SUPREME COURT
FIRST DIVISION

M.Y. SAN BISCUITS INC.,
***Petitioner*,**

-versus-

G.R. No. 95011
April 22, 1991

ACTING SECRETARY BIENVENIDO E. LAGUESMA and PHILIPPINE TRANSPORT AND GENERAL WORKERS ORGANIZATIONS,
***Respondents*.**
x----------x

D E C I S I O N

GANCAYCO, *J.*:

The issue presented by this petition is whether or not the med-arbiter or the Secretary of Labor and Employment has the authority to determine the existence of an employer-employee relationship between the parties in a petition for certification election.

On May 12, 1989, private respondent Philippine Transport and General Workers Organization (Union for short) file a petition for certification election as a bargaining agent for a group of employees of petitioner M.Y. San Biscuits, Inc. before the med-arbiter of the Department of Labor and Employment (DOLE).

After the parties submitted their position papers, on August 25, 1989, the med-arbiter issued an order dismissing the petition for lack of merit as there is no employer-employee relationship between petitioner and the delivery drivers, helpers represented by respondent Union.[1]

Meanwhile, respondent Union and several others filed before the NLRC Branch of Region No. IV a complaint for underpayment of wages; non-payment of 13th month pay; service incentive pay and COLA; damages and attorney's fees.

On February 9, 1990, the labor arbiter rendered a decision dismissing the said complaint on the ground that there is no employer-employee relationship between the parties.[2] On February 26, 1990 private respondent appealed to the National Labor Relations Commission (NLRC).

In the certification election case, private respondent appealed to the Secretary of DOLE. On December 15, 1989, then DOLE Secretary Franklin Drilon promulgated a resolution reversing the decision of the med-arbiter, thus finding that there exists an employer-employee relationship between petitioner and private respondent.[3]

Petitioner filed a motion for reconsideration of this resolution on January 22, 1990 and a manifestation on February 12, 1990 asking that action be held in abeyance pending consideration of the other case where the labor arbiter rendered a decision declaring the absence of an employer-employee relationship between the parties.[4] On April 16, 1990, public respondent issued an order denying the relief sought in the manifestation of petitioner.[5] Petitioner filed a motion for reconsideration therefrom[6] but it was denied on June 18, 1990.[7]

Thus, this petition for certiorari with prayer for the issuance of a writ of preliminary prohibitory injunction and temporary restraining order based on the following grounds:

> "I. The Acting Secretary Bienvenido E. Laguesma abused his discretion in denying the Manifestation filed by Petitioner

on the ground of a Prejudicial question involving the issue of employer-employee relationship pending before the National Labor Relations Commission (NLRC).

"II. The Hon. Secretary has no jurisdiction to determine the existence of [an] employer-employee relationship between petitioner and private respondent."[8]

On September 19, 1990, the Court, without giving due course to the petition, required the respondents to comment thereon within ten (10) days from notice and granted the prayer for the issuance of a temporary restraining order enjoining the execution of the questioned orders dated December 15, 1989 and June 18, 1990.

The main thrust of the petition is that the public respondent Secretary has no jurisdiction to determine the existence of an employer-employee relationship between the parties and that its determination is vested in the NLRC.

The petition must fail.

Under Article 226 of the Labor Code, as amended, the Bureau of Labor Relations (BLR), of which the med-arbiter is an officer, has the following jurisdiction —

> "ART. 226. Bureau of Labor Relations. — The Bureau of Labor Relations and the Labor Relations divisions in the regional offices of the Department of Labor shall have original and exclusive authority to act, at their own initiative or upon request of either or both parties, on all inter-union and intra-union conflicts, and all disputes, grievances or problems arising from or affecting labor-management relations in all work places whether agricultural or non-agricultural, except those arising from the implementation or interpretation of collective bargaining agreements which shall be the subject of grievance procedure and/or voluntary arbitration.
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> "The Bureau shall have fifteen (15) working days to act on labor cases before it, subject to extension by agreement of the parties." (Emphasis supplied.)

From the foregoing, the BLR has the original and exclusive jurisdiction to inter alia, decide all disputes, grievances or problems arising from or affecting labor-management relations in all workplaces whether agricultural or non-agricultural. Necessarily, in the exercise of this jurisdiction over labor-management relations, the med-arbiter has the authority, original and exclusive, to determine the existence of an employer-employee relationship between the parties.

Apropos to the present case, once there is a determination as to the existence of such a relationship, the med-arbiter can then decide the certification election case.[9] As the authority to determine the employer-employee relationship is necessary and indispensable in the exercise of jurisdiction by the med-arbiter, his finding thereon may only be reviewed and reversed by the Secretary of Labor who exercises appellate jurisdiction under Article 259 of the Labor Code, as amended, which provides —

> "ART. 259. Appeal from certification election orders. — Any party to an election may appeal the order or results of the election as determined by the Med-Arbiter directly to the Secretary of Labor and Employment on the ground that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) calendar days."

When as in this case Secretary Drilon of DOLE rendered a resolution dated December 15, 1989 reversing the order of the med-arbiter dated August 25, 1989 by declaring the existence of an employer-employee relationship between the parties, such finding cannot be rendered nugatory by a contrary finding of the labor arbiter in a separate dispute for money claims between same parties.

It is absurd to suggest that the med-arbiter and Secretary of Labor cannot make their own independent finding as to the existence of such relationship and must have to rely and wait for such a determination by the labor arbiter or NLRC in a separate proceeding. For then, given a situation where there is no separate complaint filed

with the labor arbiter, the med-arbiter and/or the Secretary of Labor can never decide a certification election case or any labor-management dispute properly brought before them as they have no authority to determine the existence of an employer-employee relationship. Such a proposition is, to say the least, anomalous.

Correctly indeed, the Secretary of Labor denied the prayer in the manifestation of petitioner to await the resolution of the NLRC as to the existence of such employer-employee relationship.

The Court reproduces with approval the findings and conclusions of the Secretary in the said resolution dated December 15, 1989.

> "The sole issue to be resolved is whether or not there exists an employer-employee relationship between members of petitioning union and the company.
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> "After a careful review of the records of the case, we find for the appellant.
>
> "It has been well settled in jurisprudence that the factors to be considered in determining the existence of employer-employee relationship are as follows: (a) selection and engagement of the employees; (b) the payment of wages; (c) the process [sic] of dismissal; and, (d) the employer's power to control the employee with respect to the means and methods [with] which the work is to be accomplished.
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> "On the first factor, (selection and engagement of the employer), [sic] it is very apparent from the records that the personnel of M.Y. San Biscuits are the one responsible for hiring of employees. Assuming, it is the salesman that engages his own driver, it could be inferred however that such authority emanates from the respondent.
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> "On the second factor (payment of wages), while the respondent tried to impress upon us that the drivers/helpers are not in the payroll of the company and, therefore, not receiving salaries from it, this at best is but an administrative arrangement in

order to save the respondent from the burden of keeping records and other indirect cost."

On the third factor, (the power of dismissal), it is very clear that herein respondent is the authority that imposes disciplinary measures against erring drivers. This alone proves that it wields disciplinary authority over the drivers/helpers.

Finally, on the fourth factor which is the control test, the fact that the respondent gives daily instructions to the drivers on how to go about their work is sufficient indication that it exercises control over the movements of the drivers/helpers. The drivers are instructed as to what time they are supposed to report to the office and what time they are supposed to return.

Viewed from the above circumstances, it is every clear that the herein respondent is the real employer of the drivers/helpers. They are in truth and in fact the employees of the respondent and its attempt to seek refuge on its salesmen as the ostensible employer of the drivers/helpers was nothing but an elaborate scheme to deprive drivers/helpers their right to self-organization.

WHEREFORE, premises considered, the appeal is hereby granted and the Med-Arbiter's Order dated 25 August 1989 vacated, and in lieu thereof, a new one is entered calling for the conduct of a certification election among the drivers/helpers of M.Y. San Biscuits with the following as choices:

1. Philippine Transport and General Workers Organization (PTGWO); and,

2. No Union.

SO ORDERED."[10]

On September 19, 1990, the NLRC promulgated its resolution reversing the decision of the labor arbiter and finding the existence of an employer-employee relationship between the parties.[11] A motion

for reconsideration filed by petitioner was denied in a resolution dated November 16, 1990.[12]

On all counts, the petition must be struck down.

WHEREFORE, the Petition is **DISMISSED**. The temporary restraining order which the Court issued on September 19, 1990 is hereby lifted, with costs against petitioner.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino and Medialdea, *JJ.*, concur.

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[1] Annex D to the Petition.
[2] Annex E to the Petition.
[3] Annex F to the Petition.
[4] Annex H to the Petition.
[5] Annex I to the Petition.
[6] Annex J to the Petition.
[7] Annex K to the Petition.
[8] Page 6, Rollo.
[9] Besa vs. Trajano, 146 SCRA 501 (1987).
[10] Annex G to the Petition; pages 162 to 163, Rollo.
[11] Pages 132 to 143, Rollo.
[12] Pages 145 to 147, Rollo.
