



LEGAL ALERT

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Labor Unions' Threats To Disrupt Construction Sites

Owners and general contractors have been receiving letters from construction trade unions which, in essence, inform them of the union's labor dispute with one or more of the contractors working at their jobsites, and of "the public information campaign" which the union intends to conduct. Typically, these letters state:

It has come to our attention that XYZ, Inc., is or will be working at your project. Please be informed that this union has an ongoing labor dispute with XYZ, Inc. We want you to be aware of our aggressive public information campaign against XYZ, Inc. This campaign may include picketing, highly-visible banner displays, distribution of handbills, and demonstrations at the construction jobsite . . .

In these letters, employers, such as the owner and the general contractor, with whom the union does not have a labor dispute are the "neutral employers." Employer(s) with whom the union does have a labor dispute, such XYZ, Inc., in the above scenario, are considered the "primary" employers(s).

Under current NLRB law, a letter such as the one above, would be unlawful, because it uses the term "picketing" without qualification. It is well established that a union may picket against an employer at a construction site where other employers also perform work (common situs) if:

- a. The primary employer is present at the site during the picketing;
- b. The primary employer is engaged in its normal business at the site;



- c. The picketing occurs reasonably close to the location where the primary employer works at the site (reserved gates); and
- d. The picket signs identify the primary employer.¹

The NLRB requires that any warnings or threats directed to neutral employers that the union plans to picket a construction jobsite must include assurances that the picketing will be conducted in a lawful manner.²

If the union’s letter to the neutrals does not specifically refer to “picketing,” as part of the “public information campaign,” the letter, by itself, is not unlawful. The NLRB takes the position that threats to engage in bannering, handbilling, or other demonstrations “do not constitute threats to engage in unlawful confrontational conduct.”³

The NLRB and the courts scrutinize bannering, handbilling, or other demonstrations to determine whether, under the totality of the circumstances, “confrontational activity” occurs. If it is determined that, under the circumstances, the activity is “confrontational,” the NLRB may prosecute the union’s conduct as violating the prohibition against secondary boycotts.

In order to prevent costly disruptions at the construction site, labor counsel should be consulted as soon as there is information that a union may have a labor dispute with one of the contractors performing services at the site. At Snell and Wilmer, we have the resources to assist own-

ers and contractors at construction jobsites to prevent and minimize disruptions arising from labor disputes.

For more information please contact Jerry Morales at 602-382-6362 or at jmorales@swlaw.com.



Gerard Morales is a Partner in Snell & Wilmer’s Phoenix office. His practice involves Labor/Employment/Construction Law - Representation in employment related matters,

including wrongful termination, employment discrimination, arbitration and other alternative dispute resolution proceedings. He has extensive experience in NLRB unfair labor practice trials, and union elections matters, collective bargaining, labor law issues affecting the construction industry, wage and hour compliance, corporate policy development, and administrative proceedings before state and federal regulatory agencies, including the Equal Employment Opportunity Commission, U.S. Department of Labor, and National Labor Relations Board.

¹ *Moore Dry Dock*, 92 NLRB 547 (1950).

² *Young Plumbing*, 227 NLRB 300, 312 (1976) (generalized threat to picket common situs is unlawful, as it does not carry a presumption that the picketing would conform to established restrictions).

³ Mountain West Regional Council of Carpenters. NLRB ADVICE MEMORANDUM, Dec. 18, 2002.