

LANDLORDS, TENANTS AND UNIONS; UNIONS WIN

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Since the California Supreme Court's 1979 landmark decision in *Robins v. Pruneyard Shopping Center*, which recognized constitutional protection for speech-related activities in privately-owned shopping centers, labor unions have been testing the limits of shopping center owners' ability to restrict access to their properties. In a labor dispute, picketers inconvenience shoppers and disrupt business, causing major stress for owners and tenant-businesses alike.

Recently, the California Supreme Court was asked to provide further guidance on what conduct a shopping center owner is permitted to regulate in a labor dispute. The court's decision, in *Ralph's v. United Food and Commercial Workers Union*, offers both serious advantages and major drawbacks, as owners gained clarity on how they can regulate speech-related activities while labor unions received confirmation of their seemingly endless authority.

The facts of the case are relatively straightforward: local union members were picketing at the entrance of a Ralph's supermarket in Sacramento, encouraging workers to unionize. Ralph's had the picketers removed by enforcing its shopping center regulations, which prohibited speech activities within 20 feet of the store's entrance, prohibited all speech activities during specific hours and for a week before certain designated holidays, and prohibited physical contact with any person, distribution of literature, and the display of any sign larger than two feet by three feet. In response, the labor union brought suit to challenge the center's rules, arguing that labor unions were entitled to special protections which rendered the center's regulations restricting their access unenforceable.

In granting judgment for the union, the Supreme Court made two major pronouncements. First, the State's highest court confirmed that speech-related activities in privately-owned shopping centers are protected only in areas that qualify as "public forums." To the Court, this includes only those areas that are specifically designed for leisure and congregation, such as communal meeting areas with tables and benches. Other than these specific locations, shopping center

owners are free to regulate the time, place and manner of speech activities. The Court stated emphatically that “areas outside the individual stores’ customer entrances and exits ...are not public forums” for which constitutional speech protections apply.

However, the Court also decided that labor unions are considered a distinct group for which the California Legislature has conferred special protections. Specifically, under California’s Moscone Act and Labor Code § 1138.1, labor unions are entitled to engage in peaceful picketing and other union activity in privately-owned shopping centers, above and beyond what is otherwise protected by the U.S. and California constitutions. This means that labor unions can picket on a private sidewalk outside a privately-owned shopping center with apparent impunity, and owners are powerless to stop them unless they can show that the activity resulted in a physical disruption of business.

The impact of the Court’s decision is striking. On one hand, the Court held that owners are free to adopt regulations restricting speech activities at their shopping centers in all locations except those designed for patrons to “leisurely congregate for purposes of relaxation and conversation.” On the other hand, the Court’s confirmed that labor unions are entitled to special rights and protections, which is likely to result in continued picketing at store entrances and more headaches for shopping center owners.

Despite the Court’s best efforts to clarify California law with respect to speech-related activities in privately-owned shopping centers, the long-term effect of *Ralphs* is difficult to predict. As the Court noted in its opinion, there is significant disagreement between state and federal courts regarding whether the U.S. Constitution allows California to designate labor unions for special protections. Counsel for *Ralphs* confirmed they intend to file a petition for review to the U.S. Supreme Court later this month. In the meantime, however, the *Ralphs* decision confirms that shopping center owners can confidently regulate and restrict speech activities with respect to the majority of third parties seeking to use their centers as public forums for communicating with other patrons.

The Trainor Fairbrook Property Management Group acknowledges the contribution of Mark Ellinghouse to this article.