

ROWELL LABOR UNION-TRADE UNIONS OF THE PHILIPPINES AND ALLIED SERVICES (LOCAL CHAPTER NO. 569), PETITIONER, VS. HONORABLE BLAS F. OPLE, ROWELL WORKERS UNION-UOEF NO. 59; ROWELL ...

G.R. No. L-42270. July 29, 1977

Ponente: FERNANDO, J.

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FERNANDO, J.:

It is the claim of petitioner labor union that on a showing of "an arbitrary denial and curtailment of the [freedom of the workers] to change their bargaining representative"[1] by respondent Secretary of Labor,[2] the remedy of certiorari may be invoked. So it is. For as held in *San Miguel Corporation v. Secretary of Labor*,[3] the opinion being penned by Justice Aquino, a due process question arises. There would then be manifest a jurisdictional flaw in the administrative proceedings correctible by this Tribunal. Such is the contention pressed on this; Court in assailing the order of January 9, 1975 of respondent Secretary of Labor, setting aside on appeal the decision of the former National Labor Relations Commission ordering a certification election, although what was sought in the pleading filed with it by petitioner union was direct certification. It prayed that if "be certified by this Honorable Commission as the sole and exclusive bargaining agent for all the regular rank and file employees of the Company." [4]

The order of respondent Secretary of Labor speaks for itself. Its relevant portion starts thus: "It is contended in this appeal that the Order appealed from is contrary to law and jurisprudence applicable on the matter. We find merit in this appeal. Firstly, Section 2 of Implementing Instructions No. 2 on Representation Cases and Other Matters provides that 'the petition when filed by a legitimate labor organization shall contain, among others: (1) the name of petitioner and its address and affiliation, if any; (2) name, address and nature of the employer's business; (3) description of the bargaining unit; (4) approximate number of the employees in the alleged bargaining unit; (5) names and addresses of other legitimate labor organizations in the collective bargaining unit; and (6) other relevant facts.' A perusal of the petition filed in the instant case will readily reveal that the same failed to state the 'description of the bargaining unit,' the 'approximate number of the employees in the alleged bargaining unit' and the 'names and addresses of other legitimate labor organizations in the collective bargaining unit.' Such failure is fatal. These are jurisdictional facts and without which the petition must fall." [5] It continues: "Secondly, under Section 3 of the same Implementing Instructions No. 2 on Representation Cases and Other Matters, it is provided that 'it shall be the duty of the 'petitioner to serve a copy of the petition to each of the interested parties either personally or by registered mail. Proof of such service must be shown in the petition.' The petitioner likewise failed to comply with this requirement. It is very clear from the record that the petitioner did not furnish or serve copy of the petition either personally or by registered mail both the intervenor union and the company. It has been noted that it was only on June 27, 1974, at the initial hearing in the fact-finding stage, that the company was furnished a copy of the petition. The intervenor union was then not represented as it was not served with notice. And, it was in said initial hearing that it was decided that the intervenor union should be

notified on the proceedings. Service of the petition to the interested parties is also a jurisdictional requirement. Failure to comply with this requirement is likewise fatal." [6] There was a third ground: "Thirdly, under Section 12(c) of Republic Act No. 875, otherwise known as the Magna Carta of Labor, the holding of an election becomes mandatory only upon a clear showing that the petition was brought by at least ten (10%) per cent of the workers in the bargaining unit. A mere allegation in the petition that the petitioner possesses the preponderant majority of the employees is not sufficient. Proof of such ten (10%) per cent must be sufficiently established before the petition can be given due course, more so in the instant case when there is another union claiming that it has majority of all the employees in the bargaining unit. This ten (10%) per cent requirement is likewise jurisdictional." [7]

It cannot be properly held then that there is basis for the reversal of the challenged order. The petition must be dismissed.

1. The facts are undisputed. They were clearly set forth in the order now impugned. They cannot be questioned in this certiorari proceeding absent an allegation that in the process of ascertaining what transpired, there was on the part of respondent Secretary a manifest failure to exercise that care and circumspection incumbent on a trier of facts. If so, an imputation of arbitrariness would lie. That is not the case at all. Petitioner labor union was aware of what it did and what it failed to do. On the basis of the events that did occur, respondent Secretary, in categorical language, stated wherein its petition for direct certification was defective. Such a finding this court must respect. [8]

2. The matter cannot be any clearer. The inescapable conclusion is that the imputation of arbitrariness to the assailed order of respondent Secretary is devoid of basis whether on the facts or on the law. It cannot even be successfully contended that respondent public official was not guided by applicable norms in reversing the formerly existing National Labor Relations Commission. He did reach such a conclusion on the basis of the evidence before him calling for the observance of the then controlling statutory provision as well as the applicable rules. It could be that respondent Secretary was much too emphatic in castigating the failure of respondent labor union to follow the implementing instructions on representation cases. The language of severity need not have been employed. It could very well be also that the tone of certitude as to every defect attending the plea of petitioner union to be the sole bargaining agent being jurisdictional in character was not fully warranted. It does not follow, however, in thus giving vent to his stern disapproval that there was a grave abuse of discretion on his part. It could be looked upon as a matter more of style than of substance. At any rate, the procedure set forth under the present Labor Code as to representation matters is not controlling. There need be no further discussion on the implementing instructions under Presidential Decree No. 21 other than to restate that there was no justification for the allegation of improvident exercise of authority by respondent Secretary. Parenthetically, it may be observed that the initial weakness of the step taken by petitioner labor union was that instead of praying for a certification election, it would want a direct certification. That, to put it mildly, was rather presumptuous. Had it paid greater attention to the legal requirements then in force, it would not have been in the predicament it is now. The blame, therefore, cannot be shifted to Secretary Ople.

3. That is all that is legally relevant to the disposition of this petition. The assailed order of January 9, 1975 by respondent Secretary spoke that as of that time "the holding of certification election * * * is untimely." Since the Labor Code had just become effective only on November 1, 1974, it cannot be said that such an approach lacked plausibility. If it were so then, it cannot be so now. The importance of a certification election to the institution of collective bargaining, a manifestation of industrial democracy at its best, cannot be overemphasized. It is reassuring to note that the policy of the Department of Labor since then is much more in keeping with the letter and spirit of the Labor Code. Thus in October, 1975, in *United Employees Union of Gelmart Industries Philippines v. Noriel*, [9] this Court sustained an order of respondent Director of Labor Relations for the holding of a

certification election as against the vigorous objection of petitioner labor union. Since then, as reflected in at least seven other cases, the decision reached by such Bureau has invariably been to order a certification election.[10] As noted in the comment of the Solicitor General, the situation confronting petitioner union is by no means hopeless. The present collective bargaining agreement, duly certified, expires on August 14, 1977. Since there can be no disagreement on the basic proposition that there should be free choice on the part of the employees as to who should be their bargaining representative, observance of the applicable provisions of the present Labor Code would seem to assure attainment of that desirable objective.

WHEREFORE, the petition for certiorari is dismissed.

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

[1] Petition, 13.

[2] The private-respondents are Rowell Workers Union-UOEF No. 59 and Rowell Industrial Corporation.

[3] L-39195, May 16, 1975, 64 SCRA 56.

[4] Petition, Annex A, 1.

[5] Annex H to Petition, 1-2.

[6] Ibid, 2.

[7] Ibid.

[8] Cf. Antipolo Highway Lines v. Inciong, L-38523, June 27, 1975, 64 441; Jacqueline Industries v. National Labor Relations Commission, L-37034, Aug, 29, 1975, 66 SCRA 397; Federacion Obrera v. Noriel, L-41937, July 6, 1976, 72 SCRA 24; Kapisanan v. Nortel, L-45475, J"ne 20, 1977.

[9] L-40810, October 3, 1975, 67 SCRA 267.

[10] Cf. Philippine Association of Free Labor Unions v. Bureau of Labor Relations, 69 SCRA 132 (1976), Federation Obrera v. Noriel, 72 SCRA 24 (1976); U.E. Automotive Employees and Workers Union-Trade Unions of the Philippines and Allied Services v. Noriel, 74 SCRA 72 (1976); Philippine Labor Alliance Council v. Bureau of Labor Relations, L-41288, Jan. 31, 1977; Today Is Knitting Free Workers Union v. Noriel, L-45057, Feb. 28, 1977; Benguet Exploration Miner's Union v. Noriel, L-44110, March 29, 1977; Kapisanan v. Noriel, L-45475, June 20, 1977.

CONCURRING OPINION:

AQUINO, J.,

I concur in Mr. Justice Fernando's learned opinion. The facts of the case, as set forth in the Solicitor General's memorandum, are as follows:

"A petition for direct certification (not a certification election) was filed with the AD HOC NLRC on June 17, 1974 by one Cesar M. Santos, as President of Rowell Labor Union-TUPAS (petitioner herein) praying that his Union be certified by this Honorable Commission as the sole and exclusive bargaining agent for all the regular rank-and-file employees of the Company.' (Annex A-Petition).

"The record also discloses that at the time the said petition was filed, Rowell Workers Union-UOEF No. 59 and Rowell Industrial Corporation (both respondents herein) were in the process of negotiating a renewal of the Collective Bargaining Agreement which was due to expire on July 15, 1974. Aware of this fact, Cesar Santos and/or petitioner herein 'wrote a letter to the National Labor Relations Commission requesting said Commission not to certify any Collective Bargaining Agreement entered into by the Company and any Labor Union, for the same was not the will of the majority.'

"The petition for direct certification was assigned to a Mediator Factfinder who sent a telegram to the Company requesting it to appear before him in connection with the case. The initial hearing was held on June 27, 1974, and it was only then that the Company was furnished with a copy of the petition of Rowell Labor Union-TUPAS. It was also at this hearing that the Company informed the Mediator about the existence of another union, the Rowell Workers Union, UOEF No. 59. Upon learning of this, the Mediator reset the hearing until such time as such other union shall have been notified and furnished with a copy of the petition.

"Meanwhile, in a general meeting of Rowell Worker's Union, UOEF No. 59 held on September 1, 1974 attended by its Officers and 132 worker-members out of the Company's total number of 183 laborers, a resolution was passed ratifying the new Collective Bargaining Agreement concluded between the Company and UOEF No. 59 to take effect on August 15, 1974 up to August 14, 1977, or for a period of three years. Copy of the minutes of said meeting and the list of employee-members who attended the said meeting are hereto attached as Annexes A and B, respectively.

"The CBA was then submitted to the defunct NLRC for 'certification' in line with PD No. 21, Finding that the same was ratified by a majority of the employees of the Company, the new CBA was certified on October 8, 1974. The certification by the NLRC of this CBA reads in part:

'xxx hereby certified as duly filed in this Office, to serve as basic covenant between the parties hereinabove indicated and shall have the force and effect of law between the parties during the period of its duration from August 15, 1974 to August 14, 1977.'

"Prior to the certification of the said CBA on October 8, 1974, however, the Commission, on September 4, 1974, had issued an Order calling for a certification election among the workers in the Company to determine their bargaining representative. From this Order, the Company and Intervenor Union-UOEF No. 59, appealed to the Secretary of Labor. On January 9, 1975, the Secretary of Labor rendered a decision reversing the Order of the defunct NLRC calling for a certification election. It is this last-mentioned Order that is the subject matter of the present petition for certiorari,"

If this case had arisen when section 223 of the Labor Code, as amended, was already in force then petitioner's remedy would have been an appeal to the President of the Philippines, and not a special civil action of certiorari which was filed five months after the Secretary of Labor denied petitioner's motion for reconsideration.

The Secretary of Labor found that the petitioner did not comply with the requirements of Implementing Instructions No. 2 on Representation Cases and Other Matters. That factual finding should be respected by this Court.

Moreover, as observed by the Solicitor General, the ratification on September 1, 1974 of the collective bargaining agreement by 132 members of the Rowell Works Union-UOEF No. 59, out of 183 workers of the Rowell Industrial Corporation, served as an implied revocation of the alleged resolution dated June 16, 1974 wherein it appears that 149 of the company's employees had disaffiliated from UOEF No. 59.

Under the circumstances, the special civil action of certiorari does not lie to set aside the said decision of the

Secretary of Labor.

Barredo, J., concurs.

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