

**PHILIPPINE FRUITS AND VEGETABLE INDUSTRIES, INC.,
PETITIONER, VS. HON. RUBEN D. TORRES, IN HIS CAPACITY AS
SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT
AND TRADE UNION OF...**

G.R. No. 92391. July 03, 1992

Ponente: PARAS, J.

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PARAS, J.:

This petition for review on certiorari with prayer for the issuance of a temporary restraining order and/or preliminary injunction assails the following:

- (1) The Resolution dated December 12, 1989 of public respondent Secretary of Labor[1] affirming on appeal the Order dated March 7, 1989 issued by Med--Arbiter Danilo T. Basa, and certifying private respondent Trade Union of the Philippines and Allied Services (or TUPAS) as the sole and exclusive bargaining agent of all regular rank-and-file and seasonal workers at Philippine Fruits and Vegetable Industries, Inc. (or PFVII), petitioner herein; and
- (2) The Order dated February 8, 1990 issued by public respondent Secretary of Labor[2] denying petitioner's Urgent Motion for Reconsideration.

Petitioner PFVII contends the questioned resolution and order are null and void as they are contrary to law and have been issued with grave abuse of discretion, and having no other plain, speedy and adequate remedy in the ordinary course of law, it filed with this Court the petition now at hand.

The facts of the case are well-stated in the Comment filed by the Solicitor General, and are thus reproduced hereunder, as follows:

"On October 13, 1988, Med-Arbiter Basa issued an Order granting the petition for Certification election filed by the Trade Union of the Philippines and Allied Services (TUPAS). Said order directed the holding of a certification election among the regular and seasonal workers of the Philippine Fruits and Vegetables, Inc. (p. 42, NLRC, Records).

"After a series of pre-election conferences, all issues relative to the conduct of the certification election were threshed out except that which pertains to the voting qualifications of the hundred ninety four (194) workers enumerated in the lists of qualified voters submitted by TUPAS.

"After a late submission by the parties of their respective position papers, Med?Arbiter Basa issued an Order dated December 9, 1988 allowing 184 of the 194 questioned workers to vote, subject to challenge, in the certification election to be held on December 16, 1989. Copies of said Order were furnished the parties (p. 118, NLRC, Records) and on December 12, 1988 the notice of certification election was duly posted. One hundred sixty eight (168) of the questioned workers actually voted on election day.

"In the scheduled certification election, petitioner objected to the proceeding, through a Manifestation (p. 262,

NLRC, Records) filed with the Representation Officer before the close of the election proceedings. Said Manifestation pertinently reads:

'The posting of the list of eligible voters authorized to participate in the certification election was short of the five (5) days provided by law considering that it was posted only on December 12, 1988 and the election was held today, December 16, 1988 is only four days prior to the scheduled certification election.'

"By agreement of petitioner and TUPAS, workers whose names were inadvertently omitted in the list of qualified voters were allowed to vote, subject to challenge (p. 263, NLRC, Records). Thirty eight of them voted on election day.

"Initial tally of the election results excluding the challenged votes showed the following:

Total No. of Votes ----- 291

Yes votes ----- 40

No votes ----- 38

Spoiled ----- 7

Challenged (Regular) ----- 38

Total No. of Votes Cast ----- 123

"On January 6, 1989, Management and TUPAS agreed to have the 36 challenged votes of the regular rank-and-file employees opened and a canvass thereof showed:

Yes votes ----- 20

No votes ----- 14

Spoiled ----- 4

Total----- 38

"Added to the initial election results of December 16, 1988, the canvass of results showed:

Yes ----- 60

No ----- 52

Spoiled ----- 11

Total -----123

"Based on the foregoing results, the yes votes failed to obtain the majority of the votes cast in said certification election, hence, the necessity of opening the 168 challenged votes to determine the true will of the employees.

"On January 20, 1989, petitioner filed a position paper arguing against the opening of said votes mainly because said voters are not regular employees nor seasonal workers for having allegedly rendered work for less than 180 days.

"Trade Union of the Philippines and Allied Services (TUPAS), on the other hand, argued that the employment status of said employees has been resolved when Labor Arbiter Ricardo N. Martinez, in his Decision dated November 26, 1988 rendered in NLRC Case No. Sub-Rab-01-09-7-0087-88, declared that said employees were illegally dismissed.

"In an Order dated February 2, 1989 (pp. 278-280, NLRC, Records) Med-Arbiter Basa ordered the opening of

said 168 challenged votes upon his observation that said employees were illegally dismissed in accordance with the foregoing Decision of Labor Arbiter Martinez. As canvassed, the results showed:

Yes votes ----- 165

No Votes ----- 0

Spoiled ----- 3

Total ----- 168

"On February 23, 1989, petitioner formally filed a Protest (pp. 284-287, NLRC, Records) claiming that the required five day posting of notice was not allegedly complied with and that the list of qualified voters so posted failed to include fifty five regular workers agreed upon by the parties as qualified to vote. The Protest further alleged that voters who were ineligible to vote were allowed to vote.

"Med-Arbiter Basa, in his Order dated March 7, 1989, dismissed said Protest which Order was affirmed on appeal in the Resolution dated December 12, 1989 of then Secretary of Labor, Franklin Drillon.

"Petitioner's Motion for Reconsideration was denied for lack of merit in public respondent's Order dated February 28, 1990."

(pp. 84-88, Rollo)[3]

The instant petition has, for its Assignment of Errors, the following:

(1) The Honorable Secretary of Labor and Employment acted with grave abuse of discretion amounting to lack of jurisdiction and committed manifest error in upholding the certification of TUPAS as the sole bargaining agent mainly on an erroneous ruling that the protest against the canvassing of the votes cast by 168 dismissed workers was filed beyond the reglementary period.

(2) The Honorable Secretary of Labor committed an abuse of discretion in completely disregarding the issue as to whether or not non-regular seasonal workers who have long been separated from employment prior to the filing of the petition for certification election would be allowed to vote and participate in a certification election.[4]

The Court finds no merit in the petition.

For it is to be noted that the formal protest of petitioner PFVII was filed beyond the reglementary period. A close reading of Sections 3 and 4, Rule VI, Book V of the Implementing Rules of the Labor Code, which read as follows:

"Section 3. Representation officer may rule on any-on-the-spot questions. - The Representation officer may rule on any on--the-spot question arising from the conduct of the election. The interested party may however, file a protest with the representation officer before the close of the proceedings.

"Protests not so raised are deemed waived. Such protest shall be contained in the minutes of the proceedings." (underscoring supplied)

"Section 4. Protest to be decided in twenty (20) working days. - Where the protest is formalized before the med-arbiter within five (5) days after the close of the election proceedings, the med-arbiter shall decide the same within twenty (20) working days from the date of formalization. If not formalized within the prescribed period, the protest shall be deemed dropped. The decision may be appealed to the Bureau in the same manner and on the same grounds as provided under rule V." (Underscoring supplied)

would readily yield, as a matter of procedure, the following requirements in order that a protest filed thereunder

would prosper, to wit:

- (1) The protest must be filed with the representation officer and made of record in the minutes of the proceedings before the close of election proceedings, and
- (2) The protest must be formalized before the Med-Arbiter within five (5) days after the close of the election proceedings.

The records before Us quite clearly disclose the fact that petitioner, after filing a manifestation of protest on December 16, 1988, election day, only formalized the same on February 20, 1989, or more than two months after the close of election proceedings (i.e., December 16, 1988). We are not persuaded by petitioner's arguments that election proceedings include not only casting of votes but necessarily includes canvassing and appreciation of votes cast and considering that the canvassing and appreciation of all the votes cast were terminated only on February 16, 1989, it was only then that the election proceedings are deemed closed, and thus, when the formal protest was filed on February 20, 1989, the five-day period within which to file the formal protest still subsisted and its protest was therefore formalized within the reglementary period.[5]

As explained correctly by the Solicitor General, the phrase "close of election proceedings" as used in Sections 3 and 4 of the pertinent Implementing Rules refers to that period from the closing of the polls to the counting and tabulation of the votes as it could not have been the intention of the Implementing Rules to include in the term "close of the election proceedings" the period for the final determination of the challenged votes and the canvass thereof, as in the case at bar which may take a very long period.[6] Thus, if a protest can be formalized within five days after a final determination and canvass of the challenged votes have been made, it would result in an undue delay in the affirmation of the employees' expressed choice of a bargaining representative.[7]

Petitioner would likewise bring into issue the fact that the notice of certification election was posted only on December 12, 1988 or four days before the scheduled elections on December 16, 1988, instead of the five-day period as required under Section 1 of Rule VI, Book V of the Implementing Rules. But it is not disputed that a substantial number, or 291 of 322 qualified voters, of the employees concerned were informed, thru the notices thus posted, of the elections to be held on December 16, 1988, and that such employees had in fact voted accordingly on election day. Viewed thus in the light of the substantial participation in the elections by voter-employees, and further in the light of the all-too settled rule that in interpreting the Constitution's protection to labor and social justice provisions and the labor laws and rules and regulations implementing the constitutional mandate, the Supreme Court adopts the liberal approach which favors the exercise of labor rights.[8] We find the lack of one day in the posting of notices insignificant, and hence, not a compelling reason at all in nullifying the elections.

As regards the second assignment of error, the public respondent Secretary of Labor did not completely disregard the issue as to the voting rights of the alleged separated employees for precisely, he affirmed on appeal the findings of the Med-Arbiter when he ruled

"The election results indicate that TUPAS obtained majority of the valid votes cast in the election - 60 plus 165, or a total of 225 votes out of a possible total of 291.

WHEREFORE, premises considered, the appeal is hereby denied and the Med--Arbiter's order dated 7 March 1989 affirmed. Petitioner TUPAS is hereby certified as the sole and exclusive bargaining agent of all regular rank-and-file and seasonal workers at Philippine Fruits and Vegetable Industries, Inc."[9] (p. 26, Rollo)

At any rate, it is now well-settled that employees who have been improperly laid off but who have a present, unabandoned right to or expectation of re?employment, are eligible to vote in certification elections.[10] Thus,

and to repeat, if the dismissal is under question, as in the case now at bar whereby a case of illegal dismissal and/or unfair labor practice was filed, the employees concerned could still qualify to vote in the elections.[11]

And finally, the Court would wish to stress once more the rule which it has consistently pronounced in many earlier cases that a certification election is the sole concern of the workers and the employer is regarded as nothing more than a bystander with no right to interfere at all in the election. The only exception here is where the employer has to file a petition for certification election pursuant to Article 258 of the Labor Code because it is requested to bargain collectively. Thus, upon the score alone of the "Bystander Rule", the instant petition would have been dismissed outright.

WHEREFORE, the petition filed by Philippine Fruits and Vegetable Industries, Inc. (PFVII) is hereby DISMISSED for lack of merit.

SO ORDERED.

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

[1] Then Secretary of Labor Franklin M. Drilon.

[2] Then Secretary of Labor Ruben D. Torres.

[3] Rollo, pp. 84-88.

[4] Ibid., at p. 9.

[5] Rollo, pp. 66-67; Annex "I" of the Petition.

[6] Rollo, p. 91; Comment of the Solicitor General, p. 8.

[7] Ibid.; Id..

[8] Manila Electric Company vs. NLRC, G.R. No. 78763 July 12, 1989.

[9] Rollo, p. 26; Annex "B", p. 5.

[10] Rothenberg on Labor Relations, p. 548.

[11] Samahang Manggagawa ng Via Mare vs. Noriel, 98 SCRA 507.

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