

In the Matter of BROWN SHOE COMPANY, INC. and BOOT & SHOE
WORKERS' UNION, LOCAL 649

Cases Nos. C-376 and R-557.—Decided February 11, 1938

Shoe Manufacturing Industry—Settlement: agreement to comply with Act—*Order:* entered on stipulation—*Investigation of Representatives:* agreement for election—*Election ordered*

Mr. Herbert N. Shenkin, for the Board.

Nagel, Kirby, Orrick & Shepley, by *Mr. Dwight D. Ingamells*, of St. Louis, Mo., for the respondent.

Mr. William P. Dennigan, of Vincennes, Ind., for the Union.

Kessinger, Hill & Arterburn, by *Mr. W. H. Hill* and *Mr. N. F. Arterburn*, for the Association.

Mr. Abraham L. Kaminstein, of counsel to the Board.

DECISION

ORDER

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On September 16, 1937, Boot & Shoe Workers' Union, Local 649, herein called the Union, filed with the Regional Director for the Eleventh Region (Indianapolis, Indiana) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Brown Shoe Company, Inc., St. Louis, Missouri, herein called the respondent, at its Vincennes, Indiana, plant, 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 October 11, 1937, the Union filed with the Regional Director amended charges alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the Act. On November 1, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Sections 3 and 10 (c) (2), and Article II, Section 37 (b), of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered a consolidation of these cases and ordered an investigation of representatives, author-

izing the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

Upon the amended charges, the Board, by the Regional Director, issued its amended complaint dated November 2, 1937, against the respondent, alleging that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the Act. The amended complaint and notice of hearing thereon, together with a notice of hearing on the petition for investigation of representatives, were duly served upon the respondent, the Union, and the Employees Welfare Association, herein called the Association, a labor organization having members among the respondent's employees. On November 13, 1937, the respondent filed its answer, in which it denied the unfair labor practices, admitted the allegations of fact in the complaint with respect to the interstate character of its business, but denied that these activities affected commerce.

On November 24, 1937, the Association filed a motion to be permitted to intervene in the proceedings based upon the complaint, which motion was granted by the Regional Director on November 26, 1937. On November 30, 1937, at the hearing, the Association filed a motion to be permitted to intervene in the proceedings based upon the petition for investigation of representatives, which motion was granted by the Trial Examiner.

Pursuant to notice and amended notice to the respondent, the Union, and the Association, a hearing on both the petition and the complaint was held at Vincennes, Indiana, on November 29 and 30, and December 1, 1937, and on January 20 and 24, 1938, before Alvin J. Rockwell, the Trial Examiner duly designated by the Board. The Board, the respondent, the Union, and the Association were represented by counsel.

I

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

FINDINGS OF FACT

THE BUSINESS OF THE RESPONDENT¹

The respondent, Brown Shoe Company, Inc., originally organized in 1879 as a Missouri corporation, became a New York corporation in 1913, with its principal office and principal place of business in the City of St. Louis, Missouri. It is engaged in the manufacture, production, sale and distribution of a complete line of a medium-priced men's, women's and children's shoes.

¹A more complete and detailed description of the business of the respondent is given in the Board's prior decision, *Matter of Brown Shoe Company, Inc., a Corporation and Boot and Shoe Workers' Union, Local No. 655*, 1 N. L. R. B., No. 803.

The respondent is the third largest shoe manufacturing company in the United States. Its stock is listed on the New York and St. Louis stock exchanges. It owns and operates fifteen plants, located in Missouri, Illinois, Indiana, and Tennessee. Through its wholly owned subsidiary, the Moench Tanning Company, Inc., it operates two tanning plants in Gowanda, New York. For the year ending October 31, 1936, the respondent's gross sales amounted to \$24,011,356.97.²

The Vincennes, Indiana, plant is directly under the supervision of the St. Louis office. It manufactures a stitch-down shoe for the popular and low-price fields. The plant receives its raw material from the respondent's warehouses in St. Louis. It does not ship its product directly to the consumer or the wholesale merchant, but bills all its finished product to the St. Louis office. Thus, the plant receives all its raw materials, in the form of leather, cotton goods, rubber, and various small items, from the St. Louis warehouses, and ships all its product back to the warehouses.

We find that the respondent's operations at the Vincennes, Indiana, plant constitute a continuous flow of trade, traffic, and commerce among the several States and with foreign countries.

II

On January 24, 1938, during the hearing, all parties, including the Board, the respondent, the Union, and the Association, by their respective counsel, entered into two stipulations which are incorporated as exhibits in these proceedings. The first stipulates that, on the basis of the record and the stipulation, an order may be entered by the Board and, if necessary, upon application by the Board, by the Circuit Court of Appeals for the appropriate Circuit. The stipulation continues as follows:

1. Respondent will cease and desist as follows:

(a) From in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7, of the National Labor Relations Act;

(b) From spying on meetings of the Union, or in any other manner attempting to apprise itself of activities of the Union, or attempting to find out which of its employees are members of the Union;

² Board Exhibit No. 7, Annual Report filed pursuant to the Securities Exchange Act of 1934, as amended, on January 28, 1937.

(c) From in any manner influencing, inducing and causing citizens, civic bodies, or public officials to interfere, restrain or coerce its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act;

(d) From dominating or interfering with the formation or administration of the Association, or any other labor organization, and from contributing financial or other support to the Association, or any other labor organization;

(e) From discouraging membership in the Union, or in any other labor organization of its employees; by discharging threatening, or refusing to reinstate any of its employees for joining the Union, or any other labor organization of its employees;

(f) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment for joining the Union, or any other labor organization of its employees;

(g) From recognizing, in any event, the Association as a bargaining agency in respect to rates of pay, wages, hours of employment, and other conditions of employment for a period of six (6) months from the date this order is entered by the Board;

(h) From refusing to recognize the Union as the exclusive representative of its production and maintenance employees, excluding supervisory and office employees, for a period of one (1) year in the event the Union wins the election provided for in the stipulation entered into on this date in the Representation case (XI-R-74),³ and in the event the Board certifies the Union as such exclusive representative.

2. The Respondent shall take the following affirmative action to effectuate the policies of the National Labor Relations Act:

(a) Offer to Edmund Kaiser, Orville Hoffman, Louis Youngstaffle, Otto Muchmore, John Walker, Charles Preusz and Harvey Hendrixson, full and complete reinstatement to their former positions, without prejudice to any rights and privileges previously enjoyed or accruing to them, such reinstatement to be offered within 15 days from the entering of this order by the Board;

(b) Make whole the men listed below for any losses of pay they have suffered by their discharge, by payment to each of them, respectively, a sum equal to that which each would normally have earned as wages during the period from the date of his discharge to the date he is offered reemployment as ordered hereunder, or

³ R-557.

to the date of this order, as the case may be, less amounts earned by each during each period, which sum agreed to be paid to each man is as set forth opposite his name below :

Edmund Kaiser.....	\$319. 00
Orville Hoffman.....	580. 00
Otto Muchmore.....	520. 00
John Walker.....	312. 00
Charles Preusz.....	236. 00
Harvey Hendrixson.....	221. 00
Austin Bilskie.....	354. 00
John F. Hensley.....	268. 00
Floyd Clark.....	357. 00
Troy Hale.....	800. 00
Floyd Deem.....	800 00

(c) Withdraw recognition from the Association for a period of six (6) months as an agency of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment;

(d) Immediately post and keep visible in at least three (3) prominent places in the Vincennes Plant for a period of thirty (30) days from the date of posting, notices stating that the Respondent will cease and desist as provided in paragraphs 1 (a) through 1 (h) above, and will take the affirmative action provided in paragraph 2 (c) above, which notices shall repeat the contents of the above-mentioned paragraphs.

3. The amended complaint is dismissed as to Floyd Thompson.

4. The amended complaint is dismissed as to the allegations that the Respondent has violated Section 8 (5) of the National Labor Relations Act.

The second stipulation provides for the entry of a Direction of Election by the Board, to provide, "in substance, as follows":

1. There shall be held forthwith, and in no event later than March 1, 1938, an election under the auspices of the Board, in accordance with its usual procedure, among the production and maintenance employees, excluding supervisory and office employees, at the Company's plant at Vincennes, Indiana.

2. All production and maintenance employees, as aforesaid, on the pay roll for the week ending July 31st, 1937, except only any employees who have, since such date, voluntarily left the employment of the Company or been discharged for proper cause shall be eligible to vote in said election.

3. The ballot used in such election shall give the voters an opportunity to indicate whether or not they wish to be represented by the Union (Boot & Shoe Workers' Union, Local No. 649), and the name of no other labor organization shall be placed on such ballot.

4. In the event that, on the basis of such election, the Board shall certify the Union as the exclusive representative of the production and maintenance workers, as aforesaid, such certification shall be effective for the period of one (1) year from the date thereof.

On the basis of the above stipulations, the Board will issue an Order and a Direction of Election.

ORDER

On the basis of the above findings of fact and stipulations, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Brown Shoe Company, Inc., St. Louis, Missouri, and its officers, agents, successors, and assigns, shall:

1. Cease and desist:

(a) From in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7, of the National Labor Relations Act;

(b) From spying on meetings of the Union, or in any other manner attempting to apprise itself of activities of the Union, or attempting to find out which of its employees are members of the Union;

(c) From in any manner influencing, inducing and causing citizens, civic bodies, or public officials to interfere, restrain or coerce its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act;

(d) From dominating or interfering with the formation or administration of the Association, or any other labor organization, and from contributing financial or other support to the Association, or any other labor organization;

(e) From discouraging membership in the Union, or in any other labor organization of its employees by discharging, threatening, or refusing to reinstate any of its employees for joining the Union, or any other labor organization of its employees;

(f) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment for joining the Union, or any other labor organization of its employees;

(g) From recognizing, in any event, the Association as a bargaining agency in respect to rates of pay, wages, hours of employ-

ment, and other conditions of employment for a period of six (6) months from the date this order is entered by the Board;

(h) From refusing to recognize the Union as the exclusive representative of its production and maintenance employees, excluding supervisory and office employees, for a period of one (1) year in the event the Union wins the election provided for in the accompanying Direction of Election, and in the event the Board certifies the Union as such exclusive representative.

2. Take the following affirmative action to effectuate the policies of the National Labor Relations Act:

(a) Offer to Edmund Kaiser, Orville Hoffman, Louis Youngstaffle, Otto Muchmore, John Walker, Charles Preusz and Harvey Hendrixson, full and complete reinstatement to their former positions, without prejudice to any rights and privileges previously enjoyed or accruing to them, such reinstatement to be offered within 15 days from the entering of this order by the Board;

(b) Make whole the men listed below for any losses of pay they have suffered by their discharge, by payment to each of them, respectively, a sum equal to that which each would normally have earned as wages during the period from the date of his discharge to the date he is offered reemployment as ordered hereunder, or to the date of this order, as the case may be, less amounts earned by each during each period, which sum agreed to be paid to each man is as set forth opposite his name below:

Edmund Kaiser	\$319.00
Orville Hoffman	580.00
Otto Muchmore	520.00
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Austin Bilskie	354.00
John F. Hensley	268.00
Floyd Clark	357.00
Troy Hale	800.00
Floyd Deem	800.00

(c) Withdraw recognition from the Association for a period of six (6) months as an agency of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment;

(d) Immediately post and keep visible in at least three (3) prominent places in the Vincennes Plant for a period of thirty (30) days from the date of posting, notices stating that the respondent will cease and desist as provided in paragraphs 1 (a) through 1 (h) above, and will take the affirmative action provided in paragraph 2 (c) above, which notices shall repeat the contents of the above-mentioned paragraphs.

And it is further ordered that the allegations in the amended complaint (1) that the respondent has engaged in unfair labor practices, within the meaning of Section 8 (3) of the Act, by discharging and refusing to reinstate Floyd Thompson, and (2) that the respondent has engaged in unfair labor practices, within the meaning of Section 8 (5) of the Act be, and they hereby are, dismissed.

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 directed by the Board to ascertain representatives for the purposes of collective bargaining with Brown Shoe Company, Inc., St. Louis, Missouri, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eleventh Region, acting in this manner as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, and in accordance with the stipulations entered into in this case, among the production and maintenance employees of Brown Shoe Company, Inc. at its Vincennes, Indiana, plant whose names appear on the pay roll of the respondent for the week ending July 31, 1937, exclusive of supervisory and office employees, and those who have, since July 31, 1937, voluntarily left the employment of the respondent or been discharged for proper cause, to determine whether or not they desire to be represented by Boot and Shoe Workers' Union, Local 649, for the purposes of collective bargaining.