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THIRD DIVISION

[G.R. No. 113638, November 16, 1999]

A. D. GOTHONG MANUFACTURING CORPORATION EMPLOYEES UNION-ALU, PETITIONER, VS. HON. NIEVES CONFESOR, SECRETARY, DEPARTMENT OF LABOR AND EMPLOYMENT AND A. D. GOTHONG MANUFACTURING CORPORATION, SUBANGDAKU, MANDAUE CITY, RESPONDENTS.

D E C I S I O N

GONZAGA-REYES, J.:

Petitioner A. D. Gothong Manufacturing Corporation Employees Union-ALU seeks to reverse and set aside the decision of the Secretary of Labor promulgated on September 30, 1993 affirming in *toto* the Resolution of Mediator-Arbiter, Achilles V. Manit declaring Romulo Plaza and Paul Michael Yap as rank- and-file employees of A. D. Gothong Manufacturing Corporation.

On May 12, 1993, petitioner A. D. Gothong Manufacturing Corporation Employees Union-ALU ("Union") filed a petition for certification election in its bid to represent the unorganized regular rank-and-file employees of respondent A. D. Gothong Manufacturing Corporation ("Company") excluding its office staff and personnel. Respondent Company opposed the petition as it excluded office personnel who are rank and file employees. In the inclusion-exclusion proceedings, the parties agreed to the inclusion of Romulo Plaza and Paul Michael Yap in the list of eligible voters on condition that their votes are considered challenged on the ground that they were supervisory employees.

The certification election was conducted as scheduled and yielded the following results:

YES - - - - - - - - - - - - - - - - 20

NO - - - - - - - - - - - - - - - - - 19

Spoiled - - - - - - - - - - - - - - - 0

Challenged - - -- - - - - - - - - - 2

Total votes cast - - - - - - - - - 41

Both Plaza and Yap argued that they are rank-and-file employees. Plaza claimed that he was a mere salesman based in Cebu, and Yap argued that he is a mere expediter whose job includes the facilitation of the processing of the bills of lading of all intended company shipments.

Petitioner Union maintains that both Plaza and Yap are supervisors who are

disqualified to join the proposed bargaining unit for rank-and-file employees. In support of its position paper, the petitioner Union submitted the following:

1. Joint affidavit of Ricardo Cañete, et al. which alleges that Michael Yap is a supervisory employee of A. D. Gothong Manufacturing Corporation and can effectively recommend for their suspension/dismissal.

2. Affidavit of Pedro Diez which alleges that the affiant is a supervisor in the production department of A. D. Gothong Manufacturing Corporation; that the affiant knows the challenged voters because they are also supervisory employees of the same corporation; that the challenged voters used to attend the quarterly meeting of the staff employees of A. D. Gothong Manufacturing Corporation;

3. Photocopy of the memorandum dated January 4, 1991 regarding the compulsory attendance of department heads/supervisors to the regular quarterly meeting of all regular workers of A. D. Gothong Manufacturing Corporation on January 13, 1991. Appearing therein are the names ROMULO PLAZA and MICHAEL YAP;

4. A not-so-legible photocopy of a memorandum dated March 1, 1989 wherein the name "ROMY PLAZA" is mentioned as the acting OIC of GT Marketing in Davao; and

5. Photocopy of the minutes of the regular quarterly staff meeting on August 13, 1989 at Mandaue City wherein Michael Yap is mentioned as a shipping assistant and a newly hired member of the staff.[1]

The Med-Arbiter declared that the challenged voters Yap and Plaza are rank-and-file employees.

Petitioner Union appealed to the Secretary of Labor insisting that Yap and Plaza are supervisor and manager respectively of the corporation and are prohibited from joining the proposed bargaining unit of rank-and-file employees. In an attempt to controvert the arguments of petitioner, respondent Company stressed that Pacita Gothong is the company's corporate secretary and not Baby L. Siador, who signed the minutes of the meeting submitted in evidence. Respondent also argued that Romulo Plaza could not qualify as a manager of the Davao Branch the opening of which branch never materialized.

Respondent Secretary of Labor affirmed the finding of the Med-Arbiter. Motion for Reconsideration of the above resolution having been denied, petitioner Union appeals to this Court by petition for review on *certiorari* alleging the following grounds:

I. THAT THE SECRETARY OF LABOR AND EMPLOYMENT CLEARLY COMMITTED MISAPPREHENSION OF FACTS/EVIDENCE AND IF IT WERE NOT FOR SUCH MISAPPREHENSION IT WOULD HAVE ARRIVED AT DIFFERENT CONCLUSION FAVORABLE TO PETITIONER.

II. THAT THE SECRETARY OF LABOR AND EMPLOYMENT ACTED WITH GRAVE ABUSE OF DISCRETION AND CONTRARY TO LAW IN

AFFIRMING IN TOTO THE DECISION OF HONORABLE ACHILLES V. MANIT, DEPARTMENT OF LABOR AND EMPLOYMENT, REGIONAL OFFICE No. 7, CEBU CITY IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION.[2]

We find no merit in the instant petition.

The Labor Code recognizes two (2) principal groups of employees, namely, the managerial and the rank and file groups. Article 212 (m) of the Code provides:

> "(m) `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. 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."

Under Rule I, Section 2 (c), Book III of the Implementing Rules of the Labor Code, to be a member of managerial staff, the following elements must concur or co-exist, to wit: (1) that his primary duty consists of the performance of work directly related to management policies; (2) that he customarily and regularly exercises discretion and independent judgment in the performance of his functions; (3) that he regularly and directly assists in the management of the establishment; and (4) that he does not devote more than twenty percent of his time to work other than those described above.

In the case of *Franklin Baker Company of the Philippines vs. Trajano*[3], this Court stated:

> "The test of `supervisory' or `managerial status' depends on whether a person possess 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 exercise of independent judgment as required by law.[4]

It has also been established that in the determination of whether or not certain employees are managerial employees, this Court accords due respect and therefore sustains the findings of fact made by quasi-judicial agencies which are supported by substantial evidence considering their expertise in their respective fields.[5]

The petition has failed to show reversible error in the findings of the Med-Arbiter and the Secretary of the Department of Labor.

In ruling against petitioner Union, the Med-Arbiter ruled that the petitioner Union failed to present concrete and substantial evidence to establish the fact that