term, that the Intervenor's notice to modify was late, and the contract automatically renewed for the term of another year. The Employer's president testified, moreover, that it was the understanding of the parties that the above article meant that the 60 days' notice be given prior to the anniversary date of the contract, and that such has been the procedure in the past. In 1952 and 1954, the Intervenor on April 2 and March 29, respectively, gave the "required" notice to open negotiations for a new contract. The president of the Intervenor testified that this was the first time that the Intervenor had been late in giving the notice to the Employer.

The Petitioner contends, on the other hand, that there is nothing to indicate that the notice must be 60 days *prior* to the termination date, and, that 60 days' notice is effective to terminate the contract, even if given *after* the termination date of the contract.

The Board agrees with the Employer's interpretation of the contract. Although article XXI does not expressly provide that notice be given 60 days before the expiration date of a contract term to forestall automatic renewal of the contract, we think the most reasonable construction of the article is that it so provides. The article does clearly provide for *definite* yearly terms after the initial term absent appropriate notice to modify or terminate. The article also provides for termination or modification *at the end of the contract term under 60 days' notice.* It is customary and reasonable for notice to *precede* a result which the notice effects. Furthermore, the practice of the parties, as testified to at the hearing, is consistent with this interpretation.

As we construe the contract's notice clause, absent notice to terminate 60 days before June 1, 1956, the contract automatically renewed itself for another year commencing June 1, 1956.[1] We find that the existing contract between the Employer and the Intervenor is a bar to the petition herein. Accordingly, we shall dismiss the petition.

[The Board dismissed the petition.]

CHAIRMAN LEEDOM and MEMBER MURDOCK took no part in the consideration of the above Decision and Order.

[1] See *Williams Laundry Company*, 97 NLRB 995.

A. Victor & Co. *and* Local 212, Retail Clerks International Association, AFL–CIO, Petitioner. *Case No. 3–RC–1706. July 25, 1956*

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 Murray S. Freeman, 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 Act.

2. The labor organization involved claims to represent certain 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 Employer is engaged in the operation of a retail department store in Buffalo, New York. The parties agree on a unit of all sales personnel, excluding all other employees including office clerical employees, warehouse employees, guards, professional employees, and supervisors as defined in the Act. The parties disagree somewhat as to the meaning of sales personnel: the Employer would include under that description the terms and selling employees and the telephone operators whom the Petitioner would exclude. There has been no bargaining history for any of the employees of the Employer except the truckdrivers who are presently represented by a labor organization.

The Employer has an employee complement of approximately 175 employees working in a 10-story building where the Employer performs its operations. The 30–40 sales employees sought by the Petitioner work on the lower floors and in the basement, the area devoted to retail operations and customer contact. The same store hours and vacation plan are applicable to all employees. The general manager hires and supervises the two disputed categories and all selling help except the salespeople in the men's and women's clothing departments. Hiring in these two departments is done by the departmental buyers. The salesclerks are all paid on a commission basis or a salary plus commissions; the terms and sales employees and the telephone operators are paid a straight salary.

The six terms and sales employees are located on the first floor across the aisle from the office staff and adjacent to the salesmen's booth where salesmen sit to await customers. These employees check the customer's credit, arrange payment terms, and receive deposits and down payments. They fill mail orders and take telephone orders, but do not go out on the selling floors except to obtain information relative to an item involved in closing a credit transaction. At times when they are able to encourage a customer to increase a purchase, they call a salesman who handles the actual selling transaction. The telephone operators frequently take telephone orders and explain advertised merchandise over the telephone. They do not leave the switchboard. It appears, therefore, that while the disputed categories do receive orders from customers and arrange payments for sales, they are not

actually engaged in selling, and their duties are not primarily a part of the sales function. Neither do their essential skills seem to be those required of salesmen as evidenced in part by their method of payment. On the record as a whole, we find that the terms and sales employees and the telephone operators are not sales personnel and shall exclude them from the unit of sales personnel which we find appropriate for collective-bargaining purposes.

Accordingly, we find that all sales employees in the Employer's department store located at 19 West Genesee Street, Buffalo, New York, excluding all other employees (including the term and sales employees, the telephone operators, the office clerical employees, warehouse employees, guards, and professional employees) 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.

[Text of Direction of Election omitted from publication.]

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

Clark Concrete Construction Corporation *and* Teamsters, Chauffeurs, Warehousemen and Helpers Union No. 983 and International Union of Operating Engineers, Local 370, AFL–CIO, Petitioner

Clark Concrete Construction Corporation, Idaho Concrete Products, Incorporated, and Concrete Products, Incorporated *and* Local 1227, International Hod Carriers, Building and Common Laborers Union of America, AFL–CIO, and Idaho State District Council of Laborers, Petitioner. *Cases Nos. 19–RC–1791 and 19–RC–1797. July 27, 1956*

DECISION AND DIRECTION OF ELECTION

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held in these consolidated cases before Orville W. Turnbaugh, hearing officer.[1] The hearing

[1] The names of the three Employers involved in this proceeding appear herein as corrected at the hearing.

Before the hearing, the Petitioner in Case No. 19–RC–1797, hereinafter called the Laborers, withdrew its petition in Case No. 19–RC–1800, relating to the plant of one of the Employers involved herein, and also filed an amended petition in Case No. 19–RC–1797. At the hearing, the Petitioner in Case No. 19–RC–1791, hereinafter called the Teamsters, alleging that it had received no notice of such withdrawal and amendment, moved in effect that the withdrawn petition be reinstated and the amended petition dismissed, and that the hearing proceed on the basis of the petition in Case No. 19–RC–1800 and the