

**PIER 8 ARRASTRE & STEVEDOR-ING SERVICES, INC.,
PETITIONER, VS. HON. MA. NIEVES ROLDAN-CONFESOR, IN HER
CAPACITY AS SECRETARY OF LABOR AND EMPLOYMENT, AND
GENERAL MARITIME & STEV...**

G.R. No. 110854. February 13, 1995

Ponente: PUNO, J.

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PUNO, J.:

Petitioner corporation and private respondent labor union entered into a three-year Collective Bargaining Agreement (CBA) with expiry date on November 27, 1991. During the freedom period, the National Federation of Labor Unions (NAFLU) questioned the majority status of private respondent through a petition for certification election. The election conducted on February 27, 1992 was won by private respondent. On March 19, 1992, private respondent was certified as the sole and exclusive bargaining agent of petitioner's rank-and-file employees.

On June 22, 1992, private respondent's CBA proposals were received by petitioner. Counter-proposals were made by petitioner. Negotiations collapsed, and on August 24, 1992, private respondent filed a Notice of Strike with the National Conciliation and Mediation Board (NCMB). The NCMB tried but failed to settle the parties' controversy.

On September 30, 1992, public respondent Secretary of Labor assumed jurisdiction over the dispute. She resolved the bargaining deadlock between the parties through an Order, dated March 4, 1993, which reads, in part:

"x x x x x x x x

"A. The non-economic issues

"1. Scope/coverage of the CBA. Article I of the 1988 CBA provides:

'The Company recognizes the Union as the sole and exclusive collective bargaining representative of all the stevedores, dockworkers, gang bosses, foremen, rank and file employees working at Pier 8, North Harbor and its offices and said positions are [sic] listed in ANNEX 'A' hereof.

'As such representative the UNION is designated as the collective bargaining agent with respect to and concerning the terms and conditions of employment and the interpretations and implementation of the provisions and conditions of this Agreement.'

"Annex 'A' of the CBA is the listing of positions covered thereby. These are:

- Foremen;
- Gang bosses;
- Winchmen;

- Signalmen;
- Stevedores;
- Dockworkers;
- Tallymen;
- Checkers;
- Forklift and crane operators;
- Sweepers;
- Mechanics;
- Utilitymen;
- Carpenters; and
- Other rank and file employees.

"The company argues in the first instance that under Article 212(m) in relation to Article 245 of the Labor Code, supervisors are ineligible for membership in a labor organization of rank and file employees. Being supervisors, foremen should be excluded from the bargaining unit.

"The Company likewise seeks the exclusion, on the ground of lack of community of interest and divergence in functions, mode of compensation and working conditions, of the following:

- Accounting clerk;
- Audit clerk;
- Collector;
- Payroll clerk;
- Nurse;
- Chief biller;
- Biller;
- Teller/biller;
- Personnel clerk;
- Timekeeper;
- Asst. timekeeper;
- Legal secretary;
- Telephone operator;
- Janitor/Utility; and
- Clerk

"These positions, the Company argues, cannot be lumped together with the stevedores or dockworkers who mostly comprise the bargaining unit. Further, notwithstanding the check-off provisions of the CBA, the

incumbents in these positions have never paid union dues. Finally, some of them occupy confidential positions and therefore ought to be excluded from the bargaining unit.

"The Union generally argues that the Company's proposed exclusions are retrogressive. xxx

"We see no compelling justification to order the modification of Article I of the 1988 CBA as worded. For by lumping together stevedores and other rank and file employees, the obvious intent of the parties was to treat all employees not disqualified from union membership as members of one bargaining unit. This is regardless of working conditions, mode of compensation, place of work, or other considerations. In the absence of mutual agreement of the parties or evidence that the present composition of the bargaining unit is detrimental to the individual and organizational rights either of the employees or of the Company, this expressed intent cannot be set aside.

"It may well be that as a consequence of Republic Act No. 6715, foremen are ineligible to join the union of the rank and file. But this provision can be invoked only upon proof that the foremen sought to be excluded from the bargaining unit are cloaked with effective recommendatory powers such as to qualify them under the legal definition of supervisors.

"xxx xxx xxx

"7. Effectivity of the CBA. The Union demands that the CBA should be fully retroactive to 28 November 1991. The Company is opposed on the ground that under Article 253-A of the Labor Code, the six-month period within which the parties must come to an agreement so that the same will be automatically retroactive is long past.

"The Union's demand for full retroactivity, we note, will result in undue financial burden to the Company. On the other hand, the Company's reliance on Article 253-A is misplaced as this applies only to the renegotiated terms of an existing CBA. Here, the deadlock arose from negotiations for a new CBA.

"These considered, the CBA shall be effective from the time we assumed jurisdiction over the dispute, that is, on 22 September 1992, and shall remain effective for five (5) years thereafter. It shall be understood that except for the representation aspect, all other provisions thereof shall be renegotiated not later than three (3) years after its effectivity, consistently with Article 253-A of the Labor Code.

"B. The economic issues

"The comparative positions of the parties are:

COMPANY

UNION

"xxx xxx xxx

"5.

Vacation and sick leave

17 days va-cation and 17 days sick leave per year for employees with at least five years of service

i) For all co-covered employ-ees other than gang bosses:

15 working days vacation and 15 working days sick leave for those with at least 1 year of service

20 working days vacation and 20 working days sick leave for those with more than one year of service up to 5 years of service

25 working days vacation and 25 working days sick leave for those with more than 5 years of service up to 10 years of service

30 working days vacation and 30 working days sick leave for those with more than 10 years of service

Provided that in the case of a rota-tion worker, he must have worked for at least 160 days in a year for avaiment

Provided that in the case of a rotation worker, he must have worked for 140 days in a calen-dar year as a condition for availment.

Provided, further that in the event a rotation worker fails to complete 140 days work in a calendar year, he shall still be entitled to vaca-tion and sick leave with pay, as follows:

139 - 120 days worked: 90%

119 - 110 days worked: 50%

ii) For Gang bosses:

Same as the above schedule except that:

1) the condition that a gang boss must have worked for at least 120 days in a calendar year shall be reduced to 110 days; and

2) where the above number of days worked is not met, the gang boss shall still be entitled to vacation and sick leave with pay, as follows:

109 - 90 days worked: 90%

89 - 75 days worked: 50%

"xxx xxx xxx

"7.

Death aid

P1,500.00 to heirs of covered employees

P10,000.00 to heirs of covered employees

P5,000.00 assist-ance for death of immediate member of covered employee's family

"xxx xxx xxx

"12. Emergency loan

a) amount of entitlement included

P700.00 but damage to dwelling by fire shall be twelve monthly installments

30 days salary payable through payroll deduction in

b) cash bond for loss, damage or accident

None

The company shall put up a cash bond of not less than P40,000.00 for winchmen, crane and forklift operators.

"xxx xxx xxx

"Balancing the right of the Company to remain viable and to just returns to its investments with right of the Union members to just rewards for their labors, we find the following award to be fair and reasonable:

"xxx xxx xxx

"6. Vacation and Sick Leave

a) Non-rotation workers

17 days vacation/17 days sick leave for those with at least 1 year of service

b) Rotation workers

17 days vacation/17 days sick leave, other than provided that the covered worker must have worked for at least 155 days in a calendar year

c) Gang bosses

17 days vacation/17 days sick leave, provided that the gang boss must have worked for at least 115 days in a calendar year

"xxx xxx xxx

"8. Death aid

P3,000.00 to the heirs of each covered employee

"xxx xxx xxx

"12. Emergency loan

30 days pay, payable through payroll deductions of 1/12 of monthly salary

"WHEREFORE, the Pier 8 Arrastre and Stevedoring Services and the General Maritime Services Union are hereby ordered to execute a new collective bargaining agreement incorporating the dispositions herein contained. These shall be in addition to all other existing terms, conditions and benefits of employment, except those specifically deleted herein, which have previously governed the relations of the parties. All other disputed items not specifically touched upon herein are deemed denied, without prejudice to such other agreements as the parties may have reached in the meantime. The collective bargaining agreement so executed shall be effective from 22 September 1992 and up to five years thereafter, subject to renegotiation on the third year of its effectivity pursuant to Article 253-A of the Labor Code." [1]

Petitioner sought partial reconsideration of the Order. On June 8, 1993, public respondent affirmed her findings, except for the date of effectivity of the Collective Bargaining Agreement, which was changed to September 30, 1992. This is the date when she assumed jurisdiction over the deadlock.

Petitioner now assails the Order as follows:

"I

THE HONORABLE SECRETARY OF LABOR COMMITTED GRAVE ABUSE OF DISCRETION IN NOT EXCLUDING CERTAIN POSITIONS FROM THE BARGAINING UNIT

"II

THE HONORABLE SECRETARY OF LABOR COMMITTED GRAVE ABUSE OF DISCRETION IN MAKING THE CBA EFFECTIVE ON SEPTEMBER 30, 1992 WHEN SHE ASSUMED JURISDICTION OVER THE LABOR DISPUTE AND NOT MARCH 4, 1993 WHEN SHE RENDERED JUDGMENT OVER THE DISPUTE

"III

THE HONORABLE SECRETARY OF LABOR COMMITTED GRAVE ABUSE OF DISCRETION IN REDUCING THE NUMBER OF DAYS AN EMPLOYEE SHOULD ACTUALLY WORK TO BE ENTITLED TO VACATION AND SICK LEAVE BENEFITS

"IV

THE HONORABLE SECRETARY OF LABOR COMMITTED GRAVE ABUSE OF DISCRETION IN INCREASING WITHOUT FACTUAL BASIS THE DEATH AID AND EMERGENCY LOAN" [2]

The petition is partially meritorious.

Firstly, petitioner questions public respondent for not excluding four (4) foremen, a legal secretary, a timekeeper and an assistant timekeeper from the bargaining unit composed of rank-and-file employees represented by private respondent. Petitioner argues that: (1) the failure of private respondent to object when the foremen and legal secretary were prohibited from voting in the certification election constitutes an admission that such employees hold supervisory/confidential positions; and (2) the primary duty and responsibility of the timekeeper and assistant timekeeper is "to enforce company rules and regulations by reporting to petitioner xxx those workers who committed infractions, such as those caught abandoning their posts and sleeping on post," and hence, they should not be considered as rank-and-file employees.

The applicable law governing the proper composition of a bargaining unit is Article 245 of the Labor Code, as amended, which provides as follows:

“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.

Article 212(m) of the same Code, as well as Book V, Rule 1, Section 1(o) of the Omnibus Rules Implementing the Labor Code, as amended by the Rules and Regulations Implementing R.A. 6715, differentiate managerial, supervisory, and rank-and-file employees, thus:

" 'Managerial Employee' is one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, layoff, 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. All employees not falling within any of the above definitions are considered rank-and-file employees for purposes of the Book."

This Court has ruled on numerous occasions that the test of supervisory or managerial status is whether an employee possesses authority to act in the interest of his employer, which authority is not merely routinary or clerical in nature but requires use of independent judgment. [3] What governs the determination of the nature of employment is not the employee's title, but his job description. If the nature of the employee's job does not fall under the definition of "managerial" or "supervisory" in the Labor Code, he is eligible to be a member of the rank-and-file bargaining unit. [4]

Foremen are chief and often especially-trained workmen who work with and commonly are in charge of a group of employees in an industrial plant or in construction work. [5] They are the persons designated by the employer-management to direct the work of employees, and to superintend and oversee them. [6] They are representatives of the employer-management with authority over particular groups of workers, processes, operations, or sections of a plant or an entire organization. In the modern industrial plant, they are at once a link in the chain of command and the bridge between management and labor. [7] In the performance of their work, foremen definitely use their independent judgment and are empowered to make recommendations for managerial action with respect to those employees under their control. Foremen fall squarely under the category of supervisory employees, and cannot be part of rank-and file unions.

Upon the other hand, legal secretaries are neither managers nor supervisors. Their work is basically routinary and clerical. However, they should be differentiated from rank-and-file employees because they are tasked with, among others, the typing of legal documents, memoranda and correspondence, the keeping of records and files, the giving of and receiving notices, and such other duties as required by the legal personnel of the corporation. [8] Legal secretaries therefore fall under the category of confidential employees. Thus, to them applies our holding in

the case of *Philips Industrial Development, Inc. v. NLRC*, 210 SCRA 339 (1992), that:

"xxx By the very nature of their functions, they 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. As such, the rationale behind the ineligibility of managerial employees to form, assist or join a labor union equally applies to them.

"In *Bulletin Publishing Co., Inc. vs. Hon. Augusto Sanchez*, this Court elaborated on this rationale, thus:

'x x x The rationale for this inhibition has been stated to be, because 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 interests. The Union can also become company-dominated with the presence of managerial employees in Union membership.'

"In *Golden Farms, Inc. vs. Ferrer-Calleja*, [9] this Court explicitly made this rationale applicable to confidential employees:

"This rationale holds true also for confidential employees xxx, who having access to confidential information, may become the source of undue advantage. Said employee(s) may act as a spy or spies of either party to a collective bargaining agreement. xxx"

We thus hold that public respondent acted with grave abuse of discretion in not excluding the four foremen and legal secretary from the bargaining unit composed of rank-and-file employees.

As for the timekeeper and assistant timekeeper, it is clear from petitioner's own pleadings that they are neither managerial nor supervisory employees. They are merely tasked to report those who commit infractions against company rules and regulations. This reportorial function is routinary and clerical. They do not determine the fate of those who violate company policy rules and regulations. It follows that they cannot be excluded from the subject bargaining unit.

The next issue is the date when the new CBA of the parties should be given effect. Public respondent fixed the effectivity date on September 30, 1992, when she assumed jurisdiction over the dispute. Petitioner maintains it should be March 4, 1993, when public respondent rendered judgment over the dispute.

The applicable laws are Articles 253 and 253-A of the Labor Code, thus:

"Art. 253. Duty to bargain collectively when there exists a collective bargaining agreement. — When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties."

and;

"Art. 253-A. Terms of a collective bargaining agreement. — Any Collective Bargaining Agreement that the parties may enter into shall, insofar as the representation aspect is concerned, be for a term of five (5) years. No petition questioning the majority status of the incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside the sixty-day period immediately before the date of expiry of such five year term of the Collective Bargaining Agreement. All other provisions of the Collective Bargaining Agreement shall be renegotiated not later than three (3) years after its execution. Any agreement on such other provisions of the Collective Bargaining Agreement entered into within six (6) months from the date of expiry of the term of such other provisions as fixed in such Collective Bargaining Agreement, shall retroact to the day immediately following such date. If any such

agreement is entered into beyond six months, the parties shall agree on the duration of retroactivity thereof. In case of a deadlock in the renegotiation of the collective bargaining agreement, the parties may exercise their rights under this Code."

In *Union of Filipino Employees v. NLRC*, 192 SCRA 414 (1990), this Court interpreted the above law as follows:

"In light of the foregoing, this Court upholds the pronouncement of the NLRC holding the CBA to be signed by the parties effective upon the promulgation of the assailed resolution. It is clear and explicit from Article 253-A that any agreement on such other provisions of the CBA shall be given retroactive effect only when it is entered into within six (6) months from its expiry date. If the agreement was entered into outside the six (6) month period, then the parties shall agree on the duration of the retroactivity thereof.

"The assailed resolution which incorporated the CBA to be signed by the parties was promulgated June 5, 1989, the expiry date of the past CBA. Based on the provision of Section 253-A, its retroactivity should be agreed upon by the parties. But since no agreement to that effect was made, public respondent did not abuse its discretion in giving the said CBA a prospective effect. The action of the public respondent is within the ambit of its authority vested by existing law."

In the case of *Lopez Sugar Corporation v. Federation of Free Workers*, 189 SCRA 179 (1991), this Court reiterated the rule that although a CBA has expired, it continues to have legal effects as between the parties until a new CBA has been entered into. It is the duty of both parties to the CBA to keep the status quo, and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day freedom period and/or until a new agreement is reached by the parties. [10] Applied to the case at bench, the legal effects of the immediate past CBA between petitioner and private respondent terminated, and the effectivity of the new CBA began, only on March 4, 1993, when public respondent resolved their dispute.

Finally, we find no need to discuss at length the merits of the third and fourth assignments of error. The questioned Order relevantly states:

"In the resolution of the economic issues, the Company urges us to consider, among others, present costs of living, its financial capacity, the present wages being paid by the other cargo handlers at the North Harbor, and the fact that the present average wage of its workers is P127.75 a day, which is higher than the statutory minimum wage of P118.00 a day. The Company's evidence, consisting of its financial statements for the past three years, shows that its net income was P743,423.45 for 1989, P2,108,569.03 for 1990, and P1,479,671.84 for 1991, or an average of P1,443,885.10 over the three-year period. It argues that for just the first year of effectivity of the CBA, the Company's proposals on wages, effect thereof on overtime, 13th month pay, and vacation and sick leave commutation, will cost about P520,723.44, or 35.19% of its net income for 1991. The Company likewise urges us to consider the multiplier effect of its proposals on the second and third years of the CBA. As additional argument, the Company manifests that a portion of its pier will undergo a six-month to one-year renovation starting January 1993.

"On the other hand, the Union's main line of argument — that is, aside from being within the financial capacity of the Company to grant, its demands are fair and reasonable — is not supported by evidence controverting the Company's own presentation of its financial capacity. The Union in fact uses statements of the Company for 1989-1991, although it interprets these data as sufficient justification for its own proposals. It also draws our attention to the bargaining history of the parties, particularly the 1988 negotiations during which the company was able to grant wage increases despite operational losses.

"Balancing the right of the Company to remain viable and to just returns to its investments with right of the Union members to just rewards for their labors, we find the following award to be fair and reasonable xxx."
[11]

It is evident that the above portion of the impugned Order is based on well-studied evidence. The conclusions reached by public respondent in the discharge of her statutory duty as compulsory arbitrator, demand the high respect of this Court. The study and settlement of these disputes fall within public respondent's distinct administrative expertise. She is especially trained for this delicate task, and she has within her cognizance such data and information as will assist her in striking the equitable balance between the needs of management, labor, and the public. Unless there is clear showing of grave abuse of discretion, this Court cannot and will not interfere with the labor expertise of public respondent Secretary of Labor.

IN VIEW WHEREOF, public respondent's Order, dated March 4, 1993, and Resolution, dated June 8, 1993, are hereby MODIFIED to exclude foremen and legal secretaries from the rank-and-file bargaining unit represented by private respondent union, and to fix the date of effectivity of the five-year collective bargaining agreement between petitioner corporation and private respondent union on March 4, 1993. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Bidin, Regalado, and Mendoza, JJ., concur.

[1] Order of the Secretary of Labor and Employment, dated March 4, 1993. See Annex "A" to Petition, pp. 27--47 of Rollo .

[2] Rollo , pp. 6-7.

[3] See Philippine Appliance Corporation v. Laguesma, 226 SCRA 730 (1993); Villuga v. NLRC, 225 SCRA 537 (1993); Pagkakaisa ng mga Manggagawa sa Triumph International-United Lumber and General Workers of the Philippines v. Ferrer-Calleja, 181 SCRA 119 (1990). See also Atlas Lithographic Services, Inc. v. Laguesma, 205 SCRA 12 (1992); Philtranco Service Enterprises v. Bureau of Labor Relations, 174 SCRA 338 (1989).

[4] See Southern Philippines Federation of Labor (SPFL) v. Calleja, 172 SCRA 676 (1989).

[5] See Ballentine's Law Dictionary, 3[rd] Edition (1969); Webster's Third New International Dictionary (1971).

[6] Black's Law Dictionary, 6[th] Edition (1990).

[7] Webster's Third New International Dictionary (1971).

[8] See Black's Law Dictionary, 6th Edition (1990).

[9] 210 SCRA 471 (1989).

[10] National Congress of Unions in the Sugar Industry of the Philippines v. Ferrer-Calleja, 205 SCRA 478 (1992).

[11] Rollo , pp. 44-45.

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