

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**PHILIPPINE PHOSPHATE
FERTILIZER CORPORATION,**
Petitioner,

-versus-

**G.R. No. 98050
March 17, 1994**

**HON. RUBEN D. TORRES, Secretary of
Labor and Employment, HON.
RODOLFO S. MILADO, Department of
Labor and Employment Mediator-
Arbiter for Region VIII, Tacloban City,
and PHILPHOS MOVEMENT FOR
PROGRESS, INC. (PMPI),**
Respondents.

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DECISION

BELLOSILLO, J.:

PHILIPPINE PHOSPHATE FERTILIZER CORPORATION (PHILPHOS) assails the Decision of the Secretary of Labor of 7 August 1990 affirming the order of the Mediator-Arbiter of 28 March 1990 which directed the immediate conduct of a certification election among the supervisory, professional or technical, and confidential employees of petitioner corporation.

On 7 July 1989, Philphos Movement for Progress, Inc. (PMPI for brevity), filed with the Department of Labor and Employment a petition for certification election among the supervisory employees of petitioner, alleging that as a supervisory union duly registered with the Department of Labor and Employment it was seeking to represent the supervisory employees of Philippine Phosphate Fertilizer Corporation.

The petition for certification election filed by PMPI was not opposed by PHILPHOS. In fact, on 11 August 1989, PHILPHOS submitted a position paper with the Mediator-Arbiter stating that its management welcomed the creation of a supervisory employees' union provided the necessary requisites of law were properly observed, but exempting from the union its superintendents who were managerial and not supervisory employees as they managed a division, subdivision or section, and were vested with powers or prerogatives to lay down and execute management policies. PHILPHOS also asserted that its professional or technical employees were not within the definition of supervisory employees under the Labor Code as they were immediately under the direction and supervision of its superintendents and supervisors. Moreover, the professional and technical employees did not have a staff of workers under them. Consequently, petitioner prayed for the exclusion of its superintendents and professional/technical employees from the PMPI supervisory union.

On 13 October 1989, Mediator-Arbiter Rodolfo S. Milado issued an order directing the holding of a certification election among the supervisory employees of petitioner, excluding therefrom the superintendents and the professional and technical employees. He also directed the parties to attend the pre-election conference on 19 April 1990 for the determination of the mechanics of the election process and the qualifications and eligibility of those allowed to vote.

On 15 November 1989, PMPI filed an amended petition with the Mediator-Arbiter wherein it sought to represent not only the supervisory employees of petitioner but also its professional/technical and confidential employees. The amended petition was filed in view of the amendment to the PMPI Construction

which included in its membership the professional/technical and confidential employees.

On 14 December 1989, the parties therein agreed to submit their respective position papers and to consider the amended petition submitted for decision on the basis thereof and related documents.

On 28 March 1990, Mediator-Arbiter Milado issued an order granting the petition and directing the holding of a certification election among the “supervisory, professional (engineers, analysts, mechanics, accountants, nurses, midwives, etc.), technical, and confidential employees”^[1] to comprise the proposed bargaining unit.

On 16 April 1990, PHILPHOS appealed the order of 28 March 1990 to the Secretary of Labor and Employment who on 7 August 1990 rendered a decision through Undersecretary Bienvenido Laguesma dismissing the appeal. PHILPHOS moved for reconsideration but the same was denied; hence, the instant petition alleging grave abuse of discretion on the part of public respondents in rendering the assailed rulings.

On 8 July 1991, this Court issued a temporary restraining order enjoining respondents from holding the certification election among petitioner’s supervisory, professional/technical, and confidential employees scheduled on 12 July 1991.

There are two (2) issues raised by petitioner: (1) whether it was denied due process in the proceedings before respondent Mediator-Arbiter; and, (2) whether its professional/technical and confidential employees may validly join respondent PMPI union which is composed of supervisors.

PHILPHOS claims that it was denied due process when respondent Mediator-Arbiter granted the amended petition of respondent PMPI without according PHILPHOS a new opportunity to be heard.

We do not see it the way PHILPHOS does here. The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one’s side or an opportunity to seek a reconsideration of the action or ruling

complained of.^[2] Where, as in the instant case, petitioner PHILPHOS agreed to file its position paper with the Mediator-Arbiter and to consider the case submitted for decision on the basis of the position papers filed by the parties, there was sufficient compliance with the requirement of due process, as petitioner was afforded reasonable opportunity to present its side.^[3] Moreover, petitioner could have, if it so desired, insisted on a hearing to confront and examine the witnesses of the other party. But it did not;^[4] instead, it opted to submit its position paper with the Mediator-Arbiter. Besides, petitioner had all the opportunity to ventilate its arguments in its appeal to the Secretary of Labor.

As regards the second issue, we are with petitioner that being a supervisory union, respondent PMPI cannot represent the professional/technical and confidential employees of petitioner whose positions we find to be more of the rank and file than supervisory.

With the enactment in March 1989 of R.A. 6715, employees were thereunder reclassified into three (3) groups, namely: (a) managerial employees, (b) supervisory employees, and (c) rank and file employees. The category of supervisory employees is once again recognized in the present law.

Article 212, par. (m), of the Labor Code, as amended, provides that “(s)upervisory 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.” The definition of managerial employees is limited to those having authority to hire and fire, while those who only recommend effectively the hiring or firing or transfer of personnel are considered closer to rank and file employees. The exclusion therefore of mid-level executives from the category of managers has brought about a third classification, the supervisory employees. The peculiar role of supervisors is such that while they are not managers, when they recommend action implementing management policy or ask for the discipline or dismissal of subordinates, they identify with the interests of the employer and may act contrary to the interests of the rank and file.^[5]

In its position paper submitted to the Mediator-Arbiter, petitioner described the positions and functions of its professional/technical employees, (engineers, analysts, mechanics, accountants, nurses, and midwives). The guidelines, which were not refuted by respondent PMPI, state:

Professional and Technical positions are those whose primary duty consists of the performance of work directly related to management programs; who customarily, regularly and routinely exercise judgment in the application of concepts, methods, systems and procedures in their respective fields of specialization; who regularly and directly assist a managerial and/or supervisory employee, execute under general supervision, work along specialized or technical lines requiring special training, experience or knowledge, or execute under general supervision special assignments and tasks. They are immediately under the direction and supervision of supervisors or superintendents. They have no men under them but are regularly called upon by their supervisors or superintendents on some technical matters.^[6]

Moreover, Herculano A. Duhaylungsod, Personnel Officer of petitioner, attested that there was no community of interests between the supervisors of petitioner and the professional/technical employees; that as of 25 July 1990, personnel records showed that there were 125 supervisors and 271 professional/technical employees; that of the 271 professional/technical employees, 150 were directly under and being supervised by supervisors, while the rest were staff members of superintendents.^[7]

The certification of Personnel Officer Duhaylungsod that its professional/technical employees occupy positions that are non-supervisory is evidence that said employees belong to the rank and file.^[8] Quite obviously, these professional/technical employees cannot effectively recommend managerial actions with the use of independent judgment because they are under the supervision of superintendents and supervisors. Because it is unrefuted that these professional/technical employees are performing non-supervisory functions, hence considered admitted, they should be classified, at least for purposes of this case, as rank and file employees.

Consequently, these professional/technical employees cannot be allowed to join a union composed of supervisors. Conversely, supervisory employees cannot join a labor organization of employees under their supervision but may validly form a separate organization of their own.^[9] This is provided in Art. 245 of the Labor Code, as amended by R.A. No. 6715, to wit:

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.

Respondent PMPI is supposed to be a union of 125 supervisors. If the professional/technical employees are included as members, and records show that they are 271 in all or much more than the supervisors, then PMPI will turn out to be a rank and file union with the supervisors as members.

This is precisely the situation which the law prohibits. It would create an obvious conflict of views among the members, or at least between two (2) groups of members espousing opposing interests. 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, especially where, as in the case at bar, the supervisors will be commingling with those employees whom they directly supervise in their own bargaining unit. Members of the supervisory union might refuse to carry out disciplinary measures against their co-member rank and file employees.^[10]

Supervisors have the right to form their own union or labor organization. What the law prohibits is a union whose membership comprises of supervisors merging with the rank and file employees because this is where conflict of interests may arise in the areas of discipline, collective bargaining and strikes.^[11] The professional/technical employees of petitioner therefore may join the existing rank and file union, or form a union separate and distinct from the existing union organized by the rank and file employees of the same company.

As to the confidential employees of the petitioner, the latter has not shown any proof or compelling reason to exclude them from joining respondent PMPI and from participating in the certification election, unless these confidential employees are the same professional/technical employees whom we find to be occupying rank and file positions.

WHEREFORE, the petition is **GRANTED**. The decision of respondent Secretary of Labor of 7 August 1990, as well as the order of the respondent Mediator-Arbiter of 28 March 1990, is **SET ASIDE**. The professional/technical employees of petitioner Philippine Phosphate Fertilizer Corporation (PHILPHOS) are declared disqualified from affiliating with respondent Philphos Movement for Progress, Inc. (PMPI).

The Department of Labor is directed to order immediately the conduct of certification election among the supervisory employees of petitioner, particularly excluding therefrom its professional and technical employees.

SO ORDERED.

Cruz, Davide, Jr., Quiason and Kapunan, JJ., concur.

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- [1] Rollo, p. 56.
 - [2] PLDT vs. NLRC, G.R. No. 71499, 19 July 1989, 175 SCRA 437.
 - [3] Maglutac vs. NLRC, G.R. 78345, 21 September 1990, 189 SCRA 767.
 - [4] Chua-Qua vs. Clave. G.R. 49549, 30 August 1990, 189 SCRA 117.
 - [5] Atlas Lithographic Services, Inc. vs. Laguesma, G.R. No. 96566, 6 January 1992, 205 SCRA 12.
 - [6] Rollo, pp. 35-36.
 - [7] Rollo, pp. 88-89.
 - [8] Hipolito vs. Ferrer-Calleja, G.R. No. L-81830, 1 October 1990, 190 SCRA 182.
 - [9] Adamson & Adamson, Inc. vs. No. L-35120, 31 January 1984, 127 SCRA 268.
 - [10] See Note 5.
 - [11] Ibid.