

IN the Matter of PARKE DAVIS & Co. and FEDERAL LABOR UNION,  
LOCAL 20734, A. F. L.

*Case No. 2-R-4189.—Decided October 8, 1943*

*Mr. J. K. Worley*, of Detroit, Mich., for the Company.

*Mr. J. Buitenkant*, of New York City, for the Union.

*Mr. David V. Easton*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Federal Labor Union, Local 20734, A. F. L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Parke Davis & Co., New York City, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Daniel Baker, Trial Examiner. Said hearing was held at New York City on September 7 and 13, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Parke Davis & Co., a Michigan corporation, is engaged in the manufacture and distribution of pharmaceutical and allied products. In the course and conduct of its business it maintains offices and warehouses in many cities throughout the United States. We are concerned herein with the employees engaged in the Company's

warehouse and office located at 181 Hudson Street, New York City. The Company receives annually at its Hudson Street warehouse and office products valued in excess of \$500,000, all of which are shipped to the warehouse and office from points outside the State of New York. The Company ships products from said warehouse and office valued in excess of \$500,000 annually, 50 percent of which is destined for points outside the State of New York. The Company has contracts with various governmental agencies, under which its products are supplied for use in the national war effort; it admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATION INVOLVED

Federal Labor Union, Local 20734, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to recognize the Union as the exclusive bargaining representative of certain of its employees on the ground that the unit sought by the latter is not appropriate.

A statement of the Acting Regional Director, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</sup>

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNIT

The Union, already the bargaining representative of the warehouse employees, seeks to represent as a unit the employees in the Shipping and Order Department (including the employees engaged at the City Desk), and in the Invoice Department of the Company, but excluding foremen and supervisory employees. The Company contends that the entire office personnel at its Hudson Street office should be included within the unit.

The record discloses that the Company's Hudson Street office is composed of 14 departments, each of which is a substantially inte-

<sup>1</sup>The Acting Regional Director stated that the Union submitted 29 application cards, 23 of which bore apparently genuine original signatures of persons whose names appeared on the Company's pay roll of July 31, 1943. Said pay roll contained the names of 49 employees in the appropriate unit.

grated unit, performing duties in relation to matters which are, for the most part, not concerned with matters handled by other departments. The Company's usual policy has been to maintain the integrity of each department, and under normal conditions it makes no departmental interchange of personnel; however, due to the loss of employees caused by the national emergency, the Company has been forced to make several departmental transfers, none of which appears to have been made on a permanent basis.<sup>2</sup> There is a close functional relationship between the employees engaged in the Shipping and Order Department, the Invoice Department, and the Warehouse, which latter group the Union now represents. This relationship is based both upon their duties and their physical location,<sup>3</sup> a fact recognized by the Company, which has placed both departments together with the warehouse under the personal supervision of the same executive. Had the Union in its petition sought a unit consisting of the employees of the two departments together with the employees engaged in the warehouse, we would have found such a unit appropriate. However, apparently the Union sought a unit consisting only of the two departments because it already has been recognized as the representative of the warehouse employees. Under these circumstances, we shall find appropriate the unit which the Union seeks herein, and if chosen as the representative of the employees in that unit the Union may then bargain for them, together with the employees of the warehouse as a single group, if it so desires.

We find, therefore, that all employees of the Company at its Hudson Street office engaged in the Shipping and Order Department (including the employees engaged at the City Desk) and the Invoice Department, excluding foremen and supervisors of each department, executives, and all other supervisory employees with authority to

<sup>2</sup> The record discloses that for almost a year certain employees have regularly performed work in departments other than their own for certain portions of the week; however, this is not sufficient to warrant a finding that there is no delineation between departments, inasmuch as the major portion of such employees' work is performed in the departments to which they are assigned.

<sup>3</sup> Warehouse employees occupy the basement, most of the first floor, and part of the second floor of the building with which we are concerned herein. The employees of the two departments which the Union is presently seeking to represent occupy the balance of the first (where the City Desk employees who are part of the Shipping and Order Department are located) and second floors. Both departments are concerned with domestic orders. These go first to the Shipping and Order Department for processing. There, employees, designated by the Company as "order censors," not only check the credit of the customers from information available in the department, but also check with the warehouse with respect to the availability of stock ordered. This entails frequent trips between the Shipping and Order Department and the warehouse as well as close cooperation between the two. Both checks proving satisfactory, the order is forwarded to the Invoice Department for the preparation of invoices, the checking of prices, and the assembly of all papers in connection with the order. Thereafter a copy of the invoice is forwarded from the Invoice Department, together with any special instructions that might be necessary, to the warehouse for filling. Thus, uncomplicated domestic orders would be received, filled, and sent out, and the transaction handled almost entirely, for all practical purposes, by the three departments.

hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.\*

#### V. THE DETERMINATION OF REPRESENTATIVES

We find that the question concerning representation which has arisen can best be resolved by an election by secret ballot. The Union desires that eligibility to vote be determined as of July 13, 1943, on the ground that the manager of internal operations of the Company testified that the Company would like to increase its personnel by approximately 25 percent. However, he also testified that he had little hope of being able to do so because of the present manpower shortage. In any event, the reason advanced by the Union is not so persuasive as to warrant a departure from our customary practice, and we shall direct that the employees of the Company eligible to vote in the election shall be those in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

#### 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 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

**DIRECTED** that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Parke Davis & Co., New York City, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) 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, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily

\* Our finding herein is based upon the close functional relationship between the departments involved and the warehouse which the Union already represents. It is not to be interpreted as indicating that we would find that other departments of the Company, either separately or in combination, constitute separate appropriate units.

laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause, to determine whether or not they desire to be represented by Federal Labor Union, Local 20734, affiliated with the American Federation of Labor, for the purposes of collective bargaining.