

EIGHTH DIVISION

[CA-G.R. SP NO. 118048, October 31, 2014]

**TUPPERWARE BRANDS PHILIPPINES, INC., PETITIONER, VS.
THE HONORABLE SECRETARY OF LABOR AND EMPLOYMENT AND
FULLERLIFE SUPERVISORY SPECIALIST EMPLOYEES
ASSOCIATION – TRADE UNION CONGRESS OF THE PHILIPPINES,
RESPONDENTS.**

DECISION

GARCIA-FERNANDEZ, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court as amended, seeking to annul and set aside the resolution dated December 20, 2010^[1] issued by the Department of Labor and Employment in OS-A-17-8-10 which affirmed the order dated July 22, 2010 of DOLE-NCR Mediator-Arbiter Ma. Simonette L. Calabocal in NCR-OD-M-1002-016.

The facts based on the records are as follows:

On February 23, 2010, respondent Fullerlife Supervisory & Specialist Employees Association-APSOTEU-TUCP (respondent Fullerlife), a duly chartered local/chapter of the Associated Professional, Supervisory Office and Technical Employees Union – Trade Union Congress of the Philippines (APSOTEU-TUCP), certified by the Department of Labor and Employment (DOLE) as a local chapter on November 19, 2009^[2] and composed of employees of petitioner Tupperware Brands Philippines (Tupperware), filed a petition^[3] to be certified as the exclusive bargaining agent of more or less one hundred (100) regular supervisory and specialist employees of petitioner-company in its offices/branches within Metro Manila and nearby provinces. In support of its petition, Fullerlife claims that the bargaining unit is presently unorganized and there are no other legitimate labor organizations representing the bargaining unit in the company.

Acting on the petition, Mediator-Arbiter Atty. Ma. Simonette L. Calabocal issued summons to petitioner-company, ordering to submit its comment to the petition^[4].

In its comment/opposition^[5] to the petition, petitioner Tupperware claims that the Fullerlife violated Article 245 of the Labor Code of the Philippines which proscribes the establishment of a labor organization composed of both supervisory and rank-and-file employees; and that Fullerlife, failing to acquire legal personality since it is composed of supervisory and rank-and-file employees, cannot file a petition for certification election. To support its claim that the "specialists" included in the union are rank-and-file employees, petitioner submitted a copy of the job description of the "specialists"^[6] in its supplemental comment^[7].

On April 13, 2010, petitioner claims to have received summons from the DOLE Industrial Relations Division directing petitioner to submit an alphabetical list of all supervisors/specialist employees. Presuming that the list would be used to conduct the certification election, petitioner Tupperware filed an urgent motion to resolve^[8] with the Mediator-Arbiter claiming that the conduct of a pre-election conference and/or certification election before resolving the issues raised in the comment/opposition is premature, irregular, and improper.

The certification election pushed through on June 25, 2010 with the bargaining unit voting in favor of having a union. Thus, the Mediator-Arbiter issued an order dated July 22, 2010^[9] certifying Fullerlife as the sole and exclusive bargaining agent of petitioner-company.

Aggrieved, petitioner Tupperware filed an appeal^[10] with the DOLE, claiming that it was denied of its right to due process when the Mediator-Arbiter ordered the conduct of the certification election notwithstanding its opposition; that petitioner is not a mere by-stander since the Mediator-Arbiter ordered it to comment on Fullerlife's petition; and that the petition for certification election should be dismissed since Fullerlife is not a legitimate labor organization and thus, it has no legal personality to institute the petition.

On December 20, 2010, the public respondent Secretary of Department of Labor and Employment, acting through Undersecretary Hans Leo J. Cacdac, issued the assailed resolution dismissing the appeal and affirming the decision of Mediator-Arbiter Ma. Simonette L. Calabocal, saying:

"At the outset, we bewail the company's cavalier stance against the petition for certification election and its conduct. It is well to remind the company that it is a settled rule in certification election proceedings that employers are mere by-standers. Thus, when a petition for certification election is filed by a legitimate labor organization, it is good policy of the employer not to have any participation or partisan interest in the choice of the bargaining representative. While employers may rightfully be notified of informed of petitions of such nature, they should not, however, be considered parties thereto with an inalienable right to oppose it. Clearly, the company's argument that it was denied due process of law if off-tangent as it is not even considered a party to the subject petition.

Be that as it may, we shall resolve the appeal on the merits.

A perusal of the 22 March 2010 Order of the Mediator-Arbiter granting the subject petition clearly passed upon the issues of the union's legal personality and mixture of membership. Citing the case of Tagaytay Highlands International Golf Club Incorporated vs. Tagaytay Highlands Employees Union-PTGWO, the Mediator-Arbiter held that [sic] alleged mixture of supervisory and rank-and-file employees is neither a ground for the cancellation of certificate of union registration nor dismissal of a petition for certification election. Clearly, the issues raised by the company were squarely resolved by the Mediator-Arbiter.

The contention that the Mediator-Arbiter erred in granting the petition for certification election because FSSEA-TUCP is composed of supervisory and rank-and-file employees is likewise bereft of merit. Aside from the self-serving job description presented by the company, no other substantial evidence was submitted to prove that the bargaining unit sought to be represented is composed of rank-and-file and supervisory employees.

Assuming that there is such comingling of different types of employees, the same is not one of the grounds for the denial of a petition for certification election as enumerated under Section 14, Rule VIII of Department Order No. 40-03, as amended. Neither does it render the petitioning union an illegitimate labor union. Section 15, Rule VIII in relation to Section 6 Rule XIV of Department Order No. 40-03, as amended, specifically provides that the inclusion as union member of employees outside the bargaining unit shall not be a ground for the cancellation of the registration of the union. Said employees are automatically deemed removed from the list of membership of said union." [Citations omitted.]

Petitioner argues in this petition that public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction 1) by declaring that petitioner being a mere by-stander, does not have the right to due process in the petition for certification election; and 2) in ruling that petitioner was not able to prove by substantial evidence that Fullerlife is composed of supervisory and rank-and-file employees, and that such composition is not a ground to deny the petition for certification election.

The petition is devoid of merit.

Sec. 12 of Republic Act. No. 9481, otherwise known as "An Act Strengthening the Workers' Constitutional Right to Self-Organization, Amending for the Purpose Presidential Decree No. 442, as Amended, Otherwise Known as the Labor Code of the Philippines" provides:

"SEC. 12. A new provision, Article 258-A is hereby inserted into the Labor Code to read as follows:

"ART. 258-A. *Employer as Bystander.* - In all cases, whether the petition for certification election is filed by an employer or a legitimate labor organization, the employer shall not be considered a party thereto with a concomitant right to oppose a petition for certification election. The employer's participation in such proceedings shall be limited to: (1) being notified or informed of petitions of such nature; and (2) submitting the list of employees during the pre-election conference should the Med-Arbiter act favorably on the petition."