aside and the matter will be remanded to the examiner for the preparation of a new initial decision containing adequate findings.

Commissioner MacIntyre did not concur in the decision in this matter.

THE B. F. GOODRICH COMPANY AND TEXACO, INC.

Docket 6485. Order and Opinion, Feb. 26, 1963

Order denying motion for the disqualification of Chairman Dixon.

Respondent Texaco, Inc., by motion filed February 18, 1963, having requested that Commissioner Dixon withdraw from participation in this proceeding, or, in the alternative, that the Commission determine that Commissioner Dixon be disqualified from such participation; and

The Commission having determined that respondent has failed to show justification for departure from the Commission's practice of treating disqualification as a matter primarily for determination by the individual concerned; and

Commissioner Dixon having filed with the Commission a memorandum denying the existence of any grounds for his disqualification from participation in this proceeding:

It is ordered, That the motion directed to the Commission requesting that it disqualify Commissioner Dixon from participating in this proceeding, be, and it hereby is, denied.

Commissioner Dixon and Commissioner MacIntyre not participating.

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[2] We note that the National Labor Relations Board recently twice remanded a case to their trial examiner for the writing of supplemental intermediate reports. He had made broad conclusions without analysis of evidence. In remanding, the Board held that the trial examiner's report did not satisfy Section 8(b) of the Administrative Procedure Act and the Board's corresponding Rules and Regulations. *Funkhouser Mills, Division of the Ruberoid Company,* 132 N.L.R.B. 245 (1961).

MEMORANDUM OF CHAIRMAN DIXON IN RESPONSE TO THE MOTION OF RESPONDENT TEXACO, INC.,* THAT HE WITHDRAW FROM THE PROCEEDING

The respondent Texaco, Inc., by motion filed February 18, 1963, has asked me to withdraw from further participation in this proceeding. The motion is alternatively directed to the Federal Trade Commission and asks that it "determine" that I be disqualified from such participation.

It is Texaco's contention that my speech of July 25, 1961, before the National Congress of Petroleum Retailers, Inc., "reflects personal bias and a pre-judgment in favor of the allegations of the instant complaint." The allegedly objectionable parts of the speech are quoted in the motion. As I read it and recall it, the only thought conveyed by the speech was that the Commission had challenged the legality of "overriding commissions" and certain other practices engaged in by the various oil and rubber companies, including respondent Texaco, Inc., and The B. F. Goodrich Company. By using the word "challenged," I indicated only that the Commission had determined there was reason to believe that the practices were in violation of law. This determination is an absolute, statutory prerequisite to any complaint, is in fact declared in the first paragraph of the instant complaint, and I fail to see how my repetition of it in a speech indicates bias or prejudgment of the ultimate issue.

The complaint in this matter was issued long before I assumed my present position as a member of the Commission and my direct knowledge of the proceeding is limited to that obtained from a cursory reading of the initial pleadings. I am not possessed of sufficient knowledge to have formed any opinion, pro or con, with respect to the legality of the practices engaged in by these respondents. When the matter is ultimately presented to the Commission for decision, I will then apprize myself of the facts contained in the record and cast my vote in accordance therewith.

As I view it, bias or prejudgment are conditions of the mind, whose existence is known only to the person accused of harboring them. As the accused here, I can flatly say that I have not prejudged the issue in this matter and that I do not have any bias with respect thereto. Therefore, it is my decision not to withdraw from participation in this proceeding.

In view of the circumstances, I shall not participate in the Commission's deliberation and decision upon the respondent's motion to the Commission for a determination that I be disqualified from participation in this matter.

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* Formerly known as The Texas Company.

MASON, AU & MAGENHEIMER CONF. MFG. CO. INC.

Docket 7733. Order and Opinion, Feb. 26, 1963

Interlocutory order placing on suspense—pending investigation of the current pricing practices of respondent's new parent company—proceeding charging a candy manufacturer with discriminating in price between certain vending machine operators and other customers, and with granting promotional allowances to certain retail food chains without making such payments available to their competitors.

ORDER OF THE COMMISSION PLACING THE PROCEEDING IN SUSPENSE

This matter having come before the Commission on the exceptions of counsel supporting the complaint to the initial decision of the hearing examiner and upon briefs and oral argument in support of said exceptions and in opposition thereto; and

The Commission having determined for the reasons stated in the accompanying opinion that the public interest would be best served by placing this proceeding on suspense, pending an investigation of the pricing practices of Bayuk Cigars, Inc., sole owner of respondent corporation:

It is ordered, That the adjudicatory proceedings pending against respondent, Mason, Au & Magenheimer Conf. Mfg. Co. Inc., in this matter be, and they hereby are, placed on suspense until further order of the Commission.

Commissioners Anderson and Higginbotham not participating.

OPINION OF THE COMMISSION

BY DIXON, *Commissioner:*

The complaint in this proceeding issued January 7, 1960, charging Mason, Au & Magenheimer Conf. Mfg. Co. Inc. (Mason), a candy manufacturer, with violation of Sections 2(a) and 2(d) of the Clayton Act as amended. Specifically, respondent was charged with discriminating in price between certain vending machine operators and other customers and granting promotional allowances to certain retail food chains without making such payments available to their competitors. The matter is now before us on the exceptions of counsel supporting the complaint to the initial decision dismissing this proceeding for lack of public interest.

The case-in-chief of counsel supporting the complaint was presented intermittently from May 2, 1960, to May 25, 1961. At the close thereof, Mason moved to dismiss the case on the ground that there was no public interest in continuing the proceeding since the challenged practices had been discontinued and because respondent had become subject to different management and control as a result