

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**NATIONAL ASSOCIATION OF TRADE
UNIONS (NATU) — REPUBLIC
PLANTERS BANK SUPERVISORS
CHAPTER,**

Petitioner,

-versus-

**G.R. No. 93468
December 29, 1994**

**HON. RUBEN D. TORRES, SECRETARY
OF LABOR AND EMPLOYMENT and
REPUBLIC PLANTERS BANK,**

Respondents.

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DECISION

BELLOSILLO, J.:

PADILLA, J., concurring and dissenting:

NATIONAL ASSOCIATION OF TRADE UNIONS (NATU) — REPUBLIC PLANTERS BANK SUPERVISORS CHAPTER seeks nullification of the Decision of public respondent Secretary of Labor dated 23 March 1990, which modified the order of Med-Arbiter Manases T. Cruz dated 17 August 1989 as well as his order dated 20 April 1990 denying reconsideration.

On 17 March 1989, NATU filed a petition for certification election to determine the exclusive bargaining representative of respondent Bank's employees occupying supervisory positions. On 24 April 1989, the Bank moved to dismiss the petition on the ground that the supposed supervisory employees were actually managerial and/or confidential employees thus ineligible to join, assist or form a union, and that the petition lacked the 20% signatory requirement under the Labor Code.

On 17 August 1989, Med-Arbiter Manases T. Cruz granted the petition thus —

WHEREFORE, let a certification election be ordered conducted among all the regular employees of the Republic Planters Bank occupying supervisory positions or the equivalent within 20 days from receipt of a copy of this Order. The choice shall be: (1) National Association of Trade Unions (NATU) — Republic Planters Bank Supervisors Chapter; and (2) No Union.

The payroll three months prior to the filing of this petition shall be utilized in determining the list of eligible voters.^[1]

Respondent Bank appealed the order to the Secretary of Labor on the main ground that several of the employees sought to be included in the certification election, particularly the Department Managers, Branch Managers/OICs, Cashiers and Controllers were managerial and/or confidential employees and thus ineligible to join, assist or form a union. It presented annexes detailing the job description and duties of the positions in question and affidavits of certain employees. It also invoked provisions of the General Banking Act and the Central Bank Act to show the duties and responsibilities of the bank and its branches.

On 23 March 1990, public respondent issued a decision partially granting the appeal, which is now being challenged before us —

WHEREFORE, the appeal is hereby partially granted. Accordingly, the Order dated 17 August 1989 is modified to the extent that Department Managers, Assistant Managers, Branch

Managers, Cashiers and Controllers are declared managerial employees. Perforce, they cannot join the union of supervisors such as Division Chiefs, Accounts Officers, Staff Assistants and OIC's (sic) unless the latter are regular managerial employees.^[2]

NATU filed a motion for reconsideration but the same was denied on 20 April 1990.^[3] Hence this recourse assailing public respondent for rendering the decision of 23 March 1990 and the order of 20 April 1990 both with grave abuse of discretion.

The crucial issue presented for our resolution is whether the Department Managers, Assistant Managers, Branch Managers/OICs, Cashiers and Controllers of respondent Bank are managerial and/or confidential employees hence ineligible to join or assist the union of petitioner.

NATU submits that an analysis of the decision of public respondent readily yields certain flaws that result in erroneous conclusions. Firstly, a branch does not enjoy relative autonomy precisely because it is treated as one unit with the head office and has to comply with uniform policies and guidelines set by the bank itself. It would be absurd if each branch of a particular bank would be adopting and implementing different policies covering multifarious banking transactions. Moreover, respondent Bank's own evidence clearly shows that policies and guidelines covering the various branches are set by the head office. Secondly, there is absolutely no evidence showing that bank policies are laid down through the collective action of the Branch Manager, the Cashier and the Controller. Thirdly, the organizational setup where the Branch Manager exercises control over branch operations, the Controller controls the Accounting Division, and the Cashier controls the Cash Division, is nothing but a proper delineation of duties and responsibilities. This delineation is a Central Bank prescribed internal control measure intended to objectively establish responsibilities among the officers to easily pinpoint culpability in case of error. The "dual control" and "joint custody" aspects mentioned in the decision of public respondent are likewise internal control measures prescribed by the Central Bank.

Neither is there evidence showing that subject employees are vested with powers or prerogatives to hire, transfer, suspend, lay off, recall,

discharge, assign or discipline employees. The bare allegations in the affidavits of respondent Bank's Executive Assistant to the President^[4] and the Senior Manager of the Human Resource Management Department^[5] that those powers and prerogatives are inherent in subject positions are self-serving. Their claim cannot be made to prevail upon the actual duties and responsibilities of subject employees.

The other evidence of respondent Bank which purports to show that subject employees exercise managerial functions even belies such claim. Insofar as Department Managers and Assistant Managers are concerned, there is absolutely no reason mentioned in the decision why they are managerial employees. Not even respondent Bank in its appeal questioned the inclusion of Assistant Managers among the qualified petitioning employees. Public respondent has deviated from the real issue in this case, which is, the determination of whether subject employees are managerial employees within the contemplation of the Labor Code, as amended by RA 6715; instead, he merely concentrated on the nature, conduct and management of banks conformably with the General Banking Act and the Central Bank Act.

Petitioner concludes that subject employees are not managerial employees but supervisors. Even assuming that they are confidential employees, there is no legal prohibition against confidential employees who are not performing managerial functions to form and join a union.

On the other hand, respondent Bank maintains that the Department Managers, Branch Managers, Cashiers and Controllers are inherently possessed of the powers enumerated in Art. 212, par. (m), of the Labor Code. It relies heavily on the affidavits of its Executive Assistant to the President and Senior Manager of the Human Resource Department. The Branch Managers, Cashiers and Controllers are vested not only with policy-making powers necessary to run the affairs of the branch, given the independence and relative autonomy which it enjoys in the pursuit of its goals and objectives, but also with the concomitant disciplinary authority over the employees.

The Solicitor General argues that NATU loses sight of the fact that by virtue of the appeal of respondent Bank, the whole case is thrown open for consideration by public respondent. Even errors not assigned in the appeal, such as the exclusion by the Med-Arbiter of Assistant Managers from the managerial employees category, is within his discretion to consider as it is closely related to the errors properly assigned. The fact that Department Managers are managerial employees is borne out by the evidence of petitioner itself. Furthermore, while it assails public respondent's finding that subject employees are managerial employees, petitioner never questioned the fact that said officers also occupy confidential positions and thus remain prohibited from forming or joining any labor organization.

Respondent Bank has no legal personality to move for the dismissal of the petition for certification election on the ground that its supervisory employees are in reality managerial employees. An employer has no standing to question the process since this is the sole concern of the workers. The only exception is where the employer itself has to file the petition pursuant to Art. 258 of the Labor Code because of a request to bargain collectively.^[6]

Public respondent, invoking RA 6715 and the inherent functions of Department Managers, Assistant Managers, Branch Managers, Cashiers and Controllers, held that these officers properly fall within the definition of managerial employees. The ratiocination in his Decision of 23 March 1990^[7] is that —

Republic Act No. 6715, otherwise known as the Herrera-Veloso Law, restored the right of supervisors to form their own unions while maintaining the proscription on the right to self-organization of managerial employees. Accordingly, the Labor Code, as amended, distinguishes managerial, supervisory and rank-and-file employees thus:

Art. 212 (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 managerial authority is not routinary 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 (Emphasis supplied).

At first glance, pursuant to the above-definitions and based on their job descriptions as guideposts, there would seem to be no difficulty in distinguishing a managerial employee from that of a supervisor, or from that of a mere rank-and-file employee. Yet, this task takes on a different dimension when applied to banks, particularly the branches thereof. This is so because unlike ordinary corporations, a bank's organizational operation is governed and regulated by the General Banking Act and the Central Bank Act, both special laws.

As pointed out by the respondent, in the banking industry, a branch is the microcosm of a banking institution, uniquely autonomous and self-governing.

This relative autonomy of a branch finds legal basis in Section 27 of the General Banking Act, as amended, thus:

The bank shall be responsible for all business conducted in such branches to the same extent and in the same manner as though such business had all been conducted in the head office.

For the purpose of this Act, a bank and its branches shall be treated as a unit (Emphasis supplied).

Conformably with the above, bank policies are laid down and/or executed through the collective action of the Branch Manager, Cashier and Controller at the branch level. The Branch Manager exercises over-all control and supervision over branch operation being on the top of the branch's pyramid structure. However, both the controller and the cashier who are called in banking parlance as 'Financial Managers' due to their fiscal functions are given such a share and sphere of responsibility in the operations of the bank. The cashier controls and supervises the cash division while the controller that of the Accounting Division. Likewise, their assigned task is of

great significance, without which a bank or branch for that matter cannot operate or function.

Through the collective action of these three branch officers operational transactions are carried out like: The two (2)-signature requirement of the manager, on one hand, and that of the controller or cashier on the other hand as required in bank's issuances and releases. This is the so-called 'dual control' through check-and-balance as prescribed by the Central Bank, per Section 1166.6, Book I, Manual of Regulations for Banks and Financial Intermediaries. Another is in the joint custody of the branch's cash in vault, accountable forms, collaterals, documents of title, deposit, ledgers and others, among the branch manager and at least two (2) officers of the branch as required under Section 1166.6 of the Manual of Regulations for Banks and Other Financial Intermediaries.

This structural set-up creates a triad of managerial authority among the branch manager, cashier and controller. Hence, no officer of the bank 'have (sic) complete authority and responsibility for handling all phases of any transaction from beginning to end without some control or balance from some other part of the organization' (Section 1166.3, Division of Duties and Responsibilities, Ibid). This aspect in the banking system which calls for the division of duties and responsibilities is a clear manifestation of managerial power and authority. No operational transaction at branch level is carried out by the singular act of the Branch Manager but rather through the collective act of the Branch Manager, Cashier/Controller (Emphasis supplied).

Noteworthy is the 'on call client' set up in banks. Under this scheme, the branch manager is tasked with the responsibility of business development and marketing of the bank's services which place him on client call. During such usual physical absences from the branch, the cashier assumes the reins of branch control and administration. On those occasions, the 'dual control system' is clearly manifest in the transactions and operations of the branch bank as it will then require the necessary joint action of the controller and the cashier.

The grave abuse of discretion committed by public respondent is at once apparent. Art. 212, par. (m), of the Labor Code is explicit. A

managerial employee is (a) one who is vested with powers or prerogatives to lay down and execute management policies, or to hire, transfer, suspend, lay off, recall, discharge, assign or discipline employees; or (b) one who is vested with both powers or prerogatives. A supervisory employee is different from a managerial employee in the sense that the supervisory employee, in the interest of the employer, effectively recommends such managerial actions, if the exercise of such managerial authority is not routinary in nature but requires the use of independent judgment.

Ranged against these definitions and after a thorough examination of the evidence submitted by both parties, we arrive at a contrary conclusion. Branch Managers, Cashiers and Controllers of respondent Bank are not managerial employees but supervisory employees. The finding of public respondent that bank policies are laid down and/or executed through the collective action of these employees is simply erroneous. His discussion on the division of their duties and responsibilities does not logically lead to the conclusion that they are managerial employees, as the term is defined in Art. 212, par. (m).

Among the general duties and responsibilities of a Branch Manager is “[t]o discharge his duties and authority with a high sense of responsibility and integrity and shall at all times be guided by prudence like a good father of the family, and sound judgment in accordance with and within the limitations of the policy/policies promulgated by the Board of Directors and implemented by the Management until suspended, superseded, revoked or modified” (par. 5, emphasis supplied).^[8] Similarly, the job summary of a Controller states: “Supervises the Accounting Unit of the branch; sees to the compliance by the Branch with established procedures, policies, rules and regulations of the Bank and external supervising authorities; sees to the strict implementation of control procedures (emphasis supplied).^[9] The job description of a Cashier does not mention any authority on his part to lay down policies, either.^[10] On the basis of the foregoing evidence, it is clear that subject employees do not participate in policy-making but are given approved and established policies to execute and standard practices to observe,^[11] leaving little or no discretion at all whether to implement said policies or not.^[12] It is the nature of the employee’s functions, and not the nomenclature

or title given to his job, which determines whether he has rank-and-file, supervisory or managerial status.^[13]

Moreover, the bare statement in the affidavit of the Executive Assistant to the President of respondent Bank that the Branch Managers, Cashiers and Controllers “formulate and implement the plans, policies and marketing strategies of the branch towards the successful accomplishment of its profit targets and objectives,”^[14] is contradicted by the following evidence submitted by respondent Bank itself:

- (a) Memorandum issued by respondent Bank’s Assistant Vice President to all Regional Managers and Branch Managers giving them temporary discretionary authority to grant additional interest over the prescribed board rates for both short-term and long-term CTDs subject, however, to specific limitations and guidelines set forth in the same memorandum;^[15]
- (b) Memorandum issued by respondent Bank’s Executive Vice President to all Regional Managers and Branch Officers regarding the policy and guidelines on drawing against uncollected deposits (DAUD);^[16]
- (c) Memorandum issued by respondent Bank’s President to all Field Offices regarding the guidelines on domestic bills purchased (DBP);^[17] and
- (d) Memorandum issued by the same officer to all Branch Managers regarding lending authority at the branch level and the terms and conditions thereof.^[18]

As a consequence, the affidavit of the Executive Assistant cannot be given any weight at all.

Neither do the Branch Managers, Cashiers and Controllers have the power to hire, transfer, suspend, lay off, recall, discharge, assign or discipline employees. The Senior Manager of the Human Resource Management Department of respondent Bank, in her affidavit, stated that “the power to hire, fire, suspend, transfer, assign or otherwise

impose discipline among subordinates within their respective jurisdictions is lodged with the heads of the various departments, the branch managers and officers-in-charge, the branch cashiers and the branch controllers. Inherent as it is in the aforementioned positions, the authority to hire, fire, suspend, transfer, assign or otherwise discipline employees within their respective domains was deemed unnecessary to be incorporated in their individual job descriptions; By way of illustration, on August 24, 1989, Mr. Renato A. Tuates, the Officer-in-Charge/Branch Cashier of the Bank's Dumaguete Branch, placed under preventive suspension and thereafter terminated the teller of the same branch. Likewise, on February 22, 1989, Mr. Francis D. Robite, Sr., the Officer-in-Charge of International Department, assigned the cable assistant of the International Department as the concurrent FCDU Accountable Forms Custodian.”^[19]

However, a close scrutiny of the memorandum of Mr. Tuates reveals that he does not have said managerial power because as plainly stated therein, it was issued “upon instruction from Head Office.”^[20] With regard to the memorandum of Mr. Robite, Sr., it appears that the power he exercised was merely in an isolated instance, taking into account the other evidence submitted by respondent Bank itself showing lack of said power by other Branch Managers/OICs:

- (a) Memorandum from the Branch Manager for the AVP — Manpower Management Department expressing the opinion that a certain employee, due to habitual absenteeism and tardiness, must be penalized in accordance with respondent Bank's Code of Discipline; and
- (b) Memorandum from a Branch OIC for the Assistant Vice President recommending a certain employee's promotional adjustment to the present position he occupies.

Clearly, those officials or employees possess only recommendatory powers subject to evaluation, review and final action by higher officials. Therefore, the foregoing affidavit cannot bolster the stand of respondent Bank.

The positions of Department Managers and Assistant Managers were also declared by public respondent as managerial, without providing any basis therefor. Petitioner asserts that the position of Assistant Manager was not even included in the appeal filed by respondent Bank. While we agree with the Office of the Solicitor General that it is within the discretion of public respondent to consider an unassigned issue that is closely related to an issue properly assigned, still, public respondent's error lies in the fact that his finding has no leg to stand on. Anyway, inasmuch as the entire records are before us, now is the opportunity to discuss this issue.

We analyzed the evidence submitted by respondent Bank in support of its claim that Department Managers are managerial employees^[21] and concluded that they are not. Like Branch Managers, Cashiers and Controllers, Department Managers do not possess the power to lay down policies nor to hire, transfer, suspend, lay off, recall, discharge, assign or discipline employees. They occupy supervisory positions, charged with the duty among others to "recommend proposals to improve and streamline operations."^[22] With respect to Assistant Managers, there is absolutely no evidence submitted to substantiate public respondent's finding that they are managerial employees; understandably so, because this position is not included in the appeal of respondent Bank.

As regards the other claim of respondent Bank that Branch Managers/OICs, Cashiers and Controllers are confidential employees, having control, custody and/or access to confidential matters, e.g., the branch's cash position, statements of financial condition, vault combination, cash codes for telegraphic transfers, demand drafts and other negotiable instruments,^[23] pursuant to Sec. 1166.4 of the Central Bank Manual regarding joint custody,^[24] this claim is not even disputed by petitioner. A confidential employee is one entrusted with confidence on delicate matters, or with the custody, handling, or care and protection of the employer's property.^[25] While Art. 245 of the Labor Code singles out managerial employees as ineligible to join, assist or form any labor organization, under the doctrine of necessary implication, confidential employees are similarly disqualified. This doctrine states that what is implied in a statute is as much a part thereof as that which is expressed, as elucidated in several cases^[26]

the latest of which is *Chua vs. Civil Service Commission*^[27] where we said:

No statute can be enacted that can provide all the details involved in its application. There is always an omission that may not meet a particular situation. What is thought, at the time of enactment, to be an all-embracing legislation may be inadequate to provide for the unfolding events of the future. So-called gaps in the law develop as the law is enforced. One of the rules of statutory construction used to fill in the gap is the doctrine of necessary implication. Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. *Ex necessitate legis*.

In applying the doctrine of necessary implication, we took into consideration the rationale behind the disqualification of managerial employees expressed in *Bulletin Publishing Corporation vs. Sanchez*,^[28] thus: “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. The Union can also become company-dominated with the presence of managerial employees in Union membership.” Stated differently, in the collective bargaining process, managerial employees are supposed to be on the side of the employer, to act as its representatives, and to see to it that its interests are well protected. The employer is not assured of such protection if these employees themselves are union members. Collective bargaining in such a situation can become one-sided.^[29] It is the same reason that impelled this Court to consider the position of confidential employees as included in the disqualification found in Art. 245 as if the disqualification of confidential employees were written in the provision. If confidential employees could unionize in order to bargain for advantages for themselves, then they could be governed by their own motives rather than the interest of the employers. Moreover, unionization of

confidential employees for the purpose of collective bargaining would mean the extension of the law to persons or individuals who are supposed to act “in the interest of” the employers.^[30] It is not farfetched that in the course of collective bargaining, they might jeopardize that interest which they are duty-bound to protect. Along the same line of reasoning we held in *Golden Farms, Inc. vs. Ferrer-Calleja*^[31] reiterated in *Philips Industrial Development, Inc. vs. NLRC*,^[32] that “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 spy or spies of either party to a collective bargaining agreement.”

In fine, only the Branch Managers/OICs, Cashiers and Controllers of respondent Bank, being confidential employees, are disqualified from joining or assisting petitioner Union, or joining, assisting or forming any other labor organization. But this ruling should be understood to apply only to the present case based on the evidence of the parties, as well as to those similarly situated. It should not be understood in any way to apply to banks in general.

WHEREFORE, the petition is partially **GRANTED**. The decision of public respondent Secretary of Labor dated 23 March 1990 and his order dated 20 April 1990 are **MODIFIED**, hereby declaring that only the Branch Managers/OICs, Cashiers and Controllers of respondent Republic Planters Bank are ineligible to join or assist petitioner National Association of Trade Unions (NATU) – Republic Planters Bank Supervisors Chapter, or join, assist or form any other labor organization.

SO ORDERED.

Davide, Jr., Quiason and Kapunan, JJ., concur.

SEPARATE OPINION

PADILLA, J., concurring and dissenting:

I concur in the majority opinion's conclusion that respondent Bank's Branch Managers/OICs, Cashiers and Controllers, being confidential employees of the Bank, are disqualified from joining or assisting petitioner labor union or joining, assisting or forming any other labor organization, including a supervisor's union.

However, I dissent from its conclusion that respondent Bank's Department Managers and Department Assistant Managers are not disqualified from joining a labor union including a supervisors' union. My years of experience in the banking industry (perhaps irrelevant to this case) have shown that positions of such Department Heads (Managers) are as confidential, if not more, than the position of Branch Managers. In fact, most of such Department Heads are Vice-Presidents of the Bank, which underscores their status both as managerial employees and confidential personnel of the Bank. It would be incongruous for a Department Manager who, as already stated, is usually a Vice-President, to be a member of the same labor organization as his messenger or supervisory account executives. It would be even more untenable and dangerous for a Department Manager who usually is a Vice-President, being a member of a labor union, to be designated a union representative for purposes of collective bargaining with the management of which he is a part. I think the public respondent is correct in disqualifying from membership in a labor union of supervisors, those who are Department Managers and Assistant Managers.

I, therefore, vote for the affirmance in toto of public respondent's decision of 23 March 1990 and order of 20 April 1990.

[1] Rollo, p. 33.

[2] Id., p. 28.

[3] Id., pp. 18-19.

- [4] Id., pp. 103-106.
- [5] Id., pp. 112-113.
- [6] Philippine Telegraph and Telephone Corporation vs. Laguesma, G.R. No. 101730, 17 June 1993, 223 SCRA 452.
- [7] Decision of public respondent Secretary of Labor promulgated 23 March 1990, Annex "B," Petition; Rollo, pp. 24-26.
- [8] Records, p. 111.
- [9] Id., p. 94.
- [10] Id., pp. 91-92.
- [11] Franklin Baker Company of the Philippines vs. Trajano, G.R. No. 75039, 28 January 1988, 157 SCRA 416.
- [12] Southern Philippines Federation of Labor (SPFL) vs. Calleja, G.R. No. 80882, 24 April 1989, 172 SCRA 676.
- [13] See Batongbacal vs. Associated Bank, G.R. No. 72977, 21 December 1988, 168 SCRA 600.
- [14] Records, pp. 249-250.
- [15] Rollo, pp. 201-203.
- [16] Id., pp. 204-205.
- [17] Id., pp. 206-207.
- [18] Id., p. 208.
- [19] Records, pp. 239-240.
- [20] Id., pp. 233-238.
- [21] Records, pp. 112-115.
- [22] Rollo, p. 170.
- [23] Records, pp. 120-121.
- [24] Id., p. 265.
- [25] See Panday vs. NLRC, G.R. No. 67664, 20 May 1992, 209 SCRA 122.
- [26] In re Dick, 38 Phil 41 [1918]; City of Manila vs. Gomez, No. L-37251, 31 August 1981, 107 SCRA 98; Escribano vs. Ovila, No. L-30375, 12 September 1978, 85 SCRA 245; Go Chico vs. Martinez, 45 Phil. 256 [1923]; Gatchalian vs. COMELEC, No. L-32560, 22 October 1970, 35 SCRA 435; People vs. Uy Jui Pio, 102 Phil. 679 [1957]; People vs. Aquino, 83 Phil. 614 [1949].
- [27] G.R. No. 88979, 7 February 1992, 206 SCRA 65, and cited cases therein.
- [28] G.R. No. 74425, 7 October 1986, 144 SCRA 628, 635.
- [29] Alcantara, Samson S., Philippine Labor and Social Legislation Annotated, 1991 Ed., p. 455.
- [30] Pascual, Crisolito, Labor Relations Law, 1986 ed., p. 159.
- [31] G.R. No. 78755, 19 July 1989, 175 SCRA 471.
- [32] G.R. No. 88957, 25 June 1992, 210 SCRA 339.