SUPREME COURT
SECOND DIVISION

SAMAHANG MANGGAGAWA SA PERMEX (SMP-PIILU-TUCP),
***Petitioners*,**

-versus-

G.R. No. 107792
March 2, 1998

THE SECRETARY OF LABOR, NATIONAL FEDERATION OF LABOR, PERMEX PRODUCER AND EXPORTER CORPORATION,
***Respondents*.**
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D E C I S I O N

MENDOZA, *J.*:

This is a Petition for Review on *Certiorari* of the decision, dated October 8, 1992 and order dated November 12, 1992, of Undersecretary of Labor and Employment Bienvenido Laguesma,

ordering a certification election to be conducted among the employees of respondent company.

The facts of the case are as follows. On January 15, 1991, a certification election was conducted among employees of respondent Permex Producer and Exporter Corporation (hereafter referred to as Permex Producer). The results of the elections were as follows:

National Federation of Labor (NFL)	235
No Union	466
Spoiled ballots	18
Marked ballots	9
Challenged ballots	7

However, some employees of Permex Producer formed a labor organization known as the Samahang Manggagawa sa Permex (SMP) which they registered with the Department of Labor and Employment on March 11, 1991. The union later affiliated with the Philippine Integrated Industries Labor Union (PIILU).

On August 16, 1991, Samahang Manggagawa sa Permex-Philippine Integrated Industries Labor Union (SMP-PIILU), wrote the respondent company requesting recognition as the sole and exclusive bargaining representative of employees at the Permex Producer. On October 19, 1991 Permex Producer recognized SMP-PIILU and, on December 1, entered into a collective bargaining agreement with it. The CBA was ratified between December 9 and 10, 1991 by the majority of the rank and file employees of Permex Producer. On December 13, 1991, it was certified by the DOLE.

On February 25, 1992, respondent NFL filed a petition for certification election, but it was dismissed by Med-Arbiter Edgar B Gongalos in an order dated August 20, 1992. Respondent NFL then appealed the order to the Secretary of Labor and Employment. On October 8, 1992, the Secretary of Labor, through Undersecretary Bienvenido Laguesma, set aside the order of the Med-Arbiter and ordered a certification election to be conducted among the rank and file employees at the Permex Producer, with the following choices:

1. National Federation of Labor

2. Samahang Manggagawa sa Permex
3. No union

Petitioner moved for a reconsideration but its motion was denied in an order dated November 12, 1992. Hence, this petition.

Two arguments are put forth in support of the petition. First, it is contended that petitioner has been recognized by the majority of the employees at Permex Producer as their sole collective bargaining agent. Petitioner argues that when a group of employees constituting themselves into an organization and claiming to represent a majority of the work force requests the employer to bargain collectively, the employer may do one of two things. First, if the employer is satisfied with the employees' claim the employer may voluntarily recognize the union by merely bargaining collectively with it. The formal written confirmation is ordinarily stated in the collective bargaining agreement. Second, if on the other hand, the employer refuses to recognize the union voluntarily, it may petition the Bureau of Labor Relations to conduct a certification election. If the employer does not submit a petition for certification election, the union claiming to represent the employees may submit the petition so that it may be directly certified as the employees' representative or a certification election may be held.

The case of Ilaw at Buklod ng Manggagawa vs. Ferrer-Calleja,[1] cited by the Solicitor General in his comment filed in behalf of the NLRC, is particularly apropos. There, the union also requested voluntary recognition by the company. Instead of granting the request, the company petitioned for a certification election. The union moved to dismiss on the ground that it did not ask the company to bargain collectively with it. As its motion was denied, the union brought the matter to this Court. In sustaining the company's stand, this Court ruled:

> Ordinarily, in an unorganized establishment like the Calasiao Beer Region, it is the union that files a petition for a certification election if there is no certified bargaining agent for the workers in the establishment If a union asks the employer to voluntarily recognize it as the bargaining agent of the employees, as the petitioner did, it in effect asks the employer to

> certify it as the bargaining representative of the employees — A CERTIFICATION WHICH THE EMPLOYER HAS NO AUTHORITY TO GIVE, for it is the employees' prerogative (not the employer's) to determine whether they want a union to represent them, and, if so, which one it should be. (Emphasis supplied)

In accordance with this ruling, Permex Producer should not have given its voluntary recognition to SMP-PIILU-TUCP when the latter asked for recognition as exclusive collective bargaining agent of the employees of the company. The company did not have the power to declare the union the exclusive representative of the workers for the purpose of collective bargaining.

Indeed, petitioner's contention runs counter to the trend towards the holding of certification election. By virtue of Executive Order No. 111, which became effective on March 4, 1987, the direct certification previously allowed under the Labor Code had been discontinued as a method of selecting the exclusive bargaining agents of the workers.[2] Certification election is the most effective and the most democratic way of determining which labor organization can truly represent the working force in the appropriate bargaining unit of a company.[3]

Petitioner argues that of the 763 qualified employees of Permex Producer, 479 supported its application for registration with the DOLE and that when petitioner signed the CBA with the company, the CBA was ratified by 542 employees. Petitioner contends that such support by the majority of the employees justifies its finding that the CBA made by it is valid and binding.

But it is not enough that a union has the support of the majority of the employees. It is equally important that everyone in the bargaining unit be given the opportunity to express himself.[4]

This is especially so because, in this case, the recognition given to the union came barely ten (10) months after the employees had voted "no union" in the certification election conducted in the company. As pointed out by respondent Secretary of Labor in his decision, there can be no determination of a bargaining representative within a year of the proclamation of the results of the certification election.[5] Here

the results, which showed that 61% of the employees voted for "no union," were certified only on February 25, 1991 but on December 1, 1991 Permex Producer already recognized the union and entered into a CBA with it.

There is something dubious about the fact that just ten (10) months after the employees had voted that they did not want any union to represent them, they would be expressing support for petitioner. The doubt is compounded by the fact that in sworn affidavits some employees claimed that they had either been coerced or misled into signing a document which turned out to be in support of petitioner as its collective bargaining agent. Although there were retractions, we agree with the Solicitor General that retractions of statements by employees adverse to a company (or its favored union) are oftentimes tainted with coercion and intimidation. For how could one explain the seeming flip-flopping of position taken by the employees? The figures claimed by petitioner to have been given to it in support cannot readily be accepted as true.

Second. Petitioner invokes the contract-bar rule. They contend that under Arts. 253, 253-A and 256 of the Labor Code and Book V, Rule 5, § 3 of its Implementing Rules and Regulations, a petition for certification election or motion for intervention may be entertained only within 60 days prior to the date of expiration of an existing collective bargaining agreement. The purpose of the rule is to ensure stability in the relationships of the workers and the management by preventing frequent modifications of any collective bargaining agreement earlier entered into by them in good faith and for the stipulated original period. Excepted from the contract-bar rule are certain types of contracts which do not foster industrial stability, such as contracts where the identity of the representative is in doubt. Any stability derived from such contracts must be subordinated to the employees' freedom of choice because it does not establish the kind of industrial peace contemplated by the law.[6] Such situation obtains in this case. The petitioner entered into a CBA with Permex Producer when its status as exclusive bargaining agent of the employees had not been established yet.

WHEREFORE, the challenged decision and order of the respondent Secretary of Labor are **AFFIRMED**.

SO ORDERED.

Regalado, Melo, Puno and Martinez, *JJ.*, concur.

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[1] 182 SCRA 561 (1990).
[2] Central Negros Electric Cooperative vs. Secretary of Labor and Employment, 201 SCRA 591 (1991).
[3] National Mines and Allied Workers Union vs. Secretary of Labor, 227 SCRA 821 (1993); Associated Trade Unions vs. Trajano, 162 SCRA 319 (1988).
[4] Central Negros Electric Cooperative, Inc. vs. Secretary of DOLE, 201 SCRA at 592.
[5] IMPLEMENTING RULES, Book V, Rule V, § 3.
[6] Firestone Tire and Rubber Company Employees Union vs. Estrella, 81 SCRA 49 (1978).
