

BCI EMPLOYEES AND WORKERS UNION (PAFLU), PETITIONER, VS. MOUNTAIN PROVINCE WORKERS UNION, ET AL., RESPONDENTS.

G. R. No. L-23813. December 29, 1965

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On November 16, 1963, respondent Mountain Province Workers Union filed a petition before the Court of Industrial Relations for certification election among the rank and file employees in the mining operations undertaken by the Benguet Consolidated, Inc. at Acupan, Balatoc and Antamok, Mountain Province.

On December 4, 1963, the Court of Industrial Relations issued an order serving notice to all concerned, including the petitioning union, that the hearing of said petition was set for January 10 and 11, 1964 in Manila and on March 9, 10, and 11, 1964 in Baguio City and directing the President of Benguet Consolidated, Inc. to give wide publicity to said notice in the premises of the company and submit at the scheduled hearing an affidavit concerning compliance with the order.

On December 27, 1963, upon petition of respondent Mountain Province Workers Union, the date of hearing was transferred to January 11, with notice to all parties concerned, and when this date came the hearing was held as scheduled during which all parties concerned were represented, except only the petitioner, who failed to appear nor sent any representative in spite of the notice served on it. At the hearing the Benguet Consolidated, Inc. submitted the required affidavit of compliance concerning the posting of notice as well as the company's payroll as directed by the court in its order of December 4, 1963. All the issues having been fully discussed by all the parties present, the industrial court, in open court, directed an order directing the requested certification election.

On January 15, 1964, petitioner herein filed an opposition to the petition for certification election with a prayer that it be dismissed, but on January 28, 1964, the industrial court overruled said opposition on the ground that the same was filed out of time. On February 1, 1964, petitioner filed a motion for reconsideration, which was denied, as well as several attempts to suspend the certification election as directed by the court in its order of January 11, 1964.

Hence, petitioner interposed the present petition for review.

We find no merit in the contention that the Court of Industrial Relations has acted on the petition for certification election in disregard of the opposition filed by petitioner on January 15, 1964 wherein it prayed that said petition be dismissed. While it may be conceded that the order of January 11, 1964 was dictated in open court, the court stating therein that no opposition has been filed thereto and that at the hearing only the union who requested the certification election was present, it does not follow that the opposition of petitioner has been entirely ignored it appearing that it interposed its opposition four days thereafter. Be that as it may, however, said opposition was duly considered as shown by the fact that the industrial court issued its order of January 28, 1964 denying said opposition. True, the ground of denial was the late filing of the opposition, but such does not make the ruling less meritorious if it is justified on some other ground. Moreover, it appears that petitioner filed a motion for

reconsideration of the denial of the ruling and that such motion was also duly considered when it was properly acted upon by the industrial court en banc.

We do not also find tenable the contention that the industrial court acted erroneously in ordering a new certification election in spite of the fact that petitioner was already certified as the collective bargaining unit in an election held on August 22, 1962 it appearing that more than 15 months had elapsed since such certification. 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 provisions tend 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. As already said, here petitioner has been chosen as the sole and exclusive bargaining representative of the employees in the mining operations of their employer more than 15 months since the certification election held on August 22, 1962, and so there is every justification for the industrial court to grant the petition for a new certification election.

It is true that petitioner has not been able within that period to secure its own collective bargaining agreement with its employer on the ground that apparently the former agreement has not yet expired, but that is the concern of petitioner. The only thing to consider is whether petitioner has had reasonable time within which to conclude a bargaining contract with the employer and here it cannot complain that it has had no such time before the industrial court intervened. We do not find any abuse of discretion on its part in issuing the order now disputed by petitioner.

Wherefore, petition is denied. The order of the industrial court dated January 11, 1964 is hereby affirmed. No costs.

Bengzon, C. J., Concepcion, Dizon, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

Petition denied.

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