

**ASSOCIATED TRADE UNIONS-ATU (ATU-KILUSAN), PETITIONER, VS.
HON. CARMELO C. NORIEL, IN HIS CAPACITY AS DIRECTOR OF THE
BUREAU OF LABOR RELATIONS, DEPARTMENT OF LABOR,
FEDERATION ...**

G.R. No. L-46651. March 30, 1979

Ponente: FERNANDO, J.

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FERNANDO, J.:

This Court has repeatedly been on record as favoring the holding of a certification election as the most democratic means of determining which labor association should be the exclusive bargaining agent, thus effectively implementing the clear policy of the New Labor Code.[1] Nonetheless, in appropriate cases, on a showing that there is in existence a collective bargaining contract duly certified, there is a legal obstacle to its taking place. It is on that premise that this certiorari petition is based, the allegation being that respondent Director Carmelo C. Noriel acted in violation of the due process guarantee in disregarding what it alleged are proven and uncontested facts as to the existence of a certified collective bargaining contract and thus acted at the very least with grave abuse of discretion. The plausibility of the petition was bolstered by the inclusion of four annexes, apparently justifying its contention. The first[2] was a certification of the collective bargaining contract of the employer[3] with petitioner Union. The other two consisted of the dismissal of the petition for certification[4] of respondent Federation Unions of Rizal (FUR) and the denial by respondent Director of a Motion for Reconsideration.[5] More specifically, there is an allegation of arbitrariness, for according to petitioner there was unaccountably and unjustifiably a reversal of the decision reached by respondent Director in denying the plea for the holding of a certification election. To be precise, on May 28, 1977, he ordered that such election be held.[6] Accordingly, a restraining order was issued by this Court, and respondents were required to comment. The Comment of Solicitor General Estelito P. Mendoza[7] on behalf of respondent Director Noriel clarified matters. It stressed that one month before the application by petitioner for the certification of the collective bargaining contract, there was a pending petition for certification election filed by respondent Union and that when the collective bargaining contract was certified, it had not been as yet decided. Even its dismissal was provisional. Moreover, "petitioner in requesting for the certification of said collective bargaining agreement failed to inform the Bureau that there was a pending petition for certification election in the company. Had said fact been disclosed to the Bureau, the latter could not have certified the aforementioned collective bargaining agreement. As aptly pointed out by public respondent Noriel in the assailed order of May 28, 1977, to wit: 'ATU, in requesting that the agreement be certified, should have volunteered the information that there is a pending petition for certification election at the contracting company. Instead, it chose to conceal this very important fact from the Bureau. Had ATU dealt with the Bureau with candor, the matter should not have become muddled by the subsequent certification of the CBA.'"[8] It cannot be said, therefore, in the light of the above facts, that the actuation of respondent Noriel is susceptible to the charge of arbitrariness. No due process question arises.

The petition must fail.

1. It should occasion no surprise if a labor organization in the position of petitioner would take steps to continue as the collective bargaining representative. That is an aspect of the competitive struggle between unions for supremacy in a collective bargaining unit. Petitioner Union ought to have realized that whatever step it took should be in conformity with and not in defiance of the law. From the above facts, it is quite apparent that it was unmindful of such a basic principle so essential to the maintenance of the rule of law. Respondent labor Union on the other hand was guided by and, therefore, acted in accordance with the applicable provision of the Labor Code. Thus: "No certification election issue shall be entertained by the Bureau in any collective bargaining unit if a certified collective bargaining agreement exists between the employer and a legitimate labor organization, except within sixty (60) days prior to the expiration of the life of such certified collective bargaining agreement. The organization receiving the majority of the votes cast in such election shall be certified by the Bureau as the exclusive bargaining representative of the employees concerned." [9] Nor could any question be raised as to the petition for certification by respondent labor Union being supported by the written consent of 30% of all the employees in the bargaining unit. In such a case, the law makes it mandatory for respondent Director to order that certification election be held. [10] That is what was done by respondent Director. To repeat, no arbitrariness had been shown or could be imputed to respondent Director.

2. This Court has ever been alert against such attempts at circumventing the clear statutory policy to conduct a certification election as the most appropriate means of ascertaining which labor organization should be the exclusive bargaining representative by collective contracts concluded under the circumstances present in this controversy. In the first case cited in this opinion, *Philippine Association of Free Labor Unions v. Bureau of Labor Relations*, [11] this Court did not consider a duly certified collective bargaining contract as a bar to a certification election when it was shown that it was entered into pending an appeal against an earlier rejection of the plea for certification by respondent union. In *General Textiles Allied Workers Association v. Director of Bureau of Labor Relations*, [12] this Court dismissed a certiorari proceeding by petitioner labor union assailing an order of respondent Director to call a certification election on the plea that there was a previous renewal of collective bargaining contract. Reference may likewise be made to *Vassar Industries Employees Union v. Estrella*, [13] where it was alleged that the management subsequently entered into a collective bargaining agreement with respondent labor organization, a contract approved and ratified by the general membership or employees of such firm. Nonetheless, it did not suffice to nullify an order requiring that a certification election be held. There is relevance to this excerpt from the opinion: "With a pending petition for certification, any such agreement entered into by management with a labor organization is fraught with the risk that such a labor union may not be chosen thereafter as the collective bargaining representative. That is the situation that is confronted by private respondents. Any other view would render nugatory the clear statutory policy to favor certification election as the means of ascertaining a true expression of the will of the workers as to which labor organization would represent them." [14] So it must be in this case.

3. The last point to be considered is the legal effect, if any, of the certified collective bargaining contract prior to the holding of the certification election. Fortunately, this is not the first time this question had confronted this Tribunal. The latest case in point, *National Mines and Allied Workers' Union v. Estrella*, [15] supplies the guiding principle. It was set forth with clarity in the opinion of Justice Antonio thus: "It also appears that after the expiration of the existing Collective Bargaining Agreement, or on March 31, 1976, the company and respondent Union executed a new Collective Bargaining Agreement incorporating all the conditions imposed by the decision of the Labor Arbiter of May 12, 1976 in the compulsory arbitration case (No. RB-IV-4138-76) to wit: (1) a wage increase of P1.04 a day per man; and (2) incentive for assay workers in the amount of P21,280.00 a year, and providing that the Collective Bargaining Agreement shall be for a period of three (3) years effective on the date of its execution, but the wage increase should be retroactive to the day immediately following the expiration of the 1972 agreement. It is claimed this Collective Bargaining Agreement has much more favorable terms than the previous agreement. This agreement should be enforced in the meantime. If a union, other than the one that executed the agreement, should be certified, then such union shall negotiate with management for a new Collective Bargaining Agreement. [Then came this citation]: '* * * we are not

unmindful that he supplemental collective bargaining contract entered into in the meanwhile between management and respondent Union contains provisions beneficial to labor. So as not to prejudice the workers involved, it must be made clear that until the conclusion of a new collective bargaining contract entered into by it and whatever labor organization may be chosen after the certification election, the existing collective labor contract as thus supplemented should be left undisturbed. Its terms call for strict compliance. This mode of assuring that the cause of labor suffers no injury from the struggle between contending labor organizations follows the doctrine announced in the recent case of Vassar Industries Employees Union v. Estrella (L-46562, March 31, 1978). To quote from the opinion: "In the meanwhile, if as contended by private respondent labor union the interim collective bargaining agreement, which it engineered and entered into on September 26, 1977, has much more favorable terms for the workers of private respondent Vassar Industries, then it should continue in full force and effect until the appropriate bargaining representative is chosen and negotiations for a new collective bargaining agreement thereafter concluded." "[16] On the assumption then that the stipulations in the certified collective bargaining agreement in this case are more advantageous to the laborers, then it must, in the meanwhile, be observed and maintained until the certification election is conducted, the collective bargaining representative chosen, and the collective bargaining contract concluded.

WHEREFORE, this petition for certiorari is dismissed for lack of merit. The restraining order is hereby lifted. The certification election must be held forthwith. This decision is immediately executory.

Antonio, Concepcion, Jr., and Santos, JJ., concur.

Barredo, J., did not take part.

Aquino, J., concurs in the result because the existing collective bargaining agreement will expire on July 26, 1979 and during the four-month period preceding its expiration, the question of representation might as well be decided.

Abad Santos, J., is on official leave.

[1] At least twelve decisions of this character may be cited, starting from Philippine Association of Free Labor Unions v. Bureau of Labor Relations, L-42115, January 27, 1976, 69 SCRA 132. The latest case is Associated Trade Unions v. Noriel, L-48367, January 16, 1979.

[2] Annex H.

[3] Annex A.

[4] Annex G.

[5] Annex M.

[6] Annex Q.

[7] He was assisted by Assistant Solicitor General Reynato S. Puno and Trial Attorney Felix B. Lerio.

[8] Comment, 8-9.

[9] Art. 257, The New Labor Code (1974).

[10] According to Art. 258 of the New Labor Code: "Any petition for certification election filed by any legitimate labor organization shall be supported by the written consent of at least thirty percent (30%) of all the employees in the bargaining unit. Upon receipt and verification of such petition, it shall be mandatory for the Bureau to conduct a certification election for the purpose of determining the representative of the employees in the appropriate bargaining unit and certify the winner as the exclusive collective bargaining representative of all the employees in the unit."

[11] 69 SCRA 132.

[12] L-45719, July 31, 1978.

[13] L-46562, March 21, 1978, 82 SCRA 280.

[14] Ibid, 288.

[15] L-45293, November 25, 1978.

[16] Ibid. The citation is from Federation of Free Workers (Bisig ng Manggagawa sa UTEX), v. Noriel, L-47182-83, October 30, 1978.

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