

07 | 22 | 2010 Posted By

Court Finds That Union Speech Is Not To Be Afforded Special Treatment

A recent case has provided important guidance as to whether employers may restrict the types of speech that take place on their property. In *Ralphs Grocery Company v. United Food and Commercial Workers Union Local 8*, a California Court of Appeal addressed the issue of picketing outside of a storefront.

Ralphs Grocery Company owns Foods Co, a warehouse style grocery store located in a shopping plaza in Sacramento, California. Foods Co was scheduled to open in July 2007. In the meantime, United Food and Commercial Workers Union Local 8 ("Local 8") had been negotiating with Ralphs to make Foods Co a union store, but those negotiations had stalled. Local 8 representatives then began picketing outside of Foods Co's entrance once the store opened, staying for eight hours a day, five days a week. In January 2008, Ralphs provided Local 8 with a memo containing Foods Co's rules for speech on its property. These rules included prohibitions against speech within 20 feet of the Foods Co entrance, distribution of literature, and display of signs larger than two feet by three feet.

Local 8's representatives violated these rules by standing within five feet of the entrance and handing out flyers. At first, Foods Co management called on the police for assistance. However, officers stated that their only response would be to provide Foods Co's rules to the protestors. Ralphs then filed a lawsuit against Local 8 in April 2008 for continuous trespass and sought an injunction to prevent Local 8 from continuing to picket. Three key questions of law were at issue. The first issue was whether the entranceway was a public forum. If so, the California Constitution then required that any time, place, and manner restrictions on speech be reasonable. The second issue was whether California's Moscone Act, forbidding courts from issuing injunctions in cases of peaceful labor protests, was constitutional. Constitutionality was in question because the Moscone Act's selective restriction on speech was based on content. Only speech related to labor disputes was receiving extra protection under the act. As such, the Act could violate the U.S. Constitution's First Amendment speech protection and the Fourteenth Amendment's guarantee that citizens of every state enjoy the same level of protection under the law. Finally, Labor Code section 1138.1 required factual showings, such as substantial and irreparable injury, be made in a hearing before a court could grant an injunction. The constitutionality of this Labor Code section was also in question for the same reasons as that of the Moscone Act.

The Court of Appeal ordered that the injunction be granted. First, the Court dismissed Local 8's argument that its agents were picketing in a public forum and were therefore engaging in free speech protected by the California Constitution. While the plaza where Foods Co was located had courtyards, benches, and other public spaces for people to congregate, the store's

entranceway was not one of them. Because the Foods Co entranceway was not "designed and presented" to the public as a public meeting space, it was not a public forum protected from unreasonable speech restrictions by the California Constitution. With such unrestricted private property, Foods Co was free to restrict speech in its entranceway as it saw fit. It also did not matter if Foods Co selectively restricted speech on its premises, such as being more lenient with non-union groups.

Second, the Court agreed that the Moscone Act was a violation of the First and Fourteenth Amendments. Its favoritism of speech related to a labor dispute was based solely on that speech's content. Finally, the Court ruled that Labor Code section 1138.1 was also unconstitutional because it differentiated between speech related to a labor dispute and other speech. In essence, the Labor Code section impermissibly included additional injunction requirements that only applied to speech that was related to a labor dispute. Accordingly, the Court found that Labor Code section 1138.1 was unconstitutional. Without these restraints on injunctions, the Court held a continuous trespass was occurring on Ralphs property and deemed an injunction an appropriate remedy.

Importantly, this case sheds light on the free speech implications of restricting labor protests on employers' private property. By invalidating the Moscone Act and Labor Code section 1138.1, two restraints on an employer's right to obtain an injunction against speech were lifted.