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SECOND DIVISION

[G.R. No. 84433. June 2, 1992]

ALEXANDER REYES, ALBERTO M. NERA, EDGARDO M. GECA, and 138 others, *petitioners, vs.* **CRESENCIANO B. TRAJANO, as Officer-in-Charge, Bureau of Labor Relations, Med. Arbiter PATERNO ADAP, and TRI-UNION EMPLOYEES UNION,** *et al. respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; EMPLOYEE'S RIGHT TO SELF-ORGANIZATION; GUARANTEED BY THE LABOR CODE.— Guaranteed to all employees or workers is the "right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining." This is made plain by no less than three provisions of the Labor Code of the Philippines. Article 243 of the Code provides as follows: ART. 243. Coverage and employees right to self-organization. — All persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical, or educational institutions whether operating for profit or not, shall have the right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining. Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection. Article 248 (a) declares it to be an unfair labor practice for an employer, among others, to "interfere with, restrain or coerce employees in the exercise of their right to self-organization." Similarly, Article 249 (a) makes it an unfair labor practice for a labor organization to "restrain or coerce employees in the exercise of their rights to self-organization xxx." The same legal proposition is set out in the Omnibus Rules Implementing the Labor Code, as amended, as might be expected. Section 1, Rule II (Registration of Unions), Book V (Labor Relations) of the Omnibus Rules provides as follows: "SEC. 1. Who may join unions; exception. — All persons employed in commercial, industrial and

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agricultural enterprises, including employees of government corporations established under the Corporation Code as well as employees of religious, medical or educational institutions, whether operating for profit or not, except managerial employees, shall have the right to self-organization and to form, join or assist labor organizations for purposes of collective bargaining. Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection.

2. ID.; ID.; ID.; CONSTRUED.— The right of self-organization includes the right to organize or affiliate with a labor union or determine which of two or more unions in an establishment to join, and to engage in concerted activities with co-workers for purposes of collective bargaining through representatives of their own choosing, or for their mutual aid and protection, i.e., the protection, promotion, or enhancement of their rights and interests. [Art. 247, Labor Code, as amended] Logically, the right NOT to join, affiliate with, or assist any union, and to disaffiliate or resign from a labor organization, is subsumed in the right to join, affiliate with, or assist any union, and to maintain membership therein. The right to form or join a labor organization necessarily includes the right to refuse or refrain from exercising said right. It is self-evident that just as no one should be denied the exercise of a right granted by law, so also, no one should be compelled to exercise such a conferred right. The fact that a person has opted to acquire membership in a labor union does not preclude his subsequently opting to renounce such membership. The right to refuse to join or be represented by any labor organization is recognized not only by the law but also in the rules drawn up for implementation thereof.

3. ID.; ID.; CERTIFICATION ELECTION; INCLUSION OF THE CHOICE OF "NO UNION" IN THE BALLOTS, NO LONGER REQUIRED BUT NOT EXPRESSLY BARRED.— The present implementing rules no longer explicitly impose the requirement that the ballots at a certification election include a choice for "NO UNION." Section 8 (Rule VI, Book V of the Omnibus Rules) entitled "Marking and canvassing of votes," pertinently provides that: "xxx (a) The voter must write a cross (X) or a check (/) in the square opposite the union of his choice. If only one union is involved, the voter shall make his cross or check in the square indicating

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'YES' or 'NO.' Withal, neither the quoted provision nor any other in the Omnibus Implementing Rules expressly bars the inclusion of that choice of "NO UNION" in the ballots. Indeed, it is doubtful if the employee's alternative right NOT to form, join or assist any labor organization or withdraw or resign from one may be validly eliminated and he be consequently coerced to vote for one or another of the competing unions and be represented by one of them. Besides, the statement in the quoted provision that "(i)f only one union is involved, the voter shall make his cross or check in the square indicating 'YES' or 'NO,' is quite clear acknowledgment of the alternative possibility that the "NO" votes may outnumber the "YES" votes — indicating that the majority of the employees in the company do not wish to be represented by any union — in which case, no union can represent the employees in collective bargaining. And whether the prevailing "NO" votes are inspired by considerations of religious belief or discipline or not is beside the point, and may not be inquired into at all.

4. ID.; ID.; ID.; PURPOSE THEREOF.— The purpose of a certification election is precisely the ascertainment of the wishes of the majority of the employees in the appropriate bargaining unit: to be or not to be represented by a labor organization, and in the affirmative case, by which particular labor organization. If the results of the election should disclose that the majority of the workers do not wish to be represented by any union, then their wishes must be respected, and no union may properly be certified as the exclusive representative of the workers in the bargaining unit in dealing with the employer regarding wages, hours and other terms and conditions of employment. The minority employees — who wish to have a union represent them in collective bargaining — can do nothing but wait for another suitable occasion to petition for a certification election and hope that the results will be different. They may not and should not be permitted, however, to impose their will on the majority — who do not desire to have a union certified as the exclusive workers' benefit in the bargaining unit - upon the plea that they, the minority workers, are being denied the right of self-organization and collective bargaining.

5. ID.; ID.; ID.; RIGHT TO VOTE; GRANTED TO ALL BONAFIDE EMPLOYEES IN THE BARGAINING UNIT, WHETHER MEMBERS OF A LABOR ORGANIZATION

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OR NOT.— The respondents' argument that the petitioners are disqualified to vote because they "are not constituted into a duly organized labor union" — "but members of the INK which prohibits its followers, on religious grounds, from joining or forming any labor organization" — and "hence, not one of the unions which vied for certification as sole and exclusive bargaining representative," is specious. Neither law, administrative rule nor jurisprudence requires that only employees affiliated with any labor organization may take part in a certification election. On the contrary, the plainly discernible intendment of the law is to grant the right to vote to all bonafide employees in the bargaining unit, whether they are members of a labor organization or not. As held in *Airtime Specialists, Inc. v. Ferrer-Calleja* [180 SCRA 749, 754 (1989)]. "In a certification election all rank-and-file employees in the appropriate bargaining unit are entitled to vote. This principle is clearly stated in Art. 255 of the Labor Code which states that the 'labor organization designated or selected by the majority of the employees in an appropriate bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining.' Collective bargaining covers all aspects of the employment relation and the resultant CBA negotiated by the certified union binds all employees in the bargaining unit. Hence, all rank-and-file employees, probationary or permanent, have a substantial interest in the selection of the bargaining representative. The Code makes no distinction as to their employment status as basis for eligibility in supporting the petition for certification election. The law refers to 'all' the employees in the bargaining unit. All they need to be eligible to support the petition is to belong to the 'bargaining unit.'"

6. ID.; ID.; ID.; ID.; ID.; NOT FORFEITED BY REASON OF NEGLECT TO EXERCISE THE SAME IN PAST CERTIFICATION ELECTIONS.— Neither does not the contention that petitioners should be denied the right to vote because they "did not participate in previous certification elections in the company for the reason that their religious beliefs do not allow them to form, join or assist labor organizations," persuade acceptance. No law, administrative rule or precedent prescribes forfeiture of the right to vote by reason of neglect to exercise the right in past certification elections. In denying the petitioners' right

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to vote upon these egregiously fallacious grounds, the public respondents exercised their discretion whimsically, capriciously and oppressively and gravely abused the same.

APPEARANCES OF COUNSEL

Eliseo M. Cruz for petitioners.
Potenciano Flores, Jr. for private respondents.

D E C I S I O N

NARVASA, *C.J.*:

The officer-in-charge of the Bureau of Labor Relations (Hon. Cresenciano Trajano) sustained the denial by the Med Arbiter of the right to vote of one hundred forty-one (141) members of the "Iglesia ni Kristo" (INK), all employed in the same company, at a certification election at which two (2) labor organizations were contesting the right to be the exclusive representative of the employees in the bargaining unit. That denial is assailed as having been done with grave abuse of discretion in the special civil action of *certiorari* at bar, commenced by the INK members adversely affected thereby.

The certification election was authorized to be conducted by the Bureau of Labor Relations among the employees of Tri-Union Industries Corporation on October 20, 1987. The competing unions were the Tri-Union Employees Union-Organized Labor Association in Line Industries and Agriculture (TUEU-OLALIA), and Trade Union of the Philippines and Allied Services (TUPAS). Of the 348 workers initially deemed to be qualified voters, only 240 actually took part in the election, conducted under the supervision of the Bureau of Labor Relations. Among the 240 employees who cast their votes were 141 members of the INK.

The ballots provided for three (3) choices. They provided for votes to be cast, of course, for either of the two (2) contending labor organizations, (a) TUPAS and (b) TUEU-OLALIA; and,

[1] SEE footnote 5, *infra*.

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conformably with established rule and practice,[1] for (c) a third choice: "*NO UNION*."

The final tally of the votes showed the following results:

TUPAS	1
TUEU-OLALIA	95
NO UNION	1
SPOILED	1
CHALLENGED	141

The challenged votes were those cast by the 141 INK members. They were segregated and excluded from the final count in virtue of an agreement between the competing unions, reached at the pre-election conference, that the INK members should not be allowed to vote "because they are not members of any union and refused to participate in the previous certification elections."

The INK employees promptly made known their protest to the exclusion of their votes. They filed a petition to cancel the election alleging that it "was not fair" and the result thereof did "not reflect the true sentiments of the majority of the employees." TUEU-OLALIA opposed the petition. It contended that the petitioners " do not have legal personality to protest the results of the election," because "they are not members of either contending unit, but xxx of the INK" which prohibits its followers, on religious grounds, from joining or forming any labor organization xxx."

The Med-Arbiter saw no merit in the INK employees' petition. By Order dated December 21, 1987, he certified the TUEU-OLALlA as the sole and exclusive bargaining agent of the rank-and-file employees. In that Order he decried the fact that "religious belief was (being) utilized to render meaningless the rights of the non-members of the Iglesia ni Kristo to exercise the rights to be represented by a labor organization as the bargaining agent," and declared the petitioners as "not possessed of any legal personality to institute this present cause of action" since they were not parties to the petition for certification election.

The petitioners brought the matter up on appeal to the Bureau

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of Labor Relations. There they argued that the Med-Arbiter had "practically disenfranchised petitioners who had an overwhelming majority," and "the TUEU-OLALIA certified union cannot be legally said to have been the result of a valid election where at least fifty-one percent of all eligible voters in the appropriate bargaining unit shall have cast their votes." Assistant Labor Secretary Cresenciano B. Trajano, then Officer-in-Charge of the Bureau of Labor Relations, denied the appeal in his Decision of July 22, 1988. He opined that the petitioners are "bereft of legal personality to protest their alleged disenfranchisement" since they "are not constituted into a duly organized labor union, hence, not one of the unions which vied for certification as sole and exclusive bargaining representative." He also pointed out that the petitioners "did not participate in previous certification elections in the company for the reason that their religious beliefs do not allow them to form, join or assist labor organizations."

It is this Decision of July 22, 1988 that the petitioners would have this Court annul and set aside in the present special civil action of *certiorari*.

The Solicitor General having expressed concurrence with the position taken by the petitioners, public respondent NLRC was consequently required to file, and did thereafter file, its own comment on the petition. In that comment it insists that "if the workers who are members of the Iglesia ni Kristo in the exercise of their religious belief opted not to join any labor organization as a consequence of which they themselves can not have a bargaining representative, their right to be represented by a bargaining agent should not be denied to other members of the bargaining unit."

Guaranteed to all employees or workers is the "right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining." This is made plain by no less than three provisions of the Labor Code of the Philippines.[2] Article 243 of the Code provides as

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[2] As amended *inter alia* by R.A. Nos. 6715, 6725 and 6727.

[3] Italics supplied.

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follows:[3]

ART. 243. *Coverage and employees right to self-organization.* — All persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical, or educational institutions whether operating for profit or not, shall have the *right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining.* Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection.

Article 248 (a) declares it to be an unfair labor practice for an employer, among others, to "interfere with, restrain or coerce employees in the exercise of their right to self-organization." Similarly, Article 249 (a) makes it an unfair labor practice for a labor organization to "restrain or coerce employees in the exercise of their rights to self-organization xxx."

The same legal proposition is set out in the Omnibus Rules Implementing the Labor Code, as amended, as might be expected. Section 1, Rule II (Registration of Unions), Book V (Labor Relations) of the Omnibus Rules provides as follows:[4]

"SEC. 1. *Who may join unions; exception.* — All persons employed in commercial, industrial and agricultural enterprises, including employees of government corporations established under the Corporation Code as well as employees of religious, medical or educational institutions, whether operating for profit or not, except managerial employees, shall have the *right to self-organization and to form, join or assist labor organizations for purposes of collective bargaining.* Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection.

xxx xxx xxx"

The right of self-organization includes the right to organize or affiliate with a labor union or determine which of two or more unions in an establishment to join, and to engage in concerted

[4] Italics supplied.

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activities with co-workers for purposes of collective bargaining through representatives of their own choosing, or for their mutual aid and protection, *i.e.*, the protection, promotion, or enhancement of their rights and interests.[5]

Logically, the right *NOT* to join, affiliate with, or assist any union, and to *disaffiliate or resign* from a labor organization, is subsumed in the right to join, affiliate with, or assist any union, and to maintain membership therein. The right to form or join a labor organization necessarily includes the right to refuse or refrain from exercising said right. It is self-evident that just as no one should be denied the exercise of a right granted by law, so also, no one should be compelled to exercise such a conferred right. The fact that a person has opted to acquire membership in a labor union does not preclude his subsequently opting to renounce such membership.[6]

As early as 1974 this Court had occasion to expatiate on these self-evident propositions in *Victoriano v. Elizalde Rope Workers' Union, et al.*,[7] *viz.*:

"xxx What the Constitution and Industrial Peace Act recognize and guarantee is the 'right' to form or join associations. Notwithstanding the different theories propounded by the different schools of jurisprudence regarding the nature and contents of a 'right,' it can be safely said that whatever theory one subscribes to, a right comprehends at least two broad notions, namely: first, liberty or freedom, i.e., the absence of legal restraint, whereby an employee may act for himself without being prevented by law; second, power, whereby an employee may, as he pleases, join or refrain from joining an association. It is therefore the employee who should decide for

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[5] ART. 247, Labor Code, as amended; SEE Fernandez and Quiazon, Law of Labor Relations, p. 162.

[6] To be sure, the right not to join a union, or discontinue membership therein, is subject to certain qualifications or exceptions as, *e.g.*, when there is a closed shop or similar agreement in effect in the establishment, although it has been held that such agreements are not applicable to any religious sect which prohibits affiliation of their members in any labor organization (Sec. 4(a) (4), R.A. No. 875 [The Industrial Peace Act], as amended by R.A. No. 3350)

[7] 59 SCRA 54, 66-67 (1974).

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himself whether he should join or not an association; and should he choose to join, he himself makes up his mind as to which association he would join; and even after he has joined, he still retains the liberty and the power to leave and cancel his membership with said organization at any time (*Pagkakaisa Samahang Manggagawa ng San Miguel Brewery vs. Enriquez, et al.*, 108 Phil. 1010, 1019). It is clear, therefore, that the right to join a union includes the right to abstain from joining any union (*Abo, et al. vs. PHILAME [KG] Employees Union, et al.*, L-19912, January 20, 1965, 13 SCRA 120, 123, quoting Rothenberg, Labor Relations). Inasmuch as what both the Constitution and the Industrial Peace Act have recognized, and guaranteed to the employee, is the 'right' to join associations of his choice, it would be absurd to say that the law also imposes, in the same breath, upon the employee the duty to join associations. The law does not enjoin an employee to sign up with any association."

The right to refuse to join or be represented by any labor organization is recognized not only by the law but also in the rules drawn up for implementation thereof. The original Rules on Certification promulgated by the defunct Court of Industrial Relations required that the ballots to be used at a certification election to determine which of two or more competing labor unions would represent the employees in the appropriate bargaining unit should contain, aside from the names of each union, an alternative choice of the employee voting, to the effect that he desires not to be represented by any union.[8] And where only one union was involved, the ballots were required to state the question — "Do you desire to be represented by said union?" — as regards which the employees voting would mark an appropriate square, one indicating the answer, "Yes," the other, "No."

To be sure, the present implementing rules no longer explicitly impose the requirement that the ballots at a certification election include a choice for "NO UNION." Section 8 (Rule VI, Book V of the Omnibus Rules) entitled "*Marking and canvassing of votes*," pertinently provides that:

". . . (a) The voter must write a cross (X) or a check (/) in the square opposite the union of his choice. If only one union is involved,

[8] SEE Fernandez & Quiazon, *op. cit*., pp. 499-501.

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the voter shall make his cross or check in the square indicating 'YES' or 'NO.'

xxx xxx xxx."

Withal, neither the quoted provision nor any other in the Omnibus Implementing Rules expressly bars the inclusion of that choice of "NO UNION" in the ballots. Indeed, it is doubtful if the employee's alternative right *NOT* to form, join or assist any labor organization or withdraw or resign from one may be validly eliminated and he be consequently coerced to vote for one or another of the competing unions and be represented by one of them. Besides, the statement in the quoted provision that "(i)f only one union is involved, the voter shall make his cross or check in the square indicating 'YES' or 'NO,' is quite clear acknowledgment of the alternative possibility that the "NO" votes may outnumber the "YES" votes — indicating that the majority of the employees in the company do not wish to be represented by any union — in which case, no union can represent the employees in collective bargaining. And whether the prevailing "NO" votes are inspired by considerations of religious belief or discipline or not is beside the point, and may not be inquired into at all.

The purpose of a certification election is precisely the ascertainment of the wishes of the majority of the employees in the appropriate bargaining unit: to be or not to be represented by a labor organization, and in the affirmative case, by which particular labor organization. If the results of the election should disclose that the majority of the workers do not wish to be represented by any union, then their wishes must be respected, and no union may properly be certified as the exclusive representative of the workers in the bargaining unit in dealing with the employer regarding wages, hours and other terms and conditions of employment. The minority employees — who wish to have a union represent them in collective bargaining — can do nothing but wait for another suitable occasion to petition for a certification election and hope that the results will be different. They may not and should not be permitted, however, to impose their will on the majority — who do not desire to

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have a union certified as the exclusive workers' benefit in the bargaining unit - upon the plea that they, the minority workers, are being denied the right of self-organization and collective bargaining. As repeatedly stated, the right of self-organization embraces not only the right to form, join or assist labor organizations, but the concomitant, converse right *NOT* to form, join or assist any labor union.

That the INK employees, as employees in the same bargaining unit in the true sense of the term, do have the right of self-organization, is also in truth beyond question, as well as the fact that when they voted that the employees in their bargaining unit should be represented by "NO UNION," they were simply exercising that right of self-organization, albeit in its negative aspect.

The respondents' argument that the petitioners are disqualified to vote because they "are not constituted into a duly organized labor union" — "but members of the INK which prohibits its followers, on religious grounds, from joining or forming any labor organization" — and "hence, not one of the unions which vied for certification as sole and exclusive bargaining representative," is specious. Neither law, administrative rule nor jurisprudence requires that only employees affiliated with any labor organization may take part in a certification election. On the contrary, the plainly discernible intendment of the law is to grant the right to vote to all *bona fide* employees in the bargaining unit, whether they are members of a labor organization or not. As held in *Airtime Specialists, Inc. v. Ferrer-Calleja*:[9]

"In a certification election all rank-and-file employees in the appropriate bargaining unit are entitled to vote. This principle is clearly stated in Art. 255 of the Labor Code which states that the 'labor organization designated or selected by the majority of the employees in an appropriate bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining.' Collective bargaining covers all aspects of the employment relation and the resultant CBA negotiated by the certified union binds all employees in the bargaining unit. Hence,

[9] 180 SCRA 749, 754 (1989).

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all rank-and-file employees, probationary or permanent, have a substantial interest in the selection of the bargaining representative. The Code makes no distinction as to their employment status as basis for eligibility in supporting the petition for certification election. The law refers to 'all' the employees in the bargaining unit. All they need to be eligible to support the petition is to belong to the 'bargaining unit.'"

Neither does the contention that petitioners should be denied the right to vote because they "did not participate in previous certification elections in the company for the reason that their religious beliefs do not allow them to form, join or assist labor organizations," persuade acceptance. No law, administrative rule or precedent prescribes forfeiture of the right to vote by reason of neglect to exercise the right in past certification elections. In denying the petitioners' right to vote upon these egregiously fallacious grounds, the public respondents exercised their discretion whimsically, capriciously and oppressively and gravely abused the same.

WHEREFORE, the petition for certiorari is *GRANTED*; the Decision of the then Officer-in-Charge of the Bureau of Labor Relations dated December 21, 1987 (affirming the Order of the Med-Arbiter dated July 22, 1988) is *ANNULLED* and SET ASIDE; and the petitioners are DECLARED to have legally exercised their right to vote, and their ballots should be canvassed and, if validly and properly made out, counted and tallied for the choices written therein. Costs against private respondents.

SO ORDERED.

Paras, Padilla, and *Regalado, JJ.*, concur.

Nocon, J., on leave.