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**SUPREME COURT
THIRD DIVISION**

**CATALINO ALGIRE and OTHER
OFFICERS OF UNIVERSAL ROBINA
TEXTILE MONTHLY SALARIED
EMPLOYEES UNION (URTMSEU),
*Petitioners,***

-versus-

**G.R. No. 97622
October 19, 1994**

**REGALADO DE MESA, ET AL., and
HON. SECRETARY OF LABOR,
*Respondents.***

X-----X

DECISION

ROMERO, J.:

This Petition for *Certiorari* seeks to nullify and set aside the Decision dated January 31, 1991 of the Secretary of Labor which reversed on appeal the Order dated December 20, 1990 issued by Med-arbiter

Rolando S. de la Cruz declaring petitioners as the duly-elected officers of the Universal Robina Textile Monthly Salaried Employees Union (URTMSEU) as well as the Order dated March 5, 1991 denying petitioner Catalino Algire's Motion for Reconsideration.

The case arose out of the election of the rightful officers to represent the union in the Collective Bargaining Agreement (CBA) with the management of Universal Robina Textile at its plant in Km. 50, Bo. San Cristobal, Calamba, Laguna.

Universal Robina Textile Monthly Salaried Employees Union, (URTMSEU), through private respondent Regalado de Mesa, filed on September 4, 1990 a petition for the holding of an election of union officers with the Arbitration Branch of the Department of Labor and Employment (DOLE). Acting thereon, DOLE's Med-Arbiter Rolando S. de la Cruz issued an Order dated October 19, 1990 directing that such an election be held.

In the pre-election conference, it was agreed that the election by secret ballot be conducted on November 15, 1990 between petitioners (Catalino Algire, et al.) and private respondents (Regalado de Mesa, et al.) under the supervision of DOLE through its duly appointed representation officer.

The official ballot contained the following pertinent instructions:

“Nais kong pakatawan sa grupo ni:

LINO ALGIRE REGALADO and DE MESA his officers
and his officers

1. Mark check (/) or cross (x) inside the box specified above who among the two contending parties you desire to be represented for the purpose of collective bargaining.
2. This is a secret ballot. Don't write any other markings.”^[1]

The results of the election were as follows:

Lino Algire group	—	133
Regalado de Mesa group	—	133
Spoiled	—	6
		—
Total votes cast		272

On November 19, 1990, Catalino Algire filed a Petition and/or Motion (RO 400-9009-AU-002), which DOLE’s Med-Arbitration unit treated as a protest, to the effect that one of the ballots wherein one voter placed two checks inside the box opposite the phrase “Lino Algire and his officers,” hereinafter referred to as the “questioned ballot,” should not have been declared spoiled, as the same was a valid vote in their favor. The group argued that the two checks made even clearer the intention of the voter to exercise his political franchise in favor of Algire’s group.

During the scheduled hearing thereof, both parties agreed to open the envelope containing the spoiled ballots and it was found out that, indeed, one ballot contained two (2) checks in the box opposite petitioner Algire’s name and his officers.

On December 20, 1990, med-arbiter de la Cruz issued an Order declaring the questioned ballot valid, thereby counting the same in Algire’s favor and accordingly certified petitioner’s group as the union’s elected officers.^[2]

Regalado de Mesa, et al. appealed from the decision of the med-arbiter to the Secretary of Labor in Case No. OS-A-1-37-91 (RO 400-9009-AU-002). On January 31, 1991, the latter’s office granted the appeal and reversed the aforesaid Order. In its stead, it entered a new one ordering “the calling of another election of officers of the Universal Robina Textile Monthly Salaried Employees Union (URTMSEU), with the same choices as in the election of 15 November, 1990, after the usual pre-election conference.”^[3]

Director Maximo B. Lim of the Industrial Relations Division, Regional Office No. IV of the DOLE set the hearing for another pre-election conference on March 22, 1991, reset to April 2, 1991, and finally reset to April 5, 1991.

Catalino Algire's group filed a motion for reconsideration of the Order. It was denied for lack of merit and the decision sought to be reconsidered was sustained.

Algire, et al. filed this petition on the following issues:

- “(1) the Secretary of Labor erred in applying Sections 1 and 8 (6), Rule VI, Book V of the Rules and Regulations implementing the Labor Code to the herein case, considering that the case is an intra-union activity, which act constitutes a grave abuse in the exercise of authority amounting to lack of jurisdiction.
- (2) the assailed decision and order are not supported by law and evidence.”

with an ex-parte motion for issuance of a temporary restraining order, alleging that the assailed decision of the office of the Secretary of Labor as public respondent is by nature immediately executory and the holding of an election at any time after April 5, 1991, would render the petition moot and academic unless restrained by this Court.

On April 5, 1991, we issued a temporary restraining order enjoining the holding of another election of union officers pursuant to the January 31, 1991 Decision.^[4]

There is no merit in the petition.

The contention of the petitioner is that a representation officer (referring to a person duly authorized to conduct and supervise certification elections in accordance with Rule VI of the Implementing Rules and Regulations of the Labor Code) can validly rule only on on-the-spot questions arising from the conduct of the elections, but the determination of the validity of the questioned ballot is not within his competence. Therefore, any ruling made by the representation officer concerning the validity of the ballot is deemed an absolute nullity because — such is the allegation — it was done without or in excess of his functions amounting to lack of jurisdiction.

To resolve the issue of union representation at the Universal Robina Textile plant, what was agreed to be held at the company's premises and which became the root of this controversy, was a consent election, not a certification election.

It is unmistakable that the election held on November 15, 1990 was a consent election and not a certification election. It was an agreed one, the purpose being merely to determine the issue of majority representation of all the workers in the appropriate collective bargaining unit. It is a separate and distinct process and has nothing to do with the import and effort of a certification election.^[5]

The ruling of DOLE's representative in that election that the questioned ballot is spoiled is not based on any legal provision or rule justifying or requiring such action by such officer but simply in pursuance of the intent of the parties, expressed in the written instructions contained in the ballot, which is to prohibit unauthorized markings thereon other than a check or a cross, obviously intended to identify the votes in order to preserve the sanctity of the ballot, which is in fact the objective of the contending parties.

If indeed petitioner's group had any opposition to the representation officer's ruling that the questioned ballot was spoiled, it should have done so seasonably during the canvass of votes. Its failure or inaction to assail such ballot's validity shall be deemed a waiver of any defect or irregularity arising from said election. Moreover, petitioners even question at this stage the clear instruction to mark a check or cross opposite the name of the candidate's group, arguing that such instruction was not clear, as two checks "may be interpreted that a voter may vote for Lino Algire but not with (sic) his officers or vice-versa,"^[6] notwithstanding the fact that a pre-election conference had already been held where no such question was raised.

In any event, the choice by the majority of employees of the union officers that should best represent them in the forthcoming collective bargaining negotiations should be achieved through the democratic process of an election, the proper forum where the true will of the majority may not be circumvented but clearly defined. The workers must be allowed to freely express their choice once and for all in a determination where everything is open to their sound judgment and

the possibility of fraud and misrepresentation is minimized, if not eliminated, without any unnecessary delay and/or maneuvering.

WHEREFORE, the Petition is **DENIED** and the challenged Decision is hereby **AFFIRMED**.

SO ORDERED.

Bidin, Melo and Vitug, JJ., concur.
Feliciano, J., is on leave.

[1] Annex "A," Rollo, p. 25.

[2] Rollo, pp. 26-31.

[3] Rollo, pp. 32-33.

[4] Rollo, p. 41.

[5] Warren Manufacturing Worker's Union vs. Bureau of Labor Relations, G.R. No. 76185, March 30, 1988, 159 SCRA 387.

[6] Rollo, p. 10 of Memorandum on p. 107.