**United Steelworkers of America, Local No. 937, AFL–CIO–CLC (Magma Copper Company) *and* George Glass.** Case 28–CB–641

November 7, 1972

## DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND PENELLO

On February 28, 1972, Administrative Law Judge[1] Leo F. Lightner issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering 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 authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

We agree with the finding that Respondent Union violated Section 8(b)(1)(A) of the Act by refusing to process grievances for George Glass and Ray Stephenson because they were not members of the Union. But the Administrative Law Judge recommended two remedial provisions which we do not adopt. First, he recommended that Respondent make the above-named employees whole for the loss of a bonus they "might otherwise have obtained." Second, he rejected as patently frivolous Respondent's defenses, and recommended that Respondent be ordered to reimburse the Board for its expenses in connection with this case. In support of this recommendation, the Administrative Law Judge cited *Tiidee Products, Inc.*, 194 NLRB No. 198. Respondent excepts to these recommendations. For reasons set forth below, we find merit in the exceptions.

As for the first recommendation, that the employees be made whole for a bonus, we note that there is no proof that they actually would have obtained a bonus if Respondent had processed the grievances.

As for the second recommendation, that Respondent be ordered to reimburse the Board for its expenses, we note that under the contract the Employer arguably had absolute discretion to fill temporary vacancies of 2 days or less from any source. Accordingly, we find that Respondent's defenses under the contract are not so insubstantial as to be considered patently frivolous.

However, in view of the nature of Respondent's unlawful conduct, we shall require as a remedy that Respondent mail the attached notice to all employees in the bargaining unit.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that Respondent, United Steelworkers of America, Local No. 937, AFL–CIO–CLC, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Delete paragraphs 2(b) and (c).
2. Add the following as paragraph 2(b) and reletter paragraphs 2(d), (e), and (f) as paragraphs 2(c), (d), and (e), respectively:

"2(b) Mail a signed copy of the attached notice marked Appendix to all employees in the bargaining unit."

3. Substitute the attached notice marked "Appendix" for the Administrative Law Judge's notice.

[1] The title of "Trial Examiner" was changed to "Administrative Law Judge" effective August 19, 1972

## APPENDIX

NOTICE
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

To all employees of Magma Copper Company

To all members of United Steelworkers of America, Local No. 937, AFL–CIO–CLC:

WE WILL NOT fail or refuse to process grievances against Magma Copper Company on behalf of George Glass, Ray Stephenson, or any other employee, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, because of nonmembership in the Union.

WE WILL NOT in any like or related manner restrain or coerce employees of Magma Copper Company in the exercise of their rights guaranteed in Section 7 of the Act.

WE WILL, upon request, investigate and handle grievances filed by George Glass or Ray Stephenson, or any other member of the bargaining unit, without regard to union membership of the grievant.

UNITED STEELWORKERS
OF AMERICA, LOCAL NO.
937, AFL–CIO–CLC
(Labor Organization)

Dated By
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Camelback Building, Room 207, 110 West Camelback Road, Phoenix, Arizona 85013, Telephone 602–261–3717.

## TRIAL EXAMINER'S DECISION

### STATEMENT OF THE CASE

LEO F. LIGHTNER, Trial Examiner: This proceeding was heard before me in Tucson, Arizona, on January 18, 1972, upon the complaint of General Counsel, and the answer of United Steelworkers of America, Local No. 937, AFL–CIO–CLC, herein referred to as Respondent.[1] The complaint alleges violations of Sections 8(b)(1)(A) and 2(6) and (7) of the Labor Management Relations Act, 1947, as amended, (61 Stat. 136; 65 Stat. 601; 73 Stat. 519; 29 U.S.C. Sec. 151, *et seq.*), herein called the Act. The parties waived oral arguments and briefs filed by the General Counsel and Respondent have been carefully considered.

Upon the entire record,[2] and from my observation of the witnesses,[3] I make the following:

### FINDINGS AND CONCLUSIONS

#### I. BUSINESS OF THE EMPLOYER

Magma Copper Company is a Delaware corporation maintaining a place of business at San Manuel, Arizona, where it is engaged in the operation of a copper mine and smelter. During the 12-month period preceding the issuance of the complaint, a representative period, the Employer, in the course and conduct of its business operation, mined, sold, and distributed at said place of business, products valued in excess of $50,000, which were shipped from said place of business directly to states of the United States other than the State of Arizona. During the same period, the Employer purchased and received equipment, supplies, and other goods and materials directly from outside the State of Arizona of a value in excess of $50,000.

The complaint alleges, the answer admits, and I find that the Employer is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### II. THE RESPONDENT IS A LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find, that Respondent, at all times material, is and has been a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE UNFAIR LABOR PRACTICE

##### A. *The Issue*

The principal issue raised by the pleadings and litigated at the hearing is whether the Respondent engaged in conduct in contravention of the provisions of Section 8(b)(1)(A) by, on August 16, pursuant to a request by George Glass and Ray Stephenson, restraining and coercing said employees in the exercise of rights guaranteed in Section 7 of the Act, by refusing to process grievances against the Employer on behalf of George Glass and Ray Stephenson with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, because of their nonmembership in Respondent.

Respondent denies the commission of any unfair labor practice.

##### 1. Agency

The complaint alleges, the answer admits, and I find that Dudley Killinsworth, Sub-District Director, Rudy Garcia, business agent, and Tom Hubbard, grievanceman, are, and at all times material herein were, agents of Respondent within the meaning of Section 2(13) of the Act.

##### 2. Agency and supervisors

The complaint alleges, the answer admits, and I find that Paul Hernandez, foreman, Larry Chavez, foreman, Hank Scany, foreman, and Tom Clemens, development foreman, were and are, at all times material, agents of the Employer, acting on its behalf and supervisors within the meaning of Section 2(11) of the Act.

##### B. *Background*

It is undisputed that the Union and the Employer were parties to a collective-bargaining agreement which by its terms became effective on July 28, 1971, and remains in full force and effect until July 1, 1974, and thereafter from year to year unless modified or terminated as therein provided.

Among other provisions of the contract, article 6, relates to Grievances. Included thereunder is subsection 6-3, Grievance Procedure Step 1, Verbal presentation of grievance to supervisors: Any employee having a grievance shall, by himself or with the aid of his grievanceman, first take the grievance up with his Immediate Supervisor who

[1] A charge was filed on October 6 A complaint was issued on October 29 All dates herein are 1971, except where otherwise indicated

[2] The record was corrected in certain particulars. In addition, General Counsel's motion to correct the record, without opposition, is granted

[3] Respondent presented no witnesses

will attempt to adjust it. The grievance shall be presented verbally as promptly as possible, and in no case in excess of five (5) calendar days from date of occurrence of the incident which led to the grievance.

## The Events of August 16

George Glass, charging party herein, credibly related that he has been employed by the Employer for approximately 17 years. Prior to August 16, Glass had been doing work as a transfer raiser miner at the 2075 foot level. This work was acquired by reason of Glass' seniority. The work involved driving a vertical raise from one level to another level, which Glass described as a part of stope preparation. Glass was assigned to what is identified as the Mine Division. The particular job he was performing is under an incentive bonus system. Glass asserted his basic daily wage was $34.17 and that he was earning $45.00 a day bonus. The base pay was a guarantee predicated on a specified amount of footage. Bonus was computed on the footage performed in excess of the basic footage.

When Glass reported for work, at approximately 4 p.m. on August 16, he was advised by the mine foreman, whom he identified as J. D. Crawford, that they did not have supplies at Glass' regular working level. Crawford advised Glass that he had turned his timecard over to foreman Paul Hernandez, who was performing work at the 2015 foot level, and instructed Glass to report to Hernandez.

Glass asserted that he reported at the 2015 foot level, where the job involved a bonus, which might have resulted in earnings of $10.00 to $15.00 a day less.

Glass had been engaged at the 2015 foot level only a few minutes, inferentially approximately 15 minutes, when Hernandez advised that he was going to put Glass and Ray Stephenson on a job of mucking track.[4] Glass described the job of mucking track as cleaning between rails down to the ties, a general cleanup job and not a bonus job. Glass inquired of Hernandez who was to replace Stephenson and Glass. Hernandez responded they would be replaced by two miner's pool hands. Miner's pool hands are described as temporary employees, inferentially without seniority, who are brought into the mine as needed. Glass inquired of Hernandez why he was being replaced with a miner's pool hand when Glass was assigned to stope preparation, which was his department. Glass advised Hernandez that Hernandez was "messing up." Hernandez acknowledged that it was wrong but asserted he had been advised to make the assignment by his boss, identified as Larry Chavez.

Glass related that he later talked to Chavez, at Glass' worksite and inquired why Chavez was "goofing me around." Chavez, according to Glass, responded that he had been told to make the assignment by Davis, who was identified as the shift foreman. Glass advised Chavez that he intended to file a grievance.

Ray Stephenson has been employed by the Employer for approximately 16 years. His classification was the same as that of Glass, a miner, and he was also assigned to the mining operation division which was charged with stope preparation, on August 16, as a transfer raise miner. Normally, his partner was George Glass.

On August 16, Stephenson went directly to the 2075 foot level, where he encountered Crawford, his immediate supervisor. Crawford advised Stephenson that he was supposed to have reported at the 2015 foot level, and that Crawford so advised Glass earlier. Pursuant to Crawford's instructions, Stephenson then went to the 2015 foot level and reported to Paul Hernandez. By reason of the necessary delay involved arriving at this level—a distance in excess of one mile—when Stephenson arrived, he was advised by Hernandez to go back and work with Glass and another employee identified as Don Nelson, who were at that time mucking track.

Stephenson corroborated the recitation of Glass, that the normal work of both Stephenson and Glass provided a daily minimum guarantee, with a bonus for extra footage. The work at the 2015 foot level, as described by Glass, involved the use of machinery while mucking the track involved the use of a pick and shovel.

Lunchtime on the 4 p.m. to 12 p.m. swing shift is from 8:00 p.m. to 8:30 p.m. Glass related that he went to lunch with Stephenson and Nelson, and that some 30 other employees were present in the lunch room. During lunch, Glass and Stephenson met Thomas Hubbard, the Union grievanceman. Stephenson credibly related that Glass advised Hubbard that Stephenson and Glass should have filled the two openings in stope preparation at the 2015 foot level, but had been assigned to a job completely out of their department, mucking track, while two relief miners, from the miner's pool, were doing the work to which Stephenson and Glass should have been assigned. Stephenson quoted Hubbard as responding, "Well, hell we got a good case here, we'll get them." Glass asserted that Hubbard advised he would "get on" Hernandez right after lunch, explaining that it was necessary for him to present it to Hernandez first. Toward the end of the lunch period, Glass related, Hubbard inquired if Glass was a member in good standing and Glass responded in the negative, that he did not belong to the Union. Hubbard then inquired if Stephenson was a member of the Union and Stephenson likewise advised that he was not a member.[5] Glass quoted Hubbard as saying, "Boy, I sure liked to have goofed. They would have laughed me clear out of the union hall if I'd filed a grievance for you two scabs."[6] Glass asserted that he responded that the Union had signed an agreement with the Company, that the employees were bound by it, and the Union had to file a grievance for them.[7] Glass related that Hubbard then asserted, "It's not only against my

[4] Glass' assertion that he was changed from the first to the second assignment while still "on top" appears to relate to the assignment to the 2015 foot level, not the subsequent assignment to "mucking track."

[5] Glass had joined the Union in 1957, and discontinued his membership when he was promoted to supervisor, in June 1968 He did not renew his membership after he ceased being a supervisor about six months later Stephenson discontinued his membership in June 1968, for an unspecified reason

[6] While Stephenson's version was at variance, I find the difference of no importance. Stephenson quoted Hubbard as saying, "Jesus Christ, man, I about goofed up." Hubbard then said they would laugh him out of the office, without specifying to whom he was referring.

[7] Stephenson related that he advised Hubbard that he and Glass were covered by the union agreement with the Employer, and that, when the Union called a strike, they could not draw unemployment benefits Stephenson asserted Hubbard responded this did not make any difference to him

principles, the big boys upstairs don't go for this kind of stuff." Glass asserted that Hubbard advised both Glass and Stephenson that they had 24 hours to present their grievance verbally and if each would write a check or give him $10 for union initiation fees, the time element would still be available to file a grievance. At this point the whistle blew, signifying the end of the lunch period.

According to Glass, Hubbard then proceeded to talk to Hernandez and Glass overheard the conversation. Glass was uncertain that he had heard what Hubbard said to Hernandez correctly and requested that Hernandez repeat what had been said by Hubbard. Hernandez advised Glass that Hubbard had said that he had an airtight grievance against Hernandez, "but since it was two scabs that he wasn't going to file it", that Hernandez could forget it. Hernandez also related to Glass that Hubbard had stated that "mucking that track back there was too good for two scabs, they ought to have us pumping [toilets]".[8]

It is undisputed that at all times material herein, Glass and Stephenson were within the unit represented by Respondent.

On August 17, Glass explained what had happened to Tom Clemens, development foreman, who is in charge of stope preparation. Glass quoted Clemens as saying it should never have happened and that they would get it straightened out.

It is undisputed that Glass and Stephenson were returned to their normal duties on August 17. They were subsequently paid an amount equal to their normal base pay for August 16, but without any bonus.

### C. *Concluding Findings*

It appears undisputed, and I have found, that Hubbard refused to process the grievances of Glass and Stephenson solely because they were not members of the Union. It is also undisputed that Hubbard, initially, expressed an opinion that the grievance was meritorious.[9]

It is well established that an exclusive bargaining representative is under a statutory duty to bargain on behalf of all the employees within the bargaining unit, and to represent them fairly and without discriminating among them because of their union membership or lack thereof.[10]

In the *Hughes Tool* case[11] the Court held:

> When the Steelworkers Union accepted certification as the bargaining representative for the group, it accepted a trust. It became bound to represent equally and in good faith the interests of the whole group. [Citation omitted.] It ought not to discriminate in the execution of its duties between its own members and employees who belong to another union or to no union. The handling of grievances, as has been pointed out, is part of the business it has assumed, and must be done with impartiality.

In the *Wallace* case[12] the Supreme Court held:

> The duties of a bargaining agent selected under the terms of the Act extend beyond the mere representation of the interests of its own group members. By its selection as bargaining representative it has become the agent of all the employees, charged with responsibility of representing their interests fairly and impartially. Otherwise, employees who are not members of a selected union at the time it is chosen by the majority would be left without adequate representation. . . .

In the *Local Union No. 12* case[13] the Court held:

> Neither does the mere fact that the act provides that an individual employee may present his claim directly to the Employer diminish the union's duty of fair representation, for admittedly the grievance of a single employee can have little force in the absence of support of his bargaining representative. [Citation omitted.] Undoubtedly, the duty of fair representation can be breached by discriminatory inaction by refusing to process grievances as well as by active conduct on the part of the union. [Citations omitted.] . . . .

Accordingly, for the reasons stated, I find that Respondent, by failing and refusing to process the grievances of Glass and Stephenson, has restrained and coerced said employees of the Employer in the exercise of rights guaranteed in Section 7 of the Act and that said conduct constitutes unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

### D. *Respondent's Purported Defenses*

At the outset of the hearing, Respondent asserted that it was placing reliance on a Management Rights clause, article 4. In its brief, Respondent asserts that article 4 gives the "Company the sole right to assign an employee to the job, and to relieve him of his duties." Thus, says Respondent, "No violations of this agreement occurred with Mr. Glass." The Management Rights clause *in toto,* provides:

> 4. The Company retains and shall maintain all managerial authority and prerogatives, subject only to the express terms and provisions of this Agreement.
>
> 4–2. Nothing in this Agreement shall be interpreted as interfering in any way with the Company's right to alter, rearrange or change, extend, limit or curtail its operations or any part thereof, or to shut down completely, whatever may be the effect upon employment, when in its sole discretion it may determine it advisable to do all or any of said things when such action is not in conflict with the provisions of this Agreement. Nothing in this Agreement shall be construed so as to deprive the Union of any rights under existing laws.

It is patent that Respondent's contention is frivolous, otherwise the seniority and other provisions of the contract

[8] Stephenson related that Hubbard, shortly thereafter, made the same observation to him, relative to [toilets]

[9] Respondent's contentions to the contrary, in its brief, are explicated *infra*

[10] *Steele* v *Louisville & Nashville R Co*, 323 U S 192, 202, *Syres* v *Oil Workers,* 350 U S 892, reversing 223 F 2d 739 (C A 5), *Vaca* v *Sipes,* 386 U S 171, 181, *Miranda Fuel Company, Inc*, 140 NLRB 181, 184–185, enforcement denied 326 F 2d 172 (C A 2), *Independent Metal Workers Union, Local No 1 (Hughes Tool Company),* 147 NLRB 1573, 1575

[11] *Hughes Tool Company* v *N L R B*, 147 F 2d 69, 74 (C A. 5)

[12] *The Wallace Corp* v *N L R B*, 323 U S 248, 255–256.

[13] *Local Union No 12, United Rubber, Cork, Linoleum & Plastic Workers of America, AFL–CIO* v *N L R B*, 368 F.2d 12, 18 (C A 5)

would be meaningless. It is ludicrous for the Union to assert this clause precludes assertion of seniority rights.

Respondent, at the outset of the case, asserted, by way of defense, that the contract was not valid, that the Company does not allow a grievance to be held on Company time, that the lunch period is Company time and that the employees did not present the grievance properly, inferentially because it was presented on Company time. Respondent, in its brief, appears to have abandoned these asserted defenses. General Counsel, in his brief, refers to these defenses as "frivolous nonsense" since nowhere in article 6 does such a provision appear. I find no merit in these asserted defenses.

Respondent, in its brief, urges that the provisions of article 16–7, Administration [of the contract on incentive bonus plan] and the provisions of subsection 8–3, Temporary Vacancies(b) Development and Repair Department, precludes the acceptance of the grievance of Mr. Glass as a legitimate grievance, assertedly by reason of a provision that temporary vacancies may be filled for two days. We are not called upon, herein, to determine the validity of the grievance, or to substitute our judgment for that which the parties might have agreed upon, had the grievance been pursued. The gravamen of the complaint is the failure of the Union to process a grievance. It is undisputed that Hubbard expressed the view that the grievance was meritorious. Hindsight determination, at variance with that expressed by Hubbard, is no defense to the Union's failure to perform its statutory duty.

Finally, the Union asserts that Glass could have exercised his right by filing an individual grievance, or by finding another grievanceman to file it for him. The Union's duty is explicated *supra,* in the decisions set forth.

While the Union makes no reference in its brief, to Stephenson, it is assumed that its contentions relative to Glass were intended also to apply to Stephenson.

I find all of Respondent's asserted defenses patently frivolous.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with the business operations of Magma Copper Company, set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several states, and such of them as have been found to be unfair labor practices tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I have found that Respondent, by failing and refusing to process the grievances of Glass and Stephenson, has caused each of them to lose a bonus they might otherwise have obtained for work performed on August 16, 1971. Therefore, I shall recommend that Respondent make Glass and Stephenson whole for the loss of pay each has suffered by payment to each of a sum of money equal to the bonus each would have earned on said date. *N.L.R.B.* v. *Seven-Up Bottling Co., Inc.,* 344 U.S. 344. Interest on backpay shall be computed in the manner set forth in *Isis Plumbing & Heating Co., Inc.,* 138 NLRB 716.[14]

General Counsel, in his brief, urges as an additional remedy, that Respondent be ordered to pay to the Board the costs and expenses it has incurred in the investigation, preparation, presentation and conduct of this litigation, such amount to be ascertained at the compliance stage of this proceeding. *Tiidee Products, Inc.,* 194 NLRB No. 198. General Counsel asserts two reasons for his request: (1) to imprint on the International that when there is no defense it has no right, in good morality or good law, to impose on the Board's processes and litigate a matter when the Union is clearly in the wrong and has no defense; and (2) to teach the Local that it cannot ignore the legal rights of nonmembers with impunity or with nothing more than a mild slap on the wrist.

I find nothing in this record relating to the conduct of the International. However, I am constrained to find Respondent's conduct was a clear and flagrant violation of the law. In addition, the Court held in the *Tiidee* case:[15]

> Simply put, the present posture of the Board encourages frivolous litigation not only before the Board, but in the reviewing courts. The case at hand is in point. The position of the Company is palpably without merit with respect to its refusal to bargain. Yet it profited through the delay the review entails: all during this litigation it has not had to bargain collectively over wages or other financial aspects of employment.
>
> The courts, then, are doubly concerned when Board inadequacies drain and divert judicial resources from the provision of justice to crowded calendars and to meritorious litigants whose claims clamor for attention. The same considerations are presumably applicable at the administrative level.

Having found that Respondent's conduct was a clear and flagrant violation of the Act, and that its defense is frivolous and without substance, to discourage future frivolous litigation, to effectuate the policies of the Act, and to serve the public interest, I recommend the Respondent be ordered to reimburse the Board[16] for its expenses incurred in the investigation, preparation, presentation, and conduct of this case, including the following costs and expenses incurred by the Board: reasonable counsel fees, salaries, witness fees, transcript and record costs, printing costs, travel expenses and per diem, and other reasonable costs and expenses. *Tiidee Products, Inc.,* 194 NLRB No. 198, (Rule 38, Federal Rules of Appellate Procedure, and cases cited in fn. 17).

In view of the nature of the unfair labor practices

[14] *Local No 4, United Slate, Tile, and Composition Roofers, Damp and Waterproof Workers Association, AFL–CIO (Avon Sheet Metal Co),* 140 NLRB 384

[15] *International Union of Electrical Radio and Machine Workers, AFL–CIO* v *N.L.R.B.,* 426 F.2d 1243, 1249–1250 (C.A.D.C.)

[16] The term Board, in this context, is intended to encompass General Counsel

committed, the commission of similar and other unfair labor practices reasonably may be anticipated. I will therefore recommend that Respondent be ordered to cease and desist from failing and refusing, upon the request of any employee in the appropriate unit, to process grievances against the Employer, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, thus restraining and coercing said employees in the exercise of rights guaranteed under Section 7 of the Act, solely by reason of nonmembership.

## CONCLUSIONS OF LAW

1. Magma Copper Company is an employer, within the meaning of Section 2(2), engaged in commerce and in activities affecting commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent, at all times material herein, acted as collective-bargaining representative of said employees of the Employer, in an appropriate unit, including George Glass and Ray Stephenson.
4. By refusing to process grievances against the Employer on behalf of George Glass and Ray Stephenson, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, because of their nonmembership in Respondent, to the extent found herein, Respondent has restrained and coerced said employees in the exercise of rights guaranteed in Section 7 of the Act, and said conduct is an unfair labor practice within the meaning of Section 8(b)(1)(A) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

## RECOMMENDED ORDER[17]

United Steelworkers of America, Local No. 937, AFL–CIO–CLC, its officers, agents and representatives, shall:

1. Cease and desist from:

(a) Failing and refusing to process grievances against the Employer on behalf of George Glass and Ray Stephenson, or any other employee, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, because of their nonmembership in Respondent.

(b) In any like or related manner restraining or coercing employees of Magma Copper Company in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, investigate and handle grievances filed by George Glass or Ray Stephenson, or any other member of the bargaining unit, without regard to union membership of the grievant.

(b) Make whole George Glass and Ray Stephenson for any loss of pay they may have incurred by reason of Respondent's refusal to process their grievances on August 16, 1971, in accordance with "The Remedy" herein.

(c) Pay to the Board the costs and expenses incurred by it in the investigation, preparation, presentation and conduct of this case before the National Labor Relations Board, such costs to be determined at the compliance stage of these proceedings.

(d) Post at its offices at Tucson, Arizona, and at all other places where it customarily posts notices to its members, copies of the notice attached hereto marked "Appendix".[18] Copies of said notice, to be furnished by the Regional Director for Region 28, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(e) Sign and deliver sufficient copies of said notice to the Regional Director for the Region 28 for posting by the Magma Copper Company, at all locations where notices to its employees are customarily posted, if said Employer is willing to so post.

(f) Notify the said Regional Director, in writing, within 20 days from the date of receipt of this Trial Examiner's Decision what steps the Respondent has taken to comply therewith. It is further recommended that, unless on or before 20 days from the date of the receipt of this Trial Examiner's Decision, the Respondent shall notify the said Regional Director, in writing, that it will comply with the recommended Order[19] the National Labor Relations Board issue an Order requiring the Respondent to take the aforesaid action.

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[17] In the event no exceptions are filed as provided by Sec 102 46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and recommended Order herein, shall, as provided in Sec 102 48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes

[18] In the event that the Board's 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".

[19] In the event that this recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply therewith".