

containing union-security provisions. It will therefore be recommended that Respondent Company withdraw and withhold all recognition from Respondent Unions as the collective-bargaining representative of its employees; cease giving effect to its contract of December 1954 with that organization, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract, unless and until it is certified by the Board as such representative; and that Respondents reimburse all employees and former employees for all sums withheld for dues and fees. *Hibbard Dowel Co., supra.* However, nothing herein shall be construed as requiring Respondent Company to vary or abandon the wages, hours, seniority, or other substantive features of its relations with the employees themselves which it may have established in performance of said contract as extended, renewed, modified, supplemented, or superseded, or to prejudice the assertion by the employees of any rights they may have under such contract.

Respondent Company's coercion of employees to join Respondent Unions, the potent support and assistance rendered to that organization, including its unlawful recognition and bargaining with it as the exclusive representative of its employees, although carried out by Respondent Company primarily as the result of pressure by Respondent Unions, demonstrate that the commission of similar unfair labor practices may be anticipated in the future. The remedy should be coextensive with the threat. I shall, therefore, recommend that Respondents be ordered to cease and desist from infringing in any manner upon the rights guaranteed by Section 7 of the Act.

Upon the basis of the foregoing findings of fact, and on the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and its Local 986, and its Joint Council No. 42, and its Western Conference of Teamsters Organizing Committee are labor organizations within the meaning of Section 2 (5) of the Act.

2. By recognizing, by executing and maintaining a contract containing union-security provisions with Respondent Unions, and by enforcing said provisions, thereby encouraging membership in Respondent Unions, Respondent Company has engaged in unfair labor practices within the meaning of Section 8 (a) (2) and (3) of the Act.

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

4. By executing and maintaining a contract containing union-security provisions, and by attempting to cause Respondent Company to discriminate against employees in violation of Section 8 (a) (3) of the Act, Respondent Unions, Local 986 and Western Conference of Teamsters Organizing Committee, have engaged in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

5. By restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent Unions, Local 986 and Western Conference of Teamsters Organizing Committee, have engaged in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.

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

[Recommendations omitted from publication.]

General Foods Corporation, Northland Dairy Division, Petitioner and General Teamsters Union, Local 406, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO. Case No. 7-RM-146. January 30, 1956

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 Bernard Gottfried,

hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent employees of the Employer.

3. The Union contends that its contract with the Employer, executed August 25, 1954, is a bar to this petition.¹ The Employer urges that the contract is not a bar.

The Union was certified June 16, 1954, and the first contract was executed August 2, 1954, to be in effect for 1 year and thereafter from year to year subject to a 60-day notice to terminate. The contract also provides that if either party wishes to change, alter, or amend the agreement, only those specific portions shall be considered, and the remainder of the agreement shall remain in full force and effect. If no agreement has been reached on the proposed changes within 30 days after the expiration of the agreement, either party may give a 5-day written notice of termination.²

On May 25, 1955, the Union notified the Employer of its desire to negotiate changes in the clauses relating to "Wages, hours, working conditions, benefit plans, strike and lockout under Art. XIX and termination." The notice also stated that if agreement has not been reached on such changes within 30 days after expiration of the agreement, the Union would serve notice of its desire to terminate. On May 28, the Employer served written notice of its desire to make changes in some 12 clauses of the agreement dealing with union activity, grievances, arbitration, seniority, job posting and transfer, holidays, wages, work schedules, strikes and lockouts, duration, and job classifications. It also stated that "we shall be glad to explain these changes to you when we negotiate the new contract at our mutual convenience." On June 21, the Employer wrote the Union indicating

¹ Although the Union claims that its contract is a bar to the Employer's petition for an election, it does not disclaim its interest in continuing to represent the Employer's employees. The Employer, for reasons hereinafter stated, has declined to negotiate a renewal of the present contract.

² Article XXII—duration.

Sec. 1 The terms of this agreement shall be from 12 01 Monday, August 2, 1954 to and including midnight, August 1, 1955 and shall continue in full force and effect from year to year thereafter unless termination notice is given in writing by either party at least 60 days prior to the expiration date of this agreement.

Sec. 2 If either party desires to negotiate a change, alteration, or amendment of this agreement for the succeeding term thereof, written notice shall be given to the other party at least 60 days prior to the expiration date of this agreement. When such change, alteration or amendment is requested only that specific portion of the Agreement shall be considered open for negotiation, and the remainder of the agreement shall remain in full force and effect. If agreement has not been reached on such change, alteration or amendment within 30 days after the expiration date of this agreement, either party may give 5-day written notice of a desire to terminate this agreement.

its willingness to meet at a convenient time and place after July 6. On June 25, the Employer was handed a petition bearing the signatures of 22 out of 34 employees in the bargaining unit to the effect that "we, the following employees of Northland Dairy, do not wish to recognize the union." On June 29, the Employer notified the Union that, since the petition indicated the Union no longer represented a majority of the employees, no useful purpose would be served by negotiating a renewal agreement until the present uncertainties as to the Union's status have been resolved. The Employer filed the instant petition on July 8, and on September 1 the Employer notified the Union of its desire to terminate the agreement in accordance with the duration clause.

The Union urges that its letter and notice of May 24 constituted a notice to modify the contract and not to terminate it, that the contract automatically renewed itself on June 2, 1955, and further, that the Employer's notice of termination of September 1 was not effective because it had refused to negotiate the requested changes prior to the termination notice.

We find it unnecessary to pass upon the sufficiency of the Union's notice of May 24 to prevent automatic renewal of the contract, as we find that any contract bar arising from alleged insufficiency of this notice is effectively removed by the Employer's termination notice of September 1. Such notice to terminate was given in accordance with the contract provision permitting termination when agreement had not been reached on the suggested changes within 30 days of the expiration of the agreement. There is no express provision in the contract that prior negotiations must be conducted as a condition precedent to the giving of a notice to terminate. Nor do we find any basis for implying such a condition precedent. Accordingly, as the contract was terminated by the Employer's notice of September 1, it is no longer in effect and is therefore no bar to the present proceeding.

4. The appropriate unit:

The parties agreed generally that the appropriate unit should consist of all production and maintenance employees, including truck-drivers and boilerroom employees, with the usual exclusions. The parties disagreed as to the inclusion of one laboratory employee and a number of working supervisors³ who were excluded from the certification and the contract and whom the Employer would now exclude but the Union include.

The laboratory employee works under the laboratory supervisor in the laboratory which is a separate room in the plant. He makes tests of products for composition and quality and also works with the

³ These employees were excluded from the contract. As the record is uncontradicted that the foremen have the authority to discharge, we find that they are supervisors and we shall exclude them from the unit.

research group on experiments with new products. He uses the babcock tester, microscope, and bacterial equipment. He is licensed by the State. On the basis of the foregoing, we find that the laboratory man is a technical employee.⁴ Accordingly, in conformity with Board practice, he may not be added to the production and maintenance unit as one of the parties to this proceeding opposes his inclusion.⁵

We find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees at the Employer's Evert, Michigan, plant including truckdrivers and boilerroom employees, but excluding the laboratory employee, office clerical employees, executive employees, administrative employees, professional employees, guards, working supervisors, and all other supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁴ *Buckeye Oil Company*, 101 NLRB 30, 32. See also *United States Gypsum Company*, 109 NLRB 1402, 1405, where testers were found to be technical employees.

⁵ See *Pacific Moulded Products*, 111 NLRB 882, at 884.

Sears Roebuck and Company and Sears Roebuck Employees' Council, Local #1635, Retail Clerks International Association, AFL-CIO,¹ Petitioner. Case No. 1-RC-3814. January 31, 1956

SUPPLEMENTAL DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a Board Decision, Order, and Direction of Election,² an election by secret ballot was conducted on May 26, 1955, under the direction and supervision of the Regional Director for the First Region, among the employees in the unit found appropriate for purposes of collective bargaining. Thereafter, a tally of ballots was furnished the parties showing that 103 ballots were cast for Petitioner, 35 for the Intervenor, and 228 for no union. On May 31, 1955, the Petitioner filed timely objections to conduct affecting the results of the election.

In accordance with the Board's Rules and Regulations, the Regional Director conducted an investigation of the matters raised by the Petitioner's objections and, on June 16, 1955, issued and duly served

¹ As the AFL and CIO have merged since the holding of the election herein, we are amending the Petitioner's designation accordingly.

² *Sears Roebuck & Company*, 112 NLRB 559, in which the instant case was consolidated for purposes of decision with Cases Nos. 1-RC-3813 and 1-RC-3827.