SUPREME COURT
FIRST DIVISION

CCBPI POSTMIX WORKERS UNION,
***Petitioner*,**

-versus-

G.R. No. 114521
November 27, 1998

NATIONAL LABOR RELATIONS COMMISSION and COCA-COLA BOTTLERS, PHIL., INC.,
***Respondents*.**
x----------x

COCA-COLA BOTTLERS PHILS., INC.,
***Petitioner*,**

-versus-

G.R. No. 123491
November 27, 1998

NATIONAL LABOR RELATIONS COMMISSION, CCBPI POSTMIX WORKERS UNION, MARTIN

GUMARANG, LUISITO PIEDAD, EDMAR BASCO, VICTORIANO JUMALON and JUANITO DAYAO,
Respondents.
x----------x

D E C I S I O N

QUISUMBING, *J.*:

Although far from easy application in the field of labor-management relations, well-settled is the rule that a union officer who knowingly participates in an illegal strike, or in the commission of illegal acts during a strike, may be terminated from his employment. An ordinary striking worker, however, may not be dismissed from his job for mere participation in an illegal strike.[1] There must be proof that he committed illegal acts during an illegal strike. Thus, absent any clear, substantial and convincing proof of illegal acts committed during an illegal strike, an ordinary striking worker or employee may not be terminated from work.

Before us are two petitions for *certiorari* under Rule 65 of the Rules of Court, that have been consolidated since they arose from the same factual milieu. They, however, demonstrate the difficulty of the application of the officer and member dichotomy in the aforecited rule when there is an illegal strike or when there are illegal acts committed, even if the strike is legal.

In G.R. No. 114521, the petition by the workers union in the Postmix Division of Coca-Cola Bottlers Phil., Inc. (CCBPI) seeks to annul the Resolution[2] of the public respondent National Labor Relations Commission[3] (NLRC) promulgated on December 28, 1993, disposing as follows:

> "WHEREFORE, finding the subject strike to be illegal, the decision appealed from is hereby SET ASIDE. Consequently, the strike staged by the respondent is hereby declared illegal and the respondent union officers are hereby declared to have lost their employment status."[4]

In G.R. No. 123491, the petition by the management of the said company seeks to nullify the Decision[5] of public respondent NLRC[6] promulgated on December 12, 1995, in CA No. L-00804-94,[7] decreeing that:

> "WHEREFORE, in view of all the foregoing, our decision of 25 August 1995 is hereby RECONSIDERED AND SET ASIDE, and the appealed decision of the Labor Arbiter dated 05 October 1994 is likewise SET ASIDE and VACATED. Respondents are hereby ordered to reinstate all five (5) terminated employees herein, namely, Luisito Piedad, Juanito Payao, Jr., Edmar Basco, Victoriano Jumalon, and Martin Gumarang, to their former positions without loss of seniority rights and other privileges appurtenant thereto, with full backwages from the time of their dismissal until actually reinstated, less earnings elsewhere, if any."[8]

For a clear comprehension of the petitions, we now set forth the background circumstances of the dispute between the union and the management. Coca-Cola Bottlers Phils., Inc. Postmix Workers union (hereinafter referred to as the "union") is the certified sole and exclusive bargaining agent for all regular office and sales employees of CCBPI Postmix Division (hereinafter referred to as the "company"). With the impending expiration of the Collective Bargaining Agreement (CBA) between the parties on June 30, 1986, a series of negotiations were held for the possible renewal thereof. Since the negotiations failed to produce any agreement, the union filed a Notice of Strike with the Department of Labor and Employment (DOLE) on March 9, 1987. Acting thereon, the DOLE summoned the parties for conciliation hearings to resolve the bargaining deadlock. Still unable to reach a common ground, the union conducted a strike vote[9] on April 14, 1987, the result of which clearly showed the members' sentiments in favor of waging a strike.

On April 20, 1987, the union struck. On even date, the company filed a Petition to Declare the Strike Illegal,[10] alleging that the union staged a strike without observing the mandatory seven-day strike ban imposed under Art. 264 (f) of the Labor Code and that the strike was done in bad faith, considering that the union did not exhaust the conciliation period. The strike, which lasted for about five months, ended with the signing of the renewed CBA[11] between the union and the company on November 27, 1987. The CBA includes the Memorandum of Agreement[12] (the "Memorandum") drawn by the parties on September 23, 1987, and the Amendments to Memorandum of Agreement[13] (the "Amendments") finalized on October 1987.

On December 14, 1989, the Labor Arbiter[14] rendered a Decision[15] dismissing the Petition to Declare Strike Illegal for lack of merit, ruling that there was substantial compliance with the mandatory seven-day strike ban, the union having struck on the sixth day from the submission of the results of the strike vote to the NLRC.

On Appeal, the NLRC reversed the Decision of the Labor Arbiter. In its Resolution[16] dated December 28, 1993, the NLRC ruled that the seven-day strike ban is a mandatory requisite before a union may strike, such that "a strike held even on the seventh day of the said seven-day ban, would be illegal." Consequently, the respondent officers of the union were declared to have lost their employment status. The company thus terminated the services of eight employees who were believed to be officers of the union, namely: Alex T. Devierte, Dominador Silvestre, Martin Gumarang, Ernesto Dula, Luisito A. Piedad, Edmar L. Basco, Juanito F. Dayao, and Victoriano P. Jumalon.

Asserting that the termination of the above-mentioned employees is null and void, the union filed a Petition for *Certiorari*[17] with this Court on April 7, 1994. Said petition seeks to annul the Resolution of the NLRC dated December 28, 1993, which reversed the Decision of the Labor Arbiter. In support of their assertion, the union offered as evidence the Certification[18] dated 18 April 1994, issued by the Bureau of Labor Relations (BLR) Labor Organization Division,[19] to show that the terminated employees were not officers of the union during the strike held on April 20, 1987.

Thus, on April 8, 1994, the union filed a Complaint[20] against the company with the NLRC, questioning the validity of the termination of the following employees, namely, Martin Gumarang, Luisito A. Piedad, Edmar L. Basco, Victoriano P. Jumalon, and Juanito F. Dayao, (hereinafter collectively referred to as the "employees"). The union alleges that the termination is not in accordance with the resolution which declares the loss of employment status of the respondent union officers and that the employees were not among those sought to be terminated in the Petition to Declare the Strike Illegal nor were they union officers during the strike.

In answer to the union's allegations, the company submitted its Position Paper dated July 15, 1994[21] and its Supplemental Position Paper dated August 23, 1994.[22] The company likewise offered evidence proving that the terminated employees were among the officers of the union during the strike.

With respect to the complaint for illegal dismissal, the Labor Arbiter[23] rendered a Decision[24] dated October 5, 1994, dismissing the complaint, ruling that as union officers, the termination of the employees was a logical consequence of their participation in the illegal strike. The union appealed the Labor Arbiter's decision to the NLRC, on grounds of serious errors in the findings of fact, prejudice or bias in favor of the company and that the decision dated October 5, 1994 does not conform to the facts alleged and relief prayed for in the company's Petition to Declare the Strike Illegal.

The company then filed its Opposition to Appeal[25] dated December 13, 1994, on grounds that the certification and other documents relied upon by the union as bases for its claim of illegal dismissal are erroneous and misleading and that the evidence offered to show that the employees were union officers during the strike, remains uncontroverted.

In its August 25, 1995 Decision,[26] the NLRC ruled:

> "WE REMAND.
>
> x x x

> "The matter on who actually participated during the April 20, 1987 strike is a factual issue. Considering, therefore, that the basis of the Labor Arbiter a quo's findings is being assailed as speculative, and considering as well that complainants' documentary evidence is likewise assailed by respondent as not being up-to-date, it is imperative that this instant case be Remanded for further elucidation and specific determination of who were the union officers involved in the declared illegal strike on April 20, 1987 (paragraph 3, Article 264 (g), Labor Code)."

The company filed its Motion for Reconsideration[27] from the Decision dated August 25, 1995 and argued that the Labor Arbiter's Decision of October 5, 1994 declaring the termination or dismissal as legal was based on strong and convincing evidence.

However, on December 12, 1995, the NLRC reversed its October 5, 1994 ruling and ordered the company to reinstate the terminated employees based on the finding that the latter were illegally dismissed, as they were not union officers during the April 20, 1987 strike.[28]

On February 5, 1996, the company filed a petition questioning the Decision dated December 12, 1995, which ordered the reinstatement with full backwages of the said employees, for having been rendered capriciously and whimsically, with grave abuse of discretion amounting to lack of jurisdiction considering that, other than the outdated certification, there is no sufficient evidence on record to support the union's contention that the terminated employees were not its officers at the time the illegal strike was staged.

Hence, this case.

From the foregoing factual and procedural antecedents which gave rise to and now form part of the circumstances attendant to the instant case, the following issues emerge for our resolution:

I.

Whether the strike declared by the union on April 20, 1987 was illegal for failure to comply with the mandatory seven-day strike ban imposed under Art. 264 (f) of the Labor Code.

II.

Whether the employees who participated in the strike, who were later declared to have lost their employment status, were union officers at the time of the strike.

III.

Whether the employees were rightfully and legally dismissed from service as a consequence of their union membership and mere participation during the strike.

The union submits that the NLRC gravely abused its discretion when it issued the assailed Resolution promulgated on December 28, 1993, ruling that the strike declared on April 20, 1987 was illegal, and consequently declaring the respondent union officers to have lost their employment status. The assailed Resolution reversed the Decision of the Labor Arbiter dated December 14, 1989 which found that the strike held on April 20, 1987, though staged only after six days from the strike vote or a day short of the seven-day mandatory strike ban, is not illegal. In the opinion of the Labor Arbiter, the deficiency of one day is not a fatal defect that would necessarily make the strike legally infirm.

"As explained by the respondents in their position papers:

> 'That respondent union, its officers and members were forced by circumstances to proceed with the strike in the morning of April 20, 1987 because of abnormal activities then being undertaken by petitioner-management days before, that was Holy Thursday and Good Friday, April 16 and 17, respectively that during these two (2) holidays, vendo dispenser machines, raw materials, finished products, and other items were removed from the main

> plant, at Timog Ave., Quezon City to another place. The strike, therefore, staged the first working day after the holy week was upon the provocation of petitioner.'
>
> Indeed, respondents had to stage the strike the first working day, April 20, 1987, after the holy week to effectively protect their interest. They regretly [sic] felt that if they did not declare the strike on April 20, 1987, everything necessary for the production, distribution and effective marketing of the CCBPI vendo products, could be removed from the premises, and thus their intended strike could be rendered useless.
>
> Respondents also contend that the 7-day ban contemplated under Article 264(f) of the Labor Code, as amended, was not violated. The union claims that the 'strike vote' was conducted on April 14, 1987, between 7:30 a.m. to 8:45 a.m., by a Bureau of Labor Relations' representative, who certified that the balloting was peaceful and orderly; that the strike was staged exactly on the 7th day from the balloting, in accordance with law, as the counting of the 7 days has to start at 8:45 a.m. and the result thereof was taken cognizance of the BLR representative.
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> While petitioner-company declares that the strike staged by the respondents at 8:30 a.m. of April 20, 1987 was merely six (6) days from the strike vote violative of Article 264(f) of the Labor Code, respondents claim that it was declared on the 7th day from balloting hence the same does not violate the law.
>
> But conceding that the strike was staged only after six (6) days from strike vote, or short of the seven-day ban by one (1) day, this Labor Arbiter, still does not consider the deficiency of one-day as a fatal defect, to conclude that the strike is illegal. A one day deficiency could not have changed the fact that respondents have in fact substantially complied with the cooling-off period."[29]

Articles 264 and 265 of the Labor Code, insofar as pertinent here, read:

"ART. 264. Strikes, picketing and lockouts. —

'(c) In cases of bargaining deadlocks, the certified or duly recognized bargaining representative may file a notice of strike with the Ministry (of Labor and Employment) at least thirty (30) days before the intended date thereof. In cases of unfair labor practices, the period of notice shall be shortened to fifteen (15) days;

x x x

'(e) During the cooling-off period, it shall be the duty of the Ministry to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.

'(f) A decision to declare a strike must be approved by at least two-thirds (2/3) of the total union membership in the bargaining unit concerned by secret ballots in meetings or referenda. A decision to declare a lockout must be approved by at least two-thirds (2/3) of the board of directors of the employer corporation or association or of the partners in a partnership obtained by secret ballot in a meeting called for the purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Ministry, may at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union of the employer shall furnish the Ministry the results of the voting at least seven (7) days before the intended strike or lockout, subject to the cooling-off period herein provided.' (Emphasis supplied.)"

It is easily understood that before a strike maybe declared, the following requirements should be observed, to wit: (1) the thirty-day notice or the fifteen-day notice, in case of unfair labor practices; (2) the two-thirds (2/3) required vote to strike done by secret ballot; and (3) the submission of the strike vote to the DOLE at least seven days prior to the strike.[30] These strike requirements must concur in order for the strike not to come under Article 265 of the Labor Code, to wit:

> "ART. 265. Prohibited activities. — It shall be unlawful for any labor organization or employer to declare a strike or lockout without first having bargained collectively in accordance with Title VII of this Book or without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the Ministry.
>
> > 'It shall likewise be unlawful to declare a strike or lockout after assumption of jurisdiction by the President or Minister or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout." (Emphasis supplied.)

As we stated in Gold City Integrated Port Service, Inc. vs. National Labor Relations Commission,[31] citing the case of National Federation of Sugar Workers vs. Ovejera,[32] the language of the law leaves no room for doubt that the cooling-off period and the seven-day strike ban after the strike-vote report were intended to be mandatory. The cooling-off period must be observed as it is the requisite number of days from the mandatory filing of the Notice of Strike, before the lapse of which, the union may not strike.

> "The foregoing provisions hardly leave any room for doubt that the cooling-off period in Art. 264(c) and the 7-day strike ban after the strike-vote report prescribed in Art. 264(f) were meant to be, and should be deemed, mandatory.
>
> When the law says 'the labor union may strike' should the dispute 'remain unsettled until the lapse of the requisite number of days (cooling-off period) from the mandatory filing

> of the notice,' the unmistakable implication is that the union may not strike before the lapse of the cooling-off period. Similarly, the mandatory character of the 7-day strike ban after the report on the strike-vote is manifest in the provision that 'in every case,' the union shall furnish the MOLE with the results of the voting 'at least seven (7) days before the intended strike, subject to the (prescribed) cooling-off period.' It must be stressed that the requirements of cooling-off period and 7-day strike ban must both be complied with, although the labor union may take a strike vote and report the same within the statutory cooling-off period.
>
> If only the filing of the strike notice and the strike-vote report would be deemed mandatory, but not the waiting periods so specifically and emphatically prescribed by law, the purposes (hereafter discussed) for which the filing of the strike notice and strike-vote report is required would not be achieved, as when a strike is declared immediately after a strike notice is served, or when — as in the instant case — the strike-vote report is filed with MOLE after the strike had actually commenced. Such interpretation of the law ought not and cannot be countenanced. It would indeed be self-defeating for the law to imperatively require the filing of a strike notice and strike-vote report without at the same time making the prescribe waiting periods mandatory."[33]

Thus, we do not agree with the Labor Arbiter's opinion that a deficiency of one-day from the mandatory seven-day strike ban is not a fatal defect, as to render the strike illegal. We do not share the view that the union should be considered to have substantially complied with the strike requirements under the law.

It bears stressing that the strike requirements under Articles 264 and 265 of the Labor Code are mandatory requisites, without which, the strike will be considered illegal. The evident intention of the law in requiring the strike notice and strike-vote report as mandatory requirements is to reasonably regulate the right to strike, which is essential to the attainment of legitimate policy objectives embodied in the law. Verily, substantial compliance with a mandatory provision

will not suffice. Strict adherence to the mandate of the law is required.

In fine, we hold that for failure of the striking union to observe and comply with the seven-day mandatory strike ban, the strike on April 20, 1987 was illegal.

In another attempt to sway this Court to accept the view that the union substantially complied with the strike requirements, the union theorized that since the strike vote was conducted on April 14, 1987, between 7:30 a.m. to 8:45 a.m., the strike held on April 20, 1987, at 8:30 a.m., should be considered as held exactly on the seventh day from the balloting, in accordance with the seven-day strike ban, as the counting of the seven days should be reckoned from April 14, 1987, at 8:45 a.m.

However, the last paragraph of Article 13 of the Civil Code provides for the correct manner of computing a period, to wit:

> "Art. 13. In computing a period, the first day shall be excluded and the last day included."

Accordingly, since the strike vote was conducted and submitted to the DOLE on April 14, 1987, the seventh day fell on April 21, 1987. Since there is no dispute that the union struck on April 20, 1987, only the sixth day since the submission of the strike vote, the strike was patently illegal.

As correctly held by the NLRC in its Resolution dated December 28, 1993:

> "When the law mandates that 'the union shall furnish the Ministry (now DOLE) the results of the voting at least seven days before the intended strike, subject to the cooling-off period herein provided', it is therefore clear that a strike held even on the seventh day of the said seven-day ban, would be illegal."[34]

However, while we agree with the Labor Arbiter's finding that the April 20, 1987 strike was illegal, we maintain that a mere finding of

illegality of a strike should not be followed by a wholesale dismissal of strikers from employment.[35]

Article 264 of the Labor Code reads, inter alia:

> "(a)
>
> Any worker whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full back wages. Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike maybe declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike." (Emphasis supplied)

The effects of illegal strikes, as outlined in Art. 264 of the Labor Code, make a distinction between ordinary workers and union officers who participate therein. Under established jurisprudence, a union officer may be terminated from employment for knowingly participating in an illegal strike.[36] The fate of union members is different. Mere participation in an illegal strike is not a sufficient ground for termination of the services of the union members.[37] The Labor Code protects ordinary, rank-and-file union members who participated in such a strike from losing their jobs provided that they did not commit illegal acts during the strike.[38]

The company submits that the Labor Arbiter's decision of October 5, 1994 on the legality of the termination of the employees was based on strong and convincing evidence. The company takes as substantial evidence the alleged repeated admissions of the employees on their status as union officers in the CBA, Memorandum and Amendments. In any event, the company alleges that the principle of estoppel should be applied, such that the employees should not be permitted to assert the contrary. The company further alleges that, the NLRC gravely abused its discretion when it relied upon the BLR certification despite its glaring inaccuracies.

On this point, we are not persuaded by the company's submission. Anent the issue on the status of the employees, we find for the union, and declare that the employees were mere union members, and not officers, during the strike held on April 20, 1987.

As held in the assailed Decision of 12 December 1995:

> "These pieces of evidence, indubitably confirm and corroborate the certification of the Chief, Labor Organization Division of the Bureau of Labor Relations, Johnny P. Garcia as to the union officers of the herein complainant from 1986-1989. And being public records, they enjoy the presumption of regularity and deserve weight in probative value. Thus, in the absence of clear and convincing proof, as in this case, that they are flawed, they should be taken on its face value.
>
> These are not however, the only basis that we find for the complainants. No less than the respondents' Petition to Declare the Strike Illegal in NLRC CASE NO. 00-04-01419-87 specifically enumerated and pinpointedly identified the officers of the union 'who have knowingly instigated and participated in the illegal strike.' None of five (5) terminated employees herein were included in the said petition. And it will not be amiss to conclude that when herein respondent, in their said Petition, prayed that 'respondent union officers be declared to have lost their employment status' it obviously referred to the union officers enumerated in paragraph 2 thereof. Viz a viz, when this Commission reversed the 14 December 1989 decision of Labor Arbiter Cresencio J. Ramos in the said case and thus declared therein union officers to have lost their employment status such, undoubtedly were made in conformity with herein respondents' prayers that the enumerated union officers appearing in paragraph 2 of their petition be declared as such."[39]

With respect to the company's allegation that, by being signatories to the CBA, Memorandum and Amendments, the concerned employees have effectively represented themselves as union officers, we are of

the view that such did not sufficiently establish the status of the employees as union officers during the illegal strike.

After a careful perusal of the evidence on record, nowhere can it be found that the cited employees signed the documents as officers of the union. We find that the NLRC correctly appreciated the evidence:

> "Again, We looked back and took a second look at the evidence adduced by the herein respondent during the arbitration proceedings, namely the CBA, Memorandum of Agreement and Amendments to the Memorandum of Agreement signed by the parties on 27 November 1987, and found that contrary to respondent's claim, the same did not contain the signatures of the five (5) terminated employees herein. The records disclose that it (CBA) was signed only by the President, Vice-President and the Secretary of the Union. None of the herein five (5) terminated employees signed the said CBA. It was only on the Memorandum of Agreement of 23 September 1987 and the Amendments to the Memorandum of Agreement that the herein five (5) terminated employees appeared to have affixed their signatures and signed the documents aforementioned. Nonetheless, while the other signatories thereto were properly identified as to what capacity they signed for the union, the herein five (5) terminated employees (save for Gumarang who signed for the Union as Director) signed the aforesaid documents without any indication that they did so as officers of the Union. In fact, others, namely, Espiritu, Saturnino, M., C.B. delos Santos, Rodolfo Cirilo, R.M. Daleg, P. Sebastiano, F. Santos, Marlene Rellosa and Cynthia Foriginal, who were also signatories to the said documents, did not appear to have been terminated nor were presumed officers of the union as the five (5) terminated employees herein."[40]

It appears that said employees signed the documents only as witnesses to the perfection of the contract between the union, represented by its officers and the company. The employees' signatures were not necessary to bind the union or to perfect the CBA. These employees signed as mere witnesses to the contracts to attest to the fact that the documents were indeed signed and that the CBA was validly renewed.

With respect to the allegation that the employees played active roles or were perceived to be main players during the bargaining negotiations, we hold that such participation did not make them union officers. Quite interestingly, in situations such as negotiations and strikes, union officers could not have the monopoly of action and reaction. Finding themselves to be similarly situated, the union members, stimulated by rising emotions, joined their leaders and immersed themselves in the dealings and negotiations.

On the claim that the principle of estoppel should apply in the instant case, we find no basis. For estoppel to apply, the employees should have represented themselves as union officers. However, the records are bereft of any evidence that the employees, by their admissions and actions, did in fact represent themselves as officers of the union. The signatures in the CBA, Memorandum and Amendments, confirm nothing more but the presence of the employees during the signing of the documents, presumably as witnesses, considering that no designation, title or position was indicated therein to show their authority as union officers.

It must be emphasized that the penalty of dismissal could be imposed only on union officers serving and acting as such, during the illegal strike[41] held on April 20, 1987. As a necessary implication, if employees acted as union officers after said strike, they may not be held liable and therefore, could not be terminated.

With respect of employee Martin Gumarang ("Gumarang"), who signed in the capacity of director in the Memorandum and Amendments, we are of the opinion that such is not sufficient to establish his status as a union officer during the strike. As earlier stated, his name was not listed in the BLR certification as one of the union officers for the years 1986-1989. On the other hand, the documents he signed in the capacity of director, were dated September 23, 1987[42] and October 1987,[43] several months after the April 20, 1987, strike. Thus, we can only safely conclude that Gumarang served as union director from September 23, 1987, onwards. There is simply no basis, to hold him liable as union officer during the strike of April 20, 1987. Therefore, Gumarang may not be penalized with termination. For the imposition of a penalty as harsh

as the loss of employment, should rest on solid evidence, not on speculation and conjecture.

In sum, we are convinced that the cited employees were not union officers, but mere union members, when the subject strike was held. Having ruled that the employees were merely union members during the April 20, 1987 strike, we conclude that they cannot be terminated for having joined it, even if here the strike was illegal.

We reiterate the ruling of this Court in Bacus vs. Ople:[44]

> "A mere finding of the illegality of a strike should not be automatically followed by wholesale dismissal of the strikers from their employment."

An examination of the evidence on record fails to disclose any active participation in or the commission of illegal acts of the cited employees during the illegal strike. Such being the case, they incur no liability for the said strike. They cannot even be held responsible for an illegal strike solely on the basis of union membership.[45] And since there is absolutely no showing, much less clear proof, that said employees actually participated in the commission of illegal acts during the said strike involved in this petition, there is no adequate basis for us to hold that these employees should be deemed to be among those who have lost their employment status, in consequence of a declaration of illegality of the strike. The terminated employees should therefore be entitled to reinstatement with back wages.

However, four of the five employees appear to have already accepted payments and released the company from any further obligation to them. In its Manifestation[46] dated January 21, 1997, the company attached three notarized Deeds of Receipt, Release and Quitclaim separately executed by Martin Gumarang, Luisito A. Piedad and Juanito F. Dayao to the effect that they individually received monetary payments, which settled all their claims against the company. In the Manifestation[47] dated February 20, 1997, the company attached the notarized Deed of Receipt, Release and Quitclaim executed by Victoriano P. Jumalon to the effect that the employee's receipt of the monetary payments fully satisfies any and all claims against the company. Hence only one employee, Edmar L.

Basco, remains to take advantage of his entitlement to reinstatement and back wages or, if no longer feasible, separation pay.

Finally, under the principles prevailing in this jurisdiction, only when there is a showing of grave abuse of discretion would this Court be warranted in reversing the actuations of public respondent NLRC. However, there appears to be no showing of said abuse in the instant case. All told, we find that the petitions herein have not shown sufficiently any grave abuse of discretion committed by said public respondent in rendering the challenged Resolution of December 28, 1993 and Decision of December 12, 1995. On the contrary, given the factual circumstances, said Decision and Resolution respectively appear to be in accord with the applicable law and jurisprudence.

WHEREFORE, the Petition in G.R. No. 114251 ("CCBPI Postmix Workers union vs. NLRC and Coca-Cola Bottlers, Phil., Inc.) is **DISMISSED**. The assailed Resolution dated December 28, 1993 declaring the strike illegal is **AFFIRMED** but only the union officers found herein to be such are hereby declared to have lost their employment status.

The Petition in G.R. No. 123491 (CCBPI vs. NLRC et al.) is **DISMISSED**. The assailed Decision dated December 12, 1995 is **AFFIRMED**. Petitioner Coca-Cola Bottlers Phils., Inc. is hereby ordered to reinstate Edmar L. Basco to his former position, without loss of seniority rights and other privileges appurtenant thereto, with full back wages from the time of his dismissal until he is actually reinstated, or to pay him separation pay, if reinstatement is no longer feasible.

COSTS against the petitioners in each case.

SO ORDERED.

Davide, Jr., Bellosillo, Vitug and Panganiban, *JJ.*, concur.

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[1] Gold City Integrated Port Services, Inc. vs. NLRC, 245 SCRA 627, 637-638.
[2] First Division, in NLRC Case No. 00-04-01419-87.

[3] First Division composed of Presiding Commissioner Bartolome S. Carale, Commissioner Alberto R. Quimpo and Commissioner Vicente S.E. Veloso, ponente.
[4] Annex "D", Petition, April 7, 1994, rollo, pp. 43-53 (G.R. No. 114521).
[5] Annex "A", Petition, February 5, 1996, rollo, pp. 32-42 (G.R. No. 123491).
[6] Third Division composed of Presiding Commissioner Lourdes C. Javier, Commissioner Joaquin A. Tanodra and Commissioner Ireneo B. Bernardo, ponente.
[7] NLRC-NCR CN. 00-04-02960-94, entitled "CCBPI Postmix Workers Union vs. Coca-Cola Bottlers Phils., Inc. and Postmix Division.
[8] Annex "A", Petition, February 5, 1996, rollo, p. 41 (G.R. No. 123491).
[9] Annex "A", Petition, April 7, 1994, rollo, p. 20 (G.R. No. 114521); the minutes reflect that out of 44 votes cast, 40 were in favor of staging a strike.
[10] Annex "E", Petition, February 5, 1996, rollo pp. 63-68 (G.R. No. 123491).
[11] Annex "G", Petition, February 5, 1996, rollo pp. 82-100 (G.R. No. 123491).
[12] Annex "H", Petition, February 5, 1996, rollo pp. 101-106 (G.R. No. 123491).
[13] Annex "I", Petition, February 5, 1996, rollo, pp. 99-100 (G.R. No. 123491).
[14] Labor Arbiter Cresencio J. Ramos.
[15] Annex "B", Petition, April 7, 1994, rollo, pp. 22-30 (G.R. No. 114521).
[16] Annex "F", Petition, February 5, 1996, rollo, pp. 71-79 (G.R. No. 123491).
[17] Rollo, pp. 1-13 (G.R. No. 114521).
[18] Annexed to Union's Reply dated 25 July 1994 in NLRC-NCR Case No. 00-04-02960-94.
[19] Signed by BLR Labor Organization Division Chief Johnny P. Garcia.
[20] Annex "J", Petition, February 5, 1996, rollo, pp. 109-114 (G.R. No. 123491).
[21] Annex "K", Petition, February 5, 1996, rollo, pp. 115-126 (G.R. No. 123491).
[22] Annex "L", Petition, February 5, 1996, rollo, pp. 127-136 (G.R. No. 123491).
[23] Labor Arbiter Geobel A. Bartolome.
[24] Annex "C", Petition, February 5, 1996, rollo, pp. 56-61 (G.R. No. 123491).
[25] Annex "M", Petition, February 5, 1996, rollo, pp. 137-149 (G.R. No. 123491).
[26] Annex "B", Petition, February 5, 1996, rollo, pp. 43-55 (G.R. No. 123491).
[27] Annex "N", Petition, February 5, 1996, rollo pp. 150-165 (G.R. No. 123491).
[28] Supra, note 4.
[29] Supra, note 13; NLRC Decision dated December 14, 1989, pp. 7-8; rollo, pp. 28-29 (G.R. No. 114521).
[30] Reliance Surety & Insurance Co., Inc. vs. NLRC, 193 SCRA 365, 370.
[31] Supra, note 1, pp. 636-637.
[32] 114 SCRA 354, 365.
[33] Ibid., pp. 365-366.
[34] Supra, note 14; Resolution dated December 28, 1993, pp. 8-9; rollo, pp. 78-79 (G.R. No. 123491).
[35] Supra, note 31, p. 641.
[36] Ibid., p. 637.
[37] Allied Banking Corporation vs. NLRC, 258 SCRA 724, 744. See also Philippine Airlines, Inc. vs. Secretary of Labor and Employment, 193 SCRA 223; St. Scholastica's College vs. Torres, 210 SCRA 565; De Ocampo vs.

NLRC, 213 SCRA 652; Isalama Machine Works Corporation vs. NLRC, 242 SCRA 115.

[38] Philippine Telegraph and Telephone Corporation (PT&T) vs. NLRC, 251 SCRA 21, 24.

[39] Supra, note 4: Decision dated December 12, 1995, pp. 4-5; rollo, pp. 36-37 (G.R. No. 123491).

[40] Ibid., pp. 7-8; rollo, pp. 39-40 (G.R. No. 123491).

[41] Lapanday Workers Union vs. NLRC, 248 SCRA 95, 106.

[42] Memorandum Of Agreement.

[43] Amendments to Memorandum of Agreement.

[44] 132 SCRA 690, 703. See also Almira vs. B.F. Goodrich Phils., Inc. 58 SCRA 120; Shell Oil Workers' Union vs. Shell Co. of the Phils., Ltd. 39 SCRA 276; Cebu Portland Cement Co. vs. Workers Union, 25 SCRA 504; Ferrer vs. CIR, et. al., 17 SCRA 352.

[45] Arica vs. Minister of Labor, 137 SCRA 267, 277.

[46] Rollo, pp. 308-317 (G.R. No. 123491).

[47] Rollo, pp. 321-325 (G.R. No. 123491).