



SEPARATE GATE HANDBOOK

- *Operating a Project When a Picket is Present on the Jobsite*

AGC
San Diego Chapter, Inc.

The purpose of this handbook is to provide information as general reference material concerning the subject. This information is for educational purposes only and is not intended to be a substitute for legal advice. The information is general in nature and the specific facts of any legal problem may vary the applicability of such material. Specific legal questions should be addressed to the attorney of your choice.



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I. Summary of the Law Covering Separate Gates

Under current law, it is possible to establish separate gates or entrances for different contractors working on the same construction project and limit picketing to certain gates. The gates must be separate, but can be within reasonable proximity of each other. The primary gate, that is, the gate used by the employer with the labor dispute, must be accessible (typically on or by way of public property), visible to the public, and close to the portion of the project that is the object of the picketing. If the gate is too remote or inaccessible, it will not be effective.

The filing of an unfair labor practice charge with the NLRB may be appropriate if picketing by a union is improper. The filing of a suit against a union engaged in illegal activity based on a secondary boycott theory is also an effective deterrent.

Picketing by a union against a primary employer must be confined to the place or places designated and it must be limited to the time the primary employer, its employees, or its suppliers are on the premises.

If separate gates are established after picketing begins, **a union must be provided with actual knowledge of their existence.** A union must also be told of the reestablishment of separate gates in the case of a contamination problem. In such a case, either a telegram, fax a certified or registered letter should be used to inform the union.

Picketing must take place on public grounds and in close proximity to the entrance used by the primary employer. Picketing cannot block access to the project; if access is denied an injunction may be obtained.

II. Definitions

Dual Gate, reserve gate, two-gate system, separate gate is a procedure that serves to isolate a complaining or striking union and employer. Use of a neutral gate (see definition below) allows neutral contractors or employers to continue working.

A **contaminated gate** occurs when employees or suppliers enter or exit the wrong gate; that is, they fail to use the gate labeled for exclusive use by neutral employees. If this occurs, the NLRB will determine that the complaining union can picket all entrances.

A **neutral employer** is an employer who **does not have a labor dispute** with the complaining or striking union.

A **neutral gate** is the entrance with whom a union does not have a labor dispute concerning its employees or who is the object of any picketing.

The **primary employer** is the employer with **whom a union has a labor dispute** concerning its employees and who is the object of any picketing.

The **primary gate** is the **entrance used by the primary employer**, its employees and suppliers that have a dispute with the complaining or striking union.

Supplier is a person or company that furnishes material to the job site. A supplier does not have job site employees; it is however, an ally of the companies whose employees handle the material and must utilize that employer's gate. **An example of a supplier is a ready-mix company.**

III. Basis of the Law Covering Separate Gates

Under existing law, a general contractor may establish separate gates on multi-employer construction sites when there is a dispute between an employer and a union. If the picketing union (or unions) fails to confine picketing to the designated gate, it may be engaging in an unlawful secondary boycott. Four basic requirements exist to fully comply with a separate gate system:

1. Designate the Users of Each Gate

Care should be taken to carefully designate who is to use the reserved gates. For instance, a sign at the primary gate might read:

THIS GATE IS RESERVED EXCLUSIVELY FOR THE USE OF THE EMPLOYEES AND SUPPLIERS OF (INSERT COMPANY NAME). ALL OTHER PERSONS USE THE GATE LOCATED AT (INSERT LOCATION).

2. Notify Unions & All Contractors of Existing Gates (after picketing commences)

If the separate gates are established after picketing commences, **the employer must notify the union of the existence of the gates.** Preferably, notice should be by facsimile, certified mail, return receipt requested mail, or telegram. If this action is taken, the union cannot, at a later date argue that it did not have knowledge of the separate gate system. As an additional precaution to insure that the other contractors and suppliers on the job site honor the separate gate systems, similar notices should be sent to all other contractors.

3. Locate Gate in Suitable Area

The gate reserved for the employees with the labor dispute must be located in an area that is suitable for picketing and reasonably close to the sites of the picketed work.

4. Use Gates Properly

The employer must make sure that its employees and suppliers **always use** the separate gate. If they do not, the separate gate will be contaminated. All employees and suppliers should be informed of the separate gate, and employees should be told that discipline, including discharge, will result if an employee violates the separate gate system. A sample list of instructions regarding the proper use of the separate gate system is attached. All subcontractors also need to be warned of their obligation to ensure that their employees and material providers use the proper gate and that a violation may be a breach of their subcontract.

Even if picketing at the separate gate brings about a work stoppage or slowdown, the separate gate nevertheless should be established for another reason. If the union does not confine its picketing to the separate gate, the contractor may file unfair labor practice charges with the NLRB and can also proceed against the union in federal court to collect monetary damages. Proper establishment of a separate gate system is therefore of critical importance.

IV. Sample Separate Gate Signs

V. Establishing a Separate Gate System

The last thing needed on a project to add to normal project delays is a labor dispute. When you have a labor problem, **the first rule of thumb is to avoid inflammatory statements and belligerent postures.**

The decision of when to establish a separate gate system is one that should be made on a job-by-job basis.

One alternative to a separate gate system involves the scheduling of work so that the contractor or contractors anticipated to cause a picket situation are on the project only during designated times. For example, a landscaping contractor who does not need to be on the project for six months should be kept off the project until then. No picketing of this contractor can take place until it is actually on the project and the union needs to be aware of this rule if their target is not on the job.

If a problem is anticipated, you may wish to set up a separate gate system before the work begins or before the picket shows up. In such a case, it is not necessary to give the unions written notice of the gates, but it is good practice to do so. However, many times separate gates that are established before a dispute begins invites more problems than it solves.

A separate gate system can also be established after the picket shows up or after the gates have been contaminated by providing notice of the existence of the gates.

The following is an outline of the steps to take in setting up a separate gate system under different situations:

A. Setting up gates before the project begins or before picketing begins.

1. Prepare gate messages. The sign must have a positive statement (persons who may use the entrance) and negative statement (persons who cannot use the gate). Put a fence around the construction project, if possible. If an open area rather than a fence is used to enter and exit the construction project, a union can establish a picket across the whole area, as it is, in fact, one entrance.

2. Develop a policing system to ensure that employees and suppliers for the neutral employer pass through the neutral gate and employees and suppliers for the primary employer pass through the primary gate. Policing the gates avoids mistaken usage and provides you with witnesses to refute any alleged contamination.
3. Use “No Trespassing” signs on private premises.
4. Contractors signatory to union agreements should notify their unions in writing of the availability of the neutral gate.

B. Setting up gates after picketing occurs.

1. In addition to the steps under 1 above, the following action must be taken:
 - a. Written notification to the union picketing the project. The notice should be by fax, telegram or by certified or registered mail.
 - b. Written notification to all employers and neutral unions on the project.

VI. Do's and Don'ts Regarding A Separate Gate System

THE FOLLOWING RULES MUST BE THOROUGHLY UNDERSTOOD BY ALL OFFICE AND FIELD EMPLOEES OR THE COMPANY AND ITS SUBCONTRACTORS AND THEIR SUPPLIERS:

Do's:

- A. Always use the separate gate assigned to your company.
- B. Use the separate gate assigned to your company every time you enter or leave the job site even if you enter or leave the job several times a day.
- C. Instruct all suppliers to use the separate gate when delivering materials for your company.
- D. Make sure that all suppliers use the separate gate for your company both when entering and leaving the job site.
- E. Make sure that all equipment for your company uses only the gate assigned to your company both when entering and leaving the job site.
- F. Make sure that all visitors for your company use the gate assigned to your company when entering and leaving the job site.
- G. Make sure that company and personal vehicles are parked on the job site in such a way that separate gates for other companies are not blocked.
- H. Monitor picketing activities.
- I. Place "No Trespassing" signs on your premises.
- J. Frequently check the gates. Keep a job diary that details the dates and times that you, or one of our employees, checked the gates and found no contamination of the gate system.

Don'ts:

- A. Never use a gate assigned to another company when entering or leaving the job site.
- B. Never use an unassigned gate when entering or leaving the job site.
- C. Never use any other entrance to or exit from the job site other than the assigned gate to your company.

- D. Never let other employees from your company use the other gates when entering or leaving the job site.
- E. Never let equipment or materials for your company enter or leave the job site except through the gate assigned to your company.
- F. Never store materials or park vehicles (company or personal) in a way that will block the gates assigned to other companies.
- G. Never “mix and match” gates. Use only the gate assigned to your company and stay away from gates assigned to other companies.



Separate Gate Letters and Notifications

Sample letters follow.

Dual Gate System

(1)

Sample Notice for Picketing Union

(Date)

Picketing Union
Address

RE: (Project)

Gentleman:

A dual gate entrance system has been established at our project referenced above located at (job location).

Gate "1", located at (describe physical location), is for the exclusive use of employees and material suppliers of (Neutral Contractor) only.

Gate "2", located at (describe physical location), is for the exclusive use if employees and material suppliers of (Primary Contractor) only.

Failure on your part to limit your picketing to Gate "2" (primary gate) will cause us to pursue our rights to the fullest extent permitted by law through the National Labor Relations Board.

Yours very truly,

(General Contractor)

cc: AGC San Diego Chapter

(A FAX with proof of receipt is suggested as the quickest means of notification. The FAX can be followed up with a personally delivered letter or a certified or registered letter. A telephone call or regular mail delivery may be inadequate because there is no proof that the notice was ever given and received.)

Dual Gate System

(2)

Sample Notice for Unions of Neutral Employers

(Date)

(To be sent by neutral union contractor to their union)

Union
Address

RE: (Project)

Gentleman:

A dual gate entrance system has been established at our project referenced above located a (job location) .

Gate “1”, located at (describe physical location), is for the exclusive use of employees and material suppliers of (Neutral Contractor) only.

Gate “2”, located at (describe physical location), is for the exclusive use if employees and material suppliers of (Primary Contractor) only.

We expect your organization to provide workers to the project in accordance with the labor agreement. We also expect a representative of your organization to be at the job site prior to starting time tomorrow morning to assist in manning the project.

Yours very truly,

(Signed by Specific Contractor with Union Agreement)

cc: AGC San Diego Chapter, Inc.

(A FAX with proof of receipt is suggested as the quickest means of notification. The FAX can be followed up with a personally delivered letter or a certified or registered letter. A telephone call or regular mail delivery may be inadequate because there is no proof that the notice was ever given and received.)

Dual Gate System

(3)

Sample Notice for All Contractors

(Date)

Address

RE: (Project)

Gentleman:

Effective at starting time on the _____ day of _____, 20____, a dual gate system has been established at our project referenced above located at (job location).

Gate "1", located at (describe physical location), is for the exclusive use of employees, subcontractors, and material suppliers of (Neutral Contractor) only (or all others).

Gate "2", located at (describe physical location), is for the exclusive use if employees, subcontractors, and material suppliers of (Primary Contractor) only.

We expect you to provide workers for the job and perform the work in accordance with your agreement.

You and your material suppliers are to confine your access to the project work area through the proper gate.

Yours very truly,

(Signed by General Contractor or Owner)

cc. AGC San Diego Chapter, Inc.

(A FAX with proof of receipt is suggested as the quickest means of notification. The FAX can be followed up with a personally delivered letter or a certified or registered letter. A telephone call or regular mail delivery may be inadequate because there is no proof that the notice was ever given and received.)

Sample Statement Explaining Use of Neutral Gate to Union Employees

_____ Company has no dispute with (picketing union). You have every legal right to work on this project. Work is available and you are ordered to continue working. If you walk off this job, you have adopted the (picketing union's) strike as your own and the company has the right to replace you.

Sample Confirmation of Statement Given to Employees

(Date)

RE: Statement of _____(Superintendent)

I am the superintendent for _____ (Company) on the _____project located at _____(street address),
(City), _____ (State)_____.

On the _____ day of _____, 200____, pickets from local Union _____
Appeared at the above referenced job site. I stated to our company employees that,
“_____ Company has no dispute with (picketing union). You have every legal right to work on this project. Work is available and you are ordered to continue working. If you walk off this job, you have adopted the (picketing union's) strike as your own and the company has the right to replace you”.

A copy of this statement was given to the following employees:

Name(s):

_____	_____
_____	_____
_____	_____
_____	_____

Superintendent's Signature

VIII. What to do when Picketing Occurs Under a Separate Gate System and There is a Work Stoppage

Once gates are properly established as previously detailed, a project should be able to move forward. The gate system requires that any picketing by a union must be confined to the primary gate. Neutral employers expect that their employees and suppliers will be able to go to work through the neutral gate.

A. If picketing occurs at the neutral gate and there is a work stoppage, the following should be done:

1. Ask the picketers which union they represent.
2. Ask the picketers why they are picketing and determine why the union is picketing the neutral gate.
3. Document all conversations.
4. Contact your main office.
5. Inform the picket in charge that he is illegally picketing in front of the neutral gate and that his picketing should be restricted to the primary gate.
6. After main office approval, have AGC contact the picketing union by phone to remove pickets and follow up the phone contact with a FAX or telegram.
7. The neutral contractor or subcontractor should tell the employees the following: “Our company has no dispute with the picketing union. This is a neutral gate. This is not a lawful picket. Work is available. If a worker refuses to go to work, the worker is adopting the strike as its own, and the company has a right to replace the worker”.
8. The neutral contractor or subcontractor should log the business agent’s statements and actions to the employees, noting the exact time of the conversation. These events may be crucial in a lawsuit or a NLRB proceeding.

B. In the event the workers refuse to go to work, the neutral company representative should:

1. Reread the prior statement to the employees. Log the names of those employees who heard and received the statement but still refused to go to work.
2. Call the union and request that employees be dispatched from the union as replacements.
3. Coordinate with AGC the filing of unfair labor practice charges with the NLRB (i.e. 8 (b) 4 (b) secondary boycott charges) and the filing of an illegal work stoppage grievance, if applicable, or a lawsuit.

ALL ACTIONS AND CONVERSATIONS PERTAINING TO THE WORK STOPPAGE SHOULD BE CAREFULLY DOCUMENTED.

C. If picketing occurs at the primary gate and neutral employees refuse to work.

If the neutral contractor's employees are reluctant to go to work through the neutral gate even though there are no pickets at the gate, the company supervisory people should:

1. Gather all neutral employees and the union representative, if available, in front of the neutral gate.
2. Tell the employees that your company has no dispute with the picketing union. Explain that the neutral gate is without pickets and that the work is available at the job site. Explain that any employee who refuses to go to work is adopting the picketing union's strike as your own and this is a violation of the no-strike provision of the union contract (if there is one) and can subject that employee to being replaced.

State to the business agent that his union has a duty to staff the job and observe the No strike clause (if there is one) and not to engage in an illegal secondary strike.

3. Log the business agent's statements and actions to the employees, noting the exact time of the conversation.

IX. Contamination of Separate Gates

The NLRB will not allow a separate gate system to continue if contractor employees or suppliers use the wrong gate. Even one inadvertent usage may trigger forfeiture of right to use the gates.

If the gates are contaminated, a contractor can reestablish the gates by taking the following steps:

1. Assign a monitor who is responsible for maintaining the integrity of the gates.
2. Find out what caused the “contamination”.
3. Correct the “contamination” problems.
4. Reestablish a gate system by sending notice to all parties, including the unions.

Sample notices follow.

Union
Address

RE: Project

Gentleman:

This letter is to notify you that the dual gate entrance system at the above reference project has been reestablished.

Gate 1

Gate 1 alternative

Gate 2

Failure on your part to limit your picketing to Gate 2 (primary gate) will cause us to pursue rights to the fullest extent permitted by law through the National Labor Relations Board.

Yours very truly,

(Signed by General Contractor or Owner)

cc. AGC San Diego Chapter, Inc.

X. Establishing a Reserve Time

An alternative to Separate Gates is establishing a Reserve Time. If notified, the union may only picket when the contractor they have a dispute with working on the construction site. Often, a subcontract may be able to work in the evenings or at night. If this is possible, the union will generally not picket.

A notification letter follows.

Reserved Time

Notice to all Contractors Establishing Reserved Time

(Date)

Contractor
Address

RE: (Project)

Gentlemen:

A Reserve Time has been established at our project for the exclusive use of (picketed contractor), their employees and suppliers.

The Reserve Time is (place proper times, days of week, dates). You are directed to confine your work on the project to hours other than those “reserved” to (picketed contractor).

Further, you are directed to inform your employees and material suppliers of the Reserve Time for (picketed contractor).

All other persons are expected to work during normal working hours.

Yours very truly,

(General Contractor of Owner)

cc: AGC San Diego Chapter

(A FAX with proof of receipt is suggested as the quickest means of notification. The FAX can be followed up with a personally delivered letter or a certified or registered letter. A telephone call or regular mail delivery may be inadequate because there is no proof that the notice was ever given and received.)

Notice to all Picketing Union
Establishing Reserved Time

(Date)

Union
Address

RE: (Project)

Gentlemen:

A Reserve Time has been established at the above referenced project for the exclusive use of (picketed contractor), their employees and suppliers.

The Reserve Time is (be specific and include dates or days of week).

Please confine your picketing of this contractor to the times noted above. Failure on your part to do so will cause us to pursue our rights to the fullest extent permitted by the law through the National Labor Relations Board.

Yours very truly,

(General Contractor of Owner)

cc: AGC San Diego Chapter

(A FAX with proof of receipt is suggested as the quickest means of notification. The FAX can be followed up with a personally delivered letter or a certified or registered letter. A telephone call or regular mail delivery may be inadequate because there is no proof that the notice was ever given and received.)

XI. Completion of Project Notification

It is often a good idea to notify the union when a contractor (subcontractor) has completed their portion of the project. This will usually end the picketing of the contractor on the particular project.

A suggested notification follows.

(Date)

Letter to Notify of Completion of Project

Union
Address

Dear _____:

This letter is to inform you that (company) has completed all work on the (project and address).

Our firm's contract with the owner is complete and employees and suppliers of (company) no longer be working on this project.

Sincerely,

(Signed by General Contractor or Owner)

cc: AGC San Diego Chapter, Inc.

(A FAX with proof of receipt is suggested as the quickest means of notification. The FAX can be followed up with a personally delivered letter or a certified or registered letter. A telephone call or regular mail delivery may be inadequate because there is no proof that the notice was ever given and received.)

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