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California Update: State Union Picketing Laws Banned

A recent decision by the California Court of Appeal effectively banned unions from picketing on business property within the state. In doing so, the court invalidated two California laws designed to protect union demonstrations on business property and ordered the trial court to grant an injunction restraining the United Food and Commercial Workers Union (“the Union”) from picketing in front of a Sacramento warehouse store owned by Ralphs Grocery Co. (“Ralphs”). *Ralphs Grocery Co. v. United Food and Commercial Workers Local 8*, No. C060413 (Cal. Ct. App. July 19, 2010).

Factual Background

The dispute arose when several members of the Union picketed in front of Food Co., a subsidiary of Ralphs, for being a nonunion store. Ralphs filed a complaint for trespass and sought injunctive relief against the unauthorized picketing following an unsuccessful attempt to require the Union to follow Food Co.’s rules for speech on the premises. The rules prohibited, among other things, the distribution of literature, physical contact with any person, display of signs larger than two feet by three feet, and speech within 20 feet of the store entrance. Ralphs alleged that the Union violated these rules by handing out flyers and enlisting supporters within five feet of the entrance.

In bringing suit, Ralphs challenged the constitutionality of California’s Moscone Act, which deprived state courts of jurisdiction to issue injunctions against “peaceful picketing or patrolling” involving any labor dispute. Ralph’s lawsuit also challenged California’s Labor Code section 1131.8, which imposed severe restrictions on a property owner’s right to obtain injunctive relief against union activities. The trial court ruled that the Moscone Act was unconstitutional because it constituted content based discrimination in violation of the First Amendment and Equal Protection Clause. The trial court, however, upheld the constitutionality of California’s Labor Code section 1138.1 in light of a prior appellate decision which held that Labor Code section 1138.1 did not violate federal and state constitutional guarantees of equal protection. Applying Labor Code section 1138.1, the trial court denied Ralphs’ motion for a preliminary injunction. Ralphs appealed.

California Appeals Court Strikes Down Union Picketing Laws

Three questions of law were at issue on appeal. The first was whether the entrance area of Food Co., where the picketing was taking place, was a public or private forum. If public, the California Constitution required that any time, place, and manner restrictions on free speech be reasonable. The court found that Food Co.’s entrance area was not a public forum and therefore, Food Co. as private property owner was free to restrict the type of speech allowed at its entrance.

The second issue was whether California’s Moscone Act, which limited the ability of courts to issue injunctions in labor relations cases, was constitutional. The constitutionality of the Moscone Act was at issue because the Act’s selective restriction was based on the content of the speech. The court held that the Moscone Act was unconstitutional under the First and Fourteenth Amendments because it afforded

preferential treatment to speech concerning labor disputes over speech about other issues.

Lastly, the court addressed the constitutionality of California's Labor Code section 1138.1 which required factual showings – *i.e.*, that unlawful acts have been threatened and will be committed and that substantial and irreparable injury to the property would result – be made before a court could grant an injunction in a labor dispute. The court found that this Labor Code section was unconstitutional for the same reasons as that of the Moscone Act.

Future Implications for Businesses

Although the decision may be subject to further appeal, this case provides important guidance for employers dealing with the issue of regulating union activity on business property. The court's ruling is seen as a major victory for California retailers who have endured loss of business and damage to their image resulting from union picketing on their properties. A wide spectrum of businesses ranging from hospitals to retail chain stores are expected to be impacted by this decision. Employers need to have a firm grasp of what constitutes public and private forums under California law and be able to determine the types of content neutral restrictions that are enforceable on their premises.

For any questions regarding how this case may affect your business, or to learn more about how different types of labor dispute speech and union's organizing efforts may affect employers' ability to restrict picketers, please contact partner Richard Frey or associate Christin Kim of Venable's Labor and Employment group in Los Angeles.

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