SUPREME COURT
FIRST DIVISION

PHILIPPINE LAND-AIR-SEA LABOR UNION (PLASLU),
***Petitioner*,**

-versus-

G.R. No. L-14656
November 29, 1960

COURT OF INDUSTRIAL RELATIONS, ET AL.,
Respondents.
x----------x

D E C I S I O N

GUTIERREZ DAVID, *J.*:

This is a Petition to Review on *Certiorari* an order of the Court of Industrial Relations in Case No. 38 MC-Cebu certifying the Allied Workers' Association of the Philippines, San Carlos Chapter, as the sole collective bargaining representative of the employees of the San Carlos Milling Co., Inc.

The record shows that in Case No. 38 MC-Cebu the Industrial Court on May 25, 1956 ordered the holding of certification election to determine which of the two contending labor unions therein, herein petitioner Philippine Land-Air-Sea Labor Union (PLASLU) or respondent Allied Workers' Association of the Philippines (AWA),

shall be the sole collective bargaining agent of the employees of the San Carlos Milling Co. The pertinent portions of the court's order read as follows:

> "Considering the history of bargaining relations in this case where there has only been one bargaining unit, and for purposes of effectuating the policies of the Act, the same should be maintained. In other words, the appropriate bargaining unit is the Employer unit composed of 602 employees including some 200 piece work (pakiao) workers and stevedores appearing in the Employer's payrolls during the milling and off season minus the alleged laborers and operators of farm tractors who are hired and paid by the sugar cane planters. (Italics supplied.)
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> "All the foregoing considered, the Court hereby directs the Department of Labor to conduct a certification election in the premises of the San Carlos Milling Company, Ltd. at San Carlos Negros Occidental for the purpose of determining, under existing rules and regulations on the matter, which of the two (2) contending labor unions herein, the PLASLU or the AWA shall be the sole collective bargaining agent in accordance with the provisions of the Act. The Employer is hereby ordered to submit a list of employees appearing in its payroll during the milling season for the year 1955 to the Department of Labor which, together with the 'Exhibit X-Court' now part of the records of this case shall be used as the list of eligible voters minus employees who are performing functions of supervisors and security guards who are excluded from participating in said election. (Italics supplied.)
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> "SO ORDERED."

Prior to the holding of the election, respondent AWA filed an urgent motion to exclude 144 employees from participating in the election. The motion, however, was denied, the Industrial Court holding that the workers sought to be excluded were eligible to vote since they were actual employees of good standing of the respondent company during the milling season of 1955 and were included in the company's payroll as of that date.

On September 21, 1956, the certification election was held in the premises of the San Carlos Milling Co., PLASLU receiving 88 votes while AWA garnered 149, with 390 ballots recorded as challenged, 242 of them by the petitioner PLASLU and 142 by the respondent AWA. Within 72 hours after the closing of the election, as required by the Rules for Certification Election, AWA filed with the Industrial Court a petition contesting the election on the ground of the ineligibility of the voters who cast the 148 ballots it challenged. Said respondent AWA also alleged that the 242 ballots challenged by PLASLU were cast by legitimate employees of the company, as they were the votes of "piece work (pakiao) workers and stevedores appearing in the employer's payroll during the milling and off-season" of 1955. PLASLU, on the other hand, in an urgent motion filed on October 4, 1956, questioned the validity of the 242 ballots cast by the stevedores and piece workers. The motion was opposed by AWA on the ground that as a protest of the election it was filed late. The Industrial Court, however, considered the same as an answer to AWA's petition, and on September 4, 1957, after hearing the arguments of the parties, ordered that all the 390 challenged ballots be opened and canvassed and the corresponding votes added to those already credited to the contending labor unions. PLASLU moved for reconsideration of the order but the motion was denied and pursuant to said order the challenged ballots were opened. After the canvass, 148 votes challenged by AWA were counted in favor of PLASLU. Of the 242 votes challenged by PLASLU, 3 were counted in its favor, 228 credited in favor of AWA, and 11 declared either for no union or spoiled ballots. Adding the votes to the results of the certification election, the final count showed that the respondent AWA garnered a total of 377 votes on against 239 for PLASLU. Accordingly, said respondent was certified by the Industrial Court in its order dated March 12, 1958 as the sole collective bargaining agent of the employees of the San Carlos Milling Co. As its motion for reconsideration of the order was denied by the court en banc — with Judge Feliciano Tabigne dissenting — the petitioner PLASLU filed the present petition for review, contending that the Industrial Court erred in not excluding the 242 votes challenged by it from the total number of votes credited to respondent AWA.

We find petitioner's contention to be meritorious.

In the order of May 25, 1956 authorizing the certification election, the trial judge of the Industrial Court directed that the "list of employees appearing in its payroll during milling season for the year 1955 together with the Exhibit 'X-Court' now part of the records of this case shall be used as the list of eligible voters minus employees who are performing functions of supervisors and security guards who are excluded from participating in said election." It being disputed that the challenged votes were cast by casual employees consisting of stevedores and piece workers who — as stated by Judge Tabigne in his dissent — "were not included in the list of employees appearing in the payroll of the company during the milling season for the year 1955 nor did they appear in the Exhibit 'X-Court' which formed portion of the list of personnel allowed to vote in said certification election", the said challenged votes should have been excluded. Citing the declaration of the Industrial Court that the appropriate bargaining unit is the employer's unit composed of 602 employees, including the piece workers and stevedores whose votes were challenged by PLASLU, the respondent AWA argues that the challenged votes were cast by employees eligible to vote. It will be noted, however, that these employees whose votes were challenged were hired on temporary or casual basis and had work of a different nature from those of the laborers permitted to vote in the certification election. In the case of Democratic Labor Union vs. Cebu Stevedoring Co., Inc., et al. (G.R. No. L-10321, February 28, 1958) this Court had occasion to rule that in the determination of the proper constituency of a collective bargaining unit, certain factors must be considered, among them, the employment status of the employees to be affected, that is to say, the positions and categories of work to which they belong, and the unity of employees' interest such as substantial similarity of work and duties. The most efficacious bargaining unit is one which is comprised of constituents enjoying a community or mutuality of interest. And this is so because the basic test of a bargaining unit's acceptability is whether it will be best assure to all employees the exercise of their collective bargaining rights. (See also Alhambra Cigar & Cigarette Manufacturing Co. vs. Alhambra Employees' Association, 107 Phil., 23.) It appearing that the 242 stevedores and piece workers, whose votes have been challenged, were employed on a casual or day to day basis and have no reasonable basis for continued or renewed employment for any appreciable substantial time — not to mention the nature of work they perform — they cannot be considered to have

such mutuality of interest as to justify their inclusion in a bargaining unit composed of permanent or regular employees.

There is nothing to the contention that the order complained of is merely complementary to the order of the Industrial Court dated September 4, 1957, which has become final and executory the same not having been appealed. It will be observed that the said order of September 4, 1957 merely ordered the opening and canvassing of the challenged ballots. Any appeal taken from said order would therefore have been premature.

Disregarding the votes cast by the stevedores and piece workers which were counted in favor of the respondent AWA, the final results of the certification election show that the petitioner PLASLU garnered a majority of the votes cast by eligible voters. Consequently, said petitioner should be certified as the sole collective bargaining representative of the employees of the San Carlos Milling Co.

WHEREFORE, the order complained of is reversed and the petitioner PLASLU is hereby certified as the collective bargaining agent of the employees of the San Carlos Milling Company. Without costs.

Paras, *C.J.*, Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, Barrera, Paredes and Dizon, *JJ.*, concur.