

NLRB rules BrucePac firings broke federal labor law

By **DON McINTOSH**
Associate Editor

BrucePac broke federal labor law when it fired workers last June for supporting a union campaign, said an April 8 judge's ruling. The case stems from unfair labor practice charges that Portland-headquartered Laborers Local 296 filed last July against BrucePac — a cooked meat producer with plants in Woodburn and Silverton, Oregon.

Altogether, Local 296 accused BrucePac of firing 17 union supporters and disguising the firings in a 42-worker mass layoff. Agents of the National Labor Relations Board (NLRB) concluded there wasn't enough evidence to pursue charges in 13 of the firings, but issued a complaint in four, and held a trial Feb. 8-10 before administrative law judge Lana Parke.

It's against federal law for an employer to fire a worker for union activity. Proving it is another matter.

The NLRB, responsible for protecting workers' union rights, is possibly the most feeble federal law enforcement agency. It waits until someone files a complaint, takes statements from each side, and if no "smoking gun" evidence emerges, drops the charge. It doesn't visit the work site, subpoena documents, or compel testimony from anyone. Employers know that the worst



BrucePac sanitation worker Manuel Coria, fired for seeking to join Laborers Local 296, testifies Feb. 8 at an unfair labor practice hearing before a federal administrative law judge. The judge ordered BrucePac to reinstate Coria and two other workers, but thus far the company has not complied.

consequence they face for firing pro-union workers is a court order to reinstate them with back pay — minus any money the workers earned elsewhere after the firing.

At BrucePac, firings took place at both locations, on every shift, in every department — operations, sanitation, maintenance, quality assurance, accounting. But shifts and locations var-

ied greatly in the percentage of employees laid off. To Local 296, it seemed obvious that the "layoffs" were about decapitating the union campaign. In a workplace of about 350, 42 workers were laid off — one month after a union campaign began. Included in the layoff were Luis Coria, who had called the union in the first place, his brother Manuel, and almost every individual

who had attended three pro-union meetings at Manuel's house. In all, 17 workers known to the union as supporters — many of them the most experienced in their departments — were terminated.

Local 296 denounced the firings, put pickets up outside BrucePac, and filed 18 charges with the NLRB.

But for the NLRB to prosecute an employer, it's not enough to show that a pro-union worker was fired. The NLRB must be shown that the worker took pro-union action, that the employer knew about it, and that the employer opposed unionization. If those three things are shown, the burden of proof shifts to the employer — to show that it would have fired the worker anyway for some other reason.

BrucePac, represented by the law firm Jackson Lewis, told NLRB agents it didn't know that the terminated workers were union supporters, so it couldn't have fired them for being union supporters. In most of the cases, Local 296 had no way to prove otherwise, and those charges were dismissed.

But on the day-shift in the sanitation department at the Silverton plant, supervisor Abel Esparza slipped up. Ten days before the firings, Esparza had called BrucePac worker Maria Estelle

Cortez on her cell phone as she was carpooling home with co-worker Laura Jimenez deCordova. Esparza asked Cortez to confirm that workers were forming a group to bring in the union, and mentioned her husband, Jose Carmen Maciel, and his co-worker Manuel Coria, by name. Esparza said it was a delicate thing; he had a raise for Maciel and Coria, but they needed to be careful. Esparza told Cortez he knew a union meeting was scheduled the following day (and it was, in fact) and that on Monday, he "would know."

Ten days later, the mass layoff hit four workers in the Silverton sanitation department day shift: Coria and Maciel, and also Daniel Luna and Federico Nieves Rojas. Coria and Maciel were the most senior of the 13 sanitation workers on their shift.

Later, a terminated worker from the Silverton sanitation night shift, Mauro Navarro, asked Esparza, his friend of 15 years, why workers had been laid off. Esparza said he'd chosen the day-shift sanitation workers for layoff because they were stirring things up, meeting with the union.

At trial, those two conversations made it harder for BrucePac to deny it knew about the union campaign,

(Turn to Page 6)

You want your funds to work as hard as your members do.

Funding the Pipe Trades apprenticeship program is vital not only to the next generation of tradesmen, but to the future of the industry. Just ask Robert Jennings. As Labor Trustee for Pipe Trades District Council 36, he relies on the expertise at Union Bank® to take the labor out of managing his Taft-Hartley Trust funds banking needs. Our Labor Management specialists help Robert maximize his funds' assets with accurate and timely reporting. And with our customized treasury management tools, he enjoys a high level of account visibility, which helps streamline annual audits. For over 60 years, we've helped labor unions administer their trusts with the greatest of ease. Now that's a legacy you can count on.



Robert Jennings, Labor Trustee, Pipe Trades District Council 36

To put our Taft-Hartley expertise to work for you, call us today.

Labor Management Trust Services:

Stephen Heady, Vice President
503-450-1270

Louis Nagy, Vice President
503-450-1273

Labor Management Deposit Services:

Rita Dailey, Senior Vice President & Industry Manager
949-553-6850

John Mendoza, Vice President & Relationship Manager
415-705-7112

Member
FDIC ©2010 Union Bank, N.A.
unionbank.com

UnionBank®
Invest in you®