

**VICMICO INDUSTRIAL WORKERS ASSOCIATION (VIWA),
REPRESENTED HEREIN BY ITS PRESIDENT, PAQUITO V. ANDO,
PETITIONER, VS. THE HONORABLE CARMELO NORIEL, IN HIS
CAPACITY AS BUREAU OF L...**

G.R. No. 59167. August 31, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

On April 27, 1981, the National Federation of Sugar Workers (NFSW) filed a petition with the Labor Relations Division, Bacolod City, for a certification election among the rank and file members of the Victorias Milling Company, Inc. The petitioner alleged, among others, that more than 30% of the total work force supported its petition, attaching the signatures of said union members.

On June 3, 1981, the Med-Arbiter set the petition for hearing with notices sent to all parties concerned, including herein petitioner.

On June 22, 1981, Vicmico Industrial Workers Association (VIWA) filed a "Motion to Dismiss" alleging that the petition for certification election filed by NFSW failed to comply with the 30% requirement of the employees of the bargaining unit because the signatures submitted by NFSW are either forgeries, duplications, obtained thru misrepresentation and/or signed by managerial employees, extra laborers and security guards.

On July 21, 1981, the Med-Arbiter denied the motion to dismiss after finding that "there are 1,323 signatures which all appear to be genuine" and ordered "a certification election be made among the rank and file workers/employees of VICMICO within 20 days after receipt of this order by the parties. The unions participating in the election will be: NATIONAL FEDERATION OF SUGAR WORKERS (NFSW), VICTORIAS INDUSTRIAL WORKERS' ASSOCIATION (VIWA)." (pp. 26, 27, Rollo)

On July 29, 1981, VIWA filed a motion for reconsideration alleging that 605 bona fide rank and file members of the VIWA have disaffiliated with NFSW.

On August 12, 1981, the Med-Arbiter set aside his previous order of July 21, 1981 and set the case for re-hearing on September 7 and 8, 1981.

As a consequence of the order of August 12, 1981, NFSW appealed to the Bureau of Labor Relations in Manila. In the meantime, on October 8, 1981, the Med-Arbiter issued an order, which states, among others -

"According to the counsel for VICMICO, the sugar central has a total of 3,017 rank and file workers (list attached to the records). Considering that NFSW had submitted only 1,323 signatures, minus the invalid signatures of 637 the signatures which are valid are only 686. Thirty (30) percent of the total work force in the central equals 906, (30% of 3,017) so that it becomes mathematically obvious that NFSW failed to present 30% signatures from the total work force of VICMICO.

"On the basis of the evidence presented by VIWA, which were not refuted or objected to by the petitioner NFSW, we believe that the petition lacks the required 30% of the total work force as required by law.

"But considering that there was a prior appeal filed by the petitioner, let the entire records of this case be elevated to the Bureau of Labor Relations, Ministry of Labor and Employment, Manila, for final resolution." (Pp. 56--57, Rollo)

On November 27, 1981, respondent Director of the Bureau of Labor Relations sustained NFSW's appeal from the order dated August 12, 1981, of the Med-Arbiter and ordered a certification election at VICMICO, "with-out further delay." (p. 54, Rollo)

Hence, this petition by VIWA assailing the decision of respondent Director of the Bureau of Labor Relations, dated November 27, 1981, and praying, among others, that herein respondents be enjoined from conducting a certification election among the rank and file members of Victorias Milling Company, Inc.

We must state that there is no showing of arbitrary or improvident exercise of authority to justify the granting of a writ of certiorari. The petition must be dismissed.

1. When the Med-Arbiter in his order of July 21, 1981 made the pronouncement that the 1,323 signatures (which is more than 30% of the 3,200 rank and file employees of the bargaining unit) attached to the application for certification election "all appear to be genuine," he had no choice but to order a certification election. And, the request of VIWA for a hearing could have been denied considering that "a certification proceeding is not a litigation in the sense in which this term is commonly understood, but a mere investigation of a non-adversary, fact-finding character. Since representation cases are not to be taken as contentious litigations or suits but as mere investigations of a non-adversary fact-finding character as to which of the competing unions represents the genuine choice of the workers to be their sole and exclusive collective bargaining representative with their employer, the cited Rule of Court on intervention has no application." (Federation of Free Workers vs. Paredes, 54 SCRA 76).

"Certification election is mandatory when there is written consent of 30% of all the employees in the bargaining unit. (Associated Trade Unions-ATU vs. Noriel, 89 SCRA 264)

"The law cannot be any clearer. The 30% requirement was fully met. Such a finding of fact is well-nigh conclusive on this Court. It becomes, therefore, in the language of the law, 'mandatory for the bureau to conduct a certification election' (National Organization of Trade Unions vs. Secretary of Labor, 90 SCRA 463,466)."

2. On the issue that more than 600 bona fide rank and file members of VIWA have disaffiliated with respondent NFSW, this Court had occasion to state what should be followed in case of withdrawal or retraction of signatures. In National Mines and Allied Workers Union vs. Luna, 83 SCRA 607, it was held that "the best forum for determining whether there were indeed retractions from some of the laborers is the certification election itself wherein the workers can freely express their choice in a secret ballot." And, pursuant to Article 257 of the Labor Code, "if there is any reasonable doubt as to whom the employees have chosen as their representative for the purpose of collective bargaining, the Bureau shall order a secret ballot election to be conducted by the Bureau to ascertain who is the freely chosen representative of the employees concerned. x x x." To hold otherwise, would be violative of the liberal approach constantly followed by this Court in matters of certification elections.

3. The Court takes note of the fact that at the initial hearing of the petition for direct certification on June 3, 1981, herein petitioner did not raise the issue of withdrawal or retraction of more than 600 signatures. It was only on July 29, 1981 or in its motion for reconsideration of the order of the Med-Arbiter directing that a certification election be conducted that petitioner VIWA claimed disaffiliation of more than 600 employees from private

respondent NFSW. As well stressed by the Solicitor General in his comment to this petition for certiorari by VIWA, "the fact that such alleged retraction was brought up in the late stage of the proceeding casts doubt on the alleged retraction. This is reinforced by the admission of petitioner itself that the mass withdrawal of authority to respondent NFSW was made by the rank and file members only after it had talked with these members (p. 3, Petition)."

4. Assuming that there was mass disaffiliation with NFSW, this Court, in Albano Memorial College vs. Noriel, 85 SCRA 499, has recognized that the Bureau of Labor Relations, in the exercise of sound discretion, may order a certification election notwithstanding the failure to meet the 30% requirement.

5. Finally, the factual finding arrived at by respondent director that the 1,323 signatures submitted and attached to the petition at the time it was filed constitute more than 30% of the total 3,017 rank and file is conclusive to the Court. To set aside this finding "is contrary to the constant holding of this Tribunal in a host of cases. (Federacion Obrera de la Industria Tabaquera vs. Noriel, 72 SCRA 24)."

WHEREFORE, the petition is dismissed. This decision is immediately executory so as to enable the holding forthwith of the certification election. No Costs.

SO ORDERED.

Teehankee, Acting C.J., Melencio-Herrera, Plana, Gutierrez, Jr., and De La Fuente, JJ., concur.

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