

Cloak and Gavel

A handful of pivotal court cases will indelibly shape

To many rank and file union members, presidential and mid-term elections are of obvious importance as Organized Labor routinely comes together to elect the best possible representatives for working people. What is not always so obvious is the indirect result of those elections. In fact, those indirect results can sometimes have more of a profound impact on the lives of workers than the immediacy of executive orders or other actions taken by a chief executive.

Presidents and Governors nominate judges and legislators appoint them, and depending on what party is in power or whose interests are being represented determines what sort of judges will decide upon cases with implications greater than most members are aware.

After all, judges have power. They hear appeals, reject or accept pleas, overturn or set precedents, and directly preside over many other aspects of the legal process. Often, their influence shapes the very scope and manner in which legal activities are pursued.

This study will discuss a few decisions that have already been presided over by judges and the effects of these decisions upon Organized Labor and working folks, and a few decisions that are still pending.

Citizens United v. Federal Election Commission, No. 08-205

In January of this year, the Supreme Court, with a bitterly contested 5-to-4 vote, essentially ruled that institutions, such as corporations or unions, have the same First Amendment rights as human beings.

The Supreme Court's decision in this case overturned previous restrictions and limits to corporate spending on election advertisements.

While this initially might seem like a beneficial ruling, Organized Labor and its allies have never been able to match corporations and wealthy conservative donors in spending and usually counter such sums with mass door-to-door and phone campaigning. But, with no limits to the amounts of money corporations can spend on political advertisements, the balance in the election process has been irrevocably changed.

According to recent articles in the Washington Post and L.A. Times, as of October, \$80 million had been spent already by groups outside the Democratic and Republican parties on this year's mid-term elections or five times the amount spent

by outside groups on the entire mid-term elections in 2006.

The vast majority of this \$80 million has come from conservative groups, out spending liberal ones 7-to-1 in September alone. These same conservative groups have committed to spending another \$50 million in support of Republican candidates.

The spending appears to have confirmed the fears of retired Supreme Court Justice Sandra Day O'Connor who took the unusual step of criticizing the decision of her former colleagues by saying the ruling will "open the floodgates" for spending by third parties.

Large corporations and the ultra wealthy have invested heavily into tipping governorships and state and national legislatures in their favor during these mid-term elections. Many fear that such leanings will only lead to more big business friendly rulings, which will only lead to more corporate campaign spending in the presidential election in 2012.

New Process Steel v. National Labor Relations Board, No. 08-1457

In June of this year, the Supreme Court, with another 5-to-4 vote, ruled some 600 cases decided upon by the National Labor Relations Board to be invalid. The U.S. Senate's refusal to consider President Obama's nominations at the National Labor Relations Board was directly responsible.

Deciding over 600 cases is about two years worth of work for a properly constituted NLRB, and the Board was already backlogged a few hundred cases prior to this ruling.

The potential postponement of already won awards and sanctions to workers and the pileup of some 900 or so cases temporarily deemed unable to act, initially seemed like a major setback to Organized Labor. The March recess appointments of Craig Becker and Mark Pearce to the NLRB changed the previous landscape drastically.

Now, not only does the NLRB have the quorum necessary to make valid rulings, but the Board also is tilted 3-to-1 in Labor's favor. Thus, the current Board is not likely to overturn any of the 600 cases ruled in favor of either workers or Organized Labor and will have the opportunity to set new pro-labor precedents. It may even reconsider old cases in which the board ruled in favor of management.

If the newly constituted NLRB can handle the workload, Organized Labor should benefit.

shape the union's agenda for decades to come

Ralph's Grocery v. UFCW, CO60413

In July of this year, the California Court of Appeal, 3rd District, while overturning a trial courts' denial for a preliminary injunction against a UFCW local, invalidated the Moscone Act and Labor Code section 1138.1 on the grounds that both violated the 1st and 14th Amendments.

Basically, the Appeal's court ruled that the sidewalk between the store's entrance and the parking lot and the parking lot itself were private property and not a 'public forum' for free speech. Therefore, Ralph's as a private property owner has the right to selectively permit or prohibit speech in these places as it desires, including the ability to seek preliminary or permanent injunctions against groups intending to engage in speech the company deems undesirable.

The Moscone Act and Labor Code Section 1138.1 are two of the legal apparatuses that allow for Organized Labor to demonstrate on site. Without such legal wherewithal, strikes or picketing would have to occur outside of the parking lots of employers and not be nearly as effective.

Lester Aponte, an attorney who has worked for one of the more notorious anti-labor law firms in the nation New York City-based Seyfarth Shaw, described the court's ruling as one of the most sweeping free speech decisions to emerge from the state courts in years and predicted that the California Supreme Court would likely overturn it.

"This decision would have implications not only for unions, but also for everyone from Cub Scouts to gay activists ...in California we have come to take for granted the ability to get the word out to the public on a variety of issues and certainly the right of unions to let the public know they are on strike falls into that," Aponte said.

Because rulings in state courts can be used as precedents by other judges in other states as they examine similar issues, unions nationwide are watching the case closely as it winds its way up to the state Supreme Court.



State of California v. Safeway, No. 08-55671

In August of this year, the United States Court of Appeals, 9th Circuit, overturned the California Central District Court's denial, in February of 2004, for a summary judgment as to whether Kroger, Supervalu, and Safeway violated federal antitrust law when they agreed to share profits during the Strike/Lockout of 2003-2004.

The 9th Circuit's reversal of the Central Court's denial did not consider the grocery strike to be justification for separate and naturally competitive companies to artificially and temporarily agree not to compete in order to maintain their market status and stabilize their profit margins.

Judge Steven Reinhardt concluded that the companies' mutual strike assistance agreement ran afoul of federal law. The federal appeals court not only reinstated the case but also concluded that it should proceed to trial.

The decision was seen as a major setback for the grocery giants as they prepare once again for negotiations with the same Southern California Unions they plotted against in the first place.

Now, six years after the strike/lockout, the state of Califor-

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The Labor Movement's future will be determined partly by judges

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nia, represented by a pro-labor Attorney General, will get their day in court, and Kroger, Supervalu, and Safeway will have to defend their conduct before a jury.

This case when heard could set landmark precedents for Organized Labor and corporate responsibility.

Tarkington V. California Unemployment Ins. Appeals Board No. BS107174

On the evening of Oct. 11, 2003, thousands of UFCW members employed by Vons throughout Southern California carried out their threat to strike. Within minutes, Ralphs and Albertsons locked their employees out of the stores despite their willingness to clock in and work their posted hours.

The UFCW took the position that the thousands of workers who were not allowed to clock in were now unemployed through no fault of their own and should be entitled to unemployment benefits.

But officials at California's Employment Development Department (EDD), under the direction of Gov. Arnold Schwarzenegger, ruled against the striking workers based on Unemployment Insurance Code (1262) under which benefits are denied to workers who leave their jobs in a trade dispute.

But a major ruling from the U.S. Ninth Circuit Court of Appeals last month has given new life to the issue when it granted Class Action Status to thousands of Ralphs and Supervalu employees locked out during the dispute.

Union officials stressed that although the ruling was great news, this legal matter is likely far away from a final conclusion.

Nevertheless, the sheer weight of a potential ruling in favor of unions has many people watching the case anxiously.

Not out of reach

Everything from major social issues to economic controversies seem to many peo-

ple to be topics that are out of reach for the average citizen to influence.

But years of consistent and coordinated campaigns designed to bolster member awareness about politics appears to be bridging that gap.

Voter registration and participation are up among union households in recent years and many members appear to be more cognizant of their highly influential role in the process.

Union officials are quick to point out that simply because pivotal issues of national significance to Organized Labor is in the hands of the judiciary branch of government, citizens still play an essential role.

The governor and president, for example, are directly elected and both have the power to appoint judges. State senators and U.S. senators confirm or reject an executive appointment, giving rank-and-file union members yet another shot at influencing the judiciary.

"No matter what angle you look at it from, the vote remains the most powerful tool anybody has to shape the direction of public policy in our democracy," said President Greg Conger.





2 cities settle with veteran union members who say local police violated their civil rights in 2003/04 Strike/Lockout

Fourteen UFCW members will share a sum total of \$420,000 in compensation from the cities of Hermosa Beach and Manhattan Beach, marking the first and only such case of civil damages arising from police misconduct during the 2003/04 Strike Lockout.

Overall, Hermosa Beach contributed \$400,000 of the settlement money while Manhattan Beach contributed \$20,000.

The lead attorney for the plaintiffs, Los-Angeles-based Olu Orange, said that the parties involved settled only after the presiding judge rejected a motion by the defendants to have the case thrown out of court.

Instead, the judge ruled that there was enough evidence to warrant a trial in the case in which the 14 UFCW picketers accused officers of the Hermosa Beach Police with violating their constitutional right to free speech.

The picket line at Vons on Pier Avenue was ground zero for several confrontations with police, the worst of which resulted in an injury to a union member and the arrest of another.

The settlement also calls for the Hermosa Beach Police to undergo formal training on how to handle incidents between picketing union members and local employers.

Field Director Chuck Adinolfi called the settlement a victory and predicted it would be seen as welcomed news to many veterans of the Strike/Lockout who were labeled “troublemakers” by police.

“It’s demoralizing when you see the people who are supposed to protect you turn out to be squarely on the employer’s side. It was heartbreaking to see a member come to that realization for the first time,” Adinolfi said.

The case was filed in 2005 in U.S. District Court in Los Angeles but got bogged down by delay tactics from defendants, said UFCW 1442

President Michael Straeter.

“It is inspiring that these 14 members managed to stick together and remain committed to securing justice as long as they did,” Straeter said.

For his part, Orange credited the outcome of the case to the solidarity of the picketers as well as to UFCW Local 1442, which he described as instrumental in seeing that each of the 14 members got their day in court.

“The Union stood behind these men and women and never wavered a bit,” he said.

Victory Number 2

Although the case is the first of its kind to involve police conduct during the infamous labor dispute, it is actually the second case to emerge from the judicial system in which union allegations of wrong doing were validated.

The landmark case brought by the U.S. Justice Department in 2005 resulted in several felony convictions of Ralphs and its executives for violating federal labor laws.

UFCW members employed by Ralphs divided \$50 million in compensation from the company in that case. An additional \$20 million went to the Justice Department. And like the settlement with Hermosa Beach, the belated victory for the unions showed that union members can be remarkably patient as they wait for the wheels of justice to turn.

“Hopefully the actions of these few union brothers and sisters will spare many more from being hurt or demeaned by a few badge carrying thugs on a power trip,” said Local 324 President Greg Conger.

