



# Federal Appeals Court Says Removing Union Literature from Breakrooms Can Be Lawful: How Employers Can Thread the Needle

Insights

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A federal appeals court recently held that an employer does not violate federal labor law by removing union flyers left in a breakroom so long as it neutrally applies its housekeeping and solicitation policies. The July 7 ruling from the 5th Circuit Court of Appeals overturned a prior National Labor Relations Board (NLRB) decision and delivered a business-friendly outcome for employers navigating union activity, reinforcing that employers can enforce neutral workplace standards without infringing on NLRA Section 7 rights. As an added bonus, the court also rejected claims that a supervisor unlawfully interrogated a worker about organizing. What do employers need to know about the *Apple, Inc. v. NLRB* decision?

## What Happened?

The case arose from union organizing efforts at Apple's World Trade Center retail store.

- Employees left union flyers on a breakroom table.
- Apple managers immediately removed the flyers, with some managers shredding them afterwards.
- In removing the flyers, management cited the store's longstanding practice of keeping the store "grand opening ready" and its Solicitation and Distribution Policy.
- While the Solicitation and Distribution Policy was a formal, written rule, the expectation that shared spaces be kept clean and free of clutter was an unwritten practice.
- Importantly, the policy had been uniformly enforced in the past in which managers had previously removed non-union items including opera performance flyers, folk music event advertisements, and even a going-away party notice just days before the union materials appeared.
- At the same time, Apple allowed other union activity, letting employees wear union bracelets and distributing flyers outside the store without interference.

Nevertheless, in the original May 2024 decision, the Board found that Apple violated Section 8(a)(1) by unlawfully confiscating union literature and coercively interrogating an employee.

Apple appealed the decision, and the 5th Circuit Court of Appeals reversed and ruled in Apple's favor.

## What Does It Mean for Employers?

The 5th Circuit stressed three points in holding favorably for Apple:

- **Consistent Enforcement Matters.** Even an unwritten housekeeping rule can be lawful if consistently applied. The evidence showed managers routinely removed non-union flyers and other written materials from the breakroom.
- **Context Counts.** The court drew a line between unattended flyers, which were treated as abandoned, and food or belongings that might still be in use.
- **No Selective Targeting.** The National Labor Relations Act (NLRA) prohibits employers from selectively discarding union materials. Because Apple also removed non-union items such as personal, promotional, and social flyers, the evidence did not support a finding of anti-union discrimination.
- **Geographic Limits.** Because the ruling came from the 5th Circuit, its direct precedential impact is limited to employers in that jurisdiction (Texas, Louisiana, and Mississippi). Employers in the 5th Circuit can take clearer guidance from this case, but those elsewhere should confirm whether local precedent aligns, since the Board is not bound by this ruling nationwide.
- **Expect Continued Scrutiny.** The Board has a long-standing policy of non-acquiescence, meaning it will likely apply its original standard in cases outside the 5th Circuit. Employers in other regions should not assume the decision provides blanket protection. Thus, the Board may continue to challenge similar employer actions in other regions despite this decision.

## Court Finds No Interrogation

The Board also originally ruled that Apple violated the NLRA by interrogating an employee about union activity. That finding came from a short conversation on the sales floor during a routine managerial check-in, where a manager asked about wages and unionization.

The 5th Circuit disagreed, finding no violation. The court held that the conversation at issue was a casual, public discussion about wages and unionization, not a coercive exchange. The court noted that the supervisor made clear that employees had the right to engage in union discussions when she said “this is something that you can talk about and you can engage in.” Since the exchange was brief, took place in a public area, and included an assurance that employees were free to discuss unions, the court found there was no evidence of threats, hostility, or retaliation.

## Why It Matters

This ruling emphasizes that employers can lawfully apply certain neutral workplace rules, even

while union activity is underway. Courts will look beyond Board conclusions and insist on substantial evidence before finding violations.

The decision also narrows what counts as unlawful interrogation, focusing on whether a conversation reasonably tends to be coercive, not merely whether unions disapprove of the questions asked.

### **What Should Employers Do Now?**

The court's decision affirms that employers may enforce workplace rules, so long as those rules are applied consistently and neutrally. Employers should:

- **Reinforce Non-Solicitation Rules if Applicable.** Ensure solicitation and distribution policies are up to date and clarify that leaving materials behind in work areas is not permitted, regardless of the message.
- **Audit and Apply Policies Consistently.** Whether written or unwritten, make sure you apply rules on solicitation, distribution, and housekeeping uniformly, regardless of the content (though having a written policy is often the best practice).
- **Differentiate Between Work Rules and Retaliation.** Employers may prohibit leaving clutter in breakrooms or enforce non-solicitation rules but must avoid selective enforcement aimed at union content.

### **Conclusion**

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