

In the Matter of HUTH & JAMES SHOE MFG. COMPANY and UNITED  
SHOE WORKERS OF AMERICA

*Case No. R-174.—Decided August 3, 1937*

*Shoe Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations—*Unit Appropriate for Collective Bargaining:* production employees; plant; functional coherence; history of collective bargaining in plant and industry; eligibility for membership in both rival organizations; uniformity of skill and conditions of employment; community of interest—*Election. Ordered—Certification of Representatives.*

*Mr. Robert R. Rissman* and *Mr. S. G. Lippman* for the Board.

*Mr. Daniel K. Hopkinson*, of Milwaukee, Wis., for the Company.

*Mr. Max E. Geline*, of Milwaukee, Wis., for the U. S. W.

*Mr. Joseph A. Padway*, by *Mr. A. G. Goldberg*, of Milwaukee, Wis., for the B. & S. W. U.

*Mr. Millard L. Midonick*, of counsel to the Board.

## DECISION

### STATEMENT OF THE CASE

On May 4, 1937, the United Shoe Workers of America, herein called the U. S. W., affiliated with the Committee for Industrial Organization, filed with the Regional Director for the Twelfth Region (Milwaukee, Wisconsin) a petition alleging that a question affecting commerce had arisen concerning the representation of the employees of the Huth & James Shoe Mfg. Company, Milwaukee, Wisconsin, 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 June 8, 1937, the Board, acting pursuant to Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended, authorized the Regional Director to conduct an investigation and to provide for an appropriate hearing in connection therewith. On June 15, 1937, the Regional Director issued a notice of hearing to be held at Milwaukee, Wisconsin, on June 21, 1937. The Company, the U. S. W., and the Boot & Shoe Workers Union, herein called the B. & S. W. U., affiliated with the American Federation of Labor, which had been named in the petition as also claiming to represent employees of the Company, were served with the notice.

Pursuant to the notice, a hearing was held in Milwaukee, Wisconsin, on June 21, 1937, before Charles A. Wood, the Trial Examiner duly designated by the Board. The Board, the Company, the U. S. W. and the B. & S. W. U. were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all the parties. During the course of the hearing the Trial Examiner made numerous rulings on motions and on objections to the admission or exclusion of evidence. We have examined all of the Trial Examiner's rulings and find that no prejudicial errors were committed. His rulings are hereby affirmed.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE COMPANY

The Huth & James Shoe Mfg. Company, a Wisconsin corporation, has its general offices, sales and show rooms, and its principal plant in Milwaukee, Wisconsin. It operates a smaller plant in Cedar Grove, 20 miles distant from Milwaukee, but the record is bare of facts concerning that plant and it appears that the Milwaukee plant is an entity in itself. The Company is engaged exclusively in the manufacture of women's shoes, employing in its Milwaukee plant approximately 437 production workers, exclusive of supervisory employees, in addition to about 15 maintenance, janitor, elevator, and shipping employees, and a clerical staff numbering about 25.

Over 95 per cent of all leather used in the Company's manufacturing operations is obtained from tanneries primarily in the New England States, and 80 per cent of all other materials used by the Company in the production of shoes are shipped to its plant from outside the State of Wisconsin. Eighty-five per cent of all the Company's sales are made to jobbers and retailers similarly located outside of the State; thus, of \$2,000,000 worth of shoes made by the Company during 1936, \$1,700,000 were sent to points outside of the State of Wisconsin.

#### II. THE ORGANIZATIONS INVOLVED

United Shoe Workers of America is a labor organization, affiliated with the Committee for Industrial Organization. It admits to membership all employees of the Company in the Milwaukee, Wisconsin plant, except supervisory and clerical employees. The Boot and Shoe Workers Union is a labor organization, affiliated with the American Federation of Labor. It likewise admits to membership

all employees of the Company in the Milwaukee, Wisconsin, plant, except the supervisory and clerical employees.

### III. THE APPROPRIATE UNIT

The question of the appropriate unit for collective bargaining is the only contested issue in the case. The Company, the U. S. W., and the B. & S. W. U. agree that an election is necessary if collective bargaining is to continue. Each union, however, advances a separate theory as to the more desirable and appropriate unit for the purpose, the U. S. W. contending for a plant-wide unit, the B. & S. W. U. urging that the eight production departments of the plant be held to be distinct units and that bargaining representatives be determined for each in separate elections.

The shoe manufacturing industry today is virtually without craft unions, its labor organizations throughout the United States being almost universally along vertical and plant-wide lines. This industrial form of organization is not only recognized by the B. & S. W. U., but is advocated and employed by that Union in other similarly constituted Milwaukee shoe factories controlled by it.

In the very plant here involved, the plant-wide unit urged by the U. S. W. as appropriate for the purposes of collective bargaining is coterminous with the groups of employees admitted to membership not only in the U. S. W. but in the B. & S. W. U. as well. Both of these organizations admit to membership all employees of the Company except supervisory and clerical or office employees. Neither organization maintains any divisions in its ranks based upon trade classifications or occupations in the Company's plant.<sup>1</sup> Even the B. & S. W. U. declares that it is prepared to bargain collectively for all the production workers in the plant in the event that such a unit shall be held appropriate and a subsequent election shall reveal a majority of the workers therein to be desirous of representation by the B. & S. W. U.

Admitting these facts, the B. & S. W. U. inclines nevertheless toward splitting the factory into eight departmental units consisting of cutting, fitting, lasting, sole leather, bottoming, finishing, wood heel, and packing. In support of its contention, the B. & S. W. U. urges that the Company is the striking exception to the general rule prevailing in the industry in that by an established course of dealing between the employers and the eight separate departments, the departmental subdivisions of the Milwaukee plant have been recognized to be the appropriate units. The history of

<sup>1</sup> Cf. *Matter of Acklin Stamping Company and International Union, United Automobile Workers of America, Local No. 12*, Case No. R-142, decided May 28, 1937, 2 N. L. R. B. 872

the course and nature of collective bargaining in the plant is therefore of major significance in this case.

Both unions entered the plant at approximately the same time in the latter part of 1933. Until recently, the U. S. W. was an independent labor organization under the name of Shoe Workers Protective Association, herein called the S. W. P. A. At the outset, and for several years thereafter, the B. & S. W. U. and the S. W. P. A. had a working understanding or procedure whereby the B. & S. W. U. would represent the workers in those of the eight departments where the B. & S. W. U. was stronger, and the S. W. P. A. would represent the workers in those departments where the S. W. P. A. was stronger. The procedure or mechanics of representation for collective bargaining consisted of the appointment of a committee from each of the eight departments, each committee composed entirely of members of the union dominant in that department. These committees would convene in a single body called the Shop Council to deal with the Company. The Shop Council in 1934 was instrumental in concluding with the Company a contract which terminated after six months. This contract applied to the entire plant. It is significant that the bargaining for an agreement encompassing fundamental employment terms such as wages and hours, affecting all the production workers in the plant, was always a matter to be negotiated between the Company and the entire Shop Council acting for the whole plant. Only minor matters relating to grievances in particular departments were taken up between the Company and the respective committee for each department. It is also significant that when inter-union differences threatened the continuance of collective bargaining, the Company would appeal to the two shop leaders of both unions to come to an understanding. From this we infer that each shop leader could and did represent and bargain for the *group of departments* dominated by his union. This account does not indicate a practice of bargaining by departmental units. Despite the Company's attempts to bring the unions to a new working arrangement, the question of representation has remained unsettled for about two years and a complete break-down in the mechanics of designation of representatives brought negotiations to a halt by approximately the first of May 1937.

In addition to the history of collective bargaining in the plant and industry, and the eligibility of all production workers to membership in each of the labor organizations involved here, other circumstances are significant. The similarity among the production departments with regard to skilled workers, wage rates, and other conditions of employment, and the functional coherence of the various departments, all compel us to take the view that the plant as a

whole is an appropriate unit for the purposes of collective bargaining. Workers of various skills are distributed in not greatly divergent proportions throughout the eight departments. For example, the 39 cutters, concededly among the departments with the highest proportion of skilled workers, are approximately 40 per cent skilled, 40 per cent semi-skilled, and 20 per cent unskilled. The 234 fitters, on the other hand, among the least skilled of the departments, are approximately 30 per cent skilled, 30 per cent semi-skilled, and 40 per cent unskilled. Wage rates for a similar degree of skill are uniform throughout the plant except as affected by a difference in sex, and the piece work basis is employed wherever possible. No special problems regarding conditions of employment requiring a separate bargaining unit have been demonstrated with regard to any department.

Under all the circumstances, the Board feels that there is no reason for departing from the practice of both the U. S. W. and the B. & S. W. U. throughout the shoe industry.

Despite the apparent willingness of both unions to include the clerical employees at the Company's Milwaukee plant in the event of a direction of a plant-wide election, the absence of any solicitation for their membership or bargaining on their behalf by either union at any time, and the difference in their duties, manner of payment, conditions of employment, and other interests, from the production and maintenance employees, prompts us to exclude them from the appropriate unit.

In view of all the afore-mentioned facts and in order to insure the Company's employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, we find that all the employees of the Company at its Milwaukee plant, except clerical and supervisory employees, constitute an appropriate unit for the purposes of collective bargaining.

#### IV. QUESTION CONCERNING REPRESENTATION

The Company, the B. & S. W. U., and the U. S. W. unite in a request for an election, representatives of all three having produced mutually corroborative testimony indicating that the unsettled question of representation is the cause of the cessation of collective bargaining and of the continued inability of the Company to bargain collectively with its employees. Both unions claim to represent more than half of the entire body of its employees constituting the appropriate unit for purposes of collective bargaining.

On the basis of these facts, and other facts stated in the opinion, we find that a question has arisen concerning the representation of the employees of the Company.

V. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION ON  
COMMERCE

All parties agree that friction and unrest have resulted from the unsettled question concerning representation and that industrial strife will result in the event that this question remains longer unsettled. 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 has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. CONDUCT OF ELECTION

We further find that an election by secret ballot is necessary to determine the proper representatives for collective bargaining and thus to resolve the question concerning representation. Those eligible to vote shall be all those who come within the classification stated above, as of May 4, 1937, the date of the filing of the petition and to which all parties consent. This shall include, in addition to those appearing on the pay roll as of that date, all regular employees in such classification who were then temporarily absent for illness or other cause, and excluding all who have since quit or been discharged for cause.

CONCLUSIONS OF LAW

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

1. A question affecting commerce has arisen concerning the representation of the employees of the Milwaukee, Wisconsin, plant of the Huth & James Shoe Mfg. Company, within the meaning of Section 9 (c), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. All of the employees of the Milwaukee, Wisconsin, plant of the Huth & James Shoe Mfg. Company, except clerical and supervisory employees, constitute a unit appropriate for the purposes 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, 49 Stat. 449, 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 the Huth & James Shoe Mfg. Company, an election by secret ballot shall be conducted within ten days from the date of this Direction, under the direction and supervision of the Regional Director for the Twelfth 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—Series 1, as amended, among all the production and other employees employed on May 4, 1937, by the Huth & James Shoe Mfg. Company in its Milwaukee, Wisconsin, plant, excepting those engaged in clerical and supervisory capacities, to determine whether they desire to be represented by the Boot & Shoe Workers Union or the United Shoe Workers of America, for the purposes of collective bargaining.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Decision and Direction of Election.

[SAME TITLE]

### CERTIFICATION OF REPRESENTATIVES

*August 26, 1937*

On May 4, 1937, the United Shoe Workers of America, herein called the U. S. W., affiliated with the Committee for Industrial Organization, filed with the Regional Director for the Twelfth Region (Milwaukee, Wisconsin) a petition alleging that a question affecting commerce had arisen concerning the representation of the employees of the Huth & James Shoe Mfg. Company, Milwaukee, Wisconsin, herein called the Company. The petition requested an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

Pursuant to notice duly served upon the Company, the U. S. W., and the Boot & Shoe Workers Union, herein called the B. & S. W. U., affiliated with the American Federation of Labor, which had been named in the petition as also claiming to represent employees of the Company, a hearing was held in Milwaukee, Wisconsin, on June 21, 1937, before Charles A. Wood, the Trial Examiner duly designated by the National Labor Relations Board, herein called the Board. On August 3, 1937, the Board issued a Decision and Direction of Election. The Direction of Election provided that an election by secret ballot be held among all the production and other employees employed by the Company, except those engaged in clerical and supervisory capacities, to determine whether they wished to be represented by the U. S. W. or the B. & S. W. U. for the purposes of collective bargaining.

Pursuant to the Direction, balloting was conducted on August 13, 1937. Full opportunity was accorded to all the parties to this investigation to participate in the conduct of the secret ballot and to make challenges.

On August 14, 1937, the Regional Director certified that a count of the ballots cast showed:

Total number eligible.....	362
Total ballots cast.....	360
Total number of blank ballots.....	1
Total number of void ballots.....	0
Total number of ballots cast for United Shoe Workers of America (C. I. O.).....	211
Total number of ballots cast for Boot & Shoe Workers Union (A. F. of L.).....	148

There was only one vote which was protested and the Regional Director arrived at an understanding with the U. S. W. and the B. & S. W. U. that this vote would not be considered unless the results of the balloting were such as to make this vote decisive. Inasmuch as the U. S. W. received a majority by more than one, it was not necessary to tabulate this vote.

The agent of the Board who conducted the ballot caused to be served upon the parties to the proceeding his Intermediate Report on the conduct of the ballot. No objection with respect to the conduct of the ballot was filed to the Intermediate Report, and the Regional Director forwarded the Intermediate Report to the Board in Washington, D. C.

NOW THEREFORE 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 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 production and other employees employed by the Huth & James Shoe Mfg. Company in its Milwaukee, Wisconsin, plant, excepting those engaged in clerical and supervisory capacities, 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 the production and other employees employed by the Huth & James Shoe Mfg. Company in its Milwaukee, Wisconsin, plant, for the purposes of collective bargaining in regard to rates of pay, wages, hours of employment, and other conditions of employment.

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Certification of Representatives.