

**Gurabo Lace Mills, Inc. and Union General de Trabajadores a/k/a International Boilermakers, AFL-CIO, Petitioner. Case 24-RC-6328**

May 20, 1980

**DECISION AND ORDER REMANDING  
PROCEEDING TO REGIONAL  
DIRECTOR**

BY CHAIRMAN FANNING AND MEMBERS  
PENELLO AND TRUESDALE

Pursuant to a Decision and Direction of Election issued by the Regional Director for Region 24 of the National Labor Relations Board on June 20, 1979, an election was conducted on July 17, 1979, under the direction and supervision of the Regional Director, among the employees in the unit as agreed on by the parties.<sup>1</sup> The tally of ballots furnished the parties at the conclusion of the election showed that of approximately 14 eligible voters 7 cast ballots for and 6 against the Petitioner; there was 1 challenged ballot, which was insufficient to affect the results of the election. Thereafter, the Employer timely filed objections to conduct affecting the results of the election.

Pursuant to the Board's Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation and on September 13, 1979, issued his report in which he dismissed paragraphs 1, 2 and 4 of the Employer's objections and ordered that a hearing be held on the supervisory issue raised by the challenge to the ballot of Octavio Rodriguez. As for paragraph 3 of the Employer's objections, it raised issues concerning alleged improper conduct predicated, however, on the assertion that Rodriguez was a supervisor. Consequently, the Regional Director deferred ruling on the allegation of paragraph 3 "pending a final determination of Rodriguez's status by the Board."<sup>2</sup> Thereafter, the Employer filed a request for review contending the Regional Director was in error in finding paragraph 4 of its objections to be without merit; the Board denied the request by telegraphic order on October 9, 1979.

Thereafter, pursuant to the Regional Director's order, a hearing on the alleged supervisory status of Rodriguez was held before Hearing Officer Eduardo Fernandez. On December 17, 1979, the Hearing Officer issued his report in which he con-

cluded that Rodriguez was an employee, not a supervisor, and recommended to the Board that the challenge to his ballot be overruled. On January 2, 1980, the Employer filed exceptions with the Board in which it contended that the Hearing Officer erred in finding Rodriguez to be an employee.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the Hearing Officer's report, the exceptions and brief, and the entire record in the case and hereby adopts the Hearing Officer's findings and conclusions but only to the extent consistent with the following:<sup>3</sup>

The Employer's Gurabo Lace Mills in Puerto Rico is alone involved in this proceeding. The Employer employs there some 12 to 14 employees. The only management personnel concededly involved in the plant's operation is Gerard Scher, the Employer's president, who, however, spends most of his time in the continental United States, and Joseph Esposito, the Employer's general manager, who lives in Puerto Rico but who normally spends at most only 2 days a week at the plant. Rodriguez, the Employer contends, is the general factory supervisor responsible for the day-to-day operation of the plant and possesses most of the supervisory functions specified in Section 2(11) of the Act. The Hearing Officer concluded, however, that Rodriguez is, as contended by the Union, a nonsupervisory leadman, conceding there are a few aspects of Rodriguez' work "which appear to reflect supervisory authority" but are insufficient in his view to warrant a conclusion Rodriguez is a supervisor. Of course, we are faced with determining if Rodriguez possesses any of the supervisory criteria of Section 2(11) of the Act, one being enough to establish supervisory status, and not, as the Hearing Officer seemed to suggest, with balancing the supervisory aspects of his job with the nonsupervisory in order to determine his status.

The Hearing Officer found that Rodriguez' role at the plant "was clearly different from that of other rank-and-file employees on the day shift." Unlike the others Rodriguez is responsible for the daily assignment of jobs to day-shift employees, assists employees when problems arise, makes necessary reassignments if an employee fails to show on either the day or night shift, and adjusts employee grievances. Further, since Esposito is at the plant

<sup>1</sup> The unit is: All production and maintenance employees employed by the Employer at its factory located at Carr. 943, Km. 2.0, Barrio Celada, Gurabo, Puerto Rico; but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

<sup>2</sup> However, inconsistently—and, no doubt, inadvertently—the Regional Director dismissed the Employer's objections "in their entirety." As no final determination has been made with respect to par. 3 of the Employer's objections, the issues raised by that paragraph are, of course, still pending.

<sup>3</sup>The Hearing Officer made what appears to us to be inconsistent and incomplete credibility findings concerning testimony as to Rodriguez' supervisory status, and relied to a large extent on witnesses' conclusory statements. However, in reaching our result here we rely on a consideration of all the evidence not discredited by the Hearing Officer, and not the conclusory testimony of these witnesses.

only 2 days a week and as he is unable to converse in Spanish, the day-to-day management of the plant is necessarily handled at least in large part by Rodriguez.<sup>4</sup> He is also immediately involved in the hiring process. As Esposito has no command of Spanish, Rodriguez interviews the prospective employees<sup>5</sup> and, at a minimum, heavy reliance is placed on his recommendations concerning hiring. Also, in at least one instance—that involving Jesus Rivera—Rodriguez, after learning the Employer needed another employee, offered Rivera a job at a specified wage and Rivera accepted and went to

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<sup>4</sup>In finding Rodriguez to be a nonsupervisory leadman the Hearing Officer relied in part on his assessment of the situation to the effect that "virtually every decision . . . [Rodriguez] made had to be checked by phone with a superior." The record does not, however, support such a conclusion. Rather, it shows that where Rodriguez had doubts about what decision to make he would telephone Esposito, but if he felt he knew what was right he would go ahead and do it without an consultation with higher management.

<sup>5</sup>Prior to 1975 Esposito was present when prospective employees were interviewed by Rodriguez; after that date Rodriguez usually handled the interviews alone.

work for the Employer without prior clearance from Scher or Esposito. In view of the foregoing—and there is additional record evidence supporting the same result—we find that Rodriguez has the authority responsibly to direct employees, to hire and transfer them, and to adjust their grievances. Accordingly, we further find, contrary to the Hearing Officer, that Rodriguez is a supervisor within the meaning of Section 2(11) of the Act and, thus, sustain the challenge to his ballot.

As the Regional Director has deferred resolution of the issues raised by paragraph 3 of the Employer's objections pending our decision concerning Rodriguez' supervisory status, we shall remand the case to the Regional Director for further appropriate proceedings.

#### ORDER

It is hereby ordered that this case be, and it hereby is, remanded to the Regional Director for Region 24 for further appropriate proceedings.