SUPREME COURT
EN BANC

FREE EMPLOYEES AND WORKERS ASSOCIATION (FEWA),
***Petitioner*,**

-versus-

G.R. No. L-20862
July 30, 1965

THE COURT OF INDUSTRIAL RELATIONS, BETTER BUILDINGS LABOR UNION (BLU), and WILLIAM S. WARNE, as owner and operator of BETTER BUILDINGS,
***Respondents*.**
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D E C I S I O N

REYES, *J.*:

Petition for *Certiorari* to Review and Set Aside the Orders of the Court of Industrial Relations, issued on September 18, 1962 and November 21, 1962, in its Case No. 965-MC, directing the holding of a certification election.

The factual background is as follows:

The Better Buildings, a single proprietorship of William S. Warne, with offices at Pasay City, engages in the business of cleaning and sanitation maintenance of different building offices, and establishments, employing for the purpose some 70 persons working at different job sites. Two labor unions, Free Employees and Workers' Association (FEWA) and Better Buildings Labor Union (BLU) claimed representation to bargain collectively for the laborers.

In view of their conflicting demands, the employer instituted proceedings in the Industrial Court, asking that a certification election be held after determining who are entitled to vote therein. In answer, both unions claimed majority membership, and the case was set for trial on January 18, 1962 before a hearing examiner.

On the day set, counsel for FEWA sought a continuance on the ground that it had to prepare and file an urgent pleading on the very day in an election protest pending in the House Electoral Tribunal (Electoral Case No. 138); but upon objection of the opposing lawyer for BLU, the postponement was denied. The lawyers for Better Buildings and FEWA being absent, evidence was received for BLU, consisting in the sole testimony of that union's president, Nelson Padilla, who exhibited the membership rosters (Exhs. "A", "B" and "C"), marked for identification, and with leave to submit later the union's certificate of registration.

Later, counsel for FEWA filed a verified motion for an opportunity to cross-examine the witness, and after hearing, the motion was granted, and the cross examination was set for March 9 and 10, 1962. Subpoenas were issued for Padilla to appear and be cross examined.

On March 9, Padilla and counsel for BLU did not appear; neither did they do so on March 10. Attorney for petitioner FEWA moved to strike out his testimony, but the court deferred final resolution until the next hearing, and meanwhile received evidence for the other parties. Trial was then reset for March 31, 1962. On that day, the witness, Padilla, was again absent; but the Court again held the motion to strike out his testimony in abeyance, and deferred its ruling once more.

On September 18, 1962, Judge Arsenio L. Martinez, on the basis of the exhibits identified by Padilla (who never submitted to cross-examination) petitioner's payroll, and the evidence for FEWA, held that "many workers had dual membership," and, being "in a quandary" as to which union really had the majority, ordered a certification election. Reconsideration being asked by FEWA having been denied on November 21, 1962 by the Court en banc, that Union elevated the case to this Court.

The issue before us is whether the Industrial Court abused its discretion in not ordering the striking out of the testimony of BLU's witness, for lack of cross examination, as well as the exhibits identified by him, there being no other witness for BLU.

It is the position of the Court of Industrial Relations that, a representation proceeding being non-adversary in character, the right of confrontation and cross examination may be dispensed with.

We agree with the appellant that, having been granted the opportunity to cross examine witness Nelson Padilla (and in fact the hearings were twice postponed because the witness did not appear for the purpose), it was error and abuse of discretion for the industrial court to have decided the case without the reserved cross examination, and to have taken into account Padilla's testimony in chief. The error of the trial court was compounded in that, after deferring its ruling on whether the testimony in chief should be stricken out, it decided the case on the merits without announcing the deferred ruling. It stands to reason that as long as the question of admissibility of the challenged testimony is not decided, appellant's evidence could not be considered complete, for the party challenging the testimony is unable to decide whether such evidence calls for additional rebuttal on its part, and the proof to be adduced would naturally vary according to whether the testimony of the lone witness for BLU is or is not to remain on the record. The fairness that lies at the root of due process, therefore, exacts that the party moving to strike out the testimony be apprised of the Court's ruling before the case is submitted for decision.

The respondent court's position that cross examination may be dispensed with is untenable. While the proceedings in case of

representation controversies are investigative in character, yet where two rival unions claim representation, the case becomes one of the adversary type, and has to be decided according to lawful evidence. This is clear from section 12(b) of the Industrial Peace Act, providing that —

> "Whenever a question arises concerning the representation of employees, the Court may investigate such controversy. In any such investigation the Court shall provide for a speedy and appropriate hearing upon due notice, and if there is any reasonable doubt as to whom the employees have chosen the Court shall order a secret election."

The words "appropriate hearing upon due notice" clearly connote that the intervening parties must be given opportunity not only to present their witnesses but also to cross examine those of the adversary, for there is no real hearing when the party is not given opportunity to test, explain, or refute. We need not reiterate here that cross examination is one of the most efficacious tests for the discovery of truth for probing the reliability of the testimony, and it would be appalling for a fact-finding body to presume that it can lawfully suppress such an essential evidentiary practice. It would mean that, where rights depended upon facts, that body could "disregard all rules of evidence and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another, is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power" (Interstate Commerce Comm. vs. Louisville & N. R. Co., 57 L. Ed [U. S.] 433).

That the Court of Industrial Relations is only quasi judicial in character, and not bound by strict rules of evidence, does not mean that it can dispense with any and all rules, even the most substantial, and those shown by experience to be essential in arriving at the truth. In the case just cited (57 L. Ed. 434), the United States Supreme Court used the following language:

> "The Commission is an administrative body and, even where it acts in a quasi judicial capacity, is not limited by the strict rules, as to the admissibility of evidence, which prevail in suits

> between private parties. Interstate Commerce Commission vs. Baird, 194 U.S. 25, 48 L. ed. 860, 24 Sup. Ct. Rep. 563. But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. In such cases the Commissioners cannot act upon their own information, as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding; for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the Commission had before it extraneous, unknown, but presumptively sufficient information to support the finding. (United States vs. Baltimore & O.S.W.R. Co. 226 U.S. 14, ante, 104, 33 Sup. Ct. Rep. 5.)"

The law (jam quot.) does not contemplate the holding of a certification election unless the preliminary inquiry shows a reasonable doubt as to which the contending unions represent a majority, or unless ten per centum of the laborers demand this election. But these grounds necessarily depend on the weight of the evidence adduced by the rival unions, and this weight, in turn, can not be determined properly if the right of cross examination is denied. Once the testimony of Nelson Padilla is discarded, as it must be, for lack of opportunity for cross examination, then the exhibits identified by him in the course of his testimony must be equally rejected with it, there being no independent ground for their admissibility. So that their consideration by the court below was unwarranted.

Since "wholly inadequate proof by the petitioning union that it possesses a majority of the employees' authorization is also a bar to a holding that a question exists concerning representation (2 Teller Labor Disputes, p. 200; 8 NLRB 665; 2 NLRB 859; 2 NLRB 1070), it is plain that without Nelson Padilla's testimony the case for the BLU can not stand, and the election called for is not justified. We think,

however, that the interest of justice would be better served by remanding the case for a proper hearing in accordance with law.

The respondent court also seeks to defend its questioned order by claiming that it examined the signatures in the membership rolls exhibited by Padilla and found them genuine. This justification appears not convincing, to say the least, for it is nowhere mentioned in the challenged order and it reposes on the assumed authenticity of the membership rolls themselves. At any rate, the appellant had no notice that the authenticity of the signatures was in issue and no opportunity to adduce proof on the point. Ex parte findings formulated in the absence of the applicant, without opportunity for a hearing thereon, and based upon evidence undisclosed to it, are not sufficient to make a prima facie case (Saltzman vs. Stromberg Carlson Telephone Co., 46 Fed. 2d. 612; of Sabre vs. Rutland R. Co., Am. Cas. 1915C, p. 1272).

WHEREFORE, the challenged Orders of the respondent court, dated September 18 and November 21, 1962, are revoked and set aside, and the records ordered remanded to the Court of Industrial Relations for a rehearing conformable to this opinion. Costs against Better Buildings Labor Union.

Bengzon, *C.J.*, Concepcion, Paredes, Dizon, Regala, Makalintal, Bengzon, and Zaldivar, *JJ.*, concur.
Bautista Angelo, *J.*, took no part.