KNITJOY MANUFACTURING, INC., PETITIONER, VS. PURA FERRER-CALLEJA, DIRECTOR OF BUREAU OF LABOR RELATIONS, AND KNITJOY MONTHLY EMPLOYEES UNION, RESPONDENTS.

G.R. No. 81883. September 23, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

These petitions have a common origin and raise identical issues. They were ordered consolidated on 23 November 1988.

In G.R. No. 81883, the 1 December 1987 Decision of respondent Director of the Bureau of Labor Relations in BLR Case No. A-10-315-87, which reversed the Order of Med-Arbiter?Designate Rolando S. dela Cruz dated 4 September 1987 and ordered the holding of a certification election among the regular rank?and-file monthly-paid employees of Knitjoy Manufacturing, Inc. (KNITJOY), is assailed by the latter.

The Med-Arbiter's order dismissed the petition of private respondent Knitjoy Monthly Employees Union (KMEU) for such certification election and directed the parties "to work out (sic) towards the formation of a single union in the company."

The antecedent material operative facts in these petitions are as follows:

Petitioner KNITJOY had a collective bargaining agreement (CBA) with the Federation of Filipino Workers (FFW). The bargaining unit covered only the regular rank-and-file employees of KNITJOY paid on a daily or piece-rate basis. It did not include regular rank-and-file office and production employees paid on a monthly basis. The CBA expired on 15 June 1987. Prior to its expiration, the FFW was split into two (2) factions -? the Johnny Tan and the Aranzamendez factions. The latter eventually became the Confederation of Filipino Workers (CFW), herein petitioner in G.R. No. 82111.

Also prior to the expiration of the CBA, the Trade Union of the Philippines and Allied Services (TUPAS) filed a petition for the holding of a certification election among KNITJOY's regular rank-and-file employees paid on a daily and piece-rate basis. Excluded were the regular rank-and-file employees paid on a monthly basis. In the certification election conducted on 10 June 1987, CFW emerged as the winner; thereafter, negotiations for a new CBA between CFW and KNITJOY commenced.

On 24 June 1987, during the pendency of the said negotiations, private respondent KMEU filed a petition for certification election among KNITJOY's regular rank-and-file monthly–paid employees with Regional Office No. IV of the Department of Labor and Employment (DOLE) which docketed the same as R-04-OD-M-6-75-87. The Knitjoy Monthly Employees Association and Confederation of Citizens Labor Union (KMEA-CCLU), another union existing in the said company, and petitioner CFW intervened therein.

The petition was dismissed in the Order of 4 September 1987 of Med-Arbiter Rolando S. de la Cruz, the dispositive portion of which reads:

> "WHEREFORE, premises considered, the petition is hereby Dismissed, but the parties are instructed to work out (sic) towards the formation of a single union in the company."[1]

KMEU filed a motion to reconsider this order, which was treated as an appeal by the Bureau of Labor Relations (BLR).

On 1 December 1987, public respondent Pura Ferrer-Calleja, Director of the BLR, handed down a Decision[2] reversing the order of Med-Arbiter de la Cruz. The dispositive portion of the Decision reads:

> "WHEREFORE, premises considered, the Appeal of Knitjoy Monthly Employees is hereby granted subject to the exclusion of the monthly paid employees who are deemed managerial.
>
> Let, therefore, the certification election proceed without delay, with the following as choices:
>
> 1. Knitjoy Monthly Employees Union (KMEU); and
>
> 2. No Union.
>
> The company's latest payroll shall be the basis in determining the list of eligible voters.
>
> SO ORDERED."

Respondent Director brushed aside KNITJOY's arguments that the monthly-paid employees have the same working incentives as their counterparts, the daily-paid workers; that the existing collective bargaining agent (CFW) is willing to include the monthly-paid employees; and that out of the 212 monthly-paid employees, 116 qualify as managerial employees while the rest who are holding confidential or technical positions should likewise be excluded. In finding for KMEU, said Director declared that:

> "As pointed out by the Supreme Court in the similar case of General Rubber and Footwear Corporation vs. Bureau of Labor Relations, et al., G.R. No. 74262, it is perhaps unusual for management to have to deal with two (2) collective bargaining unions but there is no one to blame except management for creating the situation it is in. From the beginning of the existence of the CBA, management had sought to indiscriminately suppress the members of the petitioners' right (sic) to self-organization. Respondents' argument that the incumbent collective bargaining agent is willing to accommodate herein petitioner is of no moment since the option now rests upon the petitioner as to whether or not they desire to join the existing collective bargaining agent or remain as separate (sic) union."[3]

KNITJOY and CFW separately moved to reconsider the said decision alleging, as principal underpinning therefor, the conclusion and signing between them, allegedly on 27 November 1987 -- before the rendition of the challenged decision -- of a CBA which includes in its coverage the monthly-paid rank-and--file employees. It is averred that said CBA has rendered the case moot and academic; moreover, to remove the monthly-paid employees from their present bargaining unit would lead to the fragmentation thereof, contrary to existing labor policies favoring larger units.

In her Decision of 8 February 1988, respondent Director denied for lack of merit the motion for reconsideration on the principal ground that although the monthly-paid rank-and-file employees were allegedly included within the scope of the new CBA, they are not barred from forming a separate bargaining unit considering that: (a) since the petition for certification election was filed as early as 24 June 1987, there already existed a pending representation issue when KNITJOY and CFW commenced negotiations for a new CBA; nevertheless, KMEU was not brought into the said negotiations and was therefore not a privy to the CBA; (b) members of KMEU did not participate in the ratification of the CBA; contrary to KNITJOY's claim that the same was unanimously ratified by the members of the bargaining unit, the CBA failed to mention even one monthly-paid employee who

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participated in the ratification process; and (c) while it is true that the policy of the DOLE is to favor a one company-one union scenario which finds basis in Section 2, Rule V, Book V of the Rules Implementing the Labor Code, there are, nonetheless, some exceptions thereto, as where the bargaining history requires the formation of another bargaining unit. Besides, such a policy must yield to an employee's Constitutional right to form unions which includes the freedom to join a union of one's choice.[4]

The new CBA, which KMEU claims to have been signed on 12 December 1987, and not on 27 November 1987 as both KNITJOY and CFW boldly assert, defines the bargaining unit covered as follows:

> "SEC. 2. The bargaining unit covered by this Agreement consists of all regular and permanent rank-and-file employees of the COMPANY employed in its production plants and paid on a daily or piece-rate basis and regular, rank-and-file monthly paid office employees, excluding managerial, supervisory, casual, temporary and probationary employees, and security guards."[5]

Unfazed by their defeat before the BLR, KNITJOY and CFW separately filed the instant petitions. The former imputes upon respondent Director grave abuse of discretion in holding that (a) the scope of the bargaining unit agreed upon in the new CBA does not bind KMEU because it is not a party thereto, (b) the acceptance by all the members of KMEU of all benefits of the CBA did not constitute an overt act of ratification and (c) the CBA was concluded on 12 December 1987 and not on 27 November 1987. It further contends that respondent Director contumaciously violated the one company-one union policy of the Labor Code and disregarded the ruling of this Court in Bulletin Publishing Corp. vs. Hon. Sanchez,[6] reiterated in part in General Rubber and Footwear Corp. vs. Bureau of Labor Relations.[7] Upon the other hand, CFW contends that respondent Director committed grave abuse of discretion in (a) allowing the creation of a unit separate from the existing bargaining unit defined in the new CBA thus abetting the proliferation of unions, (b) disregarding the CBA provisions which consider the CFW as the sole and exclusive bargaining agent of all rank-and-file employees and (c) excluding CFW from the choices of unions to be voted upon.[8]

On 24 August 1988,[9] this Court gave due course to the petition in G.R. No. 81883 after both the public and private respondents filed their separate comments and the petitioner filed its consolidated reply thereto.[10]

On 23 November 1988, G.R. No. 82111 was consolidated with G.R. No. 81883 and the petitioner in the former was ordered to file a consolidated reply to the separate comments of both respondents.[11]

The principal issues raised in these petitions are:

> 1. Whether or not petitioner KNITJOY'S monthly-paid regular rank-and-file employees can constitute an appropriate bargaining unit separate and distinct from the existing unit composed of daily or piece-rate paid regular rank-and-file employees, and
>
> 2. Whether or not the inclusion in the coverage of the new CBA between KNITJOY and CFW of the monthly-paid rank-and-file employees bars the holding of a certification election among the said monthly paid employees.

We decide for the respondents.

1. The suggested bias of the Labor Code in favor of the one company-one union policy, anchored on the greater mutual benefits which the parties could derive, especially in the case of employees whose bargaining strength could undeniably be enhanced by their unity and solidarity but diminished by their disunity, division and dissension, is not without exceptions.

The present Article 245 of the Labor Code expressly allows supervisory employees who are not performing managerial functions to join, assist or form their separate union but bars them from membership in a labor

organization of the rank-and-file employees. It reads:

> "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."

This provision obviously allows more than one union in a company.

Even Section 2(c), Rule V, Book V of the Implementing Rules and Regulations of the Labor Code, which seeks to implement the policy, also recognizes exceptions. It reads:

> "SEC. 2. Who may file. -- Any legitimate labor organization or the employer, when requested to bargain collectively, may file the petition.
>
> The petition, when filed by a legitimate labor organization shall contain, among others:

x x x

(c) description of the bargaining unit which shall be the employer unit unless circumstances otherwise require; x x x." (Emphasis supplied)

The usual exception, of course, is where the employer unit has to give way to the other units like the craft unit, plant unit, or a subdivision thereof; the recognition of these exceptions takes into account the policy to assure employees of the fullest freedom in exercising their rights.[12] Otherwise stated, the one company-one union policy must yield to the right of the employees to form unions or associations for purposes not contrary to law, to self-organization and to enter into collective bargaining negotiations, among others, which the Constitution guarantees.[13]

The right to form a union or association or to self?organization comprehends two (2) broad notions, to wit: (a) the liberty or freedom, i.e., the absence of restraint which guarantees that the employee may act for himself without being prevented by law, and (b) the power, by virtue of which an employee may, as he pleases, join or refrain from joining an association. In Victoriano vs. Elizalde Rope Workers' Union,[14] this Court stated:

> "x x x Notwithstanding the different theories propounded by the different schools of jurisprudence regarding the nature and contents of a 'right', it can be safely said that whatever theory one subscribes to, a right comprehends at least two broad notions, namely: first, liberty or freedom, i.e., the absence of legal restraint, whereby an employee may act for himself without being prevented by law; and second, power, whereby an employee may, as he pleases, join or refrain from joining an association. It is, therefore, the employee who should decide for himself whether he should join or not an association; and should he choose to join, he himself makes up his mind as to which association he would join; and even after he has joined, he still retains the liberty and the power to leave and cancel his membership with said organization at any time [Pagkakaisa Samahang Manggagawa ng San Miguel Brewery vs. Enriquez, et al., 108 Phil., 1010, 1019]. It is clear, therefore, that the right to join a union includes the right to abstain from joining any union [Abo, et al. vs. PHILAME (KG) Employees Union, et al., L-19912, January 30, 1965, 13 SCRA 120, 123, quoting Rothenberg, Labor Relations]. Inasmuch as what both the Constitution and the Industrial Peace Act have recognized, and guaranteed to the employee, is the 'right' to join associations of his choice, it would be absurd to say that the law also imposes, in the same breath, upon the employee the duty to join associations. The law does not enjoin an employee to sign up with any association."

Furthermore, it is not denied that in the bargaining history of KNITJOY, the CBA has been consistently limited to the regular rank-and-file employees paid on a daily or piece-rate basis. On the other hand, the rank-and-file employees paid on a monthly basis were never included within its scope. Respondent KMEU's membership is

limited to the latter class of employees; KMEU does not seek to dislodge CFW as the exclusive bargaining representative for the former. The records further disclose that in the certification solicited by TUPAS and during the elections which followed thereafter, resulting in the certification of CFW as the exclusive bargaining representative, the monthly-paid employees were expressly excluded. Thus, the negotiations between CFW and KNITJOY following such a certification could only logically refer to the rank-and-file employees paid on a daily or piece-rate basis. Clearly therefore, KNITJOY and CFW recognize that insofar as the monthly-paid employees are concerned, the latter's constituting a separate bargaining unit with the appropriate union as sole bargaining representative, can neither be prevented nor avoided without infringing on these employees' rights to form a union and to enter into collective bargaining negotiations. Stated differently, KNITJOY and CFW recognize the fact that the existing bargaining unit in the former is not -- -and has never been -- the employer unit. Given this historical and factual setting, KMEU had the unquestioned and undisputed right to seek certification as the exclusive bargaining representative for the monthly-paid rank-and-file employees; both KNITJOY and CFW cannot block the same on the basis of this Court's declaration in Bulletin Publishing Corp. vs. Hon. Sanchez[15] and General Rubber and Footwear Corp. vs. Bureau of Labor Relations[16] regarding the one company-one union concept. Petitioners have obviously misread these cases. In the first, We stated that "[t]he crux of the dispute x x x is whether or not supervisors in petitioner company therein 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,"[17] and ruled that the members of the Bulletin Supervisory Union, wholly composed of supervisors, are not qualified to form a union of their own under the law and rules then existing, considering that "[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 officers, personnel officers, property officers, supervisors, cashiers, heads of various sections and the like. The nature of their duties gives rise to the irresistible conclusion that most of the herein private respondents are performing managerial functions;"[18] hence, under Article 246[19] of the Labor Code, they cannot form, join and assist labor organizations. It should be stressed that the statement therein that supervisors "who do not assume 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"[20] is no longer legally feasible under existing laws. As earlier noted, the present Article 245 of the Labor Code allows supervisory employees who are not exercising managerial functions to join, assist or form separate labor organizations of their own but prohibits them from joining a labor organization composed of the rank-and-file employees.

The second case, on the other hand, demolishes the stand of KNITJOY and CFW for, as correctly contended by the respondents, it in fact recognizes an exception to the one company-one union concept. Thus:

> "Perhaps it is unusual for the petitioner to have to deal with two (2) collective bargaining unions but there is no one to blame except petitioner itself for creating the situation it is in. From the beginning of the existence in 1963 of a bargaining unit for the employees up to the present, petitioner had sought to indiscriminately suppress the members of the private respondent's right (sic) to self-organization provided for by law. Petitioner, in justification of its action, maintained that the exclusion of the members of the private respondent from the bargaining union of the rank-and-file or from forming their own union was agreed upon by petitioner corporation with the previous bargaining representatives x x x. Such posture has no leg to stand on. It has not been shown that private respondent was privy to this agreement. And even if it were so, it can never bind subsequent federations and unions particularly private respondent-union because it is a curtailment of the right to self-organization guaranteed by the labor laws. However, to prevent any difficulty and to avoid confusion to all concerned and, more importantly, to fulfill the policy of the New Labor Code as well as to be consistent with Our ruling in the Bulletin case, supra, the monthly-paid rank-and-file employees should be allowed to join the union of the daily-paid--rank-and-file employees of petitioner so that they can also avail of the CBA benefits or to form their own rank-and-file union, without prejudice to the certification election that has been ordered."[21] (Emphasis supplied)

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2. Regardless of the date when the new CBA was executed --- whether on 27 November 1987 as contended by KNITJOY and CFW or 12 December 1987 as claimed by the respondents -- the fact remains that it was executed before the resolution of KMEU's petition for certification election among the monthly paid employees became final. This Court, however, sustains the respondents' claim for indeed if it was executed by the parties on 27 November 1987, both KNITJOY and CFW would have immediately filed the appropriate pleading with the BLR informing it of such execution and moving for the dismissal of the appeal on the ground that it has been rendered moot and academic. Moreover, public respondent's finding on this point is supported by substantial evidence, thus:

> "The parties could not have signed the said CBA on 27 November 1987, contrary to their allegation, because from 4:00 - 10:00 p.m. on the same day, 27 November 1987, the parties still attended a conciliation conference before Assistant Director Maximo L. Lim of the NCR (see Annex "F" of respondent's Supplemental Motion for Reconsideration) and agreed in principle on nine (9) items or provisions to be included in said CBA. Said minutes do not state that these nine items are the remaining unresolved issues in the negotiation of the CBA."[22]

It was only in their motion for the reconsideration of public respondent's decision of 1 December 1987 that the existence of the new CBA was made known.

Considering that (a) the TUPAS solicited certification election was strictly confined to the rank-and-file employees who are paid on a daily or piece-rate basis, (b) the results of the election must also necessarily confine the certified union's representation to the group it represents and (c) the issue of the plight of the monthly-paid employees was still pending, KNITJOY and CFW clearly acted with palpable bad faith and malice in including within the scope of the new CBA these monthly-paid employees. Thus was effected a conspiracy to defeat and suppress the right of the KMEU and its members to bargain collectively and negotiate for themselves, to impose upon the latter a contract the negotiation for which they were not even given notice of, consulted or allowed to participate in, and to oust from the BLR the pending appeal on the certification issue. In the latter case, KNITJOY and CFW are guilty of contumacious conduct. It goes without saying then that the new CBA cannot validly include in its scope or coverage the monthly-paid rank-and-file employees of KNITJOY. It does not bar the holding of a certification election to determine their sole bargaining agent and the negotiation for and the execution of a subsequent CBA between KNITJOY and the eventual winner in said election. Section 4, Rule V, Book V of the Rules Implementing the Labor Code expressly provides:

> "SEC. 4. Effects of early agreements. -- The representation case shall not, however, be adversely affected by a collective bargaining agreement registered before or during the last 60 days of a subsisting agreement or during the pendency of the representation case." (Emphasis supplied)

The public respondent then committed no abuse of discretion in ordering a certification election among the monthly-paid rank-and-file employees, except managerial employees, of KNITJOY. The choice however, should not be, as correctly contended by CFW, limited to merely (a) KMEU and (b) no union. The records disclose that the intervenors in the petition for certification are the KMEA-CCLU and CFW. They should be included as among the choices in the certification election.

WHEREFORE, the instant petitions are DISMISSED. However, the challenged decision of public respondent of 1 December 1987 is modified to include in the choices for the certification election petitioner Confederation of Filipino Workers (CFW) and the Knitjoy Monthly Employees Association and Confederation of Citizens Labor Unions (KMEU-CCLU).

Costs against petitioners.

SO ORDERED.

Bidin, Romero, and Melo, JJ., concur.
Gutierrez, Jr., J., (Chairman), on official leave.

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[1] Rollo, G.R. No. 81883, 31-39.

[2] Id., 21-24.

[3] Rollo, G.R. No. 81883, 23.

[4] Rollo, G.R. No. 81883, 28-29.

[5] Annex "F" of Petition; Id., 44.

[6] 144 SCRA 628 [1986].

[7] 155 SCRA 283 [1987].

[8] Rollo, G.R. No. 82111, 8-9.

[9] Id., G.R. No. 81883, 144.

[10] Id., 92, 41, 129.

[11] Id., G.R. No. 82111, op. cit., 106.

[12] PASCUAL, C., Labor Relations Law, 1986 ed., 109.

[13] Section 8, Article III and Section 3, Article XIII, 1987 Constitution.

[14] 59 SCRA 54, 66-67 [1974]. See also Anucension vs. National Labor Union, 80 SCRA 350 [1977]; Vassar Industries Employees Union vs. Estrella, 82 SCRA 280 [1978]; Philips Industrial Development, Inc. vs. NLRC, G.R. No. 88957, 25 June 1992.

[15] Supra.

[16] Supra.

[17] At page 631.

[18] At page 634.

[19] Now Article 245 by reason of subsequent amendments.

[20] At page 635.

[21] At pages 288-289.

[22] Rollo, G.R. No. 81883, 30.

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