

discharge. Clearly they are supervisors within the meaning of the Act, and we shall exclude them from the voting group.

We direct that the questions concerning representation which have arisen be resolved by separate elections by secret ballot among the employees in the following voting groups:

1. All machinists, machinist apprentices, machinist helpers, and the tool keepers employed by the Employer at its Charleston, South Carolina, shipyard, excluding quartermen and leadmen, all other supervisors, and all other employees.

2. All remaining production and maintenance employees of the Employer at its Charleston, South Carolina, shipyard, including permanent and temporary laborers<sup>4</sup> and the material control men who are engaged in manual labor but excluding the material control men who are engaged in clerical work,<sup>5</sup> watchmen, guards, and supervisors as defined in the Act.

If the employees in group 1 select a bargaining representative different from that selected by the employees in group 2, the Board finds that they constitute a separate appropriate unit; and if, in these circumstances, the employees in group 2 also select a bargaining agent, the Board finds that the employees in group 2 also constitute an appropriate unit. If the employees in the two groups select the same bargaining agent, the Board finds that together they constitute an appropriate unit. The Regional Director conducting the elections directed herein is instructed to issue a certification of representatives to the union or unions in the unit or units which may result from the election. If either group selects no bargaining agent, the Regional Director shall issue a certificate of results of election to such effect.

[Text of Direction of Elections omitted from publication in this volume.]

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<sup>4</sup> Permanent and temporary laborers do the same sort of work, the former at 10 cents an hour more pay. In addition permanent laborers generally work at the same assignment, but temporary laborers have their work assigned each day. Both classifications work together and temporary laborers become permanent as they acquire more skill.

<sup>5</sup> Excluded because of the clerical character of their work are inside material control men who spend 85 percent of their time at clerical tasks, of whom the record indicates there are three or four, and the outside material control man, who spends 75 percent of his time at such tasks.

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PUERTO RICO CEMENT CORPORATION *and* UNION DE TRABAJADORES DE LA INDUSTRIA DEL CEMENTO DE PUERTO RICO (IND.), PETITIONER.  
*Case No. 24-RC-218.—December 10, 1951*

### Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Philip Licari, hearing

officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 Houston, Reynolds, and Styles].

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 organizations involved claim 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.<sup>1</sup>

4. The appropriate unit:

We find, in accord with substantial agreement of the parties,<sup>2</sup> that all production and maintenance employees at the Employer's operations in Barrio Sabana, Guaynabo, P. R., excluding office and clerical employees, professional employees, laboratory employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. The Petitioner contends, contrary to the Intervenor, that workers designated by the Employer as temporary employees are ineligible to vote.

There are about 165 permanent employees and 100 to 110 temporary employees at the Employer's plant. The temporary employees do not share in the benefits granted in the contract between the Employer and the Petitioner, wear different colored badges, are listed separately on the payroll, and are generally told the expected duration of their employment at the time of hire. However, they perform the

<sup>1</sup> At the hearing, the Petitioner moved to withdraw its petition on the grounds that (1) it was misled by its then attorney as to the necessity for filing the petition; and (2) its existing contract with the Employer, which extends to December 31, 1952, is a bar. As to (1), the Intervenor, Sindicato de Trabajadores de la Industria del Cemento, has established its right to intervene by an adequate showing of interest and opposes the Petitioner's motion to withdraw. Under these circumstances, the Petitioner's alleged misapprehension does not warrant the Board's permitting the withdrawal of the petition. Cf. *Frank Foundries Corporation*, 92 NLRB 1754; *Monticello Charm Tread Mills, Incorporated*, 80 NLRB 379. With respect to (2), the Petitioner itself raised the question concerning representation by filing the instant petition and, therefore, apart from other considerations, its contract covering the employees involved cannot serve as a bar. *Western Equipment Company*, 96 NLRB 1211. Accordingly, the Petitioner's motion to withdraw its petition is hereby denied. However, either participant in the election hereinafter directed may, upon its prompt request to, and approval thereof by, the Regional Director, have its name removed from the ballot.

<sup>2</sup> The parties are in disagreement as to whether certain individuals classified as temporary employees should be included in the unit. However, our unit finding is based upon functionally related occupational categories and all employees working at jobs within the unit are necessarily included and entitled to representation irrespective of the tenure of their employment. The separate issue of the voting eligibility of such employees will be discussed in paragraph numbered 5, *infra*.

same type of functions and have the same hours of work and supervision as the permanent employees. They also are paid wages comparable to those received by some of the permanent employees and, like the permanent employees, are given a Christmas bonus each year.<sup>3</sup> The record further shows that most of the temporary employees currently employed, on a date approximately 2 months before the hearing had worked for the Employer intermittently during the last 4 years;<sup>4</sup> that, within this period, they were employed for periods up to 22 months and had been recalled for work as many as 10 times; and that the current employment of many of these temporary employees had extended for 8 months or more. Moreover, the Employer's general administrator testified that an attempt is made first to recall employees who have previously worked for the Employer and that, when vacancies occur or new jobs are created in the permanent classification, preference in filling these jobs is given to the temporary employees.

Under all the circumstances, we find that the temporary employees have a substantial interest in the employment conditions at the Employer's plant and are, therefore, eligible to vote.<sup>5</sup>

[Text of Direction of Election omitted from publication in this volume.]

<sup>3</sup> The permanent employees receive a bonus guaranteed by contract while the temporary employees receive an amount decided by special action of the Employer's board of directors.

<sup>4</sup> Some temporary employees had worked for the Employer intermittently for over 12 years.

<sup>5</sup> *The Welch Grape Juice Company*, 96 NLRB 214. Cf. *Taunton Pearl Works*, 89 NLRB 1382.

**THE OCALA STAR BANNER and INTERNATIONAL PRINTING PRESSMEN & ASSISTANTS' UNION OF NORTH AMERICA, A. F. OF L., PETITIONER.**  
*Case No. 10-RC-1365. December 10, 1951*

**Order Directing Regional Director to Open and Count  
Challenged Ballot**

Pursuant to a Decision and Direction of Election<sup>1</sup> of the Board, an election by secret ballot was conducted on August 17, 1951, under the direction of the Regional Director for the Region in which this case was heard, among the employees of the Employer in the unit found to be appropriate. At the close of the election, the parties were furnished a tally of ballots. The tally showed that there were three ballots cast, of which one was for the Petitioner and two were challenged by the Employer. As the challenged ballots were sufficient to

<sup>1</sup> 95 NLRB 569.

97 NLRB No. 57.