

DUNLOP SLAZENGER (PHILS.), INC., PETITIONER, VS. HON. SECRETARY OF LABOR AND EMPLOYMENT AND DUNLOP SLAZENGER STAFF ASSOCIATION – APSOTEU, RESPONDENTS.

G.R. No. 131248. December 11, 1998

Ponente: PUNO, J.

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PUNO, J.:

In this petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, petitioner seeks the annulment of the Resolution and Order, dated July 19, 1997 and October 16, 1997,[1] of the public respondent Secretary of Labor and Employment calling for a certification election in its company.

It appears that on September 15, 1995, the respondent union filed a Petition for Certification Election among the supervisory, office and technical employees of the petitioner company before the Department of Labor and Employment, Regional Office No. III, San Fernando, Pampanga. It alleged that it is a legitimate labor organization, a duly chartered local of the Associated Professional, Supervisory, Office & Technical Employees Union (APSOTEU); that petitioner is a domestic corporation engaged in the manufacture of tennis balls and other allied products; that petitioner is an unorganized establishment and there is no certified bargaining agreement that will bar the filing of its petition for certification election; and that no certification election has been conducted within one (1) year prior to the filing of its petition for certification election.

On October 9, 1995, the petitioner company filed its Answer with Motion to Dismiss based on three (3) grounds, namely: (1) that the respondent union is comprised of supervisory and rank-and-file employees and cannot act as bargaining agent for the proposed unit; (2) that a single certification election cannot be conducted jointly among supervisory and rank-and-file employees; and (3) that the respondent union lacks legal standing since it failed to submit its books of accounts.[2]

In its Reply filed on December 5, 1995, the respondent union alleged that its members are supervisors and not rank-and-file employees. It averred that all its members are paid monthly by the petitioner company. It alleged that the bargaining unit it seeks to represent is made up of the monthly paid supervisory employees and other personnel who cannot be classified as belonging to the rank-and-file. It further contended that it has no obligation to attach its books of accounts since it is a legitimate labor organization. It urged that the certification election proceeding cannot be used to question the legal personality of a labor organization.[3] On March 4, 1996, however, respondent union submitted its new books of accounts consisting of the Cash Receipts Journal, Cash Disbursements Journal and two (2) ledgers.[4]

On July 15, 1996, Mediator Arbiter Ma. Carmen A. Espinosa granted the petition for certification election. Respondent Secretary of Labor and Employment affirmed the Arbiter's decision ruling as follows:

"x x x

"The order of the Med-Arbiter directing the conduct of a certification elections is well and proper.

"A perusal of the records shows that the bargaining unit that the petitioner seeks to represent has been properly defined and this is composed of all the supervisory employees of the respondent company. We wish to emphasize that the right of supervisory employees to form their own labor organization separate from that of the rank-and-file union has been recognized by law. This is quite clear from the provisions of Article 245 of the Labor Code, as amended, which states:

`ART. 245. Ineligibility of managerial employees to join any labor organization; right of supervisory employees-manual 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.'

"As to the contention of the respondent that the petitioning union is composed of both supervisory and rank and file employees, suffice it to stress that the same is not a sufficient reason that would warrant the dismissal of the present petition. The same can be taken care (sic) of during the pre-election conference thru the exclusion-inclusion proceedings wherein those employees who are occupying rank and file positions will be excluded from the list of eligible voters.

"Anent the issue on the legitimacy of the petitioner, we agree with the findings of the Med-Arbiter that the petitioner has acquired the requisite legal personality to file the present petition for certification elections. This is shown by the fact that the petitioner has sufficiently complied with the mandatory reportorial requirements provided for under Section 3, Rule II, Book V of the Rules and Regulations Implementing the Labor Code, as amended and as enunciated by the Supreme Court in the cases of Progressive Development Corporation vs. Secretary of Labor, et al., 205 SCRA 802 and Protection Technology Inc. vs. Secretary of Labor, G.R. 11711, March 1, 1995."[5]

Respondent Secretary of Labor denied petitioner's motion for reconsideration; hence, this petition.

It is petitioner's submission that:

"I

"Respondent Secretary acted arbitrarily and with grave abuse of discretion amounting to lack or excess of jurisdiction in holding that the respondent union is composed of all the supervisory employees of the [petitioner] company.

"II

"Respondent Secretary acted arbitrarily and with grave abuse of discretion amounting to lack or excess of jurisdiction in finding that even if the respondent union is composed of both supervisory and rank-and-file employees such can be taken care of during the pre-election conference thru the exclusion-inclusion proceedings.

"III

"Respondent Secretary acted contrary to law and with grave abuse of discretion amounting to lack or excess of jurisdiction in upholding the findings of the Med-Arbiter that the respondent union has complied with all the requirements for it to attain the legal personality to file the petition for certification election."[6]

The petition is meritorious.

We agree with the public respondent that supervisors can be an appropriate bargaining unit. This is in accord with our repeated ruling that "[a]n appropriate bargaining unit is a group of employees of a given employer, composed of all or less than the entire body of employees, which the collective interests of all the employees, consistent with equity to the employer, indicate to be best suited to serve reciprocal rights and duties of the parties under the collective bargaining provisions of law. Otherwise stated, it is a legal collectivity for collective bargaining purposes whose members have substantially mutual bargaining interests in terms and conditions of employment

as will assure to all employees their collective bargaining rights. 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." [7]

The critical issue, however, is whether or not the respondent union can file a petition for certification election to represent the supervisory employees of the petitioner company. The resolution of this issue depends on whether the respondent union is composed solely of supervisory employees or of both supervisory and rank-and-file employees. Article 245 of the Labor Code clearly provides that "supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees x x x."

To determine who are supervisory and rank-and-file employees reference has to be made to Article 212 (m) of the Labor Code, as amended, as well as Section 1 (t), Rule I, Book V of the Omnibus Rules Implementing the Labor Code, as amended, viz:

"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 this Book [these Rules]."

Determining the status of supervisory and rank-and-file employees is not a hard row to hoe in labor law. The test of supervisory status as we have repeatedly ruled is whether an employee possesses authority to act in the interest of his employer, which authority should not be merely routinary or clerical in nature but requires the use of independent judgment. Corrollarily, what determines the nature of employment is not the employee's title, but his job description.[8]

In the instant case, the list of monthly paid employees submitted by the petitioner company contains the names of about twenty seven (27) supervisory employees, six (6) managerial employees, one (1) confidential employee and twenty six (26) office and technical employees holding various positions. The list reveals that the positions occupied by the twenty six (26) office and technical employees are in fact rank-and-file positions, i.e., A/C mechanic, draftsmen, storemen, motorpool mechanic, secretaries, accounts clerk, company nurses, industrial mechanic, boiler men, laboratory technicians, payroll clerk, welder, purchasing clerk, company drivers and electricians. It is fairly obvious that these positions cannot be considered as supervisory positions for they do not carry the authority to act in the interest of the employer or to recommend managerial actions. It is not decisive that these employees are monthly paid employees. Their mode of compensation is usually a matter of convenience and does not necessarily determine the nature and character of their job.

We also do not agree with the ruling of the respondent Secretary of Labor that the infirmity in the membership of the respondent union can be remedied in "the pre-election conference thru the exclusion-inclusion proceedings wherein those employees who are occupying rank-and-file positions will be excluded from the list of eligible voters." Public respondent gravely misappreciates the basic antipathy between the interest of supervisors and the interest of rank-and-file employees. Due to the irreconcilability of their interests we held in *Toyota Motor Philippines v. Toyota Motors Philippines Corporation Labor Union*,[9] viz:

"x x x

"Clearly, based on this provision [Article 245, Labor Code], a labor organization composed of both rank-and-file and supervisory employees is no labor organization at all. It cannot, for any guise or purpose, be a legitimate labor organization. Not being one, an organization which carries a mixture of rank-and-file and

supervisory employees cannot possess any of the rights of a legitimate labor organization, including the right to file a petition for certification election for the purpose of collective bargaining. It becomes necessary, therefore, anterior to the granting of an order allowing a certification election, to inquire into the composition of any labor organization whenever the status of the labor organization is challenged on the basis of Article 245 of the Labor Code."

Needless to stress, the respondent union has no legal right to file a certification election to represent a bargaining unit composed of supervisors for so long as it counts rank-and-file employees among its members.

IN VIEW WHEREOF, the Resolution and Order dated July 19, 1997 and October 16, 1997, in OS-A-10-171-96 of the public respondent are annulled and set aside. No costs.

SO ORDERED.

Bellosillo (Chairman), Mendoza, and Martinez, JJ., concur.

[1] In OS-A-10-171-96 [RO-300-9509-RU-007].

[2] Rollo, pp. 27-36.

[3] Rollo, pp. 19-20, 38-42.

[4] Rollo, pp. 44-45.

[5] Resolution, pp. 3-4; Rollo, pp. 20-21.

[6] Rollo, pp. 8, 10 and 11.

[7] San Miguel Corp. Supervisors and Exempt Employees Union v. Laguesma, 277 SCRA 370 [1997]; Toyota Motor Philippines Corporation v. Toyota Motor Philippines Corporation Labor Union, 268 SCRA 573 [1997]; Belyca Corporation v. Ferrer-Calleja, 168 SCRA 184 [1988].

[8] Engineering Equipment, Inc. v. NLRC, 133 SCRA 752 [1984].

[9] 268 SCRA 573 [1997].

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