

APPENDIX B

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act we hereby notify our employees that:

WE WILL NOT interrogate coercively our employees concerning their membership in, activities on behalf of, and sympathy for Federation of Union Representatives.

WE WILL NOT solicit coercively our employees to renounce their affiliation with Federation of Union Representatives, to drop the representation petition, and to resign or withdraw from Federation of Union Representatives.

WE WILL NOT warn our employees concerning their membership in or contemplated membership in Federation of Union Representatives.

WE WILL NOT threaten our employees with reprisals unless they resign or withdraw from Federation of Union Representatives.

WE WILL NOT solicit and encourage our employees to submit their grievances to a committee established by our General Executive Board in lieu of and as a substitute for further participation in self-organization and for membership and activities in Federation of Union Representatives.

WE WILL NOT fail to grant automatic annual wage increases to our employees in accordance with our past practices because of Federation of Union Representatives' recognition request.

WE WILL NOT in any like or similar manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist Federation of Union Representatives, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement authorized by Section 8(a)(3) of the Act.

All our employees are free to become or to refrain from becoming members of the above union or any other labor organization.

INTERNATIONAL LADIES GARMENT WORKERS' UNION, AFL-CIO,
Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office 745 Fifth Avenue, New York 22, New York, Telephone No. Plaza 1-5500, if they have any question concerning this notice or compliance with its provisions.

Liebmann Breweries, Inc. of New Jersey and Salesmen's Division Local 153, Office Employees International Union, AFL-CIO,¹ Petitioner. Case No. 22-RC-1825 April 18, 1963

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹The Petitioner's name appears as amended at the hearing.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Fanning, and Brown].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Liebmann Breweries, Inc., is a New York corporation engaged in the production and sale of alcoholic beverages with its headquarters and brewery in Brooklyn, New York. Liebmann Breweries, Inc. of New Jersey, a New Jersey corporation, is a wholly owned subsidiary² of the New York corporation and has a brewery located at Orange, New Jersey.

The record shows that all the officers and directors of the New Jersey corporation, with one exception, are also officers and directors of the New York parent corporation,³ and that, *inter alia*, overall policy decisions pertaining to labor relations, production, and sales are commonly made by the parent corporation. In these circumstances, we find that Liebmann Breweries, Inc., and Liebmann Breweries, Inc. of New Jersey, constitute a single Employer.⁴

The Employer's sales department consists of sales offices located at its two breweries, in Brooklyn, New York, and Orange, New Jersey, five branches, in Hartford and Bridgeport, Connecticut, and White Plains, Riverhead, and Hicksville, New York, and a wholesale division, also located in the Employer's Brooklyn headquarters. Attached to the Brooklyn sales office is a merchandising division and a chain-store division.

The branches are company-operated wholesale outlets which serve as depots and distribution centers for the Employer's products, and also as home base for a crew of salesmen and merchandising men who sell and service the Employer's retail customers located in the area covered by that particular branch. Each branch is under the direction and supervision of a branch manager. The sales offices in Orange and Brooklyn perform the same function, and are essentially the same, as the branches, except for the fact that they are housed at the

² A few qualifying shares of stock are held by New Jersey residents as required by that State's laws.

³ Liebmann Breweries, Inc., has a larger group of officers and directors than its New Jersey subsidiary. However, the principal officers and directors of Liebmann Breweries, Inc., hold corresponding positions in Liebmann Breweries, Inc. of New Jersey.

⁴ See *Liebmann Breweries, Inc.*, 101 NLRB 616, reversed on other grounds. *P. Ballantine & Sons*, 141 NLRB 1103.

breweries and therefore have no need of separate warehouse facilities. Each sales office is supervised by a director of sales, who is assisted by a sales manager.⁵

The employees in the merchandising division go around to the stores to set up displays and advertising, and assist in pricing and stocking the Employer's products.

The salesmen in the chainstore division, who all work out of the Brooklyn office, contact the head offices of the various chainstores and attempt to get their approval to sell Liebmann beverages to their stores.

The salesmen in the wholesale division deal with Liebmann's wholesale customers, the independent distributors who sell Liebmann's products in areas not covered by the Employer's branches and sales offices.

The Petitioner seeks to represent all the Employer's salesmen located at its Orange, New Jersey, sales office, and would exclude the two merchandising men who work out of that office, and all other employees. The Employer contends that only an overall unit of its sales personnel, including all salesmen employed at its two sales offices and five branches, distributor salesmen in its wholesale division, all chainstore salesmen in its chainstore division, and the two merchandising men who work out of the Orange, New Jersey, sales office, is appropriate.

The record shows, and the Board has previously found,⁶ that the Employer has integrated and centralized certain functions of the sales department. Thus, the Brooklyn headquarters office furnishes accounting, purchasing,⁷ advertising, and promotion services for the entire sales organization. All matters related to labor relations and employee terms and conditions of employment are determined by the appropriate management officials in the Brooklyn headquarters office, and are uniform throughout the sales department. In addition, all hiring, firing, and other personnel matters must be approved by the Brooklyn headquarters.

However, the record also shows that the branches and sales offices are, within the limits of certain instructions and policies laid down by the management of the Company, essentially autonomous operations. The day-to-day work of the branches and sales offices is directed by, and is the responsibility of, the branch managers and sales

⁵ Because of the size of the sales force in the Brooklyn sales office, there are two sales managers in that office.

⁶ *Liebmann Breweries, Inc.*, 92 NLRB 1740; and 101 NLRB 616. Note that these two decisions were recently reversed in *P. Ballantine & Sons, supra*, to the extent that they held that single office or branch units could not be appropriate for purposes of collective bargaining.

⁷ All purchases are made by the Brooklyn office with the exception of office supplies and materials which are handled by a separate purchasing office in Orange, New Jersey.

directors and sales managers, respectively. Thus, the branch managers and sales managers have the authority to discipline employees for "minor infractions," such as skipping customers or failing to make calls promptly; supervise and attempt to improve the salesmen's performance; make recommendations concerning merit increases when the salesmen's records are reviewed; make recommendations with respect to hiring, firing, and other personnel action, which recommendations are followed "in the main"; hold weekly sales meetings to discuss current sales problems, performance, and policy; and have power to grant time off to the employees. James Jackier, the Employer's assistant director of sales, who was the sole witness at the hearing, described the authority and responsibility of the branch managers as follows:

. . . running of the branch, handling of drivers, handling of the maintenance of the building, handling of the men, setting records, watching sales results, watching merchandising results, seeing that advertising is placed properly, seeing that the figures are met

In addition, there is a substantial geographic separation between the branches and sales offices, ranging from 27 to more than 140 miles. While there have been occasional temporary transfers of salesmen between the branches or sales offices, permanent transfers have been rare—six in the past 5 years.

The Employer's salesmen have never been represented. However, certain warehouse and delivery employees are presently represented in single-branch units.

In our recent decision in *P. Ballantine & Sons, supra*, which involved the same industry, the same unit issue, and facts strikingly similar to those in the instant proceeding, the Board pointed out that its fundamental responsibility under Section 9(b) of the Act is to make appropriate unit determinations which "assure to employees the fullest freedom in exercising the rights guaranteed by this Act"—i.e., the rights to self-organization and bargaining. To effectuate this mandate and to protect employees in their exercise of the aforementioned rights, the Board has taken the position that it would not compel labor organizations to seek representation in the most comprehensive grouping unless an appropriate unit compatible with that requested does not exist.⁸

While a unit of all the Employer's sales personnel would be appropriate for the purposes of collective bargaining, this does not es-

⁸ See *Dixie Belle Mills, Inc., a wholly-owned subsidiary of Bell Industries, Inc.*, 139 NLRB 629; *Sav-On Drugs, Inc.*, 138 NLRB 1032; and *Quaker City Life Insurance Company*, 134 NLRB 960.

tablish it as the only appropriate one. Indeed, in the instant case, as in *P. Ballantine & Sons*, a plethora of factors are present which support the appropriateness of the Petitioner's unit request. Thus, we note that: (1) single office units are presumptively appropriate; (2) the geographic separation of the sales offices and branches, the substantial degree of local autonomy in the day-to-day operations thereof, and the lack of interchange between office and branch employees, all reinforce this presumption; (3) the Employer has bargained with its warehouse and delivery employees on the basis of single-branch units, thereby pointing up the feasibility of labor-management relationships within the framework of such units; (4) the absence of any bargaining history for the employees sought; and (5) no labor organization seeks to represent these employees in a broader unit.

Accordingly, in view of all the foregoing,⁹ we find that the unit sought by the Petitioner is appropriate for the purposes of collective bargaining.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: All salesmen of the Employer employed at its Orange, New Jersey, sales office, including bottle salesmen, keg salesmen, and merchandising men,¹⁰ but excluding all other employees, office clerical employees, guards, sales managers, district managers, and all other supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBER RODGERS, dissenting:

As in *P. Ballantine & Sons*, 141 NLRB 1103, the unit requested by the Petitioner is confined to one of the Employer's sales offices. This unit is precisely the one which the Board, in three previous cases involving this Employer, decided was *not* appropriate for the purposes of collective bargaining.¹¹ For these reasons and for the reasons set forth in my dissenting opinion in the *Ballantine* case, *supra*, I would find inappropriate the unit sought herein, and accordingly, I would dismiss the petition.

⁹ For the reasons set forth above, it is clear, contrary to our dissenting colleague's assertion, that the above appropriate unit determination is not based solely on the Union's extent of organization. See also footnote 20 of *P. Ballantine & Sons, supra*.

¹⁰ The record shows that the two merchandising men working out of the Employer's Orange sales office, unlike all the Employer's other merchandising men, work about 40 weeks a year, or approximately 75 percent of their time, as relief salesmen. Accordingly, we shall include them in the unit. *Berea Publishing Company*, 140 NLRB 516.

¹¹ *Liebmann Breweries, Inc., supra*, footnote 6, and Case No. 2-RC-7416 (1955) (not published in NLRB volumes). No legally significant distinction can be made between these cases and the instant case.