UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

ASARCO LLC		
and	**Cases**	**28-CA-154886**
		28-CA-155737
UNITED STEEL, PAPER AND RUBBER, MANUFACTURING, ENERGY, FORESTRY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC		**28-CA-158199**
		28-CA-163008
		28-CA-163333
and	**Case**	**28-CA-160210**
MANUEL ORCASITAS, an Individual		

ORDER FURTHER CONSOLIDATING CASES, THIRD CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delays, IT IS ORDERED that Cases 28-CA-154886, 28-CA-155737, and 28-CA-158199, filed by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (the Steelworkers International Union) against ASARCO LLC (Respondent), and Case 28-CA-160210 filed by Manuel Orcasitas, an Individual (Orcasitas), against Respondent, in which an Order Consolidating Cases, Second Consolidated Complaint and Notice of Hearing issued on November 30, 2015, are consolidated with Cases 28-CA-163008 and 28-CA-163333, filed by the Steelworkers International Union against Respondent.

This Order Further Consolidating Cases, Third Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the

National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges that Respondent has violated the Act as described below.

1. (a) The charge in Case 28-CA-154886 was filed by the Steelworkers International Union on June 24, 2015, and a copy was served on Respondent by U.S. mail on June 26, 2015.

(b) The charge in Case 28-CA-155737 was filed by the Steelworkers International Union on July 9, 2015, and a copy was served on Respondent by U.S. mail on July 10, 2015.

(c) The charge in Case 28-CA-158199 was filed by the Steelworkers International Union on August 17, 2015, and a copy was served on Respondent by U.S. mail on August 18, 2015.

(d) The charge in Case 28-CA-160210 was filed by Orcasitas on September 17, 2015, and a copy was served on Respondent by U.S. mail on the same date.

(e) The charge in Case 28-CA-163008 was filed by the Steelworkers International Union on October 29, 2015, and a copy was served on Respondent by U.S. mail on October 30, 2015.

(f) The charge in Case 28-CA-163333 was filed by the Steelworkers International Union on November 4, 2015, and a copy was served on Respondent by U.S. mail on November 5, 2015.

(g) The first amended charge in Case 28-CA-163333 was filed by the Steelworkers International Union on November 16, 2015, and a copy was served on Respondent by U.S. mail on November 17, 2015.

(h) The second amended charge in Case 28-CA-163333 was filed by the Steelworkers International Union on December 4, 2015, and a copy was served on Respondent by U.S. mail on the same date.

2 (a) At all material times, Respondent has been a limited liability company with offices and places of business in Hayden, Arizona (Respondent's Hayden Smelter), Kearny, Arizona (Respondent's Ray Complex), Sahuarita, Arizona (Respondent's Mission Complex), Amarillo, Texas (Respondent's Amarillo Copper Refinery), and Marana, Arizona (Respondent's Silver Bell Mine) (collectively, Respondent's facilities), and has been engaged in the business of mining, smelting, and refining copper.

(b) During the 12-month period ending June 24, 2015, Respondent in conducting its operations described above in paragraph 2(a), purchased and received at Respondent's facilities in the State of Arizona goods valued in excess of $50,000 directly from points outside the State of Arizona.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all material times, the following entities (collectively, the Unions) have been labor organizations within the meaning of Section 2(5) of the Act:

(a) the Steelworkers International Union;

(b) Local 886-2 of the Steelworkers International Union;

(c) Local 915 of the Steelworkers International Union;

(d) Local 937 of the Steelworkers International Union;

(e) Local 5252 of the Steelworkers International Union;

(f) Local 5613 of the Steelworkers International Union;

(g) International Brotherhood of Electrical Workers, Local 518;

(h) International Brotherhood of Electrical Workers, Local 570;

(i) International Brotherhood of Electrical Workers, Local 602;

(j) International Association of Machinists and Aerospace Workers, Local 519;

(k) International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith, Forgers and Helpers, Local 627;

(l) International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 104;

(m) International Union of Operating Engineers, Local 428;

(n) United Brotherhood of Carpenters and Joiners of America, Millwrights Local 1607 (Millwrights Local 1607); and

(o) United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 469.

4. (a) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

David Boyd	-	Maintenance General Supervisor – Respondent's Hayden Smelter
Manuel Carrillo	-	Manager – Respondent's Ray Complex
Mick Crisp	-	Supervisory Safety Engineer
Crista Crazeaux	-	Leave Specialist
Kenny David	-	Supervisor – Respondent's Hayden Smelter
Gary Esquivel	-	Tire Shop Supervisor – Respondent's Ray Complex
Carol Hawkins	-	Human Resources Manager – Respondent's Hayden Smelter

Anthony Hotchkiss	-	Shift Supervisor – Respondent's Mission Complex
Ronald Knight	-	Director of Safety
John Machado	-	Operational Supervisor – Respondent's Hayden Smelter
Debbie McMorrow	-	Human Resources Representative – Respondent's Silver Bell Mine
Ken Meddley	-	Maintenance Supervisor – Respondent's Silver Bell Mine
Dennis Peed	-	Preventative Maintenance Supervisor – Respondent's Ray Complex
Stacy Sinele	-	Corporate Labor & Employee Relations Manager
Fred Stout	-	Carpenter and Pipe Fitter Foreman – Respondent's Hayden Smelter
Carrie Tavares	-	Supervisor – Respondent's Ray Complex
Bill Tower	-	General Shovel and Drill Supervisor – Respondent's Ray Complex
Agustin Trevino	-	Director, Human Resources
Ronnie Ventura	-	Chief Supervisor – Respondent's Mission Complex

(b) At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

Ken Dickey	-	Day-Pay Supervisor – Respondent's Ray Complex
Chad Hymas	-	President – Chad Hymas Communications, Inc.

5. (a) About March 5, 2015, Respondent, by Ronnie Ventura and Anthony Hotchkiss (Hotchkiss), at Respondent's Mission Complex, interrogated its employees about their union activities and the union activities of other employees, including by questioning them about a potential strike.

(b) About June 24, 2015, Respondent, by John Machado, at Respondent's Hayden Smelter, interrogated its employees about their union activities and the union activities of other employees, including by questioning them about a union meeting and a potential strike.

(c) About June 25, 2015, Respondent, by Hotchkiss, at Respondent's Mission Complex, interrogated its employees about their union activities and the union activities of other employees, including by questioning them about a union meeting and a potential strike.

(d) About October 22, 2015, and October 28, 2015, Respondent, by Chad Hymas (Hymas), at a series of meetings at Respondent's Ray Complex, threatened employees with layoff if did not accept Respondent's collective bargaining proposals.

(e) About November 3, 2015, Respondent, by its Code of Conduct, promulgated and since then has maintained the following rules:

(1) **Conflicts of Interest**

> Employees have a duty to avoid possible conflicts of interest. For example, if a situation arises where the personal interest of an employee or an affiliated party conflicts with the interests of ASARCO, or an employee uses his or her position to achieve personal gain, a conflict of interest may exist. Each ASARCO employee must avoid at all times any interest that might conflict or appear to conflict with the interest of the company or that might deprive the company of the undivided loyalty of the employee in business dealings.
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> * * *
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> All employees have a duty to report to Human Resources, the Legal Department or through the Ethics and Compliance Hotline any personal, property, or business interests or obligations that might conflict or appear to conflict with the interests of ASARCO. Employees should take care to report conflicts to a person who they believe is not involved in the matter giving rise to the conflict.

(2) **Disclosure**

> ASARCO will ensure that material communications to the public about the company and in all required filings to governmental authorities (i) are full, fair, timely, factual, accurate and understandable; (ii) are disseminated in a way that provides broad, non-exclusionary distribution of the information to the public, and (iii) meet all legal requirements. Only authorized personnel, namely, the COO, the CFO

and Vice President of Environmental Affairs are authorized to respond on behalf of the company to inquiries on material matters for members of the investment community and the media. Company employees who are not authorized spokespersons may not respond to inquiries or discuss matters related to the company with representatives of the investment community or the media, and should refrain from discussing company matters with anyone outside the company except in the ordinary course of business as required in the performance of his or her company duties. Moreover, except as authorized or permitted by applicable law, no employee should disclose non-public information outside of the company in the absence of appropriate confidentiality agreements.

(3) **Information Systems**

Information system resources and their contents are assets of ASARCO and must be protected from unauthorized access, modification, destruction or disclosure. Altering or modifying information except as it relates to an employee's required job function(s) is not allowed. Additionally, any attempt to gain access to information, user ID's, facilities or other information to which such person is not specifically authorized is prohibited.

Data processing facilities or corporate information resources should not be used in a manner that is inconsistent with the business of ASARCO except for minimal, incidental use that is not specifically disallowed by this Code of Conduct.

Additionally, information systems should not be used for outside business ventures, charitable organizations or for any political or religious purpose, without prior written authorization by the Chief Operating Officer. Other examples of prohibited use are:

* * *

- Solicitation, except for company sanctioned activities approved by the COO

* * *

- Personal gain activities
- Obscene, pornographic, harassing or abusive material

* * *

- Forwarding of mass e-mail or chain letters.

(4) **E-Mail, Internet and Voice Mail Usage**

When an employee uses an ASARCO e-mail or instant messaging account, or visits a Web site on the Internet at work, he or she is in effect representing ASARCO to the world. Employees may not use these tools at work for personal gain or for unlawful or unethical purposes. Employees are expected to use e-mail and the Internet responsibly and to limit personal use of these tools in the workplace so that it will not affect job performance or the success of the company. ASARCO does monitor employee usage of e-mail and the Internet.

Employees should also note that all e-mail and voice mail is the property of ASARCO, regardless of content. E-mail and voice mail should be treated as other verbal or written business communications. Appropriate language and standards of decency must be used. Offensive, demeaning, defamatory or disruptive messages are prohibited. System users are responsible for the content of all text, audio and video sent using the Internet or e-mail. All messages must comply with relevant federal and state laws regarding copyright, trademark and intellectual property.

(f) About November 3, 2015, Respondent, by its employee Policy and Procedures Conflict of Interest Policy, promulgated and since then has maintained the following rules:

(1) **L. Employment**

(a) Employment by, or rendering consulting services to any outside concern which does or may do business with, or is competitor of the Company, except as a representative of the Company or with its written consent, is prohibited.

(b) Employees shall not engage in outside business activities or employment incompatible with the Company's right to such employee's full time and dedicated service.

(c) Employment decisions are to be made solely in the best interests of the Company. An offer of employment or promotion for any position within the Company or its subsidiaries shall be based exclusively on the requirements of the position being filled and the qualifications of the candidates with due regard for applicable local, state and federal employment law. Family or personal relationships with current or retired employees shall not inappropriately influence decisions.

(2) **U. Fundraising/Solicitation**

The Company encourages employees to support their community and be good citizens. The Company recognizes that individuals will sometimes seek to fundraise or solicit on behalf of worthy causes; however, activities such as these can create conflicts of interest, or undue pressure to conform or participate. In order to avoid any appearance of a conflict of interest, employees should consult with their local HR manager or General Counsel and obtain approval prior to engaging in such activities.

(3) **V. Questions Regarding Policy and Reporting of Violations**

It is an employee's primary duty to represent the Company at all times to the best of his or her ability. Therefore, no employee should become involved in any situations, in addition to those set forth above, which would impair or interfere with this primary duty. While it is the responsibility of each individual employee to recognize such situations, should he or she be in doubt as to any particular set of facts which might be deemed a conflict of interest, the question should be submitted in writing or e-mail to his or her local HR manager and/or the General Counsel.

It is the duty of the employee to follow the advice received on any possible conflict, keeping in mind that the procedures and guidelines set forth in this Policy Statement have been formulated to afford the maximum protection to the employee as well as to the Company.

6. (a) From about January 23, 2013, to about February 5, 2013, Respondent's employee Orcasitas engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection and complained to Respondent regarding the wages, hours, and working conditions of Respondent's employees, by talking to other employees, complaining to Respondent, and filing a Mine Safety and Health Administration complaint about asbestos at Respondent's Hayden Smelter.

(b) About August 18, 2015, Respondent discharged its employee Orcasitas.

(c) Respondent engaged in the conduct described above in paragraph 6(b) because Orcasitas engaged in the conduct described above in paragraph 6(a)

(d) Respondent engaged in the conduct described above in paragraph 6(b) because Orcasitas formed, joined and assisted the Unions and engaged in concerted activities, and to discourage employees from engaging in these activities.

7. (a) The employees of Respondent (collectively, the Units) described in Article 2, Section A of the Basic Labor Agreement between Respondent and the Unions (the Basic Labor Agreement) as supplemented by the Supplemental Agreements between Respondent and certain of the Unions for each of Respondent's facilities (the Supplemental Agreements), all of which were effective from January 1, 2007, through June 20, 2010, and were extended by agreement of the parties until June 20, 2015, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

(b) Since at least January 1, 2007, and at all material times, Respondent has recognized the Unions as the exclusive collective-bargaining representatives of their respective units, as described in Article 2, Section A of the Basic Labor Agreement, as supplemented by the Supplemental Agreements. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was the Basic Labor Agreement, as supplemented by the Supplemental Agreements.

(c) Since at least January 1, 2007, and at all material times, based on Section 9(a) of the Act, the Unions have been the exclusive collective-bargaining representatives of their respective units, as described in Article 2, Section A of the Basic Labor Agreement, as supplemented by the Supplemental Agreements.

(d) About June 29, 2015, Respondent changed the shifts of certain of its employees in the Units at Respondent's Hayden Smelter from 8-hour shifts to 12-hour shifts.

(e) About June 29, 2015, Respondent eliminated the night shift for certain of its employees in the Units at Respondent's Hayden Smelter.

(f) About July 18, 2015, Respondent conducted a reduction in force at Respondent's Ray Complex and temporarily laid off certain of its employees in the Units without regard to seniority.

(g) About August 30, 2015, Respondent eliminated the night shift for certain of its employees in the Units in the Tire Shop Department at Respondent's Ray Complex.

(h) About August 30, 2015, Respondent changed the schedules of certain of its employees in the Units in the Tire Shop Department at Respondent's Ray Complex without bidding.

(i) About September 14, 2015, Respondent, by Ken Dickey, at Respondent's Ray Complex, bypassed the Unions and dealt directly with its employees in the Units by requesting that they complete bidding sheets concerning their schedules and shifts.

(j) About September 20, 2015, Respondent changed employees' schedules and shifts in the Units in the Shovel and Drill Department at Respondent's Ray Facility.

(k) About October 22 and 28, 2015, Respondent, by Hymas, at a series of mandatory meetings Respondent's Ray Complex, bypassed the Unions and dealt

directly with its employees in the Units by soliciting employees to lead employees in the Units in place of the Unions and to agree to Respondent's collective bargaining proposals.

(l) About November 3, 2015, Respondent promulgated a Code of Conduct and Policy and Procedures Conflict of Interest Policy at Respondent's Silver Bell Mine applicable to its employees in the Units.

(m) About December 1, 2015, Respondent implemented terms set forth in a bargaining proposal dated May 15, 2015, that it characterized as its Last, Best, and Final Offer.

(n) The subjects set forth above in paragraphs 7(d) through (h), (j), (l), and (m) relate to wages, hours, and other terms and conditions of employment of the Units and are mandatory subjects for the purposes of collective bargaining.

(o) Respondent engaged in the conduct described above in paragraphs 7(d) through (h), (j), and (l) without prior notice to the Unions and without affording the Unions an opportunity to bargain with Respondent with respect to this conduct or the effects of this conduct and without first bargaining with the Unions to an overall good-faith impasse for successor collective-bargaining agreements including the Basic Labor Agreement and the Supplemental Agreements.

(p) Respondent engaged in the conduct described above in paragraph 7(m) in the presence of serious unremedied unfair labor practices, including the conduct described above in paragraphs 5, 6, and 7(d) through (l).

8. By the conduct described above in paragraphs 5 and 6(b) and 6(c), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

9. By the conduct described above in paragraphs 6(b) and 6(d), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

10. By the conduct described above in paragraph 7, Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representatives of its employees in violation of Section 8(a)(1) and (5) of the Act.

11. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practices alleged above in paragraph 6, the General Counsel seeks an order requiring that the Respondent reimburse the discriminatee for all search-for-work and work-related expenses regardless of whether the discriminatee received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before January 21, 2016, or postmarked on or before January 19, 2016**. Respondent should file an original copy of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **File Case Documents,** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on March 15, 2016, at 9:00 a.m. (local time), at the Hearing Room of the National Labor Relations Board, 2600 North Central Avenue, Suite 1400, Phoenix, Arizona, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Phoenix, Arizona, this 7th day of January 2016.

Cornele A. Overstreet, Regional Director

Attachments

FORM NLRB-4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Cases 28-CA-154886, et al.

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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