

Laborers' Union, Local No. 464 and Lycon, Inc.
Cases 30-CC-479-2 and 30-CB-3079

August 27, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

On May 9, 1991, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed a brief in answer to the exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions¹ and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Laborers' Union, Local No. 464, Madison, Wisconsin, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

“(a) Inducing or encouraging individuals employed by J. P. Cullen & Sons, Inc., or by any other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of their employment to process, transport, load, unload, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to require J. P. Cullen & Sons, Inc., or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of Lycon, Inc., or to cease doing business with Lycon, Inc.”

2. Substitute the following for paragraph 1(b).

¹No exceptions were filed to the judge's findings that the Respondent violated Sec. 8(b)(2) and (1)(A) of the Act by causing J. P. Cullen & Sons, Inc. to terminate employees McDaniels and Rupprecht because they were not members of the Respondent's local, and that the Respondent violated Sec. 8(b)(1)(A) of the Act by telling McDaniels and Rupprecht that they must be members of the Respondent's local as a condition of registration and referral by the Respondent.

²In the circumstances of this case, where the Respondent's unlawful conduct was directed only against one employer (J. P. Cullen & Sons, Inc.) doing business with *Lycon, Inc.*, we do not believe the judge's recommended Order, prohibiting all secondary activity, regardless of the primary employer, is warranted. We shall, however, in accordance with our usual practice, prohibit such conduct against any other secondary employers where an object is to force or require them to cease doing business with Lycon, Inc. *Laborers Local 676 (Roberts Construction Co.)*, 232 NLRB 388 fn. 2 (1977), enf. 575 F.2d 1255 (8th Cir. 1978); *District 65, Distributive Workers (S.N.S. Distributing Service)*, 211 NLRB 469 fn. 4 (1974), enf. mem. 517 F.2d 1399 (3d Cir. 1975).

“(b) Threatening, coercing, or restraining J. P. Cullen & Sons, Inc., or any other persons engaged in commerce or in an industry affecting commerce, when an object is to require J. P. Cullen & Sons, Inc., or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of Lycon, Inc., or to cease doing business with Lycon, Inc.”

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX A

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 the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT induce or encourage individuals employed by J. P. Cullen & Sons, Inc., or any other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of their employment to process, transport, load, or unload, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object is to require J. P. Cullen & Sons, Inc., or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of Lycon, Inc., or to cease doing business with Lycon, Inc.

WE WILL NOT threaten, coerce, or restrain J. P. Cullen & Sons, Inc., or any other persons engaged in commerce or in an industry affecting commerce, where an object is to require J. P. Cullen & Sons, Inc., or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of Lycon, Inc., or to cease doing business with Lycon, Inc.

WE WILL NOT cause or attempt to cause J. P. Cullen & Sons, Inc. to terminate, lay off, or refrain from hiring Michael McDaniels, John Rupprecht, or any other employee, because they are not members of Laborers' Union, Local No. 464, and because they have not obtained a clearance card from, and shown that they are

current in their dues payments at, their respective local unions.

WE WILL NOT tell Michael McDaniels, John Rupprecht, or any other employee that they cannot register for referral by Laborers' Union, Local No. 464 because they are not members of Laborers' Union, Local No. 464, and also because they have not obtained a clearance card from, and shown that they are current in their dues payments at, their respective local unions.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make Michael McDaniels and John Rupprecht whole for any loss of earnings and other benefits they may have suffered as a result of the discrimination against them, plus interest.

WE WILL notify J. P. Cullen & Sons, Inc., in writing, with copies furnished to Michael McDaniels and John Rupprecht, that we have no objection to their employment and request that Cullen reemploy Michael McDaniels.

WE WILL remove from our files, and ask J. P. Cullen & Sons, Inc. to remove from Cullen's files, any reference to Michael McDaniels' and John Rupprecht's unlawful termination and notify McDaniels and Rupprecht, in writing, that we have done so and that we will not use the discharges against them in any way.

WE WILL notify Michael McDaniels and John Rupprecht, respectively, in writing, that they are entitled, at their option, to register on, and be referred from, Laborers' Union, Local No. 464's out-of-work list, maintained at our Madison, Wisconsin office, without regard to their membership or good standing in their respective home locals.

LABORERS' UNION, LOCAL NO. 464

George Strick, Esq., for the General Counsel.

Donald Schwartz, Esq. (Arnold and Kadjan), of Chicago, Illinois, for the Respondent.

Joseph A. Melli Esq. (Melli, Walker, Pease & Ruhly, S.C.), of Madison, Wisconsin, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Madison, Wisconsin, on June 14 and 15, 1990.¹ On charges filed by Lycon, Inc. (Lycon), in Cases 30-CC-479-2 and 30-CB-3079, the Regional Director for Region 30 issued a consolidated complaint and notice of hearing in these cases on December 22, against Laborers' Union, Local No. 464 (Local 464). The consolidated complaint alleges that Local 464 violated Section 8(b)(1)(A) and

(2) of the National Labor Relations Act by causing J. P. Cullen & Sons (Cullen) to terminate employee Michael McDaniels because he was not a member of Local 464, and by attempting to cause Cullen to terminate John Rupprecht because he was not a member of Local 464, and because Rupprecht did not have a clearance card showing that he was up-to-date in his dues payments to his current local. The consolidated complaint also alleges that Local 464 violated Section 8(b)(4)(i) and (ii)(B) by inducing and encouraging individuals employed by Cullen to refuse in the course of their employment to use or otherwise handle Lycon's products, and by threatening, coercing, and restraining Cullen, all with an object of forcing or requiring Cullen to cease using, selling, handling, transporting, or otherwise dealing in Lycon's products, and to cease doing business with Lycon.

In its timely filed answer, the Respondent denied that it had committed any of the alleged unfair labor practices. Each of the parties filed a timely posthearing brief.²

On the entire record, including my observation of the witnesses and their demeanor, and after considering the posthearing briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Lycon, a corporation, has an office and principal place of business at Janesville, Wisconsin, and plants at Madison, Middleton, Portage, and Sauk City, Wisconsin, where it produces and sells redi-mix concrete. The complaint alleges, the answer admits, and I find, that during the calendar year 1988, a representative period, Lycon, in the course and conduct of its redi-mix concrete business, purchased and received at its Wisconsin locations, goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Wisconsin.

J. P. Cullen & Sons, Inc. a corporation, with its principal place of business at Janesville, Wisconsin, engages in the construction business. During the calendar year 1988, a representative period, Cullen, in the course and conduct of its construction business, purchased and received goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Wisconsin.

I find that Lycon and Cullen, respectively, are, and have been at all times material to these cases, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

The complaint alleges, the answer admits, and I find that Laborers' Union, Local No. 464, and Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Local 695, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,³ respectively, are labor organizations within the meaning of Section 2(5) of the Act.

²Lycon's motion to correct the transcript of the hearing in these cases is granted. The corrections are set forth in appendix "B," attached to this decision [omitted from publication].

³Drivers, Salesmen, Warehousemen, Milk Processor, Cannery, Dairy Employees and Helpers Local 695, affiliated with International Brotherhood of

Continued

¹All dates are in 1989, unless otherwise stated.

III. ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*⁴

Cullen is a general contractor, primarily engaged in constructing commercial, institutional, governmental, and health care buildings. At all times material to these cases, Cullen has had collective-bargaining agreements with several labor organizations, including Local 464. Cullen and Local 464 were party to a collective-bargaining agreement, effective from June 1, 1988, through May 31, 1990. Article V of the agreement set forth an exclusive referral system, which included the following provisions pertinent to these cases:

Article V.—HIRING HALL SYSTEM

Section 1. . . .

a. Registration, selection and referral of applicants for employment shall be on a non-discriminatory basis and in no way affected by Union membership, rules, regulations, bylaws, constitutional provisions or any other aspect or obligation of Union membership policies or requirements. . . .

b. The Employer shall notify the Union of the need for workers and shall not recruit applicants or hire persons who have not been referred by the Union except under conditions stated herein.

An employer reserves the right to:

. . . .

(3) Employ a minimum number of key laborers.

. . . .

i. In the event that the referral facilities maintained by the Union are unable to fill the requisition of an Employer for employees within a forty-eight (48) hour period after such requisition is made by the Employer (Saturdays, Sundays and Holidays excepted), the Employer may employ applicants directly at the jobsite. In such event, the Employer will notify the Local Union of the names and dates of such hirings.

. . . .

k. The order of referral set forth above shall be followed except in cases where Employers require and call for employees possessing special skills and abilities in which case the Union shall refer the first applicant on the register possessing such special skills and talent.

In 1989, Cullen was the general contractor for the Wisconsin Mutual Insurance office building, to be constructed on the west side of Madison, Wisconsin. Cullen began work on the Wisconsin Mutual project in late August, and had substantially completed it by the time of the hearing in these cases.

Cullen chose Lycon as the supplier of redi-mix concrete for the Wisconsin Mutual Insurance job. At all times material to these cases, Lycon has had a labor dispute with Teamsters Local 695. Cullen has not had any labor dispute with Teamsters Local 695, at any time.

On September 11, Cullen was ready to make its first concrete pour on the Wisconsin Mutual site. At approximately

1 p.m., a Lycon redi-mix truck arrived at the site, followed closely by a pickup truck with some men in it. The men alighted from the pickup truck and began picketing the site with signs. As the Lycon truck prepared to pour its concrete, three Cullen employees, including one laborer, a carpenter, and an operating engineer, walked off the job.

Andy Blomstrom, Cullen’s field superintendent at the Wisconsin Mutual site, instructed the redi-mix truck to return to the Lycon plant. Blomstrom then called Cullen’s Vice President Mark Cullen. After hearing Blomstrom’s report of the three employees’ refusal to handle the Lycon concrete, Mark Cullen told him to send them home for the rest of the day. Blomstrom told the three employees that there was no more work for them that day, and to return to work on the following morning.

The next day, Cullen’s employees returned to the Wisconsin Mutual site. Soon after lunch, a Lycon redi-mix truck appeared at the site. Immediately, all of Cullen’s employees, except its iron worker, left the jobsite. Blomstrom and the ironworker poured and placed the concrete. However, Blomstrom cancelled the delivery of a second truck load, scheduled for that same day. When the Lycon truck departed, the employees, who had walked off, attempted to return to work. Blomstrom told them to return to work tomorrow.

On the morning of September 13, at the Wisconsin Mutual site, Vice President Mark Cullen met with Blomstrom and the Cullen employees assigned to work there. Mark explained that Cullen had no dispute with the Teamsters and had set up a dual gate system on the jobsite. Mark pointed out that in light of this system, the employees “should not have a problem handling the Lycon material.” Indeed, Cullen had erected a fence, with one gate for its employees and another for Lycon’s employees.

Mark also explained that Cullen was acting in accordance with its contract with the Unions. Mark added that Cullen “did not believe in sympathy strikes or secondary boycotts.”

Pointing out that Cullen’s calculation of its successful bid on the Wisconsin Mutual building had included the cost of Lycon’s redi-mix, Mark announced that Cullen intended to pour that redi-mix. Mark warned that if the employees refused to handle the Lycon material, Cullen would terminate them and employ replacements. He requested that the employees immediately go to their respective Unions for advice, and then return to work. After some discussion, three of the assembled employees left. Of the three who left, only laborer Bill Dunn failed to return to the Wisconsin Mutual jobsite.

Approximately 1 or 1-1/2 hours after the meeting, Superintendent Blomstrom telephoned Local 464 and conversed with Field Representative Thomas E. Fisher about Bill Dunn. Fisher reported that Dunn had not yet appeared at Local 464’s office.

Later in the morning, Blomstrom and Fisher conversed again about Dunn. Fisher reported that Dunn claimed that Cullen had fired him. Blomstrom said he wanted Dunn to return to work, but understood that Dunn would not return. Blomstrom asked Fisher if he had anyone experienced in pouring concrete, who could replace Dunn. Blomstrom also asked how many people were on Local 464’s out-of-work list. Fisher answered that he had 15 “on the bench,” including some who were experienced in handling concrete. Blomstrom asked Fisher to select a qualified person and send

Teamsters, Chauffeurs, Warehousemen and Helpers of America (Teamsters Local 695).

⁴Except as noted below, the facts in these cases are not in dispute.

him to Cullen, at the Wisconsin Mutual site. Fisher said he would have someone at the job on the following morning.

Fisher checked Local 464's out-of-work list and contacted Dan Wilson. Fisher told Wilson of the labor dispute between Lycon and Teamsters Local 695 and that Cullen was using Lycon's redi-mix concrete on the Wisconsin Mutual Insurance job. Wilson assured Fisher that he would have no problem handling Lycon's concrete. Fisher dispatched Wilson to Cullen.

When Wilson reported to the Wisconsin Mutual site, on the morning of September 14, he announced that he would not handle Lycon concrete. When a Lycon truck arrived, Wilson walked off the job and stood across the street watching the pour. After watching for some time, he crossed the street and began helping with the pour. However, when Blomstrom asked him to vibrate the concrete, Wilson did not know how. Nor did Wilson know how to place the concrete in forms. After the pour was completed, Blomstrom asked Wilson if he had any experience vibrating concrete. Wilson answered that he did not have very much. Blomstrom instructed him on the proper techniques for vibrating concrete. Wilson worked on the jobsite for about 2 weeks.

On the morning of Friday, September 15, Blomstrom telephoned Local 464 and asked Fisher to refer a person qualified to work with concrete. Fisher answered that no one was available and that the people on the out-of-work list were already placed. Blomstrom requested that if the Union should get someone on the out-of-work list, who could pour concrete, it refer that person to Cullen, at the Wisconsin Mutual Insurance site. Blomstrom described the type of workman he needed as someone who could place concrete, and gave Ken Cook as an example. Fisher said he understood what type of person Blomstrom wanted, and would get in touch with him when such a person came along.

Absent from Fisher's response was any suggestion that Local 464 intended to seek such a laborer from a neighboring local. However, I find from Fisher's testimony, that Local 464's policy is to call upon nearby locals for laborers, when its own out-of-work list is depleted.

Local 464 never referred a laborer meeting Blomstrom's specifications to him at the Wisconsin Mutual site. On September 18, Cullen did not receive any referral from Local 464. Yet, I find from Fisher's testimony, that Local 464 referred laborers to other jobs on September 18. Local 464's referral list for September 18, showed 10 referrals and one recall on that date. From September 19 until 26, Local 464 referred 33 laborers without sending any to Cullen's Wisconsin Mutual job. The referral list shows that the next referral to Cullen's Wisconsin Mutual job was on September 27, when Local 464 sent Cindy Pearson to that site.

Local 464 ignored nonmember Donald Zander's application for construction work, filed on September 14. Zander's application showed that he had "a couple of months cement const. experience," and was available for work immediately. According to Local 464's referral records, it did not refer him to any job on or before September 15.

As of September 18, Cullen's need for laborers to pour concrete at its Wisconsin Mutual jobsite continued. Shortly before 6 a.m., on that day, Mark Cullen telephoned laborer Mike McDaniels, a member of Laborers' Local 1440, in Janesville, Wisconsin. Cullen had recently laid McDaniels off from a job, and Mark wanted to employ him at the Wis-

consin Mutual job, in Madison. Mark explained to McDaniels that Cullen had a job in Madison involving concrete, and asked if McDaniels would go to the Wisconsin Mutual job, that same morning. Mark remarked that he saw McDaniels as having a key role for Cullen in the concrete work at that site. McDaniels took the job and arrived at the Wisconsin Mutual site at approximately 7:20 a.m.

On arriving at the jobsite, McDaniels met Blomstrom. Who explained the work that was in progress and the contemplated concrete work. McDaniels said he would have no problem working with the concrete. At the time McDaniels arrived at the Wisconsin Mutual jobsite, Blomstrom knew that he was a key man. On learning that McDaniels was from the Janesville laborers' local, Blomstrom suggested that he notify his union hall of his whereabouts. On completion of his conversation with Blomstrom, McDaniels began to work.

Later, on the morning of September 18, Local 464's business manager, Robert Niebuhr, and Field Representative Fisher appeared at the Wisconsin Mutual site, after hearing that Mike McDaniels, a laborer from Janesville's Local 1440, was working there. Niebuhr and Fisher approached Superintendent Blomstrom about McDaniels. Niebuhr mentioned that Local 464 had not referred McDaniels, that the local had "people on the out-of-work list," and that therefore he should not be working on this jobsite. Niebuhr asked Blomstrom to point out McDaniels. Blomstrom said McDaniels was around the side of the trailer.

As they were leaving the trailer, Fisher and Niebuhr apologized to Blomstrom for the problems which had beset the Wisconsin Mutual job, and said they hoped he did not take them personally. One or both of the Local 464 officials explained that Local 464 did not have any "problem" with Blomstrom, personally, and hoped they would not "create a problem for [him]." Continuing, the Local 464 officials said that their problem was with Cullen, who they believed was collaborating with Lycon on some legal matters and was in collusion with the same firm against Local 464.

Fisher and Niebuhr found McDaniels, and explained that Local 464 had people on its out-of-work list, and that he, McDaniels "could become a member of the local and go out on our out-of-work list." Fisher and Niebuhr went on to assure McDaniels that once he got on its referral list, there would be work for him, as Local 464 "did have several jobs in the area." They also told him that Local 464 could send him to a job closer to the Janesville area, "once he became a member."

The two Local 464 officials advised McDaniels that to achieve membership in their local, he must obtain a transfer slip from his Janesville local. They also told McDaniels that to obtain the transfer slip, he must be a paidup member of Local 1440 through the current month, September.⁵

McDaniels said that he did not want to transfer to the Madison local. He noted that if he did so, there was no certainty that he would be working for Cullen. He said he wanted to work for Cullen, and that Mark had originally hired him to work at another job, preferable to the Wisconsin Mu-

⁵ My findings regarding Fisher's and Niebuhr's remarks to McDaniels, are based upon Fisher's full and forthright account. McDaniels' version corroborates much of Fisher's testimony regarding this conversation. However, Fisher testified about his and Niebuhr's remarks in a frank manner, with careful attention to details.

tual job. McDaniels expressed displeasure at the inconvenience of travelling from Janesville to Madison. Niebuhr said he would get in touch with Blomstrom, who would notify McDaniels of his employment status.⁶

Niebuhr returned to Blomstrom and told him that McDaniels could not remain on the Wisconsin Mutual job. Local 464's position on this matter was, as Niebuhr explained to Blomstrom, that Local 464 had not referred McDaniels, who had not followed the hiring hall procedures. Niebuhr said that McDaniels could finish the day. Blomstrom replied that he had no authority to remove McDaniels from the job, and that if Fisher and Niebuhr wanted McDaniels off the job, they should talk to Mark Cullen.⁷

Late on the morning of September 18, Niebuhr telephoned Mark Cullen and said that he had a problem because McDaniels was working on the Wisconsin Mutual site. Mark replied that Cullen had a job to do and needed people who would pour concrete. Niebuhr remarked, in substance, that Local 464 laborers were willing to work, but would not handle Lycon material. Mark asserted that McDaniels was a keyman, sent to the job because he would perform the work. Niebuhr said he would consider the situation, contact Mark before the workday was over, and tell him if McDaniels could remain on the job.⁸

On the afternoon of September 18, Niebuhr called Mark and insisted that Cullen remove McDaniels from the Wisconsin Mutual job, as there was no work for him there, and because Local 464 had men out of work. Mark insisted that Cullen had a job to complete, and that Niebuhr's men would be required to handle Lycon's material. Niebuhr replied that it was up to each individual to decide whether he or she would handle Lycon material. Later in the afternoon, Mark instructed Blomstrom to permit McDaniels to complete his day's work and then send him back to Janesville. Blomstrom carried out Mark's instructions. McDaniels did not return to the Wisconsin Mutual site.⁹

Later in September, Cullen needed a mason tender to assist its masons in constructing block and brick walls at the Wisconsin Mutual site. During the 2 weeks prior to September 27, Superintendent Blomstrom telephoned Local 464 every other day to request a mason tender.

⁶I based my findings regarding McDaniels' remarks and Niebuhr's statement of intent to talk to Blomstrom, upon McDaniels' uncontradicted testimony.

⁷Blomstrom was uncertain about who he had a second conversation with on September 18, regarding McDaniels. I have credited Fisher's denial that he had a second conversation with Blomstrom on that date. Also, I have credited Niebuhr's admission that he had talked to Blomstrom a second time on September 18.

Blomstrom's and Niebuhr's testimony about the second conversation raised an issue of credibility regarding whether Blomstrom mentioned that McDaniels was a keyman. On direct examination, Blomstrom testified that during the second conversation, he told Niebuhr that McDaniels was a keyman. However, on cross-examination, Blomstrom changed his testimony. He testified that he told Fisher and Niebuhr of McDaniels' keyman status, when the two union officials first arrived at the Wisconsin Mutual jobsite. Niebuhr denied that Blomstrom ever told him that McDaniels was a keyman.

Blomstrom's inconsistent testimony, and his uncertainty as to which of the two Local 464 officials he spoke to in the first conversation, cast serious doubt upon the reliability of his contradicted testimony. In contrast, Niebuhr impressed me as having a firm memory of his and Fisher's conversations with Blomstrom on September 18.

⁸My findings regarding Mark Cullen's conversation with Niebuhr on September 18, are based on Mark's uncontradicted testimony.

⁹I have credited Mark Cullen's uncontradicted version of his conversation of September 18, with Niebuhr.

On September 26, Local 464's business manager, Niebuhr answered Blomstrom's request, saying that the only mason tender he had available was Cindy Pearson. Niebuhr said that she had worked for Monona Masonry and that he thought she was an experienced mason tender. Blomstrom accepted Niebuhr's recommendation and told him to send her out to Cullen at the Wisconsin Mutual site.¹⁰

Cindy Pearson came to work on September 27. On completion of some preliminary paperwork, Blomstrom directed her to build a scaffold, one of the tasks usually performed by a mason tender. Pearson said that she did not know how to build a scaffold. Blomstrom asked her to mix mortar in place of another employee, who would build the scaffold. Pearson said she did not know how to mix mortar, another task included in mason tending. Blomstrom asked Pearson how she could claim to be an experienced mason tender, when she could neither build a scaffold nor mix mortar. She replied that the extent of her mason tending consisted of keeping bricks next to the bricklayers and supplying them with mortar.¹¹

Blomstrom introduced Pearson to the carpenter foreman and assigned her to him. The carpenter foreman found her performance less than satisfactory. Before she had completed half of the day, the carpenter foreman was asking Blomstrom to remove her from his crew. Pearson worked for the carpenter foreman for 3 days. At that point, Blomstrom switched her to mason tending.

On September 28, Blomstrom telephoned Local 464, complained to Field Representative Fisher that Pearson was not a very experienced mason tender, and asked if he had anyone else. Fisher replied that there was only one prospect, and that man had neither a driver's license nor access to transportation to the jobsite from his residence, located on the other side of Madison.¹²

Cindy Pearson worked as a mason tender for 3 days. She put concrete blocks near the masons' work stations, put mortar on their boards, and assisted in setting up scaffolding, referred to as "Morgan towers." I find from Pearson's testimony that she had never before helped to erect a Morgan tower.

¹⁰Blomstrom testified that his conversation regarding Cindy Pearson, on September 26, was with Fisher, Local 464's field representative. However, Fisher's testimony did not reflect such a conversation. Further, Niebuhr's testimony showed that he had participated in that conversation. Indeed, his version largely agreed with Blomstrom's. Accordingly, I have credited Niebuhr's testimony showing that he conversed with Blomstrom about Pearson on September 26. I have also credited Blomstrom's and Niebuhr's testimony regarding the substance of their conversation.

¹¹In her testimony, Cindy Pearson denied that Cullen assigned her to mason tending duties on September 27. Instead, she testified that her initial assignments were to assist the carpenters and another laborer. However, as Blomstrom gave a logical account of his encounter with Pearson on September 27, in a frank and forthright manner, I have credited his testimony. I also noted that Pearson seemed hostile as she responded to cross-examination by counsel for the General Counsel.

¹²Blomstrom testified that he conversed with Fisher on September 28 about Pearson and whether Local 464 could provide a mason tender. Fisher denied that such a conversation occurred. For the reasons stated below, I have resolved this issue of credibility in favor of Blomstrom.

In response to a leading question on direct examination by Local 464's counsel, Fisher denied receiving a call from Blomstrom on September 28. However, Fisher's evasiveness on cross-examination suggested that he was anxious to avoid giving information which might assist the General Counsel's case against Local 464. This factor, plus my impression that Blomstrom was a frank witness, persuaded me to reject Fisher's denial and credit Blomstrom.

On Pearson's last day, Blomstrom received a report that she was talking to an electrician, and had been doing so for 20 minutes. Blomstrom went to see for himself, and found her talking. As he walked across the jobsite, the masons were complaining that they had no material to work with. On October 4, at the end of the day, Blomstrom laid Pearson off.¹³

On the morning of October 4, John L. Rupprecht, a laborer, who was a member of Local 392, Waukesha, Wisconsin, drove to Madison looking for work. Rupprecht stopped off at Local 464's hall, where he asked Secretary-Treasurer Gordy Kraut if there was work in the neighborhood. Kraut said no, but he would put Rupprecht's name on the list. Rupprecht said he was from the Waukesha local and showed his union card to Kraut, who asked for his telephone number. Rupprecht told Kraut that he was a mason tender and had worked with Morgan scaffolding.

Rupprecht left Local 464's hall, visited a project, and then went to Cullen's Wisconsin Mutual site. Rupprecht spoke to Cullen's mason foreman, Gene Haegele, who knew of his skill as a mason tender. On Haegele's recommendation, Blomstrom hired Rupprecht and told him to report for work on the following morning.

That same afternoon, Rupprecht notified Local 464's secretary-treasurer that Cullen had hired him. Gordy Kraut said, "Okay."

On the morning of October 5, after Rupprecht came to the Cullen jobsite, Blomstrom told him to obtain a transfer slip from his local in Waukesha. Shortly thereafter, Blomstrom telephoned Local 464, and complained to Niebuhr that Pearson was not "very qualified" and was "unwilling to work." Blomstrom also reported that he had laid her off, and said he wanted to employ Rupprecht. Niebuhr said that he would check on Rupprecht, who was not on the out-of-work list.¹⁴

Rupprecht went to Local 464, where he met Fisher and Niebuhr. I find from Fisher's testimony that he and Niebuhr explained the procedure for transferring into Local 464, to Rupprecht, as follows:

We told him at that point he had to be a member, paid up and in good standing from his local. And that at that time he could request that transfer slip from his local and deposit it in ours within 30 days. At that time he would be put on the out of work list and when his name come [sic] up, he would be sent out.

¹³ I based my findings as to Pearson's employment as a carpenter's helper, and a mason tender, at Cullen's jobsite, on Blomstrom's, Field Superintendent Dale Schultz', and Pearson's testimony. However, where Pearson's testimony conflicted with, or was inconsistent with, Blomstrom's, I have credited him.

Pearson's testimony suffered from inconsistency. Thus, after testifying that she assisted in pouring concrete from the first day of her employment at the Cullen job, until "Wednesday, Thursday and Friday," Pearson testified that she did not believe there was any concrete poured on any of those 3 days. Also after testifying that she "prepared mortar," Pearson testified that another employee mixed the concrete, and all she did was move material from a fork-lift to the masons.

I also noted that she became incensed as she recounted the circumstances immediately surrounding her layoff by Cullen. This impression, and her annoyed reaction to cross-examination, cast doubt on her objectivity. In contrast, Blomstrom seemed to have no personal feelings about the subject matter of his testimony. Thus, of the two, Blomstrom impressed me as being the more reliable witness.

¹⁴ I have credited Blomstrom's uncontradicted testimony regarding his conversation with Rupprecht and his two telephone conversations with Niebuhr, all on October 5.

I also find from Fisher's testimony that Rupprecht responded bluntly. He said he intended to work for Cullen on the Wisconsin Mutual job.

On the afternoon of October 5, Niebuhr telephoned Blomstrom and began discussing Rupprecht. Niebuhr remarked that Rupprecht was not a member of Local 464, but belonged to the Waukesha local. Switching topics, Niebuhr suggested that Cindy Pearson's layoff might be the subject of a sex discrimination case. However, out of consideration for Blomstrom's past favors for him, Niebuhr was uncertain about pursuing the matter. Niebuhr said, in substance, that he was troubled by Cullen's cooperation with Lycon on a labor dispute, and that this problem had nothing to do with Blomstrom.

Niebuhr said that Rupprecht would not be available to work for Cullen. According to Niebuhr, he had a qualified laborer, whom he preferred to send to Cullen. Blomstrom insisted on having Rupprecht on the job. Niebuhr rejected Blomstrom's insistence, pointing out that Rupprecht was not a Local 464 member, and thus could not work on the Cullen job. Blomstrom suggested that Niebuhr talk to Mark or David Cullen, and expressed disappointment that he and Niebuhr could not resolve this problem, as they had done on previous occasions. Niebuhr said he could not give in, as he had "several qualified mason tenders," and he would prefer to send one of them to Cullen.

Niebuhr also called attention to the requirements that Rupprecht bring his dues up to date, and obtain a clearance slip before he could go on Local 464's out-of-work list. Blomstrom said he intended to employ Rupprecht, and insisted that Niebuhr permit that to happen. Niebuhr said he would talk to one of the Cullens about this matter.¹⁵

At about 2:30 p.m., on October 5, Niebuhr reached Cullen's Vice President David Cullen by phone. David said that Cullen wanted to hire Rupprecht, and complained about Cindy Pearson. David remarked that she had been referred to the job as a qualified mason tender and was not qualified. Niebuhr was apologetic as he conceded that he knew Pearson was not a qualified mason tender. He went on to criticize Blomstrom for laying her off, and warned of possible "consequences."

David and Niebuhr began arguing about Rupprecht. David insisted that Cullen wanted him as a qualified mason tender. Niebuhr said Rupprecht could not work for Cullen because he was not a member of Local 464, had not transferred from the Waukesha local, and was not current in his dues to that local. According to Niebuhr, until Rupprecht paid his dues and obtained a transfer, Local 464 would not place his name on its referral list. Niebuhr said he wanted to send a qualified mason tender from Local 464.

The argument about Rupprecht continued until David relented. David agreed to employ the Local 464 man, whom Niebuhr had suggested. The man would report to the Wisconsin Mutual job on the next morning.

In the course of the conversation about Rupprecht, Niebuhr suggested that Cullen could "make things a lot easier . . ." if it bought redi-mix from a Madison supplier, who was signatory to a union contract. David answered that Cullen had done business with a Madison concrete supplier

¹⁵ My findings regarding Blomstrom's second conversation with Niebuhr, on October 5, are based on Blomstrom's uncontradicted testimony.

which was signatory to a union contract. However, David went on, Cullen's policy was to award its redi-mix contracts to the lowest bidder. David pointed out that Lycon had been the low bidder on the Wisconsin Mutual job; that Cullen had no dispute with the Teamsters; and, that Cullen would continue to use Lycon material.

David complained that Local 464 had not been sending the most qualified people on its out-of-work list to Cullen at the Wisconsin Mutual job. I find from Niebuhr's testimony, that during his conversation with David, he explained that Local 464 had difficulty in filling Cullen's requests, because he, Niebuhr, knew "for a fact," that some of the individuals on the out-of-work list "would not touch Lycon concrete." Niebuhr did not disclose how he learned that individuals on the out-of-work list would not handle Lycon concrete, and he was not asked to provide that information in his testimony before me.¹⁶

Late on the afternoon of October 5, Local 464's business manager, Niebuhr referred laborer Daniel R. Younger to the Wisconsin Mutual job. Younger had been on Local 464's out-of-work list since October 4. He was to report to the Cullen job at 7 a.m., on the morning of October 6, and work as a mason tender. Younger accepted the referral.

Following his conversation with Niebuhr, David Cullen advised Blomstrom that Cullen could not hire Rupprecht. David also told Blomstrom that Local 464 was referring a mason tender, who would report to the Wisconsin Mutual site at 7 a.m., on the following day.

At about 6:45 a.m. on October 6, Rupprecht reported for work at the Wisconsin Mutual building site. Blomstrom would not permit Rupprecht to work. Instead, Blomstrom said that Local 464 would not permit Rupprecht to work for Cullen because he had not obtained a clearance slip from the Waukesha local, and because there were laborers on Local 464's out-of-work list. Rupprecht replied that he was getting the necessary clearance slip. Blomstrom advised Rupprecht to go to the Waukesha local and pay his dues for October. Rupprecht departed for Waukesha, paid his dues, and received a transfer slip.

At approximately 6:20 a.m., on October 6, the employer, which had laid him off earlier in the week, recalled Younger. He accepted the recall and did not notify Cullen of his decision. Instead, Younger called Local 464 and notified Fisher, shortly after 7 a.m.¹⁷

At about 7:15 a.m., Blomstrom telephoned Local 464, and reported to Fisher that the promised mason tender had not appeared. Fisher said he would notify Niebuhr. Later in the morning, Niebuhr called Blomstrom and explained that the laborer had returned to work for his former employer. Blomstrom complained that after Local 464 had insisted on sending a member from the out-of-work list, and had compelled Cullen to deny employment to Rupprecht, the referred laborer did not "show up." When Niebuhr offered to send another laborer, Blomstrom hung up on him.¹⁸

¹⁶My findings regarding Niebuhr's conversation with David Cullen on the afternoon of October 5, are based on the latter's undisputed testimony.

¹⁷Younger testified that he telephoned Fisher at "approximately 7:12." However, Younger's answer that he thought he had done so at that time, suggested that he was uncertain about it. Accordingly, I have adjusted my finding to reflect my evaluation of his testimony in this regard.

¹⁸I have credited Blomstrom's versions of his conversations on October 6, with Local 464's officials, regarding Younger's failure to report to Cullen.

Between 8 and 9 a.m., on October 6, Niebuhr telephoned Mark Cullen and apologized for the treatment Cullen had received from Local 464 on the previous day, in connection with Rupprecht's effort to work at the Wisconsin Mutual site. Mark answered that Cullen had work to do, and needed Rupprecht. Mark asked if Niebuhr would permit Rupprecht to work for Cullen. Niebuhr expressed dislike for Rupprecht, but said he would allow him to work for Cullen on the Wisconsin Mutual job.¹⁹

I find from Rupprecht's undisputed testimony, that on the afternoon of October 6, after he had presented his transfer slip, he told Thomas Fisher of Local 464 that he planned to report to the Cullen job on the following Monday. Fisher did not object. Nor did Local 464 refer Rupprecht to that job. Instead, I find from Rupprecht's testimony, that on the afternoon of October 6, Blomstrom told Rupprecht to report for work on Monday, October 9. On the following Monday, Rupprecht began working for Cullen, at the Wisconsin Mutual site.²⁰

B. Analysis and Conclusions

1. Violations of Section 8(b)(1)(A) and (2) of the Act

The complaint alleged that on September 18, Local 464 violated Section 8(b)(1)(A) and (2) of the Act by causing Cullen to remove laborer Michael McDaniels from employment at the Wisconsin Mutual site because he was not a member of Local 464. The complaint also alleged that Local 464 again violated those provisions of the Act on October 5, by attempting to cause Cullen to terminate laborer John Rupprecht because he was not a member of Local 464, and could not register on its out-of-work list until he became current in his dues at Local 392, and obtained a transfer slip from that local. Local 464 contends that it did not violate Section 8(b)(1)(A) and (2), on the ground that there was no evidence that it discriminated against McDaniels or Rupprecht or that it encouraged them to be union members. I disagree with Local 464's position.

"[T]he policy of the Act is to insulate employees' jobs from their organizational rights." *Radio Officers v. NLRB*, 347 U.S. 17, 40 (1954). With this policy in mind, Congress enacted provisions "designed to allow employees to freely exercise their right to join unions, be good, bad, or indifferent members, or abstain from joining any union without imperiling their livelihood." *Id.* Thus, under Section 8(b)(2) of the Act, a union engages in an unfair labor practice, when it causes or attempts to cause an employer to discriminate against an employee to encourage or discourage membership in any labor organization. Also, Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a union "to restrain or coerce" employees in the exercise of their rights under Sec-

Niebuhr did not deny having a conversation with Blomstrom on October 6 regarding Younger's failure to arrive at the Cullen job.

Fisher presented testimony contradicting Blomstrom's account of their conversation of October 6. However, on cross-examination, Fisher showed reluctance to provide responsive answers. He seemed more interested in exculpating Local 464. In contrast, Blomstrom seemed to be providing his full recollection in a frank manner. Therefore, I have resolved the issues of credibility here in favor of Blomstrom.

¹⁹I based my findings regarding the conversation between Niebuhr and Mark Cullen on the latter's undisputed testimony. Niebuhr did not testify about this conversation.

²⁰My findings regarding Rupprecht's activities on October 6 and 9 are based on his uncontradicted testimony.

tion 7 of the Act to join a union or to refrain from joining except where there is a union-security agreement as authorized by Section 8(a)(3) of the Act.

“The Board presumes that a union acts illegally any time it prevents an employee from being hired or causes an employee to be discharged because by such conduct a union demonstrates its power to affect the employee’s livelihood in so dramatic a way as to encourage union membership among employees. [Footnote citation omitted.] A union may, however, rebut this presumption ‘by evidence of a compelling and overriding character showing that the conduct complained of was referable to other considerations lawful in themselves, and wholly unrelated to the exercise of protected employee rights or to other matters with which the Act is concerned.’ *Carpenters Local 1102 (Planet Corp.)*, 144 NLRB 798, 800 (1963) [footnote omitted].” *Glaziers Local Union 558 (PPG Industries)*, 271 NLRB 583, 585 (1984).

Here, the record shows that on September 18, Local 464 caused Cullen to terminate McDaniels’ employment at the end of that day. Local 464’s business manager, Niebuhr, told Cullen that it could not keep McDaniels on the Wisconsin Mutual job because members of Local 464 were on the out-of-work list. Earlier on that same day, Local 464’s officials, Niebuhr and Fisher, had explained to McDaniels that he could not work on the Wisconsin Mutual job because there were Local 464 members on the out-of-work list. They went on to explain that McDaniels could qualify for inclusion on the out-of-work list only by being a member of Local 464. Fisher and Niebuhr also told McDaniels that Local 464 would accept him for membership only if he had a transfer slip from his Janesville local, and that to obtain such a slip, he must be a paid-up member of the Janesville local.

In its brief, Local 464 seeks to excuse its effort to cause McDaniels’ termination on the ground that he did not comply with Local 464’s and the International Union’s constitution’s requirement that job applicants from other locals transfer into Local 464 as a precondition for seeking employment through Local 464’s referral system. However, I do not find such a requirement embodied in that document. Indeed, such a requirement would run afoul of Section 8(b)(2) and (1)(A) of the Act, as did Local 464’s insistence on McDaniels’ termination because he was not a member of that local. Niebuhr’s remarks to Cullen, and Niebuhr’s and Fisher’s remarks to McDaniels, on September 18, clearly reflected that unlawful motive for insisting that Cullen remove McDaniels from the Wisconsin Mutual job.

In sum, I find that Local 464 caused Cullen to terminate McDaniels on September 18 and that there was no showing by Local 464 that its conduct was based on lawful considerations. Instead, the record showed that Local 464 insisted that McDaniels become one of its members before his name could appear on its out-of-work list. By this conduct, Local 464 did violence to the insulation between employment and union membership envisioned by the Act, and thereby violated Section 8(b)(2) and (1)(A) of the Act. *Glaziers Local 558*, supra, 271 NLRB at 586. I also find that Local 464 violated Section 8(b)(1)(A) of the Act, when Fisher and Niebuhr told McDaniels that his name would appear on its referral list only if he became a member of the Local (*Laborers Local 332 (D’Angelo Bros.)*, 295 NLRB 1036 (1989)), and that to obtain such membership, he must be a paid-up member of

his local in Janesville (*Iron Workers Local 433*, 272 NLRB 530 (1984)).²¹

The principles which I have invoked in analyzing Local 464’s conduct toward McDaniels also apply to its effort to cause Cullen to terminate Rupprecht on October 5. For, on that date Local 464’s business manager, Niebuhr successfully insisted that Cullen must terminate Rupprecht because he was not a member of Local 464, and was not current in his dues to the Waukesha local. Niebuhr also pressured Cullen to agree to replace Rupprecht with a mason tender, who was a Local 464 member. Local 464’s proffered explanation for seeking Rupprecht’s termination, was the same one rejected in my discussion of McDaniels’ termination. Again, I find no merit in that explanation. Accordingly, I find that Local 464’s conduct regarding Rupprecht violated Section 8(b)(2) and (1)(A) of the Act. I also find that Local 464 violated Section 8(b)(1)(A) of the Act when Fisher and Niebuhr told Rupprecht that he would qualify for inclusion on its out-of-work list only by transferring his union membership to Local 464, and by being a paid-up member of, and in good standing with, his current local.²²

2. Violations of Section 8(b)(4)(i) and (ii)(B)

Section 8(b)(4) of the Act makes it unlawful for a union—

(i) to engage in or to induce or encourage any individual employed by any person engaged in 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, or articles, material or commodities or to perform any services; or

(ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an objective thereof is—

. . . .

(B) forcing or requiring any person to cease using, selling handling, transporting or otherwise dealing in the products of any other producer, processor or manufacturer, or to cease doing business with any other person.

The quoted provisions reflect 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 Building & Construction Trades Council*, 341 U.S. 675, 692 (1951).

There are two prerequisites for the finding of an 8(b)(4)(i) and (B) violation: (1) that a labor organization induce or encourage any individual employed by any person to refuse to handle goods; and (2) that an object of this conduct be to force or require one person to cease doing business with an-

²¹ The consolidated complaint did not allege that Fisher’s and Niebuhr’s remarks to McDaniels on September 18, violated the Act. However, as the facts regarding those remarks were fully litigated at the hearing, my finding that they violated Sec. 8(b)(1)(A) of the Act, is warranted. *St. Joseph Hospital East*, 236 NLRB 1450 fn. 5 (1978).

²² The consolidated complaint did not allege that Fisher’s and Niebuhr’s remarks to Rupprecht on October 5 violated the Act. However, as the facts regarding those remarks were fully litigated at the hearing, my finding that they violated Sec. 8(b)(1)(A) of the Act, is warranted. *St. Joseph Hospital East*, supra.

other person. *Longshoremen ILA v. Allied International*, 456 U.S. 212, 222 (1982). The two prerequisites for the finding of an 8(b)(4)(ii) and (B) violation are: (1) that a labor organization “threaten, coerce, or restrain any person”; and (2) that an object of this conduct be to force one person to cease doing business with another person. E.g., *Painters Local 36 (Stewart Construction Co.)*, 278 NLRB 1012, 1015 (1986).

The General Counsel and Lycon contend that Local 464 violated Section 8(b)(4)(i) and (ii)(B), by inducing the neutral Cullen’s employees to refrain from handling Lycon’s concrete, by threatening and coercing Cullen by failing and refusing to refer qualified laborers, and by causing Cullen to terminate McDaniels’ and Rupprecht’s employment. Local 464 urges dismissal of all these allegations on the ground that the evidence does not support them. Contrary to Local 464’s contention, I find that ample evidence supports the General Counsel’s and Lycon’s contentions.

That Cullen was a neutral employer in this context, is undisputed. Thus, the first issues to be considered are whether Local 464’s conduct ran afoul of 8(b)(4)(i) and (ii) of the Act. The Board has held that a union’s refusal to furnish employees to a neutral employer, pursuant to an exclusive referral agreement, violates those provisions of the Act. *Longshoremen ILA Local 799 (Allied International)*, 257 NLRB 1075, 1085 (1981). Here, I find ample evidence to support the General Counsel’s contention that Local 464’s conduct, as found above, violated those provisions.

The record shows that Local 464, which had an exclusive referral agreement with Cullen, was less than responsive to Cullen’s requests for laborers at the Wisconsin Mutual site. On September 13, Superintendent Blomstrom asked Local 464 for a laborer experienced in pouring concrete. Local 464 responded by sending Dan Wilson. However, before sending Wilson, Local 464’s Field Representative Fisher made a point of telling him of the labor dispute between Lycon and Local 695, and that Cullen was using Lycon’s redi-mix on the Wisconsin Mutual job. Fisher’s remarks were not wasted. For, when Wilson first arrived on that jobsite, he refused to work on the Lycon concrete. However, after watching the work for some time, Wilson began helping, and showed that he was not the experienced concrete handler Blomstrom had requested. Blomstrom again sought Local 464’s help in fulfilling his need for an experienced concrete handler.

On September 15, Blomstrom made a futile attempt to obtain an experienced concrete handler, in accordance with the exclusive referral agreement between his employer and Local 464. Blomstrom asked Fisher for a concrete handler. Fisher answered that none was available. Blomstrom asked that Local 464 refer the next available laborer experienced in concrete handling, to Cullen’s Wisconsin Mutual jobsite. He mentioned laborer Ken Cook as an example of an experienced concrete handler. Blomstrom asked Fisher to let him know when Cook became available. Local 464 referred Cook to another employer on September 26. Fisher said he understood Blomstrom’s request and would notify him when such a person was available.

Local 464 never referred another laborer experienced in handling concrete pours, to Cullen at the Wisconsin Mutual site. Indeed, 3 days after Fisher’s and Blomstrom’s conversation, Local 464 referred 11 laborers without sending any to Cullen’s Wisconsin Mutual job. Thereafter, until September

26, Local 464 made 33 referrals but showed no interest in fulfilling Blomstrom’s request.

Local 464 also showed its indifference to Blomstrom’s request for concrete handlers by its treatment of nonmember Zander’s application for construction work, filed on September 14, one day after that request. Zander’s application showed that he had “a couple of months cement const. experience,” and was available for work immediately. According to Local 464’s referral records, it did not refer him to any job on or before September 15. Thus, Zander would have been available, when Blomstrom asked for an experienced concrete handler.

On September 15, Fisher reflected Local 464’s attitude toward Cullen’s plight, when he told Blomstrom that Local 464 had no one on its out-of-work list, and thus could not provide a laborer to work on concrete. Absent from Fisher’s response was any suggestion that Local 464 intended to seek such a laborer from a neighboring local. Fisher’s testimony showed that Local 464’s policy is to call upon nearby locals for laborers, when its own out-of-work list is depleted. Yet when Cullen’s need confronted him, Fisher ignored that policy.

On September 15, Cullen resorted to self-help, in a vain attempt to fulfill its need for an experienced concrete handler. On that day, after waiting in vain for help from Local 464, Cullen looked to the “key man” provision of the collective-bargaining agreement as authorization for recalling a laid off laborer to work with Lycon concrete at its Wisconsin Mutual jobsite. Cullen contacted one of its laid-off employees, Mike McDaniels, an experienced concrete handler, and directed him to report to the Madison jobsite on September 18. Under its collective-bargaining agreement with Local 464, Cullen was free to employ “a minimum number of key laborers” without using Local 464’s referral system. Cullen deemed McDaniels to be a key laborer, and so advised Local 464, in the discussions with Local 464’s Niebuhr and Fisher. However, on September 18, undaunted by either the collective-bargaining agreement or Section 8(b)(2) and (1) (A) of the Act, Local 464 pressed Cullen to get rid of McDaniels immediately.

Again, when Cullen needed a mason tender to help its masons at the Wisconsin Mutual site, Local 464 exhibited laxity in its response. Over a period of 2 weeks in September, Blomstrom made a standing request for a mason tender. Until September 26, Local 464’s Fisher told Blomstrom that no mason tenders were available. Again, there was no showing in the record before me, that Local 464 sought a mason tender among its neighboring locals. Finally, on that date, Business Manager Niebuhr told Blomstrom that Cindy Pearson was the only mason tender he had available, and that he thought she was experienced in that work. Local 464 sent her to Blomstrom on the following day.

A glance at Local 464’s referral record, covering the period from September 18 until September 26, reveals a considerable flow of laborers to various jobsites. However, until the latter date, Local 464 did not refer any laborer to Cullen, as a mason tender. Surely, there were laborers on that list who could have satisfied Blomstrom’s repeated requests for a mason tender. Before me, Local 464 did not claim that none of the laborers it referred to other employers between September 18 and 26, was an experienced mason tender. In-

stead, Local 464 argued that Blomstrom's requests for a mason tender were defective.

At the hearing, Fisher sought to excuse Local 464's failure to respond to either Cullen's request on September 15 for a laborer to handle concrete, or to its repeated requests for a mason tender prior to September 26. According to his testimony, Local 464's policy is to ignore such requests. Instead, according to Fisher, Local 464 refers laborers only when an employer makes a specific request, as Blomstrom finally did, late in September. I find no merit in Fisher's proffered excuse.

Fisher's testimony suggested that Local 464 hastily adopted this policy to confront Cullen. For, Fisher could not recall that any other employer had ever made such a request. Thus, it appears that Local 464 never had need for such a policy prior to Blomstrom's requests. Nor is there any mention of such a policy in the collective-bargaining agreement governing the operation of Local 464's referral system. Finally, there was no showing that Fisher or any other official of Local 464 ever raised this policy, whenever Blomstrom made a standing request.

On September 27, Local 464 sent Cindy Pearson to Blomstrom, after Business Manager Niebuhr had told Blomstrom that she was the only available mason tender. Soon after she arrived, Blomstrom noted that she was not an experienced mason tender. On October 5, Niebuhr, in conversation with a Cullen vice president, conceded that he knew that Pearson was not a qualified mason tender, when he sent her to Blomstrom.

Its continuing need for an experienced mason tender caused Cullen to hire John L. Rupprecht on October 4. However, Local 464 interfered with Cullen's effort. Local 464's business manager, Niebuhr insisted on substituting a laborer from the out-of-work list for Rupprecht. Then, when Blomstrom said he wanted Rupprecht, Niebuhr objected on the ground that Rupprecht was not a member of Local 464. Niebuhr also stated that Rupprecht must obtain a clearance from his local union in Waukesha as a precondition for inclusion on Local 464's out-of-work list.

Niebuhr carried his argument to Vice President David Cullen. Again Niebuhr offered to refer a qualified mason tender from Local 464's out-of-work list. He again stated that Rupprecht was not available because he was not a member of Local 464, and that he must obtain a clearance from his current local. David Cullen gave in. He agreed to terminate Rupprecht and accept the mason tender offered by Niebuhr. David immediately told Blomstrom that Cullen could not employ Rupprecht, and that Local 464 would refer someone else.

In its effort to thwart Cullen, Local 464 was again blind to the collective-bargaining agreement and the Act. Niebuhr's argument disregarded article V, section 1.i. of the collective-bargaining agreement. That provision permitted Cullen to hire Rupprecht directly, when, as here, Local 464 had not fulfilled its request for a mason tender within 48 Hours. Further, as found above, Local 464 violated Section 8(b)(2) and (1)(A) of the Act by Niebuhr's insistence that Rupprecht obtain a clearance from his current local and become a member of Local 464, as preconditions for entry to Local 464's out-of-work list.

The record shows Local 464's unlawful object in withholding referrals from Cullen, a neutral employer, and

thwarting Cullen's attempts to hire McDaniels, and Rupprecht. As early as September 18, Local 464's business manager and field representative apologized to Cullen's Superintendent Blomstrom for the problems afflicting the Wisconsin Mutual job, and added that they were concerned that Cullen was in league with Lycon on some legal matters against Local 464. That same day, Business Manager Niebuhr warned Mark Cullen that Local 464 members would not handle Lycon concrete.

On October 5, Niebuhr made clear to Blomstrom that the use of Lycon's redi-mix on the Wisconsin Mutual jobsite motivated Local 464's treatment of Cullen's requests for qualified laborers. On that occasion, Niebuhr remarked that he was troubled by Cullen's cooperation with Lycon in a labor dispute. I find that Niebuhr was addressing himself to Lycon's dispute with Teamsters Local 695.

Later, in the afternoon on October 5, while discussing Rupprecht's employment with David Cullen, Niebuhr suggested that Cullen could "make things a lot easier" if it obtained redi-mix concrete from a local supplier, who was under a union contract. Later in the conversation, Niebuhr asserted that some persons on the out-of-work list "would not touch Lycon concrete."

In sum, I find that, within the meaning of Section 8(b)(4), Local 464 has engaged in, and induced and encouraged individuals employed by Cullen, and other individuals, including Michael McDaniels and John Rupprecht, to engage in, refusals in the course of their employment by Cullen to use or otherwise handle or work on redi-mix concrete of Lycon. Further, Local 464, has threatened, coerced, and restrained Cullen by causing it to terminate Michael McDaniels' and John Rupprecht's employment, and by refusing to refer laborers to work on, use, or otherwise handle, Lycon's redi-mix concrete, or to work as mason tenders, at Cullen's Wisconsin Mutual Insurance building site, at Madison, Wisconsin. An object of Local 464's conduct, described above, was to force or require Cullen to cease using, handling or otherwise dealing in the redi-mix concrete of, and to cease doing business with, Lycon, all in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

CONCLUSIONS OF LAW

1. Lycon and J. P. Cullen & Sons, Inc., are employers engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Laborers' Union, Local No. 464 and Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Local 695, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America are labor organizations within the meaning of Section 2(5) of the Act.

3. By inducing and encouraging employees of Cullen and other individuals, including Michael McDaniels and John Rupprecht, to engage in, refusals in the course of their employment by Cullen to use or otherwise handle or work on redi-mix concrete of Lycon, and by threatening, coercing and restraining Cullen, with an object of forcing or requiring Cullen to cease doing business with Lycon, Local 464 engaged in unfair labor practices affecting commerce in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

4. By causing Cullen to terminate Michael McDaniels on September 18, and John Rupprecht on October 6, respec-

tively, because they were not members of Local 464, Local 464 violated Section 8(b)(2) and (1)(A) of the Act.

5. By telling Michael McDaniels and John Rupprecht, respectively, that they must be members of Local 464 as a condition of registration and referral by Local 464, and further, that to achieve such membership they must be paid-up members of their current locals, Local 464 violated Section 8(b)(1)(A) of the Act.

REMEDY

Having found that Local 464 has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Local 464 violated the Act, when it caused Cullen to terminate Michael McDaniels and John Rupprecht, respectively, because they were not members of Local 464, I shall recommend that Local 464 be ordered to make them whole for any loss of earnings or other benefits they may have suffered as a result of the discrimination against them, by paying to them a sum they would normally have earned from the date of their respective discharges until their reinstatement by Cullen to their former or substantially equivalent jobs or until they secure substantially equivalent employment elsewhere, less net interim earnings. The loss of earnings shall be computed on a quarterly basis, in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

I shall also recommend that Local 464 be ordered to notify Cullen, in writing, with a copy to Michael McDaniels and John Rupprecht, that it has no objection to their employment and to request that Cullen reemploy them. I shall also recommend that Local 464 be required to remove from its files any references to Michael McDaniels' and John Rupprecht's unlawful discharges and notify these employees, in writing, that such action has been taken and that the discharges will not be used against them in any way.

I shall further recommend that Local 464 be ordered to notify Michael McDaniels and John Rupprecht, respectively, in writing, that they are entitled, at their option, to register on, and be referred from, Local 464's out-of-work list, maintained at its Madison, Wisconsin office, without regard to their membership in Local 464 or their membership or good standing in their respective home locals.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²³

ORDER

The Respondent, Laborers' Union, Local No. 464, Madison, Wisconsin, its officers, agents, and representatives, shall

1. Cease and desist from

- (a) Inducing or encouraging individuals employed by J. P. Cullen & Sons, Inc., or by any other persons engaged in commerce, or in commerce, to engage in a strike or refusal in the course of their employment to process, transport, load, unload, or otherwise handle or work on any goods, articles,

materials, or commodities, or to perform any services, where an object thereof is to require J. P. Cullen & Sons, Inc., or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of Lycon, Inc., or of any other producer, processor, or manufacturer, or to cease doing business with Lycon, Inc., or any other person.

- (b) Threatening, coercing, or restraining J. P. Cullen & Sons, Inc., or any other persons engaged in commerce or in an industry affecting commerce, where an object thereof is to require J. P. Cullen & Sons, Inc., or the described persons, or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of Lycon, Inc., or of any other producer, processor, or manufacturer, or to cease doing business with Lycon, Inc., or with any other person.

- (c) Causing or attempting to cause J. P. Cullen & Sons, Inc., to terminate, lay off, or to refrain from hiring Michael McDaniels, John Rupprecht, or any other employee, because they are not members of Local 464, and because they have not obtained a clearance card from, and shown that they are current in their dues payments to, their respective local unions.

- (d) Telling Michael McDaniels, John Rupprecht, or any other employee that they cannot register for referral by Local 464 because they are not members of that local, and also because they have not obtained a clearance card from, and shown that they are current in their dues payments at, their respective local unions.

- (e) In any like or related manner interfering, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

- (a) Make Michael McDaniels and John Rupprecht whole for any loss of earnings and other benefits they may have suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

- (b) Notify Cullen, in writing, with copies furnished to Michael McDaniels and John Rupprecht, that it has no objection to their employment and request Cullen to reemploy Michael McDaniels.

- (c) Remove from its files, and ask Cullen to remove from Cullen's files, any reference to McDaniels' and Rupprecht's unlawful terminations and notify McDaniels and Rupprecht, in writing, that it has done so and that it will not use the discharges against them in any way.

- (d) Notify Michael McDaniels and John Rupprecht, respectively, in writing, that they are entitled, at their option, to register on, and be referred from, Local 464's out-of-work list, maintained at its Madison, Wisconsin office, without regard to their membership in Local 464 or their membership or good standing in their respective home locals.

- (e) Post at its union office and other places where it customarily posts notices to members, in Madison, Wisconsin, copies of the attached notice marked "Appendix A."²⁴ Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's au-

²³ 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.

²⁴ 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."

thorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Sign and return to the Regional Director sufficient copies of the notice for posting by J. P. Cullen & Sons, Inc., if willing, at all places where notices to employees are customarily posted.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.