SUPREME COURT
EN BANC

UNITED PEPSI-COLA SUPERVISORY UNION (UPSU),
***Petitioner*,**

-versus-

G.R. No. 122226
March 25, 1998

HON. BIENVENIDO E. LAGUESMA and PEPSI-COLA PRODUCTS, PHILIPPINES, INC.
***Respondents*.**
x----------x

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 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 questions 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 organizational 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. Examples 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 exists 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 policies 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 the second category, managers, *vis-a-vis* employers, are, likewise, employees.[3]

The first question is whether route 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-10-318-91, entitled Worker's Alliance Trade Union (WATU) vs. Pepsi-Cola Products Philippines, Inc., decided on November 13, 1991, the Secretary of Labor found:

> We examined carefully the pertinent job descriptions of the subject employees and other documentary evidence on record *vis-a-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]

Citing our ruling in Nasipit Lumber Co. vs. National Labor Relations Commission,[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]

But the doctrine of *res judicata* certainly applies to adversary administrative proceedings. As early as 1956, in Brillantes vs. Castro,[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 vs. NLRC[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] 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]

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.

1.1.5 maintain and improve productivity of all cooling equipment and kiosks.

1.1.6 Execute and control all authorized promotions.

1.1.7 Develop and maintain dealer goodwill.

1.1.8 Ensure all accounts comply with company suggested retail pricing.

1.1.9 Study from time to time individual route coverage and productivity for possible adjustments to maximize utilization of resources.

1.2 Administration

1.2.1 Ensure the proper loading of route trucks before check-out and the proper sorting of bottles before check-in.

1.2.2 Ensure the upkeep of all route sales reports and all other related reports and forms required on an accurate and timely basis.

1.2.3 Ensure proper implementation of the various company policies and procedures incl. but not limited to shakedown; route shortage; progressive discipline; sorting; spoilages; credit/collection; accident; attendance.

1.2.4 Ensure collection of receivables and delinquent accounts.

2.0 MANAGING YOUR PEOPLE

The Route Manager is accountable for the following:

2.1 Route Sales Team Development

2.1.1 Conduct route rides to train, evaluate and develop all assigned route salesmen and

helpers at least 3 days a week, to be supported by required route ride documents/reports & back check/spot check at least 2 days a week to be supported by required documents/reports.

2 1.2 Conduct sales meetings and morning huddles. Training should focus on the enhancement of effective sales and merchandizing [sic] techniques of the salesmen and helpers. Conduct group training at least 1 hour each week on a designated day and of specific topic.

2.2 Code of Conduct

2.2.1 Maintain the company's reputation through strict adherence to PCPPI's code of conduct and the universal standards of unquestioned business ethics.[12]

Earlier in this opinion, reference was made to the distinction between managers per se (top managers and middle managers) and supervisors (first-line managers). That distinction is evident in the work of the route managers which sets them apart from supervisors in general. Unlike supervisors who basically merely direct operating employees in line with set tasks assigned to them, route managers are responsible for the success of the company's main line of business through management of their respective sales teams. Such management necessarily involves the planning, direction, operation and evaluation of their individual teams and areas which the work of supervisors does not entail.

The route managers cannot thus possibly be classified as mere supervisors because their work does not only involve, but goes far beyond, the simple direction or supervision of operating employees to accomplish objectives set by those above them. They are not mere functionaries with simple oversight functions but business administrators in their own right. An idea of the role of route managers as managers per se can be gotten from a memo sent by the

director of metro sales operations of respondent company to one of the route managers. It reads:[13]

> 03 April 1995
>
> To : CESAR T . REOLADA
> From : REGGIE M. SANTOS
> Subj : SALARY INCREASE
>
> Effective 01 April 1995, your basic monthly salary of P11,710 will be increased to P12,881 or an increase of 10%. This represents the added managerial responsibilities you will assume due to the recent restructuring and streamlining of Metro Sales Operations brought about by the continuous losses for the last nine (9) months.
>
> Let me remind you that for our operations to be profitable, we have to sustain the intensity and momentum that your group and yourself have shown last March. You just have to deliver the desired volume targets, better negotiated concessions, rationalized sustaining deals, eliminate or reduced overdues, improved collections, more cash accounts, controlled operating expenses, etc. Also, based on the agreed set targets, your monthly performance will be closely monitored.
>
> You have proven in the past that your capable of achieving your targets thru better planning, managing your group as a fighting team, and thru aggressive selling. I am looking forward to your success and I expect that you just have to exert your doubly best in turning around our operations from a losing to a profitable one!
>
> Happy Selling!!
>
> (Sgd.) R.M. SANTOS

The plasticized card given to route managers, quoted in the separate opinion of Justice Vitug, although entitled “RM’s Job Description,” is only a summary of performance standards. It does not show whether route managers are managers per se or supervisors. Obviously, these

performance standards have to be related to the specific tasks given to route managers in the four page "Route Manager Position Description," and, when this is done, the managerial nature of their jobs is fully revealed. Indeed, if any, the card indicates the great latitude and discretion given to route managers — from servicing and enhancing company goodwill to supervising and auditing accounts, from trade (new business) development to the discipline, training and monitoring of performance of their respective sales teams, and so forth, — if they are to fulfill the company's expectations in the "key result areas."

Article 212(m) says that "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." Thus, their only power is to recommend. Certainly, the route managers in this case more than merely recommend effective management action. They perform operational, human resource, financial and marketing functions for the company, all of which involve the laying down of operating policies for themselves and their teams. For example, with respect to marketing, route managers, in accordance with B.1.1.1 to B.1.1.9 of the Route Managers Job Description, are charged, among other things, with expanding the dealership base of their respective sales areas, maintaining the goodwill of current dealers, and distributing the company's various promotional items as they see fit. It is difficult to see how supervisors can be given such responsibility when this involves not just the routine supervision of operating employees but the protection and expansion of the company's business *vis-a-vis* its competitors.

While route managers do not appear to have the power to hire and fire people (the evidence shows that they only "recommended" or "endorsed" the taking of disciplinary action against certain employees), this is because this is a function of the Human Resources or Personnel Department of the company.[14] And neither should it be presumed that just because they are given set benchmarks to observe, they are ipso facto supervisors. Adequate control methods (as embodied in such concepts as "Management by Objectives [MBO]" and "performance appraisals") which require a delineation of the functions and responsibilities of managers by means of ready

reference cards as here, have long been recognized in management as effective tools for keeping businesses competitive.

This brings us to the second question, whether the first sentence of Art. 245 of the Labor Code, prohibiting managerial employees from forming, assisting or joining any labor organization, is constitutional in light of 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 purposes not contrary to law shall not be abridged.

As already stated, whether they belong to the first category (managers per se) or the second category (supervisors), managers are employees. Nonetheless, in the United States, as Justice Puno's separate opinion notes, supervisors have no right to form unions. They are excluded from the definition of the term "employee" in §2(3) of the Labor-Management Relations Act of 1947.[15] In the Philippines, the question whether managerial employees have a right of self-organization has arisen with respect to first-level managers or supervisors, as shown by a review of the course of labor legislation in this country.

Right of Self-Organization of Managerial Employees under Pre-Labor Code Laws

Before the promulgation of the Labor Code in 1974, the field of labor relations was governed by the Industrial Peace Act (R.A. No. 875).

In accordance with the general definition above, this law defined "supervisor" as follows:

> SEC. 2. . . .
>
> (k) "Supervisor" means any person having authority in the interest of an employer, to hire, transfer, suspend, lay-off, recall, discharge, assign, recommend, or discipline other employees, or responsibly to direct them, and to adjust their grievances, or effectively to recommend such acts, if, in connection with the foregoing, the exercise of such authority is

> not of a merely routinary or clerical nature but requires the use of independent judgment.[16]

The right of supervisors to form their own organizations was affirmed:

> SEC. 3. Employees' Right to Self-Organization. — Employees shall have the right to self-organization and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid and protection. Individuals employed as supervisors shall not be eligible for membership in a labor organization of employees under their supervision but may form separate organizations of their own.[17]

For its part, the Supreme Court upheld in several of its decisions the right of supervisors to organize for purposes of labor relations.[18]

Although it had a definition of the term "supervisor," the Industrial Peace Act did not define the term "manager." But, using the commonly-understood concept of "manager," as above stated, it is apparent that the law used the term "supervisors" to refer to the sub-group of "managerial employees" known as front-line managers. The other sub-group of "managerial employees," known as managers per se, was not covered.

However, in Caltex Filipino Managers and Supervisors Association vs. Court of Industrial Relations,[19] the right of all managerial employees to self-organization was upheld as a general proposition, thus:

> It would be going too far to dismiss summarily the point raised by respondent Company — that of the alleged identity of interest between the managerial staff and the employing firm. That should ordinarily be the case, especially so where the dispute is between management and the rank and file. It does not necessarily follow though that what binds the managerial staff to the corporation forecloses the possibility of conflict between them. There could be a real difference between what

> the welfare of such group requires and the concessions the firm is willing to grant. Their needs might not be attended to then in the absence of any organization of their own. Nor is this to indulge in empty theorizing. The record of respondent Company, even the very case cited by it, is proof enough of their uneasy and troubled relationship. Certainly the impression is difficult to erase that an alien firm failed to manifest sympathy for the claims of its Filipino executives. To predicate under such circumstances that agreement inevitably marks their relationship, ignoring that discord would not be unusual, is to fly in the face of reality.

The basic question is whether the managerial personnel can organize. What respondent Company failed to take into account is that the right to self-organization is not merely a statutory creation. It is fortified by our Constitution. All are free to exercise such right unless their purpose is contrary to law. Certainly it would be to attach unorthodoxy to, not to say an emasculation of, the concept of law if managers as such were precluded from organizing. Having done so and having been duly registered, as did occur in this case, their union is entitled to all the rights under Republic Act No. 875. Considering what is denominated as unfair labor practice under Section 4 of such Act and the facts set forth in our decision, there can be only one answer to the objection raised that no unfair labor practice could be committed by respondent Company insofar as managerial personnel is concerned. It is, as is quite obvious, in the negative.[20]

Actually, the case involved front-line managers or supervisors only, as the plantilla of employees, quoted in the main opinion,[21] clearly indicates:

> CAFIMSA members holding the following Supervisory Payroll Position Title are Recognized by the Company:
>
> *Payroll Position Title*
>
> Assistant to Mgr. — National Acct. Sales
> Jr. Sales Engineer
> Retail Development Asst.
> Staff Asst. — 0 Marketing

Sales Supervisor
Supervisory Assistant
Jr. Supervisory Assistant
Credit Assistant
Lab. Supvr. — Pandacan
Jr. Sales Engineer B
Operations Assistant B
Field Engineer
Sr. Opers. Supvr. — MIA A/S
Purchasing Assistant
Jr. Construction Engineer
St. Sales Supervisor
Deport Supervisor A
Terminal Accountant B
Merchandiser
Dist. Sales Prom. Supvr.
Instr. — Merchandising
Asst. Dist. Accountant B
Sr. Opers. Supervisor
Jr. Sales Engineer A
Asst. Bulk Ter. Supt.
Sr. Opers. Supvr.
Credit Supervisor A
Asst. Stores Supvr. A
Ref. Supervisory Draftsman
Refinery Shift Supvr. B
Asst. Supvr. A — Operations (Refinery)
Refinery Shift Supvr. B
Asst. Lab. Supvr. A (Refinery)
St. Process Engineer B (Refinery)
Asst. Supvr. A — Maintenance (Refinery)
Asst. Supvr. B — Maintenance (Refinery)
Supervisory Accountant (Refinery)
Communications Supervisor (Refinery)

Finally, also deemed included are all other employees excluded from the rank and file unions but not classified as managerial or otherwise excludable by law or applicable judicial precedents.

Thus, the dictum in the Caltex case which allowed at least for the theoretical unionization of top and middle managers by assimilating them with the supervisory group under the broad phrase "managerial personnel," provided the lynchpin for later laws denying the right of self-organization not only to top and middle management employees but to front line managers or supervisors as well. Following the Caltex case, the Labor Code, promulgated in 1974 under martial law, dropped the distinction between the first and second sub-groups of managerial employees. Instead of treating the terms "supervisor" and "'manager" separately, the law lumped them together and called them "managerial employees," as follows:

> ART. 212. Definitions . . .
>
> (k) "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, or to effectively recommend such managerial actions. All employees not falling within this definition are considered rank and file employees for purposes of this Book.[22]

The definition shows that it is actually a combination of the commonly understood definitions of both groups of managerial employees, grammatically joined by the phrase "and/or."

This general definition was perhaps legally necessary at that time for two reasons. First, the 1974 Code denied supervisors their right to self-organize as theretofore guaranteed to them by the Industrial Peace Act. Second, it stood the dictum in the Caltex case on its head by prohibiting all types of managers from forming unions. The explicit general prohibition was contained in the then Art. 246 of the Labor Code.

The practical effect of this synthesis of legal concepts was made apparent in the Omnibus Rules Implementing the Labor Code which

the Department of Labor promulgated on January 19, 1975. Book V, Rule II, §11 of the Rules provided:

> Supervisory unions and unions of security guards to cease operation. — All existing supervisory unions and unions of security guards shall, upon the effectivity of the Code, cease to operate as such and their registration certificates shall be deemed automatically cancelled. However, existing collective agreements with such unions, the life of which extends beyond the date of effectivity of the Code, shall be respected until their expiry date insofar as the economic benefits granted therein are concerned.

Members of supervisory unions who do not fall within the definition of managerial employees shall become eligible to join or assist the rank and file labor organization, and if none exists, to form or assist in the forming of such rank and file organization. The determination of who are managerial employees and who are not shall be the subject of negotiation between representatives of the supervisory union and the employer. If no agreement is reached between the parties, either or both of them may bring the issue to the nearest Regional Office for determination.

The Department of Labor continued to use the term "supervisory unions" despite the demise of the legal definition of "supervisor" apparently because these were the unions of front line managers which were then allowed as a result of the statutory grant of the right of self-organization under the Industrial Peace Act. Had the Department of Labor seen fit to similarly ban unions of top and middle managers which may have been formed following the dictum in Caltex, it obviously would have done so. Yet it did not, apparently because no such unions of top and middle managers really then existed.

Real Intent of the 1986 Constitutional Commission

This was the law as it stood at the time the Constitutional Commission considered the draft of Art. III, §8. Commissioner Lerum sought to amend the draft of what was later to become Art. III, §8 of the present Constitution:

> MR. LERUM. My amendment is on Section 7, page 2, line 19, which is to insert between the words "people" and "to" the following: WHETHER EMPLOYED BY THE STATE OR PRIVATE ESTABLISHMENTS. In other words, the section will now read as follows: "The right of the people WHETHER EMPLOYED BY THE STATE OR PRIVATE ESTABLISHMENTS to form associations, unions, or societies for purposes not contrary to law shall not be abridged."[23]

Explaining his proposed amendment, he stated:

> MR. LERUM. Under the 1935 Bill of Rights, the right to form associations is granted to all persons whether or not they are employed in the government. Under that provision, we allow unions in the government, in government-owned and controlled corporations, and in other industries in the private sector, such as the Philippine Government Employees' Association, unions in the GSIS, the SSS, the DBP and other government-owned and controlled corporations. Also, we have unions of supervisory employees and of security guards. But what is tragic about this is that after the 1973 Constitution was approved and in spite of an express recognition of the right to organize in P.D. No. 442, known as the Labor Code, the right of government workers, supervisory employees and security guards to form unions was abolished.

And we have been fighting against this abolition. In every tripartite conference attended by the government, management and workers, we have always been insisting on the return of these rights. However, both the government and employers opposed our proposal, so nothing came out of this until this week when we approved a provision which states:

> Notwithstanding any provision of this article, the right to self-organization shall not be denied to government employees.
>
> We are afraid that without any corresponding provision covering the private sector, the security guards, the supervisory

> employees or majority employees [sic] will still be excluded, and that is the purpose of this amendment.
>
> I will be very glad to accept any kind of wording as long as it will amount to absolute recognition of private sector employees, without exception, to organize.
>
> THE PRESIDENT. What does the Committee say?
>
> FR. BERNAS. Certainly, the sense is very acceptable, but the point raised by Commissioner Rodrigo is well-taken. Perhaps, we can lengthen this a little bit more to read: "The right of the people WHETHER UNEMPLOYED OR EMPLOYED BY STATE OR PRIVATE ESTABLISHMENTS."
>
> I want to avoid also the possibility of having this interpreted as applicable only to the employed.
>
> MR. DE LOS REYES. Will the proponent accept an amendment to the amendment, Madam President?
>
> MR. LERUM. Yes, as long as it will carry the idea that the right of the employees in the private sector is recognized.[24]

Lerum thus anchored his proposal on the fact that (1) government employees, supervisory employees, and security guards, who had the right to organize under the Industrial Peace Act, had been denied this right by the Labor Code, and (2) there was a need to reinstate the right of these employees. In consonance with his objective to reinstate the right of government, security, and supervisory employees to organize, Lerum then made his proposal:

> MR. LERUM. Mr. Presiding Officer, after a consultation with several Members of this Commission, my amendment will now read as follows: "The right of the people INCLUDING THOSE EMPLOYED IN THE PUBLIC AND PRIVATE SECTORS to form associations, unions, or societies for purposes not contrary to law shall not be abridged. In proposing that amendment I ask to make of record that I want the following provisions of the Labor Code to be automatically abolished, which read:

> ART. 245. Security guards and other personnel employed for the protection and security of the person, properties and premises of the employers shall not be eligible for membership in a labor organization.
>
> ART. 246. Managerial employees are not eligible to join, assist, and form any labor organization.
>
> THE PRESIDING OFFICER (Mr. Bengzon). What does the Committee say?
>
> FR. BERNAS. The Committee accepts.
>
> THE PRESIDING OFFICER. (Mr. Bengzon) The Committee has accepted the amendment, as amended.
>
> Is there any objection? (Silence) The Chair hears none; the amendment, as amended, is approved.[25]

The question is what Commissioner Lerum meant in seeking to "automatically abolish" the then Art. 246 of the Labor Code. Did he simply want "any kind of wording as long as it will amount to absolute recognition of private sector employees, without exception, to organize"?[26] Or, did he instead intend to have his words taken in the context of the cause which moved him to propose the amendment in the first place, namely, the denial of the right of supervisory employees to organize, because he said, "We are afraid that without any corresponding provision covering the private sector, security guards, supervisory employees or majority [of] employees will still be excluded, and that is the purpose of this amendment"?[27]

It would seem that Commissioner Lerum simply meant to restore the right of supervisory employees to organize. For even though he spoke of the need to "abolish" Art. 246 of the Labor Code which, as already stated, prohibited "managerial employees" in general from forming unions, the fact was that in explaining his proposal, he repeatedly referred to "supervisory employees" whose right under the Industrial Peace Act to organize had been taken away by Art. 246. It is noteworthy that Commissioner Lerum never referred to the then

definition of “managerial employees” in Art. 212(m) of the Labor Code which put together, under the broad phrase “managerial employees,” top and middle managers and supervisors. Instead, his repeated use of the term “supervisory employees,” when such term then was no longer in the statute books, suggests a frame of mind that remained grounded in the language of the Industrial Peace Act.

Nor did Lerum ever refer to the dictum in Caltex recognizing the right of all managerial employees to organize, despite the fact that the Industrial Peace Act did not expressly provide for the right of top and middle managers to organize. If Lerum was aware of the Caltex dictum, then his insistence on the use of the term “supervisory employees” could only mean that he was excluding other managerial employees from his proposal. If, on the other hand, he was not aware of the Caltex statement sustaining the right to organize to top and middle managers, then the more should his repeated use of the term “supervisory employees” be taken at face value, as it had been defined in the then Industrial Peace Act.

At all events, that the rest of the Commissioners understood his proposal to refer solely to supervisors and not to other managerial employees is clear from the following account of Commissioner Joaquin G. Bernas, who writes:

In presenting the modification on the 1935 and 1973 texts, Commissioner Eulogio R. Lerum explained that the modification included three categories of workers: (1) government employees, (2) supervisory employees, and (3) security guards. Lerum made of record the explicit intent to repeal provisions of P.D. 442, the Labor Code. The provisions referred to were:

> ART. 245. Security guards and other personnel employed for the protection and security of the person, properties and premises of the employers shall not be eligible for membership in a labor organization.
>
> ART. 246. Managerial employees are not eligible to join, assist, and form any labor organization.[28]

Implications of the Lerum Proposal

In sum, Lerum's proposal to amend Art. III, §8 of the draft Constitution by including labor unions in the guarantee of organizational right should be taken in the context of statements that his aim was the removal of the statutory ban against security guards and supervisory employees joining labor organizations. The approval by the Constitutional Commission of his proposal can only mean, therefore, that the Commission intended the absolute right to organize of government workers, supervisory employees, and security guards to be constitutionally guaranteed. By implication, no similar absolute constitutional right to organize for labor purposes should be deemed to have been granted to top-level and middle managers. As to them the right of self-organization may be regulated and even abridged conformably to Art. III, §8.

Constitutionality of Art. 245

Finally, the question is whether the present ban against managerial employees, as embodied in Art. 245 (which superseded Art. 246) of the Labor Code, is valid. This provision reads:

> ART. 245. 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.[29]

This provision is the result of the amendment of the Labor Code in 1989 by R.A. No. 6715, otherwise known as the Herrera-Veloso Law. Unlike the Industrial Peace Act or the provisions of the Labor Code which it superseded, R.A. No. 6715 provides separate definitions of the terms "managerial" and "supervisory employees," as follows:

> ART. 212. Definitions. . . .
>
> (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.

Although the definition of "supervisory employees" seems to have been unduly restricted to the last phrase of the definition in the Industrial Peace Act, the legal significance given to the phrase "effectively recommends" remains the same. In fact, the distinction between top and middle managers, who set management policy, and front-line supervisors, who are merely responsible for ensuring that such policies are carried out by the rank and file, is articulated in the present definition.[30] When read in relation to this definition in Art. 212(m), it will be seen that Art. 245 faithfully carries out the intent of the Constitutional Commission in framing Art. III, §8 of the fundamental law.

Nor is the guarantee of organizational right in Art. III, §8 infringed by a ban against managerial employees forming a union. The right guaranteed in Art. III, §8 is subject to the condition that its exercise should be for purposes "not contrary to law." In the case of Art. 245, there is a rational basis for prohibiting managerial employees from forming or joining labor organizations. As Justice Davide, Jr., himself a constitutional commissioner, said in his ponencia in Philips Industrial Development, Inc. vs. NLRC:[31]

> In the first place, all these employees, with the exception of the service engineers and the sales force personnel, are confidential employees. Their classification as such is not seriously disputed by PEO-FFW; the five (5) previous CBAs between PIDI and PEO-FFW explicitly considered them as confidential employees. By the very nature of their functions, they assist and act in a confidential capacity to, or have access to confidential matters of, persons who exercise managerial functions in the field of labor relations. As such, the rationale behind the ineligibility of

> managerial employees to form, assist or joint a labor union equally applies to them.

In Bulletin Publishing Co., Inc. vs. Hon. Augusto Sanchez, this Court elaborated on this rationale, thus:

> "The rationale for this inhibition has been stated to be, because 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."[32]

To be sure, the Court in Philips Industrial was dealing with the right of confidential employees to organize. But the same reason for denying them the right to organize justifies even more the ban on managerial employees from forming unions. After all, those who qualify as top or middle managers are executives who receive from their employers information that not only is confidential but also is not generally available to the public, or to their competitors, or to other employees. It is hardly necessary to point out that to say that the first sentence of Art. 245 is unconstitutional would be to contradict the decision in that case.

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.

Narvasa, *C.J.*, Regalado, Romero, Bellosillo, Martinez and Purisima, *JJ.*, concurs.

(Separate Opinions)

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[1] JAMES A.F. STONER & CHARLES WANKEL, MANAGEMENT 11 (3rd. ed., 1987).
[2] Id. (emphasis added).
[3] Atlantic Gulf &. Pac. Co. of Manila vs. CIR, 113 Phil. 650 (1961).
[4] Record, pp. 53-54.
[5] 177 SCRA 93 (1989).
[6] Id., p. 100.

[7] Nasipit Lumber Co. vs. National Labor Relations Commission, 177 SCRA 93, 100 (1989).
[8] 99 Phil. 497 (1956).
[9] G.R. No. 108996, Feb. 20, 1998.
[10] Nasipit Lumber Co. vs. National Labor Relations Commission, supra note 7.
[11] B.F. Goodrich Philippines, Inc. vs. B.F. Goodrich (Marikina Factory) Confidential and Salaries Employees Union-NATU, 49 SCRA 532 (1973).
[12] DOLE Record, pp. 144-145.
[13] Rollo, p. 46 (emphasis in original).
[14] Record, pp. 133-141.
[15] The rationale for excluding supervisors in the United States is given in the Report of the Committee on Education and Labor of the U.S. House of Representatives, quoted in NLRB vs. Bell Aerospace Co., 416 U.S. 267, 281, n. 11, 40 L.Ed.2d 134, 147, n. 11 (1974), thus :

Supervisors are management people. They have distinguished themselves in their work. They have demonstrated their ability to take care of themselves without depending upon the pressure of collective action. No one forced them to become supervisors. They abandoned the "collective security" of the rank and file voluntarily, because they believed the opportunities thus opened to them to be more valuable to them than such "security." It seems wrong, and it is wrong, to subject people of this kind, who have demonstrated their initiative, their ambition and their ability to get ahead, to the leveling processes of seniority, uniformity and standardization that the Supreme Court recognizes as being fundamental principles of unionism. (J.I. Case Co. vs. National Labor Relations Board, 321 U.S. 332, 88 L.Ed. 762, 64 S. Ct. 576 (1944).) It is wrong for the foremen, for it discourages the things in them that made them foremen in the first place. For the same reason, that it discourages those best qualified to get ahead, it is wrong for industry, and particularly for the future strength and productivity of our country.

[16] R.A. No. 875 (1953), §2(k).
[17] Id., §3.
[18] E.g., Filoil Refinery Corp. vs. Filoil Supervisory and Confidential Employees Association, 6 SCRA 522 (1972); Kapisanan ng mga Manggagawa sa Manila Railroad Co. vs. CIR, 106 Phil 607 (1959).
[19] 47 SCRA 112 (1972) (res. on motion for reconsideration, per Fernando, J.)
[20] 47 SCRA at 115-117.
[21] 44 SCRA 350, 363, n. 3 (1972) (per Villamor, J.) (emphasis added).
[22] LABOR CODE, ART. 212 (m).
[23] I RECORD OF THE CONSTITUTIONAL COMMISSION 761 (Session of July 18, 1986).
[24] Id. (emphasis added).
[25] Id., p. 762 (emphasis added).
[26] Id. at. 761.
[27] Ibid.
[28] THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 340-341 (1996).

[29] LABOR CODE, ART. 245, as amended by R.A. No. 6715, §18.
[30] 2 CESARIO A. AZUCENA, THE LABOR CODE WITH COMMENTS AND CASES 172-173 (1996).
[31] 210 SCRA 339 (1992).
[32] Id. at 347-348.

SEPARATE OPINIONS

DAVIDE, JR., J ., concurring and dissenting:

I concur with the majority that the "route managers" of private respondent Pepsi-Cola Products Philippines, Inc. are managerial employees. However, I respectfully submit that contrary to the majority's holding, Article 245 of the Labor Code is unconstitutional, as it abridges Section 8, Article III of the Constitution.

Section 8, Article III of the 1987 Constitution was taken from Section 7, Article IV of the 1973 Constitution which, in turn, was lifted from Section 6, Article III of the 1935 Constitution. Section 7 of the 1973 Constitution provided as follows:

> SEC. 7. The right to form associations or societies for purposes not contrary to law shall not be abridged.

This Section was adopted in Section 7 of Proposed Resolution No. 486 of the 1986 Constitutional Commission, entitled Resolution to Incorporate in the New Constitution an Article on the Bill of Rights,[1] submitted by the Committee on Citizenship, Bill of Rights, Political Rights and Obligations, and Human Rights, with a modification, however, consisting of the insertion of the word union between the words "associations" and "societies." Thus the proposed Section 7 provided as follows:

> SEC. 7. The right of the people to form associations, unions, or societies for purposes not contrary to law shall not be abridged (Emphasis supplied).

Commissioner Joaquin G. Bernas, in his sponsorship speech on the proposed Article on the Bill of Rights, expounded on the nature of the proposed provision, in this wise:

> Section 7 preserves the old provision not because it is strictly needed but because its removal might be subject to misinterpretation. It reads:
>
> x x x
>
> > It strictly does not prepare the old provision because it adds the word UNION, and in the explanation we received from Commissioner Lerum, the term envisions not just unions in private corporations but also in the government. This preserves our link with the Malolos Constitution as far as the right to form associations or societies for purposes not contrary to law is concerned.[2]

During the period of individual amendments, Commissioner Lerum introduced an amendment to the proposed section consisting of the insertion of the clause "WHETHER EMPLOYED BY THE STATE OR PRIVATE ESTABLISHMENTS, which, after consulting other Commissioners, he modified his proposed amendment to read: "INCLUDING THOSE EMPLOYED IN THE PUBLIC AND PRIVATE SECTORS." At that time, the section read:

> SEC. 7. The right of the people including those employed in the public and private sectors to form associations, unions or societies for purposes not contrary to law shall not be abridged.

Pertinently to this dispute Commissioner Lerum's intention that the amendment "automatically abolish" Articles 245 and 246 of the Labor Code. The Committee accepted the amendment, and there having been no objection from the floor, the Lerum amendment was approved, thus:

MR. LERUM:

In proposing that amendment I ask to make of record that I want the following provisions of the Labor Code to be automatically abolished, which read:

> ART. 245. Security guards and other personnel employed for the protection and security of the person, properties and premises of the employers shall not be eligible for membership in a labor organization.
>
> ART. 246 Managerial employees are not eligible to join, assist, and form any labor organization.

THE PRESIDING OFFICER (Mr. Bengzon):

What does the Committee say?

FR. BERNAS:

The Committee accepts.

THE PRESIDING OFFICER (Mr. Bengzon):

The Committee has accepted the amendment, as amended.

Is there any objection? (Silence) The Chair hears none; the amendment, as amended, is approved.[3]

The Committee on Style then recommended that commas be placed after the words people and sectors, while Commissioner Lerum likewise moved to place the word unions before the word associations.[4] Section 7, which was subsequently renumbered as Section 8 as presently appearing in the text ratified in the plebiscite of 2 February 1987, then read as follows:

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

It is then indubitably clear from the foregoing that the intent of the Constitutional Commission was to abrogate the law prohibiting managerial employees from joining, assisting, or forming unions or labor organizations. In this regard, there is absolutely no need to decipher the intent of the framers of the 1987 Constitution *vis-a-vis* Article 245 (originally 246) of the Labor Code, there being no ambiguity or vagueness in the wording of the present Section 8, Article III of the 1987 Constitution. The provision is clear and written in simple language; neither were there any confusing debates thereon. More importantly, the purpose of Commissioner Lerum's amendments was unequivocal: he did not merely intend an implied repeal, but an express repeal of the offending article of the Labor Code. The approval of the amendments left no doubt whatsoever, as faithfully disclosed in the Records of the Constitutional Commission, that all employees — meaning rank-and-file, supervisory and managerial — whether from the public or the private sectors, have the right to form unions for purposes not contrary to law.

The Labor Code referred to by Commissioner Lerum was P.D. No. 442, promulgated on 1 May 1974. With the repeal of Article 239 by Executive Order No. 111 issued on 24 December 1986,[5] Article 246 (as mentioned by Commissioner Lerum) became Article 245. Thereafter, R.A. No. 6715[6] amended the new Article 245 (originally Article 246) to read, as follows:

> SEC. 245. 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.[7]

With the abrogation of the former Article 246 of the Labor Code,[8] and the constitutional prohibition against any law prohibiting managerial employees from joining, assisting or forming unions or labor organizations, the first sentence then of the present Article 245 of the Labor Code must be struck down as unconstitutional.[9] However, due to an obvious conflict of interest — being closely identified with the interests of management in view of the inherent

nature of their functions, duties and responsibilities — managerial employees may only be eligible to join, assist or form unions or labor organizations of their own rank, and not those of the supervisory employees nor the rank-and-file employees.

In the instant case, the petitioner's name — United Pepsi-Cola Supervisory Union (UPSU) — indubitably attests that it is a union of supervisory employees. In light of the earlier discussion, the route managers who are managerial employees, cannot join or assist UPSU. Accordingly, the Med-Arbiter and public respondent Laguesma committed no error in denying the petition for direct certification or for certification election.

I thus vote to GRANT, IN PART, the instant petition. That portion of the challenged resolution of public respondent holding that since the route managers of private respondent Pepsi-Cola Products Philippines, Inc., are managerial employees, they are "not eligible to assist, join or form a union or any other organization" should be SET ASIDE for being violative of Section 8 of Article III of the Constitution, while that portion thereof denying petitioner's appeal from the Med-Arbiter's decision dismissing the petition for direct certification or for a certification election should be AFFIRMED.

DAVIDE, JR., J, concurring and dissenting:

[1] I Record of the Constitutional Commission, 672-673.
[2] I Record of the Constitutional Commission, 675.
[3] I Record of the Constitutional Commission, 762. See also JOAQUIN G. BERNAS, THE INTENT OF THE 1986 CONSTITUTION WRITERS 188-189 (1995 ed.).
[4] V Record of the Constitutional Commission, 717-718.
[5] 83 O.G. No. 7, 16 February 1987,577-579.
[6] Entitled An Act to Extend Protection to Labor, Strengthen the Constitutional Rights of Workers to Self-Organization, Collective Bargaining and Peaceful Concerted Activities, Foster Industrial Peace and Harmony, Promote the Preferential Use of Voluntary Modes of Settling Labor Disputes, and Reorganize the National Labor Relations Commission, Amending for These Purposes Certain Provisions of Presidential Decree No. 442, as Amended, Otherwise Known as The Labor Code of the Philippines, Appropriating Funds Therefor, and For Other Purposes.
[7] Section 18, R.A. No. 6715.

[8] As well as the original Article 245 thereof.

[9] The second paragraph, Section 3, Article XIII, Constitution provides, in part:

> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law.

PUNO, J ., concurring:

With due respect, it is my submission that Article 245 of the Labor Code was not repealed by section 8, Article III of the 1987 Constitution for reasons discussed below.

A. Types of Employees.

For purposes of applying the law on labor relations, the Labor Code in Article 212 (m) defines three (3) categories of employees. They are managerial, supervisory and rank-and-file, 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 recommended 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."

The test of "managerial" or "supervisory" status depends on whether a person possesses authority to act in the interest of his employer and whether such authority is not routinary or clerical in nature but requires the use of independent judgment.[1] The rank-and-file employee performs work that is routinary and clerical in nature. The distinction between these employees is significant because supervisory and rank-and-file employees may form, join or assist labor organizations. Managerial employees cannot.

B. The Exclusion of Managerial Employees:

Its Historical Roots in the United States.

The National Labor Relations Act (NLRA), also known as the Wagner Act, enacted by the U.S. Congress in 1935, was the first law that regulated labor relations in the United States and embodied its national labor policy.[2] The purpose of the NLRA was to eliminate obstructions to the free flow of commerce through the practice of collective bargaining. The NLRA also sought to protect the workers' full freedoms of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid and protection.[3] The NLRA established the right of employees to organize, required employers to bargain with employees collectively through employee-elected representatives, gave employees the right to engage in concerted activities for collective bargaining purposes or other mutual aid or protection, and created the National Labor Relations Board (NLRB) as the regulatory agency in labor-management matters.[4]

The NLRA was amended in 1947 by the Labor Management Relations Act (LMRA), also known as the Taft-Hartley Act. This Act sought to lessen industrial disputes and placed employers in a more nearly equal position with unions in bargaining and labor relations procedures.[5]

The NLRA did not make any special provision for "managerial employees."[6] The privileges and benefits of the Act were conferred on "employees." Labor organizations thus clamored for the inclusion of supervisory personnel in the coverage of the Act on the ground that supervisors were also employees. Although traditionally, supervisors were regarded as part of management, the NLRB was constrained to recognize supervisors as employees under the coverage of the law. Supervisors were then granted collective bargaining rights.[7] Nonetheless, the NLRB refused to consider managers as covered by the law.[8]

The LMRA took away the collective bargaining rights of supervisors. The sponsors of the amendment feared that their unionization would break down industrial discipline as it would blur the traditional distinction between management and labor. They felt it necessary to deny supervisory personnel the right of collective bargaining to preserve their loyalty to the interests of their employers.[9]

Several amendments were later made on the NLRA but the exclusion of managers and supervisors from its coverage was preserved. Until now managers and supervisors are excluded from the law.[10] Their exclusion hinges on the theory that the employer is entitled to the full loyalty of those whom it chooses for positions of responsibility, entailing action on the employers' behalf. A supervisor's and manager's ability to control the work of others would be compromised by his sharing of employee status with them.[11]

C. Historical Development in the Philippines.

Labor-management relations in the Philippines were first regulated under the Industrial Peace Act[12] which took effect in 1953. Hailed as the Magna Carta of Labor, it was modelled after the NLRA and LMRA of the United States.[13] Most of the basic principles of the NLRA have been carried over to the Industrial Peace Act and the Labor Code.[14] This is significant because we have ruled that where our labor statutes are based on statutes in foreign jurisdiction, the decisions of the high courts in those jurisdictions construing and interpreting the Act are given persuasive effects in the application of Philippine law.[15]

The Industrial Peace Act did not carry any provision prohibiting managerial employees from joining labor organizations. Section 3 of said law merely provided:

> "Sec. 3. Employees' Right to Self-Organization.— Employees shall have the right to self-organization and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid and protection. Individuals employed as supervisors shall not be eligible for

membership in a labor organization of employees under their supervision but may form separate organizations of their own."

Significantly, the Industrial Peace Act did not define a manager or managerial employee. It defined a "supervisor" but not a "manager." Thus:

"Sec. 2. . . .

(k) "Supervisor" means any person having authority in the interest of an employer, to hire, transfer, suspend, lay-off, recall, discharge, assign, recommend, or discipline other employees, or responsibly to direct them, and to adjust their grievances, or effectively to recommend such acts, if, in connection with the foregoing, the exercise of such authority is not of a merely routinary or clerical nature but requires the use of independent judgment."

In 1972, we interpreted Section 3 of the Industrial Peace Act to give supervisors the right to join and form labor organizations of their own. 16 Soon we grappled with the right of managers to organize. In a case involving Caltex managers, we recognized their right to organize, viz:

"It would be going too far to dismiss summarily the point raised by respondent company, that of the alleged identity of interest between the managerial staff and the employing firm. That should ordinarily be the case, especially so where the dispute is between management and the rank-and-file. It does not necessarily follow though that what binds the managerial staff to the corporation forecloses the possibility of conflict between them. There could be a real difference between what the welfare of such group requires and the concessions the firm is willing to grant. Their needs might not be attended to then in the absence of any organization of their own. Nor is this to indulge in empty theorizing. The records of respondent company, even the very case cited by it, is proof enough of their uneasy and troubled relationship. Certainly the impression is difficult to erase that an alien firm failed to manifest sympathy for the claims of its Filipino executives."[17]

The Industrial Peace Act was repealed in 1975 by P.D. 442, the Labor Code of the Philippines. The Labor Code changed existing jurisprudence when it prohibited supervisory and managerial employees from joining labor organizations. Supervisory unions were no longer recognized nor allowed to exist and operate as such.[18] We affirmed this statutory change in Bulletin Publishing Corp. vs. Sanchez.[19] Similarly, Article 246 of the Labor Code expressly prohibited managerial employees from forming, assisting and joining labor organizations, to wit:

> "Art. 246. Ineligibility of managerial employees to join any labor organization. — Managerial employees are not eligible to join, assist or form any labor organization."

In the same Bulletin case, the Court applied Article 246 and held that managerial employees are the very type of employees who, by the nature of their positions and functions, have been decreed disqualified from bargaining with management. This prohibition is based on the rationale that if managerial employees were to belong or be affiliated with a union, the union might not be assured of their loyalty in view of evident conflict of interest or that the union can be company-dominated with the presence of managerial employees in the union membership.[20] In the collective bargaining process, managerial employees are supposed to be on the side of the employer, to act as its representative, and to see to it that its interests are well protected. The employer is not assured of such protection if these employees themselves become union members.[21]

The prohibition on managerial employees to join, assist or form labor organizations was retained in the Labor Code despite substantial amendments made in 1989 by R.A. 6715, the Herrera-Veloso Law. R.A. 6715 was passed after the effectivity of the 1987 Constitution and this law did not abrogate, much less amend the prohibition on managerial employees to join labor organizations. The express prohibition in Article 246 remained. However, as an addendum to this same Article, R.A. 6715 restored to supervisory employees the right to join labor organizations of their own.[22] Article 246 now reads:

> "Article 246. 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."

Article 246 became Article 245 after then Article 244 was repealed by E.O. 111. Article 246 is presently Article 245 of the Labor Code.

Indeed, Article 245 of the Labor Code prohibiting managerial employees from joining labor organizations has a social and historical significance in our labor relations law. This significance should be considered in deciphering the intent of the framers of the 1987 Constitution *vis-a- vis* the said Article.

With due respect, I do not subscribe to the view that section 8, Article III of the Constitution abrogated Article 245 of the Labor Code. A textual analysis of section 8, Article III of the Constitution will not justify this conclusion. With due respect, the resort by Mr. Justice Davide to the deliberations of the Constitutional Commission does not suffice. It is generally recognized that debates and other proceedings in a constitutional convention are of limited value and are an unsafe guide to the intent of the people.[23] Judge Cooley has stated that:

> "When the inquiry is directed to ascertaining the mischief designed to be remedied, or the purpose sought to be accomplished by a particular provision, it may be proper to examine the proceedings of the convention which framed the instrument. Where the proceedings clearly point out the purpose of the provision, the aid will be valuable and satisfactory; but where the question is one of abstract meaning, it will be difficult to derive from this source much reliable assistance in interpretation. Every member of such a convention acts upon such motives and reasons as influence him personally, and the motions and debates do not necessarily indicate the purpose of a majority of a convention in adopting a particular clause. It is quite possible for a particular clause to

> appear so clear and unambiguous to the members of the convention as to require neither discussion nor illustration; and the few remarks made concerning it in the convention might have a plain tendency to lead directly away from the meaning in the minds of the majority. It is equally possible for a part of the members to accept a clause in one sense and a part in another. And even if we were certain we had attained to the meaning of the convention, it is by no means to be allowed a controlling force, especially if that meaning appears not to be the one which the words would most naturally and obviously convey. For as the constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be arrived at is that of the people, and it is not to be supposed that they have looked for any dark and abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that was the sense designed to be conveyed."[24]

It is for this reason that proceedings of constitutional conventions are less conclusive of the proper construction of the instrument than are legislative proceedings of the proper construction of the statute.[25] In statutes, it is the intent of the legislature that is being sought, while in constitutions, it is the intent of the people that is being ascertained through the discussions and deliberations of their representatives.[26] The proper interpretation of constitutional provisions depends more on how it was understood by the people adopting it than in the framers' understanding thereof.[27]

Thus, debates and proceedings of the constitutional convention are never of binding force. They may be valuable but are not necessarily decisive.[28] They may shed a useful light upon the purpose sought to be accomplished or upon the meaning attached to the words employed. And the courts are free to avail themselves of any light that may be derived from such sources, but they are not bound to adopt it as the sole ground of their decision.[29]

Clearly then, a statute cannot be declared void on the sole ground that it is repugnant to a supposed intent or spirit declared in constitutional convention proceedings.

D. Freedom of Association

The right of association flows from freedom of expression.[30] Like the right of expression, the exercise of the right of association is not absolute. It is subject to certain limitations.

Article 243 of the Labor Code reiterates the right of association of people in the labor sector. Article 243 provides:

> "Art. 243. Coverage of employees' right to self-organization.— All persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical, or educational institutions whether operating for profit or not, shall have the right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining. Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection."

Article 243 guarantees the right to self-organization and association to "all persons." This seemingly all-inclusive coverage of "all persons," however, actually admits of exceptions.

Article 244[31] of the Labor Code mandates that all employees in the civil service, i.e, those not employed in government corporations established under the Corporation Code, may only form associations but may not collectively bargain on terms and conditions fixed by law. An employee of a cooperative who is a member and co-owner thereof cannot invoke the right of collective bargaining and negotiation *vis-a-vis* the cooperative.[32] An owner cannot bargain with himself or his co-owners.[33] Employees in foreign embassies or consulates or in foreign international organizations granted international immunities are also excluded from the right to form labor organizations.[34] International organizations are organized mainly as a means for conducting general international business in which the member-states have an interest and the immunities granted them shield their affairs from political pressure or control by the host country and assure the unimpeded performance of their functions.[35]

Confidential employees have also been denied the right to form labor-organizations. Confidential employees do not constitute a distinct category for purposes of organizational right. Confidentiality may attach to a managerial or non-managerial position. We have, however, excluded confidential employees from joining labor organizations following the rationale behind the disqualification of managerial employees in Article 245. In the case of National Association of Trade Unions-Republic Planters' Bank Supervisors Chapter vs. Torres,[36] we held:

> "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. It is the same reason that impelled this Court to consider the position of confidential employees as included in the disqualification found in Article 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. It is not farfetched that in the course of collective bargaining, they might jeopardize that interest which they are duty-bound to protect."[37]

E. The disqualification extends only to labor organizations.

It must be noted that Article 245 of the Labor Code deprives managerial employees of their right to join "labor organizations." A labor organization is defined under the Labor Code as:

> "Article 212 (g). "Labor organization" means any union or association of employees which exists in whole or in part for the

> purpose of collective bargaining or of dealing with the employer concerning terms and conditions of employment."

A labor organization has two broad rights: (1) to bargain collectively and (2) to deal with the employer concerning terms and conditions of employment. To bargain collectively is a right given to a labor organization once it registers itself with the Department of Labor and Employment (DOLE). Dealing with the employer, on the other hand, is a generic description of interaction between employer and employees concerning grievances, wages, work hours and other terms and conditions of employment, even if the employees' group is not registered with the DOLE.[38] Any labor organization which may or may not be a union may deal with the employer. This explains why a workers' organization does not always have to be a labor union and why employer-employee collective interactions are not always collective bargaining.[39]

In the instant case, it may be argued that managerial employees' labor organization will merely "deal with the employer concerning terms and conditions of employment" especially when top management is composed of aliens, following the circumstances in the Caltex case.

Although the labor organization may exist wholly for the purpose of dealing with the employer concerning terms and conditions of employment, there is no prohibition in the Labor Code for it to become a legitimate labor organization and engage in collective bargaining. Once a labor organization registers with the DOLE and becomes legitimate, it is entitled to the rights accorded under Articles 242 and 263 (b) of the Labor Code. And these include the right to strike and picket.

Notably, however, Article 245 does not absolutely disqualify managerial employees from exercising their right of association. What it prohibits is merely the right to join labor organizations. Managerial employees may form associations or organizations so long as they are not labor organizations. The freedom of association guaranteed under the Constitution remains and has not been totally abrogated by Article 245.

To declare Article 245 of the Labor Code unconstitutional cuts deep into our existing industrial life and will open the floodgates to unionization at all levels of the industrial hierarchy. Such a ruling will wreak havoc on the existing set-up between management and labor. If all managerial employees will be allowed to unionize, then all who are in the payroll of the company, starting from the president, vice-president, general managers and everyone, with the exception of the directors, may go on strike or picket the employer.[40] Company officers will join forces with the supervisors and rank-and-file. Management and labor will become a solid phalanx with bargaining rights that could be enforced against the owner of the company.[41] The basic opposing forces in the industry will not be management and labor but the operating group on the one hand and the stockholder and bondholder group on the other. The industrial problem defined in the Labor Code comes down to a contest over a fair division of the gross receipts of industry between these two groups.[42] And this will certainly bring ill-effects on our economy.

The framers of the Constitution could not have intended a major upheaval of our labor and socio-economic systems. Their intent cannot be made to override substantial policy considerations and create absurd or impossible situations.[43] A constitution must be viewed as a continuously operative charter of government. It must not be interpreted as demanding the impossible or the impracticable; or as effecting the unreasonable or absurd.[44] Courts should always endeavour to give such interpretation that would make the constitutional provision and the statute consistent with reason, justice and the public interest.[45]

I vote to dismiss the petition.

PUNO, J., concurring:

[1] Franklin Baker Co. vs. Trajano, 157 SCRA 416, 422 [1988].
[2] 48 Am Jur 2d, "Labor and Labor Relations," Sec. 1 [1994].
[3] Id.
[4] Id., Sec. 2.
[5] Id., Sec. 3.
[6] International Ladies' Garment Workers' Union vs. N.L.R.B., 339 F. 2d 116, 123 [1964].

[7] This was declared by the National Labor Relations Board in 1945 and upheld by the U.S. Supreme Court in Packard Motor Co. vs. N.L.R.B., 330 U.S. 485, 91 L.Ed. 1040 [1947] — See also Footnote 2 in L.A. Young Spring & Wire Corporation vs. N.L.R.B., 163 F.2d 905, 906-907 [1947].
[8] International Ladies' Garment Workers' Union vs. N.L.R.B., 339 F. 2d 116, 123 [1964] citing Ford Motor Co., 66 N.L.R.B. 1317, 1322 [1946] and Palace Laundry Dry Cleaning Corp., 75 N.L.R.B. 320, 323 [1947]; also cited in 51 C.J.S. "Labor Relations," Sec. 41.
[9] International Ladies' Garment Workers' Union vs. N.L.R.B., supra, at 122.
[10] 48 Am Jur 2d, "Labor and Labor Relations," Secs. 1048, 1113 [1994 ed.].
[11] Id., at Sec. 1048.
[12] R.A. 873.
[13] Azucena, The Labor Code with Comments and Cases, vol. 1, p. 16 [1996]; Pascual, Labor Relations Law, p. 13 [1986].
[14] Azucena, supra.
[15] Atlantic Gulf & Pacific Co., 33 Phil. 425, 428-429 [1916]; Boy Scouts of the Philippines vs. Araos, 102 Phil. 1080 [1958].
[16] Filoil Refinery Corporation vs. Filoil Supervisory & Confidential Employees Association, 46 SCRA 512, 519 [1972].
[17] Caltex Filipino Managers and Supervisors Association vs. Court of Industrial Relations, 47 SCRA 112, 115 [1972].
[18] Section 11, Rule II, Book V of the Omnibus Rules Implementing the Labor Code provided:
"Sec. 11. All existing supervisory unions and unions of security guards shall, upon effectivity of the Code, cease to operate as such and their registration certificates shall be deemed automatically cancelled. . . . Members of supervisory unions who do not fall within the definition of managerial employees shall become eligible to join or assist the rank- and-file labor organization, and if none exists, to form or assist in the forming of such rank-and-file organizations."
[19] 144 SCRA 628, 634 [1986].
[20] Golden Farms, Inc. vs. Calleja, 175 SCRA 471, 477 [1989]; Bulletin Publishing Corp. vs. Sanchez, 144 SCRA 628, 635 [1986].
[21] National Association of Trade Unions-Republic Planters' Bank Supervisors Chapter vs. Torres, 239 SCRA 546, 559 [1994].
[22] Azucena, supra, at 129-132.
[23] Gonzales, Philippine Constitutional Law, p. 30 [1969].
[24] Cooley, Treatise on Constitutional Limitations, vol. 1, pp. 142-143 [1927]; Also cited in Willoughby, The Constitutional Law of the United States, Sec. 32, pp. 54-55, vol. 1 [1929].
[25] Vera vs. Avelino, 77 SCRA 192, 215 [1946].
[26] Id.
[27] Civil Liberties Union vs. Executive Secretary, 194 SCRA 317, 337-338 [1991]; See also J.M. Tuason & Co., Inc. vs. Land Tenure Administration, 31 SCRA 413, 425 [1970].
[28] J.M. Tuason & Co., Inc. vs. Land Tenure Administration, supra; Aglipay vs. Ruiz, 64 Phil. 201 [1937].

[29] Debates and proceedings in the constitutional convention
"are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of the fundamental law. We think it safer to construe the Constitution from what appears upon its face." (Commonwealth vs. Balph, 111 Pa. 365, 3 Atl. 220, cited in Black, Handbook on the Construction and Interpretation of the Laws, Sec. 44, p. 122 [1911]).
[30] Cruz, Constitutional Law, p. 227 [1991].
[31] See also E.O. 180.
[32] San Jose Electric Cooperative, Inc. vs. Ministry of Labor, 173 SCRA 697, 703 [1989]; Benguet Electric Cooperative, Inc. vs. Ferrer-Calleja, 180 SCRA 740, 745 [1989].
Member-employees of a cooperative may, however, withdraw as members of the cooperative in order to join a labor union (Central Negros Electric Corp. vs. Sec. of Labor, 201 SCRA 584, 591 [1991].
[33] Id.
[34] International Catholic Migration Commission vs. Calleja, 190 SCRA 130, 143 [1990].
[35] Id.
[36] 239 SCRA 546 [1994].
[37] at 551.
[38] Azucena, The Labor Code with Comments and Cases, vol. 2, p. 127 [1996.]; Pascual, Labor Relations Law, pp. 35-36 [1986].
[39] Id.
[40] Dissenting opinion of Justice Douglas in Packard Motor Co. vs. N. L. R. B., 330 U.S. 492, 91 L ed. 1040, 1052 [1946]. This dissent became one of the bases for the passage of the LMRA (Taft-Hartley Act) which abolished the right of supervisors to form unions (Footnote 2, L.A. Young Spring & Wire Corp. vs. N.L.R.B., 163 F. 2d 905, 906-907 [1947].
[41] Id.
[42] Id.
[43] Pritchard vs. Republic, 81 Phil. 244, 252 [1948].
[44] Civil Liberties Union vs. Executive Secretary, 194 SCRA 317, 332 [1991].
[45] Co Kim Cham vs. Valdez Tan Keh, 75 Phil. 113, 132 [1945]; See also Agpalo, Statutory Construction, pp. 119-120 [1995]; Black, Handbook on the Construction and Interpretation of the Laws, Sec. 44, p. 122 [1911].

VITUG, J ., concurring & dissenting:

The pivotal issues raised in the case at bar, aptly stated by the Office of the Solicitor General, are:

(1) Whether or not public respondent, Undersecretary of the Department of Labor and Employment ("DOLE") Bienvenido E. Laguesma, gravely abused his discretion in categorizing the members of petitioner union to be managerial employees and thus ineligible to form or join labor organizations; and

(2) Whether or not the provision of Article 245 of the Labor Code, disqualifying managerial employees from joining, assisting or forming any labor organization, violates Section 8, Article III, of the 1987 Constitution, which expresses that "(t)he right of the people, including those employed in public and private sectors to form unions, associations or societies for purposes not contrary to law shall not be abridged."

The case originated from a petition for direct certification or certification election among route managers/supervisory employees of Pepsi-Cola Products Phils., Inc. ("Pepsi"), filed by the United Pepsi-Cola Supervisory Union ("Union"), claiming to be a legitimate labor organization duly registered with the Department of Labor and Employment under Registration Certificate No. NCR-UR-3-1421-95. Pepsi opposed the petition on the thesis that the case was no more than a mere duplication of a previous petition for direct certification[1] filed by the same route managers through the Pepsi-Cola Employees Association (PCEA-Supervisory) which petition had already been denied by Undersecretary Laguesma. The holding reiterated a prior decision in Workers Alliance Trade Unions ("WATU") vs. Pepsi-Cola Products Phils., Inc.,[2] that route managers were managerial employees.

In its decision, dated 05 May 1995, Med-Arbiter Brigida C. Fadrigon dismissed for lack of merit the petition of the Union, stating that the issue on the proper classification and status of route managers had already been ruled with finality in the previous decisions, aforementioned, rendered by DOLE.

The union appealed the decision. In his resolution of 31 August 1995, Undersecretary Laguesma dismissed the appeal, saying that there was

no compelling reason to abandon the ruling in the two old cases theretofore decided by DOLE. In his order of 22 September 1995, Undersecretary Laguesma denied the Union's motion for reconsideration.

The Union went to this Court, via a petition for certiorari, assailing the cancellation of its certificate of registration. The Court, after considering the petition and the comments thereon filed by both public and private respondents, as well as the consolidated reply of petitioner, dismissed the case in its resolution of 08 July 1996 on the premise that no grave abuse of discretion had been committed by public respondent.

Undaunted, the Union moved, with leave, for the reconsideration of the dismissal of its petition by the Court En Banc. In its resolution of 16 June 1997, the case was referred to the Court En Banc en consulta with the movant's invocation of unconstitutionality of Article 245 of the Labor Code *vis-a-vis* Section 8, Article III, of the 1987 Constitution.

There is merit, in my view, in petitioner's motion for reconsideration but not on constitutional grounds.

There are, in the hierarchy of management, those who fall below the level of key officers of an enterprise whose terms and conditions of employment can well be, indeed are not infrequently, provided for in collective bargaining agreements. To this group belong the supervisory employees. The "managerial employees," upon the other hand, and relating the matter particularly to the Labor Code, are those "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" as distinguished from the supervisory employees whose duties in these areas are so designed as to verily be implementary to the policies or rules and regulations already outstanding and priorly taken up and passed upon by management. The managerial level is the source, as well as prescribes the compliance, of broad mandates which, in the field of labor relations, are to be carried out through the next rank of employees charged with actually seeing to the specific personnel action required. In fine, the real authority, such as in hiring or firing of employees,

comes from management and exercised by means of instructions, given in general terms, by the "managerial employees;" the supervisory employees, although ostensibly holding that power, in truth, however, only act in obedience to the directives handed down to them. The latter unit, unlike the former, cannot be considered the alter ego of the owner of enterprise.

The duties and responsibilities of the members of petitioner union, shown by their "job description" below —

PCPPI
RM's JOB DESCRIPTION

A. GENERAL/OVERALL OBJECTIVE OF THIS POSITION

To contribute to the growth and profitability of PCPPI via well-selected, trained and motivated Route Sales Team who sell, collect and merchandise, following the Pepsi Way, and consistent with Company policies and procedures as well as the corporate vision of Customer Satisfaction.

B. SPECIFIC JOB DESCRIPTION

KEY RESULT AREAS	STANDARD OF PERFORMANCE
SALES VOLUME	*100% vs. Target ____% NTG
DISTRIBUTION	* Product Availability 70% Pepsi 80% Seven-Up 40% Mirinda 65% Mt. Dew 5% Out of Stock
ACCOUNTS RECEIVABLE MANAGEMENT	65% Current (Incl. Legal & Col.) 80:20 Cash to Credit Ratio DSO-assigned Std. To Division by the District

ASSET MANAGEMENT	30 cases for ice-coolers 80 cases for electric coolers BLOWAGA on Division Vehicles 60 cases on Rolling/Permanent Kiosks
TRADE DEVELOPMENT	100% Buying Customers Based on master list that bought once 5 months payback on concessions 4 CED's/Rte
EXPENSE MANAGEMENT	a) 5% Absentism rate Excl. VL b) 280 cases/route/day c) 15% cost-to-sales ratio
ROUTE MANAGEMENT	3 Days on RR/Wk - Days on BC-SC-Financial & Co. Assets - Days on TD 75% Load Factor 18 Productive Calls
CUSTOMER SATISFACTION	Customer Complaints attended to within the next working day
HUMAN RESOURCE MANAGEMENT	5% Absentism Excl. VL *(approved)* 3 Documented RR/Week using SLM's Training Log
ADMINISTRATIVE MANAGEMENT	- Complete, timely and accurate reports.

PCPPI
RM's BASIC DAILY ACTIVITIES

A. AT THE SALES OFFICE

1. PRACTICES BLOWAGA ON SERVICE VEHICLE (AT HOME)

2. REPORTS FOR WORK ON OR BEFORE 6:15 A.M.

3. REPORTS IN CLEAN AND NEAT UNIFORM (GOOD GROOMING)

4. DAILY BRIEFING WITH THE DM

5. CONDUCTS SKILLS ENHANCEMENT OR HUDDLES WITH RST's

    a). ATTENDANCE/GROOMING
    b). OPERATIONAL DIRECTIONS & PRIORITIES
    c). ANNOUNCEMENT

6. RM's PRESENCE DURING CHECK-OUT

    a). SLM PRACTICES BLOWAGA ON ROUTE TRUCK
    b). PRIVATE COUNSELING WITH RST (AM & PM IF NECESSARY)
    c). PROPER HANDLING OF SELLING/MDSG. MATERIALS
    d). YESTERDAY's FINAL SETTLEMENT REVIEW

7. UPDATE REPORTS, MONITORS, DOCUMENTS & TELEPHONE CONFIRMATION

8. ATTENDS TO PRODUCT COMPLAINTS (GFM)

9. CONDUCTS ADMINISTRATIVE INVESTIGATION OR ATTENDS DM's MEETING (on Saturdays)

B. FIELD WORK

ROUTE RIDE

1. CHECKS SLMS. TRAINING LOG (PROGRESS & DEV'T.)

2. SALEMAN's CPC

3. ROUTE COVERAGE EVALUTION

4. LOAD FACTOR

5. SALEMAN's ROUTING SYSTEM EVALUATION

BC/SC

1. FINANCIAL & ASSET VERIFICATION, CONFIRMATION & AUDIT

2. BACKCHECKS FIRST 5 CUSTOMERS SERVED FOR THE DAY

    a). MERCHANDISING
    b). SERVICING
    c). RM's TERRITORY FAMILIARITY
    d). KEY ACCOUNTS GOODWILL

TRADE DEVELOPMENT

1. PREPARATION PRIOR TO CALL

2. ACTUAL CALL

3. POST CALL ANALYSIS
   (HOW DID I FARE? WHY? WHAT ACTIONS TO TAKE)

4. FOLLOW-UP ACTION

C. AT CLOSE OF DAY

1. MAINTAINS & UPDATES CORRECT & ACCURATE RECORDS & REPORTS

2. RM-SLM BRIEFING

3. SLR DISCUSSION (BASED ON A.M. SLR)

4. COORDINATES WITH DM ON PLANS & PROGRAMS

5. PREPARATIONS FOR NEXT DAY's ACTIVITIES[3]

— convey no more than those that are aptly consigned to the "supervisory" group by the relatively small unit of "managerial" employees. Certain portions of a pamphlet, the so-called "Route Manager Position Description" referred to by Mr. Justice Vicente Mendoza, in his ponencia, hereunder reproduced for easy reference, thus —

"**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 merchandising objectives are achieved in all outlets.

1.1.5 Maintain and improve productivity of all cooling equipment and kiosks.

1.1.6 Execute and control all authorized promotions.

1.1.7 Develop and maintain dealer goodwill.

1.1.8 Ensure all accounts comply with company suggested retail pricing.

1.1.9 Study from time to time individual route coverage and productivity for possible adjustments to maximize utilization of resources.

1.2 Administration

1.2.1 Ensure the proper loading of route trucks before check-out and the proper sorting of bottles before check-in.

1.2.2 Ensure the upkeep of all route sales reports and all other related reports and forms required on an accurate and timely basis.

1.2.3 Ensure proper implementation of the various company policies and procedures include but not limited to shakedown; route shortage; progressive

discipline; sorting; spoilages; credit/collection; accident; attendance.

1.2.4 Ensure collection of receivables and delinquent accounts.

2.0 MANAGING YOUR PEOPLE

The Route Manager is accountable for the following:

2.1 Route Sales Team Development

2.1.1 Conduct route rides to train, evaluate and develop all assigned route salesmen and helpers at least 3 days a week, to be supported by required route ride documents/reports & back check/spot check at least 2 days a week to be supported by required documents/reports.

2.1.2 Conduct sales meetings and morning huddles. Training should focus on the enhancement of effective sales and merchandising techniques of the salesmen and helpers. Conduct group training at least 1 hour each week on a designated day and of specific topic.

2.2 Code of Conduct

2.2.1 Maintain the company's reputation through strict adherence to PCPPI's code of conduct and the universal standards of unquestioned business ethics." —

> offer nothing at all that can approximate the authority and functions of those who actually and genuinely hold the reins of management.

I submit, with due respect, that the members of petitioning union, not really being "managerial employees" in the true sense of the term, are

not disqualified from forming or joining labor organizations under Article 245 of the Labor Code.

I shall now briefly touch base on the constitutional question raised by the parties on Article 245 of the Labor Code.

The Constitution acknowledges "the right of the people, including those employed in the public and private sectors, to form unions, associations or societies for purposes not contrary to law."[4] Perforce, petitioner claims, that part of Article 245[5] of the Labor Code which states: "Managerial employees are not eligible to join, assist or form any labor organization," being in direct collision with the Constitutional provision, must now be declared abrogated in the law.

Frankly, I do not see such a "direct collision." The Constitution did not obviously grant a limitless right "to form unions, associations or societies" for it has clearly seen it fit to subject its exercise to possible legislative judgment such as may be appropriate or, to put it in the language of the Constitution itself, to "purposes not contrary to law."

Freedom of association, like freedom of expression, truly occupies a choice position in the hierarchy of constitutional values. Even while the Constitution itself recognizes the State's prerogative to qualify this right, heretofore discussed, any limitation, nevertheless, must still be predicated on the existence of a substantive evil sought to be addressed.[6] Indeed, in the exercise of police power, the State may, by law, prescribe proscriptions, provided reasonable and legitimate of course, against even the most basic rights of individuals.

The restriction embodied in Article 245 of the Labor Code is not without proper rationale. Concededly, the prohibition to form labor organizations on the part of managerial employees narrows down their freedom of association. The very nature of managerial functions, however, should preclude those who exercise them from taking a position adverse to the interest they are bound to serve and protect. The mere opportunity to undermine that interest can validly be restrained. To say that the right of managerial employees to form a "labor organization" within the context and ambit of the Labor Code should be deemed totally separable from the right to bargain

collectively is not justified by related provisions of the Code. For instance —

> "ART. 212. Definitions.[7] — . . .
>
> "(g) 'Labor organization' means any union or association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment.
>
> "x x x
>
> "(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 routinely 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."
>
> "ART. 263. . . .
>
> "(b) Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. The right of legitimate labor organizations to strike and picket and of employers to lockout, consistent with the national interest, shall continue to be recognized and respected."

The maxim *"ut res magis quam pereat"* requires not merely that a statute should be given such a consequence as to be deemed whole but that each of its express provisions equally should be given the intended effect.

I find it hard to believe that the fundamental law could have envisioned the use by managerial employees of coercive means against their own employers over matters entrusted by the latter to

the former. Whenever trust and confidence is a major aspect of any relationship, a conflict of interest on the part of the person to whom that trust and confidence is reposed must be avoided and when, unfortunately, it does still arise its containment can rightly be decreed.

Article 245 of the Labor Code indeed aligns itself to the Corporation Code, the basic law on by far the most commonly used business vehicle — the corporation — which prescribes the tenure of office, as well as the duties and functions, including terms of employment (governed in most part by the Articles of Incorporation, the By-laws of the Corporation, or resolutions of the Board of Directors), of corporate officers for both the statutory officers, i.e., the president, the treasurer and the corporate secretary, and the non-statutory officers, i.e., those who occupy positions created by the corporate by-laws who are deemed essential for effective management of the enterprise. I cannot imagine these officers as being legally and morally capable of associating themselves into a labor organization and asserting collective bargaining rights against the very entity in whose behalf they act and are supposed to act.

I submit, accordingly, that, firstly, the members of petitioner union or the so-called route managers, being no more than supervisory employees, can lawfully organize themselves into a labor union within the meaning of the Labor Code, and that, secondly, the questioned provision of Article 245 of the Labor Code has not been revoked by the 1987 Constitution.

WHEREFORE, I vote, given all the foregoing, for the reversal of the Resolution of 31 August 1995, and the order of 22 September 1995, of public respondent.

Melo, Kapunan, Panganiban and Quisumbing, *JJ.*, concur.

VITUG, J., concurring and dissenting:

[1] In Re: Petition for Direct Certification and/or Certification Election — Route Managers/Supervisory Employees of the Pepsi-Cola Products Phils., Inc., OS-A-3-71-92; NCR-OD-A-91-10-055.

[2] OS-MA-A-10-318-91; ROX Case No. R-1000-9002-Ru-007.
[3] Rollo, pp. 68-69.
[4] Article III, Section 8, 1987 Constitution provides:
Sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.
[5] Art. 245. — 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 organizations of their own.
[6] See People vs. Ferrer, 48 SCRA 382.
[7] As amended by Sec. 3, RA 6715.