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SUPREME COURT
FIRST DIVISION

EDUARDO TANCINCO, OSCAR E. BARTOLO, DANIEL DE LEON, EDDIE POE, VIRGILIO SAN PEDRO, MA. LUISA QUIBIN, FE MUDLONG and HENRY MADRIAGA,
***Petitioners*,**

-versus-

G.R. No. L-78131
January 20, 1988

DIRECTOR PURA FERRER-CALLEJA, EDWIN LACANILAO, BOYET DALMACIO, JOSEFINO ESGUERRA, TESSIE GATCHALIAN, LITO CUDIA and DING PAGAYON,
***Respondents*.**
x----------x

D E C I S I O N

GANCAYCO, *J.*:

This Special Civil Action for *Certiorari* seeks to annul the Resolution of February 12, 1987 and the Decision of December 10, 1986 of the Bureau of Labor Relations[*] in BLR Case No. A-9-221-86, setting aside the order of July 25, 1986 which decreed the inclusion and counting of the 56 segregated votes for the determination of the

results of the election of officers of Imperial Textile Mills, Inc. Monthly Employees Association (ITM-MEA).

Private respondents are the prime organizers of ITM-MEA. While said respondents were preparing to file a petition for direct certification of the Union as the sole and exclusive bargaining agent of ITM's bargaining unit, the union's Vice-President, Carlos Dalmacio was promoted to the position of Department Head, thereby disqualifying him for union membership. Said incident, among others led to a strike spearheaded by Lacanilao group, respondents herein. Another group however, led by herein petitioners staged a strike inside the company premises. After four (4) days the strike was settled. On May 10, 1986 an agreement was entered into by the representatives of the management, Lacanilao group and the Tancinco group the relevant terms of which are as follows:

> "'1. That all monthly-paid employees shall be united under one union, the ITM Monthly Employees Association (ITM-MEA), to be affiliated with ANGLO;
>
> 2. That the management of ITM recognizes ANGLO as the sole and exclusive bargaining agent of all the monthly-paid employees;
>
> 3. That an election of union officers shall be held on 26 May 1986, from 8:00 a.m. to 5:00 p.m.;
>
> 4. That the last day of filing of candidacy shall be on 19 May 1986 at 4:00 p m.;
>
> 5. That a final pre-election conference to finalize the list of qualified voters shall be held on 19 May 1986, at 5:00 p.m.;"[1]

On May 19, 1986, a pre-election conference was held, but the parties failed to agree on the list of voters. During the May 21, 1986 pre-election conference attended by MOLE officers, ANGLO through its National Secretary, a certain Mr. Cornelio A. Sy made a unilateral ruling excluding some 56 employees consisting of the Manila office employees, members of Iglesia ni Kristo, non-time card employees,

drivers of Mrs. Salazar and the cooperative employees of Mrs. Salazar. Prior to the holding of the election of union officers petitioners,[2] through a letter addressed to the Election Supervisor, MOLE San Fernando Pampanga, protested said ruling but no action was taken. On May 26, 1986, the election of officers was conducted under the supervision of MOLE wherein the 56 employees in question participated but whose votes were segregated without being counted. Lacanilao's group won. Lacanilao garnered 119 votes with a margin of three (3) votes over Tancinco prompting petitioners to make a protest. Thereafter, petitioners filed a formal protest with the Ministry of Labor Regional Office in San Fernando, Pampanga[3] claiming that the determination of the qualification of the 56 votes is beyond the competence of ANGLO. Private respondents maintain the contrary on the premise that definition of union's membership is solely within their jurisdiction.

On the basis of the position papers submitted by the parties MOLE's Med-Arbiter[4] issued an order dated July 25, 1986 directing the opening and counting of the segregated votes.[5] From the said order private respondents appealed to the Bureau of Labor Relations (BLR) justifying the disenfranchisement of the 56 votes. Private respondents categorized the challenged voters into four groups namely, the Manila Employees, that they are personal employees of Mr. Lee; the Iglesia ni Kristo, that al lowing them to vote will be anomalous since it is their policy not to participate in any form of union activities; the non-time card employees, that they are managerial employees; and the employees of the cooperative as non-ITM employees.[6] On December 10, 1986, BLR rendered a decision[7] holding the exclusion of the 56 employees as arbitrary, whimsical, and wanting in legal basis[8] but set aside the challenged order of July 25, 1986 on the ground that 51[**] of 56 challenged voters were not yet union members at the time of the election per April 24, 1986 list submitted before the Bureau.[9] The decision directed among others the proclamation of Lacanilao's group as the duly elected officers and for ITM-MEA to absorb in the bargaining unit the challenged voters unless proven to be managerial employees.[10] Petitioners' motion for reconsideration was likewise denied.

Dissatisfied with the turn of events narrated above petitioners elevated the case to this Court by way of the instant petition for *certiorari* under Rule 65 of the Rules of Court.

Petitioners allege that public respondent director of Labor Relations committed grave abuse of discretion in ordering the Med-Arbiter to disregard the 56 segregated votes and proclaim private respondents as the duly elected officers of ITM-MEA whereas said respondent ruled that the grounds relied upon by ANGLO for the exclusion of voters are arbitrary, whimsical and without legal basis.

The petition is impressed with merit. The record of the case shows that public respondent categorically declared as arbitrary, whimsical and without legal basis the grounds[11] relied upon by ANGLO in disenfranchising the 56 voters in question. However, despite said finding public respondent ruled to set aside the Resolution of July 25, 1986 of the Med-Arbiter based on its own findings[12] that 51 of the 56 disenfranchised voters were not yet union members at the time of the election of union officers on May 26, 1986 on the ground that their names do not appear in the records of the Union submitted to the Labor Organization Division of the Bureau of Labor on April 24, 1986.

The finding does not have a leg to stand on. Submission of the employees names with the BLR as qualified members of the union is not a condition sine qua non to enable said members to vote in the election of union's officers. It finds no support in fact and in law. Per public respondent's findings, the April 24, 1986 list consists of 158 union members only[13] wherein 51 of the 56 challenged voters' names do not appear. Adopting however a rough estimate of a total number of union members who cast their votes of some 333[14] and excluding therefrom the 56 challenged votes, if the list is to be the basis as to who the union members are then public respondent should have also disqualified some 175 of the 333 voters. It is true that under Article 242(c) of the Labor Code, as amended, only members of the union can participate in the election of union officers. The question however of eligibility to vote may be determined through the use of the applicable payroll period and employee's status during the applicable payroll period. The payroll of the month next preceding the labor dispute in case of regular employees[15] and the payroll period at or

near the peak of operations in case of employees in seasonal industries.[16]

In the case before Us, considering that none of the parties insisted on the use of the payroll period-list as voting list and considering further that the 51 remaining employees were correctly ruled to be qualified for membership, their act of joining the election by casting their votes on May 26, 1986 after the May 10, 1986 agreement is a clear manifestation of their intention to join the union. They must therefore be considered ipso facto members thereof Said employees having exercised their right to unionism by joining ITM-MEA their decision is paramount. Their names could not have been included in the list of employee submitted on April 24, 1986 to the Bureau of Labor for the agreement to join the union was entered into only on May 10, 1986. Indeed the election was supervised by the Department of Labor where said 56 members were allowed to vote. Private respondents never challenged their right to vote then.

The Solicitor General in his manifestation agreed with petitioners that public respondent committed a grave abuse of discretion in deciding the issue on the basis of the records of membership of the union as of April 24, 1986 when this issue was not put forward in the appeal.

It is however the position of private respondents that since a collective bargaining agreement (CBA) has been concluded between the local union and ITM management the determination of the legal question raised herein may not serve the purpose which the union envisions and may destroy the cordial relations existing between the management and the union.

We do not agree. Existence of a CBA and cordial relationship developed between the union and the management should not be a justification to frustrate the decision of the union members as to who should properly represent them in the bargaining unit. Neither may the inclusion and counting of the 56 segregated votes serve to disturb the existing relationship with management as feared by herein private respondents. Respondents themselves pointed out that petitioners joined the negotiating panel in the recently concluded CBA. This fact alone is conclusive against herein petitioners and hence will estop

them later if ever, from questioning the CBA which petitioners concurred with. Furthermore, the inclusion and counting of the 56 segregated votes would not necessarily mean success in favor of herein petitioners as feared by private respondents herein. Otherwise, could this be the very reason behind their fears why they made it a point to nullify said votes?

WHEREFORE, premises considered, the Petition for *Certiorari* is **GRANTED**. The temporary restraining order issued by this Court on May 13, 1987 is hereby made permanent. The questioned Resolution of February 12, 1987 and the Decision of December 10, 1986 are hereby set aside for being null and void and the Order of July 25, 1986 of the Mediator Arbiter is hereby declared immediately executory.

Cost against private respondents.

SO ORDERED.

Teehankee, *C.J.*, Narvasa, Cruz and Paras, *JJ.*, concur.

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[*] Penned by Director Pura Ferrer-Callejo.
[1] Page 16, Rollo, Decision BLR Case No. A-9-221-56.
[2] Eduardo Tancinco, Oscar Bartolo, Fe Mudlong, Malou Quibin, Virgilio San Pedro, Daniel de Leon, Eduardo Poe and Henry Madriaga.
[3] BPLO-MA-019-86.
[4] Med-Arbiter Antonio R. Cortez.
[5] Pages 24-27, Rollo, Annex C, Petition.
[6] Page 18, Rollo.
[7] Pages 15-23, Rollo, BLR Case No. A-9-221-86, penned by Pura Ferrer-Calleja.
[8] Page 19, Rollo.
[**] The Bureau ruled that the other five (5) are union members and hence qualified to vote. However, since the segregated votes are unidentified and the names of the voters not indicated on the envelopes, said five (5) was not considered and counted for a final tally of the election results.
[9] Citing Article 242(c) of the Labor Code as amended, which provides that only union members can participate in the election of union officers.
[10] Page 23, Rollo.
[11] Supra.
[12] Page 20, Rollo, page 6, Decision BLR-A-9-221-86.

[13] Page 19, Rollo, page 5, Decision.
[14] Based on the results wherein Lacanilao garnered 119 votes whereas Tancinco a total of 116 votes.
[15] United States Lines vs. Associated Watchman and Security Union, G.R. No. L-12208 & L-12211, May 21, 1958.
[16] Tarke Warehouse Company, 95 NLRC 1133 (1951); Colorado River Farnes, 99 NLRC 41 (1952).

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