

Federal Labor Laws

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XXVIII. Common Situs Picketing

A. Situations in Which More than One Employer is Engaged in Business at a Single Work Location

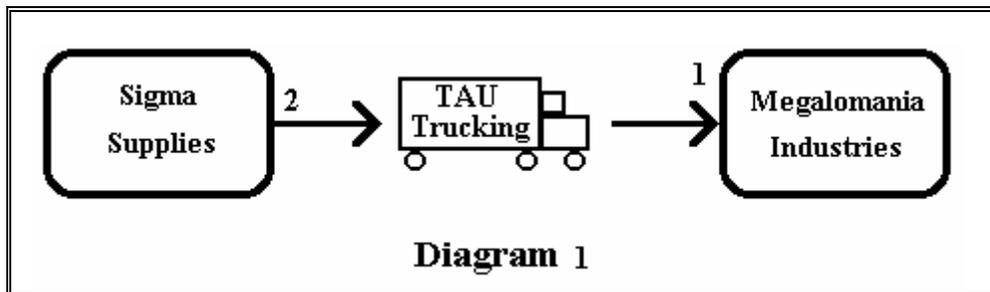
1. The regulation of secondary pressure is compounded by many situations in which both primary and secondary employers are engaged in their regular business on a common site. There are detailed rules limiting the right of unions to picket at these common work locations.
2. There are two broad sets of rules concerning common situs picketing, the application of which depends on the ownership and control of the site and which employer is the target of the labor dispute.
 - a. One set of rules limit the right of a union to picket, if the primary dispute is located on the property of a neutral, secondary employer. These rules, known as the *Moore Dry Dock* standards, are discussed in Section B of this outline.
 - b. The other set of rules limits the ability of an employer to restrict picketing by a union at its primary site. Known as the *General Electric* standards, these rules are discussed in Section C.
3. Construction projects present unusual problems for the regulation of secondary pressure. Construction projects may have as many as fifteen to twenty different employers engaged in normal work at the same time, none of which controls the site. Moreover, the unique nature of union working conditions and the bargaining process in the construction trades has led to a restrictive set of rules concerning construction site picketing. These rules are discussed in Section D.

B. *Moore Dry Dock* Standards for Primary Picketing at a Secondary Site

1. The leading case for determining the right of a union to picket its primary employer at a secondary site is *Moore Dry Dock*.¹ In that case, sailors in a dispute with a ship owner attempted to picket a ship while it was in a dry dock. The Board ruled that a union has the right to engage in primary picketing at a secondary site if the following four conditions are met:

¹ Sailors Union of the Pacific (Moore Dry Dock Co.), 92 NLRB 547, 27 LRRM 1108 (1950).

- a. The picketing must be limited to times when the situs of the dispute is located on the secondary employer's property,
 - b. The primary employer must be engaged in its normal business at the secondary site,
 - c. The picketing must be limited to places reasonably close to the situs of the dispute, and
 - d. The picketing must clearly disclose that the dispute is with the primary employer.
2. The *Moore Dry Dock* standards have broad application to efforts of a union to follow a primary employer onto a neutral site. In addition to construction sites, discussed below, other situations in which these standards will apply include:
 - a. Deliveries, in which the primary employer is transporting struck work to customers or warehouses,
 - b. Vendors and service or maintenance contractors, which move from site to site to clean, service or maintain facilities of other employers,²
 - c. Customers, including manufacturers which send equipment out to secondary sites for repair or maintenance services.
 3. To illustrate the application of the *Moore Dry Dock* standards, consider the plight of workers represented by the Truckers Union of the Americas, engaged in a labor dispute with Tau Trucking Co. (Diagram 1).



4. When the trucks of Tau are on the property of Sigma or Megalomania, the *Moore Dry Dock* standards apply to the right of the Truckers Union to picket. The following analysis would apply:
 - a. Is the primary employer present on the secondary site? When the Tau trucks enter the property of Megalomania, the pickets may go up. When the struck trucks leave, the pickets must also leave the secondary site. However, if the

² IBEW Local 861 (Plauche Electric Inc.), 135 NLRB 250, 49 LRRM 1446 (1962).

primary employer attempts to scramble regular delivery routes to avoid the pickets, the picketing may occur when the trucks would have been present, but for the labor dispute.

- b. Is the primary employer engaged in its normal business at the secondary site? Making deliveries is clearly part of the normal business of the Tau Trucking company.
 - c. Are the pickets reasonably close to the situs of the dispute? This standard has led to major problems in following struck work. For the union to "picket between the headlights," the pickets would have to enter the private property of the secondary employer. If the secondary employer denies them access, then the pickets would have to remain as close as possible to the dispute, probably at the gate through which the truck entered.
 - d. Do the pickets clearly identify the primary employer? To picket at Megalomania's site, the Truckers Union must use signs which clearly indicate that the target of the dispute is Tau, not Megalomania. Vague signs, or simple "on strike" signs, would tend to suggest that the dispute is with Megalomania.
5. Of the four standards, the requirement that the pickets remain reasonably close to the situs of the dispute has created the most substantial legal problems. This results from the necessity of balancing the property rights of the secondary employer against the rights of the primary union to follow and picket the struck work.
- a. If the "roving" pickets are to follow the struck work to the point of the dispute (the truck, in the example given), the potential for a legal sympathy strike is maximized, because those who are assigned to unload the struck truck can see and may be permitted to honor the primary picketing. The secondary employer may want to minimize this effect by exercising its property rights, requiring the pickets to leave the property and picket the gate through which the truck entered.
 - b. If the "roving" pickets are forced to picket on public property, the impact of the picket may be intensified. If other workers see and acknowledge the picket line, the impact may be to spread union member awareness of the existence of the dispute.
 - c. The right of pickets to follow struck work is probably underutilized. As most forms of secondary pressure have been outlawed, the willingness of unions to use primary weapons which remain available could be important tools in the rekindling of trade union solidarity.

6. The burden of establishing a right to engage in primary picketing is on the union, which must show that each of the four conditions have been met.

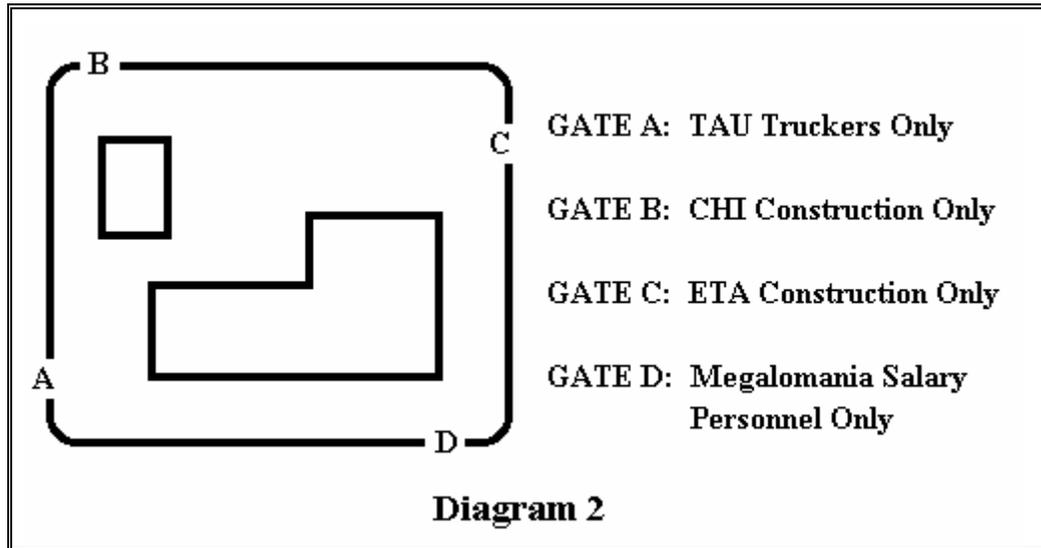
C. General Electric Standards Limiting Picketing at a Primary Site

1. If a union pickets the primary site of an employer with which it has a dispute, the picketing is presumably legitimate. However, the primary employer may attempt to isolate neutral employers present on the site from the effects of that picketing.
2. The Supreme Court has granted primary employers the right to limit the secondary effects of picketing at the primary site, if the employer satisfies the following conditions:
 - a. The employer must establish and maintain a separate gate for the workers of the secondary employer.
 - b. The work of the secondary employer must be unrelated to the normal operations of the primary employer.
 - c. The work done by the secondary employer must be of a kind that would not, in the absence of a labor dispute, require the curtailment of the normal operations of the primary employer.³
3. Examples of the *General Electric* standards are given in Diagram 2, in which Megalomania creates the following gates:
 - a. An attempt by Megalomania to reserve a gate for regular suppliers is ineffective. The Extrusion Workers have the right to picket Gate A because the delivery of supplies to the primary employer is directly related to normal operations.
 - b. New construction work is the type of work for which a separate gate may be maintained. With or without a strike, the business of building a new building is regarded as unrelated to the normal operation of the primary business. If Chi Construction is building a new office building, the company may insulate the workers of Chi from the effects of Extrusion Workers pickets by establishing and maintaining Gate B.⁴
 - c. If the work of outside contractors would require a curtailment of operations, the employer may not avoid picketing by

³ International Union of Electrical, Radio and Machine Workers Local 761 v. NLRB [General Electric Co.], 366 U.S. 667, 48 LRRM 2210 (1961), Steelworkers (Carrier Corp.) v. NLRB, 376 U.S. 492, 55 LRRM 2698 (1964)..

⁴ See, e.g., Hotel & Restaurant Employees, Local 343 (Kutsher's Country Club Corp.), 198 NLRB 1172, 81 LRRM 1100 (1972).

reserving a gate. If Eta is tearing out the floor of the plant for retooling, the Extrusion Workers may picket at Gate C.



- d. An employer may not reserve a gate for its own employees. The Extrusion Workers have the right to picket Gate D because it is primary picketing, whether the salary workers are members of the bargaining unit or not. To the extent that salary workers are "employees" under Taft-Hartley, they have the same right to honor a picket line as other employees.

D. Picketing at a Construction Site

1. The Supreme Court has ruled that the various contractors on a construction site are neutral in the labor disputes of each other, despite the close interrelationship between the work of the various crafts.⁵
2. In interpreting the *Denver Building Trades* decision, the NLRB has ruled that a construction site is a secondary site for all contractors working on that site.⁶ The implications of this for common situs picketing on a construction site are that:
 - a. A union must show that it has the right, under the *Moore Dry Dock* standards, to picket at the construction site, and
 - b. The general contractor may isolate the effects of any picketing by reserving gates for each contractor on the site, in accordance with the *General Electric* standards.

⁵ NLRB v. Denver Building & Construction Trades Council, 341 U.S. 675, 28 LRRM 2108 (1951).

⁶ Building and Construction Trades Council of New Orleans [Markwell & Hartz, Inc.], 155 NLRB 319, 60 LRRM 1296 (1965).

