In the Matter of CRADDOCK-TERRY SHOE CORP. *and* UNITED SHOE WORKERS OF AMERICA, C. I. O.

Case No. 5–R–1510.—Decided April 17, 1944

Mr. L. P. McLendon, of Greensboro, N. C., for the Company.

Mr. Jack S. Zucker, of Washington, D. C., and *Mr. Rubert Thrasher*, of Lynchburg, Va., for the C. I. O.

Messrs. L. H. Shrader and *H. B. Singleton*, of Lynchburg, Va., *Mr. Leonard J. Ford*, of Boston, Mass., and *Mr. R. B. Ricketts*, of Madison Heights, Va., for the A. F. L.

Mr. William C. Baisinger, Jr., of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Shoe Workers of America, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Craddock-Terry Shoe Corp., Lynchburg, Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert A. Levett, Trial Examiner. Said hearing was held at Lynchburg, Virginia, on March 22, 1944. The Company, the C. I. O., and Boot and Shoe Workers Union, Local 441, herein called the A. F. L., appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues, and to file briefs with the Board. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Craddock-Terry Shoe Corp. is a Virginia corporation engaged in the manufacture and sale of shoes. It operates one plant at Farm-

55 N. L. R. B., No. 254.

ville, Virginia, and three plants at Lynchburg, Virginia. The latter three plants known as the Southland, Fort Hill, and East End factories, are the only plants involved in this proceeding. During the year 1943, the Lynchburg plants used raw materials, consisting chiefly of leather, cloth, rubber, dye-stuffs, and findings, valued in excess of $10,000,000, of which approximately 90 percent was shipped to said plants from points outside the State of Virginia. During the same period the finished shoes produced at the Lynchburg plants were valued in excess of $13,000,000, of which approximately 90 percent was shipped to points outside the State of Virginia.

The Company admits and we find that at its Lynchburg plants it is engaged in commerce within the meaning of the National Labor Relations Act.[1]

II. THE ORGANIZATIONS INVOLVED

United Shoe Workers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Boot and Shoe Workers Union, Local 441, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On March 26, 1943, pursuant to the results of the election held in a prior representation proceeding[2] the Board certified the A. F. L. as the exclusive bargaining representative of the employees within an appropriate bargaining unit substantially identical to the unit which the C. I. O. alleges to be appropriate in the present proceeding. Thereafter, on May 8, 1943, the A. F. L. and the Company entered into a collective bargaining agreement covering the employees for whom the A. F. L. had been certified. This agreement provides for maintenance of membership. It contains the following termination clause:

> This agreement shall be in full force and effect for a period of one year from the date of its execution, and this agreement shall automatically renew itself from year to year thereafter unless written notice of a desire to change, modify or cancel is given not less than 90 days prior to the expiration of this agreement by either party to the other.

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[1] In a prior representation case, *Matter of Craddock-Terry Shoe Corporation*, 44 N L R B 738, the Board asserted jurisdiction over these same operations At the hearing in the instant case the Company stipulated that the general operations and employee classifications at its Lynchburg plants are substantially the same today as they were at the time of the prior proceeding

[2] Case cited in footnote 1, *supra*.

The parties stipulated at the hearing that by registered letter dated February 7, 1944, the C. I. O. advised the Company that it represented a majority of the employees within an alleged appropriate bargaining unit and requested recognition as their exclusive bargaining representative. The postal registry return receipt which is part of the record shows that the C. I. O.'s letter was delivered to the Company on February 8, 1944. By letter dated February 9, 1944, the Company advised the C. I. O. that inasmuch as it had a collective bargaining contract with the A. F. L. which would not expire for "some months," it could not accord the C. I. O. the requested recognition. Thereafter, on February 11, 1944, the C. I. O. filed its petition herein. The Company and the A. F. L. contend that their contract automatically renewed and therefore constitutes a bar to this proceeding. The A. F. L. also contends that the showing of representation made by the C. I. O. is not sufficient to raise a question concerning representation among the employees of the Company's Lynchburg plants.

We cannot agree with either of these contentions. We have repeatedly held that a bargaining contract executed or automatically renewed after the employer has received notice that a rival union challenges the contracting union's status as the exclusive bargaining representative is no bar to a determination of representatives.[3] It is undisputed that the Company had notice of the C. I. O.'s claim of representation on February 8, 1944. This was exactly 90 days prior to the expiration date of the A. F. L.'s contract, and 1 day prior to the date on which the contract's automatic renewal clause would have become operative. Consequently, since the Company received notice of the C. I. O.'s claim prior to the automatic renewal date of the contract, we find that the contract is not a bar to an immediate determination of representatives.

We also find, contrary to the position taken by the A. F. L., that, in view of its maintenance of membership contract with the Company, the statement prepared by a Field Examiner of the Board, introduced into evidence at the hearing, as supplemented by the statement prepared by the Trial Examiner and read into the record at the hearing, indicates that the C. I. O. represents a substantial number of employees within the unit hereinafter found to be appropriate.[4]

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[3] See *Matter of General Chemical Company*, 48 N. L. R. B. 988; *Matter of Electric Auto-Lite Company*, 46 N. L. R. B. 395; *Matter of Corcoran Metal Products Corporation*, 45 N. L. R. B. 439; *Matter of El Paso Electric Company*, 50 N. L. R. B. 56.

[4] The Field Examiner reported that the C. I. O. submitted 631 application for membership cards, 609 of which were signed by persons whose names appear on the Company's pay roll of February 17, 1944, which contains the names of 2,269 persons within the alleged appropriate unit; that, although all of said cards were undated, the C. I. O. submitted an affidavit certifying that all cards were signed in February 1944. He further stated that the A. F. L. claims an interest in the proceeding by virtue of its current contract.

The Trial Examiner reported that the C. I. O. submitted to him 40 additional authorization cards, 33 of which bore the apparently genuine original signatures of persons whose names appear on the aforesaid pay roll of the Company.

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

We find, in accordance with the agreement of the parties, that all production employees of the Company at its three Lynchburg plants, including instructors, inspectors, skivers, and packers, but excluding all maintenance employees, clerical employees, janitors, truck drivers, elevator operators, mechanics, watchmen, and all 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.[5]

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 pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.[6]

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 Craddock-Terry Shoe Corp., Lynchburg, Virginia, 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 Fifth 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 preced-

[5] The above-described unit is substantially identical to the unit which the Board found to be appropriate in the prior representation proceeding, and to the bargaining unit covered by the A. F. L.'s contract.

[6] At the hearing the C. I. O. and the A. F. L. requested that their names appear on the ballot as hereinafter set forth in the Direction of Election

ing 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 they desire to be represented by United Shoe Workers of America, C. I. O., or by Boot and Shoe Workers Union, A. F. L., for the purposes of collective bargaining, or by neither.

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