

# Construction Picket Lines: What Union Workers Must Know

## Labor & Employment Law Update

By Michael Hughes on March 16, 2021



As the 2021 construction season gets underway, and with an increasing number of construction projects being completed with a mix of union and non-union subcontractors, many workers have legitimate questions about their rights and responsibilities on such mixed-staffed projects. These questions especially can arise when a “dual-gate” system has been established (creating a “neutral” gate for union contractors and a separate, “reserved” gate for

non-union contractors), or when a union is involved in different types of activities at the jobsite, such as picketing, bannering (erecting stationary signage or using the inflatable rat), or hand-billing (handing out flyers to the public).

This update does not address how project owners and general contractors can lawfully establish such dual-gate systems, but rather addresses common questions raised by subcontractors and their employees after such system has been established. Mostly, though, this update aims to dispel common myths and untruths perpetuated by union representatives that simply are contrary to established law under the National Labor Relations Act (NLRA).

The following Q&A should allow you to answer those questions and, more importantly, educate workers (especially including union-represented workers) about their rights and responsibilities when there is a labor dispute at a mixed construction project.

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**Q:** *The unions have said they don't have to "honor" a dual-gate system and that any picketing on the project means that the entire job is being picketed. Is that true?*

**A:** **This is not true. Under the NLRA, it is UNLAWFUL for a union to fail to properly honor a valid dual-gate system (for example, by picketing the gate designated for union contractors). If the union sets up its pickets at the "neutral" union gate, an Unfair Labor Charge can be filed and the NLRB will seek a federal court injunction to prevent the union from picketing the wrong gate.**

**Q:** *Isn't it lawful for employees of union subcontractors to refuse to work while a picket is located at the project—even if there is a neutral gate for the union members to enter?*

**A. NO. It is NOT a lawful work stoppage for a union tradesperson to refuse to enter through a neutral gate. Such actions are NOT protected under the NLRA. Union workers can be disciplined/fired for refusing to enter and work through a neutral gate.**

**Q:** *What if a union Business Agent instructs or encourages union workers to refuse to enter through, or work "behind," a lawful, neutral gate?*

**A: It is UNLAWFUL for a union or its Business Agent to instruct or encourage any employee to refuse to enter a neutral gate, or to leave a jobsite and refuse to work when there is a neutral gate established for those employees.**

**Q:** *Can the union take away employees' pensions or blackball them if they enter a neutral gate?*

**A: NO! This is a common tactic used by unions and Business Agents to threaten their own members with loss of pension or other sanctions if they enter through a neutral gate and work. Such statements are completely and entirely false and unlawful. A union cannot punish—and cannot threaten to punish—any employee who enters a neutral gate and works.**

**Q:** *If the union is "bannering" or hand-billing, isn't that the same as picketing?*

**A: NO. If the union is bannering (using stationary signage or the inflatable rat) or handing out flyers to the public, without normal picketing, the NLRB currently says that is NOT a picket line. It is not a lawful work stoppage to refuse to work during bannering/leafletting and, just like the above, it is illegal for a union to threaten or take action against employees who work in those circumstances.**

Amundsen Davis's Labor & Employment Group serves as labor counsel to multiple construction industry associations and has particular experience in helping owners, developers, GC's and contractors maintain labor harmony.

Knowing the law and separating fact from fiction goes a long way in ensuring construction projects get done on time and on budget.

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