

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**DAVAO FREE WORKERS FRONT
and/or VICENTE R. VILLARIN,
JOSEFINO ALPAS, MIGUEL NAVALES,
ROMEO PALLAR, FLORENTINO
HATAMOSA, BONIFACIO PIONSO,
FRANCISCO DUJALE, LAURO OCTOT,
LORENZO LALAGUNA, TEOFILO
SANCHEZ and PEPE CORPORAL,
*Petitioners,***

-versus-

**G.R. No. L-29356
October 31, 1974**

**COURT OF INDUSTRIAL RELATIONS,
7-UP BOTTLING COMPANY OF
PHILIPPINES and/or SANTIAGO
SYJUCO, JR., 7-UP BOTTLING
COMPANY OR PHILIPPINES (DAVAO
BRANCH) and/or GUILLERMO S.
SANCHEZ, ALEXANDER VEGA,
ROBERT M. PEREZ, ZOILO BONCAN
and GREGORIO DIVINO,
*Respondents.***

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DECISION
(DECISION dated October 27, 1975)

TEEHANKEE, J.:

On the basis of the undisputed findings of respondent court that respondent employer was guilty of grossly unfair labor practices and discriminatory acts aimed at the elimination of petitioner labor union which fully justified petitioner union's strike, as affirmed by this Court's action in September, 1968 which rejected respondents' separate appeal therefrom in Case L-29331 "for being factual and for lack of merit," the Court sustains petitioners' appeal at bar. Since all five judges of respondent court concurred in these facts and voted in favor of the reinstatement of the nine unlawfully dismissed petitioners-employees and of the strikers' return to work, the Court grants with modifications the petition for upholding the trial court's decision awarding the nine unlawfully dismissed employees full backwages without qualification from dismissal to reinstatement and to the striking members of petitioner union strike-duration pay less earnings elsewhere (as against the lesser award granted by the split majority of respondent court en banc).

On the unfair labor practice complaint filed on July 26, 1957 by the court of industrial relations prosecutor on behalf of petitioner union Davao Free Workers Front and its president Vicente R. Villarín and ten other members who are all co-petitioners at bar, the trial court's affirmative findings of unfair labor practice as charged were unanimously reaffirmed by all five (5) members of respondent industrial court en banc.

The trial court as presided by Judge M. Salvador found in its decision of September 5, 1966 that respondent employer 7-UP Bottling Company of the Philippines at its Davao branch refused to bargain with petitioner union; interfered with and coerced its members to vote for its hand-picked candidate as president of petitioner union; required the members of petitioner union to join the Seven-Up Employees Association, a newly organized labor union obviously sponsored and favored by it with which it immediately executed a collective bargaining agreement granting the members of such new union fringe benefits while refusing to bargain with petitioner union regarding the renewal of their just-expired contract and instead foisting upon petitioner union its unilateral version of a collective

bargaining agreement; and filed a notice of lock-out and refused entry to members of petitioner union when the latter refused to accept its unilateral contract version; and that respondent employer's union-busting and discriminatory acts led petitioner union justifiably to declare a strike on August 6, 1957 against respondents' unfair labor practices.

These unfair labor practices and discriminatory acts as found by respondent court and which are undisputed by respondent employer and have already been affirmed by this Court in September, 1968 when it denied due course to respondents' Petition for Review^[1] were specified in the trial court's decision, as follows:

“Based on the evidence adduced, it appears that the complainant union and respondent Company entered into a bargaining agreement on June 15, 1956 effective for a period of one year (Exh. ‘A’ or ‘28’, Record p. 83). This agreement in one part recognizes the complaining union as the sole bargaining agent for all its members (par. 1, supra). In other portions of the contract benefits were accorded to employees, and without distinction as to whether they are members of the union or not. The impression created by the agreement is that the complainant union was the sole bargaining agent for the employees and nothing else. This is further confirmed by the testimony adduced (TSN., pp. 9-10, Feb. 10, 1958), as well as the opening paragraph of the agreement. At the same time, it must be observed that under the law, the labor organization who is a party to the collective bargaining agreement is presumed to be the majority representative of the employees.

“Sometime in December 1956, respondent Guillermo Sanchez called the president of the complainant union. The former presented to the latter a draft of the collective bargaining agreement as a basis for a new contract as the existing agreement was to expire on June 15, 1957 (TSN., pp. 15, Feb. 19, 1958; 395-401, March 13, 1958; 634-638, June 2, 1958; 151-154, March 23, 1960; Exhibits ‘B’ and ‘29’, pp. 85-90, Record). This draft recognizes the complainant union as the ‘only legitimate, duly organized and existing labor union’ and the ‘unquestioned exclusive representative of all the workers and employees’ in

respondents' Davao Plant. There is also a grant of P0.25 as an increase for daily workers and an equivalent amount for employees paid on monthly basis.

“Thereafter, several communications were exchanged between the complainants and respondents concerning collective bargaining negotiations (Exhs. ‘1’, ‘2’ and ‘3’)

“The complainant union, on the other hand, has answered the communications as shown by Exhibit ‘C’ (pp. 91-92, Record). It even said that it was ready to bargain on the proposals and counter-proposals.

“The union deliberated on the proposals contained in Exhibit ‘B’ and on March 26, 1957 commented on them and made counter-proposals (Exh. ‘C’). The company, it would seem, appears indifferent to the union proposals, although an attempt was made to show that a reply was made by respondent Company on March 28, 1957 (Exh. ‘4’). Nevertheless, it is certain that a reply was made to the union’s counter-proposals on May 13, 1957 (Exh. ‘H’ and ‘13’), which we will discuss later on in relation to the attendant circumstances to this case.

“Sometime on February 24, 1957, which was a Sunday, respondents Guillermo S. Sanchez and Robert M. Perez, plant manager and accountant, respectively of the respondent company, checked the funds handled by Francisco Diongson, the union treasurer. These officials have learned that Diongson had collected strike funds from their union members late on Saturday morning, February 23, 1957. Finding that Diongson had more than company funds in the cashier’s cage because of the strike funds which he did not deem provident to withdraw late on Saturday evening as he could not then deposit the same with the Bank, Diongson was asked by the company to explain within six hours such purported ‘technical malversation’ (Exh. ‘S’) without the case having been brought to a grievance hearing as provided for in the existing collective bargaining agreement. The respondent dismissed Diongson but he was later on temporarily reinstated (Exh. ‘T’). It would seem that despite the absence of any missing funds, an oversupply of the same is also

a liability but which the company later on rectified by Diongson's reinstatement.

"The elections for the officers of the complainant union was held on May 12, 1957. Prior to this date respondent Gregorio Divino made known his intention to run for the presidency and intimated that somebody was backing him up and he had an understanding with respondent Guillermo Sanchez (TSN., pp. 147-149, 153, Feb. 10, 1958). Said respondent (Divino) was at the time a member of the Board of Directors of complainant union (TSN., p. 1773, April 16, 1959). In fact, in a Resolution of March 19, 1957 wherein it was stated that harmony can never be created in respondent company as long as respondents Sanchez, Perez and Vega are managing the respondent company, said respondent Divino was one of the signatories. (Exh. 'CC')

"In the meanwhile to assure the presence of all the members, the complainant union sent a letter to respondent Guillermo Sanchez requesting that no work be required of the employer on the date mentioned. This letter was sent three weeks before the date set for the elections. (Exh. '7', TSN., pp. 282-284, March 12, 1958)

"Likewise, before the elections a member of the Board of complainant union together with several members were called by respondent Sanchez. The latter tried to convince them to vote for the right man so there will be no trouble in the company (TSN., p. 690, Jan. 2, 1958). Further, on May 11, 1957, a day before the election, a member of complainant union was called by respondent Zoilo Boncan, salesman in charge in the company (Exh. '24', TSN., p. 1048, June 4, 1958), and the former was told by the latter to vote for respondent Divino for union president as he, (Divino), was the choice of the company. (TSN., pp. 1051-1055, June 4, 1958)

"On the day of the elections several of the respondents were seen in the immediate vicinity of the place where the same was to be held and remained there until the same was over (TSN., p. 686, June 2, 1958; p. 1060, June 4, 1958). In the voting that

followed, respondent Divino who ran for the presidency lost by a wide margin to complainant Vicente Villarín. (Exh. '11')

“After the canvass was over, one of the individual complainants was accosted by respondent Zoilo Boncan and was called a traitor for not voting for Gregorio Divino (TSN., pp. 1061-1064, 1114, June 5, 1958). Significantly, respondent Boncan was never presented as a witness on the ground that he has resigned from the employ of respondent company. (TSN., pp. 130-139, Feb. 24, 1961)

“The following day May 13, 1957, after the elections mentioned respondent Guillermo Sanchez sent a letter to complainant union (Exhs. 'H' and '31') which reiterated the company's previous position. It stated further 'that you can make your choice of accepting or refusing the draft that we submitted to you. If we can not agree among ourselves and observe industrial peace, then we have to shut up Davao Plant, if necessary.

“On May 14, 1957, complainant Romeo Pallar, the object of the ire of respondent Zoilo Boncan was not allowed to enter the gate of respondent Company's compound by respondent Divino. The latter told the former that he (Pallar) cannot work anymore. (TSN., pp. 1004-1065, June 4, 1958; 1195-1196, June 6, 1958).

“A week after this union election, respondent Gregorio Divino started organizing another union which eventually became the Seven-up Employees Association (SEAD) for short, TSN., pp. 1784-1787, April 16, 1959). His reason for organizing another labor organization was allegedly due to the information that the complainant union was staging a strike and will be demanding for a closed shoe and added that those people who were with him will be out of work (TSN., p. 1790, April 16, 1959). This, indeed, does not seem to be in keeping with previous actuations of the said respondent. As early as February 17, 1957, this respondent was one of the signatories to a resolution of the complainant union to create a strike fund (Exh. 'Y'). Sometime on March 3 and 19, 1957, he himself collected from certain

employees amounts as contributions to the strike fund. (Exhs. 'X' & 'x-1')

“On May 24, 1957, respondent through its vice-president filed a notice of lockout with Regional Office No. 1 of the Department of Labor against the members of complainant union allegedly for failure of management and the union to agree on the terms of the proposed renewal of the collective bargaining agreement. (Exhs. 'E' and '13')

“About the end of May 1957, respondent Gregorio Divino stated he left the complainant union. (TSN., 1894-1895, April 17, 1957)

“On June 1, 1957, complainants Josefino Alpas, Bonifacio Pionso, Miguel Navales, Florentino Hatamosa, Lauro Octot, Lorenzo Lalaguna, Francisco Dujale and Jose Corporal were refused entry to respondent company's premises by respondent Gregorio Divino. They were told that the refusal was the order of respondent Guillermo Sanchez. It was stated that respondent Divino told them further that had they not been members of complainant union, they would have been allowed to work (TSN., pp. 1214-1331, June 6, 1958; 1282-1284, 1327, 1351-1352, Nov. 17, 1958; 1426-1427, 1467-1469, Nov. 18, 1958; 1538-1540, Nov. 19, 1958; 1622-1623, 1662-1666, April 15, 1959; 1812-1818, April 16, 1959). Attempts were further made by the same respondent to persuade the said complainants to join the SEAD. On the other hand, respondent Gregorio Divino admitted that he did really refuse entry to the said complainants as their names were not in the list sent by respondent Guillermo Sanchez (Exhs. '5-00' and '24'). An examination of the list shows that it was made several months prior to June 1, 1957, e.g., on Aug. 15, 1956. The complainants have been going to and from subsequent to August 15, 1956 and it was only on June 1, 1957 that respondent Divino conveniently discovered that their names are not listed in the same.

“On June 20, 1957 the SEAD was issued a registration certificate (Exh. '1-GD'). Two days after its registration and two days before the thirty-day period of the lock-out notice of respondent company, the SEAD sent a letter asking the

respondent company for recognition as the sole and collective bargaining agent of all the employees of the Davao plant (Exh. 'K', p. 106 of Record). The letter in question does not embody proposals of any kind whatsoever.

“On June 28, 1957, a collective bargaining agreement was signed between the SEAD and the respondent company embodying terms and conditions of employment (Exh. '4-00', p. 122, Record). Certain fringe benefits were granted and SEAD was recognized as the representative of its members only. It is interesting to note that respondent Divino, the president of the SEAD, does not remember if he ever furnished a list of his members to the respondent company. Neither does he know how the respondent company was able to determine who are the members entitled to the benefits granted by the agreement (TSN., pp. 13-17, March 21, 1960)

“On August 6, 1957, the complainant union struck (TSN., p. 271, March 12, 1958, Exh. 'L') based on the acts herein cited.”

The trial court thus rendered judgment finding respondents guilty of unfair labor practices and ordering them to reinstate the nine illegally dismissed employees-petitioners with full backwages until actual reinstatement and to allow the return to work of the striking members of petitioner union with strike-duration pay, as follows:

“WHEREFORE, in view of the foregoing the respondent Company, Seven-Up Bottling Company of the Philippines, by its officers and agents, is hereby found guilty of unfair labor practices and is hereby ordered to:

“(a) Reinstate complainants Josefino Alpas; Miguel Navales, Romeo Pallar, Florentino Hatamosa, Bonifacio Pionso,^[*] Francisco Dujale, Lauro Octot, Lorenzo Lalaguna, and Pepe Corporal to their former and equivalent positions with full backwages from dates of their respective dismissals until they are actually reinstated;

“(b) Allow the return to work of any members of the complainant union who have refused to work as a consequence of the strike of August 6, 1957, and to give strike duration pay to any such member equivalent to what such member would normally have earned as wages during the period from the date of the strike up to the receipt of the Decision but deducting therefrom any amount he has earned elsewhere in the form of salaries and/or wages, without loss of seniority and other benefits granted by the Company.”

The case was complicated for petitioners, however, by respondent court’s resolution en banc dated November 2, 1966, but actually promulgated and served almost two years later in July, 1968, resolving respondents’ motion for reconsideration. While the en banc resolution “fails to find sufficient justification in altering or modifying the aforesaid decision” and all members of respondent court were unanimous that respondents were guilty of grave unfair labor practices and anti-union acts designed to destroy petitioner union and that petitioners were entitled to reinstatement, three separate opinions were filed which in fact altered and modified the trial court’s judgment awarding backwages and strike duration pay.

Then presiding judge Arsenio I. Martinez filed a concurring and dissenting opinion dated November 10, 1966 concurred in by then judge Emiliano C. Tabigne, wherein although “concurring in the findings of unfair labor practice” and “that this strike was staged on account of discriminatory acts of the respondent company,” they voted against the payment of any backwages and strike duration pay on general grounds of “wielding our discretionary authority so as to be consistent with justice and equity.”

Then judge Amando C. Bugayong filed a concurring opinion dated July 5, 1968 stressing that “the evidence adduced left no room for further doubts” as to respondents’ unfair labor practices and that “the strike . . . came about as a result of the discriminatory acts of the company but voted for a modified award of backwages and strike duration pay “from the time of dismissal of the aggrieved workers only until this case was submitted for resolution [on October 25,

1961], subject to that interruption, and to be restored immediately at the time when they presented themselves for work”^[2] (or an exclusion from the award, of the backwages corresponding to a period of seven years [1961 to 1968] in round figures). On the matter of strike duration pay, Judge Bugayong held that “it sounds reasonable that the trial court has enunciated a mandate that the strikers, considering the adverse attitude of its employer, were not in a position to return to work until such time when the discriminatory acts were in due time rectified by the employer” and hence voted for payment of strike duration pay in the same manner as the backwages for the dismissed petitioners-employees.

The fifth judge Ansberto P. Paredes filed his concurring and dissenting opinion dated July 10, 1968 recognizing “the gravity of the offense of respondents and the resultant damage and prejudice to individual complainants found to be victims but voted as a matter of equity “that the period commencing one year (in view of the voluminous records, this is the reasonable length of time the case should have been decided) after the time this case was submitted for decision on October 25, 1961 up to the time the Court en banc shall have promulgated its resolution on the motion for reconsideration of the Decision of the trial court dated September 6, 1966, should not be included in the award” (or an exclusion from the award, of the backwages corresponding to a period of six years [1962 to 1968] in round figures). He voted against any award of strike duration pay on the ground that this was not pleaded nor prayed for in the unfair labor practice complain.

In short, while all the five judges sustained the findings of the trial court on respondents’ unfair labor practices and discriminatory acts which justified petitioner-union’s strike and all voted in favor of reinstatement and of the strikers’ return to work, only three judges voted to award backwages without deduction but in varying periods as above stated (with two of them excluding certain periods thus modifying the trial judge’s award of backwages from dismissal to reinstatement) while two judges voted against any award of backwages. On the award of strike-duration pay to the strikers, two judges voted to grant strike duration pay while three voted against any such award.

Both parties sought to appeal from respondent court's decision and resolution en banc to this Court.

Respondents' petition for review was docketed as L-29331^[3] on August 5, 1968 and was denied due course per this Court's resolution of August 9, 1968 "for being factual and for lack of merit" and resolution of September 18, 1968 denying reconsideration and entry of judgment was entered on September 26, 1968.

Respondents' petition before this Court in said case L-29331 raised the following specific issues:

"(a) Whether or not an award for an unconditional reinstatement is proper and just where the nature of the business of respondent employees requires not only medical examination prior to admission for work, but a periodic medical check-up as a condition for continued employment?

"(b) Whether or not an award for full backwages to certain workers from the date of their dismissal up to the time of their actual reinstatement is fair, equitable and just where there has been no findings on the nature of the employment of the workers concerned?"

In their discussion of their petition, respondents further claimed that reinstatement of petitioners was not feasible because they had closed their Davao plant on October 16, 1966 due to alleged huge losses from 1964 to 1966 — an allegation made by them for the first time after respondent court en banc had denied reconsideration in July 1968 and which had never been timely nor properly raised by them as an issue in their pleadings nor at the trial held by respondent court. As already indicated above, respondents' petition was denied by this Court "for being factual and for lack of merit."

The question of the dismissed petitioners-employees' right to reinstatement with backwages without deduction as awarded by respondent court and of the petitioner-union's striking members' right to return to work is thus already a settled matter, respondent court's action in this regard having been affirmed by this court's

denial of respondents' petition for review in L-29331. Such denial of their petition in L-29331 equally settled and barred their belated contention therein that the reinstatement and return of the petitioner-union's dismissed employees and striking members was not feasible due to their alleged closure of their Davao plant in 1966 which closure was without respondent court's authorization and in violation of its judgment ordering reinstatement and return to work of the workers.

The only remaining questions submitted for the Court's resolution are the two questions raised by petitioners in their petition, *viz*, that the "duration of the period for backwages should not be shortened in view of the gravity of respondents' offense and the resultant damage and prejudice to said workers" and that "the striking members of petitioning union are clearly entitled to strike duration pay."^[4]

The petition is meritorious and should be granted.

- I. On the matter of payment of full backwages to the wrongfully dismissed petitioners-employees from date of dismissal to reinstatement without exclusion of any period during which the case was pending determination by respondent court, the following vital considerations support petitioners' stand:

1. As soon as this Court's resolution denying respondents' separate appeal in Case L-29331 from respondent court's decision became final in September, 1968, petitioners filed under date of November 2, 1968 with respondent court their motion for execution of its decision of September 5, 1966 as affirmed with modification by the en banc resolution of July 10, 1968 ordering the reinstatement with backwages of the nine wrongfully dismissed employees and for the return to work of the striking members of petitioner union.

Respondents however obstinately but successfully opposed in their pleading dated November 21, 1968 5 the reinstatement and return of the workers on the ground that the matter of the amount of backwages was appealed by petitioners through the present case to this Court and

contended erroneously that petitioners thereby waived the benefits of the rule on non-stay of execution of judgment.

A second ground of respondents' opposition to the motion for execution was an entirely new and unpleaded matter, viz, that "the matter of reinstatement can no longer be effected there having been closure (allegedly since October 16, 1966) of the Davao branch office due to financial reverses." This alleged closure was raised by respondents for the first time in respondent court, as far as the record shows, only in their said opposition of November 21, 1968, after respondent court had denied in July, 1968 reconsideration of its decision and this Court had denied in September, 1968 respondents' separate appeal from respondent court's judgment in question.

2. As already indicated above, in their petition in L-29331 by way of separate appeal from respondent court's judgment ordering reinstatement with backwages and return to work of the strikers, respondents for the first time made the claim that reinstatement was not feasible because of their alleged unilateral closure of the Davao plant on October 16, 1966 which closure they undertook at their own instance and risk and without court authorization notwithstanding the rendition of judgment ordering them to reinstate the dismissed and striking members of petitioner union. Petitioners accordingly assailed respondents in their motion to dismiss dated August 24, 1968 in opposition to respondents' petition in L-29331, averring that "this allegation was made for the first time only after the respondent court en banc had denied, in July, 1968, the above-mentioned motion for reconsideration of the decision filed by respondent employer. Hence, for the same reasons above-mentioned, such a question may not be properly raised on appeal before this Honorable Court. Moreover, the closure was resorted to in bad faith and in order to circumvent the order of

reinstatement which had been received by the respondent employer beforehand.”^[6]

This Court’s denial of their said petition in L-29331 has settled and foreclosed in this case their belated contention that their unilateral closure of the Davao plant has made reinstatement and return of the workers “not feasible”. In point of fact, respondents apparently concede this for outside of their answer, they have not raised the question of the alleged closure of the Davao plant in their brief and even acknowledged therein while raising some question as to whether is it “proper and practicable,” that reinstatement and return to work may be enforced at their main plant at Parañaque, Rizal.^[7]

3. This Court’s denial of respondents’ separate petition by way of appeal in L-29331 from the judgment at bar equally forecloses any dispute in the case at bar (since their contrary contentions were already rejected therein) as to the judgment which has ordered the reinstatement of the nine dismissed employees with full backwages without deduction or qualification from date of their respective unlawful dismissal until the date of their actual reinstatement and the acceptance of the return to work of the striking members of petitioner union whose strike was upheld to be just and legal as a measure of self-defense and protection against respondents’ union-busting activities.

The judgment of backwages comprises a period from 1957 (the year of dismissal) up to the present year 1974 since the workers’ attempts to enforce the judgment by execution and to be reinstated and to return to work have been obstinately and successfully resisted by respondents up to now.

Respondents cannot now be heard to complain since it is they who have blocked all attempts of the workers at reinstatement and return to work, notwithstanding the

finality of the judgment in this aspect since the denial in September, 1968 of their separate appeal in Case L-29331.

As the Court has stressed in *East Asiatic Co. Ltd. vs. CIR*,^[8] “it is implicit in the law that what the court should have done as the initial step was to order immediate implementation of the ordered reinstatement, without prejudice to resolving the question of backwages afterwards. In that manner, all of these questions vexing the parties and the court could have been avoided or at least minimized. After all, it is the long lay-off that creates problems not only for the employer, with regard to how much has to be paid in backwages, but also, and this is worse, for the discharged employee or worker, as to whom naturally the damage is always bound to be beyond complete repair since during the uncertain period of lay-off, he and his family have to undergo the difficulties, hardships and vicissitudes of unemployment until he can have some kind of earning elsewhere. On the other hand, with immediate reinstatement upon the court’s finding of just and legal ground therefor no injury is caused to either employer or employee, for the former gets the benefit of the latter’s work and the latter receives due compensation therefor. The obvious advantages of this arrangement in terms of industrial peace and economic and social progress, and the larger interest of the nation as a whole, are incalculable.”

4. The question directly raised by the nine dismissed petitioners-employees as far as their backwages are concerned is whether the backwages corresponding to the period of six to seven years (in round figures) that the case was pending decision by respondent court from date of submittal on October 25, 1961 through the date of the trial court’s decision on September 5, 1966 until the release of said court’s en banc resolution and denial with modification of the motion for reconsideration on July 10, 1968 should be excluded from the backwages award. Respondent court’s award of backwages without deduction of qualification was

not questioned by respondents in their separate appeal in L-29331 and this Court's denial of their petition therein in September, 1968 has at any rate foreclosed this matter (in fact, respondents raise no question concerning the same in their brief in the case at bar).

As already stated above, two other judges concurred with the trial judge in awarding full backwages without deduction or qualification from dismissal to reinstatement. Judge Bugayong however qualified his concurrence by voting to exclude a period of seven years (from October 25, 1961 date of submittal for decision "to be restored immediately" on November 2, 1968 after the decision when the workers presented themselves unsuccessfully for work), while Judge Paredes was for excluding from the backwages award a period of six years (from October 25, 1962 [one year after submittal for decision] to July 1968, when respondent court en banc resolved respondents' motion for reconsideration).

Both of the latter two, Judges Bugayong and Paredes, voted for the exclusion of the backwages corresponding to the period of six to seven years that the case was pending determination by respondent court on the sole ground of the long pendency of the case before their court, with Judge Bugayong rationalizing that "respondent company, no matter how guilty it was for the unfair labor practices committed against its employees should not be made to sacrifice and compensate for damages occasioned by the long pendency of this case after its submission which was anyway beyond its control. The court must also take a share of its fault and be willing to admit the blame for the long pendency of this case."^[9]

Such reasoning on which respondents mainly relied in their brief^[10] is however fallacious for it completely ignores the fact that respondent company was found guilty of the grossest form of oppressive and unfair labor practices, discriminatory acts and union-busting activities against petitioners as the aggrieved parties and must bear

the full consequences of its acts particularly in the light of its obstinacy in persisting in its refusal to reinstate the unlawfully dismissed nine employees and accept the returning strikers notwithstanding that its appeal to this Court in L-29331 had been rejected in September, 1968. Such a favoring of the offender-employer as against the aggrieved workers would not be in consonance with the constitutional mandate that the State afford protection to labor^[11] and the statutory injunctions against the employer's unfair labor practices^[12] and oppressive acts against labor.^[13] While the judge would have respondent court take a share of its fault for the long pendency of the case, this should not be done however at the expense and to the prejudice of the aggrieved workers who should be duly indemnified for their lost earnings as a direct result of their illegal dismissal and to the favor and advantage of the offender-employer.

5. The minority's (Judges Martinez and Tabigne) view that the dismissed and striking members of petitioner union should first undergo a medical examination before they are reinstated or allowed to return to work was the first of two issues raised by respondents in their separate appeal in Case L-29331, supra.^[14] This issue was settled and foreclosed by this Court's rejection in September, 1968 of respondents' said appeal.

At any rate, respondent court correctly followed established principles in not adhering to the minority view of requiring medical examination as a condition precedent for reinstatement or return to work. The filing and pendency of an unfair labor practice case as in the case at bar presupposes a continuing employer-employee relationship^[15] and when the case is decided in favor of the workers, this relationship is in law deemed to have continued uninterrupted notwithstanding their unlawful dismissal or the lawful strike and stoppage of work, and hence, seniority and other privileges are preserved in their favor. To require them to undergo a physical or medical

examination as a precondition of reinstatement or return to work simply because of the long pendency of their case which is due to no fault of theirs would not only defeat the purpose of the law and the constitutional and statutory mandates to protect labor but would work to their unfair prejudice as aggrieved parties and give an undue advantage to employers as the offenders who have the means and resources to wage attrition and withstand the bane of protracted litigation.

Hence, the aggrieved workers may be subjected to periodic physical or medical examination as old reinstated workers, but not as a precondition to their reinstatement or return to work with the important consequence that if they are found to be ill or suffering from some disability, they would be entitled to all the benefits that the laws and company practices provide by way of compensation, medical care, disability benefits and gratuities, etc. to employees and workers.

II. On the matter of payment of strike-duration pay to the striking members of petitioner union whose strike was upheld by respondent court to be justified and legal, the Court finds that respondents' unfair labor practices and discriminatory practices to the extent of unlawfully dismissing the nine petitioners, coercing the members of petitioner union to join another union obviously sponsored by it and threatening to virtually lock them out and "to shut up Davao plant, if necessary fully justify the trial court's original decision ordering respondents to allow the return to work of the striking members of petitioner union and to give strike duration pay with deduction of earnings elsewhere, without loss of seniority and other benefits granted by the company.

1. While all five judges of respondent court concurred that the petitioners' strike was fully justified on account of the company's discriminatory practices, Judges Martinez and Tabigne who subscribed to the trial court's principle "that the strikers are not bound

to offer a return to work until such time when the discriminatory acts have been corrected by the employer and if possible, rectified indeed (as) a just one”^[16] nevertheless voted against the granting of strike duration pay (and backwages for the unlawfully dismissed petitioners) on vague grounds “of wielding our discretionary authority so as to be consistent with justice and equity” and resolving their doubt as “to the necessity of awarding backwages and strike duration pay” in favor of the employer just as “in criminal law, the doubt is always resolved in favor of the accused.”^[17] They were joined by the negative vote of Judge Paredes who voted against the granting of strike duration pay on the ground that “this matter has neither been raised nor pleaded or prayed for in the complaint”^[18] to form a majority of three against the affirmative votes of the trial judge and Judge Bugayong for the granting of strike duration pay.

The trial court’s award of strike duration pay less earnings must be sustained as urged by petitioners. The self-same considerations of the company’s unfair labor practices and discriminatory acts and anti-union activities that fully justify the award of backwages to the unlawfully dismissed employees equally justify the granting of strike duration pay to petitioner union’s members who were left no other alternative by their employer’s improper and oppressive conduct but to declare a strike to render aid and protection to themselves and their unlawfully dismissed companions.^[19]

The detail that the number and names of the striking members of petitioner union were not specified in the decision nor in the complaint is of no consequence as against the established fact that all members of the petitioner union went on strike on August 6, 1957 due to the respondent’s unfair labor practices and anti-union activities, inter alia unlawfully dismissing the nine petitioners-members, foisting their own favored union on the workers together with a ready-made collective

bargaining agreement and announcing a lockout and threatening the closure of the Davao plant. It is the function precisely of a labor union such as petitioner to carry the representation of its members particularly against the employer's unfair labor practices against it and its members and to file an action for their benefit and behalf without joining them and to avoid the cumbersome procedure of joining each and every member as a separate party (as authorized under Rule 3, section 3).^[20] The petitioner union is thus authorized to ask for execution in due course of the strike duration pay as awarded on behalf of its members and the court a quo in the course of implementation and execution of the judgment may call upon the union as well as the striking members and the company's payrolls for the proper verification of the individual members entitled to receive the strike duration pay as awarded.

2. On the procedural question raised by Judge Paredes that the strike duration pay was not raised or prayed for in the original unfair labor practice complaint filed (on July 26, 1957) before the strike (declared on August 6, 1957), the Court is satisfied from the record that the issue of the legality and validity of the strike and of the right of the strikers to backwages or more precisely strike duration pay was duly joined and properly litigated by the parties in the trial below.

Respondents themselves in both their answer of August 19, 1957^[21] to the complaint below and amended answer of December 17, 1958^[22] put in issue the legality of the strike and prayed "that the strike and picket be declared illegal." The parties introduced their respective evidence on the issue and respondents in their memorandum of September 19, 1961 prayed of respondent court, inter alia, "5. To re-admit all the members of the complainant union who were on strike since August 6, 1957 by reason of the respondents' lock-out and other unfair labor practices, with back wages."

III. The Court therefore grants the petition and as prayed for sets aside the majority en banc resolution of respondent court and reinstates the decision and judgment of the trial court of September 5, 1966,^[23] subject to the following three modifications:

1. Part (a) of the said judgment ordering the reinstatement of the nine dismissed petitioners “to their former and equivalent positions with full backwages from dates of their respective dismissals until they are actually reinstated” without qualification or deduction is hereby reinstated, provided that such backwages shall be computed and paid only up to the date of finality and entry of this judgment.

As already indicated above,^[24] this Court’s denial of respondents’ separate appeal in L-29331 from the same judgment at bar forecloses any dispute in the case at bar and the application of the precedent in Mercury Drug Co. vs. CIR^[25] of fixing an amount of net backwages to relieve the employers from proving or disproving the employees’ earnings elsewhere during the latter’s lay-off and the employees from the same burden (for purposes of deducting the same from the award of gross backwages) which usually resulted in protracted delay to the prejudice of the employees since here the award was for the payment of full backwages without deduction or qualification and respondents’ appeal therefrom was already turned down by this Court as without merit in September, 1968.

There is thus imposed here an element of punitive damages against respondent employer by way of example and for the public good. Due to respondent-employers’ obstinacy in not reinstating the unlawfully dismissed employees, notwithstanding that the judgment had become final with the failure of their separate appeal since September, 1968, they will now have to pay a record full backwages without qualification surpassing the almost sixteen years of such backwages paid in the recent case of

NASSCO vs. CIR^[26] owing also to the employer's obstinacy and aversion to reinstating the employee in said case notwithstanding the finality of the judgment for reinstatement.

Here, respondents' obstinacy has further been compounded by their questionable act (to say the least, when it is noted that they were found guilty of threatening "to shut up Davao plant, if necessary" in order to discourage the workers' union membership with petitioner and to bust petitioner union) of not raising with respondent court during the two years (1966-1968) that their motion for reconsideration was pending their alleged unilateral closure of their Davao plant on October 16, 1966 for alleged huge losses from 1964 to 1966 and to seek its sanction therefor. Instead it was only after their motion for reconsideration had been denied by respondent court that they used the alleged closure since October 1966 of their Davao plant to claim in their separate appeal in 1968 in L-29331 to this Court that reinstatement and return of the workers were no longer feasible because of such closure, and when their appeal was nonetheless rejected by this Court, to make the same claim with respondent court to block obstinately but successfully the reinstatement and return to work of the workers. Hence, petitioners' claim that such closure was "resorted to in bad faith and in order to circumvent the order of reinstatement."^[27]

Such alleged unilateral closure of the Davao plant cannot of course be availed of to defeat in this case the final judgment for reinstatement and payment of full backwages to the nine unlawfully dismissed petitioners-employees from dates of their dismissal up to the date of finality and entry of this judgment, as now fixed by the court. Otherwise, respondents would be able to do indirectly what they could not do directly and unlawfully dismiss the workers and evade judgment by the mere unilateral closure without justifiable cause of their Davao plant.^[28]

2. What about the implementation of the final judgment for reinstatement (and for acceptance back to work of the strikers whose strike was found to be just and lawful, as per part (b) of the trial court's judgment herein reinstated) and its provision for the continuation of payment of backwages until actual reinstatement?

The Court, due to the unjustified suppression by respondents from respondent court during the pendency for two years (1966-1968) of their motion for reconsideration of the alleged closure since 1966 of their Davao plant and the failure of their separate appeal in L-29331 wherein they invoked such closure for the first time, therefore considers as a matter of equity that notice of such closure and proper application to close its Davao plant and to be relieved from the effects of the adverse judgment (although no such application appears in the record to have been actually filed by respondents) has been filed only now by respondent employer.

Since this is an entirely new matter on which the parties make separate claims with petitioners claiming it is a mere device in bad faith to escape the judgment and respondents claiming it to be a legitimate decision to avoid huge losses, this matter will have to be remanded for further proceedings, as in *Columbian Rope Co. of the Phil. vs. Tacloban Ass'n. of Laborers*^[29] to receive evidence on and decide the following questions: (a) whether the closure of the Davao plant is for a justifiable cause, as alleged by respondents or is resorted to in order to circumvent the judgment for reinstatement of the nine unlawfully dismissed petitioners-employees and return to work of the striking members of petitioner union, whose strike has been found to be just and lawful, as alleged by petitioners; (b) if the closure is found to be justified, whether or not on the basis of the evidence, it is feasible (and acceptable to the workers) to order the reinstatement and return to work of the employees in

respondent company's main plant at Parañaque, Rizal or other branches, if any, nearest to the closed Davao plant or to put them on a preferential waiting list for that purpose, on the basis of the exigencies of its business; (c) if the closure is found to be unjustified, to determine the most practical and expeditious means to enforce reinstatement and return to work of the workers; and (d) in either case, whether or not the closure is found to be justified, whether the payment of backwages with or without deduction to the unlawfully dismissed employees shall still continue after the date of finality of this judgment or shall cease, considering the substantial backwages without deduction awarded under the judgment at bar to said employees.

3. Part (b) of the trial court's judgment ordering respondents to allow the return to work of the striking members of petitioner union with strike duration pay "from the date of the strike (August 6, 1957) up to the receipt of the decision (of September 5, 1966)" less earnings elsewhere earned by the strikers in the form of salaries or wages is hereby reinstated as prayed for by petitioners, provided however that following the precedent of the Mercury Drug Co. case, *supra*,^[30] the Court in the light of the circumstances of record in the case at bar, hereby fixes the strike duration pay for the period of over nine years (August 6, 1957 to September 5, 1966) without going through the protracted process of determining the amount of such earnings elsewhere, at the equivalent of five (5) years wages net without deduction and qualification as the just and reasonable amount payable to the said employees.

ACCORDINGLY, judgment is hereby rendered setting aside the majority en banc resolution of respondent court of industrial relations insofar as it modified the September 5, 1966 decision of said court which is hereby reinstated, subject to the three modifications thereof as set forth in the preceding Heading III in the body of the opinion. The case is ordered remanded to respondent court for further proceedings as stated in part 2 of said Heading III; however, if

respondent court shall no longer be authorized or in a position to act on and determine the questions remanded to it since it is set to be abolished under the new Labor Code scheduled for implementation on November 1, 1974 under Presidential Decree No. 442, then the case shall be ordered remanded for the proceedings and purposes therein stated to the successor-entity of respondent court under the new Labor Code and its implementing regulations. **SO ORDERED.**

Castro, J., (Chairman), Makasiar, Esguerra and Muñoz Palma, JJ., concur.

- [1] Its petition to have this Court review these findings and the order to reinstate the dismissed petitioners with backwages and accept back the strikers, docketed as L-29331 was denied due course. See *infra*, pp. 9-11.
- [*] Written as “Privado” in the decision, Annex I, petition, Rollo, p. 123.
- [2] Notes in brackets supplied.
- [3] Entitled “7-Up Bottling Co. of the Phil., et al. vs. C.I.R., et al.”
- [4] Petition, par. VIII.
- [5] Rollo, pp. 181-201.
- [6] Rollo in L-29331, pp. 108-109.
- [7] Rollo, pp. 176, 201.
- [8] 40 SCRA 521, 533, cited in *NASSCO vs. CIR*, 57 SCRA 642 (June 28, 1974).
- [9] Rollo, page 135.
- [10] Respondents’ brief, pp. 2-8.
- [11] Art. XIV, sec. 6, 1935 Constitution; Art. II, sec. 9, 1973 Constitution.
- [12] R.A. 875, sec. 4(a).
- [13] Art. 1701, Civil Code.
- [14] At page 10 hereof.
- [15] R.A. 875, section 2(a).
- [16] Rollo, page 126.
- [17] Rollo, pp. 128-129.
- [18] *Idem*, p. 137.
- [19] See *McLeod & Co. of the Phil. vs. Progressive Federation of Labor*, 97 Phil. 205.
- [20] See *National Brewery & Allied Industries Labor Union vs. San Miguel Brewery*, 9 SCRA 847, cited in *Liberty Mfg. Workers Union vs. CFI of Bulacan*, 48 SCRA 273.
- [21] Petition, Annex “B”, Rollo, pp. 22-27.
- [22] Petition, Annex “D”, Rollo, pp. 30-35.
- [23] *Supra*, at pages 7-8.
- [24] *Supra*, at pages 13-16.

- [25] L-23357, Apr. 30, 1974, applied in NASSCO vs. CIR, L-31852 & L-32724, June 28, 1974, Almira vs. B.F. Goodrich Phil. Inc., L-34974, July 25, 1974, and Phil. Rock Products, Inc. vs. PAFLU, et al., L-32829, August 30, 1974.
- [26] See fn. 25 for citation.
- [27] Supra, at page 12.
- [28] See Aronson & Co. Inc. vs. Associated Labor Union, 40 SCRA 7.
- [29] 6 SCRA 425, 430, per Makalintal, now C.J.
- [30] At page 18.