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WHEREFORE, the trial court's order of April 25, 1977, denying petitioners' motion to quash is set aside. It is directed to dismiss Criminal Case No. 509, the libel case against the petitioners, without prejudice to the filing of another criminal action for written defamation in the Court of First Instance of Isabela within the remainder of the prescriptive period, if warranted according to the result of a proper and duly conducted preliminary investigation. Costs against respondent Mahinan.

SO ORDERED.

Fernando, C.J., Barredo, Antonio, Concepcion Jr., and *Santos, JJ.*, concur.

Abad Santos, J., took no part.

SECOND DIVISION

[G.R. No. L-49003. April 30, 1979]

D. O. PLAZA ENTERPRISES, INC., now known as AGUSAN WOOD INDUSTRIES, INC., *petitioner, vs.* **THE HON. CARMELO C. NORIEL, as Director of the BUREAU OF LABOR RELATIONS, DANILO P. CRUZ, as Officer-In-Charge of the BUREAU OF LABOR RELATIONS, MINDANAO ASSOCIATION OF TRADE UNIONS (MATU), PHILIPPINE LABOR ALLIANCE COUNCIL, (PLAC),** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; CERTIFICATION ELECTION; MANAGEMENT TO MAINTAIN A HANDS-OFF POLICY. — The institution of collective bargaining is designed to assure that the other party, labor is free to choose its representatives. To resolve any doubt on

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the matter, a certification election is the most appropriate means of ascertaining its will. It is true that there may be circumstances where the interest of the employer calls for its being heard on the matter. An obvious instance is where it invokes the obstacles interposed by the contract-bar-rule. Sound policy dictates that as much as possible, management is to maintain a strictly hands-off policy. For if it does not, it may lend itself to the legitimate suspicion that it is partial to one of the contending unions. That is repugnant to the concept of collective bargaining. That is against the latter and spirit of welfare legislation intended to protect labor and to promote social justice. The judiciary then should be the last to look with tolerance at such efforts of an employer to take part in the process leading to the free and untrammeled choice of the exclusive bargaining representative of the workers.

2. ID.; ID.; MAY BE CONDUCTED DESPITE UNREST IN THE AREA. — The recommended temporary suspension of any projected certification election in certain logging firms including that of petitioner's, due to insurgent activities in the area is best addressed to the discretion of the Ministry of Labor. The apprehension and misgivings on the holding of the election due to such circumstance would not materialize with the prompt and efficient compliance by the military of its duty during martial law to assist the executive in the maintenance of law and order while the emergency lasts. To further negate the workers' freedom to choose their bargaining agents would create more unrest in the area.

3. POLITICAL LAW; MARTIAL LAW; ROLE OF MILITARY. — The legal effect of the declarations of martial law goes no further than to warn citizens that the military powers have been called upon by the executive to assist him in the maintenance of law and order, and that, while the emergency lasts, they must, upon pain of arrest and punishment not commit any acts which will in any way render more difficult the restoration of order and the enforcement of the law. (citing Willoughby on the Constitution of the United States, 2nd ed., 1591 (1929).

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RESOLUTION

FERNANDO, *Actg. C.J.*:

Petitioner ought not to have been surprised by the dismissal of its suit for *certiorari* and prohibition, filed against respondent Carmelo C. Noriel, the Director of Labor Relations.[1] In essence, the thrust of the petition is to prevent the holding of a certification election. The congenital infirmity of such a writ, petitioner being D. O. Plaza Enterprises, Inc., was pointed out in the Comment of Solicitor General Estelito P. Mendoza.[2] Thus: "It is settled jurisprudence that management should maintain a hands-off policy in certification election. In the recent case of *Scout Ramon V. Albano Memorial College v. Noriel, et al.,* G. R. No. L-48347, October 3, 1978, this Honorable Court held: 3. There is relevance likewise to this excerpt from *Monark International, Inc. v. Noriel*, cited in the Comment of Solicitor General Mendoza: 'There is another infirmity from which the petition suffers. It was filed by the employer, the adversary in the collective bargaining process. Precisely, the institution of collective bargaining is designed to assure that the other party, labor is free to choose its representative, to resolve any doubt on the matter, a certification election, to repeat, is the most appropriate means of ascertaining its will. It is true that there may be circumstances where the interest of the employer calls for its being heard on the matter. An obvious instance is where it invokes the obstacles interposed by the contract-bar rule. This case certainly does not fall within the exception. Sound policy dictates that as much as possible, management is to maintain a strictly hands-off policy. For if it does not, it may lend itself to the legitimate suspicion that it is partial to one of the contending unions. That is repugnant to the concept of collective bargaining. That is against the letter and spirit of welfare legislation intended to protect labor and to promote social justice. The judiciary

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[1] Danilo P. Cruz, Mindanao Association of Trade Unions, and the Philippine Labor Alliance Council were included as respondents.

[2] He was assisted by Assistant Solicitor General Reynato S. Puno.

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then should be the last to look with tolerance at such efforts of an employer to take part in the process leading to the free and untrammeled choice of the exclusive bargaining representative of the workers.' In filing the petition at bar, petitioner pretends to vindicate the right to self-organization guaranteed in no less than the Constitution. The interest of petitioner is to say the least, highly suspect. The right to self-organization belongs to the workers and petitioner is ill-advised to champion the same."[3] Hence the order of dismissal of December 11, 1978.

In the motion for reconsideration, there is a statement made by counsel for petitioner to the effect that this Court might have failed to take into consideration an allegation in its reply regarding the recommendation made by a certain Col. Alfredo S. Olana, Regional Commander of the Philippine Constabulary in Agusan, directed to the Regional Director of Regional Office No. 10 of the Ministry of Labor, for the temporary suspension of any projected certification elections in certain logging firms including petitioner "due to escalating subversive/insurgent activities in Agusan Sur."[4] Such an observation by petitioner's counsel lack accuracy. There was no failure to take note of such an allegation. It was the opinion of the Court that such an allegation did not suffice for the failure to comply with the mandate of the law. That point was stressed anew in the motion thus: "Indeed, while it was herein petitioner who filed the petition for certification election in the Ministry of Labor, petitioner has stated, and shall repeat here for emphasis, that in view of the prevailing unrest in the province of Agusan Sur, admitted no less by the Regional Commander of the Philippine Constabulary in Agusan, petitioner has no objection to the temporary suspension of the actual holding of the certification election until the peace and order problem has been resolved, in order to insure that such election, when held, shall be free, peaceful and devoid of coercive circumstances."[5] It is for that reason that the Comment

[3] Comment, 7-8. The other legal points raised in the petition were likewise ably refuted by the Solicitor General.

[4] Motion for Reconsideration, par. 3.

[5] *Ibid*, par. 5.

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of the Solicitor General who represents not only respondent Noriel but the Republic was sought.

On March 20, 1979 came his Comment worded thus: [Come now] the public respondents by the undersigned counsel and by way of Comment to the Motion for Reconsideration of petitioner respectfully state: (1) The Motion for Reconsideration is *pro forma* for it merely reiterates petitioner's arguments already submitted in the main petition itself. Thus — (a) Paragraphs 7 and 8 of the Motion for Reconsideration recite petitioner's objections to the intervention of respondent PLAC. This is a mere repetition of paragraph 33, sub-paragraphs a to d of the petition. Undersigned counsel replied to these objections in pp. 2-5 of their Comment. (b) Paragraph 9 of the Motion for Reconsideration alleges that public respondents abused their discretion in ordering the participation of the 221 members of the MATU whose petition for illegal dismissal and reinstatement is still pending with the NLRC. Again, this is a reiteration of paragraph 35 of the petition. Undersigned counsel already replied to this argument on page 6 of their Comment. (c) Paragraph 10 of the Motion for Reconsideration alleges "the legal significance of the dispositive portion of the relief in the alternative granted by the Honorable Executive Labor Arbiter Ildefonso Agbuya ***.' This again is a reiteration of paragraphs 36 and 37 of the petition and answered by public respondents on page 6 of their Comment. In fine all these arguments had been considered in the resolution of this Honorable Court dated December 11, 1978 dismissing the Petition. (2) Belatedly, the Motion for Reconsideration calls the attention of this Honorable Court to a letter dated November 24, 1978 of Col. Alfredo S. Olano, Regional Commander of the PC in Agusan, recommending the temporary suspension of any projected certification election in certain logging firms including D. O. Plaza Enterprises, due to insurgent activities in Agusan del Sur. To begin with, the letter does not affect the *legal* issues in the case at bar. The matter of whether or not under the present circumstances in Agusan del Sur a certification election can be freely held in D. O. Plaza Enterprises is best addressed to the discretion of the Ministry of Labor. Indeed, there can be more unrest in the area if the

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workers' freedom to choose their bargaining agents is further negated."[6]

The above Comment of the Solicitor General has in its favor conformity with the requirements of the rule of law. It is therefore impressed with a highly persuasive quality. It is to be expected, of course, that management will not readily yield to an order which in its opinion, whether sound or not, works against its interest. That feature of the capitalist system has been noted time and time again, lately with some disfavor, as public welfare, not only the quest for profits, deserves to be fully taken into account. If it were not thus, the dissatisfaction of the less economically-favored element of the population would be intensified. It is for that reason that there is a great need for provisions on social and economic rights so that the interest of the other party to the industrial process, labor, would be equally safeguarded. The 1935 Constitution already provided for social justice and protection to labor.[7] The present Constitution is even more emphatic on that score.[8]

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[7] According to Article II, Section 5 of the 1935 Constitution: "The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State." According to Article XIV, Section 6 of the 1935 Constitution: "The State shall afford protection to labor, especially to working women and minors, and shall regulate the relation between landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration."

[8] As far as social justice is concerned, there is this provision found in Article II, Section 6 of the present Constitution: "The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use enjoyment, and disposition of private property, and equitably diffuse property ownership and profits." Equally so, the State is required to "afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration." Article II, Section 9.

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No doubt, the Comment of the Regional Commander of the Philippine Constabulary was given in good faith. Nonetheless, it betrays lack of awareness of the role of the military in times of martial law. Even under the more restrictive view of the governmental powers during a period of emergency, Willoughby pointed out that the legal effect of the declarations of martial law "goes no further than to warn citizens that the military powers have been called upon by the executive to assist him in the maintenance of law and order, and that, while the emergency lasts, they must, upon pain of arrest and punishment not commit any acts which will in any way render more difficult the restoration of order and the enforcement of law."[9] It would appear, therefore, that with the prompt and efficient compliance with such a duty on the military, the apprehension and misgivings felt would not materialize. It can see to it, it must see to it, that the law be complied with. It is not only good law then but sound sense that is embodied in the last sentence of the Comment of the Solicitor General: "Indeed, there can be more unrest in the area if the workers' freedom to choose their bargaining agents is further negated."[10]

WHEREFORE, the motion for reconsideration is denied and the resolution of this Court dated December 11, 1978 dismissing the petition is hereby affirmed. This resolution is immediately executory. No costs.

Antonio (Actg. Chairman), Aquino, Concepcion Jr., and *Santos, JJ.*, concur.

Barredo and *Abad Santos, JJ.*, on leave.

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[9] Willoughby on the Constitution of the United States, 2nd ed., 1591 (1929).

[10] Comment to the Motion for Reconsideration, 3.