of the challenged ballots will affect the outcome of the election, a further investigation will be conducted to determine their supervisory status.

Accordingly, we find that a unit consisting of all production and maintenance employees at the Employer's Trenton, Missouri, plant, including in-town truck drivers, night watchmen,[7] and part-time departmental foremen,[8] but excluding office and clerical employees, confidential employees, over-the-road truck drivers, professional employees,[9] guards, the general foreman, departmental foremen, and all other supervisors within the meaning of the Act, is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. The Petitioner contends that voting eligibility should be determined as of the time of the filing of the petition, when there were 64 employees working. The Employer contends that all 225 employees who are employed during peak periods are regular employees entitled to vote. The Employer keeps a list of laid-off employees, and in the past, when production increased, these employees were called back according to seniority. The Employer testified that it intended to continue this practice as soon as the expected increase in business materialized. Under these circumstances, we find that the laid-off employees have a reasonable expectation of reemployment by the Employer, and therefore are entitled to participate in the election herein directed.[10]

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

[7] The parties agreed to include the night watchmen in the unit. As the record establishes that the primary duty of these employees is to operate the boilers at the Employer's plant, that they have no authority to report or discipline employees of the Employer, and that their watchman duties consist mainly in reporting fires and broken windows and in checking locks at the Employer's plant, we find that the night watchmen are not guards within the meaning of the Act. Accordingly, we have included them in the unit.

[8] For the reasons set forth above, the inclusion of the part-time departmental foremen is solely for the purpose of permitting them to vote, and is not to be taken as a final determination of their status as supervisors.

[9] The parties agreed to the exclusion of the chemist as a professional employee within the meaning of the Act. Accordingly, he is excluded from the unit.

[10] *Cherry Brook Worsted Mills*, 86 NLRB 1321.

SAN JOSE BUILDERS COMPANY[1] *and* UNION DE TRABAJADORES DE LA CONSTRUCCION Y RAMAS ANEXAS DE PUERTO RICO (UGT), PETITIONER. *Case No. 24–RC–446. December 31, 1952*

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 Roy J. Cohen, hearing officer.

[1] Herein called the Company.

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, Murdock, 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.[2]

3. The Company and Local 1801 offer as a bar to this proceeding their current amended contract. That contract contains a provision that employees must become members of the Union within 10 days from the execution of the agreement.[3] Under well-established Board policy a contract containing such a provision is ineffective as a bar in a representation proceeding.[4] Nor is the defect in the contract cured by a subsequent oral agreement between the parties to refrain from enforcing that clause.[5]

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.

4. The Petitioner seeks a unit composed of all the construction and maintenance employees working for the Company at the San Jose Housing Development at Hato Rey, Puerto Rico, including the employees of subcontractors for masonry finishing, cement-block wall erection and plastering, and carpentry. The Company, conceding this unit to be appropriate in the main, contends that the masonry, plastering, and carpentry subcontractors are independent contractors within the meaning of the Act and that their employees should therefore be excluded from the unit.

The Company has contracted with the Puerto Rico Housing Authority to construct 851 living units at the San Jose Housing Development. The Company has subcontracted some of the electrical, painting, and plumbing work at the project and, more recently, certain

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[2] The hearing officer granted motions to intervene at the hearing by Union de Trabajadores de la Construccion, Local 1801, Amalgamated Trade Unions' Council (ILA–AFL), herein referred to as Local 1801 on the basis of a current contractual interest, and by Union Insular de Trabajadores de la Construccion, Federacion Libre de los Trabajadores de Puerto Rico, herein referred to as Union Insular, on the basis of an adequate showing of interest.

[3] Although the parties' original contract provided for a 30-day grace period as required under Section 8 (a) (3) of the Act, that contract was otherwise unlawful in that Local 1801 was not at the time of its execution in compliance with Section 9 (f), (g), and (h) of the Act.

[4] *Charles A. Krause Milling Co.*, 97 NLRB 536; *Kress Dairy, Inc.*, 98 NLRB 369.

[5] *National Malleable and Steel Castings Company*, 99 NLRB 737; *Ketchum & Company, Inc.*, 95 NLRB 43; cf. *New Jersey Oyster Planters and Packers Association, Inc.*, 98 NLRB 1187.

masonry and carpentry work. All parties to this proceeding agree that the employees of the subcontractors for the electrical, painting, and plumbing work should be excluded from the unit, but the Petitioner and Intervenors contend that all the remaining employees, including those working under other subcontractors at this project, should be included in the unit.

The 15 subcontractors in dispute have undertaken to furnish the labor and supervision for the completion of certain construction jobs—the laying and plastering of cement-block walls, the finishing of masonry work, and the construction of rough and false carpentry work on stairs—in return for a fixed sum for each job completed. The subcontracts and other evidence presented at the hearing show that the subcontractors operate independently in the execution of their work; they may engage as many or as few of their own employees as they think necessary; they exclusively direct and supervise their own employees; they do their own hiring and discharging; they alone are expected to meet the wage claims of their employees.[6] The contracts require that the subcontractors perform stated work. As shown by the subcontracts and the practices of the parties, no power to control or direct this work has been reserved to the Company. The only authority to hire, fire, discipline, or direct the subcontractors' employees lies with the subcontractors. We find that the subcontractors in question are independent contractors within the meaning of the Act[7] and shall, therefore, exclude from the bargaining unit hereinafter found appropriate all employees of these subcontractors.

Accordingly, we find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All construction and maintenance employees employed by the Company at the San Jose Housing Development, Project PR 3–16, at Hato Rey, Puerto Rico, including crane operators, scoopmobile operators, bulldozer operators, mechanics, mechanics' helpers, pipefitters, greasers, drivers, carpenters, carpenters' helpers, reinforcers, reinforcers' helpers, masons, masons' helpers, transit men, and laborers; but excluding employees employed by the painting, electrical, plumbing, masonry finishing, cement-block wall erecting, cement-block wall plastering, and carpentry subcontractors, office clerical employees, engi-

[6] The Company makes deductions from its payments to the subcontractors for social security taxes, Workmen's Compensation Insurance, and public and property liability insurance. These deductions correspond to the amounts for which the subcontractors are liable as *employers* and for which the Company would be liable should the subcontractors fail to make these payments

[7] *Oklahoma Trailer Convoy, Inc.*, 99 NLRB 1019; see *N. L. R. B.* v. *Steinberg & Co.*, 182 F. 2d 850 (C. A. 5), setting aside 78 NLRB 211, in which the court adopted the "control test" in deciding that persons working for the Respondent were independent contractors.

neers, administrative, executive, and professional personnel, time-keepers, storekeepers, janitors, watchmen, foremen, guards, and all supervisors as defined in the Act.

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

GOLDEN STATE AGENCY, INC., STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, STATE FARM FIRE AND CASUALTY COMPANY AND STATE FARM LIFE INSURANCE COMPANY *and* INSURANCE AND ALLIED WORKERS ORGANIZING COMMITTEE, CIO, PETITIONER. *Case No. 20-RC-1622. December 31, 1952*

Amended Decision and Direction of Election

On March 20, 1952, the Board issued its Decision and Order in the above-entitled case [1] finding that the insurance agents sought by the Petitioner were independent contractors and dismissing the petition. On April 29, 1952, the Petitioner filed a motion to reopen the hearing for the purpose of taking certain additional evidence relevant to the status of the insurance agents. On May 14, 1952, the Employers filed a memorandum in opposition thereto. On May 23, 1952, the Board issued an Order granting the Petitioner's motion to reopen the record subject to the right of the Employers to adduce additional evidence bearing on the issue, and remanded the case to the Regional Director for further hearing.

Pursuant to the Board's Order, a hearing was held before Jerome H. Brooks, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon reconsideration of this case, and upon the entire record herein, the Board makes the following findings of fact: [2]

1. The Employers are engaged in commerce within the meaning of the Act.

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

3. The Petitioner seeks a unit of all insurance agents appointed by and acting for the Employers in the State of California. The Employers contend that the agents sought are independent contractors.

The Employers write life, fire and casualty, and automobile insurance in the United States and Canada. The California operations involved herein are under the over-all supervision of a State director

[1] 98 NLRB 778.

[2] As the entire record and briefs adequately present the issues and the positions of the parties, the Employers' request for oral argument is hereby denied.