What to do if your company is the subject of picketing at a job site

Many roofing contractors were familiar with organized labor’s attempts to pass the Employee Free Choice Act (EFCA), which would have made it much easier for unions to organize employees. With EFCA all but officially dead, unions are seeking new ways to increase their membership. One of the most common ways for unions to increase their visibility to attract new members is to engage in picketing, which often includes signs advertising to the public that the construction company the union is targeting pays substandard wages and employs unsafe or poorly trained workers. This type of picketing is referred to as area standards picketing. Often, roofing contractors with little or no experience in dealing with union organizers or picketing do not know how to respond to an area standards picketing campaign that takes place at a construction project.

Many nonunion construction companies are surprised to learn a union may lawfully picket at a construction site provided the picketing occurs at the site of the dispute; is limited to times when the employees of the contractor being picketed are present; is reasonably close to the location of the dispute; and clearly identifies the contractor with whom the union has a dispute. The picketing also must not interfere with the rights of neutral parties, such as customers, other contractors and the public. Picketing that fails to meet these requirements is subject to challenge through the filing of an unfair labor practice with the National Labor Relations Board.

Roofing contractors that are the subject of a lawful area standards picketing campaign must be mindful of what responses to the campaign are permitted and which are illegal and can
result in the filing of an unfair labor practice charge against the company. Harassment and intimidation of the people picketing is illegal. On the other hand, it certainly is permissible for the roofing contractor which is the subject of the picketing to enforce no-trespassing rules and to engage in its own campaign to educate the public about the dispute. Roofing contractors are permitted to inform the public that they pay fair wages and benefits and employ local residents. Roofing contractors that are the subject of picketing involving false text also may decide to file a lawsuit alleging defamation. If the picketing involves text that expresses an intent to force an employer to recognize a union as the representative of a group of employees on the construction site, then the picketing must be limited to a reasonable period of time not to exceed 30 days. Some contractors decide to do nothing when the picketing is on public property and not impeding access or egress from the project site.

Where picketing moves to private property and restricts access and egress from the site, it may be time to call the police to handle the situation. Indeed, local ordinances may also be helpful in negating a picketing campaign. If the locality in which the picketing occurs has strict anti-signage rules, contractors can demand that the police enforce the law. Roofing contractors should be careful, however, not to demand that the police act in any manner beyond what is permitted under local law because doing so subjects the roofing contractor to an unfair labor practice charge from the local union.

One of the more powerful tools available to roofing contractors working on a construction site where the picketing is directed at one particular company is the reserved gate system, which also is commonly referred to as the dual gate system or two gate system. The reserved gate system allows the general contractor to isolate a disputing union and the company which is the subject of the union’s picketing by establishing a “primary” gate to be used by the primary employer (the
employer being picketed), its employees and material suppliers. The general contractor can notify the union of the specific days and times at which the primary employer will be working. The union then must restrict its picketing to those specific days and times, and the picketing also must be restricted to the primary gate.

The general contractor that uses the reserved gate system must be sure to establish a "neutral" gate for those companies not the subject of the union’s picketing. The neutral gate should be located as far as possible from the primary gate. The general contractor must be sure that only employees of companies that are not the subject of the union’s picketing use the neutral gate. Provided that use of the neutral gate is appropriately restricted to employees from companies other than the primary employer, any picketing at the neutral gate is considered an illegal secondary boycott subject to an unfair labor practice charge. If, however, employees of the primary employer use the neutral gate, the gate will be considered contaminated, and the union picketing will no longer be restricted to the primary gate. For this reason, letters also should be sent to all neutral employers on the construction site informing them of the reserve gate system and advising them which gate has been established for use by their employees. Use of the gates should be monitored by the general contractor to ensure there is no contamination.

To ensure the reserved gate system is effectively maintained, contractors are advised to correspond with the union, primary employer and primary employer’s suppliers informing each of them that the reserve gate system has been established. These entities should be advised, in writing, where the primary gate is located and should be further advised that use of the neutral gate is strictly prohibited. Additionally, signs should be created for both the primary and neutral gates. Each sign should identify who is permitted access at each gate, and the signs should advise those individuals not permitted access where the gate for them to access the job site is located. It also is helpful to
prepare a site map which clearly indicates the identities and locations of the primary and neutral gates.

The reserved gate system is a legal and effective way to limit work stoppages resulting from union pickets at construction sites. Roofing contractors are well-advised to plan for picketing before a construction project even begins by having a reserved gate system on call, ready for implementation at a moment’s notice.

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