The Region submitted this case for advice as to whether ILWU and its Local 19 (collectively, “ILWU”) violated Section 8(b)(4)(ii)(B) by seeking to hold neutral carriers and shippers liable for “pay in lieu” remedies in an arbitration proceeding against terminal operator SSAT over its assignment of maintenance and repair (M&R) work to IAM-represented employees, to the extent the carriers and shippers used SSAT’s terminal. We conclude that the charge should be dismissed, absent withdrawal.

By way of background, in a related Section 8(b)(4)(D) case, Advice concluded that ILWU’s arbitration proceeding against SSAT had an “illegal objective” because it attempted to secure M&R work at the Port of Seattle’s Terminal 5 in conflict with a Section 10(k) decision in Machinists Lodge No. 160 (SSA Terminals, LLC), 369 NLRB No. 126 (July 16, 2020), awarding that work to IAM-represented employees. See ILWU Local 19 (SSA Terminals), Cases 19-CD-269624, et al., Advice Closing Email dated Feb. 26, 2021. During the arbitration hearing held before a Coast Arbitrator on October 13 and 14, 2020, ILWU filed a motion that would have made not only SSAT liable for assigning M&R work at Terminal 5 to IAM-represented employees, but also PMA-member carriers to the extent they used Terminal 5 while the M&R work was assigned to SSAT’s IAM-represented employees. A few days later, however, ILWU withdrew that motion and amended its remedial request to seek a remedy only against SSAT. The Coast Arbitrator ultimately granted the “in lieu of payment” remedy but only against SSAT.

Section 8(b)(4)(B) expresses “the dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own.” NLRB v. Denver Bldg. & Constr. Trades Council, 341 U.S. 675, 692 (1951). Section 8(b)(4)(ii)(B) makes it “an unfair labor practice for a labor organization . . . to threaten, coerce, or restrain a person not party to a labor dispute ‘where . . . an object thereof is . . . forcing or requiring [him] to . . . cease doing business with any other person.’” NLRB v. Retail Clerks Local 1001 (Safeco Title Ins. Co.), 447 U.S. 607, 611 (1980) (quoting 29 U.S.C. § 158(b)(4)(ii)(B)). Thus, the provision prohibits a union that has a dispute with one employer (the primary) from pressuring other secondary or neutral employers who deal with the primary, where the union’s conduct is calculated to force the neutral to cease dealing with the primary and thus increase the union’s leverage in its dispute with the primary. National Woodwork Mfrs. Ass’n v. NLRB, 386 U.S. 612, 620-27 (1967).

We conclude there is insufficient evidence to warrant issuing a Section 8(b)(4)(B) complaint here. Initially, our determination is not based on ILWU’s claim that it had a work-preservation object rather than a work-acquisition object regarding the assignment of M&R work at Terminal 5. SSAT, not the carriers or shippers, controls the assignment of M&R work at Terminal 5; therefore, the carriers and shippers would be neutrals in that dispute even if ILWU demonstrated a work-preservation object regarding that work. Nonetheless, to the extent ILWU arguably demonstrated a secondary object in October 2020 when it sought pay-in-lieu relief against the neutral carriers and shippers, the motion was withdrawn after a few days. The claim for relief was not even directly
communicated to the carriers and shippers, who were not named parties to the arbitration. At most, this conduct would amount to a technical, momentary, *de minimis* violation. There is no evidence that ILWU has engaged in any other secondary conduct—it has not filed grievances against the carriers and shipping companies, nor has it picketed, threatened to picket, or engaged in like coercive conduct. SSAT claims that it heard rumors that shipping companies were unwilling to call at Terminal 5 because of their fear that ILWU would disrupt their operations as long as the dispute over M&R work continued, but this is not evidence that would support a violation.

To be sure, had ILWU engaged in a brief period of secondary picketing before ceasing such conduct, we may not have concluded the violation was *de minimis*, because picketing and threatening to picket neutrals—even briefly—are qualitatively different than a fleeting remedial request in an arbitration proceeding. That being said, if ILWU had not modified its motion, we may very well have found it violated Section 8(b)(4)(B). But under the circumstances here, it would not effectuate the purposes and policies of the Act to issue complaint. If ILWU engages in coercive “cease doing business” conduct against neutral shipping companies and carriers, a new charge can be filed.

Accordingly, the Region should dismiss the charge, absent withdrawal.

(b) (6), (b) (7)(C)