SUPREME COURT
FIRST DIVISION

PORT WORKERS UNION OF THE PHILIPPINES (PWUP),
***Petitioner*,**

-versus-

G.R. Nos. 94929-30
March 18, 1992

THE HONORABLE UNDERSECRETARY OF LABOR AND EMPLOYMENT BIENVENIDO E. LAGUESMA, ATTY. ANASTACIO L. BACTIN, MED-ARBITER NCR-DOLE,
***Public Respondents*;**

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC. (ICTSI) and ASSOCIATED PORT CHECKERS AND WORKERS UNION (APCWU),
***Private Respondents*;**

SANDIGAN NG MANGGAGAWA SA DAUNGAN (SAMADA) and PORT EMPLOYEES ASSOCIATION AND LABOR UNION (PAFLU),
***Nominal Private Respondents*.**
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D E C I S I O N

CRUZ, *J.*:

There was muffled excitement among the workers of the International Container Terminal Services, Inc. (ICTSI) because its collective bargaining agreement with private respondents Associate Port Checkers and Workers Union (APCWU), the incumbent union, was due to expire on April 14, 1990. Other unions were seeking to represent the laborers in the negotiation of the next CPA and were already plotting their moves.

The first challenge to APCWU was hurled on March 14, 1990, when the Sandigan ng Manggagawa sa Daungan (SAMADA) filed a petition for certification election. The consent signatures of at least 25% of the employees in the bargaining unit were submitted on March 26, 1990, or eleven days after the petition.

On April 2, 1990, herein petitioner Port Workers Union of the Philippines (PWUP) filed a petition for intervention.

Still another petition for certification election was filed by the Port Employees Association and Labor Union (PEALU), on April 6, 1990. The consent signatures were submitted on May 11, 1990, or thirty-five days after the filing of the petition.

The petitions of SAMADA and PEALU were consolidated for joint decision. On April 26, 1990, APCWU filed a motion to dismiss them on the ground that they did not comply with the requirement set forth in Section 6, Rule V, Book V of the Implementing Rules, quoted in part as follows:

> In a petition involving an organized establishment or enterprise where the majority status of the incumbent collective bargaining union is questioned through a verified petition by a legitimate labor organization, the Med-Arbiter shall immediately order the certification election by secret ballot if the petition is filed during the last sixty (60) days of the collective bargaining agreement and y supported by the written consent of at least twenty-five percent (25%) of all the

> employees in the bargaining unit. Any petition filed before or after the sixty-day freedom period shall be dismissed outright. The twenty-five percent (25%) requirement shall be satisfied upon the filing of the petition, otherwise the petition shall be dismissed. (Emphasis supplied.)

Specifically, APCWU faulted both petitions for non-compliance with the requirement for the 25% consent signatures at the time of filing. This contention was upheld by the Med-Arbiter in an order dated June 5, 1990, dismissing the consolidated petitions.[1]

PWUP appealed to the Secretary of Labor on June 28, 1990, arguing that Article 256 of the Labor Code did not require the written consent to be submitted simultaneously with the petition for certification election. The principal petitioners did not appeal. On August 21, 1990, DOLE Undersecretary Bienvenido Laguesma affirmed the order of the Med-Arbiter and dismissed PWUP's appeal.[2]

Thereafter, ICTSI and APCWU resumed negotiations for a new collective bargaining agreement, which was concluded on September 28, 1990. This was ratified on October 7, 1990, by a majority of the workers in the bargaining unit, i.e., 910 out of the 1,223 members, and subsequently registered with the DOLE.

PWUP is now before us. claiming grave abuse of discretion on the part of the public respondent in the application of Article 256 of the Labor Code. This article provides in part as follows:

> ART. 256. Representation issue in organized establishments. — In organized establishments, when a verified petition questioning the majority status of the incumbent bargaining agent is filed before the Department of Labor and Employment within the sixty-day period before the expiration of the collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot when the verified petition is supported by the written consent of at least twenty-five (25%) percent of all the employees in the bargaining unit to ascertain the will of the employees in the appropriate bargaining unit.

The petitioner argues that under this article, the Med-Arbiter should automatically order election by secret ballot when the petition is supported by at least 25% of all employees in the bargaining unit. SAMADA and PEALU substantially complied with the law when they submitted the required consent signatures several days after filing the petition. The petitioner complains-that the dismissal of the petitions for certification election, including its own petition for intervention, had the effect of indirectly certifying APCWU as the sole and exclusive bargaining representative of the ICTSI employees.

Private respondent ICTSI maintains that the dismissal was based on Article 256 of the Labor Code as implemented by Section 6, Rule V, Book V of the Implementing Rules, quoted above. Moreover, under Section 10, Rule V, Book V of the Implementing Rules, decisions of the Secretary in certification election cases shall be final and unappealable.

ICTSI also cites the following ruling of this Court in TUPAS vs. Inciong:[3]

> We find no merit in the petition. As observed by the Solicitor General, while the petition of TUPAS for a certification election may have the written support of 30 per cent of all the workers of the bargaining unit, it is also an undisputed fact that UMI (the rival union of TUPAS) has a clear majority of the said workers, as shown by the fact that 499 workers out of the total working force of 641 have not only ratified the collective bargaining agreement concluded between UMI and LUSTEVECO, but also affirmed their membership in UMI so that there is no more need for holding a certification election. (Emphasis supplied.)

For its part, APCWU questions PWUP's personality in these proceedings in view of the lack of consent signatures in its petition, and argues as well that the petitioner has no authority to represent SAMADA or PEALU. which had not appealed. The private respondent also invokes Tupas and maintains that the ratification of the new CBA by the majority of the workers was an affirmation of their membership in the union that negotiated that agreement.

In his own Comment, the Solicitor General agrees with the petitioner that there has been substantial compliance with the requirements of the law. He submits that Article 256 should be liberally interpreted pursuant to Article 4 of the Labor Code, stating as follows:

> Article 4. Construction in favor of labor. — All doubts in the implementation and interpretation of the provisions of this Code including its implementing rules and regulations, shall be resolved in favor of labor.

The Court has deliberated on the arguments of the parties in their respective pleadings and finds for the petitioner.

We have held that pursuant to the constitutional provision guaranteeing workers the right to self-organization and collective bargaining, "the constant and unwavering policy of this Court" has been "to require a certification election as the best means of ascertaining which labor organization should be the collective bargaining representative."[4]

The certification election is the most democratic and expeditious method by which the laborers can freely determine the union that shall act as their representative in their dealings with the establishment where they are working.[5] As we stressed in Belyca Corporation vs. Ferrer-Calleja,[6] the holding of a certification election is a statutory policy that should not be circumvented.

This Court also held in Western Agusan Workers Union-Local 101 of the United Lumber and General Workers of the Philippines vs. Trajano:[7]

> It has long been settled that the policy of the Labor Code is indisputably partial to the holding of a certification election so as to arrive in a manner definitive and certain concerning the choice of the labor organization to represent the workers in a collective bargaining unit. Conformably to said basic concept, this Court recognized that the Bureau of Labor Relations in the exercise of sound discretion, may order a certification election notwithstanding the failure to meet the 30% requirement. (Scout Ramon vs. Albano Memorial College vs. Noriel, 85 SCRA

494 [1978]; Vicmico Industrial Workers Asso. vs. Noriel, 131 SCRA 569 [1984]).

In line with this policy, we feel that the administrative rule requiring the simultaneous submission of the 25% consent signatures upon the filing of petition for certification election should not be strictly applied to frustrate the determination of the legitimate representative of the workers. Significantly, the requirement in the rule is not found in Article 256, the law it seeks to implement. This is all the more reason why the regulation should at best be given only a directory effect. Accordingly, we hold that the mere filing of a petition for certification election within the freedom period is sufficient basis for the issuance of an order for the holding of a certification election,[8] subject to the submission of the consent signatures within a reasonable period from such filing.

This interpretation is consonant with Philippine Association of Free Labor Unions vs. Bureau of Labor Relations,[9] where we declared:

> Even conceding that the statutory requirement of 30% of the labor force asking for a certification election had not been strictly complied with, respondent Director is still empowered to order that it be held precisely for the purpose of ascertaining which (of the contending labor organizations) shall be the exclusive collective bargaining representative. (National Mines and Allied Workers Union vs. Luna, et al., 83 SCRA 607).

It is not denied that the petition to intervene filed by PWUP did not carry the 25% consent signatures, but that the requirement is in fact not applicable to a petition in intervention. We so held in PAFLU vs. Ferrer-Calleja thus:[10]

> It is crystal clear from the said provisions that the requisite written consent of at least 20% of the workers in the bargaining unit applies to petitioners for certification election only and not to motions for intervention. As long as the motion for intervention has been properly and timely filed and the intervention would not cause any injustice to anyone, it should not be denied and this is so even if the eventual purpose of the Motion for Intervention is to participate in the Certification

> Election. After all, the original applicant had already met the 20% requirement.

The contention that the petitioners had no right to represent the principal petitioners which had not appealed the dismissal order is also not acceptable. We repeat that the certification election is not a litigation but a mere investigation of a non-adversary character where the rules of procedure are not strictly applied.[11] Technical rules and objections should not hamper the correct ascertainment of the labor union that has the support or confidence of the majority of the workers and is thus entitled to represent them in their dealings with management.

The above-quoted decision affirms the right of PWUP to call for the holding of the election although it was initially only in intervenor. That recognition should not be defeated by the circumstance that the other petitioning unions have not seen fit to appeal the dismissal of their petitions even if such dismissal was questionable and is in fact being reversed here. The petition for intervention was viable at the time it was filed because the principal petitions had complied with the requirement for the consent signatures as specified by Article 256. Hence, its intervention should not be disallowed simply because of the withdrawal or failure to appeal of SAMADA and PEALU.

It is correct to say that as a matter of strict procedure, a petition for intervention should be deemed automatically dismissed where the principal petition itself fails. However, that technical rule should not be allowed to prevent a correct determination of the real representative of the workers in line with their constitutional rights to self-organization and collective bargaining.

Regarding the invocation of Inciong by the private respondents, the Court has modified that decision in Associated Labor Unions vs. Calleja,[12] where we held:

> Finally, the petitioner assails the decision of the respondent Director on the ground that “the ratification of the collective bargaining agreement renders the certification election moot and academic.”

This contention finds no basis in law.

The petitioner was obviously referring to the contract-bar rule where the law prohibits the holding of certification elections during the lifetime of the collective bargaining agreement. Said agreement was hastily and prematurely entered into apparently in an attempt to avoid the holding of a certification election.

Deviation from the contract-bar rule is justified only where the need for industrial stability is clearly shown to be imperative.[13] Subject to this singular exception, contracts where the identity of the authorized representative of the workers is in doubt must be rejected in favor of a more certain indication of the will of the workers. As we stated in Philippine Association of Free Labor Union vs. Estrella,[14] any stability that does not establish the type of industrial peace contemplated by the law must be subordinated to the employees' freedom to choose their real representative.

The private respondents contend that the overwhelming ratification of the CBA is an affirmation of their membership in the bargaining agent, rendering the representation issue moot and academic and conclusively barring the holding of a certification election thereon. That conclusion does not follow. Even Tupas did not say that the mere ratification of the CBA by the majority of the workers signified their affirmation of membership in the negotiating union. That case required, first, ratification of the CBA, and second, affirmation of membership in the negotiating union. The second requirement has not been established in the case at bar as the record does not show that the majority of the workers, besides ratifying the new CBA, have also formally affiliated with APCWU.

Section 4, Rule V, Book V of the Omnibus Rules implementing the Labor Code provides that the representation case shall not be adversely affected by a collective agreement submitted before or during the last 60 days of a subsisting agreement or during the pendency of the representation case. As the new CBA was entered into at the time when the representation case was still pending, it follows that it cannot be recognized as the final agreement between the ICTSI and its workers.

On the allegation that the decision of the Secretary of Labor on certification election is final and inappealable, this Court held in San Miguel Corp. vs. Secretary of Labor[15] that:

> It is generally understood that as to administrative agencies exercising quasi-judicial or legislative power there is an underlying power in the courts to scrutinize the acts of such agencies on questions of law and jurisdiction even though no right of review is given by statute. (73 C.J.S. 506, note 56) judicial review is proper in case of lack of jurisdiction, grave abuse of discretion, error of law, fraud or collusion (Timbancaya vs. Vicente, 82 O.G. 9424; Macatangay vs. Secretary of Public Works and Communication, 63 O.G. 11236; Ortua vs. Singson Encarnacion, 59 Phil. 440).

There was indeed grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondents when they dismissed the petitions for certification election because the consent signatures had not been submitted simultaneously with the petition. The issue of majority representation thus remains open and awaits settlement. Following the rulings above-quoted, we hereby declare that the newly-concluded CBA cannot constitute a bar to the holding of a certification election.

It is possible that the APCWU will prevail in the certification election, in which event the new CBA it concluded with ICTSI will be upheld and recognized. It is also possible that another union will be chosen, in which event it will have to enter into its own negotiations with ICTSI that may result in the adoption of a new CBA. In the meantime, however, the old CBA having expired, it is necessary to lay down the rules regulating the relations of the workers with the management. For this reason, the Court hereby orders that the new CBA concluded by ICTSI and APCWU shall remain effective between the parties, subject to the result and effects of the certification election to be called.

The certification election is the best method of determining the will of the workers on the crucial question of who shall represent them in their negotiations with the management for a collective bargaining agreement that will best protect and promote their interests. It is

essential that there be no collusion against this objective between an unscrupulous management and a union covertly supporting it while professing its loyalty to labor, or at least that the hopes of labor be not frustrated because of its representation by a union that does not enjoy its approval and support. It is therefore sound policy that any doubt regarding the real representation of the workers be resolved in favor of the holding of the certification election. This is preferable to the suppression of the voice of the workers through the prissy observance of technical rules that will exalt procedure over substantial justice.

WHEREFORE, the Petition is **GRANTED**. The challenged order dated August 21, 1990, is **REVERSED** and **SET ASIDE** and the public respondent is **DIRECTED** to schedule and hold certification election among the workers of the International Container Services, Inc., this to be done with all possible dispatch. No costs.

SO ORDERED.

Narvasa, *C.J.*, Griño-Aquino and Medialdea, *JJ.*, concur.
Bellosillo, *J.*, took no part.

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[1] Rollo, pp. 22-29.
[2] Rollo, p. 19.
[3] 115 SCRA 847.
[4] National Mines and Allied Workers Union vs. Luna, 83 SCRA 127.
[5] National Association of Free Trade Unions vs. Bureau of Labor Relations, 104 SCRA 12.
[6] 168 SCRA 184.
[7] 196 SCRA 622.
[8] Associate Labor Unions (ALU) vs. Ferrer-Calleja, 179 SCRA 127.
[9] 69 SCRA 132.
[10] 169 SCRA 491.
[11] Associated Labor Unions (ALU) vs. Ferrer-Calleja, supra.
[12] 175 SCRA 490.
[13] Foamtex Labor Union-Tupas vs. Noriel, 72 SCRA 371.
[14] 170 SCRA 378.
[15] 64 SCRA 56.