SUPREME COURT
THIRD DIVISION

NEGROS ORIENTAL ELECTRIC COOPERATIVE I *(NORECO-I)*, represented by ATTY. SUNNY R.A. MADAMBA, as General Manager,
***Petitioner*,**

-versus-

G.R. No. 143616
May 9, 2001

THE SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE), and PACIWU-NACUSIP, NORECO-I Chapter of Bindoy, Negros Oriental,
***Respondents*.**
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D E C I S I O N

GONZAGA-REYES, *J.*:

Petitioner assails the Decision of the Court of Appeals[1] dated August 20, 1999 dismissing its petition for certiorari in C.A.-G.R. SP No. 50295 and the order denying its Motion for Reconsideration therefrom.

The antecedents are recited by the Court of Appeals as follows:

"It appears that on December 4, 1997, some employees of the petitioner organized themselves into a local chapter of the Philippine Agricultural Commercial and Industrial Workers' Union–Trade Union Congress of the Philippines (PACIWU-TUCP). The private respondent-union submitted its charter certificate and supporting documents on the same date.

On December 10, 1997, PACIWU-TUCP filed a petition for certification election on behalf of the NORECO 1 chapter, seeking to represent the seventy-seven (77) rank-and-file employees of NORECO 1. PACIWU-TUCP alleged in its petition that it had created a local chapter in NORECO 1 which had been duly reported to the DOLE Regional Office (Region VII) on December 4, 1997. It was further averred therein that NORECO 1 is an unorganized establishment, and that there is no other labor organization presently existing at the said employer establishment.

The Med-Arbiter dismissed the petition in an order dated December 23, 1997, which stated that:

> 'It appears in the records of this Office that the petitioner has just applied for registration. The corresponding certificate has not yet been issued. Accordingly, it has not yet acquired the status of a legitimate labor organization.
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> The instant petition, not having been filed by legitimate labor organization, the same is hereby DENIED.
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> WHEREFORE, this case is DISMISSED.
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> SO ORDERED.'

PACIWU-TUCP filed a Motion for Reconsideration of the said order, which was treated as an appeal by the public respondent. On July 31, 1998, the public respondent rendered the assailed judgment as previously quoted.[2] The petitioner filed a Motion for Reconsideration on August 24, 1998, but the same was denied in a Resolution dated September 21, 1998."[3]

The appellate court ruled that the Secretary of Labor properly treated PACIWU-TUCP's Motion for Reconsideration as an appeal, and held that the said chapter is deemed to have acquired legal personality as of December 4, 1997 upon submission of the documents required under the Omnibus Rules for the creation of a local chapter. The said court also dismissed petitioner's contention assailing the composition of the private respondent union.

Motion for Reconsideration of the above decision was denied. Hence this petition for review on certiorari which submits the following arguments in support thereof:

"I. THE COURT OF APPEALS HAS DEPARTED FROM THE ACCEPTED PRINCIPLE THAT THE PERIOD TO APPEAL CANNOT BE EXTENDED AND THUS THE RESPONDENT SECRETARY OF LABOR HAS NO JURISDICTION TO REVERSE THE DECISION OF THE MED-ARBITER, BECAUSE THE APPEAL HAS NOT BEEN PERFECTED ON TIME;

II. THE COURT OF APPEALS DECIDED THIS CASE CONTRARY TO THE DECISION OF THE SUPREME COURT IN THE CASE OF TOYOTA MOTOR PHILIPPINES VS. TOYOTA MOTOR PHILIPPINES CORPORATION UNION AND THE SECRETARY OF LABOR AND EMPLOYMENT, G.R. NO. 121084, FEBRUARY 19, 1997, BY COMPLETELY IGNORING THE TOYOTA CASE WHICH IS ON FOUR SQUARE WITH THIS CASE, WHEN THE COURT OF APPEALS SUSTAINED THE ORDER FOR CERTIFICATION ELECTIONS IN SPITE OF THE EXISTENCE OF SUPERVISORY EMPLOYEES IN THE RANK AND FILE UNION OF THE RESPONDENT PACIWU-NACUSIP NORECO 1 CHAPTER;

III. THE COURT OF APPEALS ERRED IN ALLOWING CERTIFICATION ELECTIONS WHEN ALL THE MEMBERS OF THE UNION ARE MEMBERS OF THE COOPERATIVE."[4]

The first contention was correctly resolved by the Court of Appeals. Petitioner reiterates that the Motion for Reconsideration from the Decision of the Med-Arbiter was filed by PACIWU-NACUSIP out of time, i.e. beyond the ten (10) days allowed for filing such motion for reconsideration. The allegation of late filing is bare, it does not even specify the material dates, nor furnish substantiation of the said allegation. The Court of Appeals noted that the original record does not disclose the actual date of receipt by the private respondent of the order of the Med-Arbiter dismissing the petition for certification election, and hence it "cannot conclude that the Med-Arbiter's Decision had already become final and executory pursuant to Section 14, Rule XI Book V of the Omnibus Implementing Rules". Neither the present Petition or the Reply to Comment of Solicitor General for public respondent attempts to supply the omission and we are accordingly constrained to dismiss this assigned error concerning the timeliness of respondent's appeal to the Secretary of Labor.

In its Petition for Certiorari filed in the Court of Appeals dated November 7, 1998, the allegation that the Motion for Reconsideration filed by respondent PACIWU-NACUSIP was "filed out of time" was similarly unsubstantiated. Moreover, the issue was raised below for the first time in the Motion for Reconsideration filed by NORECO I (Motion dated August 22, 1998), and the Secretary of labor rejected the petitioner's contention for not having been seasonably filed; the DOLE Resolution stated categorically that:

> "There being no question as to the timeliness of the filing of appellant's Motion for Reconsideration which was elevated to us by the Regional Office, the same can be treated as an appeal."[5]

We find no cogent justification to reverse the finding on the basis of the records before us.

The second argument posited by petitioner is also without merit. Petitioner invokes Article 245 of the Labor Code and the ruling in Toyota Motor Philippines Corp. vs. Toyota Motor Philippines Corporation Labor Union[6] which declare the ineligibility of managerial or supervisory employees to join any labor organization

consisting of rank and file employees for the reason that the concerns which involve either group "are normally disparate and contradictory". Petitioner claims that it challenged the composition of the union at the earliest possible time after the decision of the Med-Arbiter was set aside by the DOLE; and that the list of the names of supervisory or confidential employees was submitted with the petition for certiorari filed in the Court of Appeals, which did not consider the same. Petitioner further argues that the failure of the Secretary of Labor and the Court of Appeals to resolve this question constituted a denial of its right to due process.

The contentions are unmeritorious.

The issue was raised for the first time in petitioner's Motion for Reconsideration of the Decision of the Secretary of Labor dated July 13, 1998 which set aside the Order of the Med-Arbiter dated December 23, 1997 dismissing the PACIWU-TUCP's petition for certification election.[7] In its Resolution dated September 21, 1998, denying the Motion for Reconsideration, the Secretary of Labor categorically stated:

> "On the fourth ground, in the cited case of Toyota Motor Philippines Corporation vs. Toyota Motor Philippines Corporation Labor Union, 268 SCRA 573, the employer, since the beginning opposed the petition indicating the specific names of the supervisory employees and their respective job descriptions. In the instant case, movant not only belatedly raised the issue but miserably failed to support the same. Hence, between the belated and bare allegation of movant that "there are supervisory and confidential employees in the union" vis-a-vis the open and repeated declaration under oath of the union members in the minutes of their organizational meeting and the ratification of their Constitution and By-Laws that they are rank and file employees, we are inclined to give more credence to the latter. Again, in Cooperative Rural Bank of Davao City, Inc. vs. Ferrer-Calleja, supra, the Supreme Court held:
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> > 'The Court upholds the findings of said public respondent that no persuasive evidence has been presented to show

> that two of the signatories in the petition for certification election are managerial employees who under the law are disqualified from pursuing union activities.'
>
> In the instant case, there is no persuasive evidence to show that there are indeed supervisory and confidential employees in appellant union who under the law are disqualified to join the same."[8]

The above finding was correctly upheld by the Court of Appeals, and we find no cogent basis to reverse the same. Factual issues are not a proper subject for certiorari which is limited to the issue of jurisdiction and grave abuse of discretion.

Indeed, the Court of Appeals cannot be expected to go over the list of alleged supervisory employees attached to the petition before it and to pass judgment in the first instance on the nature of the functions of each employee on the basis of the job description pertaining to him. As appropriately observed by the said court, the determination of such factual issues is vested in the appropriate Regional Office of the Department of Labor and Employment and pursuant to the doctrine of primary jurisdiction, the Court should refrain from resolving such controversies. The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence.[9]

The petitioner questions the remedy suggested by the Court of Appeals i.e., to file a petition for cancellation of registration before the appropriate Regional Office arguing that the membership of supervisory employees in the rank-and-file is not one of the grounds for cancellation of registration under the Omnibus Rules. Whether the inclusion of the prohibited mix of rank-and-file and supervisory employees in the roster of officers and members of the union can be cured by cancellation of registration under Article 238 et seq. of the Labor Code vis-a-vis Rule VIII of the Omnibus Rules, or by simple inclusion-exclusion proceedings in the pre-election conference,[10] the fact remains that the determination of whether there are indeed supervisory employees in the roster of members of the rank-and-file union has never been raised nor resolved by the appropriate fact

finding body, and the petition for certiorari filed in the Court of Appeals cannot cure the procedural lapse. It bears notice that unlike in Toyota Motor Philippines Corp. vs. Toyota Motor Philippines Corp. Labor Union[11] where the objection that "the union was composed of both rank-and-file and supervisory employees in violation of law" was promptly raised in the position paper to oppose the petition for certification election, and this objection was resolved by the Med-Arbiter, this issue was belatedly raised in the case at bar and was sought to be ventilated only before the Court of Appeals in the petition for certiorari. Time and again, this Court has ruled that factual matters are not proper subjects for certiorari.[12]

The above observations are in point with respect to the last assigned error challenging the inclusion of members of the cooperative in the union. The argument that NORECO I is a cooperative and most if not all of the members of the petitioning union are members of the cooperative was raised only in the Motion for Reconsideration from the Decision of the Secretary of Labor dated July 31, 1998. The Secretary of Labor ruled that the argument should be rejected as it was not seasonably filed. Nevertheless the DOLE resolved the question in this wise:

> "On the third ground, while movant correctly cited Cooperative Bank of Davao City, Inc. vs. Ferrer-Calleja, 165 SCRA 725, that "an employee of a cooperative who is a member and co-owner thereof cannot invoke the right to collective bargaining." It failed to mention the proviso provided by the Supreme Court in the same decision:
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> > 'However, in so far as it involves cooperatives with employees who are not members or co-owners thereof, certainly such employees are entitled to exercise the rights of all workers to organization, collective bargaining, negotiations and others as are enshrined in the constitution and existing laws of the country.
> >
> > The questioned ruling therefore of public respondent Pura Ferrer-Calleja must be upheld in so far as it refers to the employees of petitioner who are not members or co-owners of petitioner.'

> "Not only did movant fail to show any proof that anyone of the union members are members or co-owners of the cooperative. It also declared that not all members of the petitioning union are members of the cooperative."[13]

The ruling was upheld by the appellate court thus:

> "The petitioner is indeed correct in stating that employees of a cooperative who are members-consumers or members-owners, are not qualified to form, join or assist labor organizations for purposes of collective bargaining, because of the principle that an owner cannot bargain with himself. However, the petitioner failed to mention that the Supreme Court has also declared that in so far as it involves cooperatives with employees who are not members or co-owners thereof, certainly such employees are entitled to exercise the rights of all workers to organization, collective bargaining, negotiations and others as are enshrined in the Constitution and existing laws of the country.
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> The public respondent found that petitioner failed to show any proof that any member of the private respondent was also a member or co-owner of the petitioner-cooperative. Hence the members of the private respondent could validly form a labor organization."[14]

In the instant petition, NORECO 1 fails to controvert the statement of the Court of Appeals that the petitioner "failed to show any proof that any member of the private respondent was also a member or co-owner of the petitioner cooperative." More important, the factual issue is not for the Court of Appeals to resolve in a petition for certiorari. Finally, the instant petition ambiguously states that "NORECO 1 is an electric cooperative and all the employees of the subject union are members of the cooperative", but submitted "a certified list of employees who are members-co-owners of the petitioner electric cooperative." Impliedly, there are rank-and-file employees of the petitioner who are not themselves members-co-owners, or who are the ones qualified to form or join a labor organization. Again, the core issue raises a question of fact that the appellate court correctly declined to resolve in the first instance.

WHEREFORE, the petition is **DENIED** for lack of merit.

SO ORDERED.

Melo, Vitug, Panganiban and Sandoval-Gutierrez, *JJ.*, concur.

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Jesus M. Elbinias and Rodrigo V. Cosico.
[2] The Dole reversed the Med-Arbiter. The dispositive portion of the DOLE Decision reads:
"WHEREFORE, the appeal is GRANTED. The order of the Med-Arbiter dated 23 December 1997 is SET ASIDE and a new judgment is entered ordering the conduct of a certification election, after the usual pre-election conference, among the rank-and-file employees of Negros Oriental Electric Cooperative, Inc. 1 at Tinaogan, Negros Oriental, with the following choices:
1. Philippine Agricultural Commercial and Industrial Workers' Union-Trade Union Congress of the Philippines (PACIWU-TUCP) and
2. No Union.
SO DECIDED."
[3] Rollo, p. 70.
[4] Petition, p. 6.
[5] Resolution dated September 21, 1998.
[6] 268 SCRA 573.
[7] In the said DOLE decision the only issue raised was whether or not a chapter may file a petition for certification election even if it has not obtained independent registration at the time it filed such petition.
[8] CA Rollo, pp. 31-32.
[9] Vidad vs. RTC of Negros Oriental, 227 SCRA 271.
[10] See Rule XII.
[11] 268 SCRA 573.
[12] Suarez vs. NLRC, 293 SCRA 496.
[13] CA Rollo, p. 31.
[14] Rollo, p. 74.
