

A’ PRIME SECURITY SERVICES, INC., PETITIONER, VS. HON. SECRETARY OF LABOR FRANKLIN DRILON AND PHILIPPINE FEDERATION OF LABOR (A’-1 PRIME SECURITY SER-VICES, INC. – U.S. EMBASSY ...

G.R. No. 91987. July 17, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This petition for certiorari seeks to set aside the Order dated November 24, 1989 of the Secretary of the Department of Labor and Employment (DOLE) and the Order dated January 16, 1990 of the Acting Secretary of the DOLE in BLR Case No. A-12-327-88 (NCR-OD-M-10-557-88).

I

On October 3, 1988, respondent union filed before the Bureau of Labor Relations (BLR) a petition for certification election (BLR Case No. A-12-327-88) among the security guards employed by petitioner and assigned at the U.S. Embassy.

Petitioner filed a motion to dismiss, contending: (1) that the security guards assigned to the U.S. Embassy were ineligible to join a labor organization; (2) that even assuming that they were eligible, the mandatory 20% subscription requirement was not met since only 77 out of the total 872 security guards under its employ joined the petition; and (3) that respondent union did not represent the proper bargaining unit.

After respondent union had filed its Opposition to the Motion to Dismiss and petitioner its Reply to the Opposition, the Med-Arbiter dismissed the petition for certification election in an Order dated November 22, 1988. While upholding the right of the security guards to join a labor organization, the Med-Arbiter ruled that there was a failure to comply with the mandatory 20% subscription requirement using the whole employer unit as the proper bargaining unit.

On appeal to the Bureau of Labor Relations (BLR), respondent union argued that its 150 members assigned to the U.S. Embassy constituted a bargaining unit separate and distinct from the other security guards employed by petitioner, because these members have to meet certain educational qualifications and receive higher pay.

Unconvinced, BLR Director Pura Ferrer-Calleja issued an Order dated April 27, 1989 holding that there was no variance in the nature of work of the members of respondent union and the other security guards employed by petitioner; hence, there was no reason why they must be allowed to form a separate bargaining unit. Despite such findings, however, BLR Director Ferrer-Calleja granted the appeal, disposing as follows:

"WHEREFORE, premises considered, the Appeal is hereby granted and the Order of the Med-Arbiter dated 22 November 1988 is set aside. Accordingly, a new Order is entered, calling for a certification election among all the security guards in the respondent company with the following choices:

- Philippine Federation of Labor (A-1) Prime Security Service, Inc. (US Embassy Chapter) Local Union-PFL; and
- No Union.

"The latest payroll of the company shall be the basis in determining the list of eligible voters" (Rollo, p. 34).

The motion for reconsideration filed by respondent union was denied on June 1, 1989 with the warning that "[n]o further motion of any nature shall hereafter be entertained" (Rollo, p. 35).

Undaunted, respondent union filed a second Motion for Reconsideration before the Office of the DOLE Secretary. The supervisors/security guards of petitioner filed a Motion to Intervene.

In his Order dated November 24, 1989, Secretary Franklin M. Drilon found that there are "clear recognizable economic and occupational differences" between the members of respondent union and the other security guard-employees of petitioner, so that the former should be "allowed to determine among themselves whether or not to constitute themselves into a separate and distinct collective bargaining unit" (Rollo, p. 22). To allow the security guards a wide latitude of choice, the motion of A' Prime Security Services/Supervisors/Security Guard to intervene was granted, to the exclusion of the supervisors. The dispositive portion of the Order reads:

"WHEREFORE, the Orders dated April 27, 1989 and June 1, 1989 are hereby MODIFIED in that the certification election called for be limited to the security guards of the respondent company assigned to the U.S. Embassy and constituting themselves into a separate bargaining unit, with the following choices:

- Philippine Federation of Labor (A-1) Prime Security Services Inc. (US Embassy Chapter) Local Union - PFL;
- A' Prime Security Services Supervisors/Security Guards;
- No Union.

"The latest payroll of the company shall be the basis in determining the list of eligible voters" (Rollo, p. 24).

Petitioner filed a motion for reconsideration, which was denied for lack of merit in the Order dated January 16, 1990 of Acting Secretary Dionisio De La Serna (Rollo, pp. 25-26).

Hence, this petition which raises the sole issue of:

WHETHER PUBLIC RESPONDENT SECRETARY OF LABOR AND EMPLOYMENT ACTED WITH GRAVE ABUSE OF DISCRETION WHEN HE RULED:

- THAT THE PROPER BARGAINING UNIT IS NOT THE ENTIRE EMPLOYER UNIT BUT ONLY LIMITED TO THOSE SECURITY GUARDS AT THE U.S. EMBASSY AND ITS FACILITIES; AND,
- THAT SAID OFFICE HAS COMPETENT JURISDICTION TO ENTERTAIN PRIVATE RESPONDENT'S SECOND MOTION FOR RECONSIDERATION (Rollo, p. 7).

We find the issue of jurisdiction decisive of the instant petition. The settled rule is that jurisdiction is determined by the statute in force at the time of the commencement of the action (*Philippine-Singapore Ports Corporation v. National Labor Relations Commission*, 218 SCRA 77 [1993] citing *Municipality of Sogod v. Rosa*, 201 SCRA 632 [1991]) and that once acquired, it continues until the case is finally terminated (*Pamintuan v. Tigalo*, 53 Phil. 1 [1929]; *Iburan v. Labes*, 87 Phil. 234 [1950]; *Philippine Land-Air-Sea Labor Union (PLASLU), Inc. v. CIR*, 93 Phil. 747 [1953]).

When respondent union filed on October 3, 1988 its petition for certification election, the law in force was Article

259 of the Labor Code of the Philippines, which provided that appeals from certification election orders issued by the Med-Arbiter were to be taken to the BLR. Accordingly, the Order dated November 22, 1988 of the Med-Arbiter dismissing the petition was appealed by respondent union to the BLR.

Pending determination of said appeal, R.A. No. 6715 was passed on March 2, 1989 and took effect on March 21, 1989. Republic Act No. 6715 amended, among others, Article 259 of the Labor Code of the Philippines to read as follows:

"Appeal from certification election orders.- Any party to an election may appeal the order or results of the election as determined by the Med-Arbiter directly to the Secretary of Labor and Employment [Bureau] on the ground that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) calendar [working] days."

The transfer of jurisdiction, notwithstanding, and consistent with the rule that jurisdiction once acquired continues until the case is terminated, the BLR continued to exercise its jurisdiction over the appeal, resolving the same in its Order of April 27, 1989. Respondent union filed its motion for reconsideration before the Bureau, which denied the same on June 1, 1989 with the warning that no further motion of any nature was to be entertained.

It is evidently in circumvention of that warning that respondent union filed its second motion for reconsideration before the DOLE Secretary. For while it continued to recognize the Bureau's jurisdiction over their appeal even after the effectivity of R.A. No. 6715 by filing a motion for reconsideration, it suddenly had a change of mind and decided that jurisdiction was then lodged with the DOLE Secretary.

We consider this act of respondent union a trifling with the orderly administration of justice. In lodging its second motion for reconsideration with an office other than that which rendered the order sought to be reconsidered, it not only evaded the dire consequences of the warning issued by the BLR Director, but also avoided the final and unappealable character of the orders of BLR as provided in the Labor Code and its Implementing Rules and Regulations. In effect, respondent union availed itself of a two-tiered review of the Med-Arbiter's ruling, the first by BLR and the second by the DOLE Secretary, contrary to the intent of speedy adjudication of cases under the Labor Code.

Indeed, respondent union's second motion for reconsideration was not only a blatant defiance of the warning issued by the BLR Director, it likewise constituted an act partaking of the nature of forum-shopping. Having obtained an unfavorable ruling from BLR, respondent union looked for another forum in the hope of obtaining, as it did obtain, a favorable ruling. There is forum-shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another. The rule prohibiting forum-shopping applies equally to multiple petitions in the same tribunal or agency (*Silabis International Hotel, Inc. v. National Labor Relations Commission*, 225 SCRA 94 [1993]).

Clearly, the DOLE Secretary had no jurisdiction to entertain the appeals of respondent union from the BLR decision. Accordingly the questioned Orders of the DOLE Secretary and Acting Secretary should be set aside.

WHEREFORE, the petition is GRANTED. The assailed Order dated November 24, 1989 of the DOLE Secretary and Order dated January 16, 1990 of the DOLE Acting Secretary are ANNULLED and SET ASIDE. The Order dated April 27, 1989 of the Bureau of Labor Relations is REVIVED and REINSTATED. Costs against private respondent.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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