SUNBEAM CORPORATION *and* ANN SALABEC, EVE SALOPEK, LAURA RAE ATKINSON, AND EARL F. OSLIE

SUNBEAM CORPORATION *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA. *Cases Nos. 13–CA–365 and 13–CA–541. April 5, 1951*

Decision and Order

On October 13, 1950, Trial Examiner Horace A. Ruckel issued his Intermediate Report in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that Respondent had not engaged in certain unfair labor practices alleged in the complaint, and recommended dismissal of these allegations. Thereafter, Respondent filed exceptions to the Intermediate Report and a supporting brief. Respondent's request for oral argument is denied because the record and brief, in our opinion, adequately set forth the issues and the position of Respondent.

The Board has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.[1]

The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

Respondent does not deny that it refused to bargain with the Union. Despite the filing of non-Communist affidavits by the Union's officers as required by Section 9 (h) of the Act, Respondent nevertheless contends that the Union is a completely dominated instrument of the Communist Party. This alleged fact, Respondent argues, relieved it of any duty to bargain.

Respondent's interpretation of the Act runs counter to the plain intent of Congress. When the amendments to the National Labor Relations Act were being considered, Congress showed abundant concern for the problem of communism in labor organizations. It chose to meet this problem, not by writing qualifications into the substantive

[1] The Trial Examiner properly refused to admit evidence of the alleged falseness of the Union's affidavits identifying its officers and of the non-Communist affidavits filed by the persons so identified. Such matters of compliance are not litigable in Board proceedings. *The Red Rock Company,* 84 NLRB 521, enforced, 187 F. 2d 76 (C. A. 5); *Porto Rico Container Corporation,* 89 NLRB 1570; *Comfort Spring Corporation,* 90 NLRB 173. The Board has satisfied itself, from its administrative investigations, that both the Union and its Local 1150 were in compliance on June 21, 1950, when the complaint herein was issued, and are now in compliance.

or definitional portions of the Act, but by enacting the procedural requirements of Section 9 (h).[2] The question whether some persons filing the non-Communist affidavits required by that section have committed perjury was clearly intended by Congress to be the concern of the Department of Justice.[3] Were the Board to take upon itself the task of deciding the truth or falsity of non-Communist affidavits, it would be departing from the legislative plan.

Respondent's other contentions were considered and rejected by the Board in the representation proceeding which resulted in the certification of the Union.[4] We see no reason now to come to different conclusions regarding any of them.

We find, as did the Trial Examiner, that on and after April 21, 1950, Respondent has refused to bargain with the Union in violation of Section 8 (a) (5) and (1) of the Act.

Order

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Respondent, Sunbeam Corporation, Chicago, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Electrical, Radio and Machine Workers of America as the exclusive representative of all its employees in the unit found appropriate in the Intermediate Report attached hereto.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

(a) Upon request, bargain collectively with United Electrical, Radio and Machine Workers of America as the exclusive representative of all its employees in the unit found appropriate in the Intermediate Report attached hereto, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an

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[2] *New Jersey Carpet Mills, Inc*, 92 NLRB 604.

[3] *American Seating Company*, 85 NLRB 269; *Seaboard Radio Broadcasting Corporation*, 92 NLRB No. 55.

[4] *Sunbeam Corporation*, 87 NLRB 123 and 89 NLRB 469. Respondent asserts that the Board and its Regional Director have refused to reveal the names of the individuals claimed by the Union to be its officers Respondent thus seeks to litigate a further question of compliance with the filing requirements of Section 9 (h). As pointed out above, such matters are not litigable. Moreover, the Board has recently reinvestigated Respondent's contention administratively and is satisfied that the Regional Director denied Respondent's request for the names only because the request was made orally, and that Respondent's inability to obtain them resulted from its own failure to make written application for them, as suggested by the Regional Director.

understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Chicago, Illinois, plants, copies of the notice attached hereto and marked Appendix A.[5] Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Thirteenth Region in writing, within ten (10) days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED, that the complaint be, and it hereby is, dismissed insofar as it alleges that Respondent discriminatorily discharged Laura Rae Atkinson and Earl F. Oslie.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Order.

Appendix A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

> WE WILL BARGAIN collectively, upon request, with UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours of employment, and other conditions of employment; and if an understanding is reached, we will embody such understanding in a signed agreement. The bargaining unit is:
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> > All production and maintenance employees at our three Chicago plants, excluding toolroom employees and experimental toolroom employees, tool crib attendants, maintenance apprentices and helpers, stationary engineers, outside truck drivers, office, factory, and shop clerical employees, draftsmen and designers, cafeteria employees, stock chasers and checkers, watchmen and guards, inspectors and super-

[5] In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

visors, foremen and assistant foremen, and all other supervisors as defined in the Act.

SUNBEAM CORPORATION,
Employer.

Dated_____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Intermediate Report

Mr. Edward T. Maslanka, for the General Counsel.

Hay, Morton, Finn and Van Mell, by *Mr. Herman T. Van Mell*, of Chicago, Ill., for Respondent.

Meyers, Meyers, and Rothstein, by *Mr. David B. Rothstein*, of Chicago, Ill, for the Union.

STATEMENT OF THE CASE

Upon charges filed on October 19, 1949, by Earl Oslie, on December 19, 1949, by Laura Atkinson, on January 5, 1950, by Ann Salabec and Eve Salopek, and on April 21, 1950, by United Electrical, Radio and Machine Workers of America, hereinafter called the Union, the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel and the Board, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued a consolidated complaint dated June 21, 1950, against Sunbeam Corporation, herein called Respondent, alleging that Respondent had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the complaint, accompanied by a notice of hearing, were duly served upon Respondent and the charging parties.

With respect to the unfair labor practices the complaint alleged, in substance, that Respondent: (1) On or about October 14, 1949, discharged Earl Oslie, on or about December 16, 1949, discharged Laura Atkinson, on or about January 5, 1950, discharged Ann Salabec and Eve Salopek, and has since failed and refused to reinstate any of them because of their concerted activities in their own behalf and on behalf of the Union; and (2) on or about April 21, 1950, and at all times thereafter, failed and refused to bargain collectively with the Union as the exclusive bargaining representative of its employees in an appropriate unit, and has failed and refused to recognize the Union as the exclusive representative of those employees for the purpose of collective bargaining, thereby interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

On July 13, 1950, Respondent filed an answer admitting certain allegations of the complaint with respect to the nature of its business, but denying that it had engaged in any unfair labor practices. The answer admitted that Respondent refused to recognize or bargain with the Union, asserting as its reasons for not doing so that the Union is, and has been, an organization wholly under the domination and control of the Communist Party, and that at no time since January 1950, has the Union represented a majority of its employees,

although the Board certified the Union as such representative on April 15, 1950. The answer avers that the Board had no authority or jurisdiction to issue such a certificate because its officers had not filed non-Communist affidavits under Section 9 (h) of the Act, and that if in fact they were so filed, they were false. On motion by the General Counsel the Trial Examiner struck these and similar allegations from the answer.

Pursuant to notice, a hearing was held in Chicago, Illinois, on July 31, August 1 and 2, 1950, before Horace A. Ruckel the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel, Respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues, was afforded all parties.

At the conclusion of the hearing the Trial Examiner granted a motion by the General Counsel to dismiss the complaint as to Ann Salabec and Eve Salopek, and reserved ruling upon a motion by Respondent to dismiss the complaint in its entirety. This motion is disposed of by the recommendations hereinafter made.

During the course of the hearing the undersigned granted a motion to revoke certain subpenas issued to various individuals at the request of Respondent, on the ground that the evidence sought to be adduced was not relevant and material. This evidence was in support of Respondent's contention, previously struck from its answer, that the Union and its officers were dominated and controlled by the Communist Party.

The parties waived oral argument but were granted until August 17, 1950, to file briefs herein. Subsequently the time to file briefs was extended by the Chief Trial Examiner to September 29. On that date Respondent and the Union filed briefs.

Upon the entire record in this case and from his observation of the witnesses the undersigned makes the following:

Findings of Fact

I. THE BUSINESS OF RESPONDENT

Respondent is an Illinois corporation whose principal office and three of its plants are located in Chicago, Illinois. It operates subsidiary plants in Canada and in Australia. At its three Chicago plants, the only ones involved herein, Respondent is engaged in the manufacture of electrical appliances, electrical furnaces, and other small electrical equipment, which is sold and distributed throughout the United States. It has about 4,200 employees in these plants.

Respondent in the operation of its business causes and has continuously caused large quantities of raw materials, machinery, and equipment to be purchased and transported in interstate commerce to its Chicago plants, from and through States of the United States other than the State of Illinois. During the calendar year 1949, the value of raw materials, machinery, and equipment so purchased and transported by Respondent was in excess of $1,000,000 of which more than 50 percent was shipped and transported from points outside the State of Illinois to the Chicago plants.

During the same period, Respondent's sales of finished products were valued in excess of $10,000,000, of which dollar value more than 50 percent was received from the sale of products shipped and transported from its Chicago plants into and through States of the United States other than the State of Illinois.

Respondent admits that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

United Electrical, Radio and Machine Workers of America, herein called the Union, is and at all times herein mentioned has been a labor organization admitting employees of Respondent to membership.[1]

III. THE UNFAIR LABOR PRACTICE AND OTHER ALLEGED UNFAIR LABOR PRACTICES

A. *The discharges*

Laura Atkinson.—All of Respondent's new employees are first employed on a probationary period of 90 days. The undisputed evidence shows that during this period they may be discharged by their foreman for any reason whatsoever, in which event there is no appeal to higher supervisory authority. On the seventy-fifth day after employment the personnel office sends to the foreman a "New Employee Follow Up Card" reminding him that it is up to him to determine whether or not the employee in question is to be considered a permanent employee, together with the injunction to return the card by the ninetieth day after employment with the notation as to whether the foreman has found the employee satisfactory or unsatisfactory. After 90 days, if the foreman has not found the employee unsatisfactory, he becomes a permanent employee and may not be discharged except with the consent of the labor relations department. This procedure has been embodied in all contracts between Respondent and labor organizations since 1944.

Atkinson was employed on September 21, 1949. On the seventy-fifth day after her employment a card of the above description was sent her foreman requesting that it be returned before December 21 On December 16 the card was returned to the personnel office with the notation "not satisfactory" checked in the square provided for that purpose, and on the same day Atkinson was discharged by her foreman.

Atkinson was graduated from high school in June 1949, and had had no previous experience in industry prior to her probationary employment with Respondent. She worked in the assembly department, first as an element winder, a group incentive job.[2] She was then transferred to a punch press, within the same department, an individual incentive job, and later, to work on brush holder buttons, another group incentive job in the same department.

Atkinson testified that on this third job the base rate was 5,100 units and that her actual production was 5,500 units. This is not controverted by Respondent. The credible, uncontroverted testimony of C. J. Uhlir, director of labor relations, however, is that the plant-wide production average for employees on an incentive basis is 142 percent of the base number of units, whereas Atkinson's average, according to her own testimony, was only 108 percent. Uhlir's further credible, uncontradicted testimony is that department foremen are instructed that a probationary employee on an incentive basis should make at least 125 percent of the base number of units to become a permanent employee.

Atkinson joined the Union during the latter part of November 1949, and her membership was known to Respondent. The record does not reveal any particular union activity on her part, however, until December 9, 1949, a week before her discharge, when she appeared on a preelection radio broadcast of the Union with 4 or 5 other employees. This program was 1 of a series of 3 broadcasts on which a total of 11 of Respondent's employees appeared, all but Atkinson be-

[1] Respondent's contention that the Union is not a labor organization within the meaning of the Act, is hereinafter disposed of

[2] Approximately 80 percent of Respondent's employees work on an individual or group incentive basis.

ing permanent employees. The broadcasts were monitored by Respondent and phonograph records made of them. Atkinson was the only one of the group who was subsequently discharged, although 2 permanent employees who participated were suspended by Respondent for "committing a fraud upon the company" because of their alleged membership in the Communist Party.

With respect to Atkinson, Respondent contends only that she was not satisfactory as a probationary employee and that Respondent merely followed its customary procedure in letting her go at the end of 90 days upon the recommendation of her foreman. There is not sufficient evidence in the record to support a finding that Respondent terminated Atkinson's employment at the end of her 90-day probationary period because of her union membership and activity. On the contrary, the preponderance of the evidence establishes, and the undersigned finds, that Respondent discharged Atkinson because it did not believe her efficient enough for permanent employment.

Earl Oslie.—Oslie came to work for Respondent in August 1947, in the buffing department in Plant No. 2, where he was still employed at the time of his discharge on October 14, 1949. He joined the Union about 4 weeks after coming to work, and during the last part of 1948 he was elected as a union steward on the second shift, a position which he held at the time of his discharge. The second shift works from 4 p.m. to midnight. There are approximately 39 stewards on this shift, and a total of over 100 throughout the plant. Oslie testified that as a steward he had handled various grievances for employees, but that none of them was taken beyond the department foreman level. During a strike which the Union conducted in June 1949, he was one of several picket captains.

On Wednesday, October 12, 1949, according to his testimony, Oslie arrived at the plant at about 3:30 p. m., reported to the first-aid room that he "felt miserable," and was given several Anacin tablets. He then felt somewhat better but not well enough to face the buffing machine, so he asked the nurse to make out a report that he was ill, but did not get in touch with his foreman. He went outside the plant as the shifts were changing and stood around for awhile exchanging greetings with the incoming employees, and "letting them know (he) still felt bad." After this he went home.

At the same time on the following day, Thursday, Oslie again reported to the first-aid room and was given more Anacin tablets. These made him feel still better, but not enough better. They did not give him "the pep and feeling that (he) could stand up to the wheel." The nurse told him that she had done all she could and that he should see his doctor. He said he would do so, and went outside as the shifts were again changing. A number of union brothers were passing out union leaflets and Pat Amato, an officer of the Union, told him that if he would wait until he was through he would drive him home. "The sun was shining and it felt good" so he leaned against the side of a station wagon, answering the sympathetic inquiries of his friends as they came to work, until about 4:15 when Amato finished with his leaflets and drove him home.

So far Oslie's testimony may be taken at its face value. He went on to testify, however, that on Thursday evening, October 13, he went to see his doctor, one J. G. Stone, who examined him and told him to report back in a few days. Stone's written statement, received in evidence, is that Oslie did not consult him until Tuesday, October 18, 4 days after he was discharged, and that Oslie's primary purpose in coming to him was to obtain a certificate regarding an illness which "he stated" had kept him out of work. Stone examined Oslie on this occasion and gave it as his opinion that he was suffering from "an upper respiratory infection" and that he should rest at home until about October 24. The undersigned accepts Stone's statement that Oslie did not consult him until

October 18 as being in accord with the facts, and finds that Oslie did not, as he testified, consult his doctor on October 13.

On Friday, October 14, at approximately 3:30 p. m. according to his further testimony, Oslie again went to the plant, this time to the locker room, where he informed various of his fellow employees that he was not yet able to go to work but had come down to get his pay check. While he was in the locker room his foreman, Powers, came in and told him to report to Timson, plant superintendent. Timson told him that his services were no longer needed and discharged him. C. J. Uhlir, Respondent's director of labor relations, was then called to Timson's office. Oslie asked Uhlir if it would help in reinstating him if he obtained a certificate from his doctor, admitting, however, according to Uhlir, whose testimony is substantiated by the doctor's statement previously alluded to and contradicted only by Oslie's later testimony as a witness, that he had not seen the doctor up to that point. Uhlir rejected the suggestion of such a statement on the ground that it would not be of value in determining Oslie's condition on the previous 2 days when he had failed to report for work. Uhlir further told Oslie that if he had not felt well on Wednesday and Thursday he should have gone home instead of standing in front of the plant in full view of the second shift as it came to work, and that if he was well enough for this he was well enough to do his job. Uhlir also called Oslie's attention to Respondent's rule, set forth in a rule book furnished the employees, that in the case of absence because of illness an employee should notify Respondent on the first date of such absence, and reminded him that the usual method of notification was by telephone from the employee's home. Asked why he had not called in or spoken to his foreman on the two occasions when he came to the plant, Oslie replied that he supposed he had "done wrong."

Oslie's home is about a mile from the plant, which he reaches by streetcar, and about a half mile from his doctor's office. Asked while testifying why he had come to the plant on October 12 and 13 instead of going to his doctor, Oslie said that he was still recovering from the financial effect of having his appendix removed, and wanted to save money by being treated at Respondent's expense. He admitted, however, that he knew that only Anacin was prescribed in his case, and did not explain why he did not save his carfare and buy it at the corner drug store.

Yolanda Fredenburg, in charge of the first-aid room in Plant No. 2, the nurse to whom Oslie reported, testified from her records that during his period of employment from August 1947 until October 14, 1949, he had visited the first-aid room a total of 71 times with complaints similar to those which he reported on October 12 and 13.

Conclusions

Although the record is silent as to how rigorous may be the operation of a buffing machine, the Trial Examiner can understand that it is less pleasant than a sunny October day and the sympathetic inquiries of fellow workers, when one has a cold. He can also understand why Respondent might desire to dispense with the services of Oslie before his example, fully as contagious as his "upper respiratory infection," should disrupt plant morale. Respondent might well consider that 71 visits to the plant nurse during Oslie's comparatively short period of employment was one too many when attended by the circumstances related above. If his record in this respect was outstanding, his union activity as one steward out of more than one hundred, and as one of several picket captains in a strike 4 months before his discharge, was not. There is no substantial evidence that Respondent discharged him because of such activity, and the undersigned finds that it did not.

B. *The refusal to bargain*

1. The appropriate unit

The complaint alleges that all production and maintenance employees in Respondent's Chicago plants, excluding toolroom employees and experimental toolroom employees, tool crib attendants, maintenance machinists and helpers, machine repair men and helpers, patternmakers, apprentices and helpers, stationary engineers, outside truck drivers, factory, office, and shop clerical employees, draftsmen and designers, cafeteria employees, stock chasers and checkers, watchmen and guards, inspectors, supervisors, set up men, line supervisors, foremen and assistant foremen, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

Respondent at no time disputed the appropriateness of this unit or proposed any other unit. The undersigned finds that this unit insures to employees of Respondent the full benefit of their rights to self-organization and collective bargaining and otherwise effectuates the policies of the Act.

2. Representation by the unit of a majority in the appropriate unit

On April 15, 1950, the Board issued its Second Supplemental Decision and Certification of Representatives,[3] certifying that the Union in an election by secret ballot, held on December 13, 1949, had been designated and selected by the majority of all employees in the unit set forth in the preceding paragraph as their representative for the purpose of collective bargaining and that pursuant to Section 9 (a) of the Act the said organization was the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

The complaint alleges that on or about April 21, 1950, and at all times thereafter, Respondent failed and refused and has continuously failed and refused to bargain collectively with the Union as the exclusive bargaining representative of its employees in the above-described appropriate unit and failed and refused, and has continued to fail and refuse, to recognize the Union as the exclusive representative for the purpose of collective bargaining of such employees.

Respondent's answer admits the allegations of the complaint with respect to its failure to recognize and bargain with the Union. It asserts as its sole reason for not doing so that the Union has not been lawfully certified as a bargaining agent within the meaning of the Act, because it is "a creature of and existed solely for the purpose of carrying out the dictates of the Communist Party."

The Board in its Second Supplemental Decision and Certification of Representatives in the previous representation case considered this contention of Respondent along with the related matter of the Union's compliance with Section 9 (h) of the Act, and held: "The determination of compliance is an administrative matter not litigable by the parties and the Board will not go behind the affidavit identifying the officers of a labor organization to determine the truth thereof. It was the intention of Congress in enacting Section 9 (h) that the filing of affidavits be sufficient for the Board's purposes, all questions of perjury with respect to such affidavits being within the province of the Department of Justice." The Board further said: "The Employer alleges that Local 1150 is

[3] *Sunbeam Corporation*, 89 NLRB 469.

not a labor organization within the meaning of the Act because of the alleged domination of Local 1150 by the Communist Party. This allegation is, in effect, another facet of the compliance matter discussed above. The record confirms that Local 1150 is, in the words of Section 2 (5) of the Act an 'organization * * * in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.' Accordingly, we find this objection to be without merit."

Thus, the contentions of Respondent herein, which constitute its sole defense to its admitted failure and refusal to bargain collectively with the Union, have already been decided adversely to Respondent by the Board.

The undersigned accordingly finds that on April 21, 1950, and at all times thereafter, Respondent failed and refused to bargain collectively with the Union as the representative of its employees within an appropriate unit, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action which the undersigned finds will effectuate the policies of the Act.

It has been found that on April 21, 1950, and at all times thereafter, Respondent refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit. In order to effectuate the policies of the Act the undersigned will recommend that, upon request, Respondent bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit in respect to rates of pay, wages, hours, and other terms and conditions of employment.

It has been found that Respondent did not discriminate against Laura Atkinson and Earl Oslie in discharging them, and it will be recommended that the complaint be dismissed in this respect.

Upon the basis of the foregoing findings of fact and upon the entire record in the case the undersigned makes the following:

CONCLUSIONS OF LAW

1. United Electrical, Radio and Machine Workers of America, is, and at all times herein has been, a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees of Respondent at its three Chicago plants, excluding toolroom employees and experimental toolroom employees, tool crib attendants, maintenance machinists and helpers, machine repair men and helpers, patternmakers, apprentices and helpers, stationary engineers, outside truck drivers, office, factory, and shop clerical employees, draftsmen and designers, cafeteria employees, stock chasers and checkers, watchmen and guards, inspectors and supervisors, set up men, line supervisors, foremen

and assistant foremen, and all other supervisors as defined in the Act, constitute, and at all times material herein did constitute, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. United Electrical, Radio and Machine Workers of America was on April 21, 1950, and at all times thereafter has been, the exclusive representative of all Respondent's employees in said unit for the purpose of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with United Electrical, Radio and Machine Workers of America as exclusive representative of its employees in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

Respondent did not engage in unfair labor practices by discharging Laura Atkinson and Earl Oslie.

[Recommended Order omitted from publication in this volume.]

MISSION OIL COMPANY, HARRY C. LONG, AN INDIVIDUAL, PADRE OIL COMPANY, AND REAL OIL COMPANY *and* OIL WORKERS INTERNATIONAL UNION, CIO. *Case No. 20–CA–325. April 5, 1951*

Decision and Order

On November 29, 1950, Trial Examiner Howard Myers, issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report, and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Styles].

The Board has reviewed the rulings made by the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, the Respondents' brief, and the entire record in the case, and for the reasons hereinafter set forth finds merit in the Respondents' exceptions.

1. The Trial Examiner found that the Respondents discharged and refused to reinstate Robert W. Loveless, Jr., because of his union membership and activities, and more particularly because he testified