

**DANIEL S.L. BORBON II AND REYNALDO D. NICODEMUS,
PETITIONERS, VS. HON. BIENVENIDO B. LAGUESMA, IN HIS
CAPACITY AS UNDER-SECRETARY OF LABOR AND EMPLOYMENT,
RAYMUNDO E. HIPOLITO, ...**

G.R. No. 101766. March 05, 1993

Ponente: MELO, J.

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MELO, J.:

The special civil action for certiorari before us seeks to reverse and set aside the decision dated July 26, 1991 of respondent Undersecretary of Labor and Employment Bienvenido B. Laguesma (p. 33, Rollo) which modified the order dated February 28, 1991 of Med-Arbiter Paterno D. Adap, thusly:

"In view of the foregoing, the partial appeal of Daniel Borbon is hereby denied for lack of merit and the appeal of Hipolito is hereby granted. Conformably, the Order of the Med Arbiter dated February 28, 1991 is hereby modified as follows:

a. The 57 contractual workers should not be allowed to vote and the 70 challenged votes should not be opened and canvassed;

b. Raymundo Hipolito, Jr. and Pablo Dee are hereby proclaimed as the duly elected president and auditor, respectively of the SMCEU-PTGWO, pursuant to the certified results of the December 14, 1990 election.

The order of the Med Arbiter certifying the other elected officers of the union who were not the subject of the protest as the winners is affirmed.

So ordered." (p. 43, Rollo.)

On December 5, 1990, representatives from the various groups of the bargaining unit of monthly-salaried employees of San Miguel Corporation entered into a voluntary agreement stipulating that: the election of officers shall be conducted on December 14, 1990; the names of the alleged contractual employees involved in G.R. No. 87700 entitled, "San Miguel Corporation Employees Union-PTGWO vs. Hon. Bersamira, et al." shall be allowed to vote, but their ballots shall be segregated subject to protest; should the incumbent president, now petitioner Daniel S.L. Borbon II, present evidence that the alleged employees are indeed qualified members of the union, they will be allowed to cast their votes unchallenged (p. 5, Rollo).

On December 10, 1990, petitioner Borbon submitted a list of applications for union membership which includes the alleged 126 contractual employees. On December 12, 1990, the contending parties agreed that these contractual employees shall be allowed to vote at the Magnolia Plant, Aurora Boulevard, Quezon City.

On December 14, 1990, as the 127 contractual employees were preparing to vote, Attorneys Raymundo Hipolito III and Jose F. Loy informed them that they cannot vote because they are not union members. After the intervention of petitioner Borbon, the DOLE officials allowed the employees to vote, but only 70 were able to do

so and their votes were segregated, while the remaining 57 employees were not able to return to the Magnolia Plant polling place due to lack of transportation fares, apart from the fact that they were running out of time since they had yet to report for work at their respective places of assignment.

The election results obtained from various plants for president and auditor were as follows:

For President
Daniel S.L. Borbon II 706
Raymundo Hipolito 789

For Auditor
Pablo Dee 568
Reynaldo Nicodemus 532

(p. 34, Rollo.)

On December 18, 1990, petitioners Borbon and Nicodemus filed a protest alleging that:

- a. "many members were not able to vote because their names were not included in the voters' list submitted by the company;"
- b. "the so-called contractual employees were not allowed to vote at Magnolia, Quezon City office but were instructed to cast their votes at the Head Office Complex, Mandaluyong;" and
- c. "the ballots of those contractual employees who were able to vote were segregated and not counted." (pp. 34-35, Rollo.)

Private respondents Raymundo E. Hipolito, Jr. and Pablo Dee countered that evidence of union membership of the contractual employees was submitted only on December 18, 1990 and not prior to the election as agreed upon.

On December 31, 1991, petitioners withdrew their protests against the winning candidates for vice-president, secretary, treasurer, and board of directors but contested the positions held by respondents Hipolito, Jr. as president and Dee as auditor on the supposition that the 70 segregated and uncounted ballots and the votes of 57 employees will substantially alter the results of the election for president and auditor.

On December 28, 1991, the med-arbiter issued an order stating:

"Wherefore, premises considered, judgment is hereby rendered directing the Representation Officers of this Office to allow the fifty seven (57) contractual employees/union members whose names appear in annexes 'KK,' 'LL' and 'MM' of Protestant's Amended Protest to vote for the position of President and Auditor of SMCEU-PTGWO after which their ballots/votes shall be canvassed/counted together with the seventy (70) segregated ballots to finally determine the winners for the said positions.

Accordingly, the above-named winners in the election of officers are hereby certified pursuant to the rules, as the duly elected officers of SMCEU--PTGWO there being no election protest filed against them. The certification of winners for the office of President and Auditor is hereby suspended pending the final determination of the winners for the said positions pursuant to this Order.

SO ORDERED." (p. 55, Rollo.)

Dissatisfied, petitioner Borbon filed on March 19, 1991 a partial motion for reconsideration while private respondent Hipolito filed a motion for reconsideration of the aforesaid order of the med-arbiter which were treated as appeals by public respondent (p. 33, Rollo). Thereafter, public respondent rendered the assailed decision denying the partial appeal of petitioner Borbon and granting the appeal of private respondent Hipolito (p. 43,

Rollo). On August 19, 1991, petitioners filed a motion for reconsideration (pp. 134-138, Rollo) of the above decision but the same was, as initially noted, denied in the order of September 2, 1991 (pp. 29-30, Rollo).

Hence, the instant petition presenting several issues all of which revolve on the question of whether the so-called 127 contractual employees are really employees of San Miguel Corporation or not.

Even assuming in gratia argumenti that at the time of the election they were regular employees of San Miguel, nonetheless, these workers are no longer connected with San Miguel Corporation in any manner because Magnolia has ceased to be a division of San Miguel Corporation and has been formed into a separate corporation with a personality of its own (p. 305, Rollo). This development, which was brought to our attention by private respondents, necessarily renders moot and academic any further discourse on the propriety of the elections which petitioners impugn via the present recourse (p. 319, Rollo).

WHEREFORE, the petition is dismissed for lack of merit and the decision of respondent Undersecretary of Labor and Employment Bienvenido B. Laguesma is AFFIRMED in toto.
SO ORDERED.

Feliciano, (Acting Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

[*] Hugo E. Gutierrez, Jr., J., On Terminal Leave.

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