SUPREME COURT
SECOND DIVISION

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

-versus-

G.R. No. 77282
May 5, 1989

HON. PURA FERRER-CALLEJA, as Director of the Bureau of Labor Relations, Ministry of Labor and Employment; PHILIPPINE SOCIAL SECURITY LABOR UNION (PSSLU); SOUTHERN PHILIPPINES FEDERATION OF LABOR (SPFL); and GAW TRADING, INC.,
***Respondents*.**
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D E C I S I O N

REGALADO, *J.*:

Petitioner Associated Labor Unions (ALU, for brevity) instituted this Special Civil Action for *Certiorari* and Prohibition to overturn the Decision of the respondent director[1] dated December 10, 1986, which ordered the holding of a certification election among the rank-and-file workers of the private respondent GAW Trading, Inc. The averments in the basic petition therefor, which succinctly but

sufficiently detail the relevant factual antecedents of this proceeding, justify their being quoted in full, thus:

> "1. The Associated Labor Unions (ALU) thru its Regional Vice-President Teofanio C. Nunez, in a Letter dated May 7, 1986 (ANNEX C) informed GAW Trading, Inc. that majority of the latter's employees have authorized ALU to be their sole and exclusive bargaining representative, and requested GAW Trading Inc., in the same Letter for a conference for the execution of an initial Collective Bargaining Agreement (CBA);
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> "2. GAW Trading Inc. received the Letter of ALU aforesaid on the same day of May 7, 1986 as acknowledged thereunder and responded (sic) ALU in a Letter dated May 12, 1986 (Annex D) indicating its recognition of ALU as the sole and exclusive bargaining agent for the majority of its employees and for which it set the time for conference and/or negotiation at 4:00 P.M. on May 12, 1986 at the Pillsbury Office, Aboitiz Building, Juan Luna Street, Cebu City;
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> "3. On the following day of May 13, 1986, per Transmittal Letter on even date (ANNEX E) ALU's Chairman of the Negotiating Panel furnished GAW Trading Inc. ten (10) final copies of the Collective Bargaining Agreement for Comment, or otherwise, for signing;
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> "4. On May 15, 1986, ALU in behalf of the majority of the employees of GAW Trading Inc. and GAW Trading Inc. signed and executed the Collective Bargaining Agreement (ANNEX F);
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> "5. In the meantime, at about 1:00 P.M. of May 9, 1986, the Southern Philippines Federation of Labor (SPFL) together with Nagkahiusang Mamumuo sa GAW (NAMGAW) undertook a strike after it failed to get the management of GAW Trading Inc. to sit for a conference respecting its demands presented at 11:00 A.M. on the same day in an effort to pressure GAW Trading Inc. to make a turnabout of its standing recognition of ALU as the sole and exclusive

bargaining representative of its employees, as to which strike GAW Trading Inc. filed a petition for Restraining Order/Preliminary Injunction, dated June 1, 1986 (Annex U) and which strike Labor Arbiter Bonifacio B. Tumamak held as illegal in a Decision dated August 5, 1986 (ANNEX I);

"6. On May 19, 1986, GAW Lumad Labor Union (GALLU-PSSLU) Federation filed a Certification Election petition (ANNEX J), but, as found by Med-Arbiter Candido M. Cumba in its (sic) Order dated June 11, 1986 (ANNEX K), without having complied (sic) the subscription requirement for which it was merely considered an intervenor until compliance thereof in the other petition for direct recognition as bargaining agent filed on May 28, 1986 by Southern Philippines Federation of Labor (SPFL) as found in the same Order (ANNEX K);

"7. In the meantime, the Collective Bargaining Agreement executed by ALU and GAW Trading Inc. (ANNEX F) was duly filed on May 27, 1986 with the Ministry of Labor and Employment in Region VII, Cebu City;

"8. Nevertheless, Med-Arbiter Candido M. Cumba in his Order of June 11, 1986 (Annex K) ruled for the holding of a certification election in all the branches of GAW Trading Inc. in Cebu City, as to which ALU filed a Motion for Reconsideration dated June 19, 1986 (ANNEX L) which was treated as an appeal on that questioned Order for which reason the entire record of subject certification case was forwarded to the Director, Bureau of Labor Relations, Ministry of Labor and Employment, Manila (ANNEX M);

"9. Bureau of Labor Relations Director Cresenciano B. Trajano, rendered a Decision on August 13, 1986 (Annex B) granting ALU's appeal (Motion for Reconsideration) and set aside the questioned Med-Arbiter Order of June 11, 1986 (Annex K, on the ground that the CBA has been effective and valid and the contract bar rule applicable;

"10. But the same Decision of Director Cresenciano B. Trajano was sought for reconsideration both by Southern Philippines Federation of Labor (SPFL) on August 26, 1986 (ANNEX N) supplemented by the 'SUBMISSION OF ADDITIONAL EVIDENCE' dated September 29, 1986 (ANNEX O), and Philippine Social Security Labor Union (PSSLU) on October 2, 1986 (ANNEX P), which were opposed by both GAW Trading, Inc. on September 2, 1986 (ANNEX Q) and ALU on September 12, 1986 (ANNEX R);"[2]

The aforesaid decision of then Director Trajano was thereafter reversed by respondent director in her aforecited decision which is now assailed in this action. A motion for reconsideration of ALU[3] appears to have been disregarded, hence, its present resort grounded on grave abuse of discretion by public respondent.

Public respondent ordered the holding of a certification election, ruling that the "contract bar rule" relied upon by her predecessor does not apply in the present controversy. According to the decision of said respondent, the collective bargaining agreement involved herein is defective because it "was not duly submitted in accordance with Section I, Rule IX, Book V of the Implementing Rules of Batas Pambansa Blg. 130." It was further observed that "(t)here is no proof tending to show that the CBA has been posted in at least two conspicuous places in the establishment at least five days before its ratification and that it has been ratified by the majority of the employees in the bargaining unit."

We find no reversible error in the challenged decision of respondent director. A careful consideration of the facts culled from the records of this case, especially the allegations of petitioner itself as hereinabove quoted, yields the conclusion that the collective bargaining agreement in question is indeed defective, hence unproductive of the legal effects attributed to it by the former director in his decision which was subsequently and properly reversed.

We have previously held that the mechanics of collective bargaining are set in motion only when the following jurisdictional preconditions are present, namely, (1) possession of the status of majority

representation by the employees' representative in accordance with any of the means of selection and/or designation provided for by the Labor Code; (2) proof of majority representation; and (3) a demand to bargain under Article 251, paragraph (a), of the New Labor Code.[4] In the present case, the standing of petitioner as an exclusive bargaining representative is dubious, to say the least. It may be recalled that respondent company, in a letter dated May 12, 1986 and addressed to petitioner, merely indicated that it was "not against the desire of (its) workers" and required petitioner to present proof that it was supported by the majority thereof in a meeting to be held on the same date.[5] The only express recognition of petitioner as said employees' bargaining representative that We see in the records is in the collective bargaining agreement entered into two days thereafter.[6] Evidently, there was precipitate haste on the part of respondent company in recognizing petitioner union, which recognition appears to have been based on the self-serving claim of the latter that it had the support of the majority of the employees in the bargaining unit. Furthermore, at the time of the supposed recognition, the employer was obviously aware that there were other unions existing in the unit. As earlier stated, respondent company's letter is dated May 12, 1986 while the two other unions, Southern Philippine Federation of Labor (hereafter, SPFL) and Philippine Social Security Labor Union (PSSLU, for short), went on strike earlier on May 9, 1986. The unusual promptitude in the recognition of petitioner union by respondent company as the exclusive bargaining representative of the workers in GAW Trading, Inc. under the fluid and amorphous circumstances then obtaining, was decidedly unwarranted and improvident.

It bears mention that even in cases where it was the then Minister of Labor himself who directly certified the union as the bargaining representative, this Court voided such certification where there was a failure to properly determine with legal certainty whether the union enjoyed a majority representation. In such a case, the holding of a certification election at a proper time would not necessarily be a mere formality as there was a compelling reason not to directly and unilaterally certify a union.[7]

An additional infirmity of the collective bargaining agreement involved was the failure to post the same in at least two (2)

conspicuous places in the establishment at least five days before its ratification.[8] Petitioner's rationalization was that "(b)ecause of the real existence of the illegal strike staged by SPFL in all the stores of GAW Trading, Inc. it had become impossible to comply with the posting requirement in so far as the realization of its purpose is concerned as there were no impartial members of the unit who could be apprised of the CBA's contents."[9] This justification is puerile and unacceptable.

In the first place, the posting of copies of the collective bargaining agreement is the responsibility of the employer which can easily comply with the requirement through a mere mechanical act. The fact that there were "no impartial members of the unit" is immaterial. The purpose of the requirement is precisely to inform the employees in the bargaining unit of the contents of said agreement so that they could intelligently decide whether to accept the same or not. The assembly of the members of ALU wherein the agreement in question was allegedly explained does not cure the defect. The contract is intended for all the employees and not only for the members of the purported representative alone. It may even be said that the need to inform the non-members of the terms thereof is more exigent and compelling since, in all likelihood, their contact with the persons who are supposed to represent them is limited. Moreover, to repeat, there was an apparent and suspicious hurry in the formulation and finalization of said collective bargaining accord. In the aforementioned letter where respondent company required petitioner union to present proof of its support by the employees, the company already suggested that petitioner ALU at the same time submit the proposals that it intended to embody in the projected agreement. This was on May 12, 1986, and promptly on the following day the negotiating panel furnished respondent company final copies of the desired agreement which, with equal dispatch, was signed on May 15, 1986.

Another potent reason for annulling the disputed collective bargaining agreement is the finding of respondent director that one hundred eighty-one (181) of the two hundred eighty-one (281) workers who "ratified" the same now "strongly and vehemently deny and/or repudiate the alleged negotiation and ratification of the CBA."[10] Although petitioner claims that only seven (7) of the

repudiating group of workers belong to the total number who allegedly ratified the agreement, nevertheless such unsubstantiated contention weighed against the factual findings of the respondent director cannot negate the fact that the controverted contract will not promote industrial stability. The Court has long since declared that:

> "Basic to the contract bar rule is the proposition that the delay of the right to select representatives can be justified only where stability is deemed paramount. Excepted from the contract bar rule are certain types of contracts which do not foster industrial stability, such as contracts where the identity of the representative is in doubt. Any stability derived from such contracts must be subordinated to the employees' freedom of choice because it does not establish the type of industrial peace contemplated by the law."[11]

At this juncture, petitioner should be reminded that the technical rules of procedure do not strictly apply in the adjudication of labor disputes.[12] Consequently, its objection that the evidence with respect to the aforesaid repudiation of the supposed collective bargaining agreement cannot be considered for the first time on appeal to the Bureau of Labor Relations should be disregarded, especially considering the weighty significance thereof.

Both petitioner and private respondent GAW Trading, Inc. allege that the employees of the latter are now enjoying the benefits of the collective bargaining agreement that both parties had forged. However, We cannot find sufficient evidence of record to support this contention. The only evidence cited by petitioner is the supposed payment of union fees by said employees, a premise too tenuous to sustain the desired conclusion. Even the actual number of workers in the respondent company is not clear from the records. Said private respondent claims that it is two hundred eighty-one (281)[13] but petitioner suggests that it is more than that number. The said parties should be aware that this Court is not an adjudicator of facts. Worse, to borrow a trite but apt phrase, they would heap the Ossa of confusion upon the Pelion of uncertainty and still expect a definitive ruling on the matter thus confounded.

Additionally, the inapplicability of the contract bar rule is further underscored by the fact that when the disputed agreement was filed before the Labor Regional Office on May 27, 1986, a petition for certification election had already been filed on May 19, 1986. Although the petition was not supported by the signatures of thirty percent (30%) of the workers in the bargaining unit, the same was enough to initiate said certification election.

WHEREFORE, the order of the public respondent for the conduct of a certification election among the rank-and-file workers of respondent GAW Trading Inc. is **AFFIRMED**. The temporary restraining order issued in this case pursuant to the Resolution of March 25, 1987 is hereby lifted.

SO ORDERED.

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

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[1] Rollo, 25-27; Annex A. Petition.
[2] Ibid., 8-11.
[3] Ibid., 11; Annex S, Petition.
[4] Kiok Loy vs. National Labor Relations Commission, 141 SCRA 179, 185 (1986).
[5] Rollo, 9, 34; Annex D, Petition.
[6] Ibid., 37.
[7] Colgate Palmolive Philippines, Inc. vs. Hon. Blas F. Ople, et al., G.R. No. 73691, June 30, 1988.
[8] Sec. 1(a), Rule IX, Book V, Implementing Rules of B.P. 130.
[9] Rollo, 16.
[10] Ibid., 27.
[11] Firestone Tire & Rubber Company Employees Union, etc. vs. Estrella, etc., et al. 81 SCRA 49, 54 (1978).
[12] Art. 221, Labor Code, as amended.
[13] Rollo, 175-176.