

In the Matter of E. R. SQUIBB & SONS *and* UNITED GAS, COKE &
CHEMICAL WORKERS OF AMERICA, LOCAL 138, C. I. O.

Case No. 2-R-4390.—Decided February 17, 1944

Proskauer, Rose, Goetz & Mendelsohn, by Messrs. Arthur E. Reym
an and Burton A. Zorn, of New York City, for Squibb.

Mr. Fred Hamilton, of Long Island City, N. Y., for the Union.

Mrs. Augusta Spaulding, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Gas, Coke & Chemical Workers of America, Local 138, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of E. R. Squibb & Sons, Brooklyn, New York, herein called Squibb, the National Labor Relations Board provided for an appropriate hearing upon due notice before James C. Paradise, Trial Examiner. Said hearing was held at Brooklyn, New York, on January 3 and 4, 1944. 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 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 SQUIBB

E. R. Squibb & Sons, herein called Squibb, is a New York corporation, having its principal office at Brooklyn, New York. Squibb operates plants at Brooklyn, New York, and at New Brunswick, New Jersey, where it is engaged in the business of manufacturing and distributing drugs, chemicals, pharmaceuticals, biologicals, and

home necessities. The Brooklyn plant is the only plant directly involved in this proceeding. Squibb controls a number of subsidiaries and affiliates, two of which are Globe Collapsible Tube Corporation and Lenthéric, Inc., herein respectively called Globe and Lenthéric. Globe and Lenthéric are engaged in manufacturing operations at Brooklyn, New York.

For its Brooklyn plant Squibb annually purchases raw materials, valued in excess of one million dollars, of which approximately 75 percent is shipped to its Brooklyn plant from points outside the State of New York. The sales of products manufactured at this plant annually exceed one million dollars, of which 75 percent represents products shipped from the Brooklyn plant to points outside the State of New York.

We find that Squibb is engaged in commerce, within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Gas, Coke & Chemical Workers of America, Local 138, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of Squibb.

III. THE QUESTION CONCERNING REPRESENTATION

On November 19, 1943, the Union asked Squibb for recognition as sole bargaining representative of employees at Squibb's Brooklyn plant. Squibb took the position that the unit proposed by the Union was not an appropriate bargaining unit and questioned the Union's majority.

A statement prepared by the Regional Director and other evidence introduced at the hearing indicate that the Union represents a substantial number of employees in the unit herein found appropriate for bargaining.¹

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

¹ In June 1943, in connection with a former petition filed by the Union on behalf of Squibb's employees, and later withdrawn, the Union submitted to the Regional Director 742 membership cards bearing the names of employees on the Brooklyn plant pay roll of June 1, 1943. There were at that time 1350 employees in the appropriate unit.

Subsequently, the Union submitted additional cards, of which 166 were signed between July and December 1943, and 29 were signed in December 1943. None of these cards was checked against Squibb's Brooklyn plant pay roll. The record does not disclose any turnover among Squibb employees in such magnitude as to alter materially the showing made by the Union in June 1943. Squibb admits that the showing made by the Union in June 1943 and the additional cards later submitted indicate that the Union has a sufficient interest to justify an election in an appropriate bargaining unit.

IV. THE APPROPRIATE UNIT

The Union contends that production and maintenance employees at Squibb's Brooklyn plant constitute an appropriate bargaining unit apart from other employees of Squibb or of its subsidiaries and affiliates. Squibb contends that the appropriate bargaining unit for employees at its Brooklyn plant should include production and maintenance employees of Lenthéric and of Globe, whether or not employees at Squibb's New Brunswick plant should also be included in the same unit.

At its Brooklyn plant Squibb manufactures chemicals and pharmaceuticals, including tablets, vitamin oils, narcotics, specialties such as shaving and dental cream, and chemicals used in the filling of prescriptions. At its New Brunswick plant Squibb manufactures in its biological laboratories serums, vaccines, and medicinal agents, and in its chemical division ether and glandular products. Lenthéric manufactures perfume, face powder, and other toiletries. Globe manufactures collapsible metal tubes, which it sells to Squibb and other customers.

Squibb employs approximately 2000 employees at its Brooklyn laboratories, which are housed in a series of directly connected buildings. Globe, a wholly owned subsidiary of Squibb, employs approximately 75 employees and occupies space on the eighth and ninth floor of a 10-story building at Brooklyn, otherwise occupied by Squibb. Lenthéric, with approximately 300 employees, manufactures its products in an adjoining connected building. The perfumes and toiletries manufactured by Lenthéric have no direct relation to the products manufactured by Squibb or Globe. Globe furnishes metal tubes to manufacturers other than Squibb and is not dependent upon Squibb production for the use of its tubes. In support of its contention that employees at the Squibb Brooklyn plant, employees of Lenthéric, and employees of Globe, with or without employees at Squibb's New Brunswick plant, constitute a single appropriate bargaining unit, Squibb urges that the three companies have interlocking officers and directors and are subject to central over-all control at Squibb's New York executive office; that all employees enjoy common privileges and benefits set up by Squibb as uniform employment policies; that job classifications in the three companies are alike; that personnel work, including the hiring of employees for all three companies, is concentrated in Squibb's personnel office at Brooklyn; that building maintenance employees and plant-protection employees on the pay roll of Squibb's Brooklyn plant serve the premises occupied by Globe and Lenthéric; and that employees of all three companies at Brooklyn use a common restaurant. Squibb contends that the transfer of employees from the pay roll of one company to that of another involves no loss of seniority rights. The rec-

ord, however, does not indicate that the companies attribute any appreciable significance to seniority. Transfers from one company to another are few and infrequent. Each of the companies operates under its own executive officers and administrative assistants. Each company sells its own products and advertises under its own name. Each plant of Squibb, the plant of Globe, and the plant of Lentheric, respectively, operate as substantially complete manufacturing enterprises. Lentheric and Globe were independent concerns before they were acquired by Squibb.

The Union has restricted its organizational activities to employees at Squibb's Brooklyn plant. Employees of these three companies wear distinctive badges which clearly identify their employment. Employees at Squibb's New Brunswick plant lie entirely outside the territorial jurisdiction of the Union. Employees of Lentheric are eligible to membership in the Union, but the Union has made no effort at the present time to organize them. Employees at Globe are probably not within the craft jurisdiction of the Union, but are eligible to membership in an affiliated labor organization. There is no collective bargaining history among the employees of any of these companies so far as the record discloses. In 1941 Squibb and District 50 of the United Mine Workers of America entered into an agreement for a consent election among employees in substantially the unit proposed herein by the Union. The election did not result in the selection of any bargaining representative.²

While the common control of the manufacturing operations of Squibb, Lentheric, and Globe may, under other circumstances, render the unit proposed by the Company an appropriate bargaining unit, it does not appear that any labor organization claims to represent a majority of such employees. Employees at Squibb's Brooklyn plant constitute a clearly definable group of production and maintenance employees and a separable administrative sector of that company's extensive manufacturing system. We, therefore, find that production and maintenance employees at Squibb's Brooklyn plant constitute an appropriate bargaining unit apart from other employees of Squibb and employees of Lentheric and Globe.

The Union would include within the bargaining unit all production and maintenance employees of Squibb at its Brooklyn plant, including packaging, shipping, packing, receiving, restaurant, traffic, and

² Squibb contends that although a unit restricted to employees at its Brooklyn plant may have been appropriate for bargaining in 1941, recent uniformity in job classifications and in employment policies in the four plants render the single plant unit presently inappropriate. We do not agree. The extent of a bargaining unit is governed in part by the scope of the organization of the labor organization which desires to represent the employees within. If the proposed unit is a clearly identifiable functional group of employees, we may find it an appropriate bargaining unit even though it represents but one administrative sector of extensive integrated operations. *Matter of Pacific Gas & Electric Company*, 44 N. L. R. B. 664.

stock and order employees, machinists, employees in the pharmacy department, control samplers, porters, cleaning women, and elevator operators, and would exclude all supervisory employees above the rank of group leader, office and clerical employees, salesmen, guards, printing department employees,³ watch and licensed engineers and firemen,⁴ and salaried laboratory employees and chemists. Squibb has no objection to the categories of employment suggested by the Union for inclusion and exclusion, respectively. Group leaders as such have no authority to make effective recommendations for disciplining of employees with whom they work. Foremen and employees above the rank of foremen have authority either to discharge employees or to make effective recommendations for this purpose, and they fall within our usual definition of supervisory employees, whom we customarily exclude from bargaining groups. The unit proposed by the Union, which is plant-wide in scope, constitutes a form of unit which the Board has frequently found to be appropriate in similar manufacturing plants.

We find that all production and maintenance employees of E. R. Squibb & Sons, at its Brooklyn, New York, plant, including packaging, shipping, packing, receiving, restaurant, traffic, and stock and order employees, machinists, employees in the pharmacy department, control samplers, porters, cleaning women, and elevator operators, but excluding office and clerical employees, salesmen, guards, printing department employees, watch and licensed engineers and firemen, salaried laboratory employees and chemists, foremen, all employees above the rank of foremen, and all other supervisory employees with authority to 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 which has arisen concerning the representation of Squibb's employees can best be resolved by an election by secret ballot.

Squibb requires that new employees serve a 3-month probationary period. There may be as many as 200 probationary employees on the pay roll at any given time. Squibb urges that probationary employees have no substantial interest in employment and should not be eligible to vote in the election. The Union opposes their exclusion. Pro-

³ Squibb has been dealing with an affiliate of the American Federation of Labor as bargaining representative of employees in the printing department.

⁴ Squibb has been dealing with an affiliate of the American Federation of Labor as bargaining representative of watch and licensed engineers and firemen in the boiler room.

bationary employees perform the same work as regular employees, although they receive a different rate of pay. Probationary employees were excluded from participation in the consent election held in 1941, pursuant to the agreement between Squibb and District 50, noted above. The evidence discloses that there is an approximate 6 percent turn-over among regular employees of Squibb and not more than a 10 percent turn-over among probationary employees. Since it clearly appears that approximately 9 of 10 probationary employees have expectancy of regular employment, we shall permit probationary employees to participate in the election.⁵

Those eligible to vote in the election shall be all employees of Squibb in the unit found appropriate in Section IV, above, including probationary employees, 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 Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purpose of collective bargaining with E. R. Squibb & Sons, Brooklyn, New York, 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 probationary employees and employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by United Gas, Coke & Chemical Workers of America, Local 138, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

⁵ *Matter of New York Central Iron Works*, 37 N. L. R. B. 895.