

ARTHUR TARNATE, PETITIONER, VS. CARMELO C. NORIEL AS DIRECTOR OF THE BUREAU OF LABOR RELATIONS, LUCERIO FAJARDO, LUIS ISIP AND AURELIO INTERTAS, RESPONDENTS.*G.R. No. L-49272. September 15, 1980*

Ponente: FERNANDO, C.J.

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The crux of the matter in this proceeding for certiorari with preliminary injunction is whether or not probationary employees are entitled to vote in the election of officers and board members of a labor union. Respondent Director Carmelo C. Noriel[1] at first ruled that they could not, apparently relying on the applicable provision of the Labor Code, which reads thus: "Any employee, whether employed for a definite period or not, with at least one year of service, whether such service is continuous or broken, shall be considered a regular employee for purposes of membership in any labor union." [2] When, however, a motion for reconsideration was filed, he granted it and allowed the votes to be counted. Hence this suit for certiorari.

In the election of union officers on October 23, 1977, there were two strong contenders, petitioner Arthur Tarnate and respondent Lucerio Fajardo. Petitioner received 308 votes and respondent 285 votes. Forty (40) ballots cast by employees who classified as second helpers were challenged. They were included in the list of qualified voters upon the motion of the Fajardo faction and over the opposition of the Tarnate group. It was imposed is a condition that the challenged ballots would be segregated and would be counted only after passing upon the question of membership of the such second helpers. The Tarnate group finally agreed to allow them to participate in the election. On October 27, 1977, after the decision, the Fajardo group moved to have the challenged votes opened. The Med-Arbitrator granted the prayer. Respondent Director Noriel in the order now challenged in this petition, as noted earlier, decided otherwise in a motion for reconsideration.

The Solicitor General,[3] when asked to comment, after stressing the constitutional right to form associations, a corollary of which in the case of labor is the right to self-organization, pointed to Article 3 of the New Labor Code in sustaining the power of respondent Director to issue the assailed order. Thus: "These constitutional mandates are recognized in Article 3 of the New Labor Code. Further, Article 244 thereof is of the same tenor: '* * * - All persons employed in commercial, industrial and agricultural enterprises, including religious, medical or educational institutions operating for profit, shall have the right to self-organization and to form, join, or assist labor organizations for purposes of collective bargaining.' " [4] Reference to the constitutional right to freedom of association is not without relevance. The more decisive question, however, is the force and effect of the Labor Code provision as to when a probationary employee could in the language thereof "be considered a regular employee for purposes of membership in any labor union."

The answer arrived at by this Court after due consideration of all factors bearing on such issue, is that the condition thus imposed in the Labor Code requiring "at least one year of service" calls for application. Petitioner, therefore, must prevail.

1. The reliance of petitioner on the applicable Labor Code provision is not in vain. It is definite and clear. At least one year of service is required for an employee to enjoy the benefits "of membership in any labor union." There is no ambiguity. Its validity has not been challenged. It, therefore, calls for application in the precise terms it was enacted. As was pointed out in *Gonzaga v. Court of Appeals*:^[5] "It has been repeated time and time again that where the statutory norm speaks unequivocally, there is nothing for the courts to do except to apply it. The law, leaving no doubt as to the scope of its operation, must be obeyed. Our decisions have consistently been to that effect."^[6] There is thus no statutory support for the challenged order of respondent Noriel.

2. In reaching such a conclusion, this Court is not unaware of the implication for freedom of association.^[7] There is plausibility on its face to the contention of the Solicitor General that to bar the probationary employees from voting for union officials would run counter to such constitutional right. Nor should it be forgotten that in *U.E. Automotive Employees and Workers Union v. Noriel*,^[8] it was stressed that "freedom of association is explicitly ordained; it is not merely derivative, peripheral or penumbral, as is the case in the United States. It can trace its origin to the Malolos Constitution."^[9] A more realistic appraisal, however, of the labor situation would serve to clarify matters. The right to join a labor union remains undisputed. In the meanwhile, however, for purposes of electing the union officers, assuming it would be chosen as the sole bargaining unit in the negotiation for a collective bargaining contract, the right of probationary employees could be thus restricted as provided for in the Labor Code. The justification lies in the fact that management could, by the simple device of appointing probationary employees in the labor union expected to prevail in the choice of the sole collective bargaining agent, attain the result that would serve best its interests, not necessarily that of labor. It must have been such a purpose that inspired a provision of this character. At any rate, there being no attack on its validity, it must be given full force and effect.

3. The delay in the decision of this case is due to the fact that the required number of votes for this conclusion could not be obtained until the last deliberation. Precisely to some of its members the argument based on freedom of association weighed heavily. At any rate, before the next election takes place, matters hopefully have been clarified by this decision.

WHEREFORE, the petition for certiorari is granted and the election of petitioner Arthur Tarnate is upheld. The restraining order issued on November 27, 1978 is lifted. This decision is immediately executory. No costs.

Aquino, Guerrero, Abad Santos, and De Castro, JJ., concur.

Barredo and Concepcion, Jr., JJ., on official leave.

[1] The private respondents are: Lucerio Fajardo, Luis Isip and Aurelio Intertas.

[2] Art. 278 (c) of the New Labor Code, Presidential Decree No. 442 (1974).

[3] Solicitor General Estelito P. Mendoza was assisted by Assistant Solicitor General Ramon A. Barcelona and Trial Attorney Felix B. Lerio.

[4] Comment, 3.

[5] L-27455, June 28, 1973, 51 SCRA 381.

[6] Ibid, 385. Twelve cases were cited starting from *People v. Mapa*, L-22301, Aug. 30, 1967, 20 SCRA 1164 to *Allied Brokerage Corp. v. Commissioner of Customs*, L-27641, Aug. 31, 1971, 40 SCRA 555. An even more recent decision is *Kapisanan ng mga Manggagawa sa Manila Railroad Company Credit Union, Inc. v. Manila Railroad Company*, L-25316, Feb. 28, 1979, 88 SCRA 616.

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

[8] L-44350, November 25, 1976, 74 SCRA 72. Cf. Vassar Industries Employees Union v. Estrella, L-46562, March 31, 1978, 82 SCRA 280.

[9] Ibid., 75.

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