

In the Matter of DUNN AND MCCARTHY INC. and UNITED SHOE  
WORKERS OF AMERICA, CIO

*Case No. 3-R-853.—Decided October 11, 1944*

*Noble, Leary & Leary, by Mr. Perry E. Leary, of Auburn, N. Y., for the Company.*

*Mr. John J. Maurillo, of Syracuse, N. Y., for the Union.*

*Mr. Paul Bisgyer, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Shoe Workers of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Dunn and McCarthy Inc., Auburn, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Milton A. Nixon, Trial Examiner. Said hearing was held at Syracuse, New York, on September 1, 1944. The Company and the Union appeared and participated.<sup>1</sup> All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing, the Company moved to dismiss the amended petition on various grounds. The Trial Examiner referred the motion to the Board for determination. For reasons hereinafter appearing, the motion is denied. 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:

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<sup>1</sup> Although duly served with Notice of Hearing, Boot and Shoe Workers Union, A F of L, did not appear.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE COMPANY

Dunn & McCarthy Inc. is a New York corporation engaged in the manufacture of shoes at its plant in Auburn, New York. During 1943, the Company used raw materials of the approximate value of \$500,000, of which over 80 percent was shipped from points outside the State of New York. During the same period, its finished products exceeded \$500,000 in value, of which more than 80 percent was shipped to points outside that State.

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.<sup>2</sup>

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of its employees until the Union has been certified by the Board in an appropriate unit.

A statement of the Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</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

The Union seeks a unit comprised of all production and maintenance employees of the Company, including stock department employees, the stock department truck driver, the stock department janitor, the factory truck driver, factory janitors, and the watchman,<sup>4</sup> excluding office and clerical employees, and supervisory personnel. The Company, although claiming that such a unit is inappropriate, apparently acquiesces alternatively in the propriety of a production and maintenance unit which would exclude the stock department employees,

<sup>2</sup> Contrary to the Company's contention, this finding is amply substantiated by the record.

<sup>3</sup> The Field Examiner reported that the Union submitted 268 application-for-membership cards, and that the alleged appropriate unit contained approximately 450 employees. Thus, the Company's contention that the Union has failed to make a substantial showing of representation is without merit.

<sup>4</sup> The watchman guards the entire plant and it does not appear that he is either armed, militarized or deputized.

the stock department truck driver and the stock department janitor. We are of the opinion that a production and maintenance unit is clearly appropriate. The sole question remaining for consideration is whether the stock department employees, the stock department truck driver and the stock department janitor should be included.

The Company conducts its operations in three buildings. Two of the buildings joined by a ramp, constitute the factory, and the third, the general office building, likewise joined by a ramp to one of the factory buildings, houses the stock department. It appears from the record that, after the shoes have been fabricated, they are individually wrapped and packed in cases by employees in the factory, who then bring the cases of shoes to the stock department. There, the shoes are removed from the cases, assorted, placed on racks, and become stock from which orders are filled. In addition to these functions, the stock department checks orders, stencils and seals packages, attends to shipping, and brands the shoes pursuant to customers' directions. After the shoes have been prepared for shipment, the stock department truck driver transports them to carriers for ultimate delivery to the Company's customers. The truck driver, when not engaged in this work, assists in the stock department. There is also a janitor who performs the usual janitorial services in this department.

The foregoing facts sufficiently demonstrate that, although the stock department employees are under the supervision of the assistant to the vice president and sales manager, and the factory employees are under the supervision of the general superintendent, there nevertheless exists between these two groups a definite relationship which is emphasized by the substantial manual work performed by the stock department employees in preparing the finished product for shipment. The stock department truck driver and the stock department janitor have common interests with all these employees. Moreover, it appears that, while the Company has a vacation plan for its clerical and supervisory staff, it has none for its stock department employees and the truck driver and janitor therein, or its production and maintenance employees. In these circumstances, the fact that there is no interchange of personnel between these departments, or that these departments have separate employment offices, does not warrant the exclusion from the unit of stock department employees, the stock department janitor and the stock department truck driver. We shall consequently include them.<sup>5</sup>

Accordingly, we find that all production and maintenance employees of the Company, including stock department employees, the stock department truck driver, the stock department janitor, the factory truck driver, factory janitors, and the watchman, but excluding office and clerical employees, factory managers, the factory superin-

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<sup>5</sup> See *Matter of U S. Shoe Corporation*, 43 N. L. R. B 637.

tendent, foremen, foreladies, 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 pay-roll period, immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

The Company requests that its employees now on military leave be permitted to vote by mail. For reasons stated in the *Mine Safety Appliances Co.*, case,<sup>6</sup> we shall direct that only persons in the armed forces who present themselves at the polls may vote in the election.

#### 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 Dunn and McCarthy Inc., Auburn, 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 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 United Shoe Workers of America, CIO, for the purposes of collective bargaining.

<sup>6</sup> 55 N. L. R. B. 1190.