

In the Matter of ENDICOTT JOHNSON CORPORATION and UNITED SHOE  
WORKERS OF AMERICA, C. I. O.

Case No. 3-R-791.—Decided August 21, 1944

*Mr. Harold X. Summers*, for the Board.

*Messrs. Howard A. Swartwood and William H. Pritchard*, of Endicott, N. Y., for the Company.

*Mr. Samuel M. Sacher*, of New York City, for the Union.

*Mr. Robert Silagi*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Shoe Workers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Endicott Johnson Corporation, Endicott, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Charles E. Persons, Trial Examiner. Said hearing was held at Binghamton, New York, on June 12, 1944. The Company and the Union 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.<sup>1</sup> 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. On August 8, 1944, oral argument, in which all parties participated, was held before the Board in Washington, D. C.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Endicott Johnson Corporation is a New York corporation having its principal offices in Endicott, New York. It is engaged in the busi-

<sup>1</sup> Following the hearing, the Company requested that certain errors in the transcript of testimony be corrected. No objection being received from the Union, the corrections are hereby ordered to be made in the official transcript.

ness of tanning leather and in the manufacture of leather, canvas, and rubber footwear at its numerous plants in Binghamton, Johnson City, Endicott, and Owego, New York. During the year ending November 30, 1943, the Company used raw materials valued in excess of \$33,000,000, approximately 55 percent of which represents shipments made to its plants in New York from points outside the State of New York. During the same period the Company manufactured finished products valued at over \$95,000,000, about 90 percent of which was shipped to points outside the State of New York.

For the purposes of this proceeding, the Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATION INVOLVED

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

#### III. THE QUESTION CONCERNING REPRESENTATION

Early in March 1944, the Union applied to the Company for recognition as the collective bargaining agent of the employees of the Company's rubber reclamation factory and paracord plant. The Company refused to grant such recognition, contending that the unit sought was inappropriate.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>2</sup>

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

<sup>1</sup> In the course of its operations, the Company employs over 15,000 people and operates many plants all of which are centered about Binghamton, New York. Some 21 factories are devoted exclusively to the manufacture of shoes, the principal business of the Company. In addition, the Company conducts what it calls its "allied manufacturing enterprises," which consist of 6 tanneries, a rubber reclaiming plant, a paracord factory for the manufacture of rubber soles and heels, a fibre board mill which produces insoles and counters, a leather

<sup>2</sup> The Field Examiner reported that the Union submitted 336 application-for-membership cards, 279 of which bore the names of persons appearing on the Company's pay roll of May 15, 1944. Said pay roll contained the names of 587 employees in the appropriate unit.

board mill for the manufacture of heel bases, a carton factory, a chemical plant for research and the manufacture of tanning lacquer, leather polishes, dyes, and cement, as well as a fertilizer plant which utilizes tannery wastes and scrap in the manufacture of fertilizer. The Company also maintains a variety of auxiliary departments to service the principal business and allied manufacturing enterprises. These consist of a laundry, a fire prevention department, power plants, a garage and transportation department, a printing department, a recreation department, and a mechanical and service department.

The Union seeks a unit consisting of all production and maintenance employees of the two rubber factories, i. e., the rubber reclaim and paracord plants. The Company, however, contends that its operations are so highly integrated that only an employer-wide unit is appropriate. In asserting that the proposed unit is inappropriate the Company relies on the Board's finding in a prior case that an employer-wide unit was appropriate.<sup>3</sup> In that case, however, the Board's finding was predicated upon an agreement of the parties. Furthermore, the election held therein did not result in a certification and a subsequent history of collective bargaining, since neither union involved<sup>4</sup> received a majority. We therefore find no merit in the Company's contentions that the Union is thereby precluded from ever seeking a smaller unit as the basis for a petition for investigation and certification of representatives.<sup>5</sup> Moreover, in 1942 the International Fur and Leather Workers Union, C. I. O., herein called the Fur Workers, filed a petition claiming the tannery employees of the Company as an appropriate bargaining unit. At the hearing held in that case, the Company again urged an employer-wide unit relying upon the unit finding in the case decided in 1939. The Board, however, established the unit sought by the petitioner.<sup>6</sup>

It thus appears that at the present time all employees of the Company, with the exception of some 2,000 employed in the tannery who are represented by the Fur Workers, do not enjoy the benefits of collective bargaining. Although the Company lays great stress upon the integrated character of its business, the uniformity of its labor policy, and its unique system of social benefits available to all its employees without distinction, we are not persuaded that these are the sole criteria for the establishment of a unit appropriate for collective bargaining. The record, and counsels' statements at oral argument, amply support the Union's position that the operations and

<sup>3</sup> *Matter of Endicott Johnson Corporation*, 17 N. L. R. B. 1004, decided November 24, 1939.

<sup>4</sup> *Boot & Shoe Workers Union, Local 42, A. F. of L., and United Shoe Workers of America, C. I. O.*

<sup>5</sup> See *Matter of Thomasville Chan Company (Plant B, Old Bard Plant)*, 54 N. L. R. B. 1071. See also *Matter of The Kansas City Star Company*, 47 N. L. R. B. 836.

<sup>6</sup> *Matter of Endicott Johnson Corporation*, 45 N. L. R. B. 1092.

skills required of the rubber workers are different from those required by employees in the other allied manufacturing enterprises or in the principal business of the Company. Aside from the operations carried on in the cutting room of the rubber factories there are no operations which are duplicated in the shoe factories. Even though rubber soles and heels are produced for specified orders on a day-to-day basis the Company admits that they are not made a part of the shoes within the rubber factories but are sent to the shoe factories for that step in production. While highly integrated with shoe factories, the Company, to all intents and purposes, operates a separate rubber production business. Nor is the individual character of the rubber business vitiated by the fact that the paracord factory occupies space in the same building which houses the sneaker factory in the absence of any evidence of a direct connection between the two. In this respect the Company is unique in the shoe manufacturing business, there being, according to Company's counsel, but one other shoe manufacturing concern which produces its own rubber soles and heels.

The evidence further shows that the working hours and the method of computing compensation of the rubber workers are different from those of the other employees.<sup>7</sup> While there has been a considerable transfer of employees between the two rubber factories and the other plants of the Company, it appears that most of these were of a more or less permanent nature. In view of the foregoing, we are of the opinion that the employees in the two rubber factories can function effectively as a separate unit for the purposes of collective bargaining. However, the factors persuasive of a finding that the reclaim and paracord factories constitute a separate unit are peculiarly confined to these operations, and our finding in this respect is not to be construed as sanctioning future organization of the shoe factories of the Company on a fragmentary basis.

We find that all production and maintenance employees of the Company employed in its rubber reclaim and paracord factories, but excluding all office and clerical employees, foremen, assistant foremen, and any other supervisory employees<sup>8</sup> 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.

<sup>7</sup> In its shoe factories, the Company pays the overwhelming majority of its employees on a piece-rate basis. In the rubber factories, however, only about 10 percent of the employees are paid piece rates, the balance receiving hourly rates. Similarly, with negligible exceptions, all plants of the Company work two shifts a day while the rubber factories work three.

<sup>8</sup> The parties agree, and we find, that the following named persons are supervisory employees within the definition set forth above: H. Doolittle, A. Stover, L. Langevine, J. Savage, and S. Chambers.

**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.

**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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Endicott Johnson Corporation, Endicott, New York, 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 Third 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 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 or not they desire to be represented by United Shoe Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

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