

Outline of Reserved Gate Law

I. The Nature of a Common Construction Situs.

Several contractors who are otherwise independent of each other come together on a single situs to work on the common endeavor of that particular project. Normally they all have a primary business location elsewhere. Their contracts may be with each other in the form of subcontracts or they may be all party to separate prime contracts with the owner.

II. The Denver Building Trades Case.

Organized labor contends that on a common situs construction project all contractors are allies in that they are all engaged in a common undertaking. Therefore organized labor contends that a dispute with one contractor on a construction situs may be carried to all contractors on the situs. In the Denver Building Trades case the United States Supreme Court rejected this contention and held that when organized labor has a dispute with one contractor on a common situs project, it must limit its activity to that individual contractor. Subsequent efforts by organized labor to change this through legislation have failed.

III. The Basic Concept of the Secondary Boycott.

A union with a dispute against an employer may not lawfully engage in certain activities designed to force neutral employers to cease doing business with the primary employer. The forbidden activities basically are threats directed at the neutral employer or attempts to induce the employees the neutral employer to cease working. On the other hand, if the union engages in primary activity against the employer with whom it has a dispute, the fact that other employers cease doing business with it does not of itself show a violation.

IV. Rules for Labor Disputes at a Common Situs.

Where a union has a dispute with an employer working on a common situs that union may carry its dispute to that situs but must observe the following restrictions:

- A. Picketing is limited to time when the primary employer is working on the situs.

- B. At the time of the picketing the primary employer must be engaged in its normal business at the situs.
- C. Picketing is limited to places reasonably close to the location of the primary employer.
- D. Picketing discloses clearly that its dispute is with the primary employer.

V. The Concept of the Reserved Gate.

Because of the foregoing rules, when a labor dispute develops on a common situs a separate entrance may be established for the employer who has the dispute. If done properly, picketing would then be confined to the entrance used by that employer.

VI. Mechanics of Reserved Gates.

- A. The gate must be distinct and well defined
- B. It must be clearly marked (see Addendum A).
- C. There must be no commingling of use
- D. If there is any chance of commingling it must be policed.
- E. The union should be given notice (see Addendum B).
- F. In the even of accidental misuse, provide policing and send another communicator to the union (see Addendum C).

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By David R. Hols

ADDENDUM A

THIS GATE RESERVED
FOR
SEPARATE AND EXCLUSIVE
USE OF EMPLOYEES OF:

- 1.
- 2.
- 3.
- 4.

THEIR SUBCONTRACTORS AND
MATERIAL SUPPLIERS ONLY!

X X X X X X X X X X X X
X X X X X X X X X X X X X

ALL OTHER EMPLOYEES, SUPPLIERS AND MATERIALMEN ARE INSTRUCTED
TO USE THE GATE THAT HAS BEEN SET UP AND MARKED FOR YOUR
EXCLUSIVE USE.

ADDENDUM B

As you know, your union is presently engaged in a labor dispute with XYZ Company at the _____ construction site located at the intersection of Rice and Sycamore Streets.

This letter is to inform you that as of (day), (month) (date), (year) at eight a.m. a reserved gate (entitled Gate A) will be established at the Rice Street entrance to that site for the sole and exclusive use of the employees of the XYZ Company, its suppliers and materialmen. All other employees, suppliers and materialmen will utilize Gate B located on Sycamore Street.

After eight a.m. (day), (month) (date), (year) any further picketing of Gate B by your union (with picket signs naming an employer other than one listed on the sign located at Gate B), will be construed as an illegal secondary boycott and appropriate unfair labor practice charges will be filed with the National Labor Relation Board.

ADDENDUM C

As you know, Gate B located on Sycamore Street at the _____ construction site has been used by employees of XYZ Company against our specific instructions. We have now reestablished a proper reserved gate which is located at Rice Street and designated it as Gate A. This gate is for the employees of XYZ Company, its suppliers and materialmen. (Option: All gate to the site will be patrolled and only those employees, suppliers and materialmen authorized for a specific gate will be allowed entrance through it.) This reserved gate will be operative as of eight a.m. (day), (month) (date), (year).

Therefore, we ask that you terminate your picketing activity at Gate B on Sycamore Street, unless your picket signs name one of the employers listed on the sign posted at Gate B.

If you contend that you still have the right to picket after the reestablishment of this reserved gate, we demand that you inform us, immediately, the basis for this belief.

If you are still picketing at Gate B on (2 days after previously stated date) at nine a.m. with picket signs naming an employer other than those listed on the sign located at Gate B we will be forced to conclude that your picketing is an unlawful secondary boycott and appropriate unfair labor practice charges will be filed with the regional office of the National Labor Relations Board.