

UST FACULTY UNION, PETITIONER, VS. UNIVERSITY OF SANTO TOMAS, REV. FR. ROLANDO DE LA ROSA, REV. FR. RODELIO ALIGAN, DOMINGO LEGASPI, AND MERCEDES HINAYON, RESPONDENTS.

G.R. No. 180892. April 07, 2009

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This Petition for Review on Certiorari under Rule 45 seeks the reversal of the June 14, 2007 Decision[1] and November 26, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 92236. The CA Decision affirmed the November 28, 2003[3] and July 29, 2005[4] Resolutions of the Third Division of the National Labor Relations Commission (NLRC) in NLRC CA No. 037320-03. These Resolutions, in turn, affirmed the August 15, 2003 Decision of Labor Arbiter Edgardo M. Madriaga in NLRC NCR Case No. 10-06255-96. Entitled *University of Santo Tomas Faculty Union v. University of Santo Tomas, Rev. Fr. Rolando De La Rosa, Rev. Fr. Rodelio Aligan, Domingo Legaspi, and Mercedes Hinayon*, these decisions and resolutions were all in favor of respondents that were found not guilty of Unfair Labor Practice (ULP).

The Facts

On September 21, 1996, the University of Santo Tomas Faculty Union (USTFU) wrote a letter[5] to all its members informing them of a General Assembly (GA) that was to be held on October 5, 1996. The letter contained an agenda for the GA which included an election of officers. The then incumbent president of the USTFU was Atty. Eduardo J. Mariño, Jr.

On October 2, 1996, Fr. Rodel Aligan, O.P., Secretary General of the UST, issued a Memorandum[6] allowing the request of the Faculty Clubs of the university to hold a convocation on October 4, 1996.

Members of the faculties of the university attended the convocation, including members of the USTFU, without the participation of the members of the UST administration. Also during the convocation, an election for the officers of the USTFU was conducted by a group called the Reformist Alliance. Upon learning that the convocation was intended to be an election, members of the USTFU walked out. Meanwhile, an election was conducted among those present, and Gil Gamilla and other faculty members (Gamilla Group) were elected as the president and officers, respectively, of the union. Such election was communicated to the UST administration in a letter dated October 4, 1996.[7] Thus, there were two (2) groups claiming to be the USTFU: the Gamilla Group and the group led by Atty. Mariño, Jr. (Mariño Group).

On October 8, 1996, the Mariño Group filed a complaint for ULP against the UST with the Arbitration Branch of the NLRC, docketed as NLRC NCR Case No. 10-06255-96. It also filed on October 11, 1996 a complaint with the Office of the Med-Arbiter of the Department of Labor and Employment (DOLE), praying for the nullification of the election of the Gamilla Group as officers of the USTFU. The complaint was docketed as Case No.

NCR-OD-M-9610-016 and entitled UST Faulty Union, Gil Y. Gamilla, Corazon Qui, et al., v. Eduardo J. Mariño, Jr., Ma. Melvyn Alamis, Norma Collantes, et al.

On December 3, 1996, a Collective Bargaining Agreement[8] (CBA) was entered into by the Gamilla Group and the UST. The CBA superseded an existing CBA entered into by the UST and USTFU which was intended for the period of June 1, 1993 to May 31, 1998.[9]

On January 27, 1997, Gamilla, accompanied by the barangay captain in the area, Dupont E. Aseron, and Justino Cardenas, Chief Security Officer of the UST, padlocked the office of the USTFU. Afterwards, an armed security guard of the UST was posted in front of the USTFU office.

On February 11, 1997, the med-arbiter issued a Resolution, declaring the election of the Gamilla group as null and void and ordering that this group cease and desist from performing the duties and responsibilities of USTFU officers. This Resolution was appealed to the Director of the Bureau of Labor Relations (BLR), docketed as BLR Case No. A-8-49-97 and entitled UST Faulty Union, Gil Y. Gamilla, Corazon Qui, et al. v. Med-Arbiter Tomas F. Falconitin of the National Capital Region, Department of Labor and Employment (DOLE), Eduardo J. Mariño, Jr., et al. Later, the director issued a Resolution dated August 15, 1997 affirming the Resolution of the med-arbiter. His Resolution was then appealed to this Court which rendered its November 16, 1999 Decision[10] in G.R. No. 131235 upholding the ruling of the BLR.

Thus, on January 21, 2000, USTFU filed a Manifestation[11] with the Arbitration Branch of the NLRC in NLRC Case No. 10-06255-96, informing it of the Decision of the Court. Thereafter, on August 15, 2003, the Arbitration Branch of the NLRC issued a Decision[12] dismissing the complaint for lack of merit.

The complaint was dismissed on the ground that USTFU failed to establish with clear and convincing evidence that indeed UST was guilty of ULP. The acts of UST which USTFU complained of as ULP were the following: (1) allegedly calling for a convocation of faculty members which turned out to be an election of officers for the faculty union; (2) subsequently dealing with the Gamilla Group in establishing a new CBA; and (3) the assistance to the Gamilla Group in padlocking the USTFU office.

In his Decision, the labor arbiter explained that the alleged Memorandum dated October 2, 1996 merely granted the request of faculty members to hold such convocation. Moreover, by USTFU's own admission, no member of the UST administration attended or participated in the convocation.

As to the CBA, the labor arbiter ruled that when the new CBA was entered into, (1) the Gamilla Group presented more than sufficient evidence to establish that they had been duly elected as officers of the USTFU; and (2) the ruling of the med-arbiter that the election of the Gamilla Group was null and void was not yet final and executory. Thus, UST was justified in dealing with and entering into a CBA with the Gamilla Group, including helping the Gamilla Group in securing the USTFU office.

The USTFU appealed the labor arbiter's Decision to the Third Division of the NLRC which rendered a Resolution dated November 28, 2003 affirming the Decision of the labor arbiter. USTFU's Motion for Reconsideration of the NLRC's November 28, 2003 Resolution was denied in a Resolution dated July 29, 2005.

The case was then elevated to the CA which rendered the assailed Decision affirming the Resolutions of the NLRC. The CA also denied the Motion for Reconsideration of USTFU in the assailed resolution.

Hence, we have this petition.

The Issues

- The Honorable Court of Appeals committed serious and reversible error when it dismissed the Petition for

Certiorari in CA-G.R. SP No. 92236 and sustained the National Labor Relations Commission's ruling that the herein respondents are not guilty of Unfair Labor Practice despite abundance of evidence showing that Unfair Labor Practices were indeed committed.

- The Honorable Court of Appeals committed serious and reversible error when it manifestly overlooked relevant facts not disputed by the parties which, if properly considered, would justify a different conclusion and in rendering a judgment that is based on a misapprehension of facts.[13]

The Court's Ruling

The petition must be denied.

UST Is Not Guilty of ULP

Petitioner claims that given the factual circumstances attendant to the instant case, the labor arbiter, NLRC, and CA should have found that UST is guilty of ULP. Petitioner enumerates the acts constituting ULP as follows: (1) Atty. Domingo Legaspi, the legal counsel for the UST, conducted a faculty meeting in his office, supplying derogatory information about the Mariño Group; (2) respondents provided the Gamilla Group with the facilities and forum to conduct elections, in the guise of a convocation; and (3) respondents transacted business with the Gamilla Group such as the processing of educational and hospital benefits, deducting USTFU dues from the faculty members without turning over the dues to the Mariño Group, and entering into a CBA with them.

Additionally, petitioner claims that the CA, NLRC, and labor arbiter ignored vital pieces of evidence. These were the Affidavit dated January 21, 2000 of Edgar Yu, the Certification dated January 27, 1997 of Alexander Sibug, and the picture of a security guard posted outside the USTFU office purportedly to "prevent entry into and exit from the union office."

The concept of ULP is contained in Article 247 of the Labor Code which states:

Article 247. Concept of unfair labor practice and procedure for prosecution thereof.--Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. (Emphasis supplied.)

Notably, petitioner claims that respondents violated paragraphs (a) and (d) of Art. 248 of the Code which provide:

Article 248. Unfair labor practices of employers.--It shall be unlawful for an employer to commit any of the following unfair labor practices:

(a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;

x x x x

(d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters.

The general principle is that one who makes an allegation has the burden of proving it. While there are exceptions to this general rule, in the case of ULP, the alleging party has the burden of proving such ULP.

Thus, we ruled in *De Paul/King Philip Customs Tailor v. NLRC* that "a party alleging a critical fact must support his allegation with substantial evidence. Any decision based on unsubstantiated allegation cannot stand as it will offend due process." [14]

While in the more recent and more apt case of *Standard Chartered Bank Employees Union (NUBE) v. Confesor*,

this Court enunciated:

In order to show that the employer committed ULP under the Labor Code, substantial evidence is required to support the claim. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[15] (Emphasis supplied.)

In other words, whether the employee or employer alleges that the other party committed ULP, it is the burden of the alleging party to prove such allegation with substantial evidence. Such principle finds justification in the fact that ULP is punishable with both civil and/or criminal sanctions.[16]

Given the above rulings of this Court, we shall now examine the acts of respondents which allegedly constitute ULP.

With regard to the alleged derogatory remarks of Atty. Legaspi, the three tribunals correctly ruled that there was no evidence to support such allegation. The alleged evidence to support petitioner's claim, the Affidavit dated January 21, 2000 of Yu, is unacceptable. In the Affidavit it is stated that: "6. That in the said meeting, Atty. Legaspi gave the participants information that are derogatory to the officers of the UST Faculty Union." [17]

It may be observed that the information allegedly provided during the meeting as "derogatory" is a conclusion of law and not of fact. What may be derogatory to Yu may not be punishable under the law. There was, therefore, no fact that was established by the Affidavit. Hence, petitioner failed to present evidence in support of its claim that respondents committed ULP through alleged remarks of Atty. Legaspi.

As to the convocation, petitioner avers that: "Indeed, Respondents, under the guise of a faculty convocation, ordered the suspension of classes and required the faculty members to attend the supposed faculty convocation which was to be held at the Education Auditorium of the University of Santo Tomas." [18] An examination of the Memorandum dated October 2, 1996 [19] would, however, rebut such allegation. It stated:

MEMORANDUM TO

THE DEANS, REGENTS, PRINCIPALS
AND HEADS OF DEPARTMENTS

Re: Convocation of Faculty Club

As per request of the Faculty Clubs of the different Faculties, Colleges, Schools and Institutes in the University through their Presidents, we are allowing them to hold a convocation on Friday, October 4, 1996 at 9:00 in the morning to 12:00 noon at the Education Auditorium.

The officers and members of said faculty clubs are, therefore, excused from their classes on Friday from 9:00 to 12:00 noon to allow them to attend.

Regular classes shall resume at 1:00 in the afternoon. Please be guided accordingly.

Thank you.

FR. RODEL ALIGAN, O.P. (Sgd.)
Secretary General

In no way can the contents of this memorandum be interpreted to mean that faculty members were required to attend the convocation. Not one coercive term was used in the memorandum to show that the faculty club members were compelled to attend such convocation. And the phrase "we are allowing them to hold a convocation" negates any idea that the UST would participate in the proceedings.

Moreover, the CA ruled properly:

More importantly, USTFU itself even admitted that during the October [4], 1996 convocation/election, not a single University Official was present. And the Faculty Convocation was held without the overt participation of any UST Administrator or Official.[20]

In other words, the Memorandum dated October 2, 1996 does not support a claim that UST organized the convocation in connivance with the Gamilla Group.

Anent UST's dealing with the Gamilla Group, including the processing of faculty members' educational and hospitalization benefits, the labor arbiter ruled that:

Neither are We persuaded by complainant's stand that respondents' acquiescence to bargain with USTFU, through Gamilla's group, constitutes unfair labor practice. x x x Such conduct alone, uncorroborated by other overt acts leading to the commission of ULP, does not conclusively show and establish the commission of such unlawful acts.[21]

The fact of the matter is, the Gamilla Group represented itself to respondents as the duly elected officials of the USTFU.[22] As such, respondents were bound to deal with them.

Art. 248(g) of the Labor Code provides that:

ART. 248. Unfair labor practices of employers.--It shall be unlawful for an employer to commit any of the following unfair labor practice:

x x x x

(g) To violate the duty to bargain collectively as prescribed by this Code.

Correlatively, Art. 250(a) of the Code provides:

ART. 250. Procedure in collective bargaining.--The following procedures shall be observed in collective bargaining:

(a) When a party desires to negotiate an agreement, it shall serve a written notice upon the other party with a statement of its proposals. The other party shall make a reply thereto not later than ten (10) calendar days from receipt of such notice;

Moreover, Art. 252 of the Code defines the duty to bargain collectively as:

ART. 252. Meaning of duty to bargain collectively.--The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreement and executing a contract incorporating such agreements if requested by either party but such duty does not compel any party to agree to a proposal or to make any concession. (Emphasis ours.)

In the instant case, until our Decision in G.R. No. 131235 that the Gamilla Group was not validly elected into office, there was no reason to believe that the members of the Gamilla Group were not the validly elected officers and directors of USTFU. To reiterate, the Gamilla Group submitted a Letter dated October 4, 1996 whereby it informed Fr. Rolando De La Rosa that its members were the newly elected officers and directors of USTFU. In the Letter, every officer allegedly elected was identified with the Letter signed by the alleged newly elected Secretary General and President, Ma. Lourdes Medina and Gamilla, respectively.

More important though is the fact that the records are bereft of any evidence to show that the Mariño Group

informed the UST of their objections to the election of the Gamilla Group. In fact, there is even no evidence to show that the scheduled elections on October 5, 1996 that was supposed to be presided over by the Mariño Group ever pushed through. Instead, petitioner filed a complaint with the med-arbiter on October 11, 1996 praying for the nullification of the election of the Gamilla Group.

As such, there was no reason not to recognize the Gamilla Group as the new officers and directors of USTFU. And as stated in the above-quoted provisions of the Labor Code, the UST was obligated to deal with the USTFU, as the recognized representative of the bargaining unit, through the Gamilla Group. UST's failure to negotiate with the USTFU would have constituted ULP.

It is not the duty or obligation of respondents to inquire into the validity of the election of the Gamilla Group. Such issue is properly an intra-union controversy subject to the jurisdiction of the med-arbiter of the DOLE. Respondents could not have been expected to stop dealing with the Gamilla Group on the mere accusation of the Mariño Group that the former was not validly elected into office.

The subsequent ruling of this Court in G.R. No. 131235 that the Gamilla Group was not validly elected into office cannot support petitioner's allegation of ULP. Had respondents dealt with the Gamilla Group after our ruling in G.R. No. 131235 had become final and executory, it would have been a different story. As the CA ruled correctly, until the validity of the election of the Gamilla Group is resolved with finality, respondents could not be faulted for negotiating with said group.

Petitioner further alleges that respondents are guilty of ULP when on January 27, 1997, "Justino Cardenas, Detachment Commander of the security agency contracted by the UST to provide security services to the university, led a group of persons, including Dr. Gil Gamilla, who padlocked the door leading to the USTFU." [23] Petitioner claims that "Gamilla who was and is still being favored by the employer, had no right whatsoever to padlock the union office. And, yet the Administrators of the University of Santo Tomas aided him in performing an unlawful act." Petitioner adds that an armed security guard was posted at the USTFU office in order to prevent the Mariño Group from performing its duties. [24] To support such contention, petitioner provides as evidence a Certification dated January 27, 1997 [25] of Sibug, a messenger of the USTFU, and a photograph [26] of a security guard standing before the USTFU office.

These pieces of evidence fail to support petitioner's conclusions.

As to the padlocking of the USTFU office, it must be emphasized that based on the Certification of Sibug, Cardenas was merely present, with Brgy. Captain Aseron of Brgy. 470, Zone 46, at the padlocking of the USTFU office. The Certification also stated that Sibug himself also padlocked the USTFU office and that he was neither harassed nor coerced by the padlocking group. Clearly, Cardenas' mere presence cannot be equated to a positive act of "aiding" the Gamilla Group in securing the USTFU office.

With regard to the photograph, while it evidences that there was indeed a guard posted at the USTFU office, such cannot be used to claim that the guard prevented the Mariño Group from performing its duties.

Petitioner again failed to present evidence to support its contention that UST committed acts amounting to ULP.

In any event, it bears stressing that at the time of these events, the legitimacy of the Gamilla Group as the valid officers and directors of the USTFU was already submitted to the med-arbiter and no decision had yet been reached on the matter. Having been shown evidence to support the legitimacy of the Gamilla Group with no counter-evidence from the Mariño Group, UST had to recognize the Gamilla Group and negotiate with it. Thus, the acts of UST in support of the USTFU as the legitimate representative of the bargaining unit, albeit through the Gamilla Group, cannot be considered as ULP.

Finally, petitioner claims that "despite the ruling of this Honorable Court, the University of Santo Tomas still entertains the interlopers whose claim to the leadership of the USTFU has been rejected by the [DOLE] and the Highest Tribunal." [27] Petitioner, however, fails to enumerate such objectionable actions of the UST. Again, petitioner fails to present substantial evidence in support of its claim.

In sum, petitioner makes several allegations that UST committed ULP. The onus probandi falls on the shoulders of petitioner to establish or substantiate such claims by the requisite quantum of evidence. In labor cases as in other administrative proceedings, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required. In the petition at bar, petitioner miserably failed to adduce substantial evidence as basis for the grant of relief.

WHEREFORE, the petition is hereby DENIED. The June 14, 2007 Decision and November 26, 2007 Resolution of the CA in CA-G.R. SP No. 92236 are hereby AFFIRMED.

No costs.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, and Brion, JJ., concur.
Carpio Morales, J., please see dissenting opinion.

[1] Rollo, pp. 42-50. Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Hakim S. Abdulwahid.

[2] Id. at 52-53.

[3] Id. at 85-94.

[4] Id. at 95-96.

[5] Id. at 109.

[6] Id. at 110.

[7] Id. at 111-112.

[8] Id. at 173-210.

[9] Id. at 108.

[10] Id. at 146-172. 318 SCRA 185.

[11] Id. at 144-145.

[12] Id. at 212-225.

[13] Id. at 24.

[14] G.R. No. 129824, March 10, 1999, 304 SCRA 448, 459.

[15] G.R. No. 114974, June 16, 2004, 432 SCRA 308, 323.

[16] Labor Code, Art. 247.

[17] Rollo, p. 211.

[18] Id. at 25.

[19] Supra note 6.

[20] Rollo, p. 48.

[21] Id. at 222.

[22] Id. at 111-112.

[23] Id. at 21.

[24] Id. at 31.

[25] Id. at 135.

[26] Id. at 136.

[27] Id. at 35-36.

DISSENTING OPINION

CARPIO MORALES, J.:

The majority opinion holds that respondents' acts did not amount to unfair labor practice (ULP) primarily because petitioner failed to adduce substantial evidence to support the charge and that in negotiating and eventually concluding a new collective bargaining agreement (CBA) with the Gamilla Group, respondents merely performed their duty to bargain collectively.

I dissent.

Article 248(a) of the Labor Code considers it an Unfair Labor Practice (ULP) for an employer to interfere, restrain or coerce employees in the exercise of their right to self-organization or the right to form association.

In *Insular Life Assurance Co., Ltd. Employees Association - NATU v. Insular Life Assurance Co. Ltd.*,^[1] this Court held that the test of whether an employer has interfered with and coerced employees in the exercise of their right to self-organization is whether the employer has engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employees' rights; and that it is not necessary that there be direct evidence that any employee was in fact intimidated or coerced by statements of threats of the employer if there is a reasonable inference that anti-union conduct of the employer does have an adverse effect on self-organization and collective bargaining.

Petitioners' questioned acts --- allowing the conduct of the convocation which led to the election of the Gamilla Group; having its Chief Security Officer participate in the padlocking of the union office at the instance of the Gamilla Group; and significantly, entering into a new CBA while the old one was still subsisting and during the pendency of an intra-union dispute --- reek of interference.

While, indeed, the onus probandi in ULP cases lies with the party making the charge, in this case the Mariño Group which was ultimately held to be the duly-elected officers of petitioner, contrary to the majority opinion that petitioner failed to discharge said burden, I find that it did prove that respondents were indeed guilty of ULP. It bears emphasis that respondents' questioned acts should be evaluated vis-a-vis the preceding and subsequent attending circumstances, in accordance with the totality of conduct doctrine.

Albeit the October 2, 1996 Memorandum issued by respondent Rev. Fr. Aligan allowing the conduct of the convocation of the University faculty clubs, on which occasion the questioned election of the Gamilla Group was held, did not contain coercive words or terms that would call for mandatory attendance, still, the official suspension of classes to give way to the convocation tended to favor the Gamilla Group. For the convergence of the faculty members gave said group the "captive audience" and opportunity to conduct the ambush election of union officers, the prior scheduling by the incumbent Mariño group of a General Assembly for such election on October 5, 1996 notwithstanding,

In fine, although the Memorandum employed the word "may" to imply that attendance was merely discretionary, that the faculty members were excused from holding their classes and classes were even suspended gave the insinuation that attendance was mandatory and official in nature.

If the Memorandum was not issued by Rev. Fr. Aligan, would the faculty members have attended the "convocation" and would enough votes have been supposedly mustered to elect the Gamilla Group, a procedure which violate the union's by-laws as the Court found in G.R. No. 131235?[2]

Respecting respondents' dealing with the Gamilla Group and executing a new CBA, the same is likewise a clear case of ULP.

It bears noting that this Court's earlier finding in *Mariño et. al v. Gamilla, et. al.*[3] that Case No. NCR-OD-M-9610-016, "*Eduardo J. Mariño, Jr., et al. v. Gil Gamilla, et al.*" which was filed before the Bureau of Labor Relations was neither a labor nor an inter-union dispute, but clearly an intra-union dispute. For what was in question was not representation or composition of the bargaining unit but which, among the contending groups, are the true union officers. Art. 253 of the Labor Code thus applies, viz:

ART. 253. Duty to bargain collectively when there exists a collective bargaining agreement.-When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties. (Emphasis supplied)

Clearly, respondents' act of dealing with and subsequently executing a new CBA with the Gamilla Group, while the old CBA was still in force and effect is a violation of the above-quoted provision and constitutes ULP.

The majority holds that respondents had no reason not to recognize the Gamilla Group and deal with it because records are bereft of a showing that the Mariño Group informed them of its (Mariño Group's) objection to said election and the holding of the General Assembly on October 5, 1996. More particularly, the majority holds that "it is not the duty or obligation of respondents to inquire into the validity of the election of the Gamilla Group" and, therefore, "there was no reason not to recognize the Gamilla Group as the new officers and directors of USTFU."

Two observations, to my mind, militate against this majority ruling. First, whenever a complaint involving intra-union disputes is filed before the DOLE-Bureau of Labor Relations, the petitioner is required to furnish copy thereof to the employer, hence, respondents could not have been unaware that there was a pending controversy on the union leadership as they would have been given a copy of Case No. NCR-OD-M-9610-016, "*Eduardo J. Mariño, Jr., et al. v. Gil Gamilla, et al.*" (not UST Faculty Union et. al. v. Mariño, et. al as stated in the ponencia) filed by the Mariño Group (for nullification of the election of the Gamilla Group) which case was eventually settled in this Court's Decision in G.R. 131235 promulgated on November 16, 1999 in favor of the therein

petitioner. In fact, even much earlier, the Gamilla Group filed a petition with the BLR to stop the scheduled October 5, 1996 elections,[4] a copy of which petition respondents must have been furnished.

Second, the Mariño Group filed the ULP complaint subject of the present petition against respondents as early as October 8, 1996 --- a mere four days after the controversial "convocation/election," hence, respondents were already put on guard of the pendency of several actions before the labor tribunals, months before the new CBA was concluded on December 4, 1996, and hence, should have proceeded with caution in dealing with the Gamilla Group.

Evidently, in executing the new CBA with the splinter group despite knowledge of the intra-union dispute, respondents favored said group - an act which cannot be condoned by simply invoking respondents' duty to bargain collectively. Verily, respondent University is mandated under the law to bargain, but only with the legitimate bargaining representative and, generally, not when there is an existing and valid CBA.

As for the majority opinion that the Mariño group failed to inform respondent University of its objection as "[i]n fact, there was no evidence to show that the scheduled elections on October 5, 1996 even pushed through," a perusal of this Court's Decision in G.R. No. 132400 (Mariño v. Gamilla) would show that said election "did not push through by virtue of the TRO,"[5] hence, the Mariño Group could not be faulted.

Respecting the padlocking incident, that respondent University's Chief Security Officer/Detachment Commander of the security force was then present lent a color of authority and legality to it, thus, again, tending to favor the Gamilla Group. The same holds true with the detail or presence of a guard to secure the USTFU office and deter the Mariño group from entering the premises.

In light of all the foregoing, and applying the totality of conduct doctrine, I submit that respondents' acts --- issuing the assailed Memorandum, dealing with and entering into a CBA with the Gamilla Group despite knowledge of the pending questions on union leadership and the existence of CBA, and authorizing/allowing the presence of the Chief of Security during the padlocking of the USTFU premises and posting a guard thereat --- amount to interference under Article 248 (a) of the Labor Code which constitutes ULP.

I, therefore, vote to grant the petition.

[1] G.R. No. L-25291, January 30, 1971, 37 SCRA 244.

[2] UST Faculty v. Bitonio, Jr., November 16, 1999.

[3] Mariño, Jr. v. Gamila, G.R. No. 132400. January 31, 2005.

[4] Vide Mariño v. Gamilla, supra.

[5] Vide, Mariño, supra.

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