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SECOND DIVISION

[G.R. No. 70185. May 27, 1985]

SANDIGAN NG MANGGAGAWA SA SHOEMART-NATIONAL FEDERATION OF LABOR [SMS-NFL], *petitioner, vs.* **HON. CRESENCIO B. TRAJANO, in his capacity as Director of the Bureau of Labor Relations, Ministry of Labor and Employment, SHOEMART EMPLOYEES UNION [SMEU] and PHILIPPINE ASSOCIATION OF FREE LABOR UNIONS [PAFLU],** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; CERTIFICATION ELECTION; MAY BE ORDERED BY THE BUREAU OF LABOR RELATIONS NOTWITHSTANDING THE FAILURE TO MEET THE 30% REQUIREMENT.— The issue as to whether petitioners had complied with the 30% signature rule had already been resolved in the proceedings before the Med-Arbiter. The petitioner alleges, and respondents do not deny, "that no certification election has been held at SM-Shoemart, Inc. for the last 13 years, to be exact since 1971." To remand the case to the Med-Arbiter for the purpose of giving PAFLU the opportunity to substantiate its claim that it could comply with the 30% requirement would only delay the holding of an election to finally determine the true bargaining representative of the employees. Besides, in the case of *Scout Albano vs. Noriel*, this Court held that "the Bureau of Labor Relations, in the exercise of sound discretion, may order a certification election notwithstanding the failure to meet the 30% requirement.

APPEARANCES OF COUNSEL

Ernesto R. Arellano for petitioner.

Manuel R. Guerrero for respondent.

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RESOLUTION

ESCOLIN, *J.*:

We grant this petition for *certiorari* and *mandamus* and, accordingly, Director Cresencio B. Trajano of the Bureau of Labor Relations is hereby directed to call a certification election to determine the collective bargaining representative of the rank and file workers of respondent SM Shoemart, Inc.

On May 25, 1984, petitioner Sandigan ng Manggagawa sa Shoemart-National Federation of Labor [SMS-NFL] filed with the Med-Arbiter Section of the National Capital Region, MOLE, a petition for certification election of the employees of SM Shoemart, Inc.

The petition was opposed by respondent Shoemart Employees Union [SMEU] and SM Shoemart, Inc. on the grounds that the petition was not signed by 30% of the establishment's labor force;[1] and that the existence of the new collective bargaining agreement entered into on October 19, 1983 by and between SM Shoemart, Inc. and the respondent SMEU as exclusive bargaining agent of all Shoemart employees, proscribes the holding of a certification election under the contract bar rule.[2]

Respondent Philippine Association of Free Labor Unions [PAFLU] filed a motion to intervene in the proceedings for the purpose of justifying its right, as one of the contending unions, to participate in the certification election sought by petitioner Union.[3]

After due hearing, the Med-Arbiter, in a resolution dated September 4, 1984, granted the petition for certification election. He ruled that [a] the contract bar rule does not apply to the petition because the new CBA was signed prematurely, *i.e.*, more than six [6] months before the expiration of the previous

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[1] *Rollo*, p. 38, p. 46.

[2] *Rollo*, p. 39, p. 45.

[3] *Rollo*, p. 65.

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CBA on May 31, 1984;[4] and [b] even disregarding the nineteen [19] supposedly duplicated signatures and the two [2] signatures of persons allegedly not employees of SM Shoemart, Inc., the petition was actually supported by 1,244 out of 3,347 employees, or more than 30% of the labor force of SM Shoemart, Inc. In the said resolution, however, the intervention of respondent PAFLU was denied primarily because no representative of the PAFLU appeared during the hearing of the motion for intervention and the intervention lacked the signatures of 30% of the total number of employees of SM Shoemart, Inc.

Thus, the holding of a certification election was ordered by the Med-Arbiter among the rank and file workers of SM Shoemart, Inc. with the following choices, to wit:

1. SANDIGAN NG MANGGAGAWA SA SHOEMART-NATIONAL FEDERATION OF LABOR
2. SHOEMART EMPLOYEES UNION
3. NO UNION.

On appeal, the respondent Director of the Bureau of Labor Relations, acting on the allegations of respondent SM Shoemart, Inc. that in the two sets of signatures supporting the petition, one submitted on June 4, 1984 and the other on June 13, 1984, there were a number of forgeries, illegible entries, double, triple and quadruple entries and signatures belonging to non-employees, thereby impairing the 30% subscription requirement; and that intervenor PAFLU was not given the opportunity to substantiate its bid to participate in the proceedings, ordered the case remanded to the Med-Arbiter for further hearing. Respondent Director ruled that —

"There is need, therefore, to subject the dispute to further hearing at the level of the Med-Arbiter. In that manner, all questions of fact that have been raised in this representation proceedings would be fully threshed out." (*Rollo*, p. 28).

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[4] *Rollo*, p. 31.

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We set aside the above resolution of respondent Director. The issue as to whether petitioners had complied with the 30% signature rule had already been resolved in the proceedings before the Med-Arbiter. The petitioner alleges, and respondents do not deny, "that no certification election has been held at SM-Shoemart, Inc. for the last 13 years, to be exact since 1971."[5] To remand the case to the Med-Arbiter for the purpose of giving PAFLU the opportunity to substantiate its claim that it could comply with the 30% requirement would only delay the holding of an election to finally determine the true bargaining representative of the employees. Besides, in the case of *Scout Albano vs. Noriel*,[6] this Court held that "the Bureau of Labor Relations, in the exercise of sound discretion, may order a certification election notwithstanding, the failure to meet the 30% requirement.

WHEREFORE, respondent Director is hereby ordered to call a certification election among the rank and file workers of SM Shoemart, Inc. with the following choices:

1. Sandigan ng mga Manggagawa sa SM-National Federation of Labor;
2. Shoemart Labor Union;
3. Philippine Association for Free Labor Unions;
4. No Union.

Makasiar (Chairman), *Aquino*, *Abad Santos*, and *Cuevas*, *JJ.*, concur.

Concepcion Jr., *J.*, on leave.

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[5] Petition, p. 3.

[6] 85 SCRA 499.