

In the Matter of SOMERSET SHOE COMPANY and UNITED SHOE
WORKERS OF AMERICA

Cases Nos. C-278, R-343, and R-344, respectively.—Decided
February 19, 1938

Shoe Manufacturing Industry—Interference, Restraint or Coercion: refusal to bargain collectively; shut-down of plants—*Unit Appropriate for Collective Bargaining:* all production employees in both of employer's plants; no controversy as to—*Representatives:* proof of choice: application for membership in union—*Collective Bargaining:* refusal to meet representatives—*Lock-outs—Strike—Reinstatement Ordered:* strikers upon application—*Back Pay:* awarded employees from date of lock-out to reopening of plant—*Petition:* for certification dismissed.

Mr. Edward Schneider, for the Board.

Skelton & Mahon, by *Mr. John Mahon* of Lewiston, Maine, for the respondent.

Merrill & Merrill, by *Mr. W. F. Merrill* of Skowhegan, Maine, for the Association.

Mr. A. Raymond Rogers, of Waterville, Maine, for the United.

Mr. S. G. Lippman, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a charge duly filed by United Shoe Workers of America, herein called the United, the National Labor Relations Board, herein called the Board, by A. Howard Myers, Regional Director for the First Region (Boston, Massachusetts), duly issued and served its complaint dated August 13, 1937, against Somerset Shoe Company, Skowhegan, Maine, herein called the respondent. The complaint, as amended at the hearing, alleges that the respondent had engaged in, and was engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In respect to the unfair labor practices, the complaint, as amended at the hearing, in substance alleges that since March 22, 1937, the United has been the representative for the purposes of collective bargaining of a majority of the respondent's production employees, and that on March 22, 1937, and at all times thereafter the respondent

has refused to bargain collectively with the United, as the exclusive representative of its production employees; and that on or about March 24, 1937, the respondent locked out its employees in order to discourage them from designating the United as their representative for collective bargaining.

On August 18, 1937, the respondent filed its answer which in substance denied the commission of the unfair labor practices alleged in the complaint, and denied the jurisdiction of the Board and the constitutionality of the Act, reserving all question of jurisdiction and constitutionality.

On July 6, 1937, the United filed two separate petitions with the Regional Director alleging that questions affecting commerce had arisen concerning the representation of employees of the respondent's No. 1 and No. 2 plants in Skowhegan, Maine. The petitions were amended at the hearing and, as amended, alleged that plants No. 1 and No. 2 in Skowhegan, Maine, constituted an appropriate unit for the purposes of collective bargaining. On July 26, 1937, pursuant to Article III, Section 10 (c) (2), of National Labor Relations Board Rules and Regulations—Series 1, as amended, the Board issued an order consolidating the complaint and representation cases for all purposes.

Pursuant to a notice duly issued and served upon the respondent, the United, and Pine Tree Association, herein called the Association, a labor organization claiming to represent employees affected by the investigation, a hearing was held in Skowhegan, Maine, on August 23, and 24, 1937, before William P. Webb, the Trial Examiner duly designated by the Board. 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.

On November 3, 1937, the Trial Examiner filed his Intermediate Report in which he found that the respondent had engaged in the unfair labor practices alleged in the amended complaint, and recommended that the respondent cease and desist from such unfair labor practices, and upon request bargain collectively with the United.

On November 12, 1937, the respondent filed exceptions to the Intermediate Report. The Board has considered these exceptions and finds them to be without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is a Massachusetts corporation engaged in the manufacture and sale of women's shoes, having its principal plant

and office at Auburn, Maine. The respondent owns a storage house in Skowhegan, Maine, and a plant in Richmond, Maine, which is not in operation. In addition it owns and operates two shoe factories in Skowhegan, Maine, designated as Factory No. 1 and Factory No. 2. On March 10, 1937, the respondent employed at its Skowhegan plants about 485 employees excluding supervisory, maintenance, and clerical employees. In this proceeding we are concerned only with the Skowhegan factories.

The respondent maintains a sales office and showroom at Boston, Massachusetts, employing three salesmen, and a sales agency in Chicago, which employs two salesmen. These five salesmen solicit orders for the respondent in the Eastern, Southern, and Middle-western States. At times these salesmen cover the Far West and the Pacific Coast.

In the manufacture of women's shoes the respondent purchases raw materials principally consisting of upper leather, sole leather, eyelets, rubber, cloth, shoe lining, thread, shanks, counters, heels and miscellaneous items. It was estimated by Thomas F. O'Byrne, president of the Somerset Shoe Company, that more than 80 per cent of the raw materials used by the respondent come from outside the State of Maine. He further estimated that the respondent's purchases of raw materials for the year 1936 amounted to about \$750,000.

The respondent sells chiefly to chain stores, mail-order houses, and jobbers. Practically all of its customers are located outside the State of Maine. It was estimated by O'Byrne that in 1936 the Skowhegan plants produced approximately 1,000,000 pairs of shoes. All of these shoes were shipped to purchasers outside of the State of Maine.

II. THE UNIONS

United Shoe Workers of America, affiliated with the Committee for Industrial Organization, is a labor organization admitting to membership all production employees engaged in the manufacture of shoes, excluding clerical and supervisory help.

Pine Tree Association is a labor organization limiting its membership to all employees of the respondent exclusive of clerical and supervisory employees.

III. THE UNFAIR LABOR PRACTICES

A. *The background of the unfair labor practices*

Early in January 1937 the employees of Factory No. 1 became dissatisfied with their wages. On January 5, the treers¹ in Factory No. 1 requested an adjustment in wages. Travers, the superintendent

¹ Employees who are engaged in finishing and packing shoes.

ent, refused to make any adjustment and the treers went on strike. Travers, however, recalled them and the situation was settled temporarily. On January 11, 1937, the employees of factory No. 1 called a sit-down strike, which, however, lasted but a few hours.

In the meantime labor trouble developed in factory no. 2. A committee representing employees of the two factories held a meeting and decided to strike for a 12½-per cent increase in wages. The ensuing strike closed both factories. The strike was settled as a result of the intervention of the Federal and State labor departments, and on January 21, 1937, the strikers went back to work.

After the strike a local organization was formed, known as the Skowhegan Shoe Workers Association. It secured the membership of a majority of the employees. About February 1, 1937, individual wage adjustments were made. The employees, however, remained dissatisfied, and early in March, concluding that their local organization was ineffective, decided to affiliate with the United.

B. *The refusal to bargain*

1. The appropriate unit

The United alleges in its petition that all the production employees in the Skowhegan plants constitute an appropriate bargaining unit.

Plants No. 1 and No. 2 are about two blocks apart. In many instances part of the shoe is manufactured by plant No. 1 and sent by truck to plant No. 2 where the manufacturing of the shoe is completed. No evidence was introduced by the respondent or the Association to controvert the United's position that the production employees in the Skowhegan plants constituted one unit for the purposes of collective bargaining.

We, therefore, find that the production employees in the two plants, excluding clerical and supervisory employees, constitute an appropriate bargaining unit.

2. Representation by the United of a majority in the appropriate unit

Early in March, John Nolan, a United organizer, came to Skowhegan and addressed a mass meeting attended by the respondent's employees. Application cards were distributed, and 89 signatures were secured. During the following week additional applicants were obtained. By March 18, 1937, over 350 of the respondent's employees, a clear majority, had signed United application cards. A list of the persons who had signed such application cards by that date was introduced into evidence.² The respondent did not contest

² Board Exhibit No. 33.

the accuracy of the list, although it was given an opportunity to check the application cards with the list. Comparison with a later list of employees who were members of the United³ shows that all of the applicants were employees of the respondent. In the absence of evidence to the contrary, an application for membership in a labor organization may be considered as a designation of the organization as the applicant's representative for the purposes of collective bargaining.

We therefore find that on March 18, 1937, and at all times thereafter the United was the duly designated representative of the production employees in the Skowhegan plants, exclusive of clerical and supervisory employees for purposes of collective bargaining.

3. The refusal to bargain

On March 18 representatives of the United called on the respondent for the purpose of holding a bargaining conference. O'Byrne was not at the Skowhegan plants that day, so no conference took place.

On March 22, 1937, Nolan sent a letter to the respondent at Skowhegan stating that the United "now has signed application cards for membership in the Union of a majority of the shoe workers employed in the Somerset Shoe factories . . . We request a conference to discuss a union agreement covering hours, wages, recognition of the Union and other conditions. We would like this conference at the earliest possible moment to the end that satisfactory and peaceable conditions may prevail in the shoe factories in your city. Will you please let me know at the earliest possible moment a date for this conference." On March 24, 1937, the plants closed down without any reply being made to Nolan's letter.⁴ O'Byrne testified that the Skowhegan plants had been closed at the time the letter was forwarded to him at Auburn. No reply was made to the letter after the closing of the plant; consequently, the Union did not make any subsequent attempt to bargain with the respondent.

C. *The lock-out and the strike*

Seth M. Rounds, editor of the Independent Reporter, a weekly newspaper published in Skowhegan, testified that about the time the factory closed he interviewed John Bowler, the general superintendent. The results of the interview were published in his newspaper on April 1, 1937, captioned "Shoe Factories Closed for an Indef-

³ Petitioner Exhibit No 38.

⁴ On March 10 the respondent had 510 employees, and on March 22 it had reduced its pay roll to 319 employees.

inite Period." Rounds testified that the following paragraphs of the article came from Bowler:

It was learned from an official of the Somerset Shoe Factory this week that the decision to close the local factory for an indefinite period was the outgrowth of labor agitation which the Company believes is inspired by a small minority. . . .

This is very unfortunate in view of the fact that the Somerset Shoe Company plant here according to the factory spokesman was in line to face the best run in recent years. Plenty of orders are available but none will be accepted for the local plants until all ideas of affiliating with outside unions is abandoned it was said.

Somerset Shoe Company stands ready to deal with a local union or with individual employees in the matter of alleged grievances, but will not recognize C. I. O. or any outside organizations it was said. Until such time as local shoe workers agree to abandon outside affiliation this plant will remain closed.

Bowler admitted making statements of "that general character." He also stated that the plants were closed because of labor trouble which influenced the mental attitude of the employees and caused them to make inferior shoes resulting in many returns and complaints. There is further evidence that O'Byrne stated he would not operate a plant under a C. I. O. contract. Bowler admitted at the hearing that he had heard O'Byrne make such a statement.

On April 12, 1937, Factory No. 1 reopened for the purpose of making samples. Sixteen shoe workers returned to work. On April 15, 1937, the United members decided they would consider themselves on strike because of the respondent's refusal to bargain, and started to picket Plant No. 1.

Shortly thereafter a citizens' committee, consisting of leading business and professional men, was organized for the purpose of persuading the respondent to reopen its plants and to induce employees to return to work. The committee met with the respondent, secured a list of the names and addresses of the respondent's employees, and mailed to each employee a printed circular and a ballot. The circular stated that the shoe industry in Skowhegan had cost the citizens of the town over \$100,000 in contributions and that the town was now faced with the loss of the factories after twenty years of operation, during which time the respondent had distributed millions of dollars in wages. A ballot was enclosed with the following three questions: "(1) Do you favor a local union or a union with national affiliations? (2) Are you in favor of having the Somerset Shoe Company leave town without any attempt being made to keep it here? (3) Do you prefer to take your chances with

some outside Shoe Company that might locate here, or would you rather see the Somerset Shoe Company stay and reopen?" The committee, through local newspapers, distributed application blanks, and employees who desired to return to work were requested to sign and return them to the committee. There is no evidence as to the result of the ballot. In spite of these activities on the part of the committee, the strike was still in progress at the date of the hearing.

D. The Pine Tree Association

Soon after the commencement of activities by the Citizens' Committee, an independent organization was formed by the 16 sample makers, known as Pine Tree Association. When the plant opened for production on May 11, 1937, applications for the Association were circulated throughout the plant, and active solicitation for membership in the Pine Tree Association occurred during working hours. No objection was made by the respondent to this solicitation.

On July 23, 1937, the Association submitted to the respondent a list of its members and a letter requesting recognition. The list contained 281 names. The respondent did not make any attempt to ascertain whether in fact the employees listed were members of the Association. But on the day the respondent received the request for recognition it granted the Association sole bargaining rights. Although the Association was accorded recognition, it made no attempt to bargain collectively.

IV. CONCLUSIONS AS TO THE UNFAIR LABOR PRACTICES

The respondent's failure to answer the United's request for a bargaining conference constituted a refusal to bargain with the exclusive representative of its employees. The shut-down of the plants did not relieve the respondent of its obligation under Section 8 (5) of the Act to bargain with its employees. It cannot be contended that such bargaining would have been pointless then in view of the fact that the respondent admits that labor trouble was directly responsible for the shut-down. It is altogether possible that had the respondent met with the United the labor difficulties might have been adjusted.

In view of the uncontradicted testimony of the editor of the Independent Reporter the Board is convinced that the closing of the plants was for the purpose and had the necessary effect of interfering with, restraining and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, and that the respondent thereby discriminated in regard to hire and tenure of employment within the meaning of the Act.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the respondent set forth in Sections III and IV, above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. THE REMEDY

It is clear that on March 22, 1937, when the United attempted to bargain with the respondent, the United represented a majority of the respondent's employees. If doubt is now cast upon the majority status of the United, it is as a direct result of the unfair labor practices of the respondent. We cannot consider as the free expression of its employees any change in designation of representatives resulting from the respondent's unfair labor practices. To recognize the calculated effects of such practices would be to defeat the purposes of the Act. The United is entitled to be restored to its status as the representative of a majority of the respondent's employees, and the respondent will be ordered to withdraw its recognition from the Association.

As we have seen, the respondent locked out its employees on March 24, 1937, in violation of Section 8 (1) and (3) of the Act. On May 11, 1937, when plant No. 1 reopened for production, it appears that reinstatement was offered to all employees. We shall therefore order payment to employees laid off because of the stoppage of production on March 24, 1937, of the amount which they would normally have earned up to May 11, 1937, less any sum of money which they earned during such period.

Since the strike was caused by the respondent's unfair labor practices, the respondent is under a duty to restore the status quo which existed prior thereto. Therefore we shall order that the respondent offer to those employees who went on strike on April 12, 1937, reinstatement to their former or equivalent positions without prejudice to their seniority or other rights and privileges, dismissing if necessary employees hired after that date.

If after reinstating its employees pursuant to our order and dismissing employees hired since the shut-down, the respondent determines that the services of its staff as then constituted are not required for the operation of its plants on a regular basis, it may reduce its staff, providing the reduction is made without discrimination against any employee because of Union affiliation or activities, following a system of seniority to such an extent as has heretofore been applied in the conduct of the respondent's business, subject to any modification introduced by agreement with the United.

THE PETITION

In view of the findings in Section III above as to the appropriate unit and the designation of the United by a majority of the respondent's employees as their representative it is not necessary to consider the petition of the United for certification of representatives. Consequently the petition for certification will be dismissed.

Upon the basis of the foregoing findings of fact the Board makes the following:

CONCLUSIONS OF LAW

1. United Shoe Workers of America, affiliated with the Committee for Industrial Organization, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. The respondent, by discriminating in regard to hire and tenure of employment of its Skowhegan employees and thereby discouraging membership in United Shoe Workers of America, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

3. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The production employees, excluding supervisory and clerical employees, of the respondent's plants in Skowhegan, Maine, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. United Shoe Workers of America is and has been at all times since March 18, 1937, the exclusive representative of all employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

6. The respondent, by refusing to bargain collectively with United Shoe Workers as the exclusive representative of all its employees in such unit, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

ORDER

On the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Somerset Shoe Company, Skowhegan, Maine, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from discouraging membership in the United Shoe Workers of America, or any other labor organization of its

employees by discriminating in any manner in regard to the hire or tenure of employment of any of its employees.

2. Cease and desist 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 and protection, as guaranteed in Section 7 of the National Labor Relations Act.

3. Cease and desist from refusing to bargain collectively with United Shoe Workers of America as the exclusive representative of its Skowhegan employees, excluding supervisory and clerical workers, in respect to rates of pay, wages, hours of employment and other conditions of employment.

4. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make whole all employees who were laid off by reason of the shut-down on March 24, 1937, for any loss of pay suffered by reason of said shut-down by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the termination of employment to May 11, 1937, less any amount he has earned during that period;

(b) Offer to employees who went on strike on April 12, 1937, immediate and full reinstatement to their former or equivalent positions without prejudice to their seniority or other rights and privileges, in the manner described in Section VI above;

(c) Withdraw all recognition from Pine Tree Association as the representative of its employees for the purpose of bargaining collectively with the respondent concerning rates of pay, wages, hours of employment, or other conditions of employment, and completely disestablish Pine Tree Association as such representative;

(d) Upon request, bargain collectively with United Shoe Workers of America, as the exclusive bargaining representative of its Skowhegan production employees, excluding supervisory and clerical help;

(e) Post immediately notices to its employees in conspicuous places through its plant stating that the respondent will cease and desist in the manner aforesaid, and maintain such notices posted for a period of at least 30 consecutive days from the date of posting;

(f) Notify the Regional Director for the First Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply therewith.

And it is further ordered that the petition for certification of representatives, filed by United Shoe Workers of America, be, and it hereby is, dismissed.