SUPREME COURT
FIRST DIVISION

ASSOCIATED LABOR UNIONS (ALU),
***Petitioner*,**

-versus-

G.R. No. 85085
November 6, 1989

HON. PURA FERRER-CALLEJA, DIRECTOR, BUREAU OF LABOR RELATIONS, DEPARTMENT OF LABOR AND EMPLOYMENT, NATIONAL FEDERATION OF LABOR UNIONS (NAFLU),
Respondents.
x----------x

D E C I S I O N

GANCAYCO, *J.*:

Is the contract bar rule applicable where collective bargaining agreement was hastily concluded in defiance of the order of the med-arbiter enjoining the parties from entering into a CBA until the issue on representation is finally resolved? This is the primary issue on in this special civil action for *certiorari.*

The Philippine Associated Smelting and Refining Corporation (PASAR) is a corporation established and existing pursuant to

Philippine laws and is engaged in the manufacture and processing of copper cathodes with a plant operating in Isabel, Leyte. It employs more or less eight hundred fifty (850) rank-and-file employees in its departments.

Petitioner Associated Labor Union (ALU) had a collective bargaining agreement (CBA) with PASAR which expired on April 1, 1987. Several days before the expiration of the said CBA or on March 23, 1987, private respondent National Federation of Labor Unions (NAFLU) filed a petition for certification election with the Bureau of Labor Relations Regional Office in Tacloban City docketed as MED-ARB-RO VII Case No. 3-28-87, alleging, among others, that no certification election had been held in PASAR within twelve (12) months immediately preceding the filing of the said petition.

Petitioner moved to intervene and sought the dismissal of the petition on the ground that NAFLU failed to present the necessary signatures in support of its petition. In the order dated April 21, 1987,[1] Med-Arbiter Bienvenido C. Elorcha dismissed the petition. However, the order of dismissal was set aside in another order dated May 8, 1987 and the case was rescheduled for hearing on May 29, 1987. The said order likewise enjoined PASAR from entering into a collective bargaining agreement with any union until after the issue of representation is finally resolved. In the order dated June 1, 1987,[2] the petition for certification was dismissed for failure of NAFLU to solicit 20% of the total number of rank and file employees while ALU submitted 33 pages containing the signatures of 88.5% of the rank and file employees at PASAR.

Private respondent appealed the order of dismissal to the Bureau of Labor Relations. While the appeal was pending, petitioner ALU concluded negotiations with PASAR on the proposed CBA. On July 24, 1987, copies of the newly concluded CBA were posted in four (4) conspicuous places in the company premises. The said CBA was ratified by the members of the bargaining unit on July 28, 1987.[3] Thereafter, petitioner ALU moved for the dismissal of the appeal alleging that it had just concluded a CBA with PASAR and that the said CBA had been ratified by 98% of the regular rank-and-file employees and that at least 75 of NAFLU's members renounced their

membership thereat and affirmed membership with PEA-ALU in separate affidavits.

In a resolution dated September 30, 1987, the public respondent gave due course to the appeal by ordering the conduct of a certification election among the rank-and-file employees of PASAR with ALU, NAFLU and no union as choices, and denied petitioner's motion to dismiss.[4]

Both parties moved for reconsideration of the said resolution. However, both motions were denied by public respondent in the order dated April 22, 1988.

Hence, the present petition.[5]

The petition is anchored on the argument that the holding of certification elections in organized establishments is mandated only where a petition is filed questioning the majority status of the incumbent union and that it is only after due hearing where it is established that the union claiming the majority status in the bargaining unit has indeed a considerable support that a certification election should be ordered, otherwise, the petition should be summarily dismissed.[6] Petitioner adds that public respondent missed the legal intent of Article 257 of the Labor Code as amended by Executive Order No. 111.[7]

In effect, petitioner is of the view that Article 257 of the Labor Code which requires the signature of at least 20% of the total number of rank-and-file employees should be applied in the case at bar.

The petition is devoid of merit.

As it has been ruled in a long line of decisions,[8] a certification proceedings is not a litigation in the sense that the term is ordinarily understood, but an investigation of a non-adversarial and fact-finding character. As such, it is not covered by the technical rules of evidence. Thus, as provided under Article 221 of the Labor Code, proceedings before the National Labor Relations Commission (NLRC) are not covered by the technical rules of procedure and evidence. The Court had previously construed Article 221 as to allow the NLRC or the

labor arbiter to decide the case on the basis of position papers and other documents submitted without resorting to technical rules of evidence as observed in regular courts of justice.[9]

On the other hand, Article 257 is applicable only to unorganized labor organizations and not to establishments like PASAR where there exists a certified bargaining agent, petitioner ALU, which as the record shows had previously entered into a CBA with the management. This could be discerned from the clear intent of the law which provides that —

> "ART. 257. Petitions in unorganized establishments. — In any establishment where there is no certified bargaining agent, the petition for certification election filed by a legitimate labor organization shall be supported by the written consent of at least twenty per cent (20%) of all the employees in the bargaining unit. Upon receipt and verification of such petition, the Med-Arbiter shall automatically order the conduct of a certification election."

Said article traverses the claim of the petitioner that in this case there is a need for a considerable support of the rank-and-file employees in order that a certification election may be ordered. Nowhere in the said provision does it require that the petition in organized establishments should be accompanied by the written consent of at least twenty percent (20%) of the employees of the bargaining unit concerned much less a requirement that the petition be supported by the majority of the rank-and-file employees. As above stated, Article 257 is applicable only to unorganized establishments.

The Court reiterates that in cases of organized establishments where there exists a certified bargaining agent, what is essential is whether the petition for certification election was filed within the sixty-day freedom period. Article 256 of the Labor Code, as amended by Executive Order No. 111 provides:

> "ART. 256. Representation issue in organized establishments. — In organized establishments, when a petition questioning the majority status of the incumbent bargaining agent is filed before the Department within the sixty-day period before the

> expiration of the collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot to ascertain the will of the employees in the appropriate bargaining unit. To have a valid election, at least a majority of all elegible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit. When an election which provides for three or more choices results in no choice receiving a majority of the valid votes cast, a run-off election shall be conducted between the choices receiving the two highest number of votes."

Article 256 is clear and leaves no room for interpretation. The mere filing of a petition for certification election within the freedom period is sufficient basis for the respondent Director to order the holding of a certification election.

Was the petition filed by NAFLU instituted within the freedom period? The record speaks for itself. The previous CBA entered into by petitioner ALU was due to expire on April 1, 1987. The petition for certification was filed by NAFLU on March 23, 1987, well within the freedom period.

The contract bar rule is applicable only where the petition for certification election was filed either before or after the freedom period. Petitioner, however, contends that since the new CBA had already been ratified overwhelmingly by the members of the bargaining unit and that said CBA had already been consummated and the members of the bargaining unit have been continuously enjoying the benefits under the said CBA, no certification election may be conducted,[10] citing, Foamtex Labor Union-TUPAS vs. Noriel,[11] and Trade Unions of the Phil. and Allied Services vs. Inciong.[12]

The reliance on the aforementioned cases is misplaced. In Foamtex, the petition for certiorari questioning the validity of the order of the Director of Labor Relations which in turn affirmed the order of the Med-Arbiter calling for a certification election was dismissed by the Court on the ground that although a new CBA was concluded between the petitioner and the management, only a certified CBA would serve

as a bar to the holding of a certification election, citing Article 232 of the Labor Code.

Foamtex weakens rather than strengthens petitioner's stand. As pointed out by public respondent, the new CBA entered into between petitioner on one hand and by the management on the other has not been certified as yet by the Bureau of Labor Relations.

There is an appreciable difference in Trade Unions of the Phil. and Allied Services (TUPAS for short). Here, as in Foamtex, the CBA was not yet certified and yet the Court affirmed the order of the Director of the Bureau of Labor Relations which dismissed the petition for certification election filed by the labor union. In TUPAS, the dismissal of the petition for certification, was based on the fact that the contending union had a clear majority of the workers concerned since out of 641 of the total working force, the said union had 499 who did not only ratify the CBA concluded between the said union and the management but also affirmed their membership in the said union so that apparently petitioners therein did not have the support of 30% of all the employees of the bargaining unit.

Nevertheless, even assuming for the sake of argument that the petitioner herein has the majority of the rank-and-file employees and that some members of the NAFLU even renounced their membership thereat and affirmed membership with the petitioner, We cannot, however, apply TUPAS in the case at bar. Unlike in the case of herein petitioner, in TUPAS, the petition for certification election was filed nineteen (19) days after the CBA was signed which was well beyond the freedom period.

On the other hand, as earlier mentioned, the petition for certification election in this case was filed within the freedom period but the petitioner and PASAR hastily concluded a CBA despite the order of the Med-Arbiter enjoining them from doing so until the issue of representation is finally resolved. As pointed out by public respondent in its comment,[13] the parties were in bad faith when they concluded the CBA. Their act was clearly intended to bar the petition for certification election filed by NAFLU. A collective bargaining agreement which was prematurely renewed is not a bar to the holding of a certification election.[14] Such indecent haste in renewing the CBA

despite an order enjoining them from doing so[15] is designed to frustrate the constitutional right of the employees to self-organization 16 Moreover, We cannot countenance the actuation of the petitioner and the management in this case which is not conducive to industrial peace.

The renewed CBA cannot constitute a bar to the instant petition for certification election for the very reason that the same was not yet in existence when the said petition was filed[17] The holding of a certification election is a statutory policy that should not be circumvented.[18]

Petitioner posits the view that to grant the petition for certification election would open the floodgates to unbridled and scrupulous petitions the objective of which is to prejudice the industrial peace and stability existing in the company.

This Court believes otherwise. Our established jurisprudence adheres to the policy of enhancing the welfare of the workers. Their freedom to choose who should be their bargaining representative is of paramount importance. The fact that there already exists a bargaining representative in the unit concerned is of no moment as long as the petition for certification was filed within the freedom period. What is imperative is that by such a petition for certification election the employees are given the opportunity to make known who shall have the right to represent them thereafter. Not only some but all of them should have the right to do so.[19] Petitioner's contention that it has the support of the majority is immaterial. What is equally important is that everyone be given a democratic space in the bargaining unit concerned. Time and again, We have reiterated that the most effective way of determining which labor organization can truly represent the working force is by certification election.[20]

Finally, petitioner insists that to allow a certification election to be conducted will promote divisiveness and eventually cause polarization of the members of the bargaining unit at the expense of national interest.[21]

The claim is bereft of merit. Petitioner failed to establish that the calling of certification election will be prejudicial to the employees

concerned and/or to the national interest. The fear perceived by the petitioner is more imaginary than real. If it is true, as pointed out by the petitioner, that it has the support of more than the majority and that there was even a bigger number of members of NAFLU who affirmed their membership to petitioner-union, then We see no reason why petitioner should be apprehensive over the issue. If their claim is true, then most likely the conduct of a certification election will strengthen their hold as any doubt will be erased thereby. With the resolution of such doubts, fragmentation of the bargaining unit will be avoided, and hence coherence among the workers will likely follow.

Petitioner's claim that the holding of a certification election will be inimical to the national interest is far fetched. The workers are at peace with one another and their working condition is smooth. There has been no stoppage of work or an occurrence of a strike. With these facts on hand, to order otherwise will be repugnant to the well-entrenched right of the workers to unionism.

WHEREFORE, premises considered, the instant petition is **DISMISSED** for lack of merit. The temporary restraining order issued by the Court in the resolution dated October 10, 1988[22] is hereby lifted.

This Decision is immediately executory. No costs.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino and Medialdea, *JJ.*, concur.

---

[1] Pages 166-167, Rollo.
[2] Page 14, Rollo.
[3] Pages 36-81, Rollo.
[4] Pages 14-17, Rollo.
[5] Pages 1-12, Rollo.
[6] Page 7, Rollo.
[7] Page 6, Rollo.
[8] Tanduay Distillery Labor Union vs. NLRC, 149 SCRA 470 (1987), citing George & Peter Lines, Inc. vs. Associated Labor Union 134 SCRA 82 (1985) and National Labor Union vs. Go Soc & Sons, 23 SCRA 431 (1968).

[9] Manila Doctors Hospital vs. NLRC, 135 SCRA 262 (1985).
[10] Page 8, Rollo.
[11] 72 SCRA 371 (1976).
[12] 115 SCRA 847 (1982).
[13] Page 117, Rollo.
[14] General Textiles Allied Workers Association vs. The Director of the Bureau of Labor Relations, 84 SCRA 430 (1978).
[15] Page 113, Rollo.
[16] Antipolo Highway Lines, Inc. vs. Inciong, 64 SCRA 441 (1975).
[17] Associated Labor Unions vs. Hon. Pura Ferrer-Calleja, G.R. No. 82260, July 19, 1989.
[18] George & Peter Lines, Inc. vs. Associated Labor Union, supra.
[19] Confederation of Citizens Labor Unions (CCLU) vs. National Labor Relations Commission, 60 SCRA 450, 467 (1974), citing Federation of the United Workers Organization (F.U.W.O.) vs. Court of Industrial Relations, 54 SCRA 305 (1973).
[20] Plum Federation of Industrial and Agrarian Workers vs. Noriel, 119 SCRA 299 (1982).
[21] Pages 10-11, Rollo.
[22] Page 90, Rollo.