SUPREME COURT
SECOND DIVISION

FOAMTEX LABOR UNION-TUPAS,
***Petitioner*,**

-versus-

G.R. No. L-42349
August 17, 1976

HON. DIRECTOR OF THE BUREAU OF LABOR RELATIONS CARMELO NORIEL, and CORAZON BELGA, ET AL.,
***Respondents*.**
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D E C I S I O N

ANTONIO, *J.*:

This is a Petition for *Certiorari* and Prohibition with Preliminary Injunction to annul the Order of the Bureau of Labor Relations in BLR Case No. 0390, affirming the Order of the Med-Arbiter calling for a certification election among the employees of the Foamtex Manufacturing Corporation.

The Foamtex Labor Union was originally an independent union, which was registered with the Bureau of Labor Relations on November 25, 1970.[1] It became affiliated with the Trade Unions of the Philippines and Allied Services (TUPAS) as its mother federation

sometime in 1971 and was, thereafter, called Foamtex Labor Union-TUPAS. It was during this affiliation that a collective bargaining agreement was entered into on July 1, 1971, and said collective bargaining agreement expired last August 1974. Negotiations for a new collective bargaining agreement created a deadlock between the Foamtex Labor Union-TUPAS and the company on the questions of wage increase, living allowance and Christmas bonus, prompting respondent Corazon Belga, in behalf of the union, to file a petition, on November 25, 1974, for mediation or conciliation with the Bureau of Labor Relations in order to resolved the issues causing the deadlock.[2]

It is claimed by petitioner that, during the pendency of the petition for mediation or conciliation, the general membership of the union requested respondent Corazon Belga to call a meeting for the purpose of electing a new set of union officers, but said respondent refused; hence, on January 5, 1975, a "majority of the members" of the union held a meeting wherein a new set of officers was elected.[3] In the same meeting, a bargaining panel was created for the purpose of continuing the negotiations with the management of Foamtex Manufacturing Corporation. Under the chairmanship of Pacifico Aligarbes, the panel was able to conclude negotiations with the employer and on January 8, 1975, the new collective bargaining agreement was finally signed. This was submitted to the Bureau of Labor Relations for certification.

The petition for mediation or conciliation was, thereafter, dismissed on January 24, 1975 by Med-Arbiter Cynthia D. Tong Sy upon motion of the petitioner.

On January 30, 1975, respondent Corazon Belga filed a petition with the Bureau of Labor Relations for the direct certification of the Foamtex Labor Union, of which she claims to be the President, as the sole bargaining representative of the employees in the bargaining unit.[4] She alleged that, by virtue of the action of the majority of the employees, said union had disaffiliated from the mother union, the Trade Unions of the Philippines and Allied Services, of which fact the employer had been apprised as early as January 6, 1975, prior to the signing of the collective bargaining agreement. The position was supported by the signatures of eighty (80), out of a total of one

hundred twenty (120) of the rank and file employees in the unit.[5] The aforesaid petition was referred to Med-Arbiter Luzviminda G. Gumatay, who set it for hearing initially of February 11, 1975, but upon agreement of the parties reset it to February 19, 1975, at which date the parties agreed to submit the case on the basis of their memoranda.

On March 1, 1975, herein petitioner filed a "Memorandum with Motion to Dismiss" the petition for direct certification contending that the real issue is not one of representation as there is only one union in the company's rank and file unit and that is the Foamtex Labor Union-TUPAS, which has been recognized as the sole and exclusive bargaining agent, and that a collective bargaining agreement with the company with substantial benefits to the employees has already been executed.

After finding that the Foamtex Labor Union is a legitimate labor union and that there has been no certification election conducted in the bargaining unit for the last four years or any existing certified collective bargaining agreement between the company and any union, the Med-Arbiter issued on March 14, 1975 an Order directing that a certification election be conducted in the premises of the Foamtex Manufacturing Corporation among the following parties: (1) FOAMTEX LABOR UNION; (2) FOAMTEX LABOR UNION-TUPAS; and (3) No Union desired.

Herein petitioner moved for reconsideration of said Order, assailing the assumption of jurisdiction over the petition by the Bureau of Labor Relations, on the grounds previously adverted to. On November 10, 1975, respondent Director of the Bureau of Labor Relations, treating the motion as an appeal from the Order of the Med-Arbiter, issued the questioned Order, affirming that of Med-Arbiter Gumatay and dismissing the appeal. Pertinent portions of the Order read as follows:

> "The Med-Arbiter ordered a certification election at the company taking into consideration the established facts that there has been no such election held in the bargaining unit for the last four years nor is there an existing certified collective agreement between the employer and intervenor union. Hence,

the appeal filed by the intervenor (Foamtex Labor Union-TUPAS).

"Appellant contends that this Bureau has no jurisdiction to order the holding of a certification election since there is only one union existing in the company and that the dispute concerns only the union. Furthermore, it is claimed that the order is illegal as it allows an illegitimate labor union to participate.

"We do not agree with the above contentions. Having been registered as a labor union before it affiliated with the appellant, the appellee is by its own right a legitimate labor organization while simultaneously a local of its mother union, herein appellant. It did not lose its status as a legitimate labor organization upon its affiliation so much so that when it disaffiliated from TUPAS it merely became independent, nothing less. The disaffiliation not only created a schism within the local union but also freed the latter from its affiliation. Considering that TUPAS is the bargaining agent of the employees in the previous contract and that it still asserts majority representation, it is but apt that TUPAS be included in the choices. Likewise there is no doubt that therein petitioner should be included.

"PREMISES CONSIDERED, the appealed order is hereby affirmed and this instant appeal dismissed for lack of merit."[6]

In the present petition, petitioner contends that the respondent Director of the Bureau of Labor Relations committed a grave abuse of discretion in issuing an Order calling for a certification election. The gist of the petitioner's arguments is that (a) the resolution of disaffiliation of the majority members of Foamtex Labor Union led by respondent Belga is not valid because it was not in accordance with the Constitution and By-Laws of the union and Article 241(d) of the Labor Code, which requires that a question of majority policy affecting the entire membership of the organization should be decided by the members after due deliberation by secret ballot; and (b) only one union exists in the establishment, which union has already been recognized by the employer as the exclusive bargaining

agent of the rank and file employees, and since the said union has already an existing collective bargaining agreement with the employer, the respondent Director had no jurisdiction to issue the Order for certification election.

On February 12, 1976, this Court issued the writ of preliminary injunction prayed for, enjoining public respondent from conducting the certification election subject matter of this petition.

The sole issue in this petition is — whether or not the Director of the Bureau of Labor Relations gravely abused his discretion in affirming the Order of the Med-Arbiter calling for a certification election among the employees of the Foamtex Manufacturing Corporation.

The power of the Bureau of Labor Relations to certify a union as the exclusive bargaining agent of the employees in an appropriate bargaining unit is expressly recognized by law. Article 256 of the labor Code[7] provides as follows:

> "Art. 256. Procedure governing representation issues. — When a question concerning the representation of employees is submitted to it, the Bureau shall hear and decide such controversy and certify to the parties in writing the name of the labor organization that has been designated or selected as the appropriate bargaining agent. In such cases, the Bureau 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 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, under such rules and regulations as the Bureau may prescribe, at which balloting representatives of the contending parties shall have right to attend as inspectors.
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> "No certification election shall be entertained by the Bureau in any collective bargaining unit if a certified collective bargaining agreement exists between the employer and a legitimate labor organization, except within sixty (60) days prior to the expiration of the life of such collective bargaining agreement.

> The organization receiving the majority of the votes cast in such election shall be certified by the Bureau as the exclusive bargaining representative of the employees concerned."

Both Foamtex Labor Union-TUPAS and Foamtex Labor Union claim majority representation, the former by virtue of the collective bargaining agreement executed on January 8, 1975 between the union and the Foamtex Manufacturing Corporation wherein the employer recognized the union as the sole and exclusive bargaining agreement executed on January 8, 1975 between the union and the Foamtex Manufacturing Corporation wherein the employer recognized the union as the sole and exclusive bargaining of the employees, and the latter, by virtue of its independent status and subsequent disaffiliation from the mother union. There is no question that both factions are "labor organizations" within the context of the provisions of the Labor Code. Which of the two organizations had been authorized by the employees to bargain for them is the question to be resolved by the Bureau of Labor Relations. The question is complicated by petitioner's assertion that the disaffiliation of the faction headed by respondent Corazon Belga, being a matter of policy, should have been the subject of secret ballot determination by the employees in the bargaining unit in accordance with Article 241(d) of the Labor Code. 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 afore-mentioned circumstances that there is actually a reasonable doubt as to whom the employees have chosen as their representative for the purpose of collective bargaining.

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 it 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 majority of the employees desire to disaffiliate from the mother union, would be merely a circuitous way of ascertaining the majority's true choice.

As observed in PAFLU vs. Bureau of Labor Relations,[8] 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 expression 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."

It is next contended that the existing collective bargaining agreement between the employer and the Foamtex Labor Union-TUPAS, which was signed by the new set of officers on January 8, 1975, constitutes a bar to the certification election. This argument, however, ignores the fact that only a certified collective bargaining agreement would serve as a bar to the holding of a certification election.[9] In the case at bar, the collective bargaining agreement invoked by petitioner has not been certified by the Bureau of Labor Relations.[10]

The contract bar rule is intended to promote stability and fairness in collective bargaining agreements. There are certain types of contracts, however, which have been excepted from the operation of the contract bar rule. Among these are contracts which do not foster industrial peace and stability such as contracts where the identity or existence of the representation is in doubt.[11]

It has likewise been held that a contract does not operate to bar representation proceedings where, as a result of a schism in the

union, the contract can no longer serve to promote industrial stability. In such a situation, the contract is no longer a stabilizing force and there is, therefore, no warrant for denying to the employees the immediate exercise of their right to select their representative. Indeed, by granting to the employees full freedom of choice would further serve the statutory objective of promoting stability in bargaining relationships by definitely resolving all proper questions of representation affecting the employees involved.[12]

WHEREFORE, the petition is **DISMISSED** for lack of merit. The temporary restraining order, dated February 12, 1976, is hereby set aside and respondent Bureau of Labor Relations is ordered to set a new date for the holding of the certification election. Costs against petitioner.

Fernando, *(Acting C.J.)*, Barredo, *J.*, *(Acting Chairman)*, Aquino and Concepcion, Jr., *JJ.*, concur.

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[1] Annex "2", Comments of Respondent Foamtex Labor Union, Corazon Belga and 110 Others, p. 135, Rollo.
[2] BLR Case No. 0067, entitled "In re: Request for Mediation/Conciliation, Foamtex Labor Union-TUPAS, Petitioner.
[3] It is not clear from the records who the president-elect was, as in the minutes of said meeting (Annex "C"), one Arnaldo Blanco was elected president, and one Pacifico Aligarbes was elected adviser. However, in the collective bargaining agreement (Annex "D") Pacifico Aligarbes signed as President-Chairman, while Arnaldo Blanco signed as Vice-President-Member.
[4] BLR Case No. 0390, entitled "Foamtex Labor Union, Corazon Belga and 110 Others, Petitioners, Foamtex Manufacturing Corporation, Mr. Gan Thiet (167 M. H. del Pilar Street, Caloocan City), Employer, for Mandatory Certification Election under PD 442."
[5] P. 6, Memorandum for Public Respondent Director of the Bureau of Labor Relations, pp. 187-196, Rollo.
[6] P. 2, Annex "J", Petition, p. 93, Rollo.
[7] Presidential Decree No. 422, as amended.
[8] 69 SCRA 132, 139.
[9] Article 231, Labor Code.
[10] Cf. Annex "3" — Certification of the Bureau of Labor Relations dated January 23, 1976 — Comments of Co-Respondent Foamtex Labor Union, Corazon Belga and 110 Others, p. 160, Rollo.

[11] At the outset it seems appropriate to set forth certain basic principles upon which the entire contract-bar doctrine is predicated and which, although well settled, deserve recapitulation in order to place the subject matter involved in its proper context.

"In administering Section 9 of the Act, the Board has maintained the objective of giving expression and effect to congressional policy. In so doing, it has repeatedly found it necessary to weigh the dual and sometimes conflicting objectives of fostering stability in labor relations and of according to employees an opportunity to express in a Board-conducted election the freedom of choice guaranteed in Section 7 of the Act. Contracts established the foundation upon which stable labor relations usually are built. As they tend to eliminate strife which leads to interruptions of commerce, they are conducive to industrial peace and stability. Therefore, when such a contract has been executed by an employer and a labor organization the Board has held that postponement of the right to select a representative is warranted for a reasonable period of time. For effective and expeditious implementation of this policy, the Board has established certain administrative rules of decision permitting contracts to bar representation proceedings. Basic to the whole of contract-bar policy is the proposition that the delay of the right to select representatives can be justified only where stability is deemed paramount. Thus, the Board has excepted from the contract-bar rule certain types of contracts which in its considered judgment did not foster industrial stability such as contracts where the identity or existence of the representative was in doubt or contracts which themselves were in conflict with the policies of the Act, e.g., a contract containing an illegal union-security clause. It has been the Board's view that any stability derived from such contracts must be subordinated to employees freedom of choice because it does not establish the type of industrial peace the Act was designed to foster." (Re Paragon Products Corporation, 134 NLRB 662, 663.)

[12] "There have been numerous types of situations in which the Board has been called upon to determine whether the alleged schism has so disrupted the existing bargaining relationship that an election is warranted to resolve the resulting confusion and reestablish bargaining stability. These have included cases in which a local union, or a group within a local union, has sought to change its affiliation in the context of a basic intraunion conflict over fundamental policy considerations, involving an entire international union or a federation of unions; they have also included cases in which such a change in affiliation is sought in the absence of any basic intraunion conflict. In the cases arising out of a basic intraunion conflict, that conflict has usually resulted in the disaffiliation or expulsion of a union from the federation with which it had been affiliated and the creation of a new rival union within the federation, or the transfer of affiliation of a part of the official hierarchy of one union to an existing rival union, and in consequence in the creation of a new union rivalry or the aggravation of an existing rivalry based on the policy conflict. Such a conflict and realignment has in turn been followed by intensive campaigning to secure the allegiance of the

local union members on the basis of the policy differences which were initially responsible for the basic conflict.

"In considering the cases in which these varying situations have been presented, the Board has generally found a schism to exist, warranting an election, when the disaffiliation action at the local level has occurred in the context of a basic intraunion conflict.

x x x

"In concluding as we have that a basic intraunion conflict is a necessary prerequisite to a finding that a schism exist warranting an election, we deem a basic intraunion conflict to be any conflict over policy at the highest level of an international union, whether or not it is affiliated with a federation, or within a federation, which results in a disruption of existing intraunion relationships." (Re Hershey Chocolate Corp., 121 NLRB, 901, 906-907.)