tract as extended is not a bar to a petition filed within a reasonable time before the expiration date.[5]

4. The parties stipulate and we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees at the Employer's Trenton, New Jersey, plant, excluding all office clerical employees, guards, watchmen, professional employees, and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

[5] *The Pure Oil Company*, 98 NLRB 139, footnote 4; *Lewis Engineering & Manufacturing Company, supra.*

DOAK AIRCRAFT CO., INC., PETITIONER *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE NO. 720, AFL

DOAK AIRCRAFT CO., INC. *and* BERENICE WOODS, PETITIONER *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE NO. 720, AFL. *Cases Nos. 21–RM–285 and 21–RD–211. November 4, 1954*

Decision and Direction of Election

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Max Steinfeld, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[1]

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 Petitioner in Case No. 21–RD–211, employee of the Employer, asserts that the Union is no longer the representative, as

[1] The Union moved to adjourn the hearing on the ground that there was pending before the Board unfair labor practice charges filed by the Union The Board's records show that at the time of the hearing the Regional Director had dismissed the charges, and that the General Counsel thereafter sustained the Regional Director's dismissals. We therefore affirm the hearing officer's denial of the Union's motion for adjournment. See *Meridian Plastics, Inc.*, 108 NLRB 203; *McQuay Incorporated*, 107 NLRB 787 The Union also moved to consolidate the representation and complaint cases, and to adjourn the hearing until the General Counsel acted on the Union's motion to consolidate these cases. It is established Board practice to exclude all evidence relating to unfair labor practices from representation hearings. *Dichello, Incorporated*, 107 NLRB 1642; *New York Shipping Association and Its Members*, 107 NLRB 364. Moreover, as noted above, the unfair labor practice charges against the Employer have been dismissed. Accordingly, we affirm the hearing officer's denial of the Union's motion to consolidate the cases and to adjourn the hearing. Cf *Northwestern Photo Engraving Company*, 106 NLRB 1067; *Everett Plywood & Door Corporation*, 105 NLRB 17.

defined in Section 9 (a) of the Act, of the employees designated in the petition. The Union is the currently recognized representative of the Employer's employees in a unit which includes the employees designated in the petition.

3. The hearing officer referred to the Board the Union's motions to dismiss the petition on the grounds that (a) unfair labor practice charges filed against the Employer bar an election; (b) the Union disclaims that it is now the majority representative of the employees within the bargaining unit; and (c) the Union's contract with the Employer constitutes a bar to these proceedings. For the reasons stated below, we find no merit in the Union's contentions. Accordingly, its motions to dismiss are hereby denied.

(a) As the charges filed by the Union against the Employer have been dismissed, there is no reason for delaying the election on this ground.

(b) At the hearing, the Union asserted that it no longer claimed to represent a majority of the Employer's employees. On January 13, 1954, the Union called a strike which was still continuing at the time of the hearing on February 11. The Union contends that the strike is in protest against the Employer's unfair labor practices, and also to seek the support of the employees in the plant, in order to again establish itself as majority representative of the employees.[2] In view of the fact that the Union filed 8 (a) (5) charges against the Employer, and in view of the additional fact that the Union was actively picketing the Employer's plant at the time of the hearing, we are not persuaded that the Union has so clearly and unequivocally disclaimed interest in representing the Employer's employees as to negate the existence of a present question concerning representation.[3] Moreover, we believe that the Union's assertion of its contract with the Employer as a bar to the instant petition is inconsistent with its disclaimer.[4] We therefore believe that the policies of the Act will best be served by directing an election in this case.

(c) The Union urges that a contract with the Employer executed on November 12, 1952, is a bar to these proceedings. The contract provides that it shall remain in effect for a period of 1 year from November 12, 1952, and from year to year thereafter until either party serves a 60-day written notice on the other specifying a desire to modify or terminate the agreement. The contract is to remain in full force and effect for 60 days after such notice is given. On

[2] The placards carried by the pickets contained the legend "on strike" on one side, and "this company is unfair" on the other side.

[3] Cf. *Frances Platmg Co.*, 109 NLRB 2; *Petrie's, an Operating Division of Red Robin Stores, Inc.*, 108 NLRB 188; *V & D Machine Embroidery Co*, 107 NLRB 1567; *McAllister Transfer, Inc*, 105 NLRB 751; *Terminal Storage Company*, 104 NLRB 407; *Kimel Shoe Company*, 97 NLRB 127, 128–129; *The Johnson Bros. Furniture Co.*, 97 NLRB 246, 246–247.

[4] Cf *American Lawn Mower Co.*, 108 NLRB 1589.

September 11, 1953, the Union notified the Employer, in writing, of its desire to terminate the existing agreement and to enter into negotiations for a new contract. After an exchange of letters in reference to the Union's request of September 11, the Employer, on November 30, 1953, notified the Union that it could not make any further deductions for membership dues from the employees' earnings under the contract, as the contract had been terminated on November 11, 1953. The Employer's petition in Case No. 21–RM–285 was filed on January 22, 1954, and the Petitioner's petition in Case No. 21–RD–211 was filed on January 25, 1954.

The Union contends that as the Employer declined to accept the Union's notice to terminate the contract, and did not itself give any termination notice, the contract was automatically renewed. We find this contention to be without merit. The contract contains no provisions that require acceptance of a notice of termination. It is therefore immaterial whether or not the Employer accepted the Union's termination notice. As the Union's termination notice was given in accordance with the terms of the contract, and was timely with respect to the Mill-B date of the contract, we find that such notice effectively terminated the contract, and the contract therefore cannot be considered as a bar to these proceedings.[5] Moreover, contrary to the Union's contention, we find that the Employer did accept the Union's notice to terminate the contract.

We find 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. The parties stipulated that a unit of all production and maintenance employees, including shipping, receiving, and production control employees, inspectors, timekeepers, and leadmen, but excluding office clerical and professional employees, watchmen, guards, construction carpenters, secret project department employees, and all supervisors, is appropriate for the purposes of collective bargaining.

In a prior decision involving this Employer, the Board found that the leadmen were supervisors.[6] Since the time of the hearing in the former case, the Employer has made a number of changes in its supervisory structure. The record in the instant case shows that the Employer's operations are headed by a general manager, under whom is a factory manager who is responsible for several departments, including the production department.[7] There is a superintendent and

[5] Cf. *Diamond Printing Company*, 109 NLRB 112; *Moore Drop Forging Company*, 108 NLRB 32; *20th Century Press*, 107 NLRB 292; *Winter Stamping Company*, 107 NLRB 14; *Continental Can Company, Inc., Bether Division*, 107 NLRB 8; *Augat Bros., Inc.*, 97 NLRB 993, 994

[6] *Doak Aircraft Co., Inc.*, 107 NLRB 924.

[7] The factory manager also is responsible for the inspection, production control, purchasing, and personnel departments.

an assistant superintendent under the factory manager who are directly responsible for production. Below the level of assistant superintendent are three foremen. One of the foremen has 2 leadmen who report to him, and another has 4 leadmen who report to him. The third foreman has immediate supervision over the receiving and shipping employees.

The primary duty of the assistant superintendent is to be on the floor within the working area, and to work with the foremen, leadmen, and other persons where necessary, to keep up the constant flow of the work. He also has some administrative duties. The foremen have full authority over the leadmen. They have authority to hire and discharge, make recommendations as to changes in the employees' status, process merit reviews, transfer personnel, direct the assignment of work, and to discipline employees.

The six leadmen are hourly paid employees who have no authority over the employees other than to assist them in the processing of work, and to help them in setups on machinery. They spend most of their time doing production work. They have no authority to hire, discharge, or discipline employees, or effectively to recommend such action. They do not recommend wage increases and are not consulted in the marking of merit review cards.[8] They have no authority to make or recommend changes in the status of employees working under them, to transfer employees, or to make other than routine work assignments.

It is clear from this record that the direction exercised by the leadmen over the employees under them is routine in nature, and does not require the exercise of independent judgment. We therefore find that the leadmen are not supervisors within the meaning of the Act.

We find that all production and maintenance employees, at the Employer's Torrance, California, plant, including shipping, receiving, and production control employees, inspectors, timekeepers, and leadmen, but excluding office clerical and professional employees, watchmen, guards, construction carpenters, secret project department employees, and all supervisors, 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.]

CHAIRMAN FARMER, concurring:

I concur in this decision. In January 1954, a majority of the Board dismissed an election petition at this plant on the ground that the leadman who filed the petition was a supervisor. I dissented

[8] One leadman testified that the foreman consulted with him in making ratings, but used his own independent judgment in rating the employees and did not necessarily take the leadmen's recommendations. He further testified that he now does not have as much responsibility as he formerly had.

because I was convinced on the record then, as now, that the leadmen were nonsupervisory employees and that the Local Union's attack upon the right of a leadman to petition for an election was motivated solely by a desire to prevent a representation election. The current proceeding, in my opinion, proves the correctness of my position. Now, the parties all stipulate that these leadmen should be included in the unit as nonsupervisory employees, and the Board adopts that stipulation.

Without explanation, the majority decision says that there have been changes in the Employer's supervisory structure. The only change shown in the record is that three additional supervisory jobs have been created. The direct testimony of the leadmen, themselves, shows without qualification that their work has remained the same, that their responsibilities are now no different from their responsibilities in the past. Yet, in the first case, the majority held that these leadmen were supervisors and in this case the majority agrees that they are not.

In all candor, I am compelled to say that the only difference which I can see is that the prior case involved a decertification petition and this case does not. In the prior case, a finding that leadmen were supervisors was fatal to the entire petition because of the Board rule, with which I agree, that supervisory employees cannot file a decertification petition. In this case, involving both RC and RM petitions, an election would be ordered regardless of the status of the leadmen. Accordingly, since a claim of supervisory capacity could not in any event defeat the holding of an election, which it may be added, the local has consistently opposed, the Local now stipulates that the leadmen are not supervisors. This, I may observe, is consistent with its position throughout its history in this plant, except for the one occasion when the employees sought to exercise their statutory right to obtain a decertification election.

I do not, of course, accuse the majority in the prior case of improper motives in dismissing the decertification petition. I am certain that their action was taken in complete good faith. I do say, however, that this case demonstrates that they were wrong. I also say that the entire record shows that the effort to forestall an election on the prior petition, albeit successful, was a serious abuse of the processes of this Board.

The record shows that, during a long period of time, there have been continuing labor disturbances at this plant because of the unresolved representation dispute. The dismissal of the decertification petition has delayed the settlement of that dispute for many months. I understand that this dispute antedated the dismissal of the decertification petition, but my point is that a resolution of the representation dispute on the basis of that petition would have settled the

question. While I would have done so sooner, I am in complete agreement with directing an election at this time.

MEMBERS MURDOCK and PETERSON, concurring:

While we also concur in this decision, the separate remarks of the Chairman, in our opinion, cloud the issue and contain a number of erroneous and unfortunate implications. As the decision in this case states, the Board had previously found the Employer's leadmen to be supervisors. An opposite conclusion is reached herein, not because the former decision was in error or that we, as individual members were "wrong" as the Chairman states, but because, as the decision here clearly finds, "the Employer has made a number of changes in its supervisory structure" which deprive those leadmen of supervisory authority. As the Board stated, in that earlier decision, a major factor in the determination that the leadmen then possessed supervisory authority was the fact that "other than the leadmen, there is no intermediate supervision between the 100 factory employees in a number of separate departments and the assistant superintendent although other departments are under acknowledged supervisors."[9] Since that decision, the Employer has created such intermediate supervision and the record contains other testimony, cited in the majority opinion herein, that the leadmen do not have as much responsibility as before. The Board's decision in the current proceeding, accordingly, hardly illustrates the "correctness" of the Chairman's dissenting view in the previous case.

The Chairman further states that the only reason we, as the majority which dismissed the prior petition, now join in the direction of an election is that "this case arises also on an employer petition" as well as a decertification petition. This is simply not so. Even absent the RM petition we would of course direct the election on an RD petition filed by a nonsupervisory employee. Nor do we find any real support for the assertion that the Local Union in the prior case abused the Board's processes in any way by taking a position, which if adopted by the Board, would prevent a representation election. Even if that desire can properly be attributed to the Union, it is irrelevant. To our knowledge, a party to proceedings before this Board is entitled to raise, and have seriously considered and decided on its merits, any issue which it feels has legal merit whether or not their motives are acceptable to all parties concerned. Any other procedure which granted consideration to a legal argument only if the Board approved the proponent's motives would be a flagrant denial of due process. But the Chairman's comments as to the Union's consistent position as to the status of the leadmen is directly disproved by uncontradicted

[9] *Doak Aircraft Co., Inc*, 107 NLRB 924

evidence that a number of these leadmen were previously excluded from the unit as supervisors by agreement of the parties.

Finally, we view as particularly unfortunate the implication that the Board's previous decision was responsible for the continuance of labor disturbances at this plant. As a matter of fact, those disturbances antedated the Board's previous decision. Their continuation in the interim between that decision and the present is hardly attributable to the Board in view of the fact that at any time during this period, nonsupervisory employees of the Employer or the Employer itself could have filed a petition for a representation election. The fact that this Board prevented one individual from doing so at a time when he was a supervisor, and therefore not entitled under the Act to file a petition, is hardly pertinent.

MEMBER RODGERS took no part in the consideration of the above Decision and Direction of Election.

THE AMERICAN SHIPBUILDING COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, PETITIONER. *Case No. 8–RC–2260. November 5, 1954*

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 W. R. Griesbach, hearing officer. 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 National Labor Relations Act.

2. The following labor organizations claim to represent certain employees of the Employer: Petitioner, International Association of Machinists, AFL; Intervenors—International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL; Pattern Makers' League of North America, AFL; United Brotherhood of Carpenters & Joiners of America, AFL; International Brotherhood of Electrical Workers, AFL; Brotherhood of Painters, Decorators & Paperhangers of America, AFL; International Brotherhood of Firemen & Oilers, AFL; International Union of Operating Engineers, AFL; Sheet Metal Workers International Association, AFL; and United Association of Journeymen & Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL.