

In the Matter of THE JULIAN & KOKENGE COMPANY and UNITED SHOE  
WORKERS OF AMERICA, CIO, LOCAL #158

*Case No. 9-R-1384.—Decided May 13, 1944*

*Messrs. Luther L. Boger and Herbert Lane, Jr., of Columbus, Ohio, for the Company.*

*Messrs. George Martin and Emerson T. Pence, of Portsmouth, Ohio, for the C. I. O.*

*Mr. Ben Berk, of St. Louis, Mo., Mr. Paul Meyer, of Columbus, Ohio, and Mr. John A. Brooker, of Portsmouth, Ohio, for the Shoe Workers.*

*Mr. James B. Quigley, of Columbus, Ohio, for the Engineers.*

*Mr. William Strong, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by the United Shoe Workers of America, CIO, Local #158, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of The Julian & Kokenge Company, Columbus, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Allen Sinshiemer, Jr., Trial Examiner. Said hearing was held at Columbus, Ohio, on April 13, 1944. The Company, the CIO, the Boot and Shoe Workers Union, AFL, Local #241, herein called the Shoe Workers, and International Union of Operating Engineers, AFL, herein called the Engineers, 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

The Company, an Ohio corporation with its office and factory in Columbus, Ohio, is engaged in the manufacture of shoes for women. Raw materials used by the Company during the fiscal year ending October 31, 1943, were valued at approximately \$3,140,592, over 50 percent of which was obtained from sources outside the State of Ohio. During the same period, of the sales of the Company's finished products, totally valued at approximately \$4,599,545, over 50 percent was made to customers outside of Ohio.

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

#### II. THE ORGANIZATIONS INVOLVED

United Shoe Workers of America, Local #158, affiliated with the Congress of Industrial Organizations, Boot and Shoe Workers Union, Local #241, affiliated with the American Federation of Labor, and International Union of Operating Engineers, affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the CIO as the exclusive bargaining representative of certain of the Company's employees until the CIO has been certified by the Board in an appropriate unit. The Company based its refusal in part upon the fact that it was a party to a contract with the Shoe Workers, which by its terms was to continue in effect until May 1, 1944, and indefinitely thereafter subject to defeasance upon 30 days' notice given by either party. However, since the CIO's demand was made more than 30 days prior to May 1, 1944, the contract is no bar to this proceeding.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</sup>

<sup>1</sup> The Field Examiner reported that the CIO submitted 276 authorization cards, 247 of which bore the names of persons appearing on the cards were listed on the Company's pay roll of March 11, 1944, which contained the names of 695 employees in the alleged appropriate unit.

The Shoe Workers relies on its contract with the Company as evidencing its representation interest in the Company's employees.

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 substantial agreement with stipulations of the Company and the CIO, and the position of the Shoe Workers, that all persons gainfully employed by the Company in the production of shoes, including floor help, the matron, maintenance employees, watchmen, other than firemen who work part time as watchmen,<sup>2</sup> excluding engineers, firemen, firemen's helpers, electricians, the nurse, office employees, office commercial employees, production tracers,<sup>3</sup> superintendents, supervisors, executives, foremen, the shipping room manager, and any 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

Issue arose at the hearing as to the eligibility of two shipping room helpers, and employees William Johnson, Ethel Freeman, and Fred Schlecht to participate in the election.

The shipping room helpers are listed on the Company's office pay roll and are paid on a salary basis. They devote about 90 percent of their time to crating boxes of shoes, constructing cartons, and other physical work. They also perform a slight amount of clerical work in that they check the contents of cartons against tickets and, in the absence of the supervisor, perform his duties of keeping records, preparing bills of lading, and other similar functions. The CIO requests their exclusion as clerical employees; the Shoe Workers assumes a contrary position asserting that they are production employees. We shall include the shipping room helpers among the employees eligible to vote in the election.

Ethel Freeman is listed on the production pay roll as an office clerk. She spends about 75 percent of her time in handling and distributing supplies for the fitting department and about 25 percent on production work. She keeps no records. Her only clerical work consists of making out requisitions for supplies, making oral absen-

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<sup>2</sup> Specifically, the Company and the CIO agreed that within the general inclusions were the employees in the cutting department, the fitting department, the heel building department, the lasting department, the melt department, the bottoming department, the wood heel department, the finishing department, and the packing department.

<sup>3</sup> Harold Dixon, Wesley Drapp, and Harley Peterson.

tee reports to the foreman, placing time cards into the rack, and occasionally aiding with the daily record of production. The CIO asserts that she should be excluded, as a clerical employee; the Shoe Workers would include her. Since Freeman's work is clerical only in a slight degree, we shall include her among the production employees eligible to vote in the election.

William Johnson is listed on the "Factory Foremen" pay roll as the "Assistant to Superintendent." Johnson has no authority to hire or discharge, nor does he direct or supervise anyone. Johnson is a pattern maker without any present duties along that line because of war production curtailment of new models. Johnson assists in various capacities on production work, as well as in other capacities. As a pattern maker, Johnson's inclusion among the employees in the unit would be acceptable to both the CIO and to the Shoe Workers. Since Johnson does not appear to fall within our normal definition of a supervisory employee, he is eligible to participate in the election.

Fred Schlecht appears on the Company pay roll as a designer. As such the parties would exclude him. Schlecht, however, has been working for the past 18 months covering shoes. He nevertheless still receives his former salary of about \$66 a week, which is approximately \$25 more than that of a regular shoe coverer. The CIO contends that he should be excluded, while the Shoe Workers asserts that he should be included. Since Schlecht continues to receive pay as a designer, we shall regard him as continuing in that category for the purposes of this proceeding. Schlecht, consequently, is ineligible to vote in the election.

The parties are in agreement that part-time employees who have worked for the Company part time regularly during the 30 days preceding the pay-roll date determinative of eligibility to participate in the election herein, shall be eligible to vote. We so direct.

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.<sup>4</sup>

#### 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,

<sup>4</sup> The CIO desires to appear on the ballot as "J. & K. Local 158, United Shoe Workers of America CIO." The Company objects to the use of the initials "J & K" by either labor organization. Since the CIO is clearly identifiable without those initials, we shall omit them from the ballot.

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 The Julian & Kokenge Company, Columbus, Ohio, 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 Ninth 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 the 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, CIO, Local #158, or by Boot and Shoe Workers Union, Local #241, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.