In the Matter of BEST MOTOR LINES, EMPLOYER *and* JEAN MCCONNELL, PETITIONER *and* DALLAS GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 745, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, UNION

Case No. 16-RD-33.—Decided November 15, 1948

DECISION

AND

DIRECTION OF ELECTION

Upon a petition for decertification duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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-man panel consisting of the undersigned Board Members.*

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 Petitioner, an employee of the Employer, asserts that the Union is no longer the bargaining representative of the employees of the Employer as defined in Section 9 (a) of the Act.

3. The Union moved to dismiss the proceeding upon the grounds: (1) that the petition had not been filed by a person or persons qualified at the time to file a petition for decertification; and (2) that it has a contract with the Employer which constitutes a bar to the petition.

The contention of the Union that the petition as filed is invalid by reason of the alleged disqualification of the Petitioner to file the petition is based upon the premise that at the time it was filed the Petitioner and the other individuals on whose behalf the petition was filed were not employees within the unit represented by the Union involved in this proceeding. The record discloses that, following some dispute

*Reynolds, Murdock, and Gray.

between a group of employees, including the Petitioner, and the officers of the Union resulting in suspension of these employees from membership in the Union, the latter demanded that the Employer discharge such employees under the closed-shop provision in the collective bargaining agreement between the Employer and the Union; that the Employer, desiring to avoid a conflict with the Union, had, at the time when the petition was filed, given to various members of this group temporary work assignments elsewhere in its organization or had loaned such employees to other employers upon a temporary basis; that in so doing the Employer did not remove these employees from its pay roll; nor did it discontinue paying them their regular salaries or formally transfer them out of the unit in which they had been employed and for which the Union was the bargaining representative. In view of the foregoing, we find that at the time of the filing of the petition, not only the Petitioner, but also the other members of the group in whose behalf the petition was filed, were employees of the Employer within the unit represented by the Union.[1] Accordingly, we find that the Petitioner and the employees for whom the Petitioner seeks Board action under the present petition were, at the time of filing, qualified to file and support the petition in this proceeding. We reject, therefore, the first ground urged by the Union as the basis of its motion to dismiss the petition.

The contention of the Union that its contract with the Employer constitutes a bar to this proceeding is based upon the assumption that the contract entered into between the parties on July 15, 1947, covering the unit in question was automatically renewed on July 15, 1948. The 1947 contract provided that it was to be effective for 1 year, subject to automatic renewal from year to year thereafter unless notice to change or modify was given by either party at least 60 days before the terminal date of the contract. The record reveals that on May 5, 1948, the Union advised the Employer by letter of its desire to reopen the contract and to negotiate a new agreement effective July 15, 1948. Thereafter, no further action was taken by either party. In this connection, the Union argues that it abandoned its attempt to reopen the 1947 contract and that, therefore, its letter to the Employer failed to forestall the operation of the automatic renewal clause. We do not agree with this contention. Although a new contract was never actually negotiated, we believe that the 1947 contract was reopened and that the automatic renewal clause therein was rendered inoperative by the Union's timely notice that it desired to negotiate a new

[1] Cf. *Matter of Quick Industries Incorporated*, 71 N. L. R. B. 949; *Matter of Perry County Plywood Corporation*, 74 N. L. R. B. 1397.

agreement.[2] We find, therefore, that the contract is not a bar to this proceeding.

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 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 lead mechanics, mechanics and mechanics' helpers, welders, painters, body-men, tire men, parts men, and wash and grease men employed at the Employer's Dallas, Texas, terminal, excluding all other employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Best Motor Lines, Dallas, Texas, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Sixteenth Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by Dallas General Drivers, Warehousemen and Helpers, Local Union No. 745, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL.

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[2] *Matter of Whitin Machine Works*, 76 N. L. R. B. 998.