In the Matter of AMERICAN PEARL BUTTON COMPANY *and* AMALGAMATED CLOTHING WORKERS OF AMERICA, C. I. O.

Case No. 18–C–967.—Decided May 18, 1944

DECISION

AND

ORDER

Upon complaint issued pursuant to charges duly filed by Amalgamated Clothing Workers of America, C. I. O., herein called the Union, against American Pearl Button Company, Washington, Iowa, herein called the respondent, a hearing was held before a Trial Examiner at Washington, Iowa, from December 9 to 11, 1943, inclusive, in which the Board, the respondent, and the Union participated by their representatives. The Board has reviewed the rulings of the Trial Examiner made on motions and on objections to the admission of evidence and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On January 26, 1944, the Trial Examiner issued his Intermediate Report, finding that the respondent had engaged in and was engaging in violations of Section 8 (1), (3), and 4 of the Act. Exceptions to the Intermediate Report and a brief were thereafter filed by the respondent and have been considered by the Board. Oral argument was held before the Board at Washington, D. C., on April 27, 1944. The respondent and the Union were represented by counsel and participated in the oral argument. Upon consideration of the entire record, we adopt the findings, conclusions, and recommendations of the Trial Examiner, a copy of whose report is attached hereto, except insofar as they are inconsistent with our findings, conclusions, and order hereinafter set forth.

The record is clear and we are convinced, as the Trial Examiner found, that the respondent discriminated against Carrie Rabenold, Beulah Vinton, and Harriet Shaw for the reason that they were members of the Union and participated in activities in behalf of the Union and for the further reason that they testified as witnesses for the Board in the earlier unfair labor practice proceeding. Case No. C–2668,[1] in which the Board found the respondent guilty of unfair

[1] *Matter of Pearl Button Company and Washington Chamber of Commerce, Washington, Iowa*, 52 N. L. R. B 1113

labor practices. However, the Trial Examiner also found that, for the same reasons, the respondent had discriminated against Anna Amlong. We do not agree with the finding as to Amlong. We are of the opinion that her low production record and low seniority rating were justification for the respondent's delay in recalling her to work following the departmental shut-down of July 15, 1943.

In determining the order of recall of employees to work after lay-off, the respondent's general policy was to consider need of the employee, merit, and seniority. The employees in the automatic and carving department, in which Amlong worked, were paid on a piece-rate basis. In the event an employee failed to produce a number of buttons sufficient to entitle him to wages at the rate of 40 cents per hour, the respondent sustained a loss with respect to such services, since, under the applicable minimum wage law, each employee was entitled to a minimum payment of 40 cents an hour without respect to the amount of his production. The record discloses that between September 7, 1942, the date Amlong commenced her employment with the respondent, and November 27, 1943, Amlong failed to earn her minimum wage in 19 of 46 weekly pay periods. The loss per pay period thereby sustained by the respondent on Amlong's services ranged in amount from $0.24 to $7.90, and totaled $44.90. In each pay period between March 13 and July 17, 1943, Amlong failed to earn her minimum wage. On the other hand, 6 employees who had failed to earn their minimum wage during the 4 pay periods immediately preceding the lay-off, were reemployed on July 20, 1943, when work in the automatic and carving department was resumed. Of the 6, 2 were transferred to the counting department, and the other 4 were reemployed at the machines they had operated at the time of the lay-off. The total loss suffered by the respondent with respect to the services of each of these 6 employees amounted to $6.37, $3.04, $6.36, $9.31, $6.83, and $5.78, respectively. During the same period of time, Amlong's total deficiency was either $8.55 or $9.65.[2] However, each of these 6 employees had worked for the respondent considerably longer than had Amlong, who had been in the respondent's employ only since September 7, 1942.[3] Amlong may have had somewhat greater need for employment than did 4 of the 6 employees, but it is impossible, on the basis of the record before us, to consider this factor as conclusive.[4] In view of Amlong's status

[2] The two exhibits introduced herein covering Amlong's production record are inconsistent as to the amount of her deficiency during that period.

[3] The initial employment date of these employees was as follows: Maxwell, August 15, 1935; Springman, September 15, 1939; Lambert, October 11, 1940; Wiley, April 8, 1941; Moriarty, September 10, 1941; Edwards, April 13, 1942; and Amlong, September 7, 1942.

[4] Amlong was married and had three children; her husband was unable to work full time because of ill health. Wiley and Moriarty were married; their husbands were in the armed services. Edwards was married and had one child; her husband was employed. Springman's husband was employed. Wiley, Moriarty, and Springman had no children.

as to production record, seniority rating, and financial need, as contrasted with such status of other employees of comparable efficiency in her department, we conclude and find that the respondent did not discriminate against Amlong by delaying her recall to work as alleged in the complaint.

Since we have found that the respondent did not discriminate with respect to the hire and tenure of employment of Anna Amlong, we shall order that the complaint be dismissed as to her.

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

CONCLUSIONS OF LAW

1. Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Carrie Rabenold, Harriet Shaw, and Beulah Vinton and thereby discouraging membership in Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act; and by discriminating against Carrie Rabenold, Harriet Shaw, and Beulah Vinton for the reason that they testified at a hearing conducted under the provisions of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (4) of the Act.

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

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

5. The respondent has not discriminated with respect to the hire and tenure of employment of Anna Amlong.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, American Pearl Button Company, Washington, Iowa, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations,

or in any other labor organization of its employees, by refusing a timely reinstatement to any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as 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) Make whole Carrie Rabenold, Harriet Shaw, and Beulah Vinton for any loss of pay they may have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which she normally would have earned as wages from July 20, 1943, the date of the respondent's discrimination against her, to the date of the respondent's offer of reinstatement, less her net earnings during such period;

(b) Rescind immediately its rules prohibiting circulation of petitions and participation in organizational activities insofar as such rules prohibit union activity, including solicitation, on company property during the employees' own time;

(c) Immediately post in conspicuous places in and about its plant at Washington, Iowa, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order; (3) that the respondent's employees are free to become or remain members of Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, and that the respondent will not discriminate against any employee because of membership or activity in that organization; and (4) that the respondent's employees are free to engage in concerted activities upon the respondent's premises during their free time and that the respondent will not discriminate against any employee because of such activity;

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

AND IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the respondent has discriminated in regard to the hire and tenure of employment of Anna Amlong.

INTERMEDIATE REPORT

Mr. Stephens M. Reynolds, for the Board.

Mr. Roscoe P Thoma, of Fairfield, Iowa, and *Mr. W. A. Rinckhoff* and *Mr. Harvey B. Rector*, of Cincinnati, Ohio, for the respondent.

Mr. E D. Schultheis, of Muscatine, Iowa, for the Union.

STATEMENT OF THE CASE

Upon a second amended charge duly filed on November 22, 1943, by Amalgamated Clothing Workers of America, C. I. O, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Eighteenth Region (Minneapolis, Minnesota), issued its complaint dated November 26, 1943, against American Pearl Button Company, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (4) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent: (1) on or about October 23, 1943, and since that date by its officers, agents and employees has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act by publishing and distributing to its employees a printed pamphlet entitled "Employment and Labor Policy;" and (2) on July 20, 1943, failed and refused to recall to work Carrie Rabenold, Harriet Shaw, and Beulah Vinton until stated dates and failed and refused to recall Anna Amlong, for the reasons that they, and each of them, joined and assisted the Union, engaged in concerted activities with other employees, and gave testimony before a Trial Examiner of the Board on June 17, 1943, in Case No. C-2668.

On December 7, 1943, the respondent filed an answer, admitting certain allegations of the complaint as to the nature of its business but denying that it had committeed any unfair labor practices.

Pursuant to notice, a hearing was held at Washington, Iowa, from December 9 to 11, 1943, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, and the Union by its representative. All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the close of the Board's case, counsel for the Board moved to conform the complaint to the proof as to names and dates, particularly to show that Beulah Vinton was recalled to work on October 20, 1943, instead of November 1, 1943, as alleged in the complaint and that Anna Amlong was recalled on November 27, 1943. The motion was granted without objection. At the close of the Board's case, counsel for the respondent moved to dismiss that portion of the complaint alleging violation of Section 8 (1) of the Act. At the close of the whole case this motion was renewed and the respondent further moved to dismiss the entire complaint. Ruling was reserved on these motions at the hearing. The motions to dismiss are hereby denied.

At the close of the hearing, counsel for the Board and the respondent argued orally on the record before the undersigned Pursuant to permission granted at the hearing, counsel for the Board and the respondent thereafter filed briefs with the undersigned.

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 American Pearl Button Company is an Iowa corporation, having its principal office and place of business in Washington, Iowa, where it is engaged in the manufacture, sale and distribution of pearl buttons. During the calendar year 1942, the respondent purchased about 2000 tons of mussel shells for use at its Washington plant, approximately 50 percent of which was purchased and shipped to the plant from points outside the State of Iowa. During the same period, the respondent sold finished products manufactured at its Washington plant in the approximate value of $900,000, of which about 90 percent was sold and shipped to points outside the State of Iowa.

II. THE ORGANIZATION INVOLVED

Amalgamated Clothing Workers of America, is a labor organization affiliated with the Congress of Industrial Organizations. It admits to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

The hearing in Case No. C–2668,[1] referred to in the complaint was held before a Trial Examiner on June 17 and 18, 1943. Carrie Rabenold, Harriet Shaw, Beulah Vinton, and Anna Amlong, together with other employees of the respondent, testified as witnesses for the Board at that hearing. With respect to the respondent American Pearl Button Company, the Board in its Decision and Order in Case No. C–2668, dated October 4, 1943, found that the respondent by by certain anti-union statements and conduct of its president, plant superintendent, and foremen, had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and ordered the respondent to cease and desist from such activities and to take certain affirmative action to effectuate the purposes of the Act.

At the time of the hearing in the instant proceeding, the respondent had not complied with the Board's Decision and Order.

B. *The discriminatory lay-offs*

On or about June 16, 1943, Carrie Rabenold had a conversation with Fred Bey, the foreman of her department. During the conversation, Rabenold told Bey that she was going to be a witness at the hearing (in Case No. C–2668) and that she would tell the truth whether he liked it or not. Bey replied, "Then it's going to be too bad for you."[2]

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[1] Matter of *American Pearl Button Company and Washington Chamber of Commerce, Washington, Iowa* and *Amalgamated Clothing Workers of America*, C. I. O., 52 N. L R. B. 1113

[2] Rabenold testified to the above conversation at the hearing in Case No. C–2668 and the Trial Examiner credited her testimony despite Bey's denial. In its Decision and Order the Board sustained the Trial Examiner's findings concerning statements made by Bey to employees Vinton, Rabenold and Shaw. These statements were clearly, and the Board found them to be, anti-union.

Prior to July 16, 1943, the respondent employed four mechanics whose duties were to service the machines in the "automatic and carving" department." Rabenold, Shaw, Vinton and Amlong were employed in this department and Bey was its foreman. On July 15, 1943, all four mechanics resigned their positions, apparently without any advance notice to the respondent.[3] Their resignations necessitated a shut-down of the automatic and carving department from July 16 to 20, 1943. On the night of July 15 and the morning of July 16, Bey advised the employees that a lay-off was necessary and that he would recall them to work as soon as he could use them. On July 20 Bey recalled to work about 22 employees. About 16 of these employees returned to work in the automatic and carving department and without exception they operated the same machines they had operated prior to the lay-off. The remainder of the 22 employees recalled were transferred to work in other departments in the plant.

On July 15, 1943, the respondent employed approximately 50 persons (excluding mechanics) in the automatic and carving department. As of the date of the hearing, approximately 38 of these employees had returned to work for the respondent.

Harriet Shaw was recalled on September 15; Beulah Vinton on October 20; and Anna Amlong on November 22, 1943. Carrie Rabenold was recalled by the respondent on September 15 but at her own request did not return to work until September 20, 1943.

Concluding Findings

On or about October 22, 1943, the respondent published and distributed to its employees, a pamphlet entitled "Employment and Labor Policy," in which the following section is contained:

> 2. The lay off and employment continuity policy of the company is as follows:
>
> (a) How badly the employee needs the work.
>
> (b) Merit.
>
> (c) Length of service with the Company.
>
> Lay off and employment continuity shall be departmental and shall always be governed by the above factors as it has been in the past.

At the hearing the respondent contended that the above policy had been in effect for many years and that it governed the recalls to work on July 20 and thereafter[4]

However, it does not appear that the respondent followed the above policy with respect to employees recalled to work in the automatic and carving department. As to this department, those employees were recalled on July 20 who on July 16 were operating the machines which produced buttons that the respondent determined to produce after the shut-down. The respondent's witnesses testified, in substance, that all types of buttons were urgently needed after the shut-down, that certain types were more urgently needed than others,

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[3] It is undisputed that the Union barred mechanics from membership because it considered them to be supervisory employees At all times mentioned herein, Rabenold, Shaw, Vinton and Amlong were active members of the Union.

[4] Harriet Shaw and other witnesses for the Board testified that they had never heard of the above lay-off policy prior to receiving a pamphlet on or about October 23, 1943 Further, there is no evidence that the respondent had ever published or otherwise made known this policy to its employees prior to October 22, 1943

and that the employees were recalled to work in the automatic and carving department accordingly. In the opinion of the undersigned the respondent's failure to produce the best evidence, i. e, its inventory and order records in support of this testimony, is significant.

Rabenold was first employed by the respondent on October 15, 1934; Shaw on March 9, 1931; Vinton on March 9, 1937; and Amlong on September 7, 1942. Many of the employees recalled after the lay-off and before these four employees were recalled to work had less length of service with the respondent.[5] The respondent's records show that a number of employees were recalled on July 20 whose production records were worse than those of Rabenold, Shaw and Vinton. In fact, Rabenold and Shaw had excellent production records.[6] Even if the respondent had such a lay-off policy as set forth above, nevertheless it appears from the evidence that at least Rabenold, Vinton and Amlong had as much or more need for the work than a number of the employees recalled on July 20, including those transferred into departments other than the automatic and carving department on that date, and that the respondent made no investigation of the employees' needs, relying instead on Bey's indefinite knowledge of their personal affairs.[7] Further, the evidence shows that Bey, who had the authority to decide the order in which certain of the employees were to be recalled to work, had an anti-union attitude and, as set forth above, had threatened Rabenold with retaliation if she told the truth at the hearing in June, 1943. It is significant that Vinton, Rabenold, Shaw and Amlong were the only employees in the automatic and carving department who testified as

[5] Arlene Weinard, the only employee in the Automatic and Carving Department who testified at the hearing in June, 1943, as a witness for the respondent, was first employed by the respondent on July 20, 1942, and after the lay-off, was recalled to work on July 20, 1943. In addition to Weinard, there were many other employees recalled to work on July 20, 1943, who had less length of service with the respondent than Rabenold, Shaw and Vinton. Some of these employees, and particularly those who were first employed by the respondent after Amlong, were Myrtle Wenger, Laura Harland, Mae Whetstine and Esther Kerr. At least 6 employees who had less length of service than either Rabenold, Shaw, Vinton or Amlong, or all of them, and who were recalled on July 20, were transferred into departments other than the Automatic and Carving Department.

[6] Respondent's employees were paid on a piece-rate basis. For the four pay periods preceeding the lay-off, the payroll records disclose that Rabenold and Shaw at all times exceeded the minimum wage required under Federal legislation, that 11 employees who were recalled to work on July 20 failed to make the minimum wage during one or more of these pay periods; that five of the employees recalled on July 20 had piece-rate earnings less than those of Vinton; but that all of the employees recalled on July 20 had better production records than did Amlong.

[7] The undisputed evidence shows that at the time of the lay-off Rabenold, Amlong and Vinton were married; that Amlong had three children and Vinton had two; that all three of these employees had husbands who were unable to engage in full-time employment due to ill health; that the earnings of each of these employees was needed to help support her family; and that Bey was aware of the condition of Rabenold's husband. The evidence shows that Shaw was married and had one son of high school age, that her father was partially dependent upon her, that her husband also worked for the respondent, and that her son was working at or about the time of the lay-off. Shaw testified that her husband's wages were not sufficient to maintain her family and that she needed the work.

With respect to the employees recalled to work on July 20, the evidence shows that four and possibly five were not married and were without dependents, that one was a widow without children; and that four who had no children were married to husbands who were either working or in the armed forces. At least two of the above employees were transferred on July 20 into departments other than the Automatic and Carving Department. In addition, it appears from the evidence that there were 8 other employees recalled on July 20 whose need for the work was no greater, and in some cases far less, than that of either Rabenold, Shaw, Vinton or Amlong.

witnesses for the Board at that hearing, which was held about one month before the lay-off. Accordingly, the undersigned is convinced and finds that the respondent discriminated against Rabenold, Vinton, Shaw and Amlong in not recalling them to work on July 20, 1943, because of their membership in and activities on behalf of the Union and for the further reason that they testified as witnesses for the Board in Case No. C–2668. By thus discriminating against Rabenold, Vinton, Shaw and Amlong the respondent has discouraged membership in the Union and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

C. *Interference, restraint, and coercion*

The pamphlet entitled "Employment and Labor Policy," mentioned above, was distributed by the respondent to its employees in their pay envelopes on or about October 22, 1943 Copies of the rules were also posted on the bulletin boards. Under "Rules and Regulations," this pamphlet contained the following:

> 2 No petitions shall be passed on either company time or property.
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> * * * * * * *
>
> 4. Participation in organization activities of any kind on company time and property are strictly prohibited.[8]

The undersigned finds that the respondent, by publishing and distributing the above rules to its employees, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, in that these rules prohibited, on company property, concerted or union activities of employees on their free time, as distinguished from working time.[9] Further, the evidence in the instant proceeding shows that the posting and distribution to employees of these rules on *October 22, 1943*, only 18 days after the Board had rendered its Decision and Order in Case No. C 2668, were directed against organizational efforts of employees in behalf of the Union, and the undersigned so finds. From the Board's Decision and Order, it is clear that the respondent was antagonistic towards the Union. At the time of the posting and distribution it does not appear that any other union was attempting to organize the respondent's employees It does appear that the respondent had posted the same rules about 3 years previously; but on the other hand, the record indicates that other than this posting, the respondent had never strictly enforced the rules or otherwise called them to the attention of the employees Moreover, there is no evidence in the case of any concerted or union organizational activities by employees on company time and property or that such activities interfered with the plant's production.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the 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.

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[8] The above two rules were also posted in the respondent's plant on or about August 21, 1940. The record is not clear, however, as to the length of time the rules remained posted.

[9] *In the Matter of Peyton Packing Company, Inc.*, and *Amalgamated Meat Cutters and Butcher Workmen of North America, A. F. of L., Local #606*, 49 N. L. R. B 828

V. THE REMEDY

Since it has been found that the respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act.

The undersigned has found that the respondent has discriminated in regard to the hire and tenure of employment of Carrie Rabenold, Harriet Shaw, Beulah Vinton, and Anna Amlong. The undersigned will therefore recommend that the respondent make them whole for any loss of pay they may have suffered by reason of the respondent's discrimination against them, by the payment to each of them of a sum of money equal to the amount which she would normally have earned as wages from July 20, 1943, the date of such discrimination, to the date of offer of reinstatement, less her net earnings,[10] during said period.

The undersigned has also found that the respondent committed an unfair labor practice by publishing and distributing to its employees on or about October 22, 1943, a pamphlet entitled "Employment and Labor Policy," which interfered with, restrained, and coerced the employees in the exercise of the rights guaranteed in Section 7 of the Act. The deterrent influence of such publishing and distribution and of the pamphlet itself can be removed only by a statement by the respondent, properly publicized, to the effect that its employees are free to exercise the rights guaranteed them by the Act without risk of discrimination for so doing. Accordingly, it will be recommended that such notice be posted by the respondent.

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

CONCLUSIONS OF LAW

1. Amalgamated Clothing Workers of America, C. I. O. is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Carrie Rabenold, Harriet Shaw, Beulah Vinton, and Anna Amlong, thereby discouraging membership in a labor organization, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act; and by discriminating against the above employees for the reason that they testified at a hearing conducted under the provisions of Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (4) of the Act.

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

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

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[10] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company* and *United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N L R B 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation* v *N. L. R. B.*, 311 U. S. 7.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, American Pearl Button Company, Washington, Iowa, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Amalgamated Clothing Workers of America, C. I. O., or any other labor organization of its employees, by refusing a timely reinstatement to any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Make whole Carrie Rabenold, Harriet Shaw, Beulah Vinton, and Anna Amlong for any loss of pay they may have suffered by reason of the respondent's discrimination against them, by the payment to each of them of a sum of money equal to the amount which she would normally have earned as wages from the date of the discrimination to the date of the respondent's offer of reinstatement, less her net earnings [11] during said period;

(b) Rescind its rule prohibiting concerted activities by its employees on its property during their free time;

(c) Immediately post in conspicuous places in and about its plant at Washington, Iowa, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a) and (b) of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) and (b) of these recommendations; (3) that the respondent's employees are free to become or remain members of Amalgamated Clothing Workers of America, C. I. O., that the respondent will not discriminate against any employee because of membership or activity in that organization; and (4) that the respondent's employees are free to engage in concerted activities upon the respondent's premises during their free time and that the respondent will not discriminate against any employee because of such activity;

(d) File with the Regional Director for the Eighteenth Region, on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective November 26, 1943, any party

[11] See footnote 10, *supra*.

or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

JOHN H. EADIE,
Trial Examiner.

Dated January 26, 1944