adopt modern technological tools to modernize the electoral system, especially the counting/recording of votes and the consolidation of results, mistakes and the opportunity to commit fraud, inherent in a manual counting, cannot be avoided.

CONCLUSION

The free choice of our country's leaders should stir one's political and national consciousness. The study and implementation of our electoral process, as well as the implementing laws and systems, should be given more than cursory thought if we are to succeed as a nation. A democratic government can only be sustained over time, if the people themselves are enlightened, educated, and properly mobilized in the selection of those who shall govern. In the final analysis, neither the Constitution nor machines can safeguard the electoral power of the people, but the people themselves. As Judge Learned Hand said: "Liberty lies in the hearts of men and women. While it lies there, it needs no Constitution, no law, no court to save it. When it dies there, no Constitution, no law, no court can save it."[37]

37. Learned Hand, The Spirit of Liberty, Speech in New York (May 21, 1944), *in* THE SPIRIT OF LIBERTY 189-90 (Irving Dilard ed. 1953).

Restraining Free Trade Unionism: A Critique of Supreme Court Decisions that Unduly Restrict Labor's Exercise of the Right to Self-Organization

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INTRODUCTION

On paper, the policy environment in the Philippines appears to be conducive for the organization of labor unions. Unfortunately, however, the written policy does not reflect the reality of trade unionism in the country. To be more accurate, the written policy does not translate into concrete implementing mechanisms that ensure the free exercise of the right to self-

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Cite as 46 ATENEO L.J. 447 (2001).

organization. On the contrary, judicial pronouncements have imposed undue restrictions on the workers' exercise of their right to self-organization.

Among the first provisions of the 1987 Constitution is the bold declaration of the State policy on labor. Article II, Section 18 provides: "The State affirms labor as a social economic force. It shall protect the rights of workers and promote their welfare."

Following this declaration of the state policy on labor, the Bill of Rights provides that "the right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged." [1]

Not content with these two provisions, the framers of the Constitution included a lengthy provision on labor in the Article on Social Justice and Human Rights. Article XIII, Sec. 3 provides:

> Sec. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
>
> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
>
> The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.
>
> The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

Consistent with the Constitution, the Labor Code contains a more detailed statement of the state policy on labor:

> ART. 211. *Declaration of Policy.* — A. It is the policy of the State:
>
> a) To promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes;
>
> b) To promote free trade unionism as an instrument for the enhancement of democracy and the promotion of social justice and development;
>
> c) To foster the free and voluntary organization of a strong and united labor movement;
>
> d) To promote the enlightenment of workers concerning their rights and obligations as union members and as employees;

1. PHIL. CONST. art. III, § 8.

> e) To provide an adequate administrative machinery for the expeditious settlement of labor or industrial disputes;
>
> f) To ensure a stable but dynamic and just industrial peace; and
>
> g) To ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare.

A review of the constitutional and statutory provisions on labor may lead to the conclusion that the workers' right to self-organization is amply protected. From this, it may be further concluded that labor organizations must flourish in this favorable environment. However, these conclusions are inappropriate. The statistics of the Department of Labor and Employment readily refute the validity of these conclusions.

The Department of Labor and Employment reports that, as of April, 2001, there were 14,245,000 "Wage and Salary Workers,"[2] 11,925,000 of which were in the private sector.[3] As of the same date, there were 9,575 existing private sector unions.[4] The existing membership of active unions reached 3,622,000 workers,[5] equivalent to only thirty percent (30%) of the "Wage and Salary Workers" who were employed in the private sector. Assuming that only seventy-five percent (75%) of the total number of private sector employees or 8,943,750 were eligible for union membership, the existing active unions covered a membership base of only about forty percent (40%)[6] of the eligible workers. Worse, only 468,000 workers were covered by collective bargaining agreements.[7] This number constitutes only about thirteen percent (13%) of the total union membership, and only about five percent (5%) of workers who were eligible for union membership.[8]

What is more disturbing is the declining number of workers covered by collective bargaining agreements through the three-year period reported in the latest government statistics. While the number of private sector unions increased from 9,056 in 1999 to 9,637 in June 2001, an increase of 581, the number of workers who were covered by collective bargaining agreements declined from 529,000 in 1999 to 484,000 in 2000, and to 466,000 in June

2. The other classes of employed persons are the "Own-Account Workers" and the "Unpaid Family Workers."

3. Table 7-Employed Persons by Class of Worker, Philippines: 1999-April 2001. DEPARTMENT OF LABOR AND EMPLOYMENT & BUREAU OF LABOR AND EMPLOYMENT, CURRENT LABOR STATISTICS, SECOND QUARTER 2001 11 (2001).

4. Table 46-Existing Labor Organizations and Collective Bargaining Agreements, Philippines: 1999-June 2001. CURRENT LABOR STATISTICS, *supra* note 3 at 68.

5. *Id.*

6. 3,622,000 / 8,943,750.

7. CURRENT LABOR STATISTICS, *supra* note 3.

8. Again, this assumes that only 75% of the total number of private sector employees or 8,943,750 workers were eligible for union membership.

2001.[9] If the number of workers covered by collective bargaining agreements is to be considered as an indicator of the success of union organizing, then trade unionism seems to be failing.

There are many possible explanations for the low percentage of organized workers and the decline in the number of organized workers covered by collective bargaining agreements. First, the labor unions themselves may be blamed for their continuing disunity and stubborn insistence in competing with each other over the same set of workers. Second, the closure of many establishments may also account for the decline in the number of workers covered by collective bargaining agreements, despite the increase in the number of unions. According to the same report, 2,289 establishments reported their closure or retrenchment due to economic reasons in 1999; 2,258 establishments in 2000; and 1,333 establishments in the first half of 2001.[10] These closures or retrenchments displaced 71,723 workers in 1999; 67,624 workers in 2000; and 32,148 workers in the first semester of 2001.[11]

What cannot be discounted, however, is the adverse effect on organizing efforts of Supreme Court decisions that impose undue restrictions on the workers' exercise of the right to self-organization. These decisions, the author submits, likewise account for the low percentage of organized workers and the decline in the number of workers covered by collective bargaining agreements.

This essay will discuss some of the major Supreme Court decisions that hinder free trade unionism. It will not present an exhaustive survey of the decisions that impede the exercise of the right to self-organization, but will merely highlight the most notable decisions that have clear recognizable effects on organizing efforts in the labor sector. The discussion will concentrate on three main obstacles to union organizing: (1) the rule on the composition of unions; (2) the strict application of the requirements for union registration and formation; and (3) the rule that allows the suspension of certification election proceedings based on an unresolved challenge to the union's legitimacy.

I. Composition of Unions: The *Toyota Motor* Case

The case of *Toyota Motor Philippines Corporation v. Toyota Motor Philippines Corporation Labor Union*[12] resolved the issue of whether the co-mingling of rank-and-file and supervisory employees in the roster of membership of a union affects the legitimacy of the union. In this case, the employer sought the

9. Current Labor Statistics, *supra* note 3.

10. Table 11-Establishments Resorting to Permanent Closure/Retrenchment Due to Economic Reasons and Workers Displaced by Region, Philippines: January 1999-June 2001. Current Labor Statistics, *supra* note 3 at 15.

11. *Id.*

12. 268 SCRA 573 (1997).

denial of the union's petition for certification election on the ground that the union was composed of both rank-and-file and supervisory employees. The Med-Arbiter dismissed the petition after finding that the union's membership was composed of supervisory and rank-and-file employees, which was in violation of Article 245 of the Labor Code. On appeal, the Secretary of Labor set aside the Med-Arbiter's order and directed the holding of a certification election among the regular rank-and-file employees of the company.

When the case reached the Supreme Court, the Court ruled in favor of the company and reinstated the order of the Med-Arbiter dismissing the petition for certification election. Explaining its ruling, the Court stated:

> [T]he Labor Code has made it a clear statutory policy to prevent supervisory employees from joining labor organizations consisting of rank-and-file employees as the concerns which involve members of either group are normally disparate and contradictory. Art. 245 provides:
>
> > ART. 245. *Ineligibility of managerial employees to join any labor organization; Right of supervisory employees.* — Managerial employees are not eligible to join, assist or form any labor organizations. Supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own.
>
> Clearly, based on this provision, a labor organization composed of both rank-and-file and supervisory employees is no labor organization at all. It cannot, for any guise or purpose, be a legitimate labor organization. Not being one, an organization which carries a mixture of rank-and-file and supervisory employees cannot possess any of the rights of a legitimate labor organization, including the right to file a petition for certification election for the purpose of collective bargaining. It becomes necessary, therefore, *anterior* to the granting of an order allowing a certification election, to inquire into the composition of any labor organization whenever the status of the labor organization is challenged on the basis of Article 245 of the Labor Code.[13]

Since the Court found that the union's membership list included at least twenty seven (27) supervisory employees, it stated that the union cannot attain the status of a legitimate labor organization unless it could purge itself of its supervisory employee members.[14]

In deciding the case, the Court did not give any credence to the position of the Office of the Secretary of Labor that the mere allegation of the inclusion of supervisory employees in the proposed bargaining unit of the rank-and-file employees should not have caused the dismissal of the petition for certification election. The Office of the Secretary argued that the issue of the inclusion of supervisory employees in the proposed bargaining unit, composed of about 42 supervisory employees in the proposed bargaining unit, composed of about 1,800 employees, could very well be resolved during the pre-election

13. *Id.* at 581-82.

14. *Id.* at 584.

conference where inclusion/exclusion proceedings would be conducted to determine the list of eligible voters.[15]

To assess the Court's ruling in *Toyota Motor*, it is necessary to inquire into the meaning of the prohibition in Article 245 of the Labor Code. A perusal of the said provision will readily show that the provision refers to the ineligibility of managerial employees to join, assist or form any labor organization, and the ineligibility of supervisory employees to join the union of the rank-and-file employees. The provision does not make any reference to the legal personality of the union or the effect of any violation of the prohibition on such legal personality. The provision does not state that a labor organization composed of both rank-and-file and supervisory employees is no labor organization at all. However, this was the conclusion made by the Court.

In explaining the reason for the prohibition in Article 245, the Court said that it would be difficult to find unity or mutuality of interests in a bargaining unit consisting of a mixture of rank-and-file and supervisory employees.[16] This statement is correct. However, the issue of the appropriateness of the bargaining unit is entirely separate and distinct from the issue of the legitimacy of the union that seeks to represent the proposed bargaining unit.

It must be noted that Article 245 is contained in Title V, Book V of the Labor Code. Title V refers to Coverage, which follows, and is separate from, the title on Labor Organizations (Title IV). In fact, no provision in Title V makes any mention of the union's personality as a legitimate labor organization, or of registration or cancellation of registration. Article 245 should therefore be construed as a rule on the eligibility of individual employees for membership in labor unions, not as a rule on the legitimacy of unions.

The Supreme Court had the opportunity to express this clarification in the case of *SPI Technologies, Inc. v. Department of Labor and Employment et al.*,[17] a minute resolution. The issue presented by the case was identical to the issue raised in *Toyota Motor*, *i.e.* whether the union's violation of the prohibition in Article 245 of the Labor Code bars it from filing a petition for certification election. Contrary to its ruling in *Toyota Motor*, the Court held:

> The record shows that private respondent is a legitimate labor organization having been issued a certificate of registration. Under prevailing rules, once a union acquires legitimate status as a labor organization, it continues as such until its certificate of registration is cancelled or revoked in an independent action for cancellation.

15. *Id.* at 578.

16. *Id.* at 584.

17. G.R. No. 137422 (Mar. 8, 1999) (unreported).

> It is worth noting too that Article 245 of the Labor Code relied upon by petitioner merely prescribes the requirements for eligibility in joining a union and does not prescribe the grounds for the cancellation of union registration.[18]

It is very unfortunate that the Court made this clarification in a mere minute resolution, instead of an extended decision. As to how the Court will later on use its ruling in *SPI Technologies vis-a-vis* its ruling in *Toyota Motor* remains uncertain. What is certain is that employers have used the *Toyota Motor* doctrine in opposing petitions for certification election. Furthermore, certification election proceedings have been derailed because of the invocation of *Toyota Motor*.

In itself, the *Toyota Motor* case is harmful enough to labor's effort to organize and to start the process of collective bargaining. Its real worth can only be appreciated, however, if it is understood in relation to other Supreme Court decisions that similarly impede the exercise of the right to self-organization.

II. Registration of Requirements: The Regressive Decision in the 1992 *Progressive Development* Case

A. *The Progressive Development Case*

In the 1969 case of *Philippine Association of Free Labor Unions v. Secretary of Labor*,[19] the Supreme Court, in an *en banc* decision, upheld the validity of the registration requirement for labor unions. The Court, speaking through then Chief Justice Concepcion, explained:

> The theory to the effect that Section 23 of Republic Act No. 875 unduly curtails the freedom of assembly and association guaranteed in the Bill of Rights is devoid of factual basis. The registration prescribed in paragraph (b) of the said section is *not* a limitation to the right of assembly or association, which *may* be exercised with or *without* said registration. The latter is merely a condition *sine qua non* for the *acquisition of legal personality* by labor organizations, associations or unions and the possession of the "rights and privileges granted by law to legitimate labor organizations." The Constitution does not guarantee these rights and privileges, much less said personality, which are mere *statutory* creations, for the possession and exercise of which registration is required for both labor and the public against abuses, fraud, or impostors who pose as organizers, although not truly accredited agents of the union they purport to represent. Such requirement is a valid exercise of the police power, because the activities in which labor organizations, associations and union of workers are engaged affect public interest, which should be protected. Furthermore, the obligation to submit financial statements, as a condition for the non-cancellation of a certificate of registration, is a reasonable regulation for the benefit of the members of the organization, considering that the same generally solicits funds or membership, as

18. *Id.* at 1.

19. 27 SCRA 40 (1969).

well as oftentimes collects, on behalf of its members, huge amounts of money due to them or to the organization.[20]

In 1992, the Supreme Court exacted strict compliance with these requirements for the formation and registration of a labor union. This was made in the case of *Progressive Development Corporation v. Secretary, Department of Labor and Employent:*[21]

> The main issue involved in this case was the legitimacy of a chapter of Pambansang Kilusan ng Paggawa (KILUSAN), a duly registered federation. The employer questioned the chapter's right to file a petition for certification election. When the Med-Arbiter and the Secretary of the Department of Labor and Employment granted the petition for certification election despite its objection, and directed the conduct of a certification election, the employer elevated the case to the Supreme Court.

The case centered on the requirements before a local or chapter of a federation may file a petition for certification election. At issue was the failure of the chapter to comply with the requirement of registration, stated in Article 235 of the Labor Code, that all requisite documents be certified under oath by the secretary or the treasurer of the organization and attested to by the president. The documents submitted to the Bureau of Labor Relations, while attested to by the chapter's president, were not certified under oath by the secretary. The Court posed the question as follows: Did such defect warrant the withholding of the status of legitimacy to the local or chapter? The Court answered this in the affirmative.

The Court, through Justice Gutierrez, explained the rationale for the certification and attestation requirements:

> The certification and attestation requirements are preventive measures against the commission of fraud. They likewise afford a measure of protection to unsuspecting employees who may be lured into joining unscrupulous or fly-by-night unions whose sole purpose is to control union funds or to use the union for dubious ends.[22]

The Court then made the categorical pronouncement that "[a]bsent compliance with these mandatory requirements, the local or chapter does not become a legitimate labor organization."[23] The Court, thus, set aside the decisions of the Med-Arbiter and the Secretary directing the conduct of a certification election.

Apparently aware of the adverse implication of its ruling not only on KILUSAN's chapter but also on other unions that had pending petitions for certification election, the Court made the following disclaimer:

> It is not this Court's function to augment the requirements prescribed by law in order to make them wiser or to allow greater protection to the workers and even their employer. Our only recourse is, as earlier discussed, to exact strict compliance with what the law provides as requisites for local or chapter formation.[24]

20. *Id.* at 44-45.

21. 205 SCRA 802 (1992).

22. *Id.* at 812.

23. *Id.* at 813.

There lies the rub. Contrary to the Court's disclaimer, the Court did not simply "exact strict compliance with what the law provides." In its decision, the Court unduly extended the requirements of the law to include conditions that were not previously imposed.

It is interesting to note that the Court devoted a good portion of the decision differentiating the sets of requirements for registration for the formation of a local or chapter of a registered federation. The Court quoted Article 234 of the Labor Code that provides the requirements for registration. The Court was quick to point out that when an unregistered union becomes a branch, local or chapter of a federation, some of the requirements for registration that are enumerated in Article 234 are no longer required. Explaining the different sets of requirements, the Court said that "[I]mplicit in the differentiation is the fact that a local or chapter need not be independently registered."[25]

Despite the differentiation in the requirements for independent registration and for the formation of a federation's local or chapter that the Court adequately explained in the decision, the Court, surprisingly, took an unexpected turn. It applied the requirements for certification and attestation in Article 235, which pertains to applications for *registration*, to the concerned chapter of KILUSAN. Explaining its decision, the Court cited Rule II, Section 3 (e), Book V of the Labor Code's Implementing Rules, which reads:[26]

> (e) The local or chapter of a labor federation or national union shall have and maintain a constitution and by-laws, set of officers and books of accounts. For reporting purposes, the procedure governing the reporting of independently registered unions, federations or national unions shall be observed.

Applying this provision in the Implementing Rules to the dispute, the Court stated:

> Since the "procedure governing the reporting of independently registered unions" refers to the certification and attestation requirements contained in Article 265, paragraph 2, it follows that the constitution and by-laws, set of officers and books of accounts submitted by the local and chapter must likewise comply with these requirements. The same rationale for requiring the submission of duly subscribed documents upon union registration exists in the case of union affiliation. Moreover, there is a greater reason to exact compliance with the certification and attestation requirements because, as previously mentioned, several requirements applicable to independent union registration are no longer required in the case of the formation of a local or chapter. The policy of the law in conferring greater bargaining power upon

24. *Id.* at 814.

25. *Id.* at 810.

26. Omnibus Rules Implementing the Labor Code, Book V, Rule II, § 3(e) (1989).

> labor unions must be balanced with the policy of providing preventive measures against the commission of fraud.[27]

The flaws in the Court's decision are readily apparent. First, there is no clear indication that the "procedure governing the reporting of independently registered unions" stated in the quoted portion of the Implementing Rules refers to the certification and attestation requirements contained in Article 235, paragraph 2. This was the Court's own conclusion. In fact, the provision uses the term "reporting," a concept entirely different from the registration requirements stated in Article 235. This "procedure governing the reporting" could be referring to the reporting requirements stated in Article 239, which includes, among others, the submission of the annual financial report within thirty (30) days after the closing of every fiscal year, and the submission of the minutes of the election of officers, the list of voters, and the list of the newly elected officers within thirty (30) days from election.

Second, even assuming that the provision in the Implementing Rules refers to the certification and attestation requirements in Article 235, the Court could have easily ruled that the extension of such requirements to locals or chapters was not warranted, as the same was not specifically required by the law itself. As the Court said, it was not its function to augment the requirements prescribed by law, and that its only recourse was to exact strict compliance with what the law provides as requisites.

Third, the Court failed to see the reason why several requirements applicable to independent union registration are no longer required in the case of the formation of a local or chapter. Since a local or chapter derives its legal personality as a legitimate labor organization from the personality of the federation, the registration of the federation and its compliance with the requisites for such registration should suffice as preventive measures against the commission of fraud and as a measure of protection to unsuspecting employees. Hence, it is illogical to use the special nature of locals or chapters as basis for both its exemption from compliance with several requirements applicable to independent union registration, and its coverage in the strict requirements of certification and attestation.

Last, the Court ignored the position of the Med-Arbiter and the Solicitor General that there was substantial compliance with the requirements for the formation of a chapter. The Court could have merely required the chapter to remedy the formal defect in the documents that it submitted and let the certification election proceedings continue. Instead of doing this, however, the Court set aside the order of the Med-Arbiter and the Secretary directing the conduct of a certification election. Succinctly, the Court chose to resolve the doubt in the provisions in the law and the Implementing Rules against the

27. *Progressive Development*, 205 SCRA at 812.

workers and nullified the proceedings earlier completed. The setting aside of the order calling for the conduct of a certification election had the effect of requiring the union to re-file the "defective" documents, and to re-file the petition for certification election, with the addition of the precious certification.

B. Reinforcing the Progressive Development Doctrine: The Protection Technology Case

Three years after its issuance, the 1992 *Progressive Development* case was reinforced by the Supreme Court's decision in *Protection Technology, Inc. v. Secretary, Department of Labor and Employment*.[28] The union involved in this case, *Samahan ng Manggagawa sa Protection*-Alliance of Nationalist and Genuine Labor Organizations, failed to submit its books of accounts with the Bureau of Labor Relations at the time it was registered as a legitimate labor organization. Adopting the company's argument that the submission of such documentation was a mandatory requirement before a union could exercise the rights and privileges of a legitimate labor organization, the Med-Arbiter dismissed the petition for certification election. On appeal, the Secretary of the Department of Labor and Employment set aside the Med-Arbiter's order, and held that the requirement to submit books of account applies only to labor organizations already existing for at least a year. The company then filed a petition for certiorari before the Supreme Court.

The principal issue in the case was whether books of account, consisting of ledgers, journals and other accounting books, form part of the mandatory documentation requirements for registration of a newly organized union affiliated with a federation, or the formation of a local or chapter of such union. In its decision, penned by Justice Feliciano, the Supreme Court ruled that this issue "was addressed several years ago and answered in the affirmative by this Court in *Progressive Development Corporation v. Secretary, DOLE*."[29] After quoting portions of the decision in *Progressive Development*, the Court declared that the non-submission of the books of account certified and attested to by the appropriate officers is a ground that the employer can invoke legitimately to oppose the petition for certification election.[30]

Rejecting the documents offered by the federation, the Court said that what had been submitted by the union was a mere "financial statement," which the Court sarcastically referred to as "a generous description considering the sheet of paper in fact submitted" by the union.[31] The Court made a lengthy explanation of the difference between books of account and financial statements:

28. 242 SCRA 99 (1995).

29. *Id.* at 105.

30. *Id.* at 106.

31. *Id.* at 107.

> Books of account are quite different in their essential nature from financial statements. In generally accepted accounting practice, the former consist of journals, ledgers and other accounting books (which are registered with the Bureau of Internal Revenue) containing a record of individual transactions wherein monies are received and disbursed by an establishment or entity; entries are made on such books on a day-to-day basis (or as close thereto as is possible). Statements of accounts or financial reports, upon the other hand, merely *summarize* such individual transactions as have been set out in the books of account and are usually prepared at the end of an accounting period, commonly corresponding to the fiscal year of the establishment or entity concerned. Statements of account and financial reports do *not* set out or repeat the basic data (i.e., the individual transactions) on which they are based and are, therefore, *much less informative sources* of cash flow information. Books of account are kept and handled by bookkeepers (employees) of the company or agency; financial statements may be audited statements, i.e., prepared by external independent auditors (certified public accountants).[32]

As in the *Progressive Development* case, the Supreme Court disregarded the Secretary's argument that the submission of the statement of income and expenses is "substantial compliance" with the requirements of the law. The Court rejected the Secretary's contention that a newly organized union which had been operating for only four (4) months prior to the filing of its application for registration was in no position to submit books of accounts since it had no daily transactions to be entered everyday in the books. Responding to these arguments, the Court held:

> It is immaterial that the Union, having been organized for less than a year before its application for registration with the BLR, would have had no real opportunity to levy and collect dues and fees from its members which need to be recorded in the books of account. Such accounting books can and must be submitted to the BLR, even if they contain no detailed or extensive entries as yet. The point to be stressed is that the applicant local or chapter must demonstrate to the BLR that it is entitled to registered status because it has *in place* a system for accounting for members' contributions to its funds even before it actually receives dues or fees from its members. The controlling intention is to minimize the risk of fraud and diversion in the course of the subsequent formation of growth of the Union fund.[33]

The Court even berated the respondent Secretary for disregarding the requirements in the Implementing Rules and the ruling in the *Progressive Development* case.

What the Supreme Court failed to see was the fact that the requirement for the submission of the books of account was not in the Labor Code but was found only in the Implementing Rules. Thus, when the Department of Labor relaxed such requirement in the Rules, which the Department itself promulgated, the Supreme Court should not have ruled that such relaxation of the requirement was an arbitrary act on the part of the Department. The Court should have pointed out that since the law did not require such document,

32. *Id.*

33. *Id.* at 107-08.

then the submission of the financial statements should be adequate. The Court would make this ruling four years later in the case of *Pagpalain Haulers, Inc. v. Trajano*.[34]

C. *A Long Overdue Correction: The Pagpalain Haulers Case*

Pagpalain Haulers resurrected the same issues that were earlier raised in *Progressive Development* and *Protection Technology*. The employer questioned the legitimacy of the union and claimed that the books of accounts submitted by the union were not verified under oath by its treasurer and attested to by its president. The Med-Arbiter and the Secretary ordered the holding of a certification election and ruled that Department Order No. 9 which was issued in 1997 and which amended the rules implementing Book V of the Labor Code dispensed with the submission of books of account.

Upholding the Secretary this time, the Supreme Court, speaking through Justice Romero, ruled that the Labor Code does not require the submission of books of account in order for a labor organization to be registered as a legitimate labor organization. The Court pointed out that this requirement can only be found in Book V of the Implementing Rules, before its amendment by Department Order No. 9 in 1997.[35]

In response to the employer's contention that Department Order No. 9 was illegal, as it contravened the rulings in *Progressive Development* and *Protection Technology*, the Supreme Court held:

> Consequently, *Progressive* and *Protection Technology* are not to be deemed as laws on the registration of unions. They merely interpret and apply the implementing rules of the Labor Code as to registration of unions. It is this interpretation that forms part of the legal system of the Philippines, for the interpretation placed upon the written law by a competent court has the force of law. *Progressive* and *Protection Technology*, however, applied and interpreted the then existing Book V of the Omnibus Rules Implementing the Labor Code. Since Book V of the Omnibus Rules, as amended by Department Order No. 9, no longer requires a local or chapter to submit books of accounts as a prerequisite for registration, the doctrine enunciated in the above-mentioned cases, with respect to books of account, are already passé and therefore, no longer applicable. Hence, Pagpalain cannot insist that ILO-PHILS comply with the requirements prescribed in said rulings, for the current implementing rules have deleted the same.[36]

While the Supreme Court's decision in *Pagpalain Haulers* may be laudable, it merely highlights the fault in the Court's rulings in *Progressive Development* and *Protection Technology*. In *Pagpalain Haulers*, the Court categorically stated that the Labor Code does not require a local or chapter to submit books of account in order for it to be registered as a legitimate labor organization. In fact,

34. 310 SCRA 354 (1999).

35. *Id.* at 358-59.

36. *Id.* at 362.

the Court made this statement twice in the decision,[37] a statement that it did not even suggest in *Protection Technology*.

If the Supreme Court readily admitted in *Pagpalain Haulers* the absence of the requirement for the books of accounts in the Labor Code, it could have likewise done so in the earlier cases of *Progressive Development* and *Protection Technology*. Instead of exacting strict compliance with the rules that the promulgating authority itself was prepared to relax, the Court could have given the law and the rules an interpretation that would be more consistent with the policy of promoting free trade unionism. Unfortunately, however, the Supreme Court decided to be rigid in its interpretation. With the Court's inflexible stance, labor unions' registrations were seriously questioned and petitions for certification election were denied.

III. Certification Election Proceedings: The More Dangerous 1997 *Progressive Development* Case

In the 1997 case of *Progressive Development Corporation-Pizza Hut v. Laguesma*,[38] the Supreme Court once again resolved an issue relating to the registration requirements for labor unions. Unlike the earlier *Progressive Development* case, however, the 1997 decision was not limited to the issue of the legitimacy of the union concerned but went into the effect of a challenge on the union's legitimacy on the pending certification election proceedings.

The factual background of the case is similar to that of the cases earlier discussed. The union filed a petition for certification election. The employer opposed the petition, questioning the legitimacy of the petitioner union. In this case, the employer alleged instances of misrepresentation and fraud relating to the union's registration. What is peculiar in this case is that, instead of merely opposing the petition for certification election, the employer filed a separate action seeking the cancellation of the union's registration. After filing the petition for the cancellation of the union's registration, the employer filed a motion requesting the Med-Arbiter to suspend the proceedings in the certification election case until after the prejudicial question of the union's legal personality could be determined in the proceedings for cancellation of registration.

After the Med-Arbiter and the Secretary of Labor denied the employer's motion for the suspension of the certification election proceedings and directed the holding of a certification election, the employer elevated the case to the Supreme Court. The Court granted the employer's petition for certiorari and set aside the order calling for the conduct of a certification election. The Court's pronouncements, made through Justice Kapunan, are worth quoting:

37. *Id.* at 358, 363.

38. 271 SCRA 593 (1997).

> The grounds ventilated in cancellation proceedings in accordance with Article 239 of the Labor Code constitute a grave challenge to the right of respondent Union to ask for certification election. The Med-Arbiter should have looked into the merits of the petition for cancellation before issuing an order calling for certification election. Registration based on false and fraudulent statements and documents confer no legitimacy upon a labor organization irregularly recognized, which, at best, holds on to a mere scrap of paper. Under such circumstances, the labor organization, not being a legitimate labor organization, acquires no rights, particularly the right to ask for certification election in a bargaining unit.
>
> As we laid emphasis in *Progressive Development Corporation vs. Secretary of Labor and Employment*, "(t)he employer needs the assurance that the union it is dealing with is a bona fide organization, one which has not submitted false statements or misrepresentations to the Bureau." Clearly, fraud, falsification and misrepresentation in obtaining recognition as a legitimate labor organization are contrary to the Med-Arbiter's conclusion not merely collateral issues. The invalidity of respondent Union's registration would negate its legal personality to participate in certification election.
>
> Once a labor organization attains the status of a legitimate labor organization it begins to possess all of the rights and privileges granted by law to such organizations. As such rights and privileges ultimately affect areas which are constitutionally protected, the activities in which labor organizations, associations and unions are engaged directly affect the public interest and should be zealously protected. A strict enforcement of the Labor Code's requirements for the acquisition of the status of a legitimate labor organization.
>
> Inasmuch as the legal personality of the respondent Union had been seriously challenged, it would have been more prudent for the Med-Arbiter and public respondent to have granted petitioner's request for the suspension of proceedings in the certification election case, until the issue of the legality of the Union's registration shall have been resolved. Failure of the Med-Arbiter and public respondent to heed the request constituted a grave abuse of discretion.[39]

The Court's decision contains glaring inconsistencies. Before the Court made its pronouncements about the need to suspend the certification election proceedings, the Court discussed the issue of whether or not, after the necessary documents have been filed by a labor organization, recognition by the Bureau of Labor Relations merely becomes ministerial. The Court said that the Bureau's functions are not merely ministerial. According to the Court, after a labor union has filed the necessary documents for registration, it becomes mandatory for the Bureau of Labor Relations to check if the requirements under Article 234 have been complied with. If the application for registration is vitiated by falsification and serious irregularities, the Court said that the labor organization should be denied recognition as a legitimate labor organization. The Court then continued to explain that if a certificate of recognition has been issued, the labor organization's registration could be assailed directly through cancellation of registration proceedings in accordance with Articles

39. *Id.* at 603-04.

238 and 239 of the Labor Code, or indirectly, by opposing the petition for certification election.[40]

The discussion of the procedure for registration and the functions of the Bureau of Labor Relations should have led to a conclusion different from the Court's ruling. Since it is mandatory for the Bureau to look into the documents filed by a labor union and check whether the requirements of the law are complied with, any recognition that the Bureau will later give to a labor union should be given, at least, a presumption of regularity. As the Court itself stated, the grant of recognition to a labor organization is not merely ministerial. It must be presumed, therefore, that the Bureau of Labor Relations has scrutinized the documents submitted by the labor union before giving such union recognition as a legitimate labor organization. Given this presumption, a mere challenge to the legitimacy of a union, either directly, through a petition for cancellation of the union's registration, or indirectly, through an opposition to the petition for certification election, should not, by itself, divest the union of its legitimacy.

Contrary to the Court's statement, the recognition given to a labor union is not "a mere scrap of paper" but remains the strongest proof of the legitimacy of the union. To paraphrase the Court's statement, unless such recognition is declared with finality to be a mere scrap of paper for having been irregularly issued, the recognition stays and protects the union against allegations of illegitimacy.

The Court's ruling in *Progressive Development* is contrary to the consistent ruling of the Court in previous cases that an order to hold a certification election is proper despite the pendency of the petition for cancellation of the registration certificate of the petitioner union.[41] The rationale for this ruling is that at the time the union filed its petition for certification election and during the certification election proceedings, it had the legal personality to avail of such right absent any final order directing a cancellation. This ruling was reiterated in *Samahan ng Manggagawa sa Pacific Plastic v. Laguesma*,[42] decided only three months prior to *Progressive Development*.

The application of the decision in *Progressive Development* will defeat the provisions of the Labor Code. Article 242 of the Labor Code provides:

> ART. 242. Rights of legitimate labor organizations. — A legitimate labor organization shall have the right:
>
> (a) To act as the representative of its members for purposes of collective bargaining;

40. *Id.* at 599.

41. National Union of Bank Employees v. Minister of Labor, 110 SCRA 274 (1981); Association of Court of Appeals Employees v. Ferrer-Calleja, 203 SCRA 596 (1991).

42. 267 SCRA 303 (1997).

> (b) To be certified as the exclusive representative of all the employees in an appropriate collective bargaining unit for purposes of collective bargaining.

Thus, a legitimate labor organization has the right to be certified as the exclusive bargaining agent of employees in a bargaining unit. Without a final order directing the cancellation of the union's registration, the union remains a legitimate labor organization that is entitled to all the rights stated in Article 242 of the Labor Code. Allegations in a petition for cancellation of union registration should not negate the Labor Code's grant of the right to be certified as the exclusive bargaining agent. Until a final order directing the cancellation of a union's registration is issued, therefore, allegations in the Petition for Cancellation of Union Registration remain mere allegations and do not affect the legitimate status of a labor union.

Under Article 234 of the Labor Code, a labor union shall acquire legal personality and shall be entitled to the rights and privileges granted by law to a legitimate labor organization upon the issuance of the certificate of registration. The mere filing of a petition for the cancellation of a union's registration should not suspend the legitimate status of the union nor the union's rights under the law. The union's registration, until canceled, serves as a strong and convincing proof of the union's legitimate status. When a party files a petition for the cancellation of a union's registration, such party has the burden of proving its claim that the union is not a legitimate labor organization. It should not be the reverse. Until the claim of the party seeking the cancellation of a union's registration has been adequately proved, therefore, the legitimate status of the union should be recognized.

There is no basis for the suspension of the certification election proceedings simply because a petition for cancellation of the union's registration is pending. It is true that the legitimacy of the union is a jurisdictional requirement in a certification election case. As the Court declared in the *Pacific Plastic* case, however, at the time the union filed its petition for certification, it still had the legal personality to perform such act absent an order directing its cancellation. Hence, the jurisdictional requirement is met and is not lost simply because of the filing of a petition for the cancellation of the union's registration. Suspending the certification election proceedings simply because of the pendency of a petition for cancellation of the petitioner union's registration is tantamount to depriving a legitimate labor organization of its rights under the Labor Code.

While the *Toyota Motor* and *Progressive Development* cases resolved different issues (the former case relating to union membership and the latter case relating to the suspension of certification election proceedings), a deadly combination of the two rulings is possible. *Toyota Motor* ruled that the membership of both supervisory and rank-and-file employees in a labor union adversely affects the legitimacy of the union. *Progressive Development*, on the other hand, decreed the suspension of the certification election proceedings upon the filing of a petition

for the cancellation of petitioner union's registration. Hence, the allegation of mixed membership of supervisors and rank-and-file employees in a union may be a ground for a Petition for Cancellation of Union Registration and, consequently, a ground to ask for the suspension of the certification election proceedings.

CONCLUSION

The Supreme Court decisions that have been discussed are major causes for unwarranted delays in certification election cases. Unscrupulous employers take advantage of these rulings in order to delay the certification election proceedings, and consequently, the conduct of the election itself and the commencement of collective bargaining negotiations. With the application of the rulings, baseless petitions for the cancellation of union registrations have been, and will be, filed. Many certification election proceedings have been, and will be, suspended.

This delay in certification election cases certainly works against labor. During the pendency of the certification election proceedings, many incidents can happen that will adversely affect, if not defeat altogether, the workers' exercise of their right to self-organization. Union leaders and members can be terminated, legally or illegally. The employers' businesses may be closed, again, legally or illegally. Or worse, the workers themselves may lose interest, if not hope, in the certification election cases. After a long delay, certification election proceedings may eventually lead to the conduct of certification elections. With the supervening events, however, a union victory becomes highly improbable.

After the examination of the Supreme Court decisions that impose undue restraint on the workers' exercise of the right to organize, this essay does not offer any complicated solution. No complicated solution is needed. What is simply required is for the Supreme Court to resolve doubts in the law in favor of labor and to be faithful to the state policy that guarantees free trade unionism.

In the meantime, from the workers' point of view, the so-called "free trade unionism" shall remain costly.

Trademark Law in a Knotshell:* From Caves to Cyberspace

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* A term coined by the author to describe the developments in Philippine Trademark Law. Consistency and, therefore, predictability in the application of the law is the key to sound business decisions. However, the seemingly conflicting decisions of Philippine courts in trademark cases and the rapid advances in technology result in inconsistencies and uncertainties in the application of the law.

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Cite as 46 ATENEO L.J. 465 (2001).