an adjustment of rates for claimed "extra marking and trimming" and for "shingling." Blank had advised Heller of the reported attitude, immediately before the conference.

It is reasonable to infer, and I find, that Heller knew he could not obtain adequate replacements except by training. The new season was barely started and production would be impaired. These employees, it may reasonably be inferred, also knew this. Messina outlined the importance of "marking and trimming" at the beginning, in the middle, and at the end of the operation. The marking was a prerequisite to the performance of operations by other crafts. The economic impact of a withholding of services must have been apparent to all.

After the conference with Heller, Marie Swerdlik talked to Bormack and testified he said there was nothing he could do—"He was laughing." I find the latter assertion incongruous.[10]

After leaving the plant, the group waited 10 days before contacting anyone relative to their jobs. They then went to see Dordick, and were advised they had been replaced. It would thus appear reasonable to infer they waited 10 days, albeit vainly, for the fulfillment of Marie Swerdlik's prediction "when Mr. Heller needs us, he'll call us back."

Under all the facts outlined, I find there was neither a "firing" nor a "quitting" as the latter term expresses intent to permanently sever relations. Rather, there was a voluntary departure from the plant of these five employees who were offered the alternative of working at the rate agreed upon or "getting their hats and coats."

In view of the above findings it is my conclusion that this record does not establish that these employees were discharged, discriminatorily or otherwise, and the record does not contain the preponderant evidence needed to establish discriminatory terminations within the meaning of the Act. Accordingly, I recommend that the complaint herein be dismissed in its entirety.

On the basis of the foregoing findings of fact, and upon the entire record herein, I have reached the following

CONCLUSIONS OF LAW

1. The Respondent, Tailored Trend, Inc., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of the Act.
3. The Respondent has not engaged in unfair labor practices as alleged in the complaint within the meaning of Section 8(a)(3) and (1) of the Act.

[Recommendations omitted from publication.]

[10] I find it unnecessary to further detail the inconsistencies, evasions, and patent inaccuracies which have caused me to discredit those portions of the testimony of both Swerdliks which conflict with the testimony, set forth, of witnesses called by the Respondent. In view of this, and in view of the findings and conclusions based on the record as a whole, the testimony of Pincus and Warth is not persuasive where it conflicts with the credited testimony of Respondent's witnesses.

Yorktowne Hotel (Community Hotel Company, Incorporated)[1] *and* Hotel and Restaurant Employees & Bartenders International Union, AFL-CIO, Petitioner.

Case No. 4-RC-3975. January 26, 1960

DECISION AND DIRECTION OF ELECTION

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

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

[2] The Employer questions the Petitioner's showing of interest on the grounds that several cards were submitted to the hearing officer at the hearing. However, showing of interest is an administrative matter not litigable by the parties. *O. D. Jennings & Co.*, 68 NLRB 516. We find nothing in the circumstances of this case to warrant an exception.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Jenkins, and Fanning].

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 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 parties agree generally on the appropriate unit, except with respect to the following categories:

Chef: The chef, with the steward, is responsible for the operation of the kitchen. He oversees the work of approximately 35 employees, schedules work assignments, and moves employees between jobs. The chef has the authority to request employees to work overtime and frequently attends meetings of management at which policy matters are discussed. As we find that the chef responsibly directs the work of employees under him, we shall exclude him from the unit as a supervisor.

Headwaiter: The headwaiter greets and seats customers, makes "table assignments," and sees that the Employer's "Wedgewood" dining room is in order. He reports directly to the hotel manager and assistant manager. While the headwaiter is purported to have the power to recommend hiring, his recommendations may or may not be followed. We are unable from the above facts, which constitute the entire record evidence regarding the headwaiter, to determine whether or not he is a supervisor. Accordingly, we make no finding regarding the headwaiter, but shall allow him to vote subject to challenge.

Head housekeeper and assistants to the head housekeeper: The head housekeeper directs the work of approximately 32 employees, and is responsible for seeing that hotel rooms are kept clean and in good order. She has a voice in making up work schedules, and her recommendations regarding hire, discharge, and pay increases for housekeeping employees are given weight. As the record indicates that the

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to this rule. See *Brunswick Quick Freezer, Inc*, 117 NLRB 662. We are administratively satisfied that Petitioner's showing of interest is adequate

The Employer also alleges that Petitioner was not in compliance with the filing requirements of the Labor Management Relations Act of 1947, and intimates the existence of a noncomplying local of the Petitioner interested in the employees in question. The petition herein was filed August 5, 1959, prior to the repeal of Section 9(f), (g), and (h) of the Act. It is settled that the fact of compliance is an administrative matter not litigable in a representation proceeding No evidence appears, nor was offered, to show the existence of a noncomplying local of Petitioner interested in these employees, and we are administratively satisfied that the Petitioner was in compliance at all times relevant. Accordingly, we find no merit in these contentions of the Employer. See *The M. W. Kellogg Company*, 110 NLRB 51.

head housekeeper responsibly directs employees under her, and makes effective recommendations concerning their employment status, we find the head housekeeper is a supervisor and shall exclude her. As for the assistants to the head housekeeper, the record indicates only that these employees help the housekeeper maintain records and control linen distribution. As the assistants appear to possess none of the statutory indicia or supervisory authority, we shall include them.

Hostesses: The primary duty of the four hostesses is to seat patrons as they enter the Employer's dining rooms. The hostesses do not normally attend management meetings, and possess no authority to hire or discharge other employees. They may recommend available friends for work, but their recommendations are given the same weight as those of other employees. We find the hostesses are not supervisors, and shall include them.[3]

Cashiers: There are five cashiers, including one combination cashier-hostess. These employees, alleged by the Petitioner to be office clericals, check food slips for accuracy, take cash from waitresses, and make change. They are hired by the steward, but are responsible to the auditor's office for the cash they collect. When the dining room is busy, the cashiers give out menus, help seat patrons, and occasionally wait on tables. We find that the cashiers are not office clerical employees,[4] and shall include them.

Desk clerks and telephone operators: The record indicates only that employees in these categories work in an area adjacent to the hotel lobby, and that desk clerks, telephone operators, and cashiers frequently interchange jobs, depending on the Employer's needs. The aforementioned evidence does not substantiate the Petitioner's claim that employees in these classifications are office clericals. We shall therefore include the desk clerks and telephone operators in the unit.[5]

In view of the foregoing and the entire record, 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 hotel, restaurant, and bar employees at the Employer's Yorktowne, Pennsylvania, hotel, including maintenance, garage, and parking lot employees, food checkers, assistants to the head housekeeper, hostesses, cashiers, desk clerks, and telephone operators, but excluding secretaries, auditing and other office clerical employees, extra employees, part-time employees who work less than 20 hours a week, professional employees, watchmen and guards, the chef, the head housekeeper, and all other supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

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[3] See *Marshall Field & Co.*, 93 NLRB 182.

[4] See *Indiana Hotel Company*, 125 NLRB 629; *Beau Rivage Hotel*, 124 NLRB 809

[5] See *Indiana Hotel Company, supra.*