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SECOND DIVISION

[G.R. Nos. L-48962-63. June 19, 1979]

UNITED LUMBER & GENERAL WORKERS OF THE PHILIPPINES (ULGWP), *petitioner, vs.* **THE HONORABLE DIRECTOR CARMELO C. NORIEL, BUREAU OF LABOR RELATIONS, DEPARTMENT OF LABOR and HIJO PLANTATION, INC., PROGRESSIVE FEDERATION OF LABOR, ASSOCIATED LABOR UNION, DAVAO WORKERS UNION, and TRADE UNIONS OF THE PHILIPPINES AND ALLIED SERVICES,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; THE BUREAU OF LABOR RELATIONS HAS A WIDE DISCRETION TO ASCERTAIN WHAT ACTUALLY OCCURS IN A LABOR DISPUTE.**— Respondent Director, as the enforcement agency of the Labor Code, must be given a wide latitude of discretion. There was a recognition of such autonomy where the Court of Industrial Relations was concerned. The following excerpt from *National Waterworks and Sewerage Authority v. NWSA Consolidated Union* possesses relevance: "The controlling doctrine recognizes the wide discretion enjoyed by respondent Court in ascertaining what actually did occur in labor disputes of whatever sort. Its conclusion once reached is invariably accorded the seal of our acceptance. Its disposition of a case before it usually elicits assent from us. It could happen, of course, that we may fail to view matters similarly. We have that power; it must be made use of when warranted. It does not occur often, though. That is not merely so as to the facts found. The acceptance of its legal conclusion reached is not a rare event either. This is merely to recognize that on labor matters, its recognized expertise has well-nigh earned for its decrees the title-deed to recognition, unless there be a rank failure to observe the constitutional and statutory limitations which it must observe." The discretion vested in respondent

Supreme Court E-Library

Director under the present Labor Code should not be less in degree.

2. ID.; ID.; CERTIFICATION ELECTION; FOREMEN MAY PARTICIPATE THEREIN.— To ban foremen from participating in a certification election, on the ground that they are managerial employees could be a step fraught with peril for the cause of labor as the highly prized safeguard of security of tenure would be emasculated.

APPEARANCES OF COUNSEL

Gregorio A. Pizarro for petitioner.

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Reynato S. Puno and *Trial Attorney Felix B. Lerio* for public respondents.

D E C I S I O N

FERNANDO, *Acting C.J.*:

The sole issue in this *certiorari* proceeding, whether or not foremen could participate in a certification election, arose from an order of respondent Director Carmelo C. Noriel[1] of the Bureau of Labor Relations allowing them to do so. The recognition of such a right, so it was alleged by petitioner union, runs counter to the collective bargaining provision under the Constitution.[2] It would be tantamount, in its opinion, to the inclusion of managerial employees and therefore inconsistent with the

[1] The other respondents are the Hijo Plantation, Inc., Progressive Federation of Labor, Associated Labor Union, Davao Workers Union and Trade Unions of the Philippines and Allied Services.

[2] According to Article II, Section 9 of the Constitution: "The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employees. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."

Supreme Court E-Library

protection to labor mandate. The Comment, considered as the Answer, submitted by Solicitor General Estelito P. Mendoza,[3] denies the validity of such an assertion as the employees in question "have no prerogative either to hire or fire subordinates."[4]

To support its stand, reliance is placed on *National Merchandising Corporation v. Court of Industrial Relations*.[5] An excerpt from the opinion of the case, penned by Justice Barrera, was quoted: "It is to be noted, however, that the power to recommend, in order to qualify an employee as a supervisor, must not only be *effective* but the exercise of such authority should not be merely of a routinary or clerical nature but should require the use of *independent judgment*. In the case at bar, it appears in the first place that, as found by the trial court, there are no clear appointments in favor of the employees in question including the alleged power to recommend, and while Alfonso Panganiban, Personnel Manager of the petitioner company, declared that these employees as section heads could recommend the hiring, expulsion or dismissal of the workers under their respective shops, the fact remains that as admitted by him, no such recommendations have ever been made by them. There is also evidence that other employees have been appointed, transferred, or discharged and laid-off without any recommendation of the employees involved in these proceedings. Furthermore, such recommendatory powers are subject to evaluation, review and final action by the department heads and other higher executives of the company. It, therefore, appears that the conclusion of the trial court that the authority to recommend even if present, is not effective and not an exercise of independent judgment as required by law, is not incorrect."[6] A reply to the comment was submitted by petitioner seeking to distinguish the National Merchandising decision, although

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[3] He was assisted by Assistant Solicitor General Reynato S. Puno and Trial Attorney Felix B. Lerio.

[4] Comment, 5, and Annex B of Petition.

[5] 117 Phil. 608 (1963).

[6] *Ibid.*, 613.

Supreme Court E-Library

admitting the similarity between a supervisor as defined in the Industrial Peace Act and a managerial employee as defined in the present Labor Code. It sought to support its claim that the order assailed should be set aside by citing certain provisions of the collective bargaining agreement existing between petitioner and employer dealing with the functions of foremen.

On the face of the record, petitioner had failed to make out a case for nullifying the challenged order.

1. It is essential that the integrity of the collective bargaining process must be maintained. Industrial democracy requires that the workers, and the workers alone, should choose which labor organization should be the exclusive bargaining representative in a certification election conducted according to law. That is of the very essence of industrial democracy.[7] There must be no introduction of any alien, not necessarily hostile, element. It does appear far-fetched to assert that foremen can no longer be considered as integral units of the labor force. It is to be admitted that the powers they exercise are intended to benefit management in the sense of assuring greater efficiency. It does not follow, by any means, that in performing the task assigned to them, they have forfeited their right to be counted on the side of labor and had thereby become mere minions of management. There may be instances where such a deplorable situation may exist. It cannot be assumed, though. It must be proved. Such a proof is lacking in this litigation. It cannot be concluded, therefore, that the institution of collective bargaining as an instrument of assuring the protection to labor mandated by the Constitution had thereby become impaired or weakened by virtue of allowing the foremen to participate in the certification election ordered by respondent Director Noriel.

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[7] Cf. *United Employees Union of Gelmart Industries v. Noriel*, L-40810, October 3, 1975, 67 SCRA 267 citing eight decisions starting from *PLDT Employees Union v. PLDT Co. Free Telephone Workers Union*, 97 Phil. 424 (1955) to *Philippine Communications Workers Federation v. Court of Indus ial Relations*, L-34531, March 29, 1974, 56 SCRA 480.

Supreme Court E-Library

2. It must be borne in mind that in thus arriving at such a conclusion, respondent Director Noriel must have taken into consideration all relevant factors. It must be assumed that a labor union would ever be on its guard to avoid management intruding into a matter which should be the sole and exclusive concern of the workers. The fear that by allowing foremen to take part in a certification election, there would be such an intrusion, is therefore understandable. It must be assumed, likewise, that respondent Director is equally alert to such a possibility. The law, however, does not rely on the degree of possibility, but on the logic of probabilities. When foremen were therefore included as voters, the danger of management interference must have appeared to him as more fanciful than real. That was his decision. It must be respected in the absence of a showing of abuse of authority. To repeat, there is lacking such proof. While it was not a determination of fact to which full credence must be accorded,[8] the question partaking more of a legal character, respondent Director, as the enforcement agency of the Labor Code, must be given a wide latitude of discretion. There was a recognition of such autonomy where the Court of Industrial Relations was concerned.[9] The following excerpt from *National Waterworks and Sewerage Authority v. NWSA Consolidated Union*[10] possesses relevance: "The controlling doctrine recognizes the wide discretion enjoyed by respondent Court in ascertaining what actually did occur in labor disputes of whatever sort. Its conclusion once reached is invariably accorded the seal of our acceptance. Its disposition of a case before it usually elicits assent from us. It could happen, of course, that we may fail to view matters similarly. We have that power; it must be made use of when warranted. It does not occur often, though. That is not merely so as to the facts

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[8] Cf. *Antipolo Highway Lines v. Inciong*, L-38532, June 27, 1975, 64 SCRA 441; *Jacqueline Industries v. National Labor Relations Commission*, L-37034, Aug. 29, 1975, 66 SCRA 397; *Federacion Obrera v. Noriel*, L-41937, July 6, 1976, 72 SCRA 24; *Kapisanan ng mga Manggagawa v. Noriel*, L-45475, June 20, 1977, 77 SCRA 414; *Monark International, Inc. v. Noriel*, L-47570-71, May 11, 1978, 83 SCRA 114.

Supreme Court E-Library

found. The acceptance of its legal conclusion reached is not a rare event either. This is merely to recognize that on labor matters, its recognized expertise has well-nigh earned for its decrees the title-deed to recognition, unless there be a rank failure to observe the constitutional and statutory limitations which it must observe."[11] The discretion vested in respondent Director under the present Labor Code should not be less in degree.

3. An aspect that should not be ignored in the consideration of the basic issue raised is the consequence flowing from a holding that foremen should be classified as managerial employees. A recent decision, *Reyes v. Zamora*,[12] promulgated barely a month ago, is indicative of the untoward effects of such a holding. In the exhaustive opinion of Justice Guillermo Santos, it was pointed out that petitioner Reyes "is a managerial employee, one in whom respondent company has given its complete trust and confidence."[13] As a result: "Loss of confidence is a valid ground for dismissing an employee, and proof beyond reasonable doubt of the employee's misconduct — apparently demanded by the Minister of Labor — is not required to dismiss him on this charge."[14] The situation would be different if there were not that degree of "complete trust and confidence." Nonetheless, to ban foremen from participating in a certification election, on the ground that they are managerial employees, could be a step fraught with peril for the cause of labor as the highly prized safeguard of security of tenure would be emasculated.

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[9] Cf. *Security Bank Employees Union NATU v. Security Bank and Trust Co.*, L-28536, April 30, 1968, 23 SCRA 503; *Sanchez v. Court of Industrial Relations*, L-26932, March 28, 1969, 27 SCRA 490.

[10] L-26894-96, February 28, 1969, 27 SCRA 227.

[11] *Ibid.*, 237.

[12] L-46732, May 5, 1979.

[13] *Ibid.*, 27.

[14] *Ibid.*, 26.

Supreme Court E-Library

WHEREFORE, this petition for *certiorari* is dismissed. This decision is immediately executory. No costs.

Barredo (Acting Chairman), Antonio, Santos, and *Abad Santos, JJ.*, concur.

Aquino, J., concurs in the result.

Concepcion Jr., J., is on leave.