

CITIZENS' LEAGUE OF FREE WORKERS AND VICTORIANO ELIZAN AND 142 OTHERS, PETITIONERS, VS. COURT OF INDUSTRIAL RELATIONS, EASTCOAST DEVELOPMENT ENTERPRISES AND ERNESTO NOMBRADO, R...

G.R. No. L-38293. February 21, 1980

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for review on certiorari of the Resolution of the respondent Court en banc dated January 25, 1974 affirming the decision of the Trial Judge dismissing the complaint for unfair labor practice against the respondent company in CIR Case No. 239-ULP-DB, entitled "Citizens' League of Freeworkers and Victoriano Elizan and 142 Others, complainants, versus Eastcoast Development Enterprises and Ernesto Nombrado, Resident Manager, respondents."

The complaint filed in said CIR Case No. 239-ULP-DB with the CIR, Davao Branch, Davao City, alleges:

"x x x

(4) That on June 24, 1969, complainant union thru its president sent a letter to the respondent company asking for union recognition, failing which, the union will file a petition for certification within the aforesaid unit with this Court;

(5) That when said union proposal was ignored by the respondents, complainant union filed a petition for certification on September 8, 1969, entitled "IN THE MATTER OF PETITION FOR CERTIFICATION IN THE LOGGING OPERATIONS OF THE EASTCOAST DEVELOPMENT ENTERPRISES, QUINABLANGAN, BAGANGA, DAVAO ORIENTAL, ERNESTO NOMBRADO, Resident Manager" docketed as Case No. 421-MC-DB, which petition is still pending at present;

(6) That after the sending of the proposals for union recognition and the filing of the petition for certification, respondents, thru their officials and supervisors, interfered with, coerced, discriminated and restrained herein individual complainants in their right to self-organization by:

(a) Investigating complainant Victoriano Elizan, the local union president, on September 3, 1969, asking him, among others, to deny or confirm the information that he was heading the union movement in the area, and, subsequently, denying him to get supplies at the area canteen during the period of his confinement at a hospital;

(b) Spreading out information to the workers that the company will close its operations if they will join complainant union;

(c) Instructing supervisors and foremen of respondent company to conduct surveillance and investigation as to the truth of the employees joining complainant union with the view to discourage, discriminate and dismiss employees found out to be members of complainant union;

(d) Forcing the herein individual complainants to sign prepared affidavits which inquire as to whether or not they are members of complainant union;

(e) Forcing herein individual complainants to sign prepared certifications waiving all claims against here-in respondents not excluding claims under the Industrial Peace Act as a condition precedent to their payment of wages due them, separating from the service employees who did not sign the aforesaid certification and retaining to work at the Boston Unit of operations of respondent company employees who signed said certification; and

(f) Transferring the operations of the Quinablangan Unit to the Boston Unit with the view to disestablishing the bargaining unit proposed in the petition for certification Case No. 421-MC-DB;

(7) That on November 29, 1969, respondents thru respondent manager Ernesto Nombrado notified herein individual complainants by posting in conspicuous places copies of a memorandum to the effect that the company is closing its operation and that it is terminating the employment of herein complainants on the following day as it did in fact terminate the services of the aforesaid individual complainants on November 30, 1969."

Complainants prayed for judgment: (a) declaring respondents guilty as charged; (b) directing respondents to cease and desist from further committing the acts complained of; (c) directing respondents to re-instate the complainants to their former positions, with back wages since their dismissal up to the date of their reinstatement, with rights and privileges appertaining to their positions; and (d) for other reliefs.

Respondent Eastcoast Development Enterprises, then operating two logging operations, one in Boston, Cateel, Davao Oriental and another in Quinablangan, Baganga, same province, in its Answer denied the material allegations of the complaint and alleged, among others, that they did not interfere with, restrain or coerce complainants herein in the exercise of their right to organize; that they did not 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; that they did not dismiss, discharge or otherwise prejudice or discriminate against the complainants for having filed charges or having given or being about to give testimony under the Act.

Respondents also averred that Victoriano Elizan was investigated not for his union activities but for his outstanding unpaid account with the canteen in the amount of P1,102.98 and the unpaid cash advance from the respondent company in the amount of P1,589.23. As to the closure of the Quinablangan Unit, respondents alleged that the closure was not designed for the purpose of disestablishing the bargaining unit proposed in the petition for certification election; that it was an act of economic necessity to avoid harm or damage not only to the company but also to the employees, the truth of the matter being that the company was forced to close down the Quinablangan Unit in compliance with the warning of the Bureau of Forestry that the maximum allowable quantity of timber to be cut in the area is nearly exhausted which was shown in the letter reading as follows:

"D-54, Licenses (O.T. No. 112-'71) Eastcoast Development Enterprises
(Baganga & Cateel, Davao Oriental)

November 4, 1969

The General Manager
Eastcoast Development Enterprises
Quinablangan, Baganga, Davao Oriental

Sir:

Please be informed that the record in this Office shows that as of October 31, 1969, you have already cut and manifested a total of 54,552.08 cubic meters of timber from your license area under Ordinary Timber License

No. 112-'71, leaving you a balance of 8,720.92 cubic meters from your allowable cut of 63,273.00 for the current fiscal year ending June 30, 1970.

Immediately after exhausting your ex-portable cut, you are advised to stop your logging operations, unless you can put up a wood processing plant or if an additional cut is authorized by the Director of Forestry. All timber cut by you in excess of your allowable cut shall be subjected to the imposition of the necessary surcharges.

Please be guided accordingly.

Very truly yours,

(Sgd.) Felizardo A. Najera
Officer-in-Charge"[1]

The Trial Judge after several hearings ruled in favor of the respondent company in the decision dated August 12, 1970, the dispositive portion of which states:

"ALL OF THE FOREGOING CONSIDERED, the Court finds that the closure of operations of the Quinablangan Unit was due to a legitimate cause since it was in pursuance to the order of the Bureau of Forestry. Respondents' supervisory employees namely, Casimiro Peregrino and Domingo Albino are however ordered to cease and desist from further committing acts of interferences as charged."

On September 5, 1970, complainants filed before the Court, en banc a Motion for Reconsideration from the above decision, and said motion was denied in the proposed Resolution signed by Associate Judge Joaquin M. Salvador dated October 13, 1970. Expounding further, on the legality and justification of the temporary closure of operations of the respondent company in its Quinablangan Unit on November 30, 1969, the Resolution states:

"Records reveal that as early as December 1969, the Department of Labor, through its labor Administrator in Davao City, has conducted investigations on the circumstances that led to the alleged locking out of herein individual complainants. The result of the investigation is contained in a letter addressed to the Executive Secretary dated December 10, 1969, stating among other things that "management merely suspended its operation because its current allowable cut under forestry regulations has already been exhausted" (See Exh. "O-I").

"Records further reveal that conferences were held between management and the complainants, through their representative, which conferences culminated in the execution of a "memorandum agreement" on February 25, 1970 (Exh. "F"). One of the pertinent stipulations of said agreement runs as follows: "(c) the company guarantees the rehiring of workers who desire to seek employment upon resumption of its operations." This to our mind, is a clear indication, if not an express admission by complainants themselves, that there was just a temporary cessation of operations in the Quinablangan Unit. And it must have to be stressed here that such temporary stoppage was due to the exhaustion of the company's allowable cut at the time.

"On the basis of the foregoing, complainants' protestation that their mass dismissal was discriminatory would be untenable.

WHEREFORE, let the instant motion for reconsideration be, as it is hereby, DENIED.

"SO ORDERED."

"Manila, Philippines, October 13, 1970.

(SGD.) JOAQUIN M. SALVADOR
Associate Judge"

The proposed Resolution signed and dated October 13, 1970 was acted upon by the other judges of the Court

some five or six months thereafter. Thus, Presiding Judge Arsenio I. Martinez in his concurring opinion dated March 20, 1971, held as follows:

"I concur but in line with my letter to the trial court under date of February 10, 1971, enclosing therewith the manifestation with Annexes from "A" to "P", and since the proposed resolution admits merely the temporary stoppage of work at the Quinablangan Unit due to the exhaustion of the company's allowable cut, and, as there is now a continued operation, the workers should be reinstated.

Associate Judge Amando C. Bugayong, in his concurring and dissenting opinion dated April 22, 1971, wrote as follows:

"It may be conceded that the closure of the operation of the Quinablangan Unit of respondent Eastcoast Development Enterprises was due more to the coincidental exhaustion of the allowable cut of timber for said year in question than to its alleged union busting and for that matter it alleged that its operation was merely suspended (Exh. "O-2") effective November 30, 1969. In the face, however, of complainants' undisputed formal manifestation, filed on February 2, 1971, but after the Trial Court has prepared the proposed resolution to the effect that respondent has resumed its operation since June 7, 1970 even before this was decided, the reinstatement of the 143 individual complainants and the payment of their backwages from that date until their actual reinstatement would now be proper and in order.

It is to be stressed, in this connection, that the Trial Court did not entirely absolve respondents of the unfair labor practice acts complained of. Instances of interference to discourage and encourage their joining and/or disaffiliation from complainant union were found to be committed by respondent's officials. If only for this, restitution of individual complainants' losses should herein be accorded."

Associate Judge Ansberto P. Paredes wrote a dissenting opinion, to wit:

"I vote for the remanding of the case to the Trial Court for it to hear and receive evidence on the matters raised in complainants' Manifestation filed on February 2, 1971, (after the Trial Court penned the proposed resolution dated October 13, 1970), and thereafter to submit a report thereon to the Court en banc, which will then resolve the motion for reconsideration; meanwhile, the resolution of said motion should be held in abeyance.

Manila, May 6, 1971."

Associate Judge Emiliano C. Tabigne was on leave.

The Resolution dated October 13, 1970 was finally entered in the case on July 6, 1971.

As indicated in the various concurring and dissenting opinions quoted above, complainants filed on February 2, 1971 a "Manifestation" alleging that respondents reopened their normal operations in Quinablangan, Baganga, Davao Oriental on June 25, 1970 as shown by the joint affidavit of Victoriano Elizan, Roberto Sotomayor and Jaime Artigo with Annexes "A" to "P" which are pictures of the resumed operations in the Quinablangan Unit, and that despite the reopening of their normal operations, the respondents have not re-employed complainants and finally praying that the above manifested facts be considered in the resolution of complainants' Motion for Reconsideration dated August 25, 1970.

Thereafter, complainants filed a Motion for Re-instatement with Backwages dated July 26, 1971 in the light of the facts alleged in their Manifestation dated February 2, 1971 and praying that an order be issued ordering the reinstatement of the 143 individual complainants with payment of their backwages from June 25, 1970.[2]

Acting on the motion to reinstate with payment of backwages, the Court en banc, through Associate Judge Joaquin M. Salvador in the Order dated December 13, 1971, after considering the concurring and dissenting opinions of his colleagues, ruled as follows:

"Nowhere in the separate opinions of the Judges of the Court en banc is there any definite finding as to the commission of unfair labor practice acts by the respondents, which by operation of law require a directive of reinstatement with or without backwages. Nevertheless, it is evident that a majority of the Judges of the Court en banc are in favor of reinstatement of the complainants, a point which on equitable consideration appears to be in keeping with the assertion of respondents that once operations are resumed, they are willing to reinstate the complainants.

The Trial Court takes note that complainants have filed a manifestation on February 2, 1971 alleging the resumption of operations in Quinablangan Unit of respondents. In the absence of any evidence we are in no position to make a determination as to whether respondents have in fact resumed operation in the same so as to reinstate complainants.

WHEREFORE, IN VIEW OF THE FOREGOING, the Motion to reinstate with backwages is hereby denied. However, the Court directs that further hearings be had to determine whether respondents have or have not resumed operations in its Quinablangan Unit at Baganga, Davao Oriental and should the findings be in the affirmative, to fix the date of complainants' reinstatement.

Lastly, the Hearing Examiner, Cagayan de Oro Branch of this Court, is hereby directed to receive and hear the evidence at the earliest possible time.

SO ORDERED.

Manila, Philippines, December 13, 1971."

In conformity with the order quoted above, hearings were conducted from May 23, 1972 to June 16, 1972. Then on September 25, 1973, Acting Presiding Judge Ansberto Paredes issued an Order, after evaluating the separate opinions of the members of the former court en banc (which are quoted hereinabove) as a failure to reach a decision, annulled the hearings ordered and conducted after December 13, 1971 and remanded the case to the court en banc for the rendition of the necessary majority resolution, in the following wise and manner:

"The Order, therefore, of December 13, 1971, directing that "further hearings be had to determine whether respondents have or have not resumed operations in its Quinablangan Unit" finds no sanction nor authority from the Court en banc. Hence, any subsequent proceedings should be considered null and void.

WHEREFORE, the hearings conducted in this case subsequent to December 13, 1971 are without any force and effect nor with legal basis. Such hearings are, therefore, declared null and void.

Case is hereby remanded to the Court en banc for the rendition of the necessary majority resolution.

SO ORDERED.

Manila, September 25, 1973."

On January 25, 1974, the Court en banc^[3] issued a resolution affirming the decision of the trial court dated August 12, 1970 but with the modification that the ultimate sentence contained in its dispositive portion reading that - "Respondents' supervisory employees, namely, Casimiro Peregrino and Domingo Albino are however ordered to cease and desist from further committing acts of interferences as charged" - should be, as it is hereby ordered, deleted. Accordingly, the Motion for Reconsideration of complainants was denied for lack of merit. The Resolution was penned by Associate Judge Alberto S. Veloso with the concurrence of Acting Presiding Judge Ansberto Paredes, Judge Serafin R. Cuevas and Judge Simeon M. Gopengco who were detailed with the court per Administrative Orders No. 359 and 360, respectively.

Complainants, now the herein petitioners, filed a Petition for Review by Certiorari to this Court, appealing the resolution of the CIR en banc dated January 25, 1974, but in Our resolution of June 26, 1974, the Petition for

Review was denied for lack of merit. However, on a Motion for Reconsideration, We considered and gave due course to the petition in Our resolution dated November 8, 1974.

Petitioners submit the following assignments of errors:

- The respondent court erred in not resolving petitioners' motion to amend or reconsider.
- The respondent court erred in arriving at a conclusion before reconciling the contra-dicting sets of facts found by the individual judges of the court en banc.
- The respondent court erred by not voiding the order of the trial court declaring a failure of the court en banc to reach a decision without the necessary concurrence of the majority.
- The respondent court erred by affirming a decision that had previously been aside by the majority of the court en banc.
- The respondent court erred by concurring in a verdict of acquittal obviously based only on the part of the findings and records that support its conclusions.
- The respondent court erred by not investigating a charge for unfair labor practice committed by private respondents after the trial court's decision but before resolution of the motion for reconsideration.
- The respondent court erred by not issuing a directive for reinstatement and backwages in the light of the undisputed fact of respondent company's resumption of operations without reinstating petitioners.
- The respondent court erred by equating hasty justice with substantial justice.
- The respondent court erred by not finding that the affirmed decision lacks substantial evidence to support it.

The main thrust of petitioners' appeal is directed against the failure of the respondent court to act favorably on their Motion for Reinstatement with Backwages filed July 27, 1971 (a similar Motion for Reinstatement with Backwages was also filed by another counsel dated July 28, 1971) based on the undisputed facts that the private respondent company had resumed operations but refused to reinstate petitioners in accordance with the memorandum agreement dated February 25, 1970 signed by and between the petitioners and management which, among others, stipulated that "(c) the company guarantees the rehiring of workers who desire to seek employment upon resumption of its operations." Hence, the several errors assigned by the petitioners may be synthesized into one, and that is, whether the court erred by not issuing a directive for reinstatement and backwages in the light of the undisputed fact of respondent company's resumption of operations without reinstating petitioners.

Private respondents contend that it was within the legal competence of the respondent court to consider only the evidence presented or submitted during the hearing of the case, and to consider at the late stage of the proceedings the particular incident contained in petitioners' Manifestation filed on February 2, 1971 would be violative of the due process clause. They further contend that the matter of the resumption of the Quinablangan operations brought out in petitioners' Manifestation and Motion for Reinstatement With Backwages being new or having occurred long after trial on the merits have been terminated and submitted to the court for decision and even longer after its decision of August 12, 1970 and, therefore, not squarely presented during its trial cannot and should not be entertained merely by the filing of an incidental manifestation or motion. And respondents conclude that it was not an error of the respondent court when it took into consideration only the evidence presented during the trial and available in the records, and handed down its decision of August 12, 1970 which was affirmed by the respondent court en banc in its Resolution of January 25, 1974.[4]

Petitioners, on the other hand, take the position that the Motion for Reinstatement with Backwages is a motion to

amend or reconsider the Resolution of October 13, 1970, in legal effect, a motion for recon-sideration which the respondent court is by duty bound to resolve, pursuant to the provisions of Section 1 of Commonwealth Act No. 103, citing the case of Philippine Education Company vs. CIR, 49 O.G. 5354 where it is held that "There is no essential difference between a motion for reconsideration, for new trial, and for modification of award, order or decision based on changed conditions; they all amount to the same thing." Petitioners advance the stand that the Manifestation filed on February 2, 1971 is actually a charge for unfair labor practice committed by the respondent for refusing to re-admit the workers temporarily laid off when respondent company's operations reopened.[5] And they strongly insist that the provisions of Republic Act 875 should be liberally construed in favor of employees and strictly against the employer, unless otherwise intended by or patent from the language of the statute itself as laid down by the Supreme Court in Caltex Filipino Managers and Supervisors' Association vs. CIR, L-30632-33, April 11, 1972; 44 SCRA 350-351. Finally, petitioners stress that it is the duty of the respondent court to investigate the charge of unfair labor practice imputed to the private respondent company for refusing to reinstate petitioners after it had resumed its operations at the Quinablangan Unit which was manifested to the court in petitioners' Manifesta-tion dated February 2, 1971 as well as in the Motion for Reinstatement with Backwages filed July 27, 1971, pursuant to Section 5 (b) of the Industrial Peace Act (Republic Act 875) which, among others, requires the Court of Industrial Relations or a member thereof, or before a designated Hearing Examiner to conduct a hearing of the charges and in such proceedings, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of the Act that the court and its members and Hearing Examiners shall use every and all reasonable means to ascertain the facts in each case speedily and ob-jectively and without regard to technicalities of law or procedure. And when "respondent court sitting en banc left the matter of reinstatement and backwages hanging in the air as though the matters treated are foreign to the case at bar; and to compound the injus-tice, it allowed unquestioned the Order of September 25, 1973 forever removing these crucial issues from the area of adjudication,"[6] petitioners vehemently fault respondent court with grave abuse of discretion.

We agree with the petitioners.

It is in faithful compliance with the mandate of the Constitution of the Philippines expressed in Article 2, Section 9 which declares that "The State shall afford protection to labor" x x x and "shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work" as well as in Article 2, Section 6 providing that "The State shall promote social justice to insure the dignity, welfare, and security of all the people" that We uphold the con-tention of the petitioners and consider the Manifes-tation filed February 2, 1971 together with the Motion for Reinstatement with Backwages filed with respondent court on July 27, 1971 as a new charge for unfair labor practice committed by respondent company for its re-fusal to rehire or reinstate petitioners who were tem-porarily laid off upon its resumption of operations at its Quinablangan Unit. The new charge of unfair labor practice may indeed be a fact in dispute raised for the first time after the trial or hearing of the origi-nal charge of unfair labor practice charged in peti-tioners' complaint arising from the mass dismissal or lay-off of petitioners due to the temporary closure of respondent company's operations and when the case was already submitted to the respondent court for decision. Nonetheless, it is within the power of the Supreme Court conferred upon it by the injunctions of the Constitution of the Philippines, particularly binding on all the parties, agencies and instrumentalities of the government, especially upon the Judiciary to "afford protection to labor and to promote social justice to disregard the usual procedure if in doing so there would not be any resulting denial of due process." (Galang vs. Workmen's Compensation Commission, L-33928, March 29, 1972, 44 SCRA 221).

We hold that respondent court gravely erred when it failed to consider, resolve and decide on the new charge of unfair labor practice grounded upon the refusal of respondent company to reinstate petitioners after the company

resumed its operations. And the error is compounded when respondent court, after ordering that hearings be resumed and conducted by the Hearing Examiner for the purpose of determining "whether respondents have or have not resumed operations in its Quinablangan Unit at Baganga, Davao Oriental and should the findings be in the affirmative, to fix the date of complainants' reinstatement" as directed in the Order dated December 13, 1971, nullified said hearings as without any force and effect nor with legal basis and were declared null and void in the Order issued September 25, 1973 arbitrarily, whimsically and without legal nor factual basis.

In failing to resolve the new issues of the company's resumption of operations and the reinstatement of petitioners in compliance with the memorandum agreement between the parties, respondent court abused its discretion by being unduly rigid and severe in total disregard of the doctrine in *East Asiatic Co. vs. Court of Industrial Relations*, L-29068, August 31, 1971, 40 SCRA 521, wherein We said:

"Not only does Section 20 of Commonwealth Act 103 creating the Court of Industrial Relations precisely endow the said Court with such plenitude of authority but Section 5(b) of the Industrial Peace Act pointedly provides that in unfair labor proceedings, 'the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Act that the Court and its members and Hearing Examiners shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure. In rendering its decision, the Court shall not be bound solely by the evidence presented during the hearing but may avail itself of all other means such as (but not limited to) ocular inspections and questioning of well-informed persons which results must be made a part of the record.'"

A similar ruling is enunciated in the earlier case of *Sanchez vs. Court of Industrial Relations*, L-26932, March 28, 1969, 27 SCRA 490 -

"Moreover, petitioners appear to be oblivious of the statutory mandate that respondent Court in the hearing, investigation and determination of any question or controversy and in the exercise of any of its duties or powers is to act 'according to justice and equity and substantial merits of the case, without regard to technicalities or legal forms and shall not be bound by any technical rules of legal evidence informing its mind in such manner as it may deem just and equitable.' Again, this Court has invariably accorded the most hospitable scope to the breadth and amplitude with which such provision is couched. So it has been from the earliest case decided in 1939 to a 1967 decision."

In the case at bar, the labor dispute between the petitioners and respondent company which had arisen from the closure of the company's operations resulting in the mass lay-off or dismissal of petitioners and the filing of the original complaint for unfair labor practice apparently was aggravated by a new dispute caused by the refusal of the respondent company to reinstate petitioners to their employment when the company resumed its operations. Still the respondent court exercised a continuing control and jurisdiction over the case and as long as it remains under its control and jurisdiction, in order to accord substantial justice to the parties the Court of Industrial Relations under Section 7 of Commonwealth Act No. 103 as amended, has the power, among others, to correct, amend or waive any error, defect, or irregularity, whether in substance or in form that it may find in its proceedings, to give all such direction as it may deem necessary or expedient in the determination of any dispute before it, and under Section 17, the court may alter, modify or set aside, during its effectiveness, any award, order, or decision it may render upon application of any of the parties and after due hearing.

We reject private respondents' contention that it would be violative of the due process clause if the respondent court should consider the new matter contained in petitioners' Manifestation of February 2, 1971 relative to the resumption of the company's operations at its Quinablangan Unit at Baganga, Davao Oriental. The records disclose that private respondent was duly notified and furnished copy of the Manifestation as well as copy of the Motion for Reinstatement with Backwages which reiterated the allegation of the company's resumption of

operations in the Mani-festation. Private respondent was also notified and appeared at the hearings conducted by the Hearing Examiner from May 23, 1972 to June 16, 1972 pursuant to the Order dated December 13, 1971. Atty. Carlos Carbonilla, counsel for private respondent, participated in said hearings. It is futile for private respondent to claim violation of due process.

There is incontrovertible and substantial evidence in the records proving that respondent company resumed operations at its Quinablangan Unit. This is shown not only in the joint affidavit of Victoriano Elizan, Roberto Sotomayor and Jaime Artigo attached to the Manifestation of February 2, 1971 (which affidavit is admissible evidence, *Luzon Brokerage Company vs. Luzon Labor Union*, L-17085, July 31, 1963), by the pictures likewise attached to the Manifestation marked Annexes "A" to "P" but also by the clear testimony of the Resident Manager of respondent company, Ernesto Nombrado, quoted in Annex "M-5" to Annex "M-8" attached to the petition for review, pp. 148 to 151, Records. This witness further affirmed that complainants were replaced by other laborers in accordance with the list prepared by the General Manager. We quote hereunder excerpts from the transcript of stenographic notes of the hearings conducted June 15, 1972 as follows:

"Atty. Carbonilla

[to witness]

Q -

Atty. Nombrado, do you know of your own personal knowledge when the Eastcoast Development Enterprises, insofar as your unit of operation is concerned, resumed its operations?

A -

The normal operation resumed August 22, 1970, sir.

x x x

Q -

Now, Atty. Nombrado, after you submitted Exhibit '5' which is a table of organization of your unit now marked as Exhibit '5' for the respondents, what happened to this table of organization you submitted to the general manager?

A -

After I sent that by plane on July 1, 1970, the complainants paraded to office which happened that I was in the office. Then they demanded for an audience. I required only Mr. Elizan and Bady could come to the office. (T.S.N., p. 37, supra)

x x x

"The Commissioner

[to witness]

Q -

What happened to the complainants who according to you refused to work if not all of them will be rehired?

The Witness

A -

Their names were deleted here, replaced by other laborers in accordance with the list, table of organization

prepared by the general manager. (T.S.N., p. 49, June 15, 1972)"

The separate opinions of the Associate Judges of the respondent court made particular references to the new matter of the company's resumption of operations. Judges Martinez and Bugayong in fact favored reinstatement of the complainants in view of the resumption of the operations of the company. Judge Paredes voted to remand the case to the Trial Court to hear and receive evidence on the matter of the resumption of operations of respondent company and "thereafter to submit a report thereon to the Court en banc which will then resolve the Motion for Reconsideration, meanwhile the Resolution of said Motion should be held in abeyance."

Respondent court cannot ignore, much less attempt to disregard and nullify this substantial evidence by issuing the Order of September 25, 1973, (which was after Martial Law) ruling that the proceedings held and conducted in the case after December 13, 1971 to be without force and effect and thereby eliminated the above-quoted testimony of the witness Ernesto Nombrado. Clearly, respondent court acted arbitrarily and with grave abuse of discretion in nullifying the hearings conducted by the Hearing Examiner upon orders of the same court to determine whether or not respondent company had resumed its operations. As a result, respondent court suppressed the inquiry or hearing of the charge of unfair labor practice against respondent company under Section 4(a), Republic Act No. 858, which provides that it shall be unfair labor practice for an employer to x x x "(4) 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: x x x," and "(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."

It may even be said that under the new supervening facts, there was to the petitioners, for all practical purposes, a lockout, as similarly held by this Court in *Sta. Mesa Slipways & Engineering Co., vs. CIR*, L-4521, Nov. 28, 1962, 6 SCRA 628, thus:

"Where regular employees of the company were told that work would be stopped for two weeks for the taking of an inventory and that they would be notified when it is resumed, but upon the return of such employees to the premises after the inventory was over, they were prevented from resuming work, it was held that 'there was, to them, for all practical purposes, a lockout.' It was not necessary that the same be directed against a union or union activities or that the real reason for it be known; it is enough that the work stoppage was on the initiative of the employer."

In labor law jurisprudence, it is settled that a refusal to rehire certain strikers entitled to reinstatement, without sufficient justification therefor while rehiring other strikers, or admitting non-strikers, or even hiring new employees, is unlawful discrimination. (*Insular Life Assurance Co. Employees Assn. vs. Insular Life Assurance Co.*, 37 SCRA 244; *Consolidated Labor Assn. vs. Marsman & Co.*, 11 SCRA 594, cited in *Labor Law Relations* by Prof. Perfecto V. Fernandez, 1977 ed., p. 134). The doctrine in *Rizal Cement Workers Union vs. Madrigal and Company*, L-19767, April 30, 1964, 10 SCRA 831 that under Republic Act 875, for discrimination by reason of union membership to be considered unfair labor practice, the same must have been committed to encourage or discourage such membership in the union, is applicable to the case at bar since it can reasonably be concluded that respondent company refused to rehire or reinstate the herein petitioners who had joined the petitioner union and had filed a pending petition for certification in the logging operations of respondent company docketed as Case No. 421-MC-DB in order to discourage membership in said union and as a reprisal for filing the case of unfair labor practice against respondent company in CIR Case No. 239-ULP-DB, hired instead new workers to replace the petitioners.

The general rule is that the Supreme Court does not review on appeal conclusions of facts by lower courts since only questions of law may be raised on appeal. Thus, We may agree with the Resolution appealed from dated

January 25, 1974 affirming the findings of the respondent court in its decision dated August 12, 1970 that the closure of the respondent company's operations at the Quinablangan area on November 30, 1969 was temporary, caused by the near-exhaustion of the company's allowable cut for the fiscal year from July 1, 1969 to June 30, 1970 and that the same was due to a legitimate cause since it was in pursuance to the order of Bureau of Forestry and, therefore, the act of respondent company in the mass lay-off of petitioners did not constitute an unfair labor practice. But whereas the same Resolution omitted, neglected and failed to resolve the new charge of unfair labor practice which arose and supervened after the respondent company resumed its operations but refused to reinstate petitioners, instead replaced them with new workers, We must apply the well-recognized exception to the general rule.

The general rule does not apply where the lower court in arriving at its conclusion, has manifestly overlooked or disregarded certain relevant facts not disputed by the parties which, if properly considered, would justify a different conclusion (*Abellana vs. Dosdos*, L-19498, February 26, 1965, 13 SCRA 244). This Court will review or alter findings of fact of the Court of Industrial Relations if such findings are completely devoid of basis and there is a grave abuse of discretion. (*Kaisahan ng Mga Manggagawa sa La Campana vs. Tandongco*, L-18338, October 31, 1962. See also *Rizal Cement Workers Union vs. C.I.R.*, L-18442, November 30, 1962; *Industrial Commercial Agricultural Workers Organization vs. Bautista*, L-15639, April 30, 1963; *Lu Do vs. Philippine Land-Air-Sea Labor Union*, L-18450, May 29, 1964; *National Shipyards and Steel Corporation vs. C.I.R.*, L-20838, July 30, 1965; *Manila Pencil Co. vs. C.I.R.*, L-16903, August 31, 1965; *East-Asiatic Co. vs. C.I.R.*, L-17037, April 30, 1966; *Barna-chea vs. Tabigne*, L-22791, May 16, 1967).

And to update the rule on judicial review, We have the case of *Consolidated Farms, Inc. vs. Noriel*, No. L-47752, July 31, 1978, which reiterated the ruling in *San Miguel Corporation vs. Secretary of Labor*, L-39195, May, 1975, 64 SCRA 56, that -

"It is generally understood that as to administrative agencies exercising quasi-judicial or legislative power there is an underlying power in the courts to scrutinize the acts of such agencies on questions of law and jurisdiction even though no right of review is given by statute (73 C.J.S. 506, note 56). x x x Judicial review is proper in case of lack of jurisdiction, grave abuse of discretion, error of law, fraud or collusion." (*Timbancaya vs. Vicente*, 82 O.G. 9424; *Macatangay vs. Secretary of Public Works and Communications*, 63 O.G. 11236; *Ortua vs. Singson Encarnacion*, 59 Phil. 400)

And more recently, in the case of *Insular Life Assurance Co., Ltd., Employees Association-NATU vs. Insular Life Assurance Co., Ltd.*, 76 SCRA 50, this Court, speaking through Chief Justice Fred Ruiz Castro, said:

"The Supreme Court, likewise, has broad discretionary powers, in the resolution of a controversy, to take into consideration matters on record which the parties fail to submit to the Court as specific questions for determination. Where the issues already raised also rest on other issues not specifically presented, as long as the latter issues bear relevance and close relation to the former and as long as they arise from matters on record, the Court has the authority to include them in its discussion of the controversy as well as to pass upon them. In brief, in those cases wherein questions not particularly raised by the parties surface as necessary for the complete adjudication of the rights and obligations of the parties and such questions fall within the issues already framed by the parties, the interests of justice dictate that the Court consider and resolve them."

One last point. We note that respondent court en banc issued the Resolution appealed from, skirting the new issue or charge of unfair labor practice, after respondent court, speaking through Acting Presiding Judge Paredes in his Order of September 25, 1973, nullified the hearings ordered to be conducted to receive evidence on the said charge that respondent company resumed operations but refused to reinstate petitioners, which hearings the same Judge voted affirmatively to remand the case for further hearings in his opinion dated May 6, 1971. Petitioners strongly insist that the Order of September 25, 1973 is invalid and null and void on three (3) grounds: 1- the case

being pending with the court en banc, any order proceeding therefrom, to be valid, must be concurred in by at least three members of the court sitting en banc; there exists no such concurrence to the Order in question; 2- the respondent court committed grave abuse of discretion in not resolving the case for unfair labor practice; on the contrary, the court stayed its determination in violation of Section 5(d) of the Industrial Peace Act; and 3- the Order, in question, in effect seeks to prevent the investigation of a charge for unfair labor practice.[7]

We agree with the petitioners. We rule that said Order was arbitrary and unwarranted. It was issued in grave abuse of discretion, without legal or factual basis. Neither party sought, by motion or otherwise, the nullification of the hearings. The Order was issued by the court *motu proprio* without notice or hearing and by the same authority who had previously voted to conduct said hearings. Moreover, the Order of December 13, 1971 directing further hearings to determine whether respondent company had or had not resumed operations was signed by Judge Salvador, concurred in by Presiding Judge Martinez and Judge Bugayong, while Judge Paredes voted to remand the case to the Trial Court for said hearings. Hence, all four Judges voted affirmatively that further hearings be conducted, which unanimous vote gave sanction and authority from the court that further hearings be held and conducted for the purpose indicated in the Order.

In fine, We rule that in issuing the January 25, 1974 Resolution affirming the August 12, 1970 Decision of the Trial Court, the respondent court acted with grave abuse of discretion and committed reversible error in failing, omitting and/or neglecting to consider substantial and undisputed evidence on record showing unfair labor practice on the part of respondent company.

In the light of the constitutional mandate to afford protection to labor and to effectuate the policies of the Industrial Peace Act, under Our power of judicial review, We hereby order the reinstatement of the petitioners with backpay and including rights prior to dismissal, including seniority pursuant to Section 5(c), Republic Act 875, to be determined as of August 22, 1970 when respondent company resumed its operations but refused to reinstate or rehire petitioners upon said resumption of operations, instead replaced them with new workers.

Concerning the award of backpay, in the case of *Mercury Drug Co. vs. CIR*, L-23357, April 30, 1974, We adopted a policy of fixing the amount of backwages to a just and reasonable level without qualification or deduction in order to "avoid protracted delay in the execution of the award of backwages due to extended hearings and unavoidable delays and difficulties encountered in determining the earnings of the laid-off employees ordered to be reinstated with backwages during the pendency of the case for purposes of deducting the same from the gross backwages awarded." The rationale for the policy was stated in *Feati University Faculty Club vs. Feati University*, L-31503, August 15, 1974, 58 SCRA 395, thus -

"As has been noted, this formula of awarding reasonable net backwages without deduction or qualification relieves the employees from proving or disproving their earnings during their lay-off and the employers from submitting counterproofs, and obviates the twin evils of idleness on the part of the employee who would 'with folded arms, remain inactive in the expectation that a windfall would come to him' (*Itogon Suyoc Mines, Inc. vs. Sangilo-Itogon Workers Union*, 24 SCRA 873 (1968) cited in *Diwa ng Pagkakaisa vs. Filtex International Corp.*, 43 SCRA 287 (1972) and attrition and protracted delay in satisfying such award on the part of unscrupulous employers who have seized upon the further proceedings to determine the actual earnings of the wrongful dismissed or laid-off employees to hold unduly extended hearings for each and every employee awarded backwages and thereby render practically nugatory such award and compel the employees to agree to unconscionable settlements of their backwages award in order to satisfy their dire need. (See *La Campana Food Products, Inc. vs. C.I.R.*, 28 SCRA 314 (1969) and *Kaisahan ng Mga Manggagawa vs. La Campana Food Products, Inc.*, 36 SCRA 142 (1970))."

In *Feati University Faculty Club vs. Feati University*, L-31503, August 5, 1974, 58 SCRA 394; *Luzon*

Stevedoring Corporation and B.H. Tenefrancia vs. CIR, L-34300, November 22, 1974, 61 SCRA 154; Insular Life Assurance Co., Ltd. Employees Association-NATU vs. Insular Life Assurance Company, L-25291, March 10, 1977, 76 SCRA 50; Liberty Cotton Mills Workers Union vs. Liberty Cotton Mills, Inc., L-33987, May 31, 1979, 90 SCRA 391, We reiterated the same basis of computing the award of backwages not exceeding three (3) years without requiring the parties to submit proof of compensation received from other sources from the time of the illegal dismissal until actual reinstatement.

We must apply the same policy in the case at bar wherein more than nine (9) years have elapsed from August 22, 1970 when respondent company resumed operations in its Quinablangan Unit but refused to reinstate or rehire petitioners pursuant to their memorandum agreement.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the Resolution of the Court of Industrial Relations en banc dated January 25, 1974 affirming the decision of the Trial Judge dated August 12, 1970 is hereby REVERSED and set aside.

Judgment is hereby rendered ordering the respondent company:

(a)

To immediately rehire and reinstate petitioners to their former employment at current rates paid by it to workers occupying the same or similar positions, without loss of seniority as if said petitioners had not been laid-off within thirty (30) days from notice of this decision; and

(b)

To pay petitioners-workers the equivalent of three (3) years backwages at the rates actually received by them before their lay-off on November 30, 1969 without deduction or disqualification.

Costs against respondent company.

In view of the length of time that petitioners' right to reinstatement during the pendency of the dispute and to accrued backwages has been pending enforcement, this decision shall be immediately executory upon its promulgation.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, De Castro, and Melencio-Herrera, JJ., concur.

[1] Rollo, p. 97.

[2] Rollo, pp. 130-135.

[3] This time composed of Judges Paredes, Cuevas, Veloso and Gopengco.

[4] Brief of Private Respondents, pp. 18-23.

[5] Brief of Petitioners, pp. 17-18, 24 33-34.

[6] Brief of Petitioners, p. 18.

[7] Brief for the Petitioners, pp. 23-24.

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