

Communications Regarding Unionization

A number of faculty members and administrators have asked for clarification about how federal labor law affects their participation in campus discussions about graduate student unionization. There is a common misconception that saying nothing at all is the advisable route.

The reality is that federal labor law protects everyone's free speech rights. This includes faculty members, graduate students, and administrators. In short, everyone on campus has the right to discuss their opinions about unionization, to debate the pros and cons, to take a stand for or against, and to seek to persuade others. In particular, faculty are allowed to discuss unionization with graduate students, advocate for or against the union to students, hear views and arguments from students and respond to them, and publicly agree or disagree with students and others. Faculty members and administrators should not threaten harm or promise rewards based on whether an election petition is filed and, if so, how a student votes, but as long as they follow these basic rules, members of our community are free to express their views, make arguments, or publish their opinions on any side of the issue.

What follows is a summary of the rules governing faculty and administrator communications regarding unionization. The rules are often referred to as TIPS, which is shorthand for no "Threats, Interrogation, Promises, or Surveillance." These rules should not impede a wide-ranging exchange of views about unionization, and in fact rigorous discussions and debate are vital given the University's intellectual tradition and the need to fully understand the consequences of unionization.

Background

There are discussions underway on campus about the possibility of graduate students in teaching and research positions becoming represented by a labor union for purposes of negotiating terms and conditions of employment. Under federal labor law, a union seeking to represent a group of employees who work for a private sector employer may pursue this goal by using the procedures established by the National Labor Relations Board (NLRB). These procedures allow for a secret ballot election on the question of union representation, and they also trigger rules governing what an employer, through its managerial employees, may say to employees who are eligible to vote in the election. The goal of these rules is to prevent managers from using coercion or making promises to impact the outcome of the election. Under federal labor law, faculty members are considered "managerial employees," even if they do not manage graduate students or the graduate student with whom they are speaking, which means that the rules apply to all University faculty.

The NLRB's rules balance the free speech rights described in Section 8(c) of the National Labor Relations Act (NLRA) with prohibitions against coercion developed over the course of decades of NLRB jurisprudence. Section 8(c) states:

The expression of any views, arguments or opinions or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any provision of this . . . [law], if such expression contains no threat of reprisal or force or promise of benefit.

Section 8(c) thus codifies the right to free speech on these and other subjects guaranteed by the United States Constitution, as long as that speech does not promise benefits or contain threats of reprisal or force. In short, threats of reprisal or force or promises of benefits are not protected free speech and are unlawful. Accordingly, in exercising free speech, faculty should avoid the following expressions and/or conduct:

1. No Threats

Threats to a graduate student because of their activities or expressions in support of or against the union should be avoided and are unlawful, e.g., threatening to give a student a poor reference, or refusing to have the person as a teaching assistant on account of pro- or anti-union views, or otherwise threatening adverse consequences because of the person's advocacy or activities for or against the union. Likewise, faculty should not make predictions of adverse consequences that are not based on objective facts.

Faculty should avoid stating that certain negative or positive consequences “will” result from unionization, but rather that selection of a union “could” or “may” have such effects. Examples of lawful statements include saying that “unionization of graduate students could enhance the way that teaching assistants are treated and compensated” or that “negotiation of a collective bargaining agreement may result in new rules and restrictions for teaching assistants.”

The best course for faculty is to express their opinions, share their experiences, convey facts, raise questions, and challenge assumptions. In other words, faculty should continue to function as scholars but not threaten anyone based on their views.

2. No Interrogation

Interrogation of graduate students about their union sentiments and related matters is unlawful under federal labor law. In this regard, faculty should not ask graduate students whether they are for or against the union, whether they signed a union authorization card, or how they would vote in an election. This prohibition does not foreclose faculty from having conversations about unionization, i.e., conversations that are not started or interspersed with questions about a student's union support or lack of it. Likewise, the law does not prevent faculty from expressing their opinions about unionization, or from listening to anything anyone wants to tell them and responding in a non-threatening fashion. For example, it is lawful for a faculty member to begin a conversation with a graduate student by saying that the faculty member would like to discuss issues about graduate student unionization and share their views with the student. Finally, faculty always are free to listen to graduate students who openly offer information or express opinions regarding the union, and to have discussions with them, including agreeing or disagreeing with the students, and attempting to establish the validity of the faculty's viewpoint.

3. No Promises

Like threats, faculty promises of favorable treatment as an inducement to support or oppose the union are impermissible. The union is free to promise anything it wishes because it does not have the ability to unilaterally fulfill its promises regarding wages, hours, terms, and conditions of employment. By contrast, the National Labor Relations Board will treat promises made by a faculty member as being made on behalf of the University, which has the ability to fulfill them. Faculty are free to tell students that promises made by the union can only be fulfilled with University agreement during the bargaining process.

4. No Surveillance

Faculty surveillance of graduate students—or creating the impression of surveillance—to determine their sympathies for or against the union is impermissible. For example, faculty should not ask graduate students to attend a union meeting and report on who was there and what was said.

In sum, University faculty should seek to avoid conduct that constitutes threats, interrogation, promises, or surveillance—TIPS—within the meaning of the National Labor Relations Act, and failure to act within these guidelines could result in serious legal consequences. At the same time,

University faculty retain broad freedom to express their views—pro and con—regarding union-related issues, and all such dialogue is squarely protected against government interference by federal labor and constitutional law.

A final note: some faculty have asked whether students or union organizers may solicit students to join the union in classes or during lab activities. While students are welcome to engage with their peers in public areas across campus, if student organizing is disruptive to your class or lab activity, you may ask them to wait until the end of the class or lab session to engage. If the students refuse to do so and continue being disruptive, you may ask them to leave the class/lab.