

## **KORYO SUBIC (PHILS), INC., PETITIONER, VS. KORYO SUBIC EMPLOYEES LABOR ASSOCIATION – ALYANSA NG MANGGAGAWA AT PILIPINONG ORGANIZADO-TUCP (KSELA – AMAPO – TUCP) AND THE DEPARTMEN...**

Ponente: GARCIA-FERNANDEZ, J.

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### **GARCIA-FERNANDEZ, J.:**

This is a petition for certiorari under Rule 65 of the Rules of Court, as amended, seeking to annul and set aside the resolutions dated July 18, 2014[1] and September 4, 2014[2] issued by the Department of Labor and Employment in OS-A-29-12-13.

In support of its prayer for the issuance of a temporary restraining order/writ of preliminary injunction, petitioner Koryo Subic (Phils) Inc. claims that it will suffer great and irreparable damage and prejudice by being constrained to negotiate and enter into a Collective Bargaining Agreement with private respondent Koryo Subic Employees Labor Association – Alyansa Ng Manggagawa At Pilipinong Organizado-TUCP (KSELA – AMAPO – TUCP), which petitioner claims does not have the legal personality of a legitimate labor organization.

A cursory reading of the records fails to persuade this Court that the DOLE committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the appeal filed by petitioner following the certification of private respondent as the exclusive bargaining agent for rank-and-file employees of the company. Records show that the instant petition arose from a petition for certification election filed by the Alyansa Ng Manggagawa At Pilipinong Organizado-TUCP (AMAPO-TUCP) docketed as Case No. R03 – RO-CE-05-11-03-1, where AMAPO-TUCP alleged that its local chapter, private respondent, seeks to represent all the rank-and-file employees of petitioner and that there is no existing union representing the rank-and-file employees of the company. Petitioner opposed the petition for certification election alleging that private respondent has no legal personality to seek the conduct of a certification election based on the charter certificate issued by the Trade Union Congress of the Philippines (TUCP) since the latter is merely a labor center and not a national union or federation and thus is not authorized to issue a charter certificate. In the order dated July 30, 2013[3], the DOLE Regional Office III through Atty. Remedios T. Vegim granted the petition on the ground that private respondent's charter certificate was issued by AMAPO-TUCP, which is a legitimate labor organization and registered federation.

Accordingly, a certification election was conducted on October 8, 2013 but no counting was conducted since petitioner challenged the votes on the following grounds: 1) Private respondent has no legal personality to be voted upon since AMAPO-TUCP (formerly Federation of Filipino Civilian Employees or FFCEA) already lost its legal existence and status as labor federation following the closure of several companies that used to operate within the various United States military bases in the Philippines[4]; and 2) The Internal Security Personnel of the company cannot be part of the bargaining unit since they are confidential employees. In its resolution dated November 8, 2013[5], Mediator-Arbiter Atty. Remedios T. Vegim-Teves, ordered the immediate counting of the challenged votes. Petitioner appealed the resolution dated November 8, 2013 but the DOLE, in its letter dated

December 23, 2013[6], noted the appeal only without action since the assailed resolution is interlocutory in nature and not appealable. Petitioner filed a motion for reconsideration from the said letter.

Notwithstanding the pending motion for reconsideration, the counting of the challenged votes was commenced and completed. The Mediator-Arbiter issued the order dated March 12, 2014[7], certifying private respondent as the sole and exclusive bargaining representative of all regular rank-and-file employees of petitioner.

Petitioner filed an appeal with the DOLE. In the resolution dated July 18, 2014, the DOLE dismissed the appeal and affirmed the order dated March 12, 2014 issued by the Mediator-Arbiter. Petitioner's motion for reconsideration was also denied by the DOLE in the resolution dated September 4, 2014.

As exhaustively discussed by the DOLE and the Mediator-Arbiter in the aforementioned orders and resolutions, Section 16, Rule VIII of DOLE Department Order No. 40-03, provides that "all issues pertaining to the validity of the petitioning union's certificate of registration or its legal personality as a labor organization, validity of registration and execution of collective bargaining agreements shall be heard and resolved by the Regional Director in an independent petition for cancellation of its registration and not by the Mediator-Arbiter in a petition for certification election." Until petitioner is able to cancel the registration of private respondent as a labor organization in an independent action, this Court shall continue to recognize private respondent's standing as a labor organization and its right to act as an exclusive bargaining representative following the conduct of the certification election.

It also bears noting that petitioner is an unorganized company. As such, a certification election is automatically conducted upon the filing of a petition, as provided under Section 11 of R.A. 9481:

"SEC. 11. Article 257 of the Labor Code is hereby amended to read as follows:

"ART. 257. Petitions in Unorganized Establishments. - In any establishment where there is no certified bargaining agent, a certification election shall automatically be conducted by the Med-Arbiter upon the filing of a petition by any legitimate labor organization, including a national union or federation which has already issued a charter certificate to its local/chapter participating in the certification election or a local/chapter which has been issued a charter certificate by the national union or federation. In cases where the petition was filed by a national union or federation, it shall not be required to disclose the names of the local chapter's officers and members."

Finally, this Court agrees with the DOLE's finding that petitioner failed to prove that the internal security personnel should be considered as confidential employees through substantial evidence.

WHEREFORE, the petition including the prayer for injunctive relief is DISMISSED.

### **SO ORDERED.**

Lampas Peralta, (Chairperson), and Acosta, JJ., concur.

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[1] Rollo, pp. 221-228.

[2] Rollo, pp. 238-240.

[3] Rollo, pp. 78-82.

[4] Petitioner claims that FFCEA was supposedly composed to several labor unions in several companies that used to operate within various United States military bases in the Philippines. Since these military bases have been removed, these companies ceased their operations and thus the labor organizations comprising FFCEA "lost

the very essence of their existence as labor organizations." Thus, FFCEA no longer enjoys the status of a federation since there is no longer an employer unit to deal with and no more labor union to represent under its wing.

[5] Rollo, pp. 156-161.

[6] Rollo, pp. 169-170.

[7] Rollo, pp. 200-205.

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