

**COOPERATIVE RURAL BANK OF DAVAO CITY, INC., PETITIONER, VS.
PURA FERRER-CALLEJA, DIRECTOR, BUREAU OF LABOR
RELATIONS, MOLE, MANILA; FELIZARDO T. SERAPIO, MED-ARBITER
DESIGNATE, ...**

G.R. No. 77951. September 26, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a Petition for certiorari under Rule 65 of the Rules of Court where the issue is whether or not the employees of a cooperative can organize themselves for purposes of collective bargaining.

The record of the case discloses that the herein petitioner Cooperative Rural Bank of Davao City, Inc. is a cooperative banking corporation operating in Davao City. It is owned in part by the Government and its employees are members and co-owners of the same. The petitioner has around 16 rank-and-file employees. As of August, 1986, there was no existing collective bargaining agreement between the said employees and the establishment. On the other hand, the herein private respondent Federation of Free Workers is a labor organization registered with the Department of Labor and Employment. It is interested in representing the said employees for purposes of collective bargaining.

On August 27, 1986, the private respondent filed with the Davao City Regional Office of the then Ministry of Labor and Employment a verified Petition for certification election among the rank-and-file employees of the petitioner.[1] The same was docketed as Case No. R-325 ROXI MED-UR-73-86. On September 18, 1986, the herein public respondent issued an Order granting the Petition for certification election.

On October 3, 1986, the petitioner filed an Appeal Memorandum and sought a reversal of the Order of the Med-Arbiter.[2] The petitioner argues therein that, among others, a cooperative is not covered by the Rules governing certification elections inasmuch as it is not an institution operating for profit. The petitioner also adds that two of the alleged rank-and-file employees seeking the certification election are managerial employees disqualified from joining concerted labor activities. In sum, the petitioner insists that its employees are disqualified from forming labor organizations for purposes of collective bargaining.

On October 8, 1986, the private respondent filed a "Motion to Dismiss the Appeal." On October 15, 1986, the petitioner filed its opposition to the said Motion.

On February 11, 1987, the herein public respondent Bureau of Labor Relations Director Pura Ferrer-Calleja issued a Resolution affirming the Order of the Med-Arbiter and dismissing the Appeal.[3] The pertinent portions of the said Resolution are as follows --

"It is beyond doubt that respondent-appellant, Cooperative Rural Bank of Davao City falls within the purview of Article 212, paragraph C of the Labor Code, acting as such in the interest of an employer. To argue otherwise would amount to closing one's eyes to the realities of today's cooperative banking institutions. xxx.

"Moreover, basic is the right of every worker in any establishment whether operated for profit or not to organize and engage in concerted activity, mutually beneficial to their interest. Such right is sacredly enshrined and protected in our fundamental law, granting every worker the right to organize into a collective group and engage in concerted activities for purposes of promoting their well being, subject only to such limitations as may be provided for by law.

" xxx.

"As this Office has consistently ruled and applied in various cases, being a member of a cooperative organization does not preclude one from forming or joining a labor union provided that such person or persons are not among those disqualified by law. Nowhere in the records can we find any piece of evidence showing that the signatories in the petition are among those disqualified to form or join a union.

"Finally, we cannot give credence to (the) employer's allegation that two of the signatories thereof, are managerial employees, since no evidence showing such fact can be found from the records.

" xxx."

In a Motion dated March 2, 1987, the petitioner asked for a reconsideration of the said Resolution.[4] The petitioner reiterated therein its view that its employees are disqualified from forming the labor organization so contemplated. The petitioner also called attention to an Opinion rendered by then Solicitor General and Minister of Justice Estelito P. Mendoza dated August 14, 1981.[5] The Opinion states that employees of an electric cooperative who are themselves members/co-owners of the same cannot form or join labor organizations for purposes of collective bargaining. The Opinion also states that the duty to bargain exists only between an employer and his/its employees, and that an employer has no duty to bargain with his co-owners of a corporation who are also its employees. The petitioner submits that the said Opinion calls for application in the present controversy.

On March 26, 1987, director Calleja issued a Resolution denying the reconsideration sought by the petitioner.[6] Thus, the certification election was scheduled in the morning of April 23, 1987.

Finding the action taken by the Bureau unsatisfactory, the petitioner brought the case directly to this Court on April 9, 1987 by way of the instant Petition for certiorari. The petitioner maintains that the public respondents both acted without jurisdiction or in excess thereof, or with grave abuse of discretion amounting to lack of jurisdiction, in allowing the certification election sought by the private respondent despite the arguments of the petitioner in opposition thereto. The petitioner reiterates its argument that employees of cooperatives who are members and co-owners of the same cannot form and join labor organizations for purposes of collective bargaining.

On April 15, 1987, this Court issued a temporary restraining order enjoining the Bureau of Labor Relations from proceeding with the certification election scheduled on April 23, 1987.[7] The certification election nonetheless pushed through as scheduled for the alleged reason that the temporary restraining order was not seasonably transmitted to Davao City.[8]

This court also required the respondents to file their Comment on the Petition.[9] The respondents complied as instructed. The Office of the Solicitor General represented the public respondents.

The Solicitor General intimated to this Court that the instant Petition has been rendered moot and academic inasmuch as the certification election sought to be enjoined had already been conducted. The Solicitor General added that the public respondents did not commit any jurisdictional error.[10]

In due time, the parties submitted other pleadings. On January 6, 1988, the case was deemed submitted for decision.

After a careful examination of the entire record of the case, We find the instant Petition meritorious.

Contrary to the view espoused by the Solicitor General, this case cannot be considered moot and academic simply because the certification election sought to be enjoined went on as scheduled. The instant Petition is one for certiorari as a special civil action. Errors of Jurisdiction on the part of the public respondents are alleged in the Petition itself. If the public respondents had indeed committed jurisdictional errors, the action taken by both the Med-Arbiter and the Bureau Director will be deemed null and void ab initio.[11] And if this were so, the certification election would, necessarily, have no legal justification. The arguments raised in the instant Petition strike at the very heart of the validity of the certification election itself.

We come now to the main aspect of the case.

Article 243 of the Labor Code[12] enumerates who are eligible to form, join, or assist labor organizations for purposes of collective bargaining, to wit --

"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. xxx."

The recognized exception to this enumeration is found in Article 245 of the same code, which provides for the ineligibility of managerial employees to join any labor organization, viz --

"ART. 245. Ineligibility of managerial employees to join any labor organization. -- Managerial employees are not eligible to join, assist or form any labor organization."

From the foregoing provisions of law it would appear at first blush that all the rank and file employees of a cooperative who are not managerial employees are eligible to form, join or assist any labor organization of their own choosing for the purpose of collective bargaining.

However, under Section 2 of P.D. No. 175, a cooperative is defined to mean "organizations composed primarily of small producers and of consumers who voluntarily join together to form business enterprises which they themselves own, control, and patronize." Its creation and growth was declared as a policy of the State as a means of increasing the income and purchasing power of the low-income sector of the population in order to attain a more equitable distribution of income and wealth.[13]

The principles governing it are:

a)

Open membership - "Should be voluntary and available without artificial restriction, or any social, political, racial or religious discrimination, to all persons who can make use of its services and are willing to accept responsibilities of membership;"

b)

Democratic control - "Irrespective of the number of shares owned, each member can only cast one vote in deciding upon the affairs of the cooperative;"

c)

Limited interest to capital - "Share capital shall earn only limited interest, the maximum rate of interest to be established by the Department of Local Government and Community Development from time to time;" and

d)

Patronage refund - "Net income after the interest on capital has been paid shall be redistributed among the members in proportion to their patronage." [14]

While cooperatives may exercise the same rights and privileges given to persons, partnership and corporations provided under existing laws, operate business enterprises of all kinds, establish rural banks, enjoy all the privileges and incentives granted by the NACIDA Act and other government agencies to business organizations under existing laws, to expropriate idle urban or rural lands for its purposes, to own and dispose of properties, enter into contracts, to sue and be sued and perform other acts necessary to pursue its objectives, [15] such cooperatives enjoy such privileges as:

a)

Exemption from income tax and sales taxes;

b)

Preferential right to supply rice, corn and other grains, and other commodities produced by them to State agencies administering price stabilization program; and

c)

In appropriate cases, exemption from application of minimum wage law upon recommendation of the Bureau of Cooperative Development subject to the approval of the Secretary of Labor. [16]

A cooperative development loan fund has been created for the development of the cooperative movement. [17]

It may be further stated that the Department of Local Government and Community Development through the Bureau of Cooperative Development is vested with full authority to promulgate rules and regulations to cover the promotion, organization, registration, regulation and supervision of all types of cooperatives. [18] Electric cooperatives, however, are under the regulation and supervision of the National Electrification Administration, [19] while it is the Monetary Board of the Central Bank that has exclusive responsibility and authority over the banking functions and operations of cooperative banks. [20]

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 number of shares owned by each member they are entitled to cast one vote each in deciding upon the affairs 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 wages 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 purposes of collective bargaining for being themselves co-owners of the cooperative.[21]

However, in so far as it involves cooperatives with employees 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.[22]

The questioned ruling therefore of public respondent Pura Ferrer-Calleja must be upheld insofar as it refers to the employees of petitioner who are not members or co-owners of petitioner. It cannot extend to the other employees who are at the same time its members or co-owners.

The Court upholds the findings of said public respondent that no persuasive evidence has been presented to show that two of the signatories in the petition for certification election are managerial employees who under the law are disqualified from pursuing union activities.

WHEREFORE, the herein petition is hereby GRANTED and the resolution of public respondent Pura Ferrer-Calleja, Director, Bureau of Labor Relations of February 11, 1987 is hereby MODIFIED to the effect that only the rank and file employees of petitioner who are not its members or co-owners are entitled to self-organization, collective bargaining, and negotiations, while the other employees who are members or co-owners thereof can not enjoy such right.

SO ORDERED.

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

[1] Pages 93 and 94, Rollo.

[2] Pages 16 to 20, Rollo.

[3] Pages 13 to 15, Rollo.

[4] Pages 21 to 25, Rollo.

[5] Pages 26 to 27, Rollo.

[6] Pages 30 to 31, Rollo.

[7] Pages 37 and 38, Rollo.

[8] Pages 45 to 47, Rollo.

[9] Page 37, Rollo.

[10] Pages 37 and 38, Rollo.

[11] Ang Lam v. Rosillosa, 86 Phil. 447 (1950).

[12] Presidential Decree No. 442, as amended. The codal provisions cited herein have been renumbered pursuant to Executive Order No. 111 issued by President Aquino on December 24, 1986.

[13] Section 1, P.D. No. 175.

[14] Section 3, *supra*.

[15] Section 4, *supra*.

[16] Section 5, *supra*.

[17] Section 6, *supra*.

[18] Section 8, *supra*.

[19] P.D. No. 501, Section 1, amending Section 8 of P.D. No. 175.

[20] P.D. No. 1283, amending P.D. No. 175.

[21] Annex D to Petition, pages 26-27.

[22] Section 8, Art. II, Section 3, Art. XIII, 1987 Constitution; Labor Code of the Philippines and other related laws.

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