Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

THE HERITAGE HOTEL MANILA, ACTING THROUGH ITS OWNER, GRAND PLAZA HOTEL CORPORATION, Petitioner,	**G.R. NO. 172132**
- *versus* -	Present: SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*:
SECRETARY OF LABOR AND EMPLOYMENT; MED-ARBITER TOMAS F. FALCONITIN; and NATIONAL UNION OF WORKERS IN THE HOTEL, RESTAURANT and ALLIED INDUSTRIES–HERITAGE HOTEL MANILA SUPERVISORS CHAPTER (NUWHRAIN-HHMSC), Respondents.	Promulgated: JUL 23 2014

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DECISION

BERSAMIN, *J.*:

Although case law has repeatedly held that the employer was but a bystander in respect of the conduct of the certification election to decide the labor organization to represent the employees in the bargaining unit, and that the pendency of the cancellation of union registration brought against the labor organization applying for the certification election should not prevent the conduct of the certification election, this review has to look again at the seemingly never-ending quest of the petitioner employer to stop the conduct of the certification election on the ground of the pendency of proceedings to cancel the labor organization's registration it had initiated on the ground that the membership of the labor organization was a mixture of managerial and supervisory employees with the rank-and-file employees.

Under review at the instance of the employer is the decision promulgated on December 13, 2005,[1] whereby the Court of Appeals (CA) dismissed its petition for *certiorari* to assail the resolutions of respondent Secretary of Labor and Employment sanctioning the conduct of the certification election initiated by respondent labor organization.[2]

Antecedents

On October 11, 1995, respondent National Union of Workers in Hotel Restaurant and Allied Industries-Heritage Hotel Manila Supervisors Chapter (NUWHRAIN-HHMSC) filed a petition for certification election,[3] seeking to represent all the supervisory employees of Heritage Hotel Manila. The petitioner filed its opposition, but the opposition was deemed denied on February 14, 1996 when Med-Arbiter Napoleon V. Fernando issued his order for the conduct of the certification election.

The petitioner appealed the order of Med-Arbiter Fernando, but the appeal was also denied. A pre-election conference was then scheduled. On February 20, 1998, however, the pre-election conference was suspended until further notice because of the repeated non-appearance of NUWHRAIN-HHMSC.[4]

On January 29, 2000, NUWHRAIN-HHMSC moved for the conduct of the pre-election conference. The petitioner primarily filed its comment on the list of employees submitted by NUWHRAIN-HHMSC, and simultaneously sought the exclusion of some from the list of employees for occupying either confidential or managerial positions.[5] The petitioner filed a motion to dismiss on April 17, 2000,[6] raising the prolonged lack of interest of NUWHRAIN-HHMSC to pursue its petition for certification election.

On May 12, 2000, the petitioner filed a petition for the cancellation of NUWHRAIN-HHMSC's registration as a labor union for failing to submit its annual financial reports and an updated list of members as required by Article 238 and Article 239 of the *Labor Code*, docketed as Case No. NCR-OD-0005-004-IRD entitled *The Heritage Hotel Manila, acting through its owner, Grand Plaza Hotel Corporation v. National Union of Workers in the Hotel, Restaurant and Allied Industries-Heritage Hotel Manila Supervisors*

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1 *Rollo*, pp. 45-52; penned by Associate Justice Mario L. Guariña III (retired), with Associate Justice Roberto A. Barrios (retired) and Associate Justice Santiago Javier Ranada (retired), concurring.

2 Id. at 159-162 and 179-181.

3 Id. at 55-56 (docketed as NCR-OD-M-9510-014 entitled *In Re: Petition for Certification Election Among the Regular Supervisory Employees of the Heritage Hotel Manila: NUWHRAIN-HHSMC Chapter, petitioner: Heritage Hotel, respondent*).

4 Id. at 159-160.

5 Id. at 58-70.

6 Id. at 71.

Chapter (NUWHRAIN-HHSMC).[7] It filed another motion on June 1, 2000 to seek either the dismissal or the suspension of the proceedings on the basis of its pending petition for the cancellation of union registration.[8]

The following day, however, the Department of Labor and Employment (DOLE) issued a notice scheduling the certification elections on June 23, 2000.[9]

Dissatisfied, the petitioner commenced in the CA on June 14, 2000 a special civil action for *certiorari*,[10] alleging that the DOLE gravely abused its discretion in not suspending the certification election proceedings. On June 23, 2000, the CA dismissed the petition for *certiorari* for non-exhaustion of administrative remedies.[11]

The certification election proceeded as scheduled, and NUWHRAIN-HHMSC obtained the majority vote of the bargaining unit.[12] The petitioner filed a protest (with motion to defer the certification of the election results and the winner),[13] insisting on the illegitimacy of NUWHRAIN-HHMSC.

Ruling of the Med-Arbiter

On January 26, 2001, Med-Arbiter Tomas F. Falconitin issued an order,[14] ruling that the petition for the cancellation of union registration was not a bar to the holding of the certification election, and disposing thusly:

> WHEREFORE, premises considered, respondent employer/protestant's protest with motion to defer certification of results and winner is hereby dismissed for lack of merit.
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> Accordingly, this Office hereby certify pursuant to the rules that petitioner/protestee, National Union of Workers in Hotels, Restaurants and Allied Industries-Heritage Hotel Manila Supervisory Chapter (NUWHRAIN-HHSMC) is the sole and exclusive bargaining agent of all supervisory employees of the Heritage Hotel Manila acting through its owner, Grand Plaza Hotel Corporation for purposes of collective bargaining with respect to wages, and hours of work and other terms and conditions of employment.
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> SO ORDERED.

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7 Id. at 75-83.
8 Id. at 85-88.
9 Id. at 89.
10 Id. at 90-105.
11 Id. at 111-112; penned by Associate Justice Romeo A. Brawner (later Presiding Justice), with Associate Justice Quirino D. Abad Santos, Jr. (retired) and Associate Justice Andres B. Reyes, Jr. (presently Presiding Justice), concurring.
12 Id. at 139.
13 Id. at 113-122.
14 Id. at 139-142.

The petitioner timely appealed to the DOLE Secretary claiming that: (*a*) the membership of NUWHRAIN-HHMSC consisted of managerial, confidential, and rank-and-file employees; (*b*) NUWHRAIN-HHMSC failed to comply with the reportorial requirements; and (*c*) Med-Arbiter Falconitin simply brushed aside serious questions on the illegitimacy of NUWHRAIN-HHMSC.[15] It contended that a labor union of mixed membership of supervisory and rank-and-file employees had no legal right to petition for the certification election pursuant to the pronouncements in *Toyota Motor Philippines Corporation v. Toyota Motor Philippines Corporation Labor Union*[16] (*Toyota Motor*) and *Dunlop Slazenger (Phils.) v. Secretary of Labor and Employment*[17](*Dunlop Slazenger*).

Ruling of the DOLE Secretary

On August 21, 2002, then DOLE Secretary Patricia A. Sto. Tomas issued a resolution denying the appeal,[18] and affirming the order of Med-Arbiter Falconitin, *viz*:

> WHEREFORE, the appeal is DENIED. The order of the Med-Arbiter dated 26 January 2001 is hereby AFFIRMED.
>
> SO RESOLVED.

DOLE Secretary Sto. Tomas observed that the petitioner's reliance on *Toyota Motor* and *Dunlop Slazenger* was misplaced because both rulings were already overturned by *SPI Technologies, Inc. v. Department of Labor and Employment*,[19] to the effect that once a union acquired a legitimate status as a labor organization, it continued as such until its certificate of registration was cancelled or revoked in an independent action for cancellation.

The petitioner moved for reconsideration.

In denying the motion on October 21, 2002, the DOLE Secretary declared that the mixture or co-mingling of employees in a union was not a ground for dismissing a petition for the certification election under Section 11, par. II, Rule XI of Department Order No. 9; that the appropriate remedy was to exclude the ineligible employees from the bargaining unit during the inclusion-exclusion proceedings;[20] that the dismissal of the petition for the certification election based on the legitimacy of the petitioning union would

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15 Id. at 143-151.
16 G.R. No. 121084, February 19, 1997, 268 SCRA 573, 584.
17 G.R. No. 131248, December 11, 1998, 300 SCRA 120, 128.
18 *Rollo*, pp. 159-162.
19 G.R. No. 137422, March 8, 1999.
20 *Rollo*, pp. 179-181.

be inappropriate because it would effectively allow a collateral attack against the union's legal personality; and that a collateral attack against the personality of the labor organization was prohibited under Section 5, Rule V of Department Order No. 9, Series of 1997.[21]

Upon denial of its motion for reconsideration, the petitioner elevated the matter to the CA by petition for *certiorari*.[22]

Ruling of the CA

On December 13, 2005,[23] the CA dismissed the petition for *certiorari*, giving its following disquisition:

> The petition for certiorari filed by the petitioner is, in essence, a continuation of the debate on the relevance of the *Toyota Motor, Dunlop Slazenger* and *Progressive Development* cases to the issues raised.
>
> *Toyota Motor* and *Dunlop Slazenger* are anchored on the provisions of Article 245 of the Labor Code which prohibit managerial employees from joining any labor union and permit supervisory employees to form a separate union of their own. The language naturally suggests that a labor organization cannot carry a mixture of supervisory and rank-and-file employees. Thus, courts have held that a union cannot become a legitimate labor union if it shelters under its wing both types of employees. But there are elements of an elliptical reasoning in the holding of these two cases that a petition for certification election may not prosper until the composition of the union is settled therein. *Toyota Motor*, in particular, makes the blanket statement that a supervisory union has no right to file a certification election for as long as it counts rank-and-file employees among its ranks. More than four years after *Dunlop Slazenger*, the Court clarified in *Tagaytay Highlands International Golf Club Inc vs Tagaytay Highlands Employees Union-PTGWO* that while Article 245 prohibits supervisory employees from joining a rank-and-file union, it does not provide what the effect is if a rank-and-file union takes in supervisory employees as members, or vice versa. *Toyota Motor* and *Dunlop Slazenger* jump into an unnecessary conclusion when they foster the notion that Article 245 carries with it the authorization to inquire collaterally into the issue wherever it rears its ugly head.
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> *Tagaytay Highlands* proclaims, in the light of Department Order 9, that after a certificate of registration is issued to a union, its legal personality cannot be subject to a collateral attack. It may be questioned only in an independent petition for cancellation. In fine, *Toyota* and *Dunlop Slazenger* are a spent force. Since *Tagaytay Highlands* was handed down after these two cases, it constitutes the latest expression of the will of the Supreme Court and supersedes or overturns previous rulings inconsistent with it. From this perspective, it is needless to discuss whether *SPI Technologies* as a mere resolution of the Court may prevail over a full-blown decision that *Toyota Motor* or *Dunlop Slazenger* was.

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21 Id. at 180.
22 Id. at 182-209.
23 Supra note 1.

> The ruling in *SPI Technologies* has been echoed in *Tagaytay Highlands*, for which reason it is with *Tagaytay Highlands*, not *SPI Technologies*, that the petitioner must joust.
>
> The fact that the cancellation proceeding has not yet been resolved makes it obvious that the legal personality of the respondent union is still very much in force. The DOLE has thus every reason to proceed with the certification election and commits no grave abuse of discretion in allowing it to prosper because the right to be certified as collective bargaining agent is one of the legitimate privileges of a registered union. It is for the petitioner to expedite the cancellation case if it wants to put an end to the certification case, but it cannot place the issue of the union's legitimacy in the certification case, for that would be tantamount to making the collateral attack the DOLE has staunchly argued to be impermissible.
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> The reference made by the petitioner to another *Progressive Development* case that it would be more prudent for the DOLE to suspend the certification case until the issue of the legality of the registration is resolved, has also been satisfactorily answered. Section 11, Rule XI of Department Order 9 provides for the grounds for the dismissal of a petition for certification election, and the pendency of a petition for cancellation of union registration is not one of them. Like *Toyota Motor* and *Dunlop Slazenger*, the second *Progressive* case came before Department Order 9.
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> IN VIEW OF THE FOREGOING, the disputed resolutions of the Secretary of Labor and Employment are AFFIRMED, and the petition is DISMISSED.
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> SO ORDERED.

The petitioner sought reconsideration,[24] but its motion was denied.

Issues

Hence, this appeal, with the petitioner insisting that:

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> THE COURT OF APPEALS ERRED IN RULING THAT *TAGAYTAY HIGHLANDS* APPLIES TO THE CASE AT BAR
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> II
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> [THE HONORABLE COURT OF APPEALS] SERIOUSLY ERRED WHEN IT DISREGARDED *PROGRESSIVE DEVELOPMENT CORPORATION – PIZZA HUT V. LAGUESMA* WHICH HELD THAT IT WOULD BE MORE PRUDENT TO SUSPEND THE CERTIFICATION CASE UNTIL THE ISSUE OF THE LEGALITY OF THE REGISTRATION OF THE UNION IS FINALLY RESOLVED

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[24] Id. at 256-268.

III

BECAUSE OF THE PASSAGE OF TIME, RESPONDENT UNION NO LONGER POSSESSES THE MAJORITY STATUS SUCH THAT A NEW CERTIFICATION ELECTION IS IN ORDER[25]

The petitioner maintains that the ruling in *Tagaytay Highlands International Golf Club Inc v. Tagaytay Highlands Employees Union-PTGWO*[26] (*Tagaytay Highlands*) was inapplicable because it involved the co-mingling of supervisory and rank-and-file employees in one labor organization, while the issue here related to the mixture of membership between two employee groups — one vested with the right to self-organization (*i.e.*, the rank-and-file and supervisory employees), and the other deprived of such right (*i.e.*, managerial and confidential employees); that suspension of the certification election was appropriate because a finding of "illegal mixture" of membership during a petition for the cancellation of union registration determined whether or not the union had met the 20% representation requirement under Article 234(c) of the *Labor Code*; [27] and that in holding that mixed membership was not a ground for canceling the union registration, except when such was done through misrepresentation, false representation or fraud under the circumstances enumerated in Article 239(a) and (c) of the *Labor Code*, the CA completely ignored the 20% requirement under Article 234(c) of the *Labor Code*.

The petitioner posits that the grounds for dismissing a petition for the certification election under Section 11, Rule XI of Department Order No. 9, Series of 1997, were not exclusive because the other grounds available under the *Rules of Court* could be invoked; that in *Progressive Development Corporation v. Secretary, Department of Labor and Employment*,[28] the Court ruled that prudence could justify the suspension of the certification election proceedings until the issue of the legality of the union registration could be finally resolved; that the non-submission of the annual financial statements and the list of members in the period from 1996 to 1999 constituted a serious challenge to NUWHRAIN-HHMSC's right to file its petition for the certification election; and that from the time of the conduct of the certification election on June 23, 2000, the composition of NUWHRAIN-HHMSC had substantially changed, thereby necessitating another certification election to determine the true will of the bargaining unit.

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25 Id. at 14.

26 G.R. No. 142000, January 22, 2003, 395 SCRA 699.

27 Article 234. *REQUIREMENTS OF REGISTRATION.*—A federation, national union or industry or trade union center or an independent union shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of based on the following requirements:.

x x x x

(c) In case the applicant is an independent union, the names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate;

x x x x

28 G.R. No. 96425, February 4, 1992, 205 SCRA 802, 808.

In short, should the petition for the cancellation of union registration based on mixed membership of supervisors and managers in a labor union, and the non-submission of reportorial requirements to the DOLE justify the suspension of the proceedings for the certification elections or even the denial of the petition for the certification election?

Ruling

We deny the petition for review on *certiorari*.

Basic in the realm of labor union rights is that the certification election is the sole concern of the workers,[29] and the employer is deemed an intruder as far as the certification election is concerned.[30] Thus, the petitioner lacked the legal personality to assail the proceedings for the certification election,[31] and should stand aside as a mere bystander who could not oppose the petition, or even appeal the Med-Arbiter's orders relative to the conduct of the certification election.[32] As the Court has explained in *Republic v. Kawashima Textile Mfg., Philippines, Inc.*[33](*Kawashima*):

> Except when it is requested to bargain collectively, an employer is a mere bystander to any petition for certification election; such proceeding is non-adversarial and merely investigative, for the purpose thereof is to determine which organization will represent the employees in their collective bargaining with the employer. The choice of their representative is the exclusive concern of the employees; the employer cannot have any partisan interest therein; it cannot interfere with, much less oppose, the process by filing a motion to dismiss or an appeal from it; not even a mere allegation that some employees participating in a petition for certification election are actually managerial employees will lend an employer legal personality to block the certification election. The employer's only right in the proceeding is to be notified or informed thereof.

The petitioner's meddling in the conduct of the certification election among its employees unduly gave rise to the suspicion that it intended to establish a company union.[34] For that reason, the challenges it posed against the certification election proceedings were rightly denied.

Under the long established rule, too, the filing of the petition for the cancellation of NUWHRAIN-HHMSC's registration should not bar the

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[29] *San Miguel Foods, Inc. v. San Miguel Corporation Supervisors and Exempt Union*, G.R. No. 146206, August 1, 2011, 655 SCRA 1, 17; *Trade Unions of the Phils. and Allied Services v. Trajano*, G.R. No. L-61153, January 17, 1983, 120 SCRA 64, 66.

[30] *Consolidated Farms, Inc. v. Noriel*, G.R. No. L-47752, July 31, 1978, 84 SCRA 469, 473.

[31] *San Miguel Foods, Inc. v. San Miguel Corporation Supervisors and Exempt Union*, supra note 29.

[32] *Sta. Lucia East Commercial Corporation v. Secretary of Labor and Employment*, G.R. No. 162355, August 14, 2009, 596 SCRA 92, 103; *San Miguel Foods, Inc.-Cebu B-Meg Feed Plant v. Laguesma*, G.R. No. 116172, October 10, 1996, 263 SCRA 68, 82.

[33] G.R. No. 160352, July 23, 2008, 559 SCRA 386, 408.

[34] *Oriental Tin Can Labor Union v. Secretary of Labor and Employment*, G.R. No. 116751, August 28, 1998, 294 SCRA 640, 651.

conduct of the certification election.[35] In that respect, only a final order for the cancellation of the registration would have prevented NUWHRAIN-HHMSC from continuing to enjoy all the rights conferred on it as a legitimate labor union, including the right to the petition for the certification election.[36] This rule is now enshrined in Article 238-A of the *Labor Code*, as amended by Republic Act No. 9481,[37] which reads:

> Article 238-A. *Effect of a Petition for Cancellation of Registration.* – A petition for cancellation of union registration shall not suspend the proceedings for certification election nor shall it prevent the filing of a petition for certification election.
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> x x x x

Still, the petitioner assails the failure of NUWHRAIN-HHMSC to submit its periodic financial reports and updated list of its members pursuant to Article 238 and Article 239 of the *Labor Code*. It contends that the serious challenges against the legitimacy of NUWHRAIN-HHMSC as a union raised in the petition for the cancellation of union registration should have cautioned the Med-Arbiter against conducting the certification election.

The petitioner does not convince us.

In *The Heritage Hotel Manila v. National Union of Workers in the Hotel, Restaurant and Allied Industries-Heritage Hotel Manila Supervisors Chapter (NUWHRAIN-HHMSC)*,[38] the Court declared that the dismissal of the petition for the cancellation of the registration of NUWHRAIN-HHMSC was proper when viewed against the primordial right of the workers to self-organization, collective bargaining negotiations and peaceful concerted actions, *viz*:

> x x x x
>
> [Articles 238 and 239 of the Labor Code] give the Regional Director ample discretion in dealing with a petition for cancellation of a union's registration, particularly, determining whether the union still meets the requirements prescribed by law. It is sufficient to give the Regional Director license to treat the late filing of required documents as sufficient compliance with the requirements of the law. After all, the law requires the labor organization to submit the annual financial report and list of members in order to verify if it is still viable and financially sustainable as

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[35] *Samahan ng Manggagawa sa Pacific Plastic v. Laguesma*, G.R. No. 111245, January 31, 1997, 267 SCRA 303, 310; *National Union of Bank Employees v. Minister of Labor*, G.R. No. L-53406, December 14, 1981, 110 SCRA 274, 392.

[36] *Itogon-Suyoc Mines, Inc. v. Sañgilo-Itogon Workers' Union*, G.R. No. L-24189, August 30, 1968, 24 SCRA 873, 881-882.

[37] *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*.

[38] G.R. No. 178296, January 12, 2011, 639 SCRA 420, 435-439.

an organization so as to protect the employer and employees from fraudulent or fly-by-night unions. With the submission of the required documents by respondent, the purpose of the law has been achieved, though belatedly.

We cannot ascribe abuse of discretion to the Regional Director and the DOLE Secretary in denying the petition for cancellation of respondent's registration. The union members and, in fact, all the employees belonging to the appropriate bargaining unit should not be deprived of a bargaining agent, merely because of the negligence of the union officers who were responsible for the submission of the documents to the BLR.

Labor authorities should, indeed, act with circumspection in treating petitions for cancellation of union registration, lest they be accused of interfering with union activities. In resolving the petition, consideration must be taken of the fundamental rights guaranteed by Article XIII, Section 3 of the Constitution, i.e., the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities. Labor authorities should bear in mind that registration confers upon a union the status of legitimacy and the concomitant right and privileges granted by law to a legitimate labor organization, particularly the right to participate in or ask for certification election in a bargaining unit. Thus, the cancellation of a certificate of registration is the equivalent of snuffing out the *life* of a labor organization. For without such registration, it loses - as a rule - its rights under the Labor Code.

It is worth mentioning that the Labor Code's provisions on cancellation of union registration and on reportorial requirements have been recently amended by Republic Act (R.A.) No. 9481, *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*, which lapsed into law on May 25, 2007 and became effective on June 14, 2007. The amendment sought to strengthen the workers' right to self-organization and enhance the Philippines' compliance with its international obligations as embodied in the International Labor Organization (ILO) Convention No. 87, pertaining to the non-dissolution of workers' organizations by administrative authority. Thus, R.A. No. 9481 amended Article 239 to read:

> ART. 239. Grounds for Cancellation of Union Registration.--The following may constitute grounds for cancellation of union registration:
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> (a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;
>
> (b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;

(c) Voluntary dissolution by the members.

R.A. No. 9481 also inserted in the Labor Code Article 242-A, which provides:

> ART. 242-A. Reportorial Requirements.--The following are documents required to be submitted to the Bureau by the legitimate labor organization concerned:
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> (a) Its constitution and by-laws, or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification of the constitution and by-laws within thirty (30) days from adoption or ratification of the constitution and by-laws or amendments thereto;
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> (b) Its list of officers, minutes of the election of officers, and list of voters within thirty (30) days from election;
>
> (c) Its annual financial report within thirty (30) days after the close of every fiscal year; and
>
> (d) Its list of members at least once a year or whenever required by the Bureau.
>
> **Failure to comply with the above requirements shall not be a ground for cancellation of union registration but shall subject the erring officers or members to suspension, expulsion from membership, or any appropriate penalty.**
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> x x x x

The ruling thereby wrote *finis* to the challenge being posed by the petitioner against the illegitimacy of NUWHRAIN-HHMSC.

The remaining issue to be resolved is which among *Toyota Motor*, *Dunlop Slazenger* and *Tagaytay Highlands* applied in resolving the dispute arising from the mixed membership in NUWHRAIN-HHMSC.

This is not a novel matter. In *Kawashima*,[39] we have reconciled our rulings in *Toyota Motor*, *Dunlop Slazenger* and *Tagaytay Highlands* by emphasizing on the laws prevailing at the time of filing of the petition for the certification election.

Toyota Motor and *Dunlop Slazenger* involved petitions for certification election filed on November 26, 1992 and September 15, 1995, respectively. In both cases, we applied the Rules and Regulations Implementing R.A. No. 6715 (also known as the *1989 Amended Omnibus Rules*), the prevailing rule then.

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[39] Supra note 33.

The *1989 Amended Omnibus Rules* was amended on June 21, 1997 by Department Order No. 9, Series of 1997. Among the amendments was the removal of the requirement of indicating in the petition for the certification election that there was no co-mingling of rank-and-file and supervisory employees in the membership of the labor union. This was the prevailing rule when the Court promulgated *Tagaytay Highlands*, declaring therein that mixed membership should have no bearing on the legitimacy of a registered labor organization, unless the co-mingling was due to misrepresentation, false statement or fraud as provided in Article 239 of the *Labor Code*.[40]

Presently, then, the mixed membership does not result in the illegitimacy of the registered labor union unless the same was done through misrepresentation, false statement or fraud according to Article 239 of the *Labor Code*. In *Air Philippines Corporation v. Bureau of Labor Relations*,[41] we categorically explained that—

> Clearly, then, for the purpose of de-certifying a union, it is not enough to establish that the rank-and-file union includes ineligible employees in its membership. Pursuant to Article 239 (a) and (c) of the Labor Code, it must be shown that there was misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, or in connection with the election of officers, minutes of the election of officers, the list of voters, or failure to submit these documents together with the list of the newly elected-appointed officers and their postal addresses to the BLR.

We note that NUWHRAIN-HHMSC filed its petition for the certification election on October 11, 1995. Conformably with *Kawashima*, the applicable law was the *1989 Amended Omnibus Rules*, and the prevailing rule was the pronouncement in *Toyota Motor* and *Dunlop Slazenger* to the effect that a labor union of mixed membership was not possessed with the requisite personality to file a petition for the certification election.

Nonetheless, we still rule in favor of NUWHRAIN-HHMSC. We expound.

In both *Toyota Motor* and *Dunlop Slazenger*, the Court was convinced that the concerned labor unions were comprised by mixed rank-and-file and supervisory employees. In *Toyota Motor*, the employer submitted the job descriptions of the concerned employees to prove that there were supervisors in the petitioning union for rank-and-file employees. In *Dunlop Slazenger*, the Court observed that the labor union of supervisors included employees occupying positions that apparently belonged to the rank-and-file. In both *Toyota Motor* and *Dunlop Slazenger*, the employers were able to adduce

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[40] Supra note 26, at 709.

[41] G.R. No. 155395, June 22, 2006, 492 SCRA 243, 249-250.

substantial evidence to prove the existence of the mixed membership. Based on the records herein, however, the petitioner failed in that respect. To recall, it raised the issue of the mixed membership in its comment on the list of members submitted by NUWHRAIN-HHMSC, and in its protest. In the comment, it merely identified the positions that were either confidential or managerial, but did not present any supporting evidence to prove or explain the identification. In the protest, it only enumerated the positions that were allegedly confidential and managerial, and identified two employees that belonged to the rank-and-file, but did not offer any description to show that the positions belonged to different employee groups.

Worth reiterating is that the actual functions of an employee, not his job designation, determined whether the employee occupied a managerial, supervisory or rank-and-file position.[42] As to confidential employees who were excluded from the right to self-organization, they must (1) assist or act in a confidential capacity, in regard (2) to persons who formulated, determined, and effectuated management policies in the field of labor relations.[43] In that regard, mere allegations *sans* substance would not be enough, most especially because the constitutional right of workers to self-organization would be compromised.

At any rate, the members of NUWHRAIN-HHSMC had already spoken, and elected it as the bargaining agent. As between the rigid application of *Toyota Motors* and *Dunlop Slazenger*, and the right of the workers to self-organization, we prefer the latter. For us, the choice is clear and settled. "What is important is that there is an unmistakeable intent of the members of [the] union to exercise their right to organize. We cannot impose rigorous restraints on such right if we are to give meaning to the protection to labor and social justice clauses of the Constitution."[44]

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[42] *Pepsi Cola Products, Philippines v. Secretary of Labor*, G.R. Nos. 96663 & 103300, August 10, 1999, 312 SCRA 104, 118.

[43] *San Miguel Foods, Inc. v. San Miguel Corporation Supervisors and Exempt Union, supra*, note 29 at 12.

[44] See *San Miguel Corporation (Mandaue Packaging Products Plants) v. Mandaue Packing Products Plants-San Miguel Packaging Products-San Miguel Corporation Monthlies Rank-And-File Union-FFW (MPPP-SMPP-SMCMRFU-FFW)*, G.R. No. 152356, August 16, 2005, 467 SCRA 107, 134-135, which quoted from the Resolution of the DOLE-BLR dated December 29, 1998 in relation to mixed membership as sufficient basis for cancelling the labor organizations's registration, and the application of *Toyota Motor* to the issue dealt with in the case, as follows:

> x x x [T]he *Toyota* case cannot certainly be given an interpretation that emasculates the right to self-organization and the promotion of free trade unionism. We take administrative notice of the realities in union organizing, during which the organizers must take their chances, oftentimes unaware of the fine distinctions between managerial, supervisory and rank and file employees. **The grounds for cancellation of union registration are not meant to be applied automatically, but indeed with utmost discretion. Where a remedy short of cancellation is available, that remedy should be preferred. x x x. What is important is that there is an unmistakeable intent of the members of appellee union to exercise their right to organize. We cannot impose rigorous restraints on such right if we are to give meaning to the protection to labor and social justice clauses of the Constitution.** (Emphasis supplied)

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on December 13, 2005 by the Court of Appeals; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice