

mutual assent of Budd and the Union on June 29 to negotiate changes in the old agreement clearly manifested their understanding that the timekeepers agreement, as automatically renewed on May 30, would remain in effect until modified, and nothing that the parties did before or after June 29 indicates a contrary intention.³

Thus, in the absence of any showing that Budd and the Union had terminated the timekeepers contract, we find that it was in effect on July 1 when the timekeepers engaged in their strike. The Respondent was therefore free under terms of the no-strike clause to discharge these employees for their contract violation. We shall accordingly dismiss the complaint.

[The Board dismissed the complaint.]

³ See *New England Lead Burning Company, Inc.*, 133 NLRB 863, where the Board found that a notice of termination may be revoked by a mutual oral agreement the effect of which was to permit automatic renewal of a contract.

The F. A. Bartlett Tree Expert Co., Petitioner and International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO, Local No. 1353. Case No. 9-RM-251. June 6, 1962

SUPPLEMENTAL DECISION AND DIRECTION OF SECOND ELECTION

Pursuant to a Decision and Order of the National Labor Relations Board¹ dated July 27, 1961, a hearing was held on August 18, 1961, before Cassius B. Gravitt, Jr., hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

In its petition, the Employer requests an election in a unit comprised of all employees employed and working out of the Charleston, West Virginia, office of the Employer and under the supervision and direction of the local supervisor of that office, excluding office clerical employees, temporary employees, technical employees, professional employees, guards, and supervisors as defined in the Act. The Union agrees to the appropriateness of this unit, which is the unit certified by the Board in August 1959 and covered by contract between the Employer and the Union, except that the Union, contrary to the Employer, would include temporary employees and exclude temporary foremen.

The Employer, which is engaged chiefly in line clearance for a power company within a 50-mile radius of Charleston, trims and fells trees,

¹ Not published in NLRB volumes.

cuts brush, and sprays foliage along the power company's right-of-way. Its 35 regular employees are classified as groundmen and climbers. They work in crews of five to seven, each crew normally headed by one of the six regular foremen, who have authority to hire and discharge. These foremen are stipulated by the parties to be supervisors within the meaning of the Act, and we so find.

Temporary employees: Spraying is done during 2 seasons: foliage spraying from June through August, and dormant spraying from November until March. During these periods, the Employer hires extra employees on a temporary basis. They work with regular employees, chiefly on spraying and brush cutting. This work is routine and can be learned in about 20 minutes. Extra hiring is heavier for the summer foliage spraying than for the winter dormant spraying, but the number hired for each season varies from year to year. For example, 42 were hired during the summer of 1960, but only 13 during the summer of 1961. The temporary employees are drawn from the regular labor force of the area. They are hired as temporaries, are told the approximate length of time they will be employed, are discharged at the end of that time, and do not share in any of the fringe benefits of the regular employees. Although no recall list is kept, most of the temporary employees have worked for the Employer one or more previous seasons. At the time of the hearing, there were three temporary employees on the payroll, all of whom had been hired in early June, and were scheduled to be laid off on or before September 1. One of these three was employed by the Employer for the first time in 1961; one had worked for the Employer for 2 or 3 months 2 years previously and also 6 or 8 years before his most recent employment; and the third had worked for 2 or 3 months in both 1958 and 1959.

In view of the foregoing, particularly the fact that temporary employees are drawn from the same labor force, are employed every year in substantial numbers for substantial periods of time, are composed primarily of former employees, and work with and do the same kind of work as the permanent employees, we find that they have sufficient interests in employment conditions to warrant their inclusion in the unit.²

Temporary foremen: Employees who are put in charge of crews during spraying seasons and while regular foremen are on vacation are designated as "temporary foremen." During the year prior to the hearing, various employees served as temporary foremen for periods ranging from 2 to 37 weeks. The contract between the Employer and the Union provided that employees would not be covered by the contract while serving as temporary foremen. They continue, however,

² *Knouse Foods Co-Operative, Inc.*, 131 NLRB 801.

Members Leedom and Brown do not agree with the inclusion of these employees in the unit, but would exclude them as casuals under all the circumstances of this case.

to receive the employee benefits. The temporary foremen receive 30 cents an hour more than their regular rate, but do not receive the same pay or benefits as the regular foremen.

Like regular foremen, temporary foremen work along with their crews, which consist of both regular and temporary employees. Unlike the regular foremen, however, temporary foremen have no authority to discharge or to make effective recommendations regarding the employment status of their crew members. While the Employer's job description provides that temporary foremen may select men for temporary employment when so directed by the area supervisor, and one temporary foreman testified that he has hired temporary employees when so authorized, all the other temporary foremen who testified stated that the area supervisor had to approve those hired for such temporary work. In addition, the area supervisor testified that he designates the specific individuals to be hired for these temporary jobs, that he sometimes requests the groundmen and climbers as well as the temporary foremen to bring men in when needed for temporary work, and that no temporary employees are hired without his approval.

The area supervisor designates one of the regular foremen to serve as his assistant during periods when crews are added, and either the area supervisor or his assistant visits each crew one or more times a week. Temporary foremen keep time records and report irregularities to the area supervisor or his assistant. The record also establishes that the temporary foremen serve as conduits for the directions of the area supervisor and his assistant, as well as the representative of the power company for which this work is done.

Under all circumstances of this case, we find that the temporary foremen are leadmen who direct the work of their crews, but that they are not required to exercise independent judgment in doing so and do not possess any of the other statutory indicia of supervisory authority. We shall, therefore, include them in the unit.³

Accordingly, we find that the following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act: All employees employed and working out of the Charleston, West Virginia, office of the Employer and under the supervision and direction of the local supervisor of that office, including temporary employees and temporary foremen, but excluding office clerical employees, technical employees, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Second Election omitted from publication.]

³ Member Rodgers would find that the temporary foremen possess statutory supervisory authority. As they spend a regular and substantial part of their time during the year performing such supervisory duties, he would exclude them.