

A Corporate View of Mafia Tactics: Protesting, Lobbying and Citing Upton Sinclair

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Smithfield Foods, which raises, kills and processes more pigs than any company on earth, does not like some of the things a union has been saying about conditions at its giant slaughterhouse in Tar Heel, N.C., where 4,650 people work and 32,000 hogs die every day.

So Smithfield has filed a racketeering lawsuit against the union, on the theory that speaking out about labor, environmental and safety issues in order to pressure the company to unionize amounts to extortion like that used by organized crime.

"It's economic warfare," explained G. Robert Blakey, one of Smithfield's lawyers. "It's actually the same thing as what John Gotti used to do. What the union is saying in effect to Smithfield is, 'You've got to partner up with us to run your company.'"

One hesitates to argue with Mr. Blakey, who helped write the Racketeer Influenced and Corrupt Organizations Act, or RICO, the 1970 law Smithfield is suing under, as a staff lawyer in the Senate. But what Mr. Blakey calls extortion sounds quite a bit like free speech.

Gene Bruskin, the director of the union's organizing drive and a defendant in the suit, said his work "bears no relationship to the Mafia whatsoever."

"If we kidnapped the C.E.O. and we said, 'We know where your children go to school,' that's a Mafia-like act," Mr. Bruskin said. "If we told the truth about how the company abuses workers to its customers, that's traditional free speech."

Smithfield says the union, the United Food and Commercial Workers International, and its officials violated RICO by issuing press releases, contacting civil rights and environmental groups, organizing protests and calling for boycotts.

But the most striking assertion in the suit, one Smithfield devotes five pages to, is that the union was engaged in racketeering when it urged local governments in New York, Boston and other cities to pass resolutions condemning the company. After meeting with the union in 2006, a dozen members of the New York City Council sponsored a resolution calling for the city to stop buying meat from Smithfield's Tar Heel factory "until the company ends all forms of abuse, intimidation and violence against its workers," citing a ruling by a federal appeals court in Washington that Smithfield had engaged in "intense and widespread coercion" in battling unionization at its Tar Heel plant.

Councilwoman Melissa Mark-Viverito was a sponsor of the resolution, and she said she had been happy to meet with representatives of labor and business groups to hear their concerns. The practice Smithfield calls racketeering is, Ms. Mark-Viverito said, what others call lobbying. The First Amendment has a name for it, too: the right to petition the government.

Ms. Mark-Viverito said Smithfield's lawsuit made no sense to her as a matter of logic, to say nothing of principle. But it did resonate as an exercise of corporate power. "It's a wacky strategy," she said, "that is aimed at coercing the union into backing off."

Perhaps the union should file its own RICO suit based on the company's RICO suit.

Smithfield's lawsuit contains other nuggets. It complains, for instance, that the union interfered with its relationship with Paula Deen, "a celebrity chef" who has a contract to promote Smithfield products on her show on the Food Network. The union has demonstrated at Ms. Deen's public appearances.

In a recent court filing, Smithfield added another complaint: the union "deprived Smithfield of an incomparable marketing opportunity" by persuading Oprah Winfrey not to allow Ms. Deen to promote Smithfield hams on Ms. Winfrey's show.

Smithfield's 94-page lawsuit sputters with an outrage not always grounded in a sure command of the English language. A union representative, for instance, was said to have made "salacious statements" at a water permit hearing by arguing that granting the permit would damage the environment.

The suit seeks more than \$17 million, an order barring the union from publishing "reports or press releases designed to mislead the public," another barring demonstrations "at Paula Deen events," and a third barring the union "from participating in the drafting, encouraging, sponsorship and/or passage of public condemnations of plaintiffs by cities, townships or other organizations."

The courts seem receptive to this new kind of racketeering suit. Last week, Judge Robert E. Payne of Federal District Court in Richmond, Va., rejected a motion to dismiss the case, which is now scheduled for trial in October.

Mr. Blakey said he knew of six racketeering suits against unions for so-called corporate campaigns meant to pressure companies into unionizing by drawing attention to their asserted shortcomings. Five of the suits survived motions to dismiss, he said, at which point the unions generally entered into settlements.

"When they settle," Mr. Blakey said, "it normally breaks the campaign." A century ago, Upton Sinclair educated the nation about the filth, degradation and misery that pervaded Chicago's stockyards by writing down what happened in them in "The Jungle."

Sinclair figures in the Smithfield suit, too.

"On or about April 20, 2007," the suit says, a union organizer named Jason Lefkowitz had the temerity to quote Sinclair in a critique of Ms. Deen in an online newsletter. That's right: Smithfield maintains that it is a form of racketeering to quote an American master.

Mr. Blakey said it was perfectly appropriate to cite activities protected by the First Amendment as evidence of racketeering, and he seemed to have little sympathy for the argument that some things should be hashed out through debate rather than litigation.

On the other hand, listen to Upton Sinclair, as quoted in the RICO suit. "It is difficult to get a man to understand something," Sinclair wrote, "when his salary depends upon his not understanding it."