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UNITED STATES GOVERNMENT
National Labor Relations Board

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Memorandum

A.D. [illegible]

TO : Joseph A. Szabo, Regional Director
Region 30

DATE: July 21, 1987

RELEASE

FROM : Harold J. Datz, Associate General Counsel
Division of Advice

SUBJECT: IBEW Local 577 and
its agent West Krause
(Town & Country Electric, Inc.)
Case 30-CC-446 C

560-7540-8060-0120
560-7540-8060-1717
560-7540-8060-5000
560-7540-8070-3300

International Assn. of Heat and
Frost Insulators and Asbestos
Workers Local 127
(Oscar J. Boldt Construction)
Case 30-CC-447 C

Fox River Valley Dist. Council
of Carpenters a/k/a Northern
District Council of Carpenters
(Town & Country Electric, Inc.)
Case 30-CC-448-1 C

IBEW Local No. 577
(Town & Country Electric, Inc.)
Case 30-CC-448-2

These Section 8(b)(4)(i)(ii)(B) cases were submitted for advice as to whether the primary gates were improperly established thereby privileging the unions to picket at other locations.

FACTS

Cases 30-CC-446 and 30-CC-447

Thilmany Pulp and Paper Company ("TP&P") operates a mill located on an island for which there are two entrances. One entrance is from the West via a lift bridge to Thilmany Road, a public street, which runs west to east the length of the island to a city sewage treatment facility and U.S. Government locks on the canal. The other entrance is on the southern side of the island, which is approached via the Elm Street Bridge and connects with Thilmany Road at a point approximately 1/8 of a mile south of the lift bridge.

With respect to Case-30-446, in early 1987, TP&P contracted with MEI Systems, a general contractor, to conduct a construction project on TP&P's premises. MEI subcontracted

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electrical work on the project to Town & Country Electric, Inc., a nonunion electrical contractor. Town & Country has a history of problems with organized labor including picketing by IBEW Local 577.

On March 23, 1987, 1/ Town and Country commenced work at the TP&P site and work is expected to continue until August. In anticipation of picketing by Local 577, TP&P on March 18 established a reserved gate system with appropriate signs. 2/ The gates are at the opposite ends of a parking lot just off Thilmany Road. This parking lot, Lot Y on the map, was used by contractors' and suppliers' employees. TP&P's employee parking lot is located past the gates also off Thilmany Road. Public traffic to the city sewage treatment plant and the canal locks must pass both these gates. The gates were properly marked, and there is no evidence that the gates were tainted at any time.

On March 26, 27, and 30, Local 577 posted pickets at the lift bridge as well as at the primary gate. The pickets also distributed handbills at the lift bridge site. The picket signs and the handbills carried an area standards message stating that the union's dispute was with Town & Country. While the picketing was ongoing, two union electricians employed by VDH Electric and six union insulators ceased work. There is no direct evidence, however, of any inducement, by Local 577, of individuals to cease work at the site, or any inducement of TP&P or MEI to cease doing business with Town & Country.

In Case 30-CC-447, TP&P retained Boldt Construction as general contractor to rebuild TP&P's No. 13 paper machine, also located on the lower island site. Boldt contracted with Quality Insulation to perform certain work. Quality does not have a contract with Asbestos Workers Local 127. The same gates were used, as described above, with the proper signs. On February 6, Local 127 picketed the neutral gate for a short time and, after Boldt informed the union of its objections to the picketing, Local 127's pickets moved to the primary gate. On February 9, Local 127 stationed its pickets at the lift bridge and at the Elm Street Bridge. Unionized employees who worked on the island did

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1/ All dates hereinafter are in 1987.

2/ See Map One, attached. Gate #1 was for the use of Town & Country, and Gate #2 was for the use of all other contractors. The gates are approximately 260 feet apart and are located at the lower island mill about one-half of a mile from the lift bridge.

not cross the lines and some even joined in the picketing. On the following day, picketing again occurred at the lift bridge. On both these days, no picketing occurred at either of the established gates to the worksite. Local 127 informed Boldt that picketing would continue until Quality was removed and replaced by a union contractor. On February 11, picketing again occurred near the lift bridge on Island Street. Later that day, Boldt agreed to remove Quality from the job and hire a union contractor. The picketing and work stoppage thereafter ceased.

Case 448-1 and 448-2

These cases involve a project to construct a marina for the city of Menasha, Wisconsin. The project includes the removal of a section of a street, Water Street, which is parallel to a canal, one block south of Main Street between Mill and Center Streets. Boldt is the general contractor for some of the work, but the developer, Downtown Marina Re-Development Corporation, hired Town & Country to perform the electrical work. Work on the site began in mid-February and ended in mid-May.

On April 6, Boldt set up a reserved gate system with Gate #1 at the corner of Mill and Water to be used by Town & Country, and Gate #2 at the corner of Center and Water to be used by all other persons. 3/ Boldt notified all employers and unions, including Local 577, of the gates by letter mailed on April 8. Both of the gates were clearly marked, except that, on the morning of April 7, the Gate #1 sign was at the corner of Main and Mill. Later that morning, however, it was moved to the corner of Water and Mill. 4/ Local 577 began picketing on April 7 using area standards signs and patrolling the full block on Main Street between Center and Mill. On April 8 picketing continued at the same location as well as at Gate #1. As the pickets patrolled, they called Boldt employees "scabs", who were working on the worksite near Main Street, and yelled profanities at the employees. The picketing continued in this manner until the third week in April. At no time was there a work stoppage, nor did the pickets interfere with deliveries. The above activity is the subject of Case 30-CC-448-2.

3/ See Map Two, attached, showing gates at bottom corners.

4/ The worksite was open and unobstructed, except for buildings at the corner of Main and Mill and Main and Center Streets. The distance from Main Street to Water Street is about 300 feet.

On April 8, while the picketing was ongoing, an employee of Boldt, Leon Loose, who was also the president of the Carpenters Local, remarked to a Boldt manager that Boldt's carpenters might get the "blue flu" on April 9. There was some evidence that Loose said this in a joking manner. Boldt, however, immediately called the Carpenters office and told the business manager what Loose had said. The business manager agreed to send his assistant to the site to tell the carpenters that they should work. The business manager also telephoned Loose, and Loose told Boldt that the carpenters would continue their work. There was no work stoppage. Loose's remark is the subject of the charge in Case 30-CC-448-1.

ACTION

We concluded that complaint should issue, absent settlement, in Cases 30-CC-446, 447, and 448-2 in that the unions were not privileged to picket at locations away from the primary gates because the primary gates were not found to have been improperly established. In Case 30-CC-448-1, the charge should be dismissed, absent withdrawal, in that the remark by the Local Union president, which constituted a vague threat to strike, was quickly and effectively disclaimed by the Carpenters' Union business manager and the Local Union president himself.

With respect to Cases 30-CA-446, 447, and 448-2, we initially note that the law is clear that, in order for reserve gates to be properly established, the primary gate need not be located so as to maximize the impact of area standards picketing. Carpenters Local 354 (Sharp & Tatro Development, Inc.), 268 NLRB 382 (1983), enf'd, _ F.2d _, 120 LRRM 2631 (9th Cir. 1985); IBEW Local 501 (C.W. Pond Electric Service, Inc.), 269 NLRB 274 (1984), remanded, 756 F.2d 888, 118 LRRM 3103 (D.C. Cir. 1985). For example, a primary gate is properly established even when it is located on a public road where there is some, although limited, public traffic. Id.

In C.W. Pond Electric, above, the Board found that a union had violated Section 8(b)(4)(i)(ii)(B) by failing to limit area standards picketing to a reserved gate at a construction site. It found that the union there could have communicated its dispute to the general public at the reserved gate, even though that gate was located at the end of a cul-de-sac where the traffic was extremely light. The only traffic to pass the primary gate during the three and a half days of picketing consisted of a mail truck once a day and a city cleaning truck on one occasion. In Sharp & Tatro Development, above, the Board

upheld an administrative law judge's decision rejecting a union's contention that the effectiveness of its area standards picketing at a construction project would be substantially impaired if it were restricted to a primary gate located on a public access road in a remote corner of the jobsite. The judge reasoned that there was some access to the primary gate and concluded that a reserved gate need not be located so as to maximize the union's impact on the general public.

In the Cases 30-CC-446 and 447, we conclude that the unions violated Section 8(b)(4)(i)(ii)(B) of the Act by picketing at locations away from the primary gate in that the primary gate was properly established. We note that the primary gate was located on a public road, which carried traffic to and from the TP&P parking lot, Lot Z on Map One, the city sewage treatment plant and the government locks on the canal. In addition, the primary gate was located adjacent to a second parking lot, Lot Y, which was used by the employees of contractors on the construction site as well as the employees of the suppliers. Moreover, the neutral gate, located on the opposite side of Lot Y, was substantially less than 100 yards away. In sum, the public's access to the primary gate here, was substantially greater than that acceptable to the Board in C.W. Pond. Therefore, picketing by the unions at other locations is not justified and evidences an intent to enmesh other neutral employers on the site in a dispute that is not their own. Accordingly, the picketing in these cases that occurred away from the primary gate violated Section 8(b)(4)(i)(ii)(B) of the Act.

With respect to Case 30-CC-448-2, the same analysis would apply. In that case, the primary gate was located on a public road in a position that was clearly visible from Main Street, a heavily travelled public road. Any individual who was interested could approach the primary gate to investigate the reason for the picketing. Nevertheless, IBEW Local 577 chose to picket 300 feet away from the gate, on Main Street for the entire length of the block, in order to be at the corner of the street on which employees and suppliers of neutral employers approached the neutral gate. Moreover, the picketers shouted profanities at the Boldt employees and called them "scabs" in a clear attempt to enmesh them and their employer in the union's dispute with Town & Country. 5/ Local 577's activity in this regard constitutes

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5/ Where the unions' picketing has an unlawful object, this conduct violates Section 8(b)(4)(i)(ii)(B) of the Act even if the picketing does not result in a work stoppage. See General

evidence that at least one object of the picketing was secondary in nature. 6/ Accordingly, the picketing in case 30-CC-448-2 also violated Section 8(b)(4)(i)(ii)(B) of the Act.

Finally, the Board's decision in Local 435, IBEW, (Southern Sun Electric Corp.) 7/ does not require a contrary result. In that case the Board held that a union had not violated Section 8(b)(4)(B) by failing to limit picketing, in support of area standards objectives, to reserved primary gates. The primary employer in that case was engaged in construction at a shopping center project. The Board reasoned that restricting the picketing to the primary gates would have unjustly impaired the effectiveness of the union's picketing in conveying its message to the primary employer's employees, suppliers, and visitors, and to the general public. In that case, however, the Board also found that the signs identifying the various gates had been confusingly located and emphasized that the primary gate was located in a private alley which could not be distinguished visually from the private parking lot of an adjacent store and that the primary gate was barely visible, if at all, from the public street. The primary employer in that case had also ignored the reserved gates on occasion. The instant case is distinguishable from Southern Sun in that there neither the primary nor the neutral areas were clearly delineated. Moreover, in that case the primary gate was substantially less exposed to public view than the primary gate in this case and in fact could not be distinguished visually from the property of a third party.

Similarly, the instant case is distinguishable from E & L Engineering, Inc., Case 21-CC-2938, Advice Memorandum dated

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Teamsters Local 126 (Ready Mix Concrete, Inc.), 200 NLRB 253, 254-255 n.6, 8 (1972) and cases cited therein.

6/ We noted that, for a short time on the morning of April 7, the sign for the primary gate was at the corner of Main and Mill Streets. Even assuming that the location of the primary gate sign on Main Street led to confusion as to the location of the primary gate, Local 577's picketing on Main still violated the Act in that the pickets patrolled the full block between Mill and Center Streets on Main, a distance of about 300 feet from the primary gate sign (on Main) in the direction of the neutral reserved gate. Picketing in such a manner would not be in keeping with the Board's Moore Dry Dock, 92 NLRB 547, standards, specifically the third criterion limiting activity to "places reasonably close to the situs" of the dispute.

7/ 237 NLRB 829 (1978), enf'd 620 F.2d 170 (8th Cir. 1980).

February 18, 1987, finding that a union did not violate Section 8(b)(4)(B) by engaging in area standards picketing at the point on a public road nearest to the reserved primary gate instead of limiting its picketing to the primary gate. In that case, however, the primary gate was located on a portion of a private access road which was far less exposed to public view than that in the instant case and which was in fact posted against trespassing. 8/

With respect to Case 30-CC-448-1, involving an alleged secondary threat, we conclude that the case should be dismissed, absent withdrawal, in that there was an effective disclaimer. The Board has recognized that a union or employer may relieve itself of liability for unlawful conduct by repudiating that conduct. See UAW Local 376 (Emhart Industries), 278 NLRB No. 37, slip op. at 34 (January 30, 1986); Kroger Co., 275 NLRB 1478 (1985); Passavant Memorial Hospital, 237 NLRB 138 (1978). An effective repudiation must be: (1) "timely", "unambiguous", "specific in nature to the coercive conduct", and "free from other proscribed illegal conduct"; (2) there must be adequate publication of the repudiation to those involved; (3) there must be no proscribed conduct after the publication; and (4) assurances must be given against future unlawful interference. Emhart Industries, above, slip op. at 3 (citing Passavant). In Case 30-CC-448-1, the repudiation by the officers of the Carpenters Local clearly meets the Passavant criteria. Thus, reassurances were given immediately after the alleged threat in an unambiguous manner, free of any proscribed illegal conduct. The Local made the repudiation directly to the Boldt manager with no subsequent misconduct, and the Local assured the manager that the carpenter employees would continue to work at the site, as the carpenters in fact did, with no disruptions. Thus, we conclude that the Carpenters Local effectively disclaimed the unlawful threat. Accordingly, Case 30-CC-448-1 should be dismissed, absent withdrawal.

Based on the foregoing analysis, the unions, by their picketing in Cases 30-CC-446, 447 and 448-2, violated Section

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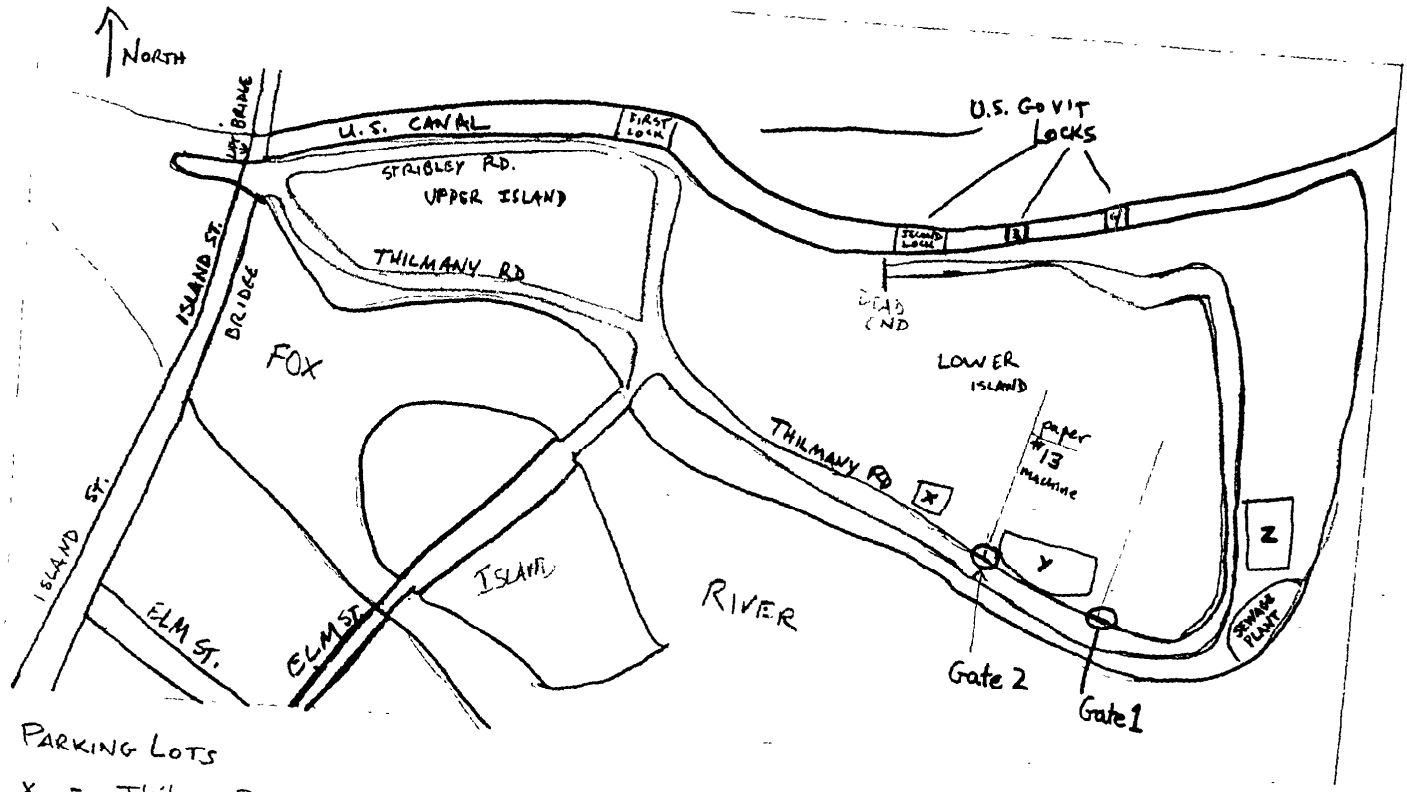
8/ Helgesen v. Ironworkers Local 498, 548 F.2d 175 (7th Cir. 1977) is also distinguishable from the instant case in that there the union did not picket on the road adjacent to the primary gate, instead picketing on a public road further away, because it apparently thought that the adjacent road was private and not open to the public. Here there is no question but that the union knew that there was public property closer to the primary gate on which the union could post its pickets.

8(b)(4)(B) of the Act. In Case 30-CC-448-1, as noted, the Region should dismiss the charge, absent withdrawal, based on the prompt and effective disclaimer of the strike threat by the Carpenters Local Union officials.

H. J. D.

Attachments (2 Maps)



PARKING LOTS

X = Thilmany P+P Employees

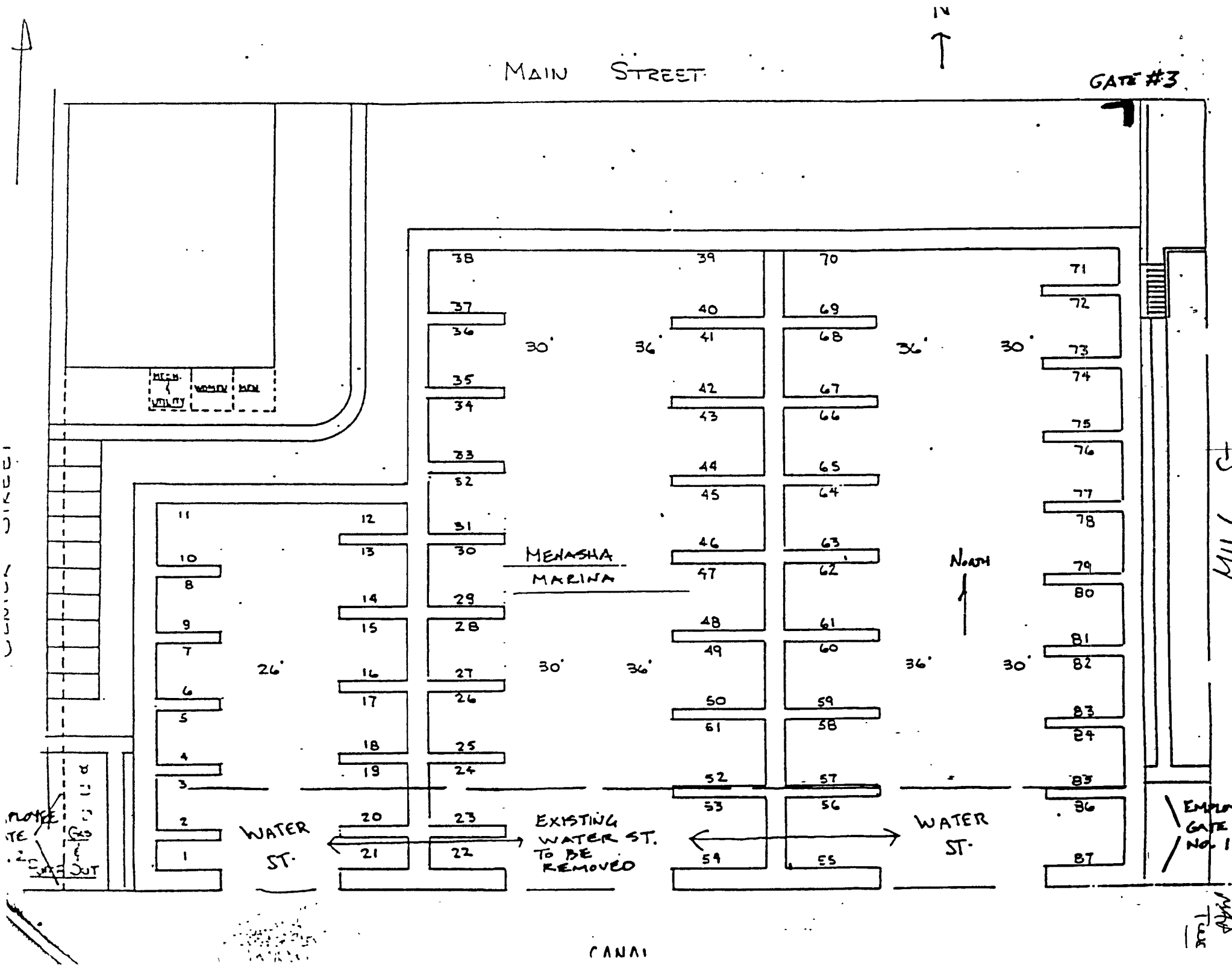
Y = Contractors + Suppliers

Z = Thilmany P+P Employees

Gates

#1 - Primary

#2 - Neutral


MAIN STREET
GATE #3
MENASHA MARINA
NORTH
WATER ST.
EXISTING WATER ST. TO BE REMOVED
WATER ST.
CANAL
30'
36'
26'