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**SUPREME COURT
FIRST DIVISION**

**SAN JOSE CITY ELECTRIC SERVICE
COOPERATIVE, INC. (SAJELCO),
*Petitioner,***

-versus-

**G.R. No. 77231
May 31, 1989**

**MINISTRY OF LABOR AND
EMPLOYMENT AND MAGKAISA-
ADLO,
*Respondents.***

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DECISION

MEDIALDEA, J.:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court. Petitioner San Jose City Electric Service Cooperative, Inc. (SAJELCO, for brevity) seeks the reversal of the Order (pp. 38-40, Rollo) of Pura Ferrer-Calleja, Director of Bureau of Labor Relations in BLR Case No. A-10-259-86 which affirmed the Order of Med-Arbiter Antonio R. Cortez to conduct a certification election among the rank-and-file employees of SAJELCO.

The antecedent facts of the instant case are as follows:

On July 29, 1986, private respondent Manggagawang Nagkakaisa ng SAJELCO — Association of Democratic Labor Organization (MAGKAISA-ADLO) filed a petition (pp. 16-18, Rollo) for direct certification election with the Regional Office No. 111 of the Department of Labor and Employment in San Fernando, Pampanga. The petition alleged that MAGKAISA-ADLO is a legitimate labor organization duly registered with the Ministry of Labor and Employment; that there are more or less fifty-four (54) rank and file employees in SAJELCO; that almost 62% of the employees sought to be represented have supported the filing of the petition; that there has been no valid certification election held in SAJELCO during the twelve (12) month period prior to the filing of the petition and that there is no other union in the bargaining unit.

In its answer (pp. 19-21, Rollo), SAJELCO opposed the petition for direct certification election contending, inter alia, that the employees who sought to be represented by private respondent are members-consumers of the Cooperative itself and at the same time composed the General Assembly which, pursuant to the By-laws is also the final arbiter of any dispute arising in the Cooperative. Thus:

“x x x

- “5. That some, if not most, of the employees who sought to be represented by the petitioner, are member-consumers, and as such are members of the General or Special Assembly which is the final arbiter on any dispute which a member and/or the Board, or the Cooperative may have, and that such “some” of said alleged supporters, in their capacity as member-consumers, enjoy two personalities in that as employees and/or members of the General Assembly, and therefore cannot fairly and prudently represent such opposing personalities that merge into one juridical or natural person, and these special and unique status or personalities of the supposed supporters cannot qualify to be represented by the petitioner, without doing injustice, in equity and unfair status or advantage to those member-consumers who have not that destiny or status of becoming employees;

- “6. No valid and lawful representation can be obtained by petitioner in behalf of the supposed supporters, who are also member-consumers, that are bound by the Articles of Incorporation, By-laws of the respondent Cooperative and pertinent Decrees and laws, to support and defend the basic policies of the government on Electric Cooperatives;
- “7. There is no possible legal way by which to dismantle the personalities of some of the supporters of the petitioner, as employees, from their status as consumer-members, who are, under the By-laws, part and parcels of the General or Special Assembly that finally decides any dispute, and no reasonable or valid scale of justice could be invoked to divide a person who, in conscience, is also the other fellow against whom a remedy is sought for in allowing this to happen is tantamount to slaughtering a man to his own ends;

X X X

On September 5, 1986, the Med-Arbiter who was assigned to the case issued an Order (pp. 24-26, Rollo) granting the petition for direct certification election on the basis of the pleadings filed. The Order said that while some of the members of petitioner union are members of the cooperative, it cannot be denied that they are also employees within the contemplation of the Labor Code and are therefore entitled to enjoy all the benefits of employees, including the right to self-organization (pp. 25, Rollo). This Order was appealed by SAJELCO to the Bureau of Labor Relations.

In Its appeal, (pp. 27-36, Rollo) SAJELCO reiterated its position that:

“Upon the principle that in electric cooperative — as in the case of respondent—there is a merger of the consumer-members that composed of the assembly and that of the rank-and-file members of the petitioners — into one person or juridical status thus rendering the proposed collective bargaining agent ineffective and/or uncalled for — considering that a grievance machinery for employees and/or member-consumers of the

cooperative — has been provided for by the By-laws as a built-in over-all arbiter involving disputes affecting said cooperative;”

Respondent Director of the Bureau of Labor Relations dismissed the appeal and sustained the ruling of the Med-Arbiter in an order dated January 5, 1987.

On February 19, 1987, SAJELCO filed the instant petition for certiorari praying that the order of respondent Director be set aside and another one rendered denying the holding or conduct of a certification election among the rank and file employees of SAJELCO.

In a letter dated June 20, 1987, Atty. Ricardo Soto, Jr., counsel for private respondent union, manifested that a direct certification election was conducted in SAJELCO, there being no restraining order from this Court enjoining the holding thereof. Likewise, Atty. Soto was of the opinion that in view of the direct certification election conducted, the petition brought before this Court by SAJELCO has become moot and academic (p. 48, Rollo). Attached to his letter is a copy of the minutes of the certification election held on April 13, 1987 showing that of forty three (43) employees who voted, thirty (30) voted for respondent union and thirteen (13) voted for “no union.”

In the resolution of this court (First Division) dated September 29, 1987, respondents were required to comment on the petition. The Solicitor General filed its comment dated October 30, 1987 wherein it took a stand contrary to that of respondent Director. To support its stand, the Solicitor General argued firstly, that the union-members who seek to be represented by the union are the very members of the cooperative, thereby resulting in a fusion of two personalities. Thus, it will be inconsistent for the union-members to bargain with themselves. Secondly, he said that article 243 of the Labor Code’ requires that before one can form, join or assist a labor union, he must first be employed and to be an employee one must be under hire and must have no involvement in the ownership of the firm. A labor union is formed for purposes of collective bargaining. The duty to bargain exists only between employer and employees and not between an employer and his co-owners. Thirdly, he also said that under the National Electrification Decree (P.D. No. 269, August 6, 1973) members of an electric cooperative such as petitioner, besides

contributing financially to its establishments and maintenance, participate in its management. In the latter aspect, they possess the powers and prerogatives of managerial employees who are not eligible to join, assist or form any labor organization (pp. 4-6 of Comment; pp. 43-45, Rollo).

On November 25, 1987, We required Atty. Soto, Jr. to comment on the comment of the Solicitor General (p. 47, Rollo). However, the notices sent to him were returned and stamped “moved to an unknown address.” But respondent Director of the Bureau of Labor Relations filed a comment on the aforesaid comment of the Solicitor General reiterating his stand that members of private respondent union fall under the general provision of Article 244 of the Code on who are qualified to form, join or assist in the formation of unions as they are neither managerial employees nor persons belonging to subversive organizations. Thus, on May 25, 1988, we gave due course to the petition (p. 79, Rollo).

The only issue presented for resolution in this petition is whether or not the employees-members of an electric cooperative can organize themselves for purposes of collective bargaining.

This Court had the occasion to rule on this issue in the consolidated cases of Batangas I – Electric Cooperative Labor Union vs. Romeo Young, et al., G.R. No. 62386, Bulacan II Electric Cooperative, Inc., vs. Hon. Eliseo A. Penaflor, et al., G.R. No. 70880 and Albay Electric Cooperative vs. Crescencio B. Trajano, et. al., G.R. No. 74560 (November 9, 1988), citing the case of Cooperative Rural Bank of Davao City, Inc. vs. Pura Ferrer-Calleja, G.R. No. 77951, September 26, 1988, where it was held that:

“A cooperative, therefore, is by its nature different from an ordinary business concern being run either, by persons, partnerships or corporations. Its owners and/or members are the ones who run and operate the business while the others are its employees. As above stated, irrespective of the name of shares owned by its members they are entitled to cast one vote each in deciding upon the affair of the cooperative. Their share capital earn limited interests. They enjoy special privileges as — exemption from income tax and sales taxes, preferential right to

supply their products to State agencies and even exemption from minimum wage laws.

“An employee therefore of such a cooperative who is a member and co-owner thereof cannot invoke the right to collective bargaining for certainly an owner cannot bargain with himself or his co-owners. In the opinion of August 14, 1981 of the Solicitor General he correctly opined that employees of cooperatives who are themselves members of the cooperative have no right to form or join labor organizations for purposes of collective bargaining for being themselves co-owners of the cooperative.

“However, in so far as it involves cooperatives with employees who are not members or co-owners thereof, certainly such employees are entitled to exercise the rights of all workers to organization, collective bargaining, negotiations and others as are enshrined in the Constitution and existing laws of the country.”

In this petition, San Jose City Electric Service Cooperative, Inc. (SAJELCO) claims that its employees are also members of the cooperative. It cited Section 17(18) of its By-laws which declares that:

“The Board shall also create positions for subordinate employees and fix their duties and remunerations. Only member-consumers or members of their immediate family shall be employed by the cooperative” (Emphasis supplied).

The above-cited provision, however, mentions two types of employees, namely: the members-consumers and the members of their immediate families. As regards employees of SAJELCO who are members-consumers, the rule is settled that they are not qualified to form, join or assist labor organizations for purposes of collective bargaining. The reason for withholding from employees of a cooperative who are members-co-owners the right to collective bargaining is clear: an owner cannot bargain with himself. However, employees who are not members-consumers may form, join or assist labor organizations for purposes of collective bargaining notwithstanding the fact that employees of SAJELCO who are not

members-consumers were employed ONLY because they are members of the immediate family of members-consumers. The fact remains that they are not themselves members-consumers, and as such, they are entitled to exercise the rights of all workers to organization, collective bargaining, negotiations and others as are enshrined in Section 8, Article III and Section 3, Article XIII of the 1987 Constitution, Labor Code of the Philippines and other related laws (Cooperative Rural Bank of Davao City, Inc., supra, P. 10).

ACCORDINGLY, the petition is GRANTED. The assailed Order of respondent Pura Ferrer-Calleja, Director of the Bureau of Labor Relations is hereby MODIFIED to the effect that only the rank and file employees of petitioner who are not its members-consumers are entitled to self-organization, collective bargaining, and negotiations, while other employees who are members-consumers thereof cannot enjoy such light. The direct certification election conducted on April 13, 1987 is hereby set aside. The Regional Office III of the Department of Labor and Employment in San Fernando, Pampanga is hereby directed: (a) to determine the number of rank and file employees of SAJELCO who are not themselves members-consumers; (b) to resolve whether or not there is compliance with the requirements set forth in Article 257 of the Labor Code; and (c) in the affirmative, to immediately conduct a direct certification election among the rank and file employees of SAJELCO who are not members-consumers.

SO ORDERED.

Narvasa, Cruz, Gancayco and Griño-Aquino, JJ., concur.