main location at Hallandale have sufficient community of interest to warrant their inclusion in the same appropriate unit. However, in view of the transitory nature of the road construction work and the mobility and interchange of employees working on such projects, and the fact that the Petitioner does not desire to include all road construction employees, we are unable to agree with the Regional Director's inclusion of only those road construction employees who may at some time fortuitously work in Dade and Broward Counties and instead shall exclude all employees working on road construction and paving.

Accordingly, with respect to unit No. 1, we find that the following employees constitute an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All service, maintenance, and quarry employees of Curcie Brothers, Inc., Crucie Brothers Trucking, Inc., and Beach Boulevard Service, Inc., working at and out of their plant at 3190 Hallandale Beach Boulevard, Hallandale, Florida, including truckdrivers, but excluding employees working at road construction and paving projects, employees at the LaBelle rock pit in Hendry County, office clerical employee, professional employees, guards, and supervisors as defined in the Act.

The case is hereby remanded to the Regional Director for the Twelfth Region for the purpose of conducting an election in unit No. 1, as modified herein, except that the eligibility period shall be the payroll period immediately preceding the date below.

Holt Bros. *and* Operating Engineers, Local No. 3, International Union of Operating Engineers, AFL–CIO, Petitioner. *Case No. 20–RC–5596. March 17, 1964*

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 Hearing Officer Elizabeth M. Bianchi of the National Labor Relations Board. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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

3. A question affecting commerce exists concerning the representation of certain employees of the Employer with the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that all production and maintenance employees, field and shop mechanics, their helpers and apprentices, and partsmen working in and out of the Employer's shops in Stockton, Modesto, Tracy, Merced, and Los Banos, California, excluding office and plant clerical employees, salesmen, professional 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 Employer contends that no election should be directed at this time because of pending unfair labor practice charges filed by the Employer against the Petitioner alleging that the Petitioner had violated Section 8(e) of the Act by entering into a contract with an employer association requiring that the terms of the contract apply to subcontractors performing work off the jobsite, and granting immunity to employees who refuse to cross picket lines without regard to whether the strike has been ratified by the bargaining representative of the striking employees.

As stated by the Employer, the Board does not normally conduct representation elections while unresolved unfair labor practice charges are pending, unless the charging party requests the Board to proceed with the election.[1] But this rule was formulated in cases involving charges alleging violations of Section 8(a) and (b) of the Act, where, if the charges were true, a free election could not normally be held because of the restraint and coercion of employees flowing from the unfair labor practices. However, in contrast, a charge alleging a violation of Section 8(e), if true, would not necessarily restrain or coerce employees and thus prevent a fair election, because this section of the Act deals only with terms of agreement between an employer and a labor organization, regardless of whether it is publicized to employees. In the absence of any allegation that the Petitioner sought to utilize the contract with the employer association to influence the employee choice of a bargaining representative, we do not believe that the pendency of the instant charges will make a free election in this case impossible at the present time.[2] Accordingly, we shall direct an immediate election.

[Text of Direction of Election omitted from publication.]

[1] *Edward J. Schlachter Meat Co., Inc.*, 100 NLRB 1171. But cf. *Columbia Pictures Corporation, et al.*, 81 NLRB 1313.

[2] Cf. *Superior Wood Products, Inc.*, 145 NLRB 782.