

CONFEDERATION OF CITIZENS LABOR UNIONS (CCLU), CONTINENTAL EMPLOYEES AND LABORERS ASSOCIATION (CELA) AND REDSON EMPLOYEES AND LABORERS ASSOCIATION (RELA), PETITIONERS, VS. NATIO...

G.R. Nos. L-38955-56. October 31, 1974

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for certiorari and prohibition to have the respondent National Labor Relations Commission declared without jurisdiction over its cases Nos. LR-2751 and 2883 with a prayer for a writ of preliminary injunction to enjoin said Respondent from proceeding with the scheduled certification election on July 23, 1974.

G.R. No. L-38895. On February 15, 1974 the Continental Manufacturing Corporation, (hereinafter referred to as CMC), renewed for another three years or until February 15, 1977 its collective bargaining agreement with Continental Employees and Laborers Association (hereinafter referred to as CELA), an affiliate of petitioner Confederation of Citizens Labor Unions, (hereinafter referred to as CCLU) which is a legitimate labor organization. Copy of this collective bargaining agreement was attached to the petition as Annex A, and appears to have been acknowledged on February 21, 1974. Three days before February 15, 1974 however, that is, on February 12, 1974, respondent Federation of Free Workers (hereinafter referred to as FFW), another legitimate labor organization, filed with the National Labor Relations Commission (hereinafter referred to as NLRC), a "Petition for Certification Election at the Continental Manufacturing Corporation,[1] and docketed as NLRC Case No. LR-2751. A copy of this petition was furnished CMC on February 22, 1974. Subsequently, on February 25, 1974 a copy of the CMC-CELA collective bargaining agreement was filed with the Bureau of Labor Relations for certification. The collective bargaining agreement was certified on March 4, 1974[2] On February 28, 1974, CMC filed its answer to the petition praying for the dismissal of the petition on the ground of the contract-bar, rule.

G.R. No. L-38956. A three-year collective bargaining agreement[3] was signed on March 4, 1974[4] but to be effective as of February 16, 1974 by Redson Textile Manufacturing Company (hereinafter referred to as REDSON) and Redson Employees and laborers Association (hereinafter referred to as RELA). Said agreement was filed with the NLRC on March 7, 1974, and certified on March 14, 1974. The FFW, however, had already filed on February 25, 1974 its "Petition for Certification Election at Redson and Company, Inc." with the NLRC, and docketed as NLRC Case No. LR--2883.[5] REDSON was furnished a copy of the petition on March 7, 1974. On March 18, 1974 REDSON filed its answer praying for the dismissal of the petition principally on the ground that the petition was barred by the collective bargaining agreement which it had signed with RELA.

The CELA-CCLU and RELA-CCLU filed on April 23, 1974 a motion to dismiss[6] the petitions for certification election, and on May 8, 1974 a supplemental motion to dismiss.[7]

Respondent NLRC rendered its decision dated April 26, 1974, which consolidated the two petitions for certification election inasmuch as they raised identical issues, granted the petitions, and directed the Bureau of

Labor Relations to conduct the certification elections within ten days from receipt thereof.[8] Copy thereof was received by petitioners on May 11, 1974.

Petitioners filed on May 15, 1974 their "Motion for Reconsideration and/or Appeal from the NLRC Decision of 26th of April, 1974,"[9] and their Appeal to the Secretary of Labor on May 16, 1974.[10]

On July 6, 1974, petitioners, through counsel, received a telegram dated July 5, 1974 from the Bureau of Labor Relations, requesting them to attend the pre-election conference in LR-2751 and LR-2883 on July 15, 1974.[11] On July 12, 1974, petitioners filed a motion to cancel the pre-election conference.[12]

Claiming that notwithstanding the fact that the NLRC's decision had not yet become final or they had not received a copy of the decision of the Secretary of Labor and that their motion to cancel the pre-election conference had not yet been acted upon, Respondent NLRC already scheduled the election on July 23, 1974, which unless enjoined, it intended to hold, petitioners filed on July 18, 1974 the instant petition, praying, on the basis of the irregularities allegedly committed by the NLRC, for the issuance of a writ of preliminary injunction enjoining the NLRC from taking any action on the cases in question.

On July 22, 1974, the Second Division of this Court, resolved to require the respondents to comment on the petition, to set the date for the hearing of the matter of issuance of the writ of preliminary injunction, and to allow the holding of the certification election on July 23, 1974. At the same time this Court issued a temporary restraining order enjoining respondents from opening the ballot boxes, canvassing the votes, and announcing the results thereof.

In their comments, respondents CMC and REDSON, thru counsel, asserted that the scheduled certification elections on July 23, 1974 were cancelled until further orders from the NLRC at the pre-election conference called on July 18, 1974 by the Bureau of Labor Relations; that CMC signed with petitioner CELA a collective bargaining agreement on February 15, 1974; that REDSON and petitioner RELA also signed a collective bargaining agreement on February 15, 1974; that in both NLRC Cases Nos. LR-2751 and LR-2883, counsel submitted memoranda to sustain the proposition that both petitions for certification election should be dismissed for the collective bargaining agreements of CMC and REDSON were in effect certified as of February 15, 1974, and no certification election could be entertained during the life of said bargaining contracts; that CMC and REDSON received copy of the NLRC decision on May 11, 1974 ordering an election within ten (10) days from receipt thereof to select an exclusive collective bargaining agent; that the Secretary of Labor denied in a resolution dated May 29, 1974 the appeal of CMC and REDSON; that CMC and REDSON filed with the Secretary of Labor on July 10, 1974 a manifestation to the effect that as long as their collective bargaining agreements were honored, an election might not jeopardize the rights of their employees who were already enjoying the benefits of the collective bargaining agreements; that CMC and REDSON would obey whatever may be the resolution of this Court regarding the holding of the certification elections during the life of the certified collective bargaining agreements.[13]

Respondent FFW, in its comments, alleged that petitioners cannot legally avail themselves of the remedy of certiorari and/or prohibition as they did not raise the issue of jurisdiction in their motions to dismiss NLRC cases Nos. 2751 and 2883 and that petitioners did not move that respondent FFW be required to present evidence of its claimed 60% or 10% membership of the employees and workers; that neither the NLRC nor the Secretary of Labor had acted with grave abuse of discretion for their orders were issued pursuant to the rules of the Commission; that neither the NLRC nor the Secretary of Labor acted in excess of jurisdiction as the certification election order was issued pursuant to the Implementing Rules of the Commission issued under Presidential Decree No. 21; and that the certification election scheduled set for July 23, 1974 were cancelled.[14]

The Solicitor General's Office, as counsel for respondents NLRC and the Secretary of Labor, refuted in its comments petitioners' contentions that said respondents did not have jurisdiction over the NLRC cases or that said respondents committed grave abuse of discretion, or that they committed the irregularities imputed to them.[15]

ISSUES RAISED AND OUR RULINGS

1. Petitioners contend, first, that respondent NLRC had no authority to modify the "contract-bar rule" by requiring that a collective bargaining agreement had to be certified before it could constitute a bar to a petition for certification election.[16] The contract-rule is a principle in labor law that a collective bargaining agreement of reasonable duration is, in the interest of the stability of industrial relations, a bar to certification elections.

We think otherwise for the following reasons.

The NLRC issued on October 18, 1972, Rules and Regulations Re Its Organization and Definition of Functions, which, among other things, provide thus:

"Section 30. All collective bargaining agreements and other agreements settling or adjusting labor disputes must be filed with the Commission by the parties therein for certification. The widest publicity shall be given by the management and the union to such collective bargaining agreements for the information and guidance of the workers concerned.

"Section 31. During the life of a certified collective bargaining agreement, the Commission shall not entertain any representation issues which may in any manner affect the administration of the agreement."

Labor Relations Implementing Instruction No. 2, dated December 21, 1972, establishing rules and regulations concerning certification elections provides thus:

"Section 3. When Petition May Be Filed. – Where the collective bargaining agreement is certified, a petition may be filed within sixty (60) days before its expiration date. In the absence of a certified collective bargaining agreement, a petition may be filed any time. If a petition is filed during the life of a collective bargaining agreement, the same shall be dismissed without prejudice to its refiling within sixty (60) days prior to the expiration date of the certified collective bargaining agreement.

It shall be the duty of the petitioner to serve a copy of the petition to each of the interested parties either personally or by registered mail. Proof of such service must be shown in the petition."

But where from does the NLRC's authority to promulgate its rules emanate? From Presidential Decree No. 21, dated October 14, 1972, section 2 whereof gave the NLRC, which the Decree created, original and exclusive jurisdiction over all matters involving all disputes and grievances which may otherwise lead to strikes and lockouts under Republic Act No. 875. Section 9 thereof also enjoined the NLRC to promulgate rules and regulations governing collective bargaining.

Petitioners, however, contend that respondent NLRC had no authority to promulgate Section 3 of Implementing Instructions No. 2 because it violates not only General Order No. 3 but also the existing jurisprudence on the matter.[17]

We do not agree. The President in General Order No. 3, dated September 22, 1972, ordered "all executive departments, bureaus, offices, agencies and instrumentalities of the National Government x x x to function x x x in accordance with existing laws, until otherwise ordered by me or by my duly designated representative," and the Judiciary to continue trying and deciding cases in accordance with existing laws. Assuming, *gratia argumenti*, that the existing law on collective bargaining at the time of the promulgation of Implementing Instructions No. 2 was that a collective bargaining agreement need not be certified in order to be a bar to a certification election, it does not mean that it could not be changed by virtue of General Order No. 3. This Order did not render unchangeable

the existing law, for it is expressly provided therein that the executive departments and their agencies may function not in accordance with the then existing law if so ordered by the President or by his duly authorized representative, and as stated above, the President granted the NLRC original and exclusive jurisdiction over all matters involving employee-employer relationship, and the authority to issue rules and regulations concerning collective bargaining.

Assuming *arguendo*, furthermore, that a non-certified collective bargaining agreement may serve as a bar to a certification election as petitioners would want us to hold, petitioners would still be bereft of cause to complain. The petition for certification election filed by FFW at the Continental Manufacturing Corporation (NLRC CASE No. LR-2751) was filed, as shown by Annex C to the petition, on February 12, 1974. The collective bargaining agreement between the CMC and the CELA (Annex A) which, as claimed, should bar said petition, had not yet been filed as of that date for certification, for it was acknowledged before the Notary Public only on February 21, 1974.

The petition for certification election at Redson and Company (NLRC Case No. LR-2883) was filed on February 25, 1974. As of said date, no collective bargaining agreement had been entered into between REDSON and RELA which could serve as a bar to the petition, for their collective bargaining agreement was signed only on March 4, 1974, as admitted by REDSON in its answer,[18] and acknowledged only on March 7, 1974.[19]

We do not see, moreover, any violation of the existing law which NLRC allegedly committed when it gave due course to the petitions for certification election. Section 12 (b) of Republic Act No. 875 makes it plain that after a certification election has been made "the court shall not order certification in the same unit more often than once in 12 months," and under Section 12 (d) of the same law, "an employer may petition the court for an election if there has been no certification election held during the 12 months prior to the date of the request of the employees," which provision tends to show that after the lapse of such period of 12 months a certification election may be requested either by the employer or by the requisite number of employees of a particular union.[20] The petitions for certification election in both NLRC Cases Nos. 2751 and 2883 alleged "that there has been no certification election in the company for the last 12 months,"[21] which allegation was not denied by CMC and REDSON in their answers.[22]

Section 12(c) of the same law furthermore provides that it shall be mandatory on the Court to order an election for the purpose of determining the representative of the employees for the appropriate bargaining unit, where a petition is filed by at least ten per cent of the employees in the appropriate unit requesting an election. In LR No. 2751, FFW claimed that it represented 60% of the employees and workers in CMC, and in LR No. 2883, it claimed that it represented more than 10% of the employees in REDSON.

II. Secondly, petitioners contend that inasmuch as the collective bargaining agreements (Annexes A and B to the Petition) contain standard and substantial benefits and their duration is reasonable, there was no reason why said agreements should still be certified before they could be considered bars to the petitions for certifications election.[23] In the light of what has been said above regarding NLRC's authority to promulgate Labor Relations Implementing Instruction No. 2 and the clear provisions of section 12 of Republic Act No. 875, it is obvious that petitioner's complaint on this point is not meritorious. Even if a certification of the collective bargaining agreements were not necessary, the certification elections could still be ordered by virtue of Republic Act No. 875.

III. Petitioners complain, thirdly, that respondent NLRC favored FFW and allowed it to raid CCLU locals when it granted the petitions for certification elections.[24] It has been shown that FFW had legal right to petition for certification elections. If in exercising said right, FFW would reap benefits and petitioners would suffer damage,

such damage would be no more than a *damnum absque injuria*, damage without legal injury.

IV. Fourthly, petitioners also complain that the respondent NLRC committed an irregularity when it took cognizance of the petitions for certification elections despite the fact that there was no schism and the grievance procedure provided in the collective bargaining agreements[25] have not been resorted to. Assuming *arguendo*, that petitioners were correct on this point, NLRC's error would still be only an error in judgment and not of jurisdiction, hence, this petition for certiorari would still fail.

For it is elementary that a petition for certiorari in order to succeed, must be based on jurisdictional grounds because as long as the respondent official acted with jurisdiction, any error committed by him in the exercise thereof will amount to nothing more than an error of judgment which may be reviewed or corrected only by appeal.[26] It is true that an application for the issuance of the writ of certiorari may likewise be based on grave abuse of discretion. But it is equally true that there is grave abuse of discretion which justifies the issuance of the writ of certiorari only if and when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility, amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law.[27] In other words, the writ of certiorari will lie when an inferior Court, board or officer exercising judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.[28]

In the case at bar, the alleged error of the respondent Commission is one of judgment. And as already pointed out, even assuming that such judgment is indeed erroneous, the same does not constitute a grave abuse of discretion within the meaning of the Rules and established jurisprudence, there being no showing that said Commission exercised its power on the matter "in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility, amounting to an evasion of positive duty or to a virtual refusal to perform duty enjoined, or to act at all in contemplation of law." [29]

The "grievance procedure" provided in the collective bargaining agreements Annexes A and B need not be resorted to in the instant cases for said procedure was not applicable. The collective bargaining agreements defines a grievance as a "controversy between the COMPANY and the UNION or any employee or employees covered by this Agreement." The instant cases do not involve a controversy between the company and the union, but between two unions.

V. Fifth, petitioners contend that the decision (Annex H) dated April 26, 1974 was void for not having been personally and directly prepared by the members of the Commission,[30] alleging, as reason therefor that the NLRC Chairman and Commissioners, being saddled with administrative duties, have no time to personally prepare decisions such that their decisions are prepared by other employees.[31]

There was no evidence introduced that that particular decision complained of was not personally prepared by the NLRC Chairman and Commissioners. Because an official has much administrative work to do, and which he does, it does not follow that he does not have time to prepare decisions, for the preparation of the decisions is one of those duties he must do. Such bare allegation of petitioners cannot furthermore prevail over the presumption that "official duty has been regularly performed." [32]

This presumption is particularly strong as regards respondent Commission – a government agency vested with quasi-judicial powers, in connection with the enforcement of labor laws and social legislations affecting particular fields of activity involving labor and capital. Thus, it was held that a legal presumption is particularly strong as regards administrative agencies vested with powers considered to be quasi-judicial in nature, in connection with

the enforcement of laws affecting particular fields of activity, the proper regulations and/or promotion of which requires a technical or special training, aside from a good knowledge and grasp of the overall conditions, relevant to said field, obtaining in the nation.[33]

VI. The sixth alleged irregularity complained of by petitioners is that they were deprived of their day in court for the parties seeking certification elections were not required to prove the allegations in their petitions, particularly their claimed membership consisting of "more than 60% of the employees and workers" of CMC, and "10% of the employees of Redson and Company." [34] We note that this question was not raised in the proceedings before the NLRC. It was not raised in the Answer in NLRC Case No. LR-2751 [35] or in the Answer in NLRC Case No. LR-2883. [36] Too repeatedly enunciated as not to require citation of authorities is the rule that no issue may be raised on appeal which was not raised in the lower court. Moreover, before an act of an official may be questioned in certiorari proceedings, said official must first be given the opportunity to correct the error by moving that he reconsider the same. [37] The NLRC was not given this opportunity.

VII. Petitioners' last complaint was that the NLRC attempted to implement its decision even before they received copy of the alleged resolution or decision on their "Motion for Reconsideration and/or Appeal." [38]

Assuming that there was an irregularity on this point, it was corrected when the certification elections scheduled on July 23, 1974 as well as the pre-election conference set for July 18, 1974 were cancelled. [39]

WHEREFORE, the instant petition is hereby dismissed and the temporary restraining order issued on July 22, 1974 is LIFTED. Costs against petitioners.

SO ORDERED.

Makalintal, C.J., Barredo, Makasiar, Esguerra, Munoz Palma, and Aquino, JJ., concur.
Castro, Teehankee and Antonio, JJ., concur in the result.
Fernando, J., concurs and in addition submits a brief concurrence.

[1] Annex C to petition, Record, pp. 64-65.

[2] Record, pp. 124-25.

[3] Annex B to the petition.

[4] Record, p. 71.

[5] Record, pp. 66-67.

[6] Annex G, Record, pp. 81-91.

[7] Annex G-1, Record, pp. 92-94.

[8] Record, pp. 98-101.

[9] Annex I, Record, pp. 104-110.

[10] Annex J, Record, pp. 111-114.

[11] Annex K, Record, p. 115.

[12] Annex L, Record, pp. 116-117.

[13] Record, pp. 124-127.

- [14] Record, pp. 129-135.
- [15] Record, pp. 140-149.
- [16] Record, pp. 7-9; Memorandum for the petitioners, Record, pp. 184-185.
- [17] Petition, Par. XVI, Record, pp. 7-8; Memorandum for the Petitioners, Record, p. 185.
- [18] Annex F, Record, p. 71.
- [19] Annex B, p. 22; Record, p. 60.
- [20] BCI Employees and Workers Union vs. Mountain Province Workers Union, G.R. No. L-23813, Dec. 29, 1965, 15 SCRA 650, 652.
- [21] Annexes C and D, Record, pp. 65-66.
- [22] Annexes E and F, Record, pp. 68-69, 70-79.
- [23] Petition, p. 9, Record, p. 9.
- [24] Petition, p. 9; Record, p. 9.
- [25] Petition, pp. 10-11; Record, pp. 10-11.
- [26] Abig vs. Constantino, G.R. No. L-12460, May 31, 1961, 2 SCRA 299.
- [27] People vs. Marave, G.R. No. L-19023, July 31, 1964, 11 SCRA 618.
- [28] Moscoso vs. Quitco, G.R. No. L-29486, December 15, 1970, 36 SCRA 256; People vs. Bautista, G.R. No. L-26057 & G.R. No. L-26092, April 25, 1968, 23 SCRA 219; and Arroyo vs. Mencina, G.R. No. L-21186, August 31, 1965, 14 SCRA 1050.
- [29] People vs. Morave, *supra*. See also Rueda vs. Court of Agrarian Relations, G.R. No. L-13014, Sept. 30, 1959; Liwanag vs. Castillo, G.R. No. L-13517, Oct. 20, 1959; Alafriz vs. Nable, 72 Phil. 278; Tavera, Luna, Inc. vs. Nable, 67 Phil. 340; Abad Santos vs. Province of Tarlac, 67 Phil. 480; Tan vs. People, G.R. No. L-4269, April 27, 1951.
- [30] Petition, p. 11; Record, p. 11.
- [31] Record, p. 107.
- [32] Sec. 5 (m), Rule 131, Rules of Court.
- [33] Philippine Air Lines, Inc. vs. Civil Aeronautics Board, G.R. No. L-24219, June 13, 1968, 23 SCRA 992.
- [34] Petition, pp. 11-12; Record, pp. 11-12.
- [35] Annex E, pp. 68-69.
- [36] Annex F, Record, pp. 70-79.
- [37] Aquino, et al., vs. Estenzo, et al., G.R. No. L-20791, May 19, 1965, 14 SCRA 18, 26; Plaza vs. Mencias, G.R. No. L-18253, October 31, 1962, 6 SCRA 562, 566.
- [38] Petition, pp. 13-14; Record, pp. 13-14.
- [39] Memorandum for Petitioners, p.11; Record, p. 194.

CONCURRING OPINION

FERNANDO, J.:

The decision reached by the Court calls for concurrence. So I vote. The reasons for such a conclusion are set forth in the opinion of Justice Fernandez with that clarity and realism that characterize his juristic writing. Nonetheless, there are other considerations that for me, at least, cause hesitancy in yielding entire agreement. As of now, this branch of the law is in a stage of transition the new Labor Code, as a matter of fact is scheduled to be operative the first day of next month. It seems to me then that this case should not be the vehicle where doctrines impressed with a certain degree of novelty should be announced. Moreover, there is not to my mind a sufficient need to accord permanence to actuations of governmental agencies which were likely inspired by the emergency conditions then prevailing. Under the circumstances, I would limit my concurrence to the National Labor Relations Commission acting in conformity with the Industrial Peace Act.[1] In the language of the opinion of the Court: "We do not see, moreover, any violation of the existing law which NLRC allegedly committed when it gave due course to the petitions for certification election. Section 12(b) of Republic Act No. 875 makes it plain that after a certification election has been made 'the court shall not order certification in the same unit more often than once in 12 months,' and under Section 12(d) of the same law, 'an employer may petition the court for an election if there has been no certification election held during the 12 months prior to the date of the request of the employees,' which provision tends to show that after the lapse of such period of 12 months a certification election may be requested either by the employer or by the requisite number of employees of a particular union. The petitions for certification election in both NLRC Cases Nos. 2751 and 2883 alleged 'that there has been no certification election in the company for the last 12 months,' which allegation was not denied by CMC and REDSON in their answers. Section 12(c) of the same law furthermore provides that it shall be mandatory on the Court to order an election for the purpose of determining the representative of the employees for the appropriate bargaining unit, where a petition is filed by at least ten per cent of the employees in the appropriate unit requesting an election. In LR No. 2751, FFW claimed that it represented 60% of the employees and workers in CMC, and in LR No. 2883, it claimed that it represented more than 10% of the employees in REDSON."

The above excerpt, to my mind, suffices to dispose of the decisive legal issue posed by this petition. It indicates in a manner, quite conclusive, the appropriate solution. It makes clear why petitioners cannot validly complain of any grievance in law. What is more, this brief statement of my views is intended to demonstrate that fealty was manifested by the National Labor Relations Commission to the applicable decisions of this Tribunal invariably upholding the determination reached by the Court of Industrial Relations to ascertain the wishes of the rank and file of an appropriate bargaining unit as to which union should be its exclusive bargaining representative. Necessarily then the concept of the contract bar rule, invoked by petitioners, hardly poses any obstacle.

1. The fundamental principle as to the breadth of discretion enjoyed by the Court of Industrial Relations in determining whether or not a certification election would be held was first announced in *LVN Pictures, Inc. vs. Philippine Musicians Guild*,[2] a 1961 decision. As was clearly pointed out by then Justice, later Chief Justice, Concepcion, after stressing the role of the administrative agency as a "disinterested investigator seeking merely to ascertain the desires of employees" as to their representation, the overmastering requirement is "to insure the fair and free choice of bargaining representatives by employees." [3] Unless the actuation of the Court of Industrial Relations, here the National Labor Relations Commission, could be shown to deviate from that basic norm, a plea for the reversal of the order complained of would be marked by futility.[4] It may be added that in *Lakas Ng Manggagawang Pilipino vs. Benguet Consolidated, Inc.*,[5] there is this relevant excerpt from the opinion of the Court: "It is obvious from a perusal of the above that the opposition to dismissing this case is bereft of any support

in law. The intervenor Union appears to be unaware that from the earliest case decided under the Industrial Peace Act, this Tribunal has wisely recognized a latitude of discretion in the Court of Industrial Relations, the agency which is in a better position to see to it that the certification election is properly conducted. Even intervenor Union cannot dispute the proposition that what is essential is that every labor organization be given the opportunity in a free and honest election to make good its claim that it should be the exclusive bargaining representative." [6] The latest decision in point, *Federation of the United Workers Organization vs. Court of Industrial Relations*, [7] is equally categorical: "The slightest doubt cannot therefore be entertained that what possesses significance in a petition for certification is that through such a device the employees are given the opportunity to make known who shall have the right to represent them. What is equally important is that not only some but all of them should have the right to do so." [8]

2. It is, to my mind, in that perspective that the invocation by petitioners of the contract bar rule should be viewed. Essentially it signifies that under certain circumstances while the right to free and unfettered choice by employees of their exclusive bargaining representative should be respected, there are circumstances, which in the interest of stability of labor relations, call for a relaxation in its observance. As a statement of a norm, it has something in its favor. It should not lend itself however to denigrating the fundamental right of an appropriate bargaining unit to determine who should speak for it. That is of the essence of industrial democracy. Moreover, it is a guarantee that labor organizations will ever be on the alert to obtain the most favorable terms of employment. That may explain why the contract bar never obtained a secure foothold in the Philippines. Two cases were cited by petitioners, the first being *Philippine Long Distance Telephone Employees' Union vs. Philippine Long Distance Telephone Company Free Telephone Workers' Union*, [9] a 1955 decision. While it is true that in the opinion therein, penned by the then Acting Chief Justice, later Chief Justice, Cesar P. Bengzon, there was a reference to *Werne on Labor Relations* to show the existence of such a rule, there is this paragraph which explicitly indicated why the norm should not be applied: "Now then, as this contract between the Company and the petitioner was signed December 1, 1951, it had been in operation more than two years in August 1954 when the certification election was ordered. It is therefore no bar to the certification even under American labor views." [10] The next case cited, that of *General Maritime Stevedores' Union of the Philippines vs. South Sea Shipping Line*, [11] promulgated in 1960, is far from conclusive either. While the opinion of Justice Montemayor is notable for the grasp displayed in American labor law, there is this all-important qualification: "In adopting the 'contract-bar policy,' the Board, however, was careful in refusing to announce an inflexible rule as to its authority, and whenever possible, it avoided a determination of the contract's effect on its power of certification election: ***" [12]

That leads us to the contract bar rule as it is recognized in the United States. It may be observed at the outset that there has been no fixed or rigid formulation of such a norm. The practice followed has not adhered to a single concept. The approach has been wavering. If identified with a line, it is far from straight and at times has been blurred. [13] Why it should be thus is made clear in the authoritative work of Summers and Wellington [14] in these words: "From its earliest days the NLRB was confronted with the question whether the existence of a collective agreement with one union would bar another union from petitioning for an election and being certified as the exclusive representative. Two competing values clashed. The statute guarantees employees the right to bargain through representatives of their own choosing, and this freedom of existing representative proves unsatisfactory. But one of the goals of the statute is to achieve stability in labor relations through the negotiation of collective agreements. The Board initially reconciled these competing demands by declaring that the existence of a collective agreement would not bar an election but that the winning union was subject to the existing agreement. See *New England Transportation Co.*, 1 N.L.R.B. 130 (1936). Within three years the Board changed its rule to hold that a contract for one year would bar an election, as one year was not such a long period 'as to be contrary to the purposes and the policies of the Act.' *National Sugar Refining Co.*, 10 N.L.R.B. 1410 (1939). This

rule was later expanded to bar elections during contracts of 'reasonable duration' measured by what was customary in the industry. In 1945 the Board held that it would presume a contract of two years reasonable, and in 1947 it ruled that this presumption was conclusive."^[15] Then came the Hershey Chocolate Corporation decision of the National Labor Relations Board,^[16] cited by petitioners. It does not however sustain their stand. This is how it is summarized in an equally noted casebook on the subject, that of Cox and Bok:^[17] "Respondent and Local 464 of the Bakery and Confectionery Workers (BCW) signed a collective bargaining agreement running from April 1, 1957 through December 31, 1958. In the spring of 1957 a split developed in BCW growing out of charges of corruption levelled against the President of the International, and a rival group, the Integrity Committee, was formed to replace the allegedly corrupt officials. As a result of information growing out of hearings before a Select Committee of the United States Senate, the Bakery and Confectionery Workers were suspended by the AFL-CIO. Thereafter, Local 464 voted to condemn the officers of the International whose conduct was responsible for the suspension and, on December 9, 1957, the Local voted 829-1 to leave the BCW and affiliate with a new union, the American Bakery and Confectionery Workers, which was chartered by the AFL-CIO. The employer filed a petition seeking a Board determination as to which of the two labor organizations it was obliged to recognize. Held, that the existing contract is not a bar and an election should be held. A contract will not act as a bar where a schism has occurred. A schism will not be found merely because of dissatisfaction by the members of a local with their leaders. But where the members of a local vote in open meeting to disaffiliate and where this action grows out of a conflict over policy taking place at the highest level of the International, no genuine interest of stability would be served by barring an election."^[18] What becomes crystal-clear in the light of the above is that the pragmatic approach has been followed, due note being taken of the varied as well as changing conditions to make such a norm truly responsive to the needs of the occasion. It would be going too far then to affix to the contract bar rule the element of inflexibility. Wisely, it has not been the case at all, even in the United States.

That is about all. It is deserving of mention, however, to my mind at least, that while the stand of petitioners cannot be sustained, their counsel, Ty, Gesmundo, Agpalo, Fernandez and Maderazo and their associate, Balagtas P. Ilagan, deserve commendation for the scholarly approach evident in the pleadings submitted. To repeat, the decision arrived at, as expressed in the opinion of Justice Fernandez, finds support in the Industrial Peace Act. It is by virtue of such cogent consideration that I do not feel called upon to discuss the other issues raised. If, in the course of this concurrence, there has been what for some may be an undue stress on the doctrines promulgated by this Court, it may be explained by my belief that with the emergence of a new Labor Code and the creation of the agencies for its enforcement, very likely to be manned by personnel other than the present officials, it may not be amiss to refer to well-settled principles lest by inadvertence or inadequacy in the grasp of authoritative legal precepts, there may be a tear in the fabric of the law, which, in the immortal language of Maitland, should be a seamless web.

[1] Republic Act No. 875 (1953).

[2] 110 Phil. 725.

[3] Ibid, 728-729.

[4] Cf. Acoje Workers Union vs. National Mines and Allied Workers Union, G.R. No. L-18848, April 23, 1963, 7 SCRA 730; Binalbagan, Isabela Sugar Co. vs. Philippine Association of Free Labor Unions, G.R. No. L-18782, Aug. 29, 1963, 8 SCRA 700; Santa Cecilia Sawmills vs. Court of Industrial Relations, G.R. No. L-19273, Feb. 29, 1964, 10 SCRA 433; BCI Employees and Workers Union vs. Mountain Province Workers Union, G.R. No. L-23813, Dec. 29, 1965, 15 SCRA 650; Compania Maritima vs. Compania Maritima Labor Union, G.R. No.

L-29504, Feb. 29, 1972, 43 SCRA 464; Phil. Association of Free Labor Unions vs. Court of Industrial Relations, G.R. No. L-33781, Oct. 31, 1972, 47 SCRA 390; B.F. Goodrich vs. B.F. Goodrich Confidential and Salaried Employees Union, G.R. No. L-34069-70, Feb. 28, 1973, 49 SCRA 532.

[5] G.R. No. L-35075, November 24, 1972, 48 SCRA 169.

[6] Ibid, 174.

[7] G.R. No. L-37392, December 19, 1973, 54 SCRA 305.

[8] Ibid., 310.

[9] 97 Phil. 424.

[10] Ibid, 430.

[11] 108 Phil. 1112.

[12] Ibid, 118.

[13] Cf. Freidin, The Board, The "Bar" and The Bargain, 59 Columbia Law Rev., 61 (1959).

[14] Summers and Wellington, Labor Law (1968).

[15] Ibid, 661.

[16] 121 NLRB 901 (1958).

[17] Cox and Bok, Labor Law, 7th ed. (1969).

[18] Ibid, 332.

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