

In the Matter of GEORGE F. CARLETON & COMPANY, INC. *and* BOOT AND SHOE WORKERS' UNION (AFL)

In the Matter of KENT SHOE CORPORATION *and* BOOT AND SHOE WORKERS' UNION (AFL)

In the Matter of HERBERT HOLTZ SHOE COMPANY, INC. *and* BOOT AND SHOE WORKERS' UNION (AFL)

In the Matter of HAROLD SHOE CO., INC. *and* BOOT AND SHOE WORKERS' UNION (AFL)

In the Matter of HARTMAN SHOE MANUFACTURING CO. *and* BOOT AND SHOE WORKERS' UNION (AFL)

In the Matter of LAIRD-SCHOBER & Co., INC. *and* BOOT AND SHOE WORKERS' UNION (AFL)

In the Matter of STEIN-SULKIS SHOE CO. *and* BOOT AND SHOE WORKERS' UNION (AFL)

In the Matter of UNITY SHOEMAKERS CORP. *and* BOOT AND SHOE WORKERS' UNION (AFL)

In the Matter of JEAN'S INC.¹ *and* BOOT AND SHOE WORKERS' UNION (AFL)

In the Matter of STEPHEN SHOE COMPANY² *and* BOOT AND SHOE WORKERS' UNION (AFL)

*Cases Nos. 1-R-1616 to 1-R-1623 inclusive, 1-R-1628 and 1-R-1629.—
Decided December 31, 1943.*

Mr. Walter M. Espovich, of Haverhill, Mass., for Holtz, Harold, Hartman, Laird-Schober, Stein-Sulkis, Unity, Jean's, and Stephen.

Mr. Morton Rowe, of Haverhill, Mass., for Carleton.

Sugarman & Schneider, by Mr. Edward Schneider, of Boston, Mass., for Kent.

Mr. George Karelitz, of Haverhill, Mass., and Mr. Salvatore Feraci, for the A. F. L.

Grant & Angoff, by Mr. Sidney S. Grant, of Boston, Mass.; and Mr. Harry Sacher, of New York, N. Y., for the C. I. O.

Mr. William Feldesman, of counsel to the Board.

¹ The name of this Company is amended to read as written above pursuant to a stipulation made on the record.

² The name of this Company is amended to read as written above pursuant to a stipulation made on the record.

DECISION
DIRECTION OF ELECTION
AND
ORDER

STATEMENT OF THE CASE

Upon separate petitions duly filed by Boot and Shoe Workers' Union, affiliated with the American Federation of Labor, herein called the A. F. L., alleging that questions affecting commerce had arisen concerning the representation of employees of George F. Carleton & Company, Inc., herein called Carleton, Kent Shoe Corporation, herein called Kent, Herbert Holtz Shoe Company, Inc., herein called Holtz, Harold Shoe Co., Inc., herein called Harold, Hartman Shoe Manufacturing Co., herein called Hartman, Laird-Schober & Co., Inc., herein called Laird-Schober, Stein-Sulkis Shoe Co., herein called Stein-Sulkis, Unity Shoemakers Corp., herein called Unity, Jean's Inc., herein called Jean's, and Stephen Shoe Company, herein called Stephen, all of Haverhill, Massachusetts, and collectively referred to as the Companies, the National Labor Relations Board provided for appropriate hearings upon due notice before Robert E. Greene, Trial Examiner. Separate hearings in the 10 cases were had at Haverhill, Massachusetts, on November 19, 22, and 23, 1943. The Companies, the A. F. L., and United Shoe Workers of America, affiliated with the Congress of Industrial Organizations, herein called the C. I. O., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearings are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board. Since the A. F. L. and C. I. O. have filed briefs which adequately discuss the issues, the A. F. L.'s request for oral argument is denied. For the purpose of decision the 10 cases are hereby consolidated.

Upon the entire records in the cases, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESSES OF THE COMPANY

All the Companies are Massachusetts corporations having their offices and principal places of business in Haverhill, Massachusetts. Carleton is engaged in the manufacture, sale, and distribution of men's leather slippers. The remaining Companies manufacture, sell, and distribute women's novelty shoes.

Carleton's annual purchases of raw materials approximate \$225,000, about 30 percent of which is received from points outside the Commonwealth of Massachusetts, and its annual sales of finished products approximate \$350,000, about 98 percent of which is shipped to points outside the Commonwealth of Massachusetts.

Kent's annual purchases of raw materials are in excess of \$100,000, more than 50 percent of which is received from points outside the Commonwealth of Massachusetts, and its annual sales of finished products exceed 500,000 pairs of shoes, more than 75 percent of which is shipped to points outside the Commonwealth of Massachusetts.

Holtz's annual purchases of raw materials approximate \$750,000, about 10 percent of which is received from points outside the Commonwealth of Massachusetts, and its annual sales of finished products, approximate \$1,250,000, about 85 percent of which is shipped to points outside the Commonwealth of Massachusetts.

Harold's annual purchases of raw materials approximate \$289,000, about 30 percent of which is received from points outside the Commonwealth of Massachusetts, and its annual sales of finished products approximate \$533,000, about 70 percent of which is shipped to points outside the Commonwealth of Massachusetts.

Hartman's annual purchases of raw materials approximate \$500,000, about 5 percent of which is received from points outside the Commonwealth of Massachusetts, and its annual sales of finished products approximate \$1,000,000, about 85 percent of which is shipped to points outside the Commonwealth of Massachusetts.

Laird-Schober's annual purchases of raw materials approximate \$350,000, about 10 percent of which is received from points outside the Commonwealth of Massachusetts, and its annual sales of finished products approximate \$1,000,000, about 75 percent of which is shipped to points outside the Commonwealth of Massachusetts.

Stein-Sulkis' annual purchases of raw materials approximate \$350,000, about 10 percent of which is received from points outside the Commonwealth of Massachusetts, and its annual sales of finished products approximate \$1,000,000, about 95 percent of which is shipped to points outside the Commonwealth of Massachusetts.

Unity's annual purchases of raw materials approximate \$1,000,000, about 10 percent of which is received from points outside the Commonwealth of Massachusetts, and its annual sales of finished products approximate \$1,750,000, about 90 percent of which is shipped to points outside the Commonwealth of Massachusetts.

Jean's purchases annually raw materials of the approximate value of \$205,000, about 10 percent of which is received from points outside the Commonwealth of Massachusetts, and its annual sales of finished

products approximate \$500,000, about 50 percent of which is shipped to points outside the Commonwealth of Massachusetts.

Stephen's annual purchases of raw materials approximate \$230,000, about 5 percent of which is received from points outside the Commonwealth of Massachusetts, and its annual sales of finished products approximate \$435,000, all of which is ultimately transported in interstate commerce.

Kent does not contest the jurisdiction of the National Labor Relations Board, and each of the other Companies admits that it is engaged in commerce, within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Boot and Shoe Workers' Union, affiliated with the American Federation of Labor, and United Shoe Workers of America, affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Companies.

III. THE QUESTION CONCERNING REPRESENTATION OF CARLETON'S EMPLOYEES; THE ALLEGED QUESTIONS CONCERNING REPRESENTATION

By letter dated September 13, 1943, the A. F. L. requested recognition from Carleton as the collective bargaining representative of Carleton's production employees. Several days after this letter was mailed one of Carleton's officials informed a representative of the A. F. L., in effect, that recognition would be accorded the labor organization certified by the National Labor Relations Board as the collective bargaining representative of Carleton's employees.

A statement of the Regional Director, introduced into evidence at the Carleton hearing, indicates that the A. F. L. represents a substantial number of employees in the unit of Carleton's production employees herein found to be appropriate.³ The C. I. O. relies upon a union-shop contract with Carleton as evidence of its interest.

We find that a question affecting commerce has arisen concerning the representation of Carleton's employees, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

Inasmuch as the other units sought by the A. F. L. are herein found to be inappropriate, we find that no questions affecting commerce have arisen concerning the representation of employees of Kent, Holtz, Harold, Hartman, Laird-Schober, Stein-Sulkis, Unity, Jean's and Stephen.

³The Regional Director reported that the A. F. L. submitted 16 authorization cards bearing apparently genuine original signatures of persons whose names appeared on Carleton's pay roll for the week ending September 24, 1943, which contained the names of 59 persons in the appropriate unit.

IV. THE APPROPRIATE UNIT OF CARLETON'S PRODUCTION EMPLOYEES; THE ALLEGED APPROPRIATE UNITS

It is the contention of the A. F. L. that the production workers of each of the Companies, excluding maintenance employees, office and clerical employees, executives, foremen, and 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 10 independent appropriate units. The Companies and the C. I. O. do not dispute the classifications of employees which the A. F. L. desires to include and exclude. Moreover, Carleton agrees that its production employees form a separate appropriate unit. However, the remaining Companies and the C. I. O. urge that a multiple-employer unit embracing the production employees of all the Companies, among others, is appropriate, and that consequently the contention of the A. F. L. is not meritorious.

From 1918 to the present, the history of collective bargaining in the shoe industry in Haverhill has been divided into a number of well-defined periods, each marked by the infiltration of a labor organization which ultimately gained ascendancy by obtaining collective bargaining contracts with almost all the slipper and women's novelty shoe factories and stitching rooms in Haverhill whose employees evinced interest in self-organization. Shoe Workers Protective Union was the first of such organizations. It secured a foothold in 1918, later became the dominant union in Haverhill, remained in power until about 1932, and, after a lapse of approximately 1 year, entrenched itself again in 1933. It was not until 1934 that the United Shoe and Leather Workers displaced Shoe Workers Protective Union as the predominant shoe workers' labor organization in Haverhill. In 1934, 1935, and 1936, United Shoe and Leather Workers held sway. In 1936 the A. F. L. entered upon the scene. In time it supplanted the United Shoe and Leather Workers and retained its dominant position until 1941 when it, the C. I. O., and some 23 slipper and women's novelty shoe factories and stitching rooms in Haverhill agreed in writing to a consent election which was conducted in early 1942 under the auspices of the Board. The C. I. O. emerged victorious, and as a consequence it obtained union-shop contracts with the employer signatories of the consent election agreement, among whom were all the Companies. In addition, it secured union-shop agreements with other Haverhill shoe manufacturers.

During all this time, except for a lapse from 1932 to 1933, there existed in Haverhill an organization of manufacturers associated with the shoe industry. In 1933 the present organization, Shoe Manufacturers' Board of Trade, was formed. This organization and its

predecessors are jointly referred to herein as the Association. One of the primary purposes of the Association was to act for its members in the matter of labor relations. For the past 25 years, disregarding the 1-year interval when it was not in existence, the Association dealt for its members with the union which dominated each period in the making of collective bargaining contracts and the adjustment of wages and piece rates. On many occasions the Association treated with the union in ascendancy concerning questions relating to certain of its members' working conditions and also in regard to labor disputes in which they were involved. Except for one or two isolated instances the Association's membership gave their unanimous support.

It was also customary for non-members whose employees were organized to follow the lead of the Association by adhering to the wage scales and piece rates which it negotiated and by accepting the form of contract executed by Association members.

Indicative of the common course pursued by almost all the organized slipper and women's novelty shoe factories and stitching rooms in Haverhill was the series of events in 1941 and 1942 culminating in the execution of the contracts presently held by the C. I. O. Although the consent election agreement provided that "nothing in this agreement shall be used as a precedent in any future case except in a proceeding for the purpose of enforcing the terms of this agreement," we cannot disregard the overt actions of the parties. As the basis for the consent election the unit agreed upon by all concerned was one initially suggested by the A. F. L. That unit comprised the pooled production employees of the employer signatories to the consent election agreement. It is significant that the bulk of the Haverhill shoe workers thereby manifested through their labor organizations a desire for a multiple-employer unit. Also significant is the fact that all the employers involved assented, thus underscoring the historic concerted action of Haverhill shoe industry employers. More than one-half of the employer participants in the election were Association members, the Association having executed the consent election agreement as their representative. After the C. I. O. won the election, its first step was to negotiate with an Association committee respecting the form and content of a collective bargaining contract. An agreement was reached by the C. I. O. and the Association committee. Thereafter, uniform individual contracts conforming to the agreement negotiated between the C. I. O. and Association representatives were separately executed by all the members of the Association and also by almost every other non-member in Haverhill engaged in manufacturing slippers and women's novelty shoes and in the operation of a stitching room. As noted above, the contracts provide for a union shop. Each expires on December 31, 1943.

Additional evidence of the Association's leadership and the united action of Haverhill shoe manufacturers is found in another recent occurrence. In 1942 the War Labor Board passed upon the C. I. O.'s demand for a vacation with pay. Despite the fact that the members of the Association were separately involved, every slipper and women's novelty shoe factory and stitching room in Haverhill under contract with the C. I. O., members and non-members of the Association alike, accepted the War Labor Board's dispositive action.

All the Companies, with the exception of Carleton, Kent, and Jean's, are current members of the Association. The Association's entire membership now consists of 11 Haverhill stitching rooms and slipper and women's novelty shoe factories. It is clear from all the foregoing facts that the employees of the Association's members form the nucleus for a multiple-employer unit.⁴ Furthermore, the long history of collective bargaining which revolved about the Association discloses that almost all non-members engaged in manufacturing slippers and women's novelty shoes and in the operation of stitching rooms whose employees were organized acted in concert with the Association by following its lead. The position of record of non-members Kent and Jean's that a multiple-employer unit is appropriate manifests a present willingness to continue this relationship, and impels the conclusion that their employees and those of others similarly situated, together with the employees of the Association Companies and the balance of its membership constitute an appropriate unit. We accordingly find that the separate units sought by the A. F. L. with respect to the production employees of Kent, Jean's, and the Association Companies are inappropriate.

Carleton, however, by asserting that its production employees comprise an independent unit reveals an intention to pursue an individualistic course. Consequently, we find that its production employees, excluding maintenance employees, office and clerical employees, executives, foremen, and 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.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees of Carleton herein found to be an appropriate unit who were employed during the pay-roll period immediately preceding the date

⁴ *Matter of Rayonter Incorporated, Grays Harbor Division*, 52 N. L. R. B. 1377.

of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with George F. Carleton & Company, Inc., Haverhill, Massachusetts, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the First Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees of Carleton in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause, and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by Boot and Shoe Workers' Union, affiliated with the American Federation of Labor, or by United Shoe Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.

ORDER

It is hereby ordered that the separate petitions filed by Boot and Shoe Workers' Union, affiliated with the American Federation of Labor, for investigation and certification of representatives of the employees of Kent Shoe Corporation, Case No. 1-R-1617; Herbert Holtz Shoe Company, Inc., Case No. 1-R-1618; Harold Shoe Co., Inc., Case No. 1-R-1619; Hartman Shoe Manufacturing Co., Case No. 1-R-1620; Laird-Schober & Co., Inc., Case No. 1-R-1621; Stein-Sulkis Shoe Co., Case No. 1-R-1622; Unity Shoemakers Corp., Case No. 1-R-1623; Jean's Inc., Case No. 1-R-1628; and Stephen Shoe Company, Case No. 1-R-1629, be, and they hereby are, dismissed.

CHAIRMAN MILLIS took no part in the consideration of the above Decision, Direction of Election and Order.