IN RE: PETITION FOR CANCELLATION OF THE UNION REGISTRATION OF AIR PHILIPPINES FLIGHT ATTENDANTS ASSOCIATION,

G.R. NO. 155395. June 22, 2006

Ponente: TINGA, J.

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TINGA, J.:

For resolution is a Petition for Review under Rule 45, filed by petitioner Air Philippines Corporation (APC), assailing the Resolutions of the Court of Appeals dated 10 January 2002 and 13 September 2002.[1]

The case initially centered on the union registration of respondent Air Philippines Flight Attendants Association (APFLAA), which was issued a Certificate of Registration No. NCR-UR-3-2067-99 by the Department of Labor and Employment (DOLE). APFLAA filed on 17 March 1999 a petition for certification election as the collective bargaining representative of the flight attendants of APC. After the Med-Arbiter rendered a ruling ordering the holding of a certification election, such election was held on 5 August 1999, with majority of the votes cast in favor of APFLAA.[2]

On 25 November 1999, APC filed a Petition for De-Certification and Cancellation of Union Registration against APFLAA with the DOLE. APC alleged that APFLAA could not be registered as a labor organization, as its composition consisted of "a mixture of supervisory and rank-and-file flight attendants." Particularly, APC alleged that flight attendants holding the position of "Lead Cabin Attendant," which according to it is supervisory in character, were among those who comprised APFLAA.

On 18 July 2001, the DOLE-National Capital Region (NCR) Regional Director Alex E. Maraan rendered a Decision dismissing the petition. The DOLE-NCR held that Article 245 of the Labor Code, which states that supervisory employees are not eligible for membership in labor organizations of rank-and-file employees, does not provide a ground for cancellation of union registration, which is instead governed by Article 239 of the Labor Code.[3]

APC filed a Motion for Reconsideration/Appeal regarding this Decision of the DOLE-NCR. In a Resolution dated 18 July 2001, the Bureau of Labor Relations (BLR) denied the appeal, affirming the rationale of the DOLE-NCR.[4]

APC then immediately filed a Petition for Certiorari dated 12 December 2001 with the Court of Appeals, imputing grave abuse of discretion on the part of the BLR in denying its appeal. However, the petition was dismissed outright by the Court of Appeals in a Resolution dated 10 January 2002, on the ground that APC had "failed to avail of the remedy of a prior Motion for Reconsideration" before the filing of the certiorari petition, which step, it stressed, is a "condition sine qua non to the filing of a petition for certiorari."[5]

APC filed a Motion for Reconsideration dated 5 February 2002, but this too was denied by the Court of Appeals in a Resolution dated 13 September 2002. This time, the appellate court ruled that the Motion for Reconsideration

was "totally defective," for failing to contain the proof of service or registry return receipts to the respondents. The Court of Appeals even noted that the Affidavit of Service attached to the Motion for Reconsideration "failed to indicate the registry return receipts of the registered mails to the respondents."[6]

Hence, the present petition.

APC argues that its petition before the Court of Appeals involved mere questions of law, among which is whether APFLAA's union registration may be cancelled considering that the union is allegedly composed of a mixture of supervisory and rank-and-file employees. It is posited that questions of law may be raised directly in a petition for certiorari without need of a prior motion for reconsideration.[7]

However, it is clear from the petition filed by APC before the Court of Appeals that the issues involved do not consist of questions of law only. It is insisted therein that employees holding the position of Lead Cabin Attendants are supervisory employees and hence disallowed from joining a union of rank-and-file employees.[8] On the other hand, APFLAA countered before the DOLE-NCR and the BLR that only rank-and-file flight attendants comprised its membership.[9] Thus, the very question of whether Lead Cabin Attendants are indeed supervisory employees appears to be factual in nature, the proper resolution of which necessitates a factual determination of the actual duties of Lead Cabin Attendants. Indeed, APC made reference therein to such documents as an employee's manual in support of its argument,[10] documents that would evidently require factual evaluation before accorded proper evidentiary value.

There is admittedly some leeway for the Court of Appeals if it was so minded to give due course to APC's petition, notwithstanding the failure to file a motion for reconsideration. Yet ultimately, the determination of whether or not to admit a petition attended with such defect falls within the sound discretion of the Court of Appeals. Should the Court of Appeals decide, as it did, to dismiss the petition outright on such ground, it would commit no reversible error of law nor any grave abuse of discretion, considering that the rule requiring the filing of a motion for reconsideration before resorting to the special civil action of certiorari is well entrenched in jurisprudence.

It also does not escape the attention of the Court that the Motion for Reconsideration filed by APC before the Court of Appeals was itself fatally defective, allowing the appellate court to deny the same without having to evaluate its substantial arguments. The action of the appellate court relative to APC's missteps is consistent with procedural rules.

Still, the Court has deigned to give a close look at the substantial arguments raised in APC's petition before the Court of Appeals.

The DOLE-NCR Regional Director, in dismissing the petition for cancellation, cited our minute resolution in SPI Technologies Incorporated v. DOLE[11] wherein the Court observed that Article 245[12] of the Labor Code, the legal basis for the petition for cancellation, merely prescribed the requirements for eligibility in joining a union and did not prescribe the grounds for cancellation of union registration.[13] Since the filing of this petition, the Court has had occasion to rule, in Tagaytay Highlands International Golf Club v. Tagaytay Highlands Employees Union-PGTWO,[14] that "[t]he inclusion in a union of disqualified employees is not among the grounds for cancellation, unless such inclusion is due to misrepresentation, false statement or fraud under the circumstances enumerated in Sections (a) and (c) of Article 239[15] of the Labor Code."[16]

Clearly then, for the purpose of de-certifying a union, it is not enough to establish that the rank-and-file union includes ineligible employees in its membership. Pursuant to Article 239 (a) and (c) of the Labor Code, it must be shown that there was misrepresentation, false statement or fraud in connection with the adoption or ratification of

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the constitution and by-laws or amendments thereto, the minutes of ratification, or in connection with the election of officers, minutes of the election of officers, the list of voters, or failure to submit these documents together with the list of the newly elected-appointed officers and their postal addresses to the BLR.[17]

In its Petition for De-certification and Cancellation of Union Registration, APC did not impute on APFLAA such misrepresentation of the character necessitated under Article 239 (a) and (c) of the Labor Code. APC merely argued that APFLAA was not qualified to become a legitimate labor organization by reason of its mixed composition of rank-and-file and supervisory employees; and that APFLAA committed misrepresentation by making it appear that its composition was composed purely of rank-and-file employees. Such misrepresentation (if it can be called as such) as alleged by APC, is not conformable to Article 239 (a) and (c) of the Labor Code. Indeed, it appears from the record that APC instead devoted the bulk of its arguments in establishing that supervisory employees comprised part of the membership of APFLAA, a ground which is not sufficient to cause the cancellation of union registration. And this is of course all under the assumption that Lead Cabin Attendants are indeed supervisory employees, a claim consistently denied by APFLAA and which was not confirmed by either the DOLE-NCR or the BLR.

There may be remedies available to enforce the proscription set forth in Article 245 of the Labor Code on supervisory employees joining the union of rank-and-file employees. But consistent with jurisprudence, the rule under Article 245 barring supervisory employees from joining the union of rank-and-file employees is not a ground for cancellation of union registration. Accordingly, we see no error on the part of the DOLE-NCR and the BLR in having dismissed APC's petition, and thus no cause to compel the Court of Appeals to disregard APC's procedural errors and accept the petition for certiorari.

WHEREFORE, the petition is DENIED. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairman), Carpio, Carpio Morales, and Velasco, Jr., JJ., concur.

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[1]Both Resolutions penned by Justice Conrado M. Vasquez, Jr., and concurred in by Justices Andres Reyes, Jr. and Amelita G. Tolentino.

[2]See rollo, p. 89.

[3]Id. at 111.

[4]Id. at 86.

[5]Id. at 57-58.

[6]Id. at 60.

[7]Id. at 50-51.

[8]Id. at 67-73.

[9]See id. at 85, 110.

[10]See id. at 69. [11]G.R. No. 137422, 8 March 1999. Mistakenly cited by the DOLE-NCR Regional Director as G.R. No. 237422. See rollo, p. 203.

[12]Art. 245. Ineligibility of managerial employees to join any labor organization; right of supervisory employees.

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- Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own.

[13]Rollo, p. 203.

[14]443 Phil. 841 (2003).

[15]Art. 239, Labor Code, states: The following shall constitute grounds for cancellation of union registration:

> (a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification;
>
> x x x x.
>
> (c) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, the list of voters, or failure to submit these documents together with the list of the newly elected-appointed officers and their postal addresses within thirty (30) days from election.

[16]Supra note 14 at 853-854.

[17]See Article 239 (a) and (c), Labor Code.

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