

In the Matter of A. E. NETTLETON COMPANY and UNITED SHOEWORKERS  
OF AMERICA, CIO

Case No. 3-R-1078.—Decided December 7, 1945

*Bond, Schoeneck & King*, of Syracuse, N. Y., for the Company.  
*Harry Sacher*, by *Mr. Samuel M. Sacher*, of New York, N. Y., and  
*Mr. John J. Maurillo*, of Syracuse, N. Y., for the Union.  
*Mr. Donald B. Brady*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Shoeworkers of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of A. E. Nettleton Company, Syracuse, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Eugene von Wellsheim, Trial Examiner. The hearing was held in Syracuse, New York, on October 4, 1945. The Company and the Union appeared at and participated in the hearing, and all parties were afforded full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues. During the hearing, the Company moved to dismiss the proceeding on the ground that the petition for certification of representatives was dated and docketed with the Board prior to the existence of a question concerning representation. For the reasons set forth in Section III, *infra*, 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 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

A. E. Nettleton Company, a New York corporation, has its principal office and plant at Syracuse, New York, where it is engaged in

the manufacture of men's and women's shoes. During the period from September 1, 1944, to September 1, 1945, the Company used at its plant raw materials of a value exceeding \$250,000, of which approximately 90 percent was obtained from points outside the State of New York. During the same period, the Company manufactured at its plant finished products of a value exceeding \$250,000, of which approximately 70 percent was shipped to points outside the State.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act, and we so find.

## II. THE ORGANIZATION INVOLVED

United Shoeworkers 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 refuses to recognize the Union as the exclusive collective bargaining representative of the employees involved herein until such time as it is certified by the Board.<sup>1</sup>

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be 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

We find, in substantial accordance with the agreement of the parties, that all production and maintenance employees of the Company, including floor ladies and employees in the shipping department, but excluding office and clerical employees, foremen (including the clerk in charge of the shipping department), the superintendent, and all other supervisory employees with authority to hire, promote, dis-

<sup>1</sup> At the hearing, the Company pointed out that the petition for certification of representatives is dated August 25, 1945, and was docketed with the Board August 27, 1945. The letter requesting recognition introduced as Petitioner's Exhibit No. 1-A is dated August 25, 1945, attached to which is a post office return receipt indicating that the letter had not been delivered until August 28, 1945. The Company contended that there had been no refusal to bargain on August 25 or 27, 1945, the dates that the petition was sworn to and docketed with the Board and that, therefore, the allegation in the body of the petition setting forth a refusal to bargain was untrue at that time. Nevertheless, the Company at the hearing stated that it did refuse to recognize petitioner until such time as the petitioner was certified by the Board. Any defect in the petition was therefore corrected. See, *Matter of Houston Blow Pipe and Sheet Metal Works*, 53 N. L. R. B. 184.

<sup>2</sup> The Field Examiner reported that the Union presented 271 authorization cards and that there are approximately 477 employees in the appropriate unit.

charge, 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 means of 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 A. E. Nettleton Company, Syracuse, New York, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) 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 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 Shoenworkers of America, CIO, for the purposes of collective bargaining.

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