

ALBA PATIO DE MAKATI, ANASTACIO ALBA AND CLAUDIO OLAVARIETA, PETITIONERS, VS. ALBA PATIO DE MAKATI EMPLOYEES ASSOCIATION, HERMOGENES CAGANO, RUPERTO CRUZ, LUCIO CAGANO, AND BONI...

G.R. No. L-37922. March 16, 1984

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for review of the Decision of the Court of Industrial Relations dated April 30, 1973 and the Resolution promulgated by the Court of Industrial Relations en banc dated November 6, 1973 denying the Motion for Recon-sideration in Case No. 5478-ULP entitled "Alba Patio de Makati Employees Association, et al. vs. Alba Patio de Makati, et al."

This case stemmed from a complaint filed by the Prosecutor of the CIR based on sworn statements filed by individual complainants, namely: Hermogenes Cagano, Ruperto Cruz, Lucio Cagano and Bonifacio Aclado, who were the President, Vice-President, Secretary and Auditor, res-pectively, of the Alba Patio de Makati Employees Association.

The complaint charges petitioners of unfair labor practice for violating the terms of the Collective Bar-gaining Agreement by committing the following acts: (1) allowing non-union members from sharing in the ser-vice charge and locking-out the employees for nine (9) days when the union officers demanded for reimbursement; (2) failing and refusing to terminate the services of some union members who were expelled by the complainant union for acts of disloyalty induced by the management, violative of the union-shop clause; and (3) forcing pri-vate respondents to resign and making them sign papers prepared by management with the threat that if the private respondents do not resign, the establishment would be closed.

The first charge has reference to the provisions of the CBA (Exhibits "A-2" and Exhibit "1-B") entered into between Alba Patio de Makati and Alba Patio de Makati Employees Association, to wit:

"10% of the total amounts of service charge collected every month as re-flected by the sales book will be retained by the restaurant for general breakage. The remaining amount after the 10% has been deducted will be distributed twice a month following collection by the restaurant to the employees covered by this agreement in the manner they may agree upon." (t.s.n., p. 3, March 30, 1971).

Management admits allowing employees not covered by the CBA to share in the collection of the service charge, thereby reducing the individual shares of the employees but maintains that it was done in the spirit of fairness and to boost the morale of everybody working in the restaurant and that anyway the practice had been discontinued long before the complaint was filed. (Decision of the CIR, Rollo, p. 159).

Records show that the amount given to non-covered employees from September 1, 1969 to March 30, 1970 was reimbursed to the union members in three installments, (Exhibits 3, 4, and 5) the first paid on June 5, 1970, the

second on June 23, 1970 and the third on July 7, 1970, in three (3) equal amounts of P2,131.31 each.

Complainants further accuse management of locking-out the employees from April 14 to 22, 1970 without notice to the union members, violative of the no lock-out clause embodied in the CBA, when they demanded the reimbursement of the amounts paid to the employees not covered by the CBA. Management denies such a lock-out and avers that what happened was a closure of the establishment from April 14 to 22 due to an "internal misunderstanding" between the establishment and the employees concerning catering service in Forbes Park which suddenly was not available when five (5) substitute waiters refused to render service to the great embarrassment of the business.

The second charge pertains to a violation of the union-shop clause of the CBA which required membership in the union as a condition of continued employment in the restaurant and that management is bound to dismiss, upon demand of the union, any employee who ceased to be a member in good standing of the union. (t.s.n., pp. 33-34, March 30, 1971). The union had expelled four employees, Raquing Yupo, Francisco Ibañez, Manuel Dante and Rodolfo Canalita, as members of the union for acts of disloyalty, after due investigation. The union demanded from management for their dismissal in accordance with the union-shop clause embodied in the collective bargaining agreement, but management refused on the ground that the union officers never specified why these individuals were dismissed and management had reason to believe that the individual complainants who were then officers of the union, sought the dismissal of the said three persons because they dared ask for an accounting for union funds. (t.s.n., pp. 56-57, August 5, 1971).

The third charge concerns the resignation of the four (4) individual complainants allegedly made under threats of management that should private respondents do not resign, the establishment would be closed. Management refutes this accusation and counters that their re-signation was voluntary and of their own free will.

The Hearing Examiner of the Court of Industrial Relations found the petitioner establishment guilty of Unfair Labor Practice for the three (3) charges. The Hon. Presiding Judge Ansberto Paredes affirmed the findings of the said examiner and adopted it as the decision of the CIR. Petitioners filed a motion for reconsideration of said decision but was denied.

Hence, the instant Petition for Review.

Petitioner assigns six (6) errors committed by the lower court, as follows:

I

The Court of Industrial Relations erred in taking cognizance of the instant case because it had no jurisdiction over the subject matter of the suit.

II

The Court of Industrial Relations erred in concluding that the herein respondents were "forced" to resign.

III

Respondents were no longer members of the union, nor was there an employer-employee relationship when the complaint was filed on July 17, 1970 and therefore the Court of Industrial Relations erred in taking cognizance of the case.

IV

The Court of Industrial relations erred in finding petitioners guilty of unfair labor practice on the premise that petitioners violated the collective bargaining agreement when management shared the service charges with personnel not covered by the collective bargaining agreement and in concluding that petitioners locked-out the members of the union when the union demanded reimbursement (pars. 4 & 5, Complaint).

V

The Court of Industrial Relations erred in concluding that petitioners were guilty of unfair labor practice in that despite demands by the four private respondents to dismiss three other employees for alleged disloyalty to the union, petitioners failed to comply.

VI

The decision of the Court of Industrial Relations is void because it violates the substantive provisions of Article X, Section 9 of the Constitution of the Philippines and Section 1, Rule 36 of the Rules of Court.

Petitioner's first assigned error that the CIR erred in taking cognizance of the case, relying on the theory that though there were violations of the terms of the collective bargaining agreement, such causes of action gave rise only for specific performance cognizable by the ordinary courts of competent jurisdiction and not for a complaint of unfair labor practice cognizable by the CIR, is without merit.

Petitioner's reliance as authority on the case of *Pagkakaisang Itinaguyod etc. vs. Ang Tibay*, 20 SCRA 45, where this Court enunciated that "the violation by the employer of the terms of a collective agreement may be redressed, not in the Court of Industrial Relations, but in regular courts, like breaches of ordinary obligations and contracts" is misplaced. In the *Pagkakaisang Itinaguyod* case and other prior cases like *Malaya Workers Union (PAFLU) et al. vs. Court of Industrial Relations*, L-17880-81, April 23, 1963, 7 SCRA 697; *Baguio Gold Mining Co. vs. Tabisola, et al.*, L-15265, April 27, 1962, 4 SCRA 1139; *Cagalwan vs. Customs Canteen, et al.*, L-16031, Oct. 31, 1961, 3 SCRA 403; *National Labor Union vs. Insular-Yebana Tobacco Corp.*, L-15363, July 31, 1961, 2 SCRA 924, the complaint for unfair labor practice was dismissed by the CIR but there was still a breach by the employer of the obligations imposed by the CBA, though not as an unfair labor practice, and in such a situation, the employee is not entirely bereft of any remedy for he may still go to the regular courts and there ventilate his grievance just like in an ordinary contract or obligation. In the case at bar, the CIR did not dismiss the complaint for unfair labor practice and in fact found petitioner guilty of such unfair labor practice. It was, therefore, proper for the CIR not to dismiss the case and rightly so, assumed jurisdiction thereof.

That the CIR is vested with jurisdiction to try and hear the case is squarely ruled in *Campos, et al. vs. Manila Railroad Co., et al.*, 5 SCRA 93 where We stated with approval the jurisdiction of the CIR in labor disputes, thus:

"We may, therefore, restate, for the benefit of the bench and the bar, that in order that the Court of Industrial Relations may acquire jurisdiction over a controversy in the light of Republic Act No. 875, the following circumstances must be present: (a) there must exist between the parties an employer-employee relationship, or the claimant must seek his reinstatement; and (b) the controversy must relate to a case certified by the president to the CIR as one involving national interest, or must have a bearing on an unfair labor practice charge, or must arise either under the Minimum Wage Law. In default of any of these circumstances the claim becomes a mere money claim that comes under the jurisdiction of the regular courts."

Here, the individual respondents seek reinstatement as shown by their prayers in the complaint and here, the

controversy relates to an unfair labor practice by the employer restaurant against the individual complainants.

Petitioner's argument that though there was a violation of the CBA, such violation did not constitute an unfair labor practice because there was a conspicuous absence in the statute, the Industrial Peace Act (R.A. No. 875) making a violation of the CBA an unfair labor practice, is untenable.

The Industrial Peace Act enumerates what are unfair labor practices under Section 4 thereof, which reads:

"Sec. 4. Unfair labor practices. - (a) It shall be unfair labor practice for an employer:

- (1) To interfere with, restrain or coerce employees in the exercise of their rights guaranteed in Section 3;
- (2) 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;
- (3) To initiate, discriminate, assist or interfere with the formation or administration of any labor organization or to contribute financial or other support to it;
- (4) To discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: provided, that nothing in this Act or in any other Act or statute of the Republic of the Philippines shall preclude any employer from making an agreement with a labor organization to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 12, but such agreement shall not cover members of any religious sects which prohibit affiliation of their members in any such labor organization. (As amended by Rep. Act 3350 which took effect June 17, 1961);
- (5) To dismiss, discharge, or otherwise prejudice or discriminate against an employee for having filed charges or for having given or being about to give testimony under this Act;
- (6) To refuse to bargain collectively with the representatives of his employees subject to the provisions of Sections 13 and 14."

We reject petitioners' contention that it is not legally justifiable to maintain that a violation of the collective bargaining agreement is an unfair labor practice for under the legal maxim "expressio unius est exclusio alterius" (the express mention of one person, thing or consequence is an express exclusion of all others), there is no express mention that a CBA violation is an unfair labor practice in the list of unfair labor practices cited above and that since the provision making it an unfair labor practice by employers when they violate a collective bargaining agreement was provided under Presidential Decree No. 442, Title VI entitled "Unfair Labor Practice", Chapter I, Article 294, any violation of a collective bargaining agreement before the new provision or amendment was not an unfair labor practice. The prevailing jurisprudence on the matter is to the effect that "a violation of the provisions of the CBA is an unfair labor practice."

A review of Our judicial rulings will show that in *Pambujan Sur United Mine Workers vs. Samar Mining Co., Inc.*, 94 Phil. 932, the Supreme Court, speaking through Justice Cesar Bengzon who later became Chief Justice, ruled that "the jurisdiction of the Court of Industrial Relations 'shall be exclusive' to prevent 'unfair labor practices' which term embraces a refusal to bargain collectively (Section 4, par. 6 of the Industrial Peace Act) and termination or modification of the collective bargaining agreement (Section 13 of the Industrial Peace Act) including inferentially any breach or disregard of such agreement.

In the case of *Republic Savings Bank vs. CIR*, 21 SCRA 261, it was held by this Court that:

"Some other members of this Court believe without necessarily expressing approval of the way the respondents expressed their grievances, that what the bank should have done was to refer the letter-charge to the grievance

committee. This was its duty, failing which it committed an unfair labor practice under section 4 (a) (6) of the Industrial Peace Act. For collective bargaining does not end with the execution of an agreement. It is a continuous process. The duty to bargain imposes on the parties during the term of their agreement the mutual obligation 'to meet and confer promptly and expeditiously and in good faith xxx for the purpose of adjusting any grievance or question arising under such agreement' and a violation of this agreement is, by sections 4(a) (6) and (b) (3) of the Industrial Peace Act an unfair labor practice."

In the case of *Security Bank Employees Union-NATU vs. Security Bank and Trust Company*, 23 SCRA 503, Justice Fernando (now Chief Justice) speaking for the Court, said:

"It being expressly provided in the Industrial Peace Act that unfair labor practice is committed by a labor union or its agent by its refusal 'to bargain collectively with the employer' and this Court having decided in *Republic Savings Bank* case that collective bargaining agreement does not end with the execution of an agreement, being a continuous process, the duty to bargain necessarily imposing on the parties the obligation to live up to the terms of such a collective agreement if entered into, it is undeniable that non-compliance therewith constitutes an unfair labor practice."

In the case of *Alhambra Industries, Inc. vs. Court of Industrial Relations*, 35 SCRA 550, Justice Claudio Teehankee speaking for the Court, declared that:

"Failure on petitioner's part to live up in good faith to the terms of its collective bargaining agreement by denying the privileges and benefits thereof to the fifteen drivers and helpers, its salesmen and propagandists was a serious violation of petitioner's duty to bargain collectively constituted unfair labor practice in any language."

In *Shell Oil Workers' Union vs. Shell Company of the Philippines, Ltd.*, 39 SCRA 276, Justice Fernando (now Chief Justice) made a categorical reiteration:

"The Shell Company in failing to manifest fealty to what was stipulated in an existing collective bargaining contract, was then guilty of an unfair labor practice act."

Then finally, in *MRR Yard Crew Union vs. Philippine National Railways*, 72 SCRA 88, Justice Makasiar, speaking for the Supreme Court, declared that:

"Moreover, to deny binding force to the May 24, 1962 collective bargaining agreement would place premium on a refusal by respondent company to comply with the terms of said agreement - a gesture which in the recent case of *NDC vs. NDC Employees and Workers Union*, We denounced as an unfair labor practice."

From the cases cited above and the rulings therein, it is clear that a violation of the collective bargaining agreement per se is an unfair labor practice act, as it constitutes a refusal to bargain collectively. Therefore, the acts of management in allowing non-union members to share in the distribution of service charges and locking out the employees violative of the CBA are without question unfair labor practices. In fact, the question as to whether or not management violated the CBA is no longer in issue as it is deemed admitted from the very act of management in reimbursing the union for the service charges it gave to non-union members. This is borne out by the records of the case as evidenced by Exhibits "3", "4" and "5", all proofs of the checks paid by management to the association for reimbursement.

Now, to the second, third, fourth, and fifth assignment of errors which question the findings of fact by respondent court. It is the well-settled rule that the findings of fact of the CIR, if supported by substantial evidence, are binding on the Supreme Court. (*Alhambra Industries, Inc. vs. CIR*, L-22219, Aug. 28, 1969, 29 SCRA 138). In the absence of any convincing proof of misapprehension of facts by the CIR or grave abuse of discretion in ascertaining the facts, as to the issues and facts presented, and thereafter concluding that petitioner is

guilty of an unfair labor practice, the Supreme Court must affirm the findings of fact of the court below.

The last assignment of error by the petitioner is that the court's decision is void because it violates the substantive provisions of Article X of the Constitution and Section 1, Rule 36 of the Rules of Court.

We find no merit in petitioner's contention that when the presiding judge adopted the report of the Hearing Examiner as the court's decision, the judge reneged on his duty to personally and directly prepare the decision, thus violating the constitutional provision of Article X, Section 9 providing that "every decision of a court of record shall clearly and distinctly state the facts and the law on which it is based," and Rule 36 of the Rules of Court which says that "all judgments determining the merits of the case shall be in writing personally and directly pre-pared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him and filed with the Clerk of Court" (Sec. 1, Rule 36).

We hold that under the facts of the case at bar, peti-tioners were neither deprived of their day in court nor was there a violation of due process. In *Gonzales vs. Hon. Secretary of Labor*, 116 SCRA 573, We ruled that "a case referred to a hearing officer or a commissioner of the CIR fulfills the requirements of due process on the basis of which a judgment on the merits can be rendered." Specifically, the Court said:

"The petitioner's claim that the order of dismissing the complaint in NLRC (Ad Hoc) Case No. 0385 'does not partake of the nature of judgment or order on the merits' contemplated by our Rules and the Supreme Court' since the said order was merely based on the Fact Finding Report of the Labor Mediator and issued 'without the benefit of investi-gation or presentation of evidence in support of their respective stand,' is also devoid of merit. In the case of *Manila Trading and Supply Co. vs. Philippine Labor Union*, the Court said: When the Court of Industrial Relations refers a case to a commissioner for investigation, report and recommendation, and at such investigation the parties are duly represented by counsel, heard or at least given an opportunity to be heard, the require-ments of due process has been satisfied even if the Court failed to set the report for hearing and a decision on the basis of such report, with the other evidence of the case, is a decision which meets the requirements of a fair and open hearing."

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the petition is hereby DISMISSED, and the Decision and Resolution of the Court of Industrial Relations en banc subject of the instant petition for review are hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

Aquino, Acting C.J., (Acting Chairman), Concepcion, Jr., Abad Santos, De Castro and Escolin, JJ., concur.

Makasiar, Acting C.J., on leave.

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