

## **Reserved Gates and Picketing at Construction Sites**

It is common on construction sites for labor unions to picket nonunion contractors on the job or the union contractors with whom they have an ongoing labor dispute. That is not only a nuisance for the general contractor on the project, but it also can potentially shut down the job if unionized workers refuse to cross the picket line. However, there are steps to take to ensure that the project is completed with minimal labor unrest. Specifically, establish what is known as a “reserved gate system.” In the following paragraphs are the principles behind the system and suggestions for effectively creating and maintaining one.

### **Background**

When more than one contractor is located and working on a single project, each contractor is deemed a separate employer under the National Labor Relations Act (NLRA). Generally speaking, if a labor organization is engaged in a dispute with a contractor (regardless of whether it’s a union or nonunion contractor), it may picket that employer wherever it can be found.

Furthermore, employees of other contractors (neutral contractors) usually are entitled to observe a lawful picket line. Under the NLRA, however, the picketing union can’t picket neutral contractors in an attempt to pressure the contractor with which it has a dispute to give in to its demands.

At many shared project sites, all contractors use the same entrance or gate. A union can picket the contractor with whom it has a labor dispute wherever it can be found; therefore picketing a single gate used by all of the contractors is lawful. Employees of neutral contractors legally can refuse to cross the picket line and enter the project unless they’re restricted by their own collective bargaining agreements. It therefore falls to the general contractor to separate the employees of the picketed from those of neutral contractors to prevent the pickets from lawfully confronting them. A legal way to accomplish that goal is to establish a “reserved gate system”.

The legal concept behind that system goes something like this: It’s lawful for the union to picket the company with which it has a dispute. If that company shares a common gate with other contractors, the picket pressure isn’t illegal simply because it might incidentally cause other contractors’ employees to refuse to work. The law permits the picket pressure to be directed only at the company involved in the labor dispute.

If there’s a single gate reserved for its use, then the union can picket only that gate. Picketing at other gates not reserved exclusively for the picketed company would be unlawful secondary activity.

### **Checklist for establishing a reserved gate**

The general contractor should set up a separate gate or entrance for the sole use of the picketed company’s employees, suppliers, visitors, and vendors. The key to isolating the picketing to the reserved gate is maintaining the integrity of the gates so the picketed company, its employees, suppliers, visitors, and vendors use only the reserved gate. All other gates and entrances must be off limits to the picketed company and anyone connected with it. Use of a neutral gate by the picketed company will destroy the reserved gate system and allow the union to picket the entire job site.

In general, picketing confined to that gate will be permissible. If it's expanded to other gates reserved for neutral contractors and their suppliers, the picketing will be deemed unlawful and can be banned.

A reserved gate must be established clearly with unambiguous signs designating which entrances should be used by the different contractors' employees. The signs should indicate that the gate designated for the picketed company must also be used by its suppliers and visitors. Gate signs may be posted at any time before or after picketing begins.

Taking the following steps will help establish which gate is reserved for the picketed company.

**1. Determine the reserved gate's location.**

- a. View the site to determine the best way to isolate the reserved gate from other entrances. The reserved entrance may need to be created (literally, by constructing a new gate), or there may already be an entrance that can be used as a reserved gate.
- b. The reserved gate must be set up to avoid confusion and deception for the union. If it's situated so that none of the project can be seen and no appeal can be made to the picketed company's employees, the union's failure to confine picketing to that gate may not be unlawful.
- c. The reserved gate shouldn't be isolated from the public, but it need not be in a location that maximizes contact with the public.
- d. The reserved gate should be as far as possible from other, unreserved gates and still be consistent with the other guidelines.
- e. Locate the reserved gate on a different public road than other gates, if possible.
- f. If the reserved gate must be on the same public access road as other gates, make it the last gate approached by contractors and suppliers entering the project.
- g. The gate itself should be defined and limited in size so the picketing will be confined to a specific area. Large, legible signs must be posted at each gate.
- h. The signs must indicate clearly that the gates designated for particular contractors also are to be used by their visitors and suppliers.
- i. When the reserved gate becomes effective, make sure all signs are in place and all gates are policed.

Determine how the gate will be policed. Independent security may be necessary until the picketed company's personnel and suppliers understand what's expected of them. The security officer should maintain a log of everyone entering the gates.

**2. Notify the union and other contractors about the reserved gate.**

- a. First, notify the president or highest ranking officer of the picketing union by telephone that a reserved gate has been established.
- b. Next, have a service that will certify hand-delivery of a written notice to the union. Specifically describe the location of the different gates in your written notification.
- c. Send a confirming copy of the written notice to the regional director of the National Labor Relations Board and the owner of the project site.

- d. Notify all suppliers, visitors, and other contractors at the site by telephone and then by written confirmation.
- e. Notify all other unions represented on the job in writing.

**Bottom line**

Picketing at a construction site has the potential to not only disrupt the orderly progression of workers and supplies to the project but also to shut down the job. Understanding and establishing a reserved gate system allows general contractors an opportunity to complete the project with minimal disruption to the companies that aren't involved in the labor dispute. An improperly established reserved gate system can shut down an entire project; therefore, the Campus may wish to consult with University Counsel as circumstances warrant.