In view of the foregoing, and the record as a whole, we find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All truckdrivers and their helpers employed at the Employer's service building in Miami, Florida, including the shuttle truckdrivers, but excluding the servicemen, all other employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

ciated Dry Goods Corporation, 117 NLRB 1069, where the Board, in finding appropriate units of warehouse employees, including truckdrivers, excluded service employees similar to those here involved.

Plant City Welding and Tank Company *and* International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL–CIO, Petitioner. *Case No. 12–RC–30. June 21, 1957*

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 Martin Sacks, hearing officer. The hearing officer's rulings made at the hearing 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 [Chairman Leedom and Members Murdock and Jenkins].

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

1. The Employer contends that it does not meet any of the Board's jurisdictional standards and that the record herein is inadequate as a basis for the assertion of jurisdiction. At the hearing, the Employer declined to produce any witnesses to testify concerning the Employer's business, and after a *subpoena duces tecum* was served upon the Employer's president and enforced in a district court proceeding, he appealed the district court order and still did not appear to testify at the hearing. Accordingly the hearing officer proceeded to receive other jurisdictional evidence in the record. Thus, a former employee of the Employer testified that the Employer is engaged in the fabrication and sale of steel beams, boxes, cyclones, storage tanks, smokestacks, ducts, and the like. A sales representative of Bethlehem Steel Company testified that he knew of his own knowledge of shipments of steel from out of State to the Employer by Bethlehem during 1956.

[1] For the reasons stated below, we find no merit in the Employer's motion to dismiss or remand for further hearing, and the motion is accordingly denied.

In addition he testified from information contained in a document compiled and delivered to him by the trade record division of Bethlehem Steel that 961 net tons of steel were delivered to the Employer from Bethlehem Steel during 1956, of which probably none was valued at less than $100 a ton. Apart from the above testimony, the hearing officer placed in the record correspondence between the Board's Regional Office and two customers of the Employer. The correspondence indicates that St. Regis Paper Company ships products valued at in excess of $50,000 directly out of the State of Florida, and that during the period from October 1956 through January 1957, St. Regis received in Florida and paid for structural steel and steel gratings purchased from the Employer and valued at approximately $56,000. The correspondence also indicates that Stone and Webster Engineering Company is an interstate contractor having home offices at Boston, Massachusetts, and performs services outside Massachusetts in an amount valued at in excess of $250,000, that as an agent for Tampa Electric Company it entered into contracts with the Employer on April 3 and 12, 1956, calling for the sale, delivery, and installation of steel plate work and a steel stack on Tampa Electric's Gannon Station project. The total value of these contracts was in excess of $112,000, and on April 19, 1957, one of them was 99.5 percent complete and the other was 85 percent complete. Total payments made on the contracts as of that date were in excess of $80,000. A copy of the annual report of Tampa Electric for 1956 indicates that it had operating revenues of $26,000,000 during that year.

In sum, the direct uncontradicted testimony of the representative of Bethlehem Steel establishes that the Employer is engaged in interstate commerce and that the Board may legally assert jurisdiction herein. Furthermore, the correspondence in the record indicates that between April 3, 1956, and April 19, 1957,[2] the Employer sold material and services valued at in excess of $100,000 to an enterprise which in turn shipped materials valued at in excess of $50,000 out of State annually and to an electric utility having gross revenue in excess of $3,000,000. The evidence thus establishes that the Employer's business satisfies the Board's indirect outflow standards.[3] Contrary to the Employer's contention, we find this evidence competent as a basis for the assertion of jurisdiction. Representation hearings are essentially nonadversary investigatory proceedings, and the technical rules of evidence are not controlling. In view of the Employer's adamant refusal to supply any information pertaining to its business at the hearing and its failure at the hearing or in its subsequent brief to contradict or dispute the

[2] While the record does not indicate the Employer's indirect outflow during a period of exactly 1 year's duration, the indirect outflow for 1 year and 16 days was in excess of $130,000. It is clear that the Employer's indirect outflow occurs at an annual rate in excess of $100,000.

[3] *The T. H. Rogers Lumber Company*, 117 NLRB 1732.

evidence of which it complains, we sustain the hearing officer's admission of this evidence and find that is a sufficient basis for determining that it will effectuate the policies of the Act to assert jurisdiction herein.[4]

2. The labor organization involved claims to represent certain employees of the Employer.[5]

3. The Employer contends that no question concerning representation exists because the Petitioner is not in compliance with the filing requirements of Section 9 (f), (g), and (h) of the Act on a number of grounds. The hearing officer refused to permit litigation of any of the compliance issues thus raised except one on the ground that they were matters for administrative determination not subject to litigation in the course of a representation hearing. The one exception was in the case of the Employer's contention that there existed a District Lodge of the Petitioner, not in compliance with the filing requirements of the Act, to which the Petitioner's Local Lodge No. 609, named in the petition as an affiliate having or soliciting members in the unit or which will serve such employees in the event that the Petitioner is certified, is subordinate. As to that issue the hearing officer permitted interrogation of one witness who testified that no such District Lodge existed. However, the hearing officer declined to continue the hearing for enforcement of subpena to obtain, among other things, further testimony on the issue when the Employer's counsel indicated that he had no specific evidence that such a District Lodge did exist. We affirm the hearing officer's ruling and find that no District Lodge existed whose compliance is material in this proceeding.

As for the other compliance contentions, these were that the Petitioner and Local 609 have officers who have not filed non-Communist affidavits required by Section 9 (h), and that the Petitioner, Local

[4] *The Jacksonville Journal Company,* 116 NLRB 1136; *Pacific Tent & Awning Co.,* 97 NLRB 640. While the Employer contends that the *Pacific* case is distinguishable because there, unlike in the instant case, the hearing officer notified the Employer in advance of the hearing of his intention to receive similar evidence in the record, we find no distinction between the cases as the Employer has had ample opportunity since the hearing to challenge the accuracy of this evidence.

[5] The Employer would not stipulate that the Petitioner is a labor organization within the meaning of the Act. As it appears that the Petitioner is an organization which represents employees for collective-bargaining purposes, we find that it is a labor organization within the meaning of Section 2 (5) of the Act. Although the Employer complains that it was not permitted to interrogate witnesses as to the policy of the Petitioner regarding the representation of Negro employees and as to supervisory participation in the organization of the Employer's plant by the Petitioner, some examination along these lines was permitted and produced no evidence prejudicial to the Petitioner. When the hearing officer asked the Employer's counsel what he expected to establish by further examination of witnesses along these lines, Employer's counsel admitted that he knew no more than what had been established on the record. Accordingly, we sustain the hearing officer's refusal to permit further interrogation as to these issues.

Moreover, regardless of what the union practice may have been in the past, the Board will police its certification in the event the Petitioner is certified to see that it represents all employees in the unit equally. *Pacific Maritime Association, etc.,* 110 NLRB 1647; 112 NLRB 1280.

609, and the AFL–CIO, did not properly file financial reports with the Secretary of Labor or furnish such reports to their memberships as required by Section 9 (f) and (g). While the Employer contends that it seeks thereby to litigate the meaning of certain terms used in the pertinent sections of the Act, it is clear that the evidence which the Employer sought to introduce in the record went to the issue of whether the Petitioner, Local 609 and AFL–CIO, had in fact fulfilled the filing requirements of Section 9 (f), (g), and (h) rather than to the proper interpretation of those sections. Accordingly, as the parties to a representation proceeding may not litigate such issues of fact, the hearing officer properly excluded such evidence.[6] To the extent that the Employer has attempted to place in issue the legal meaning of the terms "officer" and "furnish" as used in these sections, the Supreme Court has specifically approved the definition of "officer" as used by the Board [7] and the Board is satisfied that it has properly interpreted the requirements of Section 9 (f) and (g) that the Petitioner, Local 609, and AFL–CIO furnish financial reports to their members.[8] Accordingly, we find without merit the Employer's contentions that the Petitioner was not in compliance with the filing requirements of the Act.[9] 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.[10]

4. We find that the following employees of the Employer at its Plant City, Florida, plant 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, including truckdrivers and helpers, checkers, and expediters, but excluding all office employees, guards, watchmen, professional employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

[6] *Standard Cigar Company*, 117 NLRB 852; *Shoe Corporation of America*, 117 NLRB 1208.

[7] *N. L. R. B.* v. *Coca-Cola Bottling Co. of Louisville*, 350 U. S. 264.

[8] See *Compliance Status of Cigar Makers International Union of America, AFL–CIO*, 117 NLRB 856.

[9] The Employer also contends that the Board erred in continuing to process this case during a period of time when the Petitioner's compliance with Section 9 (g) had lapsed and it had filed a certificate of intent to comply with that section. However, unlike Section 9 (f) and (h), Section 9 (g) does not prohibit the investigation of a petition filed by a union not in compliance with its requirements but only affects its eligibility for certification while out of compliance with Section 9 (g). See *Monsanto Chemical Company*, 115 NLRB 702.

[10] We also find without merit the Employer's contention that no question concerning representation exists because there is no evidence that the Petitioner ever requested or the Employer ever declined recognition in an appropriate unit. It is apparent from the entire record herein that the Employer will not recognize the Petitioner as representative of the employees in the unit sought. See *General Shoe Corporation*, 109 NLRB 618.