

Can Employers Tell Pro-Union Workers to Leave? Fifth Circuit Considers the Limits Under the NLRA

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Is an employer’s comment to a pro-union employee that “if you’re not happy at the company, you can go work for another company” an illegal threat under the National Labor Relations Act (NLRA)? The Fifth U.S. Circuit Court of Appeals recently weighed that very question.

As a reminder, the NLRA forbids employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining, or assisting a labor organization for collective bargaining purposes, working together to improve terms and conditions of employment, or refraining from any such activity.

When employees begin to discuss unions in the workplace, tensions can quickly rise. Employers and employees both have certain concerns, but what is clear is that employers cannot threaten or retaliate against employees because they support union activity. Employers also cannot interrogate employees about their union support, promise benefits to stop supporting the union, or spy on employees engaging in union activity. What employers can do is give facts about union organizing, share opinions about personal beliefs, and provide examples that illustrate problems with a union or reasons why the union is unnecessary.

Returning to the original question, is an employer's comment that "if you're not happy at the company, you can go work for another company" an illegal threat under the NLRA? During oral arguments before three judges on the Fifth Circuit panel on December 2, 2025, the judges expressed skepticism that such a comment rose to the level of coercive threats that could discourage unionizing, as the National Labor Relations Board (NLRB) previously ruled. If the Fifth Circuit panel rules in favor of the company, it would mark yet another instance of an appellate court rejecting the NLRB's expansive view of what constitutes an unlawful employer comment.

A Fifth Circuit panel pressed Starbucks Corp. to explain how former CEO Howard Schultz's comments telling a pro-union employee they could find another job did not run afoul of labor law, saying Tuesday the comments could be seen as threatening retaliation.

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