SUPREME COURT
THIRD DIVISION

PEPSI-COLA PRODUCTS PHILIPPINES, INC.,
***Petitioner*,**

-versus-

G.R. No. 96663
August 10, 1999

HONORABLE SECRETARY OF LABOR, MED-ARBITER NAPOLEON V. FERNANDO & PEPSI-COLA SUPERVISORY EMPLOYEES ORGANIZATION - UOEF,
***Respondents*.**

x----------x

PEPSI COLA PRODUCTS PHILIPPINES,
***Petitioner*,**

-versus-

G.R. No. 103300
August 10, 1999

OFFICE OF THE SECRETARY DEPARTMENT OF LABOR AND HON. CELENIO N. DAING, in his capacity as Med-Arbiter Labor Regional Office No. X, Cagayan de Oro City, CAGAYAN DE

ORO PEPSI COLA SUPERVISORS UNION (UOEF),

Respondents.

x----------x

D E C I S I O N

PURISIMA, *J.*:

These are Petitions for *Certiorari* relating to three (3) cases filed with the Med-Arbiter, to wit: MED ARB ROX Case No. R100-9101-RU-002 for Certification Election filed by Pepsi Cola Supervisors Union-UOEF (Union), MED ARB Case No. R1000-9102-RU-008, Re: Petition to Set Aside, Cancel and/ or Revoke the Charter Affiliation of the Union, and MED-ARB ROX Case No. R1000-9104-RU-012, for Cancellation of Registration Certificate No. 11492-LC in favor of the Union.

G.R. No. 96663

The facts that matter can be culled as follows:

Sometime in June 1990, the Pepsi-Cola Employees Organization-UOEF (Union) filed a petition for certification election with the Med-Arbiter seeking to be the exclusive bargaining agent of supervisors of Pepsi-Cola Philippines, Inc. (PEPSI).

On July 12, 1990, the Med-Arbiter granted the Petition, with the explicit statement that it was an affiliate of Union de Obreros Estivadores de Filipinas (federation) together with two (2) rank and file unions, Pepsi-Cola Labor Unity (PCLU) and Pepsi-Cola Employees Union of the Philippines (PEUP).

On July 23, 1990, PEPSI filed with the Bureau of Labor Relations a petition to Set Aside, Cancel and/or Revoke Charter Affiliation of the Union, entitled PCPPI vs. PCEU-UOEF and docketed as Case No. 725-90, on the grounds that (a) the members of the Union were

managers and (b) a supervisors' union can not affiliate with a federation whose members include the rank and file union of the same company.

On August 29,1990, PEPSI presented a motion to re-open the case since it was not furnished with a copy of the Petition for Certification Election.

On September 4, 1990, PEPSI submitted its position paper to the BLR in Case No. 725-90.

On September 21, 1990, PEPSI received summons to appear at the pre-trial conference set on September 25, 1990 but which the hearing officer rescheduled on October 21, 1990.

On October 12, 1990, PEPSI filed a Notice of Appeal and Memorandum of Appeal with the Secretary of Labor, questioning the setting of the certification election on the said date and five (5) days after. It also presented an urgent Ex-Parte Motion to Suspend the Certification Election, which motion was granted on October 18, 1990.

On November 12, 1990, the Secretary of Labor denied the appeal and Motion for Reconsideration. Even as the Petition to Cancel, Revoke and Suspend Union Charter Certificate was pending before the BLR, PEPSI found its way to this Court via the present petition for *certiorari.*

On February 6, 1991, the Court granted the prayer for temporary restraining order and/or preliminary injunction.

The pivot of inquiry here is: whether or not a supervisors' union can affiliate with the same Federation of which two (2) rank and file unions are likewise members, without violating Article 245 of the Labor Code (PD 442), as amended, by Republic Act 6715, which provides:

> "ARTICLE 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."

In its Comment dated March 19, 1991, the Federation argued that:

> "The pertinent portion of Article 245 of the Labor Code states that. "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 organization of their own."
>
> This provision of law does not prohibit a local union composed of supervisory employees from being affiliated to a federation which has local unions with rank-and-file members as affiliates.
>
> x x x
>
> The Petition to Cancel, Revoke or Set Aside the Charter Certificate of the private respondent is anchored on the alleged ground that certain managerial employees are included as members thereof. The grounds for the cancellation of the registration certificate of a labor organization are provided in Section 7 of Rule II, Book V of the Omnibus Rules Implementing the Labor Code, and the inclusion of managerial employees is not one of the grounds (in this case, the private respondent herein) remains to be a legitimate labor organization."[1]

On April 8, 1991, the Secretary of Labor and Employment, through the Office of the Solicitor General, sent in a Comment, alleging inter alia, that:

> "Under Article 259 of the New Labor Code, only orders of the Med-Arbiter can be appealed through the Secretary of Labor and only on the ground that the rules and regulations for the conduct of the certification election have been violated. The Order of the Representation Officer is "interlocutory" and not appealable.

> Until and unless there is a final order cancelling its certificate of registration or charter certificate, a labor organization remains to be a legitimate labor organization entitled to exercise all the rights and duties accorded to it by the Labor Code including the right to be certified as a bargaining representative.
>
> Public respondent cannot be deemed to have committed grave abuse of discretion with respect to an issue that was never presented before it for resolution.
>
> Article 245 of the New Labor Code does not preclude the supervisor's union and the rank-and-file union from being affiliated with the same federation.
>
> x x x
>
> A federation of local union is not the labor organization referred to in Article 245 but only becomes entitled to all the rights enjoyed by the labor organization (at the company level) when it has complied with the registration requirements found in Articles 234 and 237. Hence, what is prohibited by Article 245 is membership of supervisory employees in a labor union (at the company level) of the rank and file.
>
> In other words, the affiliation of the supervisory employee's union with the same federation with which the rank and file employees union is affiliated did not make the supervisory employees members of the rank and file employee's union and vice versa."[2]

PEPSI, in its Reply dated May 7, 1991, asserted:

> "It is our humble contention that a final determination of the Petition to Set-Aside, Cancel, Revoke Charter Union Affiliation should first be disposed of before granting the Petition for the Conduct of Certification Election. To allow the conduct of the certification election to proceed would make any decision arrived at by the Bureau of Labor Relations useless inasmuch as the same would necessarily be rendered moot and academic."[3]

On June 7, 1991, petitioner again filed a Supplemental Reply stressing:

> "It is likewise stressed that officials of both the PCLU and PEUP are top ranking officers of UOEF, the federation of supervisors' union, to wit:
>
> **POSITION IN RANK AND FILE UNION POSITION IN FEDERATION**
>
> 1. Rogelio de la Cruz – PCLU-President General Vice President
> 2. Felix Gatela – PEUP-President General Treasurer
> 3. Carlito Epino – PCLU Board Member Educational Research Director
>
> x x x
>
> The respondent supervisory union could do indirectly what it could not do directly as the simple expedient of affiliating with UOEF would negate the manifest intent and letter of the law that supervisory employees can only "join, assist or form separate labor organizations of their own" and cannot "be eligible for membership in a labor organization of the rank and file employees."[4]

On August 6, 1991, the Secretary of Labor and Employment filed a Rejoinder, claiming thus:

> "An employer has no legal standing to question the validity of a certification election.
>
> For this reason, the Supreme Court has consistently held that, as a rule, a certification election is the sole and exclusive concern of the employees and that the employer is definitely an intruder or a mere bystander (Consolidated Farms vs. Noriel, L-

47752, July 31, 1978, 84 SCRA 469; Filipino Metals Corporation vs. Ople, L-43861, September 4, 1981, 107 SCRA 211; Trade Unions of the Philippines and Allied Services (TUPAS) vs. Trajano No. L-61153, January 17, 1983, 120 SCRA 64).

x x x

In Adamson & Adamson, Inc. vs. CIR No. L-35120, January 31, 1984, 127 SCRA 268, the Supreme Court (then dealing with the interpretation of Section 3 of the Industrial Peace Act, from which Section 245 of the Labor Code was derived) grappled with the issue in the case at bar. It held that:

> 'There is nothing in the provisions of the Industrial Peace Act which provides that a duly registered local union affiliating with a national union or federation loses its legal personality, or its independence.'

x x x

However, there is absolutely nothing in the Labor Code that prohibits a federation from representing or exercising influence over its affiliates. On the contrary, this is precisely the reason why federations are formed and are allowed by law to exist."[5]

On November 8, 1991, the Union also filed a Rejoinder.

On December 9, 1991, the Court resolved to DISMISS the case for "failure to sufficiently show that the questioned judgment is tainted with grave abuse of discretion."

In a Resolution dated March 2, 1992, the Second Division of the Court resolved to grant the motion for reconsideration interposed on January 28, 1992.

G.R. No. 103300

What are assailed in this case is Med-Arbiter Order dated May 23, 1991 and the Decision and Order of the Secretary of Labor and

Employment, dated October 4, 1991 and December 12, 1991, respectively.

The decretal portion of the Med-Arbiter Order under attack, reads:

> "WHEREFORE, premises considered, an order is hereby issued:
>
> 1. Dismissing MED ARB ROX CASE NO. R1000-919104-RU-012 and R1000-9102-RU-008 for lack of merit; and
>
> 2. Ordering the conduct of a Certification Election to be participated by and among the supervisory workers of the respondent company, Pepsi-Cola Products Philippines, Inc. at its plant at Tin-ao, Cagayan de Oro City, including all the satellite warehouse within the territorial coverage and control of the Cagayan de Oro Pepsi-Cola Plant. The choices are as follows:
>
>   1. Cagayan de Oro Pepsi-Cola Supervisors Union (U.O.E.P.)
>
>   2. No union
>
> The parties are directed to attend a pre-election conference on June 10, 1991, 2:30 p.m. at the Regional Office to determine the qualification of the voters and to thresh out the mechanics of the election. Respondent/employer is directed to submit five (5) copies of the names of the rank and file workers taken from the payroll on October 1-31, 1991, alphabetically arranged (sic) indicating their names and positions and dates of employment and to bring the aforementioned payroll during the pre-election conference for verification purposes."[6]

The supervisory employees of the Union are:

		POSITION
1.	Felipe Valdehueza	Route Manager
2.	Gerberto Vertudazo	C & C Manager

3.	Paul Mendoza	Sales Service Department Manager
4.	Gilberto Emano, Jr.	Route Manager
5.	Jaime Huliganga	Chief Checker
6.	Elias Edgama, Sr.	Accounting Manager
7.	Romanico Ramos	Route Manager
8.	Raul Yacapin	Route Manager
9.	Jovenal Albaque	Route Manager
10.	Fulvio Narciso	Route Manager
11.	Apolinario Opiniano	Route Manager
12.	Alfredo Panas	Route Manager
13.	Simplicio Nelie	Route Manager
14.	Arthur Rodriguez	Route Manager
15.	Marco Ilano	Warehouse Operations Manager
16.	Deodoro Ramos	Maintenance Manager

On June 6, 1991, PEPSI appealed the said Order to the Secretary of Labor and Employment on the ground of grave abuse of discretion, docketed as Case No. OS-A-232-91.

On October 4, 1991, the Secretary modified the appealed decision, ruling thus:

> "WHEREFORE, the Order of the Med-Arbiter dated 23 May 1991 is hereby modified to the effect that MED ARB ROX Case No. R1000-9104-RU-012 and R1000-9102-RU-008 are hereby referred to the Office of the Regional Director which has jurisdiction over these cases. The call for certification election among the supervisory workers of the Pepsi-Cola Products Philippines, Inc. at its plant at Tin-ao, Cagayan de Oro City is hereby sustained."[7]

On October 19, 1991, PEPSI presented a motion for reconsideration of the aforesaid Order but the same was denied on December 12, 1991.

Meanwhile, the BLR issued Registration Certificate No. 11492-LC in favor of the Union. Dissatisfied therewith, PEPSI brought the instant petition for *certiorari*, contending that:

> "PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT PRIVATE RESPONDENT'S

> OFFICERS AND MEMBERS ARE NOT MANAGERIAL EMPLOYEES;
>
> PRIVATE RESPONDENT IS PROHIBITED FROM AFFILIATING ITSELF WITH A FEDERATION ALREADY AFFILIATED WITH THE RANK AND FILE UNION;
>
> PUBLIC RESPONDENT COMMITTED GRAVE OF (SIC) ABUSE OF DISCRETION IN RULING THAT THE INSTITUTION OF A PETITION FOR CANCELLATION OF UNION REGISTRATION DOES NOT CONSTITUTE A PREJUDICIAL QUESTION TO A PETITION CERTIFICATION ELECTION."[8]

The petitions must fail for want of merit.

At the outset, it must be stressed that on September 1, 1992, there was a Resolution of the Union withdrawing from the Federation, to wit:

> "BE IT RESOLVED, as it is hereby RESOLVED, that this UNION WITHDRAW, as it hereby WITHDRAWS its affiliation from the Union de Obreros Estivadores de Filipinas, and at the same time, give our thanks to the said federation for its help and guidance rendered to this Union in the past."[8]

The issue in G.R. No. 96663, whether or not the supervisors union can be affiliated with a Federation with two (2) rank and file unions directly under the supervision of the former, has thus become moot and academic in view of the Union's withdrawal from the federation.

In a long line of cases (Narciso Nakpil, et. al., vs. Hon. Crisanto Aragon, et. al., G. R. No. L - 24087, January 22, 1980, 95 SCRA 85; Toribio vs. Bidin, et. al., G.R. No. L-37960, February 28, 1980, 96 SCRA 361; Gumaua vs. Espino, G.R. No. L- 36188 - 37586 February 29, 1980, 96 SCRA 402), the Court dismissed the petition for being moot and academic. In the case of F. C. Fisher vs. Yangco Steamship Co., March 31, 1915, the Court held:

> "It is unnecessary, however to indulge in academic discussion of a moot question.

> The action would have been dismissed at any time on a showing of the facts as they were . The question left for the court was a moot one. Its Resolution would have been useless. Its judgment would have been impossible of execution."
>
> However, in the case of University of San Agustin, Inc., et al. vs. Court of Appeals, et al., the court resolved the case, ruling that "even if a case were moot and academic, a statement of the governing principle is appropriate in the resolution of dismissal for the guidance not only of the parties but of others similarly situated."[10]

In Atlas Lithographic Services, Inc. vs. Laguesma, 205 SCRA 12, [1992] decided by the Third Division with J. Gutierrez, Jr., as ponente and JJ. Feliciano, Bidin, Romero and now Chief Justice Davide, Jr., as members it was ratiocinated:

> "x x x
>
> Thus, if the intent of the law is to avoid a situation where supervisors would merge with the rank-and-file or where the supervisors' labor organization would represent conflicting interests, then a local supervisors' union should not be allowed to affiliate with the national federation of union of rank-and-file employees where that federation actively participates in union activity in the company.
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> x x x
>
> The prohibition against a supervisors' union joining a local union of rank and file is replete with jurisprudence. The Court emphasizes that the limitation is not confined to a case of supervisors' wanting to join a rank-and-file union. The prohibition extends to a supervisors' local union applying for membership in a national federation the members of which include local unions of rank and file employees. The intent of the law is clear especially where, as in this case at bar, the supervisors will be co-mingling with those employees whom they directly supervise in their own bargaining unit."

Anent the issue of whether or not the Petition to cancel/revoke registration is a prejudicial question to the petition for certification election, the following ruling in the case of Association of the Court of Appeals Employees (ACAE) vs. Hon. Pura Ferrer-Calleja, in her capacity as Director, Bureau of Labor Relations et. al., 203 SCRA 597, 598, [1991], is in point, to wit:

> It is a well-settled rule that "a certification proceedings is not a litigation in the sense that the term is ordinarily understood, but an investigation of a non-adversarial and fact finding character." (Associated Labor Unions (ALU) vs. Ferrer-Calleja, 179 SCRA 127 [1989]; Philippine Telegraph and Telephone Corporation vs. NLRC, 183 SCRA 451 [1990]. Thus, the technical rules of evidence do not apply if the decision to grant it proceeds from an examination of the sufficiency of the petition as well as a careful look into the arguments contained in the position papers and other documents.
>
> "At any rate, the Court applies the established rule correctly followed by the public respondent that an order to hold a certification election is proper despite the pendency of the petition for cancellation of the registration certificate of the respondent union. The rationale for this is that at the time the respondent union filed its petition, it still had the legal personality to perform such act absent an order directing the cancellation.
>
> x x x"

As regards the issue of whether or not confidential employees can join the labor union of the rank and file, what was held in the case of National Association of Trade Unions (NATU)-Republic Planters Bank Supervisors Chapter vs. Hon. R. D. Torres, et. al., G.R. No. 93468, December 29, 1994, applies to this case. Citing Bulletin Publishing Corporation vs. Sanchez, 144 SCRA 628, 635, Golden Farms vs. NLRC, 175 SCRA 471, and Pier 8 Arrastre and Stevedoring Services, Inc. vs. Hon. Nieves Roldan-Confessor et al., G.R. No. 110854, February 14, 1995, the Court ruled:

> "A confidential employee is one entrusted with confidence on delicate matters, or with the custody, handling, or care and protection of the employer's property. While Art. 245 of the Labor Code singles out managerial employee as ineligible to join, assist or form any labor organization, under the doctrine of necessary implication, confidential employees are similarly disqualified. This doctrine states that what is implied in a statute is as much a part thereof as that which is expressed, as elucidated in several case; the latest of which is Chua vs. Civil Service Commission where we said:
>
> > No statute can be enacted that can provide all the details involved in its application. There is always an omission that may not meet a particular situation. What is thought, at the time of the enactment, to be an all embracing legislation maybe inadequate to provide for the unfolding events of the future. So-called gaps in the law develop as the law is enforced. One of the rules of statutory construction used to fill in the gap is the doctrine of necessary implication. Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. Ex necessitate legis.

In applying the doctrine of necessary implication, we took into consideration the rationale behind the disqualification of managerial employees expressed in Bulletin Publishing Corporation vs. Sanchez, thus "if these managerial employees would belong to or be affiliated with a Union, the latter might not be assured of their loyalty to the Union in view of evident conflict of interests. The Union can also become company — dominated with the presence of managerial employees in Union membership." Stated differently, in the collective bargaining process, managerial employees are supposed to be on the side of the employer, to act as its representatives, and to see to it that its interest are well protected. The employer is not assured of such protection if these employees themselves are union members. Collective bargaining in such a situation can become one-sided. It is

the same reason that impelled this Court to consider the position of confidential employees as included in the disqualification found in Art. 245 as if the disqualification of confidential employees were written in the provision. If confidential employees could unionize in order to bargain for advantages for themselves, then they could be governed by their own motives rather than the interest of the employers. Moreover, unionization of confidential employees for the purpose of collective bargaining would mean the extension of the law to persons or individuals who are supposed to act "in the interest of" the employers. It is not farfetched that in the course of collective bargaining, they might jeopardize that interest which they are duty bound to protect. Along the same line of reasoning we held in Golden Farms, Inc. vs. Ferrer-Calleja reiterated in Philips Industrial Development, Inc., NLRC, that "confidential employees such as accounting personnel, radio and telegraph operators who, having access to confidential information, may become the source of undue advantage. Said employee(s) may act as spy or spies of either party to a collective bargaining agreement."

The Court finds merit in the submission of the OSG that Route Managers, Chief Checkers and Warehouse Operations Managers are supervisors while Credit & Collection Managers and Accounting Managers are highly confidential employees. Designation should be reconciled with the actual job description of subject employees. A careful scrutiny of their job description indicates that they don't lay down company policies. Theirs is not a final determination of the company policies since they have to report to their respective superior. The mere fact that an employee is designated manager does not necessarily make him one. Otherwise, there would be an absurd situation where one can be given the title just to be deprived of the right to be a member of a union. In the case of National Steel Corporation vs. Laguesma, G. R. No. 103743, January 29, 1996, it was stressed that:

> "What is essential is the nature of the employee's function and not the nomenclature or title given to the job which determines whether the employee has rank and file or managerial status, or whether he is a supervisory employee."

WHEREFORE, the petitions under consideration are **DISMISSED** but subject Decision, dated October 4, 1991, of the Secretary of Labor and Employment is **MODIFIED** in that Credit and Collection Managers and Accounting Managers are highly confidential employees not eligible for membership in a supervisors' union. No pronouncement as to costs.

SO ORDERED.

Melo, Vitug and Gonzaga-Reyes, *JJ.*, concur.
Panganiban, *J.*, concurs in the result.

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[1] Pepsi - Cola Supervisory Employees Organization - UOEF, Comment, pp. 4-6, Rollo, pp. 71-73.
[2] Rollo, pp. 86-89, 92.
[3] Rollo, p. 104.
[4] Rollo, p. 110.
[5] Rejoinder, pp. 2,3,10,14; Rollo, pp. 125,126, 133,137.
[6] OSG Comment, pp. 3 - 4, Rollo, pp. 145 - 146.
[7] OSG Comment, p. 5, Rollo, p. 147.
[8] Petition, pp. 8, 13, 14; Rollo, pp. 9, 14, 15.
[9] Annex I, Rollo, p. 213.
[10] 230 SCRA 761, 770, citing Eastern Broadcasting Corporation (DYRE) vs. Dans, etc, et al., 137 SCRA 628.
