SUPREME COURT
SECOND DIVISION

PEPSI-COLA LABOR UNION-BFLU-TUPAS LOCAL CHAPTER NO. 896,
***Petitioner*,**

-versus-

G.R. No. L-58341
June 29, 1982

NATIONAL LABOR RELATIONS COMMISSION AND PEPSI-COLA BOTTLING COMPANY OF THE PHILIPPINES, INC., NAGA PLANT,
***Respondents*.**
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D E C I S I O N

ABAD SANTOS, *J.*:

This is a petition to review the proceedings in Case No. 82-80 both before the Arbitration Branch, Regional Office No. V, of the Ministry of Labor and Employment (MOLE) and the National Labor Relations Commission (NLRC), 3rd Division.

In a resolution filed on August 17, 1981, by the NLRC, the appeal of Pepsi-Cola Labor Union, BFLU-Tupas, Local Chapter No. 896 (UNION) in NLRC Case No. 82-80 was dismissed. The resolution reads as follows:

> "For Our consideration is an appeal filed by the respondents from the Decision, dated November 20, 1980 of the Labor Arbiter below and a motion to dismiss the appeal filed by the complainant company.
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> "A careful scrutiny of the appeal shows that the respondents-appellants failed to serve/furnish a copy thereof on the adverse party which fact has further been ascertained thru the positive asseveration of the complainant-appellee in its motion to dismiss the appeal.
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> "The failure to serve/furnish a copy of the appeal is a fatal error, as it is in clear violation of Article 223 of the Labor Code and Section 9, Rule XIII Book V of the Rules and Regulations Implementing the Labor Code, as well as Section 3, Rule IX of the Rules of this Commission.
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> "By analogous application, the failure to serve a copy of the appeal on the adverse party stands on the same footing as an appeal filed outside the reglementary period (Broco, et al., vs. CIR, et al., G.R. No. L-12367, October 29, 1959) and that there is no decision of the Labor Arbiter that the respondents-appellants can bring to this Commission for review. (NDC vs. CIR No. L-15422, November 30, 1963). The dismissal of the appeal, therefore, is in order.
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> "WHEREFORE, let the appeal be, as it is hereby DISMISSED, for lack of merit."

The petitioner UNION now claims that the above-quoted resolution (a) is contrary to the facts, (b) is contrary to the law, (c) was issued under highly anomalous and suspicious circumstances, and (d) constitutes a grave abuse of discretion.

The factual background is as follows:

On December 11, 1979, a certification election was held at the Pepsi-Cola Bottling Company's (PEPSI) plant in Naga City. Out of 131 votes which were cast, the UNION got 128 so it regarded itself as the sole

and exclusive bargaining unit. The losing labor group contested the election at various levels but it was unsuccessful. Its petition for review was dismissed by this Court in a resolution dated June 11, 1980 (G.R. No. 51893, Pepsi-Cola Employees and Workers Union [UOEF] et al. vs. Bureau of Labor Relations, etc.).

Meanwhile, on April 1, 1980, the UNION filed a notice of strike with MOLE's Regional Office in Legaspi City on the ground that PEPSI refused to bargain. PEPSI countered that it was willing to bargain but there was yet no final decision on the appeal of the other labor union. On April 25, 1980, Med-Arbiter Antonio B. Caayao issued a resolution with following dispositive portion:

> "WHEREFORE, conformably with the foregoing, the Notice of Strike under consideration, being premature, is illegal and should, therefore, be dismissed. Consequently, any strike staged by virtue of this Notice of Strike shall, likewise, be deemed illegal."

In disregard of the resolution, the UNION staged a strike on May 7, 1980. There are conflicting claims on the duration of the strike. The UNION claims that it was only a one-day strike; PEPSI says the strike lasted for three days. At any rate, a return to work order was issued on May 9, 1980.

On May 15, 1980, PEPSI filed a complaint for unfair labor practice and illegal strike. It was docketed as Case No. 82-80. On November 20, 1980, Executive Labor Arbiter Lolito C. Fulleros rendered a decision which reads in part as follows:

> "On a question of law, the sole issue to be resolved is the legality of the respondents' strike. Like in the Mead Johnson Phil., Inc. case, the complainant submits that the larger question to be answered is how, in such a sensitive and volatile area of national life as labor relations, the Government should react to naked defiance of its authority. That the strike has been declared by the respondent union, its officers and members as listed in Annex "A" of the complaint has been indubitably and substantially established as shown in those supporting documentary evidence submitted marked as Annex "M" which

is xerox copy of the letter of Mr. Amadeo S. Diaz, Acting President, Pepsi-Cola Labor Union-BFLU-TUPAS dated May 7, 1980 to Col. Alejandro Aguirre, Provincial Commander, Province of Camarines Sur; Annex "N", which is the xerox copy of the pleading filed by the respondents in Case No. 1204-80 pending before this Office more particularly paragraph 4 thereof which show respondents' admission of the strike they stage; Annex "O" which is the xerox copy of the return to work order of Med-Arbiter Antonio Caayao; Annex "P" which is the xerox copy of the affidavit of Joseph Abiada, a member of the striking union; Annex "Q" which is the xerox copy of the joint affidavits of Messrs. Ireneo Sta. Romana and Rodolfo Bagar; Annex "R" which is the affidavit of Ismael Teves, Plant Manager of complainant firm in Naga City. The complainant contends that the strike staged and declared by the respondents on May 7, 8 and 9, 1980 is patently illegal, citing the provisions pertinent to the case at bar, Article 264 and 266 of the Labor Code. The petitioner apparently making references to the Mead Johnson Phil., Inc. case argued 'that on the day following the proclamation of Martial Law in this country, the President of the Philippines, in order to restore the tranquility and stability of the nation in the quickest possible manner, and to avoid occasions and actions that would cause hysteria or panic among the populace, or would incense the people against their legitimate government, or would generate sympathy for the radical and lawless elements, or would aggravate the already critical political and social turmoil ... prevailing throughout the land, issued General Order No. 5 which strictly prohibited all rallies, demonstrations and other forms of group actions by persons within the geographical limits of the Philippines, including strikes and picketing.' That for a considerable time after the issuance of General Order No. 5, the prevailing general impression was that strikes were banned in all industries vital or not, so that, with the exception of sporadic and abortive groups actions in certain industrial establishments, practically no strike was staged anywhere in the country. It was perhaps as an immediate reaction to sporadic and abortive group actions in some industrial establishments and for other purposes intended to further stabilize industrial peace in the country, that Presidential Decree No. 823 was promulgated which is now

embodied as Article 264, 265, 266 and 267 of the Labor Code. That the ultimate aim of PD 823 is not different from that of General Order No. 5. Thus, the decree's preamble speaks among other things of the need for stabilizing labor-management relations and industrial peace of factors essential to national security and to the purposeful pursuit of economic development and social justice for all our people, as well as to protect the gains of the new society. PD 823 therefore is important for the preservation no less of our institutions. It is an expression of the State's desire to protect itself to sustain the momentum of reform that it has launch for the general welfare, to preserve the gain it has so far won and to prevent the recurrence of the chaotic situation that made imperative in the first place the declaration of Martial Law as an act of self-defense on the part of the state. There could be no doubt that strikes are allowed in non-vital industries, but only on the grounds of unresolved economic issues in collective bargaining and after having filed in the Bureau of Labor Relations a notice of strike at least 30 days before its intended date, and there is no question that in this instant case a notice of strike was filed on April 1, 1980, however, there could be no denying that the respondents strike in the complainant's firm is one that is prohibited by PD No. 823 as amended. That at the time the strike was declared on May 7, 8 and 9, 1980, there was no collective bargaining negotiations between the parties. There could have been therefore no unresolved economic issues in collective bargaining in the real sense and without bargaining there could be no deadlock. And there was no bargaining precisely because there was a pending case relative to representation. The Ministry of Labor has not yet certified who will represent the employees as the bargaining agent. Respondents have miserably failed to show any iota of proof that they have been certified as the bargaining agent of the complainant's employees. The insistence that what respondents perpetuated on said dates was merely a walkout and/or demonstration is such gratuitous and specious argument. In deed, there is no dispute as to the fact that the respondent acting in concert, stopped their work in the morning of May 7, 1980 and picketed the company's premises and only tried to report upon receipt of the return to work order of Med-Arbiter Antonio Caayao.

Complainants argued that no amount of hair-splitting can change the fact that respondents' walkout was in fact a strike. Article 255 of the Labor Code defines the term strike as comprising not only concerted work stoppage, but also showdowns, mass leaves, sitdowns, attempts to damage, destroy or sabotage plant equipment and facilities, and similar activities. It even cited the law governing labor relations, Republic Act No. 875, which defines strike as any temporary stoppage of work by the concerted action of employees as a result of industrial dispute. Indeed, whatever name respondent may call are concerted activity against the complainant for on May 7, 8 and 9, 1980 was, under the eyes of the law, a strike just the same. Complainant further submitted that the strike in question was not the result of a spur of the moment, but was planned by the respondent union's officers and members. The strikers thus knew beforehand that they would be risking the consequences, including but not limited to lost of employee status, by striking. That the strike therefore, was the result of mature deliberations among the officers and members of the respondent union and was accordingly carried out by all the participating strikers, and that respondent union and its members having precipitately immersed themselves into the course of action they have chosen to pursue, an illegal strike, they have none but themselves to blame and they must and should therefore suffer the consequences of their misadventure.

"It is essential to add that the complainant union (sic) was not really free to enter into a collective agreement negotiations with the respondent union or to recognize it as the exclusive collective bargaining representative since there is an intervenor in this case which is the UOEF affiliated to the Beverage Industry National Union which is one of the contending unions for recognition in whose instance a petition for certiorari was filed and pending action with the Supreme Court on November 16, 1979 docketed as G.R. 51893. This issue of non-recognition of the union and the alleged refusal of the petitioner to negotiate a CBA with the respondents are so embodied in the resolution dated April 25, 1980 of Med-Arbiter Antonio Caayao. In the same resolution, it is expressed that the petitioner was willing to recognize and negotiate a bargaining agreement with

whomsoever is certified by competent authority as the sole and exclusive bargaining agent of the rank and file employees within the bargaining union of the respondent-company. However, until such time that either of the competing unions is certified as such, respondent-company is not willing to recognize and negotiate a bargaining agreement. Under the situation, the Commission in the case of PLUM versus Union Carbide Phil., Inc., NLRC Case No. 4690-ULP, held that 'strike declared by a contending union to compel recognition when there is another union seeking also the right to be recognized is illegal and consequently subject participating members to loss of employment status.' There is no doubt, to our mind, that the strike was called knowingly and in violation of an existing order. The striking union and its members have been fairly and justly reminded by Med-Arbiter Antonio Caayao in its resolution after denying the notice of strike filed by the union and its members it being premature and therefore illegal and that any strike staged by virtue of said notice shall likewise deemed illegal. Whether or not this ruling has a binding effect compliance and respect of the order should have been considered by the union and its striking members by not taking the law into their own hands. Strike and other coersive acts are justified only when peaceful alternatives have proven unfruitful in settling the dispute. Striking for recognition maybe recognized but certainly not while the union members were expressly warned by the proper government entity not to pursue such course of action for reasons made known to them. Indeed, the Mead Johnson Philippines, Inc., versus Mead Johnson Philippines, Inc. Employees Union, et al. well illustrates the instant case presenting certain facts and circumstances with striking similarity. From this, the petitioner did expound in propping up and strengthening its claim that the strike staged by the respondents herein was beyond doubt illegal. We feel convinced with the argument of the petitioner that the issue in the instant case does no merely rest on the legality of the strike but 'how the government should react to the naked defiance of its authority.'

"The Commission speaking through Commissioner Diego P. Atienza in the aforecited case, with seeming eloquence, said:

> ‘It is common knowledge that PD 823 has been violated many times. The government has so far been leaning over backward in a spirit of accommodation. Perhaps the Decree has not been understood well enough by those to whom its prescriptions are addressed; perhaps these strikes have been brought about by the heady, if mistaken, feeling that the right to strike has been fully restored; perhaps these strikes, although many of them were manifestly illegal, were well-meant and designed to achieve legitimate ends so that in another time, under a different situation, they would have been perfectly legal. The Government, in any case, has been very liberal in dealing with them. An unhealthy condition in industrial relations is developing as a result. It is now time to blow the whistle. It is time to uphold the rule of law.’

“Commissioner Cleto T. Villatuya of the NLRC in his concurring and dissenting opinion in the case cited above eloquently stated, referring to the respondent, ‘that they did not, and this act amounts to an open defiance to the government authority for which the respondents should not be permitted to defy with impunity. They have all chosen to be collectively or solidarily liable for the group action and for which they should be held responsible for the consequences of their illegal acts.’

“Commissioner Geronimo B. Quadra of the said Commission in his similar concurring opinion in the same case, despite his being the representative for the labor sector in the said commission wisely stated: ‘Respondent union and its members having precipitately immersed themselves into the course of action they have chosen to pursue, they have none but themselves to blame, they must and should therefore suffer the consequences of their misadventure.’

“It should be noted that at the time the notice of strike was filed with the district office in Naga City, the union has not been recognized yet as the certified bargaining representative. If ever there was, such was precisely being questioned and pursued through legal means by the complainant company and that was

precisely why the Med-Arbiter denied or rather dismissed their notice of strike as premature because of the pending case between two contending union. It was not after the Supreme Court, First Division, resolved to dismiss the petition for certiorari for lack of merit, dated June 30, 1980 that BLR Director Carmelo C. Noriel finally certified PCLU-BFLU-TUPAS as the exclusive bargaining representative of the employees of Pepsi-Cola Bottling Co., Naga City per his order dated July 19, 1980. Mutual understanding and harmonious relationship as vital ingredients are not difficult to achieve by both management and labor thru legal means. These the government encourages for otherwise it will risk becoming the contributing factor for those who suffer the illusion of imagined invulnerability from a wrong and who ride on the erroneous impression of indispensability as employees by sheltering themselves under the protective mantle of the constitutional as well as the labor code provisions. Respondents herein ultimately employed with defiance ways and means which did not justify the ends to be achieved to thrust themselves beyond the latter if not the spirit of the law. If only to serve as a deterent and an example to other similarly situated it is indeed the opportune time for us to blow the whistle.

"WHEREFORE, after serious and meticulous study of the evidence of both parties in this case and anchored on the above-cited cases, we feel very strongly that the strike staged by the respondent union and its members on May 7, 8 and 9, 1980 in the premises of the petitioner Pepsi-Cola Bottling Co. of the Philippines, Inc. (Naga Plant) Naga City was ILLEGAL and uncalled for and therefore all the officers and members of the Union whose names and positions appear on Annex "A" of the complaint except Romulo Cal, Nilo Bariso and Mauro Nieto be considered to have lost their employment status effective May 7, 1980. Those employees excepted should be allowed to return to work by the petitioning company under the same terms and conditions of employment existing prior to May 7, 1980."

On December 8, 1980, the UNION filed a "MOTION FOR RECONSIDERATION OR APPEAL TO THE NLRC" alleging that there was grave abuse of discretion, lack of jurisdiction, and contrary

to the law and the facts. PEPSI moved to dismiss on the ground that the UNION failed to furnish it a copy of the motion for reconsideration or appeal - a fatal omission amounting to non-perfection of the appeal.

We are bound by the finding of the NLRC that, "A careful scrutiny of the appeal shows that the respondents-appellants failed to serve/furnish a copy thereof on the adverse party which fact has further been ascertained thru the positive asseveration of the complainant-appellee in its motion to dismiss the appeal." This being the case, NLRC cannot be faulted in dismissing the UNION's appeal for its action was in accordance with both the law and regulations. (See Art. 223 of the Labor Code and Sec. 9, Rule XIII, Book V of the Implementing Rules and Regulations cited in the resolution of the NLRC.)

However, We go deeper than sustaining the action of the NLRC in dismissing the appeal because We have been asked to review not only the actuation of that agency but also that of the Labor Arbitrator who declared in his decision that, "all the officers and members of the union whose names and positions appear on Annex "A" of the complaint except Romulo Cal, Nilo Bariso and Mauro Nieto be considered to have lost their employment status effective May 7, 1980."

It is now settled "that a strike does not automatically carry the stigma of illegality even if no unfair labor practice were committed by the employer. It suffices if such a belief in good faith is entertained by labor as the inducing factor for staging a strike." (Maria Cristina Fertilizer Plant Employees, Assn. vs. Tandayag, G.R. No. L-29217, May 11, 1978, 83 SCRA 56, 72. See also Ferrer vs. CIR, G.R. No. L-24267, May 31, 1966, 17 SCRA 352; Norton & Harrison Co. & Jackbuilt Concrete Blocks Co., Inc., G.R. No. L-18461, Feb. 10, 1967, 19 SCRA 310.) And it has also been held that the members of a union cannot be held responsible for an illegal strike on the sole basis of such membership or even on account of their affirmative vote authorizing the same. They become liable only if they actually participated therein. (ESSO Philippines, Inc. vs. Malayang Manggagawa sa ESSO (MME), G.R. No. L-36545, January 26, 1977, 75 SCRA 73.)

In the case at bar, although the strike was indeed illegal, We cannot discount the presence of good faith on the part of the rank and file members of the UNION considering that in the certification election the UNION obtained 128 out of the 131 votes cast so that they could justifiably consider it as their sole bargaining representative. Moreover, there is no proof that the members of the UNION all participated in the illegal strike. The ones who deserve what Justice Barredo calls "capital punishment" in the Esso Philippines case, supra, are the officers of the UNION who staged the strike in defiance of the ruling of Med-Arbiter Caayao.

WHEREFORE, the petition is granted; the private respondent is hereby ordered to reinstate all of those persons whose names and positions appear in Annex "A" which is mentioned in the decision of the Executive Labor Arbiter dated November 20, 1980, under the same terms and conditions of employment existing prior to May 7, 1980, except for the officers of the UNION. No costs.

SO ORDERED.

Barredo, *J.*, *(Chairman)*, Aquino, Concepcion, Jr., Guerrero, De Castro and Escolin, *JJ.*, concur.