

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**NATIONAL ASSOCIATION OF FREE
TRADE UNIONS (NAFTU),**
Petitioner,

-versus-

**G.R. No. 79526
December 21, 1990**

**MAINIT LUMBER DEVELOPMENT
COMPANY WORKERS UNION-UNITED
LUMBER AND GENERAL WORKERS
OF THE PHILIPPINES. (MALDECOWU-
ULGWP),**
Respondents.

X-----X

DECISION

PARAS, J.:

This is a Petition for *Certiorari* to Annul and Set Aside the Resolution^[**] of the public respondent Bureau of Labor Relation dated January 29, 1987 in BLR Case No. A-5-99-85 entitled: IN RE: Petition for Direct Certification or Certification Election, Mainit Lumber Development Company Workers Union-United Lumber and General Workers of the Philippines (MALDECOWU-ULGWP), petitioner-appellee vs. Mainit Lumber and Development Company, Inc. (MALDECO), respondent; National Association of Free Trade

Unions (NAFTU), compulsory intervenor-appellant, affirming the Order of the Med-Arbiter date September 24, 1986 and denying petitioner's motion for reconsideration.

The facts are as follows:

On January 28, 1985, private respondent Mainit Lumber Development Company Workers Union-United Lumber and General Workers of the Philippines, MALDECOWU-ULGWP (ULGWP, for short), a legitimate labor organization duly registered with the Ministry of Labor and Employment under Registry No. 2944-IP, filed with Regional Office No. 10, Ministry of Labor and Employment at Cagayan de Oro City, a petition for certification election to determine the sole and exclusive collective bargaining representative among the rank and file workers/employees of Mainit Lumber Development Company Inc. (MALDECO), a duly organized, registered and existing corporation engaged in the business of logging and saw-mill operations employing approximately 136 rank and file employees/workers (Rollo, p. 11; Petition; Annex "A"). The case was scheduled for hearing two (2) times. During the first scheduled hearing on February 20, 1985, the counsel for compulsory intervenor (now petitioner), National Association of Free Trade Union (NAFTU) requested for postponement on the ground that he was leaving for abroad. During the scheduled hearing of March 13, 1985, they, however, agreed to submit simultaneously their respective position papers within twenty (20) days (Rollo, p. 17; Petition; Annex "D").

Petitioner ULGWP, private respondent herein, in its petition and position paper alleged, among others: (1) that there was no certification election conducted within 12 months prior to the filing of the petition; (2) that the petition was filed within the 60 day freedom period, i.e. CBA expired on February 28, 1985; (3) that the petition is supported by the signatures of 101 rank and file employees out of a total of 201 employees of the employer or more than thirty percent (30%) than that required by law (Rollo, p. 13; Petition; Annex "B").

On April 11, 1985, the Med-Arbiter granted the petition for certification election. On April 26, 1985, NAFTU appealed the decision of the Med-Arbiter on the ground that MALDECO was composed of two (2) bargaining units, the Sawmill Division and the

Logging Division, but both the petition and decision treated these separate and distinct units only as one (Rollo, p. 20; Petition; Annex "E").

On April 28, 1986, the Bureau of Labor Relations affirmed the decision (Rollo, p. 26; Petition; Annex "J"). Thus, a certification election was held on separate dates at the employer's sawmill division and logging area respectively. In said election MALDECOWU-ULGWP garnered a total vote of 146 while NAFTU garnered a total of 2 votes (Rollo, p. 42; Petition; Annex "O").

On July 26, 1986, NAFTU filed an election protest alleging massive vote buying accompanied with grave and serious threat force and intimidation on the lives of 25 applicants as stated in a Joint Affidavit attached thereto (Rollo, p. 28; Petition; Annexes "K", "K-3").

MALDECO filed its Manifestation on August 3, 1986, which corroborated petitioner's stand. Attached to the said Manifestation was a joint affidavit executed by thirty five (35) of its employees/workers (Rollo, p. 33; Petition; Annexes "L", "L-1").

On September 3, 1986, private respondent filed its position paper (Rollo, p. 36; Petition; Annex "I"). On September 8, 1986 petitioner filed its opposition to private respondent's position paper (Rollo, p. 39; Petition; Annex "N"). On September 24, 1986, the Med-Arbiter dismissed the election protest (Rollo, p. 42; Petition; Annex "O").

On October 10, 1986, petitioner NAFTU appealed the order of the Med-Arbiter to the Bureau of Labor Relations in Manila (Rollo, p. 46) which denied the appeal (Rollo, p. 48) and the two motions for reconsideration (Rollo, pp. 51, 55).

Hence, this petition.

The issues raised in this petition are:

WHETHER OR NOT IT WAS RIGHT FOR THE MED-ARBITER TO CHANGE THE EMPLOYER FROM TWO SEPARATE BARGAINING UNITS TO ONLY ONE.

II

WHETHER OR NOT THERE WAS MASSIVE VOTE BUYING AND SERIOUS THREAT TO LIFE TO JUSTIFY INVALIDATING THE RESULT OF THE ELECTION.

III

WHETHER OR NOT AN ELECTION PROTEST IN A CERTIFICATION ELECTION CAN BE GIVEN DUE COURSE EVEN IF NOT ENTERED IN THE MINUTES OF THE ELECTION.

In the case at bar, petitioner alleges that the employer MALDECO was composed of two bargaining units, the Sawmill Division in Butuan City and the Logging Division, in Zapanta Valley, Kitcharao, Agusan Norte, about 80 kilometers distant from each other and in fact, had then two separate CBA's, one for the Sawmill Division and another for the Logging Division, both the petition and decision referred only to one bargaining unit; that from 1979 to 1985, the Ministry of Labor and Employment recognized the existence of two (2) separate bargaining units at MALDECO, one for its Logging Division and another for its Sawmill Division.

Significantly, out of two hundred and one (201) employees of MALDECO, one hundred seventy five (175) consented and supported the petition for certification election, thereby confirming their desire for one bargaining representative (Rollo, p. 104).

Moreover, while the existence of a bargaining history is a factor that may be reckoned with in determining the appropriate bargaining unit, the same is not decisive or conclusive. Other factors must be considered. The test of grouping is community or mutuality of interests. This is so because "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 v. Cebu Stevedoring Company, Inc., et al., 103 Phil. 1103 [1958]).

Certainly, there is a mutuality of interest among the employees of the Sawmill Division and the Logging Division. Their functions mesh with one another. One group needs the other in the same way that the company needs them both. There may be difference as to the nature of their individual assignments but the distinctions are not enough to warrant the formation of a separate bargaining unit.

Secondly, the issue had been raised earlier by petitioner. The respondent Bureau of Labor Relations had already ruled on the same in its decision dated April 28, 1986 affirming the Med-Arbitrator's Order dated April 11, 1985 which granted the petition for Certification Election. NAFTU did not elevate the April 28, 1986 decision to this Court. On the contrary, it participated in the questioned election and later it did not raise the issue in its election protest (Rollo, p. 210). Hence, the principle of res judicata applies. It was settled as early as 1956 that "the rule which forbids the reopening of a matter once judicially determined by competent authority applies as well to the judicial and quasi-judicial acts of public, executive or administrative officers and boards acting within their jurisdiction as to the judgments of courts having general judicial powers." (B.F. Goodrich Philippines, Inc. v. Workmen's Compensation Commission and Leandro M. Castro, 159 SCRA 355 [1988]).

With regard to the second and third issues raised by petitioner, the public respondent Bureau of Labor Relations in its order dated September 24, 1986 found the following, to wit:

"After a careful perusal of the records of this case and after considering, adducing and weighing all the pleadings, arguments, etc. and the circumstances attendant to the instant case, this Office is of the opinion that the grounds relied upon by the protestant NAFTU in its protest are bereft of any merit, hence, this Office finds no cogent reason to order the invalidation or annulment of the certification election under protest or the holding of a run-off election thereat between no union and the protestee, MALDECOWU-ULGWP. Indeed, the minutes of said certification elections conducted both at the

sawmill and logging departments on August 15 and 21, 1986 respectively, of the respondent/employer showed that there was no protest on massive vote buying accompanied with grave and serious threats, force and intimidation raised by any of the parties who were ably represented in said elections. Paragraph 2, Section 9, Rule 6 of the Rules and Regulations implementing the Labor Code of the Philippines (now Section 3, Rule VI, Book 5 of the Omnibus Rules Implementing the Labor Code) provides that protests not so raised and contained in the minutes of the proceedings are deemed waived. Allegations of vote buying, grave and serious threats, force and intimidation are questions of fact which should be contained in the minutes of said proceedings. There is no clear and convincing proof presented by the protestant in support of its contention, hence, we have no other alternative than to uphold the election results."

In the case of Philippine Airlines Employees' Association (PALEA) v. Hon. Pura Ferrer-Calleja, et al., 162 SCRA 425 [1988]), this Court held that factual findings of the Bureau of Labor Relations which are supported by substantial evidence are binding on this Court and must be respected.

PREMISES CONSIDERED, the Resolution of public respondent Bureau of Labor Relations dated January 29, 1987 is hereby **AFFIRMED**.

SO ORDERED.

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

[**] Penned by Pura Ferrer-Calleja.