

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COUNTY CONCRETE CORPORATION

Cases: 22-CC-083895
22-CE-084893
22-CC-099341

and

LOCAL 560, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

ANSWERING BRIEF ON BEHALF OF THE ACTING GENERAL COUNSEL IN
RESPONSE TO RESPONDENT'S EXCEPTIONS TO THE DECISION OF
ADMINISTRATIVE LAW JUDGE ARTHUR AMCHAN

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TABLE OF CONTENTS

SUMMARY OF THE ARGUMENT.....3

STATEMENT OF FACTS.....4

 BACKGROUND.....4

 LOCAL 560’S COLLECTIVE BARGAINING AGREEMENT
 WITH THE AGC.....5

 RESPONDENT UNLAWFULLY THREATENS SHARP CONCRETE
 OWNER JOHN DOMINGUES.....5

 RESPONDENT UNLAWFULLY THREATENS MACEDOS’ GENERAL
 SUPERINTENDENT ANTHONY VIEIRA.....8

 “WINTER 2013 UPDATE” FACTS.....11

ARGUMENT.....14

 THE SUBSTANTIAL RECORD EVIDENCE WARRANTS A FINDING
 THAT RESPONDENT VIOLATED SECTION 8(e) OF THE ACT,
 BUT ONLY AS NECESSARY TO FIND, AS ALJ AMCHAN
 CORRECTLY DID, THAT RESPONDENT VIOLATED SECTION
 8(b)(4)(ii)(A) AS ALLEGED IN THE CONSOLIDATED
 COMPLAINT.....14

 THE SUBSTANTIAL RECORD EVIDENCE SUPPORTS
 ALJ AMCHAN’S FINDINGS THAT RESPONDENT HAS
 ENGAGED IN A THREE YEAR CAMPAIGN TO DISCOURAGE
 UNION CONTRACTORS FROM DOING BUSINESS WITH THE
 CHARGING PARTY AND THAT THE WINTER 2013 UPDATE
 WAS ISSUED WITH THIS UNLAWFUL OBJECTIVE IN MIND,
 IN VIOLATION OF SECTION 8(b)(4)(ii)(B) OF THE ACT.....19

 THE BACKGROUND EVIDENCE FROM JUDGE ESPOSITO’S
 HEARING SHOWS THAT RESPONDENT’S UNLAWFUL
 THREATS TO NEUTRAL CONTRACTORS HAVE
 CONSISTENTLY REVEALED A CEASE DOING BUSINESS
 OBJECT WITH THE CHARGING PARTY.....21

 THE ABOVE-REFERENCED BACKGROUND EVIDENCE
 INFORMS THE RESPONDENT’S UNLAWFUL
 SECONDARY CEASE DOING BUSINESS OBJECT
 PERMEATING THE “WINTER 2013 UPDATE.”.....23

CONCLUSION.....25

TABLE OF AUTHORITIES

Supreme Court and Circuit Court Cases

District 29, United Mine Workers of America v. NLRB,
977 F.2d 1470 (D.C. Cir. 1992).....19-20

NLRB v. International Longshoremens’ Assn, 447 U.S. 490, 504 (1980)..... 15

NLRB v. International Union of Elevator Constructors,
902 F.2d 1297 (8th Cir. 1990).....18

National Woodwork Mfrs. Assn. v. NLRB, 386 U.S. 612, 644-645 (1967).....15

*Teamsters Local Union No. 122, International Brotherhood of
Teamsters v. NLRB*, 2003 WL 880990 (D.C. Cir. 2003).....19

NLRB Cases

Connecticut Sand and Stone Corp., 138 NLRB 532 (1962).....16

*District Council 711, Int’l Union of Painters and Allied Trades
(Costanza Builders of New Jersey, Inc.)*, 351 NLRB 1139 (2007).....19

General Services Employees Union Local No. 73 (Allied Security, Inc.),
239 NLRB 295, 303 n. 3 (1978).....20, 25

General Teamsters Union Local No. 126 (Ready Mixed Concrete, Inc.),
200 NLRB 253 (1972).....20, 22

Hoffman Construction Co., 292 NLRB 562, 580 (1989).....15

Inland Concrete Enterprises, Inc., 225 NLRB 209, 216 (1976).....16

Int’l Union of Elevator Constructors (Long Elevator),
289 NLRB 1095 (1988).....18

Int’l Union of Mine Workers of America (New Beckley Mining Corp.),
304 NLRB 71, 72 n. 11 (1991).....19-20

Island Dock Lumber, Inc., 145 NLRB 484, 491 (1963).....16

<i>Local 79, Laborers Int’l Union (JMH Development, LLC),</i> 354 NLRB No. 14 (2009).....	21, 23
<i>Material Sand & Stone Corp.,</i> 356 NLRB No. 135 (2011).....	16
<i>Newspaper and Mail Deliverers’ Union of New York</i> <i>(New York Post),</i> 337 NLRB 608, 608-609 (2002).....	18
<i>Sailors’ Union of the Pacific (Moore Dry Dock Co.),</i> 92 NLRB 547 (1950).....	20, 24
<i>Shank/Balfour Beatty,</i> 327 NLRB 449 (1999).....	16
<i>Teamsters Local Union 122 (August A. Busch & Co.),</i> 334 NLRB 1190 (2001).....	19
<i>Utilities Services Engineering, Inc.,</i> 239 NLRB 253, 255 (1978).....	15

I. Summary of the Argument:¹

The record evidence adduced at the hearing before Judge Amchan clearly supports the Administrative Law Judge’s finding that Respondent violated Section 8(b)(4)(ii)(A) and (B) of the Act by sending the “Winter 2013 Update” letter to contractors threatening them with picketing and grievance activity to both force the receiving entities to cease doing business with the Charging Party and to coerce these contractors to enter into an unlawful provision contained in Section 1(q) of the Respondent/Associated General Contractor collective bargaining agreement. ALJ Amchan correctly concluded that the purpose of the “Winter 2013 Update” was to discourage signatory contractors from doing business with the Charging Party and that there is no way to segregate the statements in the Winter 2013 Update from the

¹ The statement of facts relies upon the Transcript of the hearings before ALJ Arthur Amchan and before ALJ Lauren Esposito, and the exhibits introduced at these hearings. Acting General Counsel and Respondent exhibits are referred to, respectively, as “GCX” and “RX” followed by the exhibit number. The Transcript for Judge Esposito’s hearing is referred to as “LE-Tr.” followed by the page number and the transcript for Judge Amchan’s hearing is referred to as “AA-Tr.” followed by the page number.

Respondent's continuing efforts over the last three years to discourage union contractors from doing business with the Charging Party.²

II. Statement of Facts:

A. Background:

The Charging Party is a supplier of ready mix concrete and related materials to contractors working on construction projects in Northern New Jersey. *LE-Tr. 37, 38, AA-TR. 37*. The Charging Party operates six facilities in New Jersey from which its drivers transport cement to customers in barrel mixer trucks. Upon arrival onsite, the drivers discharge the concrete as directed by the customer. Only about 6-7 concrete outfits in Northern New Jersey provide the type of ready mix services that the Charging Party supplies. *AA-Tr. 37-39*.

According to John Crimi, the Charging Party's owner and majority stockholder, the Charging Party's workers have been represented by different labor organizations since 1978 as follows: From 1978 through 2001: Local 863, Teamsters. From 2001 through January 2009: Local 408 Teamsters represented the workers. However, Local 408 merged with Respondent, and disclaimed interest. Shortly thereafter, in February 2009, the Charging Party voluntarily recognized Local 863, Teamsters as the bargaining representative of its workers after Local 863 established that it represented a majority of the Charging Party's workers. *LE-Tr. 36-41*.

² ALJ Amchan also correctly forwarded Cases 22-CC-83895 and 22-CE-84893 to the Board for summary judgment pursuant to the General Counsel's presentation of evidence demonstrating that Respondent's conduct in Case 22-CC-99341 violated the terms of the parties' settlement agreement (dated August 2012) and thereby triggered the default provisions contained in said settlement agreement. Counsel for the General Counsel respectfully requests that summary judgment be entered in the General Counsel's favor in Cases 22-CC-83895 and 22-CE-84893.

The parties started bargaining for a collective bargaining agreement in 2009. According to Crimi, one of the core issues throughout bargaining has been Local 863's insistence that the Charging Party agree to a contract containing the same terms and conditions as contracts entered into between Teamsters Local 408 (which merged with Respondent) and other concrete companies. *LE-Tr. 42*. The Charging Party has refused to do so, and the parties have yet to enter into a collective bargaining agreement. Since then, Respondent embarked on a mission to force neutral employers to cease doing business with the Charging Party. *LE-Tr. 89, 101, 111, 136-137, 141, 144*.

B. Local 560's Collective Bargaining Agreement with the AGC.

Respondent is party to a collective bargaining agreement with the Associated General Contractors of New Jersey (AGC), an association of about 60-100 union contractors that perform work in New Jersey. These entities have been party to a succession of collective bargaining agreements, the most recent of which ran from May 1, 2012 through April 30, 2013. *AA-Tr. 23-24, AA-GCX 5*.

Section 1(q) of the collective bargaining agreement (page 4) states in part that "...The Employer agrees that it shall accept deliveries of concrete and aggregate only from drivers who are receiving wages, fringe benefits and the economic dollar values of working conditions as are prevailing in the area as set by the applicable Teamster contract for the concrete, aggregate or other type of delivery then prevailing in the County in which the site is located." (AA-GCX 5).

C. Respondent Unlawfully Threatens Sharp Concrete Owner John Domingues.

Sharp Concrete is a sub-contractor that performs concrete work -- foundation, slabs and also masonry work on construction projects. At the trial before Judge Esposito,

Sharp's owner, John Domingues testified that Sharp was performing concrete foundation and masonry work on a new student center at St. Peter's College in Jersey City. The general contractor on that project is Torcon Construction Company. *LE-Tr. 85-88.*

The St. Peter's project was scheduled to start in November 2011. By mid-September 2011, Sharp had entered into an agreement with the Charging Party to provide concrete for the St. Peters project. *LE-Tr. 86-87, 109.* Dominguez testified that the Charging Party has been his "go to" concrete supplier for over 24 years (12 years with Sharp and prior to that, 12 or 13 years when Domingues worked at a different company).

On November 1, 2011, Torcon held a pre-construction meeting attended by Domingues, Torcon Superintendent Roy Porter, other contractors working on the St. Peter's project, business agents from the Hudson County Building Trades Council, as well as business agents from the different trade unions involved in this project. The Charging Party's vice president of Sales and Marketing, John Post, also attended the meeting at Domingues's invitation. At this meeting, attendees introduced themselves and indicated which work they would be performing on the project. Towards the end of the meeting, the person who was running the meeting, Pat, announced that Tony Valdner, Respondent's president, was unable to attend the meeting and he asked that everybody present contact Valdner. *LE-Tr. 88, 108-111.*

Immediately following the November 1, 2011 meeting, Post and Domingues went to Domingues' office in Newark and from there called Valdner. Domingues put the call on speaker phone and recorded the conversation. Domingues testified that he recorded the conversation because, on a prior job, he was told that Sharp was not allowed

to use the Charging Party as its concrete supplier. *LE-Tr. 89, 101, 111, LE-GCX 3a & 3b.*

During this November 1, 2011 phone conversation, Valdner asked Domingues who Sharp was using to supply the concrete for the St. Peter's Project. *Tr-LE 89.* Upon being informed that the Charging Party would be providing the concrete, Valdner immediately replied that the Charging Party is "no good". When Domingues asked, "No good?" Valdner stated, in pertinent part:

"No good. No good. I will ... put a picket line *against you* [emphasis added]... an informational picket line. They are non-union. They don't pay area standards... Before you run into a problem. All right?" You have Eastern, you have Weldon, you have Colonial, you have Service ... you have Crane Concrete ... Colonial is out of Newark. Eastern is out of Jersey City..." *LE-Tr. 89, 111, LE-GCX 3(a)&(b).*

Valdner also stated,

"... They have no signed contract with 863. For over 2 years I have been battling them ... *They have been thrown off a lot of jobs* [emphasis added]. We went before the Labor Board and we can picket the jobs. I will send you a letter and everything that my lawyer wrote up. They are not good. They don't pay area standards and that's what I will picket them. Area Standards... I'm telling you. I will put up an informational picket line and the trades won't cross it. And I'm not doing anything wrong by doing that. The Labor Board told me that I can do that. Okay, sir?" *LE-Tr. 89, 111, LE-GCX 3(a)&(b).*

Shortly after the conversation ended, Valdner faxed to Domingues a copy of an April 26, 2011 letter from Respondent to contracting associations, contractors and subcontractors³. *LE-Tr. 104, 115, 120, LE-RX 7.* Sharp subsequently repudiated its

³ Valdner's April 26, 2011 letter, addressed to the AGC, BCA, UTCA and Independent Construction Contractors and subcontractors, indicated that Respondent was engaged in an effort to protect area standards, and that the Charging Party did not pay these standards. The letter also outlined the *Moore Dry*

agreement with the Charging Party. According to Post, Domingues explained that he was told by a representative from Torcon to find a different concrete supplier because they could not afford any kind of work stoppage or slowdown. *LE-Tr. 112, 113.* Sharp entered into an agreement with Service Concrete as its concrete supplier – one of the suppliers Valdner recommended. *LE-Tr. 113, LE-GCX 3(a)&(b).*

D. Respondent Unlawfully Threatens Macedos' General Superintendent Anthony Vieira.

Macedos is a construction company located in Flemington, New Jersey (Hunterdon County). Anthony Vieira is Macedos' general superintendent. As general superintendent, Vieira is in charge of ensuring that Macedos has the manpower and sub-contractors needed to complete its construction projects. *LE-Tr. 130.*

Vieira testified in the hearing before Judge Esposito that in September 2011, Macedos entered into a contract with Novartis to construct a pre-cast parking garage at Novartis' East Hanover, New Jersey location. Turner Construction was the general contractor on this project. *LE-Tr. 130-131.*

Sometime in mid-December 2011, Turner Construction vice-president Paul Parmentola attended a meeting called by the Morris County Building Trades Association to discuss an issue which the Teamsters raised about the Charging Party's drivers at the Novartis project. *LE-Tr. 60-63.* At the meeting, Valdner stated that Respondent had a dispute with the Charging Party because its drivers were not being paid prevailing wage rates. Valdner stated that the dispute between the Charging Party and Respondent could

Dock standards and noted that any area standards picketing conducted by Respondent would be in accordance with these standards. The letter noted that Respondent did not intend to enmesh the contracting company in the dispute. However it also noted that it did not admit to any wrongdoing and ended the letter with a disclaimer – that any statements made by Respondent's agents to explain or supplement the letter were “not operative or authorized ... and they may not be claimed to be made against [Respondent]'s interests”. *LE-RX 7.*

be resolved either by paying the drivers higher wages *or* by using a different concrete supplier – one that pays prevailing wages. Valdner also stated that if the matter was not resolved, informational picketing would occur at the Novartis project site. *LE-Tr. 62-64, 76, 79.* Valdner handed Parmentola a copy of Respondent’s April 26, 2011 letter (*LE-R 6*). The April 26 letter makes no reference to the conversation Parmentola had with Valdner, nor does it make reference to the Novartis project. *LE-Tr. 74, 80, LE-RX 6.*

Macedos’ work on the Novartis project started during the last week of December 2011. *LE-Tr. 132, 141.* Macedos’ site superintendent advised Vieira that there was talk that the job site would be picketed the following week. Vieira called Respondent’s business agent Joseph DiLeo and asked why Respondent would picket the job site. DiLeo told Vieira that the Charging Party did not pay its drivers area standard wages and therefore, Macedos had to use a different concrete supplier, otherwise Respondent would picket the job. *LE-Tr. 132.*

DiLeo’s statement to Vieira mirrors Valdner’s earlier statement to Parmentola – that the dispute at issue could be resolved by either paying the drivers higher wages *or* by using a different concrete company – one that pays its drivers prevailing wage rates. *LE-Tr. 62-64.* Vieira informed DiLeo that he had to use the Charging Party as its supplier- Macedos had special ordered colored concrete, stones and sand, the materials had already been purchased, and Macedos had already spent a lot of time and money on these materials. DiLeo responded by saying that Macedos would have to get someone else to provide the concrete because the Charging Party was not paying the appropriate wage rates. DiLeo stated that Macedos could get its concrete from Eastern, Weldon, Clayton, or else he would picket the next day. *LE-Tr. 133.* Vieira specifically asked DiLeo, “Why

are you picking with Macedos when County is on the job with Nordic. Why us now? ...”

DiLeo stated that Respondent entered into an agreement with the other subcontractors whereby the subcontractors agreed not to use the Charging Party for future jobs. *LE-Tr.*

133. Vieira did not have any conversations with anyone from Turner Construction concerning the area standard wage dispute. *LE-Tr.* 141, 144.

DiLeo told Vieira that the Charging Party had to pay its workers an additional \$15.00 per hour to satisfy Respondent’s wage demands. Once again, Vieira reiterated that he had to use the Charging Party as its supplier; Vieira even offered to pay the difference in wages while the Charging Party’s drivers were on the job site. *LE-Tr.* 134. DiLeo declined the offer stating that either the Charging Party pays -- or Macedos has to get someone else to provide its concrete. *LE-Tr.* 133-135, 142. Vieira explained to DiLeo that it would take weeks to find another concrete supplier and that he could not afford to take weeks off of the working schedule. Vieira suggested using the Charging Party until he found a different concrete supplier. DiLeo again stated that if Macedos did not get a different supplier, the Respondent would picket. *LE-Tr.* 134. Vieira indicated that he was concerned that other concrete suppliers would take advantage of him because Macedos would have no other choice but to find another supplier in order to avoid the picketing. DiLeo stated that he would contact the other concrete suppliers and if Macedos replaced the Charging Party with one of the other suppliers, he would tell the other suppliers to do the right thing for Macedos. *LE-Tr.* 135-137.

DiLeo told Vieira he had until the first week of January 2012 to find another supplier otherwise Respondent would picket the jobsite. In early January 2012, DiLeo contacted Vieira and asked why he had not reached out to other suppliers. Vieira stated

that Macedos was still looking at its options. *LE-Tr. 135-137*. Macedos did not replace the Charging Party with another concrete supplier and a short time later, Respondent informed Parmentola that it would be picketing the Novartis job site. *LE-Tr. 120, 135, LE-RX 8*. Post visited the Novartis jobsite on January 18, 2012, and that morning witnessed Respondent picketing at both the reserved gate – as well as the gate set up for all neutral employers working on that jobsite. *LE-Tr. 121, 123, 126, 127*.

E. “Winter 2013 Update” Facts

In about late February or early March 2013, Respondent mailed a letter to all contractors participating in the Associated General Contractors of New Jersey (AGC), Building Contractors Association of New Jersey (BCA)⁴, the Utility Transportation Contractors Association (UTCA), and Independent Construction Contractors and Subcontractors. This letter, hereinafter referred to as the “Winter 2013 Update”, informed these entities that Respondent was still engaged in an area standards dispute with the Charging Party⁵. The letter states that

“County Concrete Corporation continues in its attempts to seriously undermine redi-mix delivery area standards. Though County Concrete Corporation has a collective bargaining relationship with Local 863, IBT, the parties have been without a contract for over two years due to County Concrete’s offer of substandard wages and benefits...Strike and picketing should be expected. While County Concrete and Local 863 may be expected to continue to seek to resolve their differences, Local 560 will not stand actionless as County Concrete continues to operate at substandard wages and economic benefits, with affect to destroy area standard wages and economic benefits.

⁴ The BCA has about 30-60 members. Only about 3 of these contractors are members of both the BCA and the AGC. *AA-Tr. 24-25*.

⁵ The letter also indicated that Respondent has an area standards dispute with Service Concrete Company and Joel Tanis & Sons. The instant cases only pertain to County.

...Local 560 wishes to remind all AGC Contractors who are signatory to Local 560 construction contracts that the contract does place certain expectations upon the contractor in regard to area standards. During the term of the Local 560 collective bargaining agreement, Local 560's enforcement of the provision will be enforced through the grievance and arbitration procedure, though this does not necessarily mean that Local 560 will not be engaging in area standards picketing in the presence of County Concrete...where not prohibited...If you are going to utilize either County Concrete or Service Concrete (Joel Tanis), be well aware that Local 560 will be showing up at your project with picketing and will no longer provide you with advanced notice..." (AA-GCX 7).

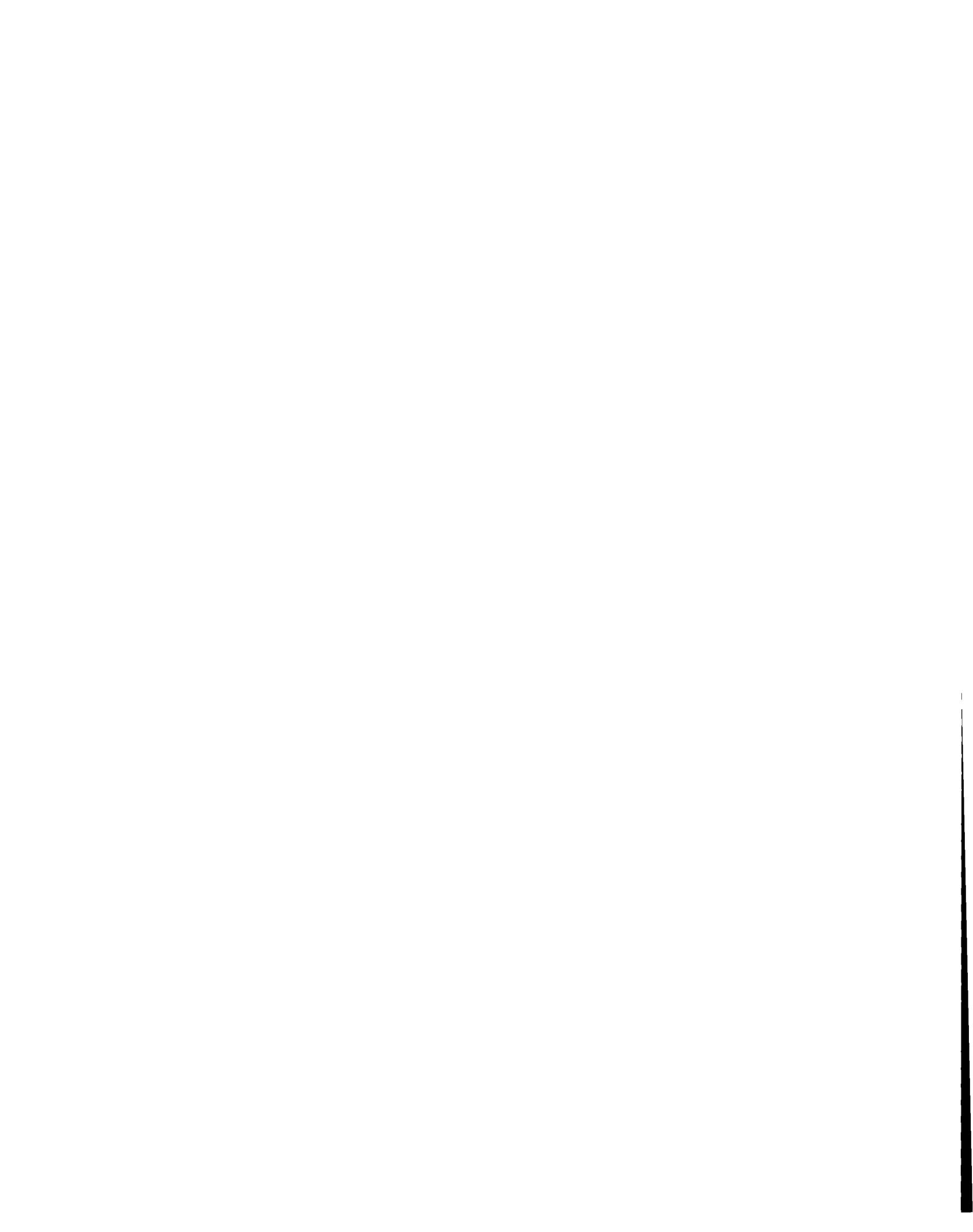
The Charging Party received its copy of the "Winter 2013 Update" via certified mail.⁶ Shortly after receiving this document from Respondent, a number of the Charging Party's customers, covering a wide swath of Northern New Jersey, forwarded copies of the "Winter 2013 Update" that they had received from Respondent on to the Charging Party. Among these customers were State Line Construction, Atlas Construction⁷, Vollers Excavating⁸, and Railroad Construction.

State Line, based in Newark (Essex County), is a concrete contractor that purchased ready mix concrete from the Charging Party for about 15-20 jobs in the past five years. State Line does not employ its own ready mix drivers. *AA-Tr. 42-43*. Post testified that about a week after receiving the "Winter 2013 Update," he spoke to State Line principal Joe Domingues about the matter in Domingues' office. Post was there to negotiate State Line's purchase of concrete from the Charging Party for the next phase of the Teachers Village project in Newark. In

⁶ The Charging Party is an associate member of the AGC and BCA. Only contractors are full members of these associations. Suppliers, like the Charging Party, can join as associate members. *AA-Tr. 41*.

⁷ Atlas is a customer of the Charging Party's based out of Edison (Middlesex County). In the past 5 years, the Charging Party has supplied concrete for Atlas on about 40 different projects. Atlas does not employ its own ready mix drivers. *AA-Tr. 43-44*.

⁸ Vollers Excavating is a customer of the Charging Party based out of Branchburg (Somerset County). In the past 5 years, the Charging Party has supplied concrete for Vollers on about 15-20 different projects. Vollers does not employ its own ready mix drivers. *AA-Tr. 44-45*.



the context of discussing the Respondent's ongoing crusade against the Charging Party, Domingues asked Post why he should use the Charging Party on this job and have to put up with all of the drama that goes along with it from the Union (when you are not saving me any money).⁹ *AA-Tr. 48-50.*

Railroad Construction, based in Paterson (Passaic County), performs heavy civil engineering-related work (e.g. railroad track work) throughout New Jersey.¹⁰ In the past five years, the Charging Party has performed about 5-10 public and private sector jobs for Railroad supplying concrete to be used on curbs, sidewalks, protection concrete for conduits running underneath active roadways or active railroad sidings. Although Railroad employs a variety of union tradesmen, including Respondent members, it does not currently employ (nor does it intend to) employ a unit of ready mix drivers. *AA-Tr. 22, 26-28, 33, 45.*

After receiving his copy of the "Winter 2013 Update" from Respondent, Railroad president Al Daloisio forwarded the document on to both Charging Party owner John Crimi and AGC president Jack Kocsis. Daloisio then spoke to Kocsis to confirm that all of the AGC contractors received this letter and expressed concerns about the threat of picketing resulting in the loss of work for his firm.¹¹

AA-Tr. 31-32.

⁹ In comments similar to the views expressed by Domingues, Union Paving principal Gerard Birdy told Post that Union Paving would no longer do business with the Charging Party because Birdy could not afford to have picket lines and Respondent continued to advertise (referring to the "Winter 2013 Update") its issues with the Charging Party. *AA-Tr. 53-56.*

¹⁰ RCC Builders & Developers is a related entity that performs building construction. Railroad is a member of the AGC and RCC Builders is a member of the BCA. Al Daloisio, Railroad's president and a member of RCC's Board of Directors testified to receiving the "Winter 2013 Update" on behalf of each entity. *AA-Tr. 22-23, 29.*

¹¹ In his testimony, Daloisio clarified that Railroad does not subcontract work out to the Charging Party because the Charging Party does not perform work on a jobsite- it simply supplies the concrete for a job. *AA-Tr. 32.*

III. ARGUMENT

Exception #1

The substantial record evidence warrants a finding that Respondent violated Section 8(e) of the Act, but only as necessary to find, as ALJ Amchan correctly did, that Respondent violated Section 8(b)(4)(ii)(A) as alleged in the consolidated complaint.

The substantial record evidence supports ALJ Amchan's finding that Respondent violated Section 8(e) of the Act by applying Section 1(q) of the Respondent/AGC contract to contractors who do not employ a bargaining unit of ready-mix drivers. Respondent is correct in asserting that no specific Section 8(e) violation was pled in the consolidated complaint. Instead, ALJ Amchan made this specific finding only as a predicate to a finding that Respondent also violated Section 8(b)(4)(ii)(A).

Section 8(e) of the Act states that:

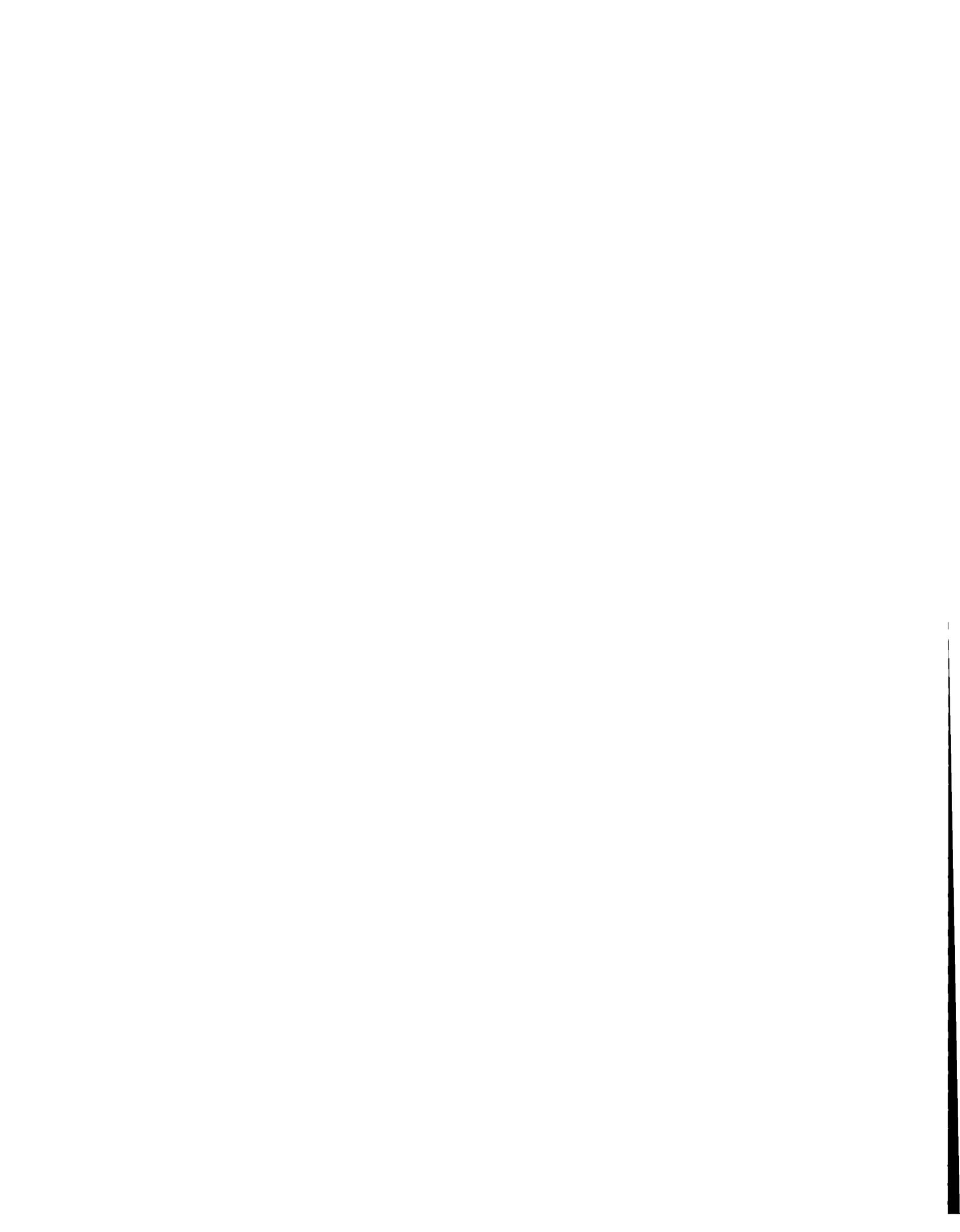
It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void.

Section 1(q) of the Respondent/AGC collective bargaining agreement (page 4) states in part that "...The Employer agrees that it shall accept deliveries of concrete and aggregate only from drivers who are receiving wages, fringe benefits and the economic dollar values of working conditions as are prevailing in the area as set by the applicable Teamster contract for the concrete, aggregate or other type of delivery then prevailing in the County in which the site is located."

The Board has held that it is lawful to have a union standards clause, such as the one above, where the Union has a primary objective, namely seeking to protect the wages

and benefits of a specific bargaining unit. See *Utilities Services Engineering, Inc.*, 239 NLRB 253, 255 (1978); *NLRB v. Int'l Longshoremen's Assn.*, 447 U.S. 490, 504 (1980), quoting *National Woodwork Mfrs. Assn. v. NLRB*, 386 U.S. 612, 644—645 (1967) (“The touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer *vis-à-vis* his own employees”). Clauses which are secondary in nature, i.e., intended to affect the employment practices of other persons or employers not party to the contract, are unlawful unless they fall within the construction proviso of Section 8(e). The construction industry proviso states “That nothing in this subsection (e) [this subsection] shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work.”

The Board has found Section 8(e) clauses secondary and unlawful when, like here, the primary employer(s) does not employ a contractual bargaining unit. See *Utilities Services Engineering, Inc.*, 239 NLRB at 255. For example, in *Hoffman Construction Co.*, 292 NLRB 562, 580 (1989), Ironworkers Local 29 attempted to force Hoffman Construction to enter into two separate project agreements that would require any of Hoffman Construction’s subcontractors to be signatory to an agreement with Ironworkers Local 29. Hoffman Construction had no contractual unit of ironworker employees and did not intend to employ ironworkers in the future. Because Hoffman Construction did not employ a bargaining unit of ironworkers, the Board found that the signatory subcontracting clause was intended to affect the employment practices of other employers.



In this case, the record is undisputed that several, if not all of the AGC contractors, do not directly employ a contractual unit of ready-mix drivers. Therefore, ALJ Amchan correctly determined that any agreement between the AGC (and its affiliated contractors) and Respondent to limit the subcontracting of ready-mix delivery work to employers who pay the contractually mandated wage and benefit rates is secondary in nature.

Additionally, ALJ Amchan correctly concluded that the AGC/Respondent collective bargaining agreement is not protected by the construction industry proviso to Section 8(e) because the Board has expressly held that “work to be done at the site of the construction” does not encompass ready-mix deliveries. Specifically, the Board has consistently found that the mixing and pouring of ready-mix concrete at a construction site is not construction work but is the final act of delivery of a material or a product. Therefore, the delivery of ready-mix concrete does not come within the construction industry proviso. See *Connecticut Sand and Stone Corp.*, 138 NLRB 532 (1962); *Inland Concrete Enterprises, Inc.*, 225 NLRB 209, 216 (1976); *Island Dock Lumber, Inc.*, 145 NLRB 484, 491 (1963); *Material Sand & Stone Corp.*, 356 NLRB No. 135 (2011) (“the delivery of ready-mix concrete and asphalt to a construction site is not ‘work to be done at the site of the construction’ within the meaning of that term in the construction industry proviso to Section 8(e) of the Act”); see also *Shank/Balfour Beatty*, 327 NLRB 449 (1999). Since Railroad, Vollers, Atlas, State Line, and others do not have an actual contractual unit of ready-mix drivers, Respondent cannot claim a primary work preservation objective by claiming it is seeking a lawful 8(f) agreement. Therefore, the substantial record evidence supports ALJ Amchan’s conclusion that applying the

provisions of Section 1(q) of the Respondent/AGC contract to the aforementioned contractors violates Section 8(e) of the Act, and Respondent's Exception #1 should be denied.

Section 8(b)(4)(ii)(A) of the Act provides in relevant part:

8(b)...It shall be an unfair labor practice for a labor organization or its agents-

(4)...(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-

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by Section 8(e).

As discussed above, ALJ Amchan correctly determined that the union standards clause in Section 1(q) of the AGC/Respondent contract violates Section 8(e) of the Act as applied to contractors with no contractual unit of ready mix drivers. The record evidence and ALJ Amchan's decision make clear that this 8(e) finding is simply a predicate to finding the 8(b)(4)(ii)(A) violation as pled in the consolidated complaint. Respondent here wanted to exert economic pressure on the Charging Party to force it to pay higher wages and benefits as outlined in the AGC contract. To achieve this unlawful object, Respondent threatened in the "Winter 2013 Update" that "...During the term of the Local 560 collective bargaining agreement, Local 560's enforcement of the provision will be enforced through the grievance and arbitration procedure, though this does not necessarily mean that Local 560 will not be engaging in area standards picketing in the presence of County Concrete...where not prohibited..." Just prior to making this

unlawful threat, Respondent, in the Winter 2013 Update letter, reminded AGC contractors that were signatory to Respondent construction contracts that the contract places certain expectations upon the contractor regarding area standards. These pronouncements, taken together, unmistakably link Respondent's threat of grievances and picketing to the unlawful Section 1(q) area standards provision in the AGC/Respondent CBA. Because it is unlawful to make a threat where the object is to force any employer to enter into an agreement that is prohibited by Section 8(e) of the Act, and the evidence here demonstrates Respondent's unlawful object in seeking to coerce these employers into complying with the unlawful union standards clause, Respondent has violated Section 8(b)(4)(ii)(A) of the Act. See *Int'l Union of Elevator Constructors (Long Elevator)*, 289 NLRB 1095 (1988), *enfd.* 902 F.2d 1297 (8th Cir. 1990) (Union violated Section 8(b)(4)(ii)(A) by filing a grievance over suspension of an employee who refused to pass through a neutral reserved gate because the Board concluded the union's interpretation would require primary employer acquiescence in any work stoppage by its employees in support of the union's dispute with a neutral employer); *Newspaper and Mail Deliverers' Union of New York (New York Post)*, 337 NLRB 608, 608-609 (2002) (finding union's attempted enforcement of union signatory subcontracting clause violative of Section 8(b)(4)(ii)(A) and (B) because union sought to prevent subcontracting to nonunion company).

Exceptions # 2 and 3

The substantial record evidence supports ALJ Amchan's findings that Respondent has engaged in a three year campaign to discourage union contractors from doing business with the Charging Party and that the Winter 2013 Update was issued with this unlawful objective in mind, in violation of Section 8(b)(4)(ii)(B) of the Act.

Respondent has engaged in a relentless multi-year crusade designed to discourage and coerce neutral contractors from doing business with the Charging Party. The literature Respondent disseminated in April 2011 is nearly identical to the Winter 2013 Update disseminated to the exact same audience nearly two years later. Sandwiched in between this correspondence are numerous unlawful and coercive threats to contractors documented in the hearing before ALJ Esposito, as well as evidence of a Section 8(e) violation and additional 8(b)(4)(ii)(A) and (B) violations as alleged in the instant two cases requiring summary judgment- 22-CE-83895 and 22-CC-84893. ALJ Amchan correctly stated that "there is no way to segregate the statements in the Winter 2013 Update from the Union's continuing efforts over the last 3 years to discourage union contractors from doing business with County Concrete" and Respondent's exceptions challenging these findings must be denied.

Section 8(b)(4)(ii)(B) "makes it unlawful for a labor organization or its agents to threaten, coerce, or restrain any person engaged in commerce ... where an object thereof is forcing or requiring any person to cease doing business with any other person." *District Council 711, International Union of Painters and Allied Trades (Costanza Building of New Jersey, Inc.)*, 351 NLRB 1139 (2007) citing *Teamsters Local 122 (August A. Busch & Co.)*, 334 NLRB 1190 (2001) *enfd.* 2003 WL 880990 (D.C. Cir. 2003) (quoting *Int'l Union, United Mine Workers of America (New Beckley Mining Corp.)*, 304 NLRB 71, 72

n. 11 (1991), enfd. 977 F.2d 1470 (D.C. Cir. 1992). If the object of the union's conduct is to bring indirect pressure on the primary employer by involving neutral or secondary employers in the dispute, this conduct is secondary and prohibited. Moreover, the unlawful objective does not have to be the *sole* objective of the union's conduct. So long as there is evidence of *an* unlawful object – a violation will be found. See *General Service Employees Union Local No. 73 (Allied Security, Inc.)*, 239 NLRB 295, 303 n. 3 (1978) and cases cited therein. The Board has also found that merely complying with the requirements of *Moore Dry Dock* “does not immunize a union's picketing and other conduct for a union may, by its other conduct, reveal that its objective is secondary.”¹² See *General Teamsters Union Local No. 126 (Ready Mixed Concrete, Inc.)*, 200 NLRB 253 (1972). Indeed, the criteria in *Moore Dry Dock* has been “designed to help resolve the question of whether a union has the proscribed motive of enmeshing neutral employers when it pickets a location where both the primary and secondary employer are present.” *Id.* at 254.

Here, the overwhelming uncontested evidence established that threats made to Sharp and Macedos, and the subsequent threats contained in the Winter 2013 Update, were all communicated by Respondent to coerce neutral employers to cease doing business with the Charging Party.

¹² According to *Moore Dry Dock*, “...picketing 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 site; (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). *Sailors' Union of the Pacific (Moore Dry Dock Co.)*, 92 NLRB 547 (1950).

1. The Background Evidence From Judge Esposito’s Hearing Shows that Respondent’s Unlawful Threats to Neutral Contractors Have Consistently Revealed a Cease Doing Business Object with the Charging Party.

The undisputed record evidence from Judge Esposito’s hearing establishes that Respondent’s president Anthony Valdner threatened Sharp Concrete principal John Domingues with picketing unless Sharp ceased doing business with the Charging Party. See *Local 79, Laborers Int’l Union (JMH Development, LLC)* 354 NLRB No. 14 (2009).

During their November 1, 2011 phone conversation, upon being informed that Sharp intended on using the Charging Party as its concrete supplier, Valdner immediately stated that the Charging Party is “no good,” and that they do not pay area standard wages. These statements clearly evidence the existence of a dispute between Respondent and the Charging Party. Valdner’s continued remarks made Respondent’s objective to enmesh Sharp into its dispute crystal clear. To that end, Valdner indicated that the Charging Party has been “thrown off a lot of jobs,” and then told Domingues “I will put a picket line against *you* ...” Valdner’s remarks clearly indicate that the threat to picket was directed at Sharp and not the Charging Party.

Valdner goes on to name several concrete suppliers that Domingues could use before he “*run[s] into a problem.*” Valdner’s statement clearly demonstrates Respondent’s intent to force Sharp to cease doing business with the Charging Party. Respondent does not dispute Valdner’s statements – indeed, how could it when the entire conversation was captured on a recording device.¹³ The fact that Valdner stated, more

¹³ In his opening statement (*AA-Tr. 17*), Respondent counsel stated that from this point forward, Respondent took caution not to have such discussions over concerns that its agent’s remarks were being “misconstrued” as to their purpose and object. It appears more likely, however, that Respondent’s decision not to continue having said discussions was motivated more by the fact that Respondent was recorded making these naked threats, and could be caught again in the same manner.

than once, that his dispute had to do with the Charging Party not paying “area standards” and that it would put up an “informational picket line,” does not transform his conduct from unlawful to lawful. Indeed, as is the case here, and as correctly found by ALJ Amchan, where the evidence makes clear that Respondent’s threats carried with it an unlawful “cease to do business” objective, a violation is found. See *Id.*; *General Teamsters Local Union No. 126 (Ready Mixed Concrete, Inc.)* 200 NLRB 253 (1972).

Respondent’s unlawful intent to entangle neutral employers in its dispute with the Charging Party is further demonstrated by Respondent business agent Joseph DiLeo’s remarks to Macedos supervisor Anthony Vieira during their December 30, 2011 phone conversation. When Vieira informed DiLeo that Macedos was using the Charging Party as its concrete supplier on the Novartis job site, DiLeo said that either Macedos use another concrete supplier – one that paid area standards – or Respondent would picket the jobsite. This statement is direct, unambiguous, and its unlawful import undeniable. Further evidence of Respondent’s unlawful objective to force Macedos to cease doing business with the Charging Party is demonstrated when DiLeo gave Vieira the names of Eastern, Weldon, and Clayton as alternate concrete suppliers for Macedos to use- the same suppliers Valdner named when threatening Sharp. Vieira repeated over and over that he had to use the Charging Party as its concrete supplier, explaining that the materials ordered by Macedos were special orders and were all ready, that Macedos had spent lots of time and money on this project, and that finding another concrete supplier at that time would cause construction delays. Further evidence of Respondent’s unlawful secondary objective is demonstrated when DiLeo offered to contact other concrete suppliers and have them “do the right thing for Macedos” with respect to pricing if Vieira

went with a different concrete supplier and that he (Vieira) had until the following Tuesday to find another supplier otherwise Respondent would picket. See *Local 79, Laborers Int'l Union (JMH Development, LLC)* 354 NLRB No. 14 (2009) and cases cited therein. DiLeo's bold statements not only constitute direct evidence of Respondent's unlawful secondary objective – DiLeo's threats constitute a total disregard of the law.

2. The above-referenced background evidence informs the Respondent's Unlawful Secondary Cease Doing Business Object Permeating the "Winter 2013 Update".

As ALJ Amchan correctly stated, the "Winter 2013 Update" was a targeted mailing- addressed to all neutral contractors operating in New Jersey who could potentially serve as the Charging Party's customers. In addressing this targeted audience, the Union used unequivocal language to convey its unlawful threats. Respondent wrote that it "will not stand actionless as County Concrete continues to operate at substandard wages and economic benefits, with affect to destroy area standard wages and economic benefits...Local 560 wishes to remind all AGC contractors who are signatory to Local 560 construction contracts that the contract does place certain expectations upon the contractor in regard to area standards...Local 560's enforcement of the provision will be enforced through the grievance and arbitration procedure, though this does not necessarily mean that Local 560 will not be engaging in area standards picketing in the presence of County Concrete...For Companies not signatory to the Local 560-AGC contract, and other Local 560 contracts that do not have a no-strike provision prohibiting area standard picketing, Local 560 intends to aggressively engage in area standards picketing...Local 560 will no longer provide advanced notice of picketing. If you are

going to utilize...County Concrete...be well aware that Local 560 will be showing up at your project with picketing and will no longer provide you with advanced notice...Local 560's energies and vigorous activities will be persistent and will continue until County Concrete Corp...commences to pay their redi-mix drivers Area Standards when making deliveries in Local 560 geographic territory..."¹⁴

The import of this incendiary language is unmistakable- if signatory AGC contractors use the Charging Party, they should expect grievances and picketing¹⁵; if non-signatory contractors use the Charging Party, they should expect picketing. That none of the intended recipients of the "Winter 2013 Update" either employs a bargaining unit of ready-mix drivers or has direct control over the Charging Party's labor relations further reveals the unlawful secondary object here. Refusing to hire or retain the Charging Party is the only way for Respondent's targeted audience to exhort the Charging Party to modify its labor relations practices, and this is exactly what the "Winter 2013 Update" requires them to do. But the law is clear, and the substantial record evidence supports ALJ Amchan's findings and conclusions that such coercive conduct coupled with a secondary object violates Section 8(b)(4)(ii)(B) of the Act.

Respondent argues that its elucidation of the *Moore Dry Dock* standards in the "Winter 2013 Update" immunizes its unlawful threats and erases any unlawful secondary

¹⁴ That Respondent's crusade against the Charging Party has spanned several years, without resolution, is evident from Respondent's April 26, 2011 letter sent to the same contractor association members that received the "Winter 2013 Update". The "Winter 2013 Update" letter mirrors much of the incendiary language contained in the April 26, 2011 mailing (e.g. Local 560 will not stand actionless as County Concrete continues to operate at substandard wages and economic benefits...Local 560's energies and vigorous activities will be persistent and will continue until County Concrete Corp. commences to pay its redi-mix drivers Area Standards.) *LE-RX-7*. ALJ Amchan correctly highlighted these facts on pages 3 and 4 of his Decision.

¹⁵ The CBA expired on April 30, 2013. Daloisio testified that an extension agreement was in effect during the negotiation of a new contract. In any event, the record is clear that the CBA was in effect at the time Respondent issued the "Winter 2013 Update."

object. But the *Moore Dry Dock* standards speak only to the manner of picketing and cannot shield otherwise unlawful conduct from a finding of a violation of the Act. As stated above, the unlawful objective does not have to be the *sole* objective of the union's conduct. So long as there is evidence of *an* unlawful object – a violation will be found. See *General Service Employees Union Local No. 73 (Allied Security, Inc.)* 239 NLRB 295, 303 n. 3 (1978). Here, Respondent's coercive statements in the "Winter 2013 Update," when viewed through the prism of an unyielding multi-year campaign by Respondent riddled with examples of unlawful statements, makes clear Respondent's secondary object and the substantial evidence clearly supports ALJ Amchan's finding that Respondent violated Section 8(b)(4)(ii)(B) of the Act.

IV. CONCLUSION:

The Remedy

The entire record, a preponderance of the credible evidence, and the applicable case law prove that Respondent violated Sections 8(b)(4)(ii)(A) and (B) of the Act as found by ALJ Amchan. Counsel for the Acting General Counsel respectfully requests that the Board issue a broad remedial order requiring Respondent to cease and desist from engaging in the unlawful conduct alleged herein; posting and mailing an appropriate notice to all recipients of the "Winter 2013 Update," and for Respondent to comply with any other remedies deemed appropriate.

Dated at Newark, New Jersey, this 17th day of October 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Silverstein", written over a horizontal line.

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CERTIFICATION OF SERVICE

This is to certify that the Answering Brief on Behalf of the Acting General Counsel in Response to Respondent's Exceptions to the Decision of Administrative Law Judge Arthur Amchan has been served on this date as follows:

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Dated at Newark, New Jersey this 17th day of October 2013



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