PHILIPPINE DIAMOND HOTEL AND RESORT, INC. (MANILA DIAMOND HOTEL), PETITIONER, VS. MANILA DIAMOND HOTEL EMPLOYEES UNION, RESPONDENT.

G.R. NO. 158075. June 30, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The Court of Appeals, by the assailed decision of November 21, 2002,[1] declared the strike staged by respondent, Manila Diamond Hotel Employee's Union (the union), illegal and its officers to have lost their employment status. It ordered, however, among other things, the reinstatement and payment of backwages to its members.

On November 11, 1996, the union, which was registered on August 19, 1996 before the Department of Labor and Employment (DOLE),[2] filed a Petition for Certification Election[3] before the DOLE-National Capital Region (NCR) seeking certification as the exclusive bargaining representative of its members.[4]

The DOLE-NCR denied the union's petition as it failed to comply with legal requirements, specifically Section 2, Rule V, Book V of the Rules and Regulations Implementing the Labor Code, and was seen to fragment the employees of petitioner.[5]

On June 2, 1997, Francis Mendoza (Mendoza), one of the Hotel's outlet cashiers, was discovered to have failed to remit to the Hotel the amount of P71,692.50 at the end of his May 31, 1997 duty.[6] On being directed to explain such failure, Mendoza claimed that after accomplishing his daily cash remittance report, the union president Jose Leonardo B. Kimpo (Kimpo) also an outlet cashier, who signed the same and dropped his remittances.[7]

Kimpo, who was thus directed to explain why no administrative sanction should be imposed on him for violating the standard procedure for remitting cash collections, informed that he was not aware of any such procedure.

Mendoza was subsequently suspended for one week, it being "the responsibility of the cashier to personally drop-off his remittances in the presence of a witness."[8] In the meantime or on July 14, 1997,[9] he was re-assigned to the Hotel's Cost Control Department.[10]

Through its president Kimpo, the union later notified petitioner of its intention to negotiate, by Notice to Bargain,[11] a Collective Bargaining Agreement (CBA) for its members.

Acting on the notice, the Hotel, through its Human Resource Development Manager Mary Anne Mangalindan, advised the union that since it was not certified by the DOLE as the exclusive bargaining agent, it could not be recognized as such.[12]

The union clarified that it sought to bargain "for its members only," and declared that "[the Hotel's] refusal to bargain [would prompt] the union to engage in concerted activities to protect and assert its rights under the Labor Code."[13]

By Notice[14] to its members dated September 18, 1997, the union announced that its executive officers as well as its directors decided to go on strike in view of the management's refusal to bargain collectively, and thus called for the taking of strike vote.

Petitioner thereupon issued a Final Reminder and Warning[15] to respondent against continuing misinformation campaign and activities which confused the Hotel employees and disturbed their work performance.

The union went on to file a Notice of Strike[16] on September 29, 1997 with the National Conciliation and Mediation Board (NCMB) due to unfair labor practice (ULP) in that the Hotel refused to bargain with it and the rank-and-file employees were being harassed and prevented from joining it.[17]

Conciliation conferences were immediately conducted by the NCMB on October 6, 13, and 20, 1997 during which the union insisted on the adoption of a CBA for its members.[18]

In the meantime, or on or about November 7, 1997, Kimpo filed before the Arbitration Branch a complaint for ULP against petitioner.[19]

More conferences took place between petitioner and the union before the NCMB.

In the conference held on November 20, 1997, the union demanded the holding of a consent election to which the Hotel interposed no objection, provided the union followed the procedure under the law. Petitioner then requested that the election be held in January 1998.[20]

The parties agreed to meet again on December 1, 1997.[21]

In the early morning of November 29, 1997, however, the union suddenly went on strike. The following day, the National Union of Workers in the Hotel, Restaurant and Allied Industries (NUWHRAIN) joined the strike and openly extended its support to the union.[22] At about this time, Hotel supervisors Vicente T. Agustin (Agustin) and Rowena Junio (Rowena) failed to report for work and were, along with another supervisor, Mary Grace U. de Leon (Mary Grace), seen participating in and supporting the strike.[23]

Petitioner thus filed on December 1, 1997 a petition for injunction before the National Labor Relations Commission (NLRC) to enjoin further commission of illegal acts by the strikers.[24]

Mary Grace, who was directed to explain her participation in the strike, alleged that she was merely trying "to pacify the group."[25] Petitioner, finding her explanation "arrogant" and unsatisfactory as her active participation in the strike was confirmed by an eye witness, terminated her services, by communication sent on December 9, 1997, drawing her to file a complaint for illegal dismissal against petitioner.[26] Agustin, who was also terminated, filed a similar complaint against the Hotel.[27]

An NLRC representative who conducted an ocular inspection of the Hotel premises confirmed in his Report that the strikers obstructed the free ingress to and egress from the Hotel.[28]

By Order of December 8, 1998, the NLRC thus issued a Temporary Restraining Order (TRO) directing the strikers to immediately "cease and desist from obstructing the free ingress and egress from the Hotel premises."[29]

The service upon the strikers of the TRO notwithstanding, they refused to dismantle the tent they put up at the employee's entrance to the Hotel, prompting the Hotel's security guards to, on December 10, 1997, dismantle the same during which the strikers as well as the guards were hit by rocks coming from the direction of the construction site at the nearby Land Bank Plaza, resulting to physical injuries to some of them.[30]

Despite the efforts of the NCMB, which was joined by the Department of Tourism, to conciliate the parties, the

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same proved futile.

On January 14, 1998, Rowena, whose services were terminated, also filed a complaint against petitioner for illegal dismissal.

For its part, petitioner filed on January 28, 1998 a petition to declare the strike illegal.

As then DOLE Secretary Cresenciano Trajano's attempts to conciliate the parties failed, he, acting on the union's Petition for Assumption of Jurisdiction, issued on April 15, 1998 an order certifying the dispute to the NLRC for compulsory arbitration, and directing the striking officers and members to return to work within 24 hours and the Hotel to accept them back under the same terms and conditions prevailing before the strike.[31]

On petitioner's motion for reconsideration, then DOLE Acting Secretary Jose Español, Jr., by Order of April 30, 1998, modified the April 15, 1998 Order of Secretary Trajano by directing the Hotel to just reinstate the strikers to its payroll, and ordering that all cases between the parties arising out of the labor disputes which were pending before different Labor Arbiters be consolidated with the case earlier certified to the NLRC for compulsory arbitration.[32] It appears that the said order of the Acting Secretary directing the reinstatement of the strikers to the Hotel's payroll was carried out.

By Resolution of November 19, 1999, the NLRC declared that the strike was illegal and that the union officers and members who were reinstated to the Hotel's payroll were deemed to have lost their employment status. And it dismissed the complaints filed by Mary Grace, Agustin, and Rowena as well as the union's complaint for ULP.[33]

On appeal by the union, the Court of Appeals affirmed the NLRC Resolution dismissing the complaints of Mary Grace, Agustin and Rowena and of the union. It modified the NLRC Resolution, however, by ordering the reinstatement with back wages of union members. Thus it disposed:

> WHEREFORE, in view of the foregoing, the petition is granted only insofar as the dismissal of the union members is concerned. Consequently, the ruling of the public respondent NLRC to the effect that the unionmembers lost their employment status with the Hotel is hereby reversedand set aside. Private respondent Hotel is hereby ordered to immediately reinstate the members with backwages from the time they were terminated. The Court finds no grave abuse of discretion on the part of the NLRC, and therefore affirms the ruling of the NLRC as follows:
>
> (1)
>
> that the strike is illegal;
>
> (2)
>
> that the union officers lost their employment status when they formed the illegal strike; and
>
> (3)
>
> That the dismissal of Ms. Mary Grace U. de Leon, Vicente C. Agustinand Rowena Junio is valid.
>
> SO ORDERED.[34] (Underscoring supplied)

In so ruling, the appellate court noted that petitioner failed to establish by convincing and substantial evidence that

the union members who participated in the illegal strike committed illegal acts, and although petitioner presented photographs of the striking employees, the strikers who allegedly committed illegal acts were not named or identified.[35]

Hence, the present appeal by petitioner faulting the appellate court:

> I
>
> IN ORDERING THE REINSTATEMENT AND THE PAYMENT OF BACKWAGES OF THE INDIVIDUAL RESPONDENTS WHOSE EMPLOYMENT STATUS WERE PREVIOUSLY DECLARED TO HAVE BEEN LOST BY THE NATIONAL LABOR RELATIONS COMMISSION, THE COURT OF APPEALS HAS IN EFFECT DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW WHICH HAS NOT YET BEFORE BEEN DETERMINED BY THIS HONORABLE COURT, [AND]
>
> II
>
> IN [THUS] DEVIAT[ING] FROM ESTABLISHED DOCTRINES LONG SETTLED BY CONSISTENT JURISPRUDENCE ENUNCIATED BY THIS HONORABLE COURT.[36] (Underscoring supplied)

Petitioner argues that:

> IT WAS THE NLRC WHICH DECLARED THAT THE UNION OFFICERS AND MEMBERS HAVE LOST THEIR EMPLOYMENT AS A CONSEQUENCE OF THEIR STRIKE WHICH IT ALSO DECLARED AND FOUND TO BE ILLEGAL.
>
> SUCH BEING THE CASE, IN THE EVENT THE NLRC's DECISION IS NOT UPHELD AS FAR AS THE UNION MEMBERS' LOSING THEIR EMPLOYMENT IS CONCERNED, PETITIONER SHOULD NOT BE HELD LIABLE TO PAY THEIRBACKWAGES.
>
> UNDER THE CIRCUMSTANCES, NEITHER CAN PETITIONERBE VALIDLY DIRECTED TO REINSTATE THEM.[37] (Emphasis and underscoring supplied)

Respondents, upon the other hand, pray for the dismissal of the petition, they arguing that:

> - Respondent [union members] must be reinstated and paid full backwages because their strike was legal and done in good faith.
>
> - Even assuming arguendo, that the strike started as an illegal strike, the union's unconditional offer to return to work, coupled with the hotel's unfair labor practices during the strike, transformed thestrike into a legal strike.
>
> - Even assuming arguendo, that the strike is illegal, the reinstatement of the strikers and the payment of full backwages is consistent withthe ruling in Telefunken Semiconductors Employees Union-FFW v. Secretary, 283 SCRA 145 which states that the individual liability of each of the union officers and members determines whether or not strikers should be reinstated.
>
> - Even assuming arguendo, that the strike is illegal, Article 264 of the Labor Code directs the reinstatement of and payment of fullbackwages to the respondents.[38] (Underscoring supplied)

As did the NLRC and the Court of Appeals, this Court finds the strike illegal.

Article 255 of the Labor Code provides:

> ART. 255. EXCLUSIVE BARGAINING REPRESENTATION AND WORKERS' PARTICIPATION IN POLICY AND DECISION-MAKING
>
> The labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective

> bargaining. However, an individual employee or group of employees shall have the right at any time to present grievances to their employer.
>
> Any provision of law to the contrary notwithstanding, workers shall have the right, subject to such rules and regulations as the Secretary of Labor and Employment may promulgate, to participate in policy and decision-making process of the establishment where they are employed insofar as said processes will directly affect their rights, benefits and welfare. For this purpose, workers and employers may form labor-management councils: Provided, That the representatives of the workers in such labor management councils shall be elected by at least the majority of all employees in said establishment. (Emphasis and underscoring supplied)

As the immediately quoted provision declares, only the labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit is the exclusive representative of the employees in such unit for the purpose of collective bargaining.

The union (hereafter referred to as respondent) is admittedly not the exclusive representative of the majority of the employees of petitioner, hence, it could not demand from petitioner the right to bargain collectively in their behalf.

Respondent insists, however, that it could validly bargain in behalf of "its members," relying on Article 242 of the Labor Code.[39] Respondent's reliance on said article, a general provision on the rights of legitimate labor organizations, is misplaced, for not every legitimate labor organization possesses the rights mentioned therein.[40] Article 242 (a) must be read in relation to above-quoted Article 255.

On respondent's contention that it was bargaining in behalf only of its members, the appellate court, affirming the NLRC's observation that the same would only "fragment the employees" of petitioner,[41] held that "what [respondent] will be achieving is to divide the employees, more particularly, the rank-and-file employees of [petitioner] . . . the other workers who are not members are at a serious disadvantage, because if the same shall be allowed, employees who are non-union members will be economically impaired and will not be able to negotiate their terms and conditions of work, thus defeating the very essence and reason of collective bargaining, which is an effective safeguard against the evil schemes of employers in terms and conditions of work."[42] This Court finds the observation well-taken.

It bears noting that the goal of the DOLE is geered towards "a single employer wide unit which is more to the broader and greater benefit of the employees working force."[43] The philosophy is to avoid fragmentation of the bargaining unit so as to strengthen the employees' bargaining power with the management. To veer away from such goal would be contrary, inimical and repugnant to the objectives of a strong and dynamic unionism.[44]

Petitioner's refusal to bargain then with respondent can not be considered a ULP to justify the staging of the strike.

The second ground alleged by respondent to justify the staging of the strike – that petitioner prevented or intimidated some workers from joining the union before, during or after the strike – was correctly discredited by the appellate court in this wise:

> . . . a careful study of the allegations of petitioners in their petition reveals that it contained general allegations that the Management of the Hotel committed unfair labor practices by refusing to bargain with the union and by alleged acts of union interference, coercion and discrimination tantamount to union-busting. Since it is the union who alleges that unfair labor practices were committed by the Hotel, the burden of proof is on theunion to prove its allegations by substantial evidence.
>
> Moreover, while petitioner Union continues to accuse the private respondent Hotel of violating their constitutional right to organize by busting the Union, this Court cannot overlook the events that transpired

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> prior to the strike that the Union staged on November 29, 1997. It is beyond argument that a conciliatory meeting was still scheduled to be held on December 1, 1997 before the NCMB. In this conciliatory meeting, petitioner Union could have substantiated and presented additional evidences. Thus, as held by the Supreme Court in the case of Tiu vs. National Labor Relations Commission:
> "The Court is not unmindful of this rule, but in the case at bar the facts and the evidence did not establish events [sic] leasta rational basis why the union would [wield] a strike basedon alleged unfair labor practices it did not even bother tosubstantiate during the conciliation proceedings. It is not enough that the union believed that the employer committed acts of unfair labor practice when the circumstances clearly negate even a prima facie [showing to] warrant [such a] belief."

It is also evident from the records of the instant petition, specifically from the Notice of Strike, that their principal ground for the strike was the "refusal of the Hotel Management to bargain collectively with the Unionfor the benefit of the latter's members." In the instant case, it is not disputed that the petitioner UNION is not a certified bargaining unit to negotiate acollective bargaining agreement (CBA) with private respondent Hotel . . . [45] (Underscoring supplied)

On top of the foregoing observations, this Court notes that respondent violated Article 264 which proscribes the staging of a strike on the ground of ULP during the pendency of cases involving the same grounds for the strike.

Further, the photographs taken during the strike, as well as the Ocular Inspection Report of the NLRC representative, show that the strikers, with the use of ropes and footed placards, blockaded the driveway to the Hotel's points of entrance and exit,[46] making it burdensome for guests and prospective guests to enter the Hotel, thus violating Article 264 (e) of the Labor Code which provides:

> ART. 264 (e) No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares. (Emphasis supplied)

Furthermore, the photographs indicate that indeed the strikers held noise barrage[47] and threatened guests with bodily harm.[48]

Finally, the police reports mention about the strikers' exploding of firecrackers, causing the guests to panic and transfer to other areas of the Hotel.[49]

It is doctrinal that the exercise of the right of private sector employees to strike is not absolute. Thus Section 3 of Article XIII of the Constitution, provides:

> SECTION 3. x x x
>
> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law. (Emphasis and underscoring supplied)

Even if the purpose of a strike is valid, the strike may still be held illegal where the means employed are illegal. Thus, the employment of violence, intimidation, restraint or coercion in carrying out concerted activities which are injurious to the rights to property renders a strike illegal. And so is picketing or the obstruction to the free use of property or the comfortable enjoyment of life or property, when accompanied by intimidation, threats, violence, and coercion as to constitute nuisance.[50]

As the appellate court correctly held, the union officers should be dismissed for staging and participating in the

illegal strike, following paragraph 3, Article 264(a) of the Labor Code which provides that ". . .[a]ny union officer who knowingly participates in anillegal strike and any worker or union officer who knowingly participates in thecommission of illegal acts during strike may be declared to have lost his employment status . . ."

An ordinary striking worker cannot, thus be dismissed for mere participation in an illegal strike. There must be proof that he committed illegal acts during a strike, unlike a union officer who may be dismissed by mere knowingly participating in an illegal strike and/or committing an illegal act during a strike.[51]

The appellate court found no convincing and substantial proof, however, that the strikers-members of respondent who participated in the illegal strike committed illegal acts.

> In the present case, private respondent Hotel failed to established [sic] by convincing and substantial evidence that these union members who participated in the illegal strike committed illegal acts. Consequently, they cannot be terminated from service for their participation in an illegal strike. Moreover, private respondent Hotel presented as evidence photographs of the striking employees, the question that comes to our mind is: why were these strikers who allegedly participated in illegal acts not identified or named? Instead the arbitral tribunal found it worthy of credence to summarily dismiss all the union members without them being named or identified . . . [52]

This Court finds otherwise. As reflected above, the photographs show that some of the workers-strikers who joined the strike indeed committed illegal acts – blocking the free ingress to and egress from the Hotel, holding noise barrage, threatening guests, and the like. The strikers were, in a list[53] attached to petitioner's Position Paper[54] filed with the NLRC, named.

The list failed to specifically identify the ones who actually committed illegal acts, however. Such being the case, a remand of the case to the Labor Arbiter, through the NLRC, is in order for the purpose only of determining the respective liabilities of thestrikers listed by petitioner. Those proven to have committed illegal acts during the course of the strike are deemed to have lost their employment, unless they have been readmitted by the Hotel, whereas those not clearly shown to have committed illegal acts should be reinstated.

Whether those ordered reinstated are entitled to backwages is, however, another matter.

For the general rule is that backwages shall not be awarded in an economic strike on the principle that "a fair day's wage" accrues only for a "fair day's labor."[55] Even in cases of ULP strikes, award of backwages rests on the court's discretion and only in exceptional instances.[56]

Thus, J.P. Heilbronn Co. v. National Labor Union,[57] instructs:

> When in case of strikes, and according to the C[ourt of] I[ndustrial] R[elations] even if the strike is legal, strikers may not collect their wages during the days they did not go to work, for the same reasons if not more, laborers who voluntarily absent themselves from work to attend the hearing of a case in which they seek to prove and establish their demands against the company, the legality and propriety of which demands is not yet known, should lose their pay during the period of such absence from work. The age-old rule governing the relation between labor and capital or management and employee is that of a "fair day's wage for a fair day's labor." If there is no work performed by theemployee there can be no wage or pay, unless of course, the laborer wasable, willing and ready to work but was illegally locked out, dismissed orsuspended. It is hardly fair or just for an employee or laborer to fight or litigate against his employer on the employer's time. (Emphasis and underscoring supplied)

This Court must thus hearken to its policy that "when employees voluntarily go on strike, even if in protest against unfair labor practices," no backwages during the strike is awarded.

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In Cromwell Commercial Employees and Laborers Union (PTUC) v. Court of Industrial Relations,[58] this Court made a distinction between two types of employees involved in a ULP: those who are discriminatorily dismissed for union activities, and those who voluntarily go on strike even if it is in protest of an ULP. Discriminatorily dismissed employees were ordered entitled to backpay from the date of the act of discrimination, that is, from the day of their discharge, whereas employees who struck as a voluntary act of protest against what they considered a ULP of their employer were held generally not entitled to backpay.[59]

Jurisprudential law, however, recognizes several exceptions to the "no backwages rule," to wit: when the employees were illegally locked to thus compel them to stage a strike;[60] when the employer is guilty of the grossest form of ULP;[61] when the employer committed discrimination in the rehiring of strikers refusing to readmit those against whom there were pending criminal cases while admitting nonstrikers who were also criminally charged in court;[62] or when the workers who staged a voluntary ULP strike offered to return to work unconditionally but the employer refused to reinstate them.[63] Not any of these or analogous instances is, however, present in the instant case.

Respondent urges this Court to apply the exceptional rule enunciated in Philippine Marine Officers' Guild v. Compañia Maritima[64] and similar cases where the employees unconditionally offered to return to work, it arguing that there was such an offer on its part to return to work but the Hotel screened the returning strikers and refused to readmit those whom it found to have perpetrated prohibited acts during the strike.

It must be stressed, however, that for the exception in Philippine Marine Officers' Guild to apply, it is required that the strike must be legal.[65]

Reinstatement without backwages of striking members of respondent who did not commit illegal acts would thus suffice under the circumstances of the case. If reinstatement is no longer possible, given the lapse of considerable time from the occurrence of the strike, the award of separation pay of one (1) month salary for each year of service, in lieu of reinstatement, is in order.[66]

WHEREFORE, the Decision dated November 21, 2002 of the Court of Appeals is, in light of the foregoing ratiocinations, AFFIRMED with MODIFICATION in that only those members of the union who did not commit illegal acts during the course of the illegal strike should be reinstated but without backwages. The case is, therefore, REMANDED to the Labor Arbiter, through the NLRC, which is hereby directed to, with dispatch, identify said members and to thereafter order petitioner to reinstate them, without backwages or, in the alternative, if reinstatement is no longer feasible, that they be given separation pay at the rate of One (1) Month pay for every year of service.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, JR., JJ., concur.

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[1] Rollo, pp. 592-610.

[2] Id. at 382.

[3] Id. at 109.

[4] Id. at 383.

[5] Ibid.

[6] Ibid.

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[7] Id. at 384.

[8] Ibid.

[9] Id. at 595.

[10] Id. at 385.

[11] Id. at 130; Annex "4."

[12] Id. at 141.

[13] Id. at 143.

[14] Id. at 145.

[15] Id. at 146.

[16] Id. at 150.

[17] Id. at 388.

[18] Id. at 389.

[19] Ibid.

[20] Id. at 596.

[21] Id. at 390.

[22] Id. at 596-597.

[23] Supra note 22.

[24] Ibid.

[25] Id. at 391.

[26] Id. at 597, Vide also rollo, p. 34.

[27] Supra note 26.

[28] Records, Vol. 21, p. 307; rollo, p. 391. In his Ocular Inspection Report dated December 4, 1997, NLRC representative Florentino Darlucio gave the following pertinent account:

> x x x x
>
> In a brief dialogue I had with the strikers, I was informed by their spokesperson, Mr. Danny Estocapio, Chairman of the Board of Directors of the respondent union that they were only preventing cars ofguests/clients to enter the passage way, which was about twenty (20) meters leading to the main door of the petitioner. Some guests/clients [sic]walked their way to the Hotel. Some guests/clients, when their cars wereprevented to enter the passage way and informed by the strikers that theywere on strike, did not pursue their intention of checking-in to the Hotel. x x x (Underscoring supplied)

[29] Supra note 27.

[30] Ibid.

[31] Id. at 43.

[32] Rollo, p. 44. The consolidated cases are as follows:

1)

NLRC NCR 11-07944-97 is a case for unfair labor practice against the Hotel and its officers. It was filed before the strike was held, and it is from thiscase that brought about the instant case;

2)

NLRC NCR-12-08668-97 and NLRC NCR 12-08750-97 are complaints for illegal dismissal filed by individual Mary Grace De Leon and Vicente Agustin, respectively against the Hotel and its officers after they were dismissed;

3)

NLRC NCR 01-00465-98 is also a complaint for illegal dismissal against the Hotel filed by Rowena Junio;

4)

NLRC NCR 01-00955-98 is another unfair labor practice complaint filed by the Union against the Hotel and its officers because of the Hotel's alleged commission of illegal and prohibited acts;

5)

NLRC NCR IC NO. 00760-97 is an injunction case filed by the Hotel against the Union officers and its members;

6)

NLRC NCR 01-00930-98 is the hotel's petition to declare the Union's strike as illegal;

7)

NCMB NCR 09-407-97 is the labor dispute that was the subject of the Union's Notice of Strike. (Rollo, pp. 593-594)

[33] Rollo, p. 400.

[34] Id. at 609-610.

[35] Id. at 607.

[36] Id. at 16.

[37] Id. at 50.

[38] Id. at 689.

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[39] Article 242. Right of legitimate labor organizations. - A legitimate labor organization shall have the right:

(a) To act as representative of its members for the purpose of collective bargaining.

x x x x

[40] Azucena, EVERYONE'S LABOR CODE, 2001 edition, p. 208.

[41] Rollo, p. 396

[42] Id. at 603.

[43] Vide: Philtranco Service Enterprises v. Bureau of Labor Relations, G.R. No. 85343, June 28, 1989, 174 SCRA 388, 397.

[44] Ibid.

[45] Rollo, pp. 601-602.

[46] Vide photographs annexed to Memorandum of petitioner filed with the NLRC on September 15, 1999.

[47] See picture nos. 101, 102, 104, 105, 107, 108, 130, 145, 146, 147, 148, 157, 166, 167 and 182. See also Police Report dated December 18, 1997, Annex "24" (Rollo, p. 167).

[48]See picture nos. 1, 6, and 8.

[49] See Police Reports dated December 17, 1997, Annex "23" (Rollo, p. 166) and December 19, 1997, Annex "25," (Rollo, p. 168).

[50] II Azucena, Supra at 494-495.

[51] Stamford Marketing Corp. v. Julian, G.R. No. 145496, February 24, 2004, 423 SCRA 633, 648; Bascon v. Court of Appeals, G.R. No. 144899, February 5, 2004, 422 SCRA 122, 130; CCBPI Postmix Workers Union v. NLRC, G.R. Nos. 114521 and 123491, November 27, 1998, 299 SCRA 410, 426; Gold City Integrated Port Service, Inc. v. NLRC, G.R. No. 103560, July 6, 1995, 245 SCRA 627, 637-638.

[52] Rollo, p. 607.

[53] Annex "30," "30-A," "30-B" (Rollo. p. 174-176) See page 29 of petitioner's Position Paper filed with the NLRC (Rollo, p. 99).

[54] Rollo, pp. 71-107. See page 29 thereof.

[55] The Philippine Marine Radio Officers' Association v. Court of Industrial Relations, 102 Phil. 373, 381 (1957); Manila Trading and Supply Co. v. Manila Trading Labor Association, 92 Phil. 997, 1000 (1953); Philippines Inter-Fashion, Inc. v. NLRC, G.R. No. L-59847, October 18, 1982, 117 SCRA 659 664; Dinglasan v. National Labor Union, 106 Phil. 671, 676-677 (1959).

[56] II Azucena, Supra, at 518.

[57] 92 Phil. 575, 577-578 (1953).

[58] 120 Phil. 918 (1964).

[59] Vide: Cromwell Commercial Employees and Laborers Union v. Court of Industrial Relations, Supra at 134.

[60] Macleod & Co. of the Phil. v. Progressive Federation of Labor, 97 Phil. 205, 211 (1955).

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[61] Vide: In Davao Free Workers Front v. C.I.R., G.R. No. L-29356, October 31, 1974, 60 SCRA 408, 412-424, this Court found that respondent employer refused to bargain with petitioner union; interfered with and coerced its members to vote for its hand-picked candidate as president of petitioner union; required the members of petitioner union to join the Seven-Up Employees Association, a newly organized labor union obviously sponsored and favored by it with which it immediately executed a collective bargaining agreement granting the members of such new union fringe benefits while refusing to bargain with petitioner union regarding the renewal of their just-expired contract and instead foisting upon petitioner union its unilateral version of a collective bargaining agreement; and filed a notice of lock-out and refused entry to members of petitioner union when the latter refused to accept its unilateral contract version; and that respondent employer's union-busting and discriminatory acts led petitioner union justifiably to declare a strike on August 6, 1957 against respondents' unfair labor practices. It thus held. "The respondent company was found guilty of the grossest form of oppressive and unfair labor practices, discriminatory acts and union–busting activities against petitioners as the aggrieved parties and must bear the full consequences of its acts particularly in the light of its obstinacy in persisting in its refusal to reinstate the unlawfully dismissed nine employees and accept the returning strikers notwithstanding that its appeal to this Court in L-29331 had been rejected in September, 1968."

[62] Vide: Insular Life Assurance Co., Ltd. Employees Association-Natu v. Insular Life Assurance Co., Ltd., No. L-25291, May 5, 1977, 77 SCRA 3, 5.

[63] Vide: Philippine Marine Officers' Guild v. Compania Maritima, Supra at 1123; Cromwell Commercial Employees and Laborers Union v. Court of Industrial Relations, Supra at 929; People's Bank and Trust Company v. People's Bank and Trust Co. Employees Union, No. L-39598, January 13, 1976, 69 SCRA 10, 26.

[64] G. R. Nos. L-20662 and L-20663, March 19, 1968, 22 SCRA 1113.

[65]Ibid, p. 1122. In the said case, petitioner's claim that it was an abuse of discretion to disallow back wages to workers who abandoned their legal strike but were refused reinstatement in spite of their unconditional offer to return to work was rejected by this Court which held that this contention has for its premises: (1) that the strike was legal; (2) that there was an unconditional offer to return to work, and (3) that the strikers were refused reinstatement.

[66] Vide: Gold City Integrated Port Service, Inc. v. NLRC, G.R. No. 103560, July 6, 1995, 245 SCRA 627, 642; Maranaw Hotels and Resort Corporation v. NLRC, 363 Phil. 163, 168 (1999).

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