

THIRD DIVISION

[G.R. No. 146206, August 01, 2011]

SAN MIGUEL FOODS, INCORPORATED, PETITIONER, VS. SAN MIGUEL CORPORATION SUPERVISORS AND EXEMPT UNION, RESPONDENT.

D E C I S I O N

PERALTA, J.:

The issues in the present case, relating to the inclusion of employees in supervisor levels 3 and 4 and the exempt employees in the proposed bargaining unit, thereby allowing their participation in the certification election; the application of the "community or mutuality of interests" test; and the determination of the employees who belong to the category of confidential employees, are not novel.

In G.R. No. 110399, entitled *San Miguel Corporation Supervisors and Exempt Union v. Laguesma*,^[1] the Court held that even if they handle confidential data regarding technical and internal business operations, supervisory employees 3 and 4 and the exempt employees of petitioner San Miguel Foods, Inc. (SMFI) are not to be considered confidential employees, because the same do not pertain to labor relations, particularly, negotiation and settlement of grievances. Consequently, they were allowed to form an appropriate bargaining unit for the purpose of collective bargaining. The Court also declared that the employees belonging to the three different plants of San Miguel Corporation Magnolia Poultry Products Plants in Cabuyao, San Fernando, and Otis, having "community or mutuality of interests," constitute a single bargaining unit. They perform work of the same nature, receive the same wages and compensation, and most importantly, share a common stake in concerted activities. It was immaterial that the three plants have different locations as they did not impede the operations of a single bargaining representative.^[2]

Pursuant to the Court's decision in G.R. No. 110399, the Department of Labor and Employment – National Capital Region (DOLE-NCR) conducted pre-election conferences.^[3] However, there was a discrepancy in the list of eligible voters, *i.e.*, petitioner submitted a list of 23 employees for the San Fernando plant and 33 for the Cabuyao plant, while respondent listed 60 and 82, respectively.^[4]

On August 31, 1998, Med-Arbiter Agatha Ann L. Daquigan issued an Order^[5] directing Election Officer Cynthia Tolentino to proceed with the conduct of certification election in accordance with Section 2, Rule XII of Department Order No. 9.

On September 30, 1998, a certification election was conducted and it yielded the following results,^[6] thus:

	Cabuyao Plant	San Fernando Plant	Total
Yes	23	23	46
No	0	0	0
Spoiled	2	0	2
Segregated	<u>41</u>	<u>35</u>	<u>76</u>
Total Votes Cast	66	58	124

On the date of the election, September 30, 1998, petitioner filed the Omnibus Objections and Challenge to Voters,^[7] questioning the eligibility to vote by some of its employees on the grounds that some employees do not belong to the bargaining unit which respondent seeks to represent or that there is no existence of employer-employee relationship with petitioner. Specifically, it argued that certain employees should not be allowed to vote as they are: (1) confidential employees; (2) employees assigned to the live chicken operations, which are not covered by the bargaining unit; (3) employees whose job grade is level 4, but are performing managerial work and scheduled to be promoted; (4) employees who belong to the Barrio Ugong plant; (5) non-SMFI employees; and (6) employees who are members of other unions.

On October 21, 1998, the Med-Arbiter issued an Order directing respondent to submit proof showing that the employees in the submitted list are covered by the original petition for certification election and belong to the bargaining unit it seeks to represent and, likewise, directing petitioner to substantiate the allegations contained in its Omnibus Objections and Challenge to Voters.^[8]

In compliance thereto, respondent averred that (1) the bargaining unit contemplated in the original petition is the Poultry Division of San Miguel Corporation, now known as San Miguel Foods, Inc.; (2) it covered the operations in Calamba, Laguna, Cavite, and Batangas and its home base is either in Cabuyao, Laguna or San Fernando, Pampanga; and (3) it submitted individual and separate declarations of the employees whose votes were challenged in the election.^[9]

Adding the results to the number of votes canvassed during the September 30, 1998 certification election, the final tally showed that: number of eligible voters – 149; number of valid votes cast – 121; number of spoiled ballots - 3; total number of votes cast – 124, with 118 (*i.e.*, 46 + 72 = 118) “Yes” votes and 3 “No” votes.^[10]

The Med-Arbiter issued the Resolution^[11] dated February 17, 1999 directing the parties to appear before the Election Officer of the Labor Relations Division on March 9, 1999, 10:00 a.m., for the opening of the segregated ballots. Thereafter, on April 12, 1999, the segregated ballots were opened, showing that out of the 76 segregated votes, 72 were cast for “Yes” and 3 for “No,” with one “spoiled” ballot.^[12]

Based on the results, the Med-Arbiter issued the Order^[13] dated April 13, 1999, stating that since the “Yes” vote received 97% of the valid votes cast, respondent is certified to be the exclusive bargaining agent of the supervisors and exempt

employees of petitioner's Magnolia Poultry Products Plants in Cabuyao, San Fernando, and Otis.

On appeal, the then Acting DOLE Undersecretary, in the Resolution^[14] dated July 30, 1999, in OS-A-2-70-91 (NCR-OD-M-9010-017), affirmed the Order dated April 13, 1999, with modification that George C. Matias, Alma Maria M. Lozano, Joannabel T. Delos Reyes, and Marilyn G. Pajaron be excluded from the bargaining unit which respondent seeks to represent. She opined that the challenged voters should be excluded from the bargaining unit, because Matias and Lozano are members of Magnolia Poultry Processing Plants Monthly Employees Union, while Delos Reyes and Pajaron are employees of San Miguel Corporation, which is a separate and distinct entity from petitioner.

Petitioner's Partial Motion for Reconsideration^[15] dated August 14, 1999 was denied by the then Acting DOLE Undersecretary in the Order^[16] dated August 27, 1999.

In the Decision^[17] dated April 28, 2000, in CA-G.R. SP No. 55510, entitled *San Miguel Foods, Inc. v. The Honorable Office of the Secretary of Labor, Bureau of Labor Relations, and San Miguel Corporation Supervisors and Exempt Union, the Court of Appeals* (CA) affirmed with modification the Resolution dated July 30, 1999 of the DOLE Undersecretary, stating that those holding the positions of Human Resource Assistant and Personnel Assistant are excluded from the bargaining unit.

Petitioner's Motion for Partial Reconsideration^[18] dated May 23, 2000 was denied by the CA in the Resolution^[19] dated November 28, 2000.

Hence, petitioner filed this present petition raising the following issues:

I.

WHETHER THE COURT OF APPEALS DEPARTED FROM JURISPRUDENCE WHEN IT EXPANDED THE SCOPE OF THE BARGAINING UNIT DEFINED BY THIS COURT'S RULING IN G.R. NO. 110399.

II.

WHETHER THE COURT OF APPEALS DEPARTED FROM JURISPRUDENCE - SPECIFICALLY, THIS COURT'S DEFINITION OF A "CONFIDENTIAL EMPLOYEE" - WHEN IT RULED FOR THE INCLUSION OF THE "PAYROLL MASTER" POSITION IN THE BARGAINING UNIT.

III.

WHETHER THIS PETITION IS A "REHASH" OR A "RESURRECTION" OF THE ISSUES RAISED IN G.R. NO. 110399, AS ARGUED BY PRIVATE RESPONDENT.

Petitioner contends that with the Court's ruling in G.R. No. 110399^[20] identifying the specific employees who can participate in the certification election, i.e., the

supervisors (levels 1 to 4) and exempt employees of San Miguel Poultry Products Plants in Cabuyao, San Fernando, and Otis, the CA erred in expanding the scope of the bargaining unit so as to include employees who do not belong to or who are not based in its Cabuyao or San Fernando plants. It also alleges that the employees of the Cabuyao, San Fernando, and Otis plants of petitioner's predecessor, San Miguel Corporation, as stated in G.R. No. 110399, were engaged in "dressed" chicken processing, *i.e.*, handling and packaging of chicken meat, while the new bargaining unit, as defined by the CA in the present case, includes employees engaged in "live" chicken operations, *i.e.*, those who breed chicks and grow chickens.

Respondent counters that petitioner's proposed exclusion of certain employees from the bargaining unit was a rehashed issue which was already settled in G.R. No. 110399. It maintains that the issue of union membership coverage should no longer be raised as a certification election already took place on September 30, 1998, wherein respondent won with 97% votes.

Petitioner's contentions are erroneous. In G.R. No. 110399, the Court explained that the employees of San Miguel Corporation Magnolia Poultry Products Plants of Cabuyao, San Fernando, and Otis constitute a single bargaining unit, which is not contrary to the one-company, one-union policy. An appropriate bargaining unit is defined as a group of employees of a given employer, comprised of all or less than all of the entire body of employees, which the collective interest of all the employees, consistent with equity to the employer, indicate to be best suited to serve the reciprocal rights and duties of the parties under the collective bargaining provisions of the law.^[21]

In *National Association of Free Trade Unions v. Mainit Lumber Development Company Workers Union – United Lumber and General Workers of the Phils.*,^[22] the Court, taking into account the "community or mutuality of interests" test, ordered the formation of a single bargaining unit consisting of the Sawmill Division in Butuan City and the Logging Division in Zapanta Valley, Kitcharao, Agusan [Del] Norte of the Mainit Lumber Development Company. It held that while the existence of a bargaining history is a factor that may be reckoned with in determining the appropriate bargaining unit, the same is not decisive or conclusive. Other factors must be considered. The test of grouping is community or mutuality of interest. This is so because the basic test of an asserted bargaining unit's acceptability is whether or not it is fundamentally the combination which will best assure to all employees the exercise of their collective bargaining rights.^[23] Certainly, there is a mutuality of interest among the employees of the Sawmill Division and the Logging Division. Their functions mesh with one another. One group needs the other in the same way that the company needs them both. There may be differences as to the nature of their individual assignments, but the distinctions are not enough to warrant the formation of a separate bargaining unit.^[24]

Thus, applying the ruling to the present case, the Court affirms the finding of the CA that there should be only one bargaining unit for the employees in Cabuyao, San Fernando, and Otis^[25] of Magnolia Poultry Products Plant involved in "dressed" chicken processing and Magnolia Poultry Farms engaged in "live" chicken operations. Certain factors, such as specific line of work, working conditions, location of work, mode of compensation, and other relevant conditions do not affect or impede their commonality of interest. Although they seem separate and distinct

from each other, the specific tasks of each division are actually interrelated and there exists mutuality of interests which warrants the formation of a single bargaining unit.

Petitioner asserts that the CA erred in not excluding the position of *Payroll Master* in the definition of a confidential employee and, thus, prays that the said position and all other positions with access to salary and compensation data be excluded from the bargaining unit.

This argument must fail. Confidential employees are defined as those who (1) assist or act in a confidential capacity, in regard (2) to persons who formulate, determine, and effectuate management policies in the field of labor relations.^[26] The two criteria are cumulative, and both must be met if an employee is to be considered a confidential employee - that is, the confidential relationship must exist between the employee and his supervisor, and the supervisor must handle the prescribed responsibilities relating to labor relations. The exclusion from bargaining units of employees who, in the normal course of their duties, become aware of management policies relating to labor relations is a principal objective sought to be accomplished by the "confidential employee rule."^[27]

A confidential employee is one entrusted with confidence on delicate, or with the custody, handling or care and protection of the employer's property.^[28] Confidential employees, such as accounting personnel, should be excluded from the bargaining unit, as their access to confidential information may become the source of undue advantage.^[29] However, such fact does not apply to the position of Payroll Master and the whole gamut of employees who, as perceived by petitioner, has access to salary and compensation data. The CA correctly held that the position of *Payroll Master* does not involve dealing with confidential labor relations information in the course of the performance of his functions. Since the nature of his work does not pertain to company rules and regulations and confidential labor relations, it follows that he cannot be excluded from the subject bargaining unit.

Corollarily, although Article 245^[30] of the Labor Code limits the ineligibility to join, form and assist any labor organization to managerial employees, jurisprudence has extended this prohibition to confidential employees or those who by reason of their positions or nature of work are required to assist or act in a fiduciary manner to managerial employees and, hence, are likewise privy to sensitive and highly confidential records.^[31] Confidential employees are thus excluded from the rank-and-file bargaining unit. The rationale for their separate category and disqualification to join any labor organization is similar to the inhibition for managerial employees, because if allowed to be affiliated with a union, the latter might not be assured of their loyalty in view of evident conflict of interests and the union can also become company-denominated with the presence of managerial employees in the union membership.^[32] Having access to confidential information, confidential employees may also become the source of undue advantage. Said employees may act as a spy or spies of either party to a collective bargaining agreement.^[33]

In this regard, the CA correctly ruled that the positions of Human Resource Assistant and Personnel Assistant belong to the category of confidential employees and,