

N.D.A.G. Letter to Hagen (Oct. 11, 1991)

October 11, 1991

Craig Hagen, Commissioner
Department of Labor
600 E. Boulevard, 5th Floor
Bismarck ND 58505

Dear Commissioner Hagen:

Thank you for your September 13, 1991, letter requesting my assistance in defining certain terms as used in N.D.C.C. ch. 34-09. The following definitions are provided to assist you.

Strike: The term strike is defined in N.D.C.C. § 34-08-01(4) as "the temporary stoppage of work by the concerted action of two or more employees as a result of a labor dispute." Under the common usage of this term, "temporary stoppage" of work is not limited to a refusal by employees to do any work for their employer. Any concerted slow down or other concerted interruption of operations by employees is a strike if it results from a labor dispute. See 48A Am. Jur. 2d Labor and Labor Relations § 2024, at 405 (1979).

Picketing: "The presence at [or in the vicinity of] an employer's business by one or more employees and/or other persons to publicize a labor dispute, influence employees or customers to withhold their work or business, respectively, or show the union's desire to represent the employees." C. Comella, Inc. v. United Farm Workers Org. Comm., 292 N.E.2d 647, 655 (Ohio App. 1972). Walking or patrolling is not required, and publication may be accomplished through signs, banners, placards, pamphlets, word of mouth, or any other form of communication. 48A Am. Jur. 2d Labor and Labor Relations § 2051, at 422 (1979).

Boycott: A concerted refusal to deal with a party with whom one has a dispute in order to exert pressure on the party by withholding, or enlisting others to withhold, patronage or services from the targeted party. St. Paul Fire & Marine Ins. Co. v. Barny, 438 U.S. 531, 541 (1977). As used in N.D.C.C. § 34-09-13, "boycotting" refers to a primary boycott. A primary boycott is a boycott applied directly and alone to the employer with whom the labor dispute exists. 48A Am. Jur. 2d Labor and Labor Relations § 2005, at 393 (1979).

Secondary Boycott: A concerted refusal to deal with a party who is "not directly concerned in a labor dispute . . . usually for the purposes of exerting indirect pressure on the primary employer." 8 T.W. Kheel, Labor Law § 36.01, at 36-1 to 36-2 (1989). The neutral party may include, but is not limited to, other employers or customers, patrons, and suppliers of the primary employer. Id. The primary employer is the one with whom the labor dispute exists.

Sympathy Strike: A strike "called or conducted not by reason of any dispute between the employer and the employees on strike or participating in such concerted interference, but rather by reason of . . . a dispute involving another employer or other employees of the same employer . . ." Jacksonville Bulk Terminals Inc. v. International Longshoremen Ass'n, 457 U.S. 702, 717 (1982) (quoting H.R. 3020, § 2 (13), 1 Leg. Hist. 168).

I hope that these definitions assist you in the administration of your office.

Sincerely,

Nicholas J. Spaeth

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