

Labor Action at Retail Locations: Free Pass or Trespass?

While labor action enjoys broad legal protection, a recent decision confirms important limits on such rights. On October 17, 2016, in *Walmart v. United Food and Commercial Workers International Union*, the California Court of Appeal upheld an injunction against union activity that constituted trespass, rejecting the union's claim that the state law trespass claim was preempted by federal labor law.

This case involved dramatic facts. In connection with a campaign across the United States, union demonstrations at Walmart stores in California included large numbers of people assembled outside a store, as well as groups of people that entered stores. Once inside, demonstrators engaged in “flash mob” activities, including singing, dancing, releasing balloons, and other disruptive tactics. Walmart sued for trespass inside its stores, and the state court issued an injunction. The union argued Walmart’s suit was preempted, claiming such union conduct can only be addressed by the National Labor Relations Board. The Court of Appeal rejected the union’s preemption argument, finding that Walmart’s trespass claim pertained to the *location* of the activity, not to its purpose, and therefore was not the same issue that could have been presented to the NLRB. For this reason, it affirmed the state court’s authority to enjoin the activity as trespass.

This case confirms that a claim for trespass can support injunctive relief from disruptive labor activity in appropriate circumstances, and reinforces the importance of careful crafting of the complaint, to avoid preemption.

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