SUPREME COURT
THIRD DIVISION

BENGUET ELECTRIC COOPERATIVE, INC.,
***Petitioner*,**

-versus-

G.R. No. 79025
December 29, 1989

HON. PURA FERRER-CALLEJA, Director of the Bureau of Labor Relations, and BENECO EMPLOYEES LABOR UNION,
***Respondents*.**
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D E C I S I O N

CORTES, *J.*:

On June 21, 1985 Beneco Worker's Labor Union-Association of Democratic Labor Organizations (hereinafter referred to as BWLU-ADLO) filed a petition for direct certification as the sole and exclusive bargaining representative of all the rank and file employees of Benguet Electric Cooperative, Inc. (hereinafter referred to as BENECO) at Alapang, La Trinidad, Benguet alleging, inter alia, that BENECO has in its employ two hundred and fourteen (214) rank and file employees; that one hundred and ninety-eight (198) or 92.5% of these employees have supported the filing of the petition; that no

certification election has been conducted for the last 12 months; that there is no existing collective bargaining representative of the rank and file employees sought to be represented by BWLU-ADLO; and, that there is no collective bargaining agreement in the cooperative.

An opposition to the petition was filed by the Beneco Employees Labor Union (hereinafter referred to as BELU) contending that it was certified as the sole and exclusive bargaining representative of the subject workers pursuant to an order issued by the med-arbiter on October 20, 1980; that pending resolution by the National Labor Relations Commission are two cases it filed against BENECO involving bargaining deadlock and unfair labor practice; and, that the pendency of these cases bars any representation question.

BENECO, on the other hand, filed a motion to dismiss the petition claiming that it is a non-profit electric cooperative engaged in providing electric services to its members and patron-consumers in the City of Baguio and Benguet Province; and, that the employees sought to be represented by BWLU-ADLO are not eligible to form, join or assist labor organizations of their own choosing because they are members and joint owners of the cooperative.

On September 2, 1985 the med-arbiter issued an order giving due course to the petition for certification election. However, the med-arbiter limited the election among the rank and file employees of petitioner who are non members thereof and without any involvement in the actual ownership of the cooperative. Based on the evidence during the hearing the med-arbiter found that there are thirty-seven (37) employees who are not members and without any involvement in the actual ownership of the cooperative. The dispositive portion of the med-arbiter's order is as follows:

> WHEREFORE, premises considered, a certification election should be as it is hereby ordered to be conducted at the premises of Benguet, Electric Cooperative, Inc., at Alapang, La Trinidad, Benguet within twenty (20) days from receipt hereof among all the rank and file employees (non-members/consumers and without any involvement in the actual ownership of the cooperative) with the following choices:

1. BENECO WORKERS LABOR UNION-ADLO

2. BENECO EMPLOYEES LABOR UNION

3. NO UNION

The payroll for the month of June 1980 shall be the basis in determining the qualified voters who may participate in the certification election to be conducted.

SO ORDERED. [Rollo, pp. 22-23.]

BELU and BENECO appealed from this order but the same was dismissed for lack of merit on March 25, 1986. Whereupon BENECO filed with this Court a petition for certiorari with prayer for preliminary injunction and or restraining order, docketed as G.R. No. 74209, which the Supreme Court dismissed for lack of merit in a minute resolution dated April 28, 1986.

The ordered certification election was held on October 1, 1986. Prior to the conduct thereof BENECO's counsel verbally manifested that "the cooperative is protesting that employees who are members-consumers are being allowed to vote when they are not eligible to be members of any labor union for purposes of collective bargaining; much less, to vote in this certification election." [Rollo, p. 28]. Petitioner submitted a certification showing that only four (4) employees are not members of BENECO and insisted that only these employees are eligible to vote in the certification election. Canvass of the votes showed that BELU garnered forty-nine (49) of the eighty-three (83) "valid" votes cast.

Thereafter BENECO formalized its verbal manifestation by filing a Protest. Finding, among others, that the issue as to whether or not member-consumers who are employees of BENECO could form, assist or join a labor union has been answered in the affirmative by the Supreme Court in G.R. No. 74209, the med-arbiter dismissed the protest on February 17, 1987. On June 23, 1987, Bureau of Labor Relations (BLR) director Pura Ferrer-Calleja affirmed the med-arbiter's order and certified BELU as the sole and exclusive bargaining agent of all the rank and file employees of BENECO.

Alleging that the BLR director committed grave abuse of discretion amounting to lack or excess of jurisdiction BENECO filed the instant petition for certiorari. In his Comment the Solicitor General agreed with BENECO's stance and prayed that the petition be given due course. In view of this, respondent director herself was required by the Court to file a Comment. On April 19, 1989 the Court gave due course to the petition and required the parties to submit their respective memoranda.

The main issue in this case is whether or not respondent director committed grave abuse of discretion in certifying respondent BELU as the sole and exclusive bargaining representative of the rank and file employees of BENECO.

Under Article 256 of the Labor Code [Pres. Decree 442] to have a valid certification election, "at least a majority of all eligible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all workers in the unit." Petitioner BENECO asserts that the certification election held on October 1, 1986 was null and void since members-employees of petitioner cooperative who are not eligible to form and join a labor union for purposes of collective bargaining were allowed to vote therein.

Respondent director and private respondent BELU on the other hand submit that members of a cooperative who are also rank and file employees are eligible to form, assist or join a labor union [Comment of Respondent Director, p. 4; Rollo, p. 125; Comment of BELU, pp. 9-10; Rollo pp. 99-100].

The Court finds the present petition meritorious.

The issue of whether or not employees of a cooperative are qualified to form or join a labor organization for purposes of collective bargaining has already been resolved and clarified in the case of Cooperative Rural Bank of Davao City, Inc. vs. Ferrer-Calleja, et al. [G.R. No. 77951, September 26, 1988] and reiterated in the cases of Batangas-I Electric Cooperative Labor Union vs. Young, et al. [G.R. Nos. 62386, 70880 and 74560, November 9, 1988] and San Jose City

Electric Service Cooperative, Inc. vs. Ministry of Labor and Employment, et al. [G.R. No. 77231, May 31, 1989] wherein the Court had stated that the right to collective bargaining is not available to an employee of a cooperative who at the same time is a member and co-owner thereof. With respect, however, to employees who are neither members nor co-owners of the cooperative they are entitled to exercise the rights to self-organization, collective bargaining and negotiation as mandated by the 1987 Constitution and applicable statutes.

Respondent director argues that to deny the members of petitioner cooperative the right to form, assist or join a labor union of their own choice for purposes of collective bargaining would amount to a patent violation of their right to self-organization. She points out that:

> "albeit a person assumes a dual capacity as rank and file employee and as member of a certain cooperative does not militate, as in the instant case, against his/her exercise of the right to self-organization and to collective bargaining guaranteed by the Constitution and Labor Code because, while so doing, he/she is acting in his/her capacity as rank and file employee thereof. It may be added that while the employees concerned became members of petitioner cooperative, their status employment as rank and filers who are hired for fixed compensation had not changed. They still do not actually participate in the management of the cooperative as said function is entrusted to the Board of Directors and to the elected or appointed officers thereof. They are not vested with the powers and prerogatives to lay down and execute managerial policies; to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees; and/or to effectively recommend such managerial functions [Comment of Respondent Director, p. 4; Rollo, p. 125.]

Private respondent BELU concurs with the above contention of respondent director and, additionally, claims that since membership in petitioner cooperative is only nominal, the rank and file employees who are members thereof should not be deprived of their right to self-organization.

The above contentions are untenable. Contrary to respondents' claim, the fact that the members-employees of petitioner do not participate in the actual management of the cooperative does not make them eligible to form, assist or join a labor organization for the purpose of collective bargaining with petitioner. The Court's ruling in the Davao City case that members of cooperative cannot join a labor union for purposes of collective bargaining was based on the fact that as members of the cooperative they are co-owners thereof. As such, they cannot invoke the right to collective bargaining for "certainly an owner cannot bargain with himself or his co-owners." [Cooperative Rural Bank of Davao City, Inc. vs. Ferrer-Calleja, et al., supra]. It is the fact of ownership of the cooperative, and not involvement in the management thereof, which disqualifies a member from joining any labor organization within the cooperative. Thus, irrespective of the degree of their participation in the actual management of the cooperative, all members thereof cannot form, assist or join a labor organization for the purpose of collective bargaining.

Respondent union further claims that if nominal ownership in a cooperative is "enough to take away the constitutional protections afforded to labor, then there would be no hindrance for employers to grant, on a scheme of generous profit sharing, stock bonuses to their employees and thereafter claim that since their employees are not stockholders [of the corporation], albeit in a minimal and involuntary manner, they are now also co-owners and thus disqualified to form unions." To allow this, BELU argues, would be "to allow the floodgates of destruction to be opened upon the rights of labor which the Constitution endeavors to protect and which welfare it promises to promote." [Comment of BELU, p. 10; Rollo, p. 100].

The above contention of respondent union is based on the erroneous presumption that membership in a cooperative is the same as ownership of stocks in ordinary corporations. While cooperatives may exercise some of the rights and privileges given to ordinary corporations provided under existing laws, such cooperatives enjoy other privileges not granted to the latter [See Sections 4, 5, 6, and 8, Pres. Decree No. 175; Cooperative Rural Bank of Davao City vs. Ferrer-Calleja, supra]. Similarly, members of cooperatives have rights and obligations different from those of stockholders of ordinary corporations. It was precisely because of the special nature of

cooperatives, that the Court held in the Davao City case that members-employees thereof cannot form or join a labor union for purposes of collective bargaining. The Court held that:

> A cooperative is by its nature different from an ordinary business concern being run either by persons, partnerships, or corporations. Its owners and/or members are the ones who run and operate the business while the others are its employees. As above stated, irrespective of the number of shares owned by each member they are entitled to cast one vote each in deciding upon the affairs of the cooperative. Their share capital earn limited interest. They enjoy special privileges as — exemption from income tax and sales taxes, preferential light to supply their products to State agencies and even exemption from the minimum wage laws.
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> An employee therefore of such a cooperative who is a member and co-owner thereof cannot invoke the right to collective bargaining for certainly an owner cannot bargain with himself or his co-owners.
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> It is important to note that, in her order dated September 2, 1985, med-arbiter Elnora V. Balleras made a specific finding that there are only thirty-seven (37) employees of petitioner who are not members of the cooperative and who are, therefore, the only employees of petitioner cooperative eligible to form or join a labor union for purposes of collective bargaining [Annex "A" of the Petition, p. 12; Rollo, p. 22]. However, the minutes of the certification election [Annex "C" of the Petition: Rollo, p. 28] show that a total of eighty-three (83) employees were allowed to vote and of these, forty-nine (49) voted for respondent union. Thus, even if We agree with respondent union's contention that the thirty seven (37) employees who were originally non-members of the cooperative can still vote in the certification election since they were only "forced and compelled to join the cooperative on pain of disciplinary action," the certification election held on October 1, 1986 is still null and void since even those who were already members of the cooperative at the time of the issuance of the med-arbiter's

order, and therefore cannot claim that they were forced to join the union, were allowed to vote in the election.

Article 256 of the Labor Code provides, among others, that:

> To have a valid, election, at least a majority of all eligible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all workers in the unit. [Emphasis supplied.]

In this case it cannot be determined whether or not respondent union was duly elected by the eligible voters of the bargaining unit since even employees who are ineligible to join a labor union within the cooperative because of their membership therein were allowed to vote in the certification election.

Considering the foregoing, the Court finds that respondent director committed grave abuse of discretion in certifying respondent union as the sole and exclusive bargaining representative of the rank and file employees of petitioner cooperative.

WHEREFORE, the petition is hereby **GRANTED** and the assailed resolution of respondent director is **ANNULLED**. The certification election conducted on October 1, 1986, is **SET ASIDE**. The Regional Office No. 1 of San Fernando, La Union is hereby directed to immediately conduct new certification election proceedings among the rank and file employees of the petitioner who are not members of the cooperative.

SO ORDERED.

Fernan, *C.J.*, Gutierrez, Jr., and Bidin, *JJ.*, concur.
Feliciano, *J.*, is on leave.