**Denver Newspaper and Graphic Communications Local No. 22 (The Denver Publishing Company d/b/a The Rocky Mountain News) *and* Wayne Jerome Scott.** Cases 27–CB–4053–1, 27–CB–4119–1, and 27–CB–4152–1

September 30, 2002

## DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

On January 22, 2002, Administrative Law Judge James L. Rose issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, conclusions as modified[1] and to adopt the recommended Order as modified.[2]

1. The administrative law judge found that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by causing the denial of overtime opportunities to the Charging Party, Wayne Jerome Scott, because he was delinquent in paying union imposed fines. We adopt the judge's finding. The judge specifically found that Scott was unlawfully denied overtime opportunities for the weeks of May 13 and June 10 and 24, 2000. The General Counsel has excepted to the judge's failure to find that Scott was also denied an overtime opportunity for the week of April 29, 2000. Upon careful examination of the judge's decision and the record, we find merit in the General Counsel's exception.[3] We therefore modify the judge's finding to include the week of April 29, 2000, along with the other dates in the judge's decision.

2. The judge found that the Respondent did not violate Section 8(b)(1)(A) of the Act by filing an internal union charge against member Scott in retaliation for Scott's filing of a Board charge against the Respondent. The judge concluded that the quick withdrawal of the internal union charge, the limited knowledge by the membership of the filing of the internal charge, and the absence of any trial or fine, sufficiently demonstrated no actual coercive effect on the Charging Party, and therefore there was no violation of the Act. The General Counsel has excepted to the judge's failure to find a violation, arguing that the mere filing of the internal charge against Scott violates Section (8)(b)(1)(A), and that the mere withdrawal of the charge, and other factors relied on by the judge, are insufficient to remedy the coercive effect of the Respondent's unlawful conduct. For the following reasons, we find merit to this exception.

### Facts

On October 17, 1999,[4] the Respondent's president, John George, filed an internal union charge against Scott because Scott had filed an unfair labor practice charge against the Union on October 13. George's charge alleged that Scott violated the Union's International constitution by filing charges with the National Labor Relations Board (the Board) before taking his claim to the Union's executive board. On October 17, the Respondent's secretary/treasurer, Cordelia Brimage, personally served Scott with the internal union charge along with a separate summons to appear before a trial committee on November 8.[5]

The record further establishes that the internal union charge at issue was "thrown out" on October 19. On that day, George informed Brimage that the Union's attorney had advised that the internal charge was invalid and directed Brimage to disregard it. Brimage made a handwritten notation at the top of the charge stating, "Invalid Charges. Thrown-out 10/19/99."[6] Brimage also orally informed Scott that the internal charge was invalid and that the Union was not going to proceed against him. The charge, with Brimage's handwritten notation, was placed in the Union's files. There is no evidence indicating whether, and if so how, the members of the trial committee were informed that the charge was thrown out.

### Analysis

Fundamental to the effectuation of the policies of the Act is promoting unrestricted access to the Board and the Board's processes. In keeping with this objective, the Board and courts have consistently held that a union violates Section 8(b)(1)(A) of the Act when it takes coercive actions designed either to prevent a member from filing a charge with the Board or to retaliate against a member for filing such a charge.[7] Filing an internal union charge

[1] We shall modify the judge's recommended Order in accordance with our recent decision in *Ferguson Electric Co.*, 335 NLRB 142 (2001).

[2] We shall substitute a new notice in accordance with our decision in *Ishikawa Gasket America*, 337 NLRB 175 (2001).

[3] The record evidence establishes that the Respondent offered overtime shifts to employees who worked the full 5-day weekly schedule, starting with the employee who had worked the least number of overtime shifts. (Tr. 145.) As argued by the General Counsel on exception, and not disputed by the Respondent, the Respondent's records establish that Scott met these criteria for the week of April 29, as well as for the weeks of May 13 and June 10 and 24. (R. Exh. 5.)

[4] All dates hereafter are 1999 unless otherwise indicated.

[5] The trial committee is a five-member board comprised of elected peers.

[6] The summons to appear before trial committee, a separate document than the charge, had no notation regarding the charge being thrown out.

[7] *NLRB v. Shipbuilders*, 391 U.S. 418 (1968); *Painters Local 1115 (C&O Painting)*, 312 NLRB 1036, 1042 (1993); *Auto Workers Local*

against a member in retaliation for the member's filing of a charge against it with the Board is such a coercive act and therefore violates Section 8(b)(1)(A) of the Act.[8] This is because "the overriding public interest makes unimpeded access to the Board the only healthy alternative."[9]

Under this analysis, we agree with the General Counsel that the Respondent violated Section 8(b)(1)(A) by filing an internal union charge against Scott on October 17. The clear language of the charge establishes the 8(b)(1)(A) violation. In addition, the charge was filed by the Union's president, a hearing was scheduled, and a summons was issued and served on Scott.[10] An actual trial, fine, or other discipline is unnecessary to establish the violation.[11]

We also find that the evidence fails to demonstrate that the Respondent effectively repudiated that violation. The mere withdrawal of the internal union charge against Scott, in the absence of an action specifically repudiating the coercive effect of the conduct, is insufficient to remedy the 8(b)(1)(A) violation.[12] Although the Respondent notified Scott that the charge against him was withdrawn, it did not assure him, or other union members, of their rights and guarantee that it would not engage in such conduct in the future. The Respondent also failed to appropriately remove from all union files any reference to the charge filed against Scott. Accordingly, contrary to the judge, we find that the Respondent violated Section 8(b)(1)(A) of the Act by filing an internal union charge against Scott in reprisal for his filing a charge with the Board against the Union.[13]

## AMENDED REMEDY

In addition to the remedy provided for in the judge's decision, we shall order the Respondent to remove from its records any reference to the internal union charge, filed on October 17, 1999, against Wayne Jerome Scott, for filing unfair labor practice charges with the Board against the Union and to notify Scott in writing that it has done so and that the Respondent will not use the charge against him in any way.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Denver Newspaper and Graphic Communications Local No. 22, Denver, Colorado, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(a) and reletter the subsequent paragraphs:

"(a) Filing internal union charges against its members for filing unfair labor practice charges with the National Labor Relations Board."

2. Insert the following as paragraph 2(a) and reletter the subsequent paragraphs:

"(a) Within 14 days from the date of the Board's Order remove from its files any reference to the October 17, 1999 internal union charge against Wayne Jerome Scott for filing NLRB charges against the Union, and within 3 days thereafter notify Scott in writing that it has done so and that it will not use his filing of the charge against him in any way."

3. Substitute the following for existing paragraph 2(b) (now relettered as par. 2(c)):

"(c) Preserve and, within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order."

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

## APPENDIX

### 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 Federal labor law and has ordered us to post and obey this notice.

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*1989 (Caterpillar Tractor Co.)*, 249 NLRB 922, 923 (1980)*; Independent Shoe Workers (U.S. Shoe Corp.)*, 208 NLRB 411, 417 (1974).

[8] Id. It appears from the record that the provision in the Union's Constitution and Bylaws on which the charge was based is no longer in effect.

[9] *NLRB v. Shipbuilders*, supra, 391 U.S. at 424.

[10] Presumably, the summons was also provided to the members of the trial committee.

[11] See, e.g., *Auto Workers Local 1989 (Caterpillar Tractor Co.)*, supra.

[12] *Painters Local 1115 (C&O Painting)*, supra, 312 NLRB at 1042; *Auto Workers Local 1989 (Caterpillar Tractor Co.)*, supra, 249 NLRB at 923–924.

[13] Member Cowen agrees with his colleagues that the Respondent did not effectively repudiate this violation of Sec. 8(b)(1)(A). Member Cowen specifically notes in this regard that the Respondent's claim of repudiation rings hollow given that the Respondent's unlawful act of filing internal charges against Scott was inextricably intertwined with its discriminatory denial of overtime opportunities to Scott, which conduct post-dated its purported repudiation and was itself never repudiated or remedied by the Respondent.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT file internal union charges against our members for filing unfair labor practice charges against us with the National Labor Relations Board.

WE WILL NOT deny any member the opportunity for extra shifts because this member is delinquent in paying fines levied as a result of internal union charges.

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

WE WILL within 14 days form the date of the Board's Order remove from our files any reference to the October 17, 1999 internal union charge filed against Wayne Jerome Scott and WE WILL within 3 days thereafter notify Scott, in writing, that we have done so and that we will not use his filing of the charge against him in any way.

WE WILL make whole Wayne Jerome Scott for any loss of wages or other benefits he may have suffered as a result of our discrimination against him, with interest.

DENVER NEWSPAPER AND GRAPHIC COMMUNICATIONS LOCAL NO. 22

*Barbara E. Blanton Greene, Esq.,* for the General Counsel.
*Dennis E. Valentine, Esq.,* of Denver, Colorado, for the Respondent.

## DECISION

### STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge. This matter was tried before me at Denver, Colorado, upon the General Counsel's complaint alleging that the Respondent Union engaged in various acts violative of Section 8(b)(1)(A) of the National Labor Relations Act.. The Respondent generally denied that it committed any violations of the Act.

On the record as a whole, including my observation of the witnesses, briefs and arguments of counsel, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

At all times material, The Denver Publishing Company d/b/a The Rocky Mountain News (the News) has engaged in the business of publishing a daily general circulation newspaper from its facility in Denver, Colorado, in connection with which it has held membership in, or subscribed to various interstate news services, including the Associated Press, published various nationally syndicated features, and advertised various nationally sold products. The News annually derives gross revenues in excess of $200,000. I therefore find that the *News* is an employer engaged in interstate commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

The Respondent, Denver Newspaper and Graphic Communications Local No. 22 (the Union) is admitted to be, and I find is, a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### *A. The Facts*

As with most labor disputes, the events alleged here to be unlawful did not occur in a vacuum. Therefore some background facts are necessary. The Charging Party, Wayne Scott, has been a member of the Union for 45 years, having worked for the Denver Post until 1998 at which time he reached a settlement with that newspaper's management that in lieu of being discharged for a second charge of sexual harassment of a fellow employee, he would accept $32,000 and agree not to seek future employment with the Post.

The Post and News were separate entities; apparently however, some time after the initial charge in this matter they merged into The Denver Newspaper Agency. Material here, as has been the practice, under certain circumstances (discussed below) employees of one paper will work shifts for the other.

In early 1999, Scott sought employment with the *News* and apparently filed an application. By letter dated March 9, his application was denied. Scott then, through the Union, sought work with the *News* as a substitute employee. As is apparently traditional in the industry, the Union provides employees when the need arises. Though complicated, I find that the first employees to be offered extra shifts are full-time employees who have worked their designated five shifts in a week. Then if not all available shifts can be filled, the union chapel chairman (steward) or the assistant, will contact full-time employees of the *Post.* Last will be retirees. There are also "substitutes" but the record suggests that substitutes were not used during the time material here. A substitute is a full-time employee who, because of lack of work, has not been assigned five shifts or is a full time employee suspended from the other employer.

According to John George, the Union's president during the material times here, Paul Gledhill, the vice president of operations for the *News* was reluctant to hire Scott, knowing of Scott's problems with the *Post.* Nevertheless, George was able to persuade Gledhill to hire Scott as a part-time employee, and subsequently Scott got "a couple" shifts a week as a retired member.

However, Scott was not satisfied, contending that under the Union's constitution and bylaws he should be considered a substitute and he disputed that George designated him as a retired member for purposes of being offered work. While Scott claims he was not retired, he did admit that he testified in a State court action that he was. According to George, Scott said he should be given "round-robin status on the overtime board" (employees on the overtime board are called based on

the number of times they have been offered work, with the lowest number being given the first call). George told Scott that such was not his decision to make, that Scott would have to take it up with the executive board of the Union. Since there was a great deal of overtime available during this period, the executive board decided it would not hurt full-time employees to treat Scott as a full-time Post employee. However, there is some question as to whether the change in status in fact helped Scott. Indeed, there is testimony that being designated a full-time *Post* employee rather than a retired member meant that he might get fewer shifts since the News Chapel Chairman could contact retired members first if unable to reach the Post chapel chairman.

In any event, Scott continued to complain about not getting enough shifts and on September 19, 1999, wrote identical letters to the *News* and the Union stating his "desire and (my) availability to work thirty five hours each and every week." This, according to Scott was a request for full-time employment, notwithstanding that under the collective-bargaining agreement, full time is 37-1/2 hours per week (unless one were to work five night shifts, which are 7 hours each). Scott was subsequently hired as a full-time employee by the *News* in January 2000.

Notwithstanding that George had in fact persuaded the *News* to hire Scott, on October 11, 1999, Scott filed an intraunion charge against George claiming that George had failed to represent him is obtaining work with the *News.* And on October 13, Scott filed his first charge with the NLRB alleging that George had failed to represent him in his quest to secure five shifts per week at the *News.* On October 17, George retaliated with an intraunion charge of his own against Scott for filing the NLRB charge. George's charge was "thrown-out" on October 19 when the Union's attorney learned of it.

George also filed an intraunion charge against Scott for bringing a frivolous charge against him. On this Scott was found guilty by the Special Trial Committee on December 5, 1999, and fined $50. On March 15, 2000, Scott was found guilty of abusing a fellow member and fined 1-day's pay ($154). Scott has not paid either of these fines.

Thus as of the week of April 15, 2000, Scott was noted as "delinquent" on the *News* overtime board and from then through the week of July 1, there is no indication on the overtime board sheets that Scott was ever called for extra work. There are notations, undisputed by Scott, that in most weeks between April and July, he did not work five shifts and therefore would not have been eligible for extra work.

During the course of these events, Scott contends, and the General Counsel alleges, that various officers and agents of the Union threatened, fined, and otherwise discriminated against him because he had filed charges with the NLRB. These allegations will be treated seriatim as they appear in the complaint.

### *B. Analysis and Concluding Findings*

Most of Scott's assertions, and the complaint allegations, depend on crediting Scott and discrediting the Respondent's witnesses. This I decline to do. I found Scott to be a most incredible and self-serving witness. I believe that throughout the time in question, Scott sought favorable treatment for himself and his recitation of the events tailored to that end. His dispute with the Union is based on his assertion that George failed to represent him, an assertion which seems incredible on its face given the facts. Scott was about to be fired by the *Post* and the Union was able to negotiate a settlement which included payment of $32,000 to Scott in order to bridge the time to his retirement. Then when Scott decided he wanted to work, George was able to convince the *News* management to hire him, first as a part time employee then full time. George's efforts on behalf of Scott occurred during the time Scott maintains union officers were threatening and discriminating against him. Therefore, Scott's' testimony about derogatory comments and threats simply are not consistent with the favorable treatment he was receiving.

In addition to Scott's generally negative demeanor, I note that: (1) He testified that Chapel Chairman George Shaffer told him he would be getting "shitty shifts" because he filed an NLRB charge. This was alleged to have occurred in the July to September 1999 timeframe. However, Scott did not in fact file his first charge until October 13. (2) In the two letters he wrote in September he stated his availability to work 35 hours a week, which he testified was a request for full-time employment. When it was pointed out to him on cross-examination that full time would be 37-1/2 hours a week, he testified that he made a "typographical" error. Such is totally incredible. I believe that when he wrote these letters, some time before there was any indication of litigation, he had something else in mind. I believe that his testimony about a "typographical" error was an intentional attempt to mislead me on what he considered to be a material fact. (3) His testimony about the sexual harassment charges at the *Post* was evasive. (4) His testimony about receiving a financial report from the Union's attorney was evasive.

On balance, where there is a dispute between the testimony of Scott and witnesses for the Respondent, I discredit Scott.

#### 1. Threat by Shaffer on October 14

This allegation apparently refers to Scott's contention that some time during the July to September timeframe, Shaffer told Scott he would be getting "shitty" shifts because he had gone to the Board. Shaffer denied making such a statement, a denial I credit. Shaffer did tell Scott that his demand that he not be treated as a retired member could result in fewer shifts because of the way the system works. But this was not a threat. I conclude that Shaffer did not in fact threaten Scott as alleged in paragraph 6 (a) and I shall recommend it be dismissed.

#### 2. Filing an intraunion charge against Scott on October 17

There is no question that on October 17, George filed a charge against Scott because Scott had filed a Board charge against the Union and could certainly be violative of Section 8(b)(1)(A). However, two days later, upon learning about it, the Union's attorney advised that the charge be "thrown out." And it was. There is no evidence that George's charge was published to the membership or even known by anyone other than George, the chapel chairman and the secretary/treasurer. There was no trial or fine. As soon as the Union was presented with George's charge, and such was checked by counsel, it was dismissed. I conclude that the mere filing an intra union charge

by a member (even the president), without more, is not sufficient to make out a violation of Section 8(b)(1)(A) and I shall recommend that paragraph 6(b) be dismissed. C.f. *Painters Local 1115 (C & O Painting)*, 312 NLRB 1036, 1043 (1993).

3. Telling Scott that he would be hired if "union problems" were resolved

It is alleged that on October 23, George "informed the Charging Party that the Employer (the News) would hire the Charging Party if 'union problems' were resolved." In fact, by this time Scott was working for the News, notwithstanding that News management had been reluctant to hire Scott because of his problems at the Post. In addition, there is no evidence to support the factual assertion of this allegation and I shall recommend that paragraph 6(c) be dismissed.

4. Fining Scott because he filed charges with the NLRB

It is alleged that on December 15, the "Respondent fined the Charging Party because the Charging Party filed charges with the National Labor Relations Board and/or engaged in other protected concerted activities."

Scott filed intraunion charges against George because, in his opinion, George should have instructed the chapel chairmen to treat him as a substitute rather than a retired member. Since Scott had not gotten his way, he claimed that George therefore did not appropriately represent him. George retaliated by filing an intraunion charge against Scott for having filed a frivolous charge. On December 5, the Special Trial Committee found George not guilty and Scott guilty and fined him $50. This is apparently the basis of the allegation in paragraph 6(d).

I conclude that the charge and countercharge here were "wholly intraunion conduct and discipline" relating a demand by Scott that he be treated differently than the union leadership though he ought to be. In these circumstances, I conclude that the charge by George and the fine were not violative of the Act. *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417 (2000), Therefore, I shall recommend that paragraph 6(d) be dismissed.

5. Filing intraunion charges against Scott on February 19, 2000

The General Counsel's evidence on this allegation is sketchy. Apparently it relates to a fine levied by the trial committee on March 13, 2000. This followed a charge against Scott because he complained to his shift foreman the lead employee (who apparently assigns tasks) had not given him the help he thought he should have. The work dispute Scott had was personal to himself and arose from the fact that when he went to work full time for the *News* in January 2000 he was the junior pressman and assigned to duties accordingly, even though he 40 years experience as a pressman.

On the day in question, Scott was assigned to install plates and thought he should have help. But there was no apprentice on the shift to help him and Scott thought the "floor man" (the senior operator on the shift) should assign another journeyman, which he did not. Scott therefore complained to the foreman.

As far as I can tell the work dispute and resulting intraunion charge was personal to Scott and in no way related to concerted activity. Nor is there any evidence that this charge in any way related to the fact that Scott filed a charge with the Board. I find it to have been a wholly intraunion dispute. Therefore, the charge, trial and fine were not violative of Section 8(b)(1)(A). I shall recommend paragraph 5(e) be dismissed.

6. Threat on March 5 by Tracey Belcher

Tracey Belcher was an assistant chapel chairman and the floor man whom Scott felt should have assigned him help with the plates. However, the basis of this allegation is unclear. There is no evidence that Belcher threatened Scott on March 5. I shall recommend that this paragraph of the complaint be dismissed.

7. Fine of March 13

This allegation relates to the intraunion charge filed against Scott on February 19. A preponderance of the credible evidence does not support the General Counsel's allegation that the fine of Scott under this charge was motivated by his having filed charges with the Board. I conclude that this dispute was wholly intraunion, and arose out of Scott's personal feelings rather than having anything to do with his Board charges. Accordingly, I shall recommend that paragraph 6(g) be dismissed.

8. Refusing to provide a financial report on May 4

It is undisputed that on May 4, while at work, Scott asked Cordelia Brimage, the Union's secretary-treasurer, for a copy of the Union's financial report. Also undisputed is that Brimage told him she did not have a copy with her and that he should come to the union meeting to get one.

While a member no doubt has a right to see, even have, the union's financial reports, the General Counsel has offered no authority to support the proposition that a member is entitled to such reports at a time and place of his choosing.

Further, it is clear that Scott was less interested in actually receiving such a report than trying to set up facts to support an unfair labor practice. Thus Shaffer credibly testified that he overheard this conversation between Scott and Brimage and told Scott he had a copy of the report which Scott could have. Scott declined, saying that he wanted the report from Brimage. Finally, Scott did receive a copy of the report from Counsel for the Union, although he was evasive about this when questioned on cross-examination.

I conclude that the General Counsel failed to establish a legal or factual basis for the allegation in paragraph 6(h) and I shall recommend that it be dismissed.

9. Telling Scott he would have to file a Board charge to get the report

Scott testified: "I just asked her, I said have they put out a financial report? And she said yes. And I said can I get a copy of it? And she said come to the Union meeting. And I said that isn't what the bylaws say. And she said, 'Then take it to the Labor Board.' I said okay."

Brimage testified: "Wayne (Scott) had asked, requested to have a copy of that (the financial report), and I said I don't have one on me right now, and then he says, 'Well, I want a copy,' and I said, 'Well, since–you may want to go down to the Labor Board and get a copy from them because it might be a lot faster than me–waiting for me to get it for you,' was my response."

Brimage went on to testify: "I said Labor Board actually meaning the Department of Labor, and I think Mr. Scott thought I meant NLRB. I had the departments mixed up." She in fact files the Union's financial reports with the Department of Labor.

I credit Brimage's testimony that she said Labor Board meaning Department of Labor. Further, even accepting Scott's version of their discussion, I find no threat that the only way for him to get a copy of the financial report would be to file a Board charge. Further, Shaffer's contemporaneous statement belies such a conclusion. I conclude that the General Counsel failed to establish the allegation in paragraph 6(i) and I shall recommend it be dismissed.

10. Since May 2000 telling Scott he could not work overtime as long as his fines were unpaid

The only evidence to support this allegation is Scott's testimony, which I found generally incredible, that sometime in 1999 Shaffer "informed me that I could not work any extra shift also when—because I was delinquent by not paying these fines." He further testified: "I just asked him why I wasn't getting any more shifts, and he said that they weren't available and he was doing what John George said as far a working me as a retired individual." According to Scott, these conversations with Shaffer happened before he had been fined, which means that Shaffer could not have said Scott was delinquent. Scott's testimony is not consistent with known facts and it is rejected.

I cannot conclude that Scott was ever told that he would not receive overtime because he had not paid the fines, even though I infer such was the case, infra. Accordingly, I conclude that the allegation in paragraph 6(j) be dismissed.

10. Refusing to call Scott for overtime because of his delinquency

After Scott became a full-time employee of the *News*, he was eligible for overtime shifts in any week in which he actually worked five shifts. This did not occur often. According to Scott, in most weeks he laid off one or more shifts, suggesting that throughout he was really not interested in working full time—that he wanted a few shifts of his own choosing. Nevertheless, there were occasions when Scott in fact worked five shifts and had the lowest number of calls for overtime. The Union's records do not reflect that he received calls for overtime after "delinquent" was placed by his name, even in those weeks when he would have been entitled, which from the overtime board sheets in evidence were the weeks of May 13, June 10 and June 24.

The Respondent argues that Scott did not receive calls because he had changed his telephone number. Though Scott's testimony about his telephone number is far from convincing, I conclude that in fact the Union had a number where he could reasonably be reached. On the other hand, I am not convinced by George's testimony to the effect that Scott was always called but no mark was put by his name when he was not actually contacted. Early in 2000, and before he was designated as delinquent, there were indications that Scott received calls at about the same rate as others.

Even if Scott was hard to reach, of all the calls that George testified must have been made to fill shifts, if Scott had not been discriminated against there would have been some indication that he was called. There is none. I am therefore convinced that he was not called for overtime shifts because he had not paid the fines. Though levying the fines was not unlawful, to discriminate against Scott in matters of employment opportunity because he did not pay them was a violation of Section 8(b)(1)(A) and (2).[1] E.g., *Fisher Theatre*, 240 NLRB 678 (1979).

## IV. REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I conclude that it should be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act, including making whole Wayne Scott for overtime shifts he should have been called for in those weeks were he worked five shifts and there is no indication on the Union's records that he was offered and refused an extra shift, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I make the following recommended[2]

## ORDER

The Respondent, Denver Newspaper and Graphic Communications Local No. 22, Denver, Colorado, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Denying to any member the opportunity for extra shifts because that member is delinquent in paying fines levied on intraunion charges.

(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 necessary to effectuate the policies of the Act.

(a) Make whole Wayne Scott for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its business office and meeting places copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided

[1] Though the complaint does not allege this paragraph to be violative of Section 8(b)(2), such was a technical omission and to find this does not affect the Respondent's rights.

[2] 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.

[3] 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."

by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to 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.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

The allegations of unfair labor practices not specifically found are hereby dismissed.