

In the Matter of CRONIN MOTOR COMPANY, INC., EMPLOYER *and*
CHARLES E. NESTOR, PETITIONER *and* AUTOMOTIVE REPAIRMEN'S
LODGE NO. 804, INTERNATIONAL ASSOCIATION OF MACHINISTS,
UNION

Case No. 9-RD-5.—Decided May 21, 1948

DECISION

AND

ORDER

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 The Petitioner claims that the labor organization named below no longer represents employees of the Employer.

3. No question of representation 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.

Automotive Repairmen's Lodge No. 804, I. A. M., herein called the Union, and the Employer entered into an agreement effective October 28, 1946, for a term of 1 year, with provision for renewal from year to year thereafter unless notice of the type specified in the contract was given 30 days prior to the anniversary date of the contract. The union by letter dated September 15, 1947, requested a 15 cents per hour increase in wage rates.¹ The Employer on Septem-

*Houston, Reynolds, and Gray

¹ There is some question whether this letter constituted such notice as was sufficient to terminate the contract under its provisions. For reasons indicated in the text, it is not necessary to decide this question.

ber 29, 1947, declined to negotiate concerning this increase unless the Union furnished evidence of its current majority status, and there have been no recent negotiations between the Employer and the Union. The instant petition was filed on November 7, 1947. The Employer stated at the hearing that, in view of evidence it had received of defections from the Union, it did not know whether the Union was any longer the representative of the majority of the employees, and felt that it would be acting at its peril if it recognized the Union at the present time. The Employer, accordingly, expressed a desire that the question of the Union's current majority status be resolved by the Board.

The Union contends that the instant proceeding should be dismissed on either one of the following alternative grounds:

(1) That despite the foregoing correspondence between it and the Employer, the contract effective October 28, 1946, is still in effect and a bar to this proceeding, the instant petition having been filed after the operative date of the automatic renewal clause in the contract.

(2) That even if the contract is no longer in effect, the Board may not entertain the petition because the Union is not currently recognized by the Employer.

If the contract is still in effect, it would bar any further proceedings on the petition. If the contract is not in effect, the petition would not be barred; but then it would be necessary to consider whether the instant case otherwise falls within the provisions of Section 9 (c) (1) (A) (ii) of the amended Act, under which the petition was filed.

Section 9 (c) (1) (A) (ii) of the amended Act empowers the Board to investigate a petition for decertification of a "labor organization which has been certified or is being currently recognized" by the employer. In the instant case the Union has not been certified and, other than the contract, there is no basis in the record for finding that the Union is "currently recognized" by the Employer as the representative of the employees. Under these circumstances, the Board has no jurisdiction to entertain the petition.²

It seems clear, therefore, that under any tenable view of the facts in this case it is necessary to dismiss the instant petition, and we shall so direct.³

ORDER

IT IS HEREBY ORDERED that the instant petition be, and it hereby is, dismissed.

² *Matter of Queen City Warehouses, Inc.*, 77 N. L. R. B. 268.

³ Where the employer is concerned over the majority status of a union which is not currently recognized but which is claiming recognition, the appropriate remedy provided by the statute is the filing of a petition by the employer.