

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**ORIENTAL TIN CAN LABOR UNION,
*Petitioner,***

-versus-

**G.R. No. 116751
August 28, 1998**

**SECRETARY OF LABOR AND
EMPLOYMENT, ORIENTAL TIN CAN
WORKERS UNION – FEDERATION OF
FREE WORKERS [OTCWU-FFW] and
ORIENTAL TIN CAN AND METAL
SHEET MANUFACTURING,
*Respondents.***

X-----X

**ORIENTAL TIN CAN AND METAL
SHEET MANUFACTURING CO., INC.,
*Petitioner,***

-versus-

**G.R. No. 116779
August 28, 1998**

**HON. BIENVENIDO E. LAGUESMA,
UNDERSECRETARY OF LABOR AND
EMPLOYMENT, ORIENTAL TIN CAN
WORKERS UNION — FFW and
ORIENTAL TIN CAN LABOR UNION,
*Respondents.***

X-----X

DECISION

ROMERO, J.:

Respondent (in G. R. No. 116751) and petitioner (in sister case G. R. No. 116779), Oriental Tin Can and Metal Sheet Manufacturing Company, Inc. (the company) is engaged in the manufacture of tin can containers and metal sheets. On March 3, 1994, it entered into a collective bargaining agreement (CBA) with petitioner Oriental Tin Can Labor Union (OTCLU) as the existing CBA was due to expire on April 15, 1994. Four days later, 248 of the company's rank-and-file employees authorized the Federation of Free Workers (FFW) to file a petition for certification election.^[1] On March 10, 1994, however, this petition was repudiated via a written waiver^[2] by 115 of the signatories who, along with other employees totalling 897, ratified the CBA on the same date.

On March 18, 1994, armed with Charter Certificate No. IV-MEE-089, respondent Oriental Tin Can Workers Union — Federation of Free Workers (OTCWU-FFW) filed a petition for certification election with the National Capital Region office of the Department of Labor and Employment (DOLE), pursuant to Article 256 of the Labor Code. Purporting to represent the regular rank-and-file employees of the company, the petition was accompanied by the "authentic signatures" of 25% of the employees/workers in the bargaining unit.

The OTCLU filed a manifestation and motion on April 15, 1994, praying for the dismissal of the petition for certification election on the ground that it was not endorsed by at least 25% of the employees of the bargaining unit. Some of the employees who initially signed the petition had allegedly withdrawn in writing such support prior to the filing of the same.

The OTCWU-FFW filed a reply to said manifestation and motion, claiming that the retraction of support for the petition was “not verified under oath” and, therefore, had no legal and binding effect. It further asserted that the petition had the required support of more than 25% of all the employees in the bargaining unit.

For its part, the company filed a comment alleging inter alia that the new CBA was ratified by 897 out of the 1,020 rank-and-file employees within the bargaining unit. The OTCLU then filed a motion to dismiss and/or position paper reiterating its position that the petition did not comply with the 25% signature requirement and maintaining that the new CBA was a bar to a certification election.

To said comment and motion to dismiss, the OTCWU-FFW filed a consolidated reply, alleging that “an employer has no legal personality to oppose a petition for certification election; that there are only 882 rank and file workers in the bargaining unit and not 1,020 which included supervisors and workers hired after the filing of the petition; that those who gave their support to the filing of the petition did not withdraw or retract the same before or after the petition was filed; the Collective Bargaining Agreement (CBA) between respondent company and Forced Intervenor (OTCLU) is a sweetheart contract and concluded within the freedom period; and that additional employees gave their support to the petition after the same was filed.”^[3]

The company filed a rejoinder to said consolidated reply, asserting its objection to the petition for certification election because the case at bar “involves a collective bargaining agreement which was ratified by 897 employees including the 245 workers who had earlier given their consent to the filing of the petition; that the benefits provided for therein are being enjoyed by the workers themselves; that a certification election would impair the said contract; that the officers

of (OTCWU-FFW) were among those who ratified the CBA; and (OTCWU-FFW) failed to name the supervisors and workers hired after the filing of the petition that were allegedly included in the list of rank and file employees.”^[4]

In the meantime, on April 18, 1994, the DOLE issued a certificate of registration of the CBA pursuant to Article 231 of the Labor Code, as amended by Republic Act No. 6715. It showed that the CBA between the company and the OTCLU would have the force and effect of law between the parties that had complied with the requirements and standards for registration thereof.

On June 1, 1994, the officers of the OTCWU-FFW walked out of their jobs, prompting the company to require them to explain in writing why no disciplinary action should be taken against them for walking out en masse. The following day, said union filed a notice of strike with the National Conciliation and Mediation Board (NCMB) grounded on the alleged dismissal of union members/officers. Two days later, the company directed said officers to report back to work within 48 hours, but none of them did.

In an order dated June 7, 1994, Med-Arbiter Renato D. Paruño dismissed the petition for certification election for lack of merit. Noting that the petition was filed after the valid retractions were made, he concluded that by the withdrawal of support to the petition by 115 workers, the remaining 133 of the 1,020 employees were clearly less than the 25% subscription requirement. Thus, he opined:

“There is merit to the Company’s contention that by subsequently ratifying the CBA, the employees in effect withdrew their previous support to the petition. Thus, when the petition was filed on March 18, 1994, it did not have the required consent of the employees within the bargaining unit. Another factor which militates against the petition is the fact that actually there are 1,020 rank and file workers in the bargaining unit. Twenty-five percent (25%) of this is 255, but admittedly only 248 union members had originally authorized the filing of the petition. The law expressly requires that a petition for certification election should be supported by the

written consent of at least 25% of all the employees in the bargaining unit at the time of the filing thereof.

In view of the circumstances obtaining in the case at bar, we are constrained to order the dismissal of the instant petition. Furthermore, it would be in the interest of industrial peace to deny the holding of a certification election among the rank and file workers of respondent Company during the effectivity of the new CBA it appearing that out of 1,020 rank and file employees, 897 have ratified the same and the benefits of which are currently being enjoyed by all covered employees of respondent Company.”^[5]

The OTCWU-FFW appealed this ruling to the Labor Secretary. On June 18, 1994, however, during the pendency of the appeal, said union staged a strike that prevented the free ingress and egress of non-striking employees, delivery trucks and other vehicles to and from the company’s premises. Upon complaint of the company, the National Labor Relations Commission (NLRC) issued a writ of preliminary injunction on July 19, 1994, on the ground that the strike caused the company to incur daily losses amounting to P3.6 million.

Meanwhile, on July 15, 1994, Undersecretary Bienvenido E. Laguesma, acting on the appeal of the OTCWU-FFW, issued a Resolution^[6] holding that:

“An examination of the records of this case shows that the subject CBA was concluded during the 60-day freedom period of the old CBA which expired on 15 April 1994, and registered with the Regional Office of this Department on 18 April 1994 while the petition for certification election was filed on 18 March 1994. It is therefore, crystal clear that, the present petition was filed during the freedom period and no registered CBA in the respondent establishment could be invoked (to) pose as a bar to the holding of a certification election. In other words, when the said CBA was registered there was a pending representation case. Consequently, said CBA cannot bar the election being prayed for. This is the rule contained in Section 4, Rule V of the Rules and Regulations Implementing the Labor Code, as amended, which provides that:

Section 4. Effects of early agreements. — The representation case shall not, however, be adversely affected by a collective bargaining agreement registered before or during the last sixty (60) days of a subsisting agreement or during the pendency of the representation case.” (Emphasis supplied)

On the issue of whether the 25% support requirement for filing the petition for certification election had been met, Undersecretary Laguesma opined thus:

“The rule being followed in case of alleged retractions and withdrawals, as appellant correctly pointed out, is that the best forum for determining whether there was (sic) indeed retractions is the certification election itself wherein the workers can freely express their choice in a secret ballot. (Atlas Free Workers Union vs. Noriel, et al., 104 SCRA 565) The argument of (OTCLU) that since the withdrawal was made prior to the filing of the petition it should be presumed voluntary and therefore, has adversely affected the petition, lacks merit. The Supreme Court ruling cited in support of the argument (i.e. La Suerte Cigar and Cigarette Factory, et al. vs. Director of the Bureau of Labor Relations, et al., 123 SCRA 679) is not squarely applicable in the present case. For while in the said case it was undisputably (sic) shown that 31 members have withdrawn their support to the petition, in the present case, the employees who supposedly withdrew from the union executed joint statements (Sama-Samang Pahayag) declaring that the WAIVER’ document they signed has no force and effect considering that it was the product of duress, force and intimidation employed by the company after it learned of the petition for certification election, and reiterating their wish to be given the opportunity to choose the union of their choice. Said statements raised doubts on the voluntariness of the retractions, destroyed the presumption that retractions made before the filing of the petition are deemed voluntary and consequently brought the present case outside the mantle of the Atlas ruling.”

He added that even if there were 1,020 rank-and-file employees in the bargaining unit, the signatures gathered sufficed to meet the 25% support requirement because the Sama-Samang Pahayag invalidating the previous "Waiver," contained 359 signatures which, when added to the 165 signatures submitted by the OTCWU-FFW on May 27, 1994, brought the total to 524, much more than the required 25% of the alleged 1,020 rank- and-file employees. Moreover, in case of doubt, the DOLE tends to favor the conduct of certification election, for the rule on simultaneous submission of the consent signatures and the petition should be liberally interpreted. As such, "contracts where the identity of the authorized representative of the workers is in doubt must be rejected in favor of a more certain indication of the will of the workers. Any stability that does not establish the type of industrial peace contemplated by the law must be subordinated to the employees' freedom to choose their real representative." Accordingly, Undersecretary Laguesma disposed of the appeal as follows:

"WHEREFORE, the appeal of the petitioner is hereby granted and the Order of the Med-Arbiter is hereby set aside. In lieu thereof, a new order is hereby issued directing the conduct of a certification election among the regular rank and file employees of the Oriental Tin Can and Metal Sheet Manufacturing, with the following as choices:

1. Oriental Tin Can Workers Union – Federation of Free Workers (OTCWU-FFW);
2. Oriental Tin Can Labor Union (OTCLU); and
3. No Union.

Let therefore, the entire records of this case be forwarded to the Regional Office of origin for the immediate conduct of certification election, subject to the usual pre-election conference. The payrolls three (3) months before the filing of the petition shall be the basis of the list of eligible voters.

SO RESOLVED."

Herein petitioners filed a motion for reconsideration of said resolution, but this was denied for lack of merit in the resolution dated August 22, 1994. From this resolution, the company and the OTCLU filed separate petitions for *certiorari* before this Court.

G. R. No. 116779

In assailing the resolution of July 15, 1994, the company raises in issue the following grounds to show that the Labor Secretary, through Undersecretary Laguesma, gravely abused his discretion in: (a) ordering the conduct of a certification election even though the employees who signed the petition therefor had withdrawn their support by ratifying the CBA and even though no certification election could be conducted without the written consent of at least 25% of all the employees in the bargaining unit, and (b) ruling, in effect, “that the provision of Article 256 of the Labor Code takes precedence over that of Article 253 of the same Code.”

The company concedes that, as an employer, it should “remain a bystander in the entire process of selection by the employees of their bargaining representative, since the exercise is indisputably an all-employee affair.” Nonetheless, it justifies its “right to question the filing of the petition for certification election” by the situation “where the small number of employees, the very ones who had earlier supported the petition for certification election, subsequently changed their mind, and ratified the CBA and thereafter reaped from its bounty.”^[7] Thus, in its desire to maintain industrial peace, the company deemed it necessary to challenge the propriety of holding a certification election.

This argument is misleading.

It is a well-established rule that certification elections are exclusively the concern of employees; hence, the employer lacks the legal personality to challenge the same.^[8] In *Golden Farms, Inc. vs. Secretary of Labor*,^[9] the Court declared:

“Law and policy demand that employers take a strict, hands-off stance in certification elections. The bargaining representative of employees should be chosen free from any extraneous

influence of management. A labor bargaining representative, to be effective, must owe its loyalty to the employees alone and to no other.”

The only instance when an employer may concern itself with employee representation activities is when it has to file the petition for certification election because there is no existing CBA in the unit and it was requested to bargain collectively, pursuant to Article 258 of the Labor Code.^[10] After filing the petition, the role of the employer ceases and it becomes a mere bystander.^[11] The company’s interference in the certification election below by actively opposing the same is manifestly uncalled-for and unduly creates a suspicion that it intends to establish a company union.^[12] On this score, it is clear that the perceived grave abuse of discretion on the part of the Labor Secretary is non-existent and G.R. No. 116779 should, consequently, be dismissed. This case will now proceed and be decided on the merits of the issues raised in G.R. No. 116751.

G.R. No. 116751

The OTCLU contends that the Labor Secretary acted without jurisdiction or with grave abuse of discretion: (a) in “imposing upon the employees the manner of choosing their collective bargaining representative by ordering a certification election notwithstanding the fact that the overwhelming majority of the employees have already decided to retain the petitioner (OCTLU) as their collective bargaining representative,” and (b) in giving due course to the petition for certification election even though it lacked the required support of 25% of the employees.

(a) The OTCLU maintains that the Labor Secretary improperly prescribed the mode of picking a collective bargaining agent upon the employees who effectively repudiated the “notion” of a certification election by ratifying the CBA entered into during the freedom period.

This contention is without merit as it runs counter to the policy of the State on the matter.

Undersecretary Laguesma, by authority of the Secretary of the DOLE, was exercising the function of the Department to “(e)nforce social and

labor legislation to protect the working class and regulate the relations between the worker and his employee”^[13] when he issued the resolution being assailed in the instant petition. As will be shown shortly, he was merely applying the law applicable to the appeal raised before his office.

The Labor Code imposes upon the employer and the representative of the employees the duty to bargain collectively.^[14] Since the question of right of representation as between competing labor organizations in a bargaining unit is imbued with public interest,^[15] the law governs the choice of a collective bargaining representative which shall be the duly certified agent of the employees concerned. An official certification becomes necessary where the bargaining agent fails to present adequate and reasonable proof of its majority authorization and where the employer demands it, or when the employer honestly doubts the majority representation of several contending bargaining groups.^[16] In fact, Article 255 of the Labor Code allows the majority of the employees in an appropriate collective bargaining unit to designate or select the labor organization which shall be their exclusive representative for the purpose of collective bargaining.

The designation or selection of the bargaining representative without, however, going through the process set out by law for the conduct of a certification election applies only when representation is not in issue. There is no problem if a union is unanimously chosen by a majority of the employees as their bargaining representative, but a question of representation arising from the presence of more than one union in a bargaining unit aspiring to be the employees’ representative, can only be resolved by holding a certification election under the supervision of the proper government authority. Thus:

“It bears stressing that no obstacle must be placed to the holding of certification elections, for it is a statutory policy that should not be circumvented. We have held that whenever there is doubt as to whether a particular union represents the majority of the rank-and- file employees, in the absence of a legal impediment, the holding of a certification election is the most democratic method of determining the employees’ choice of their bargaining representative. It is the appropriate means whereby controversies and disputes on representation may be

laid to rest, by the unequivocal vote of the employees themselves. Indeed, it is the keystone of industrial democracy.”^[17]

Given these premises, the filing of a petition for certification election by one of the two unions in the bargaining unit is enough basis for the DOLE, through its authorized official, to implement the law by directing the conduct of a certification election.

Article 253-A of the Labor Code explicitly provides that the aspect of a union’s representation of the rank-and-file employees contained in the CBA shall be for a term of five (5) years and that “(n)o petition questioning the majority status of the incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of the sixty-day period immediately before the date of expiry of such five year term of the Collective Bargaining Agreement.” Accordingly, Section 3, Rule V, Book V of the Omnibus Rules Implementing the Labor Code provides that “(i)f a collective bargaining agreement has been duly registered in accordance with Article 231 of the Code, a petition for certification election or a motion for intervention can only be entertained within sixty (60) days prior to the expiry date of such agreement.”

It is uncontroverted that the petition for certification election in this case was filed on March 18, 1994, twenty-eight days before the expiration of the existing CBA on April 15, 1994, and well within the 60-day period provided for by the Code. The OTCLU, however, is concerned with the effect of the employees’ ratification of the new CBA on the timely filing of the petition for certification election. Would such ratification nullify the petition?

The law dictates a negative reply. The filing of a petition for certification election during the 60-day freedom period gives rise to a representation case that must be resolved even though a new CBA has been entered into within that period. This is clearly provided for in the aforequoted Section 4, Rule V, Book V of the Omnibus Rules Implementing the Labor Code. The reason behind this rule is obvious. A petition for certification election is not necessary where the employees are one in their choice of a representative in the bargaining process. Moreover, said provision of the Omnibus Rules

manifests the intent of the legislative authority to allow, if not encourage, the contending unions in a bargaining unit to hold a certification election during the freedom period. Hence, the Court held in the case of Warren Manufacturing Workers Union (WMWU) vs. Bureau of Labor Relations,^[18] that the agreement prematurely signed by the union and the company during the freedom period does not affect the petition for certification election filed by another union.

(b) As regards the 25% support requirement, we concur with public respondent's finding that said requisite has been met In this case. With regard to the finding that the "waiver" document executed by the employees "was the product of duress, force and intimidation employed by the company after it learned of the petition for certification election,"^[19] the following pronouncement of the Court is relevant:

"Even doubts as to the required 30% being met warrant (the) holding of the certification election. In fact, once the required percentage requirement has been reached, the employees' withdrawal from union membership taking place after the filing of the petition for certification election will not affect the petition. On the contrary, the presumption arises that the withdrawal was not free but was procured through duress, coercion or for a valuable consideration. Hence, the subsequent disaffiliation of the six (6) employees from the union will not be counted against or deducted from the previous number who had signed up for certification elections."^[20] (Citations omitted)

The support requirement is a mere technicality which should be employed in determining the true will of the workers^[21] instead of frustrating the same. Thus, in Port Workers Union of the Philippines (PWUP) vs. Laguesma,^[22] this Court declared that:

"In line with this policy (that the holding of a certification election is a certain and definitive mode of arriving at the choice of the employees' bargaining representative), we feel that the administrative rule requiring the simultaneous submission of the 25% consent signatures upon the filing of the petition for certification election should not be strictly applied to frustrate the determination of the legitimate representative of the

workers. Significantly, the requirement in the rule is not found in Article 256, the law it seeks to implement. This is all the more reason why the regulation should at best be given only a directory effect. Accordingly, we hold that the mere filing of a petition for certification election within the freedom period is sufficient basis for the issuance of an order for the holding of a certification election, subject to the submission of the consent signatures within a reasonable period from such filing.”

All doubts as to the number of employees actually supporting the holding of a certification election should, therefore, be resolved by going through such procedure. It is judicially settled that a certification election is the most effective and expeditious means of determining which labor organization can truly represent the working force in the appropriate bargaining unit of the company.^[23] If the OTCLU wanted to be retained as the rank-and-file employees’ bargaining representative, it should have sought their vote, not engaged in legal sophistry. The selection by the majority of the employees of the union which would best represent them in the CBA negotiations should be achieved through the democratic process of an election.^[24]

The fear expressed by the OTCLU that granting the petition for certification election would be prejudicial to all the employees since the new CBA would run the risk of being nullified and the employees would be required to reconstitute whatever benefits they might have received under the new CBA, is to be dismissed as being baseless and highly speculative.

The benefits that may be derived from the implementation of the CBA prematurely entered into between the OTCLU and the company shall, therefore, be in full force and effect until the appropriate bargaining representative is chosen and negotiations for a new collective bargaining agreement is thereafter concluded.^[25] A struggle between contending labor unions must not jeopardize the implementation of a CBA that is advantageous to employees.

WHEREFORE, both petitions for certiorari are hereby **DISMISSED**. This Decision is immediately executory. Costs against petitioners.

SO ORDERED.

Narvasa, C.J., Kapunan and Purisima, JJ., concur.

- [1] Rollo of G.R. No. 116779. pp. 83-96.
- [2] Ibid., p. 128.
- [3] Rollo of G.R. No. 116751, p. 56.
- [4] Ibid., pp. 56-57.
- [5] Rollo of G.R. No. 116779. pp. 69-70.
- [6] Rollo of G.R. No. 116751, pp. 20-29.
- [7] Rollo of G.R. No. 116779. p. 18.
- [8] *Barbizon Phils., Inc. vs. NSBPI-NAFLU*, 330 Phil. 472; *Philippine Telegraph and Telephone Corp. vs. Laguesma*, 223 SCRA 452 (1993); *California Manufacturing Corporation vs. Laguesma*, 209 SCRA 606 (1992), citing *Asian Design and Manufacturing corporation vs. Calleja*, 174 SCRA 477 (1989).
- [9] 234 SCRA 517 (1994).
- [10] ART. 258. When an employer may file petition. — When requested to bargain collectively an employer may petition the Bureau for an election. If there is no existing certified collective bargaining agreement in the unit, the Bureau shall, after hearing, order a certification election.
All certification cases shall be decided within twenty (20) working days.
The Bureau shall conduct a certification election within twenty (20) days in accordance with the rules and regulations prescribed by the Secretary of Labor.
- [11] *California Manufacturing Corp. vs. Laguesma*, supra, at p. 611.
- [12] *San Miguel Foods, Inc. vs. Hon. Laguesma*. 331 Phil. 356. citing *Philippine Scout Veterans Security and Investigation Agency vs. Torres*, 224 SCRA 682 (1993).
- [13] Sec. 3 (1), Chapter 1, Title VII, Administrative Code of 1987.
- [14] Art. 251, Labor Code.
- [15] 51 C.J.S. 957-958.
- [16] *ROTHENBERG ON LABOR RELATIONS*, 1949 ed., p. 479.
- [17] *Trade Unions of the Philippines vs. Laguesma*, 233 SCRA 565 (1994).
- [18] 159 SCRA 387 (1988).
- [19] Resolution of July 15, 1994, p. 7.
- [20] *Belyca Corporation vs. Ferrer-Calleja*, 168 SCRA 184 (1988).
- [21] *Atlas Free Workers Union (AFWU) — PSSLU Local vs. Noriel*, 104 SCRA 565 (1981).
- [22] 207 SCRA 329 (1992).
- [23] *National Mines and Allied Workers Union vs. Secretary of Labor*, 227 SCRA 821 (1993), citing *Central Negros Electric Cooperative, Inc. vs. Secretary of Labor*, 201 SCRA 584 (1991).

[24] See: *Algire vs. De Mesa*, 237 SCRA 647 (1994).

[25] *Associated Trade Unions-ATU vs. Noriel*, 89 SCRA 264 (1979).

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