

**BENGUET EXPLORATION MINERS' UNION, PETITIONER, VS.
HON. CARMELO C. NORIEL, DIRECTOR OF THE BUREAU OF LABOR
RELATIONS, ATTY. ERUDITO E. LUNA, MED-ARBITER DESIGNATE
OF LABOR RELA...***G.R. No. L-44110. March 29, 1977*

Ponente: FERNANDO, J.

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The decisive issue raised in this certiorari proceeding by petitioner labor union is whether the Bureau of Labor Relations, its Director, Carmelo C. Noriel and one of its Med-Arbiters, Erudito E. Luna, being named as respondents, possessed jurisdiction to entertain a petition for certification election filed by private respondent Union. Moreover, a grave abuse of discretion was imputed to such respondent officials, when instead of deciding with finality a motion to dismiss such petition for certification, they merely ordered that it should remain part of the records of the case to be considered in its final disposition, a procedural due process question likewise being raised with the assertion that such union was not duly heard. For all the rather verbose pleadings filed by petitioner, it was unable to make a dent on the challenged actuation of respondent public officials. It became quite apparent with the submission of the comment of the then Acting Solicitor General Hugo E. Gutierrez, Jr.,^[1] now a Justice of the Court of Appeals, considered as an answer.^[2] The matter was put in its true perspective. Nothing in the memoranda thereafter submitted could change the picture at all. The petition cannot prosper.

The antecedent facts were set forth in the aforesaid comment of the then Acting Solicitor General in a specific and objective manner. It deserves to be quoted in full: "1. On January 13, 1976, the National Mines and Allied Workers' Union (NAMAWU-MIF), filed with the Labor Relations Division, Baguio City, a 'Petition for Certification Election with Prayer for Immediate Issuance of Restraining Order' alleging, among others, that it is a legitimate labor organization, that more than 30% of the 800 employees of the Benguet Exploration, Inc. have signified their conformity and desire to the holding of a certification election, attaching thereto the signatures of three hundred eighteen (318) employees; that there has been no certification election held in the company for the last twelve (12) months immediately preceding the filing of the petition; and that the CBA between the company and the Benguet Exploration Miners' Union (BXMU) had already expired * * *. 2. Said petition was docketed as LRC Case No. 332-BC and was set for hearing on January 26, 1976, with notices sent to all the parties concerned including the petitioner herein * * *. However, said scheduled hearing was reset to February 5, 1976, upon motion of petitioner herein BXMU. 3. Meanwhile, before the scheduled hearing on February 5, 1976, BXMU filed on January 20, 1976, a motion to dismiss * * * alleging in effect lack of jurisdiction on the part of the Labor Relations Division to entertain the petition for certification election in view of Secretary of Labor's Memorandum Circular dated September 5, 1974, which provides among others that: '3. No certification election shall be entertained if there is a bargaining unit in a company: a) A certified union b) An existing collective bargaining agreement c) A bonafide union comprising the majority voluntarily recognized and in the process of negotiating a contract * * * claiming that since it (BXMU) is a certified union and that there is an existing collective bargaining

agreement, no petition for certification election should be entertained. Said motion to dismiss was opposed by the petitioning union (NAMAWU-MIF) private respondent herein alleging that said memorandum circular had been superseded by the enactment of the New Labor Code and that as regards motions to dismiss or other incidental motions the same should not be given due course but shall remain as part of the records for whatever it may be worth when the case is decided on the merits as per Sec. 5, Book V, Rule XIII; Rules and Regulations Implementing the New Labor Code of the Philippines. 4. On January 26, 1976, respondent Med-Arbiter issued an order as follows: 'Pursuant to Section 5, General Provisions, Rules and Regulations Implementing the Labor Code of the Philippines, let the Motion to Dismiss filed by Intervenor remain part of the records of the petition for certification election for whatever it may be worth so that the issues tendered therein shall be resolved upon resolution of the petition on the merits, after the evidence of the parties are formally submitted, documentary as well as testimonial. The case should therefore be set for hearing on February 5, 1976, at 9:00 o'clock A.M. at the Department of Labor, Baguio city, before the undersigned and is intransferable in character 5. At the scheduled hearing of the case on February 5, 1976, counsel for BXMU (petitioner herein) without asking for the reconsideration of the aforequoted order of January 26, 1976, nevertheless argued extensively the ground of his motion to dismiss and even replied to the opposition filed by NAMAWU-MIF. After the parties had argued and manifested their respective positions, and in order to afford the company time within which to submit the list of employees as of December 31, 1975, the case was reset for continuation of hearing to February 12, 1976. 6. On February 6, 1976, petitioner BXMU filed a 'Motion for Hearing and Resolution on Motion to Dismiss,' praying for a hearing and resolution of its motion to dismiss, citing Sections 6 and 7 of the Rules of Procedure of the Bureau of Labor Relations. * * *. 7. Later, on February 12, 1976, BXMU filed another pleading entitled 'Supplemental Grounds to Motion to Dismiss, alleging that the petition for certification election was filed out of time since the CBA between it and the company had long expired on September 1, 1975, whereas the petition for certification election was filed only on January 13, 1976 * * *. 8. During the hearing of the case on February 12, 1976, as contained in the record of the proceedings on said date * * *, petitioner herein, through counsel, again argued at length his motion to dismiss and even pressed for a ruling thereon claiming that the issue raised is jurisdictional. It was at this juncture that the Med--Arbiter stated that after the submission of the answer of the petitioner union (private respondent herein) to the supplemental grounds to the motion to dismiss, he will resolve the same. Upon the other hand, respondent NAMAWU-MIF submitted during the 'hearing an additional list containing the signatures of 132 employees in the company likewise signifying their desire for a certification election * * *, while the company submitted a list of the rank and file employees totalling 776 as of December 31, 1975 * * *. 9. On February 17, 1976, respondent NAMAWU-MIF filed an opposition to the supplemental grounds to motion to dismiss * * * while petitioner herein, BXMU, on the same date filed its summary of arguments on its motion to dismiss * * *. 10. On February 20, 1976, respondent Med-Arbiter issued an order resolving, among others, the jurisdictional issue raised in the motion to dismiss thus: * * * The records show that the jurisdictional requirements particularly the legal personality of the petitioner and the date when the petition for certification of election was filed were strictly determined and therefore in order. Consequently, this Office acquires jurisdiction over the case * * * and resetting the hearing of the case on February 25, 1976. 11. On February 24, 1976, petitioner BXMU filed a memorandum of appeal and during the hearing of the case on February 25, 1976, after the parties had argued said memorandum of appeal, respondent Med--Arbiter issued an order for the records of the case to be forwarded to the respondent Director of Labor Relations for decision and/or ruling on the issue raised therein* * *. Respondent NAMAWU-MIF filed an urgent motion for reconsideration of the aforesaid order * * * which was opposed by petitioner BXMU and on March 9, 1976, respondent issued an order denying the urgent motion and affirming his previous order to forward the records of the case to the Director of Labor Relations * * *. 12. Subsequently, on April 24, 1976, respondent Director Noriel issued an order remanding the case to the Med-Arbiter for further investigation and hearing and dismissing the appeal for

lack of merit on the basis of his findings as follows: 'Since there has been no certification election for the past twelve (12) months and no certified collective bargaining agreement, the present petition for certification election could naturally prosper.' * * *to which order a motion for reconsideration was filed by petitioner but which was denied in a resolution dated June 28, 1976. * * *"[3]

Nothing can be clearer than that this petition, as noted at the outset, must be dismissed.

1. For all the strenuous effort exerted by petitioner to make out a case for lack of jurisdiction on the part of respondent officials," it cannot be gainsaid that the law mandates the contrary. It speaks in a categorical manner. Thus: "Any petition for certification election filed by any legitimate labor organization shall be supported by the written consent of at least 30% of all the employees in the bargaining unit. Upon receipt and verification of such petition, it shall be mandatory for the Bureau to conduct a certification election for the purpose of determining the representative of the employees in the appropriate bargaining unit and certify the winner as the exclusive collective bargaining representative of all the employees in the unit."[4] Instead of respondent public officials being devoid of competence, what cannot be disputed is that for them to refuse to heed the above provision would be sheer dereliction of duty. What is more, it would set at naught the clear policy of the law, which is to leave to the workers themselves the determination of their exclusive bargaining representative through a balloting wherein everyone may express his preference. In the language of a recent decision, *Philippine Association of Free Labor Unions v. Bureau of Labor Relations*: [5] "Petitioner thus appears to be woefully lacking in awareness of the significance of a certification election for the collective bargaining process. It is the fairest and most effective way of determining which labor organization can truly represent the working force. It is a fundamental postulate that the will of the majority, if given expression in an honest election with freedom on the part of the voters to make their choice, is controlling. No better device can assure the institution of industrial democracy with the two parties to a business enterprise, management and labor, establishing a regime of self-rule." [6] Such an approach has invariably been followed in subsequent decisions. [7] Petitioner's insistence therefore on a memorandum circular of September 5, 1974, which could at the most lend deceptive plausibility to his plea, is futile and unavailing. As pointed out in the memorandum of the then Acting Solicitor General Gutierrez: "Said memorandum circular which, in effect, prevents the holding of certification elections, under the conditions therein specified was issued merely as a provisional guideline during such period when the New Labor Code had not yet come into effect. This is apparent from the explanatory provisions of the Circular itself which reads: In order to pave the way for the smooth implementation of the Labor Code relative to the restructuring of the labor movement, the following guidelines on union registration and certification election are hereby issued effective immediately.' Hence, when the New Labor Code became effective on November 1, 1974, said Memorandum Circular became obsolete specially so since the provisions thereof are inconsistent with the explicit provisions of the New Labor Code on the subject. Thus, while under said memorandum circular the mere existence of a collective bargaining agreement constitutes a bar to the holding of a certification election, under the New Labor Code, however (Art. 231 and 256), only a 'certified' CBA can bar the same. More, again under said memorandum circular, the existence of a certified union would prevent a certification election no matter how long ago said union was so certified, but under the present Rules and Regulations Implementing the Labor Code, the only limitation therein provided is that 'no certification election can be held oftener than once every twelve months from the date of last election.' Rule V, Section 3, Book V) Further, if we were to enforce the prohibition in said circular, it would be violative of the provisions of Article 257 of the Labor Code which ordains that a certification election is mandatory if the petition is supported by the written consent of at least 30% of all the employees in the collective bargaining unit." [8]

2. The prop sought to be put on the allegation of lack of jurisdiction failing, petitioner would try to impart a semblance of plausibility to its suit by conjuring a grave abuse of discretion on the part of respondent public

officials. Here again, it did, not succeed. No fault can be imputed to respondent Med-Arbiter if instead of ruling definitely on the motion to dismiss a petition for certification election, he ordered that it should remain part of the records of the case to be thereafter considered in its final disposition. Petitioner himself could not deny that such a procedure is in accordance with the rules and regulations implementing the Labor Code of the Philippines. The specific provision reads: "In, all proceedings at all levels, motions for dismissal or any other incidental motions shall not be given due course, but shall remain as part of the records for whatever they may be worth when the case is decided on the merit." [9] Such a norm is precisely in accordance with the basic policy of the present Labor Code, namely, to minimize the possibility of parties raising technical objections that may not be out of place in judicial proceedings. The laudable purpose is to assure an expeditious determination of the controversy. Moreover, even as to court cases, petitioner could not be unaware that under the Rules of Court, the judge, after hearing a motion to dismiss, "may deny or grant the motion or allow amendment of pleading, or may defer the hearing and determination of the motion until the trial if the ground alleged therein does not appear to be indubitable." [10] On the alleged lack of a hearing, the memorandum of the Solicitor General again is quite revealing of the true state of affairs: "As heretofore narrated in the statement of facts, petitioner herein in no less than three (3) hearings argued extensively the grounds of its motion to dismiss, its supplemental grounds to motion to dismiss and even its memorandum of appeal. For that matter, during the hearing of the case on February 12, 1976, petitioner's counsel even insisted for a ruling on the jurisdictional issue raised in its motion. This issue was indeed resolved by the Med-Arbiter in his February 20, 1976 order * * * wherein he stated: The records show that the jurisdictional requirements particularly the legal personality of the petitioner and the date when the petition for certification of election was filed were strictly determined and therefore in order. Consequently, this Office acquires jurisdiction over the case.' This finding was reviewed and upheld by the respondent Director of Labor Relations." [11]

WHEREFORE, the petition is dismissed for lack of merit. This decision is immediately executory.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] He was assisted by Assistant Solicitor General Reynato S. Puno and Solicitor Ramon A. Barcelona.

[2] That is likewise the case with the comment of private respondent union.

[3] Comment, 1-7.

[4] Article 257 of the present Labor Code, Presidential Decree No. 442 (1974).

[5] L-42115, January 27, 1976, 69 SCRA 132.

[6] Ibid, 139.

[7] Cf. *Federacion Obrera v. Noriel*, L-41937, July 6, 1976, 72 SCRA 24; *Foamtex Labor Union-Tupas v. Noriel*, L-42349, Aug. 17, 1976, 72 SCRA 371; *U.E. Automotive Employees and Workers Union v. Noriel*, L-44350, Nov. 25, 1976; *Philippine Labor Alliance Council v. Bureau of Labor Relations*, L-41288, Jan. 31, 1977.

[8] Memorandum, 8-10.

[9] Book V, Rule XV, Section 5 of the Implementing Rules and Regulations of the Labor Code of the Philippines (1975).

[10] Rule 16, Section 3 of the Rules of Court Cf. *Asejo v. Leonoso*, 78 Phil. 467 (1947) and *Escaler v. Panganiban*, L-23457, December 16, 1968, 26 SCRA 379.

[11] Memorandum, 10-11.

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