

...Judge orders reinstatement of fired union supporters

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though it tried. Esparza testified that he didn't know any of the four terminated workers were pro-union, but the judge found the testimony of Cortez and Navarro more credible.

BrucePac attorneys also argued that Esparza wasn't the one who made the decision to fire the four workers. Assistant Sanitation Manager Osmin Martinez testified that he was the one who selected workers for layoff, and that he hadn't known about the union. Unlike with Esparza, the union had no witnesses to contradict Martinez' assertions.

Martinez further testified that in making the layoff decisions, he sought no input from lower-level supervisors, did not review personnel files, and relied solely on his recollection of previous oral reports from supervisors. He claimed that he had taken only half an hour to decide how many positions to eliminate from two shifts in the two plants, and no more than another half hour to decide which individuals to terminate. Asked why these four in the Silverton day shift were chosen, Martinez recalled in fuzzy detail some attitude problems and infractions, but declined to produce witnesses or evidence to back those claims. And Martinez failed to remember that other workers who were retained had committed similar infractions.

Local 296 Representative Jack Roy watched the whole trial and said Martinez' testimony was an outright embarrassment. After every question from the NLRB attorney, Martinez seemed to

look to BrucePac attorneys for some sign, until they stopped making eye contact with him and kept their heads down.

"It was obvious," Roy said. "He was programmed."

In her written ruling, Judge Parke called Martinez' testimony "implausible" and "vague" and said "he seemed defensive if not resistant on cross examination." In a nutshell, Parke said she didn't believe anything Martinez said unless it was backed up by someone else.

In her written decision, Parke ordered BrucePac to cease and desist interrogating employees about union activities, threatening employees with unspecified reprisals for supporting the union, and terminating employees for engaging in union activities. She also ordered the company to offer reinstatement and back pay to three of the fired workers — Manuel Coria, Jose Carmen Maciel, and Daniel Luna — and post a notice in the workplace explaining all that and informing workers of their right to form a union. As for the fourth worker, Nieves, Parke found that past tardiness made it plausible that he would have been laid off anyway.

Parke gave BrucePac two weeks to comply with the order, but as NLRB Seattle regional director Rich Ahearn explained to the Labor Press, that timeline doesn't have the force of law and can't, as a practical matter, be enforced.

BrucePac didn't comply with the deadline, and in fact, fired another union supporter — deCordoba — on March 30, according to a complaint filed with the Oregon Bureau of Labor and Indus-

tries. DeCordoba was present when Esparza called Cortez, and had a harassment charge against Esparza that the Oregon Bureau of Labor and Industries is investigating.

BrucePac's failure to reinstate within the judge's timeline may mean it plans to appeal her ruling to the next level: the National Labor Relations Board in Washington, D.C. The company had until May 6 to appeal, but had not done so when this issue went to press May 4. An appeal could drag out the case for months and years. The Board seldom reverses judges' decisions, but has often been heavily backlogged in recent years. In the last decade, the median length of time it has taken — from the moment a judge's decision is appealed to moment the Board makes its decision — has ranged from six to 21 months.

Aranda said he's pleased that the judge ordered three workers reinstated. But for Local 296, the bigger picture is that 14 other pro-union workers were fired without any consequence, and the 350-plus workers who remain at BrucePac still need a union.

In its initial investigation, the NLRB accepted BrucePac's explanation that the layoffs had a legitimate business rationale — that it was because of a continuing business downturn that had begun in 2007. But Roy says the day after the layoff, help wanted notices went up on BrucePac's workplace bulletin boards. New temporary employees were brought in. And workers were asked to work overtime.

Meanwhile, the trial seemed to show why Bru-

cePac workers might want a union. Coria testified that he arrived at the Silverton plant at 5:30 a.m. for a 10-hour shift, four days a week. Wearing a coat and two pairs of gloves, he pressure washed floors, cleaning up blood that leaked from boxes of meat. Handling hazardous chemicals, he cleaned and sanitized machines and walk-in coolers at temperatures of 20 below zero. He drove a forklift, took out the trash, and trained as many as 10 new employees during the decade he worked at BrucePac. All this for \$10.75 an hour, \$2.35 above Oregon's minimum wage.

So when his brother called the union, Coria got involved. He encouraged coworkers to support the union, hosted three union meetings at his home, and spoke daily to co-workers about the union during breaks in the company lunchroom.

After the final meeting, Coria distributed to coworkers a union-created pamphlet entitled, "35 things your employer cannot do."

One of 35 things was ... fire workers for supporting a union campaign.

CORRECTION

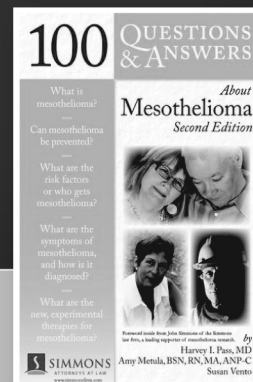
An article in the April 16 issue of the Northwest Labor Press misspelled the name of an Oregon Department of Justice attorney. His name is John Dunbar. Dunbar is defending Oregon Labor Commissioner Brad Avakian in a lawsuit by two business groups that are seeking to overturn the Worker Freedom Act. The Labor Press regrets the error.

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