SUPREME COURT
EN BANC

PHILIPPINE MARINE OFFICERS' GUILD,

***Petitioner*,**

-versus-

G.R. Nos. L-20662 & L-20663
March 19, 1968

COMPAÑIA MARITIMA, PHILIPPINE STEAM NAVIGATION CO., MADRIGAL SHIPPING CO., CIR ASSOCIATE JUDGES ARSENIO MARTINEZ, BALTAZAR VILLANUEVA, and AMANDO BUGAYONG,

***Respondents*.**

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D E C I S I O N
(RESOLUTION dated March 27, 1971)

MAKALINTAL, *J.*:

Petition for *Certiorari* to Review the Decision dated December 23, 1961 and the resolution en banc dated May 18, 1962 of the Court of Industrial Relations in Cases Nos. 6-IPA and 617-ULP.

The respondents Compañia Maritima, Philippine Steamship Navigation Company and Madrigal Shipping Company [hereinafter

referred to as MARITIMA, PHILSTEAM, and MADRIGAL, respectively, and as COMPANIES jointly] are domestic corporations engaged in the operation of motor ships and vessels in the different ports of the Philippines, while the petitioner, Philippine Marine Officers Guild (hereinafter referred to as PMOG), is a labor organization composed of marine officers and engineers.

On different dates in June 1954 PMOG sent separate letters to several shipping firms, including MARITIMA, PHILSTEAM, and MADRIGAL, each letter containing a set of demands, informing the addressees that PMOG represented the deck officers and engineers respectively employed by them, and requesting a conference concerning said demands. A dispute thereafter arose between PMOG and each of the COMPANIES, and on July 17, 1954 PMOG filed with the Conciliation Service of the Department of Labor notices of its intention to strike against MARITIMA and PHILSTEAM, alleging refusal to bargain and other unspecified unfair labor practices. The Conciliation Service called a conference of the parties, but no agreement was reached by them. Another conference was set for August 17, 1954, at which MADRIGAL was also requested to be present in view of the fact that PMOG had also filed a strike notice against it.

On August 16, 1954, a day before the date set for the second conference, MARITIMA concluded with another labor union, the Marine Officers Association of the Philippines (MOAP) a collective bargaining agreement covering the Maritima officers and engineers. The second conference was held as scheduled, but the parties were unable to come to any settlement of their disputes. On August 24, 1954 PHILSTEAM likewise entered into an agreement with another labor union, the Cebu Seamen's Association, Inc. (CSA). PMOG thereupon declared a strike against the three COMPANIES and pickets were placed at Piers 4 and 8, North Harbor, Manila, where PHILSTEAM and MARITIMA vessels regularly docked, respectively, as well as in front of the Madrigal Building on the Escolta. The picketing at Pier 4 did not last long, but that at Pier 8 and on the Escolta was carried on for weeks and months. On January 14, 1955, while the strike and the picketing in these two places were still in progress, the President of the Philippines, pursuant to Section 10 of Republic Act 875, certified the dispute to the Court of Industrial

Relations, where it was docketed as Case No. 6-IPA. On January 18, 1955 the CIR issued a resolution ordering the "strikers to return to work immediately upon receipt of this order, and the respondent companies to readmit them." The following day, PMOG filed a manifestation expressing its willingness to abide by said resolution and requesting that "three bailiffs accompany the three groups of members to their respective companies" and that the members of the petitioner in the provinces be given ten (10) days from date to report to duty to their respective companies. However, by virtue of the injunction issued by this Court[1] the return-to-work order was not enforced.

Subsequently, the following formal complaints involving unfair labor practices were docketed with the CIR, to wit:

(1) Case No. 617-ULP filed on February 25, 1955 by PMOG against MARITIMA and MOAP;

(2) Case No. 618 ULP filed on February 25, 1955 by PMOG against PHILSTEAM and CSA;

(3) Case No. 646-ULP filed on March 29, 1955 by PMOG against MADRIGAL;

(4) Case No. 672-ULP filed on April 30, 1955 by MOAP against PMOG;

(5) Case No. 1002-ULP filed on July 6, 1956 by PHILSTEAM against PMOG.

All the aforementioned cases were heard separately, but because the issue in Case No. 6-IPA, which is whether or not the PMOG strike was legal, was intertwined with the questions raised in the unfair labor practice cases, the CIR rendered a single decision, with the following findings:

(1) Case No. 617-ULP:

> "Considering the respective acts and conducts of Maritima and PMOG from the time the latter first sought to have a

bargaining conference with the former up to the date of the second and last conference, the Court is convinced, and so holds that Maritima had not refused to bargain collectively with PMOG.

"One of the charges herein states that Maritima had refused to reinstate the strikers when they offered to return to work unconditionally. As will be seen from our discussion in Case No. 6-IPA of the issue as to whether the company had discriminatorily denied reinstatement to the strikers after the termination of the PMOG strike, this charge has neither factual nor legal basis. As regards the other charges herein, the Court finds, upon the entire record of the case, that none of them has been substantiated, either, and that Maritima had not engaged in any kind of unfair labor practices."

(2) Case No. 618-ULP:

"We find that by initiating and conducting the above interrogation and investigation to determine whether its employees had authorized PMOG to act as their bargaining agent, Philsteam had interfered with, restrained and coerced employees in the exercise of their rights to self-organization."

x x x

"We find that by their acts and omission, Philsteam had tried to discourage Feliciano from remaining as member of the PMOG and to encourage him to affiliate with CSA and had, thereby, restrained, coerced and interfered with employees in the exercise of their right to self-organization.

x x x

"We find, and so hold, that this employer had not refused to bargain collectively with a representative of its

employees within the meaning of Section 4(a) (6) of the Act.

x x x

"Upon the entire record of the case, we find that, notwithstanding the fact that Philsteam had committed certain unfair labor practices herein-before mentioned, the charge that CSA is a company union or employer-dominated has not been established by substantial evidence."

(3) Case No. 646-ULP:

"And since, as indicated by the evidence, no deck-officer or engineer had volunteered to inform his employer that he was or was not a member of any labor organization, we are convinced, and so find, that after being requested to bargain collectively with PMOG, Madrigal, one way or mother, and by the use of the letters for "union members" and "non-union members," had unwittingly interrogated its employees, especially the above PMOG witnesses, to ascertain whether they were members of PMOG or had authorized it to represent them. In a way, it could be claimed and the Court so finds that Madrigal interfered with the right of its employees to self-organization guaranteed by the Act.

x x x

"But when, as for this case, the contracts were individually initiated and executed not through the union and while PMOG is still claiming to be the bargaining representative of its employees, we find that this act of Madrigal and/or its agent has left open for doubts, as the Court does, that it had further interfered with its employees' right to self-organization."

x x x

"Upon the record of this case, we find that Madrigal had not refused to bargain collectively with PMOG in contemplation of law.

(4) Case No. 672-ULP:

"Upon the entire record of this case, the Court finds that the charge against PMOG has not been proved by substantial evidence."

(5) Case No. 1002-ULP:

"Upon the entire record of this case, the Court finds that the charge against PMOG has not been proved by substantial evidence."

(6) Case No. 6-IPA:

Strike against Madrigal:

"It appearing that the Madrigal deck officers and engineers who struck on August 24, 1954, had justifiable reason for their action, and considering that there is no evidence of record showing that Madrigal's interests has been injured or prejudiced by any of the unlawful acts imputed to PMOG men, the Court is of the opinion and concludes that the strike on the whole against this employer was proper and legal."

Strike Against Philsteam:

"Upon the entire record of the case, the Court finds and so holds, that the strike against Philsteam was not only justified but properly and lawfully carried out."

Strike Against Maritima:

> "It having been declared against Maritima for no cause or purpose and unlawful means having been resorted to by some strikers and picketers in the course of the prosecution thereof at Pier 8 for which the striking labor organization has been found responsible, and considering further that Maritima cannot be held liable for the death of the late Modesto Rodriguez, the Court finds, and so holds, that the PMOG strike against this employer was illegal from its inception."

In view thereof, the CIR in the dispositive portion of the decision ordered:

"1. Madrigal Shipping Company, its agents, successors and assigns, to cease and desist from investigating their employees to ascertain whether they are members of the Philippine Marine Officers Guild or any other labor organization or have authorized it or any other labor organization to represent them for the purpose of collective bargaining and, in any manner, interfering with, restraining, or coercing such employees in the exercise of their rights guaranteed in Section 3 of the Act; and offer all of their striking employees immediate and full reinstatement to their former or substantially equivalent positions, without back salaries and without prejudice to their seniority or other rights and privileges, unless they have found substantially equivalent employment elsewhere during the pendency of this case;

"2. Philippine Steam Navigation Company, its agent successors and assigns, to cease and desist from interrogating and investigating their employees to determine whether they have authorized Philippine Marine Officers Guild or any other labor organization to represent them for the purpose of collective bargaining, discouraging or trying to discourage any of such employees from remaining as a member of Philippine Marine Officers Guild or any other

labor organization, and encouraging or trying to encourage any of such employees to join Cebu Seamen's Association or any other labor organization, and, in any manner, interfering with, restraining, or coercing their employees in the exercise of their right to self-organization and other rights guaranteed in Section 3 of this Act; and offer all of their striking employees immediate and full reinstatement to their former or substantially equivalent positions, without back salaries rights and privileges, unless they have found substantially equivalent employment elsewhere during the pendency of this case;

"3. Compañia Maritima, its agents, successors and assigns, to reinstate immediately upon their application, all of their striking employees, except those with pending and/or decided criminal cases connected with or related to the strike or picket whether the decision is stayed or on appeal, to their former or substantially equivalent positions, without back salaries, unless they have found substantial equivalent employment elsewhere during the pendency of this case.

To facilitate the return and avoid confusion in the Companies, the strikers concerned are given sixty (60) days to present themselves for work."

All the parties except intervenor Cebu Seamen's Association moved to reconsider the decision of the trial court. The resolution penned by Judge Arsenio Martinez on May 18, 1962, ruled thus: "All motions denied." But insofar as the case of MARITIMA was concerned three Judges (Villanueva, Tabigne and Bugayong) filed separate opinions, each concurring in the findings of fact made in the decision but dissenting from the dispositive portion thereof which ordered reinstatement of the strikers. Thereafter PMOG filed the instant petition for review by *certiorari*.

In this connection, it is to be noted that PHILSTEAM also appealed from the decision and resolution en banc in Case No. 6-IPA, as well as in Case No. 618-ULP and Case No. 1002-ULP, but this Court affirmed the decision and resolution appealed from without, however, passing

upon the question of back wages inasmuch as the same was not at issue in the appeal.[2]

PMOG advances the following propositions in its petition, stating that the first two (2) apply to all the COMPANIES and the last three (3) to MARITIMA only, to wit:

1. Terms and Conditions of Work

   In cases certified by the President of the Philippines as labor disputes in industries indispensable to the national interest, it is the duty of the Court of Industrial Relations to fix the terms and conditions of work through compulsory arbitration and not leave the same to the parties through free collective bargaining.

2. Back Wages

   It is a dangerous precedent to disallow back wages to workers who were refused reinstatement when they unconditionally offered to return to work after they had abandoned their legal strike.

3. Unfair Labor Practices

   a. An employer asking a union, which desires to bargain collectively, to prove its majority when said employer would not and could not bargain is an unfair labor practice.

   b. The killing of the head of the picketers by the Chief of the company's security guard is the worst form of interference.

   c. Refusal to reinstate and employ the employees who have abandoned their strike and who have offered to return to work unconditionally is an unfair labor practice.

4. Legality of Means in a strike

   In this jurisdiction, should the Supreme Court adopt the viewpoint that labor violence is a special category of unlawfulness, to be suffered (except in extreme cases), and to be overlooked in favor of efforts at setting the underlying controversy giving rise to violence?

5. Reinstatement of Strikers

   Illegality of a strike does not ipso facto deprive a striker of reinstatement if he is not personally guilty of any illegal act.

As regards the first issue, the petitioner in its brief maintains in effect that the CIR tried to solve the labor dispute by mediation during the preliminary conferences, and that when it failed to find a solution to the dispute the said Court decided to proceed with it as a compulsory arbitration case. The following statement of the Court is cited:

> "THE COURT:
>
> All right, there being no possibility of setting the case amicably, let us go to the merits of the case.
>
> Now, according to the pleadings here the question of the legality or illegality of the strike should be given preference. The Court is of the opinion that the said question of the legality or illegality of the strike should be heard first." (p. 7, t.s.n., hearing of March 28, 1955, before Judge Modesto Castillo).

The petitioner contends that it was error for the CIR not to fix the terms and conditions of employment after having found no solution to the dispute, citing Section 10 of Republic Act 875, which reads:

> "SEC. 10. Labor Disputes in Industries Indispensable to the National Interest. — When in the opinion of the President of the Philippines there exists a labor dispute in an industry indispensable to the national interest and when such labor dispute is certified by the President to the Court of Industrial Relations, said Court may cause to be issued a restraining order

> forbidding the employees to strike or the employer to lockout the employees, pending an investigation by the Court, and if no other solution to the dispute is found, the Court may issue an order fixing the terms and conditions of employment."

The contention of the petitioner that the CIR failed to find a solution to the dispute is not true. The fact is that after ascertaining that the question of majority representation had been the cause of misunderstanding between PMOG and the COMPANIES and after correctly analyzing the absurdity of the whole set-up if it should fix the terms and conditions of employment before resolving the question of majority representation, the CIR enjoined the parties to consider holding a certification election. The proposed solution thus found by the CIR cannot be questioned.

> "When a case is certified to the CIR by the President of the Philippines pursuant to Section 10 of Republic Act 875, the CIR is granted authority to find a solution to the industrial dispute; and the solution which the CIR has found under the authority of presidential certification and conformable thereto cannot be questioned." (Radio Operators' Association of the Philippines vs. Philippine Marine Radio Officers Association, et al., L-10112, Nov. 29, 1957, 54 O.G. 3218; Feati University vs. Bautista, L-21278, 21462, 21500, Dec. 27, 1966).

Regarding the second issue, the petitioner contends that it was an abuse of discretion to disallow back wages to workers who abandoned their legal strike but were refused reinstatement in spite of their unconditional offer to return to work. This contention has for its premises: (1) that the strike was legal; (2) that there was an unconditional offer to return to work, and (3) that the strikers were refused reinstatement. Indeed, if all these circumstances concurred, the strikers would be entitled to backwages:

> "Now, it is clear from the statement of the rule that those who strike voluntarily —even if in protest of unfair labor practice — are entitled to backpay only —
>
> "When the strikers abandon the strike and apply for reinstatement despite the unfair labor practice and the

> employer either refuses to reinstate them or imposes upon their reinstatement new conditions that constitute unfair labor practices." (Cromwell Commercial Employees & Laborers Union (PTUC) vs. Court of Industrial Relations and Cromwell Commercial Co., Inc., G. R. No. L 19778, Feb. 26, 1965)

However, the CIR found that "the companies are not to blame for their failure to rehire the strikers after the issuance of the Court's back-to-work order." Said the Court:

> "It will be recalled that the disputes in the case at bar reached the Court through presidential certification on January 14, 1955. The record shows that three days later, or on January 17, 1955, to be exact, the strikers met and after some discussion among themselves unanimously agreed and resolved to terminate the strike "within two weeks whether or not an order to return is issued by the Court." On the following day, the Court "without prejudice to the hearing and disposition in the usual manner of the demands and of whatever issues that might arise," issued a resolution, ordering the "strikers to return to work immediately upon receipt of this order, and the respondent companies to readmit them." On January 19, 1955, PMOG filed a manifestation, expressing its willingness "to abide by said resolution" and requesting that "three bailiffs accompany the three groups of members to their respective companies" and that the members of the petitioner in the provinces be given ten (10) days from date to report to duty to their respective companies." On the same day, the Court issued a supplementary resolution granting PMOG's requests and directing the bailiffs "to be at the premises of the respondent until the strikers shall have reported not later than January 28, 1955, at four o'clock in the afternoon." In the presence of the bailiffs, all the available strikers reported back to the Companies and the latter directed them to proceed to their respective vessels. In some instances, the replacements who were hired during the strike refused to relinquish their posts in favor of the returning strikers. In others, the ship masters did not accept the strikers because the strikers had no embarkation orders. Because of these difficulties, PMOG twice moved for enforcement of the resolutions through the assistance of law-

> enforcing agencies and other government authorities, including customs officials and the Philippine Constabulary. Those motions were granted by the Court in two orders issued on February 16 and 19, 1955. On February 23, 1955, Maritima and Philsteam filed a joint manifestation, advising the Court that although the strikers who reported back to work had been readmitted and were already 'on board the vessels for the last few days same cannot depart because the old officers and engineers, who remained in their posts when the strike was declared would not sail with the strikers so that the said vessels are now tied up,' and praying that 'if there is anything more that they can possibly and legally do in compliance with the said order, they be duly advised for their guidance.' On February 24, 1955, CSA and MOAP, in separate petition filed with the Supreme Court, sought an injunction to restrain the enforcement of the above back-to-work resolution and supplementary resolutions and order. On the same day, the high tribunal issued a writ of preliminary injunction prayed for. On March 25, 1955, the Supreme Court, after hearing all the parties concerned, including the Companies and PMOG, declared this injunction permanent."

Accordingly, the CIR concluded that "none of the companies had discriminatorily rejected their application for re-employment". Such findings being upon a question of fact, the same cannot be reversed herein because they are supported by substantial evidence. On this score alone, the claim for back wages has to be denied; hence, the CIR did not commit any abuse of discretion in this regard.

With the resolution of the first two issues raised by petitioner MADRIGAL'S motion to dismiss the appeal need no longer be considered.

The third issue raised by the petitioner pertains to three (3) alleged unfair labor practices committed by MARITIMA, which will be discussed hereunder in the order they are listed in the petition.

a. An employer asking a union, which desires to bargain collectively, to prove its majority when said employer would not and could not bargain is an unfair labor practice.

Petitioner maintains that it was an unfair labor practice for MARITIMA, after having concluded an agreement with MOAP on August 16, 1954, just one day before the scheduled second conciliation conference, to ask PMOG to prove its majority representation notwithstanding the fact that MARITIMA could no longer validly enter into a collective bargaining contract with it.

The contention of petitioner has no factual basis. The testimony of Atty. Dinglasan, which is quoted by petitioner in its brief, does not show that MARITIMA asked PMOG to prove its majority representation during the conference on August 17, 1954. The testimony is as follows:

"THE COURT

Continuing

Q. You were present in that conference had on August 17?

THE WITNESS

I think, I was.

THE COURT

Do you know the subject matter taken up in that last conference?

THE WITNESS

We have the transcript of stenographic notes of that conference.

THE COURT

Were the demands of the Philippine Marine Officers' Guild ever taken up in that conference?

THE WITNESS

I think we did not take up the discussion of the demands because we were threshing out the legal points of majority representation.

THE COURT

So, in that last conference of August 17, the principal subject- matter taken up was the majority representation, was it?

THE WITNESS

I think the August 17 conference was a continuation of the July 30th conference." (pp. 90-91, t.s.n. Jan. 10, 1956, Dinglasan testifying.)

Indeed there is no finding in the decision that MARITIMA asked PMOG to prove its majority representation during that conference. The decision merely states the following:

"But the best evidence of PMOG's true position is to be found in what Tan stated in the second conference. When asked by the conciliator whether the PMOG was willing to submit to a certification election, Tan answered: "No comment." It should be added that Tan also manifested that PMOG would institute a certification case with this Court. But the record shows that no such case was ever filed by this union." (pp. 86-87 of the Decision of the Trial Court).

In view thereof, the contention of petitioner on this point cannot be sustained.

b. The killing of the head of the picketers by the chief of the company's security guard is the worst form of interference.

Again, the allegation of the petitioner is devoid of factual and legal basis. The reference is to the fatal stabbing of Modesto Rodriguez, a MARITIMA employee-striker, allegedly by Andres Alarcon, MARITIMA chief security guard. Alarcon was prosecuted in the Court of First Instance of Manila and was found guilty of the crime of homicide. However, on appeal to the Court of Appeals he was acquitted. The appellate court found:

> "That the slaying of Modesto Rodriguez was manifestly committed without the concurrence of the will of Alarcon as it has not been proved that he participated or agreed with the criminal design of the actual killer. As has been heretofore stated, the presence of Alarcon in the scene of the commotion was for the purpose of performing his duty as security guard of the Compañia Maritima and not to kill or harm anybody. (People vs. Alarcon, 61 O.G. No. 10, p. 1380).

Accordingly, it cannot be said that in this particular connection MARITIMA interfered with the freedom of the strikers to pursue union activities.

c. Refusal to reinstate and employ the employees who have abandoned their strike and who have offered to return to work unconditionally is an unfair labor practice.

This proposition has no factual basis either. As heretofore discussed, the COMPANIES, which include MARITIMA, were not to blame for their failure to reemploy the strikers in view of the injunction issued by this Court, restraining the CIR from enforcing its return- to-work order upon which the offer to return to work of the strikers was predicated. Furthermore, there is no showing that the strikers renewed their offer to work after the issuance of said injunction. It cannot be alleged, therefore, that MARITIMA refused to reinstate and employ the strikers who have abandoned their strike.

d. Under the fourth issue, petitioner poses the following question:

In this jurisdiction, should the Supreme Court adopt the viewpoint that labor violence is a special category of unlawfulness, to be suffered (except in extreme cases), and to be overlooked in favor of efforts at settling the underlying controversy giving rise to violence?

In raising this question the petitioner would like the Court to overlook the following acts of violence in determining the legality or illegality of the strike, to wit:

a. Physical injuries and malicious mischief committed by Capt. Yenko (pp. 131-132, Decision of Trial Court)

b. Assault by Villaflor, who was sentenced to suffer 4 months and one day of arresto mayor (pp. 132-133, Decision of Trial Court)

c. Breaking of truck side and windows by Labrador and Yenko, who were, as a consequence, charged with coercion before the Municipal Court. (pp. 133-134, Decision of Trial Court)

d. Picketers threw empty bottles at Ramirez, a truck driver, and inflicted injuries on his right arm. Consequently, Ricardo Antonio was charged with slight physical injuries before the Municipal Court of Manila. (p. 134, Decision of Trial Court)

e. Free-for-all fight in the pier during which Lizardo, a picketer, drew his pistol and fired shots in the air (pp. 134-135, Decision of Trial Court).

The question has obvious reference to the following citation from Ludwig Teller of the New York Bar:

> "But the viewpoint is gaining more ground, both in legislation and in law enforcement, that labor violence is a special category

> in unlawfulness, to be suffered except in extreme cases and to be overlooked in favor of efforts at settling the underlying controversy giving rise to the violence. The Supreme Court of the United States has held, for example, that an employer subject to the Railway Act may not secure an injunction restraining violence where he refuses to submit the labor controversy to arbitration. The National Labor Relations Board has often disregarded unlawful activity committed by employees and labor unions, and has protected their rights under the Wagner Act despite such unlawful activity. Local police authorities are found to be increasingly reluctant to intervene in cases of labor unruliness." (Teller, Labor Disputes and Collective Bargaining, April 1947, Commulative Supplement, p. 101).

In this jurisdiction, however, acts of violence in carrying on a strike are not so easily overlooked in the determination of its legality or illegality. To overlook them "would encourage abuses and terrorism and would subvert the very purpose of the law which provides for arbitration and peaceful settlement of disputes." (Liberal Labor Union vs. Phil. Can Co., 91 Phil. 78). This Court has repeatedly frowned upon the use of unlawful means in carrying out a strike.

> "In cases not falling within the prohibition against strikes, the legality or illegality of a strike depends first, upon the purpose for which it is maintained, and, second, upon the means employed in carrying it on. Thus, if the purpose which the laborers intend to accomplish by means of a strike is trivial, unreasonable, or unjust (as in the case of National Labor Union vs. Philippine Match Co., 70 Phil. 300), or if in carrying on the strike the strikers should commit violence or cause injuries to persons or damage to property (as in the case of National Labor Union, Inc. vs. Court of Industrial Relations, et al., 68 Phil. 732), the strike, although not prohibited by injunction, may be declared by the court illegal with the adverse consequences to the strikers." (Luzon Marine Dept. Union vs. Roldan, 86 Phil. 507).
>
> "Here we find that the majority opinion predicated the illegality of the strike not merely on the infringement of said agreement

> by the union but on the proven fact that, in carrying out the strike, coercion, force, intimidation, violation (sic) with physical injuries, sabotage and the use of unnecessary and obscene language or epithets were committed by top officials and members of the union in an attempt to prevent arbitration and peaceful settlement of labor disputes. As aptly said in one case: 'A labor philosophy based upon the theory that might is right, in disregard of law and order, is an unfortunate philosophy of regression whose sole consequences can be disorder, class hatred and intolerance.' (Grater City Masters Plumbers Association vs. Kahme (1939 y N.Y.S. (2nd 589)" (Liberal Labor Union vs. Phil. Can Co., supra).

The above view was reiterated by this Court in United Seamen's Union of the Philippines vs. Davao Shipowners Association (G. R. No. L-18778-79, August 31. 1967).

The CIR, in finding the PMOG responsible for the aforementioned acts of violence, said:

> "As some of the above offenses were perpetrated by the picketers not only in Yenko's presence but in direct cooperation with him and under his leadership PMOG cannot seriously pretend innocence and avoid complicity in or liability for their acts and conduct and the consequent effects thereof upon Maritima's property. True, Section 9(c) of the Act has discarded the principle of "vicarious liability" under which a striking labor organization is necessarily held responsible for the acts of even a single striker. That the law, as it is now, requires in order to hold an association or organization liable for the unlawful acts of individual officers, members, or agents, 'proof of actual participation in, or actual authorization of such acts or of ratifying of such acts after actual knowledge thereof.' It is not essential that two or three of these elements should concur. One suffices. In the case at bar, the unlawful acts, as already pointed out, were done in the presence of Yenko as well as with his cooperation and under his direction and, hence, conclusive of the actual participation and ratification thereof of PMOG. Moreover, there is nothing in the record to show that this union disauthorized or objected to Yenko's acts and those of the other

> picketers despite the fact that such acts had undoubtedly come to its knowledge or that of its officers and members." (pp. 137-138 of the Decision of Trial Court)

Under the circumstances, the CIR correctly held that the PMOG strike against MARITIMA was illegal.

The last proposition raised by the petitioner is that the illegality of a strike does not ipso facto deprive a striker of the right to reinstatement if he is not personally guilty of any illegal act.

It bears repeating here that according to the CIR the strike against MARITIMA was "for no cause or purpose" and hence was unjustified, and unlawful means was resorted to by some strikers and picketers in the prosecution of the strike. On the first point the court categorically found that MARITIMA "had not refused to bargain collectively with PMOG" and "had not engaged in any kind of unfair labor practice." On the second point the specific acts of illegality have been mentioned in the earlier part of this decision. In view of such findings three Judges of the CIR (Villanueva, Tabigne and Bugayong), as hereinbefore stated, upon motion for reconsideration voted for the reversal of the decision penned by Judge Martinez insofar as it ordered MARITIMA to reinstate the strikers.

Judge Martinez himself in the decision found that PMOG, through its leaders, not only had knowledge of the acts of violence committed by some of the strikers but either participated in such commission or ratified the same. This Court has held in a number of cases that if a strike is unjustified, as when it is declared for trivial, unjust or unreasonable purpose, the employer may not be compelled to reinstate the strikers to their employment. (Almeda, et al. vs. CIR, et al., 97 Phil. 306, citing National Labor Union vs. Phil. Match Factory Co., 70 Phil. 300; and Luzon Marine Department Union vs. Arsenio Roldan, et al., 47 O.G. Supp. No. 12, p. 136). This is not of course an inflexible rule, and its application must depend to a considerable degree upon the circumstances. In United Seamen's Union vs. Davao Shipowners Association (Nos. L-18778 and 18779, August 31, 1967) we affirmed the decision of the Industrial Court dismissing the employees who were active participants in a strike which was held to be illegal and unjustified. In the present case, where the strike against

MARITIMA was not only unjustified but also carried on illegally, we find no justifiable ground to disagree with the majority in the court below who voted against the reinstatement of the strikers.

WITH THE FOREGOING MODIFICATION, the Decision of the lower Court of December 23, 1961 is affirmed. Costs against petitioner.

Reyes, *J.*, *(Acting C.J.)*, Dizon, Zaldivar, Sanchez, Castro, and Angeles, *JJ.*, concur.
Fernando, *J.*, concurs in the result.

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[1] Resolutions of February 24, 1955 and March 25, 1955 in Cebu Seamen's Association vs. Castillo, et al., G. R. No. L-8802; Marine Officers Association of the Philippines vs. CIR G. R. L-8808; Compañia Maritima vs. PMOG, G. R. No. L-8712.
[2] Philippine Steam Navigation Co., vs. Phil. Marine Officers Guild and Hon. Court of Industrial Relations, G.R. No. L-20667, Oct. 29, 1965.
