564 Phil. 513

SECOND DIVISION

[G.R. NO. 159553, December 10, 2007]

YOKOHAMA TIRE PHILIPPINES, INC., PETITIONER, VS. YOKOHAMA EMPLOYEES UNION, RESPONDENT.

DECISION

QUISUMBING, J.:

In this appeal, petitioner Yokohama Tire Philippines, Inc. (hereafter Yokohama, for brevity) assails the Decision[1] dated April 9, 2003 of the Court of Appeals in CA-G.R. SP No. 74273 and its Resolution[2] dated August 15, 2003, denying the motion for reconsideration.

The antecedent facts are as follows:

On October 7, 1999, respondent Yokohama Employees Union (Union) filed a petition for certification election among the rank-and-file employees of Yokohama. Upon appeal from the Med-Arbiter's order dismissing the petition, the Secretary of the Department of Labor and Employment (DOLE) ordered an election with (1) "Yokohama Employees' Union" and (2) "No Union" as choices.[3] The election held on November 23, 2001 yielded the following result:

YOKOHAMA EMPLOYEES UNION	-	131
NO UNION	-	117
SPOILED	-	2
		250
VOTES CHALLENGED BY [YOKOHAMA]	-	78
VOTES CHALLENGED BY [UNION]	-	73

TOTAL CHALLENGED VOTES	-	151
TOTAL VOTES CAST	-	401[4]

Yokohama challenged 78 votes cast by dismissed employees. On the other hand, the Union challenged 68 votes cast by newly regularized rank-and-file employees and another five (5) votes by alleged supervisor-trainees. Yokohama formalized its protest and raised as an issue the eligibility to vote of the 78 dismissed employees, [5] while the Union submitted only a handwritten manifestation during the election.

On January 21, 2002, the Med-Arbiter resolved the parties' protests, decreeing as follows:

> WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered as follows:

x x x x

2. **The appreciation of the votes of the sixty-five (65) dismissed employees who contested their dismissal before the National Labor Relations Commission shall be suspended until the final disposition of their complaint for illegal dismissal. . . .**

3. **The votes of the sixty-eight (68) so-called "newly-regularized" rank-and-file employees shall be appreciated in the final tabulation.**

x x x x

SO ORDERED.[6] (Emphasis supplied.)

On May 22, 2002, the DOLE Acting Secretary disposed of the appeals as follows:

WHEREFORE, the partial appeal of [Yokohama] is **DENIED** and the appeal of [the union] is **PARTIALLY GRANTED**. Thus, the Order of the Med-Arbiter dated 21 January 2002 is hereby **MODIFIED** as follows:

x x x x

2. **The votes of dismissed employees who contested their dismissal before the National Labor Relations Commission (NLRC) shall be appreciated in the final tabulation of the certification election results.**

3. **The votes of the sixty-eight (68) newly regularized rank-and-file employees shall be excluded.**

x x x x

SO RESOLVED.[7] (Emphasis supplied.)

The Court of Appeals affirmed *in toto* the decision of the DOLE Acting Secretary.[8] The appellate court held that the 78 employees who contested their dismissal were entitled to vote under Article 212 (f)[9] of the Labor Code and Section 2, Rule XII[10] of the rules implementing Book V of the Labor Code. However, it disallowed the votes of the 68 newly regularized employees since they were not included in the voters' list submitted during the July 12, 2001 pre-election conference. The appellate court also noted that Yokohama's insistence on their inclusion lends suspicion that it wanted to create a company union, and ruled that Yokohama had no right to intervene in the certification election. Finally, it ruled that the union's handwritten manifestation during the election was substantial compliance with the rule on protest.

Yokohama appealed.

On September 15, 2003, we issued a temporary restraining order against the

implementation of the May 22, 2002 Decision of the DOLE Acting Secretary and the October 15, 2002 Resolution of the DOLE Secretary, denying Yokohama's motion for reconsideration.[11]

In a manifestation with motion to annul the DOLE Secretary's entry of judgment filed with this Court on October 16, 2003, Yokohama attached a Resolution[12] dated April 25, 2003 of the Med-Arbiter. The resolution denied Yokohama's motion to suspend proceedings and cited the decision of the Court of Appeals. The resolution also certified that the Union obtained a majority of 208 votes in the certification election while "No Union" obtained 121 votes. Yokohama also attached an entry of judgment[13] issued by the DOLE stating that the April 25, 2003 Resolution of the Med-Arbiter was affirmed by the DOLE Secretary's Office on July 29, 2003 and became final on September 29, 2003.

In a subsequent manifestation/motion with erratum filed on October 21, 2003, Yokohama deleted an allegation in its October 16, 2003 manifestation which was included "through inadvertence and clerical mishap." Said allegation reads:

> x x x x
>
> . . . **Notably, the *Resolution dated 29 July 2003 which affirmed the Resolution dated 25 April 2003* is still not final and executory considering the timely filing of a motion for its reconsideration on 15 August 2003 which until now has yet to be resolved**.[14]
>
> In this appeal, petitioner raises the following issues:
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> I.
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> WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN DISALLOWING THE APPRECIATION OF THE VOTES OF SIXTY-EIGHT REGULAR RANK-AND-FILE.
>
> II.
>
> WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING THE [DOLE SECRETARY'S] DECLARATION THAT [THE UNION'S] MANIFESTATION ON THE DAY OF THE CERTIFICATION ELECTION WAS SUFFICIENT COMPLIANCE WITH THE RULE ON FORMALIZATION OF PROTESTS.
>
> III.
>
> WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN ALLOWING THE APPRECIATION OF VOTES OF ALL OF ITS EMPLOYEES WHO WERE PREVIOUSLY DISMISSED FOR SERIOUS MISCONDUCT AND ABANDONMENT OF WORK WHICH ARE CAUSES UNRELATED TO THE CERTIFICATION ELECTION.[15]

We shall first resolve the last assigned issue: Was it proper to appreciate the votes of the dismissed employees?