ployees and, in some cases, the same immediate supervision. For the most part, they work in offices attached to either warehouses or gasoline plants.

On the basis of these facts and on the record as a whole, we find that the clerks, warehousemen, and storekeepers do not come within the classification of office-clerical employees whom the Board excluded from the unit found appropriate in the original decision in this case.[5] Accordingly, we find that the clerks, warehousemen, and storekeepers are, and have been, included in that appropriate unit.[6]

Order

IT IS HEREBY ORDERED that the "Motion for Clarification" of the Decision, Direction of Election, and Order issued in this proceeding on September 5, 1949, be, and it hereby is, granted, and accordingly it is declared that clerks, warehousemen, and storekeepers were included within the unit found appropriate in that Decision, Direction of Election, and Order.

[5] It appears from the record that the Employer also has a classification called junior typist, though at present the position is unoccupied The two most recent occupants have been transferred to other jobs among the disputed field clericals. The job of the junior typist consists of filing and typing and also assisting the other field clerical employees. We find that the junior typist also is not an office-clerical position and is therefore included within the unit heretofore found appropriate.

[6] *Standard Oil Company, (Indiana)*, 80 NLRB 1275; *Union Oil Company of California*, 62 NLRB 1144.

CAPITOL TRAILER COMPANY, INC.[1] *and* UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, PETITIONER. *Case No. 32–RC–362. October 25, 1951*

Decision and Direction of Election

Upon a petition duly filed, a hearing was held before John E. Cienki, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[2]

[1] The name of the Employer appears as amended at the hearing.

[2] The hearing officer erred in denying the Employer's motion to dismiss the petition on the ground that the Petitioner failed to submit proof of its interest and of compliance with Section 9 (f), (g), and (h) of the Act. Under Section 102 57 of the Board's Rules and Regulations a motion to dismiss the petition should be referred to the Board However, the hearing officer's ruling in this case was not prejudicial because the motion to dismiss is without merit. *Modern Welding Company*, 93 NLRB No 220 As to the allegation that the Petitioner failed to submit proof of its interest, the Board has repeatedly held that the showing of interest is not litigable at the hearing, but that it is a matter for the Board to determine in its administrative capacity We are, furthermore, administratively satisfied that the Petitioner has made a sufficient showing of interest. *Modern Welding Company, supra.*

With regard to the assertion that the Petitioner failed to submit proof of its compliance, the fact of compliance by a labor organization that is required to comply is also a matter for administrative determination and is not litigable by the parties. Moreover, the Board

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated it powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Murdock].

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

1. The Employer, an Arkansas corporation, is engaged in repairing trailer and stake bodies for trucks. During the 6-month period ending August 31, 1951, the Employer made purchases of materials valued at $73,531, of which $36,381 were received by it from points out of State. During the same period, it made sales of finished goods and services valued in excess of $122,000. Within the past year, the Employer received $45,000 for trucks sold [3] to Safeway Stores Co., Inc., over which the Board has heretofore exercised jurisdiction.[4] On April 11, 1951, the Employer obtained a contract from the Red River Arsenal, an agency of the Defense Department of the United States, to perform services in the amount of $57,000. About a month later, it obtained a similar contract from the same agency in the amount of $22,000. At the time of the hearing, on September 7, 1951, about one-half of the work under these contracts had been completed.[5]

We find, contrary to the Employer's contention, that it is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction.[6]

2. The labor organization involved claims to represent 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.

4. The Petitioner seeks to represent a unit composed of all the Employer's production and maintenance employees, with certain specified exclusions. The Employer contends that all its employees except seven or eight are temporary employees and should therefore be excluded from the unit.

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is administratively satisfied that the Petitioner is in compliance *Sunbeam Corporation*, 94 NLRB 844; *Swift & Co.*, 94 NLRB 917. Cf. *N. L. R. B.* v. *Highland Park Manufacturing Co.*, 71 S. Ct. 489 The hearing officer's denial of the Employer's motion to dismiss the petition is hereby affirmed.

[3] The record does not indicate whether it obtained these trucks directly from the manufacturer or from other distributors.

[4] The record does not show over which of its other customers the Board has asserted jurisdiction.

[5] We find no merit in the Employer's contention that the Defense Department contracts were temporary projects, and that because it "has no other government contracts, and none are contemplated," the Board should not assert jurisdiction. The record is clear that the work undertaken by the Employer for the Defense Department agency is the same work that it is engaged in doing for other customers. No reason appears in the record why the Defense Department agency may not offer the Employer other contracts for similar work after its present work is completed Nor is there anything in the record to indicate that the Employer would refuse any other Government contract if offered. We believe that in any event, as the Employer is presently engaged in a substantial Defense Department contract, it would affect the present defense effort if a labor dispute developed at this time in the Employer's plant.

[6] *Westport Moving and Storage Co., Crate Making Division*, 91 NLRB 727.

The Employer bases its contention that a majority of its employees [7] should be excluded from the unit as temporary on the ground that they were hired for the special job on the 2 Government contracts which it had obtained in April 1951, and on the assertion that when these contracts are completed it will revert to its original labor complement of between 7 and 11 employees. The Employer is not certain that it may not receive further contracts from the Defense Department, but is unwilling to concede that it might continue to get similar work from Government agencies and others. The Employer nevertheless did not inform any of its employees at the time they were hired that there was to be any limitation on the duration of their employment.[8] Under all the circumstances, we find that all the production and maintenance employees of the Employer should be included in the unit herein found appropriate [9] and are eligible to vote in the election.

We find that all production and maintenance employees at the Employer's Little Rock, Arkansas, plant, excluding office and clerical employees, guards, foremen, assistant foremen, and all other supervisors as defined in the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

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

[7] At the time of the hearing, the Employer had about 25 employees.

[8] The Employer's counsel stated, however, that after the filing of the petition in this case, the employees were informed that their employment was temporary.

[9] Cf. *Lone Star Boat Mfg. Co.*, 94 NLRB 19, and cases cited therein.

A. B. HIRSCHFELD PRESS, INC. *and* AMALGAMATED LITOGRAPHERS OF AMERICA, LOCAL 15, CIO, PETITIONER. *Case No. 30–RC–470. October 26, 1951*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Clyde F. Waers, 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, 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.