

UNION OF SUPERVISORS (R.B.) – NATU, PETITIONER, VS. THE SECRETARY OF LABOR AND REPUBLIC BANK, RESPONDENTS.

G.R. No. L-39889. November 12, 1981

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition for review on certiorari of the order dated December 6, 1974 of respondent Secretary of Labor, the dispositive portion of which reads as follows:

"WHEREFORE, the Commission's Decision in so far as that portion of the decision of the Arbitrator dated September 6, 1974, granting clearance to terminate the services of complainant Norberto Luna and dismissing the unfair labor practice are concerned, is hereby affirmed; whereas, that portion awarding separation pay in accordance with the Termination Pay Law is hereby modified, and in lieu thereof said complainant should be granted the sum of TEN THOUSAND PESOS P10,000.00 by way of financial assistance" (pp. 67-68, rec.).

It appears that on April 2, 1974, petitioner filed with the National Labor Relations Commission a complaint against respondent Bank, charging it with unfair labor practice committed against its president Mr. Norberto Luna, for harassment, unjust suspension from his employment as Manager of respondent's San Juan branch and as member of the Board of Trustees of the RB Provident Fund, as well as his unlawful dismissal as Administrator and Secretary of the said fund, all due to his militant espousal and defense of workers' rights (p. 16, rec.).

On April 15, 1974, a supplemental complaint was filed by the same petitioner with the allegation that after filing of the original complaint, the respondent Bank followed up its harassment of Mr. Luna by terminating his employment as Branch Manager and as trustee, administrator and secretary of the RB Provident Fund purportedly due to his libelous remarks against the bank management (pp. 18-19, rec.). Such termination was effected through a letter dated April 5, 1974 of the Bank President, Mr. Pablo Roman to the said Mr. Luna, citing as basis thereof (1) grave misconduct for making derogatory and libelous remarks against the bank management as a whole and against the assistant vice-president in particular, and (2) insubordination for refusal to obey the lawful order of his superior, the Chairman of the RB Provident Fund (pp. 206-207, NLRC rec.). The termination was to take effect upon receipt by the bank of the necessary clearance from the Secretary of Labor pursuant to Section 11, PD 21, and Section 25 of the Rules and Regulations of the NLRC dated October 18, 1972 (pp. 180-181, NLRC rec.).

On May 20, 1974, respondent bank filed its answer, denying the allegations in both the original as well as the supplemental complaint and contending that Mr. Luna's suspension and subsequent dismissal from his various positions were for cause and had nothing to do with his alleged espousal and defense of workers' rights (pp. 20-21, rec.).

On October 6, 1974, a decision (pp. 58-65, rec.) was rendered by Flavio P. Aguas, NLRC Arbitrator, with the conclusion that Luna actually made the derogatory remarks against the officers of the bank. The said decision has the following pronouncements:

"In the interest of justice and equity, however, complainant's dismissal should be considered as without

sufficient just cause.

"Conformably to the foregoing, let clearance to terminate the services of Norberto Luna be granted to Republic Bank which is hereby ordered to pay the complainant separation pay in accordance with the Termination Pay Law.

"The charges of unfair labor practice against the employer is hereby dismissed."

From this decision, petitioner appealed to the National Labor Relations Commission, which affirmed en toto the said decision on October 17, 1974 (p. 39, rec.).

On October 29, 1974, petitioner appealed to respondent Secretary of Labor (pp. 40-48, rec.), and on December 6, 1974, the latter issued an order the dispositive portion of which has been quoted above, affirming the decision insofar as it granted clearance for the termination of employment of Mr. Norberto Luna and dismissing the unfair labor practice charge, and modifying the portion granting him separation pay, and in lieu thereof, ordering the payment to him of P10,000.00 as financial assistance. The said order of the Secretary of Labor is the subject of the present petition.

The antecedent facts of this case are as follows:

The Republic Bank Provident Fund was established pursuant to the collective bargaining agreement between the employees and respondent bank, and became operational in 1970 for the benefit of the officers and employees of the Republic Bank. Member-ship therein was open to all full-time officers and employees of the bank on a regular salary basis. The sources of its fund include contributions from members equivalent to 2% of their basic monthly salary and of the bank equivalent to 6% of the basic monthly salary of the members, annual donations of the bank, fines and penalties (please see Sections 1 and 3, Rules and Regulations of the RB Provident Fund, p. 270-A, NLRC rec.). The fund is supposed to be managed by a Board of Trustees composed of five (5) members, of which three (3), including the chairman, are supposed to be designated by the bank president, and the other two are the presidents of the Republic Bank Union of Supervisors and of the Republic Bank Employees' Union (Sec. 7, supra).

Shortly after the fund became operational, Mr. Norberto Luna, president of the petitioner union and ex-officio member of the fund's Board of Trustees, became the fund's administrator and secretary. During the three (3) years of his incumbency as administrator, the resources of the fund grew from P278,445.27 to P1,779,159.85 (p. 5 of petition and p. 4 of respondent's brief, pages 7 and 149 of the records, respectively).

In February 1974, the respondent bank decided to establish a money market department (p. 5 of petition and p. 5 of appellees' brief, supra). This was pursuant to the authority granted by the Central Bank to operate a quasi-banking operation on December 17, 1973 (p. 296, NLRC rec.).

Prior to the February meeting of the Provident Fund Board of Trustees, or on January 22, 1974, Mr. Restituto C. de Vera, an assistant vice-president of respondent bank, was designated to replace Mr. Jose C. Lugod during the latter's leave of absence as member of the Board of Trustees (p. 316, NLRC rec.).

On February 12, 1974, at the meeting of the Board of Trustees of the RB Provident Fund, Mr. de Vera proposed a reorganization of the fund in order to carry out the instruction of the (respondent's) Board of Directors, which wants to have control of the fund so as to tie it up with the Investment Money Market Operations of the bank (p. 296, NLRC rec.). Mr. Luna vehemently objected to this, saying that the Provident Fund does not belong to the respondent bank but to the officers and employees. A heated discussion followed. The reorganization move was carried by a 3 to 2 vote, with all management-appointed trustees voting for it. To protect the interests of the fund, Mr. Luna moved that a trust agreement be executed between the trustees on the one hand and the members of the

provident fund on the other, and that the trustees should execute a bond. It was during the ensuing discussion that Mr. Luna allegedly uttered the libelous remarks as follows:

"The basis of my apprehension is that if management will run the PF, I feel that the management of the RB are experts in distressing the RB and it's a known fact that for the past 10 years the RB has been in distress for which there is no reason why the PF should be controlled by management. Further-more, the latest that Mr. de Vera is harping on is that he has good intentions. The present Board of Trustees decided against giving out a loan to Mr. de Vera who was considered a poor credit risk. Now how can we expect a person who cannot be given a loan and who will now have a say in the PF.

I don't think the PF will allow that.

"xx xx xx.

"As I have said before the personal standing of a trustee is very important so that if a man has a very poor standing and crooked (sic) at that he will be very bad for the interest of the PF. I repeat that the trustees had in the past denied a loan application of Mr. de Vera for the reason that his salary is under garnishment and for a man to be appointed as trustee when his records show that his salary was under garnishment, definitely, the intention of the RB is to appoint unscrupulous people" (pp. 300-301, NLRC rec.).

After more discussion, Mr. Luna's motion was ruled as without merit by the chairman who proceeded to consider the appointment of a new administrator. At this point, Mr. Luna and Mr. Antonio Cañizares, the trustee representing the RB Employees' Union walked out of the meeting. When they were gone, Mr. Mario Galicia, a management-appointed trustee, was unanimously elected new administrator by the three (3) remaining trustees.

On February 21, 1974, Mr. Armando Abad, chairman of the RB Provident Fund, wrote a memorandum to Mr. Luna, asking him to turn over as soon as possible to the new administrator, Mr. Galicia, all his records, papers and documents relative to the operations of the Provident Fund.

Mr. Luna answered him in the following manner:

"To: Mr. Armando Abad Sr. Date: 2/22/74

"From: Mr. Norberto Luna, Administrator

"Subject: TURNOVER OF RECORDS RE: PROVIDENT FUND

"This is with reference to your letter of February 21, 1974. You being a lawyer and therefore relies on facts, should know that I am without doubt whatsoever the Administrator of the Provident Fund. What are these facts?

"1. The Rules and Regulations of the Republic Bank - Provident Fund govern the actions of the Provident Fund, its Board of Trustees and its officers and staff.

"Sec. 7, 3rd to the last paragraph of these 'Rules and Regulations' states: 'The Board of Trustees shall hold regular meetings on the second Tuesday of every month at the hour and place designated by them. If the second Tuesday falls on a holiday, the regular meeting will be held on the first working day following. Any three (3) members of the Board of Trustees shall constitute a quorum to do business, Provided, that at least one of such three (3) members is a trustee representing the Union.'

"2. The transcript of stenographic notes made by Mrs. Evelyn Unson states in page 1 under 'Other Matters'

'DE VERA I would like to move that a reorganization of this Fund be effected.'

"After this, discussion followed and then on page 3, the transcript states:

'ABAD Let us better put this into votation. Those who are in favor of reorganization - 3 voted for and 2 against.'

"Then on page 7 of the transcript it states:

'ABAD You are free to do that as a member of the Board of Trustees and as President of the Supervisor's Union, but we have to go ahead with the motion of Mr. de Vera to appoint a new Administrator.'

"MESSRS. NORBERTO LUNA, ANTONIO CAÑIZARES AND FELIX VILLAFUERTE WALKED OUT AT THIS POINT.

'DE VERA Before I make the motion for a new administrator, I would like to move that all the personal remarks made against me be stricken off the records, my personal affairs have nothing to do as to my being a trustee. I can sue Mr. Luna for slander in court.

'ABAD Deleting of the remarks made by Mr. Luna demeaning Mr. de Vera be carried.

'DE VERA I move that a reorganization of the Provident Fund be made and a new administrator be named. I move that Mr. Mario Galicia be the new administrator.

'ABAD It was moved and seconded that Mr. Galicia be elected the new administrator of the Provident Fund in lieu of Mr. Luna. Unanimous decision.

'GALICIA I would like to make it known that I will temporarily accept this position as administrator pending the final replacement of management's choice of a permanent trustee who will be the administrator of the Provident Fund.'

"THE MEETING ADJOURNED AT 3:00 P.M.

"From the above motions and sequence of discussion you will note the following:

"1. No motion was ever made to declare the position of Administrator vacant nor was there ever a motion to retire, separate, lay off, consider resigned or dismissed the administrator. Therefore I am still administrator.

"2. By the time Mr. de Vera move (sic) that a new administrator be named there was no longer a quorum. Any motion or action of a group of people pretending or holding themselves out as a Board, when there actually was no quorum is illegal.

"Considering that the minutes of this meeting has not yet been confirmed, for you to act on this matter based on your interpretation of what happened, or what you were planning to happen, or what you wished happened is rather dangerous.

"In view of the foregoing, it is requested:

"1. That all loans or any matter that needs the action of the administrator be forwarded to me for appropriate action.

"2. That you stop hindering or delaying the action of the Provident Fund and myself as administrator.

"In this connection I would like to reiterate my request that you as legal officer of the Provident Fund prepare a 'Trust Agreement' between the members of the Provident Fund and the Trustees so this can be discussed and signed in our next meeting.

"I believe that any man who claims to be a trustee but who refuses to sign a trust agreement is committing moral estafa, and is preparing to commit actual estafa.

(SGD) NORBERTO LUNA

Administrator"

On the same date (February 22, 1974) Mr. Abad caused a notice to be sent to all members of the Board of Trustees for a special meeting on February 26, 1974, to take up the following:

- 1) Confirmation of the election of the new administrator;
- 2) Loan applications;
- 3) Maturing Bankers' Acceptances' and
- 4) Other matters (p. 304, NLRC rec.).

Mr. Luna failed to attend the said meeting.

On February 28, 1974 Mr. Abad submitted to the Board of Directors a report on the February 12th incident and its aftermath, and recommended disciplinary action against Luna.

On the same date, a memorandum was sent to Mr. Luna by Antonio P. Roman, Jr., corporate secretary, informing him of Resolution No. 26-1974 of the Board of Directors which suspends him as Branch Manager of the San Juan Branch pending the investigation of the charges contained in Mr. Abad's memorandum, and directing the Committee on Personnel to immediately convene and investigate the said charges (pp. 196--197, NLRC rec.).

On March 4, 1974, the Committee on Personnel headed by Sabino de Leon, Jr. sent Mr. Luna a copy of Resolution No. 26-1974 and of the memorandum-complaint of Mr. Abad dated February 28, 1974, informing him of the charges against him for:

- 1) Dereliction of duties both as trustee of the Republic Bank Provident Fund and as an employee of the bank; and
- 2) Making utterly derogatory and libelous remarks against the entire management of the Republic Bank during the meeting of the Board of Trustees of the Provident Fund held on February 12, 1974 (pp. 198-199, NLRC rec.), and directing him to submit his written answer or explanation to the charges.

On March 5, 1974, Mr. Luna answered Mr. de Leon's letter expressing his belief that his actuations as trustee of the Provident Fund are beyond the authority of the Republic Bank because of the following reasons:

- 1) The PF is a different entity from the RB, having its own Rules and Regulations, its own name, its own source of income and files a separate income tax returns with the BIR;
- 2) His appointment as trustee was not made by the Republic Bank but by the Union of Supervisors; and
- 3) He receives his honoraria from the Provident Fund and not the Republic Bank. Nevertheless, he answered the charges in the following manner:

"However, I am concerned that if I do not answer your charges rumors may float that I am indeed guilty of the same. In order to avoid this, and also to clarify matters and soothe hurt feelings, I make the following point-by-point reply:

"1. In view of the unsystematic way that the charges and its enclosures were made I have to guess what it is that I am accused of in Dereliction of duties. My guess are (1) I did not attend the special meeting called by the Chairman (2) I walked out of the meeting (3) I did not turn over the records, papers, etc. to the new administrator.

"My answer to these are (1) Mr. Armando Abad, Sr.'s claim that I was duly notified on February 24, 1974 of a special meeting is not true, because February 24 was a Sunday and I was in the province at that time. I could

not have been notified on February 25, I was on union leave. I received the notification at 2:00 p.m. on February 26 by telephone from Mrs. Unson. It was then too late for me to attend if I wanted to. Besides I have the right not to attend a meeting if I so desire, just like the other trustees who have absented themselves on various dates.

"2. I walked out of the meeting because I felt disgusted by the rather high-handed attitude of management trustees. Besides it is the right of a trustee to walk out of any meeting, this has been done before by Mr. Abad on the meeting of September 11, 1973.

"3. I did not turn over the records, papers, etc., for reasons that I stated in my letter addressed to Mr. Abad dated February 22, received by him February 26, 1974. Since he did not pursue the matter further I concluded that he agreed to the contents of my letter.

"xx xx xx'

'2. Mr. Luna objected to the motion and said 'The basis of my apprehension is that if management will run the Provident Fund, I feel that the management of the RB are experts in distressing the RB and it is a known fact that for the past 10 years, the RB has been in distress for which there is no reason why the Provident Fund should be controlled by management' (t.s.n., p. 6, copy attached).

"On said page 6 I cannot find any such remarks and I never said that statement. What I said was 'The basis of my apprehension is that if management will run the Provident Fund, I feel that the management of the Republic Bank are not experts and it is a known fact that for the past 10 years, the Republic Bank has been in distress for which reason the Provident Fund should not be controlled by management.' Let me state very clearly that Mrs. Unson is not a court stenographer. Besides, the trustees at this point were talking at the same time making it very hard for Mrs. Unson to take down everything accurately. If you will examine word for word this alleged statement I could not have possibly made such a statement because my position was that management should not run the Provident Fund while this alleged remarks gave reason why management should control it. I quote: 'there is no reason why the Provident Fund should be controlled by management.' To prove further that Mrs. Unson failed to take an accurate record of the discussions, I made other remarks which do not appear at all in her transcript. Messrs. Cañizares and Galicia also made remarks that cannot be found in this transcript. All the trustees can attest to this. In this transcript also, you will find many inconsistencies, hanging sentences, statements attributed to a trustee that were made by another trustee. Statements or motions of trustees that were mangled beyond recognition or understanding. The other persons attending this meeting I am sure can attest to this.

"In other words this transcript is not an exact account of what was said, but is merely an interpretation by Mrs. Unson of what she understood was said.

"In this connection I would like to point out the great dis-service that Mr. Abad would be doing to management by pursuing these charges. Had Mr. Abad waited until the natural course of events had happened one of two things would happen. These are:

"1. The minutes of the meeting would come out signed by me without any unbecoming remarks, as what has happened in the past when there had been heated discussion also but nothing derogatory has ever come out in the minutes and there-fore everybody would be happy since only Mrs. Unson and I would have seen this inaccurate transcript; or

"2. The minutes would come out signed by me with derogatory remarks, in which case my goose is cooked. But unfortunately Mr. Abad jumped the gun. Now it is the transcript that is on trial as to its accuracy, and all sorts of rumors are going on in the Republic Bank that the Union President is being harassed for articulating things that everybody has all along known for the past ten years.

"In view of the foregoing it is requested that this investigation be terminated now and that the case against me be dropped immediately.

Very truly yours,

(SGD) NORBERTO LUNA"

The investigation of the charges against Mr. Luna was held ex-parte on March 6, 18, 21 and 25, 1974. Meanwhile, Mr. Luna was prevented from attending the regular meeting of the PF Board of Trustees on March 12, 1974.

The Investigating Committee submitted its report of investigation (pp. 215-235, NLRC rec.) on March 27, 1974 which became the basis of Resolution No. 40-1974 of the Board of Directors dated March 28, 1974 (p. 186, NLRC rec.), dismissing Mr. Luna for cause, effective upon receipt of the written clearance therefor from the Secretary of Labor pursuant to Section 11 of Presidential Decree No. 21 in conjunction with Section 25 of the Rules and Regulations of the National Labor Relations Commission dated October 18, 1972.

Upon the foregoing premises, it is the contention of the petitioner that:

"1. The respondent Secretary of Labor erred in not considering the utterances of Norberto Luna as falling within the purview of protected labor activity;

"2. Respondent Secretary of Labor erred in authorizing the dismissal of Norberto Luna despite finding that same is without sufficient just cause;

"3. Respondent Secretary of Labor erred in failing to secure the employment tenure of Norberto Luna in consonance with express constitutional mandate;

"4. Respondent Secretary of Labor erred in not finding respondent bank's management guilty of unfair labor practice for the unjustified harassment and dismissal of Norberto Luna on account of his union activities; and

"5. Respondent Secretary of Labor erred in not ordering the reinstatement of Norberto Luna to his various posts, with full back wages from the date of his removal therefrom to the date of his actual reinstatement thereto."

The foregoing assignments of error may be consolidated into the following issues:

1. Whether or not Mr. Luna's utterances and alleged acts of insubordination constitute just cause for his dismissal;
2. Whether or not the dismissal of said Mr. Luna constitutes unfair labor practice.

There are two different versions of the state-ment made by Mr. Luna in the meeting of the Board of Trustees of the RB Provident Fund on February 12, 1974. The management version is that which is quoted on page 4 hereof, and purportedly appearing in the stenographic notes of Mrs. Evelyn Unson, the clerk who took down notes of the meeting. Mr. Luna, however, alleges that the transcript of stenographic notes was not an accurate record of the proceedings, considering that Mrs. Unson was not a court stenographer. Besides, at the time of the alleged utterances, the trustees were talking at the same time.

Mr. Luna contends that what he said was the following:

"The basis of my apprehension is that if management will run the Provident Fund, I feel that the management of the Republic Bank are not experts, and it is a known fact that for the past 10 years the Republic Bank has been in distress for which reason the Provident Fund should not be controlled by Management" (p. 202, NLRC rec.).

Mr. Luna further alleges that his utterances were made in his capacity as trustee representing the Union of Supervisors. It was by reason of his presidency of the said union that he became a trustee, and is therefore supposed to guard the interests of its members. It was precisely in acting out that role that he vehemently opposed the management-inspired proposal to transfer the funds of the Provident Fund to the bank's newly-opened money market department that a heated argument ensued, in the course of which he made the supposedly libelous statements. Luna now argues that his statement should be regarded as falling under protected labor activity and therefore privileged.

There is merit in this contention. A review of the events prior to the ouster of Luna from his position as branch manager of respondent bank and as trustee, administrator and secretary of the Provident Fund will show the following:

1. February 1, 1974: Luna filed with the NLRC an unfair labor practice case against the management, docketed as Case No. LR-2673.

2. February 12, 1974:

a) A meeting of the PF Board of Trustees was held, attended by Mr. Restituto de Vera, a bank Assistant Vice-President who had then just been designated to sit in the board in substitution of a trustee who was on leave.

b) De Vera opened the meeting with the following statement:

"I received word from the Board of Directors, specifically from Mr. Pery that the Provident Fund (PF) is an entity of the Republic Bank because the main bulk of contributions is put up by the RB into the PF so that they would like to have control of the funds of the PF and for that matter the administration of the Fund. Along that line of instruction and in consonance with the creation of the Investment Money Market of the RB the management would like to have control of the administration so that the operation of the PF could be tied up with the operation of the Investment Money Market of the RB. The Central Bank has given us an authority to operate a quasi-banking operation on December 17, 1973. To effect the instruction, I would like to move that a reorganization of this board be effected" (p. 245, NLRC rec.).

c) Mr. Luna, the erstwhile administrator and Secretary of the Fund, vigorously objected.

d) Messrs. Armando Abad (chairman) and Mario Galicia, the two other management-appointed trustees took up the cudgels for de Vera, and forced the issue of reorganization. The same was carried by a vote of 3 to 2, with all the management-appointed trustees voting for it, and the two labor representatives voting against (p. 249, NLRC rec.).

e) Mr. Luna moved that all the trustees execute a trust agreement and a bond in favor of the PF members - to protect the interests of the PF. Messrs. Abad, de Vera and Galicia counter argued against the proposal. Luna remarked: "As long as we are supported by the members of the union, RB must follow. We will fight to protect the interests of the PF. If you insist, there will be labor trouble" (p. 248, NLRC rec.).

f) De Vera questioned Luna's apprehensions. In answer, Luna made the allegedly derogatory statements (p. 249, NLRC rec.).

g) Luna's motion was declared without merit by the chairman, Mr. Abad (p. 250, NLRC rec.).

h) Luna and Antonio Cañizares, the other labor representative, walked out of the meeting.

i) The remaining three [3] trustees unanimously elected Galicia as the new administrator (p. 251, NLRC rec.).

3. February 21, 1974: A memorandum was sent by Chairman Abad to Luna. Subject: Request to turn over

records re Provident Fund (p. 191, NLRC rec.).

4. February 22, 1974: Reply of Luna to Abad and informing of his belief that he is still the administrator because: a] the position of administrator was never declared vacant; b] Mr. Galicia's election was illegal for having been made without the requisite quorum; and c] the minutes of the February 12th meeting has not yet been confirmed (pp. 192-194, NLRC rec.).

A notice of special meeting on February 26, 1974 was released on February 22, 1974, with the copy for Luna being delivered to Mr. Cañizares (p. 304, NLRC rec.).

5. February 26, 1974: A special meeting of the Board of Trustees was held. Both Luna and Cañizares were absent.

6. February 28, 1974:

a) Report of Mr. Abad to the respondent's Board of Directors, recommending administrative action against Luna for having uttered defamatory words against the bank management and against one of its vice-presidents; for walking out of the meeting on February 12, 1974; for refusing to turn over the records of the Provident Fund to the new administrator; and for failure to attend the special meeting for no apparent reason (pp. 236-237, NLRC rec.).

b) Office Memorandum suspending Luna, per Resolution No. 26-1974 of the Board of Directors (pp. 196-197, NLRC rec.).

7. March 4, 1974: Letter of the Chair-man, Committee on Personnel of respondent bank, informing Luna of the charges against him for dereliction of duty and for making utterly derogatory and libelous remarks against the bank management (pp. 198-199, NLRC rec.).

8. March 5, 1974: Answer of Luna to the charges (pp. 200-203, NLRC rec.).

9. March 6, 1974: Administrative investigation of Luna, with witnesses Armando Abad (PF Chairman) and Maximo Galicia (trustee) testifying (pp. 272-275, NLRC rec.). No apparent notice to Luna.

10. March 12, 1974: Regular meeting of the PF Board of Trustees, wherein Luna was prevented from attending because of his suspension.

11. March 18, 1974: Continuation of the administrative investigation of Luna, with witnesses Restituto de Vera (trustee) and Evelyn Unson (stenographer) testifying [pp. 276--281, NLRC rec.]. No apparent notice to Luna.

12. March 19, 1974: Letter of the chairman of the investigating committee (Personnel), inviting Luna to appear if he so desires at the continuation of investi-gation to be held on March 20, 1974 [p. 204, NLRC rec.], at 3:00 p.m.

13. March 21, 1974: Continuation of the administrative investigation of Luna, with Antonio Cañizares (trustee) and Carlos Mora (PF auditor) testifying in the morning [pp. 283-288, NLRC rec.].

As stated in his notice, Luna appeared at the investigation at 3:00 p.m. with his counsel, and it was explained to him that the purpose of inviting him was to find out if he wanted to add anything more to his written explanation (p. 289, NLRC rec.). Luna's counsel questioned the authority of the committee to conduct the investigation, which the committee noted; after which the testimony of Felix Villafuerte (credit investigator) was taken [pp. 291-293, NLRC rec.].

14. March 27, 1974: Report of the Investigating Committee to the Board of Directors, finding Luna guilty of grave misconduct for his derogatory and libelous remarks against the bank manage-ment, and of insubordination, for his refusal to turn over the records of the PF to the new administrator. The report con-tains

a recommendation for Luna's dismissal to take effect upon receipt of the clearance from the Secretary of Labor pursuant to PD 21 (pp. 232-235, NLRC rec.).

15. April 5, 1974:

a) Request of respondent bank for clearance to terminate Luna's services (pp. 208-214, NLRC rec.).

b) Advice to Luna re termination of his employment effective upon receipt of the clearance from the Secretary of Labor (pp. 180-181, NLRC rec.).

These series of events unmistakably show that respondent bank had wanted to do away with Luna even before that eventful February 12th meeting of the PF Board of Trustees, when one of its Assistant Vice-Presidents, de Vera, who had just been appointed to fill the temporary vacancy therein was instructed by the bank's Board of Directors to press for the reorganization of the PF Board of Trustees. This is evident from the words of de Vera when he said, "the management proposed a reorganization because it thinks that a new administration can serve the PF better. You have been tried. Why can we not appoint a new administrator and give us a chance to do things in our way or fashion x x x?" (p. 248, NLRC rec.). The angry reaction and statements that Luna made in the face of this became a convenient tool for the management to use in its desire for Luna's ouster -- and its eventual control of PF funds.

But the evidence presented in this case does not support the findings.

Luna challenged the accuracy of the stenographic notes of the said meeting on the ground that Mrs. Unson was not a court stenographer and her notes do not truly reflect all that transpired during the meeting. He also stated that had the usual procedure been followed the minutes should have been submitted to him first for whatever corrections he might make before being finalized and signed by him (pp. 202-203, NLRC rec.). He further alleged that although he was given a copy of the transcribed notes, and he informed Mrs. Unson that there were errors he would like to correct, he was not able to make such corrections because Mrs. Unson did not want to take orders from him anymore (p. 291, NLRC rec.).

These allegations were never refuted. In fact, Mrs. Unson herself admitted that she was a clerk, "just a mere clerk" (p. 278, NLRC rec.) although it was part of her duties to take down stenographic notes of the discussions in board meetings; that it was likewise routinary for her to submit her transcribed notes to Luna as secretary; and that when she did the same after transcribing her notes of the February 12th meeting, Luna informed her that there were errors, but such errors were never corrected. Since there is nothing in the records to indicate that Luna has been changed as secretary, the minutes should have been signed by him before being officially released. Without such signature, neither probative value nor credibility could be accorded to such minutes; for the one who signed, Abad, is also the accuser of, and therefore biased against Luna.

This leaves only the testimonial evidence to clinch the case against Luna. It appears, however, that of the seven (7) witnesses presented, namely, Abad, Galicia, de Vera, Unson, Cañizares, Mora and Vallesteros, only the first three (3) positively testified as to the alleged derogatory statements. This is understandable, considering that Abad is the accuser, Galicia is the successor, and de Vera was the prime mover of Luna's ouster. Thus, the weakness of the evidence for respondent bank is easily discernible.

Even if it were not so, and had the alleged derogatory or libelous statements been substantially established, still the same will not justify Luna's dismissal.

For one thing, his allegations were never controverted. On the contrary, the said allegations were confirmed by the take-over by the Central Bank of the distressed respondent bank which was of public knowledge.

Moreover, Luna's remarks at the meeting of an official board are privileged in nature as a valid exercise of his constitutional freedom of expression. He addressed his remarks to the body that has jurisdiction over the question of management of the assets of the Provident Fund. Luna's remarks were intended to protect the interests of the members of the Provident Fund from what he honestly believed was a risky venture on the part of management. His protests could even be treated as union activity by the Industrial Peace Act, which assures the employees' right "to self-organization and to form, join or assist labor organizations of their own choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid and protection x x x" (Sec. 3, Rep. Act 875). This is so because Luna's membership in the PF Board of Trustees was by virtue of his being president of the RB Union of Supervisors. The Provident Fund was itself created as a result of the union's collective bargaining agreement with the bank. Luna was therefore acting out his role as protector of his constituents when he voiced out his apprehension and protests over the plan of management. It matters not that he acted singly or individually. What is important is that he had been selected by the supervisors of respondent bank to be their president and representative in the PF Board of Trustees. His actuations as such should therefore be considered as legitimate exercise of the employees' right to self-organization and as an activity for their mutual aid and protection, aside from being privileged communication protected by the constitutional guarantee on free speech. His remarks were in defense of the interest of the Provident Fund, part of which comes from the contribution of the rank and file employees. Moreover, his remarks had factual basis. As heretofore stated, the Central Bank took over the management of the respondent Republic Bank because it became distressed due to mismanagement. And his remarks were addressed to the Board of Trustees which has jurisdiction over the matter.

In *Republic Savings Bank vs. C.I.R.* (21 SCRA 226 [1967] cited with approval in *Philippine Blooming Mills Employees Organization vs. Philippine Blooming Mills, Inc.*, 51 SCRA 189 [1973]), involving the same bank where eight (8) union officials were dismissed for having written and published a patently libelous letter against the bank President, WE held:

"It will avail the Bank none to gloat over this admission of the respondents. Assuming that the latter acted in their individual capacities when they wrote the letter-charge they were nonetheless protected for they were engaged in concerted activity, in the exercise of their right of self organization that includes concerted activity for mutual aid and protection (Section 3 of the Industrial Peace Act x x x). This is the view of some members of this Court. For, as has been aptly stated, the joining in protests or demands, even by a small group of employees, if in furtherance of their interests as such, is a concerted activity protected by the Industrial Peace Act. It is not necessary that union activity be involved or that collective bargaining be contemplated (Annot., 6 A,L.R. 2d 416 [1949]).

"xx xx xx.

"Instead of stifling criticism, the Bank should have allowed the respondents to air their grievances.

"xx xx xx.

"The Bank defends its action by invoking its right to discipline for what it calls the respondents' libel in giving undue publicity to their letter-charge. To be sure, the right of self-organization of employees is not unlimited (*Republic Aviation Corp. vs. NLRB*, 324 U.S. 793 [1945]), as the right of the employer to discharge for cause (*Philippine Education Co. vs. Union of Philippine Education Employees*, L-13773, April 29, 1960) is undenied. The Industrial Peace Act does not touch the normal exercise of the right of the employer to select his employees or to discharge them. It is directed solely against the abuse of that right by interfering with the countervailing right of self organization (*Phelps Dodge Corp. vs. NLRB*, 313 U.S. 177 [1941]). x x.

"xx xx xx.

"In the final sum and substance, this Court is in unanimity that the Bank's conduct, identified as an interference

with the employees' right of self-organization, or as a retaliatory action and/or as a refusal to bargain collectively, constituted an unfair labor practice within the meaning and intendment of section 4(e) of the Industrial Peace Act."

The other basis for dismissal -- insubordination -- appears to be likewise without justifiable ground. Such charge arose out of the alleged refusal of Luna to obey the order of his superior, to turn over the records of the Provident Fund to the new administrator. The "order" referred to was not an order but a letter-request dated February 21, 1974 of Provident Fund Chairman Abad as it was in fact entitled "Request to Turn Over Records re Provident Fund" (p. 191, NLRC rec.). Upon receipt thereof, Luna immediately answered in writing (p. 192, NLRC, rec.), explaining why he feels justified to keep them. And in his answer to the charges, Luna averred that when no follow-up was made thereon, he assumed that his explanation had been satisfactory (p. 201, NLRC rec.). Indeed, the Board of Trustees, upon receipt of such written explanation, should have referred the matter to the grievance machinery under the collective bargaining agreement.

But no, this was not done. Instead, management preferred as many charges as it could frame against Luna, obviously to make sure that if one charge could not suffice to bring about his ouster, the other charges might produce the desired result. Thus, even his having walked out of the meeting on February 12, 1974, and his absence from the special meeting on February 26, 1974, were included under the heading "dereliction of duty". It was to the credit of the Investigating Committee that the latter charges were ruled out.

All the foregoing shows that Luna's dismissal had no legal justification. In the words of the arbitrator, Flavio P. Aguas, "x x x complainant's dismissal should be considered as without sufficient just cause" (p. 64, rec.).

WE therefore find the respondent then Secretary (now Minister) of Labor to have acted with grave abuse of discretion when he affirmed the grant of clearance to terminate Luna's services with respondent bank on the ground of loss of confidence, despite the fact that the charges against him were not substantiated.

In the case of *Bonifacio de Leon vs. NLRC, et al.* (G.R. No. L-52056, October 30, 1980), WE held:

"While a managerial employee may be dismissed merely on the ground of loss of confidence, the matter of determining whether the cause for dismissing an employee is justified on grounds of loss of confidence cannot be kept entirely to the employer. Impartial tribunals do not rely only on the statement made by the employer that there is loss of confidence unless duly proved or sufficiently substantiated. x x.

"After having served the company for more than 22 years, dismissal would be too severe a penalty for petitioner who was not even afforded an opportunity to be heard. He was just a victim of the whims and malicious maneuver of private respondents."

That the respondent bank tried to maneuver Luna's ouster is evident from the way the investigation was conducted by its Committee on Personnel. As shown in the above narration of events, the testimonies of witnesses -- who were not even under oath -- were taken without notice to Luna and without giving him a chance to cross-examine them. And corporate actions through the Board of Directors, such as filing of charges, suspension and termination, were taken against Luna just as soon as, and on the very same dates the reports are made. Were it not for the filing of this complaint with the NLRC Luna could have been booted out of office without due process.

In the case of *Central Textile Mills, Inc. vs. NLRC, et al.* (L-50150, 90 SCRA 9 [1979]). Chief Justice Enrique M. Fernando, speaking for the Court, ruled:

"The weakness of the petition, to repeat, is thus indisputable. Petitioner, however, would try to impart a substance of plausibility by alleging that even on the assumption that no theft was committed, still there was loss of confidence, sufficient to cause his dismissal. In the Philippine Air Lines decisions referred to, the accusation that theft was committed by the employee was likewise not borne out by the evidence. To justify a

dismissal, management relied on the allegation that there was breach of trust, a ground analogous to loss of confidence. The Court of Industrial Relations did not agree. Neither did this Court. Reinstatement was ordered. So it must be in this case. Such a vague, all-encompassing pretext as loss of confidence, if given the seal of approval by this Court, could easily be utilized to reduce to a barren form of words the constitutional guarantee of security of tenure. Precisely, the employee is afforded that protection so that his means of livelihood is not placed at the mercy of management. He is just as much a participant in the industrial process. He is entitled to be considered as such. Constitutional provisions protecting labor are in line with the predominant thinking all over the world safeguarding human dignity. It would then be to ignore not only a mandate of the fundamental law but also a counsel of wisdom and fair play to impart the concept of loss of confidence such a latitudinarian scope.

"x x x The constitutional provision is not to be so easily brushed aside. If it were other-wise, there would be failure, in the language of the Philippine Air Lines' opinion 'to conform to the ideal of the New Society, the establishment of which was so felicitously referred to by the First Lady as the compassionate Society."

And in the cited case of *Philippine Air Lines vs. PALEA* (L-24626, 57 SCRA 489 [1974]), the Court held:

"The futility of this appeal becomes even more apparent considering the express provision in the Constitution already noted, requiring the State to assure workers 'security of tenure.' It was not that specific in the 1935 charter. The mandate was limited to the State affording 'protection to labor, especially to working women and minors, x x x'. If by virtue of the above, it would not be legally justifiable to reverse the order of reinstatement, it becomes even more readily apparent that such a conclusion is even more unwarranted now. To reach it would be to show lack of fealty to a constitutional command. This is not to say that dismissal for cause is now outlawed. No such thing is intimated in this opinion. It is merely to stress that where respondent Court of Industrial Relations, in the light of all the circumstances disclosed, particularly that it was a first offense after seventeen years of service, reached the conclusion neither arbitrary nor oppressive, that dismissal was too severe a penalty, this Court should not view the matter differently. That is to conform to the ideal of the New Society, the establishment of which was so felicitously referred to by the First Lady as the Compassionate Society."

In the case at bar, Luna, the complaining witness had more than 21 years of service with respondent bank, starting on April 2, 1953. The record is not clear as to what position he first held; but it is undisputed that he was the Branch Manager of respondent bank's San Juan Branch and for eleven (11) years the president of the RB Union of Supervisors. It is like-wise not denied that the Union of Supervisors had, prior to this case, caused the filing of several cases against the bank with the NLRC. According to Arbitrator Aguas, some of these cases had been decided or were settled by the parties. NLRC Case No. LR-729 was decided by the compulsory arbitrator and the parties entered into an agreement as to how to implement the decision. NLRC Case No. 2673 was withdrawn by the unions and submitted the issue to voluntary arbitration (p. 60, rec.). It is evident, therefore, that the respondent bank's predilection to oust Luna was because of his union activities.

The respondent bank, however, argues that Luna's union activities had nothing to do with his dismissal, and that the same was for cause. If Luna's union activism indeed caused his separation, the bank contends, how come it never took action against Antonio Cañizares, the president of the RB Employees' Union, nor against Villafuerte and Mora who were likewise officers of the Union of Supervisors, and who were the credit investigator and appraiser, respectively, of the Provident Fund?

To this, WE may ask the following: Why was not Cañizares cited for dereliction of duty when he also walked out of the meeting on February 12, 1974; failed to attend the special meeting on February 26, 1974 despite notice; and walked out of the meeting on March 12, 1974 after Luna was physically ejected there-from by security guards? The answers to these questions are obvious: Cañizares and the other union officers were not as active and militant

in their defense of union rights, much less did they pose any threat against the respondent bank's plan to control the funds of the Provident Fund which was established as a result of the collective bargaining agreement. Only Luna posed such threat. Understandably therefore, management wanted him out. Forgotten were his almost 22 years of service to the respondent bank without any showing of any irregularity in the performance of his duties during those long years.

All these circumstances taken together indubitably show that Luna's discharge was discriminatory and constituted unfair labor practice under paragraph (5) Section 4 of the Industrial Peace Act. He is therefore entitled to reinstatement with back wages pursuant to the policy to decree back wages not exceeding three (3) years without requiring the parties to submit proof of compensation received from other sources at the time of illegal dismissal until actual reinstatement, in order that judgment in favor of an employee or laborer can be executed without delay (*Luzon Stevedoring Corp. vs. C.I.R.*, 61 SCRA 162).

WHEREFORE, THE ASSAILED ORDER DATED DECEMBER 6, 1974 OF RESPONDENT SECRETARY OF LABOR IS HEREBY SET ASIDE AND THE RESPONDENT REPUBLIC BANK IS HEREBY DIRECTED TO IMMEDIATELY REINSTATE COMPLAINANT NORBERTO LUNA TO HIS FORMER POSITION WITHOUT LOSS OF SENIORITY RIGHTS AND OTHER BENEFITS AND INCREASES RECOGNIZED BY LAW OR GRANTED BY PRIVATE RESPONDENT DURING THE PERIOD OF HIS ILLEGAL DISMISSAL, WITH BACK WAGES EQUIVALENT TO THREE (3) YEARS WITHOUT QUALIFICATION.

THIS DECISION IS HEREBY MADE IMMEDIATELY EXECUTORY.

SO ORDERED.

Teehankee, (Chairman), Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

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