SUPREME COURT
FIRST DIVISION

SAN MIGUEL CORPORATION EMPLOYEES UNION-PTGWO, REPRESENTED BY ITS PRESIDENT RAYMUNDO HIPOLITO, JR.,
***Petitioner*,**

-versus-

G.R. No. 111262
September 19, 1996

HON. MA. NIEVES D. CONFESOR, SECRETARY OF LABOR, DEPT. OF LABOR & EMPLOYMENT, SAN MIGUEL CORPORATION, MAGNOLIA CORPORATION (FORMERLY, MAGNOLIA PLANT) AND SAN MIGUEL FOODS, INC. (FORMERLY, B-MEG PLANT),
***Respondents*.**
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D E C I S I O N

KAPUNAN, *J.*:

This is a Petition for *Certiorari* assailing the Order of the Secretary of Labor rendered on February 15, 1993 involving a labor dispute at San Miguel Corporation.

The facts are as follows:

On June 28, 1990, petitioner-union San Miguel Corporation Employees Union — PTGWO entered into a Collective Bargaining Agreement (CBA) with private respondent San Miguel Corporation (SMC) to take effect upon the expiration of the previous CBA or on June 30, 1989.

This CBA provided, among others, that:

ARTICLE XIV
DURATION OF AGREEMENT

> SECTION 1. This Agreement which shall be binding upon the parties hereto and their respective successors-in-interest, shall become effective and shall remain in force and effect until June 30, 1992.
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> SECTION 2. In accordance with Article 253-A of the Labor Code as amended, the term of this Agreement insofar as the representation aspect is concerned, shall be for five (5) years from July 1, 1989 to June 30, 1994. Hence, the freedom period for purposes of such representation shall be sixty (60) days to June 30, 1994.
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> SECTION 3. Sixty (60) days prior to June 30, 1992 either party may initiate negotiations of all provisions of this Agreement, except insofar as the representation aspect is concerned. If no agreement is reached in such negotiations, this Agreement shall nevertheless remain in force up to the time a subsequent agreement is reached by the parties.[1]

In keeping with their vision and long term strategy for business expansion, SMC management informed its employees in a Letter dated August 13, 1991[2] that company which was composed of four operating divisions namely: (1) Beer, (2) Packaging, (3) Feeds and Livestocks, (4) Magnolia and Agri-business would undergo a restructuring.[3]

Effective October 1, 1991, Magnolia and Feeds and Livestock Division were spun-off and became two separate and distinct corporations: Magnolia Corporation (Magnolia) and San Miguel Foods Inc. (SMFI). Notwithstanding the spin-offs, the CBA remained in force and effect.

After June 30, 1992, the CBA was renegotiated in accordance with the terms of the CBA and Article 253-A of the Labor Code. Negotiations started sometime in July, with the two parties submitting their respective proposals and counter proposals.

During the negotiations, the petitioner-union insisted that the bargaining unit of SMC should still include the employees of the spun-off corporations: Magnolia and SMFI; and that the renegotiated terms of the CBA shall be effective only for the remaining period of two years or until June 30, 1994.

SMC, on the other hand, contented that the members/employees who had moved to Magnolia SMFI, automatically ceased to be part of the bargaining unit at the SMC. Furthermore, the CBA should be effective for three years in accordance with Art. 253-A of the Labor Code.

Unable to agree on these issues with respect to the bargaining unit and duration of the CBA, petitioner-union declared a deadlock on September 29, 1990.

On October 2, 1992, a Notice of Strike was filed against SMC.

In order to avert a strike, SMC requested the National Conciliation and Mediation Board (NCMB) to conduct preventive mediation. No settlement was arrived at despite several meetings held between the parties.

On November 3, 1992, a strike vote was conducted which resulted in a “yes vote” in favor of a strike.

On November 4, 1992, private respondents SMC, Magnolia and SMFI filed a petition with the Secretary of Labor praying that the latter assume jurisdiction over the labor dispute in a vital industry.

As prayed for, the Secretary of Labor assumed jurisdiction over the labor dispute on November 10, 1992.[4] Several conciliation meetings were held but still no agreement/settlement was arrived at by both parties.

After the parties submitted their respective position papers, the Secretary of Labor issued the assailed Order on February 15, 1993 directing, among others, that the renegotiated terms of the CBA shall be effective for the period of three (3) years from June 30, 1992; and that such CBA shall cover only the employees of SMC and not of Magnolia and SMFI.

Dissatisfied, petitioner-union now comes to this Court questioning this Order of the Secretary of Labor.

Subsequently, on March 30, 1995,[5] petitioner-union filed a Motion for Issuance of a Temporary Restraining Order or Writ of Preliminary Injunction to enjoin the holding of the certification elections in the different companies, maintaining that the employees of Magnolia and SMFI fall within the bargaining unit of SMC.

On March 29, 1995, the Court issued a resolution granting the temporary restraining order prayer for.[6]

Meanwhile, an Urgent Motion for Leave to Intervene[7] in the case was filed by the Samahan ng Malayang Manggagawa-San Miguel Corporation-Federation of Free Workers (SMM-SMC-FFW) through its authorized representative, Elmer S. Armando, alleging that it is one of the contending parties adversely effected by the temporary restraining order.

The Intervenor cited the case of Daniel S.L. Borbon vs. Hon. Bienvenido B. Laguesma,[8] G.R. No. 101766, March 5, 1993, where the Court recognized the separation of the employees of Magnolia from the SMC bargaining unit. It then prayed for the lifting of the temporary restraining order.

Likewise, Efren Carreon, Acting President of the SMCEU-PTGWO, filed a petition for the withdrawal/dismissal of the petition considering that the temporary restraining order jeopardized the

employees' right to conclude a new CBA. At the same time, he challenged the legal personality of Mr. Raymundo Hipolito, Jr. to represent the Union as its president when the later was already officially dismissed from the company on October 4, 1994.

Amidst all these pleadings, the following primordial issues arise:

1) Whether or not the duration of the renegotiated terms of the CBA is to be effective for three years or for only two years; and

2) Whether or not the bargaining unit of SMC includes also the employees of Magnolia and SMFI.

Petitioner-union contends that the duration for the non-representation provisions of the CBA should be coterminous with the terms of the bargaining agency which in effect shall be for the remaining two years of the current CBA, citing a previous decision of the Secretary of Labor on December 14, 1992 in the matter of the labor dispute at Philippine Refining Company.[9]

However, the Secretary of Labor, in her questioned Order of February 15, 1993 ruled that the renegotiated terms of the CBA at SMC should run for a period of three (3) years.

We agree with the Secretary of Labor.

Pertinent to the first issue is Art. 253-A of the Labor Code as amended which reads:

> ART. 253-A. Terms of a Collective Bargaining Agreement. — Any Collective Bargaining Agreement that the parties may enter into shall, insofar as the representation aspect is concerned, be for a term of five (5) years. No petition questioning the majority status of the incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of the sixty-day period immediately before the date of expiry of such five year term of the Collective Bargaining Agreement. All other provisions of the Collective Bargaining Agreement shall be

> renegotiated not later than three (3) years after its execution. Any agreement on such other provisions of the Collective Bargaining Agreement entered into within six (6) months from the date of expiry of the term of such other provisions as fixed in such Collective Bargaining Agreement, shall retroact to the day immediately following such date. If any such agreement is entered into beyond six months, the parties shall agree on the duration of retroactivity thereof. In case of a deadlock in the renegotiation of the collective bargaining agreement, the parties may exercise their rights under this Code. (Emphasis supplied.)

Article 253-A is a new provision. This was incorporated by Section 21 of Republic Act No. 6715 (the Herrera-Veloso Law) which took effect on March 21, 1989. This new provision states that the CBA has a term of five (5) years instead of three years, before the amendment of the law as far as the representation aspect is concerned. All other provisions of the CBA shall be negotiated not later than three (3) years after its execution. The "representation aspect" refers to the identity and majority status of the union that negotiated the CBA as the exclusive bargaining representative of the appropriate bargaining unit concerned. "All other provisions" simply refers to the rest of the CBA, economic as well as non-economic provisions, except representation.[10]

As the Secretary of Labor herself observed in the instant case, the law is clear and definite on the duration of the CBA insofar as the representation aspect is concerned, but is quite ambiguous with the terms of the other provisions of the CBA. It is a cardinal principle of statutory construction that the Court must ascertain the legislative intent for the purpose of giving effect to any statute. The history of the times and state of the things existing when the act was framed or adopted must be followed and the conditions of the things at the time of the enactment of the law should be considered to determine the legislative intent.[11] We look into the discussions leading to the passage of the law:

> THE CHAIRMAN (REP. VELASCO): The CBA, insofar as the economic provisions are concerned.
>
> THE CHAIRMAN (SEN. HERRERA): Maximum of three years?

THE CHAIRMAN (SEN. VELOSO): Maximum of three years.

THE CHAIRMAN (SEN. HERRERA): Present practice?

THE CHAIRMAN (REP. VELOSO): In other words, after three years puwede nang magnegotiate in that CBA for the remaining two years.

THE CHAIRMAN (REP. HERRERA): You can negotiate for one year, two years or three years but assuming three years which, I think, that's the likelihood.

THE CHAIRMAN (REP. VELOSO): Yes.

THE CHAIRMAN (SEN. HERRERA): Three years, the new union, assuming there will be a change of agent, at least he has one year to administer and to adjust, to develop rapport with the management. Yan ang importante.

You know, for us na nagne-negotiate, and hazard talaga sa negotiation, when we negotiate with somebody na hindi natin kilala, then, we are governed by our biases na ito ay destroyer ng Labor; ang mga employer, ito bayaran ko lang ito okay na.

'Yan ang nangyayari, but let us give that allowance for one year to let them know.

Actually, ang thrust natin ay industrial peace, and there can be no industrial peace if you encourage union to fight each other. 'Yan ang problema.[12]

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HON. ISIDRO: Madali iyan, kasi these two periods that are mentioned in the CBA seem to provide some doubts later on in the implementation. Sabi kasi rito, insofar as representation issue is concerned, seven years ang lifetime.

HON. CHAIRMAN HERRERA: Five years.

HON. ISIDRO: Five years, all the others three years.

HON. CHAIRMAN HERRERA: No. Ang three years duon sa terms and conditions, not later than three years.

HON. ISIDRO: Not later than three years, so within three years you have to make a new CBA.

HON. CHAIRMAN HERRERA: Yes.

HON. ISIDRO: That is again for purposes of renewing the terms, three years na naman iyan — then, seven years.

HON. CHAIRMAN HERRERA: Not later than three years.

HON. ISIDRO: Assuming that they usually follow the period — three years nang three years, but under this law with respect to representation — five years, ano? Now, after three years, nagkaroon ng bagong terms, tapos na iyong term, renewed na iyong terms, ang karapatan noon sa representation issue mayroon pang two years left.

HON. CHAIRMAN HERRERA: One year na lang because six years nang lahat, three plus three.

HON ISIDRO: Hindi, two years pa rin ang natitira, eh. Three years pa lang ang natatapos. So, another CBA was formed and this CBA mayroon na naman siyang bagong five years with respect to representation issue.

HON. CHAIRMAN HERRERA: Hindi. Hindi na. Ganito iyan. Iyong terms and conditions for three years.

HON. ISIDRO: Yes.

HON. CHAIRMAN HERRERA: On the third year you can start negotiating to change the terms and conditions.

HON. ISIDRO: Yes.

HON. CHAIRMAN HERRERA: Assuming you will follow the practice.

HON. ISIDRO: Oo.

HON. CHAIRMAN HERRERA: But on the fifth year, ang representation status now can be questioned, so baka puwedeng magkaroon ng certification election. If the incumbent union loses, then the new union administers the contract for one year to give him time to know his counterpart — the employer, before he can negotiate for a new term. Iyan ang advantage.

HON. ISIDRO: Kasi, when the CBA has only a three-year lifetime with respect to the terms and conditions and then, so you have to renew that in three years — you renew for another three years, mayroon na naman another five years iyong ano.

HON. ANIAG: Hindi, ang natitira duon sa representation two years na lang.

HON. CHAIRMAN HERRERA: Two years na lang sa representation.

HON. ANIAG: So that if they changed the union, iyong last year.

HON. CHAIRMAN HERRERA: Iyon lang, that you have to administer the contract. Then, voluntary arbitration na kayo and then mayroon ka nang probisyon "retroact on the date of the expiry date". Pagnatalo ang incumbent unyon, mag-aassume ang new union, administer the contract. As far as the term and condition, for one year, and that will give him time and the employer to know each other.

HON. JABAR: Boy, let us be realistic. I think if a new union wins a certification election, it would not want to administer a CBA which has not been negotiated by the union itself.

HON. CHAIRMAN HERRERA: That is not true, Hon. This is true because what is happening now in the country is that the term ng contract natin, duon din mage-expire ang representation. Iyon ang nangyari. That is where you have the gulo. Ganoon ang nangyari. So, ang nangyari diyan, pag-mayroon certification election, expire ang contract, ano ang usual issue — company union. I can you (sic) give you more what the incumbent union is giving. So ang mangyayari diyan, pag-negotiate mo hardline na agad.

HON. CHAIRMAN VELOSO: Mon, for four years?

HON. ISIDRO: Ang tingin ko lang dito, iyong distinction between the terms and the representation aspect — why do we have to distinguish between three and five? What's wrong with having a uniform expiration period?

HON. CHAIRMAN HERRERA: Five years.

HON. ISIDRO: Puro three years.

HON. CHAIRMAN HERRERA: That is what we are trying to avoid because ang reality diyan, Mart, pagpasok mo sa kumpanya, mag-ne-negotiate ka ng six months, that's the average, aabot pa minsan ng one year. Pagkatapos ng negotiation mo, signing kayo. There will be an allowed period of one year. Third year na, uumpisahan naman ang organizations, papasok na ang ibang unyon because the reality in Trade Union committee, they organize, we organize. So, actually, you have only industrial peace for one year, effective industrial peace. That is what we are trying to change. Otherwise, we will continue to discourage the investors and the union will never grow because every other year it has to use its money for the certification election. Ang grabe pang practice diyan, mag-a-advance ang federation for three years union dues para panggastos lang sa certification election. That is what we are trying to avoid.

HON. JABAR: Although there are unions which really get advances.

HON. CHAIRMAN HERRERA: Pag nag-survey tayo sa mga unyon, ganoon ang mangyayari. And I think our responsibility here is to create a legal framework to promote industrial peace and to develop responsible and fair labor movement.

HON. CHAIRMAN VELOSO: In other words, the longer the period of the effectivity.

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HON. CHAIRMAN VELOSO. (continuing) ... ... in other words, the longer effectivity of the CBA, the better for industrial peace.

HON. CHAIRMAN HERRERA: representation status.

HON. CHAIRMAN VELOSO: Only on —

HON. CHAIRMAN HERRERA: the representations.

HON. CHAIRMAN VELOSO: But on the economic issues.

HON. CHAIRMAN HERRERA: You have to review that. The parties will have to review that.

HON. CHAIRMAN VELOSO: At least on second year.

HON. CHAIRMAN HERRERA: Not later than 3 years ang karamihan ng mga, mag-negotiate when the company is — (interrupted)[13]

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From the aforesaid discussions, the legislators were more inclined to have the period of effectivity for three (3) years insofar as the economic as well as non-economic provisions are concerned, except representation.

Obviously, the framers of the law wanted to maintain industrial peace and stability by having both management and labor work harmoniously together without any disturbance. Thus, no outside union can enter the establishment within five (5) years and challenge the status of the incumbent union as the exclusive bargaining agent. Likewise, the terms and conditions of employment (economic and non-economic) can not be questioned by the employers or employees during the period of effectivity of the CBA. The CBA is a contract between the parties and the parties must respect the terms and conditions of the agreement.[14] Notably, the framers of the law did not give a fixed terms as to the effectivity of the terms and conditions of employment. It can be gleaned from their discussions that it was left to the parties to fix the period.

In the instant case, it is not difficult to determine the period of effectivity for the non-representation provisions of the CBA. Taking it from the history of their CBAs, SMC intended to have the terms of the CBA effective for three (3) years reckoned from the expiration of the old or previous CBA which was on June 30, 1989, as it provides:

> SECTION 1. This Agreement which shall be binding upon the parties hereto and their respective successors-in-interest, shall become effective and shall remain in force and effect until June 30, 1992.

The argument that the PRC case is applicable is indeed misplaced. We quote with favor the Order of the Secretary of Labor in the light of SMC's peculiar situation as compared with PRC's company situation.
It is true that in the Philippine Refining Company case (OS-AJ-0031-91 (sic), Labor Dispute at Philippine Refining Company), we ruled that the term of the renegotiated provisions of the CBA should coincide with the remaining term of the agency. In doing so, we placed premium on the fact that PRC has only two (2) unions and no other union had yet executed a renewed term of 3 years. Nonetheless, in ruling for a shortened term, we were guided by our considered perception that the said term would improve, rather than ruin, the general welfare of both the workers and the company. It is equally true that once the economic provisions of the CBA expire, the residual representative status of the union is effective for only 2 more years. However, if circumstances warrant that the contract duration which it

is soliciting from the company for the benefit of the workers, shall be a little bit longer than its lifespan, then this Office cannot stand in the way of a more ideal situation. We must not lose sight of the fact that the primordial purpose of a collective contract is to promote industrial harmony and stability in the terms and conditions of employment. To our mind, this objective cannot be achieved without giving due consideration to the peculiarities and unique characteristics of the employer. In the case at bar, there is no dispute that the mother corporation (SMC) spun-off two of its divisions and thereby gave birth to two (2) other entities now known as Magnolia Corporation and San Miguel Foods, Inc. In order to effect a smooth transition, the companies concerned continued to recognize the existing unions as the bargaining agents of their respective bargaining units. In the meantime, the other unions in these companies eventually concluded their CBA negotiations on the remaining term and all of them agreed on a 3-year cycle. Notably, the following CBAs were forged incorporating a term of 3-years on the renegotiated provisions, to wit:

1. SMC — daily-paid employees union (IBM)

2. SMFI — monthly-paid employees and daily-paid employees at the Cabuyao Plant.

There is a direct link between the voluntary recognition by the company of the continuing representative status of the unions after the aforementioned spin-offs and the stand of the company for a 3-year renegotiated cycle when the economic provisions of the existing CBAs expired, i.e., to maintain stability and avoid confusion when the umbilical cord of the two divisions were severed from their parent. These two cannot be considered independently of each other for they were intended to reinforce one another. Precisely, the company conceded to face the same union notwithstanding the spin-offs in order to preserve industrial peace during the infancy of the two corporations. If the union would insist on a shorter renegotiated term, than all the advantages gained by both parties in this regard, would have gone to naught. With this in mind, this office feels that it will betray its mandate should we order the parties to execute a 2-year renegotiated term for then chaos and confusion, rather than tranquility, would be the order of the day. Worse, there is a strong

likelihood that such a ruling might spawn discontent and possible mass actions against the company coming from the other unions who had already agreed to a 3-year renegotiated terms. If this happens, the purpose of this Office's intervention into the parties' controversy would have been defeated.[15]

The issue as to the term of the non-representation provisions of the CBA need not belabored especially when we take note of the Memorandum of the Secretary of Labor dated February 24, 1994 which was mentioned in the Resolution of Undersecretary Bienvenido Laguesma on January 16, 1995 in the certification election case involving the SMC employees.[16] In said memorandum, the Secretary of Labor had occasion to clarify the term of the renegotiated terms of the CBA *vis-a-vis* the term of the bargaining agent, to wit:

As a matter of policy the parties are encourages (sic) to enter into a renegotiated CBA with a term which would coincide (sic) with the aforesaid five (5) year term of the bargaining representative.

In the event however, that the parties, by mutual agreement, enter into a renegotiated contract with a term of three (3) years or one which does not coincide with the said 5-year term, and said agreement is ratified by majority of the members in the bargaining unit, the subject contract is valid and legal and therefore, binds the contracting parties. The same will however not adversely affect the right of another union to challenge the majority status of the incumbent bargaining agent within sixty (60) days before the lapse of the original five (5) year term of the CBA.

Thus, we do not find any grave abuse of discretion on the part of the Secretary of Labor in ruling that the effectivity of the renegotiated terms of the CBA shall be for three (3) years.

With respect to the second issue, there is, likewise, no merit in petitioner-union's assertion that the employees of Magnolia and SMFI should still be considered part of the bargaining unit of SMC.

Magnolia and SMFI were spun-off to operates as distinct companies on October 1, 1991. Management saw the need for these

transformations in keeping with its vision and long term strategy as it explained its letter addressed to the employees dated August 13, 1991:

> As early as 1986, we announced the decentralization program and spoke of the need for structures that can react fast to competition, a changing environment, shorter product life cycles and shifts in consumer preference. We further stated in the 1987 Annual Report to Stockholders that San Miguel's business will be more autonomous and self sufficient so as to better acquire and master new technologies, cope with a labor force with different expertises and expectations, and master and satisfy the changing needs of our customers and end-consumers. As subsidiaries, Magnolia and FLD will gain better industry focus and flexibility, greater awareness of operating results, and speedier, more responsive decision making.
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> We only have to look at the experience of Coca-Cola Bottlers Philippines, Inc., since this company was organized about ten years ago, to see the benefits that arise from restructuring a division of San Miguel into a more competitive organization. As a stand-alone enterprise, CCBPI engineered a dramatic turnaround and has sustained its sales and market share leadership ever since.
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> We are confident that history will repeat itself, and the transformation of Magnolia and FLD will be successful as that of CCBPI.[17]

Undeniably, the transformation of the companies was a management prerogative and business judgment which the courts can not look into unless it is contrary to law, public policy or morals. Neither can we impute any bad faith on the part of SMC so as to justify the application of the doctrine of piercing the corporate veil.[18] Ever mindful of the employees' interests, management has assured the concerned employees that they will be absorbed by the new corporations without loss of tenure and retaining their present pay and benefits according to the existing CBAs.[19] They were advised that upon the expiration of the CBAs, new agreements will be

negotiated between the management of the new corporations and the bargaining representatives of the employees concerned. As a result of the spin-offs:

1. Each of the companies are run by, supervised and controlled by different management teams including separate human resource/personnel managers.

2. Each Company enforces its own administrative and operational rules and policies and are not dependent on each other in their operations.

3. Each entity maintains separate financial statements and are audited separately from each other.[20]

Indubitably, therefore, Magnolia and SMFI became distinct entities with separate juridical personalities. Thus, they can not belong to a single bargaining unit as held in the case of Diatagon Labor Federation Local 110 of the ULGWP vs. Ople.[21]We elucidate:

The fact that their businesses are related and that the 236 employees of Georgia Pacific International Corporation were originally employees of Lianga Bay Logging Co., Inc. is not a justification for disregarding their separate personalities. Hence, the 236 employees, who are now attached to Georgia Pacific International Corporation, should not be allowed to vote in the certification election at the Lianga Bay Logging Co., Inc. They should vote at a separate certification election to determine the collective bargaining representative of the employees of Georgia Pacific International Corporation.

Petitioner-union's attempt to include the employees of Magnolia and SMFI in the SMC bargaining unit so as to have a bigger mass base of employees has, therefore, no more valid ground.

Moreover, in determining an appropriate bargaining unit, the test of grouping is mutuality or commonality of interests. The employees sought to be represented by the collective bargaining agent must have substantial mutual interests in terms of employment and working conditions as evinced by the type of work they performed.[22]

Considering the spin-offs, the companies would consequently have their respective and distinctive concerns in terms of the nature of work, wages, hours of work and other conditions of employment. Interests of employees in the different companies perforce differ. SMC is engaged in the business of beer manufacturing. Magnolia is involved in the manufacturing and processing of dairy products[23] while SMFI is involved in the production of feeds and the processing of chicken.[24] The nature of their products and scales of business may require different skills which must necessarily be commensurated by different compensation packages. The different companies may have different volumes of work and different working conditions. For such reason, the employees of the different companies see the need to group themselves together and organize themselves into distinctive and different groups. It would then be best to have separate bargaining units for the different companies where the employees can bargain separately according to their needs and according to their own working conditions.

We reiterate what we have explained in the case of University of the Philippines vs. Ferrer-Calleja[25] that:

> There are various factors which must be satisfied and considered in determining the proper constituency of a bargaining unit. No one particular factor is itself decisive of the determination. The weight accorded to any particular factor varies in accordance with the particular question or questions that may arise in a given case. What are these factors? Rothenberg mentions a good number, but the most pertinent to our case are: (1) will of the employees (Globe Doctrine); (2) affinity and unit of employees' interest, such as substantial similarity of work and duties, or similarity of compensation and working conditions; (3) prior collective bargaining history; and (4) employment status, such as temporary, seasonal and probationary employees.
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> An enlightening appraisal of the problem of defining an appropriate bargaining unit is given in the 10th Annual Report of the National Labor Relations Board wherein it is emphasized

> that the factors which said board may consider and weigh in fixing appropriate units are: the history, extent and type of organization of employees; the history of their collective bargaining; the history, extent and type of organization of employees in other plants of the same employer, or other employers in the same industry; the skill wages, work, and working conditions of the employees; the desires of the employees; the eligibility of the employees for membership in the union or unions involved; and the relationship between the unit or units proposed and the employer's organization, management, and operation.

In said report, it is likewise emphasized that the basic test in determining the appropriate bargaining unit is that a unit, to be appropriate, must affect a grouping of employees who have substantial, mutual interests in wages, hours, working conditions and other subjects of collective bargaining (citing Smith on Labor Laws, 316-317; Francisco, Labor Laws, 162).

Finally, we take note of the fact that the separate interests of the employees of Magnolia and SMFI from those of SMC has been recognized in the case of Daniel Borbon vs. Laguesma.[26] We quote:

> Even assuming in *gratia argumenti* that at the time of the election they were regular employees of San Miguel, nonetheless, these workers are no longer connected with San Miguel Corporation in any manner because Magnolia has ceased to be a division of San Miguel Corporation and has been formed into a separate corporation with a personality of its own (p. 305, Rollo). This development, which was brought to our attention by private respondents, necessarily renders moot and academic any further discourse on the propriety of the elections which petitioners impugn via the present recourse (p. 319, Rollo).

In view of all the foregoing, we do not find any grave abuse of discretion on the part of the Secretary of Labor in rendering the assailed Order.

WHEREFORE, the Petition is **DISMISSED** for lack of merit. The Temporary Restraining Order issued on March 29, 1995 is lifted.

SO ORDERED.

Bellosillo, Vitug and Hermosisima, Jr., *JJ*., concur.
Padilla, *J*., took no part.

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[1] Rollo, p. 56.
[2] Id., at 541.
[3] Id., at 211.
[4] Id., at 9.
[5] Id., at 1048.
[6] Id., at 1125.
[7] Id., at 1166.
[8] 219 SCRA 605 (1993).
[9] OS-AJ-0031-92 NCMB-NCR-NS-08-563-92, December 14, 1992, Annex "B," Rollo, p. 33.
[10] C.A. Azucena, Labor Law Handbook, 718 (1995 Edition).
[11] De los Santos vs. Mallari, 87 Phil. 289 (1950); Gomez Garcia vs. Hipolito, 2 Phil 732 (1903).
[12] Joint Congressional Conference Committee on Senate Bill No. 530 and House Bill No. 11524, December 14, 1988.
[13] Conference Committee on Labor, December 15, 1988.
[14] Henson vs. Intermediate Appellate Court, 148 SCRA 11 (1987).
[15] Rollo, pp. 28-30.
[16] Attached as Annex "G" (Rollo, p. 1108) to the Motion for Temporary Restraining Order/Preliminary Injunction (Rollo, p. 1048).
[17] Rollo, p. 211.
[18] See Indophil Textile Mill Workers Union vs. Calica, 205 SCRA 697 (1992).
[19] Id., at 211, 213.
[20] Id., at 23.
[21] 101 SCRA 534 (1980)
[22] San Miguel Corporation vs. Laguesma, 231 SCRA 595 (1994).
[23] Rollo, p. 186.
[24] Id., at 451.
[25] 211 SCRA 451 (1992).
[26] Supra.
