

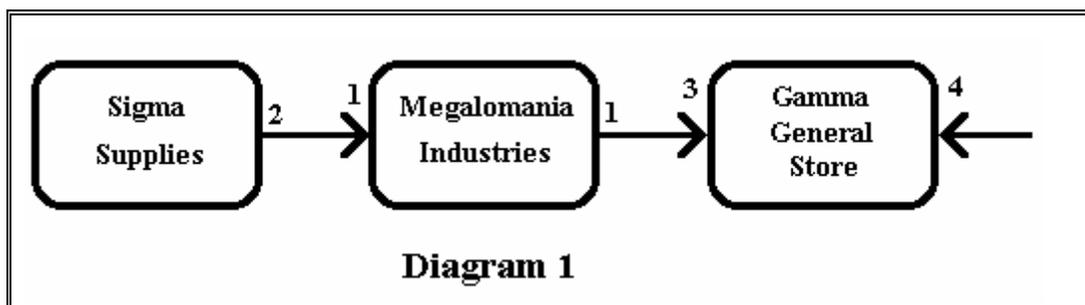
# Federal Labor Laws

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## XXVII. Primary and Secondary Activity

### A. Regulation of Secondary Pressure

1. In an effort to minimize the impact of union concerted activity on "neutral" employers, the Taft-Hartley and Landrum-Griffin Acts imposed significant limitations on the legal use of secondary pressure in labor disputes. Before Taft-Hartley, the anti-trust laws were used to limit the ability of unions to use secondary pressure in bargaining disputes.
2. Conceptually, the distinction between primary and secondary pressure is illustrated in Diagram 1, which assumes a dispute between Megalomania Industries and the Extrusion Workers, which represents production and maintenance workers at the Megalomania plant:



3. The objective of secondary pressure is to force the primary employer to settle a dispute by applying pressure to the suppliers or customers of the employer. The theory behind the use of secondary pressure is that the primary employer may be vulnerable to at least three sources of economic pressure:
  - a. Through the strike, workers may be able to apply direct (primary) pressure on the employer by withholding labor and picketing their primary place of employment, thus curtailing the production process (Diagram 1, Situation 1).
  - b. The production process may also be disrupted by shutting down the flow of supplies into the facility, through a strike directed at a major supplier of the primary employer. If the Extrusion Workers establish a picket at Sigma Supplies (Diagram 1, Situation 2), the union is engaged in secondary picketing. If workers employed by Sigma strike in sympathy, they are engaged in a secondary strike.

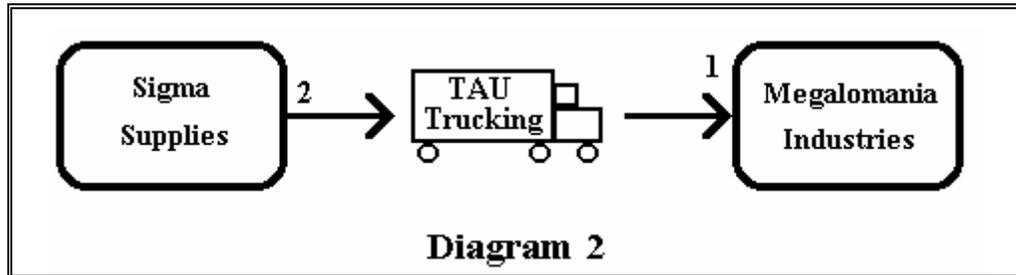
- c. The process may also be disrupted by shutting down the demand for the product of the primary employer, through a boycott or a secondary strike against the customer. If the union pickets at the Gamma General Store to induce a strike by Gamma's workforce, secondary picketing and strike rules apply (Diagram 1, Situation 3). If the target of the union pressure is the customers of Gamma (Diagram 1, Situation 4), the union is engaged in a boycott.
3. Subject to other limitations, primary pressure is presumably valid while secondary pressure is presumably illegal.

**B. Section 8(b)(4) Restrictions on Secondary Activity**

1. Section 8(b)(4)(B) is the principle source of regulation of the use of secondary pressure by unions. As that section has been interpreted, a complex set of rules have emerged which attempt to limit union pressure to primary employers.
  - a. Section 8(b)(4) attempts to outlaw secondary strikes and other forms of pressure, except for the right to honor a picket line and the right to inform the public (including customers) of the existence of a labor dispute.
  - b. The NLRB is required to seek an injunction if it determines that there is cause to believe that a union is engaged in unlawful secondary pressure.
2. There are two critical elements to finding a violation of § 8(b)(4)(B). Relevant to any case are questions concerning the type of pressure that is being applied and the objective of that pressure.
  - a. Section 8(b)(4) applies specifically to strikes, pickets and to other forms of pressure or coercion designed to accomplish a prohibited objective. Different limitations apply depending on the nature of the pressure applied.
  - b. The prohibited secondary objectives of § 8(b)(4) include efforts to force a secondary employer to cease doing business with a primary employer and efforts to induce secondary employees to refuse to deal with the goods or services of the primary employer, including refusals to use, handle, sell, or transport those goods or services.
  - c. Other provisions of § 8(b)(4) apply to different objectives that may be either primary or secondary. For example, coercive pressure applied to cause an employer or self-employed person to join a labor organization is prohibited by subsection 8(b)(4)(A).
  - d. Secondary pressure applied for reasons other than those outlined in § 8(b)(4)(B) may be permitted. For example, secondary picketing to involve a neutral employer in forcing

a primary employer to bargain with a properly certified union may be legal.<sup>1</sup>

3. If the Extrusion Workers have a dispute with Megalomania Industries and establish a picket line at all entrances to the Megalomania plant (Diagram 2), the union is engaged in primary picketing.



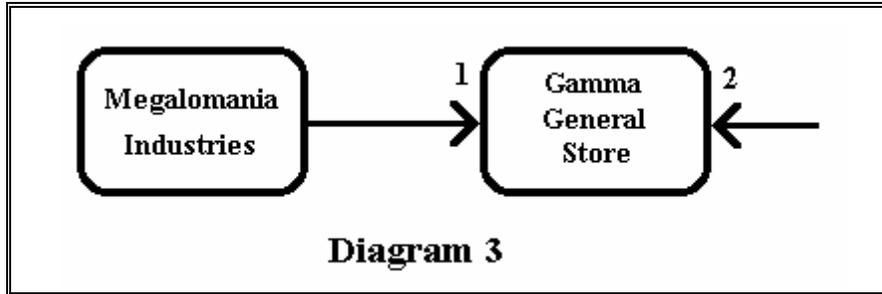
- a. The primary picketing in this case is presumably valid. The pickets are remaining at the primary site of the dispute (Diagram 2, Situation 1).
  - b. Primary picketing is legal even if it has a secondary effect.<sup>2</sup> If for example, a truck driver delivering parts from Sigma refuses to cross the Extrusion Workers picket line, the union has achieved the secondary effect of stopping the supply of parts (Diagram 2, Situation 1).
  - c. If, however, the union establishes its picket line at the gates of Sigma, it is engaged in secondary picketing (Diagram 2, Situation 2). The same effect of stopping deliveries from Sigma to Megalomania may be achieved, but the picketing is presumably illegal because it is directed at a secondary employer.<sup>3</sup>
3. The same general result occurs if the union directs its pressure at consumers of the primary employer (Diagram 3).
    - a. In cases involving secondary pressure directed at a customer of the primary employer, it is necessary to distinguish between efforts to induce a secondary strike and efforts to induce consumer boycotts.

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<sup>1</sup> Food and Commercial Workers Local 1996 (Visiting Nurse Health Systems, Inc.), 336 NLRB 421, 168 LRM 1241 (2001).

<sup>2</sup> NLRB v. International Rice Milling Co., 341 U.S. 665, 28 LRRM 2105 (1951).

<sup>3</sup> See, e.g., Teamsters, Local 145 (Howland Dry Goods Co.), 28 LRRM 2450 (2<sup>nd</sup> Cir. 1951).



- b. If the target of the secondary pressure is the workforce of the customer, the picketing is generally unlawful as an effort to cause a secondary strike (Diagram 3, Situation 1). The issue here is substantially the same as secondary pressure directed at a supplier.<sup>4</sup>
- c. If the target of the secondary pressure is the ultimate consumer, a different analysis is required (Diagram 3, Situation 2).<sup>5</sup>

**C. The Ally Doctrine**

- 1. A secondary employer may lose its insulation from union pressure if it ceases to be "neutral" in the labor dispute. Direct efforts by one employer to assist another in resisting the effects of a strike may cause the former to lose its secondary status.<sup>6</sup>
- 2. The "ally doctrine" allows a union to picket a secondary employer which has become an ally of the primary employer by entering an arrangement under which the ally agrees to assist in the dispute by performing farmed out work.<sup>7</sup>
- 3. To illustrate the ally doctrine, consider the normal business relationships in Diagram 4:
  - a. Assume that these three businesses have the following relationships under normal circumstances:

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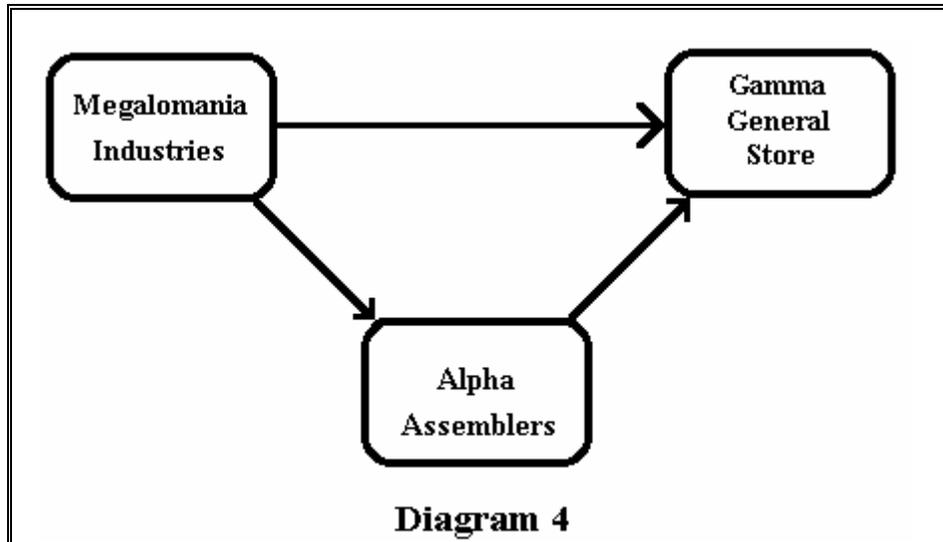
<sup>4</sup> See, e.g., Teamsters, Local 659 (Totem Ocean Trailer Express, Inc.), 266 NLRB 834, 113 LRRM 1047 (1983).

<sup>5</sup> See, e.g., Paperworkers, Local 832 (Duro Paper Bag Manufacturing Co.), 258 NLRB 67, 108 LRRM 1073 (1981).

<sup>6</sup> NLRB v. Business Machine & Office Appliance Mechanics Conference Board, IUE Local 459 [Royal Typewriter Co.], 228 F.2d 553, 37 LRRM 2219 (1955), but also note Blackhawke Engraving Co., 540 F2d 1296, 93 LRRM 2008, 2011 (7<sup>th</sup> Cir. 1976) for a discussion on when relationships are not created when struck work was assumed.

<sup>7</sup> Douds v. Metropolitan Federation of Architects, Local 231, 75 F Supp 672, 21 LRRM 2256 (S.D. NY 1948).

- 1) Megalomania manufacturers and assembles whippets, which it sells to Gamma General Store.
- 2) Megalomania also manufactures whickles, which it sells to Alpha Assembly. Alpha makes wompots, a critical component of which is the whickle. Alpha also supplies Gamma with retail wompots.
- 3) The Extrusion Workers represent production and maintenance workers at Megalomania.



- b. Businesses are permitted to maintain their normal relationships during a labor dispute without losing their neutrality. Therefore, the normal rules limiting secondary pressure would limit the ability of the Extrusion Workers to apply pressure on Alpha or Gamma during a dispute with Megalomania.
- c. Assume, however, that Megalomania cannot fill its orders with Gamma for whippets. Megalomania ships stockpiled whippet components to Alpha which agrees to assemble and ship Megalomania Whippets to Gamma for the duration of the strike. Under these circumstances, Alpha loses its neutrality and may be picketed by the Extrusion Workers under the ally doctrine.

#### **D. Secondary Pressure and Conglomerate Employers**

1. A single plant is a primary site, even if more than one union represents units of employees at that plant.
2. Multiple plants of the same employer which together constitute a single bargaining unit are considered a single primary site.

3. Separate subsidiaries of the same parent corporation with separate control, distinct bargaining units and little interrelated business activities are considered separate entities for purposes of the ally doctrine.<sup>8</sup>

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<sup>8</sup> See, e.g., Boich Mining Co., 955 F2d 431, 139 LRRM 2451 (6<sup>th</sup> Cir. 1992), but also see Teamsters, Local 560 (Curtin Matheson Scientific, Inc.), 248 NLRB 1212, 104 LRRM 1003 (1980) for when there is a mix a decentralized and centralized operations.