

## FIRST DIVISION

[ G.R. No. 108033, April 14, 1997 ]

**TEOFISTO C. GANCHO-ON, PETITIONER, VS. THE HONORABLE  
SECRETARY OF LABOR AND EMPLOYMENT AND LAKAS NG  
NAGKAKAISANG MANGGAGAWA-PAFLU, RESPONDENTS.**

### D E C I S I O N

**BELLOSILLO, J.:**

On 16 January 1992 respondent Lakas ng Nagkakaisang Manggagawa-PAFLU filed with the Department of Labor and Employment (DOLE) a petition for certification election in a bid to exclusively represent the truck drivers of Eros Repair Shop.

Petitioner Teofisto C. Gancho-on, owner of the shop, moved for the dismissal of the petition on the ground of absence of employer-employee relationship. He contended that the members of respondent Union who would constitute the proposed bargaining unit were not employees of his shop but of individual owners of the trucks used in the trucking and hauling business managed by his wife, Herminia. In support thereof he presented certificates of registration indicating the ownership of four (4) vehicles being driven by the union members. In addition, he submitted copy of the application to operate business filed with the Mayor's Office together with an application for renewal of the certificate of registration which described his business as an automotive repair shop.

Respondent Union opposed the motion and asserted that while petitioner may be the registered owner of the shop, his wife was the manager of the trucking and hauling business under the same name and style as the shop. It offered in evidence the following documents executed by petitioner's wife herself: (a) an affidavit dated 10 February 1992 alleging among others that she was the manager of Eros Repair Shop which was engaged in the trucking and hauling of sugar cane and that the truck drivers were paid on commission basis;<sup>[1]</sup> (b) a letter dated 17 February 1992 addressed to the Assistant Regional Director of the DOLE informing the latter of the violation by one of the truck drivers of Eros Repair Shop of a memorandum issued to all truck drivers;<sup>[2]</sup> and, (c) another letter dated 20 February 1992 addressed to the same official seeking advice concerning eleven (11) of her truck drivers who failed to report for work.<sup>[3]</sup>

The Med-Arbiter -Designate concluded from the evidence thus adduced that: (a) the right to control not only the result of the drivers' work but also the means and method to accomplish their task was being exercised by petitioner's wife; (b) except for petitioner's business permit and accreditation no other evidence was presented to support the allegation that Eros Repair Shop was an entity separate and distinct from the trucking and hauling business; and, (c) most of the trucks were owned by the Gancho-on spouses.