Labor Picketing During Construction Projects

by Cindy M. Lane, Partner*

As overall union membership declines, there are increasing incidents of some unions falling back on mass picketing, threats and violence to intimidate contractors into hiring subcontractors who hire only union workers. Unions appear with banners and leaflets, claiming their goal is “informational picketing”. The union’s “intention” according to the leaflets, is to inform the public that non-union workers “hurt the economy” and “cause a drain on local resources with their low pay and lack of benefits”.

Sometimes, however, the union’s real intention is to shut down the construction site by producing 50 to 100 angry picketers shouting threats of violence. In those cases, the real goal is to have the general contractor never again hire a subcontractor with non-union workers.

In California, one union took advantage of the pre-dawn darkness to padlock all construction site entrance gates on the construction to a large apartment building project. Two plain-clothes officers assessed the scene and suggested the general contractor shut down the construction site to avoid any violence. Thus, one day of construction was totally lost.

On the second day of picketing, the contractor was ready with security guards, cameras and video equipment. The 50 to 100 picketers blocked off the entrance roads, patted down the security guards for guns, and subjected workers to racial and homosexual slurs and threats of physical violence. Even after the padlocks were sawed off, the picketers physically blocked the entrances. Managers were forced to exit their cars and move barriers blocking the roadway.

Pickets slashed the subcontractor’s tires with knives as the cars passed through the entrance. The subcontractor’s workers were too afraid to approach on foot. They watched from across the street, and then left the site for the day. Construction was significantly delayed on the second day.

Quick action by the general contractor successfully stopped all picketing. Counsel served the union attorneys with a complaint, proposed a temporary restraining order, incident statements and videotapes of illegal activities. The local police offered more protection after viewing the videotapes. The picketing stopped once the union realized that the general contractor had proof of illegal conduct and would not stand for such tactics.

The purpose of this article is to demonstrate how general contractors can prepare in advance to protect workers and construction sites when these events occur. We recommend the following actions:

Prepare Management

First, provide the facts. Unions may employ these tactics even if you have cooperated and allowed the union representatives to talk to non-union workers during their breaks and lunch hours. Inform all companies working on the site if the union threatens to picket.
Tell them that you will take all reasonable measures to avoid picketing problems, but in the event of picketing, you want to operate the construction site to the fullest extent feasible without taking undue safety risks. Ask for their best efforts and judgment, notification and recording of significant incidents as they occur.

**Have Counsel Notify The Union of Your Position**

Second, notify the union in writing that the general contractor recognizes the right of unions to engage in legal picketing. At the same time, the contractor insists that the picketers recognize the general contractor’s corresponding legal rights, including free entry and exit, and freedom from violence or other illegal conduct directed against persons or property. Inform the union that the general contractor will take legal steps as necessary.

**Utilize a Dual Gate System**

Third, establish a separate entrance gate system. Legally, picketers can then only picket certain gates. Designate the gates correctly and provide a letter and a site map to the union and workers. Tell them the location, address and gate that they must use. Insist that they use the correct gate only. Post security at the gates to notify you if the picketers block the entrances or threaten violence.

**Document with Videotape**

Fourth, arm management with video cameras. Their goal is to record illegal picketing activities: tire slashing, obscenities, profanities, racial and homosexual slurs, and large numbers of picketers threatening to or actually blocking the gates. Also provide them with incident report forms so that they can record the time, date, incident, witnesses and all other pertinent details to deter further illegal activities.

**Provide and Collect Incident Report Forms**

Fifth, keep written records of incidents as they occur. Be sure to have managers, workers, security guards and delivery personnel complete an incident form with details of any events. Designate one person as an official record keeper. This person’s job is to keep a chronological record of all events leading up to and occurring during the picketing situation. Video and incident reports are critical evidence.

Keep a record of picketing related expenses, including security services, property damage, etc. Keep the receipts for any towing or tire replacement. If nails are found or tires slashed, gather the evidence. Put small evidence in a container or envelope with the date, time, and location entered by the person who collected the evidence. Photographs or videotapes are acceptable for items such as slashed tires. When videos are taken, the name of the operator, date, time and gate location should be recorded on the tape. In the case of photographs, the information should be immediately written on the back of the photos. Keep a written log of the information about each photograph and video.

The “Incident Report Form” should include for the site name, date, time, witnesses, and details, including, who, what, and gate location.
Examples of incidents that should be reported include the following:

- Picketers (even a few) who are standing in the middle of an entrance (or walking extremely slowly) in order to block pedestrians or vehicles from coming in or out;
- Large groups (e.g., ten or more) who are massing near the entrances;
- Vandalism, such as rock throwing, strewing of nails in the road, tire slashing, etc.;
- Following vehicles too closely or other dangerous conduct on the road.

**Ask For Police Assistance**

Sixth, contact the local and state law enforcement agencies to inform them of the potential picketing situation and of the possibility of unlawful activity. Seek commitments for assistance via regular patrols and/or a rapid-response capability. Designate one individual to be the primary contact between the construction site and police officials. Police presence will help deter illegal behavior and provide a record of the union activities.

**Provide Instructions on Crossing the Picket Line**

Seventh, provide instructions telling workers how to cross picket lines. In general, the following rules are appropriate:

- Whenever possible, picket lines should be crossed in a motor vehicle rather than on foot;
- Approach and cross the picket line cautiously and at a slow rate of speed. Do not be aggressive. Avoid coming in contact with or inching against the body of a picketer;
- Avoid conversations with picketers. Replies to questions or remarks should be courteous and brief. Do not respond to any name-calling or threatening words;
- If picketers block your path, attempt to identify the persons involved including a physical description and description of any signs they are carrying. Note the length of time you are detained, witnesses present, date, time and location.

**Secure the Construction Site**

Eighth, conduct a complete security survey to secure the construction site. The survey should include a review of all entrances and boundaries. Identify vulnerable areas such as unfenced sections, pipelines, substations, storage areas, outside warehouses, etc. Determine how these areas can best be protected in the event of a picketing situation.

Utility connections are important potential points of vulnerability. Power supply feeders, purchased power transformers and exposed pipeline connections are very vulnerable to sabotage,
so extra precautions may have to be taken to protect these as well. Check the lighting of the construction site perimeter and provide additional lighting where required.

Identify possible picket areas and clear obstructions to these areas to allow effective surveillance. Make sure that property lines in these areas are clearly marked. Identify all avenues of entry to the location and determine which, if any, you should close in the event of a picketing situation.

All security personnel should be uniformed but should not carry firearms except in extraordinary circumstances. Consider use of guard dogs at remote sites or at isolated sections of the location.

An effective communications system should be set up for security in order to maintain contact with management on the construction site at all times. It is also important to ensure communication with local law enforcement authorities in the event of problems with telephone service.

**Inform Management About Illegal Activities**

Ninth, let your managers know that it is unlawful to:

- Threaten retaliation for picketing;
- Videotape peaceful picketing for the purpose of intimidating picketers;
- Discourage membership in or support of the union.

**Draft a Contingency Plan**

Finally, prepare a contingency plan in the event of a picketing event to:

- Operate construction site at full capacity; or
- Operate construction site at reduced capacity; or
- Operate construction site with only specific subcontractors/deliveries; or
- Maintain site in standby condition; or
- Conduct an orderly shutdown.

Prepare and distribute lists of key personnel with cell and home telephone numbers. The list should include:

- Key management personnel for all contractors, and vendors; and,
- Federal, state, and local law enforcement agencies, the local police and fire department.
Designate one individual as the sole spokesperson for the construction site in dealing with the media and/or local government and community leaders and on making any public statements about the picketing situation or construction site operation.

Contingency planning can help prevent disruption to the construction site and fear and intimidation of workers. Even if picketing never occurs, management and workers will be ready to address such an event in an appropriate and legal manner.

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