

**NATIONAL MERCHANDISING CORPORATION, PETITIONER, VS.
COURT OF INDUSTRIAL RELATIONS, GOODWILL LABOR
ORGANIZATION-CCLU AND NAMERCO EMPLOYEES AND LABORERS
ASSOCIATION (FTLO), RESPON...**

G.R. No. L-18710. March 30, 1963

Ponente: BARRERA, J.

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BARRERA, J.:

This petition was filed by the National Merchandising Corporation to contest the correctness of the order of the Court of Industrial Relations (in Case No. 857-MC), and affirmed by the court en banc on July 21, 1961, holding that petitioner's 8 section chiefs are minor supervisory employees who should be included in the appropriate Employer's Unit, and entitled to vote in the certification election to be conducted for the purpose of determining the proper bargaining agent for the employees. Insofar as pertinent to the instant proceeding, the following facts had been established:

Through a petition filed in the Court of Industrial Relations, the National Merchandising Corporation asked for its aid in ascertaining whether the Goodwill Labor Organization—CCLU, which had sought to bargain collectively with it (the Company) for and in behalf of its employees, may properly act as bargaining agent for the latter. It was therein claimed that petitioner had in its employ 10 supervisors, 1 confidential employee, 3 salesmen, 22 office employees, and 54 mechanics, painters, carpenters, and laborers, and it doubts whether the aforesaid union represents a majority thereof.

Respondent union answered maintaining its right to represent the Company's employees, and prayed the court for the holding of a certification election after all the employees entitled to vote shall have been determined.

The parties entered into trial solely to determine the appropriate unit and bargaining agent for the employees. During the hearing, the Company and the Union agreed to the holding of a certification election, the appropriate bargaining unit or Employer Unit to be composed of all regular and temporary employees and laborers working in the different departments of the company, while a Casual Unit shall be constituted by the casual employees; However, aside from the 16 officers and employees who, by reason of their managerial, supervisory and/or confidential positions, were to be excluded from the appropriate bargaining unit, the Company insisted in the non-inclusion therein of 8 employees allegedly performing supervisory functions, namely:

- Comelio Vitug—Chief Mechanic, Agricultural Shop, Repairs & Maintenance Department;
- Eufronio Atienza—Chief Mechanic, Industrial Shop, Repairs & Maintenance Department;
- Bleardo Rodriguez—In Charge, Automotive Shop; Repairs & Maintenance Department;
- Edilberto Enriquez—Chief Mechanic, Lambretta Shop, Repairs & Maintenance Department;
- Jesus Avila—Chief Welder, Welding Shop, Repairs & Maintenance Department;

- Jose Padilla—Chief Mechanic, Motor Pool, Repairs & Maintenance Department;
- Alejandro Justo—Chief Painter, Painting Shop, Repairs & Maintenance Department;
- Eulogio Candelaria—Chief Carpenter, . Carpentry Shop, Repairs & Maintenance Department.

In its order of May 5, 1961, the court, finding them to be at most minor supervisory employees who work in close association with the few men under them, allowed their inclusion in the Employer Unit, and . directed the Department of Labor to conduct secret-ballot-elections among the employees to determine the exclusive bargaining representative for the 2 groups constituting the Employer and Casual Units.¹ Hence, the institution of the instant proceeding by the petitioner company on the sole issue of whether the 8 employees concerned are supervisors, as defined in Section 2 (k) of Republic Act 875, which reads:.

"Sec. 2. Definition.- As used in this Act.—

"(k) 'Supervisor'- means any person having authority in the interest of an employer, to hire transfer, suspend, lay-off recall, discharge, assign, recommend, or discipline other employees or responsibly to direct them, and to adjust their grievances, or effectively to recommend such acts if, in connection with the foregoing, the exercise of such authority is not of a merely routinary or clerical nature but requires the use of independent judgment.'

In rejecting this claim of petitionei, also laised m the court below the trial judge took into account the following

" Alfonso Panganiban, Personal Manager; declared that he has the direct supervision over all personal of the company; that Vitug, Atienza, Rodriguez, Enriquez, Avila, Padilla, and Candelaria are in charge of supervision of the work and personnel working under them in their respective sections; that as section heads, they can recommend the hiring, expulsion or dismissal of workers tinder their respective shops whenever proper and necessary. No evidence, however, was adduced with respect to Alejandro Justo;

"According to the list of officers and employees (Exh. X-Court), Vitug has V men under him; Atienza,'3; Rodriguez, 1; Enriquez, ; Avila, 8; Padilla, 3; and Candelaria, 2 men all working in the Repairs and Maintenance Department. Granting arguendo that these controverted employees are group or unit heads exercising such functions and recommendatory prerogatives, yet we believe that that alone do riot) encompass them within the meaning and definition of 'supervisor'. According to the evidence, they are directly under the Service Manager, JustoSycip, who gives work assignments to all persqnncl under the Repairs and Maintenance Department. As admitted by the Company,, they have no authority to hire,. promote, transfer, suspend or fire employees. As regards their alleged recommendatory powers, it is correct to state that the same are subject to evaluation, review and final approval by the department, head, and other higher executive, of-the company. There was, however, no showing that such . recommendator'y,('Prerogatii'es had, been exercised by these employees effectively and of their own independent judgment. The Company failed to adduce evidence—may; even a superficial attempt—to show concrete instances that these cor.trn-' verted employees ever exercised such alleged recommendatory powers. As a matter of fact, Personnel Manager Panganiban, on cross' examination, admitted that he had no occasion to know of anyone who was recommended by the said employees for hiring, expulsion, separation, transfer, reprimand; or for increase in salary to the management. This must be so, because according- to the unrebutted testir mony of Cornelia Vitug, although he sometimes makes work assignment of the four or five mechanics.under him, he has not hired or firecl nor. recommended anybody for hiring or firing and that he Tiad reprimanded nobody because he has no power of reprimand. It may be noteworthy to note that Vitug, who is claimed to be a supervisor for being allegedly a section head, is only receiving' P200.00, whereas, a mechanic, under him, Federico Ealbalona, is receiving P230.00 a month. This fact was never denied or contradicted by the Company."

Petitioner now contends that neither the absence of power to hire, discharge, promote, transfer, discipline, etc. subordinate personnel,"nor the laqk of the use thereof, if present, is determinative of the supervisory status or

classification of an employee under the Industrial Peace Act.

It is proposed that to be classified as a supervisor, it would be sufficient that he has the power to recommend the hiring, dismissal, promotion, disciplining, etc. of personnel under him or responsibly direct them, which the eight (8) employees involved in the case allegedly have.

It is to be noted, however, that the power to recommend, in order to, qualify an employee as a supervisor, must not only be effective but the exercise of such authority should not be merely of a routinary or clerical nature but should require the use of independent judgment. In the case at bar, it appears in the first place that, as found by the trial court, there are no clear appointments in favor of the employees in question including the alleged power to recommend; and while Alfonso Panganiban, Personnel Manager of the petitioner company, declared that these employees as section heads could recommend the hiring, expulsion or dismissal of the workers under their respective shops, the fact remains that as admitted by him, no such recommendations have ever been made by them. There is also evidence that other employees have been appointed, transferred, or discharged and laid off without any recommendation of the employees involved in these proceedings. Furthermore, such recommendatory powers are subject to evaluation, review and final action by the department heads and other higher executives of the company. It, therefore, appears that the conclusion of the trial court that the authority to recommend even if present, is not effective and not an exercise of independent judgment as required by law, is not incorrect.

Neither is it borne by the records that the employees herein involved can responsibly direct those under them, for the evidence discloses that the service manager, Justo Sycip, is the one who gives work assignments to all personnel under the Repairs and Maintenance Department in which the employees herein concerned are working. The mere designation of these employees as chief mechanic, chief welder, chief painter and chief carpenter does not indicate more than the fact that they are the number one mechanic, welder, painter or carpenter among the many of the same category.

Wherefore, finding no error in the order and resolution of the court en banc subject of this proceeding, the same are hereby affirmed, with costs against the petitioner. The preliminary injunction herein issued is dissolved. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] This order was affirmed by resolution of the court en banc of July 21, 1961).

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