

# NLRB Decision Reminds Employers to Tread Cautiously Amidst Union Push

## Labor & Employment Law Update

on April 20, 2017

On April 13, 2017 the National Labor Relations Board (NLRB) set aside a vote defeating a union organizing campaign and ordered a new election because the workforce *could have perceived* management's statements as impermissible promises to provide benefits if they voted down the union.

During a unionizing campaign, management held a meeting in which it advised employees that another facility's employees received a 12% pay raise the pay period after they rejected union representation. Management explained that the raises were the result of a survey of wages in that geographical area and stated that the company was in the early stages of conducting a similar survey in their area. All of these statements were true.

Management then opined that if the union won the election, any pay raise could take "a whole lot longer" – perhaps 6 months, a year, 18 months, and that there was a "really big chance" that they might not get the raise at all or could end up losing money. Finally, management added that although they were not promising anything, they planned to follow the same process and therefore, a "reasonable man" could expect a 12% increase.

A PowerPoint presentation shown during the meeting stated that the company was not making promises, the wage survey would continue regardless of the election outcome, the collective-bargaining process could result in wages going up or down or remaining the same, and included a hypothetical in which the union won the election and employees received a 12% raise.

The NLRB concluded that despite repeatedly stating that they were not making any promises, management implied that employees would receive a benefit if they defeated the union. Quoting a 1978 decision, the NLRB stated: "it is immaterial that an employer professes that he cannot make any promises, if in fact he expressly or impliedly indicates that specific benefits will be granted.

All employers are prohibited from interfering with, restraining, or coercing employees regarding their right to join a union. Prohibited conduct includes:

- Providing or promising (expressly or implicitly) to provide benefits in an effort to thwart the unionization effort;
- Withholding benefits that would have been provided absent the unionization campaign;
- Taking or threatening adverse action for union involvement or sympathies;
- Questioning employees about their union loyalties or that of their co-workers; and
- Spying on union activities.

This list is not exhaustive. If you suspect an organizing campaign, exercise extreme caution and seek expert advice immediately.

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