SUPREME COURT
FIRST DIVISION

FEDERATION OF FREE WORKERS,
***Petitioner*,**

-versus-

G.R. No. L-36466
November 26, 1973

HON. JUDGE ANSBERTO P. PAREDES, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF INDUSTRIAL RELATIONS, HON. AMADO GAT INCIONG, IN HIS CAPACITY AS UNDERSECRETARY OF LABOR AND KAPISANAN NG MGA MANGGAGAWA SA ASSOCIATED ANGLO-AMERICAN TOBACCO CORPORATION-FOITAF,
***Respondents*.**
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D E C I S I O N

TEEHANKEE, *J.*:

In this original action, the Court sets aside the respondent judge's questioned order which denied petitioner union's timely motion to intervene and participate in a scheduled consent election between two other competing unions on the ground that the motion had been filed

late and was not proper under the Rules of Court which allows intervention only "before or during a trial." The paramount criterion is that the genuine choice of the workers for their collective bargaining representative be assured through a certification election which is essentially fact-finding rather than adversary in character and hence all labor organizations which have shown a substantial interest at stake in the election and have timely applied to participate therein before the holding of the election should be so allowed to intervene and be voted for therein.

On August 18, 1972, pursuant to a hearing called on the petition[1] of the Associated Anglo-American Tobacco Corporation for the holding of a certification election between two contending labor organizations, namely respondent Kapisanan ng Mga Manggagawa sa Associated Anglo-American Tobacco Corporation-FOITAF (KAPISANAN for short) and the Federation of Democratic Labor Unions (FEDLU for short), the industrial court issued an order directing the holding of a consent election between the two competing unions as agreed by the parties.

The Department of Labor accordingly scheduled the certification election on September 14, 1972. Well before said scheduled date, petitioner Federation of Free Workers (FFW for short) having learned of the scheduled election, filed on September 8, 1972 a motion for intervention in the consent election, and on September 13, 1972 then Judge Joaquin Salvador of the industrial court ordered the suspension of the scheduled election.

Only respondent KAPISANAN opposed petitioner FFW's intervention and participation in the certification election, as per its opposition of September 22, 1972. Neither the employer-company nor the other union FEDLU filed any opposition, and hence, they have not been impleaded as parties-respondents.

Hearings were conducted by Judge Salvador to determine the legal interest on FFW's part in support of its intervention motion. FFW's intervention carried the signatures of more than 100 members-employees of the company and witnesses were presented to identify the genuineness of some sixty of them which amounted to 10% of the

approximately 580 rank and file employees of the employer-company.[2]

Thereafter, Judge Salvador's resignation as judge of the industrial court was accepted after the declaration of martial law and respondent judge, who took over the case, then issued on February 21, 1973 an order denying FFW's motion for intervention, setting aside the suspension order of September 13, 1972 and revived Judge Salvador's order of August 18, 1972 for the holding of the certification election with only the two original unions, KAPISANAN and FEDLU, participating, on the ground that FFW's motion for intervention of September 8, 1972 was filed late, after the certification election order of August 18, 1972 had become final, and was therefore improper under section 2, Rule 12 of the Revised Rules of Court which permits intervention only "before or during a trial."

Petitioner FFW immediately filed on March 1, 1973 (on the third day after receipt of notice) a motion for reconsideration of the industrial court's order denying its intervention and participation, and having learned on March 12, 1973 that the Department of Labor had scheduled the certification election on March 17, 1973 notwithstanding the pendency of its motion for reconsideration, it further filed on the same date its motion of March 12, 1973 to suspend the holding of said election.

Due to the urgency of the matter, petitioner also wrote on March 14, 1973 a letter to respondent undersecretary of labor requesting the suspension of the scheduled election because of the pendency of its motion for reconsideration with the industrial court, but the latter took no action thereon and instead ordered the letter returned to petitioner.

Hence, the filing of the present petition with prayer for restraining order on March 16, 1973 for nullification of respondent judge's order of February 21, 1973 and for an order to allow FFW's intervention and participation in the certification election among the rank and file employees of the employer-company. The Court, as per its resolution and order of March 19, 1973 required respondents to answer the petition and issued a restraining order restraining respondents from

proceeding with the certification election scheduled on March 17, 1973.

Respondent undersecretary's answer informed the Court that the scheduled election of March 17, 1973 did not proceed, since he received on March 16, 1973 the industrial court's en banc resolution suspending the said election "until further orders" in view of the pendency of petitioner's motion for reconsideration and states that "there is nothing more to be enjoined."

Respondent court's answer, as well as respondent KAPISANAN's answer, merely reiterated the trial judge's view that FFW's intervention was no longer proper under the Rules of Court. They did not even inform the Court — unlike respondent undersecretary — that the scheduled election has been ordered suspended by the court's en banc resolution of March 16, 1973.

As far as the record shows, the industrial court has taken no further action on petitioner FFW's motion for reconsideration insisting that it be allowed to intervene and participate in the certification election. The Court believes that this principal issue should be resolved once and for all now in order to save time, money and effort all around as urged by petitioner, rather than hew to respondent court's technical objection that "the instant petition is improper, premature and defective (since) the disputed order of respondent judge is still pending consideration by the court en banc by petitioner's filing of a motion of reconsideration."[3] The urgent matter of who of the three competing unions represents the genuine choice of the workers should not be delayed any further.

Hence, the roadblock of whether FFW may be allowed to intervene and participate in the certification election in a three-way contest should now be removed by resolving herein this simple and practical issue to clear the way for the holding of the certification election — which has been held up for well over a year now.

The Court finds that on the strength of Section 7 of Commonwealth Act No. 103 which grants the industrial court broad and ample powers to "direct parties to be joined or stricken out from the proceedings, correct, amend or waive any error, defect or irregularity,

whether in substance or in form," the industrial court acted with grave abuse of discretion in denying petitioner FFW's motion to intervene and participate in the certification election rather than granting the same and "assuring that all labor organizations having a right to take part therein can participate in such certification election" as stressed in Lakas ng Manggagawang Pilipino vs. Benguet Consolidated, Inc.[4] and thus "help subserve the declared policies of the Industrial Peace Act" as in Lakas ng Manggagawang Makabayan vs. C.I.R.[5]

Respondent judge's application of Rule 12, Section 2 on intervention in ordinary litigations for its ruling that petitioner's motion for intervention, although timely presented before the scheduled election, was improper as it was not "presented before or during a trial" but after issuance of the August 18, 1972 order approving the holding of a consent election ignored the plain fact that no trial was herein involved at all as the parties agreed on a consent election as well as the juridical concept emphasized in Benguet Consolidated, supra, that "what is essential is that every labor organization be given the opportunity in a free and honest election to make good its claim that it should be the exclusive collective bargaining representative. In line with such a sound juridical concept, it has been made clear by this Court in an opinion by the then Justice, now Chief Justice, Concepcion, in LVN Pictures, Inc. vs. Philippine Musicians Guild,[6] that a certification proceeding is not 'a 'litigation' in the sense in which this term is commonly understood, but a mere investigation of a non-adversary, fact-finding character.'" Since representation cases are not to be taken as contentious litigations or 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, the cited Rule of Court on intervention has no application.

Respondent court had duly verified at the hearing of FFW's motion for intervention that it has a substantial interest in the election proceeding. There having been no certification election held during the twelve months prior to the date of the request of FFW for intervention, and the said FFW having shown itself to represent at least ten percent of the employees, it was as a matter of law

mandatory upon the industrial court in accordance with section 12 of Republic Act No. 875 to order a certification election duly participated in by FFW as a contending union.

Respondent judge's attempt to distinguish the cited case of Lakas ng Manggagawang Makabayan (LMM), supra,[7] from the case at bar by asserting that this Court had therein allowed the intervention of LMM even after the trial because no opposition thereto had been filed by the adverse parties missed the import of this Court's pronouncements thru Mr. Justice Castro in the same case that "at about the time of the filing of the motion for intervention by the LMM, allegiances and loyalties among the U.S. Tobacco Corporation employees were behaving like shifting sands such as to have a radical effect upon the choice of the appropriate bargaining representative.;" that no evidence in the record "sufficiently rebuts the claim of the LMM that it has 300 members among the employees of the U.S. Tobacco Corporation;" that "at the time the motion for intervention was presented by the LMM to the CIR, the latter was still in the process of investigating the possibility of holding a new election since it had, through its associate judge, nullified the election held in February, 1969 and directed the holding of a new one. The CIR en banc, in turn, subsequently affirmed the nullity of the February 1969 election.;" and that "the inclusion of the LMM in the new competition for labor representation would, in an appreciable measure, help subserve the declared policies of the Industrial Peace Act." It is manifest therefrom that even if the other contending unions had actually opposed LMM's intervention, the Court would have allowed LMM's participation in the certification election in order to carry out its fundamental objective of ascertaining by a majority vote the workers' true choice of their bargaining agent. Thus, in Benguet Consolidated, supra, the Court did overrule the local union's opposition as against its parent federation's (PAFLU) agreement to have a third union participate in the certification election on the basic ground that all labor unions having a right to take part therein should participate therein to ascertain the true choice of the rank and file.

The most important criterion, as therein stressed, is that the bargaining agent be truly representative of the employees and their genuine choice, and hence all labor organizations which have shown a substantial interest at stake in the elections and have timely applied

to participate therein before the holding of the elections should be so allowed to intervene and be voted for therein. This is but to help subserve the declared policies of the Industrial Peace Act, to accomplish which the industrial court has been freed from the narrow constraints of the technical rules of procedure in order to grant relief according to the justice and equity and substantial merits of the case.

ACCORDINGLY, the writs of prohibition and *certiorari* are issued, as prayed for. Respondent judge's order of February 21, 1973 is hereby annulled and set aside, and the industrial court is instead directed to allow the intervention and participation of petitioner Federation of Free Workers together with the two other competing unions (KAPISANAN and FEDLU) in the certification election among the rank and file employees of the Associated Anglo-American Tobacco Corporation, which shall be conducted by the Department of Labor at the earliest practicable date. So ordered.

Makalintal, *C.J.*, Castro, Makasiar, Esguerra and Muñoz Palma, *JJ.*, concur.

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[1] Case No. 3592-MC of the industrial court.
[2] Petition, par. VII; petitioner's memorandum, pp. 6-7.
[3] Respondent court's memorandum, p. 2.
[4] 48 SCRA 169, 179 (Nov. 24, 1972), per Fernando, J.
[5] 36 SCRA 600, 609 (Dec. 28, 1970), per Castro, J.
[6] 110 Phil. 725 (1961) and citing a host of cases. See PAFLU vs. CIR, 47 SCRA 390 (Oct. 31, 1972).
[7] See fn. 5.