SUPREME COURT
THIRD DIVISION

PAGKAKAISA NG MGA MANGGAGAWA SA TRIUMPH INTERNATIONAL-UNITED LUMBER AND GENERAL WORKERS OF THE PHILIPPINES (PMTI-ULGWF),
***Petitioner*,**

-versus-

G.R. No. 85915
January 17, 1990

PURA FERRER-CALLEJA, DIRECTOR OF THE BUREAU OF LABOR RELATIONS AND THE CONFEDERATION OF FILIPINO WORKERS (CFW), PROGRESSIVE EMPLOYEES UNION (PEU-TIPI),
***Respondents*.**
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D E C I S I O N

GUTIERREZ, JR., *J.*:

Once again we uphold the existing law which encourages one-union, one-company policy in this petition for certiorari with prayer for preliminary injunction. The petitioner assails the resolutions of the public respondent dated August 24, 1988 and October 28, 1988 both

ordering the holding of a certification election among certain monthly-paid employees of Triumph International Philippines, Inc. (Triumph International for brevity).

The petitioner is the recognized collective bargaining agent of the rank-and-file employees of Triumph International with which the latter has a valid and existing collective bargaining agreement effective up to September 24, 1989.

On November 25, 1987, a petition for certification election was filed by the respondent union with the Department of Labor and Employment.

On January 30, 1988, a motion to dismiss the petition for certification election was filed by Triumph International on the grounds that the respondent union cannot lawfully represent managerial employees and that the petition cannot prosper by virtue of the contract-bar rule. On the same grounds, the petitioner, as intervenor, filed its opposition to the petition on February 18, 1988.

On April l3, 1988, the Labor Arbiter issued an order granting the petition for certification election and directing the holding of a certification election to determine the sole and exclusive bargaining representative of all monthly-paid administrative, technical, confidential and supervisory employees of Triumph International.

On appeal, the public respondent on August 24, 1988 affirmed the Labor Arbiter's order with certain modifications as follows:

> "WHEREFORE, premises considered, the order appealed from is hereby affirmed subject to the modification in that the subject employees sought to be represented by the petitioner union are given the option whether to join the existing bargaining unit composed of daily paid rank-and-file employees. If they opt to join, the pertinent provision of the existing CBA should be amended so as to include them in its coverage." (Rollo, p. 19)

On September 5, 1988, Triumph International filed a motion for reconsideration which was denied by the public respondent in a resolution dated October 28, 1988.

The sole issue presented by the petitioner in the instant case is whether or not the public respondent gravely abused its discretion in ordering the immediate holding of a certification election among the workers sought to be represented by the respondent union.

The petitioner argues that the members of respondent union are managerial employees who are expressly excluded from joining, assisting or forming any labor organization under Art. 245 of the Labor Code.

In the determination of whether or not the members of respondent union are managerial employees, we accord due respect and, therefore, sustain the findings of fact made by the public respondent pursuant to the time-honored rule that findings of fact of quasi-judicial agencies like the Bureau of Labor Relations which are supported by substantial evidence are binding on us and entitled to great respect considering their expertise in their respective fields. (see Phil. Airlines Employees Asso. (PALEA) vs. Ferrer-Calleja, 162 SCRA 426 [1988]; Producers Bank of the Philippines vs. National Labor Relations Commission, G.R. No. 76001, September 5, 1988; Salvador Lacorte vs. Hon. Amado G. Inciong, et al., G.R. No. 52034, September 27, 1988; Johnson and Johnson Labor Union-FFW, et al. vs. Director of Labor Relations, G.R. No. 76427, February 21, 1989; Teofila Arica, et al. vs. National Labor Relations Commission, et al., G.R. No. 78210, February 28, 1989; A.M. Oreta & Co. Inc. vs. National Labor Relations Commission, G.R. No. 74004, August 10, 1989). According to the Med-Arbiter, while the functions, and we may add, the titles of the personnel sought to be organized appear on paper to involve an apparent exercise of managerial authority, the fact remains that none of them discharge said functions. The petitioner has failed to show reversible error insofar as this finding is concerned.

In ruling that the members of respondent union are rank-and-file and not managerial employees, the public respondent made the following findings:

> "(1) They do not have the power to lay down and execute management policies as they are given ready policies merely to execute and standard practices to observe; 2) they do not have

> the power to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees but only to recommend for such actions as the power rests upon the personnel manager; and 3) they do not have the power to effectively recommend any managerial actions as their recommendations have to pass through the department manager for review, the personnel manager for attestation and the general manager/president for final actions." (At pp. 17-18, Rollo)

The petitioner further argues that while it has recognized those signatories and employees occupying the positions of Assistant Manager, Section Chief, Head Supervisor and Supervisor as managerial employees under the existing collective bargaining agreement, in the event that they are declared as rank-and-file employees in the present case they are not precluded from joining and they should join the petitioner.

We find the aforesaid contention of the petitioner meritorious in the absence of a showing that there are compelling reasons such as the denial of the right to join the petitioner which is the certified bargaining unit to the members of respondent union or that there are substantial distinctions warranting the recognition of a separate group of rank-and-file employees even as there is an existing bargaining agent for rank-and-file employees.

In the case of Philtranco Service Enterprises vs. Bureau of Labor Relations, et. al., G.R. No. 85343 promulgated on June 28, 1989, we stated that:

> "The Labor Code recognizes two (2) principal groups of employees, namely, the managerial and the rank-and-file groups. Thus, Art. 212 (k) of the Code provides:
>
> x x x
>
> "(k) '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, or to effectively recommend such managerial action. All

> employees not falling within this definition are considered rank-and-file employees for purposes of this Book.
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> "In implementation of the aforequoted provision of the law, Section II of Rule II, Book V of the Omnibus Rules implementing the Labor Code did away with existing supervisory unions classifying the members either as managerial or rank and file employees depending on the work they perform. If they discharge managerial functions, supervisors are prohibited from forming or joining any labor organization. If they do not perform managerial work, they may join the rank and file union and if none exists, they may form one such rank and file organization. This rule was emphasized in the case of Bulletin Publishing Corp. vs. Sanchez, (144 SCRA 628 [1986])."

We have explicitly explained in the case of Franklin Baker Company of the Philippines vs. Trajano, 157 SCRA 416 [1988] that:

> "The test of 'supervisory or managerial status' depends on whether a person possesses authority to act in the interest of his employer in the matter specified in Article 212 (K) of the Labor Code and Section 1 (m) of its Implementing Rules and whether such authority is not merely routinary or clerical in nature, but requires the use of independent judgment. Thus, where such recommendatory powers as in the case at bar, are subject to evaluation, review and final action by the department heads and other higher executives of the company, the same, although present, are not effective and not an exercise of independent judgment as required by law (National Warehousing Corp. vs. CIR, 7 SCRA 602-603 [1963])."

The public respondent, in its factual findings, found that the supervisory employees sought to be represented by the respondent union are not involved in policy-making and their recommendatory powers are not even instantly effective since the same are still subject to review by at least three managerial heads (department manager, personnel manager and general manager) before final action can be taken. Hence, it is evidently settled that the said employees do not possess a managerial status. The fact that their work designations are

either managers or supervisors is of no moment considering that it is the nature of their functions and not the said nomenclatures or titles of their jobs which determines their statuses (see Engineering Equipment, Inc. vs. National Labor Relations Commission, 133 SCRA 752 [1984] citing National Waterworks and Sewerage Authority vs. NWSA Consolidated Unions, 11 SCRA 766 [1964]).

Under the old Industrial Peace Act (Republic Act No. 875), the term "supervisors" had the following definition, to wit:

> "Sec. 2. Definitions — As used in this Act —
>
> x x x
>
> (k) 'Supervisor' means any person having authority in the interest of an employer, to hire, transfer, suspend, lay-off, recall, discharge, assign, recommend, or discipline, other employees, or responsibly to direct them, and to adjust their grievances, or effectively to recommend such acts if, in connection with the foregoing, the exercise of such authority is not of a merely routinary or clerical nature but requires the use of independent judgment."

Section 3 of the same Act further provides that the supervisors as defined above shall not be eligible for membership in a labor organization of employees under their supervision but may form separate organizations of their own.

With the enactment of the Labor Code (Presidential Decree No. 442 as amended), the term "supervisor" was replaced by "managerial employee." Book V, Art. 212, subparagraph (k) of said Code reads:

> "(k) '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, or to effectively recommend such managerial actions. All employees not falling within this definition are considered rank and file employees for purposes of this Book."

Art. 245 of the aforementioned Code prohibits managerial employees from joining, assisting or forming any labor organization. Hence, employees who had then formed supervisory unions were classified either as managerial or rank-and-file depending on their functions in their respective work assignments. (Bulletin Publishing Corp. vs. Sanchez, supra.)

The recent amendments to the Labor Code contain separate definitions for managerial and supervisory employees. Section 4 of Republic Act No. 6715 states that:

> "Section 4, Article 212 of the Labor Code of the Philippines, as amended, is further amended to read as follows:
>
> x x x
>
> "(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 management 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."

Section 18 of the same Act retains the provision on the ineligibility of managerial employees to join any labor organization. However, the right of supervisory employees to form their own union is revived under the said section which states, in part, to wit:

> "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."

Thus, the right of supervisory employees to organize under the Industrial Peace Act is once more recognized under the present amendments to the Labor Code. (see Adamson & Adamson, Inc., vs.

The Court of Industrial Relations, 127 SCRA 268 [1984]). In the absence of any grave abuse of discretion on the part of the public respondent as to the status of the members of the respondent union, we adopt its findings that the employees sought to be represented by the respondent union are rank-and-file employees.

There is no evidence in the records which sufficiently distinguishes and clearly separates the group of employees sought to be represented by the private respondents into managerial and supervisory on one hand or supervisory and rank-and-file on the other. The 'respondents' pleadings do not show the distinctions in functions and responsibilities which differentiate the managers from the supervisors and sets apart the rank-and-file from either the managerial or supervisory groups. As a matter of fact, the formation of a supervisor's union was never before the Labor Arbiter and the Bureau of Labor Relations and neither is the issue before us. We, therefore, abide by the public respondent's factual findings in the absence of a showing of grave abuse of discretion.

In the case at bar, there is no dispute that the petitioner is the exclusive bargaining representative of the rank-and-file employees of Triumph International. A careful examination of the records of this case reveals no evidence that rules out the commonality of interests among the rank-and-file members of the petitioner and the herein declared rank-and-file employees who are members of the respondent union. Instead of forming another bargaining unit, the law requires them to be members of the existing one. The ends of unionism are better served if all the rank-and-file employees with substantially the same interests and who invoke their right to self-organization are part of a single unit so that they can deal with their employer with just one and yet potent voice. The employees' bargaining power with management is strengthened thereby. Hence, the circumstances of this case impel us to disallow the holding of a certification election among the workers sought to be represented by the respondent union for want of proof that the right of said workers to self-organization is being suppressed.

Once again we enunciate that the proliferation of unions in an employer unit is discouraged as a matter of policy unless compelling reasons exist which deny a certain and distinct class of employees the

right to self-organization for purposes of collective bargaining. (see General Rubber & Footwear Corporation vs. Bureau of Labor Relations, 155 SCRA 283 [1987]).

Anent the correlative issue of whether or not the contract-bar rule applies to the present case, Rule V, Section 3, Book V of the Implementing Rules and Regulations of the Labor Code is written in plain and simple terms. It provides in effect that if a collective bargaining agreement validly exists, a petition for certification election can only be entertained within sixty (60) days prior to the expiry date of said agreement. Respondent union's petition for certification election was filed on November 25, 1987. At the time of the filing of the said petition, a valid and existing CBA was present between petitioner and Triumph International. The CBA was effective up to September 24, 1989. There is no doubt that the respondent union's CBA constituted a bar to the holding of the certification election as petitioned by the respondent union with public respondent. (see Associated Trade Unions [ATU] vs. Trajano, 162 SCRA 318 [1988], Federation of Democratic Trade Union vs. Pambansang Kilusan ng Paggawa, 156 SCRA 482 [1987]); Tanduay Distillery Labor Union vs. National Labor Relations Commission, 149 SCRA 470 [1987]). The members of the respondent union should wait for the proper time.

The CBA in this case expired on September 24, 1989. If a new CBA with the same provisions as the old one has been executed, its terms should be amended so as to conform to the tenor of this decision.

WHEREFORE, in view of the foregoing, the assailed resolutions of the public respondent dated August 24, 1988 and October 28, 1988 are hereby **SET ASIDE**. The restraining order dated January 11, 1989 issued by the Court is made permanent.

SO ORDERED.

Fernan, *C.J.*, Bidin and Cortes, *JJ.*, concur.
Feliciano, *J.*, took no part.