

**BATANGAS-I ELECTRIC COOPERATIVE LABOR UNION, PETITIONER,
VS. ROMEO A. YOUNG, OFFICER IN CHARGE, BUREAU OF LABOR
RELATIONS, AND BATANGAS-I ELECTRIC COOPERA-TIVE, INC.,
RESPONDENTS.**

G.R. No. 62386. November 09, 1988

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This refers to three (3) separate petitions for certiorari under Rule 65 of the Rules of Court, namely: (1) G.R. No. 62386, entitled "BATANGAS-I ELECTRIC COOPERATIVE LABOR UNION, Petitioner, versus ROMEO A. YOUNG, OFFICER IN CHARGE, BUREAU OF LABOR RELATIONS, AND BATANGAS-I ELECTRIC COOPERATIVE INC., Respondents"; (2) G.R. No. 70880, entitled "BULACAN II ELECTRIC COOPERATIVE, INCORPORATED, Petitioner, versus HON. ELISEO A. PENAFLORES, The Chief Med-Arbitrator of the Regional Arbitration Office, Branch III, San Fernando, Pampanga, et al., Respondents"; and (3) G.R. No. 74560, entitled "ALBAY ELECTRIC COOPERATIVE I, Petitioner, versus CRESENCIANO B. TRAJANO, DIRECTOR, BUREAU OF LABOR RELATIONS AND FFW ALECO I CHAPTER, Respondents". The same issue is involved in these petitions.

The antecedent facts are as follows:

G.R. No. 62386

On June 1, 1981, the Batangas-I Electric Cooperative Union (hereinafter referred to as UNION) filed with the Regional Office No. IV-A, Ministry of Labor and Employment (now Department of Labor and Employment), at San Pablo City, a petition for certification election. The UNION alleged, inter alia, that it is a legitimate labor organization; that the Batangas-I Electric Cooperative Inc. (BATELEC) has 150 employees, more or less; that the UNION desires to represent the regular rank and file employees of BATELEC for purposes of collective bargaining; that there is no other union existing in BATELEC except the UNION; that there is no certified collective bargaining agreement in the said cooperative; and that there has been no certification election conducted in BATELEC during the last twelve (12) months preceding the filing of the petition.

On August 20, 1981, Med-Arbitrator Paterno D. Adap issued a resolution (pp. 21-23, Rollo) which gave due course to the petition and ordered the holding of a certification election.

On August 31, 1981, BATELEC filed a motion for reconsideration (pp. 24-30, Rollo) of the Med-Arbitrator's resolution contending, inter alia, that there was a legal impediment to the holding of a certification election considering that the formation of a union in a cooperative is illegal and invalid, the officers and members of the union being the owners thereof. This motion was treated as an appeal from the Med-Arbitrator's resolution of August 20, 1981.

On November 27, 1981, a resolution (pp. 38-40, Rollo) was issued by Romeo A. Young, Officer in Charge,

Bureau of Labor Relations, granting the appeal and revoking the Med-Arbiter's order mandating the holding of a certification election. This Resolution, inter alia, stated:

"The sole issue that confronts Us in the instant case is whether or not employees of an electric cooperative who are at the same time members of the cooperative, may be allowed to form or join a labor union in the electric cooperative for purposes of collective bargaining.

"We rule in the negative.

"A cursory analysis of Section 35, Presidential Decree 269, as amended, readily shows that employees of an electric cooperative who are themselves members of the cooperative have no right to form or join a labor organization for purposes of collective bargaining.

"In the first instance, a cooperative is established primarily for the mutual aid and protection of the members thereof. It was never intended to operate like an ordinary company or corporation. A cooperative is a non-profit organization, so that if ever there are gains, income or benefits derived therefrom, the same equally divided among its members. For all legal intents and purposes, therefore, members of a cooperative are part-owners thereof.

"In the instant case, petitioner strongly contended that they are not co-owners of the cooperative because the only benefits that they derive therefrom are in the form of electrical services and that they never exercise the attributes of ownership recognized under Article 428 of the New Civil Code. We do not concur. The fact that these employees/members enjoy free electrical services which are not available to non-members is a clear indication that these employees are co-owners of the cooperative. Petitioner must be reminded that benefits from cooperative accruing to co-owners may not come only in the form of monetary benefits but also in the form of services.

"Petitioner also advanced the theory that if self-employed persons are allowed to form a labor organization under Article 244, Presidential Decree 442, as amended, then it is with more reason that employees of the cooperative should also be allowed to form their union. Article 244, PD 442 as amended, provides:

"x x x Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form a labor organization for their mutual aid and protection.

"It must be noted that although the self-employed people are allowed by the Labor Code to form a labor organization, the purpose of such organization is for mutual aid and protection but not for the purpose of collective bargaining.

"Finally, while Article 244, PD 442, as amended, now allows workers of non-profit institutions to form labor organizations, nevertheless, the same provisions can not extend to a cooperative considering the absence of employer-employee relationship therein" (p. 39-40, Rollo).

After its motion for reconsideration was denied, the UNION filed the instant petition contending that the respondent Director of the Bureau of Labor Relations committed a palpable error of law and/or grave abuse of discretion amounting to lack of and/or in excess of jurisdiction in finding and concluding that employees of an electric cooperative who are at the same time members of the cooperative are not allowed to form or join a labor union in the electric cooperative for purposes of collective bargaining, and in revoking and setting aside the resolution dated August 20, 1981 of the Med-Arbiter directing the holding of a certification election among the rank and file employees of BATELEC.

G.R. No. 70880

On September 1, 1982, the Federation of Free Workers (FFW) filed with the Regional Office III, Ministry of Labor and Employment (now Department of Labor and Employment), at San Fernando, Pampanga, a petition for

certification election. The petition alleged, inter alia, that the FFW is a legitimate labor organization; that the Bulacan II Electric Cooperative Inc. (BECO II) is engaged in the service and supply of electric current and, therefore, an employer under the provisions of the Labor Code; that the FFW seeks to be certified as the sole and exclusive collective bargaining representative of the regular rank and file employees and workers of BECO II for purposes of collective bargaining; that there are more or less 140 regular rank and file employees and workers of BECO II; that there is no other union existing in BECO II except the FFW, and that there is no certified collective bargaining agreement in said establishment; and that there has been no certification election conducted in BECO II during the last twelve (12) months preceding the filing of the petition.

On September 24, 1982, BECO II filed its answer (pp. 17-18, Rollo) contending that the petition does not comply with the 30% jurisdictional requirement considering that it has a total of 143 employees, 24 of whom are members of the cooperative, 28 are managerial employees, 3 are confidential employees, 23 are contractual employees and 28 are casual employees, thereby leaving only 37 employees belonging to the rank and file; and that to grant the petition would be violative of Article 244 (now Article 243) of the Labor Code and Section 35 of PD 269.

Later, the FFW filed its position paper contending that it has complied substantially with the 30% jurisdictional requirement with the 73 signatures it submitted and that there is nothing in the law that prohibits or restricts cooperative members from joining labor organizations.

On the other hand, BECO II, through its position paper dated October 4, 1982 (pp. 19-26, Rollo), contended, inter alia, that it is not among those covered by Article 244 of the Labor Code, as amended by BP 70, as it is not a commercial, industrial or agricultural enterprise and neither is it a religious, charitable, medical or educational institution; that since electric cooperatives are subject to the supervision and control of the National Electrification Administration pursuant to PD 269, as amended by PD 1645, BECO II in effect is a government institution; and that there is no representation issue as there is no other labor organization involved except the FFW.

On October 14, 1982, Eliseo A. Penaflor, Chief Med-Arbiter of the Regional Office III, issued an order (pp. 27-28, Rollo) directing the holding of a certification election among the rank and file employees and workers of BECO II.

BECO II appealed from this Order to the Bureau of Labor Relations. On January 16, 1985, Director Cresenciano Trajano of the said bureau rendered a decision (pp. 42-43, Rollo) dismissing the appeal and affirming the questioned order. This decision, inter alia, stated:

x x x x

"We dismiss the Appeal.

"Our resolution in the case of Batangas I Electric Cooperative Labor Union dated 27 November 1981 is not applicable in the case at bar as the facts therein are different. There, the petition for certification election was supported by workers who are members of the cooperative. No employer-employee relationship exists between the members and the cooperative firm. In the case at bar, respondent did admit the existence of employer-employee relationship with workers of the cooperative who are not cooperative members when it alleged that of the total 143 employees only 24 are cooperative members. Thus, even if we deduct the 24 cooperative members from the number of workers supporting the petition, there still remain 49 signatures which are more than enough compliances with the 30% requirement.

"Going to Presidential Decree No. 269, there is no showing that such decree prohibits formation of unions between and among employees who are members of the cooperative. Rather, Section 35 of PD 269 shows that the prohibitions against formation of a labor organization for purposes of collective bargaining extends to employees of an electric cooperative who are themselves members of the cooperative.

"Finally, the fact that the petition for certification election was filed already gives rise to representation issue, irrespective of whether only one union is involved.

"Considering satisfaction of the 30% subscriptional requirement coupled with the findings that the workers who are not members of the cooperative are eligible to union membership, we have no other alternative but to affirm the Order of the Med-Arbiter to hold a certification election."

"x x x" (p. 43, Rollo).

BECO II filed the instant petition contending that the public respondents acted with grave abuse of discretion in ruling that under Article 244 (now Article 243) of the Labor Code, members and part owners of electric cooperatives are eligible to form, join or assist labor organizations for purposes of collective bargaining.

On May 29, 1985, a temporary restraining order was issued by this Court enjoining the respondents from enforcing the questioned orders.

G.R. No. 74560

On October 1, 1985, the Federation of Free Workers (FFW) ALECO I Chapter filed a petition for certification election, alleging, inter alia, that it is a legitimate labor organization; that the Albay Electric Cooperative I (ALECO I) is an electric cooperative servicing electricity in the Province of Albay; that ALECK I has 160 employees, more or less, majority of whom are FFW members; that there is no other union existing nor a collective bargaining agreement existing in the cooperative; that no certification election has been held for the past twelve (12) months prior to the filing of the petition.

On November 29, 1985, the FFW submitted 63 signatures in support of the petition for certification election. On the same date, counsel for ALECO I employees for a copy of "NO-UNION STAND" intervened and submitted a copy of the ALECO I 1985 budget showing that the said cooperative has a total of 141 rank and file employees.

On December 11, 1985, the FFW filed its position paper contending, inter alia, that the ALECO I is covered by the Labor Code; that it has a right to organize and be represented by a union; that there is no legal impediment to the holding of a certification election considering that out of the 141 rank and file employees, 63 supported the petition.

On December 18, 1985, ALECO I filed its position paper seeking the dismissal of the petition on the allegation that FFW failed to comply with 30% requirement considering that 112 rank and file employees have manifested in a "declaration" that they do not desire to be represented by any union.

On December 24, 1985, intervenor (ALECO I employees for a "NO-UNION STAND") filed its position paper (pp. 15-17, Rollo) seeking likewise the dismissal of the petition, alleging that the 30% written consent requirement has not been complied with. It alleged that of the 63 signatories to the petition, 51 are not qualified to join the union as they are members-consumers of the ALECO I and are considered joint owners of the cooperative pursuant to PD 269, and Art. II Sec. I of the revised by-laws of ALECO I.

FFW, in its reply (pp. 18-20, Rollo), argued that the 51 disputed signatories to the petition are regular rank and file employees and workers of ALECO I and are entitled to self-organization under Article 244 (now Article 243) of the Labor Code.

On February 26, 1986, the Med-Arbiter, finding that there was compliance with the 30% subscription requirement, issued an Order (pp. 21-25, Rollo) calling for a certification election. ALECO I appealed from this order to the Bureau of Labor Relations.

In the meantime, on April 25, 1986, the Association of Democratic Labor Organization (ADLO) moved to

intervene in the petition claiming that it has a legal interest to protect.

On May 15, 1986, Cresenciano B. Trajano, Director of the Bureau of Labor Relations, rendered a decision (pp. 27-29, Rollo) dismissing ALECO I's appeal for lack of merit, claiming that there was a "clear proof of compliance with the 30% subscription requirement, coupled with the finding that the subscribers to the petition who are members/owners of the respondent cooperative can validly be eligible for union membership." This decision, inter alia, stated:

"The sole issue now for resolution is whether or not the petitioners who are members/owners of the cooperative are eligible to join a labor organization for the purpose of collective bargaining.

"We find for petitioner.

"While it may be true that the subscribers to the petition are in themselves members/owners of the cooperative, nevertheless, as we have often ruled, that alone does not militate against their exercise of the right of self-organization. In the present petition, they are not acting in the capacity of part-owners/members but as mere employees of the cooperative. As such, they do not have direct control and management of the affairs and operation of the cooperative. We thus see no conflict of interest between the organization of the employees into a union and their being members of the cooperative.

"Moreover, the existence of employer-employee relationship with the workers of the cooperative was not disputed by respondent. Like all other workers, the petitioners are entitled to the exercise of the right to self organization and collective bargaining as guarantee by the constitution. Surely, it is not the intention of Presidential Decree No. 269 discourage unionism of employees. The encouragement of the right to self organization is expected to promote industrial peace through the promotion of the workers' moral, social and economic well-being.

"There being clear proof of compliance with the 30% subscription requirement, coupled with the finding that the subscribers to the petition who are members/owners of the respondent cooperative can validly be eligible for union membership, we rule the affirm the Order of the Med-Arbiter.

"WHEREFORE, premises considered, the instant appeal is hereby denied for lack of merit and the Order of the Med-Arbiter dated 26 February 1986 is affirmed with the modification that the Association of Democratic Labor Organizations (ADLO) shall be included as a contending party in the certification election. Let the records of the case be immediately forwarded to the office of origin for implementation of this Decision.

"SO ORDERED" (pp. 28-29, Rollo).

Hence, ALECO I filed the instant petition contending that the public respondent erred in holding that the FFW ALECO I CHAPTER whose members are members/part owners of the cooperative are eligible to join a labor organization for collective bargaining.

On June 6, 1986, a temporary restraining order was issued by this Court enjoining the respondents from enforcing the questioned decision.

The Solicitor General who was earlier required to give his comment, filed on June 11, 1986, a manifestation and motion to be excused from filing said comment, which was later granted by this Court. In the said manifestation, the Solicitor General stated:

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"2. The issue presented in the petition is whether private respondents most of whom are members of petitioner Albay Electric Cooperative I may form or join a labor union within said cooperative.

"3. The same issue was raised in BLR Case No. A-0265-81, elevated to this Honorable Court as G.R. No. 62386, entitled 'Batangas Electric Cooperative Labor Union vs. BLR Officer in Charge Romeo A. Young, et. al.' In that case respondent BLR Officer-in-Charge Romeo Young ruled that employees who are at the same time members of an electric cooperative are not entitled to form or join a labor union. This Office in its comment sustained the decision of BLR OIC Romeo Young, as follows:

xxx xxx xxx

"Petitioner claims that the members of the cooperative may form or join a labor union within the cooperative for the purpose of collective bargaining because they fall within the ambit of Art. 244 of the Labor Code, as amended by BP 70, as follows:

"Coverage and employees' right to self-organization. - All persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical or educational institutions whether operating for profit or not, shall have the right to self-organization and to form, join or assist labor organization of their own choosing for the purpose of collective bargaining. x x x."

"It is submitted that this provision does not apply to the members of the petitioner-union since they are co-owners of the cooperative. The word 'employed' within the meaning of the above-cited provisions, eliminates members of cooperatives who are co-owners of the corporation. Said term means persons strictly under hire and without any involvement in the ownership of the firm. This construction is buttressed by the qualification that the labor union formed was for the purpose of collective bargaining. The duty to bargain exists only between employer and its employees. An employer has no duty to bargain with its co-owners of the corporation.

xxx xxx xxx

"At this point, it may be emphasized that the exclusion from the right to self organization is limited only to members-owners of the electric cooperative. Employees who are not members of the cooperative are not prohibited to form, join or assist labor unions because they are not co-owners. However, as already discussed, members of petitioner union are necessarily co-owners of the electric cooperative. Therefore, being co-owners of the electric cooperative, members of petitioner union are not entitled to the right to self-organization within the electric cooperative.

"4. Assuming a position contrary to that taken by BLR OIC Romeo Young in the above case, public respondent BLR Director Cresenciano B. Trajano in this case ruled that employees most of whom are members of the electric cooperative may form or join a labor organization in said cooperative.

"5. For this Office, therefore, to sustain the decision of respondent BLR Director Cresenciano B. Trajano in this case, would be to assume a position directly opposite and in conflict with that it had previously taken in G.R. No. 62386, now pending before this Honorable Court" (pp. 47-50, Rollo).

The common issue raised in these three (3) instant petitions is whether or not employees of electric cooperatives are qualified to form or join labor organizations for purposes of collective bargaining.

Eligibility to form, join or assist labor organizations for purposes of collective bargaining is governed by Article 243 (formerly Article 244) of the Labor Code, as amended, which provides:

"Art. 243. Coverage and employees' right to self-organization. - All persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical, or educational institutions whether operating for profit or not, shall have the right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining. Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection."

In *Cooperative Rural Bank of Davao City, Inc. vs. Pura Ferrer-Calleja, Director, Bureau of Labor Relations, et al.*, G.R. No. 77951, September 26, 1988, it was held that an employee of a cooperative who is a member and co-owner thereof cannot invoke the right to collective bargaining. The decision in the case, *inter alia*, stated:

xxx xxx xxx

"A cooperative, therefore, is by its nature different from an ordinary business concern being run either by persons, partnerships, or corporations. Its owners and/or members are the ones who run and operate the business while the others are its employees. As above stated, irrespective of the name of shares owned by its member they are entitled to cast one vote each in deciding upon the affair of the cooperative. Their share capital earn limited interests. They enjoy special privileges as - exemption from income tax and sales taxes, preferential right to supply their products to State agencies and even exemption from the minimum wage laws.

"An employee therefore of such a cooperative who is a member and co-owner thereof cannot invoke the right to collective bargaining for certainly an owner cannot bargain with himself or his co-owners. In the opinion of August 14, 1981 of the Solicitor General he correctly opined that employees of cooperatives who are themselves members of the cooperative have no right to form or join labor organizations for purpose of collective bargaining for being themselves co-owners of the cooperative.

"However, in so far as it involves cooperatives with employee who are not members or co-owners thereof, certainly such employees are entitled to exercise the rights of all workers to organization, collective bargaining, negotiations and others as are enshrined in the Constitution and existing laws of the country."

In the light of the above-stated pronouncement, the assailed resolution dated November 27, 1981 of Romeo A. Young, Officer-in-Charge, Bureau of Labor Relations, in G.R. No. 62386, revoking the Med-Arbiter's order calling for a certification election must be upheld. The records in this case do not show that minus the rank and file employees (also members of the respondent BATELEC) who supported the petition, there was still a sufficient number to constitute 30%^[1] of the bargaining unit as a jurisdictional requirement. On the contrary, there is sufficient evidence showing that all those who supported the petition were such members. Petitioner UNION admitted in its petition that its officers and members are also members-consumers of the cooperative (p. 6, Rollo). Such being the case, the employees belonging to petitioner UNION are not qualified to form a labor organization and bargain collectively.

The records in G.R. No. 70880 show that the petitioner BECO II has 143 employees and that 73 employees of the petitioner supported the petition for certification election. No clear evidence was adduced by petitioner to prove that 28 of its employees are managerial employees. However, 24 employees are members of the cooperative. Thus, even if the 24 cooperative members, assuming, *in gratia argumenti*, that all of them supported the petition, are to be deducted from the said 73 employees, there still remain forty-nine (49), a sufficient compliance with the 30% jurisdictional requirement provided in the old Article 258 of the Labor Code, the law then prevailing.

In sustaining the order of the Med-Arbiter, Director Trajano, *inter alia*, said:

"Considering satisfaction of the 30% subscriptional requirement coupled with the findings that the workers who are not members of the cooperative are eligible to union membership, we have no other alternative but to affirm the Order of the Med-Arbiter to hold a certification election" (p. 43, Rollo).

We find no valid reason to disturb this finding. Employees of a cooperative who are not members thereof are entitled to exercise the rights of all workers to form, join or assist labor organizations for purposes of collective bargaining. Compliance with the jurisdictional requirement makes it mandatory on the part of the Bureau of Labor Relations to order the holding of a certification election in order to determine the exclusive bargaining agent of the employees. With such, the Bureau is left without any discretion but to order the holding of a certification

election (Arguelles vs. Young, G.R. No. 59880, September 11, 1987, 153 SCRA 690).

With respect to G.R. No. 74560, the decision dated May 15, 1986 of the respondent Director of the Bureau of Labor Relations, affirming the Med-Arbiter's order for the holding of a certification election, is reversed. It is clear from the records in this case that the petitioner ALECO I has 141 rank and file employees. Hence, there are 90 rank and file employees, non-members of the cooperative, who may validly form, join or assist labor organizations for purposes of collective bargaining.

It is likewise clear that 63 rank and file employees supported the petition for certification election but 51 of them are members of the petitioner cooperative, a fact not disputed by the private respondent union. Hence, only 12 rank and file employees who were qualified to form, join or assist labor organizations for purpose of collective bargaining, signed the petition, which definitely is a number short of the 30% jurisdictional requirement as provided in Article 258 of the Labor Code, the law then prevailing. Thirty (30%) percent of the 90 rank and file employees who are not members of the cooperative is 27.

ACCORDINGLY, judgment is hereby rendered as follows:

- In G.R. No. 62386, the petition is DISMISSED and the challenged decision dated November 27, 1981 of respondent Romeo A. Young, OIC of the Bureau of Labor Relations is AFFIRMED.
- In G.R. No. 70880, the petition is DISMISSED and the decision dated January 16, 1985 of respondent Cresenciano B. Trajano, Director, Bureau of Labor Relations, ordering the holding of a certification election is hereby AFFIRMED. Notwithstanding the inclusion of the 24 members or co-owners of the cooperative, the 30% subscriptional requirement for the filing of a petition for certification election has been satisfied. The temporary restraining order dated May 29, 1985 is LIFTED.
- In G.R. No. 74560, the petition is GRANTED and the assailed decision dated May 15, 1986 of respondent Cresenciano B. Trajano, Director, Bureau of Labor Relations is hereby REVERSED and SET ASIDE. The temporary restraining order dated June 2, 1986 is LIFTED. SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

[1] In the present Article 257 of the Labor Code, it is now provided that in any establishment where there is no certified bargaining agent, the petition for certification election filed by a legitimate labor organization shall be supported by the written consent of at least twenty (20%) percent of all the employees in the bargaining unit.

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