Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MERCURY DRUG CORPORATION (DISTRIBUTION CENTER) EMPLOYEES UNION-FFW, Petitioner,	**G.R. No. 263812**
	Present:
	CAGUIOA, *Acting C.J.*, Chairperson,
- versus -	INTING, GAERLAN, DIMAAMPAO, and SINGH, *JJ.*
MERCURY DRUG CORPORATION, Respondent.	Promulgated: FEB 2 2023

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DECISION

GAERLAN, *J.:*

This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated July 14, 2021 and the Resolution[3] dated October 3, 2022 of the Court of Appeals (CA) in CA-G.R. SP No. 162934.

Antecedents

On March 5, 2018, Mercury Drug Corporation (Distribution Center) Employees Union-FFW (Union) filed a request for certification as the Sole and Exclusive Bargaining Agent (SEBA) of approximately 109 regular rank-and-file employees of Mercury Drug Corporation (MDC) at its establishment

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1 *Rollo*, pp. 9–37.

2 *Id.* at 38–55. Penned by Associate Justice Walter S. Ong and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Raymond Reynold R. Lauigan of the Fifteenth Division, Court of Appeals, Manila.

3 *Id.* at 58–63. Penned by Associate Justice Walter S. Ong and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Raymond Reynold R. Lauigan of the Former Fifteenth Division, Court of Appeals, Manila.

at Libis, Quezon City.[4] Due to the failure of the Union to complete its requirements during the verification conference on April 6, 2018, the request was forwarded to the Election Officer for the conduct of a certification election.[5]

The Certification Election and its Result

The certification election was held on June 11, 2018, where the employees of MDC were to choose between the Union and "No Union." The results[6] were:

Total No. of Voters	99
MDCEU-FFW (Union)	45
No Union	44
Spoiled	4
Segregated	1
Total	**94**

The single segregated ballot, as reflected in the foregoing tally, belonged to Bernabe S. Valencia Jr. (Valencia), the Union President. His vote was segregated because he had been dismissed from employment on June 2, 2018 for alleged violation of company rules and regulations.[7]

After the election, MDC filed a Protest and Supplemental Protest, contesting (a) the treatment of certain ballots, and (b) the appropriateness of the bargaining unit. The Union countered that the protests were not recorded in the minutes and were therefore deemed waived. The Union further argued that the spoiled ballots were improperly included as valid votes and that Valencia's segregated vote should be opened because Valencia had supposedly contested his dismissal from employment by filing a Notice of Strike with the National Conciliation and Mediation Board (NCMB) on June 7, 2018.[8]

On July 26, 2018, Mediator-Arbiter Jema Sharae J. Macaraya (Mediator-Arbiter Macaraya) issued an Order[9] declaring that the Union failed to secure the required majority—or 46 out of 89 valid votes. She further held that Valencia's segregated ballot could not be opened because he had not

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4 *Id.* at 40.
5 *Id.* at 41.
6 *Id.*
7 *Id.* at 47.
8 *Id.* at 41–42.
9 *Id.* at 123–126.

contested his dismissal before a forum of proper jurisdiction, in contravention of Section 6, Rule IX of the Rules on Certification Elections of the Department of Labor and Employment (DOLE).[10]

The Union thereafter filed a Memorandum of Appeal on August 7, 2018 before the Secretary of Labor.[11] In the Resolution[12] dated January 21, 2019, the Secretary of Labor disposed as follows:

> WHEREFORE, premises considered, the Memorandum on Appeal of Mercury Drug Corporation (Distribution Center) Employees Union-FFW is GRANTED. The Order dated 26 July 2018 of DOLE National Capital Region Office Mediator-Arbiter Atty. Jema Sharae J. Macaraya is hereby REVERSED and SET ASIDE as to the results.
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> Accordingly, let the entire records of the case be REMANDED to the office of origin for the opening and canvassing of vote of Bernabe Valencia and determination of the final results of the certification.
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> SO RESOLVED.[13] (Emphasis in the original)

In issuing the foregoing Resolution, the Secretary of Labor ruled that two of the four ballots initially declared "spoiled" were actually "blank" or "unfilled," and thus should properly be regarded as "abstentions." With respect to Valencia's eligibility, the Secretary of Labor sustained the position of the Union that the Notice of Strike dated June 7, 2018, filed with the NCMB, sufficiently constituted a contest of his dismissal and therefore rendered him eligible to vote in the certification election despite his termination from employment.[14]

The Motion for Reconsideration filed by MDC was denied on September 30, 2019,[15] prompting it to elevate the matter to the CA through a petition for *certiorari* docketed as CA-G.R. SP No. 162934.[16]

Ruling of the CA

In its Decision[17] dated July 14, 2021, the CA granted the petition filed by MDC, thereby setting aside the Resolutions dated January 21, 2019 and September 30, 2019 of the Secretary of Labor. The CA found that Valencia was not an eligible voter because, under the DOLE Department Order No. 40-

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10 *Id.* at 42.
11 *Id.*
12 *Id.* at 150–156.
13 *Id.* at 40.
14 *Id.* at 42–44.
15 *Id.* at 169–171.
16 *Id.* at 45.
17 *Id.* at 39–55.

03, as amended, a dismissed employee may vote only if the legality of such dismissal was contested before a forum of appropriate jurisdiction—namely, the National Labor Relations Commission (NLRC) through its labor arbiters (LA). The CA emphasized that Valencia filed no illegal dismissal case at the time of the certification election on June 11, 2018; his filing of a Notice of Strike with the NCMB did not satisfy this requirement.[18]

The CA further held that the two ballots previously treated as spoiled could not be considered valid votes, as neither party protested them in a timely manner.[19] Ultimately, the CA concluded that the Union failed to obtain the required majority of valid votes, whether the valid votes numbered 91 or, even assuming Valencia's ballot were opened and counted, 92. In all scenarios, the Union fell short of the votes necessary to be certified as SEBA.[20] The dispositive portion reads:

> The Petition dated 16 October 2019 is GRANTED. The Resolution dated 21 January 2019 and the Resolution dated 30 September 2019 issued by the Secretary of the Department of Labor and Employment in Case No. OS-A-24-8-18 are NULLIFIED and SET ASIDE. Consistent with this Decision, the Order dated 26 July 2018 issued by Mediator-Arbiter Jema Sharae J. Macaraya in Case No. NCR-QC-CE-01-11-4-18 is REINSTATED as to the result.
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> IT IS SO ORDERED.[21] (Emphasis in the original)

The Motion for Reconsideration filed by the Union was denied in a Resolution dated October 3, 2022.[22]

The Union then filed the present Petition.

Implementation of the Secretary of Labor's Resolution

While the proceedings in CA-G.R. SP No. 162934 were still pending, Mediator-Arbiter Amado C. Gasmin (Mediator-Arbiter Gasmin) implemented the Secretary of Labor's directive to canvass Valencia's segregated ballot.[23]

In a Notice of Conference, Mediator-Arbiter Gasmin informed the parties that the envelope containing the segregated ballot was missing. He

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18 *Id.* at 48–51.
19 *Id.* at 51–53.
20 *Id.* at 53–54.
21 *Id.* at 55.
22 *Id.* at 58–63.
23 *Id.* at 202–203.

then required Valencia to cast his vote anew "to comply with the Resolution of the Secretary of Labor."[24]

This implementation proceeded despite the Manifestation filed by MDC that the Secretary of Labor's Resolutions had been nullified by the CA in CA-G.R. SP No. 162934, and despite the protest of MDC against holding an election solely to enable Valencia to vote again.[25]

Mediator-Arbiter Gasmin conducted the election on March 3, 2020.[26] The combined results[27] of the June 11, 2018 and March 3, 2020 elections were:

Total No. of Voters	99
MDCEU-FFW (Union)	46
No Union	44
Spoiled	4
Total	**94**

On March 11, 2020, Mediator-Arbiter Gasmin issued an Order declaring that the Union garnered the majority of the 90 valid votes (94 less 4 spoiled) and certified it as SEBA, treating the two abstentions as spoiled ballots:

> WHEREFORE, premises considered, Mercury Drug Corporation Employees Union-FFW, having garnered majority of the valid votes cast, is hereby CERTIFIED as the sole and exclusive bargaining agent of all rank-and-file employees of MERCURY DRUG CORPORATION (MDC) Distribution Center.[28]

MDC appealed.[29]

In a Resolution dated April 6, 2021, the Secretary of Labor denied the appeal and affirmed the Order as to results.[30] MDC filed a Motion for Reconsideration, but was denied in the Resolution dated May 4, 2022. MDC then filed another Petition for *Certiorari* before the CA, docketed as CA-G.R. SP No. 173993, likewise assailing the rulings of the Secretary of Labor.[31]

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24 *Id.* at 289.
25 *Id.* at 204–205.
26 *Id.* at 203.
27 *Id.* at 19.
28 *Id.* at 203.
29 *Id.*
30 *Id.*
31 *Id.* at 205.

The Illegal Dismissal and ULP Case

In the separate illegal dismissal and unfair labor practice (ULP) case, the LA ruled that Valencia had been illegally dismissed and ordered his reinstatement with backwages, while dismissing the claims for ULP and damages. On appeal, the NLRC found that MDC acted in good faith and deleted the award of backwages. Upon motion for reconsideration, Valencia was awarded with separation pay in lieu of reinstatement.[32]

Both MDC and Valencia filed Petitions for *Certiorari* with the CA, docketed as CA-G.R. SP Nos. 169663 and 169709, respectively. Both petitions were dismissed in a Resolution dated March 31, 2023.[33]

Petition for Review on *Certiorari*

In the present petition, the Union raises the following arguments:

1. The CA committed grave abuse of discretion in concluding that there were 91 valid votes case instead of 90;[34]

2. [t]he CA erred in ruling that Valencia was not an eligible voter on the ground that he failed to properly contest his dismissal;[35] and

3. [t]he CA gravely misapplied the governing law and jurisprudence.[36]

In its Comment,[37] MDC counters:

(a) The Petition should be dismissed for violating the rule on certification against forum shopping;

(b) [t]hat Valencia lacked authority to file the Petition because he is no longer an MDC employee, and the union officers authorizing him have become supervisory employees; and

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32 *Id.* at 210–212.
33 *Id.* at 207.
34 *Id.* at 16.
35 *Id.*
36 *Id.* at 25–28.
37 *Id.* at 200–226.

(c) [t]he CA properly determined that the Union did not secure the requisite majority of valid votes, regardless of whether the count of valid votes is 91 or 92.

Subsequently, MDC filed a Manifestation[38] dated September 11, 2024, informing the Court that its counsel received on September 6, 2024 the Decision dated August 7, 2024 of the CA in CA-G.R. SP No. 173993. Attached thereto was a Certified True Copy of the said Decision,[39] wherein the CA granted the petition filed by MDC and held that Valencia was not an eligible voter and that the two abstentions should have been counted in determining the majority of the valid votes cast. The CA further ruled that, even assuming the inclusion of Valencia's ballot, the Union would still fall short of the 47 votes required to be certified as the SEBA. MDC thus requested that this development be duly noted and attached to the records of the case.[40]

Ruling of the Court

The Petition lacks merit.

On Forum Shopping

At the time the present petition was filed, CA-G.R. SP No. 173993 was already pending before the CA. Although the relief sought therein differed in form, the case nonetheless arose from the same certification election and implicated overlapping factual circumstances and administrative rulings.

To guide the parties, the Court reiterates its pronouncements in *Heirs of Barraquio v. Almeda, Inc.*:[41]

> Forum shopping exists when "in two or more cases pending, there is "identity of parties, rights or causes of action and relief sought." The identity of the parties in two or more cases must at least represent the same interests in both actions. The rights asserted and the relief prayed for must also be the same and founded on the same facts. The identity of these particulars must be such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[42]

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38 *Id.* at 283–284.
39 *Id.* at 286–299.
40 *Id.* at 284.
41 933 Phil. 442 (2023) [Per J. Leonen, Second Division].
42 *Id.* at 473.

The underlying principle behind the prohibition on forum shopping was succinctly explained in *Land Bank of the Phils. v. Honeycomb Farms Corporation*:[43]

> [A] party should not be allowed to pursue simultaneous remedies in two different courts, for to do so would constitute abuse of court processes which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.[44]

Rule 7, Section 5 of the Rules of Court thus requires the plaintiff or principal party to certify under oath that no similar action exists, or if one exists, to disclose its status.[45] Specifically, Rule 7, Section 5 of the Rules of Court reads:

> Section 5. *Certification against forum shopping.* –
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> The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he or she has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his or her knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he or she should thereafter learn that the same or similar action or claim has been filed or is pending, he or she shall report that fact within five (5) calendar days therefrom to the court wherein his or her aforesaid complaint or initiatory pleading has been filed.
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> The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading.
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> **Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing.** The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his or her counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (Emphasis supplied)

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43 698 Phil. 298 (2012) [Per J. Brion, Second Division].

44 *Id.* at 314.

45 *Amvel Land Development Corp. v. Absolute Management Corp.*, G.R. Nos. 233296 & 233394, October 10, 2022 [Notice, Second Division].

Here, CA-G.R. SP No. 173993 should have been disclosed in the Certification Against Forum Shopping.

In addition to this omission, MDC challenges the propriety of the Verification attached to the Petition. It questions Valencia's authority to execute the Verification, asserting that he is no longer an employee of MDC and has effectively ceased to be a member of the Union. MDC further disputes that the status of the union officers who authorized Valencia, contending that they have since become supervisory employees and are thus no longer qualified to act on behalf of the rank-and-file bargaining unit.[46]

Faced with both the failure to disclose CA-G.R. SP No. 173993 in the Certification Against Forum Shopping and the alleged defects in the Verification, the Union urges the Court to relax the application of procedural rules and to accord liberality in the interest of the rights of the employees of MDC.[47]

In this regard, the Court finds instructive the guidelines set in *Ingles v. Estrada*,[48] which differentiate the effects of defective verification from those of a defective certification against forum shopping:

> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
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> 2) **As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective.** The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
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> 3) **Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.**
>
> 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, **unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."**

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46 *Rollo*, pp. 210–212.
47 *Id.* at 304–305.
48 708 Phil. 271 (2013) [Per J. Perez, Second Division].

> 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and involve a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.
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> 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.[49] (Emphasis supplied; emphasis in the original)

Indeed, procedural rules exist to ensure an orderly administration of justice. While their liberal application may be allowed, such liberality is the exception rather than the rule. Without any plausible explanation for non-compliance, the mere invocation of liberality does not excuse the omission, the defect, or the irregularity.[50]

At the outset, the Court finds no irregularity in the Verification executed by Valencia.

On the status of Valencia as an employee of MDC, there is no showing that the NLRC ruling awarding him separation pay in lieu of reinstatement has become final and executory,[51] or that he has accepted and been paid separation pay.[52] Only then is the employment relationship severed. Similarly, there is no showing that any ruling recognizing the alleged supervisory status of the Union officers who authorized Valencia has become final and executory. Thus, Valencia's authority to execute the Verification and the Certification Against Forum Shopping remains unimpaired.

Having clarified the Verification, the Court now turns to the Certification Against Forum Shopping and the consequences of the failure to disclose CA-G.R. SP No. 173993.

The need for disclosure is heightened by the fact that CA-G.R. SP No. 173993 had already been resolved by the CA. As reflected in the attached

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49 *Id.* at 302–303.

50 *Bigcas v. Court of Appeals*, 961 Phil. 335 (2024) [Per J. Lazaro-Javier, Second Division].

51 *Petron Corporation v. Javier*, G.R. No. 229777, July 6, 2020 [Notice, Second Division], *citing Consolidated Distillers of the Far East, Inc. v. Zaragoza*, 833 Phil. 888, 893 & 895 (2018) [Per J. Caguioa, Second Division], *further citing Bani Rural Bank, Inc., et al. v. De Guzman, et al.*, 721 Phil. 84, 95 (2013) [Per J. Brion, Second Division], *cited in Hui v. CGI UK. LTD, Inc.*, 912 Phil. 852, 864 (2021) [Per J. Inting, Second Division].

52 As the Court held in *Wenphil Corporation v. Abing, et al.*, 731 Phil. 685 (2014) [Per J. Brion, Second Division], thus: "*Had Wenphil really wanted to put a stop to the running. . .*"

Decision, the CA squarely addressed the same core issues presented in this petition, namely: (1) Valencia's eligibility to vote; and (2) the proper treatment of abstentions in computing for the majority of the valid votes cast.

This development is highly material to the rule against forum shopping. As earlier noted, both cases revolve around the same set of ballots, the same administrative issuances, and the same question of the entitlement of the Union to be certified as the SEBA. The omission therefore strikes at the very evil that the Certification Against Forum Shopping seeks to prevent—simultaneous resort to multiple tribunals involving identical facts and issues, which risks conflicting decisions and undermines orderly judicial procedure.[53]

Nevertheless, the Court notes that the omission does not appear to have been willful. The existence of CA-G.R. SP No. 173993 was first brought to the attention of the Court through the Comment filed by MDC,[54] after which the Union, in its Reply, expressly acknowledged[55] the pendency of the said case. This sequence of events suggests that, while the Union failed to disclose the related proceeding in its Certification Against Forum Shopping, it did not deliberately seek to conceal it. This circumstance, however, does not excuse non-compliance. The requirement remains mandatory.[56]

Still, the Court finds sufficient reason to proceed and resolve the petition on the merits to settle the legal issues and prevent further uncertainty in the certification process affecting the employees of MDC.[57]

On Valencia's Eligibility to Vote

The Court affirms the CA.

Rule IX, Section 5 of DOLE Department Order No. 40-03[58] delineates the circumstances under which a dismissed employee remains qualified to vote in a certification election, specifically requiring that the dismissal be contested before a forum of appropriate jurisdiction at the time of the election. The provision reads:

SECTION 5. *Qualification of Voters; inclusion-exclusion.*—

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53 *Quiambao v. Sumbilla*, 935 Phil. 1 (2023) [Per J. Gaerlan. Third Division].
54 *Rollo*, p. 205.
55 *Id.* at 304.
56 *Quiambao v. Sumbilla*, 935 Phil. 1 (2023) [Per J. Gaerlan, Third Division].
57 *Id.*
58 Amending the Implementing Rules of Book V of the Labor Code of the Philippines, Presidential Decree No. 442. February 17, 2003.

> All employees who are members of the appropriate bargaining unit sought to be represented by the petitioner at the time of the issuance of the order granting the conduct of a certification election shall be eligible to vote. An employee who has been dismissed from work but has contested the legality of the dismissal in a forum of appropriate jurisdiction at the time of the issuance of the order for the conduct of a certification election shall be considered a qualified voter, unless his/her dismissal was declared valid in a final judgment at the time of the conduct of the certification election.
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> In case of disagreement over the voters' list or over the eligibility of voters, all contested voters shall be allowed to vote. But their votes shall be segregated and sealed in individual envelopes in accordance with Sections 10 and 11 of this Rule.[59]

In the case of Valencia, records show that he was dismissed from employment on June 2, 2018 for violation of company rules and regulations, specifically for allegedly disclosing confidential data without authorization. Five days later, or on June 7, 2018, he filed a Notice of Strike with the NCMB. The certification election was thereafter held on June 11, 2018, during which Valencia nevertheless cast his vote. It was only much later, on February 7, 2019, that he filed before the NLRC Arbitration Branch a complaint for illegal dismissal and ULP.

These chronological events frame the core legal issue surrounding Valencia's eligibility: whether the acts he undertook prior to the certification election—particularly the filing of a Notice of Strike—may be deemed a proper contest of his dismissal under the governing rules. Resolving this question necessarily requires an examination of the statutory allocation of jurisdiction over termination disputes and the specific requirements under DOLE Department Order No. 40-03 for a dismissed employee to remain qualified to vote.

Article 224 of the Labor Code is unequivocal:

> ARTICLE 224. [217] *Jurisdiction of the Labor Arbiters and the Commission.* — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:
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> (1) Unfair labor practice cases;
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> (2) Termination disputes;

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[59] *Id.*

> (3) If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
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> (4) Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
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> (5) Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and
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> (6) Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos ([PHP] 5,000.00) regardless of whether accompanied with a claim for reinstatement.
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> (b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.
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> (c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

The LA is an official in the Arbitration Branch of the NLRC vested by law with the authority to hear and decide cases. The jurisdiction conferred upon LAs under Article 224 is both original and exclusive, meaning that no other officer or tribunal may take cognizance of, or hear and decide, any of the cases enumerated therein.[60]

In this case, Valencia's dismissal stemmed from alleged violations of company rules and regulations—an allegation that squarely constitutes a termination dispute under Article 224. As such, any challenge to the legality of his dismissal must necessarily be brought before the LA, the sole authority empowered to hear and resolve such controversies.

No act undertaken before any other office or tribunal, including the filing of a Notice of Strike with the NCMB, can substitute for the jurisdictional requirement that termination disputes be directly contested before the LA. This distinction becomes crucial in light of the theory interposed by the Union that the Notice of Strike effectively placed Valencia's dismissal in issue.

A notice of strike refers to the notification filed by a duly registered labor union with the NCMB, informing the latter of its intention to go on strike

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[60] LABOR CODE OF THE PHILIPPINES, Art. 224.

because of the alleged commission by the employer of ULP or because of a deadlock in the collective bargaining negotiations. The notice must indicate, among others, the names and addresses of the employer and the union involved, the nature of the employer's business, the number of union members and workers within the bargaining unit, as well as other pertinent information that may aid in the settlement of the dispute—such as a brief statement or enumeration of all pending labor disputes between the same parties.[61]

From this description of a notice of strike, it becomes evident that such notice cannot, by its nature and purpose, encompass a termination dispute. Relatedly, Article 259[62] of the Labor Code enumerates the ULPs that may be committed by an employer, and notably, none of these grounds include the dismissal of an employee based on alleged violations of company rules and regulations. Significantly, in *Allied Banking Corporation v. Court of Appeals*,[63] the Court emphasized that an act complained of as ULP must bear a proximate and causal connection to any of the following: (1) the exercise of the right to self-organization; (2) the exercise of the right to collective bargaining; or (3) the observance of an existing CBA. Absent such a connection—as in the case of Valencia when the act complained of pertains merely to an employee's dismissal for violation of company rules and regulations—the conduct alleged cannot fall within the technical concept of ULP.

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61 NCMB Manual of Procedures for Conciliation and Preventive Mediation Cases, Rule V, sec. 3.

62 ARTICLE 259. [248] *Unfair Labor Practices of Employers.* — It shall be unlawful for an employer to commit any of the following unfair labor practices:

(a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;

(c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters;

(e) To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement: *Provided,* That the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent;

(f) To dismiss, discharge or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;

(g) To violate the duty to bargain collectively as prescribed by this Code;

(h) To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or

(i) To violate a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, only the officers and agents of corporations, associations or partnerships who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable. (Labor Code of the Philippines, Presidential Decree No. 442, Amended and Renumbered, [July 21, 2015])

63 461 Phil. 517 (2003) [Per J. Carpio, First Division].

Given these parameters, the conclusion becomes inevitable: a notice of strike alleging dismissal cannot be deemed a contest of Valencia's dismissal for purposes of voter eligibility in a certification election. Consequently, Valencia was not eligible to vote in the June 11, 2018 certification election. Corollarily, the CA committed no error in finding grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Secretary of Labor when the latter ruled that Valencia has effectively contested the legality of his dismissal and ordered the remand of the case for the opening and canvassing of Valencia's vote.[64]

This conclusion is reinforced by the Decision rendered by the CA in CA-G.R. SP No. 173993. In that case, the CA once more declared that Valencia was not an eligible voter, expressly echoing its earlier pronouncement in the assailed Decision in CA-G.R. SP No. 162934.[65]

On the Treatment of Blank or Unfilled Ballots

With Valencia's ineligibility thus firmly settled, the Court now turns to the issue concerning the treatment of blank or unfilled ballots and their effect on the computation of the results of a certification election.

Certification election refers to the process of determining, through secret ballot, the SEBA of the employees in an appropriate bargaining unit for purposes of collective bargaining or negotiations.[66]

Two majorities must be attained for a valid certification election: *first*, a majority of all eligible voters must cast their ballots; and *second*, a majority of the valid votes cast must favor one of the choices. Commonly referred to as the double majority rule, this framework serves two distinct purposes: (1) to have a valid certification election; and (2) for a union to win in the certification election.[67]

With respect to the first requirement, Article 268 of the Labor Code provides that a certification election is valid only if at least a majority of all eligible voters in the bargaining unit cast their ballots. If this required first majority is not met, the certification election is deemed invalid, and none of the

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64 *Rollo*, p. 54.

65 *Id.* at 296.

66 Amending the Implementing Rules of Book V of the Labor Code of the Philippines, Presidential Decree No. 442, DOLE Department Order No. 40-03, February 17, 2003, sec. 1(h).

67 The Court ruled: "*It is well settled that under the so-called 'double majority,' **for there to be a valid certification election, majority of the bargaining unit must have voted AND the winning union must have garnered majority of the valid votes cast.***" *NUWHRAI-MPHC v. Sec. of Labor and Employment, et al.*, 612 Phil. 291, 305 (2009) [Per J. Carpio Morales, Second Division]. (Emphasis supplied)

contending unions—regardless of the votes they obtained—may be certified as the SEBA.[68]

Once the first majority is satisfied, the inquiry shifts to the second component of the double majority rule: whether any union secured the majority of the valid votes cast. Under the same Article, only the labor union that receives the majority of the valid votes cast may be certified as the exclusive bargaining agent of all employees in the bargaining unit. Likewise, Article 267 provides that the labor organization designated or selected by the majority of employees in an appropriate bargaining unit shall serve as the exclusive representative of such employees for purposes of collective bargaining.[69]

In this context, the classification of each ballot assumes particular significance. Whether a ballot is counted, excluded, or treated as an abstention directly affects both the total number of valid votes cast and the computation of the required majority under the double majority rule. It is therefore essential to examine how the governing rules treat blank ballots, spoiled ballots, abstentions, and segregated ballots.[70]

Before the amendment of DOLE Department Order No. 40-03, blank or unfilled ballot is considered "spoiled."[71] Under DOLE Department Order No. 40-I-15,[72] such ballots are now considered "abstentions"–that is, valid ballots cast by eligible voters. Verily, abstention is defined as follows:

> Section 1. *Definition of Terms.* —
>
> a. "Abstention" refers to a blank or unfilled ballot validly cast by an eligible voter. It is not considered as a negative vote. However, it shall be considered in the counting for purposes of determining a valid election.[73] (Emphasis in the original)

The Union argues that abstentions should count only for determining whether a majority of eligible voters cast their votes (the first majority), but

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68 LABOR CODE OF THE PHILIPPINES, Art. 268; *Samahan ng Manggagawa sa Pacific Plastics v. Hon. Laguesma*, 334 Phil. 955 (1997) [Per J. Mendoza, Second Division].

69 *Isaac Peral Bowling Alley v. United Emp. Welfare Assn., et al.*, 102 Phil. 219, 225 (1957) [Per J. Felix, *En Banc*]; *United Retauror's Employees & Labor Union-PAFLU v. Hon. Torres, etc.*, 135 Phil. 426, 431 (1968) [Per J. Sanchez, *En Banc*].

70 *NUWHRAI-MPHC v. Sec. of Labor and Employment, et al.*, 612 Phil. 291 (2009) [Per J. Carpio Morales, Second Division].

71 Section 9, par. 2, Rule IX, Book V of DOLE Department Order 40-03 reads: "*If a ballot is torn, defaced* ***or left unfilled*** *in such a manner as to create doubt or confusion or identify the voter, it* ***shall be considered spoiled.***" (Emphasis supplied)

72 Further Amending Department Order No. 40, Series of 2003, Amending the Implementing Rules and Regulations of Book V of the Labor Code of the Philippines, as Amended, DOLE Department Order No. 040-I-15. September 7, 2015.

73 *Id.*

should not be included in determining whether a choice garnered the majority of valid votes cast (the second majority). This interpretation is unreasonable.

It is clear under the above-quoted definition that abstentions form part of the valid votes cast.[74] Once a ballot is counted for purposes of determining whether a majority of eligible voters participated in the certification election, logic and fairness dictate that it must likewise be included in computing the majority of valid votes cast; otherwise, the integrity of the double majority rule would be undermined by arbitrarily excluding ballots that were already recognized as valid expressions of voter participation.[75]

To further illuminate the matter and clarify the error in the interpretation insisted upon by the Union, the Court reproduces and affirms the clear and instructive discussion of the CA on this point:

> To recall, a total of 94 ballots were actually cast in the subject certification election. Consistent with the foregoing disquisitions, three of those ballots may no longer be considered, since Valencia's segregated ballot must be excluded as he failed to contest the legality of his dismissal in a forum of appropriate jurisdiction, *i.e.*, before the NLRC, and two ballots were considered "spoiled" and neither party protested them in a timely fashion.
>
> Of the 91 remaining ballots, 45 were counted in favor of [the Union] and 44 were counted in favor of "no union". As the [Secretary of Labor] found in the first assailed *Resolution*, the two remaining ballots were blank or unfilled. Blank or unfilled ballots are treated as abstentions, pursuant to Section 1(a), Rule 136 of D.O. No. 40-03, as amended.
>
> Because blank or unfilled ballots are required to be "considered in the counting for purposes of determining a valid election", the total number of valid ballots cast in this case is, therefore, 91, which makes the majority required for SEBA certification either 46, the simple majority in a group of 91, or 47, as both [MDC] and [the Union] would have it.
>
> Since the number of votes in favor of [the Union's] SEBA certification is 45, and considering that Valencia's segregated ballot may no longer be considered in its favor, the conclusion that [the Union] failed to garner the required votes for certification is mathematically inescapable.
>
> Indeed, even assuming that Valencia's segregated ballot is deemed valid, by reason of which it may be opened, canvassed, and recorded in favor of [the Union], this would nonetheless raise the number of valid ballots cast to 92, which would then make the required majority for certification 47 votes; with a new total of 46 votes in its favor, [the Union] would still fall short of the votes necessary for SEBA certification.[76]

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74 DOLE Department Order No. 40-03, as amended by DOLE Department Order 40-1-15.

75 *NUWHRAI-MPHC v. Sec. of Labor and Employment, et al.*, 612 Phil. 291 (2009) [Per J. Carpio Morales, Second Division].

76 *Rollo*, pp. 53–54.

These authoritative findings are likewise echoed in the Decision in CA-G.R. SP No. 173993.[77]

In this light, the Court recalls its pronouncements in *NUWHRAIN-MPHC v. Secretary of Labor and Employment, et al.*:[78]

> It bears reiteration that the true importance of ascertaining the number of valid votes cast is for it to serve as basis for computing the required majority, and not just to determine which union won the elections. The opening of the segregated but valid votes has thus become material. To be sure, the conduct of a certification election has a two-fold objective: to determine the appropriate bargaining unit and to ascertain the majority representation of the bargaining representative, if the employees desire to be represented at all by anyone. **It is not simply the determination of who between two or more contending unions won, but whether it effectively ascertains the will of the members of the bargaining unit as to whether they want to be represented and which union they want to represent them.**[79] (Emphasis in the original)

The Court underscores that certification elections are mechanisms designed to uphold democracy in the context of labor relations, by ensuring that employees freely choose their bargaining representative.[80] This process must be safeguarded by strict adherence to the rules governing voter eligibility, ballot classification, and the determination of majorities. Any deviation—whether in the treatment of segregated ballots, abstentions, or procedural safeguards—compromises the integrity of the election and undermines stability in labor relations.[81] By affirming the rulings of the CA, the Court reiterates that the legitimacy of a certification for SEBA rests upon unwavering fidelity to the legal framework that governs certification elections.

ACCORDINGLY, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated July 14, 2021 and the Resolution dated October 3, 2022 of the Court of Appeals in CA-G.R. SP No. 162934 are **AFFIRMED**.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

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77 *Id.* at 287–299.
78 612 Phil. 291 (2009) [Per J. Carpio Morales, Second Division].
79 *Id.* at 305.
80 *PALEA v. Hon. Ferrer-Calleja*, 245 Phil. 382 (1988) [Per J. Griño-Aquino, First Division].
81 *Trade Unions of the Phils. and Allied Services World Federation of Trade Unions (TUPAS-WFTU) v. Hon. Laguesma*, 303 Phil. 586 (1994) [Per J. Puno, Second Division].

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Acting Chief Justice

HENRI JEAN PAUL B. INTING
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ALFREDO BENJAMIN S. CAGUIOA
Acting Chief Justice
Per Special Order No. 3266
Dated February 20, 2026