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Secondary Boycotts and Sympathy Strikes

[Section 8\(b\)\(4\) of the National Labor Relations Act](#) (NLRA) outlines important guidelines for managing secondary boycotts, protecting neutral employers from being involved in disputes between unions and primary employers.

The NLRA permits unions to strike or picket against their direct employer (primary). However, it prohibits actions that coerce a neutral (secondary) employer into ceasing business relations with the primary employer as well as certain actions from employees of the primary employer to adversely affect a neutral employer. This distinction helps prevent businesses not directly involved in labor disputes from facing undue disruptions.

Unlawful conduct: Section 8(b)(4) makes it illegal for unions to:

- Induce employees of a neutral employer to strike or stop work. This includes any form of encouragement or persuasion to disrupt their normal duties (Section 8(b)(4)(i)).
- Threaten, coerce, or restrain a neutral employer with the aim of cutting business ties with the primary employer. This includes a wide range of actions from overt threats to more subtle forms of pressure (Section 8(b)(4)(ii)).

Detailed Breakdown

1. Primary and Secondary Picketing:

- **Primary:** Direct action against the employer with whom the union has a dispute. This is protected under the NLRA and includes strikes, picketing, and other protest actions focused on the primary employer. The focus here is on activities that are directly aimed at the employer involved in the dispute, and these actions are generally permissible as they are part of the union's efforts to negotiate or settle the dispute.
- **Secondary:** Actions aimed at neutral parties to pressure them into ceasing business with the primary employer are generally prohibited. Secondary actions involve targeting a third party who is not directly involved in the labor dispute. These actions are considered unlawful because they unfairly impact businesses that are not part of the conflict.

2. Prohibited Actions:

- **Inducement:** Encouraging employees of a neutral employer to stop work to pressure their employer. This can involve a range of actions, from directly asking employees to participate in a strike to more indirect methods like distributing leaflets or holding meetings to persuade them. This type of inducement is prohibited because it extends the labor dispute beyond the primary employer to neutral

parties.

- Coercion: Using threats or force against a neutral employer to achieve the same objective. Coercion includes a wide spectrum of activities, such as threats of physical harm, economic pressure, or legal threats. These actions are prohibited because they exert undue pressure on neutral employers to take sides in a labor dispute they are not directly involved in.

3. Allowed Activities:

- Sympathy Strikes: Employees of a neutral employer may refuse to cross a primary picket line if the primary strike is lawful. This protection can be lost if the primary strike is unlawful, violates a no-strike clause, or significantly disrupts the neutral employer's business. Sympathy strikes allow workers to show solidarity with striking workers at a primary employer, but they must be conducted within legal bounds.
- Common Situs Picketing: Picketing at a shared worksite is allowed if it strictly relates to the primary dispute. This ensures the focus remains on the primary employer. The Moore Dry Dock standards set the conditions for lawful common situs picketing, which include limiting the picketing to times and locations where the primary employer is operating.

4. Exceptions and Conditions:

- Ally Doctrine: A neutral employer may be treated as a primary employer if they perform work normally done by the primary employer during a strike. This prevents the primary employer from bypassing the strike by shifting work to another company. The ally doctrine applies when a neutral employer takes on work specifically to undermine the strike or when the neutral and primary employers are closely related entities.
- Consumer Handbilling: Peaceful handbilling to inform the public is permitted and does not constitute coercion. This method is used to raise awareness without applying undue pressure. The key here is that handbilling must be purely informative and directed at consumers, not at employees of the neutral employer to induce them to stop work.

5. Legal Precedents and Protections:

- Moore Dry Dock Standards: Guidelines for lawful picketing at shared worksites. These standards help ensure that picketing is appropriately directed at the primary employer. The standards require that picketing be limited to times when the primary employer is present, be confined to locations reasonably close to the primary employer's operations, and clearly disclose the primary nature of the dispute.
- Sympathy Strikes: Protected unless they excessively disrupt the neutral employer's business or violate a no-strike clause. The legality of sympathy strikes depends on the context and impact on the neutral employer. Courts will weigh the rights of employees to engage in sympathy strikes against the potential harm to the neutral employer's business.

Case Law:

1. [National Woodwork Manufacturers Association v. NLRB \(1967\)](#)

This case clarified the distinction between primary and secondary activities. It held that primary activity aimed directly at the primary employer's products or operations is lawful, even if it has secondary effects on

neutral parties. This case emphasizes that primary actions, even if indirectly affecting neutrals, remain protected.

2. [Moore Dry Dock Co., 92 NLRB 547](#) (1950)

This decision established the standards for common situs picketing, making it clear that picketing at a neutral employer's site must be strictly limited to times and places directly related to the primary dispute. The Moore Dry Dock standards provide a clear framework for what constitutes lawful primary picketing at shared sites.

3. [NLRB v. Denver Building & Construction Trades Council](#) (1951)

The Supreme Court ruled that picketing aimed at neutral secondary employers to force them to stop doing business with a primary employer was unlawful under Section 8(b)(4). This ruling reinforced the prohibition against secondary boycotts and emphasized the need to protect neutral businesses.

4. [Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council](#) (1988)

This case determined that peaceful handbilling to inform consumers about a labor dispute is protected under the First Amendment and does not constitute coercion under Section 8(b)(4)(ii)(B). This ruling highlights the distinction between informative handbilling and coercive activities, protecting the former as a form of free speech.

Practical Advice for Employers:

- **Understanding Rights and Obligations:** Employers should be well-versed in their rights and responsibilities under Section 8(b)(4). It is advisable to consult legal counsel before taking any actions related to strikes and picketing. Knowledge of the law helps prevent unintentional violations and ensures that employer responses are legally sound.
- **Documentation and Compliance:** Keeping thorough records of interactions and decisions related to picketing and strikes can help ensure compliance with the law. Detailed documentation provides evidence of lawful actions and can be crucial in legal disputes.
- **Communication with Employees:** Employers should communicate clearly with their employees about the legal aspects of strikes and picketing to avoid misunderstandings. Clear communication helps maintain a cooperative workplace environment and ensures that employees are aware of their rights and responsibilities.

Section 8(b)(4) of the NLRA provides a framework to balance the rights of unions in labor disputes while protecting neutral employers from undue pressure. By understanding these provisions, employers can navigate labor relations lawfully and effectively.

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