SUPREME COURT
SECOND DIVISION

PLUM FEDERATION OF INDUSTRIAL AND AGRARIAN WORKERS,
***Petitioner*,**

-versus-

G.R. No. L-48007
December 15, 1982

DIRECTOR CARMELO C. NORIEL of the Bureau of Labor Relations; MANILA JOCKEY CLUB RACE DAY OPERATION EMPLOYEES LABOR UNION-PTGWO; and MANILA JOCKEY CLUB, INC.,
***Respondents*.**
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D E C I S I O N

DE CASTRO, *J.*:

AQUINO, J., concurring:

Petitioner seeks to set aside the Order and Resolutions dated May 5, 1977, September 17, 1977 and March 14, 1978 of the Bureau of Labor Relations for having been issued in excess of jurisdiction and with grave abuse of discretion. It, likewise, prays for an order directing respondent director to hold a certification election so that the

employees in the company can elect a union representative to negotiate an improved collective bargaining agreement to replace the agreement which has expired on February 1, 1976.

On May 5, 1976, Plum Federation of Industrial and Agrarian Workers filed a petition, praying that it be certified as the sole and exclusive bargaining agent of the rank-and-file workers of Manila Jockey Club, Inc.

On June 18, 1976, the Manila Jockey Club Race Day Operation Employees Labor Union-PTGWO filed a motion to intervene and opposition to said petition and alleged among other things, that it is the recognized collective bargaining representative of all the employees of the company and that it is in the process of negotiating a modification of the collective bargaining agreement.

On August 30, 1976, another supplemental motion to dismiss was filed by intervenor PTGWO, this time invoking the "No Union Raiding Clause" of the "Code of Ethics" adopted by the members of the Trade Union Congress of the Philippines (T.U.C.P.) wherein both petitioner and intervenor are members, and claiming that the petition failed to satisfy the 30% requirement of the law. The entire record of the case was forwarded to the Office of the President of the T.U.C.P. for the purpose of submitting the matter to the Congress for decision.

On March 16, 1977, the entire record of the case was re turned by the T.U.C.P. President to the Office of then Secretary of Labor which in turn transmitted the same to the Bureau of Labor Relations Office with a forwarding letter signed by the late Roberto S. Oca in his capacity as President of the Congress, stating, among other things, the following:[1]

> "In a National Executive Board meeting of the Katipunang Manggagawang Pilipino (TUCP) held last March 7, 1977 at the Army & Navy Club, it was duly approved that the above-captioned case be referred back to the BLR and that MJCR-OELU-PTGWO be declared as the sole and exclusive bargaining agent, thus dismissing the petition of PLUM."

On March 22, 1977, the BLR endorsed the case to Officer-in-Charge Vicente Leodegardo, Jr., of Region IV for appropriate action.

On May 5, 1977, Atty. Luna C. Piezas, Chief, Med-Arbiter Section of Region IV, Department of Labor, promulgated an Order[2] dismissing the case pursuant to the letter of the President of the T.U.C.P.

Petitioner PLUM filed an appeal to the Bureau of Labor Relations predicated on the ground that TUCP has no authority in law to grant or deny election under the Labor Code which mandated the secret ballot to elect the true union representative.

On September 17, 1977, the Bureau Director issued a Resolution[3] dismissing the appeal. Pertinent portions of said resolution read thus:

> "While it may be true that the facts of the case may warrant the holding of a certification election in the bargaining unit concerned, to sustain first the decision arrived at by the National Executive Board of TUCP appears of indispensable importance. Contenders in the case at bar are both members of TUCP. Undeniably, there are internal rules including their Code of Ethics to keep them intact, to govern their actions and finally to preserve the Congress. It is therefore, a matter of utmost necessity that a decision arrived at by the National Executive Board be respected and enforced not only by the members of the Congress themselves but also by this Bureau and the Department if necessity arises.
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> "The appealed order has the letter of Roberto Oca as its basis. It is worthy to note that the letter sent said communication in his capacity as President of the TUCP and nothing else. Whether or not he happens also to be the president of intervenor union is of no legal significance since the decision of the TUCP was handed down by its National Executive Board and not by him alone.
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> "Other recourse could have been taken by appellant. Very much aware of the Decision of the National Executive Board on March 7, 1977, it could have asked for a reconsideration of the same. As shown by the records, the first decision of the National Board was for the holding of a certification election. But intervenor

> asked for a reconsideration hence the March 7, decision. Appellant's failure however could unequivocably be interpreted as satisfaction of the Decision. For this Office now, to sustain appellant's stand and re-open the case again by giving due course to the instant appeal is not only an open manifestation of non-recognition of the existence of TUCP but a further obstruction to the goal of the Department to establish one-union in one industry; thus at the end, to attain industrial peace."
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> x x x

Petitioner's motion for reconsideration was also denied by public respondent for being pro-forma, hence the present recourse by way of a petition for certiorari and mandamus.

It was asserted by petition that nowhere in the Labor Code or in the new Constitution has TUCP been granted any authority to supersede or impair the holding of a certification election or deny the majority employees of their right to elect their own union; that public respondent and the PTGWO acted without jurisdiction in defiance of the rule of law and popular democracy, that it is not within the Code of Ethics to suppress the employees' freedom to choose their own union; and that the TUCP, while asserting itself to be a Labor Center did not call the parties involved for conference, to submit evidence or to make a fair judicious and rational evaluation of the dispute.

The Solicitor General in his manifestation and motion prayed that he be relieved from filing the required answer to the instant petition for the reason that he was unable to sustain respondent bureau director's questioned orders and resolution. The records of the case were returned to said public respondent and he was granted an extension of time within which to submit his own answer to the petition.

Respondent Noriel in his comment (answer) made it clear that he is not opposed to the conduct of a certification election, and in fact he is ready to hold such election if the case is returned to the jurisdiction of his office. However, he stressed that the TUCP Code of Ethics and General Council Resolution No. 76-2 are clear expressions of consent by the signatory members, including their locals or affiliates, to settle

their disputes among themselves in accordance with the decision of the National Executive Board and the decision he made was made pursuant to such an agreement.

On the other hand, private respondent union maintained its stand that no certification election should be held because the petition was not supported by the written consent of at least 30% of all the employees in the bargaining unit, and that this requirement is mandatory.

A letter from the president of respondent union reveals the present state of affairs of the employees wherein they are deprived of the benefits of a collective bargaining agreement, for management refused to bargain with the union. If this situation continues, the employees would stand to lose and with the present set-up, a certification election is warranted. Time and again, We have ruled in a long-line of cases that the workers' welfare can be promoted through the bargaining process. Certification election is 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.[4] Protection to labor and freedom of peaceful assembly and association are guaranteed by the Constitution.

As to the issue of whether or not the 30% minimum subscription requirement was met, it was held that the Director is still empowered to call for a certification election provided there was no abuse of discretion. However, in the case at bar, instead of ordering an election, respondent Director dismissed the appeal of PLUM based on the decision of the TUCP, which the Court considers an impairment of the freedom of the workers to voice out their choice of the union to represent them. If there is any doubt as to the required number having met, there would be no better way than the holding of a certification election to ascertain which union really commands the allegiance of the rank-and-file employees.[5] If the desired goal is for the execution of a collective bargaining contract to protect the workers, then certification election is the most appropriate means to attain said end.

Since there has been no certification election for the past three (3) years as well as a certified collective bargaining agreement which should govern the economic and working conditions of the workers, a certification election should immediately be ordered. This Court had repeatedly made it clear that in labor controversies, time is of the essence.[6]

Accordingly, the questioned order and resolutions dated May 5, 1977, September 17, 1977 and March 14, 1978 are nullified and set aside. Respondent Director is hereby ordered to hold a certification election forthwith. This decision is immediately executory. No costs.

SO ORDERED.

Makasiar, *J.*, *(Chairman)*, Concepcion, Jr., Guerrero and Escolin, *JJ.*, concur.
Abad Santos, *J.*, I reserve my vote.

SEPARATE OPINIONS

AQUINO, J., concurring:

I concur. The practice of the Bureau of Labor Relations of referring certification election cases to the TUCP, a private entity, is utterly wrong. It is not sanctioned by the Labor Code. It is an abdication of its functions.

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[1] p. 174, Original Records.
[2] p. 76, Rollo.
[3] pp. 88-89, Rollo.
[4] PAFLU vs. Bureau of Labor Relations, 69 SCRA 139.
[5] National Mines and Allied Workers Union vs. Luna, 83 SCRA 607, 617.
[6] supra.
