

BULLETIN PUBLISHING CORPORATION, PETITIONER, VS. HON. AUGUSTO S. SANCHEZ, CRESENCIANO B. TRAJANO, PRIMITIVA C. BATERBONIA, ROLANDO G. OLALIA, ISIDRO S. MOLINA, EDUARDO C. MORALE...

G.R. No. 74425. October 07, 1986

Ponente: ALAMPAY, J.

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ALAMPAY, J.:

Petitioner Bulletin Publishing Corporation invokes the equity jurisdiction of this Court in this case for certiorari, prohibition, and for preliminary injunction, with a plea for the issuance of an ex-parte restraining order prohibiting private respondents from declaring a strike. The purpose of Petitioner is to prevent the private respondents, members of the Bulletin Publishing Corporation Supervisors Union (BSU), from staging a strike against the said publishing company.

Petitioner also prays that this Court declare null and void Registration Certificate No. 10547 issued by the Ministry of Labor and Employment to the aforestated Supervisors Union or BSU.

The crux of the dispute in the present case is whether or not supervisors in petitioner company may, for purposes of collective bargaining, form a union separate and distinct from the existing union organized by the rank-and-file employees of the same company.

Petitioner corporation has been engaged in the business of newspaper and magazine publishing for over half a century. Its current publications include the national daily "Bulletin Today," (now Manila Daily Bulletin), the tabloid "Tempo", and a weekly magazine called "Panorama". The total number of the personnel complement of the said firm (exclusive of the editorial staff, contract workers and casuals, etc.), constituting the rank-and file regular members, is said to be over three hundred persons. The supervisory employees number forty-eight. About three hundred employees belonging to the rank-and-file had previously formed the Bulletin Employees Union. This labor organization (BEU) presently administers their current Collective Bargaining Agreement which began on July 15, 1984 and remain effective up to July 15, 1987. Ever since, there has been only one bargaining unit in the petitioner company and this is the BEU - the union of the rank-and-file employees. Supervisory employees were never included in said bargaining unit nor had they ever sought inclusion in the said BEU labor union, much less registered any protest or challenge to their non-inclusion therein.

On March 12, 1986, 25 out of 48 supervisors in the Bulletin Publishing Corporation formed a labor union and adopted a charter therefor, calling themselves members of the "Bulletin Publishing Corporation Supervisors Union" or BSU. A petition for registration of BSU was filed with the Ministry of Labor and Employment. On March 26, 1986, Registration Certificate No. 10547-LC was issued. On March 31, 1986, a letter was sent to the management of petitioner corporation by BSU, giving notice of the registration of the BSU and demanding its recognition as the sole bargaining agent of all the supervisors in the company. BSU supervisors union, is, at present, an affiliate of the National Federation of Labor Unions (NAFLU) and the Kilusang Mayo Uno (KMU).

BSU is alleged to be supported in its strike move by the said groups. (Petition, p. 13, Rollo, p. 10).

On April 8, 1986, a petition for direct certification was filed by the BSU as the bargaining representative of the supervisors. On April 12, 1986, a notice of strike by BSU was filed with the Ministry of Labor due to certain acts allegedly performed by petitioner which BSU claims, in effect, to be union busting and unfair labor practices. Refusing to recognize the BSU, the Bulletin Publishing Corporation filed a petition dated April 25, 1986, seeking cancellation of the registration of the BSU on the ground that Article 246 of the Labor Code and Section 11 of Rule II, Book V of the Implementing Rules thereof, prohibit supervisors from forming labor organizations.

As the supervisors threatened to strike on May 12, 1986, following the expiration of the fifteen-day cooling-off period, petitioner was prompted to file a petition with the Ministry of Labor, urging therein that said office assume jurisdiction in the matter of the impending strike. When the Minister of Labor failed to exercise his jurisdiction or act on the matter, petitioner then felt that the remedy it seeks should be sought from this Court because, further resort to the Ministry of Labor may be construed as a tacit recognition by petitioner of the supervisors union (BSU) which would be inconsistent with petitioner's challenge to the assertion of BSU to exist as a legitimate labor union.

Petitioner invokes the equity jurisdiction of this Court, claiming that a strike by the BSU which it considers a bogus union and whose registration and operation is challenged as against public policy and legal prohibitions, will cause untold harm on herein petitioner which is engaged in publishing daily periodicals.

In accordance with our Resolution dated May 12, 1986, a hearing of petitioner's motion for preliminary injunction was scheduled for May 14, 1986, with a temporary restraining order being then issued. This Court enjoined the private respondents from proceeding with their contemplated strike. Respondents were likewise required to comment on the petition. The corresponding separate Comment of the public and private respondents were later timely submitted to the Court.

Considering the allegations contained in the petition, the issues raised, and the arguments adduced by the parties, the Court resolves to give due course to the petition, and to consider the separate Comment of both private and public respondents as their Answer to the petition.

In the light of the factual background of this case, We are constrained to hold that the supervisory employees of petitioner firm may not, under the law, form a supervisors union, separate and distinct from the existing bargaining unit (BEU), composed of the rank-and-file employees of the Bulletin Publishing Corporation. It is evident that most of the private respondents are considered managerial employees. Also, it is distinctly stated in Section 11, Rule II, of the Omnibus Rules Implementing the Labor Code, that supervisory unions are presently no longer recognized nor allowed to exist and operate as such.

Article 246 of the Labor Code explicitly excludes managerial employees from the right of self-organization, the right to form, join and assist labor organizations. A perusal of the job descriptions corresponding to the private respondents as outlined in the petition, clearly reveals the private respondents to be managers, purchasing officer, personnel officers, property officers, supervisors, cashiers, heads of various sections and the like. The nature of their duties give rise to the irresistible conclusion that most of the herein private respondents are performing managerial functions (Petition, pp. 5-6; Rollo, pp. 6-7). Their responsibilities inherently require the exercise of discretion and independent judgment as supervisors. They possess the power and authority to lay down or exercise management policies. Managerial employees are those 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, or to effectively recommend such managerial actions. All employees not falling within this definition are considered rank-and-file employees (Article 212(k), Labor Code). We further find very plainly stressed in

Section 11, Rule II, Book V of the Omnibus Rules implementing the same Labor Code, that "All existing supervisory unions and unions of security guards shall, upon the effectivity of the Code, cease to operate as such and their registration certificates shall be deemed automatically cancelled. xxx. Members of supervisory unions who do not fall within the definition of managerial employees shall become eligible to join or assist the rank-and-file labor organization, and if none exists, to form or assist in the forming of such rank-and-file organization." (Underlining supplied).

It is, therefore, evident that while mention is made of supervisors unions with reference to those existing before the enactment of the labor Code, greater significance must attach to the fact that under the present Labor Code all these supervisory unions should, after the effectivity of the Labor Code on January 1, 1975, cease to operate and that the registration certificate of any such supervisors union should even be deemed to be automatically cancelled. It is also clear that such of those supervisory employees who do not assure any managerial function may join or assist an existing rank-and-file union or if none exists, to join or assist in the formation of such rank-and-file organization.

It follows as a logical conclusion that the members of the Bulletin Supervisory Union, wholly composed of supervisors employed by petitioner corporation, are not QUALIFIED to organize a Labor Union of their own. Aside from this reason, is the fact that there is already an existing legitimate labor union, the BEU, which enjoys a current collective bargaining agreement with the petitioner publishing company.

What is pointed out under the law, is that employees who discharge managerial functions, as well as the supervisory employees who do not yet fall within the definition of managerial employees, are prohibited from organizing themselves into a labor union constituted for the purpose of acting as a collective bargaining unit. To sanction the recognition of the Supervisors Union of private respondents, which paradoxically or inadvertently received a registration certificate from the Ministry of Labor, would be for this Court to accept and tolerate a manifest violation of the Labor Code. 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.

"The submission of the private respondents that they do not actually perform duties which are managerial in character is untenable. Firstly, the status of respondents as "managerial employees" is readily reflected by their long years of acquiescence to their exclusion: (a) from the rank-and-file unit of employees and from membership in the Bulletin Publishing Corporation Employees Union; and (b) from their coverage in the current and past Collective Bargaining Agreements."

"Acquiescence by private respondents to a classification and situation far different from the rank-and-file employees for a long and unceasing period of time obviously indicates that their exclusion from the rank-and-file union was upon their awareness that their duties place them in a category different from those to which the rank-and-file employees pertain." It is significant that only 25 of the 48 employees who are said to be managers and/or supervisors, belatedly insist in forming a new and separate union.

Petitioner surmises that the motivation behind this belated move is possibly because private respondents herein are apprehensive that they might be adversely affected by policies which the new management of petitioner corporation introduced to streamline its business operation and eliminates weaknesses in the corporate structure affecting revenue and profitability. Understandably, the purpose behind the formation of the Union would be to gain leverage to pressure Management to desist from the contemplated measures.

Private respondents are incorrect when they manifest in their cement to the petition that they "could be

appropriately classified as supervisory employees and, therefore, are eligible to organize their own union but are ineligible to join the union of their subordinates", citing *Adamson and Adamson versus CIR*, L-35120, January 31, 1984, 127 SCRA 268 (Private Respondents' Comment to the Petition, p. 2, dated May 23, 1986, Rollo, p. 83).

The reference made by private respondents to said case of *Adamson and Adamson versus CIR* (supra), and the pronouncements made therein that "supervisory employees of an employer cannot join any labor organization of employees under their supervision but may validly form a separate organization of their own" no longer can be invoked for the benefit of private respondents. As aptly countered by the petitioner in its manifestation dated June 2, 1986, submitted through its counsel:

"2. *Adamson & Adamson vs. CIR*, 127 SCRA 268. In quoting from this decision of this Honorable Court, private respondents intentionally deleted the phrase "under the Industrial Peace Act" obviously to mislead this Honorable Court into believing that up to now supervisors still have the right to form unions. This right has been disallowed, disauthorized and discontinued under Article 246 of the New Labor Code and Section 11, Rule II, Book Five of the Implementing Rules." (Rollo, p. 106)

Indeed, the Industrial Peace Act or Republic Act 875, referred to in said *Adamson, et al. vs. CIR* case, became effective on January 17, 1953. It has, however, been superseded and supplanted by the present Labor Code which took effect on January 1, 1975. What should be applied now are the specific provisions of the Omnibus Rules Implementing the Labor Code which have been already above-quoted (supra). In fact, no less than the public respondents herein, represented by the present Solicitor General, in this regard, even state in their Comment to the Petition, the following:

"The only issue determinative of the present controversy is whether or not the supervisors in petitioner company may form a union for purposes of collective bargaining separate and distinct from that of the rank-and-file unit.

"It is our submission that they may not. The New Labor Code recognizes two principal groups of employees, namely, managerial and the rank-and-file group. Thus, Art. 212 (k) provides:

'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, or to effectively recommend such managerial actions. All employees not falling within this definition are considered rank and file employees for purposes of this Book.' (underscoring ours)

"In amplification of the aforequoted provisions of the law, Sec. 11 of Rule II, Book V of the Omnibus Rules Implementing the Labor Code did away with existing Supervisors Union, classifying the members thereof as neither manager or rank-and-file employees depending on the work they perform. If they discharge managerial functions they are prohibited from forming or joining any labor organization. If they do not perform managerial work, they may join or assist the rank-and-file union and, if none exists, they may form one such rank-and-file organization. From these, one can readily infer that the law no longer recognizes Supervisory Unions.

"A perusal of the job descriptions of private respondents as outlined in the petition shows that most of them do not perform managerial work. Hence, although not qualified to organize a labor union of their own, they may join the certified rank-and-file organization in the Company, which has a current collective bargaining agreement to expire on July 15, 1987.

"On the query of this Honorable Court regarding the new policy of the MOLE, if any, with respect to Supervisory Unions, the BLR Director in his reply letter dated May 21, 1986 to our letter of May 14, 1986 (copy of said letter is hereto attached as Annex "A") supports the view that, under the Labor Code and its implementing rules, supervisory unions cannot organize as a labor unit separate from that of the rank-and-file

organization. (underlining supplied)

However, he points out that on a number of occasions, the Bureau has allowed the registration of certain categories of non-managerial employees which include supervisors who are not performing managerial functions similar to that of the non-managerial members of the Bulletin Publishing Corporation Supervisors Union (BPCSU). At any rate, he states that "there is as yet no decree, executive order or issuance, whether draft or in force, which expressly modified the provision of the Labor Code on supervisory unions". (Rollo, pp. 89-91)

The foregoing discussion of public respondents will reflect and emphasize the lack of any legal basis of the assumption made by private respondents that they may organize a supervisory union of their own, distinct and separate from the existing union of the rank-and-file employees of the Bulletin Publishing Corporation.

In view of these premises, and considering the stand taken no less by respondent Director Cresenciano B. Trajano, in his aforesaid reply-letter to Assistant Solicitor General Amado D. Aquino, dated May 21, 1986 (Rollo, pp. 93-95), as disclosed to this Court, the petition for cancellation of Certificate No. 10547, issued on March 26, 1986 by the Ministry of Labor and Employment, said to be still pending in that office, ought therefore to be now acted upon thereat.

Finally, it is averred by petitioner that the resort to strike by private respondents is untimely and premature because of the pendency of a case with the Ministry of Labor docketed as NCR-LRD-4-166-88 which private respondents themselves filed and which is for direct certification of said supervisors union as the bargaining representative of the supervisors. This assertion of petitioner should be upheld. Article 265, paragraph 2 of the Labor Code expressly provides that "no strike or lock-out shall be declared xxx during the pendency of cases involving the same grounds for the strike or lock-out." (Underlining supplied).

Private respondents declare that the primary reasons which prompted their filing of a notice of strike on April 8, 1986, are the arbitrary and discriminatory retirement of four (4) members of the supervisors union effective April 17, 1986, namely: Jose B. Bernal, Ramiro A. Nebres, Alcantara S. de la Paz and Luis F. Garcia, who were among those who initiated the formation of their union; as well as the immediate promotion of some members of the union to executive positions in order to remove the said persons promoted from the coverage of, or membership from the supervisory union. Private respondents charge that these acts are tantamount to union busting tactics and constitute unfair labor practices that warrant a strike.

Furthermore, private respondents claim that petitioner does not have any definite policy governing the retirement of supervisory employees as distinguished from rank-and-file employees. Under the Collective Bargaining Agreement currently in effect, rank-and-file employees may be retired upon reaching 25 years of service or 60 years of age, at the management's option. It is claimed that this policy cannot or has never been applied to supervisors who are not members of the rank-and-file Bulletin Employees union.

We are not persuaded by private respondents' submissions. The main issues in this case are the legality of a supervisory union and the certificate of registration issued therefor, and the validity of a threatened strike by members of such union. The matter of the retirement of the four retirees is only an incident to the case. It may not be used to skirt the real question of the legality of the organization of a supervisors union. Parenthetically, it is said that three out of the retirees, Messrs. Garcia, de la Paz and Bernal collected their retirement benefits (Rollo, p. 65), rendering the alleged ill-motives behind their retirement untenable. This matter cannot be invoked by private respondents herein as an indication of union busting practice of petitioner, absent any showing of protest by the said retirees themselves.

Respondents make much ado that petitioner does not have a definite policy regarding the retirement of

supervisory employees. Petitioner has satisfactorily shown to this Court that it has been management policy to likewise apply the provisions of the Collective Bargaining Agreement (CBA) between petitioner and the rank-and-file union (BEU), also to supervisors. According to the uncontroverted submission of petitioner, the provisions of Section 4 in relation to Section 1 of Article X of the said CBA, have been repeatedly applied to supervisory personnel even if they are not included in the scope of the CBA. The pertinent provisions on retirement are as follows:

"Section 4. - The COMPANY, at its option retire an employee or worker who has rendered 25 years of service or who has reached the age of 60 years in his last birthday by paying him full benefits provided in Section 1 of this Article.

"Section 1. - Any employee in the active service of the COMPANY as of the date of signing of this Agreement whose service with the COMPANY is terminated for any reason other than those enumerated in Article 283 of Presidential Decree No. 442 as amended, shall be entitled to gratuity pay in an amount equivalent to one month's pay for every year of continuous service based on the salary as of the date of termination. Such gratuity shall not be in addition to, but shall be in lieu of, the termination pay benefits to which the employee or worker is entitled under the Labor Code of the Philippines, or any similar legislation, provided that if the benefits to which the employee or worker may be entitled under such statute are greater than that provided in the Article, the employee or worker shall receive the greater amount." (Underscoring ours).

The aforestated sections explicitly declare, in no uncertain terms, that retirement of an employee may be done upon initiative and option of the management. And where there are cases of voluntary retirement, the same is effective only upon the approval of management. The fact that there are some supervisory employees who have not yet been retired after 25 years with the company or have reached the age of sixty merely confirms that it is the singular prerogative of management, at its option to retire supervisors or rank-and-file members when it deems fit. There would be no unfair labor, practice committed by management if the retirement of private respondents were made in accord with the agreed option. That there were numerous instances wherein management exercised its option to retire employees pursuant to the aforementioned provisions, appears to be a fact which private respondents have not controverted. It seems only now when the question of the legality of a supervisors union has arisen that private respondents attempt to inject the dubious theory that the private respondents are entitled to form a union or go on strike because there is allegedly no retirement policy provided for their benefit. As above noted, this assertion does not appear to have any factual basis.

It is even more untenable for private respondents to suggest that the "sudden promotion" of the supervisors union members to executive positions was intended to remove them from the coverage of or from membership in the supervisory union. The promotion of employees to managerial or executive positions rests upon the discretion of management. Managerial positions are offices which can only be held by persons who have the trust of the corporation and its officers. It is the prerogative of management to promote any individual working within the company to a higher position. It should not be inhibited or prevented from doing so. A promotion which is manifestly beneficial to an employee should not give rise to a gratuitous speculation that such a promotion was made simply to deprive the union of the membership of the promoted employee, who after all appears to have accepted his promotion.

We find nothing improper in the promotions made by the petitioner company. These were but in implementation of petitioner's well-considered policy on retirement and promotions intended to improve the morale of lower and middle management ranks by promoting those specially deserving before they are eventually retired. This then would allow subsequent promotions of their replacements from lower ranks. As petitioner explains, these retirements and promotions were but in accord with a carefully studied and pre-established policy which had been implemented during the past years and unrelated to and without connection with the organization of private

respondents' Union, BSU.

In sum, where concerted activities are aimed at compelling an employer to ignore the clear mandate of the Labor Code, as in the instant case, grounds based on equity may be invoked from the courts in order to restrain the questioned activities. We cannot remain oblivious to the fact that a strike, as that contemplated by the supervisors union against petitioner can cause irreparable injury to its publications, diminish goodwill and seriously affect its continuity with its regular readers.

Trade unionism and strikes are legitimate weapons of labor granted by our statutes. But when these instruments are utilized by managerial/supervisory employees in violation of existing labor laws, the misuse of these tactics can be the subject of judicial intervention to forestall grave injury to a business enterprise.

WHEREFORE, the temporary restraining order issued by this Court, dated May 12, 1986, enjoining the private respondents from declaring or staging a strike against the petitioner herein, in all its forms, including walk-out, mass leave, or any kind of activity that will lead to a work stoppage, is hereby made permanent. The public respondents are also directed to act upon and resolve, at the earliest possible time and in the light of the discussion and pronouncements made by the Court in this case, the petition dated April 25, 1986, submitted by the petitioner herein for the cancellation of Bulletin Publishing Corporation Supervisors Union Registration Certificate No. 105-47-LC.

SO ORDERED.

Fernan, Narvasa, Gutierrez, Jr., and Paras, JJ., concur.

Feria, J., (Chairman), no part.

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