

# Memorandum

**Attorney/Client Privileged Communication**  
**And Work Product of Counsel**

To: Louis A. Vitantonio, Jr.  
GCADA President

From: Millisor + Nobil Co., LPA

Date: June 21, 2010

Re: UAW Activity at Toyota Dealerships

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The Automotive News and other media publications report that the UAW intends to conduct union activities at Toyota dealerships nationwide as a result of the UAW's ongoing dispute with Toyota over the closure of Toyota's New United Motor Manufacturing, Inc. ("NUMMI") factory in Fremont, California, and the UAW's desire to organize Toyota dealerships.

The purpose of this Memorandum is to consider specific types of union-related activity which could possibly take place on or outside of dealership property. Typically, unions "publicize" their disputes by either picketing or handbilling. The question of what types of picketing and handbilling are permissible under the National Labor Relations Act is an extremely complicated one, depending primarily upon the true purpose or object of such activity. The following will provide a basic description of the type of activity which you may experience and steps to be taken if picketing or handbilling occurs.

**A. Picketing**

Picketing is a type of publicity where individuals carry signs or banners containing written message. The following are the different types of picketing:

1. **Recognitional Picketing**

When the wording on the picket sign indicates that a labor union is trying to organize or represent dealership employees, the picketing is considered "recognitional." Such language could include words such as: "dealership refuses to recognize union"; or "dealership unfair to organized labor – refuses to bargain with union."

## 2. Informational Picketing

This type of picketing ostensibly is not intended to force the dealership into recognition of any union. When picketing is “informational,” it is merely intended to publicize some type of dispute with the dealership, such as the failure to pay “area standard” wages and benefits. For example, wording on the picket sign may read: “dealership pays substandard wages.” The key to differentiating between “recognitional” and “informational” picketing is that the informational picket sign will not state any intention of obtaining union recognition. However, unions sometimes attempt to use “informational” picketing to mask the real objective, which is recognition. The true object of the picketing depends not only on the wording used in the picket signs but any other available evidence such as statements by pickets.

## 3. Secondary Activity

Some union picketing may not be directly related to the dealership, but may be part of a boycott of another employer which is directed at customers. For example, media reports have indicated that UAW’s ongoing dispute is with Toyota over the closure of the NUMMI plant in Fremont, California. The UAW’s dispute is with Toyota, not the dealerships, who are considered “neutral employers” under the National Labor Relations Act. The UAW does not have a right to picket at a dealership if the objective is to encourage the general public to boycott that dealership.

### **B. Handbilling**

Handbilling is a type of organized protest similar to picketing. The primary difference is that no signs or banners are carried. In handbilling situations, persons typically station themselves outside of the entrance to the dealership and attempt to hand their literature to employees and/or customers as they go in or out. The objective of handbilling may be union recognition, publicity concerning failure to meet area standards or a product boycott. In other words, the objectives could be identical to the picketing activities described above.

### **C. Steps to be Taken in Picketing or Handbilling Situations**

1. Contact representatives of the GCADA regarding any picketing or handbilling activity.
2. Have a legal no solicitation/no distribution policy. And make sure that it is enforced. This will help curtail/eliminate union activity on dealership premises. Check your dealership’s handbook to determine if you have a policy. If the dealership does not have one, contact representatives of the GCADA.
3. Generally, picketing activity may not be conducted on dealership premises and even where handbilling is permitted on the premises, often the activity

can be restricted. Neither picketing nor handbilling may lawfully restrict your employees or customers' right to enter or leave your property or buildings. For picketing that prevents employees or witnesses from entering or leaving the premises or causes property damage, police should be called. Depending upon the nature of the union activity involved, it may be possible to obtain court injunctive relief. In either situation, an appropriate representative of the dealership should make sure that the following things are done:

a. Carefully read the picket signs or handbills.

It is extremely important to know exactly what the picket signs and/or handbills say. If there are picket signs, it is best to take close up photographs/videos of the signs which indicate what they say, as well as to copy this information in a notebook noting time, date and place of activity. Copies of any handbills should be procured. Any changes in what the picket signs or handbills say should be carefully noted.

b. Carefully observe and note location of the picketing or handbilling and what the persons involved in this activity are doing.

It is important to note exactly where the picketing or handbilling is taking place, the number of persons involved, and whether the activity is blocking any doorways or in any way interfering with customers, employees or deliveries. Again, photographs/videos should be taken which indicate the number and location of pickets or handbillers and any problems resulting from the activity. Even if there are no specific problems caused by the pickets, it is nevertheless important to observe and note exactly what they are doing. The dealership, however, should avoid taking pictures of or openly making notes about employees who are talking to or otherwise involved in the picketing or handbilling (unless the employees are blocking the entrances, engaging in acts of violence, etc.).

c. Identify the organization which is conducting the picketing or handbilling.

While the UAW has said that it intends to conduct union activities at Toyota dealerships, other organizations may also be involved. If the name of the organization is not readily apparent from the picket signs or handbills, ask the pickets or handbillers who is responsible for the activity. If someone appears to be in charge, introduce yourself and ask for a business card.