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**SUPREME COURT
THIRD DIVISION**

**SMC QUARRY 2 WORKERS UNION –
FEBRUARY SIX MOVEMENT (FSM)
LOCAL CHAPTER NO. 1564 (for and in
behalf of its members),**

Petitioner,

-versus-

**G.R. No. 150761
May 19, 2004**

**TITAN MEGABAGS INDUSTRIAL
CORPORATION,**

Respondent.

X-----X

DECISION

SANDOVAL-GUTIERREZ, J.:

For Resolution is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[1] dated July 31, 2001 and the Resolution^[2] dated November 13, 2001 rendered by the Court of Appeals in CA-G.R. SP No. 64146, entitled “Titan Megabags Industrial Corporation vs. The Honorable Office of the Secretary of Labor, Bureau of Labor Relations and SMC Quarry 2 Workers Union-February Six Movement (FSM).”

The controversy at bar arose from a petition for certification election filed with the Med-Arbitration Section, Regional Office No. IV, Department of Labor and Employment (DOLE) at Calamba, Laguna by petitioner SMC Quarry 2 Workers Union-February Six Movement (FSM) Local Chapter No. 1564, docketed as Case No. RO400-9810-RU-002.

In its petition for certification election, petitioner alleged that it is a legitimate labor organization that seeks to represent the regular rank-and-file workers at Titan Megabags Industrial Corporation, respondent.

Respondent opposed the petition, contending that members of petitioner union are not its employees but of Stitchers Multi-Purpose Cooperative (SMC), an independent contractor. Respondent claimed that it engaged SMC to manufacture and sew its multi-purpose industrial bags.

In an Order dated July 13, 1999, the Med-Arbiter held that respondent is the employer of the members of petitioner union and directed that a certification election be conducted by its regular rank and file workers.

On appeal, the Office of the DOLE Secretary, in a Resolution dated April 13, 2000, affirmed in toto the Med-Arbiter's Order authorizing a certification election.

Respondent filed a motion for reconsideration but was denied by the Office of the DOLE Secretary in a Resolution dated March 19, 2001 for being late by seven (7) days.

Respondent then filed a petition for certiorari with the Court of Appeals, alleging that the Office of the DOLE Secretary committed grave abuse of discretion in finding that an employer-employee relationship existed between respondent and members of petitioner union and in ordering a certification election.

On July 31, 2001, the Court of Appeals promulgated its Decision setting aside the April 13, 2000 and March 19, 2001 Resolutions of

the Office of the DOLE Secretary and disallowing the conduct of a certification election.

On November 13, 2001, the Court of Appeals issued a Resolution denying the petitioner's motion for reconsideration.

Petitioner, in the instant petition for review on certiorari vigorously asserts that the Court of Appeals erred (1) in setting aside the final and executory Resolutions of the Office of the DOLE Secretary; and (2) in holding that SMC is an independent contractor and that no employer-employee relationship exists between respondent and members of petitioner union that justifies the holding of a certification election.

Under Article 259 of the Labor Code, as amended, any party to a certification election may appeal the order of the Med-Arbitrator directly to the Secretary of Labor who shall decide the same within fifteen (15) calendar days.

Along this line, Section 15, Rule XI, Book V of the Omnibus Rules Implementing the Labor Code provides that the Decision or Resolution of the Secretary of the DOLE on appeal shall be final and executory. Upon finality of the Decision of the Secretary, the entire records of the case shall be remanded to the office of origin for implementation of the Decision, unless restrained by the appropriate court.

In *National Federation of Labor vs. Laguesma*,^[3] we ruled that the remedy of an aggrieved party in a Decision or Resolution of the Secretary of the DOLE is to timely file a motion for reconsideration as a precondition for any further or subsequent remedy, and then seasonably file a special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. And without a motion for reconsideration seasonably filed within the ten-day reglementary period, the questioned Decision or Resolution of the Secretary becomes final and executory.^[4] Consequently, the merits of the case can no longer be reviewed to determine if the Secretary could be faulted for grave abuse of discretion.^[5]

Respondent's failure to file its motion for reconsideration seasonably is jurisdictional and fatal to its cause and has, in effect, rendered final and executory the April 13, 2000 and March 19, 2001 Resolutions of the Secretary of the DOLE.

Even if there was no procedural flaw on the part of respondent, still the Appellate Court should have denied respondent's petition for certiorari. We have held that "in certification elections, the employer is a bystander, it has no right or material interest to assail the certification election."^[6]

Thus, when a petition for certification election is filed by a legitimate labor organization, it is good policy of the employer not to have any participation or partisan interest in the choice of the bargaining representative. While employers may rightfully be notified or informed of petitions of such nature, they should not, however, be considered parties thereto with an inalienable right to oppose it.^[7]

WHEREFORE, the petition is **GRANTED**. The Decision dated July 31, 2001 and the Resolution dated November 13, 2001 of the Court of Appeals are **REVERSED**. The Resolutions of the Office of the DOLE Secretary dated April 13, 2000 and March 19, 2001 are **AFFIRMED**.

SO ORDERED.

Vitug, J., (Chairman), Corona, and Carpio-Morales, JJ., concur.

[1] Annex "A", Petition for Review, Rollo at 45-56.

[2] Annex "B", id. at 57.

[3] See G.R. No. 123426, March 10, 1999, 304 SCRA 405 (1999), citing *St. Martin Funeral Homes vs. NLRC*, G.R. No. 130866, September 16, 1998.

[4] See *Maria Glenn M. Alviado et al. vs. MJG General Merchandize et al.*, G.R. No. 129702, September 8, 2003 at 5.

[5] *Id.*, citing *Lagera vs. NLRC*, G.R. No. 123636, March 31, 2000, 329 SCRA 436, 440.

[6] See *Toyota Motor Phils. Corporation Workers' Association (TMPCWA) vs. Court of Appeals et al.*, G.R. No. 148924, September 24, 2003 at 22.

[7] Samahan ng mga Manggagawa sa Filsystems vs. Secretary of Labor and Employment, G.R. No. 128067, June 5, 1998, 290 SCRA 680, 688.

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