

Employment Law Notes

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COURT HOLDS GIANT RAT IS PROTECTED

A recent case involving a 12-foot tall rat was decided under the First Amendment rather than the Endangered Species Act. The Sixth Circuit Court of Appeals ruled that a labor union's use of a large inflatable rat balloon as a prop for picketing an employer is constitutionally protected expression. The case is Tucker v. City of Fairfield, available at www.dehnlaw.com.

The Case

Labor unions have traditionally used a rat as a symbol in protesting unfair labor practices. In this case, the International Association of Machinists and Aerospace Workers used an inflatable rat balloon 12 feet tall and eight feet in diameter in a series of protests against a car dealership in Ohio. The balloon inflates in five to 10 minutes, and is secured with stakes to prevent it from tipping. During the protests, which lasted one to two hours each, the union inflated the balloon on a public right of way between the dealership and the adjacent state highway, while 25 to 40 protesters held picket signs.

The first protest passed without incident, although the dealership called police to complain. At the second demonstration a few months later, police and a city zoning inspector arrived and ordered the protesters to take down the balloon or face arrest, and they complied. At the third demonstration a few weeks later, police issued a citation charging the union president with violating a city ordinance that prohibits erecting structures in public rights-of-way.

The union filed suit seeking to enjoin the city from using the ordinance to prevent the union from using the balloon. The trial court granted the injunction,

and the city appealed. The Sixth Circuit upheld the injunction. It reasoned that whether or not the balloon constitutes a "structure" prohibited by the ordinance, its use is protected expression, it is portable, poses no danger to the public, and was not obstructing traffic. Also, the protests were held in a location that, like sidewalks and streets, is the type of place where public demonstrations are traditionally held.

The Union's Right to Picket

In this case, the union was exercising its right under the National Labor Relations Act to picket an employer for the purpose of truthfully advising the public, including consumers, that the employer does not employ members of, or have a contract with, a union. Such picketing may lose its protection if it has a substantial effect on the employer's business because it induces "any individual employed by any other person" to refuse to pick up or deliver goods or to perform services.

Here, the union wisely chose to hold its demonstration outside of the employer's premises. Employers usually have private property rights to exclude non-employee union organizers from their property. Special rules may apply to parking lots and other privately-owned areas to which the public is invited; in Washington and most other states non-employee organizers can usually be excluded if the owner posts and uniformly enforces a non-solicitation policy. Nevertheless, union organizers may be able to enter private property if the employees or customers that are the targets of their intended communications are otherwise so inaccessible that the union would be unable to reach them. ✍

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