

# Creative Approaches to Picketing, Handbilling and Other Secondary Activity

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## OUTLINE

This presentation is going to touch on some basics regarding picketing, handbilling, bannering, and other forms of free speech:

### Why Is Non-Picketing Communication Important?

Pickets, used properly and judiciously, can be very effective. However, they can also be dangerous and ineffective. Why? First, when done wrongly, they can put your union's funds at a significant risk. Second, they say mostly that there's a labor dispute. They don't communicate much else. Don't convince like they may have decades ago where the signal is all many people needed.

Now, last year I talked at length about how to picket properly, and I'm happy to answer questions in that regard as well. However, I thought this year I would stress the other ways to get our point across, and that will hopefully tie in directly with what Steve will address.

I'm sure we've all seen a picket that was very effective, in that it probably shut a big job down and then resulted in either the bad contractor signing up or getting kicked offsite. So you might wonder why we don't just picket every chance we get. The problem is, employers, their legislators, and the NLRB noticed the same thing we did, and decided that picketing was just too damned effective. So now, the Board and the courts draw a legal distinction between picketing and other types of expression or speech that unions engage in. The simple fact is, picketing is more restricted than other types of expression.

This is most glaringly true when we look at communications directed at so-called "secondaries."

### Legal Problems with Picketing/Legal Advantages to Non-Picketing

*Problems with Picketing:* The primary problem with picketing is that it would be most effective if directed at a secondary target, and directing it at a secondary target is precisely what is outlawed. Big damages possibility and/or injunctions.

Another problem is that it can unintentionally trigger early NLRB election when you're nowhere near ready for that.

*Advantages with Non-Picketing:*

- can direct to GC or owner or other third party
- can ask for boycott
- location not as limited
- time frame not as limited
- message can be much broader
- not limited to contractors
- Free Speech v. "Speech-Plus" (Picketing can be regulated because it is something more than speech. Involves an element of confrontation.)

Why focus on owners, GC's, developers etc.?

- your non-union target has low profile
- picket at job site doesn't reach public; dual gate limits effect
- owners can control huge amount of work (e.g. Swedish choice of contractor)
- restrictions on effectiveness of picketing primary target only:
  - can't picket GC
  - picket at reserved gate
  - worry about expedited election
    - can't picket when target isn't on job
- public image of owner/developer
- drive customers away (e.g. Applebees always uses Joe's Plumbing)
- introduce uncertainty and friction from dealing with Joe's Plumbing;
- coalition with community groups?

Sum up: typical problems of picketing – location, time, picket only when target is present, limits on what sign must say, picket at right gate, limit picket to target – not present.

Some Methods of Non-Picketing Communication

Websites – the future (Hyatt)

Handbills

Rallies

Press conferences

Billboards

Media ads

Shareholder activity

Sides of semitrailers (a la Monday Night Football)

Helium balloons

Airplane banners over corporate events

Boats with signs near corporate events

Websites

Costumes: gorilla suits, gas masks and decontamination suits

Banners

Rats etc.

Noisemakers (within reason)

These methods can place pressure on GC's or owners who aren't at the job site. Can reach public. YOU DECIDE IF/WHEN EFFECTIVE.

So for all our nonpicketing communications to owners etc.:

- doesn't matter if target can control our target
- doesn't matter if the target is "neutral" (like the yogurt shop in the mall)
- doesn't matter if we want to drive them out of business
- Moore Dry Dock limits don't apply

Rules:

1. Truthful

Linn – libel law

Good research. Avoid sketchy sources. Do your own research.

“opinion” - OK if based on disclosed facts; maybe not OK if undisclosed facts

“In my opinion Jones is a liar”- no good

“I wouldn't want to be in a building erected by X in the next earthquake”

Versus pointing to building code violations: “would you trust X to do your work?”

Proof – how will you prove your statement two years from now?

The “Question Mark” Strategem

Loose writing:

Joe’s Roofing has been “indicted” for violation of federal labor law vs.  
Joe’s Roofing is being investigated by the Federal Government for  
violation of federal labor law  
“violates safety laws” when citation is under appeal and not final  
“pays below area standards” when you don’t know or can’t prove

Versus vivid/colorful language:

“blood-sucking plantation-minded boss”  
“doesn’t pay a living wage”

Be Practical – do you need to push the envelope?

What do you want the reader/member of the public to do?

2. Non-coercive

Emailing; massed people in small place, trespass

Residential picketing; identification of personal phone/family members etc.

3. Non-threatening

“Problems”; “Trouble” ambiguous? What will the affidavit say? Circumstances?

A threat to perform a legal act in the future is not a “threat”

4. Connected to Labor Dispute

Explain the connection: who you are and what’s the beef

5. Disclaimer about not stopping work/deliveries

DO THESE THINGS:

- identify labor dispute (say why – Linn)

- say who you are
- short, plain description of message
- research and citation is your friend.
- ask reader to do something
  - avoid publication of personal addresses/phones
- add a disclaimer about not stopping deliveries/work

DON'T DO THESE THINGS:

- pass on somebody else's leaflet as yours, without checking
- rely on someone else's research (alternative press)
- put too much in one leaflet (it's unreadable)
- exaggerate
- use personal info/photo without signed waiver

Government: even greater freedom, if not "sham" (petition Gov't)

8(e): no agreements with owners etc.

Servette: OK to “ask” to use managerial discretion

Cannot enter into an agreement to CDB

Cannot have contract with owner that if owner does X, we’ll do Y. no quid pro quo’s.

Commitments to use union labor by owners etc. (or to remove non-union)

1. We know our ultimate goal –

We need to think in terms of tactics (picket, leaflet, banner, rally, rats, etc.) sometimes before we ask an earlier question:

Who is the best target, or, who is most susceptible to leverage?

Subcontractor's employees? Subcontractor? GC? Owner? Gov't?

Lender? Neighbors (tenants)?

Law dictates which tactics are best for which targets.

3. You know we can't do whatever we want, when, we want, to anyone we want.

TWO LEGAL LIMITS:

What is the **object** of the union activity

What **means** did the union use to achieve that object?

- Basic concept: primary – our target employer  
secondary – everyone else

4. When we picket (one major **means**/method of unions):

- We cannot have a purpose of organizing employees/gaining recognition from the employer. Some other purposes are OK (area standards) because we are defending our standards, not trying to organize/get a K.

Consequence if wrong: quickie election

- We cannot picket a third party (GC, owner, lender). But we can picket a primary hoping 3<sup>rd</sup> party will quit using.

Consequence if wrong: lawsuit, damages, injunction

This means we never, never, never picket a third party

- “A” purpose: means if NLRB/courts detect evidence of any ‘bad’ purpose, no matter how slight, we’re toast.
  - doesn’t matter if it was a mistake; doesn’t matter if it was minor; doesn’t matter even if it was authorized. Just if a union agent did/said it

Remember: anything, any statement or conduct, can show purpose, such as a statement in a leaflet, at a meeting with a government agent, or a comment to an employee. “Loose lips sink ships”; think of everyone as a ‘plant.

6. You see that the dividing line is whether it is picketing or not.

What is a picket? (a quick peek ahead to topic of bannering)

Sign

Patrolling

Element of confrontation



## 7. Picketing

### a. org/recog.

30 days max

RM election

No picketing if election in last 12 months

No picketing if employer recognizes another union as 9A rep.

- Can cause econ. Harm
- No big legal risk
- Big danger of election
- WHY or WHY NOT do it?

### b. the so-called “informational picket”

- “no contract” or “does not employ”
- No time limit
- Cannot stop deliveries or have a work stoppage

- WHY?

c. Area Standards

- no time limit

- can cause economic harm

- no quickie election

- WHY? WHEN WOULD IT BE EFFECTIVE?

d. these are just labels. NLRB decides what it really is. Looks at what you do, suspicious that it's really for purpose of CBA or organizing

SO PAY ATTENTION!!!

8. Before starting anything

- examine past union activity for at least last two years

Leaflets? Cards? Meet with employer?

- why is this important to know?
- how to fix if you find out something?

#### Begin investigating

- info from employees  
not enough on its own  
how old can the information be?
- Letter to employer  
allow time for employer response  
what if no employer response?

#### What is the “Area Standard”?

- union rate or true “area” rate?
- total package concept
- other issues:
  - Medical package
  - ‘working conditions’

The danger: you're attempting to bargain, or appeal to ees

## The Campaign

- demand letter

State the purpose clearly, and what isn't the purpose (e.g.:

“we don't seek a CBA or to organize your ees”)

- what do the signs say?

- do you leaflet?

- what do leaflets say?

- be consistent (employees, employer, gov't, press)

Casual comment: “you can do better with us”

Casual comment: the employer is “non-union”

- what do you tell passersby? (remember we're dealing with a contractor, not a retail business; the individual customer is not a customer of the contractor)

What if you goof?

- disavowal letters
- hiatus period. How long?

Do we leaflet while we're picketing?

Yes but only a strict A.S. message (as compared with our leaflets)

Do we point out 'bad guy' stuff to owner or gov't such as shoddy work, FLSA violations, WISHA violations, etc.? so long as it's not org/recog.

Offer list of union contractors? Yes, but point out that it is because these contractors pay community standards, not that they're 'union'

How do we deal with inquiries from employees? E.g. send me union info.

The Crunch Point: meeting with the contractor (assume it's scripted/bugged)

What if his lawyer shows up?

"what will it take"

Pitfalls: sign up.

Message: pay area standards

“how long will this go on”

Pitfalls: until you close down or sign up with union

Message: until you pay area standards

Do we ask for written commitment to pay? (no)

Have the Courage of our Convictions. Take a Gamble?

## **LEAFLETS**

1. In conjunction with A.S. campaign

Strict ‘economic package’ only

The medical coverage/‘community pays’ message

(Only as a consequence of not paying A.S.)

2. Stand-alone leaflets (no picketing now or in near future)

Free reign

Hyperbole/rhetoric OK

Lying not OK

Avoid false statements of fact or that sound like fact

e.g. 'pays well below area standards' when you don't know

e.g. 'violated federal law' when it's just a ULP charge

e.g. 'indicted' under federal law when it's a ULP complaint

e.g. violates safety laws when citation is under appeal

versus colorful/vivid language

'bloodsucking plantation-minded boss'

Doesn't pay a 'living wage' - too vague to be liable

Don't get cute: (implying inside info)

### 3. Mixing Tactics (Area standards picketing, then use of a broader leaflet)

Start with the broader leaflet, use before the disavowal letter)

DON'T picket at one location, leaflet (with broader message) at second

4. The "Notice of Labor Dispute" letter