SUPREME COURT
SECOND DIVISION

IN THE MATTER OF PETITION FOR DIRECT CERTIFICATION OR CERTIFICATION ELECTION.

FIRESTONE TIRE & RUBBER COMPANY EMPLOYEES' UNION (FEU),
***Petitioner*,**

-versus-

G.R. Nos. L-45513-14
January 6, 1978

THE HON. FRANCISCO L. ESTRELLA, as Acting Director of the Bureau of Labor Relations, FIRESTONE TIRE & RUBBER COMPANY OF THE PHILIPPINES and ASSOCIATED LABOR UNIONS (ALU),
***Respondents*.**
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D E C I S I O N

ANTONIO, *J.*:

Petition to set aside two Resolutions issued by respondent Acting Director Francisco L. Estrella of the Bureau of Labor Relations in BLR Cases Nos. A-070-76 and 2106-76.

The petition alleges that on June 21, 1973, the National Labor Relations Commission certified a three-year collective bargaining agreement between respondents Associated Labor Union (ALU) and Firestone Tire & Rubber Company of the Philippines. Said collective bargaining agreement was to be effective from February 1, 1973 to January 31, 1976.

On February 1, 1974, the afore-mentioned respondents entered into a "Supplemental Agreement" extending the life of the collective bargaining agreement for one year, making it effective up to January 31, 1977. The extension was not ratified by the covered employees nor submitted to the Department of Labor for certification.

Within the sixty day period prior to the original expiry date of the agreement, some 233 out of about 400 rank-and-file employees of respondent Company resigned from respondent ALU. Subsequently, the number of these employees who resigned from the union was increased to 276 and, by way of letter to the Director of the Bureau of Labor Relations, they requested for the issuance of a certificate of registration in favor of petitioner Firestone Tire & Rubber Company Employees' Union (FEU). On January 28, 1976, Registration Permit No. 8571-IP was issued to petitioner FEU.

On February 10, 1976, ten (10) days after the original expiry date of the collective bargaining agreement, petitioner FEU filed a petition with the Bureau of Labor Relations for direct certification or certification election,[1] with the written consent of 308 employees, or 77% of the 400-man bargaining unit.

On February 20, 1975, respondent ALU filed with the Bureau of Labor Relations a petition for the cancellation of the registration certificate of petitioner FEU,[2] alleging that at the time of FEU's registration, respondent ALU was the recognized and certified collective bargaining agent in the unit, and that FEU had not submitted the required sworn statement that there is no recognized or certified collective bargaining agent therein.

On February 23, 1976, respondent ALU prayed for the dismissal of RO4-MED-143-76 on the grounds, among others, that it has a pending petition for the cancellation of FEU's registration certificate and that there is an existing collective bargaining agreement, due to expire on January 31, 1977, which constitutes a valid bar to the holding of a certification election.

Respondent Company likewise opposed the holding of a certification election on the ground, however, that the petition therefor was filed late, considering that it was filed ten (10) days after the expiry date of the collective bargaining agreement.

On April 6, 1976, the Med-Arbiter issued an Order granting the petition for certification election. Respondents ALU and the Company filed separate appeals from the order before the Bureau of Labor Relations.

The Order of the Med-Arbiter was affirmed by the Honorable Director Carmelo C. Noriel on September 23, 1976, and Motions for Reconsideration were filed by ALU and the Company on October 11, 1976.

On January 25, 1977, respondent Acting BLR Director Francisco L. Estrella issued a Resolution reversing the Order of the Med-Arbiter which was affirmed by Director Noriel, and holding:

> "That there indeed exists a prejudicial question involving the very legal personality of the petitioner union. In BLR Case No. 2106-76, the validity of the registration certificate of petitioner is at issue. It is therefore obvious that the present representation question should wait for the final disposition of the issue on petitioner's legal personality, if only to forestall what may prove to be unnecessary proceedings."[3]

The issue of whether or not there was an existing collective bargaining agreement which serves as a bar to the holding of a certification election was not resolved by respondent Acting Director Francisco L. Estrella.

On June 8, 1976, BLR Case No. 2106-76 for the cancellation of petitioner FEU's certificate of registration was dismissed by the Med-Arbiter. Respondents ALU and the Company appealed to the Bureau of Labor Relations, but the appeals were dismissed by Director Carmelo C. Noriel. Motions for Reconsideration were filed by the same respondents and on January 25, 1977, respondent Acting Director Francisco L. Estrella entered a Resolution reversing the decision of Director Noriel and revoking the certificate of registration of petitioner FEU. Respondent Acting Director Estrella ruled that according to Section 4, Rule II, Book V of the Rules of Implementing the Labor Code, no union may be registered when there is in the bargaining unit a recognized or certified collective bargaining agent. The Acting Director found that there was such a bargaining agent in the unit (ALU), and that there was in fact a collective bargaining agreement which was yet to expire on January 31, 1977. On that score, it was held that FEU's application for registration was premature, and that it should have waited for the expiration of the collective bargaining agreement.

The two Resolutions issued by Respondent Acting Director Francisco L. Estrella are subject of the instant petition for review by way of certiorari.

It is petitioner's contention that the issue of whether or not there was an existing contract or collective bargaining agreement to validly bar the holding of a certification election should have been resolved by respondent Acting Director in BLR Case No. A-070-76, as it was already intertwined with the issue of petitioner's legal personality as assailed in BLR Case No. 2106-76. According to petitioner, "if the petition for certification election in this case is not barred by the contract in question, then the registration certificate of petitioner, acquired as it was within the sixty-day freedom period of such contract must, of necessity, be likewise not barred or denied as premature." Likewise, petitioner alleges that "there being no pronouncement on the applicability of the 'contract bar' rule in this case, the cancellation of the registration certificate of petitioner is devoid of legal basis, hence it was done by the respondent BLR Acting Director in grave abuse of discretion."

Further, it is petitioner's stand that the Acting Director erred in concluding that the collective bargaining agreement was to expire on January 31, 1977, for which reason he held that petitioner's application for registration was premature. The expiry date of January 31, 1977, according to petitioner, was unauthorized because the extension of the contract for a period of one year was not certified by the Department of Labor and was "used to foil the constitutional right of the workers to self-organization and to engage in collective bargaining."

The petition prays that the Resolutions of respondent Acting Director, both dated January 25, 1977, be set aside, and the orders/decisions of Director Carmelo C. Noriel, dated September 23, 1976 and October 8, 1976, be affirmed.

Respondent Firestone Tire and Rubber Company of the Philippines filed its Comment to the instant petition, contending, mainly, that petitioner FEU had no legal personality as a union because its non-compliance with Section 4, Rule II, Book V of the Rules and Regulations Implementing the Labor Code is sufficient ground for the cancellation of its registration certificate.

Respondent ALU likewise filed its Comment, reiterating the contention that FEU had no legal personality to ask for a direct certification or certification election because its certificate of registration was obtained fraudulently and has, in fact. been cancelled.

In the meantime, due to the fact that the collective bargaining agreement had already expired, respondent ALU demanded the respondent Company negotiate with it for a new agreement. The Company requested for specific advice on the proper course of action from the Department of Labor. In response to the request, the Department answered that "in the absence of any adjudication from competent authority and in accordance with existing jurisprudence there is no legal impediment for (the) Company to negotiate a new collective bargaining agreement with the Associated Labor Unions."

Accordingly, a new collective bargaining agreement was entered into between ALU and the Company on April 1, 1977.

It appears that on January 31, 1977, FEU filed with Regional Office No. 4 Case No. R04-MED-808-77, a petition for direct certification/certification election, utilizing its questioned Registration Permit No. 8571-IP, dated January 26, 1976.

We find this petition meritorious. In BLR Case No 2160-76, Director Carmelo C. Noriel, resolving the pivotal issue of whether or not the failure of FEU to submit "a sworn statement to the effect that there is no recognized or certified collective bargaining agent in the bargaining unit concerned" warrants the revocation of its registration, said:

> "This Bureau answers in the negative.
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> x x x
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> "Notwithstanding the existence of a certified or recognized collective bargaining agent, the policy of this Office sanctions a registration of new union during the freedom period especially if it has become apparent that a substantial number of union members has decided to form a new labor organization, as aptly illustrated in the case at bar. If the rule were otherwise, no recourse whatsoever shall be accorded to members of a bargaining unit who would like to make a free choice of their bargaining representative, thereby placing the constitutional rights of the workers to self-organization and collective bargaining in mockery, if not, in utter illusion."

This view is supported by precedents, it seems to be the better view that a contract does not operate as a bar to representation proceedings, where it is shown that because of a schism in the union the contract can no longer serve to promote industrial stability, and the direction of the election is in the interest of industrial stability as well as in the interest of the employees' right in the selection of their bargaining representatives.[4] Basic to the contract bar rule is the proposition that the delay of the right to select representatives can be justified only where stability is deemed paramount. Excepted from the contract bar rule are certain types of contracts which do not foster industrial stability, such as contracts where the identity of the

representative is in doubt. Any stability derived from such contracts must be subordinated to the employees' freedom of choice because it does not establish the type of industrial peace contemplated by the law.[5]

In the case at bar, it is doubtful if any contract that may have been entered into between respondent ALU and respondent Company will foster stability in the bargaining unit, in view of the fact that a substantial number of the employees therein have resigned from ALU and joined petitioner FEU. At any rate, this is a matter that must be finally determined by means of a certification election.

In Foamtex Labor Union-TUPAS vs. Noriel,[6] we said:

> "The question of whether or not the disaffiliation was validly made appears not to be of much significance, considering that the petition for direct certification is supported by eighty (80) out of a total of one hundred twenty (120) of the rank and file employees of the unit. Pursuant to Article 256 of the Labor Code, 'if there is any reasonable doubt as to whom the employees have chosen as their representative for the purpose of collective bargaining, the Bureau shall order a secret ballot election to be conducted by the Bureau to ascertain who is the freely chosen representative of the employees concerned.' It is very clear from the aforementioned circumstances that there is actually a reasonable doubt as to whom the employees have chosen as their representative for the purpose of collective bargaining.
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> "As to whether or not the disaffiliation was actually and validly made, or whether Foamtex Labor Union of respondent Belga is the true collective bargaining representative of the employees are questions that need not be resolved independently of each other. Such questions may be answered once and for all the moment is determined, by means of the secret ballot election, the union to which the majority of the employees have really reposed their allegiance. The important factor here is the true choice of the employees, and the most expeditious and effective manner of determining this is by means of the certification election, as it is for this very reason that such procedure has

> been incorporated in the law. To order that a separate secret ballot election be conducted for the purpose of determining the question of policy, i.e., whether or not the majority of the employees desire to disaffiliate from the mother union, would be merely a circuitous way of ascertaining the majority's true choice.
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> As observed PAFLU vs. Bureau of Labor Relations (69 SCRA 132, 139), a certification election for the collective bargaining process 'is one of the fairest and most effective way of determining which labor organization can truly represent the working force. It is a fundamental postulate that the will of the majority, if given in an honest election with freedom on the part of the voters to make their choice, is controlling. No better device can assure the institution of industrial democracy with the two parties to a business enterprise, management and labor, establishing a regime of self-rule.'"

Similarly, in Philippine Labor Alliance Council (PLAC) vs. Bureau of Labor Relations, et al.,[7] it was held that once the fact of disaffiliation has been demonstrated beyond doubt, a certification election is the most expeditious way of determining which labor organization is to be the exclusive bargaining representative.

It appearing that the extension of the life of the collective bargaining agreement for a period of one year was not certified by the Bureau of Labor Relations, it cannot, therefore, also bar the certification election. Only a certified collective bargaining agreement would serve as a bar to such election.[8]

Corollarily, therefore, petitioner's application for registration was not premature, as it need not have waited for the expiration of the one-year extension, the agreement having expired on January 31, 1976.

WHEREFORE, the instant petition for certiorari is granted. The two Resolutions, both dated January 25, 1977 in BLR Cases Nos. A-060-76 and 2106-76 are hereby **REVERSED** and set aside. Costs against private respondents.

Barredo, *J.*, *(Acting Chairman)*, Aquino, Concepcion, Jr. and Guerrero, *JJ.*, concur.
Fernando, *J.*, *(Chairman)*, and Santos, *JJ.*, are on leave.
Guerrero, *J.*, was designated to sit in the Second Division.

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[1] Case No. RO4-MED-143-76, renumbered BLR. Case No. A-07O-76.
[2] BLR Case No. 2106-76.
[3] Annex "B", Petition, p. 27, Rollo.
[4] Re: Hershey Chocolate Corp., 121 NLRB 901.
[5] Re: Paragon Products Corporation, 134 NLRB 662.
[6] 72 SCRA 371, 376-378.
[7] 75 SCRA 162.
[8] Foamtex Labor Union-TUPAS vs. Noriel, supra, pp. 377-378.
