**SUPREME COURT**
**SECOND DIVISION**

**NATIONAL MINES AND ALLIED WORKERS UNION (NAMAWU-MIF),**
***Petitioner*,**

***-versus-***

**G.R. No. L-46722**
**June 15, 1978**

**ATTY. ERUDITO E. LUNA, IN HIS CAPACITY AS MED-ARBITER, LABOR RELATIONS DIVISION, REGIONAL OFFICE, DEPARTMENT OF LABOR, BAGUIO CITY; BENGUET EXPLORATION MINER'S UNION; AND BENGUET EXPLORATION, INC.,**
***Respondents*.**
**x----------x**

**D E C I S I O N**

**FERNANDO, *Acting C.J.*:**

The tenor of the ruling of this Court in Benguet Exploration Miners' Union vs. Noriel,[1] involving the same two labor unions, parties to this case,[2] with principal respondent Med-Arbiter Erudito E. Luna in this certiorari petition likewise included therein as one of the public respondents, does not lend itself to misinterpretation. It reflected the constant and unwavering policy of this Court requiring a certification

election as the best means of ascertaining which labor organization should be the collective bargaining representative. So it has been since United Employees Union of Gelmart Industries Philippines vs. Noriel,[3] promulgated the first year of the effectivity of the present Labor Code, to Monark International, Inc. vs. Noriel,[4] decided in the early part of this month. The attempt on the part of such labor organization, now respondent, then petitioner, Benguet Exploration Miners' Union, to prevent a certification election by the far-fetched and implausible plea that before it could be ordered by respondents Noriel and Luna, they should first decide a motion to dismiss based on a provisional guideline which had become obsolete, was thus rendered futile. Implicit in the ruling of this Court then was that there was no further obstacle to a certification election being held. This is quite obvious from that portion of the opinion citing with approval the comment of the then Acting Solicitor General Hugo E. Gutierrez, Jr., quoting respondent Director Noriel to this effect: "'Since there has been no certification election for the past (12) months and no certified collective bargaining agreement, the present petition for certification election could naturally prosper.' To which order a motion for reconsideration was filed by petitioner but which was denied in a resolution dated June 28, 1976."[5]

Petitioner labor union, in this certiorari proceeding, after noting that it "is a direct and immediate outgrowth, consequence or result [of the above decision laying] down the law or principle of the case" assailed an order of respondent Med-Arbiter Luna dated July 29, 1977, which surprisingly denied the petition for certification election of such union on the ground that there was lacking the 30% requirement provided for by the Labor Code, 6 ignoring the previous actuation of his superior, Director Carmelo C. Noriel, and what is worse, the decision of this Court. The principal reliance of petitioner is on the fundamental doctrine of the law of the case, which was alleged to have been flagrantly, if not defiantly, disregarded under circumstances "attended with unreasonableness, caprice or arbitrariness as to pose the issue of substantive due process;"[7] As asserted in the petition: "The precise situation presented in this case calls for expeditious and appropriate relief through certiorari and mandamus proceedings, which special civil actions are not within the cognizance of the Bureau of Labor Relations."[8] An effort was made in the answers both public respondent Luna as well as of private

respondent Benguet Exploration Miners' Union, but it is of no avail. As noted in the vigorous language of counsel for petitioner Perfecto B. Fernandez: "Apart from the fatal flaw of grossly departing from, if not disregarding, the principle or law of the case laid down in L-44110 by the Honorable Court, the Order of dismissal dated July 29, 1977 further violates, disregards and even defies the established pertinent rulings and doctrines laid down by this Honorable Court."[9]

An examination of the record gives warrant to such a charge. It is quite manifest that the petition is impressed with merit. So we rule and order the certification election.

1. "A well-known legal principle," according to Justice Malcohm as ponente in the leading case of Zarate vs. Director of Lands,[10] decided way back in 1919, is that when an appellate court has once declared the law in a case, such declaration continues to be the law of that case even on a subsequent appeal. The rule made by an appellate court, while it may be reversed in other cases, cannot be departed from in subsequent proceedings in the same case. The 'Law of the Case,' as applied to a former decision of an appellate court, merely expresses the practice of the courts in refusing to reopen what has been decided. Such a rule is 'necessary to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal.' Again, the rule is necessary as a matter of policy in order to end litigation."[11] People vs. Olarte,[12] promulgated in 1967, reaffirmed this doctrine. It was then stressed by Justice J.B.L. Reyes that a ruling constituting the law of the case, "even if erroneous, may no longer be disturbed or modified since it has become final."[13] Sanchez vs. Court of Industrial Relations,[14] a 1969 decision, is also deserving of mention. There was a categorical pronouncement therein that the law of the case "does not apply solely to what is embodied in [this Court's decision but likewise to its implementation carried out in fealty to what has been decreed."[15] The later decisions speak to the same effect.[16] It is understandable therefore why petitioner labor union could employ condemnatory

language in assailing the order of respondent Med-Arbiter denying its petition for a certification election, after this Court had made plain that observance of and respect for controlling precedents require that it be held.

2. Even without reliance on the above doctrine, petitioner labor union had made out its case against respondent Med-Arbiter. The opening paragraph of this opinion quoted the order of Director Noriel duly noted in L-44110, the previous case between the parties, that there had been as of April 24, 1976 "no certification election for the past twelve (12) months and no certified collective bargaining agreement, [therefore] the present petition for certification election could naturally prosper. " What is more, the Court thereafter gave its approval to such an order when the certified petition by the present respondent labor union was dismissed. Nothing was left then for respondent Med-Arbiter but to obey. The alleged jurisdictional bar was held to be a mere flimsy pretext to avoid the holding of a certification election. The duty of respondent Med-Arbiter as a subordinate official was quite clear. He failed to comply. He issued the challenged-order. It must be set aside, clearly violative as it was of the liberal approach constantly followed by this Court in matters of certification elections.

3. By way of explanation, for certainly there could be no justification in law for what was done, respondent Med-Arbiter, in the assailed order, alleged that while the evidence for petitioner union showed that the 30% requirement had been complied with as indicated by the signatures of the employees in the collective bargaining unit, thereafter, at least 212 had changed their minds, as shown by affidavits submitted by respondent union, thus reducing to less than the required percentage the number of employees petitioning for certification election. In Federacion Obrera de la Industria Tabaquera y Otros Trabajadores de Filipinas vs. Noriel,[17] this Court had occasion to state the rule that should be followed in case of such withdrawal or retraction of signatures. Thus: "There is persuasiveness, likewise, to the submission of Solicitor General Mendoza in the comment

filed, that the thirteen employees who allegedly retracted were not even presented before the med-arbiter and that the alleged additional forty-five employees who supposedly likewise changed their minds, were also not called to testify to that effect, petitioner satisfying itself with their being named in an affidavit executed by its president. That would make, so it is plausibly contended, such alleged retraction to be highly dubious in character. There is this reinforcement to the contention of respondent public official in this closing paragraph of such comment: 'Besides, the best forum for determining whether there were indeed retractions from some of the laborers is in the certification election itself wherein the workers can freely express their choice in a secret ballot. If, therefore, petitioner herein is confident that it commands the majority of the workers in the collective bargaining unit why then does it vigorously oppose a certification election?'"[18] Had the respondent Med-Arbiter been aware of the above, then perhaps he would not have been led to pursue a course of action clearly at war with the doctrine uninterruptedly adhered to by this Court favoring the holding of certification elections.

4. The present state of the law on certification elections was succinctly set forth in the latest case, Monark International, Inc. vs. Noriel referred to at the outset of this opinion: "United Employees Union of Gelmart Industries Philippines vs. Noriel has left no doubt that both under the Industrial Peace Act and the present Labor Code, this Court is committed to the view that a certification election is 'crucial' to the institution of collective bargaining for it gives 'substance to the principle of majority rule, one of the basic concepts of a democratic polity.' In a subsequent case, Philippine Association of Free Labor Unions vs. Bureau of Labor Relations, it was held that even conceding that the statutory requirement of 30% of the labor force asking for a certification election had not been strictly complied with, respondent Director is still empowered to order that it be held 'precisely for the purpose of ascertaining which [of the contending labor organizations] shall be the exclusive collective bargaining representative.' Such requirement then,

to quote from Kapisanan Ng Mga Manggagawa vs. Noriel, 'is relevant only when it becomes mandatory for respondent Noriel to conduct a certification election.'"[19] In all other instances, the discretion, according to the rulings of this Tribunal, ought to be ordinarily exercised in favor of a petition for certification. It would follow then that had respondent Med-Arbiter taken due note of the authoritative and controlling precedents, he would not have ruled the way he did, unless he was so-minded. Once again, it is quite apparent that independently of the doctrine of the law of the case, deference to such applicable pronouncements from this Tribunal ought to have dictated a result different than that arrived at in the assailed order.[20]

5. With his attention being called to the grave infirmity that marred his actuation, in a petition buttressed by an impressive citation of authorities, respondent Med-Arbiter must have realized the necessity of explaining an order which, clearly, was bereft of support in law. He could, of course, plead good faith. That he did in his comment, Thus; "If in the course of your respondent's exercise of jurisdiction he committed errors of law or misapprehension of facts, especially on the interpretation of difficult questions of law, or errors arising from appraising the evidence, these were all done in honest good faith and impartiality to the very best he could under the premises, for no man is infallible. Your respondent has no intention whatsoever to disregard the rulings of the Honorable Court nor is he prone to do that nor will he ever defy. Nonetheless, at the time he prepared the decision, your respondent was not aware of the ruling in Today's Knitting Free Workers Union vs. Hon. Carmelo Noriel, L-45057, February 28, 1977, as this case is relatively recent."[21] Also: "Your respondent, as a trier of facts, respectfully submits that whatever error he has committed in rendering his decision which is now marked as Annex B of the complaint were not actuated by partiality or deliberate malice. Your respondent has explained in his decision why he arrived at such conclusion and in so doing his act was not corrupt or inspired by an intention to violate the law or in persistent disregard of well-known legal rules."[22]

Apparently, it was only when he was required to answer this petition that this relevant excerpt from Today's Knitting Free Workers Union,[23] came to his attention. Thus: "At any rate, if there is any doubt as to the required number having been met, what better way is there than the holding of a certification election to ascertain which union really commands the allegiance of the rank-and-file employees."[24] Was he likewise unaware of the previously cited Federacion Obrera pronouncement which was ignored by him? It was promulgated on July 6, 1976, more than one year before the issuance of the challenged order. Is it too much to expect of members of the bar that, after the lapse of twelve months, they should have nodding acquaintance at least with decisions of this Court, especially those that have a bearing on the activities to which they dedicate themselves, whether in a personal or official capacity? The question answers itself.

6. Such disclaimer of absence of arbitrariness, which respondent Med-Arbiter must have realized is offensive to the due process guarantee, could have been more persuasive. It hardly reflected a chastened mood. There was even a bellicose tone when, referring to petitions challenging his actuations, he went so far as to assert that they could "make his position unbearable and would be nothing short of harassment."[25] There was no attempt to refute any of the decisions cited in support of the petition. It did not preclude respondent Med-Arbiter, however, from seeking its dismissal. There is then, it would appear, more than just a touch of obduracy and stubbornness in such an attitude. This reminder from the pen of the illustrious Justice Laurel as ponente in the landmark case of People vs. Vera,[26] is in order: "A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation."[27] After all, as a Med-Arbiter, respondent takes legitimate pride in the fact that he is a "quasi-judicial officer."[28] Such well-meant admonition should be taken to heart. Who knows, it could improve the standing of respondent as a Med-Arbiter.

7. The remedy sought must be granted. A certification election should be ordered. As is quite clear from the aforecited order of Director Noriel dated April 24, 1976, there had been no certification election for over a year — that will make it almost three years now — as well as no certified collective bargaining agreement. This sad state of affairs should be terminated. Repeatedly, this Court had made clear that in labor controversies, time is of the essence.

**WHEREFORE**, the *Certiorari* prayed for is granted and the order of respondent Med-Arbiter Erudito E. Luna, dated July 29, 1977, denying the petition for a certification election filed by petitioner National Mines and Allied Workers Union (NAMAWU-MIF) is nullified and set aside. The certification election must be held forthwith. This decision is immediately executory. No costs.

**Barredo, Aquino, Concepcion Jr. and Santos, *JJ.*, concur.**
**Antonio, *J.*, is on leave.**

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[1] L-44110, March 29, 1977, 76 SCRA 107.
[2] There is this significant difference. In L-44110, the present petitioner, National Mines and Allied Workers Union, was one of the private respondents, and Benguet Exploration Miners' Union, now one of the private respondents, was the petitioner.
[3] L-40810, October 3, 1975, 67 SCRA 267.
[4] L-47570-71, May 11, 1978.
[5] 76 SCRA 107, 112.
[6] Petition, par. 3(a), Annex B, 35.
[7] Ibid, par. 3 (f).
[8] Ibid, par. 3 (g).
[9] Ibid, par. 14.
[10] 39 Phil. 747.
[11] Ibid, 749. Cf. Compagnie Franco-Indochinoise vs. Deutsche-Austrahsche Gesell-Schaft, 39 Phil. 474 (1919); Gutierrez Hermanos vs. de la Riva, 46 Phil. 827 (1923); Posas vs. Toledo Transportation 58 Phil. 390 (1933); Barreto vs. Tuason, 59 Phil. 845 (1934); Bachrach Motor Co. Inc. vs. Esteva and Teal Motor Co, Inc., 67 Phil. 16 (1938); Bardwill Bros. vs. Phil. Labor Union, 70 Phil. 672 (1940); Fernando vs. Crisostomo, 90 Phil. 585 (1951); Padilla vs. Paterno, 93 Phil. 884 (1953); People vs. Panuila, 103 Phil. 992 (1958).
[12] L-22465, February 28, 1967, 19 SCRA 494.
[13] Ibid, 498.

[14] L-26932, March 28, 1969, 27 SCRA 490.
[15] Ibid, 500. Cf. National Waterworks and Sewerage Authority vs. NWSA Consolidated Union, L-26894-96, February 28, 1969, 27 SCRA 227.
[16] Cf. Masa vs. Baes, L-29784, May 21, 1969, 28 SCRA 263; Neria vs. Vivo, L-26611-12, Sept. 30, 1969, 29 SCRA 701; Dy Pac Pakiao Workers Union vs. Dy Pac and Co., L-27377, March 31, 1971, 38 SCRA 263; Palad vs. Governor of Quezon Province, L-24302, Aug. 18, 1972, 46 SCRA 254; Rodriguez vs. Director of Prisons, L-35386, Sept. 28, 1972, 47 SCRA 153; Mangayao vs. De Guzman, L-24787, Feb. 22, 1974, 55 SCRA 540; Cosmos Foundry Shop Workers Union vs. Lo Bu, L-40136, March 25, 1975, 63 SCRA 313; Comilang vs. Court of Appeals, L-37312, July 15, 1975, 65 SCRA 69.
[17] L-41937, July 6, 1976, 72 SCRA 24.
[18] Ibid, 34.
[19] Monark International opinion, 1-2. Philippine Association of Free Labor Unions, L-42115, January 27, 1976 is reported in 69 SCRA 132 and Kapisanan Ng Mga Manggagawa, L-45475, June 20, 1977 in 77 SCRA 414. The preceding paragraph made mention of the Federacion Obrera decision.
[20] Cf. U.E. Automotive Employees and Workers Union vs. Noriel, L-44350, Nov. 25, 1976, 74 SCRA 72; Philippine Labor Alliance Council vs. Bureau of Labor Relations, L-41288, Jan. 31, 1977, 75 SCRA 162; Today's Knitting Free Workers Union vs. Noriel, L-45057, Feb. 28, 1977, 75 SCRA 450; Rowell Labor Union vs. Ople, L-42270, July 29, 1977, 78 SCRA 166; Vassar Industries Employees Union (VIEU) vs. Estrella, L-46562, March 31, 1978.
[21] Comment, 8.
[22] Ibid, 4.
[23] L-45057, February 28, 1977, 75 SCRA 450.
[24] Ibid. 454.
[25] Comment of respondent Luna, 2. This is a minor point, but accuracy demands that note be taken of the fact that respondent Luna was required in the resolution of this Court of August 29, 1977 to file an answer, NOT a comment.
[26] 65 Phil. 56 (1937).
[27] Ibid, 82.
[28] Comment of respondent Luna, 2.