



Do You Smell A Rat? Scabby Gets A Lifeline

February 11, 2021 | [Labor And Employment](#), [National Labor Relations Board](#), [Unions And Union Membership](#), [Strikes And Picketing](#)



**David J.
Pryzbylski**
Partner

We've all seen them, and they ain't pretty: those giant inflatable rats that often loom on the outskirts of construction sites indicating a union has a dispute with at least one of the companies on the site. You may be seeing more of them, or at least continue to see them for the foreseeable future.

The National Labor Relations Board (NLRB) often found the use of the inflatable rat to be lawful under labor law over the years, but former NLRB General Counsel Peter Robb sought to [put an end to them last fall](#). Robb, however, was [unceremoniously terminated](#) by President Biden on his inauguration day. The new, [acting General Counsel Peter Sung Ohr](#) apparently has a different view of these eye sores.

According to a new report [from Bloomberg Law](#):

"The National Labor Relations Board's acting general counsel is seeking to end Trump-era complaints over unions' use of Scabby the Rat, a large inflatable balloon often present at labor protests. General Counsel Peter Ohr's office has asked the board to send at least two complaints issued by Ohr's predecessor, Peter Robb, back to the regional directors with which they were originally filed, so they can be dropped. Robb aggressively prosecuted unions for deploying the rodent in demonstrations against someone other than their direct employer, arguing it's unlawful secondary picketing not protected by the First Amendment. 'Such pursuit is a waste of valuable Agency resources and not in the public interest,' Ohr's office wrote in the two

RELATED PRACTICE AREAS

Labor and Employment
Labor Relations
National Labor Relations Board (NLRB)

RELATED TOPICS

NLRB General Counsel
Union Protest

motions.”

Interestingly, though, [Republicans still control](#) the five-member NLRB for now, and they likely will have final say on whether the pending complaints will be dropped or not. In addition, there are legal issues regarding whether Robb’s firing was lawful, which may call into question whether Ohr has any legal authority in these or other cases.

Nevertheless, it looks like Scabby the Rat’s future is looking up relative to just a few months ago. Even if these complaints proceed and the rats are found to be unlawful by the Trump Board, based on this development, it is almost certain a Biden-controlled NLRB would revisit the issue and bring them back.