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FIRST DIVISION

[G.R. No. 157086, February 18, 2013]

LEPANTO CONSOLIDATED MINING COMPANY, PETITIONER, VS. THE LEPANTO CAPATAZ UNION, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

Capatazes are not rank-and-file employees because they perform supervisory functions for the management; hence, they may form their own union that is separate and distinct from the labor organization of rank-and-file employees.

The Case

Lepanto Consolidated Mining Company (Lepanto) assails the Resolution promulgated on December 18, 2002,[1] whereby the Court of Appeals (CA) dismissed its petition for *certiorari* on the ground of its failure to first file a motion for reconsideration against the decision rendered by the Secretary of the Department of Labor and Employment (DOLE); and the resolution promulgated on January 31, 2003,[2] whereby the CA denied Lepanto's motion for reconsideration.

Antecedents

As a domestic corporation authorized to engage in large-scale mining, Lepanto operated several mining claims in Mankayan, Benguet. On May 27, 1998, respondent Lepanto Capataz Union (Union), a labor organization duly registered with DOLE, filed a petition for consent election with the Industrial Relations Division of the Cordillera Regional Office (CAR) of DOLE, thereby proposing to represent 139 *capatazes* of Lepanto.[3]

In due course, Lepanto opposed the petition,[4] contending that the Union was in reality seeking a certification election, not a consent election, and would be thereby competing with the Lepanto Employees Union (LEU), the current collective bargaining agent. Lepanto pointed out that the *capatazes* were already members of LEU, the exclusive representative of all rank-and-file employees of its Mine Division.

On May 2, 2000, Med-Arbiter Michaela A. Lontoc of DOLE-CAR issued a ruling to the effect that the *capatazes* could form a separate bargaining unit due to their not being rank-and-file employees,[5] *viz*:

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> We agree with petitioner that its members perform a function totally different from the rank-and-file employees. The word capataz is defined

in Webster's Third International Dictionary, 1986 as "a boss", "foreman" and "an overseer". The employer did not dispute during the hearing that **the capatazes indeed take charge of the implementation of the job orders by supervising and instructing the miners, mackers and other rank-and-file workers under them, assess and evaluate their performance, make regular reports and recommends (sic) new systems and procedure of work, as well as guidelines for the discipline of employees. As testified to by petitioner's president, the capatazes are neither rank-and-file nor supervisory and, more or less, fall in the middle of their rank. In this respect, we can see that indeed the capatazes differ from the rank-and-file and can by themselves constitute a separate bargaining unit.**

While it is claimed by the employer that historically, the capatazes have been considered among the rank-and-file and that it is only now that they seek a separate bargaining unit such history of affiliation with the rank-and-file association of LEU cannot totally prevent the capatazes from disaffiliating and organizing themselves separately. The constitutional right of every worker to self-organization essentially gives him the freedom to join or not to join an organization of his own choosing.

The fact that petitioner seeks to represent a separate bargaining unit from the rank-and-file employees represented by the LEU renders the contract bar rule inapplicable. While the collective bargaining agreement existing between the LEU and the employer covering the latter's rank-and-file employee covers likewise the capatazes, it was testified to and undisputed by the employer that the capatazes did not anymore participate in the renegotiation and ratification of the new CBA upon expiration of their old one on 16 November 1998. Their nonparticipation was apparently due to their formation of the new bargaining unit. Thus, while the instant petition was filed on 27 May 1998, prior to the freedom period, in the interest of justice and in consonance with the constitutional right of workers to self-organization, the petition can be deemed to have been filed at the time the 60-day freedom period set in. After all, the petition was still pending and unresolved during this period.

WHEREFORE, the petition is hereby granted and a certification election among the capataz employees of the Lepanto Consolidated Mining Company is hereby ordered conducted, subject to the usual pre-election and inclusion/exclusion proceedings, with the following choices:

1. Lepanto Capataz Union; and
2. No Union.

The employer is directed to submit to this office within ten (10) days from receipt hereof a copy of the certified list of its capataz employees and the payroll covering the said bargaining unit for the last three (3) months prior to the issuance hereof.

SO DECIDED. [6]

Lepanto appealed to the DOLE Secretary.[7]

On July 12, 2000, then DOLE Undersecretary Rosalinda Dimapilis-Baldoz (Baldoz), acting by authority of the DOLE Secretary, affirmed the ruling of Med-Arbiter Lontoc, [8] pertinently stating as follows:

> x x x x
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> The bargaining unit sought to be represented by the appellee are the capataz employees of the appellant. There is no other labor organization of capatazes within the employer unit except herein appellant. Thus, appellant is an unorganized establishment in so far as the bargaining unit of capatazes is concerned. In accordance with the last paragraph of Section 11, Rule XI, Department Order No. 9 which provides that "in a petition filed by a legitimate labor organization involving an unorganized establishment, the Med-Arbiter shall, pursuant to Article 257 of the Code, automatically order the conduct of certification election after determining that the petition has complied with all requirements under Section 1, 2 and 4 of the same rules and that none of the grounds for dismissal thereof exists", the order for the conduct of a certification election is proper.
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> Finally, as to the issue of whether the Med-Arbiter exhibited ignorance of the law when she directed the conduct of a certification election when appellee prays for the conduct of a consent election, let it be stressed that appellee seeks to be recognized as the sole and exclusive bargaining representative of all capataz employees of appellant. There are two modes by which this can be achieved, one is by voluntary recognition and two, by consent or certification election. Voluntary recognition under Rule X, Department Order No. 9 is a mode whereby the employer voluntarily recognizes the union as the bargaining representative of all the members in the bargaining unit sought to be represented. Consent and certification election under Rules XI and XII of Department Order No. 9 is a mode whereby the members of the bargaining unit decide whether they want a bargaining representative and if so, who they want it to be. The difference between a consent election and a certification election is that the conduct of a consent election is agreed upon by the parties to the petition while the conduct of a certification election is ordered by the Med-Arbiter. In this case, the appellant withdrew its consent and opposed the conduct of the election. Therefore, the petition necessarily becomes one of a petition for certification election and the Med-Arbiter was correct in granting the same.[9]
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> x x x x

In the ensuing certification election held on November 28, 2000, the Union garnered 109 of the 111 total valid votes cast.[10]

On the day of the certification election, however, Lepanto presented an

opposition/protest.[11] Hence, on February 8, 2001, a hearing was held on Lepanto's opposition/protest. Although the parties were required in that hearing to submit their respective position papers, Lepanto later opted not to submit its position paper, [12] and contended that the issues identified during the hearing did not pose any legal issue to be addressed in a position paper.[13]

On April 26, 2001, Med-Arbiter Florence Marie A. Gacad-Ulep of DOLE-CAR rendered a decision certifying the Union as the sole and exclusive bargaining agent of all *capatazes* of Lepanto.[14]

On May 18, 2001, Lepanto appealed the decision of Med-Arbiter Gacad-Ulep to the DOLE Secretary.

By her Resolution dated September 17, 2002,[15] DOLE Secretary Patricia A. Sto. Tomas affirmed the decision dated April 26, 2001, holding and disposing thus:

> Appellant accused Med-Arbiter Ulep of grave abuse of discretion amounting to lack of jurisdiction based on her failure to resolve appellant's motion to modify order to submit position papers and on rendering judgment on the basis only of appellee's position paper.
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> We deny.
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> Section 5, Rule XXV of Department Order No. 9, otherwise known as the New Rules Implementing Book V of the Labor Code, states that "in all proceedings at all levels, incidental motions shall not be given due course, but shall remain as part of the records for whatever they may be worth when the case is decided on the merits".
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> Further, the motion to modify order to submit position papers filed by appellant is without merit. Appellant claimed that the issues over which Med-Arbiter Ulep directed the submission of position papers were: (1) failure to challenge properly; (2) failure (especially of LEU) to participate actively in the proceedings before the decision calling for the conduct of certification election; and (3) validity of earlier arguments. According to appellant, the first issue was for appellee LCU to reply to in its position paper, the second issue was for the LEU and the third issue for appellant company to explain in their respective position paper. It was the position of appellant company that unless the parties filed their position paper on each of their respective issues, the other parties cannot discuss the issues they did not raise in the same position papers and have to await receipt of the others' position paper for their appropriate reply.
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> Section 9, Rule XI of Department Order No. 9, which is applied with equal force in the disposition of protests on the conduct of election, states that "the Med-Arbiter shall in the same hearing direct all concerned parties, including the employer, to simultaneously submit their respective position papers within a non-extendible period of ten days". The issues as recorded in the minutes of 28 February 2001 hearing before the Med-Arbiter are clear. The parties, including appellant company were required

to submit their respective positions on whether there was proper challenge of the voters, whether LEU failed to participate in the proceedings, if so, whether it should be allowed to participate at this belated stage and whether the arguments raised during the pre-election conferences and in the protests are valid. The parties, including appellant company were apprised of these issues and they agreed thereto. The minutes of the hearing even contained the statement that "no order will issue" and that "the parties are informed accordingly". If there is any matter that had to be clarified, appellant should have clarified the same during the said hearing and refused to file its position paper simultaneously with LCU and LEU. It appears that appellant did not do so and acquiesced to the filing of its position paper within fifteen days from the date of said hearing.

Neither is there merit in appellant's contention that the Med-Arbiter resolved the protest based solely on appellee LCU's position paper. Not only did the Med-Arbiter discuss the demerits of appellant's motion to modify order to submit position papers but likewise the demerits of its protest. We do not, however, agree with the Med-Arbiter that the protest should be dismissed due to appellant's failure to challenge the individual voters during the election. We take note of the minutes of the pre-election conference on 10 November 2000, thus:

> "It was also agreed upon (by union and management's legal officer) that all those listed will be allowed to vote during the certification election subject to challenge by management on ground that <u>none</u> of them belongs to the bargaining unit". (Underscoring supplied)

It is therefore, not correct to say that there was no proper challenge made by appellant company. The challenge was already manifested during the pre-election conference, specifying that all listed voters were being challenged because they do not belong to the bargaining unit of capatazes. Likewise, the formal protest filed by appellant company on the day of the election showed its protest to the conduct of the election on the grounds that (1) none of the names submitted and included (with pay bracket 8 and 9) to vote qualifies as capataz under the five-point characterization made in 02 May 2000 decision calling for the conduct of certification election; (2) the characterization made in the 02 May 2000 decision pertains to shift bosses who constitutes another union, the Lepanto Local Staff Union; and (3) the names listed in the voters' list are members of another union, the Lepanto Employees Union. This constitutes proper challenge to the eligibility of all the voters named in the list which includes all those who cast their votes. The election officer should have not canvassed the ballots and allowed the Med-Arbiter to first determine their eligibility.

Notwithstanding the premature canvass of the votes, we note that appellant company failed to support its grounds for challenge with