

In the Matter of NOVELTY SLIPPER Co. and EMPLOYEES OF NOVELTY SLIPPER Co., INC., and BOOT & SHOE WORKERS' UNION, A. F. OF L.

*Case No. R-496.—Decided February 12, 1938*

*Shoe Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; refusal by employer to recognize petitioning union as exclusive representative of its employees; substantial doubt as to majority status; strike—*Unit Appropriate for Collective Bargaining:* all employees except office and supervisory employees; no controversy as to—*Election Ordered:* employees on pay roll for period immediately preceding filing of petition eligible to vote.

*Mr. Christopher Hoey*, for the Board.

*Tachna & Pinkussohn*, by *Mr. Lewis A. Pinkussohn* of New York City, for the Company.

*Mr. Charlton Ogburn*, by *Mr. Arthur E. Reyman* of New York City, for the Boot & Shoe Workers' Union.

*Mr. Samuel Sacher* and *Mr. Sidney L. Cohn* of New York City, for the United Shoe Workers of America.

*Mr. Bliss Daffan*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On November 19, 1937, Boot & Shoe Workers' Union, A. F. of L., hereinafter called the Boot & Shoe Workers, and Employees of Novelty Slipper Co., Inc.<sup>1</sup> 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 Novelty Slipper Co., Inc., New York City, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On November 26, 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.

<sup>1</sup> Incorrectly designated in the order directing investigation as Novelty Slipper Co

On December 3, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the Boot & Shoe Workers, and upon the United Shoe Workers of America, herein called the United, a labor organization claiming to represent employees directly affected by the investigation. On December 4, 1937, the Regional Director issued a supplemental notice of hearing, copies of which were also duly served on the Company, the Boot & Shoe Workers and the United. Pursuant to the notice, as supplemented, a hearing was held on December 11, 1937, at New York City, before H. R. Korey, the Trial Examiner duly designated by the Board. The Board, the Company, the Boot & Shoe Workers and the United were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

#### FINDINGS OF FACT

##### II. THE ORGANIZATIONS INVOLVED

The Company, a New York corporation, with its plant in New York City, is engaged in the manufacture and distribution of slippers, sandals, and shoes. It employs salesmen who travel throughout the United States and in Europe, and also maintains a sales office in Los Angeles, California.

The Company uses in connection with its manufacturing operations leather, fabrics, wood, hair padding and threads. Fifty per cent of all these materials are obtained outside of the State of New York.

The total sales of the Company each year amount to about \$1,000,000, approximately fifty per cent of the finished products being shipped outside the State of New York.

##### II. THE ORGANIZATIONS INVOLVED

Boot & Shoe Workers' Union is a labor organization affiliated with the American Federation of Labor, admitting to its membership all production employees of the Company, excluding supervisory and office employees.

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

## III. THE QUESTION CONCERNING REPRESENTATION

On or about March 5, 1937, the Boot & Shoe Workers entered into a contract with the Company which provided that the Company should employ only members of the Boot & Shoe Workers except in case the union was unable to supply sufficient workers to the Company. The term of this contract was from March 1, 1937 to February 15, 1938. Thereafter, the Boot & Shoe Workers and the United stipulated<sup>2</sup> to the holding of a consent election under the supervision of the Regional Director of the Second Region for the purpose of determining the collective bargaining agency desired by the employees of the Company, exclusive of office and supervisory employees. The Boot & Shoe Workers and the United also exchanged letters relative to the effect of such election on existing and future contracts. The letter of the Boot & Shoe Workers stated that "This will constitute the assurance of the Boot and Shoe Workers Union, A. F. of L. that our organization will not interfere in the carrying out of existing and future contracts made, or to be made, between employers and the United Shoe Workers of America of the C. I. O., where the C. I. O. represents a majority of the votes cast at consent elections to be scheduled by the Board." The letter of the United was as follows: "This will constitute the assurance of the United Shoe Workers of America of the C. I. O. that our organization will not interfere in the carrying out of existing contracts between employers and the Boot and Shoe Workers Union, A. F. of L., where the A. F. of L. represents a majority of the votes cast at consent elections to be scheduled by the Board."

Pursuant to the agreement, an election was held July 28, 1937, at which the United received a majority of the votes cast. The Report upon the secret ballot<sup>3</sup> by the Regional Director of the Second Region showed that 216 persons were eligible to vote, 185 ballots were cast, 121 votes were cast for the United, and 63 votes were cast for the Boot & Shoe Workers.

In accordance with the agreement, the United assumed the position of the Boot & Shoe Workers under the contract and the employees of the Company became members of the United.

Thereafter, in October 1937, John J. Sorce, an employee of the Company and general shop chairman of the United, obtained membership pledge cards of the Boot & Shoe Workers from Anthony Formichelli, who was originally business agent for the Boot & Shoe Workers for the employees of the Company, and who had acted as such for the United until defeated at an election held by the United on or about October 14, 1937. Sorce and a shop committee of seven,

<sup>2</sup> United Shoe Exhibits No. 2-A and 2-B.

<sup>3</sup> Boot & Shoe Exhibit No. 10-C.

obtained approximately 172 signatures among the employees of the Company to such pledge cards.

On November 15, 1937, the Boot & Shoe Workers, claiming to represent a majority of the employees of the Company, exclusive of office and supervisory employees, sought to bargain with the Company for a contract to take effect February 15, 1938. The Company refused to enter into such negotiations, stating as the reason for such refusal the contract which had been taken over by the United. Upon such refusal, all the employees of the Company except about 40 immediately went on strike.

On November 17, 1937, a petition, signed by 151 employees of the Company, and stating such employees desired representation by the Boot & Shoe Workers, was presented to the Regional Director. On November 19, the Boot & Shoe Workers filed its petition for investigation and certification of representatives. The strike terminated on November 22, upon advice of the Regional Director that the settlement of the matter of representation must await decision by the Board.

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

#### V. THE APPROPRIATE UNIT

In its petition the Boot & Shoe Workers alleged that all employees of the Company, excluding supervisory and office employees, constituted an appropriate unit. Neither the Company nor the United raised any objection as to this unit.

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

#### VI. THE DETERMINATION OF REPRESENTATIVES

The pay roll of the Company as of November 24, 1937, introduced in evidence at the hearing, showed approximately 213 employees within the appropriate unit. The Boot & Shoe Workers submitted in

evidence 171 application cards signed by employees between November 9 and November 17, 1937. It also submitted in evidence petitions dated December 9, 1937, in which said employees reaffirmed their membership in the Boot & Shoe Workers. The United claims that the application cards and the petitions do not reflect the true desires of the employees, but that the signatures were obtained due to the fear of employees that they would lose their jobs.

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

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

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Novelty Slipper Co., Inc., New York City, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The employees of the Company, excluding supervisory and office 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, 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 Novelty Slipper Co., Inc., New York City, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Second Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among all the employees of the Novelty Slipper Co., Inc., who were employed by the Company during the pay-roll period next preceding the filing of the petition in this case, excluding office and supervisory employees, and employees who quit or were discharged for cause between such date and the date of election, to determine whether they desire to be represented by Boot & Shoe Workers' Union, affiliated with the American Federation of Labor or the United Shoe Workers of America, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining, or by neither.