

## SECOND DIVISION

[ G.R. No. 169745, July 18, 2014 ]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE  
HONORABLE SECRETARY OF LABOR AND EMPLOYMENT (DOLE),  
PETITIONER, VS. NAMBOKU PEAK, INC., RESPONDENT.**

**[G.R. NO. 170091]**

**PHIL-JAPAN WORKERS UNION SOLIDARITY OF UNIONS IN THE  
PHILIPPINES FOR EMPOWERMENT AND REFORMS (PJWU-  
SUPER), MED ARBITER CLARISSA G. BELTRAN LERIOS AND  
SECRETARY PATRICIA A. STO. TOMAS OF THE DEPARTMENT OF  
LABOR AND EMPLOYMENT, PETITIONERS, VS. PHIL-JAPAN  
INDUSTRIAL MANUFACTURING CORPORATION, RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

The court or tribunal exercising quasi-judicial functions is bereft of any right or personality to question the decision of an appellate court reversing its decision.<sup>[1]</sup>

These consolidated Petitions for Review on *Certiorari*<sup>[2]</sup> assail the Decisions of the Court of Appeals (CA) issued in two separate petitions, but involving the same issue of whether Section 17, Rule VIII of Department Order No. 40-03 is unconstitutional. The first is the Decision<sup>[3]</sup> dated March 18, 2005 in CA-G.R. SP No. 80603, which granted the Petition for *Certiorari*<sup>[4]</sup> filed by herein respondent Namboku Peak, Inc. (Namboku) challenging the October 22, 2003 letter- resolution<sup>[5]</sup> of Secretary of Labor and Employment Patricia A. Sto. Tomas. Said letter-resolution affirmed the Med-Arbiter's Order<sup>[6]</sup> dated June 17, 2003 denying Namboku's motion to defer the conduct of certification election pending resolution of its appeal.

The second is the Decision<sup>[7]</sup> dated January 19, 2005 in CA-G.R. SP. No. 80106, which granted the Petition for *Certiorari*<sup>[8]</sup> filed by herein respondent Phil- Japan Industrial Manufacturing Corporation (Phil-Japan) seeking to declare Section 17, Rule VIII of Department Order No. 40-03 unconstitutional for unduly depriving it of its right to appeal the August 25, 2003 Decision<sup>[9]</sup> of the Med- Arbiter. Said Decision of the Med-Arbiter, in turn, granted the Petition<sup>[10]</sup> of Phil- Japan Workers Union- Solidarity of Unions in the Philippines for Empowerment and Reforms (PJWU-SUPER) seeking to determine the exclusive bargaining representative in Phil-Japan and ordered the conduct of certification election.

***Factual Antecedents***

The facts, insofar as G.R. No. 169745 is concerned and as culled from the records, are as follows:

Namboku is a domestic corporation engaged in the business of providing manpower services to various clients, mainly airline companies. On April 28, 2003, the Philippine Aircraft Loaders and Cargo Employees Association-Solidarity of Unions in the Philippines for Empowerment and Reforms (PALCEA-SUPER) filed a Petition<sup>[11]</sup> for direct certification election before the Med-Arbiter seeking to represent the rank-and-file employees of Namboku assigned at the Cargo and Loading Station of the Philippine Airlines (PAL) in Ninoy Aquino International Airport. In support of its Petition, PALCEA-SUPER alleged that it is a local chapter affiliate of Solidarity of Unions in the Philippines for Empowerment and Reforms; that its members are composed of regular rank- and-file employees of Namboku assigned at said Cargo and Loading Station of PAL; that out of the 155 regular rank-and-file employees of Namboku, 122 or 78% are its members; and, that Namboku is an unorganized establishment.

Namboku opposed the Petition<sup>[12]</sup> on the ground of inappropriateness. It claimed that the members of the PALCEA-SUPER are project employees. Hence, they cannot represent its regular rank-and-file employees. It emphasized that their individual Project Employee Contract clearly provides that their employment is for a fixed period of time and dependent upon its Services Agreement<sup>[13]</sup> with PAL. However, PALCEA-SUPER misrepresented the status of its members by claiming that they are regular employees of Namboku.

On June 17, 2003, the Med-Arbiter issued an Order<sup>[14]</sup> holding that the members of PALCEA-SUPER are regular employees of Namboku. She explained that while Namboku informed them at the time of their engagement that their employment is for a fixed period of time, it did not, however, apprise them that the same is for a specific activity, nor was the completion or termination made known to them at the time of their engagement. Also, as opposed to the nature of its business, the tasks for which Namboku engaged their services do not appear to be separate and independent activities with pre-determined duration or completion. The Med-Arbiter thus granted the Petition and ordered the conduct of certification election. The dispositive portion of the Order reads:

WHEREFORE, premises considered, certification election is hereby ordered among the regular rank and file employees of NAMBOK[U] PEAK, INC., subject to pre-election conference, with the following choices:

1. Philippine Aircraft Loaders and Cargo Employees Association – Solidarity of Unions in the Philippines for Empowerment and Reforms (PALCEA-SUPER); and
2. No Union.

Accordingly, Employer and Petitioner are hereby directed to submit within ten (10) days from receipt hereof, the certified list of employees in the bargaining unit, or where necessary, the payrolls covering the members of the bargaining unit for the last three months prior to this issuance.

SO ORDERED.<sup>[15]</sup>

Namboku appealed<sup>[16]</sup> the Med-Arbiter's Order to the Secretary of the Labor, maintaining that the members of PALCEA-SUPER are mere project employees. It insisted that the combination of project and regular employees would render a bargaining unit inappropriate for lack of substantial-mutual interest.

In the meantime, on July 29, 2003, Namboku received a summons setting the pre-election conference on July 31, 2003 and stating that the Order granting the conduct of a certification election in an unorganized establishment is not appealable.<sup>[17]</sup>

Whereupon, Namboku filed a Manifestation and Motion,<sup>[18]</sup> as well as a Supplemental Motion and Manifestation,<sup>[19]</sup> seeking to suspend the conduct of certification election pending resolution of its appeal. It contended that Section 17,<sup>[20]</sup> Rule VIII of Department Order No. 40-03 prohibiting the filing of an appeal from an order granting the conduct of a certification election in an unorganized establishment is unconstitutional because it runs counter to Article 259<sup>[21]</sup> of the Labor Code.

In a letter-resolution<sup>[22]</sup> dated October 22, 2003, however, the Secretary of Labor denied the appeal and affirmed the Med-Arbiter's June 17, 2003 Order. In rejecting Namboku's contention that Section 17, Rule VIII of Department Order No. 40-03 is unconstitutional, the Secretary of Labor ratiocinated that unless said Department Order is declared by a competent court as unconstitutional, her office would treat the same as valid.

Undeterred, Namboku filed before the CA a Petition for *Certiorari*,<sup>[23]</sup> which was docketed as CA-G.R. SP No. 80630. Namboku imputed grave abuse of discretion on the part of the Secretary of Labor in (i) not resolving the issue of appropriateness and (ii) rejecting its appeal based on an invalid provision of Department Order 40-03.

With regard to G.R. No. 170091, an examination of the records reveals the following facts:

Phil-Japan is a domestic corporation engaged in manufacturing mufflers, chassis and other car accessories for local and international markets. On June 6, 2003, PJWU-SUPER filed before the Med-Arbiter a Petition<sup>[24]</sup> seeking to determine the sole and exclusive bargaining representative of rank-and-file employees in Phil-Japan. PJWU-SUPER alleged that it is a legitimate labor organization; that out of the 100 rank-and-file employees of Phil-Japan, 69 or 69% are members of PJWU-SUPER; that Phil-Japan is an unorganized establishment; and, that there has been no certification election conducted during the last 12 months prior to the filing of its Petition.

Phil-Japan opposed the Petition,<sup>[25]</sup> claiming that the members of PJWU-SUPER are not its employees. It alleged that the listed members of PJWU-SUPER have either resigned, finished their contracts, or are employees of its job contractors CMC Management and PEPC Management Services. It thus prayed for the dismissal of the Petition or, in the alternative, suspension of the proceedings pending determination

of the existence of employer-employee relationship.

On August 25, 2003, the Med-Arbiter rendered a Decision<sup>[26]</sup> ordering the conduct of certification election. It held, among others, that the documents submitted are not sufficient to resolve the issue of the existence of employer- employee relationship. Considering, however, that Section 15, Rule VIII of the Rules Implementing Book V of the Labor Code prohibits the suspension of proceedings based on the pendency of such issue, she allowed the employees to vote. Their votes, however, shall be segregated, and the determination of whether the number of such segregated ballots is material to the outcome of the election shall be made after the conduct of the election. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, this petition for certification election is hereby GRANTED. Certification election is hereby ordered conducted among the regular rank-and-file workers of Phil-Japan Ind. Mfg. Corporation with the following choices:

1. Phil-Japan Workers Union-Solidarity of Unions in the Philippines for Empowerment and Reforms (PJWU-SUPER); and
2. No Union.

Accordingly, Employer and Petitioner are hereby directed to submit within ten (10) days from receipt hereof, the certified list of employees in the bargaining unit, or where necessary, the payrolls covering the members of the bargaining unit for the last three months prior to this issuance.

SO ORDERED.<sup>[27]</sup>

Aggrieved, Phil-Japan appealed<sup>[28]</sup> the Decision of the Med-Arbiter to the Office of the Secretary of Labor asserting that the Med-Arbiter gravely abused her discretion in not resolving the issue of whether employer-employee relationship existed between the parties.

In a hearing held on October 7, 2003, Hearing Officer Lourdes T. Ching informed Phil-Japan that its appeal will not be acted upon pursuant to Section 17, Rule VIII of Department Order No. 40-03 and that the certification election will proceed accordingly.

Undaunted, Phil-Japan filed before the CA a Petition for *Certiorari*,<sup>[29]</sup> which was docketed as CA-G.R. SP No. 80106. Phil-Japan ascribed grave abuse of discretion on the part of the Med-Arbiter in refusing to rule on the existence of employer-employee relationship despite the presence of sufficient evidence on the matter. It also claimed that the Secretary of Labor gravely abused her discretion in refusing to act on its appeal despite the existence of such right. As to the Secretary of Labor's reliance on Section 17, Rule VIII of Department Order No. 40-03, Phil- Japan asserted that the same cannot overturn the clear provision of Article 259 of the Labor Code.

### ***Rulings of the Court of Appeals***

On March 18, 2005, the CA issued its Decision<sup>[30]</sup> in CA-G.R. SP No. 80603 (now subject of G.R. No. 169745) granting Namboku's Petition and reversing the October 22, 2003 letter-resolution of the Secretary of Labor. It sustained Namboku's position that the members of PALCEA-SUPER are project employees and, hence, they are not similarly situated with the company's regular rank-and-file employees. The CA also nullified Section 17, Rule VIII of Department Order No. 40-03 for being in conflict with Article 259 of the Labor Code.

The Secretary of Labor filed a Motion for Reconsideration.<sup>[31]</sup> This prompted Namboku to file a Motion to Expunge<sup>[32]</sup> on the ground that the Secretary of Labor is a mere nominal party who has no legal standing to participate or prosecute the case. It argued that the Secretary of Labor should have refrained from filing the said Motion for Reconsideration and should have maintained the cold neutrality of an impartial judge.

On September 15, 2005, the CA issued a Resolution<sup>[33]</sup> denying the Secretary of Labor's Motion for Reconsideration on the ground, among others, that she is merely a nominal party to the case and has no personal interest therein.

Anent CA-G.R. No. 80106 (now subject of G.R. 170091), the CA, in its January 19, 2005 Decision,<sup>[34]</sup> reversed and set aside the ruling of the Med-Arbiter. It likewise agreed with Phil-Japan that before extending labor benefits, the determination of whether an employer-employee relationship exists is a primordial consideration. And based on the documents submitted, the CA was convinced that out of the 69 members of PJWU-SUPER, 67 were not employees of Phil-Japan.

The CA further declared that for being violative of Article 259 of the Labor Code, Section 17, Rule VIII of Department Order No. 40-03 has no legal force and effect.

PJWU-SUPER and DOLE filed separate Motions for Reconsideration.<sup>[35]</sup> On September 12, 2005, the CA issued a Resolution<sup>[36]</sup> denying both motions and upholding its January 19, 2005 Decision.

### **Issues**

On November 3, 2005, the Secretary of Labor filed before this Court a Petition for Review on *Certiorari* docketed as G.R. No. 170091 assailing the January 19, 2005 Decision in CA-G.R. SP No. 80106. She avers that:

THE COURT OF APPEALS ERRED IN DECLARING AS OF NO LEGAL FORCE  
AND EFFECT SECTION 17, RULE VIII OF D.O. 40-03.<sup>[37]</sup>

Then on November 11, 2005, the Secretary of Labor filed another Petition for Review on *Certiorari* docketed as G.R. No. 169745 challenging the March 18, 2005 Decision in CA-G.R. SP No. 80603. She anchors her Petition on the following issues:

#### **I.**