SUPREME COURT
FIRST DIVISION

R. TRANSPORT CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 106830
November 16, 1993

HON. BIENVENIDO E. LAGUESMA, in his capacity as Undersecretary of the Department of Labor and Employment, CHRISTIAN LABOR ORGANIZATION OF THE PHILIPPINES (CLOP), NATIONAL FEDERATION OF LABOR UNIONS (NAFLU), and ASSOCIATED LABOR UNIONS (ALU-TUCP),
***Respondents*.**
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D E C I S I O N

QUIASON, *J.*:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court which seeks to set aside the Resolutions of the Undersecretary of the Department of Labor and Employment (DOLE), dated July 22, 1992, affirming the order of the Med-Arbiter calling for the conduct of the certification election, and August 25, 1992, denying petitioner's motion for reconsideration.

On January 4, 1991, respondent Christian Labor Organization of the Philippines (CLOP), filed with the Med-Arbitration Unit of the DOLE a petition for certification election among the rank and file employees of the petitioner (NCR-OD-M-91-01-002).

On April 8, 1991, Med-Arbiter A. Dizon dismissed the petition on the ground that the bargaining unit sought to be represented by respondent CLOP did not include all the eligible employees of petitioner but only the drivers, conductors, and conductresses to the exclusion of the inspectors, inspectresses, dispatchers, mechanics and washer boys.

On May 10, 1991, respondent CLOP rectified its mistake and filed a second petition for certification election, which included all the rank and file employees of the company, who hold non-managerial and non-supervisorial positions.

Petitioner filed a motion to dismiss the second petition and contended that the dismissal of the first petition constituted res judicata. Petitioner argued that respondent CLOP should have interposed an appeal to the dismissal of the first petition and its failure to do so barred it from filing another petition for certification election.

On July 3, 1991, Med-Arbiter R. Parungo rendered a decision, which ordered that a certification election among the regular rank and file workers of petitioner company be conducted (Rollo, pp. 87-91).

On October 16, 1991, the Associated Labor Unions (ALU-TUCP) filed a motion for intervention (NCR OD-M-91-01-002) and alleged that it has members in the proposed bargaining unit. Subsequently, the National Federation of Labor Unions (NAFLU) filed a separate petition for certification election (NCR-OD-M-91-10-058) and a motion to consolidate related cases to avoid confusion.

Dissatisfied with the Decision dated July 3, 1991 rendered by Med-Arbiter R. Parungo, petitioner appealed to the DOLE Secretary, who, through Undersecretary Bienvenido E. Laguesma, affirmed the order of the Med-Arbiter in its Resolution dated July 22, 1992 calling for

the conduct of the certification election (Rollo, pp. 25-28). The Resolution, in pertinent part, reads as follows:

x x x

> "The defense of res judicata is not obtaining in the present petition for certification election. It is settled that for res judicata to apply there must be a final judgment on the merits on matters put in issue. In the instant case, it could not be said that there is a final judgment on the merits of the petition simply because the composition of the present proposed bargaining unit is different from that in the first petition. Moreover, there are now other parties involved, and therefore, it would not be correct to say that the parties in the said two cases are identical.
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> x x x
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> With regard however, to the question on propriety of consolidation, there is merit in the argument of respondent-appellant on the need to consolidate the separate petitions for certification election because they involve the same bargaining unit. Case No. NCR-OD-M-91-10-058 should be consolidated with that of Case No. NCR-OD-M-91-05-062, where the petition of NAFLU should be treated as an intervention and resolved by the Med-Arbiter together with the intervention of ALU-TUCP.
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> PREMISES CONSIDERED, the Order of the Med-Arbiter calling for the conduct of the certification election is hereby affirmed subject to the resolution of the Med-Arbiter of the motions for intervention aforementioned" (Rollo, pp. 27-28; Italics supplied).

On July 31, 1992, petitioner filed a Motion for Reconsideration, again stressing the principle of res judicata. Petitioner further argued that the second petition for a certification election by respondent CLOP, NAFLU and ALU-TUCP were barred at least for a period of one year from the time the first petition of CLOP was dismissed pursuant to Section 3, Rule V, Book V of the Omnibus Rules Implementing the Labor Code as amended.

On August 25, 1991, Undersecretary Laguesma denied the motion for reconsideration (Rollo, pp. 32-34).

On September 3, 1992, petitioner filed a Motion to Suspend Proceedings Based on Prejudicial Questions as an Addendum to the Motion for Reconsideration filed on July 31, 1992. Petitioner argued that the present case must be indefinitely suspended until the following cases are resolved by the NLRC and the Supreme Court: a) NLRC-NCR Case No. 00-08-04708-91 entitled "R. Transport Corporation vs. Jose S. Torregaza, et. al., wherein Labor Arbiter de Castro declared the strike staged by respondent CLOP illegal and ordered the strikers to pay petitioner the amount of P10,000.00 as exemplary damages; b) NLRC-NCR Case No. 06-03415092 filed by respondent CLOP and its members for illegal dismissal; and c) NLRC-NCR Case No. 00-08-04389-92 filed by respondent CLOP in behalf of its affected members for illegal dismissal (Rollo, pp. 139-145).

On September 29, 1992, Undersecretary Laguesma in a resolution denied the motion to suspend the conduct of the certification election. The pertinent portion of said resolution reads as follows:

> "The pendency of NLRC-NCR Cases Nos. 00-08-04708-91, 06-03415092 and 00-08-04389-92 before the NLRC is not a valid ground for the suspension of the already stalled petition for certification election which must be resolved with dispatch.
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> This must be so, because the employees subject of the pending cases before the NLRC legally remain as employees of respondent until the motion to declare them as having lost their employment status by reason of the illegal strike or their complaint for illegal dismissal is finally resolved." (Rollo, pp. 181-182; Emphasis supplied).

On October 14, 1992, petitioner filed a motion for reconsideration of the Resolution dated September 29, 1992 which was subsequently denied by Undersecretary Laguesma on October 29, 1992 (Rollo, pp. 29-31).

Petitioner filed a Comment and Objection to the Order dated October 29, 1992 with Urgent Motion to Dismiss the Petition for Certification Election. Without waiting for the resolution of the motion to dismiss, petitioner resorted to this Court by way of the instant special civil action.

This petition is without merit.

Before the principle of res judicata can be operative, the following requisites must be present: a) the former judgment or order must be final; b) it must be a judgment or order on the merits; c) it must have been rendered by a court having jurisdiction over the subject-matter and the parties; and d) there must be, between the first and second actions, identity of parties (Nabus vs. Court of Appeals, 193 SCRA 732 [1991]).

In the case at bench, it cannot be said that the parties in the first and second actions were identical. The first action was dismissed by the Med-Arbiter because it excluded parties essential to the bargaining unit such as inspectors, inspectresses, dispatchers and washer boys. The second petition included all the employees who were excluded in the first petition. Therefore, the Med-Arbiter was correct when he gave due course to the second petition for certification election after respondent CLOP corrected its mistake.

Likewise untenable is petitioner's contention that the second petition for certification election should have been filed after one year from the dismissal of the first petition for certification election under Section 3, Rule V, Book V of the Omnibus Rules Implementing the Labor Code as amended. Said section provides as follows:

> "When to file — In the absence of collective bargaining agreement duly registered in accordance with Article 231 of the Code, a petition for certification election may be filed any time. However, no certification election may be held within one year from the date of issuance of a final certification election result" (Emphasis supplied).

Apparently, petitioner misread the above-mentioned provision of law. The phrase "final certification election result" means that there was

an actual conduct of election i.e., ballots were cast and there was a counting of votes. In this case, there was no certification election conducted precisely because the first petition was dismissed, on the ground of a defective petition which did not include all the employees who should be properly included in the collective bargaining unit.

Devoid of merit is petitioner's contention that the employment status of the members of respondent CLOP who joined the strike must first be resolved before a certification election can be conducted.

As held in the case of Philippine Fruits and Vegetables Industries, Inc. vs. Torres, 211 SCRA 95 (1992):

> "At any rate, it is now well-settled that employees who have been improperly laid off but who have a present, un-abandoned right to or expectation of re-employment, are eligible to vote in certification elections (Rothenberg on Labor Relations, p. 548). Thus, and to repeat, if the dismissal is under question, as in the case now at bar whereby a case of illegal dismissal and/or unfair labor practice was filed, the employees concerned could still qualify to vote in the elections."

Therefore, the employees of petitioner who participated in the strike, legally remain as such, until either the motion to declare their employment status legally terminated or their complaint for illegal dismissal is resolved by the NLRC.

It should be noted that it is petitioner, the employer, which has offered the most tenacious resistance to the holding of a certification election. This must not be so for the choice of a collective bargaining agent is the sole concern of the employees. The employer has no right to interfere in the election and is merely regarded as a bystander (Divine Word University of Tacloban vs. Secretary of Labor and Employment, 213 SCRA 759 [1992]).

Finally, petitioner's Comment and Objection to the Order dated October 29, 1992 with Urgent Motion to Dismiss the Petition for Certification Election is still pending with the Undersecretary of Labor. The resort to judicial action by petitioner is premature. Hence, it is also guilty of forum-shopping in pursuing the same cause of

action involving the same issue, parties and subject matter before two different fora.

WHEREFORE, the Court Resolved to **DISMISS** the petition.

SO ORDERED.

Cruz and Davide, Jr., *JJ.*, concur.
Bellosillo, *J.*, on leave.