**SUPREME COURT**
**SECOND DIVISION**

**NATIONAL UNION OF WORKERS IN HOTELS, RESTAURANTS AND ALLIED INDUSTRIES (NUWHRAIN) — THE PENINSULA MANILA CHAPTER (Interim Union Junta), MELVIN COWAN, SERAFIN TRIA, JR., PORFERIO YAPE, LINDA GALVEZ, BENJAMIN ESTEVES, LUTHER ADIGUE and RAYMUNDO VANCE,**
***Petitioners***,

***-versus-***

**G.R. No. 125561**
**March 6, 1998**

**NATIONAL LABOR RELATIONS COMMISSION and THE PENINSULA MANILA,**
***Respondents.***
**x----------x**

**D E C I S I O N**

**REGALADO, *J.*:**

This is a Special Civil Action for Certiorari seeking to set aside the Decision of public respondent National Labor Relations Commission (NLRC), dated February 7, 1996,[1] which affirmed the November 4, 1993 order of the med-arbiter[2] holding that the strike held by

petitioners on October 13 and 14, 1993 was illegal, and declaring the 15 officers who knowingly participated in the strike to have lost their employment status. It likewise seeks to set aside the resolution of the NLRC, dated March 28, 1996,[3] denying the motion for reconsideration filed by petitioners.

The principal parties involved in this labor dispute are petitioner National Union of Workers in Hotels, Restaurants and Allied Industries (NUWHRAIN) — The Peninsula Manila Chapter (the Junta, for brevity); the NUWHRAIN — The Peninsula Manila Rank and File Chapter (the Union, for short); and private respondent, The Peninsula Manila (hereafter, the Hotel).

The rank and file employees union, representing approximately 800 employees of the Hotel, was the herein Union which entered into a collective bargaining agreement (CBA) with the Hotel on December 15, 1991.[4] Petitioners claim that the signing of that CBA by the Union officers, headed by one Rudolpho Genato, and representatives of the Hotel was tainted with irregularities, prompting the Union to file a notice of strike on the ground of a CBA deadlock. It was further asserted that instead of proceeding with said strike, the Union officers and the officers of its national office thereafter mysteriously signed the CBA without consulting the general membership of the local chapter.[5] These anomalies created anxiety in the Union which continued to prevail in the following years.

On February, 1993, some of the union members submitted a letter-petition which was to be the first of a series of demands for the resignation. of the incumbent union officers on the ground that the latter were purportedly abusive and neglectful of their duties.[6] Because the demands went unheeded, a faction of the Union conducted what was ostensibly an impeachment proceeding, causing the removal from office of the incumbent officers headed by Genato.[7] The faction proclaimed itself as the Interim Union Junta, now the petitioners in this case.

Subsequent to the supposed impeachment of Genato and his group, the Junta requested from the Hotel the conduct of a special election of officers. The Hotel referred the request to the NUWHRAIN-LMC-IUF, the Union's national office. The latter disallowed the holding of

the election on the ground that it did not recognize the Junta because it was allegedly constituted illegally.[8]

The Junta nonetheless conducted the election resulting in the choice of a set of officers led by petitioner Melvin Cowan, but which the supposedly impeached employees, the Union's national office, and the Hotel refused to recognize.[9]

On August 10, 1993, a notice of strike was filed by the Junta before the National Conciliation and Mediation Board (NCMB) based on alleged acts of the Hotel constituting unfair labor practice (ULP), particularly, discrimination, undue interference in the exercise of the right to self-organization, and bias in favor of the impeached officers.[10] The NCMB dismissed said notice on the ground that the imputed ULP acts were mere conflicts between two sets of union officers or intra-union disputes, and, being categorized under the nomenclature of "non-strikeable acts," fall under the jurisdiction of the appropriate office of the Department of Labor and Employment (DOLE). The NCMB likewise ordered that the notice of strike be reduced to a preventive mediation case to be subjected to conciliation and mediation proceedings.[11]

Meanwhile, the Union, headed by Genato, filed a petition for injunction in the DOLE to enjoin the Junta from usurping the functions of the rightful officers. On the other hand, the Hotel filed a petition for interpleader and declaratory relief so that it may be properly guided on which of the two sets of officers, the Genato group, or the Cowan group, it should recognize and deal with in matters pertaining to the CBA.[12]

Despite the dismissal of the first notice of strike and the pendency of the aforestated conciliation proceedings and cases, the Junta filed a second notice of strike on September 9, 1993.[13] Additional grounds were set forth therein, including the suspension of an alleged Junta officer, one Sammie Coronel, which the Junta claimed constituted an unfair labor practice. This notice of strike was likewise dismissed by the NCMB as the grounds were found to be mere amplifications of those alleged in the preceding notice,[14] hence, likewise non-strikeable.

Coronel was eventually dismissed from employment and allegedly because the Junta believed that said dismissal was a ULP act,[15] it staged a wildcat strike on October 13 and 14, 1993, notwithstanding the prohibition to strike issued by the NCMB, thereby disrupting the operations of the Hotel.[16] The 15 officers of the Junta and 153 of its members were involved in the strike.

The DOLE Secretary certified the labor dispute to the NLRC for compulsory arbitration.[17] In the meantime, an order was issued by the med-arbiter in the interpleader and injunction cases declaring illegal the formation of the Junta, the impeachment of the union officers led by Genato, and the subsequent election of officers led by Cowan. It acknowledged the incumbency of the Genato group as officers and ordered the Hotel to recognize them as representatives of the rank and file employees.[18] Said order of the med-arbiter was appealed by the Junta to the DOLE Secretary who, as earlier noted, affirmed the same in a resolution dated December 22, 1994.

On December 29, 1993, the Hotel filed in the NLRC a petition to declare the wildcat strike illegal and to dismiss the employees who went on strike.[19] On January 13, 1994, the 15 officers of the Junta involved in the strike were dismissed for alleged acts of union disloyalty. Said employees and the Junta then filed a case for illegal dismissal before the NLRC.[20]

The NLRC consolidated the foregoing cases and, in a decision dated February 7, 1996, its Second Division declared the strike held on October 13 and 14, 1993 illegal as it was not based on valid grounds pursuant to the ruling of the NCMB when the latter dismissed the two notices of strike filed by the Junta. The NLRC held that the issue involving the suspension and termination from employment of Coronel did not per se constitute ULP which justifies a strike, as the matter involved purely an exercise of management prerogative which petitioners should have questioned by filing the proper complaint and not by staging a strike.[21]

Consequently, the dismissal of the 15 officers of the Junta was declared to be valid. With respect to the 153 members whose illegal acts in the strike were in issue and whose dismissal was likewise

sought by the Hotel, the NLRC ordered the remand of the case to the labor arbiter for further proceedings.[22]

In a dissent from the decision of the majority, the opinion was advanced that the strike was legal because it was premised on a valid ground, particularly, the belief of the workers in good faith that there existed ULP acts constituting a cause to strike.[23]

A motion for reconsideration was filed by the Junta but it was denied,[24] thus the instant petition to set aside the abovementioned NLRC decision and denial resolution.

The petitioners contend that public respondent NLRC acted with grave abuse of discretion in declaring the October 13 and 14, 1993 strike illegal and in remanding to the labor arbiter the matter of the alleged illegal acts of the 153 Junta members for further proceedings.[25]

This Court has carefully reviewed the records of this case and finds the petition at bar to be unmeritorious.

Generally, a strike based on a "non-strikeable" ground is an illegal strike: corollarily, a strike grounded on ULP is illegal if no such acts actually exist. As an exception, even if no ULP acts are committed by the employer, if the employees believe in good faith that ULP acts exist so as to constitute a valid ground to strike, then the strike held pursuant to such belief may be legal.[26] As a general rule, therefore, where the union believed that the employer committed ULP and the circumstances warranted such belief in good faith, the resulting strike may be considered legal although, subsequently, such allegations of unfair labor practices were found to be groundless.[27]

An established caveat, however, is that a mere claim of good faith would not justify the holding of a strike under the aforesaid exception as, in addition thereto, the circumstances must have warranted such belief. It is, therefore, not enough that the union believed that the employer committed acts of ULP when the circumstances clearly negate even a prima facie showing to sustain such belief.[28]

The Court finds that the NLRC did not commit grave abuse of discretion in ruling that the subject strike was illegal, and accordingly holds that the circumstances prevailing in this case did not warrant, as it could not have reasonably created, a belief in good faith that the Hotel committed acts of ULP as to justify the strike.

The dismissal of Coronel which allegedly triggered the wildcat strike[29] was not a sufficient ground to justify that radical recourse on the part of the Junta members. As the NLRC later found, the dismissal was legal and was not a case of ULP but a mere exercise of management prerogative on discipline, the validity of which could have been questioned through the filing of an appropriate complaint and not through the filing of a notice of strike or the holding of a strike.[30] Evidently, to repeat, appropriate remedies under the Labor Code were available to the striking employees and they had the option to either directly file a case for illegal dismissal in the office of the labor arbiter[31] or, by agreement of the parties to submit the case to the grievance machinery of the CBA so that it may be subjected to voluntary arbitration proceedings.[32]

Petitioners should have availed themselves of these alternative remedies instead of resorting to a drastic and unlawful measure, specifically, holding a wildcat strike at the expense of the Hotel whose operations were consequently disrupted for two days. Not every claim of good faith is justifiable and herein petitioners' claim of good faith shall not be countenanced by this Court since their decision to go on strike was clearly unwarranted.

With respect to the claim of petitioners that additional acts of discrimination by the Hotel generated their belief in good faith that ULP acts existed as to justify a strike, the Court deems it unnecessary to again scrutinize and expound on the same. The NLRC has already held that the alleged acts of discrimination are not "strikeable" grounds as found and explained by the NCMB when it dismissed the two notices of strike filed by the Junta.[33]

The findings of fact of the NLRC, except where there is grave abuse of discretion committed by it, are conclusive on this Court and it is only where said findings are bereft of any substantial support from the records that the Court will step in and proceed to make its

independent evaluation of the facts.[34] The Court finds no cogent reason to disturb the aforestated findings of the NLRC in the present case.

Besides, petitioners should have complied with the prohibition to strike ordered by the NCMB when the latter dismissed the notices of strike after finding that the alleged acts of discrimination of the hotel were not ULP, hence not "strikeable." The refusal of petitioners to heed said proscription of the NCMB is reflective of bad faith. In light of the foregoing circumstances, their claim of good faith must fall and we agree with the NLRC that there was no justification for the illegal strike.

We accordingly uphold the dismissal from employment of the 15 officers of the Junta who knowingly participated in the strike. An employer may lawfully discharge employees for participating in an unjustifiable wildcat strike and especially so in this case, because said wildcat strike was an attempt to undermine the Union's position as the exclusive bargaining representative and was, therefore, an unprotected activity.[35] The cessation from employment of the 15 Junta officers as a result of their participation in the illegal strike is a consequence of their defiant and capricious decision to participate therein.

Finally, petitioners invoke the dissenting opinion in the first challenged NLRC decision, dated February 7, 1996, in support of their stand. Considering the findings of the NLRC which the Court finds no reason to reject, petitioners' reliance on the dissent cannot be sustained. Moreover, a dissenting opinion is not binding as it is a mere expression of the individual view of a commissioner who disagrees with the conclusion of the majority of the members of the NLRC division concerned.[36]

**WHEREFORE**, the petition at bar is hereby **DISMISSED** for lack of any grave abuse of discretion imputable to public respondent. The assailed decision and resolution of respondent National Labor Relations Commission are consequently **AFFIRMED**. The case is remanded to the labor arbiter a quo for further proceedings on the matter of the 153 members of the Junta who participated in the strike.

**SO ORDERED**.

**Melo, Puno, Mendoza and Martinez, *JJ*., concur.**

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[1] Original Record, 33-64.
[2] Ibid., 135-149.
[3] Ibid., 65.
[4] Ibid., 225-226. This CBA expired on December 15, 1996.
[5] Ibid., 38.
[6] Ibid., 39.
[7] Ibid., 40-43.
[8] Ibid., 35. The position taken by NUWHRAIN-LMC-IUF was sustained by the DOLE Secretary in a resolution, dated December 22, 1994, directing the employer hotel to recognize only the Genato group as union officers, and ultimately by this Court in G.R. No. 120676 (Rollo, 150-160, 164).
[9] Ibid., 42-44.
[10] Ibid., 66.
[11] Ibid., 67.
[12] Ibid., 50-51.
[13] Ibid., 68.
[14] Ibid., 69-70.
[15] Ibid., 19-20.
[16] Ibid., 184.
[17] Ibid., 69-70.
[18] Ibid., 135-149.
[19] Ibid., 122 123.
[20] Ibid., 53.
[21] Ibid., 58-62.
[22] Ibid., 61; per Commissioner Victoriano R. Calaycay, with the concurrence of Presiding Commissioner Raul T. Aquino.
[23] Ibid., 63-64. The dissenting opinion of Commissioner Rogelio I. Rayala further stated that the majority erred in ordering the remand of the matter of the 153 employees who joined the strike, and that the NLRC should have ruled on it as that issue cannot he separated from the case as submitted.
[24] Ibid., 65.
[25] Ibid., 20-21.
[26] Panay Electric Co., Inc. vs. National Labor Relations Commission, et al, G R. No. 102672, October 4, 1995, 248 SCRA 688; Master Iron Labor Union (MILU), et al. vs. National Labor Relations Commission, et al., G.R No. 92009, February 17, 1993, 219 SCRA 47; People's Industrial and Commercial Employee's and Workers Organization (FFW), et al. vs. People's Industrial and Commercial Corporation, et al., L-37687, March 15, 1982, 112 SCRA 440.

[27] People's Industrial and Commercial Employees and Workers Organization (FFW), et al. vs. People's Industrial and Commercial Corporation. et al., supra., at 453; Panay Electric Co., Inc. vs. National Labor Relations Commission. el. al., supra, at 698.
[28] Tiu, et al. vs. National Labor Relations Commission, et al., G.R. No. 123276, August 18, 1997.
[29] Original Record, 15.
[30] Ibid., 60.
[31] Article 217. Jurisdiction of Labor Arbiters and the Commission. — (a) Except as otherwise provided under this Code the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide.:
(2) Termination disputes;
[32] Article 260. Grievance Machinery and Voluntary Arbitration. — The parties to a Collective Bargaining Agreement shall include therein provisions that will ensure the mutual observance of its terms and conditions. They shall establish a machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of their Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies.

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For this purpose parties to a Collective Bargaining Agreement shall name and designate in advance a Voluntary Arbitrator or panel of Voluntary Arbitrators or include in the agreement a procedure for the selection of such Voluntary Arbitrator or panel of Voluntary Arbitrators, preferably from the listing of qualified Voluntary Arbitrators duly accredited by the Board. In case the parties fail to select a Voluntary Arbitrator or panel of Voluntary Arbitrators the Board shall designate the Voluntary Arbitrator or panel of Voluntary Arbitrators, as may be necessary pursuant to the selection procedure agreed upon in the Collective Bargaining Agreement which shall act with the same force and effect as if the Arbitrator or panel of Arbitrators has been selected by the parties as described above.
Article 262. Jurisdiction over other labor dispute. — The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.
[33] Original record, 55-58.
[34] Panay Electric Co., Inc. vs. National Labor Relations Commission, et al., supra fn. 26, at 694; Five J Taxi, et al. vs. National Labor Relations Commission, et al., G.R. No. 111474, August 22, 1994, 235 SCRA 556.
[35] 48 Am. Jur. 2d, Labor and Labor Relations, § 1043, 598.
[36] Garcia vs. Perez, L-28184, September 11, 1980, 99 SCRA 628.