

THIRD DIVISION

[G.R. No. 160352, July 23, 2008]

**REPUBLIC OF THE PHILIPPINES REPRESENTED BY DEPARTMENT
OF LABOR AND EMPLOYMENT (DOLE), PETITIONER, VS.
KAWASHIMA TEXTILE MFG., PHILIPPINES, INC., RESPONDENT.**

DECISION

AUSTRIA-MARTINEZ, J.:

The Republic of the Philippines assails by way of Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, the December 13, 2002 Decision^[1] of the Court of Appeals (CA), which reversed the August 18, 2000 Decision^[2] of the Department of Labor and Employment (DOLE), and reinstated the May 17, 2000 Order^[3] of Med-Arbiter Anastacio L. Bactin, dismissing the petition of Kawashima Free Workers Union-PTGWO Local Chapter No. 803 (KFWU) for the conduct of a certification election in Kawashima Textile Mfg. Phils., Inc. (respondent); and the October 7, 2003 CA Resolution^[4] which denied the motion for reconsideration.

The relevant facts are of record.

On January 24, 2000, KFWU filed with DOLE Regional Office No. IV, a Petition for Certification Election to be conducted in the bargaining unit composed of 145 rank-and-file employees of respondent.^[5] Attached to its petition are a Certificate of Creation of Local/Chapter^[6] issued on January 19, 2000 by DOLE Regional Office No. IV, stating that it [KFWU] submitted to said office a Charter Certificate issued to it by the national federation Phil. Transport & General Workers Organization (PTGWO), and a Report of Creation of Local/Chapter.^[7]

Respondent filed a Motion to Dismiss^[8] the petition on the ground that KFWU did not acquire any legal personality because its membership of mixed rank-and-file and supervisory employees violated Article 245 of the Labor Code, and its failure to submit its books of account contravened the ruling of the Court in *Progressive Development Corporation v. Secretary, Department of Labor and Employment*.^[9]

In an Order dated May 17, 2000, Med-Arbiter Bactin found KFWU's legal personality defective and dismissed its petition for certification election, thus:

We scrutinize the facts and evidences presented by the parties and arrived at a decision that at least two (2) members of [KFWU], namely: Dany I. Fernandez and Jesus R. Quinto, Jr. are supervisory employees, having a number of personnel under them. Being supervisory employees, they are prohibited under Article 245 of the Labor Code, as amended, to join the union of the rank and file employees. Dany I. Fernandez and Jesus R. Quinto, Jr., Chief Engineers of the Maintenance and

Manufacturing Department, respectively, act as foremen to the line engineers, mechanics and other non- skilled workers and responsible [for] the preparation and organization of maintenance shop fabrication and schedules, inventory and control of materials and supplies and tasked to implement training plans on line engineers and evaluate the performance of their subordinates. The above-stated actual functions of Dany I. Fernandez and Jesus R. Quinto, Jr. are clear manifestation that they are supervisory employees.

x x x x

Since petitioner's members are mixture of rank and file and supervisory employees, petitioner union, at this point [in] time, has not attained the status of a legitimate labor organization. Petitioner should first exclude the supervisory employees from its membership before it can attain the status of a legitimate labor organization. The above judgment is supported by the decision of the Supreme Court in the Toyota Case^[10] wherein the High Tribunal ruled:

"As respondent union's membership list contains the names of at least twenty seven (27) supervisory employees in Level Five Positions, the union could not prior to purging itself of its supervisory employee members, attain the status of a legitimate labor organization. Not being one, it cannot possess the requisite personality to file a petition for certification election." (Underscoring omitted.)

x x x x

Furthermore, the commingling of rank and file and supervisory employees in one (1) bargaining unit cannot be cured in the exclusion-inclusion proceedings [at] the pre-election conference. The above ruling is supported by the Decision of the Supreme Court in Dunlop Slazenger (Phils.), Inc. vs. Honorable Secretary of Labor and Employment, et al., G.R. No. 131248 dated December 11, 1998^[11] x x x.

x x x x

WHEREFORE, premises considered, the petition for certification election is hereby dismissed for lack of requisite legal status of petitioner to file this instant petition.

SO ORDERED. ^[12] (Emphasis supplied)

On the basis of the aforecited decision, respondent filed with DOLE Regional Office No. IV a Petition for Cancellation of Charter/Union Registration of KFWU,^[13] the final outcome of which, unfortunately, cannot be ascertained from the records.

Meanwhile, KFWU appealed^[14] to the DOLE which issued a Decision on August 18, 2000, the dispositive portion of which reads:

WHEREFORE, the appeal is GRANTED. The Order dated 17 May 2000 of the Med-Arbitrator is REVERSED and SET ASIDE. Accordingly, let the entire records of the case be remanded to the office of origin for the immediate conduct of certification election, subject to the usual pre-election conference, among the rank-and-file employees of Kawashima Textile Manufacturing Philippines, Inc. with the following choices:

1. Kawashima Free Workers Union-PTGWO Local Chapter No. 803; and
2. No union.

Pursuant to Rule XI, Section 11.1 of the New Implementing Rules, the employer is hereby directed to submit to the office of origin the certified list of current employees in the bargaining unit for the last three months prior to the issuance of this decision.

SO DECIDED. [15]

The DOLE held that Med-Arbitrator Bactin's reliance on the decisions of the Court in *Toyota Motor Philippines Corporation v. Toyota Motor Philippines Corporation Labor Union* [16] and *Dunlop Slazenger, Inc. v. Secretary of Labor and Employment* [17] was misplaced, for while Article 245 declares supervisory employees ineligible for membership in a labor organization for rank-and-file employees, the provision did not state the effect of such prohibited membership on the legitimacy of the labor organization and its right to file for certification election. Neither was such mixed membership a ground for cancellation of its registration. Section 11, Paragraph II, Rule XI of Department Order No. 9 "provides for the dismissal of a petition for certification election based on lack of legal personality of a labor organization only on the following grounds: (1) [KFWU] is not listed by the Regional Office or the Bureau of Labor Relations in its registry of legitimate labor organizations; or (2) [KFWU's] legal personality has been revoked or canceled with finality." [18] The DOLE noted that neither ground existed; on the contrary, KFWU's legal personality was well-established, for it held a certificate of creation and had been listed in the registry of legitimate labor organizations.

As to the failure of KFWU to file its books of account, the DOLE held that such omission was not a ground for revocation of union registration or dismissal of petition for certification election, for under Section 1, Rule VI of Department Order No. 9, a local or chapter like KFWU was no longer required to file its books of account. [19]

Respondent filed a Motion for Reconsideration [20] but the DOLE denied the same in its September 28, 2000 Resolution. [21]

However, on appeal by respondent, the CA rendered the December 13, 2002 Decision assailed herein, reversing the August 18, 2000 DOLE Decision, thus:

Since respondent union clearly consists of both rank and file and supervisory employees, it cannot qualify as a legitimate labor organization imbued with the requisite personality to file a petition for certification election. This infirmity in union membership cannot be corrected in the inclusion-exclusion proceedings during the pre-election conference.

Finally, contrary to the pronouncement of public respondent, the application of the doctrine enunciated in *Toyota Motor Philippines Corporation vs. Toyota Motor Philippines Corporation Labor Union* was not construed in a way that effectively denies the fundamental right of respondent union to organize and seek bargaining representation x x x.

For ignoring jurisprudential precepts on the matter, the Court finds that the Undersecretary of Labor, acting under the authority of the Secretary of Labor, acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, premises considered, the Petition is hereby GRANTED. The Decision dated 18 August 2000 of the Undersecretary of Labor, acting under the authority of the Secretary, is hereby REVERSED and SET ASIDE. The Order dated 17 May 2000 of the Med-Arbitrator dismissing the petition for certification election filed by Kawashima Free Workers Union-PTGWO Local Chapter No. 803 is REINSTATED.

SO ORDERED. [22] (Emphasis supplied)

KFWU filed a Motion for Reconsideration [23] but the CA denied it.

The Republic of the Philippines (petitioner) filed the present petition to seek **closure** on two issues:

First, whether a mixed membership of rank-and-file and supervisory employees in a union is a ground for the dismissal of a petition for certification election in view of the amendment brought about by D.O. 9, series of 1997, which deleted the phraseology in the old rule that "[t]he appropriate bargaining unit of the rank-and-file employee shall not include the supervisory employees and/or security guards;" and

Second, whether the legitimacy of a duly registered labor organization can be collaterally attacked in a petition for a certification election through a motion to dismiss filed by an employer such as Kawashima Textile Manufacturing Phils., Inc. [24]

The petition is imbued with merit.

The key to the closure that petitioner seeks could have been Republic Act (R.A.) No. 9481. [25] Sections 8 and 9 thereof provide:

Section 8. Article 245 of the Labor Code is hereby amended to read as follows:

"Art. 245. *Ineligibility of Managerial Employees to Join any Labor Organization; Right of Supervisory Employees.* - Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in the collective bargaining unit of the rank-and-file employees but may join, assist or form separate

collective bargaining units and/or legitimate labor organizations of their own. The rank and file union and the supervisors' union operating within the same establishment may join the same federation or national union."

Section 9. A new provision, Article 245-A is inserted into the Labor Code to read as follows:

"Art. 245-A. *Effect of Inclusion as Members of Employees Outside the Bargaining Unit.* - **The inclusion as union members of employees outside the bargaining unit shall not be a ground for the cancellation of the registration of the union. Said employees are automatically deemed removed from the list of membership of said union.**"

(Emphasis supplied)

Moreover, under Section 4, a pending petition for cancellation of registration will not hinder a legitimate labor organization from initiating a certification election, viz:

Sec. 4. A new provision is hereby inserted into the Labor Code as Article 238-A to read as follows:

"Art. 238-A. *Effect of a Petition for Cancellation of Registration.* - **A petition for cancellation of union registration shall not suspend the proceedings for certification election nor shall it prevent the filing of a petition for certification election.**

In case of cancellation, nothing herein shall restrict the right of the union to seek just and equitable remedies in the appropriate courts." (Emphasis supplied)

Furthermore, under Section 12 of R.A. No. 9481, employers have no personality to interfere with or thwart a petition for certification election filed by a legitimate labor organization, to wit:

Sec. 12. A new provision, Article 258-A is hereby inserted into the Labor Code to read as follows:

"Art. 258-A. *Employer as Bystander.* - In all cases, whether the petition for certification election is filed by an employer or a legitimate labor organization, **the employer shall not be considered a party thereto with a concomitant right to oppose a petition for certification election. The employer's participation in such proceedings shall be limited to: (1) being notified or informed of petitions of such nature; and (2) submitting the list of employees during the pre-election conference should the Med-Arbitrator act favorably on the petition.**"(Emphasis supplied)

However, R.A. No. 9481 took effect only on June 14, 2007;^[26] hence, it applies only to labor representation cases filed on or after said date.^[27] As the petition for certification election subject matter of the present petition was filed by KFWU on January 24, 2000,^[28] R.A. No. 9481 cannot apply to it. There may have been