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Elon Musk Tweet Violated Labor Law, Says NLRB Judge

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The United Auto Workers (UAW) union has been [hemorrhaging members for years](#), so it was no surprise when the union [started to target Tesla](#) for an organizing attempt in 2017. Though the UAW so far has been unsuccessful in unionizing the carmaker's workforce, it did recently score an initial victory against the company at the National Labor Relations Board (NLRB).

In the face of the UAW's organizing campaign, Tesla took the position that its employees should remain union-free – a stance the organization was legally entitled to take. In fact, the company's CEO, Elon Musk, publicly commented on the issue via his widely followed Twitter account. In one of his tweets, Musk stated, "Nothing stopping Tesla team at our car plant from voting union. Could do so tmrw if they wanted. But why pay union dues & give up stock options for nothing?"

The UAW filed charges with the NLRB alleging, among other things, that the tweet violated labor law. An administrative law judge evaluated the allegations and [issued a decision](#) on Sept. 27, 2019. The judge ruled that Musk's tweet was unlawful because: "Musk's tweet can only be read by a reasonable employee to indicate that if the employees vote to unionize that they would give up stock options. Musk threatened to take away a benefit enjoyed by the employees consequently for voting to unionize." In other words, according to the judge, this amounted to an impermissible threat.

The judge's decision can be appealed to the full NLRB, and it likely will be in

the near future. Nevertheless, this case illustrates the importance of careful [word choice from company officials](#) during a union campaign. When it comes to union organizing, Section 8(c) of the National Labor Relations Act vests employers with broad “free speech” rights to voice their opinions on unions to their workforces. However, the NLRA also places limits on what employers can do if their employees express interest in forming a union. Generally, companies cannot:

- threaten employees based on their union activity
- interrogate workers about their union activity, sentiments, etc.
- make promises to employees to induce them to forgo joining a union
- engage in surveillance (i.e., spying) on workers' union organizing efforts

Employers can voice their stances on unions to their employees, but they should also try to avoid NLRB proceedings by taking steps to ensure all communications conform to applicable requirements under the NLRA.