

NEYHART & GRODIN

ATTORNEYS AT LAW

STANLEY H. NEYHART
JOSEPH P. GRODIN
RICHARD R. HEATH
LEON ARDZROONI
DUANE B. BEESON
DONALD S. TAYLOR
EDWARD S. ARDZROONI, JR.
JOHN RIORDAN

RUSS BUILDING
SAN FRANCISCO 94104
YUKON 6-4060

OAKLAND OFFICE
808 LATHAM SQUARE BUILDING
TWINOAKS 1-6267

HARRY POLLAND
ECONOMIST

November 25, 1964

Ronald T. Weakley, Bus. Mgr.
I.B.E.W. Local 1245
1916 Grove Street
Oakland 12, California

Dear Mr. Weakley:

This is in reply to your request for an up-dated legal opinion concerning the right of Local 1245 to instruct its members, employed by the Pacific Gas & Electric Co., to respect picket lines established by other unions at construction projects, as well as the right of such members to observe such picket lines when not so instructed by representatives of Local 1245.

Our prior opinion letter in this matter, dated February 5, 1954, concluded (1) that Local 1245 subjects itself to legal liability if its agents instruct its members to respect such picket lines, and (2) that employees who refuse to cross such a picket line, either with or without instructions from the union subject themselves to discharge by the company. Both conclusions remain valid, for the reasons and subject to the qualifications stated below.

The first conclusion, that Local 1245 subjects itself to legal liability if its agents instruct members to respect picket lines established by another union, is based both upon the provisions of federal law and upon the collective bargaining agreement between Local 1245 and PG&E. It is still an unfair labor practice under Section 8(b)(4) of the Labor Management Relations Act for a labor organization or its agents to induce or encourage employees of one employer engaged in commerce or in an industry affecting commerce to engage in a refusal to perform services for the purpose of causing that employer to cease doing business with any other person. The "Landrum Griffin" amendments of 1959 make it clear that inducement of even one individual to engage in such a refusal constitutes an unfair labor practice. If, therefore, another union establishes a picket line in a dispute with an employer other than PG&E,

it would be an unfair labor practice for Local 1245 or its agents to induce members to observe the line, and such action would subject the union to an immediate injunction as well as a suit for damages under Section 303 of the federal Act.

In addition, inducement of members to observe a picket line, whether directed against another employer, or against PG&E itself, would constitute a breach of Local 1245's collective bargaining agreement, for Section 3.2 of that agreement provides that the Union "shall not call upon or authorize employees individually or collectively to cease or abstain from the performance of their duties." Such a breach would also subject the union to liability for an injunction and damages.

The second conclusion likewise flows from the provisions of federal law and of the collective bargaining agreement. So far as federal law is concerned, an employee has a statutory "right" to observe a picket line at the premises of another employer, if the employees of such employer are engaged in a strike ratified or approved by a union which is statutory bargaining representative for such employees. But as interpreted by the N.L.R.B. and the courts, that "right" means only that an employee cannot be discriminated against for engaging in such activity. They hold that the employer also has a right to insist that the employee perform his duties, and that, so far as federal law is concerned, the employee may be replaced, either temporarily or permanently, if the employer finds such action necessary in order to operate his business. Absent evidence of discriminatory motive, neither the union nor the employee could obtain relief from the National Labor Relations Board in such a situation.

The only alternative source of protection would be under the terms of the collective bargaining agreement itself. Though the agreement does not expressly prohibit discharge or discipline of employees who observe picket lines, and though it does recognize the principle of continuity of service as being the obligation of both parties in a public utility situation, there may be cases in which

**ARBITER UPHOLDS SUSPENSION OF CWA LOCAL PRESIDENT
WHO REFUSED TO ORDER WORKERS TO CROSS PICKET LINES**

Acting on a grievance filed by the Communications Workers of America, arbitrator Samuel L. Chalfie rules that the United Telephone Company of Ohio did not illegally suspend a local CWA president after he refused to cross picket lines set up by the International Brotherhood of Electrical Workers, and refused to order CWA members to report to work before picket lines were removed.

CWA represents the employees in the company's Cortland, Ohio, office. Employees at other locations, including the facility at Warren, are represented by the Electrical Workers.

On the morning of February 7, 1972, IBEW, which was on strike at the Warren office, set up picket lines in front of the Cortland facility. The local CWA president refused to cross the picket lines and instructed employees not to report to work until the picket lines were withdrawn.

When the company contacted the local president, he stated that he would not order the employees to cross the lines because of "possible damage to property and personal injury to the employees." Union members would report to work only if the company would guarantee them 24-hour protection against recrimination, if the company took legal action and obtained an injunction against IBEW to prohibit the picket line, or if the picket lines were removed, he added.

The lines were withdrawn by IBEW around noon, and the employees -- including the local president -- reported to work. The company then suspended the grievant for three days for engaging in an illegal strike and not directing the CWA members to report to work.

The contract provides that the union shall not "directly or indirectly call, sanction, encourage, finance and/or assist in any way, nor shall any employee instigate or participate, directly or indirectly, in any strike, slowdown, walkout, work stoppage, or other interference with operations...." If a strike or walkout occurs, the contract continues, "the local union president ... shall promptly order the employees involved to cease the violation and return to work at once."

The company argued that the picketing was not accompanied by violence or the threat of violence. Nonunion and supervisory employees had reported to work, the company said, and none of them had been accosted, threatened, or in any way intimidated by the picketers.

The company maintained that the three-day suspension was justified because the local president refused to order the union members back to work until the picketers left the premises. Union officers have a responsibility above and beyond "rank and file members" to take positive action to insure that the contract is not violated, the company argued. Instead, the local president violated his specific obligation as union president to order the employees to return work.

The grievant acknowledged that none of the employees had been threatened by the picketers. He added, however, that the international union had advised him that the welfare of the members was paramount, and that members should be advised not to cross the lines if there was some possibility of violence. It was the company's obligation to insure the safety of its employees by having the picketers removed, he added.

In addition, the union argued, the contract language is directed at "wildcat" strikes, and cannot be interpreted or construed to cover the situation where an outside union sets up an illegal picket line around the premises.

Finding for the company, Chalfie notes that there was no violence on the picket line, and there were no threats of violence to employees who crossed the lines. He continues:

"The president and the members of the union had a contractual obligation not to engage in a work stoppage and to fulfill their responsibilities as outlined in the contract . . .

"The grievant appears to have had a greater respect for and feeling of responsibility towards the rival union than to his own job and his own contractual obligation to his employer, not only as a member of the union, but as its president."

The arbitrator also denies the union's argument that the contract language is intended to prevent only "wildcat" strikes. He says:

"The arbitrator has noted that very similar clauses prohibiting work stoppages have been interpreted by many arbitrators to be a clause which properly applies against union members who refuse to cross a picket line where there are no reasonable grounds to fear violence or any other form of intimidation, or where there have been no threats, or where the pickets are notably peaceful."

(United Telephone Company of Ohio and CWA, FMCS Arbitration File No. 72A/11435, dated November 30, 1972).

-- End of Section A --