



Un-Exterminated: Scabby The Rat Is Back, Says Labor Board

July 29, 2021 | [Labor And Employment](#), [National Labor Relations Board](#), [Strikes And Picketing](#), [Unions And Union Membership](#)



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What a journey it's been over the last year for giant inflatable rats. Affectionately called "Scabby" by unions, these balloons are used by unions to signal discontent with one or more companies doing the work at a construction site. Prior National Labor Relations Board (NLRB) general counsel Peter Robb was seeking to [drastically limit the use](#) of these types of inflatables in union disputes, but those efforts ceased once Robb was [terminated earlier this year](#). In any event, the NLRB recently issued a decision determining that unions can continue to use inflatable rats and similar tools to protest certain actions.

According to a [press release from the NLRB](#):

"[T]he National Labor Relations Board [has] found that a union did not violate the National Labor Relations Act by displaying a 12-foot inflatable rat with red eyes, fangs, and claws ("Scabby the Rat") and two large banners, one targeting a neutral employer... near the public entrance to a trade show. The prior General Counsel [Peter Robb] had alleged that the display of these items was unlawfully coercive, arguing that the Board should overrule precedent. The Board had earlier issued a notice and invitation to file briefs on that question."

Notably, it was a split decision, with two Trump-appointed members joining the majority decision. The Trump members largely upheld the use of these

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inflatables in order to avoid any conflicts with the First Amendment's guarantee of free speech.

Unions like to use things like Scabby the Rat in lieu of traditional pickets with placards because labor law places additional limits on picketing versus other publicity activities. Over the years, the NLRB has been hesitant to expand the traditional definition of picketing, and this case seems to follow that trend. Any time an employer is faced with union publicity tactics such as picketing, bannering, leafletting, etc., the organization must tread cautiously if it desires to try and limit or otherwise manage that activity, as there are complex and nuanced rules that come into play. If a company oversteps in this area, it may end up with charges before the NLRB.