SUPREME COURT
SECOND DIVISION

CENTRAL NEGROS ELECTRIC COOPERATIVE, INC. (CENECO),
***Petitioner*,**

-versus-

G.R. No. 94045
September 13, 1991

HONORABLE SECRETARY, DEPARTMENT OF LABOR AND EMPLOYMENT, and CENECO UNION OF RATIONAL EMPLOYEES (CURE),
***Respondents*.**
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D E C I S I O N

REGALADO, *J.*:

In this Special Civil Action for *Certiorari*, petitioner Central Negros Electric Cooperative, Inc. (CENECO) seeks to annul the Order[1] issued by then Acting Secretary of Labor Bienvenido E. Laguesma on June 6, 1990, declaring the projected certification election unnecessary and directing petitioner CENECO to continue recognizing private respondent CENECO Union of Rational Employees (CURE) as the sole and exclusive bargaining representative of all the rank-and-file employees of petitioner's electric cooperative for purposes of collective bargaining.

It appears from the records that on August 15, 1987, CENECO entered into a collective bargaining agreement with CURE, a labor union representing its rank-and-file employees, providing for a term of three years retroactive to April 1, 1987 and extending up to March 31, 1990. On December 28, 1989, CURE wrote CENECO proposing that negotiations be conducted for a new collective bargaining agreement (CBA).

On January 18, 1990, CENECO denied CURE's request on the ground that, under applicable decisions of the Supreme Court, employees who at the same time are members of an electric cooperative are not entitled to form or join a union.[2]

Prior to the submission of the proposal for CBA re negotiation, CURE members, in a general assembly held on December 9, 1989, approved Resolution No. 35 whereby it was agreed that "all union members shall withdraw, retract, or recall the union members' membership from Central Negros Electric Cooperative, Inc. in order to avail (of the full benefits under the existing Collective Bargaining Agreement entered into by and between CENECO and CURE, and the supposed benefits that our union may avail (of) under the renewed CBA."[3] This was ratified by 259 of the 362 union members. CENECO and the Department of Labor and Employment, Bacolod District, were furnished copies of this resolution.

However, the withdrawal from membership was denied by CENECO on February 27, 1990 under Resolution No. 90 "for the reason that the basis of withdrawal is not among the grounds covered by Board Resolution No. 5023, dated November 22, 1989 and that said request is contrary to Board Resolution No. 5033 dated December 13, 1989."[4]

By reason of CENECO's refusal to re negotiate a new CBA, CURE filed a petition for direct recognition or for certification election, supported by 282 or 72% of the 388 rank-and-file employees in the bargaining unit of CENECO.

CENECO filed a motion to dismiss on the ground that there are legal constraints to the filing of the certification election, citing the ruling

laid down by this Court in Batangas I Electric Cooperative Labor Union vs. Romeo A. Young,[5] (BATANGAS case) to the effect that "employees who at the same time are members of an electric cooperative are not entitled to form or join unions for purposes of collective bargaining agreement, for certainly an owner cannot bargain with himself or his co-owners."

Med-Arbiter Felizardo T. Serapio issued an Order,[6] granting the petition for certification election which, in effect, was a denial of CENECO's motion to dismiss, and directing the holding of a certification election between CURE and No Union.

CENECO appealed to the Department of Labor and Employment which issued the questioned order modifying the aforestated order of the med-arbiter by directly certifying CURE as the exclusive bargaining representative of the rank-and-file employees of CURE.

Hence, this petition.

Petitioner CENECO argues that respondent Secretary committed a grave abuse of discretion in not applying to the present case the doctrine enunciated in the BATANGAS case that employees of an electric cooperative who at the same time are members of the electric cooperative are prohibited from forming or joining labor unions for purposes of a collective bargaining agreement. While CENECO recognizes the employees' right to self-organization, it avers that this is not absolute. Thus, it opines that employees of an electric cooperative who at the same time are members thereof are not allowed to form or join labor unions for purposes of collective bargaining. However, petitioner does not hesitate to admit that the prohibition does not extend to employees of an electric cooperative who are not members of the cooperative.

The issue, therefore, actually involves a determination of whether or not the employees of CENECO who withdrew their membership from the cooperative are entitled to form or join CURE for purposes of the negotiations for a collective bargaining agreement proposed by the latter.

As culled from the records, it is the submission of CENECO that the withdrawal from membership in the cooperative and, as a consequence, the employees' acquisition of membership in the union cannot be allowed for the following reasons:

1. It was made as a subterfuge or to subvert the ruling in the BATANGAS case;

2. To allow the withdrawal of the members of CENECO from the cooperative without justifiable reason would greatly affect the objectives and goals of petitioner as an electric cooperative;

3. The Secretary of Labor, as well as the Med-Arbiter, has no jurisdiction over the issue of the withdrawal from membership which is vested in the National Electrification Administration (NEA) which has direct control and supervision over the operations of electric cooperatives; and

4. Assuming that the Secretary has jurisdiction, CURE failed to exhaust administrative remedies by not referring the matter of membership withdrawal to the NEA.

The petition is destitute of merit; certiorari will not lie.

We first rule on the alleged procedural infirmities affecting the instant case. CENECO avers that the med-arbiter has no jurisdiction to rule on the issue of withdrawal from membership of its employees in the cooperative which, it claims, is properly vested in the NEA which has control and supervision over all electric cooperatives.

From a perusal of petitioner's motion to dismiss filed with the med-arbiter, it becomes readily apparent that the sole basis for petitioner's motion is the illegality of the employees' membership in respondent union despite the fact that they allegedly are still members of the cooperative. Petitioner itself adopted the aforesaid argument in seeking the dismissal of the petition for certification election filed with the med-arbiter, and the finding made by the latter was merely in answer to the arguments advanced by petitioner. Hence, petitioner is deemed to have submitted the issue of membership withdrawal

from the cooperative to the jurisdiction of the med-arbiter and it is now estopped from questioning that same jurisdiction which it invoked in its motion to dismiss after obtaining an adverse ruling thereon.

Under Article 256 of the Labor Code, to have a valid certification election at least a majority of all eligible voters in the unit must have cast their votes. It is apparent that incidental to the power of the med-arbiter to hear and decide representation cases is the power to determine who the eligible voters are. In so doing, it is axiomatic that the med-arbiter should determine the legality of the employees' membership in the union. In the case at bar, it obviously becomes necessary to consider first the propriety of the employees' membership withdrawal from the cooperative before a certification election can be had.

Lastly, it is petitioner herein who is actually questioning the propriety of the withdrawal of its members from the cooperative. Petitioner could have brought the matter before the NEA if it wanted to and if such remedy had really been available, and there is nothing to prevent it from doing so. It would be absurd to fault the employees for the neglect or laxity of petitioner in protecting its own interests.

The argument of CENECO that the withdrawal was merely to subvert the ruling of this Court in the BATANGAS case is without merit. The case referred to merely declared that employees who are at the same time members of the cooperative cannot join labor unions for purposes of collective bargaining. However, nowhere in said case is it stated that member-employees are prohibited from withdrawing their membership in the cooperative in order to join a labor union.

As discussed by the Solicitor General, Article I, Section 9 of the Articles of Incorporation and By-Laws of CENECO provides that "any member may withdraw from membership upon compliance with such uniform terms and conditions as the Board may prescribe." The same section provides that upon withdrawal, the member is merely required to surrender his membership certificate and he is to be refunded his membership fee less any obligation that he has with the cooperative. There appears to be no other condition or requirement imposed upon a withdrawing member. Hence, there is no just cause

for petitioner's denial of the withdrawal from membership of its employees who are also members of the union.[7]

The alleged board resolutions relied upon by petitioner in denying the withdrawal of the members concerned were never presented nor their contents disclosed either before the med-arbiter or the Secretary of Labor if only to prove the ratiocination for said denial. Furthermore, CENECO never averred noncompliance with the terms and conditions for withdrawal, if any. It appears that the Articles of Incorporation of CENECO do not provide any ground for withdrawal from membership which accordingly gives rise to the presumption that the same may be done at any time and for whatever reason. In addition, membership in the cooperative is on a voluntary basis. Hence, withdrawal therefrom cannot be restricted unnecessarily. The right to join an organization necessarily includes the equivalent right not to join the same.

The right of the employees to self-organization is a compelling reason why their withdrawal from the cooperative must be allowed. As pointed out by CURE, the resignation of the member-employees is an expression of their preference for union membership over that of membership in the cooperative. The avowed policy of the State to afford full protection to labor and to promote the primacy of free collective bargaining mandates that the employees' right to form and join unions for purposes of collective bargaining be accorded the highest consideration.

Membership in an electric cooperative which merely vests in the member a right to vote during the annual meeting becomes too trinal and insubstantial *vis-a-vis* the primordial and more important constitutional right of an employee to join a union of his choice. Besides, the 390 employees of CENECO, some of whom have never been members of the cooperative, represent a very small percentage of the cooperative's total membership of 44,000. It is inconceivable how the withdrawal of a negligible number of members could adversely affect the business concerns and operations of CENECO.

We rule, however, that the direct certification ordered by respondent Secretary is not proper. By virtue of Executive Order No. 111, which became effective on March 4, 1987, the direct certification originally

allowed under Article 257 of the Labor Code has apparently been discontinued as a method of selecting the exclusive bargaining agent of the workers. This amendment affirms the superiority of the certification election over the direct certification which is no longer available now under the change in said provision.[8]

We have said that where a union has filed a petition for certification election, the mere fact that no opposition is made does not warrant a direct certification.[9] In said case which has similar features to that at bar, wherein the respondent Minister directly certified the union, we held that:

> "As pointed out by petitioner in its petition, what the respondent Minister achieved in rendering the assailed orders was to make a mockery of the procedure provided under the law for representation cases because: x x x (c) By directly certifying a Union without sufficient proof of majority representation, he has in effect arrogated unto himself the right, vested naturally in the employees to choose their collective bargaining representative. (d) He has in effect imposed upon the petitioner the obligation to negotiate with a union whose majority representation is under serious question This is highly irregular because while the Union enjoys the blessing of the Minister, it does not enjoy the blessing of the employees. Petitioner is therefore under threat of being held liable for refusing to negotiate with a union whose right to bargaining status has not been legally established."

While there may be some factual variances, the rationale therein is applicable to the present case in the sense that it is not alone sufficient that a union has the support of the majority. What is equally important is that everyone be given a democratic space in the bargaining unit concerned. The most effective way of determining which labor organization can truly represent the working force is by certification election.[10]

WHEREFORE, the questioned order for the direct certification of respondent CURE as the bargaining representative of the employees of petitioner CENECO is hereby **ANNULLED** and **SET ASIDE**. The med-arbiter is hereby ordered to conduct a certification election

among the rank-and-file employees of CENECO with CURE and No Union as the choices therein.

SO ORDERED.

Melencio-Herrera, Paras and Padilla, *JJ.*, concur.
Sarmiento, *J.*, is on leave.

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[1] Annex A, Petition; Rollo, 20.
[2] Annex J., id., ibid., 108.
[3] Annex 4, Comment of CURE; ibid., 139.
[4] Annex 1, Petition; ibid., 107.
[5] 167 SCRA 136 (1988).
[6] Annex F, id.; ibid., 80.
[7] Rollo, 167-170.
[8] National Association of Free Trade Unions (NAFTU-TUCP) vs. Bureau of Labor Relations (BLR), et al., 164 SCRA 12 (1988).
[9] Colgate Palmolive Philippines, Inc. vs. Ople, et al., 163 SCRA 323 (1988).
[10] Associated Labor Unions (ALU) vs. Ferrer-Calleja, etc., et al., 179 SCRA (1989).
