

In the Matter of QUEEN CITY WAREHOUSES, INC., EMPLOYER *and*
LEWIS GROSS, PETITIONER *and* WAREHOUSEMEN'S LOCAL UNION No.
661 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN & HELPERS OF AMERICA, A. F. L., UNION

Case No. 9-RD-7.—Decided April 22, 1948

Messrs. Joseph H. Head, William A. McKenzie, and William H. Whiting, of Cincinnati, Ohio, for the Employer.

Messrs. Robert H. Coffey and Lewis Gross, of Cincinnati, Ohio, for the Petitioner.

Mr. Jack L. McCain, of Cincinnati, Ohio, for the Union.

DECISION
AND
ORDER

Upon a petition for decertification duly filed, hearing in this case was held at Cincinnati, Ohio, on December 5, 1947, before Martin Saks, 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 the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Queen City Warehouses, Inc., an Ohio corporation, is engaged in the operation of a general merchandise warehouse in Cincinnati, Ohio. The value of its business during a calendar year is in excess of \$100,000. Approximately 50 percent of the merchandise received by the warehouse comes from outside the State, and approximately 50 percent of the merchandise shipped from the warehouse is consigned to points outside the State.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

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II. THE PARTIES INVOLVED

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

The Union, a labor organization affiliated with the American Federation of Labor, has been the recognized representative of employees of the Employer.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

Although the Union has never been certified by the Board as exclusive representative of employees of the Employer, it has been a party to closed-shop contracts with the Employer since 1942. On August 25, 1947, the Union wrote to the Employer, indicating its desire to negotiate a contract to replace the then existing contract which was to expire on October 31.¹ The Employer, having reason to believe that the Union no longer represented a majority of employees within the unit covered by the contract, declined to bargain with the Union. On October 23, the *Employer* filed a petition for investigation and certification of representatives in Case No. 9-RM-7. On November 17, the Union called a strike at the Employer's plant. On November 25, the original petition was filed in this decertification proceeding.

On November 26, two representatives of the Teamsters Central Council approached the Employer for the purpose of settling the strike. The Employer was willing to bargain with the Union for that purpose.

On November 28, the Employer and the Union held a conference, at which time the Union submitted a contract proposal. The Union indicated its readiness to execute a contract on the conditions: (1) that its members approve the contract and (2) that the employees withdraw the instant petition. The Employer took the position that it would bargain with the Union and sign a contract, subject to a Board election to determine the question of the Union's majority status; that if the Union won an election, the contract would run for 1 year; but that, if it lost, the contract was to be terminated. The conference ended without agreement as to the contract.

On December 1, an amended petition was filed in this decertification proceeding,² and a Notice of Hearing on the amended petition was issued. The next day, the Employer withdrew its petition in Case No. 9-RM-7.

¹ None of the parties contends that the contract is a bar to this proceeding.

² The original petition in this proceeding was filed on November 25 by Ralph H. Coffey. The amended petition was filed by another employee, one Lewis Gross, on December 1, apparently because of the Union's claim that Coffey was a supervisor.

Section 9 (c) (1) (A) (ii), under which the petition and amended petition were filed, provides that a petition for *decertification* "assert that the individual or labor organization, *which has been certified or is being currently recognized* by their employer as the bargaining representative, is no longer a representative as defined in Section 9 (a)." [Italics supplied.] In the instant case, as noted above, (1) the Union was never certified; and (2) the Employer, at the time the petition was filed, and also presently, refuses to grant unqualified recognition in the absence of proof of a majority. As neither of the requisites prescribed by Section 9 (c) (1) (A) (ii) is present in this case, it is clear that the Board is not empowered by the Act to entertain a decertification petition at this time. Accordingly, we shall dismiss the instant petition. The dismissal, however, is without prejudice to the filing of an appropriate petition for investigation and certification of representatives by the Employer, or any person, or labor organization.

ORDER

IT IS HEREBY ORDERED that the amended petition filed herein by Lewis Gross for the decertification of Warehousemen's Local Union No. 661 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., as bargaining representative of employees of Queen City Warehouses, Inc., be, and it hereby is, dismissed, without prejudice to the filing of an appropriate petition for investigation and certification of representatives.

MEMBER REYNOLDS took no part in the consideration of the above Decision and Order.