

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

LOCAL 560, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

and

COUNTY CONCRETE CORPORATION

Case Nos. 22-CC-01522
22-CC-068160
22-CC-071865

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for the Acting General Counsel
Paul A. Montalbano, Esq. (Cohen, Leder,
Montalbano & Grossman, LLC), for the Respondent
Brian P. Shire, Esq. (Susanin, Widman & Brennan, P.C.),
for the Charging Party

DECISION

Statement of the Case

LAUREN ESPOSITO, Administrative Law Judge. Based upon charges in Case Nos. 22-CC-01522 and 22-CC-068160, filed on November 12, 2010 and November 3, 2011, respectively, and upon a charge in 22-CC-071865, filed on January 4, 2012 and amended on February 13, 2012, an Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing issued on April 26, 2012. The Complaint alleges that Local 560, International Brotherhood of Teamsters (“Local 560” or “Respondent”), violated Section 8(b)(4)(ii)(B) of the Act by threatening to picket Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc. Terminal Construction Co., Macedos Construction, LLC, and Sharp Concrete Corporation at various jobsites with an object of forcing or requiring the foregoing entities and other persons to cease handling, dealing with the products of, and doing business with County Concrete Corporation (“County Concrete” or “Charging Party”), in furtherance of the Union’s dispute with County Concrete. Respondent filed an Answer denying the material allegations of the Complaint.

On or about June 13, 2012, the Acting General Counsel (“General Counsel”) filed a Motion to Transfer Case No. 22-CA-01522 to the National Labor Relations Board for Further Proceedings, for Summary Default Judgment and for the Issuance of a Decision and Order of the Board, pursuant to Sections 102.24 and 102.50 of the Board’s Rules and Regulations (G.C. Ex. 2). General Counsel’s Motion is hereby granted, and Case No. 22-CA-01522 is hereby severed and transferred to the National Labor Relations Board for further proceedings.

This case was tried before me on June 13, 2012, in Newark, New Jersey.

Findings of Fact

I. Jurisdiction

5 Respondent admits in its Answer and I find that at all material times the Charging Party
has been a corporation with an office and place of business in Kenvil, New Jersey, and has
been engaged in supplying ready-mix concrete and related construction materials to various
employers in the State of New Jersey. Respondent admits and I find that the Charging Party is
10 an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
Respondent further admits and I find that it is a labor organization within the meaning of Section
2(5) of the Act.

II. Alleged Unfair Labor Practices

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1. The Parties' Operations and the Relevant Projects

County Concrete Corp. manufactures and sells ready-mix concrete, crushed sand, and
20 gravel for construction projects, and also maintains retail yards where it sells landscape,
masonry products, mulches, and other items on a wholesale and retail basis. John C. Crimi is
County Concrete's President and majority stockholder. John Post is the company's Vice
President of Sales.

25 As of April 2011, County Concrete employed approximately fifty to sixty drivers. Until
January 2001, all of County Concrete's employees except for sales and management were
represented by Local 863, International Brotherhood of Teamsters. According to Crimi, the
company was informed in January 2001 that the employees would henceforth be represented
by Local 408, International Brotherhood of Teamsters. Local 408 apparently represented the
30 bargaining unit employees until it disclaimed interest in January 2009. At that point, Local 863
prevailed in a card check certification conducted by Monsignor Gilchrest. Contract negotiations
between County Concrete and Local 863 have been ongoing since then, with the last
negotiating session having taken place in May 2011, but the parties have not reached a
collective bargaining agreement.

35 Sharp Concrete Corporation ("Sharp Concrete" or "Sharp") does concrete work,
foundation, slabs, and masonry, using concrete and materials supplied by other businesses.
John Domingues owns and manages the company. According to Domingues, Sharp Concrete
had entered into an agreement with County Concrete whereby County Concrete would provide
the necessary materials for Sharp Concrete's projects, whenever it was feasible to do so.
40 Domingues testified that for over ten years Sharp Concrete had used concrete supplied by
County Concrete on its projects on a regular basis.

Macedos Construction, LLC ("Macedos Construction" or "Macedos") is another firm
45 which performs concrete work on construction projects. Antonio Vieira is the company's
General Superintendent. Vieira testified that each year Macedos Construction generally
purchases concrete from County Concrete for two or three projects. Macedos Construction has
a collective bargaining agreement with Local 560.

50 The instant case involves two construction projects which were ongoing during the fall of
2011. The first is a new Student Center being built at St. Peter's College in Jersey City, New
Jersey. This is a seven-story concrete and masonry building; construction began in mid-
November 2011 and is continuing. Sharp Concrete was engaged to do the concrete

foundations, slabs, and masonry on the project. Torcon Construction is the general contractor. The second project is a group of three office buildings and a precast parking garage which is being built for Novartis in East Hanover, New Jersey. Macedos Construction is the concrete contractor for the parking garage component of the project, and had arranged to obtain the concrete it intended to use from County Concrete. Work on the garage began in September 2011, and Macedos began its work on the project in December 2011. Turner Construction is the construction manager on the Novartis project.

John C. Crimi and John Post of County Concrete testified at the hearing for the General Counsel, as did John Domingues of Sharp Concrete and Antonio Vieira of Macedos Construction. Paul Parmentola, Vice President and Construction Executive at Turner Construction, also testified pursuant to a Subpoena issued by the General Counsel. Respondent did not present any witnesses.

2. The Dispute Between Local 560 and County Concrete

Since at least the spring of 2011, Local 560 has been engaged in a dispute with County Concrete, contending that County Concrete has failed to pay its employees area standards wages and benefits. On April 26, 2011, Anthony Valdner, Local 560's President, sent a letter to the Building Contractors Association of New Jersey, the Associated General Contractors of New Jersey, the Utility and Transportation Contractors Association, and a number of individual firms describing its dispute with County Concrete and related activities Local 560 might possibly undertake. The letter states as follows:

Dear AGC, BCA, UTCA and Independent Construction Contractors and Subcontractors:

Local 560, IBT is currently involved in efforts to protect area standards of wages and benefits paid to drivers in the redi-mix concrete delivery industry.

County Concrete Corporation is attempting to seriously undermine redi-mix delivery area standards. Though County Concrete Corporation has a collective bargaining relationship with Local 863, I.B.T., the parties have been without a contract for over a year due to County Concrete's offer of substandard wages and benefits. County Concrete has attempted to have Local 863 decertified through a petition at the NLRB. The County Concrete employees overwhelmingly voted to continue their membership in and representation by Local 863. Unfortunately, County Concrete has not gotten the message that its employees are demanding to be paid area standards and are willing to go out on strike to compel County Concrete to pay area standard wages and benefits in similar fashion as other unionized redi-mix drivers. Drawing upon Concrete's history of intransigence, it is not expected any time soon that they will reach agreement on economic terms for a contract, and strike[s] and picketing may be expected. While County Concrete and Local 863 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.

Local 560 recently settled with the National Labor Relations Board a claim brought by County Concrete. The settlement specifically provided acknowledgement by the NLRB, as well as County Concrete, that by agreeing to settle the charge, Local 560 did not admit it engaged in any conduct that was in

The evidence establishes that this letter was widely disseminated. Crimi testified that he had seen it, and had discussed the area standards issue with Jack Macedos of Macedos Construction on numerous occasions during the past two years. Parmentola testified that he had heard about the letter from Nordic Concrete, which had provided a copy to him, and that he had also discussed the area standards dispute with James Martins of Macedos Construction. Post also testified that he was aware of the letter and had discussed it with Parmentola.

General Counsel stipulated at the hearing that Local 560 was involved in an area standards dispute with County Concrete.¹

3. Facts Relevant to the St. Peter's College Project and Sharp Concrete

Domingues and Post testified that on November 1, 2011 they attended a meeting arranged by the Hudson County Building Trades Council regarding the Student Center project at St. Peter's College. Domingues was invited to attend the meeting by Roy Porter, the superintendent for Torcon Construction, the general contractor on the project. Domingues in turn invited Post to attend. Representatives from other contractors on the project and from the Building Trades Association were present as well. Each person attending the meeting introduced themselves and explained their organization's role of on the project. Representatives of contractors identified the suppliers and subcontractors they would be using on the project to the Building Trades Council. Toward the end of the meeting, Pat, a representative of the Building Trades Association, told the group that Anthony Valdner of Local 560 had not been able to attend, and asked everyone to call Valdner later. Pat gave out Valdner's phone number, and the meeting ended.

Domingues and Post then returned to Domingues' office together and called Valdner. Domingues recorded this conversation, which proceeded as follows:

Domingues: Hi Tony, this is John from Sharp Concrete.

Valdner: Yes. Hi, how are you?

Domingues: Good.

Valdner: What can I do for you?

Domingues: Pat told me to give you a call and just touch base with you. We are doing the concrete over at St. Peter's in Jersey City.

Valdner: Right.

[Inaudible]

Valdner: County Concrete is no good.

¹ General Counsel did not stipulate that Local 560's activities were solely motivated by a permissible area standards notification objective, as Respondent claims in its Post-Hearing Brief (Tr.44).

Domingues: They are no good.

5 Valdner: No good. No good. I will be putting a picket line against you...an informational picket line. They are non-union. They don't pay the area standards.

Domingues: Okay.

10 Valdner: They don't pay the area standards. Before you run into a problem. Alright? You have Eastern, you have Weldon, you have Colonial, you have Service.²

Domingues: Okay.

15 Valdner: You have Crane Concrete out of Milisevik. Colonial is out of Newark. Eastern is out of Jersey City. [inaudible]

20 Domingues: I am going to do this, only because I went in with County's price. They have done a couple of jobs with us.

Valdner: Right.

25 Domingues: I am going to call County and I will have them give you a call. I thought they were union.

30 Valdner: No they are not union and they don't pay the area standards. They have no signed contract with 863. For over 2 years I have been battling them with 863. They have been torn off a lot of jobs, John. They don't pay the area standards. 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 the area standards and that's what I will picket them. Area standards.

35 Domingues: Okay. I am going to call my salesman over there if that's okay and I will have him...

40 Valdner: That's fine with me. He's union and this and that. 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?

Domingues: Okay, my man. I will let you know.

45 Valdner: Bye-bye.

50 ² These companies all have contractual relationships with the Union.

Domingues: Thanks.³

Valdner later faxed Domingues a copy of his April 26, 2011 letter regarding the area standards dispute with County Concrete.

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Domingues testified that he later called Roy Porter of Torcon Construction, described his conversation with Valdner, and asked Porter whether he should continue to use County Concrete. According to Domingues, Porter said no, and told Domingues that he had to speak with his office. Porter told Domingues that he needed to submit another concrete supplier as soon as possible, because they could not lose time on the job. Domingues testified that instead of County Concrete he obtained the concrete for the St. Peter's College job from Service, a supplier suggested by Valdner during their conversation whose employees are represented by Respondent.

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4. Facts Relevant to the Novartis Project and Macedos Construction

Work on the Novartis project in East Hanover began in April 2011. In September or October 2011, Dave Critchley, President of the Morris County Building Trades Association, arranged for a meeting between Paul Parmentola of Turner Construction and Valdner regarding the outstanding dispute between Local 560 and County Concrete. At that point the last of the project's four buildings was not yet ready for concrete work to begin, and Macedos Construction had not selected a concrete supplier. Parmentola testified that he met Valdner for the first time at this meeting. According to Parmentola, Valdner told him that Local 560 had an issue with County Concrete's failure to pay its drivers area standards wages and benefits. Valdner also gave Parmentola a copy of Local 560's April 26, 2011 letter to the employer associations and independent firms.

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Subsequently, in mid-December 2011, another meeting regarding Local 560's dispute with County Concrete was called by the Morris County Building Trades Association.

Parmentola attended this meeting with Bill DiPasquale, also from Turner Construction, Critchley, Valdner, another Local 560 representative named Joe, and Lou Candora, also from the Building Trades Association.⁴ Parmentola testified that at this meeting Valdner again described Local 560's dispute with County Concrete, contending that County Concrete's drivers were not being paid area standards wages. Valdner said that he wanted to bring the issue to Parmentola's attention. The participants then discussed two possibilities – ensuring that the County Concrete drivers were paid a higher wage in line with area standards wages and benefits, and engaging a company other than County Concrete provide the concrete for the remainder of the Novartis project. Parmentola testified that Valdner said that a company other than County Concrete would pay the drivers area standards wages, but could not recall Valdner mentioning any specific company. Valdner stated that the dispute could be resolved if County Concrete's drivers were paid area standards wages or if another company, whose drivers were paid area standards wages, was selected to supply the concrete. Valdner stated that if the dispute was not resolved

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³ This account of Domingues and Valdner's conversation was taken from the transcript prepared by General Counsel and in evidence as G.C. Ex. 3(b). No party has raised any objection to the accuracy of the transcript, which is consistent with the recording of the conversation (G.C. Ex. 3(a)) in all material respects.

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⁴ Several of these names are spelled phonetically.

Local 560 could engage in informational picketing. At this meeting, Valdner also provided Parmentola with another copy of his April 26, 2011 letter.

5 Antonio Vieira testified that Macedos Construction began working on the Novartis project in late December 2011, with County Concrete delivering the concrete as per the agreement between the companies. Vieira testified that after Macedos began work, his superintendent on the job told him that Local 560 intended to picket the job on the Tuesday after New Year's Day. Vieira then called Joe DiLeo of Local 560 and left him a message. Vieira testified that when DiLeo called him back, Vieira asked why Local 560 intended to picket. DiLeo told Vieira that if County Concrete did not pay Local 560 wages the union would picket the job. Vieira responded that Macedos had to use County Concrete at that point, because the materials (a special colored concrete, stone and sand) had already been purchased for the job, there had been months of mock-ups and other preparation, and everything was ready for the work to begin. DiLeo told Vieira that Macedos had to get another concrete supplier, because County Concrete was not paying area standards wages. DiLeo suggested specific concrete suppliers which would pay their employees the appropriate wages, including Eastern, Weldon, and Clayton. DiLeo told Vieira that if he did not use a concrete supplier that paid the appropriate wages, Local 560 would picket the job the next day.

20 Vieira then asked DiLeo why Local 560 was picking on Macedos, when County Concrete was supplying concrete for Nordic Construction on the Novartis project. DiLeo responded that Nordic had agreed that it would not use County Concrete again on its jobs. DiLeo then said that County Concrete would have to pay an extra fifteen dollars per hour to meet the Local 560 wage rates. Vieira responded that Macedos needed to use County Concrete because of all the time and money already invested with them in the project, and suggested to DiLeo that Macedos pay the difference between the County Concrete and Local 560 wage rates. DiLeo refused, saying that County Concrete had to pay the difference because the additional amounts would be contributed to benefit funds, and reiterated that if County Concrete did not pay the appropriate wage rates, Macedos had to use a different contractor. Vieira then told DiLeo that Macedos would need time to bring in a different concrete supplier, and asked whether Macedos could begin the job with County Concrete until they made the necessary arrangements with another company. DiLeo responded that if Macedos didn't find a different concrete supplier Local 560 would picket the job, but said that he would ask whether Macedos could use County Concrete until they made the necessary arrangements with another supplier. Vieira also told DiLeo that he was concerned that another concrete supplier would take advantage of Macedos given the last-minute nature of the situation. DiLeo responded that he would speak to another concrete supplier and "get them to do the right thing" if Macedos chose them. Vieira said that they had to think about the situation over the weekend, and DiLeo responded that if he did not hear from Macedos on Tuesday the Union would picket.⁵

40 Vieira testified that on the next Tuesday DiLeo called him. DiLeo told Vieira that he had spoken to Eastern, one of the alternative suppliers he had suggested, and Eastern had reported that they had not heard from Macedos. Vieira said that Macedos was still thinking about their options and deciding what they were going to do. Vieira then contacted Macedos' attorney.

45 Local 560 did apparently picket the Novartis job site beginning on January 18, 2012. There is no allegation in this case that the January 2012 picketing was unlawful.

50 ⁵ DiLeo did not testify at the hearing.

III. Analysis and Conclusions

A. General Principles and the Positions of the Parties

5 Section 8(b)(4)(ii)(B) prohibits labor organizations and their representatives from threatening, coercing, or restraining any person engaged in commerce, “where an object thereof is forcing or requiring any person to cease doing business with any other person.” It is well-settled that an unlawful secondary objective need not be the sole motivation for the union’s conduct; so long as *an* unlawful object exists, prohibited conduct in furtherance of that objective violates Section 8(b)(4)(ii)(B). See, e.g., *General Service Employees Union Local 73 (Allied Security, Inc.)*, 239 NLRB 295, 303, n. 3 (1978). In addition, the Board has held that an “unqualified” threat to picket a neutral employer’s jobsite where the primary employer is also working violates Section 8(b)(4)(ii)(B), absent assurances that picketing will be conducted in accordance with the standards articulated in *Sailors’ Union of the Pacific (Moore Dry Dock)*, 92 NLRB 547 (1950).⁶ *Electrical Workers Local 98 (MCF Services)*, 342 NLRB 740, 749 (2004), *enf’d* 251 Fed.Appx. 101 (3rd Cir. 2007); *Ironworkers Local 433 (United Steel)*, 280 NLRB 1325, n. 1, 1331-1333 (1986), *enf denied* 850 F.2d 531 (9th Cir. 1988); see also *Teamsters Local 456 (Peckham Materials)*, 307 NLRB 612, 619 (1992) (discussing cases). However, even compliance with the *Moore Dry Dock* standards does not preclude a finding of unlawful picketing where there is independent evidence of a secondary objective. *General Teamsters Local 126 (Ready Mixed Concrete, Inc.)*, 200 NLRB 253 (1972).

25 General Counsel and Charging Party contend that Local 560 violated Section 8(b)(4)(ii)(B) when Valdner threatened Domingues of Sharp Concrete during their November 1, 2011 phone conversation, and when DiLeo threatened Vieira of Macedos Construction during their phone conversation on or about December 30, 2011. General Counsel and Charging Party argue that the record contains sufficient independent evidence of Local 560’s secondary objective to establish that Valdner and DiLeo’s statements were threats violating Section 8(b)(4)(ii)(B). However, General Counsel further contends that even if no additional evidence of secondary objective existed, Valdner and DiLeo’s threats to picket were unqualified by affirmative assurances that picketing would comply with *Moore Dry Dock* standards, and were therefore unlawful.⁷

35 Respondent Local 560 argues that Valdner and DiLeo’s statements were not unlawful threats of picketing. Local 560 argues that its April 26, 2011 letter, which discussed picketing in the context of the *Moore Dry Dock* standards, effectively qualified Valdner and DiLeo’s statements to Domingues and Vieira, so that the statements themselves were not unlawful. Local 560 further argues that the Board should revisit and ultimately reject the principle that a union representative’s threat to picket generates a presumption, whether rebuttable or not, that

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45 ⁶ Under *Moore Dry Dock*, picketing at a common situs must be strictly limited to times when the situs of the dispute is located on the secondary employer’s premises, the primary employer must be engaged in its normal business at the situs, the picketing must be limited to places reasonably close to the situs of the dispute, and the picketing must clearly disclose that the dispute is with the primary employer. 92 NLRB at 549.

50 ⁷ Charging Party also asserts that Local 560 violated Section 8(b)(4)(ii)(B) by picketing at the Novartis jobsite in early January 2012. However, the Consolidated Complaint does not contain any allegations of unlawful picketing, and General Counsel does not assert that Local 560 violated the Act in this manner. As a result, I decline to make any findings or conclusions on this issue.

the union will engage in unlawful secondary activity absent an affirmative assurance that picketing will be conducted in accordance with *Moore Dry Dock* standards. Local 560 contends that the Board should abandon this presumption, citing the opinion of the District of Columbia Circuit in *Sheet Metal Workers Local 15 v. NLRB*, 49 F.3d 419, 434-436 (2007), and of the Ninth Circuit in *United Ass'n of Journeymen, Local 32 v. NLRB*, 912 F.2d 1108, 1110-1111 (1990), both of which rejected it. General Counsel also argues that the presumption should be abandoned based upon the opinions of the District of Columbia and Ninth Circuits in these cases.

B. Local 560 Violated Section 8(b)(4)(ii)(B) by Threatening Sharp Concrete and Macedos Construction with Picketing, with the Object of Forcing or Requiring Them to Cease Doing Business with County Concrete

I find that Local 560 violated Section 8(b)(4)(ii)(B) by threatening Sharp Concrete and Macedos Construction with picketing in furtherance of an unlawful secondary objective – forcing or requiring both companies to cease doing business with County Concrete, with whom Local 560 had an area standards dispute. I find that the record contains adequate evidence of a secondary motivation to determine that the statements were unlawful, without recourse to the presumption that unqualified threats to picket, without assurances of compliance with *Moore Dry Dock* standards, violate Section 8(b)(4)(ii)(B).

1. Valdner's statements to Domingues regarding the St. Peter's College jobsite

The evidence establishes that Valdner unlawfully threatened Domingues with picketing in furtherance of a secondary objective during their conversation on November 1, 2011. After determining that Domingues intended to use County Concrete as Sharp's supplier for the St. Peter's College job, Valdner immediately stated that he would be "putting a picket line against you." The "you" in Valdner's statement clearly refers to Sharp, and not to County Concrete. While mentioning area standards issues, Valdner also told Domingues that County Concrete was "not union," and suggested alternative suppliers which have contractual relationships with the Union. Valdner went on to inform Domingues that he would "put up an informational picket line and the trades won't cross it." It is clear from his statements that Valdner intended to convey to Domingues that his only means of avoiding picketing which, according to Valdner, would bring a halt to work at the site, was to select a concrete supplier which had a contractual relationship with the Union in lieu of County Concrete. This constitutes significant evidence of an unlawful secondary objective. See *General Service Employees Union Local 73 (Allied Security)*, 239 NLRB at 306-307 (business agent's statement that "there were about 80 security firms that met area standards in the phone book" during conversation with neutral representative regarding "possible picketing" evidence of unlawful objective); *Electrical Workers Local 369 (Garst-Receveur Construction Co.)*, 229 NLRB 68, 72-73 (1977), *enfd* 609 F.2d 266 (6th Cir. 1979) (union agent's statement that "If the job was run 100 percent union and then if [the primary employer] is off this job, then everything can be cleared up" sufficient to establish unlawful secondary objective). The evidence establishes, of course, that Valdner referred to informational picketing and the area standards nature of the Union's dispute with County Concrete. However, given Valdner's clear requirement that Domingues select another, unionized, concrete supplier or face a picket line which, according to Valdner, "the trades won't cross," these allusions are ineffective to immunize his overall remarks from a finding of prohibited secondary motivation.

I further find that Respondent's April 26, 2011 letter regarding its compliance with *Moore Dry Dock* standards during future picketing is insufficient to establish that Valdner's remarks were in fact permissible. Although the evidence establishes that Valdner faxed a copy of the

letter to Domingues after their November 1, 2011 conversation, the law is clear that subsequent or concurrent compliance with *Moore Dry Dock* standards is insufficient to excuse otherwise unlawful activity where there is direct evidence of a secondary objective. See, e.g., *Service Employees Local 254 (Women and Infants Hospital)*, 324 NLRB 743 (1997) (evidence regarding compliance with *Moore Dry Dock* standards during picketing irrelevant in light direct evidence of secondary objective); *General Teamsters Local 126 (Ready Mixed Concrete)*, 200 NLRB at 254-255 (compliance with *Moore Dry Dock* standards “does not immunize a union’s picketing and other conduct” where record evidence reveals a secondary objective). As a result, the April 26, 2011 letter providing assurances that any picketing of County Concrete will be conducted in compliance with *Moore Dry Dock* standards does not establish that Valdner’s un rebutted statements to Domingues, which clearly evince a prohibited secondary objective, were lawful.

In addition, as argued by General Counsel, the April 26, 2011 letter is insufficient under the relevant case law to operate as a repudiation of Valdner’s unlawful threats of picketing. As General Counsel notes, repudiation must be “timely, unambiguous, specific in nature to the coercive conduct and free from other proscribed legal conduct.” *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978) (internal quotations omitted). In addition, the repudiation must be publicized adequately and contain assurances that no future coercion or interference will occur, and there must be no additional proscribed conduct after publication. *Passavant Memorial Area Hospital*, 237 NLRB at 138-139. Although Respondent’s April 26, 2011 letter was disseminated, it does not explicitly repudiate any specifically identified wrongdoing, and in fact contains language stating that Respondent does not admit to any violation of the Act.⁸ See *Holly Farms Corp.*, 311 NLRB 273, 274-275 (1993), *enfd.*, 48 F.3d 1360 (4th Cir. 1995) (alleged repudiation of unlawful wage increase ineffective where Respondent did not “admit to any wrongdoing”). Indeed, the April 26, 2011 letter is not even specific to any particular jobsite, project, or statement of Respondent’s representatives. In addition, DiLeo’s unlawful threat to Vieira regarding Macedos Construction’s activities at the Novartis jobsite, as discussed below, establishes additional proscribed conduct after the April 26, 2011 letter was sent to Domingues on or about November 1, 2011. As a result, I find that Valdner’s faxing the April 26, 2011 letter to Domingues was insufficient to “cure” the unlawful threat Valdner made earlier.

For all of the foregoing reasons, I find that Valdner threatened Domingues on November 1, 2011 with picketing with the prohibited secondary objective of forcing or requiring Sharp Concrete to cease doing business with County Concrete. I therefore find that Respondent’s threat to Domingues violated Section 8(b)(4)(ii)(B).

2. DiLeo’s statements to Vieira regarding the Novartis jobsite

I likewise find independent evidence sufficient to establish an unlawful secondary objective with respect to DiLeo’s statements to Vieira in late December 2011 regarding Macedos Construction’s activities at the Novartis jobsite. I credit Vieira’s un rebutted testimony that DiLeo insisted that Macedos terminate its agreement with County Concrete and engage a supplier which had a contractual relationship with the Union in order to avoid picketing at the

⁸ Specifically, the April 26, 2011 letter states that Local 560 “did not admit it engaged in any conduct that was in violation of the National Labor Relations Act” in connection with the settlement of a previous unfair labor practice charge filed against it by County Concrete, and asserts that statements made by Local 560’s representatives regarding the letter “may not be claimed to be made against Local 560’s interests.”

5 jobsite. *General Service Employees Union Local 73 (Allied Security)*, 239 NLRB at 306-307; *Electrical Workers Local 369 (Garst-Receveur Construction Co.)*, 229 NLRB at 72-73. At least one of the contractors suggested by DiLeo was also mentioned by Valdner to Domingues during their November 1, 2011 conversation, discussed above. In addition, after Vieira asked DiLeo why Local 560 was specifically targeting Macedos when other contractors on the jobsite were using County Concrete, DiLeo responded that those other contractors had agreed not to use County Concrete in the future. Finally, when Vieira expressed concern about finding another supplier on such short notice, DiLeo offered to contact them and get them to “do the right thing for Macedos.” All of these statements evince a prohibited secondary object of forcing or requiring Macedos to cease doing business with County Concrete.

15 The events which took place after Vieira and DiLeo’s initial conversation also evince an unlawful secondary objective on Respondent’s part. According to Vieira’s unrebutted testimony, DiLeo next called him after hearing from one of the alternate suppliers he had suggested that Vieira had not yet contacted them, and threatened again to picket the jobsite. In fact, when Vieira went ahead and used County Concrete, Respondent did so. Overall, the evidence is more than sufficient to establish that DiLeo’s remarks were made with the unlawful secondary objective of forcing Macedos Construction to cease doing business with County Concrete. As a result, DiLeo’s statements during his conversation with Vieira constituted an unlawful threat to picket in violation of Section 8(b)(4)(ii)(B).

20 3. Valdner and DiLeo’s statements were unqualified threats to picket in violation of Section 8(b)(4)(ii)(B)

25 As discussed above, there is adequate independent evidence of a secondary objective based upon the content of the conversations and the surrounding circumstances to determine that Valdner and DiLeo’s statements to Domingues and Vieira violated Section 8(b)(4)(ii)(B). However, even without additional evidence of a secondary motivation, I would find that the statements were unqualified threats to picket, devoid of assurances that Respondent would comply with the *Moore Dry Dock* criteria, and therefore unlawful on that basis as well. See *Electrical Workers Local 98 (MCF Services)*, 342 NLRB at 741, 752; *Iron Workers Local 433 (United Steel)*, 280 NLRB at 1325, n. 1, 1333. I am aware, of course, that the District of Columbia and Ninth Circuits have disavowed the Board’s presumption that threats of picketing are unlawful unless accompanied by affirmative assurances that such picketing will comply with the *Moore Dry Dock* requirements. These Circuits have concluded that the presumption “is without foundation in the Act, relevant case law or any general legal principles,” and have found that the Board’s holdings in such cases were “irrational and beyond the Board’s authority.” *United Ass’n of Journeymen, Local 32*, 912 F.2d at 1110, quoting *NLRB v. Ironworkers Local 433*, 850 F.2d 551, 557 (9th Cir. 1988); *Sheet Metal Workers Local 15*, 491 F.3d at 435.

30 Nevertheless, the presumption constitutes existing Board law which I am required to apply. See *Electrical Workers Local 98 (MCF Services)*, 342 NLRB at 740, 752; see also *Laborers Local 79 (JMH Development)*, 354 NLRB No. 14, at p. 1 (2009). In addition, for the reasons discussed in Section III(B)(1) above, I would not find Respondent’s April 26, 2011 letter sufficient to rebut the presumption. As a result, even if the record did not contain independent evidence of a secondary objective, I would find that Valdner and DiLeo’s statements violated Section 8(b)(4)(ii)(B) as unqualified threats to picket Sharp Concrete and Macedos Construction.

45 For all of the foregoing reasons, I find that Respondent violated Section 8(b)(4)(ii)(B) of the Act by threatening Sharp Concrete and Macedos Construction, on November 1, 2011 and in late December 2011, respectively, with picketing, with the secondary objective of forcing the companies to cease doing business with County Concrete.

Conclusions of Law

- 5 1. County Concrete Corp., Sharp Concrete Corp., and Macedos Construction, LLC, are employers and persons engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent Local 560, International Brotherhood of Teamsters, is a labor organization within the meaning of Section 2(5) of the Act.
- 10 3. By threatening to picket Sharp Concrete Corp. at the St. Peter’s College jobsite with an object of forcing or requiring Sharp Concrete Corp. to cease doing business with County Concrete Corp. on November 1, 2011, Respondent violated Section 8(b)(4)(ii)(B) of the Act.
- 15 4. By threatening to picket Macedos Construction, LLC, at the Novartis jobsite with an object of forcing or requiring Macedos Construction, LLC, to cease doing business with County Concrete Corp. on or about December 30, 2011, Respondent violated Section 8(b)(4)(ii)(B) of the Act.
- 20 5. The above-described unfair labor practices affect commerce within the meaning of Sections 2(2), (6), and (7), and Section 8(b)(4)(ii)(B), of the Act.

The Remedy

25 Having found that Respondent has violated Section 8(b)(4)(ii)(B) of the Act, I shall recommend that it be ordered to cease and desist therefrom and post appropriate notices to effectuate the Act’s purposes.

30 Upon the foregoing findings of fact and conclusions of law, and upon the entire record, I issue the following recommended⁹

ORDER

35 Respondent Local 560, International Brotherhood of Teamsters, its officers, agents, and representatives, shall

 1. Cease and desist from

40 (a) Threatening Sharp Concrete Corp. and Macedos Construction, LLC, with picketing, where an object thereof is to force or require Sharp Concrete Corp. and Macedos Construction, LLC, to cease doing business with County Concrete Corp. or any other person.

45 2. Take the following affirmative action necessary to effectuate the policies of the Act.

50 ⁹ If no exceptions are filed as provided by Section 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Within 14 days after service by the Region, post at its office copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Also, if Respondent publishes a newsletter for its members, this notice should be published therein. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or an internet site and/or other electronic means if Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and mail a copy of the notice to Sharp Concrete Corp., Macedos Construction, LLC, and County Concrete Corp.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated: Washington, DC February 15, 2013

Lauren Esposito
Administrative Law Judge

¹⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

WE WILL NOT threaten, coerce or restrain Sharp Concrete Corp. where an object thereof is to force Sharp Concrete Corp. to cease doing business with County Concrete Corp. or any other person.

WE WILL NOT threaten, coerce or restrain Macedos Construction, LLC where an object thereof is to force Macedos Construction, LLC to cease doing business with County Concrete Corp. or any other person.

LOCAL 560, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

(Labor Organization)

Dated _____

By _____

(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

20 Washington Place, 5th Floor

Newark, New Jersey 07102-3110

Hours: 8:30 a.m. to 5 p.m.

973-645-2100.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 973-645-3784.