JD–48–13
Newark, NJ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LOCAL 560, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

and

COUNTY CONCRETE
CORPORATION

Cases 22–CC–083895
22–CE–084893
22–CC–099341

Michael P. Silverstein, Esq., for the General Counsel.
Paul Montalbano, Esq.,(Cohen, Leder, Montalbano & Grossman) Kenilworth, New Jersey, for the Respondent.
John Adams, Esq., (Susanin, Widman & Brennan, P.C.) Wayne, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Newark, New Jersey on May 29, 2013. County Concrete Company filed the charge in docket 22-CC-099341 on February 28, 2013 and the General Counsel issued the complaint on April 29, 2013.

Despite the caption, only docket 22-CC-099341 was litigated before me. The other two dockets involve cases that were settled. The General Counsel alleges that by violating the Act in 22–CC–099341, Respondent has breached the settlement of the prior cases. If I find that the Act was violated as alleged in 22-CC-099341, the General Counsel has asked me to forward the matter to the Board for the entry of summary judgment in the other two cases. I hereby do so.

The essence of the instant case is that the General Counsel alleges that Respondent violated Section 8(b)(4)(ii) (A) and (B) in sending a letter to signatory construction companies, with whom it does not have a labor dispute, threatening, coercing and restraining them from doing business with the Charging Party, County Concrete Corporation.[1]

[1] The General Counsel alleges Respondent violated Section 8(b)(4)(ii)(A) by forcing neutral employers to enter into an agreement not to do business with County Concrete and 8(b)(4)(ii)(B) by threatening to picket if these employers did business with County Concrete.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent and Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Charging Party, County Concrete Corporation supplies ready-mix concrete to various employers in northern New Jersey. County Concrete purchases and receives goods valued in excess of $50,000 directly from points outside of New Jersey. It is thus an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Union, Teamsters Local 560, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

County Concrete's ready-mix drivers have been represented by Teamsters Local 893 since 2009, but during this period there has not been a collective bargaining agreement between County and Local 893. It pays its ready-mix drivers substantially less than drivers covered by Local 560's contracts. County is one of about a half dozen suppliers of ready-mix concrete to the major construction contractors in northern New Jersey.

Respondent Union embarked upon a campaign regarding County Concrete's wages sometime in 2010. County Concrete filed a charge alleging that Respondent violated Sections 8(b)(4)(i) and (ii) (B) in November 2010. This was settled in March 2011 and was referred to the Board for summary judgment proceedings by Administrative Law Judge Lauren Esposito in her February 13, 2013 decision. That decision concerned other charges filed against Respondent by County Concrete. Judge Esposito's decision dealt with conversations between Local 560 agents and potential customers of County Concrete on or about November 1, and December 30, 2011. With regard to the events tried before Judge Esposito, I adopt her findings and conclusions, which are currently pending before the Board.

On April 26, 2011, Anthony Valdner, President of Teamsters Local 560, sent a letter to companies who are parties to collective bargaining agreements between Local 560 and the Associated General Contractors of New Jersey, Building Contractors Association of New Jersey and the Utility and Transportation Contractors Association, which threatened to engage in "area standards picketing" at jobsites when County Concrete is delivering concrete.[2] Most or all of these employers do not employ their own ready-mix drivers. Some have purchased concrete from County Concrete in the past. County's employees deliver concrete to construction sites. They do not perform other work at these sites.

On November 1, 2011, Valdner spoke with John Domingues, the owner of Sharpe Concrete Corporation, a construction company customer of County Concrete. In her decision of February 13, 2013, Judge Esposito found that in this conversation, Respondent violated Section

[2] R. Exh. 7, Docket 22-CC-01522.

8(b)(4)(ii)(B) by threatening to picket Sharpe Concrete at the St. Peter's College jobsite, with an object of forcing or requiring Sharpe to cease doing business with County Concrete.

On about December 30, 2011, Joseph DiLeo, an agent of the Respondent Union, told Antonio Vieira, General Superintendent of Macedos Construction that if Macedos did not find a concrete supplier other than County Concrete on the Novartis parking garage project, Respondent would picket the job. Judge Esposito also found that Respondent, by DiLeo, violated Section 8(b)(4)(ii)(B) by threatening to picket with an object of forcing Macedos to cease doing business with County.

On or about February 28, 2013. Valdner sent out a similar letter to his April 2011 letter, entitled "Winter 2013 Update." This letter is the subject of the instant litigation. The Winter Update stated in pertinent part:

> Dear AGC, BCA, UTCA and Independent Construction Contractors and Subcontractors:
>
> Local 560, IBT continues its efforts to protect area standards of wages and benefits paid to drivers in the redi-mix concrete delivery industry.
>
> **Target: County Concrete Corporation**
>
> **Target: Service Concrete Company; Joel Tanis & Sons**
>
> County Concrete Corporation continues its attempts to seriously undermine redi-mix delivery area standards. Though County Concrete has a collective bargaining relationship with Local 863, I.B.T., the parties have been without a contract for over two years due to County Concrete's offer of substandard wages and benefits. It is not expected any time soon that they will reach agreement on economic terms for a contract. Strike and picketing should be expected. While County Concrete and Local 863 may be expected to continue to seek to resolve their differences, Local 560 will not stand actionless as County Concrete continues to operate at substandard wages and economic benefits, with affect to destroy area standard wages and economic benefits.
>
> ---
>
> First, Local 560 wishes to remind all AGC Contractors who are signatory to Local 560 construction contracts that the contract does place certain expectations upon the contractor in regard to area standards. During the term of the Local 560 collective bargaining agreement, Local 560's enforcement of the provision will be enforced through the grievance and arbitration procedure, though this does not necessarily mean that Local 560 will not be engaging in area standards picketing in the presence of County Concrete, Service Concrete and Joel Tanis and Sons where not prohibited.
>
> For Companies not signatory to the Local 560 – AGC contract, and other Local 560 contracts that do not have a no-strike provision prohibiting area standards picketing, Local 560 intends to aggressively engage in area standards picketing.

In the past, Local 560 would contact the contractor who had in advisedly purchased from County Concrete, or other substandard concrete supplier, and provide the respectful courtesy of advance notice of picketing so that the contractor be made aware and at its option make arrangements. Due to recent claims that such courtesy notices were viewed as "threats," Local 560 will no longer provide advanced notice of picketing. If you are going to utilize either County Concrete or Service Concrete (Joel Tanis), be well aware that Local 560 will be showing up at your project with picketing and will no longer provide you with advanced notice.

So that there can be no claim of confusion or assertion of misunderstanding of any future conversations you may have 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 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., Service Concrete and Joes Tanis & Sons, commence to pay their 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, Service and Joel Tanis & Sons. 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 our own counsel. Because of previous claims of improper statements 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.

The Winter 2013 Update differs from the April 2011 letter is several respects. The paragraph stating that advance notice of picketing will no longer be provided was not in the April 2011 letter. Similarly, the language promising enforcement of areas standards through the grievance and arbitration procedure of the collective bargaining agreement was not in the April 2011 letter. That contract expired by its terms on April 30, 2013, G.C. Exh. 5, but may have been extended, Tr. 35.

The May 1, 2012-April 30, 2013 collective bargaining agreement between Local 560 and the Associated General Contractors of New Jersey contained the following clause, paragraph 1(q):

> The employer agrees that it shall accept deliveries of concrete and aggregate only from drivers who are receiving wages, fringe benefits and the economic dollar values of working conditions that are prevailing in the area, as set by the applicable Teamsters contract for the concrete, aggregate or other type of delivery then prevailing in the County in which the site is located.

Analysis

Section 8(b)(4)(ii)(B)

The General legal principles applicable to Respondent's letter, insofar as it advises neutral employers of the Union's intent to picket, were summarized by Judge Esposito in her February 13, 2013 decision in a case involving the same parties, docket 22–CC–01522 et. al. Section 8(b)(4)(ii)(B) prohibits labor organizations and their representatives from threatening, coercing, or restraining any person engaged in commerce, "where an object thereof is forcing or requiring any person to cease doing business with any other person." It is well-settled that an unlawful secondary objective need not be the sole motivation for the union's conduct so long as an unlawful object exists. Prohibited conduct in furtherance of that objective violates Section 8(b)(4)(ii)(B). 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 *Sailor's Union of the Pacific (Moore Dry Dock),* 92 NLRB 547 (1950).[3]

However, 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 Mix Concrete, Inc.),* 200 NLRB 253 (1972); *Local No. 441, IBEW (Rollins Communications, Inc.),* 222 NLRB 99, 101 (1976).

The principal disagreement between the parties in applying these principles to this case is whether, as Respondent contends, the Winter Update letter is to be considered in isolation, or in conjunction with the history of the parties over the last three years. I conclude this makes no difference to the outcome of this case.

I conclude that the Winter Update, on its face, is motivated by the Union's intention to discourage signatory contractors from doing business with County Concrete. Area standards picketing is presumptively valid when a union complies with the *Moore Dry Dock* standards. However, while picketing may evoke a response from County's employees, and others, as well as neutral employers, the Winter Update letter, which was sent only to County's potential customers, could have only one objective. That objective is to discourage neutral employers

[3] The *Moore Dry Dock* standards are essentially those set forth in the numbered paragraphs of the Respondent's Winter Update letter.

from ordering concrete from County. Moreover, there is no way to segregate the statements in the Winter Update from the Union's continuing efforts over the last 3 years to discourage union contractors from doing business with County Concrete. Thus, I conclude the letter violates Section 8(b)(4)(ii)(B).

Section 8(b)(4)(ii)(A) and 8(e)

At page 5 of its post-trial brief, Respondent appears to concede that the Winter 2013 Update letter violates Section 8(b)(4)(ii)(A) in threatening to enforce paragraph 1(q) of the 2012-2013 contract through the grievance and arbitration procedures of that contract and that paragraph 1(q) violates Section 8(e). Its argument appears to be that changes to its contracts since May 1, 2013 have rendered this issue moot.

Respondent has not established on this record either that the issue was moot when the Winter Update 2013 was sent to signatory contractors, or that it has become moot by virtue of the execution of a successor collective bargaining agreement, Tr. 34-35. Therefore, I find that the Winter Update violates Section 8(b)(4)(ii)(A) and 8(e), as alleged. There does not seem to be any question that the paragraph 1(q) is a blatant violation of Section 8(e) and that the construction industry proviso/exception in Section 8(e) does not apply to provisions aimed at depriving County, a ready-mix concrete supplier, of customers, *Teamsters Local 251 (Material Sand and Stone),* 356 NLRB No. 135 (2011).

CONCLUSIONS OF LAW

By sending its "Winter Update" letter to employers who are signatory to collective bargaining agreements with it, Respondent, Local 560, International Brotherhood of Teamsters has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(ii)(A) and (B) of the Act. Paragraph 1(q) of the Respondent's 2012-2013 collective bargaining agreement violates 8(e) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

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

1. Cease and desist from

(a) Threatening employers who are signatory to collective bargaining agreements with it with picketing and/or the filing of grievances, where the object is to force such employers from ceasing to do business with County Concrete Corporation.

(b) In any manner coercing employers in violation of Section 8(b)(4)(ii)(A) and (B) and Section 8(e).

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

(a) Sign and mail a letter to all employers to whom the 2013 Winter Update was sent informing each such employer that the 2013 Winter Update has been found to violate the Act and that it has been rescinded.

(b) Within 14 days after service by the Region, post at its office copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the 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 and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its signatory employers 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.

(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 the Respondent has taken to comply.

Dated, Washington, D.C. July 26, 2013.

_____
. Arthur J. Amchan
Administrative Law Judge

5 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 EMPLOYEES AND MEMBERS

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

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

WE WILL NOT threaten,, coerce or restrain any employer, where an object thereof is to force that employer to cease doing business with County Concrete Corporation.

LOCAL 560, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
(Union Organization)

DATED: _____ BY_____
(Representative) (Title)

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

20 Washington Place, 5th Floor, Newark, NJ 07102-3110
(973) 645-2100, Hours: 8:30 a.m. to 5 p.m.
THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (973) 645-3598.