SUPREME COURT
SECOND DIVISION

SAMAHAN NG MANGGAGAWA SA PACIFIC PLASTIC,
***Petitioner*,**

-versus-

G.R. No. 111245
January 31, 1997

HON. BIENVENIDO LAGUESMA, Undersecretary of Labor, and MALAYANG NAGKAKAISANG MANGGAGAWA NG PACIFIC PLASTIC,
***Respondents*.**
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D E C I S I O N

MENDOZA, *J.*:

This is a Special Civil Action for *Certiorari* to set aside the Resolution, dated May 14, 1993, of respondent Undersecretary of Labor and the order of the Med-Arbiter of January 31, 1993, dismissing the election protest of petitioner Samahan ng Manggagawa sa Pacific Plastic (SAMAHAN) and upholding the election of respondent Malayang Nagkakaisang Manggagawa ng Pacific Plastic (MNMPP) as the sole and exclusive bargaining representative of the rank and file employees at the Pacific Plastic Corporation.

The facts are as follows:

Petitioner SAMAHAN and respondent MNMPP are labor unions of rank and file employees at the Pacific Plastic Corporation (PPC) in Valenzuela, Metro Manila. On August 24, 1990, MNMPP filed a Petition for Certification Election, alleging that there were more or less 130 rank and file employees at the PPC whom it was seeking to represent.[1] SAMAHAN countered by seeking the cancellation of MNMPP's union registration. As a result, MNMPP's petition to be certified as the bargaining agent was dismissed. MNMPP appealed to the Secretary of Labor who, on March 5, 1991, reversed the decision of the Med-Arbiter and ordered the holding of a certification election among the rank and file employees of the PPC. The PPC filed a Motion for Reconsideration but its motion was denied. Accordingly, the representation officer of the Secretary of Labor held a pre-election conference on May 6, 1991, during which the PPC was required to submit the list of its rank and file employees based on the company payroll three (3) months prior to the filing of the petition. As respondent company failed to submit the list, it was given a stern warning by the Department of Labor (DOLE) that should it fail to appear at the next conference on June 3, 1991, the list to be submitted by petitioner MNMPP would be used as basis for determining the eligible voters.[2] But the PPC again failed to appear at the conference, prompting the Department of Labor Industrial Relations Division (DOLE-IRD) to issue a final warning.[3]

Petitioner SAMAHAN also failed to appear at the June 3, 1991 conference. On June 18, 1991, it moved to defer the conference, alleging that proceedings for the cancellation of union registration of MNMPP were still pending resolution before the Med-Arbiter which constitute a prejudicial question and that there existed a collective bargaining agreement between PPC and SAMAHAN which was a bar to the certification election.[4]

MNMPP opposed the motion, contending that the cancellation case had already been finally decided by the DOLE and that the execution of the subject CBA during the pendency of the representation case did not bar the holding of a certification election.[5]

On August 23, 1991, the DOLE-IRD summoned respondent company once more, reiterating its warning that should the company fail to submit the list of its rank and file employees, the list to be submitted by private respondent MNMPP and petitioner SAMAHAN would be adopted as the list of qualified voters and the company's right to the exclusion proceedings would be deemed waived.[6]

But again PPC did not comply with the DOLE order. Meanwhile, on September 23, 1991, SAMAHAN and MNMPP agreed to hold the certification election on October 29, 1991 on the basis of the list of employees submitted by MNMPP, without prejudice to the submission by petitioner SAMAHAN of its own list on October 17, 1991.[7] Thereafter, they agreed to postpone election to await the list of employees requested from the Social Security System.[8]

On September 10, 1992, upon motion of MNMPP, the certification election was finally set for October 6, 1992. But SAMAHAN objected despite its agreement with MNMPP on September 23, 1991 to hold an election using the list furnished by the SSS.[9] It also objected to the participation of a third labor union, Kalipunan ng Manggagawang Pilipino (KAMAPI) which in the meantime had filed a motion for intervention. Thereafter, SAMAHAN filed a Manifestation/Motion that it was not participating in the certification election and asked that the certification election held on the same day be nullified for the following reasons: (1) it did not receive notice of the certification as required by law; (2) its opposition to KAMAPI's motion to intervene and its opposition to setting the date of the certification election had not been resolved; (3) there were discrepancies in the list of voters submitted by the SSS; and (4) SAMAHAN's President moved to strike out his signature at the back of the official ballot.[10]

The certification election was held on October 6, 1992. Over SAMAHAN's objection KAMAPI was allowed to participate. The following were results of the election:[11]

No. of Eligible Voters	98
Malayang Nagkakaisang Manggagawa sa Pacific Plastic,	56
Samahan ng Manggagawa sa Pacific Plastic	2
Kalipunan ng Manggagawang Pilipino	0
No Union	1

No. of Spoiled Ballots cast	3
Total no of Votes Cast	62

On October 9, 1992, SAMAHAN protested the result of the certification election alleging the same grounds alleged by it in its Manifestation/Motion of October 6, 1992. On October 15, 1992, MNMPP opposed the petition raising the following arguments: (1) that the mere filing of a motion for intervention will not suspend the holding of a certification election under Rule V, §5 of the Omnibus Rules Implementing the Labor Code; (2) that the results of the election showed that intervenor was resoundingly repudiated by the employees; (3) that it failed to specify the alleged discrepancies in the list of employees furnished by the SSS; and (4) that matters not raised during the election are deemed waived pursuant to Rule VI, §3 of the Omnibus Rules Implementing the Labor Code.[12]

In his order dated January 31, 1993, the Med-Arbiter, Tomas F. Falconitin, dismissed the election protest of SAMAHAN and upheld the election of MNMPP as the sole and exclusive bargaining agent of all rank and file employees at the PPC. On March 12, 1993, SAMAHAN appealed to the Secretary of Labor. It argued that its opposition to KAMAPI's Motion for Intervention should first be resolved before a certification election could be held and that the contract-bar rule should be applied. In addition, it contended that the use of the SSS list was in violation of the Omnibus Rules Implementing the Labor Code which prescribe the use of the company payroll as basis for the voter's list.

On May 14, 1993, Undersecretary Bienvenido Laguesma denied the appeal of SAMAHAN and affirmed the decision of the Med-Arbiter. SAMAHAN moved for a reconsideration, but its motion was denied on July 29, 1993. Hence, this petition for certiorari.

Petitioner contends:

1. The certification election held on October 6, 1992 is null and void on the ground that only 62 out of 130 employees participated in the activity.

2. The SSS lists indicating 98 covered employees cannot be used as substitute for three (3) monthly payrolls [sic] required for the purpose of determining the qualified voters and the majority vote needed in an election.

3. Hon. Bienvenido Laguesma committed a serious error amounting to lack of jurisdiction in upholding the election of respondent officer's [sic] despite the absence of majority support which is 65 out of 130 admitted members in the bargaining unit.

4. Hon. Bienvenido Laguesma had abused his discretion in sustaining deemed-arbiter despite the absence of any legal or factual support when he could otherwise declare failure of an election, thereby constituting his acts to have been done in excess of his authority amounting to lack of jurisdiction, and therefore his resolution and order issued pursuant thereof are considered to be null and void.[13]

The petition has no merit.

First. The certification election held on October 6, 1992 is valid. Art. 256 of the Labor Code provides that in order to have a valid election, at least a majority of all eligible voters in the unit must have cast their votes.

The certification election results show that more than a majority, i.e., 62 out of a total of 98 eligible voters included in the list of employees obtained from the SSS, cast their votes. The certification election results show that more than a majority obtained from the SSS, cast their votes. Hence, the legal requirement for a valid election was met.

The bone of contention actually concerns the propriety of utilizing the list of employees furnished by the SSS as basis for determining the total number of eligible voters in the bargaining unit. Petitioner claims that, according to the Implementing Rules, the basis for the list of eligible voters should have been the payroll three (3) months preceding the filing of the petition for certification election and that if this was done the 62 votes cast would be short of the majority because, instead of only 98 employees as shown in the SSS list, there

were actually 130 as alleged in MNMPP's petition for certification election.

The contention is without merit. As petitioner itself says, the figure 130 is based on the allegation that MNMPP made in its petition for certification election that it was supported by at least 25% of the members of the bargaining unit.[14] Such statement was a mere approximation of the size of the bargaining unit that the petitioning union seeks to represent and cannot be used against MNMPP for this reason.

It should ideally be the payroll which should have been used for the purpose of the election. However, the unjustified refusal of a company to submit the payroll in its custody, despite efforts to make it produce it, compelled resort to the SSS list as the next best source of information. After all, the SSS list is a public record whose regularity is presumed. In Port Workers Union of the Philippines (PWUP) vs. Undersecretary of Labor and Employment,[15] this Court underscored the policy of the Labor Code of encouraging the holding of a certification election as the definitive and certain way of ascertaining the choice of employees as to the labor organization in a collective bargaining unit. In Trade Unions or the Philippines and Allied Services World Federation of Trade Unions vs. Laguesma,[16] we reiterated this policy thus:

> It bears stressing that no obstacle must be placed to the holding of certification elections, for it is a statutory policy that should not be circumvented. We have held that whenever there is doubt as to whether a particular union represents the majority of the rank and file employees, in the absence of a legal impediment, the holding of certification election is the most democratic method of determining the employees' choice of their bargaining representative. It is the appropriate means whereby controversies and disputes on representation may be laid to rest, by the unequivocal vote of the employees themselves. Indeed, it is the keystone of industrial democracy.

Insistence on the application of the Omnibus Implementing Rules could defeat this policy. Worse, it could facilitate fraud by employers who can easily suppress the payroll to prevent certification elections

from being held. This Court has therefore consistently adhered to the principle announced in U.E. Automotive Employees vs. Noriel[17] that where it concerns the weight to be accorded to the wishes of the majority as expressed in an election conducted fairly and honestly, certain provisions that may be considered mandatory before the voting takes place become thereafter merely directory in order that the wishes of the electorate prevail. Considering all the arguments presented above, we find no substantial reason to nullify the certification election conducted on October 6, 1992 on the basis of a mere technicality which finds no justification considering the facts of the case nor upon close examination of the true intent of the law to remove all impediments to the conduct of certification elections.

At all events petitioner must be deemed to have waived the objection based on this ground, considering that this objection was raised for the first time in petitioner's appeal from the decision of the Med-Arbiter dismissing petitioner's protest.[18] Even then, petitioner's objection to the use of the SSS list was not that this was contrary to the requirement of the Implementing Rules that the payroll three (3) months prior to the filing of the petition should be used but rather that the list contained some discrepancy[19] — an allegation which petitioner failed to substantiate.

At the latest, petitioner's objection to the use of the SSS should have been raised during the elections and formalized in its election protest. We agree with private respondent MNMPP in its Opposition to SAMAHAN's election protest dated October 15, 1992 that under the Implementing Rules, grounds of protests not raised before the close of the proceedings and duly formalized within five (5) days after the close of the election proceedings are deemed waived.[20]

Second. Petitioner's contention in its Motion for Deferment of Pre-election Conference was that the CBA between it and the PPC signed during the pendency of the representation proceedings, rendered the certification election moot and academic. Rule V, Book V of the Omnibus Rules Implementing the Labor Code, §4 provides:

> The representation case shall not, however, be adversely affected by a collective bargaining agreement registered before

> or during the last 60 days of a subsisting agreement or during the pendency of the representation case.

This rule was applied in the case of ALU-TUCP vs. Trajano[21] where we held that the representation case will not be adversely affected by a CBA registered before or during the freedom period or during the pendency of the representation case. In ALU vs. Calleja,[22] we also held that a CBA, which was prematurely renewed, is not a bar to the holding of a certification election. Hence, the CBA entered into between petitioner and PPC during the pendency of the representation case and after the filing of the petition for certification election on August 24, 1990, cannot possibly prejudice the certification election nor render it moot.

Third. With respect to petitioner's claim[23] that the proceedings for the cancellation of MNMPP's union registration was a prejudicial question, suffice it to say that as held in Association of Court of Appeals Employees vs. Calleja,[24] a certification election can be conducted despite pendency of a petition to cancel the union registration certificate. For the fact is that at the time the respondent union filed its petition for certification, it still had the legal personality to perform such act absent an order directing its cancellation.

WHEREFORE, the petition for certiorari is **DENIED** for lack of merit.

SO ORDERED.

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

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[1] Rollo, p. 16.
[2] Id., p. 52.
[3] Ibid.
[4] Rollo, pp. 24-26.
[5] Id., p. 52.
[6] Id., pp. 23 and 53.
[7] Id., p. 53.
[8] Ibid.
[9] Id., p. 54.

[10] Id., pp. 28 & 54.
[11] Id., p. 54.
[12] Id., pp. 35-38.
[13] Id., pp. 10-11.
[14] Id., p. 109.
[15] 207 SCRA 329 (1992).
[16] 233 SCRA 565 (1994).
[17] 74 SCRA 72 (1976).
[18] Rollo, p. 47.
[19] Id., p. 32.
[20] Id., p. 38; Omnibus Rules Implementing the Labor Code, Rule VI, §§3-4.
[21] 172 SCRA 49 (1989).
[22] 179 SCRA 127 (1989).
[23] Rollo, pp. 24-25.
[24] 203 SCRA 596 (1991).