Special Machine & Engineering, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 157. Case 7–RM–290

23 February 1987

ORDER

BY CHAIRMAN DOTSON AND MEMBERS JOHANSEN AND STEPHENS

On 29 May 1986 the Regional Director issued a Decision and Order in the above-entitled proceeding dismissing the petition on the ground that the Union's claim that the Respondent's transferred employees are an accretion does not raise a question concerning representation, and on the ground that the transferred employees are an accretion. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision on the basis that the Regional Director departed from Board precedent in dismissing the petition, asserting that the transferred employees are not an accretion to the existing unit as neither group is sufficiently predominant to remove any question concerning representation. The Union filed a statement in opposition in which it contended that no question concerning representation exists because the accreted group is smaller than the represented group, and the two affected groups share a community of interest.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

We have considered carefully the arguments of the parties, and for the reasons set forth below, we deny review of the Regional Director's dismissal of the Employer's petition.

The following relevant facts as found by the Regional Director are undisputed. The Union has represented the Employer's production and maintenance employees at its Southfield, Michigan facility for 30 years. The bargaining unit consists of approximately 50 employees. In early December 1985, the Employer announced its intention to consolidate operations with its corporate subsidiary, Quality Craft Die, Tool & Mold, Inc. (QCI), located in Novi, Michigan. At the time, QCI employed approximately 28 unrepresented production employees. In mid-January 1986, the Employer began to transfer QCI production employees and equipment to its Southfield plant. By May 1986, when the hearing was conducted, the Employer had transferred 20 of the 28 QCI employees.[1] Upon transfer, the Southfield and QCI production employees merged into a single productive entity as both groups of employees use the same equipment and machines, require the same skills, work on the same projects under common supervision, and work under the same terms and conditions of employment.

This case is substantially similar to our recent decision in *Central Soya Co.*, 281 NLRB No. 173 (Oct. 21, 1986), in which we found an accretion under similar circumstances. Our decision in *Central Soya* thus controls the result here. Nevertheless, our dissenting colleague has repeated some of the contentions he made in his dissent in *Central Soya*.

The dissent contends that the Board's decision in *Martin Marietta Chemicals*, 270 NLRB 821 (1984), requires that we find that the 20 unrepresented QCI employees are not an accretion to the 50-employee, union-represented Southfield, Michigan unit because the Southfield employees are not sufficiently predominant in number over the QCI employees. The dissent, however, has applied the wrong standard.

In *Martin Marietta*, the employer consolidated two units historically represented by different labor organizations. The Board, citing published precedent, stated that, under those circumstances, it would not impose one of the unions on the consolidated unit by accretion unless the group the union previously represented was "sufficiently predominant to remove the question concerning overall representation." 270 NLRB at 822 (citation omitted). The fact that one of the groups was slightly larger than the other was insufficient.

Here, unlike *Martin Marietta*, the two groups have not historically been represented by different unions; the QCI employees are unrepresented. In *Central Soya* we explained that an accretion exists in these circumstances, "even when the represented employees barely constitute[] a majority of the combined work force." 281 NLRB No. 173, slip op. at 6 (citations omitted). Accordingly, *Martin Marietta* does not by its terms apply to this case.

Our dissenting colleague nevertheless would apply *Martin Marietta* here and would consider whether the Southfield employees are "sufficiently predominant." He argues, "Inasmuch as Section 7 of the Act expressly protects the employees' right to refrain from as well as the right to engage in union activities, I see no reason for applying a different standard to consolidation cases in which one employee group was previously represented and

[1] The Employer expected at the time of the hearing to transfer the remaining eight employees to Southfield by September 1986 The Regional Director, however, made no findings with respect to those eight as the Union did not claim that they were an accretion to the bargaining unit

the other was not." Insofar as that argument may suggest that the absence of union activity is to be automatically equated with a conscious decision to refrain, we disagree with its factual premise. Even more importantly, contrary to the dissent's suggestion, *Martin Marietta* is not clearly founded on a concern for the smaller group's representation choice. Rather, as explained in *National Carloading Corp.*, 167 NLRB 801, 802 (1967), the Board has ordered elections in cases in which both employee groups are represented, and neither sufficiently predominant, in order to ensure that the disruptive influence that conflicting representation claims might have on industrial peace and harmonious bargaining relationships is eliminated. There is no such potentially disruptive influence here.

Accordingly, as in *Central Soya*, we will again apply the general rule that, where sufficient other accretion factors are present,[2] we will not permit an employer to capitalize on its decision to consolidate a smaller group with its larger, represented group to justify terminating its long-term bargaining relationship with the majority representative.[3] We will instead accrete the smaller group to the larger.

Accordingly, review is denied.

CHAIRMAN DOTSON, dissenting.

Contrary to my colleagues, I would grant the Employer's request for review and reverse the Regional Director's Decision and Order dismissing the petition.

The Employer, Special Machine & Engineering, Inc. (SME), consolidated its operations with Quality Craft Die, Tool & Mold, Inc. (QCI), a corporate subsidiary. At the time of the hearing, 20 QCI production employees had been reassigned to the SME Southfield, Michigan facility where a unit of 50 production and maintenance employees was represented by UAW, Local 157. The remaining eight QCI production employees were expected to be transferred to Southfield shortly. The Regional Director determined that the "consolidation has effected virtually a complete integration of the QCI and SME production workforces." The Regional Director then found that the former employees of QCI are governed by the unit's choice of bargaining representative and, alternatively, that the Union's claim of accretion does not raise a question concerning representation and that accretion has in fact taken place.

In the circumstances of this case, I would find the accretion doctrine to be inapplicable. In any accretion case, the Board must balance the right of employees to express their desire concerning representation against the policy favoring continuity in collective-bargaining relationships. The Board has held that "[w]hen an employer merges two groups of employees who have been historically represented by different unions, a question concerning representation arises, and the Board will not impose a union by applying its accretion policy where neither group of employees is sufficiently predominant to remove the question concerning overall representation."[1] Inasmuch as Section 7 of the Act expressly protects the employees' right to refrain from as well as the right to engage in union activities, I see no reason for applying a different standard to consolidation cases in which one employee group was previously represented and the other was not. In this case, the QCI employees had comprised a separate, distinct, and historically unrepresented work force for approximately five years prior to the Employer's consolidation. Following the consolidation, the QCI employees increased the total complement of employees at the Southfield facility by more than one-half. In these circumstances, I would conclude that neither group is "sufficiently predominant."[2]

A Federal circuit court has noted that "As a general rule, the accretion doctrine should be applied restrictively since it deprives the new employees of their opportunity to express their desires regarding memberships in the existing unit [citations omitted]. And when the relevant considerations are not free from doubt, it would seem more satisfactory to resolve such close questions through the election process rather than seeking an addition of the new employees by a finding of accretion [citations omitted]."[3] Accordingly, I would find that a question concerning representation exists and would order an election in the merged unit[4] of

[2] See *Central Soya*, supra, 281 NLRB 1308, 1309, fn 8

[3] Id at 1309 In *Central Soya* the employer withdrew recognition from the union and the union filed charges pursuant to Sec 8(a)(5) and (1) Here, as discussed in the Regional Director's decision, the Employer refused to apply the recognition and union-security clauses of its contract with the Union to the QCI employees It later filed an election petition pursuant to Sec 9(c) for an election among all of its production and maintenance employees The procedure the employers in the two cases used differed, but the result was the same

[1] *Martin Marietta Chemicals*, 270 NLRB 821 (1984)

[2] See also *Boston Gas Co*, 221 NLRB 628 (1975), *Massachusetts Electric Co*, 248 NLRB 155 (1980)

[3] *Westinghouse Electric Corp v NLRB*, 440 F 2d 7, 11 (2d Cir 1971) While the court in *Westinghouse* put its imprimatur on the Board's use of accretion, the court's concern over the extent to which the dynamics of legal logic would, in the future, expand the use of the accretion doctrine, with a concomitant effect on employee free choice, is clear This case is well beyond that pale

[4] My colleagues assert that the Employer will not be permitted "to capitalize on its decision to consolidate a smaller group with its larger, represented group to justify terminating its long-term bargaining relationship with the majority representative" However, no unlawful motive to the Employer's consolidation has been alleged in this case In their determination to see that the Employer does not—from their perspective—

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SME and QCI employees to determine whether the union represents a majority of the employees.

take advantage of the situation, my colleagues again fail to strike the correct balance between competing interests. (See fn 6 of my dissent in *Central Soya*.)

For another instance where a smaller group of employees has effectually been deprived of their statutory rights by the Board's application of a doctrine designed to forward its ideas of "industrial stability," see the dissent of myself and former Member Dennis in *Gibbs & Cox, Inc.*, 280 NLRB 953 (1986). There, the Board applied its so-called merger doctrine to hold that a group of employees, which constituted an appropriate unit at the time it sought representation, was later "merged" by agreement of the employer and union into a larger unit. This "merger" effectively stifled a later attempt by this group to withdraw from representative status.

This Board has resisted formal deferral to outside dispute resolution mechanisms in the representation area. It nevertheless increasingly defers de facto to the actions of faceless negotiators and corporate decisionmakers by its current use of so-called merger and accretion theories to prevent exercise of Sec. 7 rights by employees involuntarily caught up in these corporate and collective arrangements. Knowledgeable employees will, in the future, hesitate to select a collective-bargaining representative when they realize that they may be at any time negotiated or transferred out of their Sec 7 right to reject a current representative or select another. In the instant case, even the initial selection of a bargaining representative has been torn from employees' grasp. This is a high price to pay for abstract goals of "industrial stability."