

DHL PHILIPPINES CORPORATION UNITED RANK AND FILE ASSOCIATION-FEDERATION OF FREE WORKERS (DHL-URFA-FFW), PETITIONER, VS. BUKLOD NG MANGGAGAWA NG DHL PHILIPPINES CORPORATION, RESP...

G.R. No. 152094. July 22, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

False statements made by union officers before and during a certification election -- that the union is independent and not affiliated with a national federation -- are material facts likely to influence the election results. This principle finds application in the present case in which the majority of the employees clearly wanted an independent union to represent them. Thus, after the members learned of the misrepresentation, and after a majority of them disaffiliated themselves from the union and formed another one, a new certification election should be held to enable them to express their true will.

The late filing of the Petition for a new election can be excused under the peculiar facts of this case, considering that the employees concerned did not sleep on their rights, but promptly acted to protect their prerogatives. Petitioner should not be permitted to use legal technicalities to perpetrate the betrayal foisted by its officers upon the majority of the employees. Procedural technicalities should not be allowed to suppress the welfare of labor.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to annul the December 17, 1999 Decision[2] and the January 30, 2002 Resolution[3] of the Court of Appeals (CA) in CA-GR SP No. 53270. The assailed Decision disposed as follows:

“WHEREFORE, the petition is hereby given due course. Accordingly, the decision of Rosalinda Dimapilis-[B]aldoz, Undersecretary of Labor, in behalf of [the] Secretary of Labor and Employment, is hereby ANNULLED and SET ASIDE and DECLARED to have NO EFFECT whatsoever.

“Public respondent and its representatives are hereby enjoined to refrain and desist from implementing the said decision.”[4]

The challenged Resolution denied petitioner’s Motion for Reconsideration.

The Facts

On November 25, 1997, a certification election was conducted among the regular rank and file employees in the main office and the regional branches of DHL Philippines Corporation. The contending choices were petitioner and “no union.”

On January 19, 1998, on the basis of the results of the certification election, with petitioner receiving 546 votes and “no union” garnering 348 votes, the election officer certified the former as the sole and exclusive bargaining

agent of the rank and file employees of the corporation.[5]

Meanwhile, on December 19, 1997, Respondent Buklod ng Manggagawa ng DHL Philippines Corporation (BUKLOD) filed with the Industrial Relations Division of the Department of Labor and Employment (DOLE) a Petition for the nullification of the certification election. The officers of petitioner were charged with committing fraud and deceit in the election proceedings, particularly by misrepresenting to the voter-employees that it was an independent union, when it was in fact an affiliate of the Federation of Free Workers (FFW).

This misrepresentation was supposedly the basis for their selection of petitioner in the certification election. Allegedly supporting this claim was the fact that those whom it had misled allegedly withdrew their membership from it and subsequently formed themselves into an independent union. The latter union, BUKLOD, was issued a Certificate of Registration by DOLE on December 23, 1997.

On May 18, 1998, Med-Arbiter Tomas F. Falconitin nullified the November 25, 1997 certification election and ordered the holding of another one with the following contending choices: petitioner, respondent, and “no choice.”

Setting aside the Decision of Med-Arbiter Falconitin, DOLE Undersecretary Rosalinda Dimapilis-Baldoz held on appeal that the issue of representation had already been settled with finality in favor of petitioner, and that no petitions for certification election would be entertained within one year from the time the election officer had issued the Certification Order.

Ruling of the Court of Appeals

The CA held that the withdrawal of a great majority of the members of petitioner -- 704 out of 894 of them -- provided a compelling reason to conduct a certification election anew in order to determine, once and for all, which union reflected their choice. Under the circumstances, the issue of representation was not put to rest by the mere issuance of a Certification Order by the election officer.

According to the appellate court, broader considerations should be accorded the disaffiliating member-employees and a new election held to finally ascertain their will, consistent with the constitutional and labor law policy of according full protection to labor’s right to self-organization. The CA added that the best forum to determine the veracity of the withdrawal or retraction of petitioner’s former members was another certification election.

The appellate court also held that the election officer’s issuance of a Certification Order on January 19, 1998 was precipitate because, prior thereto, respondent had filed with the med-arbiter a Petition for nullification of the election. Furthermore, the Certification was not in accordance with Department Order No. 9 (DO 9), Series of 1997. The charges of fraud and deceit, lodged immediately after the election by petitioner’s former members against their officers, should have been treated as protests or issues of eligibility within the meaning of Section 13 of DO 9.

Hence, this Petition.[6]

Issues

In its Memorandum, petitioner submits the following issues for our consideration:

“I

Whether or not the Court of Appeals seriously erred and committed grave abuse of discretion amounting to lack and/or excess of jurisdiction when it ‘annul[le]d, set aside, and declared to have no effect whatsoever’, the Decision of Undersecretary Rosalinda Dimapilis-Baldoz, which in effect, reinstated and affirmed the

Decision of the Med-Arbiter, nullifying the result of the certification election as well as ordering the conduct of a new certification election at DHL Philippines Corporation, considering that:

- The Court of Appeals, as well as the Med-Arbiter, ignored the undisputed fact that petitioner a quo (herein respondent) has not yet existed before, during and shortly after the conduct of certification election on November 25, 1997, and not yet even registered at the time of the filing of its Petition a quo on December 19, 1997, therefore, has no legal personality to institute an action.
- The Court of Appeals, as well as the Med-Arbiter ignored and unjustifiably refused to apply Section 13, Rule XII of Department Order No. 9, there being no protest nor challenge raised before, during and even after five (5) days have lapsed from the conduct of the certification election on November 25, 1997, as the Petition a quo was only filed on December 19, 1997 – a week before herein respondent was able to obtain its Certificate of Registration.
- The Court of Appeals ignored and unjustifiably refused to apply Section 3, Rule V of Department Order No. 9, or commonly know[n] as the ‘Certification-Year Rule’, which means that no certification election should be entertained within one (1) year from the time the Election Officer issued the Certification Order.

“II

Whether or not the Court of Appeals seriously erred and committed grave abuse of discretion, amounting to lack and/or excess of jurisdiction in rendering the assailed Decision promulgated on December 17, 1999, as the same was rendered without the [Office of the] Solicitor General having filed its comment on the Petition a quo, despite having filed a Manifestation with Motion to the effect of not having received the Petition filed by petitioner a quo, which [h]as remained unacted upon; as well as the Resolution promulgated on January 30, 2002, which denied herein petitioner’s Motion for Reconsideration, which was rendered without the required comment thereon by the Petitioner a quo, thus, due process was violated.

“III

Whether or not the Court of Appeals seriously erred and committed grave abuse of discretion amounting to lack and/or excess of jurisdiction in holding that the ‘resignation, withdrawal, retraction of the great majority of the former members of United DHL should be treated as disaffiliation from such union.’

“IV

Whether or not, the Court of Appeals seriously erred and committed grave abuse of discretion amounting to lack and/or excess of jurisdiction in declaring that ‘x x x while in the February 28, 1996 x x x decision of Med-Arbiter Tomas Falconitin provides for a certification election among two (2) specific choices: the private respondent (then as petitioner), and No Union ‘as the contending choices’, what was conducted on November 25, 1996 (sic) was a referendum on a choice of yes or no and not certification order of the Election Officer reflecting the results in the number of yes votes and no votes, without indicating the name of the contending choices.

“V

Whether or not the Court of Appeals placed both parties in ‘Limbo’, as the dispositive portion of the Decision or the fallo, which x x x actually constitutes the judgment or resolution of the court, failed to specify what should be done by the parties after the rendition of the said Decision and Resolution, thus, there can be no subject of execution.”[7]

In simpler terms, the issues being raised are as follows: 1) the validity of the CA Decision and Resolution; and 2) the validity of the certification election.

The Court’s Ruling

The Petition lacks merit.

First Issue:

Validity of the CA Decision and Resolution

Petitioner assails the validity of the CA Decision for having been rendered without receipt of the required comment of the Office of the Solicitor General (OSG) on respondent's Petition; and the CA Resolution for having been issued without receipt of respondent's comment on petitioner's Motion for Reconsideration.

This contention is untenable.

The applicable provision is Section 8 of Rule 65 of the Rules of Court, which provides:

"SECTION 8. Proceedings after comment is filed. -- After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If after such hearing or submission of memoranda or the expiration of the period for the filing thereof the court finds that the allegations of the petition are true, it shall render judgment for the relief prayed for or to which the petitioner is entitled. x x x". (Italics supplied)

From the foregoing provision, it is clear that the Petition may be resolved, notwithstanding the failure of the adverse party to file a comment. Its failure to do so despite due notice is its own lookout. Indeed, when a respondent fails to file its comment within the given period, the court may decide the case on the basis of the records before it, specifically the petition and its attachments.[8]

Petitioner insists that the failure of the OSG to receive a copy of the Petition filed before the CA was the reason for the OSG's failure to file a Comment thereon. Be that as it may, as correctly pointed out by respondent, petitioner is not the proper party to invoke such failure.

At any rate, it is the duty of petitioner to defend its position, as well as those that upheld it -- the tribunal, the board and the officer --because it is the party that is ultimately interested in sustaining the correctness of the disposition or the validity of the proceedings.[9]

Petitioner further assails the validity of the CA Decision, on the ground that its dispositive portion or fallo failed to specify what should be done by the parties after its promulgation.

All that the law requires is that the judgment must be definitive. That is, the rights of the parties must be stated with finality by the decision itself, which must thus specifically deny or grant the remedy sought by the action.[10] For review by the CA was Undersecretary Dimapilis-Baldoz's Resolution reversing the Decision of Med-Arbiter Falconitin.

Parenthetically, the ultimate question presented before the appellate court was whether a new certification election should be conducted among the employees of DHL Philippines Corporation. As correctly pointed out by respondent, in reversing the undersecretary's Resolution, the CA necessarily reinstated the med-arbiter's earlier Decision to conduct a new certification election.

A judgment is not confined to what appears on the face of the decision; it encompasses matters necessarily included in or are necessary to such judgment.[11] The Decision of Med-Arbiter Falconitin and Undersecretary Dimapilis-Baldoz should be read in the context of and in relation to the assailed Decision of the CA. The setting aside of the undersecretary's Resolution necessarily implies the holding of a new certification election by the med-arbiter upon receipt of the records of the case and the motion of the interested party.

Second Issue:

Validity of the Certification Election

Under Section 13 of the Rules Implementing Book V (Labor Relations) of the Labor Code,[12] as amended, the election officer's authority to certify the results of the election is limited to situations in which there has been no protest filed; or if there has been any, it has not been perfected or formalized within five days from the close of the election proceedings.

Further, Section 14 of the same Rules provides that when a protest has been perfected, only the med-arbiter can proclaim and certify the winner. Clearly, this rule is based on the election officer's function, which is merely to conduct and supervise certification elections.[13] It is the med-arbiter who is authorized to hear and decide representation cases.[14] Consequently, the decision whether to certify the results of an election or to set them aside due to incidents occurring during the campaign is within the med-arbiter's discretion.

Petitioner argues that the CA gravely erred in rendering its assailed Decision, considering that no protest or challenge had been formalized within five days, or raised during the election proceedings and entered in the minutes thereof. Petitioner adds that respondent did not file any protest, either, against the alleged fraud and misrepresentation by the former's officers during the election.

We disagree. When the med-arbiter admitted and gave due course to respondent's Petition for nullification of the election proceedings, the election officer should have deferred issuing the Certification of the results thereof. Section 13 of the Implementing Rules cannot strictly be applied to the present case.

Respondent's contention is that a number of employees were lured by their officers into believing that petitioner was an independent union. Since the employees had long desired to have an independent union that would represent them in collective bargaining, they voted "yes" in favor of petitioner. Having been misled, a majority of them eventually disaffiliated themselves from it and formed an independent union, respondent herein, which thereafter protested the conduct of the election. Having been formed just after such exercise by the defrauded employees who were former members of petitioner, respondent could not have reasonably filed its protest within five days from the close of the election proceedings.

Notably, after it had applied for registration with the Bureau of Labor Relations (BLR), respondent filed its Petition to nullify the certification election. Petitioner insistently opposed the Petition, as respondent had not yet been issued a certificate of registration at the time. Because such certificate was issued in favor of the latter four days after the filing of the Petition, on December 23, 1997, the misgivings of the former were brushed aside by the med-arbiter. Indeed, the fact that respondent was not yet a duly registered labor organization when the Petition was filed is of no moment, absent any fatal defect in its application for registration.

The circumstances in the present case show that the employees did not sleep on their rights. Hence, their failure to follow strictly the procedural technicalities regarding the period for filing their protest should not be taken against them. Mere technicalities should not be allowed to prevail over the welfare of the workers.[15] What is essential is that they be accorded an opportunity to determine freely and intelligently which labor organization shall act on their behalf.[16] Having been denied this opportunity by the betrayal committed by petitioner's officers in the present case, the employees were prevented from making an intelligent and independent choice.

False Statements of Union Officers

The making of false statements or misrepresentations that interfere with the free choice of the employees is a valid ground for protest. A certification election may be set aside for misstatements made during the campaign, where 1) a material fact has been misrepresented in the campaign; 2) an opportunity for reply has been lacking; and 3) the misrepresentation has had an impact on the free choice of the employees participating in the election.[17] A

misrepresentation is likely to have an impact on their free choice, if it comes from a party who has special knowledge or is in an authoritative position to know the true facts. This principle holds true, especially when the employees are unable to evaluate the truth or the falsity of the assertions.[18]

The fact that the officers of petitioner especially its president, misrepresented it to the voting employees as an independent union constituted a substantial misrepresentation of material facts of vital concern to those employees. The materiality of such misrepresentation is self-evident. The employees wanted an independent union to represent them in collective bargaining, free from outside interference. Thus, upon knowing that petitioner was in fact an affiliate of the FFW, the members disaffiliated from petitioner and organized themselves into an independent union. Additionally, the misrepresentation came from petitioner's recognized representative, who was clearly in a position to hold himself out as a person who had special knowledge and was in an authoritative position to know the true facts.

We are not easily persuaded by the argument of petitioner that the employees had sufficient time between the misrepresentation and the election to check the truth of its claims. They could hardly be expected to verify the accuracy of any statement regarding petitioner, made to them by its officers. No less than its president stated that it was an independent union. At the time, the employees had no reason to doubt him.

We sustain the following findings of Med-Arbiter Falconitin:

"x x x It must be noted at the outset that [respondent] has charged [petitioner's] officers, agents and representative with fraud or deception in encouraging its members to form or join and vote for DHL Philippines Corporation United Rank-and-File Association which they represented as an independent labor union not affiliated with any labor federation or national union. Such serious allegations, supported with affidavits under oath executed by no less than seven hundred four (704) DHL Philippines Corporation's employees nationwide, cannot just be ignored.

"x x x x x x x x x

"Notwithstanding the fact that [petitioner] union was duly furnished copy of the petition and the affidavits as its attachments, it surprisingly failed to question, much less contest, the veracity of the allegations contained in such affidavits, more than just harping in general terms that the allegations are simply incredible and [interposing] vehement denial. Being unassailed and unrefuted, the allegations in the affidavits which are considered as x x x official documents must be given weight and consideration by this Office. Furthermore, with the failure of [petitioner] to rebut the affidavits, more than just denying the allegations, they give rise to the presumption that [petitioner] has admitted such allegations in the affidavit and with the admission, it is inescapable that indeed there was fraud or machination committed by the [petitioner] that seriously affected the validity and legitimacy of the certification election conducted on November 25, 1997 which gives rise to a ground to annul or void the said election, having been marred by fraud, deceptions and machinations." [19]

This finding of fact of a quasi-judicial agency of DOLE is persuasive upon the courts.[20]

Although petitioner won in the election, it is now clear that it does not represent the majority of the bargaining employees, owing to the affiliation of its members with respondent. The present uncertainty as to which union has their support to represent them for collective bargaining purposes is a salient factor that this Court has seriously considered.

The bargaining agent must be truly representative of the employees.[21] At the time of the filing by respondent of the Petition for nullification, allegiances and loyalties of the employees were like shifting sands that radically affected their choice of an appropriate bargaining representative. The polarization of a good number of them followed their discovery of the fraud committed by the officers of petitioner. At any rate, the claim that 704 of the

employees are affiliated with respondent is not sufficiently rebutted by any evidence on record.

The purpose of a certification election is precisely to ascertain the majority of the employees' choice of an appropriate bargaining unit -- to be or not to be represented by a labor organization and, in the affirmative case, by which one.[22]

Once disaffiliation has been demonstrated beyond doubt, a certification election is the most expeditious way of determining which union should be the exclusive bargaining representative of the employees.[23]

WHEREFORE, the Petition is DENIED, and the assailed Decision AFFIRMED. Costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.

Corona, J., on leave.

[1] Rollo, pp. 8-44.

[2] Id., pp. 46-63. Eleventh Division. Penned by Justice Demetrio G. Demetria, with the concurrence of Justices Ramon A. Barcelona (Division chairman) and Jose L. Sabio Jr.

[3] Id., p. 65. Special Former Eleventh Division. Penned by Justice Jose L. Sabio Jr., with the concurrence of Justices B. A. Adefuin-de la Cruz (Division chairman) and Roberto A. Barrios.

[4] CA Decision, p. 18; rollo, p. 63.

[5] See Order dated January 19, 1998; rollo, pp. 67-69.

[6] This case was deemed submitted for decision on January 13, 2003, upon this Court's receipt of respondent's Memorandum, signed by Atty. Rufino C. Lizardo. Petitioner's Memorandum, signed by Atty. Allan S. Montaña, was received by this Court on December 23, 2002.

[7] Petitioner's Memorandum, pp. 20-22; rollo, pp. 352-354.

[8] §7 of Rule 46 of the Rules of Court provides:

“SECTION 7. Effect of failure to file comment. – When no comment is filed by any of the respondents, the case may be decided on the basis of the record, without prejudice to any disciplinary action which the court may take against the disobedient party.”

[9] Regalado, Remedial Law Compendium, Vol. I, 7[th] rev. ed., p. 723.

[10] Heirs of Kishinchand Hiranand Dialdas v. Court of Appeals, 360 SCRA 72, June 28, 2001.

[11] Jaban v. Court of Appeals, 370 SCRA 221, November 22, 2001.

[12] Now §20 of Department Order No. 40-03, Series of 2003.

[13] Rule I of Book V (Labor Relations) of the Rules Implementing the Labor Code.

[14] Ibid.

[15] National Federation of Labor v. The Secretary of Labor, 287 SCRA 599, March 19, 1998.

[16] Philippine Association of Free Labor Unions (PAFLU) v. Bureau of Labor Relations, 69 SCRA 132, January

27, 1976.

[17] *Linn v. United Plant Guard Workers*, 383 US 53, 15L Ed 2d 582, 86 S Ct 657; *Collino & Aikman Corp. v. NLRB* (CA4) 383 F2d 722; *NLRB v. Bata Shoe Co.* (CA4) 377 F2d 821, Cert den 389 US 917, 19 L Ed 2d 265, 88 S Ct 238; *Celanese Corp. of America v. NLRB* (CA7) 291 F2d 224, Cert den 368 US 925, 7 L Ed 2d 189, 82 S Ct. 360; *Anchor Mfg. Co. v. NLRB* (CA5) 300 F2d 301.

[18] *Ibid.*

[19] Med-Arbiter's Decision, pp. 6-7; rollo, pp. 116-117.

[20] *JISSCOR Independent Union v. Torres*, 221 SCRA 699, May 11, 1993.

[21] *Federation of Free Workers v. Paredes*, 54 SCRA 75, November 26, 1973.

[22] *Reyes v. Trajano*, 209 SCRA 484, June 2, 1992.

[23] *Philippine Labor Alliance Council (PLAC) v. Bureau of Labor Relations*, 75 SCRA 162, January 31, 1977.

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