

**Sonic Knitting Industries, Inc., Employer-Petitioner,
and International Ladies' Garment Workers'
Union, Locals 600-601, AFL-CIO. Case 24-RM-
205**

April 11, 1977

DECISION ON REVIEW AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS
PENELLO AND WALTHER

On July 15, 1976, the Regional Director for Region 24 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate a unit composed exclusively of production and maintenance employees employed by the Employer at its fabric printing facility in Hato Rey, Puerto Rico. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, International Ladies' Garment Workers' Union, Locals 600-601, AFL-CIO (herein called the Union), filed a timely request for review of the Regional Director's Decision on the grounds that, *inter alia*, the facts raise novel questions of law and policy, the Regional Director made factual findings which are clearly erroneous, and in making these findings he departed from officially reported precedent.

On August 31, 1976, the National Labor Relations Board, by telegraphic order, granted the request for review and stayed the election pending the decision on review.

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 entire record in this case and makes the following findings:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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

3. The Petitioner, Sonic Knitting Industries, Inc. (herein also called the Employer), is a Puerto Rico corporation engaged in textile knitting and is a wholly owned subsidiary of Caribbean Leisure Wear, Inc. Sometime in 1972 the Employer voluntarily recognized the Union, and subsequently the parties entered into a collective-bargaining agreement extending from August 28, 1972, to August 27, 1975, covering "those persons employed in any connection with any and all operations in the manufacture of knitted goods produced in the Employer shops

located in Puerto Rico." At the time the contract was negotiated, the Employer had only one facility located at Hato Rey, Puerto Rico, where it employed some 21 knitters and printers.

In November 1974 the Employer notified the Union that it intended to move its knitting operations to Morovis, Puerto Rico, some 45 miles from the Hato Rey facility, but that the printing operation would remain in Hato Rey. Thereafter, the Employer bargained with the Union and agreed to provide moving expenses or severance pay to the employees affected by the relocation of the knitting operation, and on December 4, 1974, executed an agreement with the Union which provided that "the current collective-bargaining agreement between the Company and the Union will be applicable to the Morovis (Sonic) employees as well as to the workers who remain at the present premises at Tio Piedras [Hato Rey], Puerto Rico." Only three employees elected to move to Morovis, two of whom were promoted to supervisory positions. Six employees continued to work at Hato Rey, and the remainder chose the severance pay option. Ultimately, about 40 knitters were hired at Morovis.

In early February 1975, 13 of the 14 employees then employed at Morovis signed authorization cards for the Union. About the same time, several of the employees at Hato Rey, who had become dissatisfied with the Union, filed a petition for a deauthorization election at the Hato Rey facility. Following an informal preelection conference at which the Union alleged that a combined unit of the two plants was appropriate, the petition was amended to include the Morovis employees. Thereafter, the Employer gave several Hato Rey employees time off with pay to solicit signatures for the deauthorization petition from the Morovis employees.

The deauthorization election was conducted on March 20, 1975, and a majority of the employees at both locations voted to rescind the Union's authority to negotiate a union-security provision. Thereafter, the Union filed a grievance alleging that the Employer's preelection conduct violated a contract clause prohibiting antiunion discrimination and, based on the same conduct, filed objections to the election and unfair labor practice charges in Case 24-CA-3628.¹ An arbitrator found the Employer had violated the contractual requirement that "Neither the Employer nor any of its agents shall directly or indirectly discourage membership in the Union," and ordered it to cease and desist from such conduct, to post a notice to that effect, and to make certain monetary payments to the Union. The Regional Director dismissed the petition on grounds that the

¹ The charge also alleged other misconduct not relevant here

signatures thereon had been obtained with the assistance of the Employer and also dismissed the charge in Case 24-CA-3628 under *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955).²

On August 28, 1975 (the day after the contract expired), the Union filed charges in Case 24-CA-3640, alleging that the Employer violated Section 8(a)(5) of the Act by: (1) refusing to honor the Union's request to discharge certain Morovis employees under the existing union-security clause; (2) refusing to meet with the Union for the purpose of negotiating a new collective-bargaining agreement; and (3) failing to make payments into the trust funds established by the expired contract during its term. The Union also, on some later date, filed charges in Case 24-CA-3702 alleging that the Employer refused to bargain with the Union regarding the terms and conditions of employment of the Morovis employees. The Regional Director dismissed both charges on the grounds that, *inter alia*, Morovis was a new and separate unit, the Union had never attained majority status at Morovis, and such status could not be presumed from the contract or the arbitration award. The Union's appeals to the General Counsel were denied.

On September 17, 1975, the Employer filed a petition in Case 24-RM-201 seeking an election in a unit of production and maintenance employees "employed by the Employer in Puerto Rico" but, following the dismissal of the unfair labor practice charges discussed above, withdrew that petition and filed the instant petition for an election in a unit composed of all production and maintenance employees at Hato Rey, excluding office clerical employees, watchmen, designers, executives, supervisors, foremen and assistant foremen, professional, administrative, and executive personnel, guards and supervisors.

² The Union did not appeal the dismissal of this charge.

³ Sec 102.61(b) of the National Labor Relations Board Rules and Regulations, Series 8, as amended

⁴ *The A S Abell Company*, 224 NLRB 425, fn 6 (1976), *Woolwich, Inc.*, 185 NLRB 783 (1970), *Bowman Building Products Division and Allegheny Strapping Division of Cyclops Corporation*, 170 NLRB 312 (1968), *Amperex Electronic Corporation*, 109 NLRB 353 (1954)

⁵ Inasmuch as we dismiss the petition on these narrow grounds, we find it unnecessary in this proceeding to determine whether either a unit limited to the Hato Rey facility or a unit encompassing both the Morovis and Hato Rey plants would be appropriate for the purpose of collective bargaining. We further find it unnecessary to, and consequently do not, pass upon either

Under Section 9(c)(1)(B) of the Act and the Regulations implementing that section,³ a question concerning representation is established in the case of an employer petition only by an affirmative claim of a labor organization that it represents a majority of the employees in the unit claimed to be appropriate. Accordingly, the Board has often found that no question concerning representation exists where an employer petition for certification is narrower than the unit sought by a labor organization.⁴

There is no evidence that, following the Employer's announced intent to move its knitting operation to Morovis, the Union sought, or claimed, to represent the employees at the Hato Rey facility in a separate unit. To the contrary, the Union consistently and repeatedly sought recognition as the representative for the employees at both locations. Thus, the Union bargained with the Employer about and obtained an extension of the existing collective-bargaining agreement to the Morovis employees, successfully argued that the petition in Case 24-UD-156 be amended to include employees at both locations, requested the Employer to discharge certain Morovis employees under the contract's union-security clause, and requested bargaining on a new contract apparently covering employees at both locations. Further, when the Employer refused to comply with these requests the Union filed unfair labor practice charges against the Employer, reasserting the appropriateness of the two-location unit. Under these circumstances, where the Union has made no demand for recognition in the petitioned-for unit, we find that no question concerning representation has been raised within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act. Accordingly, we shall dismiss the petition.⁵

ORDER

It is hereby ordered that the petition in Case 24-RM-205 be, and it hereby it, dismissed.

the Employer's contention that the disposition of Cases 24-CA-3640 and 24-CA-3702 is controlling herein, or the Union's contention that the Employer's failure to comply with the arbitration award, the basis for the Regional Director's dismissal of the charges in Case 24-CA-3628, should bar the conducting of an election. Finally, we do not pass on such issues as whether the Employer has recognized the Union as exclusive representative for a bargaining unit comprised of employees at both plants or whether, assuming *arguendo* that the Union has been so recognized, the Employer has demonstrated by objective considerations that it has some reasonable grounds for believing that the Union has lost its majority status. See, e.g., *United States Gypsum Company*, 157 NLRB 652 (1966).