

SAN MIGUEL CORPORATION (MANDAUE PACKAGING PRODUCTS PLANTS), PETITIONER, VS. MANDAUE PACKING PRODUCTS PLANTS-SAN MIGUEL PACKAGING PRODUCTS -SAN MIGUEL CORPORATION MONTHLIES RANK-...

G.R. NO. 152356. August 16, 2005

Ponente: TINGA, J.

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TINGA, J.:

The central question in this Petition for Review is on what date did respondent Mandaue Packing Products Plants-San Miguel Packaging Products-San Miguel Corporation Monthlies Rank-And-File Union-FFW acquire legal personality in accordance with the Implementing Rules of the Labor Code. The matter is crucial since respondent filed a petition for certification election at a date when, it is argued, it had yet to acquire the requisite legal personality. The Department of Labor and Employment (DOLE) and the Court of Appeals both ruled that respondent had acquired legal personality on the same day it filed the petition for certification election. The procedure employed by the respondent did not strictly conform with the relevant provisions of law. But rather than insist on an overly literal reading of the law that senselessly suffocates the constitutionally guaranteed right to self-organization, we uphold the assailed decisions and the liberal spirit that animates them.

Antecedent Facts

The present petition assailed the Decision dated 7 June 2001 rendered by the Court of Appeals Eighth Division[1] which in turn affirmed a Decision dated 22 February 1999 by the DOLE Undersecretary for Labor Relations, Rosalinda Dimapilis-Baldoz, ordering the immediate conduct of a certification election among the petitioner's rank-and-file employees, as prayed for by respondent. The following facts are culled from the records.

On 15 June 1998, respondent, identifying itself as an affiliate of Federation of Free Workers (FFW), filed a petition for certification election with the DOLE Regional Office No. VII. In the petition, respondent stated that it sought to be certified and to represent the permanent rank-and-file monthly paid employees of the petitioner.[2] The following documents were attached to the petition: (1) a Charter Certificate issued by FFW on 5 June 1998 certifying that respondent as of that date was duly certified as a local or chapter of FFW; (2) a copy of the constitution of respondent prepared by its Secretary, Noel T. Bathan and attested by its President, Wilfred V. Sagun; (3) a list of respondent's officers and their respective addresses, again prepared by Bathan and attested by Sagun; (4) a certification signifying that respondent had just been organized and no amount had yet been collected from its members, signed by respondent's treasurer Chita D. Rodriguez and attested by Sagun; and (5) a list of all the rank-and-file monthly paid employees of the Mandaue Packaging Products Plants and Mandaue Glass Plant prepared by Bathan and attested by Sagun.[3]

The petition was assigned to Mediator-Arbiter Achilles V. Manit of the DOLE Regional Office No. VII, and docketed as Case No. R0700-9806-RU-013.[4]

On 27 July 1998, petitioner filed a motion to dismiss the petition for certification election on the sole ground that herein respondent is not listed or included in the roster of legitimate labor organizations based on the certification issued by the Officer-In-Charge, Regional Director of the DOLE Regional Office No. VII, Atty. Jesus B. Gabor, on 24 July 1998.

On 29 July 1998, respondent submitted to the Bureau of Labor Relations the same documents earlier attached to its petition for certification. The accompanying letter, signed by respondent's president Sagun, stated that such documents were submitted in compliance with the requirements for the creation of a local/chapter pursuant to the Labor Code and its Implementing Rules; and it was hoped that the submissions would facilitate the listing of respondent under the roster of legitimate labor organizations.[5] On 3 August 1998, the Chief of Labor Relations Division of DOLE Regional Office No. VII issued a Certificate of Creation of Local/Chapter No. ITD. I-ARFBT-058/98, certifying that from 30 July 1998, respondent has acquired legal personality as a labor organization/worker's association, it having submitted all the required documents.[6]

Opting not to file a comment on the Motion to Dismiss,[7] respondent instead filed a Position Paper wherein it asserted that it had complied with all the necessary requirements for the conduct of a certification election, and that the ground relied upon in the Motion to Dismiss was a mere technicality.[8]

In turn, petitioner filed a Comment, wherein it reiterated that respondent was not a legitimate labor organization at the time of the filing of the petition. Petitioner also propounded that contrary to respondent's objectives of establishing an organization representing rank-and-file employees, two of respondent's officers, namely Vice-President Emmanuel L. Rosell and Secretary Bathan, were actually supervisory employees. In support of this allegation, petitioner attached various documents evidencing the designation of these two officers in supervisory roles, as well as their exercise of various supervisory functions.[9] Petitioner cited Article 245 of the Labor Code, which provides that supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees.[10]

On 20 August 1998, petitioner filed a petition to cancel the union registration of respondent. However, this petition was denied, and such denial was subsequently affirmed by the Court of Appeals in a decision that has since become final.[11]

In the meantime, on 15 September 1998, Med-Arbiter Manit issued an Order dismissing respondent's petition for certification election. The sole ground relied upon for the dismissal was the Med-Arbiter's Opinion that as of the date of filing of the petition on 15 June 1998, respondent did not have the legal personality to file the said petition for certification election.[12] No discussion was adduced on petitioner's claims that some of respondent's officers were actually supervisory employees.

Respondent promptly appealed the 15 September 1998 Order to the DOLE. On 22 February 1999, DOLE Undersecretary Rosalinda Dimapilis-Baldoz rendered a Decision reversing the Order. Undersecretary Baldoz concluded that respondent acquired legal personality as early as 15 June 1998, the date it submitted the required documents, citing Section 3, Rule VI of the New Rules Implementing the Labor Code (Implementing Rules) which deems that a local/chapter acquires legal personality from the date of filing of the complete documentary requirements as mandated in the Implementing Rules. The DOLE also ruled that the contention that two of respondent's officers were actually supervisors can be threshed out in the pre-election conferences where the list of qualified voters is to be determined. The dispositive portion of the DOLE Decision stated:

WHEREFORE, the appeal is GRANTED. The order dated 15 September 1999 of the Med-Arbiter is REVERSED and SET ASIDE. Accordingly, let the records of the case be remanded to the office of origin for the immediate conduct of certification election, subject to the usual pre-election conference, among the

monthly-paid rank-and-file employees of the Mandaue Packaging Products Plant San Miguel Corporation, with the following choices:

- MANDAUE PACKAGING PRODUCT PLANT SAN MIGUEL PACKAGING PRODUCTS SAN MIGUEL CORPORATION MONTHLIES RANK AND FILE UNION-FFW (MPPP-SMPP-SMCMRFUFFW),

- NO UNION.

Pursuant to Rule XI, Section 11.1 of the New Implementing Rules, the company is hereby directed to submit to the office of origin the certified list of current employees in the bargaining unit, along with the payrolls covering the members of the bargaining unit for the last three months prior to the issuance of this decision.

SO DECIDED.[13]

These two conclusions of the DOLE were affirmed in the assailed Decision of the Court of Appeals. It is now our task to review whether these conclusions are warranted under law and jurisprudence. First, we shall discuss the aspect of respondent's legal personality in filing the petition for certification election.

First Issue: On the Acquisition of
Legal Personality by Respondent

Statutory Provisions for Registration Of
Local/Chapter of Federation or National Union

Before we proceed to evaluate the particular facts of this case, it would be useful to review the statutory paradigm that governs the establishment and acquisition of legal personality by a local/chapter of a labor organization. The applicable rules have undergone significant amendments in the last decade, thus a recapitulation of the framework is in order.

The Labor Code defines a labor organization as any union or association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment,[14] and a "legitimate labor organization" as any labor organization duly registered with the DOLE, including any branch or local thereof.[15] Only legitimate labor organizations may file a petition for certification election.[16]

Article 234 of the Labor Code enumerates the requirements for registration of an applicant labor organization, association, or group of unions or workers in order that such entity could acquire legal personality and entitlement to the rights and privileges granted by law to legitimate labor organizations. These include a registration fee of fifty pesos (P50.00); a list of the names of the members and officers, and copies of the constitution and by-laws of the applicant union.[17]

However, the Labor Code itself does not lay down the procedure for the registration of a local or chapter of a labor organization. Such has been traditionally provided instead in the Implementing Rules, particularly in Book V thereof. However, in the last decade or so, significant amendments have been introduced to Book V, first by Department Order No. 9 which took effect on 21 June 1997, and again by Department Order No. 40 dated 17 February 2003. The differences in the procedures laid down in these various versions are significant. However, since the instant petition for certification was filed in 1998, the Implementing Rules, as amended by Department Order No. 9, should govern the resolution of this petition.[18]

Preliminarily, we should note that a less stringent procedure obtains in the registration of a local or chapter than that of a labor organization. Undoubtedly, the intent of the law in imposing lesser requirements in the case of a

branch or local of a registered federation or national union is to encourage the affiliation of a local union with a federation or national union in order to increase the local union's bargaining powers respecting terms and conditions of labor.[19] This policy has remained consistent despite the succeeding amendments to Book V of the Omnibus Implementing Rules, as contained in Department Orders Nos. 9 and 40.

The case of *Progressive Development Corp. v. Secretary of Labor*,[20] applying Section 3, Rule II, Book V of the Implementing Rules, in force before 1997, ruled that "a local or chapter therefore becomes a legitimate labor organization only upon submission of the following to the BLR: (1) a charter certificate, within thirty (30) days from its issuance by the labor federation or national union; and (2) The constitution and by-laws, a statement of 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." [21] The submission by the local/chapter of duly certified books of accounts as a prerequisite for registration of the local/chapter was dropped in Department Order No. 9,[22] a development noted by the Court in *Pagpalain Haulers v. Hon. Trajano*,[23] wherein it was held that the previous doctrines requiring the submission of books of accounts as a prerequisite for the registration of a local/chapter "are already pass" and therefore, no longer applicable." [24]

Department Order No. 40, now in effect, has eased the requirements by which a local/chapter may acquire legal personality. Interestingly, Department Order No. 40 no longer uses the term "local/chapter," utilizing instead "chartered local," which is defined as a "labor organization in the private sector operating at the enterprise level that acquired legal personality through the issuance of a charter certificate by a duly registered federation or national union, and reported to the Regional Office." [25] Clearly under the present rules, the first step to be undertaken in the creation of a chartered local is the issuance of a charter certificate by the duly registered federation or national union. Said federation or national union is then obligated to report to the Regional Office the creation of such chartered local, attaching thereto the charter certificate it had earlier issued.[26]

But as stated earlier, it is Department Order No. 9 that governs in this case. Section 1, Rule VI thereof prescribes the documentary requirements for the creation of a local/chapter. It states:

Section 1. Chartering and creation of a local chapter - A duly registered federation or national union may directly create a local/chapter by submitting to the Regional Office or to the Bureau two (2) copies of the following:

a)

A charter certificate issued by the federation or national union indicating the creation or establishment of the local/chapter;

(b)

The names of the local/chapter's officers, their addresses, and the principal office of the local/chapter;

(c)

The local/chapter's constitution and by-laws; provided that where the local/chapter's constitution and by-laws is the same as that of the federation or national union, this fact shall be indicated accordingly.

All the foregoing supporting requirements shall be certified under oath by the Secretary or Treasurer of the local/chapter and attested by its President.

In contrast, an independent union seeking registration is further required under Dept. Order No. 90 to submit the number and names of the members, and annual financial reports.[27]

Section 3, Rule VI of Department Order No. 9 provides when the local/chapter acquires legal personality.

Section 3. Acquisition of legal personality by local chapter. - A local/chapter constituted in accordance with Section 1 of this Rule shall acquire legal personality from the date of filing of the complete documents enumerated therein. Upon compliance with all the documentary requirements, the Regional Office or Bureau shall issue in favor of the local/chapter a certificate indicating that it is included in the roster of legitimate labor organizations.

It is evident based on this rule that the local/chapter acquires legal personality from the date of the filing of the complete documentary requirements, and not from the issuance of a certification to such effect by the Regional Office or Bureau. On the other hand, a labor organization is deemed to have acquired legal personality only on the date of issuance of its certificate of registration,[28] which takes place only after the Bureau of Labor Relations or its Regional Offices has undertaken an evaluation process lasting up until thirty (30) days, within which period it approves or denies the application.[29] In contrast, no such period of evaluation is provided in Department Order No. 9 for the application of a local/chapter, and more importantly, under it such local/chapter is deemed to acquire legal personality "from the date of filing" of the documents enumerated under Section 1, Rule VI, Book V.

Apart from promoting a policy of affiliation of local unions with national unions,[30] there is a practical reason for sanctioning a less onerous procedure for the registration of a local/chapter, as compared to the national union. The local/chapter relies in part on the legal personality of the federation or national union, which in turn, had already undergone evaluation and approval from the Bureau of Legal Relations or Regional Office. In fact, a federation or national union is required, upon registration, to establish proof of affiliation of at least ten (10) locals or chapters which are duly recognized as the collective bargaining agent in the establishment or industry in which they operate; and the names and addresses of the companies where the locals or chapters operate and the list of all the members in each of the companies.[31] Once the national union or federation acquires legal personality upon the issuance of its certificate or registration,[32] its legal personality cannot be subject to collateral attack.[33]

The fact that the local/chapter acquires legal personality from the moment the complete documentary requirements are submitted seems to imply that the duty of the Bureau or Regional Office to register the local/chapter is merely ministerial. However, in *Progressive Development Corporation v. Laguesma*,[34] the Court, in ruling against a petition for certification filed by a chapter, held that the mere submission of the documentary requirements does not render ministerial the function of the Bureau of Labor Relations in according due recognition to the labor organization.[35] Still, that case was decided before the enactment of Department Order No. 9, including the aforesaid Section 3. Should we consider the said 1997 amendments as having obviated our characterization in *Progressive* of the Bureau's duty as non-ministerial?

Notwithstanding the amendments, it still is good policy to maintain that per Department Order No. 9, the duty of the Bureau of Labor Relations to recognize the local/chapter upon the submission of the documentary requirements is not ministerial, insofar as the Bureau is obliged to adjudge the authenticity of the documents required to be submitted. For example, the Bureau is not mandated to accept just any purported charter certificate matter how spurious it is in appearance. It is empowered to ascertain whether the submitted charter certificate is genuine, and if finding that said certificate is fake, deny recognition to the local/chapter.

However, in ascertaining whether or not to recognize and register the local/chapter, the Bureau or Regional Office should not look beyond the authenticity and due execution of the documentary requirements for the creation of the local/chapter as enumerated under Section 1, Rule VI, Book V of Department Order No. 9. Since the proper submission of these documentary requirements is all that is necessary to recognize a local/chapter, it is beyond the province of the Bureau or Regional Offices to resort to other grounds as basis for denying legal recognition of the local/chapter. For example, Department Order No. 9 does not require the local/chapter to submit the names of its members as a condition precedent to its registration.[36] It therefore would be improper to deny legal recognition

to a local/chapter owing to questions pertaining to its individual members since the local/chapter is not even obliged to submit the names of its individual members prior to registration.

Certainly, when a local/chapter applies for registration, matters raised against the personality of the federation or national union itself should not be acted upon by the Bureau or Regional Office, owing to the preclusion of collateral attack. Instead, the proper matter for evaluation by the Bureau or Regional Office should be limited to whether the local/chapter is indeed a duly created affiliate of the national union or federation.

Parenthetically, under the present Implementing Rules as amended by Department Order No. 40, it appears that the local/chapter (or now, "chartered local") acquires legal personality upon the issuance of the charter certificate by the duly registered federation or national union.[37] This might signify that the creation of the chartered local is within the sole discretion of the federation or national union and thus beyond the review or interference of the Bureau of Labor Relations or its Regional Offices. However, Department Order No. 40 also requires that the federation or national union report the creation of the chartered local to the Regional Office.

Acquisition by Respondent of Legal Personality

We now proceed to determine if and when the respondent acquired legal personality under the procedure laid down by the rules then in effect, Department Order No. 9, that is.

At the onset, the arguments raised by petitioner on this point are plainly erroneous. Petitioner cites the case of *Toyota Motor Philippines v. Toyota Motor Philippines Corporation Labor Union*,[38] and the purported holding therein that "[i]f it is true that at the time of the filing of the petition, the said registration certificate has not been approved yet, then, petitioner lacks the legal personality to file the petition." [39] However, an examination of the case actually reveals that the cited portion was lifted from one of the antecedent rulings of the Med-Arbiter in that case which had not even been affirmed or reinstated by the Court on review.[40] Moreover, such pronouncement made prior to the enactment of Department Order No. 9 squarely contradicts Section 3, Rule VI thereof, which provides that legal personality of the local/chapter is vested upon the submission of the complete documentary requirements.

It is also worth noting that petitioner union in *Toyota* was an independent labor union, and not a local/chapter, and under Department Order No. 9, independent labor unions, unlike local/chapters, acquire legal personality only upon issuance of the certificate of registration by the Bureau or Regional Office. Still, petitioner cites in its favor Section 5, Rule V of Dept. Order No. 9, which states that "the labor organization or workers" association shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration." Again, the citation is obviously misplaced, as respondent herein is a local/chapter, the acquisition of its legal personality being governed instead by Section 3, Rule VI.

It is thus very clear that the issuance of the certificate of registration by the Bureau or Regional Office is not the operative act that vests legal personality upon a local/chapter under Department Order No. 9. Such legal personality is acquired from the filing of the complete documentary requirements enumerated in Section 1, Rule VI. Admittedly, the manner by which respondent was deemed to have acquired legal personality by the DOLE and the Court of Appeals was not in strict conformity with the provisions of Department Order No. 9. Nonetheless, are the deviations significant enough for the Court to achieve a different conclusion from that made by the DOLE and the Court of Appeals?

In regular order, it is the federation or national union, already in possession of legal personality, which initiates the creation of the local/chapter. It issues a charter certificate indicating the creation or establishment of the local/chapter. It then submits this charter certificate, along with the names of the local/chapter's officers,

constitution and by-laws to the Regional Office or Bureau. It is the submission of these documents, certified under oath by the Secretary or Treasurer of the local/chapter and attested by the President, which vests legal personality in the local/chapter, which is then free to file on its own a petition for certification election.

In this case, the federation in question, the FFW, did not submit any of these documentary requirements to the Regional Office or Bureau. It did however issue a charter certificate to the putative local/chapter (herein respondent). Respondent then submitted the charter certificate along with the other documentary requirements to the Regional Office, but not for the specific purpose of creating the local/chapter, but for filing the petition for certification election.

It could be properly said that at the exact moment respondent was filing the petition for certification, it did not yet possess any legal personality, since the requisites for acquisition of legal personality under Section 3, Rule VI of Department Order No. 9 had not yet been complied with. It could also be discerned that the intention of the Labor Code and its Implementing Rules that only those labor organizations that have acquired legal personality are capacitated to file petitions for certification elections. Such is the general rule.

Yet there are peculiar circumstances in this case that allow the Court to rule that respondent acquired the requisite legal personality at the same time it filed the petition for certification election. In doing so, the Court acknowledges that the strict letter of the procedural rule was not complied with. However, labor laws are generally construed liberally in favor of labor, especially if doing so affirms the constitutionally guaranteed right to self-organization.

True enough, there was no attempt made by the national federation, or the local/chapter for that matter, to submit the enumerated documentary requirements to the Regional Office or Bureau for the specific purpose of creating the local/chapter. However, these same documents were submitted by the local/chapter to the Regional Office as attachments to its petition for certification election. Under Section 3, Rule VI of Department Order No. 9, it is the submission of these same documents to the Regional Office or Bureau that operates to vest legal personality on the local/chapter.

Thus, in order to ascertain when respondent acquired legal personality, we only need to determine on what date the Regional Office or Bureau received the complete documentary requirements enumerated under Section 1, Rule VI of Department Order No. 9. There is no doubt that on 15 June 1998, or the date respondent filed its petition for certification election, attached thereto were respondent's constitution, the names and addresses of its officers, and the charter certificate issued by the national union FFW. The first two of these documents were duly certified under oath by respondent's secretary Bathan and attested to by president Sagun.[41]

It may be noted though that respondent never submitted a separate by-laws, nor does it appear that respondent ever intended to prepare a set thereof. Section 1(c), Rule VI, Book V of Department Order No. 9 provides that the submission of both a constitution and a set of by-laws is required, or at least an indication that the local/chapter is adopting the constitution and by-laws of the federation or national union. A literal reading of the provision might indicate that the failure to submit a specific set of by-laws is fatal to the recognition of the local/chapter. A more critical analysis of this requirement though is in order, especially as it should apply to this petition.

By-laws has traditionally been defined as regulations, ordinances, rules or laws adopted by an association or corporation or the like for its internal governance, including rules for routine matters such as calling meetings and the like.[42] The importance of by-laws to a labor organization cannot be gainsaid. Without such provisions governing the internal governance of the organization, such as rules on meetings and quorum requirements, there would be no apparent basis on how the union could operate. Without a set of by-laws which provides how the local/chapter arrives at its decisions or otherwise wields its attributes of legal personality, then every action of the

local/chapter may be put into legal controversy.

However, if those key by-law provisions on matters such as quorum requirements, meetings, or on the internal governance of the local/chapter are themselves already provided for in the constitution, then it would be feasible to overlook the requirement for by-laws. Indeed in such an event, to insist on the submission of a separate document denominated as "By-Laws" would be an undue technicality, as well as a redundancy.

An examination of respondent's constitution reveals it sufficiently comprehensive in establishing the necessary rules for its operation. Article IV establishes the requisites for membership in the local/chapter. Articles V and VI name the various officers and what their respective functions are. The procedure for election of these officers, including the necessary vote requirements, is provided for in Article IX, while Article XV delineates the procedure for the impeachment of these officers. Article VII establishes the standing committees of the local/chapter and how their members are appointed. Article VIII lays down the rules for meetings of the union, including the notice and quorum requirements thereof. Article X enumerates with particularity the rules for union dues, special assessments, fines, and other payments. Article XII provides the general rule for quorum in meetings of the Board of Directors and of the members of the local/chapter, and cites the applicability of the Robert's Rules of Order^[43] in its meetings. And finally, Article XVI governs and institutes the requisites for the amendment of the constitution.

Indeed, it is difficult to see in this case what a set of by-laws separate from the constitution for respondent could provide that is not already provided for by the Constitution. These premises considered, there is clearly no need for a separate set of by-laws to be submitted by respondent.

The Court likewise sees no impediment in deeming respondent as having acquired legal personality as of 15 June 1998, the fact that it was the local/chapter itself, and not the FFW, which submitted the documents required under Section 1, Rule VI of Department Order No. 9. The evident rationale why the rule states that it is the federation or national union that submits said documents to the Bureau or Regional Office is that the creation of the local/chapter is the sole prerogative of the federation or national union, and not of any other entity. Certainly, a putative local/chapter cannot, without the imprimatur of the federation or national union, claim affiliation with the larger unit or source its legal personality therefrom.

In the ordinary course, it should have been FFW, and not respondent, which should have submitted the subject documents to the Regional Office. Nonetheless, there is no good reason to deny legal personality or defer its conferral to the local/chapter if it is evident at the onset that the federation or national union itself has already through its own means established the local/chapter. In this case, such is evidenced by the Charter Certificate dated 9 June 1998, issued by FFW, and attached to the petition for certification election. The Charter Certificate expressly states that respondent has been issued the said certificate "to operate as a local or chapter of the [FFW]". The Charter Certificate expressly acknowledges FFW's intent to establish respondent as of 9 June 1998.^[44] This being the case, we consider it permissible for respondent to have submitted the required documents itself to the Regional Office, and proper that respondent's legal personality be deemed existent as of 15 June 1998, the date the complete documents were submitted.

Second Issue: On the Alleged Presence Of Supervisory Employees as Officers of the Respondent

The second issue hinges on a point of some controversy and frequent discussion in recent years. Petitioner claims error in the common pronouncement in the assailed decisions that the matter concerning the two officers who are allegedly supervisory employees may be threshed out during pre-election conferences. Petitioner cites the cases of

Toyota Motors and Progressive Development Corporation-Pizza Hut v. Ledesma[45] wherein the Court ruled that the question of prohibited membership of both supervisory and rank-and-file employees in the same union must be inquired into anterior to the granting of an order allowing a certification election; and that a union composed of both of these kinds of employees does not possess the requisite personality to file for recognition as a legitimate labor organization. It should be noted though that in the more recent case of Tagaytay Highlands International Golf Club v. Tagaytay Highlands Employees Union,[46] the Court, notwithstanding Toyota and Progressive, ruled that after a certificate of registration is issued to a union, its legal personality cannot be subject to collateral attack, but questioned only in an independent petition for cancellation.[47]

There is no need to apply any of the above cases at present because the question raised by petitioner on this point is already settled law, as a result of the denial of the independent petition for cancellation filed by petitioner against respondent on 20 August 1998. The ground relied upon therein was the alleged fraud, misrepresentation and false statement in describing itself as a union of rank and file employees when in fact, two of its officers, Emmanuel Rosell and Noel Bathan, were occupying supervisory positions.[48] Said petition was denied by the Regional Director, this action was affirmed by the DOLE, the Court of Appeals, and the Supreme Court.[49] The denial made by the Court of Appeals and the Supreme Court may have been based on procedural grounds,[50] but the prior decisions of the Regional Director and the DOLE ruled squarely on the same issue now raised by the petitioner. We quote from the Resolution of the DOLE dated 29 December 1998:

. . . [The] substantive issue that is now before us is whether or not the inclusion of the two alleged supervisory employees in appellee union's membership amounts to fraud, misrepresentation, or false statement within the meaning of Article 239(a) and (c) of the Labor Code.

We rule in the negative.

Under the law, a managerial employee is "one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, layoff, recall, discharge, assign or discipline employees." A supervisory employee is "one who, in the interest of the employer, effectively recommends managerial actions if the exercise of such recommendatory authority is not merely routinary or clerical in nature but requires the use of independent judgment." Finally, "all employees not falling within the definition of managerial or supervisory employee are considered rank-and-file employees". It is also well-settled that the actual functions of an employee, not merely his job title, are determinative in classifying such employee as managerial, supervisory or rank and file.

In the case of Emmanuel Rosell, appellant's evidence shows that he undertakes the filling out of evaluation reports on the performance of mechanics, which in turn are used as basis for reclassification. Given a ready and standard form to accomplish, coupled with the nature of the evaluation, it would appear that his functions are more routinary than recommendatory and hardly leave room for independent judgment. In the case of Noel Bathan, appellant's evidence does not show his job title although it shows that his recommendations on disciplinary actions appear to have carried some weight on higher management. On this limited point, he may qualify as a supervisory employee within the meaning of the law. This may, however, be outweighed by his other functions which are not specified in the evidence.

Assuming that Bathan is a supervisory employee, this does not prove the existence of fraud, false statement or misrepresentation. Because good faith is presumed in all representations, an essential element of fraud, false statement and misrepresentation in order for these to be actionable is intent to mislead by the party making the representation. In this case, there is no proof to show that Bathan, or appellee union for that matter, intended to mislead anyone. If this was appellee union's intention, it would have refrained from using a more precise description of the organization instead of declaring that the organization is composed of "rank and file monthlies". Hence, the charge of fraud, false statement or misrepresentation cannot be sustained.

Appellant's reliance on the Toyota case must be tempered by the peculiar circumstances of the case. Even assuming that Bathan, or Rossel for that matter, are supervisory employees, the Toyota case cannot certainly be given an interpretation that emasculates the right to self-organization and the promotion of free trade unionism. We take administrative notice of the realities in union organizing, during which the organizers must take their chances, oftentimes unaware of the fine distinctions between managerial, supervisory and rank and file employees. The grounds for cancellation of union registration are not meant to be applied automatically, but indeed with utmost discretion. Where a remedy short of cancellation is available, that remedy should be preferred. In this case, no party will be prejudiced if Bathan were to be excluded from membership in the union. The vacancy he will thus create can then be easily filled up through the succession provision of appellee union's constitution and by-laws. What is important is that there is an unmistakable intent of the members of appellee union to exercise their right to organize. We cannot impose rigorous restraints on such right if we are to give meaning to the protection to labor and social justice clauses of the Constitution.[51]

The above-cited pronouncement by Bureau of Labor Relations Director Benedicto Ernesto R. Bitonio, Jr. in BLR-A-C-41-11-11-98 was affirmed by the Court of Appeals and the Supreme Court. Hence, its pronouncement affirming, notwithstanding the questions on the employment status of Rossell and Bathan, the legitimacy of the respondent, stands as a final ruling beyond the ambit of review, thus warranting the Court's respect. There may be a difference between this case, which involves a petition for certification election, and the other case, which concerns a petition for cancellation. However, petitioner opposes the petition for certification election on the ground of the illegitimacy of respondent, owing to the alleged supervisory nature of the duties of Rossell and Bathan. That matter has already been settled in the final disposition of the petition for cancellation, and thus cannot be unsettled by reason of this present petition.

Effect of Respondent's Manifestation Of Subsequent Developments

A final note. In its Memorandum, petitioner alleges that the bargaining unit that respondent sought to represent is no longer the same because of the dynamic nature of petitioner's business, a lot of changes having occurred in the work environment, and that four of respondent's officers are no longer connected with petitioner.[52] Assuming that these manifestations are true, they have no effect on the Court's ruling that a certification election should be immediately conducted with respondent as one of the available choices. Petitioner's bare manifestations adduce no reason why the certification election should not be conducted forthwith. If there are matters that have arisen since the filing of the petition that serve to delay or cancel the election, these can be threshed out during the pre-election conferences. Neither is the fact that some of respondent's officers have since resigned from petitioner of any moment. The local/chapter retains a separate legal personality from that of its officers or members that remains viable notwithstanding any turnover in its officers or members.

WHEREFORE, the Petition is DENIED. Costs against petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Penned by Justice E. Bello, Jr., concurred in by Justices E. Labitoria and P. Tria-Tirona.

[2] CA Rollo, p. 143.

[3] Id. at 144-159.

[4] Records, p. 60.

[5] Id. at 74.

[6] CA Rollo, p. 134.

[7] Records, p. 69.

[8] Id. at 79-80.

[9] Id. at 85-105. These documents purportedly show the two officers exercising such functions as the approval of leave applications, and the evaluation of the performance of subordinates.

[10] Id. at 111.

[11] Rollo, pp. 146-149.

[12] Id. at 108.

[13] Id. at 79.

[14] Article 212 (g), Labor Code.

[15] Article 212 (h), id.

[16] See *Progressive Development Corp. v. Secretary of Labor*, G.R. No. 96425, 4 February 1992, 205 SCRA 802, 808.

[17] Article 234, Labor Code.

[18] See Section 1, Rule XXVI, Department Order No. 40, which states:

Section 1. Rules governing prior applications, petitions, complaints, cases. - All applications, petitions, complaints, cases or incidents commenced or filed prior to the effectivity of these amendatory Rules shall be governed by the old rules as amended by Department Order No. 9, series of 1997.

[19] *Progressive Development Corp. v. Secretary of Labor*, supra note 16, at 811.

[20] Supra note 16.

[21] Id. at 813. See also *Lopez Sugar Corporation v. Secretary of Labor and Employment*, G.R. No. 93117, 1 August 1995, 247 SCRA 1, 8; *Phoenix Iron and Steel Corporation v. Secretary of Labor and Employment*, G.R. No. 112141, 16 May 1995, 244 SCRA 173, 177; and *Protection Technology, Inc. v. Secretary, Department of Labor and Employment*, G.R. No. 117211, 1 March 1995, 242 SCRA 99, 106.

[22] Significantly, a local/chapter is still obliged to submit annual financial reports within thirty (30) calendar days after the close of each fiscal year, see Section 1(b), Rule VII, Book V, Implementing Rules, although not as a prerequisite for registration.

[23] G.R. No. 133215, 15 July 1999, 310 SCRA 354.

[24] Id. at 363. The Court also upheld therein the validity of Department Order No. 9, which introduced the amendments to Book V of the Implementing Rules, including the subject provisions now before our review.

[25] Section 1(i), Rule I, id.

[26] Section 2-E, Rule III, id.

[27] See Section 2(II), Rule III, Book V, Dept. Order No. 40.

[28] See Section 5, Rule V, Dept. Order No. 9.

[29] See Section 3, *id.*

[30] *Progressive Development Corp. v. Secretary of Labor*, *supra* note 19.

[31] See Section 237, Labor Code. See also Section 2(II), Rule III, Book V, Implementing Rules.

[32] See Article 234, Labor Code.

[33] See Section 5, Rule V, Book V, Implementing Rules. The legal personality of the duly constituted labor organization may be questioned only in an independent petition for cancellation.

[34] 338 Phil. 310 (1997).

[35] *Id.*

[36] Although such list of members is required to be submitted within thirty (30) calendar days after the close of each fiscal year. See Section 1(d), Rule VII, Book V, Dept. Order No. 9.

[37] See Rule I, Section 1(i); Rule III, Section 2(c)(e), and Rule IV, Section 8, Department Order No. 40. Rule IV, Section 8 particularly states: "The labor union or workers' association shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration or certificate of creation of chartered local."

[38] 335 Phil. 1045 (1997).

[39] *Rollo*, p. 15.

[40] See *Toyota Motors*, *supra* note 38 at 578-579.

[41] In *San Miguel Foods-Cebu B-Meg Feed Plant v. Hon. Laguesma*, 331 Phil. 356 (1996), the Court ruled that it was not necessary for the charter certificate to be certified and attested by the local/chapter officers. *Id.* While this ruling was based on the interpretation of the previous Implementing Rules provisions which were supplanted by the 1997 amendments, we believe that the same doctrine obtains in this case. Considering that the charter certificate is prepared and issued by the national union and not the local/chapter, it does not make sense to have the local/chapter's officers to certify or attest to a document which they had no hand in the preparation of.

[42] BLACK'S LAW DICTIONARY (Sixth Edition, 1990), at 201.

[43] "[The Robert's Rules of Order] may be looked upon as the classic statement of present-day parliamentary procedure. The [rules] make up the most widely accepted guide to fair and orderly meetings." Foreword, Robert's Rules of Order Revised by Henry M. Robert III, 1979 ed.

[44] Notably, under the present rule as established in Department Order No. 40, respondent would be deemed to have acquired legal personality as of 9 June 1998, or the date of the Charter Certificate issued by FFW.

[45] G.R. No. 115077, 18 April 1997, 271 SCRA 593.

[46] G.R. No. 14200, 22 January 2003, 395 SCRA 699.

[47] *Id.* at 707.

[48] *CA Rollo*, p. 263.

[49] *Supra* note 11.

[50] In a Resolution dated 11 May 1999, the Court of Appeals dismissed CA-G.R. SP No. 52250, filed by petitioner, on the ground that the certificate of non-forum shopping was not signed by a person duly authorized, and that copies of the assailed resolutions were not attached to the petition. CA Rollo, pp. 270-271. The Supreme Court dismissed G.R. No. 139819 in a Resolution dated 27 September 1999 for lack of an affidavit of service of the petition on the Court of Appeals. *Id.* at 275.

[51] CA Rollo, pp. 266-267. Emphasis in the original, citations omitted.

[52] Rollo, p. 215.

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