

In the Matter of UTAH COPPER COMPANY, A CORPORATION, and KENNEDY COPPER CORPORATION, A CORPORATION and INTERNATIONAL UNION OF MINE, MILL, AND SMELTER WORKERS, LOCAL NO. 392.

*Cases Nos. C-399 and R-273.—Decided June 16, 1938*

*Copper Mining and Milling Industry—Employer:* corporation and wholly owned and controlled subsidiary—*Interference, Restraint, and Coercion:* statements designed to discourage labor organization; discriminatory transfers; open assistance in withdrawals from union—*Company-Dominated Union:* continuance of company-sponsored employee representation plan; domination of and interference with administration; financial and other support; disestablished, as agency for collective bargaining—*Investigation of Representatives:* controversy concerning representation of employees; controversy concerning appropriate unit; employer's refusal to grant recognition of union; majority status disputed by employer—*Unit Appropriate for Collective Bargaining:* production workers employed at two mills, excluding clerical employees and employees of the rank of foremen and above; mine and transportation department employees excluded; geographical differences; history of collective bargaining relations with employer and in industry; occupational differences—*Election Ordered:* time to be set in future when effects of unfair labor practices have been dissipated.

*Mr. John P. Jennings*, for the Board.

*Mr. C. C. Parsons* and *Mr. William M. McCrea*, of Salt Lake City, Utah, for the respondents.

*Mr. Bernard W. Freund*, of counsel to the Board.

DECISION  
ORDER  
AND  
DIRECTION OF ELECTION  
STATEMENT OF THE CASE

Upon charges duly filed on July 24, 1937, and amended on August 20, 1937, by the International Union of Mine, Mill and Smelter Workers, Local No. 392,<sup>1</sup> herein called the Union, the National

<sup>1</sup> This appears to be the correct title of the Union, although it is variously designated in the record.

Labor Relations Board, herein called the Board, by Alice M. Rosseter, Regional Director for the Twentieth Region (San Francisco, California), issued and duly served its complaint dated August 14, 1937, against Utah Copper Company, Salt Lake City, Utah, herein called Utah Copper, and on August 20, 1937, issued and duly served an amended complaint against Utah Copper and Kennecott Copper Corporation, Salt Lake City, Utah, herein called Kennecott, alleging that Utah Copper and Kennecott, herein collectively called the respondents, had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The respondents jointly filed an answer on August 30, 1937, admitting in part and denying in part the allegations of the complaint concerning their business,<sup>2</sup> but denying that the alleged unfair labor practices affect commerce, and further denying that they had engaged in or were engaging in the alleged unfair labor practices.

On July 2, 1937, the Union filed a petition with the Regional Director, alleging that a question affecting commerce had arisen concerning the representation of employees of Utah Copper at the Arthur and Magna mills operated by it in Salt Lake County, Utah, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On July 20, 1937, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On August 20, 1937, the Union filed an amended petition alleging that the question affecting commerce theretofore alleged to have arisen concerned the representation of employees of Utah Copper and/or Kennecott. Thereafter, on May 25, 1938, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of said Rules and Regulations, amended its order of July 20, 1937, to include Kennecott as a party to the investigation. This order was made nunc pro tunc as of August 20, 1937; the date of the filing of the Union's amended petition.

On August 20, 1937, the Board, acting pursuant to Article II, Section 10 (c) (2), and Article II, Section 37 (b), of said Rules and Regulations, issued an order consolidating the complaint and representation cases for the purposes of hearing.

<sup>2</sup> See section I, *infra*.

On August 14, 1937, the Regional Director issued a notice of hearing, and on August 20, 1937, an amended notice of hearing, copies of which were duly served upon the parties and upon the Employees' General Committee, Department of Mills, herein called the Committee.

Pursuant to notice, a hearing on the consolidated cases was held in Salt Lake City, Utah, from August 30 through September 4, 1937, before P. H. McNally, the Trial Examiner duly designated by the Board. The Board and the respondents appeared by counsel and participated in the hearing. Officials of both the Union and the Committee were present and testified, but neither of these organizations otherwise participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the commencement of the hearing, the Trial Examiner denied motions previously filed by each of the respondents to dismiss the two cases on various grounds.<sup>3</sup> His rulings are hereby affirmed. During the course of the hearing, the Trial Examiner made other rulings on motions and on objections to the admission of evidence. Pursuant to leave granted by the Trial Examiner at the conclusion of the hearing, an amended complaint to conform to proof, and the respondents' joint answer thereto, were subsequently filed by the Board and the respondents respectively.

On February 7, 1938, the Trial Examiner filed his Intermediate Report upon the complaint case, finding that the respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act. Thereafter, exceptions to the Intermediate Report and to various rulings of the Trial Examiner were filed by the respondents.

On May 6, 1938, the Board advised the Union, the Committee, and counsel for the respondents that the several parties were granted the right to apply for oral argument or permission to file briefs within ten (10) days from the receipt of the notification. Thereafter a brief was filed by the respondents, which the Board has fully considered. No word was received from either the Union or the Committee in response to the notification.

The rulings of the Trial Examiner on motions and on objections to the admission of evidence have been reviewed and the Board finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has considered the exceptions to the

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<sup>3</sup> See section I, *infra*.

Intermediate Report and finds them without merit, save as consistent with the findings, conclusions, and order hereinafter set forth.

Upon the entire record in both cases, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENTS

Kennecott, a New York corporation, with its principal office in New York City, is engaged with its subsidiaries in the copper mining industry in the United States, Alaska, and Chile; in the copper fabricating industry in the United States; and in incidental transportation operations. With its subsidiaries it ranks as the second largest copper mining enterprise in the world and the largest in the United States.<sup>4</sup>

Among the properties owned by Kennecott are a large open-pit copper mine, together with bleaching and precipitating plants and other properties, located in Bingham Canyon, Salt Lake County, Utah, and two mills, known as the Arthur and Magna mills, also located in Salt Lake County, approximately 17 miles from the mine. At the two mills, with which the present proceedings are concerned, over 99 per cent of the ores from the mine are reduced to copper concentrates preparatory to smelting and refining. Substantial quantities of molybdenite concentrates, all of which are shipped and used outside the State of Utah, are also produced at the mills as a byproduct.

Operation and maintenance of the Arthur and Magna mills, and the mine and other properties in Bingham Canyon, have been delegated by Kennecott to its wholly owned and wholly controlled subsidiary, Utah Copper, a Delaware corporation with its principal

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<sup>4</sup>The annual report of Kennecott to the Securities and Exchange Commission for the fiscal year ended December 31, 1936, lists the following subsidiaries, with percentages of voting control: Kennecott Sales Corporation, 100 per cent; Copper Houses, Inc., 100 per cent; Chase Brass & Copper Company, Inc., 100 per cent; The Upson Water Company, 100 per cent; American Brass & Copper Company, 100 per cent; The Waterville Corporation, 100 per cent; The A. J. Patton Company, 100 per cent; The Great Brook Manufacturing Co., 66% per cent; The Superior Wire Cloth Company, 66% per cent; Hallenbeck-Hungerford Realty Company, 50 per cent; Alaska Development & Mineral Company, 100 per cent; Dikdik Exploration Company, Ltd., 58.83 per cent; Ray & Gila Valley Railroad Company, 100 per cent; Nevada Northern Railway Company, 100 per cent; Copper River & Northwestern Railway Co., 100 per cent; Ketchikan Wharf Company, 100 per cent; Alaska Steamship Company, 100 per cent; Givson Stores Company, 100 per cent; Gallup American Coal Company, 66% per cent; Santa Rita Stores Company, 100 per cent; Ray Electric & Telephone Co., 100 per cent; Kennecott Wire & Cable Company, 100 per cent; Garfield Chemical & Manufacturing Company, 50 per cent; Garfield Water Company, 66% per cent; Garfield Improvement Company, 70 per cent; Bingham & Garfield Railway Company, 100 per cent; Utah Copper Company, 100 per cent; Nevada Consolidated Copper Corp., 100 per cent; Braden Copper Company, 100 per cent; Mines Products Corporation, 100 per cent; and three foreign subsidiaries, 100 per cent.

place of business in Salt Lake City, Utah. Utah Copper owns no assets of any kind, and serves no function other than acting as Kennecott's agent in operating and maintaining the described properties, which it does without profit to itself. All expenses of Utah Copper, including wages and salaries of the approximately 1,900 employees at the Bingham Canyon mine and the 1,400 to 1,800 employees at the Arthur and Magna mills, are paid with funds advanced by Kennecott.

In its motion to dismiss the representation proceeding herein, Kennecott contended that no question affecting commerce has arisen concerning the representation of employees of Kennecott. Both respondents contended, in their joint answers filed in the complaint proceeding, that Kennecott is not engaged in mining and milling operations at its Bingham Canyon mine and its Arthur and Magna mills, on the ground that these operations are conducted by Utah Copper. We find no merit in these contentions, in so far as they are directed to the proposition that Kennecott is not an employer within the meaning of Section 2 (2) of the Act.<sup>5</sup>

All copper concentrates produced at the mills, and the small amounts of copper precipitates produced at the mine, are delivered by Utah Copper to a smelter at Garfield, Utah, 3 or 4 miles from the mills, which is operated by American Smelting and Refining Company. These concentrates and precipitates lose their separate identities during the ensuing smelting operation, through commingling with concentrates and precipitates from other sources.

Blister copper, the resultant of the smelting operation, is shipped from the smelter in the name of Kennecott, in an amount equivalent to the metal content of all concentrates and precipitates delivered to the smelter by Utah Copper, to three refineries operated by the American Smelting and Refining Company in the States of Maryland, New Jersey, and Washington. There are no copper refineries in the State of Utah. At the refineries the copper and precious metals of which the blister copper is composed are separated, purified, and prepared for the consumer. During this refining process the identity of the blister copper shipped from the Garfield smelter in the name of Kennecott is lost through commingling with blister copper from other sources.

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<sup>5</sup> See *Matter of Art Crayon Company, Inc., and its affiliated company, American Artists Color Works, Inc and United Artists Supply Workers*, 7 N L R B 102; *Matter of Christian A. Lund, doing business as C. A. Lund Company and Northland Ski Manufacturing Company, a corporation and Woodenware Workers Union, Local 20481*, *Matter of C. A. Lund Company and Northland Ski Manufacturing Company and Woodenware Workers Union, Local 20481*, 6 N L R B. 423; and *Matter of Todd Shipyards Corporation, Robins Dry Dock and Repair Co., and Tvetjen and Lang Dry Dock Co. and Industrial Union of Marine and Shipbuilding Workers of America*, 5 N. L. R B 20

Kennecott retains title to the ores from the Bingham Canyon mine, to the concentrates and precipitates of the ores, to the blister copper produced from the concentrates and precipitates, and to the copper, gold, silver, and other metals refined from the blister copper, at all times during their mining, concentrating or precipitating, smelting, and refining, and during their transportation between these operations. The refined products owned by Kennecott, equivalent in kind and quantity to the metal content of the concentrates and precipitates delivered to the Garfield smelter from the Arthur and Magna mills and the Bingham Canyon mine, are sold by Kennecott through its wholly owned subsidiary, Kennecott Sales Corporation.

During the year 1936, approximately 389,000 tons of copper concentrates produced at the Arthur and Magna mills were delivered to the Garfield smelter. In the same period, there were produced at the three above-described refineries 105,000 tons of refined copper, 110,000 ounces of refined gold, and 883,000 ounces of refined silver attributable to production from the Bingham Canyon mine. Corresponding figures for the first 6 months of 1937 are: 293,000 tons of concentrates, 100,000 tons of refined copper, 93,000 ounces of refined gold, and 797,000 ounces of refined silver. In the first 6 months of 1937, production of molybdenite concentrates at the Arthur and Magna mills amounted to about 2,800 tons, of which about 1,500 tons were sold and shipped out of the State of Utah.

In 1936, purchases of general supplies used in the operation and maintenance of the Arthur and Magna mills and the Bingham Canyon properties totaled \$2,993,313.83, of which \$1,185,528.87, or 40 per cent, came from sources outside the State of Utah. Usually, however, there are purchased outside the State of Utah about 50 per cent of the materials and supplies so used.

## II. THE ORGANIZATIONS INVOLVED

International Union of Mine, Mill and Smelter Workers, Local No. 392, is a labor organization affiliated with the Committee for Industrial Organization. At the time of the hearing, Local No. 392 had not adopted rules determining eligibility to membership. It appears from the record, however, that organizing activities of Local No. 392 have been confined to employees at the respondents' Arthur and Magna mills.

Employees' General Committee, Department of Mills, is a labor organization composed of employee representatives selected by employees in the operation, repairs, shops, foundry, general and construction, and office departments of the Arthur and Magna mills.

## III. THE UNFAIR LABOR PRACTICES

A. *The background of the unfair labor practices*

In 1933 or 1934, following the enactment of the National Industrial Recovery Act, a local of the Union, then affiliated with the American Federation of Labor, was established among employees at the Arthur and Magna mills, with several hundred members. The local was disbanded after 6 or 8 months because differences of opinion among the men prevented the adoption of any definite course of action, and internal dissatisfaction arose.

Organization work among mill employees was renewed by the Union in the spring of 1937. The initial Union meeting at the time of the renewal of activity was held on May 10, 1937, in the nearby town of Magna, Utah, and had an estimated attendance of between 200 and 250. At this meeting several dozen men signified their desire to become Union members by signing assignments of their wages for the purpose of check-off of Union dues, pursuant to a Utah statute. According to Eldred M. Royle, a Utah State Senator, who became secretary of District No. 2 of the Union<sup>6</sup> on April 6, 1937, the Union enrolled 100 to 150 employees at the Arthur and Magna mills each week during the first 6 weeks following the May 10 meeting. In the latter part of May, however, a substantial number of withdrawals was received.

Upon being advised that the withdrawals were due to open hostility to the Union on the part of a department foreman at the mills, Royle sent a letter dated June 2, 1937, to William M. Knerr, chairman of the Industrial Commission of the State of Utah, setting forth the information which he had received. Knerr forwarded a copy of this letter to D. D. Moffat, vice president and general manager of Utah Copper, who on June 8 replied that he had thoroughly investigated the charges made, had discovered no justification for them, and that, "as always the men will form their own conclusions upon issues confronting them and we will assume no responsibility for differences of opinion among them nor for the expression given such difference." Copies of this letter were circulated among the men by the Union in the form of handbills, and during the ensuing month the number of withdrawals from the Union was relatively small.

On June 27, an article purporting to "clarify" the Act was published in the Sunday issue of a Salt Lake City newspaper, under

<sup>6</sup> District No. 2 of the International Union of Mine, Mill, and Smelter Workers has intermediate jurisdiction over locals established in the State of Utah.

the name of an associate professor of economics at the University of Utah. Taking the form of a catechism, the article read in part:

Q. May the workers carry on organization activities during working hours?

A. No. Not any work aside from regular duties unless permitted to do so by employer.

Q. Do outsiders have the right to carry on organization activities in any place of business?

A. No, not without the consent of the employer.

Q. May they not come into the plant at the lunch period for labor organization purposes?

A. No, not then or at any other time, except by permission of the employer.

Q. May the employer refuse to grant such a privilege to outsiders?

A. Yes.

At the request of the Committee,<sup>7</sup> the respondents secured reprints of this article and distributed them among the employees. Thereafter, the men were advised by supervisory officials that outside organizers would not be permitted on company property and that employees with union sympathies must not attempt to do any organizing during working hours. Non-employees who disregarded this admonition were summarily ejected by agents of the respondents, and employees were warned to stop.

On an afternoon in the latter part of July, handbills violently attacking the Union were placed in practically all the employees' cars parked in a parking lot on company property, but there is no evidence to indicate who was responsible for this action.

On July 1, 1937, Royle telephoned Moffat and asked recognition of the Union as exclusive bargaining agency for the mill employees. Moffat denied Royle's claim that the Union had a majority, and refused the request for recognition. A letter sent by the Union to Moffat on the same day, repeating the request, was never answered. After the telephone conversation, the Union filed with the Board its original petition for investigation and certification of representatives in these proceedings. A field examiner for the Board arrived in Salt Lake City on July 8 and conferred with Moffat in an attempt to arrange an election upon the consent of the parties. Moffat would not agree to an election.

A report of Moffat's action appeared in the newspapers, and in the following week a substantial number of the respondents' employees withdrew from the Union. Royle testified, however, that

<sup>7</sup> See section III-C, *infra*.  $\frac{1}{4}$

between July 15, 1937, and the date of the hearing there were few withdrawals.

*B. Interference, restraint and coercion*

Company officials admitted at the hearing that they were hostile to the Union, but insisted that this hostility had had no effect upon their relationship with employees of the respondents. Moffat testified that he would not be willing to post on the company bulletin boards a statement that Utah Copper had no objection to its employees joining the Union, because the Union advocates a closed shop. Roy Hatch, superintendent of the Arthur mill, referring to the management's attitude toward the Union, said, "They are against it,—dead against it." He added, however, "When we go out there we have got to be absolutely impartial as between man and man, and let the union stay on the outside of it." Joseph Hadley, employment director, expressed similar sentiments. The evidence introduced indicates, however, that on occasion the respondents' antagonism to the Union was translated into action and brought home to the employees.

Garfield Lewis, a common laborer, was given work in the yard gang at the Arthur mill on March 30, 1937, at \$4.30 per day. He had worked at the mills on several previous occasions, and had also been in the employ of the Bingham & Garfield Railway Company.<sup>8</sup> In the weeks following March 30, Lewis occasionally helped out as an extra on the rigger gang, being paid \$5.40 per day for this work. Lewis joined the Union at the meeting on May 10. About this time union literature began to appear on the company bulletin boards. On May 20, Lewis was transferred to the dike gang, some distance from the mill, and his pay was reduced to \$4.20 per day. Another member of the Union, John Lloyd, was also transferred to the dike. Dike workers are the lowest paid in the company's employ, and the jobs are considered particularly undesirable because the men are out of touch with activities at the mill, where opportunities for advancement may present themselves.

At the time of the transfer, Lewis' foreman told him that the yard gang was going to be cut in half in a short time, and that Lewis

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<sup>8</sup>The Bingham & Garfield Railway Company, a wholly owned subsidiary of Kennecott, operates a railroad running from Bingham Canyon, Utah, past the Arthur and Magna mills, to Garfield, Utah. Utah Copper employees, under the direct control and supervision of Bingham & Garfield Railway Company officials, transport all ores from the Bingham Canyon mine to the Arthur and Magna mills over this railroad, under trackage rights granted to Kennecott by the railway company, and assist in maintaining the tracks and roadbed of the railroad. The general manager of the Bingham & Garfield Railway Company is in charge of the employment of enginemen and trainmen for Utah Copper's transportation operations

was being sent down to the dike so that he could keep his job. When Lewis approached Hadley, the employment director, Hadley gave him the same explanation. In the course of the conversation Hadley asked Lewis, "Did you ever post any newspaper clippings, or handbills or any other bulletins on the plant bulletin boards?" Lewis replied in the negative.<sup>9</sup> Lewis testified that Hadley also remarked that he "didn't see why the men wanted a union around there." Hadley did not deny making this statement.

Both Hadley and Roy Hatch admitted that Lewis and Lloyd were suspected of having been the ones who posted the union literature, and for that reason were transferred to the dike, "where there wouldn't be any bulletin boards to bother them." The respondents sought to justify the transfers on the ground that there is a strict company rule against posting material of any description on the bulletin boards without permission. The penalty for infraction of the rule was stated to be immediate discharge. On cross-examination, Hadley said that this rule had never been publicized, and that he did not know how the men were expected to know about it. The evidence clearly establishes that the management's concern over the bulletin board incident arose from the fact that it was union literature which was involved, and that the transfers were made for the purpose of punishing the men for their suspected union activity.

Two weeks after his talk with Hadley, Lewis was still working on the dike. He thereupon instituted a strenuous union organizing campaign among the dike workers, and, with the help of one or two others, soon had all but a few employees signed up. News of this development was not long in reaching the management. Frank Haymond, general manager of the Bingham & Garfield Railway Company, who, with Harvey Garrity, his assistant, maintains general supervision over the work on the dike,<sup>10</sup> approached Lewis the day after he learned of Lewis' activities, and "jumped all over him," asking him if he had not had enough "trouble" with him when Lewis was working for the railroad. When Lewis explained that his union activity was prompted by a feeling that he was being unjustly discriminated against, Haymond told him to speak to Hatch. Then, speaking "as a father," Haymond told Lewis he did not think that the men should get into the C. I. O. because of "certain things he figured the C. I. O. meant."

Haymond denied discussing the C. I. O. with Lewis at this time, and explained that he had approached him because he had heard charges that Lewis and a young dike worker named Paul Blackwell

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<sup>9</sup> Lewis testified that his brother, who closely resembles him, had placed the material on the bulletin boards.

<sup>10</sup> The roadbed of the railroad runs along the top of the dike.

had been threatening the men with violence if they did not join the Union, and that he wanted to caution them against the use of such tactics. No testimony was introduced to prove any threats of violence, and Lewis expressly denied that he had made such threats. On July 11, Hadley called Lewis in and transferred him to the utility gang at \$4.30 per day, doing cement work on a new construction project at the mill. With regard to the conversation which took place at that time, Hadley testified in part:

I said, "I know you have been soliciting membership in the union since you have been out on the dyke. I understood, too, you did it on the plant. Whether you did it on the plant, or not, I know you did it on the dyke, because some of the boys you signed up told me you did, and some you tried to sign up told me."

He said, "Well, what about it?"

I said, "It is all right with me. Sign them all up. Sign up the foreman for this union, if you can."

After Lewis' transfer to the mill, Haymond spoke to him again, and, according to Lewis' testimony, asked him if he was "still up to his old tricks." When Lewis replied that he was still a union man, Haymond said, "Well, I don't care whether you belong to the union. But why don't you get in a good union, such as the Boiler Makers' Union—something like that?" To Lewis' answer that he "thought the C. I. O. was all right," Haymond responded that "they" [the C. I. O.] were "causing a lot of trouble back east." Haymond testified that Lewis volunteered the information that he was still in the Union, and that his only response was, "That is fine and dandy, boy; that is all right with me."

About the time that Lewis left the dike, the other dike workers became uncertain as to the wisdom of their previous decision to join the Union. Transfers from the dike were less frequent than they had been before Lewis' organizing campaign, and the men felt that the few transfers that were being made were usually of men who were not wearing Union buttons. Jobs at the mill were being filled with new men from the outside, rather than from the dike gang. After discussing the matter among themselves, a number of the dike workers determined to withdraw from the Union. A delegation of two men, Perkins and another, was sent to Hadley to ask him what steps they should take to accomplish their purpose.

When the men walked into Hadley's office, the latter said to Perkins, "How is C. I. O.?" Perkins replied that that was what they had come to see him about, and explained that the men wanted to resign from the Union. Hadley told them that he had no objections. When Perkins expressed ignorance of the proper procedure, Hadley

suggested that "the thing to do was to get a petition up and resign through that petition."

The next night the men returned with a signed petition which they gave to Hadley. Hadley looked at it, pointed out that it read "wish to resign," rather than "hereby resign," and suggested that it would look more presentable if typewritten. At Perkins' request, Hadley proceeded to typewrite a new petition in duplicate, and handed it to Perkins together with an envelope addressed to the Union secretary. The old petition was left with Hadley. Hadley testified that he threw it in the wastebasket without noticing the names on it. On the following day the petition was signed by 32 men.

It cannot be doubted that the knowledge among the respondents' employees that a company official had assisted in the preparation of a petition for withdrawal from the Union had the effect of restraining them from joining the Union and impelling them to withdraw if they had already joined.

Within a few days after the incident of the petition, numerous transfers were made from the dike to the mills. Hatch testified that the transfers were made on the basis of seniority "and any other reason we can think of." He contended that the great number of transfers from the dike immediately after the withdrawals from the Union was due to an increase in the need for common laborers at the mills. In the early part of July, work was started at the Arthur mill on construction of a large tank for use in the milling operations. Preparatory work was completed by the middle of July, and a great many laborers were then needed for the cement work. After July 23, Hatch said, "all the labor that was satisfactory" was transferred from the dike.

Hatch did not deny, however, that prior to July 23 'outsiders had been given work at the mill in preference to dike workers. He would give no direct answer to a question by counsel for the respondents as to whether he had allowed discrimination on account of labor affiliation, saying that "if he were to do so" he would be "disregarding orders," and that he has "tried to be absolutely fair." Hadley, who appears to have been in direct charge of the transfers, testified that there had been no discrimination on account of union affiliation. The statements of both of these men must be considered in the light of their treatment of Lewis and Lloyd.

Legrand Alonzo Dykman, a high-school teacher, secured work in the dike gang on June 9, 1937, shortly after the close of the spring school term. On the same day he joined the Union. Two or three weeks later, while working, Dykman saw and spoke to Garrity, Haymond's assistant, with whom he had attended college. Dykman asked

Garrity to help him get a better job. Garrity told him that he would see what he could do for him, and then added, according to Dykman, "If you want to get ahead with the company, you will be better off if you are not affiliated with the C. I. O." In his testimony Dykman stated that Garrity's remark was made in the capacity of a friend, and not that of a company official. Garrity, however, denied that he and Dykman were friends or that he had ever made the statement attributed to him.

Dykman later signed the withdrawal petition prepared by Hadley, "because," he testified, "I knew my time was short out there, and I wanted a better job, with more money in it, as anybody naturally does." He was transferred to the utility gang within a week. While he was working there, on about July 20, Garrity and Haymond approached, and Garrity introduced the other two men to each other. According to Dykman, Haymond turned the conversation to unionism, and in the course of his remarks said, "Do you realize if this company was ever unionized that Mr. Jackling would close this place down? Mr. Jackling would never stand for it a minute." Jackling is president of Utah Copper. Both Haymond and Garrity denied that this statement was made, or that the subject of unions was even discussed.

Dykman testified that he joined the Union originally for the sole reason that he hoped, through the collective bargaining contemplated by the Union, to increase his earnings. He withdrew because he believed his continued union membership would impair his chances for promotion. At the time of the hearing, Dykman was still employed by the respondents at the mills, and had not rejoined the Union. It is difficult to believe that he should have jeopardized his relationship with the respondents by willfully falsifying his testimony regarding his conversations with Haymond and Garrity.

Examination of the record makes it clear that the hostility of the respondents toward Union organization was impressed upon their employees by acts and statements of their agents and by actual discrimination against members of the Union in regard to the terms and conditions of their employment. We, therefore, find that the respondents have interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed by Section 7 of the Act.

### *C. Domination of and interference with the Committee*

In September 1919, the predecessor of the respondents in the ownership and operation of the Arthur and Magna mills and the

Bingham Canyon properties,<sup>11</sup> invited its employees at the Arthur mill to participate in a secret ballot under company supervision for the purpose of choosing a committee of employee representatives to consult with the management on subjects of mutual interest, and at the same time extended a similar invitation to employees at the Bingham Canyon mine. The Magna mill was not then in operation. Committees were formed as the result of the elections, and proceeded to function, being reconstituted from time to time as further elections were held.

On July 28, 1922, written "rules governing the method of representation of employees to the management" were promulgated by the company over the signature of Roy Hatch, then, as now, superintendent of the Arthur mill. The rules were revised on January 2, 1924, to provide representation for Magna employees; the revision, issued in the name of the company, was approved by Hatch, by E. B. Engelmann, superintendent of the Magna mill, and by the chairman and the secretary of the Committee. A second revision of the rules, which has been effective since May 23, 1934, was signed by Hatch, by A. C. Ensign, assistant superintendent of the Magna mill, and by the chairman and the secretary of the Committee.

The rules have been substantially adhered to in practice. The revisions effected little change in the nature or method of operation of the Committee. In all fundamental respects it functions today in the same manner as when originally formed by the management in 1919.

Committee members, numbering about 22 at the time of the hearing, are chosen by vote of employees in the various departments of the mills in semiannual secret elections conducted by the management. All nonsupervisory employees are entitled to vote, by virtue of their employment. No formal nominations are provided for, and no campaign promises are made. Ballots are counted at each mill by two representatives of the management and two employees. Only workers who have been continuously employed by the respondents for 6 months are eligible for election. No official of the respondents, foreman, boss, or any person having the right to employ, remove, or discharge an employee may vote or be a candidate for election.

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<sup>11</sup> From about the year 1904 until November 1936, the Arthur and Magna mills and the Bingham Canyon properties were owned and operated by a New Jersey corporation, also named Utah Copper Company. At all times after the year 1926, Kennecott owned more than 95 per cent of the outstanding capital stock of this corporation. In November 1936, when Kennecott acquired actual title to the properties and turned operations over to the Utah Copper Company of Delaware, the respondent herein, Kennecott owned over 99 per cent of the New Jersey corporation's outstanding capital stock. Utah Copper, in its management and operation of the properties including the formulation of labor policies, has retained and continued the same operating personnel and organization as conducted operations during the period of ownership by the New Jersey corporation.

At the first regular meeting of the Committee following an election, a chairman is chosen by the Committee. The chairman appoints a secretary, usually not an employee representative, subject to ratification by the Committee. Regular meetings, of 3 to 4 hours' duration, are held on the respondents' premises twice each month, in rooms provided by the respondents. The respondents' officials are present at the second regular meeting each month, at which time requests and suggestions previously determined upon by the Committee are presented and discussed. The secretary prepares minutes of every meeting of the Committee, which are subsequently typed and duplicated with the respondents' stationery and equipment. Copies of all minutes are delivered to the management and posted on the respondents' bulletin boards, and are also sent to the Employees' General Committee, Department of Mines, at the respondents' Bingham Canyon mine.

All expenses of the Committee are borne by the respondents; there are no dues. Committee members are not docked for the hours spent at Committee meetings, and are paid \$2.00 each by the respondents for attending a meeting while off shift. The secretary receives a small monthly salary from the respondents. At occasional intervals subcommittees appointed by the Committee go to Salt Lake City for the purpose of conferring with the respondents' superintendent of welfare and securing information concerning living costs and other economic data. The respondents allow these men time off with pay, and take care of their transportation and meals. In their answers the respondents allege that the total of expenditures by the management in connection with the holding of committee meetings at the mine and the mills over the period of 18 years commencing September 1919, and "for and on account of the operation activities, and function of each said general committees, including the payment of \$2.00 per meeting to each man then off shift, but ignoring the failure to deduct from the wages of men on shift sums to cover the time occupied by them in said meetings," is the sum of \$24,347.26.

The 1934 rules revision contains statements that the Committee was organized "to provide a satisfactory method for settlement of any misunderstandings that may arise" and "to supply a channel thru which requests, complaints or suggestions may be presented to the management for consideration," and that "it is believed that the arrangements outlined will provide a satisfactory method for the settlement of misunderstandings as they arise, and all complainants are urged and expected to present their cases through proper channels in order that an early settlement may be reached." The rules specify that if an employee is unable to secure satisfactory adjustment of a complaint with the help of the Committee repre-

representatives from his department, "the question shall be submitted at a meeting of the general committee with representatives of the management at which time causes for complaint will be recited." No method of arbitration is provided. Nowhere in the record is there any suggestion that the Committee has been granted power or authority to determine the final disposition of a grievance either as a separate body or in conjunction with the management. Its function is purely advisory.

No general meetings of the mill employees of the respondents are provided for either by the rules governing the Committee or in actual practice. Consequently the employees are not afforded an opportunity to present a collective expression of opinion on matters affecting their wages, hours, or other conditions of employment. Committee members are expected to determine the desires of their constituents through individual conversations with them. Frank Beers, a Committee member, testified on cross-examination that general meetings of the workers are not permitted. Other evidence clearly establishes that such meetings have never been contemplated or held in connection with the functioning of the Committee.

As might have been expected, and as, indeed, was inevitable from the composition of the Committee, "collective bargaining," as the respondents term it, between the Committee and the management has been of an attenuated nature. There have never been any negotiations attempted by the Committee looking toward a collective agreement dealing with wages, hours, or other conditions of employment. Frequent requests for wage increases have been made by the Committee, but the individual eloquence of its members has alone been relied upon to secure them. In the words of William Dameron, a Committee representative, the only recourse in the event of refusal by a company official is to "go back, get a few more arguments made up on it, and hit him again."

The evidence clearly establishes that the respondents have contributed and are contributing financial and other support to the Committee. We have seen that previous to the passage of the Act revisions of the rules by virtue of which the Committee exists have been effected only with the consent of the management. That this domination of the Committee by the management has continued since that time is revealed by the fact that as recently as March 26, 1937, a request by the Committee for a change in the rules was denied by Moffat. An instance of direct interference by the respondents with the Committee's administration, and of domination of its activities, is afforded by an occurrence at a joint meeting of the Committee and the management on June 25, 1937, when Moffat refused to grant to the Committee the requested "privilege" of send-

ing a representative to meetings of the employees' committee at the Bingham Canyon mine, saying that it was "inadvisable to make this concession."

At the hearing, several of the Committee members experienced difficulty in answering the question whether they considered the Committee to be a labor organization. Their confusion is understandable. The "organization" here was accomplished not by "labor" but by the management itself, which conceived, controls, and fosters it.

We find that the respondents have dominated and interfered with the administration of the Committee, and have contributed to it financial and other support; and have thereby interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed by Section 7 of the Act.

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

The activities of the respondents set forth in Section III above, occurring in connection with the operations of the respondents described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

We have found that since the inception of the Committee in 1919 the management of the Arthur and Magna mills has completely dominated and controlled its administration, and that this domination and control has been continued by the respondents since November 1936. Under these circumstances, the continued existence of the Committee as an ostensible collective bargaining agency is destructive of the employees' freedom in the exercise of their rights guaranteed by Section 7 of the Act. In order to effectuate the policies of the Act, we will order the disestablishment of the Committee as the representative of any of the respondents' employees for the purposes of dealing with the respondents in respect to grievances, wages, hours, and other conditions of employment.

In conjunction with its employee-representation plan, the management has from time to time used other methods in conducting its personnel activities. For example, first-aid and safety-first courses have been offered; savings in coal purchases by the employees have been made possible; recreation associations have been encouraged and assisted; an employees' benefit association and a death-benefit plan have been established, to which the respondents have contrib-

uted. Our order disestablishing the Committee as a collective bargaining representative is not intended to interfere with any such activities, provided that they are continued without discrimination against or in favor of any labor organization.

We have found, also, that the respondents have interfered with union organization by acts and statements hostile to the Union and by discrimination against Union members. In our order we shall provide for the cessation of these practices.

#### VI. THE QUESTION CONCERNING REPRESENTATION

In Section III-A above we have found that on July 1, 1937, Moffat, vice president and general manager of Utah Copper, refused a request for recognition of the Union as the representative of employees at the Arthur and Magna mills, on the ground that the Union did not represent a majority. The Union claimed that a majority of such employees desired to be represented by the Union for the purposes of collective bargaining. We, therefore, find that a question has arisen concerning representation of employees of the respondents at their Arthur and Magna mills.

#### VII. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the respondents described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### VIII. THE APPROPRIATE UNIT

In its amended petition the Union alleges that all production workers in the employ of the respondents at their Arthur and Magna mills, exclusive of clerical employees and executives of the rank of foreman and above, constitute a unit appropriate for the purposes of collective bargaining. The respondents contend that the unit should include employees working at the Bingham Canyon mine and in the transportation of ores from the mine to the mills, as well as mill employees.

The arguments of the respondents in favor of the more comprehensive unit are that the mine, transportation department, and mills are all operated by a single company, and that, since the functions performed in the three divisions are interrelated, a labor dispute at any one of them would affect employees at the others.

On the other hand, the employee-representation plans now in existence have functioned separately at the mine and the mills; the two localities are 17 miles apart; Utah Copper governs the wages, hours, and working conditions of the trainmen, enginemen, and yardmen in its employ in accordance with an agreement between the Bingham & Garfield Railway Company and the latter's employees; the type of work performed in the three divisions differs materially; and actual organization by the Union has been effected separately at the mine and the mills. Evidence introduced at the hearing indicated that units similar to the one here requested by the Union have been used as a basis for collective bargaining at other copper mills in the district in which the Arthur and Magna mills are located.

We find that the production workers employed by the respondents at their Arthur and Magna mills, excluding clerical employees and employees of the rank of foreman and above, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees the full benefit of their right of self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

#### IX. THE DETERMINATION OF REPRESENTATIVES

From the testimony of Royle, secretary of District No. 2 of the Union, it appears that approximately 750 employees at the Arthur and Magna mills have assigned their wages to the Union for the purpose of check-off of Union dues. Of these assignments, about 160 have been revoked, and an additional 40 returned for re-signing. Royle further testified that 200 other employees have orally expressed the desire to be represented by the Union.

The Union has requested the holding of an election. We find that by this method the question concerning representation can best be resolved. We shall provide for an election, to be conducted upon our further order after we are satisfied that the effects of the respondents' unfair labor practices have been dissipated by compliance with the order respecting those practices which we shall make at this time. Since the election date is uncertain, we shall not determine at this time what pay-roll period will govern eligibility to participate in the election.

#### CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in both cases, the Board makes the following conclusions of law:

1. Utah Copper Company and Kennecott Copper Corporation are employers within the meaning of Section 2 (2) of the Act.

2. International Union of Mine, Mill, and Smelter Workers, Local No. 392, affiliated with the Committee for Industrial Organization, and Employees' General Committee, Department of Mills, are labor organizations within the meaning of Section 2 (5) of the Act.

3. By their domination and interference with the administration of Employees' General Committee, Department of Mills, and by contributing financial and other support thereto, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (2) of the National Labor Relations Act.

4. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed by Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

6. A question affecting commerce has arisen concerning the representation of employees of the respondents at their Arthur and Magna mills, Salt Lake County, Utah, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

7. The production workers employed by the respondents at their Arthur and Magna mills, Salt Lake County, Utah, excluding clerical employees and employees of the rank of foreman and above, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

### ORDER

Upon the basis of the findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents Utah Copper Company and Kennecott Copper Corporation, and their officers, agents, successors, and assigns, shall:

1. Cease and desist:

(a) From in any manner dominating or interfering with the administration of Employees' General Committee, Department of Mills, or any other labor organization of their employees, and from contributing financial or other support to Employees' General Committee, Department of Mills, or any other labor organization of their employees;

(b) From recognizing Employees' General Committee, Department of Mills, as the representative of any of their employees for the purpose of dealing with the respondents concerning grievances, labor

disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(c) From in any other manner interfering with, restraining, or coercing their employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Employees' General Committee, Department of Mills, as a representative of any of their employees for the purpose of dealing with the respondents concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and completely disestablish Employees' General Committee, Department of Mills, as such representative;

(b) Immediately post notices to their employees in conspicuous places throughout their Arthur and Magna mills, and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting, stating (1) that the respondents will cease and desist as aforesaid; (2) that the respondents withdraw and will refrain from all recognition of Employees' General Committee, Department of Mills, as a representative of any of their employees for the purpose of dealing with the respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment; and (3) that the respondents completely disestablish it as such representative;

(c) Notify the Regional Director for the Twenty-second Region in writing within ten (10) days from the date of this order what steps the respondents have taken to comply herewith.

#### DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation directed by the Board to ascertain representatives for the purposes of collective bargaining with Utah Copper Company and Kennecott Copper Corporation, an election by secret ballot shall be conducted at such time as the

Board shall hereafter direct, under the direction and supervision of the Regional Director for the Twenty-second Region (Denver, Colorado), acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among all production workers employed by Utah Copper Company and Kennecott Copper Corporation at their Arthur and Magna mills, Salt Lake County, Utah, within a period to be determined by the Board in the future, excluding clerical employees and employees of the rank of foreman and above, to determine whether or not they desire to be represented by International Union of Mine, Mill, and Smelter Workers, Local No. 392, affiliated with the Committee for Industrial Organization, for the purpose of collective bargaining.