SUPREME COURT
SECOND DIVISION

REPUBLIC PLANTERS BANK GENERAL SERVICES EMPLOYEES UNION — NATIONAL ASSOCIATION OF TRADE UNIONS,
***Petitioner*,**

-versus-

G.R. No. 119675
November 21, 1996

BIENVENIDO LAGUESMA and REPUBLIC PLANTERS BANK,
***Respondents*.**
x----------x

D E C I S I O N

PUNO, *J.*:

Republic Planters Bank General Services Employees Union-National Association of Trade Unions (petitioner) seeks to annul the resolution rendered by Undersecretary Bienvenido Laguesma, dismissing its petition for certification election for lack of merit.

The facts show that on January 21, 1991, petitioner filed a petition for certification election to determine the sole and exclusive bargaining representative of all regular employees outside the bargaining unit of

Republic Planters Bank.[1] The proposed bargaining unit is composed of clerks, messengers, janitors, plumbers, telex operators, mailing and printing personnel, drivers, mechanics and computer personnel. Allegedly, these employees are regular employees but are considered as contractual employees by private respondent bank. They are excluded from the existing collective bargaining agreement between private respondent and Republic Planters Bank Employees Union (RPBEU), the duly certified bargaining representative of the regular employees of private respondent.

Private respondent filed its position paper and moved to dismiss the petition for certification election. Firstly, it contended that petitioner union is comprised of some thirty (30) employees of Superior Maintenance Services, Inc. (SMSI)[2] who are assigned o the bank as messengers and janitors under a Contract of Services. The other employees in the proposed bargaining unit are employed on "contractual basis" and are not members of petitioner. Secondly, it stressed the existence of a bargaining unit represented by Republic Planters Bank Employees Union (RPBEU). Thirdly, it alleged that the petition failed to state the number of employees in the proposed bargaining unit and there is no prior determination that the members of petitioner are employees of private respondent.

Petitioner opposed the motion to dismiss and averred that the proposed unit is not part of the existing bargaining unit. Petitioner further argued that some of its members had been in the employ of private respondent for more than six (6) months. Allegedly, they perform services that are necessary and desirable to the usual business operations of private respondent. As to its member performing janitorial and messengerial services for private respondent, petitioner contended that Superior Maintenance Services, Inc. (SMSI) is engaged in 'labor-only' contracting.

Med-Arbiter Anastacio Bactin dismissed the petition for certification election on the ground that there is already a certified bargaining agent representing the appropriate bargaining unit within private respondent. Thus, if qualified, the employees who were excluded from the existing collective bargaining agreement may join the existing bargaining unit in accord with the one-union, one-company policy of

the Department of Labor and Employment. The dispositive portion of the Med-Arbiter's Order[3] states:

> "WHEREFORE, premises considered, the petition for certification election is hereby DISMISSED for lack of legal basis.
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> "The employees who are rendering services to the respondent Bank as clerks, messengers, plumbers, telex operators, mailing and printing personnel, drivers, mechanics, and computer personnel are hereby DECLARED as employees of Republic Planters Bank. Since they are employees of the bank, they may join the existing bargaining agent of the rank and file employees of the respondent bank.
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> "However, the janitors who are tasked to clean the premises of the bank are classified as employees of Superior Maintenance Services, Incorporated since their job is not related to the main business of the respondent bank.
>
> "SO ORDERED."

Private respondent interposed an appeal protesting the finding of employer-employee relationship. On December 21, 1992, Undersecretary Bienvenido Laguesma reversed the Order of the Med-arbiter.[4]

Petitioner filed a Motion for Reconsideration.[5] It submitted additional documentary evidence prepared by some of the contractual employees, namely, Concepcion L. Garcia (messenger), Noel Gavarra (machine operator), Consuelo David (clerk typist), Maria Trinita M. Samson (clerk typist), and Rodelio Tabernilla (messenger).[6]

Private respondent opposed the motion for reconsideration on the ground that the documents submitted for the first time on appeal are inadmissible in evidence. The documents were also denounced as self-serving.

On May 10, 1993, Undersecretary Laguesma modified the December 21, 1992 Resolution, thus:

> "WHEREFORE, the questioned Order is hereby modified by declaring that Concepcion L. Garcia, Noel Gavarra, Consuelo David, Maria Trinita M. Samson, and Rodelio Tabernilla are regular employees of respondent bank and therefore, part of the existing rank and file unit.
>
> "SO ORDERED."

Both parties moved for reconsideration of the May 10, 1993 Order. Petitioner sought a ruling that the other workers in the proposed bargaining unit should also be considered regular employees of private respondent since they perform duties necessary to the bank's business operations. Petitioner submitted additional documents containing the job descriptions of eleven (11) employees assigned at private respondent, most of whom were performing messengerial services. Private respondent reiterated its objection to the admissibility of the new evidence.

On February 24, 1995, Undersecretary Laguesma issued another Order, setting aside the May 10, 1993 Order and reinstating the Resolution dated December 21, 1992. The pertinent portion of the Order states:

> "Indeed, the documents submitted by petitioner, including those appended to its present motion, which purportedly are the job descriptions of the subject workers, may not be given weight for being self-serving. It is quite obvious that they were prepared by the workers themselves and was not approved by their supposed employer. Being so, they are mere scraps of paper having no evidentiary value.
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> "Moreover, respondent correctly pointed out that petitioner submitted the said documents for the first time on a motion for reconsideration, after this Office ruled that the questioned finding of the Med-Arbiter is not supported by any evidence. To our mind, such belated submission should not be tolerated nor encouraged, otherwise there will be no end to the proceedings.

> "WHEREFORE, the motion for reconsideration of petitioner is hereby denied for lack of merit while the motion of respondent is hereby granted. Accordingly, our Order dated 10 May 1993 is hereby set aside and our Order (Resolution) dated 10 [sic] May December 1992, dismissing the petition, is hereby reinstated."
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> SO ORDERED."

Hence, this petition for certiorari.

Petitioner contends grave abuse of discretion on the part of public respondent when (1) it allowed private respondent to participate or intervene in the certification election, contrary to our decision in Golden Farms Inc. vs. Secretary of Labor; and (2) it did not give value to the documents it submitted on appeal.

The petition lacks merit.

We start with the restatement of the rule that no petition for certification election may be entertained if filed outside the sixty-day period immediately before the expiration of the collective bargaining agreement.[7] The purpose of the prohibition against the filing of a petition for certification election outside the so-called freedom period is to ensure industrial peace between the employer and its employees during the existence of the CBA.[8] Thus in Trade Unions of the Philippines vs. Laguesma,[9] we held that when a legitimate labor organization has been certified as the sole and exclusive bargaining agent of the rank-and-file employees of a given employer, it means that it shall remain as such during the existence of the CBA, to the exclusion of other labor organizations, and no petition questioning the majority status of said incumbent agent or any certification election be conducted outside the sixty-day freedom period immediately before the expiry date of the CBA.

In the case at bar, the petition for certification election was filed on January 21, 1991. The collective bargaining agreement between the duly certified bargaining agent, Republic Planters Bank Employees Union, and private respondent was effective from June 30, 1988 to

June 30, 1991.[10] It is crystal clear that the filing of the petition for certification election was premature.

Petitioner tries to tilt the balance in its favor by assailing the legal standing of private respondent in intervening in the certification election. The attempt is futile. To begin with, petitioner did not raise this issue in the proceedings below. It is too late to litigate the issue on appeal. Besides, our ruling in Golden Farms, Inc. vs. Secretary of Labor[11] cannot be invoked by petitioner. In Golden Farms Inc., we upheld the general rule that "an employer has no legal standing to question a certification election since this is the sole concern of the workers." Its facts, however, are different for in said .case, the existence of employer-employee relationship was not disputed. Likewise, the petition for certification election was filed within the freedom period. The main issue involved therein was also different, i.e., the propriety of forming a separate bargaining unit for the monthly paid office employees despite the existence of a bargaining unit for the daily paid rank-and-file workers assigned at the banana fields. Considering the dissimilarity of interests between the two groups of employees in terms of duties and obligations, working conditions, salary rates and skills, we allowed the formation of a separate and distinct bargaining unit for the monthly paid employees of Golden Farms, Inc.

The more applicable case is Singer Sewing Machine Company vs. Drilon, et al.,[12] where we ruled that if the union members are not employees, no right to organize for purposes of bargaining, nor to be certified as bargaining agent can be recognized. Since the persons involved are not employees of the company, we held that they are not entitled to the constitutional right to join or form a labor organization for purposes of collective bargaining. Singer reiterated our earlier pronouncement in La Suerte Cigar and Cigarette Factory vs. Director of Labor Relations (123 SCRA 679 [1983]), thus:

> "The question of whether employer-employee relationship exists is a primordial consideration before extending labor benefits under the workmen's compensation, social security, medicare, termination pay and labor relations law. It is important in the determination of who shall be included in the proposed bargaining unit because, it is the sine qua non, the

> fundamental and essential condition that a bargaining unit be composed of employees. Failure to establish this juridical relationship between the union members and the employer affects the legality of the union itself. It means the ineligibility of the union members to present 2 petition for certification election as well as to vote therein."

Finally, the public respondent did not commit grave abuse of discretion when it rejected the documents submitted by petitioner for the first time on appeal. Truly, technical rules of procedure need not be strictly followed by the public respondent in rendering decisions if they are impediments in giving justice and equity to the litigants. In the case at bar, the public respondent rejected the documents defining the duties of the members of petitioner union in question less because they were belatedly submitted only on appeal but more because they were self-serving and did not bear the approval of their employer. The rejection is based on sound reason and we are not free to modify the findings of respondent public official.

IN VIEW WHEREOF, the present petition for certiorari is **DISMISSED** for lack of merit.

SO ORDERED.

Regalado, Romero, Mendoza and Torres, Jr., *JJ.*, concur.

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[1] Annex "A", Rollo, p. 21; The case was docketed as NCR-OD-M-91-01-055 and raffled to Med-Arbiter Anastacio L. Bactin.
[2] SMSI is a business firm engaged in sanitation, maintenance and janitorial work.
[3] Rollo, pp. 47-52.
[4] Rollo, pp. 62-65.
[5] Annex "G", Rollo, pp. 31-91.
[6] The newly submitted evidence showed their respective job descriptions.
[7] Articles 232 and 253-A of the Labor Code.
[8] Atlantic, Gulf and Pacific Co. of Manila, Inc., vs Laguesma, G.R. No. 96635, August 6, 1992, 212 SCRA 281.
[9] G.R. No. 95013, September 21, 1994, 236 SCRA 586; Cf. Article 253-A of the Labor Code; Section 3, Rule V, Book V of the Rules Implementing the Labor Code.
[10] Annex "A" of Petition, Rollo, pp. 21-22.

[11] G.R. No. 102130, July 25, 1994, 234 SCRA 517.
[12] G.R. No. 91307, January 24, 1991, 193 SCRA 270, 275.