

In the Matter of CARSON PIRIE SCOTT & COMPANY and DEPARTMENT STORE EMPLOYEES' UNION LOCAL 291, OF THE BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, A. F. OF L.

Case No. 13-C-3044.—Decided February 5, 1948

Mr. Leon A. Rosell, for the Board.

Sidley, Austin, Burgess & Harper, by *Mr. Gordon W. Winks*, of Chicago, Ill., for the respondent.

Mr. Daniel Carmell, by *Messrs. Lester Asher, Joseph E. Gubbins*, and *S. F. Sullivan*, of Chicago, Ill., for the Union.

DECISION

AND

ORDER

On March 7, 1947, Trial Examiner Henry J. Kent issued his Intermediate Report in the above-entitled proceeding, finding that the 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. Thereafter, the respondent filed exceptions to the Intermediate Report and supporting briefs.

On December 16, 1947, the Board, at Washington, D. C., heard oral argument in which the respondent and the Union participated.

The Board has considered the Intermediate Report, the exceptions and briefs of the respondent, the oral argument, and the entire record in the case, and finds that the respondent's exceptions have merit.

In his Intermediate Report, the Trial Examiner found, as alleged in the complaint, that the respondent refused to bargain collectively with the Union on behalf of a unit of employees consisting of all fitters, relief fitters, tailors, tailors' helpers, pressers, pants markers, pants rippers, examiners, and machine operators employed in the men's and boys' alteration shop, section 653, of the respondent's retail store, excluding the general office clerks, wrappers, and supervisors. In prior representation proceedings,¹ in which the respondent

¹ *Matter of Carson Pirie Scott & Company and Department Store Employees' Union, Local 291, CIO*, 63 N. L. R. B. 1096 (Case No. 13-R-2589, issued on September 21, 1945); 75 N. L. R. B., No. 148.

ent contended that a store-wide unit was appropriate, the Board had found that the employees in section 653 were a homogeneous group, distinguishable from sales personnel who form a major part of the respondent's employees, and had determined that section 653 constituted a unit appropriate for collective bargaining. In finding such a unit to be appropriate, the Board stated that collective bargaining should be made an immediate possibility for the employees in section 653 without requiring them to await organization on a broader basis at an uncertain date in the future. There was no labor organization claiming to represent the employees in a store-wide unit, although the petitioning union sought ultimately to do so.²

We have again examined the record in these representation proceedings which led to the instant case. On the basis of our reexamination, we are now of the opinion, for the reasons hereinafter set forth, that a separate bargaining unit should not have been established on behalf of the employees in section 653.

With an employment force of more than 5,000 persons, the respondent operates in Chicago a retail department store in which management is centralized and working conditions are generally uniform. Section 653 of the store consists of approximately 35 workers who chiefly alter men's ready-to-wear clothing. However, they also do a considerable amount of work on women's ready-to-wear clothing. Thus, the tailors alter women's coats, suits, bathrobes, and raincoats; the pressers press all types of women's clothing; the pants marker and ripper mark and rip women's slacks; and the machine operators do sewing work on women's clothing. In addition to interchange of personnel between the men's and women's alteration shops, merchandise to be altered is interchanged between the two shops. This interchange, in gross, is substantial. Yet the unit previously established not only excludes the approximately 54 employees in the women's alteration shop, section 670, who alter women's clothing, but it also fails to include the same type of employees who do similar fitting and other alteration work in other sections of the store. These employees who work in sections of the store other than the men's or women's alteration shops are fitters, rippers, pressers, and machine

Matter of Carson Pirie Scott & Company and Department Store Employees' Union Local 291, of the Building Service Employees' International Union, A. F. L., 69 N. L. R. B. 935 (Case No. 13-R-3451, issued on July 25, 1946). The AFL union in Case No. 13-R-3451, which is the charging union in the instant case, filed its 9 (c) petition after the employees in the unit shifted affiliation *en masse* to it from the CIO union which was the petitioner in Case No. 13-R-2859

² 63 N. L. R. B. 1096 at 1099. In its decision in the second representation proceeding referred to above, the Board merely adopted the rationale of its first decision, noting that there had been no substantial change in the facts of the case since the first decision.

operators, totaling approximately 151 in number. Moreover, the unit previously established includes employees, namely tailors' helpers and examiners, who are clerical workers and who do no alteration work whatever.³

Under the circumstances, and on reconsideration of all the facts, we find that a separate unit of employees in section 653 is an unduly artificial and impractical grouping of department-store employees, which should have been found inappropriate for bargaining purposes even before the Act was amended to limit the Board's application of the extent-of-organization doctrine. The Board's earlier opinion carried that doctrine too far.⁴ Accordingly we shall dismiss the complaint, for the Act does not require the respondent to bargain with respect to an inappropriate unit of employees.⁵

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, as amended, the National Labor Relations Board hereby orders that the complaint herein against Carson Pirie Scott & Company, Chicago, Illinois, be, and it hereby is, dismissed.

MEMBER HOUSTON took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT

Leon A. Rosell, Esq., for the Board.

Sidley, Austin, Burgess & Harper, by *Gordon W. Winks, Esq.*, for the respondent.

Daniel D. Carmell, Esq., by *Joseph E. Gubbins, Esq.*, and *Mr. S. F. Sullivan*, for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by Department Store Employees' Union, Local 291, of the Building Service Employees' International Union, A. F. of L., herein called the Union, the National Labor Relations Board, herein called the Board,

³ The ultimate objective of this particular Union, of course, is not limited to skilled workers on men's clothing.

The examiner checks to see that all alterations ordered have been made. We excluded employees having such functions from a similar unit classification in *Matter of Desmond's, Inc.*, 68 N. L. R. B. 379 (inspectors). Although the classification, tailors' helpers, seems to have a trade connotation, they do no more than assemble pants with matching coats, and route the garments to whichever section of the store is to deliver the clothing to the customer.

⁴ See opinion of Chairman Herzog in *Matter of Hudson Hosiery*, 74 N. L. R. B. 250. See also *Matter of Garden State Hosiery Co.*, 74 N. L. R. B. 318, and cases cited in footnote 8 thereof.

⁵ In view of our decision, we find it unnecessary to determine the impact, if any, of Sections 9 (c) (5) and 103 of the amended Act upon our previous unit determination, and therefore do not pass upon these questions.

by its Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint dated November 8, 1946, against Carson Pirie Scott & 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) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint accompanied by notice of hearing thereon were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance: (1) that all fitters, relief fitters, tailors, tailors' helpers, pressers, pants markers, pants rippers, examiners, and machine operators, employed in the men's and boys' alteration shop, Section 653, of the retail store of the respondent, at Chicago, Illinois, except for the general office clerks, wrappers, the supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining; (2) that on August 29, 1946, the Board certified the Union as the exclusive representative of the employees in the above-described unit for the purposes of collective bargaining; (3) that at all times since August 29, 1946, the Union has been and now is the exclusive representative of the employees in the said appropriate unit; and (4) that since on or about September 4, 1946, and thereafter the respondent has refused to bargain collectively with the Union as the exclusive representative of the employees in the said unit.

The respondent duly filed its answer admitting the allegations in the complaint in respect to the nature and scope of its business, and the refusal to bargain, but denying that it was engaging in commerce within the meaning of the Act, and also denying that the above-described unit constituted an appropriate bargaining unit.

Pursuant to notice, a hearing was held on December 9, 1946, at Chicago, Illinois, before the undersigned, Henry J. Kent, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent and the Union were represented at the hearing by counsel. 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 hearing, counsel for the respondent moved to dismiss the complaint on the grounds: (1) respondent is not engaging in commerce within the meaning of the Act; and (2) that the Board's finding regarding the appropriate unit is erroneous. Rulings on these two motions were reserved by the undersigned and they are now denied. The parties did not avail themselves of the opportunity afforded them to present oral argument before the undersigned, but counsel for the respondent has filed a brief with him.

Upon the entire record of the case, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Carson Pirie Scott & Company, an Illinois corporation, has its principal office and place of business in Chicago, Illinois, where it is engaged in the operation of a retail department store. In conjunction with its retail store, the respondent operates a buying office in New York City, and a warehouse located in Chicago. The respondent also operates a wholesale floor covering business in Chicago, with branch offices, salesrooms, and warehouses located in Columbus, Cincinnati, and Cleveland, Ohio; Milwaukee, Wisconsin; Indianapolis, Indiana; and Minneapolis, Minnesota. The respondent's retail department store is the only one

concerned in this proceeding. During the year 1945, the respondent purchased merchandise for resale at its retail store valued in excess of \$20,000,000, approximately 87 percent of the total value of such merchandise being shipped to its Chicago store from points outside the State of Illinois. During the same period, the respondent's gross sales at its retail store exceeded the sum of \$25,000,000, approximately 5 percent of the sum representing sales of merchandise transported to customers at points located outside the State of Illinois. Approximately 3 percent of the respondent's advertising of merchandise sold at its retail store is placed with magazines having a national circulation which are published outside the State of Illinois.

The undersigned finds, contrary to the contention of respondent, that it is engaged in commerce within the meaning of the Act,¹ as heretofore found by the Board.²

II. THE ORGANIZATION INVOLVED

Department Store Employees' Union, Local 291, of the Building Service Employees' International Union, is a labor organization, affiliated with the American Federation of Labor, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

1. Background

Insofar as the record shows, none of the respondent's employees had been organized prior to 1945. On October 23, 1945, Local 291, CIO, was certified by the Board as the bargaining agent for the same unit of employees now sought by Local 291, A. F. L.³ After certification, the respondent refused to bargain with the CIO on the grounds that the unit found by the Board was inappropriate. As a result, unfair labor practice charges were filed against the respondent on December 8, 1945.⁴ On December 27, 1945, the executive board of Local 291, CIO, met and voted to disaffiliate with the CIO and to affiliate with the A. F. L. This decision was the result of a long standing dispute between leaders of Local 291 and the International of the CIO in regard to the distribution of dues collected from the members. Within a 24-hour period, the executive board, the local officers, and approximately 95 percent of the employees represented by Local 291, CIO, voted to transfer their affiliation from the CIO to the A. F. L. A charter was obtained from Building Service Employees' International Union, the new local retaining its former name and local number. Local 291, A. F. L., thereafter filed its petition for certification of representatives on January 25, 1946.⁵

2. The appropriate unit; the Union's majority therein

On July 25, 1946, the Board issued its Decision and Direction of Election in Case No. 13-R-3451 (69 N. L. R. B. 935), finding that all fitters, relief fitters,

¹ Cf. *N. L. R. B. v. Botany Worsted Mills, et al.*, 133 F. (2d) 876 (C. C. A. 3); 319 U. S. 751, cert. denied.

² See *Matter of Carson Pirie Scott & Co., et al.*, 69 N. L. R. B. 935.

³ *Matter of Carson Pirie Scott & Company* (13-R-2859), 63 N. L. R. B. 1096. Local 291, CIO, is a community local which has also represented units in The Fair, Marshall Field & Company, the Boston, and South Center Department Stores in the Chicago area.

⁴ Case No. 13-C-2727.

⁵ These findings are based upon findings made in the Board's Decision and Direction of Election in Case No. 13-R-3451 (69 N. L. R. B. 935).

tailors, tailors' helpers, pressers, pants markers, pants rippers, examiners, and machine operators, employed in the men's and boys' alteration shop, Section 653 of the respondent's retail store, except for the general office clerks, wrappers, the supervisor and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

Previous thereto, on or about May 27, 1946, the respondent duly filed its brief with the Board in Case No. 13-R-3451. It therein contended that the unit sought by the Union was inappropriate and that the respondent was not engaging in commerce within the meaning of the Act. Thereafter, following a consideration of the entire record, the Board on July 25, 1946, as aforesaid, directed an election be held.⁶

The tally of ballots cast in the election by secret ballot held on August 14, 1946, which was conducted under the direction and supervision of the Regional Director for the Thirteenth Region, showed that of approximately 52 eligible voters in the unit, 29 cast valid votes, of which 27 were for the Union, and 2 against. No objections to this election were thereafter filed by any of the parties within the time provided therefor in Article III, Section 10, of the Board's Rules and Regulations. On August 29, 1946, the Board certified the Union as the exclusive collective bargaining representative for the respondent's employees in the above-described appropriate unit.

The respondent continues to contest the appropriateness of the unit. Its objections are the same ones asserted by it from the beginning of this controversy, namely, that a store-wide unit constitutes an appropriate bargaining unit. In the instant proceeding the respondent presented no further evidence of a nature not previously adduced in the preceding representation records. It merely offered additional repetitious evidence tending to show that the Union concedes a store-wide unit to be the most appropriate bargaining unit. Such proof raises no new issue not previously submitted to and considered by the Board prior to its certification of the Union as the exclusive representative of the respondent's employees in the above-found appropriate unit.⁷

The undersigned accordingly finds, pursuant to the Board's previous determination, that all fitters, relief fitters, tailors, tailors' helpers, pressers, pants markers, pants rippers, examiners, and machine operators, employed in the men's and boys' alteration shop, Section 653, of the respondent's retail store, except for the general office clerks, wrappers, the supervisor and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, constitute, and at all times material herein constituted, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. The undersigned further finds that on and at all times after August 29, 1946, the Union was the representative of a majority of its employees in the aforesaid unit and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was on August 29, 1946, and at all times material thereafter has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

⁶ 69 N. L. R. B. 935.

⁷ See *N. L. R. B. v. Botany Worsted Mills, et al.*, 133 F. (2d) 876 (C. C. A. 3); 319 U. S. 751, cert denied

3. The refusal to bargain

The complaint alleges and the answer admits that on September 3, 1946, the Union requested the respondent to bargain collectively with it as the exclusive representative of all the employees in the aforesaid appropriate unit, and that on September 4, 1946, as well as at all times thereafter, the respondent refused to do so.

The undersigned finds that the respondent on September 4, 1946, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby interfered with, restrained, and coerced 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 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.

V. THE REMEDY

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

Because of the basis of the respondent's refusal to bargain as indicated by the facts found, and because of the absence of any evidence that danger of other unfair labor practices is to be anticipated from the respondent's conduct in the past, the undersigned will not recommend that the respondent cease and desist from the commission of any other unfair labor practices. Nevertheless, in order to effectuate the policies of the Act, the undersigned will recommend that the respondent cease and desist from the unfair labor practices found and from any other acts in any manner interfering with the efforts of the Union to negotiate for or represent the employees as exclusive bargaining agent in the unit herein found appropriate.

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. Department Store Employees' Union, Local 291, of the Building Service Employees' International Union, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act

2. All fitters, relief fitters, tailors, tailors' helpers, pressers, pants markers, pants rippers, examiners, and machine operators, employed in the men's and boys' alteration shop, Section 653, of the respondent's retail store, except for the general office clerks, wrappers, the supervisor, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Department Store Employees' Union, Local 291, of the Building Service Employees' International Union, A. F. of L., was on August 29, 1946, and at all times

thereafter has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on September 4, 1946, and at all times thereafter, to bargain collectively with Department Store Employees' Union, Local 291, of the Building Service Employees' International Union, A. F. of L., as the exclusive representative of all its employees in the aforesaid unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By said acts, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) 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

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent, Carson Pirie Scott & Company, and its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain with Department Store Employees' Union, Local 291, of the Building Service Employees International Union, A. F. of L., as the exclusive representative of all fitters, relief fitters, tailors, tailors' helpers, pressers, pants makers, pants rippers, examiners, and machine operators, employed in the men's and boys' alteration shop, Section 653, of the respondent's retail store, except for the general office clerks, wrappers, the supervisor, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action;

(b) Engaging in any other acts in any manner interfering with the efforts of Department Store Employees' Union, Local 291, of the Building Service Employees' International Union, A. F. of L., to negotiate for or represent the employees in the aforesaid unit as exclusive bargaining agent.

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

(a) Upon request bargain collectively with Department Store Employees' Union, Local 291, of the Building Service Employees' International Union, A. F. of L., as the exclusive bargaining representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its retail store in Chicago, Illinois, copies of the notice attached to the Intermediate Report herein marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by the respondent's representatives, be posted by the respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the

respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) File with the Regional Director for the Thirteenth 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 receipt of the Intermediate Report the respondent notifies said Regional Director in writing that it has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, 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; and any party or counsel for the Board may within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exception and/or briefs, 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. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, 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 service of the order transferring the case to the Board.

HENRY J. KENT,
Trial Examiner.

Dated March 7, 1947.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT engage in any acts in any manner interfering with the efforts of DEPARTMENT STORE EMPLOYEES' UNION, LOCAL 291, OF THE BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, A. F. OF L., to negotiate for or represent the employees in the bargaining unit described below.

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described below with respect to rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All fitters, relief fitters, tailors, tailors' helpers, pressers, pants markers, pants rippers, examiners, and machine operators, employed in the men's

and boys' alteration shop, Section 653, of our retail store at Chicago, Illinois, except for the general office clerks, wrappers, the supervisor, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

CARSON PIRIE SCOTT & COMPANY,
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.