

PHILIPPINE SCOUT VETERANS SECURITY AND INVESTIGATION AGENCY (PSVSIA), GVM SECURITY AND INVESTIGATION AGENCY (GVM) AND ABAQUIN SECURITY AND DETECTIVE AGENCY, INC. (ASDA), PETITIO...

G.R. No. 92357. July 21, 1993

Ponente: NOCON, J.

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NOCON, J.:

The sole issue presented for resolution in this petition for certiorari with prayer for preliminary injunction is whether or not a single petition for certification election or for recognition as the sole and exclusive bargaining agent can validly or legally be filed by a labor union in three (3) corporations each of which has a separate and distinct legal personality instead of filing three (3) separate petitions.

On April 6, 1989, private respondent labor union, PGA Brotherhood Association - Union of Filipino Workers (UFW), hereinafter referred to as "the Union" filed a petition for Direct Certification/Certification Election among the rank and file employees of Philippine Scout Veterans Security and Investigation Agency (PSVSIA), GVM Security and Investigation Agency, Inc. (GVM) and Abaquin Security and Detective Agency, Inc. (ASDA). These three agencies were collectively referred to by private respondent Union as the "PGA Security Agency," which is actually the first letters of the corporate names of the agencies.

On April 11, 1989, summons was issued to the management of PSVSIA, GVM, ASDA (PGA Security Agency) at 82 E. Rodriguez Avenue, Quezon City.

On April 26, 1986, petitioners filed a single comment alleging therein that the said three security agencies have separate and distinct corporate personalities while PGA Security Agency is not a business or corporate entity and does not possess any personality whatsoever; the petition was unclear as to whether the rank-and-file employees mentioned therein refer to those of the three security agencies collectively and if so, the labor union cannot seek a certification election in three separate bargaining units in one petition; the labor union included in their organization "security supervisors," in violation of R.A. 6715; and though R.A. 6715 is already in effect, there were still no implementing rules therefor.

On May 4, 1989, the security agencies filed a Consolidated Motion to Dismiss on the grounds that the 721 supporting signatures do not meet the 20% minimum requirement for certification election as the number of employees totals 2374 and that there are no implementing rules yet of R.A. 6715.

On May 8, 1989, the Union filed an Omnibus Reply to Comment and Motion to Dismiss alleging that it is clear that it is seeking a certification election in the three agencies; that the apparent separate personalities of the three agencies were used merely to circumvent the prohibition in R.A. 5847, as amended by P.D. 11 and P.D. 100, that a security agency must not have more than 1,000 guards in its employ; that the three security agencies' administration, management and operations are so intertwined that they can be deemed to be a single entity; and

that the security supervisors cannot be deemed part of management since they do not meet the definition of "supervisory employees" found in Article 212(m), Labor Code, as amended by Section 4, R.A. No. 6715.

On May 18, 1989, the security agencies filed a Rejoinder claiming that there is no violation of R.A. 5487, as amended by P.D. 11 and P.D. 100 since the three agencies were incorporated long before the decrees' issuance; that mere duplication of incorporators does not prove that the three security agencies are actually one single entity; and that security guard supervisors, most especially detachment commanders, fall within the definition of the term "supervisors."

On July 6, 1989, Med-Arbiter Rasidali C. Abdullah issued an Order in favor of the labor union finding that PSVSIA, GVM and ASDA should be deemed as a single entity and bargaining unit for the purpose of union organizing and the holding of a certification election. The dispositive portion of the Order reads as follows:

"WHEREFORE, premises considered, let a certification election be conducted among the rank and file security guards of PSVSIA, GVM and ASDA within twenty (20) days from receipt hereof with the usual pre-election conference of the parties. The list of eligible voters shall be based on the security agencies' payroll three (3) months prior to the filing of this petition with the following choices:

- a) PGA Brotherhood Association-Union of Filipino Workers (UFW); and
- b) No union.

SO ORDERED."[1]

On July 21, 1989, the security agencies appealed the Med Arbiter's Order to the Secretary of Labor and employment claiming that said Order was issued with grave abuse of discretion when it ruled that the three security agencies could be considered as a single bargaining entity for purposes of the holding of a certification election.

On December 15, 1989, then Labor Secretary Franklin M. Drilon denied the appeal for lack of merit while at the same time affirming the Med-Arbiter's Order of July 6, 1989. He also ordered the immediate conduct of a certification election. The dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the Appeal of respondents Security agencies is hereby denied for lack of merit and the Order dated 6 July affirmed.

"Let therefore, the pertinent records of this case be immediately forwarded to the Regional Office for the immediate conduct of the certification election.

"SO ORDERED."[2]

On January 5, 1990, the three security agencies filed a Motion for Reconsideration arguing that they were denied their rights to due process and that jurisdiction was not acquired over them by the labor authorities.

On January 26, 1990, the succeeding Labor Secretary, Ruben D. Torres, likewise denied the Motion for Reconsideration for lack of merit and reiterated the directive that a certification election be conducted without further delay.

On March 14, 1990, the instant petition was filed by the three security agencies, raising the following grounds:

"I

"SERIOUS ERRORS IN THE FINDINGS OF FACTS.

"II

"GRAVE ABUSE OF DISCRETION ON THE PART OF THE SECRETARY OF LABOR."[3]

Petitioners insist that there are three (3) corporations in this petition, each of which has a separate and distinct corporate personality of its own with separate registrations with the Securities and Exchange Commission (SEC) and different Articles of Incorporation and By-Laws; with separate sets of corporate officers and directors; and no common business address except for GVM and ASDA which are located at 1957 España corner Craig Streets, Sampaloc, Manila.

Petitioners claim that the facts and circumstances of the case of *La Campana Coffee Factory, Inc. v. Kaisahan Ng Mga Manggagawa sa La Campana*[4] which public respondent claims to be on all fours with the instant case, are very distinct from the facts and circumstance obtaining in the case at bar. As to form of business organization, in the *La Campana* case, only one of two (2) businesses was a corporation i.e., the *La Campana Coffee Factory, Inc.* and the other, the *La Campana Gaugau Packing*, is a "non-entity," being merely a business name. In the case at bar, all three (3) agencies are incorporated. Moreover, the issue involved in the instant case is one of representation while in the *La Campana* case, the issue involved is the validity of a demand for wage increases and other labor standards benefits.

Petitioners likewise contend that it was error to hold that the three companies should be treated as one in a single bargaining unit in one petition for certification elections resulting in a violation of the right to due process of each corporation as no notice of hearing and other legal processes were served on each of said corporations. Consequently, no jurisdiction was acquired on them by the Department of Labor and Employment.

Petitioners' arguments deserve scant consideration. The facts and circumstances extant in the record indicate that the Med-Arbiters and Secretaries Drilon and Torres were not mistaken in holding that the three security companies are in reality a single business entity operating as a single company called the "PGA Security Group" or "PGA Security Services Group." Factual findings of labor officials are conclusive and binding on the Court when supported by substantial evidence.[5]

The public respondent noted the following circumstances in the *La Campana* case similar to the case at bar, as indicative of the fact that the *La Campana Coffee Factory* and *La Campana Gaugau Packing* were in reality only one business with two trade names: (1) the two factories occupied the same address, wherein they had their principal place of business; (2) their signboards, advertisements, packages of starch, delivery trucks and delivery forms all use one appellation, "*La Campana Starch and Coffee Factory*"; (3) the workers in either company received their pay from a single cashier, and (4) the workers in one company could easily transfer to the other company, and vice-versa. This Court held therein that the veil of corporate fiction of the coffee factory may be pierced to thwart the attempt to consider it apart from the other business owned by the same family. Thus, the fact that one of the businesses is not incorporated was not the decisive factor that led the Court to consider the two factories as one. Moreover, we do not find any materiality in the fact that the *La Campana* case was instituted to demand wage increases and other labor standard benefits while this case was filed by the labor union to seek recognition as the sole bargaining agent in the establishment. If businesses operating under one management are treated as one for bargaining purposes, there is not much difference in treating such businesses also as one for the preliminary purpose of labor organizing.

Indeed, the three agencies in the case at bar failed to rebut the fact that they are managed through the Utilities Management Corporation with all of their employees drawing their salaries and wages from said entity; that the agencies have common and interlocking incorporators and officers; and that the PSVSIA, GVM and ASDA employees have a single Mutual Benefit System and followed a single system of compulsory retirement.

No explanation was also given by petitioners why the security guards of one agency could easily transfer from one agency to another and then back again by simply filling-up a common pro forma slip called "Request for Transfer". Records also show that the PSVSIA, GVM and ASDA always hold joint yearly ceremonies such as the "PGA Annual Awards Ceremony". In emergencies, all PSVSIA Detachment Commanders were instructed in a memorandum dated November 10, 1988 to get in touch with the officers not only of PSVSIA but also of GVM and ASDA. All of these goes to show that the security agencies concerned do not exist and operate separately and distinctly from each other with different corporate directions and goals. On the contrary, all the cross-linking of the three agencies' command, control and communication systems indicate their unitary corporate personality. Accordingly, the veil of corporate fiction of the three agencies should be lifted for the purpose of allowing the employees of the three agencies to form a single labor union. As a single bargaining unit, the employees therein need not file three separate petitions for certification election. All of these could be covered in a single petition.

Petitioners' claim of alleged defect in the petition for certification election which although addressed to the three security agencies merely alleged that there are only 1,000 employees when the total number of employees in said security agencies is about 2,374 (PSVSIA - 1252; GVM - 807; and ASDA - 315) thereby failing to comply with the legal requirement that at least twenty percent (20%) of the employees in the bargaining unit must support the petition, betrays lack of knowledge of the amendments introduced by R.A. 6715 which became effective on March 21, 1989, prior to the filing of the petition for certification election on April 6, 1989. Under the amendments, there is no need for the labor union to prove that at least 20% of the security guards in the three agencies supported the petition. When a duly organized union files a petition for certification election, the Med-Arbiter has the duty to automatically conduct an election. He has no discretion on the matter. This is clearly the mandate of Article 257 of the Labor Code, as amended by Section 24 of R.A. 6715, which now reads:

"ART. 257. Petitions in unorganized establishments. - In any establishment where there is no certified bargaining agent, a certification election shall automatically be conducted by the Med-Arbiter upon the filing of a petition by a legitimate labor organization."

The designation of the three agencies collectively as "PGA Security Agency" and the service of summons to the management thereof at 82 E. Rodriguez Avenue, Quezon City did not render the petition defective. Labor Secretary Franklin Drilon correctly noted the fact that the affidavits executed separately and under oath by the three managers of the three security agencies indicated their office address to be at PSVSIA Center II, E. Rodriguez Sr. Blvd., Quezon City. Besides, even if there was improper service of summons by the Med-Arbiter, the three (3) security agencies voluntarily submitted themselves to the jurisdiction of the labor authorities. The summons were clearly sent to and received by their lawyer who filed motions and pleadings on behalf of the three security agencies and who always appeared as their legal counsel. It puzzles this Court why petitioners, who claim to be separate entities, continue to be represented by one counsel even in this instant petition.

Finally, except where the employer has to file a petition for certification election pursuant to Article 258 of the Labor Code because of a request to bargain collectively, it has nothing to do with a certification election which is the sole concern of the workers. Its role in a certification election has aptly been described in *Trade Unions of the Philippines and Allied Services (TUPAS) v. Trajano*,^[6] as that of a mere by-stander. It has no legal standing in a certification election as it cannot oppose the petition or appeal the Med-Arbiter's orders related thereto. An employer that involves itself in a certification election lends suspicion to the fact that it wants to create a company

union.

This Court's disapprobation of management interference in certification elections is even more forceful In Consolidated Farms, Inc. v. Noriel,[7] where we held:

"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."

Indeed, the three security agencies should not even be adverse parties in the certification election itself. We note with disapproval the title given to the petition for certification election of the Union by the Med-Arbiter and the Secretary of Labor naming the three security agencies as respondents. Such is clearly an error. While employers may rightfully be notified or informed of petitions of such nature, they should not, however, be considered parties thereto with concomitant right to oppose it. Sound policy dictates that they should maintain a strictly hands-off policy.

WHEREFORE, finding no reversible error in the questioned decision of the Secretary of Labor, the instant petition for certiorari is hereby DISMISSED for utter lack of merit.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

Puno, J., no part.

[1] Rollo, p. 36.

[2] Ibid., p. 20

[3] Ibid., p. 9.

[4] 93 Phil. 160, (1968).

[5] Aboitiz Shipping Corporation v. Dela Serna, G.R. No. 88538, 199 SCRA 568 (1991).

[6] G.R. No. 61153, 120 SCRA 64 (1983).

[7] L-47752, 84 SCRA 469 (1978).

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