

Platt Electric Supply, Inc., Employer-Petitioner and Chauffeurs, Teamsters and Helpers, Local No. 58, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

Platt Electric Supply, Inc. and Chauffeurs, Teamsters and Helpers, Local No. 58, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Cases 19-RM-1217 and 19-RC-7401

September 8, 1975

DECISION ON REVIEW

BY CHAIRMAN MURPHY AND MEMBERS FANNING
AND PENELLO

On April 25, 1975, the Regional Director for Region 19 issued a Second Supplemental Decision on Determinative Challenges and Direction, in which he adopted a Hearing Officer's finding that James E. Doherty, Jr., was an eligible voter in the election conducted on February 12, 1975, and directed the opening and counting of his ballot, together with five other ballots, challenges to which had earlier been overruled. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of his decision, on the ground, *inter alia*, that he erred in rejecting its exceptions to the Hearing Officer's findings of fact as to Doherty's eligibility to vote in the election.

The National Labor Relations Board, by telegraphic order dated June 2, 1975, granted review as to the eligibility of Doherty and denied review in all other respects. The Employer and Petitioner filed briefs on review.

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 considered the entire record in this case with respect to the issues under review, including the briefs on review, and hereby adopts the Regional Director's Second Supplemental Decision, with the following additions:

Although Doherty was originally hired as a tempo-

rary employee and worked as such for about a week, the Hearing Officer found—and credible evidence establishes—that, during the first week of November 1974, the Employer asked him if he wanted to work regularly after his classes at a local community college, and that thereafter he worked 3 to 5 hours a day, Monday through Friday, and sometimes on Saturday, except during the last week in November when he worked 3 days. The record indicates that, on approximately December 2, Doherty requested permission from the Employer to be off from work for the month of December, which was his school Christmas holiday period, to visit his mother in Hawaii. The Employer's manager agreed to such leave and noted the anticipated date of Doherty's return to the job on a yellow note pad. When Doherty reported to the plant after his vacation, he ascertained that an economic strike, which had begun during his absence, was in progress. At that time, according to his credited testimony, Doherty told the manager that he would be glad to return to work part time after the strike was resolved and the manager nodded affirmatively. Unlike employees who were admittedly separated, Doherty was never given a termination notice.

Our review of the record reveals that, although Doherty had applied for admission to a college in Hawaii, it is clear that *before* his vacation he had decided not to attend school there, and in fact had preregistered at his local college in order to be able to attend school there after Christmas.

On the basis of the foregoing and the record as a whole, we conclude that Doherty occupied the status of a regular part-time warehouse employee in November, was given a leave of absence to visit his mother in Hawaii during his Christmas vacation, and would have returned to work for the Employer in the same status upon his return from Hawaii but for the economic strike which was in progress affecting the Employer's warehouse employees. We find, therefore, that he was eligible to vote at the time of the election and affirm the Regional Director's determination to overrule the challenge to his ballot.

Accordingly, the case is remanded to the Regional Director in order that he may proceed further pursuant to the direction previously issued by him.¹

¹ We hereby deny the Employer's motion to reopen the record, as the additional evidence sought to be introduced would not require a different result