

## Union rat is protected as free speech, N.J. top court rules

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A large inflatable rat placed at a job site as a labor protest is protected speech under the First Amendment, the state Supreme Court ruled today.

The high court overturned a municipal ordinance that bans any inflatable signs not being used for a store grand opening. The court ruled the sign ban was overly broad and violates the First Amendment right to free speech.



Tony Kurdzuk/The Star-LedgerRichard Brooks, a CWA Local 1033 member from Trenton and a giant inflatable rat outside the state House Annex.

The [text of the court opinion](#) is available.

The justices ruled in a case involving International Brotherhood of Electrical Workers Local 269 in Lawrence and the union's business manager, Wayne DeAngelo.

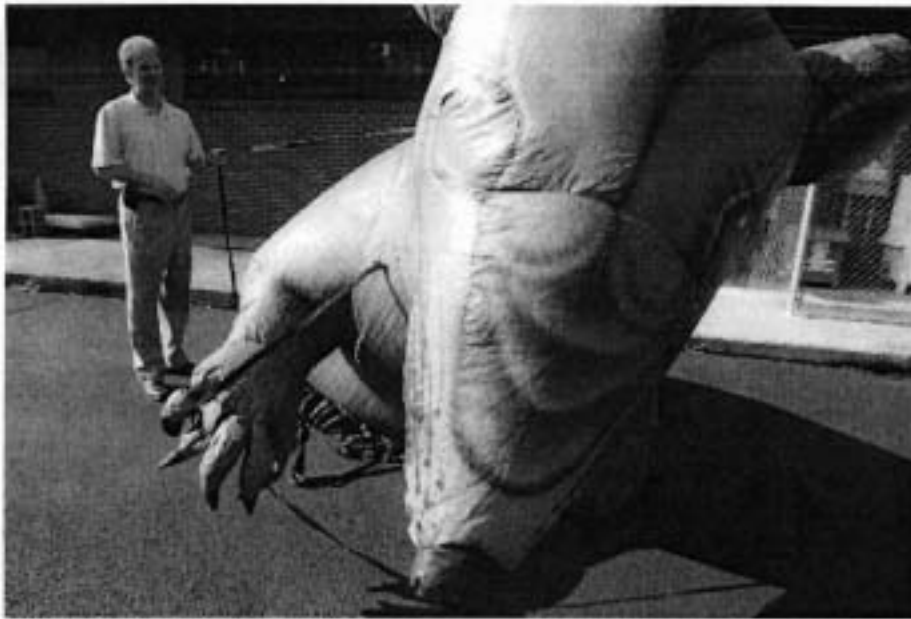
Local 269's lawyer, Andrew Watson, called the unanimous ruling a "landmark" decision.

"Not only will it impact labor protests in New Jersey, but we feel it's a decision that will be influencing sign ordinances and law nationwide," he said.

The first inflatable rat was used by a Chicago union in 1990 to catch the attention of nonunion employers. There are about 50 throughout New Jersey and the Lawrence union's rodent is used about 50 times a year, union officials said.

The union used the rat in April 2005 to stage a protest outside a health club in Lawrence Township where electrical work was done by nonunion laborers. The inflatable rat was anchored to a grassy spot considered part of the public right of way while union members stood nearby handing out leaflets.

When police told the workers the rat violated the local ordinance on inflatable signs, the creature was removed, but later brought back. The union's business manager, Wayne DeAngelo, was issued a summons and paid a \$133 fine.



Amanda Brown/The Star-LedgerWayne P.

DeAngelo, assistant business manager with IBEW Local 269, inflates a rat taken to protests that is **at the heart** of a case heard by the state Supreme Court.

The union took Lawrence to court, but the township prevailed when its inflatable sign ban was upheld by a divided state appeals court in December 2007.

Today the state's highest court reversed that decision, concluding Lawrence's sign ordinance was overly broad and violates the First Amendment right to free speech.

"The goals of the Lawrence Township sign ordinance are to maintain an aesthetic environment, to improve pedestrian and vehicular safety, and to minimize the adverse effects of signs on property. Although those are salutary goals, they do not justify a content-based restriction of non-commercial speech," the justice concluded in the unanimous ruling.

"Content-based restrictions that bar noncommercial speech must be subjected to the most exacting scrutiny," the justices said. "There is no evidence to suggest that a rat balloon is significantly more harmful to aesthetics or safety than a similar item being displayed as an advertisement or commercial logo used in a seven-day grand opening promotion. Nor is there any evidence to suggest that the ordinance 'is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.'"

The justices left municipalities an avenue to regulate the "time place and manner of use" of signs, "as long as any future sign ordinance 'leaves open ample alternative channels for communication.'"

The Mercer County case was the latest in a string of attempts to exterminate inflatable rats from public displays. Businesses elsewhere have sued unions, arguing the rodents shouldn't be considered protected speech. First Amendment scholars counter they fall into the category of "pure speech" that deserves protection akin to political and religious speech.

Watson, Local 269's lawyer, said "We believe it's a vindication. Unions and their members have a long history, a tradition of exercising the right of free speech and they've developed these orderly and non-threatening means of protest and expression. This decision really validates the rights of the unions, and frankly all New Jersey citizens, to peacefully and effectively express themselves."

John Dember, the township's attorney, said he was glad the high court limited its decision to the First Amendment constitutional issue and not other issues raised by the union, such as selective enforcement of the sign ordinance by township police **officers** or that the union's rights under the National Labor Relations Act trumped the township's right to enact ordinances.

"But of course the freedom of expression First Amendment issue is the most important one they addressed," he said. "Obviously we need to tweak our ordinance and we'll get on that right away."

He said any revised ordinance would address the court's concern that the township was restricting too much speech to accomplish the sign ordinance's goals of promoting safety and aesthetics.

"We'll look to narrow the scope of the ordinance," he said. A revised ordinance also would address the issue of favoring commercial speech over non-commercial speech.

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