

PROGRESSIVE DEVELOPMENT CORPORATION, PETITIONER, VS. THE HONORABLE SECRETARY, DEPARTMENT OF LABOR AND EMPLOYMENT, MED-ARBITER EDGARDO DELA CRUZ, AND PAMBANSANG KILUSAN NG PAGGAW...

G.R. No. 96425. February 04, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The controversy in this case centers on the requirements before a local or chapter of a federation may file a petition for certification election and be certified as the sole and exclusive bargaining agent of the petitioner's employees.

Petitioner Progressive Development Corporation (PDC) filed this petition for certiorari to set aside the following:

- 1) Resolution dated September 5, 1990, issued by respondent Med-Arbiter Edgardo dela Cruz, directing the holding of a certification election among the regular rank-and-file employees of PDC;
- 2) Order dated October 12, 1990, issued by the respondent Secretary of Labor and Employment, denying PDC's appeal; and
- 3) Order dated November 12, 1990, also issued by the respondent Secretary, denying the petitioner's Motion for Reconsideration.

On June 19, 1990, respondent Pambansang Kilusan ng Paggawa (KILUSAN) - TUCP (hereinafter referred to as Kilusan) filed with the Department of Labor and Employment (DOLE) a petition for certification election among the rank-and-file employees of the petitioner alleging that it is a legitimate labor federation and its local chapter, Progressive Development Employees Union, was issued charter certificate No. 90-6-1-153. Kilusan claimed that there was no existing collective bargaining agreement and that no other legitimate labor organization existed in the bargaining unit.

Petitioner PDC filed its motion to dismiss dated July 11, 1990 contending that the local union failed to comply with Rule II, Section 3, Book V of the Rules Implementing the Labor Code, as amended, which requires the submission of: (a) the constitution and by-laws; (b) names, addresses and list of officers and/or members; and (c) books of accounts.

On July 16, 1990, respondent Kilusan submitted a rejoinder to PDC's motion to dismiss claiming that it had submitted the necessary documentary requirements for registration, such as the constitution and by-laws of the local union, and the list of officers/members with their addresses. Kilusan further averred that no books of accounts could be submitted as the local union was only recently organized.

In its "Supplemental Position Paper" dated September 3, 1990, the petitioner insisted that upon verification with the Bureau of Labor Relations (BLR), it found that the alleged minutes of the organizational meeting was

unauthenticated, the list of members did not bear the corresponding signatures of the purported members, and the constitution and by-laws did not bear the signatures of the members and was not duly subscribed. It argued that the private respondent therefore failed to substantially comply with the registration requirements provided by the rules. Additionally, it prayed that Med-Arbiter Edgardo dela Cruz inhibit himself from handling the case for the reason that he allegedly had prejudged the same.

In his September 5, 1990 resolution, Med-Arbiter dela Cruz held that there was substantial compliance with the requirements for the formation of a chapter. He further stated that mere issuance of the charter certificate by the federation was sufficient compliance with the rules. Considering that the establishment is unorganized, he maintained that a certification election should be conducted to resolve the question of representation.

Treating the motion for reconsideration filed by PDC as an appeal to the Office of the Secretary, Undersecretary Laguesma held that the same was merely a "reiteration of the issues already ventilated in the proceedings before the Med-Arbiter, specifically, the matter involving the formal organization of the chapter." (Rollo, p. 20) PDC's motion for reconsideration from the aforementioned ruling was likewise denied. Hence, this petition.

In an order dated February 25, 1991, the Court resolved to issue a temporary restraining order enjoining the public respondents from carrying out the assailed resolution and orders or from proceeding with the certification election. (Rollo, pp. 37-39)

It is the petitioner's contention that a labor organization (such as the Kilusan) may not validly invest the status of legitimacy upon a local or chapter through the mere expedient of issuing a charter certificate and submitting such certificate to the BLR (Rollo, p. 85) Petitioner PDC posits that such local or chapter must at the same time comply with the requirement of submission of duly subscribed constitution and by laws, list of officers and books of accounts. (Rollo, p. 35) PDC points out that the constitution and by-laws and list of officers submitted were not duly subscribed. Likewise, the petitioner claims that the mere filing of the aforementioned documents is insufficient; that there must be due recognition or acknowledgment accorded to the local or chapter by the BLR through a certificate of registration or any communication emanating from it. (Rollo, p. 86)

The Solicitor General, in behalf of the public respondents, avers that there was substantial compliance with the requirements for the formation of a chapter. Moreover, he invokes Article 257 of the Labor Code which mandates the automatic conduct by the Med-Arbiter of a certification election in any establishment where there is no certified bargaining agent.

The Court has repeatedly stressed that the holding of a certification election is based on a statutory policy that cannot be circumvented. (*Airtime Specialists, Inc. v. Ferrer-Calleja*, 180 SCRA 749 [1989]; *Belyca Corporation v. Ferrer-Calleja*, 168 SCRA 184 [1988]; *George and Peter Lines, Inc. v. Associated Labor Unions*, 134 SCRA 82 [1986]). The workers must be allowed to freely express their choice in a determination where everything is open to their sound judgment and the possibility of fraud and misrepresentation is eliminated.

But while Article 257 cited by the Solicitor General directs the automatic conduct of a certification election in an unorganized establishment, it also requires that the petition for certification election must be filed by a legitimate labor organization. Article 242 enumerates the exclusive rights of a legitimate labor organization among which is the right to be certified as the exclusive representative of all the employees in an appropriate collective bargaining unit for purposes of collective bargaining.

Meanwhile, Article 212(h) defines a legitimate labor organization as "any labor organization duly registered with the DOLE and includes any branch or local thereof." (Underlining supplied) Rule I, Section 1(j), Book V of the Implementing Rules likewise defines a legitimate labor organization as "any labor organization duly registered

with the DOLE and includes any branch, local or affiliate thereof.” (Underlining supplied)

The question that now arises is: when does a branch, local or affiliate of a federation become a legitimate labor organization?

Ordinarily, a labor organization acquires legitimacy only upon registration with the BLR. Under Article 234 (Requirements of Registration):

"Any applicant labor organization, association or group of unions or workers shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements:

- (a) Fifty-pesos (P50.00) registration fee;
- (b) The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of the workers who participated in such meetings;
- (c) The names of all its members comprising at least twenty 20% percent of all the employees in the bargaining unit where it seeks to operate;
- (d) If the applicant has been in existence for one or more years, copies of its annual financial reports; and
- (e) Four copies of the constitution and by-laws of the applicant union, the minutes of its adoption or ratification and the list of the members who participated in it."

And under Article 235 (Action on Application):

"The Bureau shall act on all applications for registration within thirty (30) days from filing.

All requisite documents and papers shall be certified under oath by the secretary or the treasurer of the organization, as the case may be, and attested to by its president."

Moreover, section 4 of Rule II, Book V of the Implementing Rules requires that the application should be signed by at least twenty percent (20%) of the employees in the appropriate bargaining unit and be accompanied by a sworn statement of the applicant union that there is no certified bargaining agent or, where there is an existing collective bargaining agreement duly submitted to the DOLE, that the application is filed during the last sixty (60) days of the agreement.

The respondent Kilusan questions the requirements as too stringent in their application but the purpose of the law in prescribing these requisites must be underscored. Thus, in *Philippine Association of Free Labor Unions v. Secretary of Labor*, 27 SCRA 40 (1969), the Court declared:

"The theory to the effect that Section 23 of Republic Act No. 875 unduly curtails the freedom of assembly and association guaranteed in the Bill of Rights is devoid of factual basis. The registration prescribed in paragraph (b) of said section is not a limitation to the right of assembly or association, which may be exercised with or without said registration. The latter is merely a condition sine qua non for the acquisition of legal personality by labor organizations, associations or unions and the possession of the "rights and privileges granted by law to legitimate labor organizations." The Constitution does not guarantee these rights and privileges, much less said personality, which are mere statutory creations, for the possession and exercise of which registration is required to protect both labor and the public against abuses, fraud, or impostors who pose as organizers, although not truly accredited agents of the union they purport to represent. Such requirement is a valid exercise of the police power, because the activities in which labor organizations, associations and unions of workers are engaged affect public interest, which should be protected. Furthermore, the obligation to submit financial statements, as a condition for the non-cancellation of a certificate of registration, is a reasonable regulation for

the benefit of the members of the organization, considering that the same generally solicits funds or membership, as well as oftentimes collects, on behalf of its members, huge amounts of money due to them or to the organization." (Underlining supplied)

But when an unregistered union becomes a branch, local or chapter of a federation, some of the aforementioned requirements for registration are no longer required. The provisions governing union affiliation are found in Rule II, Section 3, Book V of the Implementing Rules, the relevant portions of which are cited below:

"SEC. 3. Union affiliation; direct membership with national union. - An affiliate of a labor federation or national union may be a local or chapter thereof or an independently registered union.

a) The labor federation or national union concerned shall issue a charter certificate indicating the creation or establishment of a local or chapter, copy of which shall be submitted to the Bureau of Labor Relations within thirty (30) days from issuance of such charter certificate.

b) An independently registered union shall be considered an affiliate of a labor federation or national union after submission to the Bureau of the contract or agreement of affiliation within thirty (30) days after its execution.

xxx xxx xxx

e) The local or chapter of a labor federation or national union shall have and maintain a constitution and by-laws, set of officers and books of accounts. For reporting purposes, the procedure governing the reporting of independently registered unions, federations or national unions shall be observed."

Paragraph (a) refers to a local or chapter of a federation which did not undergo the rudiments of registration while paragraph (b) refers to an independently registered union which affiliated with a federation. Implicit in the foregoing differentiation is the fact that a local or chapter need not be independently registered. By force of law (in this case, Article 212[h]), such local or chapter becomes a legitimate labor organization upon compliance with the aforementioned provisions of Section 3.

Thus, several requirements that are otherwise required for union registration are omitted, to wit:

- 1) The requirement that the application for registration must be signed by at least 20% of the employees in the appropriate bargaining unit;
- 2) The submission of officers' addresses, principal address of the labor organization, the minutes of organizational meetings and the list of the workers who participated in such meetings;
- 3) The submission of the minutes of the adoption or ratification of the constitution and by laws and the list of the members who participated in it.

Undoubtedly, the intent of the law in imposing lesser requirements in the case of a branch or local of a registered federation or national union is to encourage the affiliation of a local union with a federation or national union in order to increase the local union's bargaining powers respecting terms and conditions of labor.

The petitioner maintains that the documentary requirements prescribed in Section 3(c), namely: the constitution and by-laws, set of officers and books of accounts, must follow the requirements of law. Petitioner PDC calls for the similar application of the requirement for registration in Article 235 that all requisite documents and papers be certified under oath by the secretary or the treasurer of the organization and attested to by the president.

In the case at bar, the constitution and by-laws and list of officers submitted to the BLR, while attested to by the chapter's president, were not certified under oath by the secretary. Does such defect warrant the withholding of the

status of legitimacy to the local or chapter?

In the case of union registration, the rationale for requiring that the submitted documents and papers be certified under oath by the secretary or treasurer, as the case may be, and attested to by the president is apparent. The submission of the required documents (and payment of P50.00 registration fee) becomes the Bureau's basis for approval of the application for registration. Upon approval, the labor union acquires legal personality and is entitled to all the rights and privileges granted by the law to a legitimate labor organization. The employer naturally needs assurance that the union it is dealing with is a bona-fide organization, one which has not submitted false statements or misrepresentations to the Bureau. The inclusion of the certification and attestation requirements will in a marked degree allay these apprehensions of management. Not only is the issuance of any false statement and misrepresentation a ground for cancellation of registration (see Article 239 (a), (c) and (d)); it is also a ground for a criminal charge of perjury.

The certification and attestation requirements are preventive measures against the commission of fraud. They likewise afford a measure of protection to unsuspecting employees who may be lured into joining unscrupulous or fly-by-night unions whose sole purpose is to control union funds or to use the union for dubious ends.

In the case of union affiliation with a federation, the documentary requirements are found in Rule II, Section 3(e), Book V of the Implementing Rules, which we again quote as follows:

"(c) The local or chapter of a labor federation or national union shall have and maintain a constitution and by-laws, set of officers and books of accounts. For reporting purposes, the procedure governing the reporting of independently registered unions, federations or national unions shall be observed." (Underlining supplied)

Since the "procedure governing the reporting of independently registered unions" refers to the certification and attestation requirements contained in Article 235, paragraph 2, it follows that the constitution and by-laws, set of officers and books of accounts submitted by the local and chapter must likewise comply with these requirements. The same rationale for requiring the submission of duly subscribed documents upon union registration exists in the case of union affiliation. Moreover, there is greater reason to exact compliance with the certification and attestation requirements because, as previously mentioned, several requirements applicable to independent union registration are no longer required in the case of the formation of a local or chapter. The policy of the law in conferring greater bargaining power upon labor unions must be balanced with the policy of providing preventive measures against the commission of fraud.

A local or chapter therefore becomes a legitimate labor organization only upon submission of the following to the BLR:

- 1) A charter certificate, within 30 days from its issuance by the labor federation or national union, and
- 2) The constitution and by-laws, a statement on the set of officers, and the books of accounts all of which are certified under oath by the secretary or treasurer, as the case may be, of such local or chapter, and attested to by its president.

Absent compliance with these mandatory requirements, the local or chapter does not become a legitimate labor organization.

In the case at bar, the failure of the secretary of PDEU-Kilusan to certify the required documents under oath is fatal to its acquisition of a legitimate status.

We observe that, as borne out by the facts in this case, the formation of a local or chapter becomes a handy tool for the circumvention of union registration requirements. Absent the institution of safeguards, it becomes a

convenient device for a small group of employees to foist a not-so-desirable federation or union on unsuspecting co-workers and pare the need for wholehearted voluntariness which is basic to free unionism. The records show that on June 16, 1990, Kilusan met with several employees of the petitioner. Excerpts of the "Minutes of the Organizational/General Membership Meeting of Progressive Development Employees Union (PDEU) - Kilusan", are quoted below:

"The meeting was formally called to order by Bro. Jose V. Parungao, KILUSAN secretary for organization by explaining to the general membership the importance of joining a union. He explained to the membership why they should join a union, and briefly explained the ideology of the Pambansang Kilusan ng Paggawa -TUCP as a democratically based organization and then read the proposed Constitution and By-Laws, after which said Constitution and By-Laws was duly and unanimously ratified after some clarification.

Bro. Jose Parungao was also unanimously voted by the group to act as the chairman of the COMELEC in holding the organizational election of officers of the Union.

Bro. Parungao, officially opened the table for the nomination of candidates after which the election of officers followed by secret balloting and the following were the duly elected officers." (Original Record, p. 25)

The foregoing shows that Kilusan took the initiative and encouraged the formation of a union which automatically became its chapter. On June 18, 1990, Kilusan issued a charter certificate in favor of PDEU-KILUSAN (Records, page 1). It can be seen that Kilusan was moving very fast.

On June 19, 1990, or just three days after the organizational meeting, Kilusan filed a petition for certification election (Records, pages 2 and 3) accompanied by a copy each of the charter certificate, constitution and by-laws and minutes of the organizational meeting. Had the local union filed an application for registration, the petition for certification election could not have been immediately filed. The applicant union must first comply with the "20% signature" requirement and all the other requisites enumerated in Article 234. Moreover, since under Article 235 the BLR shall act on any application for registration within thirty (30) days from its filing, the likelihood is remote that, assuming the union complied with all the requirements, the application would be approved on the same day it was filed.

We are not saying that the scheme used by the respondents is per se illegal for precisely, the law allows such strategy. It is not this Court's function to augment the requirements prescribed by law in order to make them wiser or to allow greater protection to the workers and even their employer. Our only recourse is, as earlier discussed, to exact strict compliance with what the law provides as requisites for local or chapter formation.

It may likewise be argued that it was Kilusan (the mother union) and not the local union which filed the petition for certification election and, being a legitimate labor organization, Kilusan has the personality to file such petition.

At this juncture, it is important to clarify the relationship between the mother union and the local union. In the case of *Liberty Cotton Mills Workers Union v. Liberty Cotton Mills, Inc.*, 66 SCRA 512 [1975]), the Court held that the mother union, acting for and in behalf of its affiliate, had the status of an agent while the local union remained the basic unit of the association, free to serve the common interest of all its members subject only to the restraints imposed by the constitution and by-laws of the association. Thus, where as in this case the petition for certification election was filed by the federation which is merely an agent, the petition is deemed to be filed by the chapter, the principal, which must be a legitimate labor organization. The chapter cannot merely rely on the legitimate status of the mother union.

The Court's conclusion should not be misconstrued as impairing the local union's right to be certified as the employees' bargaining agent in the petitioner's establishment. We are merely saying that the local union must first

comply with the statutory requirements in order to exercise this right. Big federations and national unions of workers should take the lead in requiring their locals and chapters to faithfully comply with the law and the rules instead of merely snapping union after union into their folds in a furious bid with rival federations to get the most number of members.

WHEREFORE, the petition is GRANTED. The assailed resolution and orders of respondents Med-Arbiter and Secretary of Labor and Employment, respectively, are hereby SET ASIDE. The temporary restraining order dated February 25, 1991 is made permanent.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

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