SUPREME COURT
EN BANC

REPUBLIC SAVINGS BANK (now REPUBLIC BANK),
***Petitioner*,**

-versus-

G.R. No. L-20303
September 27, 1967

COURT OF INDUSTRIAL RELATIONS, ROSENDO T. RESUELLO, BENJAMIN JARA, FLORENCIO ALLASAS, DOMINGO B. JOLA, DIOSDADO S. MENDIOLA, TEODORO DE LA CRUZ, NARCISO MACARAEG and MAURO A. ROVILLOS,
***Respondents*.**
x----------x

D E C I S I O N
(RESOLUTION dated October 31, 1967)

CASTRO, *J.*:

FERNANDO, J., concurring:

The vital issue in this case is whether the dismissal of the eight (8) respondent employees by the petitioner Republic Bank (hereinafter referred to as the Bank) constituted an unfair labor practice within

the meaning and intendment of the Industrial Peace Act (Republic Act 875). The Court of Industrial Relations (CIR) found it did and its decision is now on appeal before us. The Bank maintains that the discharge was for cause.

The Bank had in its employ the respondents Rosendo T. Resuello, Benjamin Jara, Florencio Allasas, Domingo B. Jola, Diosdado S. Mendiola, Teodoro de la Cruz, Narciso Macaraeg and Mauro A. Rovillos. On July 12, 1958 it discharged Jola and, a few days after (July 18, 1958), the rest of respondents, for having written and published "a patently libelous letter tending to cause the dishonor, discredit or contempt not only of officers and employees of this bank, but also of your employer, the bank itself."

The letter referred to was a letter-charge which the respondents had written to the bank president, demanding his resignation on the grounds of immorality, nepotism in the appointment and favoritism as well as discrimination in the promotion of bank employees. The letter, dated July 9, 1958, is hereunder reproduced in full:

> Mr. Ramon Racelis
> President, Republic Savings Bank
> Manila
>
> "Dear Mr. President:
>
> We, the undersigned, on behalf of all our members and employees of the Republic Savings Bank, who have in our hearts only the most honest and sincere motive to conserve and protect the interest of the institution and its 200,000 depositors, do hereby, demand the much needed resignation of His Excellency, Mr. Ramon Racelis as President and Member of the Board of Directors of the Bank.
>
> Mr. President, you have already, in so many occasions, placed the Bank on the verge of danger, that now we deem it right and justifiable for you to leave this Bank and let other more capable presidents continue the work you have not well accomplished.

In the above instance, we are presenting charges which in our humble contention properly justifies incapacity on your part to continue and assume the position as top executive of the huge institution:

(1) That you Mr. President, have tolerated and practiced immorality in this Bank. We have been expecting you to do something about this malpractice which is very disgraceful and affects the morale of the hundreds of your employees. But so far, Mr. President, you have just let this thing passed through. As a matter of fact, you have even promoted these women like Misses Pacita Mato and Edita Castro. These women are of questionable characters, Mr. President, and should have had no place in the Bank as managers or even as mere employees. We know Mr. President, because it is an open secret in the Bank, that you have illicit relations with one of them — Miss Edita Castro. As top officer and as father of the employees of the Bank, you have shown this bad example to your employees. Mr. President, we are really ashamed of you.

(2) That you have allowed the practice of nepotism in this Bank. You have employed relatives of yours like Honorio Ravida; Bienvenido Ravida; Antonio Racelis; Jesus Antonio; and Argentina Racelis. Not only that Mr. President. You have also given those nieces and nephews of yours good positions at the expense of the more capable employees. Mr. President, if we have to mention all of them, one page will not be enough.

(3) With regards to promotion, you have given more preferences to your close relatives. When the Bank advocated the sending of pensionados to States, you have only limited your choice among your nieces, nephews, and querida, namely, Miss Argentina Racelis, Mr. Jesus Antonio, Miss Edita Castro, and her brother-in-law, Mr. Pedro Garcia, Jr. In doing this, Mr. President, you have only lowered the reputation and standing of the Republic Savings

Bank. There is really no sense in sending high school and B.S.E. graduates to States to study advanced banking. Because of this silly decision, it took one pensionado six months and cost the Bank a total of P10,000.00 just to study Christmas savings. That subject is very simple; one need not go to States to study savings; that you know full well, Mr. President. The reason why you sent Miss Castro to States was because you were also there. Are we not right?

(4) That you Mr. President, tolerated and still tolerating grave dishonesty in this Bank as evidenced by the following irregularities and anomalies:

(a) In one of our branches, around P200,000.00 was mulcted and embezzled by a certain Maximo Donado by doctoring the ledgers and records of that particular office. To the present, the amount is still increasing and some more are being dug up from the records everyday ever since its discovery in February 1957. In this case you dismissed Mr. M. Donado, immediately. But this was all that you did. If you have to go back to the history of the case, you will find out that your beloved nieces and nephews are also involved having been managers of that particular office. Another nephew, the Vice President-Operations, then Vice President, Personnel, was also involved for valid reasons that he did not even shift this particular employee to other branches or departments since the beginning when it has been the policy of the Bank to reshuffle its personnel. If you want to know why your good nephew did not transfer this employee, we will tell you. “Your good nephew has eaten too many baskets of delicious alimango.” Mr. President, if there is someone to be blamed in this particular case, it is your good nephews and nieces for their gross negligence.

(b) Aside from the one mentioned above, we have also Mr. Rodolfo Francisco, who in April 1955, maliciously withdraw (sic) P970.00 in two withdrawal slips from the account of one depositor in one of our provincial offices, inserting his name as co-depositor in the savings account ledger.

(c) In January 1958, Mr. Jose De los Santos expended and approved representation expense in the amount of P300.00 in one of our provincial offices.

(d) Mr. Federico M. Dabu, the ex-cashier and now Personnel Manager, incurred a shortage in the amount of P1,240.00 in the course of the audit on August 3, 1954.

(e) Mr. Jose S. Guevara, Vice-President on Personnel have (sic) been accepting bribe moneys. One of these amounts to P4,000.00 which was delivered by a messenger sometime during the last quarter of 1957.

Mr. President, the anomalies are only a partial list of the irregularities which so far you have not acted upon. This type of people should have been fired out from the Bank; yet on the contrary, you promoted them to higher and responsible positions, thus, resulting in the demoralization of the more capable employees.

Mr. President, we hope that you have still a little sense of decency and propriety left. So, for goodsake and for the welfare of the Bank, DO RESIGN NOW as President and as Member of the Board of Directors of the Republic Savings Bank.

Very respectfully yours,

(Sgd.)
Rosendo T. Resuello
President, RSB Supervisors' Union (FFW),

(Sgd.)
Benjamin Jara
Vice-President RSB Supervisors' Union (FFW)

(Sgd.)
Florencio Allasas
Treasurer, RSB Supervisors' Union (FFW)

(Sgd.)
Domingo B. Jola
Chairman, Executive Committee, RSB Employees' Union (FFW)

(Sgd.)
Diosdado S. Mendiola
Vice-President, RSB Employees Union (FFW)

(Sgd.)
Teodoro de la Cruz
Member, Executive Committee, RSB Employees' Union (FFW)

(Sgd.)
Angelino Quiambao
President, RSB Security Guard Union (FFW)

(Sgd.)
Narciso Macaraeg
Vice-President, RSB Security Guard Union (FFW)

(Sgd.)
Alfredo Bautista
Treasurer, RSB Security Guard Union (FFW)

(Sgd.)
Pacifico A. Argao
PRO, RSB Employees' Union (FFW)

(Sgd.)
Toribio B. Garcia
Secretary, RSB Security Guard Union (FFW)

(Sgd.)
Mauro A. Rovillos
Member, Executive Committee, RSB Supervisors' Union (FFW)

Copies of this letter were admittedly given to the chairman of the board of directors of the Bank, and the Governor of the Central Bank.

At the instance of the respondents, prosecutor A. Tirona filed a complaint in the CIR on September 15, 1958, alleging that the Bank's conduct violated section 4(a) (5) of the Industrial Peace Act which makes it an unfair labor practice for an employer "to dismiss, discharge or otherwise prejudice or discriminate against an employee for having filed charges or for having given or being about to give testimony under this Act."

The Bank moved for the dismissal of the complaint, contending that respondents were discharged not for union activities but for having written and published a libelous letter against the bank president. The court denied the motion on the basis of its decision in another case[1] in which it ruled that section 4(a) (5) applies to cases in which an employee is dismissed or discriminated against for having filed "any charges against his employer." Whereupon the case was heard.

In 1960, however, this Court overruled the decision of the CIR in the Royal Interocean case and held that "the charge, the filing of which is the cause of the dismissal of the employee, must be related to his right to self-organization in order to give rise to unfair labor practice on the part of the employer," because "under subsection 5 of section 4(a), the employee's (1) having filed charges or (2) having given testimony or (3) being about to give testimony, are modified by 'under this Act' appearing after the last item."[2] The Bank therefore renewed its motion to dismiss, but the court held the motion in abeyance and proceeded with the hearing.

On July 4, 1962 the court rendered a decision finding the Bank guilty of unfair labor practice and ordering it to reinstate the respondents, with full back wages and without loss of seniority and other privileges. This decision was affirmed by the court en banc on August 9, 1962.

Relying upon Royal Interocean Lines vs. CIR,[3] and Lakas ng Pagkakaisa sa Peter Paul vs. CIR,[4] the Bank argues that the court should have dismissed the complaint because the discharge of the respondents had nothing to do with their union activities as the latter in fact admitted at the hearing that the writing of the letter-charge was not a "union action" but merely their "individual" act.

It will avail the Bank none to gloat over this admission of the respondents. Assuming that the latter acted in their individual capacities when they wrote the letter-charge they were nonetheless protected for they were engaged in concerted activity, in the exercise of their right of self-organization that includes concerted activity for mutual aid and protection,[5] interference with which constitutes an unfair labor practice under section 4(a)(1). This is the view of some members of this Court. For, as has been aptly stated, the joining in protests or demands, even by a small group of employees, if in furtherance of their interests as such, is a concerted activity protected by the Industrial Peace Act. It is not necessary that union activity be involved or that collective bargaining be contemplated.[6]

Indeed, when the respondents complained against nepotism, favoritism and other management practices, they were acting within an area marked out by the Act as a proper sphere of collective bargaining. Even the reference to immorality was not irrelevant as it was made to support the respondents' other charge that the bank president had failed to provide wholesome working conditions, let alone a good moral example, for the employees by practicing discrimination and favoritism in the appointment and promotion of certain employees on the basis of illicit relations or blood relationship with them.

In many respects, the case at bar is similar to National Labor Relations Board vs. Phoenix Mutual Life Insurance Co.[7] The issue in that case was whether an insurance company was guilty of an unfair

labor practice in interfering with this right of concerted activity by discharging two agents employed in a branch office. The cashier of that office had resigned. The ten agents employed there held a meeting and agreed to join in a letter to the home office objecting to the transfer to their branch office of a cashier from another branch office to fill the position. They discussed also the question whether to recommend the promotion of the assistant cashier of their office as the proper alternative. They then chose one of their number to compose a draft of the letter and submit it to them for further discussion, approval and signature. The agent selected to write the letter and another were discharged for their activities in this respect as being, so their notices stated, completely unpleasant and far beyond the periphery of their responsibility. In holding the company liable for unfair labor practice, the Circuit Court of Appeals said:

> A proper construction is that the employees shall have the right to engage in concerted activities for their mutual aid or protection even though no union activity be involved, for collective bargaining be contemplated. Here Davis and Johnson and other salesmen were properly concerned with the identity and capability of the new cashier. Conceding they had no authority to appoint a new cashier or even recommend anyone for the appointment, they had a legitimate interest in acting concertedly in making known their views to management without being discharged for that interest. The moderate conduct of Davis and Johnson and the others bore a reasonable relation to conditions of their employment. It was therefore an unfair labor practice for respondent to interfere with the exercise of the right of Davis and Johnson and the other salesmen to engage in concerted activities for their mutual aid or protection.

Other members of this Court agreed with the CIR that the Bank's conduct violated section 4(a) (5) which makes it an unfair labor practice for an employer to dismiss an employee for having filed charges under the Act.

Some other members of this Court believe, without necessarily expressing approval of the way the respondents expressed their grievances, that what the Bank should have done was to refer the

letter-charge to the grievance committee. This was its duty, failing which it committed an unfair labor practice under section 4(a) (6). For collective bargaining does not end with the execution of an agreement. It is a continuous process. The duty to bargain imposes on the parties during the term of their agreement the mutual obligation "to meet and confer promptly and expeditiously and in good faith for the purpose of adjusting any grievances or question arising under such agreement"[8] and a violation of this obligation is, by section 4 (a) (6) and (b) (3) an unfair labor practice.[9] As Professors Cox and Dunlop point out:

> Collective bargaining normally takes the form of negotiations when major conditions of employment to be written into an agreement are under consideration and of grievance committee meetings and arbitration when questions arising in the administration of an agreement are at stake.[10]

Instead of stifling criticism, the Bank should have allowed the respondents to air their grievances. Good faith bargaining required of the Bank an open mind and a sincere desire to negotiate over grievances.[11] The grievance committee, created in the collective bargaining agreements, would have been an appropriate forum for such negotiation. Indeed, the grievance procedure is a part of the continuous process of collective bargaining.[12] It is intended to promote, as it were, a friendly dialogue between labor and management as a means of maintaining industrial peace.

The Bank defends its action by invoking its right to discipline for what it calls the respondents' libel in giving undue publicity to their letter-charge. To be sure, the right of self-organization of employees is not unlimited,[13] as the right of an employer to discharge for cause[14] is undenied. The Industrial Peace Act does not touch the normal exercise of the right of an employer to select his employees or to discharge them. It is directed solely against the abuse of that right by interfering with the countervailing right of self-organization.[15] But the difficulty arises in determining whether in fact the discharges are made because of such a separable cause or because of some other activities engaged in by employees for the purpose of collective bargaining.[16]

It is for the CIR, in the first instance, to make the determination, "to weigh the employer's expressed motive in determining the effect on the employees of management's otherwise equivocal act."[17] For the Act does not undertake the impossible task of specifying in precise and unmistakable language each incident which constitutes an unfair labor practice. Rather, it leaves to the court the work of applying the Act's general prohibitory language in the light of infinite combinations of events which may be charged as violative of its terms.[18] As the Circuit Court of Appeals puts it:

> Determining the legality of a dismissal necessarily involves an appraisal of the employer's motives. In these cases motivations are seldom expressly avowed and avowals are not always candid. There thus must be a measure of reliance on the administrative agency knowledgeable in labor-management relations and on the Trial Examiner who receives the evidence firsthand and is therefore in a unique position to determine the credibility of the witnesses. Where Examiner and Board are in agreement there is an increased presumption in favor of their resolution of the issue.[19]

What we have just essayed underscores at once the difference between Royal Interocean and Lakas ng Pagkakaisa on the one hand and this case on the other. In Royal Interocean, the employee's letter to the home office, for writing which she was dismissed, complained of the local manager's "inconsiderate and untactful attitude"[20] — a grievance which, the court found, "had nothing to do with or did not arise from her union activities." Nor did the court find evidence of discriminatory discharge in Lakas ng Pagkakaisa as the letter, which the employee wrote to the mother company in violation of the local company's rule, denounced "wastage of company funds." In contrast, the express finding of the court in this case was that the dismissal of the respondents was made on account of the letter they had written, in which they demanded the resignation of the bank president for a number of reasons touching labor-management relations — reasons which not even the Bank's judgment that the respondents had committed libel could excuse it for making summary discharges[21] in disregard of its duty to bargain collectively.

In final sum and substance, this Court is in unanimity that the Bank's conduct, identified as an interference with the employees' right of self-organization, or as a retaliatory action, and/or as a refusal to bargain collectively, constituted an unfair labor practice within the meaning and intendment of section 4(a) of the Industrial Peace Act.

ACCORDINGLY, the decision of July 4, 1962 and the resolution of August 9, 1962 of the Court of Industrial Relations are affirmed, at petitioner's cost.

Concepcion, *C.J.*, Reyes, Dizon, Makalintal, Zaldivar, Sanchez and Angeles, *JJ.*, concur.
Bengzon, *J.*, took no part.

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[1] Mariano vs. Royal Interocean Lines, Case 527-ULP.
[2] Royal Interocean Lines vs. CIR, L-11745, Oct. 31, 1960.
[3] Note 2, supra.
[4] L-10130, Sept. 30, 1957.
[5] Section 3 of the industrial Peace Act provides: "Employees' Right to Self-Organization. — Employees shall have the right to self-organization and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection. Individuals employed as supervisors shall not be eligible for membership in a labor organization of employees under their supervision but may form separate organizations of their own."
[6] Annot., 6 A.L.R. 2d 416 (1949).
[7] 167 F. 2d 983 (7th Cir 1948).
[8] Industrial Peace Act, sec. 13.
[9] NLRB vs. Highland Shoe, Inc., 119 F. 2d 218 (1st Cir. 1941); NLRB vs. Bachelder, 120 F. 2d 574 (7th Cir. 1941).
[10] The Duty to Bargain Collectively During the Term of an Existing Agreement, 63 Harv. L. Rev. 1097, 1105 (1950).
[11] Cf. id. at 1110.
[12] United Steelworkers of America vs. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); accord, United Steelworkers of America vs. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).
[13] Republic Aviation Corp. vs. NLRB, 324 U.S. 793 (1945).
[14] E.g., Philippine Educ. Co. vs. Union of Phil. Educ. Employees, L-13773, April 29, 1960.
[15] Phelps Dodge Corp. vs. NLRB, 313 U.S. 177 (1941).
[16] NLRB vs. Local 1229, IBEW, 346 U.S. 464 (1953).

[17] NLRB vs. Stowe Spinning Co., 336 U.S. 226 (1949).
[18] Republic Aviation Corp. vs. NLRB, supra note 13.
[19] NLRB vs. M & B Headwear Co., 349 F. 2d 170 (4th Cir. 1965).
[20] See second Royal Interocean case, L-12429, Feb. 27, 1961.
[21] "Considering the actualities of the collective bargaining and grievance procedures, we think the employer must realize that far-fetched and overstated claims, easily dissuadable, are often made initially by one side in a labor dispute (especially when it is inexperienced in labor relations). Such claims may well evaporate on discussion and negotiation, and never become an integral part of the union's real purposes. We think that the employer cannot seize upon this kind of claim — made by ignorant workers in their initial demands — in order to justify retaliatory measures against them. He must make some effort to find out if the employees mean in fact to pursue these claims, to stick to demands which are not protected by sec. 7. Summary discharge seems especially premature here." NLRB vs. Electronics Equip. Co., 194 F. 2d 650 (2nd Cir. 1952).

Cf. Abaya vs. Villegas, L-25641, Dec. 17, 1966.

SEPARATE OPINIONS

FERNANDO, J., concurring:

The opinion of the Court in this highly significant unfair labor practice case, one of first impression, easily commends itself for approval. The relevant facts are set forth in all fullness and with due care. The position of the Court united as it is on an unfair labor practice having been committed, but not quite fully agreed as to which particular subsection of the legal provision was violated, is delineated with precision. With the explicit acknowledgement there made that some members of the Court are of the belief that what was done by the Republic Bank here amounted to "interference" and with the writer being of the persuasion that it could be categorized in line with the statute as "interference, restraint or coercion," a few words as to why this view is entertained may not be inappropriate.

No one can doubt that we are in the process of evolving an indigenous labor jurisprudence. Notwithstanding the clearly American background of the Industrial Peace Act, based as it is mainly on the

Wagner Act,[1] labor relations in the Philippines with their peculiar problems and the ingenuity of Filipino lawyers have resulted in a growing body of decisions notable for their suitability to local condition and their distinctly local flavor. This is as it should be.

The present case affords one such instance. The wealth of adjudication by both judicial and administrative agencies in the United States notwithstanding the diligent and earnest search for a ruling based on a similar fact-situation yielded no case precisely in point. What does it signify? At the very least, it may indicate that while the problem posed could have arisen there, this particular response of labor was quite unique. On the assumption which I have here hypothetically made that there was indeed a valid cause for grievance, a more diplomatic approach could have been attempted. Or at the very least the procedure indicated for the adjustment of a grievance could have been followed. That was not done. What respondents did was to issue an ultimatum.

Collective bargaining whether in its formative stage preparatory to a labor contract or in the adjustment of a labor problem in accordance with the procedure set forth in an existing agreement presupposes the give-and-take of discussion. No party adopts, at least in its initial stages, a hard-line position, from which there can be no retreat. That was not the situation here. Respondents as labor leaders appeared adamantine in their attitude to terminate the services of the then president of the Republic Savings Bank. Nor did they mince words in describing his alleged misdeeds. They were quite certain that he had offended most grievously. They wanted him out. There was no room for discussion.

That for me is not bargaining as traditionally and commonly understood. It is for that reason that I find it difficult to agree fully with the view that their dismissal could be construed as a refusal to bargain collectively. Moreover, they did not as adverted to in the opinion of the Court, follow the procedure set forth for adjusting grievances. Nor considering the explicit language of the Industrial Peace Act may such dismissal fall within the prohibition against dismissing employees for having filed charges or about to give testimony “under the Act.” As a matter of fact, if the letter were indeed libelous, their dismissal would not have been unjustified.

There was an admission as noted in the opinion "that the writing of the letter charged was not a 'union' action but merely their 'individual' act."

Nonetheless, concurrence with the decision arrived at by the Court is called for in view of their mass dismissal. Under the circumstances, the supervisors union, the Republic Savings Bank employees union, the Republic Savings Bank security guards union, and the Republic Savings Bank supervisors union were left leaderless. For collective bargaining to be meaningful, there must be two parties, one representing management and the other representing the union. Nor could management select who would represent the latter or with whom to deal, otherwise in effect there would be only one party. Obviously there would then be no bargaining.

It is my view therefore that the dismissal amounted to "interference, restraint or coercion" as prohibited in the Industrial Peace Act. To repeat, this Section 4(a), with the exception of subsection (2), was taken from the Wagner Act. There is as stated by Bufford in his treatise for the Wagner Act "an overlap" as this particular subsection deals "with additional labor practice besides containing incidental provisions concerning related matters."[2] As noted further by such commentator: "As expressed by the Senate Committee: 'The four succeeding unfair labor practices are designed not to impose limitations or restrictions upon the general guarantees of the first, but rather to spell out with particularity some of the practices that have been most prevalent and most troublesome.'"

Teller is in agreement. This subsection according to him "involves the widest varieties of activities." The other unfair labor practices condemned fall within its terms. Thus: "That the Board has taken this position is evidenced both by the Board decisions and by express statement to such effect contained in its first annual report, the language of which in this connection is as follows: 'At the outset it should be explained that the Board has held that a violation by an employer of any of the other four subdivisions of Section 8 of the act is, by the same token, a violation of Section 8(1). Such a conclusion is too obvious to require explanation. In fact, almost all of the cases in which the Board has found a violation of Section 8(1) are cases in which the principal offense charged fell within some other

subdivision of Section 8. The explanation for this is, apparently, that even though an employer may be engaging in anti-union activities in violation of Section 8(1), unions do not seek protection of the act until such activities take such drastic form as bring them within the provisions of some other subdivisions, as, for example, the discriminatory discharge of union members (which comes within subdivision [3]), the domination of or interference with the formation or administration of a labor organization (which comes within subdivision [2]). or a refusal to bargain collectively (which comes within subdivision [5]."[3]

In the Philippines as in the United States then, the first subsection on "interference, restraint or coercion" covering as it does such a broad range of undesirable practices on the part of employers could easily be seized upon, where a borderline case, inimical to the right of self-organization or to collective bargaining, presents itself as justifying a finding of an unfair labor practice.

Decision and Resolution affirmed.

FERNANDO, J., concurring:

[1] The National Labor Relations Act (1935) 49 Stat. 457.
[2] Bufford on the Wagner Act (1941), 169.
[3] Teller, Labor disputes and Collective Bargaining (1940), 762.