

**ASIAN DESIGN AND MANUFACTURING CORPORATION, PETITIONER,
VS. HON. PURA FERRER-CALLEJA, IN HER CAPACITY AS THE
DIRECTOR OF THE BUREAU OF LABOR RELATIONS, AND SOUTHERN
PHILIPPINES ...**

G.R. No. 77415. June 29, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a special civil action for certiorari seeking the annulment of the resolution (pp. 21-23, Rollo) dated November 24, 1986 of respondent Director in BLR Case No. A-10-247-85 which affirmed the appealed order of the Med-Arbiter dismissing petitioner's complaint to declare the certification election of May 21, 1986 as null and void and the resolution (p. 20, Rollo) dated January 21, 1987 which denied petitioner's motion for reconsideration.

Petitioner Asian Design and Manufacturing Corporation (ADMACOR) is a corporation duly organized and existing by virtue of the laws of the Philippines. It operates a rattan furniture factory at Maguikay, Mandaue City, Cebu.

Upon petition of Buklod ng Manggagawang Pilipino (BMP), one of several labor unions at ADMACOR'S factory, the Labor Relations Division, Regional Office VII (Cebu City) ordered a certification election to be conducted on May 21, 1986, a regular business day.

On May 19, 1986, several factory workers of ADMACOR held a strike. No previous notice of strike was filed by the factory workers with the Bureau of Labor Relations Regional Office. On May 20, 1986, ADMACOR filed a petition (pp. 42-44, Rollo) for the indefinite resetting of the scheduled certification election, which petition was not acted upon by the Labor Relations Division

On May 21, 1986, the scheduled certification election was conducted, despite the strike. Of the 423 workers who voted, 413 voted for Southern Philippines Federation of Labor (SPFL) as their exclusive bargaining agent (p. 82, Rollo). On the same day, ADMACOR filed a complaint for illegal strike (RAB VII-0136-88; pp. 37-41, Rollo) and for illegal picketing (RAB-0408-86; pp. 34-36, Rollo) with the Regional Arbitration Branch No. VII, Cebu City.

On May 23, 1986, ADMACOR filed a petition to declare the certification election conducted on May 21, 1986 as null and void on the ground that there being a strike by some workers in the premises of the factory on the day of the certification election, such day cannot be considered a regular business day, pursuant to Section 2, Rule VI, Book V of the Omnibus Rules Implementing the Labor Code, to wit:

Section 2. Election conducted during regular business day. — The election shall be set during the regular business day of the company unless otherwise agreed upon by the parties.

On August 5, 1986, the Med-Arbiter dismissed ADMACOR's complaint to annul the May 21, 1986 certification election and certified SPFL as the sole and exclusive bargaining agent of the rank and file employees of ADMACOR. This dismissal was appealed by ADMACOR to the Bureau of Labor Relations (Bureau) by way of a motion for reconsideration and docketed as BLR Case No. A-10-247-85. On August 14, 1986, the Concerned Workers Association of ADMACOR filed a motion for intervention in the case appealed to the Bureau.

On November 24, 1986, the public respondent Pura Ferrer-Calleja acting as Director of the Bureau of Labor Relations dismissed the appeal of ADMACOR and affirmed the decision of the Med-Arbiter. The motion for intervention filed by the Concerned Workers Association of ADMACOR was denied for having been filed after the actual certification election had already been conducted (pp. 3-4, Resolution dated Nov. 24, 1986, pp. 22-23, Rollo). The motion for reconsideration of the November 24, 1986 resolution was also denied in a resolution dated January 21, 1987. These two resolutions are assailed in this petition for having been issued without or in excess of jurisdiction or with grave abuse of discretion (p. 4, Rollo).

Meanwhile, on January 26, 1987, a decision (pp. 45-54, Rollo) on the twin complaints for illegal strike (RAB-0316-86) and illegal picketing (RAB-0408-86) was rendered by Labor Arbiter Bonifacio B. Tumamak declaring the strike held on May 20, 1986 against ADMACOR as illegal.

In this petition, ADMACOR questions the jurisdiction of the Bureau of Labor Relations (Bureau) to resolve or determine the factual and legal basis of a strike in relation to the question of representation of employees (p. 9, Rollo). It said:

"What is directly in issue is the jurisdiction of the Bureau to rule, as it did, on the protest filed after the election by the petitioner. Petitioner's protest involves the regularity of the election, due to the contemporaneous, in fact, even antecedent conduct of an illegal strike. Instead of holding in abeyance the election protest so that the Labor Arbiter could properly resolve the pending complaints, the Bureau rendered its assailed Resolutions in excess of its jurisdiction. The Bureau had assumed on its own an implied determination of the legality or illegality of the complained strike" (pp. 10-11, Petition; pp. 11-12, Rollo).

Indeed, the question involving the legality of the strike which was conducted against ADMACOR is an independent issue, the resolution of which pertains to the Labor Arbiter pursuant to No. 5, Article 217 of the Labor Code. On the other hand, the issue of the validity of the certification election pertains solely to the Bureau of Labor Relations, originally, the Med-Arbiter and by way of appeal, to the Director of the Bureau of Labor Relations, pursuant to Section 7, Rule V, Book V of the Rules to Implement the Labor Code. However, We find no overlapping by the Bureau of the jurisdiction of the Labor Arbiter on the question of legality, or illegality of the complained strike. The allegation that the Bureau assumed on its own an implied determination of said issue is belied by the fact that the assailed resolutions of respondent Director confined itself to the issue of the validity of the certification election. There was nothing in the assailed resolutions which contain any conclusion or ruling by the Bureau that the alleged strike was legal or illegal.

What was resolved was whether or not there was compliance with the procedural requirement set by Section 2, Rule VI, Book VI of the Rules to Implement the Labor Code that the election shall be set during a regular business day. In answer to petitioner's contention that there being a strike on May 21, 1986, the day the certification election was held, said day cannot be considered a regular business day, the respondent Director ruled:

"Furthermore, anent complainant's contention that the certification election was conducted not on regular

business day, the same is devoid of merit. The records further show that during the pre-election conference the contending parties agreed that the election should be conducted on May 21, 1986 which was, on that time, a determined regular business day of the company. This was in accordance with Section 2, Rule VI Book V, of the Implementing Rules of the Labor Code which explicitly provides:

'The election shall be set during the regular business day of the company unless otherwise agreed upon by the parties.'

The alleged strike and/or picketing of some employees at the company's premises which coincided with the actual conduct of certification election might, perhaps have affected the actual performance of works by some employees, but did not necessarily make said date an irregular business day of the company to go against the aforesaid Rule" (p. 22, Rollo).

We agree with the said ruling of respondent Director upholding the validity of the certification election despite the strike. In the first place, since petitioner invoked the jurisdiction of the Bureau when it filed its election protest before the Med-Arbiter, it cannot now be allowed to repudiate the same jurisdiction after failing to obtain affirmative relief. Moreover, it can not be denied that an actual election was conducted on said date where, of the 423 workers who voted, 413 voted for SPFL as its exclusive bargaining agent. In the "Minutes of the Certification Election among the Rank and File Employees of Asian Design Manufacturing Corp.," the representatives of the contending unions, and of the Ministry of Labor even attested that the election was peaceful and orderly (pp. 79-83, Rollo) and none of the parties registered any protest on any matter concerning the election proceedings. There is thus, no valid reason to annul the certification election.

On the pretext that the issue posited in this petition is the lack of jurisdiction of the Bureau in dismissing its protest against the certification election despite the pendency of the case before the Labor Arbiter on the validity of the strike, petitioner seeks exception to the rule that an employer has no standing to question a certification election. We reiterate the rule that such concern over the validity of certification election must come from the employees themselves. The case of *Trade Union Congress of the Philippines and Allied Services vs. Trajano*, G.R. No. 61153, January 17, 1983, 120 SCRA 64, 66, is clear on this point. This Court therein held:

"A certification election is the sole concern of the workers. The only exception is where the employer has to file a petition for certification election pursuant to Article 259 of the Labor Code because it was requested to bargain collectively. Thereafter the role of the employer in the certification process ceases. It becomes merely a by-stander.

"In the instant case, the petition for a certification election was filed by a legitimate labor organization as stipulated by Article 258 of the Labor Code. Such being the case, ROBINA should not have involved itself in the certification election. That it did gives rise to a well-founded suspicion that it wanted a company union which is a no, no in this jurisdiction.

"The pronouncement of this Court concerning management interference in certification elections is well worth

repeating:

'On a matter that should be the exclusive concern of labor, the choice of a collective bargaining representative, the employer is definitely an intruder. His participation, to say the least, deserves no encouragement. This Court should be the last agency to lend support to such an attempt at interference with a purely internal affair of labor.¹' (Consolidated Farms, Inc. vs. Noriel, L-47752, July 31, 1978, 84 SCRA 469, 473. See also Filipino MetalsCorp. vs. Ople, L-43861, Sept. 4, 1981, 107SCRA211)

ACCORDINGLY, for the reasons above-stated, the petition is DISMISSED for lack of merit.

SO ORDERED.

Narvasa, Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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