We find that all oilers and greasers of production machinery and equipment at the Employer's plant at New Brighton, Minnesota, excluding all other employees, office and clerical employees, guards, the general foreman, shift foreman, subforemen, and other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section (b) of the Act.

[Text of Direction of Election omitted from publication in this volume.]

LEAF BRANDS, INC. *and* DOROTHY Z. MCCONVILLE. *Case No. 13-CA-920. December 12, 1952*

Decision and Order

On July 28, 1952, Trial Examiner John H. Eadie issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel and the charging party, with Chicago Joint Board, Retail, Wholesale & Department Store Employees Union, CIO,[1] hereinafter called the Union, filed exceptions to the Intermediate Report and supporting briefs, and the Respondent filed a brief supporting the report.

The Board[2] has reviewed the rulings of 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 and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendation of the Trial Examiner with the modifications noted below.[3]

Order

IT IS HEREBY ORDERED that the complaint herein against Leaf Brands, Inc., be, and it hereby is, dismissed.

---

[1] Otherwise known in the record as Chicago Joint Board, Retail, Wholesale, and Department Store Union, CIO.

[2] Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Styles and Peterson].

[3] The Trial Examiner inadvertently found that the Union was on the ballot in the elections held among the Respondent's employees in Case No. 13-RC-1650. Our records disclose that Local 15 of Retail, Wholesale & Department Store Employees Union, Bakery and Confectionery Workers, CIO, and not the Union as such, participated in the elections.

Intermediate Report

STATEMENT OF THE CASE

Upon a charge duly filed by Dorothy Z. McConville, an individual, the General Counsel of the National Labor Relations Board, respectively called herein the General Counsel and the Board, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued a complaint dated February 7, 1952, against Leaf Brands, Inc., herein called the Respondent, alleging that the Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, herein called the Act.

With respect to the unfair labor practices, the complaint alleges that on or about September 13, 1951, and thereafter, the Respondent failed and refused to employ Dorothy Z. McConville because she had engaged in activities on behalf of Chicago Joint Board, Retail, Wholesale and Department Store Union, CIO, herein called the Union.

The Respondent filed an answer on or about February 15, 1952, in which it admitted the jurisdictional allegations of the complaint, but denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at Chicago, Illinois, on April 21, 1952, before the undersigned Trial Examiner. All parties were represented by counsel. At the close of the General Counsel's case, the Respondent moved to dismiss the complaint for lack of proof. The motion was denied. The Respondent renewed its motion to dismiss the complaint at the close of the whole case. Ruling on the motion was reserved. The motion to dismiss is disposed of as hereinafter indicated.

Counsel for the General Counsel and the Respondent presented oral argument on the record at the conclusion of the case, and have filed briefs with the Trial Examiner.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is an Illinois corporation, having its principal office and four plants located in Chicago, Illinois, where it is engaged in the manufacture of confectionary products.

In the course and conduct of its business, the Respondent uses annually raw materials valued in excess of $500,000, of which approximately 50 percent is purchased and shipped from points outside the State of Illinois. During the same period, the Respondent manufactures finished products valued in excess of $5,000,000, of which approximately 50 percent is sold and transported in interstate commerce from its plants to places outside the State of Illinois.

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

II. THE ORGANIZATION INVOLVED

Chicago Joint Board, Retail, Wholesale and Department Store Union, CIO, is a labor organization which admits to membership employees of the Respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

During 1950 and 1951, elections were conducted by the Board among Respondent's employees. The Union and the International Longshoremen's and Warehousemen's Union were on the ballot in each election. The first election, held on December 19, 1950, was set aside by the Regional Director. A majority was not obtained by either union at the second election on February 20, 1951. The Union won the third election which was held on March 27. The evidence shows that before the second election the Respondent sent three letters to its employees. The third letter, dated February 16, 1951, urged them to vote for "neither union."

After the last election the Respondent and the Union negotiated a new collective bargaining agreement which included a "union shop." [1]

Dorothy Z. McConville, the charging party herein, was employed by the Union as an international representative. Since 1948 she met frequently with representatives of the Respondent, including Don Moss, Respondent's personnel director, during contract negotiations and on grievance matters. She also conducted several organizational drives to increase the union membership in the plants.

On September 13, 1951, McConville appeared at the Respondent's office and applied for a job. Moss refused to employ her. Concerning her application for employment, McConville testified, in substance, that after seeing a help wanted advertisement of the Respondent she went to the office shortly before 8 a. m.; that when she asked a guard if the Respondent was doing any hiring, he told her that the Company had been "doing quite a bit" as it had "government work"; that she filled out an application blank and handed it to the guard; that while she was waiting in the office, two other women came in and got application blanks; that Foreman Bill Wrightsman entered the office and told Flo Johnson, Moss' assistant, that he needed two girls for the next morning; that Wrightsman then talked to the two other applicants in the office and told them to report for work the following morning; that Johnson then took the two women to her office; that thereafter Johnson told her, "Dorothy, you had better wait and see Mr. Moss"; and that at about 8:45 a. m. she talked with Moss. With respect to her conversation with Moss, McConville testified as follows:

> . . . And about a quarter to nine Mr. Moss come in, and he went in his office, and then he came back out with my application card in his hand. He asked me if that was my application and I said that it was, and then he called me into his office and he said to me, "What is the matter? Aren't you with the union any more?" And then I said to him "no," and I explained to him that I was looking for a job because my doctor had said, or had given me instructions to get out of organizing work and to get into the type of work where I could work regular hours and eat regular meals, and so forth, and then he said something about "You have too many brains to work in a factory, and why did you come to Leaf Brands?" So I explained to him that I enjoyed factory work and that I had come there for other reasons—first of all, that they had had an ad in the newspaper and that they were hiring; second, that I had experience in the candy business and knew that

[1] The Respondent's answer alleges that the new contract was entered into on September 13, 1951.

The evidence indicates that the Respondent and the Union had a contractual relationship since 1945, with a union-security clause since 1948.

> I could handle the work at Leaf Brands, and then he asked me if I had tried anywhere else, and I said that Mr. Anderson had tried to get me on at Carr-Consolidated Company. . . . He is our president, but I said that at that time they had 40 people laid off and that they could not hire me and that I wanted to work steady, and that I would have to work at a big plant, such as Carr and Leaf Brands, or big plants that were unionized in their union, and then he asked me something about that—something to the effect of "Did I want to be in the industry, or why didn't I try some place else," and then I explained to him that working in non-union shops would mean that I would have to falsify my union work record, and that they wouldn't hire union organizers, or that they wouldn't hire union organizers if I falsified my union work record, and naturally, I did not want to do that, because when you do that, that is grounds for discharge, and then you have that hanging over your head all of the time, and I didn't see any reason why Leaf Brands should not hire me, because I could handle the job. Then he said something to me about getting me a job—that he had had connections with other plants, or words to that effect—that he had connections at other plants, and then I said to him that I didn't want to do that, because I wanted to stay in the industry, because I knew that I could do that type of work. Then he said to me, "Well, Dorothy, I will have to check this with the higher-ups, because of your past connections with the union." He said, "I will let you know about it." . . .

McConville testified that she told Moss that she was on a 90-day leave of absence from the Union but that she did not "expect" that she "could go back." She further testified that she had a telephone conversation with Moss some few days later; that he told her that the Company could not use her; that when she asked him the reason, he said, "You know what the problem is, just everything in general"; that she told him that it was an unfair labor practice to refuse to hire people because of their union connections; that he then said, "Give me a couple of days and then I will let you know next week"; and that she did not hear from Moss thereafter.

Concerning his conversation with McConville on September 13, Moss testified as follows:

> I asked her what she was doing there. . . . She said, "I am applying for a factory job." I said, "Are you no longer with the union?" She said, "Well, I am on a temporary leave of absence—90 days from the union, because of doctor's orders . . ." I asked her if she was really interested in working at the factory, and she said that she was, and I then told her that I did not have a job for her, but if the picture changed, or if I heard of something with some other company, that I would be glad to let her know.

Moss denied that he told McConville that it would be necessary for him "to check this with the higher-ups," or that he told her he could not give her a job because she had worked for the Union. He testified that she called him the next day; that when she accused him of not hiring her because of her union activities, he replied, "Dorothy, I did not say that"; and that McConville then hung up and nothing further was said.

Henry Anderson, president of the Union, testified that Moss called him shortly after September 13; that Moss inquired about McConville's status with the Union; that he told Moss that she was on a "leave of absence" from the Union because

of a nervous condition; and that when he asked Moss why McConville was not hired, Moss "indicated that there were no jobs available."[2]

Moss testified that he did not hire McConville mainly because he had heard "a lot of conversations and rumors around the place" to the effect that McConville had "Red tendencies," and because it was "against the policy of the company" to hire a person "on a leave of absence status, from another job."[3] It was stipulated at the hearing "that during the months of August, September, and October of 1951, a considerable number of new female employees were hired" by the Respondent.

I find that the General Counsel has failed to sustain the burden of proving that the Respondent's refusal to hire McConville was discriminatory. The undersigned was impressed favorably with Moss as a witness. He appeared to be honest and reliable; and, contrary to the contentions in the General Counsel's brief, after a review of the record I do not find any serious conflicts in his testimony which change my observations at the hearing. Accordingly, I credit Moss' version of his conversations with McConville.

It is true that the Respondent sent letters to its employees urging them to vote for "neither union." If, as contended by the General Counsel, this conduct shows an antiunion bias, it is my opinion that it was dissipated by reason of the fact that the Respondent thereafter entered into a union-shop contract with the Union. Further, the alleged antiunion conduct was remote from the date of the refusal to hire. The last letter was dated February 16, 1951, or approximately 7 months before the incident involved herein.

From all the evidence I find that the Respondent did not commit an unfair labor practice by refusing to hire Dorothy Z. McConville on September 13, 1951, and thereafter.[4]

Conclusions of Law

By failing and refusing to hire Dorothy Z. McConville on September 13, 1951, and thereafter, the Respondent has not engaged in any unfair labor practice.

[Recommendations omitted from publication in this volume.]

[2] Moss testified that he called Anderson in order "to find out what the status of Dorothy Zabin (McConville) was with her previous employer—with the Union."

[3] Moss also testified that there were several minor reasons for the refusal to hire. He testified that McConville "lived a considerable distance from work," and that she had "no packing experience for a period of around five or six years, and only with an experience at that time for a period of approximately two months."

[4] Without passing upon the merits of Respondent's proposed finding relating to "Background" on page 3 of its brief, it is rejected. Respondent's second proposed finding relating to the refusal to hire, on page 6 of its brief, is accepted.

Globe Wireless, Ltd. *and* Communication Workers of America, CIO, Petitioner. *Case No. 20–RC–1258. December 15, 1952*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Jerome H. Brooks, hearing

242305—53——67