

ployees. The wage rates of the former are not related to nor dependent upon the wage rates of the latter. Although the employees sought are employed on an intermittent basis, the record reveals the same men are usually hired from a pool of these employees and that a number of them have been employed by the Employer for 1 or 2 years.

Under the circumstances we find that the employees sought by the Petitioner are in effect regular part-time employees whose conditions and interests of employment are substantially different from those of the permanent employees, and that they may be represented as a separate appropriate unit.²

We therefore find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act: All shipboard employees employed on an intermittent basis by the Employer at the drydock utilized by the Employer in Miramar, Santurce, Puerto Rico, excluding all permanent employees employed in the Employer's foundry and shops, administrative, executive, and professional employees, office clerical employees, guards, watchmen, firemen, and all supervisors as defined in the Act.

5. The determination of representation :

In view of the intermittent nature of the employment of the employees involved in the petition, we have modified our usual direction of election to provide that only those employees within the appropriate unit described in paragraph 4 whose names appear on three or more payrolls of the Employer in the 8 months preceding this Direction shall be eligible to vote.³

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

² See *Mario Mercado e Hijos d/b/a Central Rufina, Inc.*, 92 NLRB 1509, and *Temphon Trading Company, Inc.*, 88 NLRB 597, in which the Board held that where the conditions of employment of part-time or casual employees employed aboard ships differ substantially from those of the permanent employees of the Employer, such part-time or casual employees as a group constitute a separate appropriate unit.

³ *Mario Mercado e Hijos d/b/a Central Rufina, Inc.*, *supra*.

ALTAMONT KNITTING MILLS, INC. and UNITED TEXTILE WORKERS OF AMERICA, AFL, PETITIONER. *Case No. 4-RC-1629. November 21, 1952*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, hearings were held before Bernard Samoff and Harold 101 NLRB No. 109.

Kowal, hearing officers. The hearing officers' rulings made at the hearings are free from prejudicial error and are hereby affirmed.¹

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 Intervenor contends that it has an effective contract with the Employer which bars the instant petition and moved to dismiss the petition on that ground. We do not agree and the motion to dismiss is denied. On March 15, 1950, the Employer and the Intervenor executed a contract covering the employees concerned herein. The contract was for a term of 1 year with provision for automatic renewal in the absence of 60 days' notice prior to the date of termination. On December 20, 1950, the Intervenor and the Employer executed a supplemental agreement which, among other things, amended the previous agreement to provide for a termination date of March 15, 1952. On January 11, 1952, Joseph Bellas, a business agent of the Intervenor, sent a letter to the Employer notifying the latter that the Intervenor desired to terminate the contract and commence negotiations for a new agreement. On March 15, 1952, Bellas, signing for the Intervenor, and the Employer executed a "Stipulation of Agreement" extending the previous contract pending negotiation of a new agreement. This stipulation of agreement is terminable by either party upon 10 days'

¹ The Textile Workers Union of America, CIO, herein termed the Intervenor, moved at the hearing to strike the testimony of Bellas for refusal to answer certain questions. The Intervenor also moved to terminate the hearing and for a new hearing on the ground that the hearing officer had asked leading questions prejudicial to the Intervenor's case. Both motions were referred to the Board and are herewith denied. The Board's Rules and Regulations, Series 6, as amended, Section 102.58, provides that refusal by a witness to answer may be grounds for striking testimony previously given by the witness within the discretion of the hearing officer. We do not believe the refusal of witness Bellas to answer herein, if, indeed, there was such a refusal, is sufficient ground for exclusion of the remainder of his testimony. Likewise, we find nothing in the record to show that the hearing officer in any way abused the discretion entrusted that position by the Board. The hearing officer is vested with the authority to call witnesses and elicit testimony in representation cases in order that a complete record may be compiled. See *Signode Steel Strapping Company*, 83 NLRB 184. The Intervenor also moved to dismiss the petition on grounds relating to the compliance status of the Petitioner and its Local 861B. The fact of compliance by a labor organization which is required to comply is a matter for administrative determination and is not litigable by the parties. Moreover, the Board is administratively satisfied that the Petitioner is in compliance. See *Swift & Company*, 94 NLRB 917; cf. *Highland Park Manufacturing Company*, 71 S. Ct. 489. The Board's administrative records also show that the Petitioner's Local 861B has achieved compliance as a new local. We find no merit in the contention of the Intervenor that the petition should be dismissed for failure of this local to comply prior to hearing in this case. Cf. *United States Gypsum Company*, 100 NLRB 1100.

² The Intervenor was granted intervention at the hearing without objection on showing of a contractual interest in these employees.

written notice. As such, it is clearly a contract terminable at will and cannot, under long-standing Board precedent, bar a petition for determination of representatives.³ The Intervenor, however, contends that this stipulation of agreement and the notice of intent to terminate the previous contract sent on January 11 were both unauthorized acts on the part of Business Agent Bellas. It therefore asserts that the previous contract was not terminated, as a matter of law, and replaced by the stipulation, but was automatically renewed for a term ending March 15, 1953, and bars this petition.⁴ We do not agree.

The employees at the Employer's plant, for the past few years, have been a part of the Intervenor's Local 861, which is attached to the Penn-Appalachian Joint Board.⁵ The bylaws of the Joint Board provide for a managing director who has authority to negotiate and sign collective bargaining contracts subject to the approval of the local unions. They also provide for business agents who are delegated authority to "assist the managing director in the performance of such work and activities as the managing director shall direct." It is not contested that Bellas, as one of these business agents, has serviced the employees of the Employer and Local 861 in the past, and, indeed, has been one of the signatories to each of the collective bargaining contracts between the Intervenor and the Employer. The letter of termination sent January 11, 1952, by Bellas was on the stationery of the Joint Board. Nothing appears on the face of the letter to indicate any lack of authorization on the part of Bellas who signed it. Moreover the bylaws of the Joint Board do not indicate any such lack of authority.⁶ We note further that the Intervenor made no attempt prior to the hearing to disavow the action of Bellas or assert the illegality of either the termination or the extension agreement and the Employer clearly relied upon the sufficiency of the notice for a considerable length of time without challenge. Under all the circumstances, therefore, we find that timely notice of intent to terminate the contract between the Employer and the Intervenor was

³ See *Mid-Continent Coal Corporation*, 82 NLRB 261.

⁴ The Intervenor also submitted an offer of proof to the effect that the termination letter of January 11 and the stipulation of agreement were part of a conspiracy by Bellas and others to remove any barrier to an election at this plant if certain factions were unsuccessful at the Intervenor's convention. The offer of proof is rejected.

⁵ Employees at the Employer's plant were included in the same local as employees of another employer in the same vicinity. The separate shops apparently retained some autonomy of action and held separate shop meetings within the local structure.

⁶ The Intervenor contends that the termination letter, as a part of the general process of contract negotiation, could have been valid only if approved by the Local. It further asserts that the minutes of the meetings of Local 861 do not show any such authorization. We do not consider, however, that the bylaws of the Joint Board, in providing for negotiation by the managing director and his agents "subject to the approval of those Local Unions whose members are covered thereby," necessarily provide that the approval of the Local must be noted in formal fashion. As noted above, neither the Local nor the Intervenor's international organization expressed any disapproval or rejection of the termination action until the date of this hearing.

given on January 11, 1952, and that neither this terminated agreement nor the stipulation of agreement dated March 15, 1952, bars the instant petition.⁷ The Board finds that 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. We find that all production and maintenance employees of the Employer's Wilkes-Barre, Pennsylvania, textile plant, including the receiving clerk but excluding office employees, guards, executives, and all supervisors as defined in the amended Act, constitute a unit appropriate for the 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 See *Amco Tank and Welding Works, Inc.*, 85 NLRB 861; *Joseph E. Knox & Co.*, 86 NLRB 1257; *Dictaphone Corporation*, 78 NLRB 866. We do not consider the facts of these cases distinguishable from those of the instant case as urged by the Intervenor in its brief.

TUBE TURNS, INC. *and* LOUISVILLE DIE SINKERS' LODGE #430, INTERNATIONAL DIE SINKERS' CONFERENCE, PETITIONER. *Case No. 9-RC-1658. November 21, 1952*

Order Setting Aside Election and Directing Second Election

On October 16, 1952, the Intervenor moved to set aside the election conducted on October 3, 1952, on the ground that the Petitioner was not in compliance on that date. The Petitioner is an affiliate or a constituent unit of International Die Sinkers' Conference, whose compliance with Section 9 (h) had lapsed on September 24, 1952, and was not renewed until October 6, 1952.

As the election was a crucial part of the investigation of the question affecting commerce concerning the representation of employees, raised by the Petitioner under Section 9 (c), the Board finds that temporary noncompliance with Section 9 (h) invalidates it. Accordingly, the election is hereby set aside. However, Section 9 (h) does not require dismissal of the petition because of this lapse of compliance. The Board therefore directs the Regional Director to conduct another election not later than 30 days from the date of this Order, under the same terms and conditions as were provided in the Board's original Decision and Direction of Election issued September 9, 1952.

Dated, Washington, D. C., November 21, 1952.

By direction of the Board:

OGDEN W. FIELDS,
Executive Secretary.