

# THE NATIONAL LAW JOURNAL

## **Picket ruling may fuel labor tensions**

Tresa Baldas / Staff reporter

September 08, 2008

A recent California court ruling that says union members can picket in shopping malls — even during peak holiday seasons — is causing yet more friction between organized labor and employers.

Union supporters view the decision as a much-needed boost to the struggling labor movement, while management-side lawyers fear the ruling will lead to yet more picketing and make companies more vulnerable to negative attacks and bad publicity.

The case involves members of the Carpenters Union, who in 1999 and 2000 were arrested for distributing leaflets and picketing at two California malls without permission.

'Town center'

In a recent 2-1 decision, the 9th U.S. Circuit Court of Appeals ruled that California shopping malls can't prohibit union members from carrying picket signs, standing on sidewalks or picketing during the peak holiday season. *United Brotherhood of Carpenters v. NLRB*, No. 05-75295 (9th Cir.). Such activities, the court said, are protected freedom of speech rights. The court also held that shopping malls, essentially, are no different from public parks.

"One of the forms of pressures that unions rely on is the ability to do this — embarrass employers and put pressure on them," said **Josh Zuckerberg** of New York's **Pryor Cashman**, who represents both unions and employers. "But I think you're still going to see efforts to restrict this type of activity."

**Zuckerberg** noted that the ruling holds only in California because it relied on California law, which, he added, is very protective of free speech rights. But he expects it will motivate picketers elsewhere.

David Rosenfeld of Alameda, Calif.'s Weinberg, Roger & Rosenfeld, who argued the case on behalf of the carpenters, agreed. "I think you'll see tremendous resurgence in expressive activity," said Rosenfeld, who believes the ruling sends a strong message to malls that try to limit picketing activity.

"For the purpose of California law, you treat shopping malls like public property. They're the modern town center. They invite the public, and we have to treat it like a public square," Rosenfeld said.

Rosenfeld views the decision as more than a pro-labor win. It's more of a freedom-of-expression win.

"It's definitely not tailored to union organizing," Rosenfeld said. "This applies to people wanting to sign petitions, talk about animal rights . . . .It protects any expressive activity for any issue."

Thomas Leanse of the Los Angeles office of Katten Muchin Rosenman, who represented the mall owners in the case, was unavailable for comment.

Management-side attorneys, meanwhile, believe the ruling went too far in making shopping malls public property, and exposing employers to more negative attacks. "What certainly comes across is that the court has gone very far down the road in opening up shopping malls for all kinds of expressions and opinions," said Steven Suflas, a management-side attorney in the Voorhees, N.J, office of Philadelphia's Ballard Spahr Andrews & Ingersoll.

"What I found mildly troubling . . . was that picketing — which is plaques and banners — is more than, 'here, let me hand you a piece of paper.' It's more in your face, more confrontational. And in the tighter confines of a shopping mall, that's more problematic for an employer than it is outdoors," Suflas said.

###