

In the Matter of WYETH, INCORPORATED, EMPLOYER and DRUG TRADE
SALESMEN'S UNION, CIO, PETITIONER

Case No. 2-R-7070.—Decided April 30, 1947

Cullen & Dykman, by *Mr. Harry G. Hill*, of Brooklyn, N. Y., for the Employer.

Messrs. Leonard H. Wacker and Peter J. Stein, of Bronx, N. Y., for the Petitioner.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION

AND

ORDER

Upon a petition duly filed, hearing in this case was held at New York City, on November 7, 1946, before George Turitz, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Wyeth, Incorporated, a Delaware corporation and wholly owned subsidiary of American Products, Inc., has its principal office in Philadelphia, Pennsylvania, and is engaged in the manufacture, sale and distribution of pharmaceutical, biological, and nutritional products throughout the United States, in various sections of which it maintains plants, warehouses, and sales offices. During the past year, the Employer purchased for use in its operations, drugs and chemicals valued in excess of \$1,000,000, of which 75 percent represented materials shipped to the Employer's plants and warehouses from points outside the States in which such plants and warehouses are located. During the same period, the Employer sold finished products valued in excess of \$1,000,000, of which 75 percent represented products shipped by the Employer to purchasers located outside the States in which the plants and warehouses manufacturing and storing the products were located.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

The Petitioner is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

III. THE ALLEGED APPROPRIATE UNIT

The Employer's sales organization¹ is divided into 8 divisions contained in District 1, Division 1, of the Employer's sales organization, excluding supervisory employees. The Employer opposes the unit sought by the Petitioner upon the ground that the unit sought is not sufficiently extensive to be appropriate for purposes of collective bargaining.

The Employer's sales organization is divided into 8 divisions containing in all 390 sales employees, each division averaging between 32 and 68 employees distributed among 3 or more districts. The Employer contends that the similarity in working conditions and the integration in the supervision and the earnings of the sales employees involved herein,¹ require a finding that a unit less than Nation-wide in scope is inappropriate. The Employer further contends that in any event a unit limited in extent to a district, the smallest subdivision in the Employer's sales organization, is clearly inappropriate.

With respect to the Employer's first contention, we do not agree, in view of the wide geographical separation of employees in the Employer's sales organization and the attendant difficulties of organizing and representing such a group over a Nation-wide area, that a unit of lesser scope is inappropriate for the purposes of collective bargaining.² On the other hand, there would appear to be merit in the Employer's contention that in any event a unit confined to a single district is too small to be appropriate.

The record discloses that none of the districts which make up the divisions in the Employer's sales organization have more than 13 employees in any one district, and, as indicated above, there are no more than 68 employees in any of the divisions.³ Moreover, although both districts and divisions are under the supervision of individual

¹ A degree of integration exists with respect to commissions paid for sales to wholesale houses and chain stores. The Employer sets up a pool for sales to each customer of this type and allocates commissions on a percentage basis to those sales territories which, as indicated by studies, receive the Employer's products through that customer. These pools cross both division and district lines.

² See *Matter of Winthrop Chemical Company, Inc.*, 59 N. L. R. B. 1550.

³ The district upon which the Petitioner bases its present petition has only 13 employees from among a total of 58 employees in the division of which it is a part.

managers, district managers have no established offices and transact business from their homes. Division managers, on the other hand, have established divisional offices for use in the promotion of the Employer's business. Upon all the evidence adduced, we are of the opinion that a unit less than division-wide which, as here, is restricted to a single district, is too limited in scope and not sufficiently autonomous in relation to the Employer's sales organization as a whole to be appropriate for the purposes of collective bargaining. Accordingly, we shall dismiss the petition.⁴

ORDER

Upon the basis of the above findings of fact and the entire record in the case, the Board hereby orders that the petition for investigation and certification of employees of Wyeth, Incorporated, Philadelphia, Pennsylvania, filed by Drug Trade Salesmen's Union, CIO, be, and it hereby is, dismissed.

⁴The Petitioner also indicated at the hearing that it would accept in the alternative a unit coextensive with its present organizational efforts and comprising the employees of two districts (District 1, Division 1, and District 1, Division 2). We find, in view of the crossing of divisional lines in the Employer's organization that a unit comprised of these two districts would be inappropriate.