SUPREME COURT
SECOND DIVISION

BELYCA CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 77395
November 29, 1988

DIR. PURA FERRER CALLEJA, LABOR RELATIONS, MANILA, MINISTRY OF LABOR AND EMPLOYMENT; MED-ARBITER, RODOLFO S. MILADO, MINISTRY OF LABOR AND EMPLOYMENT, REGIONAL OFFICE NO. 10 AND ASSOCIATED LABOR UNION (ALU-TUCP), MINDANAO REGIONAL OFFICE, CAGAYAN DE ORO CITY,
***Respondents*.**
x----------x

D E C I S I O N

PARAS, *J.*:

This is a Petition for *Certiorari* and Prohibition with Preliminary Injunction Seeking to Annul or to Set Aside the Resolution of the Bureau of Labor Relations dated November 24, 1986 and denying the

appeal, and the Bureau's resolution dated January 13, 1987 denying petitioner's motion for reconsideration.

The dispositive portion of the questioned resolution dated November 24, 1986 (Rollo, p. 4) reads as follows:

> "WHEREFORE, in view of all the foregoing considerations, the Order is affirmed and the appeal therefrom denied.
>
> Let, therefore, the pertinent records of the case be remanded to the office of origin for the immediate conduct of the certification election."

The dispositive portion of the resolution dated January 13, 1987 (Rollo, p. 92) reads, as follows:

> WHEREFORE, the Motion for Reconsideration filed by respondent Belyca Corporation (Livestock Agro-Division) is hereby dismissed for lack of merit and the Bureau's Resolution dated 24 November 1986 is affirmed. Accordingly, let the records of this case be immediately forwarded to the Office of origin for the holding of the certification elections.
>
> No further motion shall hereafter be entertained."

The antecedents of the case are as follows:

> On June 3, 1986, private respondent Associated Labor Union (ALU)-TUCP, a legitimate labor organization duly registered with the Ministry of Labor and Employment under Registration Certificate No. 783-IP, filed with the Regional Office No. 10, Ministry of Labor and Employment at Cagayan de Oro City, a petition for direct certification as the sole and exclusive bargaining agent of all the rank and file employees/workers of Belyca Corporation (Livestock and Agro-Division), a duly organized, registered and existing corporation engaged in the business of poultry raising, piggery and planting of agricultural crops such as corn, coffee and various vegetables, employing approximately 205 rank and file employees/workers, the collective bargaining unit sought in the petition, or in case of

> doubt of the union's majority representation, for the issuance of an order authorizing the immediate holding of a certification election (Rollo, p. 18). Although the case was scheduled for hearing at least three times, no amicable settlement was reached by the parties. During the scheduled hearing of July 31, 1986 they, however, agreed to submit simultaneously their respective position papers on or before August 11, 1986 (rollo. p. 62).

Petitioner ALU-TUCP, private respondent herein, in its petition and position paper alleged, among others, (1) that there is no existing collective bargaining agreement between the respondent employer, petitioner herein, and any other existing legitimate labor unions; (2) that there had neither been a certification election conducted in the proposed bargaining unit within the last twelve (12) months prior to the filing of the petition nor a contending union requesting for certification as the sole and exclusive bargaining representative in the proposed bargaining unit; (3) that more than a majority of respondent employer's rank-and-file employees/workers in the proposed bargaining unit or one hundred thirty-eight (138) as of the date of the filing of the petition, have signed membership with the ALU-TUCP and have expressed their written consent and authorization to the filing of the petition; (4) that in response to petitioner union's two letters to the proprietor/General Manager of respondent employer, dated April 21, 1986 and May 8, 1986, requesting for direct recognition as the sole and exclusive bargaining agent of the rank-and-file workers, respondent employer has locked out 119 of its rank-and-file employees in the said bargaining unit and had dismissed earlier the local union president, vice-president and three other active members of the local unions for which an unfair labor practice case was filed by petitioner union against respondent employer last July 2, 1986 before the NLRC in Cagayan de Oro City (Rollo, pp. 18; 263).

Respondent employer, on the other hand, alleged in its position paper, among others, (1) that due to the nature of its business, very few of its employees are permanent, the overwhelming majority of which are seasonal and casual and regular employees; (2) that of the total 138 rank-and-file employees who authorized, signed and supported the filing of the petition (a) 14 were no longer working as of

June 3, 1986 (b) 4 resigned after June, 1986 (c) 6 withdrew their membership from petitioner union (d) 5 were retrenched on June 23, 1986 (e) 12 were dismissed due to malicious insubordination and destruction of property and (f) 100 simply abandoned their work or stopped working; (3) that the 128 incumbent employees or workers of the livestock section were merely transferred from the agricultural section as replacement for those who have either been dismissed, retrenched or resigned; and (4) that the statutory requirement for holding a certification election has not been complied with by the union (Rollo, p. 26).

The Labor Arbiter granted the certification election sought for by petitioner union in his order dated August 18, 1986 (Rollo, p. 62).

On February 4, 1987, respondent employer Belyca Corporation, appealed the order of the Labor Arbiter to the Bureau of Labor Relations in Manila (Rollo, p. 67) which denied the appeal (Rollo, p. 80) and the motion for reconsideration (Rollo, p. 92). Thus, the instant petition received in this Court by mail on February 20, 1987 (Rollo, p. 3).

In the resolution of March 4, 1987, the Second Division of this Court required respondent Union to comment on the petition and issued a temporary restraining order (Rollo, p. 95).

Respondent union filed its comment on March 30, 1987 (Rollo, p. 190); public respondents filed its comment on April 8, 1987 (Rollo, p. 218).

On May 4, 1987, the Court resolved to give due course to the petition and to require the parties to submit their respective memoranda within twenty (20) days from notice (Rollo, p. 225).

The Office of the Solicitor General manifested on June 11, 1987 that it is adopting the comment for public respondents as its memorandum (Rollo, p. 226); memorandum for respondent ALU was filed on June 30, 1987 (Rollo, p. 231); and memorandum for petitioner, on July 30, 1987 (Rollo, p. 435).

The issues raised in this petition are:

I

WHETHER OR NOT THE PROPOSED BARGAINING UNIT IS AN APPROPRIATE BARGAINING UNIT.

II

WHETHER OR NOT THE STATUTORY REQUIREMENT OF 30% (NOW 20%) OF THE EMPLOYEES IN THE PROPOSED BARGAINING UNIT, ASKING FOR A CERTIFICATION ELECTION HAD BEEN STRICTLY COMPLIED WITH.

In the instant case, respondent ALU seeks direct certification as the sole and exclusive bargaining agent of all the rank-and-file workers of the livestock and agro division of petitioner BELYCA Corporation (Rollo, p. 232), engaged in piggery, poultry raising and the planting of agricultural crops such as corn, coffee and various vegetables (Rollo, p. 26). But petitioner contends that the bargaining unit must include all the workers in its integrated business concerns ranging from piggery, poultry, to supermarts and cinemas so as not to split an otherwise single bargaining unit into fragmented bargaining units (Rollo, p. 435).

The Labor Code does not specifically define what constitutes an appropriate collective bargaining unit. Article 256 of the Code provides:

> "Art. 256. Exclusive bargaining representative. — The labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be exclusive representative of the employees in such unit for the purpose of collective bargaining. However, an individual employee or group of employees shall have the right at any time to present grievances to their employer.
>
> According to Rothenberg, a proper bargaining unit maybe said to be a group of employees of a given employer, comprised of all or less than all of the entire body of employees, which the collective interests of all the employees, consistent with equity

> to the employer, indicate to be best suited to serve reciprocal rights and duties of the parties under the collective bargaining provisions of the law. (Rothenberg in Labor Relations, p. 482).
>
> This Court has already taken cognizance of the crucial issue of determining the proper constituency of a collective bargaining unit.
> Among the factors considered in Democratic Labor Association vs. Cebu Stevedoring Co. Inc. (103 Phil 1103 [1958]) are: "(1) will of employees (Glove Doctrine); (2) affinity and unity of employee's interest, such as substantial similarity of work and duties or similarity of compensation and working conditions; (3) prior collective bargaining history; and (4) employment status, such as temporary, seasonal and probationary employees."

Under the circumstances of that case, the Court stressed the importance of the fourth factor and sustained the trial court's conclusion that two separate bargaining units should be formed in dealing with respondent company, one consisting of regular and permanent employees and another consisting of casual laborers or stevedores. Otherwise stated, temporary employees should be treated separately from permanent employees. But more importantly, this Court laid down the test of proper grouping, which is community and mutuality of interest.

Thus, in a later case, (Alhambra Cigar and Cigarette Manufacturing Co. et al. vs. Alhambra Employees' Association 107 Phil. 28 [1960]) where the employment status was not at issue but the nature of work of the employees concerned; the Court stressed the importance of the second factor otherwise known as the substantial-mutual-interest test and found no reason to disturb the finding of the lower Court that the employees in the administrative, sales and dispensary departments perform work which has nothing to do with production and maintenance, unlike those in the raw leaf, cigar, cigarette, packing and engineering and garage departments and therefore have a community of interest which justifies the formation or existence as a separate appropriate collective bargaining unit.

Still later in PLASLU vs. CIR et al. (110 Phil. 180 [1960]) where the employment status of the employees concerned was again challenged, the Court reiterating the rulings, both in Democratic Labor Association vs. Cebu Stevedoring Co. Inc. supra and Alhambra Cigar and Cigarette Co. et al. vs. Alhambra Employees' Association (supra) held that among the factors to be considered are: employment status of the employees to be affected, that is the positions and categories of work to which they belong, and the unity of employees' interest such as substantial similarity of work and duties.

In any event, whether importance is focused on the employment status or the mutuality of interest of the employees concerned "the basic test of an asserted bargaining unit's acceptability is whether or not it is fundamentally the combination which will best assure to all employees the exercise of their collective bargaining rights (Democratic Labor Association vs. Cebu Stevedoring Co. Inc. supra)

Hence, still later following the substantial-mutual interest test, the Court ruled that there is a substantial difference between the work performed by musicians and that of other persons who participate in the production of a film which suffice to show that they constitute a proper bargaining unit. (LVN Pictures, Inc. vs. Philippine Musicians Guild, 1 SCRA 132 [1961]).

Coming back to the case at bar, it is beyond question that the employees of the livestock and agro division of petitioner corporation perform work entirely different from those performed by employees in the supermarts and cinema. Among others, the noted difference are: their working conditions, hours of work, rates of pay, including the categories of their positions and employment status. As stated by petitioner corporation in its position paper, due to the nature of the business in which its livestock-agro division is engaged very few of its employees in the division are permanent, the overwhelming majority of which are seasonal and casual and not regular employees (Rollo, p. 26). Definitely, they have very little in common with the employees of the supermarts and cinemas. To lump all the employees of petitioner in its integrated business concerns cannot result in an efficacious bargaining unit comprised of constituents enjoying a community or mutuality of interest. Undeniably, the rank and file employees of the livestock-agro division fully constitute a bargaining unit that satisfies

both requirements of classification according to employment status and of the substantial similarity of work and duties which will ultimately assure its members the exercise of their collective bargaining rights.

It is undisputed that petitioner BELYCA Corporation (Livestock and Agro Division) employs more or less two hundred five (205) rank-and-file employees and workers. It has no existing duly certified collective bargaining agreement with any legitimate labor organization. There has not been any certification election conducted in the proposed bargaining unit within the last twelve (12) months prior to the filing of the petition for direct certification and/or certification election with the Ministry of Labor and Employment, and there is no contending union requesting for certification as the sole and exclusive bargaining representative in the proposed bargaining unit.

The records show that on the filing of the petition for certification and/or certification election on June 3, 1986; 124 employees or workers which are more than a majority of the rank-and-file employees or workers in the proposed bargaining unit had signed membership with respondent ALU-TUCP and had expressed their written consent and authorization to the filing of the petition. Thus, the Labor Arbiter ordered the certification election on August 18, 1986 on a finding that 30% of the statutory requirement under Art. 258 of the Labor Code has been met.

But, petitioner corporation contends that after June 3, 1986 four (4) employees resigned; six (6) subsequently withdrew their membership; five (5) were retrenched; twelve (12) were dismissed for illegally and unlawfully barricading the entrance to petitioner's farm; and one hundred (100) simply abandoned their work.

Petitioner's claim was however belied by the Memorandum of its personnel officer to the 119 employees dated July 28, 1986 showing that the employees were on strike, which was confirmed by the finding of the Bureau of Labor Relations to the effect that they went on strike on July 24, 1986 (Rollo, p. 419). Earlier the local union president, Warrencio Maputi; the Vice-president, Gilbert Redoblado; and three other active members of the union Carmen Saguing,

Roberto Romolo and Iluminada Bonio were dismissed and a complaint for unfair labor practice, illegal dismissal etc. was filed by the Union in their behalf on July 2, 1986 before the NLRC of Cagayan de Oro City (Rollo, p. 415). The complaint was amended on August 20, 1986 for respondent Union to represent Warrencio Maputi and 137 others against petitioner corporation and Bello Casanova President and General Manager for unfair labor practice, illegal dismissal, illegal lockout, etc. (Rollo, p. 416)

Under Art. 257 of the Labor Code once the statutory requirement is met, the Director of Labor Relations has no choice but to call a certification election (Atlas Free Workers Union (AFWU) PSSLU Local vs. Noriel, 104 SCRA 565 [1981]; Vismico Industrial Workers Association (VIWA) vs. Noriel, 131 SCRA 569 [1984]) It becomes in the language of the New Labor Code "Mandatory for the Bureau to conduct a certification election for the purpose of determining the representative of the employees in the appropriate bargaining unit and certify the winner as the exclusive bargaining representative of all employees in the unit." (Federacion Obrera de la Industria Tabaquera y Otros Trabajadores de Filipinas vs. Noriel, 72 SCRA 24 [1976]; Kapisanan Ng Mga Manggagawa vs. Noriel, 77 SCRA 414 [1977]); more so when there is no existing collective bargaining agreement. (Samahang Manggagawa Ng Pacific Mills, Inc. vs. Noriel, 134 SCRA 152 [1985]); and there has not been a certification election in the company for the past three years (PLUM Federation of Industrial and Agrarian Workers vs. Noriel, 119 SCRA 299 [1982]) as in the instant case.

It is significant to note that 124 employees out of the 205 employees of the Belyca Corporation have expressed their written consent to the certification election or more than a majority of the rank and file employees and workers; much more than the required 30% and over and above the present requirement of 20% by Executive Order No. 111 issued on December 24, 1980 and applicable only to unorganized establishments under Art. 257, of the Labor Code, to which the BELYCA Corporation belong (Ass. Trade Unions (ATU) vs. Trajano, G.R. No. 75321, June 20, 1988).) More than that, any doubt cast on the authenticity of signatures to the petition for holding a certification election cannot be a bar to its being granted (Filipino Metals Corp. vs. Ople 107 SCRA 211 [1981]). Even doubts as to the required 30% being

met warrant holding of the certification election (PLUM Federation of Industrial and Agrarian Workers vs. Noriel, 119 SCRA 299 [1982]). In fact, once the required percentage requirement has been reached, the employees' withdrawal from union membership taking place after the filing of the petition for certification election will not affect said petition. On the contrary, the presumption arises that the withdrawal was not free but was procured through duress, coercion or for a valuable consideration (La Suerte Cigar and Cigarette Factory vs. Director of the Bureau of Labor Relations, 123 SCRA 679 [1983]). Hence, the subsequent disaffiliation of the six (6) employees from the union will not be counted against or deducted from the previous number who had signed up for certification elections (Vicmico Industrial Workers Association (VIWA) vs. Noriel 131 SCRA 569 [1984]). Similarly, until a decision, final in character, has been issued declaring the strike illegal and the mass dismissal or retrenchment valid, the strikers cannot be denied participation in the certification election notwithstanding, the vigorous condemnation of the strike and the fact that the picketing were attended by violence. Under the foregoing circumstances, it does not necessarily follow that the strikers in question are no longer entitled to participate in the certification election on the theory that they have automatically lost their jobs. (Barrera vs. CIR, 107 SCRA 596 [1981]). For obvious reasons, the duty of the employer to bargain collectively is nullified if the purpose of the dismissal of the union members is to defeat the union in the consent requirement for certification election. (Samahang Manggagawa Ng Via Mare vs. Noriel, 98 SCRA 507 [1980]). As stressed by this Court, the holding of a certification election is a statutory policy that should not be circumvented. (George and Peter Lines Inc. vs. Associated Labor Unions (ALU), 134 SCRA 82 [1986]).

Finally, as a general rule, a certification election is the sole concern of the workers. The only exception is where the employer has to file a petition for certification election pursuant to Art. 259 of the Labor Code because the latter was requested to bargain collectively. But thereafter the role of the employer in the certification process ceases. The employer becomes merely a bystander (Trade Union of the Phil. and Allied Services (TUPAS) vs. Trajano, 120 SCRA 64 [1983]).

There is no showing that the instant case falls under the above mentioned exception. However, it will be noted that petitioner corporation from the outset has actively participated and consistently taken the position of adversary in the petition for direct certification as the sole and exclusive bargaining representative and/or certification election filed by respondent Associated Labor Unions (ALU)-TUCP to the extent of filing this petition for certiorari in this Court. Considering that a petition for certification election is not a litigation but a mere investigation of a non-adversary character to determining the bargaining unit to represent the employees (LVN Pictures, Inc. vs. Philippine Musicians Guild, supra; Bulakeña Restaurant & Caterer vs. Court of Industrial Relations, 45 SCRA 88 [1972]; George Peter Lines, Inc. vs. Associated Labor Union, 134 SCRA 82 [1986]; Tanduay Distillery Labor Union vs. NLRC, 149 SCRA 470 [1987]), and its only purpose is to give the employees true representation in their collective bargaining with an employer (Confederation of Citizens Labor Unions (CCLU) vs. Noriel, 116 SCRA 694 [1982]), there appears to be no reason for the employer's objection to the formation of subject union, much less for the filing of the petition for a certification election.

PREMISES CONSIDERED, (a) the Petition is **DISMISSED** for lack of merit (b) Resolution of the Bureau of Labor Relations dated Nov. 24, 1986 is **AFFIRMED**; and the Temporary Restraining Order issued by the Court on March 4, 1987 is **LIFTED** permanently.

SO ORDERED.

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