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It should be noted that the second paragraph of Section 10, Rule 112, in providing that "in cases triable in the municipal or city courts, the accused shall not be entitled as a matter of right to a preliminary investigation in accordance with this section," refers to the *second stage* of the preliminary investigation.

A complaint for an offense, falling within the concurrent jurisdiction of the city court and the Court of First Instance, may be filed in the city court either for purposes of preliminary investigation only or for investigation and trial.

In the former case, the city court may elevate the record to the Court of First Instance after conducting the preliminary investigation (*Neñaria vs. Veluz*, 91 Phil. 473; *People vs. Padios*, 97 Phil. 19).

In the latter case, the city court, after conducting the preliminary examination, may proceed to try the case on the merits (*Natividad vs. Robles*, 87 Phil. 834; *Alimajen vs. Valera*, 107 Phil. 244).

SECOND DIVISION

[G.R. No. L-48931. July 16, 1979]

ILAW AT BUKLOD NG MANGGAGAWA (IBM), *petitioners, vs.* **DIRECTOR OF LABOR RELATIONS, TRADE UNION CONGRESS OF THE PHILIPPINES, GENERAL MILLING CORPORATION, and ASSOCIATED LABOR UNIONS,** *respondents.*

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SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; THE DIRECTOR OF LABOR RELATIONS CANNOT DELEGATE HIS ARBITRATIONAL PREROGATIVES TO A FEDERATION OF LABOR UNIONS; CASE AT BAR.— We hold that the referral of the appeal to the TUCP is glaringly illegal and void. The Labor Code never intended that the Director of Labor Relations should abdicate, delegate and relinquish his arbitrational prerogatives in favor of a private person or entity or to a federation of trade unions. Such a surrender of official functions is an anomalous, deplorable and censurable renunciation of the Director's adjudicatory jurisdiction in representation cases. The Director's act of referring the appeal of the Associated Labor Unions to the TUCP is not only contrary to law but is a patent nullification of the policy of the Labor Code to avoid delay in the adjudication of labor controversies. Articles 226, 259 and 260 of the Labor Code are mandatory provisions and should be strictly adhered to. They are part and parcel of the adequate administrative machinery established by the Labor Code for the expeditious settlement of labor disputes.

APPEARANCES OF COUNSEL

Feliciano C. Tumale & Leonardo C. Rodriguez for petitioner.

Office of the Solicitor General for the public respondents.

D E C I S I O N

AQUINO, *J.*:

This is a certification election case. On June 24, 1976, or within sixty days prior to the expiration on August 19, 1976 of the unregistered collective bargaining agreement between the Associated Labor Unions and the General Milling Corporation, the Ilaw at Buklod ng Manggagawa, a duly registered labor union, filed with Regional Office No. 7 at Cebu City of the Ministry of Labor a petition for certification election.

The med-arbiter in his order of October 12, 1976 granted the petition. He ordered the holding of a certification election

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within twenty days from notice among the rank-and-file employees of the company at Lapu-Lapu City. The Associated Labor Unions appealed from that order to the Director of Labor Relations.

Instead of deciding the appeal promptly, the Director turned over the record of the case to the Trade Union Congress of the Philippines (TUCP), a federation of labor unions, allegedly by virtue of an arrangement between the Ministry of Labor and the said federation that cases involving its member-unions must first be referred to it for possible settlement in accordance with its Code of Ethics.

The TUCP has not decided the controversy. On September 14, 1978, or more than twenty months after the federation received the record of the case, the Ilaw at Buklod ng Manggagawa filed in this Court the instant petition for *mandamus* to compel the Director of Labor Relations to decide the case, or, in the alternative, to require the TUCP to return to the Director the record of the case.

The petitioner accused the TUCP of sitting indefinitely on the appeal because its president and the president of appellant Associated Labor Unions are the same person. The TUCP admits that its president is also the president of the Associated Labor Unions but it clarifies that its executive board, not its president, will decide the controversy.

The Director of Labor Relations manifested in his comment that he is willing to decide the appeal. He prays that the TUCP be ordered to return to him immediately the record of the case.

Respondent employer, the General Milling Corporation, revealed in its comment that it has a registered collective bargaining agreement with the Associated Labor Unions which will expire on *August 19, 1979*. Presumably, that agreement was a renewal of the unregistered collective bargaining agreement which expired on August 19, 1976. It was the impending expiration of that agreement which provoked the Ilaw at Buklod ng Manggagawa to file its petition for certification election in June, 1976.

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The petitioner in its reply to the TUCP's comment alleged that it was affiliated with the TUCP only in 1978 or long after the certification case was appealed to the Director of Labor Relations.

The petitioner further manifested that other certification cases referred in 1976 to the TUCP have not been acted upon by it up to this time and that the delay is a denial of labor justice.

The issue is whether it was legal and proper for the Director of Labor Relations to refer to the TUCP the appeal of the Associated Labor Unions in a certification election case.

We hold that the referral of the appeal to the TUCP is glaringly illegal and void. The Labor Code never intended that the Director of Labor Relations should abdicate, delegate and relinquish his arbitrational prerogatives in favor of a private person or entity or to a federation of trade unions. Such a surrender of official functions is an anomalous, deplorable and censurable renunciation of the Director's adjudicatory jurisdiction in representation cases.

Article 226 of the Labor Code provides in peremptory terms that the Bureau of Labor Relations and the labor relations divisions in the regional offices of the Ministry of Labor "shall have *original and exclusive authority to act*, at their own initiative or upon request of either or both parties, on all inter-union and intra-union conflicts, and all disputes, grievances or problems arising from or affecting labor-management relations in all workplaces whether agricultural or non-agricultural, except those arising from the implementation or interpretation of collective bargaining agreements which shall be the subject of grievance procedure and/or voluntary arbitration."

Article 259 of the Labor Code provides that "all certification cases shall be decided within twenty (20) working days. "Article 260 of the same Code provides that the Bureau of Labor Relations should decide appeals in representation cases "within fifteen (15) working days," or twenty working days, according to Section 10, Rule V, Book V of the Rules and Regulations Implementing the Labor Code. Section 10 further provides that "the decision of the Bureau in all cases shall be final and unappealable."

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Those provisions are mandatory and should be strictly adhered to. They are part and parcel of the adequate administrative machinery established by the Labor Code for the expeditious settlement of labor disputes. The Director's act of referring the appeal of the Associated Labor Unions to the TUCP is not only contrary to law but is a patent nullification of the policy of the Labor Code to avoid delay in the adjudication of labor controversies.

There is another aspect of this case which should be underscored. And that is that the Labor Code never intended that the original record of a labor case, an official public record, should be removed from the legitimate custodian thereof and entrusted to a private person or entity. It should be obvious that the delivery of an official public record to a private person is fraught with mischievous consequences. (See Sec. 27, Rule 132, Rules of Court on irremovability of public record.)

Respondent Director of Labor Relations in imprudently and illegally delivering to the TUCP the record of the certification election case (instead of a transcript thereof) placed himself in the pitiable, lamentable and ridiculous situation of having to beg the TUCP for the return of the record and then to ask for a court order to compel its return since the TUCP has cavalierly not heeded its request.

The petitioner and the Director could have reconstituted the record and the Director could have decided the appeal on the basis of the reconstituted record instead of awaiting the pleasure of the TUCP's officers for the return of the original record.

WHEREFORE, the president, secretary, or any responsible officer of the Trade Union Congress of the Philippines, Marvex Bldg., South Harbor, Port Area, Manila, is ordered to return to the Director of Labor Relations within forty-eight hours from notice the original record of BLR Case No. A-536-76 (LRD Case No. CE-0018).

The Director is directed to decide the appeal within ten days from the receipt of the record. Costs against respondent TUCP.

SO ORDERED.

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Barredo (Chairman), Antonio, Concepcion Jr., Santos, and *Abad Santos, JJ.*, concur.

EN BANC

[G.R. No. L-23431. July 20, 1979]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSE REPATO, ET AL.,** *defendants-appellants.*

SYLLABUS

1. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; IN ROBBERY WITH HOMICIDE, IT IS ONLY A GENERIC AGGRAVATING CIRCUMSTANCE AND NOT QUALIFYING.**— In robbery with homicide, treachery is only a generic aggravating circumstance and is not qualifying. It does not change the qualification of homicide to murder.

2. **ID.; ID.; ID.; WHEN APPRECIATED.**— There is treachery when the victim was first bound before being killed because such means tended directly and particularly to insure the consummation of the crime without risk to the aggressors, inasmuch as thus bound and disarmed, the victim could not defend himself in any manner against his assailants.

3. **ID.; PENALTY; APPLICATION THEREOF IN ROBBERY WITH HOMICIDE WHEN ATTENDED BY ONE AGGRAVATING CIRCUMSTANCE.**— We find the crime to be attended by the aggravating circumstance of treachery. The Revised Penal Code, Art. 294 (1) imposes the penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed. Since the law prescribes a penalty composed of two indivisible penalties, and there is present one aggravating circumstance, the greater penalty shall be applied.