

**KIMBERLY INDEPENDENT LABOR UNION FOR SOLIDARITY,
ACTIVISM AND NATIONALISM-ORGANIZED LABOR ASSOCIATION IN
LINE INDUSTRIES AND AGRICULTURE (KILUSAN-OLALIA), ROQUE
JIMENEZ, MARIO C...**

G.R. No. 77629. May 09, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

Before us are two consolidated petitions for certiorari filed by the above-named petitioner union (hereinafter referred to as KILUSAN-OLALIA, for conciseness) and individual complainants therein, to wit (a) G.R. No. 77629, which seeks to reverse and set aside the decision, dated November 13, 1986,[1] and the resolution, dated January 9, 1987,[2] respectively handed down by the two former Ministers of Labor, both rendered in BLR Case No. NS-5-164-86; and (b) G.R. No. 78791, which prays for the reversal of the resolutions of the National Labor Relations Commission, dated May 25, 1987[3] and June 19, 1987,[4] issued in Injunction Case No. 1442 thereof.

Kimberly-Clark Philippines, Inc. (KIMBERLY, for brevity) executed a three-year collective bargaining agreement (CBA) with United Kimberly-Clark Employees Union-Philippine Transport and General Workers' Organization (UKCEU-PTGWO) which expired on June 30, 1986.

Within the 60-day freedom period prior to the expiration of and during the negotiations for the renewal of the aforementioned CBA, some members of the bargaining unit formed another union called "Kimberly Independent Labor Union for Solidarity, Activism and Nationalism-Organized Labor Association in Line Industries and Agriculture (KILUSAN-OLALIA)."

On April 21, 1986, KILUSAN-OLALIA filed a petition for certification election in Regional Office No. IV, Ministry of Labor and Employment (MOLE), docketed as Case No. RO4-OD-M-4-15-86.[5] KIMBERLY and UKCEU-PTGWO did not object to the holding of a certification election but objected to the inclusion of the so-called contractual workers whose employment with KIMBERLY was coursed through an independent contractor, Rank Manpower Company (RANK, for short), as among the qualified voters.

Pending resolution of the petition for certification election by the med-arbiter, KILUSAN-OLALIA filed a notice of strike on May 7, 1986 with the Bureau of Labor Relations, docketed as BLR Case No. NS-5-164-86,[6] charging KIMBERLY with unfair labor practices based on the following alleged acts: (1) dismissal of union members (KILUSAN-OLALIA); (2) non-regularization of casuals/contractuals with over six months service; (3) non-implementation of appreciation bonus for 1982 and 1983; (4) non-payment of minimum wages; (5) coercion of employees; and (6) engaging in CBA negotiations despite the pendency of a petition for certification election. This was later amended to withdraw the charge of coercion but to add, as new charges, the dismissal of Roque Jimenez and the non-payment of backwages of the reinstated Emerito Fuentes.[7]

Conciliation proceedings conducted by the bureau proved futile, and KILUSAN-OLALIA declared a strike at

KIMBERLY's premises in San Pedro, Laguna on May 23, 1986.

On May 26, 1986, KIMBERLY petitioned MOLE to assume jurisdiction over the labor dispute. On May 30, 1986, finding that the labor dispute would adversely affect national interest, then Minister Augusto S. Sanchez issued an assumption order, the dispositive portion whereof reads:

"Wherefore, premises considered, immediately upon receipt of this order, the striking union and its members are hereby enjoined to lift the picket and remove all obstacles to the free ingress to and egress from the company premises and to return to work, including the 28 contractual workers who were dismissed; likewise, the company is directed to resume its operations immediately thereafter and to accept all the employees back under the same terms and conditions of employment prevailing prior to the industrial action. Further, all issues in the notice of strike, as amended, are hereby assumed in this assumption order, except for the representation issue pending in Region IV in which the Med-Arbiter is also enjoined to decide the same the soonest possible time." [8]

In obedience to said assumption order, KILUSAN-OLALIA terminated its strike and picketing activities effective June 1, 1986 after a compliance agreement was entered into by it with KIMBERLY. [9]

On June 2, 1986, Med-Arbiter Bonifacio I. Marasigan, who was handling the certification election case (RO4-OD-M-4-15-86), issued an order [10] declaring the following as eligible to vote in the certification election, thus:

1. The regular rank-and-file laborers/employees of the respondent company consisting of 537 as of May 14, 1986 should be considered qualified to vote;
2. Those casuals who have worked at least six (6) months as appearing in the payroll months prior to the filing of the instant petition on April 21, 1986; and
3. Those contractual employees who are allegedly in the employ of an independent contractor and who have also worked for at least six (6) months as appearing in the payroll month prior to the filing of the instant petition on April 21, 1986.

During the pre-election conference, 64 casual workers were challenged by KIMBERLY and UKCEU-PTGWO on the ground that they are not employees of KIMBERLY but of RANK. It was agreed by all the parties that the 64 voters shall be allowed to cast their votes but that their ballots shall be segregated and subject to challenge proceedings. The certification election was conducted on July 1, 1986, with the following results: [11]

1. KILUSAN-OLALIA =
 2. UKCEU-PTGWO =
 3. NO UNION =
 4. SPOILED BALLOTS =
 5. CHALLENGED BALLOTS =
- 246 votes
- 266 votes
- 1 vote
- 4 votes
- 64 votes

TOTAL

581 votes

On July 2, 1986, KILUSAN-OLALIA filed with the med-arbiter a "Protest and Motion to Open and Count Challenged Votes"[12] on the ground that the 64 workers are employees of KIMBERLY within the meaning of Article 212(e) of the Labor Code. On July 7, 1986, KIMBERLY filed an opposition to the protest and motion, asserting that there is no employer-employee relationship between the casual workers and the company, and that the med-arbiter has no jurisdiction to rule on the issue of the status of the challenged workers which is one of the issues covered by the assumption order. The med-arbiter opted not to rule on the protest until the issue of regularization has been resolved by MOLE.[13]

On November 13, 1986, then Minister Sanchez rendered a decision in BLR Case No. NS-5-164-86,[14] the disposition wherein is summarized as follows:

1. The service contract for janitorial and yard maintenance services between KIMBERLY and RANK was declared legal;
2. The other casual employees not performing janitorial and yard maintenance services were deemed labor-only contractuels and since labor-only contracting is prohibited, such employees were held to have attained the status of regular employees, the regularization being effective as of the date of the decision;
3. UKCEU-PTGWO, having garnered more votes than KILUSAN-OLALIA, was certified as the exclusive bargaining representative of KIMBERLY'S employees;
4. The reinstatement of 28 dismissed KILUSAN-OLALIA members was ordered;
5. Roque Jimenez was ordered reinstated without backwages, the period when he was out of work being considered as penalty for his misdemeanor;
6. The decision of the voluntary arbitrator ordering the reinstatement of Ermilo Fuentes with backwages was declared as already final and unappealable; and
7. KIMBERLY was ordered to pay appreciation bonus for 1982 and 1983.

On November 25, 1986, KIMBERLY filed a motion for reconsideration with respect to the regularization of contractual workers, the appreciation bonus and the reinstatement of Roque Jimenez.[15] In a letter dated November 24, 1986, counsel for KILUSAN-OLALIA demanded from KIMBERLY the implementation of the November 13, 1986 decision but only with respect to the regularization of the casual workers.[16]

On December 11, 1986, KILUSAN-OLALIA filed a motion for reconsideration questioning the authority of the Minister of Labor to assume jurisdiction over the representation issue. In the meantime, KIMBERLY and UKCEU-PTGWO continued with the negotiations on the new collective bargaining agreement (CBA), no restraining order or injunctive writ having been issued, and on December 18, 1986, a new CBA was concluded and ratified by 440 out of 517 members of the bargaining unit.[17]

In an order dated January 9, 1987, former Labor Minister Franklin Drilon denied both motions for reconsideration filed by KIMBERLY and KILUSAN-OLALIA.[18] On March 10, 1987, the new CBA executed between KIMBERLY and UKCEU-PTGWO was signed.

On March 16, 1987, KILUSAN-OLALIA filed a petition for certiorari in this Court, docketed as G.R. No. 77629, seeking to set aside the aforesaid decision, dated November 13, 1986, and the order, dated January 9, 1987, rendered by the aforesaid labor ministers.

On March 25, 1987, this Court issued in G.R. No. 77629 a temporary restraining order, enjoining respondents from enforcing and/or carrying out the decision and order above stated, particularly that portion (1) recognizing respondent UKCEU-PTGWO as the exclusive bargaining representative of all regular rank-and-file employees in the establishment of respondent company, (2) enforcing and/or implementing the alleged CBA which is detrimental to the interests of the members of the petitioner union, and (3) stopping respondent company from deducting monthly dues and other union assessments from the wages of all regular rank-and-file employees of respondent company and from remitting the said collection to respondent UKCEU-PTGWO, issued in BLR Case No. NS-5-164-86, entitled, "In Re: Labor Dispute at Kimberly-Clark Philippines, Inc.," of the Department of Labor and Employment, Manila.[19]

In its comment,[20] respondent company pointed out certain events which took place prior to the filing of the petition in G.R. No. 77629, to wit:

1. The company and UKCEU-PTGWO have concluded a new collective bargaining agreement which had been ratified by 440 out of 517 members of the bargaining unit.
2. The company has already granted the new benefits under the new CBA to all its regular employees, including members of petitioner union who, while refusing to ratify the CBA nevertheless readily accepted the benefits arising therefrom.
3. The company has been complying with the check-off provision of the CBA and has been remitting the union dues to UKCEU-PTGWO;
4. The company has already implemented the decision of November 13, 1986 insofar as the regularization of contractual employees who have rendered more than one (1) year of service as of the filing of the Notice of Strike on May 7, 1986 and are not engaged in janitorial and yard maintenance work, are concerned;
5. Rank Manpower Company had already pulled out, reassigned, or replaced the contractual employees engaged in janitorial and yard maintenance work, as well as those with less than one year service; and
6. The company has reinstated Roque Jimenez as of January 11, 1987.

In G.R. No. 78791, the records[21] disclose that on May 4, 1987, KILUSAN-OLALIA filed another notice of strike with the Bureau of Labor Relations charging respondent company with unfair labor practices. On May 8, 1987, the bureau dismissed and considered the said notice as not filed by reason of the pendency of the representation issue before this Court in G.R. No. 77629. KILUSAN-OLALIA moved to reconsider said order, but before the bureau could act on said motion, KILUSAN-OLALIA declared a strike and established a picket on respondent company's premises in San Pedro, Laguna on May 17, 1987.

On May 18, 1987, KIMBERLY filed a petition for injunction with the National Labor Relations Commission (NLRC), docketed as Injunction Case No. 1442. A supplement to said petition was filed on May 19, 1987. On May 26, 1987, the commission en banc issued a temporary restraining order (TRO) on the basis of the ocular inspection report submitted by the commission's agent, the testimonies of KIMBERLY'S witnesses, and pictures of the barricade. KILUSAN-OLALIA moved to dissolve the TRO on the ground of lack of jurisdiction.

Immediately after the expiration of the first TRO on June 9, 1987, the striking employees returned to their picketlines and reestablished their barricades at the gate. On June 19, 1987, the commission en banc issued a second TRO.

On June 25, 1987, KILUSAN-OLALIA filed another petition for certiorari and prohibition with this Court, docketed as G.R. No. 78791, questioning the validity of the temporary restraining orders issued by the NLRC on May 26, 1987 and June 19, 1987. On June 29, 1987, KILUSAN-OLALIA filed in said case an urgent motion for a

TRO to restrain NLRC from implementing the questioned orders. An opposition, as well as a reply thereto, were filed by the parties.

Meanwhile, on July 3, 1987, KIMBERLY filed in the NLRC an urgent motion for the issuance of a writ of preliminary injunction when the strikers returned to the strike area after the second TRO expired. After due hearing, the commission issued a writ of preliminary injunction on July 14, 1987, after requiring KIMBERLY to post a bond in the amount of P20,000.00.

Consequently, on July 17, 1987, KILUSAN-OLALIA filed in G.R. No. 78791 a second urgent motion for the issuance of a TRO by reason of the issuance of said writ of preliminary injunction, which motion was opposed by KIMBERLY.

Thereafter, in its memorandum[22] filed on December 28, 1989 and in its motion for early resolution[23] filed on February 28, 1990, both in G.R. No. 78791, KILUSAN-OLALIA alleged that it had terminated its strike and picketing activities and that the striking employees had unconditionally offered to return to work, although they were refused admission by KIMBERLY. By reason of this supervening development, the petition in G.R. No. 78791, questioning the propriety of the issuance of the two temporary restraining orders and the writ of injunction therein, has been rendered moot and academic.

In G.R. No. 77629, the petition of KILUSAN-OLALIA avers that the respondent Secretary of labor and/or the former Minister of Labor have acted with grave abuse of discretion and/or without jurisdiction in (1) ruling on the issue of bargaining representation and declaring respondent UKCEU-PTGWO as the collective bargaining representative of all regular rank-and-file employees of the respondent company; (2) holding that petitioners are not entitled to vote in the certification election; (3) considering the regularization of petitioners (who are not janitors and maintenance employees) to be effective only on the date of the disputed decision; (4) declaring petitioners who are assigned janitorial and yard maintenance work to be employees of respondent RANK and not entitled to be regularized; (5) not awarding to petitioners differential pay arising out of such illegal work scheme; and (6) ordering the mere reinstatement of petitioner Jimenez.

The issue of jurisdiction actually involves a question of whether or not former Minister Sanchez committed a grave abuse of discretion amounting to lack of jurisdiction in declaring respondent UKCEU-PTGWO as the certified bargaining representative of the regular employees of KIMBERLY, after ruling that the 64 casual workers, whose votes are being challenged, were not entitled to vote in the certification election.

KILUSAN-OLALIA contends that after finding that the 64 workers are regular employees of KIMBERLY, Minister Sanchez should have remanded the representation case to the med-arbiter, instead of declaring UKCEU-PTGWO as the winner in the certification election and setting aside the med arbiter's order which allowed the 64 casual workers to cast their votes.

Respondents argue that since the issues of regularization and representation are closely interrelated and that a resolution of the former inevitably affects the latter, it was necessary for the former labor minister to take cognizance of the representation issue; that no timely motion for reconsideration or appeal was made from his decision of November 13, 1986 which has become final and executory; and that the aforesaid decision was impliedly accepted by KILUSAN-OLALIA when it demanded from KIMBERLY the issuance of regular appointments to its affected members in compliance with said decision, hence petitioner employees are now estopped from questioning the legality thereof.

We uphold the authority of former Minister Sanchez to assume jurisdiction over the issue of the regularization of the 64 casual workers, which fact is not even disputed by KILUSAN-OLALIA as may be gleaned from its request

for an interim order in the notice of strike case (BLR-NS-5-164-86), asking that the regularization issue be immediately resolved. Furthermore, even the med-arbiter who ordered the holding of the certification election refused to resolve the protest on the ground that the issue raised therein correctly pertains to the jurisdiction of the then labor minister. No opposition was offered by KILUSAN-OLALIA. We hold that the issue of regularization was properly addressed to the discretion of said former minister.

However, the matter of the controverted pronouncement by former Minister Sanchez, as reaffirmed by respondent secretary, regarding the winner in the certification election presents a different situation.

It will be recalled that in the certification election, UKCEU-PTGWO came out as the winner, by garnering a majority of the votes cast therein with the exception of 64 ballots which were subject to challenge. In the protest filed for the opening and counting of the challenged ballots, KILUSAN-OLALIA raised the main and sole question of regularization of the 64 casual workers. The med-arbiter refused to act on the protest on the ground that the issue involved is within the jurisdiction of the then Minister of Labor. KILUSAN-OLALIA then sought an interim order for an early resolution on the employment status of the casual workers, which was one of the issues included in the notice of strike filed by KILUSAN-OLALIA in BLR Case No. NS-5-164-86. Consequently, Minister Sanchez rendered the questioned decision finding that the workers not engaged in janitorial and yard maintenance service are regular employees but that they became regular only on the date of his decision, that is, on November 13, 1986, and, therefore, they were not entitled to vote in the certification election. On the basis of the results obtained in the certification election, Minister Sanchez declared UKCEU-PTGWO as the winner.

The pivotal issue, therefore, is when said workers, not performing janitorial or yard maintenance service, became regular employees of KIMBERLY.

We find and so hold that the former labor minister gravely abused his discretion in holding that those workers not engaged in janitorial or yard maintenance service attained the status of regular employees only on November 13, 1986, which thus deprived them of their constitutionally protected right to vote in the certification election and choose their rightful bargaining representative.

The Labor Code defines who are regular employees, as follows:

"ART. 280. Regular and Casual Employment. - The provisions of written agreements to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

"An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists."

The law thus provides for two kinds of regular employees, namely: (1) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and (2) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed. The individual petitioners herein who have been adjudged to be regular employees fall under the second category. These are the mechanics, electricians, machinists, machine shop helpers, warehouse helpers, painters, carpenters, pipefitters and masons. It is not disputed that these workers have been in the employ of

KIMBERLY for more than one year at the time of the filing of the petition for certification election by KILUSAN-OLALIA.

Owing to their length of service with the company, these workers became regular employees, by operation of law, one year after they were employed by KIMBERLY through RANK. While the actual regularization of these employees entails the mechanical act of issuing regular appointment papers and compliance with such other operating procedures as may be adopted by the employer, it is more in keeping with the intent and spirit of the law to rule that the status of regular employment attaches to the casual worker on the day immediately after the end of his first year of service. To rule otherwise, and to instead make their regularization dependent on the happening of some contingency or the fulfillment of certain requirements, is to impose a burden on the employee which is not sanctioned by law.

That the first stated position is the situation contemplated and sanctioned by law is further enhanced by the absence of a statutory limitation before regular status can be acquired by a casual employee. The law is explicit. As long as the employee has rendered at least one year of service, he becomes a regular employee with respect to the activity in which he is employed. The law does not provide the qualification that the employee must first be issued a regular appointment or must first be formally declared as such before he can acquire a regular status. Obviously, where the law does not distinguish, no distinction should be drawn.

The submission that the decision of November 13, 1986 has become final and executory, on the grounds that no timely appeal has been made therefrom and that KILUSAN-OLALIA has impliedly acceded thereto, is untenable.

Rule 65 of the Rules of Court allows original petitions for certiorari from decisions or orders of public respondents provided they are filed within a reasonable time. We believe that the period from January 9, 1987, when the motions for reconsideration separately filed by KILUSAN-OLALIA and KIMBERLY were denied, to March 16, 1987, when the petition in G.R. No. 77629 was filed, constitutes a reasonable time for availing of such recourse.

We likewise do not subscribe to the claim of respondents that KILUSAN-OLALIA has impliedly accepted the questioned decision by demanding compliance therewith. In the letter of KILUSAN-OLALIA dated November 24, 1986,[24] addressed to the legal counsel of KIMBERLY, it is there expressly and specifically pointed out that KILUSAN-OLALIA intends to file a motion for reconsideration of the questioned decision but that, in the meantime, it was demanding the issuance of regular appointments to the casual workers who had been declared to be regular employees. The filing of said motion for reconsideration of the questioned decision by KILUSAN-OLALIA, which was later denied, sustains our position on this issue and denies the theory of estoppel postulated by respondents.

On the basis of the foregoing circumstances, and as a consequence of their status as regular employees, those workers not performing janitorial and yard maintenance service were perforce entitled to the payment of salary differential, cost of living allowance, 13th month pay, and such other benefits extended to regular employees under the CBA, from the day immediately following their first year of service in the company. These regular employees are likewise entitled to vote in the certification election held on July 1, 1986. Consequently, the votes cast by those employees not performing janitorial and yard maintenance service, which form part of the 64 challenged votes, should be opened, counted and considered for the purpose of determining the certified bargaining representative.

We do not find it necessary to disturb the finding of then Minister Sanchez holding as legal the service contract executed between KIMBERLY and RANK, with respect to the workers performing janitorial and yard maintenance service, which is supported by substantial and convincing evidence. Besides, we take judicial notice

of the general practice adopted in several government and private institutions and industries of hiring a janitorial service on an independent contractor basis. Furthermore, the occasional directives and suggestions of KIMBERLY are insufficient to erode primary and continuous control over the employees of the independent contractor.[25] Lastly, the duties performed by these workers are not independent and integral steps in or aspects of the essential operations of KIMBERLY which is engaged in the manufacture of consumer paper products and cigarette paper, hence said workers cannot be considered regular employees.

The reinstatement of Roque Jimenez without back-wages involves a question of fact best addressed to the discretion of respondent secretary whose finding thereon is binding and conclusive upon this Court, absent a showing that he committed a grave abuse in the exercise thereof.

WHEREFORE, judgment is hereby rendered in G.R. No. 77629:

1. Ordering the med-arbiter in Case No. RO4-OD-M--4-15-86 to open and count the 64 challenged votes, and that the union with the highest number of votes be thereafter declared as the duly elected certified bargaining representative of the regular employees of KIMBERLY;

2. Ordering KIMBERLY to pay the workers who have been regularized their differential pay with respect to minimum wage, cost of living allowance, 13th month pay, and benefits provided for under the applicable collective bargaining agreement from the time they became regular employees.

All other aspects of the decision appealed from, which are not so modified or affected thereby, are hereby AFFIRMED. The temporary restraining order issued in G.R. No. 77629 is hereby made permanent.

The petition filed in G.R. No. 78791 is hereby DISMISSED.

SO ORDERED.

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

* The other petitioners not specifically named in the title of this case consist of 97 other alleged members of petitioner union (exclusive of petitioners Roque Jimenez and Mario C. Rongaleros) who are enumerated in the "Amended List of Petitioners" which is indicated as Annex "A" of the basic petition filed herein.

[1] Petition, G.R. No. 77629, Annex B; Rollo, 62-79.

[2] Id., id., Annex C; ibid., 80-81.

[3] Petition, G.R. No. 78791, Annex A; Rollo, 42-43.

[4] Id., id., Annex B; ibid., 44-45.

[5] Petition, G.R. No. 77629, Annex D; Rollo, 82-83.

[6] Id., id., Annex F; ibid., 86.

[7] Memorandum of Public Respondent, G.R. No. 77629; Rollo, 458-459.

[8] Petition, G.R. No. 77629, Annex G; ibid., 87-88.

[9] Id., id., Annex H; ibid., 89.

[10] Id., id., Annex J; ibid., 114-117.

- [11] Rollo, G.R. No. 77629, 66.
- [12] Ibid., id., 18.
- [13] Ibid., id., 19, 68, 461.
- [14] Ibid., id., 62-79.
- [15] Ibid., id., 461-462.
- [16] Petition, G.R. No. 77629, Annex M; *ibid.*, 125.
- [17] Rollo, G.R. No. 77629; 462-463.
- [18] Ibid., id., 161-162.
- [19] Ibid., id., 134-135.
- [20] Ibid., id., 171-190.
- [21] Rollo, G.R. No. 78791, 327-339.
- [22] Rollo, G.R. No. 78791, 350-402.
- [23] Ibid., id., 406.
- [24] Footnote 16, *ante*.
- [25] *Wirtz vs. San Francisco & Oakland Helicopter Air Inc.*, 244 F. Supp. 680.

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