American Smelting and Refining Company *and* Local Union 13886, International Union of District 50, United Mine Workers of America (Ind.). Case 28-CA-1723

February 25, 1969

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS BROWN AND JENKINS

On November 26, 1968, Trial Examiner Maurice Alexandre issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel

The Board has considered the Trial Examiner's Decision, the exceptions, brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and orders that the Respondent, American Smelting and Refining Company, Silver Bell, Arizona, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

TRIAL EXAMINER'S DECISION

MAURICE ALEXANDRE, Trial Examiner: This matter is before me upon a stipulated record.[1] Upon a charge filed on June 21, 1968,[2] a complaint was issued on July 18, 1968, alleging that the Respondent had violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, by unilaterally increasing, and by refusing to bargain upon request with the Union about, the rents payable by its employees for certain company housing accommodations rented by Respondent to such employees. In its answer, Respondent admits that the Union is the majority bargaining representative of its production and maintenance employees, that the Union requested it to bargain with respect to wages and other terms and conditions of employment, and that on or about April 1, 1968, it increased the amounts payable by employees for the use and occupancy of its housing accommodations. However, it denies any obligation to bargain with the Union concerning such increases, and hence denies the commission of any unfair labor practices.

On the basis of the stipulated record and the briefs filed by the General Counsel and the Respondent, I make the following:

FINDINGS AND CONCLUSIONS[3]

I. THE UNFAIR LABOR PRACTICES

A. *Events*

This is a sequal to the decision in *American Smelting and Refining Company,* 167 NLRB No. 26 (decided August 24, 1967), in which the Board found that Respondent had violated Section 8(a)(5) and (1) of the Act by unilaterally increasing the rents payable by its employees for certain company houses effective September 1, 1966, and by rejecting the Union's request to bargain about such rent increases. Subsequent to that decision, i.e., on March 22, 1968, Respondent notified its employee-tenants of further increases which are the subject of this proceeding, made the increases effective April 1, 1968, and refused to bargain about them.

In its brief, Respondent states that the basic facts in the instant proceeding are "almost identical" to those in the prior case, but that there are "some" differences which, it is claimed, differentiate the two situations. The General Counsel's position is that "there is a slight difference with no cognizable distinction." These are the main stipulated facts which differ from those presented in the prior case. In 1967, the Arizona legislature enacted legislation imposing certain taxes, to become effective March 22, 1968, equal to three percent of the gross proceeds received from the rental of real property. That tax was applicable to Respondent's rental income from its company housing. On that date, without consulting the Union, Respondent informed its employee-tenants of the legislation and notified them that effective April 1, 1968, they would be required to pay additional amounts on account of the tax levied As of the latter date, the rental rates for Respondent's two-bedroom and three-bedroom units were $50 and $65 a month, respectively. The monthly increases which took effect on that date were $1.50 for two-bedroom houses and $1.95 for three-bedroom houses. Thereafter, Respondent rejected the Union's request to bargain about such increases. As of June 22, 1968, the number of Respondent's bargaining unit employees had increased from 264 to 324, the number of such employees who rented company housing had decreased from 175 to 173, and the number of nonunit employees who rented company housing had decreased from 33 to 32.[4] The number of unit employees who lived elsewhere had increased from 89 to 161. Until recently, there was usually a waiting list for company housing; but as of June 21,

[1] I find the facts to be those which appear in the stipulated Statement of Facts and the attachment thereto Such Statement of Facts is set forth in Appendix A, *infra.*

[2] Filed by Local Union 13886, International Union of District 50, United Mine Workers of America, hereafter called the Union.

[3] No issue of commerce is presented. The complaint alleges, the answer admits, and the parties have stipulated to facts which, I find, establish that Respondent is engaged in commerce within the meaning of the Act. I further find that the Union is a labor organization within the meaning of the Act

[4] The number of housing units has remained unchanged 68 three-bedroom houses, 107 two-bedroom houses, and 24 apartments, making a total of 199 housing units

1968, there were a total of nine vacant units.[5]

B. *Analysis*

The General Counsel contends that the decision in the prior *American Smelting* case is dispositive of this proceeding. Respondent makes a two-pronged defense. In essence, it attacks the rationale of the *American Smelting* decision. In addition, it seeks to distinguish the instant case on several grounds. Respondent contends that the existence of vacancies in its company housing precludes a finding, such as that made in the prior *American Smelting* case, that rents for such housing "have been below the prevailing rate." 167 NLRB No. 26, fn. 1.[6] Second, it asserts that the increases here were for the purpose of offsetting the tax imposed by the Arizona legislature upon the rentals received by landlords and did not result in an increase in Respondent's net income from the rental of its company housing. Third, Respondent argues that the obligation to bargain does not encompass a matter as insubstantial as the small increases here involved. I agree with the General Counsel.

1. The principles ennunciated in *American Smelting* are, of course, binding upon the Trial Examiner. Accordingly, the only issue presented in this proceeding is whether the facts require a conclusion different from the one reached in that case.

2. In *American Smelting,* the Board stated: "That no increase in rent was made [by Respondent] between 1954 and 1966 indicates that the rents have been below the prevailing rate." That statement constituted a finding that the absence of rent increases for 14 years constituted *prima facie* proof that Respondent's rents have been below prevailing rates, and that such proof had not been rebutted. I take official notice of the record in the *American Smelting* case[7] and of the Board's findings in that case,[8] and adopt the above-quoted finding of the Board. Accordingly, the question is whether it has been rebutted.[9]

The only rebuttal evidence presented by Respondent consists of the nine vacancies as of June 21, 1968.[10] In my opinion, the mere existence of those vacancies constitutes insufficient rebuttal evidence and hence does not require a finding that Respondent's rents on April 1, 1968, were no longer below the prevailing rate.[11] Respondent's reliance on the vacancies assumes that they would not have existed if its rentals had been below the prevailing rate. But other assumptions are equally valid. It may be that the vacancies occurred shortly before June 21, 1968, and did not exist for long. It may be that rental applications from employees were being processed by Respondent on that date. It is possible that Respondent had temporarily refrained from renting the nine units because of needed repairs. Perhaps employees living in other housing had refrained from moving into the vacant units because they were bound by leases, because they lacked sufficient funds for a move, or because of uncertainty concerning their jobs.[12] Or it may be that since Respondent had sought court review of the *American Smelting* decision and had announced a second rent increase in March 1968, its employees were reluctant to make a change and move into vacant units while Respondent was still insisting that it could unilaterally raise the rents.

Absent an explanation for the vacancies, I am unable to conclude that their existence on June 21, 1968, is incompatible with a finding that Respondent's rentals have continued to be below prevailing rates. Since Respondent has failed to present more persuasive evidence to the contrary, I so find.

3. It is irrelevant that the rent increases were made by Respondent merely in order to pass on the Arizona tax to its employee-tenants and produced no additional profit to Respondent. The increases were no different from those found to be unlawful in *American Smelting,* and, indeed, no different from any rent increase instituted because of higher costs resulting from higher taxes or any other operating expense.

4. Respondent *de minimis* argument is without merit. Although the amount of the rent increases may be relatively small, it cannot be said that the employee-tenants consider them insignificant. Moreover, in the aggregate, the increases did not have a "minute effect" on the employee-tenants, as Respondent asserts in its brief.[13]

Finally, to permit Respondent to institute unilateral rent increases in small amounts would enable it, over a period of time, to raise the rents by a substantial amount without bargaining about them. This would permit Respondent to do by indirection what it cannot do directly. I find that the size of the rent increases is not a basis for regarding Respondent's conduct as lawful or for declining to adopt a remedy necessary to effectuate the purposes of the Act.

C. *Concluding Findings*

I find that Respondent's employee-tenants have substantial advantages not enjoyed by its other employees, i.e., the rents which they pay for company housing have

[5]The vacancies were in two of the three-bedroom houses, in three of two-bedroom houses, and in four of the apartments

[6]The Board concluded that since the rents were below prevailing rates, since the employee-tenants had the convenience of living nearer to their place of work than Respondent's other employees, and since Respondent had itself viewed the company housing as an employee benefit, Respondent's ownership and operation of such housing materially affect the employees' "conditions of employment", and hence the rentals are a mandatory subject of collective bargaining.

[7]The parties in the instant proceeding stipulated that "[t]he trial examiner herein may take official notice of the official record and documents" in the *American Smelting* case

[8]In *National Electric Products Corp.*, 87 NLRB 1536, the Board stated "we reject [the Trial Examiner's] implication that a Board finding in one proceeding may not be used as the basis for a finding in a later proceeding involving the same employer"

[9]The Administrative Procedure Act (5 USC, Sec. 556 (e)) provides "When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary."

[10]Respondent does not even intimate that its 1966 rent increases made its rentals higher or even equal to prevailing rates.

[11]The record shows a decrease of only three in the number of housing accommodations rented to unit and salaried employees, and contains no explanation for the existence of the six other vacancies A possible explanation is that some tenants "doubled up" because of marriage or other personal reasons

[12]Although Respondent's complement of employees had increased, the employees may not have felt that the mine operations would continue at the expanded rate.

[13]The rents in the 66 occupied three-bedroom houses were increased by $1.95 a month, and the rents in the 107 occupied two-bedroom houses were increased $1 50 a month These increases amounted to $3,416 40 a year Cf. *N L R B* v *Inglewood Park Cemetery Assn.*, 355 F.2d 448 (C A. 9), cert. denied 584 U S. 951

continued to be below the prevailing rates, and they have the convenience of living adjacent to their place of work. Based on official notice of the record and the Board's findings in the *American Smelting* case, I adopt the finding therein that "the Respondent, by relying on the availability of company housing as a basis for rejecting the Union's bargaining demands, in prior contract negotiations, for travel allowance pay for employees commuting to and from work, regarded its rental facilities as one of the employees' conditions of employment."[14] Accordingly, I find that Respondent's ownership and management of the company housing materially affect the employees' conditions of employment, that the rent for such housing was a mandatory subject of collective bargaining; and that Respondent's unilateral increase in rents announced on March 22, 1968 and made effective on April 1, 1968, and its rejection of the Union's request to bargain about the increases, constituted violations of Section 8(a)(5) and (1) of the Act.

II. THE REMEDY

Having found that Respondent engaged in unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action which I find necessary to remedy and remove the effects of the unfair labor practices and to effectuate the policies of the Act.

Affirmatively, I shall recommend that Respondent restore the rentals for its company housing at Silver Bell, Arizona, to the levels required by the Board in *American Smelting and Refining Company,* 167 NLRB No. 26, and make whole with interest the employees who have paid the increased rental charges involved in the instant proceeding.

CONCLUSIONS OF LAW

1. By unilaterally increasing the rents payable by its employee-tenants beginning about April 1, 1968, and by rejecting the Union's request to bargain about the increases, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

2. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

It is recommended that American Smelting and Refining Company, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Refusing, upon request, to bargain collectively with Local Union 13886, International Union of District 50, United Mine Workers of America (IND.) as the exclusive representative of all the employees in the unit set forth and described in *American Smelting and Refining Company,* 167 NLRB No. 26, with respect to proposed changes in rentals at the Respondent's Silver Bell, Arizona, operation.

(b) Unilaterally increasing rental charges of company housing at Silver Bell, Arizona, without prior notification to, and bargaining with, the Union.

(c) In any like or related manner interfering with the efforts of the above-named Union to bargain collectively on behalf of the employees in the above-described unit.

2. Take the following affirmative action which it is found will effectuate the policies of the Act.

(a) Upon request, bargain collectively with Local Union 13886, International Union of District 50, United Mine Workers of America (IND.), as the exclusive representative of all its employees in the aforesaid unit with respect to any changes, now in effect or hereafter proposed, in rentals charged employees at company-owned housing and trailer parking areas at its Silver Bell, Arizona, facility.

(b) Immediately restore the rental charges for its company housing at Silver Bell, Arizona, to the levels required by the Board in *American Smelting and Refining Company,* 167 NLRB No. 26, and make whole, with interest at 6 percent per annum, all the employees in the above-described unit who have paid the increased rental charges found to be unlawful herein.

(c) Post at its operation in Silver Bell, Arizona, copies of the attached notice marked "Appendix B."[15] Copies of said notice on forms provided by the Regional Director for Region 28, shall, after being duly signed by a representative of the Respondent, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the said Regional Director for Region 28, in writing, within 20 days from the date of the receipt of this Decision and Recommended Order, what steps the Respondent has taken to comply herewith.[16]

[14] See fn 9, *supra* Respondent has made no attempt to show the contrary

[15] If this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words, "the Recommended Order of a Trial Examiner" in the notice. If the Board's Order is enforced by a decree of the United States Court of Appeals, the notice will be further amended by the substitution of the words "a Decree of the United States Court of Appeals, Enforcing an Order" for the words "a Decision and Order."

[16] If this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify the Regional Director for Region 28, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX A

STATEMENT OF FACTS

[Stipulated by the Parties]

1. A copy of the original charge herein filed June 21, 1968, was served on Respondent on or about June 22, 1968.

2. Respondent is now, and has been at all times material herein, a corporation organized and existing under and by virtue of the laws of the State of New Jersey

3. Respondent maintains a place of business at Silver Bell, Arizona, and at that location is engaged in the business of the operation of copper mines, a crusher, a concentrator, and the necessary accessory facilities. This place of business is approximately 40 miles from Tucson, Arizona.

4. During the 1-year period immediately preceding June 21, 1968, Respondent, in the course and conduct of the business of operating said facilities at Silver Bell, Arizona, mined, sold and distributed in and from said place of

business products of a value in excess of $50,000. Products valued in excess of $50,000 were shipped from said place of business in Silver Bell, Arizona, directly to states of the United States other than the State of Arizona.

5. During the 12-months period immediately preceding June 21, 1968, Respondent purchased and received equipment and supplies and other goods and materials direct from outside the State of Arizona in excess of $50,000.

6. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

7. Local Union 13886, International Union of District 50, United Mine Workers of America (Ind.) (hereafter referred to as "District 50"), is a labor organization within the meaning of Section 2(5) of the Act.

8. Stripping the overburden from the mine commenced at Silver Bell in December of 1951.

9. At approximately the same time as the stripping operation commenced, Respondent started construction of a townsite at Silver Bell, Arizona, and the first houses were occupied in the fall of 1952.

10. The townsite, as it presently exists, consists of 175 detached, single-family dwellings, of which 68 are three-bedroom houses, and 107 are two-bedroom houses; 24 two- and three-bedroom apartments; and 50 trailer spaces

11. Stripping of the overburden and mining operations was contracted out by Respondent to Isbell Construction Co. until April 1, 1957. Construction of Respondent's crusher and concentrator was completed in 1954, and the first production was shipped from the mine in that year.

12 From the inception of the property until April 1, 1957, the houses, apartments and trailer spaces were occupied by employees of both Isbell Construction Co. and Respondent. Since on or about April 1, 1957, none of the tenants has been an employee of Isbell Construction Co.

13. The townsite, as it presently exists, consists of 175 detached single-family dwellings, of which 68 are three-bedroom houses and 107 are two-bedroom houses. There are also 24 two- and three-bedroom apartments and 50 trailer spaces. Additionally, the site contains a grocery store, church, barbershop, post office and service station. With the exception of the foregoing businesses which service the community of Silver Bell, Respondent's operation is the only business or industry in that town.

14. Respondent maintains the townsite at its expense and pays the utilities on the residences and apartments.

15. Certain individuals other than employees rent houses from Respondent at Silver Bell, to-wit, a barber, a minister and a grocer. Three employees of Boyles Bros., a drilling company, which company does drilling as in independent contractor for Respondent, rent apartments.

16. All tenants who live in the Respondent's housing facilities at Silver Bell pay the same rent for identical facilities, whether employees or non-employees or bargaining-unit employees or supervisory employees.

17. Each occupant of the housing unit enters into a formal lease with Respondent. (A typical lease is attached hereto as Exhibit A.)

18. Upon completion of the construction of the crusher and concentrator in 1954, District 50 of the United Mine Workers of America, Local Union No. 13886 (now known as Local Union 13886, International Union of District 50, United Mine Workers of America (Ind.)), was recognized as the bargaining representative of the production and maintenance employees of Respondent at its Silver Bell Unit. At that time, the representation rights included no mining employees since the mining was carried on by Isbell Construction Co.

19. The first labor agreement between Respondent and District 50 at Silver Bell was concluded on December 15, 1954, and was for a 2-year duration.

20. Additional labor agreements were negotiated in 1956, 1959, 1961, 1962, 1964 and 1967. The current labor agreement expires on September 30, 1971 [There is no provision in the current labor agreement, nor were there in any past agreements, covering or dealing with the subject of company housing.]

21. Respondent took over the mining operations from Isbell Construction Co. on or about April 1, 1957, and the mining employees were included in the District 50 contract during the life of the 1956-1959 labor agreement.

22. At all times material herein, District 50 has been, and is now, the exclusive bargaining representative for all employees of Respondent in the classifications set forth in the current collective-bargaining agreement between Respondent and District 50; which employees constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. This unit comprises essentially production, maintenance and mining employees.

23. No employee of Respondent is required to live at Silver Bell, Arizona, as a condition of his employment.

24. As of June 22, 1968, Respondent had 387 employees at its Silver Bell Unit, of which 53 were salaried employees, and 334 were bargaining-unit employees.

25. As of June 22, 1968, 161 of the bargaining-unit employees lived at locations other than Silver Bell, Arizona. These employees lived in Tucson and the intermediate communities lying between Tucson and Silver Bell, Arizona; 173 bargaining-unit employees lived in company housing at Silver Bell, Arizona.

26. As of June 22, 1968, 21 of the salaried employees lived at locations other than Silver Bell, Arizona. These employees lived in Tucson and the intermediate communities lying between Tucson and Silver Bell, Arizona; 32 salaried employees lived in company housing at Silver Bell, Arizona.

27. Employees who do not live at Silver Bell, Arizona, whether salaried or bargaining-unit employees, are paid at the same rate of pay as employees who live at Silver Bell, Arizona, within their respective occupational classifications. There is no travel allowance paid to employees who do not live at Silver Bell.

28. Effective August 1, 1966, Respondent increased the rent of the two-bedroom from $45 to $50 per month and three-bedroom houses from $55 to $65 per month. Thereafter, the effective date of the rental increases was postponed to September 1, 1966. This increase resulted in District 50 filing an unfair labor practice charge with the National Labor Relations Board. Thereafter, a complant issued and the matter was processed as Case No. 28-CA-1435 The matter is presently pending before the United States Court of Appeals for the Ninth Circuit on the Employer's petition to review and set aside an order of the Board (167 NLRB No. 26) and the Board's cross-petition for enforcement of its order. [The trial examiner herein may take official notice of the official record and documents in Case No. 28-CA-1435 *(American Smelting and Refining Company,* 167 NLRB No. 26)]

29. Section 42-1314, Arizona Revised Statutes, was amended by the Legislature of the State of Arizona in Chapter 3, Section 1, Laws of 1967, Third Special

Session, to read as follows:

Sec 42-1314. Operating amusement places; exception; leasing or renting of property; exemption

A. The tax imposed by subsection A of Sec. 42-1309 shall be levied and collected at an amount equal to two per cent of the gross proceeds of sales or gross income from the business upon every person engaging or continuing within this state in the following businesses:

1. Operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard and pool parlors and bowling alleys, public dances, dance halls, boxing and wrestling matches and any business charging admission fees for exhibition, amusement or instruction, other than projects of bona fide religious or educational institutions.

2. Leasing or renting tangible personal property for a consideration. Sales of tangible personal property to be leased or rented to a person engaged in the business of leasing or renting such tangible personal property for a consideration shall be deemed to be resale sales.

3. Leasing or renting for a consideration the use of occupancy of real property, including any improvements, rights or interest in such property.

B. Until December 1, 1972, the tax prescribed under the terms of paragraph 3, subsection A of this section shall not apply to any written lease or rental agreement entered into Prior to December 1, 1967, provided that such exception shall not apply to the businesses of hotels, guest houses, dude ranches and resorts, rooming houses, apartment houses, office buildings, automobile storage garages, parking lots or tourist camps, or to the extension or renewal of any such written lease or rental agreement.

C. The tax prescribed under the terms of subsection A of this section shall not apply to events sponsored by the Arizona coliseum and exposition center board or county fair commissions. As amended Laws 1959, Ch. 11, Sec. 1; Laws 1966, Ch. 23, Sec. 1; Laws 1967, 3rd S.S., Ch. 3, Sec. 1.

30. Section 42-1361, Arizona Revised Statutes, was amended by the Legislature of the State of Arizona in Chapter 3, Section 2, Laws of 1967, Third Special Session, to read as follows:

Sec. 42-1361. Levy of tax

A. There is levied and shall be collected by the commission an annual tax:

1. On the privilege of doing business in this state, measured by the amount or volume of business transacted by persons on account of their business activities, and in the amounts to be determined by the application, against values, gross proceeds of sales, or gross income, as the case may be, in accordance with the provisions and schedules as set forth in title 42, chapter 8, article 1, at rates equal to fifty per cent of the rates imposed in said article.

2. On the storage, use or consumption in this state of tangible personal property subject to the tax prescribed by title 42, chapter 8, article 2, and purchased on and after July 1, 1959, at a rate equal to fifty per cent of the rate imposed in said article.

B. The tax levied and collected under the terms of this article is designated as the "education excise tax". Added Laws 1965, 3rd S.S., Ch. 7, Sec 2, as amended Laws 1967, 3rd S.S., Ch. 3, Sec. 2.

31. Section 42-1309, Arizona Revised Statutes, reads as follows

Sec 42-1309. Levy of tax; purposes, distribution

A. There is levied and there shall be collected by the commission for the purpose of raising public money to be used in liquidating the outstanding obligations of the state and county governments, to aid in defraying the necessary and ordinary expenses of the state and the counties, to reduce or eliminate the annual tax levy on property for state and county purposes, and to reduce the levy on property for public school education, annual privilege taxes measured by the amount or volume of business transacted by persons on account of their business activities, and in the amounts to be determined by the application of rates against values, gross proceeds of sales, or gross income, as the case may be, in accordance with the schedule as set forth in Secs. 42-1310 through 42-1315.

B. If any funds remain after the payments are made for state purposes, as provided for by subsection A of this Section, the remainder of the funds, to the extent to which they will apply, shall be in lieu of county or ad valorem taxes for educational purposes on a per capita basis as provided by Secs. 15-1233, 15-1235 and 15-1236.

32 Prior to the amendments of A. R. S. 42-1314 and 42-1361, in 1967, income received from the rental of houses, apartments and other real property was not subject to the Arizona Transaction Privilege Taxes. The statutory amendments resulted in the imposition of the transaction privilege tax in an amount equal to two per cent of the gross proceeds received from the rental of real property and in the imposition of the education excise tax at a rate of one percent of the gross proceeds, or a total tax on the gross proceeds from rentals of three percent. The foregoing statutory amendments became effective on March 22, 1968.

33. The rental paid to Respondent by those employees who rent houses, apartments or trailer spaces from it is paid by means of a deduction from the gross pay received by such employees. On March 22, 1968, notice was given to all employees who rent houses, apartments, or trailer space from the Respondent, which notice was placed in the pay envelopes of all affected employees. The notice read as follows:

Recent amendments to the Arizona transaction privilege tax statutes impose a three per cent tax on income from rentals as of March 22, 1968.

Effective April 1, 1968, the amount withheld from your gross pay will be increased $.... per pay period on account of the tax.

34. Employees pay their rent for company housing by payroll deduction and all employees presently occupying company housing units have authorized in writing such payroll deductions.

35. As of June 21, 1968, there were three vacancies for the two-bedroom houses and two vacancies for the three-bedroom houses as well as four vacancies for apartments; however, until recently, there has usually been a waiting list for the houses [The Respondent's official policy is to ask that the houses be vacated within a

reasonable period of time when the lessee ceases to be an employee of Respondent.]

36. As of April 1, 1968, the rental rate for two-bedroom and three-bedroom houses was $50 and $65 per month, respectively. These rates covered rent, gas, electric and water utility charges. The monthly deductions made from the gross pay of employees who rented houses from Respondent on account of the transaction privilege tax was, and is, $1.50 in the case of two-bedroom houses, and $1.95 in the case of three-bedroom houses.

37. Subsequent to March 22, 1968, District 50 requested the opportunity to discuss and bargain about Respondent's actions in withholding further sums from employees' net pay on account of the transaction privilege tax. Respondent told the representatives of District 50 that the Company would not bargain about its decision to withhold said additional sums, it being its position that it had no duty to bargain concerning the matter.

38. Respondent owns and operates a mine, crusher and concentrator known as the Mission Unit, approximately twenty (20) miles southwest of Tucson. There are no housing units at the Mission Unit. Wages for comparable occupational classifications at Respondent's Mission Unit are approximately the same as those at Respondent's Silver Bell operation. No travel allowance is paid to employees of Respondent at the Mission Unit.

APPENDIX B

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT refuse, upon request, to consult and bargain collectively with Local Union 13886, International Union of District 50, United Mine Workers of America (IND.), as the exclusive representative of all the employees in the bargaining unit described herein, with respect to any changes in rentals charged for our company housing at Silver Bell, Arizona.

The appropriate bargaining unit is:

All employees in the classifications set forth in the collective-bargaining agreement, effective during the period from November 1, 1964, through September 30, 1967; excluding all other employees, office clerical employees, guards, watchmen, and supervisors as defined in the Labor Management Relations Act, as amended.

WE WILL, upon request, bargain with Local Union 13886, International Union of District 50, United Mine Workers of America (IND.), as the exclusive representative of all the employees in the bargaining unit, with respect to any proposed changes in rentals charged for our company housing at Silver Bell, Arizona.

WE WILL, immediately reinstate the rental charges in effect prior to all unlawful increases thereof at Silver Bell, Arizona, and make whole with interest at 6 percent per annum all our employees in the above-described unit who have paid increased rental charges beginning about April 1, 1968.

WE WILL NOT in any like or related manner interfere with the efforts of the above-named Union to bargain collectively on behalf of the employees in the above-described unit.

AMERICAN SMELTING & REFINING CO.
(Employer)

Dated By
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 500 Gold Avenue, Room 7011, Albuquerque, New Mexico 87101, Telephone 247-0311, Ext. 2538.