

CITIZENS LABOR UNION-CCLU, PETITIONER, VS. COURT OF INDUSTRIAL RELATIONS, MALAYANG MANGGAGAWA SA ESSO, DEPARTMENT OF LABOR AND ESSO STANDARD EASTERN, INC., RESPONDENTS.

G. R. No. L-24320 and L-24431. November 12, 1966

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

G.R.L-24320. entitled "Citizens Labor Union vs. Court of Industrial Relations, Malayang Manggagawa Sa Esso, Department of Labor and Esso Standard Eastern Inc.," is a petition for certiorari and mandamus with preliminary injunction. The petitioner therein prayed, among other things, that a writ of preliminary injunction issue to compel the Court of Industrial Relations (to be hereinafter referred to as the CIR) to act on the motion filed by the said petitioner Citizens Labor Union (to be hereinafter referred to as the CLU) to suspend certification election, and to enjoin the Department of Labor from holding the secret ballot election scheduled for March 22, 1965; or, in the alternative, should the CIR fail to act on the motion in question and such inaction be interpreted as a denial thereof, that the petition be given due course under Rule 43, Revised Rules of Court, judgment be rendered reversing the order of March 6, 1965, *infra*, and that the petition for certification election filed by the Malaysans Manggagawa Sa Esso (to be hereinafter referred to as the MME) be dismissed. The dispositive portion of the order of March 6, 1965 reads:

"WHEREFORE, pursuant to the provisions of Section 12, Republic Act No. 875, and the Rules on Certification Election of this Court, the Department of Labor is hereby requested to conduct the necessary certification election among the regular rank and file employees and/or laborers of the Esso Standard Eastern, Inc. at Pandacan Terminal, Manila, whose names appear in Exhibit X-Court, in order to determine whether they desire to be represented for collective bargaining purposes with the employer firm by either the Citizens Labor Union (CLU) or the Malayang Manggagawa Sa Esso (PFPW) or neither; and upon conclusion of the said election, to submit a report of the result thereof, for further disposition."

G.R. No. L-24431. entitled "Citizens Labor Union vs. Court of Industrial Relations, Malayang Manggagawa Sa Esso, Esso Standard Eastern Inc.," is a petition for certiorari to review the order of March 6, 1965, quoted above, and the resolution of the CIR en banc of April 2, 1965, the dispositive portion which reads:

"After a close perusal of the records as well as the arguments of the parties, the Court en banc fails to find sufficient justification for altering or modifying the aforesaid Order.

"BOTH MOTIONS DENIED."

The chronology of the events leading to these two cases follows.

The MME on January 7, 1965 filed a petition for certification election with the CIR (case 1459-MC), alleging that it is a labor union organized among the employees of Esso Standard Eastern Inc. (ESSO) Pandacan Terminal,

Manila; that it represents the majority of the non-supervisory employees of the said terminal unit; that there exists a collective bargaining agreement between the CLU and the ESSO, of a duration of 3 years and 3 months, from April 8, 1963 to July 8, 1966; and that its aim in asking for a certification election is merely to determine which union will administer the contract during the remainder of the term thereof. The CLU and the ESSO filed motions to dismiss the petition based on several grounds, most important of which is that the existing collective bargaining contract is a bar to the holding of a certification election.

After due hearing, the CIR, thru the Honorable Judge Tabigne, issued an order dated March 6, 1965, denying the motions to dismiss the petition for certification election, holding that the existing collective bargaining contract is no bar to a certification election, and requesting the Department of Labor to conduct the necessary election. The CLU and the ESSO filed with the CIR en banc separate motions for reconsideration, to which the MMB filed its opposition. Meanwhile, the Department of Labor scheduled the secret ballot election for March 22, 1965, from 7:00 a.m. to 7:00 p.m., with notice to the parties concerned. The CLU and the ESSO on March 18, 1965 filed with the CIR en banc separate motions to suspend the certification election as set, upon the basis of their respective motions for reconsideration then pending, ESSO on its part alleging that the certification election if held would render academic its said motion for reconsideration.

On March 19, 1965 the CLU filed with this Court a petition for certiorari and mandamus with preliminary injunction (L-24320) This was given due course and the parties respondents therein as required filed their respective answers, but no writ of preliminary injunction was issued to direct the CIR to suspend the certification election or to enjoin the Department of Labor from proceeding with its scheduled secret ballot election. The latter proceeded with the election and the result thereof shows that the MME obtained votes of more than one-half of the rank and file employees and laborers of the ESSO Pandacan Terminal unit eligible to vote.

The CLU on March 23, 1965 filed with the CIR a motion to annul the certification election on several grounds, among which are that the election was held illegally and irregularly as it was conducted on a holiday, and that it was had without participation of the CLU therein. The ESSO on the following March 29 also filed with the CIR a similar motion to annul the certification election. The MME thereafter filed its opposition thereto.

The CIR en banc, by resolution of April 2, 1965, denied the motions for reconsideration of the order of March 6, 1965. From this resolution, the CLU filed a notice of appeal.

The CIR on April 26, 1965 issued an order denying the motions for reconsideration seeking annulment of the certification election held on March 22, 1965. In the same order, on the basis of the result of the secret ballot election, the CIR certified the MME as the sole and exclusive bargaining agent of all the non-supervisory employees of the ESSO at its Pandacan Terminal unit. The CLU and the ESSO filed separate motions to have this last order reconsidered. These motions are pending resolution.

The CLU on May 9, 1965 filed with this Court an urgent petition praying for issuance of a writ of preliminary injunction to restrain the CIR from proceeding with the enforcement of its order of April 26, 1965, on the ground that the issues to be heard in L-24320 which was set for hearing on June 16, 1965 would become moot and academic if the said order were enforced. The CLU on the following May 12 moved to have hearing advanced to May 19, 1965. This Court on May 14, 1965 issued the injunction prayed for, restraining the CIR from enforcing its order of April 26, 1965, and also from proceeding or taking any other action in connection with the certification election case. This Court also advanced the hearing to May 26, 1965.

The CLU on June 10, 1965 filed with this Court a petition for review of the order of March 6, 1965 and of the CIR resolution en banc of April 2, 1965 (L-24431). The MME moved to have the petition dismissed on the ground that this Court lacks jurisdiction to entertain it as the CLU failed to file with the CIR its notice of appeal from the

order of March 6, 1965 and the CIR resolution en banc of April 2, 1965 within the prescribed reglementary period. We gave due course to the petition for review and resolved further to consider it together with G.R. No. L-24320 (Res. of July 14, 1965).

Pending this Court's adjudication of the two cases, or more precisely on October 13, 1966, the MME filed with this Court a "Motion for Preliminary Injunction", alleging that the ESSO and the CLU had extended the term of the existing collective bargaining contract to December 31, 1966; that pursuant to its salient provisions, the CLU and the ESSO at any time between October 31 and December 31, 1966 will commence negotiations for a new collective bargaining agreement and sign the same, unless a preliminary injunction is issued by this Court; that a new agreement will render moot and academic the order of the CIR certifying the MME as the sole and exclusive bargaining agent of all the employees of the ESSO at its Pandacan Terminal unit, and may again be alleged as a bar to the holding of a new certification election. The motion was opposed by the CLU and the ESSO, both alleging in concert that since March 22, 1965 when the secret ballot election was held, there has occurred a substantial change in the composition of the rank and file of the employees and laborers at the ESSO Pandacan Terminal unit, a good number of them having left their employment, retired, or been compulsorily laid off with the approval of the CIR, resulting in a change of employee composition in the unit; that the ESSO will negotiate and conclude a new collective bargaining contract with the union that commands the majority of the present labor force, either the CLU or the MME, as the case may be; and that if this Court issues the restraining order, it will suspend the process of a new collective bargaining agreement to the prejudice of the workers who would be denied the economic benefits thereof.

On November 3, 1966, we issued in G.R. No. L-24320 an injunction commanding the CLU and the ESSO to refrain from negotiating and concluding a new collective bargaining agreement until after this Court shall have decided the case on the merits.

We will first dispose of the jurisdictional objection interposed by the MME in its brief: that this Court did not acquire Jurisdiction over the petition for review (L-24431) on the ground that the CLU failed to file its notice of appeal from the order of March 6, 1965 and the CIR resolution en banc of April 2, 1965 within the prescribed reglementary period. We cannot sustain this view. By giving due course to the petition for review (see Res. of July 14, 1965), we necessarily denied the motion to dismiss the petition for review, and simultaneously regarded the petition for mandamus and certiorari with preliminary injunction (L-24320) as a petition for review. The CLU in that petition in fact prayed this Court that, should the "inaction of the Respondent Court en banc be interpreted as a denial of the said motion to Suspend Election and the Motion for Reconsideration," the petition be treated as one for review under Rule 43 of the Revised. Rules of Court, that judgment be rendered therein reversing the order of March 6, 1965, and that the petition of the MME for certification election be dismissed. Our resolution is in line with the ruling in *Cruz vs. Court of Industrial Relations, et al.*, G.R. No. L-18277, August 31, 1963. We there held that

"Although as heretofore stated, this is an action for mandamus, prohibition and certiorari, primarily to compel the respondent court to act on petitioner's motion for reconsideration of November 29, 1960, nevertheless, in view of the inaction of the court, notwithstanding the repeated petitions to pass upon the motions in question which could be interpreted as an insistence on or adherence to the judges' respective previous rulings, and therefore, a denial of the motion for reconsideration, and considering that we have here already before us all the records of the case, it is believed that the interest of justice would be better subserved if the present petition should be treated as one for review."

We will now define the diametrically opposite positions taken by the two competing unions.

In seeking the reversal and setting aside of the order of the CIR of March 6, 1965 and the dismissal of the petition

for certification election filed by the MME, the concerted grounds relied upon by the CLU and the ESSO are that the MME was not qualified to ask for certification election, not having observed the legal requisites therefor; that the petition for certification election was made to circumvent the results of the elections held in the ESSO Pandacan Terminal unit on December 4, 1964 wherein the MME's officers were defeated; that the certification election is being used as a justification for unethical, illegal and immoral union-raiding and union-grabbing which disturb industrial peace; that a certification election cannot be held pending the adjudication of the unfair labor practice actions filed against the CLU and the MME in connection with the strikes staged by the said unions (Case 3943 and Charge 442 before the CIR); and that the certification election is barred by the "Contract-Bar Policy".

The MME, upon the other hand, urges the dismissal of these two cases before us and the affirmance of the orders in question, contending that the CIR committed no abuse of discretion in ordering a certification election, its judgment in certification proceedings being entitled to almost complete finality in the absence of patent abuse; that the CLU can no longer be considered as the representative of the rank and file of the employees and laborers of ESSO at its Pandacan Terminal unit, because it has lost its majority status inasmuch as the overwhelming majority of its members have given up their membership therein; that the MME was conclusively established to have obtained the majority status as a result of the secret ballot election held on March 22, 1965; that the "Contract-Bar Policy" relied upon by the CLU and the ESSO for the non-holding of a certification election can not be applied, because here the existing collective bargaining agreement is not one of reasonable duration as it has been in existence for more than 10 years, that is from 1953 to 1964, and moreover that the MME in its petition for certification election expressly bound itself not to change, modify, or contest the contract during its unexpired term; and that the right of the workers to elect their bargaining agent to represent them is paramount and should not be curtailed or restricted in any manner unless absolutely necessary.

We thus confront the problem of determining which of the competing unions should be recognized as the "appropriate bargaining unit" of the rank and file of the employees and laborers of ESSO at its Pandacan Terminal unit, pursuant to Section 12-(a) of the Industrial Peace Act.

We must observe at this juncture, however, that the passage of time has removed all meaning and validity from the positions taken by the two competing unions. Except for the motion for preliminary injunction filed by the MME recently, that is, on October 13, 1966, all the pleadings extant in the record are dated and were filed prior to July 8, 1966, the date when the life of the collective bargaining agreement in question expired. All that the MME seeks is that it be declared the sole and collective bargaining agent to "administer the contract during its remaining term (see order of March 6, 1965). Upon the other hand, the opposition of the CLU and the ESSO is grounded mainly on the existence of the collective bargaining agreement which, they claim, is of a reasonable duration, and therefore precludes the holding of a certification election by virtue of the "Contract-Bar Policy". The collective bargaining agreement lapsed on July 8, 1966; the positions of the two labor unions have therefore become academic.

All these notwithstanding, we still confront the very real and fundamental problem of which union should be recognized as the sole and exclusive bargaining agent of all the ESSO employees at the Pandacan Terminal unit. The extension of the life of the collective bargaining agreement to December 31, 1966, while significant, is really of little moment, because after that date, the problem will still be there, as big as life, unless it is resolved before then.

This Court in numerous cases has reaffirmed its attitude that it is a sound and unassailable labor practice for labor and management to conclude a new contract before the expiry date of any collective bargaining agreement in order to avoid a hiatus in management-labor relations. The Industrial Peace Act was designed primarily to promote industrial peace through encouragement of collective bargaining. Any undue delay in the selection of a

bargaining representative can hardly be said to contribute to that end.

The CLU claims that it is the sole and exclusive bargaining agent on the strength of its prior collective bargaining history (*Democratic Labor Assn. vs. Cebu Stevedoring*, G.R. No. L-10321, Feb. 28, 1958); the MME claims that it is the one that should be recognized on the basis of the will of the employees (*Democratic Labor Assn. vs. Cebu Stevedoring*, supra) manifested in the secret ballot election held on March 22, 1965 in favor of the MME as their sole and exclusive bargaining agent, which collective will should not be brushed aside lightly. Like the CLU, the MME claims that its majority status should be presumed to continue up to the present time and for as long as the question has not been finally resolved (*NLRB vs. International Furniture Co.*, 212 F.2d 431; *The Celanese Corporation of America*, 95 NLRB 664).

Against the presumption of continued majority status, however, is the rule that such majority status does not continue forever "especially in face of an assertion and offer of proof to the contrary" (*Steward Die Casting Corp. vs. National Labor Relations Board* [1940; CCA 8th] 114 F. 2d, 849 (writ of certiorari denied in (941), 312 US 680, 85 L ed 1119, 61 S Ct 449), or "in view of altered circumstances which have likely occurred in the interim" (*Reliance Mfg. Co. vs. National Labor Relations Board* [1941; CCA 8th] 125 F. 2d, 311), or "by a change in the conditions which demonstrates that a shift in sentiment actually exists among the employees, and is caused by other factors than the employer's refusal to bargain collectively" (*National Labor Relations Board vs. P. Lorillard Co.* [1941; CCA 6th], 117 F. 2d 921). It would seem then that the burden of coming forward with proof of majority status is upon the union asserting it.

Against the claim of the MME that it represents the will of the majority of the rank and file employees at the Pandacan Terminal unit, is the manifestation, advanced with vehemence, of both the CLU and the ESSO that after the secret ballot election held on March 22, 1965, the employee composition has substantially changed because a great number of the employees and laborers in the Pandacan Terminal unit have left their employment, retired, or been compulsorily laid off with the approval of the CIR. On its part, ESSO further claims that the salient facts obtaining in the two cases before us have been so altered by the lapse of time and by developments shaped and brought about by the parties themselves, that "nothing will be gained if an altered factual situation is compelled to await a decision applicable to an entirely different set of facts." (see ESSO opposition to the motion for issuance of a writ of preliminary injunction, filed on October 20, 1966).

The above conflicting assertions are not based on any evidence of record, but they are nevertheless assertions formally and solemnly made and therefore cannot be ignored.

But precisely because the record is barren of evidence upon which this Court may properly reach a definitive determination as to which of the two unions should be upheld, at this time, as the sole and exclusive bargaining agent, this Court will not even begin to attempt to resolve the problem in favor of one or the other labor union.

By express mandate of law, the CIR is empowered to investigate controversies concerning the matter of representation of labor in its dealings with management, and, depending upon the results of its investigation, thereafter to certify to the parties the name of the labor organization that, in proper proceedings, has been selected to act as the appropriate bargaining unit (sec. 12-(b), Industrial Peace Act).

UPON THE FOREGOING PREMISES, this Court is constrained to remand, as it hereby remands, this case to the Court of Industrial Relations, with instructions that it exert and exercise, without delay, the powers conferred upon it by law, and take such actions and issue such orders as the environmental circumstances will accordingly warrant.

No pronouncement as to costs.

Concepcion, C.J., Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar and Sanchez, JJ., concur.
Barrera, J., on leave.

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