SUPREME COURT
SECOND DIVISION

FILIPINO METALS CORPORATION,
***Petitioner*,**

-versus-

G.R. No. L-43861
September 4, 1981

HONORABLE BLAS OPLE, Secretary of Labor, CARMELO NORIEL, Director of Labor Relations, Mr. GEORGE EDUVALA, Mr. ZARAGOZA, NEW FILIPINO METAL WORKERS UNION-TUPAS, and INDUSTRIAL WORKERS UNION,
***Respondents*.**
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D E C I S I O N

FERNANDO, *C.J.*:

Two questions, as yet unresolved at the time of the filing of this petition as well as at the time of its submission, called for its being given due course. They are (1) whether the then Acting Secretary of Labor acted according to law in referring back an appeal from an order of the Director of Labor Relations, requiring the holding of a certification election to such official for him to decide and (2) whether an employer has an interest cognizable in law to appeal from such

order. The second question had since then been resolved, but the first has not as yet been given a definitive answer.

Petitioner as the employer filed this *certiorari* proceeding assailing the actuation of the then Acting Secretary of Labor Amado G. Inciong. He referred back to the then Director of Labor Relations, Carmelo C. Noriel,[1] the appeal interposed by petitioner against an order declaring an existing collective bargaining agreement as suspended subject to the outcome of the certification election, required to be held within twenty days. The basis for such appeal was the existence of a certified collective bargaining agreement which, in the opinion of petitioner, should be given full force and effect rather than being suspended. After a motion for reconsideration was denied, an appeal was taken to the then Acting Secretary of Labor. It is the contention of petitioner that there should be a decision by the Secretary or Acting Secretary, instead of the appeal being sent to the very same official who issued the order sought to be nullified. In the answer filed on behalf of public respondents, such a procedure was sought to be justified on the basis of one of the implementing rules providing that the decision of the Bureau of Labor Relations in certification matters should be final and unappealable.[2] The then Acting Secretary Inciong, so it is argued, "was completely justified in referring the case back to the Director of Labor Relations for the latter to treat the same as a motion for reconsideration."[3]

The petition must be dismissed not in accordance with the above view which raises a procedural due process question, but in accordance with previous authoritative rulings (1) on the lack of interest of petitioner-employer cognizable by law and (2) the necessity for the holding of a certification election.

1. The pertinent question of the assailed order of the then Secretary of Labor Amado G. Inciong reads as follows: "Without waiving any of our powers and duties under the Administrative Code [to] review any decision by subordinate officials of this Department, it is our policy that this Office will intervene in Med-Arbitration cases only where there is an imminent threat to public order and stability or when, impelled by urgent public considerations, the Secretary of Labor at his own initiative decides to review decisions of the

Bureau of Labor Relations."[4] The introductory phrase is correct insofar as it states categorically that the Secretary of Labor then, the Minister of Labor now, is vested with the power of reviewing "any decision by subordinate officials" and is free from any objection when it was made clear that there was no waiver of such power, with this qualification that a duty cannot be waived. Then came the statement of the policy of non-intervention except in cases of "imminent threat to public order and stability or when, impelled by urgent public considerations," such power to review decisions of the Bureau of Labor Relations would be exercised. Such a limitation as a matter of policy may be acceptable. There is this flaw, however, from which it suffers. An appeal having been taken from an order of the Bureau of Labor Relations, there was a duty cast upon the then Acting Secretary to pass on it. He could have affirmed what was done by his subordinate, modified it, or reversed it. The tenor of his order being obviously the lack of an "imminent threat to public order and stability" as well as of "urgent public considerations," an affirmance of the appealed decision was indicated. When, instead, the matter was referred anew to the very same official, even if in the guise of treating it as a motion for reconsideration, there was an affront to the concept of procedural due process. Considering that the then Acting Secretary of Labor called on the Director of Bureau of Labor Relations to review his own determination, the objection based on due process ground cannot be brushed aside. It is impressed with merit.[5] As is so well put in an oft-quoted legal maxim: *Nemo debet esse judex in propria causa*.

2. As pointed out in the opening paragraph of this opinion, this Court has authoritatively laid down the controlling doctrine as to when an employer may have an interest sufficient in law enabling him to contest a certification election. There is relevance to this excerpt from Consolidated Farms, Inc. vs. Noriel:[6] "The record of this proceeding leaves no doubt that all the while the party that offered the most obdurate resistance to the holding of a certification election is management, petitioner Consolidated Farms, Inc., II. That

circumstance of itself militated against the success of this petition. On a matter that should be the exclusive concern of labor, the choice of a collective bargaining representative, the employer is definitely an intruder. His participation, to say the least, deserves no encouragement. This Court should be the last agency to lend support to such an attempt at interference with a purely internal affair of labor."[7] Reference was likewise made in the above decision to the earlier case of Monark International, Inc. vs. Noriel.[8] Thus: "It is true that there may be circumstances where the interest of the employer calls for its being heard on the matter. An obvious instance is where it invokes the obstacle interposed by the contract-bar rule."[9] There is nothing in its thirteen-page appeal[10] to the Acting Secretary of Labor clearly indicative that the main reliance was on the contract-bar rule. All it alleged was that there was an existing collective bargaining agreement and therefore it would be "untimely" to hold a certification election.[11] That clearly does not suffice to take this case out of the operation of the authoritative doctrine. At any rate, the time that had elapsed since 1976 would make it manifest that a certification election is long overdue.

3. It is equally indubitable that the doubt sought to be cast on the authenticity of the signatures appearing in the petition for certification election cannot be a bar to its being granted. Even on the assumption that the evidence is clearly insufficient and the number of signatories less than 30%, that cannot militate against the favorable response to such petition for certification election. As far back as Phil. Association of Free Labor Unions (PAFLU) vs. Bureau of Labor Relations,[12] a 1976 decision, this Court categorically held: "Petitioner's contention to the effect that the 30% requirement should be satisfied suffers from an even graver flaw. It fails to distinguish between the right of a labor organization to be able to persuade 30% of the labor force to petition for a certification election, in which case respondent Bureau is left with no choice but to order it, and the power of such governmental agency precisely entrusted with the implementation of the collective bargaining process to

> determine, considering the likelihood that there may be several unions within a bargaining unit to order such an election precisely for the purpose of ascertaining, which of them shall be the exclusive collective bargaining representative. The decision of respondent Bureau of April 4, 1975 was intended for that purpose. That was why not only petitioner but also the Philippine Federation of Labor, the National Labor Union, the National Federation of Labor Unions and the Samahan ng mga Manggagawa at Kawani sa AG&P were included in the list of labor unions that could be voted on. To reiterate a thought already expressed, what could be more appropriate than such a procedure if the goal desired is to enable labor to determine which of the competing organizations should represent it for the purpose of a collective bargaining contract?"[13]

WHEREFORE, the Petition is dismissed and the restraining order lifted. Costs against Filipino Metals Corporation.

Aquino, Concepcion, Jr., Guerrero and De Castro, *JJ.*, concur.
Barredo and Abad Santos, *JJ.*, are on official leave.

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[1] The other respondents are Mr. George Eduvala, Mr. Zaragoza, New Filipino Metal Workers Union-TUPAS, and Industrial Workers Union.
[2] Paragraph 10, Answer, quoting Section 10, Book V, of the Rules and Regulations Implementing the Labor Code which reads: "The Bureau shall have twenty (20) working days from receipt of the records of the case within which to decide the appeal. Its decision shall be final and unappealable."
[3] Ibid.
[4] Petition, Annex Q.
[5] There is this exception. An appeal could be referred back by the Minister of Labor to the Director of Labor Relations in the absence of evidence for the reception thereof, on the basis of which a decision can be rendered by the latter. Cf. Metro Drug Corporation vs. Sagmit, L-51154, October 18, 1979, 93 SCRA 560 (per Melencio-Herrera, J.).
[6] L-47752, July 31, 1978, 84 SCRA 469.
[7] Ibid, 473.
[8] L-47570-71, May 11, 1978, 83 SCRA 114.
[9] Ibid., 118.
[10] Petition, Annex S.

[11] Ibid., 13.
[12] L-42115, January 27, 1976, 69 SCRA 132.
[13] Ibid, 141. The above doctrine was reiterated in Today's Knitting Free Workers Union vs. Noriel, L-45057, February 28, 1977, 75 SCRA 450; Kapisanan ng mga Manggagawa vs. Noriel, L-45475, June 20, 1977, 77 SCRA 414; Monark International Inc. vs. Noriel, L-47570-71, May 11, 1978, 83 SCRA 114; National Mines and Allied Workers Union vs. Luna, L-46722, June 15, 1978, 83 SCRA 607; Scout Ramon V. Albano Memorial College vs. Noriel, L-48347, October 3, 1978, 85 SCRA 494.