



The Board made clear that this return to *Gissel* will only be applied prospectively to account for the reasonable reliance employers may have previously placed on *Tri-Cast*. The Board stated that to find Starbucks liable for its statements, the Board would have to find a violation of the National Labor Relations Act “based on speech that was clearly lawful at the time of utterance.” The Board stated it would amount to a “manifest injustice” if it were to apply the new standard in this case, and that “prospective application is the more appropriate course.” Ultimately, The Board cleared Starbucks of charges that it illegally told workers to vote against joining a union if they wanted to maintain direct communication with their managers, and ordered them to cease all unlawful activity and delete Facebook posts from one of its managers.

“The rule that we return to today brings greater consistency to the Board’s approach in evaluating potentially threatening statements,” stated 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.”

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