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THIRD DIVISION

[G.R. No. 95405, June 29, 1999]

SEMIRARA COAL CORPORATION, PETITIONER, VS. HON. SECRETARY OF LABOR, SEMIRARA COAL CORPORATION SUPERVISORY UNION (SECCSUN) AND SEMIRARA COAL CORPORATION UNION OF NON-MANAGERIAL EMPLOYEES (SCCUNME), RESPONDENTS.

D E C I S I O N

PURISIMA, J.:

Before the Court is a Petition for *Certiorari* with prayer for the issuance of a Temporary Restraining Order and/or Preliminary Injunction, seeking to annul the Decision[1] and affirmatory Orders[2] of the Secretary of Labor which set aside the Order[3] of the Med-Arbiter dated April 18, 1990.

The petitioner, Semirara Coal Corporation, prays for the reinstatement of the Order of the Med-Arbiter which excluded the members of Semirara Coal Corporation Supervisory Union *(SECCSUN)* allegedly performing a managerial function, from participating in the certification election among the petitioner's supervisory employees.

On February 13, 1989, the Court issued a Temporary Restraining Order,[4] enjoining the respondents from proceeding with the pre-election conference and/or certification election scheduled for February 15, 1991.

The antecedent facts that matter are as follows:

On January 13, 1989, respondent Semirara Corporation Union of Non-Managerial Employees *(SCCUNME)* filed a petition for certification election among the non-managerial *(supervisors and Junior staff)* employees of the bargaining unit consisting, more or less, of one hundred forty *(140)* employees.

On March 21, 1989, Republic Act 6715, amending the Labor Code, took effect. Among others, it amended Article 212 *(m)* and Article 245 of the Labor Code by creating a new group of employees - the supervisory employees - separate and distinct from the managerial employees.

Meanwhile, the petition for certification election was granted. Accordingly, on May 29, 1989 the Med-Arbiter issued an Order directing the conduct of a certification election among the non-managerial *(supervisors and junior staff)* employees of the petitioner with the following choices:

1. Semirara Coal Corporation Union of Non-Managerial Employees *(SCCUNME);*

2. No Union.[5]

On June 23, 1989, petitioner appealed from the aforesaid Order on the sole ground that the "Honorable Med-Arbiter erred in considering the petitioner union as vested with legal personality to seek certification election as the exclusive bargaining agent of the corporations supervisory employees."[6]

In his Resolution of August 3, 1989, the Secretary of Labor dismissed the appeal of petitioner and directed the immediate conduct of a certification election. Petitioner's motion for reconsideration of the said resolution was denied.

On December 6, 1989, respondent Semirara Coal Corporation of Supervisory Union *(SECCSUN)*, which was granted a certificate of registration on September 11, 1989, filed an *Ex-Parte* motion for intervention in the certification election sought by respondent SCCUNME.[7]

During the hearing of the petition for certification election on January 4, 1990, the private respondents, SCCNME, SECCSUN, and the petitioner voluntarily agreed to hold a consent election.[8]

However, on or about February 2, 1990, petitioner, instead of submitting the required list of eligible voters pursuant to a prior undertaking, sent a telegram to Med-Arbiter Claudio Sigaya, Jr., informing the latter that petitioner could not submit a list of non-managerial supervisors since all the supervisors are performing managerial functions. The pertinent portion of said telegram stated:

> *"Further to our communication earlier made to your Office to the effect that we can not submit a list of non managerial supervisors because all of our supervisors are performing managerial function based on following definition of R.A. 6715 x x x"*[9]

On February 5, 1990, private respondent SCCUNME filed a Manifestation and Motion withdrawing its consent to the intervention of private respondent SECCSUN.

On the same date, petitioner instead of submitting the list of eligible voters requested by the Med-arbiter, filed a Manifestation and Motion alleging that its supervisors are not eligible to participate in the certification election because they are managerial employees within the contemplation of Section 4 *(o)* of the Rules and Regulation Implementing Republic Act No. 6715. In so claiming, petitioner presented a copy of a company memorandum[10] dated August 29, 1988, allegedly vesting in the supervisory employees of petitioner the power to discipline the subordinates. To support its portion on the matter, the petitioner likewise submitted samples of the standard form of the company disciplinary memorandum.

In its Order, dated April 18, 1990, Med-Arbiter Claudio M. Sigaya Jr. declared that the so-called supervisory employees of Semirara Coal Corporation are managerial employees and are therefore deemed ineligible to participate in a certification election.[11]

On appeal[12] by private respondent SECCSUN on May 18, 1990, the said Order was

set aside by the Honorable Secretary of Labor, and declared the so-called supervisory employees as truly supervisory employees. He further ordered the inclusion of SECCSUN as one of the choices in the certification election, ruling thus:

> *"WHEREFORE, premises considered, the appeal of intervenor-appellant Semirara Coal Corporation Supervisory Union (SECCSUN) is hereby granted, and the Order dated 18 April 1990 is hereby set aside. In lieu thereof, a new Order is entered declaring the so-called supervisory employees of the respondent Semirara Coal Corporation as truly supervisory employees pursuant to the mandate of paragraph (m), Article 212, of the Labor Code, as amended by Republic Act No. 6715.*
>
> *A certification election is hereby directed to be conducted within the context of our previous Resolution dated 3 August 1989 and 30 October 1989, with the inclusion of herein intervenor-appellant Semirara Coal Corporation Supervisory Union (SECCSUN) as one of the choices.*
>
> *Let, therefore, the entire records of this case be remanded to the Regional Office of origin for the immediate conduct of the certification election aforestated subject to the usual pre-election conference.*
>
> *SO ORDERED."*[13]

A motion for reconsideration of the aforesaid ruling was denied by the Secretary of Labor, on August 21, 1990.[14]

On August 30, 1990, petitioner issued a memorandum, entitled "Policy Empowering All the Junior Staffs/Supervisors In The Company To Discipline The Erring Employees Under Them."[15]

On September 4, 1990, petitioner filed its Manifestation and Motion for the reversal of the Secretary's Decision of July 30, 1990, as well as the affirmatory Order dated August 21, 1990. Petitioner manifested that "[R]ecently, on 30 August 1990, the Company issued a Memorandum captioned `Policy Empowering All the Supervisors in the company to Discipline the Erring Employees Directly Under Them,' which unequivocally vested upon the supervisors the power to discipline employees. It has already taken effect."[16]

On September 19, 1990, the Honorable Secretary of Labor denied[17] for lack of merit the aforementioned Manifestation and Motion of petitioner.

With the denial of its Manifestation and Motion, petitioner found its way to this court via the present petition.

The petition is not impressed with merit.

The law in point is Article 212 *(m)* of the Labor Code, which reads:

> *"**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." (emphasis supplied)*

Are the supervisory employees of petitioner truly supervisory employees? The Med-Arbiter and the Secretary of Labor in delving into this pivot of inquiry relied upon the: *1)* April 10, 1984 Memorandum entitled "Guidelines on Disciplinary Actions;" [18] *2)* August 29, 1988 Memorandum entitled "Processing of Disciplinary Action Cases;"[19] and *3)* Standard Forms of the Company Disciplinary Memoranda.[20]

Pertinent portion of the Memorandum, entitled "Guidelines on Disciplinary Actions," dated April 10, 1984, addressed to all department heads/supervisors reads:

"A. PHILOSOPHY

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3. The company shall take prompt and consistent disciplinary action on its erring employees. All offenses as a general rule, shall be investigated within 24 hours and shall be acted upon within three (3) working days.

4. While reporting person/s/immediate supervisor/s is/are responsible for reporting violations of the company rules and regulations, conducting preliminary investigation thereof, and making the appropriate recommendations in accordance with company rules and regulations, nevertheless ***all disciplinary actions should be reviewed and concurred by Personnel Manager who reserves the right and responsibility to conduct further investigation on violations committed as well as determine and administer the appropriate disciplinary action against erring employees, upon concurrence and approval of the Resident Manager.*** *(emphasis supplied)*

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C. PROCEDURES

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4. Recommendation

Here the immediate supervisor, after studying the facts of the case and the surrounding circumstances recommends appropriate action based on company rules and regulations/policy/SOP.

5. Concurrences

All disciplinary actions must be concurred by the following officers in this order: Department Manager, Personnel Manager, Division Manager.

6. Approval