

EAGLE RIDGE GOLF & COUNTRY CLUB, PETITIONER, VS. COURT OF APPEALS AND EAGLE RIDGE EMPLOYEES UNION (EREU), RESPONDENTS.

G.R. No. 178989. March 18, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

In this petition for certiorari under Rule 65, Eagle Ridge Golf & Country Club (Eagle Ridge) assails and seeks to nullify the Resolutions of the Court of Appeals (CA) dated April 27, 2007[1] and June 6, 2007,[2] issued in CA-G.R. SP No. 98624, denying a similar recourse petitioner earlier interposed to set aside the December 21, 2006 Decision[3] of the Bureau of Labor Relations (BLR), as reiterated in a Resolution[4] of March 7, 2007.

Petitioner Eagle Ridge is a corporation engaged in the business of maintaining golf courses. It had, at the end of CY 2005, around 112 rank-and-file employees. The instant case is an off-shot of the desire of a number of these employees to organize themselves as a legitimate labor union and their employer's opposition to their aspiration.

The Facts

On December 6, 2005, at least 20% of Eagle Ridge's rank-and-file employees--the percentage threshold required under Article 234(c) of the Labor Code for union registration--had a meeting where they organized themselves into an independent labor union, named "Eagle Ridge Employees Union" (EREU or Union),[5] elected a set of officers,[6] and ratified[7] their constitution and by-laws.[8]

On December 19, 2005, EREU formally applied for registration[9] and filed BLR Reg. Form No. I-LO, s. 1998[10] before the Department of Labor and Employment (DOLE) Regional Office IV (RO IV). In time, DOLE RO IV granted the application and issued EREU Registration Certificate (Reg. Cert.) No. RO400-200512-UR-003.

The EREU then filed a petition for certification election in Eagle Ridge Golf & Country Club, docketed as Case No. RO400-0601-RU-002. Eagle Ridge opposed this petition,[11] followed by its filing of a petition for the cancellation[12] of Reg. Cert. No. RO400-200512-UR-003. Docketed as RO400-0602-AU-003, Eagle Ridge's petition ascribed misrepresentation, false statement, or fraud to EREU in connection with the adoption of its constitution and by-laws, the numerical composition of the Union, and the election of its officers.

Going into specifics, Eagle Ridge alleged that the EREU declared in its application for registration having 30 members, when the minutes of its December 6, 2005 organizational meeting showed it only had 26 members. The misrepresentation was exacerbated by the discrepancy between the certification issued by the Union secretary and president that 25 members actually ratified the constitution and by-laws on December 6, 2005 and the fact that 26 members affixed their signatures on the documents, making one signature a forgery.

Finally, Eagle Ridge contended that five employees who attended the organizational meeting had manifested the desire to withdraw from the union. The five executed individual affidavits or Sinumpaang Salaysay[13] on

February 15, 2006, attesting that they arrived late at said meeting which they claimed to be drinking spree; that they did not know that the documents they signed on that occasion pertained to the organization of a union; and that they now wanted to be excluded from the Union. The withdrawal of the five, Eagle Ridge maintained, effectively reduced the union membership to 20 or 21, either of which is below the mandatory minimum 20% membership requirement under Art. 234(c) of the Labor Code. Reckoned from 112 rank-and-file employees of Eagle Ridge, the required number would be 22 or 23 employees.

As a counterpoint, EREU, in its Comment,[14] argued in gist:

- 1) the petition for cancellation was procedurally deficient as it does not contain a certification against forum shopping and that the same was verified by one not duly authorized by Eagle Ridge's board;
- 2) the alleged discrepancies are not real for before filing of its application on December 19, 2005, four additional employees joined the union on December 8, 2005, thus raising the union membership to 30 members as of December 19, 2005;
- 3) the understatement by one member who ratified the constitution and by-laws was a typographical error, which does not make it either grave or malicious warranting the cancellation of the union's registration;
- 4) the retraction of 5 union members should not be given any credence for the reasons that: (a) the sworn statements of the five retracting union members sans other affirmative evidence presented hardly qualify as clear and credible evidence considering the joint affidavits of the other members attesting to the orderly conduct of the organizational meeting; (b) the retracting members did not deny signing the union documents; (c) following, *Belyca Corporation v. Ferrer-Calleja*[15] and *Oriental Tin Can Labor Union v. Secretary of Labor and Employment*,[16] it can be presumed that "duress, coercion or valuable consideration" was brought to bear on the retracting members; and (d) citing *La Suerte Cigar and Cigarette Factory v. Director of Bureau of Labor Relations*,[17] *Belyca Corporation* and *Oriental Tin Can Labor Union*, where the Court ruled that "once the required percentage requirement has been reached, the employees' withdrawal from union membership taking place after the filing of the petition for certification election will not affect the petition," it asserted the applicability of said ruling as the petition for certification election was filed on January 10, 2006 or long before February 15, 2006 when the affidavits of retraction were executed by the five union members, thus contending that the retractions do not affect nor be deemed compelling enough to cancel its certificate of registration.

The Union presented the duly accomplished union membership forms[18] dated December 8, 2005 of four additional members. And to rebut the allegations in the affidavits of retraction of the five union members, it presented the *Sama-Samang Sinumpaang Salaysay*[19] dated March 20, 2006 of eight union members; another *Sama-Samang Sinumpaang Salaysay*,[20] also bearing date March 20, 2006, of four other union members; and the *Sworn Statement*[21] dated March 16, 2006 of the Union's legal counsel, Atty. Domingo T. Añonuevo. These affidavits attested to the orderly and proper proceedings of the organizational meeting on December 6, 2005.

In its Reply,[22] Eagle Ridge reiterated the grounds it raised in its petition for cancellation and asserted further that the four additional members were fraudulently admitted into the Union. As Eagle Ridge claimed, the applications of the four neither complied with the requirements under Section 2, Art. IV of the union's constitution and by-laws nor were they shown to have been duly received, issued receipts for admission fees, processed with recommendation for approval, and approved by the union president.

Moreover, Eagle Ridge presented another *Sinumpaang Salaysay*[23] of retraction dated March 15, 2006 of another union member. The membership of EREU had thus been further reduced to only 19 or 20. This same member was listed in the first *Sama-Samang Sinumpaang Salaysay*[24] presented by the Union but did not sign it.

The Ruling of the DOLE Regional Director

After due proceedings, the DOLE Regional Director, Region IV-A, focusing on the question of misrepresentation, issued on April 28, 2006 an Order^[25] finding for Eagle Ridge, its petition to cancel Reg. Cert. No. RO400-200512-UR-003 being granted and EREU being delisted from the roster of legitimate labor organizations.

Aggrieved, the Union appealed to the BLR, the recourse docketed as BLR A-C-30-5-31-06 (Case No. RO400-0602-AU-003).

The Ruling of the BLR

Initially, the BLR, then headed by an Officer-in-Charge (OIC), affirmed^[26] the appealed order of the DOLE Regional Director.

Undeterred by successive set backs, EREU interposed a motion for reconsideration, contending that:

- 1) Contrary to the ruling of the BLR OIC Director, a certificate of non-forum shopping is mandatory requirement, under Department Order No. (DO) 40-03 and the Rules of Court, non-compliance with which is a ground to dismiss a petition for cancellation of a certificate of registration;
- 2) It was erroneous for both the Regional Director and the BLR OIC Director to give credence to the retraction statements of union members which were not presented for reaffirmation during any of the hearings of the case, contrary to the requirement for the admission of such evidence under Sec. 11, Rule XI of DO 40-03.

In a Decision dated December 21, 2006, the BLR, now headed by Director Rebecca C. Chato, set aside the July 28, 2006 order of the BLR OIC Director, disposing as follows:

WHEREFORE, the motion for reconsideration is hereby GRANTED and our Resolution dated 28 July 2006 is hereby VACATED. Accordingly, the Eagle Ridge Employees Union (EREU) shall remain in the roster of legitimate organizations.

In finding for the Union, the BLR Director eschewed procedural technicalities. Nonetheless, she found as without basis allegations of misrepresentation or fraud as ground for cancellation of EREU's registration.

In turn aggrieved, Eagle Ridge sought but was denied reconsideration per the BLR's Resolution dated March 7, 2007.

Eagle Ridge thereupon went to the CA on a petition for certiorari.

The Ruling of the CA

On April 27, 2007, the appellate court, in a terse two-page Resolution,^[27] dismissed Eagle Ridge's petition for being deficient, as:

- the questioned [BLR] Decision dated December 21, 2006 and the Resolution dated March 7, 2007 Resolution [appended to the petition] are mere machine copies; and
- the verification and certification of non-forum shopping was subscribed to by Luna C. Piezas on her representation as the legal counsel of the petitioner, but sans [the requisite] Secretary's Certificate or Board Resolution authorizing her to execute and sign the same.

The CA later denied, in its second assailed resolution, Eagle Ridge's motion for reconsideration, albeit the latter had submitted a certificate to show that its legal counsel has been authorized, per a board resolution, to represent the corporation.

The Issues

Eagle Ridge is now before us via this petition for certiorari on the submissions that:

I.

[THE CA] COMMITTED SERIOUS ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING THE COMPANY'S PETITION FOR CERTIORARI AND DENYING ITS MOTION FOR RECONSIDERATION CONSIDERING THAT THE COMPANY'S PREVIOUS COUNSEL WAS AUTHORIZED TO REPRESENT THE COMPANY IN THE PETITION FOR CERTIORARI FILED BEFORE THE [CA];

II.

IN ORDER NOT TO FURTHER PREJUDICE THE COMPANY, IT IS RESPECTFULLY SUBMITTED THAT THIS HONORABLE COURT COULD TAKE COGNIZANCE OF THE MERITS OF THIS CASE AND RESOLVE THAT BASED ON THE EVIDENCE ON RECORD, THERE WAS FRAUD, MISREPRESENTATION AND/OR FALSE STATEMENT WHICH WARRANT THE CANCELLATION OF CERTIFICATE OF REGISTRATION OF EREU.[28]

The Court's Ruling

We dismiss the petition.

Procedural Issue: Lack of Authority

Certiorari is an extraordinary, prerogative remedy and is never issued as a matter of right.[29] Accordingly, the party who seeks to avail of it must strictly observe the rules laid down by law.[30]

Petitions for certiorari under Rule 65 of the Rules of Court require a "sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46." [31] Sec. 3, paragraphs 4 and 6 of Rule 46 pertinently provides:

SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. -- x x x x

x x x x

x x x x

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any action involving the same issues in the Supreme Court, the Court of Appeals x x x, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same x x x.

x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Emphasis supplied.)

Evidently, the Rules requires the petitioner, not his counsel, to sign under oath the requisite certification against non-forum shopping. Such certification is a peculiar personal representation on the part of the principal party, an assurance to the court that there are no other pending cases involving basically the same parties, issues, and cause of action.[32]

In the instant case, the sworn verification and certification of non-forum shopping in the petition for certiorari of Eagle Ridge filed before the CA carried the signature of its counsel without the requisite authority.

Eagle Ridge tried to address its faux pas by submitting its board secretary's Certificate[33] dated May 15, 2007, attesting to the issuance on May 10, 2007 of Board Resolution No. ERGCCI 07/III-01 that authorized its counsel of record, Atty. Luna C. Piezas, to represent it before the appellate court.

The CA, however, rejected Eagle Ridge's virtual plea for the relaxation of the rules on the signing of the verification and certification against forum shopping, observing that the board resolution adverted to was approved after Atty. Piezas has signed and filed for Eagle Ridge the petition for certiorari.

The appellate court's assailed action is in no way tainted with grave abuse of discretion, as Eagle Ridge would have this Court believed. Indeed, a certification of non-forum shopping signed by counsel without the proper authorization is defective and constitutes a valid cause for dismissal of the petition.[34]

The submission of the board secretary's certificate through a motion for reconsideration of the CA's decision dismissing the petition for certiorari may be considered a substantial compliance with the Rules of Court.[35] Yet, this rule presupposes that the authorizing board resolution, the approval of which is certified to by the secretary's certification, was passed within the reglementary period for filing the petition. This particular situation does not, however, obtain under the premises. The records yield the following material dates and incidents: Eagle Ridge received the May 7, 2007 resolution of the BLR Director on March 9, 2007, thus giving it 60 days or up to May 8, 2007 to file a petition for certiorari, as it in fact filed its petition on April 18, 2007 before the CA. The authorization for its counsel, however, was only issued in a meeting of its board on May 10, 2007 or a couple of days beyond the 60-day reglementary period referred to in filing a certiorari action. Thus, there was no substantial compliance with the Rules.

As with most rules of procedure, however, exceptions are invariably recognized and the relaxation of procedural rules on review has been effected to obviate jeopardizing substantial justice.[36] This liberality stresses the importance of review in our judicial grievance structure to accord every party litigant the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities.[37] But concomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.[38]

To us, Eagle Ridge has not satisfactorily explained its failure to comply. It may be true, as Eagle Ridge urges, that its counsel's authority to represent the corporation was never questioned before the DOLE regional office and agency. But EREU's misstep could hardly lend Eagle Ridge comfort. And obviously, Eagle Ridge and its counsel erred in equating the latter's representation as legal counsel with the authority to sign the verification and the certificate of non-forum shopping in the former's behalf. We note that the authority to represent a client before a court or quasi-judicial agency does not require an authorizing board resolution, as the counsel-client relationship is presumed by the counsel's representation by the filing of a pleading on behalf of the client. In filing a pleading, the counsel affixes his signature on it, but it is the client who must sign the verification and the certification against forum shopping, save when a board resolution authorizes the former to sign so.

It is entirely a different matter for the counsel to sign the verification and the certificate of non-forum shopping. The attestation or certification in either verification or certification of non-forum shopping requires the act of the principal party. As earlier indicated, Sec. 3 of Rule 46 exacts this requirement; so does the first paragraph of Sec. 5 of Rule 7 pertinently reading:

SEC. 5. Certification against forum shopping. -- The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed. (Emphasis added.)

It is, thus, clear that the counsel is not the proper person to sign the certification against forum shopping. If, for any reason, the principal party cannot sign the petition, the one signing on his behalf must have been duly authorized.[39]

In addition, Eagle Ridge maintains that the submitted board resolution, albeit passed after the filing of the petition was filed, should be treated as a ratificatory medium of the counsel's act of signing the sworn certification of non-forum shopping.

We are not inclined to grant the desired liberality owing to Eagle Ridge's failure to sufficiently explain its failure to follow the clear rules.

If for the foregoing considerations alone, the Court could very well dismiss the instant petition. Nevertheless, the Court will explore the merits of the instant case to obviate the inequity that might result from the outright denial of the petition.

Substantive Issue: No Fraud in the Application

Eagle Ridge cites the grounds provided under Art. 239(a) and (c) of the Labor Code for its petition for cancellation of the EREU's registration. On the other hand, the Union asserts bona fide compliance with the registration requirements under Art. 234 of the Code, explaining the seeming discrepancies between the number of employees who participated in the organizational meeting and the total number of union members at the time it filed its registration, as well as the typographical error in its certification which understated by one the number of union members who ratified the union's constitution and by-laws.

Before their amendment by Republic Act No. 9481[40] on June 15, 2007, the then governing Art. 234 (on the requirements of registration of a labor union) and Art. 239 (on the grounds for cancellation of union registration) of the Labor Code respectively provided as follows:

ART. 234. REQUIREMENTS OF REGISTRATION. -- Any applicant labor organization, association or group of unions or workers shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:

(a) Fifty pesos (P50.00) registration fee;

(b) The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of workers who participated in such meetings;

(c) The names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate;

x x x x

(e) Four copies (4) of the constitution and by-laws of the applicant union, minutes of its adoption or ratification and the list of the members who participated in it.[41]

x x x x

ART. 239. GROUNDS FOR CANCELLATION OF UNION REGISTRATION. -- The following shall constitute grounds for cancellation of union registration:

(a) Misrepresentation, false statements or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the 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.[42] (Emphasis supplied.)

A scrutiny of the records fails to show any misrepresentation, false statement, or fraud committed by EREU to merit cancellation of its registration.

First. The Union submitted the required documents attesting to the facts of the organizational meeting on December 6, 2005, the election of its officers, and the adoption of the Union's constitution and by-laws. It submitted before the DOLE Regional Office with its Application for Registration and the duly filled out BLR Reg. Form No. I-LO, s. 1998, the following documents, to wit:

(a) the minutes of its organizational meeting[43] held on December 6, 2005 showing 26 founding members who elected its union officers by secret ballot;

(b) the list of rank-and-file employees[44] of Eagle Ridge who attended the organizational meeting and the election of officers with their individual signatures;

(c) the list of rank-and-file employees[45] who ratified the union's constitution and by-laws showing the very same list as those who attended the organizational meeting and the election of officers with their individual signatures except the addition of four employees without their signatures, i.e., Cherry Labajo, Grace Pollo, Annalyn Poniente and Rowel Dolendo;

(d) the union's constitution and by-laws[46] as approved on December 6, 2005;

(e) the list of officers[47] and their addresses;

(f) the list of union members[48] showing a total of 30 members; and

(g) the Sworn Statement[49] of the union's elected president and secretary. All the foregoing documents except the sworn statement of the president and the secretary were accompanied by Certifications[50] by the union secretary duly attested to by the union president.

Second. The members of the EREU totaled 30 employees when it applied on December 19, 2005 for registration. The Union thereby complied with the mandatory minimum 20% membership requirement under Art. 234(c). Of note is the undisputed number of 112 rank-and-file employees in Eagle Ridge, as shown in the Sworn Statement of the Union president and secretary and confirmed by Eagle Ridge in its petition for cancellation.

Third. The Union has sufficiently explained the discrepancy between the number of those who attended the organizational meeting showing 26 employees and the list of union members showing 30. The difference is due to the additional four members admitted two days after the organizational meeting as attested to by their duly accomplished Union Membership forms. Consequently, the total number of union members, as of December 8, 2005, was 30, which was truthfully indicated in its application for registration on December 19, 2005.

As aptly found by the BLR Director, the Union already had 30 members when it applied for registration, for the admission of new members is neither prohibited by law nor was it concealed in its application for registration. Eagle Ridge's contention is flawed when it equated the requirements under Art. 234(b) and (c) of the Labor Code. Par. (b) clearly required the submission of the minutes of the organizational meetings and the list of workers who participated in the meetings, while par. (c) merely required the list of names of all the union members comprising at least 20% of the bargaining unit. The fact that EREU had 30 members when it applied for registration on

December 19, 2005 while only 26 actually participated in the organizational meeting is borne by the records.

Fourth. In its futile attempt to clutch at straws, Eagle Ridge assails the inclusion of the additional four members allegedly for not complying with what it termed as "the sine qua non requirements" for union member applications under the Union's constitution and by-laws, specifically Sec. 2 of Art. IV. We are not persuaded. Any seeming infirmity in the application and admission of union membership, most especially in cases of independent labor unions, must be viewed in favor of valid membership.

The right of employees to self-organization and membership in a union must not be trammled by undue difficulties. In this case, when the Union said that the four employee-applicants had been admitted as union members, it is enough to establish the fact of admission of the four that they had duly signified such desire by accomplishing the membership form. The fact, as pointed out by Eagle Ridge, that the Union, owing to its scant membership, had not yet fully organized its different committees evidently shows the direct and valid acceptance of the four employee applicants rather than deter their admission--as erroneously asserted by Eagle Ridge.

Fifth. The difference between the number of 26 members, who ratified the Union's constitution and by-laws, and the 25 members shown in the certification of the Union secretary as having ratified it, is, as shown by the factual antecedents, a typographical error. It was an insignificant mistake committed without malice or prevarication. The list of those who attended the organizational meeting shows 26 members, as evidenced by the signatures beside their handwritten names. Thus, the certification's understatement by one member, while not factual, was clearly an error, but neither a misleading one nor a misrepresentation of what had actually happened.

Sixth. In the more meaty issue of the affidavits of retraction executed by six union members, we hold that the probative value of these affidavits cannot overcome those of the supporting affidavits of 12 union members and their counsel as to the proceedings and the conduct of the organizational meeting on December 6, 2005. The DOLE Regional Director and the BLR OIC Director obviously erred in giving credence to the affidavits of retraction, but not according the same treatment to the supporting affidavits.

The six affiants of the affidavits of retraction were not presented in a hearing before the Hearing Officer (DOLE Regional Director), as required under the Rules Implementing Book V of the Labor Code covering Labor Relations. Said Rules is embodied in Department Order No. (DO) 40-03 which was issued on February 17, 2003 and took effect on March 15, 2003 to replace DO 9 of 1997. Sec. 11, Rule XI of DO 40-03 specifically requires:

Section 11. Affirmation of testimonial evidence. - Any affidavit submitted by a party to prove his/her claims or defenses shall be re-affirmed by the presentation of the affiant before the Med-Arbiter or Hearing Officer, as the case may be. Any affidavit submitted without the re-affirmation of the affiant during a scheduled hearing shall not be admitted in evidence, except when the party against whom the affidavit is being offered admits all allegations therein and waives the examination of the affiant.

It is settled that affidavits partake the nature of hearsay evidence, since they are not generally prepared by the affiant but by another who uses his own language in writing the affiant's statement, which may thus be either omitted or misunderstood by the one writing them.[51] The above rule affirms the general requirement in adversarial proceedings for the examination of the affiant by the party against whom the affidavit is offered. In the instant case, it is required for affiants to re-affirm the contents of their affidavits during the hearing of the instant case for them to be examined by the opposing party, i.e., the Union.

For their non-presentation and consonant to the above-quoted rule, the six affidavits of retraction are inadmissible as evidence against the Union in the instant case. Moreover, the affidavit and joint-affidavits presented by the Union before the DOLE Regional Director were duly re-affirmed in the hearing of March 20, 2006 by the affiants. Thus, a reversible error was committed by the DOLE Regional Director and the BLR OIC Director in giving

credence to the inadmissible affidavits of retraction presented by Eagle Ridge while not giving credence to the duly re-affirmed affidavits presented by the Union.

Evidently, the allegations in the six affidavits of retraction have no probative value and at the very least cannot outweigh the rebutting attestations of the duly re-affirmed affidavits presented by the Union.

Seventh. The fact that six union members, indeed, expressed the desire to withdraw their membership through their affidavits of retraction will not cause the cancellation of registration on the ground of violation of Art. 234(c) of the Labor Code requiring the mandatory minimum 20% membership of rank-and-file employees in the employees' union.

The six retracting union members clearly severed and withdrew their union membership. The query is whether such separation from the Union can detrimentally affect the registration of the Union.

We answer in the negative.

Twenty percent (20%) of 112 rank-and-file employees in Eagle Ridge would require a union membership of at least 22 employees ($112 \times 20\% = 22.4$). When the EREU filed its application for registration on December 19, 2005, there were clearly 30 union members. Thus, when the certificate of registration was granted, there is no dispute that the Union complied with the mandatory 20% membership requirement.

Besides, it cannot be argued that the six affidavits of retraction retroact to the time of the application of registration or even way back to the organizational meeting. Prior to their withdrawal, the six employees in question were bona fide union members. More so, they never disputed affixing their signatures beside their handwritten names during the organizational meetings. While they alleged that they did not know what they were signing, it bears stressing that their affidavits of retraction were not re-affirmed during the hearings of the instant case rendering them of little, if any, evidentiary value.

With the withdrawal of six union members, there is still compliance with the mandatory membership requirement under Art. 234(c), for the remaining 24 union members constitute more than the 20% membership requirement of 22 employees.

Eagle Ridge further argues that the list of union members includes a supervisory employee. This is a factual issue which had not been raised at the first instance before the DOLE Regional Director and cannot be appreciated in this proceeding. To be sure, Eagle Ridge knows well who among its personnel belongs or does not belong to the supervisory group. Obviously, its attempt to raise the issue referred to is no more than an afterthought and ought to be rejected.

Eighth. Finally, it may not be amiss to note, given the factual antecedents of the instant case, that Eagle Ridge has apparently resorted to filing the instant case for cancellation of the Union's certificate of registration to bar the holding of a certification election. This can be gleaned from the fact that the grounds it raised in its opposition to the petition for certification election are basically the same grounds it resorted to in the instant case for cancellation of EREU's certificate of registration. This amounts to a clear circumvention of the law and cannot be countenanced.

For clarity, we reiterate the following undisputed antecedent facts:

- (1) On December 6, 2005, the Union was organized, with 26 employees of Eagle Ridge attending;
- (2) On December 19, 2005, the Union filed its formal application for registration indicating a total of 30 union members with the inclusion of four additional members on December 8, 2005 (Reg. Cert. No. RO400-200512-UR-003 was eventually issued by the DOLE RO IV-A);

(3) On January 10, 2006, the Union filed before the DOLE RO IV-A its petition for certification election in Eagle Ridge;

(4) On February 13, 2006, Eagle Ridge filed its Position Paper opposing the petition for certification election on essentially the same grounds it raised in the instant case; and

(5) On February 24, 2006, Eagle Ridge filed the instant case for cancellation of the Union's certificate of registration on essentially the same grounds it raised in its opposition to the Union's petition for certification election.

Evidently, as the Union persuasively argues, the withdrawal of six member-employees from the Union will affect neither the Union's registration nor its petition for certification election, as their affidavits of retraction were executed after the Union's petition for certification election had been filed. The initial five affidavits of retraction were executed on February 15, 2006; the sixth, on March 15, 2006. Indisputably, all six were executed way after the filing of the petition for certification election on January 10, 2006.

In *Eastland Manufacturing Company, Inc. v. Noriel*,^[52] the Court emphasized, and reiterated its earlier rulings,^[53] that "even if there were less than 30% [the required percentage of minimum membership then] of the employees asking for a certification election, that of itself would not be a bar to respondent Director ordering such an election provided, of course, there is no grave abuse of discretion."^[54] Citing *Philippine Association of Free Labor Unions v. Bureau of Labor Relations*,^[55] the Court emphasized that a certification election is the most appropriate procedure for the desired goal of ascertaining which of the competing organizations should represent the employees for the purpose of collective bargaining.^[56]

Indeed, where the company seeks the cancellation of a union's registration during the pendency of a petition for certification election, the same grounds invoked to cancel should not be used to bar the certification election. A certification election is the most expeditious and fairest mode of ascertaining the will of a collective bargaining unit as to its choice of its exclusive representative.^[57] It is the fairest and most effective way of determining which labor organization can truly represent the working force. It is a fundamental postulate that the will of the majority, if given expression in an honest election with freedom on the part of the voters to make their choice, is controlling.^[58]

The Court ends this disposition by reproducing the following apt excerpts from its holding in *S.S. Ventures International, Inc. v. S.S. Ventures Labor Union (SSVLU)* on the effect of the withdrawal from union membership right before or after the filing of a petition for certification election:

We are not persuaded. As aptly noted by both the BLR and CA, these mostly undated written statements submitted by Ventures on March 20, 2001, or seven months after it filed its petition for cancellation of registration, partake of the nature of withdrawal of union membership executed after the Union's filing of a petition for certification election on March 21, 2000. We have in precedent cases said that the employees' withdrawal from a labor union made before the filing of the petition for certification election is presumed voluntary, while withdrawal after the filing of such petition is considered to be involuntary and does not affect the same. Now then, if a withdrawal from union membership done after a petition for certification election has been filed does not vitiate such petition, is it not but logical to assume that such withdrawal cannot work to nullify the registration of the union? Upon this light, the Court is inclined to agree with the CA that the BLR did not abuse its discretion nor gravely err when it concluded that the affidavits of retraction of the 82 members had no evidentiary weight.^[59] (Emphasis supplied.)

WHEREFORE, premises considered, we DISMISS the instant petition for lack of merit.

Costs against petitioner.

SO ORDERED.

Corona, (Chairperson), Nachura, Peralta, and Mendoza, JJ., concur.

[1] Rollo, pp. 282-283. Penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Mariano C. del Castillo (now a member of the Court) and Arcangelita M. Romilla-Lontok.

[2] Id. at 297-300.

[3] Id. at 232-235. Penned by Director Rebecca C. Chato.

[4] Id. at 242-244.

[5] Id. at 54-55.

[6] Id. at 57-58.

[7] Id. at 60-61.

[8] Id. at 63-72.

[9] Id. at 50-53, dated December 13, 2005.

[10] Id. at 79-80, dated December 14, 2005.

[11] Through a position paper; id. at 98-104, dated February 10, 2006.

[12] Id. at 43-49, dated February 23, 2006, entitled "In Re: Petition to Cancel the Registration Certificate of Eagle Ridge Employees Union (EREU); Eagle Ridge Golf & Country Club, petitioner vs. Eagle Ridge Employees Union, respondent."

[13] Id. at 81-85.

[14] Id. at 86-97, dated March 20, 2006.

[15] No. L-77395, November 29, 1988, 168 SCRA 184.

[16] G.R. No. 116779, August 28, 1998, 294 SCRA 640.

[17] G.R. No. 55674, July 25, 1983, 123 SCRA 679.

[18] Rollo, pp. 105-108.

[19] Id. at 109-111.

[20] Id. at 112-113.

[21] Id. at 114-115.

[22] Id. at 116-126, dated March 25, 2006.

[23] Id. at 138.

[24] Id. at 109-111.

[25] Id. at 139-148. Penned by Regional Director Atty. Maximo B. Lim.

[26] Id. at 206, per Resolution of July 28, 2006.

[27] Id. at 283.

[28] Id. at 24.

[29] Nisce v. Equitable PCI Bank, Inc., G.R. No. 167434, February 19, 2007, 516 SCRA 231, 251; Cervantes v. Court of Appeals, G.R. No. 166755, November 18, 2005, 475 SCRA 562.

[30] University of Immaculate Concepcion v. Secretary of Labor and Employment, G.R. No. 143557, June 25, 2004, 432 SCRA 601.

[31] Last sentence of Secs. 1, 2, and 3 of Rule 65.

[32] United Residents of Dominican Hill, Inc. v. Commission on the Settlement of Land Problems, G.R. No. 135945, 7 March 2001, 353 SCRA 782.

[33] Rollo, p. 288, issued by Eagle Ridge Corporate Secretary Mariza Santos-Tan.

[34] Sapitan v. JB Line Bicol Express, Inc., G.R. No. 163775, October 19, 2007, 537 SCRA 230, 241.

[35] Varorient Shipping Co., Inc. v. National Labor Relations Commission, G.R. No. 164940, November 28, 2007, 539 SCRA 131, 138.

[36] Far Corporation v. Magdaluyo, G.R. No. 148739, November 19, 2004, 443 SCRA 218; Go v. Tong, G.R. No. 151942, November 27 2003, 416 SCRA 557, 567; Fajardo v. Cas, G.R. No. 140356, March 20, 2001, 354 SCRA 736; Ginete v. Court of Appeals, G.R. No. 127596, September 24, 1998, 296 SCRA 38.

[37] Yambao v. Court of Appeals, G.R. No. 140894, November 27, 2000, 346 SCRA 141, 146.

[38] Enriquez v. Enriquez, G.R. No. 139303, August 25, 2005, 468 SCRA 77, 86.

[39] Sapitan v. JB Line Bicol Express, Inc., supra note 34; citing Fuentebella and Rolling Hills Memorial Park, Inc. v. Castro, G.R. No. 150865, June 30, 2006, 494 SCRA 183, 190.

[40] "An Act Strengthening the Workers' Constitutional Right to Self-Organization," took effect on June 15, 2007 after due publication.

[41] As amended by RA 9481, Art. 234 now reads:

ART. 234. REQUIREMENTS OF REGISTRATION. -- A federation, national union or industry or trade union center or an independent union shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:

(a) Fifty pesos (P50.00) registration fee;

(b) The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of workers who participated in such meetings;

(c) In case the applicant is an independent union, the names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate;

(d) If the applicant union has been in existence for one or more years, copies of its annual financial statements; and

(e) Four copies of the constitution and by-laws of the applicant union, minutes of its adoption or ratification, and the list of the members who participated in it.

[42] As amended by RA 9481, the grounds for cancellation of registration has been reduced to three; thus, Art. 239 now reads:

ART. 239. GROUNDS FOR CANCELLATION OF UNION REGISTRATION. -- The following may 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, and the list of members who took part in the ratification;

(b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;

(c) Voluntary dissolution by the members.

[43] Rollo, pp. 54-55.

[44] Id. at 57-58.

[45] Id. at 60-61.

[46] Id. at 63-72.

[47] Id. at 73-74.

[48] Id. at 77.

[49] Id. at 76.

[50] Id. at 56, 59, 62, 73, 75 and 78.

[51] Tating v. Marcella, G.R. No. 155208, March 27, 2007, 519 SCRA 79, 88 [citations omitted].

[52] No. L-45528, February 10, 1982, 111 SCRA 674.

[53] Scout Ramon Albano Memorial College v. Noriel, No. L-48347, October 3, 1978, 85 SCRA 494; National Mines and Allied Workers Union v. Luna, No. L-46722, June 15, 1978, 83 SCRA 607; Monark International, Inc. v. Noriel, Nos. L-47570-71, May 11, 1978, 83 SCRA 114; Kapisanan ng mga Manggagawa sa La Suerte v. Noriel, No. L-45475, June 20, 1977, 77 SCRA 414.

[54] Eastland Manufacturing Company, Inc. v. Noriel, supra note 52, at 675-676.

[55] No. L-42115, January 37, 1976, 69 SCRA 132.

[56] Eastland Manufacturing Company, Inc. v. Noriel, supra note 52, at 676.

[57] Consolidated Farms, Inc. II v. Noriel, No. L-47752, July 31, 1978, 84 SCRA 469, 472.

[58] Philippine Association of Free Labor Unions v. Bureau of Labor Relations, supra note 55, at 139.

[59] G.R. No. 161690, July 23, 2008, 559 SCRA 435, 443-444.

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