

PHILIPPINE COMMUNICATIONS, ELECTRONICS & ELECTRICITY WORKERS’ FEDERATION (PCWF), PETITIONER VS. COURT OF INDUSTRIAL RELATIONS, UNION CARBIDE PHILIPPINES, INC., AND UNION CARBIDE...*G.R. NO. L-34531. March 29, 1974*

Ponente: FERNANDO, J.

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There is nothing unique about this petition for the review of an order of respondent Court of Industrial Relations, except perhaps the way it was disposed of by it. There was a plea for a certification election by petitioner Labor Union submitted just barely six months before the termination of a collective bargaining agreement. It ought, ordinarily, to have elicited a favorable response. Respondent Court acted otherwise, notwithstanding the series of recent decisions,[1] all traceable to the leading case of LVN Pictures, Inc. vs. Philippine Musicians Guild,[2] the opinion of which was penned by the then Justice, later Chief Justice, Concepcion. It is beyond cavil that as therein pointed out, a certification proceeding, far from being a litigation in the sense in which the term is commonly understood, is an investigation of a non-adversary fact-finding character. For such an inquiry to be truly meaningful, it is essential that an actual poll be taken of the members of a collective bargaining unit. Only thus may there be a concrete and accurate determination as to which union should be the exclusive representative for bargaining purposes. Surprisingly, as pointed out above, respondent Court was of a different mind. It must have been misled by the fact that under an existing collective bargaining agreement, the employees by virtue of a maintenance-of-membership clause had to remain members of respondent Union. It ought to have realized that to impress such stipulation as a bar to their changing their affiliation would be to infringe on the constitutional right of freedom of association. Moreover, it cannot escape attention that almost three years have again presumably elapsed since the last collective bargaining contract, which must have been concluded in the latter part of 1971. All such considerations call for a reversal.

There is no dispute as to the facts. On June 16, 1971, there was filed with the respondent Court a petition for a certification election, wherein it was alleged: "1. That petitioner PCWF is a legitimate labor organization with offices at 3rd Floor, Veloso Building, 357 David Street, Manila; 2. That the Union Carbide Philippines, Inc., is a duly organized corporation, existing under and by virtue of the laws of the Philippines, with offices at E. de los Santos Avenue, Mandaluyong, Rizal; 3. That said Union Carbide Philippines, Inc., employs more or less 700 employees, which is the appropriate bargaining unit, and that under date of May 25, 1971, petitioner PCWF in representation of the aforementioned employees transmitted to the herein employer a set of proposals for collective bargaining in respect to wages, hours and other conditions of employment, claiming therein, among others, that said PCWF 'has been duly designated by the great majority of (the) employees as their sole and exclusive collective bargaining representative'; 4. That from petitioner PCWF's proposals for recognition and collective bargaining, the herein employer made a reply stating in part as follows: 'We regret to advise you that our client cannot accede to your request. The regular rank-and-file employees of the company whom you seek to

represent are presently covered by a collective bargaining agreement with the Union Carbide Labor Union (NLU). We are sure you will understand that our client cannot disregard said agreement without committing unfair labor practice' which fear of the employer above described is erroneous for the reason that the collective bargaining agreement referred to is about to expire; 5. That the so-called Union Carbide Labor Union (NLU) may be served with summon and other court processes at care: National Labor Union, 3199 Magsaysay Blv., Manila; and 6. That there has been no certification and/or certification election for the past twelve months, counted from the filing of this petition with this Honorable Court." [3] It prayed for a certification election. In its answer, respondent employer, Union Carbide of the Philippines, after inviting attention to a collective bargaining agreement with respondent Union Carbide Labor Union, prayed that such labor union be maintained as the exclusive bargaining representative. [4] There was likewise a denial by respondent Union Carbide Labor Union of petitioner's claim that it was the choice of the employees as "the sole and, exclusive bargaining representative." [5] The petition, after hearing, was denied in an order of respondent Court dated August 30, 1971. [6] Apparently, it relied on the fact that under the then existing collective bargaining contract, the employees were shown to be affiliated with respondent Union. Not that they had any choice, considering a maintenance-of-membership clause. A motion for reconsideration met the same fate. [7]

We find, to repeat, for petitioner. The gravity of the error of respondent Court must have arisen from a wrong perspective. It appeared to have been satisfied with the failure of petitioner to make good its rather exaggerated claim that practically the entire rank-and-file employees were with it. It could be that petitioner's counsel promised more than he could deliver, but his sin, if such it be, should not be visited on his client. Ordinarily it would be thus, but it should not be so in this case. For the correct perspective is whether the electoral process should have been relied upon to determine the choice of the majority. The basic issue then is as to the need for holding a certification election. Our recent decisions, as noted, indicate that the answer must be in the affirmative. Their force is not to be blunted by the admitted fact that under the then existing collective bargaining agreement it was obvious that respondent labor union had the edge. It had to be thus. The employees were in the grip of the vise of a maintenance-membership clause. That was how union security was assured during its existence. That was an approved technique. It did not bar however their joining a new union for the purpose of a new collective contract to be negotiated. It could happen thus that there would be a new exclusive bargaining representative. The freedom of association [8] safeguarded by the Constitution would be satisfied with nothing less. Respondent Court thus ought to have decided differently. As noted at the outset, we reverse.

1. Stress is rightfully laid, to follow the oft-reiterated language of the then Justice, later Chief Justice, Concepcion, on the principle that a certification election proceeding "is not a 'litigation' in the sense in which this term is commonly understood, but a mere investigation of a non-adversary, fact-finding character, in which the investigating agency plays the part of a disinterested investigator seeking merely to ascertain the desires of employees as to the matter of their representation." [9] What could be more logical then as well as sounder policy than to conduct a poll to determine with accuracy and certainty such wishes? At least, that is the incontrovertible, not to say irreversible, trend of our present decisions. In *Compania Maritima vs. Compania Maritima Labor Union*, [10] respondent Court was sustained when it required a certification election, thus giving respondent union in that case an opportunity to be the exclusive bargaining representative, as against the contention of the employer that sound business practice would dictate that the representation be left to the other union with which it had allegedly previously dealt. Then came *Philippine Association of Free Labor Unions vs. Court of Industrial Relations*. [11] There the usefulness of a certification election proceeding was further emphasized by us when notwithstanding its having been held, respondent Court's competence to continue to act further by resolving the conflict as to which of the two labor unions should be entitled to the dues of the members in the concept of check-off was sustained. This excerpt from *Lakas ng Manggagawang Pilipino vs. Benguet Consolidated, Inc.*, [12]

decided a month later, reflects the same approach: "Where, as is indicated in the motion to dismiss, the Court of Industrial Relations is precisely taking the necessary steps to assure that all labor organizations having a right to take part therein can participate in such certification election, there is no justification for the opposition to the motion to dismiss... As a matter of fact, it is difficult to resist the suspicion that this refusal to have the certification election conducted as soon as possible could be the betrayal of a fear on the part of intervenor Union that its claim of being the choice of the rank-and-file would not be borne out by the result." [13] What was held by us in *B.F. Goodrich Philippines, Inc. vs. B.F. Goodrich Confidential and Salaried Employees Union* [14] is self-explanatory. Thus: "Nor would any useful purpose be served by such a postponement of the holding of a certification election until after the determination of the unfair labor practice case filed. The time that might elapse is hard to predict, as the matter may eventually reach this Tribunal. In the meanwhile, there is no opportunity for free choice on the part of the employees as to which labor organization shall be their exclusive bargaining representative." [15] Lastly in requiring that a certification election be held in *Federation of the United Workers Organization vs. Court of Industrial Relations*, [16] notwithstanding that the lawyer for petitioner Union, as in this case, appeared to be less than impressive in the presentation of his client's cause thus resulting in an adverse order, which had to be set aside, we made clear: "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." [17] We reiterate such a view.

2. Respondent Court could not of course have anticipated the trend so evident in these recent decisions, although from the *LVN* decision it was quite obvious that the holding of a certification election has much to recommend it. Moreover, it acted-adversely to petitioner Union inasmuch as its counsel was unable to make good his assertion that a great majority of the employees concerned had joined it. Apparently it was unduly impressed with the showing made by respondent Union that as shown by the existing collective bargaining agreement it had included in its ranks the overwhelming number of the labor force. It could not be otherwise, as included therein was a union security clause with its maintenance-of-membership requirement. This is how it was explicitly worded: "All present employees covered by this agreement who are members of the [respondent Union Carbide Labor Union] at the time of the signing of this agreement shall, as a condition of employment, maintain their membership [therein] for the duration of this agreement." [18] Nor is it to be lost sight of how clearly emphasized that such obligation to remain members of respondent Union was only "for the duration of this agreement." No other stipulation could have survived the test of constitutionality. The freedom of association of the rank-and-file would have been rendered nugatory if the letters of membership would bind for a period longer than the agreement. This is not to imply that of their own free will, they could not continue to be included in the roster of respondent Union. It is merely to emphasize that what the Constitution safeguards is the respect that must be shown to whatever be their choice. If they desire to stick with it, their decision stands. If they are of a different mind, however, their wishes must prevail. Nor is there any more practical way of gauging what their feelings are on the matter except by the holding of a certification election. When respondent Court decided otherwise, it reached a conclusion that ran counter to the settled law on the subject.

3. There is this other equally valid consideration that calls for a reversal. On the assumption that a new collective bargaining contract was entered into in the second half of 1971, its termination is not likely to be far off. Under the circumstances, the policy of the Industrial Peace Act, not to mention the constitutional right of association, would best be served by the holding of a certification election.

WHEREFORE, the order of respondent Court of August 30, 1971 denying the petition of Philippine Communications, Electronics and Electricity Workers' Federation, as affirmed by the resolution of November 4, 1971 is reversed and set aside, and a certification election ordered wherein both petitioner and respondent labor

union, Union Carbide Labor Union, can participate and take part, to be held at a time and place to be designated by respondent Court. No costs.

Zaldivar, (Chairman), Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] Cf. *Compania Maritima vs. Compania Maritima Labor Union*, L-29504, Feb. 29, 1972, 43 SCRA 464; *Phil. Association of Free Labor Unions vs. Court of Industrial Relations*, L-33781, Oct. 31, 1972, 47 SCRA 390; *Lakas ng Manggagawang Filipino vs. Benguet Consolidated, Inc.*, L-35075, Nov. 24, 1972, 48 SCRA 169; *B.F. Goodrich Philippines, Inc. vs. B.F. Goodrich Confidential and Salaried Employees Union*, L-34069-70, Feb. 28, 1973, 49 SCRA 532; *Federation of United Workers vs. Court of Industrial Relations*, L-37392, Dec. 19, 1973.

[2] 110 Phil. 725 (1961).

[3] Petition, paragraph 2.

[4] *Ibid*, Annex E.

[5] *Ibid*, Annex I.

[6] *Ibid*, Annex J.

[7] *Ibid*, Annex M.

[8] According to Article IV, Section 7 of the Constitution: "The right to form associations or societies for purposes not contrary to law shall not be abridged."

[9] *LVN Pictures, Inc. vs. Philippine Musicians Guild*, 110 Phil. 725, 728 (1961).

[10] L-29504, February 29, 1972, 43 SCRA 464.

[11] L-33781, October 31, 1972, 47 SCRA 390.

[12] L-35075, November 24, 1972, 48 SCRA 169.

[13] *Ibid*, 175.

[14] L-34069- 70, February 28, 1973, 49 SCRA 532.

[15] *Ibid*, 541.

[16] L-37392, December 19, 1973.

[17] *Ibid*, 4-5.

[18] Collective Bargaining Agreement, Article III on Union Security, Section 3, Petition, Annex C.

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