

In the Matter of PIONEER PEARL BUTTON COMPANY and BUTTON
WORKERS' UNION, FEDERAL LOCAL 20,026

Case No. C-64.—Decided June 1, 1936

Button Industry—Strike—Unit Appropriate for Collective Bargaining: eligibility for membership in only organization making bona fide effort at collective bargaining; employees on piece work basis—*Representatives:* proof of choice: membership in union—*Collective Bargaining:* refusal to negotiate with representatives; refusal to recognize representatives as bargaining agency representing employees—negotiation in good faith: meeting with representatives but with no intention of bargaining in good faith; counter proposals; reasonable effort—employer's duty as affected by strike—*Reinstatement Ordered, Strikers:* displacement of employees hired during strike.

Mr. Robert Rissman for the Board.

Mr. Harold J. Alton and *Mr. John W. Murdoch*, of Wabasha, Minn., for respondent.

Mr. Samuel G. Zack, of counsel to the Board.

DECISION

STATEMENT OF CASE

On January 29, 1936, the Button Workers' Union, Federal Local 20,026, hereinafter referred to as the Union, filed with the Regional Director for the Twelfth Region an amended charge¹ that the Pioneer Pearl Button Company, Wabasha, Minnesota, had engaged in unfair labor practices prohibited by the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On January 30, 1936, the Board issued a complaint against the Pioneer Pearl Button Company, hereinafter referred to as the respondent, the complaint being signed by the Regional Director for the Twelfth Region and alleging that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (5), and Section 2, subdivisions (6) and (7), of the Act. In respect to the unfair labor practices the complaint alleged in substance:

1. That the blank cutters employed by the respondent at its plant at Wabasha, Minnesota, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act;

¹A charge had previously been filed with the Regional Director for the Eighteenth Region. The amended charge was filed after the Board had, by appropriate order, transferred the proceeding to the Twelfth Region

2. That on or before June 6, 1935, a majority of the employees in said unit had designated the Button Workers' Union, Federal Local 20,026, as their representative for the purposes of collective bargaining with the respondent;

3. That on or about October 25, 1935, November 2, 1935, November 11, 1935, and November 16, 1935, the respondent did refuse to bargain collectively with the Union as representative of the respondent's blank cutters;

4. That the respondent, by its refusal to rehire or reengage Emma Schones, Herbert Beaulieu, Tessie Koch, Ambrose Hopkins, Roy Hopkins, Amy LaBresh, Leslie LaBresh, Margaret Welch, Mary Caves, Jim Caves, Harold Beahn, Pearl Blatter, Madeline Blatter, Mary Hughley, Dorothy Hagedoim, Florence Lark, Mrs. Ben Kennebeck, Adolph Caduff and Jean Sherwood, following a strike of the employees engaged at the said plant on or about June 5, 1935, did discriminate against said employees, within the meaning of Section 8, subdivision (3) of the Act.

The complaint and notice of hearing were served on the respondent and the Union in accordance with Articles V of National Labor Relations Board Rules and Regulations—Series 1. The respondent filed its answer to the complaint, denying (1) that it is engaged in interstate commerce within the meaning of the Act; (2) that it discriminated against the Union employees above named; and (3) that it has refused or failed to bargain collectively with the Union as the representative of the blank cutters.

Pursuant to the notice, a hearing was held in Wabasha, Minnesota, on February 13, 14 and 15, 1936, before Leon M. Despres, the Trial Examiner duly designated by the Board. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues, was afforded to all parties.

The respondent filed a motion to dismiss the complaint on constitutional grounds. The Trial Examiner denied the motion. His ruling is hereby affirmed.

On March 7, 1936, the Trial Examiner duly filed his intermediate report, copies of which were duly served on the parties, in which he found that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (5), and Section 2, subdivisions (6) and (7) of the Act. On March 18, 1936, the respondent filed a statement of exceptions with the Board.

Upon the record in the case, the stenographic report of the hearing, and all the evidence, including oral testimony, documentary and other evidence, offered and received at the hearing, the Board makes the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

1. The Pioneer Pearl Button Company is a New York corporation engaged in the production, sale and distribution of fresh water pearl buttons. Its main plant is located in Poughkeepsie, New York. It has three branches, located in Dover, Kentucky; Freemont, Michigan; and Wabasha, Minnesota.

2. The buttons produced by the respondent are cut from clam shells at the respondent's branch plants. After the rough shells are cut, and before they are finished into buttons, they are called blanks. For finishing into buttons, the blanks are forwarded from the branch plants to the Poughkeepsie plant. The only operation which the branches perform is the cutting of blanks.

3. The clam shells represent practically 100% of the raw material used by the respondent in connection with its business at the Wabasha plant. These shells are obtained mainly from the Mississippi River, a navigable stream forming the boundary between the states of Minnesota and Wisconsin. The clam shells are obtained from both the Minnesota and the Wisconsin sides of the river, and are forked directly out of the river itself. Clams are also obtained in the Cannon River, which is entirely within the State of Minnesota and which flows into the Mississippi River. Other shells used by the respondent come from Lake La Croix and Lake Pepin, a widening of the Mississippi River. Both of these lakes lie in the States of Minnesota and Wisconsin. The respondent purchases shells obtained from both sides of these lakes.

The respondent has at times engaged clam diggers on exclusive contracts and has considered them as its employees. It also buys shells from other clam diggers in 500-pound to six-ton lots. There are no other buyers of shells in Wabasha.

The shells, after they come to the Wabasha plant, are placed in fresh water vats to soak for a period of two weeks. At the end of the soaking period, the shells are placed in buckets which hold about twenty-five pounds of shells, and are taken to the machines. They are thereupon placed on the machines and, by means of a saw, blanks are cut. At the end of the day, the cutters take the blanks to a room where the blanks are washed and sorted and then carried back to the cutter's machine, where they are kept until "weighing day", which usually is on Wednesday of each week. After being weighed, the blanks are placed in bags and are shipped to the respondent's plant at Poughkeepsie, New York, where they are finished into buttons and sold for use on under-garments and shirts.

The Wabasha plant is not equipped to do any work other than cutting blanks. The blanks are cut in various sizes depending on the needs of the respondent. All instructions as to size are sent to the Wabasha plant from the Poughkeepsie office of the respondent. After the blanks are cut at the Wabasha plant, they can not be used for any purpose of ordinary consumption. They constitute a partly fabricated product.

4. Once a week, the washed blanks are shipped to the respondent's finishing plant in Poughkeepsie. The shipment travels to its destination over three railroad lines; namely, Chicago, Milwaukee, St. Paul and Pacific Railroad, the Erie Railroad, and the New York, New Haven and Hartford Railroad.

5. All of the aforesaid constitutes a continuous flow of trade, traffic and commerce among the several States.

II. THE STRIKE AND THE FORMATION OF THE UNION

6. On May 27, 1935, immediately following the decision of the Supreme Court of the United States holding the National Industrial Recovery Act unconstitutional, the respondent instructed Archie Huber, general manager of its Wabasha plant, to put into effect a new scale of wage rates and hours. The new scale applied to the respondent's blank cutters and called for an increase in the number of hours to be worked per week from 40 (the maximum under the Code for the industry) to 50, and reduced the hourly rate of pay approximately 25 per cent. The respondent employed at that time 29 blank cutters in its Wabasha plant. They expressed their dissatisfaction with the new scale, but they agreed with Mr. Huber to try it out for one week. The new schedule of wage rates and hours went into effect on May 29.

On June 5, when the trial week was completed and after their earnings under the new scale had been computed, the employees expressed considerable dissatisfaction with the results and requested an immediate revision of the scale. Mr. Huber stated to them that he was without authority in the matter, but that he would communicate the employees' dissatisfaction to the respondent's home office. He also stated that it would take about ten days before a reply could be received and suggested that the blank cutters continue working in the meantime under the terms of the new scale. The cutters refused to accede to such a request. The power was thereupon shut off by Huber, and the cutters left the plant. The plant remained closed the rest of that day but was reopened the following day, June 6. Ten of the 29 blank cutters returned to work on that day. The 19 blank cutters who did not return and who were then unorganized, held a meeting that evening and organized Button Workers' Union, Federal Local 20,026, for the purpose of creating an agency for col-

lective bargaining between the respondent and its blank cutters. On June 14, the Union elected officers and appointed a grievance committee of seven, to negotiate with the respondent on matters of wages, hours and other conditions of employment.

7. Among respondent's employees at the Wabasha plant only blank cutters are eligible to membership in the Union. Unlike all the employees at the plant, who are paid on a time basis, the blank cutters are paid on a piece basis.

We find that the blank cutters employed by the respondent constitute a unit appropriate for the purposes of collective bargaining. We find that on June 6, and at all times thereafter, the Union had been designated by a majority of the blank cutters employed by the respondent as their representative for the purposes of collective bargaining.

8. Mr. Ethal, president of the respondent, came to the Wabasha plant on June 8 but refused to meet with the temporary officers of the Union and stated that he would deal only with the employees individually. The Union members picketed the plant on June 6, 7 and 10. The respondent closed the plant on June 10 and it was not reopened until October 30. On November 12, the plant was again shut down for a few days.

III. THE UNFAIR LABOR PRACTICES

A. *Collective bargaining*

9. On October 25, the grievance committee met with Huber at the respondent's Wabasha plant. Huber urged them to request the Union workers to return to work, which was to be resumed on October 30. The committee, thereupon, in an endeavor to bargain collectively and end the strike, requested that the respondent nullify the new scale and at least reinstate the old schedule of hours and rates, but Huber stated he had no authority to bargain collectively with them. He did not offer to take this proposal up with the home office. The committee subsequently voted against recommending to the Union employees that they return to work under the existing scale.

10. After the plant reopened on October 30, the Union continued its efforts to engage in collective bargaining with the respondent. The committee, together with Frank Koester, vice president of the Minnesota State Federation of Labor, met with Huber on November 2. At this meeting the Union again requested the respondent to bargain collectively with it on matters of wages and hours. Huber stated that he could not enter into such negotiations and further stated that "there is no use trying to bargain with the company, as they would not tie themselves to union regulation" and that "the company would not have anything to do with organized labor".

11. The Union held a meeting at the City Hall in Wabasha on November 11, and, with the aid of the Mayor, succeeded in getting Huber to attend the meeting. At the meeting, Huber again asserted his lack of authority to bargain collectively and stated further that the respondent would continue to refuse to bargain. The Union insisted that he send a telegram to the respondent in Poughkeepsie, requesting an authorized representative to come to Wabasha to bargain collectively with the Union. Huber stated that there was no use in sending a telegram; that the respondent "would close down the plant or move the machinery out of town". After much persuasion, Huber sent the following telegram to the president of the respondent:

"Factory closed for indefinite period on account of labor trouble until a company representative arrives to settle labor dispute and wages reply at once by wire."

12. As a result of the telegram, Mr. Ethal came to Wabasha on November 16. Whether he came because of the information that the plant was closed down or because of the Union's desire to bargain collectively with an authorized representative, is not clear. However, the committee, together with Koester, did meet him that day. Ethal stated that the respondent "would have nothing to do with the Union; that it had nothing to offer"; that "there was no use of trying to attempt to get an agreement signed"; and that it "would not sign anything with the Union". He also announced that the Union workers could return to work, if and when vacancies occurred, at the new scale of hours and wages which the respondent had put into effect on May 29.

At this meeting the committee stated to Ethal that it wanted a 40-hour week and a minimum weekly wage of \$12; the minimum under the invalidated Code for the industry had been \$13 or \$13.50. Ethal did not submit any counter proposals, nor did he make a reasonable effort to bargain with the Union. He did no more than assert that the reason for the respondent's refusal to increase wage rates or reduce the number of hours was because of its poor financial condition. The committee doubted this statement, and one of its members asked that the respondent show its books to the committee, or agree to have them audited. Ethal refused, and did not offer to prove his contention that poor business conditions prevented a revision of the new scale. At the hearing Huber admitted that there was no bargaining between the respondent and the Union at this meeting.

13. At each of the meetings that the Union had with Huber, it sought to bargain collectively with him as a representative of the respondent. While it may be that Huber had no authority to bargain with the Union, the requests for collective bargaining made to Huber by the Union were in effect notices to him as agent of the

respondent that the Union desired to bargain collectively. The respondent, therefore, had knowledge of the Union's requests for collective bargaining, and it was thus obliged to meet with the Union. It did not do so until a considerable period of time had elapsed. When Ethal, the respondent's president, finally did meet with the Union, his attitude was peremptory and non-conciliatory even though the employees had been on strike for several months. He did no more than take refuge in the assertion that the respondent's financial condition was poor; he refused either to prove his statement, or to permit independent verification. This is not collective bargaining.

14. We find that the respondent refused to bargain with the representatives of its employees on October 25 and thereafter, and that by such refusal, the respondent did interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. *Discrimination*

15. The complaint alleges that the respondent, by its refusal to rehire or reinstate the 19 Union members, discriminated in regard to hire and tenure of employment. The record fails to sustain such a contention.

In July, when Huber met Hopkins, Huber asked Hopkins whether the Union members would be willing to return to work. Again on October 25, when Huber met with the grievance committee, he stated that the plant would be reopened on October 29 or 30 and invited all of the Union members to return to work. These invitations to the Union members were turned down by them because of their refusal to return to work under the terms of the new scale.

There was testimony to the effect that Huber stated, prior to the reopening of the plant, that he would not reemploy Jim Caves, Mary Hughley, Mary Caves and Pearl Blatter. Huber denied that he ever made such a statement. Without making a finding as to that statement, but assuming that Huber did make such a statement, the record shows that the persons named did not at any time apply for reinstatement and, further, that they did not return to work nor did they intend to return to work under the terms of the new wage scale.

We find, therefore, that the respondent has not discriminated in regard to hire or tenure of employment against any of its employees because they were members of the Union.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON INTERSTATE COMMERCE

16. Interference with the activities of employees in joining and assisting labor organizations leads and tends to lead to labor disputes that burden and obstruct commerce and the free flow thereof. The

effects that a labor dispute may have on the operation of a business are shown by the facts in this case. On June 5, 1935, the day on which the blank cutters protested against the decrease in rates and increase in hours, the Wabasha plant ceased operations. Although it reopened the following day and resumed operations with a skeleton crew for three days, it was finally compelled to close its doors and remain closed until October 30, 1935.

Not only did the labor dispute interfere with the operations of the Wabasha plant from June 5 to October 30, but it was also the cause of the plant's closing down for a few days starting November 12. At all times while the Wabasha plant was operating there were continuous shipments of the blanks from Wabasha to the finishing plant at Poughkeepsie, New York; but, during the period in which the plant had ceased operations, there were no shipments of such blanks to Poughkeepsie.

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

THE REMEDY

The Union sought on at least three occasions to enter into collective bargaining with the respondent, but all of those attempts on the part of the Union were unsuccessful because of the fact that the respondent deliberately refused to enter into such negotiations. It may well be that if the respondent had fulfilled the obligation resting upon it to bargain collectively with the Union that the strike would have been settled and the blank cutters returned to work. It is because of its refusal to so bargain that the blank cutters are now without employment.

It would be futile simply to order the respondent to bargain with the Union since the plant now has its full quota of blank cutters: the process of collective bargaining would yield little to those blank cutters who are not employed. Those Union workers who have not obtained employment elsewhere are out of work as a consequence of the respondent's wrongful acts. If they are to be put in statu quo and if the interference with the union activities of its employees is to cease, the Union workers who went on strike must be returned to work, even though it may mean that workers hired subsequent to October 25, 1935, the earliest date on which the respondent refused to bargain after July 5, 1935, the effective date of the Act, shall have to be displaced.

CONCLUSIONS OF LAW

1. The Union is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. The blank cutters employed by the respondent at its Wabasha plant constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. By virtue of Section 9 (a) of the Act, the Button Workers' Union, Federal Local 20,026, having been designated on June 6, 1935, as their representative for the purposes of collective bargaining by a majority of the employees in an appropriate unit, has been at all times since such date, the exclusive representative of all the employees in such unit for the purposes of collective bargaining.

4. The respondent, by refusing to bargain collectively with the representative of its employees, has engaged and is engaged in unfair labor practices, within the meaning of Section 8, subdivision (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 and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

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

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

ORDER

On the basis of the findings and the conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Pioneer Pearl Button Company, shall:

1. Cease and desist

(a) from in any manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, to 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 and protection, as guaranteed in Section 7 of the National Labor Relations Act;

(b) from refusing to bargain collectively with the Button Workers' Union, Federal Local 20,026, as the exclusive representative of all its blank cutters for the purpose of collective bargaining in respect

to rates of pay, wages, hours of employment, and other conditions of employment.

2. Take the following action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Emma Schones, Herbert Beaulieu, Tessie Koch, Ambrose Hopkins, Roy Hopkins, Amy LaBresh, Leslie LaBresh, Margaret Welch, Mary Caves, Jim Caves, Harold Beahm, Pearl Blatter, Madeline Blatter, Mary Hughley, Dorothy Hagedoim, Florence Lark, Mrs. Ben Kennebeck, Adolph Caduff and Jean Sherwood, immediate and full reinstatement, respectively, to their former positions, with all rights and privileges previously enjoyed;

(b) Upon request, bargain collectively with the Button Workers' Union, Federal Local 20,026, as the exclusive representative of all its blank cutters for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.