

In the Matter of SAMUEL GOLDENBERG, DOING BUSINESS AS AN INDIVIDUAL UNDER THE FIRM NAME AND STYLE OF PARAGON SLIPPER COMPANY and BOOT & SHOE WORKERS UNION, A. F. OF L.

Case No. R-756.—Decided June 27, 1938

Shoe Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; doubt raised as to majority status by consecutive changes of affiliation by employees between rival unions—*Strike—Unit Appropriate for Collective Bargaining:* all employees except supervisory, office, and maintenance employees and employees who have right to hire and discharge: no controversy as to—*Election Ordered*

Mr. Albert Ornstein, for the Board.

Mr. Morris A. Schoenfeld, of New York City, for the Company.

Miss Loretta Gordon, of Brooklyn, N. Y., for the B. & S. W. U.

Mr. Henry Sacher by Mr. Irving Leuchter, of New York City, for the United.

Mr. Allan Lind, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On March 15, 1938, Boot & Shoe Workers Union, herein called the B. & S. W. U., filed with the Regional Director for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Paragon Slipper Company,¹ New York City, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On April 14, 1938, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to

¹ At the opening of the hearing counsel for the Board moved to amend the title of the proceeding to read correctly as it is set forth in the title above. The Trial Examiner granted the motion.

conduct it and to provide for an appropriate hearing upon due notice.

On May 4, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the B. & S. W. U., and upon the United Shoe Workers of America, affiliated with the Committee for Industrial Organization, herein called the United, a labor organization claiming to represent employees directly affected by the investigation.

Pursuant to a notice of postponement, a hearing was held on May 12, 1938, at New York City, before William Seagle, the Trial Examiner duly designated by the Board. The Board, the respondent, and the United were represented by counsel and the B. & S. W. U. by its representative. All participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On May 18, 1938, the B. & S. W. U. requested an opportunity for oral argument before the Board, pursuant to which, by notice issued to all parties on May 27, a hearing before the Board was scheduled for June 9. None of the parties appeared for oral argument, however, on that day.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Samuel Goldenberg, doing business as an individual under the firm name and style of Paragon Slipper Company, is engaged in the manufacture, sale, and distribution of slippers. His manufacturing plant is located at Brooklyn, New York. During 1937 the Company manufactured and processed goods valued at approximately \$100,000. Of the goods manufactured and processed approximately 90 per cent were shipped to destinations located in States other than the State of New York. The raw materials used by the Company consist of leather, fabrics, heels, and other materials used in the manufacture of slippers. Approximately 80 per cent of the raw materials used by the Company were shipped from points located outside of the State of New York.

II. THE ORGANIZATIONS INVOLVED

Boot & Shoe Workers Union is a labor organization affiliated with the American Federation of Labor, admitting to its membership all

production employees of the Company, excluding office, supervisory, and maintenance employees.

United Shoe Workers of America is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all production employees of the respondent, excluding office, supervisory, and maintenance employees.

III. THE QUESTION CONCERNING REPRESENTATION

Prior to July 1937, the B. & S. W. U. had a closed-shop contract with the respondent for a period of 3 years. Early in July 1937, a petition for an investigation and certification of representatives pursuant to Section 9 (c) of the Act was filed by the United. On July 28, 1937, following the filing of said petition, and pursuant to an agreement among the representatives of the two contending unions and the Company, a consent election was held by the agents of the Board. The United won the election by a vote of 155 to 15. As a result of the agreement for said election, the United succeeded to the rights previously held by the B. & S. W. U. under its contract with the Company.

In November 1937, a committee of five self-appointed representatives of the employees came to the B. & S. W. U. headquarters and declared themselves dissatisfied with the United. Michael Tesoro, Eastern representative of the B. & S. W. U., advised them not to take any affirmative action until February 15, 1938, when the contract taken over by the United should expire. During the interim, he advised the committee to have the employees sign B. & S. W. U. pledge cards. By February 14, 1938, the committee had obtained the signed pledge cards of 103 of the 150 employees of the Company.

On February 21, 1938, the B. & S. W. U., through its representative, wrote the Company indicating that the employees had changed their affiliation and requesting the Company to bargain with it. The Company refused to do so until proof was offered of the change. On February 28 the B. & S. W. U. filed charges with the Regional Director alleging that the Company had refused to bargain with it. On or about March 3 Michael Tesoro, together with the committee of five hereinbefore mentioned, met with the Company and its counsel and furnished proof that it represented 103 of the 150 employees. After the Company had checked the signatures on the pledge cards it entered into a 2 weeks' probationary contract with the B. & S. W. U. The B. & S. W. U. thereupon withdrew its charges.

On or about March 3 the United called a strike of the Company's employees in protest against the contract made with the B. & S. W. U. On the second day of the strike the Company closed its plant because it feared the outbreak of violence. The strike continued for

several days during which time the United contends it convinced the employees to rejoin the United.

We find that a question has arisen concerning the representation of employees of the Company.²

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

At the hearing it was stipulated between counsel for the United and the representative of the B. & S. W. U. that the appropriate unit should consist of all production employees of the Company, excluding supervisory, office, and maintenance employees, and those who have the power to hire or discharge.

We find that all the production employees of the Company, excluding supervisory, office, and maintenance employees, and all those who have the power to hire or discharge, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

Although the record does not disclose the exact number of employees within the appropriate unit between November 1937 and March 7, 1938, the evidence shows that not more than 150 employees comprised the unit during this period. In support of its claim to represent the Company's employees the B. & S. W. U. submitted in evidence 103 application cards signed by the employees between November 1937 and February 14, 1938. The United submitted into evidence a petition signed by 149 of the 151 employees of the Company on or about March 7, 1938, in which the employees repudiated the B. & S. W. U. as their representative and reaffirmed their

² See *Matter of Novelty Slipper Co., and Employees of Novelty Slipper Co., Inc and Boot & Shoe Workers' Union, A F of L*, 5 N L R B 264

membership in the United. The B. & S. W. U. claims that the petition does not reflect the true desires of the employees, but that the signatures were obtained as a result of coercion and intimidation exercised by the United organizers in threatening bodily harm to those employees who refused to remain with the United.

Pursuant to an agreement made between the Unions at the hearing the field examiner for the Board compared the signatures on the pledge cards and on the petition with the pay-roll list submitted by the Company, which included approximately 150 employees that had worked for the Company at any time during the period of 3 weeks prior to and including February 25, 1938. The examiner found that all the signatures were authentic, but, that of the 103 on the pledge cards, 79 were on the pay-roll list and of the 149 on the petition, 111 were on the pay-roll list. He also found that of the 79 employees signing the B. & S. W. U. pledge cards 78 had also signed the petition of the United.

We find that the question which has arisen concerning representation can best be resolved by the holding of an election by secret ballot.

At the hearing it was stipulated between counsel for the United and the representative of the B. & S. W. U. that in the event an election is ordered by the Board all those employees in the unit considered appropriate above that worked for the Company at any time during the period of 3 weeks prior to and including February 25, 1938, should be eligible to vote. It was also agreed that if an election were ordered the Company would furnish a certified list of such employees and that this list should be utilized for the purposes of the election. We shall so order.

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

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Samuel Goldenberg, doing business as an individual under the firm name and style of Paragon Slipper Company, Brooklyn, New York, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All the production employees of the Company, excluding supervisory, office, and maintenance employees, and all those who have the power to hire or discharge constitute a unit appropriate for the purpose of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

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 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Samuel Goldenberg, an individual doing business under the firm name and style of Paragon Slipper Company, Brooklyn, New York, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Second Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among all production employees of Samuel Goldenberg, an individual doing business under the firm name and style of Paragon Slipper Company, who were employed by the Company during the period of 3 weeks prior to and including February 25, 1938, excluding supervisory, office, and maintenance employees, and those who have the power to hire or discharge, and those employees who quit or were discharged for cause between such date and the date of election, to determine whether they desire to be represented by Boot & Shoe Workers Union, affiliated with the American Federation of Labor or by United Shoe Workers of America, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining, or by neither.