SUPREME COURT
SECOND DIVISION

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

-versus-

G.R. No. 102130
July 26, 1994

THE HONORABLE SECRETARY OF LABOR and THE PROGRESSIVE FEDERATION OF LABOR,
***Respondents*.**
x----------x

D E C I S I O N

PUNO, *J.*:

The sole issue for Resolution in this Petition for *Certiorari* with Prayer for the Issuance of Preliminary Injunction and/or Restraining Order is whether or not petitioner's monthly paid rank-and-file employees can constitute a bargaining unit separate from the existing bargaining unit of its daily paid rank-and-file employees.

Petitioner Golden Farms, Inc., is a corporation engaged in the production and marketing of bananas for export. On February 27, 1992, private respondent Progressive Federation of Labor (PFL) filed a petition before the Med-Arbiter praying for the holding of a

certification election among the monthly paid office and technical rank-and-file employees of petitioner Golden Farms.

Petitioner moved to dismiss the petition on three (3) grounds. First, respondent PFL failed to show that it was organized as a chapter within petitioner's establishment. Second, there was already an existing collective bargaining agreement between the rank-and-file employees represented by the National Federation of Labor (NFL) and petitioner. And third, the employees represented by PFL had allegedly been disqualified by this Court from bargaining with management in Golden Farms, Inc., vs. Honorable Director Pura Ferrer-Calleja, G.R. No. 78755, July 19, 1989.[1]

Respondent PFL opposed petitioner's Motion to Dismiss. It countered that the monthly paid office and technical employees should be allowed to form a separate bargaining unit because they were expressly excluded from coverage in the Collecting Bargaining Agreement (CBA) between petitioner and NFL. It also contended that the case invoked by petitioner was inapplicable to the present case.

In its reply, petitioner argued that the monthly paid office and technical employees should have joined the existing collective bargaining unit of the rank-and-file employees if they are not managerial employees.

On April 18, 1991, the Med-Arbiter granted the petition and ordered that a certification election be conducted, viz:

> "WHEREFORE, premises considered, the present petition filed by the Progressive Federation of Labor, for certification election among the office and technical employees of Golden Farms, Inc., is, as it is hereby, GRANTED with the following choices:
>
> 1. Progressive Federation of Labor (PFL);
>
> 2. No union.
>
> The designated representation officer is hereby directed to call the parties to a pre-election conference to thresh out the mechanics of the election and to conduct and supervise the

same within twenty (20) days from receipt by the parties of this Order. The "Masterlist of Office and Technical Employees" shall be the basis in determining the employees qualified to vote during the certification election.

SO ORDERED."[2]

Petitioner seasonably appealed to public respondent Secretary of Labor. On August 6, 1991, respondent Secretary of Labor issued the assailed Decision denying the appeal for lack of merit.[3] Petitioner filed a Motion for Reconsideration but the same was also denied on September 13, 1991.

Thus, this petition for certiorari interposing two (2) issues.

I

THE CREATION OF AN ADDITIONAL BARGAINING UNIT FOR CERTAIN RANK AND FILE EMPLOYEES WILL NOT ONLY SPLIT THE EXISTING ONE BUT WILL ALSO NEGATE THE PRINCIPLE OF RES JUDICATA.

II

THE PROGRESSIVE FEDERATION OF LABOR BEING THE EXCLUSIVE BARGAINING AGENT OF THE SUPERVISORY EMPLOYEES IS DISQUALIFIED FROM REPRESENTING THE OFFICE AND TECHNICAL EMPLOYEES.

The petition is devoid of merit.

The monthly paid office and technical rank-and-file employees of petitioner Golden Farms enjoy the constitutional right to self-organization and collective bargaining.[4] A "bargaining unit" has been defined as a group of employees of a given employer, comprised of all or less than all of the entire body of employees, which the collective interest of all the employees, consistent with equity to the employer, indicate to be the best suited to serve the reciprocal rights and duties of the parties under the collective bargaining provisions of the law.[5] The community or mutuality of interest is therefore the essential

criterion in the grouping. "And this is so because 'the basic test of an asserted bargaining unit's acceptability is whether or not it is fundamentally the combination which will best assure to all employees the exercise of their collective bargaining rights.'"[6]

In the case at bench, the evidence established that the monthly paid rank-and-file employees of petitioner primarily perform administrative or clerical work. In contradistinction, the petitioner's daily paid rank-and-file employees mainly work in the cultivation of bananas in the fields. It is crystal clear the monthly paid rank-and-file employees of petitioner have very little in common with its daily paid rank-and-file employees in terms of duties and obligations, working conditions, salary rates, and skills. To be sure, the said monthly paid rank-and-file employees have even been excluded from the bargaining unit of the daily paid rank-and-file employees. This dissimilarity of interests warrants the formation of a separate and distinct bargaining unit for the monthly paid rank-and-file employees of the petitioner. To rule otherwise would deny this distinct class of employees the right to self-organization for purposes of collective bargaining. Without the shield of an organization, it will also expose them to the exploitations of management. So we held in University of the Philippines vs. Ferrer-Calleja,[7] where we sanctioned the formation of two (2) separate bargaining units within the establishment, viz:

> "The dichotomy of interests, the dissimilarity in the nature of the work and duties as well as in the compensation and working conditions of the academic and non-academic personal dictate the separation of these two categories of employees for purposes of collective bargaining. The formation of two separate bargaining units, the first consisting of the rank-and-file non-academic employees, and the second, of the rank-and-file academic employees, is the set-up that will best assure to all the employees the exercise of their collective bargaining rights."

Petitioner next contends that these monthly paid office and technical employees are managerial employees. They allegedly include those in the accounting and personnel department, cashier, and other employees holding positions with access to classified information.

We are not persuaded, Article 212, paragraph (m) of the Labor Code, as amended, defines a managerial employee as follows:

> "'Managerial employee' is one who is vested with power 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."

Given this definition, the monthly paid office and technical employees, accountants, and cashiers of the petitioner are not managerial employees for they do not participate in policy-making but are given cut out policies to execute and standard practices to observe.[8] In the main, the discharge of their duties does not involve the use of independent judgment. As factually found by the Med-Arbiter, to wit:

> "A perusal of the list of the office and technical employees sought to be represented in the instant case, with their corresponding designation does not show that said Office and Technical employees exercises supervisory or managerial functions.
>
> The office believes and so hold that the employees whose names appear in the "Masterlist of Office and Technical Employees" submitted during the hearing are eligible to join/form a labor organization of their own choice."[9]

Our decision in Golden Farms, Inc., vs. Honorable Pura Ferrer-Calleja, op. cit., does not pose any obstacle in holding a certification election among petitioner's monthly paid rank-and-file employees. The issue brought to fore in that case was totally different, i.e., whether or not petitioner's confidential employees, considering the nature of their work, should be included in the bargaining unit of the daily paid rank-and-file employees. In the case at bench, the monthly

paid rank-and-file employees of petitioner are being separated as a bargaining unit from its daily paid rank-and-file and employees, on the ground that they have different interest to protect. The principle of res judicata is, therefore, inapplicable.

The second assigned error which was not raised in the proceedings below must necessarily fail. The alleged error involves a question of fact which this Court cannot resolve. Petitioner submitted this contention only in its Memorandum dated February 12, 1993.[10] In this Memorandum, petitioner cited LRD Case No. OXI-UR-70 for Direct Recognition/Certification Election. But even a side glance of the cited case will reveal that it involves a petition for direct certification among the rank-and-file office and technical employees of the Golden Farms Inc., (not supervisory employees) under the House of Investment, Ladislawa Village, Buhangin, Davao City filed by the National Federation of Labor (not the respondent Progressive Federation of Labor). The averment of petitioner is baseless and its recklessness borders the contemptuous.

Finally, we note that it was petitioner company that filed the motion to dismiss the petition for election. The general rule is that an employer has no standing to question a certification election since this is the sole concern of the workers.[11] Law and policy demand that employers take a strict, hands-off stance in certification elections. The bargaining representative of employees should be chosen free from any extraneous influence of management. A labor bargaining representative, to be effective, must owe its loyalty to the employees alone and to no other.

WHEREFORE, the Petition is **DISMISSED** for lack of merit. With costs against petitioner.

SO ORDERED.

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

---

[1] Petition, Rollo, pp. 6-7.
[2] Med-Arbiter's Order, Rollo, pp. 31-32.
[3] Id., p. 43.

[4] 1987 Constitution, Article XIII, Section 3.
[5] University of the Philippines vs. Ferrer-Calleja, G.R. No. 96189, July 14, 1992, 211 SCRA 451; citing Rothenberg on Labor Relations, 482, cited in Fernandez & Quiazon, The Law of Labor Relations, 1963 ed., p. 281.
[6] Supra., p. 467.
[7] Supra., pp. 468-469.
[8] Villuga vs. NLRC, G.R. No. 75038, August 23, 1993, 225 SCRA 537.
[9] Rollo, pp. 30-31.
[10] Rollo, p. 121.
[11] Philippine Telegraphic and Telephone Corp., vs. Laguesma, G.R. No. 101730, June 17, 1993, 223 SCRA 452.