

In the Matter of MUSEBECK SHOE COMPANY *and* SHOE WORKERS OF
DISTRICT 50, UNITED MINE WORKERS OF AMERICA

Case No. 13-R-2241.—Decided April 8, 1944

Mr. John F. Spivey, of Danville, Ill., for the Company.

Mr. W. F. Cassidy, of Kincaid, Ill., for the Union.

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Shoe Workers of District 50, United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Musebeck Shoe Company, Danville, Illinois, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Francis X. Helgesen, Trial Examiner. Said hearing was held at Danville, Illinois, on March 2, 1944. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. Prior to and after the close of the hearing, the Company filed motions to dismiss the petition. The motions are hereby denied. On March 6, 1944, the Company filed with the Board an application for subpoena *duces tecum*, directed at the Union to produce its membership cards, minutes of its meetings, minutes of its membership rolls, and financial records. The application is hereby denied inasmuch as the contents of the documents sought are immaterial to the instant proceeding. During the course of the hearing the Trial Examiner granted a motion to amend the petition to correctly set forth the name of the Company. The ruling is hereby affirmed. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded 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

Musebeck Shoe Company is an Illinois corporation operating a plant at Danville, Illinois, where it is engaged in the manufacture and sale of shoes. During 1943 the Company purchased raw materials for use at its Danville plant valued in excess of \$500,000, over \$300,000 worth of which was shipped to it from points outside the State of Illinois. During the same period the Company sold shoes from its Danville plant valued in excess of \$600,000, over 66 percent of which was shipped to points outside the State of Illinois. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Shoe Workers of District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On January 4, 1944, the Union filed its petition herein. On January 5, 1944, the Company received from the Union a letter requesting that the Company recognize it as the exclusive collective bargaining representatives of the employees at the Danville plant. The Company did not reply to this request.

The Company contends that the petition should be dismissed on the ground that the Union did not request the Company to recognize it as the exclusive collective bargaining representative of the employees involved prior to the filing of the petition. The petition is sufficient to confer jurisdiction to institute this investigation.¹ Moreover, it is plain that the Company disputes the claim of the Union to majority representation.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.²

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.

¹ *Matter of Granite Finishing Works of Proximity Mfg Company*, 7 N. L. R. B., 910.

² The Field Examiner reported that the Union presented 231 membership application cards. There are approximately 400 employees in the appropriate unit.

IV. THE APPROPRIATE UNIT

The Union urges that all employees at the Danville, Illinois, plant of the Company, including shipping and receiving department employees, but excluding executives, office and clerical employees, superintendents, foremen, assistant foremen, floorladies, factory nurses, licensed engineers, the commissary clerk, and assistant commissary clerk, constitute an appropriate unit. The only controversy with respect to the unit concerns the assistant to the commissary clerk and the shipping and receiving department employees.

The assistant to the commissary clerk is paid on an hourly wage rate and maintains inventories of raw materials. It is also his duty to dispense the materials to the production and maintenance employees. We find that the assistant to the commissary clerk is comparable to a shop clerical employee and should be included in the unit.

The Company has six shipping and receiving department employees. Although supervision of the shipping and receiving department is vested in the assistant sales manager, rather than the plant superintendent, the six employees involved physically handle and wrap for shipment the Company's manufactured products. The record indicates that the work performed by these employees is integrated with production work and that their duties are closely allied to those of the production and maintenance employees. We shall include the shipping and receiving department employees in the unit.

We find that all employees at the Danville, Illinois, plant of the Company, including shipping and receiving department employees and the assistant to the commissary clerk, but excluding the plant superintendent, assistant plant superintendent, factory nurse, licensed engineer, commissary employee 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 means of an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll 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 Museback Shoe Company, Danville, Illinois, 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 Thirteenth 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 any 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 or not they desire to be represented by Shoe Workers of District 50, United Mine Workers of America, for the purposes of collective bargaining.

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