

In the Matter of SHELBY SHOPS, INC. and UNITED FURNITURE
WORKERS OF AMERICA, LOCAL No. 301

In the Matter of SHELBY SHOPS, INC. and UNITED FURNITURE
WORKERS OF AMERICA, LOCAL No. 301

Cases Nos. C-652 and R-808, respectively.—Decided July 26, 1938

Furniture Manufacturing Industry—Settlement: stipulations providing for reinstatement of three employees refused reemployment; withdrawal of recognition and disestablishing of company-dominated union; conduct of election—Order: entered on stipulation—Election Ordered: pursuant to stipulation—Certification of Representatives.

Mr. William Logan Donnel, for the Board.

Mr. Wilbur F. Pell, of Shelbyville, Ind., for the respondent.

Mr. Joseph D. Persily, of Indianapolis, Ind., and Mr. William W. Harris, of Shelbyville, Ind., for the Union.

Mr. Stanton A. Sweeney, of Indianapolis, Ind., and Mr. Carl E. Murrell, of Shelbyville, Ind., for the Brotherhood.

Mr. Emerson J. Brunner, of Shelbyville, Ind., for the Independent.

Miss Edna Loeb, of counsel to the Board.

DECISION

ORDER

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On March 7, 1938, United Furniture Workers of America, Local No. 301, affiliated with the Committee for Industrial Organization, herein called the Union, filed a charge with the Regional Director for the Eleventh Region (Indianapolis, Indiana) alleging that Shelby Shops, Inc., Shelbyville, Indiana, herein called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

On March 28, 1938, the Union filed with the Regional Director a petition alleging that a question affecting commerce had arisen concerning the representation of the employees of the respondent and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On April 20, 1938, 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 the Regional Director to conduct an investigation and provide for an appropriate hearing upon due notice, and acting pursuant to Article III, Section 10 (c) (2), and Article II, Section 37 (b), of the Rules and Regulations, further ordered that the two cases be consolidated for the purposes of hearing.

On May 5, 1938, the Board issued a complaint charging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (5), and Section 2 (6) and (7) of the Act. The complaint charged, in substance, (1) that the respondent dominated and interfered with the formation and administration of a labor organization known as Employees Independent Association of Shelbyville, Indiana, herein called the Independent, and contributed support to it; (2) that the respondent on or about February 15, 1938, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the respondent's production employees, such employees constituting a unit appropriate for the purposes of collective bargaining; and (3) that the respondent by these and other acts and conduct, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

On May 5, the Regional Director duly served copies of the complaint and accompanying notice of hearing in the consolidated cases upon respondent, the Union, the Independent, and upon the United Brotherhood of Carpenters and Joiners of America, Local No. 1617, affiliated with the American Federation of Labor, herein called the Brotherhood, a labor organization claiming to represent employees directly affected by the investigation.

The respondent duly filed an answer to the complaint, dated May 9, 1938, admitting the allegations as to the nature and scope of its business but denying the alleged unfair labor practices.

On May 9, 1938, the Independent filed with the Regional Director a petition to intervene in the proceeding. On May 11, 1938, the Regional Director granted this petition, permitting the Independent to intervene for the purpose of showing that it was not a labor organization initiated, dominated, or controlled by the respondent.

Pursuant to notice, a hearing was held from May 16 to May 26, 1938, at Shelbyville, Indiana, before Alvin J. Rockwell, the Trial Examiner duly designated by the Board. The Board, the respondent, the Union, the Brotherhood, and the Independent 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 parties. During the course of the hearing, the Trial Examiner granted the motion of counsel for the Board to amend the complaint to include maintenance employees within the unit alleged to be appropriate for purposes of collective bargaining, and to charge the commission of unfair labor practices within the meaning of Section 8 (3) of the Act,¹ and to state that on April 26, 1938, a majority of the respondent's production employees went on strike in protest against the respondent's unfair labor practices. On May 20, 1938, the respondent filed its answer to the complaint, as amended, denying that it engaged in the unfair labor practices charged. On May 16, 1938, counsel for the Board and for the respondent entered into a stipulation, which was made part of the record, concerning the respondent's business and operation.

The hearing was recessed on May 26, 1938, pending approval by the Board of two stipulations effecting a settlement of the consolidated cases.

On June 3, 1938, the Board issued an order approving the stipulations and making them part of the record, and, acting pursuant to Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended, further ordered that the proceeding be transferred to and continued before the Board for the purpose of entry of a decision and order by the Board pursuant to the provisions of the stipulations.

The stipulation in the proceeding based on the complaint is signed by the respondent, the Union, the Independent, and by counsel for the Board, and provides as follows:

IT IS HEREBY STIPULATED by and between The Shelby Shops, Inc., respondent herein, the United Furniture Workers of America Local No. 301 (affiliated with C. I. O.), the Employees Independent Association of Shelbyville, Indiana (for employees of Shelby Shops Inc.), and William Logan Donnel, Attorney, Eleventh Region, for the National Labor Relations Board (hereinafter called the Board) that upon the record herein and upon this stipulation, if approved by the

¹ It was charged that the respondent had discriminatorily refused to reemploy William W. Harris, Ernest Finney, and Raymond Bennett. The Union had duly filed an amended charge to that effect on May 16, 1938

Board, an order may be entered by said Board providing as follows:

1. Respondent, The Shelby Shops, Inc., will 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) Dominating or interfering with the formation or administration of the Employees Independent Association of Shelbyville, Indiana (for employees of Shelby Shops, Inc.), or any other labor organization, and shall cease and desist contributing financial or other support to said Employees Independent Association of Shelbyville, Indiana (for employees of Shelby Shops, Inc.), or any other labor organization, except that respondent may permit employees to confer with it during working hours without loss of pay or time;

(c) From, in any manner, recognizing the said Employees Independent Association of Shelbyville, Indiana (for employees of Shelby Shops, Inc.) as the bargaining agency of its employees, or from engaging in any contractual relationship with said Employees Independent Association of Shelbyville, Indiana (for employees of Shelby Shops, Inc.);

(d) From discouraging membership in the United Furniture Workers of America, Local No. 301, or in any other labor organization of its employees: by discharging, threatening or refusing to reinstate any of its employees for joining the United Furniture Workers of America, Local No. 301, or any other labor organization of its employees;

(e) From, in any manner, discriminating against any of its employees in regard to hire or tenure of employment or any terms or conditions of employment for joining the United Furniture Workers of America, Local No. 301, or any other labor organization of its employees;

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

(a) Refuse recognition to and disestablish as an agency of collective bargaining the said Employees Independent Association of Shelbyville, Indiana (for employees of Shelby Shops, Inc.); inform in writing the officers of said Employees Independent Association of Shelbyville, Indiana (for employees of

Shelby Shops, Inc.) that it will not, in any manner, deal with or recognize such organization and will refrain from any contractual relationship with said organization;

(b) Offer to William W. Harris, Ernest Finney and Raymond Bennett full reinstatement to their former positions without prejudice to any rights and privileges previously enjoyed by them, in due course of resumption of operations immediately upon development of work of the nature and character heretofore regularly performed by them;

(c) Upon request, recognize and bargain collectively with whichever union, if any, wins a majority of the votes in an election to be held to determine the appropriate representative for purposes of collective bargaining, pursuant to a stipulation this day filed in the representation matter herein pending between said respondent and United Furniture Workers of America, Local No. 301, being Case No. XI-R-120;² any agreement whatsoever resulting from such collective bargaining to be reduced to writing and duly signed and executed by said respondent and said chosen representative both as an evidence of the good faith thereof and in order to eliminate possible future misunderstandings as to the nature, extent and intent of such agreement or agreements;

(d) Post and keep visible in conspicuous places about its Shelbyville plant in the City of Shelbyville, State of Indiana, for a period of thirty (30) days after receipt of a copy of the order to be entered herein by the National Labor Relations Board;

(e) Inform the Regional Director of the National Labor Relations Board for the Eleventh Region, within thirty (30) days of the service of said order, of the manner in which said respondent has complied therewith.

And such order may be embodied in any decree of a United States Circuit Court of Appeals in any action or proceeding in the premises, the respondent herein hereby expressly waiving any and all requirement of notice of the institution of proceedings for the enforcement of said order.

The stipulation in the proceeding based on the petition is signed by the respondent, the Union, the Brotherhood, the Independent, and by counsel for the Board, and provides as follows:

IT IS HEREBY STIPULATED AND AGREED by and between The Shelby Shops, Inc., the employer herein, the

²XI-R-120 was the number of the case based on the petition, now Case No. R-808, before it was transferred to and continued before the Board for the purpose of entry of a decision and order by the Board.

United Furniture Workers of America, Local No. 301, petitioning union, the United Brotherhood of Carpenters and Joiners Union Local No. 1617, the Employees Independent Association of Shelbyville, Indiana (for employees of Shelby Shops, Inc.), and William Logan Donnel, Attorney, Eleventh Region for the National Labor Relations Board, as follows:

1. Upon the record herein, the National Labor Relations Board has jurisdiction in the premises;

2. The appropriate bargaining unit shall consist of the production and maintenance employees of the employer, The Shelby Shops, Inc., exclusive of supervisory and clerical employees;

3. Employees entitled to vote in an election for the purpose of choosing a collective bargaining representative shall be those whose names appear upon the payroll of the employer for the period ending November 11, 1937, with the addition of Raymond Bennett, not appearing upon said payroll but continuing to be an employee of said employer;

4. Such election shall be held to determine a choice between United Furniture Workers of America; Local No. 301, petitioning union, and United Brotherhood of Carpenters and Joiners Union, Local No. 1617; and the Employees Independent Association of Shelbyville, Indiana (for employees of Shelby Shops, Inc.) shall not be given a place upon the ballot;

5. Numerous employees having signed applications for membership in two or more of the labor organizations named in the premises hereof and signatories hereto, and the employer, The Shelby Shops, Inc., having refused to enter into any collective bargaining agreement until it has been determined which labor organization represents the majority of its employees, an election for that purpose is necessary;

6. An order for an election in the foregoing terms shall be issued by the National Labor Relations Board at the earliest practicable date;

7. This stipulation is subject to the approval of the National Labor Relations Board.

Upon the entire record the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Shelby Shops, Inc., is an Indiana corporation with its principal office and place of business in Shelbyville, Indiana. It is engaged in the manufacture, sale, and distribution of furniture.

In its manufacturing operations the respondent uses lumber, veneer, finishing materials, packing materials, hardware, and up-fitting materials. Of these raw materials, amounting in value to approximately \$80,000, approximately 80 per cent were shipped to the respondent in 1937 from points outside Indiana.

The total value of the respondent's products in 1937 was approximately \$150,000. In that year 80 per cent of the finished products were sold and shipped to customers outside Indiana. Sales are made through commission salesmen who solicit orders throughout the United States. In promoting its sales, the respondent advertises on a national-scale in trade journals.

We find that the respondent's operations at its plant in Shelbyville, Indiana, constitute a continuous flow of trade, traffic, and commerce among the several States.

II. THE APPROPRIATE UNIT

We find that the production and maintenance employees of the respondent, exclusive of clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

III. THE QUESTION CONCERNING REPRESENTATION

Numerous employees of the respondent signed membership cards of the Union, of the Brotherhood, of the Independent, or of two or more of these labor organizations. The respondent has refused and refuses to enter into any collective bargaining agreement until it has been determined which labor organization represents a majority of the employees within the appropriate unit.

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

IV. THE DETERMINATION OF REPRESENTATIVES

We find that the question concerning representation which has arisen can best be resolved by the holding of an election by secret ballot. Those eligible to vote in the election will be the employees of the respondent within the appropriate unit, whose names appear on the pay roll of the respondent for the pay-roll period ending November 11, 1937. Raymond Bennett will also be eligible to vote. In accordance with the stipulation, the Independent will not be given a place upon the ballot.

ORDER

On the basis of the above findings of fact and stipulations and upon the entire record in the consolidated cases and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Shelby Shops, Inc., Shelbyville, Indiana, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) 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 purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

(b) Dominating or interfering with the formation or administration of Employees Independent Association of Shelbyville, Indiana (for employees of Shelby Shops, Inc.), or any other labor organization, and from contributing financial or other support to Employees Independent Association of Shelbyville, Indiana (for employees of Shelby Shops, Inc.), or any other labor organization, except that nothing in this paragraph shall prevent the respondent from permitting its employees to confer with it during working hours without loss of time or pay;

(c) In any manner, recognizing Employees Independent Association of Shelbyville, Indiana (for employees of Shelby Shops, Inc.), as the bargaining agency of its employees, or engaging in any contractual relationship with Employees Independent Association of Shelbyville, Indiana (for employees of Shelby Shops, Inc.);

(d) Discouraging membership in United Furniture Workers of America, Local No. 301, or in any other labor organization of its employees, by discharging, threatening to discharge, or refusing to reinstate any of its employees for joining United Furniture Workers of America, Local No. 301, or any other labor organization of its employees;

(e) In any manner, discriminating against any of its employees in regard to hire or tenure of employment or any terms or conditions of employment for joining United Furniture Workers of America, Local No. 301, or any other labor organization of its employees.

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

(a) Refuse recognition to and disestablish as an agency of collective bargaining Employees Independent Association of Shelbyville, Indiana (for employees of Shelby Shops, Inc.), and inform

in writing the officers of Employees Independent Association of Shelbyville, Indiana (for employees of Shelby Shops, Inc.), that it will not, in any manner, deal with or recognize such organization and that it will refrain from any contractual relationship with said organization;

(b) Offer to William W. Harris, Ernest Finney, and Raymond Bennett full reinstatement to their former positions without prejudice to any rights and privileges previously enjoyed by them, in due course of resumption of operations immediately upon development of work of the nature and character heretofore regularly performed by them;

(c) Upon request, recognize and bargain collectively with whichever union, if any, wins a majority of the votes in the election which we direct below, and reduce to writing and sign any agreement resulting from such collective bargaining;

(d) Post and keep visible in conspicuous places about its Shelbyville, Indiana, plant, a copy of this order for a period of thirty (30) days after service thereof;

(e) Inform the Regional Director for the Eleventh Region within thirty (30) days of the service of this order of the manner in which the respondent has complied therewith.

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 Shelby Shops, Inc., Shelbyville, Indiana, an election by secret ballot shall be conducted within forty-five (45) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eleventh 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 the production and maintenance employees of Shelby Shops, Inc., whose names appear upon the pay roll of the respondent for the period ending November 11, 1937, excluding supervisory and clerical employees, but including Raymond Bennett, to determine whether they desire to be represented by United Furniture Workers of America, Local No. 301, affiliated with the Committee for Industrial Organization, by United Brotherhood of Carpenters and Joiners of America, Local No. 1617, affiliated with the American Federation of Labor, or by neither.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

September 21, 1938

On July 26, 1938, the National Labor Relations Board issued a Decision, Order, and Direction of Election in the above-entitled proceeding. The Direction of Election provided that an election by secret ballot be conducted within forty-five (45) days from the date of the Direction among the production and maintenance employees of Shelby Shops, Inc., herein called the respondent, whose names appeared upon the pay roll of the respondent for the period ending November 11, 1937, excluding supervisory and clerical employees, but including Raymond Bennett, to determine whether they desired to be represented by United Furniture Workers of America, Local No. 301, affiliated with the Committee for Industrial Organization, by United Brotherhood of Carpenters and Joiners of America, Local No. 1617, affiliated with the American Federation of Labor, or by neither.

Pursuant to the Direction of Election an election by secret ballot was conducted on September 9, 1938, at Shelbyville, Indiana, under the direction and supervision of the Regional Director for the Eleventh Region (Indianapolis, Indiana). Full opportunity was accorded to all parties to this investigation to participate in the conduct of the ballot and to make challenges. On September 10, 1938, the Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued and duly served upon the parties to the proceeding his Intermediate Report on the secret ballot. No objections or exceptions to the Intermediate Report have been filed by any of the parties.

As to the balloting and its results, the Regional Director reported as follows:

Total Number of Employees Eligible to Vote.....	34
Total Number of Votes Cast.....	33
Total Number of Votes for United Furniture Workers of America, Local No. 301, affiliated with C. I. O.....	21
Total Number of Votes for United Brotherhood of Carpenters and Joiners of America, Local No. 1617, affiliated with the A. F. of L.....	12
Total Number of Votes for Neither Organization.....	0
Total Number of Blank Ballots.....	0
Total Number of Void Ballots.....	0
Total Number of Challenged Ballots.....	0

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, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that United Furniture Workers of America, Local No. 301, affiliated with the Committee for Industrial Organization, has been selected by a majority of the production and maintenance employees of Shelby Shops, Inc., excluding supervisory and clerical employees, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the National Labor Relations Act, United Furniture Workers of America, Local No. 301, affiliated with the Committee for Industrial Organization, is the exclusive representative of all such employees for the purposes of collective bargaining in respect 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.

8 N. L. R. B., No. 61a