

Picky about pickets

When is it OK to picket, and when does the law say no?

LEGAL CORNER



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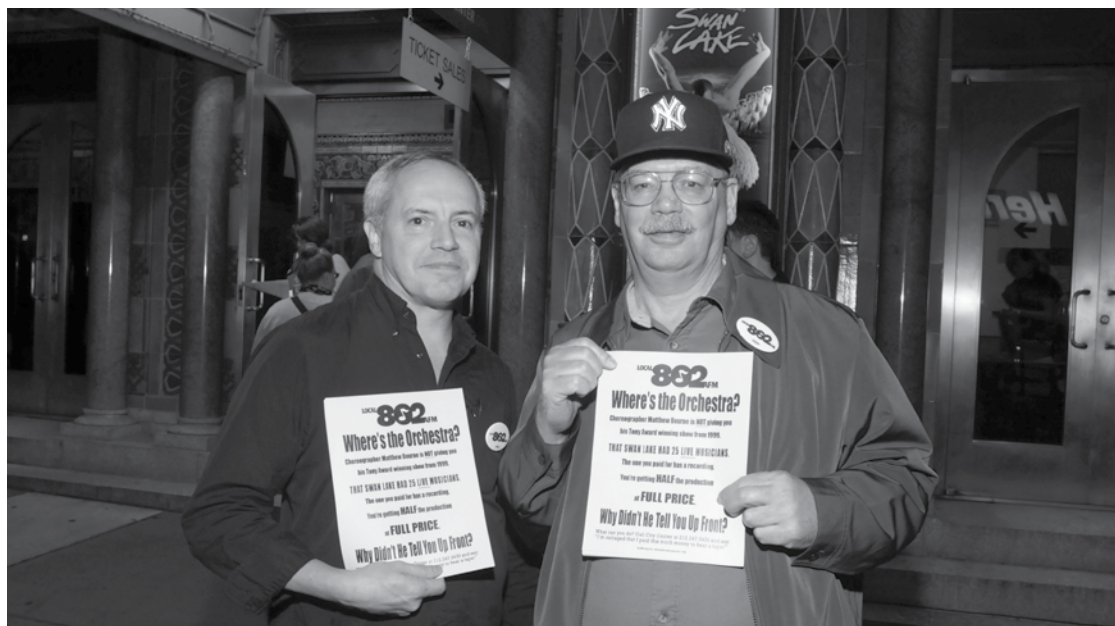


PHOTO: WALTER KARLING

Bud Burrige (left) and Bill Rohdin protesting the use of canned music at Matthew Bourne's production of "Swan Lake." This kind of informational picketing is legal under the NLRA.

IN ONE OF our recent campaigns here at Local 802, we told the public that a certain orchestra "undercuts area standards."

In another recent protest, we stood outside an opera that was using canned music and we passed out flyers to the public.

Both of these actions were legal, but there are some kinds of picketing that are not.

Let's look at the law.

Section 7 of the National Labor Relations Act permits employees "to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection."

This means, among other things, that workers are allowed to picket and also pass out flyers or handbills.

(By the way, "picketing" can

involve any organized concerted activity against an employer, not just picket lines and picket signs.)

Both picketing and handbilling are useful tools for employees to obtain improvements in their terms and conditions of employment.

For instance, picketing may be used by workers to pressure an employer into recognizing their union. This is called **recognitional picketing**.

But the NLRA says that recognitional picketing is not OK if workers are already lawfully represented by another union, or where a representational election has already been conducted within the last 12 months.

Furthermore, if neither of these two conditions apply, picketing is still limited to 30 days unless

the union applies for an election petition.

In short, the law severely restricts a union's ability to compel an employer to recognize it through use of picketing.

Nevertheless, the NLRA permits other forms of picketing, provided, however, that recognition is not the union's ultimate objective.

For instance, picketing may simply be for **informational** purposes to advise members of the general public that union labor is not being employed at a given work site.

This kind of picketing is OK, as long as the workers are not using it to specifically ask for union representation. This is simply freedom of speech.

It's also OK to pass out handbills that say that a certain employer is not living up to **area standards**. This means that an employer is undercutting wages and benefits that are customarily provided to employees working in a particular type of job.

Again, these kinds of handbills must not ask for union representation.

Furthermore, these kinds of pickets must not prevent workers from doing their jobs. You can't block a work site or coerce customers from coming into a store.

But in general, this kind of picketing is much less restrictive. That's why we'll use it whenever we're in a situation where it's impractical to ask for union representation but we still want to support and help a group of musicians.

INFORMATIONAL PICKETING — including area standards picketing — has been a particularly potent weapon for Local 802.

For example Local 802 recently handbilled the City Center production of "Swan Lake" protesting the production's use of taped music.

In that instance, the handbills fit the definition of informational picketing because the handbills purpose was to educate the public that they were not going to a ballet with live music, as they have believed.

Our recently resolved dispute with Philharmonic of America involved that organizations' previous refusal to meet area standards established through the customary application of union

scale rates in New York major venues.

In order for informational picketing to be lawful, the information disseminated must be truthful and must not be used to induce third parties to cease doing business with the targeted employer.

For example, our protest against "Swan Lake" was based upon the fact that the production was not utilizing live music.

In order for area standards picketing to be found lawful, the union must have ascertainable proof that the employer's wage structure is below area standards and that the union's demands do not have a broader objective than making sure area standards are adhered to.

Ensuring that picketing is for lawful purposes presents a challenge for any labor organization. Assuming that the standards in the National Labor Relations Act are satisfied, however, such concerted activity is an extremely powerful tool for achieving the improvement of employees working conditions.



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