SUPREME COURT
SECOND DIVISION

GOLDEN FARMS, INC.,
***Petitioner*,**

-versus-

G.R. No. 78755
July 19, 1989

THE HONORABLE DIRECTOR PURA FERRER-CALLEJA, BUREAU OF LABOR RELATIONS and NATIONAL FEDERATION OF LABOR,
***Respondents*.**
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D E C I S I O N

PARAS, *J.*:

Petitioner Golden Farms, Inc., seeks a reversal of the resolution of public respondent Department of Labor and Employment Director Pura Ferrer-Calleja in BLR Case No. A-2-56-87 which affirmed on appeal the decision of Labor Arbiter Conrado O. Macasa, Sr., in NLRC Case No. R-418-ROXI-MED-UR-88-86, issuing a directive as follows:

> "In view of the foregoing, the herein petition for certification election filed by the National Federation of Labor (NFL) is hereby DISMISSED; whereas, its resultant and relevant consequence of its recognized representation of the entire rank-

> and-file employees of the bargaining unit should be given life and meaning, as it is hereby directed, and Employer Golden Farms, Incorporated likewise enjoined to negotiate for a supplementary collective bargaining agreement, or for the inclusion of the herein monthly paid rank-and-file employees at Luna, Kapalong, Davao del Norte, and Lanang, Davao City in the still existing negotiated contract, whichever the parties may consider just and appropriate under the circumstances."
>
> SO ORDERED. (P. 29, Rollo)

The case originated as a Petition for Direct Certification Election or Recognition filed by herein private respondent in behalf of certain office employees and foremen before Regional Office No. XI, Davao City of the Ministry of Labor and Employment. Petitioner herein opposed said petition on the ground among others that a perusal of the names allegedly supporting the said petition showed that said persons by the nature of their jobs are performing managerial functions and/or occupying confidential positions such that they cannot validly constitute a separate or distinct group from the existing collective bargaining unit also represented by private respondent.

Petitioner is a corporation engaged in the production of bananas for export. Private respondent Union represents the employees/workers of petitioner corporation, who were the same signatories to an earlier Petition for Certification Election filed in 1984 before the Ministry of Labor known as ROXI Case No. UR-70-84, which was dismissed by a Resolution issued by Med-Arbiter Conchita Martinez when it was established that a collective bargaining unit (NFL) between the Corporation and the rank-and-file employees was and is in existence at the time of the filing of the said petition for certification election until the present filing. However, in the order of dismissal, it was stated:

> "After taking into consideration the functions exercised by the foremen as contained in their joint affidavits (Annexes "A-1", "A-2" & "A-3", Petitioner's Position Paper) apparently, they fall within the classification of rank-and-file employees. For, as consistently ruled in a long line of decisions, mere supervisory

> designations in the position titles, do not make the holders of such positions any less rank and filers, without the convincing proof that such supervisory designations are coupled with actual performance of managerial functions. In the cases at bar, what was submitted by the respondent companies are only lists of employees holding the positions of foremen and confidential positions and as such are not covered by the bargaining unit. Such piece of evidence alone does not constitute convincing proof for us to adapt respondents' stance (Annexes "A", "B", "C", & "D"). Comment on Petition). (P. 13, Rollo)

Having had no opportunity to contest the abovementioned statement in the order of dismissal, petitioner herein as private respondent therein, filed a "Manifestation" stating among others:

> "2. That since the petitions were dismissed the herein employees make clear for the record that said view would run counter to the provision of the pertinent Collective Bargaining Agreement whereby the foremen were already acknowledged and agreed upon to be managerial employees and accordingly excluded from the coverage of the said CBA;
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> "3. That with respect to those employees holding confidential positions, it is a basic principle that they cannot be included in any bargaining unit, the fact being that having access to confidential informations, said employees may be the source of undue advantage. Said employees may act as spies for either parties to collective bargaining agreement. This is especially true in this case where the petitioning union is already the bargaining agent of the rank-and-file employees in the establishment. To allow confidential employees to join existing bargaining unit will defeat the very purpose for which an employee holding confidential position was in the first place excluded." (P. 68, Rollo)

Private respondent herein as petitioner therein appealed the order of dismissal which was accordingly opposed (Annex "L" p. 69, Rollo) by Golden Farms, Inc., reiterating the grounds and arguments set forth in its Manifestation filed earlier. The appeal was dismissed and

subsequently the National Federation of Labor Union refiled the Petition for Certification in NLRC Case No. R-418-ROX-MED-UR-88-86 which was also dismissed. Said order of dismissal is now the subject of this review for containing directives not within the power of a Med-Arbiter to issue. Petitioner Golden Farms, Inc., now poses the following questions:

> I — HAS A MED-ARBITER THE POWER OR AUTHORITY TO DIRECT MANAGEMENT TO ENTER INTO A SUPPLEMENTAL COLLECTIVE BARGAINING AGREEMENT WITH A CONTRACTING UNION.
>
> II — MAY SUPERVISORS, CASHIERS, FOREMEN, AND EMPLOYEES HOLDING CONFIDENTIAL/MANAGERIAL FUNCTION COMPEL MANAGEMENT TO ENTER INTO A COLLECTIVE BARGAINING AGREEMENT WITH THEM. (P. 14, Rollo)

The petition merits Our consideration.

Respondents relied heavily on the alleged finding of Med-Arbiter Martinez that the employees who were signatories to the petition for certification election and represented by respondent Union are actually rank-and-file workers not disqualified from entering into a collective bargaining agreement with management. In said findings of fact, Med-Arbiter Martinez singled out in her classification as rank-and-file employees the foremen of Petitioner Corporation considered from their joint affidavits and for lack of convincing proof that their supervisory designations are coupled with the actual performance of managerial functions.

Whether or not such finding is supported by the evidence is beside the point. Respondents herein do not dispute that the signatories (listed in Annex "A", page 30, Rollo) to the Petition for certification election subject of this case, were holding the positions of cashier, purchasers, personnel officers, foremen and employees having access to confidential information such as accounting personnel, radio and telegraph operators and head of various sections. It is also a fact that respondent Union is the exclusive bargaining Unit of the rank-and-file employees of petitioner corporation and that an existing CBA

between petitioner corporation and the Union representing these rank-and-file employees was still enforced at the time the Union filed a petition for certification election in behalf of the aforementioned signatories. Under the terms of said CBA (Annex "E", p. 40, Rollo) it is expressly provided that:

> "Section 1. The COMPANY and the UNION hereby agree that the recognized bargaining unit for purposes of this agreement shall consist of regular rank-and-file workers employed by the COMPANY at the plantation presently situated at Alejal, Carmen, Davao. Consequently, all managerial personnel like, superintendents, supervisor, foremen, administrative, professional and confidential employees, and those temporary, casual, contractual, and seasonal workers are excluded from the bargaining unit and therefore, not covered by this agreement." (P. 41, Rollo)

Respondents do not dispute the existence of said collective bargaining agreement. We must therefore respect this CBA which was freely and voluntarily entered into as the law between the parties for the duration of the period agreed upon. Until then no one can be compelled to accept changes in the terms of the collective bargaining agreement.

Furthermore, the signatories to the petition for certification election are the very type of employees by the nature of their positions and functions which We have decreed as disqualified from bargaining with management in case of Bulletin Publishing Co. Inc. vs. Hon. Augusto Sanchez, etc. (144 SCRA 628) reiterating herein the rationale for such ruling as follows: if these managerial employees would belong to or be affiliated with a Union, the latter might not be assured of their loyalty to the Union in view of evident conflict of interests or that the Union can be company-dominated with the presence of managerial employees in Union membership. A managerial employee is defined under Art. 212 (k) of the new Labor Code as "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, or to effectively recommend such managerial actions. All employees not falling within

this definitions are considered rank-and-file employees for purposes of this Book."

This rationale holds true also for confidential employees such as accounting personnel, radio and telegraph operators, who having access to confidential information, may become the source of undue advantage. Said employee(s) may act as a spy or spies of either party to a collective bargaining agreement. This is specially true in the present case where the petitioning Union is already the bargaining agent of the rank-and-file employees in the establishment. To allow the confidential employees to join the existing Union of the rank-and-file would be in violation of the terms of the Collective Bargaining Agreement wherein this kind of employees by the nature of their functions/positions are expressly excluded.

As to the company foremen, while in the performance of supervisory functions, they may be the extension or alter ego of the management. Adversely, the foremen, by their actuation, may influence the workers under their supervision to engage in slow down commercial activities or similar activities detrimental to the policy, interest or business objectives of the company or corporation, hence they also cannot join.

WHEREFORE, finding the assailed directive of Med-Arbiter Conrado O. Macasa, Sr. which was affirmed by Director Pura Ferrer-Calleja reiterating the directive of Med-Arbiter Conchita Martinez "to negotiate for a supplementary collective bargaining agreement, or for the inclusion of the herein monthly paid rank-and-file employees" to be erroneous as it is in complete disregard of the terms of the collective bargaining agreement, the same is hereby **DECLARED** to be without force and effect.

SO ORDERED.

Melencio-Herrera, Padilla, Sarmiento and Regalado, *JJ.*, concur.