



United States Government  
**NATIONAL LABOR RELATIONS BOARD**  
Region 22  
20 Washington Place - 5th Floor  
Newark, NJ 07102-3115  
Tele: 973-645-2100 Fax: 973-645-3852  
E-Mail: [REGION22@NLRB.GOV](mailto:REGION22@NLRB.GOV)

April 11, 2013

**By Electronic Filing**

Gary Shinnars, Acting Executive Secretary  
Office of the Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20570-0001

Re: Local 560, International Brotherhood of Teamsters  
Case 22-CC-01522

Dear Mr. Shinnars:

On February 15, 2013 ALJ Lauren Esposito issued a decision in cases 22-CC-01522, 22-CC-068160; 22-CC-071865 wherein, *inter alia*, she granted Counsel for the Acting General Counsel's Motion to Transfer Case 22-CC-01522 to the Board for Further Proceedings. In that regard, in connection with the above-referenced matter, following this cover page please find Counsel for the Acting General Counsel's Motion to Strike Portions of Respondent's Answer, For Summary Default Judgment and for the Issuance of a Board Decision and Order, together with Supporting Memorandum of Law.

Respectfully submitted,

A handwritten signature in black ink that reads "Laura Elrashedy".

LAURA ELRASHEDY  
Counsel for the Acting General Counsel  
Direct Line: (973) 645-3542  
[lauraelrashedy@nlrb.gov](mailto:lauraelrashedy@nlrb.gov)

Attachments

cc: Paul Montalbano, Counsel for Respondent (*via electronic mail*)  
Brian Shire, Counsel for the Charging Party (*via electronic mail*)

**MOTION TO STRIKE PORTIONS OF RESPONDENT'S ANSWER,  
FOR SUMMARY DEFAULT JUDGMENT AND FOR  
THE ISSUANCE OF BOARD DECISION AND ORDER**

*Local 560, International Brotherhood of Teamsters  
Case 22-CC-01522*

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**LOCAL 560, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

**and**

**Case 22-CC-01522**

**COUNTY CONCRETE CORPORATION**

**MOTION TO STRIKE PORTIONS OF RESPONDENT’S ANSWER,  
FOR SUMMARY DEFAULT JUDGMENT AND FOR  
THE ISSUANCE OF BOARD DECISION AND ORDER**

Counsel for the Acting General Counsel hereby moves to strike portions of Respondent’s Answer, for Summary Default Judgment on the pleadings and supporting papers, and for the issuance of a Decision and Order by the National Labor Relations Board, herein called “the Board,” pursuant to Sections 102.24 and 102.50 of the Board's Rules and Regulations, and in support of said Motion states the following:

1. On November 12, 2010, County Concrete Corporation, herein called the Charging Party, filed the charge in Case 22-CC-01522 against Local 560, International Brotherhood of Teamsters, herein called “Respondent”, alleging violations of Section 8(b)(4)(ii)(B) of the Act. A copy of that charge, together with the Regional Director’s letter transmitting the charge, and an affidavit of service, was served on Respondent by mail on November 16, 2010. (Exhibits 1(a) – (c), respectively).

2. After being advised of the Regional merit determination as to the allegations in charge 22-CC-01522, Respondent entered into a Settlement Agreement,

herein called “the Agreement”, which was approved by the Regional Director on March 31, 2011. (Exhibit 2).

3. The Agreement provided, *inter alia*, that Respondent post a Notice and refrain from threatening to picket any employer where the object thereof is to force the employer to cease doing business with the Charging Party.

4. The Agreement also contained the following provision entitled "Performance":

“Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days from notice from the regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue the complaint on the allegation spelled out above in the Scope of Agreement section. Thereafter the General Counsel may file a motion for summary judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the aforementioned complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an order providing full remedy for the violations found as is customary to remedy such violations. The parties further agree that the U.S. Court of Appeals Judgment may be entered enforcing the Board order *ex parte*.”

5. On April 10, 2012, Respondent was advised of its failure to comply with the terms of the Agreement by, in cases 22-CC-061680 and 22-CC-071865, engaging in additional violations of Section 8(b)(4)(ii)(4) of the Act.

6. After being advised of its failure to comply, Respondent was given an opportunity to cure its non-compliance. Respondent failed to do so.

7. On April 26, 2012, pursuant to the Agreement's "Performance" provision, and to Section 102.33 of the Board's Rules and Regulations, the Regional Director re-issued the Complaint in case 22-CC-05122, an Order Consolidating Cases 22-CC-01522 with cases 22-CC-068160 and 22-CC-071865, and Consolidated Complaint and Notice of Hearing. (Exhibit 3).

8. The Consolidated Complaint described in paragraph 7 was served by certified and regular mail on Respondent on April 26, 2012. (Exhibit 4).

9. Pursuant to the Default Provisions in the Agreement, Respondent waived its right to contest the allegations relevant to Complaint paragraphs 7 through 11 and 14 through 17, as they relate to 22-CC-01522, and as such are deemed to be admitted by Respondent.

10. On May 11, 2012, despite having waived its right to contest the validity of these allegations, Respondent filed an Answer in which it denies Complaint allegations 7 through 17. (Exhibit 5).

11. Summary Default Judgment on those paragraphs is nonetheless proper based on the undisputed facts set forth in this Motion and as elaborated further in the attached Memorandum of Law in support of the instant motion.

12. In light of the undisputed facts described above, Respondent has

defaulted upon the terms of the Agreement within the meaning of the "Performance" provision of that Agreement.

13. On February 15, 2013, Administrative Law Judge Lauren Esposito issued her decision wherein she granted the Acting General Counsel's Motion to Transfer case 22-CA-01522 to the Board for further proceedings.<sup>2</sup>

WHEREFORE, Counsel for the Acting General Counsel respectfully requests, in accordance with the terms of the "Performance" provision of the Agreement, that:

1. a finding be made that Respondent has waived its right to file an Answer to paragraphs 7 through 11 and 14 through 17 of the Complaint in this matter and that it has thereby admitted all allegations contained therein<sup>3</sup>;

2. paragraphs 7 through 11 and 14 through 17 of Respondent's Answer, as it pertains to 22-CC-01522, be stricken from Respondent's Answer;

3. without the necessity of trial, a Decision and Order issue finding the allegations of the Consolidated Complaint relating to case 22-CC-01522, to be true, making findings of fact and conclusions of law consistent with those allegations adverse to Respondent on all issues raised by the pleadings; and

4. the Board provide a remedy for the violations found consistent with the terms of the Agreement and the Notice to Employees attached to the Agreement.

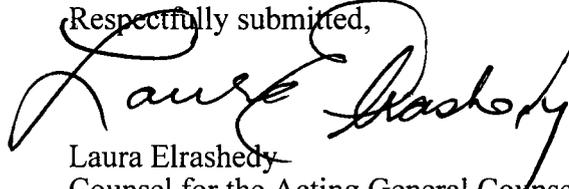
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<sup>2</sup> In that same decision the ALJ found Respondent to have violated Section 8(b)(4)(ii)(B) of the Act by threatening Sharp Concrete Corp. and Macedos Construction LLC with picketing with the object of forcing both companies to cease doing business with the Charging Party. (Exhibit 6).

<sup>3</sup> With the exception of those portions of the Complaint allegations pertaining to Sharp and Macedos.

Dated at Newark, New Jersey this 11<sup>th</sup> day of April 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Laura Elrashedy". The signature is written in a cursive style with a large, looping initial "L".

Laura Elrashedy  
Counsel for the Acting General Counsel  
National Labor Relations Board  
Region 22  
20 Washington Place  
Newark, New Jersey 07102

Attachments

## **INDEX OF EXHIBITS**

- Exhibit 1(a): Charge in case 22-CC-01522
- Exhibit 1(b) Regional Director's letter transmitting the charge to Respondent
- Exhibit 1(c): Affidavit of Service
- Exhibit 2: Informal Settlement Agreement, approved by Regional Director  
on March 31, 2011.
- Exhibit 3. Consolidated Complaint and Notice of Hearing, issued April 26, 2012.
- Exhibit 4: Affidavit of Service for the April 26, 2012 Consolidated Complaint  
and Notice of Hearing.
- Exhibit 5: Answer
- Exhibit 6: Administrative Law Judge's decision in cases 22-CA-061680  
and 22-CA-071865

**Exhibit 1(a)**

**Charge in case 22-CC-01522**

**Exhibit 1(a)**

INTERNET  
FORM NLRB-508  
(2-08)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST LABOR ORGANIZATION  
OR ITS AGENTS

FORM EXEMPT UNDER 44 U.S.C. 3512

| DO NOT WRITE IN THIS SPACE |                                 |
|----------------------------|---------------------------------|
| Case<br><b>22-CC-1522</b>  | Date Filed<br><b>11/12/2010</b> |

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

|  |   |             |
|--|---|-------------|
| a. Name<br>Local 560, International Brotherhood of Teamsters   | b. Union Representative to contact<br>Anthony Valdner |             |
| c. Address (Street, city, state, and ZIP code)<br>707 Summit Avenue,<br>Union City, New Jersey 07087 | d. Tel. No.<br>201-864-0051                           | e. Cell No. |
|  | f. Fax No.  | g. e-Mail   |

h. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections) (4)(i)(B) and (4)(ii)(B) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)  
**8(b)(4)(i)(B):** Beginning on or about May 20, 2010 and continuing until the present, Local 560, International Brotherhood of Teamsters, acting by and through its officers, agents, employees, members and representatives, has induced or encouraged individuals employed by Macedos Construction and other persons engaged in interstate commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, all with the object of forcing or requiring such contractor and others to cease doing business with County Concrete Corporation.  
**8(b)(4)(ii)(B):** Beginning on or about May 20, 2010 and continuing until the present, Local 560, IBT, acting by and through its officers, agents, employees, members and representatives, has engaged in a pattern and practice of threatening, coercing and restraining Century 21, Rocket Construction, Indianhead Pipeline Services, Terminal Construction, Crisdel Construction, Henkels & McCoy Construction, Sharp Construction, Torcon Construction and other persons engaged in interstate commerce all with the object of forcing or requiring such contractors and other persons to cease doing business with County Concrete Corporation.

|  |                              |             |
|--|------------------------------|-------------|
| 3. Name of Employer<br>County Concrete Corporation | 4a. Tel. No.<br>973-584-7122 | b. Cell No. |
|  | c. Fax No.<br>973-584-4370   | d. e-Mail   |

|   |   |
|---|---|
| 5. Location of plant involved (street, city, state and ZIP code)<br>50 Railroad Avenue, Kenil, New Jersey 07847 | 6. Employer representative to contact<br>John H. Widman |
|---|---|

|   |  |  |
|---|--|--|
| 7. Type of establishment (factory, mine, wholesaler, etc.)<br>Ready-Mix Concrete Supplier | 8. Identify principal product or service<br>Ready-Mix Concrete | 9. Number of workers employed<br>Approximately 150 |
|---|--|--|

|   |                               |             |
|---|-------------------------------|-------------|
| 10. Full name of party filing charge<br>County Concrete Corporation | 11a. Tel. No.<br>973-584-7122 | b. Cell No. |
|   | c. Fax No.<br>973-584-4370    | d. e-Mail   |

|  |
|--|
| 11. Address of party filing charge (street, city, state and ZIP code)<br>50 Railroad Avenue, Kenil, New Jersey 07847 |
|--|

|  |                                      |
|--|--------------------------------------|
| <p>12. DECLARATION</p> <p>I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.</p> <p>By <u>[Signature]</u> John H. Widman<br/>(signature of representative or person making charge) (Print type name and title or office, if any)</p> <p>Susanin, Widman &amp; Brennan, P.C.<br/>Address <u>1285 Drummers Lane, Suite 202, Wayne, PA 19087</u> (date) <u>11-12-10</u></p> | Tel. No.<br>610-710-4510             |
|  | Cell No.<br>610 308 8555             |
|  | Fax No.<br>610-710-4520              |
|  | e-Mail<br>jhwidman@swbcounselors.com |

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Submission of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

**Exhibit 1(b)**

**Regional Director's letter transmitting the charge 22-CC-01522 to Respondent**

**Exhibit 1(b)**



**UNITED STATES GOVERNMENT**

**NATIONAL LABOR RELATIONS BOARD**

Region 22

20 Washington Place - 5th Floor  
Newark, NJ 07102-3115

Telephone: 973-645-2100

Fax: 973-645-3852

**CB-RESP**

November 16, 2010

Mr. Anthony Valdner  
International Brotherhood of Teamsters Local 560  
707 Summit Avenue  
Union City, NJ 07087

Re: Local 560, International  
Brotherhood of Teamsters  
(County Concrete Corporation)  
Case 22-CC-1522

Dear Sir/Madam:

This is to inform you that a charge, a true copy of which is enclosed, was filed in the above-entitled matter. Also enclosed is a statement (Form NLRB-4541) briefly setting forth our investigation and voluntary adjustment procedures.

I would appreciate receiving from you a full and complete written account of the facts and a statement of your position with respect to the allegations of the charge.

You are welcome to use e-mail to communicate with the agent assigned to this case at the e-mail address below. However, such transmissions will not constitute proof that the e-mail or any attached documents or message content have been received in this office.

**FILING DOCUMENTS WITH REGIONAL OFFICES:** The Agency is moving toward a fully electronic records system. To facilitate this important initiative, the Agency strongly urges all parties to submit documents and other materials (except unfair labor practice charges and representation petitions) to Regional Offices through the Agency's E-Filing system on its website: <http://www.nlr.gov> (See Attachment to this letter for instructions). Of course, the Agency will continue to accept timely filed paper documents.

The case has been assigned to the below-listed Board agent. When the Board agent solicits relevant evidence from you or your counsel, I request and strongly urge you or your counsel to promptly present to the Board agent any and all evidence relevant to the investigation. It is my view that a refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily. Full and complete cooperation includes, where relevant, timely providing all material witnesses under your control to a Board agent so that witnesses' statements can be reduced to affidavit form, and providing all relevant documentary evidence requested by the Board agent. The submission of a position letter or memorandum, or the submission of affidavits not taken by a Board agent, does not constitute full and complete cooperation.

Further, please be advised that we cannot accept any limitations on the use of any evidence or position statements that are provided to the Agency. Thus any claim of confidentiality cannot be honored except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. In this regard, we are required by the Federal Records Act to keep copies of documents used in furtherance of our investigation for some period of years after a case closes. Further, we may be required by the Freedom of Information Act to disclose such records upon request, absent some applicable exemption such as those that protect confidential financial information or personal privacy interests (e.g., Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4)). Accordingly, we will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the forgoing laws, regulations and policies. Please state the case name and number on all correspondence.

Attention is called to your right, and the right of any party, to be represented by counsel or other representative in any proceeding before the National Labor Relations Board and the courts. In the event that you choose to have a representative appear on your behalf, please have your representative complete Form NLRB-4701, "Notice of Appearance," and forward it promptly to this office. If you desire to designate a representative to receive all documents mailed by this office in this matter, you are requested to complete Form NLRB-4813 "Notice of Designation of Representative as Agent for Service of Documents." Both forms should be returned to this office as soon as possible. Please note that Form NLRB-4701 may be executed by your designated representative, but that Form NLRB-4813 will not be honored unless it is signed by you as a party.

Please be advised that, under the Freedom of Information Act, unfair labor practice charges and representation petitions are subject to prompt disclosure to members of the public upon request. In this regard, you may receive a solicitation by organizations or persons who have obtained public information concerning this matter and who seek to represent you before our Agency. You may be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board; their information regarding this matter is only that which must be made available to any member of the public.

Customer service standards concerning the processing of cases have been published by the Agency and can be found on the Agency's website at [www.nlr.gov](http://www.nlr.gov) under "Public Notices."

Upon request, the Regional Office will provide assistance to persons with limited English proficiency. Requests for such assistance should be communicated to our office as early in the course of the proceeding as possible.<sup>1</sup>

Your cooperation in this matter is invited so that all facts of the case may be considered.

If you or your representative wish to communicate with the agent by E-mail, please include your E-mail address with your response to this letter. You should be aware that a Board agent may be unable to access E-mails when he/she is away from the office. Please see the enclosed instructions for communications by E-mail.

Very truly yours,

*J. Michael Lightner*

J. Michael Lightner  
Regional Director

Enclosures

Bernard Mintz  
Board Agent

(973)645-6612  
Telephone No.

Bernard.Mintz@nlrb.gov  
E-Mail

<sup>1</sup> The National Labor Relations Board will provide assistance to individuals with limited English. If you or anyone involved in this case is in need of assistance due to their limited English, please advise this Office as soon as possible.

La Junta Nacional de Relaciones de Trabajo proveerá asistencia a personas con ingles limitado. Si uno necesita asistencia debido a su ingles limitado, debe avisar a esta Oficina tan pronto posible.

**Exhibit 1(c)**  
**Affidavit of Service**

**Exhibit 1(c)**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Local 560, International Brotherhood of Teamsters

and

County Concrete Corporation

Case No. 22-CC-1522

DATE OF MAILING: .....November 16, 2010.....

**AFFIDAVIT OF SERVICE OF \_\_\_\_\_ CHARGE \_\_\_\_\_**

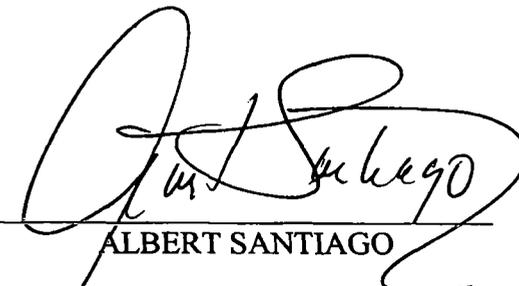
I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid mail upon the following persons, addressed to them at the following addresses:

REGULAR MAIL

Mr. Anthony Valdner  
International Brotherhood of Teamsters Local 560  
707 Summit Avenue  
Union City, NJ 07087

Mr. John H. Widman  
County Concrete Corporation  
50 Railroad Avenue  
Kenvil, NJ 07847

Susanin, Widman & Brennan, P.C.  
1285 Drummers Lane Suite 202  
Wayne, PA 19087

  
ALBERT SANTIAGO

**Exhibit 2**

**Informal Settlement Agreement, approved by Regional Director**

**on March 31, 2011**



The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue the complaint on the allegations spelled out above in the Scope of Agreement section, Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the aforementioned complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is customary to remedy such violations. The parties further agree that the U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte.

**NOTIFICATION OF COMPLIANCE** — The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charged Party has taken to comply herewith. Such notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. In the event the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in the above captioned case(s).

|  |  |   |                       |
|--|--|---|-----------------------|
| Charged Party  | Local 560, International<br>Brotherhood of Teamsters | Charging Party  | County Concrete, Inc. |
| By: Name and Title<br>/s/ Paul Montalbano,<br>Attorney | Date<br>2/28/11                                      | By Name and Title   | Date                  |
| Recommended By:<br>/s/ Bernard Mintz<br>Board Agent    | Date<br>2/28/11                                      | Approved By:<br>/s/ J Michael Lightner<br>Regional Director | Date<br>3/31/11       |



# NOTICE TO EMPLOYEES AND MEMBERS

POSTED PURSUANT TO A SETTLEMENT AGREEMENT  
APPROVED BY A REGIONAL DIRECTOR OF THE  
NATIONAL LABOR RELATIONS BOARD  
AN AGENCY OF THE UNITED STATES GOVERNMENT

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join or assist a union;
- Choose representatives to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected, concerted activities.

WE WILL NOT threaten to picket Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., Terminal Construction Co., or any other employer, where an object thereof is to force or require Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Terminal Construction Co., or any other employer, to cease doing business with County Concrete.

**INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, LOCAL 560**  
(UNION)

Dated: 4-26-11 By: Anthony M. Pardo Pres.  
(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.nlr.gov](http://www.nlr.gov) and the toll-free number (888) 667-NLRB (6672).

Veteran's Adm. Building, NLRB, 20 Washington Place, 5th Floor, Newark, NJ 07102-3115 Tel. (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.

**Exhibit 3**

**Consolidated Complaint and Notice of Hearing, issued April 26, 2012.**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**LOCAL 560, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

**and**

**Cases 22-CC-01522  
22-CC-068160  
22-CC-071865**

**COUNTY CONCRETE CORPORATION**

**ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND  
NOTICE OF HEARING**

Based upon a charge filed by County Concrete Corporation (“the Charging Party”), in Case 22-CC-01522, against Local 560, International Brotherhood of Teamsters. (“Respondent”), alleging that it violated the National Labor Relations Act, 29 U.S.C. § 151 et seq. (“the Act”), by engaging in unfair labor practices, a Settlement Agreement and Notice to Employees was approved (“the Settlement”), a copy of which is attached as Appendix A, and pursuant to which Respondent agreed to take certain actions to remedy the unfair labor practices alleged in the Complaint. Respondent has failed to comply with the terms of the Settlement. On November 3, 2011, the Charging Party filed a charge in 22-CC-068160, and on January 4, 2012, the Charging Party filed a charge in Case 22-CC-071865, alleging that Respondent engaged in additional unfair labor practices in violation of the Act. Accordingly, pursuant to the terms of the Settlement, Section 10(b) of the Act, and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (“the Board”), this Complaint is issued.

Pursuant to Section 102.33 of the Board’s Rules and Regulations, and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 22-CC-01522, Case 22-CC-

068160, and Case 22-CC-071865 are hereby consolidated. This Consolidated Complaint and Notice of Hearing, issued pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, is based on these consolidated cases and alleges that Respondent has violated the Act by engaging in the following unfair labor practices:

1. (a) The charge in Case 22-CC-01522 was filed by the Charging Party November 12, 2010, and a copy was served upon Respondent by regular mail on November 16, 2010.

(b) The charge in Case 22-CC-068160 was filed by the Charging Party on November 3, 2011, and a copy was served upon respondent by regular mail on November 4, 2011.

(c) The charge in Case 22-CC-071865 was filed by the Charging Party on January 4, 2012, and a copy was served upon respondent by regular mail on January 5, 2012.

(d) The first amended charge in Case 22-CC-071865 was filed by the Charging Party on February 13, 2012, and a copy was served upon respondent by regular mail on February 21, 2012.

2. At all material times, The Charging Party Concrete Corporation, a corporation with an office and place of business in Kenvil, New Jersey, herein called the Charging Party's Kenvil facility, and various other facilities in the State of New Jersey, has been engaged in the supplying of ready-mix concrete and related construction materials to various employers in the State of New Jersey.

3. During the preceding twelve months, the Charging Party, in conducting its business operations described above in paragraph 2, purchased and received at its various

New Jersey facilities, goods valued in excess of \$50,000 directly from points outside the State of New Jersey.

4. At all material times herein, the Charging Party has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5. At all material times Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

6. At all material times, the following individuals have held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act.

Anthony Valdner – President  
Joseph DiLeo – Business Agent

7. (a) At all material times, Respondent has been engaged in a labor dispute with the Charging Party.

(b) At no material time has Respondent been engaged in a labor dispute with Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., Terminal Construction Co., Macedos Construction, LLC or Sharp Concrete Corporation.

8. About May 24, 2010 and May 27, 2010, Respondent, in support of its dispute with the Charging Party described above in paragraph 7(a), by Joseph DiLeo, threatened Torcon Construction Co. with picketing of its jobsite.

9. About July 15, 2010 and July 22, 2010, Respondent, in support of its dispute with the Charging Party described above in paragraph 7(a), by Joseph DiLeo, threatened Century 21 Construction Co. with picketing of its jobsite.

10. About September, 2010, Respondent, in support of its dispute with the the Charging Party described above in paragraph 7(a), by Anthony Valdner, threatened J Fletcher Creamer and Sons, Inc. with picketing of its jobsite.

11. About July, 2010, Respondent, in support of its dispute with the Charging Party described above in paragraph 7(a), by Joseph DiLeo, threatened Terminal Construction Co. with picketing of its jobsite.

12. About November 1, 2011, Respondent, in support of its dispute with the Charging Party described above in paragraph 7(a), by Anthony Valdner, threatened Sharp Concrete Corporation with picketing of its jobsite.

13. About December 30, 2011 and January 1, 2012, Respondent, in support of its dispute with the Charging Party described above in paragraph 7(a), by Joseph DiLeo, threatened Macedos Construction, LLC with picketing of its jobsite.

14. By the conduct described above in paragraphs 8 through 13, Respondent has threatened, coerced or restrained Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., Terminal Construction Co., Sharp Construction Corporation, Macedos Construction, LLC and other persons engaged in commerce or in industries affecting commerce.

15. An object of Respondent's conduct described above in paragraphs 8 through 14 has been to force or require Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., Terminal Construction Co., Sharp Construction Corporation, Macedos Construction, LLC and other persons to cease handling or otherwise dealing in the products of, and to cease doing business with The Charging Party.

16. By the conduct described above in paragraphs 8 through 16, Respondent has been violating Section 8(b)(4)(ii)(B) of the Act.

17. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that on the 13th day of June, 2012 at 9:30 a.m., and on consecutive days thereafter until concluded, a hearing will be conducted in the Veterans Administration Building, 20 Washington Place, 5<sup>th</sup> Floor, Newark, New Jersey 07102 before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

### **ANSWER REQUIREMENT**

Respondents are notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, they must file an answer to the complaint. The answer must be **received by this office on or before May 10, 2012, or postmarked on or before May 9, 2012.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

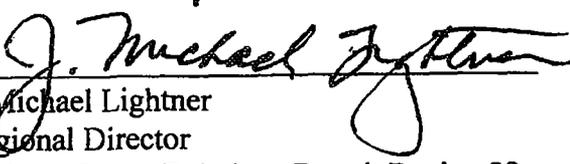
An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at

<http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the “File Documents” button under “Regional, Subregional and Resident Offices” and then follow the directions. Unless notification on the Agency’s website informs users that the Agency’s E-filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Standard Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency’s website was off-line or unavailable for some other reason. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. A failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency’s website was off-line or unavailable for some other reason. The Board’s Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.21. If an answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer needs to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must still be accomplished by means allowed under the Board’s Rules and Regulations. The answer may not be filed by

facsimile transmission. If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

Dated at Newark, New Jersey, this 26<sup>th</sup> day of April, 2012

  
\_\_\_\_\_  
J. Michael Lightner  
Regional Director  
National Labor Relations Board, Region 22  
20 Washington Place, 5<sup>th</sup> Floor  
Newark, New Jersey 07102

Attachment

**Exhibit 4**

**Affidavit of Service for the April 26, 2012 Consolidated Complaint  
and Notice of Hearing**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**LOCAL 560, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

**Cases 22-CC-001522  
22-CC-068160  
22-CC-071865**

**And**

**COUNTY CONCRETE CORPORATION**

**AFFIDAVIT OF SERVICE OF: Order Consolidating Cases, Consolidated Complaint  
and Notice of Hearing dated April 26, 2012.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **April 26, 2012**, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

**CERTIFIED MAIL**

**REGULAR MAIL**

**PAUL MONTALBANO, ESQ.  
COHEN, LEDER, MONTELBANO &  
GROSSMAN, LLC  
1700 GALLOPING HILL ROAD  
KENILWORTH, NJ 07033**

**ANTHONY VALDNER  
TEAMSTERS LOCAL 560 BENEFIT FUND  
707 SUMMIT AVE  
5TH FLOOR  
UNION CITY, NJ 07087-3463**

**JOHN WIDMAN, ESQ.  
SUSANIN, WIDMAN & BRENNAN, P.C.  
1285 DRUMMERS LN  
STE 202  
WAYNE, PA 19087-1572**

**JOHN WIDMAN, ESQ.  
COUNTY CONCRETE CORPORATION  
50 RAILROAD AVE  
KENVIL, NJ 07847-2606**

**NOVARTIS CONCRETE CORPORATION  
1 S RIDGEDALE AVE  
EAST HANVOVER, NJ 07936-342**

April 26, 2012

Date

Enter NAME, Designated Agent of NLRB

Name

Signature

**Exhibit 5**

**Answer**

**Exhibit 5**

COHEN, LEDER, MONTALBANO & GROSSMAN, LLC  
1700 Galloping Hill Road  
Kenilworth, New Jersey 07033  
908-298-8800  
Attorneys for Charged Party

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

LOCAL 560, INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS,  
  
and  
  
COUNTY CONCRETE CORPORATION

Cases: 22-CC-01522  
22-CC-068160  
22-CC-071865

**CHARGED PARTY'S  
ANSWER TO CONSOLIDATED COMPLAINT**

Respondent, Local 560, International Brotherhood of Teamsters, by way of Answer to the Complaint, does hereby state:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Denied.
8. Denied.
9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

**AFFIRMATIVE DEFENSES**

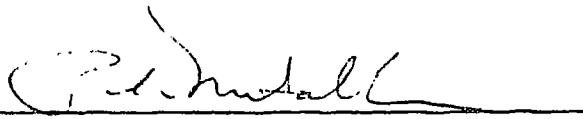
1. The unfair labor practice charge fails to properly state the alleged actions of Local 560 that violated the National Labor Relations Act, and accordingly, the Complaint should be dismissed in its entirety.

2. At all times, Local 560 acted in accordance with the requirements of the National Labor Relations Act, and accordingly, the Complaint should be dismissed in its entirety.

**WHEREFORE**, the Complaint against Charged Party should be dismissed.

COHEN, LEDER, MONTALBANO & GROSSMAN, LLC  
Attorneys for Charged Party

Dated: May 1<sup>st</sup>, 2012  
371  
212

By: 

PAUL A. MONTALBANO

COHEN, LEDER, MONTALBANO & GROSSMAN, LLC  
1700 Galloping Hill Road  
Kenilworth, New Jersey 07033  
908-298-8800  
Attorneys for Charged Party

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22

LOCAL 560, INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS,  
  
and  
  
COUNTY CONCRETE CORPORATION

Cases: 22-CC-01522  
22-CC-068160  
22-CC-071865

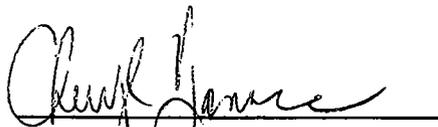
**CERTIFICATION OF SERVICE**

I, CHERYL YANNACONE, hereby certify as follows:

1. I am a secretary with the law firm of Cohen, Leder, Montalbano & Grossman, L.L.C.
2. On May 11, 2012, I caused to be served by UPS overnight delivery, a copy of Respondent's Answer to the Order Consolidating Cases, Consolidating Complaint and Notice of Hearing upon: **County Concrete Corp., 50 Railroad Avenue, Kenvil, N.J. 07847 (Charging Party)** and upon **Novartis Concrete Corporation, 1 S. Ridgedale Avenue, East Hanover, N.J. 07936.**

I certify that the foregoing statements made by me are true to the best of my knowledge and belief. If any of the foregoing statement made by me are wilfully false, I am subject to punishment.

Date: May 11, 2012

  
CHERYLYANNACONE

**Exhibit 6**

**Administrative Law Judge's decision in cases 22-CA-061680**

**and 22-CA-071865**

Westlaw

Page 1

2013 WL 601950 (N.L.R.B. Div. of Judges)

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  
JD(NY)-06-13  
Kenvil, NJ

February 15, 2013

Laura Elrashedy, Esq., Newark, New Jersey, for the  
Acting General Counsel

Paul A. Montalbano, Esq. (Cohen, Leder, Montal-  
bano & 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

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 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

1. The Parties' Operations and the Relevant Projects  
County Concrete Corp. manufactures and sells ready-mix concrete, crushed sand, and 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.

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 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.

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. 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 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**.

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 Trans-

portation 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 redimix 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 en-

gaged in any conduct that was in violation of the National Labor Relations Act. You as a company executive understand that it is often a wiser and more prudent course to settle legal claim[s] rather than pursue costly and time consuming litigation.

The settlement does not in any manner limit **Local 560** from engaging in an energetic campaign focused against County Concrete which will have the object to protect the area standards of wages and economic benefits earned by area redi-mix drivers. This campaign has several different facets, one of which includes area standards picketing.

So that there can be no claim of confusion or assertion of misunderstanding of any future conversations with **Local 560** Business Agents, **Local 560** advises that all "threats to picket" are made with, and actual picketing, will be conducted in accordance with, Moore Dry Dock Standards for Picketing at a Secondary Site, as indicated below:

1. Picketing will clearly disclose that the dispute is with County Concrete Corp. for its failure to pay Area Standards.
2. Picketing will be conducted at times County Concrete is "engaged in its normal business" at the Secondary Site.
3. Picketing will be conducted at times County Concrete is "located" or "present" on the Secondary employer's site.
4. Picketing will be limited to places reasonably close to the sites of the dispute, with due regard to reserve gates and property access.

**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 when making deliveries in **Local 560** geographic territory.

**Local 560** does not seek to enmesh your company in its dispute with County Concrete. Whichever redi-mix company you decide to utilize, we recommend prudence be taken to determine what rates of pay and benefits the

Company pays its drivers.

If you have any questions in regard to the meaning of the Moore Dry Dock Standards, you should contact the National Labor Relations Board or your own counsel. Because of previous claims of improper statements being made by **Local 560** Business Representatives, **Local 560** Business Representatives are under instruction that they shall not add to, supplement, or explain this letter to any contractor, and you are specifically advised that any such statements are not operative or authorized such that they may not be claimed to be made against **Local 560's** interests.

Respectfully,

Anthony Valdner

President

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. [FN1]

### 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. Repres-

entatives 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.

Domingues: They are no good.

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.

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. [FN2]

Domingues: Okay.

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

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.

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

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.

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

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.

Valdner: Bye-bye.

Domingues: Thanks. [FN3]

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

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.

#### 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 2001, 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.

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. [FN4] 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 are 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 **Local 560** could engage in informational picketing. At this meeting, Valdner also provided Parmentola with another copy of his April 26, 2011 letter.

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.

Vieira then asked DiLeo why **Local 560** was picketing 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. [FN5]

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.

**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.

### III. Analysis and Conclusions

A. General Principles and the Positions of the Parties  
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 wellsettled 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).<sup>[FN6]</sup> *Electrical Workers Local 98 (MCF Services)*, 342 NLRB 740, 749 (2004), *enfd* 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).

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 suffi-

cient 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. <sup>[FN7]</sup>

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 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 unlaw-

ful 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 (6<sup>th</sup> 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 of 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 relev-

ant 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. [FN8] *See Holly Farms Corp.*, 311 NLRB 273, 274-275 (1993), *enfd.*, 48 F.3d 1360 (4<sup>th</sup> 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 re-

spect to DiLeo's statements to Vieira in late December 2011 regarding Macedos Construction's activities at the Novartis jobsite. I credit Vieira's unrebutted 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 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.

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).

3. Valdner and DiLeo's statements were unqualified

threats to picket in violation of Section 8(b)(4)(ii)(B). 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. 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.

For all of the foregoing reasons, I find that Re-

spondent 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

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.
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.
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.
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

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.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, I issue the following recommended [FN9]

## ORDER

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

## 1. Cease and desist from

(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.

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

(a) Within 14 days after service by the Region, post at its office copies of the attached notice marked "Appendix." [FN10] 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

[FN1]. 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).

[FN2]. These companies all have contractual relationships with the Union.

[FN3]. 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.

[FN4]. Several of these names are spelled phonetically.

[FN5]. DiLeo did not testify at the hearing.

[FN6]. 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.

[FN7]. 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.

[FN8]. 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.”

[FN9]. 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.

[FN10]. 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

**\*1** 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.nlr.gov](http://www.nlr.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, DE-FACED, 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.

2013 WL 601950 (N.L.R.B. Div. of Judges)

END OF DOCUMENT

**MEMORANDUM OF LAW IN SUPPORT OF THE ACTING GENERAL COUNSEL'S  
MOTION TO STRIKE PORTIONS OF RESPONDENT'S ANSWER,  
FOR SUMMARY DEFAULT JUDGMENT  
AND FOR THE ISSUANCE OF A BOARD DECISION AND ORDER**

*Local 560, International Brotherhood of Teamsters  
Case 22-CC-01522*

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**  
**REGION 22**

**LOCAL 560, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

**and**

**Case 22-CC-01522**

**COUNTY CONCRETE CORPORATION**

**MEMORANDUM OF LAW IN SUPPORT OF THE ACTING GENERAL  
COUNSEL'S MOTION TO STRIKE PORTIONS OF RESPONDENT'S ANSWER,  
FOR SUMMARY DEFAULT JUDGMENT  
AND FOR THE ISSUANCE OF A BOARD DECISION AND ORDER**

Counsel for the Acting General Counsel respectfully submits this Memorandum of Law in support of its Motion to National Labor Relations Board, herein "the "Board" to: (1) strike paragraphs 7 through 11 and 14 through 17 from Respondent's May 11, 2012 Answer, herein "the Answer"<sup>1</sup>; (2) deem the allegations set forth in paragraphs 7 through 11 and 14 through 17 of the Consolidated Complaint, herein "the Complaint," issued April 26, 2012, as admitted to be true without taking evidence supporting the allegations<sup>2</sup>; and (3) grant Summary Default Judgment for the Acting General Counsel and issue a Decision and Order.

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<sup>1</sup> As the instant matter is based on Respondent's default of the Settlement Agreement entered into in case 22-CC-01522, Counsel for the Acting General Counsel moves to strike only those portions of Respondent's Answer relating to Torcon Construction Co., Century 21 Construction Co., J. Fletcher Creamer and Sons, Inc., and Terminal Construction Co.

<sup>2</sup> With the exception of those portions of the Complaint allegations pertaining to Sharp Concrete Corporation and Macedos Construction, LLC.

## STATEMENT OF THE CASE

### A. Charge and Settlement in Case 22-CC-01522

This case arises out of charge 22-CC-01522 filed by County Concrete Corporation (herein “the Charging Party”) alleging that Local 560, International Brotherhood of Teamsters (herein “Respondent”) violated Section 8(b)(4)(ii)(B) of the Act. After being advised of the Regional merit determination as to the allegations in Charge 22-CC-01522, Respondent entered into a Settlement Agreement (herein “the Agreement”) (Exhibit A). Pursuant to the Agreement, approved by the Regional Director on March 31, 2011, Respondent agreed, *inter alia*, to post a Notice to Employees and to refrain from threatening to picket any employer where the object thereof is to force the employer to cease doing business with the Charging Party. The Agreement’s “Performance” or “Default” provision also provided that in the event of noncompliance with the terms of the Agreement, Respondent would be given 14 days notice to cure its default, and if it failed to do so, Complaint would issue and all the Complaint allegations relating to Charge 22-CC-01522 would be deemed admitted. In this regard, the “Performance” provision specified that Respondent waived its right to file an Answer responding to the Complaint; that the General Counsel would move for summary judgment; and that Respondent agreed that the “only issue that may be raised before the Board is whether the Charged Party [Respondent] defaulted upon the terms of this Settlement Agreement.” *Id.*

B. Respondent Breached the Agreement's Performance Provision.

On November 3, 2011 the Charging Party filed charge 22-CC-068160, and on January 4, 2012 filed charge 22-CC-071865<sup>3</sup> - each charge alleging that Respondent engaged in additional unfair labor practices in violation of Section 8(b)(4)(ii)(B). (Exhibits B and C respectively). Finding merit to these allegations, the Regional Director notified Respondent on April 10, 2011 that it was in breach of the Agreement's Performance ("Default") Provision. Respondent was afforded an opportunity to cure the default and resolve the underlying dispute. However, Respondent failed to do so.<sup>4</sup>

C. The Complaint and Answer

On April 26, 2012, the Regional Director issued an Order Consolidating Cases 22-CC-01522, 22-CC-068160 and 22-CC-071865 and Consolidated Complaint and Notice of Hearing. (Exhibit D). Pursuant to the Agreement, the allegations relevant to Consolidated Complaint paragraphs 7 through 11 and 14 through 17, as they relate to case 22-CC-01522, are deemed to be admitted by Respondent.

On May 11, 2012, despite having waived its right to contest the validity of these allegations, Respondent filed an Answer in which it denies Complaint allegation 7 through 17. (Exhibit E).

An unfair labor practice hearing was held on June 13, 2012 and on February 15, 2013, Administrative Law Judge Lauren Esposito (the "ALJ") issued a decision wherein

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<sup>3</sup> The Charging Party amended charge 22-CC-07185 on February 13, 2012.

<sup>4</sup> While Respondent signed an informal settlement agreement concerning Cases 22-CC-068151 and 22-CC-071865, this agreement was not approved by the Regional Director in light of the relationship of those charge allegations to the allegations in Case 22-CC-01522. Any assertion by Respondent that it believed Cases 22-CC-068151 and 22-CC-071865 to be resolved is belied by Respondent's Answer to the Complaint and by the Complaint itself, both of which clearly include references to Cases 22-CC-068151 and 22-CC-071865.

she granted the Acting General Counsel a Motion to Transfer case 22-CA-01522 to the Board for Further Proceedings.<sup>5</sup>

For the foregoing reasons, Counsel for the Acting General Counsel respectfully requests that Respondent's Answer, paragraphs 7 through 17 be stricken to the extent that they relate to case 22-CC-01522, and that Counsel for the Acting General Counsel's Motion for Summary Default Judgment be granted.

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<sup>5</sup> In that same decision the ALJ found that Respondent violated Section 8(b)(4)(ii)(B) of the Act by threatening Sharp Concrete Corp. and Macedos Construction, LLC with picketing with the object of forcing both companies to cease doing business with the Charging Party. (Exhibit F).

## ARGUMENT

A. Counsel for the Acting General Counsel Respectfully Requests that the Board Grant its Motion for Summary Default Judgment based on Respondent's Failure to Comply with the Terms of the Agreement.

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As already stated, Respondent entered into an Agreement wherein it agreed that, in the event of non-compliance with the terms of the Agreement, and failure to cure, the Regional Director may issue a complaint on the allegations found to have merit in the underlying investigation and move for summary judgment on that complaint. (See Exhibit A). Respondent further agreed that the complaint allegations will be deemed admitted, that it waived its right to file an Answer, and that “the only issue that may be raised . . . is whether the Charged Party/Respondent defaulted on the terms of the Settlement Agreement.” (Id.) On April 10, 2012, Respondent was informed that charges 22-CC-068160 and 22-CC-071865, alleging additional violations pursuant to Section 8(b)(4)(ii)(B) of the Act, were found to be meritorious and that as such, Respondent failed to comply with the terms of the Agreement. Respondent was further advised that failing to cure the default within 14 days would result in the Region issuing a consolidated complaint and notice of hearing. Respondent failed to cure its default. Accordingly, pursuant to the terms of the non-compliance provision of the Agreement, the Regional Director for Region 22 issued an Order Consolidating Cases 22-CC-01522, 22-CC-068160 and 22-CC-071865, Consolidated Complaint and Notice of Hearing.

B. Respondent Waived its Right to File an Answer Thus  
Its Response to Complaint Paragraphs 7 through 11 and 14 through 17<sup>6</sup>  
are Improper and Must be Struck from its Answer.

It is uncontested that Respondent entered into an Agreement containing a Default Provision wherein it waived its right to file an Answer as to all of the allegations in the underlying meritorious case. Thus, by breaching the terms of the Agreement, vis a vis cases 22-CC-068160 and 22-CC-071865, and failing to cure its unlawful acts, Respondent is barred from filing an Answer wherein it “contest[s] the validity” of allegations arising out of Case 22-CA-01522.

The Board has consistently held provisions such as the Default Provision here to be enforceable, and has found summary judgment to be appropriate in cases where respondents have defaulted on settlement agreements containing nearly-identical language to the Default Provision here. *See, e.g., Testa Constructions Company, Inc.*, 356 NLRB No. 31 (2010) (Respondent found to be noncompliant with the provisions of a settlement agreement and as such, the allegations in the reissued complaint were found to be true); *Benchmark Mechanical, Inc.*, 348 NLRB 576 (2006) (finding the allegations of the consolidated complaint to be true pursuant to the default provisions of a settlement agreement.); *U-Bee, Ltd.*, 315 NLRB No. 92 (1994) (where the Board found Respondent’s “answer to be withdrawn by the terms of the settlement stipulation”, and that, as further provided in the settlement stipulation, “all the allegations of the complaint to be true”).

In light of the undisputed facts set forth above, Respondent has defaulted on its

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<sup>6</sup> Except as to Macedos and Sharp.

obligations and duties specified in the Agreement. Accordingly, the allegations of Complaint paragraphs 7 through 11 and 14 through 17, insofar as they relate to 22-CC-01522, should be “deemed to be true by the Board,” and Respondent’s response to these Complaint paragraphs must be stricken from Respondent’s Answer.

C. The Acting General Counsel’s Summary Default Judgment Motion Must Be Granted As No Genuine Issue of Material Fact Exists.

Summary judgment is appropriate when an answer fails to raise a genuine issue of material fact warranting a hearing. *Nick and Bob Partners*, 345 NLRB 1092 (2005) (granting summary judgment for General Counsel); *APS Events, LLC*, 355 NLRB No. 152 (2010); *Tuv Taam Corp.*, 340 NLRB 756 (2003) (summary judgment for General Counsel granted where Respondent “did not deny that it has defaulted on the settlement agreement.”) Here, Respondent’s Answer does not alter a finding by the Board that no genuine issue of material fact exists. First, although already stated it bears repeating, Respondent entered into an Agreement wherein it waived its right to file an Answer concerning the allegations in case 22-CC-01522. Secondly, although Respondent asserts formal denials to the paragraphs of the Complaint which allege the basis for its breach, nowhere in its Answer or affirmative defenses does Respondent make any claim to have actually complied with the Agreement. Instead, the record is clear that Respondent has failed to satisfy its obligations under the Agreement. Indeed, the ALJ has found that Respondent violated Section 8(b)(4)(ii)(B) by unlawfully threatening Sharp and Macedos. This is the same conduct which Respondent agreed to refrain from in the Agreement. Moreover, Respondent’s asserted affirmative defenses fail to provide any legitimate defense requiring a hearing before a finder of fact that would render summary

judgment improper. Accordingly, summary default judgment should be granted for General Counsel.

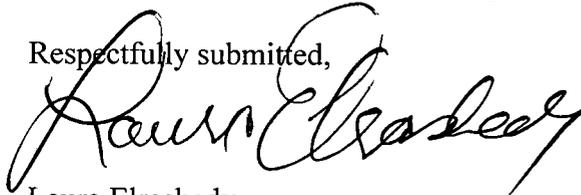
D. General Counsel Seeks a Full Customary Remedy

The Agreement calls for a full and complete remedy for all violations of the Act in the event of Respondent's default. (Exhibit A) As it is clear from the record that Respondent has indeed defaulted on the terms of the Agreement, General Counsel seeks an Order providing a full remedy for the violations found as is customary to remedy such violations.

**CONCLUSION**

Based on the foregoing, Counsel for the Acting General Counsel respectfully requests that the Board strike paragraphs 7 through 17 of the Answer, insofar as they relate to case 22-CC-01522, deem the allegations set forth in paragraphs 7 through 11 and 14 through 17<sup>7</sup> of the Complaint as admitted to be true without taking evidence supporting the allegations in the Complaint; and that it grant Default Summary Judgment for the Acting General Counsel and issue a Decision and Order on the Complaint.

Respectfully submitted,



Laura Elrashedy,  
Counsel for the Acting General Counsel  
National Labor Relations Board, Region 22  
20 Washington Place, Fifth Floor  
Newark, NJ 07102

Dated: April 11, 2013

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<sup>7</sup> Except as to Macedos and Sharp.

## INDEX OF EXHIBITS

- Exhibit A: Informal Settlement Agreement, approved by Regional director on March 31, 2011
- Exhibit B: Charge in case 22-CA-061680
- Exhibit C: Charge in case 22-CA-071865 (Original and Amended)
- Exhibit D: Consolidated Complaint and Notice of Hearing, issued April 26, 2012.
- Exhibit E: Answer
- Exhibit F: Administrative Law Judge Lauren Esposito's Decision, dated February 15, 2013

**Exhibit A**

**Informal Settlement Agreement, approved by Regional director on March 31, 2011**

**EXHIBIT A**

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**SETTLEMENT AGREEMENT**

**IN THE MATTER OF Local 560, International Brotherhood of Teamsters Case 22-CC-1522**

The undersigned Charged Party and the undersigned Charging Party, in settlement of the above matter, and subject to the approval of the Regional Director for the National Labor Relations Board, HEREBY AGREE AS FOLLOWS:

**POSTING OF NOTICE** — Upon approval of this Agreement and receipt of the Notices from the Region, which may include Notices in more than one language as deemed appropriate by the Regional Director, the Charged Party will post immediately in conspicuous places in and about its plant/office, including all places where notices to employees/members are customarily posted, and maintain for 60 consecutive days from the date of posting, copies of the attached Notice (and versions in other languages as deemed appropriate by the Regional Director) made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to be shown thereon. In the event this Agreement is in settlement of a charge against a union, the union will submit forthwith signed copies of said Notice to the Regional Director who will forward them to the employer whose employees are involved herein, for posting, the employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for 60 consecutive days from the date of posting. Further, in the event that the charged union maintains such bulletin boards at the facility of the employer where the alleged unfair labor practices occurred, the union shall also post Notices on each such bulletin board during the posting period.

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, or other electronic means, if the Charged Party customarily communicates with its employees or members by such means. The electronic posting shall remain posted for 60 consecutive days from the date it was originally posted. The Charged Party will e-mail the Region's Compliance Officer at [collette.sarro@nlrb.gov](mailto:collette.sarro@nlrb.gov) with a link to the electronic posting location on the same day as the posting. In the event that passwords or other log-on information is required to access the electronic posting, the Charged Party agrees to provide such access information to the Region's Compliance Officer. If the Notice is distributed via e-mail, the charged party will forward a copy of the e-mail distributed to the Regional Compliance Officer.

**COMPLIANCE WITH NOTICE** — The Charged Party will comply with all the terms and provisions of said Notice.

**SCOPE OF THE AGREEMENT** — This Agreement settles only the following allegations in the above-captioned case(s), and does not constitute a settlement of any other case(s) or matters: 8(b)(4)(i)(ii)(B) allegations of secondary threats and picketing directed at neutral employers with an object of having those employers cease doing business with County Concrete, Inc.

It does not preclude persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters which precede the date of the approval of this Agreement regardless of whether such matters are known to the General Counsel or are readily discoverable. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

**NON-ADMISSIONS**---By executing this Agreement the Charged Party does not admit that it has violated any provision of the National Labor Relations Act, as amended. Charged Party's agreement to the Performance procedures, which includes a provision that in the event of a proven default of this Settlement Agreement the allegations in the Complaint will be deemed admitted, and the matter will proceed through uncontested summary judgment, entry of Board Order, and Court Judgment, this being without testimony having been taken, shall be recognized as equivalent to a plea of *nolo contendere*, and shall not negate the terms of the Non-Admissions provision.

**REFUSAL TO ISSUE COMPLAINT** — In the event the Charging Party fails or refuses to become a party to this Agreement, and if in the Regional Director's discretion it will effectuate the policies of the National Labor Relations Act, the Regional Director shall decline to issue a Complaint herein (or a new Complaint if one has been withdrawn pursuant to the terms of this Agreement), and this Agreement shall be between the Charged Party and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within 14 days thereof. This Agreement shall be null and void if the General Counsel does not sustain the Regional Director's action in the event of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in the above captioned case(s), as well as any answer(s) filed in response.

**AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY.** Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes /s/ PM No \_\_\_\_\_  
Initials Initials

**PERFORMANCE** — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue the complaint on the allegations spelled out above in the Scope of Agreement section, Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the aforementioned complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is customary to remedy such violations. The parties further agree that the U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte.

**NOTIFICATION OF COMPLIANCE** — The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charged Party has taken to comply herewith. Such notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. In the event the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in the above captioned case(s).

|  |  |   |                       |
|--|--|---|-----------------------|
| Charged Party  | Local 560, International<br>Brotherhood of Teamsters | Charging Party  | County Concrete, Inc. |
| By: Name and Title<br>/s/ Paul Montalbano,<br>Attorney | Date<br>2/28/11                                      | By Name and Title   | Date                  |
| Recommended By:<br>/s/ Bernard Mintz<br>Board Agent    | Date<br>2/28/11                                      | Approved By:<br>/s/ J Michael Lightner<br>Regional Director | Date<br>3/31/11       |



# NOTICE TO EMPLOYEES AND MEMBERS

POSTED PURSUANT TO A SETTLEMENT AGREEMENT  
APPROVED BY A REGIONAL DIRECTOR OF THE  
NATIONAL LABOR RELATIONS BOARD  
AN AGENCY OF THE UNITED STATES GOVERNMENT

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join or assist a union;
- Choose representatives to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected, concerted activities.

WE WILL NOT threaten to picket Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., Terminal Construction Co., or any other employer, where an object thereof is to force or require Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Terminal Construction Co., or any other employer, to cease doing business with County Concrete.

**INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, LOCAL 560**  
(UNION)

Dated: 4-26-11 By: Anthony M. Adolph Pres.  
(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.nlr.gov](http://www.nlr.gov) and the toll-free number (888) 687-NLRB (6872).

Veteran's Adm. Building, NLRB, 20 Washington Place, 5th Floor, Newark, NJ 07102-3115 Tel. (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.

**Exhibit B: Charge in case 22-CA-061680**

**Exhibit B**

FORM NLRB-508 (2-98)

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

DO NOT WRITE IN THIS SPACE Case 22-CC-068160 Date filed 11/3/2011

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name Local 560, International Brotherhood of Teamsters b. Union Representative to contact Anthony Valdner, President

c. Address (Street, city, state, and ZIP code) 707 Summit Avenue, Union City, New Jersey 07087 d. Tel. No. 201-864-0051 e. Cell No. f. Fax No. g. e-Mail

h. The labor organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection (i) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) See Attached

3. Name of Employer County Concrete Corporation 4a. Tel. No. 973-584-7122 b. Cell No. c. Fax No. 973-584-4370 d. e-Mail

5. Location of plant involved (street, city, state and ZIP code) 50 Railroad Avenue, Kenil, New Jersey 07847 6. Employer representative to contact John H. Widman

7. Type of establishment (factory, mine, wholesaler, etc.) Ready-Mix Concrete Supplier 8. Identify principal product or service Ready-Mix Concrete 9. Number of workers employed Approximately 150

10. Full name of party filing charge County Concrete Corporation 11a. Tel. No. 973-584-7122 b. Cell No. c. Fax No. 973-584-4370 d. e-Mail

11. Address of party filing charge (street, city, state and ZIP code) 50 Railroad Avenue, Kenil, New Jersey 07847

12. DECLARATION I declare that the facts set forth above are true to the best of my knowledge and belief. By John H. Widman (signature of representative of person making charge) (Printtype name and title or office, if any) Susanin, Widman & Brennan, P.C. Address 1285 Drummers Lane, Suite 202, Wayne, PA 19087 (date) 11/02/11 Tel. No. 610-710-4510 Cell No. 610-303-8555 Fax No. 610-710-4520 e-Mail jhwidman@swbcounselors.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Oct. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

8(b)(4)(i)(B): On or about November 1, 2011 and continuing until the present, Local 560, IBT, acting by and through its officers, agents, employees, members and representatives, has induced or encouraged individuals who are or will be employed by contractors now or will be performing work at St. Peter's College and other persons engaged in interstate commerce or in an industry affecting commerce to engage in a strike or refusal in the course of employment to use manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, all with the object of forcing or requiring Sharp Concrete Corporation, Torcon, Inc., and other persons to cease doing business with County Concrete Corporation.

8(b)(4)(ii)(B): On November 1, 2011, Local 560, IBT, acting by and through its officers, agents, employees, members, and representatives, has threatened, coerced and restrained Sharp Concrete Corporation and other persons engaged in interstate commerce all with the object of forcing or requiring Sharp Concrete Corporation, Torcon, Inc., and other persons to cease doing business with County Concrete Corporation. .

The allegations set forth above are part of Local 560's continuing area-wide pattern and practice of forcing neutral contractors and other persons engaged in interstate commerce to cease doing business with County Concrete Corporation.

**Exhibit C:**

**Original and Amended Charges in case 22-CA-071865**

**Exhibit C**

INTERNET  
FORM NLRB-503  
(2-08)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST LABOR ORGANIZATION  
OR ITS AGENTS

FORM EXEMPT UNDER 44 U.S.C. 3512

| DO NOT WRITE IN THIS SPACE |                        |
|----------------------------|------------------------|
| Case<br>22-CC-071865       | Date Filed<br>1/4/2012 |

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring

| 1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT  |  |   |             |
|--|--|---|-------------|
| a. Name<br>Local 560, International Brotherhood of Teamsters   |  | b. Union Representative to contact<br>Anthony Valdner, President  |             |
| c. Address (Street, city, state, and ZIP code)<br>707 Summit Avenue<br>Union City, New Jersey 07087  |  | d. Tel. No.<br>201-864-0051   | e. Cell No. |
|  |  | f. Fax No.  | g. e-Mail   |
| h. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections) <u>(4)(i)(B)</u> of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.   |  |   |             |
| 2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)<br>On December 30, 2011, Local 560, IBT, acting by and through its officers, agents, employees, members, and representatives, has threatened, coerced and restrained Macedos Construction, LLC and other persons engaged in interstate commerce all with the object of forcing or requiring Macedos Construction, LLC, Turner Construction Company, Novartis Corporation, and other persons to cease doing business with County Concrete Corporation.<br><br>The allegations set forth above are part of Local 560's continuing area-wide pattern and practice of forcing neutral contractors and other persons engaged in interstate commerce to cease doing business with County Concrete Corporation as set forth in County's prior NLRB Charges 22-CC-068160 (currently pending appeal to the General Counsel); 22-CC-1521; 22-CC-1522; and 22-CB-11234. |  |   |             |
| 3. Name of Employer<br>County Concrete Corporation   |  | 4a. Tel. No.<br>973-584-7122  | b. Cell No. |
|  |  | c. Fax No.<br>973-584-4370  | d. e-Mail   |
| 5. Location of plant involved (street, city, state and ZIP code)<br>Novartis Corporation<br>1 South Ridgedale Avenue, East Hanover, New Jersey 07936   |  | 6. Employer representative to contact<br>John H. Widman   |             |
| 7. Type of establishment (factory, mine, wholesaler, etc.)<br>Ready-Mix Concrete Supplier  | 8. Identify principal product or service<br>Ready-Mix Concrete | 9. Number of workers employed<br>Approximately 150  |             |
| 10. Full name of party filing charge<br>County Concrete Corporation  |  | 11a. Tel. No.<br>973-584-7122   | b. Cell No. |
|  |  | c. Fax No.<br>973-584-4370  | d. e-Mail   |
| 11. Address of party filing charge (street, city, state and ZIP code.)<br>50 Railroad Avenue, Kenil, New Jersey 07847  |  |   |             |
| 12. DECLARATION<br>I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.<br>By <u>John H. Widman</u> John H. Widman<br>(signature of representative or person making charge) (Print/type name and title or office, if any)<br><br>Susanin, Widman & Brennan, P.C.<br>Address <u>1285 Drummers Lane, Suite 202, Wayne, PA 19087</u> (date) <u>01/04/12</u>   |  | Tel. No.<br>610-710-4510<br>Cell No.<br>610-308-8555<br>Fax No.<br>610-710-4520<br>e-Mail<br>jhwidman@swbcounselors.com |             |

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 7494-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Amended 22-CC-071865

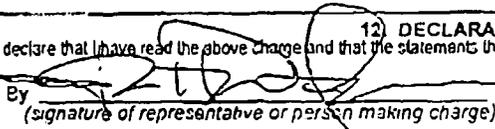
ET 3-56

FORM EXEMPT UNDER 44 U.S.C. 3512

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST LABOR ORGANIZATION  
OR ITS AGENTS

| DO NOT WRITE IN THIS SPACE |                             |
|----------------------------|-----------------------------|
| Case <b>22-CC-071865</b>   | Date Filed <b>2/13/2012</b> |

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

|   |   |  |                    |
|---|---|--|--------------------|
| <b>1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT</b>  |   |  |                    |
| <b>a. Name</b><br>Local 560, International Brotherhood of Teamsters   |   | <b>b. Union Representative to contact</b><br>Anthony Valdner   |                    |
| <b>c. Address (Street, city, state, and ZIP code)</b><br>707 Summit Avenue<br>Union City, New Jersey 07087  |   | <b>d. Tel. No.</b><br>201-864-0051                             | <b>e. Cell No.</b> |
|   |   | <b>f. Fax No.</b>  | <b>g. e-Mail</b>   |
| <b>h. The above named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), (subsections) (list subsections) (4)(i)(B) and (4)(ii)(B) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.</b> |   |  |                    |
| <b>2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)</b><br>See Attached  |   |  |                    |
| <b>3. Name of Employer</b><br>County Concrete Corporation   |   | <b>4a. Tel. No.</b><br>973-584-7122                            | <b>b. Cell No.</b> |
|   |   | <b>c. Fax No.</b><br>973-584-4370                              | <b>d. e-Mail</b>   |
| <b>5. Location of plant involved (street, city, state and ZIP code)</b><br>Novartis Corporation<br>1 South Ridgedale Avenue, East Hanover, New Jersey 07936   |   | <b>6. Employer representative to contact</b><br>John H. Widman |                    |
| <b>7. Type of establishment (factory, mine, wholesaler, etc.)</b><br>Ready-Mix Concrete Supplier  | <b>8. Identify principal product or service</b><br>Ready-Mix Concrete | <b>9. Number of workers employed</b><br>Approximately 150      |                    |
| <b>10. Full name of party filing charge</b><br>County Concrete Corporation  |   | <b>11a. Tel. No.</b><br>973-584-7122                           | <b>b. Cell No.</b> |
|   |   | <b>c. Fax No.</b><br>973-584-4370                              | <b>d. e-Mail</b>   |
| <b>11. Address of party filing charge (street, city, state and ZIP code.)</b><br>50 R. 1st Road Avenue, Kenvil, New Jersey 07847  |   |  |                    |
| <b>12. DECLARATION</b><br>I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.<br>By  John H. Widman<br>(signature of representative or person making charge) (Print name and title or office, if any)  |   | <b>Tel. No.</b><br>610-710-4510                                |                    |
|   |   | <b>Cell No.</b><br>610-308-8555                                |                    |
|   |   | <b>Fax No.</b><br>610-710-4520                                 |                    |
|   |   | <b>e-Mail</b> jhwidman@swbcounselors.com                       |                    |
| <b>Address</b> 1285 Drummers Lane, Suite 202, Wayne, PA 19087   |   | <b>(date)</b> 2/13/12  |                    |

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Amended Charge

Case No. 22-CC-071865; County Concrete Corporation.

8(b)(4)(i)(B):

On January 19, 2012 and continuing until the present, Local 560, IBT, acting by and through its officers, agents, employees, members, and representatives, has engaged in, or induced or encouraged any individual who is or will be employed by contractors who now or will be performing work at Novartis Corporation and other persons engaged in interstate commerce, or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any service, all with the object of forcing or requiring Novartis Corporation, Turner Construction Company, Macedos Construction, LLC, and other persons to cease doing business with County Concrete Corporation.

8(b)(4)(ii)(B):

On December 30, 2011 and continuing until the present, Local 560, IBT, acting by and through its officers, agents, employees, members, and representatives, has threatened, coerced and restrained Macedos Construction, LLC and other persons engaged in interstate commerce all with the object of forcing or requiring Macedos Construction, LLC, Turner Construction Company, Novartis Corporation, and other persons to cease doing business with County Concrete Corporation.

The allegations set forth above are part of Local 560's continuing area-wide pattern and practice of forcing neutral contractors and other persons engaged in interstate commerce to cease doing business with County Concrete Corporation as set forth in County's prior NLRB Charges 22-CC-068160 (currently pending appeal to the General Counsel); 22-CC-1521; 22-CC-1522; and 22-CB-11234.

**Exhibit D**

**Consolidated Complaint and Notice of Hearing, issued April 26, 2012.**

**Exhibit D**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**LOCAL 560, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

**and**

**Cases 22-CC-01522  
22-CC-068160  
22-CC-071865**

**COUNTY CONCRETE CORPORATION**

**ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND  
NOTICE OF HEARING**

Based upon a charge filed by County Concrete Corporation (“the Charging Party”), in Case 22-CC-01522, against Local 560, International Brotherhood of Teamsters. (“Respondent”), alleging that it violated the National Labor Relations Act, 29 U.S.C. § 151 et seq. (“the Act”), by engaging in unfair labor practices, a Settlement Agreement and Notice to Employees was approved (“the Settlement”), a copy of which is attached as Appendix A, and pursuant to which Respondent agreed to take certain actions to remedy the unfair labor practices alleged in the Complaint. Respondent has failed to comply with the terms of the Settlement. On November 3, 2011, the Charging Party filed a charge in 22-CC-068160, and on January 4, 2012, the Charging Party filed a charge in Case 22-CC-071865, alleging that Respondent engaged in additional unfair labor practices in violation of the Act. Accordingly, pursuant to the terms of the Settlement, Section 10(b) of the Act, and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (“the Board”), this Complaint is issued.

Pursuant to Section 102.33 of the Board’s Rules and Regulations, and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 22-CC-01522, Case 22-CC-

068160, and Case 22-CC-071865 are hereby consolidated. This Consolidated Complaint and Notice of Hearing, issued pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, is based on these consolidated cases and alleges that Respondent has violated the Act by engaging in the following unfair labor practices:

1. (a) The charge in Case 22-CC-01522 was filed by the Charging Party November 12, 2010, and a copy was served upon Respondent by regular mail on November 16, 2010.

(b) The charge in Case 22-CC-068160 was filed by the Charging Party on November 3, 2011, and a copy was served upon respondent by regular mail on November 4, 2011.

(c) The charge in Case 22-CC-071865 was filed by the Charging Party on January 4, 2012, and a copy was served upon respondent by regular mail on January 5, 2012.

(d) The first amended charge in Case 22-CC-071865 was filed by the Charging Party on February 13, 2012, and a copy was served upon respondent by regular mail on February 21, 2012.

2. At all material times, The Charging Party Concrete Corporation, a corporation with an office and place of business in Kenil, New Jersey, herein called the Charging Party's Kenil facility, and various other facilities in the State of New Jersey, has been engaged in the supplying of ready-mix concrete and related construction materials to various employers in the State of New Jersey.

3. During the preceding twelve months, the Charging Party, in conducting its business operations described above in paragraph 2, purchased and received at its various

New Jersey facilities, goods valued in excess of \$50,000 directly from points outside the State of New Jersey.

4. At all material times herein, the Charging Party has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5. At all material times Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

6. At all material times, the following individuals have held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act.

Anthony Valdner – President  
Joseph DiLeo – Business Agent

7. (a) At all material times, Respondent has been engaged in a labor dispute with the Charging Party.

(b) At no material time has Respondent been engaged in a labor dispute with Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., Terminal Construction Co., Macedos Construction, LLC or Sharp Concrete Corporation.

8. About May 24, 2010 and May 27, 2010, Respondent, in support of its dispute with the Charging Party described above in paragraph 7(a), by Joseph DiLeo, threatened Torcon Construction Co. with picketing of its jobsite.

9. About July 15, 2010 and July 22, 2010, Respondent, in support of its dispute with the Charging Party described above in paragraph 7(a), by Joseph DiLeo, threatened Century 21 Construction Co. with picketing of its jobsite.

10. About September, 2010, Respondent, in support of its dispute with the the Charging Party described above in paragraph 7(a), by Anthony Valdner, threatened J Fletcher Creamer and Sons, Inc. with picketing of its jobsite.

11. About July, 2010, Respondent, in support of its dispute with the Charging Party described above in paragraph 7(a), by Joseph DiLeo, threatened Terminal Construction Co. with picketing of its jobsite.

12. About November 1, 2011, Respondent, in support of its dispute with the Charging Party described above in paragraph 7(a), by Anthony Valdner, threatened Sharp Concrete Corporation with picketing of its jobsite.

13. About December 30, 2011 and January 1, 2012, Respondent, in support of its dispute with the Charging Party described above in paragraph 7(a), by Joseph DiLeo, threatened Macedos Construction, LLC with picketing of its jobsite.

14. By the conduct described above in paragraphs 8 through 13, Respondent has threatened, coerced or restrained Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., Terminal Construction Co., Sharp Construction Corporation, Macedos Construction, LLC and other persons engaged in commerce or in industries affecting commerce.

15. An object of Respondent's conduct described above in paragraphs 8 through 14 has been to force or require Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., Terminal Construction Co., Sharp Construction Corporation, Macedos Construction, LLC and other persons to cease handling or otherwise dealing in the products of, and to cease doing business with The Charging Party.

16. By the conduct described above in paragraphs 8 through 16, Respondent has been violating Section 8(b)(4)(ii)(B) of the Act.

17. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that on the 13th day of June, 2012 at 9:30 a.m., and on consecutive days thereafter until concluded, a hearing will be conducted in the Veterans Administration Building, 20 Washington Place, 5<sup>th</sup> Floor, Newark, New Jersey 07102 before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

### **ANSWER REQUIREMENT**

Respondents are notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, they must file an answer to the complaint. The answer must be **received by this office on or before May 10, 2012, or postmarked on or before May 9, 2012.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at

<http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the “File Documents” button under “Regional, Subregional and Resident Offices” and then follow the directions. Unless notification on the Agency’s website informs users that the Agency’s E-filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Standard Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency’s website was off-line or unavailable for some other reason. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. A failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency’s website was off-line or unavailable for some other reason. The Board’s Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.21. If an answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer needs to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must still be accomplished by means allowed under the Board’s Rules and Regulations. The answer may not be filed by

facsimile transmission. If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

Dated at Newark, New Jersey, this 26<sup>th</sup> day of April, 2012

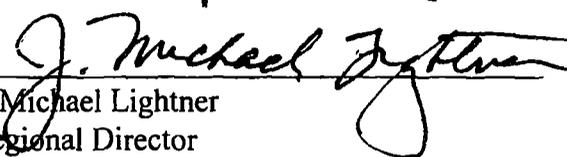
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J. Michael Lightner  
Regional Director  
National Labor Relations Board, Region 22  
20 Washington Place, 5<sup>th</sup> Floor  
Newark, New Jersey 07102

Attachment

facsimile transmission. If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

Dated at Newark, New Jersey, this 26<sup>th</sup> day of April, 2012

  
J. Michael Lightner  
Regional Director  
National Labor Relations Board, Region 22  
20 Washington Place, 5<sup>th</sup> Floor  
Newark, New Jersey 07102

Attachment

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**LOCAL 560, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

**and**

**Cases 22-CC-01522  
22-CC-068160  
22-CC-071865**

**COUNTY CONCRETE CORPORATION**

**ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND  
NOTICE OF HEARING**

Based upon a charge filed by County Concrete Corporation (“the Charging Party”), in Case 22-CC-01522, against Local 560, International Brotherhood of Teamsters. (“Respondent”), alleging that it violated the National Labor Relations Act, 29 U.S.C. § 151 et seq. (“the Act”), by engaging in unfair labor practices, a Settlement Agreement and Notice to Employees was approved (“the Settlement”), a copy of which is attached as Appendix A, and pursuant to which Respondent agreed to take certain actions to remedy the unfair labor practices alleged in the Complaint. Respondent has failed to comply with the terms of the Settlement. On November 3, 2011, the Charging Party filed a charge in 22-CC-068160, and on January 4, 2012, the Charging Party filed a charge in Case 22-CC-071865, alleging that Respondent engaged in additional unfair labor practices in violation of the Act. Accordingly, pursuant to the terms of the Settlement, Section 10(b) of the Act, and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (“the Board”), this Complaint is issued.

Pursuant to Section 102.33 of the Board’s Rules and Regulations, and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 22-CC-01522, Case 22-CC-

068160, and Case 22-CC-071865 are hereby consolidated. This Consolidated Complaint and Notice of Hearing, issued pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, is based on these consolidated cases and alleges that Respondent has violated the Act by engaging in the following unfair labor practices:

1. (a) The charge in Case 22-CC-01522 was filed by the Charging Party November 12, 2010, and a copy was served upon Respondent by regular mail on November 16, 2010.

(b) The charge in Case 22-CC-068160 was filed by the Charging Party on November 3, 2011, and a copy was served upon respondent by regular mail on November 4, 2011.

(c) The charge in Case 22-CC-071865 was filed by the Charging Party on January 4, 2012, and a copy was served upon respondent by regular mail on January 5, 2012.

(d) The first amended charge in Case 22-CC-071865 was filed by the Charging Party on February 13, 2012, and a copy was served upon respondent by regular mail on February 21, 2012.

2. At all material times, The Charging Party Concrete Corporation, a corporation with an office and place of business in Kenil, New Jersey, herein called the Charging Party's Kenil facility, and various other facilities in the State of New Jersey, has been engaged in the supplying of ready-mix concrete and related construction materials to various employers in the State of New Jersey.

3. During the preceding twelve months, the Charging Party, in conducting its business operations described above in paragraph 2, purchased and received at its various

New Jersey facilities, goods valued in excess of \$50,000 directly from points outside the State of New Jersey.

4. At all material times herein, the Charging Party has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5. At all material times Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

6. At all material times, the following individuals have held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act.

Anthony Valdner – President  
Joseph DiLeo – Business Agent

7. (a) At all material times, Respondent has been engaged in a labor dispute with the Charging Party.

(b) At no material time has Respondent been engaged in a labor dispute with Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., Terminal Construction Co., Macedos Construction, LLC or Sharp Concrete Corporation.

8. About May 24, 2010 and May 27, 2010, Respondent, in support of its dispute with the Charging Party described above in paragraph 7(a), by Joseph DiLeo, threatened Torcon Construction Co. with picketing of its jobsite.

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15. An object of Respondent's conduct described above in paragraphs 8 through 14 has been to force or require Torcon Construction Co., Century 21 Construction Co., J Fletcher Creamer and Sons, Inc., Terminal Construction Co., Sharp Construction Corporation, Macedos Construction, LLC and other persons to cease handling or otherwise dealing in the products of, and to cease doing business with The Charging Party.

16. By the conduct described above in paragraphs 8 through 16, Respondent has been violating Section 8(b)(4)(ii)(B) of the Act.

17. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that on the 13th day of June, 2012 at 9:30 a.m., and on consecutive days thereafter until concluded, a hearing will be conducted in the Veterans Administration Building, 20 Washington Place, 5<sup>th</sup> Floor, Newark, New Jersey 07102 before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

### **ANSWER REQUIREMENT**

Respondents are notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, they must file an answer to the complaint. The answer must be **received by this office on or before May 10, 2012, or postmarked on or before May 9, 2012.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at

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facsimile transmission. If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

Dated at Newark, New Jersey, this 26<sup>th</sup> day of April, 2012

  
\_\_\_\_\_  
J. Michael Lightner  
Regional Director  
National Labor Relations Board, Region 22  
20 Washington Place, 5<sup>th</sup> Floor  
Newark, New Jersey 07102

Attachment

**Exhibit E: Answer**

**Exhibit E**

COHEN, LEDER, MONTALBANO & GROSSMAN, LLC  
1700 Galloping Hill Road  
Kenilworth, New Jersey 07033  
908-298-8800  
Attorneys for Charged Party

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

LOCAL 560, INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS,  
  
and  
  
COUNTY CONCRETE CORPORATION

Cases: 22-CC-01522  
22-CC-068160  
22-CC-071865

**CHARGED PARTY'S  
ANSWER TO CONSOLIDATED COMPLAINT**

Respondent, Local 560, International Brotherhood of Teamsters, by way of Answer to  
the Complaint, does hereby state:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Denied.
8. Denied.
9. Denied.

10. Denied.
11. Denied.
12. Denied.
13. Denied.
14. Denied.
15. Denied.
16. Denied.
17. Denied.

**AFFIRMATIVE DEFENSES**

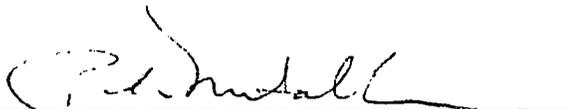
1. The unfair labor practice charge fails to properly state the alleged actions of Local 560 that violated the National Labor Relations Act, and accordingly, the Complaint should be dismissed in its entirety.

2. At all times, Local 560 acted in accordance with the requirements of the National Labor Relations Act, and accordingly, the Complaint should be dismissed in its entirety.

**WHEREFORE**, the Complaint against Charged Party should be dismissed.

COHEN, LEDER, MONTALBANO & GROSSMAN, LLC  
Attorneys for Charged Party

Dated: May 1, 2012  
571  
-217

By:   
PAUL A. MONTALBANO

COHEN, LEDER, MONTALBANO & GROSSMAN, LLC  
1700 Galloping Hill Road  
Kenilworth, New Jersey 07033  
908-298-8800  
Attorneys for Charged Party

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
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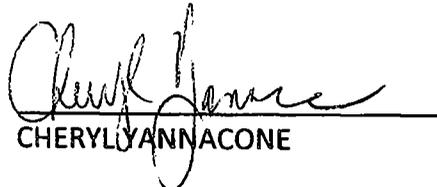
**CERTIFICATION OF SERVICE**

I, CHERYL YANNAcone, hereby certify as follows:

1. I am a secretary with the law firm of Cohen, Leder, Montalbano & Grossman, L.L.C.
2. On May 11, 2012, I caused to be served by UPS overnight delivery, a copy of Respondent's Answer to the Order Consolidating Cases, Consolidating Complaint and Notice of Hearing upon: **County Concrete Corp., 50 Railroad Avenue, Kenil, N.J. 07847 (Charging Party)** and upon **Novartis Concrete Corporation, 1 S. Ridgedale Avenue, East Hanover, N.J. 07936.**

I certify that the foregoing statements made by me are true to the best of my knowledge and belief. If any of the foregoing statement made by me are wilfully false, I am subject to punishment.

Date: May 11, 2012

  
CHERYL YANNAcone

**Exhibit F: Administrative Law Judge Lauren Esposito's Decision, dated February 15, 2013**

**Exhibit F**

Westlaw

Page 1

2013 WL 601950 (N.L.R.B. Div. of Judges)

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  
JD(NY)-06-13  
Kenvil, NJ

February 15, 2013

Laura Elrashedy, Esq., Newark, New Jersey, for the  
Acting General Counsel

Paul A. Montalbano, Esq. (Cohen, Leder, Montal-  
bano & 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**

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 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**

1. The Parties' Operations and the Relevant Projects  
County Concrete Corp. manufactures and sells ready-mix concrete, crushed sand, and 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.

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 bargaining unit employees until it disclaimed interest in January 2009. At that point, Local 863 prevailed in a card check certification conducted by Monsignor Gilcrest. 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.

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. 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 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**.

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 Trans-

portation 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 redimix 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 en-

gaged in any conduct that was in violation of the National Labor Relations Act. You as a company executive understand that it is often a wiser and more prudent course to settle legal claim[s] rather than pursue costly and time consuming litigation.

The settlement does not in any manner limit **Local 560** from engaging in an energetic campaign focused against County Concrete which will have the object to protect the area standards of wages and economic benefits earned by area redi-mix drivers. This campaign has several different facets, one of which includes area standards picketing.

So that there can be no claim of confusion or assertion of misunderstanding of any future conversations with **Local 560** Business Agents, **Local 560** advises that all "threats to picket" are made with, and actual picketing, will be conducted in accordance with, Moore Dry Dock Standards for Picketing at a Secondary Site, as indicated below:

1. Picketing will clearly disclose that the dispute is with County Concrete Corp. for its failure to pay Area Standards.
2. Picketing will be conducted at times County Concrete is "engaged in its normal business" at the Secondary Site.
3. Picketing will be conducted at times County Concrete is "located" or "present" on the Secondary employer's site.
4. Picketing will be limited to places reasonably close to the sites of the dispute, with due regard to reserve gates and property access.

**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 when making deliveries in **Local 560** geographic territory.

**Local 560** does not seek to enmesh your company in its dispute with County Concrete. Whichever redi-mix company you decide to utilize, we recommend prudence be taken to determine what rates of pay and benefits the

Company pays its drivers.

If you have any questions in regard to the meaning of the Moore Dry Dock Standards, you should contact the National Labor Relations Board or your own counsel. Because of previous claims of improper statements being made by **Local 560** Business Representatives, **Local 560** Business Representatives are under instruction that they shall not add to, supplement, or explain this letter to any contractor, and you are specifically advised that any such statements are not operative or authorized such that they may not be claimed to be made against **Local 560's** interests.

Respectfully,

Anthony Valdner

President

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. [FN1]

### 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. Represent-

atives 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.

Domingues: They are no good.

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.

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. [FN2]

Domingues: Okay.

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

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.

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

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.

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

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.

Valdner: Bye-bye.

Domingues: Thanks. [FN3]

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

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.

#### 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 2001, 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.

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. [FN4] 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 are 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 **Local 560** could engage in informational picketing. At this meeting, Valdner also provided Parmentola with another copy of his April 26, 2011 letter.

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.

Vieira then asked DiLeo why **Local 560** was picketing 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. [FN5]

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.

**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.

### III. Analysis and Conclusions

A. General Principles and the Positions of the Parties  
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 wellsettled 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).<sup>[FN6]</sup> *Electrical Workers Local 98 (MCF Services)*, 342 NLRB 740, 749 (2004), *enfd* 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).

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 suffi-

cient 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. <sup>[FN7]</sup>

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 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 unlaw-

ful 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 (6<sup>th</sup> 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 of 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 relev-

ant 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. [FN8] See *Holly Farms Corp.*, 311 NLRB 273, 274-275 (1993), *enfd*, 48 F.3d 1360 (4<sup>th</sup> 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 re-

spect to DiLeo's statements to Vieira in late December 2011 regarding Macedos Construction's activities at the Novartis jobsite. I credit Vieira's unrebutted 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 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 objective of forcing or requiring Macedos to cease doing business with County Concrete.

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).

3. Valdner and DiLeo's statements were unqualified

threats to picket in violation of Section 8(b)(4)(ii)(B). 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. 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.

For all of the foregoing reasons, I find that Re-

spondent 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

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.
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.
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.
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

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.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, I issue the following recommended [FN9]

## ORDER

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

## 1. Cease and desist from

(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.

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

(a) Within 14 days after service by the Region, post at its office copies of the attached notice marked "Appendix." [FN10] 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

[FN1]. 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).

[FN2]. These companies all have contractual relationships with the Union.

[FN3]. 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.

[FN4]. Several of these names are spelled phonetically.

[FN5]. DiLeo did not testify at the hearing.

[FN6]. 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.

[FN7]. 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.

[FN8]. 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.”

[FN9]. 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.

[FN10]. 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

\*1 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.nlr.gov](http://www.nlr.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, DE-FACED, 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.

2013 WL 601950 (N.L.R.B. Div. of Judges)

END OF DOCUMENT

**CERTIFICATION OF SERVICE**

This is to certify that Counsel for the Acting General Counsel's Motion to Strike Portions of Respondent's Answer, for Summary Default Judgment and for the Issuance of a Board Decision and Order, together with Supporting Memorandum of Law has been served, on this date, as follows:

**By Electronic Filing**

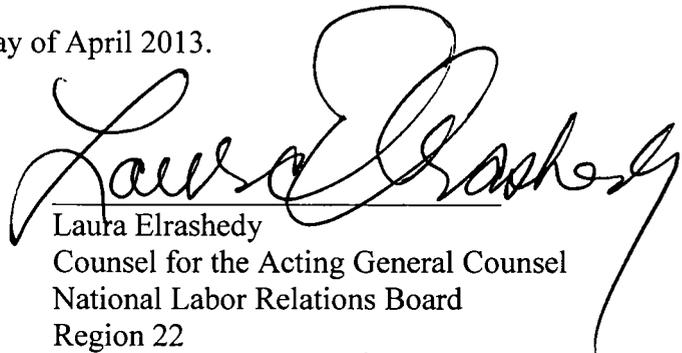
Gary Shiners, Acting Executive Secretary  
Office of Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20570-0001

**By Electronic Mail**

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Dated at Newark, New Jersey this 11<sup>th</sup> day of April 2013.



Laura Elrashedy  
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