

NLRB Answers: Como Se Dice 'Unlawful Threat' En Español

Labor & Employment Law Update

By Beverly Alfon on September 18, 2014

One week before an election to decertify Teamsters Local 734 as the bargaining representative of drivers at LaBriola Baking Co., the company held a mandatory meeting for its drivers to make a final push against continued union representation. At the meeting, the company's Chief Operating Officer spoke about the upcoming election. The COO said in English, "If you choose union representation, we believe the union will push you toward a strike. Should this occur, we will exercise our legal right to hire replacement workers for the drivers who strike." Roughly 80 percent of the drivers were Spanish-speaking, so the employer relied on one of its payroll administrators to translate his remarks.

The election resulted in 20 votes against union representation, 16 votes in support of the union, and 4 uncounted challenged ballots. The union challenged the results and appealed its objections to the NLRB. The union presented evidence that the employer's Spanish translation ended with the statement the employer would replace the workers with "legal workers" or a "legal workforce." Despite objection from the dissent, which pointed out that the union's allegations was contradicted by the record and improperly disregarded well-established principles regarding the relative burdens of proof – the NLRB majority found that the employer's reference to "legal workers" in its Spanish translation conveyed an unlawful threat to the non-English speaking employees, regardless of their immigration status. Accordingly, the majority ordered a second election – despite the heavy burden typically placed on the objecting party to prove that the objectionable conduct actually interfered with the results of the election.

Among other deficiencies, the dissent pointed out that the majority's finding was based on a mistaken premise that it is objectionable for employers to make even the slightest reference to the legal requirement of work authorization in the presence of non-English speaking employees: "The only potential basis for inferring the existence of immigration-related fears—an inference drawn by our colleagues—is the participation by Spanish-speaking employees in the meeting."

For those who raise their arms over what they have viewed as evidence upon evidence of the NLRB's pro-labor agenda, this latest decision only solidifies their stance. It was just one year ago that the NLRB raised eyebrows by executing a letter of agreement with the Foreign Ministry of Mexico, committing to strengthening its efforts to educate Mexican workers in the U.S. about their rights under the NLRA. The move was seen as in lock-step with the AFL-CIO's

"Work Without Fear" immigration campaign.

Bottom line: Whether or not your employees are represented by a union, if you have a largely non-English speaking workforce, give special consideration to all of your verbal and written communications.

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