

Ward Trucking Corp., Employer-Petitioner, and Teamsters, Chauffeurs, Warehousemen & Helpers, Local 560. Case 22-RM-241. September 21, 1966

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Robert M. Schwartzbart. Thereafter, the Employer-Petitioner and the Union filed briefs. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the National Labor Relations Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

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

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c) (1) and 2(6) and (7) of the Act, for the following reasons:

On May 16, 1966, two representatives of the Union appeared at the Employer's terminal in North Bergen, New Jersey, and informed the terminal manager that the Union represented a majority of its 13 clerical employees and demanded that the Employer recognize the Union as their collective-bargaining representative. The terminal manager asked for proof of the Union's majority status, and when these representatives refused to proffer the signed authorization cards, he advised them that he would have to contact the home office for further instructions. On May 20, a letter was sent to the Union by counsel for the Employer denying the Union recognition until it was certified by the National Labor Relations Board. On the morning of May 26, a picket line was established at the Employer's terminal avowedly for the purpose of obtaining recognition, and none of the employees reported for work. The terminal manager again requested proof of majority status but that request was again denied. Nevertheless, that same morning, the terminal manager extended, in writing, recognition of the Union as bargaining agent for its clerical employees and the employees returned to work. A few days thereafter the Employer received photostatic copies of eight authorization cards signed by its clerical employees. On June 2, the Employer filed a petition for an election among those employees. One week later the Union demanded that the Employer sign a collective-bargaining agreement or the picket line would be reestablished, and on June 14 such an agreement, containing an unconditional recognition clause, was executed effective from the date of the Union's original demand. The

employer admitted that at that time it had no doubts that the Union did in fact represent a majority of its clerical employees.

Notwithstanding the execution of this agreement, the Employer did not withdraw its petition for an election and a hearing thereon was held on June 20. At the hearing the Employer contended that because of the picketing neither the recognition agreement nor the collective-bargaining agreement barred it from securing an election to test the Union's claim of majority status. The Union contended that the Employer lost its right to have an election by its entry into the recognition agreement and/or the collective-bargaining agreement.

It is unnecessary to pass upon the Union's contentions regarding the recognition agreement, for it is well established that when the Employer entered into the collective-bargaining agreement unconditionally recognizing the Union¹ after filing a petition for an election, it" . . . [took] a position wholly inconsistent with its attempt to establish that a question concerning representation presently exists"² and, hence, its petition must be dismissed. The Employer's repeated assertion that the contract was entered into only because it wished to end the strike cannot alter our conclusion. If, as the Employer conceded, the Union had been designated by a majority of the employees as their bargaining agent, then the picketing could not justify the conclusion that, despite the signing of a collective-bargaining agreement, there existed a question concerning representation.

The Union also contended that the Employer's implicit right to obtain an election for the purpose of dealing with a union certified by the Board was also barred by the execution of the collective-bargaining agreement. We agree with the Union for employers cannot be permitted ". . . to take advantage of whatever benefits may accrue from the contract with the knowledge that they have an option to avoid their contractual obligations and commitments through the device of a petition to the Board for an election."³

For the above-stated reasons, we find that a question concerning representation does not exist and it would not effectuate the policies of the Act to permit the Employer to proceed with its petition. The petition will therefore be dismissed.

[The Board dismissed the petition.]

¹ Article I, section 1 of the contract provided that "The Employer agrees to recognize the Union as the sole collective-bargaining agent for all office and clerical Employees . . ." Union's Exhibit 1, page 1.

² *U S Gypsum Company*, 116 NLRB 1771, 1772. It should be noted that our recent decision in *U.S. Gypsum Company*, 157 NLRB 652, is clearly not applicable to the instant case since, without considering other differences between the cases, the Union herein is not an incumbent union with an expiring or recently expired contract.

³ *Montgomery Ward & Co., Incorporated*, 137 NLRB 346, 348-349; *The Absorbent Cotton Company*, 137 NLRB 908. Cf., *Hallenberger, Inc.*, 132 NLRB 449, 450.