Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ASIAN INSTITUTE OF MANAGEMENT, *Petitioner,*	**G.R. No. 207971**
	Present:
- versus -	SERENO, *C.J., Chairperson,* LEONARDO-DE CASTRO, DEL CASTILLO, PERLAS-BERNABE, *and* CAGUIOA, *JJ.*
ASIAN INSTITUTE OF MANAGEMENT FACULTY ASSOCIATION, *Respondent.*	Promulgated: **JAN 23 2017**

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DECISION

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the January 8, 2013 Decision[2] of the Court of Appeals (CA) which dismissed the Petition for *Certiorari*[3] in CA-G.R. SP No. 114122, and its subsequent June 27, 2013 Resolution[4] denying herein petitioner's Motion for Reconsideration.[5]

Factual Antecedents

Petitioner Asian Institute of Management (AIM) is a duly registered non-stock, non-profit educational institution. Respondent Asian Institute of Management Faculty Association (AFA) is a labor organization composed of members of the AIM faculty, duly registered under Certificate of Registration No. NCR-UR-12-4076-2004.

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1 *Rollo*, Vol. 1, pp. 3-31.
2 Id. at 33-41; penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Japar B. Dimaampao and Elihu A. Ybañez.
3 Id. at 198-226.
4 Id. at 43-45.
5 Id. at 269-276.

On May 16, 2007, respondent filed a **petition for certification election**[6] seeking to represent a bargaining unit in AIM consisting of forty (40) faculty members. The case was **docketed as DOLE Case No. NCR-OD-M-0705-007**. Petitioner opposed the petition, claiming that respondent's members are neither rank-and-file nor supervisory, but rather, managerial employees.[7]

On July 11, 2007, petitioner filed a **petition for cancellation of respondent's certificate of registration**[8] – **docketed as DOLE Case No. NCR-OD-0707-001-LRD** – on the grounds of misrepresentation in registration and that respondent is composed of managerial employees who are prohibited from organizing as a union.

On August 30, 2007, the Med-Arbiter in DOLE Case No. NCR-OD-M-0705-007 issued an Order[9] denying the petition for certification election on the ground that AIM's faculty members are managerial employees. This Order was appealed by respondent before the Secretary of the Department of Labor and Employment (DOLE),[10] who reversed the same via a February 20, 2009 Decision[11] and May 4, 2009 Resolution,[12] decreeing thus:

> WHEREFORE, the appeal filed by the Asian Institute of Management Faculty Association (AIMFA) is GRANTED. The Order dated 30 August 2007 of DOLE-NCR Mediator-Arbiter Michael T. Parado is hereby REVERSED and SET ASIDE.
>
> Accordingly, let the entire records of the case be remanded to DOLE-NCR for the conduct of a certification election among the faculty members of the Asian Institute of Management (AIM), with the following choices:
>
> 1. ASIAN INSTITUTE OF MANAGEMENT FACULTY ASSOCIATION (AIMFA); and
>
> 2. No Union.
>
> SO ORDERED.[13]

Meanwhile, in DOLE Case No. NCR-OD-0707-001-LRD, an Order[14] dated February 16, 2009 was issued by DOLE-NCR Regional Director Raymundo G. Agravante granting AIM's petition for cancellation of respondent's certificate of registration and ordering its delisting from the roster of legitimate labor organizations. This Order was appealed by respondent before the Bureau of

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6 Id., Vol. II at 456-458.
7 Id., Vol. I at 93-95.
8 Id. at 74-91.
9 Id. at 93-98; penned by Mediator-Arbiter Michael Angelo T. Parado.
10 Docketed as Case No. OS-A-20-9-07.
11 *Rollo*, Vol. I, pp. 131-138; penned, by authority of the Secretary, by Undersecretary Romeo C. Lagman.
12 See CA October 22, 2010 Decision in CA-G.R. SP No. 109487, id. at 251.
13 Id. at 137.
14 Id. at 139-147.

Labor Relations[15] (BLR), which, in a December 29, 2009 Decision,[16] reversed the same and ordered respondent's retention in the roster of legitimate labor organizations. The BLR held that the grounds relied upon in the petition for cancellation are not among the grounds authorized under Article 239 of the Labor Code,[17] and that respondent's members are not managerial employees. Petitioner moved to reconsider, but was rebuffed in a March 18, 2010 Resolution.[18]

CA-G.R. SP No. 109487 and G.R. No. 197089

Petitioner filed a Petition for *Certiorari* before the CA, questioning the DOLE Secretary's February 20, 2009 Decision and May 4, 2009 Resolution relative to DOLE Case No. NCR-OD-M-0705-007, or respondent's petition for certification election. Docketed as CA-G.R. SP No. 109487, the petition is based on the arguments that 1) the bargaining unit within AIM sought to be represented is composed of managerial employees who are not eligible to join, assist, or form any labor organization, and 2) respondent is not a legitimate labor organization that may conduct a certification election.

On October 22, 2010, the CA rendered its Decision[19] containing the following pronouncement:

> AIM insists that the members of its tenure-track faculty are managerial employees, and therefore, ineligible to join, assist or form a labor organization. It ascribes grave abuse of discretion on SOLE[20] for its rash conclusion that the members of said tenure-track faculty are not managerial employees solely because the faculty's actions are still subject to evaluation, review or final approval by the board of trustees ("BOT"). AIM argues that the BOT does not manage the day-to-day affairs, nor the making and implementing of policies of the Institute, as such functions are vested with the tenure-track faculty.
>
> We agree.
>
> Article 212(m) of the Labor Code defines managerial employees as:
>
> 'ART. 212. **Definitions.** – x x x

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15 Docketed as BLR-A-C-19-3-6-09.

16 *Rollo*, Vol. I, pp. 172-177; penned by Officer-in-Charge Romeo M. Montefalco, Jr.

17 ART. 239. *Grounds for Cancellation of Union Registration.* – The following may constitute grounds for cancellation of union registration:

(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.

18 *Rollo*, Vol. I, pp. 196-197.

19 Id. at 250-268; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Francisco P. Acosta and Samuel H. Gaerlan.

20 DOLE Secretary.

> (m) '**Managerial employee**' is one who is vested with powers or prerogatives **to lay down** and **execute management policies** and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment. All employees not falling within any of the above definitions are considered rank-and-file employees for purposes of this Book.'

There are, therefore, two (2) kinds of managerial employees under Art. 212(m) of the Labor Code. Those who 'lay down x x x management policies', such as the Board of Trustees, and those who 'execute management policies and/or hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees'.

x x x x

On its face, the SOLE's opinion is already erroneous because in claiming that the 'test of 'supervisory' **or** 'managerial status' depends on whether a person possesses authority to act in the interest of his employer in the matter specified in Article 212(m) of the Labor Code and **Section 1(m)** of its Implementing Rules', he obviously was referring to the **old definition of a managerial employee**. Such is evident in his use of 'supervisory or managerial status', and reference to '**Section 1(m)** of its Implementing Rules'. For presently, as aforequoted in Article 212(m) of the Labor Code and as amended by Republic Act 6715 which took effect on **March 21, 1989, a managerial employee is already different from a supervisory employee**. x x x

x x x x

In further opining that a **managerial** employee is one whose '**authority is not merely routinary or clerical in nature but requires the use of independent judgment'**, a description which fits now a **supervisory employee** under **Section 1(t), Rule I, Book V** of the Omnibus Rules Implementing the Labor Code, it then follows that the SOLE was not aware of the change in the law and thus gravely abused its discretion amounting to lack of jurisdiction in concluding that AIM's '**tenure-track**' faculty are **not** managerial employees.

SOLE further committed grave abuse of discretion when it concluded that said tenure-track faculty members are not managerial employees on the basis of a 'footnote' in AIM's Policy Manual, which provides that 'the **policy[-]making authority of the faculty members is merely recommendatory** in nature considering that the faculty standards they formulate are **still subject** to evaluation, review or final **approval by the [AIM]'s Board of Trustees**'. x x x

x x x x

Clearly, AIM's tenure-track faculty do not merely recommend faculty standards. They '**determine all faculty standards**', and are thus managerial employees. The standards' being subjected to the approval of the Board of Trustees would not make AIM's tenure-track faculty non-managerial because as earlier mentioned, managerial employees are now of two categories: (1) those who 'lay down policies', such as the members of the Board of Trustees, and (2) those who '**execute** management policies (etc.)', such as AIM's tenure-track

faculty.

x x x x

It was also grave abuse of discretion on the part of the SOLE when he opined that AIM's tenure-track faculty members are not managerial employees, **relying on an impression** that they were subjected to rigid observance of regular hours of work as professors. x x x

x x x x

More importantly, **it behooves the SOLE to deny AFA's appeal in light of the February 16, 2009 Order of Regional Director Agravante delisting AFA from the roster of legitimate labor organizations.** For, **only legitimate labor organizations are given the right to be certified as sole and exclusive bargaining agent in an establishment.**

x x x x

Here, the SOLE committed grave abuse of discretion by giving due course to AFA's petition for certification election, despite the fact that: (1) AFA's members are managerial employees; and (2) AFA is not a legitimate labor organization. These facts rendered AFA ineligible, and without any right to file a petition for certification election, the object of which is to determine the sole and exclusive bargaining representative of qualified AIM employees.

WHEREFORE, the instant petition is **GRANTED**. The assailed Decision dated February 20, 2009 and Resolution dated May 4, 2009 are hereby **REVERSED and SET ASIDE**. The Order dated August 30, 2007 of Mediator-Arbiter Parado is hereby **REINSTATED**.

SO ORDERED.[21] (Emphasis in the original)

Respondent sought reconsideration, but was denied. It thus instituted a Petition for Review on *Certiorari* before this Court on July 4, 2011. The Petition, docketed as G.R. No. 197089, remains pending to date.

The Assailed Ruling of the Court of Appeals

Meanwhile, relative to DOLE Case No. NCR-OD-0707-001-LRD or petitioner AIM's petition for cancellation of respondent's certificate of registration, petitioner filed on May 24, 2010 a Petition for *Certiorari*[22] before the CA, questioning the BLR's December 29, 2009 decision and March 18, 2010 resolution. The petition, docketed as CA-G.R. SP No. 114122, alleged that the BLR committed grave abuse of discretion in granting respondent's appeal and affirming its certificate of registration notwithstanding that its members are managerial employees who may not join, assist, or form a labor union or

[21] *Rollo*, Vol. I, pp. 260-267.
[22] Id. at 198-226.

organization.

On January 8, 2013, the CA rendered the assailed Decision, stating as follows:

> ***The petition lacks merit.***
>
> x x x x
>
> It is therefore incumbent upon the Institute to prove that the BLR committed grave abuse of discretion in issuing the questioned Decision. Towards this end, AIM must lay the basis by showing that any of the grounds provided under Article 239 of the Labor Code, exists, to wit:
>
> > Article 239. Grounds for cancellation of union registration. – The following may constitute grounds for cancellation of union registration:
> >
> > (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.
>
> Article 238 of the Labor Code provides that the enumeration of the grounds for cancellation of union registration, is **exclusive**; in other words, no other grounds for cancellation is acceptable, except for the three (3) grounds stated in Article 239. The scope of the grounds for cancellation has been explained –
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> > For the purpose of de-certifying a union such as respondent, 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, the 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.
> >
> > The bare fact that two signatures appeared twice on the list of those who participated in the organizational meeting would not, to our mind, provide a valid reason to cancel respondent's certificate of registration. The cancellation of a union's registration doubtless has an impairing dimension on the right of labor to self-organization. For fraud and misrepresentation to be grounds for cancellation of union registration under the Labor Code, the nature of the fraud and

> misrepresentation must be grave and compelling enough to vitiate the consent of a majority of union members.[23]

In this regard, it has also been held that:

> Another factor which militates against the veracity of the allegations in the *Sinumpaang Petisyon* is the lack of particularities on how, when and where respondent union perpetrated the alleged fraud on each member. Such details are crucial for, in the proceedings for cancellation of union registration on the ground of fraud or misrepresentation, what needs to be established is that the specific act or omission of the union deprived the complaining employees-members of their right to choose.[24]

A cursory reading of the Petition shows that AIM did NOT allege any specific act of fraud or misrepresentation committed by AFA. What is clear is that the Institute seeks the cancellation of the registration of AFA based on Article 245 of the Labor Code on the ineligibility of managerial employees to form or join labor unions. Unfortunately for the petitioner, even assuming that there is a violation of Article 245, such violation will not result in the cancellation of the certificate of registration of a labor organization.

It should be stressed that a Decision had already been issued by the DOLE in the Certification Election case; and the Decision ordered the conduct of a certification election among the faculty members of the Institute, basing its directive on the finding that the members of AFA were not managerial employees and are therefore eligible to form, assist and join a labor union. As a matter of fact, the certification election had already been held on October 16, 2009, albeit the results have not yet been resolved as inclusion/exclusion proceedings are still pending before the DOLE. The remedy available to the Institute is not the instant Petition, but to question the status of the individual union members of the AFA in the inclusion/exclusion proceedings pursuant to Article 245-A of the Labor Code, which reads:

> Article 245-A. Effect of inclusion as members of employees outside the bargaining unit. – The inclusion as union members of employees outside the bargaining unit shall not be a ground for the cancellation of the registration of the union. Said employees are automatically deemed removed from the list of membership of said union.

Petitioner insists that Article 245-A is not applicable to this case as all AFA members are managerial employees. We are not persuaded.

The determination of whether any or all of the members of AFA should be considered as managerial employees is better left to the DOLE because,

> It has also been established that in the determination of

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[23] Citing *Mariwasa Siam Ceramics, Inc. v. The Secretary of Department of Labor and Employment*, 623 Phil. 603 (2009), citing *In Re: Petition for Cancellation of the Union Registration of Air Philippines Flight Attendants Association, Air Philippines Corporation v. Bureau of Labor Relations*, 525 Phil. 331 (2006).

[24] Citing *Dong Seung Inc. v. Bureau of Labor Relations*, 574 Phil. 368 (2008), citing *Toyota Autoparts, Phils., Inc. v. The Director of the Bureau of Labor Relations*, 363 Phil. 437 (1999).

> whether or not certain employees are managerial employees, this Court accords due respect and therefore sustains the findings of fact made by quasi-judicial agencies which are supported by substantial evidence considering their expertise in their respective fields.[25]
>
> From the discussion, it is manifestly clear that the petitioner failed to prove that the BLR committed grave abuse of discretion; consequently, the Petition must fail.
>
> **WHEREFORE**, the Petition is hereby **DENIED**. The Decision and Resolution of public respondent Bureau of Labor Relations in BLR-A-C-19-3-6-09 (NCR-OD-0707-001) are hereby **AFFIRMED**.
>
> **SO ORDERED**.[26] (Emphasis in the original)

Petitioner filed its Motion for Reconsideration, which was denied by the CA via its June 27, 2013 Resolution. Hence, the instant Petition.

In a November 10, 2014 Resolution,[27] the Court resolved to give due course to the Petition.

Issue

Petitioner claims that the CA seriously erred in affirming the dispositions of the BLR and thus validating the respondent's certificate of registration notwithstanding the fact that its members are all managerial employees who are disqualified from joining, assisting, or forming a labor organization.

Petitioner's Arguments

Praying that the assailed CA dispositions be set aside and that the DOLE-NCR Regional Director's February 16, 2009 Order granting AIM's petition for cancellation of respondent's certificate of registration and ordering its delisting from the roster of legitimate labor organizations be reinstated instead, petitioner maintains in its Petition and Reply[28] that respondent's members are all managerial employees; that the CA erred in declaring that even if respondent's members are all managerial employees, this alone is not a ground for cancellation of its certificate of registration; that precisely, the finding in DOLE Case No. NCR-OD-M-0705-007, which the CA affirmed in CA-G.R. SP No. 109487, is that

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25 Citing *A.D. Gothong Manufacturing Corporation Employees Union-ALU v. Hon. Confesor*, 376 Phil. 168 (1999), citing *Philippine Airlines Employees Association (PALEA) v. Hon. Ferrer-Calleja*, 245 Phil. 382 (1988); *Lacorte v. Hon. Inciong*, 248 Phil. 232 (1988); *Arica v. National Labor Relations Commission*, 252 Phil. 803 (1989); *A.M. Oreta & Co., Inc. v. National Labor Relations Commission*, 257 Phil. 224 (1989).

26 *Rollo*, Vol. I, pp. 37-41.

27 Id., Vol. II at 646-647.

28 Id. at 635-642.

respondent's members are managerial employees; that respondent's declaration that its members are eligible to join, assist, or form a labor organization is an act of misrepresentation, given the finding in CA-G.R. SP No. 109487 that they are managerial employees; and that the grounds for cancellation of union registration enumerated in Article 239 of the Labor Code are not exclusive.

Respondent's Arguments

In its Comment,[29] respondent maintains that the CA was right to treat petitioner's case for cancellation of its union registration with circumspection; that petitioner's ground for filing the petition for cancellation is not recognized under Article 239; that petitioner's accusation of misrepresentation is unsubstantiated, and is being raised for the first time at this stage; that its members are not managerial employees; and that petitioner's opposition to respondent's attempts at self-organization constitutes harassment, oppression, and violates the latter's rights under the Labor Code and the Constitution.

Our Ruling

In *Holy Child Catholic School v. Hon. Sto. Tomas*,[30] this Court declared that "[i]n case of alleged inclusion of disqualified employees in a union, the proper procedure for an employer like petitioner is to directly file a petition for cancellation of the union's certificate of registration due to misrepresentation, false statement or fraud under the circumstances enumerated in Article 239 of the Labor Code, as amended."

On the basis of the ruling in the above-cited case, it can be said that petitioner was correct in filing a petition for cancellation of respondent's certificate of registration. Petitioner's sole ground for seeking cancellation of respondent's certificate of registration – that its members are managerial employees and for this reason, its registration is thus a patent nullity for being an absolute violation of Article 245 of the Labor Code which declares that managerial employees are ineligible to join any labor organization – is, in a sense, an accusation that respondent is guilty of misrepresentation for registering under the claim that its members are not managerial employees.

However, the issue of whether respondent's members are managerial employees is still pending resolution by way of petition for review on *certiorari* in G.R. No. 197089, which is the culmination of all proceedings in DOLE Case No. NCR-OD-M-0705-007 – where the issue relative to the nature of respondent's membership was first raised by petitioner itself and is there fiercely contested.

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[29] Id., Vol. I at 317-371.

[30] 714 Phil. 427, 453 (2013), citing *Sta. Lucia East Commercial Corporation, v. Secretary of Labor and Employment*, 612 Phil. 998, 1007-1008 (2009).

The resolution of this issue cannot be pre-empted; until it is determined with finality in G.R. No. 197089, the petition for cancellation of respondent's certificate of registration on the grounds alleged by petitioner cannot be resolved. As a matter of courtesy and in order to avoid conflicting decisions, We must await the resolution of the petition in G.R. No. 197089.

> x x x If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. x x x Identity of cause of action is not required, but merely identity of issues.[31] (Citation omitted)

WHEREFORE, considering that the outcome of this case depends on the resolution of the issue relative to the nature of respondent's membership pending in G.R. No. 197089, this case is ordered **CONSOLIDATED** with G.R. No. 197089.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

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[31] *Heirs of Parasac v. Republic*, 523 Phil. 164, 183 (2006).

ALFREDO BENJAMIN S. CAGUIOA
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