

PEOPLE'S BANK AND TRUST COMPANY, NOW BANK OF THE PHILIPPINE ISLANDS, AND VICENTE C. AQUINO, PETITIONERS, VS. PEOPLE'S BANK AND TRUST COMPANY EMPLOYEES UNION AND COURT OF INDUSTR...

G.R. No. L-39598. January 13, 1976

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Petitions for review on certiorari of the per curiam Resolution of the Court of Industrial Relations en banc, now the National Labor Relations Commission, in its case No. 5421-ULP, dated October 28, 1974.

The factual background of the case is as follows:

In a complaint dated March 5, 1970, the Acting Assistant Chief Prosecutor of the Court of Industrial Relations, pursuant to the provision of Section 5(b) of R.A. No. 875, charged the People's Bank & Trust Company and Vicente C. Aquino (Bank for short) with unfair labor practice within the meaning of Section 4(a), sub-sections 1, 2, 4 and 5 of Republic Act No. 875, committed against the People's Bank & Trust Company Employees Union (Union for short), as follows:

“4. That on May 4, 1967, complainant union and respondent Bank entered into a collective bargaining agreement;

“5. That on February 21, 1969, complainant sought of the respondents Bank for the adjustment and/or increase of the employees' wages as provided for in the collective bargaining agreement;

“6. That on March 31, 1969, respondents, instead of bargaining with the complainant and in order to discourage unionism, dismissed the following officers and/or members of the union, to wit: Lorenzo M. Diño, Manolita de Jesus, Catalina Agonoy, Jose de la Peña, Orchid C. Yabut, Olympia P. Rodriguez, Elvira Torres, Myrna A. Vidamo, Belen E. Bagtas, Venus F. Canlas, Miriam B. Miraflores, Victor Sumagaysay, Ester Garcia, Vitz F. Forteza, Eligio Montero, Norma M. Alegre, Adelina T. Geonzon, Arsenio Bermudez, Sonia B. Ella, Mario delos Reyes, Ruben Mendoza, Corazon Cordero, Jaime de Vera, Josefina Florentino, Ma. Lourdes del Villar, Felix B. del Mundo, Custodio Salazar, Rosauro Mendoza, Gaudioso Sabio, Sotero Fernandez, Rogelio Dignos, Benjamin Santos, Luis Salvatierra, Jose Tesorero, Ireneo Lozada, Benjamin Miranda, Maximiano Pineda, Pedro Ymas, Francisco Manalastas, G. Cabaluna, Jose V. Aure, Salvador Santiago, William Rangel, Eugenio L. Cabe, Rosalinda F. Vintayen, Cirilo M. Dator, Jr., Fidel Mangonan, Roy W. Tabberrah, Ma. Josefina P. Lacambra, Jovencio Cruz and Rico Pasamba;

“7. That in April 1969, because of respondents' acts of unfair labor practice, complainant union declared a strike against the respondent Bank;

“8. That sometime in May, 1969, while negotiations for the settlement of the strike was still going on at the Bureau of Labor Relations, Department of Labor, said 'employees unconditionally offered to return to work but respondents refused and they were instead dismissed because of their union activities to wit: Aurellano

Abellera, Antonio Villar, Virgilio Masocol, Victor T. Española, Danilo Lozano, Ludgerio Romero, Rafaelito Hernandez, Virgilio Vergel de Dios, Guillermo Santos, Henry Talag, Rodolfo Pineda, Maria Luisa Banzuela, Luvinia Sison, Vedasto Dayan, Robert Espino, Mateo Pili, Ernesto Chupungco, Nazario Austria, Federico Encarnacion, Eliodoro Perez, Nemesio Samson, Buenaventura Baltazar, Bienvenido San Juan, Teresito Magno, Manuel dela Fuente, Cesar Rivera, Carlito Reyes, Lilia Ponce de Leon, Imelda V. Handang, Wilhelmina C. Taberrah, Rolando M. Serrano, Minerva Catalig, Alexandro Enriquez, Roberto Balonkita, Efren Mallari, Arsenio Jacinto, Carlos Cruz, Tito Enrile, Relinda Ramos Reyes, Francisco dela Cruz, Alicia Macanaya, Honorata Morabe Cruz, Nora Apar, Jane Vivien Jurado, Domingo Caidic, Gregorio Gebulan, Jorge de Leon, Felix Poji, Andrew Varela, Gerardo Bullo, Abelardo Ortiz, Carlos Quitzon, Evelyn Maximo, Socorro Perez Relova, Danilo Perlez, Melencio Mendoza, Alipio C. Cabelin, Salvador Lirios, Jeremias Belonio, Eustaquio Tolentino Jr., Amador Tano, Rodrigo Cacho, Jose Acosta, Benjamin San Marcos, Romeo Custodio, Roberto Pilar, Purificacion Deato Sazon, Oscar E. Velarde, Alberto Glinogo, Ricardo Balba, Patricio Fajardo, Ramiro Malvas;

"9. That all these dismissed employees desire to be reinstated to their previous employment with the respondent Bank."

In their Answer dated March 23, 1970, the Bank alleged that -

"I. - Respondents separated on March 31, 1969 sixty-five (65) excess personnel including the fifty-one (51) alleged members of complainant listed in paragraph 6, who were all given their corresponding separation pay, plus the money value of their respective unused vacation leaves.

"1. In separating said excess personnel, respondents exercised a legitimate right recognized by law and in the Collective Bargaining Contract dated May 4, 1967 which remains in force-up to May 4, 1970.

"a) In said contract, complainant 'recognizes the prerogative of the BANK to hire and dismiss employees as well as its right to determine and decide on promotions, transfer and adjustments of salaries based on performance, ability, seniority and integrity. * * *' (Art. IV)

"b) In February, 1969, respondent Bank realized that it had then under its employment in its Head Office approximately 281 personnel, which were twice the personnel employed in the Head Office of the Bank of the Philippine Islands whose capital resources were then twice those of the respondent Bank.

"c) Respondent Bank then decided to reduce its personnel as a measure of economy.

"d) Before carrying out the separation of the excess personnel on March 26, 1969, effective at the end of said month, respondent Bank invited the officers of complainant in two previous meetings of its Executive Committee held in said month (March, 1969) to formally apprise the complainant of respondents' decision to reduce personnel and to request complainant to submit a list of employees whom it would recommend for separation.

"e) In said conferences, complainant expressed the view that the separation of excess personnel was reasonable, but it refused to submit a list of employees whom it wanted to be separated as requested by said Executive Committee.

"f) In effecting the separation of the excess personnel, respondents were not concerned with the union activity, if any, of the men concerned, who reportedly joined the complainant at the eleventh hour.

"2. With respect to the allegations (par. 5) that complainant sought on February 21, 1969, the adjustment of employees' wages as provided in the Collective Bargaining Contract, respondents further allege:

"a) Complainant's request dated February 21, 1969, 'Attention: Mr. Roman G. Azanza, President', was withheld by Mr. Azanza from the Executive Committee and/or Board of Directors of respondent Bank.

"b) Mr. Azanza resigned on March 6, 1969, and it was only on March 7, 1969, when Mr. Antonio de las Alas, Jr., then Executive Vice-President of respondent Bank, furnished the Directors with a copy of the aforementioned request of complainant, with the advice that said request had been included in the agenda of the next meeting of the Board.

"c) In the ensuing meetings of the Executive Committee of respondent Bank, where the officers of the complainant were present as already stated above, complainant was requested to give then newly installed Acting President Vicente C. Aquino reasonable time of not less than one (1) month to study complainant's aforestated request for salary adjustment and complainant agreed.

"d) In violation of its aforestated agreement, complainant, filed a strike notice with the Department of Labor on March 28, 1969, and went on strike on April 8, 1969.

"3. The strike was illegal because, among other causes:

"a) It was declared in violation of the no-strike clause of the Collective Bargaining Contract (Art. XI).

"b) It was declared before the expiration of the period of thirty (30) days specified in the strike notice, as respondents had not in fact committed the unfair labor practices alleged in said strike notice.

"c) Complainant and its officers and members who participated in the strike employed illegal means in carrying out said strike.

"4. With respect to the allegations of paragraph 8, respondents allege:

"a) The strikers mentioned therein were not readmitted because they failed to report for work within the deadline set in the letter of respondents to the Director of Labor Relations dated May 2, 1969, which was published in leading newspapers in Manila on May 8, 1969.

"b) Even before said letter was published, its contents were already known to the complainant and its officers and members.

"c) When complainant advised the Director of Labor Relations in its letter dated May 20, 1969, that the strikers were willing to return to work, which letter was endorsed by said officer to respondent Bank the following day, respondent Bank had already enough employees to efficiently man its operations and had no need for the services of the strikers.

"d) Respondent Bank has learned from the strike that it can operate on a reduced personnel.

"e) Furthermore, Jeremias O. Belonio, Cesar A. Rivera, Salvador Lirios, Alipio Cabelin, Roberto Balonkita, Ludgerio Romero, Andrew Valera, Mateo Pili, Oscar Velarde, Roberto Espino, Gerardo Bullo and others, were not admitted because they committed illegal acts in the course of the strike.

"f) In addition, Rodolfo Pineda, Ernesto Chupangco, Domingo Caidic and Rolando Serrano have been rehired as suitable opening became available."

Issues of the case having been joined, a Hearing Examiner of the Court of Industrial Relations received the evidence of the parties. After the reception of evidence, the Hearing Examiner submitted his Report on the case, with the following findings and recommendations:

"A close perusal and evaluation of the evidence of the parties on the issue under consideration will logically point to an inevitable conclusion that the lay-off or retrenchment of the sixty-five (65) employees, among whom were the fifty-one (51) named in paragraph 6 of the Complaint, which the respondents had undertaken, was motivated by their desire to bust the complainant union in order to escape their obligations under the existing Collective Bargaining Agreement they had with the Union, compounded by their actuations to

discriminate against said employees as to terms and conditions of their employment, and to disregard their acquired seniority rights.

"The narrations made by Roberto Balonkita about the apprehensiveness and worry of the management of the Bank on his being elected as officer of the Union and on his eye-opener speeches during their election meeting in December, 1968 deserve more credence and consideration than the denial postulated by Severino P. Coronacion, the Head of the Accounting Department, who had invited Balonkita twice to a cup of coffee after the latter's election as Vice-President of the union. Coronacion's claim that it was only sometime in the third week of March, 1969, when he and his three other co-junior executives invited Carlito Reyes and Balonkita to lunch is likewise not deserving of belief because, if the purpose of such invitation was merely to convince the two to give respondent Vicente Aquino time to study their demand for implementation of the salary structure provided for in the Collective Bargaining Agreement, the invitation would then appear an empty gesture since, as early as March 10, 1969, the officers of the union had already acceded to the bickerings or protestations of Benito Araneta and respondent Aquino. But as pointed out by Balonkita, the group of Coronacion were the representatives named by Aquino to meet with them at the Bankers Club before the second meeting they had with the Executive Committee of the Bank. Hence, a clear act of interference.

"Regarding the alleged excess personnel of the Bank, it is surprising why Director J. Antonio would have expressed his concern about it during the meeting of the Board on February 10, 1969 and capitalized on it for retrenchment purpose when by way of clarification, Mr. Roman Azanza, the President of the Bank at the time, reasoned out that the reason why a lot of people were taken in the past was because the Management was banking on the Central Bank's approving the former's proposal to open up at least 2 or 3 branches, which, unfortunately, did not materialize for reasons known to the Board (Exhibit '27-A'). Evidently, if the cause for excess personnel was due to what Mr. Azanza had explained, there is, therefore, every reason to expect that those hired in anticipation of the approval of the proposal to open additional branches by the Central Bank should have been the first ones to suffer the axe of retrenchment if at all the Bank believed there were such excess personnel. But, instead of resorting to this remedy, the respondent proceeded against the sixty-five (65) employees without due regard to their seniority rights and their membership in the union. To this end, respondents' attempt to show that the guidelines they followed were the usefulness of the employees to, and the length of their services with, the Bank cannot, therefore justify their discriminatory attitude against the sixty-five (65) employees, especially so that they did not only fail to show that even some of said sixty-five (65) employees were those hired in anticipation for the opening of additional branches, but, in violation of the grievance machinery provided for in the existing CBA, they even disregarded the right of the union to sit down with the representatives of the Bank in order to arrive at an impartial list of probable employees to be retrenched.

"It must be noted that, while the officers of the union had naively accepted the protestations for more time and, upon respondent Aquino's ascension to the Bank's presidency, an opportunity was given to the latter to acquaint himself with the problem, yet, under this guise of studying the mode and manner of the demanded salary adjustments, the Bank did not only utilize the hiatus to defeat its commitment by launching the gambit of retrenchment, but all the while, it already activated the termination warrants, and their issuance inexorably ordained. Respondents would seemingly want to justify these surreptitious actuations through the tenuous theory that the assets of the respondent Bank were less than those of the Bank of P.I., which allegedly employed lesser personnel. But this theory of respondents is totally rendered nugatory, if we have to consider that the retrenchment is permissible only where the employer is compelled by business reverses and economic experiences. The ruling in the case of *Insular Lumber Company vs. Court of Appeals, et al.*, (L-23875, August 29, 1969, 29 SCRA 381-382) is believed in point, wherein the Supreme Court said:

'* * * petitioner was making profits even before the retrenchment program was launched with the reduction in the labor force by 25% and the introduction of mechanization or modernization in its operations, it is difficult to see how petitioner could be headed for financial disaster.'

Accordingly, if the People's Bank was earning substantial profits in the last ten (10) years of operations anterior to retrenchment, no justification then existed for the respondents to have defeated their commitments by launching their gambit for retrenchment. More specially so that, after the strike, they did not only hire thirty-four (34) new employees, but they even re-hired non-union members who reported for work only one year, more or less, after the strike (Exhibit '20'). Undoubtedly, this taking in of new employees after the strike is one clear indication that the claim for excess personnel was only a smoke-screen for the Bank to bust the union, while the rehiring of non-union members long after the expiration of the given deadline is another evidence of further discrimination against the striking union members who, after a few days following the given deadline, made an unconditional offer to return to work but were spurned or rejected by the Bank. Above all these anti-union acts, the Bank implemented the salary scales of employees after the strike, an implementation which was evidently denied to the members of the union when Mr. Roman Azanza was still the incumbent President of the Bank.

"In summation, all these events obviously negated the claim of the Bank that the yardstick of the retrenchment it had ordained against the sixty-five (65) employees was to economize expenses and to maximize profits. In this connection, it may not be amiss to state further that, if economy and the maximizing of profits were the real target of the Bank there was, therefore, no reason why the Bank still had to turn down the suggestions of the Union that, in lieu of lay-off, the allowances of the Officers of the Bank and the use of its cars for personal benefits should be the items to be cut down, since they entailed expenses on gasoline and maintenance, as well as to wait for the opening of the Branches which the Bank contemplated to operate, so that, instead of training other people, the excess personnel, if at all there were, could man them as they were already trained; and that, anyhow, above all, the Union was willing to forego its demand for implementation of the salary structure as provided for in the existing Collective Bargaining Agreement.

"Respondents' contention that, with their grant of severance pay to the sixty-five (65) laid-off employees, they had more than complied with the law, and may no longer be held liable for the impropriety of such lay-off, is believed erroneous. The Supreme Court, in the case of *Cariño vs. Agricultural Credit Cooperative Financing Administration*, cited in the case of *San Miguel Corporation (formerly San Miguel Brewery, Inc.) vs. Macario* and the CIR L-27828, February 27, 1970, said:

'Acceptance of these benefits (separation pay and terminal leave benefits) would not amount to estoppel. The reason is plain. Employer and employee, obviously, do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of money. Because out of job, he had to face the harsh necessities of life. He has found himself in no position to resist money proffered. His, then is a case of adherence, not of choice. One thing sure, however, is that petitioners did not relent on their claim. They pressed it. They are deemed not to have waived any of their rights.'

"In the case of the sixty-five (65) laid-off employees, not only many refused to receive their Notices of termination, thereby prompting the Bank to send and serve said Notices thru the officers of the union, but that the union, as result of said lay-off, also filed a Notice of Strike in protest thereof; and, during the conciliation conferences called by the Bureau of Labor Relations, it insisted for the return of the sixty-five (65) laid off employees. Finally, when the respondents stood pat on their refusal, it staged a strike.

"Lastly, apart from the clear bad faith with which the respondents treated the members of complainant union, permeating their conduct then was their continuing desire to bust or exterminate the Union, which they ultimately attained after the union struck. In unison, all the witnesses for respondents testified that, after the strike, they do not know of any other union existing in the Bank, and, as further admitted by Rogelio Nera, no union dues were thereafter deducted from the salaries of the remaining employees because no one had made any representation in their behalf (tsn. pp. 68-81, 84-97, Hearing on June 9, 1971).

"Anent the second issue, it has been earlier pointed out that the grounds cited by complainant in the Notice of

Strike it filed with the Bureau of Labor Relations on March 28, 1969 were the following unfair labor practice acts; mass lay-off of personnel without cause; bargaining in bad faith; interference in union affairs, intimidation, harassment and coercion of employees; and others (Exhibits '6' and 'B'). As admitted by respondents, the only ground discussed during the conciliation conferences called by the Bureau of Labor Relations on March 31, 1969, and on another date subsequent thereto, was the mass lay-off of sixty-five (65) personnel, where on both occasions the union insisted for the return of said sixty-five (65) laid-off personnel. With the consistent rejection of such demand of the union by the Bank, through its representatives, Atty. Mendoza, and Mr. Benjamin Calalang, coupled by the unfair labor practice acts of respondents which, as vividly portrayed by Roberto Balonkita earlier, were never disputed, the union declared a strike on or about April 8, 1969 in protest thereof.

"While the strike was in progress, the Director of Labor Relations continued to conciliate the parties in his efforts to effect a settlement, so that, in the conference held in his office on April 30, 1969, said Director, after conferring with the parties separately, submitted his proposals for settlement of the strike for comment or study by the parties, and had the conference reset to May 5, 1969 at the 'Jade Vine'. At the May 5, 1969 conference, Atty. Mendoza, the lone representative of the Bank present, furnished the Director of Labor Relations and Carlito Reyes, President of the Union, each a copy of the letter of the Bank to the Director of Labor Relations dated May 2, 1969 (Exhibit '9'), showing its comments or position on the proposals earlier submitted by the Director of Labor Relations (par. 8 of Exh. '26') which letter, as partly quoted, reads:

'In closing we wish to advice that if our foregoing comments are not accepted by the Union, we will be forced to have this letter published in the newspapers.

'We hereby give notice to our absent employees that should they fail to report for work on or before May 8, 1969, we will consider them as having abandoned their employment and will act accordingly.'

It appears, however, that as to the comments contained in said letter, discussions were made on the loans that may be granted to the strikers in order to alleviate their sufferings, and on the conditions being imposed therein by the Bank for the return of the strikers which the union proposed to be reformed. But, in spite of the assurance of the Bank's counsel that the members of the union panel would still be advised as to what will be the final stand of the Bank on the proposals of the union, the strikers were caught by surprise when the said May 2, 1969 letter of the Bank was suddenly published on May 8, 1969 in leading newspapers (Exhibits '16' & '16-A'; '17' & '17-A'; '18' & '18-A'; '19' & '19-A') without first giving them the promised advisement (Testimony of R. Balonkita, tsn. pp. 28-35, Hearing on July 13, 1970; pp. 40-48 Hearing on March 5, 1971). As they were still waiting for information from the Bank's counsel, even after the publication, when he learned later from the union members that the published letter was, according to Atty. Mendoza, the final stand taken by the Bank, they held a meeting wherein the union members decided to lift their picket since they had no more money to sustain it and for them to make an unconditional offer to return to work, which they did on May 20, 1969, thru the Director of Labor Relations (Testimony of Balonkita, pp. 37-43, July 13, 1970; pp. 40-50, 66-71, March 5, 1971, Exhibits 'C' & 'C-1'). However, in its reply dated May 27, 1969 (Exhibits 'D' & 'D-1'), likewise addressed through the Director of Labor Relations, the Bank rejected their said unconditional offer, for reasons that, as per Resolution of its Board of Directors, the present employees were enough to man the operations and that they were already considered to have abandoned their work when they allegedly failed to report on or before May 8, 1969, the given deadline (pp. 37-43, July 13, 1970).

"While it may be needless to further say that employees who went on strike in protest against the unfair labor practice acts committed by their employer could not be treated as absentees, and their refusal to accept the invitation to return to work as an act of abandonment of work, yet, the facts and events surrounding the rejection by the Bank of the unconditional offer to return to work appeared to have been very much incompatible with the above reasons given. For, if true that the Bank had no more need for the services of the

strikers because its employees were then enough to man the operations, then, as earlier pointed out, the Bank should not have hired thirty-four (34) new employees and rehired the non-union members who only reported for work one year, more or less, after the strike. But, in so doing, the Bank had not only patently shown its need for additional men but even unveiled its imaginary gambit at retrenchment when actually there was really no excess of personnel.

"Undoubtedly, the publication of the May, 1969 letter of the Bank, on the very date of the deadline (May 8, 1969) for the strikers to report back to work, was unexpected, with the apparent motivation not to give those strikers who had left for the provinces enough time to return to the city and report for work. Caught by surprise, those strikers who were either in the picket lines or somewhere else cannot be blamed if they could not report for work at once as directed in said publication because for them to have done so would otherwise have abetted a feared tactical maneuver of the respondents, to the prejudice of their other co-strikers whom they know could not make it. It must be remembered that the said last minute publication by the Bank of its invitational letter can only be considered as a tactical threat to end the strike, and not as a 'justification' for dismissal or lockout of the strikers after the deadline. This is especially so if we take into consideration the unannounced or unpublished extension of the return to work of the striking employees up to May 12, 1969, which respondents claimed to have allegedly given the strikers, as well as the reports of discrimination and interference made to Roberto Balonkita that strikers Alberto Glinogo and Ricardo Balba were refused by the Bank when they reported on May 9, 1969, or one day after the May 8, 1969, deadline, while other strikers, like Marlene Padriga and the two lady clerks from the Trust Department, were visited and fetched up from their houses by insiders with the use of the cars and armored cars of the Bank (tsn. pp. 54-59, 87-98, Hearing on March 5, 1971).

"Respondents' claim that the strike staged by the union and its members was in violation of the 'no strike' clause in the Collective Bargaining Agreement is certainly not a defense against their own acts of bargaining in bad faith and discriminatory mass lay-off of the union members, because these unfair labor practice acts were precisely what recently appeared to justify the release of the union from the prohibition of such waiver clause, and which goaded it and its members to resort to the worker's weapon of strike as a last recourse, the coercive and concerted processes of a legitimate strike. Adherent to this legal justification the pronouncement by the Supreme Court in *Cromwell Commercial Co., Inc. vs. Cromwell Employees and Laborers Union*, L-19777, February 20, 1967, 19 SCRA 398, to wit:

'A strike is legal if it was provoked by the employer's failure to abide by the terms and conditions of its collective bargaining agreement with the union, by discrimination employed by it with regard to hire and tenure of employment and the dismissal of employees due to union activities as well as the company's refusal to bargain collectively in good faith.'

"Similarly, a strike called to offset unfair labor practices before the expiration of the 30-day period is legal (See *Ferrer vs. CIR*, L-24268, May 31, 1966, 17 SCRA 352).

"Consequently, on the rejection by the respondents of the unconditional offer of the strikers to return to work, the former's responsibility entails, therefore, the return of the strikers to their former positions and seniority rights, with backwages from the time they asked unconditionally for reinstatement and were not reinstated. Applicable herewith is the ruling in *Cromwell Commercial Employees and Laborers Union (PTUC) vs. CIR* (L-19778, September 30, 1964, 12 SCRA 124), where the Supreme Court said:

'In contrast, the rest of the employees struck as a voluntary act of protest against what they considered unfair labor practices of the company. * * *. As explained by the National Labor Relations Board in the case of *American Manufacturing Co.*, NLRC 433. 'When employees voluntarily go on strike, even if in protest against unfair labor practices, it has been our policy not to award them backpay during the strike. However, when the strikers abandon the strike and apply for reinstatement despite the unfair labor practices, and the employer either refuses to reinstate them or imposes upon their reinstatement new conditions that constitute unfair labor

practices, we are of the opinion that the considerations impelling our refusal to award backpay are no longer controlling. Accordingly we hold that where as, in this case, an employer refuses to reinstate strikers except upon their acceptance of the new conditions that discriminate against them because of their union membership or activities, the strikers who refused to accept the conditions and are consequently refused reinstatement are entitled to be made whole for any losses of pay they may have suffered by reason of the respondent's discriminatory acts.' (Quoted in Teller 2, Labor Disputes and Collective Bargaining, Sec. 371, pp. 997-998).'

As what happened to the strikers in the case at bar, they lifted their picket when they had no more money to sustain it and made an unconditional offer to return to work, but the respondents spurned it on the pretext that they, the strikers, had already forfeited their right to work when they failed to meet the deadline set out by the Bank in its newspaper advertisements which appeared on the very day of said deadline. Conformably with the above-quoted ruling, if some of the strikers, like Balonkita, did not honor the Bank's formal notices or invitations for possible employment, it was because those who earlier honored the same were taken in as probationary employees only and their rights and privileges before the strike were all considered forfeited or waived.

"Considering, however, that, out of the fifty-one (51) laid-off members of the union named in paragraph 6 of the Complaint, only Norma N. Alegre appeared to have been rehired, but as a probationary employee, and whose seniority rights and privileges immediately before the lay-off were considered waived by the Bank (tsn. pp. 27-28, 39, November 3, 1972), she (Norma N. Alegre) should, therefore, be returned to her former position, and her seniority rights and privileges restored to her, with backpay from the date of lay-off up to the date of her return, but less whatever gratuity pay she had previously received, if any. As to the other fifty (50) laid-off members named in said paragraph 6 of the Complaint, they should likewise be reinstated to their former position and to the same rights and privileges appertaining thereto before their dismissal, with backwages from the date of their lay-off until actually reinstated, but less whatever gratuity pay they had previously received.

"It also appears that, out of the seventy-two (72) striking union members named in paragraph 8 of the Complaint, Ernesto Chupangco, Domingo Caidic, Rolando Serrano, Ramiro Malvaz, Eustaquio Tolentino, Jr., Nora Apar and Rodolfo Pineda were supposedly rehired as of March 18, 1971, while Rafaelito Hernandez, Mateo Pili, Federico Encarnacion, Manuel dela Fuente, Wilhelmina Tabberrah, Minerva Catalig, Alicia Macanaya, Honorata Morabe Cruz, Amador Tano, Purificacion Deato Sazon, Alberto Glinogo and Ricardo Balba were supposedly rehired after March 8, 1971 (Exh. '20', tsn. pp. 21-25, June 8, 1972). As admitted, however, by respondents that those nineteen (19) rehired strikers were taken in as new or probationary employees, and their seniority rights and other privileges obtaining before the strike considered all waived by the Bank (tsn. pp. 60-62, November 3, 1972) it logically follows that, like Norma N. Alegre, they must be returned to their former positions, and their rights and privileges which were considered waived should be restored to them, with backpay from the date their unconditional offer was refused by the respondents up to the date they were supposedly rehired. But as to the rest of the strikers named in said paragraph 8 of the Complaint, they should be reinstated to their former positions, with backwages from the time their unconditional offer to return to work was rejected by the respondents until actually reinstated, and with the same rights and privileges appertaining thereto before their dismissal.

"WHEREFORE, premises all considered, it is respectfully recommended that an Order or Decision be issued declaring the respondents guilty of the unfair labor practice acts complained of; requiring them to cease and desist from committing further said acts; and to reinstate the members of the complainant union named in paragraphs 6 and 8 of the Complaint with backwages for the periods specifically provided for above. Likewise, the Chief of the Examining Division of the Court or any of his duly authorized representatives, be directed to proceed to the premises of the respondent Bank and there, in the presence of the representatives of the parties, to examine its books, records, payrolls and other pertinent documents necessary in the computation of the backwages due to each of the complaining union members, and, thereafter, to submit his report on the same for the consideration and disposition of the Court."

On July 8, 1974, the Court of Industrial Relations, thru Associate Judge Alberto S. Veloso, rendered its decision fully concurring in the findings of fact and conclusions of law of the Hearing Examiner, the dispositive portion of which reads as follows:

"WHEREFORE, in view thereof, the respondents should be, as they are hereby declared guilty of having committed the unfair labor practice acts complained of, and as a consequence, are therefore ordered to cease and desist from further committing the same or similar acts, and to reinstate the members of the complainant union named in paragraphs 6 and 8 of the Complaint to their former or substantially equivalent positions in line with the recommendations contained in the aforequoted Report, with backwages for the periods specifically provided for above, less whatever gratuity pay they may have previously received, as well as other earnings elsewhere during the period of dismissal."

Motion for reconsideration having been filed by the Bank, the Court of Industrial Relations en banc in a per curiam Resolution dated October 28, 1974, modified the Decision of its trial court, dated July 8, 1974, so as to read as follows:

"WHEREFORE, in view of all the foregoing, the Court en banc hereby modifies the Decision of the Trial Court dated July 8, 1974, and renders judgment:

"1. Dismissing the above-entitled case insofar as it concerns the 65 individual complainants named in paragraph 6 of the complaint;

"2. Declaring the respondent bank guilty of unfair labor practice insofar as the 72 individual complainants mentioned in paragraph 8 of the complaint are concerned, and ordering it to cease and desist from further committing the acts complained of;

"3. Ordering the respondent bank and the Bank of the Philippine Islands, which is hereby substituted for the former pursuant to respondents' Motion dated August 28, 1974, to pay the 72 individual complainants named in paragraph 8 of the complaint, who have not been so far reinstated or rehired, back wages for a period of eighteen (18) months from May 20, 1969, without any deduction for possible income earned elsewhere, and without reinstatement.

"Following, however, the precedent in U.S. Tobacco Corporation Labor Union vs. Quality Tobacco Corp., Case No. 5763-ULP, the Bank of the Philippine Islands should be, as it is hereby, ordered to readmit, as preferred new employees or workers the unemployed individual complainants named in paragraph 8 of the complaint to positions substantially equivalent to those held by them immediately before the strike of April 8, 1969, the availability of which arise out of resignations or retirement of its employees, the creation of new positions and such other causes resulting in personnel vacancies within the three year period after finality of this decision, subject to the employment requirements of the recently-merged entity, still called the Bank of the Philippine Islands.

"4. Declaring those who were later rehired among the 65 complainants, mentioned in paragraph 6 of the complaint, as new employees in view of their having received termination pay."

From this modified judgment of the Court of Industrial Relations en banc, the Bank and the Union brought separately the instant cases for certiorari to this Court.

In G.R. No. L-39598, petitioners Bank (respondents in L-39603) make three assignments of errors, to wit:

"I. THE LOWER COURT ERRED IN DECLARING THE BANK GUILTY OF UNFAIR LABOR PRACTICE AS REGARDS THE SEVENTY-TWO STRIKING EMPLOYEES.

"II. THE LOWER COURT ERRED IN NOT HOLDING THAT THOSE OF THE SEVENTY-TWO STRIKING EMPLOYEES WHO HAVE NOT BEEN SO FAR REINSTATED OR REHIRED BY THE

BANK ARE EXCESS PERSONNEL AND, AS SUCH, ARE ENTITLED ONLY TO SEPARATION PAY, INSTEAD OF BACK WAGES FOR EIGHTEEN MONTHS.

"III. THE LOWER COURT ERRED IN ORDERING THE BANK TO READMIT AS PREFERRED NEW EMPLOYEES THOSE OF THE SEVENTY-TWO STRIKING EMPLOYEES WHO HAVE NOT BEEN SO FAR REINSTATED OR REHIRED."

In the other case, G.R. No. L-39603, petitioners Union (respondents in L-39598) assign two errors, to wit:

"I. THAT THE RESPONDENT CIR DELIBERATELY DISREGARDED THE EVIDENCES ON RECORD, PARTICULARLY THE VERY ADMISSION OF THE BANK OFFICERS, PROBATIVE OF UNFAIR LABOR PRACTICES AND, IN THE GRAVEST ABUSE OF ITS JUDICIAL DISCRETION AMOUNTING TO LACK OF JURISDICTION, LEGALIZED RESPONDENT BANK'S DISMISSAL OF THE PETITIONERS; AND

"II. THAT THE SAME CIR, CONTRARY TO LAW, EFFECTIVELY SUBVERTED THE WEAL AND WELFARE OF THE STRIKING EMPLOYEES BY LICENSING UNFAIR LABOR PRACTICES, THROUGH DEPRIVAL OF THEIR EMPLOYMENT."

The questions thus presented by the parties boil down to the principal issue of whether or not the Bank is guilty of unfair labor practices for dismissing 65 of its employees under the guise of retrenchment policy and in not readmitting the 72 strikers in its employ.

It is Our considered opinion, under the facts and circumstances of the case, that the Bank is guilty of unfair labor practices in having summarily dismissed the 65 employees and in not re-admitting the 72 strikers after their unconditional offer to return to work.

As has been held by this Court in *Insular Lumber Company vs. CA, et al.*, L-23875, August 29, 1969, 29 SCRA 371, retrenchment can only be availed of if the company is losing or meeting financial reverses in its operation, which certainly is not the case at bar. Undisputed is the fact, that the Bank "at no time incurred losses." As a matter of fact, "the net earnings of the Bank would be in the average of P2,000,000.00 a year from 1960 to 1969 and, during this period of nine (9) years, the Bank continuously declared dividends to its stockholders." Thus the mass lay-off or dismissal of the 65 employees under the guise of retrenchment policy of the Bank is a lame excuse and a veritable smoke-screen of its scheme to bust the Union and thus unduly disturb the employment tenure of the employees concerned, which act is certainly an unfair labor practice.

As regards the non-admission of the 72 strikers in the employ of the Bank on the ground that the said Bank has already learned from the strike that they have enough personnel to man its operation and that the said strikers had abandoned their work and position, We find this unfair and at variance with the ruling and mandate of this Court in *Cromwell Commercial Employees and Laborers Union (PTUC) vs. CIR, et al.*, L-19778, September 30, 1964, 12 SCRA 124, wherein strikers were held entitled to reinstatement and backpay if they abandon their strike and make an unconditional offer to return to work, as what the strikers did in this case at bar but were nevertheless refused re-employment by the Bank.

It would be subverting the social justice policy of our Constitution which underlies all the benevolent social legislations of this country were We to uphold, in the circumstances above set forth, the dismissal of the union members after they have capitulated and signified their desire to return to work. We would be sanctioning an act of reprisal which deals a serious blow to their means of livelihood, instead of throwing a protective mantle around their security of tenure which is the only guaranty to their well-being as workers who live a hand-to-mouth existence. We do not wish to be a party to the perpetration of something which borders on the heartless and inhuman.

Considering that the dismissal of the 65 employees as well as the 72 strikers was illegal and unwarranted, the Bank is hereby held liable to the worker-members of the Union for the payment of their back wages. Following the precedent set by Us in *Mercury Drug Co., Inc., et al., vs. CIR, et al.*, L-23357, April 30, 1974, 56 SCRA 694 (which has been applied by this Court in *NASSCO vs. CIR*, 57 SCRA 642; *Almira vs. B. F. Goodrich Phil., Inc.*, 58 SCRA 120; *Feati University Faculty Club vs Feati University*, 58 SCRA 395; *Phil. Rock Products Inc. vs. PAFLU*, 58 SCRA 730 and *Davao Free Workers Front vs. CIR*, 60 SCRA 408) of fixing an amount of net backwages and doing away with the protracted process of determining the worker's earnings elsewhere during the period of their illegal dismissal, this Court hereby fixes the amount of backwages to be paid under this decision to the worker-members of the Union who have not so far been reinstated at three (3) years pay.

Wherefore, judgment is hereby rendered setting aside the per curiam resolution en banc, dated October 28, 1974, of respondent Court of Industrial Relations insofar as it modified the July 8, 1974, decision of said court which is hereby reinstated. The 123 member-workers of the Union, named in paragraphs 6 and 8 of the Complaint and in the Petition, are entitled to three (3) years backwages without deduction or qualification whatsoever. Without pronouncement as to costs.

Teehankee, J., (Actg. Chairman), Makasiar, Muñoz Palma and Martin, JJ., concur.

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