

United Telecontrol Electronics, Inc., U.T.E. Microwave, Inc., and U.T.E. Consumer Products, Inc. and Local 2066, International Brotherhood of Electrical Workers, AFL-CIO, Petitioner. Case 22-RC-7519

December 27, 1978

DECISION ON REVIEW AND ORDER

BY MEMBERS JENKINS, PENELLO, AND MURPHY

On June 28, 1978, The Regional Director for Region 22 issued a Decision and Direction of Election in the above-entitled proceeding. Thereafter, the Employer timely filed a request for review of said Decision and Direction of Election on the ground that the Regional Director erred in classifying as seasonal and including in the unit the employees employed in the Employer's "Char-B-Que" operation at Asbury Park, New Jersey. On July 20, 1978, the National Labor Relations Board granted the request for review. The election has not yet been held because of the seasonal nature of the "Char-B-Que" operation, and the Regional Director has scheduled it to take place during the peak of the operation in 1979, if the operation is resumed.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the entire record¹ in this proceeding with respect to the issues under review and makes the following findings.

Petitioner seeks to include in the production and maintenance unit sought the employees engaged in the "Char-B-Que" operation and is unwilling to participate in an election unless they are included in the unit.

The Employer primarily is engaged in the manufacture of electronic components for the computer and microwave industries. For the past 6 years the Employer also has engaged in the manufacture, painting, packaging, and shipping of an electric grill called a "Char-B-Que", pursuant to annual contracts secured through successful bidding. During those years, the bidding has taken place in November or December, a contract requiring a specific number of grills to be manufactured has been awarded in December or January, and production has commenced in February or March. For the last several years, production has been based on a 6-hour workday and has continued for approximately 27 weeks.²

The 26 to 28 positions in the operation are filled by unskilled employees hired predominantly from state unemployment rolls. They are utilized solely for "Char-B-Que" work, perform all of the work connected therewith except painting but including shipping from a separate shipping area, and are terminated at the conclusion of the contract run, except for several who are terminated after taking inventory. Inasmuch as no skills or previous experience is necessary, the Employer makes no attempt to recall former employees, does not keep records of former employees who may be interested in rehire, and gives no hiring preference to former employees.

Some former employees have been rehired, however, primarily through the state unemployment rolls. In 1978, there were 11 rehires included in the approximately 54 employees hired to fill the 26 to 28 "Char-B-Que" operation positions and who worked for periods ranging from 2 to 27 weeks. Of those 11, however, only 4 had worked during the 1977 contract run. In 1977, out of 69 employees hired and who worked for periods of time varying from 2 to 27 weeks, 9 were rehires, but again only 4 had worked the previous season. In 1976, 9 of the 45 employees hired were rehires, but only 3 of them had worked the previous season. Thus, 17.26 percent of the employees hired for the operation during the past 3 years were repeaters, but, of those repeaters, only one who worked in 1978 and two who worked in 1977 were employed both in the previous year and in 1 year prior thereto.

The "Char-B-Que" work, essentially an unskilled assembly operation, is housed in a building which also houses certain other of the Employer's operations. It is performed, as are all of the Employer's operations, under separate immediate supervision, subject to the general direction of the plant manager who also has responsibilities with regard to certain other operations. The employees sought punch a timeclock and receive the same benefits (except profit sharing) as do most of the Employer's permanent employees. In addition, they are paid wages comparable to those paid the Employer's permanent unskilled employees and, in the sense that unskilled functions generally are comparable, perform work comparable to that performed by the permanent unskilled employees. Except for four "Char-B-Que" employees who have attained permanent positions with the Employer during the past 6 years, there has been no employee interchange from the "Char-B-Que" operation into the Employer's other operations. Such functional and operational integration as has occurred has been into the "Char-B-Que" operation

¹ Pertinent portions of the Regional Director's Decision and Direction of Election have been attached hereto as an appendix.

² Prior thereto, the workday was 8 hours, and production continued for 16-19 weeks.

and consists of a painter who routinely performs his function for all of the Employer's operations; the sporadic and infrequent assignment of a few permanent employees to "Char-B-Que" work during emergency situations; the performance of such work by permanent employee Sampoli in December 1977 and on sporadic occasions when he had no work; and the performance of an interim production run in December 1977, between the 1977 and 1978 seasons, by the painter, Sampoli, possibly another permanent employee, and a few newly hired employees who were retained for the next season.

The Regional Director has correctly set forth the general principles applicable to the unit placement issues but nevertheless has concluded that the "Char-B-Que" employees are drawn from the same labor market area and, hence, have sufficient interest to warrant the conclusion that they have a community of interest and are eligible to vote. We disagree with his conclusion that said employees in fact are drawn from the same labor market.³ We also find that he has not given appropriate weight to the fact that, as previously set forth, few of the disputed employees return from year to year. In view of the source from which the "Char-B-Que" employees are drawn; the Employer's policies of not attempting to recall former employees, not giving hiring preference to former employees, and not maintaining records concerning former employees who may be interested in rehire; the insubstantial number of former employees rehired and the very insubstantial number of former employees rehired from year to year; the separate immediate supervision over the employees involved—who also perform work which is separate and distinct from other of the Employer's operations; the minimal degree of functional and operational integration and employee interchange; and the termination of the employees at the conclusion of the production year, we find that the "Char-B-Que" employees are temporary employees without a reasonable expectation of substantial future employment from year to year. We find, therefore, contrary to the Regional Director, that these employees do not possess sufficient interests in employment conditions to warrant their inclusion in the unit.⁴

As noted *supra*, Petitioner has stated that it will not participate in an election unless the "Char-B-Que" employees whom we have excluded are included in the unit. Accordingly, we shall dismiss the petition before us.

³ Contrary to the Regional Director, we find that a statewide group of unemployed people is so vast and everchanging as to preclude it from being classified as an identifiable labor market area from which the Employer "draws the same labor force."

⁴ Cf. *Knapp-Sherrill Company*, 196 NLRB 1072, 1075 (1972).

ORDER

It is hereby ordered that the petition filed in Case 22-RC-7519 be, and it hereby is, dismissed.

APPENDIX

The Char-B-Que Employees:

A Char-B-Que is a specific type of electronic grill which is manufactured, painted and packaged by the Employer, pursuant to a contract with Contempra Industries. For each of the past six years, the Employer has successfully bid for a contract with Contempra Industries to perform the Char-B-Que operation. The contract specifies a set number of grills to be manufactured, rather than a time duration for the operation. The practice has been that the Employer has bid for the contract in November or December, been awarded the contract in December or January and commenced production in February or March. The production has continued for from 16 to 19 weeks, based on an eight-hour workday; production extended to 27 weeks in 1977, when the workday was shortened to six hours. In 1978 as in 1977, the Employer has shortened the workday for the majority of the Char-B-Que employees to a six-hour shift and it now projects that it will complete the 1978 production run in August. In approximately November or December 1977, long after performance of the 1977 contract was completed and prior to the award of the 1978 contract, Contempra Industries contracted for an interim small production run of Char-B-Que grills which the Employer made by utilizing its year-round production staff which was augmented by hiring a few employees, some of whom were retained for the performance of the 1978 Char-B-Que contract. The Char-B-Que operation employees are hired predominantly from state unemployment rolls. No attempt is made to recall former employees, nor is any record kept of former employees who may be interested in rehire. No special skills or prior experience are required and no preferences are given to former employees.

The Employer's payroll records show that four of its current Char-B-Que employees were employed by the Employer last year in Char-B-Que production; seven additional Char-B-Que employees who had worked in 1978 before they were laid off, also worked for the Employer in prior years. In 1978, approximately 54 employees worked for between 2 to 27 weeks to fill the approximately 26 to 28 employee positions in the Char-B-Que operations. Of these 54 employees, 11 previously worked for the Employer in the Char-B-Que department. In 1977, out of 69 em-

ployees hired to fill the 26 to 28 Char-B-Que positions, 9 had been previously employed by the Employer as Char-B-Que employees and, in 1977 they worked for periods of time varying from 2 weeks to 27 weeks. In 1976, out of 45 employees hired for the 26 to 28 Char-B-Que positions, 9 had been previously employed by the Employer in Char-B-Que operations and they worked periods of time varying from 2 weeks to 22 weeks in 1976.

As of the time of the hearing, there were approximately 4 Char-B-Que employees who work eight hours a day; the remainder work approximately five hours a day. All are paid the same relative pay rates as are the other unskilled employees of the Employer, that is, \$3.00 per hour to \$5.00 per hour. The Employer's year-round employee complement receives benefits which include paid vacations, Blue Cross-Blue Shield Medical Benefits, life insurance, profit-sharing and paid holidays. The full-time Char-B-Que operation employees receive the same benefits except for profit-sharing. The part-time Char-B-Que operation employees receive no benefits except for paid holidays. Some Char-B-Que operation employees moved from full-time to part-time work and lost all benefits but paid holidays. The record does not disclose whether the Employer has other part-time employees. The Char-B-Que employees punch a timeclock, as do most of the Employer's year-round employees.

In order to stock the line, the full-time Char-B-Que employees were hired several weeks before the Char-B-Que assembly line commenced production. They perform the same assembly work as do the part-time Char-B-Que employees when the Char-B-Que assembly line is functioning, as it is between 5 and 6 hours daily. In addition, they perform receiving and material handling functions for the Char-B-Que operations, such as bringing components from the warehouse to the line and feeding these parts to the line as needed. It is anticipated that all Char-B-Que employees will be laid off in approximately August 1978 when the contract is completed, although the full-time employees will be retained for an extra week to take inventory of the Char-B-Que supplies.

The Char-B-Que employees were hired by the Employer's plant manager, assisted by a personnel employee. Both were instructed by the president of the United Telecontrol Electronics, Inc. to tell the Char-B-Que employees at the time of their hire that they were being hired as temporary employees to perform a specific contract and that the duration of their employment would be until June or July 1978. The record reveals no evidence that these employees have ever been so informed or that they may or may not be recalled from layoff. However, the record

does reveal that the plant manager informed employees that he would try to keep three or four of the best Char-B-Que employees throughout the year if there was work available.

The Employer has assigned the Char-B-Que work to its U.T.E. Consumer Products section where it is performed in a building in which several other U.T.E. products are also made. However, the Char-B-Que operation has its own shipping area.

The record reveals that, in emergency situations, the Employer's year-round employees are assigned to perform Char-B-Que work and that four Char-B-Que employees, over the past several years, have been transferred to year-round positions. Further, one employee, a painter, routinely performs painting work for all facets of the Employer's operations, including Char-B-Que. Another year-round employee performed Char-B-Que work for approximately one month in late 1977 and has continued to perform such work periodically to date whenever year-round work was slow.

The Char-B-Que operations are under the direction of the Employer's plant manager who also directs the U.T.E. Consumer Products, Inc. machine shop, maintenance crew and material control employees. The Char-B-Que operation has separate immediate supervision as do each of the other U.T.E. operations.

The Board has held that employees, who are drawn from the same labor market area each year to perform seasonal work and who have a substantial expectation of substantial future employment, have a sufficient interest in employment conditions to justify their inclusion in a unit with year-round employees.³ In that case, the Board noted that 19 of the 29 seasonal employees had worked 2 months or more in the previous year and that at least 10 of the 29 had worked for the employer in that case in preceding years. In a later case⁴ the Board held that where there is a relatively stabilized demand for, and dependence on, a group of seasonal employees and, likewise, a reliance on such employment by a substantial number of employees in the labor market who return to work each season, those seasonal employees share sufficient interest in employment conditions with the other employees to warrant their inclusion in the unit. In that case, approximately one-third of the seasonal workers had worked the previous year, all seasonal employees came from the immediate vicinity of this Employer's operations and all performed substantially the same work as the other employees under the same supervisors. The

³ *P. G. Gray*, 128 NLRB 1026 (1960).

⁴ *Kelley Brothers Nurseries, Inc.*, 140 NLRB 82 (1962). See also *Millbrook, Inc.*, 204 NLRB 1148 (1973).

Board has included seasonal employees in an overall unit although no recall list is maintained; the significant factors in this regard are whether or not a pattern exists as to the number of employees returning each year and whether or not the employer draws from the same labor market each year.⁵ In another case, the Board held that seasonal employees who were paid on a different basis than, and do not receive the same fringe benefits as, the other employees do and who were each given an identification card stamped "Temporary Employee" because they work "only on a need basis" should not thereby be excluded from a unit of year-round employees.⁶

In the instant case, the Char-B-Que operation is not the only one performed by the Employer as a result of its obtaining a contract pursuant to bidding

procedures. Further, it has done Char-B-Que work on a seasonal basis for the past six years and, last year, it had a special production run of Char-B-Que grills in the late fall.

Based upon the foregoing and the record as a whole, noting that the Char-B-Que operations are seasonal, that the Employer draws from the same labor force area each year to perform these operations, that a number of the Char-B-Que employees return each year, that some have obtained employment as year-round employees, and that they work under the same overall supervision as do the year-round employees in the same building with them doing substantially the same type of work, I find that the Char-B-Que employees are seasonal employees who share sufficient interests in employment conditions to warrant their inclusion in a unit with the year-round employees.⁷

⁵ *Baumer Foods, Inc.*, 190 NLRB 960 (1971). See also *Knapp-Sherrill Company*, 196 NLRB 1072, 1075 (1972).

⁶ *The Julliard School*, 208 NLRB 152 (1974).

⁷ *The Julliard School*, *supra*. See also *The Wackenhut Corporation*, 224 NLRB 1142.