SUPREME COURT
FIRST DIVISION

B. F. GOODRICH PHILIPPINES, INC.,
***Petitioner*,**

-versus-

G.R. Nos. L-34069-70
February 28, 1973

B. F. GOODRICH (MARIKINA FACTORY) CONFIDENTIAL & SALARIED EMPLOYEES UNION-NATU, B. F. GOODRICH (MAKATI OFFICE) CONFIDENTIAL & SALARIED EMPLOYEES UNION-NATU, and COURT OF INDUSTRIAL RELATIONS,
***Respondents*.**
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D E C I S I O N

FERNANDO, *J.*:

The specific question raised impressed with an aspect of novelty, sustained with vigor and plausibility, persuaded this Court that the petition was worth looning into. It is whether the determination of an unfair labor practice case, brought against respondent-unions, must precede the holding of a certification election. A negative response came from respondent Court of Industrial Relations, through Judge Ansberto Paredes. His order, affirmed by respondent Court en banc,

is sought to be nullified in this certiorari proceeding. The answer filed on behalf of respondent-unions would sustain its validity. What is more, it called attention to what is characterized as a consistent pattern of anti-union practices on the part of petitioner intended to defeat the rights of labor to collective bargaining. A careful study of the specific legal issue posed, namely, whether the existence of an unfair labor practice case against a labor organization, consisting of an illegal strike, would suffice to call for the postponement of a proposed certification election, incidentally started at the instance of petitioner itself, yields the same conclusion reached by respondent Court. The objectives of the Industrial Peace Act[1] would be sooner attained if, at the earliest opportunity, the employees, all of them of an appropriate collective bargaining unit, be polled to determine which labor organization should be its exclusive representative. Moreover, the discretion on the matter vested in respondent Court is rarely interfered with. We dismiss the petition.

It was shown in the petition that on February 27, 1971, one Rodolfo Pajaro, as President of B. F. Goodrich (Makati Office) Confidential and Salaried Employees Union-NATU, sent a letter to the petitioner, seeking recognition as the bargaining agent of such employees so that thereafter there could be negotiations for a collective contract.[2] Similarly, on the same date, one Pablo C. Fulgar, as President of B. F. Goodrich (Marikina Factory) Confidential and Salaried Employees Union-NATU, and one Marcelino Lontok, Jr., representing himself as Vice-President, NATU, sent a letter to the petitioner, of a similar tenor.[3] Petitioner, as employer, countered by filing on March 6, 1971, two petitions for certification election with respondent Court of Industrial Relations.[4] Then came on March 10, 1971, two strike notices from respondents, filed with the Bureau of Labor Relations, demanding union recognition.[5] It was not until April 13, 1971, that respondent Court commenced the hearings of the petitions for certification election.[6] It was then alleged that on two days in April 19 and 20, 1971, there was a strike staged by those affiliated with private respondents, to force recognition of their unions.[7] Subsequently, after preliminary investigation first had, on a finding of a prima facie case of illegal strike and unfair labor practice committed by the members of the two unions, Case No. 5612-ULP of the Court of Industrial Relations for unfair labor practice was filed against them.[8] There was on May 27, 1971, an answer with affirmative defenses filed

in such case.[9] Earlier, on May 20, 1971, the petitioner filed identical motions in MC Cases Nos. 2995 and 2996 to hold in abeyance the hearings of the petitions for certification election.[10] Then, on August 5, 1971, respondent Court, through Judge Ansberto Paredes, denied the petitioner's motions to hold in abeyance the hearing of MC Cases Nos. 2995 and 2996.[11]

The challenged order of Judge Paredes stated the nature of the issue before him as well as the respective positions of the parties: "Submitted for resolution without further arguments are petitioner's motions filed in each of the above-entitled cases, praying that the proceedings therein be held in abeyance pending final judgment in Case No. 5612-ULP and the oppositions thereto filed by the respondent unions. It is petitioner's stand that if Case No. 5612-ULP will prosper and the strike staged by respondent unions during the pendency of the instant cases will be declared illegal and the individual members cited therein as respondents found guilty of the unfair labor practice acts complained of, the latter will consequently lose their status as employees and will be disqualified to vote in a certification election that may be ordered by the Court. On the other hand, respondents-oppositors maintain that the pendency of said unfair labor practice case is not a bar to the hearing of the instant cases, following the ruling of this Court in Case No. 2536-MC, entitled `In re: Petition for Certification Election at the Central Textile Mills, Inc., Vicente Flores, et al.'"[12] This was his ruling: "The motions can not be granted. Individual respondents in the ULP case are still employees and possessed of the right to self-organization. Included therein is their choice of a bargaining representative (Secs. 2[d], 3 & 12, R. A. 875). To hold the certification proceedings in abeyance until final judgment of the ULP case will be a denial of the aforesaid statutory right, the employees being left without a collective bargaining representative."[13] The dispositive portion was to deny the motions for lack of merit. There was a motion for reconsideration, but such motion did not prosper. It was denied on August 31, 1971.[14]

These certiorari proceedings were then filed with this Court, with petitioners maintaining through copious references to National Labor Relations Board cases that, with the declaration of what it considered to be an illegal strike resulting in an unfair labor practice case, the status as employees of members of the two respondent Labor Unions

would be placed in doubt and thus should be determined before the certification election. This Court, in a resolution of November 10, 1971, required private respondents to file an answer. There is, on the whole, an admission of the allegations of the petition. In addition, the following special and affirmative defenses were interposed: "That up to the present, the strike of the respondent unions is still on, thus the striking employees cannot be considered to have abandoned, quit, or otherwise terminated their employment relationship with the petitioner company, on the basis of the doctrine that a strike does not serve to sever the employer-employee relationship; That the respondent unions were virtually coerced by the petitioner company's blatant resort to all kinds of union-busting tactics, topped by the technical refusal to recognize and bargain with the respondent unions through the neat trick of filing a baseless petition for certification election and questioning therein the right of over 90% of the unions' membership to join the unions; That the members of the respondent unions are still employees of the petitioner company and as such are qualified to vote in any certification election that the Court of Industrial Relations may direct to be held on the petitioner company's own petition, pursuant to Section 2 (d) of Republic Act 875."[15] They sought the dismissal of these certiorari proceedings for lack of merit, Subsequently, memoranda were filed by the parties, and the case was deemed submitted on February 14, 1972.

As made clear at the outset, petitioner has not made out a case for the reversal of the challenged order of Judge Ansberto Paredes.

1. There is novelty in the specific question raised, as to whether or not a certification election may be stayed at the instance of the employer, pending the determination of an unfair labor practice case filed by it against certain employees affiliated with respondent-unions. That is a matter of which this Court has not had an opportunity to speak on previously. What is settled law, dating from the case of Standard Cigarette Workers' Union vs. Court of Industrial Relations,[16] decided in 1957, is that if it were a labor organization objecting to the participation in a certification election of a company-dominated union, as a result of which a complaint for an unfair labor practice case against the employer was filed, the status of the latter union must be first cleared in such a proceeding before such voting could take place. In the language of Justice J.B.L. Reyes as ponente:

"As correctly pointed out by Judge Lanting in his dissenting opinion on the denial of petitioner's motion for reconsideration, a complaint for unfair labor practice may be considered a prejudicial question in a proceeding for certification election when it is charged therein that one or more labor unions participating in the election are being aided, or are controlled, by the company or employer. The reason is that the certification election may lead to the selection of an employer-dominated or company union as the employees' bargaining representative, and when the court finds that said union is employer-dominated in the unfair labor practice case, the union selected would be decertified and the whole election proceedings would be rendered useless and nugatory."[17] The next year, the same jurist had occasion to reiterate such a doctrine in Manila Paper Mills Employees and Workers Association vs. Court of Industrial Relations,[18] thus: "We agree with the CIR on the reasons given in its order that only a formal charge of company domination may serve as a bar to and stop a certification election, the reason being that if there is a union dominated by the Company, to which some of the workers belong, an election among the workers and employees of the company would not reflect the true sentiment and wishes of the said workers and employees from the standpoint of their welfare and interest, because as to the members of the company dominated union, the vote of the said members in the election would not be free. It is equally true, however, that the opposition to the holding of a certification election due to a charge of company domination can only be filed and maintained by the labor organization which made the charge of company domination, because it is the entity that stands to lose and suffer prejudice by the certification election, the reason being that its members might be overwhelmed in the voting by the other members controlled and dominated by the Company."[19] It is easily understandable why it should be thus. There would be an impairment of the integrity of the collective bargaining process if a company-dominated union were allowed to participate in a certification election. The timid, the timorous, and the faint-hearted in the ranks of labor could easily be tempted to cast their votes in favor of the choice of management. Should it emerge victorious, and it becomes the exclusive representative of labor at the conference table, there is a frustration of the statutory scheme. It takes two to bargain. There would be instead a unilateral imposition by the employer. There is need therefore to inquire as to whether a labor organization that

aspires to be the exclusive bargaining representative is company-dominated before the certification election.

2. The unique situation before us, however, it exactly the reverse. It is management that would have an unfair labor practice case filed by it for illegal strike engaged in by some of its employees concluded, before it would agree to the holding of a certification election. That is the stand of petitioner. It does not carry conviction. The reason that justifies the postponement of a certification election pending an inquiry, as to the bona fides of a labor union, precisely calls for a different conclusion If under the circumstances disclosed, management is allowed to have its way, the result might be to dilute or fritter away the strength of an organization bent on a more zealous defense of labor's prerogatives. The difficulties and obstacles that must be then hurdled would not be lost on the rest of the personnel, who had not as yet made up their minds one way or the other. This is not to say that management is to be precluded from filing an unfair labor practice case. It is merely to stress that such a suit should not be allowed to lend itself as a means, whether intended or not, to prevent a truly free expression of the will of the labor group as to the organization that will represent it. It is not only the loss of time involved, in itself not likely to enhance the prospect of respondent-unions, but also the fear engendered in the mind of an ordinary employee that management has many weapons in its arsenal to bring the full force of its undeniable power against those of its employees dissatisfied with things as they are. There is no valid reason then for the postponement sought. This is one instance that calls for the application of the maxim, *lex dilationes semper exhorret*. Moreover, is there not in the posture taken by petitioner a contravention of what is expressly set forth in the Industrial Peace Act, which speaks of the labor organizations "designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit [be the exclusive] representative of all the employees in such unit for the purpose of collective bargaining."[20] The law clearly contemplates all the employees, not only some of them. As much as possible then, there is to be no unwarranted reduction in the number of those taking part in a certification election, even under the guise that in the meanwhile, which may take some time, some of those who are employees could

possibly lose such status, by virtue of a pending unfair labor practice case.

3. Nor would any useful purpose be served by such a postponement of the holding of a certification election until after the determination of the unfair labor practice case filed. The time that might elapse is hard to predict, as the matter may eventually reach this Tribunal. In the meanwhile, there is no opportunity for free choice on the part of the employees as to which labor organization shall be their exclusive bargaining representative. The force of such an objection could be blunted if after a final decision to the effect that the employees complained of were engaged in illegal strike, they would automatically lose their jobs. Such is not the law, however.[21] It does not necessarily follow that whoever might have participated in a strike thus proscribed has thereby forfeited the light to employment. What will be gained then by holding in abeyance the certification election? There is no certitude that the final decision arrived at in the pending unfair labor practice case would sustain the claim of petitioner. Even if success would attend such endeavor, it cannot be plausibly asserted that its employees adjudged as having been engaged in such illegal strike are ipso facto deprived of such status. There is thus an aspect of futility about the whole thing. Why should not respondent Court then decide as it did?

4. This Court, moreover, is led to sustain the challenged order by another consideration. In General Maritime Stevedores' Union vs. South Sea Shipping Line,[22] a 1960 decision, Justice Labrador, speaking for this Court, stated that the question of whether or not a certification election shall be held "may well be left to the sound discretion of the Court of Industrial Relations, considering the conditions involved in the case."[23] This Court has since then been committed to such a doctrine.[24] As a matter of fact, the only American Supreme Court decision cited in the petition, National Labor Relations Board vs. A. J. Tower Co.,[25] likewise, sustains the same principle. It was there held that the discretion of the labor tribunal, in this case, the National Labor Relations Board of the United States, is not lightly to be interfered with. The issue in that case, as noted in the opinion of Justice Murphy, equally noted for his labor law decisions, as well as his civil libertarian views, "concerns the procedure used in elections under the National Labor Relations Act in

which employees choose a statutory representative for purposes of collective bargaining. Specifically, we must determine the propriety of the National Labor Relations Board's refusal to accept an employers post-election challenge to the eligibility of a voter who participated in a consent election."[26] His opinion then went on to state that the First Circuit Court of Appeals set aside the Board's order. The matter was then taken to the United States Supreme Court on certiorari. In reversing the Circuit Court of Appeals, Justice Murphy made clear the acceptance of such a doctrine in the light of the National Labor Relations Act thus: "As we have noted before, Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees."[27] Hence, this ruling of American Supreme Court: "It follows that the court below erred in refusing to enforce the Board's order in full."[28] In the United States as in the Philippines, the decision in such matters by the administrative agency is accorded the utmost respect. Relevant is this affirmation by the then Justice, now Chief Justice, Concepcion that in such proceedings, the determination of what is an appropriate bargaining unit is "entitled to almost complete finality."[29] The prevailing principle then on questions as to certification, as well as in other labor cases, is that only where there is a showing of clear abuse of discretion would this Tribunal be warranted in reversing the actuation of respondent Court.[30] There is on showing of such a failing in this case.

WHEREFORE, the petition for certiorari is dismissed. With costs against petitioner.

Concepcion, *C.J.*, Makalintal, Zaldivar, Castro, Teehankee, Barredo, Makasiar, Antonio and Esguerra, *JJ.*, concur.

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[1] Republic Act No. 875 (1953).
[2] Petition, par. (1).
[3] Ibid, par. (2).
[4] Ibid, par. (3). The petitions were docketed as MC Cases Nos. 2995 and 2996.
[5] Ibid, par. (5).
[6] Ibid, par. (6).
[7] Ibid, par. (7).
[8] Ibid, par. (9).

[9] Ibid, par. (10).
[10] Ibid, par. (13).
[11] Ibid, par. (14).
[12] Order, Annex Q to Petition, 1-2.
[13] Ibid, 2.
[14] Petition, par (17).
[15] Answer, pars. V, VI and VII.
[16] 101 Phil. 126.
[17] Ibid, 128.
[18] 104 Phil. 10 (1958).
[19] Ibid, 15. Cf. Acoje Mines Employees vs. Acoje Labor Union, 104 Phil. 81 (1958).
[20] Section 12, paragraph (a) of the Industrial Peace Act 875 reads in full: "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."
[21] Cf. Cebu Portland Cement Co. vs. Cement Workers Union, L-25032 and 25037-38, October 14, 1968, 25 SCRA 504; Insular Life Assurance Co. Ltd. Employees Asso. vs. Insular Life Assurance Co. Ltd., L-25291, January 30, 1971, 37 SCRA 244; Shell Oil Workers' Union vs. Shell Co. of the Philippines, Ltd., L-28607. May 31, 1971, 39 SCRA 276; Caltex Fil. Managers and Supervisors Asso. vs. Court of Industrial Relations, L-30632-33, April 11, 1972, 44 SCRA 350.
[22] 108 Phil. 112.
[23] Ibid, 1122.
[24] Cf. Acoje Workers Union vs. National Mines and Allied Workers' Union, L-18848, April 23, 1963, 7 SCRA 730; Binalbagan-Isabela Sugar Co. vs. Philippine Association of Free Labor Unions, L-18782, August 29, 1963, 8 SCRA 700; BCI Employees and Workers Union vs. Mountain Province Workers Union, L-23813, December 29, 1965, 15 SCRA 650; National Labor Union vs. Go Soc and Sons, L-21260, April 30, 1968, 23 SCRA 431; Filoil Refinery Corp. vs. Filoil Supervisory and Confidential Employees Association, L-26736, August 18, 1972, 46 SCRA 512; Phil. Association of Free Labor Unions vs. Court of Industrial Relations, L-33781, October 31, 1972, 47 SCRA 390.
[25] 329 US 324 (1946). Reference was made in the earlier portion of this opinion that the petition contains "copious references to National Labor Relations Board cases." While not to be discouraged as the Industrial Peace Act owes much to the National Labor Relations Act of 1935, commonly known as the Warner Act, as well as to the Norris-La Guardia Act of 1932, still their persuasive force would depend on the fuller discussion of the facts in each of the cases cited and the rulings arrived at. Such feature is conspicuously lacking in the petition.

[26] Ibid, 325-326.
[27] Ibid, 330. Justice Murphy cited the following cases: Southern S.S. Co. vs. National Labor Board, 316 US 31 and National Labor Board vs. Falk Corporation, 308 US 453.
[28] Ibid, 335.
[29] LVN Pictures vs. Philippine Musicians Guild, L-12582, Jan. 28, 1961, 1 SCRA 132. Cf. Alhambra Cigar and Cigarette Manufacturing Co. vs. Alhambra Employees' Association, 107 Phil. 23 and Compania Maritima vs. Compania Maritima Labor Union, L-29504, February 29, 1972, 43 SCRA 464.
[30] Philippine Land-Air Sea Labor Union vs. Bogo-Medellin Milling Co., Inc., 109 Phil. 227 (1960).