

In the Matter of PLOUGH, INC. and UNITED GAS, COKE AND CHEMICAL WORKERS, C. I. O.

Case No. 15-R-1381.—Decided November 15, 1945

Mr. Clarence Clifton, of Memphis, Tenn., for the Company.
Messrs. W. A. Copeland, Paul Tollison, and R. H. Routon, of Memphis, Tenn., for the C. I. O.
Mr. R. F. Brown, of Memphis, Tenn., for the A. F. L.
Miss Helen Hart, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Gas, Coke and Chemical Workers, C. I. O. herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Plough, Inc., Memphis, Tennessee, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before T. Lowry Whittaker, Trial Examiner. The hearing was held at Memphis, Tennessee, on July 26, 1945. At the commencement of the hearing, the Trial Examiner granted a written motion to intervene made by the Allied Printing Trades Unions, herein called the A. F. L.¹ The Company, the C. I. O., and the A. F. L. 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:

¹ The A. F. L. intervened on behalf of its constituent unions, Memphis Printing Pressmen's and Assistants' Union No. 13, subordinate to International Printing Pressmen's and Assistants' Union of North America, A. F. L.; International Brotherhood of Bookbinders, Local Union No. 172, A. F. L.; Memphis Typographical Union No. 11, subordinate to International Typographical Union, A. F. L.; and Memphis Corrugated and Folding Box Workers Union No. 384, subordinate to International Printing Pressmen's and Assistants' Union of North America, A. F. L., herein called the Box Workers.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Plough, Inc., a Delaware corporation, has its principal office and place of business at Memphis, Tennessee, where it manufactures drugs and cosmetics at two plants, located at 705-735 South Fifth Street and Second and Gayoso Streets. The Company also maintains a shipping plant at 491 South Main Street. The box and printing departments at the South Fifth Street plant are involved in this proceeding. The Company annually purchases raw materials valued in excess of \$1,000,000, the greater part of which is shipped to the Company's plants from points outside the State of Tennessee. Approximately 90 percent of the Company's finished products is transported to points outside the State of Tennessee.

For the purposes of this proceeding the Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Gas, Coke and Chemical Workers, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

The Allied Printing Trades Unions, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

For many years the Company has been bargaining with certain constituents of the A. F. L. as the representatives of the skilled employees in the printing and box departments.² The bargaining relationship between the Company and these unions, however, has been based on oral contracts;³ these agreements were reduced to writing in 1944, but were not signed by the Company and the contracting unions. The record is not clear as to the date on which the Company recognized the Box Workers as bargaining agent for the unskilled and the semi-skilled employees in the box and printing departments.⁴ However, it appears that the Company and the Union entered into an oral con-

² All constituents mentioned in footnote 1, *supra*, except the Box Workers.

³ The terms of these oral contracts conformed to those of the contracts between the A. F. L. and several companies at Memphis, designated as the "Employing Printers." The Company is not a member of this association of employers.

⁴ The Company's comptroller testified that the Company had recognized the Box Workers in oral contracts and bargained with it as agent for the unskilled and semi-skilled employees in the two departments for several years. The Company's attorney and the A. F. L.'s representative stated, however, that the Company recognized the Box Workers about September 29, 1944. The Board in an earlier case involving the Company, decided

tract in 1944 which was reduced to writing about June 26, 1945; this agreement was never signed by either party due to the filing of the petition in the instant proceeding.

On May 14, 1945, the C. I. O., by letter, informed the Company that it was filing with the Board a petition for investigation and certification of representatives of unskilled and semi-skilled employees in the box department.⁵ This petition was filed on May 15, 1945. At a conference subsequent to that date, between the Company, the C. I. O. and a Board agent, the Company stated that it could not recognize the C. I. O. because of its agreement with the Box Workers.

Inasmuch as the Company's contract with the Box Workers is unsigned, we do not agree with the Company's contention that it constitutes a bar to this proceeding.⁶

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.⁷

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 C. I. O. contends that a unit of unskilled and semi-skilled employees in the box department of the Company's South Fifth Street plant is appropriate. The Company and the A. F. L., however, urge the creation of a unit of unskilled and semi-skilled employees in both

December 11, 1944 (59 N. L. R. B. 840), in accordance with a stipulation of the parties, excluded the employees in the printing and box departments from a company-wide unit. In a footnote, the Board stated that these employees "are represented by the [A. F. L.] and presently bargain with their employer through this labor organization."

⁵ On March 15, 1945, Paperworkers Industrial Union, No. 1220, C. I. O., notified the Company of its claim to represent a majority of the employees in the box department and requested recognition by the Company. On April 9, 1945, it filed a petition with the Board which was later withdrawn to permit the filing of a new petition by the C. I. O. The C. I. O. presently represents "all employees at the Company's South Fifth Street plant, excluding office and clerical employees, maintenance mechanics, employees in the printing and box departments, and all supervisory employees . . ." the unit established by the Board in an earlier proceeding (see footnote 4, *supra*).

⁶ See *Matter of Eicor, Inc.*, 46 N. L. R. B. 1035.

⁷ The Field Examiner reported that the C. I. O. submitted 19 authorization cards of employees in the box department and that the names of 17 persons appearing on the cards were listed on the Company's pay roll of April 10, 1945, which contained the names of 43 employees in the box department; that the A. F. L. submitted 14 authorization cards of employees in the box department and 49 authorization cards of employees in the box and printing departments combined, and that the names of 49 persons appearing on the cards were listed on the aforesaid pay roll which contained the names of 91 persons in the box and printing departments. The record reveals, however, that only 3 employees in the box department are alleged by the A. F. L. to constitute part of the appropriate unit. It appears that the other 45 printing department employees are skilled men, many of whom are represented by the other members of the A. F. L., and that authorization cards for these men were submitted from the printing department along with cards for the unskilled and semi-skilled employees whose bargaining rights are involved in the instant proceeding.

the box and printing departments; specifically, they seek to include 3 employees from the printing department, namely, the laborer, the porter and laborer, and the stock handler. The C. I. O.'s representative stated at the hearing that should the Board find that unskilled and semi-skilled employees in the printing and box departments appropriately constitute a single unit, these three employees from the printing department should be included. The C. I. O. does not seek to represent any skilled employees in either department.

The Company's plant at South Fifth Street consists of 2 complete buildings separated by an alley. The box department, employing about 70 men, is located in one building and the printing department, with approximately 48 employees, is located in the other building. While normally all cartons are made and printed in the box department and all labels and folders are prepared in the printing department, the available labor and machine presently determine which department will perform the printing job. Due to the increase in work, during the past year each department has performed work usually allocated to the other. Although each department is separately supervised, each superintendent is responsible to the general manager whose office cares for the accounting, secretarial work, and pay roll of both departments. The pay day, the working hours, and the wage levels are identical in the 2 departments. While there is little permanent exchange of employees between the 2 departments, exchange on a temporary basis often occurs, especially among unskilled employees. The 2 departments are serviced by the same (maintenance employees and they use the same) warehouse. In a prior case involving the Company,⁸ the Board excluded employees in the printing and box departments from the unit of all the Company's employees at the plant. Under its oral contract with the Company, the Box Workers represented unskilled and semi-skilled employees in both departments. In view of all the foregoing facts, we conclude that the semi-skilled and unskilled workers of the box and printing departments compose a single, appropriate unit.

We find that all stock handlers, strippers, glue machine operators and inspectors, Stokes and Smith machine operators and inspectors, assemblers, stitcher, guard machine operator, and hand workers in the box department of the Company's plant at 705-735 South Fifth Street, Memphis, Tennessee; and the laborer, the porter and laborer, and the stock handler in the printing department of that plant; excluding the die maker, pressmen, apprentice pressmen, and the working foreman of the box department, all employees of the printing department not specifically included, all office workers, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise

⁸ See footnote 4, *supra*.

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 shall direct that the question concerning the representation which has arisen be resolved by an election by secret ballot among the employees 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.⁹

DIRECTION OF ELECTION

By virtue of and pursuant to the power invested 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 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Plough, Inc., Memphis, Tennessee, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) days from the date of Direction, under the direction and supervision of the Regional Director for the Fifteenth 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 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 and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by United Gas, Coke and Chemical Workers, C. I. O., or by Memphis Corrugated and Folding Box Workers Union No. 384, subordinate to International Printing Pressmen's and Assistants' Union of North America, A. F. L., for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.

⁹ Since it appears that the Box Workers is the A. F. L. constituent directly concerned herein, we shall place it on the ballot with the C. I. O.