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[Another California Court of Appeal Finds California's Special Protections for Labor Picketing to be Unconstitutional](#)

On January 27, 2011, another California Court of Appeal held in Ralph's Grocery Co. v. United Food and Commercial Workers Union Local 8 that the Moscone Act and Labor Code section 1138.1, both of which give special protections to union picketing, are unconstitutional because they violate constitutional free speech protections. This is the second Court of Appeal decision within the past year to reach this conclusion.

The issue in this case arose out of labor picketing at a Foods Co. grocery store by non-employee representatives of the United Food and Commercial Workers Union ("UFCW"). In attempting to raise support for a union campaign at the non-union grocery store, union representatives carried placards, distributed leaflets, and attempted to engage customers in conversations about union issues. The picketing took place in an area in front of the store that was owned by the company, but that was open to the general public. After it was reported that the picketers were confronting store employees, and were aggressive in distributing leaflets to customers who did not want them, the store sought an injunction to prevent the picketing. The trial court held that it could not issue an injunction, because it was prohibited from doing so by the Moscone Act and Labor Code section 1138.1.

The Moscone Act states that California courts may not issue a restraining order or injunction prohibiting labor picketing, even when that picketing occurs on an employer's private property. Similarly, Labor Code section 1138.1 prohibits courts from issuing an injunction in "any case involving or growing out of a labor dispute," unless a number of procedural requirements are met. The Court of Appeal found that both statutes were unconstitutional under Article I, section 2 of the California Constitution, which guarantees the right to free speech. The Court acknowledged the Legislature *could* place limits on picketing that occurs on private property, in order to protect the rights of property owners. However, the Legislature could not protect *only* speech relating to labor disputes, while not protecting other types of speech. By doing so, the Legislature improperly discriminated against other types of picketers, based on the content of their message. The Court of Appeal held that the Legislature could not "selectively create a free speech right applicable only to the few, while excluding all others" in this manner. Consequently, the Moscone Act and Labor Code section 1138.1 are unconstitutional, and thus did not prohibit the issuance of an injunction against the UFCW.

This issue is currently before the California Supreme Court, and will remain open until the California Supreme Court issues its ruling. Until then, the law in this area remains uncertain. This uncertainty underscores that employers who are faced with labor picketing should always consult with legal counsel before taking responsive action.

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