

**PHILIPPINE TELEGRAPH AND TELEPHONE CORPORATION,
PETITIONER, VS. HON. BIENVENIDO E. LAGUESMA AND PT & T
SUPERVISORY EMPLOYEES UNION-APSOTEU, RESPONDENTS.**

G.R. No. 101730. June 17, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Can a petition for certification election filed by supervisory employees of an unorganized establishment - one without a certified bargaining agent - be dismissed on the ground that these employees are actually performing managerial functions?

This is the issue for consideration in this petition for certiorari and mandamus, with prayer for the issuance of a temporary restraining order, of the Resolution of 11 June 1991[1] of then Acting Secretary of Labor and Employment Nieves D. Confesor dismissing the appeal from the Order of 11 December 1990[2] of the Med-Arbiter which granted the petition for certification election, and of the Order of 15 August 1991[3] denying reconsideration.

On 22 October 1990, private respondent PT&T Supervisory Employees Union-APSOTEU (UNION, for brevity) filed a petition before the Industrial Relations Division of the Department of Labor and Employment praying for the holding of a certification election among the supervisory employees of petitioner Philippine Telegraph & Telephone Corporation (PT&T, for brevity). On 29 October 1990, UNION amended its petition to include the allegation that PT&T was an unorganized establishment employing roughly 100 supervisory employees from whose ranks will constitute the bargaining unit sought to be established.

On 22 November 1990, PT&T moved to dismiss the petition for certification election on the ground that UNION members were performing managerial functions and thus were not merely supervisory employees. Moreover, PT&T alleged that a certified bargaining unit already existed among its rank-and-file employees which barred the filing of the petition.

On 27 November 1990, respondent UNION opposed the motion to dismiss, contending that under the Labor Code supervisory employees are not eligible to join the labor organization of the rank-and-file employees although they may form their own.

On 4 December 1990, PT&T filed its reply to the opposition and manifested that it is the function of an employee which is determinative of whether said employee is a managerial or supervisory employee.

On 11 December 1990, the Med-Arbiter granted the petition and ordered that "a certification election x x x (be) conducted among the supervisory personnel of the Philippine Telegraph & Telephone Corporation (PT&T)."[4] Petitioner PT&T appealed to the Secretary of Labor and Employment.

On 24 May 1991, PT&T filed its supplemental appeal and attached copies of the job descriptions and employment service records of these supervisory employees, including samples of memoranda and notices they made which

purportedly illustrate their exercise of management prerogatives. On 31 May 1991, petitioner submitted more job descriptions to further bolster its contention.

On 11 June 1991, then Acting Secretary of Labor and Employment Nieves R. Confesor denied petitioner's appeal for lack of merit. However, she did not rule on the additional evidence presented by PT&T. Instead, she directed that the evidence "should be scrutinized and x x x considered during the exclusion-inclusion proceedings where the employees who should be part of the bargaining unit x x x will be determined." [5]

On 15 August 1991, respondent Undersecretary of Labor and Employment Bienvenido E. Laguesma denied reconsideration of the resolution dismissing the appeal. Hence, the instant petition anchored on the ground that public respondent committed grave abuse of discretion in failing to rule on the additional evidence submitted by petitioner which would have buttressed its contention that there were no supervisory employees in its employ and which, as a consequence, would have barred the holding of a certification election.

The petition is devoid of merit.

The applicable provision of law in the case at bar is Art. 257 of the Labor Code. It reads -

"Art. 257. Petitions in unorganized establishments. - In any establishment where there is no certified bargaining agent, a certification election shall automatically be conducted by the Med-Arbiter upon the filing of a petition by a legitimate labor organization" (underscoring supplied).

The supervisory employees of PT&T did not yet have a certified bargaining agent to represent them at the time the UNION, which is a legitimate labor organization duly registered with the Department of Labor and Employment, [6] filed the petition for certification election. Since no certified bargaining agent represented the supervisory employees, PT&T may be deemed an unorganized establishment within the purview of Art. 257 of the Labor Code.

The fact that petitioner's rank-and-file employees were already represented by a certified bargaining agent does not make PT&T an organized establishment vis-a-vis the supervisory employees. After all, supervisory employees are "not x x x eligible for membership in a labor organization of the rank-and-file employees." [7]

Consequently, the Med-Arbiter, as sustained by public respondent, committed no grave abuse of discretion in granting the petition for certification election among the supervisory employees of petitioner PT&T because Art. 257 of the Labor Code provides that said election should be automatically conducted upon filing of the petition. In fact, Sec. 6 of Rule V, Book V, of the Implementing Rules and Regulations makes it mandatory for the Med-Arbiter to order the holding of a certification election. It reads -

"Sec. 6. Procedure. - Upon receipt of a petition, the Regional Director shall assign the case to a Med-Arbiter for appropriate action. The Med-Arbiter, upon receipt of the assigned petition, shall have twenty (20) working days from submission of the case for resolution within which to dismiss or grant the petition.

In a petition filed by a legitimate organization involving an unorganized establishment, the Med-Arbiter shall immediately order the conduct of a certification election x x x" (underscoring supplied).

Furthermore, PT&T did not possess the legal personality to file a motion to dismiss the petition for certification election even if based on the ground that its supervisory employees are in reality managerial employees. It is well-settled that an employer has no standing to question a certification election [8] since this is the sole concern of the workers. [9] The only exception to this rule is where the employer has to file the petition for certification election itself pursuant to Art. 258 [10] of the Labor Code because it was requested to bargain collectively. But, other than this instance, the choice of a collective bargaining agent is purely the internal affair of labor. [11]

What PT&T should have done was to question the inclusion of any disqualified employee in the certification election during the exclusion-inclusion proceedings before the representation officer. Indeed, this is precisely the purpose of the exclusion-inclusion proceedings, i.e., to determine who among the employees are entitled to vote and be part of the bargaining unit sought to be certified.

Then Acting Secretary Nieves D. Confesor therefore did not abuse her discretion when she opted not to act upon the additional evidence presented by petitioner PT&T. For, the holding of a certification election in an unorganized establishment is mandatory and must immediately be ordered upon petition by a legitimate labor organization, which is the case here.

At any rate, the additional evidence presented by petitioner failed to sufficiently show that the supervisory employees who sought to be included in the bargaining unit were in fact performing managerial functions. On the contrary, while these supervisory employees did exercise independent judgment which is not routinary or clerical in nature, their authority was merely recommendatory in character. In all instances, they were still accountable for their actions to a superior officer, i.e., their respective superintendents. The Solicitor General succinctly puts it thus -

"A perusal of petitioner's annexes x x x would readily show that the power of said supervisors in matters relating to the exercise of prerogatives for or against rank-and-file employees is not absolute but merely recommendatory in character. Note that their reports recommending or imposing disciplinary action against rank-and-file employees always bore the concurrence of one or two superiors x x x and the job descriptions x x x clearly stated that these supervisors directly reported to a superior and were accountable to the latter"[12] (underscoring supplied).

As the Med-Arbitrator himself noted, "it is incredible that only rank-and-file and managerial employees are the personnel of respondent firm, considering the line of service it offers to the public"[13] and the fact that it employed 2,500 employees, more or less, all over the country.

A word more. PT&T alleges that respondent UNION is affiliated with the same national federation representing its rank-and-file employees. Invoking *Atlas Lithographic Services, Inc. v. Laguesma*, [14] PT&T seeks the disqualification of respondent UNION. Respondent, however, denied it was affiliated with the same national federation of the rank-and-file employees union, the Associated Labor Union or ALU. It clarified that the PT&T Supervisory Employees Union is affiliated with Associated Professional, Supervisory Office, Technical Employees Union or APSOTEU, which is a separate and distinct national federation from ALU.

IN VIEW OF THE FOREGOING, the Petition for Certiorari and Mandamus with prayer for the issuance of a temporary restraining order is DENIED.

Costs against petitioner.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino and Quiason, JJ., concur.

[1] Annex "A", Petition; Rollo, pp. 22-26.

[2] Annex "G", Petition; Rollo, pp. 28-30.

[3] Annex "B", Petition; Rollo, pp. 28-30.

[4] Annex "G", Petition, p. 3; Rollo, p. 52.

[5] Annex "A", Petition, p. 3; Rollo, p. 25.

[6] Rollo, p. 32.

[7] Art. 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 (underscoring supplied).

[8] California Manufacturing Corporation v. Laguesma, G.R. No. 97020, 8 June 1992, 209 SCRA 606.

[9] Asian Design and Manufacturing Corporation v. Calleja, G.R. No. 77415, 29 June 1989, 174 SCRA 477.

[10] Art. 258. When an employer may file petition. - When requested to bargain collectively, an employer may petition the Bureau for an election. If there is no existing certified collective bargaining agreement in the unit, the Bureau shall, after hearing, order a certification election x x x x

[11] Trade Unions of the Philippines and Allied Services v. Trajano, G.R. No. 61153, 17 January 1983, 120 SCRA 64.

[12] Comment, p. 5; Rollo, p., 164.

[13] Annex "G", Petition, p. 2; Rollo, p. 51.

[14] G.R. No. 96566, 6 January 1992, 205 SCRA 12.

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