SUPREME COURT
EN BANC

MANILA ELECTRIC COMPANY,
***Petitioner*,**

-versus-

G.R. No. 91902
May 20, 1991

THE HON. SECRETARY OF LABOR AND EMPLOYMENT, STAFF AND TECHNICAL EMPLOYEES ASSOCIATION OF MERALCO, and FIRST LINE ASSOCIATION OF MERALCO SUPERVISORY EMPLOYEES,
***Respondents*.**
x----------x

D E C I S I O N

MEDIALDEA, *J.*:

This Petition seeks to Review the Resolution of respondent Secretary of Labor and Employment Franklin M. Drilon dated November 3, 1989 which affirmed an Order of Med-Arbiter Renato P. Parungo (Case No. NCR-O-D-M-1-70), directing the holding of a certification election among certain employees of petitioner Manila Electric Company (hereafter "MERALCO") as well as the Order dated January 16, 1990 which denied the Motion for Reconsideration of MERALCO.

The facts are as follows:

On November 22, 1988, the Staff and Technical Employees Association of MERALCO (hereafter "STEAM-PCWF") a labor organization of staff and technical employees of MERALCO, filed a petition for certification election, seeking to represent regular employees of MERALCO who are: (a) non-managerial employees with Pay Grades VII and above; (b) non-managerial employees in the Patrol Division, Treasury Security Services Section, Secretaries who are automatically removed from the bargaining unit; and (c) employees within the rank and file unit who are automatically disqualified from becoming union members of any organization within the same bargaining unit.

Among others, the petition alleged that "while there exists a duly-organized union for rank and file employees in Pay Grade I-VI, which is the MERALCO Employees and Worker's Association (MEWA) which holds a valid CBA for the rank and file employees,[1] there is no other labor organization except STEAM-PCWF claiming to represent the MERALCO employees.

The petition was premised on the exclusion/disqualification of certain MERALCO employees pursuant to Art. I, Secs. 2 and 3 of the existing MEWA CBA as follows:

> "ARTICLE I
> SCOPE
>
> x x x
>
> SECTION 2. Excluded from the appropriate bargaining unit and therefore outside the scope of this Agreement are:
>
> (a) Employees in Patrol Division;
>
> (b) Employees in Treasury Security Services Section;
>
> (c) Managerial Employees; and

(d) Secretaries.

Any member of the Union who may now or hereafter be assigned or transferred to Patrol Division or Treasury Security Services Section, or becomes Managerial Employee or a Secretary, shall be considered automatically removed from the bargaining unit and excluded from the coverage of this agreement. He shall thereby likewise be deemed automatically to have ceased to be member of the union, and shall desist from further engaging in union activity of any kind.

SECTION 3. Regular rank-and-file employees in the organization elements herein below listed shall be covered within the bargaining unit, but shall be automatically disqualified from becoming union members:

1. Office of the Corporate Secretary
2. Corporate Staff Services Department
3. Managerial Payroll Office
4. Legal Service Department
5. Labor Relations Division
6. Personnel Administration Division
7. Manpower Planning & Research Division
8. Computer Services Department
9. Financial Planning & Control Department
10. Treasury Department, except Cash Section 11. General Accounting Section.

"x x x" (p. 19, Rollo).

MERALCO moved for the dismissal of the petition on the following grounds:

I

> The employees sought to be represented by petitioner are either 1) managerial who are prohibited by law from forming or joining supervisory union; 2) security services personnel who are prohibited from joining or assisting the rank-and-file union; 3) secretaries who do not consent to the petitioner's representation and whom petitioner can not represent; and 4) rank-and-file employees represented by the certified or duly recognized bargaining representative of the only rank-and-file bargaining unit in the company, the Meralco Employees Workers Association (MEWA), in accordance with the existing Collective Bargaining Agreement with the latter.

II

> The petition for certification election will disturb the administration of the existing Collective Bargaining Agreement in violation of Art. 232 of the Labor Code.

III

> The petition itself shows that it is not supported by the written consent of at least twenty percent (20%) of the alleged 2,500 employees sought to be represented. (Resolution, Sec. of Labor, pp. 223-224, Rollo)

Before Med-Arbiter R. Parungo, MERALCO contended that employees from Pay Grades VII and above are classified as managerial employees who, under the law, are prohibited from forming, joining or assisting a labor organization of the rank and file. As regards those in the Patrol Division and Treasury Security Service Section, MERALCO maintains that since these employees are tasked with providing security to the company, they are not eligible to join the rank and file bargaining unit, pursuant to Sec. 2(c), Rule V, Book V of the then Implementing Rules and Regulations of the Labor Code (1988) which reads as follows:

"Sec. 2. Who may file petition. — The employer or any legitimate labor organization may file the petition.

"The petition, when filed by a legitimate labor organization, shall contain, among others:

"x x x;

"(c) description of the bargaining unit which shall be the employer unit unless circumstances otherwise require, and provided, further: that the appropriate bargaining unit of the rank and file employees shall not include security guards (As amended by Sec. 6, Implementing Rules of EO 111).

"x x x" (p. 111, Labor Code, 1988 Ed.)

As regards those rank and file employees enumerated in Sec. 3, Art. I, MERALCO contends that since they are already beneficiaries of the MEWA-CBA, they may not be treated as a separate and distinct appropriate bargaining unit.

MERALCO raised the same argument with respect to employees sought to be represented by STEAM-PCWF, claiming that these were already covered by the MEWA-CBA.

On March 15, 1989, the Med-Arbiter ruled that having been excluded from the existing Collective Bargaining Agreement for rank and file employees, these employees have the right to form a union of their own, except those employees performing managerial functions. With respect to those employees who had resented their alleged involuntary membership in the existing CBA, the Med-Arbiter stated that the holding of a certification election would allow them to fully translate their sentiment on the matter, and thus directed the holding of a certification election. The dispositive portion of the Resolution provides as follows:

"WHEREFORE, premises considered, a certification election is hereby ordered conducted among the regular rank-and-file employees of MERALCO to wit:

"1. Non-managerial employees with Pay Grades VII and above;

"2. Non-managerial employees of Patrol Division, Treasury Security Services Section and Secretaries; and

"3. Employees prohibited from actively participating as members of the union.

Within 20 days from receipt hereof, subject to the usual pre-election conference with the following choices:

"1. Staff and Technical Employees Association of MERALCO (STEAM-PCWF);

"2. No Union.

"SO ORDERED." (p. 222, Rollo)

On April 4, 1989, MERALCO appealed, contending that "until such time that a judicial finding is made to the effect that they are not managerial employee, STEAM-PCWF cannot represent employees from Pay Grades VII and above, additionally reiterating the same reasons they had advanced for disqualifying respondent STEAM-PCWF.

On April 7, 1989, MEWA filed an appeal-in-intervention, submitting as follows:

A. The Order of the Med-Arbiter is null and void for being in violation of Article 245 of the Labor Code;

B. The Order of the Med-Arbiter violates Article 232 of the Labor Code; and

C. The Order is invalid because the bargaining unit it delineated is not an appropriated (sic) bargaining unit.

On May 4, 1989, STEAM-PCWF opposed the appeal-in-intervention. With the enactment of RA 6715 and the rules and regulations implementing the same, STEAM-PCWF renounced its representation of the employees in Patrol Division, Treasury Security Services Section and rank-and-file employees in Pay Grades.

On September 13, 1989, the First Line Association of Meralco Supervisory Employees. (hereafter FLAMES) filed a similar petition (NCR-OD-M-9-731-89) seeking to represent those employees with Pay Grades VII to XIV, since "there is no other supervisory union at MERALCO." (p. 266, Rollo). The petition was consolidated with that of STEAM-PCWF.

On November 3, 1989, the Secretary of Labor affirmed with modification, the assailed order of the Med-Arbiter, disposing as follows:

> "WHEREFORE, premises considered, the Order appealed from is hereby affirmed but modified as far as the employees covered by Section 3, Article I of the existing CBA in the Company are concerned. Said employees shall remain in the unit of the rank-and file already existing and may exercise their right to self organization as above enunciated.
>
> "Further, the First Line Association of Meralco Supervisory Employees (FLAMES) is included as among the choices in the certification election.
>
> "Let, therefore, the pertinent records of the case be immediately forwarded to the Office of origin for the conduct of the certification election.
>
> "SO ORDERED." (p. 7, Rollo)

MERALCO's motion for reconsideration was denied on January 16, 1990.

On February 9, 1990, MERALCO filed this petition, premised on the following ground:

> "RESPONDENT SECRETARY ACTED WITH GRAVE ABUSE OF DISCRETION AND/OR IN EXCESS OF JURISDICTION AMOUNTING TO LACK OF JURISDICTION IN RULING THAT:
>
> "I. ANOTHER RANK-AND-FILE BARGAINING UNIT CAN BE ESTABLISHED INDEPENDENT, DISTINCT AND SEPARATE FROM THE EXISTING RANK-AND-FILE BARGAINING UNIT.
>
> "II. THE EMPLOYEES FROM PAY GRADES VII AND ABOVE ARE RANK-AND-FILE EMPLOYEES.
>
> "III. THE SECURITY GUARDS OR PERSONNEL MAY BE LUMPED TOGETHER WITH THE RANK-AND-FILE UNION AND/OR THE SUPERVISORY UNION." (p. 8, Rollo)

On February 26, 1990, We issued a temporary restraining order (TRO) against the implementation of the disputed resolution.

In its petition, MERALCO has relented and recognized respondents STEAM-PCWF and FLAMES' desired representation of supervisory employees from Grades VII up. However, it believes that all that the Secretary of Labor has to do is to establish a demarcation line between supervisory and managerial rank, and not to classify outright the group of employees represented by STEAM-PCWF and FLAMES as rank and file employees.

In questioning the Secretary of Labor's directive allowing security guards (Treasury/Patrol Services Section) to be represented by respondents, MERALCO contends that this contravenes the provisions of the recently passed RA 6715 and its implementing rules (specifically par. 2, Sec. 1, Rule II, Book V) which disqualifies supervisory employees and security guards from membership in a labor organization of the rank and file (p. 11, Rollo).

The Secretary of Labor's Resolution was obviously premised on the provisions of Art. 212, then par. (k), of the 1988 Labor Code defining "managerial" and "rank and file" employees, the law then in force when the complaint was filed. At the time, only two groups of employees were recognized, the managerial and rank and file. This explains the absence of evidence on job descriptions on who would be classified managerial employees. It is perhaps also for this reason why the Secretary of Labor limited his classification of the Meralco employees belonging to Pay Grades VII and up, to only two groups, the managerial and rank and file.

However, pursuant to the Department of Labor's goal of strenghthening the constitutional right of workers to self-organization, RA 6715 was subsequently passed which reorganized the employee-ranks by including a third group, or the supervisory employees, and laying down the distinction between supervisory employees and those of managerial ranks in Art. 212, renumbered par. [m], depending on whether the employee concerned has the power to lay down and execute management policies, in the case of managerial employees, or merely to recommend them, in case of supervisory employees.

In this petition, MERALCO has admitted that the employees belonging to Pay Grades VII and up are supervisory (p. 10, Rollo). The records also show that STEAM-PCWF had "renounced its representation of the employees in Patrol Division, Treasury Security Service Section and rank and file employees in Pay Grades I-VI" (p. 6, Rollo); while FLAMES, on the other hand, had limited its representation to employees belonging to Pay Grades VII-XIV, generally accepted as supervisory employees, as follows:

> "It must be emphasized that private respondent First Line Association of Meralco Supervisory Employees seeks to represent only the Supervisory Employees with Pay Grades VII to XIV.
>
> "Supervisory Employees with Pay Grades VII to XIV are not managerial employees. In fact the petition itself of petitioner Manila Electric Company on page 9, paragraph 3 of the petition stated as follows, to wit:

> 'There was no need for petitioner to prove that these employees are not rank-and-file. As adverted to above, the private respondents admit that these are not the rank-and-file but the supervisory employees, whom they seek to represent. What needs to be established is the rank where supervisory ends and managerial begins.'

and First Line Association of Meralco Supervisory Employees herein states that Pay Grades VII to XIV are not managerial employees. In fact, although employees with Pay Grade XV carry the Rank of Department Managers, these employees only enjoys (sic) the Rank Manager but their recommendatory powers are subject to evaluation, review and final action by the department heads and other higher executives of the company." (FLAMES' Memorandum, p. 305, Rollo).

Based on the foregoing, it is clear that the employees from Pay Grades VII and up have been recognized and accepted as supervisory. On the other hand, those employees who have been automatically disqualified have been directed by the Secretary of Labor to remain in the existing labor organization for the rank and file, (the condition in the CBA deemed as not having been written into the contract, as unduly restrictive of an employee's exercise of the right to self-organization). We shall discuss the rights of the excluded employees (or those covered by Sec. 2, Art. I, MEWA-CBA later.

Anent the instant petition therefore, STEAM-PCWF, and FLAMES would therefore represent supervisory employees only. In this regard, the authority given by the Secretary of Labor for the establishment of two labor organizations for the rank and file will have to be disregarded since We hereby uphold certification elections only for supervisory employees from Pay Grade VII and up, with STEAM-PCWF and FLAMES as choices.

As to the alleged failure of the Secretary of Labor to establish a demarcation line for purposes of segregating the supervisory from the managerial employees, the required parameter is really not necessary since the law itself, Art. 212-m, (as amended by Sec. 4 of RA 6715) has already laid down the corresponding guidelines:

"Art. 212. Definitions

"(m) 'Managerial employee' is one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment. All employees not falling within any of the above definitions are considered rank-and-file employees for purposes of this Book."

In his resolution, the Secretary of Labor further elaborated:

"Thus, the determinative factor in classifying an employee as managerial, supervisory or rank-and-file is the nature of the work of the employee concerned.

"In National Waterworks and Sewerage Authority vs. National Waterworks and Sewerage Authority Consolidated Unions (11 SCRA 766) the Supreme Court had the occasion to come out with an enlightening dissertation of the nature of the work of a managerial employees as follows:

'That the employee's primary duty consists of the management of the establishment or of a customarily recognized department or subdivision thereof, that he customarily and regularly directs the work of other employees therein, that he has the authority to hire or discharge other employees or that his suggestions and recommendations as to the hiring and discharging and or to the advancement and promotion or any other change of status of other employees are given particular weight, that he customarily and regularly exercises discretionary powers (56 CJS, pp. 666-668.).'" (p. 226, Rollo)

We shall now discuss the rights of the security guards to self-organize. MERALCO has questioned the legality of allowing them to join either the rank and file or the supervisory union, claiming that this is a violation of par. 2, Sec. 1, Rule II, Book V of the Implementing Rules of RA 6715, which states as follows:

> "Sec. 1. Who may join unions.
>
> "x x x
>
> "Supervisory employees and security guards shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own;
>
> "x x x" (Emphasis supplied).

Paragraph 2, Sec. 1, Rule II, Book V, is similar to Sec. 2 (c) Rule V, also of Book V of the implementing rules of RA 6715:

> "Rule V.
> REPRESENTATION CASES AND INTERNAL-UNION CONFLICTS
>
> 'Sec. 1. x x x
>
> "Sec. 2. Who may file. — Any legitimate labor organization or the employer, when requested to bargain collectively, may file the petition.
>
> "The petition, when filed by a legitimate labor-organization shall contain, among others:
>
> "(a) x x x
>
> "(b) x x x
>
> "(c) description of the bargaining unit which shall be the employer unit unless circumstances otherwise require; and provided further, that the appropriate

> bargaining unit of the rank-and-file employees shall not include supervisory employees and/or security guards;
>
> "x x x" (Emphasis supplied)

Both rules, barring security guards from joining a rank and file organization, appear to have been carried over from the old rules which implemented then Art. 245 of the Labor Code, and which provided thus:

> "Art. 245. Ineligibility of security personnel to join any labor organization. — Security guards and other personnel employed for the protection and security of the person, properties and premises of the employer shall not be eligible for membership in any labor organization."

On December 24, 1986, Pres. Corazon C. Aquino issued E.O No. 111 which eliminated the above-cited provision on the disqualification of security guards. What was retained was the disqualification of managerial employees, renumbered as Art. 245 (previously Art. 246), as follows:

> "ART. 245. Ineligibility of managerial employees to joint any labor organization. — Managerial employees are not eligible to join, assist or form any labor organization."

With the elimination, security guards were thus free to join a rank and file organization.

On March 2, 1989, the present Congress passed RA 6715.[2] Section 18 thereof amended Art. 245, to read as follows:

> "Art. 245. Ineligibility of managerial employees to join any labor organization; right of supervisory employees. — Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist, or form separate labor organizations of their own." (Emphasis supplied).

As will be noted, the second sentence of Art. 245 embodies an amendment disqualifying supervisory employees from membership in a labor organization of the rank-and-file employees. It does not include security guards in the disqualification.

The implementing rules of RA 6715, therefore, insofar as they disqualify security guards from joining a rank and file organization are null and void, for being not germane to the object and purposes of EO 111 and RA 6715 upon which such rules purportedly derive statutory moorings. In Shell Philippines, Inc. vs. Central Bank, G.R. No. 51353, June 27, 1988, 162 SCRA 628, We stated:

> "The rule-making power must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned." (citing University of Sto. Tomas vs. Board of Tax Appeals, 93 Phil. 376).

While therefore under the old rules, security guards were barred from joining a labor organization of the rank and file, under RA 6715, they may now freely join a labor organization of the rank and file or that of the supervisory union, depending on their rank. By accommodating supervisory employees, the Secretary of Labor must likewise apply the provisions of RA 6715 to security guards by favorably allowing them free access to a labor organization, whether rank and file or supervisory, in recognition of their constitutional right to self-organization.

We are aware however of possible consequences in the implementation of the law in allowing security personnel to join labor unions within the company they serve. The law is apt to produce divided loyalties in the faithful performance of their duties. Economic reasons would present the employees concerned with the temptation to subordinate their duties to the allegiance they owe the union of which they are members, aware as they are that it is usually union action that obtains for them increased pecuniary benefits.

Thus, in the event of a strike declared by their union, security personnel may neglect or outrightly abandon their duties, such as protection of property of their employer and the persons of its officials and employees, the control of access to the employer's premises, and the maintenance of order in the event of emergencies and untoward incidents.

It is hoped that the corresponding amendatory and/or suppletory laws be passed by Congress to avoid possible conflict of interest in security personnel.

ACCORDINGLY, the petition is hereby **DISMISSED**. We **AFFIRM** with modification the Resolution of the Secretary of Labor dated November 3, 1989 upholding an employee's right to self-organization. A certification election is hereby ordered conducted among supervisory employees of MERALCO, belonging to Pay Grades VII and above, using as guidelines an employee's power to either recommend or execute management policies, pursuant to Art. 212 (m), of the Labor Code, as amended by Sec. 4 of RA 6715, with respondents STEAM-PCWF and FLAMES as choices.

Employees of the Patrol Division, Treasury Security Services Section and Secretaries may freely join either the labor organization of the rank and file or that of the supervisory union depending on their employee rank. Disqualified employees covered by Sec. 3, Art. I of the MEWA-CBA, shall remain with the existing labor organization of the rank and file, pursuant to the Secretary of Labor's directive:

> "By the parties' own agreement, they find the bargaining unit, which includes the positions enumerated in Section 3, Article I of their CBA, appropriate for purposes of collective bargaining. The composition of the bargaining unit should be left to the agreement of the parties, and unless there are legal infirmities in such agreement, this Office will not substitute its judgment for that of the parties. Consistent with the history of collective bargaining in the company, the membership of said group of employees in the existing rank-and-file unit should continue, for it will enhance stability in that unit already well established. However, we cannot approve of the condition set in Section 3, Article I of the CBA that the employees covered are

automatically disqualified from becoming union members. The condition unduly restricts the exercise of the right to self organization by the employees in question. It is contrary to law and public policy and, therefore, should be considered to have not been written into the contract. Accordingly, the option to join or not to join the union should be left entirely to the employees themselves." (p. 229, Rollo)

The Temporary Restraining Order (TRO) issued on February 26, 1990 is hereby **LIFTED**. Costs against petitioner.

SO ORDERED.

Fernan, *C.J.*, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Regalado and Davide, Jr., *JJ.*, concur.

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[1] This CBA expired on November 30, 1989. There is an on-going CBA negotiation with National Capitol Region, Dole, per Comment of FLAMES, dated March 6, 1990, p. 248, Rollo.
[2] Published in two newspapers, the law took effect on March 21, 1989.
