

SECOND DIVISION

[G.R. No. 104556, March 19, 1998]

**NATIONAL FEDERATION OF LABOR (NFL), PETITIONER, VS. THE
SECRETARY OF LABOR OF THE REPUBLIC OF THE
PHILIPPINES AND HIJO PLANTATION INC. (HPI),
RESPONDENTS.**

DECISION

MENDOZA, J.:

Petitioner NFL (National Federation of Labor) was chosen the bargaining agent of rank-and-file employees of the Hijo Plantation Inc. (HPI) in Mandaum, Tagum, Davao del Norte at a certification election held on August 20, 1989. Protests filed by the company and three other unions against the results of the election were denied by the Department of Labor and Employment in its resolution dated February 14, 1991 but, on motion of the company (HPI), the DOLE reconsidered its resolution and ordered another certification election to be held. The DOLE subsequently denied petitioner NFL's motion for reconsideration.

The present petition is for certiorari to set aside orders of the Secretary of Labor and Employment dated August 29, 1991, December 26, 1991 and February 17, 1992, ordering the holding of a new certification election to be conducted in place of the one held on August 20, 1989 and, for this purpose, reversing its earlier resolution dated February 14, 1991 dismissing the election protests of private respondent and the unions.

The facts of the case are as follows:

On November 12, 1988, a certification election was conducted among the rank-and-file employees of the Hijo Plantation, Inc. resulting in the choice of "no union." However, on July 3, 1989, on allegations that the company intervened in the election, the Director of the Bureau of Labor Relations nullified the results of the certification election and ordered a new one to be held.

The new election was held on August 20, 1989 under the supervision of the DOLE Regional Office in Davao City with the following results:

Total Votes cast ----- 1,012

Associated Trade Unions (ATU) ----- 39

TRUST KILUSAN ----- 5

National Federation of Labor (NFL)---- 876

Southern Philippines Federation

of Labor ----- 4

SANDIGAN -----	6
UFW -----	15
No Union -----	55
Invalid -----	13

The Trust Union Society and Trade Workers-KILUSAN (TRUST-Kilusan), the United Lumber and General Workers of the Philippines (ULGWP), the Hijo Labor Union and the Hijo Plantation, Inc. sought the nullification of the results of the certification election on the ground that it was conducted despite the pendency of the appeals filed by Hijo Labor Union and ULGWP from the order, dated August 17, 1989, of the Med-Arbiter denying their motion for intervention. On the other hand, HPI claimed that it was not informed or properly represented at the pre-election conference. It alleged that, if it was represented at all in the pre-election conference, its representative acted beyond his authority and without its knowledge. Private respondent also alleged that the certification election was marred by massive fraud and irregularities and that out of 1,692 eligible voters, 913, representing 54% of the rank-and-file workers of private respondent, were not able to vote, resulting in a failure of election.

On January 10, 1990, Acting Labor Secretary Dionisio dela Serna directed the Med-Arbiter, Phibun D. Pura, to investigate the company's claim that 54% of the rank-and-file workers were not able to vote in the certification election.

In his Report and Recommendation, dated February 9, 1990, Pura stated:

1. A majority of the rank-and-file workers had been disfranchised in the election of August 20, 1989 because of confusion caused by the announcement of the company that the election had been postponed in view of the appeals of ULGWP and Hijo Labor Union (HLU) from the order denying their motions for intervention. In addition, the election was held on a Sunday which was a non-working day in the company.
2. There were irregularities committed in the conduct of the election. It was possible that some people could have voted for those who did not show up. The election was conducted in an open and hot area. The secrecy of the ballot had been violated. Management representatives were not around to identify the workers.
3. The total number of votes cast, as duly certified by the representation officer, did not tally with the 41-page listings submitted to the Med-Arbitration Unit. The list contained 1,008 names which were checked or encircled (indicating that they had voted) and 784 which were not, (indicating that they did not vote), or a total of 1,792, but according to the representation officer the total votes cast in the election was 1,012.

Med-Arbiter Pura reported that he interviewed eleven employees who claimed that they were not able to vote and who were surprised to know that their names had been checked to indicate that they had voted.

But NFL wrote a letter to Labor Secretary Ruben Torres complaining that it had not been informed of the investigation conducted by Med-Arbiter Pura and so was not heard on its evidence. For this reason, the Med-Arbiter was directed by the Labor Secretary to hear interested parties.

The Med-Arbiter therefore summoned the unions. TRUST-Kilusan reiterated its petition for the annulment of the results of the certification election. Hijo Labor Union

manifested that it was joining private respondent HPI's appeal, adopting as its own the documentary evidence presented by the company, showing fraud in the election of August 20, 1989. On the other hand, petitioner NFL reiterated its contention that management had no legal personality to file an appeal because it was not a party to the election but was only a bystander which did not even extend assistance in the election. Petitioner denied that private respondent HPI was not represented in the pre-election conference, because the truth was that a certain Bartolo was present on behalf of the management and he in fact furnished the DOLE copies of the list of employees, and posted in the company premises notices of the certification election.

Petitioner NFL insisted that more than majority of the workers voted in the election. It claimed that out of 1,692 qualified voters, 1,012 actually voted and only 680 failed to cast their vote. It charged management with resorting to all kinds of manipulation to frustrate the election and make the "Non Union" win.

In a resolution dated February 14, 1991, the DOLE upheld the August 20, 1989 certification election. With respect to claim that election could not be held in view of the pendency of the appeals of the ULGWP and Hijo Labor Union from the order of the Med-Arbiter denying their motions for intervention, the DOLE said:^[1]

. . . even before the conduct of the certification election on 12 November 1988 which was nullified, Hijo Labor Union filed a motion for interventions. The same was however, denied for being filed unseasonably, and as a result it was not included as one of the choices in the said election. After it has been so disqualified thru an order which has become final and executory, ALU filed a second motion for intervention when a second balloting was ordered conducted. Clearly, said second motion is proforma and intended to delay the proceedings. Being so, its appeal from the order of denial did not stay the election and the Med-Arbiter was correct and did not violate any rule when he proceeded with the election even with the appeal. In fact, the Med-Arbiter need not rule on the motion as it has already been disposed of with finality.

The same is true with the motion for intervention of ULGWP. The latter withdrew as a party to the election on September 1988 and its motion to withdraw was granted by the Med-Arbiter on October 27, 1988. After such withdrawal, it cannot revive its lost personality as a party to the present case through the mere expedience of a motion for intervention filed before the conduct of a second balloting where the choices has already been pre-determined.

Let it be stressed that ULGWP and HLU were disqualified to participate in the election through valid orders that have become final and executory even before the first certification election was conducted. Consequently, they may not be allowed to disrupt the proceeding through the filing of nuisance motions. Much less are they possessed of the legal standing to question the results of the second election considering that they are not parties thereto.

The DOLE gave no weight to the report of the Med-Arbiter that the certification election was marred by massive fraud and irregularities. Although affidavits were submitted showing that the election was held outside the company premises and private vehicles were used as makeshift precincts, the DOLE found that this was because respondent company did not allow the use of its premises for the purpose of holding the election, company guards were allegedly instructed not to allow parties, voters and DOLE