



## **Appellate Court Decision Permits California Employers to Ban Unions from Picketing on Most Private Property**

Insights

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A ruling this week by a California Court of Appeal will enable California employers and commercial property owners to keep unions off their property and to distance themselves from union demonstrations. This new decision is *Ralphs Grocery Company v. United Food And Commercial Workers Union Local 8*, decided Monday, July 19, 2010.

*Ralphs Grocery* is an important victory for California employers because it rejects the common union argument that most commercial property essentially amounts to a public meeting place to which unions have a legally protected state law right of access including a right to engage in free speech there. According to the court, even "larger retail developments," with "amenities provided by those centers, including their restaurants, theaters, and community events" are not public forums because they typically serve the private commercial interests of their owners and occupants and the invitation they make to the public is to enter the property for the sole purpose of buying their goods and services. Because of the private nature of these properties, a union has no legal right to enter the premises or to engage in free speech there. Further, because of its private character, the party who owns or controls that property is free to pick and choose between the expressive activities it will permit there and the speech that it will ban from the property.

*Ralphs Grocery* also overturns two state statutes that have long served as insurmountable obstacles to obtaining injunctions against union trespass. According to the court, both statutes, C.C.P. §527.3 and Labor Code §1138.1, are unconstitutional because they give greater legal protection to labor-related speech than other types of speech and because they compel private property owners to provide access to their property for demonstrations with which they may disagree. Accordingly, neither statute may be used to block a property owner's or employer's request for injunctive relief from union trespass.

Finally, *Ralphs Grocery* is worthy of note because it presents a clear standard for courts to follow when asked to enjoin a union's threatened or continuing trespass. Under this decision, a continuing trespass is, for the purposes of injunctive relief, an unlawful act. A property owner or employer need not prove any wrongdoing other than a trespass by a union. Further, according to the *Ralphs* court, a continuing trespass is legally sufficient proof of the irreparable harm necessary for obtaining injunctive relief because the resulting injury though real, is often beyond any method of reliable proof or estimation.

Whether *Ralphs Grocery* will be appealed to California's Supreme Court remains to be seen. Indeed, given the *federal* constitutional issues presented by the case, it could easily end up before the U.S. Supreme Court. For the present, however, it gives employers and commercial property owners faced with union trespass a welcome leg up for keeping unions off their private property and getting unwanted property incursions enjoined.

For more information contact any attorney in one of our California offices.

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