

In the Matter of BROWN SHOE CO., INC. and SHOE WORKERS OF DISTRICT
50, UNITED MINE WORKERS OF AMERICA

Case No. 14-R-854.—Decided February 17, 1944.

Mr. H. F. Willhite, of St. Louis, Mo., and *Mr. Theodore R. Volenetz*, of Charleston, Mo., for the Company.

Mr. Van Zimmerman, of Mattoon, Ill., and *Mr. Harry Ham*, of Freeman Spur, Ill., for the Shoe Workers.

Mr. Elmer A. Jones, of St. Louis, Mo., and *Mr. Ellis Baker* of Cape Gerardeau, Mo., for the United.

Mr. William Strong, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Shoe Workers of District 50, United Mine Workers of America, herein called the Shoe Workers, alleging that a question affecting commerce had arisen concerning the representation of employees of Brown Shoe Company, Inc., Charleston, Missouri, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before William F. Guffey, Jr., Trial Examiner. Said hearing was held at Charleston, Missouri, on January 7, 1944. The Company, the Shoe Workers, and Local 171-A, United Shoe Workers of America, herein called the United, appeared and participated. All parties 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 hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Brown Shoe Company, Inc., a New York corporation, operates 15 shoe factories and auxiliary plants in the States of Missouri, Illinois, 54 N. L. R. B., No. 228.

Indiana, and Tennessee. This proceeding involves only the Company's plant at Charleston, Missouri, where it manufactures, sells, and distributes novelty shoes. During 1943 more than 60 percent of the raw materials used at the Charleston plant, totally valued at more than \$500,000, was shipped from points outside the State of Missouri. During the same period more than 60 percent of the finished products of the Charleston plant, valued in excess of \$500,000, was shipped to points outside the State of Missouri.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Shoe Workers of District 50, United Mine Workers of America, and Local 171-A, United Shoe Workers of America, affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Shoe Workers as the exclusive bargaining representative of the Company's employees at its Charleston plant until the Shoe Workers has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Shoe Workers represents a substantial number of employees in the unit hereinafter found appropriate.¹

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

IV. THE APPROPRIATE UNIT

All parties agree, with the exceptions noted and discussed below, that an appropriate unit should include all employees of the Company at its Charleston plant, excluding executives, office and clerical employees, foremen, foreladies, assistant foremen, the factory nurse, the licensed engineer, bonded watchmen, and the factory commissary clerk.

¹ The Regional Director reported that the Shoe Workers submitted 222 membership application cards all of which bore apparently genuine original signatures, that the names of 171 persons appearing on the cards were listed on the Company's pay roll of December 11, 1943, which contained the names of 462 employees in the alleged appropriate unit.

The United submitted 30 membership application cards all of which bore apparently genuine original signatures. The names of 28 persons appearing on the cards were contained in the aforesaid pay roll.

The parties are in disagreement as to the proposed inclusion or exclusion of instructors, commissary clerks and their assistants, cutting room stock clerk and assistant, and a record writer.

Instructors: The Shoe Workers would exclude, and the United would include instructors. The Company would exclude those instructors who have supervisory powers and include the others. The Company employs 12 instructors each of whom is assigned to a group of 15 to 50 employees, whom he advises as to methods and manner of work performance. Instructors see to it that work is properly routed, that proper materials are used and that shoe construction is correct. Instructors perform no production work. The training of new employees is one of their major functions. Instructors may not hire, discharge, promote, transfer or discipline employees; however, they have the power effectively to recommend such action. Instructors fill the places of foremen when they are absent. Since the functions and powers of instructors place them within our usual definition of supervisory employees, we shall exclude instructors from the unit.

Assistants to commissary clerks: The Shoe Workers would exclude the two assistants to the commissary clerk, the United would include them, while the Company would exclude one and include the other. These assistants work with the commissary clerk. All order materials and keep records and a perpetual inventory of supplies needed at the plant. The assistants also unpack, but do not unload, materials and distribute them to employees. They are hired by and are responsible to the office manager, and are answerable directly to him. The assistants are paid on an hourly basis, while production employees are paid on a piece-work basis. They perform no production work, their entire time being devoted to various phases of commissary work, as part of which one assistant spends at least 60 percent of her time and the other 15 percent of his time in actual clerical work.²

We shall exclude both assistants since their duties and interests more closely align them with clerical employees than with the production employees.

Cutting room stock clerk and assistant, and record writer: The Shoe Workers and the United would include all in the unit, the Company would include the assistant and exclude the other two.

The cutting room stock clerk spends a major portion of his time keeping stock room records and assembling materials necessary for production. The assistant issues the materials to production employees. The record writer prepares job specifications, engaging wholly in clerical work. All three are responsible to the cutting room foreman.

² The Company would exclude the 60-percent clerical assistant and include the other.

All three work essentially as a group. The duties of these three employees are mostly clerical in nature and their functions are basically similar to those of the commissary clerk and assistants. We shall exclude the cutting room stock clerk, the assistant, and the record writer from the unit.

Fitting room commissary clerk: The Shoe Workers and the United would include, and the Company would exclude this category of employee. The duties of the fitting room commissary clerk consist of furnishing and preparing various pay statistics to employees, computing wages, preparing various wage and other records and requisitions, obtaining materials and supplies and issuing them to employees. Almost all time spent is on clerical work. We shall exclude the fitting room commissary clerk from the unit.

We find that all employees of the Company at its Charleston plant, excluding executives, office and clerical employees, instructors, commissary clerks and their assistants, the record writer, the factory nurse, bonded watchmen, the licensed engineer, foremen, foreladies, assistant foremen, 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.

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 in the appropriate unit who were employed during the payroll period immediately preceding the date 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 Brown Shoe Co., Inc., Charleston, Missouri, 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 Fourteenth 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 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 Shoe Workers of District 50, United Mine Workers of America, or by Local 171-A, United Shoe Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.