

In the Matter of MARSHALL, MEADOWS & STEWART, INC. and UNITED  
SHOE WORKERS OF AMERICA, C. I. O.

*Case No. 3-R-861.—Decided October 28, 1944*

*Mr. Thomas Penney, Jr.*, of Buffalo, N. Y., for the Company.

*Mr. John J. Maurillo*, of Syracuse, N. Y., and *Mr. Daniel Jardine*, of Auburn, N. Y., for the C. I. O.

*Mr. Phillip Licari*, 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 Marshall, Meadows & Stewart, 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 Auburn, New York, on September 30, 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. 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

Marshall, Meadows & Stewart, Inc., a New York corporation, is engaged at Auburn, New York, in the manufacture of shoes. During the year ending July 1, 1944, the Company purchased raw materials valued in excess of \$100,000, of which approximately 70 percent was shipped from points outside the State of New York. During the same period,

<sup>1</sup> Boot and Shoe Workers of America, A F of L, after being duly apprised of the instant proceeding, appeared through its representative at the hearing and moved to intervene. The Trial Examiner denied the motion on the ground that it made no showing of interest

the Company produced goods valued at \$500,000, of which in excess of 50 percent was shipped to points outside the State of New York.

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

On August 18, 1944, the Union advised the Company that it represented a majority of the Company's employees engaged at its plant in Auburn, New York, and wished to be recognized as the exclusive bargaining representative of such employees. At the hearing, the Company stated that it would not recognize the Union until the Union has been certified by the Board in an appropriate unit.

A statement of a Field Examiner for the Board, 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

The parties are in agreement as to the appropriateness of a unit of "all production employees of Marshall, Meadows & Stewart, Inc., Auburn, New York, except for office and clerical employees and supervisory employees having the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action." There are, however, some groups concerning which the parties cannot agree, and which are discussed below.

*Cutting department employees:* The Company employs 30 workers in its cutting department, of whom 13 are highly skilled cutters. The Company seeks to exclude the 13 highly skilled cutters, whereas the Union seeks their inclusion. Although these cutters work by hand and are paid on a piece-work basis, whereas most of the other employees in this department work by machine and are paid on an hourly basis, they are regular production employees and perform work substantially similar to that performed by the other workers in the department. We shall include them.

<sup>2</sup> The Field Examiner reported that the Union submitted 139 undated authorization cards. He also reported that there were 260 employees in the alleged appropriate unit.

*Shipping clerk:* This employee works in the shipping room of the miscellaneous department. His main duties consist of labeling cartons containing shoes and preparing them for shipment. The greater part of his time is spent in manual labor although he is under the supervision of the chief shipping clerk. We shall include him.

We find, in substantial accordance with the agreement of the parties and our foregoing determinations, that all production employees employed at the Company's plant in Auburn, New York, including all cutting department employees and the shipping clerk, but excluding office and clerical employees 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.

#### 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.

While the Company seeks to exclude from participation in the election summer employees, most of whom are school students working on a temporary basis, whereas the Union asks that they be declared eligible to vote, we find that this category of employees does not presently appear on the Company's pay roll. Therefore, we shall not make provision for their participation or non-participation in the election.

The Company employs several part-time employees. These employees work on regular production jobs 4 or 5 hours per day, for 3 or 4 days per week. They are paid on an hourly or piece-rate basis and receive the same rate as the other production employees. The record reveals that different part-time employees work different weeks, depending upon the Company's need for extra help and also upon the availability of part-time employees. While the identity of these part-time employees varies from week to week, it is clear that they spend a substantial part of their time at regular production work and should be allowed to participate in the directed election. In order to facilitate the ascertainment of part-time employees eligible to vote, we shall provide that only those part-time employees whose names appear on the Company's pay roll during any part of 3 of the 4 weeks immediately preceding the date of the Direction of Election shall be permitted to participate in the election.<sup>3</sup>

<sup>3</sup> Cf. *Matter of Union Premier Food Stores, Inc.*, 11 N. L. R. B. 270.

The Company has a policy whereby all employees work a probationary period of 6 weeks. The Company claims that, while no substantial difference exists between these employees and other regular production employees, they are not considered permanent workers and therefore should not be allowed to participate in the election. We find that, since the employees in question have a reasonable expectancy of permanent employment with the Company for an indeterminate period of time, they have a substantial interest in the working conditions of the Company, and we shall, therefore, permit them to participate in the election.<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, 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 Marshall, Meadows & Stewart, 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, as well as all part-time employees doing work similar to that of the full-time employees in the unit found appropriate in Section IV, above, whose names appear on the Company's pay roll during any part of 3 of the 4 weeks 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 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.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.

<sup>4</sup> See *Matter of United States Gypsum Company*, 55 N. L. R. B. 586.