

As Unions Worm their Way into Apple, Inc., NLRB Alleges a ULP

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This week we are pleased to have a guest post by Robinson+Cole Labor and Employment Group lawyers Natale V. DiNatale and Kayla N. West.

Last month, the National Labor Relations Board issued a complaint alleging that Apple, Inc. committed an unfair labor practice by prohibiting union flyers in the breakroom while permitting non-union solicitations and distributions, thus interfering with the staff's rights to engage in union activity.

While it's important for manufacturers to maintain lawful non-solicitation policies, it's equally important that employer practices with respect to those policies don't violate relevant laws, including the National Labor Relations Act (NLRA). Section 8(a)(1) of the NLRA makes it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their right to unionize or to join together to advance their interests as employees.

As we have previously [noted](#), union organizing is increasing and people view unions more favorably than they have in more than five decades, when unionization was at an all-time high. According to a very recent press release, the NLRB has seen the largest single-year increase in cases since 1976, including a 53% increase in representation petitions in the recent fiscal year. Now, more than ever, manufacturers may want to consider both reviewing their solicitation and distribution policies and practices and appropriate training for their supervisors to avoid learning any lessons the hard way.

While the NLRA provides employees with a right to engage in union activity, including solicitation and distribution in support of a union, employers may generally maintain policies that prohibit solicitation during working time and the distribution of materials in working areas or during working time. These limitations, which are often intended to maintain an efficient and productive workplace, can be applied, for example, to solicitations by employees to buy a product or service or to sign a union card.

But what happens if a manufacturer allows an employee to promote their side business or sell candy for their child's fundraiser at school? Even if a manufacturer's solicitation and distribution policy doesn't violate the law, selectively enforcing the policy or otherwise promulgating practices with regard to solicitations and distributions in a discriminatory manner can violate the NLRA. Thus,

where a manufacturer enforces the policy or practice only against union activity, a union can challenge the policy or practice as discriminating against employees based on the exercise of their right to engage in activity protected by the NLRA or otherwise interfering with employees' right to engage in union activity. Employers may wish to speak with competent labor counsel regarding the implementation of lawful solicitation and distribution policies and practices.

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