

**SAN MIGUEL CORPORATION SUPERVISORS AND EXEMPT UNION
AND ERNESTO L. PONCE, PRESIDENT, PETITIONERS, VS.
HONARABLE BIENVENIDO E. LAGUESMA IN HIS CAPACITY AS
UNDERSECRETARY OF LABOR...**

G.R. No. 110399. August 15, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

This is a Petition for Certiorari with Prayer for the Issuance of Preliminary Injunction seeking to reverse and set aside the Order of public respondent, Undersecretary of the Department of Labor and Employment, Bienvenido E. Laguesma, dated March 11, 1993, in Case No. OS MA A-2-70-91[1] entitled “In Re: Petition for Certification Election Among the Supervisory and Exempt Employees of the San Miguel Corporation Magnolia Poultry Plants of Cabuyao, San Fernando and Otis, San Miguel Corporation Supervisors and Exempt Union, Petitioner.” The Order excluded the employees under supervisory levels 3 and 4 and the so-called exempt employees from the proposed bargaining unit and ruled out their participation in the certification election.

The antecedent facts are undisputed:

On October 5, 1990, petitioner union filed before the Department of Labor and Employment (DOLE) a Petition for District Certification or Certification Election among the supervisors and exempt employees of the SMC Magnolia Poultry Products Plants of Cabuyao, San Fernando and Otis.

On December 19, 1990, Med-Arbiter Danilo L. Reynante issued an Order ordering the conduct of certification among the supervisors and exempt employees of the SMC Magnolia Poultry Products Plants of Cabuyao, San Fernando and Otis as one bargaining unit.

On January 18, 1991, respondent San Miguel Corporation filed a Notice of Appeal with Memorandum on Appeal, pointing out, among others, the Med-Arbiter’s error in grouping together all three (3) separate plants, Otis, Cabuyao and San Fernando, into one bargaining unit, and in including supervisory levels 3 and above whose positions are confidential in nature.

On July 23, 1991, the public respondent, Undersecretary Laguesma, granted respondent company’s Appeal and ordered the remand of the case to the Med-Arbiter of origin for determination of the true classification of each of the employees sought to be included in the appropriate bargaining unit.

Upon petitioner-union’s motion dated August 7, 1991, Undersecretary Laguesma granted the reconsideration prayed for on September 3, 1991 and directed the conduct of separate certification elections among the supervisors ranked as supervisory levels 1 to 4 (S1 to S4) and the exempt employees in each of the three plants at Cabuyao, San Fernando and Otis.

On September 21, 1991, respondent company, San Miguel Corporation filed a Motion for Reconsideration with

Motion to suspend proceedings.

On March 11, 1993, an Order was issued by the public respondent granting the Motion, citing the doctrine enunciated in *Philips Industrial Development, Inc. v. NLRC*[2] case. Said Order reads in part:

“x x x Confidential employees, like managerial employees, are not allowed to form, join or assist a labor union for purposes of collective bargaining.

In this case, S3 and S4 and the so-called exempt employees are admittedly confidential employees and therefore, they are not allowed to form, join or assist a labor union for purposes of collective bargaining following the above court’s ruling. Consequently, they are not allowed to participate in the certification election.

WHEREFORE, the motion is hereby granted and the Decision of this Office dated 03 September 1991 is hereby modified to the extent that employees under supervisory levels 3 and 4 (S3 and S4) and the so-called exempt employees are not allowed to join the proposed bargaining unit and are therefore excluded from those who could participate in the certification election.”[3]

Hence this petition.

For resolution in this case are the following issues:

1. Whether Supervisory employees 3 and 4 and the exempt employees of the company are considered confidential employees, hence ineligible from joining a union.
2. If they are not confidential employees, do the employees of the three plants constitute an appropriate single bargaining unit.

On the first issue, this Court rules that said employees do not fall within the term “confidential employees” who may be prohibited from joining a union.

There is no question that the said employees, supervisors and the exempt employees, are not vested with the powers and prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, layoff, recall, discharge or dismiss employees. They are, therefore, not qualified to be classified as managerial employees who, under Article 245[4] of the Labor Code, are not eligible to join, assist or form any labor organization. In the very same provision, they are not allowed membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own. The only question that need be addressed is whether these employees are properly classified as confidential employees or not.

Confidential employees are those who (1) assist or act in a confidential capacity, (2) to persons who formulate, determine, and effectuate management policies in the field of labor relations.[5] The two criteria are cumulative, and both must be met if an employee is to be considered a confidential employee – that is, the confidential relationship must exist between the employees and his supervisor, and the supervisor must handle the prescribed responsibilities relating to labor relations.[6]

The exclusion from bargaining units of employees who, in the normal course of their duties, become aware of management policies relating to labor relations is a principal objective sought to be accomplished by the “confidential employee rule.” The broad rationale behind this rule is that employees should not be placed in a position involving a potential conflict of interests.[7] “Management should not be required to handle labor relations matters through employees who are represented by the union with the company is required to deal and who in the normal performance of their duties may obtain advance information of the company’s position with regard to contract negotiations, the disposition of grievances, or other labor relations matters.”[8]

There have been ample precedents in this regard, thus in *Bulletin Publishing Company v. Hon. Augusto Sanchez*,^[9] the Court held that “if these managerial employees would belong to or be affiliated with a Union, the latter might not be assured of their loyalty to the Union in view of evident conflict of interest. The Union can also become company-dominated with the presence of managerial employees in Union membership.” The same rationale was applied to confidential employees in “*Golden Farms, Inc. v. Ferrer-Calleja*”^[10] and in the more recent case of “*Philips Industrial Development, Inc. v. NLRC*”^[11] which held that confidential employees, by the very nature of their functions, assist and act in a confidential capacity to, or have access to confidential matters of, persons who exercise managerial functions in the field of labor relations. Therefore, the rationale behind the ineligibility of managerial employees to form, assist or join a labor union was held equally applicable to them.^[12]

An important element of the “confidential employee rule” is the employee’s need to use labor relations information. Thus, in determining the confidentiality of certain employees, a key questions frequently considered is the employees’ necessary access to confidential labor relations information.^[13]

It is the contention of respondent corporation that Supervisory employees 3 and 4 and the exempt employees come within the meaning of the term “confidential employees” primarily because they answered in the affirmative when asked “Do you handle confidential data or documents?” in the Position Questionnaires submitted by the Union.^[14] In the same questionnaire, however, it was also stated that the confidential information handled by questioned employees relate to product formulation, product standards and product specification which by no means relate to “labor relations.”^[15]

Granting arguendo that an employee has access to confidential labor relations information but such is merely incidental to his duties and knowledge thereof is not necessary in the performance of such duties, said access does not render the employee a confidential employee.^[16] “If access to confidential labor relations information is to be a factor in the determination of an employee’s confidential status, such information must relate to the employer’s labor relations policies. Thus, an employee of a labor union, or of a management association, must have access to confidential labor information with respect to his employer, the union, or the association, to be regarded a confidential employee, and knowledge of labor relations information pertaining to the companies with which the union deals, or which the association represents, will not clause an employee to be excluded from the bargaining unit representing employees of the union or association.”^[17] “Access to information which is regarded by the employer to be confidential from the business standpoint, such as financial information^[18] or technical trade secrets, will not render an employee a confidential employee.”^[19]

Herein listed are the functions of supervisors 3 and higher:

1. To undertake decisions to discontinue/temporarily stop shift operations when situations require.
2. To effectively oversee the quality control function at the processing lines in the storage of chicken and other products.
3. To administer efficient system of evaluation of products in the outlets.
4. To be directly responsible for the recall, holding and rejection of direct manufacturing materials.
5. To recommend and initiate actions in the maintenance of sanitation and hygiene throughout the plant.^[20]

It is evident that whatever confidential data the questioned employees may handle will have to relate to their functions. From the foregoing functions, it can be gleaned that the confidential information said employees have access to concern the employer’s internal business operations. As held in *Westinghouse Electric Corporation v. National Labor Relations Board*,^[21] “an employee may not be excluded from appropriate bargaining unit merely

because he has access to confidential information concerning employer's internal business operations and which is not related to the field of labor relations."

It must be borne in mind that Section 3 of Article XIII of the 1987 Constitution mandates the State to guarantee to "all" workers the right to self-organization. Hence, confidential employees who may be excluded from bargaining unit must be strictly defined so as not to needlessly deprive many employees of their right bargain collectively through representatives of their choosing.[22]

In the case at bar, supervisors 3 and above may not be considered confidential employees merely because they handle "confidential data" as such must first be strictly classified as pertaining to labor relations for them to fall under said restrictions. The information they handle are properly classifiable as technical and internal business operations data which, to our mind, has no relevance to negotiations and settlement of grievances wherein the interests of a union and the management are invariably adversarial. Since the employees are not classifiable under the confidential type, this Court rules that they may appropriately form a bargaining unit for purposes of collective bargaining. Furthermore, even assuming that they are confidential employees, jurisprudence has established that there is no legal prohibition against confidential employees who are not performing managerial functions to form and join a union.[23]

In this connection, the issue of whether the employees of San Miguel Corporation Magnolia Poultry Products Plants of Cabuyao, San Fernando, and Otis constitute a single bargaining unit needs to be threshed out.

It is the contention of the petitioner union that the creation of three (3) separate bargaining units, one each for Cabuyao Otis and San Fernando as ruled by the respondent Undersecretary, is contrary to the one-company, one-union policy. It adds that Supervisors level 1 to 4 and exempt employees of the three plants have a similarity or a community of interests.

This Court finds the contention of the petitioner meritorious.

An appropriate bargaining unit may be defined as "a group of employees of a given employer, comprised of all or less than all of the entire body of employees, which the collective interest of all the employees, consistent with equity to the employer, indicate to be best suited to serve the reciprocal rights and duties of the parties under the collective bargaining provisions of the law." [24]

A unit to be appropriate must effect a grouping of employees who have substantial, mutual interests in wages, hours, working conditions and other subjects of collective bargaining.[25]

It is readily seen that the employees in the instant case have "community or mutuality of interest," which is the standard in determining the proper constituency of a collective bargaining unit.[26] It is undisputed that they all belong to the Magnolia Poultry Division of San Miguel Corporation. This means that, although they belong to three different plants, they perform work of the same nature, receive the same wages and compensation, and most importantly, share a common stake in concerted activities.

In light of these considerations, the Solicitor General has opined that separate bargaining units in the three different plants of the division will fragmentize the employees of the said division, thus greatly diminishing their bargaining leverage. Any concerted activity held against the private respondent for a labor grievance in one bargaining unit will, in all probability, not create much impact on the operations of the private respondent. The two other plants still in operation can well step up their production and make up for the slack caused by the bargaining unit engaged in the concerted activity. This situation will clearly frustrate the provisions of the Labor Code and the Mandate of the Constitution.[27]

The fact that the three plants are located in three different places, namely, in Cabuyao, Laguna, in Otis, Pandacan, Metro Manila, and in San Fernando, Pampanga is immaterial. Geographical location can be completely disregarded if the communal or mutual interests of the employees are not sacrificed as demonstrated in *UP v. Calleja-Ferrer* where all non-academic rank and file employees of the University of the Philippines in Diliman, Quezon City, Padre Faura, Manila, Los Baños, Laguna and the Visayas were allowed to participate in a certification election. We rule that the distance among the three plants is not productive of insurmountable difficulties in the administration of union affairs. Neither are there regional differences that are likely to impede the operations of a single bargaining representative.

WHEREFORE, the assailed Order of March 11, 1993 is hereby SET ASIDE and the Order of the Med-Arbitrator on December 19, 1990 is REINSTATED under which a certification election among the supervisors (level 1 to 4) and exempt employees of the San Miguel Corporation Magnolia Poultry Products Plants of Cabuyao, San Fernando, and Otis as one bargaining unit is ordered conducted.

SO ORDERED.

Regalado, (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] (NCR – OD – M – 90-10-01).

[2] 210 SCRA 339 (1992)

[3] Rollo, pp. 45-46.

[4] 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 organization of their own.

[5] *Westinghouse Electric Corp. v. NLRB* (CA6) 398 F2d 669 (1968); *Ladish Co.*, 178 NLRB 90, 1969.

[6] *B.F. Goodrich Co.* 115 NLRB 722 (1956).

[7] *Westinghouse Electric Corporation v. NLRB*, supra; citing *Retail Clerks International Assn. v. NLRB.*, 125 U.S. App D.C. 63, 366 F2d 642, 645 n. 7 (1966)

[8] *In the Matter of The Hoover Company and United Electrical, Radio and Machine workers of America* 55 NLRB 1321 (1941); *Philippine Phosphate Fertilizer Corporation v. Hon. Ruben Torres, et al.* 231 SCRA 335 (1994); *National Association of Trade Unions, etc. v. Hon. R. Torres, et al.*, 239 SCRA 546 (1994).

[9] 144 SCRA 682 (1986).

[10] 175 SCRA 471 (1989).

[11] Supra.

[12] *Philips Industrial Development Inc. v. NLRC*, supra.

[13] *NLRB v. Swift and Co.* (CA1) 292 F2d 561; citing *Pullman Standard Div., Pullman Inc.*, 214 NLRB 762, 1974-1975; *Kieckhefer Container Co.*, 118 NLRB 950, 1957-1958.

[14] Rollo, p.86.

[15] Rollo, p.131.

[16] Chrysler Corp. 173 NLRB 1046 (1968); Standard Oil Co., 127 NLRB 656 (1960).

[17] Pacific Maritime Assn. 185 NLRB 780 (1970); Air Line Pilots Asso., 97 NLRB 929 (1951).

[18] Westinghouse Electric Corp. v. NLRB, *supra*, citing NLRB v. Armour and Co. (CA10) 154 F2d 570, 169 ALR 421, cert den 329 US 732, 91 L Ed 633, 67 S Ct 92; NLRB v. Poultrymen's Service Corp. (CA3) 138 F2d 204; Pacific Far East Line Inc., 174 NLRB 1168 (1969), Dun and Bradstreet, Inc., 194 NLRB 9 (1972); Fairfax Family Fund Inc., 195 NLRB 306 (1972).

[19] Lykiens Hosiery Mills, Inc. 82 NLRB 981 (1948); Janowski 83 NLRB 273 (1948).

[20] Rollo, p. 157.

[21] *Supra*.

[22] Ford Motor Co., 66 NLRB 1317, 1322 (1946); B. F. Goodrich Co., *supra*; Vulcanized Rubber and Plastics Co., Inc., 129 NLRB 1256 (1961).

[23] National Association of Trade Unions v. Hon. Ruben Torres, et al., *supra*.

[24] University of the Philippines v. Calleja-Ferrer, 211 SCRA 464 (1992); citing Rothenberg on Labor Relations, p. 482.

[25] Democratic Labor Association v. Cebu Stevedoring Co., Inc., et al., G.R. No. L-10321, February 28, 1958; citing Smith on Labor Laws, 316-317; Francisco, Labor Laws, 162.

[26] *Supra*; National Association of Free Trade Unions v. Mainit Lumber Development Company Workers Union-United Lumber and General Workers of the Philippines, 192 SCRA 598 (1990); Philippine Land-Air-Sea Labor Union v. Court of Industrial Relations, 110 Phil. 176.

[27] Rollo, pp. 136-137.

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