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OPINION NO. 2000-01

TO: Michael L. Strobe, Police Chief
FROM: Stephen M. Kemp, City Attorney
DATE: January 24, 2000
SUBJECT: Labor Union Picketing and Private Property

QUESTION:

You have asked the following questions pertaining to labor union picketing and private property.

1. Can Picketers and persons distributing handbills stand in the middle of a business entrance/access to hand out information blocking traffic?
2. Stopping vehicles on the roadway or while the vehicle is pulling into a business access drive, can persons distributing handbill and picketers pass out pamphlets or is this a violation of the City ordinance on street solicitation?
3. Does the manager of a grocery store that is the subject of the picketing and/or distribution of handbills, representing the company, have the right to ask people not to conduct activities or be on their premises (Trespass Warnings)?
4. Union members who do picket or distribute handbills, where do they have to be in order to legally picketing or to engage in the distribution of handbills and what can they do and not do?
5. Is the parking area of a shopping center, public property? If not, do the tenants have right to restrict access to persons they do not want on their establishment?

OPINION:

For purposes of this opinion, the following background is offered. Kroger Corporation operates Fry's Food and Drugs, a grocery store chain with two existing stores in the City of Peoria. Recently, Kroger acquired Smith's Food and Drugs and converted them to the Fry's name. At the same time, Kroger sold the warehousing operating of Smith's to a third party that proposed changes to the existing collective bargaining agreement between the warehouse employees and Smith's. Subsequently, the labor union representing these employees mounted a number of protests at current and converted Fry's locations expressing their disagreement with Kroger's position on the warehouse collective bargaining agreement. As a result of these protests, the questions asked in this opinion have arisen.

Regarding Question 1:

Issues of picketing a business and or the distribution of handbills pertaining to the labor negotiation and organization practices of a business are subject to the United States National Labor Relations Act (NLRA). Under the NLRA, a labor union would have the right to picket a business and distribute handbills pertaining to the labor dispute, even in cases where the individuals are not employees of the business picketed. Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc. 391 U.S. 308 (1968). Therefore, federal law would permit picketing and the distribution of handbills on the Fry's property pertaining to the labor negotiations with Kroger's.

To the extent that such picketing and/or distribution of handbills interfere with reasonable access and egress to Fry's, the picketers and handbill distributors can be directed to move. From a traffic control standpoint the concern should be having the picketers and handbill distributors behind the public right of way so that acceleration on to the major streets is not impacted and the stacking up of traffic occurs in the driveway, not on the street.

Regarding Question 2:

The street and the driveway entrance to the right of way line are public property. The rights of employees to picket must be balanced against the rights of the employer, the public policy of the state, the rights of the picketing organization and reasonable, time, place and manner restrictions. International Brotherhood of Carpenters and Joiners of America, Local 857 v. Todd L. Storms Construction Co., 84 Ariz. 120, 324 P.2d 1002 (1958).

In this case, the City Code provisions prohibiting blocking the public roadway and business accesses that are part of the public right of way are legitimate time

place and manner restrictions. Blocking the free movement of traffic on 75th Avenue, which is a major arterial roadway, increases the likelihood of rear end and broadside collisions by restricting turning movements. Preventing these type of accidents by prohibiting stopping vehicles on the roadway or on the portion of the access drive within the public right of way is a reasonable restriction on the right of assembly, that is not content related and that does not substantially impact this right.

Regarding Question 3:

Picketing and passing out handbills is protected activity under the NLRA. The federal law is a comprehensive statute that preempts any state law to the contrary. State laws, such as Arizona's that would appear to restrict picketing only to employees of that entity are unconstitutional as they interfere with the comprehensive federal purpose of the NLRA. Liner v. Jafco, 375 U.S. 301 (1964). Further, state criminal law, such as the criminal trespassing statute may not be used to deny rights under the NLRA.

Certainly, this does not mean that the Police can not enforce statutes pertaining to breaches of the peace. Illegal violent behavior such as assaults, threatening and intimidating, misconduct with a weapon and other offenses remain against the law. Those persons who commit such offenses should be cited or arrested in the same manner as any other person at any other location.

While the management of Fry's may ask the picketers and handbill distributors to limit their access inside and outside the building, they can not prohibit these activities on their premises as they are protected under Federal Law.

Regarding Question 4:

Union members may picket and pass out handbills on private property. However, they may not block the flow of traffic entering and leaving the center. In this case, Union members may not block entrances and exits to businesses. Additionally, they may not block traffic isles and drive ways needed to access parking spaces.

Regarding Question 5:

Is the parking area of a shopping center, public property? The answer is clearly no; the private property owner is taxed on and is responsible for the maintenance and conditions on such property. However, it needs to be recognized that those businesses located in the same building attached to Fry's share the same customers and are also subject to the ability to pass out hand bills and picket.

In the case of those buildings not connected to Fry's, such as Hollywood Video at 75th Avenue and Cactus Road, pursuant to title 13, the landowner or his designee, the tenant may post the property "No trespassing, No solicitation, No distribution of material" in accordance with A.R.S. §13-1502 and further indicate that solicitation and distribution of materials on their premises is prohibited. To the extent that the tenant is not a party to the labor relations matter involved above, such prohibitions may be enforced by the Police Department. Again, it must be noted that the closer the business is in proximity to that being picketed and subject to handbill distribution and to the extent common driveways and entrances are used, the Federal labor laws preempt enforcement of state criminal laws on trespassing.

It should also be recognized that the tenant might have the right independently to obtain a court injunction prohibiting a union from engaging in picketing on its premises. Should such an injunction issue, the Police Department should enforce the injunction in the same manner as any other court order.

I trust that this answers any questions you may have. If you have any further questions, please contact me.

cc: Honorable Mayor and Council
Terry Ellis, City Manager
Janice L. Graziano, City Clerk