

In the Matter of SHOWERS BROTHERS FURNITURE COMPANY and THE
UPHOLSTERERS, FURNITURE, CARPET AND AWNING WORKERS, LINO-
LEUM WORKERS UNION, LOCAL No. 184

Case No. R-339.—Decided December 17, 1937

Furniture Manufacturing—Investigation of Representatives: controversy concerning representation of employees: rival organizations; refusal of employer to bargain with petitioning union because of prior agreement with rival organization—*Unit Appropriate for Collective Bargaining:* production employees; no controversy as to—*Election Ordered:* "American Federation of Labor" rather than title of petitioning organization to appear on ballot in order to avoid any implication of determination by Board of possible jurisdictional dispute.

Mr. Herbert N. Shenkin and *Mr. Walter B. Chelf*, for the Board
Mr. Jess. B. Fields, of Bloomington, Ind., for the Company.

Mr. Roy W. Grow, of Indianapolis, Ind., for the Upholsterers.

Mr. Joseph D. Persily, of Indianapolis, Ind., for the United Furniture Workers.

Mr. Kenneth Vayles of Bloomington, Ind., for the Carpenters.

Mr. William Fleener, of Bloomington, Ind., for the Operating Engineers.

Mr. E. A. Hostetter, of Bloomington, Ind., for the Firemen and Oilers.

Mr. Henry H. Foster, Jr., of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On September 3, 1937, The Upholsterers, Furniture, Carpet and Awning Workers, Linoleum Workers Union, Local No. 184, herein called the Upholsterers, filed with the Regional Director for the Eleventh Region (Indianapolis, Indiana) a petition alleging that a question had arisen concerning the representation of employees of Showers Brothers Furniture Company, Bloomington, Indiana, 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 September 29, 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 October 1, 1937, the Regional Director issued a notice of hearing to be held at Bloomington, Indiana, on October 14, 1937. Copies were served upon the Company; the Upholsterers; International Brotherhood of Firemen and Oilers, herein called the Firemen and Oilers; International Union of Operating Engineers, herein called the Operating Engineers; United Furniture Workers, Local Industrial Union No. 496, herein called the United Furniture Workers; National Furniture Workers, Local No. 1, herein called the National Furniture Workers; and the United Brotherhood of Carpenters and Joiners of America, herein called the Carpenters, all labor organizations purporting to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on October 14 and 15, 1937, before Henry J. Kent, the Trial Examiner duly designated by the Board.

The Board and the Company were represented by counsel, and the unions by their officers, and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to the 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 these rulings 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 Company was incorporated in the State of Indiana in 1899. It operates plants located at Bloomington and Bloomfield in that State for the manufacture of bedroom furniture, dining room furniture, kitchen cabinets, desks, breakfast sets, wooden and upholstered chairs, and living room furniture. It is one of the largest, if not the largest, of the manufacturers of this class of furniture in the United States and operates five separate plants or units, of which four are located in Bloomington and one in Bloomfield, about thirty miles west of Bloomington. The present case involves only the Bloomington plants.

These four plants manufacture cabinets and case goods. They employ approximately 1,300 people. About seventy-five percent of the lumber used by the Company is derived from sources outside

Indiana. Glue is procured from Pennsylvania; hardware from Massachusetts, Michigan, and Illinois; glass from Indiana and Missouri; porcelain tops from Illinois; finishing material from Indiana and Michigan; packing materials from Indiana and Michigan; cotton and moss from Mississippi and Louisiana; and palm fibre, which is an import, is procured from New York. Approximately 10 per cent of these materials are shipped by truck and 90 per cent by rail. 90 per cent of the merchandise manufactured is shipped outside of Indiana, and shipments are made to every state in the Union. In 1936, about 27 per cent of the merchandise manufactured was sold to Sears, Roebuck and Company, the Company's largest customer.

II. THE ORGANIZATIONS INVOLVED

The Upholsterers, Furniture, Carpet and Awning Workers, Linoleum Workers Union, Local No. 184, is a labor organization, affiliated with the American Federation of Labor, admitting to membership all production employees of the Company, excluding office workers and supervisory employees.

United Furniture Workers, Local Industrial Union No. 496, is a labor organization, affiliated with the Committee for Industrial Organization, admitting to its membership all production workers, exclusive of office and supervisory employees.

United Brotherhood of Carpenters and Joiners of America and International Union of Operating Engineers are labor organizations affiliated with the American Federation of Labor. The Carpenters admit to membership all production workers and the Operating Engineers admit engineers, firemen and watchmen whose duties include "handling steam or instruments of power".

The National Furniture Workers was an unaffiliated labor organization admitting to membership production workers of the Company. It organized Local No. 1 at Bloomington and Local No. 2 at Bloomfield. Both locals were recognized by the Company as a result of a consent election, agreed to by the Company, labor organizations representing employees, and the Regional Director of the Eleventh Region, held May 21, 1937, among the production employees of the Company. Negotiations carried on with the Company by the National Furniture Workers failed to conclude in an agreement, and in the summer of 1937 its two locals became defunct. At a meeting on July 13, 1937, a majority of the members of Local No. 1 present voted to affiliate with the Committee for Industrial Organization. On July 26, 1937, at another meeting of the same local, a majority present voted to affiliate with the Upholsterers. The United Furniture Workers, the Upholsterers, and the Carpenters all claim former members of the National Furniture Workers, Local No. 1, as present members of their unions.

The local of the International Brotherhood of Firemen and Oilers here involved was a labor organization, formerly affiliated with the American Federation of Labor. It admitted to membership firemen, watchmen and maintenance men. On September 30, 1937, a resolution to affiliate with the United Furniture Workers was passed unanimously by the members present at a meeting of the Firemen and Oilers. The United Furniture Workers has accepted former members of the Firemen and Oilers into its membership.

III. THE QUESTION CONCERNING REPRESENTATION

On September 3, 1937, the United Furniture Workers sent a letter¹ to the Company stating that the United Furniture Workers was prepared to certify that it represented a majority of the production employees and would do whatever was necessary to convince the Company of that fact, and that it was anxious to enter into negotiations on behalf of the employees. On September 9, 1937, the Company, in answer, stated that its agreement with the National Furniture Workers Union and the National Labor Relations Board, entered into before the consent election, provided that the National Furniture Workers should act as the exclusive bargaining agency for all production employees of the Company's Bloomington plants and that the terms of that agreement precluded bargaining with any other organization.

On September 23, 1937, after further attempts at negotiations had failed, a strike was called by members of the United Furniture Workers at the Bloomington plants. On October 8, 1937, the strike was settled by agreement pending the hearing before the National Labor Relations Board for the purpose of determining the collective bargaining representative of the production employees.

The United Furniture Workers has at all times since September 3, 1937, claimed to represent a majority of the production employees at the Bloomington, Indiana, plants of the Company. The Upholsterers likewise claimed to represent a majority of the production workers and the Carpenters also claimed to represent some of the production employees.

We find that a question has arisen concerning the representation of the production workers employed at the Company's Bloomington plants.

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 1 above, has a close, intimate, and substantial

¹ Intervenor C I O Exhibit 1

relation to trade, traffic, and commerce among the several States, and tends to lead, and has led to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The bargaining unit, alleged appropriate by the petitioner, is a unit composed of production employees of the Bloomington plants. Representatives of the Upholsterers and the United Furniture Workers indicated at the hearing that they deemed it appropriate to exclude from the unit office employees, supervisory employees, engineers, firemen, watchmen and maintenance employees. None of the parties to the proceeding contended that any additional classes of employees should be included in the unit, or filed a petition for certification of representatives of any other employees. In this unit the United Furniture Workers and the Carpenters are the only other labor organizations besides the Upholsterers claiming to represent employees.

We find that the production employees of the Company in its Bloomington, Indiana, plants, excluding the office employees, supervisory employees, engineers, firemen, watchmen, and maintenance employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company at its Bloomington, Indiana, plants 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

We find that an election by secret ballot is necessary to determine the proper representatives for collective bargaining and thus resolve the question concerning representation. Those eligible to vote shall be the production employees of the Company at its Bloomington, Indiana, plants as of September 3, 1937, excluding the office employees, supervisory employees, engineers, firemen, watchmen and maintenance employees.

Under date of October 23, 1937, a letter, subscribed and sworn to before a notary public, was sent to the Board at Washington in which it was stated that it was the desire of the Upholsterers and the Carpenters that only one American Federation of Labor organization be placed on the ballot if an election was ordered by the Board, and that both organizations were willing to abide by the decision of the Board as to which American Federation of Labor organization should be placed on the ballot, in accordance with the evidence presented at the hearing. After due consideration of this request, the Board deems it advisable to avoid any implication of a

determination of any jurisdictional dispute that may exist between the Upholsterers and the Carpenters, and consequently will direct that the American Federation of Labor, and the United Furniture Workers, Local Industrial Union No. 496, affiliated with the Committee for Industrial Organization, are the organizations to appear upon the official ballot for the election held pursuant to this Decision and Direction of Election.

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

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Showers Brothers Furniture Company at its Bloomington, Indiana, plants, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production employees of Showers Brothers Furniture Company at its Bloomington, Indiana, plants, excluding office employees, supervisory employees, engineers, firemen, watchmen and maintenance 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 Showers Brothers Furniture Company, Bloomington, Indiana, 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 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 employees, employed by the Company at its Bloomington, Indiana, plants on September 3, 1937, excluding office employees, supervisory employees, engineers, firemen, watchmen and maintenance employees, to determine whether they desire to be represented by the American Federation of Labor or by United Furniture Workers, Local Industrial Union No. 496, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining, or by neither.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTION

December 29, 1937

On December 17, 1937, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election, in the above-entitled proceeding, the election to be held within fifteen (15) days from the date of the Direction, under the supervision of the Regional Director for the Eleventh Region, (Indianapolis, Indiana).

The Upholsterers, Furniture, Carpet and Awning Workers, Linoleum Workers Union, Local No. 184, the petitioner herein, has filed a protest to said Direction upon the ground that petitioner is not named upon the ballot. Also, the Indiana State Federation of Labor has advised the Board that the Bloomington plants are closed indefinitely and that it is impossible to obtain a representative vote at the present time. In order to consider these matters further we will postpone the election for the present.

The Board hereby amends its Direction of Election by striking out the words "within fifteen (15) days from the date of this Direction", and substituting therefor the words, "within such time as may hereafter be determined".

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Amendment to Direction of Election.

[SAME TITLE]

SECOND AMENDMENT TO DIRECTION OF ELECTION

December 31, 1937

On December 17, 1937, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election, in the above-entitled proceeding, the election to be held within fifteen (15) days from the date of the Direction, under the supervision of the Regional Director for the Eleventh Region (Indianapolis, Indiana).

Thereafter The Upholsterers, Furniture, Carpet and Awning Workers, Linoleum Workers Union Local No. 184, the petitioner herein, herein called the Upholsterers, filed a protest against the form of the ballot directed by the Board to be used in the election. Also, the Indiana State Federation of Labor advised the Board that the Bloomington plants were closed indefinitely and that it was impossible to obtain a representative vote at the time. In order to

consider these matters further, the Board, on December 29, 1937, amended its Direction of Election by postponing the election to such time as might thereafter be determined.

As found in the Decision of December 17, 1937, there are three labor organizations purporting to represent employees in the unit which the Board found appropriate for the purposes of collective bargaining, namely, the Upholsterers, United Brotherhood of Carpenters and Joiners of America, herein called the Carpenters, and United Furniture Workers, Local Industrial Union No. 496, herein called the United Furniture Workers. Of these the first two are affiliated with the American Federation of Labor, while the last is affiliated with the Committee for Industrial Organization.

Subsequent to the hearing, a letter dated October 23, 1937, signed by Melvin Hunter, Raymond Hamun, and Clarence L. Martin for the Upholsterers, and by Kenneth Vayles, James Herbin, and Edward Kent for the Carpenters, and sworn to before a notary public, was received by the Board. The letter stated that it was the desire of both organizations that the name of only one American Federation of Labor organization should be placed on the ballot if an election was ordered by the Board, and that both organizations were willing to abide by the decision of the Board as to which American Federation of Labor organization should be placed on the ballot, in accordance with the evidence presented at the hearing. In its Decision, however, the Board stated that it deemed it advisable to avoid any implication of a determination of any jurisdictional dispute that might exist between the Upholsterers and the Carpenters, and consequently directed that the name of the American Federation of Labor should appear on the ballot as the one organization opposing the United Furniture Workers.

The protest of the Upholsterers referred to above, signed by Clarence L. Martin, as business agent, and Roy W. Grow, as organizer, is based on the contention that the election "would not be conclusive in the event the American Federation of Labor were to win the election," and "it would still not settle the issue between the Carpenters and the Upholsterers International Locals . . ." The Board did not, and does not, intend to attempt to determine a jurisdictional dispute between two unions both affiliated with and subject to the discipline of, a single parent body. It will make no determination in this case of the issue between the Upholsterers and Carpenters, either on the basis of the results of an election or otherwise. Whatever the results of this proceeding, that question remains, so far as this Board is concerned, to be determined by the proper authorities of the American Federation of Labor.

Since it appears, however, that the terms of the Direction placing the name of the American Federation of Labor on the ballot are

not satisfactory to one of the two American Federation of Labor organizations, and since, by the letter of October 23, 1937, both have authorized the Board to name only one of them for the purpose of voting, we shall amend the Direction in accordance with that authority. The record indicates that the Upholsterers have at present a much larger membership in the unit than the Carpenters. We will, therefore, direct that the ballot name, as the alternatives for the voter, the Upholsterers, the United Furniture Workers, or neither. If the Upholsterers should, as a result, be certified as the exclusive representative of the employees, it is to be understood that the Board's action will not affect whatever jurisdictional rights over the employees the Carpenters may have under the governing provisions of the American Federation of Labor.

With respect to the date of the election, after due consideration, there seems no reason for further postponement, particularly in view of information received from the Regional Director that four hundred of the employees in plant No. 4 are returning to work on January 3, 1938.

The Board hereby amends its Direction of Election, as amended, by striking out the words, "within such time as may hereafter be determined," and substituting therefor the words, "within thirty (30) days from the date of this Direction," and by inserting immediately preceding the words, "the American Federation of Labor," the words, "The Upholsterers, Furniture, Carpet and Awning Workers, Linoleum Workers Union, Local No. 184, affiliated with."

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Second Amendment to Direction of Election.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

January 25, 1938

On September 3, 1937, The Upholsterers, Furniture, Carpet and Awning Workers, Linoleum Workers Union, Local No. 184, herein called the Upholsterers, filed with the Regional Director for the Eleventh Region (Indianapolis, Indiana) a petition alleging that a question had arisen concerning the representation of employees of Showers Brothers Furniture Company, Bloomington, Indiana, 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.

Pursuant to notice duly served upon the Company; the Upholsterers; International Brotherhood of Firemen and Oilers, herein

called the Firemen and Oilers; International Union of Operating Engineers, herein called the Operating Engineers; United Furniture Workers, Local Industrial Union No. 496, herein called the United Furniture Workers; National Furniture Workers, Local No. 1, herein called the National Furniture Workers; and the United Brotherhood of Carpenters and Joiners of America, herein called the Carpenters, a hearing was held on October 14 and 15, 1937, before Henry J. Kent, the Trial Examiner duly designated by the Board.

On December 17, 1937, the Board issued a Decision and Direction of Election. On December 29, 1937, the Board issued an Amendment to Direction of Election, and on December 31, 1937, the Board issued a Second Amendment to Direction of Election. The Direction of Election, as amended, provided that an election by secret ballot should be held within thirty (30) days from the date of the Direction under the direction and supervision of the Regional Director for the Eleventh Region among the production employees, employed by the Company at its Bloomington, Indiana, plants on September 3, 1937, excluding office employees, supervisory employees, engineers, firemen, watchmen and maintenance employees, to determine whether they desired to be represented by The Upholsterers, Furniture, Carpet and Awning Workers, Linoleum Workers Union, Local No. 184, affiliated with the American Federation of Labor, or by United Furniture Workers, Local Industrial Union No. 496, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining, or by neither.

Pursuant to the Direction of Election, as amended, an election by secret ballot was conducted on January 6, 1938, by the Regional Director for the Eleventh Region. Full opportunity was afforded all the parties to the investigation to participate in the conduct of the secret ballot and to make challenges. On January 7, 1938, the Regional Director for the Eleventh Region issued and duly served upon the parties to the proceeding his Intermediate Report on the ballot. No objection to the ballot or to the Intermediate Report has been filed by any of the parties.

As to the results of the secret ballot, the Regional Director reported as follows:

Total Employees Eligible.....	977
Total Number of Ballots Counted.....	710
Total Number of Votes for The Upholsterers, Furniture, Carpet and Awning Workers, Linoleum Workers Union Local No 184, affiliated with the A F. of L.....	230
Total Number of Votes for the United Furniture Workers, Local Industrial Union No. 496, affiliated with the C I. O....	443

Total Number of Votes for neither Organization.....	35
Total Number of Blank Ballots.....	0
Total Number of Void Ballots.....	0.
Total Number of Challenged Ballots.....	2

We find that United Furniture Workers, Local Industrial Union No. 496, affiliated with the Committee for Industrial Organization, has been designated and selected by a majority of the production employees, employed by Showers Brothers Furniture Company at its Bloomington, Indiana, plants, excluding office employees, supervisory employees, engineers, firemen, watchmen and maintenance employees, as their representative for the purposes of collective bargaining. United Furniture Workers, Local Industrial Union No. 496, affiliated with the Committee for Industrial Organization, is, therefore, by virtue of Section 9 (a) of the Act 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, and we will so certify it.

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 CERTIFIED that United Furniture Workers, Local Industrial Union No. 496, affiliated with the Committee for Industrial Organization, has been designated and selected by a majority of the production employees, employed by the Showers Brothers Furniture Company at its Bloomington, Indiana, plants, excluding office employees, supervisory employees, engineers, firemen, watchmen and maintenance employees, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, United Furniture Workers, Local Industrial Union No. 496, 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.