Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ASIAN INSTITUTE OF MANAGEMENT FACULTY ASSOCIATION, Petitioner, -versus- **ASIAN INSTITUTE OF MANAGEMENT,** Respondent.	**G.R. No. 197089**
IN RE: PETITION FOR CANCELLATION OF CERTIFICATE OF REGISTRATION NO. NCR-UR-12-4075*-2004 ISSUED TO ASIAN INSTITUTE OF MANAGEMENT FACULTY ASSOCIATION. **ASIAN INSTITUTE OF MANAGEMENT,** Petitioner, -versus- **ASIAN INSTITUTE OF MANAGEMENT FACULTY ASSOCIATION,** Respondent.	**G.R. No. 207971** Present: LEONEN, *J., Chairperson,* LAZARO-JAVIER, LOPEZ, M., LOPEZ, J., and KHO, JR., *JJ.* **Promulgated:** AUG 3 1 2022

* 6 in some parts of the *rollo*.

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DECISION

LEONEN, *J.*:

Faculty members are not managerial employees who are disqualified from forming or joining a labor organization. Moreover, the legitimacy of labor organizations cannot be collaterally attacked in a petition for certification election.

Meanwhile, the grounds to cancel the registration of a labor organization are exclusive. If none of these grounds are proven to exist, its registration shall be sustained, owing to the State policy according primacy to the right to self-organization.

This Court resolves two consolidated cases involving the determination of whether the Asian Institute of Management Faculty Association (AFA) is a legitimate labor organization who may file a petition for certification election.

G.R. No. 197089 involves a Petition for Review on Certiorari[1] filed by AFA, assailing the Court of Appeals' Decision[2] and Resolution[3] in CA-G.R. SP No. 109487. The Court of Appeals denied its Petition for Certification Election in Asian Institute of Management (AIM).

G.R. No. 207971 involves a Petition for Review on Certiorari[4] filed by AIM, questioning the Court of Appeals' Decision[5] and Resolution[6] in CA-G.R. SP No. 114112. The Court of Appeals affirmed the ruling of the Bureau of Labor and Management, which denied the Petition to Cancel the Certificate of Registration of AFA.

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1 *Rollo* (G.R. No. 197089), pp. 30–80.

2 Id. at 7–25. The October 22, 2010 Decision was penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Francisco P. Acosta and Samuel H. Gaerlan (now a member of this Court) of the Special Sixteenth Division, Court of Appeals, Manila.

3 Id. at 26–27. The May 27, 2011 Resolution was penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Francisco P. Acosta and Samuel H. Gaerlan (now a member of this Court) of the Former Special Sixteenth Division, Court of Appeals, Manila.

4 *Rollo* (G.R. No. 207971), pp. 3–32.

5 Id. at 33–41. The January 8, 2013 Decision was penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Japar B. Dimaampao (now a member of this Court) and Elihu A. Ybañez of the Fourteenth Division, Court of Appeals, Manila.

6 Id. at 43–45. The June 27, 2013 Resolution was penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Japar B. Dimaampao (now a member of this Court) and Elihu A. Ybañez of the Fourteenth Division, Court of Appeals, Manila.

Since 1968, AIM has been an unorganized establishment.[7] On October 14, 2004, the faculty members of AIM "formed and formally organized AFA to serve as the collective body which would act for and on behalf of its members in all matters involving and/or affecting their rights and interest."[8] On December 20, 2004, the Department of Labor and Employment issued AFA a Certificate of Registration, recognizing it as a legitimate labor organization.[9]

AIM opposed AFA's registration, saying that its faculty members were managerial employees.[10] It reasoned that its "tenure-track faculty" was tasked to determine faculty standards, subject to approval by the Board of Trustees, which in turn had the power to ratify practices and policies adopted by AIM.[11]

On May 16, 2007, AFA filed a Petition for Certification Election before the Department of Labor and Employment-National Capital Region, praying that a certification election be conducted to determine the exclusive bargaining agent of AIM's faculty members.[12]

Meanwhile, on July 11, 2007, AIM filed a Petition for Cancellation of the Certificate of Registration issued to AFA,[13] the case from which would arise the controversy in G.R. No. 207971. In a February 16, 2009 Order,[14] the Department of Labor and Employment-National Capital Region granted the Petition and directed AFA to be delisted from the roster of legitimate labor organizations.[15] From this, AFA went to the Bureau of Labor Relations, which later issued a Decision on December 29, 2009 ordering AFA to remain in the roster of legitimate labor organizations.[16]

Meanwhile, in the certification election case, on August 30, 2007, Mediator-Arbiter Michael T. Parado denied the Petition for Certification Election, finding that all of AFA's members were managerial employees.[17]

AFA appealed to the Secretary of Labor and Employment.[18] In a February 20, 2009 Decision,[19] the Secretary reversed the Mediator-Arbiter's

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7 *Rollo* (G.R. No. 197089), p. 32.
8 Id.
9 Id. at 953.
10 Id. at 9.
11 Id.
12 Id. at 959–960.
13 *Rollo* (G.R. No. 207971), p. 139.
14 Id. at 139–147. The Order was penned by Regional Director Raymundo G. Agravante.
15 Id. at 146–147.
16 Id. at 36.
17 *Rollo* (G.R. No. 197089), pp. 9–12.
18 Id. at 12.
19 Id. at 275–282. The Decision was penned by Undersecretary Romeo C. Lagman by authority of the Secretary.

ruling and allowed the conduct of the certification election after finding that AFA's members were not managerial employees:

> At the outset, this Office notes the Institute's vehement opposition against the petition for certification election. It is well to caution the Institute against taking such a stance since it is settled that on matters that should be the exclusive concern of labor as in the choice of a collective bargaining representative, the employer is regarded as an intruder, its participation, to say the least, deserves no encouragement. Thus, when a petition for certification election is filed by a legitimate labor organization, it is good policy of the employer not to have any participation or partisan interest in the choice of the bargaining representative. While employers may rightfully be notified or informed of petitions of such nature, they should not[,] however, be considered parties thereto with an inalienable right to oppose it.
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> . . . .
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> The test of "supervisory" or "managerial status" depends on whether a person possesses authority to act in the interest of his employer in the matter specified in Article 212(m) of the Labor Code and Section 1(m) of its Implementing Rules, and whether such authority is not merely routinary or clerical in nature, but requires the use of independent judgment. Thus, where such powers are recommendatory and therefore subject to evaluation, review and final action by the department heads and other higher executives of the company, the same although present, are not effective and not an exercise of independent judgment as required by law.
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> In *Engineering Equipment, Inc. vs. NLRC*, the Supreme Court laid down the characteristics of a managerial employee, to wit:
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> 1. he is not subject to the rigid observance of regular office hours;
> 2. his work requires the consistent exercise of discretion and judgment in its performance;
> 3. the output produced or the result accomplished cannot be standardized in relation to a given period of time;
> 4. he manages a customarily recognized department or subdivision of the establishment, customarily and regularly directing the work of other employees there;
> 5. he either has the authority to hire or discharge other employees or his suggestion and recommendations as to hiring and discharging, advancement and promotion or other change of status of other employees are given particular weight; and
> 6. as a rule, he is not paid hourly wages nor subjected to maximum hours of work.
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> *A[n] examination of the duties and responsibilities of the Institute's faculty members as outlined in its Policy Manual-Faculty Qualifications, Performance Evaluation, Recognition and Tenure reveal[s] that they do not meet the test and characteristics of a managerial employee as laid down in the foregoing cases of Franklin Baker and Engineering Equipment.*

Section 1, Part III of the Policy Manual sets down the fundamental premises to be observed in the application of the provisions therein, to wit:

> III. FUNDAMENTAL PREMISES
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> Faculty performance evaluation and recognition policies shall be guided by the following fundamental premises:
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> 1. The principle of Empowerment and the Multi-School System
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> Under the multi-school system, the tenure-track faculty (formerly referred to as the "Full Faculty") shall determine all faculty standards subject to the approval of the Board of Trustees while leaving open to each school the flexibility to adopt formulae for developing practices and innovations subject to those standards. Such school-specific practices are subject to ratification by the tenure-track faculty as an indication that they meet their respective standards.
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> . . . .

A footnote therein further clarifies that AIM would continue to be an Institute run operationally by its tenure-track faculty but guided by a Board of Trustees on policy directions and fiduciary stewardship. Clearly the policymaking authority of the faculty members is merely recommendatory in nature considering that the faculty standards they formulate are still subject to evaluation, review or final approval by the Institute's Board of Trustees.

Moreover, Part IV of the Policy Manual requires the faculty members, especially the tenure-track professors, to have a full-time load that include[s] 130 actual teaching sessions and 105 equivalent teaching sessions. They are also required to devote 70% of their time to the Institute while the remaining 30% is to be utilized for consulting and other work that would enhance the faculty member's expertise. Obviously, the faculty members are subject to the rigid observance of regular hours of work in the discharge of their primary task as such professors, the accomplishment of which can be standardized in relation to a given period of time.

Further, Section 2, Part IV of said Manual itemizes the five responsibilities of the faculty members into: a) teaching; b) mentoring; c) research; d) academic advising[;] and e) other academic responsibilities. Even assuming that these responsibilities involve polic[ym]aking powers, they are all related to academic matters or adjunct to teaching, the core activity of the Institute, and not to proprietary concerns.

. . . .

The allegation that the tenure-track faculty members have the power to hire and fire is equally without basis. The Policy Manual has laid down straight jacket criteria in the appointment and deployment of faculty members. It is in fact a check list of who may qualify to become a faculty member of the Institute, making the evaluation of applicants a

mere mechanical act of determination whether or not they meet such criteria. Thus, granted that tenure-track faculty has the power to hire, the same is not an exercise of effective management prerogative.

Even the allegation that tenure-track professors are assigned academic responsibilities and program administration would not make them managerial employees. As stated above, these add-on responsibilities merely pertain to academic matters and may not be categorized as discharge of managerial functions relating to the operation of the Institute.

What is then evident is that the faculty members, at the most, simply direct or supervise the operations level of the Institution to accomplish objectives set by those above them. They are mere functionaries with simple oversight functions and not business administrators in their own right. Their authority is not effective and not an exercise of independent judgment as required by law.

It must be noted that what is being questioned is the participation of the tenure-track professors in the certification election among the faculty members of AIM. Apparently, there is a perceived mixture of managerial employees with members of the bargaining unit sought to be represented. *If indeed there is a mixture of different levels of employees in one bargaining unit, the remedy is not to dismiss or deny the petition, but to exclude disqualified employees, if any, in an inclusion-exclusion proceedings.*[20] (Emphasis supplied, citations omitted)

The dispositive portion of the Decision reads:

WHEREFORE, the appeal filed by the Asian Institute of Management Faculty Association (AIMFA) is GRANTED. The Order dated 30 August 2007 of DOLE-NCR Mediator-Arbiter Michael T. Parado is hereby REVERSED and SET ASIDE.

Accordingly, let the entire records of the case be remanded to DOLE-NCR for the conduct of a certification election among the faculty members of the Asian Institute of Management (AIM), with the following choices:

1. ASIAN INSTITUTE OF MANAGEMENT FACULTY ASSOCIATION (AIMFA); and

2. No Union.

SO DECIDED.[21]

AIM filed a Motion for Reconsideration, but this was denied in the Secretary of Labor and Employment's May 4, 2009 Resolution.[22] AIM thus filed a Petition for Certiorari before the Court of Appeals.[23]

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[20] Id. at 278–281.

[21] Id. at 281–282.

[22] Id. at 284–285. The Resolution was also penned by Undersecretary Romeo C. Lagman by authority of the Secretary.

In the meantime, a pre-certification election conference was held, and finally, on October 16, 2009, the certification election commenced.[24]

On October 22, 2010, the Court of Appeals issued a Decision[25] granting AIM's Petition for Certiorari, thus denying AFA's Petition for Certification Election.[26] It held that the Secretary of Labor and Employment erred in using a test based on the old definition of a managerial employee, that is, whether a person possesses authority to act in the employer's interest. It said that this test referred to supervisory employees under Article 212(m)[27] of the present Labor Code, as amended by Republic Act No. 6715.[28]

The Court of Appeals also found that the Secretary gravely abused their discretion in concluding that "the tenure-track faculty members are not managerial employees on the basis of a 'footnote' in AIM's Policy Manual,"[29] which said that their policymaking authority was recommendatory. For the Court of Appeals, the faculty members determined all faculty standards, which made them managerial employees.[30]

The Court of Appeals also ruled that the Secretary confused the definition of a managerial employee with that of a managerial staff due to the allegedly rigid observance of the professors' work hours.[31] It explained that a managerial staff member, while considered a managerial employee under Article 82 of the Labor Code, a labor standard law, is not a managerial employee under Art. 212(m) on labor relations.[32]

Finally, the Court of Appeals found that the Secretary should have denied AFA's appeal since only legitimate labor organizations are allowed to be certified as exclusive bargaining agents in establishments, and AFA was supposedly delisted from the roster of legitimate labor organizations.[33] Notably, it did not acknowledge that in the cancellation of registration case, the Bureau of Labor Relations ordered AFA to remain in the roster.

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23 Id. at 7.
24 Id. at 966 and 1035–1036.
25 Id. at 7–25.
26 Id. at 24.
27 LABOR CODE, art. 212(m) states:
(m) "Managerial employee" is one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment. All employees not falling within any of the above definitions are considered rank-and-file employees for purposes of this Book.
28 *Rollo* (G.R. No. 197089), p. 20.
29 Id.
30 Id. at 21.
31 Id. at 22.
32 Id.
33 Id. at 23.

The dispositive portion of the Court of Appeals Decision states:

> WHEREFORE, the present petition is GRANTED. The assailed Decision dated February 20, 2009 and Resolution dated May 4, 2009 are hereby REVERSED and SET ASIDE. The Order dated August 30, 2007 of Mediator-Arbiter Parado is hereby REINSTATED.
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> SO ORDERED.[34]

AFA filed a Motion for Reconsideration, but the Court of Appeals denied this in a May 27, 2011 Resolution.[35] It said that even if AFA were a legitimate labor organization, 90% of AIM's faculty members performed administrative functions, making them managerial employees.[36]

AFA thus filed before this Court the Petition for Review on Certiorari[37] docketed as G.R. No. 197089. AIM filed a Comment,[38] to which AFA filed a Reply.[39] Per this Court's directive,[40] each party submitted its Memorandum,[41] which was noted in this Court's July 3, 2013 Resolution.[42]

As G.R. No. 197089 was pending before this Court, the proceedings for AIM's Petition for Cancellation likewise progressed, with AIM having elevated the case to the Court of Appeals. On January 8, 2013, the Court of Appeals issued a Decision[43] affirming the Bureau of Labor Relations' ruling, which sustained AFA's registration as a legitimate labor organization. AIM's Motion for Reconsideration was likewise denied in the Court of Appeals' June 27, 2013 Resolution.[44] These incidents, AFA manifested before this Court as part of the records of G.R. No. 197089.[45]

Subsequently, AIM filed the Petition for Review on Certiorari[46] before this Court, docketed as G.R. No. 207971. AFA filed a Comment,[47] to which AIM filed a Reply.[48] As per this Court's directive, the parties then submitted their respective Memoranda.[49]

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34 Id. at 24.
35 Id. at 26–27.
36 Id.
37 Id. at. 30–80.
38 Id. at 630–664.
39 Id. at 919–943.
40 Id. at 946–947.
41 Id. at 948–1021, AFA's Memorandum, and 1031–1064, AIM's Memorandum.
42 Id. at 1066.
43 *Rollo* (G.R. No. 207971), pp. 33–41.
44 Id. at 43–45.
45 *Rollo* (G.R. No. 107089), pp. 1068–1071.
46 *Rollo* (G.R. No. 207971), pp. 3–32.
47 Id. at 317–372.
48 Id. at 635–643.
49 Id. at 656–711, AFA's Memorandum, and 723–747, AIM's Memorandum.

On January 23, 2017, this Court consolidated G.R. No. 207971 with G.R. No. 197089, finding that the outcome of G.R. No. 207971 would depend on the resolution of the pending issue in G.R. No. 197089, on the nature of AFA's membership.[50] It held:

> In *Holy Child Catholic School v. Hon. Sto. Tomas*, this Court declared that "[i]n case of alleged inclusion of disqualified employees in a union, the proper procedure for an employer like petitioner is to directly file a petition for cancellation of the union's certificate of registration due to misrepresentation, false statement or fraud under the circumstances enumerated in Article 239 of the Labor Code, as amended."
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> On the basis of the ruling in the above-cited case, it can be said that petitioner was correct in filing a petition for cancellation of respondent's certificate of registration. Petitioner's sole ground for seeking cancellation of respondent's certificate of registration — that its members are managerial employees and for this reason, its registration is thus a patent nullity for being an absolute violation of Article 245 of the Labor Code which declares that managerial employees are ineligible to join any labor organization — is, in a sense, an accusation that respondent is guilty of misrepresentation for registering under the claim that its members are not managerial employees.
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> However, the issue of whether respondent's members are managerial employees is still pending resolution by way of petition for review on certiorari in G.R. No. 197089, which is the culmination of all proceedings in DOLE Case No. NCR-OD-M-0705-007 — where the issue relative to the nature of respondent's membership was first raised by petitioner itself and is there fiercely contested. The resolution of this issue cannot be pre-empted; until it is determined with finality in G.R. No. 197089, the petition for cancellation of respondent's certificate of registration on the grounds alleged by petitioner cannot be resolved. As a matter of courtesy and in order to avoid conflicting decisions, We must await the resolution of the petition in G.R. No. 197089.[51] (Citation omitted)

This Court thus considers the arguments of the parties in both cases.

In G.R. No. 197089, regarding the certification election, AFA argues that a union's legitimacy cannot be collaterally attacked in a petition for certification election, and that such a petition cannot be denied based on the bargaining unit's members allegedly being managerial employees. Moreover, AFA says that the employer has no legal personality to have such a petition dismissed on this ground.[52]

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50 *Asian Institute of Management v. Asian Institute of Management Faculty Association*, 803 Phil. 708 (2017) [Per J. Del Castillo, First Division].

51 Id. at 720–721.

52 *Rollo* (G.R. No. 197089), pp. 973–974.

In any case, AFA insists that AIM's faculty members are not managerial employees. It cites the rulings of the Secretary of Labor and Employment and the Bureau of Labor Relations, whose findings of fact should be respected, AFA says, they being administrative agencies.[53]

AFA further argues that contrary to the Court of Appeals' ruling, the managerial employees' definition "has not materially changed" despite the amendment by Republic Act No. 6715.[54] AFA says that the amendment simply removed the duties and powers of supervisory employees from those of managerial rank, and thus, the Secretary did not gravely abuse their discretion in concluding that the faculty members are not managerial employees.[55] AFA adds that the Secretary's reliance on *Engineering Equipment, Inc. v. National Labor Relations Commission*[56] is correct considering that the case remains good law.[57]

AFA then argues that under AIM's Policy Manual, the faculty's authority to determine faculty standards is purely recommendatory, requiring approval by the Board of Trustees, which may reject such recommendations.[58] AFA also cites Article I, Section C of the Revised AIM Policy Manual, which states that AIM is run by "(a) the Board of Trustees as its ultimate policymaking body; (b) the Board of Governors as the AIM's highest advisory body; and (c) the President and Dean, as AIM's Chief Executive Officer and Chief Academic Officer, respectively[,] and not by the faculty."[59]

AFA then argues that the faculty members' main duty is to teach and not manage the affairs of AIM, citing Article II, Section C and Article V, Section A of the Revised AIM Policy Manual.[60] While some faculty members[61] occupy managerial posts, AFA says that the proper recourse would be to move for their exclusion, and not to deny its Petition for Certification Election.[62]

AFA says that even if the faculty members have "some leeway in structuring their schedule and determining the date and time when their teaching sessions will be held, subject to the approval of the Dean/Associate

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53 Id. at 995.
54 Id. at 1000.
55 Id. at 1001.
56 218 Phil. 719 (1984) [Per J. Gutierrez, Jr., First Division].
57 *Rollo* (G.R. No. 197089), pp. 1003–1005.
58 Id. at 1006–1007.
59 Id. at 1009.
60 Id. at 1010.
61 President Edilberto de Jesus, Dean Victoria Licuanan, Associate Deans Ricardo Lim, Gracia Ugut, and Juan Miguel Luz, Executive Directors Nieves Confesor, Buenaventura Canto III, and Horacio Borromeo, and SRF CFO Prof. Ma. Elena Herrera.
62 *Rollo* (G.R. No. 197089), p. 1008.

Dean in each instance," it does not take away from AIM still imposing "stringent requirements and conditions" for the faculty to meet.[63]

Finally, AFA maintains that it is a legitimate labor organization with a valid and subsisting Certificate of Registration.[64] It notes that the prior delisting has been set aside by the Bureau of Labor Relations,[65] which was in turn affirmed by the Court of Appeals.[66]

On the other hand, AIM argues that AFA merely rehashed its arguments raised before the Court of Appeals.[67] Nevertheless, it insists that AFA's faculty members are managerial employees, as they had been running AIM's operations and holding a majority of its administrative positions.[68] AIM alleges that all, not just some, of the faculty members are managerial employees, so conducting a pre-election conference for inclusion-exclusion proceedings would be a futile exercise.[69]

AIM further argues that the Board of Trustees only provides guidance on policy directions and does not manage AIM's daily affairs; it is the tenure-track faculty members that do so, hence their managerial employee status.[70] AIM adds that "while the law provides that the corporation must be operationally run by the Board, it can delegate the same to the managerial employees," as what AIM has done, "where the tenure-track faculty was tasked to operationally run the Institute pursuant to the Policy Manual cited by the [Labor and Employment] Secretary."[71]

As for the observance of working hours, AIM argues that faculty members are not subject to rigid working hours or schedules:

> Far from being "rigid", the Policy Manual and Revised Faculty Manual do not impose a specified number of office hours which the faculty members have to strictly comply with. For instance, the requirement of 130 actual teaching sessions and 105 equivalent teaching sessions under the former refer to "sessions", regardless of the time or schedule and number of hours these are conducted, and do not require that these sessions be conducted within given office hours. Likewise, the Policy Manual and Revised Faculty Manual only lay down guidelines as to the minimum allocation of the faculty members' time consistent with the Institute's mission and objectives. The requirement as to the number of teaching sessions and the 70%-30% allocation of working time are, thus, accomplished or complied with regardless of the number of hours

63 Id. at 1017.
64 Id. at 981.
65 Id. at 976.
66 Id. at 981–984.
67 Id. at 1047–1048.
68 Id. at 1051.
69 Id. at 1052.
70 Id. at 1053.
71 Id. at 1054.

> actually used and the time or schedule these are actually conducted. In other words, the number of hours actually spent for the teaching session and the time or the schedule the sessions begin and end [are] entirely left to the discretion of the faculty members. Moreover, the 130 actual teaching sessions [are] not even required but [are] subject to the needs of the Institute. This means that the requirement of 130 actual teaching sessions is only a guideline.[72]

As to AFA's argument that the faculty members' primary duty is to teach, AIM says that this duty does not conflict with their duties as managerial employees, since they are not required to devote the whole day to teaching.[73] They are free to comply in whatever way with the 130 actual teaching sessions and 105 equivalent teaching sessions.[74]

In G.R. No. 207971, on the cancellation of AFA's registration as a labor organization, AIM again insists that AFA's members are managerial employees.[75] It argues that AFA's declaration that it is composed of rank-and-file employees constitutes misrepresentation as to its list of voters, which is one of the grounds for cancellation of union registration.[76]

For its part, AFA maintains that none of the grounds to cancel its union registration are present.[77] It says that it did not commit any misrepresentation, false statement, or fraud.[78] AFA further notes that AIM only raised this issue for the first time before this Court, and in any case, AFA calls the allegation sweeping and unsubstantiated.[79]

Moreover, AFA insists that its members are not managerial employees, repeating its arguments in G.R. No. 197089.[80] It contends that AIM's "virulent opposition" to its exercise of the right to self-organization is "patently contrary to law."[81]

The issues for this Court's resolution are:

First, whether or not the faculty members of the Asian Institute of Management are managerial employees;

Second, whether or not the legitimacy of a labor organization may be

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72 Id. at 1055.
73 Id. at 1055–1056.
74 Id. at 1056.
75 *Rollo* (G.R. No. 207971), p. 739.
76 Id. at 744–755.
77 Id. at 684.
78 Id. at 685.
79 Id. at 686–687.
80 Id. at 687–693.
81 Id. at 708–709.

attacked in proceedings over a petition for certification election; and

Finally, whether or not the Asian Institute of Management Faculty Association is a legitimate labor organization.

This Court grants AFA's Petition in G.R. No. 197089 (regarding the Petition for Certification Election) and denies AIM's Petition in G.R. No. 207971 (regarding the Petition for Cancellation of AFA's registration as a labor organization).

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AIM's faculty members are not managerial employees.

Under Article 255 of the Labor Code,[82] managerial employees are disqualified to join labor organizations:

> ARTICLE 255. [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 the collective bargaining unit of the rank-and-file employees but may join, assist or form separate collective bargaining units and/or legitimate labor organizations of their own. The rank and file union and the supervisors' union operating within the same establishment may join the same federation or national union.

A managerial employee is one "who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, [lay off], recall, discharge, assign[,] or discipline employees."[83] On the other hand, a supervisory employee is one "who, in the interest of the employer, effectively recommend[s] such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment."[84]

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82 The Labor Code, or Presidential Decree No. 442 (1974), has been amended and renumbered in DOLE Department Advisory No. 01 on July 21, 2015.

83 LABOR CODE, art. 219(m). *See also* Implementing Rules of Book V of the Labor Code, as amended, Rule I, sec. 1(hh), which states: "'Managerial Employee' refers to an employee who is vested with powers or prerogatives to lay down and execute management policies or to hire, transfer, suspend, layoff, recall, discharge, assign or discipline employees." *See also* Implementing Rules of the Labor Code, Hours of Work, Exemption, Book III, Rule I, sec. 2(b), which states:
(b) Managerial Employees, if they meet all of the following conditions:
(1) Their primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof;
(2) They customarily and regularly direct the work of two or more employees therein;
(3) They have the authority to hire or fire employees of lower rank; or their suggestions and recommendations as to hiring and firing and as to the promotion or any other change of status of other employees, are given particular weight.

84 LABOR CODE, art. 219(m).

The present controversy is not one of first impression. This Court has already ruled on the status of faculty members in relation to their right to self-organization. AIM, however, still insists on its unique structure in terms of administration and faculty participation:

> The Institute, for most of its existence, has been run operationally by faculty members. In fact, to this date, faculty members still hold a majority, if not all, the administrative positions in the Institute. Any faculty member may be asked to take on an administrative post and most, if not all, have had administrative assignments at one time or another during his/her stay at the Institute. No other comparable local graduate management school even comes close to the kind of administration-faculty setup existing in the Institute. In view of the Institute's peculiarity, as previously mentioned, so much power and authority have been, through the years, vested upon, and exercised by, the faculty members.[85]

AIM's contention fails to convince. In *University of the Philippines v. Ferrer-Calleja*,[86] this Court held that those teaching in the university with the rank of assistant professor or higher cannot be deemed high-level or managerial employees:

> In light [of] Executive Order No. 180 and its implementing rules, as well as the University's charter and relevant regulations, the professors, associate professors and assistant professors (hereafter simply referred to as professors) cannot be considered as exercising such managerial or highly confidential functions as would justify their being categorized as "high-level employees" of the institution.
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> The Academic Personnel Committees, through which the professors supposedly exercise managerial functions, were constituted "in order to foster greater involvement of the faculty and other academic personnel in appointments, promotions, and other personnel matters that directly affect them." Academic Personnel Committees at the departmental and college levels were organized "consistent with, and demonstrative of the very idea of consulting the faculty and other academic personnel on matters directly affecting them" and to allow "flexibility in the determination of guidelines peculiar to a particular department or college."
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> Personnel actions affecting the faculty and other academic personnel should, however, "be considered under uniform guidelines and consistent with the Resolution of the Board (of Regents) adopted during its 789th Meeting (11-26-69) creating the University Academic Personnel Board." *Thus, the Departmental Academic Personnel Committee is given the function of "assist(ing) in the review of the recommendations initiated by the Department Chair[person] with regard to recruitment, selection, performance evaluation, tenure and staff development, in accordance with the general guidelines formulated by the University Academic Personnel*

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85 *Rollo* (G.R. No. 107089), p. 1051.

86 286 Phil. 575 (1992) [Per C.J. Narvasa, Second Division].

Board and the implementing details laid down by the College Academic Personnel Committee;" while the College Academic Personnel Committee is entrusted with the following functions:

> 1. Assist the Dean in setting up the details for the implementation of policies, rules, standards or general guidelines as formulated by the University Academic Personnel Board;
>
> 2. Review the recommendations submitted by the DAPCs with regard to recruitment, selection, performance evaluation, tenure, staff development, and promotion of the faculty and other academic personnel of the College;
>
> 3. Establish departmental priorities in the allocation of available funds for promotion;
>
> 4. Act on cases [of] disagreement between the Chair[person] and the members of the DAPC particularly on personnel matters covered by this Order;
>
> 5. Act on complaints and/or protests against personnel actions made by the Department Chair[person] and/or the DAPC.

The University Academic Personnel Board, on the other hand, performs the following functions:

> 1. Assist the Chancellor in the review of the recommendations of the CAPC'S.
> 2. Act on cases of disagreement between the Dean and the CAPC.
> 3. Formulate policies, rules, and standards with respect to the selection, compensation, and promotion of members of the academic staff.
> 4. Assist the Chancellor in the review of recommendations on academic promotions and on other matters affecting faculty status and welfare.

From the foregoing, it is evident that it is the University Academic Personnel Committee, composed of deans, the assistant for academic affairs and the chief of personnel, which formulates the policies, rules and standards respecting selection, compensation and promotion of members of the academic staff. *The departmental and college academic personnel committees' functions are purely recommendatory in nature, subject to review and evaluation by the University Academic Personnel Board.* In *Franklin Baker Company of the Philippines vs. Trajano*, this Court reiterated the principle laid down in *National Merchandising Corp. vs. Court of Industrial Relations*, that the power to recommend, in order to qualify an employee as a supervisor or managerial employee "must not only be effective but the exercise of such authority should not be merely of a routinary or clerical nature but should require the use of independent judgment." Where such recommendatory powers, as in the case at bar, are subject to evaluation, review and final action by the department heads and other higher executives of the company, the same, although present, are

not effective and not an exercise of independent judgment as required by law.

Significantly, the personnel actions that may be recommended by the departmental and college academic personnel committees must conform with the general guidelines drawn up by the university personnel academic committee. This being the case, the members of the departmental and college academic personnel committees are not unlike the chiefs of divisions and sections of the National Waterworks and Sewerage Authority whom this Court considered as rank-and-file employees in *National Waterworks & Sewerage Authority vs. NWSA Consolidated Unions*, because "given ready policies to execute and standard practices to observe for their execution, . . . they have little freedom of action, as their main function is merely to carry out the company's orders, plans and policies."

The power or prerogative pertaining to a high-level employee "to effectively recommend such managerial actions, to formulate or execute management policies or decisions and/or to hire, transfer, suspend, lay-off, recall, dismiss, assign or discipline employees" is exercised to a certain degree by the university academic personnel board/committees and ultimately by the Board of Regents in accordance with Section 6 of the University Charter, . . .

. . . .

Another factor that militates against petitioner's espousal of managerial employment status for all its professors through membership in the departmental and college academic personnel committees is that not all professors are members thereof. Membership and the number of members in the committees are provided as follows:

> Section 2. Membership in Committees. — Membership in committees may be made either through appointment, election, or by some other means as may be determined by the faculty and other academic personnel of a particular department or college.
>
> Section 3. Number of Members. — In addition to the Chairman, in the case of a department, and the Dean in the case of a college, there shall be such number of members representing the faculty and academic personnel as will afford a fairly representative, deliberative and manageable group that can handle evaluation of personnel actions.

Neither can membership in the University Council elevate the professors to the status of high-level employees. Sections 6 (f) and 9 of the UP Charter respectively provide:

> Sec. 6. The Board of Regents shall have the following powers and duties . . .:
>
> . . . .
> (f) To approve the courses of study and rules of discipline drawn up by the University Council as hereinafter provided; . . .

> Sec. 9. There shall be a University Council consisting of the President of the University and of all instructors in the university holding the rank of professor, associate professor, or assistant professor. The Council shall have the power to prescribe the courses of study and rules of discipline, subject to the approval of the Board of Regents. It shall fix the requirements for admission to any college of the university, as well as for graduation and the receiving of a degree. The Council alone shall have the power to recommend students or others to be recipients of degrees. Through its president or committees, it shall have disciplinary power over the students within the limits prescribed by the rules of discipline approved by the Board of Regents. The powers and duties of the President of the University, in addition to those specifically provided in this Act shall be those usually pertaining to the office of president of a university.

It is readily apparent that the policy-determining functions of the University Council are subject to review, evaluation and final approval by the Board of Regents. The Council's power of discipline is likewise circumscribed by the limits imposed by the Board of Regents. What has been said about the recommendatory powers of the departmental and college academic personnel committees applies with equal force to the alleged policy-determining functions of the University Council.

Even assuming arguendo that UP professors discharge policy-determining function[s] through the University Council, still such exercise would not qualify them as high-level employees within the context of E.O. 180. As correctly observed by private respondent, "Executive Order No. 180 is a law concerning public sector unionism. It must therefore be construed within that context. Within that context, the University of the Philippines represents the government as an employer. 'Policy-determining' refers to policy-determination in university matters that affect those same matters that may be the subject of negotiation between public sector management and labor. The reason why 'policy-determining' has been laid down as a test in segregating rank-and-file from management is to ensure that those who lay down policies in areas that are still negotiable in public sector collective bargaining do not themselves become part of those employees who seek to change these policies for their collective welfare."

The policy-determining functions of the University Council refer to academic matters, i.e. those governing the relationship between the University and its students, and not the University as an employer and the professors as employees. It is thus evident that no conflict of interest results in the professors being members of the University Council and being classified as rank-and-file employees.[87] (Emphasis supplied, citations omitted)

Similar to *University of the Philippines*, some of AIM's faculty members carry out both administrative and policy-determining functions

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[87] Id. at 584–590.

subject to the Board of Trustees' approval. AIM's academic administration and faculty composition are provided under its Revised Policy Manual:

> III. ACADEMIC ADMINISTRATION
>
> A. Key Officers of the Academic Administration
>
> 1. Dean
> 2. Associate Deans
> 3. Program Directors
> 4. Program Managers, others
>
> B. *The Academic Committee* – The Committee is composed of 4 faculty members, chaired by the Dean. Functions include vetting and *submitting recommendations to the President for approval of the BOT* on
>
> 1. Appointment of new faculty members
> 2. Promotions of faculty members between ranks
> 3. Renewals of contracts
> 4. Appointment of Professors Emeriti [sic]
> 5. Dysfunctional behavior cases
>
> I. DEFINITION OF FACULTY
>
> Faculty members at AIM are categorized according to time committed to the Institute, as well as by rank and by employment status.
>
> A. By commitment of time to the Institute, the faculty is categorized as core faculty and non-core faculty, the latter being comprised of adjunct, visiting or emeritus faculty.
>
> 1. *Core Faculty* [members] are academic staff for whom the Institute is the principal employer and whose main allegiance is to the Institute. The core faculty ensures the continuity of the Institute, embodies its traditions and values, and build[s] up its distinctive expertise through research and programs development. All core faculty are expected to teach, do research and render tasks of citizenship to the Institute.
>
> Core faculty [members] are expected to devote at least 70% of their working time to AIM, with the balance of a maximum of 30% devoted to their personal consulting, community and professional services and advocacy.
>
> With special permission from the Dean, the core faculty may undertake limited teaching assignments in academic institutions outside the Philippines, subject to the following:
>
> a. The program does not directly compete with AIM.
> b. The written permission of the Dean must be obtained prior to undertaking such an assignment.
>
> 2. *Non-Core Faculty* [members] are persons contracted on an

> occasional basis to teach or conduct research or a combination of both. They are an integral part of the Institute's efforts to bring practitioner-orientation to the classroom but the Institute is not their principal employer – e.g. practitioners from business or professions, entrepreneurs, academics from other institutions and visiting professors. Non-core faculty may attend faculty meetings on a non-voting basis (with the exception of Professors Emeriti [sic] who are included as voting members of the faculty).
>
> a. Clinical Faculty
>
> . . . .
>
> b. Adjunct Faculty
>
> . . . .
>
> c. Visiting Faculty
>
> . . . .
>
> d. Professors Emeritus
>
> . . . .
>
> e. Special Appointments
>
> . . . .
>
> B. By rank, core faculty consist[s] of teaching associate, assistant professor, associate professor and full professor. Such ranks apply only to core faculty. Adjunct faculty are not ranked but are assigned to one of 3 levels for salary purposes.
>
> C. By employment status, the faculty [is] divided into tenured faculty (those hired prior to October 2007) and faculty under contract (those hired after October 2007).[88] (Emphasis supplied, citation omitted)

The primary duty of AIM's faculty members is to teach. This must be separated from their secondary duties related to academic matters. Article II, Section C and Article V, Section A of AIM's Revised Policy Manual clearly enumerates the responsibilities and roles of the faculty:

> II. FACULTY PHILOSOPHY
>
> . . . .

[88] *Rollo* (G.R. No. 197089), pp. 588–591. AIM's Policy Manual was revised on June 17, 2008, or while the case was pending before the Court of Appeals. AFA argues that the Policy Manual was revised without AIM consulting the core or tenure-track faculty, showing that the faculty members do not wield such powers claimed by AIM. *See* id. at 1013.

C. Responsibilities of faculty are

1. Teaching and activities directly supporting teaching such as mentoring, advising, curriculum development and design, development of teaching materials and new pedagogy
2. Research in accordance with the Institute's research agenda, and in order to stay current on developments in the Asian region as well as in his/her chosen areas of specialization. Thus, AIM creates and disseminates management knowledge that contributes to the managerial and academic communities.
3. Citizenship activities that support the functioning of the Institute and the creation of an academic community.

. . . .

V. PROFESSIONAL RESPONSIBILITIES AND DUTIES OF FACULTY

A. Roles of Faculty

[The] Faculty [is] critical in the continuous improvement of high quality academic programs and development of high quality graduates. As the critical stakeholder responsible for the educational mission of AIM, the faculty's principal responsibilities are to:

1. Teach, including activities which directly support teaching such as grading, mentoring and advising students, the preparation of teaching curricula and materials, grading of Management Research Reports ("MRRs"), development of new pedagogy, etc.

2. Conduct relevant, practice-oriented or discipline-based academic research consistent with the Institute's strategic objectives.

3. Citizenship or service to the Institute including

    a. Administrative responsibilities related to academic matters, if and when duly appointed by the Dean (and endorsed by the President)
    b. Attending meetings and other deliberations, participating in ad hoc or standing committees
    c. Otherwise perform services as would be required of a good "citizen" of any community.

    (Note: Service to the profession or to the wider community, which do[es] not directly support AIM programs[,] are deemed to be a personal choice or advocacy of the faculty member, undertaken outside of AIM responsibilities.)[89]

The Secretary of Labor and Employment did not commit grave abuse of discretion in holding that the faculty members' policymaking authority

[89] Id. at 587–592.

was "merely recommendatory in nature considering that the faculty standards they formulate are still subject to evaluation, review[,] or final approval by [AIM]'s Board of Trustees."[90] Both of AIM's old and revised Policy Manuals provide that the policies determined by the faculty are merely recommendatory.

In the old Policy Manual:

> Under the multi-school system, the tenure-track faculty (formerly referred to as the "Full faculty shall determine all faculty") standards *subject to the approval of the Board of Trustees* while leaving open to each school the flexibility to adopt formulae for developing practices and innovations subject to those standards. Such school-specific practices are subject to ratification by the tenure-track faculty as an indication that they meet their respective standards.[91] (Emphasis supplied)

In the revised Policy Manual:

> B. The Academic Committee – The Committee is composed of 4 faculty members, chaired by the Dean. Functions include vetting and *submitting recommendations to the President for approval of the BOT* on
>
> 1. Appointment of new faculty members
> 2. Promotions of faculty members between ranks
> 3. Renewals of contracts
> 4. Appointment of Professors Emereti [sic]
> 5. Dysfunctional behaviour cases[92] (Emphasis supplied)

We cannot accept AIM's argument that its Board of Trustees "merely provides guidance on policy directions."[93] It is clear that the faculty's policymaking powers refer to academic matters and not proprietary matters. Article I, Section C of the Revised AIM Policy Manual states that AIM is run by: (a) the Board of Trustees as its ultimate policymaking body; (b) the Board of Governors as its highest advisory body; and (c) the president as chief executive officer and the dean as chief academic officer.[94] The faculty takes none of these roles:

> I. FUNDAMENTAL PREMISES
>
> . . . .
>
> C. Governance Paradigm

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90 Id. at 280.
91 *Rollo* (G.R. No. 207971), p. 547 *citing* AIM Policy Manual (Old Manual), part III, sec. 1.
92 *Rollo* (G.R. No. 179089), p. 588 *citing* AIM Revised Policy Manual, art. III, sec. B.
93 Id. at 1053.
94 Id. at 1009.

1. The Board of Trustees ("BOT") is the ultimate policymaking body of the Institute, and has the final legal authority for its governance.

2. The Board of Governors ("BOG") is the Institute's highest advisory body. In accordance with the Institute's program for internationalization, the Board of Governors guides the Institute on all academic matters relevant to the promotion of managerial excellence in Asia.

3. Through the By-Laws and by decision of the BOT

   a. The President is the Chief Executive Officer of the Institute, responsible for overseeing the operations of AIM, reporting to the BOT. Specifically he (she) is responsible for

   - Formulating the operating plan and strategies of the Institute
   - Executing the plan and strategy as approved by the BOT
   - Periodically reviewing and, upon approval by the BOT, updating (in consultation with the Institute's stakeholders) the Institute's policies and procedures
   - Institutional development and external relations

   b. The Dean is the Chief Academic Officer, responsible for the academic affairs of the Institute. He (She) reports to the President. The Dean is primarily responsible for

   - Faculty
   - Students
   - Quality for the Institute's teaching program and research content
   - Formulating and submitting, for concurrence of the President and approval of the BOT, the Institute's research agenda; and upon approval, implementation of the same[95]

AIM also failed to substantiate its argument that it delegated its powers to the faculty members. Nothing in the Policy Manual, old or revised, states that the faculty members, through the power committee, are given full powers to run AIM's operations.

AFA has admitted that some faculty members occupy managerial posts, such as President Edilberto de Jesus, Dean Victoria Licuanan, Associate Deans Ricardo Lim, Gracia Ugut, and Juan Miguel Luz, Executive Directors Nieves Confesor, Buenaventura Canto III, and Horacio Borromeo, and SRF CFO Prof. Ma. Elena Herrera. However, this is not a ground to deny the Petition for Certification Election.

For faculty members, whom AIM claims are assigned to program administration and are given staff members over which they exercise the

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[95] Id. at 585–586.

power to hire, transfer, suspend, lay off, recall, discharge, assign, or discipline, the proper course of action is to determine membership in the bargaining unit through inclusion-exclusion proceedings. Generally, the determination of whether a union comprises managerial or supervisory employees is a factual issue best resolved in inclusion-exclusion proceedings, especially when the proceedings have not been initiated.[96]

As to the faculty members' work hours, AIM insists that their duty to teach is not incompatible with their duties as managerial employees, and that the 130 actual teaching sessions and 105 equivalent teaching sessions are mere guidelines.[97] AFA counters that these guidelines are so stringent that the faculty members cannot be categorized as managerial employees.[98]

Article VII, Section B of the Revised Policy Manual lists the work hours faculty members are required to render:

B. Faculty Deliverables

	Standard Load (Associate Professor)	**Minimum Load (Associate Professor)**
Core Teaching requirements	260 ATS over each 2-year performance period. In general, this will be calculated over a two-year rolling period. Under special circumstances, this may be changed, but only by written agreement between the faculty and the Dean.	In cases where the teaching load is decreased, the teaching load may not be lower than 20 sessions each year.
Activities in direct support of Teaching	Grades, MRR's, Mentoring and Advising, Preparation of teaching material, Submission of course design/material	As designated by the Associate Dean of the Program with the concurrence of the Dean.
Adding to AIM Teaching Resources	• Designing new programs (actually run) • Development of cases or readings (actually used) • Development of new pedagogy (actually used)	CASES – Over a 2-year period, all core faculty must write at least 2 cases, plus supervise 4 additional cases.
Research – Contributions to the public domain and maintaining qualifications	For AQ faculty: 3 quality publications over rolling 5 years OR 2 quality publications and 1 validating academic experience over rolling 5 years For PQ faculty: 1 quality publication over rolling 5 years 1 validating professional	Over a three[-]year period, at least 2 publications/research papers, whether printed or online, at least one as principal author, and at least one in a refereed journal.

96 *Holy Child Catholic School v. Sto. Tomas*, 714 Phil. 427, 451 (2013) [Per J. Peralta, En Banc].
97 *Rollo* (G.R. No. 197089), p. 1055.
98 Id. at 1017.

	experience in past 5 years	
Citizenship	• Program directorships (Dean/ADs) to ensure rotation, no one can refuse and say "I've done my time") • Meetings – program meetings, regular faculty meetings, faculty conference • Committee work (Dean/ADs to ensure rotation) • Staff development, work with students • No dysfunctional behavior whether of an academic or non-academic nature	• At least 80% attendance at faculty meetings and graduations. • For faculty with administrative responsibilities, a more significant portion of their performance will be based on administrative responsibilities • No dysfunctional behavior[99]

According to the Court of Appeals, the Secretary of Labor and Employment gravely abused their discretion by confusing the definition of a managerial employee with that of a managerial staff in relying on the allegedly rigid observance of work hours.[100]

While observance of rigid work hours is not a determinative factor in deciding whether an employee is a managerial employee for purposes of labor relations,[101] this Court in *Cathay Pacific Steel Corporation v. Court of Appeals*[102] ruled that a strict imposition of work hours on an employee is "uncharacteristic of a managerial employee."[103] In *Cathay*, this Court upheld the lower court's ruling, which cited *Engineering Equipment, Inc. v. National Labor Relations Commission*[104] and said that "one of the essential characteristics of an employee holding a managerial rank is that [they are]

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99 Id. at 597.

100 Id. at 22–23.

101 Implementing Rules of the Labor Code, Book III, Rule I, sec. 2(c):
(c) Officers or members of a managerial staff of they perform the following duties and responsibilities:
(1) The primary duty consists of the performance of work directly related to management policies of their employer;
(2) Customarily and regularly exercise discretion and independent judgment;
(3) (i) Regularly and directly assist a proprietor or a managerial employee whose primary duty consists of the management of the establishment in which he is employed or subdivision thereof; or (ii) execute under general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or (iii) execute under general supervision special assignments and tasks; and
(4) Who do not devote more than 20 percent of their hours worked in a work-week to activities which are not directly and closely related to the performance of the work described in paragraphs (1), (2), and (3) above.
Implementing Rules of the Labor Code, Book V, Rule I, sec. 1:
(hh) "Managerial Employee" refers to an employee who is vested with powers or prerogatives to lay down and execute management policies or to hire, transfer, suspend, layoff, recall, discharge, assign or discipline employees.
. . . .
(xx) "Supervisory Employee" refers to an employee who, in the interest of the employer, effectively recommends managerial actions and the exercise of such authority is not merely routinary or clerical but requires the use of independent judgment.

102 531 Phil. 620 (2006) [Per J. Chico-Nazario, First Division].

103 Id. at 633.

104 218 Phil. 719 (1984) [Per J. Gutierrez, Jr., First Division].

not subjected to the rigid observance of regular office hours or maximum hours of work."[105]

Likewise, here, the prescribed work hours for AIM's faculty members go against a finding that they are managerial employees.

Lastly, the Court of Appeals erred in faulting the Secretary of Labor and Employment's citation of *Engineering Equipment* to say that the faculty members are not managerial employees. It explained that *Engineering Equipment* was decided before Republic Act No. 6715 took effect in 1989, and since Republic Act No. 6715 amended the definition of managerial employees under the Labor Code, the discussion in *Engineering Equipment* on managerial employees no longer applies.[106]

However, Republic Act No. 6715's provisions are not so incompatible with the previous definition of managerial employees under the Labor Code. As AFA points out, the amendments to the Labor Code and its Implementing Rules only clarify the distinction between managerial and supervisory employees:[107]

Labor Code (1974), art. 212(m): "Managerial employee" is one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or to effectively recommend such managerial actions. All employees not falling within any of the above definitions are considered rank-and-file employees for purposes of this Book.	**Republic Act No. 6715 (1989), sec. 4, amending the Labor Code, art. 212(m):** (m) "Managerial employee" is one who is vested with the powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment. All employees not falling within any of the above definitions are considered rank-and-file employees for purposes of this Book.
Implementing Rules of the Labor Code, Book V, Rule I, sec. 1(m): "Managerial employee" is one who is vested with the power or prerogatives: (a) to lay down and execute management policies; (b) to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees; and/or (c) to effectively	**Omnibus Rules Implementing the Labor Code, Book V, Rule I, secs. 1(hh) and 1(xx):** (hh) "Managerial Employee" refers to an employee who is vested with powers or prerogatives to lay down and execute management policies or to hire, transfer, suspend, layoff, recall, discharge, assign or

[105] *Cathay Pacific Steel Corporation v. Court of Appeals*, 531 Phil. 620, 633–634 (2006) [Per J. Chico-Nazario, First Division].

[106] *Rollo* (G.R. No. 197089), pp. 21–22.

[107] Id. at 1001.

recommend such managerial actions. All employees not falling within this definition are considered rank and file employees for purposes of the Code.	discipline employees. . . . . (xx) "Supervisory Employee" refers to an employee who, in the interest of the employer, effectively recommends managerial actions and the exercise of such authority is not merely routinary or clerical but requires the use of independent judgment.

Thus, the Secretary of Labor and Employment did not err in relying on *Engineering Equipment* to determine whether the faculty members are managerial employees.

All told, the Court of Appeals erred in finding that the faculty members are managerial employees.

II

This Court further holds that the legitimacy of a labor organization may not be attacked in a petition for certification election.

The State's policy toward labor is deep-rooted in this jurisdiction. Article II, Section 18 of the Constitution states:

> SECTION 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Article XIII, Section 3 of the Constitution, on social justice and human rights, states:

> SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
>
> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
>
> The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary

> modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.
>
> The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

This is reinforced in the Labor Code's declared policy. Article 3 states:

> ARTICLE 3. Declaration of Basic Policy. — The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

In enforcing and interpreting "the provisions of the Labor Code and its implementing regulations, the work[er]'s welfare should be the primordial and paramount consideration."[108]

Concomitant to the State's policy toward labor is the guarantee of workers' rights to self-organization. Article III, Section 8 of the Constitution provides:

> SECTION 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

As for the Labor Code, Articles 253 and 257 state:

> ARTICLE 253. [243] *Coverage and Employees' Right to Self-Organization.* — All persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical, or educational institutions, whether operating for profit or not, shall have the right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining. Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection.
>
> ARTICLE 257. [246] *Non-Abridgment of Right to Self-Organization.* — It shall be unlawful for any person to restrain, coerce, discriminate against or unduly interfere with employees and workers in their exercise of the right to self-organization. Such right shall include the

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[108] *Philippine National Bank v. Cruz*, 259 Phil. 696, 702–703 (1989) [Per J. Gancayco, First Division]; *Volkschel Labor Union v. Bureau of Labor Relations*, 221 Phil. 423, 428 (1985) [Per J. Cuevas, Second Division].

> right to form, join, or assist labor organizations for the purpose of collective bargaining through representatives of their own choosing and to engage in lawful concerted activities for the same purpose for their mutual aid and protection, subject to the provisions of Article 264 of this Code.

Article 257 enshrines the workers' right to form, join, or assist labor organizations to collectively bargain and engage in lawful concerted activities for their aid and protection. Of course, the choice of which labor organization to represent the workers is at their behest. This choice is made through a certification election, which refers to:

> . . . the process of determining, through secret ballot, the sole and exclusive bargaining agent of the employees in the appropriate bargaining unit, for purposes of collective bargaining. Specifically, the purpose of a certification election is to ascertain whether or not a majority of the employees wish to be represented by a labor organization and, in the affirmative case, by which particular labor organization.[109] (Citations omitted)

The requirements for filing a petition for certification election of an unorganized establishment are laid down in the Labor Code and its Implementing Rules, as amended. The Labor Code provides:

> ARTICLE 269 [257]. Petitions in Unorganized Establishment. — *In any establishment where there is no certified bargaining agent, a certification election shall automatically be conducted by the Med-Arbiter upon the filing of a petition by any legitimate labor organization*, . . .
>
> . . . .
>
> ARTICLE 272 [259]. Appeal from Certification Election Orders. — Any party to an election may appeal the order or results of the election as determined by the Med-Arbiter directly to the Secretary of Labor and Employment on the ground that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) calendar days. (Emphasis supplied)

More specifically, Book V, Rule VIII of the Omnibus Rules Implementing the Labor Code, as amended by Department of Labor and Employment Department Order No. 40-03, series of 2003, states:

> RULE VIII
> CERTIFICATION ELECTION
>
> SECTION 1. Who may file. — Any legitimate labor organization may file a petition for certification election.

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[109] *UST Faculty Union v. Bitonio, Jr.*, 376 Phil. 294, 307 (1999) [Per J. Panganiban, Third Division].

When requested to bargain collectively, an employer may file a petition for certification election with the Regional Office. If there is no existing registered collective bargaining agreement in the bargaining unit, the Regional Office shall, after hearing, order the conduct of a certification election.

. . . .

SECTION 13. Order/Decision on the petition. — Within ten (10) days from the date of the last hearing, the Med-Arbiter shall issue a formal order granting the petition or a decision denying the same. In organized establishments, however, no order or decision shall be issued by the Med-Arbiter during the freedom period.

The order granting the conduct of a certification election shall state the following:

(a) the name of the employer or establishment;
(b) the description of the bargaining unit;
(c) a statement that none of the grounds for dismissal enumerated in the succeeding paragraph exists;
(d) the names of contending labor unions which shall appear as follows: petitioner union/s in the order in which their petitions were filed, forced intervenor, and no union; and
(e) a directive upon the employer and the contending union(s) to submit within ten (10) days from receipt of the order, the certified list of employees in the bargaining unit, or where necessary, the payrolls covering the members of the bargaining unit for the last three (3) months prior to the issuance of the order.

SECTION 14. Denial of the Petition; Grounds. — The Med-Arbiter may dismiss the petition on any of the following grounds:

(a) the petitioner is not listed in the Department's registry of legitimate labor unions or that its legal personality has been revoked or cancelled with finality in accordance with Rule XIV of these Rules;
(b) the petition was filed before or after the freedom period of a duly registered collective bargaining agreement; provided that the sixty-day period based on the original collective bargaining agreement shall not be affected by any amendment, extension or renewal of the collective bargaining agreement;
(c) the petition was filed within one (1) year from entry of voluntary recognition or a valid certification, consent or run-off election and no appeal on the results of the certification, consent or run-off election is pending;
(d) a duly certified union has commenced and sustained negotiations with the employer in accordance with Article 250 of the Labor Code within the one-year period referred to in Section 14.c of this Rule, 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;

> (e) in case of an organized establishment, failure to submit the twenty-five percent (25%) support requirement for the filing of the petition for certification election.
>
> SECTION 15. Prohibited Grounds for the Denial/Suspension of the Petition. — All issues pertaining to the existence of employer-employee relationship, eligibility or mixture in union membership raised before the Med-Arbiter during the hearing(s) and in the pleadings shall be resolved in the same order or decision granting or denying the petition for certification election. Any question pertaining to the validity of petitioning union's certificate of registration or its legal personality as a labor organization, validity of registration and execution of collective bargaining agreements shall be heard and resolved by the Regional Director in an independent petition for cancellation of its registration and not by the Med-Arbiter in the petition for certification election, unless the petitioning union is not found in the Department's roster of legitimate labor organizations or an existing collective bargaining agreement is unregistered with the Department.

Article 269 (or Article 257 before being renumbered in 2015) of the Labor Code mandates that a petition for certification election in an unorganized establishment shall be automatically granted by the Mediator-Arbiter. Since AIM is undisputed to be an unorganized establishment,[110] Article 269 applies.

Thus, AFA correctly stated that for the certification election to be held, it was sufficient that AFA, as a legitimate labor organization, filed a Petition for Certification Election that is sufficient in form and substance, and none of the grounds for dismissal under Book V, Rule VIII, Section 14 of the Labor Code's Implementing Rules are present.[111]

The proceedings involved in a petition for certification election are nonadversarial and merely investigative.[112] Thus, in these proceedings, the employer is a mere bystander, without any legal personality to participate in the proceedings. "Sound policy dictates that as much as possible, management is to maintain a strictly hands-off policy."[113] In *Republic v. Kawashima Textile Manufacturing, Philippines, Inc.*:[114]

> 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

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110 *Rollo* (G.R. No. 197089), p. 32.

111 Id. at 987.

112 *Republic v. Kawashima Textile Manufacturing, Philippines, Inc.*, 581 Phil. 359, 380 (2008) [Per J. Austria-Martinez, Third Division].

113 *Notre Dame of Greater Manila vs. Laguesma*, 477 Phil. 262, 274 (2004) [Per J. Panganiban, First Division] *citing Monark International, Inc. v. Noriel*, 172 Phil. 477 (1978) [Per J. Fernando, Second Division].

114 581 Phil. 359 (2008) [Per J. Austria-Martinez, Third Division].

> 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.[115] (Citations omitted)

Indeed, w*hile employers may be notified of petitions* for certification election, they have no *inalienable right to oppose it.*[116] This concept has long been entrenched in our jurisdiction, coined as the "bystander rule":

> 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. The employer clearly lacks the personality to dispute the election and has no right to interfere at all therein. 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 company union. 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.[117] (Citations omitted)

In this case, therefore, AIM had no right to oppose AFA's Petition for Certification Election.

Moreover, the Court of Appeals' denial of AFA's Petition for Certification Election violated the rule that a legitimate labor organization's legal personality cannot be collaterally attacked.[118]

The Labor Code's Implementing Rules provide for the effect of registration of a labor organization:

> SECTION 8. Effect of registration. — The labor union or workers' association shall be deemed registered and vested with legal

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[115] Id. at 380. Similar to what was observed in *Kawashima*, the resolution of this issue could have depended on Republic Act No. 9481's application. But since this law only took effect on June 14, 2007, it would not apply. Nonetheless, as noted in *Kawashima*, even without the express provision of Republic Act No. 9481, the bystander rule has long existed in our jurisdiction.

[116] *Samahan ng mga Manggagawa sa Filsystems v. Secretary of Labor and Employment*, 353 Phil. 122 (1998) [Per J. Puno, Second Division].

[117] *Holy Child Catholic School v. Sto. Tomas*, 714 Phil. 427, 433 (2013) [Per J. Peralta, En Banc].

[118] *Tagaytay Highlands International Golf Club v. Tagaytay Highlands Employees Union-PGTWO*, 443 Phil. 841, 852 (2003) [Per J. Carpio Morales, Third Division].

> personality on the date of issuance of its certificate of registration or certificate of creation of chartered local.
>
> Such legal personality may be questioned only through an independent petition for cancellation of union registration in accordance with Rule XIV of these Rules, and not by way of collateral attack in petition for certification election proceedings under Rule VIII.[119]

This Court has said:

> After a certificate of registration is issued to a union, its legal personality cannot be subject to collateral attack. It may be questioned only in an independent petition for cancellation in accordance with Section 5 of Rule V, Book IV of the "Rules to Implement the Labor Code" (Implementing Rules) which section reads:
>
> . . . .
>
> 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 above-quoted Article 239 of the Labor Code.
>
> THEU, having been validly issued a certificate of registration, should be considered to have already acquired juridical personality which may not be assailed collaterally.[120]

AFA was thus correct to say that in denying its Petition for Certification Election for its members being managerial employees, "the Court of Appeals has illicitly allowed AIM to collaterally attack the legal personality of AFA."[121] Indeed, the Court of Appeals overlooked that AFA continues to be a legitimate labor organization, since the previous decision to delist it from the roster was set aside by the Bureau of Labor Relations and the Court of Appeals.[122] As long as the order of cancellation is not final, the labor organization whose registration is sought to be canceled continues to enjoy the rights granted by law.[123]

The Court of Appeals also erred when it ruled on AFA's legitimacy as a labor organization. This issue is distinct from the issue of the conduct of certification elections. "In case of alleged inclusion of disqualified

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[119] Implementing Rules of Book V of the Labor Code, as amended, Rule IV, sec. 8.

[120] *Tagaytay Highlands International Golf Club v. Tagaytay Highlands Employees Union-PGTWO*, 443 Phil. 841, 852–854 (2003) [Per J. Carpio Morales, Third Division].

[121] *Rollo* (G.R. No. 197089), p. 989.

[122] Id. at 976.

[123] *Samahan ng Manggagawa sa Pacific Plastic v. Laguesma*, 334 Phil. 955 (1997) [Per J. Mendoza, Second Division]; *Association of Court of Appeals Employees v. Calleja*, 280 Phil. 652 (1991) [Per J. Gutierrez, Jr., Third Division]; *National Union of Bank Employees v. Minister of Labor*, G.R. No. L-53406, December 14, 1981, 110 SCRA 274 [Per J. Makasiar, En Banc]; *Itogon-Suyoc Mines, Inc. v. Sañgilo-Itogon Workers' Union*, 133 Phil. 919 (1968) [Per J. Sanchez, En Banc].

employees in a union, the proper procedure for an employer . . . is to directly file a petition for cancellation of the union's certificate of registration due to misrepresentation, false statement or fraud[.]"[124]

Under Book V, Rule XI, Section 22 of the Labor Code's Implementing Rules, the decision and resolution of the Mediator-Arbiter or Regional Director are immediately executory:

> SECTION 22. Execution of Decision. — The decision of the Med-Arbiter and Regional Director shall automatically be stayed pending appeal with the Bureau. The Decision of the Bureau in the exercise of its appellate jurisdiction shall be immediately executory upon issuance of entry of final judgment.
>
> The decision of the Bureau in the exercise of its original jurisdiction shall automatically be stayed pending appeal with the Office of the Secretary. The decision of the Office of the Secretary shall be immediately executory upon issuance of entry of final judgment.

The Bureau of Labor Relations' Decision to retain AFA in the list of legitimate labor organizations came out in December 29, 2009,[125] much earlier than the Court of Appeals' October 22, 2010 Decision.[126] AFA informed the Court of Appeals of this ruling through its August 19, 2010 Memorandum.[127] The Court of Appeals was, thus, properly apprised of the events and is presumed to know of their legal consequences. As it stands, AFA is a legitimate labor organization.

In any case, even if AIM sought to cancel AFA's registration and its resolution is still pending, this Court has consistently ruled that the pendency of a petition for cancellation of registration does not bar the conduct of certification elections.[128] Thus, AIM's Petition is not a basis to deny AFA's Petition for Certification Election.

The legitimacy of a labor organization cannot be haphazardly passed upon by the courts. Registration makes a union legitimate, affording it rights and privileges granted by law, "particularly the right to participate in or ask for certification election in a bargaining unit. Thus, the cancellation of a certificate of registration is the equivalent of snuffing out the life of a labor organization. For without such registration, it loses—as a rule—its rights under the Labor Code."[129]

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[124] *Holy Child Catholic School v. Sto. Tomas*, 714 Phil. 427, 453 (2013) [Per J. Peralta, En Banc].

[125] *Rollo* (G.R. No. 197089), p. 36.

[126] Id. at 7.

[127] Id. at 465.

[128] *See Heritage Hotel Manila v. Secretary of Labor and Employment*, 739 Phil. 351 (2014) [Per J. Bersamin, First Division].

[129] *The Heritage Hotel Manila v. National Union of Workers in the Hotel, Restaurant and Allied Industries-Heritage Hotel Manila Supervisors Chapter*, 654 Phil. 395, 409 (2011) [Per J. Nachura,

In reversing the Secretary of Labor and Employment's Decision, the Court of Appeals caused further injury to the faculty members' constitutional right to self-organization. It erred when it refused to recognize that AFA is a legitimate labor organization and that the holding of a certification election in an unorganized establishment is mandated by law.

III

The grounds for the cancellation of a legitimate labor organization's certificate of registration are exclusive. Article 247 (Article 239 before being renumbered) of the Labor Code provides:

> ARTICLE 247 [239]. Grounds for Cancellation of Union Registration. — The following may constitute grounds for cancellation of union registration:
>
> (a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;
>
> (b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;
>
> (c) Voluntary dissolution by the members.

Moreover, Article 245 of the Labor Code provides when the Bureau of Labor Relations may canceled:

> ARTICLE 245 [238]. Cancellation of Registration. — The certificate of registration of any legitimate labor organization, whether national or local, may be cancelled by the Bureau, after due hearing, only on the grounds specified in Article [247] hereof.

In the Decision consolidating the present cases, this Court stated that AIM was correct in filing the Petition for Cancellation of Registration because AIM was ultimately accusing AFA of misrepresentation for registering under a claim that its members are managerial employees.

This Court emphasizes that it is the misrepresentation or fraud that the parties may have committed in making the inclusion—not that employees outside the bargaining unit were included as AFA's members—that warrants the cancellation of labor organization's registration.

Second Division].

Nonetheless, the allegations of misrepresentation or fraud need to be proven by evidence.

> This Court emphasizes . . . that a direct challenge to the legitimacy of a labor organization based on fraud and misrepresentation in securing its certificate of registration is a serious allegation which deserves careful scrutiny. Allegations thereof should be compounded with supporting circumstances and evidence.[130]

In this case, none of the exclusive grounds under Article 247 are present as to warrant the cancellation of AFA's registration as a legitimate labor organization. AFA was not shown to have committed any misrepresentation, false statement, or fraud in the adoption or ratification of its constitution and by-laws, the minutes of its ratification, or the list of members who took part in the ratification. Neither is there any proof of misrepresentation, false statement, or fraud in the election of officers, the minutes of the election of its officers, or its list of voters.

As earlier mentioned, AFA has admitted that some faculty members occupy managerial posts. However, it cannot be presumed that their inclusion as AFA's members is an act of misrepresentation, in the absence of evidence.

In any case, most of AIM's faculty members are not managerial employees. Thus, AIM's contention that AFA falsely stated the employment status of its list of voters cannot stand.

To reiterate, this Court should be wary of canceling the registration of legitimate labor organizations, if we are to give primacy to employees' right to self-organization, collective bargaining negotiations, and peaceful concerted actions, which is protected under the Constitution.[131]

ACCORDINGLY, the Petition for Review on Certiorari in G.R. No. 197089 is **GRANTED**. The Court of Appeals October 22, 2010 Decision and May 27, 2011 Resolution in CA-G.R. SP No. 109487 are **REVERSED AND SET ASIDE**. Asian Institute of Management Faculty Association may validly conduct its certification election. Meanwhile, the Petition for Review on Certiorari in G.R. No. 207971 is **DENIED**. The Court of Appeals' January 8, 2013 Decision and June 27, 2013 Resolution in CA-G.R. SP No. 114112 are **AFFIRMED**. The Asian Institute of Management

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[130] *San Miguel Corporation Employees Union-PTGWO v. San Miguel Packaging Products Employees Union-PDMP*, 559 Phil. 549, 566–567 (2007) [Per J. Chico-Nazario, Third Division].

[131] *The Heritage Hotel Manila v. National Union of Workers in the Hotel, Restaurant and Allied Industries-Heritage Hotel Manila Supervisors Chapter*, 654 Phil. 395, 409 (2011) [Per J. Nachura, Second Division].

Faculty Association's registration as a legitimate labor organization is sustained.

SO ORDERED.

MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest 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.

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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.

ALEXANDER G. GESMUNDO
Chief Justice