

# Federal Labor Laws

Paul K. Rainsberger, Director  
University of Missouri – Labor Education Program  
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## XXXI. Organizational and Recognition Picketing

### A. Organizing with a Picket

1. To attempt to pressure an employer into voluntarily recognizing a union, a union may choose to picket the targeted employer. Section 8(b)(7) makes this form of picketing unlawful under specific circumstances.
2. Organizational or recognition picketing is unlawful if:
  - a. Another union has been properly recognized by the union, under § 8(b)(7)(A).
  - b. An election or certification bar precludes a Board representation election, under §8(b)(7)(B), or
  - c. The picketing continues for more than 30 days without a petition for representation being filed with the Board, under § 8(b)(7)(C).
3. Most allegations of § 8(b)(7) violations involve organizing at a construction site, where no proof of majority support of the union is necessary for employer recognition under § 8(f).
  - a. At non-construction workplaces, the same rules apply, but a union would be rarely picket unless it had strong majority support and was prepared to petition for an election.
  - b. With majority support, a valid representational petition and no bars to an election, the effect of the picketing is to expedite the Board election process.

### B. Picketing a Workplace at which No Election may be Conducted

1. The first and second limitations on recognition picketing prevent a union from attempting to coerce voluntary recognition if the union could not seek Board certification as a bargaining agent.<sup>1</sup>
2. If one union represents a workplace as a result of previous voluntary recognition by the employer (with or without Board certification), a second union may not use picketing to launch a

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<sup>1</sup> See, e.g., Service Employees Local 73 (Rainey's Sec. Agency), 239 NLRB 1233, 100 LRRM 1133 (1979).

raid. If the raiding union believes it has majority support, it is required to seek Board certification if that is possible.<sup>2</sup>

3. If a union is precluded from seeking a Board election because a valid election has been conducted within the past 12 months, it may not picket to obtain recognition. Picketing in these circumstances is unlawful whether the previous election was won by another union (certification bar) or lost (election bar).<sup>3</sup>
4. It is legal for an employer to recognize a majority union even if an election bar exists. Recognition picketing is unlawful in these circumstances because of the coercive aspects of the picketing.

### **C. Thirty Day Limit on Recognition Picketing**

1. If a union establishes a recognition picket, it must take action within 30 days, either by pulling the pickets or by petitioning for a Board election.
2. The employer may petition the Board for an election if the union establishes a recognition picket. For the employer petition, there is no need for a showing of interest.
3. Petitions filed with the Board while picketing is involved are given the highest priority for Board action under expedited election procedures.

### **D. Area Standards Picketing**

1. Section 8(b)(7) allows unions to engage in picketing to truthfully advise the public of the existence of a labor dispute. Under this limitation, Section 8(b)(7) does not apply to area standards picketing if:
  - a. Picketing is directed at consumers or the general public, and
  - b. There is not a substantial secondary effect of the picketing. These two points are contained in the second proviso of §8(b)(7)(C).
2. The distinction between legal and illegal area standards picketing is primarily a question of effectiveness. If the effect is a substantial disruption of deliveries to the targeted employer, the picketing is regulated by § 8(b)(7). If only customers honor the line, § 8(b)(7) does not apply.

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<sup>2</sup> See, e.g., Meat Cutters Local 229 (Jensen Meat Co.), 237 NLRB 650, 99 LRRM 1066 (1978).

<sup>3</sup> See, e.g., Meat Cutters District Local 340 (PFA-Farmers Market Association), 232 NLRB 111, 96 LRRM 1566 (1977).

3. Regulated recognition picketing is distinguished from area standards picketing, with which a union informs the public that an employer pays wages at a rate less than union scale.
  - a. Area standards picketing without a goal of recognition is primary picketing, which is not limited by § 8(b)(7).<sup>4</sup>
  - b. The valid primary dispute tied to area standards picketing is narrow. The union's objective must be the preservation of union wages and benefits.
    - 1) If the objective is to organize the substandard employer, Section 8(b)(7) applies, irrespective of the wording of the picket signs.<sup>5</sup>
    - 2) If the goal of the picketing is to force the general contractor to remove the substandard, nonunion subcontractor from the construction site, the picketing is illegal under § 8(b)(4) as secondary picketing designed to cause an employer to cease doing business with another employer.

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<sup>4</sup> See, e.g., Houston Building & Construction Trades Council (Claude Everett Construction Co.), 136 NLRB 321, 49 LRRM 1757 (1962).

<sup>5</sup> See, e.g., Electrical Workers (IBEW) Local 265 (R P & M Electrical), 602 F2d 102, LRRM 2001 (8<sup>th</sup> Cir. 1979).