

**B. T. Mancini Co., Inc. and Thomas P. Haynes
North Slope Mechanical and B. T. Mancini Co.,
Inc., a Joint Venture and Thomas P. Haynes.
Cases 28-CA-7129 and 28-CA-7294**

4 April 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS**

On 26 August 1983 Administrative Law Judge James M. Kennedy issued the attached decision. The Respondent in Case 28-CA-7294 filed exceptions and a supporting brief, and the General Counsel filed an answering¹ brief.

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 exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions² and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that Respondent B. T. Mancini Co., Inc., Phoenix, Arizona, and Respondent North Slope Mechanical and B. T. Mancini, Co., Inc., a Joint Venture, Prudhoe Bay, Alaska, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notices are substituted for those of the administrative law judge.

¹ The General Counsel also filed a motion to strike that Respondent's brief on the grounds that the brief does not constitute exceptions within the meaning of Sec. 102.46 of the Board's Rules and Regulations. Although the Respondent's submission does not comply with the literal requirements of Sec. 102.46, we find that the deficiencies are insufficient to justify striking the brief. Accordingly, the General Counsel's motion is denied.

² In the absence of exceptions, Chairman Dotson and Member Dennis adopt the judge's recommended Order in Case 28-CA-7129 pursuant to Sec. 10(c) of the Act. Accordingly, their action does not necessarily constitute an endorsement of all the judge's findings and conclusions in that case.

APPENDIX A

**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 discharge employees who insist on being paid wages in accordance with any collective-bargaining agreement regulating their employment.

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.

WE WILL offer Terry L. Brewster and Thomas P. Haynes immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL notify each of them, that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

B. T. MANCINI CO., INC.

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 discharge any employee because he or she has filed charges with the National Labor Relations Board.

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.

WE WILL offer Thomas P. Haynes immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings

and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL notify him that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

NORTH SLOPE MECHANICAL AND B.
T. MANCINI CO., INC., A JOINT VEN-
TURE

DECISION

STATEMENT OF THE CASE

JAMES M. KENNEDY, Administrative Law Judge. This case was tried before me at Phoenix, Arizona, on June 7, 1983, pursuant to two separate complaints issued by the Regional Director for Region 28 of the National Labor Relations Board. The complaint in Case 28-CA-7129 was filed on October 28, 1982, and the complaint in Case 28-CA-7294 was issued February 25, 1983. The two cases were consolidated by order dated March 2, 1983. They are based on charges filed by Thomas P. Haynes on September 24, 1982, and January 20, 1983, respectively. The first complaint alleges that B. T. Mancini Co., Inc. violated Section 8(a)(1) and (3) of the National Labor Relations Act (herein called the Act) and the second complaint alleges that Mancini and a joint venturer, North Slope Mechanical (together called the Joint Venture) violated Section 8(a)(4) and (1) of the Act.

Issues

There are two separate but related allegations. The first case presents the issue of whether or not Mancini discharged two employees, Haynes and Terry L. Brewster, from a construction project in Tucson, Arizona, because they made a claim for a pay rate to which they were entitled under their collective-bargaining contract. The second case raises the question of whether or not Haynes, dispatched by a union hiring hall to the Joint Venture's project on the Alaska North Slope, was discharged when its managers learned that Haynes was seeking relief through the NLRB over the Tucson dispute.

FINDINGS OF FACT

I. RESPONDENTS' BUSINESS

Respondents admit that B. T. Mancini, Inc. is a California corporation doing business in California, Arizona, and Alaska, and that North Slope Mechanical is a joint venture with B. T. Mancini Co., Inc. on various construction projects in Alaska. They further admit that Mancini and North Slope Mechanical are engaged in the building and construction industry in those States. Mancini's headquarters are in Santa Clara, California; it also has an Arizona office in Phoenix. They also admit that Mancini annually performs construction services valued in excess of \$50,000 in States other than Arizona and California. Accordingly, Mancini and North Slope Mechanical admit and I find them to be employers engaged

in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATIONS INVOLVED

B. T. Mancini Co., Inc. admits, and I find, Sheetmetal Workers International Association, Local Union No. 359, AFL-CIO to be a labor organization within the meaning of Section 2(5) of the Act. The Joint Venture admits, and I find, Sheetmetal Workers Local 72 also to be a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Tucson Incident*

On September 1, 1982, sheet metal workers Haynes and Brewster were dispatched by Local 359's Phoenix hiring hall to work for Respondent in Tempe, Arizona, at a construction site owned by G.T.E. Both were experienced journeymen sheet metal workers, each having been employed in the industry for more than 15 years. Their immediate foreman on the job was Roy "Bud" Finch.

The collective-bargaining contract describes various pay rates for sheet metal workers, principally depending on the distance the job is located from a central point in Phoenix. The Tempe job is located within so-called zone 1. Zones 2 and 3 are larger concentric circles. Each has a correspondingly higher rate of pay.

At the end of the workday on Thursday, September 9, Finch and Haynes had a conversation about an upcoming job at an IBM site near Tucson. Brewster was present during the entire conversation but did not participate.¹ Brewster nonetheless testified, "Well, Bud came up to Tom [Haynes] and he asked if we would like to go down to Tucson and Tom said, 'Yes.' Bud said, 'Well, this is not my idea. This is coming from a little higher above.' He says, 'If you guys go down to Tucson, would you go down and work for Zone 1 pay?' Tom stated, he said, 'No, we couldn't do that because if we did we would be violating the contract and we could have charges pressed up, you know, against us.'"

Haynes says Finch asked him if he would go to Tucson to work the IBM job for zone 1 pay. He says he replied he would not do so because a brother union member might file charges against him.

Finch testified they were to finish the G.T.E. job on Friday and to start in Tucson on the following Monday. He said, referring to Haynes and Brewster but not describing them separately: "They wanted to go. I told them I couldn't take them because I couldn't afford to pay them Zone 3 pay, but if they wanted to go down for Zone 1, then they could come down and go to work. They agreed." On cross-examination when Finch was asked if Haynes had referred to internal union charges being filed against him for working at rates below those required by the contract, he said Haynes "may have"

¹ Brewster mistakenly testified the conversation occurred on Friday, September 10.

mentioned being fined for working outside the contract. Finch could not recall what, if anything, Brewster said.

Local 359 operates two hiring halls, one in Phoenix and the other in Tucson. Each hall maintains separate out-of-work lists. If an individual is dispatched from the Phoenix hall, a Tucson job would fall within the zone 3 category. However, if an individual is dispatched from Tucson to work a Tucson job, he would fall within the zone 1 category as Tucson, like Phoenix, is marked with similar concentric circles delineating each pay zone. Obviously, it would be more economical for a contractor working in Tucson to utilize the services of an individual dispatched from the Tucson hiring hall.

Both Brewster and Haynes deny Finch's assertion that they had agreed to work in Tucson for zone 1 pay. Although Finch wishes to place the onus for the suggestion on the employees, he nonetheless agrees that he offered the Tucson job to them at zone 1 pay. Moreover, Jack Welborn, Mancini's Phoenix superintendent, testified Finch told him that Haynes and Brewster had asked to work on the Tucson IBM project. He says he advised Finch the company could not pay zone 3 on that job because it had been bid at the zone 1 rate. Finch replied the two had agreed to work for zone 1 pay.

According to Brewster and Haynes, rather than agreeing to work at the zone 1 rate, they neither agreed nor disagreed. After their conversation with Finch they went to Local 359's Phoenix office where they spoke with three officials, including the business agent in charge of the Tucson office who happened to be present. They learned that Local 359 would indeed disapprove of their working in Tucson at the zone 1 rate. However, it was decided that, if the job were offered them, they should go to Tucson and see what happened.

On the following day, Friday, the two were assigned to a 1-day job at another location in Phoenix. At the end of the day, all agree, Finch told them he would see them on Monday in Tucson.

The two worked at the Tucson project through Friday, September 24. On Thursday, September 23, they received their paychecks for their first week's work in Tucson. After work that day, aware they had not received zone 3 pay, they made photocopies of their paychecks and cashed them. On the following morning, prior to starting work they spoke to Finch. Brewster opened the conversation saying, "Hey Bud, I'm a little short on my check here." He says Finch asked what he meant and he answered, "We didn't receive our Zone 3 pay." Brewster reports Finch becoming quite upset, throwing his arms in the air and hollering, ". . . you guys said you'd come down here for Zone 1 pay!" Brewster replied, "No, we didn't." Brewster says Finch then said, "Well, I guess you guys don't have a job here." Haynes asked him, "Well, does that mean we are fired?" Finch replied affirmatively. Haynes thereupon asked if they could get a dismissal slip for being fired but Finch replied he did not carry "such animals." He then went to his briefcase and handed each of them a business card containing the Company's Phoenix address, saying, "You can pick up your checks here." Haynes and Brewster then got in a truck and started to drive away. Remembering Haynes had left some tools behind, they returned.

Haynes went to retrieve them. As Brewster waited, Finch came up and said, "I hate to see this kind of stuff go on." Brewster replied, "There must be some kind of miscommunication between us 'cause we did not agree to come down here for Zone 1 pay." Brewster says Finch told him he hated to see them go because he liked their work.

Haynes corroborates Brewster in nearly every detail, although he was not present during the latter conversation between Finch and Brewster.

Finch places a different emphasis on the conversation. As before he makes no distinction between Brewster and Haynes. He testified that when "they" made the claim for zone 3 pay he told them "they" had agreed to work for zone 1. He agrees he became very agitated, but says he simply told them to check with the office, giving them a business card containing the phone number. Instead of telephoning the office, the two walked away saying they would not work. A short time later they returned and asked him for termination slips but he did not give them any because he was not terminating them. He denies referring to the termination slips as "animals." He testified: "The job was there if they wanted to work under their agreement." On cross-examination he was even more specific. He said the job was still there if they wished to work for zone 1 pay. He amplified:

Q. (By Ms. Goldman): Mr. Finch, when you told those employees before they left that the job was there if they wanted it at Zone 1 pay, did you also tell them that you weren't going to keep them there at Zone 3 pay?

A. I couldn't.

JUDGE KENNEDY: Well, did you tell them that?

Q. (By Ms. Goldman): Well, did you or didn't you?

JUDGE KENNEDY: Did you tell them that?

THE WITNESS: I assume I did with the conditions.

Clearly Finch believed he could not continue to employ Brewster and Haynes at the zone 3 rate and that if they insisted on that rate there could be no work for them. Conversely, however, if they continued to adhere to their "agreement" to work at zone 1 pay then the job remained available.

Thus, although Finch denies firing them, and his denial is somewhat weakly corroborated by job steward Max Kendall who overheard part of the conversation, those denials are belied by the above-quoted testimony. Plainly, the employees wished to remain employed, but they also wished to be paid in accordance with the rate prescribed by the collective-bargaining contract. Finch, under orders from Welborn, knew he could not economically do so, and conditioned their continued employment on their abandonment of the pay rate set forth in the contract. Thus, no matter how Finch or anyone else now wishes to characterize it, Brewster and Haynes' departures were involuntary for Finch could not employ them at the contract rate. All testimony to the contrary,

including that of Welborn and Kendall, is therefore rejected.²

Brewster and Haynes went to Local 359's Tucson office but were unable to find anyone in authority. They telephoned the Phoenix office explaining what had happened and the business agent there agreed to obtain the pay differential. Later, in attempting to obtain both the pay differential and a check for their remaining time, they spoke with Welborn who asserted they had quit. Ultimately all checks were issued and sent to Local 359's Phoenix office.

B. *The Prudhoe Bay Incident*

Within a few days of the Tucson incident, Haynes flew to Alaska to seek employment as a sheet metal worker. He obtained some short-term employment and was then referred by Local 72 in Fairbanks to a job with the Joint Venture in Prudhoe Bay. He began working there on approximately October 4. On one occasion, while Haynes was employed, Respondent's president Brooks Mancini visited the Alaska operation. Mancini met Haynes at that time and later determined Haynes was the same individual who had filed unfair labor practice charges over the Tucson incident. Mancini testified that because he thought that matter had been resolved, he was unconcerned about Haynes' employment. He believed the matter had been resolved on the basis of paying Haynes the zone pay differential. Apparently he was unaware that Haynes was pursuing backpay for himself and Brewster for the remainder of the IBM job.

During his employment by the Joint Venture, Haynes on two occasions was made a foreman, although it appears that one of the principals of the Joint Venture, Gary Fenton, was not fully satisfied with his foremanship.

The testimony shows that the Joint Venture at the North Slope was considered to be a "sub-tier" contractor. It appears that most employment in the Prudhoe Bay area is governed by two major petroleum companies, ARCO and SOHIO. These in turn offer work to various construction companies who often subcontract it. The Joint Venture was one of the subcontractors. Workers employed at Prudhoe Bay are required to live in camps whose occupancy is controlled by the oil companies. Without attempting to detail the cost of housing individuals at these camps, it is expensive and the construction companies must arrange in advance with the oil companies to determine the availability of housing. In addition some of the contractors own and operate their own facilities for their permanent staff. North Slope Mechanical has such a camp. The general practice of Prudhoe Bay employers is to provide construction workers with 9 weeks of full employment, 10 hours per day, 7 days per week, followed by 2 weeks' leave. On such a rotation system, the Joint Venture provides employees with a

round-trip ticket from Prudhoe Bay to his point of hire. In addition to normally scheduled "R & R," North Slope contractors are governed by major oil company shut-downs, such as often occur during December and January of each year, usually referred to as the Christmas holiday. During that period nearly everyone leaves the Bay and the facilities are manned by skeleton crews. Little, if any, work is performed.

During December 1982, the Joint Venture was in the process of finishing a job for H. C. Price Construction Company and was hoping to obtain an immediate contract with the construction subsidiary of the Boeing Company, known as Boecon. Both Mancini's general manager, George Wilson, and North Slope Mechanical's president, Gary Fenton, testified they were hoping to get the Boecon contract quickly so they could switch the crew smoothly from the Price to Boecon job. According to Haynes, at the December 5 Christmas party Wilson told him he was to be assigned to the Boecon project and could count on returning on January 1, 1983. On December 12, shortly before Haynes left on leave, Fenton told him there would be nothing happening during the first week of January and that he should return instead on January 10.

Later that day Haynes left the North Slope with a round trip ticket between Prudhoe Bay and Fairbanks. He then paid his way from Fairbanks to Phoenix where he spent the next month. He says he was combining some R & R with the Christmas holiday.

Fenton and Wilson testified that the Christmas holiday did not begin until approximately December 18 and that employees left for that holiday period between December 18 and 21. Fenton did not return until late January. Wilson left at or about the same time as Fenton but returned during the first week in January.

Prior to their leaving, both Wilson and Fenton testified they were concerned because the Boecon contract had not yet been signed. As a precaution they drafted a priority list of employees whom they wished to call back first. No such list was offered in evidence and though neither Wilson nor Fenton could recall who was on it, they nonetheless testified that Haynes had been placed either near its tailend or approximately three-quarters of the way down.

While Wilson was on his vacation, he visited corporate president Brooks Mancini in his office in Santa Clara, California. They discussed the upcoming Boecon job, observing that the contract had not yet been signed and noting the uncertainty over when that work would begin. During the conversation Mancini mentioned to Wilson that the Joint Venture had employed an individual "who was suing us in the lower 48." Wilson was surprised to learn it was Haynes. Mancini asked Wilson if Haynes was still working. Wilson replied he was not, but was to be recalled for the Boecon job. Both Wilson and Mancini testified nothing further was said regarding Haynes. On January 5 Haynes, still in Phoenix, called the Joint Venture's North Slope office and spoke to Office Manager Flo Lancaster. Both agree he told her he was coming to Fairbanks on January 8 and that she told him be sure to call the office before he flew to Prudhoe

² Welborn concedes that he was the one who determined that they had "quit," saying he did so because whenever an employee leaves a jobsite to go to the union hall such conduct is uniformly interpreted in the construction industry as a "quit." Aside from whether or not his understanding of industry practice is accurate, which I do not believe it to be, Welborn was not there and only had Finch's report to go on. If Finch reported them as quitting, Welborn could only agree.

Bay. Haynes arrived in Fairbanks as scheduled but never telephoned.³

On January 10, Haynes went to Local 72's hall and then, using the return portion of his ticket, took a commercial flight to Prudhoe Bay. At the Fairbanks airport he met a coworker, Sedlac, who had been called to return to work. At Prudhoe Bay Haynes telephoned Wilson seeking transportation to the camp. He says Wilson asked him what he was doing there, saying that he had been "fired." Wilson contends he told Haynes he had been laid off, not "fired." Haynes says he asked why and Wilson replied that Brooks Mancini had told him to do so because he was employing "a man who was suing them in the lower 48." Wilson denies such a conversation occurred on the telephone, but agrees that a similar conversation occurred later at the staff camp.

Transportation was arranged for both Haynes and Sedlac. They went to Wilson's quarters. Haynes testified he and Wilson had a second conversation in which the contents of the telephone conversation were repeated. He adds that Wilson asked why he had not told him about the Arizona suit. Haynes replied that, if he had told him, he would have been fired "a long time ago." He says Wilson agreed. Haynes also says he attempted to explain the merits of the Arizona dispute to Wilson, but Wilson was not interested.

Wilson agrees that when Haynes telephoned him from the airport he asked why he was there, but says he told Haynes he had been "RIFed." He also asked Haynes why he had not called before flying to the North Slope. He says Haynes did not reply, but asked to come to talk to him.

When Haynes arrived at Wilson's residence they had a conversation in the living room. Wilson says he repeated to Haynes that he had been RIFed and again asked him why he had not called. Haynes replied he "thought he had a job." Wilson told him he would have to return to the union hiring hall in Fairbanks, but Haynes told him he had no money. Wilson said he did not sympathize because Haynes had not followed the North Slope rules. He asserted that no one "shows up" in Prudhoe Bay without first calling because there is no place to live.

After discussing where Haynes might spend the night, they had another conversation. Over a drink, Wilson asked Haynes why he had not told him that he worked for Mancini previously. At that point, he says, Haynes asked, "Was that the reason I'm terminated—because I have a lawsuit?" Wilson replied it was not. The conversation then continued on a civil basis. Haynes left after making some arrangements for lodging.

Wilson testified he was aware that Haynes had spoken to Flo Lancaster on January 5 and was also aware that she had told him to call before flying to Prudhoe Bay. He says shortly after that call, acutely aware that the Boecon contract had not yet been signed, he decided to RIF Haynes. He told Lancaster to inform him when Haynes called again. He says he directed Lancaster to prepare a termination slip for Haynes and to mail it. He does not know when or where it was mailed.

³ Haynes says he had his wife telephone but she mistakenly called the camp instead of the office.

The termination slip, dated January 7, was not given to Haynes until January 14 when he was at Local 72's hall. A union official gave it to him.

When Wilson was asked how Haynes was expected to know about his layoff if no one had communicated it directly to him, Wilson gave what I regard as an unsatisfactory reply, "The minute that slip would hit the hall the phones would ring all over wherever Tom was at to let him know." Even if it had been sent on January 7, there was little likelihood it would reach Haynes prior to January 10 due to the intervening weekend.

Curiously, Respondent did not at any time cancel the return portion of the round-trip ticket which Haynes had in his possession. Lancaster testified that could have been done. If it had been, no doubt the airline would not have accepted Haynes' ticket and the cancellation would, at the very least, have triggered an inquiry by him.

Wilson also testified that Haynes was eligible to return to Respondent if Local 72 again referred him. Indeed, Wilson says that when the Boecon job actually began a week or so later, he put in an "open call" to the hiring hall. He admits he did not call for Haynes by name because he was annoyed with him for having "falsified" his employment application. The alleged falsification to which he refers is a check mark in a box on the employment application indicating that Haynes had not worked for Mancini before. The check mark is quite curious. There are two other check marks also appearing on the same document. The check mark in question is clearly distinguishable from the other two. It is more practiced; the other two are scrawls. Haynes testified he had left that particular box blank. He is credited on the point for it appears that someone added the check mark at a later date.

Given Wilson's concession that Haynes "did a fine job for us" it seems unlikely that a mismarked box would be of significant concern to Wilson unless it was accompanied by something more serious—knowledge of the NLRB litigation in Arizona. Certainly, in November or December Mancini himself had not been too concerned with Haynes' presence. By then he knew Haynes was the person who had filed charges over the Tucson incident and knew, or should have known, that the box was either blank or falsely marked. It was not until the Christmas holiday that he became concerned enough to remark on it to Wilson.

IV. ANALYSIS AND CONCLUSIONS

First, with respect to the Tucson incident I conclude that the General Counsel has proven that Finch discharged Haynes and Brewster because they insisted on being paid at the zone 3 rate. The job had been budgeted at zone 1, but Finch, happy with Haynes and Brewster's work, opted for known quality workmanship at the lower rate, rather than risking unknown quality from the Tucson hiring hall. It may be true that Haynes originated the idea of going to work in Tucson. After all it was a concrete employment opportunity about which he knew, rather than the less certain opportunities offered by the hiring hall. However, even if the suggestion of working in Tucson originated with him, it does not follow that

the suggestion of working for zone 1 pay also did. In fact, it seems likely that if Haynes expressed an interest in working in Tucson, Finch would respond with something to the effect that for "them" to do so "they" would have to agree to work for zone 1 pay. Whatever the case, Finch's assertion that they agreed to work for zone 1 pay has not been proven. Moreover, even if it were, such an agreement would be immaterial to this action as it would not constitute a legal defense to the discharges. The collective-bargaining agreement governs wages, hours, and terms and conditions of employment and an employee has no standing to waive those rights. *J. I. Case Co. v. NLRB*, 321 U.S. 332, 336 (1944). See also *Certified Ad Services*, 239 NLRB 156, 164 (1978). Moreover, where such a contract is in effect it is an unfair labor practice for an employer to negotiate directly with an employee regarding his wages or unilaterally to change them. Thus, public policy clearly precludes raising the defense of waiver in those circumstances.

In any event, Brewster and Haynes' testimony that they never agreed to work for zone 1 pay is credible. Brewster clearly did not; he simply stood silent during the entire conversation. Finch could recall nothing said by Brewster to dispute Brewster's testimony. Haynes testified, and Finch seems to concur, that he expressed some opposition to the idea of working for zone 1 pay because he feared intraunion charges might be filed against him for doing so. Most likely, Finch simply saw an opportunity to take advantage of their skills thinking that they would see zone 1 pay as being in their best interest. Brewster's total silence and Haynes' equivocation cannot be seen as agreement work for zone 1 pay.

The fact that both employees reported the proposal to their union officials and were told to wait and see is of no moment either. Union officials, like anyone else, are happy to see individuals employed. They did not want to jeopardize their members' possible earnings. The two had been properly referred to Mancini and the officials could only assume that because Mancini's history of contract compliance was good, it would continue. Thus, Local 359's instructions to Brewster and Haynes cannot be seen as an acquiescence to the proposal.

It is clear, therefore, based on Brewster and Haynes' testimony, as well as Finch's admissions that he could continue to employ them only if they agreed to work for zone 1 pay, that Finch discharged them when they asked for zone 3. Quite clearly they were seeking to obtain a wage rate to which they were entitled under the collective-bargaining agreement and were discharged for insisting on it. Such a discharge is a violation of Section 8(a)(1) of the Act. *Bunney Bros. Construction Co.*, 139 NLRB 1516, 1519 (1962); *B & M Excavating*, 155 NLRB 1152 (1965), *enfd. per curiam* 368 F.2d 624 (9th Cir. 1966); *H. C. Smith Construction Co.*, 174 NLRB 1173 (1969), *enfd. per curiam* 439 F.2d 1064 (9th Cir. 1971); *George E. Masker, Inc.*, 261 NLRB 118 (1982); *NLRB v. Interboro Contractors*, 388 F.2d 495 (2d Cir. 1967). I therefore find that the Respondent, B. T. Mancini Co.,

Inc., violated Section 8(a)(1) of the Act on September 27, 1982, when it discharged Haynes and Brewster.⁴

Second, with respect to the Alaska matter, it appears to me that the General Counsel has made out a prima facie case that Haynes was discharged on January 10, 1983, because of the NLRB action which had been commenced by him over his Tucson discharge. Haynes had worked satisfactorily from his initial employment until he left Alaska on his Christmas/R & R leave. Prior to his leaving, he had been told by Wilson that he should return on January 1. This was subsequently modified by Fenton to January 10. Thus, he had been given a specific reporting date. Moreover, he later complied with their directive and policy to call before leaving for the job. On December 5 he had called the office and had spoken to Lancaster, telling her that he intended to return on January 10 as scheduled. She did not tell him anything to the contrary, except to suggest that he call again before he actually left Fairbanks.⁵

Until Wilson met with Mancini in Santa Clara over the Christmas holiday, Wilson had no particular complaint regarding Haynes. Indeed, Haynes had been made foreman on two separate occasions and his workmanship was considered to be quite good. It may be that Fenton did not hold Haynes in the same regard as did Wilson, but certainly Fenton was not dissatisfied with his work. He had told Haynes to return on January 1.

This all is complicated to some extent by the fact that the Boecon contract did not begin quite as quickly as the Joint Venture had anticipated, but there are still some unusual circumstances surrounding the decision to RIF Haynes. First there is the discrepancy regarding the termination slip. It is dated January 7, but was not received until a week later. Haynes was not given a copy of it on January 10. Did it even exist on that date? Second, even assuming that Respondent had no "duty," as Wilson claims, to inform Haynes of his layoff, nonetheless it seems likely that Respondent would have canceled the return portion of his airline ticket. At the very least that would have prevented a monetary loss; moreover, it would have signaled Haynes to telephone again.

Finally, there is Wilson's confession that after the Boecon contract had commenced he decided not to recall Haynes by name even though he was entitled to do so. He gave as a reason his conclusion that Haynes had falsified his application form. However, there is no credible proof that Haynes had ever falsified the form. Instead, there is a very strong possibility that the form had been altered by someone in Respondent's office. Beyond that, the very subject matter of the alleged falsification, whether he had worked for Mancini before, is directly connected to the theory of this case. Thus, Wilson concedes that he was "disappointed" to learn that Haynes had filed an NLRB action in Arizona. His disappointment no doubt triggered his inquiry into Haynes'

⁴ It is unnecessary to determine whether this also violates Sec. 8(a)(3) of the Act. *Bunney Bros.*, *supra*.

⁵ His failure to call on January 10 is of no significance to the case. According to Wilson, Haynes had already been discharged so his failure to follow Lancaster's suggestion—or directive—to call could not have contributed to Wilson's decision to discharge him.

application form. That appears particularly likely given Wilson and Mancini's testimony regarding their Santa Clara conversation.

Even if Mancini did not give Wilson a specific directive to discharge Haynes, nonetheless his question to Wilson was, "Is he still employed?" Wilson replied that he was not, but was scheduled to be recalled when the Boecon contract commenced. Wilson could easily have interpreted Mancini's question as a subtle hint to discontinue Haynes' employment. Thus, Wilson had ample motivation on his return to Alaska to find a way to avoid recalling Haynes. He believed he was complying with Mancini's wishes and was also personally "disappointed" to learn of Haynes' NLRB suit. Whether or not he took the next step and caused Haynes' application form to be altered cannot immediately be discerned.

Even so, the circumstances raise a strong suggestion that Respondent was seeking evidence to justify refusing to recall Haynes. First, there is the odd timing of the termination slip. No doubt Haynes was not the most important thing on Wilson's mind when he returned to the North Slope; obtaining the Boecon contract was far more important. Nonetheless, when Haynes telephoned on January 5, Wilson's attention was once again drawn to him. Given the fact that Haynes had been told to report on January 10 and was calling from Phoenix to say that he intended to do so, Wilson was forced to decide what to do. He followed Mancini's subtle hint and decided not to allow Haynes to return. The best way to accomplish that was to lay him off. No doubt he intended to do that orally when Haynes called again. Unfortunately Haynes did not do so.

When Haynes actually appeared at the North Slope on January 10 there is no evidence that the termination slip even existed, for he was not then given a copy. That is quite strange for there was ample opportunity to have done so. Either Wilson or Flo Lancaster, the office manager, could easily have given him one. Lancaster had plenty of opportunity because to relieve his financial embarrassment, she bought Haynes' television set to give him the air fare back to Fairbanks. In this regard, I note the testimony of both Lancaster and Wilson was quite vague about when the slip was prepared and mailed. I assume therefore that the termination slip did not then exist, despite its January 7 date.

Finally, Wilson's treatment of Haynes' situation thereafter is fully consistent with this scenario. Although he had planned to recall Haynes for the Boecon project, he did not do so despite being fully satisfied with Haynes' workmanship. He had the right to recall Haynes by name, but instead put in an open call to the union hiring hall. The Joint Venture argues now that Haynes could have accepted that open call and returned to work. That, however, is quite doubtful. When an open call is made to a hiring hall the union usually refers prospective employees from the top of the list. Having been terminated by Respondent, Haynes, if on the list at all, would have been near the bottom. The likelihood that Haynes would have been immediately referred to the Joint Venture was quite low.

Finally, I do not regard the delay in commencing the Boecon contract to be of particular significance. Re-

spondent was in the process of recalling employees, including Sedlac, and had made no credible showing that it would not also have recalled Haynes. Although Wilson and Fenton testified about a priority list with respect to recalling employees, the list itself was never introduced, or even offered, in evidence. Despite Fenton's testimony that Haynes was three-quarters of the way down the list, I am unable fully to credit the testimony regarding either its existence or Haynes' place on it. Indeed, Wilson told Mancini that Haynes was scheduled to work on the Boecon project. Such a statement can readily be interpreted as meaning that he was scheduled to return with those on the top of the list rather than those on the bottom. Absent the list, the testimony, vague in any event, must be rejected.

Given all the circumstances I conclude that Wilson, believing he was acting at Mancini's directive, decided to discharge Haynes. He was responding to Mancini's observation that Haynes was suing the Company in Arizona. Accordingly, I conclude that on January 10, 1983, Respondent discharged Haynes because he had filed charges with the National Labor Relations Board.

V. THE REMEDY

Having found that B. T. Mancini Co., Inc. and the Joint Venture have engaged in violations of the Act, I shall recommend that they be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. The affirmative action shall include an order requiring Mancini and the Joint Venture to reinstate Haynes and Brewster to their former jobs if they still exist, and to make them whole for any loss of pay they may have suffered by reason of the discrimination against them. Backpay and interest thereon shall be computed on a quarterly basis and in the manner prescribed by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962). In addition, Respondent shall be required to expunge from its records any reference to Haynes and Brewster's unlawful discharges, to provide written notice of such expunction to them, and to inform them that its unlawful conduct will not be used as a basis for further personnel action concerning them.

Based on the foregoing findings of fact and on the entire record in this case, I make the following

CONCLUSIONS OF LAW

1. The Respondent, B. T. Mancini Co., Inc. and North Slope Mechanical and B. T. Mancini Co., Inc., a joint venture, are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent B. T. Mancini Co., Inc. violated Section 8(a)(1) of the Act when on September 27, 1982, it discharged employees Terry L. Brewster and Thomas P. Haynes because they insisted on being paid in accordance with the rates of pay set forth in the collective-bargaining contract governing their wages, hours, and terms and conditions of employment.

3. Respondent North Slope Mechanical and B. T. Mancini Co., Inc., a joint venture, violated Section

8(a)(4) and (1) of the Act by discharging its employee Thomas P. Haynes on January 10, 1983, because he had filed charges with the National Labor Relations Board.

On these findings of fact and conclusions of law and on the entire record in this case, I issue the following recommended⁶

ORDER

A. Respondent B. T. Mancini Co., Inc., Phoenix, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they seek to enforce the pay rates set forth in the collective-bargaining contract governing their employment.

(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) Immediately offer Terry L. Brewster and Thomas P. Haynes reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or any other rights or privileges and make them whole, with interest, for lost earnings in the manner set forth in the section of this decision entitled "The Remedy," dismissing if necessary any employees who replaced them.

(b) Expunge from Brewster and Haynes' personnel records and all other files any reference to their discharges.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Arizona office and jobsites copies of the attached notice marked "Appendix A."⁷ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by Respondent authorized representative, shall be posted immediately on 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 Respondent to ensure that such notices are not altered, defaced, or covered by any other material.

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

B. Respondent North Slope Mechanical and B. T. Mancini Co., Inc., Prudhoe Bay, Alaska, a joint venture, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they have filed charges with the National Labor Relations Board.

(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) Immediately offer Thomas P. Haynes reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or any other rights or privileges and make him whole, with interest, for lost earnings in the manner set forth in the section of this decision entitled "The Remedy," dismissing if necessary any employee who replaced him.

(b) Expunge from Haynes' personnel records and all other files any reference to his discharge.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this order.

(d) Post at its Alaska office and jobsites copies of the attached notice marked "Appendix B."⁸ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by Respondent authorized representative, shall be posted immediately on 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 Respondent to ensure that such notices are not altered, defaced, or covered by any other material.

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

⁶ 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.

⁷ 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."

⁸ 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."