

PROTECTION TECHNOLOGY, INC., PETITIONER, VS. HONORABLE SECRETARY, DEPARTMENT OF LABOR AND EMPLOYMENT, MED-ARBITER BRIGIDA C. FADRIGON AND SAMAHAN NG MANGGAGAWA SA PROTECTION-ALL...

G.R. No. 117211. March 01, 1995

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 12 January 1994, private respondent Samahan na Manggagawa sa Protection - Alliance of Nationalist and Genuine Labor Organizations ("Union"), a newly organized union affiliated with a federation, filed a Petition for direct certification or for certification election to determine the exclusive collective bargaining representative of the regular rank and file employees of petitioner Protection Technology Inc. ("Company"), at its Pasay City and Guiguinto, Bulacan offices, with the National Capital Region Med Arbitration Branch, Department of Labor and Employment ("DOLE"). [1]

In its Comment on the Petition, petitioner Company stated that the Union was not a legitimate labor organization capable of filing the petition because it had failed to submit its books of account with the Bureau of Labor Relations ("BLR") at the time it was registered as a legitimate labor organization. Submission of such documentation is a "mandatory" requirement before a union can exercise the rights and privileges of a legitimate labor organization, pursuant to the Court's ruling in *Progressive Development Corporation v. Secretary, Department of Labor and Employment*. [2]

In an Order dated 14 March 1994, Med Arbiter Brigida C. Fadrigon dismissed the Union's petition and held further that the submission of the books of account, consisting of journals, ledgers and other accounting books, was one of several "preventive measures against commission of fraud" arising from "improper or incorrect recording of union funds, inefficient administration and even malversation of union funds." [3]

The Union appealed to the Secretary, DOLE, contending that the Labor Code and Progressive Development "never mentioned journals and ledgers" as part of the documentation requirements for registration of a newly-organized local union. [4]

In a Resolution dated 6 July 1994, public respondent DOLE Undersecretary, Bienvenido Laguesma, set aside the Order of the Med Arbiter, holding that the requirement to submit books of account applies only to labor organizations already existing for at least a year. Undersecretary Laguesma ordered the holding of a certification election at petitioner's establishment with the following as choices: (1) the Union; and (2) no union. He also took note of the Union's submission of one sheet of paper captioned a "Statement of Income and Expenses for the month ended September 28, 1993." This "Statement" contained only one entry: "Cash on hand -- P590.00;" the sheet was certified correct by the Union secretary, attested by the Union president and duly subscribed. [5]

Petitioner's motion for reconsideration therefrom having been unsuccessful, it is now before the Court on Petition

for Certiorari with prayer for a temporary restraining order (TRO), seeking annulment of the Resolution and Order of the public respondent DOLE Undersecretary as products of grave abuse of discretion. [6]

In a Resolution dated 19 October 1994, the Court required the respondents to comment upon the Petition. On 9 November 1994, after the Union had filed its Comment and prior to the filing of public respondent's Comment, the Court issued a TRO upon petitioner's posting of a sufficient cash bond. [7] This notwithstanding, the certification election was conducted on 10 November 1994 in the presence and under the supervision of DOLE representation officers. [8] Of the fifty-eight (58) votes validly cast, the Union obtained fifty-three (53) votes. [9]

In a Manifestation dated 17 November 1994, the Union prayed that the main Petition should be considered moot and academic since the results of the certification election showed that an "overwhelming majority" of the employees had chosen it to be their collective bargaining representative vis-a-vis management. [10] Upon the other hand, in a Manifestation and Motion dated 25 November 1994, the Company moved that public respondents be "admonished" for hastily conducting the certification election, "just to accommodate" the Union. [11] The Court required public and private respondents to comment on the Company's Manifestation and Motion. [12]

Pending receipt of such comments, the Court will deal with the merits of the Petition for Certiorari, that is, whether or not the Undersecretary's decision to grant the Union's petition for a certification election constituted a grave abuse of discretion correctible on certiorari.

In its Petition for Certiorari, the Company contends that the statement of income and expenses submitted by the Union is actually an annual financial statement which is required, under Articles 234 and 241(1-1) of the Labor Code, to be submitted by unions organized and existing for a period of at least one year or more prior to the filing of their application for registration as a legitimate labor organization. Having reference to ordinary accounting practice, the Company continues, such document cannot possibly be the "books of account" demanded both by the Progressive Development Corporation case and by Section 3, Rule 2 of the Omnibus Rules Implementing the Labor Code, as a prerequisite for due registration of a newly organized union affiliated with a federation. [13]

Undersecretary Laguesma, through the Solicitor-General, on the other hand, contends that submission of the statement of income and expenses is "substantial compliance" with the requirements of the law for the registration of labor organizations because a newly organized union like the private respondent, which had been operating for just four (4) months prior to the filing of its application for registration with the BLR, was in no position to submit books of account, for "it (had) no daily transaction to be entered everyday in the books except the receipt of union dues from its members which are remitted to it only during certain periods of time" [14]

Undersecretary Laguesma argues further that the juridical existence of the Union as a legitimate labor organization had commenced from the moment its application for registration was approved; "its subsequent non-compliance with the requirements of the Labor Code relative to the keeping of books of account, if at all, would only be a ground for the cancellation of its registration." Until such due cancellation is made, Laguesma argues, the Union is not to be prevented from exercising its rights, powers and privileges as a legitimate labor organization. [15]

The Union, in its own Comment on the Petition, adds that the DOLE Undersecretary's factual findings and administrative interpretation of the Labor Code and its implementing Rules, an area within his special expertise and arrived at by him after "a thorough and extensive examination of the entire records of the case," is entitled to great respect by the courts and "should no longer be subject to the review of this Honorable Supreme Court." [16]

Deliberating upon the present Petition for Certiorari, the Court considers that petitioner Company has shown that

public respondent DOLE Undersecretary had indeed committed a grave abuse of discretion, amounting to an act without or in excess of jurisdiction, in rendering his assailed Resolution and Order granting the Petition for the holding of a certification election.

The principal issue here posed is whether books of account, consisting of ledgers, journals and other accounting books, form part of the mandatory documentation requirements for registration of a newly organized union affiliated with a federation, or a local or chapter of such a federation, as a legitimate labor organization.

The above issue was addressed several years ago and answered in the affirmative by this Court in *Progressive Development Corporation v. Secretary, DOLE*. [17] There, the Court said:

"In the case of union affiliation with a federation, the documentary requirements are found in Rule II, Section 3(e), Book V of the Implementing Rules, which we again quote as follows:

'(c) The local or chapter of a labor federation or national union shall have and maintain a constitution and by-laws, set of officers and books of accounts. For reporting purposes, the procedure governing the reporting of independently registered unions, federations or national unions shall be observed.'

Since the 'procedure governing the reporting of independently registered unions' refers to the certification and attestation requirements contained in Article 235, paragraph 2, it follows that the constitution and by-laws, set of officers and books of accounts submitted by the local and chapter must likewise comply with these requirements. The same rationale for requiring the submission of duly subscribed documents upon union registration exists in the case of union affiliation. Moreover, there is greater reason to exact compliance with the certification and attestation requirements because, as previously mentioned, several requirements applicable to independent union registration are no longer required in the case of the formation of a local or chapter. The policy of the law in conferring greater bargaining power upon labor unions must be balanced with the policy of providing preventive measures against the commission of fraud.

A local or chapter therefore becomes a legitimate labor organization only upon submission of the following to the BLR:

- 1) A chapter certificate, within 30 days from its issuance by the labor federation or national union, and
- 2) The constitution and by-laws, a statement on the set of officers and the books of accounts all of which are certified under oath by the secretary or treasurer, as the case may be, of such local or chapter, and attested to by its president.

Absent compliance with these mandatory requirements, the local or chapter does not become a legitimate labor organization.

In the case at bar, the failure of the secretary of PDEU-Kilusan to certify the required documents under oath is fatal to its acquisition of a legitimate status.

x x x x x x x x" [18]

(Underscoring partly in the original and partly supplied)

Non-submission of such books of account certified by and attested to by the appropriate officer is a ground which the employer can invoke legitimately to oppose a petition for certification election filed by the local or chapter concerned.

Although the federation with which the Union is affiliated submitted documents purporting to show that the latter had offered books of account to support its (the Union's) application for registration as a legitimate labor

organization, what had been actually submitted to the BLR by the Union was a mere "financial statement," [19] a generous description considering the sheet of paper in fact submitted by the Union.

Books of account are quite different in their essential nature from financial statements. In generally accepted accounting practice, the former consist of journals, ledgers and other accounting books (which are registered with the Bureau of Internal Revenue) containing a record of individual transactions wherein monies are received and disbursed by an establishment or entity; entries are made on such books on a day-to-day basis (or as close thereto as is possible). Statements of accounts or financial reports, upon the other hand, merely summarize such individual transactions as have been set out in the books of account and are usually prepared at the end of an accounting period, commonly corresponding to the fiscal year of the establishment or entity concerned. [20] Statements of account and financial reports do not set out or repeat the basic data (i.e., the individual transactions) on which they are based and are, therefore, much less informative sources of cash flow information. Books of account are kept and handled by bookkeepers (employees) of the company or agency; financial statements may be audited statements, i.e., prepared by external independent auditors (certified public accountants).

It is immaterial that the Union, having been organized for less than a year before its application for registration with the BLR, would have had no real opportunity to levy and collect dues and fees from its members which need to be recorded in the books of account. Such accounting books can and must be submitted to the BLR, even if they contain no detailed or extensive entries as yet. The point to be stressed is that the applicant local or chapter must demonstrate to the BLR that it is entitled to registered status because it has in place a system for accounting for members' contributions to its fund even before it actually receives dues or fees from its members. The controlling intention is to minimize the risk of fraud and diversion in the course of the subsequent formation and growth of the Union fund.

The public respondent Undersecretary thus acted arbitrarily in disregarding the plain terms of the Omnibus Implementing Rules (Section 3(e), Rule II, Book V, Omnibus Rules Implementing the Labor Code), and as well the rule laid down by this Court in the Progressive Development Corporation case. The statutory and regulatory provisions defining the requirements of registration of legitimate labor organizations are an exercise of the overriding police power of the State, designed for the protection of workers against potential abuse by unions and federations of unions that recruit them. [21] This purpose is obviously defeated if the registration requirements are relaxed arbitrarily by the very officials supposed to administer such requirements and registered status extended to an organization not entitled to such status, as in the case at bar.

The Court is not closing its eyes to the certification election actually, if precipitately, held in this case notwithstanding the prior issuance of the temporary restraining order of this Court. So far as the record of this case is concerned, that certification election was held in the presence of representatives of the DOLE and presumably reflected the free and democratic will of the workers of petitioner Company. The Court will not set aside that will, in the absence of compelling reasons to do so.

Nevertheless, private respondent Union must comply with all the requirements of registration as a legitimate labor organization before it may enjoy the fruits of its certification election victory and before it may exercise the rights of a legitimate labor organization. Registration is a condition sine qua non for the acquisition of legal personality by a labor organization and the exercise of the rights and privileges granted by law to legitimate labor organizations. [22]

We hold, therefore, that private respondent Union must submit its books of account certified under oath by its treasurer and attested to by its president before such Union may demand recognition by the Company as exclusive bargaining agent of the members of the bargaining unit and before the Union may exercise any of the rights

pertaining to such an agent.

ACCORDINGLY, the Court Resolved to DISMISS the Petition for Certiorari for having become moot and academic and to LIFT the Temporary Restraining Order issued by this Court dated 9 November 1994. However, private respondent Union is hereby ENJOINED from exercising the rights and privileges of a legitimate labor organization and duly authorized collective bargaining representative UNTIL it shall have submitted the required books of account, duly certified and attested, with the Bureau of Labor Relations.

This Resolution shall be without prejudice to the liability, if any, which public and private respondents may have incurred in connection with their alleged failure to comply with the Court's Temporary Restraining Order dated 9 November 1994. The Court hereby REITERATES its Resolution dated 18 January 1995 requiring public and private respondents to comment on the petitioner Company's Manifestation and Motion dated 25 November 1994 within ten (10) days from notice hereof.

Romero, Melo, Vitug, and Francisco, JJ., concur.

[1] Rollo, p. 50.

[2] 205 SCRA 802 (1992); Rollo, p. 55.

[3] Rollo, p. 65.

[4] Id., p. 69.

[5] Id., pp. 41 and 73-74.

[6] Id., pp. 2, 80-81.

[7] Id., pp. 82,92 and 96.

[8] Id., p. 106.

[9] Id.

[10] Id., pp. 100-101.

[11] Id., pp. 112-113.

[12] Id., p. 125-A.

[13] Id., pp. 11-12.

[14] Id., pp.129-A and 130.

[15] Id., p. 130.

[16] Id., pp. 98-99.

[17] 205 SCRA 802 (1992).

[18] 205 SCRA 812-813.

[19] Id., pp. 21 and 41.

[20] See, e.g., Consolidated Mines, Inc. v. Court of Tax Appeals, et al., 58 SCRA 618, 636-637 (1974).

[21] PAFLU v. Secretary of Labor, 27 SCRA 40,45 (1969).

[22] Id.

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