SUPREME COURT
THIRD DIVISION

SOUTHERN PHILIPPINES FEDERATION OF LABOR (SPFL),
***Petitioner*,**

-versus-

G.R. No. 80882
April 24, 1989

HONORABLE PURA FERRER CALLEJA, DIRECTOR, BUREAU OF LABOR RELATIONS, DEPARTMENT OF LABOR AND EMPLOYMENT,
***Public Respondent*.**

MINDANAO MINERS EMPLOYEE UNION SANDIGAN NG MANGGAGAWANG PILIPINO (SANDIGAN),
***Forced Intervenor-Private Respondent*,**

APEX MINING COMPANY, INC.,
***Employer-Private Respondent*.**
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D E C I S I O N

GUTIERREZ, JR., *J.*:

This Petition for *Certiorari* seeks to annul and set aside the Order issued by public respondent Director Pura Ferrer Calleja of the Bureau of Labor Relations dated June 23, 1987 which certified the respondent union, Mindanao Miners Employees Union-Sandigan ng Manggagawang Pilipino (MMEU-Sandigan), as the sole and exclusive bargaining representative of the rank-and-file employees of respondent Apex Mining Company (Apex) after the said public respondent denied the motion of herein petitioner to exclude one hundred ninety-seven (197) employees from voting in the certification election. The denial is based on the ground that they are rank-and-file employees.

As summarized by the Solicitor General in his Comment 1 the facts are as follows:

> "On December 29, 1986, petitioner Southern Philippines Federation of Labor filed a petition for certification election among the rank-and-file employees of private respondent Apex Mining Company, Incorporated with the Department of Labor in Region XI, Davao City.
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> "On February 6, 1987, Med-Arbiter Conrado O. Macasa, Sr. issued an Order calling for the holding of the certification election on February 23, 1987 among the rank-and-file employees of APEX with the following choices:
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> > "'1. Southern Philippines Federation of Labor (SPFL)
> >
> > 2. Mindanao Miners Employees Union-Sandigan ng Manggagawang Pilipino (MMEU-Sandigan) and
> >
> > 3. No union.
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> "On February 9, 1987, a pre-election conference was conducted among the petitioner Union; private respondent Union, MMEU-Sandigan; and APEX to settle details in the conduct of the election such as the venue of the election and the list of employees qualified to vote in the election.

"During the pre-election conference, the parties agreed to delete from the list of workers prepared and submitted by APEX numbering One Thousand Seven Hundred Sixteen (1,716), the names of nineteen (19) managerial employees and seventy-three probationary employees who were statutorily disqualified from voting. Petitioner Union objected to the inclusion in said list of the following: (1) employees occupying the positions of Supervisor I, II, and III; (2) employees under confidential/special payrolls; and (3) employees who were not paying Union dues. The petitioner Union contends that the aforementioned employees were disqualified from participating in the certification election since the Supervisors were managerial employees while the last two were disqualified by virtue of their non-membership in the Union and their exclusion from the benefits of the collective bargaining agreement.

"In view of the lack of agreement among the parties on the list of qualified voters, Med-Arbiter Macasa issued an Order on February 20, 1987, the dispositive portion of which reads:

"'Wherefore, premises considered it is hereby declared that the following groups of workers be not included in the list of employees qualified to vote in the consent election on February 23, 1987, as follows:

1. Nineteen (19) managerial employees;

2. Seventy-three (73) probationary employees; and

3. Nineteen (19) Supervisors I;

All other workers except the foregoing will be allowed to vote.'"

"On February 23, 1987, the day of the certification election petitioner Union filed a Motion for Reconsideration of Macasa's Order dated February 20, 1987. The certification election was nonetheless conducted, with the result as follows:

'1. Southern Philippines Federation of Labor 614

2.	Mindanao Miners Employees Union (MMEU-Sandigan)	528
3.	No Union	9
4.	Challenged Ballots	197
5.	Spoiled	25
	TOTAL VOTES CAST	1,373

"On the basis of the foregoing results, respondent Union filed an Urgent Motion to Open the Challenged Ballots, with the prayer, to wit:

> "'Wherefore, premises considered, it is most respectfully prayed of this Honorable office that this instant motion be given due course and that an order be issued to open and count the challenged ballots in order to determine, once and for all, the winner in the certification and/or consent election and thereafter certify the sole and exclusive collective bargaining representative of all rank-and-file employees and workers of Apex Mining Company, Incorporated.'

x x x

"On March 11, 1987, APEX filed a Manifestation and Motion manifesting its interest in the speedy resolution of the case and primary concern for 'the restoration of normalcy and the preservation of industrial peace in the already explosive situation in the mining area.'

x x x

"On March 19, 1987, Med-Arbiter Macasa issued an Order, the dispositive portion of which reads:

> "'Wherefore, the interest of industrial peace considered, it is hereby directed that the challenged ballots be opened and inventoried on 26 March 1987 at 3:00 p.m., before the entire records of the case be indorsed to the BLR for review'

x x x

"Petitioner Union appealed Macasa's Order dated March 19, 1987 to the Bureau of Labor Relations. On April 14, 1987, BLR Director Pura Ferrer-Calleja issued an Order, the dispositive portion of which reads:

> "WHEREFORE, the Appeal of petitioner Southern Philippines Federation of Labor (SPFL) is hereby dismissed for lack of merit and the Med-Arbiter's Order dated 19 March 1987 is affirmed with modification that the 197 ballots should be opened and canvassed by Labor Regional Office XI, Davao City. Let, therefore, the records of this case be immediately remanded to the said office, for the immediate implementation of this Resolution.'"

"Petitioner Union moved for a reconsideration of the resolution dated April 14, 1987. Meanwhile, on May 21, 1987, Med-Arbiter Macasa opened and canvassed the 197 challenged ballots with the results as follows:

SPFL	—	12 votes
SANDIGAN	—	178 votes
No Union	—	2 votes
Spoiled	—	4 votes
Envelop with no ballots	—	1 vote
TOTAL		197 votes
		=======

"As a consequence of the opening and canvass of the challenged ballots, the outcome of the certification election became:

SPFL	—	626 votes
SANDIGAN	—	706 votes
No Union	—	11 votes
TOTAL		1,343 votes
		========

> "Based on the aforementioned results, respondent Union filed a Manifestation with the BLR with prayer for the issuance of Certification Order certifying it as the sole and exclusive bargaining representative of the rank-and-file employees of APEX.
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> "On June 23, 1987, Director Calleja issued can Order, the dispositive portion of which reads:"
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> > "'WHEREFORE, the Motion for reconsideration of Petitioner SPFL is hereby denied for lack of merit. Meanwhile, intervenor Mindanao Employees Union-Sandigan Ng Manggagawang Pilipino (MMEU-SANDIGAN) is hereby certified as the sole and exclusive bargaining representative of the rank-and-file employees of respondent Apex Mining Company, Inc. Accordingly, the management of Apex Mining Company, Inc., is directed to negotiate with MMEU-SANDIGAN for the conclusion of a collective bargaining agreement (CBA).'"

Hence, this petition.

The issue raised in this petition is whether or not the public respondent committed grave abuse of discretion in allowing the 197 employees to vote in the certification election when, as alleged by the petitioner, they are disqualified by express provision of law or under the existing collective bargaining agreement.

It is maintained by the petitioner that under the Labor Code, managerial employees are excluded from forming or joining a collective bargaining unit; and under the collective bargaining agreement executed between Apex and respondent union, among those who are excluded from the bargaining unit are: a) managerial employees as defined in paragraph K, Article 212 of the Labor Code; b) those performing supervisory functions; and c) those holding confidential positions as determined by the company. Therefore, the employees holding the positions of Supervisors II and III and those in the confidential payrolls should be excluded from joining the bargaining unit and from voting in the certification election. Likewise, those employees who are not paying union dues should be excluded

from the same since the existing CBA contains a Union shop provision.

The contentions have no merit.

Although we have upheld the validity of the CBA as the law among the parties, (see Planters Products, Inc. vs. NLRC, et al., G.R. No. 78524, January 20, 1989), its provisions cannot override what is expressly provided by law that only managerial employees are ineligible to join, assist or form any labor organization. (See Art. 247, Labor Code). Therefore, regardless of the challenged employees' designations, whether they are employed as Supervisors or in the confidential payrolls, if the nature of their job does not fall under the definition of "managerial" as defined in the Labor Code, they are eligible to be members of the bargaining unit and to vote in the certification election. Their right to self-organization must be upheld in the absence of an express provision of law to the contrary. It cannot be curtailed by a collective bargaining agreement.

Hence, it is important to determine whether the positions of Supervisors II and III are considered "managerial" under the law.

As defined in the Labor Code and as we have held in the case of Franklin Baker Company of the Phils. vs. Trajano, (157 SCRA 416, 421-423, [1988]):

> "A managerial employee is defined as one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or to effectively recommend such managerial actions. (Reynolds Phil. Corp. vs. Eslava, 137 SCRA [1985], citing Section 212 (K), Labor Code."
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> x x x
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> "The test of 'supervisory' or 'managerial status' depends on whether a person possesses authority to act in the interest of his employer in the matter specified in Article 212 (k) of the Labor Code and Section 1 (m) of its Implementing Rules and whether such authority is not merely routinary or clerical in nature, but

> requires the use of independent judgment. Thus, where such recommendatory powers as in the case at bar, are subject to evaluation, review and final action by the department heads and other higher executives of the company, the same, although present, are not effective and not an exercise of independent judgment as required by law (National Warehousing Corp. vs. CIR, 7 SCRA 602-603 [1963]).”
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> “Furthermore, in line with the ruling of this Court, subject employees are not managerial employees because as borne by the records, they do not participate in policy making but are given ready policies to execute and standard practices to observe, thus having little freedom of action (National Waterworks and Sewerage Authority vs. NWSA Consolidated, L-18988, 11 SCRA 766 [1964]).

The petitioner’s motion for reconsideration before the public respondent outlined the job description of Supervisors. In the category of Supervisory II, the “General Summary” provides:

> “GENERAL SUMMARY:
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> “Assists the Foreman in the effective dispatching/distribution of manpower and equipment to carry out approved work.” (p. 30, Rollo) while the first duty enumerated in the position of Supervisor III states:
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> “1. Executes and coordinates work plans emanating from his supervisors.” (p. 32, Rollo)

Thus, it is clear from the above provisions that the functions of the questioned positions are not managerial in nature because they only execute approved and established policies leaving little or no discretion at all whether to implement the said policies or not. The respondent Director, therefore, did not commit grave abuse of discretion in dismissing the petitioner’s appeal from the Med-Arbiter’s Order to open and count the challenged ballots in denying the petitioner’s motion for reconsideration and in certifying the respondent Union as the sole and exclusive bargaining representative of the rank-and-file employees of respondent Apex.

As regards the employees in the confidential payroll, the petitioner has not shown that the nature of their jobs is classified as managerial except for its allegation that they are considered by management as occupying managerial positions and highly confidential. Neither can payment or non-payment of union dues be the determining factor of whether the challenged employees should be excluded from the bargaining unit since the union shop provision in the CBA applies only to newly hired employees but not to members of the bargaining unit who were not members of the union at the time of the signing of the CBA. It is, therefore, not impossible for employees to be members of the bargaining unit even though they are non-union members or not paying union dues.

WHEREFORE, the petition is hereby **DISMISSED** for **LACK OF MERIT**. Costs against the petitioner.

SO ORDERED.

Fernan, *C.J.*, Feliciano, Bidin and Cortes, *JJ.*, concur.
