SUPREME COURT
THIRD DIVISION

PHILIPS INDUSTRIAL DEVELOPMENT, INC.,
***Petitioner*,**

-versus-

G.R. No. 88957
June 25, 1992

NATIONAL LABOR RELATIONS COMMISSION and PHILIPS EMPLOYEES ORGANIZATION (FFW),
***Respondents*.**
x----------x

D E C I S I O N

DAVIDE, JR., *J.*:

In this Petition for *Certiorari* and prohibition under Rule 65 of the Rules of Court with a prayer for a temporary restraining order and/or a writ of preliminary injunction, petitioner Philips Industrial Development, Inc. (PIDI) seeks to set aside the Decision and Resolution, dated 16 January 1989 and 17 March 1989, respectively, of the National Labor Relations Commission (NLRC) in Case No. NLRC-NCR-00-11-03936-87 on the ground that it committed grave abuse of discretion amounting to lack of jurisdiction in holding that service engineers, sales representatives and confidential employees of PIDI are qualified to be included in the existing bargaining unit.

PIDI is a domestic corporation engaged in the manufacturing and marketing of electronic products. Since 1971, it had a total of six (6) collective bargaining agreements (CBAs) with private respondent Philips Employees Organization-FFW (PEO-FFW), registered labor union and the certified bargaining agent of all the rank and file employees of PIDI. In the first CBA (1971-1974), the supervisors referred to in R.A. No. 875, confidential employees, security guards, temporary employees and sales representatives were excluded from the bargaining unit. In the second to the fifth CBAs (1975-1977; 1978-1980; 1981-1983; and 1984-1986), the sales force, confidential employees and heads of small units, together with the managerial employees, temporary employees and security personnel, were specifically excluded from the bargaining unit.[1] The confidential employees are the division secretaries of light/telecom/data and consumer electronics, marketing managers, secretaries of the corporate planning and business manager, fiscal and financial system manager and audit and EDP manager, and the staff of both the General Management and the Personnel Department.[2]

In the sixth CBA covering the years 1987 to 1989, it was agreed upon, among others, that the subject of inclusion or exclusion of service engineers, sales personnel and confidential employees in the coverage of the bargaining unit would be submitted for arbitration. Pursuant thereto, on June 1987, PEO-FFW filed a petition before the Bureau of Labor Relations (BLR) praying for an order "directing the parties to select a voluntary arbitrator in accordance with its rules and regulations."

As the parties failed to agree on a voluntary arbitrator, the BLR endorsed the petition to the Executive Labor Arbiter of the National Capital Region for compulsory arbitration pursuant to Article 228 of the Labor Code. Docketed as Case No. NLRC-NCR-00-11-03936-87, the case was assigned to Executive Labor Arbiter Arthur Amansec.

On 17 March 1988, Labor Arbiter Amansec rendered a decision, the dispositive portion of which states:

> "In view of the foregoing, a decision is hereby rendered, ordering the respondent to conduct a referendum to determine

> the will of the service engineers, sales representatives as to their inclusion or exclusion in the bargaining unit.
>
> It is hereby declared that the Division Secretaries and all Staff of general management, personnel and industrial relations department, secretaries of audit, EDP, financial system are confidential employees and as such are hereby deemed excluded in the bargaining unit.
>
> SO ORDERED."

PEO-FFW appealed from the decision to the NLRC.

On 16 January 1989, the NLRC rendered the questioned decision, the dispositive portion of which reads:

> "WHEREFORE, the foregoing premises considered, the appealed decision of the Executive Labor Arbiter is hereby SET ASIDE and a new one entered declaring respondent company's Service Engineers, Sales Force, division secretaries, all Staff of General Management, Personnel and Industrial Relations Department, Secretaries of Audit, EDP and Financial Systems are included within the rank and file bargaining unit.
>
> SO ORDERED."

The reversal is anchored on the respondent NLRC's conclusion that based on Section 1,[3] Rule II, Book V of the Omnibus Rules Implementing the Labor Code, as amended by Section 3, Implementing Rules of E.O. No. 111; paragraph (c), Section 2, Rule V of the same Code, as amended by Section 6[4] of the Implementing Rules of E.O. No. 111; and Article 245[5] of the Labor Code, as amended:

> "All workers, except managerial employees and security personnel, are qualified to join or be a part of the bargaining unit."

It further ruled that:

> "The Executive Labor Arbiter's directive that the service engineers and sales representatives to (sic) conduct a referendum among themselves is erroneous inasmuch as it arrogates unto said employees the right to define what the law means. It would not be amiss to state at this point that there would be no one more interested in excluding the subject employees from the bargaining unit than management and that it would not be improbable for the latter to lobby and/or exert pressure on the employees concerned, thus agitating unrest among the rank-and-file. Likewise, the Executive Labor Arbiter's declaration that the Division Secretaries and all Staff of general management, personnel and industrial relations department, secretaries of audit, EDP and financial system 'are confidential employees and as such are hereby deemed excluded in (sic) the bargaining unit' is contrary to law for the simple reason that the law, as earlier quoted, does not mention them as among those to be excluded from the bargaining unit only (sic) managerial employees and security guards. As a matter of fact, supervisory unions have already been dissolved and their members who do not fall within the definition of managerial employees have become eligible to join or assist the rank-and-file organization."[6]

Its motion for the reconsideration of this decision having been denied by the NLRC in its Resolution of 16 March 1989, a copy of which it received on 8 June 1989, petitioner PIDI filed the instant petition on 20 July 1989, alleging that:

> "I
>
> THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT SERVICE ENGINEERS, SALES REPRESENTATIVES AND CONFIDENTIAL EMPLOYEES OF PETITIONER ARE QUALIFIED TO BE PART OF THE EXISTING BARGAINING UNIT.

II

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT APPLYING THE TIME HONORED 'GLOBE DOCTRINE.'"[7]

On 31 July 1989, this Court required the respondents to comment on the petition, which PEO-FFW complied with on 28 August 1989. Public respondent NLRC, thru its counsel, the Solicitor General, moved for, and was granted a 30-day extension to file its Comment.

On 18 September 1989, this Court required the parties to show cause why the petition should not be dismissed in view of the finality of the NLRC decision as provided for by the penultimate sentence of Article 223 of the Labor Code, as amended by R.A. No. 6715. R.A. No. 6715, which amended Article 223 of the Labor Code, was enacted on 2 March 1989 and took effect on 21 March 1989. The parties subsequently complied with the Resolution.

On 16 May 1990, this Court required the parties to submit Memoranda explaining the effect in this case of Article 223 of the Labor Code, as amended by Section 12 of R.A. No. 6715 with respect to the finality of decisions of the NLRC. The parties complied separately with the same.

On 10 September 1990, this Court gave due course to the petition and required the parties to submit their respective Memoranda. The petitioner and the Office of the Solicitor General filed their separate Memoranda. On the other hand, PEO-FFW moved that its motion and manifestation dated 23 August 1989 be considered as its Memorandum; this Court granted the same.

As stated earlier, the principal issue in this case is whether the NLRC committed grave abuse of discretion in holding that service engineers, sales representatives and confidential employees (division secretaries, staff of general management, personnel and industrial relations department, secretaries of audit, EDP and financial system) are qualified to be included in the existing bargaining unit. Petitioner maintains that it did, and in support of its stand that said employees

should not be absorbed by the existing bargaining unit, it urges this Court to consider these points:

1) The inclusion of the group in the existing bargaining unit would run counter to the history of the parties' CBA. The parties' five (5) previous CBAs consistently excluded this group of employees from the scope of the bargaining unit. The rationale for such exclusion is that these employees hold positions which are highly sensitive, confidential and of a highly fiduciary nature; to include them in the bargaining unit may subject the company to breaches in security and the possible revelation of highly sensitive and confidential matters. It would cripple the company's bargaining position and would give undue advantage to the union.

2) The absence of mutuality of interests between this group of employees and the regular rank and file militates against such inclusion. A table prepared by the petitioner shows the disparity of interests between the said groups:

AREAS OF INTEREST	SERVICE ENGINEERS TECHNICIANS (Bargaining Unit Employees)	SERVICE (Non-Bargaining Unit Employees)	SALES REPRESENTATIVES
Qualifications	Professional Employees	High School/ Vocational Grads.	
Work Schedule	With Night Shift Schedule	None	
Night Shift Differential Pay	10% of Basic Rate	None	
Stand-By Call & On Stand-By Call with:		None	
Allowance	First Line: 15% of basic rate Second Line: 10% of basic rate		
Uniforms	None	2 sets of polo & pants every 6 months	
Retirement Benefits	15 yrs. ser. 70% 16 75% 17 80%	15 yrs serv. 50% 16 85% 17 90%	

	18	85%	18	100%
	19	90%	19	115%
	20	100%	20	135%
Year End Performance	Merit Increase System		None Evaluation	
Sales Commission		Yes	None	
Car Loan		Yes	None	
Precalculated Kilometer allowance		Yes	None	

The Office of the Solicitor General supports the decision of the Executive Labor Arbiter and refuses to uphold the position of the NLRC. It holds the view that the division secretaries; the staff members of General Management, Personnel and the Industrial Relations Department; and the secretaries of Audit, EDP and Financial Systems, are disqualified from joining the PEO-FFW as they are confidential employees. They cannot even form a union of their own for, as held in Golden Farms, Inc. vs. Ferrer-Calleja,[8] the rationale for the disqualification of managerial employees from joining unions holds true also for confidential employees. As regards the sales representatives and service engineers, however, there is no doubt that they are entitled to join or form a union, as they are not disqualified by law from doing so. Considering that they have interests dissimilar to those of the rank and file employees comprising the existing bargaining unit, and following the Globe Doctrine enunciated in In Re: Globe Machine and Stamping Company[9] to the effect that in determining the proper bargaining unit the express will or desire of the employees shall be considered, they should be allowed to determine for themselves what union to join or form. The best way to determine their preference is through a referendum As shown by the records, such a referendum was decreed by the Executive Labor Arbiter.

The petition is impressed with merit.

At the outset, We express Our agreement with the petitioner's view that respondent NLRC did not quite accurately comprehend the issue raised before it. Indeed, the issue is not whether the subject employees may join or form a union, but rather, whether or not they may be part of the existing bargaining unit for the rank and file employees of PIDI.

Even if the issue was, indeed, as perceived by the NLRC, still, a palpable error was committed by it in ruling that under the law, all workers, except managerial employees and security personnel, are qualified to join a union, or form part of a bargaining unit. At the time Case No. NLRC-NCR-00-11-03936-87 was filed in 1987, security personnel were no longer disqualified from joining or forming a union. Section 6 of E.O No. 111, enacted on 24 December 1986, repealed the original provisions of Article 245 of the Labor Code, reading as follows:

> "ARTICLE 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."

and substituted it with the following provision:

> "ARTICLE 245. Right of employees in the public service. —"[10]

x x x

By virtue of such repeal and substitution, security guards became eligible for membership in any labor organization.[11]

On the main issue raised before Us, it is quite obvious that respondent NLRC committed grave abuse of discretion in reversing the decision of the Executive Labor Arbiter and in decreeing that PIDI's "Service Engineers, Sales Force, division secretaries, all Staff of General Management, Personnel and Industrial Relations Department, Secretaries of Audit, EDP and Financial Systems are included within the rank and file bargaining unit."

In the first place, all these employees, with the exception of the service engineers and the sales force personnel, are confidential employees. Their classification as such is not seriously disputed by PEO-FFW; the five (5) previous CBAs between PIDI and PEO-FFW explicitly considered them as confidential employees. By the very nature of their functions, they assist and act in a confidential capacity

to, or have access to confidential matters of, persons who exercise managerial functions in the field of labor relations.[12] As such, the rationale behind the ineligibility of managerial employees to form, assist or join a labor union equally applies to them.

In Bulletin Publishing Co., Inc. vs. Hon. Augusto Sanchez,[13] this Court elaborated on this rationale, thus:

> "The rationale for this inhibition has been stated to be, because 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."

In Golden Farms, Inc. vs. Ferrer-Calleja,[14] this Court explicitly made this rationale applicable to confidential employees:

> "This rationale holds true also for 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 a spy or spies of either party to a collective bargaining agreement. This is specially true in the present case where the petitioning Union is already the bargaining agent of the rank-and-file employees in the establishment. To allow the confidential employees to join the existing Union of the rank-and-file would be in violation of the terms of the Collective Bargaining Agreement wherein this kind of employees by the nature of their functions/positions are expressly excluded."

As regards the service engineers and the sales representatives, two (2) points which respondent NLRC likewise arbitrarily and erroneously ruled upon, need to be discussed. Firstly, in holding that they are included in the bargaining unit for the rank and file employees of PIDI, the NLRC practically forced them to become members of PEO-FFW or to be subject to its sphere of influence, it being the certified bargaining agent for the subject bargaining unit. This violates, obstructs, impairs and impedes the service engineers' and the sales representatives' constitutional right to form unions or associations[15]

and to self-organization.[16] In Victoriano vs. Elizalde Rope Workers' Union,[17] this Court already ruled:

> "Notwithstanding the different theories propounded by the different schools of jurisprudence regarding the nature and contents of a 'right', it can be safely said that whatever theory one subscribes to, a right comprehends at least two broad notions, namely: first, liberty or freedom, i.e., the absence of legal restraint, whereby an employee may act for himself without being prevented by law; and second, power, whereby an employee may, as he pleases, join or refrain from joining an association. It is, therefore, the employee who should decide for himself whether he should join or not an association; and should he choose to join, he himself makes up his mind as to which association he would join; and even after he has joined, he still retains the liberty and the power to leave and cancel his membership with said organization at any, time.[18] It is clear, therefore, that the right to join a union includes the right to abstain from joining any union.[19] Inasmuch as what both the Constitution and the Industrial Peace Act have recognized, and guaranteed to the employee, is the 'right' to join associations of his choice, it would be absurd to say that the law also imposes, in the same breath, upon the employee the duty to join associations. The law does not enjoin an employee to sign up with any association."

The decision then of the Executive Labor Arbiter in merely directing the holding of a referendum "to determine the will of the service engineers, sales representatives as to their inclusion or exclusion in (sic) the bargaining unit" is the most appropriate procedure that conforms with their right to form, assist or join a labor union or organization. However, since this decision was rendered before the effectivity of R.A. No. 6715, it must now be stressed that its future application to the private parties in this case should, insofar as service engineers and sales representatives holding supervisory positions or functions are concerned, take into account the present Article 245[20] of the Labor Code which, as amended by R.A. No. 6715, now reads:

> "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." (Emphasis supplied)

The foregoing disquisitions render unnecessary a discussion on the second ground on the alleged grave abuse of discretion on the part of the NLRC in not applying the "Globe Doctrine". Suffice it to state here that since the only issue is the subject employees' inclusion in or exclusion from the bargaining unit in question, and PIDI never questioned the decision of the Executive Labor Arbiter, the Globe Doctrine finds no application. Besides, this doctrine applies only in instances of evenly balanced claims by competitive groups for the right to be established as the bargaining unit,[21] which do not obtain in this case.

WHEREFORE, the petition is hereby **GRANTED**. The Decision of public respondent National Labor Relations Commission in Case No. NLRC-NCR-00-11-03936-87, promulgated on 16 January 1989, is hereby SET ASIDE while the Decision of the Executive Labor Arbiter in said case dated 17 March 1988 is hereby **REINSTATED**, subject to the modifications above indicated.

Costs against private respondent.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin and Romero, *JJ.*, concur.

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[1] Rollo, 4.
[2] Id.
[3] On who may join labor unions.
[4] On exclusion of security guards from the bargaining unit of the rank and file employees.
[5] On ineligibility of managerial employees to join any labor organization.
[6] Rollo, 111.
[7] Id., 2.
[8] 175 SCRA 471 [1989].
[9] 3 NLRB 294 [1937].

[10] In view of the repeal of Article 238 of the Labor Code by Section 5 of E.O. 111, this Article was deemed renumbered as Article 244.
[11] Manila Electric Co. vs. Secretary of Labor and Employment, 197 SCRA 275 [1991].
[12] PASCUAL, C., Labor Relations Law, 1986 ed., 159.
[13] 144 SCRA 628, 635 [1986].
[14] Supra.
[15] Section 8, Article III (Bill of Rights) and Section 3, Article XIII of the present Constitution.
[16] Article 246, Labor Code of the Philippines, as amended.
[17] 59 SCRA 54, 66-67 [1974]. See also Anucension vs. National Labor Union, 80 SCRA 350 [1977]; Vassar Industries Employees Union vs. Estrella, 82 SCRA 280 [1978].
[18] Citing Pagkakaisa Samahang Manggagawa ng San Miguel Brewery at mga Kasangay (PAFLU) vs. Enriquez, 108 Phil. 1010 [1960].
[19] Citing Abo vs. PHILAME (KG) Employees & Workers Union, 13 SCRA 120 [1965].
[20] Originally Article 246.
[21] Rothenberg on Labor Relations, 1949 ed., 483.