

In the Matters of CHARLES CUSHMAN SHOE COMPANY, VENUS SHOE COMPANY, SOMERSET SHOE COMPANY, LOWN SHOE COMPANY, MAINE SHOES, INC., LUMBARD SHOE COMPANY, KOSS SHOE COMPANY, INC., B. A. CORBIN & SONS, C. V. WATSON COMPANY, AULT-WILLIAMSON SHOE COMPANY, MASCOTT SHOE COMPANY, INC., and HOLMES-BOHR COMPANY and UNITED SHOE WORKERS OF AMERICA

Cases Nos. R-161 to R-172, inclusive

Shoe Manufacturing Industry—Election Ordered: controversy concerning representation of employees; rival organizations; current strike caused by employer's refusal to bargain collectively with petitioning union; substantial doubt as to majority status—*Strike—Unit Appropriate for Collective Bargaining:* production employees; eligibility for membership in both rival organizations—*Election:* boycott of by one of rival organizations—*Majority Rule:* meaning of, Section 9 (a) interpreted—*Certification of Representatives.*

Mr. Malcolm F. Halliday and *Mr. Edward Schneider* for the Board.

Mr. George C. Webber and *Mr. Donald W. Webber*, of Auburn, Maine, and *Mr. John J. Mahan* and *Mr. David V. Berman*, of Lewiston, Maine, for the Companies.

Mr. A. Raymond Rogers, of Waterville, Maine, for United Shoe Workers of America.

Mr. Frank W. Linnell, of Auburn, Maine, for the Lewiston and Auburn Shoe Workers Protective Association and the Independent Shoeworkers Union.

Mr. Julius Schlezinger, of counsel to the Board.

DIRECTION FOR ELECTIONS

June 23, 1937

The National Labor Relations Board having found that questions affecting commerce have arisen concerning the representation of the shoe workers employed in the production departments, respectively, of Charles Cushman Company (named Charles Cushman Shoe Company in caption), Venus Shoe Company, Somerset Shoe Company, Lown Shoe Company, Maine Shoes, Inc., Lumbard Shoe Co., Koss Shoe Co., Inc., B. A. Corbin & Sons, C. V. Watson Company, and Ault-Williamson Shoe Co., all of Auburn, Maine, and Mascott Shoe Co., Inc., and Holmes-Bohr Company, both of Lewiston, Maine, and that said shoe workers employed in each of said production departments of said Companies, respectively, constitute units appro-

prate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act, and acting pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of said Act and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended, hereby

DIRECTS that, as part of the investigations authorized by the Board to ascertain representatives for the purposes of collective bargaining with the Charles Cushman Company (named Charles Cushman Shoe Company in caption), Venus Shoe Company, Somerset Shoe Company, Lown Shoe Company, Maine Shoes, Inc., Lumbard Shoe Co., Koss Shoe Co., Inc., B. A. Corbin & Sons, C. V. Watson Company, Ault-Williamson Shoe Co., Mascott Shoe Co., Inc. and Holmes-Bohr Company, elections by secret ballot shall be conducted within a period of 20 days from the date of this Direction, under the direction and supervision of the Regional Director for the First Region, acting in these matters as the agent of the National Labor Relations Board and subject to Article III, Section 9 of said Rules and Regulations, among those shoe workers who were employed in each of the production departments of Charles Cushman Company, Venus Shoe Company, Somerset Shoe Company, Lown Shoe Company, Maine Shoes, Inc., Lumbard Shoe Co., Koss Shoe Co., Inc., B. A. Corbin & Sons, C. V. Watson Company, Ault-Williamson Shoe Co., and Mascott Shoe Co., Inc., as of March 24, 1937, excepting clerical and supervisory employees, to determine whether or not they desire to be represented by the United Shoe Workers of America or the Lewiston and Auburn Shoe Workers Protective Association, and among the shoe workers who were employed in the production department of the Holmes-Bohr as of March 24, 1937, excepting clerical and supervisory employees, to determine whether or not they desire to be represented by the United Shoe Workers of America or the Independent Shoe Workers Union.

[SAME TITLES]

AMENDED DIRECTION FOR ELECTIONS

July 12, 1937

The Board having found on June 23, 1937 that a question affecting commerce had arisen concerning the representation of the shoe workers employed in the production departments, respectively, of Charles Cushman Company (named Charles Cushman Shoe Company in caption), Venus Shoe Company, Somerset Shoe Company, Lown Shoe Company, Maine Shoes, Inc., Lumbard Shoe Co., Koss Shoe Co., Inc., B. A. Corbin & Sons, C. V. Watson Company and

Ault-Williamson Shoe Co., all of Auburn, Maine, and Mascott Shoe Co., Inc. and Holmes-Bohr Company, both of Lewiston, Maine, within the meaning of Section 9 (c) of the National Labor Relations Act, and that an election by secret ballot should be conducted, hereby

DIRECTS that, as part of the investigations authorized by the Board to ascertain representatives for the purposes of collective bargaining with the Charles Cushman Company (named Charles Cushman Shoe Company in caption), Venus Shoe Company, Somerset Shoe Company, Lown Shoe Company, Maine Shoes, Inc., Lumbard Shoe Co., Koss Shoe Co., Inc., B. A. Corbin & Sons, C. V. Watson Company, Ault-Williamson Shoe Co., Mascott Shoe Co., Inc., Holmes-Bohr Company, elections by secret ballot shall be conducted on or before July 23, 1937, under the direction and supervision of the Regional Director for the First Region, acting in these matters as the agent of the National Labor Relations Board and subject to Article III, Section 9 of said Rules and Regulations, among those shoe workers who were employed in each of the production departments of Charles Cushman Company, Venus Shoe Company, Somerset Shoe Company, Lown Shoe Company, Maine Shoes, Inc., Lumbard Shoe Co., Koss' Shoe Co., Inc., B. A. Corbin & Sons, C. V. Watson Company, Ault-Williamson Shoe Co., and Mascott Shoe Co., Inc., as of March 24, 1937, excepting clerical and supervisory employees, to determine whether or not they desire to be represented by the United Shoe Workers of America or the Lewiston and Auburn Shoe Workers Protective Association, and among the shoe workers who were employed in the production department of the Holmes-Bohr Company as of March 24, 1937, excepting clerical and supervisory employees, to determine whether or not they desire to be represented by the United Shoe Workers of America or the Independent Shoe Workers Union.

[SAME TITLES]

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

August 30, 1937

STATEMENT OF CASE

In April 1937, the United Shoe Workers of America, herein called the Union, filed petitions with the Regional Director for the First Region (Boston, Massachusetts) alleging that questions affecting commerce had arisen concerning the representation of the production employees in the Auburn, Maine, plants of the Charles Cushman

Company,¹ Somerset Shoe Company, Lown Shoe Company, Maine Shoes, Inc., Lombard Shoe Company, Koss Shoe Company, Inc., B. A. Corbin & Sons, C. V. Watson Company, Venus Shoe Company, and Ault-Williamson Shoe Company and in the Lewiston, Maine, plants of the Mascott Shoe Company, Inc., and the Holmes-Bohr Company, herein referred to collectively as the Companies, and requesting investigations and certifications of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On May 17, 1937, the National Labor Relations Board, herein called the Board, issued an order authorizing the Regional Director for the First Region to conduct investigations and provide hearings in connection therewith. By order of the Board all of the above named cases were consolidated for the purpose of hearing.² Notices of hearing were duly served on each of the Companies.

Pursuant to the notices, a hearing was conducted by John A. Lapp, the Trial Examiner duly designated by the Board, from May 24 to June 15, 1937, in Auburn, Maine, and testimony was taken. At the hearing the Lewiston and Auburn Shoe Workers Protective Association, herein called the Association, and the Independent Shoeworkers Union, herein referred to as the Independent Union, requested permission to intervene under Article II, Section 19 of National Labor Relations Board Rules and Regulations—Series 1, as amended. Permission to intervene was granted by the Trial Examiner. Full opportunity to be heard, to examine, and to cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the commencement of the hearing the Companies objected to the proceedings on the ground of lack of jurisdiction on the part of the Board. The Companies also made numerous other objections to the hearing, among them being objections to the consolidation of the cases and to the form of the petitions.³ All of these objections were overruled by the Trial Examiner. The Board has reviewed the conduct of the hearing and the rulings of the Trial Examiner and finds that no prejudicial errors were committed.

After examining the record in the case, the Board concluded that a question affecting commerce had arisen concerning the representation of the shoe workers, excepting clerical and supervisory employees, employed in the production departments of the plants of

¹ Referred to in the petition as the Charles Cushman Shoe Co.

² Also consolidated with these cases for the purpose of hearing were petitions concerning representation at the Clark Shoe Company and Augusta Shoe Corporation and complaints charging the Clark Shoe Company, Augusta Shoe Corporation, Charles Cushman Company, Somerset Shoe Company, C. V. Watson Company, and Auburn Shoe Manufacturers Association with violations of the Act. The petitions and charges concerning the Clark Shoe Company and the Augusta Shoe Corporation were withdrawn at the commencement of the hearing. The charges against the Charles Cushman Company, Somerset Shoe Company, C. V. Watson Company, and Auburn Shoe Manufacturers Association were dismissed by the Trial Examiner or withdrawn by the Union subsequent to the hearing.

³ The petitions filed by the Union did not bear the seal of a notary public.

each of the Companies, and on the basis of such conclusion, and acting pursuant to Article III, Section 8 of said Rules and Regulations, issued a Direction for Elections on June 23, 1937, in which it was found that said employees in the case of each of the Companies, respectively, constitute a unit appropriate for the purposes of collective bargaining, and in which the Regional Director for the First Region was directed to conduct elections by secret ballot to determine whether they wish to be represented, in the case of the Holmes-Bohr Company, by the United Shoe Workers of America or the Independent Shoeworkers Union and, in the case of each of the other Companies, by the United Shoe Workers of America or the Lewiston and Auburn Shoe Workers Protective Association, for the purposes of collective bargaining.* For the purpose of expediting the elections, the Board issued the Direction for Elections without at the same time issuing a decision embodying findings of fact and conclusions of law.

The elections were conducted from July 13 to July 17, 1937. Pursuant to Article III, Section 9 of said Rules and Regulations, the Regional Director subsequently filed an Intermediate Report with respect thereto. The Intermediate Report found the results of the elections to be as follows:

CHARLES CUSHMAN COMPANY

1. Total number of ballots cast.....	175
2. Total number of void ballots.....	0
3. Total number of ballots cast for Union.....	175
4. Total number of ballots cast for Association.....	0

SOMERSET SHOE COMPANY

1. Total number of ballots cast.....	147
2. Total number of void ballots.....	0
3. Total number of ballots cast for Union.....	146
4. Total number of ballots cast for Association.....	1

LOWN SHOE COMPANY

1. Total number of ballots cast.....	237
2. Total number of void ballots.....	2
3. Total number of ballots cast for Union.....	234
4. Total number of ballots cast for Association.....	1

MAINE SHOES, INC.

1. Total number of ballots cast.....	149
2. Total number of void ballots.....	1
3. Total number of ballots cast for Union.....	148
4. Total number of ballots cast for Association.....	0

*The Direction for Elections was amended on July 12, 1937, in a particular not here important

LUMBARD SHOE COMPANY

1. Total number of ballots cast.....	41
2. Total number of void ballots.....	0
3. Total number of ballots cast for Union.....	39
4. Total number of ballots cast for Association.....	2

KOSS' SHOE COMPANY, INC.

1. Total number of ballots cast.....	136
2. Total number of void ballots.....	2
3. Total number of ballots cast for Union.....	130
4. Total number of ballots cast for Association.....	4

B. A. CORBIN & SONS

1. Total number of ballots cast.....	51
2. Total number of void ballots.....	0
3. Total number of ballots cast for Union.....	47
4. Total number of ballots cast for Association.....	4

C. V. WATSON COMPANY

1. Total number of ballots cast.....	120
2. Total number of void ballots.....	1
3. Total number of ballots cast for Union.....	116
4. Total number of ballots cast for Association.....	3

VENUS SHOE COMPANY

1. Total number of ballots cast.....	214
2. Total number of void ballots.....	1
3. Total number of ballots cast for Union.....	212
4. Total number of ballots cast for Association.....	1

AULT-WILLIAMSON SHOE COMPANY

1. Total number of ballots cast.....	142
2. Total number of void ballots.....	0
3. Total number of ballots cast for Union.....	142
4. Total number of ballots cast for Association.....	0

MASCOTT SHOE COMPANY, INC.

1. Total number of ballots cast.....	69
2. Total number of void ballots.....	1
3. Total number of ballots cast for Union.....	66
4. Total number of ballots cast for Association.....	2

HOLMES-BOHR COMPANY

1. Total number of ballots cast.....	90
2. Total number of void ballots.....	0
3. Total number of ballots cast for Union.....	87
4. Total number of ballots cast for Independent Union.....	3

Objections to the conduct of the ballot and to the Intermediate Report were thereafter filed by the Association, the Independent Union, and the Companies. Pursuant to notices duly served on each of the parties, a hearing on the objections was conducted by

John T. Lindsay, the Trial Examiner duly designated by the Board, on August 5 and 6, 1937, in Auburn, Maine, and testimony was taken. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. Exceptions were taken by the parties to various rulings made by the Trial Examiner during the course of the hearing. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed.

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

FINDINGS OF FACT

I. THE COMPANIES AND THEIR BUSINESSES

A. *Charles Cushman Company*

The Charles Cushman Company, a Maine corporation, is engaged in the business of manufacturing shoes at Auburn, Maine. In addition to its factory and principal office in Auburn, the Company maintains sales offices and display rooms in Boston, Massachusetts, and New York, New York. It employs full time salesmen in Boston, New York, and Oakland, California, and part time salesmen who work out of Selma, Alabama, and St. Louis, Missouri. The Company is represented at various style shows throughout the country.⁵

The Company produced approximately 1,500,000 pairs of shoes in 1936 and had sales of over \$1,750,000. There were about 730 production employees in its Auburn plant on March 24, 1937.⁶

A very high percentage of the raw materials used by the Company in the manufacture of its shoes are received by it from States other than Maine.⁷ More than 95 per cent of its finished products are shipped to points outside the State of Maine. All of its goods are made directly on order and are shipped immediately upon their completion. The products of the Company are sold throughout the United States and in Puerto Rico, Cuba, and Canada.

⁵ Style shows are held annually in Boston, Mass., Chicago, Ill., and New York, N. Y., and biennially in St. Louis, Mo. At these shows orders are taken and sales made.

⁶ March 24 was the last day before the strike in the plants of the Companies. The strike will be discussed in Section IV, *infra*.

⁷ E. Farrington Abbott, president of the Company, estimated that leather constituted at least 60 per cent of the cost of the raw materials used in the manufacture of shoes by his Company and about 85 per cent of such materials in volume. The Company obtains its leather from Massachusetts. It also purchases ornaments, cloth lining, shanks, eyelets, and kid skins outside of Maine. Shoe laces, rubber heels and soles, eyelets thread, counters, heels, box toes, and cartons are purchased in Maine. All of these latter items, however, with the exception of counters, are composed very largely of materials originally obtained from points outside the State of Maine.

The raw materials used by the other Companies are generally the same as those used by the Charles Cushman Company and the places in which such materials are purchased are also generally the same.

B. Somerset Shoe Company

The Somerset Shoe Company is a Massachusetts corporation engaged in the business of manufacturing shoes at Auburn, Maine. It has, in addition to its factory and principal office in Auburn, three plants in Skowhegan, Maine, a plant in Richmond, Maine,⁸ and a branch office and display room in Boston, Massachusetts. The Company controls the Dingley-Foss Company and the Stetson-Abbott Company, sales companies assisting it in distributing its shoes throughout the United States. The Levi-Weiss Sales Company, a Chicago concern, handles its shoes in Ohio, Indiana, and the territory adjacent to Chicago. The Somerset Shoe Company is represented at different style shows throughout the country. It has a registered trade mark for use in commerce among the several States.⁹

About 675 persons were employed in the Auburn factory of the Company on March 24, 1937. In the year 1936, the Company produced approximately 1,330,000 pairs of shoes in this plant. The great majority of the raw materials used by the Company in the manufacture of its shoes are purchased by it outside of the State of Maine.¹⁰ Practically all of its finished products are shipped to points without Maine. These products are manufactured directly upon the orders of the customers.

C. Lown Shoe Company

The Lown Shoe Company operates at Auburn, Maine, a plant for the manufacture of shoes.¹¹ It does not maintain any sales offices outside of Auburn but employs one salesman who travels throughout the United States. It is represented at various style shows.

The Company employed about 600 workers in its Auburn plant on March 24, 1937. In 1936 it produced approximately 500,000 pairs of shoes. From 85 to 90 per cent of the raw materials used by the Company are purchased by it in States other than Maine. Its shoes are sold entirely outside of Maine. These shoes are manufactured only on order.

⁸ The plant at Richmond, Maine, has only recently been purchased by the Company. It was not operating at the time of the hearing.

⁹ Board Exhibit No. 37.

¹⁰ Thomas F. O'Byrne, the president of the Company, estimates that about 80 per cent of the cost of the raw materials going into the Company's shoes is expended for leather. The leather is obtained from Massachusetts.

¹¹ The Lown Shoe Company apparently is only a name under which the Philco Shoe Company, a corporation, operates its Auburn plant. The Philco Shoe Company owns at least one other plant, a shoe factory in Bangor, Maine.

D. Maine Shoes, Inc.

Maine Shoes, Inc., is a Maine corporation owning and operating a shoe factory at Auburn, Maine. Ben Weiner, its president, acts as its only salesman and represents the Company at the style shows in Chicago, Illinois, Boston, Massachusetts, and New York, New York. The Company employed about 525 persons on March 24, 1937. In 1936, it produced approximately 730,000 pairs of shoes.

About 85 per cent of the raw materials used by the Company are received by it from points outside of Maine and about 90 per cent of its finished products are delivered without the State. Its shoes are manufactured on order and are shipped chiefly to the Middle West.

E. Lumbard Shoe Company

The Lumbard Shoe Company is a Maine corporation engaged in the business of manufacturing shoes at Auburn, Maine. It has branch offices and display rooms in Boston, Massachusetts, and New York, New York, and employs eleven salesmen who cover the entire country.¹² It had 109 production employees on March 24, 1937. During the year 1936 it produced 96,689 pairs of shoes.

Ninety per cent of the raw materials used by the Company are received from points outside of Maine. All of its finished products are shipped to points without Maine. Some shipments are made to Puerto Rico and Cuba. The Company has a registered trade mark for use in commerce among the several States.¹³

F. Koss Shoe Company, Inc.

The Koss Shoe Company is a Maine corporation owning and operating a shoe factory at Auburn, Maine. It maintains a branch office and display room at Boston, Massachusetts. The Company is represented at various style shows. About 150 persons were in its employ on March 24, 1937. During the year 1936 the Company manufactured 592,683 pairs of shoes.

Approximately 90 per cent of the raw materials used by the Company are received by it from points outside of Maine. About 95 per cent of its finished products are shipped without the State, chiefly to the larger cities of the East and Midwest. It manufactures entirely upon order.

¹² On May 6, 1937, the Company closed down its plant and discontinued business. Mr. Babb, the treasurer of the Company, stated that it had no intention of reopening until it believed it could operate without a loss.

¹³ Board Exhibit No. 39.

G. B. A. Corbin & Sons

B. A. Corbin & Sons is a Maine corporation with its principal office and place of business in Auburn, Maine. It also has a branch office and display room in Boston, Massachusetts. The Company employs two salesmen who work out of the Boston office. At times it is represented at style shows.

The Company produced approximately 170,000 pairs of shoes in 1936 and had total sales of about \$400,000. On March 24, 1937, 147 persons were employed in its Auburn factory.

Ninety-eight per cent of the raw materials used by the Company in the production of shoes are received by it from outside the State of Maine. It ships 100 per cent of its finished products to points without the State. These shoes are delivered chiefly to the larger cities of the East. Some, however, are shipped to the Panama Canal Zone and to the Philippines. Shoes are manufactured only on order.

H. C. V. Watson Company

The C. V. Watson Company is a Maine corporation engaged in the business of manufacturing shoes at Auburn, Maine. In addition to its factory in Auburn it maintains a branch office and display room in Boston, Massachusetts. Two salesmen are employed by the Company, and the Company is represented at the major style shows. The Company produced 435,471 pairs of shoes in the year ending June 30, 1936. On March 24, 1937, it had 403 production workers in its employ.

The Company purchases from 85 to 95 per cent of its raw materials outside of Maine. It ships 99 per cent of its finished products without the State. Shipments are made to points throughout the United States. The Company manufactures shoes only on order.

I. Venus Shoe Company

The Venus Shoe Company is a Maine corporation owning and operating a shoe factory at Auburn, Maine. It employs two salesmen who cover the entire country, and the Company is represented at various style shows. There is a trade mark for use in commerce among the several States registered in the United States Patent Office to George Laganas, doing business as the Venus Shoe Company.¹⁴

In the year 1936 the Company produced approximately 400,000 pairs of shoes and had total sales of about \$600,000. Approximately 300 persons were employed in its factory on March 24, 1937.

¹⁴ Board Exhibit No 40 George Laganas is president of the Venus Shoe Company which was incorporated in 1933. The trade mark was registered in 1931.

About 90 per cent of the raw materials used by the Company in the manufacture of shoes are received by it from without Maine. All of its finished products are shipped outside the State. The Company manufactures shoes directly upon order.

J. Ault-Williamson Shoe Company

The Ault-Williamson Shoe Company, a Maine corporation, is engaged in the manufacture of shoes at Auburn, Maine. It employs 12 salesmen who cover the entire country. On March 24, 1937, 426 production workers were employed in its Auburn plant. The Company produces between 1,800 and 2,000 pairs of shoes in an average day. It is represented at various style shows throughout the United States. It has a registered trade mark for use in commerce among the several States.¹⁵

No official of the Company testified at the hearing who was able to estimate what percentage of the raw materials used by the Company are received from outside of Maine. Its leather, however, which is by far the most important material used, and numerous other items, are purchased without the State. The evidence indicates that the proportion of raw materials received by the Company from States other than Maine is about the same as that of the other Companies.

Approximately 95 per cent of the shoes produced by the Company are delivered to points outside Maine. Shipments are made to every State in the Union and to Cuba and Canada.

K. Mascott Shoe Company, Inc.

The Mascott Shoe Company, Inc., is a Maine corporation with its office and principal place of business in Lewiston, Maine. It employs one part time salesman in New York, New York. On March 24, 1937, it had 150 employees in its Lewiston plant. In 1936 the sales of the Company amounted to about \$350,000. The Company is represented at the style shows in Boston, Massachusetts, and New York, New York.

Approximately 90 per cent of the raw materials used by the Company are purchased outside of Maine. It ships all of its finished products to points without the State. The Company manufactures shoes only upon order.

L. Holmes-Bohr Company

The Holmes-Bohr Company is a Maine corporation engaged in the business of manufacturing shoes at Lewiston, Maine. It has four salesmen who cover the Northeastern part of the United States and

¹⁵ Board Exhibit No. 38.

the Pacific Coast. Two hundred and eighty-eight production workers were employed in its plant on March 24, 1937. The Company is represented at various style shows. In 1936 it produced approximately 250,000 pairs of shoes.

About 90 per cent of the raw materials used by the Company are received by it from without Maine. The Company manufactures only pursuant to order. Ninety-eight per cent of its finished products are shipped to points outside of Maine.

II. THE ORGANIZATIONS INVOLVED

A. *The United Shoe Workers of America*

The United Shoe Workers of America is a labor organization affiliated with the Committee for Industrial Organization. It was formed in March 1937 through the amalgamation of the Shoe Workers Protective Union and the United Shoe and Leather Workers Union.

B. *Lewiston and Auburn Shoe Workers Protective Association*

The Lewiston and Auburn Shoe Workers Protective Association is an incorporated labor organization not affiliated with any national union. It was organized in October 1932 but became inactive in 1933. In April 1937, during the strike called by the Union, it was revived among the workers in the plants of all of the Companies with the exception of the Holmes-Bohr Company.

C. *Independent Shoe Workers Union*

The Independent Shoe Workers Union is also an incorporated labor organization not affiliated with any national union. It was organized in April 1937 among the workers in the plant of the Holmes-Bohr Company. Membership in the Independent Union is limited to employees of that Company.

III. THE APPROPRIATE UNITS

The constitution of the Union¹⁶ and the by-laws of the Association¹⁷ and of the Independent Union¹⁸ all restrict membership in their organizations to "shoe workers." The term "shoe workers" was not defined at the hearing but the record indicates that the only workers these organizations are interested in are production workers and that neither clerical workers nor supervisory employees are intended to be included within the term.

¹⁶ Board Exhibit No. 68

¹⁷ L. A. S. P. A. Exhibit No. 6.

¹⁸ I. S. W. U. Exhibit No. 7.

We find that, in order to insure to the employees in the Auburn or Lewiston plants of each of the Companies, respectively, the full benefit of their right to self-organization and collective bargaining, and otherwise to effectuate the policies of the Act, all of the employees in the production departments, excepting clerical and supervisory employees, of the Auburn or Lewiston plants of each of the Companies, respectively, constitute a unit appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

IV. QUESTIONS CONCERNING REPRESENTATION

Early in 1937, various shoe workers in the plants of the Companies and the other shoe manufacturers in Lewiston and Auburn, conscious of the organization drives then being staged in different industries throughout the country and discontented with the wages and working conditions in the factories in which they were employed, commenced meeting together for the purpose of discussing the formation of a union in Lewiston and Auburn. Some of these persons had formerly been members of the Shoe Workers Protective Union and the United Shoe and Leather Workers Union and they believed that only a strong national union could satisfy the needs of the shoe workers in the two cities. The group decided to request the United Shoe Workers of America, just then being created under the sponsorship of the Committee for Industrial Organization, to conduct an organization drive in Lewiston and Auburn. On or about February 20, they contacted the Union, which complied with their request by sending two organizers to the Maine cities.

Between February 27, 1937, and March 24, 1937, an intensive organization drive was staged by the Union in Lewiston and Auburn. A local organizing committee, composed of employees of each of the shoe factories, was formed and additional organizers were sent into the district from Boston and other shoe centers. A mass meeting, attended by about 500 persons, was held on March 3. This meeting was followed by mass meetings at the Lewiston City Hall on March 10, 17, and 24. At the last two meetings the City Hall, which holds about 3,000 persons, was jammed to capacity.

In the meantime the local organizing committee had voted to contact the manufacturers in regard to a union contract and had authorized Powers Hapgood, director of the Shoe Workers Organizing Committee,¹⁹ to seek a conference with the Auburn Shoe Manufac-

¹⁹ The Shoe Workers Organizing Committee is the governing body of the Union until its first convention is held in November 1937.

turers Association, a trade association composed of all the shoe manufacturers in Lewiston and Auburn except the Venus Shoe Company. Hapgood wrote to the Manufacturers Association on March 18, stating that the Union had received applications for membership from a majority of the shoe workers employed by the companies belonging to the Manufacturers Association, and requesting a conference for the purpose of discussing a union agreement covering recognition of the Union, hours, wages, and other working conditions. No answer was received to this letter but the Lewiston Daily Sun of March 23 published a statement by the "shoe manufacturers of Lewiston and Auburn" to the effect that problems arising between the shoe manufacturers and their employees were purely local problems to be settled locally "without the dictatorship of outside agitators."²⁰

At the mass meeting of March 24 the members of the Union voted to strike on the following morning. Although not many workers left their jobs on the first day of the strike it soon became effective. Seven of the shoe factories were forced to close down entirely and the other five were forced to drastically curtail their operations.

Since March 25, 1937, Lewiston and Auburn have been the center of continuous industrial strife and unrest. Acts committed by public officials, employers, strikers, and non-strikers have engendered bitterness and harsh feelings in the community. However, there is only one event which occurred during the strike to which this Board feels it should devote particular attention. On April 20, Judge Harry Manser of the Supreme Judicial Court of Maine delivered an opinion²¹ declaring the strike illegal and granted an injunction prohibiting the strike leaders or their agents from picketing or from assisting the strike in any manner.²² In its opinion the Court appears to have interpreted the National Labor Relations Act to declare strikes by a minority of employees in a plant illegal. That such a declaration did not represent the intention of Congress is clearly evident from even a cursory examination of the Act. Section 13 of the Act states in unequivocal language that "Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike."²³

On April 20, 1937, the same day that the injunction against the Union was granted, the Lewiston and Auburn Shoe Workers Pro-

²⁰ Board Exhibit No 44

²¹ Respondent's Exhibit No 3.

²² Respondent's Exhibit No 4

²³ In *Christian A. Lund, doing business as C. A. Lund Company, v. Woodenware Workers Union, et al*, decided May 19, 1937, the United States District Court for the District of Minnesota, Third Division, refused to enjoin a strike by a minority of employees in the plaintiff's factory, holding that such a strike is not outlawed by the National Labor Relations Act even though the employer has entered into an agreement with an organization representing the majority of his employees

tective Association was revived among the shoe workers at the Charles Cushman Company. Organization work was carried on by the Association and within a short time members had been obtained from among the employees of each of the other Companies except the Holmes-Bohr Company. A large mass meeting was held by the Association on May 14.

In the meantime another movement for a local union had been started among employees of the Holmes-Bohr Company. This movement culminated in the formation of the Independent Shoe Workers Union on May 4, 1937.

At the hearing both the Union and the Independent Union claimed to represent a majority of employees of the Holmes-Bohr Company. The Union also claimed it represented a majority of the shoe workers in the plants of each of the other Companies. This latter claim was contested by the Association. The evidence indicates that in the Holmes-Bohr Company and in many of the other plants, a great many workers have designated both rival organizations to represent them.

The Board concludes that questions have arisen concerning the representation of the production employees, excepting clerical and supervisory employees, in the Auburn, Maine, plants of the Charles Cushman Company, Somerset Shoe Company, Lown Shoe Company, Maine Shoes, Inc., Lumbard Shoe Co., Koss Shoe Co., Inc., B. A. Corbin & Sons, C. V. Watson Company, Venus Shoe Company, and Ault-Williamson Shoe Company and in the Lewiston, Maine, plants of the Mascott Shoe Co., Inc., and the Holmes-Bohr Company.

V. THE EFFECT OF THE QUESTIONS OF REPRESENTATION UPON COMMERCE

The strike of March 25, 1937, resulted in a complete stoppage of production at the plants of seven of the Companies,²⁴ and a drastic curtailment in production at the plants of the other five Companies.²⁵ Since on practically every day prior to that date each of the Companies had received raw materials from outside the State and shipped finished products to points without the State, it is evident that the

²⁴ Ault-Williamson Shoe Company, Somerset Shoe Company, B. A. Corbin & Sons, Lumbard Shoe Company, C. V. Watson Company, Mascott Shoe Company, Inc. and Koss Shoe Company, Inc. The plants of the Lumbard Shoe Company, C. V. Watson Company, Mascott Shoe Company, and Koss Shoe Company were still closed down at the time of the original hearing.

²⁵ Production at the Charles Cushman Company dropped approximately 50 per cent in April from an average of 9,000 pairs of shoes per day in March. Shipments by the Venus Shoe Company had dropped to 40 cases of shoes a day at the time of the original hearing from 70 cases just before the strike. During the strike production at the Holmes-Bohr Company gradually declined from the March average of 1,500 pairs a day to a low of between 300 and 500 pairs, and at Maine Shoes, Inc., from a daily average of 5,000 pairs to one of 3,000 pairs. The Lown Shoe Company produced only 22,205 pairs of shoes in April in comparison to its production of 69,136 pairs in January, 77,992 pairs in February, and 68,265 pairs in March.

labor dispute here involved sharply impeded the flow of interstate commerce to and from Auburn and Lewiston, Maine.²⁶

We find that the questions of representation which have arisen, in connection with the operations of the Companies described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and with foreign countries, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. OBJECTIONS TO ELECTIONS

The Association, the Independent Union, and the Companies have raised seven major objections to the elections conducted by the Board to determine the exclusive bargaining agency. These objections will be considered separately.

1. Persons were permitted to vote in an election by signing affidavits to the effect that they were employed by the particular company involved in such election on March 24, 1937. The objection is made that voting lists against which to check the voters should have been provided by the Board and that the carrying out of the elections by means of affidavits violated the Direction for Elections issued by the Board and was injurious to the parties involved. The Direction for Elections authorized the Regional Director to conduct elections by secret ballot in accordance with Article III, Section 9 of National Labor Relations Board Rules and Regulations—Series 1, as amended. There is nothing in either the Direction or the Rules and Regulations which would prevent him from conducting such elections by means of affidavits. Furthermore, the elections were conducted by this method only after the Companies had refused to furnish the Regional Director with copies of their payrolls of March 24, 1937. In view of this refusal, it is with little grace that the Companies complain against the use of affidavits.

The contention that the Association and the Independent Union were injured by the use of affidavits is without merit. All parties to this proceeding were given an equal opportunity to have watchers at the polls for the purpose of preventing persons not eligible to vote from voting. Such watchers had the privilege of challenging any person making out a false affidavit. Furthermore, at the second hearing in these cases, the Association and the Independent Union failed to show that any person voted who was not eligible to do so. The objection is overruled.

2. The Direction for Elections stated that the elections should be conducted among those shoe workers who were employed in the pro-

²⁶ The treasurer of the Beaver Transportation Company, an interstate freight carrier operating between Boston, Massachusetts, and Auburn, Maine, estimated that the gross business of the firm declined from 25 to 40 per cent as a result of the strike at the plants of the Companies. It was forced to lay off 7 of its 16 or 17 employees as a consequence.

duction departments of the Companies on March 24, 1937. During the elections the Regional Director ruled that "employees who were temporarily laid off or on temporary leave of absence on March 24, 1937, were eligible to vote." The evidence reveals that the only persons not actually at work on March 24, 1937, who voted at the elections were 11 cutters employed by the Holmes-Bohr Company. These 11 men had worked until a few days before March 24, and had then been temporarily laid off because of lack of work. However, they had been expected to begin working again the following week. Their own foreman testified that he considered a workman to be an employee until he draws his last pay. These 11 men did not draw their last pay until March 26, 1937. It is clear, therefore, that on March 24, 1937, they were employees of the Holmes-Bohr Company. The ruling of the Regional Director is affirmed.

Even if the contention of the objectors is accepted, however, the results of these elections would not be affected. The Union received 87 votes at the Holmes-Bohr election to 3 for the Independent Union. If the 11 votes cast by these employees are not counted the result would still be 76 to 3 in favor of the Union. The objection is overruled.

3. The objection is made that the eligibility date of March 24, 1937, was arbitrarily chosen and that there was no evidence produced at the first hearing to justify the selection of that date. This objection is not borne out by the record of that hearing, however. The record of the first hearing clearly indicates that March 24, 1937, was the last day of normal operations at any of the plants involved. At the date of that hearing four of the Companies were shut down completely and the operations of the other eight Companies had been drastically curtailed. Subsequent to March 24, 1937, thousands of men employed by these Companies went on strike and an abnormal situation prevailed in Lewiston and Auburn. An election among employees of the abnormal period between March 24, 1937, and the date of the first hearing would not have truly revealed the wishes of the workers normally employed by the Companies. We believe that such wishes have been best determined by an election among the employees of March 24, 1937. The objection is overruled.

4. The objection that large numbers of people were permitted to vote more than once is conclusively disproved by the evidence. The second hearing failed to reveal a single instance of a person voting more than once. The objection is overruled.

5. The Regional Director is charged with having improperly permitted electioneering by the Union in the immediate vicinity of the voting place. This charge is not sustained by the evidence. The two police officers present at the polls during the elections testified that everything had been peaceful and orderly in the vicinity and that

no instances of coercion or intimidation of voters had occurred. The objection is overruled.

6. The Association and the Independent Union had written contracts with several of the Companies at the time of the hearing and they contend that the elections tend toward the abrogation of the right of contract guaranteed to them by the Constitution of the United States. These contracts were all entered into after the calling of the strike, however, and the first hearing indicated that there was considerable doubt as to whether these unions represented a majority of the workers in the plants involved at the time of the contracts. The objection is overruled.

7. The objection is made that many persons who were no longer employed by the Companies at the date of the elections and who had obtained "regular and substantially equivalent employment" to their employment of March 24, 1937, were permitted to vote. It is contended that such persons had ceased to be employees of the Companies by virtue of the provisions of Section 2, subdivision (3) of the Act and were, therefore, ineligible to vote. Where elections involving thousands of men are being conducted it is obviously impossible for the Board to insist on a showing by every voter that he has not obtained "regular and substantially equivalent employment" elsewhere. In part for this very reason the Board arranges for all parties to have watchers at the polls with the privilege of challenging ineligible voters. Although the opportunity was afforded them, the objectors failed to take advantage of that privilege. Furthermore, at the second hearing, they failed to show that any persons who had obtained "regular and substantially equivalent employment" did vote at the elections. The objection is overruled.

In addition to these seven major objections, numerous minor objections were raised by the parties. The Board has carefully considered all of these objections and finds them without merit. The objections are overruled.

VII. THE EXCLUSIVE BARGAINING AGENCY

In Section I above, we found the number of production workers employed by each of the Companies on March 24, 1937, and in the Statement of Case we set forth the election results. By way of a summary we will now list together the number of persons eligible to vote in each plant and the number of votes received by each of the contending unions in such plant.

CHARLES CUSHMAN COMPANY

Total number eligible to vote.....	730
Total number of ballots cast for Union.....	175
Total number of ballots cast for Association.....	0

SOMERSET SHOE COMPANY

Total number eligible to vote.....	675
Total number of ballots cast for Union.....	146
Total number of ballots cast for Association.....	1

LOWN SHOE COMPANY

Total number eligible to vote.....	600
Total number of ballots cast for Union.....	234
Total number of ballots cast for Association.....	1

MAINE SHOES, INC.

Total number eligible to vote.....	525
Total number of ballots cast for Union.....	148
Total number of ballots cast for Association.....	0

LUMBARD SHOE COMPANY

Total number eligible to vote.....	109
Total number of ballots cast for Union.....	39
Total number of ballots cast for Association.....	2

KOSS SHOE COMPANY, INC.

Total number eligible to vote.....	150
Total number of ballots cast for Union.....	130
Total number of ballots cast for Association.....	4

B. A. CORBIN & SONS

Total number eligible to vote.....	147
Total number of ballots cast for Union.....	47
Total number of ballots cast for Association.....	4

C. V. WATSON COMPANY

Total number eligible to vote.....	403
Total number of ballots cast for Union.....	116
Total number of ballots cast for Association.....	3

VENUS SHOE COMPANY

Total number eligible to vote.....	300
Total number of ballots cast for Union.....	212
Total number of ballots cast for Association.....	1

AULT-WILLIAMSON SHOE COMPANY

Total number eligible to vote.....	426
Total number of ballots cast for Union.....	142
Total number of ballots cast for Association.....	0

MASCOTT SHOE COMPANY, INC.

Total number eligible to vote.....	150
Total number of ballots cast for Union.....	66
Total number of ballots cast for Association.....	2

HOLMES-BOHR COMPANY

Total number eligible to vote.....	288
Total number of ballots cast for Union.....	87
Total number of ballots cast for Independent Union.....	3

Only in elections involving Koss Shoe Company, Inc., and Venus Shoe Company did the Union obtain a majority of all persons eligible to vote as well as a majority of those who actually voted. However, in prior decisions we have established the principle that the majority of the employees referred to in the Act is a majority of those participating in the election.²⁷ The reason behind this principle is clearly vindicated by the present cases. The Association and the Independent Union boycotted the elections and thus impaired the secrecy of the ballot. With only the members of one union participating in the elections employees by voting in effect signified their intention to vote for such union. In view of the bitter opposition to the Union which had been expressed by the Companies, this fact must certainly have caused many supporters of the Union to refrain from voting. Where a labor organization claiming to represent a majority of the employees in a particular plant has refused to participate in a fair and impartial election conducted by this Board for the purpose of determining the accuracy of its claim, it cannot thereafter contest the right of a rival labor organization which has made the same claim and has received a majority of the votes cast in such election to be certified as exclusive bargaining agency, on the ground that such rival labor organization has not obtained the votes of a majority of all persons eligible to vote. We will certify the Union as the exclusive representative of all the employees in the appropriate unit of each of the Companies.

CONCLUSIONS OF LAW

Upon the basis of the above findings of fact, the Board makes the following conclusions of law:

1. The shoe workers employed in the production departments, excepting clerical and supervisory employees, of the Auburn or Lewiston plants of each of the Companies, respectively, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.
2. Questions affecting commerce have arisen concerning the representation of the employees in the aforesaid units, within the meaning of Section 9 (c) of the National Labor Relations Act.
3. The United Shoe Workers of America, having been selected for the purposes of collective bargaining by the majority of the employees in each of the aforesaid units, is, by virtue of Section 9 (a) of the National Labor Relations Act, the exclusive representative of all the

²⁷ *Matter of R. C. A. Manufacturing Company, Inc and United Electrical & Radio Workers of America*, Case No R-39, Certification of Representatives issued November 7, 1936 (*supra*, p 168). See *Virginian Railway Company v System Federation No 40, Railway Employees Department of the American Federation of Labor, et al*, 300 U. S. 515 (March 29, 1937).

employees in each of such units for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

CERTIFICATION OF REPRESENTATIVES

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, 49 Stat. 449, and pursuant to Article III, Section 8 of the National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that United Shoe Workers of America has been selected by a majority of the shoe workers, excepting clerical and supervisory employees, employed in the production departments of the Auburn or Lewiston plants, respectively, of the Charles Cushman Company, Somerset Shoe Company, Lown Shoe Company, Maine Shoes, Inc., Lumbard Shoe Company, Koss Shoe Company, Inc., B. A. Corbin & Sons, C. V. Watson Company, Venus Shoe Company, Ault-Williamson Shoe Company, Mascott Shoe Company, Inc., and Holmes-Bohr Company, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the National Labor Relations Act, United Shoe Workers of America is the exclusive representative of all such employees of each of such Companies, respectively, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

MR. EDWIN S. SMITH took no part in the consideration of the above Decision and Certification of Representatives.