

CELINE MARKETING CORPORATION, PETITIONER, VS. HON. BIENVENIDO E. LAGUESMA, UNDERSECRETARY OF LABOR AND EMPLOYMENT AND CONFEDERATION OF FILIPINO WORKERS (CFW), RESPONDENTS.

G.R. No. 97568. February 04, 1992

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

Celine Marketing Corporation filed a petition for certiorari to review the resolution dated March 5, 1991 of the Undersecretary of Labor and Employment. Bienvenido Laguesma, ordering the holding of a certification election among its rank-and-file employees, as prayed for in a petition filed on August 26, 1990, by the Confederation of Filipino Workers (or CFW), praying that it be certified as the exclusive bargaining agent of all the rank-and-file employees of the petitioner.

On September 10, 1990, the petition was amended to include all the rank-and-file employees of the petitioner in its outlets at Landmark-Makati; Shoppesville-Greenhills; SM-North; Ginza-Esperanza-Shoe Mart; SM Car Park-Celine Marketing; Gold Crest-Makati; Greenbelt-Celine; Makati Ginza-Esperanza-Tesoro Building; Mabini-Celine, Mabini; Escolta-Celine Escolta; and Escolta Ginza-Esperanza Escolta, comprising more or less 100 employees.

The petitioner moved to dismiss the petition on the grounds that the CFW had not been authorized by a majority of the rank-and-file-employees, and that it failed to submit a copy of the charter certificate issued to the local union.

At the hearing before the Labor Arbiter on October 16, 1991, CFW submitted a xerox copy of the charter certificate issued to its local union, "Celine Marketing Corp. Workers Chapter-CFW."

The petitioner moved to strike it from the records for non-production of the original and for lack of proof that the organizational documents of the union had been filed with the Bureau of Labor Relations.

On October 19, 1990, the Med-Arbiter dismissed the petition on those grounds.

The union appealed the order to the Secretary of Labor and Employment, who, on March 5, 1991, through Undersecretary Bienvenido Laguesma, granted the appeal. The dispositive portion of the resolution reads:

"WHEREFORE, the appeal is hereby granted and the Order appealed from set aside. A new Order is hereby entered directing the conduct of a certification election among the rank-and-file employees of Celine Marketing Corporation/Ginza Esperanza and all its outlets at Landmark-Makati; Shoppesville-Greenhills; SM-North; Ginza Esperanza Shoe Mart; SM-Car Park-Celine Marketing; Gold Crest-Makati-Celine Makati; Greenbelt-Celine; Makati Ginza Esperanza Tesoro Building; Mabini-Celine Mabini; Escolta-Celine Escolta; Escolta Ginza Esperanza Escolta with the following choices:

"1. CFW-Celine Marketing Corp. Workers Chapter; and

"2. No Union.

"The payroll three (3) months prior to the filing of the petition shall be the basis for determining the list of eligible voters.

"Let therefore, the pertinent records of the case be forwarded to the Office of origin for the conduct of certification election." (pp. 12-13, Rollo.)

Hence, this petition for certiorari in which petitioner assails the resolution of respondent Undersecretary Laguesma on the grounds that:

1. The Undersecretary of Labor and Employment acted in excess of jurisdiction in setting aside the Med-Arbiter's order to conduct a certification election because the appeal of CFW was addressed to the Secretary of Labor & Employment himself who could not delegate the power of review to the Undersecretary.
2. The Undersecretary of Labor & Employment erred in setting aside the Med-Arbiter's order despite the failure of the private respondent to comply with the mandatory requirements in Section 3, Rule II, Book V of the Omnibus Rules and Regulations of the Labor Code as amended.

The petition has no merit.

The issuance of the questioned resolution by Undersecretary of Labor Laguesma was not irregular for he did so by authority of the Secretary of Labor & Employment. Not having been repudiated or reversed by the head of office, that resolution has the force and effect of a resolution of the Secretary himself. (*Hannibal Bridge Co. vs. U.S.*, 221 U.S. 194, 55 L. ed. 699, 31 CT. 603; *Alvord vs. U.S.*, 95 U.S. 356, 24 L. ed. 414; pp. 53-54, 2 Am. Jur. 2d.)

While it may be true that the petition for certification election did not carry the authorization of a majority of the rank-and-file employees of the petitioner, their consent is not necessary when the bargaining unit that the union seeks to represent, is still unorganized. The petition for certification election may be filed by any union, not by the employees. Thus, Article 257 of the Labor Code, as amended by R.A. 6715, provides:

"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 law assumes that the union is the real party in interest in a petition for certification election. Anyway, the certification election itself is the appropriate forum for the employees to express their choice of a bargaining representative or none at all.

WHEREFORE, finding no grave abuse of discretion in the Undersecretary's resolution ordering the holding of a certification election among the petitioner's employees, this petition for certiorari is DISMISSED.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.

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