

ASSOCIATED LABOR UNIONS (ALU)-TUCP, PETITIONER, VS. HON, CRESENCIANO B. TRAJANO, AS OFFICER-IN-CHARGE OF THE BUREAU OF LABOR RELATIONS, ASSOCIATION OF DEMOCRATIC LABOR ORGANIZAT...

G.R. No. 77539. April 12, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari with prayer for a temporary restraining order, seeking review of the resolution of the Director of Labor Relations* dated January 30, 1987 in BLR Case No. A-1-18-87 ordering a certification election among the rank and file employees of respondent company and the order of public respondent** dated February 24, 1987 dismissing petitioner's motion for reconsideration for lack of merit.

The dispositive portion of the questioned resolution of the Bureau of Labor Relations dated January 30, 1987 (Rollo, p. 55), reads as follows:

"Accordingly, let a certification election be conducted within the twenty (20) days from receipt of this Resolution, subject to the usual pre-election conference, with the following as choices:

1. Association of Democratic Labor Union (ADLO);
2. Associated Labor Union - ALU; and
3. No Union.

Let, therefore, the records be forwarded to the Office of origin for the immediate implementation of this Resolution."

The undisputed facts of the case are as follows:

Petitioner herein is the recognized collective bargaining representative of all the rank and file employees of respondent Company with a collective bargaining agreement effective January 1, 1984 to December 31, 1986. Article XX of the collective bargaining agreement provides that the CBA shall be for a period of three (3) years effective January 1, 1984 to December 31, 1986, provided that within sixty (60) days before its expiration the parties shall renegotiate for a new one (Memorandum for the Petitioner, Rollo, p. 208).

On October 22, 1986, a big majority of the covered employees of respondent Company petitioned for the renewal of the expiring agreement which petitioner and the respondent Company agreed to negotiate. The parties, however, failed to arrive at an acceptable agreement so that a bargaining deadlock on CBA negotiation was declared (Memorandum for the Petitioner, Rollo, p. 209).

On November 3, 1986, petitioner filed a notice of strike (Rollo, p. 27). Failing to arrive at an agreement during the conciliation following the filing of the notice of strike, on December 1, 1986 petitioner went on strike.

Meanwhile, on November 4, 1986 private respondent Union, Association of Democratic Labor Organization (ADLO) filed with the Ministry of Labor and Employment, Panlalawigang Tanggapan ng Paggawa, Bataan Export Processing Zone, a verified petition for certification election among the regular rank and file workers of private company, docketed as Case No. BZED-CE-11-011-86 (Rollo, p. 87).

On December 4, 1986, petitioner and respondent company came to an agreement with representatives of the parties setting their signature on the resulting CBA on the same date (Rollo, p. 28), ratified by a big majority of the covered employees, 584 out of 742 covered employees, also on the same date (Rollo, p. 43). Petitioner registered the new CBA with the Regional Director of the Ministry of Labor and Employment in San Fernando, Pampanga on December 4, 1986 (Rollo, p. 41) as required under Article 231 of the Labor Code.

Petitioner herein intervened in the petition for certification election. On December 9, 1986, the Med-Arbiter called for a conference to see whether a consent election could be agreed upon between the intervenor union and the petitioner union, but the parties failed to reach an agreement despite several conferences. (Rollo, pp. 59; 78).

The Med-Arbiter, Eladio de Jesus, issued an order for the holding of a certification election in a resolution dated December 10, 1986, premised on the fact that the petitioner, respondent union herein, "has satisfactorily complied with the jurisdictional requirement of this Office. The same records show that the instant petition was seasonably filed within the sixty-day freedom period." (Rollo, p. 59). The said resolution was appealed by petitioner to the Director of Bureau of Labor Relations but the appeal was dismissed for lack of merit, in the questioned resolution of January 30, 1987 (Rollo, p. 53). Petitioner's motion for reconsideration dated February 12, 1987 (Rollo, p. 19) was likewise dismissed in the equally questioned order of February 24, 1987 (Rollo, p. 17). The Med-Arbiter then set the certification election for March 17, 1987 (Rollo, p. 60).

Instant petition was filed with the Court on March 9, 1987 (Rollo, p. 2). On the same date, petitioner filed an urgent ex parte motion for issuance of a temporary restraining order (Rollo, p. 6). On March 16, 1987, the Second Division of this Court, without giving due course to the petition, required the respondents to comment thereon and issued a temporary restraining order effective on the same date that the resolution was passed, to continue until otherwise ordered by the Court (Rollo, p. 64).

The comment of public respondent was filed by the Office of the Solicitor General on June 3, 1987 (Rollo, p. 75). In a resolution dated June 29, 1987, petitioner was required to file a reply thereto and the letters addressed to then Chief Justice Claudio Teehankee, of twenty one (21) progressive democratic labor unions in Japan protesting the temporary restraining order issued by the Court on March 16, 1987 was noted (Rollo, p. 129). Again on August 31, 1987, the Court resolved to note the letters of the progressive democratic organizations in Japan (Rollo, p. 140).

On August 10, 1987, the petition was given due course and both parties were required to submit their simultaneous memoranda within thirty (30) days from notice (Rollo, p. 166). On September 18, 1987, the Office of the Solicitor General manifested that it was adopting for its memorandum its comment on the petition for certiorari filed with the Court on June 3, 1987 (Rollo, p. 194) which was noted by the Court in its resolution dated November 11, 1987 (Rollo, p. 202). In the same resolution, the Court also noted receipt of two telegrams of the Mitsumi Workers Union - ALDO of Mariveles, Bataan dated September 3 and September 9, 1987 (Rollo, pp. 184, 185), requesting for information on the status of the case and for its expeditious resolution, and the letters all addressed to the Chief Justice from progressive unions in Japan together with two undated letters signed in Japanese characters, all demanding for a certification election (Rollo, pp. 170-182).

Memorandum for the Petitioner was filed on November 2, 1987 (Rollo, p. 208) noted by the Court in its resolution dated February 15, 1988 (Rollo, p. 231). The motion to admit memorandum filed by respondent union

on April 7, 1988 (Rollo, p. 232) was granted by the Court in its resolution dated April 18, 1988 (Rollo, p. 259) wherein the Court also noted the memorandum of respondent union attached to the motion (Rollo, p. 234).

The issues raised by petitioner (Rollo, p. 212), are as follows:

I

THAT THE PUBLIC RESPONDENT ERRED IN NOT HOLDING THAT NO CERTIFICATION ELECTION MAY BE HELD DUE TO THE FACT THAT A BARGAINING DEADLOCK TO WHICH PETITIONER IS A PARTY IS SUBMITTED TO CONCILIATION/ARBITRATION AND THERE IS A VALID NOTICE OF STRIKE PRIOR TO THE FILING OF THE PETITION FOR CERTIFICATION ELECTION ON DECEMBER 4, 1986.

II

THAT THE PUBLIC RESPONDENT ERRED IN NOT HOLDING THAT THE COLLECTIVE BARGAINING AGREEMENT ENTERED INTO AS A RESULT OF A BARGAINING DEADLOCK AND CONCILIATION DURING THE PROGRESS OF A STRIKE HAVING BEEN ACCORDINGLY REPORTED TO THE DEPARTMENT OF LABOR AND EMPLOYMENT PURSUANT TO THE PROVISIONS OF ARTICLE 231 OF THE LABOR CODE RENDERS THE FILING OF THE PETITION FOR CERTIFICATION ELECTION PREMATURE.

III

THAT THE PUBLIC RESPONDENT ERRED IN NOT DISMISSING THE PETITION, ANNEXED "D" AND HOLDING THAT THE COLLECTIVE BARGAINING AGREEMENT (ANNEX "B" TO ANNEX "B" HEREOF) HAVING BEEN RATIFIED BY THE MEMBERS AND THE BENEFITS THEREIN ENJOYED IS A BAR TO THE HOLDING OF A CERTIFICATION ELECTION.

The petition is devoid of merit.

Simply stated, the sole issue is whether or not public respondent committed a grave abuse of discretion amounting to lack of jurisdiction in ordering a certification election considering that at the time the petition for certification election was filed, there was a bargaining deadlock between company and the petitioner union, as a result of which petitioner union filed a notice of strike.

In fact, it actually went on strike, and pending decision on the said petition, petitioner and respondent company came to terms on the collective bargaining agreement duly ratified by a big majority of the covered members and duly registered with the Department of Labor and Employment.

Public respondent denied petitioner's motion for reconsideration, finding "no compelling justification to effect a reconsideration, much less a reversal" of the resolution of January 30, 1987 (Rollo, p. 18). The aforesaid resolution dismissed the appeal of petitioner as intervenor in the petition for certification election based on the following: (1) the records show that the petition for certification election was seasonably filed within the sixty (60) day freedom period; and (2) the records likewise reveal that the petition is supported by two hundred forty-two (242) of the more or less six hundred (600) rank-and-file employees of Mitsumi Philippines, Inc., hence, has complied with the thirty percent (30%) statutory requirement (Rollo, p. 54). The provision of the law then in force was Article 258 of the Labor Code inasmuch as Executive Order No. 111 which amended it took effect only on March 4, 1987. Article 258 reads, as follows:

"Art. 258. Requisites for certification election. - Any petition for certification election filed by any legitimate labor organization shall be supported by the written consent of at least thirty percent (30%) of all the

employees in the bargaining unit. Upon receipt and verification of such petition, it shall be mandatory for the Bureau to conduct a certification election for the purpose of determining the representative of the employees in the appropriate bargaining unit and certify the winner as the exclusive collective bargaining representative of all the employees in the unit."

There is no question that the 30% support requirement for a certification election had been met even if the covered employees number 742, as alleged by petitioner (Memorandum for the Petitioner, Rollo, p. 217) not 600. Hence, it became mandatory for the Director of Labor Relations to call a certification election (*Atlas Free Workers Union (AFWU)-PSSLU Local v. Noriel*, 104 SCRA 565 [1981]; *Vismico Industrial Workers Association (VIWA) v. Noriel*, 131 SCRA 569 [1984]; *Samahang Manggagawa ng Pacific Mills, Inc. v. Noriel*, 134 SCRA 152 [1985]), and in the language of the Labor Code, "mandatory for the Bureau to conduct a certification election for the purpose of determining the representative of the employees in the appropriate bargaining unit and certify the winner as the exclusive bargaining representative of all employees in the unit" (*Federacion Obrera de la Industria Tabaguera y Otros Trabajadores de Filipinas v. Noriel*, 72 SCRA 24 [1976]; *Kapisanan ng mga Manggagawa v. Noriel*, 77 SCRA 414 [1977]).

"No administrative agency can ignore the imperative tone of the above article. The language used is one of command. Once it has been verified that a petition for certification election has the support of at least 30% of the employees in the bargaining unit, it must be granted. The specific word used yields no other meaning" (*Federation of Free Workers v. Noriel*, 86 SCRA 132 [1978]; *Warren Manufacturing Workers Union (WMWU) v. Bureau of Labor Relations*, G.R. No. 76185, March 30, 1988).

Petitioner, however, insists that the deadlock in negotiation already submitted to conciliation/arbitration after the filing of a valid notice of strike based on deadlock in negotiation prior to the filing of the petition for certification election bars the holding of a certification election, basing its argument on the contract bar rule under Section 3 of Rule V, Book V of the Omnibus Rules Implementing the Labor Code (Memorandum for the Petitioner, Rollo, p. 213), which provides:

"Sec. 3. When to file – In the absence of a collective agreement submitted in accordance with Article 231 of the Code, a petition for certification election may be filed at any time. However, no certification election may be held within one year from the date of issuance of declaration of a final certification election result. Neither may a representation question be entertained if, before the filing of a petition for certification election, a bargaining deadlock to which an incumbent or certified bargaining agent is a party had been submitted to conciliation or arbitration or had become the subject of a valid notice of strike or lockout.

"If a collective agreement has been submitted in accordance with Article 231 of the Code, a petition for certification election or a motion for intervention can only be entertained within 60 days prior to the expiry date of such agreement."

As the introductory sentence of the first paragraph states, said paragraph applies where there is no existing collective bargaining agreement. This circumstance is not obtaining in the instant case. As admitted by petitioner (Memorandum for the Petitioner, Rollo, p. 208) there was an existing collective bargaining agreement when the petition for certification election was filed, which was to expire on December 31, 1986. It is the second paragraph which is applicable to the case at bar.

In a recent decision, this Court interpreted the above provision as follows:

"This rule simply provides that a petition for certification election or a motion for intervention can only be entertained within 60 days prior to the expiry date of an existing collective bargaining agreement. Otherwise put, the rule prohibits the filing of a petition for certification election during the existence of a collective bargaining agreement except within the freedom period, as it is called, when the said agreement is about to

expire. The purpose, obviously, is to ensure stability in the relationship of the workers and the management by preventing frequent modifications of any collective bargaining agreement earlier entered into by them in good faith and for the stipulated original period." (Associated Trade Unions (ATU) v. Trajano, G.R. No. 75321, June 20, 1988).

Undoubtedly, the petition for certification election was filed during the 60-day freedom period. The fact that petitioner was able to negotiate a new CBA with respondent company on December 4, 1986 within the freedom period of the existing CBA, does not foreclose the right of a rival union, which in this instant case is the respondent union, to challenge petitioner's claim to majority status, by filing earlier on November 4, 1986, a timely petition for certification election before the old CBA expired on December 31, 1986 and before petitioner signed a new CBA with respondent company (Kapatiran Sa Meat and Canning Division (TUPAS Local Chapter No. 1027) v. Calleja, G.R. No. 82914, June 20, 1988). There should be no obstacle to the right of the employees to petition for a certification election at the proper time, that is, within sixty (60) days prior to the expiration of the life of a certified collective bargaining agreement (General Textiles Allied Workers Association (GTAWA) v. Director of the Bureau of Labor Relations, 84 SCRA 430 [1978]; Warren Manufacturing Workers Union (WMWU) v. Bureau of Labor Relations, *supra*), not even by a collective agreement submitted during the pendency of a representation case.

On said subject, Rule V of the Omnibus Rules Implementing the Labor Code, provides:

"Sec. 4. Effects of early agreements. The representation case shall not, however, be adversely affected by a collective agreement submitted before or during the last 60 days of a subsisting agreement or during the pendency of the representation case."

The new CBA negotiated by petitioners whether or not submitted to the MOLE in accordance with Article 231 of the Labor Code cannot be deemed permanent, precluding the commencement of negotiations by another union with management, considering that it was entered into at a time when the petition for certification election had already been filed by respondent union (Associated Trade Unions (ATU) v. Trajano, *supra*). Meantime, this interim agreement must be recognized and given effect on a temporary basis so as not to deprive the workers of the favorable terms of the agreement (Vassar Industries Employers Union (VIEW) v. Estrella, 82 SCRA 280 [1978]; National Mines and Allied Workers Union (NAMAWUMIF) v. Estrella, 87 SCRA 84 [1978], cited in Associated Trade Unions (ATU) v. Trajano, *Ibid.*)

If, as a result of the certification election, respondent union or a union other than petitioner union which executed the interim agreement, is certified as the exclusive bargaining representative of the rank and file employees of respondent company, then, such union may adopt the interim collective bargaining agreement or negotiate with management for a new collective bargaining agreement (Associated Trade Unions (ATU) v. Trajano, *Ibid.*)

PREMISES CONSIDERED, (a) the petition for certiorari is DISMISSED for lack of merit; (b) the resolution of the Bureau of Labor Relations dated January 30, 1987 and the order of the Bureau dated February 24, 1987 are AFFIRMED; and (c) the temporary restraining order issued by the Court on March 9, 1987 is LIFTED permanently.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* Director Pura Ferrer-Calleja.

** Hon. Cresenciano N. Trajano, as Officer-in-Charge of the Bureau of Labor Relations.

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