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TRAINING BULLETIN

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Labor Disputes and Expressive Activity

It is not uncommon for an officer to be called to a business regarding picketers, demonstrators or solicitors. It can be difficult to determine if a crime is occurring or if the actions or speech are protected under the 1st Amendment, or by case law. There have been several court decisions that have tried to clarify what is permissible and what may constitute a crime. The majority of these calls can be categorized as either, **Expressive Activity** or **Labor Activity**. Identifying what you're dealing with can greatly assist you in deciding what course of action to take.

The picketers, protestors or labor union officials will frequently cite case law decisions in an effort to convince you to take their side or take enforcement action. The following are some of the cases likely to be referenced:

Pruneyard vs. Robins (1980) U.S. Supreme Court - under the [California Constitution](#), individuals may peacefully exercise their right to free speech in parts of *private* shopping centers regularly held open to the public, subject to reasonable regulations adopted by the shopping centers. In Pruneyard, the court held that modern malls are the current day equivalent of historical "village commons" or "town squares."

Moscone Act of 1975 (California Code of Civil Procedure, section 527.3) - provides that picketing and related union activities during a labor dispute cannot be prohibited except in the case of certain unlawful conduct. It also prevents businesses from obtaining injunctions against labor unions during labor disputes.

Catalano Case: A labor representative who enters a jobsite to conduct lawful union activity does not violate the criminal trespass law.

Lechmere Case: Denies access to union organizers onto employee parking lots for the purpose of placing handbills onto employee cars.

Trader Joe's vs. Progressive Campaigns, Inc. (1999) and **Costco v. Galant (2002)** – In both of these cases, the courts concluded the locations were NOT public forums. The courts focused on the store's purpose, which was limited to providing a place to shop, not to provide the public with a common gathering place. Both identified the locations as stand-alone stores.

Albertsons, Inc. vs. Young (2003) – In this case, Albertson's was NOT a stand-alone store; it was part of a shopping center with 20 other businesses. The court concluded that no public forum existed; there was no public congregating area or common area inviting the public to engage in typical public forum activities.

Van vs. Target Corp., Home Depot, U.S.A. Inc. (2007) – The courts concluded that the store apron and perimeter areas are not designated meeting places. The court declined to extend *Pruneyard* to the entrance and exit area of an individual retail establishment within a larger shopping center.

Fashion Valley Mall vs. National Labor Relations Board (2007) – Allows passing out of leaflets advocating the boycott of a store on the private property of a shopping mall. Additionally, any regulations of expressive speech must be content neutral (see Time, Place and Manner below).

Ralphs Grocery Co. vs. United Food & Commercial Workers, Local 8 (2012) – This decision limited application of *Pruneyard* to places in retail settings where members of the public are invited to congregate for performances, socializing, and similar activities - Public Forums. Therefore, the privately owned sidewalk in front of stand-alone stores, including those in a strip-mall, would not be considered a Public Forum, but rather a Private Forum. Additionally, store displays in front of a store, as well as sidewalks from one store to another, do not constitute a Public Forum.

Time, Place, and Manner Restrictions

Occasionally, you may encounter property or business owners who have prepared content-neutral rules that attempt to regulate the time, place and manner that expressive activity may be conducted. The courts have approved regulations that prohibit activities on specified busy retailing days; designate specified areas; prohibit repeat groups from activities more than 5 consecutive days a month or on consecutive weekends; and require prior written application with approval on a first-come, first-served basis. We do not enforce these policies, but they may be used to support a private person's arrest.

Labor Disputes

Individuals participating in a labor dispute or organizing effort have a right to stand in front of a store, on sidewalks, and in parking lots in front of the store entrance. Speech concerning a labor dispute is permitted so long as no blocking of the entrance nor violence occurs, even though those areas are not *Pruneyard* public forums. When determining if labor demonstrators are "blocking" an entrance, the "blocking" needs to be obvious and prolonged (blocking a driveway for 15 seconds while a picket line walks across is okay). The individuals can be union members or those speaking out against a union. Absent an immediately recognized unlawful act, such as battery or vandalism, the majority of labor activity is going to be protected under California law and any violation will likely be a civil matter.

SO, WHAT ENFORCEMENT ACTION CAN WE TAKE?

1. First of all, KEEP THE PEACE.
2. Identify if the location is Public Property, Private Property-Open to the Public, or Private Property-Not Open to the Public.
3. Is the activity Expressive Speech or Labor Related?
4. In almost all cases involving labor related activity, do not take enforcement action unless a criminal act, such as battery or vandalism, has occurred. If necessary, take an Incident Report to document the activity.
5. If Expressive Activity:
 - a. Has the owner or manager asked the individual(s) to leave?
 - b. Are signs posted prohibiting the activity?
 - c. Does the property owner have a written policy?
 - d. Has the potentially unlawful activity been recorded?
6. Absent some other criminal act, do any of the trespassing statutes apply, (see below)?
7. If the property owner or manager is adamant, and there is an applicable statute, they can make a **Private Person's Arrest**.

Injunctions

Labor dispute injunctions are not applicable to law enforcement – An exception would be if a criminal law is violated on the picket line, or if the court order is directed to the **Sheriff or Chief of Police**, ordering the enforcement of the injunction; a violation of 166(a)(4) PC may apply.

Criminal Statutes

602(k) PC – Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent, or by the person in lawful possession.

602(o) PC – Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the public upon being requested to leave. **However, this section does not apply to lawful labor union activities.**

552.1 PC – Allows designated union representatives to enter for organizing or investigating the safety of working conditions.

602.1(a) PC – Any person who intentionally interferes with any lawful business or occupation carried on by the owner or agent of a business establishment open to the public, by obstructing or intimidating those attempting to carry on business, or their customers, and who refuses to leave the premises of the business establishment after being requested to leave by the owner or the owner's agent, or by a peace officer acting at the request of the owner or owner's agent.

Guidelines for Trespass & Speech

Speech Location	General Solicitation	Labor Speech Exceptions
Blocking store entrances/exits or parking lot entrances/exits <i>(Example: any store)</i>	TRESPASS, unless permission given by the store operator	TRESPASS, unless permission given by the store operator
Private sidewalks/walkways leading to hospitals, hotels, or other large facilities <i>(Example: Hampton Inn)</i>	TRESPASS, unless permission given by the store operator	PERMITTED, if not blocking doorways or violent in nature
Private sidewalks/apron areas of freestanding stores <i>(Example: Ralphs)</i>	TRESPASS, unless permission given by the store operator	PERMITTED, if not blocking doorways or violent in nature
Private sidewalks/apron areas of any stores within a strip development <i>(Example: El Pollo Loco)</i>	TRESPASS, unless permission given by the store operator	PERMITTED, if not blocking doorways or violent in nature
Private sidewalks/apron areas of an individual store within a large shopping mall <i>(Example: Whole Foods)</i>	TRESPASS, unless permission given by the store operator	PERMITTED, if not blocking doorways or violent in nature
Common areas within a shopping mall <i>(Example: Common areas of The Pointe)</i>	PERMITTED, if not blocking doorways or violent in nature	PERMITTED, if not blocking doorways or violent in nature
Sidewalk outside convention centers or stadiums <i>(Example: Lakers facility)</i>	PERMITTED, if not blocking doorways or violent in nature	PERMITTED, if not blocking doorways or violent in nature
Public sidewalks <i>(Example: Pacific Coast Highway, Main Street, etc.)</i>	PERMITTED, if not blocking doorways or violent in nature	PERMITTED, if not blocking doorways or violent in nature

Key Points

- Any entity, with control of the area, has the right to eject trespassers; including tenants or owners—not just the owners
- Individual stores within a shopping center may eject trespassers from the sidewalk area immediately in front of and surrounding that individual store