Towse. Sheila J.

From: Retarus Faxolution <gla.from@retarus.net>
Sent: Tuesday, August 13, 2019 9:12 AM
To: FSM-Fort Worth
Subject: fax from '8064678882' for 'NLRB'
Attachments: faxreceive.2019-08-13-09-12-26_67D.pdf

Categories: Blue category

overall result : OK
calling party phone number : 0018064678882 calling party ID '8064678882'
called party phone number : +18179782928 called party ID 'NLRB'
call setup : 2019-08-13-09.12.26
call duration 30
page count : 1
transfer rate 31200 bps
resolution : low

Form NLRB - 501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
16-CA-246530	8-13-2019

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer ASARCO		b. Tel. No. (806)468-4000 468-4136 c. Cell No.
d. Address (street, city, state ZIP code) 7001 State Hwy 136 79108 P.O. Box 30200 79120	e. Employer Representative Sandy Ellioott HR	f. Fax No. g. e-Mail h. Dispute Location (City and State) Amarillo, TX
i. Type of Establishment (factory, nursing home, hotel) refinery	j. Principal Product or Service copper	k. Number of workers at dispute location 450

l. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (*set forth a clear and concise statement of the facts constituting the alleged unfair labor practices*)

Since about February 2019, the Employer has failed to bargain collectively and in good faith with the USW Local 5613 by failing and refusing to timely provide and/or unreasonably delaying providing relevant and necessary information requested by (b) (6), (b) (7)(C) on February 21, 2019.

3. Full name of party filing charge (*if labor organization, give full name, including local name and number*)
(b) (6), (b) (7)(C)

4a. Address (street and number, city, state, and ZIP code) (b) (6), (b) (7)(C)	4b. Tel. No. 4c. Cell No. (b) (6), (b) (7)(C) 4d. Fax No. 4e. e-Mail (b) (6), (b) (7)(C)

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (*to be filled in when charge is filed by a labor organization*)

6. DECLARATION **I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.**	Tel. No.
By (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (signature of representative or person making charge) Print Name and Title	Office, if any, Cell No. (b) (6), (b) (7)(C) Fax No.
Address: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) Date: 8-13-19	e-Mail (b) (6), (b) (7)(C)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes. (b) (6), (b) (7)(C)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 16
819 Taylor St Rm 8A24
Fort Worth, TX 76102-6107

Agency Website: www.nlrb.gov
Telephone: (817)978-2921
Fax: (817)978-2928

Download NLRB Mobile App

August 14, 2019

(b) (6), (b) (7)(C)

Re: ASARCO
Case 16-CA-246530

DEAR (b) (6), (b) (7)(C)

The charge that you filed in this case on August 13, 2019 has been docketed as case number 16-CA-246530. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner ALMA C. LUNA-DEMPSEY whose telephone number is (682)703-7231. If this Board agent is not available, you may contact Supervisory Field Examiner MEIKE ZIEGLER whose telephone number is (682)703-7226.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

TIMOTHY L. WATSON
REGIONAL DIRECTOR

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 16
819 Taylor St Rm 8A24
Fort Worth, TX 76102-6107

Agency Website: www.nlrb.gov
Telephone: (817)978-2921
Fax: (817)978-2928

Download
NLRB
Mobile App

August 14, 2019

SANDY ELLIOTT, HR MANAGER
ASARCO
7001 STATE HWY 136
AMARILLO, TX 79108

Re: ASARCO
Case 16-CA-246530

DEAR MS. ELLIOTT:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner ALMA C. LUNA-DEMPSEY whose telephone number is (682)703-7231. If this Board agent is not available, you may contact Supervisory Field Examiner MEIKE ZIEGLER whose telephone number is (682)703-7226.

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If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

TIMOTHY L. WATSON
REGIONAL DIRECTOR

Enclosures:
1. Copy of Charge
2. Commerce Questionnaire

cc: SANDY ELLIOTT, HR MANAGER
ASARCO
PO BOX 30200
AMARILLO, TX 79120

United States Government
NATIONAL LABOR RELATIONS BOARD
Region 16
819 Taylor Street - Room 8A24
Fort Worth, TX 76102-6178
(817) 978-2921

August 15, 2019

(b) (6), (b) (7)(C)

Re: ASARCO
Case No. 16-CA-246530

DEAR (b) (6), (b) (7)(C)

In order to secure your evidence in support of the allegations included in the charge you filed, I have enclosed an affidavit and a questionnaire for you to complete, and a self-addressed business reply envelope. Please include the County in which you reside at the top of the left corner of the affidavit. **The completed questionnaire and the affidavit must be returned to this office by no later than August 26, 2019.**

If the questionnaire and affidavit are not received by the date indicated above, your charge will be subject to dismissal because of your failure to cooperate in the investigation. If the charge is dismissed, you will receive a long-form dismissal letter detailing that the charge was dismissed for lack of cooperation. Please be advised, the charged party will also receive a copy of the dismissal letter and a redacted copy of the letter will be posted on the Agency's website.

Should you be unable to proceed with the investigation at this time and wish to withdraw the above-captioned charge, please sign and date the enclosed withdrawal request form and return it to this office so that it is received no later than close of business on **August 26, 2019**. However, please note that should you elect to withdraw the charge, there is no avenue of appeal as is the case when a charge is dismissed. Please take further note of the fact that while a withdrawn charge or a charge dismissed for lack of cooperation may be refiled subsequently, Section 10(b) of the National Labor Relations Act provides that no formal action can be initiated with respect to any alleged unfair labor practice which occurred more than six months prior to the filing of the charge.

If you have any questions or if I can be of some further assistance in this matter, please do not hesitate to contact me at (682) 703-7216. Thank you for your cooperation.

Sincerely,

/s/ Letrivette Bailey

LETRIVETTE BAILEY
CASE PROCESSING ASSISTANT

Enclosures Affidavit
Business Reply Envelope
Questionnaire
Withdrawal Request

County of _____
State of Texas

Case No. 16-CA-246530

A F F I D A V I T

I, _____ being duly sworn upon my oath, hereby state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.

I reside at _____

My telephone number is _____

My email address is _____

I (am) (was) employed by _____

located at _____.

I currently hold the position of _____. I have held this position

since _____. In this position, I am responsible for _____

_____.

I hereby incorporate by reference and make a part hereof, the attache questionnaire designated as "Attachment A"

I have read this Confidential Witness Affidavit and questionnaire consisting of ___ pages, including this page, I fully understand its contents, and I state under penalty of perjury that the foregoing is true and correct.

_____
(Signature)

_____
(Date)

"ATTACHMENT A"

CASE NAME: ASARCO
CASE NUMBER: 16-CA-246530

QUESTIONNAIRE REGARDING REFUSAL AND/OR FAILURE TO FURNISH REQUESTED INFORMATION

Instructions to the Charging Party: This questionnaire is to be completed as completely and as accurately as possible to support the allegation(s) in the above-captioned charge that the Employer has violated Sections 8(a)(1) and (5) of the Act by refusing and/or failing to furnish requested information which is necessary and relevant to the performance of collective bargaining functions. If your answers require more space than provided, attach additional sheets as necessary.

Please complete the questionnaire and return it to this office no later than **August 26, 2019**. **If the questionnaire is not received by August 26, 2019, the charge may be dismissed for lack of cooperation.**

I. THE REQUEST FOR INFORMATION

1. Did the Union make a request to the Employer for the information in question? Yes _____ No _____

   (If the request for information was in writing, please provide a copy of the request with this questionnaire.)

2. What is the name of the person who made the request for information?

   _____

3. What is the name of the person to whom the request for information was made?

   _____

4. Where was the request for information presented to the Employer?

   _____

5. On what date was the request presented to the Employer?

   _____

6. What information was requested?

   _____

   _____

7. Why is the requested information necessary and relevant to the collective bargaining functions of the Union? (Be as specific as possible. Generalized statements such as "to prepare for negotiations" or "to police the collective bargaining agreement" have been found by the Board to be insufficient.)

_____

_____

_____

_____

II. THE RESPONSE TO THE REQUEST FOR INFORMATION

1. Has any response been given to the request for information?
   Yes ___ No ___

2. If your answer to question 1 was ***"YES"***, please give details below

   A. Who gave the response?

   _____

   B. What is the date of the response?

   _____

   C. What was the response?

   _____

   _____

   _____

   D. Was any of the requested information provided? Yes _____ No _____
   If ***"YES"***, what was provided?

   _____

   _____

   _____

   E. If the response was in writing, please provide a copy of it with this questionnaire.

F. If not all of the requested information was provided, what information was not provided?

_____

_____

_____

_____

G. Subsequent to the request for information, have there been any written communications or verbal discussions with management concerning the request? Yes _____ No _____

If ***"YES"***, please provide the details below of who was involved, when and where it occurred, and what was said. If there have been written communications, please provide a copy of each with this questionnaire.

_____

_____

_____

_____

_____

_____

III. GRIEVANCES CONCERNING THE REQUEST FOR INFORMATION

1. Have any grievances been filed over the Employer's failure to provide the requested information? Yes _____ No _____

2. If a grievance has been filed: (Please enclose a copy.)

   A. When was it filed?

   _____

   B. What is the current status of the **failure to provide the information grievance**?

   _____

   _____

   _____

   _____

   _____

C. Is the **requested information** related to a pending grievance?

Yes _____ No _____ (If yes, please enclose a copy of the grievance(s).)

D. What is the current status of the grievance(s)?

_____

_____

_____

E. Has the grievance(s) been resolved?

Yes _____ No _____ (If yes, please enclose a copy of the resolution.)

F. If the grievance(s) has/have been resolved, is the information still needed?

Yes _____ No _____ (If yes, please explain below why it is still needed).

_____

_____

_____

_____

_____

G. Is the Empoyer aware the information is still needed?

Yes _____ No _____ (If yes, please explain below how and when the Employer was notified including the name of the management representative that was informed).

_____

_____

_____

_____

_____

_____

H. Any other information related to this case you wish to provide?:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

I state under penalty of perjury that the foregoing information I have provided on this questionnaire is true and correct.

By: _____

Title: _____

Date: _____

NxGen Allegation Sheet – EMPLOYER/LABOR ORGANIZATION

Case Name: _____ **Case No.:** _____
Board Agent: _____

Check the appropriate action

Withdrawal Approval	**W** = Withdrawn no adjustment; **A** =- Adjusted
Advice Issuance	**X** = Allegation type submitted to Advice
Complaint Issuance	**X** = Allegation type in Complaint
Deferral Issuance	**X** = Allegation type deferred
Dismissal Issuance	**D** = Dismissed no adjustment; **A** = Adjusted
Settlement Approval	**X** = Allegation type settled

EMPLOYER:

	8(a)(1)
	Coercive Actions (Surveillance, etc.)
	Coercive Rules
	Coercive Statements (Threats, Promises of Benefits, etc.)
	Concerted Activities (Retaliation, Discharge, Discipline)
	Denial of Access
	Discharge of supervisor (Parker-Robb Chevrolet)
	Interrogation (including Polling)
	Lawsuits
	Weingarten

	8(a)(2):
	Assistance
	Domination
	Unlawful Recognition

	8(a)(3):
	Changes in Terms & Conditions of Employment
	Discharge (including Layoff and Refusal to Hire – not Salting)
	Discipline
	Lockout
	Refusal to Consider/Hire Applicant (salting only)
	Refusal to Reinstate Employee/Striker (e.g. Laidlaw)
	Retaliatory Lawsuit
	Shutdown or Relocate/Subcontract Unit Work
	Union Security Related Actions

	8(a)(4)
	Changes in Terms & Conditions of Employment
	Discharge (including Layoff & Refusal to Hire)
	Discipline
	Refusal to Reinstate Employee/Striker
	Shutdown or Relocate/Subcontract Unit Work

	8(a)(5):
	Alter Ego
	Failure to Sign Agreement
	Refusal to Bargain/Bad Faith Bargaining (incl'g surface bargaining/direct dealing
	Refusal to Furnish Information
	Refusal to Hire Majority
	Refusal to Recognize
	Repudiation/Modification of Contract (Sec. 8(d)/Unilateral Changes)
	Shutdown or Relocate (e.g., *First National M'nt.*)/Subcontract Work

	8(e):
	All Allegations against a Labor Organization
	All Allegations against an Employer

UNION:

	8(b)(1)(A):
	Coercion, incl'g statements and violence
	Denial of Access
	Discipline (including charges/fines)/harassment
	Duty of Fair Representation, incl'g superseniority
	Hiring Halls
	Picketing/Strike Actions
	Rules: Coercive
	Union Dues and/or Membership Related (including excessing fees)

	8(b)(1)(B):
	Fund Contribution Related
	Lawsuits
	Other Allegations
	Statements/Threats/Violence

	8(b)(2):
	Hiring Hall Related
	Lawsuits
	Union Security Related

	8(b)(3):
	Failure to Sign Agreement
	Refusal to Bargain/Bad Faith or Surface Bargaining
	Refusal to Furnish Information

	8(b)(4)(B):
	Law Suits/Grievances
	Picketing/Handbilliing
	Statements

	8(b)(4)(C):
	Law Suits/Grievances
	Picketing
	Statements

	8(b)(4)(D):
	All Allegations

	8(b)(5):
	All Allegations

	8(b)(6):
	All Allegations

	8(b)(7)(A):
	All Allegations

	8(b)(7)(B):
	All Allegations

	8(b)(7)(C):
	All Allegations

	8(e):
	All Allegations against a Labor Organization
	All Allegations against an Employer

	8(g):
	All Allegations

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 16
819 Taylor Street, Room 8A24
Fort Worth, TX 76102-6107
Agency Website: www.nlrb.gov
Telephone: (817)978-2921
Fax: (817)978-2928

August 23, 2019

SANDY ELLIOTT, HR MANAGER
ASARCO
7001 STATE HWY 136
AMARILLO, TX 79108

Re: ASARCO
Case 16-CA-246530

DEAR MS. ELLIOTT:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

/s/Timothy L. Watson

TIMOTHY L. WATSON
REGIONAL DIRECTOR

cc: (b) (6), (b) (7)(C)

SANDY ELLIOTT, HR MANAGER
ASARCO
PO BOX 30200
AMARILLO, TX 79120

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 28-CA-239074	Date Filed April 4, 2019

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Asarco LLC

b. Tel. No.
(520) 879-7818

c. Cell No.

f. Fax No.

d. Address *(Street, city, state, and ZIP code)*
5285 E. Williams Circle
AZ Tucson 85711-____

e. Employer Representative
Stacy Sinele
Coorperate Human Resources

g. e-Mail

h. Number of workers employed
650

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Metal Mining

j. Identify principal product or service
Copper

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* 5 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

--See additional page--

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
(b) (6), (b) (7)(C) Title: (b) (6), (b) (7)(C)
United Steelworkers Local 937

4a. Address *(Street and number, city, state, and ZIP code)*
877 South Alvernon Way
AZ Tucson 85711-____

4b. Tel. No.
(602) 361-1822

4c. Cell No.
(602) 361-1822

4d. Fax No.

4e. e-Mail
(b) (6), (b) (7)(C)

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
United Steelworkers

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By (b) (6), (b) (7)(C)
(signature of representative or person making charge)

Title: (b) (6), (b) (7)(C)
(Print/type name and title or office, if any)

Address 877 South Alvernon Way
Tucson AZ 85711-

04/4/2019 15:20:17
(date)

Tel. No.
(602) 361-1822

Office, if any, Cell No.
(602) 361-1822

Fax No.

e-Mail
(b) (6), (b) (7)(C)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

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Basis of the Charge

8(a)(5)

Within the previous six months, the Employer failed and refused to bargain in good faith with the union as the collective bargaining representative of its employees by failing to furnish information requested by the union.

Date of request	Employer representative	List items requested	Date refused
March 6, 2019	(b) (6), (b) (7)(C)	Absentee training manual used by supervisor	March 26, 2019

NxGen "C" Assignment Sheet

Case Name: Asarco, LLC **Category:** 1

Method of Receipt eFile Date Filed 4-4-19 **Amended Charge?** ☐Yes ☒No

Assign To: Harvey (Supervisor) Choose an item. Choose an item. Choose an item. Scheid (Agent)

Case/Inquiry Number: (b) (6), (b) (7)(C) **Potential 10(j)?** ☐ Yes ☒ No **Related/Blocked Cases:**

Coordination? ☐ Yes ☒ No ☐Cat 3 Organizing ☐**U.S. Postal Information Case Region**

Bargaining Status: ☒Existing Contract ☐Organizational Campaign ☐None ☐Seeking Initial Contract ☐Seeking Successor Contract

CA - 8(a)(1):

☐Coercive Actions (Surveillance, etc.)
☐Coercive Rules
☐Coercive Statements (Threats, Promises of Benefits, etc.)
☒Concerted Activities (Retaliation, Discharge, Discipline)
☐Denial of Access
☐Discharge of supervisor (Parker-Robb Chevrolet)
☐Interrogation (Including Polling)
☐Lawsuits
☐Weingarten

CA - 8(a)(2):

☐Assistance
☐Domination
☐Unlawful Recognition

CA - 8(a)(3):

☐Changes in Terms and Conditions of Employment
☐Discharge (Including Layoff and Refusal to Hire (not salting))
☐Discipline
☐Lockout
☐Refusal to Consider/Hire Applicant (salting only)
☐Refusal to Hire Majority
☐Refusal to Reinstate E'ee/Striker (e.g. Laidlaw)
☐Retaliatory Lawsuit
☐Shutdown or Relocate/Subcontract Unit Work
☐Union Security Related Actions

CA - 8(a)(4):

☐Changes in Terms and Conditions of Employment
☐Discharge (Including Layoff and Refusal to Hire)
☐Discipline
☐Refusal to Reinstate Employee/Striker
☐Shutdown or Relocate/Subcontract Unit Work

CA - 8(a)(5):

☐Alter Ego
☐Failure to Sign Agreement
☐Refusal to Bargain/Bad Faith Bargaining (incl'g surface bargaining/direct dealing)
☒Refusal to Furnish Information
☐Refusal to Recognize
☐Repudiation/Modification of Contract [Sec. 8(d)/Unilateral Changes]
☐Shutdown or Relocate (e.g., First National Maint.) Subcontract Work

CB - 8(b)(1)(A):

☐Coercion, Incl'g Statements and Violence
☐Denial of Access
☐Discipline (including charges/fines)/ Harassment
☐Duty of Fair Representation, incl'g Superseniority, denial of access
☐Hiring Halls
☐Picketing/Strike Actions
☐Rules: Coercive
☐Union Dues and/or Membership Related (including excessing fees)

CB - 8(b)(1)(B):

☐Fund Contribution Related
☐Lawsuits
☐Other Allegations
☐Statements/Threats/Violence

CB - 8(b)(2):

☐Hiring Hall Related
☐Lawsuits
☐Union Security Related Actions
☐Causing the Employer to Discriminate/Retaliate

CB - 8(b)(3):

☐Failure to Sign Agreement
☐Refusal to Bargain/Bad Faith or Surface Bargaining
☐Refusal to Furnish Information
☐Repudiation/Modification of Contract

CB - 8(b)(5):

☐All Allegations

CB - 8(b)(6):

☐All Allegations

CC - 8(b)(4)(A):

☐Lawsuits/Grievances
☐Picketing/Handbilling
☐Statements

CC - 8(b)(4)(B):

☐Lawsuits/Grievances
☐Picketing/Handbilling
☐Statements

CC - 8(b)(4)(C):

☐Lawsuits/Grievances
☐Picketing
☐Statements

CD - 8(b)(4)(D):

☐All Allegations

CD - 8(b)(7)(A):

☐All Allegations

CD - 8(b)(7)(B):

☐All Allegations

CD - 8(b)(7)(C):

☐All Allegations

CE - 8(e):

☐All Allegations against a Labor Organization
☐All Allegations against an Employer

CG - 8(g):

☐All Allegations

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004

Agency Website: www.nlrb.gov
Telephone: (602)640-2160
Fax: (602)640-2178

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April 5, 2019

Stacy Sinele, Corporate Human Resources
Asarco LLC
5285 E. Williams Circle
Tucson, AZ 85711

Re: Asarco LLC
Case 28-CA-239074

Dear Ms. Sinele:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney Kyler A. Scheid whose telephone number is (602)416-4769. If this Board agent is not available, you may contact Supervisory Field Attorney Rachel A. Harvey whose telephone number is (602)416-4748.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board

agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Cornele A. Overstreet
Regional Director

Enclosures:
1. Copy of Charge
2. Commerce Questionnaire

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
2600 North Central Avenue
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April 5, 2019

(b) (6), (b) (7)(C)
United Steelworkers Local 937
877 South Alvernon Way
Tucson, AZ 85711

Re: Asarco LLC
Case 28-CA-239074

Dear (b) (6), (b) (7)(C)

The charge that you filed in this case on April 04, 2019 has been docketed as case number 28-CA-239074. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney Kyler A. Scheid whose telephone number is (602)416-4769. If this Board agent is not available, you may contact Supervisory Field Attorney Rachel A. Harvey whose telephone number is (602)416-4748.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic

documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

CORNELE A. OVERSTREET
Regional Director

cc: Richard J. Brean, General Counsel
United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied
Industrial & Service Workers International Union, AFL-CIO, CLC
Five Gateway Center, Suite 807
60 Boulevard of the Allies
Pittsburgh, PA 15222-1214

UNITED STEELWORKERS

UNITY AND STRENGTH FOR WORKERS

August 10, 2018

(b) (6), (b) (7)(C)
United Steelworkers Local 937
877 South Alvernon Way
Tucson, AZ 85711

Re: Asarco Mission Copper Mine
Case 28-CA-223666

National Labor Relations Board
ATTN: Stefanie J. Parker
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004

Stefanie J. Parker
In relations to our conversation on August 6, 2018, I am sending you a copy of the Basic Labor Agreement (BLA) between Asarco Copper Mine and the Unions. Each property also has a Local Supplemental Agreement (LSA) that is "site specific". I included the Mission Complex LSA.

If there is any other information that is needed in the case, please feel free to contact me.

Regards

(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)

United Steelworkers Local 937
877 South Alvernon Way
Tucson, AZ 85711
(602) 361-1822
(b) (6), (b) (7)(C)

ASARCO LLC
Mission Complex

LOCAL SUPPLEMENTAL AGREEMENT

Effective

September 21, 2017

through

November 30, 2018

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LOCAL SUPPLEMENTAL AGREEMENT
MISSION COMPLEX

ARTICLE I: AGREEMENT

By ASARCO LLC, Mission Complex and the International Union of Operating Engineers, Local 428, United Steelworkers of America, Local 937, International Brotherhood of Electrical Workers, Local 570, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 104.

1. This Local Supplemental Agreement ("Agreement") is between ASARCO LLC and International Union of Operating Engineers, Local 428, United Steelworkers, Local 937, International Brotherhood of Electrical Workers, Local 570, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 104 (the "Union"), and supplements the Basic Labor Agreement ("BLA").

2. The effective date and duration of this Agreement shall be the same as the Effective Date and duration of the BLA.

3. In the event any provision of this Agreement is in conflict with a provision of the BLA, the BLA shall prevail absent the express intent in this Agreement that the particular provision here is intended to supersede the BLA.

ARTICLE II: HOURS OF EMPLOYMENT, SCHEDULES AND OVERTIME

Section 1

1. Schedules showing employees' workdays shall be posted or otherwise be made known to employees not later than 2:00 p.m. Wednesday of the week preceding the calendar week in which the schedule becomes effective. The employee's schedule may be changed during the workweek when the Company needs flexibility due to emergency e.g. work required by conditions which, if not performed, might result in interference with operations, bodily injury or loss or damage to material or equipment and/or acts of God. An employee required to work on his day off shall not be required to lay off on another scheduled work shift during the same workweek.

2. All time worked will be recorded to the nearest one tenth (1/10) of an hour. All overtime must be authorized.

Section 2

Where practical, overtime work will be distributed as equitably as possible within a crew, consistent with the efficient conduct of the operation.

1. An employee required to begin work in advance of his regularly scheduled starting time shall not be required to lay off that day a corresponding interval in advance of his regularly scheduled finishing time.

Section 3

Employees who are unable to report for work at their regular shift starting time shall give as much advance notice as possible to their Supervisor or the Company, unless it is impossible to do so Employees who fail to give notice to the Company that they will be absent, even though the reason may be otherwise excusable may be subject to discipline.

Section 4

An employee who expects to return to work from any absence must notify his Supervisor or the Company, as soon as possible, of the shift on which the employee intends to return to work, unless the employee has made prior arrangements with his Supervisor or the Company when he intends to return to work.

If an employee fails to make prior arrangements in advance before the start of the shift, the employee may be sent home.

Section 5

1. When employees in the same occupational classification are regularly required to perform the same duties on more than one shift, they shall be rotated on an equal basis.
2. Employees assigned to a regular operating crew or maintenance crew on rotation will be permitted to eat lunch while on duty. For those not assigned on rotation, the work shift shall constitute two approximately equal periods totaling eight (8) hours separated by a lunch period of one-half hour during which the employee is relieved of all duties.
3. Where practical, and consistent with efficient operation of the Complex, it is the intent of the Company to allow employees to eat their lunch between the third and fifth hour for shifts lasting 8 hours and to be offered lunch within the first 6 hours for those on extended shifts.
4. Employees coming off a rotating shift cycle to day shift, that are completing the cycle on a day assignment, will be allowed to work an equal number of weeks with a paid lunch. The employee may elect to work one half-hour of overtime or leave the plant after completing 8 hours. For example, an employee working a week on a regular rotation of afternoon, night and day shift (7/2, 7/2 and 6/4, or some variation) would be allowed to work another week with paid lunches to complete the cycle. If the cycle, however, started with the day shift schedule with paid lunch periods, and the cycle is complete when the employee returns to a day shift schedule, s/he is not entitled to additional paid lunches. Employees working straight afternoon or night shifts for extended periods of two weeks or longer will be allowed to return to day shift and work two weeks of days with a paid lunch period. Employees in this situation will also be given the option of working 1/2 hour overtime or leaving work after 8 hours.

ARTICLE III: SENIORITY

Section 1

The seniority list, which will be corrected quarterly each year and following the conclusion of any strike or layoff, will show the names of the employees by the Department and with respect to each employee. Said list will show the following dates:

1. Company Seniority
2. Plant Seniority
3. Departmental Seniority
4. Sub-Departmental or Line Seniority
5. Occupational/craft seniority is defined as an Employee's total unbroken credited length of service in a particular occupation or would have commenced working in such occupation had he not been absent for one of the reasons as provided in Section 7 (2) of this Article unless he moves to a different line of promotion in which event he would forfeit his seniority in the line of promotion vacated.

Each Department list shall be posted in its respective Department. A copy of the complete list shall be given to each of the Unions and Chief Stewards. Lines of Promotion are included in this Agreement as Exhibit B.

Upon review by the Unions and/or Chief Stewards, any and all discrepancies will be corrected within ten (10) business days and a new list will be reposted. It is the responsibility of employees to review the posted seniority list and to notify the Company of any errors within thirty (30) calendar days of posting date.

Section 2

If an employee, now or hereafter, occupies a supervisory position, and is demoted back into the bargaining unit, he shall retain the seniority rating which he had at the time of promotion, if he has not held the supervisory position more than 24 months. If he has held the supervisory position more than 24 months, he may return to an open job or a job at the bottom of the flow line.

Section 3

For the purposes of departmental seniority, the Departments shall be as follows:

1. Open Pit Mining Department
2. Mechanical Department
3. Concentrator Department

Section 4

A permanent vacancy is defined as and limited to: a job left vacant by reason of an employee leaving one job permanently to take another within the Complex, or an employee leaving permanently the employ of the Company, or a new and permanent job created by the Company.

Section 5

If the Company finds it necessary to fill a vacancy, as defined in Section 4 above, it shall be filled in the following sequence:

1. By an employee previously removed from such occupation by a reduction in force.
2. By an employee because of health reasons, who has previously demoted from or is presently demoting to such occupation, as provided in Section 9 of this Article.
3. By an employee in the line of promotion requesting demotion to such occupation, as provided in Section 9 of this Article.
4. By the senior qualified employee next lower in the line of promotion. For the purpose of this provision: the North Mill, South Mill and Shovel and Drill Welder lines of promotion will be separate.
5. If the vacancy cannot be filled as provided above, a notice will be posted plant-wide that will give the occupational classification in which the vacancy exists and shall be posted for eight (8) calendar days and then taken down, closing the period of bidding. An employee wishing to apply for any posted vacancy will do so by presenting written application into the bid box located next to the appropriate bid boards. The job shall be awarded to the senior qualified bidder within the Department.
6. If there are no qualified employees bidding on the posted job vacancy within the Department, the Company will fill the vacancy from the senior (Company Seniority) qualified bidder from another department. Any employee who has bid for a job involving a transfer from one Department to another will be given full consideration for such bid provided he has the qualifications the Company does require were said employee to be hired into the Department from the street.
7. A Bid Box will be available at each bid board. All jobs posted shall be awarded within ten (10) days after the posting period has expired. Qualified employees awarded the bid will be moved to the new job within thirty (30) days. In the event the Company can not fill the awarded job within thirty (30) days, the employee will be paid the higher rate of pay if qualified and applicable.
8. If there are no qualified employees bidding on the posted job vacancy plant-wide, the Company may fill the vacancy from any source.
9. No employee who has worked for the Company for less than one year may apply for an interdepartmental transfer except as set forth below,
10. An employee with less than one year of service and who is demoted for proven physical reasons as certified by a physician as set forth in Section 9 of this Article may be demoted to another Department in less than one year under the following circumstances:

a. He cannot perform his own job for physical reasons.
b. There is no job for which he is qualified within his Department to which he can demote by occupational seniority.
c. There is a job vacancy as set forth in Section 4 above.
d. He is qualified as set forth in Paragraph (6) above.

Section 6

A vacancy other than a permanent vacancy as described in Section 4 above shall be deemed a temporary vacancy. If the Company finds it necessary to fill a temporary vacancy it shall be filled as follows:

1. Any temporary vacancy which can be foreseen by the Supervisor more than eight (8) hours before it is to be filled shall be filled by the senior qualified employee from the line of promotion on the shift involved. In the event said temporary vacancy cannot be foreseen by the Supervisor more than eight (8) hours before it is to be filled, it shall be filled for the first shift or remaining portion thereof in the same manner, provided no delay or impairment of the efficiency of the operations would result. If efficiency is so impaired the temporary vacancy may be filled for the first shift or remaining portion thereof from any source within the Department. In the event said temporary vacancy cannot be filled from any source within the Department, it may then be filled from any source.
2. After the first eight (8) hours and up to forty-five (45) days the vacancy will be filled by the senior qualified employee in the line of promotion on the shift involved. If there is no such qualified employee, the temporary vacancy will be filled from any source.
3. However, if it is anticipated that such a job shall continue for more than forty-five (45) days, it shall be filled as provided in Section 5 as if it were a permanent vacancy.

An employee filling a temporary vacancy shall upon its termination return to the classification from which he was transferred without loss of seniority.

Section 7

1. Selections shall be based on the necessary qualifications such as, but not limited to, skill, ability and experience. Determination of these qualifications shall be made by the Company fairly and in good faith. Standards used by the Company in the selection of qualified employees shall be uniformly applied.
2. A qualified employee returning from any absence except layoff, may, within five (5) working days exercise his seniority to displace an employee his junior who during his absence has filled a permanent vacancy under Section 5 above. An employee so displaced shall return to his former job without loss of seniority.
3. Except for the Leadperson classifications, promotions within the mechanical department lines of promotion shall be granted when the employee becomes qualified.
4. An employee involuntarily by-passed by a junior employee(s) within the mechanical department lines of promotion shall be returned to his/her original seniority with the occupational and line of promotion if he becomes qualified within sixty (60) calendar days from when the Junior employee that bypassed him/her becomes qualified.

5. A senior employee may voluntarily decline in writing to accept an occupation higher in the line of promotion. However, such employee shall not be entitled to regain occupational and line seniority lost as described in Section 8 (2).

Section 8

1. The selected applicant for the vacancy shall be given ten (10) days to demonstrate his ability to satisfactorily perform the job, provided the employee can be removed if he endangers life, limb or property. If such employee fails to satisfactorily perform the job within the said period, he shall be returned to his former job without loss of seniority and must wait for a period of six (6) months before again applying for a job vacancy requiring the same or similar qualifications. Should said employee re-apply for a job vacancy requiring the same or similar qualifications after the six (6) month waiting period and for a second time fails to satisfactorily perform the job within ten (10) days; he shall be disqualified for two (2) years or upon successful completion of an acceptable training program from any future bidding for that job or a vacancy requiring the same or similar qualifications. He will, once again, be returned to his former job.
2. When an employee is promoted or hired past one or more occupations in a line of promotion, he shall acquire occupational seniority dates in the intervening occupations as of the date by-passed.
3. An employee, who has successfully been awarded a job bid may, within ten (10) days of the filling of the bid, voluntarily elect to disqualify himself from such job and return to his former classification without loss of seniority. A person electing to return to his former job under this provision may not again disqualify himself for any other position during the life of the Agreement.
4. A senior employee may voluntarily decline in writing to accept an occupation higher in the line of flow.

Section 9

Except as specifically provided in Section 5 of this Article, an employee may request a demotion to a lower occupational classification in the same line of promotion or to the Labor classification in his or another Department and, if his reasons are justifiable and he has filed a written request with his Department Head, he shall, if qualified in accordance with Section 7 (1) of this Article, be demoted thereto on the basis of his occupational seniority date in such lower occupation. An employee thus demoted shall forfeit all seniority in occupational classifications above the one accepted. His occupational date and Departmental seniority date, where he is transferred to another Department, shall be the effective date of the demotion. An employee demoted for proven physical reasons, certified by a physician, shall retain all seniority.

Section 10

In reduction of the work force, employees affected thereby shall exercise their seniority in the following manner:

1. An employee shall exercise his occupational seniority date to claim a job lower in his line of promotion.
2. In the event the employee cannot remain in his Department by virtue of Section 10 (1), above, he then shall exercise his Company seniority to claim a job as Laborer in any Department, provided he is qualified.
3. In the event an employee is to be reduced from his present occupation due to a reduction of work force, and employees are going to be laid off from the Company, the employee can accept layoff instead of demotion and will be recalled on the basis of his occupational seniority when a vacancy exists in the occupation.

Section 11

When recall takes place, the employee with the greatest plant-wide seniority shall be recalled first and so on, down through the layoff list, providing the employee so recalled has the qualifications to do the work required.

Any employee who has been laid off, but whose seniority has not been terminated in accordance with Section 3, shall keep the Company advised as to his address and will be notified when his services are again required. Such employee shall have five (5) working days from the date of receipt by him of registered or certified notice in which he must notify the Company of his intention to accept employment, and such employee must present himself for employment within fourteen (14) days from the date he notifies the Company of his intent to return to work unless a longer time has been agreed to between the Union and the Company.

It is agreed that a failure on the part of such employee to notify the Company of his acceptance of employment within five (5) working days from the date of receipt by him of such registered or certified notice, or his failure to report for such employment with the fourteen (14) day period from his notification of his intent to return to work unless a longer time has been agreed to between the Union and the Company, he shall be considered to have quit.

ARTICLE IV: HOLIDAYS

At the Mission Complex, the following shall be recognized as holidays:

New Year's Day
Easter Sunday
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Eve Day
Christmas Day
New Year's Eve Day

If Independence Day falls on a Sunday it shall be celebrated on the following Monday. All other holidays shall be celebrated on the day they occur on.

ARTICLE V: VACATIONS

Section 1

An employee who has completed one (1) year or more of employment with the Company and is laid off in a reduction of force shall be eligible for pro rata vacation pay, for each full month worked, on the basis of his having worked at least seventy-five percent (75%) of the working days scheduled by the Company and available to him during the current calendar year. If he is recalled within one (1) year after layoff, he shall receive additional pro rata vacation pay for the period between recall and the end of the calendar year.

The Administration of the vacation provisions will be as follows: Newly hired employees must cross their first anniversary before they are eligible for their first vacation of forty (40) hours, provided they have worked the required number of hours in the preceding anniversary year. This vacation must be taken between the employee's first anniversary date and the upcoming January 1st. On January 1st following his/her first anniversary, s/he is eligible for his second vacation, provided s/he has worked the required number of hours in the preceding calendar year. Thereafter, employees will be eligible for future vacations on each January 1st, provided they meet the required number of hours worked.

When any employee reaches a new eligibility level (40, 80, 120, 160 and 200 hours of vacation entitlement) s/he will be eligible for an additional week on January 1 of the calendar year in which they become eligible. For example, an employee who starts work on July 1, 2006, must work until July 1, 2007 and having worked at least 1040 hours, will be eligible for vacation of one week. That vacation must be used before January 1, 2008. On January 1, 2008, the employee is eligible for his second vacation of forty (40) hours. On January 1, 2009 the employee is eligible for two weeks of vacation since this is the calendar year in which s/he will reach his/her 2 week level.

An employee terminated for any reason other than quit or discharge who is not eligible for a vacation shall receive a pro rata payment based on percent of service to date of termination.

Section 2

In the event of a vacation shutdown, employees who have completed one year of continuous service, or more, will take whatever vacation to which they are entitled, if any, during the shutdown. The amount of vacation entitlement shall be based on the years of continuous service reached during the year in which the shutdown takes place. An employee who has not completed one year of continuous service, or an employee with more than one year of continuous service who has not completed his 1,040 hours worked requirement at the time of the shutdown, shall not receive any vacation at that time. Said employee shall receive his vacation after he has qualified for same in accordance with the Basic Labor Agreement. Employees who take their vacation during the shutdown shall be paid their vacation pay at the time of the shutdown.

ARTICLE VI: WAGES

Section 1

Whenever an employee is called off his regular assignment to perform work for which a lower rate is paid, he shall receive his usual rate for all time worked that day. If the other work is classed at a higher rate, he shall receive the rates applicable to the different classes of work performed, unless four (4) or more hours are worked at the higher rate, in which event he shall receive the higher rate for the full shift.

ARTICLE VII: GRIEVANCE AND ARBITRATION PROCEDURE

Section 1

The Company shall recognize four (4) Chief Stewards, one each for the Unions signatory hereto. The four Stewards so designated shall constitute the Grievance Committee. If the Union selects additional Stewards, an authorized Officer thereof shall promptly certify such selection(s) to the Company and promptly thereafter as changes are made. The four (4) Chief Stewards shall be assigned to the day shift.

Section 2

After the probationary period shall have elapsed, no employee shall be discharged or disciplined without just cause.

If an employee is placed on investigatory leave or suspension he/she and the four (4) designated Chief Stewards shall be given notice of the reason for same within forty-eight (48) hours, Saturday, Sunday and holidays excepted.

Section 3

The Basic Labor Agreement, Article 5 Workplace Procedure, Section I Adjustment of Grievances, Paragraph 3 (e) will be supplemented to include:

The Union involved, either by the Business Representative or Chief Steward representing the employee / complaint, may request Arbitration. The Union involved will be identified in the numbering of the grievance.

ARTICLE VIII: PERSONAL LEAVE

The Company shall not be expected to grant leaves of absence except for good cause. It is understood that leaves of absence are not granted for the purpose of engaging in other employment, and employees using leaves of absence for such purpose shall be subject to discharge.

Section 1

A request for permission to lay off work without pay for personal reasons up to five (5) days shall be arranged with an employee's Department Head.

Section 2

The following applies to employees not eligible for leave under the Family Medical Leave Act. A leave of absence without pay for a legitimate cause may be granted for up to thirty (30) days without loss of seniority. Such leaves of absence shall be applied for in writing and shall be subject to approval by the General Manager. Under extreme hardship situations, this leave may be extended at the discretion of the General Manager for an additional thirty (30) days.

ARTICLE IX: PHYSICAL EXAMINATIONS

All candidates for employment, or re-employment, and after curtailment, must pass a pre-employment physical and medical examination which includes a Drug and Alcohol test, and the Company may require periodic examinations of all employees. The Company will pay for all such physical or medical examinations and periodic physicals will be taken on Company time.

ARTICLE X: VIOLATION OF SAFETY RULES

The Union agrees that the discharge of any employee for willful violation of safety laws, State and Federal mining laws, or safety rules and regulations promulgated by the Company, shall not be the subject of a grievance, except as to fact.

Rules of Conduct will be made known to all employees through posting on Company bulletin boards.

ARTICLE XI: APPLICATION

If any provisions of this **SUPPLEMENT** shall be in conflict with or in violation of any applicable State or Federal Law, such provision shall be inoperative and of no effect, but shall not affect the remaining provisions hereof.

ARTICLE XII: MISCELLANEOUS PROVISIONS

1. When it is discovered that an employee is paying union dues to two different unions simultaneously, the respective unions will be notified so that a determination of the proper union affiliation can be made. Union dues will be deducted from only the initial union until the Company is notified of the determination in writing, by letter signed by the business agents (sub-district representatives) of both unions.
2. The Company has provided the Union with copies of the tool lists for plant repairmen, mill repairmen, welders, mechanics, shovel repairmen and electricians. For existing employees, tools on the list are required and the employee is expected to obtain these tools if needed to do the job, without reimbursement. The Company will notify the Union of any future changes in the tool lists. Mutual agreement is not required. If the Company elects to change these lists, it will pay 50%

of the cost of any additional tools required of employees already working in these jobs at the time of the change. Employees are to submit a receipt to the Company for reimbursement of 50% of the cost of the tool(s). Employees hired or promoted into these jobs will be responsible for obtaining all the tools on the tool list in effect at the time they are hired/promoted. It is not the company's intent to require the employees to pay for tools currently provided by the Company.

3. The Company will commit to reasonable and necessary repairs of the change room to be completed in a reasonable period of time.
4. The Company will provide a stand with sign-up sheets for donations at both the North and South guard house areas.
5. The employee will receive a copy of any written warning prior to it being placed in any file.
6. The Company will pay grievance settlements during the next pay cycle.
7. A copy of the bid sheet and the bid award for plant vacancies will be given to all four (4) Chief Stewards.
8. If an employee is off when vacation requests are distributed, a request will be mailed to the employee and it must be returned to the Company by the specified due date.
9. The Tails Dam Operator position will remain in the same line of promotion, but will be paid as a "man" position.
10. The Company will continue to monitor water used by employees for washing and drinking.
11. The Company agrees to provide Port-A-Johns along with "Scrubs in a Bucket" in the mine.
12. For Mill Repair, and Mine Maintenance Personnel: Truck Shop, Weld Shop, Lube Center, Tire Shop and Shovel Repair, the following procedure will be used for selection of holiday work:

    A notice requesting volunteers will be posted 21 days in advance of all holidays whether or not there is any intention at the time of the posting to actually have maintenance personnel work on the holiday. If maintenance personnel are required to work, employees requesting specific shifts will be assigned their requested shift in sequence of Classification Seniority. It is the Company's intent, however, not to allow employees to "double" (work double shifts) unless no other options are available.

    In the event sufficient volunteers are not available, management will first schedule those junior qualified employees, who would have otherwise been scheduled to work those shifts, by class seniority. Thereafter, employees within the classification from all shifts will be scheduled from the junior (class seniority) qualified employees to the most senior qualified employees as needed.

13. The Company will indicate, either on the paycheck or by notice in the paycheck, that a grievance settlement has been paid.
14. When a holiday falls at the end of a pay period, employees will be paid holiday pay in the pay period in which the holiday occurs. In the event the employee does not qualify for holiday pay, the holiday pay will be recovered by the Company.
15. The defined shift starting times in the contract will be waived when a supervisor allows an employee to start his/her shift prior to or later than these times. The supervisor will allow early or late starts only if he/she can properly manage his/her workload and the employees within his/her work group. If the employee's supervisor is not on the property, the employee will know ahead of time who he/she should report to, if he/she requires supervisory assistance. In all cases, an

employee who begins his/her shift prior to or later than his/her work group will sign the Early/Late Shift Log at the guard house when he/she reports for work.

16. The Company will provide an alternate low sodium, low fat emergency lunch for those employees whose diet requires it.
17. Prior arrangements for partial shift absence to be administered on an individual request basis.
18. Requests for Union Leave for partial shifts to be honored on the same basis as Union leave for full shifts are currently administered provided 24 hours advance notice, when practicable, is presented to Human Resources.
19. The Company agrees to handle clothing as follows:
    a. Shovel repair maintain present practice.
    b. Wash pads. The Company will supply rubber boots and rain suits.
    c. Steam pads. The Company will supply rubber boots and rain suits.
    d. Battery Shop. The Company will supply a rubber apron.
20. The Company will continue its practice of furnishing transportation for employees working unscheduled overtime.
21. The Company agrees to maintain its practice and criterion of mailing pay checks to the employee's homes.
22. The Company agrees that it will select the senior acceptable truck drivers for water truck assignments on each shift. On the afternoon and night shifts the senior acceptable truck driver will drive a water truck when he works. If the senior acceptable truck driver does not work on his shift, the next senior acceptable driver on that shift will drive the water truck.
23. The Company and Union agree that incremental vacation days can be used in conjunction with a holiday.
24. Employees required to remain on the job until relieved shall be allowed to relieve each other ("buddy relief") in accordance with procedures established between the management and Union, up to 30 minutes prior to the scheduled end of the turn provided the Employee has worked their scheduled total hours.
25. When a decrease of force is affected, the Local Union President/Unit Chair and all Chief Stewards shall if they would otherwise be laid off be retained at the lowest rated job in the unit that they represent. The intent of this provision is to retain in active employment individuals who can provide continuity in the administration of the Agreement; provided that an individual shall not be retained in employment unless work which s/he can perform is available.
26. A locked bid board will be placed in an acceptable position near each of the change houses.
27. The Company shall provide a Joint Safety Committee bulletin board located near every change house to supply current safety related information. The Company shall post a miner safety representative and shop steward list on the Joint Safety Committee bulletin board. The Union will ensure that the Safety Department receives timely updates of the miner safety representative and steward lists.

IN WITNESS WHEREOF, said parties have caused this Agreement to be executed in their names by their duly authorized representatives this 21st day of September, 2017.

ASARCO LLC

Manuel Ramos
President & Chief Operating Officer

Tom Phillips
General Manager

Agustin Trevino
Corporate Director, Human Resources

Stacy Sinele
Corporate Labor & Employee Relations Manager

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC

Manny Armenta, Sr.
Sub-District Director, USW

Eduardo Placencio
President, USW Local 937

Kevin Stephens
Committee Member, USW Local 937

International Brotherhood of Electrical Workers

Troy Worrell
Unit Chair, IBEW Local 570

International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 104

Kevin Hampton
Mission Unit Chair, IBT Local 104

International Union of Operating Engineers, Local 428

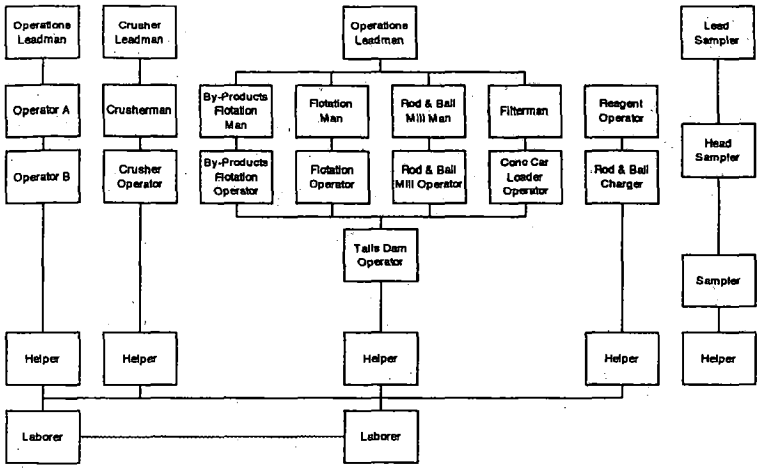
Tim Davies
Unit Chair

EXHIBIT A
Wage Standardization Rates

Job Title	Pay Rate
Laborer A (up to 1040 hours)	16.75
Laborer B (1040 hours to 2080 hours)	17.25
Laborer C (more than 2080 hours)	17.75
Helper	18.75
Light Equipment Operator, Light Truck Driver, Powder Truck Driver, Shovel Oiler A	19.75
Powderman, Sampler, Town Truck Driver, Warehouse Counterman	20.25
By-Products Floatation Operator, Concrete Car Loader Operator, Crusher Operator, Floatation Operator, Lubeman, Operator B, Pit Utility Man, Rod & Ball Charger, Rod & Ball Mill Operator, Shovel Oiler B, Water Truck Driver, Travel Drill Operator	20.75
Head Sampler, Electrician 2nd Class, Field Lubeman, Machinist 2nd Class, Mechanic 2nd Class, Mill Repairman 2nd Class, Plant Repairman 2nd Class, Shovel Repairman 2nd Class, Welder 2nd Class	21.25
By-Products Flotationman, Crusherman, Filterman, Flotatioman, Heavy Truck Driver, Highway Truck Driver, Operator A, Reagent Operator, Rod & Ball Mill Man, Tailings Dam Operator	21.75
Clean-Up Loader Operator, Dozer Operator, Equipment Operator (Mobile Crane, Batch Plant, Back Hoe, 2 ¾ Yd. Front End Loader, Dozer), , Lube Leadman, Motor Grader Operator, Powder Crew Leadman, Plant Repairman 1st Class, Tireman, Warehouse Leadman, Lead Sampler	22.25
Scraper Operator, Truck Driver Instructor, Rotary Drill Operator	22.75
Plant Repair Leadman, Tire Shop Leadman, Leadman Crusher	23.25
Electrician 1st Class, Instrumentation 1st Class, Machinist 1st Class, Mechanic 1st Class, Mill Repairman 1st Class, Shovel Repairman 1st Class, Welder 1st Class	23.75
Pit Production-Front End Loader Operator, Shovel Operator	24.25
Diesel Mechanic Leadman, Electrician Leadman, Instrument Leadman, Machinist Leadman, Mill Repair Leadman, Shovel Repair Leadman, Welder Leadman	24.75
Electrical Tech	25.25

EXHIBIT B

Lines of Promotion
CONCENTRATOR DEPARTMENT



Note 1: Lateral bidding in the MID (by-products, flotation, grinding, filter) is permitted once during the life of the contract to the senior qualified applicant.

Note 2: For permanent vacancies only, bidding into another line of progression within the department is permitted once during the life of the contract at the Helper level. Temporary Helper positions, including 40-5 (45) days or longer, will be filled by the senior qualified employee by the laborer's classification.

EXHIBIT B

Lines of Promotion
MECHANICAL DEPARTMENT

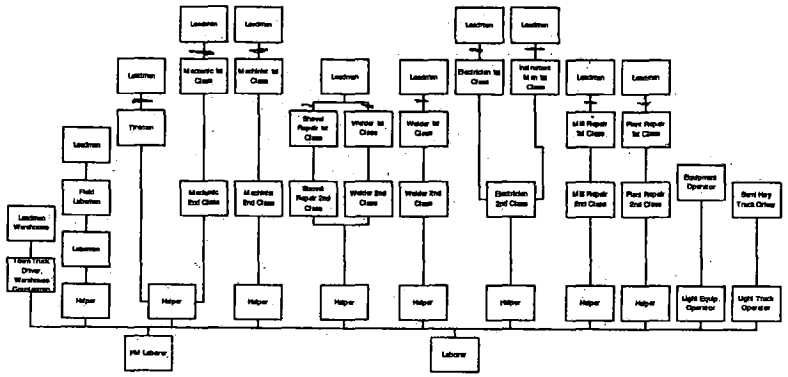
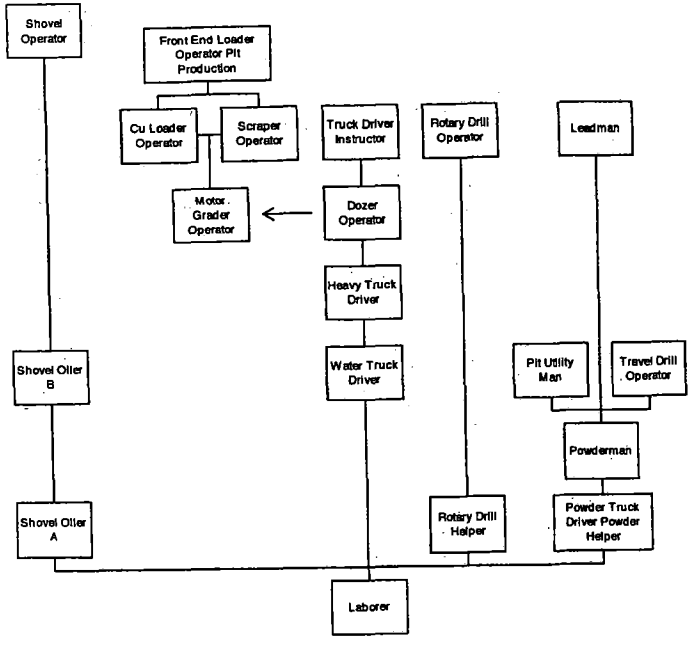


EXHIBIT B

Lines of Promotion
MINING DEPARTMENT



LETTER OF ADMININSTRATION ON OVERTIME AND OVERTIME DISTRIBUTION

1. The Company will continue its practice with regard to nonscheduled overtime work. i.e., where it is practical to secure qualified volunteers overtime will be assigned on that basis. However, the Company reserves the right, as in the past, to assign employees non-scheduled overtime when there are no volunteers readily available.

2. The Company will endeavor to distribute overtime as equitable as practical within the appropriate crews. However, there will be no more than a 32 hour disparity [36 hour disparity for extended Shifts] in overtime within the applicable crews.

3. An overtime board will be established and kept current in each department. At least every three months, the person with the lowest amount of overtime will be reduced to zero and all other employees will be reduced a like amount.

4. Employees who refuse overtime will be credited as if it had been worked.

5. Employees absent for any reason in excess of 35 days, holidays excepted, who otherwise would have been requested to work overtime, will be charged with the appropriate number of overtime hours as if it had been worked.

6. An employee who comes into a particular crew will be assigned the highest amount of overtime in that crew.

7. Employees who do not wish to be considered for distribution of overtime may withdraw their name from the overtime board by submitting a written request to the department head. Such employee may only be requested to work overtime when there are no other volunteers readily available.

8. If the Company cannot obtain employees for voluntary overtime from the crew, the least senior person in the crew will be forced until he/she reaches a total of eight (8) hours (12 hours for extended shifts) in one week. If forcing continues to be necessary, the Company will work through the crew based on seniority. If all the people within the crew have been forced to work overtime to the maximum eight (8) (12 hours for extended shifts) hour limit, and the workload requires additional forcing of overtime, the Company will start again with the least senior man in the crew. This is not to be confused with scheduled overtime.

9. The overtime board for the welding group will be split into two crews; shovel repair welders and all other welders.

LETTER OF ADMINISTRATION OF VACATION

The administration of our vacation provision for Silver Bell Mining LLC and Mission Complex will be as follows: Newly hired employees must cross their first anniversary before they are eligible for their first vacation of forty (40) hours, provided they have worked the required number of hours in the preceding anniversary year. This vacation must be taken between the employee's first anniversary date and the upcoming January 1st. On January 1st following his/her first anniversary date, s/he is eligible for his second vacation, provided s/he has worked the required number of hours in the preceding calendar year. Thereafter, employees will be eligible for future vacations on each January 1st, provided they meet the required number of hours worked.

When any employee reaches a new eligibility level (40, 80, 120, 160 and 200 hours of vacation entitlement) s/he will be eligible for the additional week on January 1 of the calendar year in which they become eligible. For example, an employee who starts work on July 1, 2006, must work until July 1, 2007 and, having worked at least 1040 hours, will be eligible for vacation of one week. That vacation must be used before January 1, 2008, unless the General Manager has agreed to a longer time. On January 1, 2008, the employee is eligible for his second vacation of forty (40) hours. On January 1, 2009, the employee is eligible for two weeks of vacation since this is the calendar year in which s/he will reach his/hers 2 week level.

LETTER OF AGREEMENT
POWDER CREW LOADER OPERATOR

This Letter of Understanding is to clarify the position of powder crew loader operator. The position covers the use of a small loader to load stemming material in small haulage trucks. The letter will provide the guidelines for this position.

1. The position will be filled from the powderman line of flow and will be filled by the senior operator.

2. The position will be paid at "clean up loader" rate.

LETTER OF UNDERSTANDING - MISSION NON-POSITIVE RELIEF EMPLOYEES

This letter will confirm the parties' agreement regarding certain time keeping devices and time clock practices as provided in Company's Proposal CP 26.2 (regarding BLA Article 5, Section C, Subsection 6) at Mission. The Company agrees that non-positive relief employees at Mission shall be allowed to clock in at the Mission pit operations office, and clock out 5 minutes prior to the end of the shift at their respective departmental stations. Further, the Union agrees to withdraw and dismiss with prejudice its pending Grievance Numbers 12-09 and 10-53 regarding shower time and donning and doffing.

Further the parties agree that should time clock issues arise in the future regarding non-positive relief employees at Mission they will meet and discuss such issues.

LETTER OF UNDERSTANDING
SHOVEL AND DRILL WELDER
LINE OF PROMOTION

The Shovel and Drill Line of Promotion will have a separate line of promotion for welder classifications. Any welder vacancies in the Shovel and Drill Line of Promotion of one scheduled shift or less will be filled from that line of promotion. If a scheduled off shift welders from Shovel and Drill are unavailable or if the vacancy exceeds one shift the current language in the Local Supplemental Agreement Article III, Section 6 will prevail.

In the event a reduction of work force occurs, the current language in the Local Supplemental Agreement Article III, Section 10 will prevail.

LETTER OF UNDERSTANDING
STRAIGHT DAY / LEADPERSON POSITIONS
SOUTH MILL MAINTENANCE

To promote consistency and training among crews at the South Mill and North Mills; the Company acknowledges the following straight day Leadperson position(s).

The Company reserves the right to staff these position(s) based on the following criteria:

Knowledge of repair procedures

Ability and leadership skills

Extensive experience in the area(s) described below

Promotions to the classification of leadperson shall be based upon seniority and qualifications. Where qualifications are substantially equal, seniority will govern. The Company shall determine qualifications. These positions will be filled by the existing employees, and if any current and / or future vacancies exist, the position(s) will be offered by the criteria set forth above. Assignment to the area will be at the sole discretion of supervision. The initial breakdowns of straight day Leadperson positions by area are as follows:

South Mill Maintenance	Classification	Anticipated Need(s)
Crusher / Conveyor	Straight Day / Leadperson	One (1)
Grind / Floatation	Straight Day / Leadperson	One (1)
Electrician	Straight Day / Leadperson	One (1)
Pump Rebuild	Straight Day	One (1)
Oiler(s)	Straight Day	Two (2)
Tool Room	Straight Day	One (1)

Article 2; Section A; 8 (Leadpersons) language of the Basic Labor Agreement (BLA) or the applicable BLA successor language will apply to any bargaining unit employee designated in such said capacity.

Management reserves the right to change and or modify these shifts / positions due to operational and/or departmental needs. In addition, Management agrees to include the PACT Union Leadership in a meeting to explain the justification for any and all changes.

LETTER OF UNDERSTANDING REGARDING NORTH MILL TRAINING PROGRAM

Area	Trainer	Leadperson	Straight Day Positions
Primary/secondary crushers	1	1	2 Oilers
Mill	1	1 Mechanical / 1 Welding	0
Rubber shop	1	2	0
Pump shop	1	1	2 Oilers / 1 Pump Packer
Flotation deck	1	1	0
Moly/Filter Plant	1	1	0
TOTAL	**6**	**8**	**5**

GUIDELINES:

1. Due to the labor intensive complexity of the North Mill, the intent of this training program is to develop and train the 2nd class and helper positions in the proper standard operating procedures for the repairs required in their areas.

2. Management reserves the right to staff the trainer positions based on the following criteria:
   - Seniority
   - Knowledge of area training to be performed in.
   - Ability to instruct related to the specific training criteria.
   - Experience related to the standard operating repair procedures.

3. The General Supervisor of the North Mill Maintenance department will generate a list of training needs specific to the different areas:
   a. Primary/secondary crushers
   b. Mill
   c. Rubber shop
   d. Pump shop
   e. Flotation deck
   f. Moly/Filter Plant

4. The General Supervisor of the North Mill Maintenance department will manage the following key aspects of the training program:
   a. Participation of management and employees.
   b. Design a KPI to track the performance of each individual in the program.
   c. Based on performance of workforce, define weak points and training requirements per individual.
   d. Introduce technical training programs based on the needs of each area in the North Mill, utilizing outside entities to provide the initial technical training.

5. Management reserves the right to change and or modify this training program due to operational and/or departmental needs. In addition, Management agrees to include the PACT Union Leadership in a meeting to explain the justifications for any and all changes regarding the training program.

Agreement

Between

Asarco LLC

and the

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC

International Brotherhood of Electrical Workers, Locals 518, 570; and 602

International Association of Machinists and Aerospace Workers, Local 519

International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith, Forgers and Helpers, Local 627

International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 104

International Union of Operating Engineers, Local 428

United Brotherhood of Carpenters & Joiners of America, Local 1912 and

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

September 21, 2017 through November 30, 2018

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Article 1. Agreement

Section A. Parties to the Agreement

1. This Agreement (the Basic Labor Agreement, BLA or the Agreement), is between Asarco LLC (Asarco or the Company) and the following Unions or their successors (the Union) on behalf of the Employees of the Company:

   a. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (USW);

   b. International Brotherhood of Electrical Workers, Locals 518, 570; and 602;

   c. International Association of Machinists and Aerospace Workers, Local 519;

   d. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith, Forgers and Helpers, Local 627;

   e. International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 104;

   f. International Union of Operating Engineers, Local 428;

   g. United Brotherhood of Carpenters and & Joiners of America, Local 1912; and

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

2. "Agreement" shall mean this contract and all other agreements, including any and all benefits agreements, memoranda of understanding, letters of agreement and local supplemental agreements. References to the male gender herein also refer to the female gender unless otherwise required by the context.

Article 1. Agreement

Section B. Term of the Agreement

1. The effective date of the Agreement shall be September 21, 2017 (the Effective Date).

2. Except as otherwise provided below, this Basic Labor Agreement, the Pension Agreement, all Local Supplemental Agreements (set out in free-standing booklets), and all MOU's and LOU's that are reproduced at the back of the BLA booklet, shall terminate at the expiration of sixty (60) days after either party shall give written notice of termination to the other party, but in any event shall not terminate earlier than November 30, 2018 (the Termination Date). This paragraph will supersede any contrary expiration, termination or notice provision of any of those agreements other than the Basic Labor Agreement.

3. Any notice to be given under this Agreement shall be given by certified mail and shall be postmarked by the required date. Mailing of notice to the Company should be addressed to Asarco, 5285 E. Williams Circle, Suite 2000, Tucson, Arizona 85711. Mailing of notice to the Unions should be addressed to:

   (1) the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Five Gateway Center, Pittsburgh, Pennsylvania 15222;

   (2) International Brotherhood of Electrical Workers, Local 518, P.O. Box 88, Globe, Arizona 85502;

   (3) International Brotherhood of Electrical Workers, Local 570, 750 South Tucson Blvd., Tucson, Arizona 85716;

   (4) International Brotherhood of Electrical Workers, Local 602, P.O. Box 143, Amarillo, Texas 79105;

   (5) International Association of Machinists and Aerospace Workers, Local 519, 3117 North 16th Street, Suite 210, Phoenix, Arizona 85016;

   (6) International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith, Forgers and Helpers, Local 627, P.O. Box 13268, Phoenix, Arizona 85002;

   (7) International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 104, 238 West Elm, Tucson, Arizona 85705;

   (8) International Union of Operating Engineers, Local 428, 6601 North Black Canyon Highway, Phoenix, Arizona 85015;

   (9) United Brotherhood of Carpenters & Joiners of America, Local 1912, 4547 W. McDowell, Phoenix, Arizona 85035; and

(10) United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 469, 3189 North 24th Street, Phoenix, Arizona 85016.

b. Either party may, by like written notice, change the address to which certified mail notice shall be given.

Article 2. Union Security

Section A. Recognition and Coverage

1. The Company recognizes:

   a. the USW; International Union of Operating Engineers, Local 428; International Brotherhood of Electrical Workers, Local 570; and International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 104; as the exclusive joint representative of a bargaining unit made up of employees at the Mission Complex as certified by the National Labor Relations Board ("NLRB") in Case No. 28-RC-3311 dated June 27, 1977;

   b. the International Brotherhood of Electrical Workers, Local 518, as the sole bargaining agent for all of its employees in the Electrical Department and Powerhouse at the Hayden Smelter in accordance with Certification of the NLRB of August 15, 1949, Case No. 21-RC-818 and September 4, 1953, Case No. 21-RC-3069; all other employees at that location are excluded from representation by Local 518;

   c. the USW as the sole bargaining agent for its production and maintenance employees at the Hayden Smelter in accordance with the Certification of the National Labor Relations Board of June 12, 1951, Case No. 21-RC-1941. Hourly-paid Employee(s) assigned to the Warehouse will be recognized as being part of the bargaining unit but such assignment(s), if any, shall be at the discretion of the Company. Executive, administrative, technical employees, supervisors, assistant supervisors, engineers, metallurgists, chemists, assayers, secretaries, clerks, accountants, auditors, watchmen, electricians, electrician helpers and electrician apprentices, powerhouse operators, powerhouse utilitymen and powerhouse helpers are excluded from representation by the USW;

   d. the International Brotherhood of Electrical Workers, Local 602 as the sole bargaining agent for all the skilled electricians and apprentices employed in the Amarillo Copper Refinery as certified by the NLRB in Case No. 16-RC-7100 and 16-RC-7108 dated May 5, 1976;

   e. the USW as the sole bargaining agent for its production and maintenance employees at the Amarillo Copper Refinery as certified by the NLRB in Case No. 16-RC-7100 and 16-RC-7108 dated May 5, 1976;

   f. the unions in this subparagraph f are recognized as the sole collective bargaining representatives for all Employees covered by this Agreement at the Ray Complex in their respective units. The Employees so covered shall be only those employed in the job classifications set forth in the local supplemental agreement, at the Company's Concentrator and Smelter Plants located at Hayden, Arizona and the Mines Plant located at Ray, Arizona. The NLRB certification numbers for the appropriate bargaining units, covered by this Agreement are as follows: USW Local 5252, 915 and 886-02: 28-RC-974 and 28-RC-5088; International Association of Machinists

and Aerospace Workers (IAM) Local 519: 28-RC-856 and 28-RC-5091; International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers (Boilermakers) Local 627: 28-RC-857; United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (UA) Local 469: 28-RC-858; United Brotherhood of Carpenters & Joiners of America, Local 1912: 28-RC-863; International Brotherhood of Electrical Workers (IBEW) Local 518: 21-RC-769 and 28-RC-5099; and

g. the USW as the exclusive bargaining agent for all employees of its Silver Bell Mining, L.L.C., who come under the jurisdiction of the USW for the purpose of collective bargaining.

2. Individuals in the bargaining unit shall be referred to in this Agreement as "Employees." Individuals who are employed by the Company and are not in the bargaining unit shall be referred to as "non-bargaining unit employees." Individuals who are in the bargaining unit and those who are not in the bargaining unit shall be collectively referred to as "employees."

3. Except as expressly provided herein, the provisions of this BLA constitute the sole procedure for the processing and settlement of any claim by an Employee or the Union of a violation by the Company of this Agreement. As the representative of the Employees, the Union may process grievances through the grievance procedure, including arbitration, in accordance with this BLA or may adjust or settle same.

4. When the Company establishes a new or changed job whose duties include a material level of production or maintenance work; the resulting job shall be considered a job covered within the bargaining unit; provided that where non-bargaining unit duties are added to a job in the bargaining unit on a temporary basis, they may be withdrawn.

5. It is understood that supervisors at a plant shall not perform work on a job normally performed by the bargaining unit except:

   a. experimental work;

   b. demonstration work performed for the purpose of instructing and training Employees; and

   c. work required by conditions which, if not performed, might result in interference with operations, bodily injury or loss or damage to material or equipment.

6. If a supervisor or other non-bargaining unit employee performs work in violation of Paragraph 5 and the Employee who otherwise would have performed this work can reasonably be identified, the Company shall pay such Employee his/her applicable Regular Rate of Pay for the time involved or for one (1) hour, whichever is greater.

7. Day-Pay Supervisors

   a. Day-Pay Supervisors are Employees assigned at the discretion of the Company as temporary foreman or supervisor. A Day-Pay Supervisor will not issue discipline to Employees, provided that this provision will not prevent a Day-Pay Supervisor or supervisor from relieving an Employee from work for the balance of the shift for alleged misconduct. An Employee will not be called by either party in the grievance procedure or arbitration to testify as a witness regarding any events involving discipline which occurred while the Employee was assigned as a temporary foreman or supervisor.

   b. On a monthly basis, the Company will provide the Union with a listing of those Employees who have been temporarily assigned to supervisory positions during the previous month. Such listing shall include the number of supervisory shifts worked during that month.

   c. Day-Pay supervisors shall have essentially the same duties and responsibilities as a salaried supervisor, except that they will not have the authority to hire, fire or discipline employees nor recommend same, provided that this provision will not prevent a Day-Pay Supervisor from relieving an Employee from work for the balance of the shift for alleged misconduct.

8. Leadpersons

   a. During the term of this Agreement, the Company will make every effort, when appropriate, to utilize working leadpersons in lieu of day pay supervisors in their work area and on their regular shift, provided the leadperson has demonstrated the necessary leadership skills.

   b. A leadperson will direct, oversee and assist a work crew in addition to his/her assigned work.

   c. The Company will provide the training necessary for the leadperson to perform his/her duties which may include warehouse requisition, work order entry and closure, on-line requisition entry and timekeeping. Nothing herein shall be construed to mean that these tasks are exclusively bargaining unit work.

   d. Leadpersons shall not have the authority to discipline, terminate or make recommendations for disciplinary or termination actions.

   e. Leadpersons will be paid the greater of:

      (1) one-level above the highest level of the employees the leadperson is leading, or

      (2) $1.00 per hour above their regular wage level.

f. Promotions to the classification of leadperson shall be based on seniority and qualifications. Where qualifications are substantially equal, seniority shall govern. The Company shall determine qualifications. In the event a junior person is selected to fill a leadperson position, the Union may file a grievance over the Company's determination of qualifications.

g. The parties agree that in the event the National Labor Relations Board or the courts issue any decision(s) placing in question the supervisory status, as defined under the National Labor Relations Act, of any bargaining unit leadman classification, then the parties will, if necessary, modify the duties and responsibilities of said classification so that said classification remains a bargaining unit position.

Article 2. Union Security

Section B. Union Membership and Dues Checkoff

1. The Company will check off dues or service charges each payroll period, including, where applicable, initiation fees and assessments, each in amounts as designated by the International Union Secretary-Treasurer, effective upon receipt of individually signed voluntary checkoff authorization cards. The Company shall within thirty (30) days remit any and all amounts so deducted to the International Union Secretary-Treasurer (or equivalent) with a completed summary of USW Form R-115 (or its equivalent).

2. At the time of employment, the Company will advise each new Employee that s/he may voluntarily execute an authorization for the checkoff of amounts due or to be due under Paragraph 1. A copy of the card will be forwarded at the time of signing to the Financial Secretary of the Local Union.

3. To the extent available through the Company's Information System, the Union will be notified of the amount transmitted for each authorizing Employee (including the hours and earnings used in the calculation of such amount) and, where applicable, the reason for non-transmission with respect to any Employee formerly on checkoff, such as in the case of interplant transfer, layoff, discharge, resignation, leave of absence, sick leave, retirement, death or insufficient earnings.

4. The Union shall indemnify the Company and hold it harmless against any and all claims, demands, suits and liabilities that shall arise out of or by reason of any action taken by the Company for the purpose of complying with the foregoing provisions.

Article 2. Union Security

Section C. PAC and SOAR Checkoff

1. The Company will deduct Political Action Committee (PAC) contributions for active Employees who have submitted authorization for such deductions from their wages and for retirees who have submitted authorization for such deductions from their pension. Such deductions shall be on a form reasonably acceptable to the Company and shall be promptly remitted to the Secretary-Treasurer of the Union's PAC Fund.

2. For retirees who are or wish to become members of the Steelworkers Organization of Active Retirees (SOAR) (or equivalent for other Unions) and who have submitted authorization for such deductions from their pension, the Company will deduct monthly SOAR dues from their pension. Such deductions shall be on a form reasonably acceptable to the Company and shall be promptly remitted to the International Union Secretary-Treasurer.

Article 2. Union Security

Section D. Successorship

1. The Company agrees that it will not sell, convey, assign or otherwise transfer, using any form of transaction, any facility, plant or significant part thereof covered by this Agreement (any of the foregoing, a Sale) to any other party (Buyer), unless, prior to the closing date of the Sale, the Buyer shall accept and assume all obligations of this Agreement effective as of the closing date of the Sale.

2. This Section is not intended to apply to any transactions solely between the Company and any of its affiliates.

3. This Section shall not apply to a public offering of registered securities.

4. Notwithstanding the provisions of the Term of the Agreement, this Section shall expire one (1) year after the Termination Date.

Article 2. Union Security

Section E. Neutrality

1. Introduction

The Company and the Union have developed a constructive and harmonious relationship built on trust, integrity and mutual respect. The parties place a high value on the continuation and improvement of that relationship.

2. Neutrality

a. To underscore the Company's commitment in this matter, it agrees to adopt a position of Neutrality regarding the unionization of any hourly-paid production and maintenance employees of the Company in the United States and Canada.

b. Neutrality means that, except as explicitly provided herein, the Company will not in any way, directly or indirectly, involve itself in any matter which involves the unionization of its employees, including but not limited to efforts by the Union to represent the Company's employees or efforts by its employees to investigate or pursue unionization.

c. The Company's commitment to remain neutral as defined above may only cease upon the Company demonstrating to the arbitrator under Paragraph 5 below that in connection with an Organizing Campaign (as defined in Paragraphs 3(a) through 3(c) below) the Union is intentionally or repeatedly (after having the matter called to the Union's attention) materially misrepresenting to the employees the facts surrounding their employment or is unfairly demeaning the integrity or character of the Company or its representatives.

3. Organizing Procedures

a. Prior to the Union distributing authorization cards to non-represented employees at a facility owned, controlled or operated by the Company, the Union shall provide the Company with written notification (Written Notification) that an organizing campaign (Organizing Campaign) will begin. The Written Notification will include a description of the proposed bargaining unit.

b. The Organizing Campaign shall begin immediately upon provision of Written Notification and continue until the earliest of: (1) the Union gaining recognition under Paragraph 3(d)(5) or; (2) written notification by the Union that it wishes to discontinue the Organizing Campaign.

c. Upon Written Notification the following shall occur:

(1) Notice Posting

The Company shall post a notice on all bulletin boards of the facility where notices are customarily posted as soon as the Unit Determination Procedure in Paragraph 3(d)(3) below is completed. This notice shall read as follows:

"NOTICE TO EMPLOYEES

We have been formally advised that the United Steelworkers is conducting an organizing campaign among certain of our employees. This is to advise you that:

1. The Company does not oppose collective bargaining or the unionization of our employees.

2. The choice of whether or not to be represented by a union is yours alone to make.

3. We will not interfere in any way with your exercise of that choice.

4. In their conduct of the organizing effort, the Union and its representatives are prohibited from misrepresenting the facts surrounding your employment. Nor may they unfairly demean the integrity or character of the Company or its representatives.

5. If the Union secures a simple majority of authorization cards of the employees in [insert description of bargaining unit provided by the Union] the Company shall recognize the Union as the exclusive representative of such employees without a secret ballot election conducted by the National Labor Relations Board.

6. The authorization cards must unambiguously state that the signing employees desire to designate the Union as their exclusive representative.

7. Employee signatures on the authorization cards will be confidentially verified by a neutral third party chosen by the Company and the Union."

Following receipt of Written Notification, the Company will not communicate to its employees on subjects which directly or indirectly concern unionization on the issues covered in the Notice set forth above or raised by other terms of this Neutrality Section.

(2) Employee Lists

Within five (5) days following Written Notification, the Company shall provide the Union with a complete list of all of its employees in the proposed bargaining

unit who are eligible for Union representation. Such list shall include each employee's full name, home address, job title and work location. Upon the completion of the Unit Determination Procedure described in Paragraph 3(d)(3) below, an amended list will be provided if the proposed unit is changed as a result of such Unit Determination Procedure. Thereafter during the Organizing Campaign, the Company will provide the Union with updated lists monthly.

(3) Determination of Appropriate Unit

As soon as practicable following Written Notification, the parties will meet to attempt to reach an agreement on the unit appropriate for bargaining. In the event that the parties are unable to agree on an appropriate unit, either party may refer the matter to the Dispute Resolution Procedure contained in Paragraph 7 below. In resolving any dispute over the scope of the unit, the arbitrator shall apply the principles used by applicable U.S. Labor Law.

(4) Access to Company Facilities

During the Organizing Campaign the Company, upon written request, shall grant continuous access to well-traveled areas of its facilities to the Union for the purpose of distributing literature and meeting with unrepresented Company employees. Distribution of Union literature shall not compromise safety or production or unreasonably disrupt ingress or egress or the normal business of the facility. Distribution of Union literature and meetings with employees shall be limited to non-work areas during non-work time.

(5) Card Check/Union Recognition

(a) If, at any time during an Organizing Campaign which follows the existence of a substantial and representative complement of employees in any unit appropriate for collective bargaining, the Union demands recognition, the parties will request that a mutually acceptable neutral conduct a card check within five (5) days of the making of the request.

(b) The neutral shall confidentially compare the authorization cards submitted by the Union against original handwriting exemplars of the entire bargaining unit furnished by the Company. If the neutral determines that a simple majority of eligible employees has signed cards which unambiguously state that the signing employees desire to designate the Union as their exclusive representative for collective bargaining purposes, and that cards were signed and dated during the Organizing Campaign, then the Company shall recognize the Union as the exclusive representative of such employees without a secret ballot election conducted by the National Labor Relations Board.

(c) The list of eligible employees submitted to the neutral shall be jointly prepared by the Union and the Company.

4. Definitions and Scope of this Agreement

a. For purposes of this Section, the Company includes (in addition to the Company) any entity which is an Affiliate of the Company.

b. An Affiliate shall mean any business enterprise that is under the Control of Asarco.

Control of a business enterprise shall mean possession, directly, of greater than fifty percent (50%) of the equity of the enterprise and actual control over the day-to-day labor relations of said enterprise.

5. Dispute Resolution

a. Any alleged violation or dispute involving the terms of this Section may be brought to a joint committee of one (1) representative each from the Company and the Union. If the alleged violation or dispute cannot be satisfactorily resolved by the parties, either party may submit such dispute to the arbitrator. A hearing shall be held within ten (10) days following such submission and the arbitrator shall issue a decision within five (5) days thereafter. Such decision shall be in writing and need only succinctly explain the basis for the findings. All decisions by the arbitrator pursuant to this article shall be based on the terms of this Section and the applicable provisions of the law. The arbitrator's remedial authority shall include the power to issue an order requiring the Company to recognize the Union where, in all the circumstances, such an order would be appropriate.

b. The arbitrator's award shall be final and binding on the parties and all employees covered by this Section. Each party expressly waives the right to seek judicial review of said award; however, each party retains the right to seek judicial enforcement of said award.

c. For any dispute under this Section, the parties shall choose the arbitrator from the list of arbitrators described in the Grievance and Arbitration procedure, contacting them in the order listed, and retaining the first to indicate an ability to honor the time table set forth above for the hearing and the decision.

Article 2. Union Security

Section F. Bargaining Unit Work

1. Guiding Principle

   a. The Guiding Principle is that to the greatest extent possible the Company will use Employees to perform any and all work which they are or could be capable (in terms of skill and ability) of performing (Bargaining Unit Work).

   b. Any individual or entity other than an Employee who performs Bargaining Unit Work shall be referred to herein as an Outside Entity.

2. Exceptions

   It is understood unless the work meets one of the exceptions outlined in this Paragraph 2 it will normally be performed by Employees unless there is a legitimate and necessary reason to deviate from the Guiding Principle as stated in paragraph 1, above.

   a. Work Performed In or Around the Plant

      (1) New Construction Work

      New Construction Work is that portion of the work associated with significant (in the context of the facility) capital projects involving the installation, replacement or reconstruction of any equipment or productive facilities. The Company may use Outside Entities to perform New Construction Work.

      (2) Surge Maintenance Work

      Surge Maintenance Work is that portion of maintenance and repair work which is required by bona fide operational needs performed on equipment where the Company temporarily uses Outside Entities to supplement bargaining unit forces and where: (a) the use of Outside Entities would materially reduce the downtime of the equipment; or (b) the work cannot reasonably be performed by bargaining unit forces. The Company may use Outside Entities to perform Surge Maintenance Work provided that the Company has offered all reasonable and appropriate requested overtime to all qualified Employees who, by working such overtime, could reduce the amount of Surge Maintenance Work performed by Outside Entities in an efficient manner.

   b. Work Performed Outside the Plant or its Environs

      (1) Fabrication and Repair Work

Fabrication Work is the creation outside of the plant or its environs of items or parts used in the Company's business which are not themselves, either directly or after additional work is performed on them, sold to customers. Repair Work is the repair, renovation or reconstruction of those items. Fabrication and Repair Work may be performed by Outside Entities only where the location of the work's performance is for a bona fide business purpose and the Company can demonstrate a meaningful sustainable economic advantage to having such work performed by an Outside Entity. In determining whether a meaningful sustainable economic advantage exists, lower wage rates, if any, of the Outside Entity shall not be a factor.

(2) Production Work

The Company may use Outside Entities to perform production work outside the plant and its environs provided the Company demonstrates that it is utilizing plant equipment to the maximum extent consistent with equipment capability and customer requirements.

c. Warranty Work

Warranty Work is work performed pursuant to a warranty obtained at the time of purchase on new or rehabilitated equipment or systems. The Company may use Outside Entities to perform Warranty Work provided the guarantor of the Warranty Work is responsible for the cost of such work.

3. Commitment

In addition to the understandings described in Paragraphs 1 and 2 above, the Company agrees that:

a. The Company will not use Outside Entities where total hours worked by employees of Outside Entities over a period of time either directly causes the erosion of bargaining unit work, as measured by the displacement of Employees or the diminution of hours worked by Employees, or has directly prevented an increase in Employee headcount, such work performed by such Outside Entities will be assigned to Employees and the number of Employees will be appropriately increased if necessary, unless the Company is able to clearly demonstrate: that the work cannot be performed by the addition of an Employee(s); that assignment of the work to Employees would not be economically feasible; or that the Company, despite its best efforts, has been unable to hire Employees necessary to perform the work. In determining whether the assignment of the work to Employees is or is not economically feasible, the lower wage rates, if any, of an Outside Entity shall not be a factor. Any disputes arising under this provision shall be subject to arbitration pursuant to paragraph 7 of this Section.

b. The parties agree that the Union may at any time enforce the obligations described above, irrespective of the Company's compliance with any other obligation in this Section or any other part of the Agreement.

c. The Company shall supply the Bargaining Unit Work Committee (as defined below) and the appropriate Contract Coordinator with all requested information regarding compliance with the Commitment.

4. Bargaining Unit Work Committee

At each plant a committee consisting of four (4) individuals, two (2) individuals designated by each of the parties, shall be constituted to serve as the Bargaining Unit Work Committee. The Committee shall meet as required but not less than quarterly to:

a. review bargaining unit force levels for the plant;

b. review historical contractor utilization by the plant;

c. review projections for contractor utilization by the plant;

d. monitor the implementation of new programs or hiring to reduce contractor utilization; and develop new ideas and implementation plans to effectively reduce contractor usage as per the terms of this Section.

5. Notice and Information

a. Prior to the Company entering into any agreement or arrangement to use Outside Entities to perform Bargaining Unit Work, the Company will provide reasonable advance written notice to the Bargaining Unit Work Committee and the appropriate Contract Coordinator in sufficient time to permit a final determination, using the Expedited Procedure, of whether or not the proposed use of Outside Entities meets the criteria herein, unless unforeseen emergencies or exigent circumstances that could result in a substantial loss of production or significant damage to Company equipment or property preclude the giving of such notice. However, the Company shall provide notice as soon as reasonably possible. Such notice shall include the following:

(1) location, type, duration and detailed description of the work;

(2) occupations involved and anticipated utilization of bargaining unit forces;

(3) effect on operations if the work is not completed in a timely fashion; and

(4) total hours if available and total bid amount.

b. Should the appropriate Bargaining Unit Work Committee believe a meeting to be necessary, a written request shall be made within five (5) days (excluding Saturdays, Sundays and holidays) after receipt of such notice. The meeting shall be held within three (3) days (excluding Saturdays, Sundays and holidays) thereafter. At such meeting, the parties shall review in detail the plans for the work to be performed and the reasons for using Outside Entities.

c. Should the Company fail to give notice as provided above, then not later than thirty (30) days from the later of the date of the commencement of the work or when the Union becomes aware of the work, a grievance relating to such matter may be filed.

6. Mutual Agreement

a. As of the Effective Date, all agreements, understandings or practices of any kind that directly or indirectly permit the use of Outside Entities to perform Bargaining Unit Work shall be renewed as necessary.

b. In the event the Bargaining Unit Work Committee resolves a matter in a fashion which in any way permits the use of Outside Entities, such resolution shall be final and binding only as to the matter under consideration and shall not affect future determinations under this Section.

c. No agreement, whether or not reached pursuant to this Section, which directly or indirectly permits the use of Outside Entities on an ongoing basis, shall be valid or enforceable unless it is in writing and signed by the President/Unit Chair and the Grievance Committee Chair/Unit Grievance Committeeperson of the affected Local Union. Any such valid agreement shall expire on the Termination Date of this Agreement, unless signed by a Representative of the International Union.

7. Arbitration Procedure for Disputes under this Section

In the event the Union requests an expedited resolution of any dispute arising under this Section, it shall be submitted to the Expedited Procedure in accordance with the following:

a. Within three (3) days (excluding Saturdays, Sundays and holidays) after the Union determines that the Bargaining Unit Work Committee cannot resolve the dispute, the Union may advise the Company in writing that it is invoking this Expedited Procedure.

b. An expedited arbitration must be scheduled within ten (10) days (excluding Saturdays, Sunday and holidays) of such notice and heard at a hearing commencing within fifteen (15) days (excluding Saturdays, Sundays and holidays) thereafter.

c. The arbitrator shall render a decision within forty-eight (48) hours (excluding Saturdays, Sundays and holidays) of the conclusion of the hearing.

d. No testimony offered by an individual associated with an Outside Entity may be considered in any proceeding unless the party calling the outsider provides the other party with a copy of each Outside Entity document to be offered in connection with such testimony at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before commencement of that hearing.

e. Notwithstanding any other provision of this Agreement, any case heard in the Expedited Procedure before the work in dispute was performed may be reopened by the Union if such work, as actually performed, varied in any substantial respect from the description presented in arbitration. The request to reopen the case must be submitted within seven (7) days of the date on which the Union knew or should have known of the variance.

8. Quarterly Review

a. Not less than quarterly (unless the parties agree to a semi-annual meeting or another mutually acceptable schedule), the Bargaining Unit Work Committee shall meet with the Local Union President/Unit Chair and the General Manager of the plant, for the purpose of reviewing all work for which the Company anticipates utilizing Outside Entities at some time during the next or subsequent quarters. The Union shall be entitled to review any current or proposed contracts concerning such work and shall keep such information confidential.

b. During the review, the Bargaining Unit Work Committee may (1) agree on items of work that should be performed by Outside Entities for which Notice under Paragraph 5 above is therefore not required; or (2) disagree on which items of work should be performed by Employees and which should be performed by Outside Entities for which notice under Paragraph 5 is therefore required.

c. During the quarterly review, the Company will provide to the Bargaining Unit Work Committee a detailed report showing work performed by Outside Entities since the last such report. For each item of work the report shall include the date and shift the work was performed; a description of the work; the trade, craft or occupation of the individual(s) performing the work; and the total number of hours worked by each contracting entity or individual.

Article 2. Union Security

Section G. Printing of Contracts

1. Immediately after the Effective Date of this Agreement, the parties will create mutually acceptable labor and benefits agreement documents for printing. These agreements shall, at the expense of the Company, be printed in a form (size, paper stock, number of copies, etc.) and in a manner of distribution mutually acceptable to the parties. The distribution of the Basic Labor Agreement shall occur within three (3) months of the Effective Date. Distribution of the benefit agreements shall occur as close in time thereafter as can reasonably be accomplished. A union printer shall be used provided that its price is not more than 10% higher than the lowest price received. If the lowest proposed price from a union printer is more than 10% above the lowest proposed price received from a nonunion printer, the Company will inform the Union before a contract to print is signed with the nonunion printer and allow the Union a reasonable amount of time to seek a union printer whose printing price is within the 10% margin.

2. The Company will provide the Union with electronic versions of this Agreement and all negotiated benefit agreements.

Article 2. Union Security

Section H. Hiring Consideration

1. In all hiring for bargaining unit positions, the Company shall, subject to its obligations under applicable equal employment opportunity laws, regulations and Executive Orders and tribal preference requirements, give consideration to the direct relatives (children, children-in-law, step-children, spouse, siblings, grandchildren, nieces and nephews) of Employees who meet reasonably established hiring criteria.

2. Such hiring shall conform to applicable lines of progression, bidding, promotion and other requirements under this Agreement.

3. The Company shall, subject to these and other applicable provisions, have the final discretion for accepting or rejecting a particular applicant for employment. The Company shall have no obligation to reveal information it obtains on a reference check or whether it has obtained such information.

Article 2. Union Security

Section I. Union Officers - Straight Shifts

Current practices concerning the assignment of Union officers and other Union representatives to straight day shifts will remain in effect.

Article 2. Union Security

Section J. Bulletin Boards

Bulletin Boards shall be provided at convenient locations on the Company's property for the exclusive use of the Union. All posted notices shall have been approved by the president or secretary of the Union. The Union agrees not to post literature derogatory of the Company or its employees.

Article 3. Health, Safety and the Environment

Section A. Employee and Union Rights

1. Employees have the right to a safe and healthful workplace, to refuse dangerous work that constitutes an Unsafe Condition, as described in Article 3, Section C, paragraph 1, to adequate personal protective equipment, to safety and health training, to a proper medical program for workplace injuries and illnesses, and to a reasonable alcoholism and drug abuse policy.

2. Subject to the provisions in this Article, the Union has the right to participate in active and informed Joint Safety and Health and Environmental Committees, to appoint Union health and safety representatives, to join in regular safety audits and accident investigations, to receive full and continuing access to pertinent and relevant information (including all OSHA and MSHA reports), and to participate in programs which address certain special hazards. It is further agreed that the Union has a duty to provide pertinent and relevant safety, health, and environmental information to the Company, subject to the provisions of paragraphs 3, 4, and 5 of this article and section (Article 3, Section A).

3. The parties agree that certain workplace, safety, health, and environmental information may not be discloseable based on the attorney-client privilege and the attorney work product doctrine.

4. Further, workplace, safety, health, and environmental information may be subject to limitations on public disclosure based on trade secret, confidentiality, privacy, self-critical, internal and deliberative process considerations whether in draft, preliminary, or final form, or because such information is being used in settlement discussions (herein collectively referred to as "Confidential Information"). The parties agree that Confidential Information is not per se discloseable or non-discloseable, and the Union and the Company will process requests for information consistent with the requirements of the National Labor Relations Act.

5. To ensure timely participation by the Union in safety audits and accident investigations, a Contract Coordinator and the Union members of the Joint Health, Safety, and Environmental Committee will sign a confidentiality agreement ("HSE Confidentiality Agreement"). The HSE Confidentiality Agreement will be in effect whenever a Union is participating in an investigation or safety audit and the Company asserts that certain information is non-discloseable. When the investigation or audit concludes, the parties will meet to discuss what information, if any, may be disclosed to individuals not mentioned in the HSE Confidentiality Agreement.

6. The Company will provide the Union Health, Safety and Environmental Department with prompt notification of the basic facts concerning any fatality at the worksite, as well as a copy of any related fatal accident report.

7. The Company will develop and implement, with the involvement of the Union, further policies and programs for ensuring these rights. Nothing in this Article or the parties' commitment to joint efforts shall detract from the Company's right to manage the workplace to optimize safety and to adopt reasonable safety rules, policies and programs following satisfaction of its statutory bargaining obligations.

8. Once during the term of this Agreement, the Company shall allow time off and reimburse one Union Joint Safety, Health and Environmental Committee member from each location the reasonable and out of pocket expenses at the USW travel and per diem rates, and as reasonably agreed to by the Company and the Union in advance of incurring such expenses, so they may attend the periodic International Union's Health, Safety and Environment Conferences. Further, for the term of this agreement, a Company safety representative may attend the International Union's Health, Safety and Environment Conferences without being required to pay a registration fee. Attendees will be required to give a report and training (presentation) regarding the program to the Committee at his location.

9. Nothing in this Agreement shall mean that the Company shall have violated this Agreement solely because a workplace accident, injury or illness has occurred.

Article 3. Health, Safety and the Environment

Section B. Safe and Healthful Workplace

1. The Company will provide safe and healthful conditions of work for its Employees and will, at a minimum, comply with all applicable laws and regulations concerning the health and safety of Employees at work and the protection of the environment. The Company will install and maintain any equipment reasonably necessary to protect Employees from hazards.

2. The Company will make every reasonable effort to ensure that all equipment is maintained in a safe condition. Its inspection and maintenance program will give top priority to equipment critical to Employee safety and health. Where faulty equipment creates an abnormal risk to Employees, the Company will take all necessary steps to eliminate the risk.

3. The Company will provide suitable heating and ventilation systems and keep them in good working order.

Article 3. Health, Safety and the Environment

Section C. Right to Refuse Unsafe Work

In providing the following procedure, the parties agree to guard against the misapplication of this procedure by those seeking to use it for purposes not related to safety or health and/or by the misapplication of the unsafe or unhealthful conditions provisions described herein. The continuing responsibility of all employees, as well as all Company and Union representatives, is to make certain that the provisions of this procedure are applied solely for, and in the manner intended herein.

1. An Employee who in good faith believes an unsafe or unhealthful condition exists which is beyond the normal hazards inherent in the operation and which involves a danger of injury to his person should notify his immediate supervisor who will immediately investigate to determine whether or not such conditions do exist.

2. If at any step in the procedure outlined below, the Company finds that an unsafe or unhealthful condition does exist which involves a danger of injury, the condition will be corrected before any employee is assigned to do the work.

3. If the immediate supervisor determines that such danger of injury does not exist, he/she will instruct the employee to do the work. If the employee still believes that such conditions do exist the employee may then request a Union safety committee representative on the shift to confer immediately with the supervisor on the subject. Upon conferring, the parties must first decide if a danger of injury exists. If the parties agree that no such danger of injury to the employee exists, the employee shall be advised to perform the work.

4. If upon conferring, the immediate supervisor and the Union safety committee representative on the shift cannot agree whether or not a danger of injury exists, the Union or employee may file a grievance as provided in Step 5 below.

    a While the matter is under consideration, the employee will be assigned other work in his/her classification, as appropriate, if such is available.

    b. Nothing contained herein shall preclude the Company from assigning another employee to do the work in question if the Company has determined that no danger of injury exists. The Company and Union representative on shift will advise such other employee of the disagreement prior to assignment.

    c. No employee or representative, other than communicating the facts relating to the safety of the work, shall take any steps to prevent the assigned employee from doing the work.

    d. No employee shall be discharged or disciplined for the reasonable good faith exercise of the rights set forth in the above procedure.

5. If the matter remains in dispute, it shall be subject to and processed in accordance with the grievance procedure. A grievance alleging an imminent danger shall be submitted at step 2 within two (2) calendar days (excluding Saturdays, Sundays and Holidays) of the event giving rise to the grievance. The Company safety representative or designee shall attend the meeting. If not resolved, the matter will be subject to the final step of the grievance and arbitration procedure.

6. Before arbitration, the parties may agree to present the facts relating to a grievance arising out of an employee exercising his or her rights under this Article to an International Union Health, Safety and Environment Department, and the corporate-level safety and health department, who make a joint recommendation concerning the disposition of the grievance.

Article 3. Health, Safety and the Environment

Section D. Personal Protective Equipment

The Company will provide, without cost to the Employee, goggles, hard hats, non-prescription safety glasses, hearing protectors, face shields, respirators, special-purpose gloves, protective clothing, harnesses, and other effective protective equipment, in good working order when required by law or regulation or when necessary to protect Employees from injury or illness. When a non-probationary Employee requires prescription safety glasses, the Company will pay for up to two (2) pairs as necessary in each two (2) year period. Prescription safety glasses shall be selected by the Employee from Company-authorized vendors and product lists. The Company may assess a fair charge to cover loss or willful destruction by the Employee. The Company will replace prescription safety glasses as needed if an Employee's prescription changes or if the glasses are damaged.

Article 3. Health, Safety and the Environment

Section E. Safety and Health Training

1. All Employees will be provided with periodic safety and health training. In addition, before the initial assignment to a particular job, Employees will receive training on the nature of the operation or process; the hazards of the job; controls in place; safe working procedures and the reasons for them; the purpose, use and limitations of the required personal protective equipment; and other controls or precautions associated with the job. Such training will also be provided when the job changes in a way that affects the nature or severity of the hazards.

2. All safety-related training programs will be fully discussed and reviewed by the Joint Safety and Health Committee. The Company will make a reasonable effort to also use Employees chosen by the Union Co-Chair of the Joint Safety Committee as trainers and will instruct trainers in effective teaching techniques. Upon request, the Union's Health, Safety and Environment Department (Union Safety Department) will be provided with a copy of all training materials and be afforded the opportunity to review the training.

Article 3. Health, Safety and the Environment

Section F. Medical Program for Workplace Injuries and Illnesses

1. The Company will provide first aid equipment and trained first aid personnel in close proximity to each of its facilities. The Company will provide Employees who are seriously injured on the job with prompt emergency transportation to an appropriate treatment facility and return transportation to the plant or the Employee's residence.

2. An Employee who, as a result of occupational injury or illness, is unable to work for the balance of the shift on which s/he is injured will be paid for the balance of his/her scheduled shift that day. If such an Employee is not able to be seen by a licensed health care provider until the next day and misses scheduled work for that reason, s/he will be paid for scheduled time missed that next day. Such an Employee, who returns to work on subsequent days and who thereafter requires follow up medical appointments directed by a licensed health care provider, shall be paid up to three (3) hours straight time earnings for lost time on the day of each such follow up appointment for up to three (3) appointments.

3. The Company will make medical screening for occupational illnesses available to Employees in jobs where a government agency requires screening.

4. The Company will not require any Employee to submit to any medical test or answer any medical history question that is not related to the Employee's ability to perform his/her job.

5. The Company will maintain the privacy of reports of medical examinations of its Employees and will only furnish such reports to a physician designated by the Employee with the written authorization of the Employee; provided that the Company may use or supply such medical examination reports of its Employees in response to subpoenas, requests by a governmental agency authorized by law to obtain such reports, in arbitration or litigation of any claim or action involving the Company and the Employee, and otherwise within the Company strictly on a need-to-know basis. Upon written request by the Employee, the Company will provide the Employee with a copy of the Employee's medical records at no cost to the Employee. All medical examinations will be conducted by or under the supervision of a licensed physician.

Article 3. Health, Safety and the Environment

Section G. Policy on Alcoholism and Drug Abuse

1. To facilitate rehabilitation of Employees who abuse alcohol or drugs, before they violate the Alcohol and Drug Abuse Policy, the Company and the Union agree to establish an Employee Assistance Program (EAP) administered and funded by the Company. The EAP will utilize professional and/or peer counselors and will operate under strict rules of need-to-know confidentiality.

2. The Company may require an Employee to submit to a drug or alcohol test as set forth in the attached Exhibit A, Alcohol and Drug Abuse Policy.

3. Employees will not be required to submit to drug or alcohol testing for any other reason, unless such testing is required by law. The Company agrees that it will not test for drugs or alcohol based solely on anonymous tips.

4. Drug and alcohol tests will utilize scientifically accepted methods for evaluating impairment. When a biological sample is taken, a portion will be retained for retesting, should the Employee dispute the initial results.

5. Employees who are found through testing to have abused alcohol or drugs will be offered rehabilitation. However, this provision does not affect the right of the Company to discipline or discharge Employees for violation of Exhibit A, plant rules or for working or attempting to work while impaired. A positive test result will be proof of impairment.

Article 3. Health, Safety and the Environment

Section H. Joint Safety and Health Committee

1. A Joint Safety and Health Committee (Joint Safety Committee) will be established at each facility to be composed of not less than three (3) nor more than five (5) Employees designated by the Union, including a Local Union President/Unit Chair, and an equal number of employees designated by the Company, including the General Manager or his designee. The parties will designate their respective Co-Chairs and provide each other with updated lists of their members of the Joint Safety Committee.

2. The Joint Safety Committee will have the following functions: participating in the design of Employee safety and health programs; assisting in the establishment of safe job procedures; overseeing and participating in plant safety and health audits (including annual comprehensive audits of the entire plant); reviewing plant safety rules; participating in the investigation of workplace accidents; reviewing accident, injury, illness and other statistics related to safety and health; participating in the design of Employee safety and health training programs; reviewing changes in plant technology or operations for their personal protective equipment; discussing the Company's response to proposed regulations and legislation affecting safety and health; participating in and reviewing the results of safety and health inspections or industrial hygiene monitoring by OSHA, MSHA, and NIOSH; collecting and responding to safety and health concerns raised by individual members of the Joint Safety Committee or Employees; and working together to promote an awareness of safety and health hazards and safe work procedures.

3. The Joint Safety Committee will hold periodic meetings at times jointly determined by the Co-Chairs, but no less often than monthly. The Co-Chairs may jointly call a special meeting of the Joint Safety Committee.

4. The Company and the Union will each keep minutes of meetings. Prior to every regular meeting, the Company will prepare a written response to concerns or action items noted at the previous meeting, as well as any open items from previous meetings. The two (2) sets of minutes, or a jointly agreed reconciled version, along with the Company's written response to concerns and action items, will be included in the official record of the meeting.

5. The Company will not make any non-emergency changes to plant safety and health programs, policies or rules; introduce new protective equipment or eliminate existing protective equipment; or modify safety and health training, unless the Joint Safety Committee has been notified and the Union has been provided the opportunity to discuss the change.

6. The Joint Safety Committee will not handle grievances, although it may discuss safety and health issues that have led to a grievance.

7. Members of the Joint Safety Committee will be afforded access, consistent with their own safety and the safety of the operation, to all operational areas of the plant, upon notification to the appropriate management representative. The director of the Union Safety Department or his/her designee will be allowed access to the plant upon notification to the Company.

8. The parties will sponsor an annual safety and health meeting, attended by Union members of the Joint Safety Committee from each plant covered by this Agreement, appropriate Company counterparts and members of the Union Safety Department. The Company will pay reasonable travel expenses, including lodging and meals, and lost time earnings.

9. The Union members of the Joint Safety Committee will be compensated for all time spent meeting with the Company on Committee work.

Article 3. Health, Safety and the Environment

Section I. Joint Environmental Issues

1. The parties agree that issues and concern pertaining to the environment will continue to be addressed through the Joint Safety, Health and Environmental Committee.

2. The Company will make available for review to the Joint Safety, Health and Environmental Committee all environmental reports, monitoring results, analyses, materials received from the EPA and other agencies and any other documents related to the Company's environmental program and obligations. The disclosure of information under this paragraph shall be subject to Article 3 Section A, Paragraph 4 and 5 of this Agreement.

Article 3. Health, Safety and the Environment

Section J. Union Safety and Health Representatives

The Joint Safety Committee, Company Safety Department and Union Safety Department will cooperate in designing and implementing training for Union safety and health representatives.

Article 3. Health, Safety and the Environment

Section K. Right to Participate in Accident Investigations

1. When an accident occurs that results, or could have resulted, in a serious injury to an Employee, the Company will promptly notify the Union Co-Chair of the Joint Safety, Health and Environmental Committee, and will provide access to the accident site to Union-designated member/s of the Joint Safety, Health and Environmental Committee, consistent with his/her safety. The union commits to limiting the number of committee members on the investigation to a maximum of three (3) except in the case of fatalities which may include the entire committee. The Union designated member/s of the Joint Safety, Health and Environmental Committee shall be in addition to the designated Miner's Representative. The Company will investigate all such accidents and provide a copy of the accident report it prepares to the Union Co-Chair of the Joint Safety, Health and Environmental Committee.

2. If the Company requires an Employee to testify at the formal investigation of an accident, the Employee will be advised that s/he may have a Union representative present. Further, the Union will be furnished with a copy of the Employee's testimony, if it is transcribed.

3. Employees will not be subject to discipline, discrimination or retaliation solely for suffering an injury or illness or for reporting same. However, Employees may be subject to discipline for proper cause based on failure to follow and adhere to safety rules, take standard safety precautions, or engage in safe work practices, or for making fraudulent accident reports.

Article 3. Health, Safety and the Environment

Section L. Carbon Monoxide Control, Toxic Substances and Harmful Physical Agents

1. The Company will routinely perform engineering surveys of hazards, periodic in-plant industrial hygiene sampling, and testing for harmful physical agents at each location covered by this Agreement. The survey, to be conducted by qualified personnel, will list locations from which significant amounts of carbon monoxide, toxic substances and harmful physical agents could escape, the conditions which might cause such a release, and the steps necessary to minimize or control the hazard. The survey will be updated annually and whenever significant changes are made to the gas-handling system or procedure.

2. Based on sampling and surveys, the Company will implement a program for the control of such hazards as necessary including engineering and equipment changes necessary to eliminate or reduce the hazards identified in the survey; necessary amendments to safe job procedures; the installation and regular testing of fixed automatic monitors equipped with alarms; the use of portable monitors; regular inspection and maintenance of testing equipment; provision of an adequate number of approved breathing apparatus appropriate for emergency operations and in locations readily accessible to Employees; Employee training including regular drills; an emergency rescue program with appropriate rescue and trained personnel; and the investigation by the Joint Safety Committee of all incidents which involve the accidental releases of such hazards, cause an alarm to trigger or result in an elevated level of carboxyhemoglobin in any exposed person. The Joint Safety Committee will review the survey and the program whenever it is updated.

3. Where the Company is currently using chemicals, solvents and/or compounds or when new chemicals, solvents and/or compounds are to be introduced, the Company will inform the Joint Management-Union Safety and Health Committee what known hazards in normal use are involved, if any, and what precautions will be taken to assure the safety and health of employees involved. Those employees that will be required to work with or in the area of such chemicals, solvents and/or compounds, will be instructed in the hazards, precautions and handling procedures of such materials. On request of the committee's Union representatives, the Company will provide written assurance that such steps have been taken.

4. The Company will keep such records of exposure as may be required by the U.S. Department of Labor. On request of the Committee's Union Representatives, the Company will review the results of exposure measurements with them.

Article 3. Health, Safety and the Environment

Section M. Ergonomics

Recognizing the value of the prior work by the parties to identify and recommend controls to ergonomic hazards, the parties will continue to identify ergonomic hazards in the plant and recommend controls.

Article 3. Health, Safety and the Environment

Section N. Safety Shoe Allowance

On October 1 of each year, each Employee, other than a probationary Employee, will be provided $125 for the purchase of safety shoes for the Employee's use at work and company will continue current safety shoe practices at all locations (not just OSHA regulated area).

Article 3. Health, Safety and the Environment

Section O. No Union Liability

The Company has the exclusive legal responsibility for safety and health conditions in the plant and for environmental matters. Neither the Union nor its representatives, officers, employees or agents will in any way be liable for any work-related injuries or illnesses or for any environmental pollution that may occur.

Article 3. Health, Safety and the Environment

Section P. Showering

Employees may be required to shower immediately before or after the completion of the workday. In such cases the Employee will be paid 15 minutes for showering and related activities when required before the end of the workday, or if so designated by the Company, where required before the completion of the Employees' workday.

Article 3. Health, Safety and the Environment

Section Q. New or Changed Work Processes

When the Company plans to implement significant changes in its work processes or the introduction of new machinery, the Company will notify the Union(s) of such plans. The Employees who work on the changed or new work process or the new machinery shall be instructed in their safe operation.

Article 3. Health, Safety and the Environment

Section R. Safety Education and Training

1. All newly-hired Employees shall be given an orientation by the Company concerning the Company's safety and health programs. The newly-hired Employee shall then be taken to the supervisor in the area in which he/she is to work and instructed on safety and health matters relating to the job and his safety responsibilities to himself/herself and to fellow workers. Likewise, he/she shall be introduced to the area's Union Safety and Health Committeeperson, or the Union Safety and Health Chairman, when one of these and the Employee are both available.

2. Instructions on safety and health matters will be given to all affected Employees as changes in circumstances or assignments may warrant.

Article 4. Civil Rights

Section A. Non-Discrimination

1. The provisions of this Agreement shall be applied to all Employees without regard to:

   a. race, color, religious creed, national origin, sexual orientation, handicap or disability or status as a veteran; or

   b. sex or age, except where sex or age is a bona fide occupational qualification; or

   c. citizenship or immigration status, except as permitted by law;

   d. membership in, affiliation with, or support for the Union, or refraining from Union membership, affiliation or support, it being understood that this does not preclude the Unions from lawfully preferring union officers or activists in appointing the member of committees established under the agreement.

2. Unlawful harassment by the Company or the Union on any of the bases set forth in this Section shall be considered discrimination under this Section.

3. Neither the Company nor the Union shall retaliate against an Employee who complains of discrimination or who is a witness to discrimination.

4. The Company shall have no right to discipline in any way an Employee solely because of his/her failure to perform his/her duties as a representative or officer of the Union.

5. Nothing herein shall be construed in any way to deprive any Employee of any right or forum under public law.

6. The provisions of this section shall be applied consistent with existing law.

Article 4. Civil Rights

Section B. Civil Rights Committee

1. A Joint Committee on Civil Rights (Joint Committee) shall be established at each location covered by this Agreement. The Union shall appoint three (3) members, one of whom shall be a Local Union President/Unit Chair or Grievance Chair. The Company shall appoint an equal number of members, including the General Manager or his designee. The parties shall each appoint a Co-Chair and shall provide each other with updated lists of the members of the Joint Committee.

2. Joint Committee members must, as a precondition to serving on the Joint Committee, meet the following requirements:

   a. Agree to keep all matters confidential and sign an appropriate confidentiality agreement.

   b. Satisfactorily complete a training program, to be mutually agreed upon by the Company and the Union concerning: employment, discrimination laws; the topics addressed in Article 4, Section A of this Agreement; fact investigation; and note-taking and documentation practices.

3. The Joint Committee shall meet as necessary and shall review, investigate, and attempt to resolve complaints alleging an adverse employment action that would, if true, violate Article 4, Section A of this Agreement and/or a Federal or State statute prohibiting discrimination in employment, including but not limited to, Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act.

4. The Joint Committee shall not displace the normal operation of the grievance procedure or any other right or remedy and shall have no jurisdiction over initiating, filing or processing grievances. Further, the Joint Committee may decline at the request of either the Company or the Union committee members to investigate the complaint.

5. An Employee complaint to the Joint Committee shall be subject to the following guidelines:

   a. The complaint must be in writing on a form mutually agreed to by the Company and the Union, and must, at a minimum, include the facts supporting the complaint and the basis of the alleged discrimination (e.g. sex, race, national origin).

   b. The Employee must provide the Joint Committee with at least sixty (60) days to attempt to resolve the matter.

   c. At any time thereafter, if the Joint Committee has not yet resolved the matter, the Employee may request that the Grievance Chair file it as a grievance in Step 2 of the

grievance procedure, and upon such filing the Joint Committee shall have no further jurisdiction over the matter.

d. If the Joint Committee proposes a resolution of the matter and the Employee is not satisfied with such resolution, then the Union may file the complaint at Step 2 of the grievance procedure, provided such filing is made within thirty (30) days of the Employee being made aware of the Joint Committee's proposed resolution.

e. In arbitrations of disputes involving alleged discrimination in violation of a statute or statutes discussed in paragraph 3 of this Section, the parties shall be entitled to the remedies provided for in the statute or statutes and shall have the same rights and limitations as those which are provided for in the statute or statutes.

f. Nothing in this Article and Section shall be construed to prohibit an Employee from filing a charge with the EEOC or other administrative agencies.

Article 4. Civil Rights

Section C. Workplace Harassment, Awareness and Prevention

1. All Employees shall be educated in the area of harassment awareness and prevention on a periodic basis.

2. All new Employees (and all Employees who have not received such training) will be scheduled to receive training as to what harassment is, why it is unacceptable, its consequences for the harasser and what steps can be taken to prevent it.

3. All Employees shall be compensated in accordance with the standard local plant understandings for time spent in training referred to in this Section.

Article 5. Workplace Procedures

Section A. Local Working Conditions

1. Deprivation of Benefits

   In no case shall Local Working Conditions or a local supplemental agreement deprive an Employee of rights under this Agreement and the conditions shall be changed to provide the benefits established by this Agreement.

2. Benefits in Excess

   Any provision of a local supplemental agreement which provides benefits that are in excess of, or in addition to, but not in conflict with benefits established by this Agreement shall remain in effect for the term of this Agreement.

Article 5. Workplace Procedures

Section B. Job Evaluation and New or Changed Jobs

1. In the event the Company chooses to permanently modify substantial duties of an existing job or create a new job, it shall follow the procedure outlined below.

2. The Company will notify the Union in advance and in writing and provide a description of how it intends to modify an existing job or a description of a proposed new job. The description shall include:

   a. the requirements of such new or modified job in the areas of training, skill, responsibility, effort and surroundings (Requirements);

   b. the Company's view as to how these Requirements compare to the Requirements for existing jobs at the plant; and

   c. based on Paragraphs (a) and (b) above, at what rate the Company believes the job should be paid.

3. If the parties are unable to agree upon the appropriate rate of pay for the new or modified job, they shall submit their dispute to arbitration under Article 5, Section I, and the arbitrator shall have authority to decide only the rate of pay for the job, slotting it into proper relationship with existing jobs and rates.

4. The arbitrator shall base his/her decision on the Requirements of the new or modified job and how those Requirements compare to the Requirements for the existing jobs at the plant and other plants of the Company covered by this Agreement.

Article 5. Workplace Procedures

Section C. Hours of Work

1. Normal Workday and Work Week

   a. The normal workday shall be any regularly scheduled consecutive twenty-four (24) hour period comprising eight (8) consecutive hours of work and sixteen (16) consecutive hours of rest. The normal work week shall be five (5) consecutive workdays beginning on the first day of any seven (7) consecutive day period. The seven (7) consecutive day period is a period of 168 consecutive hours and may begin on any day of the calendar week and extend into the next calendar week. On shift changes, the 168 consecutive hours may become 152 consecutive hours depending upon the change in the shift. In the event extended shifts are adopted in accordance with applicable extended shift language, the eight (8) hours of work above shall become up to twelve (12) hours and the sixteen (16) hours of rest above shall become not less than twelve (12) hours.

   b. The Company shall have the discretion to determine hours and days of operations, and to determine the number of straight time or overtime hours to be worked by any Employee.

   c. Schedules showing Employees' workdays shall be posted or otherwise made known to Employees not later than 2:00 p.m. Wednesday of the week preceding the calendar week in which the schedule becomes effective. The Company will establish a procedure affording any Employee whose last scheduled shift ends prior to the posting of his/her schedule for the following week an opportunity to obtain information relating to his/her next scheduled shift. This procedure will also be applicable with respect to Employees returning from vacation.

   d. In accordance with the Company's practice, employees will be at their work station and ready for work at the start of their scheduled shift. All employees will remain at their designated work station until the end of the shift or, in designated jobs, until properly relieved. Time used in personal preparation for work, wash-up, clothes changing, travel to the work station at the beginning of the shift, and from the work station at the end of the shift, unless otherwise designated by mutual agreement, will not be considered as time worked and will not be compensated for by the Company.

2. No Guarantee

   Nothing contained in this Agreement shall be construed as a guarantee of work or that any particular schedule cannot be changed. This paragraph is not intended to void any agreement between the parties for the manner in which shifts will be assigned or selected.

3. Absenteeism

Absenteeism is addressed in a separate absenteeism policy.

4. Overtime

a. The parties recognize that schedules that regularly require a substantial level of overtime are undesirable and should be avoided where possible.

b. Where local practices or agreements with respect to the distribution of overtime do not presently exist, the Company and the Local Union Grievance Committee, if requested by either party, shall promptly conclude an agreement providing for the most equitable distribution of overtime opportunities consistent with the efficiency of the operation.

c. The Company will consider an Employee's request to be excused from overtime work and shall endeavor to reasonably accommodate those requests which are practicable and reasonable under the circumstances. Nevertheless, no Employee shall refuse a directive to work overtime and any disputes about the Company's compliance with this paragraph shall be subject to the grievance procedure.

5. Reporting to Work and Call-Out Pay

a. When an Employee reports for work on a regular shift, or is instructed to report for work on a special shift, and upon reporting at the scheduled time, he shall be given six (6) hours work at his/her regular rate, in whatever job classification is available as determined by Management, unless that Employee is notified at least four (4) hours prior to the starting time not to report. Notification will be by telephone. If the Employee provides no telephone number to the Company, the notification requirement is waived. An unanswered telephone call will be the same as notification. The foregoing shall not apply where the employer's failure to provide work is occasioned by, or results from:

(1) Plant delay, resulting from causes beyond the control of the Company, and the Employee is notified at least two (2) hours prior to his starting time not to report, or

(2) When an Employee has been absent from one shift or more and said Employee fails to notify the departmental supervisor then in charge at least eight (8) hours prior to the commencement of this shift to which the Employee intends to return.

b. An Employee returning to work as called between his/her regular shifts shall be paid one and one-half (1 -1/2) times the hourly straight-time pay rate for the classification of work to be performed with a minimum payment equivalent to five (5) hours at such straight-time rate. This minimum payment shall not apply to overtime work

consecutive to the regular scheduled shift. Employees scheduled off for vacation or on an authorized leave of absence shall not be called out for work.

c. An Employee who is called for duty on his/her scheduled day(s) off shall be paid for not less than six (6) hours at the straight-time pay rate for the classification of the work to be performed.

d. Pay for time not worked under the above sub-paragraphs 5 a, b and c will not be considered as time worked in the computation of overtime.

6. Timekeeping Device

Employees are required to use time-keeping devices, such as time clocks, installed by the Company and to comply with Company directions to record the beginning and end of their hours of work. Such instructions may require employees to "swipe in" or "punch in" prior to commencing work and to "swipe out" or "punch out" after the completion of their work day. The Company shall provide the Union a list of currently installed timekeeping devices at each facility, and shall provide notice to the Union prior to the installation of any additional timekeeping devices

Article 5. Workplace Procedures

Section D. Overtime

1. Definitions

   a. The payroll week shall consist of seven (7) consecutive days beginning at 12:01 a.m. Sunday or the shift change nearest to that time (or as agreed by the parties in the applicable Supplemental Agreement).

   b. The workday for the purposes of this Section is the twenty-four (24) hour period beginning with the time the Employee is scheduled to begin work.

   c. The Regular Rate of Pay as used in Paragraph 2 below (and in this Agreement) shall mean the Base Rate of Pay (including Shift Differential) for the job on which the overtime hours are worked.

2. Conditions Under Which Overtime Rates Shall Be Paid

   a. Unless worked pursuant to an Alternative Work Schedule, overtime at the rate of one-and-one-half times the Regular Rate of Pay shall be paid for:

      (1) hours worked in excess of eight (8) hours in a workday or, for employees working an Alternative Work Schedule, hours worked in excess of the scheduled shift;

      (2) hours worked in excess of forty (40) hours in a payroll week;

      (3) hours worked on the sixth workday of a regularly scheduled workweek during which five (5) days were worked; and

      (4) hours worked on a second reporting in the same workday where the Employee has been recalled or required to report to work after working eight (8) hours.

   b. Overtime at the rate of double the Regular Rate of Pay shall be paid for hours worked on the seventh workday of a regularly scheduled workweek during which six (6) days were worked.

3. Holidays

   Holidays not worked shall not be considered as time worked in the computation of weekly overtime.

4. Non-Duplication of Overtime

   Overtime shall not be duplicated by using the same hours paid at overtime rates more than once for the purpose of calculating overtime payments. There shall be no pyramiding of overtime and/or premium pay.

5. Overtime Lunches

   a. An Employee required to work unscheduled overtime for two (2) or more hours beyond the end of the regular shift will be furnished an overtime lunch. If an Employee works beyond six (6) hours beyond the end of the regular shift, s/he will be furnished with another overtime lunch. In the event an overtime lunch is waived by the Employee, s/he shall receive ten dollars ($10.00) pay in lieu thereof for each overtime lunch waived.

   b. It is understood, in the event an Employee waives an overtime lunch, s/he will be provided time to eat as if s/he had accepted the overtime lunch rather than pay in lieu of the overtime lunch.

   c. An Employee called out to work will provide his/her own lunch unless determined otherwise by the Company.

6. 16-Hour Rule

   a. No Employee(s) shall be offered overtime if his regular schedule would require him to work within eight (8) hours or less after having completed sixteen (16) hours of service in the scheduled work day, except emergency where life, property and/or production are in imminent danger.

   b. Should any Employee be required to work in excess of sixteen (16) hours as stated in paragraph 1 above, the Employee(s) shall be allowed an eight (8) hour rest interval (with travel time being considered part of the rest interval) before reporting to work.

   c. If the rest interval would involve time lost from the Employee(s) regular posted schedule, he shall be paid the regular scheduled rate for that time he would have worked had he not been on the rest interval.

Article 5. Workplace Procedures

Section E. Seniority

1. Seniority Status of Employees

   a. The parties recognize that promotional and other in-plant opportunities and job security should increase in proportion to length of Seniority and that the fullest practicable consideration shall be given to Seniority in such cases.

   b. Seniority, as defined by Paragraph 4 below, shall be used for all purposes under all labor and benefits agreements, unless explicitly provided otherwise by this Agreement or local supplemental agreement; provided, however, that accumulation in excess of two (2) years during a period of layoff shall be counted only for purposes of this Section, including local agreements thereunder.

   c. In all cases of promotions, reductions in force and recalls after layoffs, Seniority (as defined below in Paragraphs 3 and 4 and as provided in the local supplemental agreements) shall govern if ability to perform the work and physical fitness are relatively equal.

2. Determination of Seniority Units

   a. Seniority shall be applied on a job and departmental or larger unit basis, as agreed upon. A job may be in one seniority unit for one purpose and in a different unit for another.

   b. The seniority units, lines of progression, departments and rules for the application of seniority factors in effect as of the Effective Date shall remain in effect unless modified by a local written agreement signed by the President or Unit Chair of the affected Local Union.

3. Seniority Unit Definitions

   a. Company seniority is defined as an Employee's total credited length of service in one or more plants owned by the Company or its (predecessor).

   b. Plant seniority is defined as an Employee's total unbroken credited length of service in a plant.

   c. Departmental seniority is defined as an Employee's total unbroken credited length of service in a particular department.

   d. Sub-departmental seniority is defined as an Employee's total unbroken credited length of service in a particular sub-department.

e. Occupational/craft seniority is defined as an Employee's total unbroken credited length of service in a particular classification.

f. Jurisdictional seniority is defined as an Employee's total credited length of service in a particular bargaining unit.

g. Upon satisfactory completion of an apprenticeship, craft seniority shall be the date of the apprentice's indenture date.

4. Calculation of Seniority

a. Seniority shall be determined by the Employee's first employment or reemployment following a break in Seniority in any facility of the Company covered by this Agreement.

(1) Employees Who Were Employees of Any Predecessor Company

Seniority for Employees who were employees (within the meaning of the relevant basic labor agreement with the Union) of any predecessor company (a Union-represented company some or all of whose assets are or were acquired by the Company) will be the length of time measured from the Employee's Seniority date under that predecessor company's basic labor agreement subject to the employee's eligibility dates agreed to by the parties, except as otherwise provided by this Agreement or other agreements between the parties.

(2) All Other Employees

Seniority for all other Employees will be the length of time measured from the Employee's first date of employment with the Company.

b. Company Seniority shall be the length of time measured from the Employee's first date of employment or reemployment following a break in Seniority with the Company.

c. Plant Service shall be the length of time measured from the Employee's first date of employment or reemployment following a break in Seniority in his/her plant.

d. Seniority (including Company Seniority and Plant Service) shall only be broken if an Employee:

(1) quits;

(2) retires;

(3) is discharged for cause;

(4) if on layoff, fails to report to the Employment Office within ten (10) days of certified mail notice sent to his/her last address s/he provided to the Company.

(5) is absent due to a compensable disability incurred during the course of employment and does not return to work within thirty (30) days after final payment of statutory compensation for the disability or after the end of the period used to calculate a lump-sum payment. If the seniority of an Employee does not permit a return to work, the Employee will be placed on layoff.

(6) has not worked for more than thirty-six (36) months.

5. Probationary Employees

a. New Employees hired after the Effective Date of this Agreement will serve a probationary period for the first 480 hours of actual work and will receive no Seniority credit during such period. Probationary Employees shall not have access to the grievance procedure to contest their discharge.

b. Probationary Employees who continue in the service of the Company beyond the first 480 hours of actual work shall receive full Seniority credit from their original date of hire.

c. Where a probationary Employee is laid off and is subsequently rehired at the same location within one (1) year from the date of such layoff, the hours of actual work accumulated during the first employment shall be added to the hours of actual work accumulated during the second employment in determining when the Employee has completed 480 hours of actual work; provided, however, that his/her Seniority date will be the date of hire of the second hiring.

6. Interplant and Intraplant Transfers

It is recognized that conflicting seniority claims among Employees may arise when plant or department facilities are created, expanded, added, merged or discontinued. In the event the local parties are unable to resolve such conflicts, the International Union and the Company may reach such agreements as they deem appropriate, irrespective of existing seniority agreements, or submit the matter to arbitration.

7. Seniority Status of Grievance Committee Members and Local Union Officers

When a decrease of force is effected, the Local Union President/Unit Chair, Vice President and the Chair of the Grievance Committee shall, if they would otherwise be laid off, be retained at the lowest rated job in the unit that they represent. The intent of this provision is to retain in active employment individuals who can provide continuity in the administration of the Agreement; provided that an individual shall not be retained in employment unless work which s/he can perform is available.

8. Administration of Seniority

The Company shall post in each department, on a bulletin board maintained for that purpose, the Plant Service date of all Employees in that department.

9. Compensation for Improper Layoff or Recall

In the event of improper layoff or failure to recall an Employee in accordance with his/her seniority rights, the Employee shall be made whole for the period during which s/he is entitled to retroactivity.

10. Disabled Employees

Provided there is a vacancy and the employee is qualified, an employee who becomes physically unable to perform the duties of his/her job and who is ineligible for permanent total disability retirement may apply for a vacant job if such job is to be filled. The Union and the Company may waive seniority procedures to temporarily place the disabled employee in a vacancy. No job incumbent shall be required to vacate a job involuntarily to accommodate the disabled employee. A disabled employee who is temporarily placed in a job by other than the standard seniority procedure shall accrue seniority in his/her previous regular job, will accrue no seniority in his/her disability assignment, and will not share overtime in any job where he/she is not currently assigned. Upon a Company doctor's determination that he/she can return to regular employment, the employee shall be reassigned to his/her regular assignment.

11. Interunion Transfers

Employees transferring into other bargaining units on a trial basis and who are disqualified by the company within the trial period shall be allowed to return to their former jobs without loss of seniority.

12. Curtailments

Reductions in forces of seven (7) days or less may be made without regard to seniority to meet operating requirements or emergencies.

Article 5. Workplace Procedures

Section F. Testing

1. Where tests are used as an aid in making pre-selection determinations of the ability to perform the work, such a test must in all events be:

   a. job related;

   b. in accordance with Article 4, Section A (Non-Discrimination); and

   c. uniformly applied within each relevant work group.

2. A job related test, whether oral, written or in the form of an actual work demonstration, is one which measures whether an Employee can satisfactorily meet the specific requirements of that job.

3. Testing procedures shall in all cases include notification to an Employee of any deficiencies and an offer to counsel how to overcome the deficiencies.

4. Where, in accordance with this Agreement, a test is used by the Company as an aid in making a determination of the Employee's ability to perform the work and where the use of the test is challenged in the grievance procedure, the following shall pertain:

   a. Upon request and in connection with a grievance concerning the use of a job-related test in accordance with this Agreement, the Company will provide a description of the test and examples of test questions to the Union. The Company, however, shall have no duty and shall not be required to provide the actual test or the questions used in the test to the Union except as required by law.

   b. In the event that test questions and descriptions have been provided to the Union, all such test questions and descriptions will be held in strictest confidence and will not be copied or disclosed to any other person; provided that such test questions and descriptions may be disclosed to an expert in the testing field for the purpose of preparing the Union's position in the grievance procedure and to an arbitrator, if the case proceeds to that step. All test questions and descriptions will be returned to the Company following resolution of the dispute.

   c. Copies of transcripts and exhibits presented in the arbitration of cases involving the challenge to a test will also be held in confidence and will not be copied or otherwise published, except as needed by the Company in order to defend against a claim challenging an adverse employment action.

Article 5. Workplace Procedures

Section G. Indefinite Shutdowns

1. Before the Company decides to indefinitely shutdown or discontinue a plant, department or operating unit (a Shutdown for purposes of this Section) it shall give the Union advance written notice of at least sixty (60) days prior to the proposed Shutdown date if the Shutdown is within the Company's control. Along with such notice, the Company shall provide the Union with a detailed statement of the reasons for the proposed action and how and where the work which was performed at the shut down unit will be performed.

2. Thereafter, the Company will meet with appropriate Union representatives in order to provide them with an opportunity to discuss the Company's proposed course of action, provide the Union with any additional requested relevant and non-confidential information and bargain in good faith over any suggested alternatives.

3. No less than thirty (30) days prior to the Shutdown date within the Company's control, the Company shall advise the Union of its final decision, which decision shall be the exclusive function of the Company.

4. Any Employee affected by a Shutdown shall, after exercising any rights to which s/he may be entitled, be placed on layoff in accordance with this Agreement.

Article 5. Workplace Procedures

Section H. Manning of New Facilities

1. In the manning of production or maintenance jobs at new facilities in existing plants covered by this Agreement, the jobs shall be filled utilizing the criteria as set forth in Article 5, Section E, Paragraph 1(c) except that Seniority shall be Plant Service from the following categories in the following order but subject to the other provisions of this Section:

    a. Employees displaced from any facility being replaced in the plant by the new facilities;

    b. Employees otherwise displaced as a result of the installation of the new facilities;

    c. Employees presently employed on like facilities in the plant;

    d. Employees presently on layoff from like facilities in the plant; and

    e. Employees in the plant with two (2) or more years of Plant Service; provided, that if sufficient qualified applicants from this source are not available, the Company shall fill the remaining vacancies as it deems appropriate.

2. The local parties shall meet to seek agreement on the standards to be used to determine the qualifications entitling Employees otherwise eligible to be assigned to the jobs in question.

3. Should the local parties fail to agree on the standards for determining qualifications, assignments to the jobs in question shall be made pursuant to Article 5, Section E, 1, c, above (selection of Employees in promotions, reductions in force, and recalls).

Article 5. Workplace Procedures

Section I. Adjustment of Grievances

1. Purpose

Should any differences arise between the Company and the Union as to the interpretation or application of, or compliance with, the provisions of this or any other applicable Supplemental Agreement, Memorandum of Understanding or Agreement, Letter of Understanding or Agreement, Settlement Agreement or Last Chance Agreement, prompt and earnest efforts shall be made to settle them under the following provisions.

2. Definitions

a. "Grievance" shall mean a complaint by the Union which involves the interpretation or application of, or compliance with, the provisions of this or any other applicable Supplemental Agreement, Memorandum of Understanding or Agreement, Letter of Understanding or Agreement, Settlement Agreement or Last Chance Agreement.

b. "Day" as used in this Section shall mean a calendar day, excluding Saturdays, Sundays and holidays.

3. Grievance Procedure

a. An Employee may informally discuss a complaint with his/her supervisor, with or without his/her steward being present.

b. Step 1. Any Employee or representative of the Union having a grievance may, within fifteen (15) days of the date on which the Employee first knew or should have known of the facts which gave rise to the grievance, present the grievance to his/her immediate supervisor, who shall attempt to adjust it. The Employee or Employees presenting the grievance may be accompanied by a steward. The supervisor shall give his/her decision within seven (7) days. If the supervisor's answer does not satisfactorily adjust the grievance, the grievance may be taken to the next step. Grievance responses at this step of the procedure will not set precedent.

c. Step 2. If not settled at Step 1, the grievance must then be reduced to writing by the Grievance Committee noting the alleged facts, applicable provisions of the Agreement, and the remedy sought and presented for Step 2 within seven (7) days of the supervisor's answer. The General Supervisor and Human Resources Manager or their designees will hear the grievance within ten (10) days from receipt of the grievance in the presence of the Union Grievance Committee. The Company will render a written decision within ten (10) days after the hearing to the Union's Grievance Chair and to the Union's International Representative or designee.

d. Step 3. If a satisfactory settlement is not reached in Step 2, the grievance may be appealed to the General Manager or his designee, by the Union's International Representative or designee, within ten (10) days following receipt of the Step 2 decision. The General Manager or his designee and the International Union Representative and/or the Grievance Committee shall meet within ten (10) days of the appeal notice to review the facts and the Step 2 positions in an attempt to mutually resolve the grievance. The Company shall render its written decision within ten (10) days from the conclusion of the Step 3 hearing.

e. The International Union Representative may appeal a grievance to arbitration by sending a written notice to the Company Step 3 representative within ten (10) days of the Union's receipt of the Step 3 written answer.

f. The time limits above may be extended by mutual agreement.

g. Grievances at Step 1 only may be presented to the Company during the grievant's scheduled working hours, provided such procedure does not interfere with production or the orderly operation of the business.

h. Grievance meetings at Step 2 and Step 3 will be held during normal working hours on day shift. Aggrieved employees and a reasonable number of witnesses will be allowed to attend meetings at Step 2 if they have testimony which the Union Grievance Committee represents is relevant, material, non-repetitive and necessary to the resolution of the grievance. If committee members, aggrieved Employees, or witnesses are scheduled to work during a hearing, once notified by the Company that the hearing has been scheduled they must provide to their supervisors reasonable advance notice that they will attend. Aggrieved Employees may be called at the request of either the Company or the Union at any step and will be paid for time lost. In Bargaining Unit Work or safety grievances, a representative of the relevant committee shall also be present.

i. Multiple grievances arising within the bargaining unit at a single plant and from a single cause may be consolidated by mutual agreement.

4. General Provisions

a. Upon request from the Union, the Company shall provide the Union with reasonable forms for filing and appealing grievances and the special form referenced in subparagraph f below. The Union shall be responsible for timely requesting from the Company a re-supply of forms. The parties shall document the Step 2 and Step 3 written records.

b. The Company and the Union shall provide each other with updated written lists of their Step 1, Step 2 and Step 3 representatives and their designees who shall have the authority to settle grievances at their respective steps and, for the grieving party, to withdraw or appeal such grievances.

c. The settlement or withdrawal of a grievance prior to arbitration shall be without precedent or prejudice to either party's position.

d. Any grievance filed directly in Step 2 or higher shall be initiated within fifteen (15) days of the event upon which the grievance is based, or the date on which such event should reasonably have become known except as otherwise provided in this Agreement.

e. Except as otherwise provided in this Agreement, all grievances shall be initiated at Step 1 and grievances which are not initiated in the proper step shall be referred there for processing.

f. Upon mutual agreement, a single grievance may be processed with the facts of the additional violations presented as well. Additional claimants shall sign a special form for this purpose. When the original grievance is resolved, the additional claims shall be reviewed in light of the resolved grievance. If the additional claims are not settled, they shall be considered as grievances and processed accordingly.

g. In the case of a grievance that involves a large group of Employees, only a reasonable number may participate in any discussion of the grievance.

h. In any settlement involving cash payments, payment not made within thirty (30) days will accrue interest from the date of settlement at the same rate as established at the local Federal Credit Union.

i. If, for any reason, the time limits specified in Paragraph 3 above for:

   (1) meetings between the parties are not met, the grievance shall be considered denied as of the last day within the time limit for such meeting and the appropriate Union representative shall have the right to move the grievance to the next step;

   (2) the Union to act are not met, the grievance shall be considered withdrawn; or

   (3) the Company to act at Step 2 or Step 3 are not met, the grievance shall be considered denied as of the last day within the time limit for such action and the appropriate Union representatve shall have the right to move the grievance to the next step.

j. An Employee who is summoned to meet with a supervisor or other representative of the Company for the purpose of discussing possible suspension or discharge of the Employee shall be entitled to be accompanied by a steward and, if no steward or other Union representative is available, the meeting shall be deferred and the Employee may be suspended pending the meeting. In the event no steward or other Union representative is available and the Company elects to suspend the Employee pending

the meeting, the Company shall make a good faith effort to advise the Local Union President/Unit Chair or Grievance Chair as soon as possible that day.

k. No Employee shall be required to submit to a lie detector test. The results of lie detector tests will not be used by the Company or the Union.

l. Notwithstanding anything to the contrary, the grievance procedure may be utilized by the Union with or without an individual grievant. Such grievances shall be filed in Step 2.

m. In the event an Employee dies, the Union may process his/her grievance on behalf of his/her heirs.

n. The Chair of the Union Negotiating Committee, the District Director and the International Representative (or equivalent) shall have access to the plant at reasonable times to investigate issues with which they are concerned.

o. The Company will pay for all lost time of Employee participants in Steps 1, 2 and 3 of the grievance procedure and disciplinary hearing (described above) in accordance with current practice.

5. Grievance Committee

a. The Union shall provide the Company with an updated list of Employees who comprise its Grievance Committee, including a chair and a secretary. The number of members of the Committee at each Company location shall be consistent with current practice.

b. Committee members will be afforded time off upon reasonable notice and approval to:

(1) attend scheduled committee meetings;

(2) attend meetings pertaining to suspension or discharge or other matters which cannot reasonably be delayed; and

(3) visit departments at reasonable times for the purpose of transacting the legitimate business of the Grievance Committee after notice to the head of the department to be visited and after reasonably granted permission from his/her own department head if the Grievance Committee member is at work.

c. Where the Grievance Committee so decides, the steward may be designated to aid the Committee in a particular matter. The Union shall notify the Company in writing when it so decides.

d. Each steward shall:

(1) with respect to the handling of grievances, be limited to Step 1 within the plant unit represented by him/her; and

(2) upon reasonable notice to and reasonable approval by his/her immediate supervisor, be afforded time off to investigate the facts essential to the settlement of any grievances.

6. Board of Arbitration

a. The Board of Arbitration (the Board) for the term of this Agreement shall consist of the following individuals:

(1) Michael D. Rappaport
(2) Michael H. LeRoy
(3) Elizabeth Ford
(4) Paul S. Betts
(5) Harry Graham
(6) Maretta Comfort Toedt

b. In the event of the resignation, incapacity or death of a member of the Board, the parties shall promptly agree upon a successor. If the parties cannot agree on a successor, the party that initially selected the departing arbitrator shall be entitled to select the successor arbitrator. The successor arbitrator must be a member of the National Academy of Arbitrators.

c. The member of the Board (arbitrator) chosen in accordance with Paragraph 7(a) below shall have the authority to hear and decide any grievance appealed in accordance with the provisions of the grievance procedure. The arbitrator shall not have jurisdiction or authority to add to, detract from or alter in any way the provisions of this Agreement.

d. Where the parties are in disagreement with respect to the meaning and application of a decision, either party may apply to the Board for a compliance hearing in accordance with rules that the Board shall prescribe. Such application shall be given priority and be resolved by the Board within thirty (30) days.

e. Expenses connected with specific cases shall be shared equally by the Company and the relevant Local Union.

f. The decision of the arbitrator shall be final and binding upon the Company, the Union, and all Employees concerned.

7. Arbitration Hearings

a. An arbitrator will be selected from the Board of Arbitration on a case-by-case rotation basis, starting after the Effective Date of this Agreement with the first case being handled by the first Board member listed above, unless the parties mutually agree to select a Board member on some other basis. Discharge cases will be placed first in the order of priority of cases to be heard. Hearings will be scheduled by mutual agreement on dates provided by the arbitrator.

b. The hearing shall be scheduled as required at a mutually acceptable location.

c. A hearing may be postponed by mutual agreement or if the Arbitrator determines that circumstances clearly require postponement. After a matter has been appealed to arbitration, within three months the arbitrator then available on the rotation described in 7(a) above shall be notified of his or her selection to hear the matter, and the parties shall within six months schedule a hearing date consistent with the dates offered by arbitrator.

8. Rules For Hearings

The total cost of any stenographic record or transcript shall be paid for by the party ordering same. All back pay awards will be limited to the amount of wages and benefits the Employee would otherwise have earned or been entitled to, less amounts the Employee could have earned through the exercise of reasonable diligence as defined by NRLB case law, or interim earnings calculated according to NLRB and unemployment compensation.

a. The parties agree that the prompt resolution of cases brought to arbitration is of the highest importance. Therefore, except for cases involving contract interpretation disputes and/or as provided in Paragraph 8(b) below, arbitration hearings shall be heard in accordance with the following rules::

(1) the hearing shall be informal;

(2) no briefs shall be filed or transcripts made in discipline cases;

(3) there shall be no formal evidence rules;

(4) the arbitrator shall assure that the hearing is, in all respects, fair;

(5) the arbitrator shall issue a decision no later than two (2) days after conclusion of the hearing in a discipline case. The decision shall include a brief written explanation of the basis for the conclusion; and

(6) the Board shall adopt such other rules as it deems necessary.

b. In the event the Union or the Company believes that the issues involved in a discipline case are of meaningful precedential significance or great complexity, it may petition the arbitrator to allow the filing of briefs as follows:

(1) the moving party will notify the other party that it intends to so argue at least seventy-two (72) hours prior to the start of the hearing;

(2) the hearing shall begin with the arbitrator taking no more than thirty (30) minutes of testimony from each side on that issue;

(3) the arbitrator shall rule from the bench on the issue of whether briefs may be filed and the hearing on the case shall commence immediately thereafter; and

(4) if the arbitrator rules that briefs are to be allowed, then the parties shall determine when the briefs will be due, as well as when the arbitrator will render a decision.

c. The Company agrees that it shall not compel, by subpoena or otherwise, any Employee or retired Employee to testify in an arbitration hearing. The Union agrees that it shall not compel, by subpoena or otherwise, any non-bargaining unit employee or retiree to testify in an arbitration hearing.

9. Suspension and Discharge Cases

a. No Peremptory Discharge

(1) Within three (3) days of notification by the Company that the conduct of an Employee may warrant disciplinary suspension or discharge, a hearing will be held by a representative designated by the Company, with the Employee and the Union Grievance Committee. The purpose of the hearing is to provide for an investigation and determination of the facts. The Company will notify the Employee and the Union of its decision in writing within five (5) days after such hearing. Any grievance over disciplinary suspension or discharge shall be filed in Step 2 of the grievance procedure within five (5) days of the notice of the Company decision. The Company may suspend the Employee pending the hearing.

(2) Before imposing a discharge, the Company shall give written notice of its intent to the affected Employee and the Grievance Chair.

(3) Where the Union files a grievance protesting such intended discharge within five (5) days of receipt of the notice, the Company may impose no more than a suspension on such Employee.

(4) The grievance protesting the intended discharge shall be filed at Step 2 of the grievance procedure and the Step 2 Answer shall be given prior to the Company converting the suspension to a discharge. At the Step 2 meeting, the Company shall provide a written statement of the facts and circumstances supporting its proposed disciplinary action.

(5) In the event the Company does convert the suspension to a discharge, the action shall be treated as a denial of the grievance at Step 2 and the Union may thereupon move the case through the balance of the grievance procedure.

10. Arbitration of Disputes Involving Asarco Benefits Plans

a. If any difference shall arise concerning a benefit, eligibility or coverage of the Employee and/or spouse or dependents under the Pension, Health and/or other Welfare Plans, the issue may be the proper subject of a grievance after completion of any claim or pre-litigation dispute resolution procedure in the applicable plan. If agreement cannot be reached between the Company and the applicable Union representative, such question shall be referred to arbitration as described herein.

b. The Union may appeal a benefits grievance to arbitration by sending a written notice to the Company Step 3 representative within sixty days of the Union's receipt of the Step 3 written answer. However, the time limits for filing a grievance under the grievance procedure shall not apply until after the claim or pre-litigation dispute resolution procedure in the applicable plan has been exhausted.

c. An arbitrator shall be selected from a list obtained from the Federal Mediation and Conciliation Service (FMCS) of arbitrators with specialized experience with issues involving Pension and Welfare Plans. The parties shall request a panel of seven such names from the FMCS and shall strike names from the list until an arbitrator is selected. If the parties are unable to reach agreement on an arbitrator from the submitted list, the parties shall request another panel and repeat the procedure until an arbitrator is selected.

d. The arbitrator shall have authority only to decide the question pursuant to the provisions of this Agreement and of the applicable Plan, but shall not have authority in any way to alter, add to or subtract from any of such provisions.

e. The decision of the arbitrator shall be final and binding and judgment on the award may be entered in any court having jurisdiction. The expense of arbitration shall be borne equally between the parties unless they agree otherwise.

Article 5. Workplace Procedures

Section J. Management Rights

1. The management of the plants and the direction of the working forces, including but not limited to the right to: hire, transfer, suspend or discharge for proper cause, relieve Employees from duty; determine the work to be performed; change or curtail operations; fill, change, add or eliminate jobs; establish, revise, or continue methods, processes, and means of mining, processing, refining, and manufacturing; determine the existence or the lack of work; lay off employees for business reasons; institute, establish, adjust, and determine work standards; establish quantity and quality standards and to exercise its judgment as to the quality and quantity required; require physical examinations or job-related functional capacity evaluations of employees seeking to return to work after time off due to a personal medical condition or occupational illness, or as may be required in order to assess the reasonableness of an accommodation under applicable law, or if other objective evidence indicates that there exists a reasonable question as to fitness for duty; adopt reasonable safety, work and other rules and, from time to time, modify, rescind, or change such rules after first providing advance notice to the Union and bargaining either to agreement or impasse, it being expressly understood that this provision is not a waiver of the Union's right to contest the reasonableness of any such rule in an arbitration proceeding, and to enforce such rules and impose discipline, including suspension and discharge, for violation thereof.

2. Nothing in Section J shall permit the Company to act inconsistently with any agreement with the Union.

3. The Company, should it fail to exercise any of its rights or exercise them in a particular way, shall not be deemed to have waived such rights or to be precluded from exercising such rights in some other way.

Article 5. Workplace Procedures

Section K. Prohibition on Strikes and Lockouts

1. There shall be no strikes, sympathy strikes, or other work stoppages or the interruption or impeding of work. No officer or representative of the Union shall authorize, instigate, aid or condone any such activities. No Employee shall participate in any such activities.

2. The applicable procedures of this Agreement will be followed for the settlement of all complaints or grievances.

3. In the event of a breach of paragraph 1 above, the Union shall immediately instruct the involved employees that their conduct is in violation of the contract and shall instruct such employees to quit the offending conduct. The Union shall provide written confirmation to the Company, in a timely manner, that it has contacted and instructed affected employees to quit the offending conduct. The Union will also provide the Company with a copy of any posting regarding such instructions in a timely manner.

4. There shall be no lockouts.

Article 5. Workplace Procedures

Section L. **Workplace Problem-Solving Committee** – Refer to Article 6, Section A(1)&(2)

Article 5. Workplace Procedures

Section M. Clothing and Tool Replacement

1. Maintenance Employees will provide and maintain a full set of hand tools necessary for the performance of their work. Apprentices will obtain such tools upon indenture date. Other employees will obtain such tools upon being promoted or hired to the maintenance position. Employees will be compensated for such required tools when they are unintentionally destroyed beyond repair in Company service or upon satisfactory proof that they were stolen from the workplace, provided negligence on the part of the employee is not the cause thereof. Compensation consideration will include normal wear and quality of the tool.

2. Employees will be compensated for personal clothing or other personal items destroyed or damaged beyond repair by abnormal circumstances during work. In determining such compensation, the prior condition of the item will be considered.

3. Except as provided in Article 3 (Health, Safety and the Environment) of this Agreement, the Company will not furnish work clothing unless applicable law or regulation requires that such clothing be furnished at Company expense. As determined by the Company, Employees will be provided special clothing and tools for unusual situations. The Company will replace tools which are broken or damaged in Company service, so long as not the result of an employee's negligence. Any broken or damaged tools will be replaced with tools of comparable value. Broken or damaged tools shall be presented and become property of the Company in exchange for the replacement.

Article 5. Workplace Procedures

Section N. Absentee Control Policy

This policy will be effective on the first day of the month following ratification of the Basic Labor Agreement. Employees will begin with a clean slate at that time.

1. Attendance

   Regular attendance and punctuality is essential to ASARCO's success and are conditions of employment which must be observed. All Employees have the obligation to be prepared to start work at their scheduled starting time. All absences under this policy will be counted in a rolling twelve (12) month period. Absences covered by a leave of absence, FMLA, jury duty, Union business, funeral leave, disciplinary layoff, industrial accidents, military leaves or other contractually allowed absences, will not be considered "absences" under this policy.

2. Absences

   a. It is the Employee's responsibility to contact the Company in accordance with local notification procedures as soon as he knows or thinks that he cannot report to work, will be late for work, or must leave early. The Company should be contacted as soon as possible, at least one hour before the Employee's starting time. In all cases, Employees must have actual reasons for absences.

   b. If an Employee does not notify the Company in accordance with local notification procedures at least one hour in advance that he will be absent from work, it will be considered a no call, no show absence. For scheduling purposes, Employees must inform the Company of the expected date of their return, if applicable. An Employee will be allowed a maximum of eleven (11) total absences for any reason in a rolling twelve month period.

3. Non-Consecutive/No Call, No Show Absences

   If an Employee has four (4), non-consecutive/no call, no show absences (cumulative) in a rolling twelve month period, he will be subject to immediate termination without a hearing. Each non-consecutive/no call, no show absence is also considered one of the Employee's eleven (11) maximum total absences.

4. Consecutive/No Call, No Show Absences

   Employees who incur three (3) consecutive/no call, no show absences will be subject to immediate termination without a hearing.

5. Notification and Counseling

   a. An Employee will receive verbal notification when he/she has reached 3 absences.

   b. An Employee will be notified in writing when he/she has five (5) absences.

   c. Employees who incur seven (7) absences shall be counseled by a committee consisting of a supervisor, Human Resources, and a Union representative. At the counseling session, the Employee will be encouraged to improve his attendance record.

   d. An Employee will also be notified in writing when he/she has ten (10) absences and his/her next absence is cause for termination. In all cases, the Union will be provided a copy of the letter.

6. Leaves of Absence

   a. An Employee may pre-arrange a leave of absence, which, if approved, will not count towards the Employee's maximum absences. A leave of absence is an absence with permission for more than three (3) scheduled work days. An Employee desiring a leave of absence will request a leave of absence from Human Resources. Whenever possible, this request should be made prior to the time the leave begins but in all events the request shall comply with local notification procedures. Human Resources or its delegate will investigate the nature and validity of the request and in accordance with local procedures will approve or disapprove the request as appropriate and notify the Employee. If the request is denied, Human Resources or its delegate will explain the reason to the Employee.

   b. Any Employee who requests or takes a leave of absence for false reasons will be subject to disciplinary action, up to and including possible discharge.

   c. Emergency requests for leaves of absence will be handled without delay.

   d. A request to extend a leave of absence must be made to Human Resources in accordance with local notification procedures. An Employee who is requesting a leave of absence for medical reasons must provide the name, address and telephone number of his doctor to Human Resources. By providing the required information, another person may arrange a leave of absence for a critically-injured or critically-ill Employee.

   e. An Employee returning from a leave of absence must comply with any return to work requirements.

7. Late In/Early Out

a. Employees who arrive late to work less than an hour after the start of their scheduled or prearranged shift are considered tardy. Two (2) tardies will equal one (1) absence. If an Employee is over one hour late after the start of the employee's scheduled or prearranged shift, it will be considered an absence which will count against the Employee's maximum and will be considered a no call, no show absence unreported if the Employee did not comply with local call in procedures more than an hour before the scheduled shift starting time. Employees who are over an hour late to work may work at the supervisor's discretion.

b. Early Out or Late Start. If an Employee works less than half (1/2) their scheduled hours in one day, he will be charged with an absence for that day, except in cases involving work-related injuries or with specific approval from a supervisor. An Employee may not have a late start and early quit in the same shift except in cases of emergency.

8. Hearing

a. If an Employee reaches the maximum number of absences in a rolling twelve month period, the Employee shall be afforded a hearing prior to termination to review the absentee record.

b. The Employee's immediate supervisor, a human resources representative, the Employee, and a Union Representative shall be present at the hearing. A copy of the written decision will be sent to the Employee, human resource manager, and the Union.

c. The Union may submit a grievance in accordance with the procedures outlined in Article 5, Section I.

9. Unusual or Unforeseeable Circumstances

a. Management reserves the right to waive or excuse absences if there are unusual or unforeseeable circumstances such as acts of god. If Management believes there are special and unique circumstances requiring deviation from this policy, the situation will be reviewed with the Union before a decision on an employee's employment status is made.

10. Call-In Procedures

a. The Company will provide the Union a list of call-in numbers at each location to be used in accordance with local call-in procedures, and a number that employees can call to confirm their call-in. The Company will give the Union at least ten (10) days advance notice of any changes to these numbers.

Article 5. Workplace Procedures

Section O. Alternative Work Schedules

1. Employees working extended shifts will be paid overtime if the employee works beyond his/her regularly scheduled shift in one workday or more than forty hours in one workweek. Employees will not be required to work more than sixteen hours in one workday except in case of emergency. The Company will seek volunteers for overtime before requiring employees to stay. Employees working twelve-hour shifts will not be required to work overtime on consecutive days unless no other qualified employee is available on that shift. Employees working overtime after a twelve-hour shift will be provided an overtime lunch within approximately the first two hours of overtime; any pay in lieu of lunch will be in accordance with Article 5, Section D Paragraph 5 (B).

2. Employees working the second shift will be paid the night shift differential. Overtime shift differentials will be paid in accordance with Article 5, Section D.

3. Vacation pay is based upon total vacation hours eligibility. Vacation days taken during the year will be deducted from the employee's total vacation hours eligibility based upon the number of hours the employee was scheduled to work during the absence. Residual vacation hours equal to half or more of a full shift may be taken as a vacation day with the residual hours paid, or the employee may elect to be paid for those hours in lieu of time off. Residual hours of less than half a full shift may not be taken as a vacation day and the employee will be paid for the unused vacation hours. Scheduling of vacations is subject to the approval of the Company.

4. Employees working on a holiday will be paid according to Article 10, Section A. Employees will be paid eight (8) hours straight time pay for holidays not worked, subject to Article 10.

5. The employee will receive full shift pay for the regularly scheduled workdays, for the purposes of and subject to the terms and conditions of Article 10, Section D (Jury and Witness Duty).

6. Employees will receive full shift pay for the regularly scheduled workdays, for the purposes of and subject to the terms and conditions of Article 10, Section C (Bereavement Leave).

7. Employees will receive compensation for lost time according to Article 3, F, 2 (occupational injury or illness time), based on the hours they otherwise were scheduled and would have worked. Accommodations for employees needing time off or shift trades will be handled according to current practice, keeping in mind that the additional days off inherent in extended shifts should allow employees more than ample time to take care of most personal business. The Company will have final approval of all schedules and reserves the right to discontinue the extended shift schedules if the needs of the operation

so require. In addition, reference to ten or twelve-hour shifts in this or any other Article regarding extended shifts is not intended to preclude scheduling for shifts of any length up to twelve hours in accordance with this Agreement.

Article 5. Workplace Procedures

Section P. Return to Work Fitness Certifications

1. When an employee has been absent from work due to an injury or illness covered by Workers Compensation or the work injury program at Amarillo, the employee's fitness to return to work, including any physical or occupational examinations to certify such fitness, shall be governed by applicable workers compensation law or work injury program documents at Amarillo, and to the extent applicable, Article 3, Section F of this Agreement.

2. When an employee has been absent from work due to an injury or illness not covered by Workers Compensation or the work injury program at Amarillo, the employee's fitness to return to work, including any physical or occupational examinations to certify such fitness, shall be governed by the standards and regulations of the Family Medical Leave Act and where applicable, by the standards and regulations of the Americans with Disabilities Act, Uniformed Services Employment and Reemployment Act, and other applicable federal and state laws and regulations.

3. The operation of the laws as described above shall change to reflect any and all statutory and regulatory amendments of the laws and regulations.

Article 6. Joint Efforts

Section A. Workplace Problem-Solving Committee

1. At each Company location, the Union (or, if applicable, the Unions, collectively) shall appoint up to six (6) Employees, including a Local Union President/Unit Chair or his/her designee, and the Company shall appoint up to an equal number of individuals, including the General Manger or his designee, to a Workplace Problem-Solving Committee (Workplace Committee). The Workplace Committee shall meet at least monthly to address matters of common interest and concern including, but not limited to, improvements in productivity and efficiency, multi-skilling, training, cost reduction techniques, enhancement of Employee job satisfaction, and other topics as agreed by the parties.

2. The Employees on the Workplace Committee selected by the Union shall be compensated for lost time during regular business hours to attend committee meetings or for time conducting other committee business when the Company approves pay for that time.

3. Comprehensive Training and Education Program

   a. Commitments

The parties are committed to:

(1) the Company's workforce being sufficiently skilled so that all Bargaining Unit Work can be performed in accordance with this Agreement by Employees; and

(2) Employees receiving sufficient training to allow for all reasonable opportunities to progress within the workforce and maximize their skills to the greatest extent possible.

   b. Plant Training Committees

The parties shall establish a Plant Training Committee at each of the Company's facilities. The Plant Training Committee shall be composed of three (3) Union representatives who are Employees of the Company and an equal number of Company representatives (except that the number of Union representatives shall be four (4) at Mission Complex). The Company members of each Plant Training Committee shall include the General Manager or his designee (who shall serve as the Company Co-Chair). The Company Members of the Committee shall be selected and serve at the pleasure of the General Manager. The Union members of each Plant Training Committee shall include a Local Union President/Unit Chair (who shall serve as the Union Co-Chair).

c. The Company will continue to make available the necessary training and/or cross-training so as to minimize the impact of new technology, automation and/or sub-contracting on bargaining unit personnel.

4. Safeguards and Resources

a. No entity created under this Section may amend or modify this Agreement, recommend or effect the hiring or discipline of any Employee or take any action with respect to contractual grievances.

b. Employee participation or training contemplated in this Section shall normally occur during normal work hours. All joint meeting time and necessary and reasonable expenses associated with any committee created under this Section shall be paid for by the Company.

c. All Union participants involved in any and all joint activities under this Section, or in any other joint committee involving members of a Union bargaining unit, shall be chosen and removed from the process exclusively by the relevant Local Union President/Unit Chair.

Article 6. Joint Efforts

Section B. Contract Coordinators

In this BLA, the parties have committed themselves to a number of joint undertakings crucial to the success of the Company, its Employees and the Union. In recognition of the crucial role being served by the Union in accomplishing the joint goals of the parties, the parties agree as follows:

1. The Chair of the Union Negotiating Committee shall select and direct three (3) Contract Coordinators who shall be responsible throughout the Company for implementation and ongoing monitoring of joint undertakings of mutual interest to the Company and the Union. It is expected that Contract Coordinators will visit each of the Company's locations on a regular basis in the performance of their duties.

2. Each Contract Coordinator shall be an Employee of the Company. The Contract Coordinator shall be compensated by the Company in the amount of the appropriate wages, benefits and other fringe benefits s/he would have earned during his/her normal course of employment with the Company, but for this assignment. In addition, each Contract Coordinator shall be reimbursed for reasonable out-of-pocket expenses including, but not limited to, travel (coach airfare, hotel and per diem) incurred in connection with this assignment and as reasonably agreed to by the Company and the Union in advance of incurring such expense. In order to receive such lost time payments and expense reimbursements, supporting vouchers must be provided by the Contract Coordinator.

Article 6. Joint Efforts

Section C. New Employee Orientation

1. There will be an orientation for new employees that will include the following:

   a. an introduction of plant Company officials, International Union officials and Local Union representatives as may be appropriate;

   b. distribution and discussion of the BLA, including any relevant local agreements;

   c. discussion of safety and health programs and safe working procedures;

   d. presentation and discussion on labor-management participation, problem solving, communications and the role of the Union and the workforce in quality and customer satisfaction;

   e. discussion (not more than ten (10) minutes) of the history and achievements of the Union and the particular Local Union;

   f. discussion (not more than ten (10) minutes) of the structure of the Union and the particular Local Union and the services that are provided by the various offices and committees;

   g. presentation on the history of the Company and plant;

   h. review of the markets in which the Company participates, the products produced and the customers serviced; and

   i. discussion of the structure of the Company, the plant organization and the functions and services that are provided by the various departments.

2. This program shall be jointly presented to each new Employee of the Company during their probationary period. The Union will be allotted a portion of the program to address the Employees.

3. All costs associated with this Program shall be borne by the Company.

Article 7. Training

Section A. Workforce Training Program

1. Commitments

The parties are committed to:

a. the Company's workforce being sufficiently skilled so that all Bargaining Unit Work can be performed in accordance with this Agreement by Employees; and

b. Employees receiving sufficient training to allow for all reasonable opportunities to progress within the workforce and maximize their skills to the greatest extent possible.

2. Plant Training Committees

The parties shall establish a Plant Training Committee at each of the Company's facilities. The Plant Training Committee shall be composed of three (3) Union representatives who are Employees of the Company and an equal number of Company representatives (except that the number of Union representatives shall be four (4) at Mission Complex). The Company members of each Plant Training Committee shall include the General Manager or his designee (who shall serve as the Company Co-Chair). The Company Members of the Committee shall be selected and serve at the pleasure of the General Manager. The Union members of each Plant Training Committee shall include a Local Union President/Unit Chair (who shall serve as the Union Co-Chair).

3. Study of Workforce Training Needs

Within six (6) months of the Effective Date, each Plant Training Committee shall complete a report (Report) of the expected training needs of the workforce over the term of the Agreement, given the Commitments outlined in Paragraph 1 above. Such Report shall include Findings and Recommendations as described below.

a. Findings

(1) an age and service profile and the anticipated attrition rates of the workforce over the life of the Agreement;

(2) an assessment of the current skill requirements (both competencies and force levels) of the plant, the availability of such skill requirements within the existing workforce and any training practices or programs necessary to bring the competencies and/or force levels of the current workforce into prompt conformity with the plant's current skill requirements;

(3) an evaluation of the appropriateness of existing training programs and the necessity of developing additional training programs, giving due consideration to changing technology and future skill needs; and

(4) an examination of methods by which productivity and efficiencies can be improved through additional training of Employees.

b. Recommendations

Based on its Findings, the Plant Training Committee shall develop a recommended training program designed to meet the commitments outlined in Article 7, Section A, 1, above.

c. Constructive Participation

The Union and the Company commit that their participation on the Plant Training Committee will be constructive. Nothing in this Article or the parties' commitment to joint efforts shall detract from the Company's right to manage the workforce and to adopt reasonable training programs and requirements following satisfaction of its statutory bargaining obligations.

4. Record Keeping

a. The Company shall keep detailed records of who is trained where and when.

b. The Company shall share such records with the Union. The Union may discuss additional or supplemental training on positions with the Company.

Article 8. Earnings Security

Section A. Supplemental Unemployment Benefits

1. Eligibility

An Employee shall be eligible for a weekly supplemental unemployment benefit (Weekly Benefit) for any week beginning on or after the Effective Date, if s/he:

a. has completed two (2) years of Continuous Service prior to his/her seeking weekly benefits;

b. is and remains an Employee within the meaning of the Agreement;

c. does not receive sickness and accident benefits under an agreement between the Company and the Union;

d. is not in the military service, including training encampments;

e. is eligible, applies for state unemployment benefits for the week and takes all reasonable steps to receive such benefits; provided, however, that this requirement will not apply if s/he has exhausted state unemployment benefits, receives other compensation in an amount that disqualifies him/her for state unemployment benefits, has insufficient employment to be covered by the state system, fails to qualify for state unemployment benefits because of a waiting week, is unable to work by reason of disability, or is participating in a federal training program; and

f. either:

(1) is on layoff for any week in which, because of lack of work, s/he does not work at all for the Company;

(2) is on layoff during a plant vacation shutdown and s/he is not entitled to vacation during the shutdown; or

(3) became disabled while on layoff and is not physically able to return to work.

2. Amount and Duration of Benefits

a. Weekly Benefits are equal to:

(1) $150 per week in which s/he is eligible for a state unemployment benefit; and

(2) $250 per week in which s/he is ineligible for a state unemployment benefit.

b. Benefit durations shall be as follows:

Seniority	Maximum Duration of Benefits
2 but less than 10	26 weeks
10 but less than 20	52 weeks
20 and over	104 weeks

c. Notwithstanding the above, the duration of Weekly Benefits payable to an Employee who becomes disabled while on layoff and is not physically able to return to work shall be limited to fifty-two (52) weeks beginning with the week the Employee is recalled to work.

d. The amount of a Weekly Benefit is not reduced for the receipt of state unemployment benefits or Trade Adjustment Allowance, but is subject to reduction due to any Excess Other Compensation.

e. Excess Other Compensation means any weekly earnings from an employer other than the Company in excess of the amount that would reduce the Employee's state unemployment benefit to zero. The amount to be offset shall be $1 for each $2 of Excess Other Compensation.

3. Company Payment

The Company shall make reasonable calculations of Weekly Benefits and pay such benefits based on the best information in its possession and obtained from the state system.

4. Disputes

In the event an Employee believes that his/her Weekly Benefit or eligibility determination has been made in error, the Employee may file a grievance, as outlined in the grievance procedure of this Agreement.

5. Administration of the Plan

Subject to and in accordance with the terms and conditions outlined in this Section, the Company shall administer the Supplemental Unemployment Benefits Plan (Plan) and may prescribe reasonable rules and regulations. The costs of administering the Plan shall be borne by the Company.

6. Finality of Determination

The Company shall have the right to recover overpayments and correct underpayments to Employees. However, any benefit determination shall become final six (6) months after the date on which it is made if (a) no dispute is then pending and (b) the Company has not given notice in writing of an error.

7. Termination

Notwithstanding the provisions of Article One, Section B (Term of the Agreement), this Section and the Plan on which it is based shall expire 150 days after the Termination Date.

8. Documentation

The parties shall adopt a mutually agreed upon Plan to provide the benefits described in this Section.

Article 8. Earnings Security

Section B. Interplant Job Opportunities

1. As described below, an Employee with more than two (2) years of Company Seniority who is continuously on layoff for at least sixty (60) days and not expected to be recalled within sixty (60) days shall be given priority, for permanent bargaining unit job vacancies at other Company locations over new hires and probationary Employees at such locations (without the right to bump probationary employees out of their current jobs):

   a. The Employee must file with his/her home plant, on a form provided by the Company, a written request for such transfer specifying the other plant or plants at which s/he would accept employment.

   b. Employees who apply shall be given priority in the order of their Company Seniority (the earlier date of birth to control where such service is identical), provided the Employee has the necessary qualifications to perform the job. In determining qualifications, the Employee shall be treated as if the job were an opening at his/her home plant.

   c. An Employee laid off from his/her plant who is offered and accepts a job at another plant, will have the same obligation to report for work there as though s/he were a laid-off Employee at that plant. During his/her employment at that plant, s/he will be subject to all the rules and conditions of employment in effect at that plant. S/he will be considered as a new Employee at that plant and therefore such Employee's Plant Service shall be defined in accordance with Article 5, Section E, 3,b.

   d. An Employee shall be deemed to reject such job if s/he does not affirmatively respond within five (5) days of the time the offer is made, which offer shall be directed to his/her last place of residence as shown on the written request referred to in Paragraph (a) above.

   e. An Employee who accepts employment at another plant under this Section will continue to accrue Plant Seniority for seniority purposes at his/her home plant in accordance with the applicable seniority rules for a maximum period of six (6) months from the date of transfer. If within six (6) month period, s/he is recalled to work at his/her home plant and s/he elects to return, his/her Plant Seniority for seniority purposes at the other plant will be cancelled. If s/he elects to remain at the other plant for more than six (6) months, his/her Plant Seniority for seniority purposes at his/her home plant will be cancelled.

   f. When an Employee is recalled to his/her home plant, the Company may require the Employee to remain at such other plant for the calendar week following the calendar week during which such recall occurs.

2. An Employee who accepts a job at another plant more than 100 miles from his/her former plant will receive a relocation allowance of $500 promptly after the commencement of employment at the plant to which s/he is relocated, provided the Employee relocates his/her permanent residence to within thirty (30) miles of the new reporting location. If the Employee does not voluntarily remain employed at the new reporting location for six (6) months, he shall repay the relocation allowance.

Article 9. Economic Opportunity

Section A. Wages

1. Standardized Wage Scale[1]

Amarillo Refinery

Classification/Grade	Pay Rate
-1	16.75
0	17.25
1	17.75
3	18.75
4	19.25
5	19.75
6	20.25
7	20.75
8	21.25
9	21.75
10	22.25
11	22.75
12	23.25
13	23.75
15	24.75
16	25.25

[1] The wages set forth in Article 9 of this Agreement and the Local Supplemental Agreements are intended to reflect the standardized wage scale as of September 21, 2017. In the event of a discrepancy between the amounts listed in Article 9 of this Agreement and/or the Local Supplemental Agreements, and the wages being paid to employees as of September 21, 2017 (as specified in the Company's payroll), the status quo shall remain, with employees continuing to receive the same wage rate as prior to execution of this Agreement. The parties do not intend for this Agreement to change the wage rate of any employees

Hayden Smelter

Classification/Grade	Pay Rate
-1	16.75
0	17.25
1	17.75
2	18.25
4	19.25
5	19.75
6	20.25
7	20.75
8	21.25
9	21.75
10	22.25
11	22.75
12	23.25
13	23.75
14	24.25
15	24.75
16	25.25
17	25.75

Mission Complex

Classification/Grade	Pay Rate
-1	16.75
0	17.25
1	17.75
3	18.75
5	19.75
6	20.25
7	20.75
8	21.25
9	21.75
10	22.25
11	22.75
12	23.25
13	23.75
14	24.25
15	24.75
16	25.25

Ray Complex

Classification/Grade	Pay Rate
-1	16.75
0	17.25
1	17.75
3	18.75
4	19.25
5	19.75
6	20.25
7	20.75
9	21.75
10	22.25
13	23.75
14	24.25
15	24.75
17	25.75

Silver Bell Mining

Classification/Grade	Pay Rate
-1	16.75
0	17.25
1	17.75
3	18.75
5	19.75
6	20.25
7	20.75
8	21.25
9	21.75
10	22.25
11	22.75
12	23.25
13	23.75
14	24.25
15	24.75

Article 9. Economic Opportunity

Section B. Shift Premium

1. For the purpose of determining the application of shift differentials, the shifts shall be defined as follows:

   a. Day or First Shift: a work shift starting between 6:30 and 9:00 a.m.

   b. Afternoon or Second Shift: a work shift starting between 3:30 and 4:30 p.m.

   c. Night or Third Shift: a work shift starting between 11:30 p.m. and 12:30 a.m.

2. Employees on the day shift shall receive no shift differential for work during their regular shift hours or for overtime work immediately following their regular shift hours.

3. Employees on the afternoon shift shall receive a shift differential of thirty (30) cents per hour for work during their regular shift hours or for overtime work immediately following their regular shift hours.

4. Employees on the night shift shall receive a shift differential of forty-five (45) cents per hour for work during their regular shift hours or for overtime work immediately following their regular shift hours.

5. In the case of an employee whose starting time does not fall within the time limits specified above, a shift differential of thirty (30) cents per hour shall be paid if four (4) hours or more of his shift falls within the afternoon shift, while a shift differential of forty-five (45) cents per hour shall be paid if four (4) hours or more of his shift falls within the night shift.

Article 9. Economic Opportunity

Section C. Copper Price Bonus

1. Each quarter a lump sum cash payment will be made depending on the average copper price during that calendar quarter.

2. The payment will be based on the average quarterly copper price in U.S. Dollars per pound on the London Metals Exchange. The average LME copper price will be determined by taking the 3 month average of the London Metal Exchange daily cash settlement prices (i.e. daily cash seller and settlement price) for high grade cathode copper for each market day during the applicable 3 month period.

3. Copper Price Bonus Payment Scale

   Payments will be made according to the scale below subject to the eligibility requirements described in this Section at Paragraph 5 below. The average quarterly LME price will be rounded to the nearest $0.001. For example, for the purposes of this Plan, $2.899 shall round up to $2.900 per pound.

Average LME Copper Price	Quarterly Bonus Payment
Below $2.700	$0
$2.700-2.799	$1,242
$2.800-2.899	$1,350
$2.900-2.999	$1,458
$3.000-3.099	$1,620
$3.100-3.199	$1,755
$3.200-3.299	$1,890
$3.300-3.399	$2,025
$3.400-3.499	$2,160
$3.500-3.599	$2,295
$3.600-3.699	$2,430
$3.700-3.799	$2,565
$3.800-3.899	$2,700
$3.900-3.999	$2,835
$4.000 or more	$2,870

4. Payment Period

   The Copper Price Bonus will be paid within thirty (30) days of the end of each calendar quarter. Article 9, Section C shall govern all Copper Price Bonus payments owed under this Paragraph 4, beginning with the payment for the calendar quarter during which the Effective Date of this Agreement falls, and all following calendar quarters that end while the terms of this Agreement are in effect.

5. Eligibility

The Copper Price Bonus will be paid to each Employee accruing Seniority under Article 5, Section E, Paragraph 4 of this Agreement at the end of the calendar quarter as long as the Employee is employed on the last day of the calendar quarter for which the bonus is being paid.

Any payments made to an Employee pursuant to this Plan shall not be included in the Employee's earnings for purposes of determining any other pay, benefit or allowance of the Employee.

6. Administration of the Plan

a. The Plan will be administered by the Company in accordance with its terms and the costs of administration shall be the responsibility of the Company. Upon determination of each Copper Price Bonus calculation, such calculation shall be forwarded to the Chair of the Union Negotiating Committee.

b. The Union, through the Chair of its Negotiating Committee or his/her designee, will have the right to review any information, calculation or other matters concerning the Plan. In the event of a dispute between the parties, the Chairs of Negotiating Committees or their designees will attempt to reach an agreement to resolve the discrepancy. In the event that they cannot resolve the dispute, either party may submit such dispute to final and binding arbitration under the grievance procedure provided in this Agreement.

Article 9. Economic Opportunity

Section D. Travel Time and Time Donning and Doffing Protective Equipment

1. Applicable to Mission, Silver Bell and Ray Mine – When the Company requires pit Employees to report prior to the start of their shift for transport into the pit ("Positive Relief").

    a. Pit employees will be ready for transport into the pit (10) ten minutes prior to their scheduled shift. The Company will pay ten (10) minutes of travel time at straight time pay each day for such reports. Travel time into the pit will not be considered time worked for overtime purposes unless a meeting is held prior to travel to the pit.

    b. Van drivers, (bus, etc.) who transport employees into the pit will be paid for such time at the rate of time and one-half (1 ½).

    c. If the report time is changed or increased, it will be paid at straight time. However, in no event will the Employees be required to report more than twenty (20) minutes before their scheduled shift.

    d. If the Company decides not to use positive relief, the employees will report to the Change House/Pit Office at the start of the shift and will be returned to the Change House/Pit Office by the end of the shift.

    e. In the event more than twelve (12) minutes pass before an individual in Pit Operations is returned to the change house from his work station at the end of the shift, s/he will be paid overtime for the actual time in excess of twelve (12) minutes based on the nearest 1/10th hour (for Positive Relief purposes only).

2. Employees required to wear protective equipment (other than hard hats, safety shoes, safety glasses, respirators and hearing protection) shall be paid for all time spent donning and doffing such equipment, waiting and traveling to their work station. Such time will be considered time worked for overtime purposes.

Article 9. Economic Opportunity

Section E. Apprenticeship

1. Contained in a separate document, the plans of apprenticeship as agreed-to between the parties outline standards covering selection, training and periodic examinations.

2. Upon successful completion of an approved apprenticeship program, and presentation of paid receipts to the Company, the Employee will be reimbursed by the Company for the cost of all authorized books and required training aids and materials. One-half of the total reimbursement shall be paid to the Employee upon successful completion of his or her apprenticeship – the remaining half shall be paid one year thereafter, provided the Employee is still employed by the Company.

Article 9. Economic Opportunity

Section F. Payment for Company Mandated Training

1. In the event that the Company requires an Employee to obtain a certification, license, or special training to perform his or her job, the Company will pay the cost of obtaining same including any lost time involved. Any renewal expense(s) shall likewise be paid by the Company if the Company requires renewal.

2. The Company will reimburse Employees for the cost of tuition and fees for job-related courses that are pre-approved by the Human Resources Manager. Reimbursement is contingent upon the Employee receiving a passing grade.

Article 10. Paid Time Off and Leaves Of Absence

Section A. Holidays

1. Designated Holidays

For the purpose of this Agreement, the following nine (9) days are designated as holidays, whether worked or not. It is understood that, by mutual agreement, the parties at each Company location may agree to substitute other days for the holidays listed below:

New Year's Day
Easter Sunday
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Eve Day
Christmas Day
New Year's Eve Day

2. Holidays Not Worked

Employees covered by this Agreement shall be paid their straight -time rate of pay for holidays designated in Article 10, Section A, 1, when not worked, subject to the following terms and conditions:

a. A new Employee must have been on the Company's payroll continuously for forty-five (45) days prior to the holiday in question. Any Employee who receives Sickness & Accident Benefits or Workers' Compensation benefits for the day of the holiday shall not be eligible for holiday pay.

b. An Employee must work his last scheduled shift prior to the holiday and his/her first scheduled shift after the holiday; provided, however, that if an Employee is absent on either or both of these days because of personal illness, illness within his/her family of such a nature as to necessitate that the Employee remain home, or death in the family, and reports such facts promptly to his/her Supervisor, such days will not be counted as scheduled. Such illness of the Employee or a family member must be verified by a licensed health care provider. An Employee who has been excused by his/her Supervisor from working his/her last scheduled shift before the holiday, his/her shift occurring on the holiday, or his/her first scheduled shift after the holiday shall be considered as not having been scheduled to work on such day or days.

c. Notwithstanding subparagraph b, above, if an Employee is absent on either his/her last scheduled shift prior to the holiday or his/her first scheduled shift after the holiday because of jury duty, witness appearance in court, certified Union business

(other than a leave of absence under Article 10, Section E), or military encampment, such days will not be counted as scheduled.

d. A holiday not worked shall not be considered as time worked in the computation of weekly overtime.

e. If an employee is scheduled and assigned to work on a holiday and does not work, he shall receive no pay.

f. Should a holiday occur during an employee's vacation, an additional day's vacation with pay shall be granted or, in lieu of the additional vacation day, the Employee may elect to receive holiday pay.

3. Holidays Worked

An employee who works on any of the holidays designated in Article 10, Section A, shall be paid double and one-half (2-1/2) for all hours worked computed at his regular straight-time basis as defined in Article 7, Section E. All hours worked on a holiday shall be used in computing weekly overtime. No more than two and one-half (2-1/2) times the straight-time pay as herein above set forth will be paid for work performed on any of the holidays listed above.

Article 10. Paid Time Off and Leaves of Absence

Section B. Vacations

1. Eligibility

   a. To be eligible for a vacation in any calendar year, an Employee must:

      (1) have one year or more of Seniority; and

      (2) have worked for at least 1,040 hours during the preceding calendar year.

2. Length

   a. The amount of vacation due an eligible Employee shall be based on his/her Seniority as follows:

Years of Service	Weeks of Vacation
1 but less than 3	1
3 but less than 10	2
10 but less than 17	3
17 but less than 25	4
25 or more	5

   b. A week of vacation shall consist of seven (7) consecutive days in accordance with current practices.

3. Scheduling

   a. On or promptly after November 1 of each year, each Employee entitled or expected to become entitled to vacation in the following year shall receive a Company form asking him/her to specify in writing the desired vacation period or periods. The Employee shall return the form to the Company within thirty (30) days.

   b. Vacations will, so far as practicable, be granted at times most desired by Employees (longer service Employees being given preference as to choice), but the final right to allot vacation periods and to change such allotments is reserved to the Company.

   c. Employees will be provided with their vacation schedule at least fourteen (14) days prior to the start of their vacation period, but in all cases no later than January 1 of the year in which the vacation is to be taken.

   d. Where an Employee transfers from one seniority unit to another, s/he shall take his/her vacation in accordance with the schedule established in his/her old seniority unit, except as orderly operations of his/her new seniority unit preclude it, and his/her

transfer shall not be a basis for altering the schedule established prior to his/her transfer.

e. Consistent with Paragraphs 3(a) through 3(d) above, Employees shall be permitted to use up to two (2) weeks (i.e., ten (10) days) of their allotted vacation on a day-at-a-time basis.

f. At the request of the Employee and with the consent of the Company, the Company may pay up to three (3) weeks of vacation allowance, in lieu of time off for vacation, in any one (1) calendar year but not more than one (1) week in any calendar quarter.

g. The Company may schedule vacations during a shutdown period but, when the timing of the shutdown is within the Company's control, the Company must provide affected Employees with at least sixty (60) days notice.

h. At the time of his/her retirement, an Employee may elect to receive a lump-sum payment for any unused vacation entitlement.

i. Vacation time not utilized by the end of the calendar year shall be paid out.

4. Grievances

Grievances regarding vacation scheduling must be referred to Step 1 of the grievance procedure not later than fifteen (15) days after notification to the Employee of the scheduled vacation (or changed scheduled vacation) is given to the Employee and shall be handled in a manner that assures resolution prior to the disputed date(s).

5. Vacation Rate of Pay

a. Employees will be paid for each week of vacation based upon forty (40) multiplied by the Base Rate of Pay of the Employee's permanent job as of the end of the payroll period immediately preceding the vacation (such amount the Vacation Rate of Pay).

b. The Daily Vacation Rate of Pay of each Employee shall be the Vacation Rate of Pay divided by five (5).

c. The Hourly Vacation Rate of Pay of each Employee shall be the Vacation Rate of Pay divided by forty (40).

6. Minimum Vacation (Employees Other Than New Hires)

Notwithstanding Sub-Section 1(a)(2) above, an Employee with one (1) year or more of Seniority who is not eligible for vacation based on the above and who works at least 520 hours in a calendar year shall receive one (1) week of vacation during that calendar year. The Company shall make reasonable efforts to schedule that vacation at the time desired by the Employee, provided it does not disrupt the vacation schedule already established hereunder.

7. Vacation Bonus

a. In addition to the regular vacation pay to which an employee is entitled, there shall be paid a vacation bonus in accordance with the following schedule:

Vacation Week Commencing in:	**Bonus:**
April, May, October, December	$35.00 per week
January, February, March, November	$50.00 per week
June, July, August, September	No Bonus

b. The amount of vacation bonus applicable to a particular vacation week (full week only) shall be determined by the calendar month in which such week commences, that is, the first day thereof the employee would otherwise have been scheduled to work. For example, an employee whose two consecutive-week vacation begins Monday, September 27, 2007, would be entitled to NO bonus for the first week but would be entitled to a $35.00 bonus for the second vacation week, which begins October 4, 2007. The bonus payment shall be included with the pay for the regular vacation week to which it corresponds. A $20.00 bonus shall be paid for vacation weeks paid in lieu of time off.

c. The vacation bonus is an add-on to, and not part of, an employee's regular vacation pay.

8. Vacation for Laid Off Employees

An Employee with one (1) year or more of Seniority and who has qualified for a vacation but is laid off before the Employee has received his vacation pay, shall be given the vacation pay that the Employee would have been entitled to in the absence of such layoff.

9. Vacation for Employees Who Quit or are Discharged

An Employee with one (1) year or more of Seniority and has qualified for a vacation but quits or is discharged before the Employee has received his vacation pay, shall be given the vacation pay that the Employee would have been entitled to in the absence of such quitting or discharge.

10. Industrial Compensable Disability, Sickness, Injury

    Regularly scheduled time lost due to a compensable disability for purposes of workers' compensation or due to sickness or injury certified by a Company physician shall be considered both employment and time worked for the purpose of computing vacation eligibility under Section B, 1, a (2), above, but in no event shall more than sixty (60) days in any qualifying year be so considered.

11. Vacation for Employees on Union Business

    Time lost from an Employee's normal working schedule spent on official Union business for which s/he is entitled to reimbursement under the provisions of this Agreement shall be considered as time worked in computing vacation eligibility.

12. Prorated Vacation

    In the event an Employee retires or dies, the Employee or the Employee's personal representative shall be paid a vacation allowance equal to his hourly rate of pay for vacation purposes multiplied by a pro rata portion of the number of hours of vacation time he would have earned, under this Agreement, had he continued to work the same relative proportion of the available time he had theretofore worked during the qualifying period.

Article 10. Paid Time Off and Leaves Of Absence

Section C. Bereavement Leave

1. In the event of the death of any of the relatives listed below, an Employee, upon request, will be excused and paid for scheduled shifts as detailed below, which fall within a consecutive day period, provided however that one such calendar day shall include either the day of the funeral or memorial service and it is established that the Employee attended the funeral or memorial service.

Relation	Scheduled Shifts Off
Legal Spouse, Parent, Child or Step-Child	5
Sibling, Step-Parent and Step-Siblings, Mother or Father in-law, Grandparent or Grandchild	3

2. Payment shall be eight (8) hours at the Employee's Regular Rate of Pay. An Employee will not receive bereavement pay when it duplicates pay received for time worked or not worked for any other reason. Time thus paid will not be counted as hours worked for purposes of determining overtime or premium pay.

Section D. Jury or Witness Duty

An Employee who is called for jury service or subpoenaed as a witness shall be excused from work for the days on which s/he serves. Service, as used in this Section, includes required reporting for jury or witness duty when summoned, whether or not the Employee is used. The Employee shall receive, for each such day of service on which s/he otherwise would have worked, the difference between the payment received for such service and the amount calculated by multiplying eight (8) hours at his/her Regular Rate of Pay. To receive payment the Employee must present proof that s/he did serve, report for service or was subpoenaed and reported as a witness and the amount of pay, if any, received therefor.

Article 10. Paid Time Off and Leaves Of Absence

Section E. Leave of Absence for Employment with the Union

1. Leaves of absence for the purpose of accepting positions with the International or Local Unions shall be made available to a reasonable number of Employees. Employees who intend to apply for such leaves shall give the Company adequate notice to enable it to fill the jobs vacated.

2. Leaves of absence for the purpose of accepting or continuing in a temporary position with the International shall be for periods of up to six (6) months and shall be extended upon request; provided, however, in no event shall an Employee be entitled under this provision to a leave of absence exceeding two (2) continuous years.

3. Leaves of absence for the purpose of accepting permanent positions with the International Union shall be for a period concurrent with the individual's permanent employment with the International Union. When an individual is made a permanent employee of the International Union (by completing his/her probationary period), s/he shall, from that point forward, retain his/her leave of absence status with the Company but shall not receive any Covered Service under the Asarco Retirement Income Plan for Hourly-Rated Employees. Such individual shall accumulate Seniority for all other purposes under the Agreement and local agreements thereunder; provided that s/he shall not be entitled to actually receive any contractual benefits during the period of the leave of absence.

4. Leaves of absence for the purpose of accepting positions with the Local Unions shall be for a period not in excess of three (3) years and may be renewed for further periods of three (3) years each.

5. Except as set forth above in Paragraph 3, Seniority shall continue to accrue and shall not be broken by a leave of absence under this Section.

Article 10. Paid Time Off and Leaves Of Absence

Section F. Service with the Uniformed Services

1. Reemployment Rights

An Employee who leaves the Company employment to enter the Uniformed Services shall be granted all statutory rights to reemployment and shall continue to accrue Seniority during such service. For the purposes of this Section, Uniformed Services means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency.

2. Training

An Employee shall be provided with a reasonable program of training in the event s/he does not qualify to perform the work on a job which s/he might have attained except for his/her service in the Uniformed Services.

3. Educational Leave of Absence

Any Employee entitled to reemployment under this Section who applies for reemployment and who desires to pursue a course of study in accordance with a federal law granting such opportunity because of his/her military service shall be granted a leave of absence for such purpose. Such leave of absence shall not constitute a break in Seniority for purposes other than a break in service under the Pension Plan. Any such Employee must notify the Company and the Union in writing at least once each year of his/her continued interest to resume active employment with the Company upon completing or terminating such course of study.

4. Disabled Returning Veterans

Any Employee entitled to reemployment under this Section who returns with a service-connected disability which makes returning to his/her prior job onerous or impossible shall be assigned to a vacancy suitable to such impaired condition during the continuance of such disability.

5. Vacation Pay

a. An Employee who did not receive but was entitled to paid vacation during the calendar year in which s/he enters the Uniformed Services shall be paid an amount equal to the vacation pay to which s/he was entitled.

b. Notwithstanding any other provisions of this Agreement to the contrary, an Employee who is reemployed after being honorably discharged shall be entitled to paid vacation

for the calendar year in which s/he is reemployed, provided that no Employee shall be afforded more than one (1) vacation allowance for any one (1) calendar year, at a rate of pay based on his/her earnings for the last full year in which s/he worked prior to his/her serving.

6. Military Encampment Allowance

An Employee who is required to attend an encampment of the Reserve of the Armed Forces or the National Guard shall be paid, for a period not to exceed two (2) weeks in any one (1) calendar year, the difference between the amount paid by the Government (not including travel, subsistence and quarters allowance) and his/her Regular Rate of Pay for the number of days s/he would have been scheduled to work during such encampment.

Article 10. Paid Time Off and Leaves Of Absence

Section G. Family and Medical Leave Act

1. The Company shall comply with the Family and Medical Leave Act of 1993 (FMLA) and shall apply its requirements as set forth below. Nothing in this Section shall be construed to provide lesser treatment than that required under the FMLA or to deprive any Employee of any right or forum thereunder.

2. A copy of a summary of the law and Employee rights and obligations thereunder is available at the Company's Human Resources Office for review and will be issued upon request and at the time any FMLA leave is requested. The required posting under the FMLA will be maintained by the Company.

3. Eligibility and Entitlement

   a. Leave under this Section shall be available to any Employee who has twelve (12) months or more of Seniority calculated pursuant to the Seniority provisions of this Agreement. There shall be no hours-worked requirement for eligibility.

   b. Any eligible Employee shall be entitled to up to twelve (12) weeks of unpaid leave in any twelve (12) month period for reasons specified in the FMLA. This period shall be measured on a rolling twelve (12) month basis, measured backward from the date any FMLA leave is used. Any time taken off in connection with any of the situations covered by the FMLA shall be counted toward the twelve (12) week period, except as otherwise excluded.

4. Pay During FMLA Leave

   a. Employees seeking FMLA leave under this Section may be required to utilize unused paid vacation.

   b. An Employee may request to utilize additional paid vacation during the FMLA leave time. The Company reserves the right to approve such a request where it involves a change in the vacation schedule.

   c. Except for the utilization of Sickness and Accident, or Workers' Compensation benefits, all time off provided shall be unpaid and shall be considered as time not worked for all other matters. Treatment of time not worked while receiving Sickness & Accident or Workers' Compensation benefits is subject to the limitation in Article 10, Section B, Paragraph 10.

   d. An Employee on FMLA leave is not eligible for Supplemental Unemployment Benefits in the event of a layoff, until following the termination of the leave.

5. Seniority

Leaves of absence under this Section shall not constitute a break in Seniority and the period of such leave shall be included in an Employee's length of Seniority under this Agreement and all benefit agreements.

6. Benefit Continuation

a. All Employees' benefit coverage will continue during such leave, provided the Employee is otherwise eligible for such coverage and the Employee continues making any normally-required premium or other payments in a manner acceptable to the Company. In the event the Employee fails to make such payments, all benefit coverage shall terminate.

b. In the event an Employee fails to return to work or quits after the Employee's FMLA leave period has been concluded, the Company waives its right to recover the cost of health insurance coverage provided by the Company during such leave.

Article 10. Paid Time Off and Leaves Of Absence

Section H. Political Leave

The Company will grant to an Employee a leave of absence for a period not to exceed four (4) years for full-time elected or appointed Federal, State, County or City political office. This leave will be limited to one (1) Employee at a location at any given time. Upon the termination of this political office, the Employee shall be reinstated to his or her previously held job with accrued seniority rights unless the Company's circumstances have so changed as to make it impossible or unreasonable to do so; such as a reduction in force requiring his or her layoff had s/he been working; provided however, that such Employee is physically able to perform the essential functions of such job and that he make application to the Company for reinstatement within twenty-one (21) days after said termination. No benefits of employment, except seniority, shall accrue during the period of absence; provided that the break-in-service rules and other provisions of the Asarco Retirement Income Plan for Hourly-Rated Employees shall apply.

Article 11. Corporate Governance

Section A. Board of Directors

1. The Company and the Union acknowledge that every member of the Company's Board of Directors (Board, members of such Board, Directors) has a fiduciary duty to the Company and all of its stockholders.

2. The Company agrees that the Union shall have the right, subject to the procedure; the Directors' discharge of their fiduciary duties; and as described below, to designate two (2) individuals to serve on the Board.

   a. The USW International President shall provide the Board's Chairman with the names and resumes of the individuals whom s/he wishes to have serve on the Board.

   b. Provided that the individuals are acceptable to the Chairman, (it being understood that in all respects each individual will be dealt with separately) such acceptance not to be unreasonably withheld, the Chairman shall promptly recommend such individual(s) to the Board's Nominating Committee, who absent compelling reasons to the contrary, shall promptly recommend such individual(s) to the full Board for election at its next meeting.

   c. Once elected, the individual(s) shall be recommended by the Board for election by the shareholders to serve a regular term at the Company's next Annual Meeting of Shareholders.

3. If after election, the individual(s) becomes unwilling or unable to serve or the Union wishes to replace one or both of them, the International President shall provide the Board's Chairman with the name of a new individual(s) whom s/he wishes to have serve on the Board and the process outlined above shall thereafter be followed. In such case the individual(s) previously named by the USW International President may be removed from or not nominated for re-election to the Board.

4. At the time that any person is nominated by the Union as provided in this Section A, said nominee shall acknowledge in whatever fashion such acknowledgement is given by all of the Company's other Directors, that such nominee, if elected to the Board, would have a fiduciary duty to the Company and its stockholders.

5. In the event the Company's Board of Directors has fewer than seven (7) members, the Union shall have the right, as described above to designate one (1) individual to serve on the Board.

Article 11. Corporate Governance

Section B. Investment Commitment

1. The Company agrees to make the capital expenditures required to maintain the competitive status of the facilities covered by this Agreement.

2. The Company agrees that, except during maintenance and repair outages and temporary production outages or shortfalls, that it will not directly or indirectly replace the product which could have been produced at any facility covered by this Agreement with product obtained from other than producers that provide base wages and other economic benefits (including holidays, vacation pay, premium pay, overtime, and health and welfare benefits) that are substantially equivalent to those provided in this Agreement, unless it is operating the relevant facility covered by this Agreement at full capacity.

3. The Company shall make all capital expenditures required to maintain the competitiveness and capacity of facilities within the plants covered by this Agreement, including investments that increase competitiveness and productivity, unless:

   a. such facilities have been shut down pursuant to provisions of this Agreement; or

   b. the Company has conducted full and extensive consultation with the Union and fully and carefully considered all Union input concerning the subject Capital Expenditures; and

   c. making the subject Capital Expenditure would be imprudent.

Article 11. Corporate Governance

Section C. Upstreaming

1. The Company agrees that it will only Upstream if after accounting for the Upstreaming the Company's credit statistics are equal to or better than those of an average BBB rated company in the mining sector, using criteria published by S&P; and upstream only if the Coverage Ratio at such time, calculated on a pro forma basis after giving effect to such Upstreaming and any incurrence of indebtedness of other funding consummated in connection therewith, is greater than or equal to 1.80 to 1.00.

2. "Coverage Ratio" means, for any 12-month period, the ratio of (1) the sum of (a) EBITDA for such period, plus (b) to the extent deducted from earnings in computing EBITDA for such period (x) pension expense incurred by the Company during such period and (y) all expenses incurred by the Company during such period in respect of any environmental or asbestos-related obligations, to (2) the sum of (a) interest expense plus (b) capital expenditures of the company for such period, plus (c) cash pension contributions made by the Company during such period plus (d) cash payments made by the Company during such period in respect of any environmental or asbestos-related obligations.

3. Without in any way limiting the applicability of Paragraph 1 above, the Company agrees that all transactions (including, without limitation, sales, loans, purchases, leases, guarantees, fees of any kind, and equity transactions) between the Company and any equity holder or any Affiliate of any equity holder, shall be conducted on an arm's-length basis, on commercially reasonable terms not less favorable to the Company than those that could be obtained from an unrelated third party, and in accordance with any shareholders agreement of the company. In addition, any loan or similar transaction to any such person shall only be made if it is beneficial to the Company and on terms consistent with the business relationship between such person and the Company. Subject to the foregoing, the Company may engage in transactions with its equity holders an their Affiliates.

4. For the purposes of this Section, Upstreaming includes directly or indirectly, paying any dividends on, or making any distributions, exchanges, conversions, retirements, repurchases or redemptions, in respect of the Company's stock.

Article 11. Corporate Governance

Section D. Right to Bid

1. Should the Company decide or be presented with an offer to sell or otherwise transfer a controlling interest in the corporate entity which owns its assets (a Controlling Interest) or all or a portion of one or more of its facilities (Facilities) (either or both, the Assets), it will promptly advise the USW in writing and grant to the USW the right to organize a transaction to purchase the Assets (a Transaction).

2. The Company will provide the USW with any information provided to other bidders so that the Union may determine whether it wishes to pursue a Transaction. All such information shall be subject to an executed Confidentiality Agreement.

3. The Company shall promptly notify the USW of the schedule and/or timetable for consideration by the Company of any possible transaction. The Company will provide the USW with the greater of (a) forty-five (45) days or (b) the time provided by the schedule and/or timetable given to other interested parties to submit an offer for the Assets, except in the case of an unsolicited offer for a controlling interest in the Company in which case the USW shall be provided with the time provided by the schedule and/or timetable given to other interested parties.

4. During the period described in Paragraph 3 above, the Company will not enter into any contract regarding the Assets with another party, provided however that this prohibition does not apply to any contract not related to the bidding process.

5. In the event that the USW submits an offer pursuant to the above, the Company shall not be under any obligation to accept such offer. However, the Company may not enter into an agreement with regard to the Assets with an entity other than the USW unless that Transaction is superior to the USW offer. The Company may only deem a proposed Transaction superior if its Board of Directors reasonably determines that such Transaction is more favorable to the Company and/or its shareholders, taking into consideration such factors as price, certainty of payment, conditions precedent to closing and other factors which influence which of the transactions is in the best interests of the Company and/or its shareholders.

6. This Section is meant to cover only sales or transfers of a Controlling Interest and shall not cover any public offering of equity securities.

7. The rights granted to the USW in this Section may be transferred or assigned by the USW; provided, that the USW's transferee or assignee must be reasonably acceptable to the Company (but the transferee may not thereafter transfer such right to bid).

Article 12. Benefits

Section A. Active Welfare Benefits

The Company and Union have negotiated the following welfare benefit plans which are described in Summary Plan Descriptions and incorporated by reference herein:

1. ASARCO Health Plan (includes Medical and Prescription);

2. ASARCO Vision Plan;

3. ASARCO Dental Plan;

4. ASARCO Sickness & Accident (S&A) Plan

5. ASARCO Life Insurance (includes Basic Life, AD&D, Supplemental and Dependent Life coverage); and

6. Flexible Spending Accounts.

Section B. General

1. The terms of Sections B through N shall control over any provisions of the summary plan descriptions or booklets distributed by the Company or plan administrators ("SPD's") that address such matters. Notwithstanding any language to the contrary in those SPD's, the benefits or covered services described therein shall not be subject to amendment, modification or termination except as the Union and the Company agree otherwise (except as necessary to comply with applicable law).

2. The Company shall pay the cost of Welfare benefits during the term of this Agreement (with the exception of required monthly contributions, annual deductibles, copays and coinsurance). Employee contributions are deducted per pay period on a pre-tax basis.

   Monthly Employee contributions are as follows:

Family Size	Monthly Contribution
Employee Only	$50.00
Employee plus One	$120.00
Employee plus Family	$140.00

Section C. Effective Date of Coverage

Employees will become covered as of the Effective Date of the Agreement. Newly hired Employees will become covered as of the first day of employment except for the Sickness and Accident (S&A) Plan, which will become effective following the completion of their probationary period.

Section D. Dependent Coverage

1. Dependent coverage will become effective on the same date as the Employee becomes covered or the date the Employee acquires a dependent, if later. An Employee is required to enroll their existing dependents within 31 days of employment and must provide dependent verification and Social Security Numbers.

2. The term "dependent" includes:

   a. spouse (including spouses through common law marriage only if the state in which the employee resides recognizes common-law marriages and the couple meets the state's legal requirements for such marriage), but does not include a spouse separated from the Employee under a divorce decree.

   b. children as follows:

Health Plan	Dependents are covered up to age 26 regardless of marital or student status
Dental Plan	Unmarried dependents are covered up to age 19 or age 25 if a full-time student
Dependent Life Insurance	Unmarried dependents are covered up to age 19 or age 25 if a full-time student

      i. Employee's natural children;

      ii. Employee's legally adopted children (including a child living with the adopting parents during the period of probation) and those for whom the Employee is legal guardian;

      iii. Stepchildren (i.e., the natural children of the Employee's spouse) subject to proof of dependent status;

      iv. Foster children;

      v. Children for whom coverage is required under a Qualified Medical Child Support Order (QMCSO); and/or with proof of legal guardianship or custody; and

vi. Children who are dependents of employees, subject to proof of dependent status.

c. Children in the above categories who are totally disabled are covered under the Plan, regardless of age, for as long as they are dependent upon the Employee for support and maintenance provided they became totally disabled prior to age 26 and were eligible for coverage as a dependent child prior to attaining age 26 for Health and prior to age 25 for Dental.

To be totally disabled, dependent children must be certified by a physician of your choice and the third-party administrator, as suffering from an injury or illness which prevents them from living independently from their parents and obtaining gainful employment. Coverage for disabled children will continue until both parents qualify for Medicare or otherwise lose coverage through the ASARCO Health Plan.

3. Dependent Benefits After the Employee's Death

a. Coverage under the ASARCO Health Plan (including prescription drug, dental and vision benefits) will continue for the eligible dependents of active Employees who die in active service with 10 years or more of Seniority and who have been married for at least one year.

Section E. Termination of Coverage

1. Disability Leave Due to Occupational or Non-Occupational Sickness or Accident

a. Insurance benefits will continue for the duration of an absence due to occupational or non-occupational sickness or accident up to a maximum of twenty-four (24) months from the end of the month last worked or the month the Employee receives pension benefits from the Company's Pension Plan.

b. If the Employee has ten or more years of Continuous Service and qualifies for Permanent and Total Disability under the Company's Pension Plan due to occupational or non-occupational sickness or accident, the Employee and dependents will be eligible for the ASARCO Health Plan applicable to retirees up to the time the Retiree or spouse attains age 65.

c. An Employee who recovers from a disability within twenty-four (24) months after their last day worked and is unable to return to work because of a reduction in force for lack of work, shall be considered on layoff at such point and eligible for a maximum of six (6) months from the date of layoff.

2. Layoff

If the Employee ceases work because of layoff, the following provisions will be applicable to insurance coverage:

a. Sickness and Accident coverage will terminate on the last day worked.

b. All other insurance coverage under the ASARCO Welfare Plans will be continued during such layoff up to a maximum of six (6) months from the end of the month last worked.

3. Leave of Absence

a. If the Employee ceases work because of a leave of absence, all coverage under the ASARCO Welfare Benefits will cease six months from the end of the month last worked.

b. If the Employee ceases work because of a leave of absence for union business, all coverage under the ASARCO Welfare Plans will continue for the entire period of such leave.

c. If the Employee ceases work due to authorized military duty, Health, Dental, Vision, Life, AD&D benefits coverage will terminate as of the thirty-first (31st) day after the last day worked.

d. If the Employee ceases work due to authorized leave under the Family and Medical Leave Act, Health, Dental, Vision, Life, AD&D coverage will terminate upon expiration of the authorized leave, unless the Employee returns to work at that time.

4. Suspension

Benefits will be continued as if the Employee were on layoff, except for the Sickness and Accident Plan will be continued during a period of suspension which is not converted into discharge.

5. Strike

Coverage under the ASARCO Welfare Plans for striking Employees and their dependents will terminate 14 days after the strike commences. In the event of a strike, Employees and dependents may elect continuation coverage under COBRA. During the strike, the Sickness and Accident benefit coverage shall not continue for disabilities which arise after the commencement of the strike, but shall commence for such disabilities upon the cessation of the strike and recall to work. Notwithstanding the above, Sickness and Accident benefit payments shall continue to Employees whose disabilities arose prior to the commencement of the strike

6. Reinstatement or Re-Employment

If the Employee returns to work following an absence on account of layoff, leave of absence or disability during which some or all of the coverage under the ASARCO Welfare Plans shall have terminated, all such coverage will be reinstated on the day the Employee returns to work.

7. Termination of Employment

If employment is terminated by other than retirement, all coverage under the Plans will cease on the date of such termination.

In the event an Employee is discharged by the Company and there is a dispute as to whether or not the discharge was justified, the Company shall continue the benefits under the Plans for such employee until the case is finally resolved but not exceeding 90 days.

In the event an Employee or dependent is hospitalized on the date the Employee's benefits terminate, health care benefits shall be covered until completion of the hospital stay.

Section F. Coverage Following Retirement

1. Employees who retire on or after the Effective Date of this Agreement shall not be entitled to any benefits under the ASARCO Health Plan applicable to retirees, provided however that any employee who retires or who would be eligible to retire, up until the expiration of this agreement ("Covered Retirees") shall be eligible for benefits under the ASARCO Health Plan applicable to retirees (including Medical and Prescription Benefits) until reaching Medicare Eligibility (for purposes of Article 12, Section F, "Medicare Eligibility" is defined as Medicare eligibility triggered at age 65, and shall not refer to Medicare eligibility triggered by disability, illness, or kidney/renal failure which requires dialysis), and their eligible spouse/surviving spouse and other eligible dependents (as defined in Article 12, Section D) shall also be eligible for benefits under the ASARCO Health Plan applicable to retirees until Medicare Eligibility, subject to paying applicable premiums, copays and deductibles. For the avoidance of doubt, only employees listed in the Letter of Understanding on Covered Retirees (attached hereto) shall be eligible for benefits under the ASARCO Health Plan as Covered Retirees. In the event an employee eligible for Covered Retiree status is inadvertently excluded from the Letter of Understanding on Covered Retirees, he/she will be deemed eligible for benefits as a Covered Retiree upon proof satisfactory to the Company that he/she satisfies the eligibility requirements of this Article 12, Section F.

2. Covered Retirees and/or the eligible spouse or surviving spouse and dependents of a Covered Retiree must enroll in the ASARCO Health Plan applicable to retirees until Medicare eligibility no later than 31 days from the Covered Retiree's retirement date.

a. Failure to enroll at this time shall be deemed a waiver of coverage, and the Covered Retiree and/or the eligible spouse or surviving spouse and dependents of the Covered Retiree will not be eligible to enroll at a later date.

b. For the avoidance of doubt, this paragraph F.2 shall supersede and nullify the Parties' January 1, 2007 Letter of Understanding on Retiree Health Care Enrollment.

Section G. Continuous Service

Wherever the term Continuous Service is used herein, it means Seniority as determined in accordance with Article 5, Section E, of the Basic Labor Agreement.

Section H. Summary of Basic, Accidental Death or Dismemberment (AD&D), Supplemental and Dependent Life Insurance Benefits

1. Active Employees

a. $50,000 of Basic Life Insurance coverage shall be provided for each active Employee, including a waiver of premium in event of total disability prior to age 60.

b. Active Employees shall be allowed to purchase at cost, supplemental life insurance in the amount of $25,000 or $50,000 for themselves and dependent life insurance in the amount of $5,000 or $10,000 for their spouses and children. Premiums are based on the amount of elected coverage and the age of the Employee. Employees are responsible for payment of these premiums.

c. Upon retirement under the Company's Retirement Plan, the amount of coverage to be continued without cost to the Employee will be $4,500. Employees hired on or after July 1, 2011 are eligible for a life insurance benefit of $4,500 upon attaining 30 years of Seniority as defined by Article 5, Section E, Paragraph 4 of the Agreement, or upon attaining 10 years of Seniority as defined by Article 5, Section E, Paragraph 4 of the Agreement and becoming permanently and totally disabled resulting in receipt of Social Security Disability Benefits.

d. AD&D insurance coverage will be provided by the Company for each active Employee. AD&D will provide a benefit in the event of an accidental death or dismemberment due to non-occupational accidents. Benefit payment includes but is not limited to:

- $50,000 for loss of life
- $25,000 for loss of a hand, foot or sight in one eye
- $50,000 for loss of a combination of a hand, a foot , or sight in one eye

Section I. Summary of Sickness and Accident Plan Benefits

1. $475.00 per week for 52 weeks for absences caused by non-occupational accidents or sickness; benefits to start the 1st day in case of accidents or hospitalized sickness or outpatient surgery and 6th day in case of un-hospitalized sickness.

2. For any week that temporary and total disability benefits are payable under State Worker's Compensation law, such payments shall be supplemented by an amount equal to the difference (if any) between such weekly payment and the Non-Occupational Weekly Sickness and Accident Benefit, provided that the Company recognizes the disability causing the absence to be work incurred. There is no change in the terms or conditions of the Non-Occupational Weekly Sickness and Accident Benefit Plan, including the duration of such benefits, except to provide a Workers Compensation Supplement.

3. Benefits will terminate at commencement of benefit payments under the Pension or Permanent and Total Disability Benefit Plans.

4. Subsequent period of S&A separated by fifteen (15) or fewer calendar days of continuous Active Employment at the Participant's normal work schedule will be considered one period of S&A, unless the subsequent S&A is due to a Sickness or injury determined to be entirely unrelated to the cause of the previous S&A and commences after return to Active Employment with the Company for at least one day.

Section J. Summary of Health Plan Benefits

1. Health Plan benefits will be provided through a Preferred Provider Organization (PPO), which offers two (2) levels of benefits. Services from a provider who is in the PPO network (in-network) will be covered at the highest level of benefits. Services from a provider who is not in the PPO network (out-of-network) will be covered at the lower level of benefits. In either case, there is no requirement to select a Primary Care Physician (PCP) to coordinate care.

2. The Company has contracted with a Managed Care Organization to implement a pre-certification and utilization review program. This program includes the following:

   a. Pre-Certification for all In-Patient Courses of Treatment;

   b. Continuing Stay Review for all Confinements; and

   c. Case Management including alternative setting reviews and Discharge Planning.

   Employees securing In-Patient care on a fee-for-service basis (outside of Network) will be required to contact the Managed Care Organization prior to admission. Claims for In-Patient treatment submitted by Employees who have failed to contact the Managed Care Organization will be subject to a per confinement deductible of $250. Employees

obtaining In-Patient care from Network providers need not contact the Managed Care Organization. This program shall include an appeals procedure.

3. Reimbursement for all medical services is subject to the annual deductible, coinsurance and applicable copayments. However, deductibles and coinsurance shall not apply to eligible Preventive or Wellness Care for in-network services.

4. Reimbursement for in-network services is subject to coinsurance calculated according to the negotiated amount; the Employee is not responsible for any amount in excess of the negotiated rate. Reimbursement for out-of-network services is subject to coinsurance according to the usual, customary and reasonable (UC&R) rate; the Employee is responsible for any amount in excess of the UC&R rate.

5. If network services are not available within a reasonable distance from the Employee's home, out of network services will be reimbursed at the in-network level. (For example, the distance from Kearny or Hayden to Tucson, Phoenix or Globe would be considered a reasonable distance).

6. Annual out-of-pocket maximum includes deductibles, coinsurance and copay amounts for covered Medical expenses each calendar year, excluding prescription drug expenses and amounts above UC&R. Expenses incurred for out-of-network expenses apply towards the in-network out-of-pocket maximum. Expenses incurred in-network apply towards the out-of-network out-of-pocket maximum. However the combined medical and prescription out-of-pocket amounts for in-network may not exceed the Affordable Care Act annual guidelines.

Summary of Health Insurance

	In-Network	**Out-of-Network**
Deductible:		
Individual:	$200 combined in and out-of-network	
Family:	$400 combined in and out-of-network	
Out-of-Pocket Maximum: Medical Only		
Individual:	$2,000 combined in and out-of-network	
Family:	$2,000 combined in and out-of-network	
Annual Maximum:	None	
Lifetime Maximum:	None	
Inpatient Care		
Precertification of Admission	Not Required	Required or $250 penalty per confinement
Inpatient Hospital Care Facility Services	80% *	70% UCR *
Inpatient Hospital Care Physician Services	80% *	70% UCR *

	In-Network	Out-of-Network
Inpatient Surgery Professional Provider Services	80% *	70% UCR *
Diagnostic Tests, X-Rays, and Lab Services	80% *	70% UCR *
Inpatient Rehabilitation Services (Occupational Therapy, Physical Therapy, Speech and Language Therapy)	80% *	70% UCR *
Maternity Services	80% *	70% UCR *
Abortion	80% *	70% UCR *
Skilled Nursing Facility	80% *	70% UCR *
Hospice Care	80% *	70% UCR *
Human Organ and Tissue Transplants	80% *	70% UCR *
Home Health Care (limited to 100 visits per year)	80% *	70% UCR *
Home Private Duty Nurses	80% *	70% UCR *
Alcohol and Substance Abuse Care	80% *	70% UCR *
Mental Health	80% *	70% UCR *
Outpatient Care		
Office Visits, Primary Care Physician	80% *	70% UCR *
Office Visits, Specialist	80% *	70% UCR *
Outpatient Surgery	80% *	70% UCR *
Second Surgical Opinion	80% *	70% *
Pre-admission Testing	80% *	70% *
Allergy and Other Injections	80% *	70% UCR *
Diabetic Supplies & Equipment	80% *	70% UCR *
Family Planning	80% *	70% UCR *
Infertility Treatment	80% *	80% UCR *
Chiropractic Services (18 visits per year, limited to three X-rays per 90 days)	80% *	80% UCR *
Podiatry Services	80% *	70% UCR *
Outpatient Mental Health Care	80% *	70% UCR *
Outpatient Substance Abuse Care Facility Services	80% *	70% UCR *
Ambulance Services (including air ambulance)	80% *	70% UCR *
Emergency Room/Emergency Physicians (co-pay waived if admitted to hospital)	$150 member co-pay 80% *	$150 member co-pay 70% UCR *
Urgent Care	$50 member co-pay	70% UCR *
Occupational Therapy	80% *	70% UCR *

	In-Network	Out-of-Network
Physical Therapy	80% *	70% UCR *
Speech and Language Therapy	80% *	70% UCR *
Durable Medical Equipment: (wheelchairs, oxygen, etc.)	80% *	70% UCR *
Prosthetic Devices (pacemakers, braces, artificial limbs and eyes, etc.)	80% *	70% UCR *
Diagnostic Tests, X-Rays, and Lab Services:	80% *	70% UCR *
Dialysis Treatment:	80% *	70% UCR *
Radiation Therapy:	80% *	70% UCR *
Preventive and Wellness Care		
Maternity: **Prenatal:** **Delivery and Postnatal:**	 100% (Deductible Waived) 80% *	 70% * 70% *
Preventive / Routine Care Benefits **Benefits Include:** **Preventive / Routine Physical Exams at Appropriate Ages:**	100% (Deductible Waived)	100% (Deductible Waived)
Preventive / Routine Diagnostic Tests, Lab, and X-Rays at Appropriate Ages:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Mammograms and Breast Exams:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Pelvic Exams and Pap Tests:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine PSA Tests and Prostate Exams:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Screenings / Services at Appropriate Ages and Gender:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Colonoscopies, Sigmoidoscopies And Similar Routine Surgical Procedures Done For Preventive Reasons:	100% (Deductible Waived)	70% (Deductible Waived)

	In-Network	Out-of-Network
Preventive / Routine Counseling for Alcohol and Substance Abuse, Tobacco Use, Diet and Nutrition:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Hearing Exams:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive Routine Oral Fluoride Supplements Prescribed for Children Ages 6 months to 5 years Whose Primary Water Source is Deficient in Fluoride:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Care Benefits For Children Include:		
Preventive Routine Physical Exams:	100% (Deductible Waived)	70% (Deductible Waived)
Immunizations:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Diagnostic Tests, Lab And X-rays:	100% (Deductible Waived)	70% (Deductible Waived)
In addition, the following Preventive / Routine Services are Covered for Women: • **Gestational Diabetes** • **Papillomavirus DNA Testing** • **Counseling for Sexually Transmitted Infections (Provided Annually)** • **Breastfeeding Support, Supplies, and Counseling**	100% (Deductible Waived)	70% (Deductible Waived)

	In-Network	Out-of-Network
Physical Therapy	80% *	70% UCR *
Speech and Language Therapy	80% *	70% UCR *
Durable Medical Equipment: (wheelchairs, oxygen, etc.)	80% *	70% UCR *
Prosthetic Devices (pacemakers, braces, artificial limbs and eyes, etc.)	80% *	70% UCR *
Diagnostic Tests, X-Rays, and Lab Services:	80% *	70% UCR *
Dialysis Treatment:	80% *	70% UCR *
Radiation Therapy:	80% *	70% UCR *
Preventive and Wellness Care		
Maternity: **Prenatal:** **Delivery and Postnatal:**	 100% (Deductible Waived) 80% *	 70% * 70% *
Preventive / Routine Care Benefits **Benefits Include:** **Preventive / Routine Physical Exams at Appropriate Ages:**	100% (Deductible Waived)	100% (Deductible Waived)
Preventive / Routine Diagnostic Tests, Lab, and X-Rays at Appropriate Ages:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Mammograms and Breast Exams:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Pelvic Exams and Pap Tests:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine PSA Tests and Prostate Exams:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Screenings / Services at Appropriate Ages and Gender:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Colonoscopies, Sigmoidoscopies And Similar Routine Surgical Procedures Done For Preventive Reasons:	100% (Deductible Waived)	70% (Deductible Waived)

	In-Network	Out-of-Network
Preventive / Routine Counseling for Alcohol and Substance Abuse, Tobacco Use, Diet and Nutrition:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Hearing Exams:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive Routine Oral Fluoride Supplements Prescribed for Children Ages 6 months to 5 years Whose Primary Water Source is Deficient in Fluoride:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Care Benefits For Children Include:		
Preventive Routine Physical Exams:	100% (Deductible Waived)	70% (Deductible Waived)
Immunizations:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Diagnostic Tests, Lab And X-rays:	100% (Deductible Waived)	70% (Deductible Waived)
In addition, the following Preventive / Routine Services are Covered for Women: • **Gestational Diabetes** • **Papillomavirus DNA Testing** • **Counseling for Sexually Transmitted Infections (Provided Annually)** • **Breastfeeding Support, Supplies, and Counseling**	100% (Deductible Waived)	70% (Deductible Waived)

	In-Network	Out-of-Network
• **Counseling for Interpersonal and Domestic Violence for Women (Provided Annually)** **Paid by Plan**		
Sterilizations for Women: **Sterilizations for Men:**	100 % (Deductible Waived) 80% *	70 % (Deductible Waived) 70% *

PRESCRIPTION SCHEDULE OF BENEFITS **(Not subject to deductibles)** **• Subject to Quantity Limits, unless medical necessity is certified.**	
By Participating Retail Pharmacy • **Covered Person's Coinsurance Amount**	For Up To A 30-Day Supply:
Generic Products	10% (minimum $10)
Brand Products	20% (minimum $25)
By Participating Mail Order Pharmacy • **Covered Person's Co-pay Amount**	For Up To A 90-Day Supply:
Generic Products	$10
Brand Products	$20
By Non-Participating Pharmacy	Use of a Non-Participating Pharmacy, requires payment for the prescription upfront. The Covered Person can then submit a claim for reimbursement. Reimbursement for covered prescription products will be based on the lowest contracted amount of a Participating Pharmacy minus any applicable deductible and/or retail co-pay shown in this schedule.
Out-of-Pocket Maximum: **Prescription Only**	$4,600/individual $11,200/family

Specialty Injectable and Medications can be covered under either the Health Plan or the Prescription Plan but not both.

Contraceptives: As mandated by the Patient Protection and Affordable Care Act (PPACA), Expanded Women's Preventive Health, all Food and Drug Administration approved self-administered prescription contraceptives (oral tablets, patches and self-insertable vaginal devices containing contraceptives hormones) will be processed under the Prescription Benefits section of this document at 100%, with $0 member copay. Prescription contraceptives that require a physician to administer a hormone shot or insert a device will be processed under the Covered Medical Benefits.

7. Maternity coverage for prenatal, postnatal, and delivery will be offered to all dependents. In addition, both the Union and the Company strongly recommend that expectant individuals enroll in the Maternity Management Program.

8. Expenses incurred for kidney dialysis provided at home or in a kidney dialysis unit which is not connected with a hospital will be covered to the same extent such services would be covered if the procedure was provided in a hospital.

9. Expenses incurred for extraction of impacted teeth in the out-patient department of a hospital will be covered to the same extent such services would be covered if the extraction was performed as a hospital in-patient.

10. Expenses incurred for surgery performed in an ambulatory surgical facility will be covered to the same extent such services would be covered if the surgery was performed as an in-patient in a hospital.

11. An ambulatory surgical facility is described as a legally constituted and operated ambulatory care health center (either part of a hospital or otherwise) with permanent plant, equipment and supplies not usually available in a physician's office for surgical or medical care not requiring in-patient confinement.

12. Temporomandibular Joint Dysfunction (TMJ) services will be covered at 80%. Services provided by an in-network physician will be covered at 80%.

13. Skilled Nursing Coverage will be provided in a Skilled Nursing Facility.

14. Benefits shall be provided for sterilizations, abortions and transplant procedures, including donor expenses not covered by other plans.

15. **Limitations**

a. Chiropractic services are covered for the initial consultation and up to a maximum of 18 visits in any calendar year (excluding initial consultation). X-rays are limited to three in any 90-day period.

16. **Nonduplication of Benefits**

a. Benefits available to any covered individual under any provision of the ASARCO Health Plan shall be reduced to the extent like benefits are payable under the provisions of any group insurance plan or group pre-payment plan.

b. Benefits available to any covered individual under any provision of the ASARCO Health Plan shall be reduced to the extent like benefits are available under the provisions of any group insurance plan or group pre-payment plan. Group insurance or prepayment plan include: (1) coverage under a governmental program or coverage that is provided or required by statute, including any motor vehicle no-fault coverage required by statute and (2) group insurance or other coverage for a group of individuals, including student coverage obtained through an educational institution.

c. In the event a dependent covered under the ASARCO Health Plan is, or shall become, covered, or eligible for coverage, under any group insurance or group pre-payment plan by virtue of employment, benefits under the ASARCO Health Plan shall be secondary to the benefits provided or available under such other plan and aggregate benefits payable under both plans may not exceed the benefits that would have been payable under the ASARCO Health Plan.

d. Notwithstanding the foregoing sentence, the Plans shall not coordinate the benefits of a dependent that is eligible for a group insurance or group pre-payment plan by virtue of employment if such plan requires the dependent to pay premiums for health care coverage greater than those required under the ASARCO Welfare Plans.

e. The ASARCO Health Plan shall be the primary source of coverage for active Employees who continue to work beyond their Medicare entitlement date. The dependents of such Employees will also continue to be eligible for coverage, provided that the Employee is actively at work.

f. Expenses and benefits which are recovered by legal action or settlement are not covered under any provision of the ASARCO Health Plan. Accordingly, the Company shall be entitled to a refund for any benefits paid under any provision of the ASARCO Health Plan which are recovered by legal action or settlement. The right of the ASARCO Health Plan to a refund shall be applied to the aggregate amount recovered by the Employee or covered dependent from legal action or settlement related to non-occupational injuries for which Plan benefits were paid. Reimbursement to the ASARCO Health Plan shall not exceed the portion of such

expenses or benefits which are covered by legal action or settlement which is attributed to health care benefits. Reasonable legal expenses (attorney's fee and costs) incurred in obtaining payments from a third party will not be considered as included in the aggregate amount subject to reimbursement. Employees are required to notify ASARCO promptly of the fact of such legal action, or of a judgment or settlement in favor of the Employee (or covered dependent) and make available all information relevant to the administration of any provision of the Plan.

g. If, during the term of this contract, like benefits are provided under a compulsory contributory Federal or State program, the Company and the International Union will meet to reach mutual agreement on the amount and reallocation of funds released as a result of reduction of ASARCO Health Plan benefits.

17. **Coordination of Benefits**

a. If an Employee or eligible dependent is eligible for more than one plan of benefits, the rules establishing which plan is primary and which one is secondary, are as follows:

1. The benefits of a group plan which covers the person other than as a dependent shall be determined before the benefits of a group plan which covers such person as a dependent.

2. In the case of dependent children who are eligible for coverage under any other group insurance or group pre-payment plan, the plan of the parent whose birthday falls earlier in a year shall be primary and the benefits of the parent whose birthday falls later in the year shall be secondary.

Note: If your spouse's birthday falls first in the year and their employer's plan requires a contribution in order to obtain dependent coverage, your dependents will only be covered on a secondary basis by the ASARCO Health Plan, even if you choose not to enroll them in that plan.

b. If a dependent child is covered under both parents' plans, the primary plan for coverage will be the plan covering the parent whose birthday comes earlier in the year, unless:

1. The parents are separated or divorced and the parent with custody of the child has not remarried. In such a case, the benefits of the plan covering the child as a dependent of the parent with custody will be determined before the benefits of the plan covering the child as a dependent of the non-custodial parent.

2. The parents are divorced and the parent with custody of the child has not remarried. In such a case, the benefits of a plan covering the child as a dependent of the parent with custody will be determined before the benefits of a

plan provided by the stepparent, whose benefits will be determined before those of the parent without custody.

3. A court decree has established one parent as having financial responsibility for the medical, dental or other health care expenses of the child. In such a case, the benefits of the plan of that parent will be considered primary.

c. When the rules do not establish an order of benefit determination, the benefits of the group plan which has covered the person for the longer period of time will be considered to be primary.

d. When only one plan has a non-duplication (or coordination) of benefits provision the plan without such provision will determine its benefits first.

e. If a person is being covered as an Employee under two plans, the benefits of the plan which has covered the employer for the longer period of time will be determined first.

Section K. Summary of Vision Care

Employees and their eligible dependents shall be covered under the ASARCO Health Plan. Details of the Vision Care Benefits are included in the Summary Plan Description.

Summary of Vision Benefits

Service/Product	Allowance
Eye Exam and Refraction	$32 per exam
Single Vision Lenses (standard)	$24 per lens ($48 for two)
Bifocal Lenses (standard)	$36 per lens ($72 for two)
Trifocal Lenses (standard)	$46 per lens ($92 for two)
Aphakic/Lenticular Lenses	$72 per lens ($144 for two)
Non-Standard Lenses (e.g. photochromatic, polycarbonate)	Same allowances as standard
Progressive Lenses	$41 per lens ($82 for two)
Frames	$24 per frame
Contact Lens Fitting and Prescription	$20 per lens – Daily $30 per lens – Extended
Standard Contact Lenses	$48 per lens

Section L. Flexible Spending Accounts

Active full-time Employees may elect to establish flexible spending accounts of up to $2,500 for uncovered medical, vision and dental expenses, with a minimum annual contribution of $240 required. Active full-time Employees may elect to establish flexible spending accounts of up to $5,000 (unless a lower maximum is required by law) for dependent care, with a minimum annual contribution of $480. Eligible expenses incurred between January 1st and March 15th of the following year may be submitted for reimbursement by March 30 of the following year. For

detailed information concerning Flexible Spending Accounts refer to the Summary Plan Description.

Section M. Summary of Dental Benefits

The dental benefits for Employees and their eligible dependents are as outlined below.

Summary of Dental Benefits

Benefit Provision	**Plan Coverage**
Annual Deductible	$100 per Individual
Annual Maximum	$3,000 per Individual
Lifetime Orthodontic Maximum	$3,000 per covered dependent
Preventive Services	
Routine oral examinations and prophylaxis	100% of UC&R charges, limited to twice in any 12 month period, separated by at least 150 days. No deductible.
Application of fluoride	100% of UC&R charges. No deductible.
Space Maintainers	100% of UC&R charges. No deductible.
Emergency treatment for the temporary relief of pain which does not affect a definite cure.	100% of UC&R charges. No deductible.
Restorative Services	**Plan Coverage**
Dental X-rays	85% of UC&R charges, after deductible.
Fillings	85% of UC&R charges, after deductible.
Inlays, onlays, gold fillings or crown restorations	85% of UC&R charges, after deductible.
Extractions and oral surgery	85% of UC&R charges, after deductible.
General anesthetics	85% of UC&R charges, after deductible.
Periodontal treatment	85% of UC&R charges, after deductible.
Endodontic treatment, including root canal therapy	85% of UC&R charges, after deductible.
Repair or recementing of crowns, inlays, onlays, bridgework or dentures	85% of UC&R charges, after deductible.
Relining or rebasing dentures	85% of UC&R charges, after deductible.
Prosthodontic Services	
Initial installation of fixed bridgework	50% of UC&R charges after deductible.
Replacement of an existing partial or full removable denture or fixed bridgework	50% of UC&R charges after deductible.
Orthodontics. Coverage limited to dependent children under 19 years of age.	50% of UC&R charges after deductible, up to lifetime maximum per covered individual.

Article 12. Benefits

Section N. 401(k) Savings Plan

1. The Company shall offer Employees the opportunity to participate in a 401(k) Savings Plan in accordance with the following:

2. Eligibility

   All Employees who have completed one (1) month of service will be eligible to participate in the Plan.

   a. Automatic Enrollment: All employees shall be automatically enrolled into the 401(k) Savings Plan with a 3% default employee deferral, effective after completion of one (1) month of service or one (1) month post-ratification, for employees currently on payroll at ratification of this Agreement. If an employee does not want to participate in the automatic enrollment the employee may opt out.

3. Elections

   Participants may elect to make, increase or decrease contributions at any time.

4. Plan Administration

   a. The Plan shall be administered by the Company. The Company shall bear the payroll administrative costs associated with the Plan. The per participant, trustee, recordkeeping, transaction and other administrative fees will be borne by the Plan.

   b. The Company reserves the right to make administrative changes to the 401(k) Savings Plan from time to time. However, these changes cannot diminish the benefits negotiated under the terms of the agreement.

5. Vesting

   a. Participants shall be fully vested in their contributions.

   b. Participants shall be fully vested in company matching contributions once they have completed three years of service; or are permanently separated (immediately or over a scheduled period of time) because your plant, is permanently shut down; retire; reach age 65; become totally disabled; or die while actively employed by the company.

6. Withdrawals and Distributions

   Withdrawals will be available at age 59 - 1/2 or above (age 55 or above upon termination of employment) or in the event of "hardship" (as determined by IRS deemed hardship

distribution standards). Distributions will be available at retirement, death, disability or termination.

7. Additional Requirements

The Plan will accept eligible rollover contributions from eligible qualified plans and IRA accounts subject to Internal Revenue Service rules.

8. Investment Options

The Plan will offer at least seven (7) investment options, including a broad range of investment objectives and risk. Participants will be able to change investment options or transfer funds among options at any time.

9. Plan Funding

a. Participants may defer from 1% to 75% of eligible pay on a pre-tax basis, or 1% to 75% of eligible pay on an after-tax basis (subject to Internal Revenue Service regulations). Participants who choose to save using a combination of pre- and after-tax contributions may save up to 75% of eligible pay.

b. Eligible earnings shall mean basic straight time hourly earnings, including vacation pay and holiday pay, but excluding overtime, shift differential, premium pay, bonuses, profit-sharing, special payments, add-ons or any similar payments. Contributions to the Plan shall not exceed the maximum permissible by law.

10. Company Matching Contributions

The Company will match 50% of employee pre-tax contributions up to 6% of eligible pay if the Employee was hired prior to July 1, 2011, and 100% of employee pre-tax contributions up to 7% of eligible pay if hired on or after July 1, 2011. The Company does not match any portion of bonus, variable pay, profit sharing or other similar payments. Participants who are fully vested may access all company matching contributions and request withdrawals, transfers and loans of these amounts.

11. Loan Provision

The minimum loan shall be $1,000. The maximum loan shall not exceed fifty percent (50%) of the participant's account balance or $50,000, whichever is less. No more than one general purpose and one primary residence loan shall be outstanding at any time. Loan repayment will be through automatic payroll deduction or an agreed upon alternative for Employees on layoff, disability or in the event of a labor dispute. All loan origination fees and loan service charges will be the responsibility of the employee requesting the loan.

12. Documentation

All documents necessary to the establishment of the Plan will be reviewed with the Union and the Company shall make reasonable efforts to accommodate the Union's issues and concerns.

Section O. Pension Plan

The Company and Union have negotiated a Pension Agreement regarding the Retirement Income Plan for Hourly-Rated Employees of ASARCO hired prior to July 1, 2011, which is contained in a separate document along with a Summary Plan Description.

The Company shall draft a summary plan description for the Pension Agreement, which will be reviewed with the Union and the Company shall make reasonable efforts to accommodate the Union's issues and concerns.

The Pension Agreement shall control over any provisions of the summary plan description distributed by the Company or plan administrator ("SPD") that address such matters. Notwithstanding any language to the contrary in those SPD, the benefits described therein shall not be subject to amendment, modification or termination except as the Union and the Company agree otherwise.

LETTER OF UNDERSTANDING ON LOCAL SUPPLEMENTAL AGREEMENTS

January 1, 2007

Mr. Terry Bonds
Chairman, Union Negotiating Committee
Director, District 12
United Steelworkers
3150 Carlisle Blvd, NE, Suite 110
Albuquerque, NM 87110

RE: Local Supplemental Agreements

Dear Mr. Bonds:

This will confirm our understanding that workplace practices and local supplement agreements that were in effect prior to our 2006 negotiations will remain in effect unless modified in the Basic Labor Agreement or as a result of local supplement discussions between the parties at each company location. The parties will work to document the current workplace practices and other applicable continuing provisions and incorporate them into the applicable Local Supplemental Agreements. Until the Local Supplemental Agreements are finalized, the current workplace practices and other provisions of the collective bargaining agreements will remain in effect.

In the event of a dispute between the parties, the Chairs of Negotiating Committees or their designees will attempt to reach an agreement to resolve the matter. In the event that they cannot resolve the dispute, either party may submit such dispute to final and binding arbitration under the grievance procedure provided in this Agreement.

Sincerely,

Jon E. Pettibone
Chief Negotiator
Asarco

Agreed:

Terry Bonds
Chairman
Union Negotiating Committee

Memorandum of Understanding
Signing Bonus

Eligible employees shall be paid:

- A signing bonus in the amount of $1,000.00 contingent upon and following ratification and notification by the USW Representative that the Contract has been approved by the International President; and

- $1,500.00 upon the first year anniversary date of such receipt of notification

To be eligible for the above payments, an employee must be on the Company's payroll at the time of such payment.

Memorandum of Understanding
Flexibility

To promote efficiency and productivity, thereby enhancing job security, the parties recognize the legitimate need for increased flexibility in assignments. Assignments within classifications will remain the same on a day-to-day basis unless there is a legitimate operations purpose for temporary assignment of tasks outside those normally performed within an Employee's classification. Routine day-to-day absences and permanent vacancies that occur will not be affected by the terms of this Memorandum of Understanding (MOU). Such routine temporary and permanent vacancies shall be filled in accordance with the Local Supplemental Agreements and the Seniority Provisions in the Basic Labor Agreement. It is understood the relationship and jurisdiction between the various unions shall not be disturbed by this MOU. This MOU is intended to enhance flexibility and it supplements, but does not supersede, existing flexibility existing by agreement or practice. Implementation of this objective shall be accomplished within the following guidelines:

a. In order to achieve the desired flexibility as described above, a Flexibility Pool will be established made up of volunteers or junior Employees who will be used for cross-classification assignments whenever possible. The size of the Flexibility Pool and the classifications within the Pool at each Company location will be determined by the Company, with the understanding the Flexibility Pool will be no larger than 10% of the Employees at any Company location. In the event 10% is not sufficient to accomplish the desired flexibility, the parties shall discuss and seek agreement on the appropriate percentage. In the event the parties are unable to agree, the company may elect to raise the percentage, but in no event shall the percentage be higher than 15%. Any disagreement over the proper percentage may be appealed to the Top Level Committee as outlined in paragraph l. below. All temporary assignments to other classifications from the Flexibility Pool will be offered by seniority (senior qualified) and mandatory for the junior Employee. Such temporary assignments will not extend beyond two weeks unless the person assigned volunteers to extend it. Temporary assignment will not affect an Employee's seniority or job assignment in his/her department, classification, Line of Progression, or regular job assignment.

b. When there is a legitimate operations purpose for cross-classification assignments, employees may be temporarily assigned to perform the work of another classification. Without limiting the foregoing, legitimate operations purposes are recognized as the elimination of contracting out, emergencies, major equipment failure, unexpected absences, production requirements, curtailments, major maintenance outages, other major projects, spillages or Acts of God.

c. In the event there is no one available from the Flexibility Pool to perform cross-classification assignments, the Company may temporarily assign other Employees to perform work in a classification other than their own classification provided the Employee is qualified to perform the work safely. Temporary assignments shall be made by seniority as described in a, above, and will not extend beyond two weeks unless the person assigned volunteers to extend it. Every effort will be made to use Employees from the proper

classification within the department to get the work done. In day-to-day equipment breakdowns, the operator assigned to operate the equipment that is down for repair may be assigned to assist maintenance personnel assigned to repair the equipment.

d. It is understood that cross-department assignments will be made only from the Flexibility Pool except where permitted by local agreement or practice; however, this shall not preclude within-classification assignments between bargaining units represented by different local unions of the same international union.

e. There shall be no favoritism, retaliation or punishment against any Employee by the Company in the exercise of its rights under this MOU. No Employee will be disciplined for poor work performance due to lack of training while performing work on a cross-classification or cross-department assignment.

f. The Company may organize Maintenance Crews designed to perform other than routine day-to-day maintenance work at any of the various Copper Group or Ray locations. Such Maintenance Crews shall be used to perform skilled maintenance tasks such as responding to emergencies, surge maintenance periods, eliminating contracting-out, major equipment failure, other major maintenance needs, or to supplement normal maintenance forces. Such Maintenance Crews shall not be used to erode the normal maintenance forces at any of the Company locations nor to reduce apprenticeship opportunities. Subparagraphs a through d above shall not apply to Maintenance Crews. For Maintenance Crew Employees who perform work at other than their home plants, the Company will pay in advance for reasonable travel and other necessary expenses and compensate for travel time pursuant to agreements reached between the parties.

g. It is understood additional training will be required. Such training is the responsibility of the Company. No Employee who has more than 25 years of service or who is 55 years of age or older shall be required to accept the training nor be forced to accept cross-classification assignments under this MOU.

h. Temporary assignments outside an Employee's job classification will not affect the Employee's seniority or regular job assignment in his/her department, classification, or line of progression.

i. Safety training shall be provided when Employees are assigned outside their regular classifications. Any necessary safety training shall be the responsibility of the Company.

j. Employees who volunteer or are forced (junior Employees) for cross-classification assignments in the Flexibility Pool, or who are on a Maintenance Crew, shall be paid $1.00 per hour above their regular rate of pay or above the rate of the classification to which they are assigned, whichever is higher.

k. The Joint Workplace Committee as described in Article 5, Section L, 1 and 2, will meet as soon as possible after the Effective Date of this Agreement to discuss, identify and seek agreement to reduce the number of classifications and possibly combine classifications. If

the Joint Workplace Committee is unable to reach agreement, the parties will refer the issues to the Top Level Committee described in paragraph 1, below. The Top Level Committee shall meet and try to resolve any differences. Should the Top Level Committee fail to reach an agreement, it is understood that nothing in this MOU shall detract from the parties' rights under the provisions of the Basic Labor Agreement or the local supplemental agreements.

1. In order to assure the purpose and intent of this MOU is carried out and the principles herein are followed and to assure that Employees are protected from abuse or favoritism, a Top Level Committee will be established. This Committee shall be made up of the Chairman of the Unions' Asarco Bargaining Committee and the CEO of Asarco. In the event a dispute arises that cannot be settled by the Top Level Committee, the issue(s) will be submitted to immediate arbitration to determine whether or the Company violated any provision of this MOU or the purpose and intent or the principles herein. The arbitrator shall have full discretion to determine the appropriate remedy.

LETTER OF UNDERSTANDING ON COVERED RETIREES

September 21, 2017

Mr. Robert LaVenture
Chairman, Union Negotiating Committee
Director, District 12
United Steelworkers
3150 Carlisle Blvd. N.E., Suite 1100
Albuquerque, NM 87110

RE: Covered Retirees Eligible for Benefits under the ASARCO Health Plan

Dear Mr. LaVenture,

This will confirm our understanding that only the employees listed below who retire, or who would be eligible to retire, up until the expiration of the Agreement ("Covered Retirees" as defined in Article 12, Section F of the Agreement) shall be eligible for benefits under the ASARCO Health Plan applicable to retirees.

Sincerely,

Agustin Trevino
Chief Negotiator
ASARCO

Agreed:

Robert LaVenture
Chairman
Union Negotiating Committee

COVERED RETIREES

NameL	NameF	DOH	Status
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June 23, 2017

Memorandum of Understanding Regarding
Paid Sick Time Pursuant to the Arizona Fair Wages and Healthy Families Act

This Memorandum of Understanding ("MOU"), is entered into by and between the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL, CIO, CLC ("Union") and ASARCO LLC ("ASARCO").

For the sole purpose of complying with the paid sick time requirements of the Arizona Fair Wages and Healthy Families Act ("Act"), and with the express acknowledgment that this MOU affects no change in the parties' bargaining positions for a successor Basic Labor Agreement, ASARCO and the Union agree that:

1. This MOU applies to all ASARCO bargaining unit employees, including those working at ASARCO's Amarillo facility;
2. Effective July 1, 2017, all employees with less than one (1) year seniority and all employees hired thereafter (collectively "New Employees"), shall, until reaching vacation eligibility pursuant to Article 10 (Paid Time Off and Leaves of Absence), Section B (Vacations), accrue paid sick time at a rate of one (1) hour for every thirty (30) hours worked, with the ability to accrue a maximum of forty (40) hours of paid sick time in a calendar year as required by the Act. Such accrual shall begin at the commencement of employment or on July 1, 2017, whichever is later. New Employees hired on or after July 1, 2017 may not use the paid sick time until ninety (90) days after the commencement of employment at ASARCO, and shall thereafter be entitled to use the paid sick time as it is accrued for the purposes specified in the Act. All New Employees hired before July 1, 2017 are entitled to use the paid sick time as it is accrued for the purposes specified in the Act;
3. Upon becoming eligible for vacation pursuant to Article 10, Section B, New Employees shall thereafter only be entitled to accrue and use their vacation entitlement pursuant to Article 10, Section B, for paid sick time under the Act;
4. New Employees shall be paid for unused paid sick time not utilized by the end of the calendar year during which their employment began. At the beginning of the subsequent calendar year, New Employees will be immediately entitled to use the entire amount of paid sick time/vacation that they are expected to earn in that calendar year, which amount cannot exceed forty (40) hours;
5. Effective July 1, 2017, all other ASARCO employees shall be entitled to accrue and use their vacation entitlement pursuant to Article 10, Section B, as paid sick time for the purposes specified in the Act. A maximum of forty (40) hours of vacation may be used as paid sick time under the Act per calendar year, except that in 2017, such employees may only use a pro-rated amount of twenty (20) hours of vacation as paid sick time under the Act. In the event that an employee has exhausted their 2017 vacation entitlement as of July 1, 2017, such employee shall be entitled, for the remainder of 2017, to accrue paid sick time at a rate of one (1) hour for every thirty (30) hours worked, which time can used

as it is accrued for the purposes specified in the Act. Employees shall be paid for unused paid sick time not utilized by the end of 2017;

6. Effective July 1, 2017, any ASARCO employees that do not qualify as New Employees and do not have any vacation entitlement under Article 10, Section B, due to insufficient hours worked, shall be entitled to accrue paid sick time at a rate of one (1) hour for every thirty (30) hours worked, with the ability to accrue a maximum of forty (40) hours of paid sick time in a calendar year, until such time that the employees become entitled to a vacation entitlement pursuant to Article 10, Section B. Such employees are entitled to use the paid sick time as it is accrued for the purposes specified in the Act, and shall be paid for unused paid sick time not utilized by the end of the calendar year. At the beginning of the subsequent calendar year, such employees will be immediately entitled to use the entire amount of paid sick time/vacation that they are expected to earn in that calendar year, which amount cannot exceed forty (40) hours. Once such employees become entitled to vacation pursuant to Article 10, Section B, the vacation entitlement shall be the sole source of paid sick time under the Act in accordance with Paragraph 5 of the MOU;
7. Employees using paid sick time under the Act shall be paid at the rate of pay that they would have been paid if they had worked during the period of time that paid sick time was used (this includes shift differential and other premium pay for work performed under differing conditions, such as day pay supervisor, leadperson and other upgraded positions, but not overtime, bonuses, holiday pay and other incentive pay). For an employee with multiple hourly rates, if known, the rate of pay will be the actual hourly wages that the employee would have been paid for the period of time when paid sick time was used, and if unknown, ASARCO will pay the employee an hourly rate equivalent to the weighted average of all hourly rates of pay for the employee during the previous pay period;
8. Any ASARCO employees who are transferred or are rehired, shall be entitled to paid sick time to the extent allowed by the Act;
9. All ASARCO employees may use paid sick time in hourly increments;
10. ASARCO employees shall provide ASARCO with notice of the need to use paid sick time in accordance with the absence notification procedures currently in effect at their site of employment at ASARCO;
11. Legitimate, good faith use of paid sick time shall not be counted as an absence under any ASARCO attendance policy, and employees will not be disciplined for such legitimate, good faith use;
12. ASARCO may designate any absences/time off as paid sick time under the Act as long as it has a good faith belief that the absence/time off was for a purpose specified in the Act;
13. In accordance with the Act, for absences of three (3) or more consecutive work days, ASARCO may require reasonable documentation from the employees showing that the paid sick time was used for a purpose specified by the Act; and
14. To the extent permitted by law, ASARCO may run paid sick time under the Act concurrently with leave under the Family Medical Leave Act and any other leave mandated/protected by law.

IN WITNESS WHEREOF, the parties hereto have duly executed this MOU on the dates set forth below.

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL, CIO, CLC	Date
ASARCO LLC	Date

Exhibit A
Alcohol and Drug Abuse Policy

PHILOSOPHY: The dangers of drug or alcohol abuse in the workplace are far reaching. Such abuse can affect not only the abusing employee but their fellow employees as well. ASARCO employees work closely together and rely upon one another to a great extent. The safe performance of the work that our employees undertake demands each employee's full attention and clear thinking. As a result, the Company, as well as each employee, has a right to expect that all employees are drug and alcohol free and prepared to do their jobs in as safe a manner as possible at all times.

PURPOSE: It is the policy of the Company to provide a workplace free of alcohol and drugs, and to take reasonable measures to insure that employee alcohol and drug use does not jeopardize the safety and health of its employees, the success of its operations, nor adversely affect the Company, or its customers. Implementation is subject to restrictions under applicable local, state, and federal laws.

POLICY:

Education:

Employees are to be advised in writing of the Company's Alcohol and Drug Abuse Policy and Program. Information provided is to cover various aspects of the policy including the reasons for the program, effects of alcohol and drugs on individuals and their families; use of inspections, alcohol tests and drug tests.

Rules of Conduct:

The following Rules of Conduct apply to all employees. Violation of such rules subjects the employee to discharge:

A. The use, sale, attempted sale, manufacture, purchase, attempted purchase, possession or transfer of alcohol while on Company property, or in Company vehicles, is a violation of Company rules and will result in severe disciplinary action up to and including discharge. However, possession of a sealed beverage container in an individual's automobile shall not constitute a violation of this rule of conduct.

B. The use, sale, attempted sale, manufacture, purchase, attempted purchase, possession or transfer of an illegal drug while on Company property or in Company vehicles is a violation of Company rules and will result in severe disciplinary action up to and including discharge.

C. Any individual who is under the influence of alcohol or an illegal drug while on Company property or in a Company vehicle is in violation of Company rules and will be subject to severe disciplinary action up to and including discharge. Being "under the influence" shall not excuse or be a defense to any other misconduct which is a violation of Company rules.

D. An employee who is convicted under any criminal drug statutes for the use, sale, attempted sale, manufacture, purchase, attempted purchase, possession or transfer of an illegal drug, shall be immediately subject to unannounced drug testing for a period of eighteen consecutive months. In the event of a confirmed positive drug test during that period, such employee will be discharged. Absence from work due to such conviction shall be considered unauthorized and the employee shall be subject to disciplinary action, up to and including discharge.

E. Any employee who is currently taking medication of any kind, either over-the-counter or prescription, including medical marijuana, which may affect the employee's ability to perform his job in any way, or may present a safety risk, is to report such drug use to the Company to ensure the safety of themselves, other employees and Company property.

Inspection for Alcohol or Drugs

A. Notices

1. Each facility is to have a notice prominently placed at or near each entrance which states that by entering the premises persons are consenting to an inspection of themselves and their property, including their vehicles.

2. Example of acceptable notice:

RIGHT TO INSPECT

THE COMPANY RESERVES THE RIGHT TO INSPECT THE PROPERTY AND PERSON OF ALL INDIVIDUALS WHILE ON COMPANY PROPERTY. THIS RIGHT INCLUDES, BUT IS NOT LIMITED TO, THE INSPECTION OF VEHICLES, PARCELS, PACKAGES, PURSES, LUNCH BOXES, BRIEFCASES, LOCKERS, WORK STATIONS AND DESKS.

B. Inspections

1. In addition to routine industrial inspection practices, such as gate inspections, where the Company has information that would cause a reasonable person to believe that the provisions of this policy have been violated, the Company may require individuals to submit to special inspections of their personal lockers, purses, lunch boxes, briefcases, tool boxes, desks, file cabinets, or other containers or personal vehicles when on Company property.

2. Individuals who are being inspected may not be touched. If it is deemed necessary to ascertain what is on the individual's person, the individual is to be directed to empty the contents of his/her clothing.

3. Employees who refuse to permit an inspection are not to be forcibly detained nor inspected. However, they are to be advised that submission to such inspection is a condition of employment. Failure to permit such an inspection will result in immediate discharge.

4. Non-employees who refuse to permit an inspection are to be informed that this is a requirement of individuals allowed on Company property. Continued failure to submit to an inspection will result in their expulsion from Company property.

5. Trained dogs may be used to detect illegal drugs in personal and Company property.

Alcohol and Drug Testing

A. Current Employees

1. **Reasonable Suspicion Testing:** Testing for Alcohol and Drugs is based on circumstances where the Company has information about an employee's conduct that would cause a reasonable person to believe the employee is demonstrating signs of impairment due to alcohol or illegal drugs, or has used or continues to use alcohol or illegal drugs on Company property.

   When an employee shows signs of impairment, including but not limited to, difficulty in maintaining balance, slurred speech, erratic or atypical behavior, or demonstrates deteriorating job performance or appears unable to perform his/her job in a safe manner, the employee is to be escorted to a collection facility for drug and/or alcohol screening.

   i. If judged appropriate by supervision, a test for alcohol is to be conducted, and/or a urine specimen for drug testing is to be required.

   ii. In the event a Company location does not have a medical department, or has a medical department which is not staffed when the employee is escorted to it for testing, the decision to require an employee to be sent to an outside medical facility for an alcohol and/or drug test is to be made by a management official. If the decision is to conduct an alcohol and/or drug test, the employee is to be escorted to the Collection Site for testing.

   When the Company otherwise has a reasonable suspicion that an employee is in violation of Company Rules of Conduct on use of alcohol or drugs, a test for alcohol and/or a urine specimen for drug testing may be required. The employee is to be escorted to the Collection Site for testing. Employees will not be tested for drugs or alcohol based solely on anonymous tips.

2. **Recall Testing:** An employee who is recalled after being on layoff for a period of six (6) months or more, or who is otherwise returning to work after a period absence of six (6) months or more, shall be required to take a Company directed medical

examination, including a drug and/or alcohol test. In the event of a confirmed positive test, the employee will be denied reinstatement until such time as he successfully passes a Company directed drug and/or alcohol test. Upon successfully passing such a test, the employee will be reinstated but will be immediately subject to unannounced drug testing for a period of eighteen consecutive months. In the event of a confirmed positive test during that period, such employee will be discharged.

3. **After-Accident Testing:** An employee or group of employees who are involved in an on-the-job accident may be required, at the Company's discretion, to submit to a test for alcohol and/or a urine analysis for drug testing.

4. **Random Testing:** The Company and the Union shall cooperate in implementation of a random alcohol and drug-testing program which will not become effective until at least 6 months after the Effective Date of this Agreement, which may test up to 20% (twenty percent) of employees Company-wide (it being understood that for purposes of this paragraph "Company-wide" means 20% of total employee headcount, and not 20% of headcount at a specific location) during any calendar year, as further described below:

   i. Selection of employees to be tested will be determined by a third party vendor, using a random selection generator method (i.e. computerized program). The Company will follow U.S. Department of Transportation requirements and use a certified third-party vendor. The parties shall have no discretion to waive the selection of an employee selected by this random selection method. After the random testing has occurred, the Union may request a list of all the employees who were eligible for random selection and the employees selected.

   ii. When an employee has been selected for random testing, the employee shall be escorted to the collection site for testing.

   iii. The testing process under the existing program as modified herein will be used for testing and retest. Any employee testing positive for any substance under the random selection process will be temporarily suspended, not terminated, without pay pending completion of referral to the Employee Assistance Program ("EAP") and fulfillment of any rehabilitation requirements suggested by the EAP that require the employee to miss work. An employee suspended under this provision, if eligible, shall be entitled to coverage under the Company's health plan, FMLA leave, and sickness and accident plan. For the avoidance of doubt, except as required by law, this suspension shall not affect the operation of any other provision in this Agreement regarding benefit eligibility, including but not limited to Weekly Sickness and Accident Benefits. Any work-time lost as a result of complying with the EAP rehabilitation requirements will not count against the employee for attendance purposes. Upon return to work, the employee shall be placed on a Last Chance Agreement for a twenty-four (24) month period. Such employee will be subject to random testing at any time during the term of the Last Chance Agreement and will be

subject to termination for any positive test result during the twenty-four (24) month period. Any such employee who refuses to participate in a random alcohol or drug test, who fails to comply with the referral to the EAP, or who fails to fulfill any rehabilitation requirements suggested by the EAP will be terminated

iv. In the event an employee questions the Company's right to random test for drug or alcohol or initially refuses, a union representative will be called to advise him of the consequences of his/her refusal, which is termination. The employee will not be terminated until he/she has a chance to speak with a union representative.

v. Similarly, any employee who is shown conclusively to have engaged in any action to alter, including dilution, adulterate, substitute, or otherwise tamper with their alcohol or drug test specimen, will be discharged.

5. **Step Forward Testing:** Any employee who is not subject to a Last Chance Agreement under paragraphs 4 or 5 of this Policy may seek rehabilitation assistance prior to selection for random testing. Such employees will be required to submit to a drug test and alcohol screening under the procedures set forth in this policy. These employees' requests for rehabilitation will be accommodated, without retaliation or retribution, through the EAP, subject to the following conditions:

   i. Employees seeking rehabilitation under this paragraph 5 will be placed on a leave of absence pending completion of referral to the EAP and fulfillment of any rehabilitation requirements suggested by the EAP that require the employee to miss work. Any work-time lost as a result of complying with the EAP rehabilitation requirements will not count against the employee for attendance purposes. Except as required by law, this leave of absence shall not affect the operation of any other provision in this Agreement regarding benefit eligibility, including but not limited to Weekly Sickness and Accident Benefits.

   ii. Upon return to work, the employee shall be placed on a Last Chance Agreement for an eighteen (18) month period. Such employee will be subject to random testing at any time during the term of the Last Chance Agreement and will be subject to termination for any positive test result during the eighteen (18) month period. Any such employee who refuses to participate in a random alcohol drug test, who fails to comply with the referral to the EAP, or who fails to fulfill any rehabilitation requirement suggested by the EAP will be terminated.

6. Nothing in this Policy, including but not limited to paragraphs 4 and 5, shall limit the Company's right to discipline employees for violations of this and other Company Policies, including performance problems.

PROCEDURE:

A. **Consent** – No alcohol test may be administered or urine or blood sample obtained or any drug test conducted on such sample without the written consent of the person being tested (See Appendix A.)

B. **Employee Refusal to Consent to an Alcohol Test or Drug Test** - An employee's refusal is viewed as insubordination and subjects the employee to immediate discharge.

C. **Alcohol Screening** – Alcohol screening will normally utilize a breathalyzer test in accordance with the test equipment manufacturer's instructions or a urine, or blood screen.

On-site Alcohol confirmation testing: A positive on-site indicator for alcohol requires a second breathalyzer test be performed. A positive confirmation for the presence of alcohol will result in the following:

1. A Breath Alcohol result of 0.04 or greater will result in an employee being placed on Investigative Leave.

2. The employee will be requested to submit a urine sample for alcohol screening which will be sent to a licensed laboratory for confirmation testing. The urine sample will be obtained in accordance with the drug testing procedures set forth below.

3. The employee and supervisor will immediately meet with the human resources representative.

4. If the testing is taking place at a time when human resources are not available, meaning a night shift; the employee will be immediately placed on Investigative Leave until such time as they can meet with the human resources representative.

D. **Drug Testing** – Drug tests will normally utilize urine samples. All urine tests will be performed according to Substance Abuse and Mental Health Services Administration ("SAMSHA") standards. An initial immunoassay test will be administered by qualified personnel using Quick Screen testing methodology and any "positive" tests will be confirmed through a certified laboratory using accepted scientific laboratory technologies. All "positive" tests finding for drug testing will be reviewed by an independent Medical Review Officer (MRO) meeting the requirements set forth in the applicable SAMSHA regulations at 73 FR 71899 (Subpart M, Section 13.1). The MRO will interview the person tested, before a final test determination is made. If the MRO is unable to contact the tested person with 5 days after receipt of the finding, the sample will be considered a "positive" (non-negative) test.

1. All test results are reported directly to the Human Resources Department.

2. The employee will remain off work, without pay, until confirmation results have been received.

3. A negative indicator will result in the employee returning to work and pay being reinstated for the time period the employee was on Investigative Leave. All initial testing, determined to be "negative" will be considered as "passed" test and no confirmation test will be required.

4. Any drug test determined to be "positive" may be appealed for retest of the original sample (or split sample), at the expense of the employee requesting the retest.

5. A positive confirmation for drugs, in quantities medically prescribed, and which do not impair ability to work safely as previously certified by a MRO, will not result in termination of employment.

6. In the event the DOT recognizes the use of oral fluid samples for drug testing and publishes applicable levels for assessing the presence of an Illegal Drug or Illegal Drug metabolites in an individual's system, the Company may, after reasonable notice to the Union, utilize such method of testing. All such tests will be performed according to SAMSHA standards.

E. **Chain-of-Custody** – The Company will follow the Substance Abuse and Mental Health Services Administration's Chain of Custody Procedures.

F. **Retention of Sample** – All urine or samples confirmed positive for illegal drugs are to be frozen by the testing laboratory and retained for one year.

G. **Notification** – All employees who test positive for Illegal Drugs are to be so notified by the MRO and given an opportunity to provide the MRO any reasons they may have which would explain the positive drug test other than the presence of Illegal Drugs. If an individual provides an explanation acceptable to the MRO that the positive drug test result is due to factors other than the presence of Illegal Drugs in the test specimen, the positive test result is to be disregarded and all records of the test result destroyed. All employees have the right to obtain copies of the written test results upon request.

H. **Confidentiality** – The identity of employees who have tested positive are to be limited to those persons having a need-to-know.

I. **Grievance and Arbitration** – Disciplinary action taken under this Policy shall be subject to the grievance and arbitration procedure.

J. **Union Representation**

A bargaining unit employee shall, upon request, be afforded union representation at any time he or she is confronted with a consent, interview or test for alcohol or drugs.

Nothing in this Policy and Program is to be construed as a guarantee of employment for any period of time, including but not limited to the time any employee is participating in the Company's drug testing program.

DEFINITIONS:

Alcohol - A colorless, volatile, and flammable liquid that is the intoxicating agent in fermented and distilled liquors. It includes but is not limited to beer, wine, and liquor.

Being Subject to the Effects of Alcohol or an Illegal Drug - Having the presence of alcohol, an illegal drug or a drug metabolite in an individual's system, as determined by appropriate testing of a bodily specimen that is equal to or greater than the levels specified in the U.S. Department of Transportation's ("DOT") rules and regulations, the current levels of which are set out below. This is referred to as "positive test", "positive level", "prohibitive level", or "positive screen." A confirmed positive shall be a basis for immediate discharge, unless otherwise provided herein.

		Initial Test Level	Confirmation Test Levels
A.	Alcohol	0.04%	0.04%
B.	Marijuana metabolite	50 ng/ml	15 ng/ml
C.	Cocaine metabolite(s)	150 ng/ml	100 ng/ml
D.	Morphine and/or codeine	2000 ng/ml	2000 ng/ml
E.	Phencyclidine (PCP)(and/or metabolites)	25 ng/ml	25 ng/ml
F.	Amphetamine and/or methamphetamine	500 ng/ml	250 ng/ml
G.	Oxazepam and/or other benzodiazepine or metabolite	300 ng/ml	300 ng/ml
H.	Barbiturates	300 ng/ml	200 ng/ml
I.	Methadone and/or metabolite	300 ng/ml	300 ng/ml
J.	Methaqualone (quaaludes)	300 ng/ml	300 ng/ml
K.	Propoxyphene (Darvon)	300 ng/ml	300 ng/ml

Collection Site – A location for specified employees to report for the purpose of participating in a test for alcohol and/or contributing urine specimens for the detection of drugs in urine. The collection of urine specimens or blood is to be conducted under tightly controlled conditions. The Collection Site can be separate and apart from the work site, if adequate facilities are not available at the work site.

Company Property – Includes, but is not limited to, all land (including parking lots), property, and buildings owned or leased by the Company and automobiles, trucks or vans owned or leased by the Company.

Drug Test – A multiple step urine test which involves an immunoassay screening method and a confirmation by use of Gas Chromatography and Mass Spectroscopy (GC/MS). The laboratory to conduct such tests shall be a certified laboratory, selected at the discretion of the Company.

Split Sample - An employee may request a split sample of his or her urine sample submitted at the collection site and, upon a confirmed positive of one sample, the employee may request a test of the other sample at his or her own expense.

Illegal Drug – A controlled substance, as defined by Section 812 of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

Exhibit B
Pension Agreement

The Pension Agreement (hereinafter called the "Agreement"), made by and between ASARCO LLC (Hereinafter called the "Company") and the following Unions or their successors (the Union) on behalf of the Employees of the Company:

a. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (USW);

b. International Brotherhood of Electrical Workers, Locals 518, 570; and 602;

c. International Association of Machinists and Aerospace Workers, Local 519;

d. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith, Forgers and Helpers, Local 627;

e. International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 104;

f. International Union of Operating Engineers, Local 428;

g. United Brotherhood of Carpenters and & Joiners of America, Local 1912; and

h. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 741.

Section 1.
Subject to the Company's obtaining and/or retaining initial approval by the Internal Revenue Service of the amendments contemplated by this Agreement, the Company agrees to amend the Retirement Income Plan for Hourly-Rated Employees of Asarco (hereinafter called the "Plan") effective as of January 1, 2007 (hereinafter called the "Effective Date"), in the following respects:

Section 2.
Eligibility and Amount of Retirement Income Benefits:

Eligibility.
Employees, not including terminated Employees, covered under this Agreement who on or after the Effective Date have reached Normal Retirement Date will be entitled at Retirement Date to a non-contributory benefit under the Plan.

Types of Pension Payments
A pension granted pursuant to Section 2 shall consist of:

a. a special severance payment (hereinafter "Special Payment"), except in the case of any participant eligible for a deferred vested pension (or as provided in Section 4), and

b. a regular pension amount (hereinafter "regular pension"), payable in monthly installments, provided in accordance with the provisions of Section 3 below.

Amount of Retirement Income Benefits.
The Amount of retirement benefit for eligible Employees retiring subsequent to the Effective Date shall be computed as follows:

A. Special Payment

The amount of Special Payment for a participant shall be calculated as follows:

1. 1% of Average Annual Earnings times Years of Service, plus $30.00 times Years of Service. Employees hired or rehired on or after July 1, 1983, shall be limited to a $7,500 maximum (lifetime) amount accrued by this formula. (Annual Earnings: Straight time hourly earnings, which shall exclude all pay premiums of whatever nature, for the twelve (12) consecutive calendar months immediately preceding the date of retirement or death, divided by the straight time hours worked, multiplied by 2,080 hours);

2. less the amount of benefit payments received under the Asarco Supplemental Unemployment Benefits Plan; and

3. less the amount of any laid off benefit payments received under the former Asarco Copper Group Security & Severance Payment Plan for weeks in which the Employee was ineligible for state unemployment benefits, if any.

Except as required by law, the Special Payment shall be paid in a lump sum within the first full calendar month following the month in which death or retirement occurs or within the month following the month in which application for pension is made, whichever is later.

B. Normal or Deferred Retirement.

1. A monthly amount determined by multiplying $32.00 by the number of years (and fractions thereof) of his or her Continuous Service up to 15 years, plus $33.50 by the number of years (and fractions thereof) of his or her Continuous Service in excess of 15 years and up to 30 years, if any, plus $35.00 for each year of Continuous Service in excess of 30 years.

2. a. Effective as of the date of an effective plan of reorganization of ASARCO, a monthly amount determined by multiplying $40.00 by the number of years (and fractions thereof) of his or her Continuous Service, effective for all Employees, not including terminated Employees, covered under this Agreement.

b. In addition to providing the $40 multiplier applicable to all pensions commencing on or after the Amendment's effective date, the Amendment also shall provide to individuals retiring or otherwise separating from service on or after January 1, 2007, but before the Amendment's effective date, (or to the beneficiaries of such individuals) supplemental pension payments in an amount equal to the excess of the value of the pension benefits that would have been payable to such individuals had they commenced their pension benefits under the Plan on or after the effective date of the Amendment over the value of the pension benefits that such individuals were actually paid from the Plan. Such supplemental pension payments shall be paid as soon as administratively practicable (taking into account any legal requirements) after the effective date of ASARCO's plan of reorganization in a single lump sum, and shall be calculated to include interest (based on the Plan's assumed rate of return on its assets) from the date that the individuals would have received such payments had the Amendment's effective date been January 1, 2007. In the event that the Plan does not pay such supplemental payments for any reason, ASARCO either (1) shall contribute to individual accounts established or maintained under the Hourly 401(k) Plan on behalf of the individuals (or to the beneficiaries of such individuals) who are entitled to such supplemental pension payments an amount equal to the value of those payments; or (2) shall provide an equivalent after-tax value to such individuals (or to the beneficiaries of such individuals) in a manner that the parties subsequently determine by mutual agreement.

C. Early Retirement.

Any Employee shall be eligible to retire prior to Normal Retirement Date provided the conditions set forth in one of the following paragraphs are satisfied.

1. 70/80 Formula.

a. Any employee who is laid off due to the permanent shutdown of the total plant at which he or she is employed and which is covered under the Agreement may elect to retire and receive a "70/80" retirement benefit, provided such Employee:

i. has reached age 55 at the commencement of layoff and attained age plus Continuous Service totals 70 years or more, or

ii. has not reached age 55 and attained age plus Continuous Service totals 80 years or more.

Notwithstanding anything to the contrary, eligibility for a 70/80 Retirement shall be determined based on the Employee's age as of the date of layoff. However, an Employee on layoff due to the permanent shutdown of the total plant shall continue to accrue Continuous Service as set forth in Section 5, below.

b. The basic benefit shall be the amount calculated in Paragraph B above, for each month of Continuous Service. In addition, such Employees shall be eligible to receive a temporary supplement of $300 per month, commencing with their first pension payment. Payment of the temporary supplement shall continue until the end of the month proceeding the earliest of:

i. Date of pensioner's death, or

ii. Date pensioner becomes eligible for a Social Security disability pension, or

iii. Date pensioner reaches the age required for eligibility for an unreduced normal Social Security pension, or

iv. Date pensioner reaches 62nd birthday.

2. 30 Year Retirement.

Any Employee who has completed 30 years or more of Continuous Service may elect to retire and receive a "30 Year" retirement benefit which shall be the amount as calculated in Paragraph B above, for each month of Continuous Service.

3. 60/30 Formula.

Any Employee who has both reached age 60 and completed at least 30 years of Continuous Service may elect to retire and receive a "60/30" retirement benefit. The basic benefit shall be the amount calculated in Paragraph B above, for each month of Continuous Service.

In addition, such Employees shall be eligible to receive a temporary supplement of $400 per month commencing with their first pension payment.

Payment of the $400 per month temporary supplement shall continue until the end of the month preceding the attaining of age 62, and thereafter a temporary supplement of $170 per month shall be payable until the end of the month preceding the date the pensioner attains his or her 65th birthday, unless one of the following events occurs, in which case the temporary supplement will be payable until the end of the month preceding the earliest of:

a. Date of pensioner's death, or

b. Date pensioner becomes eligible for an unreduced Social Security disability pension, or

c. Date pensioner reaches age required for eligibility for an unreduced normal Social Security pension.

4. 62/10 Formula.
Any Employee who has reached age 62 and completed at least 10 years of Continuous Service may elect to retire and receive a "62/10" Retirement Benefit which shall be the amount as calculated in Paragraph B above, for each month of Continuous Service.

5. 55/10 Formula.
An Employee who has reached age 55 and completed at least 10 years of Continuous Service may elect to retire and receive a "55/10" retirement benefit which shall be the amount calculated in Paragraph B above, for each month of Continuous Service, reduced by 33/100th of 1% for each full month by which the Early Retirement Date precedes the month in which the Employee shall attain age 62.

6. Permanent and Total Disability Retirement.
Any Participant who shall have had at least 10 years of Continuous Service and who shall have become Permanently and Total Disabled shall be eligible to retire on or after the Effective Date and shall upon his retirement (hereinafter Permanent and Total Disability retirement) be eligible for a pension which shall be the amount as calculated in Paragraph B above, for each month of Continuous Service. A Participant shall be considered to be eligible for Permanent and Total Disability retirement only

a. if he has been totally disabled by bodily injury or disease which prevents the Employee from engaging in any occupation or employment whatsoever covered by the Labor Agreement of the collective bargaining unit in which the Employee works, and

b. after such total disability shall have continued for a period of five consecutive months and, in the opinion of a qualified physician appointed by the Company, it will be permanent and continuous during the remainder of the Employee's life, and

c. the Employee has been declared qualified for and is receiving Social Security Disability Benefits.

Permanent and Total Disability contracted, suffered or incurred while the Employee was engaged in a felonious criminal enterprise; or the result from a self-inflicted injury; or the result from service in the armed forces after the Effective Date of this Agreement, which prevents return to employment with the Company, and for which the Employee received a military disability pension shall not entitle a Participant to a Permanent and Total Disability retirement benefit under this Paragraph. Such pension shall be discontinued if such Participant shall cease to be permanently incapacitated prior to age 65. The permanency of incapacity may be verified by medical examination prior to age 65 at any reasonable time. Should the Employee refuse to submit to medical examination prior to age 65, any Permanent and Total Disability retirement benefit shall be discontinued until the Employee submits to such examination.

D. Spouse's Pension (Pre-Retirement).
The surviving spouse of an active Employee who dies after having completed at least five (5) years of Continuous Service, shall be eligible for a Spouse's Pension which shall be equal to 50% of the Employee's accrued retirement benefit calculated as in Paragraph B above, for each full month of Continuous Service up to the date of the Employee's death. Payment of the Spouse's Pension shall commence as of the last day of the month in which the Employee dies and shall continue until the end of the month preceding the death of the surviving spouse.

For purposes of this provision, an active Employee shall not include any Employee who, immediately prior to death, was receiving disability or retirement benefits under the terms of this Agreement or any prior Agreement. Such Spouse's Pension (Pre-Retirement) shall be reduced by 1/24 of 1% for each full month the spouse is more than 60 months younger than the Employee and increased by the same factor for each full month the spouse is more than 60 months order. Payment of the Spouse's Pension shall commence as of the last day of the month in which the Employee dies and shall continue until the earlier of the death of the surviving spouse or the date deceased Employee would have attained age 65, provided, however, that if the spouse is living at the date the Employee would have attained age 65, such spouse, if otherwise eligible, shall thereafter be entitled to a Spouse's Pension (Post-Retirement) under the terms and conditions set forth in the following Paragraph (E).

E. Spouse's Pension (Post-Retirement).

At retirement, a married Employee will receive a 10% reduction in his or her basic benefit in order to provide a Spouse with a pension after the Employee's death, unless he or she refuses such spouse's pension with notarized spousal consent within the 90 day period preceding the benefit commencement date. Such Spouse's benefit will be 55% of the basic benefit which the pensioner was receiving at the time of death. The Spouse's pension shall be reduced by 1/24 of 1% for each full month the Spouse is more than 60 months younger than the Employee and increased by the same factor for each full month the Spouse is more than 60 months older. The Spouse must have been married to the Employee for one year prior to retirement. The 10% reduction will be eliminated if the Spouse predeceases the pensioner.

The provisions of this section apply at benefit commencement date to married Employees who are entitled to a Vested Deferred Benefit as noted in Section 4, reduced actuarially to provide a 50% Joint and Survivor Benefit unless the terminated Employee refuses such benefit with notarized spousal consent within the 90 day period preceding the benefit commencement date.

F. Offset for Kennecott Hourly or Salaried Pensions

Any basic retirement benefit payable to any person under the provisions of this Plan shall be reduced by any benefit payable to such a person from the Kennecott Corporation Retirement Plan for Hourly Employees or the Kennecott Corporation Retirement Plan for Salaried Employees (Kennecott Retirement Plan), whichever is applicable, to the extent that such benefits would result in a duplication of benefits for the same period or periods of Service.

If a Participant is not entitled as of the date he commences his commencement of benefits to commence receipt of a pension benefit from the Kennecott Retirement Plan, but will become entitled to a pension from such plan in the future, the Participant's benefit under this Plan shall initially be calculated as if no such pension is payable. If and when the Participant becomes entitled to commence receipt of such pension, the Participant's benefit under this Plan shall be recalculated taking into account the pension payable under the Kennecott Retirement Plans.

Section 3.
Retirement Date:

A. Normal Retirement Date.
The Normal Retirement Date shall be the last day of the month in which occurs the Employee's 65th birthday.

B. Deferred Retirement Date.
An Employee may, at his or her option, continue in active service after age 65, and retire on a Deferred Retirement date; provided such employee is qualified and able to perform his or her job duties. Nothing herein contained shall be construed as requiring the Company to create any job.

C. Early Retirement Date.
The Early Retirement Date shall be the last day of the month in which the Employee retires prior to Normal Retirement Date, pursuant to the age/or service requirements outlined in Paragraph B of Section 2, above.

D. Payment of Pension.
In all cases, an Employee's monthly pension payments shall commence on the last day of the month of retirement from active service with the Company and shall end with the payment due the last day of the month immediately preceding the month in which occurs the pensioner's death. In all cases, a Spouse's monthly pension payments shall commence on the last day of the month of the Employee's or Pensioner's death and shall end with the payment due the last day of the month immediately preceding the month in which occurs the Spouse's death.

Section 4
Vested Terminated Employees.

A. An employee whose active service with the Company is terminated on or after the Effective Date and who had prior to such termination completed at least 5 years of Continuous Service with the Company (such an Employee being referred to as a "Vested Terminated Employee"), shall be eligible to receive a Vested Deferred Benefit equal to the amount credited to his or her account at the date of termination of active service calculated in accordance with the provisions of Paragraph B of Section 2 above. Payment of a Vested Deferred Benefit is to begin not earlier than the last day of the month in which occurs the Vested Terminated Employee's 65th birthday or, at the Vested Terminated Employee's option, at age 55 or thereafter subject to an actuarial discount. A Vested Terminated Employee who is subsequently re-employed will retain all rights to any Vested Deferred Benefit provided for Continuous Service established prior to the Break in Service. However, such benefit will be calculated in accordance with the provisions of the Plan in effect at date of termination. The previously recognized Continuous Service shall be included for vesting purposes in establishing the pension benefit or the additional Vested Deferred Benefit for such additional Continuous Service beginning with the date of re-employment.

B. A Vested Terminated Employee shall, upon termination, automatically provide a Pre-Retirement Survivor Annuity ("PSA") for his or her surviving spouse in the event of such Vested Termination Employee's death prior to benefit commencement date, unless such PSA is refused by the Vested Terminated Employee with notarized spousal consent during the period beginning with the date of termination and ending with the benefit commencement date. Such PSA will be the equivalent of 50% of the former Employee's Vested Deferred Benefit calculated in accordance with Paragraph B of Section 2 and as if the former Employee had commenced payment of the Vested Deferred Benefit on the day prior to date of death, and further actuarially reduced to provide the Joint and Survivor Annuity and for the cost of such benefit until the date of the former Employee's death.

Section 5.
Definition of "Continuous Service":
For the purpose of this Agreement and both Plans herein mentioned, "Continuous Service" means any month of employment with the Company in which an Employee received compensation for services performed in such month, at a Plant or Unit of ASARCO Incorporated, prior to date of actual retirement, calculated from the later of the date of first employment or the date of re-employment following any break in service.

However, any month or months of service prior to January 1, 1939 shall be considered as credit in computing total accumulated Continuous Service for the Employees covered by such Plans on the effective dates thereof, provided that a break in service did not occur subsequent to January 1, 1939. Former Employees of Ground Hog or Selby who as of June 30, 1977 were employed by ASARCO at a Copper Plant or Unit covered by the Pension Plan and Permanent and Total Disability Plan Memorandum dated and signed September 1, 1977, shall have prior service at Ground Hog or Selby credited for Pension Plan purposes, subject to Paragraph F of Section 9,

provided such prior service was terminated by the Company as a result of the shutdown of Ground Hog or Selby.

With the exception of an absence as set forth in Paragraph (B) (1) below, any calendar month of an absence in excess of three (3) months during which the Employee does not receive any compensation from the Company for work performed in such month, and which does not cause a break in service, shall be deducted in computing the period of Continuous Service. However, such absence in excess of three (3) months and up to twenty-four (24) months during which the Employee does not receive compensation shall not be deducted in computing Continuous Service if the absence is due to layoff or non-occupational disability. Periods of absence due to compensable disability for which Worker's Compensation Benefits are paid shall be included in the computation of Continuous Service for pension purposes only.

A. Service is broken by:

1. Quit;

2. Discharge;

3. Dismissal or separation due to permanent shutdown of a plant, department or subdivision thereof, but if the Employee so dismissed or separated from such employment is rehired by such plant, department or subdivision thereof, within four (4) years, a break in service shall not be deemed to have thereby occurred;

4. Absence due to a layoff which continues for more than four (4) years;

5. Failure to report for work at the termination of a leave of absence or an extension thereof, when such failure is not excused by the Company;

6. Absence of more than four (4) years due to the physical disability of an Employee, resulting from non-compensable causes, except as provided in Paragraph B(2) of this Section 2.

The foregoing notwithstanding, a severance of employment, resulting from resignation or discharge occurring on or after July 1, 1976 shall not be deemed a Break in Service if the affected Employee is re-employed within the twelve (12) month period next following the severance, in which case the period from the date of severance to date of re-employment shall be counted for vesting purposes only.

B. Service is not broken by:

1. Absence of an Employee who, subsequent to May 1, 1940, entered or shall enter the active armed forces, which for the purposes of the Plans include the Coast Guard and Merchant Marine services of the United States, and who has re-employment rights under applicable Laws and complies with the requirements of the Law as to re-employment and is re-employed; the period of such an absence shall not be deducted in computing the months of Continuous Service;

2. Absence of an Employee on account of permanent and total disability (as provided for in Section 2(C)(6)) if such persons returns to active service with the Company within thirty (30) days immediately following recovery from such permanent and total disability. However, the period of such an absence in excess of 24 months shall be deducted in computing months of Continuous Service;

3. Absence due to a disability compensable under the State Workers Compensation Laws, incurred during the course of employment, provided the Employee returns to work within thirty (30) days after termination of the period of which statutory compensation for such disability was payable, or in case of a lump sum settlement under State Workers Compensation Laws, provided the Employee returns to work within thirty (30) days after termination of the period determined by dividing the lump sum settlement by the weekly payment used in the calculation of such lump sum settlement;

4. Absence of an Employee elected or appointed to full-time employment with the Union. The period of such a leave of absence in excess of the first six months thereof shall be deducted in computing the months of Continuous Service.

C. Continuous Service of Non-Vested Employees

The period of Continuous Service of a non-vested Employee prior to a Break in Service which occurs subsequent to June 30, 1976 shall be included in the computation of Continuous Service for pension purposes if the period commencing with the event constituting the Break in Service to date of re-employment is less than the period of Continuous Service immediately prior to such break in Service or a five (5) year Break in Service, whichever is greater; however, any benefit accrued prior to the Break in Service shall be calculated in accordance with the Plan provisions in effect at the time the event constituting the Break in Service occurred.

D. Continuous Service shall not include any period prior to July 1, 1976 not recognized as such under the Plan as in effect prior to such date.

E. Hourly Employees who were laid off from Silver Bell in 1984 and had five years of Continuous Service at the time of layoff and were recalled and/or returned to work as hourly employees, shall have their period of Continuous Service joined for purposes of calculating their pension using the multiplier in effect at the time of their retirement.

F. Former Employees of the Ray Mines Division of Kennecott Corporation who as of November 18, 1986 were employed by ASARCO at the Ray Unit (concentrator, smelter or mines plant), shall have prior Continuous Service at the Ray Mines Division of Kennecott Corporation (as defined in Section 1.10 of the Kennecott Corporation Pension Plan for Hourly Employees) credited as Continuous Service under this plan, provided such Employees retained recall rights with the Ray Mines Division of Kennecott Corporation as of that date.

G. Former Employees of the Ray Mines Division of Kennecott Corporation who as of November 18, 1986 were employed by ASARCO at a Hayden Smelter, shall have prior Continuous Service at of the Ray Mines Division of Kennecott Corporation (as defined in Section 1.10 of the Kennecott Corporation Pension Plan for Hourly Employees) credited as Continuous Service under this plan, provided such Employees retained recall rights with the Ray Mines Division of Kennecott Corporation as of that date.

Section 6
Deductions from Permanent and Total Disability Benefits

From gross monthly disability benefit shall be deducted any payments received by the Employee (other than those paid under (A), (B), (C), (D), or (E) below) any benefits, allowances, pensions or payments to which the Employee is, or shall become, or upon application would become entitled by any law of the United States, provided, however, that if such Employee shall have contributed to the source or fund out of which such allowance or payment shall be paid or become payable, then the amount which may be deducted from the disability benefit payment shall be decreased by the portion of such allowance or payment which shall be attributable to such Employee contributions. No gross monthly disability benefit payment hereunder shall be reduced by reason of:

A. Old Age Assistance payments; or payments received under any "Aid to Permanently or Totally Disabled Law", or any "Aid to the Blind Law";

B. Payments received under the Social Security Act;

C. Military pension or Veterans pension payments;

D. Payments received under the Workers Compensation Law of any state; or

E. Payments under Group Life, or Weekly Sickness and Accident Plans in effect on the Effective Date of this Agreement or as may hereafter be established.

Section 7.
Appeals Procedure
If any difference shall arise between the Company or the Company's Benefits Management Committee and any Employee who shall be an applicant for a pension as to such applicant's right to a pension or the amount of his or her pension, after completion of any claim or pre-litigation dispute resolution procedure in the applicable plan, such difference may be taken up as a grievance in accordance with the grievance procedure of the Labor Agreement, and any such difference shall be within the scope of arbitration under the Labor Agreement. The Arbitrator shall have authority only to decide the question pursuant to the provisions of this Agreement applicable to the question, but s/he shall not have authority in any way to alter, add to or subtract from any of such provisions. The decision of the Arbitrator on any such question shall be binding on the Company, the Company's Benefits Management Committee, the Union and the Employee. The expense of arbitration shall be borne equally between the parties unless they agree otherwise.

Section 8.
Medical Board
There shall be referred to a Medical Board any questions as to whether an Employee is permanently and totally disabled or whether such Employee continues to be totally and permanently disabled. Such questions shall be resolved by a Medical board which shall consist of three physicians, one appointed by the Company, one appointed by the Union representing such employee or by such person himself and a third selected by the other two appointed physicians. The fees and expenses of the first two physicians shall be borne by the appointing party and the fees and expenses of the third physician shall be shared equally by both such parties. The opinion of a majority of the Medical Board shall be final and binding upon the Company, the Employee and his duly authorized representatives.

Section 9.
General Provisions

A. The administration of the pension benefits shall be the charge of the Company's Benefits Management Committee, which shall consist of such members from management, have such authority and perform duties, as may be determined from time to time by the Company.

B. Statutory Compliance

All pension benefits for which an employee becomes eligible to receive or become payable pursuant to the terms and conditions set forth in this Pension Agreement shall be administered and provided in accordance with the Employees' Retirement Income Security Act and the Internal Revenue Code of 1986, and all applicable regulations adopted thereunder as may be amended from time to time.

C. Approval of Trust as Tax Exempt

The provisions of this Agreement are contingent upon and subject to obtaining the necessary approval of the Commissioner of Internal Revenue of the Trust or Trusts established by the Company so as to provide the pension benefits herein set forth, as exempt under the applicable provisions of the Internal Revenue Code.

D. Offset for Other Pension Benefits from Company

Any benefits to which an Employee may be entitled under any retirement plan of the Company or its subsidiaries, shall be deemed to be an offset.

E. Assignments

Except pursuant to a Qualified Domestic Relations Order, no pension, vested deferred benefit, or disability benefit shall be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void, nor, to the extent permitted by law, shall any such benefit be in any way liable for or subject to attachment or other legal process for, or against, a pensioner, spouse, terminated employee or disabled employee.

F. Rights

Nothing in this Plan shall be deemed to give any Employee the right to be retained in the service of the Company, or to interfere with the right of the Company to discharge any Employee at any time. No Employee, prior to date of effective retirement or to such date as the terminated Employee becomes eligible for vested deferred benefit payments, shall have any right or interest whatsoever in or to any portion of any reserve or any fund established by the Company for the purposes of paying benefits. No Employee, terminated Employee, pensioner, spouse or beneficiary of any such person, shall have any right to pension

benefits or vested deferred pension benefits hereunder, except to the extent provided in the Plan.

G. Application for Benefits

Application for benefit payments under the Retirement Plan shall be in writing on forms provided by the Company and be filed with the Company in such manner and with such person as the Company may specify. The Company may require that all relevant information shall be furnished with such application.

H. Payment of Pensions

Any pension properly payable pursuant to this Agreement shall continue to be payable notwithstanding the termination or expiration of this Agreement and no pension properly payable pursuant to this Agreement shall be discontinued or reduced except as provided in sub Section 2(C)(6) and Section 6 of this Agreement.

I. Facility of Payment Clause

If any Employee, pensioner, spouse, terminated Employee or disabled Employee is a minor, or is in the opinion of the insurance company or such fiduciary agency as may be responsible for benefit payments, mentally or physically incapable of giving a valid receipt for the discharge of any payment otherwise due such person under the Plans, the insurance company or fiduciary agency may (unless prior claims shall have been made by a duly appointed guardian or other legal representative) make such payment to the person or institution then (in the opinion of the insurance company or agency) providing for the care and maintenance of such person and any such payment shall completely discharge the liability of the insurance company or agency, with respect to the amount so paid.

J. Reversion of Assets

In the event of Plan termination, any assets remaining after allocation in accordance with Plan provisions shall be distributed to the Company if all liabilities of the Plan to participants and their beneficiaries have been satisfied and the distribution does not contravene any provision of the law.

Section 10.
Priority

In the event of any conflict or inconsistency between the provisions of the Plan and the provisions of this Agreement, the provisions of this Agreement shall be controlling to the extent necessary to eliminate such conflict or inconsistency.

Section 11.
Separate Agreement

This Agreement is a distinct and separate document which, it is agreed, is not to be and shall not be construed to be part of, or collateral or supplemental to, any collective bargaining contract between the Company and the Union now or hereafter in effect.

Section 12.
Term of Agreement

The term of this Agreement shall be the period commencing as of September 21, 2017 and expiring November 30, 2018 and the Company agrees that, with respect to Employees represented by the Union, it will not be amend the Plan, except as provided herein and except to such extent as may be required to obtain and/or retain the approval of the Key District Director of Internal Revenue, hereinabove referred to, or discontinue the Plan during such period.

Executed this day of , 2017.

Unions	ASARCO
_____	_____
_____	_____
_____	_____

IN WITNESS HEREOF, said parties have caused this Agreement to be executed in their names by their duly authorized representative.

ASARCO L.L.C.	The Unions
By: _____	By: _____
Date: _____	Date: _____

Re: INFORMATION REQUEST 3-20-2019

(b) (6), (b) (7)(C)

Tue 3/26/2019 3:32 PM

To: (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)@asarco.com>; Robert LaVenture <rlaventure@usw.org>; marmenta@usw.org <marmenta@usw.org>; gbarrett@wardkeenanbarrett.com <gbarrett@wardkeenanbarrett.com>; Fickman, Bruce <bfickman@usw.org>

Cc: (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)@asarco.com>

(b) (6), (b) (7)(C)

The Union request this information because the company (b) (6), (b) (7)(C) made a statement to the union that they go off another book other than the BLA on addressing the absentee control policy. I will ask you again to fulfill this information request.

(b) (6), (b) (7)(C)
USW Local 937
(b) (6), (b) (7)(C)
Mission Complex, Silver Bell Mine
(602)361-1822
(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)@asarco.com>
Sent: Tuesday, March 26, 2019 3:23:54 PM
To: (b) (6), (b) (7)(C)
Cc: (b) (6), (b) (7)(C)
Subject: RE: INFORMATION REQUEST 3-20-2019

(b) (6), (b) (7)(C)

Your request is denied at this time because it seeks information pertaining to non-bargaining unit employees and you have not specified why such information is currently relevant, particularly when there is no pending grievance relating to the Absentee Control Policy. If you have additional information regarding the relevancy of your request, please let me know and then your request will be re-evaluated.

Thanks.

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)>
Sent: Friday, March 22, 2019 5:34 PM
To: (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)@asarco.com>
Cc: (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)@asarco.com>; Fickman, Bruce <bfickman@usw.org>; marmenta@usw.org; gbarrett@wardkeenanbarrett.com; usw937terrazas@gmail.com; Robert LaVenture <rlaventure@usw.org>
Subject: Re: INFORMATION REQUEST 3-20-2019

(b) (6), (b) (7)(C)

The "above matter" is the paragraph just "above" the one you read that in. My information request to (b) (6), (b) (7)(C) That is the "above matter" No there is no grievance related to this request, but there could be....

(b) (6), (b) (7)(C)
USW Local 937
(b) (6), (b) (7)(C)
Mission Complex, Silver Bell Mine
(602)361-1822
(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Friday, March 22, 5:09 PM
Subject: Re: INFORMATION REQUEST 3-20-2019
To: (b) (6), (b) (7)(C)
Cc: (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

I am in receipt of your email request.

I will get back to you with a response next week.

What "above matter" are you referring to in your email below. Is there a grievance related to this request? If so, please provide that information.

Thanks.

(b) (6), (b) (7)(C)
Sent from my iPhone

On Mar 20, 2019, at 5:50 AM, (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)> wrote:

> (b) (6), (b) (7)(C)
>
> On March 13, 2019, I sent a Information request to (b) (6), (b) (7)(C) at Silver Bell for all Documents, paper work, book, policy, other than the BLA, that the company is using for training the supervisors on the absentee/attendance policy for the bargaining unit employees. It was relayed to me yesterday, March 19, 2019, that you specifically, are denying the union a "copy" of this material. Therefore I will ask you directly.
>
> In connection with the above matter, and to assist the union in performing and policing the basic labor agreement (collective bargaining agreement), the union requests that the employer provide the following information:
> **ALL Documents, paper work, book, policy, other than the BLA, that the company is using for training the supervisors on the absentee/attendance policy for the bargaining unit employees.**

Please provide the information to be reviewed by no later than the close of business **Friday March 22, 2019**. If any part of this request is denied or if any material is unavailable, please state so in writing and provide the remaining items by the above date, which the Union will accept without prejudice to its position that it is entitled to all documents and information sought in this request. This letter is submitted without prejudice to the Union's right to file subsequent requests.

Regards

(b) (6), (b) (7)(C)
USW Local 937
(b) (6), (b) (7)(C)
Mission Complex, Silver Bell Mine
(602)361-1822
(b) (6), (b) (7)(C)

<Outlook-kwvw21k3.jpg>

WEINGARTEN RIGHTS
Remember; at any given time you have union representation, a (Steward) on property. If you are called to a meeting with management, read the following or present this when the meeting begins.

"If this interview could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative, officer or steward be present at this meeting. Until my representative arrives, I choose not to participate in this discussion."

REQUEST FOR UNION REPRESENTATION

FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

United Steelworkers Local 937

and

ASARCO, LLC

CASE 28-CA-239074

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF ASARCO, LLC

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Richard A. Russo

MAILING ADDRESS: 401 Main Street, Suite 1600, Peoria, IL 61602

E-MAIL ADDRESS: rarusso@dcamplaw.com

OFFICE TELEPHONE NUMBER: 309-673-1681

CELL PHONE NUMBER: _____ *FAX:* 309-673-1690

SIGNATURE: Richard A. Russo
(Please sign in ink.)

DATE: 4/17/19

[1] IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 28
2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004

Agency Website: www.nlrb.gov
Telephone: (602)640-2160
Fax: (602)640-2178

Agent's Direct Dial: (602)416-4769

April 19, 2019

Richard A. Russo, Attorney at Law
Davis & Campbell, L. L. C.
401 Main Street, Suite 1600
Peoria, IL 61602-1241
E-mail: rarusso@dcamplaw.com

Re: Asarco LLC
Case 28-CA-239074

Dear Mr. Russo:

I am writing this letter to advise you that it is now necessary for me to take evidence from your client regarding the allegations raised in the investigation of the above-captioned matter. As explained below, I am requesting to take affidavits on or before May 2, 2019, with regard to certain allegations in this case.

Allegations: The allegations for which I am seeking your evidence are as follows.

During the past six (6) months, the Employer has

About March 13, 2019,

Board Affidavits: I am requesting to take affidavits from (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and any other individuals you believe have information relevant to the investigation of the above-captioned matter. Please be advised that the failure to present representatives who would appear to have information relevant to the investigation of this matter, for the purposes of my taking sworn statements from them, constitutes less than complete cooperation in the investigation of the charge. Please contact me by April 26, 2019, to schedule these affidavits.

Documents: Please provide the following documents, along with any and all other evidence you deem to be relevant to the case:

1. Collective bargaining agreements between the Employer and the Union, which were in effect during all or any portion of the period from January 1, 2017 to present.

2. Documents, including, but not limited to, memoranda or letters of agreement or understanding and grievance settlements, showing agreements between the Employer and the Union related to time and attendance, absentee/attendance

policies, which were in effect during all or any portion of the period from January 1, 2017, to present.

3. Documents showing requests for information submitted to the Employer by the Union on or about March 13, 2019 and March 20, 2019.

4. Documents, including, but not limited to, memoranda, letters, emails, text messages, and notes, showing or describing communications between the Employer and the Union related to the Union's requests for information submitted to the Employer by the Union on or about March 13, 2019 and March 20, 2019.

5. Documents showing information, documents, and other materials that the Employer provided to the Union in response to the requests for information submitted to the Employer by the Union on or about March 13, 2019 and March 20, 2019.

6. During all or any portion of the period from January 1, 2017, to present, documents showing all manuals, handbooks, agreements or other documents provided by the Employer to its supervisors, managers or agents relating to time and attendance, absentee/attendance policies for employees.

Position on Deferral: Please provide the Employer's position concerning whether the charge should be deferred to the grievance-arbitration process. If it is the Employer's position that the charge should be deferred, please identify what portions of the Employer's collective-bargaining agreement with the Union would explicitly authorize an arbitrator to decide the unfair labor practice issue and please explain how long, on average, it has taken grievance filed pursuant to the collective bargaining agreement to reach arbitration or settlement over the past year. In addition, please provide assurances of the following:

1. The Employer is willing to accept a grievance concerning the issue raised by charge in the above-captioned case and, if necessary, process it through final and binding decision by an arbitrator.

2. The Employer will authorize arbitrator to decide the unfair labor practice issue raised by the charge, to the extent that the collective bargaining agreement does not include language explicitly addressing the unfair labor practice issue.

3. The Employer will waive any time limitations on the filing and processing of a grievance concerning the issue raised by the charge and will continue in its willingness to process the grievance, if necessary, through final and binding decision by an arbitrator for a reasonable period, notwithstanding subsequent expiration of the current collective bargaining agreement.

Date for Submitting Evidence: To resolve this matter as expeditiously as possible, you must provide your evidence and position in this matter by May 2, 2019. If you are willing to allow me to take affidavits, please contact me by April 26, 2019, to schedule a time to take

affidavits. Electronic filing of position statements and documentary evidence through the Agency website is preferred but not required. To file electronically, go to **www.nlrb.gov,** select **E-File Documents,** enter the **NLRB case number,** and follow the detailed instructions. If I have not received all your evidence by the due date or spoken with you and agreed to another date, it will be necessary for me to make my recommendations based upon the information available to me at that time.

Please contact me at your earliest convenience by telephone, (602)416-4769, or e-mail, kyler.scheid@nlrb.gov, so that we can discuss how you would like to provide evidence and I can answer any questions you have with regard to the issues in this matter.

Very truly yours,

/s/ Kyler A. Scheid

Kyler A. Scheid
Field Attorney

From: Scheid, Kyler A.
To: Richard Russo
Subject: RE: 28-CA-239074 (ASARCO, LLC)
Date: Tuesday, April 23, 2019 12:04:00 PM

Thanks,

Busy week last week. My apologies.

The allegations in case 28-CA-239074 are as follows:

During the past six (6) months, the Employer has failed and refused to continue in effect all terms and conditions of the collective bargaining agreement between the parties by changing the manner in which leave is administered to bargaining unit employees. The Employer witnesses for this allegation would be [redacted] and [redacted]

Since about March 13, 2019, the Employer has failed or refused to provide information requested by the labor organization that is necessary for, and relevant to, its performance of its duties as the exclusive collective-bargaining representative of the Unit. The Employer witnesses for this allegation would be [redacted] and [redacted]

Best,

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
Facsimile: (602) 640-2178
kyler.scheid@nlrb.gov

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E-File New Charge or Petition: https://apps.nlrb.gov/eservice/efileterm.aspx?app=chargeandpetition

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From: Richard Russo <rarusso@dcamplaw.com>
Sent: Monday, April 22, 2019 11:12 AM
To: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>
Subject: RE: 28-CA-239074 (ASARCO, LLC)

Mr. Scheid:

Good morning. I am in receipt of your request for evidence letter dated April 19 for the above-

referenced matter. However, a pertinent portion of the letter is incomplete. Specifically, the letter states under **"Allegations"**:

"the allegations for which I am seeking your evidence are as follows.

During the past six (6) months, the Employer has

About March 13, 2019,"

In order to respond to your letter, we will need to have a complete recitation of the "Allegations". At your earliest convenience, please provide me with the missing information from the "Allegations" section of the letter.

If you have any questions or would like to discuss, please let me know.

Very truly yours,
Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690
Email: rarusso@dcamplaw.com

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From: Scheid, Kyler A. [mailto:Kyler.Scheid@nlrb.gov]
Sent: Friday, April 19, 2019 4:44 PM
To: Richard Russo <rarusso@dcamplaw.com>
Subject: 28-CA-239074 (ASARCO, LLC)

Good afternoon Mr. Russo,

Attached is the request evidence letter in the above-referenced matter.

Best,

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400

Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
Facsimile: (602) 640-2178
kyler.scheid@nlrb.gov

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From: Richard Russo <rarusso@dcamplaw.com>
Sent: Wednesday, May 1, 2019 2:49 PM
To: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>
Subject: RE: Requests for Evidence -- ASARCO

Thank you

Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690
Email: rarusso@dcamplaw.com

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From: Scheid, Kyler A. [mailto:Kyler.Scheid@nlrb.gov]
Sent: Wednesday, May 01, 2019 10:39 AM
To: Richard Russo <rarusso@dcamplaw.com>
Subject: RE: Requests for Evidence -- ASARCO

Good morning,

May 7, 2019 is ok for me.

Best,

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
Facsimile: (602) 640-2178
kyler.scheid@nlrb.gov

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From: Richard Russo <rarusso@dcamplaw.com>
Sent: Wednesday, May 1, 2019 7:11 AM
To: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>
Subject: Requests for Evidence -- ASARCO

Mr. Scheid:

Good morning. We are diligently working on responding to your requests for evidence in 28-CA-239074 and 28-CA-238351. However, we need additional time to respond to both requests. We can get you responses to both requests by May 7. Please let me know if that will be a problem.

Thank you,
Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690
Email: rarusso@dcamplaw.com

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From:	Richard Russo
To:	Scheid, Kyler A.
Subject:	RE: 28-CA-239074 (ASARCO, LLC)
Date:	Tuesday, May 7, 2019 4:02:34 PM
Attachments:	Position Statement (28-CA-239074) (00229493xB6F65).pdf

---

Mr. Scheid:

Attached please find ASARCO's position statement for the above-referenced matter.

Very truly yours,

Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690
Email: rarusso@dcamplaw.com

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From: Scheid, Kyler A. [mailto:Kyler.Scheid@nlrb.gov]
Sent: Friday, April 19, 2019 4:44 PM
To: Richard Russo <rarusso@dcamplaw.com>
Subject: 28-CA-239074 (ASARCO, LLC)

Good afternoon Mr. Russo,

Attached is the request evidence letter in the above-referenced matter.

Best,

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
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www.dcamplaw.com

Davis & Campbell L.L.C.

File Number: 32248-015

May 7, 2019

VIA ELECTRONIC MAIL

Mr. Kyler A. Scheid
Field Attorney
National Labor Relations Board, Region 28
2600 N. Central Ave., Suite 1400
Phoenix, Arizona 85004

RE: ASARCO LLC (Case No. 28-CA-239074)

Mr. Scheid:

The purpose of this letter is to state the position of the Respondent ASARCO LLC ("ASARCO") with respect to the above-captioned unfair labor practice charge ("Charge"). Based on the Charge, your April 23, 2019 email and our telephone discussion on April 29, 2019, it our understanding that the Charge relates to the alleged: (1) failure and refusal by ASARCO to continue in effect the terms and conditions of the parties' Basic Labor Agreement ("BLA") pertaining to application of the attendance policy when employees leave work early after working at least half of their scheduled shift; and (2) failure and refusal by ASARCO to provide the Union with a supervisor training manual pertaining to the attendance policy. For the reasons set forth below, the Charge should be dismissed in its entirety, or in the alternative, deferred to the grievance process.

Company Overview

ASARCO is a Delaware limited liability company originally organized in 1899 as American Smelting and Refining Company with its principal place of business in Tucson, Arizona. Although it originally existed as a consolidation of various lead-silver mining companies, ASARCO evolved over several decades into a fully integrated miner, smelter, and refiner of copper and other metals. ASARCO currently has three mines and one processing facility in Arizona and one processing facility in Texas.

ASARCO's production and maintenance employees at all of its facilities are represented for purposes of collective bargaining. There are eight unions representing various bargaining units throughout ASARCO, including the Charging Party, United Steelworkers Local 937 (collectively "the Union"). ASARCO and the Union are parties to a single collective bargaining agreement, the BLA, applicable to all sites.

Applicable BLA Provisions

Article 5, Section N of the BLA entitled "Absentee Control Policy" contains a detailed attendance policy, including provisions dealing with absence notification procedures and early quits (when an employee leaves work early after working a portion of their shift). Article 5, Section N states in relevant part (with emphasis added):

> This policy will be effective on the first day of the month following ratification of the Basic Labor Agreement. Employees will begin with a clean slate at that time.
>
> 1. Attendance
>
> Regular attendance and punctuality is essential to ASARCO's success and are conditions of employment which must be observed. All Employees have the obligation to be prepared to start work at their scheduled starting time. All absences under this policy will be counted in a rolling twelve (12) month period. Absences covered by a leave of absence, FMLA, jury duty, Union business, funeral leave, disciplinary layoff, industrial accidents, military leaves or other contractually allowed absences, will not be considered "absences" under this policy.
>
> 2. Absences
>
> a. **It is the Employee's responsibility to contact the Company in accordance with local notification procedures as soon as he knows or thinks that he cannot report to work, will be late for work, or must leave early. The Company should be contacted as soon as possible, at least one hour before the Employee's starting time. In all cases, Employees must have actual reasons for absences.**
>
> b. If an Employee does not notify the Company in accordance with local notification procedures at least one hour in advance that he will be absent from work, it will be considered a no call, no show absence. For scheduling purposes, Employees must inform the Company of the expected date of their return, if applicable. An Employee will be allowed a maximum of eleven (11) total absences for any reason in a rolling twelve month period.
>
> * * *
>
> 5. Notification and Counseling
>
> a. An Employee will receive verbal notification when he/she has reached 3 absences.
>
> b. An Employee will be notified in writing when he/she has five (5) absences.

c. Employees who incur seven (7) absences shall be counseled by a committee consisting of a supervisor, Human Resources, and a Union representative. At the counseling session, the Employee will be encouraged to improve his attendance record.

d. An Employee will also be notified in writing when he/she has ten (10) absences and his/her next absence is cause for termination. In all cases, the Union will be provided a copy of the letter.

* * *

7. Late In/Early Out

a. Employees who arrive late to work less than an hour after the start of their scheduled or prearranged shift are considered tardy. Two (2) tardies will equal one (1) absence. If an Employee is over one hour late after the start of the employee's scheduled or prearranged shift, it will be considered an absence which will count against the Employee's maximum and will be considered a no call, no show absence unreported if the Employee did not comply with local call in procedures more than an hour before the scheduled shift starting time. Employees who are over an hour late to work may work at the supervisor's discretion.

b. Early Out or Late Start. If an Employee works less than half (1/2) their scheduled hours in one day, he will be charged with an absence for that day, except in cases involving work-related injuries or with specific approval from a supervisor. An Employee may not have a late start and early quit in the same shift except in cases of emergency.

8. Hearing

a. If an Employee reaches the maximum number of absences in a rolling twelve month period, the Employee shall be afforded a hearing prior to termination to review the absentee record.

b. The Employee's immediate supervisor, a human resources representative, the Employee, and a Union Representative shall be present at the hearing. A copy of the written decision will be sent to the Employee, human resource manager, and the Union.

c. The Union may submit a grievance in accordance with the procedures outlined in Article 5, Section I.

9. Unusual or Unforeseeable Circumstances

a. Management reserves the right to waive or excuse absences if there are unusual or unforeseeable circumstances such as acts of god. If Management believes there are special and unique circumstances requiring deviation from this policy, the situation will be reviewed with the Union before a decision on an employee's employment status is made.

A copy of Article 5, Section N of the BLA is attached as *Exhibit A*.

Article 5, Section I of the BLA entitled "Adjustment of Grievances" contains a detailed grievance process, including a final and binding decision by an arbitrator. A copy Article 5, Section I of the BLA is attached as *Exhibit B*.

ASARCO's Position

1. ASARCO did not fail or refuse to continue in effect the terms and conditions of the BLA pertaining to the application of the attendance policy

It has been alleged by the Union that ASARCO has somehow failed and refused to continue in effect the terms and conditions of the BLA pertaining to application of the attendance policy when employees leave work early after working at least half of their scheduled shift. However, other than the unsupported conclusory statement that ASARCO has not applied the terms of the BLA as to when an employee leaves work early after working at least half of a shift, no further information has been provided to ASARCO to indicate exactly when, how and against whom ASARCO has allegedly failed to apply the attendance policy in accordance with Article 5, Section N of the BLA.[1]

ASARCO affirmatively states that it has consistently followed the terms of Article 5, Section N of the BLA, including as to early quits and the required notification procedure for early quits, and that the BLA contains the only attendance policy applicable to bargaining unit employees. No grievance has been filed alleging that ASARCO has failed to comply with Article 5, Section N of the BLA, and no employee has been identified by the Union or the Region as having been effected by the alleged failure to apply the terms of the BLA. As such, other than its blanket denial of the allegations, ASARCO is not able to specifically rebut the Union's meritless allegations. Should any evidence actually exist that ASARCO has not followed Article 5, Section N of the BLA, ASARCO requests that the Region provide it with such evidence, including the name of the employee impacted, and an opportunity to provide the Region with a supplemental response to address such evidence.

---

[1] In the event that the unspecified alleged failure to follow the BLA occurred before November 4, 2018, the Charge should be dismissed because it is time barred pursuant to Section 10(b) of the National Labor Relations Act ("Act"). Section 10(b) of the Act states in relevant part that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board."

2. ASARCO did not fail or refuse to provide the Union with currently relevant information

It has also been alleged by the Union that ASARCO unlawfully failed or refused to provide the Union with information requested by the Union. Specifically, it is ASARCO's understanding that the Union's allegation pertains solely to its March 13, 2019 request for "ALL Documents, paper work, book, policy, other than the BLA, that the company is using for training the supervisors on the absentee/attendance policy for the bargaining unit employees". The only reason given for the request was the unspecified, conclusory statement that the information is needed "to assist in performing and policing the basic labor agreement." A copy of the Union's request is attached as *Exhibit C*. ASARCO denied the Union's request because the Union was requesting information solely pertaining to training materials for non-bargaining unit, supervisory employees, without a specific basis for needing such information, including the fact that no grievance had been filed or employee identified as being impacted by any misapplication of the BLA (i.e. no showing of current relevancy).

The Union reiterated its request via email on March 22, 2019, and in doing so again provided no specificity as to why supervisor training materials were needed. As a result, in response to the Union's request, ASARCO sent the following email on March 26, 2019:

> "Your request is denied at this time because it seeks information pertaining to non-bargaining unit employees and you have not specified why such information is currently relevant, particularly when there is no pending grievance relating to the Absentee Control Policy. If you have additional information regarding the relevance of your request, please me let me know and then your request will be re-evaluated."

A copy of the email correspondence between the Union and ASARCO is attached as *Exhibit D*.

The Union failed to provide ASARCO with any further information demonstrating the relevancy of its request for non-bargaining unit information. To date, the Union still has not filed a grievance or otherwise specified to ASARCO how the supervisor training manual is currently relevant.

Information about supervisors is not presumptively relevant because it concerns individuals outside of the bargaining unit, and the burden is on the Union to demonstrate relevance. *See United States Postal Service*, 310 NLRB 701, 702 (1993). "Regardless of what rationale is offered for an information request, it must be more than a 'hypothetical theory' about the requested relevance of requested documents; 'mere suspicion or surmise' will not suffice." *Int'l Union of Operating Engineers, Local 501*, 366 NLRB No. 62, *4 (2018).

Other than the Union's vague, conclusory allegation that it needs the supervisor training manual to police the BLA, the Union has provided no information to ASARCO demonstrating the current relevancy of the supervisor training manual. At best, the Union has provided hypothetical theory, suspicion or surmise. As such, the Union has clearly not satisfied its burden of demonstrating relevancy.

> These kinds of vague, general reports, not linked to a specific time period and dependent largely on unnamed witnesses' subjective judgements about what might "border" on leave abuse, amount to nothing more than a showing that people were suspicious that supervisors might have engaged in misconduct similar to that for which a unit employee was being disciplined. It falls short of a showing of relevance.

United States Postal Service, 310 NLRB at 703.

Simply put, the Union's allegation is meritless and should be dismissed because the Union requested information applicable to ASARCO supervisors and failed to demonstrate its current relevance.

3. If Not Dismissed, the Charge Should be Deferred to the Grievance-Arbitration Process

In the event that the Region declines to dismiss the Charge allegations on the merits, then such allegations should be deferred to the contractual grievance procedure pursuant to the Board's policy set forth in *Collyer Insulated Wire*, 192 NLRB 837 (1971) and/or *Dubo Manufacturing*, 142 NLRB 431 (1963). The alleged conduct is cognizable under the BLA's grievance-arbitration procedure.

Conclusion

Based on the foregoing, ASARCO has not violated the Act, and the Charge should be dismissed in its entirety, or in the alternative, deferred to the collectively bargained grievance-arbitration process. Should you have any questions or require any additional information, please feel free to contact me.

Very truly yours,

Richard A. Russo

EXHIBIT A

Article 5. Workplace Procedures

Section N. Absentee Control Policy

This policy will be effective on the first day of the month following ratification of the Basic Labor Agreement. Employees will begin with a clean slate at that time.

1. Attendance

   Regular attendance and punctuality is essential to ASARCO's success and are conditions of employment which must be observed. All Employees have the obligation to be prepared to start work at their scheduled starting time. All absences under this policy will be counted in a rolling twelve (12) month period. Absences covered by a leave of absence, FMLA, jury duty, Union business, funeral leave, disciplinary layoff, industrial accidents, military leaves or other contractually allowed absences, will not be considered "absences" under this policy.

2. Absences

   a. It is the Employee's responsibility to contact the Company in accordance with local notification procedures as soon as he knows or thinks that he cannot report to work, will be late for work, or must leave early. The Company should be contacted as soon as possible, at least one hour before the Employee's starting time. In all cases, Employees must have actual reasons for absences.

   b. If an Employee does not notify the Company in accordance with local notification procedures at least one hour in advance that he will be absent from work, it will be considered a no call, no show absence. For scheduling purposes, Employees must inform the Company of the expected date of their return, if applicable. An Employee will be allowed a maximum of eleven (11) total absences for any reason in a rolling twelve month period.

3. Non-Consecutive/No Call, No Show Absences

   If an Employee has four (4), non-consecutive/no call, no show absences (cumulative) in a rolling twelve month period, he will be subject to immediate termination without a hearing. Each non-consecutive/no call, no show absence is also considered one of the Employee's eleven (11) maximum total absences.

4. Consecutive/No Call, No Show Absences

   Employees who incur three (3) consecutive/no call, no show absences will be subject to immediate termination without a hearing.

5. Notification and Counseling

a. An Employee will receive verbal notification when he/she has reached 3 absences.

b. An Employee will be notified in writing when he/she has five (5) absences.

c. Employees who incur seven (7) absences shall be counseled by a committee consisting of a supervisor, Human Resources, and a Union representative. At the counseling session, the Employee will be encouraged to improve his attendance record.

d. An Employee will also be notified in writing when he/she has ten (10) absences and his/her next absence is cause for termination. In all cases, the Union will be provided a copy of the letter.

6. Leaves of Absence

a. An Employee may pre-arrange a leave of absence, which, if approved, will not count towards the Employee's maximum absences. A leave of absence is an absence with permission for more than three (3) scheduled work days. An Employee desiring a leave of absence will request a leave of absence from Human Resources. Whenever possible, this request should be made prior to the time the leave begins but in all events the request shall comply with local notification procedures. Human Resources or its delegate will investigate the nature and validity of the request and in accordance with local procedures will approve or disapprove the request as appropriate and notify the Employee. If the request is denied, Human Resources or its delegate will explain the reason to the Employee.

b. Any Employee who requests or takes a leave of absence for false reasons will be subject to disciplinary action, up to and including possible discharge.

c. Emergency requests for leaves of absence will be handled without delay.

d. A request to extend a leave of absence must be made to Human Resources in accordance with local notification procedures. An Employee who is requesting a leave of absence for medical reasons must provide the name, address and telephone number of his doctor to Human Resources. By providing the required information, another person may arrange a leave of absence for a critically-injured or critically-ill Employee.

e. An Employee returning from a leave of absence must comply with any return to work requirements.

7. Late In/Early Out

a. Employees who arrive late to work less than an hour after the start of their scheduled or prearranged shift are considered tardy. Two (2) tardies will equal one (1) absence.

If an Employee is over one hour late after the start of the employee's scheduled or prearranged shift, it will be considered an absence which will count against the Employee's maximum and will be considered a no call, no show absence unreported if the Employee did not comply with local call in procedures more than an hour before the scheduled shift starting time. Employees who are over an hour late to work may work at the supervisor's discretion.

b. Early Out or Late Start. If an Employee works less than half (1/2) their scheduled hours in one day, he will be charged with an absence for that day, except in cases involving work-related injuries or with specific approval from a supervisor. An Employee may not have a late start and early quit in the same shift except in cases of emergency.

8. Hearing

a. If an Employee reaches the maximum number of absences in a rolling twelve month period, the Employee shall be afforded a hearing prior to termination to review the absentee record.

b. The Employee's immediate supervisor, a human resources representative, the Employee, and a Union Representative shall be present at the hearing. A copy of the written decision will be sent to the Employee, human resource manager, and the Union.

c. The Union may submit a grievance in accordance with the procedures outlined in Article 5, Section I.

9. Unusual or Unforeseeable Circumstances

a. Management reserves the right to waive or excuse absences if there are unusual or unforeseeable circumstances such as acts of god. If Management believes there are special and unique circumstances requiring deviation from this policy, the situation will be reviewed with the Union before a decision on an employee's employment status is made.

10. Call-In Procedures

a. The Company will provide the Union a list of call-in numbers at each location to be used in accordance with local call-in procedures, and a number that employees can call to confirm their call-in. The Company will give the Union at least ten (10) days advance notice of any changes to these numbers.

EXHIBIT B

Article 5. Workplace Procedures

Section I. Adjustment of Grievances

1. Purpose

Should any differences arise between the Company and the Union as to the interpretation or application of, or compliance with, the provisions of this or any other applicable Supplemental Agreement, Memorandum of Understanding or Agreement, Letter of Understanding or Agreement, Settlement Agreement or Last Chance Agreement, prompt and earnest efforts shall be made to settle them under the following provisions.

2. Definitions

a. "Grievance" shall mean a complaint by the Union which involves the interpretation or application of, or compliance with, the provisions of this or any other applicable Supplemental Agreement, Memorandum of Understanding or Agreement, Letter of Understanding or Agreement, Settlement Agreement or Last Chance Agreement.

b. "Day" as used in this Section shall mean a calendar day, excluding Saturdays, Sundays and holidays.

3. Grievance Procedure

a. An Employee may informally discuss a complaint with his/her supervisor, with or without his/her steward being present.

b. Step 1. Any Employee or representative of the Union having a grievance may, within fifteen (15) days of the date on which the Employee first knew or should have known of the facts which gave rise to the grievance, present the grievance to his/her immediate supervisor, who shall attempt to adjust it. The Employee or Employees presenting the grievance may be accompanied by a steward. The supervisor shall give his/her decision within seven (7) days. If the supervisor's answer does not satisfactorily adjust the grievance, the grievance may be taken to the next step. Grievance responses at this step of the procedure will not set precedent.

c. Step 2. If not settled at Step 1, the grievance must then be reduced to writing by the Grievance Committee noting the alleged facts, applicable provisions of the Agreement, and the remedy sought and presented for Step 2 within seven (7) days of the supervisor's answer. The General Supervisor and Human Resources Manager or their designees will hear the grievance within ten (10) days from receipt of the grievance in the presence of the Union Grievance Committee. The Company will render a written decision within ten (10) days after the hearing to the Union's Grievance Chair and to the Union's International Representative or designee.

d. Step 3. If a satisfactory settlement is not reached in Step 2, the grievance may be appealed to the General Manager or his designee, by the Union's International Representative or designee, within ten (10) days following receipt of the Step 2 decision. The General Manager or his designee and the International Union Representative and/or the Grievance Committee shall meet within ten (10) days of the appeal notice to review the facts and the Step 2 positions in an attempt to mutually resolve the grievance. The Company shall render its written decision within ten (10) days from the conclusion of the Step 3 hearing.

e. The International Union Representative may appeal a grievance to arbitration by sending a written notice to the Company Step 3 representative within ten (10) days of the Union's receipt of the Step 3 written answer.

f. The time limits above may be extended by mutual agreement.

g. Grievances at Step 1 only may be presented to the Company during the grievant's scheduled working hours, provided such procedure does not interfere with production or the orderly operation of the business.

h. Grievance meetings at Step 2 and Step 3 will be held during normal working hours on day shift. Aggrieved employees and a reasonable number of witnesses will be allowed to attend meetings at Step 2 if they have testimony which the Union Grievance Committee represents is relevant, material, non-repetitive and necessary to the resolution of the grievance. If committee members, aggrieved Employees, or witnesses are scheduled to work during a hearing, once notified by the Company that the hearing has been scheduled they must provide to their supervisors reasonable advance notice that they will attend. Aggrieved Employees may be called at the request of either the Company or the Union at any step and will be paid for time lost. In Bargaining Unit Work or safety grievances, a representative of the relevant committee shall also be present.

i. Multiple grievances arising within the bargaining unit at a single plant and from a single cause may be consolidated by mutual agreement.

4. General Provisions

a. Upon request from the Union, the Company shall provide the Union with reasonable forms for filing and appealing grievances and the special form referenced in subparagraph f below. The Union shall be responsible for timely requesting from the Company a re-supply of forms. The parties shall document the Step 2 and Step 3 written records.

b. The Company and the Union shall provide each other with updated written lists of their Step 1, Step 2 and Step 3 representatives and their designees who shall have the authority to settle grievances at their respective steps and, for the grieving party, to withdraw or appeal such grievances.

c. The settlement or withdrawal of a grievance prior to arbitration shall be without precedent or prejudice to either party's position.

d. Any grievance filed directly in Step 2 or higher shall be initiated within fifteen (15) days of the event upon which the grievance is based, or the date on which such event should reasonably have become known except as otherwise provided in this Agreement.

e. Except as otherwise provided in this Agreement, all grievances shall be initiated at Step 1 and grievances which are not initiated in the proper step shall be referred there for processing.

f. Upon mutual agreement, a single grievance may be processed with the facts of additional violations presented as well. Additional claimants shall sign a special form for this purpose. When the original grievance is resolved, the additional claims shall be reviewed in light of the resolved grievance. If the additional claims are not settled, they shall be considered as grievances and processed accordingly.

g. In the case of a grievance that involves a large group of Employees, only a reasonable number may participate in any discussion of the grievance.

h. In any settlement involving cash payments, payment not made within thirty (30) days will accrue interest from the date of settlement at the same rate as established at the local Federal Credit Union.

i. If, for any reason, the time limits specified in Paragraph 3 above for:

   (1) meetings between the parties are not met, the grievance shall be considered denied as of the last day within the time limit for such meeting and the appropriate Union representative shall have the right to move the grievance to the next step;

   (2) the Union to act are not met, the grievance shall be considered withdrawn; or

   (3) the Company to act at Step 2 or Step 3 are not met, the grievance shall be considered denied as of the last day within the time limit for such action and the appropriate Union representatve shall have the right to move the grievance to the next step.

j. An Employee who is summoned to meet with a supervisor or other representative of the Company for the purpose of discussing possible suspension or discharge of the Employee shall be entitled to be accompanied by a steward and, if no steward or other Union representative is available, the meeting shall be deferred and the Employee may be suspended pending the meeting. In the event no steward or other Union representative is available and the Company elects to suspend the Employee pending

the meeting, the Company shall make a good faith effort to advise the Local Union President/Unit Chair or Grievance Chair as soon as possible that day.

k. No Employee shall be required to submit to a lie detector test. The results of lie detector tests will not be used by the Company or the Union.

l. Notwithstanding anything to the contrary, the grievance procedure may be utilized by the Union with or without an individual grievant. Such grievances shall be filed in Step 2.

m. In the event an Employee dies, the Union may process his/her grievance on behalf of his/her heirs.

n. The Chair of the Union Negotiating Committee, the District Director and the International Representative (or equivalent) shall have access to the plant at reasonable times to investigate issues with which they are concerned.

o. The Company will pay for all lost time of Employee participants in Steps 1, 2 and 3 of the grievance procedure and disciplinary hearing (described above) in accordance with current practice.

5. Grievance Committee

a. The Union shall provide the Company with an updated list of Employees who comprise its Grievance Committee, including a chair and a secretary. The number of members of the Committee at each Company location shall be consistent with current practice.

b. Committee members will be afforded time off upon reasonable notice and approval to:

(1) attend scheduled committee meetings;

(2) attend meetings pertaining to suspension or discharge or other matters which cannot reasonably be delayed; and

(3) visit departments at reasonable times for the purpose of transacting the legitimate business of the Grievance Committee after notice to the head of the department to be visited and after reasonably granted permission from his/her own department head if the Grievance Committee member is at work.

c. Where the Grievance Committee so decides, the steward may be designated to aid the Committee in a particular matter. The Union shall notify the Company in writing when it so decides.

d. Each steward shall:

(1) with respect to the handling of grievances, be limited to Step 1 within the plant unit represented by him/her; and

(2) upon reasonable notice to and reasonable approval by his/her immediate supervisor, be afforded time off to investigate the facts essential to the settlement of any grievances.

6. Board of Arbitration

a. The Board of Arbitration (the Board) for the term of this Agreement shall consist of the following individuals:

(1) Michael D. Rappaport
(2) Michael H. LeRoy
(3) Elizabeth Ford
(4) Paul S. Betts
(5) Harry Graham
(6) Maretta Comfort Toedt

b. In the event of the resignation, incapacity or death of a member of the Board, the parties shall promptly agree upon a successor. If the parties cannot agree on a successor, the party that initially selected the departing arbitrator shall be entitled to select the successor arbitrator. The successor arbitrator must be a member of the National Academy of Arbitrators.

c. The member of the Board (arbitrator) chosen in accordance with Paragraph 7(a) below shall have the authority to hear and decide any grievance appealed in accordance with the provisions of the grievance procedure. The arbitrator shall not have jurisdiction or authority to add to, detract from or alter in any way the provisions of this Agreement.

d. Where the parties are in disagreement with respect to the meaning and application of a decision, either party may apply to the Board for a compliance hearing in accordance with rules that the Board shall prescribe. Such application shall be given priority and be resolved by the Board within thirty (30) days.

e. Expenses connected with specific cases shall be shared equally by the Company and the relevant Local Union.

f. The decision of the arbitrator shall be final and binding upon the Company, the Union, and all Employees concerned.

7. Arbitration Hearings

a. An arbitrator will be selected from the Board of Arbitration on a case-by-case rotation basis, starting after the Effective Date of this Agreement with the first case being handled by the first Board member listed above, unless the parties mutually agree to select a Board member on some other basis. Discharge cases will be placed first in the order of priority of cases to be heard. Hearings will be scheduled by mutual agreement on dates provided by the arbitrator.

b. The hearing shall be scheduled as required at a mutually acceptable location.

c. A hearing may be postponed by mutual agreement or if the Arbitrator determines that circumstances clearly require postponement. After a matter has been appealed to arbitration, within three months the arbitrator then available on the rotation described in 7(a) above shall be notified of his or her selection to hear the matter, and the parties shall within six months schedule a hearing date consistent with the dates offered by arbitrator.

8. Rules For Hearings

The total cost of any stenographic record or transcript shall be paid for by the party ordering same. All back pay awards will be limited to the amount of wages and benefits the Employee would otherwise have earned or been entitled to, less amounts the Employee could have earned through the exercise of reasonable diligence as defined by NRLB case law, or interim earnings calculated according to NLRB and unemployment compensation.

a. The parties agree that the prompt resolution of cases brought to arbitration is of the highest importance. Therefore, except for cases involving contract interpretation disputes and/or as provided in Paragraph 8(b) below, arbitration hearings shall be heard in accordance with the following rules::

(1) the hearing shall be informal;

(2) no briefs shall be filed or transcripts made in discipline cases;

(3) there shall be no formal evidence rules;

(4) the arbitrator shall assure that the hearing is, in all respects, fair;

(5) the arbitrator shall issue a decision no later than two (2) days after conclusion of the hearing in a discipline case. The decision shall include a brief written explanation of the basis for the conclusion; and

(6) the Board shall adopt such other rules as it deems necessary.

b. In the event the Union or the Company believes that the issues involved in a discipline case are of meaningful precedential significance or great complexity, it may petition the arbitrator to allow the filing of briefs as follows:

(1) the moving party will notify the other party that it intends to so argue at least seventy-two (72) hours prior to the start of the hearing;

(2) the hearing shall begin with the arbitrator taking no more than thirty (30) minutes of testimony from each side on that issue;

(3) the arbitrator shall rule from the bench on the issue of whether briefs may be filed and the hearing on the case shall commence immediately thereafter; and

(4) if the arbitrator rules that briefs are to be allowed, then the parties shall determine when the briefs will be due, as well as when the arbitrator will render a decision.

c. The Company agrees that it shall not compel, by subpoena or otherwise, any Employee or retired Employee to testify in an arbitration hearing. The Union agrees that it shall not compel, by subpoena or otherwise, any non-bargaining unit employee or retiree to testify in an arbitration hearing.

9. Suspension and Discharge Cases

a. No Peremptory Discharge

(1) Within three (3) days of notification by the Company that the conduct of an Employee may warrant disciplinary suspension or discharge, a hearing will be held by a representative designated by the Company, with the Employee and the Union Grievance Committee. The purpose of the hearing is to provide for an investigation and determination of the facts. The Company will notify the Employee and the Union of its decision in writing within five (5) days after such hearing. Any grievance over disciplinary suspension or discharge shall be filed in Step 2 of the grievance procedure within five (5) days of the notice of the Company decision. The Company may suspend the Employee pending the hearing.

(2) Before imposing a discharge, the Company shall give written notice of its intent to the affected Employee and the Grievance Chair.

(3) Where the Union files a grievance protesting such intended discharge within five (5) days of receipt of the notice, the Company may impose no more than a suspension on such Employee.

(4) The grievance protesting the intended discharge shall be filed at Step 2 of the grievance procedure and the Step 2 Answer shall be given prior to the Company converting the suspension to a discharge. At the Step 2 meeting, the Company shall provide a written statement of the facts and circumstances supporting its proposed disciplinary action.

(5) In the event the Company does convert the suspension to a discharge, the action shall be treated as a denial of the grievance at Step 2 and the Union may thereupon move the case through the balance of the grievance procedure.

10. Arbitration of Disputes Involving Asarco Benefits Plans

a. If any difference shall arise concerning a benefit, eligibility or coverage of the Employee and/or spouse or dependents under the Pension, Health and/or other Welfare Plans, the issue may be the proper subject of a grievance after completion of any claim or pre-litigation dispute resolution procedure in the applicable plan. If agreement cannot be reached between the Company and the applicable Union representative, such question shall be referred to arbitration as described herein.

b. The Union may appeal a benefits grievance to arbitration by sending a written notice to the Company Step 3 representative within sixty days of the Union's receipt of the Step 3 written answer. However, the time limits for filing a grievance under the grievance procedure shall not apply until after the claim or pre-litigation dispute resolution procedure in the applicable plan has been exhausted.

c. An arbitrator shall be selected from a list obtained from the Federal Mediation and Conciliation Service (FMCS) of arbitrators with specialized experience with issues involving Pension and Welfare Plans. The parties shall request a panel of seven such names from the FMCS and shall strike names from the list until an arbitrator is selected. If the parties are unable to reach agreement on an arbitrator from the submitted list, the parties shall request another panel and repeat the procedure until an arbitrator is selected.

d. The arbitrator shall have authority only to decide the question pursuant to the provisions of this Agreement and of the applicable Plan, but shall not have authority in any way to alter, add to or subtract from any of such provisions.

e. The decision of the arbitrator shall be final and binding and judgment on the award may be entered in any court having jurisdiction. The expense of arbitration shall be borne equally between the parties unless they agree otherwise.

EXHIBIT C

From: (b) (6), (b) (7)(C)
Sent: Wednesday, March 6, 2019 4:36 PM
To: (b) (6), (b) (7)(C) @asarco.com; (b) (6), (b) (7)(C)
Cc: (b) (6), (b) (7)(C) @gmail.com; usw937terrazas@gmail.com; (b) (6), (b) (7)(C)
Subject: INFORMATION REQUEST

(b) (6), (b) (7)(C)

In connection with the above matter, and to assist the union in performing and policing the basic labor agreement (collective bargaining agreement), the union requests that the employer provide the following information:

1. **Documents, paper work, book, policy, other than the BLA, that the company is using for training the supervisors on the absentee/attendance policy for the bargaining unit employees.**

Please provide the information to be reviewed by no later than the close of business **Friday March 8, 2019**. If any part of this request is denied or if any material is unavailable, please state so in writing and provide the remaining items by the above date, which the Union will accept without prejudice to its position that it is entitled to all documents and information sought in this request. This letter is submitted without prejudice to the Union's right to file subsequent requests.

(b) (6), (b) (7)(C)
USW Local 937
(b) (6), (b) (7)(C)
Mission Complex, Silver Bell Mine
(602)361-1822
(b) (6), (b) (7)(C)

WEINGARTEN RIGHTS
Remember; at any given time you have union representation, a (Steward) on property. If you are called to a meeting with management, read the following or present this when the meeting begins.

"If this interview could in any way lead to my being disciplined or terminated, or affect my

personal working conditions, I respectfully request that my union representative, officer or steward be present at this meeting. Until my representative arrives, I choose not to participate in this discussion."

REQUEST FOR UNION REPRESENTATION

EXHIBIT D

From: (b) (6), (b) (7)(C)
Sent: Tuesday, March 26, 2019 3:24 PM
To: (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)>
Cc: (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)@asarco.com>
Subject: RE: INFORMATION REQUEST 3-20-2019

(b) (6), (b) (7)(C)

Your request is denied at this time because it seeks information pertaining to non-bargaining unit employees and you have not specified why such information is currently relevant, particularly when there is no pending grievance relating to the Absentee Control Policy. If you have additional information regarding the relevancy of your request, please let me know and then your request will be re-evaluated.

Thanks.

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)>
Sent: Friday, March 22, 2019 5:34 PM
To: (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)@asarco.com>
Cc: (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)@asarco.com>; Fickman, Bruce <bfickman@usw.org>; marmenta@usw.org; gbarrett@wardkeenanbarrett.com; usw937terrazas@gmail.com; Robert LaVenture <rlaventure@usw.org>
Subject: Re: INFORMATION REQUEST 3-20-2019

(b) (6), (b) (7)(C)

The "above matter" is the paragraph just "above" the one you read that in. My information request to Debbie. That is the "above matter". No there is no grievance related to this request, but there could be.....

(b) (6), (b) (7)(C)
USW Local 937
(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)
Mission Complex, Silver Bell Mine
(602)361-1822
(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Friday, March 22, 5:09 PM
Subject: Re: INFORMATION REQUEST 3-20-2019
To: (b) (6), (b) (7)(C)
Cc: (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

I am in receipt of your email request.

I will get back to you with a response next week.

What "above matter" are you referring to in your email below. Is there a grievance related to this request? If so, please provide that information.

Thanks.

(b) (6), (b) (7)(C)
Sent from my iPhone

On Mar 20, 2019, at 5:50 AM, (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C)> wrote:

(b) (6), (b) (7)(C)

On March 13, 2019, I sent a Information request to (b) (6), (b) (7)(C) at Silver Bell for all Documents, paper work, book, policy, other than the BLA, that the company is using for training the supervisors on the absentee/attendance policy for the bargaining unit employees. It was relayed to me yesterday, March 19, 2019, that you specifically, are denying the union a "copy" of this material. Therefore I will ask you directly.

In connection with the above matter, and to assist the union in performing and policing the basic labor agreement (collective bargaining agreement), the union requests that the employer provide the following information:
ALL Documents, paper work, book, policy, other than the BLA, that the company is using for training the supervisors on the absentee/attendance policy for the bargaining unit employees.

Please provide the information to be reviewed by no later than the close of business **Friday March 22, 2019**. If any part of this request is denied or if any material is unavailable, please state so in writing and provide the remaining items by the above date, which the Union will accept without prejudice to its position that it is entitled to all documents and information sought in this request. This letter is submitted without prejudice to the Union's right to file subsequent requests.

Regards

(b) (6), (b) (7)(C)
USW Local 937
(b) (6), (b) (7)(C)
Mission Complex, Silver Bell Mine
(602)361-1822
(b) (6), (b) (7)(C)

<Outlook-kwvw21k3.jpg>

WEINGARTEN RIGHTS
Remember; at any given time you have union representation, a (Steward) on property. If you are called to a meeting with management, read the following or present this when the meeting begins.

"If this interview could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative, officer or

steward be present at this meeting. Until my representative arrives, I choose not to participate in this discussion."

REQUEST FOR UNION REPRESENTATION

From: Scheid, Kyler A.
Sent: Friday, May 24, 2019 3:18 PM
To: 'Richard Russo' <rarusso@dcamplaw.com>
Subject: RE: 28-CA-239074 (ASARCO, LLC)

Good afternoon Mr. Russo,

Thank you for the Employer's position statement in the above-referenced matter, I appreciate it. As you are aware, the allegations in the above-referenced matter are as follows:

During the past six (6) months, the Employer has failed and refused to continue in effect all terms and conditions of the collective bargaining agreement between the parties by changing the manner in which leave is administered to bargaining unit employees.

Since about March 13, 2019, the Employer has failed or refused to provide information requested by the labor organization that is necessary for, and relevant to, its performance of its duties as the exclusive collective-bargaining representative of the Unit.

From what I can gather from the Employer's position statement, there is a supervisor's training manual utilized at the Employer's facilities to train supervisors with regard to, among other things, absentee control. In the request for evidence letter dated April 19, 2019, the Region requested the following information:

- During all or any portion of the period from January 1, 2017, to present, documents showing all manuals, handbooks, agreements or other documents provided by the Employer to its supervisors, managers or agents relating to time and attendance, absentee/attendance policies for employees.

I did not see any supervisor training manuals attached to the PST. Will the Employer be providing a copy of this manual as requested?

In addition to the above, could you please also provide documents including, but not limited to, timesheets, counselings, warnings, disciplinary records, time and attendance records, absence points, e-mails, text messages, spreadsheets or memoranda showing or describing the time and attendance records for employees in the SXEW at Silver Bell Mine from about January 1, 2019 through present?

Please get me this additional information by June 7, 2019.

Best,

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
Facsimile: (602) 640-2178
kyler.scheid@nlrb.gov

The NLRB has converted to an electronic file system.
Please file documents electronically through our online E-File system:
E-File Case Documents: https://apps.nlrb.gov/eservice/efileterm.aspx
E-File New Charge or Petition: https://apps.nlrb.gov/eservice/efileterm.aspx?app=chargeandpetition

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From: Richard Russo <rarusso@dcamplaw.com>
Sent: Tuesday, May 7, 2019 1:01 PM
To: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>
Subject: RE: 28-CA-239074 (ASARCO, LLC)

Mr. Scheid:

Attached please find ASARCO's position statement for the above-referenced matter.

Very truly yours,
Richard A. Russo
Davis & Campbell L.L.C.

401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690
Email: rarusso@dcamplaw.com

IMPORTANT NOTICE: THIS EMAIL (INCLUDING ANY ATTACHMENTS) IS INTENDED ONLY FOR THE USE OF THE NAMED RECIPIENT(S), AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED OR EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT A NAMED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS TRANSMISSION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS EMAIL IN ERROR, PLEASE ERASE ALL FILES AND DESTROY ALL COPIES OF THIS TRANSMISSION AND NOTIFY RICHARD A. RUSSO AT THIS TELEPHONE NUMBER IMMEDIATELY: (309) 673-1681. THANK YOU.

From: Scheid, Kyler A. [mailto:Kyler.Scheid@nlrb.gov]
Sent: Friday, April 19, 2019 4:44 PM
To: Richard Russo <rarusso@dcamplaw.com>
Subject: 28-CA-239074 (ASARCO, LLC)

Good afternoon Mr. Russo,

Attached is the request evidence letter in the above-referenced matter.

Best,

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
Facsimile: (602) 640-2178
kyler.scheid@nlrb.gov

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The NLRB has converted to an electronic file system.
Please file documents electronically through our online E-File system:
E-File Case Documents: https://apps.nlrb.gov/eservice/efileterm aspx
E-File New Charge or Petition: https://apps.nlrb.gov/eservice/efileterm.aspx?app=chargeandpetition

Form NLRB - 501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

FIRST AMENDED CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
28-CA-239074	May 24, 2019

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer ASARCO, LLC		b. Tel. No. (520) 879-7818 c. Cell No.
d. Address (street, city, state ZIP code) 5285 E. Williams Circle Tucson, AZ 85711	e. Employer Representative Stacy Sinele Corporate Human Resources	f. Fax No. g. e-Mail h. Dispute Location (City and State) Tucson, AZ
i. Type of Establishment (factory, nursing home, hotel) Metal Mining	j. Principal Product or Service Copper	k. Number of workers at dispute location 650

l. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1), (5) and (d) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (*set forth a clear and concise statement of the facts constituting the alleged unfair labor practices*)

During the past six months, the above-named employer has refused to bargain collectively with the representatives of its employees, by its actions, including, but not limited to: failing and refusing to provide and/or unreasonably delaying in providing information requested by the union that is necessary for, and relevant to, its performance of its duties as the exclusive collective-bargaining representative of the unit; and by failing to continue in effect all the terms and conditions of its collective bargaining agreement with the union by changing the way leave is administered to bargaining unit employees without the union's consent.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of their rights under Section 7 of the National Labor Relations Act.

3. Full name of party filing charge (*if labor organization, give full name, including local name and number*)
[redacted] United Steelworkers, Local 937

4a. Address (street and number, city, state, and ZIP code) 877 Alvernon Way Tucson, AZ 85711	4b. Tel. No. (602) 361-1822 4c. Cell No. (602) 361-1822 4d. Fax No. 4e. e-Mail [redacted]

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (*to be filled in when charge is filed by a labor organization*)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO/CLC

6. DECLARATION **I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.**		Tel. No. (602) 361-1822
B[redacted]	[redacted]	Office, if any, Cell No. (602) 361-1822
([redacted]e)	Print Name and Title	Fax No.
Address: 877 South Alvernon Way Tucson, AZ 85711	Date: 5-24-2019	e-Mail [redacted]

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes. [redacted]

NxGen "C" Assignment Sheet

Case Name: Asarco, LLC **Category:** 1

Method of Receipt Fax Date Filed 5-24-2019 **Amended Charge?** ☒Yes ☐No

Assign To: Harvey (Supervisor) Scheid (Agent)

Case/Inquiry Number: 28-CA-239074 **Potential 10(j)?** ☐ Yes ☒ No **Related/Blocked Cases:**

Coordination? ☐ Yes ☒ No ☐Cat 3 Organizing ☐**U.S. Postal Information Case Region**

Bargaining Status: ☒Existing Contract ☐Organizational Campaign ☐None ☐Seeking Initial Contract ☐Seeking Successor Contract

CA - 8(a)(1):

☐Coercive Actions (Surveillance, etc.)
☐Coercive Rules
☐Coercive Statements (Threats, Promises of Benefits, etc.)
☐Concerted Activities (Retaliation, Discharge, Discipline)
☐Denial of Access
☐Discharge of supervisor (Parker-Robb Chevrolet)
☐Interrogation (Including Polling)
☐Lawsuits
☐Weingarten

CA - 8(a)(2):

☐Assistance
☐Domination
☐Unlawful Recognition

CA - 8(a)(3):

☐Changes in Terms and Conditions of Employment
☐Discharge (Including Layoff and Refusal to Hire (not salting))
☐Discipline
☐Lockout
☐Refusal to Consider/Hire Applicant (salting only)
☐Refusal to Hire Majority
☐Refusal to Reinstate E'ee/Striker (e.g. Laidlaw)
☐Retaliatory Lawsuit
☐Shutdown or Relocate/Subcontract Unit Work
☐Union Security Related Actions

CA - 8(a)(4):

☐Changes in Terms and Conditions of Employment
☐Discharge (Including Layoff and Refusal to Hire)
☐Discipline
☐Refusal to Reinstate Employee/Striker
☐Shutdown or Relocate/Subcontract Unit Work

CA - 8(a)(5):

☐Alter Ego
☐Failure to Sign Agreement
☒Refusal to Bargain/Bad Faith Bargaining (incl'g surface bargaining/direct dealing)
☒Refusal to Furnish Information
☐Refusal to Recognize
☐Repudiation/Modification of Contract [Sec. 8(d)/Unilateral Changes]
☐Shutdown or Relocate (e.g., First National Maint.) Subcontract Work

CB - 8(b)(1)(A):

☐Coercion, Incl'g Statements and Violence
☐Denial of Access
☐Discipline (including charges/fines)/ Harassment
☐Duty of Fair Representation, incl'g Superseniority, denial of access
☐Hiring Halls
☐Picketing/Strike Actions
☐Rules: Coercive
☐Union Dues and/or Membership Related (including excessing fees)

CB - 8(b)(1)(B):

☐Fund Contribution Related
☐Lawsuits
☐Other Allegations
☐Statements/Threats/Violence

CB - 8(b)(2):

☐Hiring Hall Related
☐Lawsuits
☐Union Security Related Actions
☐Causing the Employer to Discriminate/Retaliate

CB - 8(b)(3):

☐Failure to Sign Agreement
☐Refusal to Bargain/Bad Faith or Surface Bargaining
☐Refusal to Furnish Information
☐Repudiation/Modification of Contract

CB - 8(b)(5):

☐All Allegations

CB - 8(b)(6):

☐All Allegations

CC - 8(b)(4)(A):

☐Lawsuits/Grievances
☐Picketing/Handbilling
☐Statements

CC - 8(b)(4)(B):

☐Lawsuits/Grievances
☐Picketing/Handbilling
☐Statements

CC - 8(b)(4)(C):

☐Lawsuits/Grievances
☐Picketing
☐Statements

CD - 8(b)(4)(D):

☐All Allegations

CD - 8(b)(7)(A):

☐All Allegations

CD - 8(b)(7)(B):

☐All Allegations

CD - 8(b)(7)(C):

☐All Allegations

CE - 8(e):

☐All Allegations against a Labor Organization
☐All Allegations against an Employer

CG - 8(g):

☐All Allegations

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004

Agency Website: www.nlrb.gov
Telephone: (602)640-2160
Fax: (602)640-2178

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May 24, 2019

Stacy Sinele, Corporate Human Resources
Asarco LLC
5285 E. Williams Circle
Tucson, AZ 85711

Re: Asarco LLC
Case 28-CA-239074

Dear Ms. Sinele:

Enclosed is a copy of the first amended charge that has been filed in this case.

Investigator: This charge is being investigated by Field Attorney Kyler A. Scheid whose telephone number is (602)416-4769. If the agent is not available, you may contact Supervisory Field Attorney Rachel A. Harvey whose telephone number is (602)416-4748.

Presentation of Your Evidence: As you know, we seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations in the first amended charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: Your right to representation, the means of presenting evidence, and a description of our procedures, including how to submit documents, was described in the letter sent to you with the original charge in this matter. If you have any questions, please contact the Board agent. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence

submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Very truly yours,

Cornele A. Overstreet
Regional Director

Enclosure: Copy of first amended charge

cc: Richard A. Russo, Attorney at Law
Davis & Campbell, L. L. C.
401 Main Street, Suite 1600
Peoria, IL 61602-1241

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
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Phoenix, AZ 85004

Agency Website: www.nlrb.gov
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Fax: (602)640-2178

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May 24, 2019

(b) (6), (b) (7)(C)
United Steelworkers Local 937
877 South Alvernon Way
Tucson, AZ 85711

Re: Asarco LLC
Case 28-CA-239074

Dear (b) (6), (b) (7)(C)

We have docketed the first amended charge that you filed in this case.

Investigator: This charge is being investigated by Field Attorney Kyler A. Scheid whose telephone number is (602)416-4769. If the agent is not available, you may contact Supervisory Field Attorney Rachel A. Harvey whose telephone number is (602)416-4748.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. If you have additional evidence regarding the allegations in the first amended charge and you have not yet scheduled a date and time for the Board agent to obtain that evidence, please contact the Board agent to arrange to present that evidence. If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: Your right to representation, the means of presenting evidence, and a description of our procedures, including how to submit documents, was described in the letter sent to you with the original charge in this matter. If you have any questions, please contact the Board agent. The Agency requests all evidence submitted electronically to be in the form it is

normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Very truly yours,

Cornele A. Overstreet
Regional Director

cc: Richard J. Brean, General Counsel
United Steel Workers
Five Gateway Center, Suite 807
60 Boulevard of the Allies
Pittsburgh, PA 15222-1214

From:	Richard Russo
To:	Scheid, Kyler A.
Subject:	RE: 28-CA-239074 (ASARCO, LLC)
Date:	Tuesday, June 11, 2019 11:46:42 AM
Attachments:	Silver Bell SXEW Absenteeism Report History (5-26-18 - 5-25-19) (00231356xB6F65).pdf Silver Bell Absentee Control Policy Admin Guidance for Sups (00231342xB6F65).pdf
Sensitivity:	Confidential

Mr. Scheid:

Good morning. Per your request, attached please find the following:

1. The absenteeism report and history for SXEW employees at Silver Bell Mine for the time period of May 26, 2018 through May 25, 2019; and

2. The Absentee Control Policy Administration Guidance for Supervisors used as a training tool for supervisors regarding the Basic Labor Agreement's Absentee Control Policy, Article 5, Section N [per our telephone discussion on June 5, 2019, ASARCO provides this document to you based on your assurances that it will not be shared with the Union]. ASARCO maintains that the attached Guidance for Supervisors is for training purposes only and that the BLA's Absentee Control Policy is the sole attendance policy applied to ASARCO's bargaining unit employees. As such, the Guidance for Supervisors is not currently relevant to the Union. With that being the case and no grievance having been filed, in response to the Union's request for the Guidance for Supervisors document, ASARCO asked the Union to provide a basis for the Guidance being currently relevant, and the Union failed to provide any response to ASARCO.

As set forth in the previously provided position statement, the Union's charge is meritless and should be dismissed. Alternatively, it should be deferred to the contractually negotiated grievance process.

Please let me know if you have any questions or need additional information.

Very truly yours,

Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690
Email: rarusso@dcamplaw.com

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From: Scheid, Kyler A. [mailto:Kyler.Scheid@nlrb.gov]
Sent: Friday, May 24, 2019 2:18 PM
To: Richard Russo <rarusso@dcamplaw.com>
Subject: RE: 28-CA-239074 (ASARCO, LLC)

Good afternoon Mr. Russo,

Thank you for the Employer's position statement in the above-referenced matter, I appreciate it. As you are aware, the allegations in the above-referenced matter are as follows:

During the past six (6) months, the Employer has failed and refused to continue in effect all terms and conditions of the collective bargaining agreement between the parties by changing the manner in which leave is administered to bargaining unit employees.

Since about March 13, 2019, the Employer has failed or refused to provide information requested by the labor organization that is necessary for, and relevant to, its performance of its duties as the exclusive collective-bargaining representative of the Unit.

From what I can gather from the Employer's position statement, there is a supervisor's training manual utilized at the Employer's facilities to train supervisors with regard to, among other things, absentee control. In the request for evidence letter dated April 19, 2019, the Region requested the following information:

- During all or any portion of the period from January 1, 2017, to present, documents showing all manuals, handbooks, agreements or other documents provided by the Employer to its supervisors, managers or agents relating to time and attendance, absentee/attendance policies for employees.

I did not see any supervisor training manuals attached to the PST. Will the Employer be providing a copy of this manual as requested?

In addition to the above, could you please also provide documents including, but not limited to, timesheets, counselings, warnings, disciplinary records, time and attendance records, absence points, e-mails, text messages, spreadsheets or memoranda showing or describing the time and attendance records for employees in the SXEW at Silver Bell Mine from about January 1, 2019 through present?

Please get me this additional information by June 7, 2019.

Best,

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28

2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
Facsimile: (602) 640-2178
kyler.scheid@nlrb.gov

-

The NLRB has converted to an electronic file system.

Please file documents electronically through our online E-File system:
E-File Case Documents: https://apps.nlrb.gov/eservice/efileterm.aspx
E-File New Charge or Petition: https://apps.nlrb.gov/eservice/efileterm.aspx?app=chargeandpetition

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From: Richard Russo <rarusso@dcamplaw.com>
Sent: Tuesday, May 7, 2019 1:01 PM
To: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>
Subject: RE: 28-CA-239074 (ASARCO, LLC)

Mr. Scheid:

Attached please find ASARCO's position statement for the above-referenced matter.

Very truly yours,
Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690
Email: rarusso@dcamplaw.com

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From: Scheid, Kyler A. [mailto:Kyler.Scheid@nlrb.gov]
Sent: Friday, April 19, 2019 4:44 PM
To: Richard Russo <rarusso@dcamplaw.com>
Subject: 28-CA-239074 (ASARCO, LLC)

Good afternoon Mr. Russo,

Attached is the request evidence letter in the above-referenced matter.

Best,

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
Facsimile: (602) 640-2178
kyler.scheid@nlrb.gov

-

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Please file documents electronically through our online E-File system:
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E-File New Charge or Petition: https://apps.nlrb.gov/eservice/efileterm.aspx?app=chargeandpetition

Silver Bell Absenteeism Report
5/26/18 - 5/25/19

					verbal	written	counseling	written
Employee Name	Employee No	Department	Points	NCNS	3 day	5 day	7 day	10 day
(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	SXEW						
		SXEW	5	1	(b) (6), (b) (7) /2018	(b) (6), (b) (7) /2018		
		SXEW	1					
		SXEW	1	1				
		SXEW	3	1				
		SXEW	2					
		SXEW	5		(b) (6), (b) (7) /2018			
		SXEW	1					
		SXEW	6		(b) (6), (b) (7) /2018	(b) (6), (b) (7) /2018		
		SXEW	7		(b) (6), (b) (7) /2019	(b) (6), (b) (7) /2019		
		SXEW	6		(b) (6), (b) (7) /2018			
		SXEW	5		(b) (6), (b) (7) /2018			
		SXEW						
		SXEW						
		SXEW	6	2	(b) (6), (b) (7) /2018	(b) (6), (b) (7) /2018		
		SXEW	1					
		SXEW	8		(b) (6), (b) (7) /2018	(b) (6), (b) (7) /2018	(b) (6), (b) (7) /2018	
		SXEW						
		SXEW	4		(b) (6), (b) (7) /2018			
		SXEW	2	1				
		SXEW						
		SXEW	4		(b) (6), (b) (7) /2018			
		SXEW	2					
		SXEW	7.5		(b) (6), (b) (7) /2018	(b) (6), (b) (7) /2018		
		SXEW	3.5		(b) (6), (b) (7) /2018			
		SXEW	4		/2018			
		SXEW						
		SXEW	1					

Employee Absenteeism History

5/26/18 - 5/25/19

Employee:	ID:	Day	Date	Pay Code	Hours	Comments	Points	No Call No Show
(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	Mon	(b) (6), (b) 2018	ABSENCE	8:00		1	
		Wed	(b) (6), (b) 2018	ABSENCE	8:00		1	
		Fri	10/19/2018	EARLY QUIT - WORKED MORE THAN 1/2 (b) (6), (b) SHIFT	2:00	Family Emergency		
		Sat	(b) (6), (b) (b) 2018	NO CALL NO SHOW	8:00	Called in at 9:43 a.m. Shift starts at 5:00 a.m.	1	1
		Thu	(b) (6), (2019	EARLY QUIT - WORKED LESS THAN 1/2 (b) (6), (b) SHIFT	6:40	Emergency at home	1	
		Tue	(b) (6), (b) 2019	ABSENCE	8:00		1	
		Fri	5/3/2019	EARLY QUIT - WORKED MORE THAN 1/2 (b) (6), (b) SHIFT	2:00	Pre-arranged to leave early		
		Sat	(b) (6) 2019	ABSENCE	12:00		1	
		Thu	(b) (6), (b) 2018	EARLY QUIT - WORKED MORE THAN 1/2 (b) (6), (b) SHIFT	0:30	Left early without supervisor's approval	1	1
		Wed	12/19/2018	EARLY QUIT - WORKED MORE THAN 1/2 (b) (6), (SHIFT	3:00	Pre-arranged to leave early for personal reasons		
		Wed	3/27/2019	EARLY QUIT - WORKED MORE THAN 1/2 (b) (6), (SHIFT	3:00	Pre-arranged to leave early		
		Tue	(b) (6), 2018	ABSENCE	12:00		1	
		Thu	(b) (6), 2019	NO CALL NO SHOW	12:00	Called in a 6:31 a.m. Shift starts at 7:00 a.m.	1	1
		Tue	(b) (6), (b) 2019	ABSENCE	12:00		1	
		Fri	(b) (6), (b) (b) 2018	ABSENCE	8:00		1	
		Sat	(b) (6), (b) (b) 2018	ABSENCE	8:00		1	
		Mon	6/11/2018	EARLY QUIT - WORKED MORE THAN 1/2 (b) (6), (b) SHIFT	4:00	Family Emergency		
		Thu	(b) (6), (b) 2018	LATE START - MORE THAN 1 HOUR	1:30	Called in at 5:04 a.m. Family problems	1	
		Thu	(b) (6), (b) (b) 2018	LATE START - MORE THAN 1 HOUR	1:30	Called in at 5:20 a.m. Personal	1	
		Thu	(b) (6), (b) (b) 2018	ABSENCE	12:00		1	
		Sun	(b) (6), (b) (b) 2018	LATE START - MORE THAN 1 HOUR	2:00	Family issues	1	
		Sun	1/27/2019	EARLY QUIT - WORKED MORE THAN 1/2 (b) (6), (b) SHIFT	6:00	Went home sick		
		Sun	(b) (6), (b) 2019	ABSENCE	12:00		1	
		Mon	(b) (6), (b) 2018	ABSENCE	12:00		1	
		Wed	8/15/2018	EARLY QUIT - WORKED MORE THAN 1/2 (b) (6), (SHIFT	1:30	Pre-arranged to leave early		
		Mon	(b) (6), (b) 2018	ABSENCE	12:00		1	
		Sat	(b) (6), (b) 2018	ABSENCE	12:00		1	
		Tue	(b) (6), (b) 2018	ABSENCE	12:00		1	
		Mon	(b) (6), (b) 2018	ABSENCE	12:00		1	
		Fri	(b) (6), (b) 2018	ABSENCE	12:00		1	
		Thu	(b) (6), (b) 2019	ABSENCE	12:00		1	
		Fri	9/28/2018	EARLY QUIT - WORKED MORE THAN 1/2 (b) (6), (b) SHIFT	3:30	Pre-arranged to leave early		
		Fri	(b) (6), (b) (b) 2018	LATE START - LESS THAN 1 HOUR	0:08		0.5	
		Fri	(b) (6), 2019	LATE START - LESS THAN 1 HOUR	0:10		0.5	
		Fri	(b) (6), (b) 2019	LATE START - LESS THAN 1 HOUR	0:06		0.5	
		Mon	(b) (6), (b) 2019	ABSENCE	8:00		1	
		Sat	(b) (6), 2019	LATE START - LESS THAN 1 HOUR	0:30		0.5	
		Fri	(b) (6), (b) 2019	ABSENCE	8:00		1	
		Fri	(b) (6) 2019	LATE START - LESS THAN 1 HOUR	0:28		0.5	
		Fri	(b) (6), (b) 2019	ABSENCE	8:00		1	
		Sat	(b) (6), (b) 2019	EARLY QUIT - WORKED LESS THAN 1/2 (b) (6), (b) SHIFT	5:00	Family emergency	1	
		Fri	(b) (6), (b) 2019	LATE START - LESS THAN 1 HOUR	0:10		0.5	
		Mon	(b) (6), (b) 2018	ABSENCE	8:00		1	
		Thu	(b) (6), (b) 2018	ABSENCE	8:00		1	
		Sat	(b) (6), (b) 2019	ABSENCE	8:00		1	

(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)		Mon	[redacted]/2019	EARLY QUIT - WORKED LESS THAN 1/2 [redacted] SHIFT	5:30	Pre-arranged to leave early	1	
			Wed	5/8/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	3:30	Family emergency		
			Sun	[redacted]/2019	ABSENCE	8:00		1	
			Mon	[redacted]/2019	ABSENCE	8:00		1	
			Sun	[redacted]/2018	ABSENCE	10:00		1	
			Tue	[redacted]/2018	ABSENCE	10:00		1	
			Thu	[redacted]/2019	ABSENCE	10:00		1	
			Thu	4/11/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	2:00	Pre-arranged		
			Tue	[redacted]/2019	ABSENCE	10:00		1	
			Wed	[redacted]/2019	ABSENCE	10:00		1	
			Sat	6/16/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	3:30	Pre-arranged to leave early		
			Fri	10/26/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	1:30	Pre-arranged to leave early		
			Sat	10/27/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	2:00	Reason unknown		
			Tue	[redacted]/2018	NO CALL NO SHOW	12:00	Did not call in	1	1
			Wed	[redacted]/2018	ABSENCE	12:00		1	
			Tue	[redacted]/2018	LATE START - LESS THAN 1 HOUR	0:10		0.5	
			Wed	[redacted]/2018	ABSENCE	12:00		1	
			Fri	[redacted]/2018	LATE START - LESS THAN 1 HOUR	0:03		0.5	
			Thu	[redacted]/2019	NO CALL NO SHOW	12:00	Called in at 6:03 a.m. Shift starts at 7:00 a.m. Ca	1	1
			Wed	[redacted]/2019	ABSENCE	12:00		1	
			Thu	[redacted]/2019	ABSENCE	8:00		1	
			Wed	[redacted]/2018	ABSENCE	12:00		1	
			Wed	[redacted]/2018	ABSENCE	12:00		1	
			Thu	[redacted]/2018	ABSENCE	12:00		1	
			Wed	[redacted]/2018	ABSENCE	12:00		1	
			Thu	8/2/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	4:00	Family Emergency		
			Wed	[redacted]/2018	ABSENCE	12:00		1	
			Wed	[redacted]/2018	ABSENCE	12:00		1	
			Tue	2/26/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	3:45	Family emergency		
			Fri	[redacted]/2019	ABSENCE	12:00		1	
			Mon	[redacted]/2019	ABSENCE	12:00		1	
			Thu	[redacted]/2018	ABSENCE	12:00		1	
			Sun	11/11/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	3:00	Signed up for OT. Wanted to leave after the harvest was complete.		
			Tue	[redacted]/2018	ABSENCE	12:00		1	
			Fri	12/21/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	1:30	Family Emergency		
			Sun	[redacted]/2018	ABSENCE	12:00		1	
			Sat	[redacted]/2019	ABSENCE	12:00		1	
			Thu	2/21/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	2:15	Family emergency		
			Fri	[redacted]/2019	LATE START - LESS THAN 1 HOUR	1:00		0.5	
			Mon	[redacted]/2019	LATE START - LESS THAN 1 HOUR	0:34		0.5	
			Fri	[redacted]/2019	NO CALL NO SHOW	12:00	Called in at 6:40 a.m. Shift starts at 7:00 p.m.	1	1
			Fri	5/24/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	2:00	Pre-arranged to leave early (b) (6), (b) (7)(C)		
			Wed	8/15/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	2:30	Family Emergency		
			Fri	2/22/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	2:00	Went home sick		
			Sun	5/27/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	4:00	Family Emergency		
			Sat	[redacted]/2018	ABSENCE	10:00		1	
			Fri	8/10/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	1:00	Pre-arranged to leave early		
			Sat	[redacted]/2018	ABSENCE	10:00		1	
			Tue	[redacted]/2018	EARLY QUIT - WORKED LESS THAN 1/2 [redacted] SHIFT	9:00	Went home sick	1	

(b) (6), (b) (7)(C) [redacted]

[redacted]	Fri	10/12/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	0:30	Pre-arranged to leave early		
	Fri	10/26/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	2:30	Pre-arranged to leave early		
	Fri	11/2/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	2:00	Pre-arranged to leave early		
	Tue	1/22/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	2:00	Pre-arranged to leave early		
	Tue	[redacted]/2019	ABSENCE	10:00		1	
	Wed	3/13/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	4:00	Went home sick		
	Fri	5/10/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	4:00	Pre-arranged to leave early		
	Wed	5/22/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	5:00	Pre-arranged to leave early - (b) (6), (b) (7)(C)		
	Sun	[redacted]/2018	ABSENCE	10:00		1	
	Mon	[redacted]/2018	ABSENCE	10:00		1	
	Mon	11/5/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	3:00	Pre-arranged to leave early		
	Mon	6/11/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	5:00	Family Emergency		
	Sun	[redacted]/2018	ABSENCE	10:00		1	
	Sun	8/5/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	5:00	Pre-arranged to leave early		
	Tue	[redacted]/2018	LATE START - LESS THAN 1 HOUR	0:45		0.5	
	Fri	[redacted]/2018	ABSENCE	10:00		1	
	Thu	9/27/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	4:00	Family Emergency		
	Mon	[redacted]/2018	ABSENCE	10:00		1	
	Wed	[redacted]/2018	ABSENCE	10:00		1	
	Thu	[redacted]/2018	ABSENCE	10:00		1	
	Mon	[redacted]/2019	ABSENCE	10:00		1	
	Tue	1/29/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	5:00	Pre-arranged to leave early		
	Thu	3/7/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	1:45	Went home sick		
	Wed	4/17/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	3:00	Pre-arranged to leave early		
	Thu	4/25/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	5:00	Pre-arranged to leave early		
	Tue	5/7/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	5:00	Pre-arranged to leave early		
	Mon	[redacted]/2019	ABSENCE	10:00		1	
	Thu	5/23/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	5:00	Pre-arranged to leave early		
	Mon	[redacted]/2018	LATE START - LESS THAN 1 HOUR	0:30		0.5	
	Fri	[redacted]/2018	LATE START - LESS THAN 1 HOUR	0:30		0.5	
	Sat	[redacted]/2019	ABSENCE	8:00		1	
	Tue	[redacted]/2019	ABSENCE	8:00		1	
	Sat	3/23/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	3:15	Family emergency		
	Fri	[redacted]/2019	LATE START - LESS THAN 1 HOUR	0:15		0.5	
	Thu	[redacted]/2018	ABSENCE	10:00		1	
	Fri	[redacted]/2018	ABSENCE	10:00		1	
	Wed	8/8/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	4:00	Pre-arranged to leave early		
	Fri	8/24/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	2:30	Pre-arranged to leave early		
	Thu	[redacted]/2018	EARLY QUIT - WORKED LESS THAN 1/2 [redacted] SHIFT	9:00	Went home sick	1	
	Thu	[redacted]/2018	ABSENCE	10:00		1	
	Tue	12/18/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	4:30	Pre-arranged to leave early for doctor's appointment		
	Thu	1/17/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	2:00	Pre-arranged to leave early		
	Wed	2/6/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	2:30	Pre-arranged to leave early		
	Thu	2/21/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	2:30	Pre-arranged to leave early		
	Thu	3/28/2019	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	1:30	Pre-arranged to leave early		
	Thu	10/25/2018	EARLY QUIT - WORKED MORE THAN 1/2 [redacted] SHIFT	3:00	Pre-arranged to leave early		
	Tue	[redacted]/2019	EARLY QUIT - WORKED LESS THAN 1/2 [redacted] SHIFT	4:15	Pre-arranged	1	

Absentee Control Policy Administration Guidance for Supervisors

The purpose of this document is to train supervisors on the Absentee Control Policy in Article 5, Section N, pp.75-77 of the BLA effective September 21, 2017 through November 30, 2018. It will also ensure consistent administration of the Policy.

Policy went into effect on October 1, 2017.

Absences are counted in a rolling twelve month period.

This is a No Fault policy. The reason why an employee is absent does not matter unless it is one of the following absences which are *not* considered "absences" under the Policy:

Leave of Absence	FMLA	Jury Duty
Union Business	Funeral Leave	Disciplinary Layoff
Industrial Accidents	Military Leave	

Other contractually allowed absences, e.g. Paid Sick Time ("PST")

Employees are allowed a maximum of 10 absences and the 11th absence is cause for termination.

1 absence = 1 point

Employees must follow local notification procedures and call in at least one hour before the start of their shift if they cannot report to work, will be late for work or must leave early.

Employees must have a reason for their absence and must let us know when they will be returning to work when they call in.

<u>No Call No Show</u>

If an employee does not call in at least one hour before the start of shift that they are going to be absent, it is considered a no call, no show absence. A no call, no show absence is also considered an absence towards their maximum of ten absences.

Non-Consecutive No Call, No Show – An employee with four non-consecutive no call, no show absences in a rolling 12 month period is subject to immediate termination without a hearing.

Consecutive No Call, No Show – An employee with three consecutive no call, no show absences is subject to immediate termination without a hearing.

<u>Late Start – Less Than One Hour</u>

Tardy - An employee who is **less than one hour late** for work is considered tardy. It does not matter whether they called at least one hour before the start of their shift or not and it does not matter why they are late. The employee will be allowed to work.

One tardy is ½ a point; two tardies equal one absence.

Late Start – More Than One Hour

An employee who is **more than one hour late** is considered absent and will receive 1 point. That absence will be considered a no call, no show if the employee did not call in more than one hour before the start of their shift.

It is at the supervisor's discretion whether an employee who is **more than one hour late** to work will be allowed to work or not. If the employee is allowed to work, he/she will still receive 1 point.

Early Quit

If an employee needs to leave before the end of their shift, they need to follow the same call in procedure that they do when they cannot report to work or will be late for work. If they fail to follow that procedure, they may receive a No Call No Show.

Employees should be able to give advance notice for such things as doctor's appointments, family events, etc. Employees should be told to follow local notification procedures even if they tell their supervisor in advance. This will eliminate the possibility of any misunderstandings and document their notification.

If an employee works less than half their scheduled hours in one day, he/she is considered absent and will receive 1 point.

An employee may not have a late start and an early quit in the same shift except in cases of emergency.

Communication is Key

When an employee does not come to work, arrives late or leaves early, they should be told if they received a point or if their absence is considered a No Call No Show with a point. They need to know that their action has a consequence and what that consequence is.

Emergencies/Unforeseeable Circumstances

Management has the right to waive or excuse an absence if there are unusual or unforeseeable circumstances. This would include such things as acts of god, incapacitation, and family emergencies. Every instance will be considered on a case by case basis.

Senior management and HR will make the decisions and it will be consistent across all departments.

Documentation will be requested from the employee.

If we feel an employee is abusing the policy or not giving honest reasons for their absence, that is an issue that will be handled outside this policy.

Paid Sick Time

Paid Sick Time "PST" is a protected absence and does not count as an absence under the Policy (they do not receive a point). As long as an employee has PST available, they will be allowed to use it.

PST must be requested when an employee calls in.

Company Policy does not force an employee to use PST.

If an employee becomes ill while at work, that is an unplanned and unforeseen occurrence that the employee could not have notified us of in advance and the employee will be allowed to leave and use PST. How many hours they worked will not be a consideration since PST is a protected absence and no points are given.

If an employee requests PST and they do not have it available, the timekeeper will notify the supervisor. The supervisor in turn will notify the employee. The absence will be treated as if they did not request PST.

Absences of 3 or More Days Due to Illness Not Covered by PST

If an employee is out for three or more days due to their personal illness and they either do not have any PST remaining or they do not want to use their vacation as PST, they should be told to contact HR. They may qualify for FMLA.

Leave of Absence

An employee may pre-arrange a leave of absence of more than 3 days that will not count towards their maximum absences. The request has to be made to HR and must be approved.

> Example: A new hourly employee is getting married and does not have any vacation time. They can request a leave of absence to cover the time they will miss for their wedding and honeymoon if it is more than 3 days.

Notification and Counseling Procedure

- 3 absences – verbal notification. Very informal. Notify HR when done.
- 5 absences – written notification. Form letter will be generated by HR and given to the supervisor to give to the employee.
- 7 absences – formal counseling by committee made up of supervisor, HR and a Union rep.
- 10 absences – written notification. Form letter will be generated by HR and given to the supervisor to give to the employee.

Termination

If an employee reaches eleven (11) absences in a rolling twelve month period, they are subject to termination. A hearing will be held to review their absentee record.

Scenarios and How to Handle Them

Absence for the Day

1. Employee calls in one hour prior to the start of shift
   Employee does not come to work
   Employee receives 1 point and the code "Absence" is used for Kronos
   Explanation: The employee followed the proper call in procedure

2. Employee does not call in one hour prior to the start of shift
   Employee does not come to work
   Employee receives 1 point plus a No Call No Show and the code "No Call No Show" is used for Kronos
   Explanation: The employee did not follow the proper call in procedure

3. Employee calls in one hour prior to the start of shift and requests PST
   Employee does not receive any points and the code "Paid Sick Time" is used for Kronos
   Explanation: The employee followed the proper call in procedure
   NOTE: If the employee does not have any PST available, the timekeeper will notify the Supervisor. The Supervisor in turn will notify the employee. They will receive 1 point and the code "Absence" will be used in Kronos.

4. Employee does not call in one hour prior to the start of shift and requests PST
   Employee receives 1 point plus a No Call No Show and the code "No Call No Show" is used for Kronos
   Explanation: The employee did not follow the proper call in procedure. The call in procedure to request PST is the same as the call in procedure to notify of an absence.

5. Employee does not call in one hour prior to the start of shift
   Employee arrives to work on time but notifies the Company that they cannot stay because they are having vehicle issues that need to be fixed. The employee never started work.
   The next day the employee provides documentation that their vehicle was towed from the mine site along with an estimate for the repair.
   Employee receives 1 point and the code "Absence" is used in Kronos
   Explanation: Since this is an unplanned and unforeseen occurrence that took place while the employee was on their way to work, they were unable to follow the proper call in procedure. Management is using their discretion not to give the employee a No Call No Show, but the employee still receives 1 point.

Tardy/Late Start

6. Employee calls in one hour prior to the start of shift
   Employee arrives more than one hour after the start of their shift
   Supervisor lets them work
   Employee receives 1 point and the code "Tardy greater than 1 hr." is used for Kronos
   Explanation: The employee followed the proper call in procedure, but they were more than one hour late. It is at the supervisor's discretion whether they will be allowed to work. Even though the supervisor allowed them to work, they still receive one point for an absence.

7. Employee calls in one hour prior to the start of shift
   Employee arrives more than one hour after the start of their shift
   Supervisor does not let them work
   Employee receives 1 point and the code "Absence" is used for Kronos
   Explanation: The employee followed the proper call in procedure, but they were more than one hour late. It is at the supervisor's discretion whether they will be allowed to work. The supervisor did not allow them to work.

8. Employee does not call in one hour prior to the start of shift
   Employee arrives more than one hour after the start of their shift
   Supervisor lets them work
   Employee receives 1 point plus a No Call No Show and the code "No Call No Show" is used for Kronos
   Explanation: The employee did not follow the proper call in procedure and was more than one hour late. It is at the supervisor's discretion whether they will be allowed to work. Even though the supervisor allowed them to work, they still receive one point for an absence and a No Call No Show.

9. Employee does not call in one hour prior to the start of shift
   Employee arrives more than one hour after the start of their shift
   Supervisor does not let them work
   Employee receives 1 point plus a No Call No Show and the code "No Call No Show" is used for Kronos
   Explanation: The employee did not follow the proper call in procedure and was more than one hour late. It is at the supervisor's discretion whether they will be allowed to work. The supervisor did not allow them to work.

10. Employee calls in one hour prior to the start of shift
    Employee arrives less than one hour after the start of their shift
    Employee receives 1/2 point and the code "Tardy less than 1 hr." is used for Kronos
    Explanation: The employee followed the proper call in procedure and was less than one hour late. Any time an employee is less than one hour late for work, it does not matter whether they called in or why they were late and we allow them to work.

11. Employee does not call in one hour prior to the start of shift
    Employee arrives less than one hour after the start of their shift
    Employee receives 1/2 point and the code "Tardy less than 1 hr." is used for Kronos
    Explanation: The employee did not follow the proper call in procedure and was less than one hour late. Any time an employee is less than one hour late for work, it does not matter whether they called in or why they were late and we allow them to work.

12. Employee is 5 minutes late for work and did not call in
    Employee receives 1/2 point and the code "Tardy less than 1 hr." is used for Kronos
    Explanation: The employee did not follow the proper call in procedure and was less than one hour late. Any time an employee is less than one hour late for work, it does not matter whether they called in or why they were late and we allow them to work.

Early Quit

13. Employee calls in one hour prior to the start of shift
    Employee gives a reason why they need to leave early
    Employee works more than half their shift
    Employee does not receive any points and the code "Greater than half shift" is used for Kronos
    Explanation: The employee followed the proper notification procedure and let us know they needed to leave early and because they worked more than half their shift, they do not receive a point.

14. Employee calls in one hour prior to the start of shift
    Employee gives a reason why they need to leave early
    Employee works less than half their shift
    Employee receives 1 point and the code "Less than half shift" is used for Kronos
    Explanation: The employee followed the proper notification procedure and let us know they needed to leave early, but because they worked less than half their shift, they receive a point.

15. Employee does not call in one hour prior to the start of shift
    Employee does not give a reason why they need to leave early
    Employee works more than half their shift
    Employee receives 1 point plus a No Call No Show and the code "No Call No Show" is used for Kronos
    Explanation: The employee did not follow the proper notification procedure and they did not give a reason why they need to leave early. The fact that they worked more than half their shift does not matter because they did not follow proper procedure.
    NOTE: In order for management to determine whether they are going to excuse an absence or not, a reason needs to be given. Each reason will be considered on a case by case basis.

16. Employee does not call in one hour prior to the start of shift
    Employee does not give a reason why they need to leave early
    Employee works less than half their shift
    Employee receives 1 point plus a No Call No Show and the code "No Call No Show" is used for Kronos
    Explanation: The employee did not follow the proper notification procedure and they did not give a reason why they need to leave early. The fact that they worked less than half their shift does not matter because they did not follow proper procedure.
    NOTE: In order for management to determine whether they are going to excuse an absence or not, a reason needs to be given. Each reason will be considered on a case by case basis.

17. Employee lets their supervisor know that they need to leave early the next day
    Employee calls in one hour prior to the start of their shift
    Employee works more than half their shift
    Employee does not receive any points and the code "Greater than half shift" is used for Kronos
    Explanation: The employee made arrangements in advance with their supervisor to leave early and followed the proper call in procedure. Because they worked more than half their shift, they do not receive a point.

18. Employee lets their supervisor know that they need to leave early the next day
    Employee calls in one hour prior to the start of their shift
    Employee works less than half their shift
    Employee receives 1 point and the code "Less than half shift" is used for Kronos
    Explanation: Even though the employee made arrangements in advance with their supervisor to leave early and they followed the proper call in procedure, because they worked less than half their shift, they receive a point.

19. Employee gets a call and they need to leave because of a family emergency
    Employee works more than half their shift
    Employee does not receive any points and the code "Greater than half shift" is used for Kronos
    Explanation: Since this is an unplanned and unforeseen occurrence, the employee could not notify us in advance that they need to leave early. Management is using their discretion to excuse this absence.

20. Employee gets a call and they need to leave because of family emergency
    Employee works less than half their shift
    Employee does not receive any points and the code "Less than half shift" along with the comment "emergency" and a note explaining the emergency circumstances are used in Kronos
    Explanation: Since this is an unplanned and unforeseen occurrence, the employee could not notify us in advance that they need to leave early. Management is using their discretion to excuse this absence.

21. Employee wants to leave early because they have had enough of the day (or they want to watch a game or get a head start on the holiday weekend)
    Employee works more than half their shift
    Employee receives 1 point plus a No Call No Show and the code "No Call No Show" is used for Kronos
    Explanation: The employee did not follow the proper notification procedure and their reason for leaving is unacceptable. The fact that they worked more than half their shift does not matter.

22. Employee wants to leave early because they have had enough of the day (or they want to watch a game or get a head start on the holiday weekend)
    Employee works less than half their shift
    Employee receives 1 point plus a No Call No Show and the code "No Call No Show" is used for Kronos
    Explanation: The employee did not follow the proper notification procedure and their reason for leaving is unacceptable. The fact that they worked less than half their shift does not matter.

23. Employee is sick and wants to go home
    Employee has PST available and asks to use it
    Employee works more than half their shift
    Employee does not receive any points and the code "Paid Sick Time" is used for Kronos
    Explanation: Since this is an unplanned and unforeseen occurrence, the employee could not notify us in advance that they want to use PST. It is treated the same as it would for an employee who experiences a flare up of an intermittent FMLA-certified condition. Both FMLA and PST leave is protected as long as the employee has FMLA/PST leave available. The fact that they worked more than half their shift does not matter.

24. Employee is sick and wants to go home
    Employee has PST available and asks to use it
    Employee works less than half their shift
    Employee does not receive any points and the code "Paid Sick Time" is used for Kronos
    Explanation: Since this is an unplanned and unforeseen occurrence, the employee could not notify us in advance that they want to use PST. It is treated the same as it would for an employee who experiences a flare up of an intermittent FMLA-certified condition. Both FMLA and PST leave is protected as long as the employee has FMLA/PST leave available. The fact that they worked less than half their shift does not matter.

25. Employee is sick and wants to go home
    Employee does not have PST available
    Employee works more than half their shift
    Employee does not receive a point and the code "Greater than half shift" is used for Kronos
    Explanation: Since this is an unplanned and unforeseen occurrence, the employee could not notify us in advance that they need to leave early. Since the employee does not have any PST available, management is using their discretion to excuse this absence. They do not receive a point because they worked more than half their shift.

26. Employee is sick and wants to go home
    Employee does not have PST available
    Employee works less than half their shift
    Employee receives 1 point and the code "Less than half shift" is used for Kronos
    Explanation: Since this is an unplanned and unforeseen occurrence, the employee could not notify us in advance that they need to leave early. Since the employee does not have any PST available, management is using their discretion to excuse this absence. They receive a point because they worked less than half their shift.

27. Employee is sick and wants to go home
    Employee has PST available but does not want to use it
    Employee works more than half their shift
    Employee does not receive a point and the code "Greater than half shift" is used for Kronos
    Explanation: Since this is an unplanned and unforeseen occurrence, the employee could not notify us in advance that they need to leave early. Company policy does not force employees to use PST. Management is using their discretion to excuse this absence. They do not receive a point because they worked more than half their shift.

28. Employee is sick and wants to go home
    Employee has PST available but does not want to use it
    Employee works less than half their shift
    Employee receives 1 point and the code "Less than half shift" is used for Kronos
    Explanation: Since this is an unplanned and unforeseen occurrence, the employee could not notify us in advance that they need to leave early. Company policy does not force employees to use PST. Management is using their discretion to excuse this absence. They receive a point because they worked less than half their shift.

From: Richard Russo <rarusso@dcamplaw.com>
Sent: Thursday, June 27, 2019 7:57 AM
To: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>
Subject: Re: 28-CA-239074 (ASARCO, LLC)

Mr. Scheid:

I am responding to the two questions set forth in your June 19 email. As previously stated, the Absentee Control Policy Administration Guidance for Supervisors is used only as a training tool for supervisors regarding the Basic Labor Agreement's Absentee Control Policy, Article 5, Section N. The BLA's Absentee Control Policy is the sole attendance policy applied to ASARCO's bargaining unit employees. Your questions and ASARCO's responses are below.

1. Can you please provide your position as to whether the language of the Guidance changes the absentee control policy contained in the BLA?

Response: The portion of the Guidance that you cited for your question is completely

consistent with and does not in any way change the terms of the Absentee Control Policy contained in the BLA. ASARCO and the Union agreed in Article 5, Section N, Paragraph 2b of the BLA that employees would be terminated once they have reached eleven absences. The parties also agreed in Article 5, Section N, Paragraph 5d, that "an Employee will also be notified in writing when he/she has ten (10) absences and his/her next absence is cause for termination." Additionally, the parties agreed in Article 5, Section N, Paragraph 8a, that if "an Employee reaches the maximum number of absences in a rolling twelve month period, the Employee shall be afforded a hearing prior to termination to review the absentee record."

2. Can you please provide your position with respect to whether the call-in procedure described in the Guidance is any different from the BLA's requirement the Company be contacted?

Response: The portion of the Guidance that you cited for your question is completely consistent with, is not different from and does not in any way change the terms of the Absentee Control Policy contained in the BLA. ASARCO and the Union agreed in Article 5, Section N, Paragraph 2a, that "it is the Employee's responsibility to contact the Company in accordance with local notification procedures as soon as he knows or thinks that he cannot report to work, will be late for work, or must leave early. The Company should be contacted as soon as possible, at least one hour before the Employee's starting time" and the parties agreed in Article 5, Section N, Paragraph 2b, that "If an Employee does not notify the Company in accordance with local notification procedures at least one hour in advance that he will be absent from work, it will be considered a no call, no show." The plain language of the BLA makes it clear that if an employee is going to be absent from work by either: (1) not reporting to work; (2) being late for work; or (3) leaving early from work, they must follow the same call-in procedure regardless of the type of absence and must provide at least one hour advance notice of such absence prior to the start of their shift.

ASARCO reiterates its position that the Guidance in no way alters the terms set forth in the BLA's attendance policy, and the Union's charge is completely meritless. Moreover, in the event, that the Union has a situation in which an employee has allegedly been effected and the Union disagrees with the Company's interpretation/enforcement of the BLA's attendance policy in that situation, the Union should follow the agreed upon grievance procedure set forth in the BLA.

Please let me know if you any other questions or would like additional clarification on anything.

Very truly yours,

Richard A. Russo

Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690

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From: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>
Sent: Wednesday, June 19, 2019 5:51 PM
To: Richard Russo
Subject: RE: 28-CA-239074 (ASARCO, LLC)

Hi Mr. Russo,

I have a couple of follow up questions about the Guidance for Supervisors (Guidance). The Guidance states that "employees are allowed a maximum of 10 absences and the 11th absence is cause for termination" and "if an employee reaches eleven (11) absences in a rolling twelve-month period, they are subject to termination. A hearing will be held to review their absentee record." The BLA states "an employee will be allowed a maximum of eleven (11) total absences for any reason in a rolling twelve-month period." Can you please provide your position as to whether the language of the Guidance changes the absentee control policy contained in the BLA, given that supervisors have been provided with the Guidance for the purpose of referencing it to ensure consistent administration of the policy.

The Guidance for Supervisors also states "if an employee needs to leave before the end of their shift, they need to follow the same call in procedure that they do when they cannot report for work or will be late for work. If they fail to follow that procedure, they may receive a no call no show." The BLA states "the Company should be contacted as soon as possible, at least one hour before the employee's starting time." Can you please provide your position with respect to whether the call-in procedure described in the Guidance is any different from the BLA's requirement the Company be contacted? It seems like the BLA would permit an employee to utilize a number of different methods of contacting the Company while the Guidance does not. Any information or clarification you can provide would be helpful.

Best,

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400

Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
Facsimile: (602) 640-2178
kyler.scheid@nlrb.gov

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E-File New Charge or Petition: https://apps.nlrb.gov/eservice/efileterm.aspx?app=chargeandpetition

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From: Richard Russo <rarusso@dcamplaw.com>
Sent: Tuesday, June 11, 2019 8:45 AM
To: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>
Subject: RE: 28-CA-239074 (ASARCO, LLC)
Sensitivity: Confidential

Mr. Scheid:

Good morning. Per your request, attached please find the following:

1. The absenteeism report and history for SXEW employees at Silver Bell Mine for the time period of May 26, 2018 through May 25, 2019; and

2. The Absentee Control Policy Administration Guidance for Supervisors used as a training tool for supervisors regarding the Basic Labor Agreement's Absentee Control Policy, Article 5, Section N [per our telephone discussion on June 5, 2019, ASARCO provides this document to you based on your assurances that it will not be shared with the Union]. ASARCO maintains that the attached Guidance for Supervisors is for training purposes only and that the BLA's Absentee Control Policy is the sole attendance policy applied to ASARCO's bargaining unit employees. As such, the Guidance for Supervisors is not currently relevant to the Union. With that being the case and no grievance having been filed, in response to the Union's request for the Guidance for Supervisors document, ASARCO asked the Union to provide a basis for the Guidance being currently relevant, and the Union failed to provide any response to ASARCO.

As set forth in the previously provided position statement, the Union's charge is meritless and should be dismissed. Alternatively, it should be deferred to the contractually negotiated grievance process.

Please let me know if you have any questions or need additional information.

Very truly yours,
Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600

Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690
Email: rarusso@dcamplaw.com

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From: Scheid, Kyler A. [mailto:Kyler.Scheid@nlrb.gov]
Sent: Friday, May 24, 2019 2:18 PM
To: Richard Russo <rarusso@dcamplaw.com>
Subject: RE: 28-CA-239074 (ASARCO, LLC)

Good afternoon Mr. Russo,

Thank you for the Employer's position statement in the above-referenced matter, I appreciate it. As you are aware, the allegations in the above-referenced matter are as follows:

During the past six (6) months, the Employer has failed and refused to continue in effect all terms and conditions of the collective bargaining agreement between the parties by changing the manner in which leave is administered to bargaining unit employees.

Since about March 13, 2019, the Employer has failed or refused to provide information requested by the labor organization that is necessary for, and relevant to, its performance of its duties as the exclusive collective-bargaining representative of the Unit.

From what I can gather from the Employer's position statement, there is a supervisor's training manual utilized at the Employer's facilities to train supervisors with regard to, among other things, absentee control. In the request for evidence letter dated April 19, 2019, the Region requested the following information:

- During all or any portion of the period from January 1, 2017, to present, documents showing all manuals, handbooks, agreements or other documents provided by the Employer to its supervisors, managers or agents relating to time and attendance, absentee/attendance policies for employees.

I did not see any supervisor training manuals attached to the PST. Will the Employer be providing a copy of this manual as requested?

In addition to the above, could you please also provide documents including, but not limited to, timesheets, counselings, warnings, disciplinary records, time and attendance records, absence

points, e-mails, text messages, spreadsheets or memoranda showing or describing the time and attendance records for employees in the SXEW at Silver Bell Mine from about January 1, 2019 through present?

Please get me this additional information by June 7, 2019.

Best,

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
Facsimile: (602) 640-2178
kyler.scheid@nlrb.gov

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From: Richard Russo <rarusso@dcamplaw.com>
Sent: Tuesday, May 7, 2019 1:01 PM
To: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>
Subject: RE: 28-CA-239074 (ASARCO, LLC)

Mr. Scheid:

Attached please find ASARCO's position statement for the above-referenced matter.

Very truly yours,

Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690
Email: rarusso@dcamplaw.com

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From: Scheid, Kyler A. [mailto:Kyler.Scheid@nlrb.gov]
Sent: Friday, April 19, 2019 4:44 PM
To: Richard Russo <rarusso@dcamplaw.com>
Subject: 28-CA-239074 (ASARCO, LLC)

Good afternoon Mr. Russo,

Attached is the request evidence letter in the above-referenced matter.

Best,

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
Facsimile: (602) 640-2178
kyler.scheid@nlrb.gov

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From: Scheid, Kyler A.
Sent: Tuesday, August 13, 2019 8:09 PM
To: Richard Russo <rarusso@dcamplaw.com>
Subject: 28-CA-239074 (Asarco, LLC)

Good evening Mr. Russo,

The Regional Director has determined that complaint should issue, absent settlement, alleging the Employer violated sections 8(a)(1) and (5) of the National Labor Relations Act (the Act). Specifically, the Regional Director determined that the Employer violated Section 8(a)(1) by refusing to provide the Union with information that is relevant and necessary to its role as the collective-bargaining representative of employees it represents (as set forth in Article 2, Section A of the Basic Labor Agreement (BLA)).

The Region is seeking the attached informal settlement agreement. Please review the agreement and let me know whether your client intends to enter into the formal settlement agreement by noon on **Wednesday, August 21, 2018**. Absent settlement, a complaint and notice of hearing will issue shortly thereafter. Please be aware that the Region is open and willing to engage in settlement discussions even after the issuance of the complaint and notice of hearing. If you have any questions or concerns, feel free to give me a call but note that I will be out of the office on Monday, August 19, 2019 and Tuesday, August 20, 2019.

Best,

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF
ASARCO LLC **Case 28-CA-239074**

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS**:

POSTING OF NOTICE — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in conspicuous places, where notices to employees are customarily posted, in and around its Silver Bell Mine, located at 25000 West Avra Valley Road in Marana, Arizona 85653. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice**.**

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____ No _____
Initials Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does

not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.
The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party **ASARCO LLC**	**Charging Party** **United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937, AFL-CIO, CLC**
By: Name and Title Date	By: Name and Title Date
Print Name and Title below	Print Name and Title below

Recommended By: Date	Approved By: Date
Kyler A. Scheid Field Attorney	Cornele A. Overstreet Regional Director, Region 28

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in your exercise of the above rights.

WE WILL NOT, upon request, refuse to bargain in good faith with **United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937, AFL-CIO, CLC (the Union)** as the exclusive collective-bargaining representative of certain employees belonging to the bargaining units described in Article 2, Section A of the Basic Labor Agreement (BLA).

WE WILL NOT refuse to provide the Union with information that is relevant and necessary to its role as the collective-bargaining representative of the employees it represents.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL, upon request, bargain in good faith with the Union as the exclusive collective bargaining representative of the employees it represents.

WE WILL provide the Union with the information it requested on March 6, 2019, and again on March 20, 2019, in writing, seeking copies of all documents, paper work, books and policies other than the BLA, that we are using for training its supervisors on the BLA's absentee/attendance policy.

ASARCO LLC
(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's

Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at https://www.federalrelay.us/tty (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.

2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004

Telephone: (602)640-2160
Hours of Operation: 8:15 a m. to 4:45 p m.

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 above Regional Office's Compliance Officer.

From: (b) (6), (b) (7)(C)
To: Scheid, Kyler A.
Subject: Re: 28-CA-239074 (ASARCO LLC)
Date: Thursday, August 15, 2019 4:13:17 PM
Attachments: Outlook-yloskrtp.jpg

Mr. Scheid

At this time, the United Steelworkers Local 937 is requesting to Withdraw the potion of the charge in the above-reference matter alleging the Employer failed to continue in effect all the terms and conditions of the collective bargaining agreement with the union by changing the way leave is administered to the bargaining unit employees without the union consent.

(b) (6), (b) (7)(C)
USW Local 937
(b) (6), (b) (7)(C)
Mission Complex, Silver Bell Mine
(602)361-1822
(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 28
2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004

Agency Website:
www.nlrb.gov
Telephone: (602)640-2160
Fax: (602)640-2178

August 16, 2019

Richard A. Russo, Attorney at Law
Davis & Campbell, LLC
401 Main St., Suite 1600
Peoria, IL 61602-1241

Re: Asarco LLC
Case 28-CA-239074

Dear Mr. Russo:

This is to advise you that I have approved the withdrawal of the portions of the charge alleging that Asarco, LLC (the Employer) engaged in unfair labor practices within the meaning of Section 8(a)(d) of the Act and that it failed to continue in effect all the terms and conditions of the collective-bargaining agreement by changing the way leave is administered to bargaining-unit employees without the consent of United Steelworkers Local 937 (the Union). The remaining allegations remain pending and are subject to further processing.

Very truly yours,

Cornele A. Overstreet
Regional Director

cc: Asarco LLC
5285 E. Williams Circle
Tucson, AZ 85711

United Steelworkers Local 937
877 South Alvernon Way
Tucson, AZ 85711

CAO/KAS/ia

From: Scheid, Kyler A.
Sent: Thursday, August 22, 2019 6:05 PM
To: 'Richard Russo' <rarusso@dcamplaw.com>
Subject: RE: 28-CA-239074 (Asarco, LLC)

Good afternoon Mr. Russo,

Per our conversation earlier today about the Employer's position with respect to settlement in the above-referenced matter, one case on point is *Armstrong World Industries, Inc.*, 254 NLRB 1239 (1981). I can give you **until Monday at noon PHX time** to let me know if the Employer is interested in entering into the informal settlement agreement (reattached for reference).

Best,

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769

Facsimile: (602) 640-2178
kyler.scheid@nlrb.gov

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From: Scheid, Kyler A.
Sent: Wednesday, August 21, 2019 1:00 PM
To: Richard Russo <rarusso@dcamplaw.com>
Subject: RE: 28-CA-239074 (Asarco, LLC)

Ok, sounds good.

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
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From: Richard Russo <rarusso@dcamplaw.com>
Sent: Wednesday, August 21, 2019 12:57 PM
To: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>
Subject: RE: 28-CA-239074 (Asarco, LLC)

That works. I will give you a call at 1:00 AZ time tomorrow.

Thank you,
Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690
Email: rarusso@dcamplaw.com

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From: Scheid, Kyler A. [mailto:Kyler.Scheid@nlrb.gov]
Sent: Wednesday, August 21, 2019 2:40 PM
To: Richard Russo <rarusso@dcamplaw.com>
Subject: RE: 28-CA-239074 (Asarco, LLC)

Tomorrow at 1:00 p.m. works best for me.

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
Facsimile: (602) 640-2178
kyler.scheid@nlrb.gov

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From: Richard Russo <rarusso@dcamplaw.com>
Sent: Wednesday, August 21, 2019 12:39 PM
To: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>
Subject: RE: 28-CA-239074 (Asarco, LLC)

Mr. Scheid:

Please let me know your availability today or tomorrow for a telephone conference to discuss the above-referenced charge. I am available today from now until 1:30 AZ time, and tomorrow, I am currently available any time between 8:00 – 2:30 AZ time.

Thank you,

Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690
Email: rarusso@dcamplaw.com

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From: Scheid, Kyler A. [mailto:Kyler.Scheid@nlrb.gov]
Sent: Tuesday, August 13, 2019 7:09 PM
To: Richard Russo <rarusso@dcamplaw.com>
Subject: 28-CA-239074 (Asarco, LLC)

Good evening Mr. Russo,

The Regional Director has determined that complaint should issue, absent settlement, alleging the Employer violated sections 8(a)(1) and (5) of the National Labor Relations Act (the Act). Specifically, the Regional Director determined that the Employer violated Section 8(a)(1) by refusing to provide the Union with information that is relevant and necessary to its role as the collective-bargaining representative of employees it represents (as set forth in Article 2, Section A of the Basic Labor Agreement (BLA)).

The Region is seeking the attached informal settlement agreement. Please review the agreement and let me know whether your client intends to enter into the formal settlement agreement by noon on **Wednesday, August 21, 2018**. Absent settlement, a complaint and notice of hearing will issue shortly thereafter. Please be aware that the Region is open and willing to engage in settlement discussions even after the issuance of the complaint and notice of hearing. If you have any questions or concerns, feel free to give me a call but note that I will be out of the office on Monday, August 19, 2019 and Tuesday, August 20, 2019.

Best,

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
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Direct Dial: (602) 416-4769
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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF
ASARCO LLC **Case 28-CA-239074**

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS**:

POSTING OF NOTICE — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in conspicuous places, where notices to employees are customarily posted, in and around its Silver Bell Mine, located at 25000 West Avra Valley Road in Marana, Arizona 85653. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice**.**

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____ No _____
Initials Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does

not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.
The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party **ASARCO LLC**	**Charging Party** **United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937, AFL-CIO, CLC**
By: Name and Title Date	By: Name and Title Date
Print Name and Title below	Print Name and Title below

Recommended By: Date	Approved By: Date
Kyler A. Scheid Field Attorney	Cornele A. Overstreet Regional Director, Region 28

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in your exercise of the above rights.

WE WILL NOT, upon request, refuse to bargain in good faith with **United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937, AFL-CIO, CLC (the Union)** as the exclusive collective-bargaining representative of certain employees belonging to the bargaining units described in Article 2, Section A of the Basic Labor Agreement (BLA).

WE WILL NOT refuse to provide the Union with information that is relevant and necessary to its role as the collective-bargaining representative of the employees it represents.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL, upon request, bargain in good faith with the Union as the exclusive collective bargaining representative of the employees it represents.

WE WILL provide the Union with the information it requested on March 6, 2019, and again on March 20, 2019, in writing, seeking copies of all documents, paper work, books and policies other than the BLA, that we are using for training its supervisors on the BLA's absentee/attendance policy.

ASARCO LLC
(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's

Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at https://www.federalrelay.us/tty (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.

2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004

Telephone: (602)640-2160
Hours of Operation: 8:15 a m. to 4:45 p m.

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 above Regional Office's Compliance Officer.

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

ASARCO LLC

and **Case 28-CA-239074**

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937, AFL-CIO, CLC

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937, AFL-CIO, CLC (the Charging Party). It 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 Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Asarco LLC (Respondent) has violated the Act as described below.

1. (a) The charge in this proceeding was filed by the Charging Party on April 4, 2019, and a copy was served on Respondent by U.S. mail on April 5, 2019.

(b) The first amended charge in this proceeding was filed by the Charging Party on May 24, 2019, 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 Operations), 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 April 4, 2019, 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 (Local 886);

(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; and

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

4. 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:

(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)

5. (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 BLA) 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 September 21, 2017, through November 30, 2018, 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 BLA, as supplemented by the Supplemental Agreements. This recognition has been embodied in successive collective-

bargaining agreements, the most recent of which was the BLA, 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 BLA, as supplemented by the Supplemental Agreements.

6. (a) Since about March 6, 2019, the Charging Party has requested in writing that Respondent furnish the Union with the following information:

> Documents, paper work, book, policy, other than the BLA, that the company is using for training the supervisors on the absentee/attendance policy for the bargaining unit employees.

(b) The information requested by the Charging Party, as described above in paragraph 6(a), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(c) Since about March 6, 2019, Respondent has failed and refused to furnish the Charging Party with the information requested by it as described above in paragraph 6(a).

7. By the conduct described above in paragraph 6, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

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

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 complaint. The answer must be **received by this office on or before October 4, 2019, or postmarked on or before October 3, 2019**. Respondent should file an original and four copies 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 **E-File 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 complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on November 19, 2019, 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 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 20th day of September 2019.

/s/ Barbara B. Baynes
Barbara B. Baynes, Acting Regional Director

Attachments

From:	Moore, Dawn M.
To:	Agatha Pak
Cc:	Rourke-Osborne, Kathleen M.
Subject:	NEW PHOENIX TRIAL DATE NOTICE / Asarco LLC - Case 28-CA-239074
Date:	Friday, September 20, 2019 4:33:35 PM
Attachments:	Free State PHX New Trial Date Notice.doc image003.png

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Please see the attached notice and add this new trial date to the reporting calendar.
Thanks,

Dawn M. Moore

Administrative Assistant
Region 28 – Las Vegas Resident Office
National Labor Relations Board
Foley Federal Building
300 Las Vegas Boulevard South, Suite 2-901
Las Vegas, NV 89101-5833
Tel: (702) 820-7466
Fax: (702) 388-6248

nlrb-masthead-logo

HEARING NOTICE
REGION 28

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004-3099
Telephone: (602) 640-2152
Facsimile: (602) 640-2178
Website: www.nlrb.gov

RESIDENT OFFICES

421 Gold Avenue, SW – Suite 310
P.O. Box 567
Albuquerque, NM 87103-0567
Telephone: (505) 248-5125
Facsimile: (505) 248-5134

600 Las Vegas Boulevard South – Suite 400
Las Vegas, NV 89101-6637
Telephone: (702) 388-6417
Facsimile: (702) 388-6248

To:

☒ Free State Reporting Inc.
1378 Cape St Claire Road
Annapolis, MD 21409
(410) 974-0947 x[redacted] (Office)
410-974-0297 (Fax)
[redacted] cell (Evenings and Weekends)
agatha@freestatereporting.com
POC Agatha Pak

☐ Schreiber Translations
51 Monroe Street, Suite 101
Rockville, MD 20850-2420
301-424-7737 (phone)
301-424-2336 (fax)
Email:
translation@schreibernet.com
Website: www.schreibernet.com

Date: **September 20, 2019**

From: **Dawn M. Moore, Administrative Assistant / Tel: (702) 820-7466**

Subject: **Asarco LLC / Case 28-CA-239074**

Date of Hearing: **TUESDAY, NOVEMBER 19, 2019** Time: **9:00 A.M.**

Address of Hearing: **NATIONAL LABOR RELATIONS BOARD - REGION 28**
2600 NORTH CENTRAL AVENUE, SUITE 1400
PHOENIX, AZ 85004-3099

Scheduled number of days for hearing: **1 - 2 DAYS**

☐ Hearing has been canceled on

☐ Hearing has been rescheduled to _____

☐ **Above hearing has changed as follows:**

- ☐ Time of hearing will be _____ rather than _____
- ☐ Case has been settled. No hearing will be held.
- ☐ Hearing scheduled has been postponed indefinitely.

Note: This is to confirm the

☐ Conversation between Free State Reporting and Dawn M. Moore on _____

☐ Voice message left for Free State Reporting _____

☒ E-mail to agatha@freestatereporting.com and OM on **FRIDAY, SEPTEMBER 20, 2019 @ 1:30 P.M.**

From: Moore, Dawn M.
Sent: Friday, September 20, 2019 4:39 PM
To: rarusso@dcamplaw.com; uswcatrgonz@live.com; rbrean@usw.org
Subject: Asarco LLC / Case 28-CA-239074

Please see the attached Complaint and Notice of Hearing in the above subject matter.
Thank you.

Dawn M. Moore

Administrative Assistant
Region 28 – Las Vegas Resident Office
National Labor Relations Board
Foley Federal Building
300 Las Vegas Boulevard South, Suite 2-901
Las Vegas, NV 89101-5833
Tel: (702) 820-7466

Fax: (702) 388-6248

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

ASARCO LLC

and **Case 28-CA-239074**

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937, AFL-CIO, CLC

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937, AFL-CIO, CLC (the Charging Party). It 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 Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Asarco LLC (Respondent) has violated the Act as described below.

1. (a) The charge in this proceeding was filed by the Charging Party on April 4, 2019, and a copy was served on Respondent by U.S. mail on April 5, 2019.

(b) The first amended charge in this proceeding was filed by the Charging Party on May 24, 2019, 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 Operations), 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 April 4, 2019, 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 (Local 886);

(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; and

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

4. 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:

(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)

5. (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 BLA) 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 September 21, 2017, through November 30, 2018, 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 BLA, as supplemented by the Supplemental Agreements. This recognition has been embodied in successive collective-

bargaining agreements, the most recent of which was the BLA, 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 BLA, as supplemented by the Supplemental Agreements.

6. (a) Since about March 6, 2019, the Charging Party has requested in writing that Respondent furnish the Union with the following information:

> Documents, paper work, book, policy, other than the BLA, that the company is using for training the supervisors on the absentee/attendance policy for the bargaining unit employees.

(b) The information requested by the Charging Party, as described above in paragraph 6(a), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(c) Since about March 6, 2019, Respondent has failed and refused to furnish the Charging Party with the information requested by it as described above in paragraph 6(a).

7. By the conduct described above in paragraph 6, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

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

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 complaint. The answer must be **received by this office on or before October 4, 2019, or postmarked on or before October 3, 2019**. Respondent should file an original and four copies 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 **E-File 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 complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on November 19, 2019, 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 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 20th day of September 2019.

/s/ Barbara B. Baynes
Barbara B. Baynes, Acting Regional Director

Attachments

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 28-CA-239074

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.

Asarco LLC
5285 East Williams Circle, Suite 2000
Tucson, AZ 85711

(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)
United Steelworkers Local 937
877 South Alvernon Way
Tucson, AZ 85711

Richard A. Russo, ESQ.
Davis & Campbell, LLC
401 Main Street, Suite 1600
Peoria, IL 61602-1241

Richard Brean, General Counsel
United Steel Workers, AFL-CIO, Local 4-406
Five Gateway Center, Suite 807
60 Boulevard of the Allies
Pittsburgh, PA 15222-1214

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative**. If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.

- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence**: At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits: Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence.** If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing.

If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts**: An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief**: Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision**: The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

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

ASARCO, LLC

and **Case 28-CA-239074**

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937, AFL-CIO, CLC

ANSWER TO COMPLAINT

Respondent ASARCO, LLC by its attorneys Davis & Campbell L.L.C., answers the Complaint as follows:

1. (a) The charge in this proceeding was filed by the Charging Party on April 4, 2019, and a copy was served on Respondent by U.S. mail on April 5, 2019.

ANSWER: Respondent admits the allegations of Paragraph 1(a).

(b) The first amended charge in this proceeding was filed by the Charging Party on May 24, 2019, and a copy was served on Respondent by U.S. mail on the same date.

ANSWER: Respondent admits the allegations of Paragraph 1(b).

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 Operations), 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.

ANSWER: Respondent admits the allegations of Paragraph 2(a).

(b) During the 12-month period ending April 4, 2019, 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.

ANSWER: Respondent admits the allegations of Paragraph 2(b).

(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.

ANSWER: Respondent admits the allegations of Paragraph 2(c).

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 (Local 886);

(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; and

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

ANSWER: Respondent admits the allegations of Paragraph 3.

4. 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:

(b) (6), (b) (7)(C) - (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C) - (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C) - (b) (6), (b) (7)(C)

ANSWER: Respondent denies (b) (6), (b) (7)(C) **title is** (b) (6), (b) (7)(C) **and affirmatively states that** (b) (6), (b) **title is** (b) (6), (b) (7)(C). **Respondent admits the remaining allegations of Paragraph 4.**

5. (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 BLA) 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 September 21, 2017, through November 30, 2018, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

ANSWER: Respondent admits that the Units described in Article 2, Section A are units appropriate for collective bargaining. Respondent denies the remaining allegations of Paragraph 5(a).

(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 BLA, as supplemented by the Supplemental Agreements. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was the BLA, as supplemented by the Supplemental Agreements.

ANSWER: Respondent admits the allegations of Paragraph 5(b).

(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 BLA, as supplemented by the Supplemental Agreements.

ANSWER: Respondent admits the allegations of Paragraph 5(c).

6. (a) Since about March 6, 2019, the Charging Party has requested in writing that Respondent furnish the Union with the following information:

> Documents, paper work, book, policy, other than the BLA, that the company is using for training the supervisors on the absentee/attendance policy for the bargaining unit employees.

ANSWER: Respondent admits that Charging Party requested the specified information on or about March 6, 2019. Respondent affirmatively states that Charging Party was provided with the specified information requested.

(b) The information requested by the Charging Party, as described above in paragraph 6(a), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

ANSWER: Respondent denies the allegations of Paragraph 6(b).

(c) Since about March 6, 2019, Respondent has failed and refused to furnish the Charging Party with the information requested by it as described above in paragraph 6(a).

ANSWER: Respondent denies the allegations of Paragraph 6(c).

7. By the conduct described above in paragraph 6, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

ANSWER: Respondent denies the allegations of Paragraph 7.

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

ANSWER: Respondent denies the allegations of Paragraph 8.

WHEREFORE, the Respondent submits the Complaint should be dismissed promptly and in its entirety.

ASARCO, LLC
Respondent,

By: Richard A. Russo
One of its Attorneys

Richard A. Russo
Paul H. Burmeister
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, IL 61602
Tele: (309) 673-1681
Fax: (309) 673-1690
rarusso@dcamplaw.com
phburmeister@dcamplaw.com

CERTIFICATE OF SERVICE

I hereby state that I served a copy of the foregoing Answer to Complaint via electronic mail (rbrean@usw.org and uswcatrongonz@live.com) and by depositing same in envelopes addressed as follows:

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied
Industrial and Service Workers International Union, AFL-CIO, CLC
c/o Richard Brean, General Counsel
60 Boulevard of the Allies
Pittsburgh, PA 15222-1214

(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)
United Steelworkers Local 927
877 South Alvernon Way
Tucson, AZ 85711

and by delivering same by first class mail, postage prepaid on September 30, 2019.

One of Its Attorneys

Richard A. Russo
Paul H. Burmeister
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, IL 61602
Tele: (309) 673-1681
Fax: (309) 673-1690
rarusso@dcamplaw.com
phburmeister@dcamplaw.com

FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

ASARCO LLC

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937, AFL-CIO, CLC

CASE 28-CA-239074

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937, AFL-CIO,CLC

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Gerald Barrett

MAILING ADDRESS: Ward, Keenan & Barrett, P.C., 2141 E. Camelback Rd., #100, Phoenix, AZ 85016

E-MAIL ADDRESS: gbarrett@wardkeenanbarrett.com

OFFICE TELEPHONE NUMBER: 602-279-1717

CELL PHONE NUMBER: 602-421-6000 *FAX:* 602-279-8908

SIGNATURE: *(Please sign in ink.)*

DATE: 24 October 2019

[1] IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

FORM NLRB-32

SUBPOENA

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To (b) (6), (b) (7)(C), (b) (7)(D) Asarco, LLC

5285 East Williams Circle, Suite 2000, Tucson, Arizona 85711

As requested by Lisa J. Dunn, Counsel for the General Counsel

whose address is 2600 North Central Avenue, Suite 1400, Phoenix, Arizona 85004
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge

of the National Labor Relations Board

at the NLRB Hearing Room, 2600 North Central Avenue, Suite 1400

in the City of Phoenix, Arizona

on Tuesday, November 19, 2019 at 9:00 AM or any adjourned

or rescheduled date to testify in Asarco LLC Case 28-CA-239074
(Case Name and Number)

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

(b) (6), (b) (7)(C)

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Phoenix, Arizona

Dated: October 21, 2019

John Ring, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq*. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

Case 28-CA-239074

(b) (6), (b) (7)(C)

Certified 7018 0680 0000 3124 4235

RETURN OF SERVICE

I certify that, being a person over 18 years of age, I duly served a copy of this subpoena

(Check method used.)

- ☐ by person
- ✕ by certified mail
- ☐ by registered mail
- ☐ by telegraph
- ☐ by leaving copy at principal office or place of business at

_____

_____

_____

on the named person on

October 21, 2019

(Month, day, and year)

(b) (6), (b) (7)(C)

(Name of person making service)

(b) (6), (b) (7)(C)

(Official title, if any)

CERTIFICATION OF SERVICE

I certify that named person was in attendance as a witness at

_____

on

(Month, day or days, and year)

_____

(Name of person certifying)

_____

(Official title)

FORM NLRB-32

SUBPOENA

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To (b) (6), (b) (7)(C), (b) (7)(D) Asarco, LLC

Silver Bell Mine, 25000 West Avra Valley Road, Marana, Arizona 85653

As requested by LISA J. DUNN, Counsel for the General Counsel

whose address is 2600 North Central Avenue, Suite 1400, Phoenix, Arizona 85004
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge

of the National Labor Relations Board

at the NLRB Hearing Room, 2600 North Central Avenue, Suite 1400

in the City of Phoenix, Arizona

on Tuesday, November 19, 2019 at 9:00 AM or any adjourned

or rescheduled date to testify in Asarco LLC Case 28-CA-239074
(Case Name and Number)

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

(b) (6), (b) (7)(C)

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Phoenix, Arizona

Dated: October 21, 2019

John Ring, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq*. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

Case 28-CA-239074

(b) (6), (b) (7)(C)

Certified 7018 0680 0000 3124 4242

RETURN OF SERVICE

I certify that, being a person over 18 years of age, I duly served a copy of this subpoena

(Check method used.)

- ☐ by person
- ✕ by certified mail
- ☐ by registered mail
- ☐ by telegraph
- ☐ by leaving copy at principal office or place of business at

_____

_____

_____

on the named person on

October 21, 2019

(Month, day, and year)

(b) (6), (b) (7)(C)

(Name of person making service)

(b) (6), (b) (7)(C)

(Official title, if any)

CERTIFICATION OF SERVICE

I certify that named person was in attendance as a witness at

_____

on

(Month, day or days, and year)

_____

(Name of person certifying)

_____

(Official title)

FORM NLRB-31

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To Asarco, LLC ATTN: Custodian of Records

5285 East Williams Circle, Suite 2000 Tucson, Arizona 85711

As requested by Lisa J. Dunn, Counsel for the General Counsel

whose address is 2600 North Central Avenue, Suite 1400, Phoenix, Arizona 85004
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge

of the National Labor Relations Board

at the NLRB Hearing Room, 2600 North Central Avenue, Suite 1400

in the City of Phoenix, Arizona

on Tuesday, November 19, 2019 at 9:00 AM or any adjourned

or rescheduled date to testify in Asarco LLC Case 28-CA-239074
(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-16XBLTZ

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Phoenix, Arizona

Dated: October 21, 2019

John Ring, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq*. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

Case 28-CA-239074

B-1-16XBLTZ

Certified 7018 0680 0000 3124 4259

RETURN OF SERVICE

I certify that, being a person over 18 years of age, I duly served a copy of this subpoena

(Check method used.)

- ☐ by person
- ✕ by certified mail
- ☐ by registered mail
- ☐ by telegraph
- ☐ by leaving copy at principal office or place of business at

_____

_____

_____

on the named person on

October 21, 2019

(Month, day, and year)

(b) (6), (b) (7)(C)

(Name of person making service)

(b) (6), (b) (7)(C)

(Official title, if any)

CERTIFICATION OF SERVICE

I certify that named person was in attendance as a witness at

_____

on

(Month, day or days, and year)

_____

(Name of person certifying)

_____

(Official title)

From:	Scheid, Kyler A.
To:	Dunn, Lisa J
Subject:	FW: Information request response - Absentee Control Policy
Date:	Tuesday, October 22, 2019 1:03:38 PM
Attachments:	Silver Bell Absentee Control Policy Admin Guidance for Sups (00231342xB6F65).pdf
Sensitivity:	Confidential

FYI,

I'll talk with Barrett about this as soon as I get a chance.

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
Facsimile: (602) 640-2178
kyler.scheid@nlrb.gov

-

The NLRB has converted to an electronic file system.
Please file documents electronically through our online E-File system:
E-File Case Documents: https://apps.nlrb.gov/eservice/efileterm.aspx
E-File New Charge or Petition: https://apps.nlrb.gov/eservice/efileterm.aspx?app=chargeandpetition

---

From: Richard Russo <rarusso@dcamplaw.com>
Sent: Tuesday, October 22, 2019 10:01 AM
To: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>
Subject: FW: Information request response - Absentee Control Policy
Sensitivity: Confidential

Mr. Scheid:

Per your request, below is the email sent by the Company to the Union Contract Coordinator Ruben Gonzales fully responding to his request for information for "documents, paper work, book, policy, other than the BLA, that the company is using for training the supervisors on the absentee/attendance policy for the bargaining unit employees" along with the attached Silver Bell Absentee Control Policy Administration Guidance for Supervisors training document. This is the only document responsive to the Union's request.

If the Union is interested in resolving this matter through an informal settlement agreement, please advise which individual with the Union should be contacted by the Company to facilitate such an agreement.

Thank you,

Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690

IMPORTANT NOTICE: THIS EMAIL (INCLUDING ANY ATTACHMENTS) IS INTENDED ONLY FOR THE USE OF THE NAMED RECIPIENT(S), AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED OR EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT A NAMED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS TRANSMISSION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS EMAIL IN ERROR, PLEASE ERASE ALL FILES AND DESTROY ALL COPIES OF THIS TRANSMISSION AND NOTIFY RICHARD A. RUSSO AT THIS TELEPHONE NUMBER IMMEDIATELY: (309) 673-1681. THANK YOU.

Begin forwarded message:

From: (b) (6), (b) (7)(C) <(b) (6), (b) (7)(C) @asarco.com>
Date: August 16, 2019 at 4:25:13 PM MST
To (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)
Cc: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) @asarco.com>
Subject: Information request response - Absentee Control Policy

(b) (6), (b) (7)(C)

In response to your information requests of March 6 and March 20, 2019, while the Company maintains its position that the Union has not demonstrated the relevancy of such information, attached is the requested Absentee Control Policy Administration Guidance for Supervisors. As previously mentioned, the attached manual is used only as a training tool for supervisors regarding the BLA's Absentee Control Policy. The BLA's Absentee Control Policy is the sole attendance policy applied to bargaining unit employees.

In the future, if the Union disagrees with the Company's interpretation/enforcement of the BLA's Absentee Control policy, we encourage the Union follow the agreed upon grievance procedure set forth in the BLA to address the issue.

(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)
ASARCO Silver Bell Mining, LLC
25,000 W. Avra Valley Road
Marana, AZ 85653
Phone: (520) 682-2420 ext (b) (6), (b) (7)(C)

Fax: (520) 682-2347
Email: [redacted]@asarco.com

Absentee Control Policy Administration Guidance for Supervisors

The purpose of this document is to train supervisors on the Absentee Control Policy in Article 5, Section N, pp.75-77 of the BLA effective September 21, 2017 through November 30, 2018. It will also ensure consistent administration of the Policy.

Policy went into effect on October 1, 2017.

Absences are counted in a rolling twelve month period.

This is a No Fault policy. The reason why an employee is absent does not matter unless it is one of the following absences which are *not* considered "absences" under the Policy:

Leave of Absence	FMLA	Jury Duty
Union Business	Funeral Leave	Disciplinary Layoff
Industrial Accidents	Military Leave	

Other contractually allowed absences, e.g. Paid Sick Time ("PST")

Employees are allowed a maximum of 10 absences and the 11th absence is cause for termination.

1 absence = 1 point

Employees must follow local notification procedures and call in at least one hour before the start of their shift if they cannot report to work, will be late for work or must leave early.

Employees must have a reason for their absence and must let us know when they will be returning to work when they call in.

<u>No Call No Show</u>

If an employee does not call in at least one hour before the start of shift that they are going to be absent, it is considered a no call, no show absence. A no call, no show absence is also considered an absence towards their maximum of ten absences.

Non-Consecutive No Call, No Show – An employee with four non-consecutive no call, no show absences in a rolling 12 month period is subject to immediate termination without a hearing.

Consecutive No Call, No Show – An employee with three consecutive no call, no show absences is subject to immediate termination without a hearing.

<u>Late Start – Less Than One Hour</u>

Tardy - An employee who is **less than one hour late** for work is considered tardy. It does not matter whether they called at least one hour before the start of their shift or not and it does not matter why they are late. The employee will be allowed to work.

One tardy is ½ a point; two tardies equal one absence.

Late Start – More Than One Hour

An employee who is **more than one hour late** is considered absent and will receive 1 point. That absence will be considered a no call, no show if the employee did not call in more than one hour before the start of their shift.

It is at the supervisor's discretion whether an employee who is **more than one hour late** to work will be allowed to work or not. If the employee is allowed to work, he/she will still receive 1 point.

Early Quit

If an employee needs to leave before the end of their shift, they need to follow the same call in procedure that they do when they cannot report to work or will be late for work. If they fail to follow that procedure, they may receive a No Call No Show.

Employees should be able to give advance notice for such things as doctor's appointments, family events, etc. Employees should be told to follow local notification procedures even if they tell their supervisor in advance. This will eliminate the possibility of any misunderstandings and document their notification.

If an employee works less than half their scheduled hours in one day, he/she is considered absent and will receive 1 point.

An employee may not have a late start and an early quit in the same shift except in cases of emergency.

Communication is Key

When an employee does not come to work, arrives late or leaves early, they should be told if they received a point or if their absence is considered a No Call No Show with a point. They need to know that their action has a consequence and what that consequence is.

Emergencies/Unforeseeable Circumstances

Management has the right to waive or excuse an absence if there are unusual or unforeseeable circumstances. This would include such things as acts of god, incapacitation, and family emergencies. Every instance will be considered on a case by case basis.

Senior management and HR will make the decisions and it will be consistent across all departments.

Documentation will be requested from the employee.

If we feel an employee is abusing the policy or not giving honest reasons for their absence, that is an issue that will be handled outside this policy.

Paid Sick Time

Paid Sick Time "PST" is a protected absence and does not count as an absence under the Policy (they do not receive a point). As long as an employee has PST available, they will be allowed to use it.

PST must be requested when an employee calls in.

Company Policy does not force an employee to use PST.

If an employee becomes ill while at work, that is an unplanned and unforeseen occurrence that the employee could not have notified us of in advance and the employee will be allowed to leave and use PST. How many hours they worked will not be a consideration since PST is a protected absence and no points are given.

If an employee requests PST and they do not have it available, the timekeeper will notify the supervisor. The supervisor in turn will notify the employee. The absence will be treated as if they did not request PST.

Absences of 3 or More Days Due to Illness Not Covered by PST

If an employee is out for three or more days due to their personal illness and they either do not have any PST remaining or they do not want to use their vacation as PST, they should be told to contact HR. They may qualify for FMLA.

Leave of Absence

An employee may pre-arrange a leave of absence of more than 3 days that will not count towards their maximum absences. The request has to be made to HR and must be approved.

> Example: A new hourly employee is getting married and does not have any vacation time. They can request a leave of absence to cover the time they will miss for their wedding and honeymoon if it is more than 3 days.

Notification and Counseling Procedure

- 3 absences – verbal notification. Very informal. Notify HR when done.
- 5 absences – written notification. Form letter will be generated by HR and given to the supervisor to give to the employee.
- 7 absences – formal counseling by committee made up of supervisor, HR and a Union rep.
- 10 absences – written notification. Form letter will be generated by HR and given to the supervisor to give to the employee.

Termination

If an employee reaches eleven (11) absences in a rolling twelve month period, they are subject to termination. A hearing will be held to review their absentee record.

Scenarios and How to Handle Them

Absence for the Day

1. Employee calls in one hour prior to the start of shift
   Employee does not come to work
   Employee receives 1 point and the code "Absence" is used for Kronos
   Explanation: The employee followed the proper call in procedure

2. Employee does not call in one hour prior to the start of shift
   Employee does not come to work
   Employee receives 1 point plus a No Call No Show and the code "No Call No Show" is used for Kronos
   Explanation: The employee did not follow the proper call in procedure

3. Employee calls in one hour prior to the start of shift and requests PST
   Employee does not receive any points and the code "Paid Sick Time" is used for Kronos
   Explanation: The employee followed the proper call in procedure
   NOTE: If the employee does not have any PST available, the timekeeper will notify the Supervisor. The Supervisor in turn will notify the employee. They will receive 1 point and the code "Absence" will be used in Kronos.

4. Employee does not call in one hour prior to the start of shift and requests PST
   Employee receives 1 point plus a No Call No Show and the code "No Call No Show" is used for Kronos
   Explanation: The employee did not follow the proper call in procedure. The call in procedure to request PST is the same as the call in procedure to notify of an absence.

5. Employee does not call in one hour prior to the start of shift
   Employee arrives to work on time but notifies the Company that they cannot stay because they are having vehicle issues that need to be fixed. The employee never started work.
   The next day the employee provides documentation that their vehicle was towed from the mine site along with an estimate for the repair.
   Employee receives 1 point and the code "Absence" is used in Kronos
   Explanation: Since this is an unplanned and unforeseen occurrence that took place while the employee was on their way to work, they were unable to follow the proper call in procedure. Management is using their discretion not to give the employee a No Call No Show, but the employee still receives 1 point.

Tardy/Late Start

6. Employee calls in one hour prior to the start of shift
   Employee arrives more than one hour after the start of their shift
   Supervisor lets them work
   Employee receives 1 point and the code "Tardy greater than 1 hr." is used for Kronos
   Explanation: The employee followed the proper call in procedure, but they were more than one hour late. It is at the supervisor's discretion whether they will be allowed to work. Even though the supervisor allowed them to work, they still receive one point for an absence.

7. Employee calls in one hour prior to the start of shift
   Employee arrives more than one hour after the start of their shift
   Supervisor does not let them work
   Employee receives 1 point and the code "Absence" is used for Kronos
   Explanation: The employee followed the proper call in procedure, but they were more than one hour late. It is at the supervisor's discretion whether they will be allowed to work. The supervisor did not allow them to work.

8. Employee does not call in one hour prior to the start of shift
   Employee arrives more than one hour after the start of their shift
   Supervisor lets them work
   Employee receives 1 point plus a No Call No Show and the code "No Call No Show" is used for Kronos
   Explanation: The employee did not follow the proper call in procedure and was more than one hour late. It is at the supervisor's discretion whether they will be allowed to work. Even though the supervisor allowed them to work, they still receive one point for an absence and a No Call No Show.

9. Employee does not call in one hour prior to the start of shift
   Employee arrives more than one hour after the start of their shift
   Supervisor does not let them work
   Employee receives 1 point plus a No Call No Show and the code "No Call No Show" is used for Kronos
   Explanation: The employee did not follow the proper call in procedure and was more than one hour late. It is at the supervisor's discretion whether they will be allowed to work. The supervisor did not allow them to work.

10. Employee calls in one hour prior to the start of shift
    Employee arrives less than one hour after the start of their shift
    Employee receives 1/2 point and the code "Tardy less than 1 hr." is used for Kronos
    Explanation: The employee followed the proper call in procedure and was less than one hour late. Any time an employee is less than one hour late for work, it does not matter whether they called in or why they were late and we allow them to work.

11. Employee does not call in one hour prior to the start of shift
    Employee arrives less than one hour after the start of their shift
    Employee receives 1/2 point and the code "Tardy less than 1 hr." is used for Kronos
    Explanation: The employee did not follow the proper call in procedure and was less than one hour late. Any time an employee is less than one hour late for work, it does not matter whether they called in or why they were late and we allow them to work.

12. Employee is 5 minutes late for work and did not call in
    Employee receives 1/2 point and the code "Tardy less than 1 hr." is used for Kronos
    Explanation: The employee did not follow the proper call in procedure and was less than one hour late. Any time an employee is less than one hour late for work, it does not matter whether they called in or why they were late and we allow them to work.

Early Quit

13. Employee calls in one hour prior to the start of shift
    Employee gives a reason why they need to leave early
    Employee works more than half their shift
    Employee does not receive any points and the code "Greater than half shift" is used for Kronos
    Explanation: The employee followed the proper notification procedure and let us know they needed to leave early and because they worked more than half their shift, they do not receive a point.

14. Employee calls in one hour prior to the start of shift
    Employee gives a reason why they need to leave early
    Employee works less than half their shift
    Employee receives 1 point and the code "Less than half shift" is used for Kronos
    Explanation: The employee followed the proper notification procedure and let us know they needed to leave early, but because they worked less than half their shift, they receive a point.

15. Employee does not call in one hour prior to the start of shift
    Employee does not give a reason why they need to leave early
    Employee works more than half their shift
    Employee receives 1 point plus a No Call No Show and the code "No Call No Show" is used for Kronos
    Explanation: The employee did not follow the proper notification procedure and they did not give a reason why they need to leave early. The fact that they worked more than half their shift does not matter because they did not follow proper procedure.
    NOTE: In order for management to determine whether they are going to excuse an absence or not, a reason needs to be given. Each reason will be considered on a case by case basis.

16. Employee does not call in one hour prior to the start of shift
    Employee does not give a reason why they need to leave early
    Employee works less than half their shift
    Employee receives 1 point plus a No Call No Show and the code "No Call No Show" is used for Kronos
    Explanation: The employee did not follow the proper notification procedure and they did not give a reason why they need to leave early. The fact that they worked less than half their shift does not matter because they did not follow proper procedure.
    NOTE: In order for management to determine whether they are going to excuse an absence or not, a reason needs to be given. Each reason will be considered on a case by case basis.

17. Employee lets their supervisor know that they need to leave early the next day
    Employee calls in one hour prior to the start of their shift
    Employee works more than half their shift
    Employee does not receive any points and the code "Greater than half shift" is used for Kronos
    Explanation: The employee made arrangements in advance with their supervisor to leave early and followed the proper call in procedure. Because they worked more than half their shift, they do not receive a point.

18. Employee lets their supervisor know that they need to leave early the next day
    Employee calls in one hour prior to the start of their shift
    Employee works less than half their shift
    Employee receives 1 point and the code "Less than half shift" is used for Kronos
    Explanation: Even though the employee made arrangements in advance with their supervisor to leave early and they followed the proper call in procedure, because they worked less than half their shift, they receive a point.

19. Employee gets a call and they need to leave because of a family emergency
    Employee works more than half their shift
    Employee does not receive any points and the code "Greater than half shift" is used for Kronos
    Explanation: Since this is an unplanned and unforeseen occurrence, the employee could not notify us in advance that they need to leave early. Management is using their discretion to excuse this absence.

20. Employee gets a call and they need to leave because of family emergency
    Employee works less than half their shift
    Employee does not receive any points and the code "Less than half shift" along with the comment "emergency" and a note explaining the emergency circumstances are used in Kronos
    Explanation: Since this is an unplanned and unforeseen occurrence, the employee could not notify us in advance that they need to leave early. Management is using their discretion to excuse this absence.

21. Employee wants to leave early because they have had enough of the day (or they want to watch a game or get a head start on the holiday weekend)
    Employee works more than half their shift
    Employee receives 1 point plus a No Call No Show and the code "No Call No Show" is used for Kronos
    Explanation: The employee did not follow the proper notification procedure and their reason for leaving is unacceptable. The fact that they worked more than half their shift does not matter.

22. Employee wants to leave early because they have had enough of the day (or they want to watch a game or get a head start on the holiday weekend)
    Employee works less than half their shift
    Employee receives 1 point plus a No Call No Show and the code "No Call No Show" is used for Kronos
    Explanation: The employee did not follow the proper notification procedure and their reason for leaving is unacceptable. The fact that they worked less than half their shift does not matter.

23. Employee is sick and wants to go home
    Employee has PST available and asks to use it
    Employee works more than half their shift
    Employee does not receive any points and the code "Paid Sick Time" is used for Kronos
    Explanation: Since this is an unplanned and unforeseen occurrence, the employee could not notify us in advance that they want to use PST. It is treated the same as it would for an employee who experiences a flare up of an intermittent FMLA-certified condition. Both FMLA and PST leave is protected as long as the employee has FMLA/PST leave available. The fact that they worked more than half their shift does not matter.

24. Employee is sick and wants to go home
    Employee has PST available and asks to use it
    Employee works less than half their shift
    Employee does not receive any points and the code "Paid Sick Time" is used for Kronos
    Explanation: Since this is an unplanned and unforeseen occurrence, the employee could not notify us in advance that they want to use PST. It is treated the same as it would for an employee who experiences a flare up of an intermittent FMLA-certified condition. Both FMLA and PST leave is protected as long as the employee has FMLA/PST leave available. The fact that they worked less than half their shift does not matter.

25. Employee is sick and wants to go home
    Employee does not have PST available
    Employee works more than half their shift
    Employee does not receive a point and the code "Greater than half shift" is used for Kronos
    Explanation: Since this is an unplanned and unforeseen occurrence, the employee could not notify us in advance that they need to leave early. Since the employee does not have any PST available, management is using their discretion to excuse this absence. They do not receive a point because they worked more than half their shift.

26. Employee is sick and wants to go home
    Employee does not have PST available
    Employee works less than half their shift
    Employee receives 1 point and the code "Less than half shift" is used for Kronos
    Explanation: Since this is an unplanned and unforeseen occurrence, the employee could not notify us in advance that they need to leave early. Since the employee does not have any PST available, management is using their discretion to excuse this absence. They receive a point because they worked less than half their shift.

27. Employee is sick and wants to go home
    Employee has PST available but does not want to use it
    Employee works more than half their shift
    Employee does not receive a point and the code "Greater than half shift" is used for Kronos
    Explanation: Since this is an unplanned and unforeseen occurrence, the employee could not notify us in advance that they need to leave early. Company policy does not force employees to use PST. Management is using their discretion to excuse this absence. They do not receive a point because they worked more than half their shift.

28. Employee is sick and wants to go home
    Employee has PST available but does not want to use it
    Employee works less than half their shift
    Employee receives 1 point and the code "Less than half shift" is used for Kronos
    Explanation: Since this is an unplanned and unforeseen occurrence, the employee could not notify us in advance that they need to leave early. Company policy does not force employees to use PST. Management is using their discretion to excuse this absence. They receive a point because they worked less than half their shift.

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

(b) (6), (b) (7)(C)
ASARCO LLC
Silver Bell Mine
25000 W Avra Valley Rd.,
Marana, AZ 85653

9590 9402 4257 8121 6616 14

2. Article Number *(Transfer from service label)*

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☒ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery

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If YES, enter delivery address below: ☐ No

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National Labor Relations Board
Region 28
2600 N. Central Ave - STE ~~1800~~ 1400
Phoenix, AZ 85004-3009

Sub AT
CA-239074

(b) (6), (b) (7)(C)

SETTLEMENT AGREEMENT

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, Local 937 ("Union") and ASARCO LLC ("Company") (collectively "Parties") have agreed to settle the unfair labor practice charge filed by the Union (No. 28-CA-239074) ("NLRB Charge").

The premise of the NLRB Charge filed by the Union was the Company's alleged failure to provide an attendance policy supervisor training manual to the Union upon request at the Company's Silver Bell Mine. On August 16, 2019, the Company complied with the Union's request and provided the Union with a copy of the attendance policy supervisor training manual. As a condition of settlement of the NLRB Charge, on October 28, 2019, the Company provided the Union with the remainder of the information included in the training manual binder that contained the previously provided attendance policy supervisor training manual.

As the basis for the NLRB Charge has been resolved, the Parties hereby agree to settle the matter as follows:

1. The Company has informed Region 28 of the NLRB that it has complied with the Union's request for a copy of the attendance policy supervisor training manual, and that the manual has already been provided to the Union;

2. The Union shall file request with Region 28 to withdraw the NLRB Charge and dismiss the complaint issued by Region 28 with prejudice, as the underlying matter has been resolved;

3. Neither this Agreement nor the furnishing of the attendance policy supervisor training manual or other information including in the training manual binder shall be deemed as an admission by the Company of any wrongful conduct or any liability for unlawful conduct; and

4. The Company's provision of the attendance policy supervisor training manual and other information including in the training manual binder to the Union shall not be deemed precedential in any future request, charge or grievance.

(b) (6), (b) (7)(C)

For the Union

Dated: 27 Oct 2019

(b) (6), (b) (7)(C)

For the Company

Dated: 10/28/2019

From: Richard Russo <rarusso@dcamplaw.com>
Sent: Monday, October 28, 2019 6:14 PM
To: Dunn, Lisa J <Lisa.Dunn@nlrb.gov>; 'Gerald Barrett' <gbarrett@wardkeenanbarrett.com>
Subject: Asarco, LLC., 28-CA-239074

Lisa & Jerry:

Attached is a fully executed copy of the non-Board settlement agreement in the above-referenced matter. Please let me know if you have any questions or need anything else.

Very truly yours,

Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690

IMPORTANT NOTICE: THIS EMAIL (INCLUDING ANY ATTACHMENTS) IS INTENDED ONLY FOR THE USE OF THE NAMED RECIPIENT(S), AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED OR EXEMPT

FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT A NAMED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS TRANSMISSION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS EMAIL IN ERROR, PLEASE ERASE ALL FILES AND DESTROY ALL COPIES OF THIS TRANSMISSION AND NOTIFY RICHARD A. RUSSO AT THIS TELEPHONE NUMBER IMMEDIATELY: (309) 673-1681. THANK YOU.

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(b) (6), (b) (7)(C)

For the Union

Dated: 27 Oct 2019

(b) (6), (b) (7)(C)

For the Company

Dated: 10/28/2019

From:	Gerald Barrett
To:	Dunn, Lisa J; Richard Russo
Subject:	RE: Asarco, LLC., 28-CA-239074
Date:	Monday, October 28, 2019 6:24:39 PM

Union request the charge be withdrawn.

From: Dunn, Lisa J <Lisa.Dunn@nlrb.gov>
Sent: Monday, October 28, 2019 3:18 PM
To: Richard Russo <rarusso@dcamplaw.com>; Gerald Barrett <gbarrett@wardkeenanbarrett.com>
Subject: RE: Asarco, LLC., 28-CA-239074

Thanks Rick.

Jerry:

In light of Respondent's execution of the parties' Non-Board Settlement Agreement, please confirm that the Charging Party wishes to request withdrawal of this charge. An email response is fine.

Thanks,
Lisa

Lisa J. Dunn, Attorney
NLRB Region 28, Phoenix
2600 N Central Ave., Suite 1400
Phoenix, AZ 85004
(602) 416-4763 direct
(202) 702-9099 cell
(602) 640-2160 office
(602) 640-2178 fax
lisa.dunn@nlrb.gov

The NLRB has converted to an electronic file system.
Please file documents electronically through our online E-File system:
E-File Case Documents: https://apps.nlrb.gov/eservice/efileterm.aspx
E-File New Charge or Petition: https://apps.nlrb.gov/eservice/efileterm.aspx?app=chargeandpetition
Written instructions for using the Agency's E-Filing System and the Agency's Electronic Filing Terms and Conditions policy are have been posted on the Agency's see website. See https://apps.nlrb.gov/myAccount/assets/E-Filing-System-User-Guide.pdf
In addition, the Agency's website contains a video demonstration that provides step-by-step instructions.
See https://apps.nlrb.gov/myAccount/assets/My%20Account%20Portal%20Overview/story_html5.html
Answers to Frequently Asked Questions. See https://apps.nlrb.gov/myAccount/#/FileCaseDocument/FAQ

From: Richard Russo <rarusso@dcamplaw.com>
Sent: Monday, October 28, 2019 3:14 PM
To: Dunn, Lisa J <Lisa.Dunn@nlrb.gov>; 'Gerald Barrett' <gbarrett@wardkeenanbarrett.com>
Subject: Asarco, LLC., 28-CA-239074

Lisa & Jerry:

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Very truly yours,

Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690

IMPORTANT NOTICE: THIS EMAIL (INCLUDING ANY ATTACHMENTS) IS INTENDED ONLY FOR THE USE OF THE NAMED RECIPIENT(S), AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED OR EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT A NAMED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS TRANSMISSION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS EMAIL IN ERROR, PLEASE ERASE ALL FILES AND DESTROY ALL COPIES OF THIS TRANSMISSION AND NOTIFY RICHARD A. RUSSO AT THIS TELEPHONE NUMBER IMMEDIATELY: (309) 673-1681. THANK YOU.

USPS TRACKING #

9590 9402 4257 8121 6617 13

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

National Labor Relations Board
Region 28
2600 N. Central Ave - STE ~~1820~~ 1400
Phoenix, AZ 85004-3099

Sub AT
CA-239074
(b) (6), (b) (7)(C)

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

(b) (6), (b) (7)(C)
Asarco LLC
5285 E. Williams Circle, Suite 2000
Tucson, AZ 85711

9590 9402 4257 8121 6617 13

2. Article Number *(Transfer from service label)* 7018 0680 0000 3124 4235

COMPLETE THIS SECTION ON DELIVERY

A. Signature (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)
X

☐ Agent
☐ Addressee

B. Received by *(Printed Name)* (b) (6), (b) (7)(C)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

NLRB - REG 28
PHOENIX
OCT 29 2019
RECEIVED

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

USPS TRACKING #

9590 9402 4257 8121 6617 20

First-Class Mail
Postage & Fees Paid
USPS
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United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

National Labor Relations Board
Region 28
2600 N. Central Ave - STE 1400
Phoenix, AZ 85004-3099

Sub DT
GA-239074

(b) (6), (b) (7)(C)

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Asarco, LLC
ATTN: Custodian of Records
5285 E. Williams Circle, Ste 2000
Tucson, AZ 85711

9590 9402 4257 8121 6617 20

2. Article Number *(Transfer from service label)*
7018 0680 0000 3124 4259

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X (b) (6), (b) (7)(C)
☐ Agent
☐ Addressee

B. Received by (Printed Name)
(b) (6), (b) (7)(C)
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

NLRB - REG 28
PHOENIX
OCT 29 2019
RECEIVED

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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

ASARCO LLC

and **Case 28-CA-239074**

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937, AFL-CIO, CLC

ORDER APPROVING WITHDRAWAL OF CHARGE, DISMISSING COMPLAINT AND VACATING NOTICE OF HEARING

On September 20, 2019, a Complaint and Notice of Hearing (Complaint) issued in the above-captioned case, setting the matter for hearing on November 19, 2019. On October 28, 2019, the Charging Party requested to withdraw the charge on the grounds that the parties have entered into a non-Board settlement. Accordingly,

IT IS ORDERED that the Withdrawal Request filed by the Charging Party on October 28, 2019, be, and the same hereby is, approved.

IT IS FURTHER ORDERED that the Complaint previously issued in this matter be, and the same hereby is, dismissed and the notice of hearing vacated.

Dated at Phoenix, Arizona, this 1st day of November 2019.

/s/ Cornele A. Overstreet
Cornele A. Overstreet, Regional Director

From:	Moore, Dawn M.
To:	Agatha Pak
Cc:	Rourke-Osborne, Kathleen M.
Subject:	PHOENIX TRIAL DATE CANCELLATION NOTICE / ASARCO, LLC - Case 28-CA-239074
Date:	Friday, November 1, 2019 1:02:00 PM
Attachments:	Free State PHX Trial Date Cancellation Notice.doc image001.png

---

Please see the attached notice and remove this trial date from the reporting calendar.
Thanks,

Dawn M. Moore

Administrative Assistant
Region 28 – Las Vegas Resident Office
National Labor Relations Board
Foley Federal Building
300 Las Vegas Boulevard South, Suite 2-901
Las Vegas, NV 89101-5833
Tel: (702) 820-7466
Fax: (702) 388-6248

nlrb-masthead-logo

HEARING NOTICE
REGION 28

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004-3099
Telephone: (602) 640-2152
Facsimile: (602) 640-2178
Website: www.nlrb.gov

RESIDENT OFFICES

421 Gold Avenue, SW – Suite 310
P.O. Box 567
Albuquerque, NM 87103-0567
Telephone: (505) 248-5125
Facsimile: (505) 248-5134

600 Las Vegas Boulevard South – Suite 400
Las Vegas, NV 89101-6637
Telephone: (702) 388-6417
Facsimile: (702) 388-6248

To:

☒ Free State Reporting Inc.
1378 Cape St Claire Road
Annapolis, MD 21409
(410) 974-0947 x[redacted] (Office)
410-974-0297 (Fax)
[redacted] cell (Evenings and Weekends)
agatha@freestatereporting.com
POC Agatha Pak

☐ Schreiber Translations
51 Monroe Street, Suite 101
Rockville, MD 20850-2420
301-424-7737 (phone)
301-424-2336 (fax)
Email:
translation@schreibernet.com
Website: www.schreibernet.com

Date: **November 1, 2019**

From: **Dawn M. Moore, Administrative Assistant / Tel: (702) 820-7466**

Subject: **ASARCO, LLC / Case 28-CA-239074**

Date of Hearing: ~~**TUESDAY, NOVEMBER 19, 2019**~~ Time: ~~**9:00 A.M.**~~

Address of Hearing: **NATIONAL LABOR RELATIONS BOARD - REGION 28**
2600 NORTH CENTRAL AVENUE, SUITE 1400
PHOENIX, AZ 85004-3099

Scheduled number of days for hearing: **1-2 DAYS**

☒ Hearing has been canceled on **FRIDAY, NOVEMBER 1, 2019 @ 10 A.M.**

☐ Hearing has been rescheduled to _____

☒ **Above hearing has changed as follows:**

- ☐ Time of hearing will be _____ rather than _____
- ☒ Case has been withdrawn. No hearing will be held.
- ☐ Hearing scheduled has been postponed indefinitely.

Note: This is to confirm the

☐ Conversation between Free State Reporting and Dawn M. Moore on _____

☐ Voice message left for Free State Reporting _____

☒ E-mail to agatha@freestatereporting.com and OM on **FRIDAY, NOVEMBER 1, 2019 @ 10:00 A.M.**

From: Moore, Dawn M.
Sent: Friday, November 1, 2019 12:56 PM
To: gbarrett@wardkeenanbarrett.com; rbrean@usw.org; rarusso@dcamplaw.com; pburmeister@dcamplaw.com
Subject: ASARCO, LLC / Case 28-CA-239074

Please see the attached Order Approving Withdrawal of Charge, Dismissing Complaint and Vacating Notice of Hearing in the above subject matter.
Thank you.

Dawn M. Moore
Administrative Assistant
Region 28 – Las Vegas Resident Office
National Labor Relations Board
Foley Federal Building
300 Las Vegas Boulevard South, Suite 2-901

Las Vegas, NV 89101-5833
Tel: (702) 820-7466
Fax: (702) 388-6248

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

ASARCO LLC

and **Case 28-CA-239074**

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937, AFL-CIO, CLC

ORDER APPROVING WITHDRAWAL OF CHARGE, DISMISSING COMPLAINT AND VACATING NOTICE OF HEARING

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IT IS ORDERED that the Withdrawal Request filed by the Charging Party on October 28, 2019, be, and the same hereby is, approved.

IT IS FURTHER ORDERED that the Complaint previously issued in this matter be, and the same hereby is, dismissed and the notice of hearing vacated.

Dated at Phoenix, Arizona, this 1st day of November 2019.

/s/ Cornele A. Overstreet
Cornele A. Overstreet, Regional Director

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

ASARCO LLC

and **Case 28-CA-239074**

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937, AFL-CIO, CLC

AFFIDAVIT OF SERVICE OF ORDER APPROVING WITHDRAWAL OF CHARGE, DISMISSING COMPLAINT AND VACATING NOTICE OF HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **November 1, 2019,** I served the above-entitled document(s) by **Email** upon the following persons, addressed to them at the following addresses:

Richard A. Russo, ESQ.
Paul H. Burmeister, ESQ.
Davis & Campbell, LLC
401 Main Street, Suite 1600
Peoria, IL 61602-1241
Email: rarusso@dcamplaw.com
pburmeister@dcamplaw.com

Gerald Barrett, ESQ.
Ward, Keenan & Barrett, PC
2141 East Camelback Road, #100
Phoenix, AZ 85016
Email: gbarrett@wardkeenanbarrett.com

Richard Brean, General Counsel
United Steel Workers, AFL-CIO, Local 4-406
Five Gateway Center, Suite 807
60 Boulevard of the Allies
Pittsburgh, PA 15222-1214
Email: rbrean@usw.org

November 1, 2019
Date

Dawn M. Moore,
Designated Agent of NLRB
Name

/s/ Dawn M. Moore
Signature

FORM NLRB-501
(2-18)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 28-CA-255862	Date Filed 2/5/2020

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer ASARCO LLC		b. Tel. No. (520) 879-7818
		c. Cell No.
		f. Fax. No.
d. Address *(Street, city, state, and ZIP code)* 5285 E. Williams Circle, Suite 2000 Tucson, AZ 85711	e. Employer Representative Stacy Sinele	g. e-mail ssinele@asarc.com
		h. Number of workers employed 2,000+
i. Type of Establishment *(factory, mine, wholesaler, etc.)* Mine and smelter	j. Identify principal product or service copper	

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) and (5) of the National Labor Relations Act, and thest unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

See Attachment "A"

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

4a. Address *(Street and number, city, state, and ZIP code)* 9000 Machinists Place Upper Marlboro, MD 20772	4b. Tel. No. (301) 967-4510
	4c. Cell No.
	4d. Fax No.
	4e. e-mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. W H Haller *(signature of representative or person making charge)* William H. Haller, Assoc. Gen'l Counsel *(Print/type name and title or office, if any)* Address 9000 Machinists Place, Upper Marlboro, MD 20772 Date February 4, 2020	Tel. No. (301) 967-4510 Office, if any, Cell No. Fax No. e-mail whaller@iamaw.org

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

ATTACHMENT A

Within the 10(b) period, the Employer, acting through its managers, supervisors, agents and representatives, has violated the Act in the following manner:

1. The Employer failed to bargain in good faith over mandatory subject of bargaining;

2. The Employer engaged in dilatory bargaining tactics;

3. The Employer's bargaining table agents and representatives lack sufficient authority to bargain over mandatory subjects of bargaining;

4. The Employer failed to timely provide relevant and necessary bargaining information;

5. The Employer unilaterally implemented its "last, best and final offer" when there was no bargaining impasse;

6. The Employer's unilaterally implemented "Copper Price Bonus" proposal discriminates against employees to discourage membership in and support for the Unions;

7. The Employer threatened to hire permanent replacement workers;

8. The Employer hired permanent replacements to replace bargaining unit employees engaged in an unfair labor practice strike;

9. The Employer solicited employees to resign their full membership from the Unions;

10. The Employer removed union literature from employee break areas; and,

11. The Employer engaged in surveillance and/or has given the appearance of surveillance of employees engaged in peaceful Section 7 activities.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004

Agency Website:
www.nlrb.gov
Telephone: (602)640-2160
Fax: (602)640-2178

Download
NLRB
Mobile
App

February 6, 2020

International Association of Machinists
and Aerospace Workers, AFL-CIO
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Re: Asarco LLC
Case 28-CA-255862

Ladies and Gentlemen:

The charge that you filed in this case on February 05, 2020 has been docketed as case number 28-CA-255862. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney Kyler A. Scheid whose telephone number is (602)416-4769. If this Board agent is not available, you may contact Supervisory Field Attorney Rachel A. Harvey whose telephone number is (602)416-4748.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other

witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlrb.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

If the Agency does not issue a formal complaint in this matter, parties will be notified of the Regional Director's decision by email. Please ensure that the agent handling your case has your current email address.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Cornele A. Overstreet
Regional Director

CAO/KAS/ia

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004

Agency Website:
www.nlrb.gov
Telephone: (602)640-2160
Fax: (602)640-2178

Download
NLRB
Mobile
App

February 6, 2020

Asarco LLC
5285 East Williams Circle
Suite 2000
Tucson, AZ 85711

Re: Asarco LLC
Case 28-CA-255862

Ladies and Gentlemen:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

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If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge

as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

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We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Cornele A. Overstreet
Regional Director

Enclosures:
1. Copy of Charge
2. Commerce Questionnaire

CAO/KAS/ia

FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

ASARCO LLC

and

International Association of Machinists and Aerospace Workers, AFL-CIO

CASE 28-CA-255862

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF ASARCO LLC

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Richard A. Russo

MAILING ADDRESS: Davis & Campbell LLC, 401 Main Street, Suite 1600, Peoria, Illinois 61602

E-MAIL ADDRESS: rarusso@dcamplaw.com

OFFICE TELEPHONE NUMBER: (309) 673-1681

CELL PHONE NUMBER: _____ *FAX:* (309) 673-1690

SIGNATURE: Richard A. Russo
(Please sign in ink.)

DATE: 2/10/20

[1] IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

FORM NLRB-502 (RM)
(4-15)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RM PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 28-RM-255301	Date Filed January 27, 2020

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB Office in the Region in which the employer concerned is located. The petition must be accompanied by a certificate of service showing service on all parties named in the petition of the following: (1) the petition; (2) Statement of Position form; and (3) Description of Procedures in Certification and Decertification Cases (Form NLRB 4812). The petition must also be accompanied by evidence supporting the statement that a labor organization has made a demand for recognition on the employer or that the employer has good faith uncertainty about majority support for an existing representative. However, if the evidence reveals the names and/or number of employees who no longer wish to be represented, the evidence shall not be served on any party.

1. **PURPOSE OF THIS PETITION: RM-CERTIFICATION OF REPRESENTATIVE –** One or more individuals or labor organizations have presented a claim to the Employer/Petitioner to be recognized as the representative of employees of the Employer/Petitioner or the Employer/Petitioner has a good faith uncertainty about majority support for an existing representative. If a charge under Section 8(b)(7) of the Act has been filed involving the Employer/Petitioner named in this petition, this statement shall not be deemed made. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer/Petitioner ASARCO LLC and Silver Bell Mining LLC	2b. Address(es) of Establishment(s) involved *(Street and number, city, State, ZIP code)* 25000 W. Avra Valley Road AZ Marana 85653-
3a. Employer/Petitioner Representative – Name and Ti le Stacy Sinele Director of Human Resources	3b. Address (If same as 2b – state same) 5285 E. Williams Circle, Suite 2000 AZ Tucson 85711-

3c. Tel. No.	3d. Cell No.	3e. Fax No.	3f. E-Mail Address
(520) 879-7818			ssinele@asarco.com

4a. Type of Establishment *(Factory, mine, wholesaler, etc)* Metal Mining	4b. Principal product or service Copper

5a. Description of Unit Involved **Included:** See Attached Page 2 for additional details **Excluded:** See Attached Page 2 for additional details	*5b. City and State where unit is located:* Marana, AZ 6. No. of Employees in Unit: 144

*Unless a charge alleging a violation of Section 8(b)(7) is pending, check **EITHER** item 7a or 7b, whichever is applicable*

7a. ☐ A labor organization made a demand for recognition on the Employer/Petitioner on (Date) _____.

7b. ☑ The Employer/Peti ioner has a good faith uncertainty about majority support for an existing representative.

8a. **Recognized or Certified Bargaining Agent** - Name Alexander Terrazas United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937	8b. Affiliation, if any United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Internationa

8c. Address	8d. Tel. No.	8e. Cell No.
877 S Alvernon Way AZ Tucson 85711-____	(520) 243-9102	
	8f. Fax No.	8g. E-Mail Address usw937terrazas@gmail.com

9. Date of Recognition or Certification 05/21/1998	10. Expiration Date of Current or Most Recent Contract, if any *(Month, Day, Year)* 10/13/2019

11. Is there now a strike or picke ing at the Employer's establishment(s) involved? Yes If so, approximately how many employees are participating? 11

(Name of labor organization) United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local has picketed the Employer since *(Month, Day, Year)* 10/13/2019.

12. Organizations or individuals other than those named in item 8, which have a contract with the Employer/Petitioner or represent employees of the Employer/Pe itioner or demanded recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. *(If none, so state)*

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC

12a. Name and affiliation if any	12b. Address	12c. Tel. No.	12d. Cell No.
Gaylan Z Prescott District Director	Five Gateway Center PA Pittsburgh 15222-____	12e. Fax No.	12f. E-Mail Address gprescott@usw.org

13. **Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.		13a. Election Type: ☑ Manual ☐ Mail ☐ Mixed Manual/Mail
13b. Election Date(s): proposed:2/18 and 2/19/2020	13c. Election Time(s): proposed: 4:30 - 7:30 am & 5:30 - 7:00 pm	13d. Election Location(s): 25000 W. Avra Valley Road, Marana, AZ 85653

14. Representative of the Employer/Petitioner who will accept service of all papers for purposes of the representation proceeding.

14a. Name and Title Richard A Russo Attorney Davis & Campbell LLC	14b. Address *(street and number, city, state, and ZIP code)* 401 Main Street, Suite 1600 IL Peoria 61602-

14c. Tel No.	14d. Cell No.	14e. Fax No.	14f. E-Mail Address
(309) 673-1681		(309) 673-1690	rarusso@dcamplaw.com

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name *(Print)*	Signature	Title	Date
Stacy Sinele	Stacy Sinele	Director of Human Resources	01/27/2020 14:40:13

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

Attachment

Employees Included

All production and maintenance employees of the Employer at the Silver Bell Mine

Employees Excluded

All office clerical, technical, & professional employees, watchmen and supervisors

ASARCO LLC/Silver Bell Mining LLC

Evidence Supporting a Statement of Good Faith Uncertainty About Majority Support for An Existing Representative

Inquiry #1-2660110021

ASARCO LLC – Silver Bell LLC Has A Good-Faith Reasonable Uncertainty As To USW Local 937's Majority Status At The Silver Bell Mine

"The Board and the courts have consistently said that Board elections are the preferred method of testing employees' support for unions." *Levitz Furniture Co.*, 333 NLRB 717, 727 (2001). Under *Levitz Furniture*, the Board allows for employers to file a RM petition and obtain a Board election by demonstrating good-faith reasonable uncertainty as to a Union's continued majority status.

The determination of whether good-faith reasonable uncertainty exists should be based on objective evidence that reliably indicates employee opposition to incumbent unions. "The specific types of evidence that are probative of such uncertainty, and the weight to be afforded each type under the circumstances will be decided on a case-by-base basis." *Levitz Furniture*, at 729.

Based on the evidence set forth below and in the attached affidavits, ASARCO-Silver Bell ("Company") has a good-faith reasonable uncertainty as to majority status of USW Local 937 ("Union") as the representative of the Company's employees at the Silver Bell Mine:

- A number of employees have made statements to the Company regarding their dissatisfaction with the Union, including but not limited to, statements regarding getting rid of the Union, the Union being useless, the workplace being better without a Union, and it being a mistake to join the Union as their loyalty is to the Company.

- The Union commenced a strike against the Company on October 13, 2019. Of the 144 employees currently employed by the Company at the Silver Bell Mine, 128 employees never went on strike in the first place and another 3 employees abandoned the strike and returned to work. Only 11 employees are currently on strike. 2 employees were on a leave of absence at the time of the strike, and to date, remain inactive employees on leave.

- Of the 144 employees currently employed by the Company at the Silver Bell Mine, on information and belief, only 14 are still members of the Union. On information and belief, 66 employees never joined the Union in the first place. Additionally, since the strike commenced on October 13, 2019, at least 29 have resigned their membership with the Union, and prior to that another 33 had already resigned from the Union (total of at least 62 who resigned; 2 other employees revoked their authorization for dues deduction, but it is unknown if they resigned from the Union). In resigning from the Union, each of these employees is indicating that they no longer want the Union to represent them because the revoked Union membership form specifies that the employee is authorizing the Union to act for the employee as a collective bargaining agent in all matters pertaining to employment at the Silver Bell Mine.

As a result of 131 out of 142 (92%) active employees choosing not to strike, at least 128 out of 142 (90%) employees choosing not to be members of the Union, and a number of employees making anti-Union statements and/or expressing a desire not to have a Union, the Company has demonstrated that it has a good-faith reasonable uncertainty as to the Union's continued majority status at the Silver Bell Mine.

Therefore, in accordance with *Levitz Furniture*, the Silver Bell Mine employees should be afforded the opportunity, through a Board election, to exercise their free choice as to whether or not they want to continue to be represented by USW Local 937.

AFFIDAVIT OF (b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D), having first been duly sworn, states upon oath as follows:

1. I am employed by ASARCO LLC ("ASARCO") as (b) (6), (b) (7)(C), (b) (7)(D) at ASARCO's office in Tucson, Arizona.

2. ASARCO is a Delaware limited liability company and is a fully integrated miner, smelter, and refiner of copper and other metals. ASARCO currently operates three mines and one processing facility in Arizona and one processing facility in Texas.

3. One of the three mines, located in Marana, Arizona ("Silver Bell Mine"), is owned and operated by Silver Bell Mining LLC ("Silver Bell Mining"). Silver Bell Mining is fully-owned by AR Silver Bell Inc. AR Silver Bell Inc. is a wholly owned subsidiary of ASARCO.

4. Silver Bell Mining has an arrangement with ASARCO for the procurement of administrative services provided by ASARCO, including assisting with (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) function at the Silver Bell Mine.

5. The employees at the Silver Bell Mine are represented by the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937 ("Union").

6. As (b) (6), (b) (7)(C), (b) (7)(D) at ASARCO, I (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) at ASARCO, including providing (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) services to Silver Bell Mining.

7. In providing (b) (6), (b) (7)(C), (b) (7)(D) to Silver Bell Mining, I have access to (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine, including (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D)

8. On October 13, 2019, the Union commenced a strike at the Silver Bell Mine.

9. I am aware of the job status of Silver Bell Mine employees, including which employees are on strike and which employees are working, as well as which employees have notified management at the Silver Bell Mine regarding Union membership.

10. Based on (b) (6), (b) (7)(C), (b) (7)(D) and (b) (6), (b) (7)(C), (b) (7)(D) at Silver Bell Mine, I prepared the attached spreadsheet containing the names, job classifications, department, strike status and union membership status of current employees at Silver Bell Mine. *See attached Exhibit 1.*

11. At the time of the strike on October 13, 2019, there were 147 employees in the bargaining unit at the Silver Bell Mine. There are currently 144 bargaining unit employees at the Silver Bell Mine.

12. Of the current employees, 131 employees crossed the picket line and continued to work at the Silver Bell Mine. Of those employees 128 of them never went on strike in the first place, and 3 abandoned the strike and returned to work. At present, there are only 11 employees striking at the Silver Bell Mine. Also, two employees were on a leave of absence at the time of the strike, and to date, remain inactive employees on leave.

13. Of the 144 bargaining unit employees currently employed at the Silver Bell Mine, on information and belief, only 14 of those employees are members of the Union.

14. Also on information and belief, of the 144 current bargaining unit employees, 66 of those employees never joined the Union in the first place, and at least 62 resigned their membership with the Union. This includes 29 employees who resigned since the strike began on October 13, 2019. Two other employees revoked their dues deduction authorizations but it is unknown if they resigned their Union membership.

I have read the foregoing fourteen (14) typewritten paragraphs and the statements contained therein are true and correct to the best of my knowledge and belief.

(b) (6), (b) (7)(C), (b) (7)(D)

[redacted]

(b) (6), (b) (7)(C), (b) (7)(D)

Subscribed and sworn to before me this 27th day of January, 2020.

Jacqueline Haas

Notary Public

JACQUELINE HAAS
Notary Public - State of Arizona
PIMA COUNTY
Commission # 562702
Expires May 27 2023

EXHIBIT 1

Email	Last Name	First Name	Job Code Description	Department	Strike Status	Union Membership Status	Date Resigned from Union
(b) (6), (b) (7)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	6/24/2015
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/16/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/14/2019
					On Strike	Member	Not Applicable
					Leave of Absence	Member	Not Applicable
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	6/20/2019
					Did Not Strike	Resigned	6/23/2015
					Did Not Strike	Never Joined	Never Joined
					On Strike	Member	Not Applicable
					Did Not Strike	Resigned	2/2/2015
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/16/2019
					Did Not Strike	Resigned	10/15/2019
					Did Not Strike	Resigned	8/3/2017
					On Strike	Member	Not Applicable
					On Strike	Member	Not Applicable
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Resigned	11/28/2018
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/15/2019
					Did Not Strike	Resigned	10/15/2014
					Did Not Strike	Resigned	12/7/2018
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Resigned	3/16/2015
					Did Not Strike	Resigned	6/30/2015
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/17/2019
					On Strike	Member	Not Applicable
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/16/2019
					Did Not Strike	Resigned	6/5/2018
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Unknown	10/15/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					On Strike	Member	Not Applicable
					Return to Work	Member	Not Applicable
					Did Not Strike	Resigned	6/2/2015
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	5/2/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Resigned	9/7/2010
					Did Not Strike	Resigned	6/24/2019
					Did Not Strike	Resigned	4/10/2018
					Did Not Strike	Resigned	7/10/2013
					Did Not Strike	Never Joined	Never Joined

(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)			
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	7/7/2015
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Resigned	5/19/2010
					Did Not Strike	Resigned	6/23/2015
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/16/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	12/7/2017
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Resigned	10/15/2019
					Did Not Strike	Resigned	10/8/2019
					Did Not Strike	Resigned	8/1/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	8/1/2017
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Unknown	10/16/2018
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	1/15/2019
					On Strike	Member	Not Applicable
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	9/5/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Resigned	7/15/2013
					Did Not Strike	Resigned	10/16/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/16/2019
					Did Not Strike	Resigned	8/15/2014
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	12/5/2016
					Did Not Strike	Resigned	7/1/2015
					On Strike	Member	Not Applicable
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Resigned	8/1/2002
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/15/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/17/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					On Strike	Member	Not Applicable
					Did Not Strike	Resigned	10/14/2019
					Return to Work	Resigned	10/28/2019
					Return to Work	Member	Not Applicable
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Resigned	10/10/2018
					On Strike	Member	Not Applicable
					Did Not Strike	Never Joined	Never Joined
					Leave of Absence	Member	Not Applicable
					Did Not Strike	Resigned	7/13/2013
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					On Strike	Resigned	10/14/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	11/28/2018
					Did Not Strike	Resigned	10/15/2019

AFFIDAVIT OF (b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D) having first been duly sworn, states upon oath as follows:

1. I am employed by ASARCO LLC ("ASARCO") as (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine in Marana, Arizona.

2. As (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine, I (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) function at the Silver Bell Mine.

3. The employees at the Silver Bell Mine are represented by the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937 ("Union").

4. As (b) (6), (b) (7)(C), (b) (7)(D) I have access to (b) (6), (b) (7)(C), (b) (7)(D) and (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine, and (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine.

5. I am also responsible for (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) Additionally, when employees resign from the Union and/or no longer wish for Union dues to be deducted from their paychecks, I am (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) and (b) (6), (b) (7)(C), (b) (7)(D)

6. At various times in the past, along with their (b) (6), (b) (7)(C), (b) (7)(D) the Union has provided me (b) (6), (b) (7)(C), (b) (7)(D) for Local 937. The Union membership form states: "I hereby request and accept membership in the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (also known in short as 'United Steelworkers' or 'USW'), and of my own free will hereby authorize the USW, its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wage, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters including contracts which may require continuance of my membership in the United Steelworkers, as a condition of my continued employment."

7. On October 13, 2019, the Union commenced a strike at the Silver Bell Mine.

8. I am aware of the job status of employees, including which employees are on strike and which employees are working, as well as which employees have notified management at the Silver Bell Mine regarding Union membership.

9. At the time of the strike on October 13, 2019, there were 147 employees in the bargaining unit at the Silver Bell Mine. There are currently 144 bargaining unit employees at the Silver Bell Mine.

10. Of the current employees, 131 employees crossed the picket line and continued to work at the Silver Bell Mine. Of those employees 128 of them never went on strike in the first place, and 3 abandoned the strike and returned to work. At present, there are only 11 employees striking at the Silver Bell Mine. Also, 2 employees were on a leave of absence at the time of the strike, and to date, remain inactive employees on leave.

11. Of the 144 bargaining unit employees currently employed at the Silver Bell Mine, on information and belief, only 14 of those employees are members of the Union

12. Also on information and belief, of the 144 current bargaining unit employees, 66 of those employees never joined the Union in the first place, and at least 62 resigned their membership with the Union. This includes 29 employees who resigned since the strike began on October 13, 2019. 2 other employees revoked their dues deduction authorizations but it is unknown if they resigned their Union membership.

13. Besides receiving requests from employees to resign from the Union, in 2019 and 2020, several employees made other comments to me regarding dissatisfaction with the Union.

14. One such employee was (b) (6), (b) (7)(C), (b) (7)(D). Over the course of several different conversations, (b) (6), (b) (7)(C), (b) (7)(D) made statements to me such as the "Union is useless", "Why do we have a Union?" and "Wouldn't it be great if we didn't have a Union".

15. Another employee was (b) (6), (b) (7)(C), (b) (7)(D). Sometime in September or October before the beginning of the strike, (b) (6), (b) (7)(C), (b) (7)(D) said to me something like "Why can't we get rid of the Union?"

16. On October 11, 2019, (b) (6), (b) (7)(C), (b) (7)(D) informed me that the Union "was a big mistake to join, and I feel bad now for joining. My loyalty is to ASARCO."

17. On January 16, 2020, (b) (6), (b) (7)(C), (b) (7)(D) told me "We're doing better without the Union."

(b) (6), (b) (7 has read the foregoing seventeen (17) typewritten paragraphs and the statements contained therein are true and correct to the best of knowledge and belief.

(b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D)

Subscribed and sworn to before me this 24th day of January, 2020.

EMILY SCHMITT
Notary Public, State of Arizona
Pima County
Commission # 568719
My Commission Expires
June 24, 2023

Notary Public

AFFIDAVIT OF (b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D) having first been duly sworn, states upon oath as follows:

1. I am employed by ASARCO LLC ("ASARCO") as (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine in Marana, Arizona.

2. As (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine, I (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine.

3. The employees at the Silver Bell Mine are represented by the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937 ("Union").

4. On October 13, 2019, the Union commenced a strike at the Silver Bell Mine.

5. A few weeks after the strike began, two employees came into my office. One of the employees was (b) (6), (b) (7)(C), (b) (7)(D) and the other was (b) (6), (b) (7)(C), (b) (7)(D). While in my office, (b) (6), (b) (7 (b) (6), (b) (7)(C) said "I wish we could get the Union out of here". In response to (b) (6), (b statement, (b) (6), (b) ((b) (6), (b) (7)(C), (b discussed (b) (6), (b understanding of how the decertification process worked.

6. Prior to the strike, in September 2019, I became aware of an incident between employees related to the Union. I learned that the Union, in August and September 2019, was making an effort to increase union membership. I also know this was coincidental to the Union receiving ASARCO's last, best and final offer during contract negotiations on September 5, 2019.

7. In September 2019, I learned that (b) (6), (b) (7)(C), (b) (7)(D) felt harassed by one of (b) (6), (b (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D), because (b) (6), (b was not supporting the Union. To my knowledge, (b) (6), (b) (7)(C), (b) (7)(D then stated something to (b) (6), (b) (7)(C), (b) (7)(D) akin to, 'you need to get your people in line.'

8. To my knowledge, during the time the Union and (b) (6), (b) (7)(C), (b) (7)(D were attempting to garner additional employee support in September of 2019, no employee of Silver Bell joined the Union. In fact, during that time, it is my understanding that several Silver Bell employees instead decided to quit the Union.

I have read the foregoing eight (8) typewritten paragraphs and the statements contained therein are true and correct to the best of my [redacted] (b) (6), (b) (7)(C), (b) (7)(D) [redacted] ge and belief.

[redacted]

Subscribed and sworn to before me this 23rd day of January, 2020.

EMILY SCHMITT
Notary Public, State of Arizona
Pima County
Commission # 588719
My Commission Expires
June 24, 2023

Emily Schmitt
Notary Public

AFFIDAVIT OF (b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D) having first been duly sworn, states upon oath as follows:

1. I am employed by ASARCO LLC ("ASARCO") in (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine in Marana, Arizona.

2. In (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine, I assist with (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine.

3. The employees at the Silver Bell Mine are represented by the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937 ("Union").

4. On October 13, 2019, the Union commenced a strike at the Silver Bell Mine.

5. After the Union contract expired on October 13, 2019, I was approached by several employees asking me to (b) (6), (b) (7)(C), (b) (7)(D) and advising me that they no longer wish to be a part of the Union.

6. As part of my job, I (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D). I also (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) and where appropriate, that (b) (6), (b) (7)(C), (b) (7)(D) from the Union.

7. Since the strike started, more employees than usual have resigned from the Union.

8. One of those employees, (b) (6), (b) (7)(C), (b) (7)(D) told me (b) (6), (b) was, "upset about being in the union." (b) (6), (b) continued to tell me that (b) (6), (b) wanted the union gone.

9. Another employee I spoke with shortly before the strike was (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) told me, "(b) (6), (b) felt misled by the union and they didn't support (b) (6), (b) or include (b) (6), (b) in important discussions or meetings. (b) (6), (b) (b) said that the union served a purpose at one time but they don't anymore so (b) (6), (b) doesn't want to be a part of it and have them represent (b) (6), (b)."

I have read the foregoing nine (9) typewritten paragraphs and the statements contained therein are true and correct to the best of my knowledge and belief.

(b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D)

Subscribed and sworn to before me this 23rd day of January, 2020.

Deborah McMorrow

Notary Public

DEBORAH MCMORROW
Notary Public, State of Arizona
Pima County
Commission # 568718
My Commission Expires
July 16, 2023

AFFIDAVIT OF (b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D) having first been duly sworn, states upon oath as follows:

1. I am employed by ASARCO LLC ("ASARCO") as (b) (6), (b) (7)(C), (b) (7)(D) of (b) (6), (b) (7)(C), (b) (7) at the Silver Bell Mine in Marana, Arizona.

2. As (b) (6), (b) (7)(C), (b) (7)(D) of (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine, I (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine.

3. The employees at the Silver Bell Mine are represented by the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937 ("Union").

4. On October 13, 2019, the Union commenced a strike at the Silver Bell Mine.

5. While working as (b) (6), (b) (7)(C), (b) (7)(D) I have heard several of my employees express that they did not want to be represented by a union.

6. One of the employees is (b) (6), (b) (7)(C), (b) (7)(D). In 2019, (b) (6), (b) (7) told me that (b) (6), did not like the Union, and in particular, "Did not want people speaking for (b) (6), (b) (7)." (b) (6), (b) dropped out of the Union in 2017 or 2018 and told me that (b) (6), (b) "Did not want to strike."

7. Another employee who has expressed dissatisfaction with the Union in 2019 is (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) is (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C) told me that (b) (6), ("wants to work in a mine without a union."

8. Finally, one of (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) spoke to me recently about the Union. (b) (6), (b) told me (b) (6), (is, "anti-union".

I have read the foregoing eight (8) typewritten paragraphs and the statements contained therein are true and correct to the best of my knowledge and belief.

(b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7

Subscribed and sworn to before me this 23rd day of January, 2020.

Emily Schmitt

Notary Public

EMILY SCHMITT
Notary Public, State of Arizona
Pima County
Commission # 568719
My Commission Expires
June 24, 2023

Form NLRB-5544
(5-2015)

CERTIFICATE OF SERVICE

Employer Name: ASARCO LLC and Silver Bell Mining LLC

Service on the Employer

I hereby certify that on _____ (date), a copy of the petition involving the Employer named above, a Statement of Position (Form NLRB-505), and a Description of Procedures (Form NLRB-4812) were served on the Employer by: (check whichever is applicable)

- ☐ e-mail to the email address shown on the petition.
- ☐ facsimile (with the permission of the Employer) to the facsimile number shown on the petition.
- ☐ overnight mail to the mailing address shown on the petition.
- ☐ hand-delivery to_____(name of Employer's representative) at the following address:_____.

Service on the Other Party Named in the Petition

I hereby certify that on 1/27/20 (date), a copy of the petition involving the Employer named above, a Statement of Position (Form NLRB-505), and a Description of Procedures (Form NLRB-4812) were also served on USW Local 937 (name of party or parties) by: (check whichever is applicable)

- ☑ email to the email address shown on the petition.
- ☐ facsimile (with the permission of the party) to the facsimile number shown on the petition.
- ■ overnight mail to the mailing address shown on the petition.
- ☐ hand-delivery to_____ (name of party's representative) at the following address:_____.

Service on the Other Party Named in the Petition

I hereby certify that on 1/27/20 (date), a copy of the petition involving the Employer named above, a Statement of Position (Form NLRB-505), and a Description of Procedures (Form NLRB-4812) were also served on USW International (name of party or parties) by: (check whichever is applicable)

- ☑ email to the email address shown on the petition.
- ☐ facsimile (with the permission of the party) to the facsimile number shown on the petition.
- ■ overnight mail to the mailing address shown on the petition.
- ☐ hand-delivery to_____ (name of party's representative) at the following address:_____.

Stacy Sinele
Signature

Stacy Sinele, Director of HR
Name and Title

1/27/2020
Date

From:	Moore, Dawn M.
To:	Sara Cochran
Cc:	Rourke-Osborne, Kathleen M.
Subject:	NEW PHOENIX HEARING DATE NOTICE / Asarco LLC and Silver Bell Mining LLC - Case 28-RM-255301
Date:	Tuesday, January 28, 2020 6:29:00 PM
Attachments:	Free State PHX New Hearing Date Notice.doc image003.png

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Please see the attached notice and add this new hearing date to the reporting calendar.
Thanks,

Dawn M. Moore

Administrative Assistant
Region 28 – Las Vegas Resident Office
National Labor Relations Board
Foley Federal Building
300 Las Vegas Boulevard South, Suite 2-901
Las Vegas, NV 89101-5833
Tel: (702) 820-7466
Fax: (702) 388-6248

nlrb-masthead-logo

HEARING NOTICE
REGION 28

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004-3099
Telephone: (602) 640-2152
Facsimile: (602) 640-2178
Website: www.nlrb.gov

RESIDENT OFFICES

421 Gold Avenue, SW – Suite 310
P.O. Box 567
Albuquerque, NM 87103-0567
Telephone: (505) 248-5125
Facsimile: (505) 248-5134

300 Las Vegas Boulevard South – Suite 2-901
Las Vegas, NV 89101
Telephone: (702) 388-6416
Facsimile: (702) 388-6248

To:

☒ Free State Reporting Inc.
1378 Cape St Claire Road
Annapolis, MD 21409
(410) 974-0947 [redacted] (Office)
410-974-0297 (Fax)
sara@freestatereporting.com
POC Sara Cochran

☐ Schreiber Translations
51 Monroe Street, Suite 101
Rockville, MD 20850-2420
301-424-7737 (phone)
301-424-2336 (fax)
Email:
translation@schreibernet.com
Website: www.schreibernet.com

Date: **January 28, 2020**

From: **Dawn M. Moore, Administrative Assistant / Tel: (702) 820-7466**

Subject: **Asarco LLC and Silver Bell Mining LLC / Case 28-RM-255301**

Date of Hearing: **WEDNESDAY, FEBRUARY 5, 2020** Time: **10:00 A.M.**

Address of Hearing: **NATIONAL LABOR RELATIONS BOARD - REGION 28**
2600 NORTH CENTRAL AVENUE, SUITE 1400
PHOENIX, AZ 85004-3099

Scheduled number of days for hearing: **1 DAY**

☐ Hearing has been canceled on

☐ Hearing has been rescheduled to _____

☐ **Above hearing has changed as follows:**

- ☐ Time of hearing will be _____ rather than _____
- ☐ Case has been settled. No hearing will be held.
- ☐ Hearing scheduled has been postponed indefinitely.

Note: This is to confirm the

☐ Conversation between Free State Reporting and Dawn M. Moore on _____

☐ Voice message left for Free State Reporting _____

☒ E-mail to sara@freestatereporting.com and OM on **TUESDAY, JANUARY 28, 2020 @ 3:30 P.M.**

From:	Moore, Dawn M.
To:	rarusso@dcamplaw.com; ssinele@asarco.com
Bcc:	Harvey, Rachel; Scheid, Kyler A.
Subject:	ASARCO LLC and Silver Bell Mining LLC / Case 28-RM-255301
Date:	Tuesday, January 28, 2020 7:30:00 PM
Attachments:	DCK.28-RM-255301.Docket Packet to Employer Petitioner.pdf image001.png

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Please see the attached documents regarding the petition filed in the above subject matter.
Thank you.

Dawn M. Moore

Administrative Assistant
Region 28 – Las Vegas Resident Office
National Labor Relations Board
Foley Federal Building
300 Las Vegas Boulevard South, Suite 2-901
Las Vegas, NV 89101-5833
Tel: (702) 820-7466
Fax: (702) 388-6248

nlrb-masthead-logo

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004

Agency Website: www.nlrb.gov
Telephone: (602)640-2160
Fax: (602)640-2178

Download
NLRB
Mobile App

URGENT

January 28, 2020

Richard A. Russo, Esquire
Davis & Campbell LLC
401 Main Street, Suite 1600
Peoria, IL 61602
Email: rarusso@dcamplaw.com

Re: Asarco LLC and Silver Bell Mining LLC
Case 28-RM-255301

Dear Mr. Russo:

The enclosed petition that you filed with the National Labor Relations Board (NLRB) has been assigned the above case number. After a petition is filed, the employer is required to promptly take certain actions so please read this letter carefully to make sure you are aware of the employer's obligations. This letter tells you how to contact the Board agent who will be handling this matter, about the requirement to post and distribute the Notice of Petition for Election, the requirement to complete and serve a Statement of Position Form, a scheduled hearing in this matter, other information needed including a voter list, your right to be represented, and NLRB procedures.

Investigator: This petition will be investigated by Field Attorney Kyler A. Scheid whose telephone number is (602)416-4769. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Field Attorney Rachel A. Harvey whose telephone number is (602)416-4748. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Required Posting and Distribution of Notice: You must post the enclosed Notice of Petition for Election by **Thursday, January 30, 2020** in conspicuous places, including all places where notices to employees are customarily posted. The Notice of Petition for Election must be posted so all pages are simultaneously visible. If you customarily communicate with your employees electronically, you must also distribute the notice electronically to them. You must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Posting and distribution of the Notice of Petition for Election will inform the employees whose representation is at issue and the employer of their rights and obligations under by the National Labor Relations Act in the representation context. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

Originals of Good Faith Uncertainty: If you submitted by E-Filing or facsimile, evidence supporting a good faith uncertainty, the original documents containing handwritten signatures must be delivered to the Regional office within **2 business days after the filing**. If the originals are not received within that time the Region will dismiss your petition.

Required Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, both the Union and the Employer are required to complete the enclosed Statement of Position form, have it signed by an authorized representative and file a completed copy (including all attachments) with the Regional Director and serve copies on all parties named in the petition such that it is received by **noon Mountain Standard Time** on **Tuesday, February 4, 2020.** However, the employer is NOT required to complete items 3, 5, 6, and 8a-8e of the form. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form may be e-Filed but unlike other e-Filed documents will *not* be timely if filed on the due date but after noon Mountain Standard Time.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

List(s) of Employees: The Employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the Employer contends that the proposed unit is inappropriate, it must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The Employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the Employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from

challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Notice of Hearing: Enclosed is a Notice of Hearing to be conducted at **10:00 AM** on **Wednesday, February 5, 2020** at the NLRB Hearing Room, 2600 North Central Avenue, Suite 1400, Phoenix, AZ 85004, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party, the regional director may postpone the hearing for up to 2 business days upon a showing of special circumstances and for more than 2 business days upon a showing of extraordinary circumstances. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Other Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

(a) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any of your employees in the unit involved in the petition (the petitioned-for unit);

(b) The name and contact information for any other labor organization (union) claiming to represent any of the employees in the petitioned-for unit;

(c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.

Voter List: If an election is held in this matter, the employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular telephone numbers) of eligible voters.

Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. I am advising you of this requirement now, so that you will have ample time to prepare this list. When feasible, the list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Procedures: Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlrb.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the petition.

Information about the NLRB and our customer service standards is available on our website, www.nlrb.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Cornele A. Overstreet
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)

cc: Stacy Sinele, Director of Human Resources
Asarco LLC and Silver Bell Mining LLC
5285 East Williams Circle, Suite 2000
Tucson, AZ 85711-7711
Email: ssinele@asarco.com

FORM NLRB-502 (RM)
(4-15)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RM PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 28-RM-255301	Date Filed January 27, 2020

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB Office in the Region in which the employer concerned is located. The petition must be accompanied by a certificate of service showing service on all parties named in the petition of the following: (1) the petition; (2) Statement of Position form; and (3) Description of Procedures in Certification and Decertification Cases (Form NLRB 4812). The petition must also be accompanied by evidence supporting the statement that a labor organization has made a demand for recognition on the employer or that the employer has good faith uncertainty about majority support for an existing representative. However, if the evidence reveals the names and/or number of employees who no longer wish to be represented, the evidence shall not be served on any party.

1. **PURPOSE OF THIS PETITION: RM-CERTIFICATION OF REPRESENTATIVE –** One or more individuals or labor organizations have presented a claim to the Employer/Petitioner to be recognized as the representative of employees of the Employer/Petitioner or the Employer/Petitioner has a good faith uncertainty about majority support for an existing representative. If a charge under Section 8(b)(7) of the Act has been filed involving the Employer/Petitioner named in this petition, this statement shall not be deemed made. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer/Petitioner ASARCO LLC and Silver Bell Mining LLC	2b. Address(es) of Establishment(s) involved *(Street and number, city, State, ZIP code)* 25000 W. Avra Valley Road AZ Marana 85653-
3a. Employer/Petitioner Representative – Name and Ti le Stacy Sinele Director of Human Resources	3b. Address (If same as 2b – state same) 5285 E. Williams Circle, Suite 2000 AZ Tucson 85711-

3c. Tel. No.	3d. Cell No.	3e. Fax No.	3f. E-Mail Address
(520) 879-7818			ssinele@asarco.com

4a. Type of Establishment *(Factory, mine, wholesaler, etc)* Metal Mining	4b. Principal product or service Copper

5a. Description of Unit Involved **Included:** See Attached Page 2 for additional details **Excluded:** See Attached Page 2 for additional details	*5b. City and State where unit is located:* Marana, AZ 6. No. of Employees in Unit: 144

*Unless a charge alleging a violation of Section 8(b)(7) is pending, check **EITHER** item 7a or 7b, whichever is applicable*

7a. ☐ A labor organization made a demand for recognition on the Employer/Petitioner on (Date) _____.

7b. ☑ The Employer/Peti ioner has a good faith uncertainty about majority support for an existing representative.

8a. **Recognized or Certified Bargaining Agent** - Name Alexander Terrazas United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937	8b. Affiliation, if any United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Internationa

8c. Address	8d. Tel. No.	8e. Cell No.
877 S Alvernon Way AZ Tucson 85711-____	(520) 243-9102	
	8f. Fax No.	8g. E-Mail Address usw937terrazas@gmail.com

9. Date of Recognition or Certification 05/21/1998	10. Expiration Date of Current or Most Recent Contract, if any *(Month, Day, Year)* 10/13/2019

11. Is there now a strike or picke ing at the Employer's establishment(s) involved? Yes If so, approximately how many employees are participating? 11

(Name of labor organization) United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local has picketed the Employer since *(Month, Day, Year)* 10/13/2019.

12. Organizations or individuals other than those named in item 8, which have a contract with the Employer/Petitioner or represent employees of the Employer/Pe itioner or demanded recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. *(If none, so state)*

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC

12a. Name and affiliation if any	12b. Address	12c. Tel. No.	12d. Cell No.
Gaylan Z Prescott District Director	Five Gateway Center PA Pittsburgh 15222-____	12e. Fax No.	12f. E-Mail Address gprescott@usw.org

13. **Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.		13a. Election Type: ☑ Manual ☐ Mail ☐ Mixed Manual/Mail
13b. Election Date(s): proposed:2/18 and 2/19/2020	13c. Election Time(s): proposed: 4:30 - 7:30 am & 5:30 - 7:00 pm	13d. Election Location(s): 25000 W. Avra Valley Road, Marana, AZ 85653

14. Representative of the Employer/Petitioner who will accept service of all papers for purposes of the representation proceeding.

14a. Name and Title Richard A Russo Attorney Davis & Campbell LLC	14b. Address *(street and number, city, state, and ZIP code)* 401 Main Street, Suite 1600 IL Peoria 61602-

14c. Tel No.	14d. Cell No.	14e. Fax No.	14f. E-Mail Address
(309) 673-1681		(309) 673-1690	rarusso@dcamplaw.com

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name *(Print)*	Signature	Title	Date
Stacy Sinele	Stacy Sinele	Director of Human Resources	01/27/2020 14:40:13

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

Attachment

Employees Included

All production and maintenance employees of the Employer at the Silver Bell Mine

Employees Excluded

All office clerical, technical, & professional employees, watchmen and supervisors

Form NLRB-5492
(Rev: 12-2015)

National Labor Relations Board

NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that ASARCO LLC and Silver Bell Mining LLC has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 28-RM-255301 seeking an election to determine if its employees in the unit set forth below wish to be represented by for the purposes of collective bargaining:

Included: All production and maintenance employees of the Employer at the Silver Bell Mine.

Excluded: All office clerical, technical, & professional employees, watchmen and supervisors.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

YOU HAVE THE RIGHT under Federal Law

- **To self-organization**
- **To form, join, or assist labor organizations**
- **To bargain collectively through representatives of your own choosing**
- **To act together for the purposes of collective bargaining or other mutual aid or protection**
- **To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).**

PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. NO FINAL DECISIONS HAVE BEEN MADE YET regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

IF AN ELECTION IS HELD, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- **Threatening loss of jobs or benefits by an employer or a union**
- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return**
- **Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a union or an employer to influence their votes**

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to www.nlrb.gov or contact the NLRB at (602)640-2160.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.

National Labor Relations Board

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

ASARCO LLC AND SILVER BELL MINING LLC **Employer/Petitioner** **and** **UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937, AFL-CIO, CLC** **Union**	**Case 28-RM-255301**

NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on **Wednesday, February 5, 2020** and on consecutive days thereafter until concluded, at the National Labor Relations Board Hearing Room, 2600 North Central Avenue, Suite 1400, Phoenix, AZ 85004, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, ASARCO LLC and Silver Bell Mining LLC must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **Noon** Mountain Standard time on Tuesday, February 4, 2020**.** The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Mountain Standard on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: January 28, 2020

Cornele A. Overstreet, Regional Director
National Labor Relations Board - Region 28

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

DESCRIPTION OF REPRESENTATION CASE PROCEDURES IN CERTIFICATION AND DECERTIFICATION CASES

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlrb.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews both the petition and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 8 days (excluding intervening federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position. Included with the Notice of Representation Hearing are a copy of the petition, this form, a Statement of Position form, a Notice of Petition for Election, and a letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: The regional director may postpone the hearing for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request should be filed with the regional director. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. As part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department).

Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list

must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon on the business day before the opening of the hearing. The regional director may postpone the due date for filing and serving the Statement of Position for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. The Statement of Position form may be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion."

A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election – Within 2 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically if the employer customarily communicates with its employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

Purpose of Hearing: The purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative. Disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted.

Issues at Hearing: Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; and eligibility formulas. At the hearing, the Statement of Position will be received into evidence and, prior to the introduction of further evidence, all other parties will respond on the record to each issue raised in the Statement. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

Preclusion: At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Conduct of Hearing: If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

Official Record: An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made in the hearing room will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

Motions and Objections: All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

Election Details: Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

Oral Argument and Briefs: Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be filed only upon special permission of the regional director and within the

time and addressing the subjects permitted by the regional director. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. If allowed, briefs should be double-spaced on 8½ by 11 inch paper. Briefs must be filed in accordance with the provisions of Section 102.111(b) of the Board's Rules. E-Filing of briefs through the Board's website, www.nlrb.gov, is encouraged, but not required. Facsimile transmission of briefs is NOT permitted.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 14 days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefore.

Voter List – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular (''cell'') telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge.

The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction.

To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Election – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You may E-File your Statement of Position at www.nlrb.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

> **Note:** ***Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to complete items 3, 5, 6, and 8a-8e of the form.***

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at **www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015**.

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

From:	Moore, Dawn M.
To:	usw937terrazas@gmail.com; gprescott@usw.org
Bcc:	Harvey, Rachel; Scheid, Kyler A.
Subject:	ASARCO LLC and Silver Bell Mining LLC / Case 28-RM-255301
Date:	Tuesday, January 28, 2020 7:33:00 PM
Attachments:	DCK.28-RM-255301.Docket Packet to Union.pdf image001.png

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Please see the attached documents regarding the petition filed in the above subject matter.
Thank you.

Dawn M. Moore

Administrative Assistant
Region 28 – Las Vegas Resident Office
National Labor Relations Board
Foley Federal Building
300 Las Vegas Boulevard South, Suite 2-901
Las Vegas, NV 89101-5833
Tel: (702) 820-7466
Fax: (702) 388-6248

nlrb-masthead-logo

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004

Agency Website: www.nlrb.gov
Telephone: (602)640-2160
Fax: (602)640-2178

Download
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URGENT

January 28, 2020

Alexander Terrazas
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial and
Service Workers International Union, Local 937
877 South Alveron Way
Tucson, AZ 85711
Email: usw937terrazas@gmail.com

Re: ASARCO LLC and Silver Bell Mining LLC
Case 28-RM-255301

Dear Mr. Terrazas:

Enclosed is a copy of a petition that has been filed by ASARCO LLC and Silver Bell Mining LLC regarding representation of certain of its employees. This letter tells you how to contact the Board agent who will be handling this matter, the requirement to complete, file, and serve a Statement of Position Form, notifies you of a hearing, explains your right to be represented, requests that you provide certain information, and discusses some of our procedures including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Field Attorney Kyler A. Scheid whose telephone number is (602)416-4769. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Field Attorney Rachel A. Harvey whose telephone number is (602)416-4748. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Required Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the Union is required to complete a Statement of Position form (Form NLRB-505), have it signed by an authorized representative, and file a completed copy with this office and serve it on all parties named in the petition by **Noon Mountain Standard Time** on **Tuesday, February 4, 2020. This form may be e-Filed but unlike other e-Filed documents will *not* be timely if filed on the due date but after noon Mountain Standard Time.** The Union, as a non-employer party, is NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

The Employer is also required to file a Statement of Position which is due at the same time as the Union's Statement of Position. The Employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the

proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing.

Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **10:00 AM** on **Wednesday, February 5, 2020** at the NLRB Hearing Room, 2600 North Central Avenue, Suite 1400, Phoenix, AZ 85004, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party, the regional director may postpone the hearing for up to 2 business days upon a showing of special circumstances and for more than 2 business days upon a showing of extraordinary circumstances. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Posting and Distribution of Notice: The Employer must post the enclosed Notice of Petition for Election by **Thursday, January 30, 2020** in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates with its employees electronically, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

Other Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

(a) The correct name of the Union as stated in its constitution or bylaws.

(b) A copy of any existing or recently expired collective-bargaining agreements, and any addenda or extensions, or any recognition agreements covering any employees in the petitioned-for unit.

(c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.

(d) The name and contact information for any other labor organization (union) claiming to represent or have an interest in any of the employees in the petitioned-for unit and for any employer who may be a joint employer of the employees in the proposed unit. Failure to disclose the existence of an interested party may delay the processing of the petition.

Voter List: If an election is held in this matter, the employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular telephone numbers) of eligible voters. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. I am advising you of this requirement now, so that you will have ample time to prepare this list. When feasible, the list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the voter list with the Regional Office. However, a petitioner and/or union entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483, which is available on the NLRB's website or from an NLRB office. A waiver will not be effective unless all parties who are entitled to the voter list agree to waive the same number of days.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form

NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlrb.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the petition.

Information about the NLRB and our customer service standards is available on our website, www.nlrb.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Cornele A. Overstreet
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)

cc: Gaylan Z. Prescott, District Director
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial and
Service Workers International Union, AFL-CIO, CLC
5 Gateway Center
Pittsburgh, PA 15222
Email: gprescott@usw.org

FORM NLRB-502 (RM)
(4-15)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RM PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 28-RM-255301	Date Filed January 27, 2020

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB Office in the Region in which the employer concerned is located. The petition must be accompanied by a certificate of service showing service on all parties named in the petition of the following: (1) the petition; (2) Statement of Position form; and (3) Description of Procedures in Certification and Decertification Cases (Form NLRB 4812). The petition must also be accompanied by evidence supporting the statement that a labor organization has made a demand for recognition on the employer or that the employer has good faith uncertainty about majority support for an existing representative. However, if the evidence reveals the names and/or number of employees who no longer wish to be represented, the evidence shall not be served on any party.

1. **PURPOSE OF THIS PETITION: RM-CERTIFICATION OF REPRESENTATIVE –** One or more individuals or labor organizations have presented a claim to the Employer/Petitioner to be recognized as the representative of employees of the Employer/Petitioner or the Employer/Petitioner has a good faith uncertainty about majority support for an existing representative. If a charge under Section 8(b)(7) of the Act has been filed involving the Employer/Petitioner named in this petition, this statement shall not be deemed made. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer/Petitioner ASARCO LLC and Silver Bell Mining LLC	2b. Address(es) of Establishment(s) involved *(Street and number, city, State, ZIP code)* 25000 W. Avra Valley Road AZ Marana 85653-
3a. Employer/Petitioner Representative – Name and Ti le Stacy Sinele Director of Human Resources	3b. Address (If same as 2b – state same) 5285 E. Williams Circle, Suite 2000 AZ Tucson 85711-

3c. Tel. No.	3d. Cell No.	3e. Fax No.	3f. E-Mail Address
(520) 879-7818			ssinele@asarco.com

4a. Type of Establishment *(Factory, mine, wholesaler, etc)* Metal Mining	4b. Principal product or service Copper

5a. Description of Unit Involved **Included:** See Attached Page 2 for additional details **Excluded:** See Attached Page 2 for additional details	*5b. City and State where unit is located:* Marana, AZ 6. No. of Employees in Unit: 144

*Unless a charge alleging a violation of Section 8(b)(7) is pending, check **EITHER** item 7a or 7b, whichever is applicable*

7a. ☐ A labor organization made a demand for recognition on the Employer/Petitioner on (Date) _____.

7b. ☑ The Employer/Peti ioner has a good faith uncertainty about majority support for an existing representative.

8a. **Recognized or Certified Bargaining Agent** - Name Alexander Terrazas United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937	8b. Affiliation, if any United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Internationa

8c. Address	8d. Tel. No.	8e. Cell No.
877 S Alvernon Way AZ Tucson 85711-____	(520) 243-9102	
	8f. Fax No.	8g. E-Mail Address usw937terrazas@gmail.com

9. Date of Recognition or Certification 05/21/1998	10. Expiration Date of Current or Most Recent Contract, if any *(Month, Day, Year)* 10/13/2019

11. Is there now a strike or picke ing at the Employer's establishment(s) involved? Yes If so, approximately how many employees are participating? 11

(Name of labor organization) United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local has picketed the Employer since *(Month, Day, Year)* 10/13/2019.

12. Organizations or individuals other than those named in item 8, which have a contract with the Employer/Petitioner or represent employees of the Employer/Pe itioner or demanded recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. *(If none, so state)*

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC

12a. Name and affiliation if any	12b. Address	12c. Tel. No.	12d. Cell No.
Gaylan Z Prescott District Director	Five Gateway Center PA Pittsburgh 15222-____	12e. Fax No.	12f. E-Mail Address gprescott@usw.org

13. **Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.		13a. Election Type: ☑ Manual ☐ Mail ☐ Mixed Manual/Mail
13b. Election Date(s): proposed:2/18 and 2/19/2020	13c. Election Time(s): proposed: 4:30 - 7:30 am & 5:30 - 7:00 pm	13d. Election Location(s): 25000 W. Avra Valley Road, Marana, AZ 85653

14. Representative of the Employer/Petitioner who will accept service of all papers for purposes of the representation proceeding.

14a. Name and Title Richard A Russo Attorney Davis & Campbell LLC	14b. Address *(street and number, city, state, and ZIP code)* 401 Main Street, Suite 1600 IL Peoria 61602-

14c. Tel No.	14d. Cell No.	14e. Fax No.	14f. E-Mail Address
(309) 673-1681		(309) 673-1690	rarusso@dcamplaw.com

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name *(Print)*	Signature	Title	Date
Stacy Sinele	Stacy Sinele	Director of Human Resources	01/27/2020 14:40:13

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

Attachment

Employees Included

All production and maintenance employees of the Employer at the Silver Bell Mine

Employees Excluded

All office clerical, technical, & professional employees, watchmen and supervisors

Form NLRB-5492
(Rev: 12-2015)

National Labor Relations Board

NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that ASARCO LLC and Silver Bell Mining LLC has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 28-RM-255301 seeking an election to determine if its employees in the unit set forth below wish to be represented by for the purposes of collective bargaining:

Included: All production and maintenance employees of the Employer at the Silver Bell Mine.

Excluded: All office clerical, technical, & professional employees, watchmen and supervisors.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

YOU HAVE THE RIGHT under Federal Law

- **To self-organization**
- **To form, join, or assist labor organizations**
- **To bargain collectively through representatives of your own choosing**
- **To act together for the purposes of collective bargaining or other mutual aid or protection**
- **To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).**

PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. NO FINAL DECISIONS HAVE BEEN MADE YET regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

IF AN ELECTION IS HELD, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- **Threatening loss of jobs or benefits by an employer or a union**
- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return**
- **Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a union or an employer to influence their votes**

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to www.nlrb.gov or contact the NLRB at (602)640-2160.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.

National Labor Relations Board

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

ASARCO LLC AND SILVER BELL MINING LLC **Employer/Petitioner** **and** **UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937, AFL-CIO, CLC** **Union**	**Case 28-RM-255301**

NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on **Wednesday, February 5, 2020** and on consecutive days thereafter until concluded, at the National Labor Relations Board Hearing Room, 2600 North Central Avenue, Suite 1400, Phoenix, AZ 85004, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, ASARCO LLC and Silver Bell Mining LLC must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **Noon** Mountain Standard time on Tuesday, February 4, 2020**.** The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Mountain Standard on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: January 28, 2020

Cornele A. Overstreet, Regional Director
National Labor Relations Board - Region 28

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

DESCRIPTION OF REPRESENTATION CASE PROCEDURES IN CERTIFICATION AND DECERTIFICATION CASES

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlrb.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews both the petition and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 8 days (excluding intervening federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position. Included with the Notice of Representation Hearing are a copy of the petition, this form, a Statement of Position form, a Notice of Petition for Election, and a letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: The regional director may postpone the hearing for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request should be filed with the regional director. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. As part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department).

Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list

must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon on the business day before the opening of the hearing. The regional director may postpone the due date for filing and serving the Statement of Position for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. The Statement of Position form may be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion."

A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election – Within 2 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically if the employer customarily communicates with its employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

Purpose of Hearing: The purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative. Disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted.

Issues at Hearing: Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; and eligibility formulas. At the hearing, the Statement of Position will be received into evidence and, prior to the introduction of further evidence, all other parties will respond on the record to each issue raised in the Statement. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

Preclusion: At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Conduct of Hearing: If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

Official Record: An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made in the hearing room will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

Motions and Objections: All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

Election Details: Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

Oral Argument and Briefs: Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be filed only upon special permission of the regional director and within the

time and addressing the subjects permitted by the regional director. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. If allowed, briefs should be double-spaced on 8½ by 11 inch paper. Briefs must be filed in accordance with the provisions of Section 102.111(b) of the Board's Rules. E-Filing of briefs through the Board's website, www.nlrb.gov, is encouraged, but not required. Facsimile transmission of briefs is NOT permitted.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 14 days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefore.

Voter List – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular (''cell'') telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge.

The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction.

To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Election – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You may E-File your Statement of Position at www.nlrb.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

> **Note:** ***Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to complete items 3, 5, 6, and 8a-8e of the form.***

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at **www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015**.

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

From: Richard Russo
To: Harvey, Rachel
Subject: RE: ASARCO LLC and Silver Bell Mining LLC, Case 28-RM-255301
Date: Wednesday, January 29, 2020 7:28:43 PM

Thank you.

Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690
IMPORTANT NOTICE: THIS EMAIL (INCLUDING ANY ATTACHMENTS) IS INTENDED ONLY FOR THE USE OF THE NAMED RECIPIENT(S), AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED OR EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT A NAMED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS TRANSMISSION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS EMAIL IN ERROR, PLEASE ERASE ALL FILES AND DESTROY ALL COPIES OF THIS TRANSMISSION AND NOTIFY RICHARD A. RUSSO AT THIS TELEPHONE NUMBER IMMEDIATELY: (309) 673-1681. THANK YOU.

From: Harvey, Rachel <Rachel.Harvey@nlrb.gov>
Sent: Wednesday, January 29, 2020 3:27 PM
To: Richard Russo <rarusso@dcamplaw.com>
Cc: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>; Paul H. Burmeister <phburmeister@dcamplaw.com>
Subject: RE: ASARCO LLC and Silver Bell Mining LLC, Case 28-RM-255301

Mr. Russo:

We have sent the notice to our translation service and will send you a Spanish-language version as soon as we have one ready.

Thanks,

Rachel Harvey, Supervisory Field Attorney
NLRB, Region 28 (Phoenix)

From: Richard Russo <rarusso@dcamplaw.com>
Sent: Wednesday, January 29, 2020 12:44 PM
To: Harvey, Rachel <Rachel.Harvey@nlrb.gov>
Cc: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>; Paul H. Burmeister <phburmeister@dcamplaw.com>
Subject: RE: ASARCO LLC and Silver Bell Mining LLC, Case 28-RM-255301

Ms. Harvey:

Would it be possible to send us a copy of the Notice of Petition for Election in Spanish for posting?

Very truly yours,

Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690

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From: Harvey, Rachel <Rachel.Harvey@nlrb.gov>
Sent: Wednesday, January 29, 2020 12:56 PM
To: Richard Russo <rarusso@dcamplaw.com>
Cc: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>
Subject: ASARCO LLC and Silver Bell Mining LLC, Case 28-RM-255301

Dear Mr. Russo:

I am writing for Kyler Scheid, who is assigned to process the petition in the above case, but is out of the office today. This is to confirm that (b) (6), (b) (7)(C) delivered the original affidavits of the following individuals to our office today to comply with the instruction in our docketing letter to provide the originals of the evidence of good faith uncertainty supporting the petition within 2 business days: (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) and (b) (6), (b) (7)(C), (b) (7)(D) If you have any questions or would like to discuss this, please feel free to contact Mr. Scheid, or, in his absence today, to contact me.

Sincerely,

Rachel Harvey, Supervisory Field Attorney
National Labor Relations Board, Region 28
2600 N. Central Ave., Suite 1400
Phoenix, AZ 85004
Telephone: (602) 416-4748
Email: rachel.harvey@nlrb.gov

From: Moore, Dawn M.
To: rarusso@dcamplaw.com; phburmeister@dcamplaw.com
Bcc: Harvey, Rachel; Scheid, Kyler A.
Subject: ASARCO LLC and Silver Bell Mining LLC, Case 28-RM-255301
Date: Thursday, January 30, 2020 2:28:00 PM
Attachments: Notice of Petition for Election Form NLRB-5492 - English.pdf
Notice of Petition for Election Form NLRB-5492 - Spanish.pdf
image003.png

Mr. Russo:
Attached please find the Form NLRB-5492 Notice of Petition for Election in English and Spanish for posting.
If you have any questions, please contact Field Attorney Kyler A. Scheid at (602) 416-4769, or by email at Kyler.Scheid@nlrb.gov.
Thank you.

Dawn M. Moore
Administrative Assistant
Region 28 – Las Vegas Resident Office
National Labor Relations Board
Foley Federal Building
300 Las Vegas Boulevard South, Suite 2-901
Las Vegas, NV 89101-5833
Tel: (702) 820-7466
Fax: (702) 388-6248

nlrb-masthead-logo

From: Richard Russo <rarusso@dcamplaw.com>
Sent: Wednesday, January 29, 2020 12:44 PM
To: Harvey, Rachel <Rachel.Harvey@nlrb.gov>
Cc: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>; Paul H. Burmeister <phburmeister@dcamplaw.com>
Subject: RE: ASARCO LLC and Silver Bell Mining LLC, Case 28-RM-255301

Ms. Harvey:

Would it be possible to send us a copy of the Notice of Petition for Election in Spanish for posting?

Very truly yours,

Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690

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Form NLRB-5492
(Rev: 12-2015)

National Labor Relations Board

NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that ASARCO LLC and Silver Bell Mining LLC has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 28-RM-255301 seeking an election to determine if its employees in the unit set forth below wish to be represented by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937, AFL-CIO-CLC for the purposes of collective bargaining:

Included: All production and maintenance employees of the Employer at the Silver Bell Mine.

Excluded: All office clerical, technical, & professional employees, watchmen and supervisors.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

YOU HAVE THE RIGHT under Federal Law

- **To self-organization**
- **To form, join, or assist labor organizations**
- **To bargain collectively through representatives of your own choosing**
- **To act together for the purposes of collective bargaining or other mutual aid or protection**
- **To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).**

PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. NO FINAL DECISIONS HAVE BEEN MADE YET regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

National Labor Relations Board

IF AN ELECTION IS HELD, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- **Threatening loss of jobs or benefits by an employer or a union**
- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return**
- **Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a union or an employer to influence their votes**

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to www.nlrb.gov or contact the NLRB at (602)640-2160.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.

National Labor Relations Board

Form NLRB-5492
(Rev: 12-2015)

JUNTA NACIONAL DE RELACIONES DEL TRABAJO

AVISO DE PETICIÓN DE ELECCIÓN

Este aviso es para informarles a los empleados que ASARCO LLC y Silver Bell Mining LLC ha presentado una petición ante la Junta Nacional de Relaciones del Trabajo (JNRT), una agencia Federal, en el Caso 28-RM-255301 buscando una elección para determinar si los empleados de en la unidad establecida abajo desean ser representados por: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937, AFL-CIO-CLC, para propósitos de negociaciones colectivas:

Incluidos: Todos los empleados de producción y mantenimiento del Empleador en Silver Bell Mine.

Excluidos: Todos los empleados oficinistas, técnicos, y profesionales, los vigilantes y los supervisores.

Este aviso también le provee a usted información acerca de sus derechos básicos bajo la Ley Nacional de Relaciones del Trabajo, el proceso de la petición, y reglas para mantener las elecciones de la JNRT justas y honestas.

USTED TIENE EL DERECHO bajo Ley Federal

- **De organizarse**
- **Formar, unirse, o asistir a organizaciones laborales**
- **De negociar colectivamente a través de representantes que usted elija**
- **De actuar en conjunto con propósitos de negociación colectiva u otra ayuda o protección mutua**
- **A negarse a realizar algunas de estas cosas a menos que la unión y el empleador, en un estado donde se permitan tales acuerdos, entren en un acuerdo de seguridad legal con la unión donde requiera a los empleados que paguen cuotas periódicas y cargos de iniciación. Los que no son miembros e informen a la unión de que se oponen a la utilización de sus pagos para fines de no-representación pueden ser obligados a pagar sólo su parte de los costos de actividades de representación de la unión (tales como negociación colectiva, administración de contratos, y ajustes de quejas).**

PROCESANDO ESTA PETICIÓN

Las elecciones no necesariamente ocurren en todos los casos luego de que una petición se ha presentado. NO SE HA LLEGADO A UNA DECISION FINAL TODAVIA sobre si la unidad propuesta es la apropiada o si una elección se llevará a cabo en este asunto. Si es apropiada, la JNRT primero verá si las partes entrarán en un acuerdo de elección que especifique el método, fecha, hora, y local de la elección y la unidad de empleados elegibles a votar. Si las partes no entran en un acuerdo de elección, por lo general se lleva a cabo una audiencia para recibir evidencia de lo apropiado de la unidad y otros asuntos en conflicto. Luego de la audiencia, una elección puede ser dirigida por la JNRT, si es apropiado.

SI SE LLEVA A CABO UNA ELECCIÓN, se llevará a cabo por la JNRT por votación secreta y Avisos de Elección serán publicados antes de la elección dando detalles completos de la votación.

REGLAS ELECTORALES

La JNRT aplica reglas que están destinadas a mantener sus elecciones justas y honestas y que resultan en una selección libre. Si agentes de cualquiera de las partes actúa de manera tal que interfiera con su derecho a selección libre, la elección puede ser puesta a un lado por la JNRT. Cuando es apropiado, la JNRT provee otros remedios como reincorporación de empleados despedidos por ejercer sus derechos, incluyendo el pago retroactivo de la parte responsable del despido.

Los siguientes son ejemplos de conducta que interfiere con los derechos de los empleados y que puede resultar en que la elección sea puesta a un lado:

- **Amenazar con pérdida de trabajo o beneficios de parte de un empleador o una unión**
- **Prometer u otorgar promociones, aumentos de salario, u otros beneficios, para influenciar el voto de un empleado por una parte capaz de llevar a cabo dichas promesas**
- **Un empleador despidiendo empleados para desalentar o alentar actividad sindical o una unión causándoles que sean despedidos para fomentar la actividad sindical.**
- **Hacer discursos de campaña para reunir grupos de empleados durante horas de trabajo, donde la asistencia es obligatoria, en un plazo de 24-horas antes de que el centro de votación abra o, si la elección es llevada a cabo por correo, desde la hora y fecha que las papeletas son programadas para ser enviadas por la Región hasta la hora y fecha determinada para su regreso**
- **Incitación por parte de un empleador o una unión de prejuicio racial o religioso por apelaciones inflamatorias**
- **Amenazas de fuerza física o violencia hacia empleados por una unión o un empleador para influenciar sus votos**

Por favor debe estar seguro que si UNA ELECCION SE LLEVA A CABO, se hará todo lo posible para proteger su derecho a una selección libre bajo la ley. Conducta inapropiada no será permitida. Se espera que todas las partes cooperen al máximo con la JNRT en mantener los principios básicos de una elección justa como lo requiere la ley. La JNRT es una agencia del Gobierno de los Estados Unidos y no apoya ninguna de las opciones en la elección.

Para información adicional acerca del proceso de peticiones, puede ir al www.nlrb.gov o contactar a la JNRT al (602)640-2160.

ESTE ES UN AVISO OFICIAL DEL GOBIERNO Y NO DEBE SER DESFIGURADO POR NADIE. DEBE PERMANECER PUBLICADO CON TODAS LAS PAGINAS SIMULTANEAMENTE VISIBLES HASTA SER REEMPLAZADO POR EL AVISO DE ELECCION O DE QUE LA PETICION HA SIDO RECHAZADA O RETIRADA.

JUNTA NACIONAL DE RELACIONES DEL TRABAJO

Agreement

Between

Asarco LLC

and the

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC

International Brotherhood of Electrical Workers, Locals 518, 570; and 602

International Association of Machinists and Aerospace Workers, Local 519

International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith, Forgers and Helpers, Local 627

International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 104

International Union of Operating Engineers, Local 428

United Brotherhood of Carpenters & Joiners of America, Local 1912 and

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

September 21, 2017 through November 30, 2018

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Article 1. Agreement

Section A. Parties to the Agreement

1. This Agreement (the Basic Labor Agreement, BLA or the Agreement), is between Asarco LLC (Asarco or the Company) and the following Unions or their successors (the Union) on behalf of the Employees of the Company:

    a. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (USW);

    b. International Brotherhood of Electrical Workers, Locals 518, 570; and 602;

    c. International Association of Machinists and Aerospace Workers, Local 519;

    d. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith, Forgers and Helpers, Local 627;

    e. International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 104;

    f. International Union of Operating Engineers, Local 428;

    g. United Brotherhood of Carpenters and & Joiners of America, Local 1912; and

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

2. "Agreement" shall mean this contract and all other agreements, including any and all benefits agreements, memoranda of understanding, letters of agreement and local supplemental agreements. References to the male gender herein also refer to the female gender unless otherwise required by the context.

Article 1. Agreement

Section B. Term of the Agreement

1. The effective date of the Agreement shall be September 21, 2017 (the Effective Date).

2. Except as otherwise provided below, this Basic Labor Agreement, the Pension Agreement, all Local Supplemental Agreements (set out in free-standing booklets), and all MOU's and LOU's that are reproduced at the back of the BLA booklet, shall terminate at the expiration of sixty (60) days after either party shall give written notice of termination to the other party, but in any event shall not terminate earlier than November 30, 2018 (the Termination Date). This paragraph will supersede any contrary expiration, termination or notice provision of any of those agreements other than the Basic Labor Agreement.

3. Any notice to be given under this Agreement shall be given by certified mail and shall be postmarked by the required date. Mailing of notice to the Company should be addressed to Asarco, 5285 E. Williams Circle, Suite 2000, Tucson, Arizona 85711. Mailing of notice to the Unions should be addressed to:

   (1) the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Five Gateway Center, Pittsburgh, Pennsylvania 15222;

   (2) International Brotherhood of Electrical Workers, Local 518, P.O. Box 88, Globe, Arizona 85502;

   (3) International Brotherhood of Electrical Workers, Local 570, 750 South Tucson Blvd., Tucson, Arizona 85716;

   (4) International Brotherhood of Electrical Workers, Local 602, P.O. Box 143, Amarillo, Texas 79105;

   (5) International Association of Machinists and Aerospace Workers, Local 519, 3117 North 16th Street, Suite 210, Phoenix, Arizona 85016;

   (6) International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith, Forgers and Helpers, Local 627, P.O. Box 13268, Phoenix, Arizona 85002;

   (7) International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 104, 238 West Elm, Tucson, Arizona 85705;

   (8) International Union of Operating Engineers, Local 428, 6601 North Black Canyon Highway, Phoenix, Arizona 85015;

   (9) United Brotherhood of Carpenters & Joiners of America, Local 1912, 4547 W. McDowell, Phoenix, Arizona 85035; and

(10) United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 469, 3189 North 24th Street, Phoenix, Arizona 85016.

b. Either party may, by like written notice, change the address to which certified mail notice shall be given.

Article 2. Union Security

Section A. Recognition and Coverage

1. The Company recognizes:

   a. the USW; International Union of Operating Engineers, Local 428; International Brotherhood of Electrical Workers, Local 570; and International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 104; as the exclusive joint representative of a bargaining unit made up of employees at the Mission Complex as certified by the National Labor Relations Board ("NLRB") in Case No. 28-RC-3311 dated June 27, 1977;

   b. the International Brotherhood of Electrical Workers, Local 518, as the sole bargaining agent for all of its employees in the Electrical Department and Powerhouse at the Hayden Smelter in accordance with Certification of the NLRB of August 15, 1949, Case No. 21-RC-818 and September 4, 1953, Case No. 21-RC-3069; all other employees at that location are excluded from representation by Local 518;

   c. the USW as the sole bargaining agent for its production and maintenance employees at the Hayden Smelter in accordance with the Certification of the National Labor Relations Board of June 12, 1951, Case No. 21-RC-1941. Hourly-paid Employee(s) assigned to the Warehouse will be recognized as being part of the bargaining unit but such assignment(s), if any, shall be at the discretion of the Company. Executive, administrative, technical employees, supervisors, assistant supervisors, engineers, metallurgists, chemists, assayers, secretaries, clerks, accountants, auditors, watchmen, electricians, electrician helpers and electrician apprentices, powerhouse operators, powerhouse utilitymen and powerhouse helpers are excluded from representation by the USW;

   d. the International Brotherhood of Electrical Workers, Local 602 as the sole bargaining agent for all the skilled electricians and apprentices employed in the Amarillo Copper Refinery as certified by the NLRB in Case No. 16-RC-7100 and 16-RC-7108 dated May 5, 1976;

   e. the USW as the sole bargaining agent for its production and maintenance employees at the Amarillo Copper Refinery as certified by the NLRB in Case No. 16-RC-7100 and 16-RC-7108 dated May 5, 1976;

   f. the unions in this subparagraph f are recognized as the sole collective bargaining representatives for all Employees covered by this Agreement at the Ray Complex in their respective units. The Employees so covered shall be only those employed in the job classifications set forth in the local supplemental agreement, at the Company's Concentrator and Smelter Plants located at Hayden, Arizona and the Mines Plant located at Ray, Arizona. The NLRB certification numbers for the appropriate bargaining units, covered by this Agreement are as follows: USW Local 5252, 915 and 886-02: 28-RC-974 and 28-RC-5088; International Association of Machinists

and Aerospace Workers (IAM) Local 519: 28-RC-856 and 28-RC-5091; International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers (Boilermakers) Local 627: 28-RC-857; United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (UA) Local 469: 28-RC-858; United Brotherhood of Carpenters & Joiners of America, Local 1912: 28-RC-863; International Brotherhood of Electrical Workers (IBEW) Local 518: 21-RC-769 and 28-RC-5099; and

g. the USW as the exclusive bargaining agent for all employees of its Silver Bell Mining, L.L.C., who come under the jurisdiction of the USW for the purpose of collective bargaining.

2. Individuals in the bargaining unit shall be referred to in this Agreement as "Employees." Individuals who are employed by the Company and are not in the bargaining unit shall be referred to as "non-bargaining unit employees." Individuals who are in the bargaining unit and those who are not in the bargaining unit shall be collectively referred to as "employees."

3. Except as expressly provided herein, the provisions of this BLA constitute the sole procedure for the processing and settlement of any claim by an Employee or the Union of a violation by the Company of this Agreement. As the representative of the Employees, the Union may process grievances through the grievance procedure, including arbitration, in accordance with this BLA or may adjust or settle same.

4. When the Company establishes a new or changed job whose duties include a material level of production or maintenance work; the resulting job shall be considered a job covered within the bargaining unit; provided that where non-bargaining unit duties are added to a job in the bargaining unit on a temporary basis, they may be withdrawn.

5. It is understood that supervisors at a plant shall not perform work on a job normally performed by the bargaining unit except:

   a. experimental work;

   b. demonstration work performed for the purpose of instructing and training Employees; and

   c. work required by conditions which, if not performed, might result in interference with operations, bodily injury or loss or damage to material or equipment.

6. If a supervisor or other non-bargaining unit employee performs work in violation of Paragraph 5 and the Employee who otherwise would have performed this work can reasonably be identified, the Company shall pay such Employee his/her applicable Regular Rate of Pay for the time involved or for one (1) hour, whichever is greater.

7. Day-Pay Supervisors

   a. Day-Pay Supervisors are Employees assigned at the discretion of the Company as temporary foreman or supervisor. A Day-Pay Supervisor will not issue discipline to Employees, provided that this provision will not prevent a Day-Pay Supervisor or supervisor from relieving an Employee from work for the balance of the shift for alleged misconduct. An Employee will not be called by either party in the grievance procedure or arbitration to testify as a witness regarding any events involving discipline which occurred while the Employee was assigned as a temporary foreman or supervisor.

   b. On a monthly basis, the Company will provide the Union with a listing of those Employees who have been temporarily assigned to supervisory positions during the previous month. Such listing shall include the number of supervisory shifts worked during that month.

   c. Day-Pay supervisors shall have essentially the same duties and responsibilities as a salaried supervisor, except that they will not have the authority to hire, fire or discipline employees nor recommend same, provided that this provision will not prevent a Day-Pay Supervisor from relieving an Employee from work for the balance of the shift for alleged misconduct.

8. Leadpersons

   a. During the term of this Agreement, the Company will make every effort, when appropriate, to utilize working leadpersons in lieu of day pay supervisors in their work area and on their regular shift, provided the leadperson has demonstrated the necessary leadership skills.

   b. A leadperson will direct, oversee and assist a work crew in addition to his/her assigned work.

   c. The Company will provide the training necessary for the leadperson to perform his/her duties which may include warehouse requisition, work order entry and closure, on-line requisition entry and timekeeping. Nothing herein shall be construed to mean that these tasks are exclusively bargaining unit work.

   d. Leadpersons shall not have the authority to discipline, terminate or make recommendations for disciplinary or termination actions.

   e. Leadpersons will be paid the greater of:

      (1) one-level above the highest level of the employees the leadperson is leading, or

      (2) $1.00 per hour above their regular wage level.

f. Promotions to the classification of leadperson shall be based on seniority and qualifications. Where qualifications are substantially equal, seniority shall govern. The Company shall determine qualifications. In the event a junior person is selected to fill a leadperson position, the Union may file a grievance over the Company's determination of qualifications.

g. The parties agree that in the event the National Labor Relations Board or the courts issue any decision(s) placing in question the supervisory status, as defined under the National Labor Relations Act, of any bargaining unit leadman classification, then the parties will, if necessary, modify the duties and responsibilities of said classification so that said classification remains a bargaining unit position.

Article 2. Union Security

Section B. Union Membership and Dues Checkoff

1. The Company will check off dues or service charges each payroll period, including, where applicable, initiation fees and assessments, each in amounts as designated by the International Union Secretary-Treasurer, effective upon receipt of individually signed voluntary checkoff authorization cards. The Company shall within thirty (30) days remit any and all amounts so deducted to the International Union Secretary-Treasurer (or equivalent) with a completed summary of USW Form R-115 (or its equivalent).

2. At the time of employment, the Company will advise each new Employee that s/he may voluntarily execute an authorization for the checkoff of amounts due or to be due under Paragraph 1. A copy of the card will be forwarded at the time of signing to the Financial Secretary of the Local Union.

3. To the extent available through the Company's Information System, the Union will be notified of the amount transmitted for each authorizing Employee (including the hours and earnings used in the calculation of such amount) and, where applicable, the reason for non-transmission with respect to any Employee formerly on checkoff, such as in the case of interplant transfer, layoff, discharge, resignation, leave of absence, sick leave, retirement, death or insufficient earnings.

4. The Union shall indemnify the Company and hold it harmless against any and all claims, demands, suits and liabilities that shall arise out of or by reason of any action taken by the Company for the purpose of complying with the foregoing provisions.

Article 2. Union Security

Section C. PAC and SOAR Checkoff

1. The Company will deduct Political Action Committee (PAC) contributions for active Employees who have submitted authorization for such deductions from their wages and for retirees who have submitted authorization for such deductions from their pension. Such deductions shall be on a form reasonably acceptable to the Company and shall be promptly remitted to the Secretary-Treasurer of the Union's PAC Fund.

2. For retirees who are or wish to become members of the Steelworkers Organization of Active Retirees (SOAR) (or equivalent for other Unions) and who have submitted authorization for such deductions from their pension, the Company will deduct monthly SOAR dues from their pension. Such deductions shall be on a form reasonably acceptable to the Company and shall be promptly remitted to the International Union Secretary-Treasurer.

Article 2. Union Security

Section D. Successorship

1. The Company agrees that it will not sell, convey, assign or otherwise transfer, using any form of transaction, any facility, plant or significant part thereof covered by this Agreement (any of the foregoing, a Sale) to any other party (Buyer), unless, prior to the closing date of the Sale, the Buyer shall accept and assume all obligations of this Agreement effective as of the closing date of the Sale.

2. This Section is not intended to apply to any transactions solely between the Company and any of its affiliates.

3. This Section shall not apply to a public offering of registered securities.

4. Notwithstanding the provisions of the Term of the Agreement, this Section shall expire one (1) year after the Termination Date.

Article 2. Union Security

Section E. Neutrality

1. Introduction

The Company and the Union have developed a constructive and harmonious relationship built on trust, integrity and mutual respect. The parties place a high value on the continuation and improvement of that relationship.

2. Neutrality

a. To underscore the Company's commitment in this matter, it agrees to adopt a position of Neutrality regarding the unionization of any hourly-paid production and maintenance employees of the Company in the United States and Canada.

b. Neutrality means that, except as explicitly provided herein, the Company will not in any way, directly or indirectly, involve itself in any matter which involves the unionization of its employees, including but not limited to efforts by the Union to represent the Company's employees or efforts by its employees to investigate or pursue unionization.

c. The Company's commitment to remain neutral as defined above may only cease upon the Company demonstrating to the arbitrator under Paragraph 5 below that in connection with an Organizing Campaign (as defined in Paragraphs 3(a) through 3(c) below) the Union is intentionally or repeatedly (after having the matter called to the Union's attention) materially misrepresenting to the employees the facts surrounding their employment or is unfairly demeaning the integrity or character of the Company or its representatives.

3. Organizing Procedures

a. Prior to the Union distributing authorization cards to non-represented employees at a facility owned, controlled or operated by the Company, the Union shall provide the Company with written notification (Written Notification) that an organizing campaign (Organizing Campaign) will begin. The Written Notification will include a description of the proposed bargaining unit.

b. The Organizing Campaign shall begin immediately upon provision of Written Notification and continue until the earliest of: (1) the Union gaining recognition under Paragraph 3(d)(5) or; (2) written notification by the Union that it wishes to discontinue the Organizing Campaign.

c. Upon Written Notification the following shall occur:

(1) Notice Posting

The Company shall post a notice on all bulletin boards of the facility where notices are customarily posted as soon as the Unit Determination Procedure in Paragraph 3(d)(3) below is completed. This notice shall read as follows:

"NOTICE TO EMPLOYEES

We have been formally advised that the United Steelworkers is conducting an organizing campaign among certain of our employees. This is to advise you that:

1. The Company does not oppose collective bargaining or the unionization of our employees.

2. The choice of whether or not to be represented by a union is yours alone to make.

3. We will not interfere in any way with your exercise of that choice.

4. In their conduct of the organizing effort, the Union and its representatives are prohibited from misrepresenting the facts surrounding your employment. Nor may they unfairly demean the integrity or character of the Company or its representatives.

5. If the Union secures a simple majority of authorization cards of the employees in [insert description of bargaining unit provided by the Union] the Company shall recognize the Union as the exclusive representative of such employees without a secret ballot election conducted by the National Labor Relations Board.

6. The authorization cards must unambiguously state that the signing employees desire to designate the Union as their exclusive representative.

7. Employee signatures on the authorization cards will be confidentially verified by a neutral third party chosen by the Company and the Union."

Following receipt of Written Notification, the Company will not communicate to its employees on subjects which directly or indirectly concern unionization on the issues covered in the Notice set forth above or raised by other terms of this Neutrality Section.

(2) Employee Lists

Within five (5) days following Written Notification, the Company shall provide the Union with a complete list of all of its employees in the proposed bargaining

unit who are eligible for Union representation. Such list shall include each employee's full name, home address, job title and work location. Upon the completion of the Unit Determination Procedure described in Paragraph 3(d)(3) below, an amended list will be provided if the proposed unit is changed as a result of such Unit Determination Procedure. Thereafter during the Organizing Campaign, the Company will provide the Union with updated lists monthly.

(3) Determination of Appropriate Unit

As soon as practicable following Written Notification, the parties will meet to attempt to reach an agreement on the unit appropriate for bargaining. In the event that the parties are unable to agree on an appropriate unit, either party may refer the matter to the Dispute Resolution Procedure contained in Paragraph 7 below. In resolving any dispute over the scope of the unit, the arbitrator shall apply the principles used by applicable U.S. Labor Law.

(4) Access to Company Facilities

During the Organizing Campaign the Company, upon written request, shall grant continuous access to well-traveled areas of its facilities to the Union for the purpose of distributing literature and meeting with unrepresented Company employees. Distribution of Union literature shall not compromise safety or production or unreasonably disrupt ingress or egress or the normal business of the facility. Distribution of Union literature and meetings with employees shall be limited to non-work areas during non-work time.

(5) Card Check/Union Recognition

(a) If, at any time during an Organizing Campaign which follows the existence of a substantial and representative complement of employees in any unit appropriate for collective bargaining, the Union demands recognition, the parties will request that a mutually acceptable neutral conduct a card check within five (5) days of the making of the request.

(b) The neutral shall confidentially compare the authorization cards submitted by the Union against original handwriting exemplars of the entire bargaining unit furnished by the Company. If the neutral determines that a simple majority of eligible employees has signed cards which unambiguously state that the signing employees desire to designate the Union as their exclusive representative for collective bargaining purposes, and that cards were signed and dated during the Organizing Campaign, then the Company shall recognize the Union as the exclusive representative of such employees without a secret ballot election conducted by the National Labor Relations Board.

(c) The list of eligible employees submitted to the neutral shall be jointly prepared by the Union and the Company.

4. Definitions and Scope of this Agreement

a. For purposes of this Section, the Company includes (in addition to the Company) any entity which is an Affiliate of the Company.

b. An Affiliate shall mean any business enterprise that is under the Control of Asarco.

Control of a business enterprise shall mean possession, directly, of greater than fifty percent (50%) of the equity of the enterprise and actual control over the day-to-day labor relations of said enterprise.

5. Dispute Resolution

a. Any alleged violation or dispute involving the terms of this Section may be brought to a joint committee of one (1) representative each from the Company and the Union. If the alleged violation or dispute cannot be satisfactorily resolved by the parties, either party may submit such dispute to the arbitrator. A hearing shall be held within ten (10) days following such submission and the arbitrator shall issue a decision within five (5) days thereafter. Such decision shall be in writing and need only succinctly explain the basis for the findings. All decisions by the arbitrator pursuant to this article shall be based on the terms of this Section and the applicable provisions of the law. The arbitrator's remedial authority shall include the power to issue an order requiring the Company to recognize the Union where, in all the circumstances, such an order would be appropriate.

b. The arbitrator's award shall be final and binding on the parties and all employees covered by this Section. Each party expressly waives the right to seek judicial review of said award; however, each party retains the right to seek judicial enforcement of said award.

c. For any dispute under this Section, the parties shall choose the arbitrator from the list of arbitrators described in the Grievance and Arbitration procedure, contacting them in the order listed, and retaining the first to indicate an ability to honor the time table set forth above for the hearing and the decision.

Article 2. Union Security

Section F. Bargaining Unit Work

1. Guiding Principle

   a. The Guiding Principle is that to the greatest extent possible the Company will use Employees to perform any and all work which they are or could be capable (in terms of skill and ability) of performing (Bargaining Unit Work).

   b. Any individual or entity other than an Employee who performs Bargaining Unit Work shall be referred to herein as an Outside Entity.

2. Exceptions

   It is understood unless the work meets one of the exceptions outlined in this Paragraph 2 it will normally be performed by Employees unless there is a legitimate and necessary reason to deviate from the Guiding Principle as stated in paragraph 1, above.

   a. Work Performed In or Around the Plant

      (1) New Construction Work

      New Construction Work is that portion of the work associated with significant (in the context of the facility) capital projects involving the installation, replacement or reconstruction of any equipment or productive facilities. The Company may use Outside Entities to perform New Construction Work.

      (2) Surge Maintenance Work

      Surge Maintenance Work is that portion of maintenance and repair work which is required by bona fide operational needs performed on equipment where the Company temporarily uses Outside Entities to supplement bargaining unit forces and where: (a) the use of Outside Entities would materially reduce the downtime of the equipment; or (b) the work cannot reasonably be performed by bargaining unit forces. The Company may use Outside Entities to perform Surge Maintenance Work provided that the Company has offered all reasonable and appropriate requested overtime to all qualified Employees who, by working such overtime, could reduce the amount of Surge Maintenance Work performed by Outside Entities in an efficient manner.

   b. Work Performed Outside the Plant or its Environs

      (1) Fabrication and Repair Work

Fabrication Work is the creation outside of the plant or its environs of items or parts used in the Company's business which are not themselves, either directly or after additional work is performed on them, sold to customers. Repair Work is the repair, renovation or reconstruction of those items. Fabrication and Repair Work may be performed by Outside Entities only where the location of the work's performance is for a bona fide business purpose and the Company can demonstrate a meaningful sustainable economic advantage to having such work performed by an Outside Entity. In determining whether a meaningful sustainable economic advantage exists, lower wage rates, if any, of the Outside Entity shall not be a factor.

(2) Production Work

The Company may use Outside Entities to perform production work outside the plant and its environs provided the Company demonstrates that it is utilizing plant equipment to the maximum extent consistent with equipment capability and customer requirements.

c. Warranty Work

Warranty Work is work performed pursuant to a warranty obtained at the time of purchase on new or rehabilitated equipment or systems. The Company may use Outside Entities to perform Warranty Work provided the guarantor of the Warranty Work is responsible for the cost of such work.

3. Commitment

In addition to the understandings described in Paragraphs 1 and 2 above, the Company agrees that:

a. The Company will not use Outside Entities where total hours worked by employees of Outside Entities over a period of time either directly causes the erosion of bargaining unit work, as measured by the displacement of Employees or the diminution of hours worked by Employees, or has directly prevented an increase in Employee headcount, such work performed by such Outside Entities will be assigned to Employees and the number of Employees will be appropriately increased if necessary, unless the Company is able to clearly demonstrate: that the work cannot be performed by the addition of an Employee(s); that assignment of the work to Employees would not be economically feasible; or that the Company, despite its best efforts, has been unable to hire Employees necessary to perform the work. In determining whether the assignment of the work to Employees is or is not economically feasible, the lower wage rates, if any, of an Outside Entity shall not be a factor. Any disputes arising under this provision shall be subject to arbitration pursuant to paragraph 7 of this Section.

b. The parties agree that the Union may at any time enforce the obligations described above, irrespective of the Company's compliance with any other obligation in this Section or any other part of the Agreement.

c. The Company shall supply the Bargaining Unit Work Committee (as defined below) and the appropriate Contract Coordinator with all requested information regarding compliance with the Commitment.

4. Bargaining Unit Work Committee

At each plant a committee consisting of four (4) individuals, two (2) individuals designated by each of the parties, shall be constituted to serve as the Bargaining Unit Work Committee. The Committee shall meet as required but not less than quarterly to:

a. review bargaining unit force levels for the plant;

b. review historical contractor utilization by the plant;

c. review projections for contractor utilization by the plant;

d. monitor the implementation of new programs or hiring to reduce contractor utilization; and develop new ideas and implementation plans to effectively reduce contractor usage as per the terms of this Section.

5. Notice and Information

a. Prior to the Company entering into any agreement or arrangement to use Outside Entities to perform Bargaining Unit Work, the Company will provide reasonable advance written notice to the Bargaining Unit Work Committee and the appropriate Contract Coordinator in sufficient time to permit a final determination, using the Expedited Procedure, of whether or not the proposed use of Outside Entities meets the criteria herein, unless unforeseen emergencies or exigent circumstances that could result in a substantial loss of production or significant damage to Company equipment or property preclude the giving of such notice. However, the Company shall provide notice as soon as reasonably possible. Such notice shall include the following:

(1) location, type, duration and detailed description of the work;

(2) occupations involved and anticipated utilization of bargaining unit forces;

(3) effect on operations if the work is not completed in a timely fashion; and

(4) total hours if available and total bid amount.

b. Should the appropriate Bargaining Unit Work Committee believe a meeting to be necessary, a written request shall be made within five (5) days (excluding Saturdays, Sundays and holidays) after receipt of such notice. The meeting shall be held within three (3) days (excluding Saturdays, Sundays and holidays) thereafter. At such meeting, the parties shall review in detail the plans for the work to be performed and the reasons for using Outside Entities.

c. Should the Company fail to give notice as provided above, then not later than thirty (30) days from the later of the date of the commencement of the work or when the Union becomes aware of the work, a grievance relating to such matter may be filed.

6. Mutual Agreement

a. As of the Effective Date, all agreements, understandings or practices of any kind that directly or indirectly permit the use of Outside Entities to perform Bargaining Unit Work shall be renewed as necessary.

b. In the event the Bargaining Unit Work Committee resolves a matter in a fashion which in any way permits the use of Outside Entities, such resolution shall be final and binding only as to the matter under consideration and shall not affect future determinations under this Section.

c. No agreement, whether or not reached pursuant to this Section, which directly or indirectly permits the use of Outside Entities on an ongoing basis, shall be valid or enforceable unless it is in writing and signed by the President/Unit Chair and the Grievance Committee Chair/Unit Grievance Committeeperson of the affected Local Union. Any such valid agreement shall expire on the Termination Date of this Agreement, unless signed by a Representative of the International Union.

7. Arbitration Procedure for Disputes under this Section

In the event the Union requests an expedited resolution of any dispute arising under this Section, it shall be submitted to the Expedited Procedure in accordance with the following:

a. Within three (3) days (excluding Saturdays, Sundays and holidays) after the Union determines that the Bargaining Unit Work Committee cannot resolve the dispute, the Union may advise the Company in writing that it is invoking this Expedited Procedure.

b. An expedited arbitration must be scheduled within ten (10) days (excluding Saturdays, Sunday and holidays) of such notice and heard at a hearing commencing within fifteen (15) days (excluding Saturdays, Sundays and holidays) thereafter.

c. The arbitrator shall render a decision within forty-eight (48) hours (excluding Saturdays, Sundays and holidays) of the conclusion of the hearing.

d. No testimony offered by an individual associated with an Outside Entity may be considered in any proceeding unless the party calling the outsider provides the other party with a copy of each Outside Entity document to be offered in connection with such testimony at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before commencement of that hearing.

e. Notwithstanding any other provision of this Agreement, any case heard in the Expedited Procedure before the work in dispute was performed may be reopened by the Union if such work, as actually performed, varied in any substantial respect from the description presented in arbitration. The request to reopen the case must be submitted within seven (7) days of the date on which the Union knew or should have known of the variance.

8. Quarterly Review

a. Not less than quarterly (unless the parties agree to a semi-annual meeting or another mutually acceptable schedule), the Bargaining Unit Work Committee shall meet with the Local Union President/Unit Chair and the General Manager of the plant, for the purpose of reviewing all work for which the Company anticipates utilizing Outside Entities at some time during the next or subsequent quarters. The Union shall be entitled to review any current or proposed contracts concerning such work and shall keep such information confidential.

b. During the review, the Bargaining Unit Work Committee may (1) agree on items of work that should be performed by Outside Entities for which Notice under Paragraph 5 above is therefore not required; or (2) disagree on which items of work should be performed by Employees and which should be performed by Outside Entities for which notice under Paragraph 5 is therefore required.

c. During the quarterly review, the Company will provide to the Bargaining Unit Work Committee a detailed report showing work performed by Outside Entities since the last such report. For each item of work the report shall include the date and shift the work was performed; a description of the work; the trade, craft or occupation of the individual(s) performing the work; and the total number of hours worked by each contracting entity or individual.

Article 2. Union Security

Section G. Printing of Contracts

1. Immediately after the Effective Date of this Agreement, the parties will create mutually acceptable labor and benefits agreement documents for printing. These agreements shall, at the expense of the Company, be printed in a form (size, paper stock, number of copies, etc.) and in a manner of distribution mutually acceptable to the parties. The distribution of the Basic Labor Agreement shall occur within three (3) months of the Effective Date. Distribution of the benefit agreements shall occur as close in time thereafter as can reasonably be accomplished. A union printer shall be used provided that its price is not more than 10% higher than the lowest price received. If the lowest proposed price from a union printer is more than 10% above the lowest proposed price received from a nonunion printer, the Company will inform the Union before a contract to print is signed with the nonunion printer and allow the Union a reasonable amount of time to seek a union printer whose printing price is within the 10% margin.

2. The Company will provide the Union with electronic versions of this Agreement and all negotiated benefit agreements.

Article 2. Union Security

Section H. Hiring Consideration

1. In all hiring for bargaining unit positions, the Company shall, subject to its obligations under applicable equal employment opportunity laws, regulations and Executive Orders and tribal preference requirements, give consideration to the direct relatives (children, children-in-law, step-children, spouse, siblings, grandchildren, nieces and nephews) of Employees who meet reasonably established hiring criteria.

2. Such hiring shall conform to applicable lines of progression, bidding, promotion and other requirements under this Agreement.

3. The Company shall, subject to these and other applicable provisions, have the final discretion for accepting or rejecting a particular applicant for employment. The Company shall have no obligation to reveal information it obtains on a reference check or whether it has obtained such information.

Article 2. Union Security

Section I. Union Officers - Straight Shifts

Current practices concerning the assignment of Union officers and other Union representatives to straight day shifts will remain in effect.

Article 2. Union Security

Section J. Bulletin Boards

Bulletin Boards shall be provided at convenient locations on the Company's property for the exclusive use of the Union. All posted notices shall have been approved by the president or secretary of the Union. The Union agrees not to post literature derogatory of the Company or its employees.

Article 3. Health, Safety and the Environment

Section A. Employee and Union Rights

1. Employees have the right to a safe and healthful workplace, to refuse dangerous work that constitutes an Unsafe Condition, as described in Article 3, Section C, paragraph 1, to adequate personal protective equipment, to safety and health training, to a proper medical program for workplace injuries and illnesses, and to a reasonable alcoholism and drug abuse policy.

2. Subject to the provisions in this Article, the Union has the right to participate in active and informed Joint Safety and Health and Environmental Committees, to appoint Union health and safety representatives, to join in regular safety audits and accident investigations, to receive full and continuing access to pertinent and relevant information (including all OSHA and MSHA reports), and to participate in programs which address certain special hazards. It is further agreed that the Union has a duty to provide pertinent and relevant safety, health, and environmental information to the Company, subject to the provisions of paragraphs 3, 4, and 5 of this article and section (Article 3, Section A).

3. The parties agree that certain workplace, safety, health, and environmental information may not be discloseable based on the attorney-client privilege and the attorney work product doctrine.

4. Further, workplace, safety, health, and environmental information may be subject to limitations on public disclosure based on trade secret, confidentiality, privacy, self-critical, internal and deliberative process considerations whether in draft, preliminary, or final form, or because such information is being used in settlement discussions (herein collectively referred to as "Confidential Information"). The parties agree that Confidential Information is not per se discloseable or non-discloseable, and the Union and the Company will process requests for information consistent with the requirements of the National Labor Relations Act.

5. To ensure timely participation by the Union in safety audits and accident investigations, a Contract Coordinator and the Union members of the Joint Health, Safety, and Environmental Committee will sign a confidentiality agreement ("HSE Confidentiality Agreement"). The HSE Confidentiality Agreement will be in effect whenever a Union is participating in an investigation or safety audit and the Company asserts that certain information is non-discloseable. When the investigation or audit concludes, the parties will meet to discuss what information, if any, may be disclosed to individuals not mentioned in the HSE Confidentiality Agreement.

6. The Company will provide the Union Health, Safety and Environmental Department with prompt notification of the basic facts concerning any fatality at the worksite, as well as a copy of any related fatal accident report.

7. The Company will develop and implement, with the involvement of the Union, further policies and programs for ensuring these rights. Nothing in this Article or the parties' commitment to joint efforts shall detract from the Company's right to manage the workplace to optimize safety and to adopt reasonable safety rules, policies and programs following satisfaction of its statutory bargaining obligations.

8. Once during the term of this Agreement, the Company shall allow time off and reimburse one Union Joint Safety, Health and Environmental Committee member from each location the reasonable and out of pocket expenses at the USW travel and per diem rates, and as reasonably agreed to by the Company and the Union in advance of incurring such expenses, so they may attend the periodic International Union's Health, Safety and Environment Conferences. Further, for the term of this agreement, a Company safety representative may attend the International Union's Health, Safety and Environment Conferences without being required to pay a registration fee. Attendees will be required to give a report and training (presentation) regarding the program to the Committee at his location.

9. Nothing in this Agreement shall mean that the Company shall have violated this Agreement solely because a workplace accident, injury or illness has occurred.

Article 3. Health, Safety and the Environment

Section B. Safe and Healthful Workplace

1. The Company will provide safe and healthful conditions of work for its Employees and will, at a minimum, comply with all applicable laws and regulations concerning the health and safety of Employees at work and the protection of the environment. The Company will install and maintain any equipment reasonably necessary to protect Employees from hazards.

2. The Company will make every reasonable effort to ensure that all equipment is maintained in a safe condition. Its inspection and maintenance program will give top priority to equipment critical to Employee safety and health. Where faulty equipment creates an abnormal risk to Employees, the Company will take all necessary steps to eliminate the risk.

3. The Company will provide suitable heating and ventilation systems and keep them in good working order.

Article 3. Health, Safety and the Environment

Section C. Right to Refuse Unsafe Work

In providing the following procedure, the parties agree to guard against the misapplication of this procedure by those seeking to use it for purposes not related to safety or health and/or by the misapplication of the unsafe or unhealthful conditions provisions described herein. The continuing responsibility of all employees, as well as all Company and Union representatives, is to make certain that the provisions of this procedure are applied solely for, and in the manner intended herein.

1. An Employee who in good faith believes an unsafe or unhealthful condition exists which is beyond the normal hazards inherent in the operation and which involves a danger of injury to his person should notify his immediate supervisor who will immediately investigate to determine whether or not such conditions do exist.

2. If at any step in the procedure outlined below, the Company finds that an unsafe or unhealthful condition does exist which involves a danger of injury, the condition will be corrected before any employee is assigned to do the work.

3. If the immediate supervisor determines that such danger of injury does not exist, he/she will instruct the employee to do the work. If the employee still believes that such conditions do exist the employee may then request a Union safety committee representative on the shift to confer immediately with the supervisor on the subject. Upon conferring, the parties must first decide if a danger of injury exists. If the parties agree that no such danger of injury to the employee exists, the employee shall be advised to perform the work.

4. If upon conferring, the immediate supervisor and the Union safety committee representative on the shift cannot agree whether or not a danger of injury exists, the Union or employee may file a grievance as provided in Step 5 below.

    a While the matter is under consideration, the employee will be assigned other work in his/her classification, as appropriate, if such is available.

    b. Nothing contained herein shall preclude the Company from assigning another employee to do the work in question if the Company has determined that no danger of injury exists. The Company and Union representative on shift will advise such other employee of the disagreement prior to assignment.

    c. No employee or representative, other than communicating the facts relating to the safety of the work, shall take any steps to prevent the assigned employee from doing the work.

    d. No employee shall be discharged or disciplined for the reasonable good faith exercise of the rights set forth in the above procedure.

5. If the matter remains in dispute, it shall be subject to and processed in accordance with the grievance procedure. A grievance alleging an imminent danger shall be submitted at step 2 within two (2) calendar days (excluding Saturdays, Sundays and Holidays) of the event giving rise to the grievance. The Company safety representative or designee shall attend the meeting. If not resolved, the matter will be subject to the final step of the grievance and arbitration procedure.

6. Before arbitration, the parties may agree to present the facts relating to a grievance arising out of an employee exercising his or her rights under this Article to an International Union Health, Safety and Environment Department, and the corporate-level safety and health department, who make a joint recommendation concerning the disposition of the grievance.

Article 3. Health, Safety and the Environment

Section D. Personal Protective Equipment

The Company will provide, without cost to the Employee, goggles, hard hats, non-prescription safety glasses, hearing protectors, face shields, respirators, special-purpose gloves, protective clothing, harnesses, and other effective protective equipment, in good working order when required by law or regulation or when necessary to protect Employees from injury or illness. When a non-probationary Employee requires prescription safety glasses, the Company will pay for up to two (2) pairs as necessary in each two (2) year period. Prescription safety glasses shall be selected by the Employee from Company-authorized vendors and product lists. The Company may assess a fair charge to cover loss or willful destruction by the Employee. The Company will replace prescription safety glasses as needed if an Employee's prescription changes or if the glasses are damaged.

Article 3. Health, Safety and the Environment

Section E. Safety and Health Training

1. All Employees will be provided with periodic safety and health training. In addition, before the initial assignment to a particular job, Employees will receive training on the nature of the operation or process; the hazards of the job; controls in place; safe working procedures and the reasons for them; the purpose, use and limitations of the required personal protective equipment; and other controls or precautions associated with the job. Such training will also be provided when the job changes in a way that affects the nature or severity of the hazards.

2. All safety-related training programs will be fully discussed and reviewed by the Joint Safety and Health Committee. The Company will make a reasonable effort to also use Employees chosen by the Union Co-Chair of the Joint Safety Committee as trainers and will instruct trainers in effective teaching techniques. Upon request, the Union's Health, Safety and Environment Department (Union Safety Department) will be provided with a copy of all training materials and be afforded the opportunity to review the training.

Article 3. Health, Safety and the Environment

Section F. Medical Program for Workplace Injuries and Illnesses

1. The Company will provide first aid equipment and trained first aid personnel in close proximity to each of its facilities. The Company will provide Employees who are seriously injured on the job with prompt emergency transportation to an appropriate treatment facility and return transportation to the plant or the Employee's residence.

2. An Employee who, as a result of occupational injury or illness, is unable to work for the balance of the shift on which s/he is injured will be paid for the balance of his/her scheduled shift that day. If such an Employee is not able to be seen by a licensed health care provider until the next day and misses scheduled work for that reason, s/he will be paid for scheduled time missed that next day. Such an Employee, who returns to work on subsequent days and who thereafter requires follow up medical appointments directed by a licensed health care provider, shall be paid up to three (3) hours straight time earnings for lost time on the day of each such follow up appointment for up to three (3) appointments.

3. The Company will make medical screening for occupational illnesses available to Employees in jobs where a government agency requires screening.

4. The Company will not require any Employee to submit to any medical test or answer any medical history question that is not related to the Employee’s ability to perform his/her job.

5. The Company will maintain the privacy of reports of medical examinations of its Employees and will only furnish such reports to a physician designated by the Employee with the written authorization of the Employee; provided that the Company may use or supply such medical examination reports of its Employees in response to subpoenas, requests by a governmental agency authorized by law to obtain such reports, in arbitration or litigation of any claim or action involving the Company and the Employee, and otherwise within the Company strictly on a need-to-know basis. Upon written request by the Employee, the Company will provide the Employee with a copy of the Employee’s medical records at no cost to the Employee. All medical examinations will be conducted by or under the supervision of a licensed physician.

Article 3. Health, Safety and the Environment

Section G. Policy on Alcoholism and Drug Abuse

1. To facilitate rehabilitation of Employees who abuse alcohol or drugs, before they violate the Alcohol and Drug Abuse Policy, the Company and the Union agree to establish an Employee Assistance Program (EAP) administered and funded by the Company. The EAP will utilize professional and/or peer counselors and will operate under strict rules of need-to-know confidentiality.

2. The Company may require an Employee to submit to a drug or alcohol test as set forth in the attached Exhibit A, Alcohol and Drug Abuse Policy.

3. Employees will not be required to submit to drug or alcohol testing for any other reason, unless such testing is required by law. The Company agrees that it will not test for drugs or alcohol based solely on anonymous tips.

4. Drug and alcohol tests will utilize scientifically accepted methods for evaluating impairment. When a biological sample is taken, a portion will be retained for retesting, should the Employee dispute the initial results.

5. Employees who are found through testing to have abused alcohol or drugs will be offered rehabilitation. However, this provision does not affect the right of the Company to discipline or discharge Employees for violation of Exhibit A, plant rules or for working or attempting to work while impaired. A positive test result will be proof of impairment.

Article 3. Health, Safety and the Environment

Section H. Joint Safety and Health Committee

1. A Joint Safety and Health Committee (Joint Safety Committee) will be established at each facility to be composed of not less than three (3) nor more than five (5) Employees designated by the Union, including a Local Union President/Unit Chair, and an equal number of employees designated by the Company, including the General Manager or his designee. The parties will designate their respective Co-Chairs and provide each other with updated lists of their members of the Joint Safety Committee.

2. The Joint Safety Committee will have the following functions: participating in the design of Employee safety and health programs; assisting in the establishment of safe job procedures; overseeing and participating in plant safety and health audits (including annual comprehensive audits of the entire plant); reviewing plant safety rules; participating in the investigation of workplace accidents; reviewing accident, injury, illness and other statistics related to safety and health; participating in the design of Employee safety and health training programs; reviewing changes in plant technology or operations for their personal protective equipment; discussing the Company's response to proposed regulations and legislation affecting safety and health; participating in and reviewing the results of safety and health inspections or industrial hygiene monitoring by OSHA, MSHA, and NIOSH; collecting and responding to safety and health concerns raised by individual members of the Joint Safety Committee or Employees; and working together to promote an awareness of safety and health hazards and safe work procedures.

3. The Joint Safety Committee will hold periodic meetings at times jointly determined by the Co-Chairs, but no less often than monthly. The Co-Chairs may jointly call a special meeting of the Joint Safety Committee.

4. The Company and the Union will each keep minutes of meetings. Prior to every regular meeting, the Company will prepare a written response to concerns or action items noted at the previous meeting, as well as any open items from previous meetings. The two (2) sets of minutes, or a jointly agreed reconciled version, along with the Company's written response to concerns and action items, will be included in the official record of the meeting.

5. The Company will not make any non-emergency changes to plant safety and health programs, policies or rules; introduce new protective equipment or eliminate existing protective equipment; or modify safety and health training, unless the Joint Safety Committee has been notified and the Union has been provided the opportunity to discuss the change.

6. The Joint Safety Committee will not handle grievances, although it may discuss safety and health issues that have led to a grievance.

7. Members of the Joint Safety Committee will be afforded access, consistent with their own safety and the safety of the operation, to all operational areas of the plant, upon notification to the appropriate management representative. The director of the Union Safety Department or his/her designee will be allowed access to the plant upon notification to the Company.

8. The parties will sponsor an annual safety and health meeting, attended by Union members of the Joint Safety Committee from each plant covered by this Agreement, appropriate Company counterparts and members of the Union Safety Department. The Company will pay reasonable travel expenses, including lodging and meals, and lost time earnings.

9. The Union members of the Joint Safety Committee will be compensated for all time spent meeting with the Company on Committee work.

Article 3. Health, Safety and the Environment

Section I. Joint Environmental Issues

1. The parties agree that issues and concern pertaining to the environment will continue to be addressed through the Joint Safety, Health and Environmental Committee.

2. The Company will make available for review to the Joint Safety, Health and Environmental Committee all environmental reports, monitoring results, analyses, materials received from the EPA and other agencies and any other documents related to the Company's environmental program and obligations. The disclosure of information under this paragraph shall be subject to Article 3 Section A, Paragraph 4 and 5 of this Agreement.

Article 3. Health, Safety and the Environment

Section J. Union Safety and Health Representatives

The Joint Safety Committee, Company Safety Department and Union Safety Department will cooperate in designing and implementing training for Union safety and health representatives.

Article 3. Health, Safety and the Environment

Section K. Right to Participate in Accident Investigations

1. When an accident occurs that results, or could have resulted, in a serious injury to an Employee, the Company will promptly notify the Union Co-Chair of the Joint Safety, Health and Environmental Committee, and will provide access to the accident site to Union-designated member/s of the Joint Safety, Health and Environmental Committee, consistent with his/her safety. The union commits to limiting the number of committee members on the investigation to a maximum of three (3) except in the case of fatalities which may include the entire committee. The Union designated member/s of the Joint Safety, Health and Environmental Committee shall be in addition to the designated Miner's Representative. The Company will investigate all such accidents and provide a copy of the accident report it prepares to the Union Co-Chair of the Joint Safety, Health and Environmental Committee.

2. If the Company requires an Employee to testify at the formal investigation of an accident, the Employee will be advised that s/he may have a Union representative present. Further, the Union will be furnished with a copy of the Employee's testimony, if it is transcribed.

3. Employees will not be subject to discipline, discrimination or retaliation solely for suffering an injury or illness or for reporting same. However, Employees may be subject to discipline for proper cause based on failure to follow and adhere to safety rules, take standard safety precautions, or engage in safe work practices, or for making fraudulent accident reports.

Article 3. Health, Safety and the Environment

Section L. Carbon Monoxide Control, Toxic Substances and Harmful Physical Agents

1. The Company will routinely perform engineering surveys of hazards, periodic in-plant industrial hygiene sampling, and testing for harmful physical agents at each location covered by this Agreement. The survey, to be conducted by qualified personnel, will list locations from which significant amounts of carbon monoxide, toxic substances and harmful physical agents could escape, the conditions which might cause such a release, and the steps necessary to minimize or control the hazard. The survey will be updated annually and whenever significant changes are made to the gas-handling system or procedure.

2. Based on sampling and surveys, the Company will implement a program for the control of such hazards as necessary including engineering and equipment changes necessary to eliminate or reduce the hazards identified in the survey; necessary amendments to safe job procedures; the installation and regular testing of fixed automatic monitors equipped with alarms; the use of portable monitors; regular inspection and maintenance of testing equipment; provision of an adequate number of approved breathing apparatus appropriate for emergency operations and in locations readily accessible to Employees; Employee training including regular drills; an emergency rescue program with appropriate rescue and trained personnel; and the investigation by the Joint Safety Committee of all incidents which involve the accidental releases of such hazards, cause an alarm to trigger or result in an elevated level of carboxyhemoglobin in any exposed person. The Joint Safety Committee will review the survey and the program whenever it is updated.

3. Where the Company is currently using chemicals, solvents and/or compounds or when new chemicals, solvents and/or compounds are to be introduced, the Company will inform the Joint Management-Union Safety and Health Committee what known hazards in normal use are involved, if any, and what precautions will be taken to assure the safety and health of employees involved. Those employees that will be required to work with or in the area of such chemicals, solvents and/or compounds, will be instructed in the hazards, precautions and handling procedures of such materials. On request of the committee's Union representatives, the Company will provide written assurance that such steps have been taken.

4. The Company will keep such records of exposure as may be required by the U.S. Department of Labor. On request of the Committee's Union Representatives, the Company will review the results of exposure measurements with them.

Article 3. Health, Safety and the Environment

Section M. Ergonomics

Recognizing the value of the prior work by the parties to identify and recommend controls to ergonomic hazards, the parties will continue to identify ergonomic hazards in the plant and recommend controls.

Article 3. Health, Safety and the Environment

Section N. Safety Shoe Allowance

On October 1 of each year, each Employee, other than a probationary Employee, will be provided $125 for the purchase of safety shoes for the Employee's use at work and company will continue current safety shoe practices at all locations (not just OSHA regulated area).

Article 3. Health, Safety and the Environment

Section O. No Union Liability

The Company has the exclusive legal responsibility for safety and health conditions in the plant and for environmental matters. Neither the Union nor its representatives, officers, employees or agents will in any way be liable for any work-related injuries or illnesses or for any environmental pollution that may occur.

Article 3. Health, Safety and the Environment

Section P. Showering

Employees may be required to shower immediately before or after the completion of the workday. In such cases the Employee will be paid 15 minutes for showering and related activities when required before the end of the workday, or if so designated by the Company, where required before the completion of the Employees' workday.

Article 3. Health, Safety and the Environment

Section Q. New or Changed Work Processes

When the Company plans to implement significant changes in its work processes or the introduction of new machinery, the Company will notify the Union(s) of such plans. The Employees who work on the changed or new work process or the new machinery shall be instructed in their safe operation.

Article 3. Health, Safety and the Environment

Section R. Safety Education and Training

1. All newly-hired Employees shall be given an orientation by the Company concerning the Company's safety and health programs. The newly-hired Employee shall then be taken to the supervisor in the area in which he/she is to work and instructed on safety and health matters relating to the job and his safety responsibilities to himself/herself and to fellow workers. Likewise, he/she shall be introduced to the area's Union Safety and Health Committeeperson, or the Union Safety and Health Chairman, when one of these and the Employee are both available.

2. Instructions on safety and health matters will be given to all affected Employees as changes in circumstances or assignments may warrant.

Article 4. Civil Rights

Section A. Non-Discrimination

1. The provisions of this Agreement shall be applied to all Employees without regard to:

    a. race, color, religious creed, national origin, sexual orientation, handicap or disability or status as a veteran; or

    b. sex or age, except where sex or age is a bona fide occupational qualification; or

    c. citizenship or immigration status, except as permitted by law;

    d. membership in, affiliation with, or support for the Union, or refraining from Union membership, affiliation or support, it being understood that this does not preclude the Unions from lawfully preferring union officers or activists in appointing the member of committees established under the agreement.

2. Unlawful harassment by the Company or the Union on any of the bases set forth in this Section shall be considered discrimination under this Section.

3. Neither the Company nor the Union shall retaliate against an Employee who complains of discrimination or who is a witness to discrimination.

4. The Company shall have no right to discipline in any way an Employee solely because of his/her failure to perform his/her duties as a representative or officer of the Union.

5. Nothing herein shall be construed in any way to deprive any Employee of any right or forum under public law.

6. The provisions of this section shall be applied consistent with existing law.

Article 4. Civil Rights

Section B. Civil Rights Committee

1. A Joint Committee on Civil Rights (Joint Committee) shall be established at each location covered by this Agreement. The Union shall appoint three (3) members, one of whom shall be a Local Union President/Unit Chair or Grievance Chair. The Company shall appoint an equal number of members, including the General Manager or his designee. The parties shall each appoint a Co-Chair and shall provide each other with updated lists of the members of the Joint Committee.

2. Joint Committee members must, as a precondition to serving on the Joint Committee, meet the following requirements:

   a. Agree to keep all matters confidential and sign an appropriate confidentiality agreement.

   b. Satisfactorily complete a training program, to be mutually agreed upon by the Company and the Union concerning: employment, discrimination laws; the topics addressed in Article 4, Section A of this Agreement; fact investigation; and note-taking and documentation practices.

3. The Joint Committee shall meet as necessary and shall review, investigate, and attempt to resolve complaints alleging an adverse employment action that would, if true, violate Article 4, Section A of this Agreement and/or a Federal or State statute prohibiting discrimination in employment, including but not limited to, Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act.

4. The Joint Committee shall not displace the normal operation of the grievance procedure or any other right or remedy and shall have no jurisdiction over initiating, filing or processing grievances. Further, the Joint Committee may decline at the request of either the Company or the Union committee members to investigate the complaint.

5. An Employee complaint to the Joint Committee shall be subject to the following guidelines:

   a. The complaint must be in writing on a form mutually agreed to by the Company and the Union, and must, at a minimum, include the facts supporting the complaint and the basis of the alleged discrimination (e.g. sex, race, national origin).

   b. The Employee must provide the Joint Committee with at least sixty (60) days to attempt to resolve the matter.

   c. At any time thereafter, if the Joint Committee has not yet resolved the matter, the Employee may request that the Grievance Chair file it as a grievance in Step 2 of the

grievance procedure, and upon such filing the Joint Committee shall have no further jurisdiction over the matter.

d. If the Joint Committee proposes a resolution of the matter and the Employee is not satisfied with such resolution, then the Union may file the complaint at Step 2 of the grievance procedure, provided such filing is made within thirty (30) days of the Employee being made aware of the Joint Committee's proposed resolution.

e. In arbitrations of disputes involving alleged discrimination in violation of a statute or statutes discussed in paragraph 3 of this Section, the parties shall be entitled to the remedies provided for in the statute or statutes and shall have the same rights and limitations as those which are provided for in the statute or statutes.

f. Nothing in this Article and Section shall be construed to prohibit an Employee from filing a charge with the EEOC or other administrative agencies.

Article 4. Civil Rights

Section C. Workplace Harassment, Awareness and Prevention

1. All Employees shall be educated in the area of harassment awareness and prevention on a periodic basis.

2. All new Employees (and all Employees who have not received such training) will be scheduled to receive training as to what harassment is, why it is unacceptable, its consequences for the harasser and what steps can be taken to prevent it.

3. All Employees shall be compensated in accordance with the standard local plant understandings for time spent in training referred to in this Section.

Article 5. Workplace Procedures

Section A. Local Working Conditions

1. Deprivation of Benefits

   In no case shall Local Working Conditions or a local supplemental agreement deprive an Employee of rights under this Agreement and the conditions shall be changed to provide the benefits established by this Agreement.

2. Benefits in Excess

   Any provision of a local supplemental agreement which provides benefits that are in excess of, or in addition to, but not in conflict with benefits established by this Agreement shall remain in effect for the term of this Agreement.

Article 5. Workplace Procedures

Section B. Job Evaluation and New or Changed Jobs

1. In the event the Company chooses to permanently modify substantial duties of an existing job or create a new job, it shall follow the procedure outlined below.

2. The Company will notify the Union in advance and in writing and provide a description of how it intends to modify an existing job or a description of a proposed new job. The description shall include:

   a. the requirements of such new or modified job in the areas of training, skill, responsibility, effort and surroundings (Requirements);

   b. the Company's view as to how these Requirements compare to the Requirements for existing jobs at the plant; and

   c. based on Paragraphs (a) and (b) above, at what rate the Company believes the job should be paid.

3. If the parties are unable to agree upon the appropriate rate of pay for the new or modified job, they shall submit their dispute to arbitration under Article 5, Section I, and the arbitrator shall have authority to decide only the rate of pay for the job, slotting it into proper relationship with existing jobs and rates.

4. The arbitrator shall base his/her decision on the Requirements of the new or modified job and how those Requirements compare to the Requirements for the existing jobs at the plant and other plants of the Company covered by this Agreement.

Article 5. Workplace Procedures

Section C. Hours of Work

1. Normal Workday and Work Week

   a. The normal workday shall be any regularly scheduled consecutive twenty-four (24) hour period comprising eight (8) consecutive hours of work and sixteen (16) consecutive hours of rest. The normal work week shall be five (5) consecutive workdays beginning on the first day of any seven (7) consecutive day period. The seven (7) consecutive day period is a period of 168 consecutive hours and may begin on any day of the calendar week and extend into the next calendar week. On shift changes, the 168 consecutive hours may become 152 consecutive hours depending upon the change in the shift. In the event extended shifts are adopted in accordance with applicable extended shift language, the eight (8) hours of work above shall become up to twelve (12) hours and the sixteen (16) hours of rest above shall become not less than twelve (12) hours.

   b. The Company shall have the discretion to determine hours and days of operations, and to determine the number of straight time or overtime hours to be worked by any Employee.

   c. Schedules showing Employees' workdays shall be posted or otherwise made known to Employees not later than 2:00 p.m. Wednesday of the week preceding the calendar week in which the schedule becomes effective. The Company will establish a procedure affording any Employee whose last scheduled shift ends prior to the posting of his/her schedule for the following week an opportunity to obtain information relating to his/her next scheduled shift. This procedure will also be applicable with respect to Employees returning from vacation.

   d. In accordance with the Company's practice, employees will be at their work station and ready for work at the start of their scheduled shift. All employees will remain at their designated work station until the end of the shift or, in designated jobs, until properly relieved. Time used in personal preparation for work, wash-up, clothes changing, travel to the work station at the beginning of the shift, and from the work station at the end of the shift, unless otherwise designated by mutual agreement, will not be considered as time worked and will not be compensated for by the Company.

2. No Guarantee

   Nothing contained in this Agreement shall be construed as a guarantee of work or that any particular schedule cannot be changed. This paragraph is not intended to void any agreement between the parties for the manner in which shifts will be assigned or selected.

3. Absenteeism

Absenteeism is addressed in a separate absenteeism policy.

4. Overtime

a. The parties recognize that schedules that regularly require a substantial level of overtime are undesirable and should be avoided where possible.

b. Where local practices or agreements with respect to the distribution of overtime do not presently exist, the Company and the Local Union Grievance Committee, if requested by either party, shall promptly conclude an agreement providing for the most equitable distribution of overtime opportunities consistent with the efficiency of the operation.

c. The Company will consider an Employee's request to be excused from overtime work and shall endeavor to reasonably accommodate those requests which are practicable and reasonable under the circumstances. Nevertheless, no Employee shall refuse a directive to work overtime and any disputes about the Company's compliance with this paragraph shall be subject to the grievance procedure.

5. Reporting to Work and Call-Out Pay

a. When an Employee reports for work on a regular shift, or is instructed to report for work on a special shift, and upon reporting at the scheduled time, he shall be given six (6) hours work at his/her regular rate, in whatever job classification is available as determined by Management, unless that Employee is notified at least four (4) hours prior to the starting time not to report. Notification will be by telephone. If the Employee provides no telephone number to the Company, the notification requirement is waived. An unanswered telephone call will be the same as notification. The foregoing shall not apply where the employer's failure to provide work is occasioned by, or results from:

(1) Plant delay, resulting from causes beyond the control of the Company, and the Employee is notified at least two (2) hours prior to his starting time not to report, or

(2) When an Employee has been absent from one shift or more and said Employee fails to notify the departmental supervisor then in charge at least eight (8) hours prior to the commencement of this shift to which the Employee intends to return.

b. An Employee returning to work as called between his/her regular shifts shall be paid one and one-half (1 -1/2) times the hourly straight-time pay rate for the classification of work to be performed with a minimum payment equivalent to five (5) hours at such straight-time rate. This minimum payment shall not apply to overtime work

consecutive to the regular scheduled shift. Employees scheduled off for vacation or on an authorized leave of absence shall not be called out for work.

c. An Employee who is called for duty on his/her scheduled day(s) off shall be paid for not less than six (6) hours at the straight-time pay rate for the classification of the work to be performed.

d. Pay for time not worked under the above sub-paragraphs 5 a, b and c will not be considered as time worked in the computation of overtime.

6. Timekeeping Device

Employees are required to use time-keeping devices, such as time clocks, installed by the Company and to comply with Company directions to record the beginning and end of their hours of work. Such instructions may require employees to “swipe in” or “punch in” prior to commencing work and to “swipe out” or “punch out” after the completion of their work day. The Company shall provide the Union a list of currently installed timekeeping devices at each facility, and shall provide notice to the Union prior to the installation of any additional timekeeping devices

Article 5. Workplace Procedures

Section D. Overtime

1. Definitions

   a. The payroll week shall consist of seven (7) consecutive days beginning at 12:01 a.m. Sunday or the shift change nearest to that time (or as agreed by the parties in the applicable Supplemental Agreement).

   b. The workday for the purposes of this Section is the twenty-four (24) hour period beginning with the time the Employee is scheduled to begin work.

   c. The Regular Rate of Pay as used in Paragraph 2 below (and in this Agreement) shall mean the Base Rate of Pay (including Shift Differential) for the job on which the overtime hours are worked.

2. Conditions Under Which Overtime Rates Shall Be Paid

   a. Unless worked pursuant to an Alternative Work Schedule, overtime at the rate of one-and-one-half times the Regular Rate of Pay shall be paid for:

      (1) hours worked in excess of eight (8) hours in a workday or, for employees working an Alternative Work Schedule, hours worked in excess of the scheduled shift;

      (2) hours worked in excess of forty (40) hours in a payroll week;

      (3) hours worked on the sixth workday of a regularly scheduled workweek during which five (5) days were worked; and

      (4) hours worked on a second reporting in the same workday where the Employee has been recalled or required to report to work after working eight (8) hours.

   b. Overtime at the rate of double the Regular Rate of Pay shall be paid for hours worked on the seventh workday of a regularly scheduled workweek during which six (6) days were worked.

3. Holidays

   Holidays not worked shall not be considered as time worked in the computation of weekly overtime.

4. Non-Duplication of Overtime

   Overtime shall not be duplicated by using the same hours paid at overtime rates more than once for the purpose of calculating overtime payments. There shall be no pyramiding of overtime and/or premium pay.

5. Overtime Lunches

   a. An Employee required to work unscheduled overtime for two (2) or more hours beyond the end of the regular shift will be furnished an overtime lunch. If an Employee works beyond six (6) hours beyond the end of the regular shift, s/he will be furnished with another overtime lunch. In the event an overtime lunch is waived by the Employee, s/he shall receive ten dollars ($10.00) pay in lieu thereof for each overtime lunch waived.

   b. It is understood, in the event an Employee waives an overtime lunch, s/he will be provided time to eat as if s/he had accepted the overtime lunch rather than pay in lieu of the overtime lunch.

   c. An Employee called out to work will provide his/her own lunch unless determined otherwise by the Company.

6. 16-Hour Rule

   a. No Employee(s) shall be offered overtime if his regular schedule would require him to work within eight (8) hours or less after having completed sixteen (16) hours of service in the scheduled work day, except emergency where life, property and/or production are in imminent danger.

   b. Should any Employee be required to work in excess of sixteen (16) hours as stated in paragraph 1 above, the Employee(s) shall be allowed an eight (8) hour rest interval (with travel time being considered part of the rest interval) before reporting to work.

   c. If the rest interval would involve time lost from the Employee(s) regular posted schedule, he shall be paid the regular scheduled rate for that time he would have worked had he not been on the rest interval.

Article 5. Workplace Procedures

Section E. Seniority

1. Seniority Status of Employees

   a. The parties recognize that promotional and other in-plant opportunities and job security should increase in proportion to length of Seniority and that the fullest practicable consideration shall be given to Seniority in such cases.

   b. Seniority, as defined by Paragraph 4 below, shall be used for all purposes under all labor and benefits agreements, unless explicitly provided otherwise by this Agreement or local supplemental agreement; provided, however, that accumulation in excess of two (2) years during a period of layoff shall be counted only for purposes of this Section, including local agreements thereunder.

   c. In all cases of promotions, reductions in force and recalls after layoffs, Seniority (as defined below in Paragraphs 3 and 4 and as provided in the local supplemental agreements) shall govern if ability to perform the work and physical fitness are relatively equal.

2. Determination of Seniority Units

   a. Seniority shall be applied on a job and departmental or larger unit basis, as agreed upon. A job may be in one seniority unit for one purpose and in a different unit for another.

   b. The seniority units, lines of progression, departments and rules for the application of seniority factors in effect as of the Effective Date shall remain in effect unless modified by a local written agreement signed by the President or Unit Chair of the affected Local Union.

3. Seniority Unit Definitions

   a. Company seniority is defined as an Employee's total credited length of service in one or more plants owned by the Company or its (predecessor).

   b. Plant seniority is defined as an Employee's total unbroken credited length of service in a plant.

   c. Departmental seniority is defined as an Employee's total unbroken credited length of service in a particular department.

   d. Sub-departmental seniority is defined as an Employee's total unbroken credited length of service in a particular sub-department.

e. Occupational/craft seniority is defined as an Employee's total unbroken credited length of service in a particular classification.

f. Jurisdictional seniority is defined as an Employee's total credited length of service in a particular bargaining unit.

g. Upon satisfactory completion of an apprenticeship, craft seniority shall be the date of the apprentice's indenture date.

4. Calculation of Seniority

a. Seniority shall be determined by the Employee's first employment or reemployment following a break in Seniority in any facility of the Company covered by this Agreement.

(1) Employees Who Were Employees of Any Predecessor Company

Seniority for Employees who were employees (within the meaning of the relevant basic labor agreement with the Union) of any predecessor company (a Union-represented company some or all of whose assets are or were acquired by the Company) will be the length of time measured from the Employee's Seniority date under that predecessor company's basic labor agreement subject to the employee's eligibility dates agreed to by the parties, except as otherwise provided by this Agreement or other agreements between the parties.

(2) All Other Employees

Seniority for all other Employees will be the length of time measured from the Employee's first date of employment with the Company.

b. Company Seniority shall be the length of time measured from the Employee's first date of employment or reemployment following a break in Seniority with the Company.

c. Plant Service shall be the length of time measured from the Employee's first date of employment or reemployment following a break in Seniority in his/her plant.

d. Seniority (including Company Seniority and Plant Service) shall only be broken if an Employee:

(1) quits;

(2) retires;

(3) is discharged for cause;

(4) if on layoff, fails to report to the Employment Office within ten (10) days of certified mail notice sent to his/her last address s/he provided to the Company.

(5) is absent due to a compensable disability incurred during the course of employment and does not return to work within thirty (30) days after final payment of statutory compensation for the disability or after the end of the period used to calculate a lump-sum payment. If the seniority of an Employee does not permit a return to work, the Employee will be placed on layoff.

(6) has not worked for more than thirty-six (36) months.

5. Probationary Employees

a. New Employees hired after the Effective Date of this Agreement will serve a probationary period for the first 480 hours of actual work and will receive no Seniority credit during such period. Probationary Employees shall not have access to the grievance procedure to contest their discharge.

b. Probationary Employees who continue in the service of the Company beyond the first 480 hours of actual work shall receive full Seniority credit from their original date of hire.

c. Where a probationary Employee is laid off and is subsequently rehired at the same location within one (1) year from the date of such layoff, the hours of actual work accumulated during the first employment shall be added to the hours of actual work accumulated during the second employment in determining when the Employee has completed 480 hours of actual work; provided, however, that his/her Seniority date will be the date of hire of the second hiring.

6. Interplant and Intraplant Transfers

It is recognized that conflicting seniority claims among Employees may arise when plant or department facilities are created, expanded, added, merged or discontinued. In the event the local parties are unable to resolve such conflicts, the International Union and the Company may reach such agreements as they deem appropriate, irrespective of existing seniority agreements, or submit the matter to arbitration.

7. Seniority Status of Grievance Committee Members and Local Union Officers

When a decrease of force is effected, the Local Union President/Unit Chair, Vice President and the Chair of the Grievance Committee shall, if they would otherwise be laid off, be retained at the lowest rated job in the unit that they represent. The intent of this provision is to retain in active employment individuals who can provide continuity in the administration of the Agreement; provided that an individual shall not be retained in employment unless work which s/he can perform is available.

8. Administration of Seniority

The Company shall post in each department, on a bulletin board maintained for that purpose, the Plant Service date of all Employees in that department.

9. Compensation for Improper Layoff or Recall

In the event of improper layoff or failure to recall an Employee in accordance with his/her seniority rights, the Employee shall be made whole for the period during which s/he is entitled to retroactivity.

10. Disabled Employees

Provided there is a vacancy and the employee is qualified, an employee who becomes physically unable to perform the duties of his/her job and who is ineligible for permanent total disability retirement may apply for a vacant job if such job is to be filled. The Union and the Company may waive seniority procedures to temporarily place the disabled employee in a vacancy. No job incumbent shall be required to vacate a job involuntarily to accommodate the disabled employee. A disabled employee who is temporarily placed in a job by other than the standard seniority procedure shall accrue seniority in his/her previous regular job, will accrue no seniority in his/her disability assignment, and will not share overtime in any job where he/she is not currently assigned. Upon a Company doctor's determination that he/she can return to regular employment, the employee shall be reassigned to his/her regular assignment.

11. Interunion Transfers

Employees transferring into other bargaining units on a trial basis and who are disqualified by the company within the trial period shall be allowed to return to their former jobs without loss of seniority.

12. Curtailments

Reductions in forces of seven (7) days or less may be made without regard to seniority to meet operating requirements or emergencies.

Article 5. Workplace Procedures

Section F. Testing

1. Where tests are used as an aid in making pre-selection determinations of the ability to perform the work, such a test must in all events be:

   a. job related;

   b. in accordance with Article 4, Section A (Non-Discrimination); and

   c. uniformly applied within each relevant work group.

2. A job related test, whether oral, written or in the form of an actual work demonstration, is one which measures whether an Employee can satisfactorily meet the specific requirements of that job.

3. Testing procedures shall in all cases include notification to an Employee of any deficiencies and an offer to counsel how to overcome the deficiencies.

4. Where, in accordance with this Agreement, a test is used by the Company as an aid in making a determination of the Employee's ability to perform the work and where the use of the test is challenged in the grievance procedure, the following shall pertain:

   a. Upon request and in connection with a grievance concerning the use of a job-related test in accordance with this Agreement, the Company will provide a description of the test and examples of test questions to the Union. The Company, however, shall have no duty and shall not be required to provide the actual test or the questions used in the test to the Union except as required by law.

   b. In the event that test questions and descriptions have been provided to the Union, all such test questions and descriptions will be held in strictest confidence and will not be copied or disclosed to any other person; provided that such test questions and descriptions may be disclosed to an expert in the testing field for the purpose of preparing the Union's position in the grievance procedure and to an arbitrator, if the case proceeds to that step. All test questions and descriptions will be returned to the Company following resolution of the dispute.

   c. Copies of transcripts and exhibits presented in the arbitration of cases involving the challenge to a test will also be held in confidence and will not be copied or otherwise published, except as needed by the Company in order to defend against a claim challenging an adverse employment action.

Article 5. Workplace Procedures

Section G. Indefinite Shutdowns

1. Before the Company decides to indefinitely shutdown or discontinue a plant, department or operating unit (a Shutdown for purposes of this Section) it shall give the Union advance written notice of at least sixty (60) days prior to the proposed Shutdown date if the Shutdown is within the Company's control. Along with such notice, the Company shall provide the Union with a detailed statement of the reasons for the proposed action and how and where the work which was performed at the shut down unit will be performed.

2. Thereafter, the Company will meet with appropriate Union representatives in order to provide them with an opportunity to discuss the Company's proposed course of action, provide the Union with any additional requested relevant and non-confidential information and bargain in good faith over any suggested alternatives.

3. No less than thirty (30) days prior to the Shutdown date within the Company's control, the Company shall advise the Union of its final decision, which decision shall be the exclusive function of the Company.

4. Any Employee affected by a Shutdown shall, after exercising any rights to which s/he may be entitled, be placed on layoff in accordance with this Agreement.

Article 5. Workplace Procedures

Section H. Manning of New Facilities

1. In the manning of production or maintenance jobs at new facilities in existing plants covered by this Agreement, the jobs shall be filled utilizing the criteria as set forth in Article 5, Section E, Paragraph 1(c) except that Seniority shall be Plant Service from the following categories in the following order but subject to the other provisions of this Section:

    a. Employees displaced from any facility being replaced in the plant by the new facilities;

    b. Employees otherwise displaced as a result of the installation of the new facilities;

    c. Employees presently employed on like facilities in the plant;

    d. Employees presently on layoff from like facilities in the plant; and

    e. Employees in the plant with two (2) or more years of Plant Service; provided, that if sufficient qualified applicants from this source are not available, the Company shall fill the remaining vacancies as it deems appropriate.

2. The local parties shall meet to seek agreement on the standards to be used to determine the qualifications entitling Employees otherwise eligible to be assigned to the jobs in question.

3. Should the local parties fail to agree on the standards for determining qualifications, assignments to the jobs in question shall be made pursuant to Article 5, Section E, 1, c, above (selection of Employees in promotions, reductions in force, and recalls).

Article 5. Workplace Procedures

Section I. Adjustment of Grievances

1. Purpose

   Should any differences arise between the Company and the Union as to the interpretation or application of, or compliance with, the provisions of this or any other applicable Supplemental Agreement, Memorandum of Understanding or Agreement, Letter of Understanding or Agreement, Settlement Agreement or Last Chance Agreement, prompt and earnest efforts shall be made to settle them under the following provisions.

2. Definitions

   a. "Grievance" shall mean a complaint by the Union which involves the interpretation or application of, or compliance with, the provisions of this or any other applicable Supplemental Agreement, Memorandum of Understanding or Agreement, Letter of Understanding or Agreement, Settlement Agreement or Last Chance Agreement.

   b. "Day" as used in this Section shall mean a calendar day, excluding Saturdays, Sundays and holidays.

3. Grievance Procedure

   a. An Employee may informally discuss a complaint with his/her supervisor, with or without his/her steward being present.

   b. Step 1. Any Employee or representative of the Union having a grievance may, within fifteen (15) days of the date on which the Employee first knew or should have known of the facts which gave rise to the grievance, present the grievance to his/her immediate supervisor, who shall attempt to adjust it. The Employee or Employees presenting the grievance may be accompanied by a steward. The supervisor shall give his/her decision within seven (7) days. If the supervisor's answer does not satisfactorily adjust the grievance, the grievance may be taken to the next step. Grievance responses at this step of the procedure will not set precedent.

   c. Step 2. If not settled at Step 1, the grievance must then be reduced to writing by the Grievance Committee noting the alleged facts, applicable provisions of the Agreement, and the remedy sought and presented for Step 2 within seven (7) days of the supervisor's answer. The General Supervisor and Human Resources Manager or their designees will hear the grievance within ten (10) days from receipt of the grievance in the presence of the Union Grievance Committee. The Company will render a written decision within ten (10) days after the hearing to the Union's Grievance Chair and to the Union's International Representative or designee.

d. Step 3. If a satisfactory settlement is not reached in Step 2, the grievance may be appealed to the General Manager or his designee, by the Union's International Representative or designee, within ten (10) days following receipt of the Step 2 decision. The General Manager or his designee and the International Union Representative and/or the Grievance Committee shall meet within ten (10) days of the appeal notice to review the facts and the Step 2 positions in an attempt to mutually resolve the grievance. The Company shall render its written decision within ten (10) days from the conclusion of the Step 3 hearing.

e. The International Union Representative may appeal a grievance to arbitration by sending a written notice to the Company Step 3 representative within ten (10) days of the Union's receipt of the Step 3 written answer.

f. The time limits above may be extended by mutual agreement.

g. Grievances at Step 1 only may be presented to the Company during the grievant's scheduled working hours, provided such procedure does not interfere with production or the orderly operation of the business.

h. Grievance meetings at Step 2 and Step 3 will be held during normal working hours on day shift. Aggrieved employees and a reasonable number of witnesses will be allowed to attend meetings at Step 2 if they have testimony which the Union Grievance Committee represents is relevant, material, non-repetitive and necessary to the resolution of the grievance. If committee members, aggrieved Employees, or witnesses are scheduled to work during a hearing, once notified by the Company that the hearing has been scheduled they must provide to their supervisors reasonable advance notice that they will attend. Aggrieved Employees may be called at the request of either the Company or the Union at any step and will be paid for time lost. In Bargaining Unit Work or safety grievances, a representative of the relevant committee shall also be present.

i. Multiple grievances arising within the bargaining unit at a single plant and from a single cause may be consolidated by mutual agreement.

4. General Provisions

a. Upon request from the Union, the Company shall provide the Union with reasonable forms for filing and appealing grievances and the special form referenced in subparagraph f below. The Union shall be responsible for timely requesting from the Company a re-supply of forms. The parties shall document the Step 2 and Step 3 written records.

b. The Company and the Union shall provide each other with updated written lists of their Step 1, Step 2 and Step 3 representatives and their designees who shall have the authority to settle grievances at their respective steps and, for the grieving party, to withdraw or appeal such grievances.

c. The settlement or withdrawal of a grievance prior to arbitration shall be without precedent or prejudice to either party's position.

d. Any grievance filed directly in Step 2 or higher shall be initiated within fifteen (15) days of the event upon which the grievance is based, or the date on which such event should reasonably have become known except as otherwise provided in this Agreement.

e. Except as otherwise provided in this Agreement, all grievances shall be initiated at Step 1 and grievances which are not initiated in the proper step shall be referred there for processing.

f. Upon mutual agreement, a single grievance may be processed with the facts of additional violations presented as well. Additional claimants shall sign a special form for this purpose. When the original grievance is resolved, the additional claims shall be reviewed in light of the resolved grievance. If the additional claims are not settled, they shall be considered as grievances and processed accordingly.

g. In the case of a grievance that involves a large group of Employees, only a reasonable number may participate in any discussion of the grievance.

h. In any settlement involving cash payments, payment not made within thirty (30) days will accrue interest from the date of settlement at the same rate as established at the local Federal Credit Union.

i. If, for any reason, the time limits specified in Paragraph 3 above for:

(1) meetings between the parties are not met, the grievance shall be considered denied as of the last day within the time limit for such meeting and the appropriate Union representative shall have the right to move the grievance to the next step;

(2) the Union to act are not met, the grievance shall be considered withdrawn; or

(3) the Company to act at Step 2 or Step 3 are not met, the grievance shall be considered denied as of the last day within the time limit for such action and the appropriate Union representatve shall have the right to move the grievance to the next step.

j. An Employee who is summoned to meet with a supervisor or other representative of the Company for the purpose of discussing possible suspension or discharge of the Employee shall be entitled to be accompanied by a steward and, if no steward or other Union representative is available, the meeting shall be deferred and the Employee may be suspended pending the meeting. In the event no steward or other Union representative is available and the Company elects to suspend the Employee pending

the meeting, the Company shall make a good faith effort to advise the Local Union President/Unit Chair or Grievance Chair as soon as possible that day.

k. No Employee shall be required to submit to a lie detector test. The results of lie detector tests will not be used by the Company or the Union.

l. Notwithstanding anything to the contrary, the grievance procedure may be utilized by the Union with or without an individual grievant. Such grievances shall be filed in Step 2.

m. In the event an Employee dies, the Union may process his/her grievance on behalf of his/her heirs.

n. The Chair of the Union Negotiating Committee, the District Director and the International Representative (or equivalent) shall have access to the plant at reasonable times to investigate issues with which they are concerned.

o. The Company will pay for all lost time of Employee participants in Steps 1, 2 and 3 of the grievance procedure and disciplinary hearing (described above) in accordance with current practice.

5. Grievance Committee

a. The Union shall provide the Company with an updated list of Employees who comprise its Grievance Committee, including a chair and a secretary. The number of members of the Committee at each Company location shall be consistent with current practice.

b. Committee members will be afforded time off upon reasonable notice and approval to:

(1) attend scheduled committee meetings;

(2) attend meetings pertaining to suspension or discharge or other matters which cannot reasonably be delayed; and

(3) visit departments at reasonable times for the purpose of transacting the legitimate business of the Grievance Committee after notice to the head of the department to be visited and after reasonably granted permission from his/her own department head if the Grievance Committee member is at work.

c. Where the Grievance Committee so decides, the steward may be designated to aid the Committee in a particular matter. The Union shall notify the Company in writing when it so decides.

d. Each steward shall:

(1) with respect to the handling of grievances, be limited to Step 1 within the plant unit represented by him/her; and

(2) upon reasonable notice to and reasonable approval by his/her immediate supervisor, be afforded time off to investigate the facts essential to the settlement of any grievances.

6. Board of Arbitration

a. The Board of Arbitration (the Board) for the term of this Agreement shall consist of the following individuals:

(1) Michael D. Rappaport
(2) Michael H. LeRoy
(3) Elizabeth Ford
(4) Paul S. Betts
(5) Harry Graham
(6) Maretta Comfort Toedt

b. In the event of the resignation, incapacity or death of a member of the Board, the parties shall promptly agree upon a successor. If the parties cannot agree on a successor, the party that initially selected the departing arbitrator shall be entitled to select the successor arbitrator. The successor arbitrator must be a member of the National Academy of Arbitrators.

c. The member of the Board (arbitrator) chosen in accordance with Paragraph 7(a) below shall have the authority to hear and decide any grievance appealed in accordance with the provisions of the grievance procedure. The arbitrator shall not have jurisdiction or authority to add to, detract from or alter in any way the provisions of this Agreement.

d. Where the parties are in disagreement with respect to the meaning and application of a decision, either party may apply to the Board for a compliance hearing in accordance with rules that the Board shall prescribe. Such application shall be given priority and be resolved by the Board within thirty (30) days.

e. Expenses connected with specific cases shall be shared equally by the Company and the relevant Local Union.

f. The decision of the arbitrator shall be final and binding upon the Company, the Union, and all Employees concerned.

7. Arbitration Hearings

a. An arbitrator will be selected from the Board of Arbitration on a case-by-case rotation basis, starting after the Effective Date of this Agreement with the first case being handled by the first Board member listed above, unless the parties mutually agree to select a Board member on some other basis. Discharge cases will be placed first in the order of priority of cases to be heard. Hearings will be scheduled by mutual agreement on dates provided by the arbitrator.

b. The hearing shall be scheduled as required at a mutually acceptable location.

c. A hearing may be postponed by mutual agreement or if the Arbitrator determines that circumstances clearly require postponement. After a matter has been appealed to arbitration, within three months the arbitrator then available on the rotation described in 7(a) above shall be notified of his or her selection to hear the matter, and the parties shall within six months schedule a hearing date consistent with the dates offered by arbitrator.

8. Rules For Hearings

The total cost of any stenographic record or transcript shall be paid for by the party ordering same. All back pay awards will be limited to the amount of wages and benefits the Employee would otherwise have earned or been entitled to, less amounts the Employee could have earned through the exercise of reasonable diligence as defined by NRLB case law, or interim earnings calculated according to NLRB and unemployment compensation.

a. The parties agree that the prompt resolution of cases brought to arbitration is of the highest importance. Therefore, except for cases involving contract interpretation disputes and/or as provided in Paragraph 8(b) below, arbitration hearings shall be heard in accordance with the following rules::

(1) the hearing shall be informal;

(2) no briefs shall be filed or transcripts made in discipline cases;

(3) there shall be no formal evidence rules;

(4) the arbitrator shall assure that the hearing is, in all respects, fair;

(5) the arbitrator shall issue a decision no later than two (2) days after conclusion of the hearing in a discipline case. The decision shall include a brief written explanation of the basis for the conclusion; and

(6) the Board shall adopt such other rules as it deems necessary.

b. In the event the Union or the Company believes that the issues involved in a discipline case are of meaningful precedential significance or great complexity, it may petition the arbitrator to allow the filing of briefs as follows:

(1) the moving party will notify the other party that it intends to so argue at least seventy-two (72) hours prior to the start of the hearing;

(2) the hearing shall begin with the arbitrator taking no more than thirty (30) minutes of testimony from each side on that issue;

(3) the arbitrator shall rule from the bench on the issue of whether briefs may be filed and the hearing on the case shall commence immediately thereafter; and

(4) if the arbitrator rules that briefs are to be allowed, then the parties shall determine when the briefs will be due, as well as when the arbitrator will render a decision.

c. The Company agrees that it shall not compel, by subpoena or otherwise, any Employee or retired Employee to testify in an arbitration hearing. The Union agrees that it shall not compel, by subpoena or otherwise, any non-bargaining unit employee or retiree to testify in an arbitration hearing.

9. Suspension and Discharge Cases

a. No Peremptory Discharge

(1) Within three (3) days of notification by the Company that the conduct of an Employee may warrant disciplinary suspension or discharge, a hearing will be held by a representative designated by the Company, with the Employee and the Union Grievance Committee. The purpose of the hearing is to provide for an investigation and determination of the facts. The Company will notify the Employee and the Union of its decision in writing within five (5) days after such hearing. Any grievance over disciplinary suspension or discharge shall be filed in Step 2 of the grievance procedure within five (5) days of the notice of the Company decision. The Company may suspend the Employee pending the hearing.

(2) Before imposing a discharge, the Company shall give written notice of its intent to the affected Employee and the Grievance Chair.

(3) Where the Union files a grievance protesting such intended discharge within five (5) days of receipt of the notice, the Company may impose no more than a suspension on such Employee.

(4) The grievance protesting the intended discharge shall be filed at Step 2 of the grievance procedure and the Step 2 Answer shall be given prior to the Company converting the suspension to a discharge. At the Step 2 meeting, the Company shall provide a written statement of the facts and circumstances supporting its proposed disciplinary action.

(5) In the event the Company does convert the suspension to a discharge, the action shall be treated as a denial of the grievance at Step 2 and the Union may thereupon move the case through the balance of the grievance procedure.

10. Arbitration of Disputes Involving Asarco Benefits Plans

a. If any difference shall arise concerning a benefit, eligibility or coverage of the Employee and/or spouse or dependents under the Pension, Health and/or other Welfare Plans, the issue may be the proper subject of a grievance after completion of any claim or pre-litigation dispute resolution procedure in the applicable plan. If agreement cannot be reached between the Company and the applicable Union representative, such question shall be referred to arbitration as described herein.

b. The Union may appeal a benefits grievance to arbitration by sending a written notice to the Company Step 3 representative within sixty days of the Union's receipt of the Step 3 written answer. However, the time limits for filing a grievance under the grievance procedure shall not apply until after the claim or pre-litigation dispute resolution procedure in the applicable plan has been exhausted.

c. An arbitrator shall be selected from a list obtained from the Federal Mediation and Conciliation Service (FMCS) of arbitrators with specialized experience with issues involving Pension and Welfare Plans. The parties shall request a panel of seven such names from the FMCS and shall strike names from the list until an arbitrator is selected. If the parties are unable to reach agreement on an arbitrator from the submitted list, the parties shall request another panel and repeat the procedure until an arbitrator is selected.

d. The arbitrator shall have authority only to decide the question pursuant to the provisions of this Agreement and of the applicable Plan, but shall not have authority in any way to alter, add to or subtract from any of such provisions.

e. The decision of the arbitrator shall be final and binding and judgment on the award may be entered in any court having jurisdiction. The expense of arbitration shall be borne equally between the parties unless they agree otherwise.

Article 5. Workplace Procedures

Section J. Management Rights

1. The management of the plants and the direction of the working forces, including but not limited to the right to: hire, transfer, suspend or discharge for proper cause, relieve Employees from duty; determine the work to be performed; change or curtail operations; fill, change, add or eliminate jobs; establish, revise, or continue methods, processes, and means of mining, processing, refining, and manufacturing; determine the existence or the lack of work; lay off employees for business reasons; institute, establish, adjust, and determine work standards; establish quantity and quality standards and to exercise its judgment as to the quality and quantity required; require physical examinations or job-related functional capacity evaluations of employees seeking to return to work after time off due to a personal medical condition or occupational illness, or as may be required in order to assess the reasonableness of an accommodation under applicable law, or if other objective evidence indicates that there exists a reasonable question as to fitness for duty; adopt reasonable safety, work and other rules and, from time to time, modify, rescind, or change such rules after first providing advance notice to the Union and bargaining either to agreement or impasse, it being expressly understood that this provision is not a waiver of the Union's right to contest the reasonableness of any such rule in an arbitration proceeding, and to enforce such rules and impose discipline, including suspension and discharge, for violation thereof.

2. Nothing in Section J shall permit the Company to act inconsistently with any agreement with the Union.

3. The Company, should it fail to exercise any of its rights or exercise them in a particular way, shall not be deemed to have waived such rights or to be precluded from exercising such rights in some other way.

Article 5. Workplace Procedures

Section K. Prohibition on Strikes and Lockouts

1. There shall be no strikes, sympathy strikes, or other work stoppages or the interruption or impeding of work. No officer or representative of the Union shall authorize, instigate, aid or condone any such activities. No Employee shall participate in any such activities.

2. The applicable procedures of this Agreement will be followed for the settlement of all complaints or grievances.

3. In the event of a breach of paragraph 1 above, the Union shall immediately instruct the involved employees that their conduct is in violation of the contract and shall instruct such employees to quit the offending conduct. The Union shall provide written confirmation to the Company, in a timely manner, that it has contacted and instructed affected employees to quit the offending conduct. The Union will also provide the Company with a copy of any posting regarding such instructions in a timely manner.

4. There shall be no lockouts.

Article 5. Workplace Procedures

Section L. Workplace Problem-Solving Committee – Refer to Article 6, Section A(1)&(2)

Article 5. Workplace Procedures

Section M. Clothing and Tool Replacement

1. Maintenance Employees will provide and maintain a full set of hand tools necessary for the performance of their work. Apprentices will obtain such tools upon indenture date. Other employees will obtain such tools upon being promoted or hired to the maintenance position. Employees will be compensated for such required tools when they are unintentionally destroyed beyond repair in Company service or upon satisfactory proof that they were stolen from the workplace, provided negligence on the part of the employee is not the cause thereof. Compensation consideration will include normal wear and quality of the tool.

2. Employees will be compensated for personal clothing or other personal items destroyed or damaged beyond repair by abnormal circumstances during work. In determining such compensation, the prior condition of the item will be considered.

3. Except as provided in Article 3 (Health, Safety and the Environment) of this Agreement, the Company will not furnish work clothing unless applicable law or regulation requires that such clothing be furnished at Company expense. As determined by the Company, Employees will be provided special clothing and tools for unusual situations. The Company will replace tools which are broken or damaged in Company service, so long as not the result of an employee's negligence. Any broken or damaged tools will be replaced with tools of comparable value. Broken or damaged tools shall be presented and become property of the Company in exchange for the replacement.

Article 5. Workplace Procedures

Section N. Absentee Control Policy

This policy will be effective on the first day of the month following ratification of the Basic Labor Agreement. Employees will begin with a clean slate at that time.

1. Attendance

   Regular attendance and punctuality is essential to ASARCO's success and are conditions of employment which must be observed. All Employees have the obligation to be prepared to start work at their scheduled starting time. All absences under this policy will be counted in a rolling twelve (12) month period. Absences covered by a leave of absence, FMLA, jury duty, Union business, funeral leave, disciplinary layoff, industrial accidents, military leaves or other contractually allowed absences, will not be considered "absences" under this policy.

2. Absences

   a. It is the Employee's responsibility to contact the Company in accordance with local notification procedures as soon as he knows or thinks that he cannot report to work, will be late for work, or must leave early. The Company should be contacted as soon as possible, at least one hour before the Employee's starting time. In all cases, Employees must have actual reasons for absences.

   b. If an Employee does not notify the Company in accordance with local notification procedures at least one hour in advance that he will be absent from work, it will be considered a no call, no show absence. For scheduling purposes, Employees must inform the Company of the expected date of their return, if applicable. An Employee will be allowed a maximum of eleven (11) total absences for any reason in a rolling twelve month period.

3. Non-Consecutive/No Call, No Show Absences

   If an Employee has four (4), non-consecutive/no call, no show absences (cumulative) in a rolling twelve month period, he will be subject to immediate termination without a hearing. Each non-consecutive/no call, no show absence is also considered one of the Employee's eleven (11) maximum total absences.

4. Consecutive/No Call, No Show Absences

   Employees who incur three (3) consecutive/no call, no show absences will be subject to immediate termination without a hearing.

5. Notification and Counseling

   a. An Employee will receive verbal notification when he/she has reached 3 absences.

   b. An Employee will be notified in writing when he/she has five (5) absences.

   c. Employees who incur seven (7) absences shall be counseled by a committee consisting of a supervisor, Human Resources, and a Union representative. At the counseling session, the Employee will be encouraged to improve his attendance record.

   d. An Employee will also be notified in writing when he/she has ten (10) absences and his/her next absence is cause for termination. In all cases, the Union will be provided a copy of the letter.

6. Leaves of Absence

   a. An Employee may pre-arrange a leave of absence, which, if approved, will not count towards the Employee's maximum absences. A leave of absence is an absence with permission for more than three (3) scheduled work days. An Employee desiring a leave of absence will request a leave of absence from Human Resources. Whenever possible, this request should be made prior to the time the leave begins but in all events the request shall comply with local notification procedures. Human Resources or its delegate will investigate the nature and validity of the request and in accordance with local procedures will approve or disapprove the request as appropriate and notify the Employee. If the request is denied, Human Resources or its delegate will explain the reason to the Employee.

   b. Any Employee who requests or takes a leave of absence for false reasons will be subject to disciplinary action, up to and including possible discharge.

   c. Emergency requests for leaves of absence will be handled without delay.

   d. A request to extend a leave of absence must be made to Human Resources in accordance with local notification procedures. An Employee who is requesting a leave of absence for medical reasons must provide the name, address and telephone number of his doctor to Human Resources. By providing the required information, another person may arrange a leave of absence for a critically-injured or critically-ill Employee.

   e. An Employee returning from a leave of absence must comply with any return to work requirements.

7. Late In/Early Out

a. Employees who arrive late to work less than an hour after the start of their scheduled or prearranged shift are considered tardy. Two (2) tardies will equal one (1) absence. If an Employee is over one hour late after the start of the employee's scheduled or prearranged shift, it will be considered an absence which will count against the Employee's maximum and will be considered a no call, no show absence unreported if the Employee did not comply with local call in procedures more than an hour before the scheduled shift starting time. Employees who are over an hour late to work may work at the supervisor's discretion.

b. Early Out or Late Start. If an Employee works less than half (1/2) their scheduled hours in one day, he will be charged with an absence for that day, except in cases involving work-related injuries or with specific approval from a supervisor. An Employee may not have a late start and early quit in the same shift except in cases of emergency.

8. Hearing

a. If an Employee reaches the maximum number of absences in a rolling twelve month period, the Employee shall be afforded a hearing prior to termination to review the absentee record.

b. The Employee's immediate supervisor, a human resources representative, the Employee, and a Union Representative shall be present at the hearing. A copy of the written decision will be sent to the Employee, human resource manager, and the Union.

c. The Union may submit a grievance in accordance with the procedures outlined in Article 5, Section I.

9. Unusual or Unforeseeable Circumstances

a. Management reserves the right to waive or excuse absences if there are unusual or unforeseeable circumstances such as acts of god. If Management believes there are special and unique circumstances requiring deviation from this policy, the situation will be reviewed with the Union before a decision on an employee's employment status is made.

10. Call-In Procedures

a. The Company will provide the Union a list of call-in numbers at each location to be used in accordance with local call-in procedures, and a number that employees can call to confirm their call-in. The Company will give the Union at least ten (10) days advance notice of any changes to these numbers.

Article 5. Workplace Procedures

Section O. Alternative Work Schedules

1. Employees working extended shifts will be paid overtime if the employee works beyond his/her regularly scheduled shift in one workday or more than forty hours in one workweek. Employees will not be required to work more than sixteen hours in one workday except in case of emergency. The Company will seek volunteers for overtime before requiring employees to stay. Employees working twelve-hour shifts will not be required to work overtime on consecutive days unless no other qualified employee is available on that shift. Employees working overtime after a twelve-hour shift will be provided an overtime lunch within approximately the first two hours of overtime; any pay in lieu of lunch will be in accordance with Article 5, Section D Paragraph 5 (B).

2. Employees working the second shift will be paid the night shift differential. Overtime shift differentials will be paid in accordance with Article 5, Section D.

3. Vacation pay is based upon total vacation hours eligibility. Vacation days taken during the year will be deducted from the employee's total vacation hours eligibility based upon the number of hours the employee was scheduled to work during the absence. Residual vacation hours equal to half or more of a full shift may be taken as a vacation day with the residual hours paid, or the employee may elect to be paid for those hours in lieu of time off. Residual hours of less than half a full shift may not be taken as a vacation day and the employee will be paid for the unused vacation hours. Scheduling of vacations is subject to the approval of the Company.

4. Employees working on a holiday will be paid according to Article 10, Section A. Employees will be paid eight (8) hours straight time pay for holidays not worked, subject to Article 10.

5. The employee will receive full shift pay for the regularly scheduled workdays, for the purposes of and subject to the terms and conditions of Article 10, Section D (Jury and Witness Duty).

6. Employees will receive full shift pay for the regularly scheduled workdays, for the purposes of and subject to the terms and conditions of Article 10, Section C (Bereavement Leave).

7. Employees will receive compensation for lost time according to Article 3, F, 2 (occupational injury or illness time), based on the hours they otherwise were scheduled and would have worked. Accommodations for employees needing time off or shift trades will be handled according to current practice, keeping in mind that the additional days off inherent in extended shifts should allow employees more than ample time to take care of most personal business. The Company will have final approval of all schedules and reserves the right to discontinue the extended shift schedules if the needs of the operation

so require. In addition, reference to ten or twelve-hour shifts in this or any other Article regarding extended shifts is not intended to preclude scheduling for shifts of any length up to twelve hours in accordance with this Agreement.

Article 5. Workplace Procedures

Section P. Return to Work Fitness Certifications

1. When an employee has been absent from work due to an injury or illness covered by Workers Compensation or the work injury program at Amarillo, the employee's fitness to return to work, including any physical or occupational examinations to certify such fitness, shall be governed by applicable workers compensation law or work injury program documents at Amarillo, and to the extent applicable, Article 3, Section F of this Agreement.

2. When an employee has been absent from work due to an injury or illness not covered by Workers Compensation or the work injury program at Amarillo, the employee's fitness to return to work, including any physical or occupational examinations to certify such fitness, shall be governed by the standards and regulations of the Family Medical Leave Act and where applicable, by the standards and regulations of the Americans with Disabilities Act, Uniformed Services Employment and Reemployment Act, and other applicable federal and state laws and regulations.

3. The operation of the laws as described above shall change to reflect any and all statutory and regulatory amendments of the laws and regulations.

Article 6. Joint Efforts

Section A. Workplace Problem-Solving Committee

1. At each Company location, the Union (or, if applicable, the Unions, collectively) shall appoint up to six (6) Employees, including a Local Union President/Unit Chair or his/her designee, and the Company shall appoint up to an equal number of individuals, including the General Manger or his designee, to a Workplace Problem-Solving Committee (Workplace Committee). The Workplace Committee shall meet at least monthly to address matters of common interest and concern including, but not limited to, improvements in productivity and efficiency, multi-skilling, training, cost reduction techniques, enhancement of Employee job satisfaction, and other topics as agreed by the parties.

2. The Employees on the Workplace Committee selected by the Union shall be compensated for lost time during regular business hours to attend committee meetings or for time conducting other committee business when the Company approves pay for that time.

3. Comprehensive Training and Education Program

   a. Commitments

The parties are committed to:

   (1) the Company's workforce being sufficiently skilled so that all Bargaining Unit Work can be performed in accordance with this Agreement by Employees; and

   (2) Employees receiving sufficient training to allow for all reasonable opportunities to progress within the workforce and maximize their skills to the greatest extent possible.

   b. Plant Training Committees

   The parties shall establish a Plant Training Committee at each of the Company's facilities. The Plant Training Committee shall be composed of three (3) Union representatives who are Employees of the Company and an equal number of Company representatives (except that the number of Union representatives shall be four (4) at Mission Complex). The Company members of each Plant Training Committee shall include the General Manager or his designee (who shall serve as the Company Co-Chair). The Company Members of the Committee shall be selected and serve at the pleasure of the General Manager. The Union members of each Plant Training Committee shall include a Local Union President/Unit Chair (who shall serve as the Union Co-Chair).

c. The Company will continue to make available the necessary training and/or cross-training so as to minimize the impact of new technology, automation and/or sub-contracting on bargaining unit personnel.

4. Safeguards and Resources

a. No entity created under this Section may amend or modify this Agreement, recommend or effect the hiring or discipline of any Employee or take any action with respect to contractual grievances.

b. Employee participation or training contemplated in this Section shall normally occur during normal work hours. All joint meeting time and necessary and reasonable expenses associated with any committee created under this Section shall be paid for by the Company.

c. All Union participants involved in any and all joint activities under this Section, or in any other joint committee involving members of a Union bargaining unit, shall be chosen and removed from the process exclusively by the relevant Local Union President/Unit Chair.

Article 6. Joint Efforts

Section B. Contract Coordinators

In this BLA, the parties have committed themselves to a number of joint undertakings crucial to the success of the Company, its Employees and the Union. In recognition of the crucial role being served by the Union in accomplishing the joint goals of the parties, the parties agree as follows:

1. The Chair of the Union Negotiating Committee shall select and direct three (3) Contract Coordinators who shall be responsible throughout the Company for implementation and ongoing monitoring of joint undertakings of mutual interest to the Company and the Union. It is expected that Contract Coordinators will visit each of the Company's locations on a regular basis in the performance of their duties.

2. Each Contract Coordinator shall be an Employee of the Company. The Contract Coordinator shall be compensated by the Company in the amount of the appropriate wages, benefits and other fringe benefits s/he would have earned during his/her normal course of employment with the Company, but for this assignment. In addition, each Contract Coordinator shall be reimbursed for reasonable out-of-pocket expenses including, but not limited to, travel (coach airfare, hotel and per diem) incurred in connection with this assignment and as reasonably agreed to by the Company and the Union in advance of incurring such expense. In order to receive such lost time payments and expense reimbursements, supporting vouchers must be provided by the Contract Coordinator.

Article 6. Joint Efforts

Section C. New Employee Orientation

1. There will be an orientation for new employees that will include the following:

    a. an introduction of plant Company officials, International Union officials and Local Union representatives as may be appropriate;

    b. distribution and discussion of the BLA, including any relevant local agreements;

    c. discussion of safety and health programs and safe working procedures;

    d. presentation and discussion on labor-management participation, problem solving, communications and the role of the Union and the workforce in quality and customer satisfaction;

    e. discussion (not more than ten (10) minutes) of the history and achievements of the Union and the particular Local Union;

    f. discussion (not more than ten (10) minutes) of the structure of the Union and the particular Local Union and the services that are provided by the various offices and committees;

    g. presentation on the history of the Company and plant;

    h. review of the markets in which the Company participates, the products produced and the customers serviced; and

    i. discussion of the structure of the Company, the plant organization and the functions and services that are provided by the various departments.

2. This program shall be jointly presented to each new Employee of the Company during their probationary period. The Union will be allotted a portion of the program to address the Employees.

3. All costs associated with this Program shall be borne by the Company.

Article 7. Training

Section A. Workforce Training Program

1. Commitments

   The parties are committed to:

   a. the Company's workforce being sufficiently skilled so that all Bargaining Unit Work can be performed in accordance with this Agreement by Employees; and

   b. Employees receiving sufficient training to allow for all reasonable opportunities to progress within the workforce and maximize their skills to the greatest extent possible.

2. Plant Training Committees

   The parties shall establish a Plant Training Committee at each of the Company's facilities. The Plant Training Committee shall be composed of three (3) Union representatives who are Employees of the Company and an equal number of Company representatives (except that the number of Union representatives shall be four (4) at Mission Complex). The Company members of each Plant Training Committee shall include the General Manager or his designee (who shall serve as the Company Co-Chair). The Company Members of the Committee shall be selected and serve at the pleasure of the General Manager. The Union members of each Plant Training Committee shall include a Local Union President/Unit Chair (who shall serve as the Union Co-Chair).

3. Study of Workforce Training Needs

   Within six (6) months of the Effective Date, each Plant Training Committee shall complete a report (Report) of the expected training needs of the workforce over the term of the Agreement, given the Commitments outlined in Paragraph 1 above. Such Report shall include Findings and Recommendations as described below.

   a. Findings

      (1) an age and service profile and the anticipated attrition rates of the workforce over the life of the Agreement;

      (2) an assessment of the current skill requirements (both competencies and force levels) of the plant, the availability of such skill requirements within the existing workforce and any training practices or programs necessary to bring the competencies and/or force levels of the current workforce into prompt conformity with the plant's current skill requirements;

(3) an evaluation of the appropriateness of existing training programs and the necessity of developing additional training programs, giving due consideration to changing technology and future skill needs; and

(4) an examination of methods by which productivity and efficiencies can be improved through additional training of Employees.

b. Recommendations

Based on its Findings, the Plant Training Committee shall develop a recommended training program designed to meet the commitments outlined in Article 7, Section A, 1, above.

c. Constructive Participation

The Union and the Company commit that their participation on the Plant Training Committee will be constructive. Nothing in this Article or the parties' commitment to joint efforts shall detract from the Company's right to manage the workforce and to adopt reasonable training programs and requirements following satisfaction of its statutory bargaining obligations.

4. Record Keeping

a. The Company shall keep detailed records of who is trained where and when.

b. The Company shall share such records with the Union. The Union may discuss additional or supplemental training on positions with the Company.

Article 8. Earnings Security

Section A. Supplemental Unemployment Benefits

1. Eligibility

An Employee shall be eligible for a weekly supplemental unemployment benefit (Weekly Benefit) for any week beginning on or after the Effective Date, if s/he:

a. has completed two (2) years of Continuous Service prior to his/her seeking weekly benefits;

b. is and remains an Employee within the meaning of the Agreement;

c. does not receive sickness and accident benefits under an agreement between the Company and the Union;

d. is not in the military service, including training encampments;

e. is eligible, applies for state unemployment benefits for the week and takes all reasonable steps to receive such benefits; provided, however, that this requirement will not apply if s/he has exhausted state unemployment benefits, receives other compensation in an amount that disqualifies him/her for state unemployment benefits, has insufficient employment to be covered by the state system, fails to qualify for state unemployment benefits because of a waiting week, is unable to work by reason of disability, or is participating in a federal training program; and

f. either:

(1) is on layoff for any week in which, because of lack of work, s/he does not work at all for the Company;

(2) is on layoff during a plant vacation shutdown and s/he is not entitled to vacation during the shutdown; or

(3) became disabled while on layoff and is not physically able to return to work.

2. Amount and Duration of Benefits

a. Weekly Benefits are equal to:

(1) $150 per week in which s/he is eligible for a state unemployment benefit; and

(2) $250 per week in which s/he is ineligible for a state unemployment benefit.

b. Benefit durations shall be as follows:

Seniority	Maximum Duration of Benefits
2 but less than 10	26 weeks
10 but less than 20	52 weeks
20 and over	104 weeks

c. Notwithstanding the above, the duration of Weekly Benefits payable to an Employee who becomes disabled while on layoff and is not physically able to return to work shall be limited to fifty-two (52) weeks beginning with the week the Employee is recalled to work.

d. The amount of a Weekly Benefit is not reduced for the receipt of state unemployment benefits or Trade Adjustment Allowance, but is subject to reduction due to any Excess Other Compensation.

e. Excess Other Compensation means any weekly earnings from an employer other than the Company in excess of the amount that would reduce the Employee's state unemployment benefit to zero. The amount to be offset shall be $1 for each $2 of Excess Other Compensation.

3. Company Payment

The Company shall make reasonable calculations of Weekly Benefits and pay such benefits based on the best information in its possession and obtained from the state system.

4. Disputes

In the event an Employee believes that his/her Weekly Benefit or eligibility determination has been made in error, the Employee may file a grievance, as outlined in the grievance procedure of this Agreement.

5. Administration of the Plan

Subject to and in accordance with the terms and conditions outlined in this Section, the Company shall administer the Supplemental Unemployment Benefits Plan (Plan) and may prescribe reasonable rules and regulations. The costs of administering the Plan shall be borne by the Company.

6. Finality of Determination

The Company shall have the right to recover overpayments and correct underpayments to Employees. However, any benefit determination shall become final six (6) months after the date on which it is made if (a) no dispute is then pending and (b) the Company has not given notice in writing of an error.

7. Termination

Notwithstanding the provisions of Article One, Section B (Term of the Agreement), this Section and the Plan on which it is based shall expire 150 days after the Termination Date.

8. Documentation

The parties shall adopt a mutually agreed upon Plan to provide the benefits described in this Section.

Article 8. Earnings Security

Section B. Interplant Job Opportunities

1. As described below, an Employee with more than two (2) years of Company Seniority who is continuously on layoff for at least sixty (60) days and not expected to be recalled within sixty (60) days shall be given priority, for permanent bargaining unit job vacancies at other Company locations over new hires and probationary Employees at such locations (without the right to bump probationary employees out of their current jobs):

    a. The Employee must file with his/her home plant, on a form provided by the Company, a written request for such transfer specifying the other plant or plants at which s/he would accept employment.

    b. Employees who apply shall be given priority in the order of their Company Seniority (the earlier date of birth to control where such service is identical), provided the Employee has the necessary qualifications to perform the job. In determining qualifications, the Employee shall be treated as if the job were an opening at his/her home plant.

    c. An Employee laid off from his/her plant who is offered and accepts a job at another plant, will have the same obligation to report for work there as though s/he were a laid-off Employee at that plant. During his/her employment at that plant, s/he will be subject to all the rules and conditions of employment in effect at that plant. S/he will be considered as a new Employee at that plant and therefore such Employee's Plant Service shall be defined in accordance with Article 5, Section E, 3,b.

    d. An Employee shall be deemed to reject such job if s/he does not affirmatively respond within five (5) days of the time the offer is made, which offer shall be directed to his/her last place of residence as shown on the written request referred to in Paragraph (a) above.

    e. An Employee who accepts employment at another plant under this Section will continue to accrue Plant Seniority for seniority purposes at his/her home plant in accordance with the applicable seniority rules for a maximum period of six (6) months from the date of transfer. If within six (6) month period, s/he is recalled to work at his/her home plant and s/he elects to return, his/her Plant Seniority for seniority purposes at the other plant will be cancelled. If s/he elects to remain at the other plant for more than six (6) months, his/her Plant Seniority for seniority purposes at his/her home plant will be cancelled.

    f. When an Employee is recalled to his/her home plant, the Company may require the Employee to remain at such other plant for the calendar week following the calendar week during which such recall occurs.

2. An Employee who accepts a job at another plant more than 100 miles from his/her former plant will receive a relocation allowance of $500 promptly after the commencement of employment at the plant to which s/he is relocated, provided the Employee relocates his/her permanent residence to within thirty (30) miles of the new reporting location. If the Employee does not voluntarily remain employed at the new reporting location for six (6) months, he shall repay the relocation allowance.

Article 9. Economic Opportunity

Section A. Wages

1. Standardized Wage Scale[1]

Amarillo Refinery

Classification/Grade	Pay Rate
-1	16.75
0	17.25
1	17.75
3	18.75
4	19.25
5	19.75
6	20.25
7	20.75
8	21.25
9	21.75
10	22.25
11	22.75
12	23.25
13	23.75
15	24.75
16	25.25

[1] The wages set forth in Article 9 of this Agreement and the Local Supplemental Agreements are intended to reflect the standardized wage scale as of September 21, 2017. In the event of a discrepancy between the amounts listed in Article 9 of this Agreement and/or the Local Supplemental Agreements, and the wages being paid to employees as of September 21, 2017 (as specified in the Company's payroll), the status quo shall remain, with employees continuing to receive the same wage rate as prior to execution of this Agreement. The parties do not intend for this Agreement to change the wage rate of any employees

Hayden Smelter

Classification/Grade	Pay Rate
-1	16.75
0	17.25
1	17.75
2	18.25
4	19.25
5	19.75
6	20.25
7	20.75
8	21.25
9	21.75
10	22.25
11	22.75
12	23.25
13	23.75
14	24.25
15	24.75
16	25.25
17	25.75

Mission Complex

Classification/Grade	Pay Rate
-1	16.75
0	17.25
1	17.75
3	18.75
5	19.75
6	20.25
7	20.75
8	21.25
9	21.75
10	22.25
11	22.75
12	23.25
13	23.75
14	24.25
15	24.75
16	25.25

Ray Complex

Classification/Grade	Pay Rate
-1	16.75
0	17.25
1	17.75
3	18.75
4	19.25
5	19.75
6	20.25
7	20.75
9	21.75
10	22.25
13	23.75
14	24.25
15	24.75
17	25.75

Silver Bell Mining

Classification/Grade	Pay Rate
-1	16.75
0	17.25
1	17.75
3	18.75
5	19.75
6	20.25
7	20.75
8	21.25
9	21.75
10	22.25
11	22.75
12	23.25
13	23.75
14	24.25
15	24.75

Article 9. Economic Opportunity

Section B. Shift Premium

1. For the purpose of determining the application of shift differentials, the shifts shall be defined as follows:

   a. Day or First Shift: a work shift starting between 6:30 and 9:00 a.m.

   b. Afternoon or Second Shift: a work shift starting between 3:30 and 4:30 p.m.

   c. Night or Third Shift: a work shift starting between 11:30 p.m. and 12:30 a.m.

2. Employees on the day shift shall receive no shift differential for work during their regular shift hours or for overtime work immediately following their regular shift hours.

3. Employees on the afternoon shift shall receive a shift differential of thirty (30) cents per hour for work during their regular shift hours or for overtime work immediately following their regular shift hours.

4. Employees on the night shift shall receive a shift differential of forty-five (45) cents per hour for work during their regular shift hours or for overtime work immediately following their regular shift hours.

5. In the case of an employee whose starting time does not fall within the time limits specified above, a shift differential of thirty (30) cents per hour shall be paid if four (4) hours or more of his shift falls within the afternoon shift, while a shift differential of forty-five (45) cents per hour shall be paid if four (4) hours or more of his shift falls within the night shift.

Article 9. Economic Opportunity

Section C. Copper Price Bonus

1. Each quarter a lump sum cash payment will be made depending on the average copper price during that calendar quarter.

2. The payment will be based on the average quarterly copper price in U.S. Dollars per pound on the London Metals Exchange. The average LME copper price will be determined by taking the 3 month average of the London Metal Exchange daily cash settlement prices (i.e. daily cash seller and settlement price) for high grade cathode copper for each market day during the applicable 3 month period.

3. Copper Price Bonus Payment Scale

   Payments will be made according to the scale below subject to the eligibility requirements described in this Section at Paragraph 5 below. The average quarterly LME price will be rounded to the nearest $0.001. For example, for the purposes of this Plan, $2.899 shall round up to $2.900 per pound.

Average LME Copper Price	Quarterly Bonus Payment
Below $2.700	$0
$2.700-2.799	$1,242
$2.800-2.899	$1,350
$2.900-2.999	$1,458
$3.000-3.099	$1,620
$3.100-3.199	$1,755
$3.200-3.299	$1,890
$3.300-3.399	$2,025
$3.400-3.499	$2,160
$3.500-3.599	$2,295
$3.600-3.699	$2,430
$3.700-3.799	$2,565
$3.800-3.899	$2,700
$3.900-3.999	$2,835
$4.000 or more	$2,870

4. Payment Period

   The Copper Price Bonus will be paid within thirty (30) days of the end of each calendar quarter. Article 9, Section C shall govern all Copper Price Bonus payments owed under this Paragraph 4, beginning with the payment for the calendar quarter during which the Effective Date of this Agreement falls, and all following calendar quarters that end while the terms of this Agreement are in effect.

5. Eligibility

The Copper Price Bonus will be paid to each Employee accruing Seniority under Article 5, Section E, Paragraph 4 of this Agreement at the end of the calendar quarter as long as the Employee is employed on the last day of the calendar quarter for which the bonus is being paid.

Any payments made to an Employee pursuant to this Plan shall not be included in the Employee's earnings for purposes of determining any other pay, benefit or allowance of the Employee.

6. Administration of the Plan

a. The Plan will be administered by the Company in accordance with its terms and the costs of administration shall be the responsibility of the Company. Upon determination of each Copper Price Bonus calculation, such calculation shall be forwarded to the Chair of the Union Negotiating Committee.

b. The Union, through the Chair of its Negotiating Committee or his/her designee, will have the right to review any information, calculation or other matters concerning the Plan. In the event of a dispute between the parties, the Chairs of Negotiating Committees or their designees will attempt to reach an agreement to resolve the discrepancy. In the event that they cannot resolve the dispute, either party may submit such dispute to final and binding arbitration under the grievance procedure provided in this Agreement.

Article 9. Economic Opportunity

Section D. Travel Time and Time Donning and Doffing Protective Equipment

1. Applicable to Mission, Silver Bell and Ray Mine – When the Company requires pit Employees to report prior to the start of their shift for transport into the pit ("Positive Relief").

    a. Pit employees will be ready for transport into the pit (10) ten minutes prior to their scheduled shift. The Company will pay ten (10) minutes of travel time at straight time pay each day for such reports. Travel time into the pit will not be considered time worked for overtime purposes unless a meeting is held prior to travel to the pit.

    b. Van drivers, (bus, etc.) who transport employees into the pit will be paid for such time at the rate of time and one-half (1 ½).

    c. If the report time is changed or increased, it will be paid at straight time. However, in no event will the Employees be required to report more than twenty (20) minutes before their scheduled shift.

    d. If the Company decides not to use positive relief, the employees will report to the Change House/Pit Office at the start of the shift and will be returned to the Change House/Pit Office by the end of the shift.

    e. In the event more than twelve (12) minutes pass before an individual in Pit Operations is returned to the change house from his work station at the end of the shift, s/he will be paid overtime for the actual time in excess of twelve (12) minutes based on the nearest 1/10th hour (for Positive Relief purposes only).

2. Employees required to wear protective equipment (other than hard hats, safety shoes, safety glasses, respirators and hearing protection) shall be paid for all time spent donning and doffing such equipment, waiting and traveling to their work station. Such time will be considered time worked for overtime purposes.

Article 9. Economic Opportunity

Section E. Apprenticeship

1. Contained in a separate document, the plans of apprenticeship as agreed-to between the parties outline standards covering selection, training and periodic examinations.

2. Upon successful completion of an approved apprenticeship program, and presentation of paid receipts to the Company, the Employee will be reimbursed by the Company for the cost of all authorized books and required training aids and materials. One-half of the total reimbursement shall be paid to the Employee upon successful completion of his or her apprenticeship – the remaining half shall be paid one year thereafter, provided the Employee is still employed by the Company.

Article 9. Economic Opportunity

Section F. Payment for Company Mandated Training

1. In the event that the Company requires an Employee to obtain a certification, license, or special training to perform his or her job, the Company will pay the cost of obtaining same including any lost time involved. Any renewal expense(s) shall likewise be paid by the Company if the Company requires renewal.

2. The Company will reimburse Employees for the cost of tuition and fees for job-related courses that are pre-approved by the Human Resources Manager. Reimbursement is contingent upon the Employee receiving a passing grade.

Article 10. Paid Time Off and Leaves Of Absence

Section A. Holidays

1. Designated Holidays

For the purpose of this Agreement, the following nine (9) days are designated as holidays, whether worked or not. It is understood that, by mutual agreement, the parties at each Company location may agree to substitute other days for the holidays listed below:

New Year's Day
Easter Sunday
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Eve Day
Christmas Day
New Year's Eve Day

2. Holidays Not Worked

Employees covered by this Agreement shall be paid their straight -time rate of pay for holidays designated in Article 10, Section A, 1, when not worked, subject to the following terms and conditions:

a. A new Employee must have been on the Company's payroll continuously for forty-five (45) days prior to the holiday in question. Any Employee who receives Sickness & Accident Benefits or Workers' Compensation benefits for the day of the holiday shall not be eligible for holiday pay.

b. An Employee must work his last scheduled shift prior to the holiday and his/her first scheduled shift after the holiday; provided, however, that if an Employee is absent on either or both of these days because of personal illness, illness within his/her family of such a nature as to necessitate that the Employee remain home, or death in the family, and reports such facts promptly to his/her Supervisor, such days will not be counted as scheduled. Such illness of the Employee or a family member must be verified by a licensed health care provider. An Employee who has been excused by his/her Supervisor from working his/her last scheduled shift before the holiday, his/her shift occurring on the holiday, or his/her first scheduled shift after the holiday shall be considered as not having been scheduled to work on such day or days.

c. Notwithstanding subparagraph b, above, if an Employee is absent on either his/her last scheduled shift prior to the holiday or his/her first scheduled shift after the holiday because of jury duty, witness appearance in court, certified Union business

(other than a leave of absence under Article 10, Section E), or military encampment, such days will not be counted as scheduled.

d. A holiday not worked shall not be considered as time worked in the computation of weekly overtime.

e. If an employee is scheduled and assigned to work on a holiday and does not work, he shall receive no pay.

f. Should a holiday occur during an employee's vacation, an additional day's vacation with pay shall be granted or, in lieu of the additional vacation day, the Employee may elect to receive holiday pay.

3. Holidays Worked

An employee who works on any of the holidays designated in Article 10, Section A, shall be paid double and one-half (2-1/2) for all hours worked computed at his regular straight-time basis as defined in Article 7, Section E. All hours worked on a holiday shall be used in computing weekly overtime. No more than two and one-half (2-1/2) times the straight-time pay as herein above set forth will be paid for work performed on any of the holidays listed above.

Article 10. Paid Time Off and Leaves of Absence

Section B. Vacations

1. Eligibility

   a. To be eligible for a vacation in any calendar year, an Employee must:

      (1) have one year or more of Seniority; and

      (2) have worked for at least 1,040 hours during the preceding calendar year.

2. Length

   a. The amount of vacation due an eligible Employee shall be based on his/her Seniority as follows:

Years of Service	Weeks of Vacation
1 but less than 3	1
3 but less than 10	2
10 but less than 17	3
17 but less than 25	4
25 or more	5

   b. A week of vacation shall consist of seven (7) consecutive days in accordance with current practices.

3. Scheduling

   a. On or promptly after November 1 of each year, each Employee entitled or expected to become entitled to vacation in the following year shall receive a Company form asking him/her to specify in writing the desired vacation period or periods. The Employee shall return the form to the Company within thirty (30) days.

   b. Vacations will, so far as practicable, be granted at times most desired by Employees (longer service Employees being given preference as to choice), but the final right to allot vacation periods and to change such allotments is reserved to the Company.

   c. Employees will be provided with their vacation schedule at least fourteen (14) days prior to the start of their vacation period, but in all cases no later than January 1 of the year in which the vacation is to be taken.

   d. Where an Employee transfers from one seniority unit to another, s/he shall take his/her vacation in accordance with the schedule established in his/her old seniority unit, except as orderly operations of his/her new seniority unit preclude it, and his/her

transfer shall not be a basis for altering the schedule established prior to his/her transfer.

e. Consistent with Paragraphs 3(a) through 3(d) above, Employees shall be permitted to use up to two (2) weeks (i.e., ten (10) days) of their allotted vacation on a day-at-a-time basis.

f. At the request of the Employee and with the consent of the Company, the Company may pay up to three (3) weeks of vacation allowance, in lieu of time off for vacation, in any one (1) calendar year but not more than one (1) week in any calendar quarter.

g. The Company may schedule vacations during a shutdown period but, when the timing of the shutdown is within the Company's control, the Company must provide affected Employees with at least sixty (60) days notice.

h. At the time of his/her retirement, an Employee may elect to receive a lump-sum payment for any unused vacation entitlement.

i. Vacation time not utilized by the end of the calendar year shall be paid out.

4. Grievances

Grievances regarding vacation scheduling must be referred to Step 1 of the grievance procedure not later than fifteen (15) days after notification to the Employee of the scheduled vacation (or changed scheduled vacation) is given to the Employee and shall be handled in a manner that assures resolution prior to the disputed date(s).

5. Vacation Rate of Pay

a. Employees will be paid for each week of vacation based upon forty (40) multiplied by the Base Rate of Pay of the Employee’s permanent job as of the end of the payroll period immediately preceding the vacation (such amount the Vacation Rate of Pay).

b. The Daily Vacation Rate of Pay of each Employee shall be the Vacation Rate of Pay divided by five (5).

c. The Hourly Vacation Rate of Pay of each Employee shall be the Vacation Rate of Pay divided by forty (40).

6. Minimum Vacation (Employees Other Than New Hires)

Notwithstanding Sub-Section 1(a)(2) above, an Employee with one (1) year or more of Seniority who is not eligible for vacation based on the above and who works at least 520 hours in a calendar year shall receive one (1) week of vacation during that calendar year. The Company shall make reasonable efforts to schedule that vacation at the time desired by the Employee, provided it does not disrupt the vacation schedule already established hereunder.

7. Vacation Bonus

a. In addition to the regular vacation pay to which an employee is entitled, there shall be paid a vacation bonus in accordance with the following schedule:

Vacation Week Commencing in:	**Bonus:**
April, May, October, December	$35.00 per week
January, February, March, November	$50.00 per week
June, July, August, September	No Bonus

b. The amount of vacation bonus applicable to a particular vacation week (full week only) shall be determined by the calendar month in which such week commences, that is, the first day thereof the employee would otherwise have been scheduled to work. For example, an employee whose two consecutive-week vacation begins Monday, September 27, 2007, would be entitled to NO bonus for the first week but would be entitled to a $35.00 bonus for the second vacation week, which begins October 4, 2007. The bonus payment shall be included with the pay for the regular vacation week to which it corresponds. A $20.00 bonus shall be paid for vacation weeks paid in lieu of time off.

c. The vacation bonus is an add-on to, and not part of, an employee's regular vacation pay.

8. Vacation for Laid Off Employees

An Employee with one (1) year or more of Seniority and who has qualified for a vacation but is laid off before the Employee has received his vacation pay, shall be given the vacation pay that the Employee would have been entitled to in the absence of such layoff.

9. Vacation for Employees Who Quit or are Discharged

An Employee with one (1) year or more of Seniority and has qualified for a vacation but quits or is discharged before the Employee has received his vacation pay, shall be given the vacation pay that the Employee would have been entitled to in the absence of such quitting or discharge.

10. Industrial Compensable Disability, Sickness, Injury

    Regularly scheduled time lost due to a compensable disability for purposes of workers' compensation or due to sickness or injury certified by a Company physician shall be considered both employment and time worked for the purpose of computing vacation eligibility under Section B, 1, a (2), above, but in no event shall more than sixty (60) days in any qualifying year be so considered.

11. Vacation for Employees on Union Business

    Time lost from an Employee's normal working schedule spent on official Union business for which s/he is entitled to reimbursement under the provisions of this Agreement shall be considered as time worked in computing vacation eligibility.

12. Prorated Vacation

    In the event an Employee retires or dies, the Employee or the Employee's personal representative shall be paid a vacation allowance equal to his hourly rate of pay for vacation purposes multiplied by a pro rata portion of the number of hours of vacation time he would have earned, under this Agreement, had he continued to work the same relative proportion of the available time he had theretofore worked during the qualifying period.

Article 10. Paid Time Off and Leaves Of Absence

Section C. Bereavement Leave

1. In the event of the death of any of the relatives listed below, an Employee, upon request, will be excused and paid for scheduled shifts as detailed below, which fall within a consecutive day period, provided however that one such calendar day shall include either the day of the funeral or memorial service and it is established that the Employee attended the funeral or memorial service.

Relation	Scheduled Shifts Off
Legal Spouse, Parent, Child or Step-Child	5
Sibling, Step-Parent and Step-Siblings, Mother or Father in-law, Grandparent or Grandchild	3

2. Payment shall be eight (8) hours at the Employee's Regular Rate of Pay. An Employee will not receive bereavement pay when it duplicates pay received for time worked or not worked for any other reason. Time thus paid will not be counted as hours worked for purposes of determining overtime or premium pay.

Section D. Jury or Witness Duty

An Employee who is called for jury service or subpoenaed as a witness shall be excused from work for the days on which s/he serves. Service, as used in this Section, includes required reporting for jury or witness duty when summoned, whether or not the Employee is used. The Employee shall receive, for each such day of service on which s/he otherwise would have worked, the difference between the payment received for such service and the amount calculated by multiplying eight (8) hours at his/her Regular Rate of Pay. To receive payment the Employee must present proof that s/he did serve, report for service or was subpoenaed and reported as a witness and the amount of pay, if any, received therefor.

Article 10. Paid Time Off and Leaves Of Absence

Section E. Leave of Absence for Employment with the Union

1. Leaves of absence for the purpose of accepting positions with the International or Local Unions shall be made available to a reasonable number of Employees. Employees who intend to apply for such leaves shall give the Company adequate notice to enable it to fill the jobs vacated.

2. Leaves of absence for the purpose of accepting or continuing in a temporary position with the International shall be for periods of up to six (6) months and shall be extended upon request; provided, however, in no event shall an Employee be entitled under this provision to a leave of absence exceeding two (2) continuous years.

3. Leaves of absence for the purpose of accepting permanent positions with the International Union shall be for a period concurrent with the individual's permanent employment with the International Union. When an individual is made a permanent employee of the International Union (by completing his/her probationary period), s/he shall, from that point forward, retain his/her leave of absence status with the Company but shall not receive any Covered Service under the Asarco Retirement Income Plan for Hourly-Rated Employees. Such individual shall accumulate Seniority for all other purposes under the Agreement and local agreements thereunder; provided that s/he shall not be entitled to actually receive any contractual benefits during the period of the leave of absence.

4. Leaves of absence for the purpose of accepting positions with the Local Unions shall be for a period not in excess of three (3) years and may be renewed for further periods of three (3) years each.

5. Except as set forth above in Paragraph 3, Seniority shall continue to accrue and shall not be broken by a leave of absence under this Section.

Article 10. Paid Time Off and Leaves Of Absence

Section F. Service with the Uniformed Services

1. Reemployment Rights

An Employee who leaves the Company employment to enter the Uniformed Services shall be granted all statutory rights to reemployment and shall continue to accrue Seniority during such service. For the purposes of this Section, Uniformed Services means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency.

2. Training

An Employee shall be provided with a reasonable program of training in the event s/he does not qualify to perform the work on a job which s/he might have attained except for his/her service in the Uniformed Services.

3. Educational Leave of Absence

Any Employee entitled to reemployment under this Section who applies for reemployment and who desires to pursue a course of study in accordance with a federal law granting such opportunity because of his/her military service shall be granted a leave of absence for such purpose. Such leave of absence shall not constitute a break in Seniority for purposes other than a break in service under the Pension Plan. Any such Employee must notify the Company and the Union in writing at least once each year of his/her continued interest to resume active employment with the Company upon completing or terminating such course of study.

4. Disabled Returning Veterans

Any Employee entitled to reemployment under this Section who returns with a service-connected disability which makes returning to his/her prior job onerous or impossible shall be assigned to a vacancy suitable to such impaired condition during the continuance of such disability.

5. Vacation Pay

a. An Employee who did not receive but was entitled to paid vacation during the calendar year in which s/he enters the Uniformed Services shall be paid an amount equal to the vacation pay to which s/he was entitled.

b. Notwithstanding any other provisions of this Agreement to the contrary, an Employee who is reemployed after being honorably discharged shall be entitled to paid vacation

for the calendar year in which s/he is reemployed, provided that no Employee shall be afforded more than one (1) vacation allowance for any one (1) calendar year, at a rate of pay based on his/her earnings for the last full year in which s/he worked prior to his/her serving.

6. Military Encampment Allowance

An Employee who is required to attend an encampment of the Reserve of the Armed Forces or the National Guard shall be paid, for a period not to exceed two (2) weeks in any one (1) calendar year, the difference between the amount paid by the Government (not including travel, subsistence and quarters allowance) and his/her Regular Rate of Pay for the number of days s/he would have been scheduled to work during such encampment.

Article 10. Paid Time Off and Leaves Of Absence

Section G. Family and Medical Leave Act

1. The Company shall comply with the Family and Medical Leave Act of 1993 (FMLA) and shall apply its requirements as set forth below. Nothing in this Section shall be construed to provide lesser treatment than that required under the FMLA or to deprive any Employee of any right or forum thereunder.

2. A copy of a summary of the law and Employee rights and obligations thereunder is available at the Company's Human Resources Office for review and will be issued upon request and at the time any FMLA leave is requested. The required posting under the FMLA will be maintained by the Company.

3. Eligibility and Entitlement

    a. Leave under this Section shall be available to any Employee who has twelve (12) months or more of Seniority calculated pursuant to the Seniority provisions of this Agreement. There shall be no hours-worked requirement for eligibility.

    b. Any eligible Employee shall be entitled to up to twelve (12) weeks of unpaid leave in any twelve (12) month period for reasons specified in the FMLA. This period shall be measured on a rolling twelve (12) month basis, measured backward from the date any FMLA leave is used. Any time taken off in connection with any of the situations covered by the FMLA shall be counted toward the twelve (12) week period, except as otherwise excluded.

4. Pay During FMLA Leave

    a. Employees seeking FMLA leave under this Section may be required to utilize unused paid vacation.

    b. An Employee may request to utilize additional paid vacation during the FMLA leave time. The Company reserves the right to approve such a request where it involves a change in the vacation schedule.

    c. Except for the utilization of Sickness and Accident, or Workers' Compensation benefits, all time off provided shall be unpaid and shall be considered as time not worked for all other matters. Treatment of time not worked while receiving Sickness & Accident or Workers' Compensation benefits is subject to the limitation in Article 10, Section B, Paragraph 10.

    d. An Employee on FMLA leave is not eligible for Supplemental Unemployment Benefits in the event of a layoff, until following the termination of the leave.

5. Seniority

   Leaves of absence under this Section shall not constitute a break in Seniority and the period of such leave shall be included in an Employee's length of Seniority under this Agreement and all benefit agreements.

6. Benefit Continuation

   a. All Employees' benefit coverage will continue during such leave, provided the Employee is otherwise eligible for such coverage and the Employee continues making any normally-required premium or other payments in a manner acceptable to the Company. In the event the Employee fails to make such payments, all benefit coverage shall terminate.

   b. In the event an Employee fails to return to work or quits after the Employee's FMLA leave period has been concluded, the Company waives its right to recover the cost of health insurance coverage provided by the Company during such leave.

Article 10. Paid Time Off and Leaves Of Absence

Section H. Political Leave

The Company will grant to an Employee a leave of absence for a period not to exceed four (4) years for full-time elected or appointed Federal, State, County or City political office. This leave will be limited to one (1) Employee at a location at any given time. Upon the termination of this political office, the Employee shall be reinstated to his or her previously held job with accrued seniority rights unless the Company's circumstances have so changed as to make it impossible or unreasonable to do so; such as a reduction in force requiring his or her layoff had s/he been working; provided however, that such Employee is physically able to perform the essential functions of such job and that he make application to the Company for reinstatement within twenty-one (21) days after said termination. No benefits of employment, except seniority, shall accrue during the period of absence; provided that the break-in-service rules and other provisions of the Asarco Retirement Income Plan for Hourly-Rated Employees shall apply.

Article 11. Corporate Governance

Section A. Board of Directors

1. The Company and the Union acknowledge that every member of the Company's Board of Directors (Board, members of such Board, Directors) has a fiduciary duty to the Company and all of its stockholders.

2. The Company agrees that the Union shall have the right, subject to the procedure; the Directors' discharge of their fiduciary duties; and as described below, to designate two (2) individuals to serve on the Board.

    a. The USW International President shall provide the Board's Chairman with the names and resumes of the individuals whom s/he wishes to have serve on the Board.

    b. Provided that the individuals are acceptable to the Chairman, (it being understood that in all respects each individual will be dealt with separately) such acceptance not to be unreasonably withheld, the Chairman shall promptly recommend such individual(s) to the Board's Nominating Committee, who absent compelling reasons to the contrary, shall promptly recommend such individual(s) to the full Board for election at its next meeting.

    c. Once elected, the individual(s) shall be recommended by the Board for election by the shareholders to serve a regular term at the Company's next Annual Meeting of Shareholders.

3. If after election, the individual(s) becomes unwilling or unable to serve or the Union wishes to replace one or both of them, the International President shall provide the Board's Chairman with the name of a new individual(s) whom s/he wishes to have serve on the Board and the process outlined above shall thereafter be followed. In such case the individual(s) previously named by the USW International President may be removed from or not nominated for re-election to the Board.

4. At the time that any person is nominated by the Union as provided in this Section A, said nominee shall acknowledge in whatever fashion such acknowledgement is given by all of the Company's other Directors, that such nominee, if elected to the Board, would have a fiduciary duty to the Company and its stockholders.

5. In the event the Company's Board of Directors has fewer than seven (7) members, the Union shall have the right, as described above to designate one (1) individual to serve on the Board.

Article 11. Corporate Governance

Section B. Investment Commitment

1. The Company agrees to make the capital expenditures required to maintain the competitive status of the facilities covered by this Agreement.

2. The Company agrees that, except during maintenance and repair outages and temporary production outages or shortfalls, that it will not directly or indirectly replace the product which could have been produced at any facility covered by this Agreement with product obtained from other than producers that provide base wages and other economic benefits (including holidays, vacation pay, premium pay, overtime, and health and welfare benefits) that are substantially equivalent to those provided in this Agreement, unless it is operating the relevant facility covered by this Agreement at full capacity.

3. The Company shall make all capital expenditures required to maintain the competitiveness and capacity of facilities within the plants covered by this Agreement, including investments that increase competitiveness and productivity, unless:

   a. such facilities have been shut down pursuant to provisions of this Agreement; or

   b. the Company has conducted full and extensive consultation with the Union and fully and carefully considered all Union input concerning the subject Capital Expenditures; and

   c. making the subject Capital Expenditure would be imprudent.

Article 11. Corporate Governance

Section C. Upstreaming

1. The Company agrees that it will only Upstream if after accounting for the Upstreaming the Company's credit statistics are equal to or better than those of an average BBB rated company in the mining sector, using criteria published by S&P; and upstream only if the Coverage Ratio at such time, calculated on a pro forma basis after giving effect to such Upstreaming and any incurrence of indebtedness of other funding consummated in connection therewith, is greater than or equal to 1.80 to 1.00.

2. "Coverage Ratio" means, for any 12-month period, the ratio of (1) the sum of (a) EBITDA for such period, plus (b) to the extent deducted from earnings in computing EBITDA for such period (x) pension expense incurred by the Company during such period and (y) all expenses incurred by the Company during such period in respect of any environmental or asbestos-related obligations, to (2) the sum of (a) interest expense plus (b) capital expenditures of the company for such period, plus (c) cash pension contributions made by the Company during such period plus (d) cash payments made by the Company during such period in respect of any environmental or asbestos-related obligations.

3. Without in any way limiting the applicability of Paragraph 1 above, the Company agrees that all transactions (including, without limitation, sales, loans, purchases, leases, guarantees, fees of any kind, and equity transactions) between the Company and any equity holder or any Affiliate of any equity holder, shall be conducted on an arm's-length basis, on commercially reasonable terms not less favorable to the Company than those that could be obtained from an unrelated third party, and in accordance with any shareholders agreement of the company. In addition, any loan or similar transaction to any such person shall only be made if it is beneficial to the Company and on terms consistent with the business relationship between such person and the Company. Subject to the foregoing, the Company may engage in transactions with its equity holders an their Affiliates.

4. For the purposes of this Section, Upstreaming includes directly or indirectly, paying any dividends on, or making any distributions, exchanges, conversions, retirements, repurchases or redemptions, in respect of the Company's stock.

Article 11. Corporate Governance

Section D. Right to Bid

1. Should the Company decide or be presented with an offer to sell or otherwise transfer a controlling interest in the corporate entity which owns its assets (a Controlling Interest) or all or a portion of one or more of its facilities (Facilities) (either or both, the Assets), it will promptly advise the USW in writing and grant to the USW the right to organize a transaction to purchase the Assets (a Transaction).

2. The Company will provide the USW with any information provided to other bidders so that the Union may determine whether it wishes to pursue a Transaction. All such information shall be subject to an executed Confidentiality Agreement.

3. The Company shall promptly notify the USW of the schedule and/or timetable for consideration by the Company of any possible transaction. The Company will provide the USW with the greater of (a) forty-five (45) days or (b) the time provided by the schedule and/or timetable given to other interested parties to submit an offer for the Assets, except in the case of an unsolicited offer for a controlling interest in the Company in which case the USW shall be provided with the time provided by the schedule and/or timetable given to other interested parties.

4. During the period described in Paragraph 3 above, the Company will not enter into any contract regarding the Assets with another party, provided however that this prohibition does not apply to any contract not related to the bidding process**.**

5. In the event that the USW submits an offer pursuant to the above, the Company shall not be under any obligation to accept such offer. However, the Company may not enter into an agreement with regard to the Assets with an entity other than the USW unless that Transaction is superior to the USW offer. The Company may only deem a proposed Transaction superior if its Board of Directors reasonably determines that such Transaction is more favorable to the Company and/or its shareholders, taking into consideration such factors as price, certainty of payment, conditions precedent to closing and other factors which influence which of the transactions is in the best interests of the Company and/or its shareholders.

6. This Section is meant to cover only sales or transfers of a Controlling Interest and shall not cover any public offering of equity securities.

7. The rights granted to the USW in this Section may be transferred or assigned by the USW; provided, that the USW's transferee or assignee must be reasonably acceptable to the Company (but the transferee may not thereafter transfer such right to bid).

Article 12. Benefits

Section A. Active Welfare Benefits

The Company and Union have negotiated the following welfare benefit plans which are described in Summary Plan Descriptions and incorporated by reference herein:

1. ASARCO Health Plan (includes Medical and Prescription);

2. ASARCO Vision Plan;

3. ASARCO Dental Plan;

4. ASARCO Sickness & Accident (S&A) Plan

5. ASARCO Life Insurance (includes Basic Life, AD&D, Supplemental and Dependent Life coverage); and

6. Flexible Spending Accounts.

Section B. General

1. The terms of Sections B through N shall control over any provisions of the summary plan descriptions or booklets distributed by the Company or plan administrators (”SPD's") that address such matters. Notwithstanding any language to the contrary in those SPD's, the benefits or covered services described therein shall not be subject to amendment, modification or termination except as the Union and the Company agree otherwise (except as necessary to comply with applicable law).

2. The Company shall pay the cost of Welfare benefits during the term of this Agreement (with the exception of required monthly contributions, annual deductibles, copays and coinsurance). Employee contributions are deducted per pay period on a pre-tax basis.

   Monthly Employee contributions are as follows:

Family Size	Monthly Contribution
Employee Only	$50.00
Employee plus One	$120.00
Employee plus Family	$140.00

Section C. Effective Date of Coverage

Employees will become covered as of the Effective Date of the Agreement. Newly hired Employees will become covered as of the first day of employment except for the Sickness and Accident (S&A) Plan, which will become effective following the completion of their probationary period.

Section D. Dependent Coverage

1. Dependent coverage will become effective on the same date as the Employee becomes covered or the date the Employee acquires a dependent, if later. An Employee is required to enroll their existing dependents within 31 days of employment and must provide dependent verification and Social Security Numbers.

2. The term "dependent" includes:

   a. spouse (including spouses through common law marriage only if the state in which the employee resides recognizes common-law marriages and the couple meets the state's legal requirements for such marriage), but does not include a spouse separated from the Employee under a divorce decree.

   b. children as follows:

Health Plan	Dependents are covered up to age 26 regardless of marital or student status
Dental Plan	Unmarried dependents are covered up to age 19 or age 25 if a full-time student
Dependent Life Insurance	Unmarried dependents are covered up to age 19 or age 25 if a full-time student

      i. Employee's natural children;

      ii. Employee's legally adopted children (including a child living with the adopting parents during the period of probation) and those for whom the Employee is legal guardian;

      iii. Stepchildren (i.e., the natural children of the Employee's spouse) subject to proof of dependent status;

      iv. Foster children;

      v. Children for whom coverage is required under a Qualified Medical Child Support Order (QMCSO); and/or with proof of legal guardianship or custody; and

vi. Children who are dependents of employees, subject to proof of dependent status.

c. Children in the above categories who are totally disabled are covered under the Plan, regardless of age, for as long as they are dependent upon the Employee for support and maintenance provided they became totally disabled prior to age 26 and were eligible for coverage as a dependent child prior to attaining age 26 for Health and prior to age 25 for Dental.

To be totally disabled, dependent children must be certified by a physician of your choice and the third-party administrator, as suffering from an injury or illness which prevents them from living independently from their parents and obtaining gainful employment. Coverage for disabled children will continue until both parents qualify for Medicare or otherwise lose coverage through the ASARCO Health Plan.

3. Dependent Benefits After the Employee's Death

a. Coverage under the ASARCO Health Plan (including prescription drug, dental and vision benefits) will continue for the eligible dependents of active Employees who die in active service with 10 years or more of Seniority and who have been married for at least one year.

Section E. Termination of Coverage

1. Disability Leave Due to Occupational or Non-Occupational Sickness or Accident

a. Insurance benefits will continue for the duration of an absence due to occupational or non-occupational sickness or accident up to a maximum of twenty-four (24) months from the end of the month last worked or the month the Employee receives pension benefits from the Company's Pension Plan.

b. If the Employee has ten or more years of Continuous Service and qualifies for Permanent and Total Disability under the Company's Pension Plan due to occupational or non-occupational sickness or accident, the Employee and dependents will be eligible for the ASARCO Health Plan applicable to retirees up to the time the Retiree or spouse attains age 65.

c. An Employee who recovers from a disability within twenty-four (24) months after their last day worked and is unable to return to work because of a reduction in force for lack of work, shall be considered on layoff at such point and eligible for a maximum of six (6) months from the date of layoff.

2. Layoff

   If the Employee ceases work because of layoff, the following provisions will be applicable to insurance coverage:

   a. Sickness and Accident coverage will terminate on the last day worked.

   b. All other insurance coverage under the ASARCO Welfare Plans will be continued during such layoff up to a maximum of six (6) months from the end of the month last worked.

3. Leave of Absence

   a. If the Employee ceases work because of a leave of absence, all coverage under the ASARCO Welfare Benefits will cease six months from the end of the month last worked.

   b. If the Employee ceases work because of a leave of absence for union business, all coverage under the ASARCO Welfare Plans will continue for the entire period of such leave.

   c. If the Employee ceases work due to authorized military duty, Health, Dental, Vision, Life, AD&D benefits coverage will terminate as of the thirty-first (31st) day after the last day worked.

   d. If the Employee ceases work due to authorized leave under the Family and Medical Leave Act, Health, Dental, Vision, Life, AD&D coverage will terminate upon expiration of the authorized leave, unless the Employee returns to work at that time.

4. Suspension

   Benefits will be continued as if the Employee were on layoff, except for the Sickness and Accident Plan will be continued during a period of suspension which is not converted into discharge.

5. Strike

   Coverage under the ASARCO Welfare Plans for striking Employees and their dependents will terminate 14 days after the strike commences. In the event of a strike, Employees and dependents may elect continuation coverage under COBRA. During the strike, the Sickness and Accident benefit coverage shall not continue for disabilities which arise after the commencement of the strike, but shall commence for such disabilities upon the cessation of the strike and recall to work. Notwithstanding the above, Sickness and Accident benefit payments shall continue to Employees whose disabilities arose prior to the commencement of the strike

6. Reinstatement or Re-Employment

   If the Employee returns to work following an absence on account of layoff, leave of absence or disability during which some or all of the coverage under the ASARCO Welfare Plans shall have terminated, all such coverage will be reinstated on the day the Employee returns to work.

7. Termination of Employment

   If employment is terminated by other than retirement, all coverage under the Plans will cease on the date of such termination.

   In the event an Employee is discharged by the Company and there is a dispute as to whether or not the discharge was justified, the Company shall continue the benefits under the Plans for such employee until the case is finally resolved but not exceeding 90 days.

   In the event an Employee or dependent is hospitalized on the date the Employee's benefits terminate, health care benefits shall be covered until completion of the hospital stay.

Section F. Coverage Following Retirement

1. Employees who retire on or after the Effective Date of this Agreement shall not be entitled to any benefits under the ASARCO Health Plan applicable to retirees, provided however that any employee who retires or who would be eligible to retire, up until the expiration of this agreement ("Covered Retirees") shall be eligible for benefits under the ASARCO Health Plan applicable to retirees (including Medical and Prescription Benefits) until reaching Medicare Eligibility (for purposes of Article 12, Section F, "Medicare Eligibility" is defined as Medicare eligibility triggered at age 65, and shall not refer to Medicare eligibility triggered by disability, illness, or kidney/renal failure which requires dialysis), and their eligible spouse/surviving spouse and other eligible dependents (as defined in Article 12, Section D) shall also be eligible for benefits under the ASARCO Health Plan applicable to retirees until Medicare Eligibility, subject to paying applicable premiums, copays and deductibles. For the avoidance of doubt, only employees listed in the Letter of Understanding on Covered Retirees (attached hereto) shall be eligible for benefits under the ASARCO Health Plan as Covered Retirees. In the event an employee eligible for Covered Retiree status is inadvertently excluded from the Letter of Understanding on Covered Retirees, he/she will be deemed eligible for benefits as a Covered Retiree upon proof satisfactory to the Company that he/she satisfies the eligibility requirements of this Article 12, Section F.

2. Covered Retirees and/or the eligible spouse or surviving spouse and dependents of a Covered Retiree must enroll in the ASARCO Health Plan applicable to retirees until Medicare eligibility no later than 31 days from the Covered Retiree's retirement date.

a. Failure to enroll at this time shall be deemed a waiver of coverage, and the Covered Retiree and/or the eligible spouse or surviving spouse and dependents of the Covered Retiree will not be eligible to enroll at a later date.

b. For the avoidance of doubt, this paragraph F.2 shall supersede and nullify the Parties' January 1, 2007 Letter of Understanding on Retiree Health Care Enrollment.

Section G. Continuous Service

Wherever the term Continuous Service is used herein, it means Seniority as determined in accordance with Article 5, Section E, of the Basic Labor Agreement.

Section H. Summary of Basic, Accidental Death or Dismemberment (AD&D), Supplemental and Dependent Life Insurance Benefits

1. Active Employees

a. $50,000 of Basic Life Insurance coverage shall be provided for each active Employee, including a waiver of premium in event of total disability prior to age 60.

b. Active Employees shall be allowed to purchase at cost, supplemental life insurance in the amount of $25,000 or $50,000 for themselves and dependent life insurance in the amount of $5,000 or $10,000 for their spouses and children. Premiums are based on the amount of elected coverage and the age of the Employee. Employees are responsible for payment of these premiums.

c. Upon retirement under the Company's Retirement Plan, the amount of coverage to be continued without cost to the Employee will be $4,500. Employees hired on or after July 1, 2011 are eligible for a life insurance benefit of $4,500 upon attaining 30 years of Seniority as defined by Article 5, Section E, Paragraph 4 of the Agreement, or upon attaining 10 years of Seniority as defined by Article 5, Section E, Paragraph 4 of the Agreement and becoming permanently and totally disabled resulting in receipt of Social Security Disability Benefits.

d. AD&D insurance coverage will be provided by the Company for each active Employee. AD&D will provide a benefit in the event of an accidental death or dismemberment due to non-occupational accidents. Benefit payment includes but is not limited to:

- $50,000 for loss of life
- $25,000 for loss of a hand, foot or sight in one eye
- $50,000 for loss of a combination of a hand, a foot , or sight in one eye

Section I. Summary of Sickness and Accident Plan Benefits

1. $475.00 per week for 52 weeks for absences caused by non-occupational accidents or sickness; benefits to start the 1st day in case of accidents or hospitalized sickness or outpatient surgery and 6th day in case of un-hospitalized sickness.

2. For any week that temporary and total disability benefits are payable under State Worker's Compensation law, such payments shall be supplemented by an amount equal to the difference (if any) between such weekly payment and the Non-Occupational Weekly Sickness and Accident Benefit, provided that the Company recognizes the disability causing the absence to be work incurred. There is no change in the terms or conditions of the Non-Occupational Weekly Sickness and Accident Benefit Plan, including the duration of such benefits, except to provide a Workers Compensation Supplement.

3. Benefits will terminate at commencement of benefit payments under the Pension or Permanent and Total Disability Benefit Plans.

4. Subsequent period of S&A separated by fifteen (15) or fewer calendar days of continuous Active Employment at the Participant's normal work schedule will be considered one period of S&A, unless the subsequent S&A is due to a Sickness or injury determined to be entirely unrelated to the cause of the previous S&A and commences after return to Active Employment with the Company for at least one day.

Section J. Summary of Health Plan Benefits

1. Health Plan benefits will be provided through a Preferred Provider Organization (PPO), which offers two (2) levels of benefits. Services from a provider who is in the PPO network (in-network) will be covered at the highest level of benefits. Services from a provider who is not in the PPO network (out-of-network) will be covered at the lower level of benefits. In either case, there is no requirement to select a Primary Care Physician (PCP) to coordinate care.

2. The Company has contracted with a Managed Care Organization to implement a pre-certification and utilization review program. This program includes the following:

   a. Pre-Certification for all In-Patient Courses of Treatment;

   b. Continuing Stay Review for all Confinements; and

   c. Case Management including alternative setting reviews and Discharge Planning.

   Employees securing In-Patient care on a fee-for-service basis (outside of Network) will be required to contact the Managed Care Organization prior to admission. Claims for In-Patient treatment submitted by Employees who have failed to contact the Managed Care Organization will be subject to a per confinement deductible of $250. Employees

obtaining In-Patient care from Network providers need not contact the Managed Care Organization. This program shall include an appeals procedure.

3. Reimbursement for all medical services is subject to the annual deductible, coinsurance and applicable copayments. However, deductibles and coinsurance shall not apply to eligible Preventive or Wellness Care for in-network services.

4. Reimbursement for in-network services is subject to coinsurance calculated according to the negotiated amount; the Employee is not responsible for any amount in excess of the negotiated rate. Reimbursement for out-of-network services is subject to coinsurance according to the usual, customary and reasonable (UC&R) rate; the Employee is responsible for any amount in excess of the UC&R rate.

5. If network services are not available within a reasonable distance from the Employee's home, out of network services will be reimbursed at the in-network level. (For example, the distance from Kearny or Hayden to Tucson, Phoenix or Globe would be considered a reasonable distance).

6. Annual out-of-pocket maximum includes deductibles, coinsurance and copay amounts for covered Medical expenses each calendar year, excluding prescription drug expenses and amounts above UC&R. Expenses incurred for out-of-network expenses apply towards the in-network out-of-pocket maximum. Expenses incurred in-network apply towards the out-of-network out-of-pocket maximum. However the combined medical and prescription out-of-pocket amounts for in-network may not exceed the Affordable Care Act annual guidelines.

Summary of Health Insurance

	In-Network	Out-of-Network
Deductible:		
Individual:	$200 combined in and out-of-network	
Family:	$400 combined in and out-of-network	
Out-of-Pocket Maximum: Medical Only		
Individual:	$2,000 combined in and out-of-network	
Family:	$2,000 combined in and out-of-network	
Annual Maximum:	None	
Lifetime Maximum:	None	
Inpatient Care		
Precertification of Admission	Not Required	Required or $250 penalty per confinement
Inpatient Hospital Care Facility Services	80% *	70% UCR *
Inpatient Hospital Care Physician Services	80% *	70% UCR *

	In-Network	Out-of-Network
Inpatient Surgery Professional Provider Services	80% *	70% UCR *
Diagnostic Tests, X-Rays, and Lab Services	80% *	70% UCR *
Inpatient Rehabilitation Services (Occupational Therapy, Physical Therapy, Speech and Language Therapy)	80% *	70% UCR *
Maternity Services	80% *	70% UCR *
Abortion	80% *	70% UCR *
Skilled Nursing Facility	80% *	70% UCR *
Hospice Care	80% *	70% UCR *
Human Organ and Tissue Transplants	80% *	70% UCR *
Home Health Care (limited to 100 visits per year)	80% *	70% UCR *
Home Private Duty Nurses	80% *	70% UCR *
Alcohol and Substance Abuse Care	80% *	70% UCR *
Mental Health	80% *	70% UCR *
Outpatient Care		
Office Visits, Primary Care Physician	80% *	70% UCR *
Office Visits, Specialist	80% *	70% UCR *
Outpatient Surgery	80% *	70% UCR *
Second Surgical Opinion	80% *	70% *
Pre-admission Testing	80% *	70% *
Allergy and Other Injections	80% *	70% UCR *
Diabetic Supplies & Equipment	80% *	70% UCR *
Family Planning	80% *	70% UCR *
Infertility Treatment	80% *	80% UCR *
Chiropractic Services (18 visits per year, limited to three X-rays per 90 days)	80% *	80% UCR *
Podiatry Services	80% *	70% UCR *
Outpatient Mental Health Care	80% *	70% UCR *
Outpatient Substance Abuse Care Facility Services	80% *	70% UCR *
Ambulance Services (including air ambulance)	80% *	70% UCR *
Emergency Room/Emergency Physicians (co-pay waived if admitted to hospital)	$150 member co-pay 80% *	$150 member co-pay 70% UCR *
Urgent Care	$50 member co-pay	70% UCR *
Occupational Therapy	80% *	70% UCR *

	In-Network	Out-of-Network
Physical Therapy	80% *	70% UCR *
Speech and Language Therapy	80% *	70% UCR *
Durable Medical Equipment: (wheelchairs, oxygen, etc.)	80% *	70% UCR *
Prosthetic Devices (pacemakers, braces, artificial limbs and eyes, etc.)	80% *	70% UCR *
Diagnostic Tests, X-Rays, and Lab Services:	80% *	70% UCR *
Dialysis Treatment:	80% *	70% UCR *
Radiation Therapy:	80% *	70% UCR *
Preventive and Wellness Care		
Maternity:		
Prenatal:	100% (Deductible Waived)	70% *
Delivery and Postnatal:	80% *	70% *
Preventive / Routine Care Benefits Benefits Include: Preventive / Routine Physical Exams at Appropriate Ages:	100% (Deductible Waived)	100% (Deductible Waived)
Preventive / Routine Diagnostic Tests, Lab, and X-Rays at Appropriate Ages:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Mammograms and Breast Exams:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Pelvic Exams and Pap Tests:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine PSA Tests and Prostate Exams:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Screenings / Services at Appropriate Ages and Gender:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Colonoscopies, Sigmoidoscopies And Similar Routine Surgical Procedures Done For Preventive Reasons:	100% (Deductible Waived)	70% (Deductible Waived)

	In-Network	Out-of-Network
Preventive / Routine Counseling for Alcohol and Substance Abuse, Tobacco Use, Diet and Nutrition:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Hearing Exams:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive Routine Oral Fluoride Supplements Prescribed for Children Ages 6 months to 5 years Whose Primary Water Source is Deficient in Fluoride:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Care Benefits For Children Include:		
Preventive Routine Physical Exams:	100% (Deductible Waived)	70% (Deductible Waived)
Immunizations:	100% (Deductible Waived)	70% (Deductible Waived)
Preventive / Routine Diagnostic Tests, Lab And X-rays:	100% (Deductible Waived)	70% (Deductible Waived)
In addition, the following Preventive / Routine Services are Covered for Women: • **Gestational Diabetes** • **Papillomavirus DNA Testing** • **Counseling for Sexually Transmitted Infections (Provided Annually)** • **Breastfeeding Support, Supplies, and Counseling**	100% (Deductible Waived)	70% (Deductible Waived)

	In-Network	Out-of-Network
• **Counseling for Interpersonal and Domestic Violence for Women (Provided Annually)** **Paid by Plan**		
Sterilizations for Women: **Sterilizations for Men:**	100 % (Deductible Waived) 80% *	70 % (Deductible Waived) 70% *

PRESCRIPTION SCHEDULE OF BENEFITS **(Not subject to deductibles)** • **Subject to Quantity Limits, unless medical necessity is certified.**	
By Participating Retail Pharmacy • **Covered Person's Coinsurance Amount**	For Up To A 30-Day Supply:
Generic Products	10% (minimum $10)
Brand Products	20% (minimum $25)
By Participating Mail Order Pharmacy • **Covered Person's Co-pay Amount**	For Up To A 90-Day Supply:
Generic Products	$10
Brand Products	$20
By Non-Participating Pharmacy	Use of a Non-Participating Pharmacy, requires payment for the prescription upfront. The Covered Person can then submit a claim for reimbursement. Reimbursement for covered prescription products will be based on the lowest contracted amount of a Participating Pharmacy minus any applicable deductible and/or retail co-pay shown in this schedule.
Out-of-Pocket Maximum: **Prescription Only**	$4,600/individual $11,200/family

Specialty Injectable and Medications can be covered under either the Health Plan or the Prescription Plan but not both.

Contraceptives: As mandated by the Patient Protection and Affordable Care Act (PPACA), Expanded Women's Preventive Health, all Food and Drug Administration approved self-administered prescription contraceptives (oral tablets, patches and self-insertable vaginal devices containing contraceptives hormones) will be processed under the Prescription Benefits section of this document at 100%, with $0 member copay. Prescription contraceptives that require a physician to administer a hormone shot or insert a device will be processed under the Covered Medical Benefits.

7. Maternity coverage for prenatal, postnatal, and delivery will be offered to all dependents. In addition, both the Union and the Company strongly recommend that expectant individuals enroll in the Maternity Management Program.

8. Expenses incurred for kidney dialysis provided at home or in a kidney dialysis unit which is not connected with a hospital will be covered to the same extent such services would be covered if the procedure was provided in a hospital.

9. Expenses incurred for extraction of impacted teeth in the out-patient department of a hospital will be covered to the same extent such services would be covered if the extraction was performed as a hospital in-patient.

10. Expenses incurred for surgery performed in an ambulatory surgical facility will be covered to the same extent such services would be covered if the surgery was performed as an in-patient in a hospital.

11. An ambulatory surgical facility is described as a legally constituted and operated ambulatory care health center (either part of a hospital or otherwise) with permanent plant, equipment and supplies not usually available in a physician's office for surgical or medical care not requiring in-patient confinement.

12. Temporomandibular Joint Dysfunction (TMJ) services will be covered at 80%. Services provided by an in-network physician will be covered at 80%.

13. Skilled Nursing Coverage will be provided in a Skilled Nursing Facility.

14. Benefits shall be provided for sterilizations, abortions and transplant procedures, including donor expenses not covered by other plans.

15. **Limitations**

a. Chiropractic services are covered for the initial consultation and up to a maximum of 18 visits in any calendar year (excluding initial consultation). X-rays are limited to three in any 90-day period.

16. **Nonduplication of Benefits**

a. Benefits available to any covered individual under any provision of the ASARCO Health Plan shall be reduced to the extent like benefits are payable under the provisions of any group insurance plan or group pre-payment plan.

b. Benefits available to any covered individual under any provision of the ASARCO Health Plan shall be reduced to the extent like benefits are available under the provisions of any group insurance plan or group pre-payment plan. Group insurance or prepayment plan include: (1) coverage under a governmental program or coverage that is provided or required by statute, including any motor vehicle no-fault coverage required by statute and (2) group insurance or other coverage for a group of individuals, including student coverage obtained through an educational institution.

c. In the event a dependent covered under the ASARCO Health Plan is, or shall become, covered, or eligible for coverage, under any group insurance or group pre-payment plan by virtue of employment, benefits under the ASARCO Health Plan shall be secondary to the benefits provided or available under such other plan and aggregate benefits payable under both plans may not exceed the benefits that would have been payable under the ASARCO Health Plan.

d. Notwithstanding the foregoing sentence, the Plans shall not coordinate the benefits of a dependent that is eligible for a group insurance or group pre-payment plan by virtue of employment if such plan requires the dependent to pay premiums for health care coverage greater than those required under the ASARCO Welfare Plans.

e. The ASARCO Health Plan shall be the primary source of coverage for active Employees who continue to work beyond their Medicare entitlement date. The dependents of such Employees will also continue to be eligible for coverage, provided that the Employee is actively at work.

f. Expenses and benefits which are recovered by legal action or settlement are not covered under any provision of the ASARCO Health Plan. Accordingly, the Company shall be entitled to a refund for any benefits paid under any provision of the ASARCO Health Plan which are recovered by legal action or settlement. The right of the ASARCO Health Plan to a refund shall be applied to the aggregate amount recovered by the Employee or covered dependent from legal action or settlement related to non-occupational injuries for which Plan benefits were paid. Reimbursement to the ASARCO Health Plan shall not exceed the portion of such

expenses or benefits which are covered by legal action or settlement which is attributed to health care benefits. Reasonable legal expenses (attorney's fee and costs) incurred in obtaining payments from a third party will not be considered as included in the aggregate amount subject to reimbursement. Employees are required to notify ASARCO promptly of the fact of such legal action, or of a judgment or settlement in favor of the Employee (or covered dependent) and make available all information relevant to the administration of any provision of the Plan.

g. If, during the term of this contract, like benefits are provided under a compulsory contributory Federal or State program, the Company and the International Union will meet to reach mutual agreement on the amount and reallocation of funds released as a result of reduction of ASARCO Health Plan benefits.

17. **Coordination of Benefits**

a. If an Employee or eligible dependent is eligible for more than one plan of benefits, the rules establishing which plan is primary and which one is secondary, are as follows:

1. The benefits of a group plan which covers the person other than as a dependent shall be determined before the benefits of a group plan which covers such person as a dependent.

2. In the case of dependent children who are eligible for coverage under any other group insurance or group pre-payment plan, the plan of the parent whose birthday falls earlier in a year shall be primary and the benefits of the parent whose birthday falls later in the year shall be secondary.

Note: If your spouse's birthday falls first in the year and their employer's plan requires a contribution in order to obtain dependent coverage, your dependents will only be covered on a secondary basis by the ASARCO Health Plan, even if you choose not to enroll them in that plan.

b. If a dependent child is covered under both parents' plans, the primary plan for coverage will be the plan covering the parent whose birthday comes earlier in the year, unless:

1. The parents are separated or divorced and the parent with custody of the child has not remarried. In such a case, the benefits of the plan covering the child as a dependent of the parent with custody will be determined before the benefits of the plan covering the child as a dependent of the non-custodial parent.

2. The parents are divorced and the parent with custody of the child has not remarried. In such a case, the benefits of a plan covering the child as a dependent of the parent with custody will be determined before the benefits of a

plan provided by the stepparent, whose benefits will be determined before those of the parent without custody.

3. A court decree has established one parent as having financial responsibility for the medical, dental or other health care expenses of the child. In such a case, the benefits of the plan of that parent will be considered primary.

c. When the rules do not establish an order of benefit determination, the benefits of the group plan which has covered the person for the longer period of time will be considered to be primary.

d. When only one plan has a non-duplication (or coordination) of benefits provision the plan without such provision will determine its benefits first.

e. If a person is being covered as an Employee under two plans, the benefits of the plan which has covered the employer for the longer period of time will be determined first.

Section K. Summary of Vision Care

Employees and their eligible dependents shall be covered under the ASARCO Health Plan. Details of the Vision Care Benefits are included in the Summary Plan Description.

Summary of Vision Benefits

Service/Product	Allowance
Eye Exam and Refraction	$32 per exam
Single Vision Lenses (standard)	$24 per lens ($48 for two)
Bifocal Lenses (standard)	$36 per lens ($72 for two)
Trifocal Lenses (standard)	$46 per lens ($92 for two)
Aphakic/Lenticular Lenses	$72 per lens ($144 for two)
Non-Standard Lenses (e.g. photochromatic, polycarbonate)	Same allowances as standard
Progressive Lenses	$41 per lens ($82 for two)
Frames	$24 per frame
Contact Lens Fitting and Prescription	$20 per lens – Daily $30 per lens – Extended
Standard Contact Lenses	$48 per lens

Section L. Flexible Spending Accounts

Active full-time Employees may elect to establish flexible spending accounts of up to $2,500 for uncovered medical, vision and dental expenses, with a minimum annual contribution of $240 required. Active full-time Employees may elect to establish flexible spending accounts of up to $5,000 (unless a lower maximum is required by law) for dependent care, with a minimum annual contribution of $480. Eligible expenses incurred between January 1st and March 15th of the following year may be submitted for reimbursement by March 30 of the following year. For

detailed information concerning Flexible Spending Accounts refer to the Summary Plan Description.

Section M. Summary of Dental Benefits

The dental benefits for Employees and their eligible dependents are as outlined below.

Summary of Dental Benefits

Benefit Provision	Plan Coverage
Annual Deductible	$100 per Individual
Annual Maximum	$3,000 per Individual
Lifetime Orthodontic Maximum	$3,000 per covered dependent
Preventive Services	
Routine oral examinations and prophylaxis	100% of UC&R charges, limited to twice in any 12 month period, separated by at least 150 days. No deductible.
Application of fluoride	100% of UC&R charges. No deductible.
Space Maintainers	100% of UC&R charges. No deductible.
Emergency treatment for the temporary relief of pain which does not affect a definite cure.	100% of UC&R charges. No deductible.
Restorative Services	**Plan Coverage**
Dental X-rays	85% of UC&R charges, after deductible.
Fillings	85% of UC&R charges, after deductible.
Inlays, onlays, gold fillings or crown restorations	85% of UC&R charges, after deductible.
Extractions and oral surgery	85% of UC&R charges, after deductible.
General anesthetics	85% of UC&R charges, after deductible.
Periodontal treatment	85% of UC&R charges, after deductible.
Endodontic treatment, including root canal therapy	85% of UC&R charges, after deductible.
Repair or recementing of crowns, inlays, onlays, bridgework or dentures	85% of UC&R charges, after deductible.
Relining or rebasing dentures	85% of UC&R charges, after deductible.
Prosthodontic Services	
Initial installation of fixed bridgework	50% of UC&R charges after deductible.
Replacement of an existing partial or full removable denture or fixed bridgework	50% of UC&R charges after deductible.
Orthodontics. Coverage limited to dependent children under 19 years of age.	50% of UC&R charges after deductible, up to lifetime maximum per covered individual.

Article 12. Benefits

Section N. 401(k) Savings Plan

1. The Company shall offer Employees the opportunity to participate in a 401(k) Savings Plan in accordance with the following:

2. Eligibility

   All Employees who have completed one (1) month of service will be eligible to participate in the Plan.

   a. Automatic Enrollment: All employees shall be automatically enrolled into the 401(k) Savings Plan with a 3% default employee deferral, effective after completion of one (1) month of service or one (1) month post-ratification, for employees currently on payroll at ratification of this Agreement. If an employee does not want to participate in the automatic enrollment the employee may opt out.

3. Elections

   Participants may elect to make, increase or decrease contributions at any time.

4. Plan Administration

   a. The Plan shall be administered by the Company. The Company shall bear the payroll administrative costs associated with the Plan. The per participant, trustee, recordkeeping, transaction and other administrative fees will be borne by the Plan.

   b. The Company reserves the right to make administrative changes to the 401(k) Savings Plan from time to time. However, these changes cannot diminish the benefits negotiated under the terms of the agreement.

5. Vesting

   a. Participants shall be fully vested in their contributions.

   b. Participants shall be fully vested in company matching contributions once they have completed three years of service; or are permanently separated (immediately or over a scheduled period of time) because your plant, is permanently shut down; retire; reach age 65; become totally disabled; or die while actively employed by the company.

6. Withdrawals and Distributions

   Withdrawals will be available at age 59 - 1/2 or above (age 55 or above upon termination of employment) or in the event of "hardship" (as determined by IRS deemed hardship

distribution standards). Distributions will be available at retirement, death, disability or termination.

7. Additional Requirements

The Plan will accept eligible rollover contributions from eligible qualified plans and IRA accounts subject to Internal Revenue Service rules.

8. Investment Options

The Plan will offer at least seven (7) investment options, including a broad range of investment objectives and risk. Participants will be able to change investment options or transfer funds among options at any time.

9. Plan Funding

a. Participants may defer from 1% to 75% of eligible pay on a pre-tax basis, or 1% to 75% of eligible pay on an after-tax basis (subject to Internal Revenue Service regulations). Participants who choose to save using a combination of pre- and after-tax contributions may save up to 75% of eligible pay.

b. Eligible earnings shall mean basic straight time hourly earnings, including vacation pay and holiday pay, but excluding overtime, shift differential, premium pay, bonuses, profit-sharing, special payments, add-ons or any similar payments. Contributions to the Plan shall not exceed the maximum permissible by law.

10. Company Matching Contributions

The Company will match 50% of employee pre-tax contributions up to 6% of eligible pay if the Employee was hired prior to July 1, 2011, and 100% of employee pre-tax contributions up to 7% of eligible pay if hired on or after July 1, 2011. The Company does not match any portion of bonus, variable pay, profit sharing or other similar payments. Participants who are fully vested may access all company matching contributions and request withdrawals, transfers and loans of these amounts.

11. Loan Provision

The minimum loan shall be $1,000. The maximum loan shall not exceed fifty percent (50%) of the participant's account balance or $50,000, whichever is less. No more than one general purpose and one primary residence loan shall be outstanding at any time. Loan repayment will be through automatic payroll deduction or an agreed upon alternative for Employees on layoff, disability or in the event of a labor dispute. All loan origination fees and loan service charges will be the responsibility of the employee requesting the loan.

12. Documentation

All documents necessary to the establishment of the Plan will be reviewed with the Union and the Company shall make reasonable efforts to accommodate the Union's issues and concerns.

Section O. Pension Plan

The Company and Union have negotiated a Pension Agreement regarding the Retirement Income Plan for Hourly-Rated Employees of ASARCO hired prior to July 1, 2011, which is contained in a separate document along with a Summary Plan Description.

The Company shall draft a summary plan description for the Pension Agreement, which will be reviewed with the Union and the Company shall make reasonable efforts to accommodate the Union's issues and concerns.

The Pension Agreement shall control over any provisions of the summary plan description distributed by the Company or plan administrator ("SPD") that address such matters. Notwithstanding any language to the contrary in those SPD, the benefits described therein shall not be subject to amendment, modification or termination except as the Union and the Company agree otherwise.

LETTER OF UNDERSTANDING ON
LOCAL SUPPLEMENTAL AGREEMENTS

January 1, 2007

Mr. Terry Bonds
Chairman, Union Negotiating Committee
Director, District 12
United Steelworkers
3150 Carlisle Blvd, NE, Suite 110
Albuquerque, NM 87110

RE: Local Supplemental Agreements

Dear Mr. Bonds:

This will confirm our understanding that workplace practices and local supplement agreements that were in effect prior to our 2006 negotiations will remain in effect unless modified in the Basic Labor Agreement or as a result of local supplement discussions between the parties at each company location. The parties will work to document the current workplace practices and other applicable continuing provisions and incorporate them into the applicable Local Supplemental Agreements. Until the Local Supplemental Agreements are finalized, the current workplace practices and other provisions of the collective bargaining agreements will remain in effect.

In the event of a dispute between the parties, the Chairs of Negotiating Committees or their designees will attempt to reach an agreement to resolve the matter. In the event that they cannot resolve the dispute, either party may submit such dispute to final and binding arbitration under the grievance procedure provided in this Agreement.

Sincerely,

Jon E. Pettibone
Chief Negotiator
Asarco

Agreed:

Terry Bonds
Chairman
Union Negotiating Committee

Memorandum of Understanding
Signing Bonus

Eligible employees shall be paid:

- A signing bonus in the amount of $1,000.00 contingent upon and following ratification and notification by the USW Representative that the Contract has been approved by the International President; and

- $1,500.00 upon the first year anniversary date of such receipt of notification

To be eligible for the above payments, an employee must be on the Company's payroll at the time of such payment.

Memorandum of Understanding
Flexibility

To promote efficiency and productivity, thereby enhancing job security, the parties recognize the legitimate need for increased flexibility in assignments. Assignments within classifications will remain the same on a day-to-day basis unless there is a legitimate operations purpose for temporary assignment of tasks outside those normally performed within an Employee's classification. Routine day-to-day absences and permanent vacancies that occur will not be affected by the terms of this Memorandum of Understanding (MOU). Such routine temporary and permanent vacancies shall be filled in accordance with the Local Supplemental Agreements and the Seniority Provisions in the Basic Labor Agreement. It is understood the relationship and jurisdiction between the various unions shall not be disturbed by this MOU. This MOU is intended to enhance flexibility and it supplements, but does not supersede, existing flexibility existing by agreement or practice. Implementation of this objective shall be accomplished within the following guidelines:

a. In order to achieve the desired flexibility as described above, a Flexibility Pool will be established made up of volunteers or junior Employees who will be used for cross-classification assignments whenever possible. The size of the Flexibility Pool and the classifications within the Pool at each Company location will be determined by the Company, with the understanding the Flexibility Pool will be no larger than 10% of the Employees at any Company location. In the event 10% is not sufficient to accomplish the desired flexibility, the parties shall discuss and seek agreement on the appropriate percentage. In the event the parties are unable to agree, the company may elect to raise the percentage, but in no event shall the percentage be higher than 15%. Any disagreement over the proper percentage may be appealed to the Top Level Committee as outlined in paragraph l. below. All temporary assignments to other classifications from the Flexibility Pool will be offered by seniority (senior qualified) and mandatory for the junior Employee. Such temporary assignments will not extend beyond two weeks unless the person assigned volunteers to extend it. Temporary assignment will not affect an Employee's seniority or job assignment in his/her department, classification, Line of Progression, or regular job assignment.

b. When there is a legitimate operations purpose for cross-classification assignments, employees may be temporarily assigned to perform the work of another classification. Without limiting the foregoing, legitimate operations purposes are recognized as the elimination of contracting out, emergencies, major equipment failure, unexpected absences, production requirements, curtailments, major maintenance outages, other major projects, spillages or Acts of God.

c. In the event there is no one available from the Flexibility Pool to perform cross-classification assignments, the Company may temporarily assign other Employees to perform work in a classification other than their own classification provided the Employee is qualified to perform the work safely. Temporary assignments shall be made by seniority as described in a, above, and will not extend beyond two weeks unless the person assigned volunteers to extend it. Every effort will be made to use Employees from the proper

classification within the department to get the work done. In day-to-day equipment breakdowns, the operator assigned to operate the equipment that is down for repair may be assigned to assist maintenance personnel assigned to repair the equipment.

d. It is understood that cross-department assignments will be made only from the Flexibility Pool except where permitted by local agreement or practice; however, this shall not preclude within-classification assignments between bargaining units represented by different local unions of the same international union.

e. There shall be no favoritism, retaliation or punishment against any Employee by the Company in the exercise of its rights under this MOU. No Employee will be disciplined for poor work performance due to lack of training while performing work on a cross-classification or cross-department assignment.

f. The Company may organize Maintenance Crews designed to perform other than routine day-to-day maintenance work at any of the various Copper Group or Ray locations. Such Maintenance Crews shall be used to perform skilled maintenance tasks such as responding to emergencies, surge maintenance periods, eliminating contracting-out, major equipment failure, other major maintenance needs, or to supplement normal maintenance forces. Such Maintenance Crews shall not be used to erode the normal maintenance forces at any of the Company locations nor to reduce apprenticeship opportunities. Subparagraphs a through d above shall not apply to Maintenance Crews. For Maintenance Crew Employees who perform work at other than their home plants, the Company will pay in advance for reasonable travel and other necessary expenses and compensate for travel time pursuant to agreements reached between the parties.

g. It is understood additional training will be required. Such training is the responsibility of the Company. No Employee who has more than 25 years of service or who is 55 years of age or older shall be required to accept the training nor be forced to accept cross-classification assignments under this MOU.

h. Temporary assignments outside an Employee's job classification will not affect the Employee's seniority or regular job assignment in his/her department, classification, or line of progression.

i. Safety training shall be provided when Employees are assigned outside their regular classifications. Any necessary safety training shall be the responsibility of the Company.

j. Employees who volunteer or are forced (junior Employees) for cross-classification assignments in the Flexibility Pool, or who are on a Maintenance Crew, shall be paid $1.00 per hour above their regular rate of pay or above the rate of the classification to which they are assigned, whichever is higher.

k. The Joint Workplace Committee as described in Article 5, Section L, 1 and 2, will meet as soon as possible after the Effective Date of this Agreement to discuss, identify and seek agreement to reduce the number of classifications and possibly combine classifications. If

the Joint Workplace Committee is unable to reach agreement, the parties will refer the issues to the Top Level Committee described in paragraph l, below. The Top Level Committee shall meet and try to resolve any differences. Should the Top Level Committee fail to reach an agreement, it is understood that nothing in this MOU shall detract from the parties' rights under the provisions of the Basic Labor Agreement or the local supplemental agreements.

l. In order to assure the purpose and intent of this MOU is carried out and the principles herein are followed and to assure that Employees are protected from abuse or favoritism, a Top Level Committee will be established. This Committee shall be made up of the Chairman of the Unions' Asarco Bargaining Committee and the CEO of Asarco. In the event a dispute arises that cannot be settled by the Top Level Committee, the issue(s) will be submitted to immediate arbitration to determine whether or the Company violated any provision of this MOU or the purpose and intent or the principles herein. The arbitrator shall have full discretion to determine the appropriate remedy.

LETTER OF UNDERSTANDING ON COVERED RETIREES

September 21, 2017

Mr. Robert LaVenture
Chairman, Union Negotiating Committee
Director, District 12
United Steelworkers
3150 Carlisle Blvd. N.E., Suite 1100
Albuquerque, NM 87110

RE: Covered Retirees Eligible for Benefits under the ASARCO Health Plan

Dear Mr. LaVenture,

This will confirm our understanding that only the employees listed below who retire, or who would be eligible to retire, up until the expiration of the Agreement ("Covered Retirees" as defined in Article 12, Section F of the Agreement) shall be eligible for benefits under the ASARCO Health Plan applicable to retirees.

Sincerely,

Agustin Trevino
Chief Negotiator
ASARCO

Agreed:

Robert LaVenture
Chairman
Union Negotiating Committee

COVERED RETIREES

NameL	NameF	DOH	Status
(b) (6), (b) (7)(C)			Active
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Elig-by-Nov 2018

COVERED RETIREES

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COVERED RETIREES

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COVERED RETIREES

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Elig-by-Nov 2018

June 23, 2017

Memorandum of Understanding Regarding
Paid Sick Time Pursuant to the Arizona Fair Wages and Healthy Families Act

This Memorandum of Understanding ("MOU"), is entered into by and between the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL, CIO, CLC ("Union") and ASARCO LLC ("ASARCO").

For the sole purpose of complying with the paid sick time requirements of the Arizona Fair Wages and Healthy Families Act ("Act"), and with the express acknowledgment that this MOU affects no change in the parties' bargaining positions for a successor Basic Labor Agreement, ASARCO and the Union agree that:

1. This MOU applies to all ASARCO bargaining unit employees, including those working at ASARCO's Amarillo facility;
2. Effective July 1, 2017, all employees with less than one (1) year seniority and all employees hired thereafter (collectively "New Employees"), shall, until reaching vacation eligibility pursuant to Article 10 (Paid Time Off and Leaves of Absence), Section B (Vacations), accrue paid sick time at a rate of one (1) hour for every thirty (30) hours worked, with the ability to accrue a maximum of forty (40) hours of paid sick time in a calendar year as required by the Act. Such accrual shall begin at the commencement of employment or on July 1, 2017, whichever is later. New Employees hired on or after July 1, 2017 may not use the paid sick time until ninety (90) days after the commencement of employment at ASARCO, and shall thereafter be entitled to use the paid sick time as it is accrued for the purposes specified in the Act. All New Employees hired before July 1, 2017 are entitled to use the paid sick time as it is accrued for the purposes specified in the Act;
3. Upon becoming eligible for vacation pursuant to Article 10, Section B, New Employees shall thereafter only be entitled to accrue and use their vacation entitlement pursuant to Article 10, Section B, for paid sick time under the Act;
4. New Employees shall be paid for unused paid sick time not utilized by the end of the calendar year during which their employment began. At the beginning of the subsequent calendar year, New Employees will be immediately entitled to use the entire amount of paid sick time/vacation that they are expected to earn in that calendar year, which amount cannot exceed forty (40) hours;
5. Effective July 1, 2017, all other ASARCO employees shall be entitled to accrue and use their vacation entitlement pursuant to Article 10, Section B, as paid sick time for the purposes specified in the Act. A maximum of forty (40) hours of vacation may be used as paid sick time under the Act per calendar year, except that in 2017, such employees may only use a pro-rated amount of twenty (20) hours of vacation as paid sick time under the Act. In the event that an employee has exhausted their 2017 vacation entitlement as of July 1, 2017, such employee shall be entitled, for the remainder of 2017, to accrue paid sick time at a rate of one (1) hour for every thirty (30) hours worked, which time can used

as it is accrued for the purposes specified in the Act. Employees shall be paid for unused paid sick time not utilized by the end of 2017;

6. Effective July 1, 2017, any ASARCO employees that do not qualify as New Employees and do not have any vacation entitlement under Article 10, Section B, due to insufficient hours worked, shall be entitled to accrue paid sick time at a rate of one (1) hour for every thirty (30) hours worked, with the ability to accrue a maximum of forty (40) hours of paid sick time in a calendar year, until such time that the employees become entitled to a vacation entitlement pursuant to Article 10, Section B. Such employees are entitled to use the paid sick time as it is accrued for the purposes specified in the Act, and shall be paid for unused paid sick time not utilized by the end of the calendar year. At the beginning of the subsequent calendar year, such employees will be immediately entitled to use the entire amount of paid sick time/vacation that they are expected to earn in that calendar year, which amount cannot exceed forty (40) hours. Once such employees become entitled to vacation pursuant to Article 10, Section B, the vacation entitlement shall be the sole source of paid sick time under the Act in accordance with Paragraph 5 of the MOU;
7. Employees using paid sick time under the Act shall be paid at the rate of pay that they would have been paid if they had worked during the period of time that paid sick time was used (this includes shift differential and other premium pay for work performed under differing conditions, such as day pay supervisor, leadperson and other upgraded positions, but not overtime, bonuses, holiday pay and other incentive pay). For an employee with multiple hourly rates, if known, the rate of pay will be the actual hourly wages that the employee would have been paid for the period of time when paid sick time was used, and if unknown, ASARCO will pay the employee an hourly rate equivalent to the weighted average of all hourly rates of pay for the employee during the previous pay period;
8. Any ASARCO employees who are transferred or are rehired, shall be entitled to paid sick time to the extent allowed by the Act;
9. All ASARCO employees may use paid sick time in hourly increments;
10. ASARCO employees shall provide ASARCO with notice of the need to use paid sick time in accordance with the absence notification procedures currently in effect at their site of employment at ASARCO;
11. Legitimate, good faith use of paid sick time shall not be counted as an absence under any ASARCO attendance policy, and employees will not be disciplined for such legitimate, good faith use;
12. ASARCO may designate any absences/time off as paid sick time under the Act as long as it has a good faith belief that the absence/time off was for a purpose specified in the Act;
13. In accordance with the Act, for absences of three (3) or more consecutive work days, ASARCO may require reasonable documentation from the employees showing that the paid sick time was used for a purpose specified by the Act; and
14. To the extent permitted by law, ASARCO may run paid sick time under the Act concurrently with leave under the Family Medical Leave Act and any other leave mandated/protected by law.

IN WITNESS WHEREOF, the parties hereto have duly executed this MOU on the dates set forth below.

_____	_____
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL, CIO, CLC	Date
_____	_____
ASARCO LLC	Date

Exhibit A
Alcohol and Drug Abuse Policy

PHILOSOPHY: The dangers of drug or alcohol abuse in the workplace are far reaching. Such abuse can affect not only the abusing employee but their fellow employees as well. ASARCO employees work closely together and rely upon one another to a great extent. The safe performance of the work that our employees undertake demands each employee's full attention and clear thinking. As a result, the Company, as well as each employee, has a right to expect that all employees are drug and alcohol free and prepared to do their jobs in as safe a manner as possible at all times.

PURPOSE: It is the policy of the Company to provide a workplace free of alcohol and drugs, and to take reasonable measures to insure that employee alcohol and drug use does not jeopardize the safety and health of its employees, the success of its operations, nor adversely affect the Company, or its customers. Implementation is subject to restrictions under applicable local, state, and federal laws.

POLICY:

Education:

Employees are to be advised in writing of the Company's Alcohol and Drug Abuse Policy and Program. Information provided is to cover various aspects of the policy including the reasons for the program, effects of alcohol and drugs on individuals and their families; use of inspections, alcohol tests and drug tests.

Rules of Conduct:

The following Rules of Conduct apply to all employees. Violation of such rules subjects the employee to discharge:

A. The use, sale, attempted sale, manufacture, purchase, attempted purchase, possession or transfer of alcohol while on Company property, or in Company vehicles, is a violation of Company rules and will result in severe disciplinary action up to and including discharge. However, possession of a sealed beverage container in an individual's automobile shall not constitute a violation of this rule of conduct.

B. The use, sale, attempted sale, manufacture, purchase, attempted purchase, possession or transfer of an illegal drug while on Company property or in Company vehicles is a violation of Company rules and will result in severe disciplinary action up to and including discharge.

C. Any individual who is under the influence of alcohol or an illegal drug while on Company property or in a Company vehicle is in violation of Company rules and will be subject to severe disciplinary action up to and including discharge. Being "under the influence" shall not excuse or be a defense to any other misconduct which is a violation of Company rules.

D. An employee who is convicted under any criminal drug statutes for the use, sale, attempted sale, manufacture, purchase, attempted purchase, possession or transfer of an illegal drug, shall be immediately subject to unannounced drug testing for a period of eighteen consecutive months. In the event of a confirmed positive drug test during that period, such employee will be discharged. Absence from work due to such conviction shall be considered unauthorized and the employee shall be subject to disciplinary action, up to and including discharge.

E. Any employee who is currently taking medication of any kind, either over-the-counter or prescription, including medical marijuana, which may affect the employee's ability to perform his job in any way, or may present a safety risk, is to report such drug use to the Company to ensure the safety of themselves, other employees and Company property.

Inspection for Alcohol or Drugs

A. Notices

1. Each facility is to have a notice prominently placed at or near each entrance which states that by entering the premises persons are consenting to an inspection of themselves and their property, including their vehicles.

2. Example of acceptable notice:

RIGHT TO INSPECT

THE COMPANY RESERVES THE RIGHT TO INSPECT THE PROPERTY AND PERSON OF ALL INDIVIDUALS WHILE ON COMPANY PROPERTY. THIS RIGHT INCLUDES, BUT IS NOT LIMITED TO, THE INSPECTION OF VEHICLES, PARCELS, PACKAGES, PURSES, LUNCH BOXES, BRIEFCASES, LOCKERS, WORK STATIONS AND DESKS.

B. Inspections

1. In addition to routine industrial inspection practices, such as gate inspections, where the Company has information that would cause a reasonable person to believe that the provisions of this policy have been violated, the Company may require individuals to submit to special inspections of their personal lockers, purses, lunch boxes, briefcases, tool boxes, desks, file cabinets, or other containers or personal vehicles when on Company property.

2. Individuals who are being inspected may not be touched. If it is deemed necessary to ascertain what is on the individual's person, the individual is to be directed to empty the contents of his/her clothing.

3. Employees who refuse to permit an inspection are not to be forcibly detained nor inspected. However, they are to be advised that submission to such inspection is a condition of employment. Failure to permit such an inspection will result in immediate discharge.

4. Non-employees who refuse to permit an inspection are to be informed that this is a requirement of individuals allowed on Company property. Continued failure to submit to an inspection will result in their expulsion from Company property.

5. Trained dogs may be used to detect illegal drugs in personal and Company property.

Alcohol and Drug Testing

A. Current Employees

1. **Reasonable Suspicion Testing:** Testing for Alcohol and Drugs is based on circumstances where the Company has information about an employee's conduct that would cause a reasonable person to believe the employee is demonstrating signs of impairment due to alcohol or illegal drugs, or has used or continues to use alcohol or illegal drugs on Company property.

   When an employee shows signs of impairment, including but not limited to, difficulty in maintaining balance, slurred speech, erratic or atypical behavior, or demonstrates deteriorating job performance or appears unable to perform his/her job in a safe manner, the employee is to be escorted to a collection facility for drug and/or alcohol screening.

   i. If judged appropriate by supervision, a test for alcohol is to be conducted, and/or a urine specimen for drug testing is to be required.

   ii. In the event a Company location does not have a medical department, or has a medical department which is not staffed when the employee is escorted to it for testing, the decision to require an employee to be sent to an outside medical facility for an alcohol and/or drug test is to be made by a management official. If the decision is to conduct an alcohol and/or drug test, the employee is to be escorted to the Collection Site for testing.

   When the Company otherwise has a reasonable suspicion that an employee is in violation of Company Rules of Conduct on use of alcohol or drugs, a test for alcohol and/or a urine specimen for drug testing may be required. The employee is to be escorted to the Collection Site for testing. Employees will not be tested for drugs or alcohol based solely on anonymous tips.

2. **Recall Testing:** An employee who is recalled after being on layoff for a period of six (6) months or more, or who is otherwise returning to work after a period absence of six (6) months or more, shall be required to take a Company directed medical

examination, including a drug and/or alcohol test. In the event of a confirmed positive test, the employee will be denied reinstatement until such time as he successfully passes a Company directed drug and/or alcohol test. Upon successfully passing such a test, the employee will be reinstated but will be immediately subject to unannounced drug testing for a period of eighteen consecutive months. In the event of a confirmed positive test during that period, such employee will be discharged.

3. **After-Accident Testing:** An employee or group of employees who are involved in an on-the-job accident may be required, at the Company's discretion, to submit to a test for alcohol and/or a urine analysis for drug testing.

4. **Random Testing:** The Company and the Union shall cooperate in implementation of a random alcohol and drug-testing program which will not become effective until at least 6 months after the Effective Date of this Agreement, which may test up to 20% (twenty percent) of employees Company-wide (it being understood that for purposes of this paragraph "Company-wide" means 20% of total employee headcount, and not 20% of headcount at a specific location) during any calendar year, as further described below:

   i. Selection of employees to be tested will be determined by a third party vendor, using a random selection generator method (i.e. computerized program). The Company will follow U.S. Department of Transportation requirements and use a certified third-party vendor. The parties shall have no discretion to waive the selection of an employee selected by this random selection method. After the random testing has occurred, the Union may request a list of all the employees who were eligible for random selection and the employees selected.

   ii. When an employee has been selected for random testing, the employee shall be escorted to the collection site for testing.

   iii. The testing process under the existing program as modified herein will be used for testing and retest. Any employee testing positive for any substance under the random selection process will be temporarily suspended, not terminated, without pay pending completion of referral to the Employee Assistance Program ("EAP") and fulfillment of any rehabilitation requirements suggested by the EAP that require the employee to miss work. An employee suspended under this provision, if eligible, shall be entitled to coverage under the Company's health plan, FMLA leave, and sickness and accident plan. For the avoidance of doubt, except as required by law, this suspension shall not affect the operation of any other provision in this Agreement regarding benefit eligibility, including but not limited to Weekly Sickness and Accident Benefits. Any work-time lost as a result of complying with the EAP rehabilitation requirements will not count against the employee for attendance purposes. Upon return to work, the employee shall be placed on a Last Chance Agreement for a twenty-four (24) month period. Such employee will be subject to random testing at any time during the term of the Last Chance Agreement and will be

subject to termination for any positive test result during the twenty-four (24) month period. Any such employee who refuses to participate in a random alcohol or drug test, who fails to comply with the referral to the EAP, or who fails to fulfill any rehabilitation requirements suggested by the EAP will be terminated

iv. In the event an employee questions the Company's right to random test for drug or alcohol or initially refuses, a union representative will be called to advise him of the consequences of his/her refusal, which is termination. The employee will not be terminated until he/she has a chance to speak with a union representative.

v. Similarly, any employee who is shown conclusively to have engaged in any action to alter, including dilution, adulterate, substitute, or otherwise tamper with their alcohol or drug test specimen, will be discharged.

5. **Step Forward Testing:** Any employee who is not subject to a Last Chance Agreement under paragraphs 4 or 5 of this Policy may seek rehabilitation assistance prior to selection for random testing. Such employees will be required to submit to a drug test and alcohol screening under the procedures set forth in this policy. These employees' requests for rehabilitation will be accommodated, without retaliation or retribution, through the EAP, subject to the following conditions:

i. Employees seeking rehabilitation under this paragraph 5 will be placed on a leave of absence pending completion of referral to the EAP and fulfillment of any rehabilitation requirements suggested by the EAP that require the employee to miss work. Any work-time lost as a result of complying with the EAP rehabilitation requirements will not count against the employee for attendance purposes. Except as required by law, this leave of absence shall not affect the operation of any other provision in this Agreement regarding benefit eligibility, including but not limited to Weekly Sickness and Accident Benefits.

ii. Upon return to work, the employee shall be placed on a Last Chance Agreement for an eighteen (18) month period. Such employee will be subject to random testing at any time during the term of the Last Chance Agreement and will be subject to termination for any positive test result during the eighteen (18) month period. Any such employee who refuses to participate in a random alcohol drug test, who fails to comply with the referral to the EAP, or who fails to fulfill any rehabilitation requirement suggested by the EAP will be terminated.

6. Nothing in this Policy, including but not limited to paragraphs 4 and 5, shall limit the Company's right to discipline employees for violations of this and other Company Policies, including performance problems.

PROCEDURE:

A. **Consent –** No alcohol test may be administered or urine or blood sample obtained or any drug test conducted on such sample without the written consent of the person being tested (See Appendix A.)

B. **Employee Refusal to Consent to an Alcohol Test or Drug Test -** An employee's refusal is viewed as insubordination and subjects the employee to immediate discharge.

C. **Alcohol Screening –** Alcohol screening will normally utilize a breathalyzer test in accordance with the test equipment manufacturer's instructions or a urine, or blood screen.

On-site Alcohol confirmation testing: A positive on-site indicator for alcohol requires a second breathalyzer test be performed. A positive confirmation for the presence of alcohol will result in the following:

1. A Breath Alcohol result of 0.04 or greater will result in an employee being placed on Investigative Leave.

2. The employee will be requested to submit a urine sample for alcohol screening which will be sent to a licensed laboratory for confirmation testing. The urine sample will be obtained in accordance with the drug testing procedures set forth below.

3. The employee and supervisor will immediately meet with the human resources representative.

4. If the testing is taking place at a time when human resources are not available, meaning a night shift; the employee will be immediately placed on Investigative Leave until such time as they can meet with the human resources representative.

D. **Drug Testing** – Drug tests will normally utilize urine samples. All urine tests will be performed according to Substance Abuse and Mental Health Services Administration ("SAMSHA") standards. An initial immunoassay test will be administered by qualified personnel using Quick Screen testing methodology and any "positive" tests will be confirmed through a certified laboratory using accepted scientific laboratory technologies. All "positive" tests finding for drug testing will be reviewed by an independent Medical Review Officer (MRO) meeting the requirements set forth in the applicable SAMSHA regulations at 73 FR 71899 (Subpart M, Section 13.1). The MRO will interview the person tested, before a final test determination is made. If the MRO is unable to contact the tested person with 5 days after receipt of the finding, the sample will be considered a "positive" (non-negative) test.

1. All test results are reported directly to the Human Resources Department.

2. The employee will remain off work, without pay, until confirmation results have been received.

3. A negative indicator will result in the employee returning to work and pay being reinstated for the time period the employee was on Investigative Leave. All initial testing, determined to be "negative" will be considered as "passed" test and no confirmation test will be required.

4. Any drug test determined to be "positive" may be appealed for retest of the original sample (or split sample), at the expense of the employee requesting the retest.

5. A positive confirmation for drugs, in quantities medically prescribed, and which do not impair ability to work safely as previously certified by a MRO, will not result in termination of employment.

6. In the event the DOT recognizes the use of oral fluid samples for drug testing and publishes applicable levels for assessing the presence of an Illegal Drug or Illegal Drug metabolites in an individual's system, the Company may, after reasonable notice to the Union, utilize such method of testing. All such tests will be performed according to SAMSHA standards.

E. **Chain-of-Custody** – The Company will follow the Substance Abuse and Mental Health Services Administration's Chain of Custody Procedures.

F. **Retention of Sample –** All urine or samples confirmed positive for illegal drugs are to be frozen by the testing laboratory and retained for one year.

G. **Notification –** All employees who test positive for Illegal Drugs are to be so notified by the MRO and given an opportunity to provide the MRO any reasons they may have which would explain the positive drug test other than the presence of Illegal Drugs. If an individual provides an explanation acceptable to the MRO that the positive drug test result is due to factors other than the presence of Illegal Drugs in the test specimen, the positive test result is to be disregarded and all records of the test result destroyed. All employees have the right to obtain copies of the written test results upon request.

H. **Confidentiality –** The identity of employees who have tested positive are to be limited to those persons having a need-to-know.

I. **Grievance and Arbitration –** Disciplinary action taken under this Policy shall be subject to the grievance and arbitration procedure.

J. **Union Representation**

A bargaining unit employee shall, upon request, be afforded union representation at any time he or she is confronted with a consent, interview or test for alcohol or drugs.

Nothing in this Policy and Program is to be construed as a guarantee of employment for any period of time, including but not limited to the time any employee is participating in the Company's drug testing program.

DEFINITIONS:

Alcohol - A colorless, volatile, and flammable liquid that is the intoxicating agent in fermented and distilled liquors. It includes but is not limited to beer, wine, and liquor.

Being Subject to the Effects of Alcohol or an Illegal Drug - Having the presence of alcohol, an illegal drug or a drug metabolite in an individual's system, as determined by appropriate testing of a bodily specimen that is equal to or greater than the levels specified in the U.S. Department of Transportation's ("DOT") rules and regulations, the current levels of which are set out below. This is referred to as "positive test", "positive level", "prohibitive level", or "positive screen." A confirmed positive shall be a basis for immediate discharge, unless otherwise provided herein.

		Initial Test Level	Confirmation Test Levels
A.	Alcohol	0.04%	0.04%
B.	Marijuana metabolite	50 ng/ml	15 ng/ml
C.	Cocaine metabolite(s)	150 ng/ml	100 ng/ml
D.	Morphine and/or codeine	2000 ng/ml	2000 ng/ml
E.	Phencyclidine (PCP)(and/or metabolites)	25 ng/ml	25 ng/ml
F.	Amphetamine and/or methamphetamine	500 ng/ml	250 ng/ml
G.	Oxazepam and/or other benzodiazepine or metabolite	300 ng/ml	300 ng/ml
H.	Barbiturates	300 ng/ml	200 ng/ml
I.	Methadone and/or metabolite	300 ng/ml	300 ng/ml
J.	Methaqualone (quaaludes)	300 ng/ml	300 ng/ml
K.	Propoxyphene (Darvon)	300 ng/ml	300 ng/ml

Collection Site – A location for specified employees to report for the purpose of participating in a test for alcohol and/or contributing urine specimens for the detection of drugs in urine. The collection of urine specimens or blood is to be conducted under tightly controlled conditions. The Collection Site can be separate and apart from the work site, if adequate facilities are not available at the work site.

Company Property – Includes, but is not limited to, all land (including parking lots), property, and buildings owned or leased by the Company and automobiles, trucks or vans owned or leased by the Company.

Drug Test – A multiple step urine test which involves an immunoassay screening method and a confirmation by use of Gas Chromatography and Mass Spectroscopy (GC/MS). The laboratory to conduct such tests shall be a certified laboratory, selected at the discretion of the Company.

Split Sample - An employee may request a split sample of his or her urine sample submitted at the collection site and, upon a confirmed positive of one sample, the employee may request a test of the other sample at his or her own expense.

Illegal Drug – A controlled substance, as defined by Section 812 of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

Exhibit B
Pension Agreement

The Pension Agreement (hereinafter called the "Agreement"), made by and between ASARCO LLC (Hereinafter called the "Company") and the following Unions or their successors (the Union) on behalf of the Employees of the Company:

a. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (USW);

b. International Brotherhood of Electrical Workers, Locals 518, 570; and 602;

c. International Association of Machinists and Aerospace Workers, Local 519;

d. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith, Forgers and Helpers, Local 627;

e. International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 104;

f. International Union of Operating Engineers, Local 428;

g. United Brotherhood of Carpenters and & Joiners of America, Local 1912; and

h. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 741.

Section 1.
Subject to the Company's obtaining and/or retaining initial approval by the Internal Revenue Service of the amendments contemplated by this Agreement, the Company agrees to amend the Retirement Income Plan for Hourly-Rated Employees of Asarco (hereinafter called the "Plan") effective as of January 1, 2007 (hereinafter called the "Effective Date"), in the following respects:

Section 2.
Eligibility and Amount of Retirement Income Benefits:

Eligibility.
Employees, not including terminated Employees, covered under this Agreement who on or after the Effective Date have reached Normal Retirement Date will be entitled at Retirement Date to a non-contributory benefit under the Plan.

Types of Pension Payments
A pension granted pursuant to Section 2 shall consist of:

a. a special severance payment (hereinafter "Special Payment"), except in the case of any participant eligible for a deferred vested pension (or as provided in Section 4), and

b. a regular pension amount (hereinafter "regular pension"), payable in monthly installments, provided in accordance with the provisions of Section 3 below.

Amount of Retirement Income Benefits.
The Amount of retirement benefit for eligible Employees retiring subsequent to the Effective Date shall be computed as follows:

A. Special Payment

The amount of Special Payment for a participant shall be calculated as follows:

1. 1% of Average Annual Earnings times Years of Service, plus $30.00 times Years of Service. Employees hired or rehired on or after July 1, 1983, shall be limited to a $7,500 maximum (lifetime) amount accrued by this formula. (Annual Earnings: Straight time hourly earnings, which shall exclude all pay premiums of whatever nature, for the twelve (12) consecutive calendar months immediately preceding the date of retirement or death, divided by the straight time hours worked, multiplied by 2,080 hours);

2. less the amount of benefit payments received under the Asarco Supplemental Unemployment Benefits Plan; and

3. less the amount of any laid off benefit payments received under the former Asarco Copper Group Security & Severance Payment Plan for weeks in which the Employee was ineligible for state unemployment benefits, if any.

Except as required by law, the Special Payment shall be paid in a lump sum within the first full calendar month following the month in which death or retirement occurs or within the month following the month in which application for pension is made, whichever is later.

B. Normal or Deferred Retirement.

1. A monthly amount determined by multiplying $32.00 by the number of years (and fractions thereof) of his or her Continuous Service up to 15 years, plus $33.50 by the number of years (and fractions thereof) of his or her Continuous Service in excess of 15 years and up to 30 years, if any, plus $35.00 for each year of Continuous Service in excess of 30 years.

2. a. Effective as of the date of an effective plan of reorganization of ASARCO, a monthly amount determined by multiplying $40.00 by the number of years (and fractions thereof) of his or her Continuous Service, effective for all Employees, not including terminated Employees, covered under this Agreement.

b. In addition to providing the $40 multiplier applicable to all pensions commencing on or after the Amendment's effective date, the Amendment also shall provide to individuals retiring or otherwise separating from service on or after January 1, 2007, but before the Amendment's effective date, (or to the beneficiaries of such individuals) supplemental pension payments in an amount equal to the excess of the value of the pension benefits that would have been payable to such individuals had they commenced their pension benefits under the Plan on or after the effective date of the Amendment over the value of the pension benefits that such individuals were actually paid from the Plan. Such supplemental pension payments shall be paid as soon as administratively practicable (taking into account any legal requirements) after the effective date of ASARCO's plan of reorganization in a single lump sum, and shall be calculated to include interest (based on the Plan's assumed rate of return on its assets) from the date that the individuals would have received such payments had the Amendment's effective date been January **1,** 2007. In the event that the Plan does not pay such supplemental payments for any reason, ASARCO either **(1)** shall contribute to individual accounts established or maintained under the Hourly 401(k) Plan on behalf of the individuals (or to the beneficiaries of such individuals) who are entitled to such supplemental pension payments an amount equal to the value of those payments; or (2) shall provide an equivalent after-tax value to such individuals (or to the beneficiaries of such individuals) in a manner that the parties subsequently determine by mutual agreement.

C. Early Retirement.

Any Employee shall be eligible to retire prior to Normal Retirement Date provided the conditions set forth in one of the following paragraphs are satisfied.

1. 70/80 Formula.

a. Any employee who is laid off due to the permanent shutdown of the total plant at which he or she is employed and which is covered under the Agreement may elect to retire and receive a "70/80" retirement benefit, provided such Employee:

i. has reached age 55 at the commencement of layoff and attained age plus Continuous Service totals 70 years or more, or

ii. has not reached age 55 and attained age plus Continuous Service totals 80 years or more.

Notwithstanding anything to the contrary, eligibility for a 70/80 Retirement shall be determined based on the Employee's age as of the date of layoff. However, an Employee on layoff due to the permanent shutdown of the total plant shall continue to accrue Continuous Service as set forth in Section 5, below.

b. The basic benefit shall be the amount calculated in Paragraph B above, for each month of Continuous Service. In addition, such Employees shall be eligible to receive a temporary supplement of $300 per month, commencing with their first pension payment. Payment of the temporary supplement shall continue until the end of the month proceeding the earliest of:

i. Date of pensioner's death, or

ii. Date pensioner becomes eligible for a Social Security disability pension, or

iii. Date pensioner reaches the age required for eligibility for an unreduced normal Social Security pension, or

iv. Date pensioner reaches 62nd birthday.

2. 30 Year Retirement.

Any Employee who has completed 30 years or more of Continuous Service may elect to retire and receive a "30 Year" retirement benefit which shall be the amount as calculated in Paragraph B above, for each month of Continuous Service.

3. 60/30 Formula.

Any Employee who has both reached age 60 and completed at least 30 years of Continuous Service may elect to retire and receive a "60/30" retirement benefit. The basic benefit shall be the amount calculated in Paragraph B above, for each month of Continuous Service.

In addition, such Employees shall be eligible to receive a temporary supplement of $400 per month commencing with their first pension payment.

Payment of the $400 per month temporary supplement shall continue until the end of the month preceding the attaining of age 62, and thereafter a temporary supplement of $170 per month shall be payable until the end of the month preceding the date the pensioner attains his or her 65th birthday, unless one of the following events occurs, in which case the temporary supplement will be payable until the end of the month preceding the earliest of:

a. Date of pensioner's death, or

b. Date pensioner becomes eligible for an unreduced Social Security disability pension, or

c. Date pensioner reaches age required for eligibility for an unreduced normal Social Security pension.

4. 62/10 Formula.
Any Employee who has reached age 62 and completed at least 10 years of Continuous Service may elect to retire and receive a "62/10" Retirement Benefit which shall be the amount as calculated in Paragraph B above, for each month of Continuous Service.

5. 55/10 Formula.
An Employee who has reached age 55 and completed at least 10 years of Continuous Service may elect to retire and receive a "55/10" retirement benefit which shall be the amount calculated in Paragraph B above, for each month of Continuous Service, reduced by 33/100th of 1% for each full month by which the Early Retirement Date precedes the month in which the Employee shall attain age 62.

6. Permanent and Total Disability Retirement.
Any Participant who shall have had at least 10 years of Continuous Service and who shall have become Permanently and Total Disabled shall be eligible to retire on or after the Effective Date and shall upon his retirement (hereinafter Permanent and Total Disability retirement) be eligible for a pension which shall be the amount as calculated in Paragraph B above, for each month of Continuous Service. A Participant shall be considered to be eligible for Permanent and Total Disability retirement only

a. if he has been totally disabled by bodily injury or disease which prevents the Employee from engaging in any occupation or employment whatsoever covered by the Labor Agreement of the collective bargaining unit in which the Employee works, and

b. after such total disability shall have continued for a period of five consecutive months and, in the opinion of a qualified physician appointed by the Company, it will be permanent and continuous during the remainder of the Employee's life, and

c. the Employee has been declared qualified for and is receiving Social Security Disability Benefits.

Permanent and Total Disability contracted, suffered or incurred while the Employee was engaged in a felonious criminal enterprise; or the result from a self-inflicted injury; or the result from service in the armed forces after the Effective Date of this Agreement, which prevents return to employment with the Company, and for which the Employee received a military disability pension shall not entitle a Participant to a Permanent and Total Disability retirement benefit under this Paragraph. Such pension shall be discontinued if such Participant shall cease to be permanently incapacitated prior to age 65. The permanency of incapacity may be verified by medical examination prior to age 65 at any reasonable time. Should the Employee refuse to submit to medical examination prior to age 65, any Permanent and Total Disability retirement benefit shall be discontinued until the Employee submits to such examination.

D. Spouse's Pension (Pre-Retirement).
The surviving spouse of an active Employee who dies after having completed at least five (5) years of Continuous Service, shall be eligible for a Spouse's Pension which shall be equal to 50% of the Employee's accrued retirement benefit calculated as in Paragraph B above, for each full month of Continuous Service up to the date of the Employee's death. Payment of the Spouse's Pension shall commence as of the last day of the month in which the Employee dies and shall continue until the end of the month preceding the death of the surviving spouse.

For purposes of this provision, an active Employee shall not include any Employee who, immediately prior to death, was receiving disability or retirement benefits under the terms of this Agreement or any prior Agreement. Such Spouse's Pension (Pre-Retirement) shall be reduced by 1/24 of 1% for each full month the spouse is more than 60 months younger than the Employee and increased by the same factor for each full month the spouse is more than 60 months order. Payment of the Spouse's Pension shall commence as of the last day of the month in which the Employee dies and shall continue until the earlier of the death of the surviving spouse or the date deceased Employee would have attained age 65, provided, however, that if the spouse is living at the date the Employee would have attained age 65, such spouse, if otherwise eligible, shall thereafter be entitled to a Spouse's Pension (Post-Retirement) under the terms and conditions set forth in the following Paragraph (E).

E. Spouse's Pension (Post-Retirement).

At retirement, a married Employee will receive a 10% reduction in his or her basic benefit in order to provide a Spouse with a pension after the Employee's death, unless he or she refuses such spouse's pension with notarized spousal consent within the 90 day period preceding the benefit commencement date. Such Spouse's benefit will be 55% of the basic benefit which the pensioner was receiving at the time of death. The Spouse's pension shall be reduced by 1/24 of 1% for each full month the Spouse is more than 60 months younger than the Employee and increased by the same factor for each full month the Spouse is more than 60 months older. The Spouse must have been married to the Employee for one year prior to retirement. The 10% reduction will be eliminated if the Spouse predeceases the pensioner.

The provisions of this section apply at benefit commencement date to married Employees who are entitled to a Vested Deferred Benefit as noted in Section 4, reduced actuarially to provide a 50% Joint and Survivor Benefit unless the terminated Employee refuses such benefit with notarized spousal consent within the 90 day period preceding the benefit commencement date.

F. Offset for Kennecott Hourly or Salaried Pensions

Any basic retirement benefit payable to any person under the provisions of this Plan shall be reduced by any benefit payable to such a person from the Kennecott Corporation Retirement Plan for Hourly Employees or the Kennecott Corporation Retirement Plan for Salaried Employees (Kennecott Retirement Plan), whichever is applicable, to the extent that such benefits would result in a duplication of benefits for the same period or periods of Service.

If a Participant is not entitled as of the date he commences his commencement of benefits to commence receipt of a pension benefit from the Kennecott Retirement Plan, but will become entitled to a pension from such plan in the future, the Participant's benefit under this Plan shall initially be calculated as if no such pension is payable. If and when the Participant becomes entitled to commence receipt of such pension, the Participant's benefit under this Plan shall be recalculated taking into account the pension payable under the Kennecott Retirement Plans.

Section 3.
Retirement Date:

A. Normal Retirement Date.

The Normal Retirement Date shall be the last day of the month in which occurs the Employee's 65th birthday.

B. Deferred Retirement Date.

An Employee may, at his or her option, continue in active service after age 65, and retire on a Deferred Retirement date; provided such employee is qualified and able to perform his or her job duties. Nothing herein contained shall be construed as requiring the Company to create any job.

C. Early Retirement Date.

The Early Retirement Date shall be the last day of the month in which the Employee retires prior to Normal Retirement Date, pursuant to the age/or service requirements outlined in Paragraph B of Section 2, above.

D. Payment of Pension.

In all cases, an Employee's monthly pension payments shall commence on the last day of the month of retirement from active service with the Company and shall end with the payment due the last day of the month immediately preceding the month in which occurs the pensioner's death. In all cases, a Spouse's monthly pension payments shall commence on the last day of the month of the Employee's or Pensioner's death and shall end with the payment due the last day of the month immediately preceding the month in which occurs the Spouse's death.

Section 4
Vested Terminated Employees.

A. An employee whose active service with the Company is terminated on or after the Effective Date and who had prior to such termination completed at least 5 years of Continuous Service with the Company (such an Employee being referred to as a "Vested Terminated Employee"), shall be eligible to receive a Vested Deferred Benefit equal to the amount credited to his or her account at the date of termination of active service calculated in accordance with the provisions of Paragraph B of Section 2 above. Payment of a Vested Deferred Benefit is to begin not earlier than the last day of the month in which occurs the Vested Terminated Employee's 65th birthday or, at the Vested Terminated Employee's option, at age 55 or thereafter subject to an actuarial discount. A Vested Terminated Employee who is subsequently re-employed will retain all rights to any Vested Deferred Benefit provided for Continuous Service established prior to the Break in Service. However, such benefit will be calculated in accordance with the provisions of the Plan in effect at date of termination. The previously recognized Continuous Service shall be included for vesting purposes in establishing the pension benefit or the additional Vested Deferred Benefit for such additional Continuous Service beginning with the date of re-employment.

B. A Vested Terminated Employee shall, upon termination, automatically provide a Pre-Retirement Survivor Annuity ("PSA") for his or her surviving spouse in the event of such Vested Termination Employee's death prior to benefit commencement date, unless such PSA is refused by the Vested Terminated Employee with notarized spousal consent during the period beginning with the date of termination and ending with the benefit commencement date. Such PSA will be the equivalent of 50% of the former Employee's Vested Deferred Benefit calculated in accordance with Paragraph B of Section 2 and as if the former Employee had commenced payment of the Vested Deferred Benefit on the day prior to date of death, and further actuarially reduced to provide the Joint and Survivor Annuity and for the cost of such benefit until the date of the former Employee's death.

Section 5.
Definition of "Continuous Service":
For the purpose of this Agreement and both Plans herein mentioned, "Continuous Service" means any month of employment with the Company in which an Employee received compensation for services performed in such month, at a Plant or Unit of ASARCO Incorporated, prior to date of actual retirement, calculated from the later of the date of first employment or the date of re-employment following any break in service.

However, any month or months of service prior to January 1, 1939 shall be considered as credit in computing total accumulated Continuous Service for the Employees covered by such Plans on the effective dates thereof, provided that a break in service did not occur subsequent to January 1, 1939. Former Employees of Ground Hog or Selby who as of June 30, 1977 were employed by ASARCO at a Copper Plant or Unit covered by the Pension Plan and Permanent and Total Disability Plan Memorandum dated and signed September 1, 1977, shall have prior service at Ground Hog or Selby credited for Pension Plan purposes, subject to Paragraph F of Section 9,

provided such prior service was terminated by the Company as a result of the shutdown of Ground Hog or Selby.

With the exception of an absence as set forth in Paragraph (B) (1) below, any calendar month of an absence in excess of three (3) months during which the Employee does not receive any compensation from the Company for work performed in such month, and which does not cause a break in service, shall be deducted in computing the period of Continuous Service. However, such absence in excess of three (3) months and up to twenty-four (24) months during which the Employee does not receive compensation shall not be deducted in computing Continuous Service if the absence is due to layoff or non-occupational disability. Periods of absence due to compensable disability for which Worker's Compensation Benefits are paid shall be included in the computation of Continuous Service for pension purposes only.

A. Service is broken by:

1. Quit;

2. Discharge;

3. Dismissal or separation due to permanent shutdown of a plant, department or subdivision thereof, but if the Employee so dismissed or separated from such employment is rehired by such plant, department or subdivision thereof, within four (4) years, a break in service shall not be deemed to have thereby occurred;

4. Absence due to a layoff which continues for more than four (4) years;

5. Failure to report for work at the termination of a leave of absence or an extension thereof, when such failure is not excused by the Company;

6. Absence of more than four (4) years due to the physical disability of an Employee, resulting from non-compensable causes, except as provided in Paragraph B(2) of this Section 2.

The foregoing notwithstanding, a severance of employment, resulting from resignation or discharge occurring on or after July 1, 1976 shall not be deemed a Break in Service if the affected Employee is re-employed within the twelve (12) month period next following the severance, in which case the period from the date of severance to date of re-employment shall be counted for vesting purposes only.

B. Service is not broken by:

1. Absence of an Employee who, subsequent to May 1, 1940, entered or shall enter the active armed forces, which for the purposes of the Plans include the Coast Guard and Merchant Marine services of the United States, and who has re-employment rights under applicable Laws and complies with the requirements of the Law as to re-employment and is re-employed; the period of such an absence shall not be deducted in computing the months of Continuous Service;

2. Absence of an Employee on account of permanent and total disability (as provided for in Section 2(C)(6)) if such persons returns to active service with the Company within thirty (30) days immediately following recovery from such permanent and total disability. However, the period of such an absence in excess of 24 months shall be deducted in computing months of Continuous Service;

3. Absence due to a disability compensable under the State Workers Compensation Laws, incurred during the course of employment, provided the Employee returns to work within thirty (30) days after termination of the period of which statutory compensation for such disability was payable, or in case of a lump sum settlement under State Workers Compensation Laws, provided the Employee returns to work within thirty (30) days after termination of the period determined by dividing the lump sum settlement by the weekly payment used in the calculation of such lump sum settlement;

4. Absence of an Employee elected or appointed to full-time employment with the Union. The period of such a leave of absence in excess of the first six months thereof shall be deducted in computing the months of Continuous Service.

C. Continuous Service of Non-Vested Employees

The period of Continuous Service of a non-vested Employee prior to a Break in Service which occurs subsequent to June 30, 1976 shall be included in the computation of Continuous Service for pension purposes if the period commencing with the event constituting the Break in Service to date of re-employment is less than the period of Continuous Service immediately prior to such break in Service or a five (5) year Break in Service, whichever is greater; however, any benefit accrued prior to the Break in Service shall be calculated in accordance with the Plan provisions in effect at the time the event constituting the Break in Service occurred.

D. Continuous Service shall not include any period prior to July 1, 1976 not recognized as such under the Plan as in effect prior to such date.

E. Hourly Employees who were laid off from Silver Bell in 1984 and had five years of Continuous Service at the time of layoff and were recalled and/or returned to work as hourly employees, shall have their period of Continuous Service joined for purposes of calculating their pension using the multiplier in effect at the time of their retirement.

F. Former Employees of the Ray Mines Division of Kennecott Corporation who as of November 18, 1986 were employed by ASARCO at the Ray Unit (concentrator, smelter or mines plant), shall have prior Continuous Service at the Ray Mines Division of Kennecott Corporation (as defined in Section 1.10 of the Kennecott Corporation Pension Plan for Hourly Employees) credited as Continuous Service under this plan, provided such Employees retained recall rights with the Ray Mines Division of Kennecott Corporation as of that date.

G. Former Employees of the Ray Mines Division of Kennecott Corporation who as of November 18, 1986 were employed by ASARCO at a Hayden Smelter, shall have prior Continuous Service at of the Ray Mines Division of Kennecott Corporation (as defined in Section 1.10 of the Kennecott Corporation Pension Plan for Hourly Employees) credited as Continuous Service under this plan, provided such Employees retained recall rights with the Ray Mines Division of Kennecott Corporation as of that date.

Section 6
Deductions from Permanent and Total Disability Benefits

From gross monthly disability benefit shall be deducted any payments received by the Employee (other than those paid under (A), (B), (C), (D), or (E) below) any benefits, allowances, pensions or payments to which the Employee is, or shall become, or upon application would become entitled by any law of the United States, provided, however, that if such Employee shall have contributed to the source or fund out of which such allowance or payment shall be paid or become payable, then the amount which may be deducted from the disability benefit payment shall be decreased by the portion of such allowance or payment which shall be attributable to such Employee contributions. No gross monthly disability benefit payment hereunder shall be reduced by reason of:

A. Old Age Assistance payments; or payments received under any "Aid to Permanently or Totally Disabled Law", or any "Aid to the Blind Law";

B. Payments received under the Social Security Act;

C. Military pension or Veterans pension payments;

D. Payments received under the Workers Compensation Law of any state; or

E. Payments under Group Life, or Weekly Sickness and Accident Plans in effect on the Effective Date of this Agreement or as may hereafter be established.

Section 7.
Appeals Procedure
If any difference shall arise between the Company or the Company's Benefits Management Committee and any Employee who shall be an applicant for a pension as to such applicant's right to a pension or the amount of his or her pension, after completion of any claim or pre-litigation dispute resolution procedure in the applicable plan, such difference may be taken up as a grievance in accordance with the grievance procedure of the Labor Agreement, and any such difference shall be within the scope of arbitration under the Labor Agreement. The Arbitrator shall have authority only to decide the question pursuant to the provisions of this Agreement applicable to the question, but s/he shall not have authority in any way to alter, add to or subtract from any of such provisions. The decision of the Arbitrator on any such question shall be binding on the Company, the Company's Benefits Management Committee, the Union and the Employee. The expense of arbitration shall be borne equally between the parties unless they agree otherwise.

Section 8.
Medical Board
There shall be referred to a Medical Board any questions as to whether an Employee is permanently and totally disabled or whether such Employee continues to be totally and permanently disabled. Such questions shall be resolved by a Medical board which shall consist of three physicians, one appointed by the Company, one appointed by the Union representing such employee or by such person himself and a third selected by the other two appointed physicians. The fees and expenses of the first two physicians shall be borne by the appointing party and the fees and expenses of the third physician shall be shared equally by both such parties. The opinion of a majority of the Medical Board shall be final and binding upon the Company, the Employee and his duly authorized representatives.

Section 9.
General Provisions

A. The administration of the pension benefits shall be the charge of the Company's Benefits Management Committee, which shall consist of such members from management, have such authority and perform duties, as may be determined from time to time by the Company.

B. Statutory Compliance

All pension benefits for which an employee becomes eligible to receive or become payable pursuant to the terms and conditions set forth in this Pension Agreement shall be administered and provided in accordance with the Employees' Retirement Income Security Act and the Internal Revenue Code of 1986, and all applicable regulations adopted thereunder as may be amended from time to time.

C. Approval of Trust as Tax Exempt

The provisions of this Agreement are contingent upon and subject to obtaining the necessary approval of the Commissioner of Internal Revenue of the Trust or Trusts established by the Company so as to provide the pension benefits herein set forth, as exempt under the applicable provisions of the Internal Revenue Code.

D. Offset for Other Pension Benefits from Company

Any benefits to which an Employee may be entitled under any retirement plan of the Company or its subsidiaries, shall be deemed to be an offset.

E. Assignments

Except pursuant to a Qualified Domestic Relations Order, no pension, vested deferred benefit, or disability benefit shall be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void, nor, to the extent permitted by law, shall any such benefit be in any way liable for or subject to attachment or other legal process for, or against, a pensioner, spouse, terminated employee or disabled employee.

F. Rights

Nothing in this Plan shall be deemed to give any Employee the right to be retained in the service of the Company, or to interfere with the right of the Company to discharge any Employee at any time. No Employee, prior to date of effective retirement or to such date as the terminated Employee becomes eligible for vested deferred benefit payments, shall have any right or interest whatsoever in or to any portion of any reserve or any fund established by the Company for the purposes of paying benefits. No Employee, terminated Employee, pensioner, spouse or beneficiary of any such person, shall have any right to pension

benefits or vested deferred pension benefits hereunder, except to the extent provided in the Plan.

G. Application for Benefits

Application for benefit payments under the Retirement Plan shall be in writing on forms provided by the Company and be filed with the Company in such manner and with such person as the Company may specify. The Company may require that all relevant information shall be furnished with such application.

H. Payment of Pensions

Any pension properly payable pursuant to this Agreement shall continue to be payable notwithstanding the termination or expiration of this Agreement and no pension properly payable pursuant to this Agreement shall be discontinued or reduced except as provided in sub Section 2(C)(6) and Section 6 of this Agreement.

I. Facility of Payment Clause

If any Employee, pensioner, spouse, terminated Employee or disabled Employee is a minor, or is in the opinion of the insurance company or such fiduciary agency as may be responsible for benefit payments, mentally or physically incapable of giving a valid receipt for the discharge of any payment otherwise due such person under the Plans, the insurance company or fiduciary agency may (unless prior claims shall have been made by a duly appointed guardian or other legal representative) make such payment to the person or institution then (in the opinion of the insurance company or agency) providing for the care and maintenance of such person and any such payment shall completely discharge the liability of the insurance company or agency, with respect to the amount so paid.

J. Reversion of Assets

In the event of Plan termination, any assets remaining after allocation in accordance with Plan provisions shall be distributed to the Company if all liabilities of the Plan to participants and their beneficiaries have been satisfied and the distribution does not contravene any provision of the law.

Section 10.
Priority

In the event of any conflict or inconsistency between the provisions of the Plan and the provisions of this Agreement, the provisions of this Agreement shall be controlling to the extent necessary to eliminate such conflict or inconsistency.

Section 11.
Separate Agreement

This Agreement is a distinct and separate document which, it is agreed, is not to be and shall not be construed to be part of, or collateral or supplemental to, any collective bargaining contract between the Company and the Union now or hereafter in effect.

Section 12.
Term of Agreement

The term of this Agreement shall be the period commencing as of September 21, 2017 and expiring November 30, 2018 and the Company agrees that, with respect to Employees represented by the Union, it will not be amend the Plan, except as provided herein and except to such extent as may be required to obtain and/or retain the approval of the Key District Director of Internal Revenue, hereinabove referred to, or discontinue the Plan during such period.

Executed this day of , 2017.

UNIONS	ASARCO
_____	_____
_____	_____
_____	_____

IN WITNESS HEREOF, said parties have caused this Agreement to be executed in their names by their duly authorized representative.

ASARCO LLC

Manuel Ramos
President & Chief Operating Officer

Agustin Trevino
Corporate Director, Human Resources

Stacy Sinele
Corporate Labor & Employee Relations Manager

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC

Leo W. Gerard
President

Stan Johnson
Secretary-Treasurer

Thomas Conway
Vice President, Administration

Fred Redmond
Vice President, Human Affairs

Robert LaVenture
Chairman, Union Negotiating Committee
District Director, USW District 12

Ruben Garza
District Director, USW District 13

Manny Armenta, Sr.
Sub-District Director, USW

Freddie Sanchez
Staff Representative

Eduardo Placencio
President, USW Local 937

Manny Armenta, Jr.
President, USW Local 915

Lyle Murphy
President, USW Local 5252

Greg Romero
President, USW Local 886

Craig Leake
President, USW Local 5613

Ruben Gonzales
Silver Bell Unit Chair, USW Local 937

Jose Garcia
Hayden Concentrator Unit Chair, Local 886

Will Jondreau
Committee Member, USW Local 5613

Kevin Stephens
Committee Member, USW Local 937

Carlos Castillo
Committee Member, USW Local 915

Michael Real
Committee Member, USW Local 915

Bob Tippetts
Committee Member, USW Local 5252

Nick Schafer
USW Technician

Mariana Padias
Assistant General Counsel

International Brotherhood of Electrical Workers

Chuck Grube
Business Agent, IBEW Local 570

Troy Worrell
Unit Chair, IBEW Local 570 (Mission)

Mark Casillas
Business Agent, IBEW Local 518

Paul Calderon
Unit Representative, IBEW Local 518

John Bribiescas
Unit Representative, IBEW Local 518

Rodney Olson
Unit Representative, IBEW Local 518

Robert Milton
Business Agent, IBEW Local 602

Bobby Smith
Unit Representative, IBEW Local 602

International Association of Machinists and Aerospace Workers

Paul Shepherd
Directing Business Representative

Ralph Garcia
Chief Steward, IAM Local 519 (Hayden Concentrator)

Allen Kelley
Steward, IAM Local 519 (Ray Complex)

International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith, Forgers and Helpers, Local 627

Jacob Evenson
Business Agent

Frank Estrada
Unit Chair, IBB Local 627

International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 104

Carlos Toledo
Business Agent

Kevin Hampton
Mission Unit Chair, IBT Local 104

International Union of Operating Engineers, Local 428

Mike Lee
Business Manager

Tim Davies
Unit Chair

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 741

Mark Gallegos
Business Agent

United Brotherhood of Carpenters and Joiners of America, Local 1912

Steve Pasko
Business Agent

Manuel Orcasitas
Unit Chair

Silver Bell Mining LLC

LOCAL SUPPLEMENTAL AGREEMENT

Effective

September 21, 2017

through

November 30, 2018

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LOCAL SUPPLEMENTAL AGREEMENT
SILVER BELL MINING, LLC

By Silver Bell Mining, LLC and the United Steelworkers, Local 937.

1. This Local Supplemental Agreement ("Agreement") is between Asarco and United Steelworkers, Local 937, and supplements the Basic Labor Agreement ("BLA").

2. The effective date and duration of this Agreement shall be the same as the Effective Date and duration of the BLA.

3. All previous local agreements, understandings and practices between the parties currently in effect shall remain in place except as agreed below.

4. In the event any provision of this Agreement is in conflict with a provision of the BLA, the BLA shall prevail absent the express intent in this Agreement that the particular provision here is intended to supersede the BLA.

ARTICLE I - VACATIONS

SECTION A - VACATION

The administration of the vacation provisions will be as follows: Newly hired employees must cross their first anniversary before they are eligible for their first vacation of forty (40) hours, provided they have worked the required number of hours in the preceding anniversary year. This vacation must be taken between the employee's first anniversary date and the upcoming January 1st. On January 1st following his/her first anniversary, s/he is eligible for his/her second vacation, provided s/he has worked the required number of hours in the preceding calendar year. Thereafter, employees will be eligible for future vacation on each January 1st, provided they meet the required number of hours worked.

When any employee reaches a new eligibility level (40, 80, 120, 160, and 200 of vacation entitlement) s/he will be eligible for an additional week on January 1 of the calendar year in which they became eligible. For example, an employee who starts work on July 1, 2006, must work until July 1, 2007 and having worked at least 1040 hours, will be eligible for vacation of one week. That vacation must be used before January 1, 2008. On January 1, 2008, the employee is eligible for his second vacation of forty (40) hours. On January 1, 2009, the employee is eligible for two weeks of vacation since this is the calendar year in which she/he will reach his/her 2 week level.

The Company and Union agree that incremental vacation days can be used in conjunction with a holiday.

ARTICLE II – HOURS OF EMPLOYMENT

SECTION A - STARTING TIME AND DESIGNATION OF SHIFTS

1. By mutual agreement, the starting time for day shift at Silver Bell will be from 5:00 a.m. to 8:00 a.m. The remaining shift start times are designated by the BLA.

2. The employees schedule may be changed during the workweek; however, it may not be changed for the sole purpose of avoiding weekly overtime.

3. An employee required to work on his scheduled day off shall not be required to lay off on another of his scheduled work shifts during the same work week.

SECTION B -WORKSHIFT

1. For employees assigned to a regular operating crew on rotation with other crews, the work shift shall constitute a period of eight (8) hours. Employees will be permitted to eat lunch while on duty.

2. The work shift for employees not assigned to a regular rotating shift shall constitute two approximately equal periods totaling eight (8) hours separated by a lunch period of one half (1/2) hour during which the employee is relieved of all duty.

3. When employees in the same classification which runs more than one shift are regularly required to perform the same duties on more than one shift, they shall be rotated on an equal basis.

SECTION C – UNSCHEDULED OVERTIME

The procedure for equitable distribution of unscheduled overtime is set forth in a letter of administration on overtime and overtime distribution.

SECTION D - WORK ON HIGHER RATED JOBS

Whenever an employee works 30 minutes or more on a job that has a higher pay rate, he shall receive one hour at the higher rate, or if he works more than one hour on a higher rate job, he shall be paid the higher rate for the actual time worked. Whenever an employee works four (4) hours or more on a job that has a higher pay rate, he shall receive the higher rate for the full shift.

ARTICLE III - HOLIDAYS

SECTION A - DESIGNATED HOLIDAYS

For the purpose of this Agreement and insofar as operating schedules permit, only the following nine (9) days are designated as holidays, whether worked or not:

New Year's Day
Easter Sunday
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Day After Thanksgiving
Christmas Eve Day
Christmas Day

When a holiday falls at the end of the pay period, employees will be paid holiday pay in the pay period in which the holiday occurs. In the event the employee does not qualify for holiday pay, the company will recover holiday pay.

ARTICLE IV – LEAVES OF ABSENCE

SECTION A - LEAVE OF ABSENCE

1. Personal Leave

   A leave of absence for the legitimate cause may be granted for thirty (30) days, without loss of seniority, but no seniority will be accumulated beyond the thirty (30) days.

2. Union Leave

   Leaves of absence will be granted to employees for the purpose of Union business, and shall be limited to three (3) employees, of which no more than two (2) from any work area may be off at any one time. The Union must notify the Company no later than the Friday noon posting of schedules that an employee is required to be off on Union business. In an emergency where shorter notice is given, not more than one employee will be excused. Union representatives may take leave for partial shifts provided they provide the company with the same advance notice as required for full shifts.

ARTICLE V - SENIORITY

SECTION A - RECOGNITION OF SENIORITY

Seniority means the relative standing of one employee to another based on length of continuous service in the:

1. Company
2. Plant
3. Department, or
4. Occupation

The application of seniority shall be as set forth hereunder.

The seniority list, which will be corrected quarterly each year, will show the names of the employees by department; and with respect to each employee, said list will show the following dates:

1. Company Seniority: The employee's length of continuous service at ASARCO since last date of hire.

2. Plant Seniority: The employee's length of plant seniority.

3. Departmental Seniority: Length of continuous service from the day the employee last entered his department.

4. Occupational Seniority: The date the employee first started working in a particular job classification by filling a permanent vacancy in that job classification.

When an employee is promoted or hired past one or more occupations in a line of promotion, he shall acquire occupational seniority dates in the intervening occupations as of the date bypassed.

For the purposes of this Article, the departments shall be: Mining Department, Mechanical Department and SXEW Department.

SECTION B - PROMOTIONS

If a permanent job vacancy occurs in any job classification, which needs to be filled, it shall be filled in the following sequence:

1. By an employee who has previously removed from such job classification by reduction in force.

2. By an employee who has previously demoted from or is presently demoting to such occupation for health reasons as provided in Section C of this Article.

3. By an employee in the line of promotion requesting demotion to such occupation as provided in Section C of this Article.

4. By the senior qualified employee next lower in the line of promotion.

5. If the vacancy cannot be filled as provided above, a notice will be posted in the department that will give the job classification in which the vacancy exists and shall be printed on colored paper and posted for eight (8) days. An employee wishing to apply for such a posted vacancy may do so by filling out a written application to the department head. The job shall be awarded to the employee who has the greatest departmental seniority and who is qualified within the department. All jobs posted will be awarded within ten (10) days after posting.

6. A qualified employee returning from an absence, except layoff, may within five (5) working days exercise his seniority to displace an employee his junior, who during his absence has filled a permanent vacancy. An employee so displaced shall return to his former job without loss of seniority.

7. If there are not qualified employees bidding on the posted vacancy within the department as hereinabove set forth, the Company may fill the job vacancy from any source. Before a new employee is hired to fill the job vacancy, an employee who has applied for an interdepartmental transfer will be given consideration for such transfer, providing he has the qualifications the Company requires, were said employee to be hired into the department from the street.

8. No employee who has worked for the Company for less than one year may apply for an interdepartmental transfer except as hereinafter set forth.

    a. An employee with less than one year's service and who is demoted for proven physical reasons as certified by a physician as set forth in Section C of this Article, may be demoted to another department in less than one year under the following circumstances:

        (1) He cannot perform his job for physical reasons.

        (2) There is no job for which he is qualified within the department to which he can demote by occupational seniority.

        (3) There is a vacancy for which he is qualified as set forth in Paragraph (6) above.

    b. An employee who is transferred in accordance with Paragraph (7) above shall have his Company seniority in the department from which he was transferred credited to his occupational seniority as a laborer in the new department.

9. The selected applicant for the vacancy shall be given not more than thirty (30) days to satisfactorily perform the job. If such employee fails to satisfactorily perform the job within the said period, he shall revert to his former position without loss of seniority but must wait for a period of six (6) months before again applying for a job vacancy requiring the same or similar qualifications.

10. A vacancy other than a permanent vacancy shall be deemed a temporary vacancy. If the Company finds it necessary to fill a temporary vacancy, it shall be filled as follows:

a. Any temporary vacancy which can be foreseen by the Supervisor more than eight (8) hours before it is to be filled shall be filled by the senior qualified employee from the line of promotion on the shift involved. In the event said temporary vacancy cannot be foreseen by the Supervisor more than eight (8) hours before it is to be filled, it shall be filled for the first shift or remaining portion thereof in the same manner, proved no delay or impairment of the efficiency of the operation would result. If the efficiency is so impaired, the temporary vacancy may be filled for the first shift or remaining portion thereof from any source within the department. In the event said temporary vacancy cannot be filled from any source within the department, it may then be filled from any source.

b. After the first eight (8) hours and up to thirty (30) days, the vacancy will be filled by the senior qualified employee in the line of promotion on the shift involved. If there is not such qualified employee, the temporary vacancy will be filled from any source.

c. However, if it is anticipated that such a job shall continue for more than thirty (30) days, it shall be filled as if it were a permanent vacancy.

An employee filling a temporary vacancy shall upon its termination return to the classification from which he was transferred without loss of seniority.

SECTION C - VOLUNTARY DEMOTION

An employee may request a demotion to a lower occupational classification in the same line of promotion or the Laborer classification in his or another department; if his reasons are justifiable and he has filed a written request with his department head, he shall, if qualified, be demoted thereto on the basis of his occupational seniority date in such lower occupation when a vacancy occurs. An employee so demoted shall forfeit all seniority in occupational classifications above the one accepted. The employees' occupational date and departmental seniority date, where he is transferred to another department, shall be the effective date of the demotion. An employee demoted for proven physical reasons, certified to by a physician, shall retain all seniority.

SECTION D - SUPERVISORY EMPLOYEES

If an employee now or hereafter occupies a supervisory position and is demoted, he will retain the seniority rating he had at the time of promotion. Time spent in the supervisory position will be counted in computing his seniority status.

SECTION E - REDUCTION IN FORCE

If a reduction in force becomes necessary, employees affected thereby shall exercise their seniority in the following manner:

1. The employees with the least occupational seniority shall exercise that seniority to claim a job lower in the line of promotion.

2. In the event the employee cannot remain in his department by virtue of Subsection (1) above, he shall be assigned to the lowest rated job in another department. An employee who cannot remain in his department because of a reduction in force shall maintain his occupational and department seniority for two (2) years in the old department.

3. In the event an employee has insufficient occupational, departmental or Company seniority or qualifications to claim a job, he shall be laid off from the plant.

SECTION F - RE-EMPLOYMENT AFTER LAY-OFF

When an expansion in the work force becomes necessary and there are employees laid off, the employee last laid off shall be called back first and so on, provided the employee so recalled has the qualifications required to do the work.

Any employee who has been laid off and who has recall rights shall keep the Company advised of his address so he can be notified if and when his services will be required again. An employee shall have (7) days from receipt by him of notice of recall by certified mail to his last known address to notify the Company of his intention to accept employment and must present himself for employment within fourteen (14) days from the date of such certified notice was received unless a longer time has been agreed to by the Company and the Union.

An employee who receives such notice and fails to notify the Company of his acceptance of employment within seven (7) days from receipt of the certified notice or fails to report for employment with fourteen (14) days of receipt of the certified notice, unless a longer time is agreed to as hereinafter set forth, shall be considered to have quit.

SECTION G - SENIORITY LISTS

The Company shall post on the Company bulletin boards a revised Seniority List promptly, quarterly. The Company will also provide a copy to the Union.

SECTION H - QUALIFICATIONS

Standards used by the Company in the selection of qualified employees shall be uniformly applied.

SECTION I - TEMPORARY REASSIGNMENT TO LOWER RATE JOBS

Employees temporarily assigned to lower rate jobs shall be paid at their regular rate, provided, however, that employees who request to be assigned to a lower rate job shall be paid at the lower rate.

ARTICLE VI – MISCELLANEOUS PROVISIONS

SECTION A - VIOLATION OF SAFETY RULES

The Union agrees that the discharge of any employee for willful violation of safety laws, state mining laws, or safety rules and regulations promulgated by the Company, shall not be subject to a grievance, except as to fact.

SECTION B - PHYSICAL AND MEDICAL EXAMINATION

All candidates for employment or re-employment after curtailment must pass a pre-employment physical and medical examination, and the Company may require periodic examinations of all employees.

SECTION C - WRITTEN NOTICE

Any written notice required by this Agreement must be given by certified mail, return receipt requested, within the time specified and addressed to the other party at the address herein specified. The address of the Company shall be: Silver Bell Mining, LLC, 25000 W. Avra Valley Road, Marana, Arizona 85653, and the address of the Union shall be United Steelworkers, 695 Jerry Street, Suite 208, Castle Rock, CO 80104 unless changed by written notice.

SECTION D - VALIDITY

It is specifically understood that nothing in this Agreement shall be in conflict with any state or national legislation now in force or hereafter enacted.

This document constitutes the supplemental agreement between the parties hereto and no change will be made in this Agreement or any supplemental agreement affecting same will be entered into, unless consented to by both parties in writing.

SECTION E - RULES OF CONDUCT

Rules of conduct will be made known to all employees by posting said rules on the Company bulletin boards.

SECTION F - MISCELLANEOUS AGREEMENTS

1. The Company will provide a tool list to employees when the job requires.

2. Employees will receive a copy of the written warning prior to it being placed in any file.

3. The Company will pay grievance settlements greater than $100 within 48 hours (Saturday, Sundays and holidays excluded) of the Union's agreement to settle such grievance.

4. If an employee is off work when vacation request are distributed, a request will be mailed to the employee and it must be returned to the Company by the specified due date.

5. The Company will monitor the quality of water used by employees for washing and drinking.

6. The Company will indicate, either on the paycheck or by notice that a grievance settlement has been paid.

7. The Company will provide an alternate low sodium, low fat emergency lunch for those employees whose diet requires it.

8. If transportation is required, the Company will furnish transportation for employees working overtime.

9. The Company agrees to maintain its practice and criterion of mailing paychecks to the employee's homes, if employees elect.

10. Union representatives may take leave for partial shifts provided they provide the company with the same advanced notice as required for full shifts.

11. In the event an employee is reinstated following discharge, his Union check-off will be automatically reinstated. (AND) in the event an employee is recalled from layoff, his Union check-off will be automatically reinstated.

12. The company will have available suitable coveralls for employees assigned to tankhouse cell cleaning activities and for shovel repair jobs and lubeman activities.

IN WITNESS WHEREOF, said parties have caused this Agreement to be executed in their names by their duly authorized representatives.

Silver Bell Mining, LLC

Manuel Ramos
President & Chief Operating Officer

John Dorsey
General Manager

Agustin Trevino
Corporate Director, Human Resources

Stacy Sinele
Corporate Labor & Employee Relations Manager

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC

Manny Armenta, Sr.
Sub-District Director, USW

Eduardo Placencio
President, USW Local 937

Ruben Gonzales
Silver Bell Unit Chair, USW Local 937

Kevin Stephens
Committee Member, USW Local 937

TEXT: LETTER OF ADMINISTRATION ON OVERTIME AND OVERTIME DISTRIBUTION

1. The Company will continue its practice with regard to nonscheduled overtime work, i.e. where it is practical to secure qualified volunteers, overtime will be assigned on that basis. However, the Company reserves the right, as in the past, to assign employees non-scheduled overtime when there are no volunteers readily available.

2. The Company will endeavor to distribute overtime as equitable as practical within the appropriate crews. However, there will be no more that 48-hour disparity in overtime within the applicable crews.

3. An overtime board will be established and kept in each department. At least every three months, the person with the lowest amount of overtime will be reduced to zero and all other employees will be reduced a like amount.

4. Employees who refuse overtime will be credited as if it had been worked.

5. Employees absent for any reason in excess of 35 days, holidays excepted, who otherwise would have been requested to work overtime, will be charged with the appropriate number of overtime hours as if it had been worked.

6. An employee who comes into a particular crew will be assigned the highest amount of overtime in the crew.

7. Employees who do not wish to be considered for distribution of overtime may withdraw their name from the overtime board by submitting a written request to the department head. Such employee will only be requested to work overtime when there are no other volunteers readily available.

8. If the Company cannot obtain employees for voluntary overtime from the crew, the least senior person in the crew will be forced until he / she reaches a total of twelve (12) hours in one week. If forcing continues to be necessary, the Company will work through the crew based on seniority. If all the people within the crew have been forced to work overtime to the maximum twelve (12) hour limit, and the workload requires additional forcing of overtime, the Company will start again with the least senior man in the crew. This is not to be confused with scheduled overtime.

EXHIBIT A

JOB TITLE	**WAGE RATE PER HOUR**
Leadman – Electrician, Leadman – Mechanic, Leadman - Repair	24.75
Shovel Operator, Loader – Pit Production	24.25
Electrician 1st Class, Mechanic 1st Class, Machinist, Repairman 1st Class, Welder 1st Class	23.75
Leadman-Leach	23.25
Rotary Drill Operator, Truck Instructor	22.75
Motor Grader Operator, Dozer Operator, SX Operator, Loader – Plant, Tireman	22.25
Heavy Truck Driver	21.75
Electrician 2nd Class, Mechanic 2nd Class, Repairman 2nd Class, Welder 2nd Class	21.25
Field Lubrication Man, Heavy Equipment Operator, Water Truck Driver, EW Operator, Leach Operator	20.75
Electrician 3rd Class, Mechanic 3rd Class, Repairman 3rd Class, Welder 3rd Class Sampler, Powder Man	20.25
Light Equipment Operator , Powder Truck Driver Light Truck Driver	19.75
Employees Hired Before 05/22/95	
Helper	18.75
Laborer	17.75
Employees Hired After 05/22/95	
Helper	17.25
Laborer	16.75

The Hiring Rate for Laborer Classification at the respective plants/units shall be $2.00 per hour less than the contract Laborer Rate for the first 1,040 hours worked and $1.00 per hour less than the contract Laborer Rate for the next 1,040 hours worked by persons hired on or after July 1, 1983. However, such employees shall be paid at the contract rate applicable to the work performed in higher rated classifications during this 2,080 hour period.

Lines of Promotion
MINING DEPARTMENT

EXHIBIT B

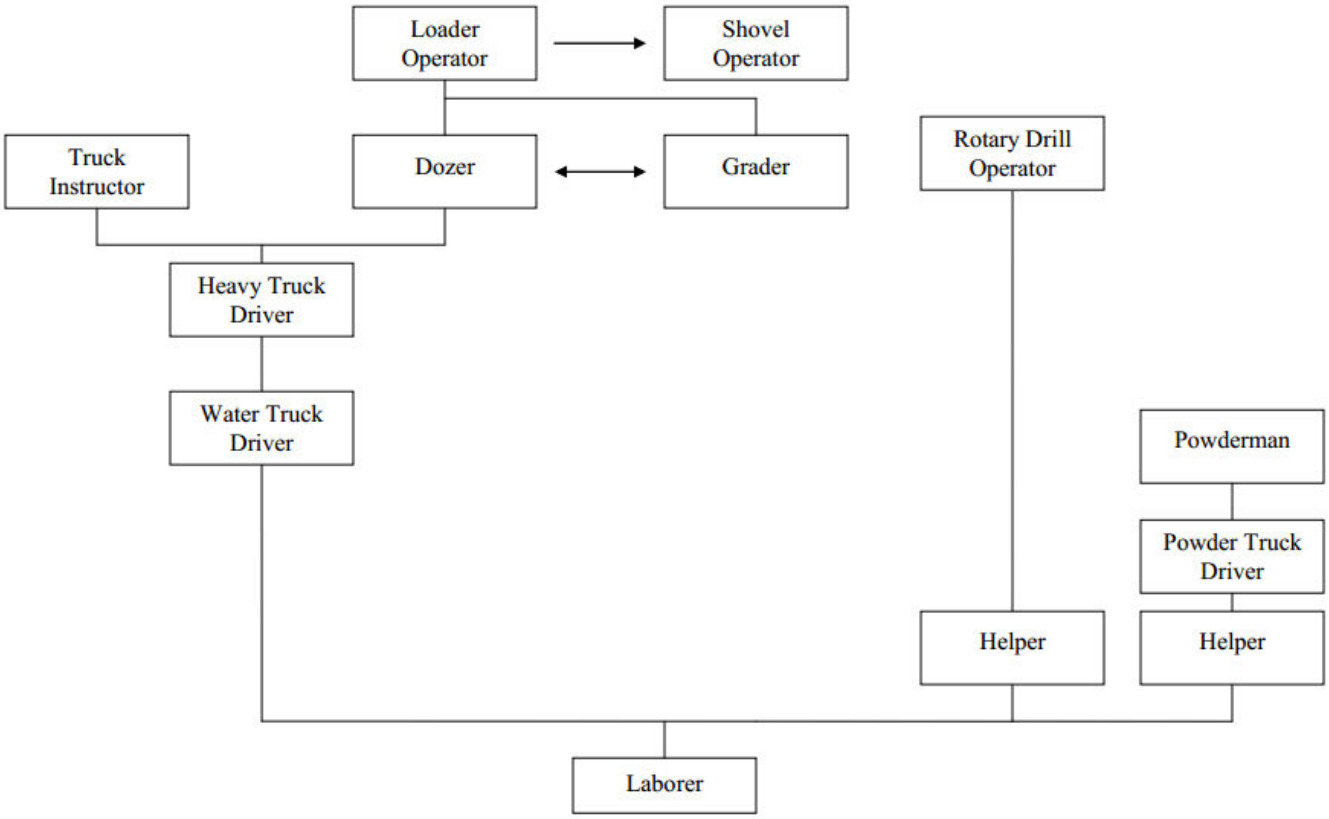
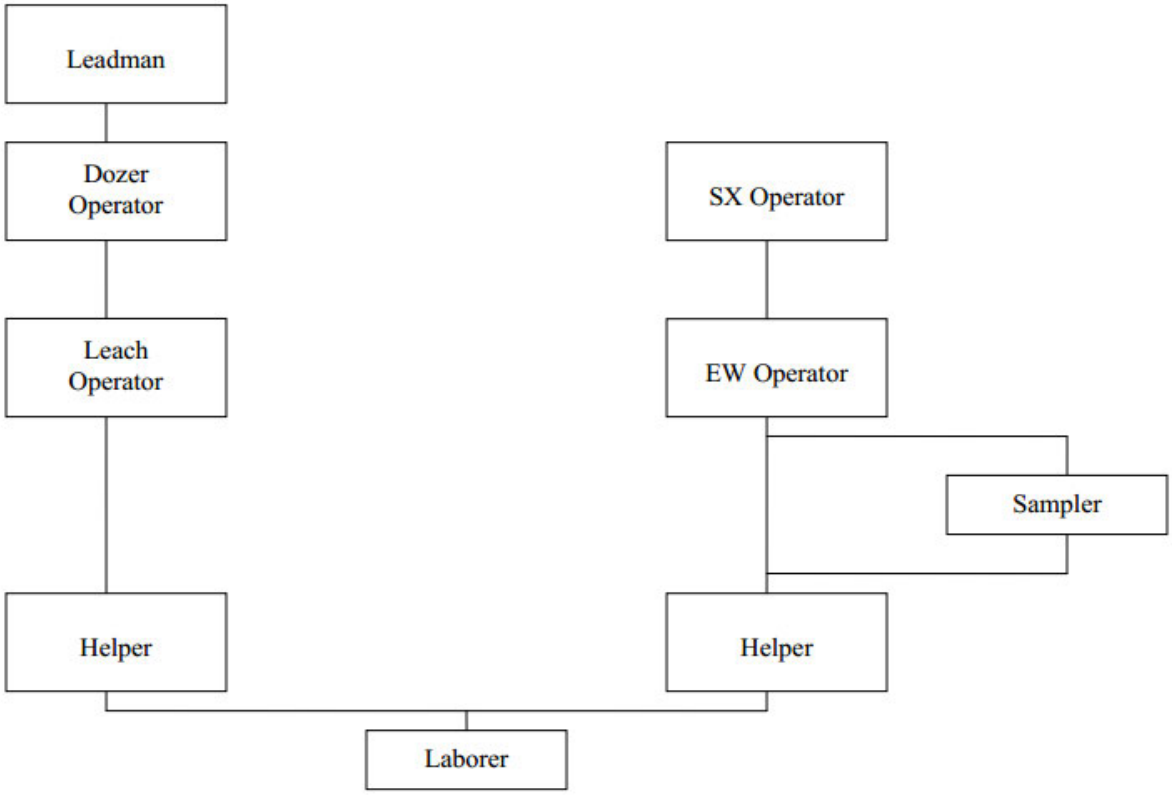


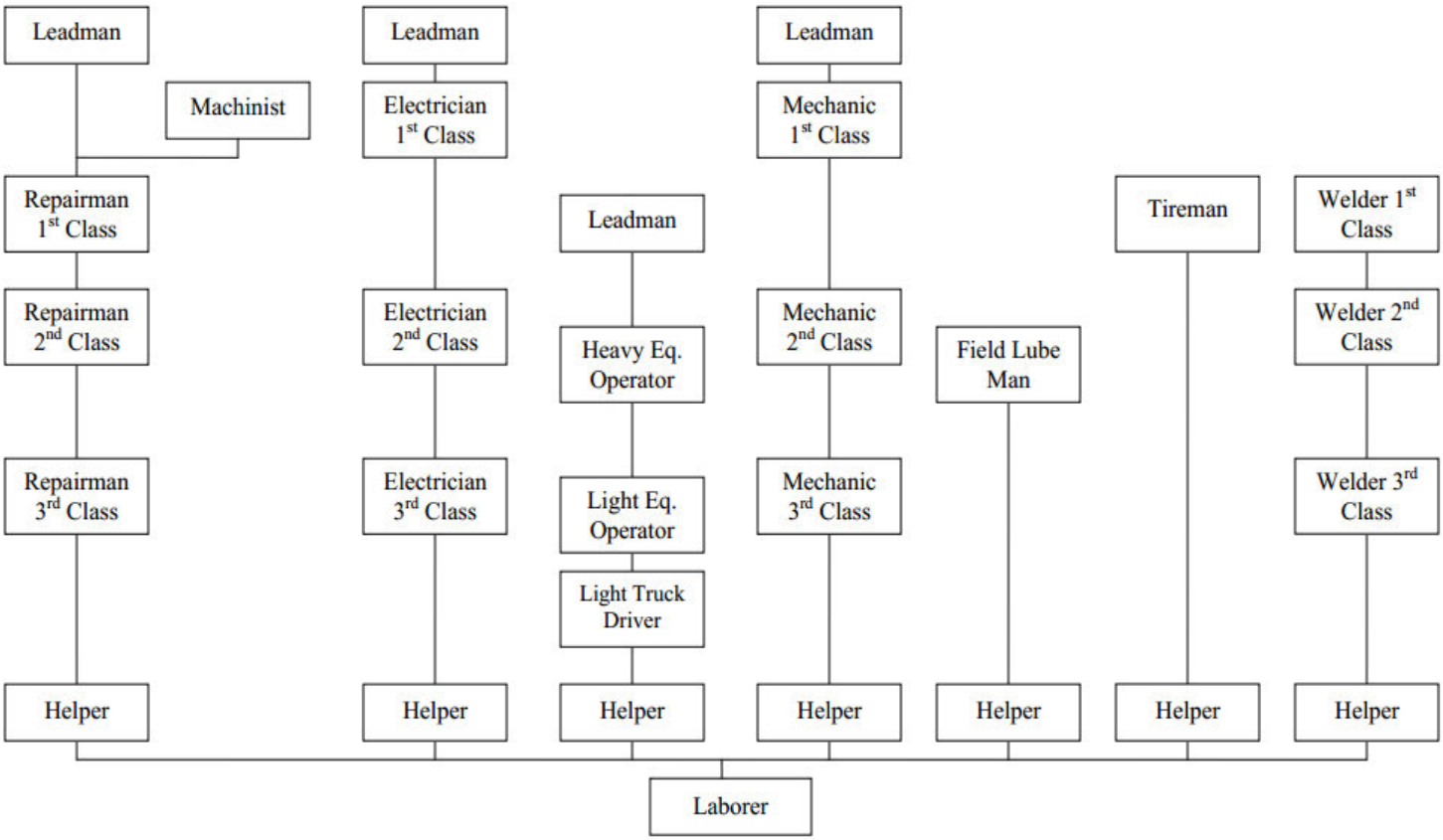
EXHIBIT B

Lines of Promotion
SXEW DEPARTMENT



Lines of Promotion
MECHANICAL DEPARTMENT

EXHIBIT B



EXTENSION AGREEMENT

ASARCO LLC and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, on behalf of itself and the other labor organizations identified at Article 1, Section A.1 of the Basic Labor Agreement dated September 21, 2017 (collectively, all labor organizations are "Union"; ASARCO and Union are "Parties"), hereby agree to extend in full force and effect the Basic Labor Agreement, Local Supplemental Agreements, Memoranda and Letters of Understanding, Pension Agreement, benefits agreements, and any other agreement between the Parties that are scheduled to expire on November 30, 2018.

Either party may terminate this Extension Agreement by providing the other party with 48 hours' written notice of termination. If the Union should decide to strike, it will provide the Company with at least 48 hours' notice of its intent to strike. The notices may be given simultaneously.

The parties also hereby agree that the notices that the Union previously provided pursuant to Section 8(d) of the Labor-Management Relations Act of 1947 ("LMRA") were timely and that no further notices pursuant to Section 8(d) shall be required.

FOR THE COMPANY

Dated: 30 NOV 2018

FOR THE UNION

Dated: 11/30/18

FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

ASARCO LLC and Silver Bell Mining LLC

and

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

CASE 28-RM-255301

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union and its Local 937

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Ryan Spillers

MAILING ADDRESS: 3699 Wilshire Boulevard, Suite 1200, Los Angeles, CA 90010

E-MAIL ADDRESS: rspillers@gslaw.org

OFFICE TELEPHONE NUMBER: 323-938-3000 x345

CELL PHONE NUMBER: 310-866-0715 *FAX:* 323-937-9139

SIGNATURE:
(Please sign in ink.)

DATE: 1/31/2020

[1] IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

FORM NLRB-5546
(4-15)

Request to Block

United Steelworkers International Union and its Local 937 is a party to the representation
(Name of Requesting Party)

proceeding in Case 28-RM-255301 . It has filed an unfair labor practice
(Case Number)

charge in Case 28-CA-255235 and hereby requests that the petition be blocked by this charge.
(Case Number)

Signature

01/31/2020
Date

Ryan Spillers, Attorney for USW and its Local 937
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: Manny Armenta, Sr.

Summary of Testimony:
Please see attached summary of testimony.

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
Please see attached summary of testimony.

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
Please see attached summary of testimony.

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
Please see attached summary of testimony.

Witness Name: (b) (6), (b) (7)(C)

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Please see attached summary of testimony.

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
Please see attached summary of testimony.

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
Please see attached summary of testimony.

Witness Name:

Summary of Testimony:

(Continue on additional pages as necessary)

ATTACHMENT TO REQUEST TO BLOCK

Form NLRB-5546

Filed by: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC ("USW" or "United Steelworkers International Union") on behalf of itself and its Local 937

R Case No: 28-RM-255301

C Case No.: 28-CA-255235

Employer: ASARCO LLC

Summary of Testimony:

Within the 10(b) period, the Employer, acting through its managers, supervisors, agents and representatives, has failed to bargain in good faith over mandatory subjects of bargaining.

The Employer and the USW, along with other Unions representing bargaining unit employees at the Employer's facilities in Arizona and Texas, are in negotiations for a successor master collective bargaining agreement, the "Basic Labor Agreement" (BLA). The parties negotiated and reached tentative agreements on "local supplemental agreements" for each represented facility in the fall of 2018. The parties commenced negotiations for the successor BLA on or about November 27, 2018. The Union's unfair labor practice charges arise from the Employer's conduct during the current negotiations for the successor BLA.

USW Sub-District Director Manny Armenta, Sr. has served as one of the lead negotiators for the USW and the other Unions representing the Employer's employees. Armenta, Sr. will testify that throughout the course of the current contract negotiations, the Employer failed to bargain in good faith over wages, healthcare benefits, the Copper Price Bonus, pensions, and other terms and conditions of employment by engaging in the conduct described below.

The Employer engaged in dilatory bargaining tactics.

USW Sub-District Director Armenta, Sr., bargaining unit employees (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and other members of the Unions' bargaining committee will testify that on numerous occasions throughout the course of the current negotiations the Employer's bargaining table agents and representatives delayed scheduled bargaining sessions; cancelled scheduled bargaining sessions; left early from scheduled bargaining sessions; failed to provide sufficient copies of the Employer's bargaining proposals for the Union's bargaining committee; were unable to explain the Employer's bargaining proposals; and, that such conduct substantially disrupted the collective bargaining process.

The Employer's bargaining table agents and representatives lacked sufficient authority to bargain over mandatory subjects of bargaining.

USW Sub-District Director Manny Armenta, Sr., bargaining unit employees (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and other members of the Unions' bargaining committee will testify that the Employer's bargaining table agents and representatives acknowledged they lacked sufficient

authority to bargain over economic issues such as wages and benefits on August 20, 2018; November 30, 2018; January 28, 2019; and, February 12, 2019.

The Employer failed to timely provide relevant and necessary bargaining information.

USW Sub-District Director Manny Armenta, Sr. and USW Senior Technician Cary Burnell will testify that on numerous dates in 2019, the Employer failed to respond in a timely manner to the Union's Requests for Information and when the Employer finally submitted its Responses, said Responses often omitted critical requested information or provided erroneous information. Examples include:

(1) The Union's January 29, 2019; February 14, 2019; September 30, 2019; November 12, 2019; and December 16, 2019 Requests seeking information concerning the Employer's Operating Costs and Net Cost per pound of Copper Produced. This requested information is relevant to negotiations over bargaining unit employees' wages, benefits and the Copper Price Bonus, which remain open issues at the bargaining table;

(2) The Union's February 25, 2019; November 12, 2019; and December 16, 2019 Requests concerning the Employer's 2019 "Year to Date" Hourly Employment Costs. This requested information is relevant to negotiations over bargaining unit employees' wages, benefits and the Copper Price Bonus, which remain open issues at the bargaining table; and,

(3) The Union's February 25, 2019; March 29, 2019; August 8, 2019; November 12, 2019; and, December 16, 2019 Requests concerning bargaining unit employees' Health Care Claims and Utilization Data. This requested information is relevant to negotiations over bargaining unit employees' wages and benefits, which remain open issues at the bargaining table.

The Employer's Copper Price Bonus proposal discriminates against employees to discourage membership in and support for the Unions.

Sub-District Director Armenta, Sr. will testify that under the Employer's September 5 "last, best and final offer", approximately 62% of the bargaining unit employees will not receive any wage increase during the term of a new four year collective bargaining agreement; that said bargaining unit employees have not received any wage increase since 2009; that said bargaining unit employees have relied upon payment of the agreed Copper Price Bonus to receive additional income from the Employer.

Sub-District Director Armenta, Sr. will testify that the Employer's Copper Price Bonus proposal includes a new attendance requirement that treats otherwise excused absences for "union business" as unexcused absences under the Employer's Copper Price Bonus proposal and disqualifies bargaining unit employees for payment of the Copper Price Bonus based on their "unexcused" absences.

The Employer unilaterally implemented its "last, best and final offer" when there was no bargaining impasse.

USW Sub-District Director Armenta, Sr. will testify that there was no impasse on December 2, 2019, when the Employer unilaterally implemented its September 5, 2019 proposal based on its

false impasse claim, because of the Employer's unremedied, serious unfair labor practices and because, on November 27, 2019:

(1) the Union submitted to the Employer a new comprehensive bargaining proposal, UP-5, which made substantial and meaningful movement on wages and employee healthcare cost sharing, away from the Union's previous comprehensive bargaining proposal, UP-4, and towards the Employer's bargaining position;

(2) the Union informed the Employer, that UP-5 would reduce the Employer's labor related costs by approximately $13.6 million over the proposed three-year term of the proposed new labor agreement, compared to the Union's previous comprehensive proposal, UP-4;

(3) the Union informed the Employer, the Union was flexible on all open bargaining issues;

(4) the Union informed the Employer, the Union was generally available to bargain in December; and;

(5) the Union requested from the Employer, the dates the Employer was available to bargain in December.

USW Sub-District Director Armenta, Sr. will testify that the Employer did not respond to the Union's November 27, 2019, UP-5 bargaining proposal nor the Union's offer to continue to bargain over the open issues in December prior to the Employer's December 2, 2019, unilateral implementation.

USW Senior Technician Cary Burnell will testify that the Union's November 27, 2019 bargaining proposal, UP-5, would reduce the Employer's labor related costs by approximately $13.6 million over the proposed three-year term of the proposed new labor agreement, compared to the Union's previous comprehensive proposal, UP-4.

The Employer threatened to hire permanent replacement workers

Sub-District Director Armenta, Sr., bargaining unit employees (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and other bargaining unit employees on the Union's bargaining committee will testify that by letter dated October 12, 2019, the Employer threatened to hire permanent replacement workers in the event the bargaining unit employees engaged in a strike; and, that the Employer threatened to retain all permanent replacements at the conclusion of any strike.

The Employer hired permanent replacements to replace bargaining unit employees engaged in an unfair labor practice strike.

USW Sub-District Director Armenta, Sr., bargaining unit employees (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and other bargaining unit employees will testify that the bargaining unit employees have been on an unfair labor practice strike against the Employer since on or about October 13, 2019, in Arizona and on or about October 14, 2019, in Texas.

Sub-District Director Armenta, Sr., bargaining unit employees (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and other bargaining unit employees on the Union's bargaining committee will testify that by letter dated January 20, 2020, the Employer admitted that since on or about October 21, 2019, it has hired permanent replacement workers.

The Employer solicited employees to resign their full membership in the Unions.

USW Sub-District Director Armenta, Sr., bargaining unit employees (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) and other bargaining unit employees will testify that on or about October 13, 2019, the Employer sent letters to bargaining unit employees soliciting their resignation as "full" members of the Unions.

The Employer removed union literature from employee break areas.

Bargaining unit employee (b) (6), (b) (7)(C) will testify that on or about September 25, 2019, the Employer removed Union literature from the employees' breakroom.

The Employer engaged in surveillance and/or has given the appearance of surveillance of employees engaged in peaceful Section 7 activities.

Bargaining unit employees (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and other bargaining unit employees will testify that the Employer's security personnel direct handheld camcorders and other video recording devices at the striking employees as they are engaged in peaceful picketing by the Employer's struck facilities.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 28
2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004

Agency Website: www.nlrb.gov
Telephone: (602)640-2160
Fax: (602)640-2178

February 4, 2020

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E-mail: bfickman@usw.org

Re: ASARCO LLC and Silver Bell Mining LLC
Case 28-RM-255301

Dear Counsel:

This is to notify you that the petition in the above-captioned case will be held in abeyance pending the investigation and disposition of the related unfair labor practice charges filed against ASARCO LLC in Cases 28-CA-255235, 28-CA-255412, 28-CA-255460, 28-CA-255482, 28-CA-255487 and 28-CA-255492.

Right to Request Review: Pursuant to Section 102.71 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review shall be submitted in eight copies, unless filed electronically, with a copy filed with the regional director, and all copies must be served on

all the other parties. The request must contain a complete statement setting forth facts and reasons upon which the request is based.

***Procedures for Filing Request for Review*:** A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time)** on **February 18, 2020**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on **February 18, 2020**.

Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review 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, absent a determination of technical failure of the site, with notice of such posted on the website.

The Board may grant special permission an extension of time within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

/s/ Cornele A. Overstreet

Cornele A. Overstreet
Regional Director

cc: see attached

cc: Office of the Executive Secretary

Stacy Sinele, Director of Human Resources
ASARCO LLC and Silver Bell Mining LLC
5285 East Williams Circle, Suite 2000
Tucson, AZ 85711-7711
E-mail: ssinele@asarco.com

Alexander Terrazas
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Gaylan Z. Prescott, District Director
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial and Service
Workers International Union, AFL-CIO, CLC
5 Gateway Center
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CAO:KAS:mhz

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

ASARCO LLC and SILVER BELL MINING LLC

Employer/Petitioner

and **Case 28-RM-255301**

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937

Union

ORDER POSTPONING HEARING INDEFINITELY

Pending the investigation and disposition of the related unfair labor practice charges filed against the Employer/Petitioner in Cases 28-CA-255235, 28-CA-255412, 28-CA-255460, 28-CA-255482, 28-CA-255487, and 28-CA-255492,

IT IS ORDERED that the pre-election hearing scheduled for February 5, 2020, be, and it is, postponed indefinitely.

Dated at Phoenix, Arizona, this 3rd day of February, 2020.

/s/ Cornele A. Overstreet
Cornele A. Overstreet, Regional Director

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

ASARCO LLC and SILVER BELL MINING LLC

Employer/Petitioner

and **Case 28-RM-255301**

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937

Union

AFFIDAVIT OF SERVICE OF: Order Postponing Hearing Indefinitely

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **February 3, 2020**, I served the above documents by Email upon the following persons, addressed to them at the following addresses:

Stacy Sinele
ASARCO LLC and Silver Bell Mining LLC
5285 East Williams Circle, Suite 2000
Tucson, AZ 85711-7711
E-mail: ssinele@asarco.com

Ryan Spillers, Attorney at Law
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3699 Wilshire Boulevard, Suite 1200
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Alexander Terrazas
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937
877 South Alvernon Way
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Richard A. Russo, Attorney at Law
Davis and Campbell, L.L.C.
401 Main Street, Suite 1600
Peoria, IL 61602-1241
E-mail: rarusso@dcamplaw.com

Paul Burmeister, Attorney at Law
Davis and Campbell, L.L.C.
333 South Wabash Avenue, Suite 2700
Chicago, IL 60604
E-mail: phburmeister@dcamplaw.com

February 3, 2020
Date

Mary H. Zorn
Name

/s/ Mary H. Zorn
Signature

From: Scheid, Kyler A.
To: Richard Russo
Cc: Paul H. Burmeister
Subject: RE: E-Service of RD Order in Case 28-RM-255301
Date: Tuesday, February 4, 2020 12:45:00 PM
Sensitivity: Confidential

Good morning,

I am writing you to ask that you both submit an NOA listing all the case numbers at issue from this morning's blocking letter (CA and RM). My understanding is Mr. Burmeister is listed on some cases, but not others. In addition, Mr. Russo's NOA is missing from the RM case. While I can try to make sure you are copied on any correspondence from our office regarding these matters, I cannot promise that you won't get missed if there aren't NOAs on file for each case. I'm told you can submit one NOA listing all the case numbers on our E-filing site, linked below.

Best,

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
Facsimile: (602) 640-2178
kyler.scheid@nlrb.gov

-

The NLRB has converted to an electronic file system.
Please file documents electronically through our online E-File system:
E-File Case Documents: https://apps.nlrb.gov/eservice/efileterm.aspx
E-File New Charge or Petition: https://apps.nlrb.gov/eservice/efileterm.aspx?app=chargeandpetition

---

From: Richard Russo <rarusso@dcamplaw.com>
Sent: Tuesday, February 4, 2020 9:12 AM
To: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>
Subject: RE: E-Service of RD Order in Case 28-RM-255301
Sensitivity: Confidential

Thank you

Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690

IMPORTANT NOTICE: THIS EMAIL (INCLUDING ANY ATTACHMENTS) IS INTENDED ONLY FOR THE USE OF THE NAMED RECIPIENT(S), AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED OR EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT A NAMED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS TRANSMISSION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS EMAIL IN ERROR, PLEASE ERASE ALL FILES AND DESTROY ALL COPIES OF THIS TRANSMISSION AND NOTIFY RICHARD A. RUSSO AT THIS TELEPHONE NUMBER IMMEDIATELY: (309) 673-1681. THANK YOU.

From: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>
Sent: Tuesday, February 4, 2020 10:01 AM
To: Richard Russo <rarusso@dcamplaw.com>
Subject: RE: E-Service of RD Order in Case 28-RM-255301
Sensitivity: Confidential

A blocking letter will also issue.

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
Facsimile: (602) 640-2178
kyler.scheid@nlrb.gov

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E-File Case Documents: https://apps.nlrb.gov/eservice/efileterm.aspx
E-File New Charge or Petition: https://apps.nlrb.gov/eservice/efileterm.aspx?app=chargeandpetition

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From: Richard Russo <rarusso@dcamplaw.com>
Sent: Monday, February 3, 2020 7:19 PM
To: Scheid, Kyler A. <Kyler.Scheid@nlrb.gov>
Subject: Fw: E-Service of RD Order in Case 28-RM-255301
Sensitivity: Confidential

Mr. Scheid:

I am following up on my request that the Regional Director put the reasons for his decision to grant the Union's blocking request in writing. He will be providing something more than the RD Order, correct?

Please let me know.

Very truly yours,

Richard A. Russo
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, Illinois 61602
Phone: (309) 673-1681
Fax: (309) 673-1690

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From: e-Service@service.nlrb.gov <e-Service@service.nlrb.gov>
Sent: Monday, February 3, 2020 6:30 PM
To: Richard Russo
Subject: E-Service of RD Order in Case 28-RM-255301

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DELIVERY OF RD ORDER

Case Name: ASARCO LLC and Silver Bell Mining LLC
Case Number: 28-RM-255301

In accordance with the National Labor Relations Board Rules and Regulations, as amended, you are hereby served with RD Order in this matter. You can view the letter by clicking the attached pdf file. You may wish to print or save the letter and this email for your records. You will not receive a copy of this document by U.S. mail.

Please do not reply to this email. If you have questions regarding this correspondence, please refer to the contact information contained in the attached pdf file.

RD Order

From: Scheid, Kyler A.
To: "Fickman, Bruce"; "Gerald Barrett"
Subject: ASARCO, LLC
Date: Tuesday, February 4, 2020 12:43:00 PM

Good morning,

Could you both please submit an NOA listing all the related CA cases and the RM case? We want to be sure that you receive electronically sent documents from our office and currently we have you for some and not for others. Even where you may have filed the charge, an NOA would be helpful for our file.

Best,

Kyler A. Scheid
Field Attorney
National Labor Relations Board - Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004
Cell: (202) 679-4032
Direct Dial: (602) 416-4769
Facsimile: (602) 640-2178
kyler.scheid@nlrb.gov

-

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E-File Case Documents: https://apps.nlrb.gov/eservice/efileterm.aspx
E-File New Charge or Petition: https://apps.nlrb.gov/eservice/efileterm.aspx?app=chargeandpetition

FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

ASARCO LLC and Silver Bell Mining LLC

and

USW, Local 937

CASE 28-RM-255301

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF ASARCO LLC and Silver Bell Mining LLC

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Richard A. Russo

MAILING ADDRESS: Davis & Campbell LLC, 401 Main Street, Suite 1600, Peoria, Illinois 61602

E-MAIL ADDRESS: rarusso@dcamplaw.com

OFFICE TELEPHONE NUMBER: (309) 673-1681

CELL PHONE NUMBER: _____ *FAX:* (309) 673-1690

SIGNATURE: Richard A. Russo
(Please sign in ink.)

DATE: 2/4/20

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FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

ASARCO LLC and SILVER BELL MINING LLC

and

CASE 28-RM-255301

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

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(REPRESENTATIVE INFORMATION)

NAME: Bruce Fickman, Associate General Counsel

MAILING ADDRESS: USW Legal Department, 60 Boulevard of the Allies, Room 807, Pittsburgh, PA 15222

E-MAIL ADDRESS: bfickman@usw.org

OFFICE TELEPHONE NUMBER: (412) 562-2540

CELL PHONE NUMBER: _____ *FAX:* (412) 562-2429

SIGNATURE: [signature]

(Please sign in ink.) DATE: February 4, 2020

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From:	Moore, Dawn M.
To:	rarusso@dcamplaw.com; phburmeister@dcamplaw.com
Bcc:	Harvey, Rachel; Scheid, Kyler A.
Subject:	LTR.28-RM-255301.48 Hour Letter to Petitioner.pdf
Date:	Wednesday, February 5, 2020 5:52:00 PM
Attachments:	LTR.28-RM-255301.48 Hour Letter to Petitioner.pdf image001.png

---

Please see the attached letter in the above subject matter.
Thank you.

Dawn M. Moore

Administrative Assistant
Region 28 – Las Vegas Resident Office
National Labor Relations Board
Foley Federal Building
300 Las Vegas Boulevard South, Suite 2-901
Las Vegas, NV 89101-5833
Tel: (702) 820-7466
Fax: (702) 388-6248

nlrb-masthead-logo

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004

Agency Website: www nlrb.gov
Telephone: (602)640-2160
Fax: (602)640-2178

Agent's Direct Dial: (602)416-4769

February 5, 2020

VIA E-MAIL ONLY:

Richard A. Russo, Attorney at Law
Davis & Campbell LLC
401 Main Street, Suite 1600
Peoria, IL 61602
E-mail: rarusso@dcamplaw.com

Paul Burmeister, Attorney at Law
Davis & Campbell, LLC
333 South Wabash Avenue, Suite 2700
Chicago, IL 60604
E-mail: phburmeister@dcamplaw.com

Re: ASARCO LLC and Silver Bell Mining LLC
Case 28-RM-255301

Gentlemen:

I am writing this letter to inform you that the documents and information submitted by ASARCO LLC and Silver Bell Mining LLC (the Petitioner) in the above-referenced matter does not establish a good-faith uncertainty as to the Union's continued majority status as set forth in *Levtiz Furniture Co. of the Pacific*, 333 NLRB 717 (2001).

In petitioning the Board for an election to question the continued majority of an incumbent union, employers must demonstrate a "good-faith reasonable uncertainty (rather than disbelief) as to unions' continuing majority status." *Levitz Furniture Co. of the Pacific, Inc. (Levitz)*, 333 NLRB 717 (2001). The petition must be supported by evidence, viewed in its entirety, which might establish good-faith uncertainty as to the union's continued majority status. The information submitted by the employer must be specific and detailed. For example, names of employees must be listed. The evidence must be objective and reliably indicate that a majority of the employees oppose the incumbent union, rather than mere speculation. Such evidence would include, but is not limited to, antiunion petitions signed by unit employees, firsthand employee statements indicating a desire to no longer be represented by the incumbent union, employees' unverified statements regarding other employees' antiunion sentiments, and employees' statements expressing dissatisfaction with the union's performance as bargaining representative. Case Handling Manual Part II "Representation Proceedings" Section 11042; *Levitz*, supra at 728, 729; see also General Counsel Memorandum 02-01 "Guideline Memorandum Concerning *Levitz*" at 9, 10.

The failure of new hires and/or strike replacements to join the Union, employees' failure to pay dues to the Union or authorize dues check off, employee turnover in the bargaining unit, nonparticipation in a strike, and anti-union statements by a minority of unit employees, whether considered individually or cumulatively, do not establish good-faith reasonable uncertainty. *Levitz* at 729, and cases cited therein. See also *Atlanta Hilton & Towers*, 278 NLRB 474, 480-481 (1981); *Alexander Linn Hospital Association*, 288 NLRB 103, 107-109 (1988); and *Flex Plastics, Inc.*, 262 NLRB 651, 657-568 (1982).

Accordingly, the Employer has **48 hours** to present sufficient evidence of a good-faith reasonable uncertainly as to the Union's continued majority status or to withdraw the instant petition. Absent such evidence or withdrawal, the Employer's petition will be dismissed. In addition, the Employer must submit a list of all unit employees, including names, job classifications, and identifying whether they are strikers, non-strikers/crossovers, permanent or temporary replacements, or new hires.

Very truly yours,

/s/ Cornele A. Overstreet

Cornele A. Overstreet
Regional Director

CAO/KAS/dmm

FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

ASARCO LLC

and

USW, Local 937

CASE 28-RM-255301

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF

ASARCO LLC and Silver Bell Mining LLC

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

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(REPRESENTATIVE INFORMATION)

NAME: PAUL H. BURMEISTER

MAILING ADDRESS: 333 S. Wabash Avenue, Suite 2700, Chicago, IL 60604

E-MAIL ADDRESS: PHBURMEISTER@DCAMPLAW.COM

OFFICE TELEPHONE NUMBER: (312) 995-7110

CELL PHONE NUMBER: 7737712865 *FAX:* 3129957102

SIGNATURE: Paul
(Please sign in ink.)

DATE: 2/6/20

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401 Main Street
Suite 1600
Peoria, Illinois 61602-1241
Tel: (309) 673-1681
Fax: (309) 673-1690
www.dcamplaw.com

Davis & Campbell L.L.C.

File Number: 32248-021

February 6, 2020

VIA ELECTRONIC MAIL & FEDERAL EXPRESS
Cornele A. Overstreet
Regional Director
National Labor Relations Board
Region 28
2600 N. Central Ave, Suite 1400
Phoenix, AZ 85004

Re: ASARCO LLC and Silver Bell Mining LLC
Case 28-RM-255301

Dear Mr. Overstreet:

ASARCO LLC and Silver Bell Mining LLC ("Petitioner") are writing in response to your February 5, 2020 letter wherein you have erroneously decided to deny employees their free choice to choose whether or not they want to continue to be represented by USW, Local 937 ("Union") at the Silver Bell Mine. This despite the fact that the Petitioner provided evidence that a number of employees had made statements expressing dissatisfaction with the Union, that at least 128 out of 142 (90%) active employees chose not to be members of the Union and that 131 out of 142 (92%) active employees chose not to strike.

Your citation to *Levitz Furniture* in justifying your decision mischaracterizes the evidence the Board indicated would be required to make a showing of good faith reasonable uncertainty. For example, contrary to your assertion that statements from a minority of employees is insufficient evidence, the Board, in *Levitz Furniture,* cited favorably to the *Allentown Mack* case wherein only 7 of 32 employees indicated their personal dissatisfaction with the Union, and indicated that such evidence was sufficient to establish a good faith reasonable uncertainty by an employer.

Moreover, the evidence presented by Petitioner is clearly distinguishable from the two cases cited by *Levitz Furniture* as being insufficient to establish a good faith reasonable uncertainty. In one case, *Sceptor Ingot Casings*, the employer only relied on ambiguous statements from one employee about union dissatisfaction and the amount of employee turnover as its evidence. In the other case, *Henry Bierce Co.*, the employer's evidence was that only one employee made an anti-union statement, and the remaining evidence was that newly hired employees failed to join the union, "some" employees failed to sign the dues checkoff, and the union's failure to file grievances, appoint a steward or submit a tentative agreement for ratification.

In stark contrast, besides providing a number of statements of dissatisfaction with the Union, the Petitioner also provided evidence that 128 Silver Bell employees have chosen not to be members of the Union, with 66 employees having never joined the Union in the first place (including not only new employees, but many long-term employees) and another 62 employees having resigned their membership with the Union (more than half prior to the October 13, 2019 strike).

Additionally, the Petitioner's evidence does not simply show that "some" employees failed to sign dues checkoff, the Petitioner can demonstrate that 130 employees either revoked their Union dues deduction authorization or did not ever authorize dues deduction.

Moreover, the Petitioner did not just demonstrate that "some" employees chose not to participate in the strike, the Petitioner provided evidence that almost all of its 142 active employees chose not to participate, and have crossed the picket line and are working during the strike.[1]

The remaining cases cited in your letter as supporting the dismissal of the RM Petition, besides being factually distinguishable, are inapposite as they were decided prior to *Levitz Furniture* using a higher standard of good faith belief, which was rejected by the Board in *Levitz Furniture* and replaced with a more lenient reasonable uncertainty standard.

> Given our ruling above regarding withdrawals of recognition, we think it appropriate to reconsider the showing that we shall require for holding employer-requested elections. After careful consideration of all the options, we have decided to adopt the lower—uncertainty—standard. The Board and the courts have consistently said that Board elections are the preferred method of testing employees' support for unions. And we think that processing RM petitions on a lower showing of good-faith uncertainty will provide a more attractive alternative to unilateral action. By contrast, were we to require employers to demonstrate a higher showing of good-faith *belief* of lost majority support in order to obtain an RM election, as in *United States Gypsum*, we might encourage some employers instead to withdraw recognition rather than seeking an election. An employer who has enough evidence to establish a good-faith belief, though not necessarily enough to

---

[1] All of the statistical information is contained in the Silver Bell employee list attached as Exhibit A. Per your February 5 request for employee information, Exhibit A is a copy of the employee list previously submitted as Exhibit 1 to the Affidavit of [redacted] filed in support of the RM Petition, with the hire date added for each employee and "Revoked Dues Deduction" added to the "Date resigned from Union" column title to indicate, that unless otherwise noted, they are the same date. All employees hired after October 13, 2019 are permanent replacements.

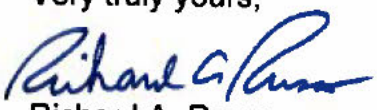
> show loss of majority status, may be tempted to withdraw recognition in the hope of being able to make that showing in an unfair labor practice proceeding (and, in any event, ousting the union while the proceeding is pending). Thus, by liberalizing the standard for holding RM elections, we are promoting both employee free choice (by making it easier to ascertain employees' support for unions via Board elections) and stability in collective-bargaining relationships (which remain intact during representation proceedings).

Levitz Furniture, at 727.

Simply put, the objective evidence submitted by the Petitioner shows that nearly every employee at Silver Bell Mine, not just "some" employees, have taken affirmative measures to show their dissatisfaction with the Union and its failed representation of employees at Silver Bell Mine. Under the circumstances, in accordance with *Levitz Furniture*, the Petitioner has clearly established a good faith reasonable uncertainty as to the majority status of the Union at the Silver Bell Mine.

Therefore, in accordance with *Levitz Furniture*, the RM Petition should not be dismissed and the Silver Bell Mine employees should be afforded the opportunity, through a Board election, to exercise their free choice as to whether or not they want to continue to be represented by the Union.

Very truly yours,



Richard A. Russo

Exhibit A

Empl ID	Last Name	First Name	Job Code Description	Department	Hire Date	Strike Status	Union Membership Status	Date Resigned from Union/Revoked Dues Deduction
(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	6/24/2015
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/16/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/14/2019
						On Strike	Member	Not Applicable
						Leave of Absence	Member	Not Applicable
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	6/20/2019
						Did Not Strike	Resigned	6/23/2015
						Did Not Strike	Never Joined	Never Joined
						On Strike	Member	Not Applicable
						Did Not Strike	Resigned	2/2/2015
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/16/2019
						Did Not Strike	Resigned	10/15/2019
						Did Not Strike	Resigned	8/3/2017
						On Strike	Member	Not Applicable
						On Strike	Member	Not Applicable
						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Resigned	11/28/2018
						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/15/2019
						Did Not Strike	Resigned	10/15/2014
						Did Not Strike	Resigned	12/7/2018
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Resigned	3/16/2015
						Did Not Strike	Resigned	6/30/2015
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/17/2019
						On Strike	Member	Not Applicable
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/16/2019
						Did Not Strike	Resigned	6/5/2018
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Unknown	Revoked Dues 10/15/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						On Strike	Member	Not Applicable
						Return to Work	Member	Not Applicable
						Did Not Strike	Resigned	6/2/2015
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	5/2/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Resigned	9/7/2010
						Did Not Strike	Resigned	6/24/2019
						Did Not Strike	Resigned	4/10/2018
						Did Not Strike	Resigned	7/10/2013
						Did Not Strike	Never Joined	Never Joined

(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)			
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	7/7/2015
						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Resigned	5/19/2010
						Did Not Strike	Resigned	6/23/2015
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/16/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	12/7/2017
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Resigned	10/15/2019
						Did Not Strike	Resigned	10/8/2019
						Did Not Strike	Resigned	8/1/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	8/1/2017
						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Never joined	Never Joined
						Did Not Strike	Unknown	Revoked Dues 10/16/2018
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	1/15/2019
						On Strike	Member	Not Applicable
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	9/5/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Resigned	7/15/2013
						Did Not Strike	Resigned	10/16/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/16/2019
						Did Not Strike	Resigned	8/15/2014
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	12/5/2016
						Did Not Strike	Resigned	7/1/2015
						On Strike	Member	Not Applicable
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Resigned	8/1/2002
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/15/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/17/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						On Strike	Member	Not Applicable
						Did Not Strike	Resigned	10/14/2019
						Return to Work	Resigned	10/28/2019
						Return to Work	Member	Not Applicable
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Resigned	10/10/2018
						On Strike	Member	Not Applicable
						Did Not Strike	Never Joined	Never Joined
						Leave of Absence	Member	Not Applicable
						Did Not Strike	Resigned	7/13/2013
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						On Strike	Resigned	10/14/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never joined	Never Joined
						Did Not Strike	Resigned	11/28/2018
						Did Not Strike	Resigned	10/15/2019

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Davis & Campbell L.L.C.

File Number: 32248-021

February 4, 2020

VIA ELECTRONIC MAIL & FEDERAL EXPRESS
Cornele A. Overstreet
Regional Director
National Labor Relations Board
Region 28
2600 N. Central Ave, Suite 1400
Phoenix, AZ 85004

Re: ASARCO LLC and Silver Bell Mining LLC
Case 28-RM-255301

Dear Mr. Overstreet:

Pursuant to Section 11730.7 of the NLRB's Case Handling Manual Part II Representation Proceedings, Petitioner ASARCO LLC and Silver Bell Mining LLC hereby requests that you promptly provide, to the Petitioner, the specific reasons for your decision to hold the above-referenced matter in abeyance pending the investigation and disposition of certain unfair labor practice charges cited in your February 4, 2020 letter.

Very truly yours,

Richard A. Russo

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ASARCO LLC and SILVER BELL MINING LLC

Employer/Petitioner

CASE 28-RM-255301

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937

Union

REQUEST FOR REVIEW

ASARCO LLC and SILVER BELL MINING LLC, ("Asarco") the Employer/Petitioner in the above proceeding, by their attorneys, Richard A. Russo and Paul H. Burmeister of Davis & Campbell L.L.C., pursuant to Section 102.71(b) of the Board's Rules, submits the following Request for Review of the February 4, 2020 decision of the Regional Director of Region 28 to hold in abeyance the RM petition filed by Asarco in Case No. 28-RM-25530 ("RM Petition"). This Request is necessary because: (1) a substantial question of law or policy is raised because of the absence of, or a departure from, officially reported Board precedent; (2) there are compelling reasons for reconsideration of an important Board rule or policy; and (3) the Regional Director's action is, on its face, arbitrary or capricious.

I. Background Facts.

Asarco operates a mining facility in Marana, Arizona ("the Silver Bell Mine"). A bargaining unit consisting of production and maintenance employees at that location is represented

by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937 ("the Union").

On January 28, 2020, Asarco filed the RM Petition. (Exhibit 1) Concurrent with the filing of the RM Petition, Asarco submitted to the Regional Director evidence demonstrating that Asarco maintained a good-faith reasonable uncertainty regarding the majority status of the Union. *Levitz Furniture Co.*, 333 NLRB 717, 727 (2001). The evidence included the following:

- The Union commenced a strike against Asarco on October 13, 2019. Of the 144 employees currently employed by Asarco at the Silver Bell Mine, 128 employees chose not to strike, and another 3 employees abandoned the strike and returned to work. Only 11 employees are currently on strike. 2 employees were on a leave of absence at the time of the strike, and to date, remain inactive employees on leave. (Exhibit 2, Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) [redacted] and attached spreadsheet, Paras. 11-12, submitted to Regional Director with RM Petition)
- Of the 144 employees, on information and belief, only 14 are members of the Union. On information and belief, 66 employees never joined the Union. Additionally, since the strike commenced on October 13, 2019, at least 29 employees have resigned their membership with the Union. Prior to the strike, another 33 had already resigned from the Union (this totals at least 62 who resigned; 2 other employees revoked their authorization for dues deduction, but it is unknown if they resigned from the Union). (Exhibit 2, Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) [redacted] and attached spreadsheet, Paras. 13-14, submitted to Regional Director with RM Petition) In resigning from the Union, each of these employees is indicating that they no longer want the Union to represent them because the revoked Union membership form specifies that the employee is authorizing the

Union to act for the employee as a collective bargaining agent in all matters pertaining to employment at the Silver Bell Mine.

- A number of employees made statements to Asarco regarding their dissatisfaction with the Union, including but not limited to, statements regarding getting rid of the Union, the Union being useless, the workplace being better without a Union, and it being a mistake to join the Union as their loyalty is to Asarco.

These numbers are telling -- 131 out of 142 (92%) active employees choose not to strike, at least 128 out of 142 (90%) employees have choosen not to be members of the Union, and a number of employees have made anti-Union statements and/or expressed a desire not to have a Union. Thus, Asarco has demonstrated that it has a good-faith reasonable uncertainty as to the Union's continued majority status at the Silver Bell Mine under the standards of *Levitz*, *supra*.

The Regional Director apparently initially accepted the above evidence as sufficient to satisfy the *Levitz* standard, as he issued a Notice of Hearing with respect to the RM Petition, setting a representation hearing for February 5, 2020. (Exhibit 3)

However, on January 27, 2020, after the RM Petition had been filed, the Union filed an unfair labor practice charge against Asarco (28-CA-255235). (Exhibit 4)

On February 3, 2020, the Regional Director issued an order that "pending the investigation and disposition of the *related* unfair labor practice charges" filed against Asarco, the scheduled February 5 hearing would be postponed indefinitely. (Emphasis added) (Exhibit 5) The Regional Director provided no rationale or reasoning supporting the "relatedness" of the charges to the RM Petition.[1]

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[1] Between January 28 – January 30, 2020, five other unions, representing employees at ASARCO facilities in Sahuarita, Hayden and Kearney, Arizona and Amarillo, Texas, filed identical charges.

On February 4, 2020, the Regional Director then issued a letter stating that the RM Petition filed by Asarco "will be held in abeyance pending the investigation and disposition of the *related* unfair labor practice charges filed against Asarco[.]" (Exhibit 6) No rationale or reasoning supporting the "relatedness" of the charges to the RM Petition was provided by the Regional Director.

After receiving the Regional Director's February 4 letter, Asarco submitted a letter to the Regional Director that requested, pursuant to NLRB Case-Handling Manual Section 11730.7, that the Regional Director promptly provide to Asarco the specific reasons for his decision to hold the processing of the RM Petition in abeyance. (Exhibit 7) To date, no response has been provided by the Regional Director.

II. The RM Petition Should Be Processed Because the Regional Director's Action is, on its Face, Arbitrary or Capricious.

a. The Regional Director did not find that the unfair labor practice charges would interfere with employee free choice in an election or would be inherently inconsistent with the petition itself.

Under Board Rule 103.20, Regional Directors are authorized to hold election petitions in abeyance only if the party requesting the block submits sufficient evidence that the alleged conduct, if proven, "would interfere with employee free choice in an election or would be inherently inconsistent with the petition itself." 29 C.F.R. 130.20. In this case, no such finding was made by the Regional Director. Rather, the Regional Director only determined that the unfair labor practices were "related" to the RM Petition. This is not the appropriate standard.

As none of those unions represent employees at the Silver Bell Mine such charges are inapposite to the RM Petition. The Regional Director acted erroneously in citing to such charges in his February 4, 2020 decision to hold the RM Petition in abeyance.

The Regional Director's "block" of the RM Petition failed to comply with the standards set by Board Rule 103.20 and is therefore arbitrary and capricious.

b. The Regional Director failed to comply with the Board's Case Handling Manual by failing to provide Asarco with any reasons for holding the Petition in abeyance.

On February 4, 2020, the Regional Director issued a letter stating that Asarco's RM Petition "will be held in abeyance pending the investigation and disposition of the *related* unfair labor practice charges filed against Asarco[.]" (Exhibit 6) No rationale or reasoning supporting the "relatedness" of the charges to the RM Petition was provided by the Regional Director.

Section 11730.7 of the Board's "Case Handling Manual, Part Two, Representation Proceedings" states as follows:

> The Board agent handling the matter should inform the parties of any determinations made with regard to concurrent charges and petitions *and the reasons therefor. If any party requests the reasons in writing, the regional director should promptly provide them.* If the determination is to hold the petition in abeyance, the letter should also inform the parties of their right to obtain review by the Board of this determination under Sec. 102.71 of the Rules and Regulations." (Emphasis added)

The Regional Director's February 4 letter did not inform Asarco of any "reasons" for holding the RM Petition in abeyance. Pursuant to the above CHM Section, Asarco then submitted a letter to the Regional Director requesting that he promptly provide the specific reasons for his decision to hold the processing of the RM Petition in abeyance. (Exhibit 7) To date, no response has been provided by the Regional Director.

The Regional Director's "block" of the RM Petition failed to comply with the procedures established by the Board in its Case Handling Manual and is therefore arbitrary and capricious.

c. The unfair labor practice charges do not support a conclusion that the alleged conduct, if proven, would interfere with employee free choice in an election or would be inherently inconsistent with the petition itself under Rule 103.20.

As stated above, the Regional Director's letter of abeyance failed to even articulate any interference the alleged unfair labor practices would have upon employee free choice, let alone set forth any evidence in support thereof. Moreover, Asarco submits that the nature of the unfair labor practice charge at issue is not of such a nature that would, or even could, lead to a subsequent expression of disaffection by the bargaining unit employees at the Silver Bell Mine with the Union under the above standards.

As demonstrated in the showing of good faith reasonable uncertainty, of the 142 active bargaining unit employees, 66 of those employees had *never* joined the Union at any time during their employment. Therefore, any alleged conduct of Asarco within the 180-day period prior to the filing of the charges could not have impacted or affected their decision to disavow union membership. In addition, 30 employees resigned their membership prior to August 1, 2019 (180 days prior to the filing of the charges). (Exhibit 2, Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) and attached spreadsheet, Paras. 13-14, submitted to Regional Director with RM Petition). Therefore, a total of 96 of the 142 active employees took their actions of disavowing union membership *prior to* the time any of the alleged unfair labor practices could have affected their free choice.

At the very least, the Board should require the Regional Director to hold a *Saint-Gobain* hearing as a precondition to blocking an election based on the Union's unfair labor practice charge. *Saint- Gobain Abrasives, Inc.*, 342 NLRB 434 (2004). At such an adversarial hearing the Union would have to meet its burden of proof that a "causal nexus" exists. As the Board noted in *Saint-Gobain,* "it is not appropriate to speculate, without facts established in a hearing, that there was a causal relationship between the conduct and the disaffection. To so

speculate is to deny employees their fundamental Section 7 rights." *Id.* at 434. [2]

III. The RM Petition Should Be Processed Because a Substantial Question of Law or Policy is Raised Because of the Absence of, or a Departure from, Officially Reported Board Precedent.

Under the Board's current blocking policies, the RM petition should be processed as an exception to the blocking policy under the authority of *American Metal Products Co,* 139 NLRB 601 (1962).

At the time the Petition was filed, a strike against Asarco at the Silver Bell Mine was in progress; 11 bargaining unit employees were on strike.

Section 9(c)(3) of the National Labor Relations Act ("NLRA"), 29 U.S.C 159(c)(3), states:

> Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this act in any election conducted *within twelve months after the commencement of the strike*. (Emphasis added)

Although some of the unfair labor practice allegations the Union has filed purportedly relate to the parties' bargaining, the Board has held that strikers are *presumed to be economic strikers* unless and until they are found by the Board to be unfair labor practice strikers. *Bright Foods, Inc.* 126 NLRB 553 (1960); *Times Square Stores Corporation*, 79 NLRB 361, 365 (1948) ("an initial finding that a strike was caused by unfair labor practices may be made only in unfair labor practice proceedings"). Therefore, the 11 striking employees must, for purposes of the RM

[2] Asarco acknowledges that the *St. Gobain* case involved a single unfair labor practice, and that under current Board law a *St. Gobain* hearing is only required as a matter of law in instances when the Regional Director dismisses a petition based upon an alleged casual connection, as opposed to holding it in abeyance. *CPL (Linwood) LLC d/b/a Linwood Care Center,* 365 NLRB No. 24 (2017). However, given the Regional Director's failure to comply with Rule 103.20, discussed above, such a hearing could be an alternative remedy.

Petition, be considered economic strikers who would lose any eligibility to vote in the RM election if such election were held after October 13, 2020.

In *American Metal Products Co., supra,* the union which was in a bargaining relationship with the employer began a strike against the employer on November 14, 1961. The strike continued until January 26, 1962. During the pendency of their labor dispute, the union filed several unfair labor practice charges against the employer, alleging violations of Sections 8(a)(1), (3) and (5) of the Act. On February 28, 1962, the employer filed an RM petition. The union then resumed picketing, and 14 bargaining unit members who had returned to work earlier resumed striking against the employer. The union alleged that the resumed picketing was in protest to employer conduct which the union charged to be a continuation of the employer's unfair labor practices. In directing that the RM petition proceed, the Board stated as follows:

> We shall direct an *immediate election* herein *despite the fact that there is pending in the Region a charge filed by the Union alleging violations of Section 8(a)(1), (3), and (5) of the Act.* We are cognizant of our usual practice of declining to direct an election in the face of unresolved unfair labor practice charges affecting the unit involved in the representation proceeding, especially where violations of Section 8(a)(5) are alleged. Nevertheless, it is well-settled that this practice is a matter which lies within the discretion of the Board as part of its function of determining whether an election will effectuate the policies of the Act. In view of the pendency of the strike which began on November 14, 1961, we deem it desirable to hold the election within the 12-month period of the strike. We find, therefore, that the direction of an immediate election will effectuate the policies of the Act.

Id. at 604-605 (Emphasis added).

The Board's "Outline of Law and Procedure in Representation Cases", June 2017, (page 126) refers to this principle as an "exception" to the "blocking rules:"

> (7) A final exception – not specifically discussed in the CHM – involves strikers. The Board will waive the blocking charge rule in order to hold an election within 12 months of the beginning of an economic strike so as to not exclude strikers. *American Metal Products, Co.,* 139 NLRB 601, 604-605 (1962).

Even if found to warrant issuance of a complaint, it is unlikely that the unfair labor practice charge filed by the Union would be fully adjudicated before the Board and potentially by court review by October 13, 2020 (the 12-month anniversary of the strike). Therefore, the Board should order the Regional Director to process the RM Petition so as to maintain the voting rights of the striking employees.[3]

IV. The RM Petition Should Be Processed Because There Are Compelling Reasons for Reconsideration of an Important Board Rule or Policy.

NLRA Section 7 grants employees a statutory right to refrain from forming, joining, or assisting a labor organization. 29 U.S.C. § 157. In order to vindicate and support those rights, NLRA Section 9(c)(1)(B) grants employers a statutory right to petition for a decertification election, subject only to the express statutory limitation preventing such an election from being held within twelve months of a previous election. 29 U.S.C. §§ 159(c)(l)(A) & (c)(3). Employees' Section 7 free choice right is the NLRA's paramount concern, and such right should not be delayed based on a Regional Director's unlitigated and unknown conclusions regarding the purported impact of unfair labor practice allegations on employee free choice.

Congress did not establish the Board's "blocking charge" practice. Rather, its creation and application lie within the Board's discretion to effectuate the Act's policies. *Am. Metal Prods. Co.*, 139 NLRB 601, 604-05 (1962). Rather than carry out the Act's purpose, the "blocking charge" policy denies Asarco's and employees' statutory rights.

The Board's "blocking charge" policy operates under a system of "presumptions" that prevent employees from exercising their Sections 7 and 9(c)(l)(A)(ii) statutory rights. As a

[3] If the Regional Director dismisses the Union's pending unfair labor practice charge, the RM Petition should be immediately approved for processing.

result, a union can stop any decertification election simply by filing an unfair labor practice charge against an employer, regardless of that charge's veracity. The Board's "blocking charge" policy often denies decertification elections even when, as here, the employees may be unaware of and unaffected by the alleged employer misconduct, or the employees' longstanding disaffection with the Union springs from an independent source.

The Board should reevaluate its discretionary Board policies, such as the Board's "blocking charge" policy, when industrial conditions warrant. *See, e.g., IBM Corp.,* 341 NLRB 1288, 1291 (2004) (holding the Board has a duty to adapt the Act to "changing patterns of industrial life" and the special function of applying the Act's general provisions to the "complexities of industrial life" (citation omitted)). The Board Chairman and several Board members have shown a desire to revisit the blocking charge rules. [4] Asarco therefore urges the Board to overrule or overhaul its "blocking charge" policies to protect the NLRA's paramount Section 7 free choice rights.

The Board should order Region 28 to proceed to a secret-ballot election without further delay to allow the bargaining unit employees in question to make their own free choice about

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[4] *See Heavy Materials, LLC-St. Croix Div.,* 12-RM-231582, 2109 WL 2353690 (May 30, 2019), (Members Kaplan and Emanuel noting they "would consider revisiting the Board's blocking charge policy in a future appropriate proceeding"); *UFCW Local 951,* 07- RD-228723, 2019 WL 1879483 (April 25, 2019), (Chairman Ring and Member Emanuel noting the same); *Klockner Metals Corp.,* 15-RD-217981, 2019 WL 2287088 (May 17, 2018), (Member Kaplan noting the same and also stating that "he believes an employee's petition for an election should generally not be dismissed or held in abeyance based on contested and unproven allegations of unfair labor practices" *Metro Ambulance Servs.,* 10-RC-208221, 2018 WL 3456223 (July 17, 2018) (Chairman Ring and Member Emanuel stating there are "significant issues with the Board's Election Rule and the law pertaining to blocking charges that potentially frustrate the rights of employees, and they believe the policy should be reconsidered").

whether to continue to be represented by the Union.

WHEREFORE, ASARCO LLC and SILVER BELL MINING LLC request that the Board reverse the Regional Director's decision to hold the processing of the RM Petition in abeyance and direct the Regional Director to process the RM Petition.

Respectfully submitted,

ASARCO LLC and SILVER BELL MINING LLC

By: _____
One of Its Attorneys

February 14, 2020

Richard A. Russo
Paul H. Burmeister
Davis & Campbell, LLC
401 Main Street, Suite 1600
Peoria, Illinois 61602
309-673-1681 (p)
309-673-1690 (f)
rarusso@dcamplaw.com
phburmeister@dcamplaw.com.

CERTIFICATE OF SERVICE

I hereby state that I served a copy of the foregoing Request for Review via electronic mail to (usw937terrazas@gmail.com, gprescott@usw.org, bfickman@usw.org, rspillers@gslaw.org, gbarrett@wardkennanbarrett.com, and cornele.overstreet@nlrb.gov) and by depositing same in an envelope addressed as follows:

Alexander Terrazas, President
United Steelworkers Local 937
877 South Alvernon Way
Tucson, AZ 85711

Gerald Barrett
Ward, Keenan & Barrett, P.C.
3838 North Central Avenue, Suite 1720
Phoenix, AZ 85012

Ryan Spillers
Gilbert & Sackman
3699 Wilshire Boulevard, Suite 1200
Los Angeles, CA 90010

Cornele Overstreet, Regional Director
NLRB, Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied
Industrial and Service Workers International Union, AFL-CIO, CLC
c/o Gaylan Prescott
5 Gateway Center
Pittsburgh, PA 15222

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied
Industrial and Service Workers International Union, AFL-CIO, CLC
c/o Bruce Fickman, Associate General Counsel
60 Boulevard of the Allies, Room 807
Pittsburgh, PA 15222-1214

and by delivering same by first class mail, postage prepaid on February 14, 2020.

One of Its Attorneys

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EXHIBIT 1

FORM NLRB-502 (RM)
(2-18)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RM PETITION

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed

INSTRUCTIONS: Unless e-Filed using the Agency's website, [redacted], submit an original of this Petition to an NLRB Office in the Region in which the employer concerned is located. The petition must be accompanied by a certificate of service showing service on all parties named in the petition of the following: (1) the petition; (2) Statement of Position form; and (3) Description of Procedures in Certification and Decertification Cases (Form NLRB 4812). The petition must also be accompanied by evidence supporting the statement that a labor organization has made a demand for recognition on the employer or that the employer has good faith uncertainty about majority support for an existing representative. However, if the evidence reveals the names and/or number of employees who no longer wish to be represented, the evidence shall not be served on any party.

1. PURPOSE OF THIS PETITION: RM-CERTIFICATION OF REPRESENTATIVE - One or more individuals or labor organizations have presented a claim to the Employer/Petitioner to be recognized as the representative of employees of the Employer/Petitioner or the Employer/Petitioner has a good faith uncertainty about majority support for an existing representative. If a charge under Section 8(b)(7) of the Act has been filed involving the Employer/Petitioner named in this petition, this statement shall not be deemed made. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer/Petitioner: ASARCO LLC and Silver Bell Mining LLC	2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code): 25000 W. Avra Valley Road, Marana, AZ 85653
3a. Employer/Petitioner Representative - Name and Title: Stacy Sinele, Director of Human Resources	3b. Address (if same as 2b - state same): 5285 E Williams Circle Suite 2000, Tucson, AZ 85711

3c. Tel. No.	3d. Cell No.	3e. Fax No.	3f. E-Mail Address
520-879-7818			ssinele@asarco.com

4a. Type of Establishment (Factory, mine, wholesaler, etc.)	4b. Principal Product or Service
Mining	Copper

5a. Description of Unit Involved	5b. City and State where unit is located:
Included: All production and maintenance employees of the Employer at the Silver Bell Mine Excluded: All office clerical, technical, & professional employees, watchmen and supervisors	Marana, AZ 6. Number of Employees in Unit: 144

Unless a charge alleging a violation of Section 8(b)(7) is pending, check EITHER Item 7a or 7b, whichever is applicable

☐ 7a. A labor organization made a demand for recognition on the Employer/Petitioner on (Date) _____

☒ 7b. The Employer/Petitioner has a good faith uncertainty about majority support for an existing representative.

8a. Name of Recognized or Certified Bargaining Agent - Name	8b. Affiliation, if any:
USW, Local 937 (see 12 below for full name of International Union)	AFL-CIO, CLC

8c. Address:	8d. Tel. No.	8e. Cell No.
877 S Alvernon Way, Tucson, AZ 85711	602-361-1822	
	8f. Fax No.	8g. E-Mail Address: usw937terrazas@gmail.com

9. Date of Recognition or Certification	10. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)
Unknown -- sometime prior to May 21, 1988 (28-RD-792)	10/13/2019

11. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes If so, approximately how many employees are participating? 11

(Name of Labor Organization) USW, Local 937, has picketed the Employer since (Month, Day, Year) 10/13/19

12. Organizations or individuals other than those named in Item 8, which have a contract with the Employer/Petitioner or represent employees of the Employer/Petitioner or demanded recognition as representatives and other organization and individuals known to have a representative interest in any employees in the unit described in Item 5 above. (If none, so state)

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

12a. Name and affiliation if any	12b. Address	12c. Tel. No.	12d. Cell No.
AFL-CIO, CLC	Five Gateway Center Pittsburgh, PA 15222		
		12e. Fax No.	12f. E-Mail Address: gprescott@usw.org

13. Election Details: If the NLRB conducts and election in this matter, state your position with respect to any such election:	13a. Election Type: ☒ Manual ☐ Mail ☐ Mixed Manual/Mail

13b. Election Date(s):	13c. Election Time(s):	13d. Election Location(s):
proposed:2/18 and 2/19/2020	proposed: 4:30 - 7:30 am & 5:30 - 7:00 pm	25000 W. Avra Valley Road, Marana, AZ 85653

14. Representative of the Employer/Petitioner who will accept service of all papers for purposes of the representation proceeding.

14a. Name and Title:	14b. Address (street and number, city, State and ZIP code):
Stacy Sinele, Director of Human Resources	ASARCO LLC 5285 E. Williams Circle, Suite 2000, Tucson, AZ 85711

14c. Tel. No.	14d. Cell No.	14e. Fax No.	14f. E-Mail Address
520-879-7818			ssinele@asarco.com

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print)	Signature	Title	Date
Stacy Sinele	Stacy Sinele	Director of Human Resources	1/27/2020

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

EXHIBIT 2

AFFIDAVIT OF (b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D) **having first been duly sworn, states upon oath as follows:**

1. **I am employed by ASARCO LLC ("ASARCO") as** (b) (6), (b) (7)(C), (b) (7)(D) **at ASARCO's office in Tucson, Arizona.**

2. **ASARCO is a Delaware limited liability company and is a fully integrated miner, smelter, and refiner of copper and other metals. ASARCO currently operates three mines and one processing facility in Arizona and one processing facility in Texas.**

3. **One of the three mines, located in Marana, Arizona ("Silver Bell Mine"), is owned and operated by Silver Bell Mining LLC ("Silver Bell Mining"). Silver Bell Mining is fully-owned by AR Silver Bell Inc. AR Silver Bell Inc. is a wholly owned subsidiary of ASARCO.**

4. **Silver Bell Mining has an arrangement with ASARCO for the procurement of administrative services provided by ASARCO, including assisting with** (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) **function at the Silver Bell Mine.**

5. **The employees at the Silver Bell Mine are represented by the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937 ("Union").**

6. **As** (b) (6), (b) (7)(C), (b) (7)(D) **at ASARCO, I** (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) **at ASARCO, including providing** (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) **to Silver Bell Mining.**

7. **In providing** (b) (6), (b) (7)(C), (b) (7)(D) **to Silver Bell Mining, I have access to** (b) (6), (b) (7)(C), (b) (7)(D) **at the Silver Bell Mine, including** (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D)

8. **On October 13, 2019, the Union commenced a strike at the Silver Bell Mine.**

9. **I am aware of the job status of Silver Bell Mine employees, including which employees are on strike and which employees are working, as well as which employees have notified management at the Silver Bell Mine regarding Union membership.**

10. **Based on** (b) (6), (b) (7)(C), (b) (7)(D) **and** (b) (6), (b) (7)(C), (b) (7)(D) **at Silver Bell Mine, I prepared the attached spreadsheet containing the names, job classifications, department, strike status and union membership status of current employees at Silver Bell Mine.** ***See attached Exhibit 1.***

11. At the time of the strike on October 13, 2019, there were 147 employees in the bargaining unit at the Silver Bell Mine. There are currently 144 bargaining unit employees at the Silver Bell Mine.

12. Of the current employees, 131 employees crossed the picket line and continued to work at the Silver Bell Mine. Of those employees 128 of them never went on strike in the first place, and 3 abandoned the strike and returned to work. At present, there are only 11 employees striking at the Silver Bell Mine. Also, two employees were on a leave of absence at the time of the strike, and to date, remain inactive employees on leave.

13. Of the 144 bargaining unit employees currently employed at the Silver Bell Mine, on information and belief, only 14 of those employees are members of the Union.

14. Also on information and belief, of the 144 current bargaining unit employees, 66 of those employees never joined the Union in the first place, and at least 62 resigned their membership with the Union. This includes 29 employees who resigned since the strike began on October 13, 2019. Two other employees revoked their dues deduction authorizations but it is unknown if they resigned their Union membership.

I have read the foregoing fourteen (14) typewritten paragraphs and the statements contained therein are true and correct to the best of my knowledge and belief.

(b) (6), (b) (7)(C), (b) (7)(D)

[redacted]

(b) (6), (b) (7)(C), (b) (7)(D)

Subscribed and sworn to before me this 27th day of January, 2020.

Jacqueline Haas

Notary Public

JACQUELINE HAAS
Notary Public - State of Arizona
PIMA COUNTY
Commission # 562702
Expires May 27, 2023

EXHIBIT 1

Email ID	Last Name	First Name	Job Code Description	Department	Strike Status	Union Membership Status	Date Resigned from Union
(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	4/24/2015
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/18/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/14/2019
					On Strike	Member	Not Applicable
					Leave of Absence	Member	Not Applicable
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	6/20/2019
					Did Not Strike	Resigned	6/21/2015
					Did Not Strike	Never Joined	Never Joined
					On Strike	Member	Not Applicable
					Did Not Strike	Resigned	2/2/2015
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/18/2019
					Did Not Strike	Resigned	10/15/2019
					Did Not Strike	Resigned	8/3/2017
					On Strike	Member	Not Applicable
					On Strike	Member	Not Applicable
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Resigned	11/19/2018
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/15/2019
					Did Not Strike	Resigned	10/15/2014
					Did Not Strike	Resigned	12/7/2018
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Resigned	1/16/2015
					Did Not Strike	Resigned	6/30/2015
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/17/2019
					On Strike	Member	Not Applicable
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/18/2019
					Did Not Strike	Resigned	6/5/2018
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Unknown	10/15/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					On Strike	Member	Not Applicable
					Return to Work	Member	Not Applicable
					Did Not Strike	Resigned	8/2/2015
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	5/2/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Resigned	9/7/2010
					Did Not Strike	Resigned	6/14/2019
					Did Not Strike	Resigned	4/18/2018
					Did Not Strike	Resigned	7/10/2019
					Did Not Strike	Never Joined	Never Joined

(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)			
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	7/7/2015
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Resigned	5/15/2019
					Did Not Strike	Resigned	6/21/2015
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/16/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	12/7/2017
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Resigned	10/15/2019
					Did Not Strike	Resigned	11/8/2019
					Did Not Strike	Resigned	8/1/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	8/1/2017
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Unknown	10/16/2018
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	1/15/2019
					On Strike	Member	Not Applicable
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	9/5/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Resigned	7/15/2019
					Did Not Strike	Resigned	10/16/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/16/2019
					Did Not Strike	Resigned	8/15/2014
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	12/5/2016
					Did Not Strike	Resigned	7/1/2015
					On Strike	Member	Not Applicable
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Resigned	8/1/2002
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/15/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/17/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					On Strike	Member	Not Applicable
					Did Not Strike	Resigned	10/14/2019
					Return to Work	Resigned	10/28/2019
					Return to Work	Member	Not Applicable
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	10/14/2019
					Did Not Strike	Resigned	10/10/2019
					On Strike	Member	Not Applicable
					Did Not Strike	Never Joined	Never Joined
					Leave of Absence	Member	Not Applicable
					Did Not Strike	Resigned	7/13/2018
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					On Strike	Resigned	10/14/2019
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Never Joined	Never Joined
					Did Not Strike	Resigned	11/28/2018
					Did Not Strike	Resigned	10/15/2019

EXHIBIT 3

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

ASARCO LLC AND SILVER BELL MINING LLC **Employer/Petitioner** **and** **UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937, AFL-CIO, CLC** **Union**	**Case 28-RM-255301**

NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on **Wednesday, February 5, 2020** and on consecutive days thereafter until concluded, at the National Labor Relations Board Hearing Room, 2600 North Central Avenue, Suite 1400, Phoenix, AZ 85004, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, ASARCO LLC and Silver Bell Mining LLC must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **Noon** Mountain Standard time on Tuesday, February 4, 2020. The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Mountain Standard on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: January 28, 2020

Cornele A. Overstreet, Regional Director
National Labor Relations Board - Region 28

EXHIBIT 4

FORM NLRB-501 (2/08)

FORM EXEMPT UNDER 44 U.S.C 3512

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer **ASARCO LLC**		b. Tel. No. **520-879-7818** c. Cell No. **520-879-7818**
d. Address *(street, city, state, and ZIP code)* **5285 E. Williams Circle, Suite 2000** **Tucson, AZ 85711**	e. Employer Representative **Stacy Sinele**	Fax No. **Unknown** g. E-Mail **SSinele@asarco.com** h. Number of workers employed **1,750**
i. Type of Establishment *(factory, mine, wholesaler, etc.)* **Mine and smelter**	j. Identify principal product or service **Copper**	

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a), subsections (1) and *(list subsections)* **(3) and (5)** of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

SEE ATTACHMENT A

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO/CLC

4a. Address *(street and number, city, state and ZIP code)* **Bruce Fickman** **United Steelworkers** **60 Boulevard of the Allies** **Pittsburgh, PA 15222**	4b. Tel. No. **412-562-2540** 4c. Cell No. 4d. Fax No. **412-562-2429** 4e. E-Mail: **bfickman@usw.org**

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*.

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ *(signature of representative or person making charge)* Address: 60 Boulevard of the Allies Room 807 Pittsburgh, PA 15222	**Bruce Fickman** **Associate General Counsel** *(Print/type name and title or office, if any)* Date: **January 27, 2020**	Tel. No. **412-562-2540** Office, if any, Cell No. Fax No. **412-562-2429** e-Mail **bfickman@usw.org**

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. §151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

ATTACHMENT A

Within the 10(b) period, the Employer, acting through its managers, supervisors, agents and representatives, has violated the Act in the following manner:

1. The Employer failed to bargain in good faith over mandatory subject of bargaining;

2. The Employer engaged in dilatory bargaining tactics;

3. The Employer's bargaining table agents and representatives lack sufficient authority to bargain over mandatory subjects of bargaining;

4. The Employer failed to timely provide relevant and necessary bargaining information;

5. The Employer unilaterally implemented its "last, best and final offer" when there was no bargaining impasse;

6. The Employer's unilaterally implemented "Copper Price Bonus" proposal discriminates against employees to discourage membership in and support for the Unions;

7. The Employer threatened to hire permanent replacement workers;

8. The Employer hired permanent replacements to replace bargaining unit employees engaged in an unfair labor practice strike;

9. The Employer solicited employees to resign their full membership from the Unions;

10. The Employer removed union literature from employee break areas; and,

11. The Employer engaged in surveillance and/or has given the appearance of surveillance of employees engaged in peaceful Section 7 activities.

EXHIBIT 5

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

ASARCO LLC and SILVER BELL MINING LLC

Employer/Petitioner

and **Case 28-RM-255301**

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937

Union

ORDER POSTPONING HEARING INDEFINITELY

Pending the investigation and disposition of the related unfair labor practice charges filed against the Employer/Petitioner in Cases 28-CA-255235, 28-CA-255412, 28-CA-255460, 28-CA-255482, 28-CA-255487, and 28-CA-255492,

IT IS ORDERED that the pre-election hearing scheduled for February 5, 2020, be, and it is, postponed indefinitely.

Dated at Phoenix, Arizona, this 3rd day of February, 2020.

/s/ Cornele A. Overstreet
Cornele A. Overstreet, Regional Director

EXHIBIT 6

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 28
2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004

Agency Website: www.nlrb.gov
Telephone: (602)640-2160
Fax: (602)640-2178

February 4, 2020

Ryan Spillers, Attorney at Law
Gilbert & Sackman, A Law Corporation
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E-mail: rspillers@gslaw.org

Paul Burmeister, Attorney at Law
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E-mail: phburmeister@dcamplaw.com

Gerald Barrett, Attorney at Law
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Richard A. Russo, Attorney at Law
Davis and Campbell, L.L.C.
401 Main Street, Suite 1600
Peoria, IL 61602-1241
E-mail: rarusso@dcamplaw.com

Bruce Fickman, Attorney at Law
United Steel, Paper & Forestry, Rubber,
Manufacturing, Allied Industrial & Service Workers
International Union, AFL-CIO/CLC
60 Boulevard of the Allies, Room 807
Pittsburgh, PA 15222
E-mail: bfickman@usw.org

Re: ASARCO LLC and Silver Bell Mining LLC
Case 28-RM-255301

Dear Counsel:

This is to notify you that the petition in the above-captioned case will be held in abeyance pending the investigation and disposition of the related unfair labor practice charges filed against ASARCO LLC in Cases 28-CA-255235, 28-CA-255412, 28-CA-255460, 28-CA-255482, 28-CA-255487 and 28-CA-255492.

Right to Request Review: Pursuant to Section 102.71 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review shall be submitted in eight copies, unless filed electronically, with a copy filed with the regional director, and all copies must be served on

all the other parties. The request must contain a complete statement setting forth facts and reasons upon which the request is based.

Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time)** on **February 18, 2020**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on **February 18, 2020.**

Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review 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, absent a determination of technical failure of the site, with notice of such posted on the website.

The Board may grant special permission an extension of time within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

/s/ Cornele A. Overstreet

Cornele A. Overstreet
Regional Director

cc: see attached

cc: Office of the Executive Secretary

Stacy Sinele, Director of Human Resources
ASARCO LLC and Silver Bell Mining LLC
5285 East Williams Circle, Suite 2000
Tucson, AZ 85711-7711
E-mail: ssinele@asarco.com

Alexander Terrazas
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial and Service
Workers International Union, Local 937
877 South Alvernon Way
Tucson, AZ 85711
E-mail: usw937terrazas@gmail.com

Gaylan Z. Prescott, District Director
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial and Service
Workers International Union, AFL-CIO, CLC
5 Gateway Center
Pittsburgh, PA 15222
Email: gprescott@usw.org

CAO:KAS:mhz

EXHIBIT 7

401 Main Street
Suite 1600
Peoria, Illinois 61602-1241
Tel: (309) 673-1681
Fax: (309) 673-1690
www.dcamplaw.com

Davis & Campbell L.L.C.

File Number: 32248-021

February 4, 2020

VIA ELECTRONIC MAIL & FEDERAL EXPRESS
Cornele A. Overstreet
Regional Director
National Labor Relations Board
Region 28
2600 N. Central Ave, Suite 1400
Phoenix, AZ 85004

Re: ASARCO LLC and Silver Bell Mining LLC
Case 28-RM-255301

Dear Mr. Overstreet:

Pursuant to Section 11730.7 of the NLRB's Case Handling Manual Part II Representation Proceedings, Petitioner ASARCO LLC and Silver Bell Mining LLC hereby requests that you promptly provide, to the Petitioner, the specific reasons for your decision to hold the above-referenced matter in abeyance pending the investigation and disposition of certain unfair labor practice charges cited in your February 4, 2020 letter.

Very truly yours,

Richard A. Russo

401 Main Street
Suite 1600
Peoria, Illinois 61602-1241
Tel: (309) 673-1681
Fax: (309) 673-1690
www.dcamplaw.com

Davis & Campbell L.L.C.

File Number: 32248-021

February 24, 2020

VIA ELECTRONIC FILING

Cornele A. Overstreet
Regional Director
National Labor Relations Board
Region 28
2600 N. Central Ave, Suite 1400
Phoenix, AZ 85004

Re: ASARCO LLC and Silver Bell Mining LLC
Case 28-RM-255301

Dear Mr. Overstreet:

ASARCO LLC and Silver Bell Mining LLC ("Petitioner") are writing as a follow up to their February 6, 2020 letter sent in response to your February 5, 2020 48-hour notice of dismissal letter regarding the above-referenced RM petition ("RM Petition"). In Petitioner's February 6, 2020 letter, it was reiterated and further demonstrated that nearly every employee at the Silver Bell Mine, not just "some" employees, took affirmative measures to show their dissatisfaction with USW Local 937 ("Union") and its failed representation of employees at Silver Bell Mine, and therefore, that the Petitioner has clearly established a good faith reasonable uncertainty as to the majority status of the Union at the Silver Bell Mine pursuant to *Levitz Furniture*.

Due to the fact that you have not subsequently dismissed the RM Petition, Petitioner is left to conclude that you have determined that Petitioner has established a good faith reasonable uncertainty as to the majority status of the Union at the Silver Bell Mine.

Therefore, in accordance with *Levitz Furniture*, the RM Petition should proceed and the Silver Bell Mine employees be given the opportunity, through a Board election, to exercise their free choice as to whether or not they want to continue to be represented by the Union.

Very truly yours,

Richard A. Russo

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 28
2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004

Agency Website: www.nlrb.gov
Telephone: (602)640-2160
Fax: (602)640-2178

March 5, 2020

Richard A. Russo, Attorney
Davis & Campbell LLC
401 Main Street, Suite 1600
Peoria, IL 61602

Paul Burmeister, Attorney
Davis & Campbell LLC
333 S. Wabash Avenue, Suite 2700
Chicago, IL 60604

Re: ASARCO LLC and
Silver Bell Mining LLC
Case 28-RM-255301

Dear Counsel:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

Decision to Dismiss: As a result of the investigation, I find that further proceedings on the petition are not warranted.

An employer representation (RM) petition must be supported by evidence that the employer possesses a good-faith reasonable uncertainty concerning the union's continued majority status. *Levitz Furniture Co. of the Pacific, Inc.*, 333 NLRB 717, 717 (2001) (*Levitz*). ASARCO LLC and Silver Bell Mining LLC (the Petitioners) have failed to present such evidence.

In support of their claim of good-faith reasonable uncertainty, the Petitioners submitted non-Board affidavits from [redacted] (b) (6), (b) (7)(C), (b) (7)(D) for the Petitioners attesting to the following:

- most unit employees have not participated in a strike called by the Union, and some have abandoned the strike;

- on information and belief, most unit employees are not members of the Union and do not pay dues, including some who resigned before the strike began and some who resigned after the strike began; and

- a very small minority of unit employees have expressed dissatisfaction with the Union to supervisors for the Petitioners.

It is well-established that employees' non-participation in a strike or abandonment of a strike does not necessarily indicate that the employees no longer want to be represented by their union. *Alexander Linn Hospital Association*, 288 NLRB 103 (1988), enfd., *NLRB v. Wallkill Valley General Hospital*, 866 F.2d 632 (3d Cir. 1989); *Curtin Matheson Scientific*, 287 NLRB 350, 352 (1987), enf. denied, 859 F.3d 362 (5th Cir. 1988), rev'd and remanded, 494 U. S. 775 (1990), enfd. on remand, 905 F.2d 871 (5th Cir. 1990). Employees may choose not to participate in a strike for reasons other than a desire not to be represented for a union. *Id.* For example, they may still want to be represented by their union but choose not to participate in a strike for financial reasons: they may not be in a position to incur the loss of income and employment benefits resulting from participation in a strike, or they may fear temporary or permanent loss of employment or other negative consequences due to replacement or unlawful retaliation. *Id.* Further, they may still want to be represented by their union but not participate in a strike because they do not agree with the objectives of that particular strike or with the use of a strike as a means to achieve those objectives. *Id.*

It is also well-established that employees' non-membership in a union, resignation from membership in a union, or choice not to authorize automatic dues check-off does not necessarily indicate that the employees no longer want to be represented by their union. *Marion Hospital Corporation*, 335 NLRB 1016, 1018-1019 (2001), enfd., 321 F.3d 1178 D.C. Cir. 2003); *Kuno Steel Products Corp.*, 252 NLRB 904, 904-905 (1980), enfd. in relevant part, *NLRB v. Koenig Iron Works*, 681 F.2d 130 (2d Cir. 1982); *Terrell Machine Company*, 173 NLRB 1480, 1481 (1969), enfd., 427 F.2d 1088 (4th Cir. 1970), cert. denied, 398 U.S. 929 (1970). Employees may choose not to be members of a union, to resign from membership in a union, or not to authorize automatic dues check-off but still want to be represented by their union. *Id.* For example, they may still want to be represented by their union but not incur the cost of dues; they may still want to be represented by their union but choose not to become members or choose to resign to avoid fines for not participating in a strike; or they may want to be represented by their union and may in fact be members but choose to pay their dues directly to their union and not with their employer as an intermediary. *Id.*

Finally, limited or vague employee statements of dissatisfaction are not sufficient to support an RM petition if, based on the number of statements made or the nature of the statements, they do not reliably establish good-faith uncertainty as to a union's continued majority status. *Levitz*, 333 NLRB at 729, citing *Henry Bierce Company*, 328 NLRB 646 (1999), affd. and remanded 234 F.3d 1268 (6th Cir. 2000), and *Scepter Ingot Castings, Inc.*, 331 NLRB 1509 (2000); see also *Horizon Health Developmental Services, Inc.*, 337 NLRB 22, 23-26 (2001); *Transpersonnel, Inc.*, 336 NLRB 484 (2001), enfd., 349 F.3d 175 (4th Cir. 2003). The testimony of the Petitioners' (b) (6), (b) (7)(C), (b) (7)(D) only establishes that a very small minority of unit employees have made statements about their dissatisfaction with the Union.

Having considered all of the evidence submitted by the Petitioners as a whole, I find that the Petitioners have not established good-faith reasonable uncertainty as to the Union's continued majority status.

Accordingly, I am dismissing the petition in this matter.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review*:** Unless otherwise permitted under Section 102.5 of the Board's Rules and Regulations, a request for review must be filed electronically (E-Filed) on the Board's website (www.nlrb.gov) by following the instructions on the website. If a request for review is filed electronically, it will be considered timely filed if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on **March 19, 2020**. To file electronically, once the Board's website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review 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, absent a determination of technical failure of the site, with notice of such posted on the website.

A party that files a request for review in paper format must accompany the filing with a statement explaining why the party does not have access to the means for filing electronically or why filing electronically would impose an undue burden. If a request for review is filed in paper format it will be considered timely filed if it is received by the Executive Secretary of the Board in Washington, DC, by the close of business (**5:00 p.m. Eastern Time)** on **March 19, 2020**.

Section 102.5 of the Board's Rules does not permit a request for review to be filed by facsimile transmission.

A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other

parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

Cornele A. Overstreet
Regional Director

cc: Office of the Executive Secretary (by e-mail)

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CAO/KAS/dmm

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ASARCO LLC and SILVER BELL MINING LLC

Employer/Petitioner

CASE 28-RM-255301

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937

Union

REQUEST FOR REVIEW

ASARCO LLC and SILVER BELL MINING LLC, ("ASARCO") the Employer/Petitioner in the above proceeding, by its attorneys, Richard A. Russo and Paul H. Burmeister of Davis & Campbell L.L.C., pursuant to Section 102.67 of the Board's Rules, submits the following Request for Review of the March 5, 2020 decision of the Regional Director of Region 28 to dismiss the RM Petition filed by ASARCO. In support of this Request, ASARCO states: (1) that a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent; and (2) that the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects ASARCO's rights.

I. Background Facts

ASARCO operates a mining facility in Marana, Arizona ("Silver Bell Mine"). A bargaining unit consisting of production and maintenance employees at that location is

represented by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937 ("Union").

On January 28, 2020, ASARCO filed the RM Petition. (Exhibit 1) Concurrent with the filing of the RM Petition, ASARCO submitted to the Regional Director evidence demonstrating that ASARCO maintained a good-faith reasonable uncertainty regarding the majority status of the Union. *Levitz Furniture Co.*, 333 NLRB 717, 727 (2001). The evidence included the following:

- The Union commenced a strike against ASARCO on October 13, 2019. Of the 144 employees currently employed by ASARCO at the Silver Bell Mine, 128 employees chose not to strike, and another three employees abandoned the strike and returned to work. Only eleven employees are currently on strike. Two employees were on a leave of absence at the time of the strike, and to date, remain inactive employees on leave. (Exhibit 2, Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) [redacted], Paras. 11-12)
- Of the 144 employees, on information and belief, only 14 are members of the Union. On information and belief, 66 employees never joined the Union. Additionally, since the strike commenced on October 13, 2019, at least 29 employees have resigned their membership with the Union. Prior to the strike, another 33 had already resigned from the Union (this totals at least 62 who resigned; two other employees revoked their authorization for dues deduction, but it is unknown if they resigned from the Union.) (Exhibit 2, Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) [redacted], Paras. 13-14). In resigning from the Union, each of these employees is indicating that they no longer want the Union to represent them because the revoked Union membership form specifies that the employee is

authorizing the Union to act for the employee as a collective bargaining agent in all matters pertaining to employment at the Silver Bell Mine.

- A number of employees made statements to ASARCO regarding their dissatisfaction with the Union, including but not limited to, statements regarding getting rid of the Union, the Union being useless, the workplace being better without a Union, and it being a mistake to join the Union as their loyalty is to ASARCO. (Exhibit 3 -- Affidavit of (b) (6), (b) (7)(C), (b) (7)(D), Paras. 13-17; Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) Para. 5; Affidavit of (b) (6), (b) (7)(C), (b) (7)(D), Paras. 8-9; Affidavit of (b) (6), (b) (7)(C), (b) (7)(D), Paras. 5-8).

These numbers are telling - 131 out of 142 (92%) active employees chose not to strike, at least 128 out of 142 (90%) employees chose not to be members of the Union, and a number of employees have made anti-Union statements and/or expressed a desire not to have a Union. Thus, ASARCO has demonstrated that it has a good-faith reasonable uncertainty as to the Union's continued majority status at the Silver Bell Mine under the *Levitz Furniture* standard.

The Regional Director apparently initially accepted the above evidence as sufficient to satisfy the *Levitz Furniture* standard, as he issued a Notice of Hearing with respect to the RM Petition, setting a representation hearing for February 5, 2020. (Exhibit 4).

However, after the RM Petition had been filed, the Union filed an unfair labor practice charge against ASARCO (28-CA-255235), and on February 4, 2020, the Regional Director issued an order stating that the RM Petition filed by ASARCO would be held in abeyance pending the investigation and disposition of the related unfair labor practice charges filed against ASARCO.[1]

[1] On February 14, 2020, Asarco filed a Request for Review of the Regional Director's February 4, 2020 decision to hold the election in abeyance. That Request for Review remains pending.

Despite initially issuing a Notice of Hearing following the filing of the RM Petition, on February 5, 2020, the Regional Director sent a letter to ASARCO stating that the RM Petition "does establish a good-faith uncertainty as to the Union's continued majority status" and providing ASARCO with 48 hours to present sufficient evidence or face dismissal of the RM Petition. (Exhibit 5)

By letter dated February 6, 2020, ASARCO responded to the Regional Director by emphasizing that the evidence submitted by ASARCO demonstrated ASARCO's good-faith reasonable uncertainty as to the Union's majority status at the Silver Bell Mine and detailing the Regional Director's mischaracterization of the evidence and Board case law. (Exhibit 6)

On March 5, 2020 -- more than five weeks after the filing of the RM petition, more than four weeks after determining to hold the election in abeyance, and more than four weeks after purportedly providing ASARCO with 48 hours to stave off dismissal of the RM Petition -- the Regional Director issued a Decision to Dismiss the RM Petition. The professed reason for dismissal was that ASARCO failed to establish good-faith reasonable uncertainty as to the Union's majority status. (Exhibit 7)

II. The Dismissal Order Should be Reversed As a Substantial Question of Law or Policy is Raised Because of the Absence of, or a Departure from, Officially Reported Board Precedent.

A. The Regional Director Failed to Apply the Proper Legal Standard Under Supreme Court and Board Precedent.

The Regional Director failed to apply the proper legal standard when determining whether the evidence submitted by ASARCO satisfied the "good-faith reasonable uncertainty" standard established under *Allentown Mack Sales & Service, Inc. v. NLRB,* which the Board is required to

follow as precedent. 522 U.S. 359, 118 S.Ct. 818, 139 L.Ed.2d 797 (1998). The Board in *Levitz Furniture* expressly adopted the "good-faith reasonable uncertainty" standard for RM petitions.

> Given our ruling above regarding withdrawals of recognition, we think it appropriate to reconsider the showing that we shall require for holding employer-requested elections. After careful consideration of all the options, we have decided to adopt the lower—uncertainty—standard. The Board and the courts have consistently said that Board elections are the preferred method of testing employees' support for unions. And we think that processing RM petitions on a lower showing of good-faith uncertainty will provide a more attractive alternative to unilateral action. By contrast, were we to require employers to demonstrate a higher showing of good-faith *belief* of lost majority support in order to obtain an RM election, as in *United States Gypsum*, we might encourage some employers instead to withdraw recognition rather than seeking an election. An employer who has enough evidence to establish a good-faith belief, though not necessarily enough to show loss of majority status, may be tempted to withdraw recognition in the hope of being able to make that showing in an unfair labor practice proceeding (and, in any event, ousting the union while the proceeding is pending). Thus, by liberalizing the standard for holding RM elections, we are promoting both employee free choice (by making it easier to ascertain employees' support for unions via Board elections) and stability in collective-bargaining relationships (which remain intact during representation proceedings).

Levitz Furniture, 333 NLRB at 727.

In the Decision to Dismiss, the Regional Director stated that the evidence submitted by ASARCO "does not necessarily" indicate that the employees no longer want to be represented by their union. (Exhibit 7, page 2). However, the appropriate standard is not whether the evidence "necessarily" supports the proposition – the standard is whether the evidence "could" support that proposition.

This is the key principle of *Allentown Mack*, which interpreted the applicable "reasonable doubt" standard to require "uncertainty" not "disbelief." At issue in *Allentown* was an employee's statement that, "he was not being represented for the $35 he was paying." The ALJ in the underlying case (whose findings were adopted by the Board) disregarded this evidence as

support for the reasonable doubt standard, stating this statement "seems like more an expression for better representation than one for no representation at all." The Supreme Court rejected that analysis, stating:

> It seems to us that it is, more accurately, simply an expression of dissatisfaction with the union's performance- which *could* reflect the speaker's desire that the union represent him more effectively, but *could also* reflect the speaker's desire to save his $35 and get rid of the union. The statement would assuredly engender an uncertainty whether the speaker supported the union, and so could not be entirely ignored.

Allentown Mack, 522 U.S. at 369 (emphasis in original).

This important principle has been noted by the federal appellate courts subsequent to *Allentown Mack.*

In *Tri-State Health Services, Inc. v. NLRB*, 374 F.3d 347 (5th Cir. 2004), the employer refused to bargain with an incumbent union. In the context of an unfair labor practice proceeding, the Board evaluated the refusal to bargain under the pre-*Levitz Furniture* good faith reasonable doubt standard requiring disbelief. Some of the evidence relied upon by the employer consisted of employee cancellations of dues checkoff authorizations. The Board rejected this evidence, stating the cancellations of dues check-off authorizations, "may be attributable to many other factors other than opposition to the union." *Id.* at 353. Rejecting the Board's analysis, the federal court relied upon *Allentown Mack,* stating:

> To claim validly that it possesses a good faith doubt regarding the union's majority status, an employer need not prove that it has a sincere belief that the union in fact lacks majority support. *Allentown Mack,* 522 U.S. at 367, 118 S.Ct. 818. Rather, it must only substantiate uncertainty on that score. *Id.* It is therefore unreasonable for the Board to disregard evidence that would tend to support the inference that workers do not support the union, even if the same evidence is capable of supporting other, more neutral inferences.
>
> ***
>
> Thus, in evaluating an employer's claim of uncertainty, the Board is not free to choose between two reasonable interpretations of the evidence and prescribe the

> one that the employer should have adopted. So long as the employer's interpretation is reasonable, and the evidence so interpreted tends to engender uncertainty as to whether the union still commands majority support, the evidence is probative and must be considered.

Id. at 353-54

In *Tri-State*, the court found that the Board's "may be attributable" analysis was inconsistent with the *Allentown Mack* analysis that certain evidence "could" also support the reasonable doubt standard. ASARCO submits that in the instant case, the Regional Director's "does not necessarily show" analysis is identical to the "may be attributable" analysis found improper in *Tri-State*. *See also*, *McDonald Partners, Inc. v. NLRB*, 331 F.3d 1002, 1006-07 (D.C. Cir. 2003), addressed more fully below.

B. <u>The Regional Director Disregarded Evidence Regarding Non-Participation in the Current Strike.</u>

In support of the RM Petition, ASARCO submitted evidence that the Union commenced a strike against ASARCO on October 13, 2019. Of the 144 employees currently employed by ASARCO at the Silver Bell Mine, 128 employees chose not to strike, and another three employees abandoned the strike and returned to work. Only eleven employees are currently on strike. Two employees were on a leave of absence at the time of the strike, and to date, remain inactive employees on leave. (Exhibit 2, Affidavit of [redacted] Paras. 11-12)

The Regional Director disregarded this evidence, stating that employees' "non-participation in a strike or abandonment of strike does not necessarily indicate that the employees no longer wish to be represented by their union." (Exhibit 7, page 2). As stated earlier, the Regional Director's "not necessarily" analysis is, on its face, at odds with *Allentown Mack's* analysis that such evidence "could also" demonstrate non-support for the union.

In addition, in support of his "not necessarily" analysis the Regional Director relied upon *Alexander Linn Hosp. Assn.*, 288 NLRB 103 (1988) and *Curtis Matheson Scientific*, 287 NLRB 350 (1987), two Board cases decided *prior to* the Supreme Court's analysis in *Allentown Mack* regarding the proper interpretation of the "good-faith reasonable uncertainty" standard and the Board's adoption of the standard in *Levitz Furniture*.

The Regional Director's reliance upon these pre-*Allentown Mack* and *Levitz Furniture* cases is faulty for other reasons as well. In *Alexander Linn*, the strike had ended over a year before the employer's withdrawal of recognition, and the employer had thereafter entered into a labor agreement, thereby making the evidence of non-participation in the strike "stale." In *Curtis Matheson Scientific*, the evidence demonstrated that only 5 out of 27 unit employees (18%) had not participated in the strike. The facts in these cases are in stark contrast to the current situation, where 92% of the bargaining unit employees are not participating in a current, ongoing strike.

C. <u>The Regional Director Disregarded Evidence Regarding Non-Membership in and Resignations from the Union.</u>

ASARCO submitted evidence that of the 144 bargaining unit employees, only 14 are members of the Union. On information and belief, 66 employees never joined the Union. Additionally, since the strike commenced on October 13, 2019, at least 29 employees have resigned their membership with the Union. Prior to the strike, another 33 had already resigned from the Union (this totals at least 62 who resigned; two other employees revoked their authorization for dues deduction, but it is unknown if they resigned from the Union.) (Exhibit 2, Affidavit of [redacted] Paras. 13-14) In resigning from the Union, each of these employees indicated they no longer want the Union to represent them because the revoked Union membership form specifies that the employee is authorizing the Union to act for the employee as a collective bargaining agent in all matters pertaining to employment at the Silver Bell Mine.

The Regional Director disregarded this evidence, stating that employees' non-membership in a union, resignation from membership in a union, or choice not to authorize automatic dues check-off "does not necessarily" indicate these employees no longer wish to be represented by their union. (Exhibit 7, page 2) Once again, the Regional Director failed to apply the proper standard as required by *Allentown Mack* and *Levitz Furniture.*

In *McDonald Partners, Inc. v. NLRB*, *above*, the employer refused to bargain based in part upon declines in union membership and union dues checkoff authorizations. The ALJ in the underlying case (as affirmed by the Board) rejected this evidence as supporting a good faith reasonable doubt as to the union's majority status. The ALJ stated that the Board had traditionally disregarded such declines as grounds for reasonable doubt because an employee may desire union representation even though they do not belong to the union or pay dues. 331 F.3d at 1006. In remanding the case to the Board, the court rejected this reasoning and application of the standard:

> This was not a correct treatment of the company's evidence. It is true that a union may enjoy majority support even if less than a majority of employees maintain union membership or authorize their employer to deduct union dues from their paychecks. *See, e.g., Furniture Rentors of Am., Inc. v. NLRB,* 36 F.3d 1240, 1244–45 (3d Cir.1994); *NLRB v. Koenig Iron Works, Inc.,* 681 F.2d 130, 138 (2d Cir.1982); *NLRB v. Silver Spur Casino,* 623 F.2d 571, 580 (9th Cir.1980). Employees may have reasons other than dissatisfaction with the union. *See Peoples Gas Sys., Inc. v. NLRB,* 629 F.2d 35, 44 (D.C. Cir.1980). They may wish to free ride on the payment of union dues by others, thereby obtaining the benefits of union representation while avoiding its financial burdens, or they may wish to pay their dues directly to the union. *See Lodges 1746 & 743, Int'l Ass'n of Machinists & Aerospace Workers v. NLRB,* 416 F.2d 809, 812 (D.C. Cir.1969) (citing *Convair Div. of Gen. Dynamics Corp.,* 169 N.L.R.B. 131, 1968 WL 18630 (1968)); *Helton v. NLRB,* 656 F.2d 883, 892 & n. 46 (D.C. Cir.1981). But the fact that the membership and dues checkoff evidence might not conclusively demonstrate lack of majority support is scarcely a reason for disregarding the evidence altogether. That is the point of this portion of the Supreme Court's opinion in *Allentown Mack*: "It must be borne in mind that the issue here is not whether [an employee's] statement clearly established a majority in opposition to

> the union, but whether it contributes to a reasonable uncertainty whether a majority in favor of the union existed." If a high percentage of checkoffs is persuasive evidence of majority support when the employees are under no obligation to join the union, *see Peoples Gas,* 629 F.2d at 40 n. 9; *Lodges 1746 & 743,* 416 F.2d at 812 & n. 8, we see no rational reason why a low percentage of checkoffs—here the percentage was zero—is not persuasive for the opposite proposition, or more accurately, why the employer could not rely on such evidence to establish good-faith doubt of the union's majority support.

Id. at 1006-1007.

Another federal court has also ruled that declines in union membership and checkoff authorizations can support the "reasonable doubt" standard as analyzed in *Allentown Mack.* In *Tri-State Health Services, Inc. v. NLRB*, the court stated:

> The Board is, of course, correct to note that a decline in checkoffs may be attributable to some innocent explanation, and an employer reasonably could conclude that such evidence does not engender any uncertainty about the level of support the union enjoys. Nevertheless, it is equally as reasonable for an employer to witness a decline in checkoffs and infer that its current work force is less supportive of the union than it was just a few years before, when eleven employees manifested support for the union by authorizing direct withdrawal of dues from their paychecks.

Tri-State Health Services, Inc., 374 F.3d at 354.

Finally, the cases cited by the Regional Director as alleged precedent for his Decision to Dismiss the RM Petition are not supportive based on the facts of those cases. First, in *Marion Hospital Corporation*, 335 NLRB 1016, 1018 (2001), enf'd. 321 F.3d 1178 (D.C. Cir. 2003), 60 of 157 bargaining unit employees (38%) resigned union membership; however, those 60 employees agreed to remain "financial core" members, thereby expressing their willingness to pay for the union's representational services. Not only does the number of bargaining unit ASARCO employees choosing not to be members of the Union clearly outweigh those in *Marion Hospital* (90% v. 38%), there is no evidence that any of those ASARCO employees chose to remain financial core members.

Second, in *Kuno Steel Products Corporation*, 252 NLRB 904 (1980), enf'd. in relevant part *NLRB v. Koenig Iron Works*, 681 F.2d 130 (2nd Cir. 1982), the Board noted that in the context of 2 out of 7 bargaining unit employees resigning union membership, the "decline in union representation is not a reliable indicator of employee lack of support for a union." However, *Kuno* was decided prior to the Supreme Court's *Allentown Mack* clarification of the appropriate standard and the Board's adoption of the good-faith reasonable uncertainty standard in *Levitz Furniture*. In addition, only 28% of the bargaining unit employees in *Kuno* were not union members, as opposed to 90% non-membership in the present case.

Finally, just as with the erroneous citation to *Kuno*, the same holds true with respect to the Regional Director's citation to *Terrell Machine Company*, 173 NLRB 1480 (1969), enf'd. 427 F.2d 1088 (4th Cir. 1970), cert. denied 398 U.S. 929 (1970) – a case both involving resignations of less than 50% of the bargaining unit, and decided pre-*Allentown Mack* and *Levitz Furniture*.

D. The Regional Director Disregarded Evidence Regarding Employee Statements of Dissatisfaction.

ASARCO submitted evidence that a number of employees made statements to ASARCO regarding their dissatisfaction with the Union, including but not limited to, statements regarding getting rid of the Union, the Union being useless, the workplace being better without a Union, and it being a mistake to join the Union as their loyalty is to ASARCO. (Exhibit 3 -- Affidavit of (b) (6), (b) (7)(C), (b) (7)(D), Paras. 13-17; Affidavit of (b) (6), (b) (7)(C), (b) (7)(D), Para. 5; Affidavit of (b) (6), (b) (7)(C), (b) (7), Paras. 8-9; Affidavit of (b) (6), (b) (7)(C), (b) (7)(D), Paras. 5-8).

The Regional Director disregarded such evidence, stating;

> limited or vague[2] employee statements of dissatisfaction are not sufficient to support an RM petition if, based on the number of statements made or the nature of the statements, they do not reliably establish good faith uncertainty as to a union's continued majority status. .... The testimony of the Petitioner's (b) (6), (b) (7)(C), (b) (7)(D) only establishes that a very small minority of unit employees have made statements about their dissatisfaction with the Union.

(Exhibit 7, page 2).

The Regional Director's analysis of the evidence and its impact is contrary to the legal standards. That only a "very small minority" of employees expressed dissatisfaction with the Union is not a determinative factor. In *Allentown Mack*, cited favorably by the Board in *Levitz Furniture* as an example of sufficient evidence of good-faith reasonable uncertainty, the evidence was that only seven out of 32 employees made statements of dissatisfaction; when considered in the context of additional evidence of dissatisfaction, the Court found the minority statements supportive of an overall reasonable uncertainty. *See also Silvan Industries*, 367 NLRB 28 (2018), noting that "some" employees' statements of disaffection would in certain cases be "enough, perhaps, to establish good faith reasonable uncertainty." *Id.* at *4.

In addition, the cases cited by the Regional Director as alleged precedent regarding employee statements of disaffection are not supportive. First, in *Henry Bierce Co.*, 328 NLRB 646, 648 n. 18 (1999), affd. and remanded 234 F.3d 1268 (6th Cir. 2000), the Board specifically noted that regarding the evidence of disaffection, the petitioner "adduced one pro-union statement and one antiunion statement." In the present case, there was no contradictory evidence presented – the employee statements of disaffection were multiple in nature, and uniformly negative regarding the Union.

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[2] Asarco will separately address the Regional Director's factual finding that the submitted statements were "vague" in Section III of this Request for Review.

Next, in *In Re Sceptor Ingot Castings, Inc.*, 331 NLRB 1509 (2000), the evidence of employee statements consisted of a single employee stating that she "felt" that the union had "no standing", that she "felt" like the employees no longer wanted a union, and that she "felt" that the union's status was "a gone issue." In the present case, rather than one employee's subjective "feelings" about the mind-set of other employees, ASARCO presented evidence of actual statements made by multiple employees expressing their own personal dissatisfactions.

Additionally, in *In Re Horizon House Development Services, Inc.*, 337 NLRB 22 (2001), the Board disregarded evidence of employee statements: (1) regarding "the difficulty of contacting the union"; (2) complaining "about being required to pay dues, when other employees were not so required"; (3) that "not all employees were paying dues because their dues cards had been lost"; and (4) that staff did not want to have union dues "taken out of their paychecks." None of these statements are similar in nature to the employee statements of obvious dissatisfaction submitted by ASARCO.

Finally, in *Transpersonnel, Inc.*, 336 NLRB 484, 486 (2002), enf'd. 349 F.3d 175 (4th Cir. 2003), the bargaining unit consisted of 23 employees. The Board considered the evidence of dissatisfaction to consist, at most, of statements from nine employees. However, at the time of the withdrawal of recognition, there were ten employees actively on strike against the employer, which the Board considered as action which "clearly indicated their support for the union." (Id. at 486). Thus, in *Transpersonnel* there was *affirmative evidence of actual support for the union by 43% of the bargaining unit*, and no additional supporting evidence of disaffection – such as 92% of the bargaining unit electing not to strike and 90% of the bargaining unit employees electing to be non-members of the Union as in the present case. In contrast, the only affirmative

evidence of record in the present case regarding "support" is that eleven employees (out of a unit of 144) are on strike.

III. The Regional Director's Decision on a Substantial Factual Issue is Clearly Erroneous On the Record, and Such Error Prejudicially Affects ASARCO's Rights.

As noted above, the Regional Director found the employee expressions of dissatisfaction submitted in support of the RM petition to be "vague." This factual finding is clearly erroneous and prejudicially affected ASARCO, as it led to the dismissal of its RM Petition.

The statements of employee dissatisfaction are not "vague" as found by the Regional Director. Rather, the statements are express statements of obvious dissatisfaction (Exhibit 3 -- Affidavit of (b) (6), (b) (7)(C), (b) (7)(D), Paras. 13-17; Affidavit of (b) (6), (b) (7)(C), (b) (7)(D), Para. 5; Affidavit of (b) (6), (b) (7)(C), (b) (7)(D), Paras. 8-9; Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) Paras. 5-8)[3]: (1) The "Union is worthless." (2) "Wouldn't it be great if we didn't have a Union?" (3) "Why can't we get rid of the Union." (4) It "was a big mistake to join, and now I feel bad for joining." (5) "My loyalty is to ASARCO." (6) "We're doing better without the Union." (7) "I wish we could get the Union out of here." (8) An employee telling a supervisor (b) (6), (b) "wanted the union gone." (9) An employee "doesn't want to be a part of it and have them [the Union] represen (b) (6), (b) (7)" (10) An employee "did not want people speaking for (b) (6), (b) (7)." (11) An employee "wants to work in a mine without a union." (12) An employee stated (b) (6), (b) was "anti-union."

These statements are not "vague" – rather, they are clear expressions of employee dissatisfaction with the Union and desires to not be represented by the Union.

[3] To maintain the privacy of employees who made statements of Union disaffection to Asarco and to protect them from retaliation by the Union or fellow Union members, identifying information regarding these employees has been redacted from the attached affidavits. Unredacted affidavits were provided to Region 28 with the filing of the RM Petition.

Based on the above, ASARCO requests that the March 5, 2020 Decision to Dismiss the instant petition be reversed, and that the Board order Region 28, through the immediate processing to a secret-ballot election, to allow ASARCO's bargaining unit employees at the Silver Bell Mine to make their own free choice about whether to continue to be represented by the Union.

WHEREFORE, ASARCO LLC and SILVER BELL MINING LLC requests that the Board reverse the Decision to Dismiss the RM Petition issued by the Regional Director of Region 28, and direct the Regional Director of Region 28 to proceed to process the RM Petition.

Respectfully submitted,

ASARCO LLC and SILVER BELL MINING LLC

By: _____
One of Its Attorneys

March 18, 2020

Richard A. Russo
Paul H. Burmeister
Davis & Campbell, LLC
401 Main Street, Suite 1600
Peoria, Illinois 61602
309-673-1681 (p)
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rarusso@dcamplaw.com
phburmeister@dcamplaw.com

CERTIFICATE OF SERVICE

I hereby state that I served a copy of the foregoing Request for Review via electronic mail to (usw937terrazas@gmail.com, gprescott@usw.org, bfickman@usw.org, rspillers@gslaw.org, gbarrett@wardkennanbarrett.com, and cornele.overstreet@nlrb.gov) and by depositing same in an envelope addressed as follows:

Alexander Terrazas, President
United Steelworkers Local 937
877 South Alvernon Way
Tucson, AZ 85711

Gerald Barrett
Ward, Keenan & Barrett, P.C.
3838 North Central Avenue, Suite 1720
Phoenix, AZ 85012

Ryan Spillers
Gilbert & Sackman
3699 Wilshire Boulevard, Suite 1200
Los Angeles, CA 90010

Cornele Overstreet, Regional Director
NLRB, Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied
Industrial and Service Workers International Union, AFL-CIO, CLC
c/o Gaylan Prescott
5 Gateway Center
Pittsburgh, PA 15222

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied
Industrial and Service Workers International Union, AFL-CIO, CLC
c/o Bruce Fickman, Associate General Counsel
60 Boulevard of the Allies, Room 807
Pittsburgh, PA 15222-1214

and by delivering same by first class mail, postage prepaid on March 18, 2020.

One of Its Attorneys

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401 Main Street, Suite 1600
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EXHIBIT 1

FORM NLRB-502 (RM)
(4-15)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RM PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 28-RM-255301	Date Filed January 27, 2020

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB Office in the Region in which the employer concerned is located. The petition must be accompanied by a certificate of service showing service on all parties named in the petition of the following: (1) the petition; (2) Statement of Position form; and (3) Description of Procedures in Certification and Decertification Cases (Form NLRB 4812). The petition must also be accompanied by evidence supporting the statement that a labor organization has made a demand for recognition on the employer or that the employer has good faith uncertainty about majority support for an existing representative. However, if the evidence reveals the names and/or number of employees who no longer wish to be represented, the evidence shall not be served on any party.

1. **PURPOSE OF THIS PETITION: RM-CERTIFICATION OF REPRESENTATIVE** – One or more individuals or labor organizations have presented a claim to the Employer/Petitioner to be recognized as the representative of employees of the Employer/Petitioner or the Employer/Petitioner has a good faith uncertainty about majority support for an existing representative. If a charge under Section 8(b)(7) of the Act has been filed involving the Employer/Petitioner named in this petition, this statement shall not be deemed made. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer/Petitioner ASARCO LLC and Silver Bell Mining LLC	2b. Address(es) of Establishment(s) involved *(Street and number, city, State, ZIP code)* 25000 W. Avra Valley Road AZ Marana 85653-
3a. Employer/Petitioner Representative – Name and Title Stacy Sinele Director of Human Resources	3b. Address (If same as 2b – state same) 5285 E. Williams Circle, Suite 2000 AZ Tucson 85711-____

3c. Tel. No. (520) 879-7818	3d. Cell No.	3e. Fax No.	3f. E-Mail Address ssinele@asarco.com

4a. Type of Establishment *(Factory, mine, wholesaler, etc.)* Metal Mining	4b. Principal product or service Copper

5a. Description of Unit Involved **Included:** See Attached Page 2 for additional details **Excluded:** See Attached Page 2 for additional details	*5b. City and State where unit is located:* Marana, AZ 6. No. of Employees in Unit: 144

*Unless a charge alleging a violation of Section 8(b)(7) is pending, check **EITHER** item 7a or 7b, whichever is applicable*

7a. ☐ A labor organization made a demand for recognition on the Employer/Petitioner on (Date) _____.

7b. ☑ The Employer/Petitioner has a good faith uncertainty about majority support for an existing representative.

8a. Recognized or Certified Bargaining Agent - Name Alexander Terrazas United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937	8b. Affiliation, if any United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International

8c. Address 877 S Alvernon Way AZ Tucson 85711-____	8d. Tel. No. (520) 243-9102 8f. Fax No.	8e. Cell No. 8g. E-Mail Address usw937terrazas@gmail.com

9. Date of Recognition or Certification 05/21/1998	10. Expiration Date of Current or Most Recent Contract, if any *(Month, Day, Year)* 10/13/2019

11. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes If so, approximately how many employees are participating? 11

(Name of labor organization) United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local has picketed the Employer since *(Month, Day, Year)* 10/13/2019

12. Organizations or individuals other than those named in item 8, which have a contract with the Employer/Petitioner or represent employees of the Employer/Petitioner or demanded recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. *(If none, so state)*

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC

12a. Name and affiliation if any Gaylan Z Prescott District Director	12b. Address Five Gateway Center PA Pittsburgh 15222-____	12c. Tel. No. 12e. Fax No.	12d. Cell No. 12f. E-Mail Address gprescott@usw.org

13. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.		13a. Election Type: ☑ Manual ☐ Mail ☐ Mixed Manual/Mail
13b. Election Date(s): proposed:2/18 and 2/19/2020	13c. Election Time(s): proposed: 4:30 - 7:30 am & 5:30 - 7:00 pm	13d. Election Location(s): 25000 W. Avra Valley Road, Marana, AZ 85653

14. Representative of the Employer/Petitioner who will accept service of all papers for purposes of the representation proceeding.

14a. Name and Title Richard A Russo Attorney Davis & Campbell LLC	14b. Address *(street and number, city, state, and ZIP code)* 401 Main Street, Suite 1600 IL Peoria 61602-____

14c. Tel No. (309) 673-1681	14d. Cell No.	14e. Fax No. (309) 673-1690	14f. E-Mail Address rarusso@dcamplaw.com

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name *(Print)*	Signature	Title	Date
Stacy Sinele	Stacy Sinele	Director of Human Resources	01/27/2020 14:40:13

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

Attachment

Employees Included

All production and maintenance employees of the Employer at the Silver Bell Mine

Employees Excluded

All office clerical, technical, & professional employees, watchmen and supervisors

EXHIBIT 2

AFFIDAVIT OF (b) (6), (b) (7)(C), (b) (7)(D) [redacted]

(b) (6), (b) (7)(C), (b) (7)(D) [redacted] having first been duly sworn, states upon oath as follows:

1. I am employed by ASARCO LLC ("ASARCO") as (b) (6), (b) (7)(C), (b) (7)(D) at ASARCO's office in Tucson, Arizona.

2. ASARCO is a Delaware limited liability company and is a fully integrated miner, smelter, and refiner of copper and other metals. ASARCO currently operates three mines and one processing facility in Arizona and one processing facility in Texas.

3. One of the three mines, located in Marana, Arizona ("Silver Bell Mine"), is owned and operated by Silver Bell Mining LLC ("Silver Bell Mining"). Silver Bell Mining is fully-owned by AR Silver Bell Inc. AR Silver Bell Inc. is a wholly owned subsidiary of ASARCO.

4. Silver Bell Mining has an arrangement with ASARCO for the procurement of administrative services provided by ASARCO, including assisting with (b) (6), (b) (7)(C), (b) (7)(D) [redacted] (b) (6), (b) (7)(C), (b) (7)(D) [redacted] (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine.

5. The employees at the Silver Bell Mine are represented by the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937 ("Union").

6. As (b) (6), (b) (7)(C), (b) (7)(D) at ASARCO, I administer and oversee (b) (6), (b) (7)(C), (b) (7)(D) [redacted] (b) (6), (b) (7)(C), (b) (7)(D) at ASARCO, including providing (b) (6), (b) (7)(C), (b) (7)(D) and (b) (6), (b) (7)(C), (b) (7)(D) [redacted] (b) (6), (b) (7)(C), (b) (7)(D) to Silver Bell Mining.

7. In providing (b) (6), (b) (7)(C), (b) (7)(D) and (b) (6), (b) (7)(C), (b) (7)(D) to Silver Bell Mining, I have access to (b) (6), (b) (7)(C), (b) (7)(D) and (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine, including (b) (6), (b) (7)(C), (b) (7)(D) [redacted] (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), (b) (7)(D) [redacted].

8. On October 13, 2019, the Union commenced a strike at the Silver Bell Mine.

9. I am aware of the job status of Silver Bell Mine employees, including which employees are on strike and which employees are working, as well as which employees have notified management at the Silver Bell Mine regarding Union membership.

10. Based on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) at Silver Bell Mine, I prepared the attached spreadsheet containing the names, job classifications, department, strike status and union membership status of current employees at Silver Bell Mine. *See attached Exhibit 1.*

11. At the time of the strike on October 13, 2019, there were 147 employees in the bargaining unit at the Silver Bell Mine. There are currently 144 bargaining unit employees at the Silver Bell Mine.

12. Of the current employees, 131 employees crossed the picket line and continued to work at the Silver Bell Mine. Of those employees 128 of them never went on strike in the first place, and 3 abandoned the strike and returned to work. At present, there are only 11 employees striking at the Silver Bell Mine. Also, two employees were on a leave of absence at the time of the strike, and to date, remain inactive employees on leave.

13. Of the 144 bargaining unit employees currently employed at the Silver Bell Mine, on information and belief, only 14 of those employees are members of the Union.

14. Also on information and belief, of the 144 current bargaining unit employees, 66 of those employees never joined the Union in the first place, and at least 62 resigned their membership with the Union. This includes 29 employees who resigned since the strike began on October 13, 2019. Two other employees revoked their dues deduction authorizations but it is unknown if they resigned their Union membership.

I have read the foregoing fourteen (14) typewritten paragraphs and the statements contained therein are true and correct to the best of my knowledge and belief.

(b) (6), (b) (7)(C), (b) (7)(D)

[redacted]

(b) (6), (b) (7)(C), (b) (7)(D)

Subscribed and sworn to before me this 27th day of January, 2020.

Jacqueline Haas

Notary Public

JACQUELINE HAAS
Notary Public - State of Arizona
PIMA COUNTY
Commission # 562702
Expires May 17 2023

Employee ID	Last Name	First Name	Job Code Description	Department	Strike Status	Union Membership Status	Date Resigned from Union
(b) (6), (b) (7)(C	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	6/24/2015
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/14/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/14/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	On Strike	Member	Not Applicable
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Leave of Absence	Member	Not Applicable
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	6/20/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	6/23/2015
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	On Strike	Member	Not Applicable
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	2/2/2015
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/15/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/15/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	8/3/2017
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	On Strike	Member	Not Applicable
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	On Strike	Member	Not Applicable
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/14/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	11/28/2018
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/14/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/15/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/15/2014
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	12/7/2018
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/14/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	3/16/2015
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	6/30/2015
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/17/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	On Strike	Member	Not Applicable
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/16/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	6/5/2018
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Unknown	10/15/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	On Strike	Member	Not Applicable
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Return to Work	Member	Not Applicable
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	8/2/2015
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	5/2/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/14/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	9/7/2020
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	6/24/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	4/10/2018
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	7/10/2013
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined

(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)			
[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	7/7/2015
				Did Not Strike	Resigned	10/14/2019
				Did Not Strike	Resigned	5/19/2010
				Did Not Strike	Resigned	6/13/2015
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Resigned	10/15/2019
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Resigned	12/7/2017
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Resigned	10/14/2019
				Did Not Strike	Resigned	10/15/2019
				Did Not Strike	Resigned	10/8/2019
				Did Not Strike	Resigned	8/1/2019
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Resigned	8/1/2017
				Did Not Strike	Resigned	10/14/2019
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Unknown	10/15/2018
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Resigned	1/15/2019
				On Strike	Member	Not Applicable
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Resigned	9/5/2019
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Resigned	10/14/2019
				Did Not Strike	Resigned	7/15/2021
				Did Not Strike	Resigned	10/16/2019
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Resigned	10/16/2019
				Did Not Strike	Resigned	8/15/2014
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Resigned	12/5/2015
				Did Not Strike	Resigned	7/6/2015
				On Strike	Member	Not Applicable
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Resigned	10/14/2019
				Did Not Strike	Resigned	8/1/2002
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Resigned	10/15/2019
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Resigned	10/14/2019
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Resigned	10/17/2019
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Never Joined	Never Joined
				On Strike	Member	Not Applicable
				Did Not Strike	Resigned	10/14/2019
				Return to Work	Resigned	10/28/2019
				Return to Work	Member	Not Applicable
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Resigned	10/14/2019
				Did Not Strike	Resigned	10/10/2018
				On Strike	Member	Not Applicable
				Did Not Strike	Never Joined	Never Joined
				Leave of Absence	Member	Not Applicable
				Did Not Strike	Resigned	7/15/2015
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Never Joined	Never Joined
				On Strike	Resigned	10/14/2019
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Never Joined	Never Joined
				Did Not Strike	Resigned	11/28/2018
				Did Not Strike	Resigned	10/15/2019

EXHIBIT 3

AFFIDAVIT OF (b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D) having first been duly sworn, states upon oath as follows:

1. I am employed by ASARCO LLC ("ASARCO") as (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine in Marana, Arizona.

2. As (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine, I (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine.

3. The employees at the Silver Bell Mine are represented by the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937 ("Union").

4. As (b) (6), (b) (7)(C), (b) (7)(D), I have access to (b) (6), (b) (7)(C), (b) (7)(D) and (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine, and (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine.

5. I am also responsible for (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D). Additionally, (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) I am (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) and (b) (6), (b) (7)(C), (b) (7)(D)

6. At various times in the past, (b) (6), (b) (7)(C), (b) (7)(D) the Union has (b) (6), (b) (7)(C), (b) (7)(D). The Union membership form states: "I hereby request and accept membership in the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (also known in short as 'United Steelworkers' or 'USW'), and of my own free will hereby authorize the USW, its agents or representatives to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wage, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters including contracts which may require continuance of my membership in the United Steelworkers, as a condition of my continued employment."

7. On October 13, 2019, the Union commenced a strike at the Silver Bell Mine.

8. I am aware of the job status of employees, including which employees are on strike and which employees are working, as well as which employees have notified management at the Silver Bell Mine regarding Union membership.

9. At the time of the strike on October 13, 2019, there were 147 employees in the bargaining unit at the Silver Bell Mine. There are currently 144 bargaining unit employees at the Silver Bell Mine.

10. Of the current employees, 131 employees crossed the picket line and continued to work at the Silver Bell Mine. Of those employees 128 of them never went on strike in the first place, and 3 abandoned the strike and returned to work. At present, there are only 11 employees striking at the Silver Bell Mine. Also, 2 employees were on a leave of absence at the time of the strike, and to date, remain inactive employees on leave.

11. Of the 144 bargaining unit employees currently employed at the Silver Bell Mine, on information and belief, only 14 of those employees are members of the Union

12. Also on information and belief, of the 144 current bargaining unit employees, 66 of those employees never joined the Union in the first place, and at least 62 resigned their membership with the Union. This includes 29 employees who resigned since the strike began on October 13, 2019. 2 other employees revoked their dues deduction authorizations but it is unknown if they resigned their Union membership.

13. Besides (b) (6), (b) (7)(C), (b) (7)(D) several employees (b) (6), (b) (7)(C), (b) (7)(D)

14. One such employee was [redacted] Over the course of several different conversations, [redacted], made statements to me such as the "Union is useless", "Why do we have a Union?" and "Wouldn't it be great if we didn't have a Union".

15. Another employee was [redacted]. Sometime in September or October before the beginning of the strike, [redacted] said to me something like "Why can't we get rid of the Union?"

16. On October 11, 2019, [redacted] informed me that the Union "was a big mistake to join, and I feel bad now for joining. My loyalty is to ASARCO."

17. On January 16, 2020, [redacted], told me "We're doing better without the Union."

(b) (6), (b) has read the foregoing seventeen (17) typewritten paragraphs and the statements contained therein are true and correct to the best of knowledge and belief.

(b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D)

Subscribed and sworn to before me this 24th day of January, 2020.

Notary Public

AFFIDAVIT OF (b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D), having first been duly sworn, states upon oath as follows:

1. I am employed by ASARCO LLC ("ASARCO") as (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine in Marana, Arizona.

2. As (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine, I (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine.

3. The employees at the Silver Bell Mine are represented by the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937 ("Union").

4. On October 13, 2019, the Union commenced a strike at the Silver Bell Mine.

5. A few weeks after the strike began, two employees came into my office. One of the employees was [redacted] and the other was [redacted]. While in my office, [redacted] said "I wish we could get the Union out of here". In response to [redacted] statement, [redacted] discussed [redacted] understanding of how the decertification process worked.

6. Prior to the strike, in September 2019, I became aware of an incident between employees related to the Union. I learned that the Union, in August and September 2019, was making an effort to increase union membership. I also know this was coincidental to the Union receiving ASARCO's last, best and final offer during contract negotiations on September 5, 2019.

7. In September 2019, I learned that [redacted] felt harassed by one of [redacted] (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D), because [redacted] was not supporting the Union. To my knowledge, [redacted] then stated something to [redacted] akin to, 'you need to get your people in line.'

8. To my knowledge, during the time the Union and [redacted] were attempting to garner additional employee support in September of 2019, no employee of Silver Bell joined the Union. In fact, during that time, it is my understanding that several Silver Bell employees instead decided to quit the Union.

I have read the foregoing eight (8) typewritten paragraphs and the statements contained therein are true and correct to the best of m[redacted]e and belief.

(b) (6), (b) (7)(C), (b) (7)(D)

[redacted]

(b) (6), (b) (7)(C), (b) (7)(D)

Subscribed and sworn to before me this 23rd day of January, 2020.

EMILY SCHMITT
Notary Public, State of Arizona
Pima County
Commission # 568719
My Commission Expires
June 24, 2023

Emily Schmitt
Notary Public

AFFIDAVIT OF (b) (6), (b) (7)(C), (b) (7)(D) [redacted]

(b) (6), (b) (7)(C), (b) (7)(D) [redacted] having first been duly sworn, states upon oath as follows:

1. I am employed by ASARCO LLC ("ASARCO") in (b) (6), (b) (7)(C), (b) (7)(D) [redacted] department at the Silver Bell Mine in Marana, Arizona.

2. In (b) (6), (b) (7)(C), (b) (7)(D) [redacted] at the Silver Bell Mine, I (b) (6), (b) (7)(C), (b) (7)(D) [redacted] (b) (6), (b) (7)(C), (b) (7)(D) [redacted] functions at the Silver Bell Mine.

3. The employees at the Silver Bell Mine are represented by the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937 ("Union").

4. On October 13, 2019, the Union commenced a strike at the Silver Bell Mine.

5. After the Union contract expired on October 13, 2019, I was approached by several employees (b) (6), (b) (7)(C), (b) (7)(D) [redacted] and (b) (6), (b) (7)(C), (b) (7)(D) [redacted] (b) (6), (b) (7)(C), (b) (7)(D) [redacted]

6. As part of my job, I (b) (6), (b) (7)(C), (b) (7)(D) [redacted] (b) (6), (b) (7)(C), (b) (7)(D) [redacted]. I also (b) (6), (b) (7)(C), (b) (7)(D) [redacted] (b) (6), (b) (7)(C), (b) (7)(D) [redacted] and where appropriate, (b) (6), (b) (7)(C), (b) (7)(D) [redacted]

7. Since the strike started, more employees than usual have resigned from the Union.

8. One of those employees, [redacted], told me (b) (6), (b) [redacted] was, "upset about being in the union." (b) (6), (b) [redacted] continued to tell me that (b) (6), (b) [redacted] wanted the union gone.

9. Another employee I spoke with shortly before the strike was [redacted]. [redacted] told me, (b) (6), (b) [redacted] felt misled by the union and they didn't support (b) (6), (b) [redacted] or include (b) (6), (b) [redacted] in important discussions or meetings. (b) (6), (b) [redacted] said that the union served a purpose at one time but they don't anymore so (b) (6), (b) [redacted] doesn't want to be a part of it and have them represent (b) (6), (b) [redacted]."

I have read the foregoing nine (9) typewritten paragraphs and the statements contained therein are true and correct to the best of my knowledge and belief.

(b) (6), (b) (7)(C), (b) (7)(D)

[redacted]

(b) (6), (b) (7)(C), (b) (7)(D)

Subscribed and sworn to before me this 23rd day of January, 2020.

Deborah McMorrow

Notary Public

DEBORAH MCMORROW
Notary Public, State of Arizona
Pima County
Commission # 559716
My Commission Expires
July 16, 2023

AFFIDAVIT OF (b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D) having first been duly sworn, states upon oath as follows:

1. I am employed by ASARCO LLC ("ASARCO") as (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine in Marana, Arizona.

2. As (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine, I (b) (6), (b) (7)(C), (b) (7)(D) (b) (6), (b) (7)(C), (b) (7)(D) and (b) (6), (b) (7)(C), (b) (7)(D) at the Silver Bell Mine.

3. The employees at the Silver Bell Mine are represented by the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, Local 937 ("Union").

4. On October 13, 2019, the Union commenced a strike at the Silver Bell Mine.

5. While working as (b) (6), (b) (7)(C), (b) (7)(D), I have heard several of my employees express that they did not want to be represented by a union.

6. One of the employees is [redacted]. In 2019, [redacted] told me that [redacted] did not like the Union, and in particular, "Did not want people speaking for [redacted]." [redacted] dropped out of the Union in 2017 or 2018 and told me that [redacted], "Did not want to strike."

7. Another employee who has expressed dissatisfaction with the Union in 2019 is [redacted]. [redacted] is a [redacted]. [redacted] told me that [redacted], "wants to work in a mine without a union."

8. Finally, one of the [redacted], [redacted], spoke to me recently about the Union. [redacted] told me [redacted] is, "anti-union".

I have read the foregoing eight (8) typewritten paragraphs and the statements contained therein are true and correct to the best of my knowledge and belief.

(b) (6), (b) (7)(C), (b) (7)(D)

(b) (6), (b) (7)(C), (b) (7)(D)

Subscribed and sworn to before me this 23rd day of January, 2020.

Emily Schmitt
Notary Public

EMILY SCHMITT
Notary Public, State of Arizona
Pima County
Commission # 568719
My Commission Expires
June 24, 2023

EXHIBIT 4

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

ASARCO LLC AND SILVER BELL MINING LLC **Employer/Petitioner** **and** **UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937, AFL-CIO, CLC** **Union**	**Case 28-RM-255301**

NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on **Wednesday, February 5, 2020** and on consecutive days thereafter until concluded, at the National Labor Relations Board Hearing Room, 2600 North Central Avenue, Suite 1400, Phoenix, AZ 85004, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, ASARCO LLC and Silver Bell Mining LLC must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **Noon** Mountain Standard time on Tuesday, February 4, 2020. The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Mountain Standard on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: January 28, 2020

Cornele A. Overstreet, Regional Director
National Labor Relations Board - Region 28

EXHIBIT 5

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004

Agency Website: www.nlrb.gov
Telephone: (602)640-2160
Fax: (602)640-2178

Agent's Direct Dial: (602)416-4769

February 5, 2020

VIA E-MAIL ONLY:

Richard A. Russo, Attorney at Law
Davis & Campbell LLC
401 Main Street, Suite 1600
Peoria, IL 61602
E-mail: rarusso@dcamplaw.com

Paul Burmeister, Attorney at Law
Davis & Campbell, LLC
333 South Wabash Avenue, Suite 2700
Chicago, IL 60604
E-mail: phburmeister@dcamplaw.com

Re: ASARCO LLC and Silver Bell Mining LLC
Case 28-RM-255301

Gentlemen:

I am writing this letter to inform you that the documents and information submitted by ASARCO LLC and Silver Bell Mining LLC (the Petitioner) in the above-referenced matter does not establish a good-faith uncertainty as to the Union's continued majority status as set forth in *Levtiz Furniture Co. of the Pacific*, 333 NLRB 717 (2001).

In petitioning the Board for an election to question the continued majority of an incumbent union, employers must demonstrate a "good-faith reasonable uncertainty (rather than disbelief) as to unions' continuing majority status." *Levitz Furniture Co. of the Pacific, Inc. (Levitz)*, 333 NLRB 717 (2001). The petition must be supported by evidence, viewed in its entirety, which might establish good-faith uncertainty as to the union's continued majority status. The information submitted by the employer must be specific and detailed. For example, names of employees must be listed. The evidence must be objective and reliably indicate that a majority of the employees oppose the incumbent union, rather than mere speculation. Such evidence would include, but is not limited to, antiunion petitions signed by unit employees, firsthand employee statements indicating a desire to no longer be represented by the incumbent union, employees' unverified statements regarding other employees' antiunion sentiments, and employees' statements expressing dissatisfaction with the union's performance as bargaining representative. Case Handling Manual Part II "Representation Proceedings" Section 11042; *Levitz*, supra at 728, 729; see also General Counsel Memorandum 02-01 "Guideline Memorandum Concerning *Levitz*" at 9, 10.

The failure of new hires and/or strike replacements to join the Union, employees' failure to pay dues to the Union or authorize dues check off, employee turnover in the bargaining unit, nonparticipation in a strike, and anti-union statements by a minority of unit employees, whether considered individually or cumulatively, do not establish good-faith reasonable uncertainty. *Levitz* at 729, and cases cited therein. See also *Atlanta Hilton & Towers*, 278 NLRB 474, 480-481 (1981); *Alexander Linn Hospital Association*, 288 NLRB 103, 107-109 (1988); and *Flex Plastics, Inc.*, 262 NLRB 651, 657-568 (1982).

Accordingly, the Employer has **48 hours** to present sufficient evidence of a good-faith reasonable uncertainly as to the Union's continued majority status or to withdraw the instant petition. Absent such evidence or withdrawal, the Employer's petition will be dismissed. In addition, the Employer must submit a list of all unit employees, including names, job classifications, and identifying whether they are strikers, non-strikers/crossovers, permanent or temporary replacements, or new hires.

Very truly yours,

/s/ Cornele A. Overstreet

Cornele A. Overstreet
Regional Director

CAO/KAS/dmm

EXHIBIT 6

401 Main Street
Suite 1600
Peoria, Illinois 61602-1241
Tel: (309) 673-1681
Fax: (309) 673-1690
www.dcamplaw.com

Davis & Campbell L.L.C.

File Number: 32248-021

February 6, 2020

VIA ELECTRONIC MAIL & FEDERAL EXPRESS
Cornele A. Overstreet
Regional Director
National Labor Relations Board
Region 28
2600 N. Central Ave, Suite 1400
Phoenix, AZ 85004

Re: ASARCO LLC and Silver Bell Mining LLC
Case 28-RM-255301

Dear Mr. Overstreet:

ASARCO LLC and Silver Bell Mining LLC ("Petitioner") are writing in response to your February 5, 2020 letter wherein you have erroneously decided to deny employees their free choice to choose whether or not they want to continue to be represented by USW, Local 937 ("Union") at the Silver Bell Mine. This despite the fact that the Petitioner provided evidence that a number of employees had made statements expressing dissatisfaction with the Union, that at least 128 out of 142 (90%) active employees chose not to be members of the Union and that 131 out of 142 (92%) active employees chose not to strike.

Your citation to *Levitz Furniture* in justifying your decision mischaracterizes the evidence the Board indicated would be required to make a showing of good faith reasonable uncertainty. For example, contrary to your assertion that statements from a minority of employees is insufficient evidence, the Board, in *Levitz Furniture*, cited favorably to the *Allentown Mack* case wherein only 7 of 32 employees indicated their personal dissatisfaction with the Union, and indicated that such evidence was sufficient to establish a good faith reasonable uncertainty by an employer.

Moreover, the evidence presented by Petitioner is clearly distinguishable from the two cases cited by *Levitz Furniture* as being insufficient to establish a good faith reasonable uncertainty. In one case, *Sceptor Ingot Casings*, the employer only relied on ambiguous statements from one employee about union dissatisfaction and the amount of employee turnover as its evidence. In the other case, *Henry Bierce Co.*, the employer's evidence was that only one employee made an anti-union statement, and the remaining evidence was that newly hired employees failed to join the union, "some" employees failed to sign the dues checkoff, and the union's failure to file grievances, appoint a steward or submit a tentative agreement for ratification.

In stark contrast, besides providing a number of statements of dissatisfaction with the Union, the Petitioner also provided evidence that 128 Silver Bell employees have chosen not to be members of the Union, with 66 employees having never joined the Union in the first place (including not only new employees, but many long-term employees) and another 62 employees having resigned their membership with the Union (more than half prior to the October 13, 2019 strike).

Additionally, the Petitioner's evidence does not simply show that "some" employees failed to sign dues checkoff, the Petitioner can demonstrate that 130 employees either revoked their Union dues deduction authorization or did not ever authorize dues deduction.

Moreover, the Petitioner did not just demonstrate that "some" employees chose not to participate in the strike, the Petitioner provided evidence that almost all of its 142 active employees chose not to participate, and have crossed the picket line and are working during the strike.[1]

The remaining cases cited in your letter as supporting the dismissal of the RM Petition, besides being factually distinguishable, are inapposite as they were decided prior to *Levitz Furniture* using a higher standard of good faith belief, which was rejected by the Board in *Levitz Furniture* and replaced with a more lenient reasonable uncertainty standard.

> Given our ruling above regarding withdrawals of recognition, we think it appropriate to reconsider the showing that we shall require for holding employer-requested elections. After careful consideration of all the options, we have decided to adopt the lower—uncertainty—standard. The Board and the courts have consistently said that Board elections are the preferred method of testing employees' support for unions. And we think that processing RM petitions on a lower showing of good-faith uncertainty will provide a more attractive alternative to unilateral action. By contrast, were we to require employers to demonstrate a higher showing of good-faith *belief* of lost majority support in order to obtain an RM election, as in *United States Gypsum*, we might encourage some employers instead to withdraw recognition rather than seeking an election. An employer who has enough evidence to establish a good-faith belief, though not necessarily enough to

---

[1] All of the statistical information is contained in the Silver Bell employee list attached as Exhibit A. Per your February 5 request for employee information, Exhibit A is a copy of the employee list previously submitted as Exhibit 1 to the Affidavit of [redacted] (b) (6), (b) (7)(C), (b) (7)(D) filed in support of the RM Petition, with the hire date added for each employee and "Revoked Dues Deduction" added to the "Date resigned from Union" column title to indicate, that unless otherwise noted, they are the same date. All employees hired after October 13, 2019 are permanent replacements.

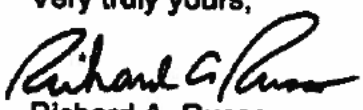
> show loss of majority status, may be tempted to withdraw recognition in the hope of being able to make that showing in an unfair labor practice proceeding (and, in any event, ousting the union while the proceeding is pending). Thus, by liberalizing the standard for holding RM elections, we are promoting both employee free choice (by making it easier to ascertain employees' support for unions via Board elections) and stability in collective-bargaining relationships (which remain intact during representation proceedings).

Levitz Furniture, at 727.

Simply put, the objective evidence submitted by the Petitioner shows that nearly every employee at Silver Bell Mine, not just "some" employees, have taken affirmative measures to show their dissatisfaction with the Union and its failed representation of employees at Silver Bell Mine. Under the circumstances, in accordance with *Levitz Furniture*, the Petitioner has clearly established a good faith reasonable uncertainty as to the majority status of the Union at the Silver Bell Mine.

Therefore, in accordance with *Levitz Furniture*, the RM Petition should not be dismissed and the Silver Bell Mine employees should be afforded the opportunity, through a Board election, to exercise their free choice as to whether or not they want to continue to be represented by the Union.

Very truly yours,



Richard A. Russo

Emp ID	Last Name	First Name	Job Code Description	Department	Hire Date	Strike Status	Union Membership Status	Date Resigned from Union/Revoked Dues Deduction
(b) (6), (b) (7)(	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	6/24/2015
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/16/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/14/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	On Strike	Member	Not Applicable
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Leave of Absence	Member	Not Applicable
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	6/28/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	6/23/2015
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	On Strike	Member	Not Applicable
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	2/2/2015
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/16/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/15/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	8/3/2017
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	On Strike	Member	Not Applicable
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	On Strike	Member	Not Applicable
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/14/2019
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	11/28/2018
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/14/2019
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	On Strike	Member	Not Applicable
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	10/16/2019
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Return to Work	Member	Not Applicable
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	6/2/2015
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[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Never Joined	Never Joined

(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)			
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	Did Not Strike	Resigned	7/7/2015
						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Resigned	5/19/2010
						Did Not Strike	Resigned	6/23/2015
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/16/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	12/7/2017
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Resigned	10/15/2019
						Did Not Strike	Resigned	10/8/2019
						Did Not Strike	Resigned	8/1/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	8/1/2017
						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Unknown	Revoked Dues 10/16/2018
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	1/15/2019
						On Strike	Member	Not Applicable
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	9/5/2019
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						Did Not Strike	Never Joined	Never Joined
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						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Resigned	7/15/2013
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						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/16/2019
						Did Not Strike	Resigned	8/15/2014
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	12/5/2016
						Did Not Strike	Resigned	7/1/2015
						On Strike	Member	Not Applicable
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Resigned	8/1/2002
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/15/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/14/2019
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						Did Not Strike	Resigned	10/17/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						On Strike	Member	Not Applicable
						Did Not Strike	Resigned	10/14/2019
						Return to Work	Resigned	10/28/2019
						Return to Work	Member	Not Applicable
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	10/14/2019
						Did Not Strike	Resigned	10/10/2018
						On Strike	Member	Not Applicable
						Did Not Strike	Never Joined	Never Joined
						Leave of Absence	Member	Not Applicable
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						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						On Strike	Resigned	10/14/2019
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Never Joined	Never Joined
						Did Not Strike	Resigned	11/28/2018
						Did Not Strike	Resigned	10/15/2019

EXHIBIT 7

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 28
2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004

Agency Website: www.nlrb.gov
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March 5, 2020

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Re: ASARCO LLC and
Silver Bell Mining LLC
Case 28-RM-255301

Dear Counsel:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

Decision to Dismiss: As a result of the investigation, I find that further proceedings on the petition are not warranted.

An employer representation (RM) petition must be supported by evidence that the employer possesses a good-faith reasonable uncertainty concerning the union's continued majority status. *Levitz Furniture Co. of the Pacific, Inc.*, 333 NLRB 717, 717 (2001) (*Levitz*). ASARCO LLC and Silver Bell Mining LLC (the Petitioners) have failed to present such evidence.

In support of their claim of good-faith reasonable uncertainty, the Petitioners submitted non-Board affidavits from [redacted] (b) (6), (b) (7)(C), (b) (7)(D) for the Petitioners attesting to the following:

- most unit employees have not participated in a strike called by the Union, and some have abandoned the strike;

- on information and belief, most unit employees are not members of the Union and do not pay dues, including some who resigned before the strike began and some who resigned after the strike began; and

- a very small minority of unit employees have expressed dissatisfaction with the Union to supervisors for the Petitioners.

It is well-established that employees' non-participation in a strike or abandonment of a strike does not necessarily indicate that the employees no longer want to be represented by their union. *Alexander Linn Hospital Association*, 288 NLRB 103 (1988), enfd., *NLRB v. Wallkill Valley General Hospital*, 866 F.2d 632 (3d Cir. 1989); *Curtin Matheson Scientific*, 287 NLRB 350, 352 (1987), enf. denied, 859 F.3d 362 (5th Cir. 1988), rev'd and remanded, 494 U. S. 775 (1990), enfd. on remand, 905 F.2d 871 (5th Cir. 1990). Employees may choose not to participate in a strike for reasons other than a desire not to be represented for a union. *Id.* For example, they may still want to be represented by their union but choose not to participate in a strike for financial reasons: they may not be in a position to incur the loss of income and employment benefits resulting from participation in a strike, or they may fear temporary or permanent loss of employment or other negative consequences due to replacement or unlawful retaliation. *Id.* Further, they may still want to be represented by their union but not participate in a strike because they do not agree with the objectives of that particular strike or with the use of a strike as a means to achieve those objectives. *Id.*

It is also well-established that employees' non-membership in a union, resignation from membership in a union, or choice not to authorize automatic dues check-off does not necessarily indicate that the employees no longer want to be represented by their union. *Marion Hospital Corporation*, 335 NLRB 1016, 1018-1019 (2001), enfd., 321 F.3d 1178 D.C. Cir. 2003); *Kuno Steel Products Corp.*, 252 NLRB 904, 904-905 (1980), enfd. in relevant part, *NLRB v. Koenig Iron Works*, 681 F.2d 130 (2d Cir. 1982); *Terrell Machine Company*, 173 NLRB 1480, 1481 (1969), enfd., 427 F.2d 1088 (4th Cir. 1970), cert. denied, 398 U.S. 929 (1970). Employees may choose not to be members of a union, to resign from membership in a union, or not to authorize automatic dues check-off but still want to be represented by their union. *Id.* For example, they may still want to be represented by their union but not incur the cost of dues; they may still want to be represented by their union but choose not to become members or choose to resign to avoid fines for not participating in a strike; or they may want to be represented by their union and may in fact be members but choose to pay their dues directly to their union and not with their employer as an intermediary. *Id.*

Finally, limited or vague employee statements of dissatisfaction are not sufficient to support an RM petition if, based on the number of statements made or the nature of the statements, they do not reliably establish good-faith uncertainty as to a union's continued majority status. *Levitz*, 333 NLRB at 729, citing *Henry Bierce Company*, 328 NLRB 646 (1999), affd. and remanded 234 F.3d 1268 (6th Cir. 2000), and *Scepter Ingot Castings, Inc.*, 331 NLRB 1509 (2000); see also *Horizon Health Developmental Services, Inc.*, 337 NLRB 22, 23-26 (2001); *Transpersonnel, Inc.*, 336 NLRB 484 (2001), enfd., 349 F.3d 175 (4th Cir. 2003). The testimony of the Petitioners' (b) (6), (b) (7)(C), (b) (7)(D) only establishes that a very small minority of unit employees have made statements about their dissatisfaction with the Union.

Having considered all of the evidence submitted by the Petitioners as a whole, I find that the Petitioners have not established good-faith reasonable uncertainty as to the Union's continued majority status.

Accordingly, I am dismissing the petition in this matter.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: Unless otherwise permitted under Section 102.5 of the Board's Rules and Regulations, a request for review must be filed electronically (E-Filed) on the Board's website (www.nlrb.gov) by following the instructions on the website. If a request for review is filed electronically, it will be considered timely filed if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on **March 19, 2020**. To file electronically, once the Board's website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review 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, absent a determination of technical failure of the site, with notice of such posted on the website.

A party that files a request for review in paper format must accompany the filing with a statement explaining why the party does not have access to the means for filing electronically or why filing electronically would impose an undue burden. If a request for review is filed in paper format it will be considered timely filed if it is received by the Executive Secretary of the Board in Washington, DC, by the close of business **(5:00 p.m. Eastern Time)** on **March 19, 2020**.

Section 102.5 of the Board's Rules does not permit a request for review to be filed by facsimile transmission.

A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other

parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

Cornele A. Overstreet
Regional Director

cc: Office of the Executive Secretary (by e-mail)

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CAO/KAS/dmm

United States of America
Before the National Labor Relations Board

ASARCO LLC and SILVER BELL MINING LLC,

Employer / Petitioner,

and Case 28-RM-255301

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL 937,

Union.

Opposition to Request for Review

The United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 937 ("the Union") submits this opposition to ASARCO LLC and Silver Bell Mining LLC ("the Employer")'s Request for Review, dated March 18, 2020. The Employer is seeking review of the Regional Director's decision, dated March 5, 2020, dismissing the RM Petition filed by the Employer.[1] However, the Employer has failed to establish any basis under Rule 102.67(d) for the National Labor Relations Board ("the Board") to grant review of the Regional Director's Decision.

Under the Board's Rules and Regulations, a request for review should only be granted if: (1) a substantial question of law or policy is raised because the Regional Director has departed from, or failed to apply, Board precedent; (2) the Regional Director's factual findings are clearly erroneous on the record and prejudicially affect the rights of a party; (3) there was prejudicial

[1] For the purpose of this Statement in Opposition, citations to the Regional Director's Decision will be "RD Dec." followed by a page number, and citations to the Employer's Request for Review will be "Er. RFR" followed by a page or exhibit number.

error arising from the conduct of the hearing; or (4) there are compelling reasons for reconsideration of an important Board rule or policy. *See* 29 CFR § 102.67(d). None of these factors are present here.

Still, the Employer argues that the Regional Director misapplied *Allentown Mack Sales & Service, Inc. v. NLRB*[2] and *Levitz Furniture Co. of the Pacific, Inc*.[3] and made factual determination that were clearly erroneous and prejudiced the Employer. For the reasons described below, these arguments are unpersuasive. In short, the Regional Director applied the correct Board precedent to the relevant facts, and reached a predictable conclusion: the Employer's Petition was deficient. Accordingly, the Union respectfully requests that the Board refrain from issuing a Notice to Show Cause, deny the Employer's Request for Review, and give finality to the Regional Director's Decision.

Argument

I. The Regional Director Did Not Depart from Board Precedent Before Dismissing the Employer's Petition.

The Employer begins by arguing that, in effect, the Regional Director applied a higher standard for considering whether the Petition was supported by sufficient evidence. *See* Er. RFR, at 4-7. That is not so. The Regional Director applied the proper standard articulated under *Allentown Mack* and *Levitz*, and the Regional Director's Decision is fully consistent with existing Board law. Accordingly, there is no basis for granting review under the Board's Rules and Regulations. *See* 29 CFR § 102.67(d)(1).

[2] 522 U.S. 359 (1998) ("*Allentown Mack*").

[3] 333 NLRB 717 (2001) ("*Levitz*").

A. The Regional Director Properly Applied the Correct Standard.

The Regional Director correctly recognized that, under the framework articulated by the Board in *Levitz*, an "employer representation petition must be supported by evidence that the employer possesses a good-faith reasonable uncertainty concerning the union's continued majority status." *See* RD Dec., at 1 (*citing Levitz*, 333 NLRB at 717). In *Levitz*, the Board interpreted the Supreme Court's decision in *Allentown Mack*, and determined that "regional offices should determine whether good-faith uncertainty exists on the basis of evidence that is objective and that reliably indicates employee opposition to incumbent unions – i.e., evidence that is not merely speculative." *Id*. at 729.

The Employer here only submitted non-Board affidavits from its own [redacted] These [redacted] asserted that: (1) most bargaining unit employees elected not to participate in an on-going strike called by the Union; (2) some employees resigned from the Union or requested not to pay dues; and (3) less than ten percent of the bargaining unit purportedly made statements indicating dissatisfaction with the Union. *See* RD Dec., at 1-2. The Employer did not present any affidavits, statements, or petitions directly from employees to support its belief that the Union had lost majority status.

The Regional Director applied the *Levitz* standard, and found this evidence to be deficient. Specifically, the Regional Director concluded that the Employer failed to "present such evidence" to establish a good-faith, reasonable uncertainty about the Union's continued majority status. *See* RD Dec., at 1.

In reaching this finding, the Regional Director did not depart from Board precedent. The Employer argues that, since the Regional Director used the phrase "not necessarily," he effectively abandoned the *Levitz* framework and instead held the Employer to higher standard.

This is not the case. *Compare* RD Dec., at 3 (after "considering all of the evidence," the Regional Director found that the Employer failed to establish a "good faith reasonable uncertainty as to the Union's continued majority status.") *with Tri-State Health Services, Inc. v. NLRB*, 374 F.3d 347 (5th Cir. 2004) (finding that the Board has inappropriately rejected certain evidence because it "may be attributable to many other factors other than opposition to the union, and inappropriately required the employer to show disbelief, rather than good faith uncertainty, that the union continued to enjoy majority status). The Regional Director considered "all of the evidence submitted by the [Employer] as a whole," and concluded that it was insufficient. *See* RD Dec., at 3. When the Regional Director found that certain evidence did "not necessarily" indicate a loss of support, the Regional Director used that language to indicate that the evidence provided was neutral, and in the aggregate, failed to establish a good-faith uncertainty under *Levitz* and *Allentown Mack*. As described below, this is entirely consistent with the existing Board law.

Despite the Employer's contentions, the Regional Director clearly applied the *Levitz* framework to all relevant evidence provided by the Employer before concluding that the Employer had failed to establish a good-faith uncertainty regarding continued majority status for the Union.

B. The Regional Director Properly Considered the Relevant Facts.

Next, the Employer contends that the Regional Director disregarded evidence it presented, including employee non-participation in the strike and [redacted] statements about employee statements. *See* Er. RFR, at 7-14. However, the Regional Director did consider this evidence, gave it the appropriate weight in accordance with applicable Board precedent, and concluded that the Employer failed to present sufficient objective evidence to support a good-

faith reasonable uncertainty. This conclusion was wholly consistent with the relevant precedent, and the Regional Director's underlying findings of fact were not clearly erroneous.

The Regional Director did not disregard the Employer's evidence of decreases in union membership or increases in requests to revoke dues checkoff authorization. Rather, the Regional Director found that this evidence alone was not sufficient to meet the necessary threshold under *Levitz*.[4] The Employer points to no cases in which declining membership alone was sufficient to support good-faith uncertainty. More to the point, in each of the cases relied upon by the Employer in its Request for Review, the employer had presented additional, objective evidence that the Employer here failed to provide. *See, e.g., McDonald's Partners, Inc*., 336 NLRB 836, 841-42 (2001) (employer also relied on direct statements from two union stewards reporting a lack of employee support for the union); *Tri-State Health*, 374 F.3d 347, 355-56 (2004) (employer also relied upon individual employee statements about other employees' dissatisfaction with the union). The Regional Director considered the evidence provided by the Employer and concluded that, in the totality, it was insufficient to support a good-faith uncertainty about the Union's continued majority status.

In much the same way, the Regional Director did not disregard the evidence of non-participation in the strike. To the contrary, the Regional Director simply found it to be neutral and insufficient to establish a good-faith uncertainty with more objective evidence. *See* RD Dec., at 2 ("employees' non-participation in a strike or abandonment of a strike does not necessarily indicate that the employees no longer want to be represented by their union.") (*citing Alexander Linn Hospital Assoc*., 288 NLRB 103 (1988), *enfd*. *NLRB v. Wallkill Valley General Hospital*,

[4] *See* RD Dec., at 2 (finding that evidence of employee non-membership, resignation, or opting out of dues check-off authorizations has a neutral interpretation).

866 F.2d 632 (3d Cir. 1989); *Curtin Matheson Scientific*, 287 NLRB 350, 352 (1987) *enf. denied* 859 F.3d 362 (5th Cir. 1988), *rev'd and remanded*, 494 U.S. 775 (1990), *enfd. on remand* 905 F.2d 871 (5th Cir. 1990)). The Regional Director's conclusion that this evidence did "not necessarily" suggest that a majority of employees no longer support the Union does not mean that the evidence was disregarded. Instead, the Regional Director considered this evidence and concluded that, without more direct evidence, it was insufficient to establish a good-faith uncertainty regarding continued majority status of the Union. As described below, this is entirely consistent with guidance from the Board, the Casehandling Manual, and memoranda from the General Counsel. *See* NLRB Casehandling Manual Part 2, at Sec. 11042.1 (*citing Levitz, supra* at 728, 729); *see also* GC Memo 02-01, at 9, 10.

Finally, the Regional Director did not disregard the Employer's evidence of purported employee statements. However, put most simply, the Employer failed to present objective, direct evidence from employees regarding dissatisfaction with the Union. While the Employer argues in its Request for Review that 92% of the employees have not participated in the strike, that a large number of employees have resigned from the Union or revoked the dues check-off authorization, and statements from [redacted] (b) (6), (b) (7)(C), (b) (7)(D) n affidavits prepared by the Employer assert that some employees have complained about the Union, the Employer has nonetheless failed to present even one statement from an employee supporting its contentions. In every one of the cases referenced by the Employer in support of this argument, the employer provided direct evidence from the employees in question. *See, e.g., Henry Bierce Co*., 328 NLRB 646 (1999) (testimony from one nonmember, bargaining unit employee); *Sceptor Ingot Castings, Inc*., 331 NLRB 1509 (2000) (testimony from an employee about other employees' dissatisfaction with the incumbent union); *Horizon House Development Services, Inc*., 337 NLRB 22 (2001) (first hand

statements from employees about their own negative opinions of the union); *Transpersonnel, Inc*., 336 NLRB 484 (2002), *enfd* 349 F.3d 175 (4th Cir. 2003) (written statements signed by employees). Here, the Employer only presented evidence from its [redacted] that showed that, at best, no more than 10%[5] if the bargaining unit employees had expressed any form of dissatisfaction with the Union. *See* Er. RFR, at 11-14. Consistent with the applicable case law, the Regional Director concluded that, in the absence of more direct evidence from employees, "the testimony of the Petitioner's [redacted] only establishes that a very small minority of unit employees have made statements about their dissatisfaction with the Union." *See* RD Dec., at 2.

In short, the Regional Director applied the proper standard and considered the relevant facts before concluding that the Employer had failed to meet its burden of production necessary to establish that it had a good-faith uncertainty necessary to support its petition. There is no basis for granting review of the Regional Director's Decision under the Board's Rules and Regulation. As a result, the Union respectfully requests that the Request for Review be denied.

II. The Employer Failed to Identify Any Substantial Factual Issues that Were Clearly Erroneous.

An employer-petitioner has an obligation to support its RM petition with sufficient objective evidence to establish that there is a good-faith uncertainty as to the union's continued majority status. If the employer-petitioner fails to do so, the Regional Director should administratively dismiss the petition. *See* NLRB Casehandling Manual, Part 2, at 11042.5. Here,

[5] The Employer's [redacted] testified to a total of 12 statements from employees purportedly expressing dissatisfaction with the Union. *See* Er. RFR, at 14; Er. RFR at Exh. 3. Assuming each of these statements are attribute to different employees, this amounts to statements from about 8.3% of the bargaining unit. This is significantly fewer than *Allentown Mack*, for example, where the employer presented employee statements from more than 20% of the bargaining unit. 522 U.S. at 368-371.

the Employer failed to present sufficient evidence, and the Regional Director administratively dismissed its petition, as required.

The Employer objects to the factual findings of the Regional Director, and argues:

> …the Regional Director found the employee expressions of dissatisfaction submitted in support of the RM petition to be 'vague.' This factual finding is clearly erroneous and prejudicially affected ASARCO, as it led to the dismissal of its RM Petition.
>
> *See* Er. RFR, at 14.

But this is simply not accurate. Despite what the Employer has argued, the Regional Director did *not* find that the employees' purported expressions of dissatisfaction submitted by the Employer were "vague." Instead, he found that the evidence was insufficient in number. Specifically, the Regional Director stated:

> Finally, **limited *or*** vague statements of dissatisfaction are not sufficient to support an RM petition if, **based on the number of statements made** or the nature of the statements, they do not reliably establish good-faith uncertainty as to a union's continued majority status. *Levitz*, 333 NLRB at 729, citing *Henry Bierce Company*, 328 NLRB 646 (1999), aff'd and remanded 234 F.3d 1268 (6th Cir. 2000), and *Sceptor Ingot Castings, Inc*., 331 NLRB 1509 (2000); see *also Horizon Health Developmental Services, Inc*., 337 NLRB 22, 23-26 (2001); *Transpersonnel, Inc*., 336 NLRB 484 (2001), enfd., 349 F.3d 175 (4th Cir. 2003). The testimony of the Petitioners' [redacted] **only establishes that a very small minority** of unit employee have made statements about their disaffection with the Union.
>
> *See* RD Dec., at 2 (emphasis added).

The Regional Director found that the Employer's own evidence only established that a "very small minority" of the unit employees had even potentially expressed their dissatisfaction with the Union. *Id*. The Regional Director did not make any findings about the substance of the statements. Nothing in this paragraph can possibly be read as a finding that the employee statements were insufficient because they were too vague.

But even if the Regional Director had found that the evidence relied upon by the Employer was insufficiently vague, that finding would have been supported by substantial evidence and not clearly erroneous.

The evidence provided by employer-petitioners in support of their petitions must objectively and reliably establish that a majority of the bargaining unit employees oppose the incumbent union. In order to assist employer-petitioners in this production, the Board has provided examples of what this evidence could include. For example: "antiunion petitions signed by unit employees, firsthand employee statements indicating a desire to no longer be represented by the incumbent union, employees' unverified statements regarding other employees' antiunion sentiments, and employees' statements expressing dissatisfaction with the union's performance as bargaining representative." *See* NLRB Casehandling Manual Part 2, at Sec. 11042.1 (*citing Levitz, supra* at 728, 729); *see also* GC Memo 02-01, at 9, 10.

The Employer provided none of the necessary, objective evidence here. Instead, the Employer elected to present only third-party, non-Board affidavits from its (b) (6), (b) (7)(C), (b) (7)(D) that contained purported hearsay statements from a few employees. *See* Er. RFR, at Exhs. 2 and 3. None of the statements were first-hand from employees. In fact, there was no evidence presented directly from any employees showing any form of dissatisfaction with, or opposition to, the Union.

Yet the Regional Director still provided the Employer with an opportunity to cure its petition with more specific, objective, or first-hand evidence. *See* Er. RFR, at Exh. 5. The Employer failed to do so, and instead, simply reiterated its legal argument to the Region. *See* Er. RFR, at Exh. 6. The Employer cannot now claim to have been prejudiced if its failure to cure a known defect became fatal to the petition.

Under the Board's Casehandling Manual, applicable memoranda from the General Counsel's office, and relevant Board law, the Employer's showing was deficient. Accordingly, the Regional Director's finding that the purported statements of dissatisfaction were insufficient – whether because of volume, vagueness, or both – was not clearly erroneous, and could not have been prejudicial to the Employer.

As such, the Union respectfully requests that the Request for Review be denied.

Conclusion

As demonstrated by the foregoing, the Employer has failed to articulate any grounds under the Board's Rules and Regulations to support its Request for Review of the Regional Director's Decision. The Regional Director correctly applied existing Board precedent and none of his factual determination were clearly erroneous. The Employer has not suffered any prejudice. Accordingly, the Union respectfully requests that that the Board deny the Employer's Request for Review.

Dated: March 24, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

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