SUPREME COURT
SECOND DIVISION

NATIONAL FEDERATION OF LABOR (NFL),
***Petitioner*,**

-versus-

G.R. No. 104556
March 19, 1998

THE SECRETARY OF LABOR OF THE REPUBLIC OF THE PHILIPPINES AND HIJO PLANTATION INC. (HPI),
***Respondents*.**
x----------x

D E C I S I O N

MENDOZA, *J.*:

Petitioner NFL (National Federation of Labor) was chosen the bargaining agent of rank-and-file employees of the Hijo Plantation Inc. (HPI) in Mandaum, Tagum, Davao del Norte at a certification election held on August 20, 1989. Protests filed by the company and three other unions against the results of the election were denied by the Department of Labor and Employment in its resolution dated February 14, 1991 but, on motion of the company (HPI), the DOLE reconsidered its resolution and ordered another certification election to be held. The DOLE subsequently denied petitioner NFL's motion for reconsideration.

The present petition is for *certiorari* to set aside orders of the Secretary of Labor and Employment dated August 29, 1991, December 26, 1991 and February 17, 1992, ordering the holding of a new certification election to be conducted in place of the one held on August 20, 1989 and, for this purpose, reversing its earlier resolution dated February 14, 1991 dismissing the election protests of private respondent and the unions.

The facts of the case are as follows:

On November 12, 1988, a certification election was conducted among the rank-and-file employees of the Hijo Plantation, Inc. resulting in the choice of "no union." However, on July 3, 1989, on allegations that the company intervened in the election, the Director of the Bureau of Labor Relations nullified the results of the certification election and ordered a new one to be held.

The new election was held on August 20, 1989 under the supervision of the DOLE Regional Office in Davao City with the following results:

Total Votes cast	1,012
Associated Trade Unions (ATU)	39
TRUST KILUSAN	5
National Federation of Labor (NFL)	876
Southern Philippines Federation of Labor	4
SANDIGAN	6
UFW	15
No Union	55
Invalid	13

The Trust Union Society and Trade Workers-KILUSAN (TRUST-Kilusan), the United Lumber and General Workers of the Philippines (ULGWP), the Hijo Labor Union and the Hijo Plantation, Inc. sought the nullification of the results of the certification election on the ground that it was conducted despite the pendency of the appeals filed by Hijo Labor Union and ULGWP from the order, dated August 17, 1989, of the Med-Arbiter denying their motion for intervention. On the other hand, HPI claimed that it was not informed or properly

represented at the pre-election conference. It alleged that, if it was represented at all in the pre-election conference, its representative acted beyond his authority and without its knowledge. Private respondent also alleged that the certification election was marred by massive fraud and irregularities and that out of 1,692 eligible voters, 913, representing 54% of the rank-and-file workers of private respondent, were not able to vote, resulting in a failure of election.

On January 10, 1990, Acting Labor Secretary Dionisio dela Serna directed the Med-Arbiter, Phibun D. Pura, to investigate the company's claim that 54% of the rank-and-file workers were not able to vote in the certification election.

In his Report and Recommendation, dated February 9, 1990, Pura stated:

1. A majority of the rank-and-file workers had been disfranchised in the election of August 20, 1989 because of confusion caused by the announcement of the company that the election had been postponed in view of the appeals of ULGWP and Hijo Labor Union (HLU) from the order denying their motions for intervention. In addition, the election was held on a Sunday which was a non-working day in the company.

2. There were irregularities committed in the conduct of the election. It was possible that some people could have voted for those who did not show up. The election was conducted in an open and hot area. The secrecy of the ballot had been violated. Management representatives were not around to identify the workers.

3. The total number of votes cast, as duly certified by the representation officer, did not tally with the 41-page listings submitted to the Med-Arbitration Unit. The list contained 1,008 names which were checked or encircled (indicating that they had voted) and 784 which were not, (indicating that they did not vote), or a total of 1,792, but according to the representation officer the total votes cast in the election was 1,012.

Med-Arbiter Pura reported that he interviewed eleven employees who claimed that they were not able to vote and who were surprised to know that their names had been checked to indicate that they had voted.

But NFL wrote a letter to Labor Secretary Ruben Torres complaining that it had not been informed of the investigation conducted by Med-Arbiter Pura and so was not heard on its evidence. For this reason, the Med-Arbiter was directed by the Labor Secretary to hear interested parties.

The Med-Arbiter therefore summoned the unions. TRUST-Kilusan reiterated its petition for the annulment of the results of the certification election. Hijo Labor Union manifested that it was joining private respondent HPI's appeal, adopting as its own the documentary evidence presented by the company, showing fraud in the election of August 20, 1989. On the other hand, petitioner NFL reiterated its contention that management had no legal personality to file an appeal because it was not a party to the election but was only a bystander which did not even extend assistance in the election. Petitioner denied that private respondent HPI was not represented in the pre-election conference, because the truth was that a certain Bartolo was present on behalf of the management and he in fact furnished the DOLE copies of the list of employees, and posted in the company premises notices of the certification election.

Petitioner NFL insisted that more than majority of the workers voted in the election. It claimed that out of 1,692 qualified voters, 1,012 actually voted and only 680 failed to cast their vote. It charged management with resorting to all kinds of manipulation to frustrate the election and make the "Non Union" win.

In a resolution dated February 14, 1991, the DOLE upheld the August 20, 1989 certification election. With respect to claim that election could not be held in view of the pendency of the appeals of the ULGWP and Hijo Labor Union from the order of the Med-Arbiter denying their motions for intervention, the DOLE said:[1]

> Even before the conduct of the certification election on 12 November 1988 which was nullified. Hijo Labor Union filed a motion for interventions. The same was however, denied for being filed unseasonably, and as a result it was not included as one of the choices in the said election. After it has been so disqualified thru an order which has become final and executory, ALU filed a second motion for intervention when a second balloting was ordered conducted. Clearly, said second motion is pro-forma and intended to delay the proceedings. Being so, its appeal from the order of denial did not stay the election and the Med-Arbiter was correct and did not violate any rule when he proceeded with the election even with the appeal. In fact, the Med-Arbiter need not rule on the motion as it has already been disposed of with finality.

The same is true with the motion for intervention of ULGWP. The latter withdrew as a party to the election on September 1988 and its motion to withdraw was granted by the Med-Arbiter on October motion for intervention filed before the conduct of a second balloting where the choices has already been pre-determined.

Let it be stressed that ULGWP and HLU were disqualified to participate in the election through valid orders that have become final and executory even before the first certification election was conducted. Consequently, they may not be allowed to disrupt the proceeding through the filing of nuisance motions. Much less are they possessed of the legal standing to question the results of the second election considering that they are not parties thereto.

The DOLE gave no weight to the report of the Med-Arbiter that the certification election was marred by massive fraud and irregularities. Although affidavits were submitted showing that the election was held outside the company premises and private vehicles were used as makeshift precincts, the DOLE found that this was because respondent company did not allow the use of its premises for the purpose of holding the election, company guards were allegedly instructed not to allow parties, voters and DOLE representation officers to enter the company premises, and notice was posted on the door of the company that the election had been postponed.

Nor was weight given to the findings of the Med-Arbiter that a majority of the rank-and-file workers had been disfranchised in the August 20, 1989 election and that the secrecy of the ballot had been violated, first, because the NFL was not given notice of the investigation nor the chance to present its evidence to dispute this finding and, second, the Med Arbiter's report was not supported by the minutes of the proceedings nor by any record of the interviews of the 315 workers. Moreover, it was pointed out that the report did not state the names of the persons investigated, the questions asked and the answers given. The DOLE held that the report was "totally baseless."

The resolution of February 14, 1991 concluded with a reiteration of the rule that the choice of the exclusive bargaining representative is the sole concern of the workers. It said: "If indeed there were irregularities committed during the election, the contending unions should have been the first to complain considering that they are the ones which have interest that should be protected."[2]

Accordingly, the Labor Secretary denied the petition to annul the election filed by the ULGWP, TRUST-KILUSAN, HLU and the HPI and instead certified petitioner NFL as the sole and exclusive bargaining representative of the rank-and-file employees of private respondent HPI.

However, on motion of HPI, the Secretary of Labor, on August 29, 1991, reversed his resolution of February 14, 1991. Petitioner NFL filed a motion for reconsideration but its motion was denied in an order, dated December 26, 1991. Petitioner's second motion for reconsideration was likewise denied in another order dated February 17, 1992. Hence, this petition.

First. Petitioner contends that certification election is the sole concern of the employees and the employer is a mere bystander. The only instance wherein the employer may actively participate is when it files a petition for certification election under Art. 258 of the Labor Code because it is requested to bargain collectively. Petitioner says that this is not the case here and so the DOLE should not have given due course to private respondent's petition for annulment of the results of the certification election.

In his resolution of August 29, 1991, the Secretary of Labor said he was reversing his earlier resolution because "workers of Hijo Plantation, Inc. have deluged this Office with their letter-appeal, either made singly or collectively expressing their wish to have a new certification election conducted" and that as a result "the firm position we held regarding the integrity of the electoral exercise had been somewhat eroded by this recent declaration of the workers, now speaking in their sovereign capacity."

It is clear from this, that what the DOLE Secretary considered in reversing its earlier rulings was not the petition of the employer but the letter-appeals that the employees sent to his office denouncing the irregularities committed during the August 20, 1989 certification election. The petition of private respondent was simply the occasion for the employees to voice their protests against the election. Private respondent HPI attached to its Supplemental Appeal filed on September 5, 1989 the affidavits and appeals of more or less 784 employees who claimed that they had been disfranchised, as a result of which they were not able to cast their votes at the August 20, 1989 election. It was the protests of employees which moved the DOLE to reconsider its previous resolution of February 14, 1991, upholding the election.

Nor is it improper for private respondent to show interest in the conduct of the election. Private respondent is the employer. The manner in which the election was held could make the difference between industrial strife and industrial harmony in the company. What an employer is prohibited from doing is to interfere with the conduct of the certification election for the purpose of influencing its outcome. But certainly an employer has an abiding interest in seeing to it that the election is clean, peaceful, orderly and credible.

Second. The petitioner argues that any protest concerning the election should be registered and entered into the minutes of the election proceedings before it can be considered. In addition, the protest should be formalized by filing it within five (5) days. Petitioner avers that these requirements are condition precedents in the filing of an appeal. Without these requisites the appeal cannot

prosper. It cites the following provisions of Book V, Rule VI of the Implementing Rules and Regulations of the Labor Code:

> SEC. 3. Representation officer may rule on any on-the-spot questions. — The Representation officer may rule on any on-the-spot question arising from the conduct of the election. The interested party may however, file a protest with the representation officer before the close of the proceedings.
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> Protests not so raised are deemed waived. Such protests shall be contained in the minutes of the proceedings.
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> SEC. 4. Protest to be decided in twenty (20) working days. — Where the protest is formalized before the med-arbiter within five (5) days after the close of the election proceedings, the med-arbiter shall decide the same within twenty (20) working days from the date of its formalization. If not formalized within the prescribed period, the protest shall be deemed dropped. The decision may be appealed to the Bureau in the same manner and on the same grounds as provided under Rule V.

In this case, petitioner maintains that private respondent did not make any protest regarding the alleged irregularities (e.g., massive disfranchisement of employees) during the election. Hence, the appeal and motions for reconsideration of private respondent HPI should have been dismissed summarily.

The complaint in this case was that a number of employees were not able to cast their votes because they were not properly notified of the date. They could not therefore have filed their protests within five (5) days. At all events, the Solicitor General states, that the protests were not filed within five (5) days, is a mere technicality which should not be allowed to prevail over the workers' welfare.[3] As this Court stressed in LVN Pictures, Inc. vs. Phil. Musicians Guild,[4] it is essential that the employees must be accorded an opportunity to freely and intelligently determine which labor organization shall act in their behalf. The workers in this case were denied this opportunity. Not only were a substantial number of them disfranchised, there were, in addition, allegations of fraud and other irregularities which put in question the integrity of the election. Workers wrote letters and

made complaints protesting the conduct of the election. The Report of Med-Arbiter Pura who investigated these allegations found the allegations of fraud and irregularities to be true.

In one case this Court invalidated a certification election upon a showing of disfranchisement, lack of secrecy in the voting and bribery.[5] We hold the same in this case. The workers' right to self-organization as enshrined in both the Constitution and Labor Code would be rendered nugatory if their right to choose their collective bargaining representative were denied. Indeed, the policy of the Labor Code favors the holding of a certification election as the most conclusive way of choosing the labor organization to represent workers in a collective bargaining unit.[6] In case of doubt, the doubt should be resolved in favor of the holding of a certification election.

Third. Petitioner claims that the contending unions, namely, the Association of Trade Union (ATU), the Union of Filipino Workers (UFW), as well as the representation officers of the DOLE affirmed the regularity of the conduct of the election and they are now estopped from questioning the election.

In its comment, ATU-TUCP states:

> The representative of the Association of Trade Unions really attest to the fact that we cannot really identify all the voters who voted on that election except some workers who were our supporters in the absence of Hijo Plantation representatives. We also attest that the polling precinct were not conducive to secrecy of the voters since it was conducted outside of the Company premises. The precincts were (sic) the election was held were located in a passenger waiting shed in front of the canteen across the road; on the yellow pick-up; at the back of a car; a waiting shed near the Guard House and a waiting shed in front of the Guard House across the road. Herein private respondents also observed during the election that there were voters who dictated some voters the phrase "number 3" to those who were casting their votes and those who were about to vote. Number 3 refers to the National Federation of Labor in the official ballot.

> ATU-TUCP explains that it did not file any protest because it expected workers who had been aggrieved by the conduct of the election would file their protest since it was in their interests that they do so.

Fourth. Petitioner points out that the letter-appeals were written almost two years after the election and they bear the same dates (May 7 and June 14, 1991); they are not verified; they do not contain details or evidence of intelligent acts; and they do not explain why the writers failed to vote. Petitioner contends that the letter-appeals were obtained through duress by the company.

We find the allegations to be without merit. The record shows that as early as August 22 and 30, 1989, employees already wrote letters/affidavits/manifestoes alleging irregularities in the elections and disfranchisement of workers.[7] As the Solicitor General says in his Comment,[8] these affidavits and manifestoes, which were attached as Annexes "A" to "CC" and Annexes "DD" to "DD-33" to private respondent's Supplemental Petition of September 5, 1989 — just 16 days after the August 20, 1989 election. It is not true therefore that the employees slept on their rights.

As to the claim that letters dated May 7, 1991 and June 14, 1991 bear these same dates because they were prepared by private respondent HPI and employees were merely asked to sign them, suffice it to say that this is plain speculation which petitioner has not proven by competent evidence.

As to the letters not being verified, suffice it to say that technical rules of evidence are not binding in labor cases.

The allegation that the letters did not contain evidence of intelligent acts does not have merit. The earlier letters[9] of the workers already gave details of what they had witnessed during the election, namely the open balloting (with no secrecy), and the use of NFL vehicles for polling precincts. These letters sufficiently give an idea of the irregularities of the certification election. Similarly, the letters containing the signatures of those who were not able to vote are sufficient. They indicate that the writers were not able to vote because they thought the election had been postponed, especially given the

fact that the two unions had pending appeals at the time from orders denying them the right to intervene in the election.

WHEREFORE, the Petition for *Certiorari* is **DISMISSED** and the questioned orders of the Secretary of Labor and Employment are **AFFIRMED.**

SO ORDERED.

Regalado, Melo, Puno and Martinez, *JJ.*, concur.

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[1] Rollo, pp. 185-186.
[2] Id., p. 189.
[3] Id., p. 238.
[4] 1 SCRA 132 (1961).
[5] Confederation of Citizens Labor Unions vs. Noriel, 116 SCRA 699 (1982).
[6] See Western Agusan Workers Union-Local 101 of the United Lumber vs. Trajano, 96 SCRA 622 (1991).
[7] Rollo, pp. 112-175.
[8] Id., p. 236.
[9] Id., pp. 112-175.
