

ASSOCIATION OF MARINE OFFICERS AND SEAMEN OF REYES AND LIM CO. (MANAGERS FOR CARGO MARINE CORP.), PETITIONER, VS. HON. BIENVENIDO E. LAGUESMA, REYES AND LIM CO. INC. (MANAGERS F...

G.R. No. 107761. December 27, 1994

Ponente: ROMERO, J.

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ROMERO, J.:

The question before us in this petition for certiorari is whether or not the major patron, minor patron, chief mate and chief engineer of a vessel are managerial employees.

Public respondent Undersecretary of Labor has ruled that they are, contrary to petitioner labor organization's contention that they are rank and file employees who may form part of the union.

The facts antecedent to this petition are as follows:

The Association of Marine Officers and Seamen of Reyes and Lim Co., a legitimate labor organization, filed a petition for certification election on March 11, 1992. On June 1, 1992 the Med-Arbiter issued an Order for the conduct of a certification election in the bargaining unit covering the entire complement of four vessels.

He ruled that even as private respondent company alleges certain employees to be managerial, supervisory and confidential employees (master, chief mate, second mate, third mate, radio officer, chief engineer and second engineer), the record is bereft of any showing that the marine officers are performing managerial, supervisory, and confidential functions.[1]

The dispositive portion of the Med-Arbiter's Order reads:

"WHEREFORE, on the foregoing consideration, let a certification election be conducted among the regular marine officers and seamen of Reyes and Lim Co., Inc. (Managers for Cargo Marine Corp.) within twenty (20) days from receipt hereof, subject to the usual pre-election conference of the parties to thresh out the mechanics and other details 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) Association of Marine Officers and Seamen of Reyes and Lim Co., Inc. (Managers for Cargo Marine Corp.); and
- b) No Union.

SO ORDERED."[2]

Private respondent Reyes and Lim Co. Inc. appealed this Order to the Secretary of Labor and Employment on the issues of employees' status as well as the composition of the bargaining unit. In a resolution dated October 8,

1992, Undersecretary Bienvenido E. Laguesma modified the order and held that:

"PREMISES CONSIDERED, the Resolution of the Med-Arbitrator dated 01 June 1992 is hereby modified so as to exclude Major Patron, Minor Patron, and Chief (Mate) and Chief Marine Engineer from the bargaining unit.

SO RESOLVED." [3]

Their motion for reconsideration having been denied for lack of merit on November 5, 1992, [4] petitioner comes to us seeking to have the Resolution of public respondent set aside and to have us rule that the major patron, minor patron, chief mate and chief engineer are not managerial employees but rank and file. As members of the rank and file, these employees would be eligible to form part of the union and take part in the certification election.

To buttress their position that the aforementioned employees are not managerial but rank and file employees, petitioner advances the following arguments.

Firstly, it is petitioner's belief that aside from having the power to execute management policies and to hire and fire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, a managerial employee should also have the power and prerogative to lay down management policies. Petitioner claims that the major patron, minor patron, chief mate and chief engineer do not have the power to lay down management policies because they merely navigate the bay and rivers of Pasig and Bataan hauling liquefied petroleum (gasul). Moreover, private respondent's operations department has "high-tech maritime gadgets and equipment" in order to monitor and direct the operations of the boats while en route to its destination. [5]

Secondly, petitioner asserts that the job descriptions submitted by private respondent Reyes and Lim Co. Inc. [6] and relied upon by public respondent Undersecretary of Labor do not apply to the situation of the aforementioned employees. Furthermore, the job descriptions were not acknowledged and even outrightly denied by the workers themselves. [7] The employees of Reyes and Lim Co. Inc. possess no seaman's book, for they do not traverse the high seas but merely the bay and rivers from Pasig to Bataan. They therefore, are not covered by the job descriptions applicable to Filipino seafarers, but are ordinary workers. [8]

Finally, public respondent's determination of who are managerial employees constitutes a deprivation of the worker's right to self-organization and free collective bargaining since such resolution is made during pre-election conference on "inclusion-exclusion" proceedings. [9]

Petitioner's arguments fail to persuade.

The only question for resolution is whether or not the major patron, minor patron, chief mate and chief engineer of the vessels, M/T Banak, M/T Butane, M/T Biya, and M/T Alkane are managerial employees, and as such, not qualified, therefore, to join a union.

Public respondent opined in the following manner:

"An evaluation of the afore-mentioned job descriptions submitted by respondent-appellant vis-a-vis Article 212 (m) of the Labor Code, as amended, showed that the following are managerial positions, namely: Major Patron, Minor Patron, Chief Mate and Chief Marine Engineer. This must be so, because among the Major Patron's duties and functions are to take complete charge and command of the ship and to perform the duties and responsibilities of a ship captain; a Minor Patron commands a vessel, plying within limits of inland waterways, ports and estuaries, while a Chief Mate acts as the executive officer next in command to the captain on board a ship; and a Chief, Marine Engineer plans, coordinates the engine-room department including supervision of subordinates. In the performance of said functions, it is clear that they are vested with powers or prerogatives to lay down and execute management policies." [10]

While petitioners assail public respondent for the use of the "Job Descriptions of Main Category of Particular Ranks and Ratings of Filipino Seafarers" submitted by private respondent, they offer no other superior proof by way of reliability and substance.

Such an attack on these job descriptions cannot be considered adequate. Apart from general claims made in a joint affidavit executed by 18 employees, including the masters, chief mates and chief engineers of three vessels,[11] there appears no other proof on record of the functions they actually perform on board the vessels and of the functions performed by other marine officers of the same position.

To buttress their position, private respondents assert that these "Job Descriptions" have been adopted as reference by the POEA and considered as matters of public knowledge in consonance with the provisions of the Code of Commerce, Philippine Merchant Marine Rules and Regulations and customary maritime practice with respect to the inherent and customary duties of captains, chief mates, and chief marine engineers on board the vessels.[12] This declaration remaining un rebutted, we are led to the conclusion that the job descriptions submitted constitute industry practice, at the very least.

More importantly, the credence accorded by public respondent to these job descriptions is worthy of due respect. The factual findings of quasi-judicial agencies, such as the Department of Labor and Employment which are supported by substantial evidence, are binding on us and entitled to great respect considering their expertise in their respective fields.[13]

Petitioner's failure to overcome the submissions of private respondent as regards these descriptions and to rebut the same leaves us no alternative but to accept public respondent's evaluation of facts.

Furthermore, petitioner's arguments that the employees who work on board the vessels are not seamen bound by the job descriptions, is untenable. The fact that they transport liquefied petroleum gas (LPG) and the vessels operate for only five hours are immaterial for these do not remove them from the coverage of maritime law. While they haul LPG, they continue to do so on board a vessel which traverses waters. Neither the length of operating time nor the area traveled would alter the fact that the vessels are used as means of transportation by water and within the sphere of maritime law to which the job descriptions are applicable. The workers on board are not, as petitioners would have us believe, in the category of gasoline delivery helpers or ordinary employees.[14]

We next consider the law concerning managerial employees.

The second paragraph of Article 82 referring to managerial employees in the Labor Code reads, thus:

"x x x 'managerial employees' refers to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff. x x x"

Article 212 (m) of the Code further defines managerial employees as:

"(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. x x x."

The Implementing rules and regulations of the Labor Code further provide a more detailed definition of managerial employees. Rule I Book III Section 2 states:

"Sec. 2. Exemption. - The provisions of this Rule shall not apply to the following persons if they qualify for exemption under the conditions set forth herein:

(a) x x x.

(b) Managerial employees, if they meet all of the following conditions, namely:

(1) Their primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof;

(2) They customarily and regularly direct the work of two or more employees therein;

(3) They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to the hiring and firing and as to the promotion or any other change of status of other employees are given particular weight.

(c) x x x.”

It is very significant to note that we are not dealing here with employees of an ordinary business establishment. The business of a marine or shipping corporation is, by its very nature, different from other corporate concerns.

Petitioner claims that the marine officers in question must possess the power to lay down and formulate management policies aside from just executing such policies.

Public respondent committed no error in concluding that the positions of major patron, minor patron, chief mate, and chief engineer are managerial because the job descriptions on record disclose that the major patron's duties include taking complete charge and command of the ship and performing the responsibilities and duties of a ship captain; the minor patron also commands the vessel, plying the limits of inland waterways, ports and estuaries; the chief mate performs the functions of an executive officer next in command to the captain; and the chief marine engineer takes over-all charge of the operation of the ship's mechanical and electrical equipment. Public respondent's assessment of these managerial functions of the subject officers has adequate basis and should not be disturbed.

The functions which these officers discharge pertain to the navigation of the vessel. Even if there are advanced communications equipment on board, the importance of the position of the officers in assessing risks and evaluating the vessel's situation remains indisputable. The exercise of discretion and judgment in directing a ship's course is as much managerial in nature as decisions arrived at in the confines of the more conventional board room or executive office.

We find that there has been no grave abuse of discretion on the part of the respondent Undersecretary of Labor when it ruled that the major patron, minor patron, chief mate and chief engineer are managerial employees who are not allowed under Article 245 of the Labor Code to join, assist or form any labor organization.

With regard to the next issue, petitioners contend that the determination of whether or not said employees are managerial should be done during the pre-election conference on "inclusion-exclusion proceeding," and not during the processing of their petition for certification election. We find this issue not a proper one for consideration since it is raised in this petition for the first time. The well-settled principle that issues not raised in the court a quo cannot be raised for the first time on appeal for being offensive to basic rules of fair play, justice, and due process applies even in labor cases.[15]

IN VIEW WHEREOF, the instant petition is DISMISSED. The challenged resolution of the Undersecretary of Labor is AFFIRMED.

SO ORDERED.

Bidin, (Acting Chairman), Melo, and Vitug, JJ., concur.
Feliciano, J., on leave.

[1] Rollo, pp. 28-29.

[2] Order of Med-Arbiter Rasidali C. Abdullah; Rollo, pp. 30-31.

[3] Rollo, p. 20.

[4] Rollo, pp. 21-22.

[5] Rollo, pp. 6-8.

[6] Rollo, pp. 46-51.

[7] Joint Affidavit dated October 5, 1992; Rollo, p. 63.

[8] Rollo, pp. 9-10.

[9] Rollo, p. 10.

[10] Rollo, p. 19.

[11] cf. Rollo, p. 63 and pp. 92-93.

[12] Rollo, p. 83.

[13] Loadstar Shipping Co., Inc. v. Gallo, G.R. No. 102845, February 4, 1994; PAL Employees' Association v. Ferrer-Calleja, 162 SCA 426.

[14] Rollo, p. 123.

[15] National Power Corporation v. Gutierrez, 193 SCRA 1.

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