SUPREME COURT
SECOND DIVISION

ATLANTIC, GULF AND PACIFIC COMPANY OF MANILA, INC.,
***Petitioner*,**

-versus-

G.R. No. 96635
August 6, 1992

HON. BIENVENIDO E. LAGUESMA, UNDERSECRETARY, DEPARTMENT OF LABOR & EMPLOYMENT; HON. TOMAS F. FALCONITIN, MED-ARBITER, BUREAU OF LABOR RELATIONS, DEPT. OF LABOR & EMPLOYMENT; LAKAS NG MANGGAGAWA SA AG & P-SMSG-NATIONAL FEDERATION OF LABOR (LAKAS-NFL),
***Respondents*.**
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D E C I S I O N

NOCON, *J.*:

This is a Petition for *Certiorari* and prohibition with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order to annul and set aside the Order dated December 11,

1990 of the Department of Labor and Employment affirming its Resolution dated November 22, 1990 and the Order of the Med-Arbiter in ordering that a certification election among the regular project employees of the herein petitioner Atlantic, Gulf and Pacific Company of Manila, Inc. at its Steel and Marine Structures Group (AG&P-SMSG) be conducted immediately.

The antecedent facts of the case are as follows:

Petitioner Atlantic, Gulf and Pacific Company of Manila, Inc. is engaged in the construction and fabrication business and conducts its construction business in different construction sites here and abroad while its fabrication operations are conducted by its Steel and Marine Structures Group at its Batangas Marine and Fabrication Yard ("BMFY", for brevity) in Bauan, Batangas where the steel structures and other heavy marine works are fabricated.

In the exercise of its management prerogative, petitioner has adopted the practice of hiring project employees when existing fabrication capacity cannot absorb increases in job orders for steel structures and other heavy construction works. Said project employees are covered by the Project Worker/Reliever Employment Agreements which indicate the specific projects to which they are assigned and the duration of their employment. Upon the expiration of their contracts/agreements, the employment of these employees is automatically terminated unless the projects to which they are assigned have not yet been completed, in which case, they are rehired for the remainder of the project. The positions occupied by the regular rank-and-file employees and the project employees are basically similar in nature and are directly related to the main line of petitioner's business.

On June 8, 1990, petitioner executed a Collective Bargaining Agreement with the AG&P United Rank & File Association ("URFA", for brevity) which is the sole and exclusive bargaining agent of all the regular rank-and-file employees of the petitioner.[1] Said Collective Bargaining Agreement was subsequently registered on July 9, 1990 with the Bureau of Labor Relations and Certificate of Registration No. BLR-90-0131 was issued.

On June 29, 1990, private respondent Lakas ng Manggagawa sa AG&P-SMSG-National Federation of Labor ("LAKAS-NFL", for brevity) filed a Petition for Certification Election with the Med-Arbitration Unit to be certified as the sole and exclusive bargaining agent of the regular non-project employees of the Steel and Marine Structure at the BMFY representing approximately 1,000 employees or that a certification be conducted among said employees.[2]

On September 25, 1990, public respondent Med-Arbiter Tomas F. Falconitin of the Department of Labor and Employment issued an Order, the dispositive portion of which reads:

> "WHEREFORE, premises considered, it is hereby ordered that certification election among the regular "Project Workers"/employees of Atlantic Gulf and Pacific Company of Manila, Inc. at its Steel and Marine Structures Group (AG&P-SMSG) be conducted immediately. The Representation Officer is hereby directed to conduct the usual pre-election conference in connection thereof with the following choices to consider:
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> 1. Lakas Ng Manggagawa Sa AG&P-SMSG National Federation of Labor (LAKAS-NFL); and
>
> 2. No Union.
>
> SO ORDERED."[3]

On October 11, 1990, petitioner filed an appeal with the Department of Labor and Employment.[4]

On October 26, 1990, 691 alleged project employees sought to be represented by private respondent LAKAS-NFL were formally issued regular employment appointments by the petitioner effective November 1, 1990 which were accepted by said project employees.

Thereafter, in a Resolution dated November 22, 1990, public respondent Undersecretary of the Department of Labor and Employment Bienvenido E. Laguesma denied petitioner's appeal for lack of merit.

On November 28, 1990, petitioner's project employees at its SMSG site who were not given regular employment appointment on October 26, 1990 went on strike and completely paralyzed petitioner's operations in Bauan, Batangas. Said strike was settled in a conciliation conference convened by the National Conciliation and Mediation Board on December 8, 1990 when an Agreement was reached by the petitioner and private respondent LAKAS-NFL wherein petitioner agreed to formally regularize all the remaining alleged project employees with at least one year of service pending the final outcome of the certification election case.[5] Thereafter, 686 additional regular project employees were regularized effective December 1, 1990 in pursuance to said Agreement.

On December 6, 1990, petitioner received a letter from URFA informing the former about the admission into URFA of the membership of 410 regular project employees who were formally regularized by the petitioner effective November 1, 1990.

On that same date, petitioner filed a Motion for Reconsideration on the Resolution dated November 22, 1990 alleging that the employees sought to be represented by the private respondent LAKAS-NFL are regular employees of the petitioner and are deemed included in the existing Collective Bargaining Agreement of the regular rank-and-file employees of the petitioner which motion was subsequently denied by the public respondent Undersecretary Laguesma in an Order dated December 11, 1990.

Hence, this petition assailing said Order and Resolution on the following grounds:

> "I. RESPONDENT UNDERSECRETARY ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ISSUING THE RESOLUTION DATED 22 NOVEMBER 1990 AND THE ORDER DATED 11 DECEMBER 1990 IN THAT THEY FAILED TO HOLD THAT THE CONTRACT-BAR RULE APPLIES TO THE INSTANT CASE.
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> II. RESPONDENT UNDERSECRETARY ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK

OF JURISDICTION IN ISSUING THE RESOLUTION DATED 22 NOVEMBER 1990 AND THE ORDER DATED 11 DECEMBER 1990 IN THAT THEY FAILED TO CONSIDER THE SUPERVENING FACT THAT THE BARGAINING UNIT OF THE ALLEGED REGULAR PROJECT WORKERS HAS CEASED TO EXIST BY VIRTUE OF THE REGULARIZATION OF ALL THE ALLEGED PROJECT WORKERS WITH AT LEAST ONE YEAR OF SERVICE."[6]

The contentions of the petitioner are meritorious.

Section 1 of Article II of petitioner's Collective Bargaining Agreement with URFA defined appropriate bargaining unit as follows:

ARTICLE II
SCOPE

Sec. 1. Appropriate Bargaining Unit — The appropriate bargaining unit covered by this Agreement consists of those regular rank-and-file employees of the COMPANY who have remained as such up to the date of execution of this Agreement, as well as those who may hereafter acquire the same status. It is hereby understood and agreed that the following are not within the appropriate bargaining unit and, therefore, this Agreement is not applicable to them, to wit:

a. Executives, division department and section heads, staff members, managerial employees, and executive secretaries;

b. Workers hired by the COMPANY as project employees as contemplated by existing laws including relievers of regular employees who are sent abroad are not covered by this Contract. Provided, however, that regular employees who are assigned as relievers shall continue to be covered by this Contract, and provided further that relievers who are assigned to regular positions which may become vacant shall be duly considered for

such regular positions after attaining the six months probationary period.

c. Security personnel."[7]

Although the aforementioned definition does not include petitioner's regular project employees in the coverage of the existing Collective Bargaining Agreement between petitioner and the URFA, the regularization of all the regular project employees with at least one year of service and the subsequent membership of said employees with the URFA mean that the alleged regular project employees whom respondent LAKAS-NFL seeks to represent are, in fact, regular employees by contemplation of law and included in the appropriate bargaining unit of said Collective Bargaining Agreement consequently, the bargaining unit which respondent LAKAS-NFL seeks to represent has already ceased to exist.

The Labor Code provides:

> "Art. 232. Prohibition on Certification Election. — The Bureau shall not entertain any petition for certification election or any other action which may disturb the administration of duty registered existing collective bargaining agreements affecting the parties except under Articles 253, 253-A and 256 of this Code."

Paragraph 2 of Section 3, Rule V, Book V of the Implementing Rules end Regulations likewise provides:

> "If a collective bargaining agreement has been duly registered in accordance with Article 231 of the Code, a petition for certification election or a motion for intervention can only be entertained within sixty (60) days prior to the expiry date of such agreement."

Consequently, the existence of a duly registered Collective Bargaining Agreement between the petitioner and URFA, which is the sole and exclusive bargaining representative of all the regular rank-and-file employees of the petitioner including the regular project employees with more than one year of service, bars any other labor organization

from filing a petition for certification election except within the 60-day period prior to the expiration of the Collective Bargaining Agreement.

To rule otherwise would negate the legislative intent in the enactment of Article 232 of the Labor Code which was designed to ensure industrial peace between the employer and its employees during the existence of the collective bargaining agreement.

WHEREFORE, finding the petition meritorious, the assailed Resolution of November 22, 1990 and the Order dated December 11, 1990 are hereby annulled and set aside. The temporary restraining order issued is made permanent. Costs against respondents.

SO ORDERED.

Narvasa, *C.J.*, Padilla and Regalado, *JJ.*, concur.

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[1] Rollo, p. 32.
[2] Id. at p. 64.
[3] Id. at p. 189.
[4] Id. at p. 95.
[5] Id. at pp. 232-233.
[6] Id. at pp. 16-17.
[7] Id. at p. 145