

NLRB Rules Inflatable Rats May No Longer Constitute Signal Pickets

Williams Kastner Labor & Employment Advisor – Spring 2011

By [Judd H. Lees](#)

The Obama National Labor Relations Board continues its movement left by reversing years of cases with regard to the use of giant inflatable rats in picketing situations. For years since unions popularized the use of rats as an emblem of non-union “scab” employers, unions have actively used this symbol in leaflets, in costumes on picket lines, and most popularly, in the form of giant 16-foot tall inflatable balloons meant to advise the public of the presence of a labor dispute. Employers and their attorneys, including those from this law firm, have argued successfully that these inflatable rats constitute “signal” pickets which are subject to the same secondary boycott rules as live pickets. The advantage of such a position is that the inflatable rats therefore have to conform to secondary boycott rules, including a requirement that they be placed in front of or near gates reserved for the picketed company, as well as a requirement that they can only appear when the picketed company is present at the jobsite. All this was recently changed by the Board in the *Sheet Metal Workers Local 15*, 356 NLRB No. 162 (2011).

In the *Sheet Metal Workers Local 15* case, the Board dismissed an unfair labor practice complaint against a union which had stationed an inflatable rat in front of a hospital rather than at a reserved gate in order to discourage the hospital from doing business with non-union contractors. The recent Obama appointees to the Board joined NLRB Chair Liebman in ruling that the inflatable rat did not constitute a signal picket, but instead, constituted symbolic speech which is not subject to secondary boycott rules. NLRB member Brian Hayes dissented from the ruling and stated that the inflatable rat was “unmistakably confrontational and coercive” and was designed to “intimidate by conduct, not to persuade by communication.” The Board made the ruling despite an admission by the union organizer that the union was “picketing.”

The Board determined that the inflatable rat, like the bannering recently found lawful in the 2010 decision of *Eliason & Kanuth of Arizona, Inc.*, did not involve confrontation, was stationery, did not block entrances, and did not result in threats to the public going into the hospital.

The Board's holding allows the union not only to place the inflatable rats at neutral entrances, but also to place them at locations where the picketed company is absent. Like bannering cases, employers who find themselves the subject of this type of campaign should carefully monitor union actions accompanying the inflatable rat, such as blocking, the use of confrontational activities, as well as traditional patrolling. If and when those activities occur, the use of the rat will not be proscribed, but it may be treated as a signal "picket" and therefore need to conform to the secondary boycott restrictions under federal labor law.