

**MODERN FISHING GEAR LABOR UNION, PETITIONER, VS.
HONORABLE CARMELO C. NORIEL, MODERN FISHING GEAR
WORKERS UNION (MFGWU) AND MODERN FISHING GEAR
DEVELOPMENT CORPORATION, RESPONDENTS.**

G.R. No. 53907. May 06, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari assailing (1) the decision of the Director of the Bureau of Labor Relations (BLR) which ordered the holding of a certification election among the rank and file employees of Modern Fishing Gear Development Corporation (Company) and (2) the withdrawal of the BLR Certification of the Collective Bargaining Agreement (CBA) forged between the company and the petitioner union.

The background facts are found in the assailed decision as follows:

"This is a consolidated case involving an appeal by the Modern Fishing Gear Workers Union (private respondent) from the order of Med-Arbitrator Eusebio M. Jimenez dated October 17, 1979, dismissing a petition for certification election and a motion for reconsideration by the Modern Fishing Gear Development Corporation (Company) of this Bureau's Resolution dated 29 October 1979 setting aside the certification issued in favor of the collective agreement entered into between the Modern Fishing Gear Labor Union and respondent company.

The pertinent facts of the case follow:

"On May 21, 1979, petitioner Modern Fishing Gear Workers Union (private respondent) and herein intervenor, Modern Fishing Gear Labor Union (petitioner) entered into an agreement under the initiative of then Chief of the Labor Organizations Division, Cresenciano Trajano, pertinent portions of the agreement are herein reproduced to wit:

"xxx It is further agreed by the parties that upon approval of their applications for registration by the M.O.L. or immediately thereafter a consent election will be conducted within the bargaining unit" after which either of the two (2) aforementioned unions shall initiate the proper petition."

"On May 30, 1979, petitioner sent a registered letter with a registry return card to Mr. Ruben Lao, General Manager of the respondent company, the tenor of which served to inform him of the agreement to conduct a consent election. "On June 1, 1979, pursuant to the abovequoted agreement, a petition for certification election was filed by herein petitioner alleging, among others, that on May 21, 1979 a consensus was reached between the two unions for a consent election; that there is no existing collective bargaining agreement (CBA) between the corporation and the workers; that no certification election has been held among the rank and file employees of the company for the past twelve (12) months and that respondent company has in its employ approximately one hundred fourteen (114) regular rank and file employees. Attached to the petition are ninety two (92) signatures as evidenced by Annexes "B", "B-1", "B-2" and "B-3".

"It appears that on the same day the petition was filed, a collective agreement between herein intervenor. Modern Fishing Gear Labor Union and respondent Company was filed before this Office for certification.

"On June 28, 1979, respondent company was summoned by the Med-Arbiter below to produce the company payroll as of May, 1979. Subsequent hearings were characterized by several postponements on the initiative of respondent company. "On July 26, 1979, this Office certified the alleged collective agreement between intervenor and respondent company.

"On August 9, 1979, respondent company filed its answer to the petition alleging among others, that the company and Modern Fishing Gear Labor Union have as of April 15, 1979 concluded a collective bargaining agreement which was also ratified by the workers. Hence, respondent company concluded that by 'invoking the contract-bar-rule, this petition should be dismissed.'

"Meanwhile, some 78 members of the Modern Fishing Gear Workers Union were dismissed by respondent company between the periods of April 10-August 13, 1979. Respondent is now facing charges of illegal dismissal before the National Capital Region.

"In a position paper dated August 27, 1979. herein petitioner averred that the alleged CBA shows that it was prepared with great haste; that the contract bar rule does not apply in the instant case because the petition was filed before the alleged CBA was filed for certification; and that in view of the foregoing, a petition for decertification of the alleged CBA between herein intervenor and respondent company was filed by petitioner before this Bureau on August 14, 1979.

Cognizant of the foregoing facts, this Bureau ordered the decertification of the CBA entered into between herein petitioner and respondent employer by virtue of a Resolution dated October 29, 1979 in BLR Case No. 2317-79 in BLR Case No. 2317-79.

"Then came the Med-Arbiter's Resolution in NCR-LRD-M-6-264-78. dismissing the petition for certification election on the basis of the contract bar rule. This assailed Order applied Sec. 1 and 2 Rule III of P.D. 1391 which states that a duly filed or certifiable CBA shall be a bar to a petition for certification election.

"On November 22, 1979, petitioner Modern Fishing Gear Workers Union appealed the aforesaid Order. Appellant alleges, among others, that P.D. 1391 does not apply in this case because the certification of a CBA is subject to the proviso that there is no pending petition for certification election nor a pending request for union recognition; that the Med-Arbiter below grossly misappreciated the evidence presented by petitioner; that the May 30 letter sent to the company's General Manager informing him of the agreement for a consent election and or the filing of a petition is sufficient notice of the pendency of representation on the part of both intervenor and respondent company when they subsequently concluded and filed the alleged CBA for certification. Appellant likewise invoked the Bureau Resolution decertifying the alleged CBA between intervenor and Respondent-Company.

"In a memorandum dated March 5, 1979, intervenor alleged among others, that it has knowledge of the appeal only on February 12, 1980 when it was invited for conference by this Bureau: that during said hearing the Med-Arbiter assigned to the case granted respondent company and intervenor 15 working days to file their respective memoranda or any relevant pleadings; that it was fatal for petitioners to file its appeal before the Bureau of Labor Relations; that Sees. 8 and 9 of the Rules state that the appeal should be filed 'in the Regional Office where the case originated copy furnished the appellee;' and that because no copy of the appeal was furnished herein intervenor within the reglementary period, the appeal should be dismissed for not having been perfected on time. Intervenor likewise traversed the issue on the merits. It reiterates the position by the Med-Arbiter below that P.D. 1391 in so far as it bars the instant petition, is applicable in this case; that the alleged agreements for a consent election last May 21, 1979 does not bind them because the same is illegal;

that the duplicates or xerox copies of the Bureau Resolution decertifying the collective agreement are spurious; and that decertification of the CBA is immaterial because the non-certification of the collective bargaining agreement does not affect its validity.

"In its motion for reconsideration, respondent company alleged among others, that no action can be brought against the certification of a collective agreement because Art. 230 of the Labor Code mandates that the non-certification of a CBA shall not affect its validity: that the May 21 agreement for a consent election was imposed upon the president of the Intervenor Union because she was not represented by an attorney: that since their CBA with herein intervenor was ratified by a majority of workers in the bargaining unit, petitioner is therefore estopped from questioning the agreement; and that the Resolution dated October 29, 1979 decertifying the CBA was issued in excess of jurisdiction because it decided on issues pending before the Regional Office.

"On an even date, respondent company in its memorandum likewise took exception to the fact that the appeal (from the Order of Med-Arbiter Jimenez dismissing the petition was not perfected on time because counsel for the company received her copy of the appeal only on January 11, 1980 and that since the fact of service is jurisdictional, the appeal must be dismissed as a matter of course." (Rollo, pp. 71-75)

On the basis of the foregoing facts, the respondent BLR rendered the questioned decision affirming its resolution dated October 29, 1979, withdrawing the certification of the CBA between the petitioner and the company and ordering the holding of a certification election with the following choices: (1) Modern Fishing Gear Workers Union (private respondent); (2) Modern Fishing Gear Labor Union (petitioner); and (3) No Union.

In the said decision, the respondent BLR ruled that the petitioner (who was the intervenor in the case below) did not even attempt to show that as a consequence of the delay in the service of the appeal it suffered actual and substantial prejudice. According to the BLR the records showed that both the petitioner and the company were served copies of the appeal on January 11, 1980 and that a copy of the resolution dated October 29, 1979 was timely served by registered mail to the petitioner but the same was returned opened to sender which was highly irregular because it was the normal practice of its Docket Section to seal the mails before delivery. As to its jurisdiction to decertify the CBA between the company and the petitioner, the BLR ruled that implicit in the power of its Office to certify is the power to withdraw its certification which, however, does not affect the validity of the said CBA; and that the subsequent withdrawal of the certification is solely premised on the fact that the suspensive condition for certification of the CBA i.e.. the non-pendency of representation issue appears to have been misrepresented before the BLR by the contracting parties.

After the denial of its motion for reconsideration, the petitioner filed this petition raising essentially the same issues it raised before the BLR.

On September 8, 1980, we issued a resolution dated September 3, 1980, dismissing the petition for lack of merit. However, on the petitioner's motion for reconsideration, we resolved to give the petition due course.

The issue presented in the petition is whether the non-compliance with the appeal procedure from a med-arbiter's decision to the Director of the Bureau of Labor Relations is a mere technicality or a jurisdictional error. The issue is procedural in nature but essentially, it boils down to the question of the jurisdiction of the respondent BLR to issue the assailed decision.

The petitioner union contends that for the respondent union to have perfected its appeal, it should have filed the same with the Regional Office where the case originated in accordance with Section 8, Rule V, Book V of the Rules and Regulations Implementing the Labor Code, and not directly with the BLR and that it must have served a copy of the said appeal on the petitioner within ten (10) working days from receipt of the order, resolution or decision, in accordance with Section 9 of the same implementing rule. Hence, it contends that the decision of the

respondent BLR on the appeal is void ab initio for lack of jurisdiction.

The above contentions are without merit.

The fact that the respondent union filed its appeal directly with the BLR instead of its regional office is of little significance when we consider that the petitioner was given every opportunity to oppose the appeal of the respondent union. Furthermore, there is nothing wrong in the BLR's taking cognizance of the appeal although the same was not coursed through the regional office since it is the BLR which will actually decide the appeal. Section 9 Rule V, Book V of the Rules and Regulations implementing the Labor Code (7th Edition, 1979) provides:

"Section 9. Period to file appeal. — The appeal shall be filed within ten (10) working days from receipt of the order by the appellant. Likewise the appellee shall file his answer thereto within ten (10) working days from receipt of the appeal. The Regional Director shall immediately forward the entire records of the case to the Bureau. (Italics supplied)

Thus, it is clear that the BLR had the jurisdiction and function to decide the appeal.

Another procedural flaw which is alleged to be fatal to the respondent union's appeal and which, therefore, invalidates the decision of the BLR is the fact that a copy of the appeal was not furnished the petitioner union within ten (10) days from receipt of the order, decision or resolution appealed from.

This contention is likewise without merit.

As the decision of the respondent BLR aptly states, the petitioner union failed to show that it was prejudiced by the delay in the service of the copy of the appeal. On the contrary, the records will show that the petitioner was not only invited for conference by the BLR regarding the appeal of the respondent union but it was also given fifteen (15) working days within which to file its memorandum and other relevant pleadings. Thus, in the absence of a showing that the petitioner was denied due process of law under the circumstances, we cannot adhere to the automatic application of the implementing rules so as to defeat a meritorious appeal. As we have ruled in *Lamsan Trading, Inc. v. Leogardo, Jr.* (144 SCRA 571, 578):

"The absence of a rule on the filing of an appellant's memorandum is not the principal reason for our affirmance of the respondent Deputy Minister's order allowing respondent employees' appeal. More compelling is the policy that rules of technicality must yield to the broader interests of substantial justice. The dismissal of an appeal on purely technical grounds is frowned upon by this Court, especially considering in the case at bar, the merit of respondent employees' clarification of the delay for which they should not be faulted."

Likewise, in *Remerco Garments Manufacturing v. Minister of Labor and Employment*. (135 SCRA 167). we said:

"xxx Finally, labor law determinations, to quote from Bultmann, should be not only *secundum rationem* but also *secundum caritatem*.' More recently, we held that in appeals in labor cases, non-service of the copy of the appeal or appeal memorandum to the adverse party is not a jurisdictional defect, and does not justify dismissal of the appeal. (*Estrada v. NLRC*. 112 SCRA 688 (1982); *J.D. Magpayo v. NLRC*. 118 SCRA 645 (1982). Likewise it was held that dismissal of an employee's appeal on a purely technical ground is inconsistent with the constitutional mandate on protection to labor. (*Pagdonsalan v. NLRC*. 127 SCRA 463 (1984))."

We, therefore, rule that the BLR acted within its jurisdiction and validly rendered the assailed decision. Furthermore, we wish to emphasize that the holding of certification elections is one of the more important rights accorded to workers and employees. Thus, its exercise should not be defeated by the blind observance of procedural technicalities such as that being urged by herein petitioner. As we ruled in *George and Peter Lines, Inc. v. Associated Labor Union* (134 SCRA 82, 85-86).

"The employees have the constitutional right to choose the labor organization which it (sic) desires to join (FOITAF v. Noriel. 72 SCRA 24 [1976]). The exercise of such right would be rendered nugatory and ineffectual if they would be denied the opportunity to choose in a certification election, which is not a litigation, but a mere investigation of a non-adversary character (Air Line Pilots Association of the Philippines v. CIR. 76 SCRA 274 [1977]). the bargaining unit to represent them (NAMAWUIF v. Esrella. 87 SCRA [1978]). The holding of a certification election is a statutory policy that should not be circumvented (ATU v. Noriel. 89 SCRA 264 [1979]).

"xxx Certification election is the best and most appropriate means of ascertaining the will of the employees as to their choice of and exclusive bargaining representative (National Mines and Allied Workers Union v. Luna. 83 SCRA 607 [1978]); Consolidated Farms. Inc. v. Noriel. 84 SCRA 469 [1978]).

WHEREFORE, the petition is hereby DISMISSED for lack of merit. The questioned decision of the public respondent is AFFIRMED.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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