SUPREME COURT
EN BANC

NATIONAL UNION OF BANK EMPLOYEES,
Petitioner,

-versus-

G.R. No. L-53406
December 14, 1981

THE HONORABLE MINISTER OF LABOR, THE HONORABLE DEPUTY MINISTER OF LABOR, THE HONORABLE DIRECTOR OF THE BUREAU OF LABOR RELATIONS, AND PRODUCERS BANK OF THE PHILIPPINES,
Respondents.
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D E C I S I O N

MAKASIAR, *J.*:

This is a petition for mandamus filed by petitioner Union to compel public respondents to conduct a certification election among the rank and file employees of the respondent employer in Case No. LRD-M-8-360-79 or in the alternative, to require the respondent Minister of Labor or his Deputy to act on private respondent's "Appeal" and on petitioner's "Motion to Dismiss with Motion to Execute."

It appears that on August 17, 1979, petitioner Union filed a petition to be directly certified as collective bargaining agent of the rank and file employees of private respondent corporation (Annex "A"; p. 26, rec.)

On September 7, 1979, the date of the hearing, private respondent was required to submit on October 5, 1979 a payroll of employees as of July 31, 1979. On the same date, in a handwritten manifestation, respondent employer through counsel, agreed that as soon as the registration certificate of the local union was issued by the Ministry of Labor and that it was shown that the local union represents the majority of the rank and file, the Bank would recognize the said union and would negotiate accordingly (Annex "B"; p. 27, rec.)

On October 5, 1979, the abovesaid registration certificate of the local union [Certificate No. 9352-LC, issued by the Ministry of Labor] was secured. On October 15, 1979, petitioner filed a Manifestation and Urgent Motion to Decide and submitted a copy of the Registration Certificate of the local union and union membership application of 183 members out of more or less 259 rank and file employees of employer Bank, authorizing the National Union of Bank Employees (NUBE) [herein petitioner] to represent them "as their sole and exclusive collective bargaining agent in all matters relating to salary rates, hours of work and other terms and conditions of employment in the Producers Bank of the Philippines" (p. 38, rec.). Nonetheless, respondent corporation failed to submit the required payroll and the list of rank and file workers based on said payroll.

On October 18, 1979, Med-Arbiter Climaco G. Plagata issued an order directing the holding of a certification election, the dispositive portion of which reads:

> "WHEREFORE, premises considered, a certification election is hereby ordered held, conducted, and supervised by representation officers of this office within 20 days from receipt hereof. The same representation officers shall conduct pre-election conferences in order to thresh out the mechanics and other minor details of this election including the inclusion and exclusion proceedings to determine the qualified electors in this

election. The choice shall be either YES, for Petitioner, or NO, for NO UNION DESIRED.

"SO ORDERED" (Annex "C", pp. 28-29, rec.)

On October 19, 1979, respondent corporation filed a motion to suspend further proceedings in view of an allegedly prejudicial issue consisting of a pending proceeding for cancellation of the registration of petitioning union for allegedly engaging in prohibited and unlawful activities in violation of the laws (Annex "D"; pp. 30-32, rec.)

On October 23, 1979, by agreement of the parties, respondent then Deputy Minister of Labor Amado Inciong, acting for the Minister of Labor, assumed jurisdiction over the certification election case and the application for clearance to terminate the services of thirteen (13) union officers by private respondent corporation. Thus, an order was issued on the same date which reads:

"On October 23, 1979 the parties entered into an agreement that the Office of the Ministry of Labor shall assume jurisdiction over the following disputes under P.D. No. 823 in the interest of speedy labor justice and industrial peace:

"1. certification election case; and

"2. application for clearance to terminate thirteen (13) employees with preventive suspension. (Agreement, October 23, 1979)

"Accordingly, the Deputy Minister deputized Atty. Luna C. Piezas, Chief of the Med-Arbiter Section, National Capital Region, to conduct summary investigations for the purpose of determining the definition of the appropriate bargaining unit sought to be represented by the petitioning union as well as compliance with the 30% mandatory written consent in support of the petition under the bargaining unit as shall have been defined.

"On the application for clearance to terminate with preventive suspension, this Office deems it necessary, for the mutual

protection of each party's interest and to assure continuance of the exercise of their respective rights within legal limits, to lift the imposition of preventive suspension on the subject employees. The lifting of the preventive suspension shall include Messrs. Castro and Sumibcay, who are presently on leave of absence with pay in pursuance of the agreement reached at the level of the Regional Director. Further, should the two (2) employees' leave credits be exhausted, they are to go on leave without pay, but this shall not be construed as done in pursuance of the preventive suspension.

"Finally, the lifting of the preventive suspension shall be without prejudice to the continuance of the hearing on the application for clearance involving the thirteen (13) employees the determination of the merits of which shall be disposed of at the Regional level" (Annex "E", pp. 33-34, rec.)

Hence, Med-Arbiter Luna Piezas conducted hearings but withdrew, in view of the alleged utter disrespect for authority, gross bad faith, malicious refusal to appreciate effective, prompt and honest service and resorting in malicious and deliberate lying in dealing with Ministry of Labor officials by a certain Mr. Jun Umali, spokesman of the Producers Bank Employees Association. The case was then transferred to Med-Arbiter Alberto Abis on November 7, 1979 (Annex "F", p. 35, rec.)

During the hearing on November 9, 1979, respondent Bank failed to submit a list of rank and file employees proposed to be excluded from the bargaining unit. Respondent Bank's counsel however, in a verbal manifestation pressed for the exclusion of the following personnel from the bargaining unit:

1. Secretaries;
2. Staff of Personnel Department;
3. Drivers;
4. Telephone Operators;
5. Accounting Department;
6. Credit Investigators;
7. Collectors;
8. Messengers;

9. Auditing Department Personnel;
10. Signature Verifiers;
11. Legal Department Personnel;
12. Loan Security Custodians; and
13. Trust Department Personnel.

On November 19, 1979, Med-Arbiter Alberto Abis Jr. ordered the holding of certification election among the rank and file employees but sustained the stand of respondent company as to the exclusion of certain employees. Thus, the pertinent portion of said order reads:

> "After a careful perusal of the records, evaluation of the evidence on hand and consideration of the positions taken by the parties, we find and so hold that Petitioner-Union has substantially complied with the mandatory and jurisdictional requirement of 30% subscription of all the employees in the bargaining unit as prescribed by Section 2, Rule 5, Book V of the Rules and Regulations Implementing the Labor Code. Submission by the Petitioner during the hearing of copies of the application and membership forms of its members wherein they have duly authorized Petitioner 'as their sole and exclusive collective bargaining agent' constitutes substantial compliance of the mandatory and jurisdictional 30% subscription requirement, it appearing from the records that out of the 264 total rank and file employees, 188 are union members who have so authorized Petitioner to represent.
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> "With respect to respondent bank's motion to suspend the proceedings in the instant case pending resolution of the cancellation proceedings now pending in the Bureau of Labor Relations, we find that the same is not tenable in the absence of a restraining order.
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> "In consideration of the agreement of the parties, it is hereby ordered that the scope or coverage of the appropriate bargaining unit should include the Head Office of the Producers Bank of the Philippines and all its branch offices and shall comprise of all the regular rank and file employees of the bank. Excluded are all managerial and supervisory employees,

probationary, contractual and casual employees and security guards.

It is further ordered that by virtue and in consonance with industry practice as revealed by the CBAs of 10 banks submitted by Petitioner-Union, the following positions should likewise be excluded from the bargaining unit; Secretaries of bank officials; employees of the Personnel Department, EXCEPT Manuel Sumibcay, Primi Zamora and Carmelita Sy; employees of the Accounting Department; employees of the Legal Department; employees of the Trust Department, credit investigators, telephone operators, and loan security custodians. Signature verifiers, drivers, messengers and other non-confidential employees included in the bank's list of proposed exclusions should be allowed to vote, but the votes should be segregated as challenged. In case a doubt arises as to whether or not the position held by an employee is confidential in nature, the employee should be allowed to vote, but his vote should be segregated as challenged.

"WHEREFORE, in the light of the foregoing considerations, it is hereby ordered that a certification election be conducted among the regular rank and file employees of the Producers Bank of the Philippines (the appropriate bargaining unit of which is defined above) after the usual pre-election conference called to formulate the list of qualified voters and discuss the mechanics of the election.

"It is further ordered that the election in the bank's branches outside the Metro Manila area be conducted by the appropriate Regional Offices of the Ministry of Labor having jurisdiction over them.

"SO ORDERED (pp. 5-7, Annex "G"; pp. 41-43, rec.; Emphasis supplied)

On November 29, 1979, petitioner filed a partial appeal to the Director of Bureau of Labor Relations questioning the exclusions made by Med-Arbiter Abis of those employees who are not among those expressly enumerated under the law to be excluded. It

vigorously urged the inclusion of the rest of the employees which is allegedly the usual practice in the banking industry. It likewise urged the holding of a certification election allowing all those excluded by Med-Arbiter Abis to vote but segregating their votes as challenged in the meantime. Hence, it averred:

> "It is in the position of the petitioner that notwithstanding the statements above that the petition for certification should be held immediately by allowing all those not excluded from Arbiter Abis' order to vote without prejudice to a final decision on the matters subject of these appeal. Which we also submit that in order to expedite the proceedings these exclusions should also be allowed to vote even pending resolution of the appeal but segregating them for further consideration" (pp. 3-4, Annex "H"; p. 46-47, rec.)

On December 4, 1979, respondent bank likewise appealed from the aforesaid November 19, 1979 order of Med-Arbiter Alberto Abis, Jr. to the Minister of Labor on the following grounds:

(1) that the act of Med-Arbiter Abis in issuing the abovesaid Order is ultra vires, full and complete jurisdiction over the questioned petition being vested in the office of the Minister of Labor and hence the only adjudicative body empowered to resolve the petition;

(2) that the fact that petitioner's Union registration was subject of cancellation proceedings with the Bureau of Labor Relations rendered the issuance of the abovequestioned Order directing the holding of a certification election premature; and

(3) that the bargaining unit was not appropriately defined [Annex "I"; pp. 49-57, rec.]

On December 7, 1979, the entire records of the case were allegedly elevated as an appealed case by Regional Director Francisco L. Estrella to the Director of the Bureau of Labor Relations and was docketed thereat as appealed case No. A-1599-79.

On January 21, 1980, the Union of the Producers Bank Employees Chapter-NATU filed a motion to intervene in the said petition for certification election alleging among other things that it has also some signed up members in the respondent Bank and consequently has an interest in the petition for certification election filed by petitioner as it will directly affect their rights as to who will represent the employees in the collective bargaining negotiations (Annex "P"; pp. 100-101, rec.)

On January 24, 1980, the Bureau of Labor Relations Director Carmelo C. Noriel rendered a decision affirming the Med-Arbiter's order with certain modifications, the pertinent portion of which reads:

> "Preliminarily, the issue of jurisdiction is being raised by respondent bank but we need not be drawn into nor tarry in this issue but instead proceed to consider the merits of the case. Suffice it rather to say that the appealed order was signed by the med-arbiter a quo and the records of the case were elevated on appeal to this Bureau by the Regional Director of the National Capital Region. Besides respondent should not unduly press the jurisdictional issue. Such question does not lead nor contribute to the resolution of the real pressing issue — the certification election issue. What is at stake here is the right of the employees to organize and be represented for collective bargaining purposes by a union at the respondent bank where none existed up to the present time. On this consideration alone, respondent's vigorous objection alleging want of jurisdiction cracks from tangency of the issue.
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> "The matter of defining the bargaining unit, that is to say the appropriateness thereof, usually presents for determination three questions, to wit, the general type of the bargaining unit or whether it should be an industrial unit embracing all the employees in a broad class or a craft unit that is confined to a small specialized group within a broad class, the scope of the bargaining unit or whether it would embrace all employees in a given class at only one plant or at several plants of an employer,

and the specific composition of the bargaining unit, that is, whether or not the unit should include employees of different occupational groups, like clerks, inspectors, technical employees, etc. On these questions, we are not without legal guidelines. The law and the Rules are clear. The petition for certification election, whether filed by a legitimate labor organization or by an employer in appropriate case, shall contain, inter alia, the description of the bargaining unit which shall be the employer unit unless circumstances otherwise require. Thus, the policy under the Labor Code on the matter of fixing the bargaining unit is to favor larger units and this is sought to be implemented on a two-tiered basis. On the lower tier, the law mandates the employer unit as the normal unit of organization at the company level, thus discouraging if not stopping fragmentation into small craft or occupational units as what prevailed prior to the Labor Code. But the Code envisions further consolidation into larger bargaining units. Thus, on the higher tier, the law mandates the eventual restructuring of the labor movement along the 'one union, one industry' basis. There should therefore be no doubt as to the law and policy on the fixing of the appropriate bargaining unit which is generally the employer unit. Applying this rule to the instant case, the appropriate bargaining unit should embrace all the regular rank and file employees at the head as well as branch offices of respondent bank. Of course, the exception to this employer unit rule is when circumstances otherwise require. But such is not at issue here, respondent not having adduced circumstances that would justify a contrary composition of the bargaining unit.

"Respondent however insists on the definition of the appropriate bargaining unit upon the question of whether or not to exclude admittedly regular rank and file employees which it considers confidential, managerial and technical. This question, it should be pointed out, does not enter the matter of defining the bargaining unit. The definition of the appropriate unit refers to the grouping or more precisely, the legal collectivity of eligible employees for purposes of collective bargaining. The presumption is that these employees are entitled to the rights to self-organization and collective bargaining, otherwise they would not be, in the first place be

considered at all in the determination of the appropriate bargaining unit.

"The question therefore of excluding certain rank and file employees for being allegedly confidential, managerial or technical does not simply involve a definition of the bargaining unit but rather raises the fundamental issue of coverage under or eligibility for the exercise of the workers' rights to self-organization and collective bargaining. On this score, the law on coverage and exclusion on the matter should by now be very clear. Article 244 of the Labor Code states that all persons employed in commercial, industrial and agricultural enterprises, including religious, charitable, medical or educational institutions operating for profit shall have the right to self-organization and to form, join, or assist labor organizations for purposes of collective bargaining. Articles 245 and 246 (ibid) provide that security guards and managerial employees are not eligible to form, assist or join any labor organization. As defined by the Code, a managerial employee is one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or to effectively recommend such managerial actions. All employees not falling within this definition are considered rank and file employees for purposes of self-organization and collective bargaining.

"It is in the light of the foregoing provisions of law that the challenged order, in so far as it excludes all managerial and supervisory employees, secretaries of bank officials, credit investigators, telephone operators, loan security custodians, employees in the accounting, auditing, legal, trust and personal departments respectively, should be modified for being either superfluous, discriminatory or simply contrary to law. The express exclusion of managerial employees in the Order is superfluous for the same is already provided for by law and is presumed when the bargaining unit was defined as comprising all the regular rank and file employees of the bank. It is also anomalous and discriminatory when it excluded employees of the personnel department but included specific individuals like

Manuel Sumibcay, Primi Zamora and Carmelita Sy. Exclusion as managerial employee is not based on the personality of the occupant but rather on the nature and function of the positions. The exclusion of the other positions is likewise contrary to law, there being no clear showing that they are managerial employees. The mere fact of being a supervisor or a confidential employee does not exclude him from coverage. He must strictly come within the category of a managerial employee as defined by the Code. The Constitution assures to all workers such rights to self-organization and collective bargaining. Exclusions, being the exception and being in derogation of such constitutional mandate, should be construed in *strictissimi juris*.

"Furthermore, to uphold the order of exclusion would be to allow the emasculation of the workers' right to self-organization and to collective bargaining, statutory rights which have received constitutional recognition when they were enshrined in the 1973 Constitution. Indeed, the further rulings that 'other non-confidential employees included in the bank's list of proposed exclusion be allowed to vote but the votes should be segregated as challenged' and 'that in case of doubt as to whether or not the position held by an employee is confidential in nature, the employee should be allowed to vote but his vote should be segregated as challenged' both complete the said order's self-nullifying effects.

"At the most and indeed as a policy, exclusion of confidential employees from the bargaining unit is a matter for negotiation and agreement of the parties. Thus, the parties may agree in the CBA, to exclude certain highly confidential positions from the bargaining unit. Absent such agreement, coverage must be observed. In any event, any negotiation and agreement can come after the representation issue is resolved and this is just the situation in the instant case.

"In fine, the appropriate bargaining unit shall include all the regular rank and file employees of the respondent including the positions excluded in the challenged order dated 19 November 1979, with the exception of the secretaries to the Bank President, Executive Vice-President, Senior Vice President and

other Vice Presidents as agreed upon by the parties during the hearings.

"Respondent vehemently interposes also the pendency of cancellation proceedings against petitioner as a prejudicial issue which should suspend the petition for certification election.

"We cannot fully concur with this contention. Unless there is an order of cancellation which is final, the union's certificate of registration remains and its legal personality intact. It is entitled to the rights and privileges accorded by law, including the right to represent its members and employees in a bargaining unit for collective bargaining purposes including participation in a representation proceeding. This is especially true where the grounds for the cancellation of its union certificate do not appear indubitable.

"The rights of workers to self-organization finds general and specific constitutional guarantees. Section 7, Article IV of the Philippine Constitution provides that the right to form associations or societies for purposes not contrary to law shall not be abridged. This right is more pronounced in the case of labor. Section 9, Article II (ibid) specifically declares that the State shall assure the rights of workers to self-organization, collective bargaining, security of tenure and just and humane conditions of work. Such constitutional guarantees should not be lightly taken much less easily nullified. A healthy respect for the freedom of association demands that acts imputable to officers or members be not easily visited with capital punishments against the association itself .

"On the 30% consent requirement, respondent contends that the bargaining unit is not appropriately defined hence, the med-arbiter's finding that there was compliance with the 30% 'jurisdictional requirement is patently erroneous.' To this we must disagree. As earlier stated, the definition of the appropriate bargaining unit does not call for an actual head count or identification of the particular employees belonging thereto. That is done in the pre-election conference. It is sufficient that the bargaining unit is defined such that the

employees who are part thereof may be readily ascertained for purposes of exclusions and inclusions during the pre-election conference when the list of the eligible voters are determined.

"In this regard, respondent does not really seriously question the 264 total number of employees except for the alleged exclusion which should reduce the number thus allegedly affecting the sufficiency of the supporting signatures submitted. We have already ruled against the exclusions as violative of the constitutional guarantee of workers' right to self-organization. Consequently, since 188 of the 264 employees subscribed to the petition, which constitutes 70% of the total employees in bargaining unit, the 30% consent requirement has been more than sufficiently complied with. In any case, even if we grant the alleged exclusions totalling about 45, the same will not give any refuge to respondent's position. For assuming momentarily that the exclusions are valid, the same will not fatally affect the 30% consent compliance.

"Finally, lest it be so easily forgotten, a certification election is but an administration device for determining the true choice of the employees in the appropriate bargaining unit as to their bargaining representative. Unnecessary obstacles should not therefore be thrown on its way. Rather, the parties should take their case, if they have, directly to the real and ultimate arbiter on the matter, the employees sought to be represented in the bargaining unit.

"WHEREFORE, in the light of the foregoing considerations, the Order dated 19 November 1979 calling for a certification election is hereby affirmed with the modification that the same shall be conducted among all the regular rank and file employees of the respondent bank and its head and branch offices, including those excluded in said Order, except only the positions of secretary to the Bank President, Executive Vice-President and other Vice-Presidents which agreed to be excluded from the bargaining unit by the parties during the hearings. The choice shall be between the petitioner and no union.

"Let the certification election be conducted within twenty (20) days from receipt hereof. The pre-election conference shall be immediately called to thresh out the mechanics of the election. The list of qualified voters shall be based on the July 1979 payroll of the company.

"SO ORDERED" (pp. 5-9, Annex "J"; pp. 63-67, rec.; Emphasis supplied)

On February 11, 1980, petitioner received an undated and unverified appeal of the respondent bank to the Minister of Labor questioning the decision of Bureau of Labor Relations Director Carmelo C. Noriel which appeal alleged that:

"I. THE QUESTIONED ORDER IS NULL AND VOID FOR HAVING BEEN ISSUED WITHOUT OR IN EXCESS OF JURISDICTION SINCE—

"(i) It is this Honorable Office, not the BLR, that has jurisdiction over the parties' appeals from the Order of Med-Arbiter Alberto A. Abis Jr.

"II. ASSUMING, AD ARGUENDO, THAT THE BLR HAS JURISDICTION, THE APPEALED ORDER IS NONETHELESS NULL AND VOID, THE BLR HAVING GRAVELY ABUSED ITS DISCRETION IN NOT FINDING THAT THE ORDER, DATED NOVEMBER 19, 1979, OF MED-ARBITER ABIS IS NULL AND VOID FOR HAVING BEEN ISSUED WITHOUT AUTHORITY/JURISDICTION CONSIDERING THAT —

"(i) Full and complete jurisdiction over this petition is vested in this Office, which, under P.D. 823, as amended, and by agreement of the parties, is the adjudicative body solely and exclusively empowered to resolve this petition.

"(ii) The fact that petitioner's Union registration is now the subject of cancellation proceedings before the BLR renders the issuance of an Order directing the holding of a certification election premature; and

"(iii) The bargaining unit is not appropriately defined; hence, the BLR's and before it, the Med-Arbiter's finding that there was compliance with the 30% jurisdictional requirement is completely without basis and, therefore, grossly erroneous.

"III. THE MOTION FOR INTERVENTION FILED BY INTERVENOR UNION OF PRODUCERS BANK EMPLOYEE'S CHAPTER-NATU WHICH THE BLR, FOR UNKNOWN REASON(S), FAILED TO RESOLVE, RENDERS IMPERATIVE THE REDETERMINATION OF WHETHER OR NOT THE MANDATORY 30% JURISDICTIONAL REQUIREMENT HAS BEEN MET." (Pp. 2-3, Annex 'K'; pp. 69-70, rec.)

On February 21, 1980, petitioner union filed a manifestation on respondent's undated and unverified appeal (Annex "L"; pp. 91-94, rec.)

On the same date, petitioner filed a motion to dismiss with motion to execute (Annex "M"; pp. 95-96, rec.)

On March 3, 1980, petitioner filed an urgent motion to resolve respondent's appeal together with petitioner's motion to dismiss and motion for execution (Annex "N"; pp. 97-98, rec.)

On March 14, 1980, petitioner received a copy of a letter endorsement dated March 7, 1980 which reads:

"Respectfully referred to the Honorable Minister of Labor, the herein attached Motion to Execute and Manifestation to Dismiss with Motion to Execute and Manifestation on Respondent's undated and unverified Appeal dated February 21, 1980 and February 20, 1980 respectively, for appropriate action.

"In a memorandum dated 9 November 1979, the Deputy Minister of Labor completely inhibited himself in this case" (p 169, rec.)

Public respondent Director Carmelo C. Noriel did not proceed to hold the certification election, neither did the Minister of Labor act on the appeal of private respondent and on petitioner's motion to dismiss with motion to execute.

Hence, petitioner filed the instant petition on March 19, 1980.

On May 2, 1980, private respondent Bank filed its comments (pp. 111-122, rec.)

On June 25, 1980, public respondents filed their comment (pp. 131-142, rec.)

On August 16, 1980, petitioner filed its memorandum (pp. 155-169, rec.)

On September 2, 1980, private respondent Bank filed its memorandum (pp. 179-197, rec.)

On October 1, 1980, public respondents filed a manifestation in lieu of memorandum alleging inter alia that:

> "1. The instant petition for mandamus seeks to compel the respondent Minister of Labor to act on respondent Producers Bank's Appeal and on petitioner's motion to execute the decision of respondent Director of Labor Relations dated January 24, 1980, directing the holding of a certification election in said bank;
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> "2. The said petition, however, is now moot and academic because:
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> "(a) Respondent Minister of Labor had already acted on the said appeal in his decisions dated April 11, 1980 the dispositive portion of which is as follows:
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> "Wherefore, respondent Bank's Appeal is hereby dismissed and the validity of the Decision of January 24, 1980, herein adopted is hereby recognized. No motion for

reconsideration of this Order shall be entertained.'

"(b) Petitioner may now file, if it so desires, with respondent Director of Labor Relations, a motion for the execution of his decision so that the certification election can be held at respondent bank;

"WHEREFORE, it is respectfully prayed that the instant petition be dismissed for being moot and academic" (pp. 201-202, rec., italics supplied).

On October 10, 1980, petitioner filed a "Manifestation Re: Decision of the Minister of Labor" alleging among other things that:

x x x

"2. Petitioner had not received any copy of such April 11, 1980 decision of the Minister of Labor mentioned by the Honorable Solicitor General. In fact, the Comment of the public respondents dated June 11, 1980 signed by Assistant Solicitor General Octavio R. Ramirez and Trial Attorney Elihu A. Ybañez made no mention of the same in the private respondent's memorandum of September 2, 1980" (p. 204, rec.)

On October 28, 1980, petitioner filed a comment on manifestation of the Honorable Solicitor General dated 30 September 1980 and motion alleging therein that despite inquiries made, no official copy of the alleged April 11, 1980 decision of the Minister of Labor mentioned in the manifestation of the Solicitor General has been furnished the petitioner. Hence, it prayed that the Minister of Labor be requested to submit to this Court a certified copy of the aforesaid April 11, 1980 decision of the Minister of Labor.

On October 30, 1980, petitioner filed a manifestation and comment stating that:

"1. On October 29, 1980, it received a copy of the decision of the Honorable Minister of Labor in Case No. NCR-LRD-8-360-79 as may be seen from Annex 'A'.

"2. The decision is dated October 23, 1980 and not April 11, 1980 as stated in the Manifestation in Lieu of Memorandum of the Office of the Honorable Solicitor General, dated 30 September 1980.

"3. Petitioner respectfully request an explanation from the public respondents on this apparent discrepancy which has in fact misled even this Honorable Court" (p. 211, rec.)

On November 11, 1980, private respondent Bank filed a manifestation /motion stating that the aforementioned April 11, 1980 decision of the Minister of Labor is non-existent, as in fact the Minister of Labor issued an order affirming the decision of BLR Director Noriel only on October 23, 1980:

x x x

"3. Notwithstanding the issuance of the October 23, 1980 Order by the Minister of Labor, the Bank respectfully submits that this petition for mandamus, initiated by petitioner on March 19, 1980 and given due course by this Honorable Court should not be dismissed. The petitioner herein prays from this Honorable Court that 'public respondents be ordered to conduct the certification election as ordered by Med-Arbiter Plagata, Abis and BLR Director Noriel among the rank and file employees. . .' of the Bank. Alternatively, the petitioner prays that the Minister of Labor or his Deputy be required 'to act forthwith' on the appeal filed by petitioner herein. As could be gleaned clearly from the allegations and prayer in this petition for mandamus, the petitioner primarily seeks the holding of a certification election. Only secondarily is it asking this Court to command the Minister of Labor or his Deputy to resolve the appeal filed by the Bank.

"4. The affirmance by the Minister of the disputed order of BLR Director Noriel thus renders moot and academic only the secondary or alternative prayer of the Union in this mandamus case. What still remains for resolution by this

Honorable Court is the issue squarely put before it on the propriety or impropriety of holding a certification election. This issue has been traversed by the petitioner and the Bank in their respective memoranda filed with this Court, with the Bank stressing that a certification election would be improper because, among others, the petitioning Union violated the strike ban, there is a pending case for cancellation of its registration certificate, and applications for clearance to dismiss the Union's striking members are pending approval by the BLR Director.

"5. A dismissal of this petition for mandamus would unduly delay the resolution of the issue of whether a certification election should be held or not.

"IN VIEW OF THE FOREGOING, it is respectfully moved that this Honorable Court rule on the issue of whether or not a certification election should be held under circumstances obtaining in the present case" (pp. 214-216, rec.; Emphasis supplied)

On November 24, 1980, public respondents filed a reply to the manifestation and comment of petitioner explaining the discrepancy of the two dates — October 23, 1980, the actual date of the order of the Minister of Labor affirming the decision of the BLR Director and April 11, 1980, the date mentioned by the Solicitor General as the alleged date of the aforesaid order of the Minister of Labor. Thus the pertinent portion of the letter of Director Noriel to the Solicitor General likewise explaining the apparent discrepancy of the aforesaid dates reads:

"I should likewise invite your attention to the date of the Order which is October 23, 1980 and not April 11, 1980 as indicated in the 'Manifestation in Lieu of Memorandum' dated September 30, 1980 of the Solicitor General filed with the Supreme Court. The April 11, 1980 date must have been based on a draft order which was inadvertently included in the records of the case that was forwarded to your office. We wish to point out, however, that the dispositive portion as quoted in the Manifestation is exactly the same as that in the Order eventually signed and

released by the Labor Minister on October 23, 1980" (p. 220, rec.)

Public respondents further averred that "(I)n any event, whether the order is dated April 11, 1980 or October 23, 1980 will not matter since both 'orders' dismissed the appeal of the respondent Bank, upon which dismissal the Manifestation in Lieu of Memorandum dated September 30, 1980, of public respondents, was based." Public respondents thus reiterated their prayer that the instant petition be dismissed for being allegedly moot and academic (pp. 219-222, rec.)

On December 5, 1980, petitioner filed a comment to manifestation/motion of counsel for private respondent alleging inter alia that "should the Honorable Court be minded to resolve the issue raised in the Manifestation/Motion of private respondent — i.e. — whether the alleged strike ban violation is a bar to a certification election, it will be noted that the matter of whether there has been a 'violation' of the strike ban or not is still to be heard by the Regional Director through Labor Arbiter Crescencio Trajano after this Honorable Court dismissed G.R. No. L-52026 on the matter of jurisdictional competence of the Regional Director to hear the question raised therein. To the present, although, the Regional Director has commenced to act on the case, there is no decision on whether the strike ban has been violated by the petitioner union." Petitioner union vigorously asserted that while private respondent Bank has a pending petition for cancellation of the registration certificate of herein petitioner union, it is still premature for private respondent Bank to claim that the petitioner union has violated the strike ban. Petitioner then alleged that "(T)here is also no proof or decision that acts indulged in by the petitioner and its members amounted to a strike and even assuming arguendo that such act (which was the holding of a meeting for 30 minutes before office time in the morning) constitutes a 'strike' and further that such act violates the strike ban. It has been held through Honorable Justice Antonio P. Barredo in Petrophil vs. Malayang Manggagawa sa Esso (75 SCRA 73) that only the leaders and members who participated in the illegal activity are held responsible. If this were so, then the rest of the members who are innocent are still entitled to the benefits of collective bargaining. There is thus no need to delay the holding of a certification election on the alleged ground that there is a pending

action of the respondent company against the petitioner union for 'violation of the strike ban'" (pp. 226-227, rec.)

It is likewise pointed out by petitioner union that even if it would be ultimately confirmed that indeed petitioner union has violated the strike ban, cancellation of the registration certificate of petitioner union is not the only disciplinary action or sanction provided for under the law but other penalties may be imposed and not necessarily cancellation of its registration certificate.

On January 12, 1981, pursuant to the resolution of this Court dated December 4, 1980, petitioner union filed its rejoinder which reiterated the stand of the Solicitor General that the present case has become moot and academic by virtue of the decision of the Minister of Labor affirming the decision of the BLR Director which ordered a certification election (p. 230, rec.)

It is quite obvious from the facts set forth above that the question of jurisdiction vigorously asserted by herein private respondent Bank has become moot and academic.

What therefore remains for this Court to resolve is the issue as to whether or not a certification election should be held under the circumstances obtaining in the present case. Is it proper to order a certification election despite the pendency of the petition to cancel herein petitioner union's certificate of registration?

The Court rules in the affirmative. The pendency of the petition for cancellation of the registration certificate of herein petitioner union is not a bar to the holding of a certification election. The pendency of the petition for cancellation of the registration certificate of petitioner union founded on the alleged illegal strikes staged by the leaders and members of the intervenor union and petitioner union should not suspend the holding of a certification election, because there is no order directing such cancellation (cf. Dairy Queen Products Company of the Philippines, Inc. vs. Court of Industrial Relations, et al., No. L-35009, Aug. 31, 1977). In said Dairy Queen case, one of the issues raised was whether the lower court erred and concomitantly committed grave abuse of discretion in disregarding the fact that therein respondent union's permit and license have been cancelled by

the then Department of Labor and therefore could not be certified as the sole and exclusive bargaining representative of the rank and file employees of therein petitioner company.

While the rationale of the decision was principally rested on the subsequent rescission of the decision ordering the cancellation of the registration certificate of the respondent union, thereby restoring its legal personality and all the rights and privileges accorded by law to a legitimate organization, this Court likewise declared: "There is no showing, however, that when the respondent court issued the order dated December 8, 1971, certifying the Dairy Queen Employees Association-CCLU as the sole and exclusive bargaining representative of all regular rank and file employees of the Dairy Queen Products Company of the Philippines, Inc., for purposes of collective bargaining with respect to wages, rates of pay, hours of work and other terms and conditions for appointment, the order of cancellation of the registration certificate of the Dairy Queen Employees Association-CCLU had become final." (78 SCRA 444-445, supra, emphasis supplied).

It may be worthy to note also that the petition for cancellation of petitioner union's registration certificate based on the alleged illegal strikes staged on October 12, 1979 and later November 5-7, 1979 was evidently intended to delay the early disposition of the case for certification election considering that the same was apparently filed only after the October 18, 1979 Order of Med-Arbiter Plagata which directed the holding of a certification election.

Aside from the fact that the petition for cancellation of the registration certificate of petitioner union has not yet been finally resolved, there is another fact that militates against the stand of private respondent Bank, the liberal approach observed by this Court as to matters of certification election. In a recent case, Atlas Free Workers Union (AFWU)-PSSLU Local vs. Hon. Carmelo C. Noriel, et al. (No. 51005, May 26, 1981), "[T]he Court resolves to grant the petition (for mandamus) in line with the liberal approach consistently adhered to by this Court in matters of certification election. The whole democratic process is geared towards the determination of representation, not only in government but in other sectors as well, by election. Thus, the Court has declared its commitment 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 as one of the basic concepts of a democratic policy" (National Mines and Allied Workers Union vs. Luna, 83 SCRA 610)

Likewise, Scout Ramon V. Albano Memorial College vs. Noriel, et al. (L-48347, Oct. 3, 1978, 85 SCRA 494, 497, 498), this Court citing a long catena of cases ruled:

> "'The institution of collective bargaining is, to recall Cox, a prime manifestation of industrial democracy at work. The two parties to the relationship, labor and management, make their own rules by coming to terms. That is to govern themselves in matters that really count. As labor, however, is composed of a number of individuals, it is indispensable that they be represented by a labor organization of their choice. Thus may be discerned how crucial is a certification election. So our decisions from the earliest case of PLDT Employees Union vs. PLDT Co., Free Telephone Workers Union to the latest, Philippine Communications, Electronics & Electricity Workers' Federation (PCWF) vs. Court of Industrial Relations, had made clear.' The same principle was again given expression in language equally emphatic in the subsequent case of Philippine Association of Free Labor Unions vs. Bureau of Labor Relations: "Petitioner thus appears to be woefully lacking in awareness of the significance of a certification election for the collective bargaining process. It is the fairest and most effective way of determining which labor organization can truly represent the working force. It is a fundamental postulate that the will of the majority, if given expression in an honest election with freedom on the part of the voters to make their choice, is controlling. No better device can assure the institution of industrial democracy with the two parties to a business enterprise, management and labor, establishing a regime of self-rule.' That is to accord-respect to the policy of the Labor Code, indisputably partial to the holding of a certification election so as to arrive in a manner definitive and certain concerning the choice of the labor organization to represent the workers in a collective bargaining unit." (Emphasis supplied).

It is true that under Section 8, Rule II, Book V of the Labor Code, cancellation of registration certificate may be imposed on the following instances:

(a) Violation of Articles 234, 238, 239 and 240 of the Code;

(b) Failure to comply with Article 237 of the Code;

(c) Violation of any of the provisions of Article 242 of the Code; and

(d) Any violation of the provisions of this Book.

The aforementioned provisions should be read in relation to Article 273, Chapter IV, Title VIII which explicitly provides:

> "Art. 273. Penalties.— (a) Violation of any provision of this Title shall be punished by a fine of One Thousand Pesos [P1,000.00] to Ten Thousand Pesos [P10,000.00] and/or imprisonment of one (1) year to five (5) years.
>
> "(b) Any person violating any provision of this Title shall be dealt with in accordance with General Order No. 2-A and General Order No. 49.
>
> "(c) Violation of this Title by any legitimate labor organization shall be grounds for disciplinary action including, but not limited to, the cancellation of its registration permit.
>
> x x x
> (Emphasis supplied)

From the aforequoted provisions, We are likewise convinced that as it can be gleaned from said provisions, cancellation of the registration certificate is not the only resultant penalty in case of any violation of the Labor Code.

Certainly, the penalty imposable should be commensurate to the nature or gravity of the illegal activities conducted and to the number of members and leaders of the union staging the illegal strike.

As aptly ruled by respondent Bureau of Labor Relations Director Noriel: "The rights of workers to self-organization, finds general and specific constitutional guarantees. Section 7, Article IV of the Philippine Constitution provides that the right to form associations or societies for purposes not contrary to law shall not be abridged. This right is more pronounced in the case of labor. Section 9, Article II (ibid) specifically declares that the State shall assure the rights of workers to self-organization, collective bargaining, security of tenure and just and humane conditions of work. Such constitutional guarantees should not be lightly taken much less easily nullified. A healthy respect for the freedom of association demands that acts imputable to officers or members be not easily visited with capital punishments against the association itself." (p. 8, Annex "J"; p. 66, rec.)

WHEREFORE, THE WRIT OF MANDAMUS PRAYED FOIS GRANTED AND RESPONDENT BLR DIRECTOR NORIEL HEREBY ORDERED TO CALL AND DIRECT THE IMMEDIATE HOLDING OF A CERTIFICATION ELECTION. NO COSTS.

SO ORDERED.

Fernando, *C.J.*, Teehankee, Barredo, Concepcion Jr., Fernandez, Guerrero, De Castro and Melencio-Herrera, *JJ.*, concur.
Abad Santos, *J.*, concurs in the result.
Aquino, *J.*, took no part.