

REPUBLIC OF THE PHILIPPINES REPRESENTED BY DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE), PETITIONER, VS. KAWASHIMA TEXTILE MFG., PHILIPPINES, INC., RESPONDENT.

G.R. No. 160352. July 23, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

The Republic of the Philippines assails by way of Petition for Review on Certiorari under Rule 45 of the Rules of Court, the December 13, 2002 Decision[1] of the Court of Appeals (CA), which reversed the August 18, 2000 Decision[2] of the Department of Labor and Employment (DOLE), and reinstated the May 17, 2000 Order[3] of Med-Arbiter Anastacio L. Bactin, dismissing the petition of Kawashima Free Workers Union-PTGWO Local Chapter No. 803 (KFWU) for the conduct of a certification election in Kawashima Textile Mfg. Phils., Inc. (respondent); and the October 7, 2003 CA Resolution[4] which denied the motion for reconsideration.

The relevant facts are of record.

On January 24, 2000, KFWU filed with DOLE Regional Office No. IV, a Petition for Certification Election to be conducted in the bargaining unit composed of 145 rank-and-file employees of respondent.[5] Attached to its petition are a Certificate of Creation of Local/Chapter[6] issued on January 19, 2000 by DOLE Regional Office No. IV, stating that it [KFWU] submitted to said office a Charter Certificate issued to it by the national federation Phil. Transport & General Workers Organization (PTGWO), and a Report of Creation of Local/Chapter.[7]

Respondent filed a Motion to Dismiss[8] the petition on the ground that KFWU did not acquire any legal personality because its membership of mixed rank-and-file and supervisory employees violated Article 245 of the Labor Code, and its failure to submit its books of account contravened the ruling of the Court in *Progressive Development Corporation v. Secretary, Department of Labor and Employment*. [9]

In an Order dated May 17, 2000, Med-Arbiter Bactin found KFWU's legal personality defective and dismissed its petition for certification election, thus:

We scrutinize the facts and evidences presented by the parties and arrived at a decision that at least two (2) members of [KFWU], namely: Dany I. Fernandez and Jesus R. Quinto, Jr. are supervisory employees, having a number of personnel under them. Being supervisory employees, they are prohibited under Article 245 of the Labor Code, as amended, to join the union of the rank and file employees. Dany I. Fernandez and Jesus R. Quinto, Jr., Chief Engineers of the Maintenance and Manufacturing Department, respectively, act as foremen to the line engineers, mechanics and other non-skilled workers and responsible [for] the preparation and organization of maintenance shop fabrication and schedules, inventory and control of materials and supplies and tasked to implement training plans on line engineers and evaluate the performance of their subordinates. The above-stated actual functions of Dany I. Fernandez and Jesus R. Quinto, Jr. are clear manifestation that they are supervisory employees.

x x x x

Since petitioner's members are mixture of rank and file and supervisory employees, petitioner union, at this point [in] time, has not attained the status of a legitimate labor organization. Petitioner should first exclude the supervisory employees from its membership before it can attain the status of a legitimate labor organization. The above judgment is supported by the decision of the Supreme Court in the Toyota Case[10] wherein the High Tribunal ruled:

"As respondent union's membership list contains the names of at least twenty seven (27) supervisory employees in Level Five Positions, the union could not prior to purging itself of its supervisory employee members, attain the status of a legitimate labor organization. Not being one, it cannot possess the requisite personality to file a petition for certification election." (Underscoring omitted.)

X X X X

Furthermore, the commingling of rank and file and supervisory employees in one (1) bargaining unit cannot be cured in the exclusion- inclusion proceedings [at] the pre-election conference. The above ruling is supported by the Decision of the Supreme Court in *Dunlop Slazenger (Phils.), Inc. vs. Honorable Secretary of Labor and Employment, et al.*, G.R. No. 131248 dated December 11, 1998[11] x x x.

X X X X

WHEREFORE, premises considered, the petition for certification election is hereby dismissed for lack of requisite legal status of petitioner to file this instant petition.

SO ORDERED.[12] (Emphasis supplied)

On the basis of the aforecited decision, respondent filed with DOLE Regional Office No. IV a Petition for Cancellation of Charter/Union Registration of KFWU,[13] the final outcome of which, unfortunately, cannot be ascertained from the records.

Meanwhile, KFWU appealed[14] to the DOLE which issued a Decision on August 18, 2000, the dispositive portion of which reads:

WHEREFORE, the appeal is GRANTED. The Order dated 17 May 2000 of the Med-Arbiter is REVERSED and SET ASIDE. Accordingly, let the entire 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 rank-and-file employees of Kawashima Textile Manufacturing Philippines, Inc. with the following choices:

- Kawashima Free Workers Union-PTGWO Local Chapter No. 803; and
- No union.

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

SO DECIDED.[15]

The DOLE held that Med-Arbiter Bactin's reliance on the decisions of the Court in *Toyota Motor Philippines Corporation v. Toyota Motor Philippines Corporation Labor Union*[16] and *Dunlop Slazenger, Inc. v. Secretary of Labor and Employment*[17] was misplaced, for while Article 245 declares supervisory employees ineligible for membership in a labor organization for rank-and-file employees, the provision did not state the effect of such prohibited membership on the legitimacy of the labor organization and its right to file for certification election. Neither was such mixed membership a ground for cancellation of its registration. Section 11, Paragraph II, Rule XI of Department Order No. 9 "provides for the dismissal of a petition for certification election based on lack of

legal personality of a labor organization only on the following grounds: (1) [KFWU] is not listed by the Regional Office or the Bureau of Labor Relations in its registry of legitimate labor organizations; or (2) [KFWU's] legal personality has been revoked or canceled with finality." [18] The DOLE noted that neither ground existed; on the contrary, KFWU's legal personality was well-established, for it held a certificate of creation and had been listed in the registry of legitimate labor organizations.

As to the failure of KFWU to file its books of account, the DOLE held that such omission was not a ground for revocation of union registration or dismissal of petition for certification election, for under Section 1, Rule VI of Department Order No. 9, a local or chapter like KFWU was no longer required to file its books of account. [19]

Respondent filed a Motion for Reconsideration [20] but the DOLE denied the same in its September 28, 2000 Resolution. [21]

However, on appeal by respondent, the CA rendered the December 13, 2002 Decision assailed herein, reversing the August 18, 2000 DOLE Decision, thus:

Since respondent union clearly consists of both rank and file and supervisory employees, it cannot qualify as a legitimate labor organization imbued with the requisite personality to file a petition for certification election. This infirmity in union membership cannot be corrected in the inclusion-exclusion proceedings during the pre-election conference.

Finally, contrary to the pronouncement of public respondent, the application of the doctrine enunciated in *Toyota Motor Philippines Corporation vs. Toyota Motor Philippines Corporation Labor Union* was not construed in a way that effectively denies the fundamental right of respondent union to organize and seek bargaining representation x x x.

For ignoring jurisprudential precepts on the matter, the Court finds that the Undersecretary of Labor, acting under the authority of the Secretary of Labor, acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, premises considered, the Petition is hereby GRANTED. The Decision dated 18 August 2000 of the Undersecretary of Labor, acting under the authority of the Secretary, is hereby REVERSED and SET ASIDE. The Order dated 17 May 2000 of the Med-Arbiter dismissing the petition for certification election filed by Kawashima Free Workers Union- PTGWO Local Chapter No. 803 is REINSTATED.

SO ORDERED. [22] (Emphasis supplied)

KFWU filed a Motion for Reconsideration [23] but the CA denied it.

The Republic of the Philippines (petitioner) filed the present petition to seek closure on two issues:

First, whether a mixed membership of rank-and-file and supervisory employees in a union is a ground for the dismissal of a petition for certification election in view of the amendment brought about by D.O. 9, series of 1997, which deleted the phraseology in the old rule that "[t]he appropriate bargaining unit of the rank-and-file employee shall not include the supervisory employees and/or security guards;" and

Second, whether the legitimacy of a duly registered labor organization can be collaterally attacked in a petition for a certification election through a motion to dismiss filed by an employer such as Kawashima Textile Manufacturing Phils., Inc. [24]

The petition is imbued with merit.

The key to the closure that petitioner seeks could have been Republic Act (R.A.) No. 9481. [25] Sections 8 and 9 thereof provide:

Section 8. Article 245 of the Labor Code is hereby amended to read as follows:

"Art. 245. Ineligibility of Managerial Employees to Join any Labor Organization; Right of Supervisory Employees. - Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in the collective bargaining unit of the rank-and-file employees but may join, assist or form separate collective bargaining units and/or legitimate labor organizations of their own. The rank and file union and the supervisors' union operating within the same establishment may join the same federation or national union."

Section 9. A new provision, Article 245-A is inserted into the Labor Code to read as follows:

"Art. 245-A. Effect of Inclusion as Members of Employees Outside the Bargaining Unit. - The inclusion as union members of employees outside the bargaining unit shall not be a ground for the cancellation of the registration of the union. Said employees are automatically deemed removed from the list of membership of said union." (Emphasis supplied)

Moreover, under Section 4, a pending petition for cancellation of registration will not hinder a legitimate labor organization from initiating a certification election, viz:

Sec. 4. A new provision is hereby inserted into the Labor Code as Article 238-A to read as follows:

"Art. 238-A. Effect of a Petition for Cancellation of Registration. - A petition for cancellation of union registration shall not suspend the proceedings for certification election nor shall it prevent the filing of a petition for certification election.

In case of cancellation, nothing herein shall restrict the right of the union to seek just and equitable remedies in the appropriate courts." (Emphasis supplied)

Furthermore, under Section 12 of R.A. No. 9481, employers have no personality to interfere with or thwart a petition for certification election filed by a legitimate labor organization, to wit:

Sec. 12. A new provision, Article 258-A is hereby inserted into the Labor Code to read as follows:

"Art. 258-A. Employer as Bystander. - In all cases, whether the petition for certification election is filed by an employer or a legitimate labor organization, the employer shall not be considered a party thereto with a concomitant right to oppose a petition for certification election. The employer's participation in such proceedings shall be limited to: (1) being notified or informed of petitions of such nature; and (2) submitting the list of employees during the pre-election conference should the Med- Arbiter act favorably on the petition." (Emphasis supplied)

However, R.A. No. 9481 took effect only on June 14, 2007;^[26] hence, it applies only to labor representation cases filed on or after said date.^[27] As the petition for certification election subject matter of the present petition was filed by KFWU on January 24, 2000,^[28] R.A. No. 9481 cannot apply to it. There may have been curative labor legislations^[29] that were given retrospective effect,^[30] but not the aforementioned provisions of R.A. No. 9481, for otherwise, substantive rights and interests already vested would be impaired in the process.^[31]

Instead, the law and rules in force at the time of the filing by KFWU of the petition for certification election on January 24, 2000 are R.A. No. 6715,^[32] amending Book V of Presidential Decree (P.D.) No. 442 (Labor Code),^[33] as amended, and the Rules and Regulations Implementing R.A. No. 6715,^[34] as amended by Department Order No. 9, series of 1997.^[35]

It is within the parameters of R.A. No. 6715 and the Implementing Rules that the Court will now resolve the two issues raised by petitioner.

If there is one constant precept in our labor laws - be it Commonwealth Act No. 213 (1936),^[36] R.A. No. 875 (1953),^[37] P.D. No. 442 (1974), Executive Order (E.O.) No. 111 (1986)^[38] or R.A. No. 6715 (1989) - it is that

only a legitimate labor organization may exercise the right to be certified as the exclusive representative of all the employees in an appropriate collective bargaining unit for purposes of collective bargaining.[39] What has varied over the years has been the degree of enforcement of this precept, as reflected in the shifting scope of administrative and judicial scrutiny of the composition of a labor organization before it is allowed to exercise the right of representation.

One area of contention has been the composition of the membership of a labor organization, specifically whether there is a mingling of supervisory and rank-and-file employees and how such questioned mingling affects its legitimacy.

It was in R.A. No. 875, under Section 3, that such questioned mingling was first prohibited,[40] to wit:

Sec. 3. Employees' right to self-organization. - Employees shall have the right to self-organization and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection. Individuals employed as supervisors shall not be eligible for membership in a labor organization of employees under their supervision but may form separate organizations of their own. (Emphasis supplied)

Nothing in R.A. No. 875, however, tells of how the questioned mingling can affect the legitimacy of the labor organization. Under Section 15, the only instance when a labor organization loses its legitimacy is when it violates its duty to bargain collectively; but there is no word on whether such mingling would also result in loss of legitimacy. Thus, when the issue of whether the membership of two supervisory employees impairs the legitimacy of a rank-and-file labor organization came before the Court En Banc in *Lopez v. Chronicle Publication Employees Association*,[41] the majority pronounced:

It may be observed that nothing is said of the effect of such ineligibility upon the union itself or on the status of the other qualified members thereof should such prohibition be disregarded. Considering that the law is specific where it intends to divest a legitimate labor union of any of the rights and privileges granted to it by law, the absence of any provision on the effect of the disqualification of one of its organizers upon the legality of the union, may be construed to confine the effect of such ineligibility only upon the membership of the supervisor. In other words, the invalidity of membership of one of the organizers does not make the union illegal, where the requirements of the law for the organization thereof are, nevertheless, satisfied and met.[42] (Emphasis supplied)

Then the Labor Code was enacted in 1974 without reproducing Sec. 3 of R.A. No. 875. The provision in the Labor Code closest to Sec. 3 is Article 290,[43] which is deafeningly silent on the prohibition against supervisory employees mingling with rank-and-file employees in one labor organization. Even the Omnibus Rules Implementing Book V of the Labor Code[44] (Omnibus Rules) merely provides in Section 11, Rule II, thus:

Sec. 11. Supervisory unions and unions of security guards to cease operation. - All existing supervisory unions and unions of security guards shall, upon the effectivity of the Code, cease to operate as such and their registration certificates shall be deemed automatically cancelled. However, existing collective agreements with such unions, the life of which extends beyond the date of effectivity of the Code shall be respected until their expiry date insofar as the economic benefits granted therein are concerned.

Members of supervisory unions who do not fall within the definition of managerial employees shall become eligible to join or assist the rank and file organization. The determination of who are managerial employees and who are not shall be the subject of negotiation between representatives of supervisory union and the employer. If no agreement is reached between the parties, either or both of them may bring the issue to the nearest Regional Office for determination. (Emphasis supplied)

The obvious repeal of the last clause of Sec. 3, R.A. No. 875 prompted the Court to declare in *Bulletin v. Sanchez*[45] that supervisory employees who do not fall under the category of managerial employees may join or assist in the formation of a labor organization for rank-and-file employees, but they may not form their own labor organization.

While amending certain provisions of Book V of the Labor Code, E.O. No. 111 and its implementing rules[46] continued to recognize the right of supervisory employees, who do not fall under the category of managerial employees, to join a rank- and-file labor organization.[47]

Effective 1989, R.A. No. 6715 restored the prohibition against the questioned mingling in one labor organization, viz:

Sec. 18. Article 245 of the same Code, as amended, is hereby further amended to read as follows

"Art. 245. Ineligibility of managerial employees to join any labor organization; right of supervisory employees. 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" (Emphasis supplied)

Unfortunately, just like R.A. No. 875, R.A. No. 6715 omitted specifying the exact effect any violation of the prohibition would bring about on the legitimacy of a labor organization.

It was the Rules and Regulations Implementing R.A. No. 6715 (1989 Amended Omnibus Rules) which supplied the deficiency by introducing the following amendment to Rule II (Registration of Unions):

Sec. 1. Who may join unions. - x x x Supervisory employees and security guards 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; Provided, that those supervisory employees who are included in an existing rank-and-file bargaining unit, upon the effectivity of Republic Act No. 6715, shall remain in that unit x x x. (Emphasis supplied)

and Rule V (Representation Cases and Internal-Union Conflicts) of the Omnibus Rules, viz:

Sec. 1. Where to file. - A petition for certification election may be filed with the Regional Office which has jurisdiction over the principal office of the employer. The petition shall be in writing and under oath.

Sec. 2. Who may file. - Any legitimate labor organization or the employer, when requested to bargain collectively, may file the petition.

The petition, when filed by a legitimate labor organization, shall contain, among others:

x x x x

(c) description of the bargaining unit which shall be the employer unit unless circumstances otherwise require; and provided further, that the appropriate bargaining unit of the rank-and-file employees shall not include supervisory employees and/or security guards. (Emphasis supplied)

By that provision, any questioned mingling will prevent an otherwise legitimate and duly registered labor organization from exercising its right to file a petition for certification election.

Thus, when the issue of the effect of mingling was brought to the fore in *Toyota*,[48] the Court, citing Article 245 of the Labor Code, as amended by R.A. No. 6715, held:

Clearly, based on this provision, a labor organization composed of both rank-and-file and supervisory employees is no labor organization at all. It cannot, for any guise or purpose, be a legitimate labor organization. Not being one, an organization which carries a mixture of rank-and-file and supervisory

employees cannot possess any of the rights of a legitimate labor organization, including the right to file a petition for certification election for the purpose of collective bargaining. It becomes necessary, therefore, anterior to the granting of an order allowing a certification election, to inquire into the composition of any labor organization whenever the status of the labor organization is challenged on the basis of Article 245 of the Labor Code.

x x x x

In the case at bar, as respondent union's membership list contains the names of at least twenty-seven (27) supervisory employees in Level Five positions, the union could not, prior to purging itself of its supervisory employee members, attain the status of a legitimate labor organization. Not being one, it cannot possess the requisite personality to file a petition for certification election.[49] (Emphasis supplied)

In *Dunlop*,[50] in which the labor organization that filed a petition for certification election was one for supervisory employees, but in which the membership included rank-and-file employees, the Court reiterated that such labor organization had no legal right to file a certification election to represent a bargaining unit composed of supervisors for as long as it counted rank-and-file employees among its members.[51]

It should be emphasized that the petitions for certification election involved in *Toyota* and *Dunlop* were filed on November 26, 1992 and September 15, 1995, respectively; hence, the 1989 Rules was applied in both cases.

But then, on June 21, 1997, the 1989 Amended Omnibus Rules was further amended by Department Order No. 9, series of 1997 (1997 Amended Omnibus Rules). Specifically, the requirement under Sec. 2(c) of the 1989 Amended Omnibus Rules - that the petition for certification election indicate that the bargaining unit of rank-and-file employees has not been mingled with supervisory employees - was removed. Instead, what the 1997 Amended Omnibus Rules requires is a plain description of the bargaining unit, thus:

Rule XI

Certification Elections

x x x x

Sec. 4. Forms and contents of petition. - The petition shall be in writing and under oath and shall contain, among others, the following: x x x (c) The description of the bargaining unit.[52]

In *Pagpalain Haulers, Inc. v. Trajano*,[53] the Court had occasion to uphold the validity of the 1997 Amended Omnibus Rules, although the specific provision involved therein was only Sec. 1, Rule VI, to wit:

Sec. 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; and (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 the Treasurer of the local/chapter and attested to by its President.

which does not require that, for its creation and registration, a local or chapter submit a list of its members.

Then came *Tagaytay Highlands Int'l. Golf Club, Inc. v. Tagaytay Highlands Employees Union-PGTWO*[54] in which the core issue was whether mingling affects the legitimacy of a labor organization and its right to file a petition for certification election. This time, given the altered legal milieu, the Court abandoned the view in

Toyota and Dunlop and reverted to its pronouncement in Lopez that while there is a prohibition against the mingling of supervisory and rank-and-file employees in one labor organization, the Labor Code does not provide for the effects thereof.[55] Thus, the Court held that after a labor organization has been registered, it may exercise all the rights and privileges of a legitimate labor organization. Any mingling between supervisory and rank-and-file employees in its membership cannot affect its legitimacy for that is not among the grounds for cancellation of its registration, unless such mingling was brought about by misrepresentation, false statement or fraud under Article 239 of the Labor Code.[56]

In *San Miguel Corp. (Mandaue Packaging Products Plants) v. Mandaue Packing Products Plants-San Miguel Packaging Products-San Miguel Corp. Monthlies Rank-and-File Union-FFW*,[57] the Court explained that since the 1997 Amended Omnibus Rules does not require a local or chapter to provide a list of its members, it would be improper for the DOLE to deny recognition to said local or chapter on account of any question pertaining to its individual members.[58]

More to the point is *Air Philippines Corporation v. Bureau of Labor Relations*,[59] which involved a petition for cancellation of union registration filed by the employer in 1999 against a rank-and-file labor organization on the ground of mixed membership:[60] the Court therein reiterated its ruling in *Tagaytay Highlands* that the 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 of the Labor Code.[61]

All said, while the latest issuance is R.A. No. 9481, the 1997 Amended Omnibus Rules, as interpreted by the Court in *Tagaytay Highlands*, *San Miguel* and *Air Philippines*, had already set the tone for it. *Toyota and Dunlop* no longer hold sway in the present altered state of the law and the rules.

Consequently, the Court reverses the ruling of the CA and reinstates that of the DOLE granting the petition for certification election of KFWU.

Now to the second issue of whether an employer like respondent may collaterally attack the legitimacy of a labor organization by filing a motion to dismiss the latter's petition for certification election.

Except when it is requested to bargain collectively,[62] an employer is a mere bystander to any petition for certification election; such proceeding is non-adversarial and merely investigative, for the purpose thereof is to determine which organization will represent the employees in their collective bargaining with the employer.[63] The choice of their representative is the exclusive concern of the employees; the employer cannot have any partisan interest therein; it cannot interfere with, much less oppose, the process by filing a motion to dismiss or an appeal from it;[64] not even a mere allegation that some employees participating in a petition for certification election are actually managerial employees will lend an employer legal personality to block the certification election.[65] The employer's only

right in the proceeding is to be notified or informed thereof.[66]

The amendments to the Labor Code and its implementing rules have buttressed that policy even more.

WHEREFORE, the petition is GRANTED. The December 13, 2002 Decision and October 7, 2003 Resolution of the Court of Appeals and the May 17, 2000 Order of Med-Arbitrator Anastacio L. Bactin are REVERSED and SET ASIDE, while the August 18, 2000 Decision and September 28, 2000 Resolution of the Department of Labor and Employment are REINSTATED.

No costs.

SO ORDERED.

Quisumbing, Ynares-Santiago, (Chairperson), Nachura, and Reyes, JJ. concur.

* In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 508 dated June 25, 2008.

[1] Penned by Associate Justice Rebecca de Guia-Salvador and concurred in by Associate Justices Rodrigo V. Cosico and Regalado E. Maambong; rollo, p. 25.

[2] Id. at 53.

[3] Id. at 43.

[4] Id. at 37.

[5] CA rollo, p. 66.

[6] Id. at 67.

[7] Id. at 68.

[8] Id. at 61-65.

[9] G.R. No. 96425, February 4, 1992, 205 SCRA 802.

[10] Toyota Motor Philippines Corporation v. Toyota Motor Philippines Corporation Labor Union, 335 Phil. 1045 (1997).

[11] 360 Phil. 306 (1998).

[12] CA rollo, pp. 29-30.

[13] Id. at 70.

[14] Id. at 49.

[15] Rollo, p. 55.

[16] Supra note 10.

[17] Supra note 11.

[18] Rollo, p. 54.

[19] Id.

[20] CA rollo, p. 39.

[21] Id. at 36.

[22] Rollo, pp. 33-34.

[23] CA rollo, p. 213.

[24] Rollo, p. 14.

[25] An Act Strengthening the Workers' Constitutional Right to Self-Organization, Amending for the Purpose Presidential Decree No. 442, as Amended, Otherwise Known as the Labor Code of the Philippines, which lapsed

into law on May 25, 2007 without the signature of the President, in accordance with Article VI, Section 27 (1) of the Constitution.

[26] Sec. 15. Effectivity Clause. - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two newspapers of general circulation.

R.A. No. 9481 was published in Malaya and Business Mirror, two newspapers of general circulation, on May 30, 2007, and took effect 15 days thereafter, or on June 14, 2007. However, it is noted that DOLE has not issued implementing rules.

[27] San Miguel Corporation Employees Union-Phil. Transport and General Workers Organization v. San Miguel Packaging Products Employees Union- Pambansang Diwa ng Manggagawang Pilipino, G.R. No. 171153, September 12, 2007, 533 SCRA 125.

[28] Supra note 5.

[29] Of retroactive effect are: a) laws expressly made retrospective in application, except in cases of ex post facto laws (United States. v. Diaz Conde, 42 Phil. 766 [1922]) or impairment of obligation of contract (Asiatic Petroleum, Co. v. Llanes, 49 Phil. 466 [1926]); b) procedural laws, prescribing rules and forms of procedures of enforcing rights or obtaining redress for their invasion (Romero v. Court of Appeals, G.R. No. 142803, November 20, 2007, 537 SCRA 643; Subido, Jr. v. Sandiganbayan, 334 Phil. 346 [1997]); (c) curative statutes which cure errors and irregularities and validate judicial or administrative proceedings, acts of public officers, or private deeds and contracts that otherwise would not produce their intended consequences due to some statutory disability or failure to comply with technical rules (Government of the Philippine Islands v. Municipality of Binalonan, 32 Phil. 634 [1915]); (e) laws interpreting others; (f) laws creating new rights (Bona v. Briones, 38 Phil. 276 [1918]); and (g) penal statutes insofar as they favor the accused who is not a habitual criminal (Article 22, Revised Penal Code).

[30] Enriquez Security Services, Inc. v. Cabotaje, G.R. No. 147993, July 21, 2006, 496 SCRA 169; Rufina Patis v. Alusitain, 478 Phil. 544 (2004). See also Batong Buhay Gold Mines, Inc. v. Dela Serna, 370 Phil. 872 (1999), citing Briad Agro Development v. Dela Cerna, G.R. No. 82805, November 9, 1989, 179 SCRA 269.

[31] Land Bank of the Philippines v. De Leon, 447 Phil. 495, 503 (2003).

[32] An Act to Extend Protection to Labor, Strengthen the Constitutional Rights of Workers to Self-Organization, Collective Bargaining and Peaceful Concerted Activities, and Foster Industrial Peace and Harmony, effective March 21, 1989.

[33] The Labor Code of the Philippines, effective November 1, 1974.

[34] Approved on May 24, 1989.

[35] Effective June 21, 1997.

[36] An Act to Define and Regulate Legitimate Labor Organizations; approved on November 21, 1936.

[37] An Act Proposing Industrial Peace and Other Purposes, effective June 17, 1953.

[38] Amending Certain Provisions of the Labor Code of the Philippines, as amended; effective March 3, 1997, but applied retroactively in Briad Agro Development v. Dela Cerna, supra note 28.

[39] Commonwealth Act No. 213 provides:

Sec. 2. All associations which are duly organized and registered with, and permitted to operate by, the

Department of Labor, shall have the right to collective bargaining with employers x x x. The registration of, and the issuance of a permit to any legitimate labor organization shall entitle it to all the rights and privileges granted by law.

R.A. No. 875 provides:

Sec. 24. Rights of Labor Organizations. -- A legitimate labor organization shall have the right -- (a) To act as the representative of its members for the purpose of collective bargaining, pursuant to section three of this Act; (b) To be certified as the exclusive representative of the employees in a collective bargaining unit, as provided in section twelve (a) x x x.

P.D. No. 442 as amended by E.O. No. 111 and, thereafter, R.A. No. 6715, provides:

Section 17. Article 242 of the same Code is amended to read as follows:

"Article 242. Rights of legitimate labor organizations. - A legitimate labor organization shall have the right: -(a) To act as the representative of its members for the purpose of collective bargaining; -(b) To be certified as the exclusive representative of all the employees in an appropriate collective bargaining unit for purposes of collective bargaining x x x.

[40] Commonwealth Act No. 213 contained no provision on the matter.

[41] 120 Phil. 1490 (1964).

[42] Id. at 1494.

[43] Art. 290. Coverage and employees' rights to self-organization. - All persons employed in commercial, industrial, agricultural, religious, charitable, educational institutions, or enterprises, whether engaged for profit or not, shall have the right to self-organization and to form, join or assist labor organizations for purposes of collective bargaining.

After several amendments and renumbering of P.D. No. 442, Art. 290 thereof later became Art. 243.

[44] Approved on January 19, 1975.

[45] 228 Phil. 600, 611 (1986). See also *United Pepsi-Cola Supervisory Union v. Laguesma*, 351 Phil. 244, 279 (1998).

[46] Approved on March 26, 1987.

[47] Section 11, Rule II, Book V of the Rules and Regulations Implementing the Labor Code remained untouched.

[48] Supra note 10.

[49] Id. at 1053, 1055.

[50] Supra note 11.

[51] Id. at 312.

[52] As further amended by DOLE Department Order No. 40 s. 2003, approved on February 14, 2003, the Omnibus Rules now requires the following documents to support a petition for certification election:

Section 4. Form and contents of petition. - The petition shall be in writing, verified under oath by the president of petitioning labor organization. Where the petition is filed by a federation or national union, it shall verified under

oath by the president or its duly authorized representative. The petition shall contain the following: (a) the name of petitioner, its address, and affiliation if appropriate, the date and number of its certificate of registration. If the petition is filed by a federation or national union, the date and number of the certificate of registration or certificate of creation of chartered local; (b) the name, address and nature of employer's business; (c) the description of the bargaining unit; (d) the approximate number of employees in the bargaining unit; (e) the names and addresses of other legitimate labor unions in the bargaining unit; (f) a statement indicating any of the following circumstances: 1) that the bargaining unit is unorganized or that there is no registered collective bargaining agreement covering the employees in the bargaining unit; 2) if there exists a duly registered collective bargaining agreement, that the petition is filed within the sixty-day freedom period of such agreement; or 3) if another union had been previously recognized voluntarily or certified in a valid certification, consent or run-off election, that the petition is filed outside the one-year period from entry of voluntary recognition or conduct of certification or run-off election and no appeal is pending thereon; (g) in an organized establishment, the signature of at least twenty-five percent (25%) of all employees in the appropriate bargaining unit shall be attached to the petition at the time of its filing; and (h) other relevant facts.

[53] 369 Phil. 617, 624 (1999).

[54] 443 Phil. 841 (2003).

[55] *Id.* at 850.

[56] *Id.* at 853-854.

[57] G.R. No. 152356, August 16, 2005, 467 SCRA 107.

[58] *Id.* at 124. Note that while the issue of mingling was raised, the Court saw no point to resolve it in said case for the DOLE had settled the same with finality in favor of the labor organization, *id.* at 132.

[59] G.R. No. 155395, June 22, 2006, 492 SCRA 243.

[60] *Id.* at 246.

[61] *Id.* at 249-250; citing the minute resolution *SPI Technologies v. Department of Labor and Employment*, G.R. No. 137422, March 8, 1999.

[62] Art. 258. When an employer may file petition. - When requested to bargain collectively, an employer may petition the Bureau for an election. If there is no existing certified collective bargaining agreement in the unit, the Bureau shall, after hearing, order a certification election.

[63] *Belyca Corp. v. Ferrer-Calleja*, G.R. No. L-77395, November 29, 1988, 168 SCRA 184, 197.

[64] *Laguna Autorparts Manufacturing Corporation v. Office of the Secretary, Department of Labor and Employment*, G.R. No. 157146, April 29, 2005, 457 SCRA 730, 742.

[65] *Philippine Telegraph and Telephone Corp. v. Laguesma*, G.R. No. 101730, June 17, 1993, 223 SCRA 452, 456.

[66] *SMC Quarry 2 Workers Union-February Six Movement (FSM) Local Chapter No. 1564 v. Titan Megabags Industrial Corporation*, G.R. No. 150761, May 19, 2004, 428 SCRA 524, 528; *San Miguel Foods, Inc. v. Laguesma*, 331 Phil. 362, 374 (1996).

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