

TUNAY NA PAGKAKAISA NG MANGGAGAWA SA ASIA BREWERY, PETITIONER, VS. ASIA BREWERY, INC., RESPONDENT.

G.R. No. 162025. August 03, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

For resolution is an appeal by certiorari filed by petitioner under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated November 22, 2002 and Resolution[2] dated January 28, 2004 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 55578, granting the petition of respondent company and reversing the Voluntary Arbitrator's Decision[3] dated October 14, 1999.

The facts are:

Respondent Asia Brewery, Inc. (ABI) is engaged in the manufacture, sale and distribution of beer, shandy, bottled water and glass products. ABI entered into a Collective Bargaining Agreement (CBA),[4] effective for five (5) years from August 1, 1997 to July 31, 2002, with Bisig at Lakas ng mga Manggagawa sa Asia-Independent (BLMA-INDEPENDENT), the exclusive bargaining representative of ABI's rank-and-file employees. On October 3, 2000, ABI and BLMA-INDEPENDENT signed a renegotiated CBA effective from August 1, 2000 to 31 July 2003.[5]

Article I of the CBA defined the scope of the bargaining unit, as follows:

Section 1. Recognition. The COMPANY recognizes the UNION as the sole and exclusive bargaining representative of all the regular rank-and-file daily paid employees within the scope of the appropriate bargaining unit with respect to rates of pay, hours of work and other terms and conditions of employment. The UNION shall not represent or accept for membership employees outside the scope of the bargaining unit herein defined.

Section 2. Bargaining Unit. The bargaining unit shall be comprised of all regular rank-and-file daily-paid employees of the COMPANY. However, the following jobs/positions as herein defined shall be excluded from the bargaining unit, to wit:

- Managers
- Assistant Managers
- Section Heads
- Supervisors
- Superintendents
- Confidential and Executive Secretaries
- Personnel, Accounting and Marketing Staff

- Communications Personnel
- Probationary Employees
- Security and Fire Brigade Personnel
- Monthly Employees
- Purchasing and Quality Control Staff[6] [emphasis supplied.]

Subsequently, a dispute arose when ABI's management stopped deducting union dues from eighty-one (81) employees, believing that their membership in BLMA-INDEPENDENT violated the CBA. Eighteen (18) of these affected employees are QA Sampling Inspectors/Inspectresses and Machine Gauge Technician who formed part of the Quality Control Staff. Twenty (20) checkers are assigned at the Materials Department of the Administration Division, Full Goods Department of the Brewery Division and Packaging Division. The rest are secretaries/clerks directly under their respective division managers.[7]

BLMA-INDEPENDENT claimed that ABI's actions restrained the employees' right to self-organization and brought the matter to the grievance machinery. As the parties failed to amicably settle the controversy, BLMA-INDEPENDENT lodged a complaint before the National Conciliation and Mediation Board (NCMB). The parties eventually agreed to submit the case for arbitration to resolve the issue of "[w]hether or not there is restraint to employees in the exercise of their right to self-organization." [8]

In his Decision, Voluntary Arbitrator Bienvenido Devera sustained the BLMA-INDEPENDENT after finding that the records submitted by ABI showed that the positions of the subject employees qualify under the rank-and-file category because their functions are merely routinary and clerical. He noted that the positions occupied by the checkers and secretaries/clerks in the different divisions are not managerial or supervisory, as evident from the duties and responsibilities assigned to them. With respect to QA Sampling Inspectors/Inspectresses and Machine Gauge Technician, he ruled that ABI failed to establish with sufficient clarity their basic functions as to consider them Quality Control Staff who were excluded from the coverage of the CBA. Accordingly, the subject employees were declared eligible for inclusion within the bargaining unit represented by BLMA-INDEPENDENT.[9]

On appeal, the CA reversed the Voluntary Arbitrator, ruling that:

WHEREFORE, foregoing premises considered, the questioned decision of the Honorable Voluntary Arbitrator Bienvenido De Vera is hereby REVERSED and SET ASIDE, and A NEW ONE ENTERED DECLARING THAT:

- a) the 81 employees are excluded from and are not eligible for inclusion in the bargaining unit as defined in Section 2, Article I of the CBA;
- b) the 81 employees cannot validly become members of respondent and/or if already members, that their membership is violative of the CBA and that they should disaffiliate from respondent; and
- c) petitioner has not committed any act that restrained or tended to restrain its employees in the exercise of their right to self-organization.

NO COSTS.

SO ORDERED.[10]

BLMA-INDEPENDENT filed a motion for reconsideration. In the meantime, a certification election was held on August 10, 2002 wherein petitioner Tunay na Pagkakaisa ng Manggagawa sa Asia (TPMA) won. As the

incumbent bargaining representative of ABI's rank-and-file employees claiming interest in the outcome of the case, petitioner filed with the CA an omnibus motion for reconsideration of the decision and intervention, with attached petition signed by the union officers.[11] Both motions were denied by the CA.[12]

The petition is anchored on the following grounds:

(1)

THE COURT OF APPEALS ERRED IN RULING THAT THE 81 EMPLOYEES ARE EXCLUDED FROM AND ARE NOT ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT AS DEFINED IN SECTION 2, ARTICLE 1 OF THE CBA[;]

(2)

THE COURT OF APPEALS ERRED IN HOLDING THAT THE 81 EMPLOYEES CANNOT VALIDLY BECOME UNION MEMBERS, THAT THEIR MEMBERSHIP IS VIOLATIVE OF THE CBA AND THAT THEY SHOULD DISAFFILIATE FROM RESPONDENT;

(3)

THE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT PETITIONER (NOW PRIVATE RESPONDENT) HAS NOT COMMITTED ANY ACT THAT RESTRAINED OR TENDED TO RESTRAIN ITS EMPLOYEES IN THE EXERCISE OF THEIR RIGHT TO SELF-ORGANIZATION.[13]

Although Article 245 of the Labor Code limits the ineligibility to join, form and assist any labor organization to managerial employees, jurisprudence has extended this prohibition to confidential employees or those who by reason of their positions or nature of work are required to assist or act in a fiduciary manner to managerial employees and hence, are likewise privy to sensitive and highly confidential records.[14] Confidential employees are thus excluded from the rank-and-file bargaining unit. The rationale for their separate category and disqualification to join any labor organization is similar to the inhibition for managerial employees because if allowed to be affiliated with a Union, the latter might not be assured of their loyalty in view of evident conflict of interests and the Union can also become company-denominated with the presence of managerial employees in the Union membership.[15] Having access to confidential information, confidential employees may also become the source of undue advantage. Said employees may act as a spy or spies of either party to a collective bargaining agreement.[16]

In *Philips Industrial Development, Inc. v. NLRC*,[17] this Court held that petitioner's "division secretaries, all Staff of General Management, Personnel and Industrial Relations Department, Secretaries of Audit, EDP and Financial Systems" are confidential employees not included within the rank-and-file bargaining unit.[18] Earlier, in *Pier 8 Arrastre & Stevedoring Services, Inc. v. Roldan-Confesor*,[19] we declared that legal secretaries who 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, fall under the category of confidential employees and hence excluded from the bargaining unit composed of rank-and-file employees.[20]

Also considered having access to "vital labor information" are the executive secretaries of the General Manager and the executive secretaries of the Quality Assurance Manager, Product Development Manager, Finance Director, Management System Manager, Human Resources Manager, Marketing Director, Engineering Manager, Materials Manager and Production Manager.[21]

In the present case, the CBA expressly excluded "Confidential and Executive Secretaries" from the rank-and-file bargaining unit, for which reason ABI seeks their disaffiliation from petitioner. Petitioner, however, maintains

that except for Daisy Laloan, Evelyn Mabilangan and Lennie Saguan who had been promoted to monthly paid positions, the following secretaries/clerks are deemed included among the rank-and-file employees of ABI:[22]

NAME

DEPARTMENT

IMMEDIATE SUPERIOR

C1 ADMIN DIVISION

1. Angeles, Cristina C.

Transportation

Mr. Melito K. Tan

2. Barraquio, Carina P.

Transportation

Mr. Melito K. Tan

3. Cabalo, Marivic B.

Transportation

Mr. Melito K. Tan

4. Fameronag, Leodigario C.

Transportation

Mr. Melito K. Tan

1. Abalos, Andrea A.

Materials

Mr. Andres G. Co

2. Algire, Juvy L.

Materials

Mr. Andres G. Co

3. Anoñuevo, Shirley P.

Materials

Mr. Andres G. Co

4. Aviso, Rosita S.

Materials

Mr. Andres G. Co

5. Barachina, Pauline C.

Materials

Mr. Andres G. Co

6. Briones, Catalina P.

Materials

Mr. Andres G. Co

7. Caralipio, Juanita P.

Materials

Mr. Andres G. Co

8. Elmido, Ma. Rebecca S.

Materials

Mr. Andres G. Co

9. Giron, Laura P.

Materials

Mr. Andres G. Co

10. Mane, Edna A.

Materials

Mr. Andres G. Co

x x x x

C2 BREWERY DIVISION

1. Laloan, Daisy S.

Brewhouse

Mr. William Tan

1. Arabit, Myrna F.

Bottling Production

Mr. Julius Palmares

2. Burgos, Adelaida D.

Bottling Production

Mr. Julius Palmares

3. Menil, Emmanuel S.

Bottling Production

Mr. Julius Palmares

4. Nevalga, Marcelo G.

Bottling Production

Mr. Julius Palmares

1. Mapola, Ma. Esraliza T.

Bottling Maintenance

Mr. Ernesto Ang

2. Velez, Carmelito A.

Bottling Maintenance

Mr. Ernesto Ang

1. Bordamonte, Rhumela D.

Bottled Water

Mr. Faustino Tetonche

2. Deauna, Edna R.

Bottled Water

Mr. Faustino Tetonche

3. Punongbayan, Marylou F.

Bottled Water

Mr. Faustino Tetonche

4. Saguan, Lennie Y.

Bottled Water

Mr. Faustino Tetonche

1. Alcoran, Simeon A.

Full Goods

Mr. Tsoi Wah Tung

2. Cervantes, Ma. Sherley Y.

Full Goods

Mr. Tsoi Wah Tung

3. Diongco, Ma. Teresa M.

Full Goods

Mr. Tsoi Wah Tung

4. Mabilangan, Evelyn M.

Full Goods

Mr. Tsoi Wah Tung

5. Rivera, Aurora M.

Full Goods

Mr. Tsoi Wah Tung

6. Salandanan, Nancy G.

Full Goods

Mr. Tsoi Wah Tung

1. Magbag, Ma. Corazon C.

Tank Farm/ Cella Services

Mr. Manuel Yu Liat

1. Capiroso, Francisca A.

Quality Assurance

Ms. Regina Mirasol

1. Alconaba, Elvira C.

Engineering

Mr. Clemente Wong

2. Bustillo, Bernardita E.

Electrical

Mr. Jorge Villarosa

3. Catindig, Ruel A.

Civil Works

Mr. Roger Giron

4. Sison, Claudia B.

Utilities

Mr. Venancio Alconaba

x x x x

C3 PACKAGING DIVISION

1. Alvarez, Ma. Luningning L.

GP Administration

Ms. Susan Bella

2. Cañiza, Alma A.

GP Technical

Mr. Chen Tsai Tyan

3. Cantalejo, Aida S.

GP Engineering

Mr. Noel Fernandez

4. Castillo, Ma. Riza R.

GP Production

Mr. Tsai Chen Chih

5. Lamadrid, Susana C.

GP Production

Mr. Robert Bautista

6. Mendoza, Jennifer L.

GP Technical

Mr. Mel Oña

As can be gleaned from the above listing, it is rather curious that there would be several secretaries/clerks for just one (1) department/division performing tasks which are mostly routine and clerical. Respondent insisted they fall under the "Confidential and Executive Secretaries" expressly excluded by the CBA from the rank-and-file bargaining unit. However, perusal of the job descriptions of these secretaries/clerks reveals that their assigned duties and responsibilities involve routine activities of recording and monitoring, and other paper works for their respective departments while secretarial tasks such as receiving telephone calls and filing of office correspondence appear to have been commonly imposed as additional duties.[23] Respondent failed to indicate who among these numerous secretaries/clerks have access to confidential data relating to management policies that could give rise to potential conflict of interest with their Union membership. Clearly, the rationale under our previous rulings for the exclusion of executive secretaries or division secretaries would have little or no significance considering the lack of or very limited access to confidential information of these secretaries/clerks. It is not even farfetched that the job category may exist only on paper since they are all daily-paid workers. Quite understandably, petitioner had earlier expressed the view that the positions were just being "reclassified" as these employees actually discharged routine functions.

We thus hold that the secretaries/clerks, numbering about forty (40), are rank-and-file employees and not confidential employees.

With respect to the Sampling Inspectors/Inspectresses and the Gauge Machine Technician, there seems no dispute that they form part of the Quality Control Staff who, under the express terms of the CBA, fall under a distinct category. But we disagree with respondent's contention that the twenty (20) checkers are similarly confidential employees being "quality control staff" entrusted with the handling and custody of company properties and sensitive information.

Again, the job descriptions of these checkers assigned in the storeroom section of the Materials Department,

finishing section of the Packaging Department, and the decorating and glass sections of the Production Department plainly showed that they perform routine and mechanical tasks preparatory to the delivery of the finished products.[24] While it may be argued that quality control extends to post-production phase -- proper packaging of the finished products -- no evidence was presented by the respondent to prove that these daily-paid checkers actually form part of the company's Quality Control Staff who as such "were exposed to sensitive, vital and confidential information about [company's] products" or "have knowledge of mixtures of the products, their defects, and even their formulas" which are considered 'trade secrets'. Such allegations of respondent must be supported by evidence.[25]

Consequently, we hold that the twenty (20) checkers may not be considered confidential employees under the category of Quality Control Staff who were expressly excluded from the CBA of the rank-and-file bargaining unit.

Confidential employees are defined as 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. The two (2) 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 employee and his supervisor, and the supervisor must handle the prescribed responsibilities relating to labor relations. 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." [26] There is no showing in this case that the secretaries/clerks and checkers assisted or acted in a confidential capacity to managerial employees and obtained confidential information relating to labor relations policies. And even assuming that they had exposure to internal business operations of the company, respondent claimed, this is not per se ground for their exclusion in the bargaining unit of the daily-paid rank-and-file employees.[27]

Not being confidential employees, the secretaries/clerks and checkers are not disqualified from membership in the Union of respondent's rank-and-file employees. Petitioner argues that respondent's act of unilaterally stopping the deduction of union dues from these employees constitutes unfair labor practice as it "restrained" the workers' exercise of their right to self-organization, as provided in Article 248 (a) of the Labor Code.

Unfair labor practice refers to "acts that violate the workers' right to organize." The prohibited acts are related to the workers' right to self organization and to the observance of a CBA. For a charge of unfair labor practice to prosper, it must be shown that ABI was motivated by ill will, "bad faith, or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy, and, of course, that social humiliation, wounded feelings or grave anxiety resulted x x x" [28] from ABI's act in discontinuing the union dues deduction from those employees it believed were excluded by the CBA. Considering that the herein dispute arose from a simple disagreement in the interpretation of the CBA provision on excluded employees from the bargaining unit, respondent cannot be said to have committed unfair labor practice that restrained its employees in the exercise of their right to self-organization, nor have thereby demonstrated an anti-union stance.

WHEREFORE, the petition is GRANTED. The Decision dated November 22, 2002 and Resolution dated January 28, 2004 of the Court of Appeals in CA-G.R. SP No. 55578 are hereby REVERSED and SET ASIDE. The checkers and secretaries/clerks of respondent company are hereby declared rank-and-file employees who are eligible to join the Union of the rank-and-file employees.

No costs.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Abad,* JJ., concur.

[*] Designated additional member per Special Order No. 843 dated May 17, 2010.

[1] CA rollo, pp. 190-201. Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino.

[2] Id. at 245-246.

[3] Id. at 27-40.

[4] Id. at 80-101.

[5] Rollo, pp. 103-124.

[6] Id. at 105.

[7] CA rollo, pp. 47-49, 61-63.

[8] Records, pp. 220-221.

[9] CA rollo, pp. 37-40.

[10] Id. at 200.

[11] Id. at 204-219.

[12] Id. at 245-246.

[13] Rollo, pp. 53, 59, 61.

[14] Metrolab Industries, Inc. v. Roldan-Confesor, G.R. No. 108855, February 28, 1996, 254 SCRA 182, 197.

[15] Bulletin Publishing Corporation v. Sanchez, No. L-74425, October 7, 1986, 144 SCRA 628, 635.

[16] Golden Farms, Inc. v. Ferrer-Calleja, G.R. No. 78755, July 19, 1989, 175 SCRA 471, 477.

[17] G.R. No. 88957, June 25, 1992, 210 SCRA 339.

[18] Id. at 347.

[19] G.R. No. 110854, February 13, 1995, 241 SCRA 294.

[20] Id. at 305.

[21] Metrolab Industries, Inc. v. Roldan-Confesor, supra note 14, at 196-197.

[22] CA rollo, pp. 62-63.

[23] Id. at 68-79.

[24] Id. at 64-67.

[25] See Standard Chartered Bank Employees Union (SCBEU-NUBE) v. Standard Chartered Bank, G.R. No. 161933, April 22, 2008, 552 SCRA 284, 293.

[26] San Miguel Corp. Supervisors and Exempt Employees Union v. Laguesma, G.R. No. 110399, August 15,

1997, 277 SCRA 370, 374-375, citing *Westinghouse Electric Corp. v. NLRB* (CA6) 398 F2d 669 (1968), *Ladish Co.*, 178 NLRB 90 (1969) and *B.F. Goodrich Co.*, 115 NLRB 722 (1956).

[27] *Id.* at 378.

[28] *Union of Filipino Employees-Drug, Food and Allied Industries Unions-Kilusang Mayo Uno v. Nestlé Philippines, Incorporated*, G.R. Nos. 158930-31 & 158944-45, March 3, 2008, 547 SCRA 323, 335, citing *San Miguel Corporation v. Del Rosario*, G.R. Nos. 168194 & 168603, December 13, 2005, 477 SCRA 604, 619.

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