



# Pennsylvania Conference of Teamsters

Strength in Numbers 95,000

## LEGISLATIVE ACTION ALERT

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The below press release was issued by the NLRB and provided by The PA Conference of Teamsters legal advisor, Tom Kohn, Esq.. Attorney Kohn said that by overruling its 1985 decision in *Tri-Cast, Inc.*, the Board has limited what an employer can legally state about the impact of unionization.

### Board Restores Prior Standard Governing Employer Statements about Unionization's Impact on Employer-Employee Relationship

November 08, 2024

Today, the National Labor Relations Board issued a decision in *Siren Retail Corp d/b/a Starbucks*, overruling *Tri-Cast, Inc.*, 274 NLRB 377 (1985) and clarifying the test that the Board will use to evaluate whether employer predictions about the impact of unionization on the relationship between individual employees and their employer are unlawful threats.

While *Tri-Cast* deemed most employer statements about the impact of unionization on the relationship between individual employees and their employer to be categorically lawful, moving forward the Board will analyze such statements under the same longstanding test it uses to evaluate other potentially threatening or coercive statements. That approach, which is grounded in the Supreme Court's decision in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), mandates that – to be lawful – employer predictions of negative impacts from unionization “must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond [its] control.” If such a prediction is not grounded in objective fact, or predicts negative consequences that would result from the employer's own actions, it is “no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion.”

The Board made clear that this change in the governing standard will be applied prospectively only, to appropriately accommodate the reasonable reliance employers may have previously placed on *Tri-Cast's* categorical rule.

“The rule that we return to today brings greater consistency to the Board's approach in evaluating potentially threatening statements,” said Chairman Lauren McFerran. “By evaluating employer predictions regarding unionization in a careful and case-specific manner, the Board better protects workers' right to make a free and fair choice about union representation while respecting an employer's prerogative to share their views in a non-coercive manner.”

Members Prouty and Wilcox joined Chairman McFerran in issuing the decision. Member Kaplan dissented.



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