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Reserved or Separate Gate Doctrine: Has It Come Full Circle?

Martin L. Garden
National Labor Relations Board

THE RESERVED OR SEPARATE GATE DOCTRINE: HAS IT COME FULL CIRCLE?

MARTIN L. GARDEN*

The "Reserved" or "Separate" Gate Doctrine received its impetus from an attempt by the National Labor Relations Board and the courts to insulate secondary or neutral employers and their employees from becoming enmeshed in a dispute between another employer and a labor organization. Insulation of neutrals as provided for under the Taft-Hartley Act[1] as amended is neither new nor novel, but the application thereunder has created new problems. Section 8(b)(4) makes it an unfair labor practice for a union

> (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is— . . .
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person . . . *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing.[2]

The difficulty with reading these provisions literally is that any picketing of the premises of an employer necessarily has a disruptive effect on the relations between the employer and his suppliers or customers. "A strike, by its very nature, inconveniences those who customarily do business with the struck employer."[3] "The cases recognize the very practical fact that, intended or not, sought for or not, aimed for or not, employees of neutral

*Field Attorney, 14th Region, National Labor Relations Board. The National Labor Relations Board, as a matter of policy, disclaims responsibility for any private publication by any of its employees. The views expressed in this article are the personal views of the author and do not necessarily reflect the views of the Board or its staff.

1. Labor Management Relations Act, 61 Stat. 136 (1947), 29 U.S.C. §§ 151-68 (1958).

2. These provisions were put in their present form by the Labor Management Reporting and Disclosure Act (Landrum-Griffin Act) § 704(a), 73 Stat. 542 (1959), 29 U.S.C. §§ 401-531 (Supp. IV 1963).

3. Oil Workers Union (Pure Oil Co.), 84 N.L.R.B. 315, 318 (1949).

employers do take action sympathetic with strikers and do put pressure on their own employers."[4]

I. The Geographic Area of the Dispute Cases

The Board, in order to avoid defeating the Congressional intent of 8(b)(4), did not literally apply the statutory language to the cases that came before it, but rather applied a primary-secondary distinction and ruled that all picketing at the premises of the primary employer was immune from the prohibition of 8(b)(4)(A) of the statute. In *United Electrical Workers (Ryan Constr. Corp.)*,[5] the employer, Bucyrus, in order to insulate the employees of Ryan Construction Corporation from the dispute with the Union, established a separate gate for Ryan employees at the site of a construction project Ryan was performing for Bucyrus. The Union picketed the entire premises, and the Board ruled that the activity was "primary picketing" and thus non-violative of Section 8(b)(4)(A) of the act. The Board stated that the provision

> was intended only to outlaw certain *secondary* boycotts, whereby unions sought to enlarge the economic battleground beyond the premises of the primary employer. When picketing is wholly at the premises of the employer with whom the union is engaged in a labor dispute, it cannot be called "secondary" even though, as is virtually always the case, an object of the picketing is to dissuade all persons from entering such premises for business reasons.[6]

In the early cases that involved picketing on *neutral* premises the Board evolved the "situs of the dispute" theory which imposed limitations upon a union's right to picket at the situs of a dispute located on neutral premises. Thus, in *Sailor's Union (Moore Dry Dock Co.)*,[7] the Board stated:

> In the kind of situation that exists in this case, we believe that picketing of the premises of a secondary employer is primary if it meets the following conditions: (a)The picketing is strictly limited to times when the *situs* of dispute is located on the secondary employer's premises; (b) at the time of the picketing the primary employer is engaged in its normal business at the *situs;* (c) the picketing is limited to places reasonably close to the location of the *situs*; and (d) the picketing discloses clearly that the dispute is with the primary employer.[8]

In *NLRB* v. *International Rice Milling Co.*,[9] members of the International Brotherhood of Teamsters who were not employees of Kaplan Rice

4. Seafarers Union v. NLRB, 265 F.2d 585, 590 (D.C. Cir. 1959).
5. 85 N.L.R.B. 417 (1949).
6. *Id.* at 418 (Footnote omitted.)
7. 92 N.L.R.B. 547 (1950).
8. *Id.* at 549. (Footnotes omitted.)
9. 341 U.S. 665 (1951).

Mills picketed the premises of Kaplan and requested the driver of the truck of a neutral customer to refrain from entering the premises to pick up an order of goods. Citing *Oil Workers Uunion (Pure Oil Co.)*,[10] the Board had dismissed the complaint on the ground that the union's activities were merely primary picketing of the Kaplan Mills and were carried out in the *immediate vicinity* of the mill. The Supreme Court sustained the Board's dismisal of the complaint but stated:

> The limitation of the complaint to an incident in the geographically restricted area near the mill is significant, although not necessarily conclusive. The picketing was directed at the Kaplan employees and at their employer in a manner traditional in labor disputes. Clearly, that, in itself, was not proscribed by § 8(b)(4). Insofar as the union's efforts were directed beyond that and toward the employees of anyone other than Kaplan, there is no suggestion that the union sought *concerted* conduct by such other employees. . . . A union's inducements or encouragements reaching individual employees of neutral employers only as they happen to approach the picketed place of business generally are not aimed at concerted, as distinguished from individual, conduct by such employees. Generally, therefore, such actions do not come within the prosciption of 8(b)(4), and they do not here.[11]

The word "concerted" was removed by the 1959 Landrum-Griffin Amendment and, thus, the specific holding of *International Rice Milling* is no longer applicable; but the Court's rationale set the stage for a different approach to the construction of 8(b)(4).

II. The "Object of the Picketing" Cases

Instead of relying primarily on the geographic area of the dispute, the Court began emphasizing the *object* of the picketing.[12] It is generally true that a union hopes that all persons will honor its picket line even if it does not intend to enmesh neutral employees in its dispute with an employer, but the Board and courts were careful to point out that harm to neutrals could be justified if it occurred as an incidental effect of the union's primary dispute with an employer.[13]

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10. 84 N.L.R.B. 315 (1949). The Board in that case stated:
> [W]e conclude that the section does not outlaw any of the primary means which unions traditionally use to press their demands on employers. In this case the Union was making certain lawful demands on Standard Oil. It was pressing these demands, in part, by picketing the Standard Oil Dock. As that picketing was confined to the *immediate vicinity of Standard Oil premises* we find that it constituted permissive primary action. *Id.* at 318-19. (Emphasis added).

11. 341 U.S. at 671.

12. See NLRB v. Denver Bldg. & Constr. Trades Council, 341 U.S. 675, 685 (1951); International Bhd. of Electrical Workers v. NLRB, 341 U.S. 694, 699 (1951); Local 74, United Bhd. of Carpenters v. NLRB, 341 U.S. 707, 708, 713 (1951).

In *Brewery Drivers (Washington Coca Cola Bottling Works, Inc.)*[14] the union, after calling a strike against Washington Coca Cola, picketed the plant premises and the company's delivery trucks as they made their rounds to customers' premises. The Board distinguished the *Moore Dry Dock* criterion by finding that in the instant case there was a permanent establishment at which the union could adequately picket, while in *Moore Dry Dock* the employer had no permanent place of business.[15] This rationale added a so-called "fifth condition" to those enumerated in *Moore Dry Dock.*[16] The rationale provided sufficient justification to permit the union to picket the primary employer at the location of a transient work situs, but where the employer had a fixed place of business in the area of the dispute, at which its employees could be reached by the union, extension of the picketing to the primary's job situs would be prohibited.

The *Washington Coca Cola* doctrine was extended to cases threatening involvement of neutral employers and their employees. In *Retail Fruit and Vegetable Clerks Union (Crystal Palace Market),*[17] the employer with whom the union was involved in a dispute owned a large market hall in which he operated several stands and leased the remaining stands to neutral third parties. When a strike was called against the primary employer, the union picketed at several general entrances to the market hall. The Board held the picketing violative of 8(b)(4), stating: "In developing and applying these standards, the controlling consideration has been to require that the picketing be so conducted *as to minimize its impact on neutral employees insofar as this can be done without substantial impairment of the effectiveness of the picketing in reaching the primary employees.*"[18]

Thus, it became clear that the Board and courts were moving to an interpretation of 8(b)(4)(B) that would require a finding that an object of the picketing was illegal.[19]

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13. See NLRB v. Service Trade Chauffeurs, 191 F.2d 65, 67 (2d Cir. 1951).

14. 107 N.L.R.B. 299 (1953).

15. *Id.* at 303.

16. 92. N.L.R.B. at 549.

17. 116 N.L.R.B. 856 (1956).

18. *Id.* at 859.

19. However, the Board in International Bhd. of Electrical Workers (Plauche Electric, Inc.), 135 N.L.R.B. 250 (1962), by refusing to follow *Washington Coca Cola,* indicated that it will avoid, if possible, the crystallization of rules-of-thumb to guide the inquiry into objectives. "We shall not automatically find unlawful all picketing at the site where the employees of the primary employer spend practically their entire working day simply because, as in this case, they may report for a few minutes at the beginning and end of each day to the regular place of business of the primary employer." *Id.* at 253.

In *Atomic Projects Workers,*[20] approximately twelve firms had prime contracts with the Atomic Energy Commission for construction work at the Sandia Base in Albuquerque, New Mexico. The respondent unions had a dispute with the Sandia Corporation, which had a contract with the AEC, and in furtherance of their dispute, the unions picketed all the entrances to the base, including one which had been set apart for the exclusive use of employees of contractors. Food, beverage, and laundry trucks entered the base, usually by the main gate. The twelve contractors were to construct a gymnasium, a chapel, cafeteria, warehouse, and to perform work on an office and lab, while the Sandia Corporation operated the AEC steam plant which supplied the whole base. Written instructions were received by the guards at the reserved gate, to the effect that any contractors who were employed with, or supplied the base, would be permitted entrance through the gate, excluding employees of the Sandia Corporation with whom the union had the dispute. The Board affirmed the Trial Examiner's decision that an object of the union's picketing at the reserved gate was to induce employees of neutrals to cease work. There was no indication from the published decision as to what other work if any, was performed by the Sandia Corporation, or whether the work of the contractors was related to the work of the Sandia Corporation. Apparently, the respondent unions did not argue that the services performed by the neutrals aided the primary employer so as to defend their picketing on an "ally doctrine."

It now seemed clear that the gravamen of any violation of 8(b)(4)(B) was that the object of the complained-of conduct, *i.e.,* the objective of the picketing had to be one proscribed by the act, and that the proscribed object had to be some object other than legitimate activity which had, in this area of discussion, been continually defined in such cases as *Crystal Palace Market* as reaching the primary employees.[21] As a practical matter, neutral employees might incidentally notice picketing at a main gate located at a distance from the gate reserved for their use. This could have an effect similar to picketing the reserved gate, but reserved gate picketing reflected an object to influence only the neutrals, which object was felt to have been proscribed by the act.

In *Local 671, International Union of Electrical Workers* v. *NLRB,*[22] the ingress to the plant of employer General Electric was limited to five

20. 120 N.L.R.B. 400 (1958), *aff'd sub nom.* Office Employees Union v. NLRB, 262 F.2d 931 (D.C. Cir. 1959).

21. *Cf.* NLRB v. Denver Bldg. & Constr. Trades Council, 341 U.S. 675, 688-90 (1951).

22. 278 F.2d 282 (D.C. Cir. 1960), *rev'd and remanded* 366 U.S. 667 (1961).

gates. The Respondent union called a strike because of twenty-four unsettled grievances with G.E., and picketing occurred at all five gates. Several years prior to the strike G.E. had issued written instructions to its guards limiting one gate to independent contractors and their employees, to minimize the possibility of picketing by various labor organizations due to jurisdictional strikes among the craft union employees which had occurred at the plant over a period of years. About six months prior to the strike, a sign had been posted at the reserved gate, which read: "Gate 3-A For employees Of contractors only G.E. employees use Other gates." The guards strictly enforced the rule; however, the picketing was effective, and most of the independent contractors' employees refused to cross the picket line at all the gates. The Trial Examiner held the picketing did not violate 8(b)(4)(A) because traditional primary strike activity extends to peaceful solicitation of neutrals to refrain from bringing materials or goods into the struck plant, and from contributing to production and maintenance by working in the struck plant, or suppling materials for use by neutral employees.[23] The Trial Examiner also concluded that there was no invalid secondary activity because the union did not induce or encourage employees of neutrals to cease work at any place other than the premises of the primary employer.[24] In reaching his decision, the Trial Examiner inquired into the nature of G.E.'s contracts with its independent contractors at the time of the strike, indicating a concern over whether the contractors' operations were "related to the production of finished products or the maintenance of the plant."[25] The Board reversed the Trial Examiner and held that the union's object was to enmesh employees of neutrals in its dispute with the company.[26]

The Court of Appeals for the District of Columbia enforced[27] the Board's order which was based on a finding that an object of the picketing was to encourage neutral employees to engage in a refusal to perform services so that their employers would cease doing business with G.E. The court did not discuss the "related work" theory of the Trial Examiner nor mention the applicability of the type of work being performed by the neutrals. The Board continued to follow the "object of the picketing"

23. International Union of Electrical Workers (General Electric Co.), 123 N.L.R.B. 1547, 1563 (1959).

24. *Ibid.*

25. *Id.* at 1555.

26. *Id.* at 1551.

27. Local 671, International Union of Electrical Workers v. NLRB, 278 F.2d 282 (D.C. Cir. 1960).

theory, and in *Local 36, International Chemical Workers Union (Virginia-Carolina Chemical Corp.),*[28] upheld the Trial Examiner's finding that the union's picketing of a separate gate reserved for use by independent contractors violated 8(b)(4)(A). The Board agreed with the Trial Examiner that the District of Columbia holding in the *General Electric* case, was inconsistent with the *Ryan Construction Corp.* case,[29] and overruled the earlier case "to the extent that it is inconsistent with the *General Elecric* case."[30] The result seemingly destroyed, for the time being, all vestiges of the earlier principle that picketing at the primary's place of business was valid and constituted protected activity. However, a subsequent decision by the Second Circuit, coupled with the 1961 reversal by the Supreme Court of the *General Electric* case, was destined to cast new light on the matter.

III. "Related Work" Doctrine

In *United Steelworkers* v. *NLRB,*[31] the Phelps-Dodge Co. decided to construct a new gas handling and dust collecting system to conform to the requirements specified by the New York City Board of Air Pollution Control, and consequently hired independent contractors to perform the work. At first, Phelp's employees and the employees of the independent contractors entered the premises through the same gate, but approximately one week prior to the picketing, the Company opened a contractors' gate 1200 feet from the gate formerly used and placed a sign thereon reading, "Contractors Only." When the strike began, the contractors' employees were told to use the contractors' gate. The Union picketed that gate, and all construction stopped. The reasoning of the court in affirming the Board's finding[32] that the act had been violated, was that picketing of the contractors' gate was not necessary to publicize the strike because the main gate could be picketed where the Company's employees and deliverymen entered the premises.[33] Secondly, the work performed by the independent contractors' employees was not the work of an "ally" hired to do the everyday business of the struck employer in an effort to preserve its good will and

28. 126 N.L.R.B. 905 (1960). One of the contractors installed a fume-removal and scrubber system. Over a period of time, Virginia-Carolina had periodically contracted out various maintenance and renovation work which did not operate to withdraw work or employment from their own maintenance staff. It involved functions beyond or in addition to those normally performed by Virginia's staff. *Id.* at 906.

29. 85 N.L.R.B. 417 (1949).

30. Local 36, International Chemical Workers Union (Virginia-Carolina Chemical Corp.), 126 N.L.R.B. 905, 906 (1960).

31. 289 F.2d 591 (2d Cir. 1961).

32. United Steelworkers (Phelps-Dodge Refining Corp.), 126 N.L.R.B. 1367 (1960).

33. United Steelworkers v. NLRB, 289 F.2d 591, 594 (2d Cir. 1961).

profits.[34] Thirdly, the kind of work engaged in was not of a kind that required the closing-down or curtailing of normal operations so that the Company could mitigate the economic effect of the strike. Proof of this was found in the fact that the contractors' work has been in progress several weeks prior to the commencement of the strike.[35]

As can be seen, the court in *United Steelworkers* listed these criteria in the context of the "ally" doctrine which states that a contractor will not be permitted to work free from picketing if his employees are performing the everyday business of the struck employer, so as to maintain the good will of the struck employer and perhaps even his profits. There was nothing in the Board's decision to indicate that Phelps' normal operations were more than the smelting and refining of copper ores and the sale and distribution of copper products. There is also nothing in the Trial Examiner's Intermediate Report to show what work Phelps' maintenance department performed in relation to or in comparison with the work of subcontractors who used a gate reserved exclusively for Phelp's contractors. In fact, there is no indication that a maintenance department existed. The Second Circuit specifically mentioned the work of the independent contractors without comparing it with the specific work of the striking employees. The work of the independent contractors was mentioned only to show that it was not the same type of work as performed by the primary's employees who were obviously engaged in refining copper, and to show that they were not allies of the primary.[36]

The Second Circuit, in enforcing the Board's order against the Union, stated that "considering the location of the gate, the relationship between Phelps-Dodge and the independent contractors, and the nature of the work being performed by those contractors, we hold that the labor statute prohibits such picketing even though it took place at the premises of the struck employer."[37] Thus, the stage was set for a determination by the Supreme Court, which was forthcoming in its reversal of the *General Electric* case.[38] The Court literally lifted the "related work" doctrine of *United Steelworkers* and adopted the doctrine as its own, stating that: *"the key to the problem is found in the type of work that is being performed by those who use the separate gate."*[39] The Supreme Court was interested in whether there was

34. *Id.* at 595.
35. *Ibid.* See note 42 *infra.*
36. *Ibid.*
37. *Id.* at 594.
38. Local 671, International Union of Electrical Workers v. NLRB, 366 U.S. 667 (1961).
39. *Id.* at 680. (Emphasis added.)

a mixed use of the struck premises and remanded the case to the Board to determine the instances of maintenance tasks, stating:

> The legal path by which the Board and the Court of Appeals reached their decisions did not take into account that if Gate 3-A was in fact used by employees of independent contractors who performed conventional maintenance work necessary to the normal operations of General Electric, the use of the gate would have been a mingled one outside the bar of § 8(b)(4)(A). In short, such mixed use of this portion of the struck employer's premises would not bar picketing rights of the striking employees. While the record shows some such mingled use, it sheds no light on its extent. It may well turn out to be that the instances of these maintenance tasks were so insubstantial as to be treated by the Board as *de minimis*.[40]

On remand,[41] the Board found that G. E.'s employees had done nonconveyor work identical or substantially similar to that scheduled to be done by employees of the independent contractors on jobs whose contract prices totaled approximately 14,750 dollars. The Board stated:

> Since this work, which we find constitutes more than a *de minimis* amount had previously been performed by GE employees, we find that such work was part of GE's normal operations. It follows therefore that this work, which was scheduled to be performed by independent contractors utilizing gate 3-A, was necessarily related to GE's normal operations. We accordingly find that the Supreme Court's "related work" condition was not met and hence the Union's picketing at gate 3-A was primary.[42]

The jobs included "the installation of shower rooms, repair of roads, construction of a sound room, enlarging of the ventilating system for the removal of welding fumes, concrete work in connection with an air-shelter type of warehouse building, and the construction of a catwalk."[43]

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40. *Id.* at 682.

41. Local 761, International Union of Electrical Workers (General Electric Co.), 138 N.L.R.B. 342 (1962).

42. *Id.* at 346. The Board acknowledged that the Supreme Court, in remanding the case, had imposed a new condition to any finding that reserved-gate picketing was not primary.

> We find, . . . that, by picketing gate 3-A, the Union did not violate former Section 8(b)(4)(A). However, we reach this conclusion solely on the following grounds. As noted, the Supreme Court ruled that reserved-gate picketing was primary *unless* the work of the independent contractors using the gate met *both* of these conditions: (1) the work . . . must be unrelated to the normal operation of the employer . . . ; and (2) the work . . . , if done when the plant was engaged in regular operations, would not necessitate curtailing those operations. Accordingly, if a portion of the work of the independent contractors using gate 3-A constituting more than a *de minimis* amount failed to meet *either* of these conditions, the reserved-gate picketing was primary. *Id.* at 345.

43. Id. at 346. The Board further found that the work of the independent contractors was related to G.E.'s normal operations, because their employees were scheduled to work during the picketing, together with employees of independent contractors in the

The next significant Supreme Court case after the *General Electric* remand was *United Steelworkers* v. *NLRB*.[44] The Union had picketed a separate entrance through which trains passed into the premises of Carrier Corporation, the primary employer. The picketing was actually done on property owned by the railroad. The captain of the pickets testified that the purpose of the picketing was to cause the railroad to cease handling or transporting Carrier products. The Trial Examiner[45] found a violation of 8(b)(4)(i) and (ii)(B) of the act, but the Board reversed the Trial Examiner and found that the services performed by the railroad for Carrier, *i.e.*, the delivery of empty boxcars to Carrier and the transportation of Carrier products, was clearly related to Carrier's normal operations.[46] Board member Rodgers dissented and treated the case the same as the Trial Examiner, specifically stating that this was not a "reserved gate" situation since the gate in question was located on the railroad's right-of-way.[47] On appeal to the Court of Appeals for the Second Circuit, the Board was reversed and the Trial Examiner was upheld on the ground that the case was one of picketing on the secondary employer's premises and that no determination of the type of work need be made in such a situation.[48] The court reversed the Board's decision because the picketing at the railroad gate was directed solely at the neutral railroad employees and could not be regarded as incidental to what the court considered the only legitimate union objective: publicizing the labor dispute to the employees involved therein, *i.e.*, those working for Carrier. The court did not believe that it was necessary for respondent to publicize its dispute by directly emmeshing the neutrals. The Supreme Court's holding in *General Electric* was distinguished on the ground that the gate in the *Carrier* case was located on premises belonging to a neutral employer.[49] Chief Judge Lumbard of the Second Circuit dissented and, because of the asserted conflict with the *General Electric* case, and the importance of the problem to the National Labor Policy, the Supreme Court granted certiorari.[50]

The Supreme Court posed the question as: "whether the activities of the union, although literally within the definition of secondary activities con-

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construction of a truck dock and in the construction of a mezzanine, the contract price of which totaled $26,100.

44. 376 U.S. 492 (1964).

45. Local 5895, United Steelworkers (Carrier Corp.), 132 N.L.R.B. 127, 144 (1961).

46. *Id.* at 130.

47. *Id.* at 132.

48. Carrier Corp. v. NLRB, 311 F.2d 135, 148-49 (2d Cir. 1962).

49. *Ibid.*

50. 373 U.S. 908 (1963).

tained in clauses (i) and (ii) of § 8(b)(4), are nevertheless within the protected area of primary picketing carved out by Congress in the proviso to subsection (B)."[51]

In the original *General Electric* decision,[52] Board member Fanning, concurring, insisted that the facts presented a common-situs problem since the regular work of the contractor was continuously done on the primary premises and hence the rules of the *Moore Dry Dock* case should be applied.[53] The Union, on the other hand, argued that no picketing at the primary premises should be considered a secondary activity. The Supreme Court[54] rejected both the rationale of the Board and of the Union, and found that the location of the picketing was not significant.

In *United Steelworkers* the Supreme Court stated:

> It seems clear that the rejection of the Board's position in *General Electric* leaves no room for the even narrower approach of the Court of Appeals in this case, which is that the picketing at the site of a strike could be directed at secondary employees only where incidental to appeals to primary employees. Under this test, no picketing at gates used only by employees of delivery men would be permitted, a result expressly disapproved by the Court in *General Electric*.[55]

The Court further stated:

> Picketing has traditionally been a major weapon to implement the goals of a strike and has characteristically been aimed at all those approaching the situs whose mission is selling, delivering or otherwise contributing to the operations which the strike is endeavoring to halt. In light of this traditional goal of primary pressures we think Congress intended to preserve the right to picket during a strike a gate reserved for employees of neutral delivery men furnishing day-to-day service essential to the plant's regular operations.[56]

Conclusion

It seems that the court is attempting to return to the earlier decisions defending picketing at the situs of the dispute as being primary although neutrals are involved. The court has not overruled any of its decisions in making this circular transition; rather, it has interpreted the reserved gate

51. 376 U.S. at 496.

52. International Union of Electrical Workers (General Electric Co.), 123 N.L.R.B. 1547 (1959). See text accompanying note 23 *supra*.

53. *Id.* at 1552-53.

54. Local 761, International Union of Electrical Workers v. NLRB, 366 U.S. 667 (1961).

55. 376 U.S. at 498.

56. *Id.* at 499. (Footnote omitted.)

doctrine so as to reach the result of legitimizing primary picketing without adverting to the many Board and court decisions which seek to limit picketing that is found to be directed solely at neutral employers.

The broad language used by the Supreme Court in *United Steelworkers* may, however, effectively foreclose an employer's use of a reserved gate to neutrals from his dispute. The Court discussed the right of a union to picket a gate of neutral deliverymen furnishing day-to-day service, and in *General Electric,* Mr. Justice Frankfurter stated that a ruling making it unlawful to picket at a reserved gate "would not bar the Union from picketing at all gates used by the employees, suppliers, and customers of the struck employer."[57] If the key to the problem is found in the type of work being performed by those who use the separate gate, and if such work is in any manner related to the employer's normal operations, whether it be day-to-day service or construction of a conveyor belt, then picketing of a separate gate will not be unlawful even if the sole object of the picketing is to enmesh neutrals in a primary's dispute.

Thus, the "reserved-gate" doctrine is now almost useless to an employer because it is difficult to conceive of a situation in which an employer could now successfully isolate his subcontractors from his dispute with a labor organization unless the services performed by a neutral were completely unrelated to the employer's normal operations.

The use of the word "related" seems unfortunate because, generically, it might include any type of work that the employer normally performs, be it a normal production process or maintenance work. As a practical matter, an employer's subcontractors would necessarily perform work related to the employer's normal operations. What are an employer's normal operations? Does it make any difference whether subcontractors are constructing new buildings which will aid an employer's operation or merely performing maintenance work that the employer's own maintenance department has done in the past? These and many other unanswered questions have arisen from the Court's interpretation of the "reserved gate" doctrine.

57. Local 761, International Union of Electrical Workers v. NLRB, 366 U.S. 667, 680 (1961).

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CONTRIBUTORS TO THIS ISSUE

MARTIN L. GARDEN—A.B. 1955, University of Florida; LL.B. 1961, Washington University. Field Attorney, Fourteenth Region, National Labor Relations Board. Member, St. Louis, Missouri, Florida and American Bar Associations.

WILLIAM C. JONES—A.B. 1946, Yale University; LL.B. 1949, Harvard University; LL.M. 1959, J.S.D. 1961, University of Chicago. Member of the Kentucky Bar. Contributor to various legal and related publications. Professor of Law, Washington University.