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MEMORANDUM

TO:	Jodi Travers
FROM:	Erich R. Schafer
DATE:	July 30, 2024
Subject:	Communications during bargaining

EMPLOYER COMMUNICATIONS WITH EMPLOYEES

Do's

It *is* permissible to do the following:

- Summarize, clarify or explain positions that the employer or employers' organization has taken in bargaining
- Provide employees with a list of issues remaining in dispute
- Respond to misleading or inaccurate union communications with employees
- Advise employees of the current status of bargaining (eg. whether an impasse has been reached), without providing editorial commentary
- Although there is no rule against verbal communications with employees, written communications are preferred, as it avoids disputes about what exactly was said by an employer
- Provide employees with *objectively true* statements about positions taken by the union (eg. "The union has advised us it will not consider any employer proposals during this round of bargaining.")

Don'ts

- Comments that may be perceived as intimidating, misleading, or coercive
- Threats (eg. "If this proposal is included in the collective agreement, we will lose a number of customers.")
- Promises (eg. "If you tell your union that you do not support this proposal, we will give you a bonus.")
- Disparaging the union or its proposals (eg. "The union is refusing to compromise.")
- Attributing fault to the union for a breakdown in negotiations
- Advising employees that the union is not acting in its best interests
- "Captive audience" meetings (ie. mandatory meetings scheduled by employers during working hours to discuss bargaining issues)

- Providing information or proposals to employees that have not yet been communicated to the union
- One-on-one conversations between an employer and employees about bargaining (although there is no rule against one-on-one communications, the situation can turn into a "he said, she said" if the union later complains about the conversation.)

Additional General Comments

- The same rules apply to communications before, during, and after bargaining, although the OLRB may view communications made early during the bargaining process with more skepticism than those that are made later on in the process.
- The employer's past practice with respect to employee communications may be considered by the OLRB. That is, if an employer has a history of explaining bargaining proposals to its employees, it is more likely that the OLRB would consider such communications to be acceptable.
- Intention may not be relevant. In other words, inaccurate statements may be considered an unfair labour practice even if the inaccuracy was unintentional.

UNION COMMUNICATIONS WITH EMPLOYEES

Do's

- Canvas members with respect to their priorities and objectives
- Confirm support for positions that may be advanced during bargaining
- Advise employees about the status of negotiations (eg. identifying outstanding proposals)

Don'ts

- Offensive or insulting comments about the employer or employers' organization
- In-person (or telephone) communications with employees during ***working*** hours that interfere with construction
- Reference to any discussions that are subject to a specific confidentiality agreement

Additional General Comments

- Since unions have a positive duty to fairly represent the interests of their members, and open communication during bargaining is necessary to achieve this objective, the OLRB is reluctant to find that a union has engaged in unlawful communications during bargaining unless it has breached a confidentiality agreement or made comments that are offensive or insulting. In other words, communication between unions and employees during bargaining is a protected activity that is subject to few restrictions.

- As with employer communications, past practice may affect the scope of permissible communications. For example, if the employer has permitted the union to post notices in the workplace during previous rounds of negotiations, a prohibition against such postings may be viewed with greater suspicion.