

Translators in Unions - ¿Cómo Se Dice: “Lost in Translation”?

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Labor law is filled with many technical rules, the meaning of which can sometimes be lost in translation. The recent NLRB decision in [Labriola Baking Co.](#), 361 N.L.R.B. No. 41 (2014), is a case in point.

During a campaign before a decertification election, an employer’s representative stated in a speech to the employees: “If you chose Union Representation, we believe the Union will push you toward a strike. Should this occurs [sic], we will exercise our legal right to hire replacement workers for the drivers who strike.” This was not an unlawful statement.

However, a translator hired to translate the speech for the workers – 80% of whom were Spanish speaking – used the Spanish words for “legal workers” or “legal workforce” in place of the English phrase “replacement workers.” This led to a claim by the union that the employer tainted the election because the Spanish speaking workers, hearing that the employer had the right to hire “legal workers” or a “legal workforce,” would perceive this as a threat that their immigration status would be subject to scrutiny.

The employer countered that the speech, as written and delivered in English, had nothing to do with the workers’ immigration status. Rather, the speech did nothing more than truthfully state the employer’s legal right to hire replacement workers during a strike. But the Board held that because the translator was the employer’s agent, his rendition of the key phrase was attributable to the employer.

The employer further argued that even the phrase as translated by the translator did not threaten the employees with investigations into their immigration status. Nevertheless, the Board held that given the potential vulnerabilities of the Spanish speaking workers, as well as their friends and relatives, the reference to “legal workers” or a “legal workforce” could be very threatening to them. The Board further stated that it “must continue to fine tune its institutional ‘ear’ in order to protect vulnerable workers from immigration related threats and manipulation that violate the Act.”

The dissent agreed that the translated phrase could be attributed to the employer, but disagreed that it was threatening. The dissent reasoned that simply because the workforce was predominantly Spanish-speaking did not support the majority’s inference that they would hear the translated words

as a threat regarding their immigration status.

The lesson here is clear. The employer, having chosen a translator spokesperson, will be responsible for the translator's rendition of otherwise lawful speech. Further, the Board – which evaluates statements from the standpoint of those who hear them – will “fine tune its institutional ear” to take account of the perceived vulnerabilities of the audience.

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