803 Phil. 708

FIRST DIVISION

[G.R. No. 207971, January 23, 2017]

ASIAN INSTITUTE OF MANAGEMENT, PETITIONER, VS. ASIAN INSTITUTE OF MANAGEMENT FACULTY ASSOCIATION, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*[1] assails the January 8, 2013 Decision[2] of the Court of Appeals (CA) which dismissed the Petition for *Certiorari*[3] in CA-G.R. SP No. 114122, and its subsequent June 27, 2013 Resolution[4] denying herein petitioner's Motion for Reconsideration.[5]

Factual Antecedents

Petitioner Asian Institute of Management (AIM) is a duly registered non stock, non-profit educational institution. Respondent Asian Institute of Management Faculty Association (AFA) is a labor organization composed of members of the AIM faculty, duly registered Certificate of Registration No. NCR-UR-12-4076-2004.

On May 16, 2007, respondent Hied a **petition for certification election**[6] seeking to represent a bargaining unit in AIM consisting of forty (40) faculty members. The case was **docketed as DOLE Case No. NCR-OD-M-0705-007**. Petitioner opposed the petition, claiming that respondent's members are neither rank-and-file nor supervisory, but rather, managerial employees.[7]

On July 11, 2007, petitioner filed a **petition for cancellation of respondent's certificate of registration**[8] - **docketed as DOLE Case No. NCR-OD-0707-001-LRD** - on the grounds of misrepresentation in registration and that respondent is composed of managerial employees who are prohibited from organizing as a union.

On August 30, 2007, the Med-Arbiter in DOLE Case No. NCR-OD-M-0705-007 issued an Order[9] denying the petition for certification election on the ground that AIM's faculty members are managerial employees. This Order was appealed by respondent before the Secretary of the Department of Labor and Employment (DOLE),[10] who reversed the same via a February 20, 2009 Decision[11] and May 4, 2009 Resolution,[12] decreeing thus:

> WHEREFORE, the appeal filed by the Asian Institute of Management Faculty Association (AIMFA) is GRANTED. The Order dated 30 August 2007 of DOLE-NCR Mediator-Arbiter Michael T. Parado is hereby

> REVERSED and SET ASIDE.
>
> Accordingly, let the entire records of the case be remanded to DOLE-NCR for the conduct of a certification election among the faculty members of the Asian Institute of Management (AIM), with the following choices:
>
> 1. ASIAN INSTITUTE OF MANAGEMENT FACULTY ASSOCIATION (AIMFA); and
>
> 2. No Union.
>
> SO ORDERED.[13]

Meanwhile, in DOLE Case No. NCR-OD-0707-001-LRD, an Order[14] dated February 16, 2009 was issued by DOLE-NCR Regional Director Raymundo G. Agravante granting AIM's petition for cancellation of respondent's certificate of registration and ordering its delisting from the roster of legitimate labor organizations. This Order was appealed by respondent before the Bureau of Labor Relations[15] (BLR), which, in a December 29, 2009 Decision,[16] reversed the same and ordered respondent's retention in the roster of legitimate labor organizations. The BLR held that the grounds relied upon in the petition for cancellation are not among the grounds authorized under Article 239 of the Labor Code,[17] and that respondent's members are not managerial employees. Petitioner moved to reconsider, but was rebuffed in a March 18, 2010 Resolution.[18]

CA-G.R.SP No. 109487 and G.R. No. 197089

Petitioner filed a Petition for *Certiorari* before the CA, questioning the DOLE Secretary's February 20, 2009 Decision and May 4, 2009 Resolution relative to DOLE Case No. NCR-OD-M-0705-007, or respondent's petition for certification election. Docketed as CA G.R. SP No. 109487, the petition is based on the arguments that 1) the bargaining unit within AIM sought to be represented is composed of managerial employees who are not eligible to join, assist, or form any labor organization, and 2) respondent is not a legitimate labor organization that may conduct a certification election.

On October 22, 2010, the CA rendered its Decision[19] containing the following pronouncement:

> AIM insists that the members of its tenure-track faculty are managerial employees, and therefore, ineligible to join, assist or form a labor organization. It ascribes grave abuse of discretion on SOLE[20] for its rash conclusion that the members of said tenure-track faculty are not managerial employees solely because the faculty's actions are still subject to evaluation, review or final approval by the board of trustees ("BOT"). AIM argues that the BOT does not manage the day-to-day affairs, nor the making and implementing of policies of the Institute, as such functions are vested with the tenure-track faculty.
>
> We agree.

Article 212(m) of the Labor Code defines managerial employees as:

> '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 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.'

There are, therefore, two (2) kinds of managerial employees under Art. 212(m) of the Labor Code. Those who 'lay down x x x management policies', such as the Board of Trustees, and those who 'execute management policies and/or hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees'.

x x x x x x x x x

On its face, the SOLE's opinion is already erroneous because in claiming that the 'test of supervisory' **or** 'managerial status' depends on whether a person possesses authority to act in the interest of his employer in the matter specified in Article 212(m) of the Labor Code and **Section 1(m)** of its Implementing Rules, he obviously was referring to the **old definition of a managerial employee**. Such is evident in his use of 'supervisory or managerial status', and reference to '**Section 1(m)** of its Implementing Rules'. For presently, as aforequoted in Article 212(m) of the Labor Code and as amended by Republic Act 6715 which took effect on **March 21, 1989, a managerial employee is already different from a supervisory employee**. x x x

x x x x x x x x x

In further opining that a **managerial** employee is one whose '**authority is not merely routinary or clerical in nature but requires the use of independent judgment**', a description which fits now a **supervisory employee** under **Section 1(t), Rule I, Book V** of the Omnibus Rules Implementing the Labor Code, it then follows that the SOLE was not aware of the change in the law and thus gravely abused its discretion amounting to lack of jurisdiction in concluding that AIM's '**tenure-track**' faculty are **not** managerial employees.

SOLE further committed grave abuse of discretion when it concluded that said tenure-track faculty members are not managerial employees on the basis of a 'footnote' in AIM's Policy Manual, which provides that 'the **policy[-]making authority of the faculty members is merely recommendatory** in nature considering that the faculty standards they

formulate are **still subject** to evaluation, review or final **approval by the [AIM]'s Board of Trustees**'. x x x

x x x x x x x x x

Clearly, AIM's tenure-track faculty do not merely recommend faculty standards. They '**determine all faculty standards**', and are thus managerial employees. The standards' being subjected to the approval of the Board of Trustees would not make AIM's tenure-track faculty non-managerial because as earlier mentioned, managerial employees are now of two categories: (1) those who 'lay down policies', such as the members of the Board of Trustees, and those who '**execute** management policies (etc.)', such as AIM's tenure-track faculty.

x x x x x x x x x

It was also grave abuse of discretion on the part of the SOLE when he opined that AIM's tenure-track faculty members are not managerial employees, **relying on an impression** that they were subjected to rigid observance of regular hours of work as professors. x x x

x x x x x x x x x

More importantly, **it behooves the SOLE to deny AFA's appeal in light of the February 16, 2009 Order of Regional Director Agravante delisting AFA from the roster of legitimate labor organizations. For, only legitimate labor organizations are given the right to be certified as sole and exclusive bargaining gent in an establishment**.

x x x x x x x x x

Here, the SOLE committed grave abuse of discretion by giving due course to AFA's petition for certification election, despite the fact that: (1) AFA's members are managerial employees; and (2) AFA is not a legitimate labor organization. These facts rendered AFA ineligible, and without any right to file a petition for certification election, the object of which is to determine the sole and exclusive bargaining representative of qualified AIM employees.

WHEREFORE, the instant petition is **GRANTED**. The assailed Decision dated February 20, 2009 and Resolution dated May 4, 2009 are hereby **REVERSED and SET ASIDE**. The Order dated August 30, 2007 of Mediator-Arbiter Parado is hereby **REINSTATED**.

SO ORDERED.[21] (Emphasis in the original)

Respondent sought reconsideration, but was denied. It thus instituted a Petition for Review on *Certiorari* before this Court on July 4, 2011. The Petition, docketed as G.R. No. 197089, remains pending to date.

The Assailed Ruling of the Court of Appeals

Meanwhile, relative to DOLE Case No. NCR-OD-0707-001-LRD or petitioner AIM's petition for cancellation of respondent's certificate of registration, petitioner filed on May 24, 2010 a Petition for *Certiorari*[22] before the CA, questioning the BLR's December 29, 2009 decision and March 18, 2010 resolution. The petition, docketed as CA-G.R. SP No. 114122, alleged that the BLR committed grave abuse of discretion in granting respondent's appeal and affirming its certificate of registration notwithstanding that its members are managerial employees who may not join, assist, or form a labor union or organization.

On January 8, 2013, the CA rendered the assailed Decision, stating as follows:

> ***The petition lacks merit***
>
> x x x x x x x x x
>
> It is therefore incumbent upon the Institute to prove that the BLR committed grave abuse of discretion in issuing the questioned Decision. Towards this end, AIM must lay the basis by showing that
>
> > Article 239. Grounds for cancellation of union registration. The following may constitute grounds for cancellation of union registration:
> >
> > (a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;
> >
> > (b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;
> >
> > (c) Voluntary dissolution by the members.
>
> Article 238 of the Labor Code provides that the enumeration of the grounds for cancellation of union registration, is **exclusive**; in other words, no other grounds for cancellation is acceptable, except for the three (3) grounds stated in Article 239. The scope of the grounds for cancellation has been explained -
>
> > For the purpose of de-certifying a union such as respondent, it must be shown that there was misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto; the minutes of ratification; or, in connection with the election of officers, the minutes of the election of officers, the list of voters, or failure to submit these doctm1ents together with the list of the newly elected-appointed officers and their postal addresses to the BLR.
> >
> > The bare fact that two signatures appeared twice on the list of those who participated in the organizational meeting would