

SECOND DIVISION

[G.R. No. 111245, January 31, 1997]

**SAMAHAN NG MANGGAGAWA SA PACIFIC PLASTIC, PETITIONER,
VS. HON. BIENVENIDO LAGUESMA, UNDERSECRETARY OF
LABOR, AND MALAYANG NAGKAKAISANG MANGGAGAWA NG
PACIFIC PLASTIC, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a special civil action for certiorari to set aside the resolution, dated May 14, 1993, of respondent Undersecretary of Labor and the order of the Med-Arbiter of January 31, 1993, dismissing the election protest of petitioner Samahan ng Manggagawa sa Pacific Plastic (SAMAHAN) and upholding the election of respondent Malayang Nagkakaisang Manggagawa ng Pacific Plastic (MNMPP) as the sole and exclusive bargaining representative of the rank and file employees at the Pacific Plastic Corporation.

The facts are as follows:

Petitioner SAMAHAN and respondent MNMPP are labor unions of rank and file employees at the Pacific Plastic Corporation (PPC) in Valenzuela, Metro Manila. On August 24, 1990, MNMPP filed a Petition for Certification Election, alleging that there were more or less 130 rank and file employees at the PPC whom it was seeking to represent. [1] SAMAHAN countered by seeking the cancellation of MNMPP's union registration. As a result, MNMPP's petition to be certified as the bargaining agent was dismissed. MNMPP appealed to the Secretary of Labor who, on March 5, 1991, reversed the decision of the Med-Arbiter and ordered the holding of a certification election among the rank and file employees of the PPC. The PPC filed a Motion for Reconsideration but its motion was denied. Accordingly, the representation officer of the Secretary of Labor held a pre-election conference on May 6, 1991, during which the PPC was required to submit the list of its rank and file employees based on the company payroll three (3) months prior to the filing of the petition. As respondent company failed to submit the list, it was given a stern warning by the Department of Labor (DOLE) that should it fail to appear at the next conference on June 3, 1991, the list to be submitted by petitioner MNMPP would be used as basis for determining the eligible voters. [2] But the PPC again failed to appear at the conference, prompting the Department of Labor Industrial Relations Division (DOLE-IRD) to issue a final warning. [3]

Petitioner SAMAHAN also failed to appear at the June 3, 1991 conference. On June 18, 1991, it moved to defer the conference, alleging that

proceedings for the cancellation of union registration of MNMPP were still pending resolution before the Med-Arbiter which constitute a prejudicial question and that there existed a collective bargaining agreement between PPC and SAMAHAN which was a bar to the certification election.

[4]

MNMPP opposed the motion, contending that the cancellation case had already been finally decided by the DOLE and that the execution of the subject CBA during the pendency of the representation case did not bar the holding of a certification election. [5]

On August 23, 1991, the DOLE-IRD summoned respondent company once more, reiterating its warning that should the company fail to submit the list of its rank and file employees, the list to be submitted by private respondent MNMPP and petitioner SAMAHAN would be adopted as the list of qualified voters and the company's right to the exclusion proceedings would be deemed waived. [6]

But again PPC did not comply with the DOLE order. Meanwhile, on September 23, 1991, SAMAHAN and MNMPP agreed to hold the certification election on October 29, 1991 on the basis of the list of employees submitted by MNMPP, without prejudice to the submission by petitioner SAMAHAN of its own list on October 17, 1991. [7] Thereafter, they agreed to postpone election to await the list of employees requested from the Social Security System. [8]

On September 10, 1992, upon motion of MNMPP, the certification election was finally set for October 6, 1992. But SAMAHAN objected despite its agreement with MNMPP on September 23, 1991 to hold an election using the list furnished by the SSS. [9] It also objected to the participation of a third labor union, Kalipunan ng Manggagawang Pilipino (KAMAPI) which in the meantime had filed a motion for intervention. Thereafter, SAMAHAN filed a Manifestation/Motion that it was not participating in the certification election and asked that the certification election held on the same day be nullified for the following reasons: (1) it did not receive notice of the certification as required by law; (2) its opposition to KAMAPI's motion to intervene and its opposition to setting the date of the certification election had not been resolved; (3) there were discrepancies in the list of voters submitted by the SSS; and (4) SAMAHAN's President moved to strike out his signature at the back of the official ballot. [10]

The certification election was held on October 6, 1992. Over SAMAHAN's objection KAMAPI was allowed to participate. The following were results of the election: [11]

Malayang Nagkakaisang Manggagawa sa Pacific Plastic	56
Samahan ng Manggagawa sa Pacific Plastic	2
Kalipunan ng Manggagawang Pilipino	0
No Union	1

No. of Spoiled Ballots cast
Total no of Votes Cast

3
62

On October 9, 1992, SAMAHAN protested the result of the certification election alleging the same grounds alleged by it in its Manifestation/Motion of October 6, 1992. On October 15, 1992, MNMPP opposed the petition raising the following arguments: (1) that the mere filing of a motion for intervention will not suspend the holding of a certification election under Rule V, 5 of the Omnibus Rules Implementing the Labor Code; (2) that the results of the election showed that intervenor was resoundingly repudiated by the employees; (3) that it failed to specify the alleged discrepancies in the list of employees furnished by the SSS; and (4) that matters not raised during the election are deemed waived pursuant to Rule VI, §3 of the Omnibus Rules Implementing the Labor Code. [12]

In his order dated January 31, 1993, the Med-Arbiter, Tomas F. Falconitin, dismissed the election protest of SAMAHAN and upheld the election of MNMPP as the sole and exclusive bargaining agent of all rank and file employees at the PPC. On March 12, 1993, SAMAHAN appealed to the Secretary of Labor. It argued that its opposition to KAMAPI's Motion for Intervention should first be resolved before a certification election could be held and that the contract-bar rule should be applied. In addition, it contended that the use of the SSS list was in violation of the Omnibus Rules Implementing the Labor Code which prescribe the use of the company payroll as basis for the voter's list.

On May 14, 1993, Undersecretary Bienvenido Laguesma denied the appeal of SAMAHAN and affirmed the decision of the Med-Arbiter. SAMAHAN moved for a reconsideration, but its motion was denied on July 29, 1993. Hence, this petition for certiorari.

Petitioner contends:

1. The certification election held on October 6, 1992 is null and void on the ground that only 62 out of 130 employees participated in the activity.
2. The SSS lists indicating 98 covered employees cannot be used as substitute for three (3) monthly payrolls [sic] required for the purpose of determining the qualified voters and the majority vote needed in an election.
3. Hon. Bienvenido Laguesma committed a serious error amounting to lack of jurisdiction in upholding the election of respondent officer's [sic] despite the absence of majority support which is 65 out of 130 admitted members in the bargaining unit.
4. Hon. Bienvenido Laguesma had abused his discretion in sustaining the med-arbiter despite the absence of any legal or factual support when he could otherwise declare failure of an election, thereby constituting his acts to have been done in excess of his authority amounting to lack of jurisdiction, and therefore his resolution and order issued pursuant thereof are considered to be null and void. [13]