SUPREME COURT
SECOND DIVISION

DAIRY QUEEN PRODUCTS COMPANY OF THE PHILIPPINES, INC.,
***Petitioners*,**

-versus-

G.R. No. L-35009
August 31, 1977

COURT OF INDUSTRIAL RELATIONS, DAIRY QUEEN EMPLOYEES ASSOCIATION-CCLU; and KATAASTAASAN SAMAHANG MAKABAYAN MANGGAGAWA,
***Respondents*.**
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D E C I S I O N

FERNANDEZ, *J.*:

This is a Petition to Review the Order of the Court of Industrial Relations in Case No. 2540-MC entitled "Dairy Queen Employees Association-CCLU vs. Dairy Queen Products Company of the Philippines, Inc.," the dispositive part of which reads:

> WHEREFORE, Petitioner Dairy Queen Employees Association-CCLU, should be, as it is hereby, certified as the sole and exclusive bargaining representative of all regular rank and file

employees of the Dairy Queen Products Company of the Philippines, Inc., for purposes of collective bargaining in respect to wages, rates of pay, hours of work and other terms and conditions of employment.

SO ORDERED.

Manila, Philippines, December 8, 1971.

(SGD)
ANSBERTO P. PAREDES
Associate Judge"[1]

On September 2, 1969 the Dairy Queen Employees Association-CCLU, Union for short, staged a strike against the Dairy Queen Products Company of the Philippines, hereinafter referred to as employer company.

On September 16, 1969, the Dairy Queen Employees Association-CCLU (Union) instituted Case No. 2540-MC for direct certification as the sole and exclusive bargaining representative of all regular rank and file employees and/or workers of the Dairy Queen Products Company of the Philippines, Inc., (employer company).[2]

An order was issued on September 19, 1969 requiring, among other things, the president and/or general manager of the employer company to post copies of said order in two conspicuous places in its premises or business establishment for the purpose of affording notice to all parties who may want to intervene and participate in the certification election proceeding. The said directive was duly complied with. The employer company submitted payrolls corresponding to a period of thirty (30) days immediately preceding the filing of the petition in the case at bar from August 16 to September 16, 1969 and a list of employees covering the same period.

The employer company, instead of answering the petition, filed a counter-petition seeking to declare the Union's strike illegal and to hold in abeyance the proceedings in the certification election.[3]

On January 17, 1970 the Kasama-Hopeworkers filed an urgent ex-parte motion that it be substituted for the CCLU allegedly because the Dairy Queen Employees Association had dis-affiliated from the CCLU and is now affiliated with the movant Kasama-Hopeworkers.[4] The Kataastaasan Samahang Makabayan Manggagawa (Kasama-Hopeworkers) filed its answer in intervention dated January 28, 1970.[5]

The Dairy Queen Products of the Philippines, Inc. charged the Union and its members with unfair labor practice for allegedly staging an illegal strike. The prosecutor of the Court of Industrial Relations filed on December 16, 1970 the corresponding complaint for unfair labor practice, docketed as Case No. 5538-ULP against the Dairy Queen Employees Association-CCLU involving the same issue of strike illegality raised in Case No. 2540-MC.

The Court of Industrial Relations considered the filing of Case No. 5538-ULP for unfair labor practice as an abandonment by the employer company of the issue of strike illegality in Case No. 2540-MC and proceeded to resolve the issue of representation in said case.

Meanwhile, on October 27, 1970, the Court of Industrial Relations had issued an order granting the motion of the KASAMA-HOPEWORKERS to intervene in Case No. 2540-MC for certification election and giving it five days from notice to file its responsive pleading. The intervenor had earlier filed on January 28, 1970 an answer in intervention which merely asked to be allowed to "participate on all proceedings". The intervenor did not comply with the order dated October 27, 1970 directing it to file its responsive pleading and did not appear in the hearings of November 5, 1970 and June 11, 1971 despite notice. The Court of Industrial Relations considered the intervenor to have lost interest in the proceeding and declared its exclusion in order.

The totality of the evidence disclosed that the employer company is engaged in the business of ice cream and in operation of three (3) refreshment parlors situated in its main office at Buendia Street, Makati, Rizal, at Cubao Branch at the New Frontier Cinema Building, Cubao, Quezon City, and Taft Avenue, Malate, Manila; that in these three (3) areas of operation or business establishments, there were 45

employees, more or less, comprising the rank and file employees; that, however, the list of employees submitted by the employer company as of August 16, 1969 up to September 16, 1969 and the payrolls covering the period from August 10, 1969 up to September 20, 1969 show that there are around 65 employees; that the Dairy Queen Employees Association-CCLU is a legitimate labor organization; that out of the 45 rank and file employees alleged by the said union, 38 are its members as shown by the application for membership forms and receipts for union dues; and that there has been no certification election held within twelve months immediately preceding the filing of the petition in the case at bar.[6]

The employer company averred that the Dairy Queen Employees Association-CCLU declared a strike which commenced on September 2, 1969 and lasted up to November 29, 1969; that as a result of said strike and in order to keep the business going, there were employees hired to replace the strikers from September 2, 1969 and onward to September 16, 1969; that on the eve of the strike, said employer company had already formulated a program to hire and train about 25 to 30 workers preparatory to the opening of an additional branch at Diliman, Quezon City; that when the strike was staged on September 2, 1969, positions held by the strikers had to be filled in by these trainees in order to keep the business going; that had it not been for the strike, these new recruits would have been placed at the new branch; and that the plan to establish the Diliman branch did not materialize.[7]

The Court of Industrial Relations found that from the list of employees, Exhibit "X-Court", it would appear that out of the 65 employees, 24 are temporary workers; that by excluding the 24 temporary employees from the appropriate bargaining unit composed of regular rank and file employees and/or workers, there were 41 regular employees or eligible voters; that all examination of the membership application forms submitted in evidence by the Dairy Queen Employees Association-CCLU disclosed that of the 38 members of the union, 8 were listed as temporary employees; that by excluding the aforementioned 8 employees and a certain Vicente Rillores who had resigned his employment in the employer company, there would be 29 members of the aforementioned union who were eligible to vote or to participate in an election if ordered; that of the 41

regular employees in the list submitted by the employer company, 29 members of the Dairy Queen Employees Association-CCLU were qualified for inclusion in the appropriate unit; that the members of said union comprised the majority of all the regular rank and file employees composing the appropriate unit; and that the certification of the Dairy Queen Employees Association-CCLU as the sole and exclusive bargaining representative of the employees in the appropriate union was in order.[8]

The petitioner, Dairy Queen Products Company of the Philippines, Inc., submits that the Court of Industrial Relations committed the following errors:

"I

THE COURT A QUO ERRED AND CONCOMMITANTLY COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE FACT THAT RESPONDENT UNION'S PERMIT AND LICENSE HAVE BEEN CANCELLED BY THE DEPARTMENT OF LABOR.

II

THE COURT A QUO ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN FAILING TO CONSIDER THAT RESPONDENT UNION HAS LOST ALMOST ALL ITS MEMBERS AND INEVITABLY DID NOT POSSESS A MAJORITY REPRESENTATION.

III

THE COURT A QUO ERRED IN HOLDING THAT 'IN FILING THE UNFAIR LABOR PRACTICE CASE (CASE NO. 5538-ULP) FOR ILLEGALITY OF STRIKE, THE EMPLOYER COMPANY (HEREIN PETITIONER) IN EFFECT ABANDONED AND DISCARDED THE SAME ISSUE IN THE PRESENT CASE (CASE NO. 2540-MC)."[9]

Anent the first error assigned, the petitioner company avers that the Dairy Queen Employees Association-CCLU could not be certified as

the sole and exclusive bargaining representative of the rank and file employees of said petitioner company because the certificate of registration of said labor organization as a legitimate labor organization in the Department of Labor had been cancelled.

It is true that under Section 24 in relation to Section 2(f) of Republic Act No. 875, only a legitimate labor organization which has been registered by the Department of Labor may be certified as the exclusive representative of the employees in a collective bargaining unit. It is also true that according to the letter of the acting registrar of the labor organization dated October 21, 1971, the certificate of registration of the Dairy Queen Employees Association-CCLU had been cancelled in a decision rendered on September 20, 1971 in Cancellation Proceeding No. 5472 of the Labor Relations Division, Bureau of Labor Relations.[10]

There is no showing, however, that when the respondent court issued the order dated December 8, 1971, certifying the Dairy Queen Employees Association-CCLU as the sole and exclusive bargaining representative of all regular rank and file employees of the Dairy Queen Products Company of the Philippines, Inc., for purposes of collective bargaining with respect to wages, rates of pay, hours of work and other terms and conditions for appointment, the order of cancellation of the registration certificate of the Dairy Queen Employees Association-CCLU had become final. Indeed, in the letter of the acting registrar of Labor Organizations to R. A. Ferreros, Sr. of the Dairy Queen Products Company of the Philippines, Inc., dated October 21, 1971, the second paragraph reads:

> "However, pursuant to law and the regulations of this Office governing the same, said labor union has still the grace period of sixty days upon receipt of a copy of said decision of cancellation within which to file with this Office a motion for reconsideration."[11]

According to the respondent Dairy Queen Employees Association-CCLU the "cancellation was unlawful because it was without notice; and the circumstances suspicious."[12] At any rate, in a resolution dated September 28, 1972, the Registrar of Labor Organization rescinded the decision of September 20, 1971 cancelling the said

union's registration and permit thus, restoring to the Dairy Queen Employees Association-CCLU "its legal personality and all the rights and privileges accorded by law to a legitimate labor organization."[13] It is thus seen that the first error assigned has no merit.

The Court of Industrial Relations noted "that from the evidence on record there is no effective disaffiliation of the Dairy Queen Employees Association from the CCLU."[14] This finding is supported by substantial evidence. There is no reason to set aside the finding that there is no effective disaffiliation of the Dairy Queen Employees Association from the CCLU.

Indeed, the KASAMA-HOPEWORKERS with whom the members of the Dairy Queen Employees Association had allegedly affiliated did not appear at the hearing of the certification election case in spite of notices to it. As previously stated by this Court, "when a union acts as the bargaining agent, it assumes the responsibility imposed upon it by law to represent not only its members but all the employees in the appropriate bargaining unit."[15] By the same token, such representative must represent the employees not only in collective bargaining but also in the bid of the employees to be the certified representative. Moreover, when the Dairy Queen Employees Association presented its evidence of majority representation, said union made use of its old membership application forms with the Confederation of Citizens Labor Union (CCLU). Hence even the members of the union chose to ignore their affiliation with the KASAMA-HOPEWORKERS. Said members are deemed to have reverted to their original union, the Dairy Queen Employees Association-CCLU.

The petitioner, Dairy Queen Products Company of the Philippines, Inc., at first filed a counter-petition in the certification election case, Case No. 2540-MC to declare the strike illegal. It was only when the certification election case was about to be terminated that the petitioner commenced the case for the unfair labor practice based on the alleged illegality of the strike. Obviously, the petitioner company was trying to delay the disposition of Case No. 2540-MC for certification election.

In view of the foregoing, the Court of Industrial Relations correctly held that in filing Case No. 5538-ULP for unfair labor practice, the petitioner in effect abandoned the issue of the legality of the strike in the case of certification election No. 2540-MC.

WHEREFORE, the order of the Court of Industrial Relations dated December 8, 1971 is hereby affirmed, without pronouncement as to costs.

SO ORDERED.

Teehankee, *J.*, *(Chairman)*, Makasiar, Muñoz Palma, Martin and Guerrero, *JJ.*, concur.

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[1] Annex "G", Rollo, p. 57.
[2] Annex "A", Rollo, pp. 33-34.
[3] Annex "B", Rollo, pp. 35-38.
[4] Annex "C", Rollo, p. 39.
[5] Annex "D", Rollo, pp. 40-41.
[6] Annex "G", Rollo, pp. 50-51.
[7] Idem, Rollo, pp. 52-53.
[8] Idem, Rollo, pp. 56-57.
[9] Brief for petitioner, pp. 1-2, Rollo, p. 226.
[10] Annex "K", Rollo, pp. 75-76.
[11] Annex "F-1", Rollo, p. 47.
[12] Supplemental Pleading, Rollo, p. 151.
[13] Annex "A" to Supplemental Pleading, Rollo, p. 153.
[14] Annex "G", Rollo, p. 50.
[15] National Brewery & Allied Industries Labor Union of the Philippines vs. San Miguel Brewery, Inc., 8 SCRA 805, 812.
