SUPREME COURT
EN BANC

ALLIED WORKERS' ASSOCIATION OF THE PHILIPPINES (National Chapter),
***Petitioner*,**

-versus-

G.R. Nos. L-22580 and L-22950
June 6, 1967

COURT OF INDUSTRIAL RELATIONS and ASSOCIATED LABOR UNION,
***Respondents*.**
x----------x

D E C I S I O N

REGALA, *J.*:

The question which this case presents is one of first impression. It concerns the determination of the majority in the choice of a bargaining representative.

Pursuant to an order of the Court of Industrial Relations, the Department of Labor conducted a certification election at the Insular Lumber Company on June 28, 1963 to select the bargaining agent of permanent employees in the Mill and Woods departments of that company. The results of the election were as follows:

Associated Labor Union	347
Philippine Ass'n. of Free Labor Unions	17
Congress of Independent Organizations	4
Allied Workers' Ass'n. of the Phil. (National Chapter)	664
Allied Workers' Ass'n. of the Phil. (Fabrica Chapter)	163
No union	9
Challenged votes	113
Spoiled ballots	39
Total valid votes cast	1,204
Total votes cast	1,356

Petitioner Allied Workers' Association of the Philippines (National Chapter) asked to be declared the winner. It contended that the challenged votes cast by security guards and supervisors should be declared illegal and, together with the spoiled ballots, should be deducted from the total number of votes cast for the purpose of determining the majority.

In its order of October 1, 1963, the Court of Industrial Relations denied petitioner's motion. The minimum majority necessary to elect a union, it was held, was 679, because "the basis for the majority in this jurisdiction is the total votes cast, not the valid votes alone." This ruling was subsequently affirmed in the resolution of January 16, 1964 of the Court of Industrial Relations en banc, denying reconsideration. The petitioner appealed to this Court.

The pertinent portion of Section 12 of the Industrial Peace Act, Republic Act No. 875, reads:

> "Exclusive Collective Bargaining Representative for Labor Organizations. —
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> > "(a) The labor organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of

employment, or other conditions of employment: Provided, That any individual employee or group of employees shall have the right at any time to present grievances to their employer.

"(b) Whenever a question arises concerning the representation of employees, the Court may investigate such controversy and certify to the parties in writing the name of the labor organization that has been designated or selected for the appropriate bargaining unit. In any such investigation, the Court shall provide for a speedy and appropriate hearing upon due notice and if there is any reasonable doubt as to whom the employees have chosen as their representative for purposes of collective bargaining, the Court shall order a secret ballot election to be conducted by the Department of Labor, to ascertain who is the freely chosen representative of the employees, under such rules and regulations as the Court may prescribe, at which balloting representatives of the contending parties shall have the right to attend as inspectors. Such a balloting shall be known as a 'certification election' and the Court shall not order certification in the same unit more often than once in twelve months. The organization receiving the majority of votes cast in such election shall be certified as the exclusive bargaining representative of such employees." (Emphasis added)

It will be noted that while subsection (a) speaks of the labor organization "designated or selected by the majority of the employees," subsection (b) speaks of the organization "receiving the majority of the votes cast in such election." Is there a difference in meaning between these phrases? The inquiry is important because, as will be shown, the pursuit of this inquiry can yield the answer to the question posed by this case.

In the United States, Section 2, Fourth, of the Railway Labor Act of May 20, 1926, 45 U.S.C.A. S 151, providing that "The majority of any

craft or class of employees shall have a right to determine who shall be the representative of the craft or class" was construed by the Federal Supreme Court as requiring only a majority of the votes cast although such a majority may be less than a majority of the entire membership. (Virginian Ry. Co. vs. System Federation No. 40, 300 U.S. 515, 81 L. Ed. 789 [1937]). The reason for this is that those who do not participate are presumed to assent to the expressed will of the majority of those voting. It was explained that "If, in addition to participation by a majority of a craft, a vote of the majority of those eligible is necessary for a choice, an indifferent minority could prevent the resolution of a contest, and thwart the purpose of the Act, which is dependent for its operation upon the selection of representatives. There is the added danger that the absence of eligible voters may be due less to their indifference than to coercion by the employer." Thus the political principle of majority rule was applied to representation elections.

This rule was applied by the Circuit Court of Appeals even to a case where those participating in the election were far less than a majority of the number of eligible voters, (See e.g., New York Handkerchief Mfg. Co. vs. NLRB, 144 F. 2d 144 [1940]); NLRB vs. Deutsch Co., 265 F. 2d 473 [1959]; Semi-Steel Casting Co., of St. Louis vs. NLRB, 160 F. 2d 388 [1947]. In the Handkerchief case, for instance, out of 225 eligible voters only 56 voted. It was held that since the union received 53 of the votes cast, the certification was proper.

It is important to note that the provision construed in Handkerchief, Deutsch and Semi-Steel Casting was Section 9(a) of the National Labor Relations Act (Wagner Act) 29 U.S.C.A. S 141, from which 12 (a) of our statute was copied. In similar language, the American statute provides that "Representatives designated or selected by the majority of the employees" in an appropriate unit shall be the exclusive collective bargaining representatives of all employees is such unit. Accordingly, Section 12(a) of the local statute must be deemed to have the same meaning when it speaks of the labor organization "designated or selected by the majority of the employees."

Now, by using different language in Section 12(b), did Congress intend a different meaning and, perforce, a different rule in this

jurisdiction? Quite the contrary, we think. It will help analysis to recall in this connection that, in early administration of the National Labor Relations Act, the issue was "whether the choice at such election shall be by a majority of the qualified voters, or merely by a majority of the votes cast." (Virginian Ry. Co. vs. System Federation No. 40, 84 F. 2d 641, 653 [1936] aff'd, 300 U.S. 515 [1937] It will thus be seen that the resolution of the issue in favor of the second choice (i.e., the majority of the votes cast) did not foreclose the question which is now raised in this case, namely, whether "the majority of the votes cast" means all votes cast, including invalid and spoiled votes. In inserting, then, in Section 12(b) the phrase "the majority of the votes cast," Congress intended no more than to adopt the political principle of the majority rule, aware as it must have been of the controversy to which the phrase "majority of employees" in Section 12(a) has given rise in the United States. By the language of Section 12(b) it was never intended to authorize the counting of invalid votes. They should be excluded and only the number of valid votes cast should be made the basis in determining the majority. (Semi-Steel Casting Co. of St. Louis vs. NLRB, supra; American Tobacco, 10 NLRB 1171 [1939l]; Sorg Paper Co., 9 NLRB 136 [1938]) As Professors Cox and Bok state the rule, "It is enough that the union be designated by a majority of the valid ballots, and this is so even though only a small proportion of the eligible voters participates." (Labor Law 382 [5th ed., 1962]) A contrary rule, such as that announced by the Court of Industrial Relations, would make it easy for a union to go on challenging voters known to be sympathetic to its rival, knowing that the votes thus challenged would not be examined even as their number would be counted in determining the majority. An easier way of frustrating the results of the elections would not be imagined.

However, spoiled ballots, i.e., those which are defaced, torn or marked (Rules for Certification Elections, Rule II, Sec. 2[j] should be counted in determining the majority since they are nevertheless votes cast by those who are qualified to do so.

Accordingly, the 39 spoiled votes in this case should be counted while the 113 challenged votes, because they are likely to effect the result of the election (Rules for Certification Elections, Rule II, Sec. 2 [k]. See Overnite Transportation Co. vs. NLRB, 48 CCH Lab. L. Rep. 18, 687 [1963]) should have been examined as to the grounds of objection.

Those found to have been cast by voters who were ineligible because they were either supervisory or confidential employees, should have been rejected and excluded from the count, while those found to have been cast by eligible employees should have been opened and counted in favor of the union for which they were cast.

WHEREFORE, the Order of October 1, 1963 and the Resolution of January 16, 1964 are hereby reversed and the case is remanded to the Court of Industrial Relations for determination of the results of the election in accordance with this decision. No costs.

Concepcion, *C.J.*, Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez and Castro, *JJ.*, concur.
