

**Arizona Portland Cement Company, a Division of California Portland Cement Company, a Division of CalMat and Local 296, Independent Workers of North America.** Case 28-CA-8742

March 11, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT AND DEVANEY

On October 12, 1988, Administrative Law Judge George Christensen issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions,<sup>2</sup> as modified, and to adopt the recommended Order as modified.

We agree with the judge's findings that the Respondent violated Section 8(a)(5) of the Act by unilaterally (1) eliminating the existing grievance procedure and substituting a dispute resolution policy which did not include involvement of the Union, (2) discontinuing the policy of permitting employee representatives to conduct union business during worktime with compensation, (3) abolishing union bulletin boards, and (4) disparately prohibiting use of the Respondent's bulletin boards by the Union, while permitting other organizations and employees to use the bulletin boards for non-work-related purposes. We, however, reverse the judge's finding that the Respondent violated Section 8(a)(5) and (1) by declining to arbitrate grievances after February 2, 1987, when the Board certified the Independent Workers of North America (IWNA) as the unit employees' exclusive representative.

As the judge correctly acknowledged: "Under *Indiana & Michigan Electric*<sup>3</sup> and its progeny, the Board has ruled it is not legally empowered to direct an employer to arbitrate an employee grievance in the absence of employer agreement thereto." To the extent that *Appalachian Power Co.*, 250 NLRB 228 (1980), affd. mem. 660 F.2d 488 (4th Cir. 1981), cert. denied

454 U.S. 866 (1981), on which the judge relied, might be read as dispensing with the consent requirement, it has clearly been overruled by *Indiana & Michigan Electric*, supra. Hence, the dispositive issue in this case is whether, as the judge concluded, the Respondent had expressed a consent to arbitrate that would cover all the postcertification grievances at issue here. We do not agree that the record supports the finding of such an agreement.

The Respondent's statements and other conduct during the period 1984-1987—when there was no contract in effect but the Respondent recognized the Boilermakers as the employees' representative—manifested an intent not to be bound generally to arbitrate all grievances, but rather to decide whether to arbitrate on a case-by-case basis.<sup>4</sup> We find no basis for concluding that the Respondent was, through its statements (which the judge characterized as "ambiguous") and other conduct, also consenting to arbitrate all future grievances with a new bargaining representative certified in a Board election.

A more difficult question, however, is presented by the particular grievances that the Respondent, prior to February 2, 1987, had specifically agreed to arbitrate. The difficulty here is that the Respondent had agreed to arbitrate those grievances with the Boilermakers Union as the opposing party representing the employees. Did that agreement include a consent to arbitrate the grievances even when a different representative was representing the employees?

If the employees had merely repudiated the Boilermakers without also selecting a new collective-bargaining representative, the issue as to those grievances could be resolved under *Missouri Portland Cement Co.*, 291 NLRB 1043 (1988). In that case, the Board held that an employer was obligated to complete unfinished business, so to speak, by meeting with the union that was its employees' former bargaining representative to resolve grievances that had arisen at a time when the employer still had an obligation to recognize that representative. *Id.* at 1043-1044.<sup>5</sup> But the Boilermakers have not filed the charges in this case. Rather, the IWNA filed the charges and the judge's recommended remedy and Order clearly would require

<sup>1</sup>The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup>Contrary to the Respondent's contention, we note that the judge's conclusions were not based on a finding of continuity of representative, but rather on his finding that the incumbent Union's status as a successor union did not relieve the Respondent of its obligation to bargain with the certified representative of the unit employees concerning any changes in existing rates of pay, wages, hours, and conditions of employment.

<sup>3</sup>284 NLRB 53, 55-56 (1987).

<sup>4</sup>The grievances arbitrated during this period were not, strictly speaking, contractual grievances because the parties had not agreed on any contract. They are apparently grievances claiming violations of terms and conditions which the Respondent had put into effect as its final contract offer on June 20, 1984. That the parties did not regard this as a mutually binding agreement is indicated by the employees' participation in strike action on several occasions, free of any constraint by the no-strike clause that was also part of the Respondent's final offer. The Respondent's conduct in agreeing to arbitrate certain grievances does not suggest an agreement to arbitrate all contractual grievances because the Respondent specifically declined to arbitrate at least two grievances during the 1984-1987 postcontract period.

<sup>5</sup>The Board contrasted the resolution of past grievances with other matters relating to the employees' current terms and conditions of employment, holding that the former, unlike the latter, did not amount to imposing a bargaining agent on employees who had not selected that agent. *Ibid.*

the Respondent to deal with the IWNA in the processing and arbitration of the past grievances that arose when the Boilermakers represented the employees. In any event, it would hardly be conducive to industrial peace to have two unions simultaneously representing the employees, albeit with respect to different time periods.

We conclude that there is no sound basis for requiring the Respondent to arbitrate even the grievances it had earlier agreed to arbitrate because we do not find clear consent to arbitrate those grievances with a different bargaining representative. The presumption of arbitrability recognized in *Steelworkers v. Gulf Navigation Co.*, 363 U.S. 574 (1960), is a powerful one, but even in that case it was grounded in an agreement between the parties that would be the parties to the arbitration. There is no such agreement here, either oral or written. We cannot agree with our dissenting colleague's suggestion that the Respondent's agreements with its "employees" to arbitrate particular grievances bound the Respondent to arbitrate those grievances with the IWNA, when those agreements were made before the IWNA defeated the Boilermakers in the Board election and was certified as the employees' new representative. As our colleague apparently agrees, the votes by which the employees had disaffiliated from the Boilermakers and affiliated with the IWNA were not shown to have resulted in continuity of representation. The IWNA was a new collective-bargaining representative, and there is no evidence that the Respondent had consciously made agreements with the IWNA after the affiliation vote but prior to the IWNA's Board certification. Indeed, the Respondent would have acted at its peril in making such agreements during that period because this would have entailed withdrawing recognition of the previously recognized incumbent during the pendency of a Board election designed to resolve a question concerning representation. See *RCA Del Caribe*, 262 NLRB 963 (1982). In any event, the General Counsel does not contend that the Respondent had specifically agreed to arbitrate grievances with the IWNA as the employees' representative. He relies on principles set forth in *Appalachian Power*, supra, that, as noted above, did not survive the Board's opinion in *Indiana & Michigan Electric*.

Accordingly, for the foregoing reasons, we shall delete those provisions of the recommended Order that require the Respondent to arbitrate grievances with the IWNA.<sup>6</sup>

<sup>6</sup>This does not mean that the employees have no recourse as to the unresolved earlier grievances. The Respondent is required to bargain with the IWNA, the employees' current representative, concerning any still-existing grievances that have not been resolved. The grievance-processing procedure could result in, inter alia, any of the following outcomes: negotiated settlements; the use of economic action by the IWNA if settlements are not reached; or an agreement by the parties to relinquish their bargaining authority

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Arizona Portland Cement Company, a division of California Portland Cement Company, a division of CalMat, Rillito, Arizona, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

"(a) Failing or refusing to timely follow and apply the terms of article 18 of its June 20, 1984 implemented final offer, except for the final step of the grievance procedure providing for submission to binding arbitration, until and unless it has bargained with Local 296 either to agreement or impasse concerning any changes therein."

2. Substitute the following for paragraph 2(b).

"(b) Timely process any pending and future grievances in accordance with the terms and conditions of article 18 of its June 20, 1984 implemented final offer, except for the final step of the grievance procedure providing for submission to binding arbitration, until and unless it has bargained with Local 296 either to agreement or impasse on proposals for changes therein."

3. Substitute the attached notice for that of the administrative law judge.

MEMBER DEVANEY, dissenting in part.

Contrary to my colleagues, I agree with the judge's finding that the Respondent violated Section 8(a)(5) of the Act by refusing to arbitrate grievances after February 2, 1987, when the Board certified the Independent Workers of North America (IWNA) as the unit employees' exclusive representative.<sup>1</sup> The judge found that the Respondent by its conduct had demonstrated its agreement to adhere to its longstanding practice of arbitrating grievances. This established term and condition of employment had been set forth in the Respondent's contract with the unit employees' prior bargaining representative and was consistent with the Respondent's final offer to IWNA's predecessor union.

The record shows that the 1984 negotiations for a new contract between the Respondent and the Boilermakers Union, the unit employees' representative at that time, were unsuccessful. Accordingly, on June 20, 1984, the Respondent implemented its final offer. This final offer included major changes in the expired collective-bargaining agreement, but did not modify provisions providing for a four-step grievance procedure that culminated in binding arbitration.

and delegate the power to decide the disputes (all or any of them) to a third party—an arbitrator.

<sup>1</sup>I join my colleagues, however, in affirming all other aspects of the judge's decision.

Between June 20, 1984, when the Respondent implemented its final offer, and February 2, 1987, representatives of the Respondent and the employees' local union processed more than 100 grievances filed during that period, and one grievance that arose during the term of the expired contract went to arbitration. In addition, the Respondent agreed to arbitrate 16 grievances that arose after the expiration of the contract, agreed on arbitrators to hear 5 of those grievances and the dates for hearings, participated in 2 arbitration hearings, and accepted the arbitrator's decisions in those 2 cases. Early in that period, the Respondent refused to arbitrate two grievances: one involved the alleged improper termination of the contract on April 30, 1984, and the other involved a dispute arising soon after contract expiration concerning whether employees had to supply their own tools.

On October 15, 1986, a majority of the unit members voted to disaffiliate from the Boilermakers and to affiliate with IWNA. On January 23, 1987, a majority of the unit employees voted for representation by IWNA in a Board-conducted election, and the Board certified IWNA as the exclusive bargaining representative of the unit on February 2, 1987.

Also on February 2, the Respondent informed IWNA that "as a consequence of" the Union's election as bargaining representative, the Respondent had unilaterally repudiated the grievance/arbitration procedure, that it was withdrawing its agreement to arbitrate the 16 grievances it had agreed to arbitrate, and that it would cancel the hearings scheduled for 3 of those grievances. Since that time, the Respondent has refused to arbitrate any of the grievances pending on February 2.

The judge found that the unit employees' vote to change the affiliation of their local union from the Boilermakers to IWNA in union-conducted and Board-conducted elections did not permit the Respondent to unilaterally eliminate or change existing terms and conditions of employment. The judge noted that throughout the previous 30 years, the 1981-1984 contract, and the administration of the June 1984 implemented final offer (between June 20, 1984, and February 2, 1987), the employees' local union in its three affiliations (Cement Workers, Boilermakers, and IWNA) processed grievances through essentially the same persons and the Respondent never expressed or had any reasonable basis to doubt that the unit employees desired continuous representation by those persons.

The judge properly recognized that under *Indiana & Michigan Electric Co.*,<sup>2</sup> "the arbitration commitment arises solely from mutual consent," and that this duty cannot be mandated solely by operation of the Act. I find that there is ample evidence of the Respondent's

agreement with its employees to arbitrate their grievances through their designated representative, the local union. The Respondent consistently agreed over the nearly 3-year period in question to arbitrate all unresolved third-step grievances with the employees' representative, except two grievances early in 1984 related to the termination of the 1981-1984 contract. In contrast with the *Indiana & Michigan* situation, the agreement to arbitrate in this case is not a product of collective bargaining. Instead, the Respondent's consent to arbitrate grievances and its continued participation in arbitrations resulted from the Respondent's imposition of its final contract offer in 1984, and its subsequent conduct over a 3-year period.<sup>3</sup> That the Respondent's consent to arbitration was manifested by its conduct, rather than by a contract, does not diminish the Respondent's commitment to the arbitral process. Contrary to my colleagues in the majority, I find that the Respondent's conduct during the 1984-1987 period does not show that the Respondent had decided to arbitrate grievances only on a case-by-case basis. Rather, the Respondent's agreement to arbitrate 16 grievances during that period demonstrates that it has agreed "to relinquish economic weapons . . . otherwise available under the Act to resolve disputes."<sup>4</sup>

The certification of IWNA as the employees' bargaining representative in February 1987 provided no legitimate basis for the Respondent's abandonment of its agreement to process grievances through the arbitration step. In view of the Respondent's consent to submit unresolved grievances to arbitration, it was not privileged to back out of that agreement simply because the employees selected a new bargaining representative. The employees actually changed the affiliation of their local union in October 1986 by voting to disaffiliate from the Boilermakers and affiliate with IWNA. Despite this change in the employees' designated representative, the Respondent did not repudiate its agreement to arbitrate grievances until some 4 months later, when IWNA was certified pursuant to the Board-conducted election. I conclude that this event did not relieve the Respondent of its obligation—into which it freely entered—to arbitrate its employees' grievances.<sup>5</sup> Accordingly, for the reasons set forth by the judge, I would adopt his finding that the Respondent violated Section 8(a)(5) and (1) by refusing to arbitrate grievances after February 2, 1987.

<sup>3</sup>Thus, this case also differs from *Indiana & Michigan* to the extent that there an employer refused to arbitrate grievances upon the expiration of a collective-bargaining agreement. Here, the Respondent expressly maintained the arbitration provision of the expired agreement for nearly 3 years and does not rely on the expiration of the contract as the basis for its abrogation of its duty to arbitrate grievances.

<sup>4</sup>*Indiana & Michigan*, supra at 58.

<sup>5</sup>There is no basis for my colleagues' suggestion that there is a danger in this case that two unions simultaneously will be representing the unit employees concerning arbitrations relating to different time periods. The IWNA has replaced the Boilermakers as the employees' bargaining representative, but the identity, status, and role of the persons who process grievances for the local Union has remained the same.

<sup>2</sup>284 NLRB 53, 57-58 (1987).

Respondent violated Section 8(a)(5) and (1) by refusing to arbitrate grievances after February 2, 1987.

#### APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail or refuse to timely follow and apply the terms of article 18 of our June 20, 1984 implemented final offer, except for the final step of the grievance procedure providing for submission to binding arbitration, until and unless we have bargained with Local 296, Independent Workers of North America, either to agreement or impasse concerning any changes therein.

WE WILL NOT fail or refuse to grant our production and maintenance employees released time from their regular job assignments to process grievances, travel to and from and participate in contract negotiations with us, and to pay those employees for time so spent until and unless we have bargained with Local 296 either to agreement or impasse over proposals for changes in our previous practices and policies for such time off and payment.

WE WILL NOT fail or refuse to supply bulletin boards within our plant and quarry areas for the exclusive use of Local 296 in posting notices of union meetings and other materials concerning the rates of pay, wages, hours, and conditions of employment of our employees represented by Local 296 until and unless we have bargained with Local 296 either to agreement or impasse over proposals for changes in our previous practice and policy of furnishing such bulletin boards.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL advise Local 296 of all grievance adjustments we have made with employees within the unit represented by Local 296 and rescind any adjustments to which Local 296 objects.

WE WILL timely process any pending and future grievances in accordance with the terms and conditions of article 18 of our June 20, 1984 implemented final offer, except for the final step of the grievance procedure providing for submission to binding arbitration, until and unless we have bargained with Local 296 either to agreement or impasse on proposals for changes therein.

WE WILL grant employees within the unit represented by Local 296 time off from work to process and adjust grievances, to travel to and from and participate in negotiations, and

WE WILL pay them for such time lost from work unless and until we have bargained with Local 296 either to agreement or impasse over proposals to change our previous policy and practice of granting such time off and reimbursement therefor.

WE WILL make whole any unit employees who suffered wage losses as a result of our February 2, 1987 elimination of pay for their time spent in activities just described, with interest on the sums due.

WE WILL provide Local 296 with bulletin boards in the plant and quarry areas for its exclusive use in posting notices of union meetings and other materials relating to rates of pay, wages, hours, and working conditions of the employees it represents, and material relating to other protected, concerted activities unless and until we have bargained with Local 296 either to agreement or impasse over the furnishing of such bulletin boards.

ARIZONA PORTLAND CEMENT COMPANY, A DIVISION OF CALIFORNIA PORTLAND CEMENT COMPANY, A DIVISION OF CALMAT

*Michael J. Karlson*, for the General Counsel.  
*Thomas J. Kennedy, Esq. (Snell & Wilmer)*, of Phoenix, Arizona, for the Respondent.

#### DECISION

##### STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge. On May 10, 1988, I conducted a hearing at Phoenix, Arizona, to try issues raised by a complaint issued on December 16, 1987, based on a charge filed by Local 296, Independent Workers of America (IW) on March 5, 1987.

The complaint alleged without prior notice to IW or affording it an opportunity to bargain, Arizona Portland Cement Company, a Division of California Portland Cement Company, a Division of CalMat (AP), eliminated the existing grievance/arbitration procedure, practice, and policy; the existing practice and policy of paying employee representatives for time spent processing grievances and engaging in collective bargaining; the existing practice and policy of providing plant bulletin boards for exclusive union use to post notices and information relating to meetings, wages, and/or other collective-bargaining subjects; and subsequently denied union

use of company bulletin boards, thereby violating Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

AP conceded commission of the acts just described but denies it thereby violated the Act.

The General Counsel and the Respondent appeared by counsel and were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, argue, and file briefs. Both counsels filed briefs.

Based upon my review of the entire record,<sup>1</sup> observation of the witnesses, perusal of the briefs and research, I enter the following

#### FINDINGS OF FACT<sup>2</sup>

##### I. JURISDICTION AND LABOR ORGANIZATION

The complaint alleged, the answer admitted, and I find at all pertinent times AP was an employer engaged in commerce in a business affecting commerce and IW was a labor organization within the meaning of the Act.

##### II. THE UNIT AND EMPLOYEE REPRESENTATIVE STATUS

The complaint alleged, the answer admitted, and I find at all pertinent times the following constituted a unit appropriate for collective-bargaining purposes within the meaning of Section 9 of the Act:

All production and maintenance employees employed by AP at its Rillito, Arizona plant, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

The complaint further alleged, the answer admitted, and I find on January 23, 1987, a majority of the employees within the above unit cast ballots designating and selecting IW as their representative for collective-bargaining purposes;<sup>3</sup> on February 2, 1987, the Board certified IW as the exclusive collective-bargaining representative of the unit employees; since February 2, 1987, IW has been the exclusive representative of the unit employees for the purpose of bargaining collectively with AP concerning the rates of pay, wages, hours, and other terms and conditions of employment of the unit employees; and that prior to February 2, 1987, Local 296 was a BB affiliate and the exclusive representative of the unit employees for the purpose of bargaining collectively

<sup>1</sup> I grant counsel for the General Counsel's posthearing motion to correct the transcript by making the changes that are noted and corrected, denying, however, that portion of the motion wherein counsel seek to add counsel for the Respondent's alleged admission of pars. 13, 14, and 15 of the complaint and that, as to par. 7 of the complaint, Benjamin Lewis, John Gresock, Thomas Brosnan, and Fran Young were agents of the Respondent within the meaning of Sec. 2(13) of the Act and Thomas Brosnan and Fran Young were supervisors of the Respondent within the meaning of Sec. 2(11) of the Act.

<sup>2</sup> While every apparent or nonapparent conflict in the evidence has not been specifically resolved below, my findings are based upon my examination of the entire record, my observation of the witnesses' demeanor while testifying, and my evaluation of the reliability of their testimony; therefore any testimony in the record which is inconsistent with my findings is hereby discredited.

<sup>3</sup> Following an October 1986 vote by a majority of the unit employees to disaffiliate from the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO (BB) and affiliate with IW, and the filing of a petition supported by a majority of the unit employees for Board certification of IW majority representative status.

with AP concerning the unit employees' rates of pay, wages, hours, and other terms and conditions of employment.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. Facts

For a considerable time AP has operated a quarry and plant at Rillito, Arizona, to manufacture cement. Between 1949 and April 1, 1974, the unit specified above was represented by Local 296, United Cement, Lime, Gypsum & Allied Workers International Union, AFL-CIO (CL) and covered by a succession of collective-bargaining agreements.<sup>4</sup>

On April 1, 1984, CL merged with BB; a "D" prefix was added to precede each local's numerical designation; the local and international complement of officers and representatives of all local and regional CL affiliates continued to function, unchanged; and both those representatives and AP continued to honor and administer the unexpired AP-CL agreement for the balance of its term.

Negotiations for a successor to the agreement expiring April 30, 1984, were commenced prior to its expiration and continued thereafter. The negotiations were conducted on a national and regional level between representatives of a coalition of employers in the industry and representatives of the international union (sometimes accompanied by representatives of affected local unions) and, on a local level, between employer representatives of each plant and local union representatives. The international union representatives who commenced the national and regional negotiations prior to the April 1, 1984 merger and the local union representatives who commenced local negotiations continued in the same status and role following the merger; the employer representatives were unchanged.

The interests of the Rillito, Colton, and Mojave employees/Locals 296, 89, and 349 members were represented, inter alia, by International Union Representatives Jack Hammond, Kent Weaver, and Ernest Lamereaux. AP management was represented, inter alia, by Benjamin F. Weaver<sup>5</sup> and Thomas Brosnan.<sup>6</sup>

During the negotiations, AP and CP, by Lewis, and Gifford-Hill and Company, by Mason Dickerson,<sup>7</sup> advised Union Representative Weaver negotiations were at an impasse<sup>8</sup> and the two employers were going to implement their final contract offers, effective June 20, 1984.

<sup>4</sup> The agreements also covered the production and maintenance employees of California Portland Cement Company (CP) at Colton and Mojave, California, represented by Locals 89 and 349.

<sup>5</sup> The complaint (as amended at the hearing) alleged, the answer admitted, and I find at relevant times Lewis was AP's and CP's director of industrial relations, cement division, and an agent of AP and CP acting on their behalf within the meaning of Sec. 2 of the Act.

<sup>6</sup> The complaint alleged and the answer denied at pertinent times Brosnan was AP's plant manager and a supervisor and agent of AP acting on its behalf within the meaning of Sec. 2 of the Act. Brosnan testified he was AP's plant manager at all times since 1981 and in charge of all production and maintenance operations; on the basis of that testimony, I find at pertinent times Brosnan was a supervisor and agent of AP acting on its behalf within the meaning of Sec. 2 of the Act.

<sup>7</sup> Three Gifford-Hill and Company (GH) cement manufacturing plants were located at Clarkdale, Arizona; Riverside, California; and Oro Grande, California. Their production and maintenance employees were represented by Locals 405, 48, and 192. Regional negotiations were conducted jointly between representatives of AP, CP, GH, and International union representatives.

<sup>8</sup> Neither the General Counsel nor IW raised any claim a bona fide negotiating impasse had not occurred at that time.

The AP/CP final offer included major changes in provisions of the expired agreement<sup>9</sup> but, with minor modification, continued in effect, unchanged, provisions:

1. For AP payment for time lost from work by employee members of the Supplemental Unemployment Benefit & Sickness Benefit Committee and employee members of the Safety Committee, while participating in committee meetings, conferences, and inspections; pay for time lost from work by employees on the union negotiating committee while traveling to and from and attending national and regional negotiating meetings with the Employer; pay for time lost from work by employees on the local negotiating committee while attending local negotiating meetings with the Employer; and pay for time lost from work by employees while investigating and adjusting grievances;

2. In an article titled "Article 18—Grievances and Arbitration," that each grievance be submitted in writing to AP within 30 days of the occurrence of the grievance; that adjustment of each grievance be attempted at a meeting attended by representatives of the Employer and the grievants within 10 days of the written submission; that the basis for any discharge be discussed by employer and employee representatives prior to the discharge; and that any grievance unadjusted at such meeting, at the request of either party within 10 days after the meeting, be submitted to a bipartite board consisting of two employee and two employer representatives, followed by submission of any grievance incapable of adjustment by that board, at the request of either party within 10 days after such meeting, to a neutral arbitrator designated by the parties, for final and binding resolution;

3. And that AP provide bulletin boards at the plant and quarry for exclusive use by the Union.

Following the employer representatives' announcement of their intentions, one of the employee representatives asked whether the two Employers would honor the arbitration section of the grievance and arbitration provision of their final offers. Dickerson stated GH would not. Lewis stated AP/CP would.<sup>10</sup>

During another (June 26–28, 1984) meeting between Lewis (plus other management representatives) and Hammond (plus other union representatives), Lewis made a contrary statement to Hammond and agreed with Hammond's rejoinder the Union and the employees then were not required to observe the no-strike provision of the implemented final offer.

In subsequent discussions during the same meeting, Lewis stated AP would not arbitrate any employee grievance over a dispute which arose while the meeting was under way.<sup>11</sup>

<sup>9</sup> Installation of two-tier wage and vacation systems, elimination of paid sick leave, establishment of employer discretion over subcontracting, combining and eliminating jobs, limiting seniority retention, reducing overtime and penalty pay, reducing entitlement to and pay for hazardous work, etc.

<sup>10</sup> This finding is based on an admission by Brosnan. In *Gifford-Hill & Co.*, 285 NLRB 746 (1987), the Board also adopted a finding by Administrative Law Judge Stevens to the same effect.

<sup>11</sup> Following the apparent posting of a union notice on the union bulletin board to the effect the maintenance employees were not obligated to furnish tools to perform their work, maintenance employees ceased supplying such tools and insisted AP supply them; confronted with an AP demand they either continue to supply those tools to perform their work or clock out, they elected to clock out and proceeded en masse to demand an audience before the AP-union committee to press their demand. Lewis refused to meet with the group, insisted they continue to supply the tools and process a grievance over the AP refusal to supply them, and stated AP was not going to pay them for the time

Since AP's June 20, 1984 implementation of its final offer, Local 296 and the unions its affiliated with (CL, BB, and IW) have refused to accept that offer and continuously maintained they and the unit employees are not bound by the no-strike provision of that offer, and caused the unit employees to engage in at least one work stoppage.<sup>12</sup>

AP has met regularly with the unit employees' representatives to negotiate terms for a new agreement ever since the April 30, 1984 expiration of the AP/CL agreement, without ever reaching final agreement.

Between the date it implemented its final offer (June 20, 1984) and the date IW was certified as the unit employees' collective-bargaining representatives (February 2, 1987), over 100 grievances were filed and processed by AP and the grievants' union representatives. During that time period (June 20, 1984–February 2, 1987), at the request of union representatives, AP agreed to arbitrate one grievance which arose during the term of the AP/CL agreement (a discharge), agreed to arbitrate 16 grievances which arose subsequent to the expiration of the AP/CL agreement, agreed on arbitrators to hear five of those grievances and dates for hearings before those arbitrators, participated in the arbitration hearings of two cases, and both the Union and AP accepted the decisions of the two arbitrators who conducted those hearings. Over the same time period, AP refused to arbitrate two grievances (over the alleged improper termination of the contract on April 30, 1984—the basis for the alleged unfair labor practice strike—and the tool supply grievance discussed above).

On the date the Board certified the results of the January 1987 election (February 2, 1987) AP, without prior notice to or bargaining with any union representative, instituted, inter alia, the following changes in provisions of its implemented offer of June 20, 1984:

1. Elimination of the entire grievance and arbitration article;
2. Prohibition of any union business during working hours;
3. Elimination of any pay to employees/union representatives for time lost from work due to processing employee grievances or traveling to and from and participating in contract negotiations;
4. Elimination of union bulletin boards; and
5. Withdrawal from any commitment to refrain from seeking contribution from the Union for money damages against AP awarded to employees claiming work-connected injury or death.

On the same date (February 2, 1987) AP informed local union representatives it was withdrawing its agreement to arbitrate the 15 grievances it had agreed to arbitrate but had not reached the hearing stage and was canceling the hearings scheduled for 3 of those grievances.

Since that time AP has refused to arbitrate any pending grievances.

they persisted in their refusal to continue working with their own tools. The employees later returned to work with their tools and filed a grievance seeking as a remedy pay for their lost time. AP denied the grievance (apparently on the basis its implemented offer required the employees continue to furnish such tools) and, in accordance with Lewis' June 28, 1984 statement, at all times since AP has refused to arbitrate that grievance.

<sup>12</sup> An alleged unfair labor practice strike which lasted approximately 1 week, in August 1984. No finding the strike was an unfair labor practice strike has been issued by any legal authority. AP takes the position the maintenance workers' actions in support of their tool supply claim constituted a second work stoppage or strike.

Since February 2, 1987, AP has instituted an informal grievance adjustment procedure with no provision for any union representation or presence during the adjustments.<sup>13</sup>

When local union representatives were informed of the changes enumerated above (on February 2, 1987), they objected thereto, to no avail.

Since February 2, 1987, AP has adjusted the grievances of unit employees directly with grievants, without notice to or any participation by or the presence of a union representative.<sup>14</sup>

In view of AP's February 2, 1987 withdrawal of its previous commitment to hold the Union harmless from any employee claim of union liability by virtue of an alleged failure of union-designated employee members of the plant safety committee to detect and rectify alleged defects or hazards an employee or his representative claimed caused the employee's work-connected injury or death, the Union withdrew from further membership on and participation in the affairs of the plant safety committee.

Following implementation of the February 2, 1987 changes, AP demanded the local union representatives<sup>15</sup> surrender keys to the locks on the union bulletin boards in the plant and quarry areas and, following their refusal to comply with its demand, removed and replaced the locks, removed all materials from each board and delivered those materials to the local officers.

When local union representatives subsequently attempted to post meeting notices, etc. on company bulletin boards in the plant and quarry, those materials were removed by management, though personal notices<sup>16</sup> continued to be displayed, some for substantial periods.

## B. Analysis and Conclusions

### 1. The elimination of article 18

For over three decades preceding February 2, 1987, AP adjusted unit employees' grievances by following the steps of a grievance procedure set out in a succession of contracts between AP and CL/BB, and (following the April 30, 1984 expiration of the AP/CL contract) AP's June 1984 implemented offer. The grievants were represented throughout by fellow employees/local union representatives at each step.

On February 2, 1987, however, without prior notice or bargaining, AP announced that procedure no longer existed, informally (by word of mouth) encouraged unit employees to seek adjustment of their grievances solely with management, with no provision for representation by fellow employees/union representatives, and thereafter processed and adjusted employee grievances without either advising

<sup>13</sup> Foremen orally advise employees seeking to adjust a grievance they would hear and attempt to adjust the grievance and that the grievant, if dissatisfied with their proposed adjustment, could take the grievance up with first, their department head, and second, the plant manager (with the adjustment or decision of the latter the final word).

<sup>14</sup> AP has also adjusted grievances brought directly to Brosnan by union representatives since February 2, 1987.

<sup>15</sup> The president and recording secretary.

<sup>16</sup> Such as for sale items, thank-you cards (for gifts and flowers presented by employees to a sick, injured, or retired employee), lost dog notices, rodeo announcements, announcements of martial arts demonstrations, retirement parties, etc. (a September 16, 1985 written notice posted by Brosnan specifically authorized posting of for sale items and there was no evidence any subsequent notice forbidding such posting has ever been displayed).

union representatives of the proposed or actual adjustments or affording union representatives an opportunity to be present at those adjustments.

The same employees/union representatives<sup>17</sup> who had been processing grievances on behalf of unit employees the day before those employees changed affiliation from BB to IW objected to the sudden and unilateral change, without success.

The Board has classified a grievance adjustment procedure as a term or condition of employment, held it is a mandatory bargaining subject, and further held an employer failure to notify and bargain with a labor organization representing the majority of his or its employees within an appropriate unit prior to effecting material changes in an existing grievance adjustment procedure (particularly the elimination of participation by and at least the presence of that organization's representative in and at any attempted or actual adjustment of a unit employee's grievance) violates Section 8(a)(1) and (5) of the Act.<sup>18</sup>

The grievance procedure followed by AP and the local union representing a majority of its employees within an appropriate unit for over 30 years prior to February 2, 1987, contemplated adjustment of unit employees' grievances by joint participation of an employee representative and an employer representative at each step of the grievance procedure, thereby assuring compliance with both Sections 9(a) and 8(a)(5) of the Act; thus the elimination of that participation, without prior notice or bargaining, the subsequent adjustment of unit employee grievances without the knowledge, participation, or presence of any employee representative, and over the objection of employee representatives who normally represented employees/grievants, clearly appear violative of those sections of the Act.

AP contends the Union waived any objection to its elimination of employee representation by failing to request negotiations with respect to the elimination. The short answer is the regular employee representatives did object to the elimination as soon as they learned of it and filed the charge which led to this proceeding. Also, the Board has ruled no waiver can occur when a union has not received notice and a reasonable opportunity to bargain concerning such a material change prior to its effectuation.<sup>19</sup>

The sole remaining issue is whether the unit employees' practically unanimous vote to change the affiliation of their local union from BB to IW in union-conducted and Board-conducted elections, followed by Board certification of the

<sup>17</sup> Throughout the previous three-plus decades, the 1981-1984 contract duration and the administration of the June 1984 implemented offer (between June 1984 and February 2, 1987), Local 296 in its three affiliations (CL, BB and IW) processed grievances through essentially the same persons—employees who were officers of the local—and AP never expressed or had any reasonable basis to doubt the unit employees desired continuous representation by those employees/representatives.

<sup>18</sup> *Indiana & Michigan Electric Co.*, 284 NLRB 53 (1987); *U.S. Postal Service*, 281 NLRB 1013 (1986); *Union Carbide Co.*, 275 NLRB 197 (1985); *Harvard Folding Box Co.*, 273 NLRB 1031 (1984); *Wellington Hall Nursing Home*, 257 NLRB 791 (1981); *Appalachian Power Co.*, 250 NLRB 228 (1980), affd. 660 F.2d 488 (4th Cir. 1981), cert. denied 454 U.S. 866 (1981); *Top Mfg. Co.*, 249 NLRB 424 (1980); *Franke's, Inc.*, 151 NLRB 532 (1965); *Celotex Corp.*, 146 NLRB 48, 59-60 (1964), affd. 364 F.2d 552 (5th Cir. 1966), cert. denied 385 U.S. 987 (1966); *Sohio Chemical Co.*, 141 NLRB 810 (1963); *Bethlehem Steel Co.*, 136 NLRB 1500, 1503 (1962), affd. 320 F.2d 615 (3d Cir. 1963); *Motoresearch, Inc.*, 138 NLRB 1490, 1492 (1962).

<sup>19</sup> *Cisco Trucking Co.*, 289 NLRB 1399 (1988); *Southwest Forest Industries*, 278 NLRB 228 (1986), affd. 841 F.2d 270 (9th Cir. 1988); *M. A. Harrison Mfg. Co.*, 253 NLRB 675 (1980), affd. 682 F.2d 580 (6th Cir. 1982).

results of the latter election, permitted AP to unilaterally eliminate or change existing rates of pay, wages, hours, or conditions of employment.

The Board, with court approval, consistently has ruled an employer has a duty to notify and bargain with the union that has won a Board-conducted election concerning any proposed changes in existing rates of pay, wages, hours, and conditions of employment from the date of the election, and certainly from the date of Board certification of the election results, and therefore violates Section 8(a)(1) and (5) of the Act by unilaterally making any such changes after the election and prior to notifying and bargaining with the winning union.<sup>20</sup>

It has been the Board's reasoning to permit an employer to make such changes following the employee choice of a new bargaining representative, without affording that representative an opportunity to bargain, undermines the employee choice and constitutes bad faith; certainly AP's elimination of the existing grievance adjustment procedure, particularly the denial of any union representational role in its administration following over 30 years of such representation, had that effect.<sup>21</sup>

On the basis of the foregoing, I find and conclude by its February 2, 1987 elimination of the existing grievance adjustment procedure, particularly the elimination of the presence, participation, and representation of any IW representative at proposed and actual AP adjustments of unit employee grievances, AP violated Section 8(a)(1) and (5) and Section 9(a) of the Act.

The elimination of the longstanding practice of achieving through arbitration final resolution of unit employee grievances which the parties were unable to resolve through the preceding steps of the grievance adjustment procedure is a more complex issue.

AP's policy and practice following its June 20, 1984 implementation of its final contract offer was ambiguous; AP's final offer preserved arbitration as the final step of article 18 in resolving unit employees' grievances; at one point subsequent to AP's implementation of that offer, its representative stated AP would continue to observe and follow that step with respect to grievances which arose after the April 30, 1984 contract expiration; at another point the same representative stated it would not; subsequent to the contract expiration AP refused to arbitrate two grievances (apparently because unit employees ceased work to press these grievances);<sup>22</sup> and, subsequent to the contract termination, AP reached agreement with Local 296 representatives to arbitrate 16 of the 100 or more grievances which arose and were filed by those representatives subsequent to the contract termination, AP and Local 296 representatives agreed on four arbitrators to hear and decide 4 of the 16, and AP/Local 296

representatives participated in the hearing of one of those 4 and accepted the resulting decision.

Under *Indiana & Michigan Electric* and its progeny,<sup>23</sup> the Board has ruled it is not legally empowered to direct an employer to arbitrate an employee grievance in the absence of employer agreement thereto.

In this case, on February 2, 1987, AP repudiated its agreement to proceed with three scheduled arbitration hearings before three jointly designated arbitrators, repudiated its agreement to continue processing 12 additional grievances through arbitrator choice and hearing dates, and announced AP thereafter neither would arbitrate the 15 employee grievances it previously had agreed to arbitrate nor arbitrate any other pending or future grievances.

In view of the fact the Union desisted from any strike effort to secure satisfactory resolution of any of the 100 plus grievances filed subsequent to April 30, 1984 (following its August 1984 strike in support of its grievance alleging improper or unlawful termination of the prior contract), and AP's reciprocal processing between August 1984 and February 1, 1987, of 16 grievances through the arbitration step of article 18, I find and conclude the unit employees and the Union reasonably believed AP on February 1, 1987, had resolved the ambiguity created by its conflicting 1984 statements in favor of honoring its arbitration commitment, thereby entitling the Union to notice and a reasonable opportunity to bargain over any change therein.

I therefore find and conclude by its February 2, 1987 failure or refusal to continue to honor the preceding practice, policy, and procedure of processing unit employee grievances through the arbitration step of article 18 without providing IW reasonable notice and consultation of any change therein, AP violated Section 8(a)(1) and (5) of the Act.<sup>24</sup>

## 2. The elimination of employee time off from work with pay to process grievances and engage in negotiations

For a period in excess of 30 years, by contract agreement and under the June 20, 1984 implemented final offer, AP employees within the unit were granted reasonable amounts of time to process and adjust unit employee grievances, to travel and participate in contract negotiations, and were compensated for the time they lost from work while performing these functions.

That practice and policy continued under the terms of the implemented offer following the unit employees' October 1986 union-conducted vote to disaffiliate from BB and affiliate with IW, the unit employees' January 1987 Board-conducted vote to the same effect, and the Board's February 2, 1987 certification thereof.

Then on February 2, 1987, without prior notice to the same representatives who had been processing grievances and conducting negotiations with AP the day and months before, AP issued an order barring any employee or employee representative from conducting any union business on work-

<sup>20</sup> *Westinghouse Broadcasting*, 285 NLRB 205 (1987), aff'd. 849 F.2d 15 (1st Cir. 1988); *A.G. Boone Co.*, 285 NLRB 1070 (1987); *Advertisers Mfg. Co.*, 280 NLRB 1185 (1986); *Sandpiper Convalescent Center*, 279 NLRB 1129 (1986), enf'd. 126 LRRM 2204 (4th Cir. 1987); *San Antonio Portland Cement Co.*, 277 NLRB 338 (1985).

<sup>21</sup> Perhaps to retaliate over AP's loss of use of the union label, which might affect the sale of AP's products on building and construction projects performed by union contractors (use of the label was specified in the expired contract and implemented offer).

<sup>22</sup> Over the tool dispute and alleged improper contract termination.

<sup>23</sup> *Indiana & Michigan Electric Co.*, 285 NLRB 53 (1987); *Gifford-Hill & Co.*, 285 NLRB 746 (1987); *Bacardi Corp.*, 286 NLRB 422 (1987).

<sup>24</sup> *Taft Broadcasting Co.*, 185 NLRB 202 (1970), enf'd. 441 F.2d 1382 (1st Cir. 1971); *Appalachian Power Co.*, 250 NLRB 228 (1980), enf'd. 660 F.2d 488 (4th Cir. 1981), cert. denied 454 U.S. 866 (1981), compliance directed 286 NLRB 274 (1986); also see *Arrow Sash & Door Co.*, 281 NLRB 1108 (1986).

ing time,<sup>25</sup> and ceased to compensate any employees or employee representatives for time lost from work to process and adjust grievances, to travel to and from contract negotiations, and to engage in contract negotiations.

AP contends any provision for employee and employee representative time off from work and compensation for such lost work time for the purpose of processing and adjusting grievances and/or engaging in contract negotiations is part of an employer-union relationship and not an employer-employee relationship, therefore was cancellable at will (and particularly after the local union's change in affiliation), and therefore its unilateral elimination of those provisions without notice or bargaining with IW was not violative of the Act.

It is well established certain provisions of an expired collective-bargaining contract relate to the employer-union rather than the employer-employee relationship and therefore need not be honored by the employer following such expiration, such as union security, union dues-checkoff and super-seniority provisions. However, it is also well established, contrary to AP's contentions, that provision for paid time off for unit employees while engaging in grievance adjustment and negotiations fall in the employer-employee category rather than the employer-union, inasmuch as they involve representation with respect to disputes over those most essential of employee concerns—rates of pay, wages, hours and conditions of employment.<sup>26</sup>

Thus the Board, with court approval, repeatedly has held an employer's elimination or termination of the practice or policy of providing employees and their representatives time off from their jobs with pay to adjust grievances and participate in negotiations, without prior notice to their representative and providing that representative a reasonable opportunity to bargain, violates Section 8(a)(1) and (5) of the Act.<sup>27</sup>

Therefore, on the grounds set forth above and in the preceding section of this decision, I find and conclude by its February 2, 1987 elimination of the preceding practice or policy of permitting employees and their representatives time off from work to adjust grievances and to travel to and from and participate in negotiations, without notifying IW of the proposed change, and without providing IW a reasonable opportunity to bargain, AP violated Section 8(a)(1) and (5) of the Act.

### 3. The elimination of union bulletin boards and barring union use of company bulletin boards

Findings have been entered the day AP received notice the Board certified the unit employees' changed affiliation from BB to IW, it denied Local 296's representatives employed by AP continued use of plant bulletin boards it provided the local union to notify unit employees of local union meetings, conferences, and other matters affecting their employment

conditions and representation by the local union, and subsequently denied the use of company bulletin boards for posting such material while permitting the continued posting by employees, addressed to other employees, of notices soliciting and promoting sales, participation in events, etc.

It is undisputed these actions were taken by AP without prior notice to the Local 296 representatives who had been posting notices to employees concerning employment conditions, etc., for over 30 years, or bargaining with those representatives over the changed practice or policy (embodied in AP's June 1984 written, implemented final contract offer).

As in the case of AP's payments to employees to compensate them for wage losses while engaging in grievance processing and negotiations, when it had provided for over 30 years bulletin boards for union use in informing employees of meetings, negotiations, and other concerns involving their employment, by its elimination of union use of those bulletin boards AP eliminated a basic condition of employment and mandatory subject of bargaining. Such a condition may not be unilaterally retracted or eliminated without first providing the employees' union representatives notice of the proposed elimination and a reasonable opportunity to bargain; in any event, AP's subsequent disparate application of access to its bulletin boards by prohibiting employees designated to represent their fellow employees from posting notices to the unit employees concerning meetings, employment conditions, etc. while permitting employees to post notices soliciting fellow employees to purchase goods, attend events, etc. violated the Act.

I therefore find and conclude by eliminating Local 296's use of bulletin boards provided for its use following the Board certification of its affiliation change, without prior notice and a reasonable opportunity to bargain, and its subsequent disparate denial of employee/Local 296 representatives use of its bulletin boards to post notices to unit employees concerning union meetings and matters affecting their conditions of employment, AP violated Section 8(a)(1) and (5) of the Act.<sup>28</sup>

## CONCLUSIONS OF LAW

1. At all pertinent times AP was an employer engaged in commerce in a business affecting commerce and IW was a labor organization within the meaning of Section 2 of the Act.

2. At all pertinent times the following constituted a unit appropriate for collective-bargaining purposes within the meaning of Section 9 of the Act:

All production and maintenance employees employed by AP at its Rillito, Arizona plant, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

3. At all pertinent times AP's employees within the above unit have been represented by Local 296 in its various affiliations (CL, BB, and IW) as the duly designated designee of a majority of the unit employees and so recognized by AP.

<sup>25</sup> AP thereafter required any employee or employee representative desiring to conduct union business during working hours to secure permission from supervision and to clock out while engaging in such business.

<sup>26</sup> *Axelson, Inc.*, 234 NLRB 414 at 415 (1978), enfd. 599 F.2d 91 (5th Cir. 1976).

<sup>27</sup> *BASF Wyandotte Corp.*, 276 NLRB 1576 (1985); *BASF Wyandotte Corp.*, 274 NLRB 978 (1985), enfd. 798 F.2d 849 (5th Cir. 1986); *Mid-State Telephone Corp.*, 262 NLRB 1291 (1982), enfd. in part 706 F.2d 401 (2d Cir. 1983); *S. Freedman Electric*, 256 NLRB 432, 443 (1981); *Axelson, Inc.*, *ibid.*

<sup>28</sup> *Proof Co.*, 115 NLRB 309 (1956), enfd. 242 F.2d 560 (7th Cir. 1957); *Honeywell, Inc.*, 262 NLRB 1402 (1982), enfd. 722 F.2d 405 (8th Cir. 1983); *Allied Stores of New York*, 262 NLRB 985 (1982); *Central Vermont Hospital*, 288 NLRB 514 (1988); *Midwest Stock Exchange*, 244 NLRB 1108 (1979), enfd. in pertinent part 620 F.2d 629 (7th Cir. 1980).

4. On February 2, 1987, and subsequently AP violated Section 8(a)(1) and (5) of the Act by:

a. Eliminating the existing grievance and arbitration practices, policies, and procedures applicable to its unit employees without prior notice to and bargaining with IW concerning such elimination;

b. Eliminating without prior notice to and bargaining with IW the existing policy, practice, and procedure of reimbursing unit employees for wages lost while processing their and other unit employees' grievances, for wages lost while engaging in contract negotiations with AP, and for wages lost while traveling to and from locations where such negotiations were and are conducted;

c. Eliminating without prior notice to and bargaining with IW the previous practice of providing bulletin boards within the Rillito plant and quarry for the exclusive use of the union representing the unit employees; and

d. Disparate application of employee access to AP bulletin boards, i.e., barring employee posting of union-related material while permitting employee posting of nonunion-related material.

5. The unfair labor practices specified above affected and affect interstate commerce as defined in the Act.

#### THE REMEDY

Having found AP committed unfair labor practices in violation of the Act, I recommend AP be ordered to cease and desist therefrom and to take affirmative action designed to effectuate the policies of the Act.

Inasmuch as I found AP violated the Act by eliminating the grievance and arbitration practice, procedure, and policy it established and followed prior to February 2, 1987, without prior notice to or consultation with IW, I recommend AP be ordered to cease and desist from failing or refusing to timely follow and apply that preexisting practice, procedure, and policy; to affirmatively be directed to advise IW of the terms of any unit employee grievance adjustments entered into without the knowledge or consent of a union representative and rescind any adjustments to which IW objects; and to timely process any pending or future unit employee grievances and arbitrations in accordance with the terms of the practice, policy, and procedure set out in article 18 of the June 1984 final AP offer until and unless AP and IW have bargained either to impasse or agreement on any proposed changes in the terms of article 18.

Since I also found AP violated the Act by eliminating the practice and policy it established and followed prior to February 2, 1987, with respect to reimbursing unit employees for wages lost due to participating in grievance processing and adjustment, plus wages lost due to unit employees' travel to and from and participation in negotiations, without prior notice to or consultation with IW, I recommend AP be ordered to cease and desist therefrom, reinstate its previous policy and practice of granting time off from work to unit employees for such activities and reimbursing them for any wages lost as a result and that AP be directed to make whole any unit employees who have lost wages as a result of the elimination just noted, with interest on the lost wages calculated in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289, plus interest thereon computed in accordance with the formulae set out in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and *Isis Plumbing Co.*, 138 NLRB 716

(1962), until and unless AP and IW have bargained either to impasse or agreement on any proposed changes with respect to such time off and reimbursement therefor.

Lastly, since I entered findings AP violated the Act by its February 2, 1987 elimination of its previous practice and policy of furnishing bulletin boards for the exclusive use of its unit employees' collective-bargaining representative without prior notice to or consultation with IW, I recommend AP be ordered to cease and desist from its withdrawal of the use of the bulletin boards in question and be ordered to furnish IW representatives with keys and access to such boards for posting of material relating to union and other protected, concerted activities,<sup>29</sup> until and unless AP and IW have bargained either to impasse or agreement on any proposed changes in the furnishing and use of such bulletin boards.

On the basis of the foregoing findings of fact, conclusions of law, and the entire record, I recommend the issuance of the following<sup>30</sup>

#### ORDER

The Respondent, Arizona Portland Cement Company, a division of California Cement Company, a division of CalMat, Rillito, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to timely follow and apply the terms of article 18 of its June 20, 1984 implemented final offer until and unless it has bargained with Local 296 either to agreement or impasse concerning any changes therein.

(b) Failing or refusing to grant its employees within the unit represented by Local 296 released time from their regular assignments to process grievances, travel to and from and participate in contract negotiations, and pay for time so spent until and unless it has bargained with Local 296 either to agreement or impasse concerning such time off and payment therefor.

(c) Failing or refusing to grant representatives of Local 296 access to bulletin boards in the plant and quarry designated for their exclusive use, for the purpose of posting notices of union meetings and other materials concerning the rates of pay, wages, hours, and conditions of employment of the employees represented by Local 296 until and unless it has bargained with Local 296 either to agreement or impasse concerning the furnishing and use of such bulletin boards.

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

(a) Advise Local 296 of all grievance adjustments it has made with employees within the unit represented by Local 296 and rescind any adjustments to which Local 296 objects.

(b) Timely process any pending and future grievances and arbitrations in accordance with the terms and conditions of article 18 of its June 20, 1984 implemented final offer until and unless it has bargained with Local 296 either to agreement or impasse on proposals for changes therein.

<sup>29</sup>In view of this Order, I find no need to direct that AP afford access to AP bulletin boards, which it denied following the elimination of union access to previously existing bulletin boards provided for use of the unit employees' collective-bargaining representative.

<sup>30</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Grant employees within the unit represented by Local 296 time off from work to process and adjust grievances, to travel to and from locations designated for contract negotiations, to participate in such negotiations, and pay those employees for any wages lost as a result, until and unless it has bargained with Local 296 either to agreement or impasse on proposals to change those practices, policies and procedures.

(d) Make whole any unit employees who have suffered wage losses as a result of the February 2, 1987 elimination of pay for their time spent in the activities just described, in the manner and with interest thereon as set forth in the remedy section of this decision.

(e) Furnish Local 296 representatives with bulletin boards designated for the exclusive use of Local 296 at the Rillito plant and quarry to post notices of union meetings and other material relating to the rates of pay, wages, hours, and conditions of employment of the employees represented by Local 296 and other protected, concerted activities, unless and until it has bargained with Local 296 either to agreement or impasse over the furnishing of such bulletin boards.

(f) Post at its facilities at Rillito, Arizona, copies of the attached notice marked "Appendix."<sup>31</sup> Copies of the notice, on forms provided by the Regional Director for Region 28, shall be signed by an authorized representative of Arizona Portland Cement Company, posted immediately after their receipt, and maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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<sup>31</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."