

In the Matter of PIQUA MUNISING WOOD PRODUCTS COMPANY and  
FEDERAL LABOR UNION LOCAL 18787

*Case No. C-302.—Decided June 9, 1938*

*Woodenware, Toy, and Lamp Manufacturing Industry—Interference, Restraint, and Coercion:* threat to shut down plant—*Discrimination:* demotion; charges of, not sustained—*Unit Appropriate for Collective Bargaining:* production and maintenance employees, excluding clerical and supervisory employees; no controversy as to—*Representatives:* proof of choice: union membership cards—*Collective Bargaining:* refusal to recognize representatives as bargaining agency representing employees; special forms of remedial order; recognition as exclusive representative; enter into agreement with representatives of employees if understanding is reached.

*Mr. Peter Di Leone, and Mr. Max W. Johnstone, for the Board.*  
*Day, Young & Veach, by Mr. Earl W. LeFever, of Cleveland, Ohio,*  
for the respondent.

*Miss Ann Landy, of counsel to the Board.*

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by Federal Labor Union Local 18787, herein called the Union, the National Labor Relations Board, herein called the Board, by James P. Miller, Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint, dated September 27, 1937, against Piqua Munising Wood Products Company, Cleveland, Ohio, the respondent herein, 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 (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

The complaint and the notice of hearing were duly served upon the parties. The respondent filed an answer to the complaint in which it denied that it had engaged in unfair labor practices.

Pursuant to notice, a hearing was held at Piqua, Ohio, on October 7, 8, 9, 11, 12, and 13, 1937, before Waldo C. Holden, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties. During the course of the hearing, exceptions were taken by the parties to various rulings of the Trial Examiner. The Board has reviewed these rulings and finds that no prejudicial errors were committed. All rulings of the Trial Examiner are hereby affirmed.

Subsequently the Trial Examiner filed an Intermediate Report. He found that the respondent had refused to bargain collectively with the Union, and that it had interfered with, restrained, and coerced its employees in their exercise of the rights guaranteed in the Act. He found further that by virtue of such acts the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act. He granted the motion to dismiss so much of the complaint as related to Raymond Cline on the ground that there has not been sufficient evidence to substantiate that charge.

Exceptions to the Intermediate Report were thereafter filed by the respondent. On May 26, 1938, the respondent presented oral argument before the Board in support of its exceptions, while the Union presented arguments in support of the findings of the Trial Examiner. Thereafter, the respondent submitted a brief, which has been considered by the Board. We have reviewed the exceptions and find them without merit.

Upon the entire record in the case, the Board makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The Piqua Munising Wood Products Company is an Ohio corporation having its principal office in Cleveland, Ohio.<sup>1</sup> The respondent operates three plants, located in Munising, Michigan; Marquette, Michigan; and Piqua, Ohio.

At the Piqua plant, with which we are herein concerned, the respondent manufactures woodenware, toys, wooden lamps, and rough wood turnings. The principal raw material used is lumber, approximately 40 per cent of which originates outside the State of Ohio.

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<sup>1</sup> In 1934 its Articles of Incorporation were amended and the corporate name changed from Munising Woodenware Products Company to its present name.

Approximately 60 per cent of the products of the Piqua plant are shipped by the respondent to points without Ohio.

## II. THE ORGANIZATION INVOLVED

Federal Labor Union Local 18787 is a labor organization affiliated with the American Federation of Labor. It admits to membership all employees of the respondent at its plant in Piqua, Ohio.

## III. THE UNFAIR LABOR PRACTICES

### A. *Interference, restraint, and coercion*

In 1934, the Union obtained a contract from the respondent, signed by its former plant manager, which remained in effect until April 1935. Subsequently, Geffine, president of the respondent, declared that the contract had been invalid from its inception because the plant manager had no authority to execute it.

On October 24, 1935, the respondent posted a declaration of policy, a copy of which was sent to the president of the Union. It provided for hours of work and other conditions of employment, including nondiscrimination against union members "provided ability and experience are equal in comparison with non-union employees." The plant continued to operate under the terms of this policy until April 12, 1937.

In November 1936, the Union, claiming to represent the majority of the respondent's employees, began to demand recognition in the form of a written agreement. Acting upon the decision of the Union membership, Hiser, an employee of the respondent and president of the Union, submitted a proposed contract to Geffine in Cleveland. The Cleveland office turned the matter over to Badstuber, manager of the Piqua plant. Badstuber met with the union committee but flatly refused to give any consideration to the proposed contract.

On December 4, 1936, the Union, through a committee composed entirely of employees of the respondent, renewed its demand for a written agreement at a meeting with Geffine and Badstuber. Geffine declared that he would not recognize the American Federation of Labor but that he was willing to deal with a committee of employees. When Hiser asserted the Union's claim to represent 93 per cent of the employees in the Piqua plant, Geffine replied: "I don't care if you have a 100 per cent; it is not a question of membership, it is a question that there is nothing we can enter into a contract about." Badstuber admitted that Geffine made this statement.

After several fruitless conferences with Badstuber about the agreement, the union committee was called in by Geffine on April 9, 1937.

He reaffirmed his policy against entering into a contract with the Union<sup>2</sup> but offered a new declaration of policy which contained a classification of employees and a 5-per cent increase in the hourly wage rate of each classification. As a further concession, the respondent prefaced this instrument with a declaration that it was the result of negotiations between the management and the employees,<sup>3</sup> so as to give it the appearance of a contract. It was to remain in force until July 1, 1937. The committee agreed to it and accordingly it was posted on the bulletin board of the plant on April 12, 1937.

While there were other meetings between the committee and the respondent to discuss grievances, the next significant meeting occurred in June, when a further increase in wages was discussed. Geffine informed the committee that while raising wages was not feasible at that time, he would try to give the men steady work and would not shut down for inventory, but "if there will be too much labor unrest, he would shut down for a month or more, or maybe shut down and leave it down." Since Geffine did not testify, this statement stands uncontradicted.

On July 8 Raymond Cline, a union employee, was demoted. Thereafter the Union protested his demotion to the management but was unable to secure an adjustment. Cline's case will be more fully discussed hereinafter.

All the attempts of the committee to negotiate an agreement with the respondent having been unsuccessful, the Union on July 27, 1937, sought the help of Taylor, American Federation of Labor organizer for the district. At 2 o'clock in the afternoon of the same day Hiser posted a notice on the plant bulletin board advising the employees that a union meeting would be held at 4 o'clock with Taylor present. An hour after Hiser's announcement was posted, the following notice was posted on the bulletin board by Badstuber:

In view of pending negotiations with another corporation for the sale or lease of part or all of this plant and equipment, we are closing this plant down for inventory purposes, effective tonight. Employees will be advised when they are to report for work.

Signed: V. P. GEFFINE, *President*.

The respondent claims that the Cleveland office received information only on the afternoon of July 27 that the Robin Hood Wood Products Company of California, the corporation referred to in the

<sup>2</sup> The members of the committee testified that Geffine told them he would "cut (shut) the place down first" before recognizing the Union. Geffine was not called at the hearing.

<sup>3</sup> "At a meeting of officers, management and employees of the Piqua Munising Wood Products Company of Piqua, Ohio, the following agreement was made "

above notice, was shipping equipment to Piqua and that the taking of an inventory thus became urgent.

The plant was closed down accordingly at 4 o'clock that afternoon and the union employees began to picket the plant. The following day the committee and Taylor met with Badstuber to discuss the agreement and Cline's demotion. When Badstuber stated that he could not decide anything without Geffine's approval, Taylor requested that a conference be arranged between Geffine, the committee, and himself. Badstuber agreed to notify Taylor after he had communicated with Geffine to arrange for the date of such a meeting, but Taylor received no further word from the respondent concerning the proposed meeting.

On August 3, 1937, the respondent mailed the following letter to all its employees.

On July 27, 1937 our plant closed in order to take inventory. This inventory will be completed by the night of August 4th, and the plant will be open for operation Thursday morning, August 5th, at the regular time.

THE PIQUA MUNISING WOOD PRODUCTS CO.,  
M. E. BADSTUBER, *Plant Manager*.

The plant was opened in the morning of August 5, but no one reported for work. Two employees started toward the entrance but after talking to those on the picket line, neither of them entered. The plant has been picketed ever since it was shut down on July 27.

From the events set forth above, we find that in its consistent efforts to discourage membership in the Union, as evidenced by Geffine's antiunion statements and the circumstances surrounding the shut-down of July 27, the respondent has interfered with, restrained, and coerced its employees in the exercise of their right to self-organization guaranteed in Section 7 of the Act.

## B. *The refusal to bargain collectively*

### 1. The appropriate unit

The Union claims that the production and maintenance employees of the respondent, exclusive of clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining. The respondent neither introduced evidence on the appropriate unit nor objected to the unit sought by the Union.

We find that the production and maintenance employees of the respondent excluding clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the respondent the full benefit

of their right to self-organization and collective bargaining and otherwise effectuate the policies of the Act.

## 2. Representation by the Union of a majority in the appropriate unit

Testimony on behalf of the respondent established the fact that at the time of the shut-down there were 135 employed in the appropriate unit. Hiser claimed at the hearing that the Union had 116 members, but introduced in evidence only 82 membership cards. Badstuber, plant manager, and Purcell, plant superintendent, after examining the membership cards, testified that two of the cards were signed by former employees of the respondent, who had quit in the early part of 1937. Of the remaining 80 cards, 68 were dated prior to August 8, 1937, but 12 were not dated. One of the undated cards was signed by Wachler. Since Wachler was a member of the union committee at least since November 1936, it is obvious that he had signed his card prior to August 8. Accordingly, at least 69 employees of the respondent signed union membership cards prior to August 8, 1937. Purcell testified that a few of the union members indicated to him or to others their withdrawal from the Union. One of the girls whom he claimed to have made such a statement, Vida Houser, testified at the hearing that she was a member of the Union. Since no evidence was introduced with regard to the other alleged withdrawals, we cannot give credence to Purcell's testimony.<sup>4</sup>

We find that on August 8, 1937, the Union has been designated as their bargaining representative by a majority of the respondent's employees in the unit above-described as appropriate. Pursuant to Section 9 (a) of the Act, the Union was, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

## 3. The refusal to bargain .

In an attempt to settle the dispute, on August 8, 1937, Geffine invited the committee for a conference. After disposing of the Union's proposed contract by stating that "he would not be bothered with it, that he would not recognize the Union," Geffine presented his plan. He had a new declaration of policy drawn up, which he offered to the committee. Unlike the one posted on April 12, this notice does not in any way purport to be a bilateral agreement between management

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<sup>4</sup> When asked what information he had about the alleged withdrawal of some of the girls from the Union, Purcell testified as follows: "There was a group of girls of the plant and I walked by and heard one of them mention, 'Well, all the girls have dropped out of the Union' And these girls were in that group; and I assumed from that that all the girls dropped out that were members."

and employees but merely states, that: "In reopening our plant on next Monday, Aug. 10, 1937 we are posting the following notice on the bulletin board." The only definite promise it contained was the continuance of the 40-hour week, 8-hour day schedule. It also provided that wages would be increased "as soon as profits shall permit," and that the respondent "will endeavor" to keep the plant open until April 1938, shutting down only for annual inventory. Aside from a nondiscrimination clause similar to the one contained in the October 24, 1935, notice, there was an indirect reference to the Union in the following paragraph:

The shop will be operated as an open shop and in order to make it a success the management must have cooperation from its employees and be freed from unreasonable interference.

The union membership voted the same evening to refuse Geffine's offer. At the same time they reaffirmed their decision to have Taylor and the committee represent them in negotiations with the respondent and went on record against participating in a meeting where Geffine planned to address all the employees of the plant.

On August 9, when Hiser called Geffine on behalf of the committee requesting another meeting, he was told that they could come over to Geffine's hotel room. About 11:30 a. m., as the members of the committee arrived before the hotel, they were joined by Taylor who had just driven into town. When Purcell noticed Taylor in the hotel lobby, he hurried upstairs to Geffine's room and immediately returned to inform the men that they could not see Geffine. Cohon, a customer of the respondent who was present, told Taylor that "if you just leave town, everything will be all settled, and the boys will go back to work." Taylor approached Badstuber, asking him to arrange for an appointment with Geffine, and was first informed that they would let him know about it at 3 o'clock. When further pressed for a definite answer, Badstuber refused his request. The committee did not meet Geffine that day.

On August 19, Taag, a field examiner from the Regional Office for the Eighth Region, met with Purcell, Taylor, and the committee. The proposed contract offered by the Union was discussed, after the respondent's Cleveland office had confirmed Purcell's authority to negotiate for an agreement. When Purcell, having read the contract, began to voice his objection to it, in its entirety, Taylor insisted on considering each clause separately. Whereupon the first paragraph containing only the names of the contracting parties was read. Purcell immediately refused to accede to the first paragraph on the ground that he doubted whether the Union represented a majority. Taag then suggested a consent election. Taylor agreed to it, but Purcell could not give an answer without consulting the Cleveland

office. No evidence appears in the record that an answer was ever given. Counsel for the respondent admitted during his oral argument before the Board that the respondent refused to agree to a consent election, since the Act did not require it. Upon Purcell's definite rejection of the first paragraph the negotiations terminated.

While the respondent was ready and willing at all times to discuss grievances with the employees composing the union committee, it never recognized them as representatives of the Union but only as a committee of employees. The declarations of policy drawn up by the respondent after negotiations with the committee made no reference to the Union, and when the issue of recognizing the Union to be one of the contracting parties was presented squarely in the first paragraph of the agreement discussed on August 19, it met with the respondent's unequivocal refusal. Further evidence of the respondent's determination to ignore the Union as the chosen representative of its employees is found in the fact that it refused to deal with Taylor. The only reason given for the strenuous objection against Taylor was his status as a "professional organizer." The respondent was so careful in avoiding any semblance of union recognition that it would not risk entering into negotiations with anyone as representative of its employees who was not employed by it. The respondent's contention that it was reluctant to recognize the Union in the absence of proof that it represented a majority of the employees carries no weight in view of its refusal to agree to a consent election. Moreover, Geffine reaffirmed several times during conferences with the committee the respondent's policy against recognizing the Union, and it is significant that he was not called by the respondent to contradict those statements.

We find that on August 8, 1937, and at all times thereafter, the respondent refused to bargain collectively with the Union as the representative of its employees with respect to rates of pay, wages, hours of employment, and other conditions of employment. We also find that by such refusal the respondent interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

#### *B. The alleged demotion of Raymond Cline*

Raymond Cline had been employed by the respondent for approximately 10 years on various jobs. For 9 months prior to the shut-down he worked as a band saw operator. On June 8, 1937, he was replaced on the band saw by a newly engaged operator, who was a faster worker, and Cline was transferred to the bore machine where his rate of pay was 5 cents less than on the band saw. A few days

before July 27 he was again put on a different machine, where his rate of pay equalled that of the band saw operator.

Cline had been a member of the Union for 18 months but had never been outstandingly active. He was an average workman, who made his quota and a small bonus. The evidence fails to sustain the allegation that the respondent demoted Cline because of his union membership. Accordingly, we will dismiss the complaint in so far as it concerns his demotion.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that 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 have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### CONCLUSIONS OF LAW

1. Federal Labor Union Local 18787 is a labor organization within the meaning of Section 2 (5) of the Act.

2. The production and maintenance employees, exclusive of clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. Federal Labor Union Local 18787 was on August 8, 1937, and at all times thereafter has been, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. The respondent, by refusing to bargain collectively with the representatives of its employees on August 8, 1937, and thereafter, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has 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.

7. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

## 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, Piqua Munising Wood Products Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Federal Labor Union Local 18787, as the exclusive representative of all its production and maintenance employees, except clerical and supervisory employees;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or 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 Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Federal Labor Union Local 18787, as the exclusive representative of its production and maintenance employees, except clerical and supervisory employees, in respect to rates of pay, wages, hours of employment and other conditions of employment, and if an understanding is reached on any such matters, embody said understanding in an agreement for a definite term, to be agreed upon, if requested to do so by said Union;

(b) Post immediately notices in conspicuous places in its plant, and maintain said notices for a period of thirty (30) consecutive days from the date of posting, stating (1) that the respondent will cease and desist in the manner aforesaid; and (2) that the respondent will bargain collectively with Federal Labor Union Local 18787 as directed in paragraph 2 (a) of this order;

(c) Notify the Regional Director for the Eighth 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 in so far as it alleges that the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act, by demoting Raymond Cline.