

**PHILIPPINE APPLIANCE CORPORATION, (PHILACOR), PETITIONER,
VS. THE HON. BIENVENIDO E. LAGUESMA, IN HIS CAPACITY AS
UNDERSECRETARY OF LABOR & EMPLOYMENT, GENUINE
LABOR ORGANIZATIO...**

G.R. No. 105223. September 27, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court to annul and set aside the Order dated March 30, 1992 of respondent Bienvenido E. Laguesma, as Undersecretary of Labor and Employment in NCR-OD-M-90-11-060, entitled "IN RE: PETITION FOR CERTIFICATION ELECTION OF ALL SUPERVISORY EMPLOYEES OF THE PHILIPPINE APPLIANCE CORPORATION (PHILACOR). GENUINE LABOR ORGANIZATION OF WORKERS IN HOTEL, RESTAURANT AND ALLIED INDUSTRIES (GLOWHRAIN), petitioner." The order complained of, affirmed the Order dated August 14, 1991 of Med-Arbiter Rosadali G. Abdullah, allowing certain employees to participate and cast their votes in the certification election.

On November 21, 1990, respondent the Genuine Organization of Workers in Hotel, Restaurant and Allied Industries (GLOWHRAIN) filed with the Department of Labor and Employment (DOLE) a petition for certification election among the supervisory employees of petitioner, docketed as Case No. NCR-OD-M-90-11-060 (Annex "C", Rollo, p. 49).

On January 3, 1991, petitioner filed a "Qualified Opposition," opposing the petition on the ground that the employees sought to be represented by respondent GLOWHRAIN are not supervisory employees, as defined by the Labor Code as amended but are, in fact, managerial employees exercising one or more managerial prerogatives and functions and that the genuine supervisory employees having the right to join, assist or form a labor organization are its foremen and linemen who are already members of the rank-and-file union (Annex "D", Rollo, p. 53).

On January 17, 1991, respondent GLOWHRAIN filed its "COMMENT and POSITION PAPER" attaching therewith supporting documents to show that union members claimed by petitioner to be managerial employees are supervisors with recommendatory powers (Rollo, p. 117).

On February 5, 1991, petitioner filed a "Supplement to Qualified Opposition," presenting specific instances as evidenced by company memoranda whereby petitioning employees were shown to have exercised managerial powers, functions and prerogatives whose decisions were instantly effective and not merely recommendatory. In said supplemental opposition, petitioner also alleged that the issue of whether petitioning employees are managerial employees constituted a prejudicial question, which should be resolved before any further proceedings could continue (Annex "E", Rollo, p. 66).

On February 25, 1991, respondent GLOWHRAIN filed a "Reply" stating that no prejudicial question existed.

On March 14, 1991, petitioner filed a "Rejoinder," explaining the nature of the documents attached to respondent GLOWHRAIN's reply and describing petitioner's company structure, as well as the corresponding tasks, duties and responsibilities of petitioning employees in such structure. It also emphasized that as can be gleaned from the company structure and the actual functions being performed by the petitioning employees, the supervisory employees of said company were the linemen and foremen who were already members of the rank-and-file union (Annex "F", Rollo, p. 121).

On March 6, 1991, Med-Arbiter Rosadali C. Abdullah issued an order directing the holding of a certification election among the supervisory employees of petitioner. The dispositive portion said order reads:

"WHEREFORE, on the foregoing consideration, let a certification election be conducted among the supervisory employees of the Philippine Appliance Corporation (PHILACOR) within twenty (20) days from receipt hereof, subject to the usual pre-election conference of the parties to thresh out the mechanics of the election. The payroll of the company three (3) months prior to the filing of the petition shall be used as the basis in determining the list of eligible voters.

The choices are:

- (a) GLOWHRAIN - Philippine Appliance Corporation Supervisor's Association; and
- (b) No union (Rollo, p. 177).

Pursuant to the aforesaid order, petitioner was required to submit a list of all supervisory employees of the company based on the payroll three months prior to the date of the petition.

On April 29, 1991, petitioner filed a "Compliance and Manifestation," (Annex "H", Rollo, p. 178), attaching two separate lists of employees. The first list (Annex "1", Rollo, p. 208) contained a list of employees designated as supervisors or equivalent rank. The second list (Annex "1-A", Rollo, p. 214) contained the names of employees designated as foremen and linemen whom petitioner deemed as its genuine supervisory employees.

On May 3, 1991, petitioner filed a "Motion to Exclude" those employees listed in Annex "1" alleging that these employees though occupying positions designated as "Supervisor" are in reality, managerial employees by virtue of their exercise of managerial functions and prerogatives which are not merely recommendatory. Petitioner reiterated its claim that the true supervisors of the company falling within the scope and definition of the Labor Code are the company foremen and linemen and some who are occupying the title of "Supervisor" (Annex "I", Rollo, p. 187).

After respondent GLOWHRAIN and petitioner submitted their respective position papers, the Med-Arbiter issued on August 14, 1991 an order, the dispositive portion of which reads:

"WHEREFORE, premises considered, an Order is hereby issued, allowing the employees listed in Annex "1" of the company's Motion to Exclude dated May 3, 1991 with nos. 2, 3, 8, 9, 11, 12, 13, 14, 16, 17, 18, 19, 20, 23, 24, 26, 28, 29, 31, 33, 35, 36, 37, 39, 41, 43, 44, 45, 46, 48, 50, 51, 53, 56, 58, 59, 60, 61, 63, 64, 66, 67, 69, 72, 76, 78, 79, 80, 81, 82, 86, 87, 89, 90, 91, 92, 93, 94, 95, 98, 99, 100, 103, 104, 105, 106, 108, 110, 111, 112, 116, 117, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 136, 139, 140, 146, 149, 151, 154, 155, 157, 161, 162, 163, 164, 167, 170, 174, 176, 177, 178, 182, 184, 185, 187, 188, 192, and those listed in Annex "1-A" of the same motion with nos. 2, 12, 13, 14, 31, 34, 36, 37, 38, 52, 57, 58, 71, 74, 76, 85, 87 to participate and cast their votes in the certification election ordered in this case.

Let the record of this case be forwarded to the representation officer concerned and be guided accordingly" (Rollo, p. 224-225).

Petitioner assailed before the Office of the Secretary of Labor, the Med-Arbiter's decision allowing petitioning employees to participate in the certification election.

It claimed that the true determination of the nature of the employment is based on the actual powers and prerogatives exercised by the employees and not the job titles or descriptions. It further questioned the Med-Arbiter's decision as contradictory to his own express finding of fact that petitioning employees exercise managerial prerogatives or functions (Annex "L", Rollo, p. 226).

On November 22, 1991, petitioner's appeal was denied for lack of merit and the Order of the Med-Arbiter dated August 14, 1991 was affirmed (Annex "M", Rollo, p. 248).

On December 6, 1991, petitioner filed a motion for reconsideration (Annex "N", Rollo, p. 249). In said motion, petitioner attached for the first time the job descriptions of its Production Supervisor (Annex "A", Rollo, pp. 259-261), Superintendent (Production) (Annex "B", Rollo, pp. 262-264) and Manager (Production) (Annex "C", Rollo, p. 265-267).

In its Resolution dated December 23, 1991, PHILACOR's Motion for Reconsideration modified the Resolution dated November 22, 1991 by finding that the employees occupying the job titles of "Production Supervisor," "Superintendent Production" and "Production Manager" are managerial employees imbued with managerial prerogatives, and therefore are ineligible to participate in the certification election among the supervisory employees (Annex "O", Rollo, pp. 269-270).

Respondent GLOWHRAIN filed a motion for reconsideration, to which petitioner filed an "Opposition and Comment."

In its motion for reconsideration, respondent GLOWHRAIN challenged the authenticity of the job descriptions submitted by petitioner, alleging that the same are irregular having been issued only for the purpose of buttressing petitioner's motion for reconsideration.

On March 30, 1992, an order was issued granting GLOWHRAIN's motion for reconsideration and with the following dispositive portion:

"WHEREFORE, the Motion for Reconsideration of petitioner Genuine Labor Organization of Workers in Hotel, Restaurant and Allied Industries (GLOWHRAIN) is hereby granted and the Order dated 23 December 1991 is hereby SET ASIDE. In lieu thereof, our Resolution dated 22 November 1991 is hereby REINSTATED and AFFIRMED in toto.

No further motion of similar nature shall hereinafter be entertained" (Annex "A", Rollo, pp. 43-44).

In his order, respondent Undersecretary of Labor found that the job descriptions submitted by petitioner were not issued in the regular course of the business and neither were the concerned employees furnished copies for them to countersign as an affirmation that the job descriptions are reflective of their true and actual function, duties and responsibilities. Furthermore, the respondent Undersecretary of Labor said there was nothing on record to show that the job descriptions are the actual functions currently being performed by the concerned employees. Hence, he concluded that the job descriptions submitted by petitioner were considered belated issuances and a mere afterthought (Rollo, pp. 37-44).

On April 13, 1992, petitioner filed a "Manifestation and Motion (for Reconsideration)" of the Order dated March 30, 1992, which was denied in an Order dated April 24, 1992.

On May 21, 1992, petitioner filed this petition for certiorari, with prayer for "a restraining order and/or a writ of preliminary injunction" to restrain or enjoin the holding of the certification election (Rollo, pp. 2-36).

On June 29, 1992, the Third Division of this Court resolved "to issue a Temporary Restraining Order effective as of this date and continuing until otherwise ordered by this Court" (Rollo, p. 327).

The main issue to be resolved is whether the petitioning employees are supervisory employees eligible to form a supervisory union.

Under the old Industrial Peace Act (Republic Act No. 875), the term "supervisor" was defined as follows:

"Sec. 2 Definitions - As used in this Act -

x x x x x x x x

(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."

With the enactment of Presidential Decree No. 442 as amended, otherwise known as the Labor Code of the Philippines, the term "supervisor" was replaced by the term "managerial employee."

The Labor Code was further amended by Republic Act No. 6715. Section 4 of the said Republic Act, amended Article 212 (m), which now contains separate definitions for managerial and supervisory employees, to wit:

"Art. 212. Definitions.

x x x x x x x x

(m) Managerial employee is 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. Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment. xxx" (Underscoring supplied)

The test of "supervisory" or "managerial status" depends on whether a person possesses authority to act in the interest of his employer in the manner specified in Article 212 (m) of the Labor Code and Rule 1(o) of Book V 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 before us, 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 (Franklin Baker Company of the Philippines v. Trajano, 157 SCRA 416 [1988] citing National Warehouse Corp. v. CIR, 7 SCRA 602-603 [1963]).

A careful analysis of the record discloses that in the exercise of the above enumerated managerial powers, petitioning employees are "given policies to execute and standard policies to observe, thus having little freedom of action" (National Waterworks and Sewerage Authority v. NWSA Consolidated, 11 SCRA 766 [1964]).

Furthermore, it will be noted that petitioning employees merely recommend the implementation of management policies or the discipline or dismissal of subordinates, as may be gleaned from the following:

In the filing/charging of overtime, petitioning employees are guided by Standard Procedure on Overtime/Charging (Annex "1-A", Rollo, p. 93; Annex "1-B", Rollo, p. 94). The accomplishment of the "Overtime Work Authority" is the duty of the supervisor who must affix his signature therein and forward the same to the manager who will

likewise sign the same. After which, it will be sent back to the supervisor concerned. In the formulation and issuance of this Management Guide, petitioner admits that petitioning employees did not participate therein (Annex "F", Rollo, p. 131).

With regard to the procedure in the hiring of rank-and-file employees, the immediate supervisor files a notice in writing with the Personnel Administration asking the latter to find qualified applicants for a position or job where there is a vacancy. The Personnel Department proceeds with the recruitment of qualified applicants, using as basis the applicable set of general standards and the job requirements. All applicants who are considered by the Personnel Department to have met both the general and specific requirements of the job are referred to a panel of four or five supervisors for interview and determination who among said applicants should be hired for the particular job. The interview conducted by the panel after the Personnel Department has already recruited qualified applicants cannot be said to vest in the supervisors the power to hire. The said interview merely involves the accomplishment of an Interview Rating Form, which rates the interviewee according to his general appearance, manner of speaking, alertness, physical condition, confidence, ability to get along with others, ability to present ideas, maturity judgment and technical competence (Annex "4" & "5", Rollo, pp. 112-113). The ultimate power to hire still rests with the Manager of the Personnel Administration (Annex "4", Rollo, p. 111).

No evidence was presented by petitioner to bolster its claim that petitioning employees exercised the power to shorten employees' probationary period and the power to change the status of or dismiss a casual employee.

As to the power to discipline, suspend and discharge employees, we find that the petitioning employees merely enforce the company rules and regulations against erring employees. While it is true that the petitioning employees are the ones who request for a formal investigation against an erring employee, it is the Corporate Legal Service which actually conducts the formal investigation and on the basis of the result of the investigation, the Assistant Vice-President - Human Resources Management - General Services is the one who imposes the corresponding penalty. The supervisor is merely furnished a copy of the result of the investigation (Annex "9", Rollo, p. 368; Annex "9-A", Rollo, p. 369).

As to the power to assign or transfer employees, the petitioning employees merely execute the shifting rotation made by the Plant Manager (Annexes "8", "8-B", "8-D", "8-E", "8-F", "9-G", "8-H", Rollo, pp. 359-367).

Even if petitioner considers petitioning employees as managers, the fact remains that they do not lay down and execute management policies nor have the power to hire, but merely recommend such management actions. As such, petitioning employees will still be considered supervisors.

PHILACOR belatedly presented the job descriptions of the Production Supervisor, Superintendent (Production) and Manager (Production) to show that indeed petitioning employees are exercising managerial powers and prerogatives. As admitted by PHILACOR, the aforesaid job descriptions were relatively new and were documented only on or about August 1991 after the Med-Arbitrator had already ordered the certification election of the petitioning employees.

We held in the case of *Pagkakaisa ng mga Mangagawa sa Triumph International - United Lumber and General Workers of the Philippines. v. Ferrer-Calleja*, 181 SCRA 119 [1990] that "the fact that their work descriptions are either managers or supervisors is of no moment considering that it is the nature of their functions and not the said nomenclatures of titles of their jobs which determines their statuses.

WHEREFORE, the Order dated March 30, 1992 of respondent Undersecretary of Labor and Employment is **AFFIRMED**. The Temporary Restraining Order issued by this Court is **LIFTED**.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Bellosillo, JJ., concur.

Griño-Aquino, J., on leave.

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