

ALLIANCE MEDIA PRINTING, INC., PETITIONER, VS. HONORABLE SECRETARY, DEPARTMENT OF LABOR AND EMPLOYMENT, FEDERATION OF FREE WORKERS, RESPONDENTS.

Ponente: SABIO, JR., J.

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SABIO, JR., J.:

Before Us is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure seeking to annul and set aside the September 14, 2004 Resolution[1] of public respondent Secretary of the Department of Labor and Employment (hereinafter DOLE) affirming the previous Order[2] dated February 10, 2004 of Med-Arbiter Zosima C. Lameyra. Likewise assailed is the January 21, 2005 Resolution[3] of the DOLE denying petitioner's Motion for Reconsideration.

The factual antecedents:

On July 14, 2003, private respondent Federation of Free Workers filed a petition for certification election with the DOLE praying for the conduct of a certification election among the regular rank-and-file employees of petitioner Alliance Media Printing, Inc. (hereinafter AMPI).

On July 22, 2003, AMPI filed a petition for cancellation of union registration of FFW-AMPI Employees Chapter with the DOLE-NCR, praying for the cancellation of the certificate of recognition issued by the DOLE grounded on the failure of private respondent to submit the requirements for registration of a labor union as provided under Article 234 of the Labor Code. In the same petition, AMPI attacked the validity of Department Order No. 40-03, specifically Rule 3, Section 2E, arguing that the said department order, a mere issuance of the DOLE, contravenes Article 234 of the Labor Code which is an act of Congress.

On August 6, 2003, Med-Arbiter Zosima C. Lameyra issued an Order[4] granting the petition for certification election. In the same Order, AMPI was directed to submit a certified list of employees in the bargaining unit concerned or the payrolls of all the members of the said bargaining unit for the last three months.

As a result thereof, petitioner AMPI filed a Memorandum of Appeal before the DOLE-NCR, contesting the Order issued by Med-Arbiter Lameyra.

Meanwhile, the DOLE proceeded with the pre-election conference. AMPI, for its part, submitted its list of employees as directed in the Med-Arbiter Order, with a caveat that it was not waiving its rights, claims and defenses raised by it during the proceedings.

On November 28, 2003, petitioner filed a motion for the exclusion of Roger Santillan from the list of eligible voters, contending therein that Santillan was no longer its employee. The motion was not however acted upon by the DOLE, such that during the certification election that was conducted on January 5, 2004, Santillan was still included in the roster of employees qualified to cast his vote.

The conduct of the certification election yielded the following results:

For Union FFW-AMPI : 10 votes

For No Union : 9 votes

On January 12, 2004, petitioner instituted an election protest. In an Order[5] February 10, 2004, Med-Arbiter Lameyra dismissed the protest, disposing as follows:

“WHEREFORE, premises considered, the Election Protest of Employer is hereby dismissed. Accordingly, the certification election on 5 January 2004 among the rank and file employees of the Alliance Media printing, Inc. is hereby declared valid and the Alliance Media Printing, Inc. Employees Chapter – FFW is hereby proclaimed and certified as the sole and exclusive collective bargaining agent of the subject collective bargaining unit.SO ORDERED.”

On February 23, 2004, petitioner interposed an appeal with the Secretary of Labor and Employment based on questions of law and grave abuse of discretion.

The appeal was however dismissed by the public respondent Secretary via the now assailed September 14, 2004 Resolution. The dispositive portion of the said Resolution reads:

“WHEREFORE, the appeal is hereby DISMISSED. The order of the Med-Arbiter dated 10 February 2004 dismissing the election protest and certifying Alliance Media Printing, Inc. Employees Chapter – FFW as the sole and exclusive bargaining representative of the rank-and-file employees of Alliance Media Printing Inc. is hereby AFFIRMED.

SO RESOLVED.”

Its motion for reconsideration having been similarly denied, petitioner is now before Us on certiorari, raising the following arguments:

I

PUBLIC RESPONDENT HON. SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT HAS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING PETITIONER’S APPEAL AND IN DENYING PETITIONER’S MOTION FOR RECONSIDERATION BY IGNORING PETITIONER’S JUSTIFIABLE ARGUMENTS THAT MR. ROGER SANTILLAN MUST NOT HAVE BEEN INCLUDED IN THE LIST OF ELIGIBLE VOTERS FOR THE CERTIFICATION ELECTION CONDUCTED ON 5 JANUARY 2004

II

PUBLIC RESPONDENT HON. SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT HAS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN UPHOLDING THE RESULTS OF THE CERTIFICATION ELECTION DESPITE THE FAILURE OF PRIVATE RESPONDENT UNION TO SUBMIT ALL REQUIREMENTS UNDER ARTICLE 234 OF THE LABOR CODE, THUS FAILING TO BE A LEGITIMATE LABOR ORGANIZATION AUTHORIZED UNDER THE LAW TO RIGHTFULLY FILE A PETITION FOR CERTIFICATION ELECTION

III

PUBLIC RESPONDENT HON. SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT HAS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN UPHOLDING THE RESULTS OF THE CERTIFICATION ELECTION DESPITE THE PENDENCY OF THE APPEAL FILED BY HEREIN PETITIONER OF THE DECISION ISSUED BY HON. MED-ARBITER ZOSIMO C. LAMEYRA DATED 6 AUGUST 2003 ORDERING THE CONDUCT OF A CERTIFICATION ELECTION

In support thereof, petitioner argues, firstly, that Roger Santillan was, on May 24, 2003, transferred to FEP Printing Corporation, a corporation separate and distinct from AMPI. The transfer was effected way before the filing of the petition for certification election on July 14, 2003. To prove the validity of the transfer, petitioner contends that it was Santillan himself who consented to the transfer, as seen from the Transfer Letter bearing his signature.

Petitioner narrates that during the pre-election conference conducted on November 20, 2003, the parties agreed to hold the certification election on January 5, 2004, and to use the March 16, 2003 – March 31, 2003 payroll furnished by petitioner AMPI as basis for the preparation of the official master list of eligible voters. The agreed eligible voters for purposes of the January 5, 2003 certification election included Roger Santillan. However, on November 28, 2003, petitioner filed a motion for the exclusion of Santillan from the list, on the ground that he was no longer an employee of AMPI not only at the time the petition for certification election was filed, more so during the scheduled certification election.

While petitioner concedes that it made a mistake in initially agreeing to the inclusion of Santillan in the list of eligible voters during the pre-election conference, it believes however, that it had attempted to rectify its mistake by the filing of the written motion for exclusion, eight (8) days after the pre-election conference and thirty-eight (38) days before the actual certification election, thereby giving unto the election officer ample time to act on the motion.

Petitioner argues that an individual like Santillan, not its employee who was allowed to vote, and whose vote was not segregated, made the certification election proceedings invalid, particularly considering the results of the certification election – FFW-AMPI had only one vote more than that of “No union”. Petitioner thus concludes that the error of allowing Santillan to vote, despite its timely objection thereto, seriously affected the results of the certification election.

Given these circumstances, petitioner contends that AMPI, as employer, can exercise its right to challenge a vote when a voter is not a member of the appropriate bargaining unit seeking representation, and this is sanctioned under Section 10, Rule IX of the Implementing Rules of Book V.[6]

As to the second argument, petitioner advances that public respondent gravely erred in declaring private respondent as a legitimate labor organization, contending that it has consistently challenged the legality of Department Order No. 40-03 which is the basis used by private respondent union in seeking recognition as a legitimate labor organization. Based on the said Order, private respondent union submitted only the following documents: (a) a Charter Certificate dated June 17, 2003 issued by the Federation of Free Workers in favor of FFW-AMPI Employees Chapter signed by Mr. Ramon J. Jabar; and (b) Report of creation of local chapter of FFW-AMPI Employees Chapter signed by Mr. Danilo A. Laserna.

Petitioner argues that Department Order No. 40-03 with respect to the registration requirements of a local chapter is illegal because it effectively amended the provisions of Article 234 of the Labor Code. The law as it stands expressly provides that the issuance of a certificate of registration for any labor organization, association or group of unions or workers shall only be made upon the submission of the required documents set forth under Article 234 of the Labor Code.

Finally, petitioner argues that its filing of the Memorandum of Appeal with the Secretary of Labor from the Med-Arbiter Order granting the petition for certification election should have stalled the election proceedings. While it is aware of the provisions of Section 17 of Department Order No. 40-03 which denies the remedy of appeal from a certification election in an unorganized establishment, petitioner vehemently questions the legality of this issuance by the DOLE, contending that the same is a contravention of Article 259 of the Labor Code which

grants any party the right to appeal an order of the Med-arbiter relating to a certification election before the Secretary of Labor and Employment regardless of whether the establishment is organized or unorganized. This statutory right granted under Article 257, according to petitioner, cannot be removed through rules and regulations issued for the purpose of implementation of the Labor Code.

We shall discuss the issues raised in seriatim.

Whether or not Roger Santillan is
qualified to vote in the January 5,
2004 certification election

It is without dispute that on May 24, 2003, Roger Santillan ceased to be the employee of petitioner AMPI, by virtue of his transfer to PEP Printing Corporation, a corporation separate and distinct from petitioner AMPI. This is evidenced by the Transfer Letter duly signed by Santillan himself. For all intents and purposes therefore, at the time that the petition for certification election was filed on July 14, 2003 and more particularly at the time that the certification election was conducted on January 5, 2004, Santillan was no longer the employee of AMPI, and consequently, no longer a member of the bargaining unit seeking union representation.

Private respondent nonetheless contends that petitioner is estopped from questioning the inclusion of Santillan in the list of voters considering that it was petitioner itself that submitted the list of qualified employees of the bargaining unit seeking representation.

Petitioner does not deny the fact that during the pre-election conference conducted on November 20, 2003, it submitted its payroll for March 16, 2003 to March 31, 2003 as the basis for preparing the master list of eligible voters, which admittedly included Roger Santillan. The inclusion of Santillan in the payroll covering the period March 16, 2003 to March 31, 2003 is understandable, considering that during this period, Santillan was still its employee. Immediately realizing its mistake, AMPI filed, on November 28, 2003, a written motion for the exclusion of Santillan.

Section 2 of Rule IX of the Rules and Regulations Implementing Book V of the Labor Code provides that the pre-election conference shall set the mechanics for election and shall determine, among others, the list of eligible and challenged voters. In this case however, petitioner failed to correct the payroll it submitted which became the basis for the determination of the list of qualified voters. While it failed to do so, however, We hold that petitioner was able to make a timely objection thereto when it filed a motion for exclusion of Santillan considering that the latter was no longer its employee. Thus, the med-arbiter erred in not ruling on petitioner's motion which was filed long before the conduct of the election. Had the med-arbiter done so, then the issue should have been resolved at the arbitration level.

Section 5 of the same Implementing Rules, as amended by Department Order No. 40-03, Series of 2003, provides:

“SECTION 5. Qualification of voters; inclusion-exclusion. – All employees who are members of the appropriate bargaining unit sought to be represented by the petitioner at the time of the issuance of the order granting the conduct of a certification election shall be eligible to vote. An employee who has been dismissed from work but has contested the legality of the dismissal in a forum of appropriate jurisdiction at the time of the issuance of the order for the conduct of a certification election shall be considered a qualified voter, unless his/her dismissal was declared valid in a final judgment at the time of the conduct of the certification election.

In case of disagreement over the voter's list or over the eligibility of voters, all the contested voters shall be allowed to vote. But their votes shall be segregated and sealed in individual envelopes in accordance with Sections 10 and 11 of this Rule.”

Further, Section 10 of the same Rule states:

SECTION 10. Challenging of votes. – An authorized representative of any of the contending parties may challenge a vote before it is deposited in the ballot only on any of the following grounds:

- (a) That there is no employer-employee relationship between the voter and the company; and
- (b) The voter is not a member of the appropriate bargaining unit which petitioner seeks to represent.

x x x”

Compliance with the above-quoted rule was satisfied when petitioner submitted to the med-arbiter a motion for the exclusion of Santillan from the list of eligible voters.

We thus rule that Santillan is not an eligible voter, not being a bona fide member of the bargaining unit seeking representation because he ceased to be the employee of petitioner upon his transfer to PEP Printing Corporation on May 24, 2003. Invalidating the vote of Santillan will thus result in equal votes for “FFW” and “No union”, which necessarily results in a failure of election, as the majority vote required was not obtained.

Section 17 of Department Order No. 40-03 provides that where the number of votes cast in a certification election is less than the majority of the number of eligible voters and there are no material challenged votes, the election officer shall declare a failure of election in the minutes of the election proceedings.

This the public respondent failed to do.

Whether or not private respondent
is a legitimate labor organization
under Article 234 of the Labor Code

Petitioner challenges the validity of private respondent as a legitimate labor organization for its failure to comply with the requirements of Article 234 of the Labor Code. Petitioner likewise faults the public respondent in adopting the provisions of Department Order No. 40-03, which, according to petitioner, contravenes the Labor Code inasmuch as it effectively amends the Labor Code.

We do not agree.

After a certificate of registration is issued to a union, its legal personality cannot be subject to collateral attack. It may be questioned only in an independent petition for cancellation in accordance with Section 5 of Rule V, Book IV of the Rules to Implement the Labor Code (Implementing Rules) which section reads:

“Sec. 5. Effect of registration. – The labor organization or workers’ association shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration. Such legal personality cannot thereafter be subject to collateral attack, but may be questioned only in an independent petition for cancellation in accordance with these Rules.” (Emphasis supplied)[7]

FFU, having been validly issued a certificate of registration, should be considered to have already acquired juridical personality which may not be assailed collaterally.

Whether or not an appeal from the
decision of the Med-Arbiter
precludes the conduct of a
certification election

Article 259 of the Labor Code provides that any party to an election may appeal the order or results of the election

as determined by the Med-Arbiter directly to the Secretary of Labor and Employment on the ground that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) calendar days.

Petitioner questions the inaction of the Secretary of Labor on its Memorandum of Appeal from the August 6, 2003 Order of Med-Arbiter Zosima C. Lameyra. On the other hand, petitioner was able to appeal from the February 10, 2004 order of Med-Arbiter Lameyra dismissing its election protest as in fact, on September 14, 2004, respondent Secretary of Labor issued a Resolution dismissing petitioner's appeal.

What is then being contested by petitioner in this case is the failure of the respondent Secretary to rule on its previous Memorandum of Appeal from the Order of the Med-Arbiter directing the conduct of a certification election, upon the assumption that the Secretary of Labor relied upon the provisions of Section 17, Rule VIII of Department Order No. 40-03 denying the right of appeal from an order granting certification election in an unorganized establishment.

Article 259 of the Labor Code provides:

ART. 259. APPEAL FROM CERTIFICATION ELECTION ORDERS. - Any party to an election may appeal the order or results of the election as determined by the Med-Arbiter directly to the Secretary of Labor and Employment on the ground that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) calendar days.

On the other hand, Section 17, Rule VIII of Department Order No. 40-03 states:

SECTION 17. Appeal. - The order granting the conduct of a certification election in an unorganized establishment shall not be subject to appeal. Any issue arising therefrom may be raised by means of protest on the conduct and results of the certification election.

x x x"

Section 17, Rule VIII of Department Order No. 40-03 has been declared null and void, for being violative of Article 259 of the Labor Code, in a decision rendered on March 18, 2005 in CA GR SP No. 80603 by the Former Fifth Division of this Court and penned by Justice Josefina Guevara-Salonga. The court therein declared that administrative regulations, which are intended only to supplement the law, cannot prevail against the law itself as the Court has interpreted it.

While decisions rendered by another division of this Court are not binding, We find no reason to deviate from the above-cited ruling insofar as it declared as null and void Section 17, Rule VIII of Department Order No. 40-03. As succinctly explained in the said decision, citing the case of *Boie-Takeda Chemicals, Inc. vs. De la Serna*[8], implementing rules cannot add to or detract from the provisions of the law it is designed to implement. Administrative regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law they are intended to carry into effect. They cannot widen its scope. An administrative agency cannot amend an act of congress.

While admittedly, the respondent Secretary of Labor has yet to decide on petitioner's memorandum of appeal from the August 6, 2003 Order of Med-Arbiter Lameyra, Article 259 of the Labor Code enjoins the secretary to decide on the appeal within fifteen calendar days. The failure of public respondent to act on the memorandum of appeal filed by petitioner despite the lapse of three years from the time that the appeal was filed on August 29, 2003 can thus be construed as a denial of their right to appeal.

With the filing of the appeal from an order of the Med-Arbiter, the certification election should not have been

conducted, as the appeal stays the holding of a certification election.[9] While Section 17 of Rule VIII of Department Order No. 40-03 states that the rule as established by Article 259 of the Labor Code does not apply in an unorganized establishment such as the petitioner, this rule has been declared invalid by the decision of this Court in CA GR SP No. 80603.

IN LIGHT OF ALL THE FOREGOING, the petition for certiorari is hereby GRANTED. The assailed resolutions of the public respondent Secretary of Labor are hereby REVERSED and SET ASIDE. The public respondent is likewise directed to act on petitioner's Memorandum of Appeal from the August 6, 2003 Order of the Med-Arbiter with deliberate dispatch.

SO ORDERED.

Asuncion-Vicente and Bato, Jr., JJ., concur.

[1] Rollo, p. 175

[2] Rollo, p. 158

[3] Rollo, p. 214

[4] Rollo, p. 73

[5] Rollo, p. 158

[6] Department Order No. 40-03, Series of 2003.

[7] Tagaytay Highlands International Golf Club Incorporated vs. Tagaytay Highlands Employees Union-PTGWO

[8] 228 SCRA 329

[9] Everyone's Labor Code, C.A. Azucena, 2000 Edition, p. 246

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