

EN BANC

[G.R. No. 122226, March 25, 1998]

**UNITED PEPSI-COLA SUPERVISORY UNION (UPSU),
PETITIONER, VS. HON. BIENVENIDO E. LAGUESMA AND PEPSI-
COLA PRODUCTS, PHILIPPINES, INC. RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

Petitioner is a union of supervisory employees. It appears that on March 20, 1995 the union filed a petition for certification election on behalf of the route managers at Pepsi-Cola Products Philippines, Inc. However, its petition was denied by the med-arbiter and, on appeal, by the Secretary of Labor and Employment, on the ground that the route managers are managerial employees and, therefore, ineligible for union membership under the first sentence of Art. 245 of the Labor Code, which provides:

Ineligibility of managerial employees to join any labor organization; right of supervisory employees. – Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own.

Petitioner brought this suit challenging the validity of the order dated August 31, 1995, as reiterated in the order dated September 22, 1995, of the Secretary of Labor and Employment. Its petition was dismissed by the Third Division for lack of showing that respondent committed grave abuse of discretion. But petitioner filed a motion for reconsideration, pressing for resolution its contention that the first sentence of Art. 245 of the Labor Code, so far as it declares managerial employees to be ineligible to form, assist or join unions, contravenes Art. III § 8 of the Constitution which provides:

The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for the purposes not contrary to law shall not be abridged.

For this reason, the petition was referred to the Court en banc.

The Issues in this Case

Two question are presented by the petition: (1) whether the route managers at Pepsi-Cola Products Philippines, Inc. are managerial employees and (2) whether Art. 245, insofar as it prohibits managerial employees from forming, joining or assisting labor unions, violates Art. III, § 8 of the Constitution.

In resolving these issues it would be useful to begin by defining who are “managerial employees” and considering the types of “managerial employees.”

Types of Managerial Employees

The term “manager” generally refers to “anyone who is responsible for subordinates and other organization resources.”^[1] As a class, managers constitute three levels of a pyramid:

Top Management

Middle Management

First Line

Management

(also called Supervisor)

Operatives

Or Operating Employees

FIRST-LINE MANAGERS – The lowest level in an organization at which individuals are responsible for the work of others is called *first-line or first-level management*. First-line managers direct operating employees only; they do not supervise other managers. Example of first-line managers are the “foreman” or production supervisor in a manufacturing plant, the technical supervisor in a research department, and the clerical supervisor in a large office. First-level managers are often called supervisors.

MIDDLE MANAGERS – The term *middle management* can refer to more than one level in an organization. Middle managers direct the activities of other managers and sometimes also those of operating employees. Middle managers’ principal responsibilities are to direct the activities that implement their organizations’ policies and to balance the demands of their superiors with the capacities of their subordinates. A plant manager in an electronics firm is an example of a middle manager.

TOP MANAGERS – Composed of a comparatively small group of executives, *top management* is responsible for the overall management of the organization. It establishes operating policies and guides the organization’s interactions with its environment. Typical titles of top managers are “chief executive officer,” “president,” and “senior vice-president.” Actual titles vary from one organization to another and are not always a reliable guide to membership in the highest management classification.^[2]

As can be seen from this description, a distinction exist between those who have the authority to devise, implement and control strategic and operational policies (top and middle managers) and those whose task is simply to ensure that such polices are

carried out by the rank-and-file employees of an organization (first-level managers/supervisors). What distinguishes them from the rank-and file employees is that they act in the interest of the employer in supervising such rank-and-file employees.

“Managerial employees” may therefore be said to fall into two distinct categories: the “managers” *per se*, who compose the former group described above, and the “supervisors” who form the latter group. Whether they belong to the first or second category, managers, vis-à-vis employers, are, likewise, employees.^[3]

The first question is whether route managers are managers are managerial employees or supervisors.

Previous Administrative Determinations of the Question Whether Route Managers are Managerial Employees

It appears that this question was the subject of two previous determinations by the Secretary of Labor and Employment, in accordance with which this case was decided by the med-arbiter.

In Case No. OS-MA-10318-91, entitled *Workers’s Alliance Trade Union (WATU) v. Pepsi-Cola Products Philippines, Inc.*, decided on November 13, 1991, the Secretary of Labor found:

We examined carefully the pertinent job description of the subject employees and other documentary evidence on record vis-à-vis paragraph (m), Article 212 of the Labor Code, as amended, and we find that only those employees occupying the position of route manager and accounting manager are managerial employees. The rest i.e. quality control manager, yard/transport manager and warehouse operations manager are supervisory employees.

To qualify as managerial employee, there must be a clear showing of the exercise of managerial attributes under paragraph (m), Article 212 of the Labor Code as amended. Designations or titles of positions are not controlling. In the instant case, nothing on record will support the claim that the quality control manager, yard/transport manager and warehouse operations manager are vested with said attributes. The warehouse operations manager, for example, merely assists the plant finance manager in planning, organizing, directing and controlling all activities relative to development and implementation of an effective management control information system at the sale offices. The exercise of authority of the quality control manager, on the other hand, needs the concurrence of the manufacturing manager

As to the route managers and accounting manager, we are convinced that they are managerial employees. Their job descriptions clearly reveal so.

On July 6, 1992, this finding was reiterated in Case No. OS-A-3-71-92, entitled *In Re: Petition for Direct Certification and/or Certification Election-Route Managers/Supervisory Employees of Pepsi-Cola Products Phils. Inc.*, as follows:

The issue brought before us is not of first impression. At one time, we had the occasion to rule upon the status of route manager in the same company vis a vis the issue as to whether or not it is supervisory employee or a managerial employee. In the case of Workers Alliance Trade Unions (NATU) vs. Pepsi Cola Products,

Phils., Inc. (OS-MA-A-10-318-91), 15 November 1991, we ruled that a route manager is a managerial employee within the context of the definition of the law, and hence, ineligible to join, form or assist a union. We have once more passed upon the logic of our Decision *aforecited* in the light of the issues raised in the instant appeal, as well as the available documentary evidence on hand, and have come to the view that there is no cogent reason to depart from our earlier holding. Route Managers are, by the very nature of their functions and the authority they wield over their subordinates, managerial employees. The prescription found in Art.

245 of the Labor Code, as amended therefore, clearly applies to them.^[4] 4

Citing our ruling in *Nasipit Lumber Co. v. National Labor Relations Commission*,^[5] 5 however, petitioner argues that these previous administrative determinations do not have the effect of *res judicata* in this case, because "labor relations proceedings" are "non-litigious and summary in nature without regard to legal technicalities."^[6] *Nasipit Lumber Co.* involved a clearance to dismiss an employee issued by the Department of Labor. The question was whether in a subsequent proceeding for illegal dismissal, the clearance was *res judicata*. In holding it was not, this Court made it clear that it was referring to labor relations proceedings of a non-adversary character, thus:

The requirement of a clearance to terminate employment was a creation of the Department of labor to carry out the Labor Code provisions on security of tenure and termination of employment. The proceeding subsequent to the filing of an application for clearance to terminate employment was outlined in Book V, Rule XIV of the Rules and Regulations Implementing the Labor Code. The fact that said rule allowed a procedure for the approval of the clearance with or without the opposition of the employee concerned (Secs. 7 & 8), demonstrates the non-litigious and summary nature of the proceeding. The clearance requirement was therefore necessary only as an expeditious shield against arbitrary dismissal without the knowledge and supervision of the Department of Labor. Hence, a duly approved

clearance implied that the dismissal was legal or for cause (Sec. 2).^[7] *v. National Labor Relations Commission*, 177 SCRA 93, 100 (1989).7

But the doctrine of *res judicata* certainly applies to adversary administrative proceedings. As early as 1956, in *Brillantes v. Castro*,^[8] 8 we sustained the dismissal of an action by a trial court on the basis of a prior administrative determination of the same case by the Wage Administration Service, applying the principle of *res judicata*. Recently, in *Abad v. NLRC*^[9] 9 we applied the related doctrine of *stare decisis* in holding that the prior determination that certain jobs at the Atlantic Gulf and Pacific Co. were project employments was binding in another case involving another group of employees of the same company. Indeed, in *Nasipit Lumber Co.*, this Court clarified toward the end of its opinion that "the doctrine of *res judicata* applies . . . to judicial or quasi judicial proceedings and not to the exercise of administrative powers."^[10] *v. National Labor Relations Commission*, *supra* note 7.10 Now proceedings for certification election, such as those involved in Case No. OS-M-A-10-318-91 and Case No. OS-A-3-71-92, are quasi judicial in nature and, therefore, decisions rendered in such proceedings can attain finality.^[11] *v. B.F. Goodrich (Marikina Factory) Confidential and Salaries Employees Union-NATU*, 49 SCRA 532 (1973).11

Thus, we have in this case an expert's view that the employees concerned are managerial employees within the purview of Art. 212 which provides:

(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.

At the very least, the principle of finality of administrative determination compels respect for the finding of the Secretary of Labor that route managers are managerial employees as defined by law in the absence of anything to show that such determination is without substantial evidence to support it. Nonetheless, the Court, concerned that employees who are otherwise supervisors may wittingly or unwittingly be classified as managerial personnel and thus denied the right of self-organization, has decided to review the record of this case.

DOLE's Finding that Route Managers are Managerial Employees Supported by Substantial Evidence in the Record

The Court now finds that the job evaluation made by the Secretary of Labor is indeed supported by substantial evidence. The nature of the job of route managers is given in a four-page pamphlet, prepared by the company, called "Route Manager Position Description," the pertinent parts of which read:

A. BASIC PURPOSE

A Manager achieves objectives through others.

As a Route Manager, your purpose is to meet the sales plan; and you achieve this objective through the skillful MANAGEMENT OF YOUR JOB AND THE MANAGEMENT OF YOUR PEOPLE.

These then are your functions as Pepsi-Cola Route Manager. Within these functions - managing your job and managing your people - you are accountable to your District Manager for the execution and completion of various tasks and activities which will make it possible for you to achieve your sales objectives.

B. PRINCIPAL ACCOUNTABILITIES

1.0 MANAGING YOUR JOB

The Route Manager is accountable for the following:

1.1 SALES DEVELOPMENT

- 1.1.1 Achieve the sales plan.
- 1.1.2 Achieve all distribution and new account objectives.
- 1.1.3 Develop new business opportunities thru personal contacts with dealers.
- 1.1.4 Inspect and ensure that all merchandizing [*sic*] objectives are achieved in all outlets.