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SUPREME COURT
SECOND DIVISION

AIRTIME SPECIALISTS, INC., ABSOLUTE SOUND, INC., COUNTRYWEALTH DEVELOPMENT CORP., AD PLANNERS & MARKETING COUNSELLORS, INC., and ATLAS RESOURCES & MANAGEMENT GROUP,
***Petitioners*,**

-versus-

G.R. No. 80612-16
December 29, 1989

HON. DIRECTOR OF LABOR RELATIONS PURA FERRER-CALLEJA, LABOR REGULATION OFFICER EUSEBIO JIMENEZ, MED-ARBITER MANASES T. CRUZ, SAMAHAN NG MGA MANGGAGAWA SA ASIA (SAMA-ASIA)-FFW CHAPTER and PINAGBUKLOD NG MGA MANGGAGAWA SA ATACO (PMA)-FFW CHAPTER,
***Respondents*.**

x---x

D E C I S I O N

PARAS, *J.*:

This *Certiorari* proceeding was filed by petitioners to assail the orders of respondent Med-Arbiter Manases T. Cruz and Director of Labor Relations Pura Ferrer-Calleja ordering a certification election.

The pertinent background facts are as follows:

Respondent Samahan ng mga Manggagawa sa Asia-FFW Chapter (SAMA-ASIA, for short) filed with the National Capital Region, Ministry of Labor and Employment, on May 22, 1986, two separate petitions for direct certification and/or certification election on behalf of the regular rank-and-file employees of the petitioners Airtime Specialists and Absolute Sound, Inc. The other respondent Pinagbuklod ng Manggagawa sa Ataco-FFW Chapter (PMA for short) also filed with the same office, on the same day, similar separate petitions in behalf of the regular rank and file employees of petitioners Country-Wealth Development, Ad Planner and Marketing Counsellors and Atlas Resources.

All these five cases were consolidated.

Petitioners filed their position paper with motion to dismiss on the following grounds — disaffiliation of the rank and file employees, ineligibility of some signatories because they had less than one (1) year of service resulting in the non-compliance with the 30% requirement.

On March 9, 1987, the Med-Arbiter issued an Order the dispositive portion of which reads —

> "WHEREFORE, premises considered, a certification election is hereby ordered conducted among the rank and file employees of the Airtime Specialists, Inc.; Absolute Sound, Inc.; Commonwealth Development Corporation; Ad Planners & Mktg. Corp.; and Atlas Resources & Management Group, within 20 days from receipt of this Order. The parties are:
>
> > '1. Samahan ng mga Manggagawa sa Asia (SAMA-ASIA) FFW Chapter & Pinagbuklod ng mga Manggagawa sa Ataco (PMA-FFW); and

'2. No union.

"Pre-election conference shall be conducted to thresh out the details of the election.

"SO ORDERED." (p. 25, Rollo)

Petitioners' motion for reconsideration having been denied they filed the instant petition for "*Certiorari* and Prohibition with Preliminary Injunction" with a Prayer for the issuance of a temporary restraining order enjoining public respondents from conducting any further proceedings in the said five cases.

The petition was given due course and the parties were required to submit simultaneously their respective memoranda.

In assailing the aforesaid Order of public respondents, petitioners alleged that —

I. Public respondents (Director Calleja and Med-Arbiter Cruz) gravely erred in considering employees with less than one year of service, and even probationaries as qualified participants in a certification election process; in direct violation of the ruling of this Honorable Court in the Tarnate vs. Noriel case;

II. Public respondents gravely erred in not considering proven disaffiliation and resignations from a petitioning union worse, from the company, and valid termination for cause from the service as material consideration to support a petition for certification and/or election.

III. Public respondent Director Calleja gravely misinterpreted the ruling of this Honorable Court in the case of Albano vs. Noriel, 85 SCRA 499, even as she held that, notwithstanding the absence of the statutory consent requirement of 30% (now 20%), the Bureau of Labor Relations can in every such case still order a certification

> election, giving the wrong impression that such exercise of discretion is absolute. (pp. 12-15, Rollo).

Thus, petitioners argue that the public respondents committed grave abuse of discretion when they considered (a) employees with less than one year of service and even (b) probationary employees as qualified participants in the certification election process. They contend that "by the very fact that such (probationary) — employees have not earned regular status, they are not of the bargaining unit." (Reply, p. 21). Petitioners maintain that this, "directly violates" the ruling of this Court in Tarnate vs. Noriel, (100 SCRA 93) where it held that "at least one year of service is required for an employee to enjoy the benefits of membership in any labor union."

Petitioners' contentions are untenable. It is Our holding in the case of B.F. Goodrich Phils., Inc. vs. B.F. Goodrich Confidential & Salaried Employees Union-NATU (49 SCRA 532) that the objectives of the Industrial Peace Act would be sooner attained if at the earliest opportunity the employees, all of them, in an appropriate bargaining unit be pooled to determine which labor organization should be its exclusive representative. This Court had made it clear that We should give discretion to the Court of Industrial Relations, or in this case, the Bureau of Labor Relations in deciding whether or not to grant a petition for certification election considering the facts and circumstances of which it has intimate knowledge. Moreover, a perusal of Art. 258 of the Labor Code as amended by Presidential Decree No. 442 reveals that compliance with the 30% requirement (now 20%) makes it mandatory upon the Bureau of Labor Relations to order the holding of a certification election in order to determine the exclusive-bargaining agent of the employees. Stated otherwise, it means that with such, the Bureau is left without any discretion but to order the holding of certification election. Parenthetically, where the petition is supported by less than 30% (now 20%) the Bureau of Labor Relations has discretion whether or not to order the holding of certification election depending on the circumstances of the case. Thus, it is Our holding in LVN Pictures vs. Musicians Guild, et al. (1 SCRA 132) that in connection with certification election, the Court of Industrial Relations enjoys a wide discretion in determining the procedure necessary to insure a fair and free choice of bargaining representatives by employees, and having exercised its sound

discretion, this Court cannot interfere. (Arguelles vs. Young, 153 SCRA 690).

In a certification election all rank-and-file employees in the appropriate bargaining unit are entitled to vote. This principle is clearly stated in Art. 255 of the Labor Code which states that the "labor organization designated or selected by the majority of the employees in an appropriate bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining." Collective bargaining covers all aspects of the employment relation and the resultant CBA negotiated by the certified union binds all employees in the bargaining unit. Hence, all rank-and-file employees, probationary or permanent, have a substantial interest in the selection of the bargaining representative. The Code makes no distinction as to their employment status as basis for eligibility in supporting the petition for certification election. The law refers to "all" the employees in the bargaining unit. All they need to be eligible to support the petition is to belong to the "bargaining unit."

The case of Tarnate vs. Noriel relied upon by petitioners has no application in certification election. That case involves the right of probationary employee to vote in the election of union officers.

Petitioner argue at length that more than a majority of the signatories to the petitions for certification election "have disaffiliated from the two private respondent unions (PMA-FFW and SAMA-ASIA-FFW) and have joined another union (ADLO)." Petitioners then contend that, with the mass disaffiliation, the petition for certification would fall short of the 20% consent requirement of the Labor Code.

Even assuming the fact of such disaffiliation and even assuming further that the 20% requirement is not reached, this will not defeat the petition for certification election. On the contrary, it becomes more imperative to conduct one. The alleged disaffiliation from the petitioning unions (PMA-FFW and SAMA-ASIA-FFW) in favor of the ADLO-KMU raised a genuine representation issue which can best be tested in a certification election. In VICMICO Industrial Workers Association (VWA) vs. The Honorable Carmelo Noriel, et al. (131 SCRA 569) this Court ruled upon the same argument. Thus:

> "On the issue that more than 600 bona fide rank and file members of VIWA had disaffiliated with respondents NFSW, this Court had occasion to state what should be followed in case of withdrawal or retraction of signatures. In National Mines and Allied Workers Union vs. Luna, 83 SCRA 607, it was held that 'the best forum for determining whether there were indeed retractions from some of the laborers is the certification election itself wherein the workers can freely express their choice in a secret ballot.' To hold otherwise would be violative of the liberal approach constantly followed by this Court in matters of certification elections."

In the same vein, in George and Peter Lines, Inc. vs. ALU, et al., 134 SCRA 82, where it was alleged that 80% of the membership of the Union had withdrawn but the union claimed that the withdrawals were involuntary, the Court held that "the best forum to determine if there was indeed undue pressure exerted upon the employees to retract their membership is in the certification election itself."

The employees have the constitutional right to choose the labor organization which they desire to join. The exercise of such right would be rendered nugatory and ineffectual if they would be denied the opportunity to choose in a certification election, which is not a litigation, but a mere investigation of a non-adversary character, the bargaining unit to represent them (NAMAWUMIF vs. Estrella, 87 SCRA 84). The holding of a certification election is a statutory policy that should not be circumvented (ATU vs. Noriel, 89 SCRA 264).

WHEREFORE, the petition is **DISMISSED**, the assailed orders of public respondents are **AFFIRMED.**

SO ORDERED.

Melencio-Herrera, Padilla, Sarmiento and Regalado, *JJ.*, concur.

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