

**DE LA SALLE UNIVERSITY AND DR. CARMELITA I. QUEBENGCO
PETITIONERS, VS. DE LA SALLE UNIVERSITY EMPLOYEES
ASSOCIATION (DLSUEA-NAFTEU), RESPONDENT.**

G.R. No. 177283. April 07, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On challenge by the De La Salle University and its Executive Vice President Dr. Carmelita I. Quebengco (petitioners) via the present petition for review on certiorari is the Court of Appeals First Division Decision of September 16, 2005[1] in CA-G.R. No. SP No. 81220 which SET ASIDE the National Labor Relations Commission (NLRC) Second Division Orders of June 26, 2003 and September 30, 2003 affirming the dismissal of the complaint for Unfair Labor Practices (ULP) filed by De La Salle University Employees Association (respondent), and directed the NLRC Second Division to transmit the records of the said complaint to the NLRC Third Division.

The antecedent facts of the case are as follows:

In 2001, a splinter group of respondent led by one Belen Aliazas (Aliazas group) filed a petition for conduct of elections with the Department of Labor and Employment (DOLE), alleging that the then incumbent officers of respondent had failed to call for a regular election since 1985.

Disputing the Aliazas group's allegation, respondent claimed that an election was conducted in 1987 but by virtue of the enactment of Republic Act 6715,[2] which amended the Labor Code, the term of office of its officers was extended to five years or until 1992 during which a general assembly was held affirming their hold-over tenure until the termination of collective bargaining negotiations; and that a collective bargaining agreement (CBA) was executed only on March 30, 2000.

Acting on the petition for the conduct of election filed by the Aliazas group, the DOLE-NCR held, by Decision of March 19, 2001, that the holdover authority of respondent's incumbent set of officers had been extinguished by virtue of the execution of the CBA. It accordingly ordered the conduct of elections to be placed under the control and supervision of its Labor Relations Division[3] and subject to pre-election conferences.

The conditions for the conduct of election imposed by the DOLE-NCR notwithstanding, respondent called for a regular election on July 9, 2001, without prior notice to the DOLE and without the conduct of pre-election conference, prompting the Aliazas group to file an Urgent Motion for Intervention with the Bureau of Labor Relations (BLR) of the DOLE. The BLR granted the Aliazas group's motion for intervention three days before the intended date of election or on July 6, 2001 and thus disposed as follows:

WHEREFORE, without necessarily resolving the merits of the appeal and considering the urgency of the issues raised by appellees and the limited time involved, the motion is hereby GRANTED. Consequently, appellants and or the members of the DLSUEA-COMELEC headed by Mr. Dominador Almodovar or any of

their authorized representatives are hereby directed to cease and desist from holding the general election of DLSUEA officers on 9 July 2001, until further ordered by this Office.

SO ORDERED.[4] (Emphasis and underscoring supplied)

The Aliazas group thereupon, via letter of August 7, 2001 to Brother Rolando Dizon, FSC, President of petitioner DLSU, requested the University "to please put on escrow until such time that an election of union officials has been scheduled and subsequent elections has been held." [5] (Underscoring in the original; emphasis supplied)

Responding to the Aliazas group's request, petitioners, citing the abovementioned DOLE and BLR Orders, advised respondent by letter of August 16, 2001 as follows:

x x x By virtue of the 19 March 2001 Decision and the 06 July 2001 Order of the Department of Labor and Employment (DOLE), the hold-over authority of your incumbent set of officers has been considered extinguished and an election of new union officers, to be conducted and supervised by the DOLE has been directed to be held. Until the result of this election comes out and a declaration by the DOLE of the validly elected officers is made, a void in the Union leadership exists.

In the light of these circumstances, the University has no other alternative but to temporarily do the following:

- Establish a savings account for the Union where all collected union dues and agency fees will be deposited and held in trust; and
- Discontinue normal relations with any group within the Union including the incumbent set of officers.

We are informing you of this decision of the University not only for your guidance but also for the apparent reason that the University does not want itself to be unnecessarily involved in your intra-union dispute. This is the only way that the University can maintain neutrality on this matter of grave concern. (Emphasis and underscoring supplied)

Petitioners' above-quoted move drew respondent to file a complaint against petitioners for Unfair Labor Practice (ULP complaint), claiming that petitioners unduly interfered with its internal affairs and discriminated against its members. The ULP complaint was docketed as NLRC-NCR Case No. S-30-08-03757-01.

During the pendency of its ULP complaint or on March 7, 2002, respondent filed its First Notice of Strike with the Office of the Secretary of Labor (OSL), charging petitioners for 1) gross violation of the CBA and 2) bargaining in bad faith which was certified for compulsory arbitration to the NLRC (certified case). The certified case, docketed as NLRC-NCR CC000222-02, was raffled to the NLRC Third Division.

In the meantime, Labor Arbiter Felipe Pati, by Decision of July 12, 2002, dismissed respondent's ULP complaint. Respondent appealed to the NLRC. The appeal was docketed as NLRC-NCR CA No. 033173-02 and lodged at the NLRC Second Division.

While the dismissal of its ULP complaint was pending appeal before the NLRC Second Division, respondent, on behalf of some of its members, filed four other cases against petitioners which were lodged at the NLRC Second Division.

Respondent thereafter filed in the certified case which was lodged at the NLRC Third Division a motion to have its four other cases and its ULP complaint then pending appeal before the NLRC Second Division to have these cases "subsumed" in the certified case. The NLRC Third Division granted respondent's motion by Order of April 30, 2003. Petitioners moved to reconsider this Order but it was denied, prompting petitioners to elevate the matter via certiorari to the Court of Appeals. This petition, docketed as CA G.R. No. SP-79798, was raffled to the appellate court's Tenth Division.

The NLRC Second Division, in the meantime, affirmed by Decision of June 26, 2003, the dismissal by the Arbiter of respondent's ULP complaint. Respondent thus elevated the case to the Court of Appeals via certiorari, docketed as CA-G.R. No. 81220. This was raffled to the appellate court's First Division.

By Decision of June 17, 2004, the Court of Appeals Tenth Division, to which petitioners' certiorari petition in CA-G.R. No. SP-79798 challenging the April 30, 2003 NLRC Third Division Order "subsuming" respondent's complaints including the ULP Complaint under the certified case, REVERSED the said Order of the NLRC Third Division[6] with respect to the "subsuming" of respondent's ULP complaint under the certified case, the ULP complaint having been, at the time the NLRC Third Division Order was issued, "already disposed of" (dismissed) by the Arbiter and was in fact pending appeal before the NLRC Second Division. Thus the Tenth Division of the appellate court held:

Anent ULP case with docket No. NLRC-NCR Case No. S-30-08-03757-01 raffled to Labor Arbiter Pati for resolution, private respondent gravely erred in including it among the cases to be consolidated with NLRC NCR CC No. 000222-02. The case is obviously no longer under arbitration.

The records show that when complainant-appellee (respondent Union) filed its motion to consolidate the cases on January 28, 2003 and the resolution of the said motion by the Third Division of the NLRC on April 30, 2003 granting the desired consolidation, NLRC-NCR Case No. S-30-08-03757-01 had already been disposed of by Labor Arbiter Pati and was, in fact, already on appeal before the Second Division of the NLRC, docketed therein as NLRC-NCR CA No. 033173-02. According to the Union itself, on June 26, 2003, the NLRC affirmed the decision of Labor Arbiter Pati and on September 30, 2003, it denied the Union's motion for reconsideration. x x x (Citation omitted)

The NLRC had thus already exhausted its jurisdiction over NLRC-NCR CA No. 033173-02. Consequently, the same case is now removed from the ambit of compulsory arbitration and may only be subject of judicial review via the special civil action of certiorari in this Court. But we are not informed if such a judicial action has been taken.[7] (Emphasis and underscoring supplied)

The Court of Appeals First Division subsequently resolving respondent's petition for certiorari in CA-G.R. No. 81220 (which assailed the affirmance by the NLRC Second Division of the Arbiter's dismissal of its ULP complaint), upon the sole issue of "whether the NLRC [Second Division] committed grave abuse of discretion . . . in ignoring the order of the [NLRC] 3[rd] Division declaring subsumed or absorbed [herein respondent's ULP complaint] in the certified case," answered the same in the affirmative via the herein challenged September 16, 2005 Decision. It thus set aside the NLRC Second Division Order affirming the dismissal of respondent's ULP complaint and accordingly ordered said NLRC Second Division to transmit the entire records of the ULP complaint to the NLRC Third Division to which said ULP complaint had priorly been ordered consolidated by the latter Division with the certified case.

WHEREFORE, premises considered, the petition is granted. Accordingly, the Order dated June 26, 2003 of National Labor Relations Commission (NLRC) as well as the Order dated September 30, 2003 are hereby set aside. The 2[nd] Division of the NLRC is hereby directed to transmit the entire records of the case to the 3[rd] Division [of the NLRC] for its resolution.

SO ORDERED.[8] (Underscoring supplied)

Hence, petitioner's petition for review on certiorari at bar.

Petitioners contend that the First Division of the Court of Appeals disregarded the ruling of the appellate court's Tenth Division setting aside the NLRC Third Division Order "subsuming" respondent's ULP complaint, which was lodged at the NLRC Second Division, under the certified case pending with said NLRC Third Division. They

fault the First Division of the appellate court for

I

. . . RULING THAT THE SECOND DIVISION OF THE NLRC COMMITTED SERIOUS ERROR OR GRAVE ABUSE OF DISCRETION WHEN IT AFFIRMED THE RULING OF LABOR ARBITER FELIPE P. PATI DATED 12 JULY 2002 (THROUGH ITS RESOLUTION AND ORDER DATED 26 JUNE 2003 AND 30 SEPTEMBER 2003, RESPECTIVELY) CONSIDERING THAT:

- WHEN THE NLRC'S SECOND DIVISION RENDERED ITS 26 JUNE 2003 RESOLUTION, WHICH DISMISSED THE APPEAL FILED BY THE UNION AND AFFIRMED THE 12 JULY 2002 DECISION OF LABOR ARBITER FELIPE P. PATI IN NLRC NCR CASE NO. 30-08-0357-01 (NLRC NCR CA NO. 033173-02), THE CONSOLIDATION ORDER OF THE NLRC THIRD DIVISION IN NCMB-NCR-NS NO. 03-093-02 (NLRC NCR CC NO. 000222-02) WHICH WAS ISSUED ON 30 APRIL 2003 HAD NOT YET ATTAINED FINALITY.

- . . . [NOT] TAK[ING] COGNIZANCE OF THE DECISION RENDERED BY THE TENTH DIVISION OF THE SAME COURT DATED 17 JUNE 2004, ANNULING AND SETTING ASIDE THE 30 APRIL 2003 AND 28 JULY 2003 RESOLUTIONS OF THE THIRD DIVISION, WHICH ORDERED THE CONSOLIDATION OF ALL CASES FILED BY THE UNION AGAINST THE UNIVERSITY.[9]

In any event, petitioners contend that

II

THE SECOND DIVISION OF THE NLRC DID NOT GRAVELY ABUSE ITS DISCRETION WHEN IT HELD THAT THE PETITIONERS WERE NOT GUILTY OF UNFAIR LABOR PRACTICE, CONSIDERING THAT THE TEMPORARY MEASURES IMPLEMENTED BY THE UNIVERSITY WERE UNDERTAKEN IN GOOD FAITH AND ONLY TO MAINTAIN ITS NEUTRALITY AMID THE INTRA-UNION DISPUTE."[10] (Underscoring supplied)

The petition is partly meritorious.

The June 17, 2004 Decision of the appellate court's Tenth Division setting aside the order of consolidation issued by the NLRC Third Division became final and executory on July 11, 2004. The herein challenged appellate court's First Division Decision reversing the NLRC Second Division Order which affirmed the dismissal of respondent's ULP complaint and directing that the records of said complaint be transmitted to the NLRC Third Division was promulgated on September 16, 2005.

It is thus clear that the appellate court's Tenth Division Decision declaring that the NLRC Third Division's order "subsuming" respondent's ULP complaint (then pending appeal before the NLRC Second Division) under the certified case pending before it (NLRC Third division) had become final and executory on July 11, 2004. Therefore, with respect to the herein challenged Decision of the appellate court's First Division ordering the NLRC Second Division to transmit the records of respondent's ULP complaint to the NLRC Third Division, the same can no longer be effected, the appellate court's Tenth Division ruling having, it bears repeating, become final.

To still transmit to the NLRC Third Division respondent's ULP complaint on appeal which has already been resolved by the NLRC Second Division would lead to absurd consequences.

On the other matter raised by petitioners - that their acts of withholding union and agency dues and suspension of normal relations with respondent's incumbent set of officers pending the intra-union dispute did not constitute interference, the Court finds for respondent.

Pending the final resolution of the intra-union dispute, respondent's officers remained duly authorized to conduct union affairs. The clarification letter of May 16, 2003 issued by BLR Director Hans Leo J. Cacdac enlightens:

We take this opportunity to clarify that there is no void in the DLSUEA leadership. The 19 March 2001 Decision of DOLE-NCR Regional Director should not be construed as an automatic termination of the incumbent officers' tenure of office. As duly-elected officers of the DLSUEA, their leadership is not deemed terminated by the expiration of their terms of office, for they shall continue their functions and enjoy the rights and privileges pertaining to their respective positions in a hold-over capacity, until their successors shall have been elected and qualified.[11] (Emphasis and underscoring supplied)

It bears noting that at the time petitioners' questioned moves were adopted, a valid and existing CBA had been entered between the parties. It thus behooved petitioners to observe the terms and conditions thereof bearing on union dues and representation. It is axiomatic in labor relations that a CBA entered into by a legitimate labor organization and an employer becomes the law between the parties, compliance with which is mandated by express policy of the law.[12]

Respecting the issue of damages, respondent, in its Position Paper before the Labor Arbiter, prayed for the award of exemplary damages, nominal damages, and attorney's fees.

Exemplary or corrective damages are imposed by way of example or correction for the public good in addition to the moral, temperate, liquidated or compensatory damages. While the amount of exemplary damages need not be proved, respondent must show proof of entitlement to moral, temperate or compensatory damages before the Court may consider awarding exemplary damages. No such damages were prayed for, however, hence, the Court finds no basis to grant the prayer for exemplary damages.

Nonetheless, the grant of nominal damages and attorney's fees to respondent under Article 2221[13] and Article 2208 (8)[14] of the Civil Code, respectively, is in order.

WHEREFORE, the petition, insofar as the challenged Court of Appeals First Division Decision ordering the transmittal by the NLRC Second Division of the records of respondent's ULP complaint to the NLRC Third Division is concerned, has become moot.

In so far as the petition involves the merits of the NLRC Second Division Decision is concerned, the same is REVERSED and a NEW one is entered finding petitioners liable for Unfair Labor Practice, and ordering them to pay respondent nominal damages in the amount of P250,000 and attorney's fees in the amount of P50,000.

SO ORDERED.

Quisumbing, (Chairman), and Tinga, JJ., concur.

Brion, J., see concurring opinion and dissenting opinion.

Velasco, Jr., J., join the concurring and dissenting opinion of J. Brion.

[1] Penned by former Presiding Justice Romeo A. Brawner with the concurrence of Associate Justices Edgardo P. Cruz and Jose C. Mendoza; CA rollo, pp. 488-496.

[2] An Act to Extend Protection to Labor, Strengthen the Constitutional Rights of Workers to Self Organization, Collective Bargaining and Peaceful Concerted Activities, Foster Industrial Peace and Harmony, Promote the Preferential Use of Voluntary Modes of Settling Labor disputes and reorganize the National Labor Relations Commission, amending for these purpose certain provisions of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, appropriating funds therefore and for other purposes.

[3] Decision of March 19, 2001.

[4] NLRC records, p. 203.

[5] Id. at p. 204.

[6] Penned by Associate Justice Salvador J. Valdez, Jr. with the concurrence of Associate Justices Rebecca De Guia-Salvador and Aurora Santiago-Lagman; CA rollo, pp. 520-530.

[7] Rollo at pp. 393-394.

[8] CA rollo, p. 495.

[9] Rollo, p. 22.

[10] Ibid.

[11] Rollo, p. 286

[12] TSPIC Corporation v. TSPIC Employees Union (FFW), G.R. No. 163419, February 13, 2008, 545 SCRA 215, 225 citing Honda Phils. Inc. v. Samahan ng Malayang Manggagawa sa Honda, G.R. No. 145561, June 15, 2005, 460 SCRA 186, 190-191.

[13] Article 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. (Underscoring supplied)

[14] Article 2208 (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. (Underscoring supplied)

CONCURRING AND DISSENTING OPINION

BRION, J.:

I concur and dissent from the ponencia as explained below.

The Facts:

The labor dispute traces its roots to the 15-year delay in the holding of an election of officers of the De La Salle University Employees Association (DLSU) -NAFTEU (union). Allegedly, the delay was approved by the general union membership under the condition that the officers would have holdover status until a collective bargaining agreement (CBA) was signed with the employer, the De La Salle University (De La Salle).

A CBA was duly negotiated and signed on March 30, 2000, but no union election followed until a group within the Union led by Ms. Belen Aliazas (Aliazas group) filed a petition for union election in 2001 with the Department of Labor and Employment, National Capital Region (DOLE-NCR). In a decision dated March 19, 2001, the DOLE-NCR called for union election and pre-election conferences, plainly stating that the "rationale for the holdover is already extinguished."

Despite the DOLE-NCR decision, the holdover union officers called for their own election and scheduled it for July 19, 2001, thereby effectively disregarding the mandate in the DOLE-NCR decision for a supervised election. With this development, the Aliazas group filed an urgent motion for intervention with the Bureau of Labor Relations (BLR). The BLR responded by issuing a cease and desist order that effectively cancelled the Union

election scheduled on July 19, 2001.

It was at this point that the Alianzas group wrote De La Salle to ask that the collected Union dues and agency fees be placed in escrow. De La Salle did as requested, citing the DOLE and BLR orders as justification for its action. It also outlined the mechanics of the escrow deposit of the collected union dues.

In reaction, the Union filed a complaint for unfair labor practice (ULP complaint) against De La Salle claiming that the University unduly interfered with its internal affairs. While this ULP complaint was pending, it filed a Notice of Strike with the Office of the Secretary of Labor and Employment charging the University of (1) gross violation of the CBA, and (2) bargaining in bad faith. The Notice of Strike was certified to the National Labor Relations Commission for compulsory arbitration and was assigned to the NLRC 3[rd] Division (NLRC-NCR CA 00222-02)

The Compulsory Arbitration Rulings

The labor arbiter dismissed the ULP complaint prompting the union to appeal to the NLRC (NLRC-NCR CA 033-173-02). The appeal was raffled to the NLRC 2[nd] Division. In the meantime, the union filed four (4) other cases against De La Salle, which were also referred to the NLRC 2[nd] Division.

With this development, the union filed a motion with the NLRC 3[rd] Division handling the certified case, to have the four new cases and the appeal in the ULP complaint pending with the NLRC 2[nd] Division, subsumed under the certified case. The NLRC 3[rd] Division granted the motion.

De La Salle elevated the NLRC 3[rd] Division ruling to the Court of Appeals (CA). The petition - CA G.R. No. SP-79798 - was raffled to the CA 10[th] Division.

In the meantime, the NLRC 2[nd] Division dismissed the union's appeal on the ULP charge in its decision dated June 26, 2003. The union questioned the decision before the CA on a Rule 65 petition for certiorari. The petition was docketed as CA G.R. SP No. 81220 and assigned to the CA 1[st] Division.

The CA Decisions

On June 17, 2004, the CA 10[th] Division reversed the Order of the NLRC 3[rd] Division subsuming the ULP case under the certified case before it. According to the CA 10[th] Division, the ULP complaint had already been disposed of (on July 12, 2002) by the Arbiter and was in fact pending appeal before the NLRC 2[nd] Division when the NLRC 3[rd] Division issued its assailed Order (on April 20, 2003).

In its decision of September 16, 2005, the CA 1[st] Division (apparently unaware of the decision of the CA 10[th] Division) set aside the Order of the NLRC 2[nd] Division (that affirmed the dismissal of the ULP complaint), and ordered the transmittal of the records of the ULP complaint to the NLRC 3[rd] Division. The sole issue the CA 1[st] Division resolved was "whether the NLRC [Second Division] committed grave abuse of discretion. . .in ignoring the order of the [NLRC] 3[rd] Division declaring subsumed or absorbed [herein respondent's ULP COMPLAINT] in the certified case."

Since the decision would have revived a matter the NLRC had already ruled upon, De La Salle brought the CA 1[st] Division ruling to this Court for review through a Rule 45 petition for review on certiorari.

The Petition

Essentially, De La Salle faults the CA 1[st] Division for keeping alive the union's ULP complaint which the labor arbiter had dismissed and which dismissal the NLRC 2[nd] Division had affirmed. De La Salle submits that the CA 1[st] Division erred in ruling that the NLRC 2[nd] Division gravely abused its discretion when it ignored the

NLRC 3[rd] Division Order subsuming the ULP complaint under the certified case.

Despite the absence of a ruling by the CA 1[st] Division on whether it had committed ULP, De La Salle also argues - dwelling on the substantive aspect of the ULP complaint - that it was not guilty of unfair labor practice considering that the temporary measures it implemented were undertaken in good faith and to stay neutral in the face of the intra-union dispute.

The Ponencia

The ponencia nullifies the decision of the CA 1[st] Division in so far as it set aside the dismissal by the NLRC 2[nd] Division of the ULP complaint and ordered the ULP complaint subsumed under the certified case before the NLRC 3[rd] Division. It declares that "to transmit to the NLRC Third Division respondent's ULP complaint on appeal which has already been resolved by the NLRC Second Division would lead to absurd consequences."

On the merits of the ULP charge that the ponencia also ruled upon, it finds De La Salle liable for unfair labor practice and awards nominal damages and attorney's fees to the Union. It holds that De La Salle's interim measure of placing the collected union dues and agency fee in escrow deposit constituted interference in union affairs and, therefore, is an unfair labor practice act.

The Concurrence

I concur with the ponencia in striking down as legally erroneous the CA 1[st] Division decision that the ULP charge before the NLRC 2[nd] Division could be absorbed by the certified Notice of Strike case pending before the NLRC 3[rd] Division. Separately from the reason stated in the Decision, I believe the NLRC 3[rd] Division has no jurisdiction to order that the matter pending before the NLRC 2[nd] Division be "subsumed" in the certified case pending before it.

The various divisions within the NLRC are co-equal bodies and one division cannot order another with binding effect.[1] More importantly, certification for compulsory arbitration is a power lodged by law in the Secretary of Labor and Employment,[2] and is a power not shared with the NLRC or any of its divisions. Only the Labor Secretary can validly order that all pending cases bearing on or related to the notice of strike should be subsumed or consolidated with the certified case. The decision on whether or not to include cases already pending with the certified case, is a matter within the Secretary's discretion. But even the Secretary must justify an order to consolidate by showing the relationships of the cases with one another, taking into account the degree of development of the cases to be consolidated with the strike or notice of strike case. As a matter of practice, cases already submitted for decision are not consolidated with the strike case, unless the resolution of the issues in these cases are ultimately related to and are necessary for the full settlement of the issues.

The Dissent

I dissent from the finding that De La Salle committed unfair labor practice for two reasons. The first reason is procedural and jurisdictional. The second reason relates to the merits of the ponencia's finding of ULP.

a. The Procedural / Jurisdictional Reason.

A look at the root of the ULP complaint shows that it was originally filed with the labor arbiter on the ground of interference with the union's right to self-organization.[3] The labor arbiter found no ULP and the union appealed his ruling to the NLRC. The appeal was raffled to the NLRC 2[nd] Division.

At some point, complications set in because the union also filed a Notice of Strike with the Office of the Secretary of Labor on the grounds of (1) gross violation of the CBA, and (2) bargaining in bad faith. The Office of the Secretary of Labor certified the notice of strike to the NLRC for compulsory arbitration. The case was raffled to

the 3[rd] Division.

The union moved before the NLRC 3[rd] Division that the ULP case with the NLRC 2[nd] Division be "subsumed" under the certified case. The NLRC 3[rd] Division granted the motion, prompting De La Salle to elevate the NLRC 3[rd] Division ruling to the Court of Appeals (CA). De La Salle's petition for certiorari (under Rule 65) was raffled to the CA 10[th] Division.

In the meantime, the NLRC 2[nd] Division ruled on the ULP case on appeal before it, sustaining the Labor Arbiter's ruling that the case should be dismissed. The union questioned the NLRC 2[nd] Division decision before the CA through a Rule 65 petition for certiorari. The petition was docketed as CA G.R. SP No. 81220 and was raffled to the CA 1[st] Division. This division's ruling on the petition is the decision now assailed in the present petition.

For clarity, the assailed decision of the CA 1[st] Division set aside the decision of the NLRC 2[nd] Division that dismissed the ULP charge on appeal and effectively disregarded the NLRC 3[rd] Division order that the ULP charge be subsumed under the certified case pending with the NLRC 3[rd] Division; the CA 1[st] Division decision thus ordered the records of the ULP charge transmitted to the NLRC 3[rd] Division. The union did not appeal from the CA 1[st] Division decision. Parenthetically, the union brought the ULP case to the CA 1[st] Division on a Rule 65 petition for certiorari that does not stop the running of the period for finality of the NLRC 2[nd] Division decision; its finality can be thwarted only by a CA 1[st] Division finding that it was issued with grave abuse of discretion. While the CA 1[st] Division voided the NLRC 2[nd] Division decision, the CA's action was based on a reason other than the merits of the NLRC 2[nd] Division's confirmation that the ULP case should be dismissed.

Based on these developments, the lone issue that is before the Court in this Rule 45 petition for review on certiorari, is the legal correctness of the CA 1[st] Division's ruling that the ULP case should be referred back to the NLRC 3[rd] Division for decision. No other aspect of the ULP case is before us and we will act outside our jurisdiction if we rule on the merits of the ULP charge against De La Salle. Even the latter could not have brought the merits of the ULP charge before us since it was not a matter ruled upon in the CA decision under review. If we rule on the merits of the ULP charge, we would effectively be directly passing upon the merits of the NLRC 2[nd] Division's decision affirming the dismissal of the ULP charge. Even on a pure question of law, we cannot directly pass upon this decision since it has long since lapsed to finality.

Thus, if we deny the petition (thus, confirming the legal correctness of the CA 1[st] Division decision), the legal effect is the return of the ULP complaint to the NLRC 3[rd] Division for its disposition. On the other hand, if we grant the petition, the effect is to recognize the finality of the NLRC 2[nd] division decision affirming the dismissal of the ULP complaint for lack of merit.

b. On the Merits of the ULP Charge.

Despite the above position and to meet the ponencia's conclusions on the merits of the ULP charge, I am compelled to register this dissent. I am particularly concerned since ULP is the ultimate offense that can be committed in a labor-management relationship; a ULP strikes at the very heart of the relationship. It is the administrative equivalent of the capital penalty in a criminal case. An administrative finding of ULP, too, can lead to a criminal prosecution for ULP - a consequence the De La Salle management does not deserve under the circumstances of this case.[4]

Because of its nature and consequences, a finding of unfair labor practice charge is not made based alone on the cited ULP act considered in isolation or in the manner the ponencia did - by viewing De La Salle's act outside of

the bigger context of the accompanying labor relations situation. Any perceived act of interference must be examined in terms of the act's inherent import and effects; in light of the surrounding circumstances; and weighed on the basis of the totality of the conduct of the entity charged. These circumstances include the factual setting of the alleged interference; the parties-in-interest or "players" whose interests should be considered in viewing the alleged ULP; the circumstances of the entity charged, particularly its record of anti-union animus; the circumstances of the accuser, particularly whether its own hands are clean; and the presence or absence of prejudice or real violation of employee rights to self-organization.

In viewing the "players" and their interests, consideration cannot be limited to a strictly bi-partite relationship between the union and management. While the Union represents the employees in a unionized setting, the latter - on their own - are live parties with rights to protect, not only against management, but even against their union. The law itself recognizes this employee role through provisions protecting them from their union.[5] The union, on the other hand, is merely the agent of the employees in their collective bargaining agreement with their employer.[6]

The interests of the employees in general, and those of the union as a representative entity, should be given particular attention when an internal dispute among union members exists on the issue of who should act for and in behalf of the union; these interests can be overlooked as the disputing groups' self-interests attain primacy in the heat of the internal dispute. In a dispute such as the present case, it can be a gross misreading of the situation to equate the union to one group of employees to the exclusion of the employees questioning the union leadership. It would likewise be incorrect to conclude that prejudice to the union necessarily results if an intervening act balances the relationship between the two contending group of employees instead of giving one group primacy over the other.

The setting of the alleged ULP must necessarily start from the root cause of the internal union dispute. In this case, a group of employees - the Aliazas group - sought the holding of a union election after the incumbent set of union officers had been in office for 15 years. The Aliazas petition is justified, not only by law, but by the union's own internal rules. To secure an election, the petitioning group went to the Department of Labor and Employment (DOLE) who, conformably with law, called for a supervised election. The incumbent officers, however, refused to follow the DOLE; they openly disregarded the official DOLE intervention and determined for themselves how and when the choice of union leaders would be held. This circumstance cannot be glossed over in considering the background facts as it left the incumbent officers with dirty hands. The defiance of DOLE and the mood that it fostered in the running of De La Salle's operations could not have escaped De La Salle management's attention. Labor relations-wise, this signified that a simple union election had become complicated as one side disregarded the regulatory authority whose presence and effectiveness would have ensured a trouble-free election process.

It was after these complications that the Aliazas group petitioned De La Salle, by letter, to place the collected union dues and agency fees in escrow. This meant that union dues and agency fees would be collected as reflected in the CBA, but the funds would not be released to any specific officer or official until the union leadership issue had been determined. In other words, the funds would be there for the Union, but its release was put on hold. Significantly, De La Salle did not undertake these arrangements out of the blue; its action was based on existing DOLE and BLR orders that recognized the state of uncertainty in the union leadership; the developing internal union situation as the incumbents defied the DOLE; its concern for the interests of its employees in general; and its concern as well and obligation to the De la Salle student population and the general public to ensure that classes are not disrupted however temporarily.

Two questions must have bothered De La Salle when it received the Aliazas group letter. First, did it have to act? And second, was it justified in acting as it did?

Unexpressed, but clearly underlying De La Salle's act, is its concern for its employees in general as parties with interests separate from the interests of the Union and its feuding leaders, as discussed above. In hindsight, it may be easy to say that the interest of the employees in general is outside of De La Salle's concern. In reality, however, hardly anything is outside of the school's concern viewed from the prism of delivering its educational objectives. This is top and foremost. Employees are not far behind as the school's human resources at all levels are its greatest assets.

There, too, is De La Salle's concern to avoid being embroiled in a potentially explosive intra-union dispute that might affect the proper and effective administration of the school. De La Salle is an educational institution and as such must be particularly sensitive to the needs of its clientele - the students and their education; it is duty-bound to maintain stability and order in its operations, not primarily for its own sake, but for that of the students and their parents. For these reasons, no less than the DOLE itself accorded the notice of strike (the union subsequently filed) special treatment; the DOLE certified the notice of strike for compulsory arbitration and enjoined any planned or on-going strike to ensure that no work stoppage would disrupt the classes.

Inevitably, De La Salle's move must be viewed from the perspective of its inherent prerogative to manage its school operations. No less than the Philippine Constitution recognizes that both management and labor must receive protection from the law.[7] We have held as well that "[E]ven as we are solicitous of the interests of the workers and their organizations, the Court has held that management is free to regulate all aspects of employment, including hiring, work assignments, supervision and transfer of employees, work methods, place and manner of work." [8]

The exercise of management prerogative, of course, has its limits, both in the law and by contract, as in this case. The problem confronting De La Salle, however, was not one of outright violation of law and contract, but of how to balance its legitimate concerns with the limitations imposed by law and contract. In this regard, we cannot disregard its good faith in doing what it did. Good faith, incidentally, is a concept that is not unknown in labor relations, albeit mostly in cases involving the labor side, particularly in strike situations.[9] There is no reason, however, why a concept that applies to labor cannot apply to management. The real question in every case is the basis of the act claimed to have been done in good faith - is there a rational basis supporting the claim?[10] The De La Salle situation and its surrounding facts, I believe, provide an occasion for the application of good faith to management.

A factor in De La Salle's favor is the nature of its move; when confronted with a dispute that threatened to involve it, it acted in a measured and calibrated manner; it complied with its CBA undertaking to enforce check-off but at the same time ensured that the checked-off fund would be preserved for those with the unquestioned authority to hold the fund. In other words, faced with a conflict on how to handle the funds it collected and held, it opted for the integrity and preservation of the fund. It should be considered in this regard that as the internal labor dispute was developing, all eyes were on De La Salle because the dispute, despite being labeled as internal, was happening within school premises; involved school employees; and was threatening to affect the continuity of school operations and classes. Anyway it turns, De La Salle could be blamed, if not on the basis of law, at least on the basis of its fairness in handling the situation, particularly of the union funds, as two disputing groups took diametrically opposed and increasingly hardening positions. To be sure, De La Salle could have chosen not to act by viewing matters solely from the prism of its CBA commitments. When it chose to act, De La Salle apparently looked at all the circumstances and opted for the principled way of handling the situation.

An important consideration in this regard is that De La Salle's act does not per se indicate anti-union animus. The letter itself that it sent to the union reflects its clear intent. It said - "this is the only way that the University can maintain neutrality on this matter of grave concern," - thus indicating its intention to its relationship with all union

and employee sectors on an even keel. Further, the records do not show any history of anti-union animus from De La Salle's labor relations record. In fact, it concluded a CBA with the Union in 2000. Significantly, both the labor arbiter and the NLRC - the entities who actually examined the facts of the case - found no anti-union animus and thus confirmed that no unfair labor practice took place. I bring this up in light of our established ruling that:[11] "[N]ecessarily, determining the validity of an employer's act involves an appraisal of his motives. In these cases motivations are seldom expressly avowed and avowals are not always candid. Thus, there must be a measure of reliance on the administrative agency. It is for the CIR (now NLRC), in the first instance, to weigh the employer's expressed motive in determining the effect on the employees of management's otherwise equivocal act." Thus, from all the surrounding circumstances, there appears to be neither patent nor latent anti-union animus or any other circumstance supporting the conclusion that De La Salle committed unfair labor practice when it acted as it did.

A problem that has to be confronted in viewing De La Salle's balancing act, is the incumbent officers' loss of primacy and effective control over the funds - a reality that the ponencia capitalizes on as a prejudice caused to the union and to the employees' self-organization rights.

Viewed in isolation, particularly in light of the check-off provision of the existing collective bargaining agreement, it may be tempting at first blush to conclude that De La Salle had in fact favored one faction of the union against another. The background of the labor relations problem outlined above, however, shows that the situation is more complicated than that of one group of employees fighting another over union leadership. Nor is it a labor vs. management issue since the core problem does not involve a direct union-management confrontation on an adversarial point. As already mentioned above, I do not believe that the interest of a group of employees, in an internal dispute with another group from the same union, should be equated with the interests of the union and of all the employees comprising the union or the bargaining unit. The larger concern should be about the interests of the union itself and the employees as a whole; from the perspective of the fund (that belongs to the union and not to any group of employees), these funds should be protected for the union. In this sense and under the background developments of the dispute, De La Salle's move offered the greatest amount of protection while at the same time causing the least interference in labor-management relations and in school operations. Thus, rather than the tendency to interfere with internal union affairs and the exercise of employee rights, De la Salle acted in a way protective of these rights. It collected and preserved the corpus of the collected funds pending the representation controversy, for the union and its members (the contending groups of employees included), for remittance to the duly elected union officials with appropriate authority to hold the funds. It therefore discharged its duty under the CBA and the law to check-off union dues and agency fees and to deliver these to the union. In due time after an authoritative ruling from the Secretary of Labor, it released the funds to the Union.

Another fault, in hindsight, was the unilateral character of De La Salle's move; it acted completely outside of the DOLE's authority when an internal union leadership issue was already pending before it (the DOLE). It should have taken cognizance of the official DOLE presence and duly notified it of the circumstances of the escrow deposit, holding the funds subject to DOLE disposition and action. I see this, however, as a problem in the application of the law and the handling of management affairs during the union's internal dispute. It was a matter traceable, more than anything else, to the quality of the legal advice the school secured when it was confronted with the Aliazas letter. Thus, this aspect of De La Salle's move should not detract from the essential good faith that it exhibited.

A last point on the ponencia's finding of ULP is its reliance on a letter by Director Hans Cacdac of the BLR. The ponencia claims that De La Salle should have relinquished control over the union funds to the Union after the BLR Director Cacdac issued on May 16, 2003 his clarification on the matter of union dues.

I draw attention to the fact that at about the time of the Director's alleged clarification, the issue on the escrow deposit was a live issue already being arbitrated as an unfair labor practice case before the NLRC. The Labor Arbiter ruled on the case on July 12, 2002, but his ruling was appealed to the NLRC which affirmed the Labor Arbiter dismissing the case for lack of merit. There was also a pending case, a Notice of Strike, that was then before the Office of the Secretary of Labor. Among the live issues in that notice of strike was gross violation of the CBA - a ground that conceivably included the failure to abide by the CBA's check-off provision. Significantly, De La Salle released the funds in escrow when ordered to do so by the Secretary of Labor on November 25, 2003.

Considering that the above cited cases were brought by the union itself before the appropriate labor tribunals specifically on the matter of union dues, the BLR Director could not, by mere letter, have authoritatively spoken on the matter such that ponencia can rely on this letter as basis to label De La Salle's action as unfair labor practice.

In light of the foregoing, I vote to grant the petition.

[1] Article 213, Labor Code, as amended by Republic Act No. 9347.

[2] Id. , Article 263(g).

[3] Article 248(a), Labor Code, as amended.

[4] Article 247, Labor Code, as amended.

[5] Id. , Article 241.

[6] Id., Article 255.

[7] Article XIII, Section 3, Philippine Constitution.

[8] Philcom Employees Union v. Philippine Global Communications, G.R. No. 144315, July 17, 2006, 495 SCRA 214.

[9] See: People's Industrial & Commercial Employees and Workers Org. (FFW) v. PICCC, G.R. No. 37687, March 15, 1982, 112 SCRA 430.

[10] See: Tiu, et al. v. NLRC, et al., G.R. No. 123276, August 18, 1997, 277 SCRA 680.

[11] Republic Savings Bank v. CIR, No. L-20303, September 27, 1967, 21 SCRA 226, citing NLRB v. M & B Headwear Co., 349 F2 170.

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