

**FRANKLIN BAKER COMPANY OF THE PHILIPPINES, PETITIONER, VS.
HONORABLE CRESENCIO B. TRAJANO, DIRECTOR OF BUREAU OF
LABOR RELATIONS, FRANKLIN BAKER BROTHERHOOD
ASSOCIATION (TECHNIC...**

G.R. No. 75039. January 28, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari seeking the annulment of: (a) the Order of Mediator-Arbiter Conchita J. Martinez of the Ministry of Labor and Employment, Davao City, dated September 17, 1984 in LRD Case No. R-22 MED-ROXI-UR-28-84 entitled "In Re: Petition for Certification Election Among the Office and Technical Employees of Franklin Baker Company of the Philippines, Davao Plant at Coronon, Sta. Cruz, Davao del Sur, Franklin Baker Company of the Philippines, Davao Plant, Employer, Franklin Baker Brotherhood Association (Technical and Office Employees)-Association of Trade Unions (ATU)", insofar as it includes the managerial employees (inspectors, foremen and supervisors) in the certification election; (b) the Order of April 7, 1986 of Director Cresencio B. Trajano, also of the MOLE, dismissing the appeal of aforesaid Order of September 17, 1985 for lack of merit; and (c) the Order of June 6, 1986 of said Director denying reconsideration of his Order of April 7, 1986 and affirming the same in toto (Rollo, p. 90).

In brief, the undisputed facts of this case are as follows:

On April 23, 1984, private respondent Franklin Baker Brotherhood Association-ATU filed a petition for certification election among the office and technical employees of petitioner company with the Ministry of Labor and Employment, Regional Office No. XI, Davao City, docketed as LRD No. R-22, MED-ROXI-UR-28-84. Among other things, it alleges that Franklin Baker Company of the Phils. Davao Plant, had in its employ approximately ninety (90) regular technical and office employees, which group is separate and distinct from the regular rank and file employees and is excluded from the coverage of existing Collective Bargaining Agreement.

Petitioner company did not object to the holding of such an election but manifested that out of the ninety (90) employees sought to be represented by the respondent union, seventy four (74) are managerial employees while two (2) others are confidential employees, hence, must be excluded from the certification election and from the bargaining unit that may result from such election (Rollo, p. 3).

Hearings were held and thereafter, the parties agreed to file their respective memoranda. Likewise, petitioner filed a reply to private respondent's Memorandum (Rollo, p. 4).

Subsequently, on September 17, 1984, Med-Arbiter Conchita J. Martinez issued an order, the dispositive part of which reads:

"Accordingly, the petition is hereby granted and a certification election among the office and technical employees of Franklin Baker Company of the Philippines, Davao Plant is ordered within twenty (20) days

from receipt hereof. The choices shall be the following:

- Franklin Baker Brotherhood Association-ATU

- No Union

The representation officer assigned shall call the parties for a pre-election conference at least five (5) days before the date of the election to thresh out the mechanics of the election, the finalization of the list of voters, the posting of notices and other relevant matters.

The company's latest payroll shall be the basis for determining the office and technical workers qualified to vote.

SO ORDERED." (Rollo, pp. 47-48).

From the aforequoted order petitioner Company appealed to the Bureau of Labor Relations, docketed as BLR Case No. A-228-84, praying that the appealed order be set aside and another be issued declaring the seventy four (74) inspectors, foreman and supervisors as managerial employees.

During the pendency of the appeal, sixty one (61) of the employees involved, filed a Motion to Withdraw the petition for certification election praying therein for their exclusion from the Bargaining Unit and for a categorical declaration that they are managerial employees, as they are performing managerial functions (Rollo, P. 4).

On April 7, 1986, public respondent Bureau of Labor Relations Cresencio B. Trajano issued a Resolution affirming th order dated September 17, 1984, the dispositive part of which reads:

"WHEREFORE, the appealed Order dated September 17, 1985 is hereby affirmed and the appeal dismissed for lack of merit. Let the certification election among the office and technical employees of Franklin Baker Company of the Philippines proceed without delay.

"The latest payrolls of the company shall be used as basis of determining the list of eligible voters." (Rollo, p. 77).

Petitioner company sought the reconsideration of the aforequoted resolution but its motion was denied by Director Cresencio B. Trajano in his order dated June 6, 1986, the dispositive part of which reads:

"WHEREFORE, the appeal of respondent company is, dismissed for lack of merit and the Bureau's Resolution dated April 1986 affirmed in toto.

"Let, therefore, the pertinent papers of this case be immediately forwarded to the Office of origin for the conduct of the certification election." (Rollo, p. 90).

Hence, this petition.

In the resolution of July 30, 1986, the Second Division of this Court without giving due course to the petition required the respondents to file their Comment (Rollo,p. 91). On August 28, 1986, public respondent filed its comment (Rollo, pp. 99 to 102). Likewise private respondent filed its comment on September 5, 1986 (Rollo, pp. 104 to 107).

In the resolution of September 8, 1986, petitioner was required to file its reply to public respondent's comment (Rollo, p. 119) which reply was filed on September 18, 1986 (Rollo, pp. 122-127).

On October 20, 1986, this Court resolved to give due course to the petition and required the parties to file their respective Memoranda (Rollo, p. 133). In compliance with said resolution, petitioner and private respondent filed

their Memoranda on December 8, 1986 and December 29, 1986, respectively (Rollo, pp. 183-187). On the other hand, public respondent filed with this Court a manifestation (Rollo, p. 153) to the effect that it is adopting as its memorandum its comment dated August 18, 1986 (Rollo, p. 99) which manifestation was noted by this Court in its resolution dated November 26, 1986 (Rollo, p. 155).

The lone assignment of error raised by petitioner states:

"Public respondent acted with grave abuse of discretion amounting to lack of jurisdiction when he ruled that the 76 employees subject of this petition are not managerial employees (inspectors, foremen, supervisors and the like) and therefore, may participate in the certification election among the office and technical employees. Such ruling is contrary to jurisprudence and to the factual evidence presented by petitioner which was not rebutted by private respondent union and is therefore patently baseless."

From this assigned error two questions are raised by petitioner, namely: (1) whether or not subject employees are managerial employees under the purview of the Labor Code and its Implementing Rules; and (2) whether the Director of the Bureau of Labor Relations acted with abuse of discretion in affirming the order of Mediator-Arbitrator Conchita J. Martinez.

There is no question that there are in the DAVAO Plant of petitioner company approximately 90 regular technical and office employees which form a unit, separate and distinct from the regular rank and file employees and are excluded from the coverage of existing Collective Bargaining Agreement; that said group of employees organized themselves as Franklin Baker Brotherhood Association (technical and office employees) and affiliated with the local chapter of the Association of Trade Unions (ATU), a legitimate labor organization with Registration Permit No. 8745 (Fed) LC and with office located at the 3rd Floor of Antwell Bldg., Sta. Ana, Davao City; that this group filed a Petition for Certification Election with the Ministry of Labor and Employment, Regional Office No. XI, Davao City; that petitioner company did not object to the holding of such certification, but only sought the exclusion of inspectors, foremen and supervisors, members of Franklin Baker Brotherhood Association (technical and office employees) numbering 76 from the certification election on the ground that they are managerial employees.

A managerial employee is defined as 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". (Reynolds Phil. Corp. v. Eslava, 137 SCRA [1985], citing Section 212 (K), Labor Code.

Also pertinent thereto is Section 1 (M) of the Implementing Rules and Regulations, which is practically a restatement of the above provision of law.

To sustain its posture, that the inspectors, foremen and supervisors numbering 76 are managerial employees, petitioner painstakingly demonstrates that subject employees indeed participate in the formulation and execution of company policies and regulations as to the conduct of work in the plant, exercised the power to hire, suspend or dismiss subordinate employees and effectively recommend such action, by citing concrete cases, among which are: (1) Mr. Ponciano Viola, a wet process inspector, who while in the performance of his duty, found Mr. Enrique Asuncion, a trimmer "forging", falsifying and simulating a company time card (timesheet) resulting in payroll padding, immediately recommended the dismissal of said erring employee, resulting in the latter's discharge. (Employer's Memo, Rollo, p. 18); (2) Mr. Manuel Alipio, an opening inspector, recommended for suspension Nut Operator Ephraim Dumayos, who was caught in the act of surreptitiously transferring to a co-worker's bin some whole nuts which act constitute a violation of company policy; (3) Mr. Sofronio Abangan, a line inspector, censured and thereafter recommended the suspension of Mr. Romeo Fullante, for being remiss in

the proper and accurate counting of nuts; (4) Binleader Dionisio Agtang was required to explain his inefficiency of Mr. Saturnino Bangkas, Bin Loading Inspector; (5) for disobeying the orders of Bin Loading Inspector Mauricio Lumanog's order, Macario Mante, Eduardo Adaptor, Rodolfo Irene and George Rellanos were all recommended for suspension which culminated in an investigation conducted by Lumanog's higher bosses (Ibid., p. 20).

It has also been shown that subject employees have the power to hire, as evidenced by the hiring of Rolando Asis, Roy Layson, Arcadio Gaudicos and Felix Arciaga, upon the recommendation of Opening Inspector Serafin Suelo, Processing Inspector Leonardo Velez and Laureano C. Lim, Opening Inspector (Ibid., p. 21).

It will be noted, however, that in the performance of their duties and functions and in the exercise of their recommendatory powers, subject employees may only recommend, as the ultimate power to hire, fire or suspend as the case may be, rests upon the plant personnel manager.

The test of "supervisory" or "managerial status" depends on whether a person possesses authority to act in the interest of his employer in the matter specified in Article 212 (k) of the Labor Code and Section 1 (m) of its Implementing Rules and whether such authority is not merely routinary or clerical in nature, but requires the use of independent judgment. Thus, where such recommendatory powers as in the case at bar, are subject to evaluation, review and final action by the department heads and other higher executives of the company, the same, although present, are not effective and not an exercise of independent judgment as required by law (National Warehousing Corp. v. CIR, 7 SCRA 602-603 [1963]).

Furthermore, in line with the ruling of this Court, subject employees are not managerial employees because as borne by the records, they do not participate in policy making but are given ready policies to execute and standard practices to observe, thus having little freedom of action (National Waterworks and Sewerage Authority v. NWSA Consolidated, L-18938, 11 SCRA 766 [1964]).

Petitioner's contention that the Director of the Bureau of Labor Relations acted with abuse of discretion amounting to lack of jurisdiction in holding that the 76 employees are not managerial employees and must be included in the certification election has no basis in fact and in law. Neither is its contention that the use of the words "and/or" categorically shows that performance of the functions enumerated in the law qualifies an employee as a managerial employee.

It is well settled that the findings of fact of the Ministry of Labor and National Labor Relations Commission are entitled to great respect, unless the findings of fact and the conclusions made therefrom, are not supported by substantial evidence, or when there is grave abuse of discretion committed by said public official (Kapisanan ng Manggagawa sa Camara Shoes, et al. v. Camara Shoes, 2nd Heirs of Santos Camara, et al., 111 SCRA 477 [1982]; International Hardwood and Veneer Co. of the Philippines v. Leonardo, 117 SCRA 967 [1982]; Pan-Phil-Life, Inc. v. NLRC, 114 SCRA 866 [1982]; Pepsi-Cola Labor Union-BF LU-TUPAS Local Chapter N-896 v. NLRC, 114 SCRA 930 [1982]; Egyptair v. NLRC, 148 SCRA 125 [1987]; RJL Martinez Fishing Corp. v. NLRC, G.R. Nos. 63550-51, 127 SCRA 455 [1984]; and Reyes v. Phil. Duplicators, G.R. No. 54996, 109 SCRA 489 [1981]).

By "grave abuse of discretion" is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law (G.R. No. 59880, George Arguelles [Hda. Emma Arguelles v. Romeo Yang, etc.], September 11, 1987).

Moreover, this Court has ruled that findings of administrative agencies which have acquired expertise, like the Labor Ministry, are accorded respect and finality (*Special Events and Central Shipping Office Workers Union v. San Miguel Corp.*, 122 SCRA 557 [1983] and that the remedy of certiorari does not lie in the absence of any showing of abuse or misuse of power properly vested in the Ministry of Labor and Employment (*Buiser v. Leogardo, Jr.*, 131 SCRA 151 [1984]).

After a careful review of the records, no plausible reason could be found to disturb the findings of fact and the conclusions of law of the Ministry of Labor.

Even if We regard the employees concerned as "managerial employees", they can still join the union of the rank and file employees. They cannot however form their own exclusive union as "managerial employees" (*Bulletin Publishing Corporation v. Sanchez*, 144 SCRA 628).

PREMISES CONSIDERED, the petition is DISMISSED, and the assailed resolution and orders are AFFIRMED.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz and Gancayco, JJ., concur.

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