

**Acme Tile and Terrazzo Co. and Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL-CIO**

**Admiral Tile Co., Inc. and Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL-CIO**

**Jolicoeur & Resmini Co., Inc. and Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL-CIO**

**Providence Marble Corp. and Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL-CIO**

**Roman Tile & Terrazzo Co. and Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL-CIO**

**Ceramic Tile, Marble and Terrazzo Contractors Association of Rhode Island, Inc. and Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL-CIO**

**International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island (Acme Tile & Terrazzo Co., et al.) and Local No. 36-T, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Cases 1-CA-26463-1, 1-CA-26463-2, 1-CA-26463-3, 1-CA-26463-4, 1-CA-26463-5, 1-CA-26463-6, and 1-CB-7053**

August 18, 1995

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND  
TRUESDALE

This case is on remand from the United States Court of Appeals for the First Circuit.<sup>1</sup> The court directed the Board to determine whether the Respondent Employers explicitly or implicitly conditioned their employees' continued employment on immediate membership in the Bricklayers Union Local 1. The Board accepted the court's remand. The General Counsel, the United Brotherhood of Carpenters, Local 36-T, and the Respondents filed statements of position. The Board remanded the case to the administrative law judge for clarification. On May 19, 1994, Administrative Law Judge Peter E. Donnelly issued the attached supplemental decision. The General Counsel filed exceptions and a supporting brief, and Respondents Roman Tile & Terrazzo Co. and Ceramic Tile, Marble and Terrazzo Contractors Association of Rhode Island, Inc. filed an answering brief.

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

<sup>1</sup> *NLRB v. Acme Tile & Terrazzo Co.*, 984 F.2d 555 (1st Cir. 1993).

The complaint alleged, inter alia, that the Respondent Employers violated Section 8(a)(1), (2), and (3) of the Act by telling employees that their continued employment was conditioned on their immediately joining the Bricklayers Union Local 1, in derogation of the 7-day grace period contained in Section 8(f) of the Act, and by discharging those employees when they refused to join the Bricklayers Union immediately.

In his original decision, the judge concluded that the Respondent Employers had not violated the Act as alleged. The Board reversed the judge and found that the Respondent Employers (excluding Respondent Providence Marble whose actions were not at issue in this regard)<sup>2</sup> had violated the Act as alleged in the complaint.

On review, the First Circuit denied enforcement of the Board's Order. The court held that, in finding the violations, the Board erroneously assumed that the administrative law judge credited testimony that on March 31, 1989, the Respondent Employers required their employees to join the Bricklayers Union by April 3, 1989, in order to keep their jobs. *NLRB v. Acme Tile & Terrazzo Co.*, supra, 984 F.2d 555, 556. The court read the judge's decision as finding that on March 31, 1989, the Employers told employees that they must secure a referral from the Bricklayers Union by April 3 if they wanted to continue working. The court remanded the case for a determination of whether the Respondent Employers explicitly or implicitly conditioned their employees' continued employment on immediate membership in the Bricklayers Union Local 1.

After accepting the court's remand, the Board in turn remanded the case to the judge for clarification. The judge, as discussed below, reaffirmed, with two exceptions, his finding that the Respondent Employers did not violate the Act. For reasons set forth below, we reverse the judge's dismissals and find that the Respondent Employers violated Section 8(a)(1), (2), and (3) of the Act.

I. BACKGROUND

The facts, as more fully set forth by the judge, may be briefly summarized as follows. This case arose from efforts by Bricklayers Union Local 1 to persuade members of Local 36-T of the Carpenters to join Local 1. Until December 1988, the employee-helpers in issue here had been represented by Local 36 of the Tile, Marble, Terrazzo Finishers, Shopworkers & Granite Cutters International Union, AFL-CIO. Local 36 was party to a prehire agreement with Respondent Ceramic Tile, Marble and Terrazzo Contractors Association of Rhode Island (Association). The most recent agreement was effective April 1, 1988, through March 31, 1989,

<sup>2</sup> Thus, in our discussion infra, our reference to the "Respondent Employers" excludes Respondent Providence.

covering “helpers.” The Association was the authorized collective-bargaining representative of the individual Respondent Employers. Both the Association and the Respondent Employers were parties to the 8(f) agreement. In late 1988, when the International affiliated with the International Brotherhood of Carpenters (Carpenters), Local 36 became Local 36-T of the Carpenters. Members of Local 36 automatically became members of the Carpenters Union and Local 36-T retained its existing offices and its autonomy.

The Respondent Employers were based in Rhode Island but about one-third of their work was performed in Massachusetts and Connecticut. The Association and the Respondent Employers were also parties to collective-bargaining agreements with Local 1 of the International Union of Bricklayers and Allied Craftsmen of Rhode Island (Local 1 or Bricklayers Union), the last of which was effective May 1, 1988, through April 30, 1990. That agreement covered work performed by “setters” or “mechanics.” In early 1989, Local 1, through its business manager, David Barricelli, approached Local 36-T about merging Local 36-T into Local 1 at that time. Local 36-T sought assurances that it would retain its autonomy. When Barricelli declined, Local 36-T rejected any merger.<sup>3</sup> Barricelli then began an effort to “help” members of Local 36-T “change their minds.”

Barricelli drafted and sent to the Bricklayers Locals in Boston and Connecticut letters asking the Connecticut and Massachusetts locals to seek to replace the Carpenters helpers with helpers who belonged to the Bricklayers Union. Barricelli sent copies of the letters to each of the Respondent Employers. He further advised the Respondent Employers that he would be notifying his members of the Bricklayers’ official position and that he was claiming the work of the finishers/helpers now that Local 36-T had advised him that its members were Carpenters. In a subsequent meeting between the representatives of the Carpenters and of the Respondent Association, the Employers’ representatives expressed concern that Barricelli would not allow Carpenters members to work in Massachusetts and Connecticut, where a great deal of their work was located.

Subsequently, Barricelli offered the Respondent Employers an addendum to the Bricklayers tilesetters contract by which the Respondent Employers would agree to assign to employees represented by the Bricklayers Union “all additional work assignments necessary to complete the entire installation of tile, marble, terrazzo,

and mosaic projects . . . .” (The addendum became effective as of April 1.) The Respondent Employers asked what would happen if they did not sign the addendum giving the helper work to the Bricklayers and were told that Barricelli was claiming that work. The Respondent Employers were also told that Bricklayers setter/mechanics would not work with the Carpenters helpers. The Respondent Employers signed the addendum.<sup>4</sup> Stanley MacPhail, owner of Respondent Roman Tile, stated that he signed because he had no choice other than to go along with the Bricklayers Union in order to work in harmony in three States. Other Respondent Employers testified that they signed the addendum to keep their work going and to ensure that the setters would not strike.

The judge found that on April 1, the helper members of Local 36-T of the Carpenters became covered by the addendum to the Bricklayers contract.<sup>5</sup> At that time, Admiral employed one helper, Sam DeRotto. Acme employed three helpers, Robert Degnan, Karl Langborg, and Gerard Peltier. Jolicoeur employed two helpers, Robert Bordieri and John Eghian. Roman employed two helpers, Daniel Curtis and Paul Graziano. Because all of the Respondent Employers had ongoing projects, they needed to determine the sentiments of their helpers about coming to work under a Bricklayers contract on Monday, April 3.

All Respondent Employers admit that they informed their employees that they would need a “referral,” “approval,” or “clearance” from the Bricklayers Union if they wished to continue working on Monday. Based on the credited testimony, employees of Admiral and Jolicoeur were further told explicitly by certain officials that they would have to join the Bricklayers Union by Monday to continue working.

Admiral employee Sam DeRotto testified that he was approached on March 31 by Chippi Conti, an owner of Admiral, and told he would not be able to work on Monday if he did not join the Bricklayers. Joseph Lombardi, president of Admiral, testified that he told DeRotto on March 31 that he had signed a contract with Local 1 covering the helper work and that in order for DeRotto to continue to work, it would be necessary for DeRotto to see Business Agent Barricelli and be referred for employment by Local 1 under the terms of the contract.

Jolicoeur employee Robert Bordieri testified that on March 31, he was told by Joe Resmini, vice president

<sup>3</sup> In its original decision in this case, the Board adopted the judge’s finding that Barricelli unlawfully threatened members of Local 36-T. At a meeting with members of Local 36-T held on February 3, 1989, Barricelli violated Sec. 8(b)(1)(A) by threatening Local 36-T members that he would interfere with their work opportunities if they retained their affiliation with the Carpenters Union and refused to join the Bricklayers Union.

<sup>4</sup> The addendum was a supplement to an underlying agreement that contained a union-security clause requiring employees to become members of Bricklayers Union Local 1 within 8 days of their employment.

<sup>5</sup> In light of our findings of violations by the Respondent Employers, limited to the denial of the statutorily required 7-day grace period, we again need not pass on whether their conduct was unlawful for the additional reason that the addendum assertedly applied only to projects begun after April 1.

of Jolicoeur, that if he wanted to work on the following Monday that he would have to join the Bricklayers. He testified further that Resmini did not mention either the expiration of the contract with Local 36 or the execution of a new contract with Local 1. John Eghian, another Jolicoeur employee, testified that he was told by Resmini that he would not be able to work after March 31 because he was a member of the Carpenters. He further testified that Jolicoeur's vice president, Robert Morin, told him on March 31, to "pick up all your tools and that's it, you can't work any more." Morin testified that he told his helpers on March 29, "that we had signed [the addendum] and the work assignment for the entire trade . . . was with the Bricklayers. As far as it came to work . . . work is there and you have to go down to the Bricklayers hall and see Mr. Barricelli and get authorization."

On remand, the judge again concluded that the Respondent Employers did not condition their employees' continued employment on immediate membership in the Bricklayers Union. Thus, the judge recommended dismissal of the 8(a)(3) allegations. The judge, however, did find, contrary to his original decision, that Respondents Jolicoeur and Admiral violated Section 8(a)(1) and (2) of the Act by *telling* their respective employees that continued employment was conditioned on their immediate membership in the Bricklayers Union.<sup>6</sup> Nonetheless, in regard to the Jolicoeur and Admiral employees, the judge concluded that they were lawfully advised by other management officials that only a referral was necessary for continued employment. Finally, in regard to the helper employees of all Employers, the judge concluded that they would not in any event have reported to work on April 3 because they were unwilling to work under a Bricklayers contract.

## II. ANALYSIS

Contrary to the judge and in agreement with the General Counsel, we find that all Respondent Employers implicitly conditioned their employees' continued employment on immediate membership in the Bricklayers Union. Thus, the Respondent Employers' requirement that their current employees obtain a "referral," "approval," or "clearance" from the Bricklayers Union was tantamount to requiring immediate membership in that Union. We find that those Employers' statements deemed lawful by the judge would in fact reasonably and foreseeably lead their employees to believe that membership in the Bricklayers Union by

<sup>6</sup>Thus, the judge concluded that the remarks of Admiral's Co-owner Chippi Conte and of Jolicoeur Vice President Joe Resmini to their respective employees requiring immediate membership in the Bricklayers Union violated the Act.

April 3 was required in order to continue working.<sup>7</sup> Further, as also recounted below, those Respondent Employers (i.e., Admiral and Jolicoeur) who made statements found unlawful by the judge thereby explicitly conditioned their employees' continued employment on immediate union membership. Those Employers did not "cure" their unlawful statements by other remarks made by other officials. Finally, we reject as speculative the judge's finding that all employees would have refused to work in any event on April 3 because of their loyalty to the Carpenters Union.

First, as discussed, all Respondent Employers, at a minimum, admittedly told their employees to get a "referral," "approval," or "clearance" from the Bricklayers Union in order to work on Monday. Noting particularly the history and context of these Employers' statements, we conclude that a requirement of immediate membership in the Bricklayers Union was implicit in all Employers' communications to their employees. Significantly, there was no contractual reason for the employees to obtain a referral. The Bricklayers' contract does not contain an exclusive hiring hall provision. To the contrary, it provides that "Contractors or their foremen can freely hire or reject at the job site applicants for employment, provided employees selected shall be qualified journeymen." Thus, in particular regard to experienced employees already working, the Respondent Employers were free to hire them directly at the jobsite. Consequently, there was no need for a "referral" from the Bricklayers Union unless in fact the "referral" would be a product of the employee's joining the Bricklayers Union.

Further, the Employers' statements must be examined against a backdrop of the Bricklayers Union's ongoing campaign to force all helpers to join the Bricklayers Union. As previously noted and as fully set forth by the judge, Barricelli was insisting that all helpers become members of the Bricklayers Union. Employers and employees alike were generally aware of Barricelli's letters and oral statements to this effect. As previously discussed, prior to the Employers' conduct at issue here, the Respondent Union, by Barricelli, had unlawfully threatened members of Local 36-T with retaliation if they refused to join the Bricklayers Union. Given Barricelli's past unlawful conduct and his insistence on the helper employees joining the Bricklayers Union, it is reasonable to infer that the Bricklayers Union would have required membership as the condition of any "referral." We find that a reasonable employee in these circumstances would believe that a "referral" would come only after the employee joined the Bricklayers Union. Accordingly, viewing the Employers' statements in the context in which they were made, employees would reasonably and fore-

<sup>7</sup>In determining what the Respondent Employers' statements conveyed to their employees, we apply an objective test.

seeably view the Employers' statements as mandating immediate membership in the Bricklayers' Union as a requisite to continue working.<sup>8</sup>

In regard to Respondents Admiral and Jolicoeur, the General Counsel's case is even more compelling. As the judge found, officials of these Employers violated Section 8(a)(1) and (2) by informing employees explicitly that they must join the Bricklayers by April 3 to continue working. The judge implied, however, that these Employers corrected any misunderstanding because other of Employers' officials advised these employees that they needed only a "referral" from the Bricklayers Union. We find that these Employers explicitly conditioned their employees' continued employment on immediate membership in the Bricklayers Union. First, for reasons discussed above, we find that those Employers' statements regarding "referrals" in fact implicitly required employees to join the Bricklayers Union by April 3. Second, assuming *arguendo* that the Employers' "referral" statements did not convey an implicit message of immediate membership, those statements were nonetheless insufficient to cure the unlawful statements of Admiral's Conti or Jolicoeur's Resmini. Neither Admiral's Lombardi nor Jolicoeur's Morin, in their statements deemed lawful by the judge, addressed the other unlawful statements or set forth with specificity what was required of the employees.<sup>9</sup> Thus, there was no effective correction or repudiation of the unlawful statements. Therefore, Respondents Admiral and Jolicoeur must be held responsible for the foreseeable consequences of having informed their employees explicitly that they were required to join the Bricklayers Union by April 3 if they wished to continue working.

Finally, the judge found that the Admiral and Jolicoeur employees in particular and all employees in general had no intention of working on April 3 under a Bricklayers' contract. In the judge's view, the employees' failure to appear for work on April 3 was attributable to their loyalty to the Carpenters Union rather than to the Employers' statements. We disagree. We reject the judge's conclusion as speculative. First, *if* the helper employees had believed that that they had, as the law requires, a grace period in which to join the

<sup>8</sup> Where, as here, an employer imposes certain requirements on its employees, it must bear the burden of any ambiguity in its message. That is, like an employer that promulgates a no-solicitation rule applying to its employees, "the risk of ambiguity must be held against the promulgator . . . rather than the employees who are supposed to abide by it." *NLRB v. Miller-Charles & Co.*, 341 F.2d 870, 874 (2d Cir. 1965).

<sup>9</sup> See *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978), where the Board set forth the standard for a party's relieving itself of unlawful conduct by repudiating that conduct. For a repudiation to be effective, it must be, *inter alia*, unambiguous, specific in nature to the coercive conduct, and must include assurances for employees that in the future their employer will not interfere with their Sec. 7 rights. Admiral and Jolicoeur did not meet this standard.

Bricklayers Union, they might well have worked at least 8 days while remaining members of the Carpenters Union. As they had been unlawfully advised by their Employers regarding the requirements for continued work, any ambiguity regarding what actions the employees might have undertaken must be resolved against the offending Employers.<sup>10</sup> Second, some of the employees in fact subsequently joined the Bricklayers Union and returned to work. Thus, it is reasonable to conclude the some or all helper employees might well have joined the Bricklayers within the statutory grace period if they had been allotted that period in which to decide how to proceed. The burden was on the Respondent Employers to establish that helper employees would not have worked regardless of what they were told by their Employers. In our view, Respondent Employers failed to meet this burden.

Accordingly, in light of the above, we reaffirm our finding that the Respondent Employers violated Section 8(a)(3), (2), and (1) of the Act. All Respondent Employers implicitly conditioned, and Respondents Admiral and Jolicoeur also explicitly conditioned, their helpers' continued employment on immediate membership in the Bricklayers Union.<sup>11</sup>

#### ORDER

The National Labor Relations Board reaffirms its original Order reported at 306 NLRB 479 (1992), and orders that the Respondents, Acme Tile and Terrazzo Co., Providence, Rhode Island; Admiral Tile Co., Inc., Johnston, Rhode Island; Jolicoeur & Resmini Co. Inc., Providence, Rhode Island; and Roman Tile & Terrazzo Co., Riverside, Rhode Island, their officers, agents, successors, and assigns, shall take the action set forth in that Order.

<sup>10</sup> We do not rely, as did the judge, on the employees' testimony at trial regarding their reasons for acting as they did on April 3. Had the Respondent Employers not unlawfully conditioned continued work on immediate membership in the Bricklayers Union, the employees, in a context free of unfair labor practices, might have thought and acted differently. The burden of resolving any uncertainty rests on the wrongdoer.

<sup>11</sup> We note that even if the Respondent Employers did not require their employees to actually become members of the Bricklayers Union by April 3 as a condition of employment, the violation is nonetheless established. In our view, employees cannot lawfully be required to obtain union "approval" or "clearance" as a condition of employment in the absence of an exclusive hiring hall agreement. *Carpenters Local 2396 (Tri-State Obhayashi)*, 287 NLRB 760, 762 (1987), *enfd. mem.* 878 F.2d 1439 (9th Cir. 1989).

*Kathleen McCarthy, Esq.*, for the General Counsel.  
*Girard Visconti, Esq.*, of Providence, Rhode Island, for Respondent Employers and Respondent Association.  
*Richard A. Skolnik, Esq.*, of Providence, Rhode Island, for Respondent Union.  
*Julius C. Michaelson, Esq.*, of Providence, Rhode Island, for the Charging Party.

## SUPPLEMENTAL DECISION

## STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge. On April 8, 1991, I issued a decision in this proceeding, concluding, *inter alia*, that Respondents Acme Tile and Terrazzo Co. (Acme), Admiral Tile Co., Inc. (Admiral), Jolicoeur & Resmini Co., Inc. (Jolicoeur), and Roman Tile & Terrazzo Co. (Roman) had not violated Section 8(a)(1), (2), or (3) of the Act by conditioning the further employment of their helper employee-members of Carpenters Local 36-T, on joining Bricklayers Local 1 without affording them the grace period required by statute.

The Board disagreed with those conclusions and on February 28, 1992, issued its decision<sup>1</sup> concluding that the Respondents had violated Section 8(a)(1), (2), and (3) as alleged.

Thereafter, the Board filed a petition for enforcement of its Order in the United States Court of Appeals for the First Circuit. The court denied enforcement,<sup>2</sup> concluding, with respect to the Board's findings, that they were based on an erroneous factual assumption; that assumption being that the administrative law judge had found that the Respondent Employers had required their employees to become members of Bricklayers Local 1 immediately, without affording them the statutory 8-day grace period mandated by Section 8(f) of the Act.<sup>3</sup>

The court vacated the Board's Order and remanded to the Board "for a determination of whether the Employers explicitly or implicitly conditioned continued employment on immediate membership in the Union."

Thereafter, on March 2, 1994, the Board accepted the remand and remanded the case to the administrative law judge for "action consistent with the court's remand" and ordered the administrative law judge to "prepare and serve on the parties a supplemental decision setting forth the resolution of credibility issues, findings of fact, conclusions of law and recommendations, including a recommended order."

*Facts*

## 1. Background

As treated more at length in my original decision, the genesis of this problem was in the affiliation in 1988 of the Tile,

<sup>1</sup> *Acme Tile & Terrazzo Co.*, 306 NLRB 479.

<sup>2</sup> *NLRB v. Acme Tile & Terrazzo Co.*, 984 F.2d 555 (1st Cir. 1993).

<sup>3</sup> The court concluded (984 F.2d at 556):

Rather than basing its factual determination on the evidence presented, however, the Board's opinion relied on the incorrect assumption that the ALJ found that the employers required the employees to join the Union by April 3. *See Acme Tile and Terrazzo Co.*, 306 N.L.R.B. [No.] 83, at 2 (1992) In reality, the ALJ found that the employers required the employees to get a Union referral by April 3, and to join the Union by April 9, the date prescribed in the contract. Indeed, the ALJ's opinion specifically stated that the employers did *not* condition employment on immediate membership in the Union. *See Acme Tile and Terrazzo Co.* . . . 1991 N.L.R.B. LEXIS 689, at \*34 (A.L.J. Apr. 8, 1991). Accordingly, we vacate the Board's order and remand for a determination of whether the employers explicitly or implicitly conditioned continued employment on immediate membership in the Union.

Marble and Terrazzo Finishers, Shopmen and Granite Cutters International Union (Terrazzo Finishers) and the United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Carpenters). Local 36 of the Terrazzo Finishers (Local 36) was a small local Union with about 18 members called "helpers." After the merger, Local 36, although now affiliated with the Carpenters, was allowed to retain its autonomy and conduct its own affairs, much as it had in the past. The Ceramic Tile and Terrazzo Contractors Association of Rhode Island, Inc. (Association) had a contract with Local 36 expiring on March 31, 1989.<sup>4</sup> Local 1 of the Bricklayers, through its business manager, David Barricelli, approached Local 36 with a view toward merging Local 36 into Local 1 at that time. Local 36 sought assurances from Barricelli that Local 36 would retain its autonomy. Barricelli declined and Local 36 rejected any merger. Later, Barricelli spoke to the membership of Local 36 in terms that some members found offensive.<sup>5</sup> Thereafter, on February 6, Carl Soderquist, regional representative of the Carpenters Union, also met with the membership of Local 36, promising them advice and legal representation if they stayed with the Carpenters. This time, all 16 of the Local 36 members present at the meeting voted to retain their affiliation with the Carpenters and signed authorization cards.

## 2. Events of Friday, March 31

The helper "addendum" to the Local 1 Association contract went into effect on April 1.<sup>6</sup> At that time, the helpers members of Local 36-T,<sup>7</sup> of the Carpenters would become covered by the addendum to the Bricklayers contract. At this time, Admiral employed one helper, Sam DeRotto, who was also vice president of Local 36. Acme employed three helpers, Robert Degnan, Karl Langborg, and Gerard Peltier. Jolicoeur employed two helpers, Robert Bordieri and John Eghian. Roman employed two helpers, Daniel Curtis and Paul Graziano. Since the Employers all had ongoing projects, they needed to determine the sentiments of their helpers about coming to work under a Bricklayers contract on Monday, April 3. As set out in more detail in my original judge's decision, DeRotto, Degnan, Langborg, Bordieri, Eghian, and Curtis all testified that during conversations with their Employers on March 31, they were told that because of the Bricklayers contract, they would have to join the Union in order to work on the following Monday, April 3.

Each of the Employers testified about conversations with their employees on March 31. Joseph Lombardi, president of Admiral, testified that he spoke to his only helper, DeRotto, telling him about the new contract, and that the Bricklayers would be assigned the work starting on Monday. He also told him that in order to work on Monday, he would have to see Barricelli for instructions. John Verardo, president of Acme, denied that in speaking to his helpers, Degnan, Langborg, and Peltier, he told them that under the Bricklayers contract which would be in effect April 1, they would

<sup>4</sup> All dates refer to 1989 unless otherwise indicated.

<sup>5</sup> Also deemed unlawful as 8(b)(1)(A) violations in my original decision.

<sup>6</sup> Both the administrative law judge and the Board have concluded that entering this 8(f) agreement was lawful.

<sup>7</sup> Local 36 had received its charter as a Carpenters Local and was designated Local 36-T, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Local 36-T).

need a clearance from the Bricklayers. Verardo specifically denied telling either Degnan or Langborg that they needed to sign a Bricklayers union card or join the Bricklayers in order to work on Monday.

Robert Morin, vice president of Jolicoeur, testified that on March 31, he told his helper employees about the Bricklayers contract going into effect on Monday and advised them to see Barricelli for an authorization to come to work on Monday. More specifically, he denied Eghian's testimony to the effect that he was told by Morin that he could not return to work. Stanley MacPhail, owner of Roman Tile, testified that he told his helpers that the work had been assigned to the Bricklayers under the new contract and that for them to work they would have to get it cleared by the Bricklayers' business agent. MacPhail also testified that it was traditional in the industry to have employees referred through the union hall of the contracting union, although the Bricklayers contract allows the contractors to hire at the jobsite.

#### *Analysis and Discussion*

In my original decision, 306 NLRB at 487, I concluded:

A review of all the relevant testimony in this record convinces me that the helpers were told that a contract had been signed with Local 1 and that in order to return to work, they would have to be referred by Local 1. Despite their denials, and particularly since under the terms of the Local 1 contracts, helpers would have to become members of the Bricklayers within 8 days of their employment, it is credible to believe, and I conclude that the Employers did tell them that they would have to join the Bricklayers in order to work.

In other words, having evaluated testimony about the helpers who testified and the Employers who testified, I concluded that the helpers were told not that they had to become members of the Bricklayers in order to return to work but, rather, that under the terms of the new Bricklayers' contract, they were told that they would have to be referred in order to return to work. Such referrals, as noted above, are provided for in the union-shop provisions of the addendum Local 1 contract.

In resolving this conflicting testimony, I concluded that the Employers did tell the helpers that they would have to join the Bricklayers "in order to work." However, this meant, not that they would be required to join the Bricklayers immediately in order to be able to work on Monday, but only generally in the sense that it would be necessary for them to join the Bricklayers in order to continue their employment under the terms of the Bricklayers contract.<sup>8</sup>

<sup>8</sup>In making this credibility resolution, I am aware that "Chippy" Conte, co-owner of Admiral, did not testify in rebuttal to DeRotto's adverse testimony. However, neither did DeRotto testify in rebuttal to the testimony of Lombardi, even though he testified concerning other matters. In these circumstances, I conclude that whatever DeRotto was told by Conte, he was nonetheless also advised by Lombardi in a lawful manner as to the conditions for his future employment. Similarly, while Joe Resmini, vice president of Jolicoeur, did not testify to rebut the testimony of Eghian and Bordieri, I conclude that both were also lawfully advised by Morin about the conditions for their continued employment. Nonetheless, since Conte and Resmini did not testify, I am constrained to credit the testimony

The essence of these findings is also found in the "Argument" section of my original decision at 489 as follows:

Next, the General Counsel argues that Acme, Admiral, Jolicoeur, and Roman violated Section 8(a)(1), (2), and (3) of the Act on March 31 by forcing their helper employees to join the Bricklayers as a condition of employment. Having concluded that the addendum was lawful under Section 8(f) of the Act, it would appear that under the terms of the addendum, which incorporated the Local 1, Rhode Island Tile, Terrazzo and Marble agreement, that representation by Local 1 began on April 1, 1989. As set out above, I have concluded that these Employers did tell their finishers that a contract had been signed with the Bricklayers and that it would be necessary for them to be referred by the Bricklayers and that it would be necessary for them to join the Bricklayers Union. However, I cannot conclude, under these circumstances, given a valid prehire agreement, that these remarks violate the Act. In context, all the Employers did was to advise their helpers of what appropriate procedures would be under the new contract starting on Monday morning. While they also advised the helpers that they would have to join the Union, this was simply an observation of the natural consequences of the existence of the union-security provisions in the contract which requires membership within 8 days of their employment, and not that they would not be allowed to work unless they immediately joined the Union. Accordingly, these allegations must be dismissed.

In summary, in view of these credibility resolutions, except as to those remarks made to DeRotto, Eghian, and Bordieri, I conclude that the Respondents have not violated the Act.

There remains for consideration, in light of having credited the testimony of these three employees, whether or not Respondents Admiral and Jolicoeur also violated Section 8(a)(3) of the Act by conditioning the employment of these three employees on their immediately joining the Bricklayers in order to work on Monday.

As noted earlier, all the employees, including DeRotto, Eghian, and Bordieri, were advised by their Employers not that they needed to join the Bricklayers in order to work on Monday, but only that they needed a referral from the Bricklayers in order to come to work on Monday. This is true even though conflicting statements appear to have been made by Conte to DeRotto, and Resmini to Bordieri and Eghian. Thus it appears that three employees were receiving mixed messages from their Employers, Admiral and Jolicoeur.

Second, and more significantly, a review of this record persuades me that whatever Conte and Resmini may have said to these three employees, none would have appeared to work on Monday in any event. None of these three individuals nor any of the other helpers had any intention of work-

of DeRotto, Eghian, and Bordieri that they were told by them that they would have to join the Bricklayers in order to work on Monday. I further conclude that these statements constitute coercion of employees to join the Bricklayers in violation of Sec. 8(a)(1) of the Act and unlawful support to the Bricklayers in violation of Sec. 8(a)(2) of the Act.

ing under a Bricklayers contract. As a Carpenters local, they had been promised autonomy and freedom in the negotiation of contracts which would not be available to them if they opted to join the Bricklayers under Barricelli. They were already committed to their affiliation with the Carpenters and were still committed as members of Local 36-T of the Carpenters Union on March 31, 1991. In a vote on February 6, all 16 members unanimously voted to retain their affiliation with the Carpenters. All 16 affirmed their intention by signing authorization cards.

There is nothing in the record to suggest that either up to or beyond March 31, members of Local 36-T had softened their determination to retain their membership as a Local within the Carpenters International Union. In my opinion, it was this membership in the Carpenters International Union and not the remarks of the Employers that prompted the decision not to work on Monday, April 3.

The following testimony of the helpers who testified bears out this conclusion. DeRotto testified that at a meeting of the membership, they were told by John Martino, president of Local 36, that: "Our contract is expiring. I can't get nobody to sign a contract and it doesn't look like we're going to work." At another meeting, Martino told the helpers that the only way the helpers could go back to work is if they signed over to the Bricklayers.

Eghian testified that in discussing with Resmini the upcoming contractual obligation to join the Bricklayers under the union-security provisions of the Bricklayers contract, he said that he would refuse. Eghian testified, "Well, I say—well, I think I used the word what if I go back and the only one working, I'm like a traitor. That's just the word I used, and he said to me well, those guys don't put the meat on your table, and that was the—the end of the conversation."

Bordieri was asked why he did not go back to work on Monday, April 3, and responded, "Because I belonged to Local 36 at the time, and I thought, you know, everybody was sticking together. We were a Local and supposed to stick together, so we did."

Langborg was asked why he did not return to work April 3 and responded succinctly, "Well, there was no contract, no work. I didn't know where the contract was, the Bricklayers or the Carpenters. I was just waiting to see what was going to happen, and we waited so long."

Degnan testified that it was his own decision not to go back to Acme Tile, and that he decided not to join the Bricklayers because Barricelli was trying to "raid" them, and take away their identity as a local union which they would continue to enjoy as a local of the Carpenters' International Union.

Curtis testified that he chose not to become a member of the Bricklayers "Because at the last meeting we had with Herbie Holmes—I think it was—no, the last one was Soderquist and Holmes [representatives of the Carpenters International Union], they said let's, you know, stay together, it will be a bumpy ride for a little while but I'm sure we're going to win in the end, just as long as we stick together as a group, you know, we should be able to come out on top, so we all took—made a decision and decided to—ride it out, I should say." When asked if he had made a decision to ride it out with the Carpenters and not to join the Bricklayers, Curtis replied affirmatively.

In summary, I conclude that the failure of DeRotto, Eghian, and Bordieri, as well as the other helper employees for that matter, to appear for work on Monday was attributable to the fact that all had already made a decision to retain their status as card carrying, dues-paying members of the Carpenters Union, unwilling to work under a Bricklayers contract, although the statements made to DeRotto, Eghian, and Bordieri did violate Section 8(a)(1) and (2) of the Act.

Specifically, in response to the remand from the court and thereafter to me from the Board, I conclude that, on the facts of this case, the Respondents did not, either "explicitly or implicitly condition continued employment on immediate membership in the Union" by discriminating against the helpers in violation of Section 8(a)(3) of the Act.

#### THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of Respondents, set forth above, occurring in connection with Respondent Employers' operations described above, have a close and intimate relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### REMEDY

Having found that Respondents Jolicoeur and Admiral and Respondent Bricklayers Local 1 violated the Act, I shall recommend that they cease and desist therefrom and from engaging in any like or related conduct and that they post appropriate notices.

#### CONCLUSIONS OF LAW

1. Employers and the Employer Association are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Union and the Charging Party are labor organizations within the meaning of Section 2(5) of the Act.

3. By threatening employees, Respondent Union has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

4. Respondents Jolicoeur and Admiral violated Section 8(a)(1) and (2) of the Act by telling their respective employees on March 31, 1989, that their continued employment was conditioned on membership in International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island, as of April 3, 1989.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>9</sup>

#### ORDER

A. Respondent International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island, its officers, agents, and representatives, shall

1. Cease and desist from

<sup>9</sup>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.

(a) Restraining and coercing employees in the exercise of their Section 7 rights by threatening them with loss of work because they are not members of the Respondent.

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

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

(a) Post at its business office and on any union bulletin board at the Employers' places of business, copies of the attached notice marked "Appendix A."<sup>10</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, after being duly signed by the Respondent's Union representative, shall be posted by the Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to 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.

(b) Forward a sufficient number of signed copies of the notice to the Regional Director for Region 1 for posting by the Respondent Employers in places where notices to employees are posted, if the Employers are willing to do so.

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

B. Respondents Admiral Tile Co., Inc., Johnston, Rhode Island, and Jolicoeur & Resmini Co., Inc., Providence, Rhode Island, their officers, agents, successors and assigns, shall take the action set forth below.

1. Cease and desist from

(a) Telling their employees that their employment is conditioned on joining International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island, before the expiration of the 8-day grace period provided by law and contained in the union-security clause of the collective-bargaining agreement.

(b) In any like or related manner interfering with, 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) Post at their respective offices copies of the attached notice marked "Appendix B."<sup>11</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous

places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

#### APPENDIX A

NOTICE TO 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.

WE WILL NOT restrain and coerce employees in the exercise of their Section 7 rights by threatening them with loss of work because they are not members of the International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island, except to the extent we seek to enforce a lawful union-security clause.

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.

INTERNATIONAL UNION OF BRICKLAYERS AND  
ALLIED CRAFTSMEN, LOCAL NO. 1 RHODE ISLAND

#### APPENDIX B

NOTICE TO EMPLOYEES  
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.

WE WILL NOT tell employees that their employment is conditioned on joining International Union of Bricklayers and Allied Craftsmen, Local No. 1 Rhode Island, before the expiration of the 8-day grace period provided by law and contained in the union-security clause of the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

ADMIRAL TILE CO., INC. AND JOLICOEUR &  
RESMINI CO., INC.

<sup>10</sup>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."

<sup>11</sup>See fn. 10, above.