LEPANTO CONSOLIDATED MINING COMPANY, PETITIONER, VS. THE LEPANTO CAPATAZ UNION, RESPONDENT.

G.R. No. 157086. February 18, 2013

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

Capatazes are not rank-and-file employees because they perform supervisory functions for the management; hence, they may form their own union that is separate and distinct from the labor organization of rank-and-file employees.

The Case

Lepanto Consolidated Mining Company (Lepanto) assails the Resolution promulgated on December 18, 2002,[1] whereby the Court of Appeals (CA) dismissed its petition for certiorari on the ground of its failure to first file a motion for reconsideration against the decision rendered by the Secretary of the Department of Labor and Employment (DOLE); and the resolution promulgated on January 31, 2003,[2] whereby the CA denied Lepanto's motion for reconsideration.

Antecedents

As a domestic corporation authorized to engage in large-scale mining, Lepanto operated several mining claims in Mankayan, Benguet. On May 27, 1998, respondent Lepanto Capataz Union (Union), a labor organization duly registered with DOLE, filed a petition for consent election with the Industrial Relations Division of the Cordillera Regional Office (CAR) of DOLE, thereby proposing to represent 139 capatazes of Lepanto.[3]

In due course, Lepanto opposed the petition,[4] contending that the Union was in reality seeking a certification election, not a consent election, and would be thereby competing with the Lepanto Employees Union (LEU), the current collective bargaining agent. Lepanto pointed out that the capatazes were already members of LEU, the exclusive representative of all rank-and-file employees of its Mine Division.

On May 2, 2000, Med-Arbiter Michaela A. Lontoc of DOLE-CAR issued a ruling to the effect that the capatazes could form a separate bargaining unit due to their not being rank-and-file employees,[5] viz:

> x x x x
>
> We agree with petitioner that its members perform a function totally different from the rank-and-file employees. The word capataz is defined in Webster's Third International Dictionary, 1986 as "a boss", "foreman" and "an overseer". The employer did not dispute during the hearing that the capatazes indeed take charge of the implementation of the job orders by supervising and instructing the miners, mackers and other rank-and-file workers under them, assess and evaluate their performance, make regular reports and recommends (sic) new systems and procedure of work, as well as guidelines for the discipline of employees. As testified to by petitioner's president, the capatazes are neither rank-and-file nor supervisory and, more or less, fall in the middle of their rank. In this respect, we can see that indeed the capatazes differ from the rank-and-file and can by themselves constitute a separate bargaining unit.

> While it is claimed by the employer that historically, the capatazes have been considered among the rank-and-file and that it is only now that they seek a separate bargaining unit such history of affiliation with the rank-and-file association of LEU cannot totally prevent the capatazes from disaffiliating and organizing themselves separately. The constitutional right of every worker to self-organization essentially gives him the freedom to join or not to join an organization of his own choosing.
>
> The fact that petitioner seeks to represent a separate bargaining unit from the rank-and-file employees represented by the LEU renders the contract bar rule inapplicable. While the collective bargaining agreement existing between the LEU and the employer covering the latter's rank-and-file employee covers likewise the capatazes, it was testified to and undisputed by the employer that the capatazes did not anymore participate in the renegotiation and ratification of the new CBA upon expiration of their old one on 16 November 1998. Their nonparticipation was apparently due to their formation of the new bargaining unit. Thus, while the instant petition was filed on 27 May 1998, prior to the freedom period, in the interest of justice and in consonance with the constitutional right of workers to self-organization, the petition can be deemed to have been filed at the time the 60-day freedom period set in. After all, the petition was still pending and unresolved during this period.
>
> WHEREFORE, the petition is hereby granted and a certification election among the capataz employees of the Lepanto Consolidated Mining Company is hereby ordered conducted, subject to the usual pre-election and inclusion/exclusion proceedings, with the following choices:
>
> - Lepanto Capataz Union; and
>
> - No Union.
>
> The employer is directed to submit to this office within ten (10) days from receipt hereof a copy of the certified list of its capataz employees and the payroll covering the said bargaining unit for the last three (3) months prior to the issuance hereof.
>
> SO DECIDED. [6]

Lepanto appealed to the DOLE Secretary.[7]

On July 12, 2000, then DOLE Undersecretary Rosalinda Dimapilis-Baldoz (Baldoz), acting by authority of the DOLE Secretary, affirmed the ruling of Med-Arbiter Lontoc,[8] pertinently stating as follows:

> x x x x
>
> The bargaining unit sought to be represented by the appellee are the capataz employees of the appellant. There is no other labor organization of capatazes within the employer unit except herein appellant. Thus, appellant is an unorganized establishment in so far as the bargaining unit of capatazes is concerned. In accordance with the last paragraph of Section 11, Rule XI, Department Order No. 9 which provides that "in a petition filed by a legitimate labor organization involving an unorganized establishment, the Med-Arbiter shall, pursuant to Article 257 of the Code, automatically order the conduct of certification election after determining that the petition has complied with all requirements under Section 1, 2 and 4 of the same rules and that none of the grounds for dismissal thereof exists", the order for the conduct of a certification election is proper.
>
> Finally, as to the issue of whether the Med-Arbiter exhibited ignorance of the law when she directed the conduct of a certification election when appellee prays for the conduct of a consent election, let it be stressed that appellee seeks to be recognized as the sole and exclusive bargaining representative of all capataz employees of appellant. There are two modes by which this can be achieved, one is by voluntary recognition and two, by consent or certification election. Voluntary recognition under Rule X, Department Order No. 9 is a mode whereby the employer voluntarily recognizes the union as the bargaining representative of all the members in the bargaining unit sought to be represented. Consent and certification election under Rules XI and

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> XII of Department Order No. 9 is a mode whereby the members of the bargaining unit decide whether they want a bargaining representative and if so, who they want it to be. The difference between a consent election and a certification election is that the conduct of a consent election is agreed upon by the parties to the petition while the conduct of a certification election is ordered by the Med-Arbiter. In this case, the appellant withdrew its consent and opposed the conduct of the election. Therefore, the petition necessarily becomes one of a petition for certification election and the Med-Arbiter was correct in granting the same.[9]
>
> x x x x

In the ensuing certification election held on November 28, 2000, the Union garnered 109 of the 111 total valid votes cast.[10]

On the day of the certification election, however, Lepanto presented an opposition/protest.[11] Hence, on February 8, 2001, a hearing was held on Lepanto's opposition/protest. Although the parties were required in that hearing to submit their respective position papers, Lepanto later opted not to submit its position paper,[12] and contended that the issues identified during the hearing did not pose any legal issue to be addressed in a position paper.[13]

On April 26, 2001, Med-Arbiter Florence Marie A. Gacad-Ulep of DOLE-CAR rendered a decision certifying the Union as the sole and exclusive bargaining agent of all capatazes of Lepanto.[14]

On May 18, 2001, Lepanto appealed the decision of Med-Arbiter Gacad-Ulep to the DOLE Secretary.

By her Resolution dated September 17, 2002,[15] DOLE Secretary Patricia A. Sto. Tomas affirmed the decision dated April 26, 2001, holding and disposing thus:

> Appellant accused Med-Arbiter Ulep of grave abuse of discretion amounting to lack of jurisdiction based on her failure to resolve appellant's motion to modify order to submit position papers and on rendering judgment on the basis only of appellee's position paper.
>
> We deny.
>
> Section 5, Rule XXV of Department Order No. 9, otherwise known as the New Rules Implementing Book V of the Labor Code, states that "in all proceedings at all levels, incidental motions shall not be given due course, but shall remain as part of the records for whatever they may be worth when the case is decided on the merits".
>
> Further, the motion to modify order to submit position papers filed by appellant is without merit. Appellant claimed that the issues over which Med-Arbiter Ulep directed the submission of position papers were: (1) failure to challenge properly; (2) failure (especially of LEU) to participate actively in the proceedings before the decision calling for the conduct of certification election; and (3) validity of earlier arguments. According to appellant, the first issue was for appellee LCU to reply to in its position paper, the second issue was for the LEU and the third issue for appellant company to explain in their respective position paper. It was the position of appellant company that unless the parties filed their position paper on each of their respective issues, the other parties cannot discuss the issues they did not raise in the same position papers and have to await receipt of the others' position paper for their appropriate reply.
>
> Section 9, Rule XI of Department Order No. 9, which is applied with equal force in the disposition of protests on the conduct of election, states that "the Med-Arbiter shall in the same hearing direct all concerned parties, including the employer, to simultaneously submit their respective position papers within a non-extendible period of ten days". The issues as recorded in the minutes of 28 February 2001 hearing before the Med-Arbiter are clear. The parties, including appellant company were required to submit their respective positions on whether there was proper challenge of the voters, whether LEU failed to participate in the proceedings, if so, whether it should be allowed to participate at this belated stage and whether the arguments raised during the

> pre-election conferences and in the protests are valid. The parties, including appellant company were apprised of these issues and they agreed thereto. The minutes of the hearing even contained the statement that "no order will issue" and that "the parties are informed accordingly". If there is any matter that had to be clarified, appellant should have clarified the same during the said hearing and refused to file its position paper simultaneously with LCU and LEU. It appears that appellant did not do so and acquiesced to the filing of its position paper within fifteen days from the date of said hearing.
>
> Neither is there merit in appellant's contention that the Med-Arbiter resolved the protest based solely on appellee LCU's position paper. Not only did the Med-Arbiter discuss the demerits of appellant's motion to modify order to submit position papers but likewise the demerits of its protest. We do not, however, agree with the Med-Arbiter that the protest should be dismissed due to appellant's failure to challenge the individual voters during the election. We take note of the minutes of the pre-election conference on 10 November 2000, thus:
>
> "It was also agreed upon (by union and management's legal officer) that all those listed will be allowed to vote during the certification election subject to challenge by management on ground that none of them belongs to the bargaining unit". (Underscoring supplied)

It is therefore, not correct to say that there was no proper challenge made by appellant company. The challenge was already manifested during the pre-election conference, specifying that all listed voters were being challenged because they do not belong to the bargaining unit of capatazes. Likewise, the formal protest filed by appellant company on the day of the election showed its protest to the conduct of the election on the grounds that (1) none of the names submitted and included (with pay bracket 8 and 9) to vote qualifies as capataz under the five-point characterization made in 02 May 2000 decision calling for the conduct of certification election; (2) the characterization made in the 02 May 2000 decision pertains to shift bosses who constitutes another union, the Lepanto Local Staff Union; and (3) the names listed in the voters' list are members of another union, the Lepanto Employees Union. This constitutes proper challenge to the eligibility of all the voters named in the list which includes all those who cast their votes. The election officer should have not canvassed the ballots and allowed the Med-Arbiter to first determine their eligibility.

Notwithstanding the premature canvass of the votes, we note that appellant company failed to support its grounds for challenge with sufficient evidence for us to determine the validity of its claim. No job description of the challenged voters was submitted by appellant from which we can verify whether the said voters are indeed disqualified from the alleged five-point characterization made in the 02 May 2000 decision, either before the Med-Arbiter or on appeal. Neither was the job description of the shift bosses whom appellant company claims pertain to the alleged five-point characterization submitted for our perusal. The challenge must perforce fail for lack of evidence.

As to the alleged membership of appellee LCU's member with another union LEU, the issue has been resolved in the 02 May 200[0] decision of Med-Arbiter Lontoc which we affirmed on 12 July 2000.

WHEREFORE, the appeal is hereby DENIED for lack of merit and the decision of the Med-Arbiter dated 26 April 2001, certifying Lepanto Capataz Union as the sole and exclusive bargaining agent of all capataz workers of Lepanto Consolidated Mining Company, is AFFIRMED.

SO RESOLVED.[16]

Ruling of the CA

Still dissatisfied with the result, but without first filing a motion for reconsideration, Lepanto challenged in the CA the foregoing decision of the DOLE Secretary through a petition for certiorari.

On December 18, 2002, the CA dismissed Lepanto's petition for certiorari, stating in its first assailed resolution:

> Considering that the petitioner failed to file a prior motion for reconsideration of the Decision of the public respondent before instituting the present petition as mandated by Section 1 of Rule 65 of the 1997 Rules of Civil Procedure, as amended, the instant "Petition for Certiorari Under Rule 65 with Prayer for Temporary Restraining Order and Injunction" is hereby DISMISSED.
>
> Well-settled is the rule that the "filing of a petition for certiorari under Rule 65 without first moving for reconsideration of the assailed resolution generally warrants the petition's outright dismissal. As we consistently held in numerous cases, a motion for reconsideration by a concerned party is indispensable for it affords the NLRC an opportunity to rectify errors or mistakes it might have committed before resort to the courts can be had.
>
> It is settled that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against acts of public respondents. Here, the plain and adequate remedy expressly provided by law was a motion for reconsideration of the impugned resolution, based on palpable or patent errors, to be made under oath and filed within ten (10) days from receipt of the questioned resolution of the NLRC, a procedure which is jurisdictional. Further, it should be stressed that without a motion for reconsideration seasonably filed within the ten-day reglementary period, the questioned order, resolution or decision of NLRC, becomes final and executory after ten (10) calendar days from receipt thereof." (Association of Trade Unions (ATU), Rodolfo Monteclaro and Edgar Juesan vs. Hon. Commissioners Oscar N. Abella, Musib N. Buat, Leon Gonzaga, Jr., Algon Engineering Construction Corp., Alex Gonzales and Editha Yap. 323 SCRA 50).
>
> SO ORDERED.[17]

Lepanto moved to reconsider the dismissal, but the CA denied its motion for reconsideration through the second assailed resolution.[18]

Issues

Hence, this appeal by Lepanto based on the following errors, namely:

> I
> THE COURT OF APPEALS ERRED IN SUMMARILY DISMISSING THE PETITION FOR CERTIORARI ON THE GROUND THAT NO PRIOR MOTION FOR RECONSIDERATION WAS FILED. THE DECISION OF THE SECRETARY BEING FINAL AND EXECUTORY, A MOTION FOR RECONSIDERATION WAS NOT AN AVAILABLE REMEDY FOR PETITIONER.
>
> II
> ON THE MERITS, THE SECRETARY OF LABOR ACTED WITHOUT OR IN EXCESS OF JURISDICTION, [O]R WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUNG THE DECISION DATED SEPTEMBER 17, 2002, WHEN SHE DELIBERATELY IGNORED THE FACTS AND RULED IN FAVOR OF THE RESPONDENT UNION, DESPITE HER OWN FINDING THAT THERE HAD BEEN A PREMATURE CANVASS OF VOTES. [19]

Lepanto argues that a motion for reconsideration was not an available remedy due to the decision of the DOLE Secretary being already classified as final and executory under Section 15, Rule XI, Book V of Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 9, series of 1997;[20] that the Union's petition for consent election was really a certification election; that the Union failed to give a definite description of the bargaining unit sought to be represented; and that the capatazes should be considered as rank-and-file employees.

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The issues to be resolved are, firstly, whether a motion for reconsideration was a pre-requisite in the filing of its petition for certiorari; and, secondly, whether the capatazes could form their own union independently of the rank-and-file employees.

Ruling

The petition for review has no merit.

I.
The filing of the motion for reconsideration
is a pre-requisite to the filing of a petition for
certiorari to assail the decision of the DOLE Secretary
We hold to be untenable and not well taken Lepanto's submissions that: (1) a motion for reconsideration was not an available remedy from the decision of the DOLE Secretary because of Section 15, Rule XI, Book V of the Omnibus Rules Implementing the Labor Code, as amended; and (2) the ruling in National Federation of Labor v. Laguesma[21] (recognizing the remedy of certiorari against the decision of the DOLE Secretary to be filed initially in the CA) actually affirms its position that an immediate recourse to the CA on certiorari is proper even without the prior filing of a motion for reconsideration.

To start with, the requirement of the timely filing of a motion for reconsideration as a precondition to the filing of a petition for certiorari accords with the principle of exhausting administrative remedies as a means to afford every opportunity to the respondent agency to resolve the matter and correct itself if need be.[22]

And, secondly, the ruling in National Federation of Labor v. Laguesma reiterates St. Martin's Funeral Home v. National Labor Relations Commission,[23] where the Court has pronounced that the special civil action of certiorari is the appropriate remedy from the decision of the National Labor Relations Commission (NLRC) in view of the lack of any appellate remedy provided by the Labor Code to a party aggrieved by the decision of the NLRC. Accordingly, any decision, resolution or ruling of the DOLE Secretary from which the Labor Code affords no remedy to the aggrieved party may be reviewed through a petition for certiorari initiated only in the CA in deference to the principle of the hierarchy of courts.

Yet, it is also significant to note that National Federation of Labor v. Laguesma also reaffirmed the dictum issued in St. Martin's Funeral Homes v. National Labor Relations Commission to the effect that "the remedy of the aggrieved party is to timely file a motion for reconsideration as a precondition for any further or subsequent remedy, and then seasonably avail of the special civil action of certiorari under Rule 65 x x x."[24]

Indeed, the Court has consistently stressed the importance of the seasonable filing of a motion for reconsideration prior to filing the certiorari petition. In SMC Quarry 2 Workers Union-February Six Movement (FSM) Local Chapter No. 1564 v. Titan Megabags Industrial Corporation[25] and Manila Pearl Corporation v. Manila Pearl Independent Workers Union,[26] the Court has even warned that a failure to file the motion for reconsideration would be fatal to the cause of the petitioner.[27] Due to its extraordinary nature as a remedy, certiorari is to be availed of only when there is no appeal, or any plain, speedy or adequate remedy in the ordinary course of law.[28] There is no question that a motion for reconsideration timely filed by Lepanto was an adequate remedy in the ordinary course of law in view of the possibility of the Secretary of Justice reconsidering her disposition of the matter, thereby according the relief Lepanto was seeking.

Under the circumstances, Lepanto's failure to timely file a motion for reconsideration prior to filing its petition for certiorari in the CA rendered the September 17, 2002 resolution of the DOLE Secretary beyond challenge.

II.

Capatazes are not rank-and-file employees;
hence, they could form their own union

Anent the second issue, we note that Med-Arbiter Lontoc found in her Decision issued on May 2, 2000 that the capatazes were performing functions totally different from those performed by the rank-and-file employees, and that the capatazes were "supervising and instructing the miners, mackers and other rank-and-file workers under them, assess[ing] and evaluat[ing] their performance, mak[ing] regular reports and recommend[ing] new systems and procedure of work, as well as guidelines for the discipline of employees."[29] Hence, Med-Arbiter Lontoc concluded, the capatazes "differ[ed] from the rank-and-file and [could] by themselves constitute a separate bargaining unit."[30]

Agreeing with Med-Arbiter Lontoc's findings, then DOLE Undersecretary Baldoz, acting by authority of the DOLE Secretary, observed in the resolution dated July 12, 2000, thus:[31]

> The bargaining unit sought to be represented by the appellee are the capataz employees of the appellant. There is no other labor organization of capatazes within the employer unit except herein appellant. Thus, appellant is an unorganized establishment in so far as the bargaining unit of capatazes is concerned. In accordance with the last paragraph of Section 11, Rule XI, Department Order No. 9 which provides that "in a petition filed by a legitimate labor organization involving an unorganized establishment, the Med-Arbiter shall, pursuant to Article 257 of the Code, automatically order the conduct of certification election after determining that the petition has complied with all requirements under Section 1, 2 and 4 of the same rules and that none of the grounds for dismissal thereof exists", the order for the conduct of a certification election is proper.[32]

We cannot undo the affirmance by the DOLE Secretary of the correct findings of her subordinates in the DOLE, an office that was undeniably possessed of the requisite expertise on the matter in issue. In dealing with the matter, her subordinates in the DOLE fairly and objectively resolved whether the Union could lawfully seek to be the exclusive representative of the bargaining unit of capatazes in the company. Their factual findings, being supported by substantial evidence, are hereby accorded great respect and finality. Such findings cannot be made the subject of our judicial review by petition under Rule 45 of the Rules of Court, because:

> x x x [T]he office of a petition for review on certiorari under Rule 45 of the Rules of Court requires that it shall raise only questions of law. The factual findings by quasi-judicial agencies, such as the Department of Labor and Employment, when supported by substantial evidence, are entitled to great respect in view of their expertise in their respective field. Judicial review of labor cases does not go far as to evaluate the sufficiency of evidence on which the labor official's findings rest. It is not our function to assess and evaluate all over again the evidence, testimonial and documentary, adduced by the parties to an appeal, particularly where the findings of both the trial court (here, the DOLE Secretary) and the appellate court on the matter coincide, as in this case at bar. The Rule limits that function of the Court to review or revision of errors of law and not to a second analysis of the evidence. Here, petitioners would have us re-calibrate all over again the factual basis and the probative value of the pieces of evidence submitted by the Company to the DOLE, contrary to the provisions of Rule 45. Thus, absent any showing of whimsical or capricious exercise of judgment, and unless lack of any basis for the conclusions made by the appellate court may be amply demonstrated, we may not disturb such factual findings.[33]

In any event, we affirm that capatazes or foremen are not rank-and-file employees because they are an extension of the management, and as such they may influence the rank-and-file workers under them to engage in slowdowns or similar activities detrimental to the policies, interests or business objectives of the employers.[34]

WHEREFORE, the Court DENIES the petition for review for lack of merit, and AFFIRMS the resolutions the Court of Appeals promulgated on December 18, 2002 and January 31, 2003.

Petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-De Castro, Villarama, Jr., and Reyes, JJ., concur.

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[1] Rollo, pp. 23-24; penned by Associate Justice Amelita G. Tolentino, with Associate Justice Eubulo G. Verzola (retired/deceased) and Associate Justice Candido V. Rivera (retired/deceased) concurring.

[2] Id. at 25.

[3] CA rollo, pp. 21-22.

[4] Id. at 27-28.

[5] Id. at 37-40.

[6] Id. at 39-40 (bold emphasis supplied).

[7] Id. at 41-51.

[8] Id. at 53-57.

[9] Id. at 56.

[10] Id. at 18.

[11] Id. at 58.

[12] Id. at 59-61.

[13] Id.

[14] Id. at 18.

[15] Id. at 18-20.

[16] Id. at 19-20.

[17] Rollo, pp. 23-24.

[18] Id. at 25.

[19] Id. at 9.

[20] Section 15. Appeal; finality of decision.—The decision of the Med-Arbiter may be appealed to the Secretary within ten (10) days from receipt by the parties of a copy thereof, only on the grounds of violation of Section 9 hereof or of serious errors of fact or law in the resolution of a protest.

The appeal shall be under oath and shall consist of a memorandum of appeal specifically stating the grounds relied upon by the appellant with the supporting arguments and evidence. The appeal shall be deemed not filed unless accompanied by proof of service thereof to appellee. The decision of the Secretary on the appeal shall be final and executory.

Where no appeal is filed within the ten-day period, the decision shall become final and executory and the Med-Arbiter shall enter this fact into the records of the case.

[21] G.R. No. 123426, March 10, 1999, 304 SCRA 405.

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[22] Teng v. Pahagac, G.R. No. 169704, November 17, 2010, 635 SCRA 173, 185.

[23] G.R. No. 130866, September 16, 1998, 295 SCRA 494, 507-508.

[24] Id. at 500-501.

[25] G.R. No. 150761, May 19, 2004, 428 SCRA 524.

[26] G.R. No. 142960, April 15, 2005, 456 SCRA 258.

[27] SMC Quarry 2 Workers Union-February Six Movement (FSM) Local Chapter No. 1564 v. Titan Megabags Industrial Corporation, supra at 527; Manila Pearl Corporation v. Manila Pearl Independent Workers Union, id. at 262.

[28] Section 1, Rule 65, Rules of Court.

[29] CA rollo, pp. 37-40.

[30] Id.

[31] Id. at 53-57.

[32] Id. at 56.

[33]Telefunken Semiconductors Employees Union-FFW v. Court of Appeals, G.R. Nos. 143013-14, December 18, 2000, 348 SCRA 565, 579-580.

[34] Golden Farms, Inc. v. Ferrer-Calleja, G.R. No. 78755, July 19, 1989, 175 SCRA 471, 477-478.

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