

SECOND DIVISION

[G.R. No. 131248, December 11, 1998]

**DUNLOP SLAZENGER (PHILS.), INC., PETITIONER, VS. HON.
SECRETARY OF LABOR AND EMPLOYMENT AND DUNLOP
SLAZENGER STAFF ASSOCIATION - APSOTEU, RESPONDENTS.**

DECISION

PUNO, J.:

In this petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, petitioner seeks the annulment of the Resolution and Order, dated July 19, 1997 and October 16, 1997,^[1] of the public respondent Secretary of Labor and Employment calling for a certification election in its company.

It appears that on September 15, 1995, the respondent union filed a Petition for Certification Election among the supervisory, office and technical employees of the petitioner company before the Department of Labor and Employment, Regional Office No. III, San Fernando, Pampanga. It alleged that it is a legitimate labor organization, a duly chartered local of the Associated Professional, Supervisory, Office & Technical Employees Union (APSOTEU); that petitioner is a domestic corporation engaged in the manufacture of tennis balls and other allied products; that petitioner is an unorganized establishment and there is no certified bargaining agreement that will bar the filing of its petition for certification election; and that no certification election has been conducted within one (1) year prior to the filing of its petition for certification election.

On October 9, 1995, the petitioner company filed its Answer with Motion to Dismiss based on three (3) grounds, namely: (1) that the respondent union is comprised of supervisory and rank-and-file employees and cannot act as bargaining agent for the proposed unit; (2) that a single certification election cannot be conducted jointly among supervisory and rank-and-file employees; and (3) that the respondent union lacks legal standing since it failed to submit its books of accounts.^[2]

In its Reply filed on December 5, 1995, the respondent union alleged that its members are supervisors and not rank-and-file employees. It averred that all its members are paid monthly by the petitioner company. It alleged that the bargaining unit it seeks to represent is made up of the monthly paid supervisory employees and other personnel who cannot be classified as belonging to the rank-and-file. It further contended that it has no obligation to attach its books of accounts since it is a legitimate labor organization. It urged that the certification election proceeding cannot be used to question the legal personality of a labor organization.^[3] On March 4, 1996, however, respondent union submitted its new books of accounts consisting of the Cash Receipts Journal, Cash Disbursements Journal and two (2) ledgers.^[4]

On July 15, 1996, Mediator Arbiter Ma. Carmen A. Espinosa granted the petition for

certification election. Respondent Secretary of Labor and Employment affirmed the Arbiter's decision ruling as follows:

"x x x

"The order of the Med-Arbiter directing the conduct of a certification elections is well and proper.

"A perusal of the records shows that the bargaining unit that the petitioner seeks to represent has been properly defined and this is composed of all the supervisory employees of the respondent company. We wish to emphasize that the right of supervisory employees to form their own labor organization separate from that of the rank-and-file union has been recognized by law. This is quite clear from the provisions of Article 245 of the Labor Code, as amended, which states:

`ART. 245. Ineligibility of managerial employees to join any labor organization; right of supervisory employees-manual employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in a labor organization of the rank and file employees but may join, assist or form separate labor organizations of their own.'

"As to the contention of the respondent that the petitioning union is composed of both supervisory and rank and file employees, suffice it to stress that the same is not a sufficient reason that would warrant the dismissal of the present petition. The same can be taken care (sic) of during the pre-election conference thru the exclusion-inclusion proceedings wherein those employees who are occupying rank and file positions will be excluded from the list of eligible voters.

"Anent the issue on the legitimacy of the petitioner, we agree with the findings of the Med-Arbiter that the petitioner has acquired the requisite legal personality to file the present petition for certification elections. This is shown by the fact that the petitioner has sufficiently complied with the mandatory reportorial requirements provided for under Section 3, Rule II, Book V of the Rules and Regulations Implementing the Labor Code, as amended and as enunciated by the Supreme Court in the cases of Progressive Development Corporation vs. Secretary of Labor, et al., 205 SCRA 802 and Protection Technology Inc. vs. Secretary of Labor, G.R. 11711, March 1, 1995."^[5]

Respondent Secretary of Labor denied petitioner's motion for reconsideration; hence, this petition.

It is petitioner's submission that:

"I

"Respondent Secretary acted arbitrarily and with grave abuse of discretion amounting to lack or excess of jurisdiction in holding that the