

## SECOND DIVISION

[ G.R. No. 116194, February 02, 2000 ]

**SUGBUANON RURAL BANK, INC., PETITIONER, VS. HON. UNDERSECRETARY BIENVENIDO E. LAGUESMA, DEPARTMENT OF LABOR AND EMPLOYMENT, MED-ARBITER ACHILLES MANIT, DEPARTMENT OF LABOR AND EMPLOYMENT, REGIONAL OFFICE NO. 7, CEBU CITY, AND SUGBUANON RURAL BANK, INC. - ASSOCIATION OF PROFESSIONAL, SUPERVISORY, OFFICE, AND TECHNICAL EMPLOYEES UNION-TRADE UNIONS CONGRESS OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

#### **QUISUMBING, J.:**

In this special civil action for certiorari and prohibition, petitioner seeks the annulment of the April 27, 1994 Resolution of the Department of Labor and Employment, affirming the order of the Med-Arbiter, dated December 9, 1993, which denied petitioner's motion to dismiss respondent union's petition for certification election.

Petitioner Sugbuanon Rural Bank, Inc., (SRBI, for brevity) is a duly-registered banking institution with principal office in Cebu City and a branch in Mandaue City. Private respondent SRBI-Association of Professional, Supervisory, Office, and Technical Employees Union (APSOTEU) is a legitimate labor organization affiliated with the Trade Unions Congress of the Philippines (TUCP).

On October 8, 1993, the DOLE Regional Office in Cebu City granted Certificate of Registration No. R0700-9310-UR-0064 to APSOTEU- TUCP, hereafter referred to as the union.

On October 26, 1993, the union filed a petition for certification election of the supervisory employees of SRBI. It alleged, among others, that: (1) APSOTEU-TUCP was a labor organization duly-registered with the Labor Department; (2) SRBI employed 5 or more supervisory employees; (3) a majority of these employees supported the petition; (4) there was no existing collective bargaining agreement (CBA) between any union and SRBI; and (5) no certification election had been held in SRBI during the past 12 months prior to the petition.

On October 28, 1993, the Med-Arbiter gave due course to the petition. The pre-certification election conference between SRBI and APSOTEU- TUCP was set for November 15, 1993.

On November 12, 1993, SRBI filed a motion to dismiss the union's petition. It sought to prevent the holding of a certification election on two grounds: First, that the members of APSOTEU-TUCP were in fact managerial or confidential employees.

Thus, following the doctrine in *Philips Industrial Development Corporation v. National Labor Relations Commission*,<sup>[1]</sup> they were disqualified from forming, joining, or assisting any labor organization. Petitioner attached the job descriptions of the employees concerned to its motion. Second, the Association of Labor Unions-Trade Unions Congress of the Philippines or ALU-TUCP was representing the union. Since ALU- TUCP also sought to represent the rank-and-file employees of SRBI, there was a violation of the principle of separation of unions enunciated in *Atlas Lithographic Services, Inc. v. Laguesma*.<sup>[2]</sup>

The union filed its opposition to the motion to dismiss on December 1, 1993. It argued that its members were not managerial employees but merely supervisory employees. The members attached their affidavits describing the nature of their respective duties. The union pointed out that Article 245 of the Labor Code expressly allowed supervisory employees to form, join, or assist their own unions.

On December 9, 1993, the Med-Arbiter denied petitioner's motion to dismiss. He scheduled the inclusion-exclusion proceedings in preparation for the certification election on December 16, 1993.

SRBI appealed the Med-Arbiter's decision to the Secretary of Labor and Employment. The appeal was denied for lack of merit. The certification election was ordered.

On June 16, 1994, the Med-Arbiter scheduled the holding of the certification election for June 29, 1994. His order identified the following SRBI personnel as the voting supervisory employees in the election: the Cashier of the Main office, the Cashier of the Mandaue Branch, the Accountant of the Mandaue Branch, and the Acting Chief of the Loans Department.

On June 17, 1994, SRBI filed with the Med-Arbiter an urgent motion to suspend proceedings. The Med-Arbiter denied the same on June 21, 1994. SRBI then filed a motion for reconsideration. Two days later, the Med- Arbiter cancelled the certification election scheduled for June 29, 1994 in order to address the motion for reconsideration.

The Med-Arbiter later denied petitioner's motion for reconsideration. SRBI appealed the order of denial to the DOLE Secretary on December 16, 1993.

On December 22, 1993, petitioner proceeded to file a petition with the DOLE Regional Office seeking the cancellation of the respondent union's registration. It averred that the APSOTEU-TUCP members were actually managerial employees who were prohibited by law from joining or organizing unions.

On April 22, 1994, respondent DOLE Undersecretary denied SRBI's appeal for lack of merit. He ruled that APSOTEU- TUCP was a legitimate labor organization. As such, it was fully entitled to all the rights and privileges granted by law to a legitimate labor organization, including the right to file a petition for certification election. He also held that until and unless a final order is issued canceling APSOTEU- TUCP's registration certificate, it had the legal right to represent its members for collective bargaining purposes. Furthermore, the question of whether the APSOTEU- TUCP members should be considered as managerial or confidential employees should not

be addressed in the proceedings involving a petition for certification election but best threshed out in other appropriate proceedings.

On May 25, 1994, SRBI moved for reconsideration of the Undersecretary's decision which was denied on July 7, 1994. The Med- Arbiter scheduled the holding of certification elections on August 12, 1994.

Hence the instant petition grounded on the following assignments of error:

### I

RESPONDENT UNDERSECRETARY LAGUESMA ACTED WITH GRAVE ABUSE OF DISCRETION AND PALPABLY ERRED:

- A. IN HOLDING THAT ART. 257 OF THE LABOR CODE REQUIRES THE MED-ARBITER TO CONDUCT A CERTIFICATION ELECTION IN ANY UNORGANIZED ESTABLISHMENT EVEN WHEN THE PETITIONING UNION DOES NOT POSSESS THE QUALIFICATION FOR AN APPROPRIATE BARGAINING AGENT; AND
- B. IN REFUSING TO ASSUME JURISDICTION OVER THE PETITIONER'S APPEAL AND TO DISMISS THE RESPONDENT UNION'S PETITION FOR CERTIFICATION ELECTION.

### II

RESPONDENT UNDERSECRETARY LAGUESMA ACTED WITH GRAVE ABUSE OF DISCRETION AND PALPABLY ERRED IN DENYING THE PETITIONER'S APPEAL DESPITE THE FACT THAT:

- A. THE ALLEGED MEMBERS OF RESPONDENT UNION ARE MANAGERIAL EMPLOYEES WHO ARE LEGALLY DISQUALIFIED FROM JOINING ANY LABOR ORGANIZATION.
- B. AT THE VERY LEAST, THE ALLEGED MEMBERS OF RESPONDENT UNION ARE OCCUPYING HIGHLY CONFIDENTIAL POSITIONS IN PETITIONER AND, THUS, THE LEGAL DISQUALIFICATION OF MANAGERIAL EMPLOYEES EQUALLY APPLY TO THEM.

### III

IN ANY EVENT, THE CONCLUSIONS REACHED IN THE SUBJECT RESOLUTIONS ARE CONTRARY TO LAW AND ARE DIAMETRICALLY OPPOSED TO RESPONDENT UNION'S RECORDED ADMISSIONS AND REPRESENTATIONS.

Considering petitioner's assigned errors, we find two core issues for immediate resolution:

- (1) Whether or not the members of the respondent union are managerial employees and/or highly-placed confidential

employees, hence prohibited by law from joining labor organizations and engaging in union activities?

(2) Whether or not the Med-Arbitrator may validly order the holding of a certification election upon the filing of a petition for certification election by a registered union, despite the petitioner's appeal pending before the DOLE Secretary against the issuance of the union's registration?

The other issues based on the assigned errors could be resolved easily after the core issues are settled.

Respecting the first issue, Article 212 (m) of the Labor Code defines the terms "managerial employee" and "supervisory employees" as follows:

"Art. 212. Definitions-

x x x

(m) '*Managerial employee*' is one who is vested with powers or prerogatives to lay down and execute management policies and/or hire, transfer, suspend, lay-off, 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 (Italic supplied)."

Petitioner submitted detailed job descriptions to support its contention that the union members are managerial employees and/or confidential employees proscribed from engaging in labor activities.<sup>[3]</sup> Petitioner vehemently argues that the functions and responsibilities of the employees involved constitute the "very core of the bank's business, lending of money to clients and borrowers, evaluating their capacity to pay, approving the loan and its amount, scheduling the terms of repayment, and endorsing delinquent accounts to counsel for collection."<sup>[4]</sup> Hence, they must be deemed managerial employees. Petitioner cites *Tabacalera Insurance Co. v. National Labor Relations Commission*,<sup>[5]</sup> and *Panday v. National Labor Relations Commission*,<sup>[6]</sup> to sustain its submission. In *Tabacalera*, we sustained the classification of a credit and collection supervisor by management as a managerial/supervisory personnel. But in that case, the credit and collection supervisor "had the power to recommend the hiring and appointment of his subordinates, as well as the power to recommend any promotion and/or increase."<sup>[7]</sup> For this reason he was deemed to be a managerial employee. In the present case, however, petitioner failed to show that the employees in question were vested with similar powers. At best they only had recommendatory powers subject to evaluation, review, and final decision by the bank's management. The job description forms submitted by petitioner clearly show that the union members in question may not transfer, suspend, lay-off, recall, discharge, assign, or discipline employees. Moreover, the forms also do not show that the Cashiers, Accountants, and Acting Chiefs of the loans Department formulate and execute management policies which are normally expected of management officers.