

In the Matter of LEIGHTON HEEL AND COUNTER CORPORATION and
UNITED SHOE WORKERS OF AMERICA, CIO

Case No. 5-R-1779.—Decided January 25, 1945

Messrs. Leon Leighton, Jr., and H. L. Stetson, of Lynchburg, Va., for the Company.

Mr. Frank McGrath, of Washington, D. C., and Messrs. Raymond H. Goff, Rubert Thrasher, and Cecil Nash, of Lynchburg, Va., for the Union.

Mr. Harold M. Humphreys, 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, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Leighton Heel and Counter Corporation, Lynchburg, Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George L. Weasler, Trial Examiner. Said hearing was held at Lynchburg, Virginia, on January 5, 1945. 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. 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

Leighton Heel and Counter Corporation, a Virginia corporation, is engaged at Lynchburg, Virginia, in the manufacture of shoe heels and counters. During the fiscal year ending August 31, 1944, the

Company purchased raw materials, consisting of leather, leather board and fibre board, valued at \$112,000, of which approximately 90 percent was shipped to it from points outside the State of Virginia. For the same period, the Company's total sales of finished products amounted in value to approximately \$200,000, of which approximately 27 percent was shipped to points outside the State of Virginia.

The Company admits that it is engaged in commerce with 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

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 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.¹

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 agreed that all production and maintenance employees of the Company at its Lynchburg, Virginia, plant, excluding clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining. However, the Company urges that the foreman of the heel department, W. H. Ramsey, be included in the unit, whereas the Union requests his exclusion on the ground that he is a supervisory employee.

The Company's operations, consisting of the manufacturing of heels and shoe counters, are supervised by a manager. Immediately below the manager in the plant hierarchy is a superintendent having authority to hire and discharge employees. The foreman of the heel department² works under the superintendent, gives the machine oper-

¹ The Field Examiner reported that the Union submitted 28 application for membership cards and that there are approximately 35 employees in the alleged appropriate unit. The Union submitted 3 additional cards at the hearing.

² Apparently the only foreman engaged by the Company.

ators "working tabs," checks and corrects the quality of their workmanship, and ascertains their working time for pay-roll purposes.³ It appears that his hourly rate is higher than that of the employees whose work he supervises and that he has authority to effectively recommend their transfer from one position to another. We are of the opinion that the foreman of the heel department possesses sufficient *indicia* of supervisory authority to warrant his exclusion from the unit.

According, we find that all production and maintenance employees of the Company at its Lynchburg, Virginia, plant, excluding clerical employees, the manager, the superintendent, the foreman of the heel department, 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 for 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 within Leighton Heel and Counter Corporation, 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 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

³ When necessary he also operates machines.

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, CIO, for the purposes of collective bargaining.

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