G.R. No. 179146 – HOLY CHILD CATHOLIC SCHOOL, *petitioner* v. HON. PATRICIA STO. TOMAS, in her official capacity as Secretary of Labor and Employment, and PINAG-ISANG TINIG AT LAKAS NG ANAKPAWIS – HOLY CHILD CATHOLIC SCHOOL TEACHERS AND EMPLOYEES LABOR UNION, *respondents.*

Promulgated:

JULY 23, 2013

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CONCURRING OPINION

BRION, *J.*:

I concur with the *ponencia's* conclusion that the Court of Appeals (*CA*) did not commit any reversible error when it ruled that the Secretary of Labor and Employment, Hon. Patricia Sto. Tomas (*Secretary of Labor*), did not gravely abuse her discretion when she ruled that: (1) the commingling of supervisory employees and rank-and-file employees in one labor organization does not affect the latter's legitimacy and its right to file a petition for certification election; and (2) two collective bargaining units should represent the teaching and non-teaching personnel of petitioner Holy Child Catholic School.

I. The Commingling and Union Legitimacy Issues

I fully concur with the conclusion that the commingling of supervisory employees and rank-and-file employees in one labor organization does not affect the latter's legitimacy and its right to file a petition for certification election. The Court had squarely addressed this issue in *Tagaytay Highlands Int'l. Golf Club Inc. v. Tagaytay Highlands Employees Union-PGTWO,*[1] *In Re: Petition for Cancellation of the Union Registration of Air Phils. Flight Attendants Ass'n., Air Phils. Corp. v. BLR,*[2] *Republic v. Kawashima Textile Mfg., Philippines, Inc.*[3] and *Samahang Manggagawa sa Charter Chemical Solidarity of Unions in the Philippines for Empowerment and Reforms (SMCC-Super) v. Charter Chemical and Coating Corporation,*[4] taking into account the omission in our existing law[5] to include mixed membership as a ground for the

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1 443 Phil. 841 (2003).

2 525 Phil. 331 (2006).

3 G.R. No. 160352, July 23, 2008, 559 SCRA 386.

4 G.R. No. 169717, March 16, 2011, 645 SCRA 538.

5 Article 239 of the Labor Code, as amended, reads:

Art. 239. Grounds for cancellation of union registration. The following shall constitute grounds for cancellation of union registration:

cancellation of a labor organization's registration. It is likewise settled that the legal personality of the respondent union, Pinag-isang Tinig at Lakas ng Anakpawis, cannot be collaterally attacked in certification election proceedings by petitioner school which, as employer, is generally a bystander in the proceedings.[6]

II. The Collective Bargaining Issue

A. Mode of Review

I share the *ponencia's* view that the Secretary of Labor and the CA correctly exercised their jurisdictions in ruling that two (2) collective bargaining units should represent the teaching and non-teaching personnel of the petitioner. I do not find any reason to disturb their findings and conclusions under a Rule 45 review applying the ruling in *Montoya v. Transmed Manila Corporation*[7] where the Court, through the Second Division, laid down the basic approach to a Rule 45 review on labor cases:

> In a Rule 45 review, we consider the **correctness of the assailed CA decision,** in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45

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1. Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification and the list of members who took part in the ratification;
2. Failure to submit the documents mentioned in the preceding paragraph within thirty (30) days from adoption or ratification of the constitution and by-laws or amendments thereto;
3. Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, the list of voters, or failure to subject these documents together with the list of the newly elected/appointed officers and their postal addresses within thirty (30) days from election;
4. Failure to submit the annual financial report to the Bureau within thirty (30) days after the closing of every fiscal year and misrepresentation, false entries or fraud in the preparation of the financial report itself;
5. Acting as a labor contractor or engaging in the "cabo" system, or otherwise engaging in any activity prohibited by law;
6. Entering into collective bargaining agreements which provide terms and conditions of employment below minimum standards established by law;
7. Asking for or accepting attorney's fees or negotiation fees from employers;
8. Other than for mandatory activities under this Code, checking off special assessments or any other fees without duly signed individual written authorizations of the members;
9. Failure to submit list of individual members to the Bureau once a year or whenever required by the Bureau; and
10. Failure to comply with [the] requirements under Articles 237 and 238.

[6] *Samahang Manggagawa sa Charter Chemical Solidarity of Unions in the Philippines for Empowerment and Reforms* (*SMCC-Super*) *v. Charter Chemical and Coating Corporation*, *supra* note 4, at 557.

[7] G.R. No. 183329, August 27, 2009, 597 SCRA 334.

> review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case**?[8]

Our review, therefore, is limited to the determination of the legal correctness of the CA's ruling on whether it correctly determined the presence or absence of grave abuse of discretion in the Secretary of Labor's decision, and not on the basis of whether the latter's decision on the merits of the case was strictly correct. Our review does not entail a re-evaluation of the evidence as we examine the CA's decision and determine whether it correctly affirmed the Secretary of Labor in a *certiorari* proceeding. The CA was tasked to determine whether the Secretary of Labor's decision considered all the evidence, that no evidence which should not have been considered was considered, and the evidence presented supported the findings. ***Note in this regard that the labor tribunals exercise primary jurisdiction on the matter on the basis of their administrative expertise that the law recognizes.***

In concrete terms, we are tasked to determine whether the CA correctly ruled that the Secretary of Labor did not commit grave abuse of discretion in ruling that separate collective bargaining units should represent the teaching and the non-teaching personnel of the petitioner.

B. <u>One or Two Bargaining Units</u>

The Labor Code, as amended, does not specifically define an appropriate bargaining unit, but provides under Article 255 what an exclusive bargaining representative should be:

> **Art. 255. Exclusive bargaining representation and workers' participation in policy and decision-making. –** The labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining. However, an individual employee or group of employees shall have the right at any time to present grievances to their employer.

Section 1, Rule I, Book V of the Labor Code's Implementing Rules states that a bargaining unit "refers to a group of employees sharing mutual interests within a given employer unit, comprised of all or less than all of the entire body of employees in the employer unit or any specific occupational or geographical grouping within such employer unit."

We explained for the first time in *Democratic Labor Association v. Cebu Stevedoring Company, Inc., et al.*[9] that several factors determine an appropriate bargaining unit, namely: "(1) will of employees (Globe Doctrine); (2) affinity

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[8] Id. at 342-343; emphases and italics supplied, citations omitted.

[9] 103 Phil. 1103 (1958).

and unity of employees' interest, such as substantial similarity of work and duties, or similarity of compensation and working conditions; (3) prior collective bargaining history; and (4) employment status, such as temporary, seasonal and probationary employees[.]"[10] We also held that the basic test of a bargaining unit's acceptability is the "combination which will best assure to all employees the exercise of their collective bargaining rights[.]"[11] These parameters (or to be exact, a combination of these parameters) have been our overriding considerations in subsequent cases.

In *Alhambra Cigar & Cigarette Manufacturing Co. and Kapisanan ng Manggagawa sa Alhambra (FOITAF) v. Alhambra Employee's Assn.,*[12] we found, based on the nature of their work, that employees in the administrative, sales and dispensary departments have no community of interest with raw leaf, cigar, cigarette and packing and engineering and garage departments whose employees are involved in production and maintenance.

In *PLASLU v. Court of Industrial Relations, et al.,*[13] we ruled that "piece workers x x x employed on a casual or day to day basis [who do not] have reasonable basis for continued or renewed employment for any appreciable x x x time[,] cannot be considered to have such mutuality of interest as to justify their inclusion in a bargaining unit composed of permanent or regular employees." We also held that the "most efficacious bargaining unit is one which is comprised of constituents enjoying a community or mutuality of interest."[14]

We held in *LVN Pictures, Inc. v. Philippine Musicians Guild*[15] that commonality or mutuality of interest, viewed from the perspective of substantial difference in the work performed (musicians as against other persons who participate in film production), is sufficient to constitute a proper bargaining unit. We reached a similar ruling in *Belyca Corporation v. Dir. Ferrer-Calleja*[16] where a substantial difference in the work performed between the employees of the livestock and agro division of petitioner corporation and the employees in the supermarts and cinema were considered to negate the presence of commonality or mutuality of interest sufficient to constitute an appropriate bargaining unit.

We examined the dissimilarity of the working conditions among the various group of employees in *Golden Farms, Inc. v. The Honorable Secretary of Labor, et al.*[17] to determine and stress the application of the commonality or mutuality of interest standard within each group. The Court observed that the dissimilarity of interests in terms of working conditions between monthly paid

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10 Id. at 1104.
11 Ibid.
12 107 Phil. 23, 28 (1960).
13 110 Phil. 176, 180 (1960).
14 Ibid.
15 No. L-12582, January 28, 1961, 1 SCRA 132, 136.
16 250 Phil. 193, 200-201 (1988).
17 G.R. No. 102130 July 26, 1994.

rank-and-file employees (performing administrative or clerical work) and the daily paid rank-and-file employees (mainly working in the cultivation of bananas in the fields) warranted the formation of a separate and distinct bargaining unit for each group.[18]

Law and jurisprudence, thus, provide that the commonality or mutuality of interest is the most fundamental standard of an appropriate bargaining unit. This standard requires that the employees in an asserted bargaining unit be similarly situated in their terms and conditions of employment relations. This commonality or mutuality may be appreciated with greater certainty if their areas of differences with other groups of employees are considered.

In the academic environment, a case to note is *University of the Philippines v. Ferrer-Calleja*[19] where the comparison and lines of distinction were between academic and non-academic personnel. We held that the formation of two (2) separate bargaining units within the establishment was warranted, reasoning:

> [T]he dichotomy of interests, the dissimilarity in the nature of the work and duties as well as in the compensation and working conditions of the academic and non-academic personnel dictate the separation of these two categories of employees for purposes of collective bargaining. The formation of two separate bargaining units, the first consisting of the rank-and-file non-academic personnel, and the second, of the rank-and-file academic employees, is the set-up that will best assure to all the employees the exercise of their collective bargaining rights.[20]

Although the *University of the Philippines* case is not completely on all fours with the present case, the core rulings on commonality or mutuality of interest element are still apt in considering the determination of an appropriate bargaining unit.

Another notable case in the academic setting is *International School Alliance of Educators v. Quisumbing*[21] where we recognized that foreign hires and local-hires, while performing similar functions and responsibilities under similar working conditions, still could not be included in a single collective bargaining unit because of essential distinctions that still separated them – foreign hires were entitled to and received certain benefits not given to local-hires.[22] This essential distinction overshadowed their similarities. We thus concluded that "[t]o include foreign-hires in a bargaining unit with local-hires *would not assure either group the exercise of their respective collective bargaining rights*."[23]

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18 Ibid.
19 G.R. No. 96189, July 14, 1992, 211 SCRA 451.
20 Id. at 468-469.
21 388 Phil. 661 (2000).
22 Id. at 675 and 678.
23 Id. at 678; italics ours.

The adage that there is strength in numbers in a single collective bargaining unit is significant when the employees are similarly situated, that is, they have the same or similar areas of interests and differences from others in their employment relations. However, strength in numbers as a consideration must take a back seat to the ultimate standard of the employees' right to self-organization based on commonality or mutuality of interest; simply put, a collective bargaining unit whose membership is characterized by diversity of interests cannot fully maximize the exercise of its collective bargaining rights.

The commonality and mutuality of interest as a determining force of what constitutes a collective bargaining unit must be understood along these lines, taking into account, of course, the facts established in a particular case. In other words, the parameters we have consistently followed in *Democratic Labor Association* must be applied on a case-to-case basis.

The established facts show that the petitioner has 156 employees[24] consisting of 98 teaching personnel, 25 non-teaching academic employees, and 33 non-teaching and non-academic employees. The 156,120 employees – consisting of teaching personnel and non-teaching personnel (*i.e.*, administrative personnel, non-teaching personnel and maintenance personnel) – supported the petition for certification election filed by the respondent union.[25]

The *Sama-Samang Salaysay* signed by several of these employees shows similarities and dissimilarities in their working conditions, thus:

> 1. Na Kami ay mga Monthly Regular Rank-amd-File na mga empleyado mula sa Teaching at Non teaching na nakatalaga sa mga Gawain ng bawat departamento ng Institusyon;
> 2. x x x
> 3. Na lahat kame ay nagtratrabaho ng limang (5) araw mula Lunes hanggang Biyernes **maliban sa maintenance** na may kalahating (1/2) araw tuwing Sabado.
> 4. Na **karamihan** sa amin ay nagtratrabaho sa minimum na walong (8) oras bawat araw, at pinapasahuran tuwing 15-30 ng bawat buwan;
> 5. [N]a kami ay pare-parehong tumatanggap ng sampung (10) araw na Sick Leave at Vacation leave, limang (5) araw na Emergency leave, Holiday premium at 13th month Pay;
> 6. Na kami ay pantay pantay na obligado umalinsunod sa patakaran polisiya at regulasyon ukol sa promotion, transfer, disiplina at tanggalan batay sa rekomendasyon ng immediate head ng bawat departamento bago aprobahan ng director ng HRD o paaralan[.][26]

While the 120 employees have similar working conditions in the following areas: a five-day work week; an eight-hour work day, paid sick leaves, vacation leaves, emergency leaves, holiday premium and 13th month pay and all are subject to the same discipline, substantial dissimilarities are also

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24 As of June 25, 2002.

25 Page 22 of the *ponencia*, citing the appeal before the Secretary of Labor (*rollo*, p. 107).

26 Id. at 213-214; emphases and underscores ours.

present in their interests, in the work and duties they performed, and in their working conditions.

One obvious distinction is the nature of the work and duties performed. The teaching personnel directly implement the school's curriculum and the school's discipline to their students, while the non-teaching personnel perform administrative, clerical, custodial, and maintenance duties. In this case, the task and duties of teachers, on one hand, are different from the tasks and duties of a secretary to the vice-principal, records assistants, liaison officer, guidance counselors, counselor, school librarians, library staff, pyschometrician, clinical staff, drivers, maintenance, electricians, carpenter, canteen helpers, bookstore staff, and drivers, on the other hand.[27] *The teaching personnel are more concerned with promoting and ensuring a healthy learning environment for students, while non-teaching personnel are involved in the management and running of the school.*

A substantial difference also exists in terms of employees' salaries. The records show that the teaching personnel are paid a basic salary and additional pay for advisory class and additional load, while non-teaching personnel are only paid a basic salary.[28]

According to the petitioner, teaching and non-teaching personnel also have differences in hours of work and working conditions.[29] For instance, the non-teaching personnel (maintenance) render an additional ½ workday on a Saturday. The petitioner further pointed out that the rules governing employment are likewise different. The petitioner asserted that "[t]he Manual of Regulations for Private Schools categorically provides that the employment of teaching and non-teaching academic personnel shall be governed by such rules as may from time to time be promulgated in coordination with one another by the Department of Education while the conditions of employment of non-academic, non-teaching personnel shall be governed by the appropriate labor laws and regulations."[30] Significantly, these circumstances were not at all disputed by the respondent union.

These considerations, in no small measure, convinced the Secretary of Labor that because of the dominance of the distinctions – ***which she appreciated as questions of facts based on her labor relations expertise*** – the collective bargaining interests of the employees would be best served if two separate bargaining units would be recognized, namely, the teaching and the non-teaching units. In making this recognition, she was duly supported by law and jurisprudence, citing and relying as she did on our ruling in *University of the Philippines*.

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27 Id. at 215-217.
28 Id. at 89.
29 Ibid.
30 Id. at 90.

I do not believe that the CA could be legally wrong in ruling as it did as the Secretary of Labor had sufficient basis in fact and in law when she recognized the substantial dissimilarity of interests between the teaching personnel and the non-teaching personnel of the petitioner. As the CA did, this Court correctly respected the Secretary of Labor's expertise on a matter that the law itself recognizes and assigns to her, particularly when her conclusions are supported by the evidence on record and by law and jurisprudence. Indeed, combining two disparate groups of employees under a single collective bargaining unit may deny one group of employees the appropriate representation for purposes of collective bargaining; in a situation where the teaching personnel are more numerous and largely have better academic preparations, the interests of the non-teaching personnel may simply be relegated to the background and may possibly be sacrificed in the interests of the dominant majority. In short, a ruling to the contrary may have the effect of denying a distinct class of employees the right to *meaningful* self-organization because of their lesser collective bargaining presence.

Viewed from this perspective, I find no reversible error committed by the CA and thus join the *ponencia* in finding that the Secretary of Labor did not commit grave abuse of discretion. Under the circumstances, the Secretary of Labor's decision was based on the facts of the case, on the applicable law and on jurisprudence.

ARTURO D. BRION
Associate Justice