

## **Employer Dinged for Unlawful Interrogation and Confiscating Union Literature Immediately Following Break Period; Vindicated for Simultaneous Leafletting**

Article By:

Adam L. Bartrom

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While it is not necessarily unlawful for an employer to ask an employee about his union sentiments, the [\*NLRB's finding on unlawful interrogation was affirmed\*](#) based upon additional facts which the court found to be coercive including proximity of recent discipline of the employee and the nature of the employer's questions.

The board's finding of unlawful confiscation was also upheld. The evidence demonstrated that the supervisors had a history of removing literature left by employees – pursuant to the housekeeping policy – at the end of each day. Thus, evidence showing that supervisors confiscated union literature immediately following each break period (as opposed to the end of the day) was found to be unlawful.

However, the 4<sup>th</sup> Circuit reversed the NLRB's finding on unlawful surveillance. The 4<sup>th</sup> Circuit found that the employer did not engage in unlawful surveillance when it distributed leaflets at the plant entrance while nearby union supporters were also distributing union leaflets. During the periods of simultaneous leafletting, there was no evidence of the employer speaking with the union (other than pleasantries), nor was there evidence of pictures, notes or other threatening activity towards the union.

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