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Labor Board: Executive's Comments Did Not Unlawfully Create The Impression Of Surveillance

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While employers enjoy broad free speech rights when it comes to expressing their views on union organizing to their employees, there are some important limitations. Specifically, employers generally cannot threaten employees, interrogate employees about union views or efforts, make promises, or spy on workers' unionization activities. Companies also may not "create the impression" they are engaged in surveillance of their employees' organizing efforts. All such conduct violates the National Labor Relations Act (NLRA) and can negatively affect union election results or result in other penalties.

A [recent case](#) from the National Labor Relations Board (NLRB) sheds some additional light on how the board evaluates allegations a company has created the impression of surveillance. In the case, an organization's employees openly were engaged in union organizing and ultimately filed a petition for a union election. In exercising its right to discuss the issue with its employees, the employer's vice president of human resources held a meeting with the workers and stated, among other things, "I know that some of you have been approached and talked to about perhaps going in the union."

The union alleged that that comment unlawfully created the impression the organization was spying on the employees' unionization activities. The NLRB, however, disagreed. In finding the comment did not violate the NLRA, the labor board noted that the executive's comments did not note any specific activities; rather, the comments just reflected a general awareness organizing

was occurring. Further, the employees were openly engaged in unionization. That is, it was not a secret, which supported a conclusion that employees knew the organization already was aware of the effort. Accordingly, the NLRB determined that “the employees would not reasonably assume their union activities were under surveillance.”

This case serves as an important reminder that there are very specific rules employers must abide by when union activity surfaces in the workplace. While the employer in this decision prevailed on the allegation it created the impression of surveillance, the NLRB concluded it violated the NLRA with respect to other actions, including unlawful promises to remedy employee grievances in the face of union organizing. Employers should consider it important to be mindful that any communications to employees regarding unionization efforts must conform to requirements under the NLRA.