In the Matter of CLARK SHOE COMPANY *and* UNITED SHOE WORKERS OF AMERICA, CIO

Case No. 1-CA-462.—Decided March 9, 1950

DECISION

AND

ORDER

On November 4, 1949, Trial Examiner Martin S. Bennett issued his Intermediate Report in the above-entitled proceeding finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Murdock].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[1]

[1] The Respondent takes the position that the Trial Examiner cannot hold himself bound by the Board's findings in the prior representation case; that it is entitled to an "independent determination" by the Trial Examiner of the issues decided in the R case; and that under Section 7 (b) (8) of the Administrative Procedure Act, the Trial Examiner should make such a determination because he is authorized to "make decisions or recommend decisions." We agree with the Trial Examiner that unless there is evidence which was newly discovered or unavailable to the Respondent at the time of the representation hearing, it cannot be permitted to relitigate in the instant proceeding the question of majority or the appropriate unit. (See cases cited on page 996 of the Intermediate Report.) Nor do we find anyhing in the Administrative Procedure Act which supports the Respondent's position.

The Respondent further contends that the Trial Examiner erred in refusing to admit evidence of the association-wide scope of the union organizing drive which was initiated after the hearing in the representation case. It argues that this evidence was clearly unavailable to the Respondent at the hearing on the representation case and therefore was properly admissible in the present proceeding. The Board twice after the election had before it an account of the Union's organizing drive as presented in briefs submitted in support of the Employer's "Petition to Vacate Election and Reopen Record for Evidence as to the Appropriate Unit" and the subsequent "Motion to Reconsider Decision

We find that the Respondent has refused to bargain collectively in violation of Section 8 (a) (5) of the Act, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. We shall order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Clark Shoe Company, Auburn, Maine, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Shoe Workers of America, CIO, as the exclusive representative of all production and maintenance employees of Respondent, including firemen, boilermen, and elevator men, but excluding office clericals, professional employees, guards, and supervisors;

(b) In any manner interfering with the efforts of United Shoe Workers of America, CIO, to bargain collectively with it in behalf of the employees in the aforesaid appropriate unit.[2]

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Shoe Workers of America, CIO, as the exclusive representative of all employees in

---

on Appropriate Unit." The Trial Examiner, therefore, did not commit error in excluding evidence as to the organizing drive. Moreover, while the Board ruled that the Employer's two post-election pleas were untimely, the Board in a series of representation cases involving the same unit issue, the same union, and the same employers' association, considered, among other factors, the organizing drive and nevertheless decided in favor of single-employer units. *Belle-Moc, Inc.*, 81 NLRB 6; *Lumbard Watson Company*, 1–RC–519; *Panther Moccasin Mfg. Co., Inc.*, 1–RC–521; *Koss Shoe Company, Inc.*, 1–RC–632.

The Respondent also wrongly contends that the Board never had occasion to overrule the first of the Respondent's three objections to the conduct of election and that it was therefore incumbent upon the Trial Examiner to rule thereon. From the Order, dated November 2, 1948, directing a hearing on objections, it is clear that the Board duly considered all three objections, the Regional Director's Report on Objections, and the Employer's exceptions thereto, and found that only objections 2 and 3 raised substantial and material factual issues.

[2] The Respondent contends that paragraph 1 (b) of the recommended order is not justified under the facts of this case and that the order, therefore, is too broad. We do not agree. The order is properly confined to enjoining violations of the Act's provisions dealing with bargaining. Paragraph 1 (b) is essential to the insurance of good faith bargaining, and as such, is within the purview of the Board's duty to effectuate the policies of the Act. See *N. L. R. B.* v. *The Continental Oil Company*, 179 F. 2d 552, where the U. S. Court of Appeals for the Tenth Circuit approved a similar provision. See also *May Department Stores Company* v. *N. L. R. B.*, 326 U. S. 376 and *N. L. R. B.* v. *Express Publishing Company*, 312 U. S. 426, in which the Supreme Court modified the Board Order as being too broad with respect to anticipated violations of other sections of the Act, but approved provisions with regard to bargaining, which were substantially the same as those contained in the recommended order to which the Respondent objects.

the aforesaid appropriate unit with respect to wages, rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant in Auburn, Maine, copies of the notice attached to the Intermediate Report marked Appendix A.[3] Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the First Region, in writing, within ten (10) days from the date of this Order what steps Respondent has taken to comply herewith.

INTERMEDIATE REPORT

Robert E. Greene, Esq., for the General Counsel.

Grant and Angoff, by *Frederick Cohen, Esq.*, of Boston, Mass., for the Union.

Gordon and Epstein, by *Benjamin E. Gordon, Esq.*, of Boston, Mass., for Respondent.

STATEMENT OF THE CASE

Upon a charge duly filed on June 21, 1949, by United Shoe Workers of America, C. I. O., herein called the Union, the General Counsel of the National Labor Relations Board, herein called the General Counsel and the Board, respectively, by the Regional Director for the First Region (Boston, Massachusetts), issued a complaint dated June 22, 1949, against Clark Shoe Company, Auburn, Maine, herein called Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the charge, complaint, and notice of hearing thereon were duly served upon Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that: (1) all production and maintenance employees of Respondent, including firemen, boilermen, and elevator men, but excluding office clericals, professional employees, guards, and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act; (2) at all times since May 23, 1949, the Union has been the exclusive representative

[3] This notice, however, shall be and it hereby is amended by striking from the first paragraph thereof the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" and substituting in lieu thereof the words "A DECISION AND ORDER." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words "DECISION AND ORDER" the words "DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING."

of all employees in the above-described appropriate unit; (3) on June 15, 1949, and at all times thereafter, Respondent has refused to bargain collectively with the Union as the exclusive representative of the employees in the aforesaid appropriate unit; and (4) by the foregoing conduct, Respondent has engaged in and is engaging in unfair labor practices violative of Section 8 (a) (1) and (5) of the Act.

Pursuant to notice, a hearing was held on August 2, 1949, at Auburn, Maine, before the undersigned Trial Examiner, Martin S. Bennett, duly designated by the Chief Trial Examiner. The General Counsel, the Union, and Respondent were represented by counsel and were afforded full opportunity to be heard and to introduce evidence bearing on the issues.[1]

At the hearing, Lewiston-Auburn Shoe Workers Protective Association, herein called LASPA, moved to intervene in this proceeding.[2] LASPA alleged that the unit set forth in the complaint was not appropriate and that the appropriate unit was one that included all members of the Auburn Shoe Manufacturers Association; within the latter unit LASPA claimed that it represented a majority. The undersigned ruled that LASPA had no interest in the issues of the instant proceeding and denied the motion to intervene. The undersigned also denied a motion by counsel for Respondent herein to further appear, in addition to his appearance for Respondent, as *amicus curiae* in behalf of Auburn Shoe Manufacturers Association, a trade association of which Respondent is apparently a member.

At the hearing, the undersigned permitted Respondent to file an answer wherein it admitted the allegations of the complaint with respect to the nature of its business; denied the appropriateness of the unit alleged by the complaint to be appropriate; contended that the appropriate unit should embrace the employees of all members of the Auburn Shoe Manufacturers Association; denied that the Union was the exclusive representative of all the employees of Respondent in the unit alleged by the complaint to be appropriate; admitted that it had refused to bargain with the Union; and denied the commission of any unfair labor practices. At the close of the hearing, the parties argued orally before the undersigned and were also advised that they might file briefs and/or proposed findings of fact and conclusions of law. A brief has been received from Respondent.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Clark Shoe Company is a Maine corporation whose principal place of business is located at Auburn, Maine, where it is engaged in the manufacture, sale, and distribution of women's shoes. In the course and conduct of its business, Respondent annually purchases raw materials including leather, shoe findings, fabrics, wooden heels, and chemicals valued in excess of $50,000, of which over 50 percent is shipped to Respondent's plant from points outside the State of Maine.

[1] The exclusion by the undersigned of certain testimony proffered by Respondent is discussed below.

[2] As appears below, this is a labor organization which intervened and appeared on the ballot in an election directed by the Board among the employees of Respondent; the Union won and was later certified by the Board. *Clark Shoe Company*, 83 NLRB 782.

Respondent annually produces shoes valued in excess of $50,000, of which over 50 percent is shipped to points outside the State of Maine.

Respondent admits in its answer, the Board has previously found, and the undersigned now finds that Respondent is engaged in commerce within the meaning of the Act.[3]

II. THE LABOR ORGANIZATION INVOLVED

United Shoe Workers of America is a labor organization affiliated with the Congress of Industrial Organizations and admits to membership employees of Respondent.[4]

III. THE UNFAIR LABOR PRACTICES

A. *Introduction; the representation proceeding*

The sole issue in the instant proceeding is whether Respondent has refused to bargain collectively with the Union and has thereby violated Section 8 (a) (1) and (5) of the Act. Respondent admits in its answer that on June 15, 1949, and at all times thereafter, it has refused to bargain collectively with the Union. As will be seen below, Respondent, in effect, raises two contentions as a defense to its refusal to bargain, (1) that the unit alleged to be appropriate is in fact inappropriate, and (2) that certain conduct which took place at the time of the election, as a result of which the Union was certified, rendered the election and the certification invalid.[5]

After a petition for certification of representatives was filed by the Union in Case No. 1–RC–298, the Board on June 23, 1948, issued a Decision and Direction of Election wherein it found, *inter alia*, that a unit of Respondent's employees identical with that set forth in the instant complaint was a unit appropriate for the purposes of collective bargaining and directed an election among the employees in that unit. The election was conducted under the supervision of the Regional Director for the First Region on July 21, 1948. Of 624 eligible voters, 602 cast ballots, of which 2 were void, 302 were for the Petitioner, the Union herein, 28 for the Intervenor, LASPA, 257 for neither, and 13 were challenged.

On July 28, 1948, the Employer, Respondent herein, filed the following Objections to the Conduct of Election:

> (1) The agent in charge of the election refused to determine the number of employees who had voted by counting the number of names checked as having voted on the eligibility list for the purpose of comparing this total with the number of ballots cast.
>
> (2) There were blank ballots present in the voting booth several times during the voting.

---

[3] Findings herein are based upon the allegations of the complaint, Respondent's answer, and the record in Case No. 1–RC–298 wherein the Board found that Respondent is engaged in commerce within the meaning of the Act.

[4] Respondent in its answer called upon the Board "to prove" that the Union was a labor organization. However, Respondent stipulated in the representation proceeding, Case No. 1–RC–298, and the Board found therein, that the Union was a labor organization.

[5] In its brief to the undersigned, Respondent raises a third contention which it urged before the Board, which the Board resolved adversely to Respondent, and which Respondent did not raise at the instant hearing. This contention is that the certification of the Union is improper because the Board in reaching its decision relied on the Report of a Hearing Officer, as appears below, contrary to its Rules and Regulations. As the Board has resolved this contention adversely to Respondent, and as no new matter was raised before the undersigned, the undersigned rejects this defense of Respondent. In any event, Respondent's position is not well taken. *Minnesota Mining and Manufacturing Co.*, 81 NLRB 557.

(3) The ballot box was left unattended on several occasions during the voting.

On August 30, 1948, the Regional Director filed his Report on Objections in which he recommended that the objections be overruled. To this the Employer duly filed exceptions. On November 2, 1948, having considered the objections, the Regional Director's Report on Objections, and Respondent's exceptions thereto, the Board found that objections 2 and 3, set forth above, raised material and substantial issues with respect to conduct affecting the results of the election and ordered a hearing upon those objections.

In order to follow the history of the representation case, it is necessary at this point to advert to another pleading filed by Respondent in that proceeding. On or about November 10, 1948, Respondent filed a "Petition to Vacate Election and Reopen Record for Evidence as to the Appropriate Unit." In support of its petition, Respondent alleged that it desired to submit "further evidence not available at the time of the formal hearing as to the appropriate unit on the grounds that the unit designated is inappropriate . . ." On November 26, 1948, the Board denied Respondent's petition of November 10 on the ground that Respondent "*at the hearing, raised no question concerning the appropriateness of the unit, but stipulated that a production and maintenance unit of its employees was appropriate. The raising of this issue now is not timely.*" [Emphasis added.] A motion for reconsideration of this order of the Board was filed by Respondent on or about February 8, 1949, and was denied on or about February 25, 1949.

Returning to the chronological record of Respondent's original objections to the election, a hearing was held as directed on December 1 and 2, 1948, on the issues raised by objections 2 and 3, before a duly designated hearing officer who was directed to make findings and recommendations. The hearing officer issued a report on March 7, 1949, wherein he recommended that Respondent's objections be overruled, and thereafter Respondent filed exceptions to that report. On May 23, 1949, the Board issued a Supplemental Decision and Certification of Representatives wherein it overruled Respondent's objections, adopted the findings and recommendations of the hearing officer, and certified the Petitioner, the Union, as the exclusive bargaining representative of the employees of Respondent in the above-described appropriate unit.

B. *The refusal to bargain*

1. The appropriate unit

The complaint alleges that all production and maintenance employees of Respondent, including firemen, boilermen, and elevator men, but excluding office clericals, professions employees, guards, and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

As set forth above, this is the unit found by the Board to be appropriate in the representation proceeding and for which the Board on May 23, 1949, certified the Union as exclusive bargaining representative. And as appears above, this is the identical unit concerning which the Board, on November 26, 1948, and again on February 25, 1949, denied Respondent's "Petition to Vacate Election and Reopen Record for Evidence as to the Appropriate Unit." Thus, the Board on those occasions has, in effect, again affirmed its original determination with respect to the appropriate unit.

Respondent, in the instant proceeding, raises again the identical contention that the unit established by the Board is inappropriate. It is urged that the only appropriate unit is a multiemployer unit of the members of the Auburn Shoe Manufacturers Association, although that question, as appears above, has already been resolved adversely to Respondent. Respondent contends here as it did in the representation proceeding that the evidence it desires to submit was not available at the time of the original hearing in that case. The facts, however, do not lend support to Respondent's contention.

The evidence relied upon by Respondent to establish its position amounts to the following: namely, that it did not occur to the president of Respondent to raise the issue of the appropriateness of a single-employer unit at the time of the hearing in the representation proceeding, and that as a result, he did not discuss the matter with his counsel until after that hearing took place. Obviously, and contrary to Respondent's contention, this is not an instance of evidence which was not available at an earlier date, but, at the most, amounts to a failure by Respondent to take a position as to unit. Morever, the record in the representation proceeding discloses, as the Board specifically pointed out in its order of November 26, 1948, denying Respondent's "Petition to Vacate Election and Reopen Record for Evidence as to the Appropriate unit," that in the representation proceeding Respondent had agreed that a unit of its production and maintenance employees was appropriate for the purposes of collective bargaining.

In sum then, Respondent moved to reopen the record in the representation proceeding for evidence as to the appropriate unit long after it not only raised no question at the representation hearing concerning the appropriateness of the unit, but agreed in fact that a unit identical with that set forth in the instant complaint was appropriate for the purposes of collective bargaining. Furthermore, as set forth above, the testimony of the president of Respondent at the instant hearing reveals that Respondent is not attempting to introduce newly discovered evidence, but is rather attempting to raise a contention which is exactly contrary to the agreement it entered into concerning the appropriate unit at the representation hearing. Finally, Respondent conceded that there had been no change in the nature of its business since the date of the certification of the Union up to and including the date of the alleged refusal to bargain.[6] In view of the foregoing findings, the undersigned rejects Respondent's contentions herein. Cf. *N. L. R. B.* v. *Worcester Woolen Mills Corp.*, 170 F. 2d 13 (C. A. 1), cert. denied 336 U. S. 903.

The undersigned finds, as alleged in the complaint, that all production and maintenance employees of Respondent, including firemen, boilermen, and elevator men, but excluding office clericals, professional employees, guards, and supervisors, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

2. Representation by the Union of a majority in the appropriate unit

As set forth above in more detail, the Union won the election held on July 21, 1948, and was certified by the Board on May 23, 1949, as the exclusive representative of all employees in the above-described appropriate unit for the purposes of collective bargaining.

It will be recalled that Respondent raised three objections to the conduct of the election of July 21, 1948, and that the Board overruled the first and directed a hearing on the second and third. At the instant hearing, Respondent attempted

[6] It may be noted that Respondent was represented by counsel in the representation proceeding, and in fact by the same counsel as in the instant proceeding.

to introduce evidence with respect to the first objection and the undersigned sustained an objection by the General Counsel to the receipt of such evidence. The record makes clear that Respondent is raising the identical objection and offering the same evidence as it set forth in considerable detail in its exceptions to the Regional Director's report on objections and on which the Board has ruled adversely to Respondent. Nor is it contended that this is newly discovered matter not previously brought to the attention of the Board. Furthermore, even at the hearing on objections 2 and 3 conducted by a hearing officer on December 1 and 2, 1948, some evidence was taken in support of objection 1 because Respondent contended that it might have a material bearing on objection 2. The hearing officer's report reveals, in effect, that some testimony on objection 1 was considered even though the Board had previously found adversely to Respondent on the issue.

In sum, then, the record shows that Respondent is attempting to raise in this proceeding the precise contention that it raised and argued to the Board in the representation proceeding and which was there resolved adversely to it. Nor is there a claim or showing that the evidence sought to be adduced was previously unavailable, for, in fact, it was brought to the attention of the Board. That the Board did not act in disregard of Respondent's rights is evidenced by the fact that it did direct a hearing on objections 2 and 3 to the election.

It has been the Board's carefully considered and long established policy not to permit an employer to relitigate in a subsequent unfair labor practice proceeding involving charges of a refusal to bargain with a certified representative the issues decided in a former representation proceeding. This policy is a salutary one and the only one administratively workable. To give employers a second opportunity in unfair labor practice proceedings to present evidence on the representation issue is to invite them to ignore the representation proceedings altogether and to refuse to bargain in the hope that the Board, in the unfair labor practice proceeding, will, upon the basis of evidence withheld in the representation proceeding, upset its representation determination and dismiss the unfair labor practice charges. Manifestly, the Board cannot adopt a procedure which is so squarely opposed to the declared policy of the Act, to encourage the practices and procedure of collective bargaining. *N. L. R. B.* v. *Worcester Woolen Mills Corp., supra; Pittsburgh Plate Glass Co.* v. *N. L. R. B.*, 313 U. S. 146; *Allis-Chalmers Manufacturing Co.* v. *N. L. R. B.*, 162 F. 2d 435 (C. A. 7); *N. L. R. B.* v. *West Kentucky Coal Company*, 152 F. 2d 198 (C. A. 6), cert. denied 328 U. S. 866; and *N. L. R. B.* v. *Anwelt Shoe Manufacturing Co.*, 93 F. 2d 367 (C. A. 1).

The undersigned finds that on and after May 23, 1949, the Union was the duly designated bargaining representative of the employees in the aforesaid appropriate unit and pursuant to Section 9 (a) of the Act, the Union was on May 23, 1949, and still is, the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. *The refusal to bargain*

On June 9, 1949, George Fecteau, territorial representative of the Union, wrote to Respondent as follows:

> We, the United Shoe Workers of America, CIO, would like to meet with officials of your company for the purpose of entering into negotiations with the view of arriving at a satisfactory working agreement between your company and our union.

This request is pursuant to the decision of the National Labor Relations Board, dated May 23, 1949, which certifies the United Shoe Workers of America, CIO, as the exclusive representative of your employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

Will you please notify us as soon as possible when it will be convenient for you to meet with us?

On June 15, 1949, counsel for Respondent replied to Fecteau's letter as follows:

It is the position of the Company that the certification issued by the National Labor Relations Board is improper. The only way that this matter can be litigated to a final decision is by the Company refusing to recognize the certification.

Therefore, you are herewith notified that the Company does not recognize the certification of the National Labor Relations Board and will not recognize your Union as the exclusive representative of the Company's employees for the purpose of collective bargaining.

The above letters reveal, Respondent admits in its answer, and the undersigned finds that on June 15, 1949, and at all times thereafter, Respondent has refused and is refusing to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in Section III, above, occurring in connection with the operations of Respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, it will be recommended that Respondent cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. Having also found that the Union represented and now represents a majority of the employees in the appropriate unit and that Respondent has refused to bargain collectively with it, the undersigned will recommend that Respondent, upon request, bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. United Shoe Workers of America, C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees of Respondent at its plant at Auburn, Maine, including firemen, boilermen, and elevator men, but excluding office clericals, professional employees, guards, and supervisors, constitute a unit appropriate for the purposes of collective bargaining with the meaning of Section 9 (b) of the Act.

3. United Shoe Workers of America, C. I. O., was on May 23, 1949, and at all times thereafter has been, and is, the exclusive representative of all employees

in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on June 15, 1949, and at all times thereafter, to bargain collectively with United Shoe Workers of America, C. I. O., as the exclusive representative of its employees in the aforesaid appropriate unit, Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that Respondent, Clark Shoe Company, Auburn, Maine, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Shoe Workers of America, C. I. O., as the exclusive representative of all production and maintenance employees of Respondent including firemen, boilermen, and elevator men, but excluding office clericals, professional employees, guards, and supervisors;

(b) In any manner interfering with the efforts of United Shoe Workers of America, C. I. O., to bargain collectively with it in behalf of the employees in the aforesaid appropriate unit.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Shoe Workers of America, C. I. O., as the exclusive representative of all employees in the aforesaid appropriate unit with respect to wages, rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant at Auburn, Maine, copies of the notice attached hereto and marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the First Region in writing within twenty (20) days from the date of receipt of this Intermediate Report what steps Respondent has taken to comply herewith.

It is also recommended that unless on or before twenty (20) days from the date of receipt of this Intermediate Report, Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondent to take the aforesaid action.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section

203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, and recommendations herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 4th day of November 1949.

MARTIN S. BENNETT,
Trial Examiner.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL BARGAIN collectively upon request with UNITED SHOE WORKERS OF AMERICA, C. I. O., as the exclusive representative of all employees in the bargaining unit described herein with respect to wages, rates of pay, hours of employment, or other terms or conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees including firement, boilermen, and elevator men, but excluding office clericals, professional employees, guards, and supervisors.

WE WILL NOT in any manner interfere with the efforts of the above-named Union to bargain collectively with us, or refuse to bargain with said Union as the exclusive representative of the employees in the bargaining unit set forth above.

CLARK SHOE COMPANY,
Employer.

By_____
(Representative) (Title)

Dated_____

This notice must remain posted for 60 consecutive days from the date hereof, and must not be altered, defaced, or covered by any other material.