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MEMORANDUM

TO: Clients
FROM: John L. Anderson
DATE: August 26, 1983
RE: Potential For Discipline of Employees Who Honor Unlawful Picket Lines

This memo is in response to questions that have been raised recently regarding the rights of employees to honor picket lines at second gates -- picket lines which may be unlawful under law governing secondary boycotts. (NLRA §8(b)(4)(B)). There is an important NLRB decision on this issue that essentially removes the protection of employees to engage sympathy strikes when the picket line honored is a secondary picket line whether or not the employee is even aware that the line is unlawful. Chevron U.S.A., 244 NLRB 1081 (1979). This memo will discuss the Board's Chevron decision.

In Chevron, a union representing employees of a subcontractor picketed three gates, only one of which was used by the subcontractor's employees. Three employees of Chevron (the primary employer) refused to cross the picket line that was set up in front of the gate reserved for Chevron employees. These three employees were suspended by Chevron.

The Union representing the three suspended workers argued that the employer's action violated §8(a)(1) of the NLRA, because honoring the picket line was protected activity under §7 of the NLRA. The Board rejected this argument. First, the Board concluded that picketing at the second and third gates was secondary, and therefore illegal. Once the picket line was found to be unlawful, honoring the line was found to be unprotected activity per se:

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"...under well-settled Board law, honoring an unlawful picket line constitutes unprotected activity per se. In Pacific Telephone and Telegraph Company, [107 NLRB 1547 (1954)], the Board decided that sympathy strikers need not possess knowledge of the unprotected character of the primary strike for their conduct also to be unprotected. The Board reaffirmed this principle in American Telephone and Telegraph Company, [231 NLRB 556 (1977)], finding that a sympathy strike was unprotected irrespective of whether the sympathy strikers knew that the primary strike was unprotected. Significantly, in American Telephone, the Board cited with approval this clear-cut characterization of Pacific Telephone from a law review article: "[T]he Board went further and stated that an employee who refused to cross a picket line that is unprotected by the Act loses the protection of section 7, whether or not he had knowledge that the picket line was unprotected." (Emphasis supplied.)

Thus, under this Board decision, it is not protected activity to honor another union's picket line if that line is found to have a secondary object. Employees may be disciplined by an employer for honoring such a line, and there will be no recourse to the NLRB.

I bring this case to your attention because of the potentially serious impact it has on the right to honor picket lines at dual or multi-gate facilities.

Do not hesitate to contact me if you have any questions about this decision or its application.