Republic of the Philippines
Supreme Court
Manila

EN BANC

HOLY CHILD CATHOLIC SCHOOL, Petitioner,	**G.R. No. 179146**
	Present:
- *versus* -	SERENO, *C.J.*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA, BERSAMIN, DEL CASTILLO, ABAD, VILLARAMA, JR., PEREZ, MENDOZA, REYES,* PERLAS-BERNABE, and LEONEN, *JJ.*
HON. PATRICIA STO. TOMAS, in her official capacity as Secretary of the Department of Labor and Employment, and PINAG-ISANG TINIG AT LAKAS NG ANAKPAWIS – HOLY CHILD CATHOLIC SCHOOL TEACHERS AND EMPLOYEES LABOR UNION (HCCS-TELU-PIGLAS), Respondents.	**Promulgated:** JULY 23, 2013

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D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure are the April 18, 2007 Decision[1] and July 31, 2007

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* No part.

[1] Penned by Associate Justice Bienvenido L. Reyes (now a member of this Court), with Associate Justices Portia Aliño Hormachuelos and Rosalinda Asuncion Vicente concurring; *rollo*, pp. 11-19.

Resolution[2] of the Court of Appeals in CA-G.R. SP No. 76175, which affirmed the December 27, 2002 Decision[3] and February 13, 2003 Resolution[4] of the Secretary of the Department of Labor and Employment (SOLE) that set aside the August 10, 2002 Decision[5] of the Med-Arbiter denying private respondent's petition for certification election.

The factual antecedents are as follows:

On May 31, 2002, a petition for certification election was filed by private respondent *Pinag-Isang Tinig at Lakas ng Anakpawis – Holy Child Catholic School Teachers and Employees Labor Union (HCCS-TELU-PIGLAS)*, alleging that: PIGLAS is a legitimate labor organization duly registered with the Department of Labor and Employment (DOLE) representing HCCS-TELU-PIGLAS; HCCS is a private educational institution duly registered and operating under Philippine laws; there are approximately one hundred twenty (120) teachers and employees comprising the proposed appropriate bargaining unit; and HCCS is unorganized, there is no collective bargaining agreement or a duly certified bargaining agent or a labor organization certified as the sole and exclusive bargaining agent of the proposed bargaining unit within one year prior to the filing of the petition.[6] Among the documents attached to the petition were the certificate of affiliation with *Pinag-Isang Tinig at Lakas ng Anakpawis Kristiyanong Alyansa ng Makabayang Obrero (PIGLAS-KAMAO)* issued by the Bureau of Labor Relations (BLR), charter certificate issued by PIGLAS-KAMAO, and certificate of registration of HCCS-TELU as a legitimate labor organization issued by the DOLE.[7]

In its Comment[8] and Position Paper,[9] petitioner HCCS consistently noted that it is a parochial school with a total of 156 employees as of June 28, 2002, broken down as follows: ninety-eight (98) teaching personnel, twenty-five (25) non-teaching academic employees, and thirty-three (33) non-teaching non-academic workers. It averred that of the employees who signed to support the petition, fourteen (14) already resigned and six (6) signed twice. Petitioner raised that members of private respondent do not belong to the same class; it is not only a mixture of managerial, supervisory, and rank-and-file employees – as three (3) are vice-principals, one (1) is a department head/supervisor, and eleven (11) are coordinators – but also a combination of teaching and non-teaching personnel – as twenty-seven (27) are non-teaching personnel. It insisted that, for not being in accord with

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2 *Id.* at 9-10.
3 *Id.* at 116-119.
4 *Id.* at 140-142.
5 *Id.* at 101-104.
6 *Id.* at 76-77.
7 *Id.* at 78-80.
8 *Id.* at 81-85.
9 *Id.* at 86-92.

Article 245[10] of the Labor Code, private respondent is an illegitimate labor organization lacking in personality to file a petition for certification election, as held in *Toyota Motor Philippines Corporation v. Toyota Motor Philippines Corporation Labor Union*;[11] and an inappropriate bargaining unit for want of community or mutuality of interest, as ruled in *Dunlop Slazenger (Phils.), Inc. v. Secretary of Labor and Employment*[12] and *De La Salle University Medical Center and College of Medicine v. Laguesma.*[13]

Private respondent, however, countered that petitioner failed to substantiate its claim that some of the employees included in the petition for certification election holds managerial and supervisory positions.[14] Assuming it to be true, it argued that Section 11 (II),[15] Rule XI of DOLE Department Order (D.O.) No. 9, Series of 1997, provided for specific instances in which a petition filed by a legitimate organization shall be dismissed by the Med-Arbiter and that "mixture of employees" is not one of those enumerated. Private respondent pointed out that questions pertaining to qualifications of employees may be threshed out in the inclusion-exclusion proceedings prior to the conduct of the certification election,

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[10] As amended by Section 18 of Republic Act No. 6715, Article 245 of the Labor Code now 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 organization. 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.

[11] 335 Phil. 1045 (1997).

[12] 360 Phil. 304 (1998).

[13] 355 Phil. 571 (1998).

[14] See Comment to Petitioner's Position Paper, *rollo*, pp. 93-100.

[15] Section 11. Action on the petition. x x x

> x x x x
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> II. The Med-Arbiter shall dismiss the petition on any of the following grounds:
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> (a) The petitioner is not listed by the Regional Office or Bureau in its registry of legitimate labor organizations, or that its legal personality has been revoked or cancelled with finality in accordance with Rule VIII of these Rules;
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> (b) The petition was filed before or after the freedom period of a duly registered collective bargaining agreement; provided, that the sixty-day freedom period based on the original collective bargaining agreement shall not be affected by any amendment, extension or renewal of the collective bargaining agreement;
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> (c) The petition was filed within one (1) year from a valid certification, consent or run-off election and no appeal on the results is pending thereon, or from recording of the fact of voluntary recognition with the Regional Office;
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> (d) A duly recognized or certified union has commenced negotiations with the employer in accordance with Article 250 of the Code within the one-year period referred to in Section 3, Rule XI of these Rules, or there exists a bargaining deadlock which had been submitted to conciliation or arbitration or had become the subject of a valid notice of strike or lockout to which an incumbent or certified bargaining agent is a party;
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> (e) In case of an organized establishment, failure to submit the twenty-five percent (25%) support requirement upon the filing of the petition; or
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> (f) Lack of interest or withdrawal on the part of the petitioner; provided, that where a motion for intervention has been filed during the freedom period, said motion shall be deemed and disposed of as an independent petition for certification election if it complies with all the requisites for the filing of a petition for certification election as prescribed in Section 4 of these Rules.

pursuant to Section 2,[16] Rule XII of D.O. No. 9. Lastly, similar to the ruling in *In Re: Globe Machine and Stamping Company*,[17] it contended that the will of petitioner's employees should be respected as they had manifested their desire to be represented by only one bargaining unit. To back up the formation of a single employer unit, private respondent asserted that even if the teachers may receive additional pay for an advisory class and for holding additional loads, petitioner's academic and non-academic personnel have similar working conditions. It cited *Laguna College v. Court of Industrial Relations*,[18] as well as the case of a union in West Negros College in Bacolod City, which allegedly represented both academic and non-academic employees.

On August 10, 2002, Med-Arbiter Agatha Ann L. Daquigan denied the petition for certification election on the ground that the unit which private respondent sought to represent is inappropriate. She resolved:

> A certification election proceeding directly involves two ***(2)*** issues namely: ***(a)*** the proper composition and constituency of the bargaining unit; and ***(b)*** the validity of majority representation claims. It is therefore incumbent upon the Med-Arbiter to rule on the appropriateness of the bargaining unit once its composition and constituency is questioned.
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> ***Section 1 (q), Rule I, Book V of the Omnibus Rules*** defines a ***"bargaining unit"*** as a group of employees sharing mutual interests within a given employer unit comprised of all or less than all of the entire body of employees in the employer unit or any specific occupational or geographical grouping within such employer unit. This definition has provided the ***"community or mutuality of interest"*** test as the standard in determining the constituency of a collective bargaining unit. This is so because the basic test of an asserted bargaining unit's acceptability is whether or not it is fundamentally the combination which will best assure to all employees the exercise of their collective bargaining rights. The application of this test may either result in the formation of an employer unit or in the fragmentation of an employer unit.
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> In the case at bar, the employees of [petitioner], may, as already suggested, quite easily be categorized into ***(2)*** general classes[:] ***one,*** the teaching staff; and ***two,*** the non-teaching-staff. Not much reflection is needed to perceive that the community or mutuality of interest is wanting between the teaching and the non-teaching staff. It would seem obvious that the teaching staff would find very little in common with the non-teaching staff as regards responsibilities and function, working conditions,

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[16] Section 2. Qualification of voters; inclusion-exclusion proceedings. - All employees who are members of the appropriate bargaining unit sought to be represented by the petitioner at the time of the certification or consent election shall be qualified to vote. A dismissed employee whose dismissal is being contested in a pending case shall be allowed to vote in the election.

In case of disagreement over the voters' list or over the eligibility of voters, all contested voters shall be allowed to vote. However, their votes shall be segregated and sealed in individual envelopes in accordance with Section 9 of these Rules.

[17] 3 NLRB 294 (1937).

[18] 134 Phil. 168 (1968).

> compensation rates, social life and interests, skills and intellectual pursuits, etc. These are ***plain and patent realities*** which cannot be ignored. These dictate the separation of these two categories of employees for purposes of collective bargaining. ***(University of the Philippines vs. Ferrer-Calleja, 211 SCRA 451)***[19]

Private respondent appealed before the SOLE, who, on December 27, 2002, ruled against the dismissal of the petition and directed the conduct of two separate certification elections for the teaching and the non-teaching personnel, thus:

> We agree with the Med-Arbiter that there are differences in the nature of work, hours and conditions of work and salary determination between the teaching and non-teaching personnel of [petitioner]. These differences were pointed out by [petitioner] in its position paper. We do not, however, agree with the Med-Arbiter that these differences are substantial enough to warrant the dismissal of the petition. First, as pointed out by [private respondent], "inappropriateness of the bargaining unit sought to be represented is not a ground for the dismissal of the petition[."] In fact, in the cited case of University of the Philippines v. Ferrer-Calleja, supra, the Supreme Court did not order the dismissal of the petition but ordered the conduct of a certification election, limiting the same among the non-academic personnel of the University of the Philippines.
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> It will be recalled that in the U.P. case, there were two contending unions, the Organization of Non-Academic Personnel of U.P. (ONAPUP) and All U.P. Workers Union composed of both academic and non-academic personnel of U.P. ONAPUP sought the conduct of certification election among the rank-and-file non-academic personnel only while the all U.P. Workers Union sought the conduct of certification election among all of U.P.'s rank-and-file employees covering academic and non-academic personnel. While the Supreme Court ordered a separate bargaining unit for the U.P. academic personnel, the Court, however, did not order them to organize a separate labor organization among themselves. The All U.P. Workers Union was not directed to divest itself of its academic personnel members and in fact, we take administrative notice that the All U.P. Workers Union continue to exist with a combined membership of U.P. academic and non-academic personnel although separate bargaining agreements is sought for the two bargaining units. Corollary, [private respondent] can continue to exist as a legitimate labor organization with the combined teaching and non-teaching personnel in its membership and representing both classes of employees in separate bargaining negotiations and agreements.
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> **WHEREFORE**, the Decision of the Med-Arbiter dated 10 August 2002 is hereby **REVERSED** and **SET ASIDE.** In lieu thereof, a new order is hereby issued directing the conduct of two certification elections, one among the non-teaching personnel of Holy Child Catholic School, and the other, among the teaching personnel of the same school, subject to the usual pre-election conferences and inclusion-exclusion proceedings, with the following choices:

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[19] *Rollo*, pp. 103-104. (Emphasis in the original).

> A. Certification Election Among [Petitioner]'s Teaching Personnel:
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> 1. Holy Child Catholic School Teachers and Employees Labor Union; and
> 2. No Union.
>
> B. Certification Election Among [Petitioner]'s Non-Teaching Personnel:
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> 1. Holy Child Catholic School Teachers and Employees Labor Union; and
> 2. No Union.
>
> [Petitioner] is hereby directed to submit to the Regional Office of origin within ten (10) days from receipt of this Decision, a certified separate list of its teaching and non-teaching personnel or when necessary a separate copy of their payroll for the last three (3) months prior to the issuance of this Decision.[20]

Petitioner filed a motion for reconsideration[21] which, per Resolution dated February 13, 2003, was denied. Consequently, petitioner filed before the CA a Petition for *Certiorari* with Prayer for Temporary Restraining Order and Preliminary Injunction.[22] The CA resolved to defer action on the prayer for TRO pending the filing of private respondent's Comment.[23] Later, private respondent and petitioner filed their Comment[24] and Reply,[25] respectively.

On July 23, 2003, petitioner filed a motion for immediate issuance of a TRO, alleging that Hon. Helen F. Dacanay of the Industrial Relations Division of the DOLE was set to implement the SOLE Decision when it received a summons and was directed to submit a certified list of teaching and non-teaching personnel for the last three months prior to the issuance of the assailed Decision.[26] Acting thereon, on August 5, 2003, the CA issued the TRO and ordered private respondent to show cause why the writ of preliminary injunction should not be granted.[27] Subsequently, a Manifestation and Motion[28] was filed by private respondent, stating that it repleads by reference the arguments raised in its Comment and that it prays for the immediate lifting of the TRO and the denial of the preliminary injunction. The CA, however, denied the manifestation and motion on

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20 *Id.* at 118-119. (Emphasis in the original)
21 *Id.* at 120-139.
22 *CA rollo*, pp. 2-32.
23 *Id.* at 111.
24 *Id.* at 112-122.
25 *Id.* at 128-141.
26 *Id.* at 142-153.
27 *Id.* at 155-156.
28 *Id.* at 176-178.

November 21, 2003[29] and, upon motion of petitioner,[30] granted the preliminary injunction on April 21, 2005.[31] Thereafter, both parties filed their respective Memorandum.[32]

On April 18, 2007, the CA eventually dismissed the petition. As to the purported commingling of managerial, supervisory, and rank-and-file employees in private respondent's membership, it held that the *Toyota* ruling is inapplicable because the vice-principals, department head, and coordinators are neither supervisory nor managerial employees. It reasoned:

> x x x While it may be true that they wield power over other subordinate employees of the petitioner, it must be stressed[,] however[,] that their functions are not confined with policy-determining such as hiring, firing, and disciplining of employees, salaries, teaching/working hours, other monetary and non-monetary benefits, and other terms and conditions of employment. Further, while they may formulate policies or guidelines, nonetheless, such is merely recommendatory in nature, and still subject to review and evaluation by the higher executives, *i.e.*, the principals or executive officers of the petitioner. It cannot also be denied that in institutions like the petitioner, company policies have already been pre-formulated by the higher executives and all that the mentioned employees have to do is carry out these company policies and standards. Such being the case, it is crystal clear that there is no improper [commingling] of members in the private respondent union as to preclude its petition for certification of *(sic)* election.[33]

Anent the alleged mixture of teaching and non-teaching personnel, the CA agreed with petitioner that the nature of the former's work does not coincide with that of the latter. Nevertheless, it ruled that the SOLE did not commit grave abuse of discretion in not dismissing the petition for certification election, since it directed the conduct of two separate certification elections based on Our ruling in *University of the Philippines v. Ferrer-Calleja.*[34]

A motion for reconsideration[35] was filed by petitioner, but the CA denied the same;[36] hence, this petition assigning the alleged errors as follows:

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29 *Id.* at 180-181.
30 *Id.* at 182-197.
31 *Id.* at 199.
32 *Id.* at 209-241.
33 *Id.* at 249-250.
34 G.R. No. 96189, July 14, 1992, 211 SCRA 451.
35 *CA rollo*, pp. 257-277.
36 *Id.* at 286-287.

I.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE RULING IN THE CASE OF TOYOTA MOTOR PHILIPPINES CORPORATION VS. TOYOTA MOTOR PHILIPPINES CORPORATION LABOR UNION (268 SCRA 573) DOES NOT APPLY IN THE CASE AT BAR DESPITE THE [COMMINGLING] OF BOTH SUPERVISORY OR MANAGERIAL AND RANK-AND-FILE EMPLOYEES IN THE RESPONDENT UNION;

II

THE HONORABLE COURT OF APPEALS ERRED IN ITS CONFLICTING RULING ALLOWING THE CONDUCT OF CERTIFICATION ELECTION BY UPHOLDING THAT THE RESPONDENT UNION REPRESENTED A BARGAINING UNIT DESPITE ITS OWN FINDINGS THAT THERE IS NO MUTUALITY OF INTEREST BETWEEN THE MEMBERS OF RESPONDENT UNION APPLYING THE TEST LAID DOWN IN THE CASE OF UNIVERSITY OF THE PHILIPPINES VS. FERRER-CALLEJA (211 SCRA 451).[37]

We deny.

Petitioner claims that the CA contradicted the very definition of managerial and supervisory employees under existing law and jurisprudence when it did not classify the vice-principals, department head, and coordinators as managerial or supervisory employees merely because the policies and guidelines they formulate are still subject to the review and evaluation of the principal or executive officers of petitioner. It points out that the duties of the vice-principals, department head, and coordinators include the evaluation and assessment of the effectiveness and capability of the teachers under them; that such evaluation and assessment is independently made without the participation of the higher Administration of petitioner; that the fact that their recommendation undergoes the approval of the higher Administration does not take away the independent nature of their judgment; and that it would be difficult for the vice-principals, department head, and coordinators to objectively assess and evaluate the performances of teachers under them if they would be allowed to be members of the same labor union.

On the other hand, aside from reiterating its previous submissions, private respondent cites Sections 9 and 12[38] of Republic Act (R.A.) No.

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[37] *Rollo*, p. 37.

[38] Sections 9 and 12 of Republic Act 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”) provide:

9481 to buttress its contention that petitioner has no standing to oppose the petition for certification election. On the basis of the statutory provisions, it reasons that an employer is not a party-in-interest in a certification election; thus, petitioner does not have the requisite right to protect even by way of restraining order or injunction.

First off, We cannot agree with private respondent's invocation of R.A. No. 9481. Said law took effect only on June 14, 2007; hence, its applicability is limited to labor representation cases filed on or after said date.[39] Instead, the law and rules in force at the time private respondent filed its petition for certification election on May 31, 2002 are R.A. No. 6715, which amended Book V of Presidential Decree (P.D.) No. 442 (the Labor Code), as amended, and the Rules and Regulations Implementing R.A. No. 6715, as amended by D.O. No. 9, which was dated May 1, 1997 but took effect on June 21, 1997.[40]

However, note must be taken that even without the express provision of Section 12 of RA No. 9481, the "Bystander Rule" is already well entrenched in this jurisdiction. It has been consistently held in a number of cases that a certification election is the sole concern of the workers, except when the employer itself has to file the petition pursuant to Article 259 of the Labor Code, as amended, but even after such filing its role in the certification process ceases and becomes merely a bystander.[41] The employer clearly lacks the personality to dispute the election and has no right to interfere at all therein.[42] This is so since any uncalled-for concern on the part of the employer may give rise to the suspicion that it is batting for a

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> **SEC. 9.** A new provision, Article 245-A is inserted into the Labor Code to read as follows:
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> ART. 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.
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> **SEC. 12.** A new provision, Article 258-A is hereby inserted into the Labor Code to read as follows:
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> ART. 258-A. *Employer as Bystander*. - In all cases, whether the petition for certification election is filed by an employer or a legitimate labor organization, the employer shall not be considered a party thereto with a concomitant right to oppose a petition for certification election. The employer's participation in such proceedings shall be limited to: (1) being notified or informed of petitions of such nature; and (2) submitting the list of employees during the pre-election conference should the Med-Arbiter act favorably on the petition.

[39] *Republic v. Kawashima Textile Mfg., Philippines, Inc.*, G.R. No. 160352, July 23, 2008, 559 SCRA 386, 396.

[40] See *Republic v. Kawashima Textile Mfg., Philippines, Inc.*, *supra*, at 397.

[41] *Divine Word University of Tacloban v. Secretary of Labor and Employment*, G.R. No. 91915, September 11, 1992, 213 SCRA 759, 770 and *Trade Unions of the Philippines and Allied Services v. Trajano*, 205 Phil. 41, 43 (1983), as cited in *Belyca Corporation v. Ferrer- Calleja*, 250 Phil. 193, 204 (1988).

[42] *Barbizon Philippines, Inc. v. Nagkakaisang Supervisor ng Barbizon Philippines, Inc.-NAFLU*, 330 Phil. 472, 492 (1996) and *Philippine Fruits and Vegetable Industries, Inc. v. Torres*, G.R. No. 92391, July 3, 1992, 211 SCRA 95, 103.

company union.[43] Indeed, the demand of the law and policy for an employer to take a strict, hands-off stance in certification elections is based on the rationale that the employees' bargaining representative should be chosen free from any extraneous influence of the management; that, to be effective, the bargaining representative must owe its loyalty to the employees alone and to no other.[44]

Now, going back to petitioner's contention, the issue of whether a petition for certification election is dismissible on the ground that the labor organization's membership allegedly consists of supervisory and rank-and-file employees is actually not a novel one. In the 2008 case of *Republic v. Kawashima Textile Mfg., Philippines, Inc.*,[45] wherein the employer-company moved to dismiss the petition for certification election on the ground *inter alia* that the union membership is a mixture of rank-and-file and supervisory employees, this Court had conscientiously discussed the applicability of *Toyota* and *Dunlop* in the context of R.A. No. 6715 and D.O. No. 9, *viz.*:

> It was in R.A. No. 875, under Section 3, that such questioned mingling was first prohibited, to wit:
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> > Sec. 3. *Employees' right to self-organization*. - Employees shall have the right to self-organization and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection**. Individuals employed as supervisors shall not be eligible for membership in a labor organization of employees under their supervision but may form separate organizations of their own.** (Emphasis supplied)
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> Nothing in R.A. No. 875, however, tells of how the questioned mingling can affect the legitimacy of the labor organization. Under Section 15, the only instance when a labor organization loses its legitimacy is when it violates its duty to bargain collectively; but there is no word on whether such mingling would also result in loss of legitimacy. Thus, when the issue of whether the membership of two supervisory employees impairs the legitimacy of a rank-and-file labor organization came before the Court *En Banc* in *Lopez v. Chronicle Publication Employees Association*, the majority pronounced:
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> > It may be observed that nothing is said of the effect of such ineligibility upon the union itself or on the status of

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[43] *Divine Word University of Tacloban v. Secretary of Labor and Employment*, *supra* note 41, at 770-771.

[44] *San Miguel Foods, Incorporated v. San Miguel Corporation Supervisors and Exempt Union*, G.R. No. 146206, August 1, 2011, 655 SCRA 1.

[45] *Supra* note 39.

> the other qualified members thereof should such prohibition be disregarded. Considering that the law is specific where it intends to divest a legitimate labor union of any of the rights and privileges granted to it by law, **the absence of any provision on the effect of the disqualification of one of its organizers upon the legality of the union, may be construed to confine the effect of such ineligibility only upon the membership of the supervisor. In other words, the invalidity of membership of one of the organizers does not make the union illegal, where the requirements of the law for the organization thereof are, nevertheless, satisfied and met.** (Emphasis supplied)

Then the Labor Code was enacted in 1974 without reproducing Sec. 3 of R.A. No. 875. The provision in the Labor Code closest to Sec. 3 is Article 290, which is deafeningly silent on the prohibition against supervisory employees mingling with rank-and-file employees in one labor organization. Even the Omnibus Rules Implementing Book V of the Labor Code (Omnibus Rules) merely provides in Section 11, Rule II, thus:

> Sec. 11. *Supervisory unions and unions of security guards to cease operation*. - All existing supervisory unions and unions of security guards shall, upon the effectivity of the Code, cease to operate as such and their registration certificates shall be deemed automatically cancelled. However, existing collective agreements with such unions, the life of which extends beyond the date of effectivity of the Code shall be respected until their expiry date insofar as the economic benefits granted therein are concerned.
>
> **Members of supervisory unions who do not fall within the definition of managerial employees shall become eligible to join or assist the rank and file organization.** The determination of who are managerial employees and who are not shall be the subject of negotiation between representatives of supervisory union and the employer. If no agreement s reached between the parties, either or both of them may bring the issue to the nearest Regional Office for determination. (Emphasis supplied)

The obvious repeal of the last clause of Sec. 3, R.A. No. 875 prompted the Court to declare in *Bulletin v. Sanchez* that supervisory employees who do not fall under the category of managerial employees may join or assist in the formation of a labor organization for rank-and-file employees, but they may not form their own labor organization.

While amending certain provisions of Book V of the Labor Code, E.O. No. 111 and its implementing rules continued to recognize the right of supervisory employees, who do not fall under the category of managerial employees, to join a rank- and-file labor organization.

Effective 1989, R.A. No. 6715 restored the prohibition against the questioned mingling in one labor organization, *viz.*:

> Sec. 18**.** *Article 245 of the same Code*, as amended, is hereby further amended to read as follows:
>
> > 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 organization. **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** (Emphasis supplied)

Unfortunately, just like R.A. No. 875, R.A. No. 6715 omitted specifying the exact effect any violation of the prohibition would bring about on the legitimacy of a labor organization.

It was the Rules and Regulations Implementing R.A. No. 6715 (1989 Amended Omnibus Rules) which supplied the deficiency by introducing the following amendment to Rule II (Registration of Unions):

> Sec. 1. *Who may join unions.* - x x x **Supervisory employees and security guards 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**; Provided, that those supervisory employees who are included in an existing rank-and-file bargaining unit, upon the effectivity of Republic Act No. 6715, shall remain in that unit x x x. (Emphasis supplied)

and Rule V (Representation Cases and Internal-Union Conflicts) of the Omnibus Rules, *viz.*;

> Sec. 1. *Where to file*. - A petition for certification election may be filed with the Regional Office which has jurisdiction over the principal office of the employer. The petition shall be in writing and under oath.
>
> Sec. 2. *Who may file*. - Any legitimate labor organization or the employer, when requested to bargain collectively, may file the petition.
>
> The petition, when filed by a legitimate labor organization, shall contain, among others:
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> x x x x
>
> **(c) description of the bargaining unit which shall be the employer unit unless circumstances otherwise**

> **require; and provided further, that the appropriate bargaining unit of the rank-and-file employees shall not include supervisory employees and/or security guards.** (Emphasis supplied)

By that provision, any questioned mingling will prevent an otherwise legitimate and duly registered labor organization from exercising its right to file a petition for certification election.

Thus, when the issue of the effect of mingling was brought to the fore in *Toyota,* the Court, citing Article 245 of the Labor Code, as amended by R.A. No. 6715, held:

> 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.**
>
> x x x x
>
> In the case at bar, as respondent union's membership list contains the names of at least twenty-seven (27) supervisory employees in Level Five positions, the union could not, prior to purging itself of its supervisory employee members, attain the status of a legitimate labor organization. Not being one, it cannot possess the requisite personality to file a petition for certification election. (Emphasis supplied)

In *Dunlop,* in which the labor organization that filed a petition for certification election was one for supervisory employees, but in which the membership included rank-and-file employees, the Court reiterated that such labor organization had no legal right to file a certification election to represent a bargaining unit composed of supervisors for as long as it counted rank-and-file employees among its members.

It should be emphasized that the petitions for certification election involved in *Toyota* and *Dunlop* were filed on November 26, 1992 and September 15, 1995, respectively; hence, the 1989 Rules was applied in both cases.

But then, on June 21, 1997, the 1989 Amended Omnibus Rules was further amended by Department Order No. 9, series of 1997 (1997 Amended Omnibus Rules). Specifically, the requirement under Sec. 2(c) of the 1989 Amended Omnibus Rules - that the petition for certification

election indicate that the bargaining unit of rank-and-file employees has not been mingled with supervisory employees - was removed. Instead, what the 1997 Amended Omnibus Rules requires is a plain description of the bargaining unit, thus:

Rule XI
Certification Elections

x x x x

> Sec. 4. *Forms and contents of petition*. - The petition shall be in writing and under oath and shall contain, among others, the following: x x x (c) The description of the bargaining unit."

In *Pagpalain Haulers, Inc. v. Trajano,* the Court had occasion to uphold the validity of the 1997 Amended Omnibus Rules, although the specific provision involved therein was only Sec. 1, Rule VI, to wit:

> Sec. 1. *Chartering and creation of a local/chapter*.- A duly registered federation or national union may directly create a local/chapter by submitting to the Regional Office or to the Bureau two (2) copies of the following: a) a charter certificate issued by the federation or national union indicating the creation or establishment of the local/chapter; (b) the names of the local/chapter's officers, their addresses, and the principal office of the local/chapter; and (c) the local/ chapter's constitution and by-laws; provided that where the local/chapter's constitution and by-laws is the same as that of the federation or national union, this fact shall be indicated accordingly.
>
> All the foregoing supporting requirements shall be certified under oath by the Secretary or the Treasurer of the local/chapter and attested to by its President.

which does not require that, for its creation and registration, a local or chapter submit a list of its members.

Then came *Tagaytay Highlands Int'l. Golf Club, Inc. v. Tagaytay Highlands Employees Union-PTGWO* in which the core issue was whether mingling affects the legitimacy of a labor organization and its right to file a petition for certification election. This time, given the altered legal milieu, the Court abandoned the view in *Toyota* and *Dunlop* and reverted to its pronouncement in *Lopez* that while there is a prohibition against the mingling of supervisory and rank-and-file employees in one labor organization, the Labor Code does not provide for the effects thereof. Thus, the Court held that after a labor organization has been registered, it may exercise all the rights and privileges of a legitimate labor organization. Any mingling between supervisory and rank-and-file employees in its membership cannot affect its legitimacy for that is not among the grounds for cancellation of its registration, unless such mingling was brought about by misrepresentation, false statement or fraud under Article 239 of the Labor Code.

> In *San Miguel Corp. (Mandaue Packaging Products Plants) v. Mandaue Packing Products Plants-San Miguel Packaging Products-San Miguel Corp. Monthlies Rank-and-File Union-FFW,* the Court explained that since the 1997 Amended Omnibus Rules does not require a local or chapter to provide a list of its members, it would be improper for the DOLE to deny recognition to said local or chapter on account of any question pertaining to its individual members.
>
> More to the point is *Air Philippines Corporation v. Bureau of Labor Relations,* which involved a petition for cancellation of union registration filed by the employer in 1999 against a rank-and-file labor organization on the ground of mixed membership: the Court therein reiterated its ruling in *Tagaytay Highlands* that the inclusion in a union of disqualified employees is not among the grounds for cancellation, unless such inclusion is due to misrepresentation, false statement or fraud under the circumstances enumerated in Sections (a) and (c) of Article 239 of the Labor Code.
>
> All said, while the latest issuance is R.A. No. 9481, the 1997 Amended Omnibus Rules, as interpreted by the Court in *Tagaytay Highlands*, *San Miguel* and *Air Philippines,* had already set the tone for it. *Toyota* and *Dunlop* no longer hold sway in the present altered state of the law and the rules.[46]

When a similar issue confronted this Court close to three years later, the above ruling was substantially quoted in *Samahang Manggagawa sa Charter Chemical Solidarity of Unions in the Philippines for Empowerment and Reforms (SMCC-Super) v. Charter Chemical and Coating Corporation.*[47] In unequivocal terms, We reiterated that the alleged inclusion of supervisory employees in a labor organization seeking to represent the bargaining unit of rank-and-file employees does not divest it of its status as a legitimate labor organization.[48]

Indeed, *Toyota* and *Dunlop* no longer hold true under the law and rules governing the instant case. The petitions for certification election involved in *Toyota* and *Dunlop* were filed on November 26, 1992 and September 15, 1995, respectively; hence, the 1989 Rules and Regulations Implementing R.A. No. 6715 (1989 Amended Omnibus Rules) was applied. In contrast, D.O. No. 9 is applicable in the petition for certification election of private respondent as it was filed on May 31, 2002.

Following the doctrine laid down in *Kawashima* and *SMCC-Super*, it must be stressed that petitioner cannot collaterally attack the legitimacy of

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[46] *Republic v. Kawashima Textile Mfg., Philippines, Inc., supra* note 39, at 399-407. (Emphasis supplied; citations omitted)

[47] G.R. No. 169717, March 16, 2011, 645 SCRA 538.

[48] *Samahang Manggagawa sa Charter Chemical Solidarity of Unions in the Philippines for Empowerment and Reforms (SMCC-Super) v. Charter Chemical and Coating Corporation, supra,* at 540.

private respondent by praying for the dismissal of the petition for certification election:

> 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 amendments to the Labor Code and its implementing rules have buttressed that policy even more.[49]

Further, the determination of whether union membership comprises managerial and/or supervisory employees is a factual issue that is best left for resolution in the inclusion-exclusion proceedings, which has not yet happened in this case so still premature to pass upon. We could only emphasize the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only with respect but even finality by the courts when supported by substantial evidence.[50] Also, the jurisdiction of this Court in cases brought before it from the CA *via* Rule 45 is generally limited to reviewing errors of law or jurisdiction. The findings of fact of the CA are conclusive and binding. Except in certain recognized instances,[51] We do not entertain factual issues as it is not Our function to analyze or weigh evidence all over again; the evaluation of facts is best left to the lower courts and administrative agencies/quasi-judicial bodies which are better equipped for the task.[52]

Turning now to the second and last issue, petitioner argues that, in view of the improper mixture of teaching and non-teaching personnel in private respondent due to the absence of mutuality of interest among its

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[49] *Republic v. Kawashima Textile Mfg., Philippines, Inc., supra* note 39, at 408 and *Samahang Manggagawa sa Charter Chemical Solidarity of Unions in the Philippines for Empowerment and Reforms (SMCC-Super) v. Charter Chemical and Coating Corporation, supra* note 47, at 557-558. (Citations omitted)

[50] *Julie's Bakeshop v. Arnaiz*, G.R. No. 173882, February 15, 2012, 666 SCRA 101, 113-114; *Philippine Veterans Bank v. NLRC*, G.R. No.188882, March 30, 2010, 617 SCRA 204, 212; and *Merck Sharp and Dohme (Philippines) v. Robles*, G.R. No. 176506, November 25, 2009, 605 SCRA 488, 494.

[51] See *Galang v. Malasugui*, G.R. No. 174173, March 7, 2012, 667 SCRA 622, 631-632; *Pharmacia and Upjohn, Inc. v. Albayda, Jr.*, G.R. No. 172724, August 23, 2010, 628 SCRA 544, 557; and *Merck Sharp and Dohme (Philippines) v. Robles, supra.*

[52] See *Dimagan v. Dacworks United, Incorporated*, G.R. No. 191053, November 28, 2011, 661 SCRA 438, 445 and *Pharmacia and Upjohn, Inc. v. Albayda, Jr., supra.*

members, the petition for certification election should have been dismissed on the ground that private respondent is not qualified to file such petition for its failure to qualify as a legitimate labor organization, the basic qualification of which is the representation of an appropriate bargaining unit.

We disagree.

The concepts of a union and of a legitimate labor organization are different from, but related to, the concept of a bargaining unit:

> Article 212(g) of the Labor Code defines a labor organization as "any union or association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment." Upon compliance with all the documentary requirements, the Regional Office or Bureau shall issue in favor of the applicant labor organization a certificate indicating that it is included in the roster of legitimate labor organizations. Any applicant labor organization 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 registration.[53]

In 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.[54] To reiterate, private respondent, having been validly issued a certificate of registration, should be considered as having acquired juridical personality which may not be attacked collaterally.

On the other hand, a *bargaining unit* has been defined as a "group of employees of a given employer, comprised of all or less than all of the entire body of employees, which the collective interests of all the employees, consistent with equity to the employer, indicated to be best suited to serve reciprocal rights and duties of the parties under the collective bargaining provisions of the law."[55] In determining the proper collective bargaining unit and what unit would be appropriate to be the collective bargaining agency, the Court, in the seminal case of *Democratic Labor Association v. Cebu Stevedoring Company, Inc.*,[56] mentioned several factors that should be considered, to wit: (1) will of employees (Globe Doctrine); (2) affinity and

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53 *Sta. Lucia East Commercial Corporation, v. Secretary of Labor and Employment*, G.R. No. 162355, August 14, 2009, 596 SCRA 92, 100.

54 *Id.* at 102.

55 *Belyca Corporation v. Ferrer- Calleja*, *supra* note 41, at 199, citing *Rothenberg in Labor Relations*, p. 482.

56 103 Phil. 1103, 1104 (1958), citing *Rothenberg in Labor Relations*, pp. 482-510.

unity of employees' interest, such as substantial similarity of work and duties, or similarity of compensation and working conditions; (3) prior collective bargaining history; and (4) employment status, such as temporary, seasonal and probationary employees. We stressed, however, that the test of the grouping is community or mutuality of interest, because "the basic test of an asserted bargaining unit's acceptability is whether or not it is fundamentally the combination which will best assure to all employees the exercise of their collective bargaining rights."[57]

As the SOLE correctly observed, petitioner failed to comprehend the full import of Our ruling in *U.P.* It suffices to quote with approval the apt disposition of the SOLE when she denied petitioner's motion for reconsideration:

> [Petitioner] likewise claimed that we erred in interpreting the decision of the Supreme Court in U.P. v. Ferrer-Calleja, *supra*. According to [petitioner], the Supreme Court stated that the non-academic rank-and-file employees of the University of the Philippines shall constitute a bargaining unit to the exclusion of the academic employees of the institution. Hence, [petitioner] argues, it sought the creation of separate bargaining units, namely: (1) [petitioner]'s teaching personnel to the exclusion of non-teaching personnel; and (2) [petitioner]'s non-teaching personnel to the exclusion of teaching personnel.
>
> [Petitioner] appears to have confused the concepts of membership in a bargaining unit and membership in a union. In emphasizing the phrase "to the exclusion of academic employees" stated in U.P. v. Ferrer-Calleja, [petitioner] believed that the petitioning union could not admit academic employees of the university to its membership. But such was not the intention of the Supreme Court.
>
> A bargaining unit is a group of employees sought to be represented by a petitioning union. Such employees need not be members of a union seeking the conduct of a certification election. A union certified as an exclusive bargaining agent represents not only its members but also other employees who are not union members. As pointed out in our assailed Decision, there were two contending unions in the U.P. case, namely[,] the Organization of Non-Academic Personnel of U.P. (ONAPUP) and the All U.P. Worker's Union composed of both U.P. academic and non-academic personnel. ONAPUP sought the conduct of a certification election among the rank-and-file non-academic personnel only, while the All U.P. Workers Union intended to cover all U.P. rank-and-file employees, involving both academic and non-academic personnel.
>
> The Supreme Court ordered the "non-academic rank-and-file employees of U.P. to constitute a bargaining unit to the exclusion of the academic employees of the institution", but did not order them to organize a separate labor organization. In the U.P. case, the Supreme Court did not dismiss the petition and affirmed the order for the conduct of a

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57 *Id.*

> certification election among the non-academic personnel of U.P., without prejudice to the right of the academic personnel to constitute a separate bargaining unit for themselves and for the All U.P. Workers Union to institute a petition for certification election.
>
> In the same manner, the teaching and non-teaching personnel of [petitioner] school must form separate bargaining units. Thus, the order for the conduct of two separate certification elections, one involving teaching personnel and the other involving non-teaching personnel. It should be stressed that in the subject petition, [private respondent] union sought the conduct of a certification election among all the rank-and-file personnel of [petitioner] school. Since the decision of the Supreme Court in the U.P. case prohibits us from commingling teaching and non-teaching personnel in one bargaining unit, they have to be separated into two separate bargaining units with two separate certification elections to determine whether the employees in the respective bargaining units desired to be represented by [private respondent]. In the U.P. case, only one certification election among the non-academic personnel was ordered, because ONAPUP sought to represent that bargaining unit only. No petition for certification election among the academic personnel was instituted by All U.P. Workers Union in the said case; thus, no certification election pertaining to its intended bargaining unit was ordered by the Court.[58]

Indeed, the purpose of a certification election is precisely to ascertain the majority of the employees' choice of an appropriate bargaining unit – to be or not to be represented by a labor organization and, if in the affirmative case, by which one.[59]

At this point, it is not amiss to stress once more that, as a rule, only questions of law may be raised in a Rule 45 petition. In *Montoya v. Transmed Manila Corporation*,[60] the Court discussed the particular parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, as follows:

> x x x In a Rule 45 review, we consider the **correctness of the assailed CA decision**, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to**

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58 *Rollo*, p. 141.

59 *DHL Philippines Corporation United Rank and File Asso.-Federation of Free Workers (DHL-URFA-FFW) v. Buklod ng Manggagawa ng DHL Philippines Corporation*; 478 Phil. 842, 858 (2004), and *UST Faculty Union v. Bitonio Jr.*, 376 Phil. 294, 307 (1999).

60 G.R. No. 183329, August 27, 2009, 597 SCRA 334. See also *Career Philippines Shipmanagement, Inc. v. Serna*, G.R. No. 172086, December 3, 2012, 686 SCRA 676, 684; *Gonzales v. Solid Cement Corporation*, G.R. No. 198423, October 23, 2012, 684 SCRA 344, 359-360; *Niña Jewelry Manufacturing of Metal Arts, Inc. v. Montecillo*, G.R. No. 188169, November 28, 2011, 661 SCRA 416, 430; and *Phimco Industries, Inc. v. Phimco Industries Labor Association (PILA)*, G.R. No. 170830, August 11, 2010, 628 SCRA 119, 132.

> **examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?**[61]

Our review is, therefore, limited to the determination of whether the CA correctly resolved the presence or absence of grave abuse of discretion in the decision of the SOLE, not on the basis of whether the latter's decision on the merits of the case was strictly correct. Whether the CA committed grave abuse of discretion is not what is ruled upon but whether it correctly determined the existence or want of grave abuse of discretion on the part of the SOLE.

WHEREFORE, the petition is **DENIED**. The April 18, 2007 Decision and July 31, 2007, Resolution of the Court of Appeals in CA-G.R. SP No. 76175, which affirmed the December 27, 2002 Decision of the Secretary of the Department of Labor and Employment that set aside the August 10, 2002 Decision of the Med-Arbiter denying private respondent's petition for certification election are hereby **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

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[61] *Montoya v. Transmed Manila Corporation, supra,* at 342-343. (Citations omitted; emphasis in the original).

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

I concur; see Dissenting Opinion

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

I join J. Brion's concurring opinion.

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

(no part)

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
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.

MARIA LOURDES P. A. SERENO
Chief Justice