SUPREME COURT
THIRD DIVISION

TAGAYTAY HIGHLAND'S INTERNATIONAL GOLF CLUB INCORPORATED,
***Petitioner*,**

-versus-

G.R. No. 142000
January 22, 2003

TAGAYTAY HIGHLANDS EMPLOYEES UNION-PGTWO,
***Respondent*.**
x----------x

D E C I S I O N

CARPIO MORALES, *J.*:

Before this Court on *Certiorari* under Rule 45 is the Petition of the Tagaytay Highlands International Golf Club Incorporated (THIGCI) assailing the February 15, 2002 decision of the Court of Appeals denying its petition to annul the Department of Labor and

Employment (DOLE) Resolutions of November 12, 1998 and December 29, 1998.

On October 16, 1997, the Tagaytay Highlands Employees Union (THEU) — Philippine Transport and General Workers Organization (PTGWO), Local Chapter No. 776, a legitimate labor organization said to represent majority of the rank-and-file employees of THIGCI, filed a petition for certification election before the DOLE Mediation-Arbitration Unit, Regional Branch No. IV.

THIGCI, in its Comment[1] filed on November 27, 1997, opposed THEU's petition for certification election on the ground that the list of union members submitted by it was defective and fatally flawed as it included the names and signatures of supervisors, resigned, terminated and absent without leave (AWOL) employees, as well as employees of The Country Club, Inc., a corporation distinct and separate from THIGCI; and that out of the 192 signatories to the petition, only 71 were actual rank-and-file employees of THIGCI.

THIGCI thus submitted a list of the names of its 71 actual rank-and-file employees which it Annexed[2] to its Comment to the petition for certification election. And it therein incorporated the following tabulation[3] showing the number of signatories to said petition whose membership in the union was being questioned as disqualified and the reasons for disqualification:

No. of Signatures	**Reasons for Disqualification**
13	Supervisors of THIGCI
6	Resigned employees of THIGCI
2	AWOL employees of THIGCI
53	Rank-and-file employees of The Country Club at Tagaytay Highlands, Inc.
14	Supervisors of The Country Club at TagaytayHighlands, Inc.
6	Resigned employees of The Country Club at Tagaytay Highlands, Inc.
3	Terminated employees of The Country Club at Tagaytay Highlands, Inc.
1	AWOL employees of The Country Club

	at Tagaytay Highlands, Inc.
4	Signatures that cannot be deciphered
16	Names in list that were erased
2	Names with first names only

THIGCI also alleged that some of the signatures in the list of union members were secured through fraudulent and deceitful means, and submitted copies of the handwritten denial and withdrawal of some of its employees from participating in the petition.[4]

Replying to THIGCI's Comment, THEU asserted that it had complied with all the requirements for valid affiliation and inclusion in the roster of legitimate labor organizations pursuant to DOLE Department Order No. 9, series of 1997,[5] on account of which it was duly granted a Certification of Affiliation by DOLE on October 10, 1997;[6] and that Section 5, Rule V of said Department Order provides that the legitimacy of its registration cannot be subject to collateral attack, and for as long as there is no final order of cancellation, it continues to enjoy the rights accorded to a legitimate organization.

THEU thus concluded in its Reply[7] that under the circumstances, the Med-Arbiter should, pursuant to Article 257 of the Labor Code and Section 11, Rule XI of DOLE Department Order No. 09, automatically order the conduct of a certification election.

By Order of January 28, 1998,[8] DOLE Med-Arbiter Anastacio Bactin ordered the holding of a certification election among the rank-and-file employees of THIGCI in this wise, quoted verbatim:

> We evaluated carefully this instant petition and we are of the opinion that it is complete in form and substance. In addition thereto, the accompanying documents show that indeed petitioner union is a legitimate labor federation and its local/chapter was duly reported to this Office as one of its affiliate local/chapter. Its due reporting through the submission of all the requirements for registration of a local/chapter is a clear showing that it was already included in the roster of legitimate labor organizations in this Office pursuant to Department Order No. 9 Series of 1997 with all the legal right and personality to institute this instant petition. Pursuant

> therefore to the provisions of Article 257 of the Labor Code, as amended, and its Implementing Rules as amended by Department Order No. 9, since the respondent's establishment is unorganized, the holding of a certification election is mandatory for it was clearly established that petitioner is a legitimate labor organization. Giving due course to this petition is therefore proper and appropriate.[9] (Emphasis supplied)

Passing on THIGCI's allegation that some of the union members are supervisory, resigned and AWOL employees or employees of a separate and distinct corporation: the Med-Arbiter held that the same should be properly raised in the exclusion-inclusion proceedings at the pre-election conference. As for the allegation that some of the signatures were secured through fraudulent and deceitful means, he held that it should be coursed through an independent petition for cancellation of union registration which is within the jurisdiction of the DOLE Regional Director. In any event, the Med-Arbiter held that THIGCI failed to submit the job descriptions of the questioned employees and other supporting documents to bolster its claim that they are disqualified from joining THEU.

THIGCI appealed to the Office of the DOLE Secretary which, by Resolution of June 4, 1998, set aside the said Med-Arbiter's Order and accordingly dismissed the petition for certification election on the ground that there is a "clear absence of community or mutuality of interests," it finding that THEU sought to represent two separate bargaining units (supervisory employees and rank-and-file employees) as well as employees of two separate and distinct corporate entities.

Upon Motion for Reconsideration by THEU, DOLE Undersecretary Rosalinda Dimalipis-Baldoz, by authority of the DOLE Secretary, issued DOLE Resolution of November 12, 1998[10] setting aside the June 4, 1998 Resolution dismissing the petition for certification election. In the November 12, 1998 Resolution, Undersecretary Dimapilis-Baldoz held that since THEU is a local chapter, the twenty percent (20%) membership requirement is not necessary for it to acquire legitimate status, hence, "the alleged retraction and withdrawal of support by 45 of the 70 remaining rank-and-file members cannot negate the legitimacy it has already acquired before

the petition;" that rather than disregard the legitimate status already conferred on THEU by the Bureau of Labor Relations, the names of alleged disqualified supervisory employees and employees of the Country Club, Inc., a separate and distinct corporation, should simply be removed from the THEU's roster of membership; and that regarding the participation of alleged resigned and AWOL employees and those whose signatures are illegible, the issue can be resolved during the inclusion-exclusion proceedings at the pre-election stage.

The records of the case were thus ordered remanded to the Office of the Med-Arbiter for the conduct of certification election.

THIGCI's Motion for Reconsideration of the November 12, 1998 Resolution having been denied by the DOLE Undersecretary by Resolution of December 29, 1998,[11] it filed a petition for certiorari before this Court which, by Resolution of April 14, 1999,[12] referred it to the Court of Appeals in line with its pronouncement in National Federation of Labor (NFL) vs. Hon. Bienvenido E. Laguesma, et al.,[13] and in strict observance of the hierarchy of courts, as emphasized in the case of St. Martin Funeral Home vs. National Labor Relations Commission.[14]

By Decision of February 15, 2000,[15] the Court of Appeals denied THIGCI's Petition for Certiorari and affirmed the DOLE Resolution dated November 12, 1998. It held that while a petition for certification election is an exception to the innocent bystander rule, hence, the employer may pray for the dismissal of such petition on the basis of lack of mutuality of interests of the members of the union as well as lack of employer-employee relationship following this Court's ruling in Toyota Motor Philippines Corporation vs. Toyota Motor Philippines Corporation Labor Union et al.[16] and Dunlop Slazenger [Phils.] vs. Hon. Secretary of Labor and Employment et al.,[17] petitioner failed to adduce substantial evidence to support its allegations.

Hence, the present petition for certiorari, raising the following

"ISSUES/ASSIGNMENT OF ERRORS:

> THE COURT OF APPEALS GRIEVOUSLY ERRED IN AFFIRMING THE RESOLUTION DATED 12 NOVEMBER 1998 HOLDING THAT SUPERVISORY EMPLOYEES AND NON-EMPLOYEES COULD SIMPLY BE REMOVED FROM APPELLEES ROSTER OF RANK-AND-FILE MEMBERSHIP INSTEAD OF RESOLVING THE LEGITIMACY OF RESPONDENT UNION'S STATUS.
>
> THE COURT OF APPEALS GRIEVOUSLY ERRED IN AFFIRMING THE RESOLUTION DATED 12 NOVEMBER 1998 HOLDING THAT THE DISQUALIFIED EMPLOYEES' STATUS COULD READILY BE RESOLVED DURING THE INCLUSION AND EXCLUSION PROCEEDINGS.
>
> THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT HOLDING THAT THE ALLEGATIONS OF PETITIONER HAD BEEN DULY PROVEN BY FAILURE OF RESPONDENT UNION TO DENY THE SAME AND BY THE SHEER WEIGHT OF EVIDENCE INTRODUCED BY PETITIONER AND CONTAINED IN THE RECORDS OF THE CASE."[18]

The statutory authority for the exclusion of supervisory employees in a rank-and-file union, and vice-versa, is Article 245 of the Labor Code, to wit:

> Article 245. Ineligibility of managerial employees to join any labor organization; right of supervisory employees. — Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own.

While above-quoted Article 245 expressly prohibits supervisory employees from joining a rank-and-file union, it does not provide what would be the effect if a rank-and-file union counts supervisory employees among its members, or vice-versa.

Citing Toyota[19] which held that "a labor organization composed of both rank-and-file and supervisory employees is no labor

organization at all," and the subsequent case of Progressive Development Corp. — Pizza Hut vs. Ledesma[20] which held that:

> "The Labor Code requires that in organized and unorganized establishments, a petition for certification election must be filed by a legitimate labor organization. The acquisition of rights by any union or labor organization, particularly the right to file a petition for certification election, first and foremost, depends on whether or not the labor organization has attained the status of a legitimate labor organization.
>
> In the case before us, the Med-Arbiter summarily disregarded the petitioner's prayer that the former look into the legitimacy of the respondent Union by a sweeping declaration that the union was in the possession of a charter certificates so that 'for all intents and purposes, Sumasaklaw sa Manggagawa sa Pizza Hut (was) a legitimacy organization."'[21] (Emphasis supplied.)

Petitioner contends that, quoting Toyota, "[i]t becomes necessary, anterior to the granting of an order allowing a certification election, to inquire into the composition of any labor organization whenever the status of the labor organization is challenged on the basis of Article 245 of the Labor Code."[22]

Continuing, petitioner argues that without resolving the status of THEU, the DOLE Undersecretary "conveniently deferred the resolution on the serious infirmity in the membership of [THEU] and ordered the holding of the certification election" which is frowned upon as the following ruling of this Court shows:

> We also do not agree with the ruling of the respondent Secretary of Labor that the infirmity in the membership of the respondent union can be remedied in "the pre-election conference thru the exclusion-inclusion proceedings wherein those employees who are occupying rank-and-file positions will be excluded from the list of eligible voters." Public respondent gravely misappreciated the basic antipathy between the interest of supervisors and the interest of rank-and-file employees. Due to the irreconcilability of their interest we held in Toyota Motor

Philippines vs. Toyota Motors Philippines Corporation Labor Union, viz:

> 'x x x
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> "Clearly, based on this provision Article 245, a labor organization composed of both rank-and-file and supervisor employees is no labor organization at all. It cannot, for any guise or purpose, be a legitimate labor organization. Not being one, an organization which carries a mixture of rank-and-file and supervisory employees cannot posses any of the rights of a legitimate labor organization, including the right to file a petition for certification election for the purpose of collective bargaining. It becomes necessary, therefore, anterior to the granting of an order allowing a certification election, to inquire into the composition of any labor organization whenever the status of the labor organization is challenged on the basis of Article 245 of the Labor Code." (Emphasis by petitioner) (Dunlop Slazenger (Phils.), vs. Secretary of Labor, 300 SCRA 120 [1998]; (Emphasis supplied by petitioner.)

The petition fails. After a certificate of registration is issued to a union, its legal personality cannot be subject to collateral attack. It may be questioned only in an independent petition for cancellation in accordance with Section 5 of Rule V, Book IV of the "Rules to Implement the Labor Code" (Implementing Rules) which section reads:

> Sec. 5. Effect of registration. The labor organization or workers' association shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration. Such legal personality cannot thereafter be subject to collateral attack, but may be questioned only in an independent petition for cancellation in accordance with these Rules. (Emphasis supplied.)

The grounds for cancellation of union registration are provided for under Article 239 of the Labor Code, as follows:

Art. 239. Grounds for cancellation of union registration. The following shall constitute grounds for cancellation of union registration:

(a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;

(b) Failure to submit the documents mentioned in the preceding paragraph within thirty (30) days from adoption or ratification of the constitution and by-laws or amendments thereto;

(c) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, the list of voters, or failure to subject these documents together with the list of the newly elected/appointed officers and their postal addresses within thirty (30) days from election;

(d) Failure to submit the annual financial report to the Bureau within thirty (30) days after the losing of every fiscal year and misrepresentation, false entries or fraud in the preparation of the financial report itself;

(e) Acting as a labor contractor or engaging in the "cabo" system, or otherwise engaging in any activity prohibited by law;

(f) Entering into collective bargaining agreements which provide terms and conditions of employment below minimum standards established by law;

(g) Asking for or accepting attorney's fees or negotiation fees from employers;

(h) Other than for mandatory activities under this Code, checking off special assessments or any other fees without duly signed individual written authorizations of the members;

(i) Failure to submit list of individual members to the Bureau once a year or whenever required by the Bureau; and

(j) Failure to comply with the requirements under Articles 237 and 238. (Emphasis supplied.)

While the procedure for cancellation of registration is provided for in Rule VIII, Book V of the Implementing Rules.

The inclusion in a union of disqualified employees is not among the grounds for cancellation, unless such inclusion is due to misrepresentation, false statement or fraud under the circumstances enumerated in Sections (a) and (c) of Article 239 of above-quoted Article 239 of the Labor Code.

THEU, having been validly issued a certificate of registration, should be considered to have already acquired juridical personality which may not be assailed collaterally.

As for petitioner's allegation that some of the signatures in the petition for certification election were obtained through fraud, false statement and misrepresentation, the proper procedure is, as reflected above, for it to file a petition for cancellation of the certificate of registration, and not to intervene in a petition for certification election.

Regarding the alleged withdrawal of union members from participating in the certification election, this Court's following ruling is instructive:

> "'The best forum for determining whether there were indeed retractions from some of the laborers is in the certification election itself wherein the workers can freely express their choice in a secret ballot. Suffice it to say that the will of the

> rank-and-file employees should in every possible instance be determined by secret ballot rather than by administrative or quasi-judicial inquiry. Such representation and certification election cases are not to be taken as contentious litigations for suits but as mere investigations of a non-adversary, fact-finding character as to which of the competing unions represents the genuine choice of the workers to be their sole and exclusive collective bargaining representative with their employer."[23]

As for the lack of mutuality of interest argument of petitioner, it, at all events, does not lie given, as found by the court a quo, its failure to present substantial evidence that the assailed employees are actually occupying supervisory positions.

While petitioner submitted a list of its employees with their corresponding job titles and ranks,[24] there is nothing mentioned about the supervisors' respective duties, powers and prerogatives that would show that they can effectively recommend managerial actions which require the use of independent judgment.[25]

As this Court put it in Pepsi-Cola Products Philippines, Inc. vs. Secretary of Labor:[26]

> Designation should be reconciled with the actual job description of subject employees. The mere fact that an employee is designated manager does not necessarily make him one. Otherwise, there would be an absurd situation where one can be given the title just to be deprived of the right to be a member of a union. In the case of National Steel Corporation vs. Laguesma (G. R. No. 103743, January 29, 1996), it was stressed that:
>
> > What is essential is the nature of the employee's function and not the nomenclature or title given to the job which determines whether the employee has rank-and-file or managerial status or whether he is a supervisory employee. (Emphasis supplied).

WHEREFORE, the petition is hereby **DENIED**. Let the records of the case be remanded to the office of origin, the Mediation-Arbitration Unit, Regional Branch No. IV, for the immediate conduct

of a certification election subject to the usual pre-election conference.

SO ORDERED.

Puno, Panganiban, Sandoval-Gutierrez and Corona, *JJ.*, concur.

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[1] CA Rollo at 59–62.
[2] Ibid. at 63.
[3] Ibid. at 60.
[4] Ibid. at 64–66.
[5] Dated May 1, 1997 which took effect on June 21, 1997, "Amending the Rules Implementing Book V of the Labor Code as Amended."
[6] CA Rollo at 58.
[7] Ibid. at 67–70.
[8] Ibid. at 74–79.
[9] Ibid. at 77–78.
[10] Ibid. at 22–27.
[11] Rollo at 29–30.
[12] CA Rollo at 111.
[13] G. R. No. 123426, March 10, 1999 (304 SCRA 405).
[14] G. R. No. 130866, September 16, 1998 (295 SCRA 494).
[15] Rollo at 35–44.
[16] G. R. No. 121084, February 19, 1997 (268 SCRA 573).
[17] G. R. No. 131248, December 11, 1998 (300 SCRA 120).
[18] Rollo at 17–18.
[19] Supra.
[20] G. R. No. 115077, April 18, 1997 (271 SCRA 593).
[21] Id. at 602.
[22] Supra at 582.
[23] Atlas Free Workers Union (AFWU)-PSSLU Local vs. Noriel. No. L-51905, May 26, 1981 (104 SCRA 565, 572-73, citations omitted), vide LVN Pictures, Inc. vs. Phil. Musicians Guild, 110 Phil, 725; Federation of Free Workers vs. Paredes, 54 SCRA 76 (1973); Phil. Communications, Electronics and Electricity Workers Federation vs. CIR, 56 SCRA 480 (1974).
[24] Records at 347–354.
[25] Vide AD Gothong Manufacturing Corporation Employees Union—ALU vs. Confessor. G.R. No. 113638, November 16, 1999, 318 SCRA 58.
[26] G. R. No. 96663, August 10, 1999, 312 SCRA 104.