

In the Matter of ATLANTIC FOOTWEAR COMPANY, INC., and UNITED
SHOE WORKERS OF AMERICA OF THE C. I. O.

Case No. R-520.—Decided February 12, 1938

Shoe Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal of employer to bargain with petitioning union because of prior closed-shop agreement with rival organization; strike; agreement not renewed prior to expiration and no bar to determination of question concerning representation—*Strike—Unit Appropriate for Collective Bargaining:* production employees; history of collective bargaining relations with employer; no controversy as to—*Election Ordered:* names of both unions to appear on ballot.

Mr. Christopher Hoey, for the Board.

Mr. Samuel B. Feld, of Passaic, N. J., for the Company.

Mr. Ben Goodkin, of Passaic, N. J., for the United.

Miss Loretta Gordon, of Brooklyn, N. Y., for the A. F. of L.

Mr. A. J. Toth, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On November 16, 1937, United Shoe Workers of America, affiliated with the Committee for Industrial Organization, herein called the United, 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 Atlantic Footwear Company, Inc., Passaic, New Jersey, 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 December 16, 1937, 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 conduct it and to provide for an appropriate hearing upon due notice.

On December 3, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the United, and upon the Boot and Shoe Workers Union Local No. 674, affiliated with the American Federation of Labor, herein called the Boot and Shoe Workers Union, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on December 10, 1937, at

New York City, before H. R. Korey, the Trial Examiner duly designated by the Board. The Board, the United, and the Boot and Shoe Workers Union were represented by counsel. Upon the failure of the Company to appear, the hearing was adjourned and resumed on December 16, 21, and 23, 1937.¹ Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Atlantic Footwear Company, Inc., a New Jersey corporation, with its only factory located at Passaic, New Jersey, is engaged in the manufacture of leather, satin, and felt slippers for ladies', men's and children's wear. The Company's volume of business for the year 1936 totaled approximately \$75,000.² During this same year approximately \$45,000 worth of raw materials were purchased, consisting mainly of imitation leather, felt material, binding, cotton padding, and footwear ornaments. Eighty to eighty-five per cent of the raw material is purchased from sources outside the State of New Jersey and approximately ninety per cent of the finished product is shipped to buyers outside the State.

II. THE ORGANIZATIONS INVOLVED

The 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 Company, excluding foremen, foreladies, and office help.

Boot and Shoe Workers Union, Local No. 674, is a labor organization affiliated with the American Federation of Labor. It admits to its membership all employees of the Company, except supervisory and clerical help.

III. THE QUESTION CONCERNING REPRESENTATION

On May 12, 1937, the Company entered into a written contract with Boot and Shoe Workers Union. The agreement is effective

¹The Boot and Shoe Workers Union failed to appear on December 16, 1937, and was not represented during the remainder of the hearing. The president of the Company appeared at the hearing on December 16, 1937, but refused to proceed without first obtaining counsel. On December 21 and 23, 1937, the Company was represented by counsel.

²Stipulation entered into on facts and figures relating to interstate commerce.

until February 15, 1938, with a proviso for renewal upon written application of either party by December 15, 1937, stating proposed changes and alterations in the contract for the ensuing year. Neither party has given notice of a desire to renew as provided and the agreement will terminate February 15, 1938. For this reason, the contract presents no problem in our consideration of the issues in this case.

During June and July, 1937, the employees of the Company voted to change their affiliation to the United and to have the United administer the contract of Boot and Shoe Workers Union. Following this change in affiliation, Boot and Shoe Workers Union took no further interest in the plant and the business agent of Boot and Shoe Workers became the business agent of the United.

During September and October, 1937, the United attempted to bargain with the Company as representative of the employees but the Company refused recognition, contending that the contract with Boot and Shoe Workers Union was in existence. On November 1, 1937, the United renewed its efforts to bargain collectively on the piece price of a new pattern slipper which was introduced during the latter part of October. The Company flatly refused to recognize the United and the employees walked out, causing a partial stoppage of production. This strike is still in progress.

The Company states that it is willing to bargain with the labor organization representing a majority of its employees.

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

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 has led to and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The United claims that the production employees of the Company, excluding clerical and supervisory employees, constitute a unit appropriate for collective bargaining. Boot and Shoe Workers Union, not participating in the hearing, makes no claim as to the appropriate unit, but had bargained with the Company on that basis in its contract of May 12, 1937. The Company raised no objection to the claimed appropriate unit. Under these circumstances, we shall adopt

the unit which has been recognized and utilized by the parties as a basis for bargaining.

We find that the production employees of the Company, excluding clerical and supervisory help, 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 to otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The United introduced into evidence 48 application cards signed by employees of the Company during the latter part of August 1937, authorizing the United to represent them. The pay roll of the Company varies, with 50 to 60 employed during the peak of production and 40 to 45 during normal production. The Company failed to produce records or other evidence affording an adequate basis for accurately determining the number of employees between October 1, and November 1, 1937. It offered in evidence a handwritten list of names which, according to the secretary of the Company, was copied from the pay-roll sheet of November 1, 1937. This list was objected to by the United as inadequate and incomplete because it did not include employees, members of the United, who worked prior to November 1, 1937, the date of the strike. No other pay-roll list was introduced. Joseph Cammerano, the shop chairman for United and an employee of the Company for two years, testified that 36 out of the 39 employees on the pay-roll list of November 1, 1937, were United members. A check of the membership cards against this list shows a total of only 18 out of the 39 employees on the list to be members of the United. As the pay-roll list of November 1, 1937, furnishes no satisfactory indication of the number of United members employed by the Company prior to the period of strike, and in view of the disparity between the testimony of Cammerano and the documentary evidence in the form of the Company's pay-roll list, we find that an election by secret ballot is necessary to determine the proper representatives for collective bargaining and to resolve the question of representation. Those eligible to vote shall be the production employees, excluding clerical and supervisory help, who were employed during the pay-roll period immediately preceding October 25, 1937, the week prior to the strike.

Upon the basis of the above findings of fact and upon the 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 Atlantic Footwear Company, Inc., Passaic,

New Jersey, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production employees of the Company excluding 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 Atlantic Footwear Company, Inc., Passaic, New Jersey, 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—Series 1, as amended, among the production employees of the Atlantic Footwear Company, Inc., who were employed by the Company during the pay-roll period immediately preceding October 25, 1937, excluding supervisory and clerical help, to determine whether they desire to be represented by the United Shoe Workers of America, affiliated with the C. I. O., or by Boot and Shoe Workers Union, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

[SAME TITLE]

AMENDED DIRECTION OF ELECTION

February 24, 1938

On February 12, 1938, the National Labor Relations Board, herein called the Board, issued its Decision and Direction of Election in the above-entitled proceedings. The Direction of Election provided that "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."

The Board, having been informed by the Regional Director for the Second Region that additional time will be required for the holding of the said election, hereby directs that the time for the holding of the election provided for in its said Direction of Election be, and it hereby is, extended indefinitely.