

# OPERATING A CONSTRUCTION PROJECT WHEN PICKETERS ARE PRESENT ON THE JOB SITE

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## DEFINITIONS

### **Separate Gate, Reserve Gate, Two-Gate and Dual Gate Systems.**

A procedure that serves to isolate a complaining or striking union and contractor. Use of a neutral gate (see below for definition) allows neutral (uninvolved) contractors, suppliers and employees to continue working.

### **Contaminated Gate . . .**

Occurs when employees or suppliers enter or exit the wrong gate; that is, they fail to use the gate labeled for exclusive use by neutral employees. If this occurs, the NLRB will determine that all entrances can be picketed by the complaining union.

### **Neutral Contractor . . .**

A contractor who does not have a labor dispute with the complaining or striking union.

### **Neutral Gate . . .**

The entrance used by contractors, their employees and suppliers who do not have a dispute with the complaining or striking union, along with school district personnel.

### **Primary Contractor . . .**

The contractor with whom a union has a labor dispute concerning its employees and who is the object of any picketing.

### **Primary Gate . . .**

The entrance used by the primary contractor, its employees and suppliers that have a dispute with the complaining or striking union, along with school district personnel.

### **Supplier . . .**

A person or company that furnishes material to the job site. A supplier does not have job site employees; it is, however, an ally of the contractor whose employees handle the material and must utilize that contractor's gate. An example of a supplier is a ready-mix company.

## **SUMMARY OF THE LAW COVERING SEPARATE GATES**

Under current federal labor law, it is possible to establish separate gates or entrances for different contractors working on the same construction project and limit picketing to certain gates. The gates must be separate, but can be within reasonable proximity of each other. The primary gate, that is, the gate used by the contractor with the labor dispute, must be accessible (typically on or by way of public property), visible to the public, and close to the portion of the project that is the object of the picketing. If the gate is too remote or inaccessible, it will not be effective. The neutral gate is used by the employees and suppliers of other contractors who aren't the subject of the picket, as well as District employees.

The filing of an unfair labor practice charge with the National Labor Relations Board ("NLRB") may be appropriate if picketing by a union is improper. The filing of a suit against a union engaged in illegal activity based on a secondary boycott theory is also an effective deterrent.

Picketing by a union against a primary contractor must be confined to the place or places designated and it must be limited to the time the primary contractor, its employees, or its suppliers are on the premises.

If separate gates are established after picketing begins, a union must be provided with actual knowledge of their existence. A union also must be told of the reestablishment of separate gates in the case of a contamination problem. In such a case, a telegram, fax, or a certified or registered letter should be used to inform the union. Forms for this purpose are included in this packet.

Picketing must take place on public property and in close proximity to the entrance used by the primary contractor. Picketing cannot block access to the project; if access is denied a state law injunction can be obtained.

## BASIS OF THE LAW COVERING SEPARATE GATES

Under existing law, a union that has a labor dispute with one contractor on a multi-contractor construction site must restrict its picketing to a gate reserved solely for use by the employees and suppliers of that specific contractor.<sup>1</sup> If the union fails to do so, it will be guilty of engaging in an unlawful secondary boycott. Four basic requirements exist to fully comply with a separate gate system.

First, care should be taken to carefully designate who is to use the reserved gate. For instance, a sign at the primary gate might read:

**THIS GATE IS RESERVED EXCLUSIVELY FOR THE USE OF  
THE  
EMPLOYEES AND SUPPLIERS OF (INSERT COMPANY NAME).  
ALL OTHER PERSONS USE THE GATE LOCATED AT  
[INSERT LOCATION]**

Second, if the separate gates are established after picketing commences, the contractor must notify the union of the existence of the gates in a timely manner. Preferably, notice should be by facsimile, certified mail or return receipt requested mail. If this action is taken, the union cannot at a later date argue that it did not have knowledge of the separate gate system. As an additional precaution to insure that other contractors and suppliers on the job site honor the separate gate system, similar notices should be sent to all other contractors on the project.

Third, the gate reserved for the employees with the labor dispute must be located in an area that is suitable for picketing and reasonably close to the sites of the picketed work.

Finally, the contractor must make sure that its employees and suppliers always use the separate gate. If they do not, the separate gate will be contaminated. All employees and suppliers should be informed of the separate gate, and employees should be told that discipline, including discharge, may result if an employee violates the separate gate system. All subcontractors also need to be warned of their obligation to ensure that their employees and material providers use the proper gate and that a violation may be a breach of their subcontract.

Even if picketing at the separate gate brings about a work stoppage or slowdown, the separate gate nevertheless should be established for another reason. If the union does not confine its picketing to the separate gate, the contractor may file unfair labor practice charges with the NLRB and can also proceed against the union in federal court

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<sup>1</sup>29 USC 158(b)(4)

to collect monetary damages.<sup>2</sup> Proper establishment of a separate gate system is therefore of critical importance.

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<sup>2</sup>Sailor's Union of the Pacific (Moore Dry Dock) 92 N.L.R.B. 547, 549 (1950)

## SAMPLE SEPARATE GATE SIGNS

### 1. Primary Gate Sign

List all contractors who you expect will have a union picket.

(Example: On "B" Street)

This gate is reserved exclusively for employees and suppliers of:

McCormick Construction and Rice Plumbing

All other persons must use the gate located at:  
"A" Street

### 2. Neutral Gate Sign

List all contractors who you do not expect will have a union picket.

(Example: On "A" Street)

This gate is reserved exclusively for employees and suppliers of:

Kouklis Electric, Garcia Concrete, etc.

All other persons must use the gate located at:  
"B" Street

## **ESTABLISHING A SEPARATE GATE SYSTEM**

The last thing needed on a project to add to normal project delays is a labor dispute. When you have a labor problem, the first rule of thumb is to avoid inflammatory statements and belligerent postures.

The decision of when to establish a separate gate system is one that should be made on a job-by-job basis.

One alternative to a separate gate system involves the scheduling of work so that the contractor or contractors anticipated to cause a picket situation are on the project only during designated times. For example, a landscaping contractor who does not need to be on the project for six months should be kept off the project until then. No picketing of this contractor can take place until it is actually on the project and the union needs to be aware of this rule if their target is not on the job.

If a problem is anticipated, you may wish to set up a separate gate system before the work begins or before the picket shows up. In such a case, it is not necessary to give the unions written notice of the gates, but it is good practice to do so.

A separate gate system can also be established after the picket shows up or after the gates have been contaminated, by providing notice of the existence of the gates.

The following is an outline of the steps to take in setting up a separate gate system under different situations:

### **A. Setting up Gates Before Project Begins or Before Picketing Begins.**

1. Prepare gate messages. The sign must have a positive statement (persons who may use the entrance) and negative statement (persons who cannot use gate). Put a fence around construction project, if possible. If an open area rather than a fence is used to enter and exit the construction project, a union can establish a picket across the whole area as it is, in fact, one entrance.
2. Develop a policing system to ensure that employees and suppliers for the neutral contractor pass through the neutral gate and employees and suppliers for the primary contractor pass through the primary gate. Policing the gates avoids mistaken usage and provides you with witnesses to refute any alleged contamination.
3. Use "No Trespassing" signs on private premises.
4. Contractors signatory to union agreements should notify their unions in writing of the availability of the neutral gate.

**B. Setting up Gates after Picketing Occurs.**

1. In addition to the steps under A.1 above, the following action must be taken:
  - (a) Written notification to the union picketing the project. The notice should be by fax, telegram or by certified or registered mail,
  - (b) Written notification to all contractors and neutral unions on the project.

Sample forms are attached.

## SEPARATE GATE SYSTEM

(1)

### Sample Notice For Picketing Union

[Date]

Picketing Union  
[Address]

Re: [Project]

Dear \_\_\_\_\_:

A dual gate entrance system has been established at our project referenced above located at *[job location]*.

Gate "A," located at *[describe physical location]*, is for the exclusive use of employees and material suppliers of *[Neutral Contractor]* only.

Gate "B," located at *[describe physical location]*, is for the exclusive use of employees and material suppliers of *[Primary Contractor]* only.

Failure on your part to limit your picketing to Gate "B" *[primary gate]* will cause us to pursue rights to the fullest extent permitted by law through the National Labor Relations Board.

Yours very truly,

*[General Contractor, or Owner if CM is being used]*

CPB: rf

*(A FAX with proof of receipt is suggested as the quickest means of notification. The FAX can be followed up with a personally delivered letter or a certified or registered letter. A telephone call or regular mail delivery may be inadequate because there is no proof that the notice was ever given and received.)*

## SEPARATE GATE SYSTEM

(2)

### Sample Notice For Unions of Neutral Contractors

[Date]

Picketing Union  
[Address]

Re: [Project]

Dear \_\_\_\_\_:

A dual gate entrance system has been established at our project referenced above located at *[job location]*.

Gate "A," located at *[describe physical location]*, is for the exclusive use of employees and material suppliers of *[Neutral Contractor]* only.

Gate "B," located at *[describe physical location]*, is for the exclusive use of employees and material suppliers of *[Primary Contractor]* only.

We expect your organization to provide workers to the project in accordance with the agreement. We also expect a representative of your organization to be at the job site prior to starting time tomorrow morning to assist in manning the project.

Yours very truly,

[Signed by Specific Contractor with Union Agreement]

pc: NBI

*[A FAX with proof of receipt is suggested as the quickest means of notification. The FAX can be followed up with a personally delivered letter or a certified or registered letter. A telephone call or regular mail delivery may be inadequate because there is no proof that the notice was ever given and received.]*

## SEPARATE GATE SYSTEM

(3)

### Sample Notice For All Contractors

[Date]

[Contractor]

[Address]

Re: [Project]

Dear \_\_\_\_\_:

Effective at starting time on the \_\_\_\_\_ [date], a dual gate system has been established at our project referenced above located at [job location].

Gate "A," located at [describe physical location], is for the exclusive use of employees, subcontractors and material suppliers of [Neutral Contractor] only.

Gate "B," located at describe [physical location], is for the exclusive use of employees, subcontractors, and material suppliers of [Primary Contractor] only.

We expect you to provide workers for the job and perform the work in accordance with your agreement.

You and your material suppliers are to confine your access to the project work area through the proper gate.

Yours very truly,

[Signed by General Contractor or Owner]

pc: MBI

*(A FAX with proof of receipt is suggested as the quickest means of notification. The FAX can be followed up with a personally delivered letter or a certified or registered letter. A telephone call or regular mail delivery may be inadequate because there is no proof that the notice was ever given and received.)*

## **DO's AND DON'Ts REGARDING A SEPARATE GATE SYSTEM**

**THE FOLLOWING RULES MUST BE THOROUGHLY UNDERSTOOD BY ALL OFFICE AND FIELD EMPLOYEES OF THE GENERAL CONTRACTOR AND ITS SUBCONTRACTORS AND THEIR SUPPLIERS:**

### **DO's:**

- A. Always use the separate gate assigned to your company.
- B. Use the separate gate assigned to your company every time you enter or leave the job site even if you enter or leave the job several times a day.
- C. Instruct all suppliers to use the separate gate when delivering materials for your company.
- D. Make sure that all suppliers use the separate gate for your company both when entering and leaving the job site.
- E. Make sure that all equipment for your company uses only the gate assigned to your company both when entering and leaving the job site.
- F. Make sure that all visitors for your company use the gate assigned to your company when entering and leaving the job site.
- G. Make sure that company and personal vehicles are parked on the job site in such a way that separate gates for other companies are not blocked.
- H. Monitor picketing activities.
  - (1) Take photographs of picket and picket sign, especially if picketing is taking place at the wrong gate.
  - (2) Keep a diary of all activities related to picketing.
- I. Place "No Trespassing" signs on your premises.
- J. Frequently check the gates. Keep a job diary that details the dates and times that you, or one of your employees, checked the gates and found no contamination of the gate system.

## **DON'Ts:**

- A. Never use a gate assigned to another company when entering or leaving the job site.
- B. Never use an unassigned gate when entering or leaving the job site.
- C. Never use any other entrance to or exit from the job site other than the gate assigned to your company.
- D. Never let other employees from your company use the other gates when entering or leaving the job site.
- E. Never let equipment or materials for your company enter or leave the job site except through the gate assigned to your company.
- F. Never store materials or park vehicles (company or personal) in a way that will block the gates assigned to other companies.
- G. Never “mix and match” gates. Use only the gate assigned to your company and stay away from gates assigned to other companies.
- H. Never treat separate gates as a joke. Your company might lose its contract and you might lose your job if you don't follow these instructions.