SUPREME COURT
EN BANC

SHELL OIL WORKERS' UNION,
***Petitioner*,**

-versus-

G.R. No. L-28607
May 31, 1971

SHELL COMPANY OF THE PHILIPPINES, LTD., and THE COURT OF INDUSTRIAL RELATIONS,
***Respondents*.**
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D E C I S I O N

FERNANDO, *J.*:

BARREDO, J., concurring:

The insistence on the part of respondent Shell Company of the Philippines to dissolve its security guard section, stationed at its Pandacan Installation, notwithstanding its being embraced in, and its continuance as such thus assured by an existing collective bargaining

contract, resulted in a strike called by petitioner Shell Oil Workers' Union, hereinafter to be designated as the Union, certified a month later on June 27, 1967 by the President to respondent Court of Industrial Relations. Against its decision declaring the strike illegal primarily on the ground that such dissolution was a valid exercise of a management prerogative, this appeal is taken. With due recognition that the system of industrial democracy fostered in the regime of unionization and collective bargaining leaves room for the free exercise of management rights, but unable to close our eyes to the violation of a contract still in force implicit in such dissolution thus giving rise to an unfair labor practice, we cannot sustain respondent Court of Industrial Relations. Consequently, the harsh and unwarranted sanction imposed, the dismissal of the security guards and the officers of the Union, cannot stand. Insofar, however, as individual liability is deemed incurred for serious acts of violence, whether committed by a leader or member of the Union, we leave things as adjudged.

The deep-rooted differences between the parties that led to the subsequent strike were made clear in the presidential certification. As set forth in the opening paragraph of the decision now on appeal: "Before this Court for resolution is the labor dispute between the petitioner Shell Oil Workers' Union, Union for brevity, and the respondent Shell Company of the Philippines Limited, Company for short, which was certified to this Court on June 27, 1967 by the Office of the President of the Republic of the Philippines pursuant to the provision of Section 10 of Republic Act No. 875. Said dispute 'was a result of the transfer by the Company of the eighteen (18) security guards to its other department and the consequent hiring of a private security agency to undertake the work of said security guards.'"[1]

The respective contentions of the parties were then taken up. Petitioner "filed the petition on July 7, 1967 alleging, among others, that the eighteen (18) security guards affected are part of the bargaining unit and covered by the existing collective bargaining contract, and as such, their transfers and eventual dismissals are illegal being done in violation of the existing contract. It, therefore, prayed that said security guards be reinstated with full back wages from the time of their dismissal up to the time of their actual reinstatement."[2] Then came a summary of the stand of Shell

Company: “For hours hereafter, respondent Company filed its Answer [to] the material allegations in the Union’s petition and adverted that the issues in this case are: (1) whether or not the Company commits unfair labor practice in contracting out its security service to an independent professional security agency and reassigning the 18 guards to other sections of the Company; (2) whether or not the dismissal of the 18 security guards are justified; and (3) whether or not the strike called by the Union on May 25, 1967 is legal. As special and affirmative defenses, the Company maintained that in contracting out the security service and redeploying the 18 security guards affected, it was merely performing its legitimate prerogative to adopt the most efficient and economical method of operation; that said guards were transferred to other sections with increase, except for four (4) guards, in rates of pay and with transfer bonus; that said action was motivated by business consideration in line with past established practice and made after notice to and discussion with the Union; that the 18 guards concerned were dismissed for wilfully refusing to obey the transfer order; and that the strike staged by the Union on May 25, 1967 is illegal. Primarily, Company prayed, among others, for the dismissal of the Union’s petition and the said Union’s strike be declared illegal followed by the termination of the employee status of those responsible and who participated in said illegal strike.”[3]

The move for the dissolution of the security section by reassigning the guards to other positions and contracting out such service to an outside security agency had its origins as far back as 1964. A study made by the Shell Company for the purpose of improving the productivity, organization and efficiency of its Pandacan Installation recommended its dissolution. If an outside agency to perform such service were to be hired, there would be a savings of P96,000.00 annually in addition to further economy consequent on the elimination to overtime an administration expenses. Its implementation was scheduled for 1965.[4] There was then, in July 1966, a joint consultation by the Union and management on the matter. At that stage, it would appear that there was no serious opposition to such a move provided it be done gradually and in close consultation with the Union. There was even an offer of cooperation as long as a scheme for retirement of the security guards affected or their redeployment would be followed.[5]

The tentative character of such proposed dissolution was made evident by the fact however that on August 26, 1966, a collective bargaining contract was executed between the Union and the Shell Company effective from the first of the month of that year to December 31, 1969. It contained the usual grievance procedure and no strike clauses.[6] More relevant to the case before this Court, however, was the inclusion of the category of the security guards in such collective bargaining contract. This was stressed in the brief for the petitioner where specific mention is made of the agreement covering rank and file personnel regularly employed by the Company, included in which is the work area covered by the Pandacan Installation.[7] There was likewise specific reference to such positions in the wage schedule for hourly-rated categories appearing in an appendix thereof.[8] Mention was expressly made in another appendix of the regular remuneration as well as premium pay and night compensation.[9] Nonetheless, Shell Company was bent on doing away with the security guard section, to be replaced by an outside security agency. That was communicated to the Union in a panel to panel meeting on May 3, 1967. A counter-offer on the part of the Union to reduce the working days per week of the guards from six to five was rejected by Shell Company on the ground of its being unusual and impracticable. Two days later, there was a meeting of the Union where a majority of the members made clear that should there be such a replacement of the company guards by a private security agency, there would be a strike. It was noted in the decision that when the strike vote was taken, out of 243 members, 226 were for the approval of a motion to that effect.[10] On the afternoon of May 24, 1967, a notice of reassignment effective at 8: 00 o'clock the next morning was handed to the guards affected. At 10 :00 o'clock that evening, there was a meeting by the Union attended by ten officers and a majority of the members wherein it was agreed viva voce that if there would be an implementation of the circular dissolving the security section to be replaced by guards from an outside agency, the Union would go on strike immediately.[11] The strike was declared at half-past 7:00 o'clock in the morning of May 25, 1967 when security guards from an outside agency were trying to pass the main gate of the Shell Company to start their work. With the picket line established, they were unable to enter. Efforts were made by the Conciliation Service of the Department of Labor to settle the matter,

but they were unsuccessful.[12] It was not until June 27, 1967, however, that the Presidential certification came.[13] There was a return to work order on July 6, 1967 by respondent Court, by virtue of which pending the resolution of the case, the Shell Company was not to lockout the employees involved and the employees in turn were not to strike.

The decision of respondent Court was rendered on August 5, 1967. It declared that no unfair labor practice was committed by Shell Company in dissolving its security guards from an outside agency, as such a step was well within management prerogative. Hence for it, the strike was illegal, there being no compliance with the statutory requisites before an economic strike could be staged. Respondent Court sought to reinforce such a conclusion by a finding that its purpose was not justifiable and that it was moreover carried out with violence. There was thus a failure on its part to accord due weight to the terms of an existing collective bargaining agreement. Accordingly, as was made clear in the opening paragraph of this opinion, we view matters differently. The strike cannot be declared illegal, there being a violation of the collective bargaining agreement by Shell Company. Even if it were otherwise, however, this Court cannot lend sanction of its approval to the outright dismissal of all union officers, a move that certainly would have the effect of considerably weakening a labor organization, and thus in effect frustrate the policy of the Industrial Peace Act to encourage unionization. To the extent, however, that the serious acts of violence occurring in the course of the strike could be made the basis for holding responsible a leader or a member of the Union guilty of their commission, what was decided by respondent Court should not be disturbed.

1. It is the contention of Shell Company, sustained by respondent Court, that the dissolution of the security guard section to be replaced by an outside agency is a management prerogative. The Union argues otherwise, relying on the assurance of the continued existence of a security guard section at least during the lifetime of the collective bargaining agreement. The second, third and fourth assignment of errors, while they could have been more felicitously worded, did attack the conclusion reached by respondent Court as contrary to and in violation of the

existing contract. It is to be admitted that the stand of Shell Company as to the scope of management prerogative is not devoid of plausibility if it were not bound by what was stipulated. The growth of industrial democracy fostered by the institution of collective bargaining with the workers entitled to be represented by a union of their choice, has no doubt contracted the sphere of what appertains solely to the employer. It would be going too far to assert, however, that a decision on each and every aspect of the productive process must be reached jointly by an agreement between labor and management. Essentially, the freedom to manage the business remains with management. It still has plenty of elbow room for making its wishes prevail. In much the same way that labor unions may be expected to resist to the utmost what they consider to be an unwelcome intrusion into their exclusive domain, they cannot justly object to management equally being jealous of its prerogatives.

More specifically, it cannot be denied the faculty of promoting efficiency and attaining economy by a study of what units are essential for its operation. To it belongs the ultimate determination of whether services should be performed by its personnel or contracted to outside agencies. It is the opinion of the Court, that while management has the final say on such matter, the labor union is not to be completely left out. What was done by Shell Company in informing the Union as to the step it was intending to take on the proposed dissolution of the security guard section to be replaced by an outside agency is praise-worthy. There should be mutual consultation eventually deference is to be paid to what management decides. Thereby, in the words of Chief Justice Warren, there is likely to be achieved "peaceful accommodation of conflicting interest."[14] In this particular case though, what was stipulated in an existing collective bargaining contract certainly precluded Shell Company from carrying out what otherwise would have been within its prerogative if to do so would be violative thereof.

2. The crucial question thus is whether the then existing collective bargaining contract running for three years from

August 1, 1966 to December 31, 1969 constituted a bar to such a decision reached by management? The answer must be in the affirmative. As correctly stressed in the brief for the petitioner, there was specific coverage concerning the security guard section in the collective bargaining contract. It is found not only in the body thereof but in the two appendices concerning the wage schedules as well as the premium pay and the night compensation to which the personnel in such section were entitled.[15] It was thus an assurance of security of tenure, at least, during the lifetime of the agreement. Nor is it a sufficient answer, as set forth in the decision of respondent Court, that while such a section would be abolished, the guards would not be unemployed as they would be transferred to another position with an increase in pay and with a transfer bonus. For what is involved is the integrity of the agreement reached, the terms of which should be binding on both parties. One of them may be released, but only with the consent of the other. The right to object belongs to the latter, and if exercised, must be respected. Such a state of affairs should continue during the existence of the contract. Only thus may there be compliance with and fulfillment of the covenants in a valid subsisting agreement.

What renders the stand of Shell Company even more vulnerable is the fact that as set forth in its brief and as found by respondent Court as far back as 1964, it had already been studying the matter of dissolving the security guard section and contracting out such service to an Outside agency. Apparently, it had reached a decision to that effect for implementation the next year. In July 1966, there was a joint consultation between it and the Union on the matter. Nonetheless on August 26, 1966, a collective bargaining contract was entered into which, as indicated above, did assure the continued existence of the security guard section. The Shell Company did not have to agree to such a stipulation. Or it could have reserved the right to effect a dissolution and reassign the guards. It did not do so. Instead, when it decided to take such a step resulting in the strike, it would rely primarily on provisions in the collective

bargaining contract couched in general terms, merely declaratory of certain management prerogatives. Considering the circumstances of record, there can be no justification then for Shell Company's insistence on pushing through its project of such dissolution without thereby incurring a violation of the collective bargaining agreement.

3. The Shell Company, in failing to manifest fealty to what was stipulated in an existing collective bargaining contract, was thus guilty of an unfair labor practice. Such a doctrine first found expression in Republic Savings Bank vs. Court of Industrial Relations,[16] the opinion of the Court being penned by Justice Castro. There was a reiteration of such a view in Security Bank Employees Union vs. Security Bank and Trust Company.[17] Thus: "It being expressly provided in the Industrial Peace Act that [an] unfair labor practice is committed by a labor union or its agent by its refusal 'to bargain collectively with the employer' and this Court having decided in the Republic Savings Bank case that collective bargaining does not end with the execution of an agreement, being a continuous process, the duty to bargain necessarily imposing on the parties the obligation to live up to the terms of such a collective bargaining agreement if entered into, it is undeniable that non-compliance therewith constitutes an unfair labor practice."[18]

4. Accordingly, the unfair labor practice strike called by the Union did have the impress of validity. Rightly, labor is justified in making use of such a weapon in its arsenal to counteract what is clearly outlawed by the Industrial Peace Act. That would be one way to assure that the objectives of unionization and collective bargaining would not be thwarted. It could, of course, file an unfair labor practice case before the Court of Industrial Relations. It is not precluded, however, from relying on its own resources to frustrate such an effort on the part of an employer. So we have consistently held — and for the soundest of reasons.[19]

   There is this categorical pronouncement from the present Chief Justice: "Again, the legality of the strike follows as a

corollary to the finding of fact, made in the decision appealed from — which is supported by substantial evidence — to the effect that the strike had been triggered by the Company's failure to abide by the terms and conditions of its collective bargaining agreement with the Union, by the discrimination, resorted to by the company, with regard to hire and tenure of employment, and the dismissal of employees due to union activities, as well as the refusal of the company to bargain collectively in good faith."[20] As a matter of fact, this Court has gone even further. It is not even required that there be in fact an unfair labor practice 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. So it was clearly stated by the present Chief Justice while still a Associate Justice of this Court: "As a consequence, we hold that the strike in question had been called to offset what petitioners were warranted in believing in good faith to be unfair labor practices on the part of Management, that petitioners were not bound, therefore, to wait for the expiration of thirty (30) days from notice of strike before staging the same, that said strike was net, accordingly, illegal and that the strikers had not thereby lost their status as employees of respondents herein."[21]

5. It would thus appear that the decision now on appeal did not reflect sufficient awareness of authoritative pronouncements coming from this Court. What is worse, certain portions thereof yield the impression that an attitude decidedly unsympathetic to labor's resort to strike is evident. Such should not be the case. The right to self-organization so sedulously guarded by the Industrial Peace Act explicitly includes the right "to engage in concerted activities for the purpose of collective bargaining and to the mutual aid or protection."[22] From and after June 17, 1953 then, there cannot be the least doubt that a strike as form of concerted activity has the stamp of legitimacy. As a matter of law, even under the regime of compulsory arbitration under the Court of Industrial Relations Act,[23] a strike was by no means a forbidden weapon. Such is the thought embodied in the opinion of Justice Laurel in Rex Taxicab Company vs. Court

of Industrial Relations.[24] Thus: "In other words, the employee, tenant or laborer is inhibited from striking or walking out of his employment only when so enjoined by the Court of Industrial Relations and alter a dispute has been submitted thereto and pending award or decision by the court of such dispute. It follows that, as in the present case, the employees or laborers may strike before being ordered not to do so and before an industrial dispute is submitted to the Court of Industrial Relations, subject to the power of the latter, after hearing when public interest so requires or when the dispute cannot, in its opinion, be promptly decided or settled, to order them to return, with the consequence that if the strikers fail to return to work, when so ordered, the court may authorize the employer to accept other employees or laborers."[25] Former Chief Justice Paras, in a case not too long before enactment of the Industrial Peace Act, had occasion to repeat such a view. Thus: "As a matter of fact, a strike may not be staged only when, during the pendency of an industrial dispute, the Court of Industrial Relations has issued the proper injunction against the laborers (section 19, Commonwealth Act No. 103, as amended). Capital need not, however, be apprehensive about the recurrence of strikes in view of the system of compulsory arbitration by the Court of Industrial Relations."[26]

A strike then, in the apt phrase of Justice J.B.L. Reyes, is "an institutionalized factor of democratic growth."[27] This is to foster industrial democracy. Implicit in such a concept is the recognization that concerning the ends which labor considers worthwhile, its wishes are ordinarily entitled to respect. Necessarily so, the choice as to when such an objective may be attained by striking likewise belongs to it. There is the rejection of the concept that an outside authority, even if governmental, should make the decisions for it as to ends which are desirable and how they may be achieved. The assumption is that labor can be trusted to determine for itself when the right to strike may be availed of in order to attain a successful fruition in their disputes with management. It is true that there is a requirement in the Act that before the employees may do so, they must file with the

Conciliation Service of the Department of Labor a notice of their intention to strike.[28] Such a requisite however, as has been repeatedly declared by this Court, does not have to be complied with in case of unfair labor practice strike, which certainly is entitled to greater judicial protection if the Industrial Peace Act is to be rendered meaningful. What has been said thus far would demonstrate the unwarranted deviation of the decision now on appeal from what is indicated by the law and authoritative decisions.

6. Respondent Court was likewise impelled to consider the strike illegal because of the violence that attended it. What is clearly within the law is the concerted activity of cessation of work in order that a union's economic demands may be granted or that an employer cease and desist from an unfair labor practice. That the law recognizes as a right. There is though a disapproval of the utilization of force to attain such an objective. For implicit in the very concept of a legal order is the maintenance of peaceful ways. A strike otherwise valid, if violent in character, may be placed beyond the pale. Care is to be taken, however, especially where an unfair labor practice is involved, to avoid stamping it with illegality just because it is tainted by such acts. To avoid rendering illusory the recognition of the right to strike, responsibility in such a case should be individual and not collective. A different conclusion would be called for, of course, if the existence of force while the strike lasts is pervasive and widespread, consistently and deliberately resorted to as a matter of policy. It could be reasonably concluded then that even if justified as to ends, it becomes illegal because of the means employed.

   Respondent Court must have unduly impressed by the evidence submitted by the Shell Company to the effect that the strike was marred by acts of force, intimidation and violence on the evening of June 14 and twice in the mornings of June 15 and 16, 1967 in Manila. Attention was likewise called to the fact that even on the following day, with police officials stationed at the strike-bound area, molotov bombs did explode and the streets were obstructed with wooden

planks containing protruding nails. Moreover, in the branches of the Shell Company in Iloilo City as well as in Bacolod, on dates unspecified, physical injuries appeared to have been inflicted on management personnel. Respondent Court in the appealed decision did penalize with loss of employment the ten individuals responsible for such acts. For is it to be lost sight of that before the certification on June 27, 1967, one month had elapsed during which the Union was on strike. Except on those few days specified then, the Shell Company could not allege that the strike was conducted in a manner other than peaceful. Under the circumstances, it would be going too far to consider that it thereby became illegal. This is not by any means to condone the utilization of force by labor to attain its objectives. It is only to show awareness that in labor conflicts, the tension that fills the air as well as the feeling of frustration and bitterness could break out in sporadic acts of violence. If there be in this case a weighing of interests in the balance, the ban the law imposes on unfair labor practices by management that could provoke a strike and its requirement that it be conducted peaceably, it would be, to repeat, unjustified, considering all the facts disclosed, to stamp the strike with illegally. It is enough that individual liability be incurred by those guilty of such acts of violence that call for loss of employee status.

Such an approach is reflected in our recent decisions. As was realistically observed by the present Chief Justice, it is usually attended by "the excitement, the heat and the passion of the direct participants in the labor dispute, at the peak thereof."[29] Barely four months ago, in Insular Life Assurance Co., Ltd. Employees' Association vs. Insular Life Assurance Co., Ltd.,[30] there is the recognition by this Court, speaking through Justice Castro, of picketing as such being "inherently explosive."[31] It is thus clear that not every form of violence suffices to affix the seal of illegality on a strike or to cause the loss of employment by the guilty party.

7. In the light of the foregoing, there being a valid unfair labor practice strike, the loss of employment decreed by

> respondent Court on all the Union officers cannot stand. The premise on which such penalty was decreed was the illegality of the strike. We rule differently. Hence, its imposition is unwarranted. It is to be made clear, however, that because of the commission of specific serious acts of violence, the Union's President, Gregorio Bacsa, as well as its Assistant Auditor, Conrado Peña, did incur such a penalty.[32]

On this point, it may be observed further that even if there was a mistake in good faith by the Union that an unfair labor practice was committed by the Shell Company when such was not the case, still the wholesale termination of employee status of all the officers of the Union, decreed by respondent Court, hardly commends itself for approval. Such a drastic blow to a labor organization, leaving it leaderless, has serious repercussions. The immediate effect is to weaken the Union. New leaders may of course emerge. It would not be unlikely under the circumstances, that they would be less than vigorous in the prosecution of labor's claims. They may be prove to fall victims to counsels of timidity and apprehension. At the forefront of their consciousness must be an awareness that a mistaken move could well mean their discharge from employment. That would be to render the right to self-organization illusory.

The plain and unqualified constitutional command of protection to labor should not be lost eight of.[33] The State is thus under obligation to lend its aid and its succor to the efforts of its labor elements to improve their economic condition. It is now generally accepted that unionization is a means to such an end. It should be encouraged. Thereby, labor's strength, what there is of it, becomes solidified. It can bargain as a collectivity. Management then will not always have the upper hand nor be in a position to ignore its just demands. That, at any rate, is the policy behind the Industrial Peace Act. The judiciary and administrative agencies in construing it must ever be conscious of its implications. Only thus may there be fidelity to what is ordained by the fundamental law. For if it were otherwise, instead of protection, there would be neglect or disregard. That is to negate the fundamental principle that the Constitution is the supreme law.

WHEREFORE, the decision of respondent Court of Industrial Relations of August 5, 1967 is reversed, the finding of illegality of the

strike declared by the Shell Oil Workers' Union on May 25, 1967 not being in accordance with law. Accordingly, the dismissal by the Shell Company on May 27, 1967 of the eighteen security guards,[34] with the exception of Ernesto Crisostomo, who was found guilty of committing a serious act of violence is set aside and they are declared reinstated. The continuance of their states as such is, however, dependent on whether or not a security guard section is provided for in the collective bargaining contract entered into after the expiration of the contract that expired on December 31, 1969. The loss of employee status of the officers of the Union,[35] decreed by respondent Court in its decision, is likewise set aside, except as to Gregorio Bacsa and Conrado Peña, both of whom did commit serious acts of violence. The termination of the employee status of Nestor Samson, Jose Rey, Romeo Rosales, Antonio Labrador and Sesinando Romero, who committed acts of violence not serious in character, is also set aside, but while allowed to be reinstated, they are not entitled to back pay. Ricardo Pagsibigan and Daniel Barraquel, along with the aforesaid Gregorio Bacsa, Conrado Peña and Ernesto Crisostomo, were legally penalized with dismissal because of the serious acts of violence committed by them in the course of the strike. The rest of the employees laid off should be reinstated with back pay to be counted from the date they were separated by virtue of the appealed decision, from which should be deducted whatever earnings may have been received by such employees during such period. The case is hereby remanded to respondent Court for the implementation of this decision. In ascertaining the back wages to which the security guards are entitled, it must likewise be ascertained whether or not the security guard section is continued after December 31, 1969. Without costs.

Concepcion, *C.J.*, Zaldivar, Teehankee, Villamor and Makasiar, *JJ.*, concur.
Castro, *J.*, took no part.

SEPARATE OPINIONS

BARREDO, J., concurring:

To be sure, a dissent from the opinion ably written by Our learned colleague, Justice Fernando, may not be entirely without some agree of plausibility. To begin with, the basic conclusion of fact of the Court of Industrial Relations in the appealed decision, which by law and the previously unbroken line of decisions of this Court on the point, We cannot lightly set aside, seem to be logical and supported by evidence not seriously disputed. Withal, when it is considered that there is nothing in the record to show that in acting as it did in this case, respondent shall Company, Ltd. was not actuated by any anti-union, much less anti-labor motive but by purely economic reasons of sound management, and, in fact, petitioner does not even suggest any such purpose, one must have to hesitate and deliberate long and hard before giving assent to a pronouncement that this respondent is guilty of unfair labor practice, such as to legalize the strike declared by petitioner against it. I take it, however, that in a larger sense this is a policy decision, and all things considered, particularly the constitutional injunctions on social justice and protection to labor, I prefer to err, since the juridical considerations and equities in this case appear to my mind and conscience to be in equipoise, on the side of labor, who, as I see it, acted in the same good faith that management did. I must hasten to add though, that in thus referring to labor, I do not have in mind the union leaders involved in this case to whom the Court of Industrial Relations has attributed personal reasons for their attitude, but I am thinking more of those security guards who felt uncertain about the ultimate consequences of their transfer ordered by respondent and naturally found nothing to hold on was the protection of the collective bargaining agreement which they had a right to assume insured the substantial continuance of the terms and conditions of their employment contemplated in said agreement at the time it was entered into.

Contrary to the conclusion of the distinguished writer of the main opinion, I regret to say that the record amply supports the finding of the Industrial Court that the transfer of the eighteen security guards concerned was not a violation of the collective bargaining agreement

between petitioner and said respondent. The more I go over the considerations of the appealed decision, the more I am convinced not only that the move was never tinged by any anti-labor hue but also that respondent had from the very beginning taken petitioner and its duly authorized representatives in its long study and deliberation of the problems, which took years, and had, in fact, consulted them on various aspects thereof. It is not denied that the maintenance of security is not the only aspect of its multifarious departments it has decided to contract out; petitioner did not object to the previous ones. Indeed, it is safe to conjecture that petitioner has always seen the point of respondent, principally the economy it would achieve and the consequent benefits labor might gain thereby. In this connection, I particularly note that there is nothing in the record indicating that there is factual basis for petitioner's claim that the security guards herein involved would surely suffer economic loss as a result of their questioned transfer; respondent made it plain that overtime and other benefits accruing to them as security guards would likewise be given to them in their new positions. And in answer to petitioner's almost rhetorical question, why were said guards being given additional hourly pay and lump sum bonuses, if respondent did not feel that their rights were being violated, it is perhaps not unreasonable to suppose that management simply felt that as the company was to save money by contracting out its security maintenance, it was but proper that the affected sector of labor should share a part of its savings.

All these, however, do not mean, on the other hand, that petitioner's strike should necessarily be held to be illegal. It is always a wholesome attitude in cases of this nature to give but secondary importance to strict technicalities, whether of substantive or remedial law, and to constantly bear in mind the human values involved which are beyond pecuniary estimation. As a general rule, labor's most potent and effective weapon is the strike, and it is but natural that when things appear to be dimming on the negotiation tables, labor should almost instinctively take a striking posture. In other words, the determination of the legality or illegality of a strike, particularly in this enlightened era of progressive thinking on labor-management relations is something that cannot be achieved by mere straight-jacketed legalistic argumentation and rationalization; the process is broader and deeper than that, for to do justice in deciding such an

issue, it is imperative that utmost consideration should be given to the particular circumstances of each case, with a view to having the most comprehensive understanding of the motivations of the parties, in the light of human needs, on the part of labor, and in the perspective of the orderly and economical conduct of business and industry, on the part of management. In this particular case, for instance, I cannot agree that respondent has violated its collective bargaining agreement with petitioner, but, on the other hand, I am not ready to conclude that for this reason, the strike here in question was consequently illegal. I hold that the two strike votes taken by the members of the petitioning union were both premised on the sincere and honest belief that there was a legal breach of the said agreement. That now I find, as the Industrial Court did, that technically and in truth, there was no such infringement did not of necessity stamp the said strike with the stigma of illegality.

It may not be amiss to add at this juncture, to allay and disabuse possible apprehension that the main opinion may conceivably produce in some quarters, that I do not discern in it any prejudice on the part of Justice Fernando, strictly pro-labor and anti-management. Precisely, I am giving my concurrence to the judgment in this case because I am convinced that, fundamentally, he has also viewed the situation at hand in the light of the above considerations, even if Our respective approaches and articulation of views have to differ, since I do not own all the perspectives whence he gives support to his conclusions, because I personally do not find any necessity to resort to other authorities, when I feel that plain reasoning, predicated on commonly accepted principles and reliance on one's proper sense of justice can suffice for the occasion.

I also concur in the sanctions ordered in the main opinion. The Court has individualized the respective responsibilities of the strikers herein involved because such exactly is what the justice of the situation demands. The reinstatement of those relatively innocent cannot be but only fair and equitable and the approval of the lay-off of those found to have acted beyond the requirements of the circumstances is founded on sound policy. In simple terms, I hold that the mere fact that a strike is not illegal, and I want to emphasize here that there is, in my opinion, a large shade of difference between a strike that is really justified and legal and one that is merely held not to be illegal,

cannot be an excuse for resort to violence. Even picketing which is the sister remedy of strikes is not supposed to be completely unrestrained and unrestricted, and unprovoked violence, threats and duress of more or less grave nature employed by strikers against person and property are twice removed from what can be judicially tolerated.

Reyes, and Makalintal, *JJ.*, concur.

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[1] Decision, Annex F, Brief for the Petitioner, pp. 84-85.
[2] Ibid., p. 85.
[3] Ibid., pp. 85-86.
[4] Brief for the Respondent, pp. 4 and 5.
[5] Decision, Annex F, Brief for the Petitioner, p. 88.
[6] Ibid.
[7] Brief for the Petitioner, pp. 20-21.
[8] Ibid., p. 21.
[9] Ibid.
[10] Decision, Annex F, Brief for the Petitioner, pp. 95-96.
[11] Ibid., p. 96.
[12] Ibid., pp. 96-97.
[13] Ibid., p. 77. The decision under review speaks of the efforts exerted by the Union leaders who were also prominent personalities in the Shell Terminal Employees Savings and Loans Association to avoid the contemplated strike if further financial concessions were to be extended to them. Since, however, it is obvious from the decision itself that the strike was approved not once but twice by the Union membership, its cause being due to the dissolution of the security guard section as noted in the Presidential certification and the pleadings of the parties, no legal relevance is to be attributed to such activities on the part of the Union leaders in the consideration of the crucial issues posed by this litigation.
[14] Fibreboard Corp. vs. National Labor Relations Board, 379 US 203 (1964). The relevant portion of Chief Justice Warren's opinion is well-worth quoting: "The Company was concerned with the high cost of its maintenance operation. It was induced to contract out the work by assurances from independent contractors that economies could be derived by reducing the work force, decreasing fringe benefits, and eliminating overtime payments. These have long been regarded as matters peculiarly suitable for resolution within the collective bargaining framework, and industrial experience demonstrates that collective negotiation has been highly successful in achieving peaceful accommodation of the conflicting interests. Yet, it is contended that when an employer can effect cost savings in these respects by contracting the work out, there is no need to attempt to achieve similar economies through negotiation with existing employees or to provide them

with an opportunity to negotiate a mutually acceptable alternative. The short answer is that, although it is not possible to say whether a satisfactory solution could be reached, national labor policy is founded upon the congressional determination that the chances are good enough to warrant subjecting such issues to the process of collective negotiation." At pp. 212-213.

[15] Brief for the Petitioner, pp. 20-21.

[16] L-20303, Sept. 27, 1967, 21 SCRA 226.

[17] L-28536, April 30, 1968, 23 SCRA 503.

[18] Ibid., p. 512.

[19] Cf. Phil. Marine Radio Officers' Assn. vs. Court of Industrial Relations, 102 Phil. 373 (1957); San Carlos Milling Co., Inc. vs. Court of Industrial Relations, L-15453, March 17, 1961, 1 SCRA 734 Consolidated Labor Assn. of the Phil. vs. Marsman and Co., Inc. L-17033, July 31, 1964, 11 SCRA 589; Phil. Steam Navigation Co. vs. Phil. Marine Officers Guild, L-20667, Oct. 29, 1965, 15 SCRA 174; Ferrer vs. Court of Industrial Relations, L-24267, May 31, 1966, 17 SCRA 352; Cromwell Commercial Co., Inc. vs. Cromwell Commercial Employees and Laborers Union, L-19777, Feb. 20, 1967, 19 SCRA 398; Cebu Portland Cement Co. vs. Cement Workers' Union, L-25032, Oct. 14, 1968, 25 SCRA 504.

[20] Cromwell Commercial Co., Inc. vs. Cromwell Commercial Employees and Laborers Union, L-19777, Feb. 20, 1967, 19 SCRA 398, 400-401.

[21] Ferrer vs. Court of Industrial Relations, L-24267, May 31, 1966, 17 SCRA 352, 360. The Ferrer doctrine was followed in Norton & Harrison Co. & Jackbilt Concrete Blocks Co. Labor Union vs. Norton Harrison Co. & Jackbilt Concrete Blocks Co., Inc., L-18461, Feb. 10, 1967, 19 SCRA 310.

[22] Section 3 of the Industrial Peace Act reads in full: "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."

[23] Commonwealth Act No. 103 as amended, October 29, 1936.

[24] 70 Phil. 621 (1940).

[25] Ibid., pp. 629-630.

[26] Dee C. Chuan & Sons vs. Court of Industrial Relations, 85 Phil. 365, 368 (1950).

[27] San Carlos Milling Co., Inc. vs. Court of Industrial Relations, L-15453, March 17, 1961, 1 SCRA 734, 740.

[28] Section 14 of the Industrial Peace Act provides in full: " (a) Whenever 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 days from receipt of such proposals. (b) In case differences shall arise on the basis of such proposals and reply, either party may request a conference which shall begin not later than ten days

from the making of such request. Both parties shall endeavor in such conference to settle the dispute amicably and expeditiously. (c) If the dispute is not settled by conference and the Conciliations Service of the Department of Labor intervenes in the dispute, it shall be the duty of each party to participate fully and promptly in such meetings and conferences as the Service may undertake. (d) Before an employer may lockout his employees or the employees may strike, either party as the case may be, must file with the Conciliation Service thirty days prior thereto a notice of their intention to strike or lockout the employees. Such notice shall be in a form to be prescribed by the Chief of the Conciliation Service."

[29] Ferrer vs. Court of Industrial Relations, L-24267, May 31, 1966, 17 SCRA 352, 360.

[30] L-25291, January 30, 1971, 37 SCRA 244.

[31] Ibid., p. 273. Mathews on Labor Relations and the Law was cited to this effect: "For as pointed out by one author, 'The picket line is an explosive front, charged with the emotions and fierce loyalties of the union-management dispute. It may be marked by colorful name-calling, intimidating threats or sporadic fights between the pickets and those who pass the line.'" Teller was likewise cited to the effect that fist fighting between union end non-union employees in the midst of a strike is no bar to reinstatement. At p. 272.

[32] It would likewise follow that no punitive sanction should be imposed on the eighteen security guards except for Ernesto Crisostomo who was rightfully held accountable for the act of violence attributed to him.

[33] Art. XIV, Sec. 6 of the Constitution reads as follows: "The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration." The eighteen security guards are: E. Crisostomo, P. Falculan, B. Bicomong, F. Flores, L. Francisco, B. Velasco, D. Pascual, J. Suarez, J. Tuazon, A. Jimenez, J. Linsangan, F. Solis, P. Carillo, V. Diaz, F. Bernardo, E. Mendoza, C. Bonus, and G. de Jesus.

[34] The eighteen security guards are: E. Crisostomo, P. Falculan, B. Bicomong, F. Flores, L. Francisco, B. Velasco, D. Pascual, B. Suarez, J. Tuazon, A. Jimenez, J. Linsangan, F. Solis, P. Carilo, V. Diaz, F. Bernardo, E. Mendoza, C. Bunos, and G. de Jesus.

[35] The thirteen officers of the Union are: G. Bacsa, E. Gaspar, E. Ocampo, D. Sahagun, J. Pilande, R. Constantino, C. Peña, P. Calaunan, N. Samson, J. Rey, P. Sawyer, A. Talastas and J. Belangoy.