The Region submitted this case for advice as to whether (1) the Union’s bargaining position during successor contract discussions violated Section 8(b)(3) of the Act; and (2) the Union violated Section 8(b)(4)(i)(B) of the Act when it engaged in picketing activity at another employer’s plant. We conclude that the Union violated Section 8(b)(3) by adhering to a “take-it-or-leave-it” position that evinced an unwillingness to bargain with the Charging Party. The Region should issue complaint, absent settlement, on this allegation. We further conclude that the Union’s picketing activity did not violate Section 8(b)(4)(i)(B) because the evidence fails to establish the presence of an unlawful secondary object. Thus, the Region should dismiss that allegation, absent withdrawal.

FACTS

BMC Enterprises (“BMC”) is the parent company of, among other entities, the following four subsidiaries involved in this case: Breckenridge Material (“Material”) and Ozark Building Materials (“Ozark”), each based out of St. Louis, Missouri, and Breckenridge O’Fallon (“O’Fallon”) and Breckenridge Jefferson County (“Jefferson County”), which are based in nearby counties. Each of these companies operate ready-mix concrete production facilities, and their drivers deliver concrete to construction sites in St. Louis and its surrounding counties. In addition to ready-mix concrete services, Ozark supplies dry goods like sand and stone and provides transloading services to chemical companies. The three Breckenridge companies—Material, O’Fallon, and Jefferson County—share common ownership and management under its parent company, BMC. BMC shares its ownership interest in Ozark with four or five other entities. Teamsters Local 682 (“the Union”) represents the drivers working for each of these companies.
Daily operations at Material, O’Fallon, and Jefferson County are overseen by the same managers: BMC’s CEO, BMC’s President, Material’s General Manager, and Material’s Operating Manager. BMC’s CEO and BMC’s President participated in the negotiation of the collective-bargaining agreements for Material, O’Fallon, and Jefferson County, and Material’s General Manager and Material’s Operating Manager handle the daily labor relations for these three companies.

Ozark’s daily operations are overseen by Ozark’s General Manager, who also signed its most recent collective-bargaining agreement. Ozark’s General Manager is not involved in the daily operations or labor relations of any other company.

Drivers working out of the Material, O’Fallon, and Jefferson County plants start and end their day at their home plant. The home plant is where drivers pick up and load their trucks and return and wash them at the end of the day. Throughout the day, drivers may dispatch from the same plant multiple times to make deliveries. The plants also have a routine practice of leasing trucks and drivers from each other. Drivers may dispatch from one of the other two plants, e.g., a Material driver may be leased to deliver a load from O’Fallon or Jefferson County, and dispatch from that plant. This occurs anywhere from one to three times per week to one to three times per day, depending on the season. Material, O’Fallon, and Jefferson County drivers are leased by and dispatch from Ozark much less regularly, if at all, e.g., a Material driver dispatched from Ozark once during a six-week period.

Material, O’Fallon, Jefferson County, and Ozark each have their own separate collective-bargaining agreement with the Union. To negotiate the recently expired collective-bargaining agreement for Material and Ozark, which was in effect from March 15, 2015 to March 15, 2021, the parties engaged in a form of group bargaining sometimes called “convenience bargaining.” Without formally ceding their bargaining rights to an employer association, this group of ready-mix employers in the same geographic area agreed to bargain and/or sign onto the same agreement with the Union. Each employer had its own bargaining representatives. On March 21, 2021, before convenience bargaining for a successor

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1 O’Fallon’s current collective-bargaining agreement is in effect from March 17, 2016 to March 16, 2022.

2 Jefferson County’s current collective-bargaining agreement is in effect from March 1, 2019 to February 28, 2024.

3 Although Material bargained with the group of employers for at least its past two agreements, there was no formal association involved and it unequivocally communicated its intent to bargain individually before group negotiations for the successor contract commenced, as discussed below. Thus, there is insufficient
agreement began, representatives of four ready-mix employers in the greater St. Louis area met to discuss the upcoming negotiations.\(^4\) At that time, two employers stated they did not wish to continue bargaining as part of the group. BMC’s CEO also decided that Material would bargain individually. The next day, BMC’s President informed the Union of this decision by phone.

On April 14, Material’s attorney contacted the Union’s attorney by email after learning that the ready-mix employers who bargained as a group had reached a final agreement.\(^5\) A few days later, by phone, in discussing with the Union’s attorney what Material sought in a successor agreement, Material’s attorney explained that BMC’s CEO wanted to deviate minimally from the deal reached by the employer group, with withdrawal liability from the Central States Pension Fund being Material’s key concern.\(^6\) The Union’s attorney responded that it had no interest in discussing pension fund withdrawal.

Around April 19, the Union’s called BMC’s CEO and stated, “here is the deal, are you going to sign the contract?” BMC’s CEO said would like to sit down with the Union to discuss terms believed would be more favorable to the employees than those in the new group contract. The Union’s replied that Material would not be getting “anything different.” BMC’s CEO repeated four or five times, and the Union’s replied that did not care,

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\(^4\) All dates hereinafter are in 2021.

\(^5\) The new group contract maintained almost all of the same terms from the expired contract, but it included a one dollar per hour wage increase per year over a five-year term.

\(^6\) The Teamsters Central States Pension Fund was severely underfunded and expected to become insolvent within a few years. BMC’s CEO apparently had concerns that Material’s withdrawal liability would significantly increase as time passed.
and that Material had to take the contract that had been negotiated with the group of employers.

The following day, the Union’s [b](6), [b](7),[c] called BMC’s CEO to explain the terms of the new group contract and ask if they would sign it. BMC’s CEO repeated that they wanted to deviate from the group contract, thought the terms would be favorable to the Union and employees, and wanted to discuss it at the bargaining table. The Union’s [b](6), [b](7),[c] said, “you’re not getting anything different. You’re going to get what the others got, period. I am going to have to take economic action.” BMC’s CEO then stated [b] needed a reopen on the pension fund, and that [b] would be willing to give the employees extra compensation in exchange for either a reopen or a shorter contract than the group contract. BMC’s CEO noted that the pension fund had approved a one-year contract in the past, but the Union’s [b](6), [b](7),[c] replied, “it doesn’t matter. They [Central States Pension Fund] won’t this time. There is one contract – one area standard. You are going to sign it, or else I am going to take action.” BMC’s CEO said it was curious that the Union would act without even sitting down for one bargaining session, and the Union’s [b](6), [b](7),[c] said, “sign it or I am taking action.”

A few days later, during a phone call with the Union’s attorney, BMC’s CEO threatened that Material would liquidate its businesses if the Union went on strike without even sitting down with Material to negotiate. On April 20, the Union’s attorney agreed to meet Material in-person, stating “[t]he Union is willing to meet and hear [BMC’s CEO] out but the end result has to be the same.” The Union called off its pickets, and a few days later, around April 23, the parties met at the Union hall for their only in-person bargaining session. There, BMC’s CEO explained Material’s position and offered to pay each unit employee a $500 bonus, which was not in the group contract, in exchange for either a reopen on pension or a one-year contract. The Union’s attorney stated that there is only going to be one contract, and that the other employers also had asked for a reopen on the pension fund, but the Union did not concede. The Union stated, “we don’t care what your needs are. Take it or leave it.” The Union’s [b](6), [b](7),[c] and the Union’s attorney each said “take it or leave it” at least once during the meeting. BMC’s CEO explained that signing the contract as is would jeopardize BMC’s growth. The Union confirmed Material’s assumption that it had assured the employers in group bargaining that Material would not get a better contract than what the employer group negotiated. Material offered to get the other employers’ consent to the changes it proposed to the group contract, and the Union stated, “[I]t doesn’t matter. You aren’t getting anything different.” Material asked what it would take to get something different, and it posed a rhetorical offer of a $10,000 signing bonus per employee, to which the Union said no. The conversation ended with the Union saying it would be taking economic action.
The following Monday, April 26, the employees began a strike, which is ongoing, at Material’s two locations. The picket signs read, “Employees of Breckenridge of St. Louis, MO On Strike. We have no dispute with any other employer on this job. Teamsters Local 682.” On April 29, after learning that the Central States Pension Fund would allow a two-year contract, Material offered a $500 signing bonus for each employee in exchange for a two-year contract, and then increased its offer to a $1,000 signing bonus. The Union rejected both offers and reproposed the group contract, noting that Material had historically signed it.

After April 29, the Union began to follow trucks that left the O’Fallon and Jefferson County plants and it set up picket lines at the trucks’ destinations to prevent them from completing their deliveries. On May 6, Ozark leased three Jefferson County trucks and drivers to assist in a surge of work at a nearby construction site. The Union followed one driver to Ozark’s plant, and set up a picket line at the plant, where the three trucks stopped to pick up concrete to deliver to the construction site. At the time, employees of Ozark and of another employer were loading their trucks to service their own customers. After the Union began picketing, a number of employees engaged in a work stoppage.

**ACTION**

We initially conclude that the Union violated Section 8(b)(3) by adhering to a “take-it-or-leave-it” position that evinced an unwillingness to bargain with Material. We further conclude that the Union’s picketing activity did not violate Section 8(b)(4)(i)(B) because the evidence fails to establish the presence of an unlawful secondary object.

I. **The Union engaged in bad faith, “take-it-or-leave-it” bargaining that violated Section 8(b)(3).**

We conclude that, notwithstanding the Union’s right to pressure Material to adopt the terms of the employer group contract and adhere to its core position by making no concessions, the Union’s refusals to engage meaningfully with Material amounted to bad faith rather than merely hard bargaining. Initially, it is lawful for a union to reach an agreement with one employer, or with a multiemployer bargaining unit, and then seek to compel another employer to adopt those set

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7 BMC’s CEO asserts that the Union directed employees of Jefferson County, Ozark, and the other employer to stop working and join the picket line. The Union denies that any of its agents spoke with employees of Ozark or the other employer. Because Material has not confirmed whether BMC’s CEO witnessed the conduct or merely speculated that it occurred, we do not rely on those assertions.
Where, as here, the employer tacitly agrees to almost all of the terms of an agreement reached by another group except for one issue, it follows that there is less negotiation ground to cover and less opportunity to engage in the back-and-forth communication that characterizes good-faith bargaining in, e.g., first contract negotiations. The right to compel an employer to agree to a contract the union has already signed with another party, however, does not override the parties’ mutual obligation to bargain collectively under Section 8(d) by “meet[ing] at reasonable times and confer[ring] in good faith” and by “contemplat[ing] a willingness to enter negotiations with an open mind and purpose consistent with the respective rights of the parties.”

Further, notwithstanding the principle that the Section 8(d) duty to bargain in good faith does not compel a party to agree to a proposal or make a concession, “take-it-or-leave-it” conduct during bargaining has been found unlawful. Thus, a party who enters into negotiations with a “take-it-or-leave-it” attitude may violate its duty to bargain although it goes through the forms of bargaining, does not insist on any illegal or nonmandatory bargaining proposals, and wants to sign an agreement. In such cases, the analysis centers not on the substance of the proposal but on the manner of its presentation.

For example, in Endo Laboratories, the issue was whether the employer engaged in unlawful take-it-or-leave-it bargaining when it proposed a new health benefits package. Despite stating it did not find difficulty with the proposal’s substance, the Board found the employer violated Section 8(a)(5) by indicating it was not at liberty to make changes to the benefits package as presented, declining to consider any part of the package separately, and refusing to discuss its contents. The Board discounted as insignificant evidence that the employer made

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9 Sweeney & Co., Inc., 176 NLRB 208, 211 (1969) (internal quotations omitted), enforced in relevant part, 437 F.2d 1127 (5th Cir. 1971).


12 Endo Laboratories, Inc., 239 NLRB at 1075.

13 239 NLRB at 1075.

14 Id. at 1075 & n.7.
self-serving or minor concessions on other issues unrelated to the core area of
disagreement, but it emphasized that the employer’s admitted motive of presenting
the benefits package as indivisible so that the union membership could only accept
or reject it showed the employer’s unwillingness to reach an agreement except on its
own terms.15

Applying the foregoing precedent, we conclude that the totality of the Union’s
counterparts to bad-faith bargaining because it evinced a “take-it-or-leave-it”
mindset that demonstrated its unwillingness to reach agreement except on its own
terms.16 Despite the limited opportunities for compromise because of the parties’
one-issue disagreement, from the outset of communications with Material and over
a span of 12 days, the Union repeatedly showed it was unwilling to consider any
modifications to the group contract. During the first telephone call on April 14, the
Union’s attorney said the Union had no interest in discussing Material’s concern
with withdrawal liability from the pension fund. During the second and third
telephone conversations, Union officials presented the group contract by stating,
“here is the deal, are you going to sign the contract,” and rejected Material’s
attempts to propose alternatives by stating, “you’re not getting anything different.
You’re getting what the others got, period.” The Union further explained there is
one contract, one area standard, and the Central States Pension Fund will not
approve Material’s alternative proposal for a shorter contract, repeatedly telling
Material, “you are going to sign it or [the Union is] taking action.” When Material’s
attorney then emailed the Union’s attorney to request at least one in-person
meeting before the Union took economic action, the Union’s attorney confirmed that
it would be nothing more than a pro forma meeting by replying “[t]he Union is
willing to meet and hear [BMC’s CEO] out but the end result has to be the same.”
After communicating the futility of meeting in-person given its firm unwillingness
to consider any modifications to the group contract, the Union agreed to postpone
economic action and sit down with Material only after BMC’s CEO threatened to
liquidate Material if the Union acted before meeting with the Union. That Material had
to coerce the Union into meeting face-to-face is indicative of a failure to meet the
statutorily-mandated test of good-faith bargaining.17

15 Id. at 1076.

16 The Union summarily denies a take-it-or-leave-it bargaining posture, which
contravenes the evidence supplied by Material, as discussed herein.

17 See generally Fountain Lodge, Inc., 269 NLRB 674, 674 (1984) (quoting U.S. Cold
Storage Corp., 96 NLRB 1108 (1951) (“[i]t is elementary that collective bargaining
is most effectively carried out by personal meetings and conferences of parties at the
bargaining table”), enforced, 203 F.2d 924 (5th Cir. 1953)).
The Union, as its attorney had indicated, then participated in one pro forma, in-person meeting with Material on April 23. During the meeting, the Union conceded it had given the group employers its word that no other employer would get a better deal than the group contract, and that the employers had proposed a most-favored-nation clause to ensure as much but the proposal was never formally adopted. In other words, the Union admitted that due to this informal oral agreement it had made in group bargaining it never had any intention of deviating from the terms of the group contract. This was confirmed at the meeting by the Union’s rejection of Material’s offer to obtain the employer group’s consent to have different terms than the group contract, the Union’s reiterating “[y]ou’re not getting anything different,” and the Union’s statement that even a $10,000 signing bonus per employee would not change the outcome.

The following Monday, April 26, the Union began its strike and ambulatory picketing, and Material subsequently presented two more proposals, which the Union mechanically rejected. Specifically, after learning that Central States Pension Fund would allow a two-year contract, Material first offered a two-year contract with the same terms as the group contract plus a $500 per employee signing bonus and then increased the signing bonus to $1,000. In rejecting the offers, the Union continued to insist that the group contract remained the only option stating unambiguously, “take it or leave it.” Consequently, the Union’s conduct leaves little room for concluding it entered negotiations with Material with an intent to negotiate, or with an open mind. To the contrary, the totality of the conduct shows it presented its full package with a “take-it-or-leave-it” approach inconsistent with good faith bargaining. As in Endo Laboratories, Material could only accept or reject the offer made by the Union, specifically, the group contract, showing the Union would only reach agreement on its own terms. Indeed, the Union’s intransigence here was compounded by the fact it had promised the other area employers in group bargaining it would not consider deviations from the group contract. Under these circumstances, and for the foregoing reasons, the Union’s conduct violated Section 8(b)(3).

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18 See Teamsters Local 418 (Seigle’s Express), 254 NLRB at 957 (finding local union representatives were unable to negotiate in good faith due to international’s mandate that they not agree to any contract inconsistent with master freight agreement); Electrical Workers IBEW Local 428 (Kern County Chapter NECA), 277 NLRB at 414 (finding union violated Section 8(b)(3) by entering negotiations with intransigent position regarding certain subjects, about which the union’s chief negotiator had limited authority due to instructions from the international union).

19 See also MRC (Allied Maintenance Technologies), Case 4-CB-9267, Advice Memorandum dated January 24, 2005 (concluding evidence showed union was not interested in reaching any agreement other than its own when it met only twice and failed to engage in meaningful discussion over the employer’s proposals; union
As discussed, the basis of the bargaining violation is the Union's predetermined mindset, i.e., its manner of presentation. Given that the cornerstone of the violation is the Union's technique at the bargaining table, we view its economic activity as background evidence that solely supports finding that the Union bargained in bad faith.\textsuperscript{21}

\textsuperscript{20} Our conclusion is consistent with the bargaining principles made clear in \textit{NLRB v. American National Ins. Co.}, that good-faith bargaining does not require a party to agree to or make concessions to proposals, and a party may lawfully adhere to its core positions without violating Section 8(d). 343 U.S. at 404. The Court also recognized that a party must demonstrate “more than a willingness to enter upon a sterile discussion of union-management differences.” \textit{Id.} at 402. The Union failed to do so here.

\textsuperscript{21} See, \textit{e.g.}, \textit{General Electric Co.}, 150 NLRB 192, 193-97 (1964) (employer's coercive away-from-the-table campaign and statements of futility as to a strike treated as background evidence in totality of conduct analysis), \textit{enforced}, 418 F.2d 736 (2d Cir. 1969), \textit{cert. denied}, 397 U.S. 965 (1970). We further note that the substance of the Union's proposal, adoption of an area contract consistent with established industry standards, remains lawful. See \textit{United Mine Workers of Am. v. Pennington}, 381 U.S. at 666 & n.2 (“a legitimate aim of any national labor organization is to obtain uniformity of labor standards,” and in support, “a union may adopt a uniform wage policy and seek vigorously to implement it”). Unlike several cases finding a union’s economic pressure unlawful, the economic activity here is unaccompanied by an independent illegal bargaining demand or other unlawful object. See \textit{Electrical Workers IBEW Local 428 (Kern County Chapter NECA)}, 277 NLRB at 414 (striking to compel elimination of a foreman call clause that would have effectively prohibited the employer from selecting its own representatives in violation of Section 8(b)(1)(B) and resulted in illegal contract provisions in violation of Section 8(b)(3)); \textit{Plumbers Local 420 (Paragon Mechanical)}, 254 NLRB 445, 448-49 (1981) (striking in support
II. The Union’s economic activity did not violate Section 8(b)(4)(i)(B) because there was no evidence it had an unlawful secondary object.

We conclude that the Union’s ambulatory picketing of O’Fallon or Jefferson County delivery trucks was lawful primary activity because those two entities are part of a single-integrated enterprise with Material, which is the primary employer in this labor dispute. We further conclude, however, that while Ozark is a neutral employer, the Union’s compliance with the factors set forth in *Sailors’ Union of the Pacific (Moore Dry Dock)*,22 for lawful common-situs picketing precludes finding it sought to enmesh neutral Ozark in its primary dispute with Material.23

The threshold issue for finding a Section 8(b)(4) violation is whether the pressured employer is the primary with whom the union has its labor dispute, or an “unoffending” neutral employer.24 Only if the pressured employer is a neutral can there be merit to a Section 8(b)(4) allegation.25 In determining whether certain entities are entitled to “neutral” status, and therefore protected under Section 8(b)(4)(B), the Board developed the “ally” doctrine, one branch of which holds that no neutral status will be afforded where the alleged neutral constitutes a single of coercing employer to abandon national agreement to which it had consented and instead substitute local agreement violated Section 8(b)(3)); *Laborers’ Local 652 (Thoner Development Corp.),* 238 NLRB 1456, 1462-63 (1978) (picketing to coerce employer to agree to nonmandatory subject of bargaining, the designation of a multiemployer association as its bargaining representative, violated Sections 8(b)(3) and 8(b)(1)(B)); *Graphic Arts Int’l, Local 280 (Samuel Holmes, et al.),* 235 NLRB 1084, 1097-98 (1978) (striking and picketing to force employer out of multiemployer bargaining unit violated Sections 8(b)(3) and 8(b)(1)(B)), enforced, 596 F.2d 904 (9th Cir. 1979); *Utility Workers Union (Ohio Power Co.),* 203 NLRB 230, 239-241 (1973) (threatening to strike to compel employer to bargain in multiemployer units violated Section 8(b)(3)), enforced, 490 F.2d 1383 (6th Cir. 1974). Under these circumstances, as to the remedy, the Region need seek only an order requiring the Union, upon request, to affirmatively bargain in good faith with Material.

22 92 NLRB 247, 249 (1952).

23 The analysis as to the Union’s conduct at Ozark would apply to other ambulatory picketing encompassed by the charge, assuming no material factual differences.

24 *See, e.g., Anchortank, Inc. v. NLRB,* 601 F.2d 233, 237 (5th Cir. 1979), enforcing 238 NLRB 290 (1978).

integrated enterprise with the primary employer. At the same time, a determination of neutrality under Section 8(b)(4)(B) is not confined to the technical concept of the “single employer” doctrine; rather, “all the strands of mutual interest” connecting the entities must be considered. The Board has emphasized that the fundamental issue in these cases is whether one employer entity is “wholly unconcerned” with the other’s labor dispute such that it remains neutral, and the single employer factors are simply used to answer that question.

Applying these principles, we first conclude that O’Fallon and Jefferson County are allies of primary-Material because the three entities constitute a single-integrated enterprise. In determining whether two entities constitute a single employer, the Board considers four factors: (1) common ownership, (2) common management, (3) interrelation of operations, and (4) common or centralized control of labor relations. Each of these factors is satisfied for the three Breckenridge companies. Regarding the first factor, Material, O’Fallon, and Jefferson County are commonly owned by parent company BMC. Regarding the second, daily operations at the three entities are overseen by the same officials, specifically, BMC’s CEO, BMC’s President, Material’s General Manager, and Material’s Operating Manager. There is also significant interrelation of operations where drivers based out of one of these three entities regularly makes deliveries for and dispatches from one of the other two entities. For example, a Material driver may make a delivery for O’Fallon or Jefferson County, and load their truck and dispatch out of one of those plants, anywhere from once a week to one to three times daily. It is further significant that daily labor relations for the three entities, including the processing of grievances, are handled by the same officials, Material’s General Manager and Operating Manager, and the collective-bargaining agreements have been and are negotiated by the same officials, BMC’s CEO and BMC’s President. Id. at 174 (noting the significance of centralized control of labor relations for finding single employer status). Because the evidence strongly supports finding the three Breckenridge entities to be a single employer, the Union’s ambulatory picketing of delivery trucks

26 See Teamsters Local 560 (Curtin Matheson Scientific, Inc.), 248 NLRB 1212, 1213 (1980). The other branch of the ally doctrine holds that an employer’s neutrality can be compromised through its performance of “struck work.” See Teamsters Local 560 (Curtin Matheson Scientific, Inc.), 248 NLRB at 1213. However, there is no need to address that issue in the current case.

27 Id. at 1214.

28 Id. at 1213-14.

29 Teamsters Local 50 (E. J. Daugherty Oil), 269 NLRB 170, 174 (1984).
from the O'Fallon and Jefferson County plants did not involve unlawful secondary conduct that violated Section 8(b)(4)(i)(B).

By contrast, we conclude that Ozark is a neutral, or secondary, employer given the lack of evidence to satisfy three of the four factors for establishing that Ozark and the other primary companies constitute a single employer. As to common ownership, BMC is the largest owner of Ozark, and shares ownership with four or five other entities, although it is not clear whether BMC is the majority owner or its ownership interest confers more than a potential for control. But even assuming the factor of common ownership favors finding single integration, this factor is insufficient on its own to support a finding of single employer status.\(^{30}\)

Conversely, the factors of common management and centralized control of labor relations strongly favor finding Ozark to be a neutral employer. Ozark’s daily operations are overseen by a different General Manager than that of the other companies; Ozark’s General Manager also signed its most recent collective-bargaining agreement. Conversely, BMC’s President signed the collective-bargaining agreements for Material, O’Fallon, and Jefferson County. Ozark’s General Manager is not involved in the daily operations or labor relations of any other company. There is no evidence the hierarchy of managers commonly overseeing Material, O’Fallon, and Jefferson County have any actual or active control over the daily operations or labor relations at Ozark.

Furthermore, the factor of interrelation of operations also favors finding Ozark to be a neutral employer despite evidence that employees of the primary entities are leased by and make deliveries for Ozark on an irregular basis. In this regard, the frequency that employees are shared among the three primary entities is significantly higher than with Ozark (daily or weekly among the primaries, less than monthly with Ozark). The rarity with which an employee of the primaries dispatches from Ozark shows a lack of interrelation of operations.\(^{31}\)

Moreover, the record fails to show other evidence of interrelation or “strands of mutual interest” connecting Ozark to the three Breckenridge plants.\(^{32}\) It is not another branch of parent company BMC for the purpose of fulfilling one step of an integrated process for providing customers with concrete, or even united in a common goal to deliver a shared product. Ozark’s concrete is produced at its own

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\(^{31}\) Cf. Teamsters Local 560 (Curtin Matheson Scientific, Inc.), 248 NLRB at 1214 (interrelation found where over half the dollar value of shipments by one branch go to customers of other branches).

\(^{32}\) Id. at 1214.
plant, and the drivers must retrieve that product from Ozark to deliver to sites for projects obtained by Ozark. Thus, Ozark’s position contrasts with that in Teamsters Local 560 (Curtin Matheson Scientific, Inc.), where the Board found the company’s autonomous branches were sufficiently interrelated not to be neutral to the labor dispute because they worked together to fulfill orders by cross-shipping a large amount of products to common customers. An automated, centralized system routed the orders for fulfillment to the branches such that a disruption at one branch would not delay shipments because the order would be rerouted elsewhere. Conversely, Ozark’s de minimis use of drivers from the other three entities to deliver its concrete and the lack of other evidence showing automated centralization differs from the planned labor-sharing in Curtin Matheson. Similarly, Ozark’s operations show no integration of products or processes such that the products of the companies are combined in some way, or that the individual processes of each company are necessary to the formation of a final product. In short, the facts here establish that Ozark is “wholly unconcerned” with the labor relations of Material and its sister companies such that Ozark remains a neutral employer.

Nevertheless, even given Ozark’s status as a neutral employer, we conclude that the Union’s picketing activity at the Ozark plant on May 6 constituted lawful primary activity. The Union engaged in ambulatory, or roving, picketing when it followed three Jefferson County drivers, who Ozark leased to assist in a surge of work, to Ozark’s plant and set up a picket line. The Jefferson County drivers performed work at a common situs, i.e., one where both primary and neutral employers are present. When reviewing economic conduct at a common situs, a “rebuttable presumption that the object of picketing at a common situs is lawful arises if a union can show it has complied” with the four criteria set forth in Moore Dry Dock. Those criteria require the conduct (1) to occur when the primary is present and (2) engaged in its normal business, (3) to be reasonably close to the site of the primary dispute, and (4) to clearly disclose that the dispute is only with the

33 Id. at 1214-15.

34 Id.

35 Cf. Mine Workers (Boich Mining Co.), 301 NLRB 872, 874-75 (1991) (integration of products and processes showed interrelation of operations where one company’s coal was washed and blended by its subsidiary before being shipped), enforcement denied and remanded 955 F.2d 431 (6th Cir. 1992), on remand 308 NLRB 953 (1992).

36 See, e.g., Carpenters (DWA Trade Show & Exposition Services), 339 NLRB 1027, 1028-29 (2003) (quoting Sailors’ Union of the Pacific (Moore Dry Dock Co.), 92 NLRB at 249)).
primary employer. Even if conduct at a common situs complies with those criteria, “it will still be found unlawful if there is independent evidence that it had the secondary object prohibited” by Section 8(b)(4)(B).

Here, the Union’s picket line at Ozark met each Moore Dry Dock criterion, establishing the rebuttable presumption that the picketing was primary, and therefore lawful. The first criterion is satisfied because drivers for Jefferson County, who we have concluded is a primary employer because it is part of a single-integrated enterprise with Material, were present at the site when the Union’s picketing occurred. As to the second criterion, the Jefferson County drivers were engaged in Material’s normal business at the time. The three Breckenridge plants routinely leased the services of their drivers as part of their normal business, and here Ozark leased the three drivers to fulfill a surplus of work it had. Thus, the Jefferson County drivers went to the Ozark plant as part of the regular services they provide for their employer.

Regarding the third criterion, the Union picketed at the Ozark plant reasonably close to the site of the primary dispute after following the Jefferson County drivers there such that its location satisfied this criterion. We note that, assuming the Union did not picket “between the headlights” of the Jefferson County trucks, the Union arguably had an obligation to request permission to enter Ozark’s premises to picket closer to those trucks. However, in AAA Motor Lines, unlike here, the union’s picketing outside of five neutral employers’ premises prompted three of the employers to invite the union to picket closer to the primary’s truck because of the disturbance caused, and the union told at least one employer it was waiting for someone to come out and tell the union to picket in front of the primary’s truck. Notably, in finding the violation, the judge also relied on the union’s conduct of driving onto two of the neutral employers’ premises and unambiguously instructing neutral employees, with horns and signs, to join their picket line at the entrance. And in the only case applying this principle, Teamsters Local 208 (DeAnza Delivery Sys.), the union failed to confine its picketing at a neutral employer’s premises to gates used by the primary’s truck drivers and picketed at

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37 Id.

38 See Preferred Building Services, 366 NLRB No. 159, slip op. at 4 (Aug. 28, 2018), reversed and remanded sub nom., Service Employees Local 87 v. NLRB, 995 F.3d 1032 (9th Cir. 2021).


40 Id. at 609.

41 Id. at 610.
entrances where the primary’s trucks could not even be seen.\textsuperscript{42} By contrast, here there is no evidence the Union picketed at locations other than in view of the Jefferson County trucks, that the Union targeted employees of any other employer, or that Ozark asked the Union to relocate its picket line. We therefore conclude that the Union’s conduct satisfied third \textit{Moore Dry Dock} criterion.\textsuperscript{43}

As to the fourth criterion, which requires that the Union clearly disclose that its dispute is only with the primary employer, we find the Union’s use of the name “Breckenridge of St. Louis, MO” on its picket signs sufficient. The Board reviews this requirement by determining whether the picket signs demonstrate an intent to create confusion as to which employer the union intended to target with its picketing.\textsuperscript{44} Although Material’s official name is “Breckenridge Material Company,” and even despite that some of its plants are located in cities other than the official bounds of the city of St. Louis, a plain reading of “Breckenridge of St. Louis” clearly and reasonably refers to Material. The ambiguity arises as to whether other Breckenridge companies are also targeted disputants, namely O’Fallon, Jefferson County, and Ozark. Even if the Union intended the name it used to include O’Fallon and Jefferson County, because we have concluded that those entities are primary employers with Material, such an inclusion would be lawful. Ozark is the only other employer involved, and its name is unambiguously different than the Breckenridge companies. Thus, the Union’s communication that it has a labor dispute with “Breckenridge of St. Louis” and no other company did not intend to create confusion but rather clearly signal that the primary dispute excluded Ozark.\textsuperscript{45} We therefore conclude that the Union’s signs satisfied the fourth criterion.

\textsuperscript{42} 224 NLRB 1116, 1120-21 (1998).

\textsuperscript{43} There is no assertion that the Union breached a reserved gate system in place at Ozark.

\textsuperscript{44} See, e.g., \textit{Carpenters (DWA Trade Show & Exposition Services)}, 339 NLRB at 1029; \textit{see generally New York Mailers Union No. 6 (New York Herald Tribune, Inc.)}, 136 NLRB 196, 198 (1962) (intent discerned by analyzing the nature of the acts performed in Section 8(b)(4) cases), enforced, 316 F.2d 371 (D.C. Cir. 1963).

\textsuperscript{45} Compare \textit{Carpenters (DWA Trade Show & Exposition Services)}, 339 NLRB at 1029 (concluding based on context that union’s signs unambiguously targeted only the primary employer even though they used an abbreviated name for the primary and included references to other neutral employers), \textit{with Service Employees Local 87 (Pacific Telephone)}, 279 NLRB 168, 168, 175 (1986) (finding union’s signs, which stated “Company X Unfair,” failed to clearly disclose the primary employer), \textit{and Service Employees Local 32B-32J}, 250 NLRB 240, 244-45, 247-48 (1980) (finding fourth criterion not met because picket signs initially failed to identify any employer).
In satisfying all four Moore Dry Dock criteria, the Union has established a rebuttable presumption that its picketing at the Ozark plant was lawful primary activity. Because no other evidence shows the Union had the unlawful secondary object on enmeshing neutral-Ozark in its primary labor dispute with Material, the Union’s picketing at the Ozark plant did not violate Section 8(b)(4)(i)(B).46

In sum, the Region should issue a complaint, absent settlement, as to the allegation that the Union’s bargaining table conduct violated Section 8(b)(3). The Region should dismiss, absent withdrawal, the allegation that the Union’s picketing violated Section 8(b)(4)(i)(B).

/s/
R.A.B.

46 Because Material has not confirmed the assertions by BMC’s CEO that Union agents directed employees of Ozark and a third employer to stop working and join the picket line on May 6, those assertions do not alter our analysis.