

THIRD DIVISION

[G.R. No. 162025, August 03, 2010]

**TUNAY NA PAGKAKAISA NG MANGGAGAWA SA ASIA BREWERY,
PETITIONER, VS. ASIA BREWERY, INC., RESPONDENT.**

D E C I S I O N

VILLARAMA, JR., J.:

For resolution is an appeal by *certiorari* filed by petitioner under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[1] dated November 22, 2002 and Resolution^[2] dated January 28, 2004 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 55578, granting the petition of respondent company and reversing the Voluntary Arbitrator's Decision^[3] dated October 14, 1999.

The facts are:

Respondent Asia Brewery, Inc. (ABI) is engaged in the manufacture, sale and distribution of beer, shandy, bottled water and glass products. ABI entered into a Collective Bargaining Agreement (CBA),^[4] effective for five (5) years from August 1, 1997 to July 31, 2002, with *Bisig at Lakas ng mga Manggagawa sa Asia-Independent* (BLMA-INDEPENDENT), the exclusive bargaining representative of ABI's rank-and-file employees. On October 3, 2000, ABI and BLMA-INDEPENDENT signed a renegotiated CBA effective from August 1, 2000 to 31 July 2003.^[5]

Article I of the CBA defined the scope of the bargaining unit, as follows:

Section 1. **Recognition.** The COMPANY recognizes the UNION as the sole and exclusive bargaining representative of all the regular rank-and-file daily paid employees within the scope of the appropriate bargaining unit with respect to rates of pay, hours of work and other terms and conditions of employment. ***The UNION shall not represent or accept for membership employees outside the scope of the bargaining unit herein defined.***

Section 2. **Bargaining Unit.** The bargaining unit shall be comprised of all regular rank-and-file daily-paid employees of the COMPANY. However, the following jobs/positions as herein defined shall be ***excluded*** from the bargaining unit, to wit:

1. Managers
2. Assistant Managers
3. Section Heads
4. Supervisors

5. Superintendents
6. ***Confidential and Executive Secretaries***
7. Personnel, Accounting and Marketing Staff
8. Communications Personnel
9. Probationary Employees
10. Security and Fire Brigade Personnel
11. Monthly Employees
12. ***Purchasing and Quality Control Staff***^[6] [emphasis supplied.]

Subsequently, a dispute arose when ABI's management stopped deducting union dues from eighty-one (81) employees, believing that their membership in BLMA-INDEPENDENT violated the CBA. Eighteen (18) of these affected employees are QA Sampling Inspectors/Inspectresses and Machine Gauge Technician who formed part of the Quality Control Staff. Twenty (20) checkers are assigned at the Materials Department of the Administration Division, Full Goods Department of the Brewery Division and Packaging Division. The rest are secretaries/clerks directly under their respective division managers.^[7]

BLMA-INDEPENDENT claimed that ABI's actions restrained the employees' right to self-organization and brought the matter to the grievance machinery. As the parties failed to amicably settle the controversy, BLMA-INDEPENDENT lodged a complaint before the National Conciliation and Mediation Board (NCMB). The parties eventually agreed to submit the case for arbitration to resolve the issue of "*[w]hether or not there is restraint to employees in the exercise of their right to self-organization.*"^[8]

In his Decision, Voluntary Arbitrator Bienvenido Devera sustained the BLMA-INDEPENDENT after finding that the records submitted by ABI showed that the positions of the subject employees qualify under the rank-and-file category because their functions are merely routinary and clerical. He noted that the positions occupied by the checkers and secretaries/clerks in the different divisions are not managerial or supervisory, as evident from the duties and responsibilities assigned to them. With respect to QA Sampling Inspectors/Inspectresses and Machine Gauge Technician, he ruled that ABI failed to establish with sufficient clarity their basic functions as to consider them Quality Control Staff who were excluded from the coverage of the CBA. Accordingly, the subject employees were declared eligible for inclusion within the bargaining unit represented by BLMA-INDEPENDENT.^[9]

On appeal, the CA reversed the Voluntary Arbitrator, ruling that:

WHEREFORE, foregoing premises considered, the questioned decision of the Honorable Voluntary Arbitrator Bienvenido De Vera is hereby REVERSED and SET ASIDE, and A NEW ONE ENTERED DECLARING THAT:

- a) the 81 employees are excluded from and are not eligible for inclusion in the bargaining unit as defined in Section 2, Article I of the CBA;
- b) the 81 employees cannot validly become members of respondent and/or if already members, that their membership is violative of the CBA and that they should disaffiliate from respondent; and

c) petitioner has not committed any act that restrained or tended to restrain its employees in the exercise of their right to self-organization.

NO COSTS.

SO ORDERED.^[10]

BLMA-INDEPENDENT filed a motion for reconsideration. In the meantime, a certification election was held on August 10, 2002 wherein petitioner *Tunay na Pagkakaisa ng Manggagawa sa Asia* (TPMA) won. As the incumbent bargaining representative of ABI's rank-and-file employees claiming interest in the outcome of the case, petitioner filed with the CA an omnibus motion for reconsideration of the decision and intervention, with attached petition signed by the union officers.^[11] Both motions were denied by the CA.^[12]

The petition is anchored on the following grounds:

(1)

THE COURT OF APPEALS ERRED IN RULING THAT THE 81 EMPLOYEES ARE EXCLUDED FROM AND ARE NOT ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT AS DEFINED IN SECTION 2, ARTICLE 1 OF THE CBA[;]

(2)

THE COURT OF APPEALS ERRED IN HOLDING THAT THE 81 EMPLOYEES CANNOT VALIDLY BECOME UNION MEMBERS, THAT THEIR MEMBERSHIP IS VIOLATIVE OF THE CBA AND THAT THEY SHOULD DISAFFILIATE FROM RESPONDENT;

(3)

THE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT PETITIONER (NOW PRIVATE RESPONDENT) HAS NOT COMMITTED ANY ACT THAT RESTRAINED OR TENDED TO RESTRAIN ITS EMPLOYEES IN THE EXERCISE OF THEIR RIGHT TO SELF-ORGANIZATION.^[13]

Although Article 245 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.^[14] 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.

[15] 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.[16]

In *Philips Industrial Development, Inc. v. NLRC*,^[17] this Court held that petitioner's "division secretaries, all Staff of General Management, Personnel and Industrial Relations Department, Secretaries of Audit, EDP and Financial Systems" are confidential employees not included within the rank-and-file bargaining unit.[18]

Earlier, in *Pier 8 Arrastre & Stevedoring Services, Inc. v. Roldan-Confesor*,^[19] we declared that legal secretaries who are tasked with, among others, the typing of legal documents, memoranda and correspondence, the keeping of records and files, the giving of and receiving notices, and such other duties as required by the legal personnel of the corporation, fall under the category of confidential employees and hence excluded from the bargaining unit composed of rank-and-file employees.[20]

Also considered having access to "vital labor information" are the executive secretaries of the General Manager and the executive secretaries of the Quality Assurance Manager, Product Development Manager, Finance Director, Management System Manager, Human Resources Manager, Marketing Director, Engineering Manager, Materials Manager and Production Manager.[21]

In the present case, the CBA expressly excluded "Confidential and Executive Secretaries" from the rank-and-file bargaining unit, for which reason ABI seeks their disaffiliation from petitioner. Petitioner, however, maintains that except for Daisy Laloan, Evelyn Mabilangan and Lennie Saguan who had been promoted to monthly paid positions, the following secretaries/clerks are deemed included among the rank-and-file employees of ABI:[22]

<u>NAME</u>	<u>DEPARTMENT</u>	<u>IMMEDIATE SUPERIOR</u>
C1 ADMIN DIVISION		
1. Angeles, Cristina C.	Transportation	Mr. Melito K. Tan
2. Barraquio, Carina P.	Transportation	Mr. Melito K. Tan
3. Cabalo, Marivic B.	Transportation	Mr. Melito K. Tan
4. Fameronag, Leodigario C.	Transportation	Mr. Melito K. Tan
1. Abalos, Andrea A.	Materials	Mr. Andres G. Co
2. Algire, Juvy L.	Materials	Mr. Andres G. Co
3. Anoñuevo, Shirley P.	Materials	Mr. Andres G. Co
4. Aviso, Rosita S.	Materials	Mr. Andres G. Co
5. Barachina, Pauline C.	Materials	Mr. Andres G. Co
6. Briones, Catalina P.	Materials	Mr. Andres G. Co
7. Caralipio, Juanita P.	Materials	Mr. Andres G. Co
8. Elmido, Ma. Rebecca S.	Materials	Mr. Andres G. Co
9. Giron, Laura P.	Materials	Mr. Andres G. Co
10. Mane, Edna A.	Materials	Mr. Andres G. Co