

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**GRAND BOULEVARD HOTEL
(formerly known as SILAHIS
INTERNATIONAL HOTEL, INC.),
*Petitioner,***

-versus-

**G.R. No. 153664
July 18, 2003**

**GENUINE LABOR ORGANIZATION OF
WORKERS IN HOTEL, RESTAURANT
AND ALLIED INDUSTRIES
(GLOWHRAIN),
*Respondent.***

X-----X

**GRAND BOULEVARD HOTEL
(formerly known as SILAHIS
INTERNATIONAL HOTEL, INC.),
*Petitioner,***

-versus-

**G.R. No. 153665
July 18, 2003**

EDNA B. DACANAY,
Respondent.

X-----X

DECISION

CALLEJO, SR., J.:

Before us is a Petition for Review on *Certiorari* of the Decision^[1] of the Court of Appeals in CA-G.R. SP Nos. 53284 & 53285 dated January 9, 2002 and its Resolution^[2] dated May 27, 2002 denying the petitioner's Motion for Reconsideration of the said Decision.

The Antecedents

On February 27, 1987, Genuine Labor Organization of Workers in Hotel, Restaurant and Allied Industries — Silahis International Hotel Chapter (GLOWHRAIN-Silahis) (respondent union for brevity) and the petitioner Grand Boulevard Hotel (then Silahis International Hotel, Inc.) executed a Collective Bargaining Agreement (CBA) covering the period from July 10, 1985 up to July 9, 1988. The petitioner thereafter dismissed some of its employees and suspended others who were members of the respondent union. On May 26, 1987, the respondent union filed a notice of strike with the Department of Labor and Employment, National Capital Region (DOLE-NCR), based on the following grounds:

- a) Illegal dismissal
- b) Illegal suspension
- c) CBA violations
- d) Harassments^[3]

On June 4, 1987, the then Acting Secretary of Labor and Employment (SOLE for brevity) issued a status quo ante bellum order certifying the labor dispute to the National Labor Relations Commission (NLRC) for compulsory arbitration pursuant to Article 263(g) of the Labor Code; and further directing the employees to return to work within forty-eight hours from receipt of the order,^[4] and for the petitioner to accept all returning employees under the same terms and conditions prevailing prior to the labor dispute. The respondent union complied with the order of the SOLE. On May 9, 1990, the respondent union filed another notice of strike against the petitioner on account of alleged violations of the CBA and the illegal dismissal of nine employees. The matter was docketed as NCMB-NCR Case No. 06-400-90. On May 23, 1990, the SOLE issued another status quo ante bellum order certifying the case to the NLRC for compulsory arbitration, directing the nine employees to return to work and enjoining both parties from engaging in any strike or lockout that would exacerbate the situation. The parties were also directed to sign a CBA within fifteen days from notice of the said order.^[5]

On June 15, 1990, the petitioner and the respondent union entered into and signed a third CBA covering the period of July 10, 1988 to July 9, 1991. On August 22, 1990, Union President Rogelio Soluta wrote the petitioner, calling its attention to and protesting the following violations of the CBA:

1. Union dues and other assessments deducted from CBU and union members' salary for July 15, 1990 payday.
2. Union dues and other assessments deducted from CBU and union member's salary for July 31, 1990 payday.
3. Union dues and other assessments deducted from CBU and union members' salary for August 15, 1990 payday.^[6]

On September 6, 1990, the petitioner placed the respondent union's Director for Grievances Apolonio Bondoc, Jr. under preventive suspension. On September 13, 1990, the respondent union filed a manifestation and motion in NCMB-NCR-NS Case No. 06-400-90 praying that the petitioner be held in contempt for violating the May

23, 1990 Order of the SOLE. On September 22, 1990, the petitioner suspended Francisco Pineda, a union counselor.

On September 27, 1990, the respondent union filed a notice of strike based on the following grounds:

- a. Violation of CBA;
- b. Coercion of employees;
- c. Harassment;
- d. Arbitrary transfer of employees; and
- e. Illegal termination and suspension of employees.^[7]

The matter was docketed as NCMB-NCR-NS-09-807-90. On October 10, 1990, the respondent union moved that the SOLE reconsider the May 23, 1990 Return-to-Work Order.

On October 16, 1990, Michael Wilson, the petitioner's general manager, wrote the SOLE informing him of the petitioner's decision to retrench seventeen less senior employees on a staggered basis, spread over a period of sixty days, to lessen the daily financial losses being incurred by the petitioner. A portion of the letter reads:

Due to the present continued downturn in tourism, we at the Silahis International Hotel are about to undertake a retrenchment program. As you know the other hotels have also invoked this management prerogative in order to lessen their financial losses incurred these last few months.

Due to our unique situation/relationship with the KMU, I am writing to you and appealing to your good sense of fair play on case of problems arising from unruly elements. We plan to retrench on a staggered basis one hundred seventy-one (171) less senior employees over a period of sixty (60) days, in order to stem the huge losses being incurred by us daily, during this unfortunate period.

Therefore, on behalf of my staff we ask fairness in this situation and hope the above actions can be taken smoothly and peacefully.^[8]

The next day, the respondent union, through its president, informed the DOLE-NCR that the union will conduct a strike vote referendum on October 23 and 24, 1990. The members of the respondent union voted to stage a strike. On October 25, 1990, the respondent union informed the DOLE-NCR of the results of the strike vote referendum. On October 31, 1990, the SOLE issued another status quo ante bellum order certifying the case to the NLRC for compulsory arbitration and enjoining the parties from engaging in any strike or lockout. The decretal portion of the order reads:

WHEREFORE, ABOVE PREMISES CONSIDERED, this Office hereby certifies the labor disputes at Silahis International Hotel, Inc., to the National Labor Relations Commission for compulsory arbitration. Accordingly, any strike or lockout, whether actual or intended, is hereby enjoined.

Consequently, pending resolution of the legality of the alleged dismissal of Apolonio Bondoc, Jr., the Company is directed to effect payroll reinstatement and accord him free access to the union office so that his duties as union officer will not be impaired.^[9]

The petitioner wrote the SOLE of its decision to implement its retrenchment program to stem its huge losses. On November 5, 1990, the petitioner disseminated a circular to all the employees, informing them that the personnel plantilla would be decreased by two hundred employees to be implemented on a staggered and “last in, first out” basis. It terminated the employment of sixty employees and two officers of the respondent union effective December 6, 1990. Moreover, the said employees, including the two union officers, were immediately barred from working. On November 7, 1990, the respondent union protested the actions of the petitioner invoking Section 15, Article VI of the CBA. The respondent union filed an urgent motion for a reconsideration by the SOLE of the Certification Order dated October 31, 1990. On November 14, 1990, the petitioner terminated the employment of eighty-six more employees effective

December 14, 1990. The remaining employees were also informed that it will close in six months. On November 14, 1990, the petitioner terminated the employment of Kristoffer So, effective December 14, 1990.

By way of riposte, the respondent union filed on November 16, 1990 another notice of strike because of what it perceived as the petitioner's continuing unfair labor practices (ULP). On the same day, at about 12:00 noon, the officers of the respondent union and some members staged a picket in the premises of the hotel, obstructing the free ingress and egress thereto. At 3:00 p.m., the police operatives of the Western Police District arrived and dispersed the picket line. Police officers detained the respondent union's president Rogelio Soluta, Henry Baybay and Dennis Cosico. On November 17, 1990, the petitioner sent identical letters to the officers and members of the respondent union terminating their employment effective that day on the following grounds:

Management found that you have willingly and knowingly participated in the illegal strike and concerted activity which was staged against the Hotel beginning on 16 November 1990. Management also found that you have, singly and collectively with others, committed illegal acts in the course of the said illegal strike such as, among others, obstructing the free ingress and egress to and from the hotel's premises.

In addition, Management has determined that you have grossly and glaringly violated existing company rules on peace and order such as, Rule V, and on promotion of goodwill such as Rule IV of the Company Rules. Worse, you have violated the Company Rule against abandonment of work under Rule VII, thus, adversely affecting the hotel operations.

Your foregoing acts are not only serious violations of the law but also constitute grave misconduct and blatant disregard of company rules, any or all of which, justify your dismissal from the company.

In view of the foregoing, notice is hereby given upon you that effective today, 17 November 1990, your employment with the company is terminated for cause.^[10]

On November 28, 1990, the SOLE issued an order certifying the labor dispute to the NLRC for consolidation with the previously certified case (Certified Case No. NCMB-NCR-NS-09-807-90). The SOLE issued a return-to-work order, excluding those who were retrenched, and enjoined all parties from committing any act that would aggravate the already tense situation. The SOLE further stated that the validity and propriety of the retrenchment program of the petitioner should be ventilated before and resolved by the NLRC. The SOLE denied the respondent union's motion to reconsider its October 31, 1990 Cease and Desist Order, thus:

WHEREFORE, PREMISES CONSIDERED, and pursuant to Article 263 (g) of the Labor Code, as amended, this Office hereby certifies the instant labor dispute at the Company to the National Labor Relations Commission for consolidation with Certified Case No. NCMB-NCR-NS-09-807-90.

Accordingly, all striking employees including those who were terminated for participation in the alleged illegal strike, but excluding those workers affected by the retrenchment program, are directed to return to work within twenty-four (24) hours from receipt hereof and for the Company to accept them under the same terms and conditions of employment prevailing prior to the work stoppage.

The validity and propriety of the Company's retrenchment program shall be ventilated and adjudicated by the NLRC.

The directive for the parties to cease and desist from committing any act that will aggravate the situation is hereby reiterated.

The union's Motion for Reconsideration is hereby denied.

Finally, the Superintendent of the Western Police District is hereby deputized to assist in the orderly and peaceful implementation of this Order.^[11]

In his order, the SOLE made the succinct observation that both the petitioner and the respondent union were to blame for the current labor conflict:

From the series of events that occurred from the time this Office issued the Order on 31 October 1990 up to the declaration of the strike, it is very apparent that several acts were committed by both parties that caused the further deterioration of their relationship despite this Office's admonition to desist from engaging in any (sic) form of lockout or strike, whether actual or intended. Likewise, it is also very obvious that the current labor conflict is deeply rooted in an (sic) intertwined with the earlier dispute on account of the nature of the acts committed by both parties. Unfair labor practices, by its nature, could be committed through series of continuing acts, and allegations of commission of unfair labor practice acts should be ventilated in the forum earlier tasked to resolve the dispute at the Company.^[12]

The respondent officers and members complied with the order of the SOLE and returned to work. On January 15, 1991, the SOLE issued an order for the reinstatement of the thirty-five dismissed employees with full backwages.

On February 1, 1991, the petitioner filed a Complaint^[13] with the Regional Arbitration Office of the NLRC for illegal strike against the union, its members and officers, namely: Rogelio M. Soluta, Elmer C. Labor, Joselito A. Santos, Florentino P. Matilla, Edna B. Dacanay, Henry N. Babay, Ray Antonio E. Rosaura, Dennis C. Cosico, Vicente M. Delola, Irene B. Ragay, Apolonio Bondoc, Jr., Quintos B. Barra, Alfredo S. Bautista, Richard T. Galigo, John Does and Jane Does. The petitioner alleged inter alia that the union members and officers staged a strike on November 16, 1990 which lasted until November 29, 1990 without complying with the requirements provided under Articles 263 and 264 of the Labor Code. The petitioner alleged inter alia that:

1. The strike staged by the respondents from 16 to 29 November 1990 is illegal for failure of the strikers to comply with the requirements provided for by law;
2. Individual respondents who are the union officers and respondent John Does and Jane Does knowingly participated in the commission of illegal acts during the strike;
3. As a consequence of the illegal strike and concerted activities by the respondents the company suffered actual damages; and
4. Complainant Hotel was constrained to engage the services of counsel and, therefore, should be paid attorney's fees.^[14]

It further alleged that the officers and members of the respondent union blocked the main ingress to and egress from the hotel.

The petitioner prayed that, after due proceedings, judgment be rendered in its favor declaring the strike staged by the respondent union illegal, that it be awarded damages, and that the officers and members of the union who participated in the strike be dismissed from their employment.

The respondents denied the material allegations of the complaint and alleged that the petitioner committed unfair labor practices prior to the filing of the November 16, 1990 notice of strike. Hence, there was no need for the respondent union to comply with Articles 263 and 264 of the Labor Code, as the notice filed by the union on September 27, 1990 was sufficient compliance with the law. The view posited by the respondent union was summarized by its president Rogelio M. Soluta in his affidavit:

- a. after the execution of the CBA on June 15, 1990 he wrote on August 22, 1990 the company protesting its violations [Exh. 8];

- b. on September 13, 1990 their union wrote the Secretary of Labor and Employment praying that the company be cited in contempt for violation of his May 23, 1990 order [Exh. 10] which enjoined the parties from engaging in strike or lockout [Exh. 7].
- c. on September 27, 1990 the union filed a notice of strike on grounds of unfair labor practices as enumerated in par. 19 of Soluta's affidavit, acting on which the Secretary of Labor certified the labor dispute to the NLRC for compulsory arbitration and enjoining any strike or lockout-again [Exh. 16]. In violation of said order, the company on November 5, 1990 issued a circular to all employees that it will decrease its personnel plantilla by 200 employees [Exh. 17] and on November 6, 1990 it again issued a memorandum terminating 60 employees including 2 union officers, while effective still December 6, 1990 were not allowed to work already on November 6, 1990, to which the union on November 7, 1990 protested invoking Sec. 15, Art. VI, 2nd par. of the CBA, only to be confirmed by the Hotel in a letter that it will undertake a retrenchment of 200 employees [Exh. 19]. Union president Soluta sought for a dialogue with the management but he was only insulted and rebuffed by the Hotel when it issued a memorandum terminating 86 employees effective December 14, 1990 [Exh. 20] and not satisfied, the Hotel's Executive Vice-President issued a memorandum to all department heads that the Hotel will close for a period of six months. [Exh. 21] (Emphasis ours, Record, pp. 396-397)^[15]

The respondent union and its officers filed on October 14, 1991 a motion to suspend the proceedings, alleging inter alia that:

8. In the determination of the validity or legality of a strike, three (3) essential factors are to consider:
 - a) The purpose or objective of the strike;
 - b) The means employed;

- c) Compliance with the requirements of the law provided for under Article 263 of the Labor Code of the Philippines, as amended.^[16]

On February 12, 1992, Labor Arbiter Cornelio L. Linsangan rendered a decision in favor of the petitioner, the decretal portion of which reads:

WHEREFORE, finding the respondents guilty of illegal strike as charged, judgment is hereby rendered declaring the union officers to have lost and forfeited their employment.^[17]

The Labor Arbiter, although sympathetic with the respondent union, held that for the latter's failure to comply with the requirements laid down in Articles 263 and 264 of the Labor Code, the strike that was staged on November 16, 1990 up to November 29, 1990 was illegal. Considering the admissions of the individual respondents that they participated in the said strike, the termination of their employment by the petitioner was legal. The Labor Arbiter noted that if as alleged by the respondent union the petitioner was guilty of ULP, it should have filed a complaint therefor against the petitioner and/or its officials for which the latter could have been meted penal and administrative sanctions as provided for in Article 272 of the Labor Code. The respondent union failed to do so.

When the petitioner learned of the decision of the Labor Arbiter on February 14, 1992, it forthwith barred the officers and members of the respondent union from entering the hotel. On February 22, 1992, the SOLE ordered the petitioner to accept the dismissed officers and employees, but the petitioner refused. On February 27, 1992, the officers of the union filed a very urgent petition for the issuance of a writ of preliminary injunction Against the petitioner under Article 218 (e) of the Labor Code. On March 11, 1992, the NLRC issued a minute resolution in favor of the officers/employees ordering the petitioner to reinstate them. The petitioner filed a motion for reconsideration of the said resolution but the said motion was denied. The petitioner forthwith filed with this Court on March 11, 1992 a petition for certiorari and prohibition against the respondent union and its officers for the nullification of the said resolution.^[18]

In the meantime, the respondent union and the individual respondents therein interposed an appeal from the decision of the Labor Arbiter to the NLRC. The respondent union pointed out in its appeal that it had complied with the requirements laid down in Articles 263 and 264 of the Labor Code because its November 16, 1990 notice of strike was a mere reiteration of its September 27, 1990 notice of strike, which, in turn, complied with all the requirements of the aforementioned articles, i.e., the cooling-off period, the strike ban, the strike vote and the strike vote report:

9. As above shown it is not disputed that the union filed a notice of strike on September 27, 1990 [Exh. 12]; par. 5 (c) and for this purpose, the union conducted a strike vote referendum and informed the Department of Labor of the result of the strike vote, acting on which said office issued its order of October 31, 1990 certifying the labor dispute to the Honorable Commission for compulsory arbitration and enjoining the parties from going on strike lockout [same par.; Exh. 16]. But then despite said order the Hotel intended to decrease its plantilla by 200 employees [Exh. 17]; terminated 60 employees, including 2 union officers, despite the vehement protests from the union; also terminating on November 14, 1990, 86 employees effective December 14, 1990 [Exh. 20] and to put fear upon the union members, circularized that the Hotel will close for a period of six months. So at this point in time, November 14, 1990 their notice of strike of September 27, 1990 [Exh. 12] has not been withdrawn nor resolved one way or another such that notice 'continued then as a warning that anyday (sic) after' the 15-day cooling-off period a strike impends (Morabe, *The Law on Strikes*, 1962 First Ed. p. 187) as it happened on November 16, 1990. The notice of strike filed on this date is a mere reiteration of that earlier notice of strike of September 27, 1990. Thus Union President Soluta declared in his affidavit:

“36. The requirements of the law relative to the Notice of Strike filed on September 27, 1990 having been complied with, the union declared a strike against the company on November 16, 1990 based on

grounds stated in the Notice of Strike filed on September 27, 1990.”^[19]

On August 4, 1993, this Court rendered a Decision in G.R. No. 104513 granting the petition and annulling the Resolution of the NLRC dated March 11, 1992.^[20]

Shortly thereafter, on September 30, 1993, the NLRC rendered a decision affirming the decision of the labor arbiter, the decretal portion of which reads:

WHEREFORE, the respondents’ appeal is hereby dismissed. The complainant Hotel is however urged, on humanitarian consideration, to pay the respondents a financial assistance computed at one month pay for every year of service.^[21]

The NLRC ratiocinated that the compliance by therein respondents of the requirements laid down in Articles 263 and 264 of the Labor Code respecting the September 27, 1990 notice of strike filed by the union cannot be carried over to the November 16, 1990 notice of strike. Resultantly, for failure of the union to comply with the aforementioned requirements for its November 16, 1990 notice of strike, the strike staged on November 16 up to November 29, 1990 was illegal. The NLRC likewise cited the ruling of this Court in *Union of Filipino Employees vs. Nestle Philippines, Inc.*^[22] However, the NLRC appealed to the petitioner to grant separation pay to the members/officers of the respondent union who joined the strike in this language:

This notwithstanding, we have deliberated on the question of whether or not the complainants should receive financial assistance. And while we are unanimously inclined to grant all the respondents separation pay equivalent to one month for every year of service, we however are so intimidated by the ruling of the Supreme Court in the case of *Benito D. Chua vs. NLRC* (G.R. No. 105775, February 8, 1993, 2nd Div., Feliciano, J.) where, despite the company’s willingness to pay financial assistance to complainant who was found guilty of participating in an illegal strike at Nestle Philippines, the Supreme Court deleted the NLRC’s award thereon. And, taking cue from the

Supreme Court ruling that the company is not precluded from “making a grant on a voluntary ex gratia basis’ (but not through an award from this Commission) we appeal to the complainant company that such a financial assistance, for humanitarian reasons, be extended all the respondents whose dismissals are hereby affirmed.^[23]

The respondents filed a motion for reconsideration of the decision but the NLRC issued an Order dated November 16, 1994 denying the same.^[24]

Dissatisfied, the respondents filed a petition for certiorari under Rule 65 before this Court docketed as G.R. No. 153664. Edna Dacanay, another officer of the union, filed a similar petition before this Court docketed as G.R. No. 153665. Upon motion of the petitioner, the petitions were consolidated. Pursuant to the ruling of this Court in *St. Martin Funeral Homes vs. NLRC*,^[25] the petitions were remanded to the Court of Appeals (CA) and re-docketed as CA-G.R. SP No. 53284 and CA-G.R. SP No. 53285, respectively. On January 9, 2002, the CA rendered a decision giving due course to and granting the petitions; and ordering the remand of the case to the labor arbiter for the determination of backwages due to the respondent officers under the said decision. The decretal portion of the decision reads:

WHEREFORE, premises considered, the instant petitions for certiorari are hereby GIVEN DUE COURSE and GRANTED.

Consequently, the subject strike being LEGAL under the prevailing circumstances then the DISMISSALS which ensued by virtue of the assailed Decisions of Arbiter Linsangan and respondent NLRC are UNJUSTIFIED and WITHOUT LEGAL BASIS.

Resultantly, the dismissed petitioners are entitled to reinstatement, if this is feasible, otherwise to separation pay and backwages plus disturbance compensation of P10,000.00 each, moral damages of P50,000.00 each and exemplary damages of another P10,000.00 each.

On the strength of the Supreme Court ruling in *Serrano vs. NLRC, et al.* (G.R. No. 117040, January 27, 2000), except for the backwages and the separation pays which would be determined by the LABOR ARBITER, the Grand Boulevard Hotel, formerly known as Silahis International Hotel, Inc., is ORDERED to pay immediately the disturbance compensation, moral and exemplary damages.

Upon finality hereof, lest it be forgotten that justice delayed is justice denied, the subject petitions should be REMANDED with dispatch to the Labor Arbiter for immediate computation and payment of backwages and separation pay due to petitioners.^[26]

In reversing the decisions of the NLRC and the Labor Arbiter, the CA took into account the observation of the Solicitor General that the petitioner (Silahis) retrenched employees pending the resolution of the certified cases respecting the alleged illegal suspension and dismissals effected by the petitioner during and prior to the notices of strike filed by the union. The Solicitor General opined that even if the strike was staged without the proper notice and compliance with the cooling-off period, resort thereto was simply triggered by the petitioners' belief in good faith that respondent Silahis was engaged in ULP.^[27] The CA cited the Order of the SOLE dated November 28, 1990 and the rulings of this Court in *Bacus vs. Ople*;^[28] *Bisig ng Manggagawa Sa Concrete Aggregates, Inc. vs. NLRC*;^[29] and *Silahis International Hotel, Inc. vs. NLRC*.^[30]

Dissatisfied, the petitioner filed a motion for reconsideration of the said decision. On May 27, 2002, the CA issued a resolution denying the said motion.^[31]

In its petition at bar, the petitioner assails the decision and resolution of the CA and prays for the reversal thereof, contending that:

- I. The findings of fact of the Court of Appeals, particularly those with respect to the unfair labor practice of petitioner Hotel were not supported by the real facts and circumstances attendant to the instant case.

- II. The Court of Appeals' finding of legality of the union's strike was a clear disregard of the requirements for a legal and valid strike as prescribed by law and jurisprudence.^[32]

Private respondent Dacanay, in her comment on the petition in G.R. No. 153665, alleges that the retrenchment program of the petitioner was without basis. The strike staged by the respondent union was sanctioned by its officers, and was not a wildcat strike. The requirements provided for in Articles 263 and 264 of the Labor Code had been complied with; the issues posed by the petitioner are factual; hence, not proper in a court petition. The petition should thus be dismissed and the decision of the CA affirmed.

The respondent union, for its part, argues that the strike staged on November 16, 1990 was lawful, considering the unfounded and illegal retrenchment undertaken by the petitioner and the unfair labor practices committed by the petitioner during the pendency of the resolution of the certification cases. The petitioner failed to show that the CA committed a grave abuse of its discretion amounting to excess or lack of jurisdiction in reversing the decisions of the Labor Arbiter and NLRC.

The respondent union likewise expostulated that the certificate of non-forum shopping embedded in the petition is defective because Jose Ma. Nuñez, who executed the certification, was not authorized by board resolution to specifically file the instant petition. The private respondent likewise asserted that the petition should not be given due course for failure of the petitioner to attach copies of relevant pleadings filed by the parties before the Labor Arbiter and the NLRC.

The issues submitted for resolution are two-fold, namely: (1) PROCEDURAL, to wit: (a) whether or not the certificate of non-forum shopping is defective, and (b) whether or not the petition is insufficient in form for failure of the petitioner to attach relevant pleadings that form part of the decision; and (2) SUBSTANTIVE, to wit: (a) whether or not the strike staged by the respondent union on November 16 up to 29, 1990 is legal, and (b) whether or not the dismissals of the private respondents officers of the respondent union as a consequence of the strike on November 16 to 29, 1990 are valid.

On the Procedural Issues

The respondents (except respondent Edna Dacanay) aver that the certification of non-forum shopping embedded in the resolution of the Board of Directors failed to specifically authorize Jose Ma. Nuñez to file the petition at bar for and in behalf of the petitioner. A reading of the comment of the said respondents reveals that they do not assail the sufficiency of the certification of non-forum shopping submitted by the petitioner; rather, they aver that the resolution of the Board of Directors of the petitioner appended to the petition does not specifically authorize Jose Ma. Nuñez to file the petition at bar for and in its behalf.

We do not agree. The resolution adverted to by the respondents reads:

RESOLVED, That the Board of Directors of Grand Boulevard Hotel hereby authorize Mr. Jose Ma. Nuñez to do any and all of the following acts: 1. to cause the filing of the proper legal actions, cases, proceedings in the appropriate court; 2. to represent the Corporation in any capacity in all suits of whatever kind and nature brought for or against it and empowering him to engage the services of counsel as it deems fit; and 3. to sign for and verify as well as authenticate such petition, pleadings, documents, record and other papers necessary in the successful prosecution of such suits, including the verification of such petitions and pleadings.^[33]

There is no doubt that the resolution of the Board of Directors is broad enough as to authorize Jose Ma. Nuñez to file the petition at bar for and in behalf of the petitioner.

Likewise, barren of merit is the respondents' contention that the petition at bar should be denied due course for failure of the petitioner to append to its petition copies of pleadings, such as petitions, complaint, answer, resolutions, orders, and decisions filed with the Labor Arbiter, the NLRC and the CA as required by Section 4, Rule 45 of the Revised Rules of Court. What the rule merely requires is for the petition to be accompanied by a clearly legible and duplicate original or a certified true copy of the judgment or final

order or resolution of the court a quo and the requisite number of plain copies thereof and such material portions of the record as would support the petition. The said rule does not require the petitioner to append copies of all pleadings and decisions filed by the parties with the Labor Arbiter, the NLRC and the CA. After all, under Section 7 of the Rule, the Court may require the parties to file pleadings or other documents as the Court deems necessary, and if the petition is given due course, the Court may require the elevation of a complete record of the case as provided for under Section 8 of the Rule.

On the Substantive Issues

The petitioner contends that the CA erred in its ruling that the petitioner committed (ULP) and acted oppressively against the respondents; and in concluding that the strike staged by the respondents on November 16, 1990 up to November 29, 1990 was legal, and the termination of employment of the respondents officers unlawful. The CA likewise erred in finding that even if the strike staged by the respondents on November 16 to 29, 1990 was defective, the same was cured when they staged the strike in good faith in the light of the oppressive and unfair labor practices of the petitioner.

A striker cannot invoke good faith where assumption orders of the SOLE, which operate as an injunction against a prospective strike, are disregarded. The respondents failed to prove that the petitioner had committed any ULP on the respondents and its employees. The testimony of respondent Rogelio Soluta and the other officers of the respondent union before the Labor Arbiter did not constitute sufficient proof of ULP. If the respondents perceived that the petitioner committed ULP, the matter should have been threshed out with the appropriate labor tribunal (NLRC or CA). Instead, the respondents staged a strike. Thus, the retrenchment by the petitioner of its employees was within its prerogative and was necessitated by —

The years 1989 and 1990 were particularly harsh to petitioner Hotel. Serious financial reverses were brought about by the increase in operational costs and a marked decline in its room occupancy rate. It was also at this time that petitioner Hotel's business was threatened by the emergence of more modern and refurbished hotels in Metro Manila. It was in order to forestall

the imminent threat of a partial or a total closure of the business that petitioner Hotel, after a thorough study and review of its corporate structure and financial set-up, decided to implement the retrenchment program. Certainly, the employees were not unaware of this situation.^[34]

The respondents assert that the issues posed by the petitioner in its petition at bar involve questions of facts which are improper in a petition for review on certiorari under Rule 45 of the Revised Rules of Court. Under the said Rule, questions of facts should not be raised in a petition for review. However, this rule admits of exceptions, such as where the findings of facts of the Labor Arbiter and the NLRC and those of the CA are contradictory; when the conclusions of the CA are based on speculations, surmises and conjectures; where the judgment of the CA is premised on misapprehension of facts; or when the CA failed to take into account and consider facts which if properly considered would justify a different conclusion.

The CA did not commit any error in ruling that the petitioner was guilty of ULP when it dismissed all the officers of the respondent union despite the certificate orders of the SOLE and in defiance of the said orders; and the respondents believed in good faith that indeed the petitioner committed ULP which belief cured whatever defects there may have been in the November 16 to 29, 1990 strike staged by the respondents. The findings of the CA, and its conclusions anchored on the said findings are supported by the evidence on record, thus:

In the case at bar, petitioners staged the strike because of alleged unfair labor practices committed by respondent Silahis, to wit, termination of two hundred (200) employees in the guise of retrenchment program, despite the certification order of then Secretary Ruben Torres (Order dated October 31, 1990) enjoining a strike lockout. However, the Labor Arbiter and the respondent NLRC did not rule on petitioners' claim of unfair labor practices committed by respondent Silahis but merely declared the strike illegal for not complying with the required notice and cooling-off period and the certification order. But whether or not the retrenchment program was valid or not, is not material in this case. The issue is whether or not there was warranted belief in good faith on the part of petitioners that

respondent Silahis was then committing acts of unfair labor practices.

It is established on record that on September 27, 1990, petitioner Union filed a notice of strike against respondent Silahis for harassment, arbitrary transfer of employees and illegal dismissal and suspension. Subsequently, respondent Silahis informed the Office of the Secretary of its plan to retrench on a staggered basis one hundred seventy-one (171) least senior employees over a period of sixty (60) days. On October 31, 1990, the Secretary certified the issues to the NLRC for compulsory arbitration. The Order likewise enjoined any strike or lockout, whether actual or intended.

On November 6, 1990, petitioner Union filed an Urgent Motion for Reconsideration objecting to the certification order. On even date, respondent Silahis informed the Secretary about its decision to implement the retrenchment program as previously stated. On account of this action of respondent Silahis terminating the services of some union officers and members, petitioner union immediately filed a notice of strike on November 16, 1990 and on the same day stated an actual strike (which strike lasted up to November 29, 1990).

On November 23, 1990, respondent Silahis further effected the retrenchment of one hundred ten (110) employees allegedly due to financial reverses and seventy-two (72) additional workers due to their participation in the strike.^[35]

According to the respondents, the petitioner enforced its retrenchment program at a time when there was an ongoing dispute between the petitioner and the respondent union regarding the dismissal and suspension of employees. This engendered an honest belief on the part of the respondents that the petitioner was indeed committing ULP which impelled them to stage a strike to protect their basic rights.

The petition is meritorious.

The relevant provision of Article 263 of the Labor Code reads:

Article 263. (c). In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Ministry at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

X X X

- (f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the 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 Department 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 or the employer shall furnish the Ministry the voting at least seven days before the intended strike or lock-out, subject to the cooling-off period herein provided.^[36]

Under the aforementioned provisions, the requisites for a valid strike are as follows: (a) a notice of strike filed with the DOLE thirty days before the intended date thereof or fifteen days in case of ULP; (b) strike

vote approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in a meeting called for that purpose; (c) notice given to the DOLE of the results of the voting at least seven days before the intended strike.^[37] The requisite seven-day period is intended to give the DOLE an opportunity to verify whether the projected strike really carries the approval of the majority of the union members. The notice of strike and the cooling-off period were intended to provide an opportunity for mediation and conciliation. The requirements are mandatory and failure of a union to comply therewith renders the strike illegal.^[38] A strike simultaneously with or immediately after a notice of strike will render the requisite periods nugatory.

Moreover, a strike that is undertaken, despite the issuance by the SOLE of an assumption or certification order, becomes a prohibited activity and, thus, illegal pursuant to Article 264 of the Labor Code of the Philippines, as amended. As this Court ruled in *Union of Filipino Employees vs. Nestle Philippines, Inc.*,^[39] under Article 264(a) of the said code, once an assumption certification order is issued by the SOLE, strikes are enjoined or if one has already taken place, all strikers shall immediately return to work:

We also wish to point out that an assumption and/or certification order of the Secretary of Labor automatically results in a return-to-work of all striking workers, whether or not a corresponding order has been issued by the Secretary of Labor. Thus, the striking workers erred when they continued with their strike alleging absence of a return-to-work order. Article 264(g) (sic) is clear. Once an assumption/certification order is issued, strikes are enjoined, or if one has already taken place, all strikers shall immediately return to work.

A strike that is undertaken despite the issuance by the Secretary of Labor of an assumption or certification order becomes a prohibited activity and thus illegal, pursuant to the second paragraph of Art. 264 of the Labor Code as amended (*Zamboanga Wood Products, Inc. vs. NLRC*, G.R. 82088, October 13, 1989; 178 SCRA 482). The Union officers and members, as a result, are deemed to have lost their employment status for having knowingly participated in an illegal act.^[40]

In this case, the respondent union filed its notice of strike with the DOLE on November 16, 1990 and on the same day, staged a picket on the premises of the hotel, in violation of the law. Police operatives of the Western Police District had to disperse the picketers and take into custody Union President Rogelio Soluta and the other officers of respondent union, Henry Babay and Dennis Cosico. The respondents cannot argue that since the notice of strike on November 16, 1990 were for the same grounds as those contained in their notice of strike on September 27, 1990 which complied with the requirements of the law on the cooling-off period, strike ban, strike vote and strike vote report, the strike staged by them on November 16, 1990 was lawful. The matters contained in the notice of strike of September 27, 1990 had already been taken cognizance of by the SOLE when he issued on October 31, 1990 a status quo ante bellum order enjoining the respondent union from intending or staging a strike. Despite the SOLE order, the respondent union nevertheless staged a strike on November 16, 1990 simultaneously with its notice of strike, thus violating Article 264(a) of the Labor Code of the Philippines, as amended, which reads:

Art. 264. x x x

No strike or lockout shall be declared after assumption of jurisdiction by the President or the Secretary 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.

While it may be true that the petitioner itself barred the officers of the respondent union from working and had terminated the employment of Kristoffer So, and sent out circulars of its decision to retrench its employees effective December 16, 1990, the same were not valid justifications for the respondents to do away with the statutory procedural requirements for a lawful strike. It behooved the respondents to avail themselves of the remedies under the CBA or file an illegal dismissal case in the office of the Labor Arbiter against the petitioner or by agreement of the parties, submit the case to the grievance machinery of the CBA so that the matter may be subjected to voluntary arbitrary proceedings instead of resorting to an

immediate strike.^[41] There was no immediate and imperative need for the respondents to stage a strike on the very day that the notice of strike on November 16, 1990 was filed because the retrenchment envisaged by the petitioner had yet to take effect on December 14, 1990. The grievances of the respondent union could still very well be ordered and acted upon by the SOLE before December 14, 1990.

The respondents' claim of good faith is not a valid excuse to dispense with the procedural steps for a lawful strike. As this Court held in *National Federation of Labor vs. NLRC*:^[42]

Arguing that despite its failure to comply with the statutory requirements necessary for a valid strike, NFL asserts that the same can be declared legal for it was done in good faith, citing the cases of *People's Industrial and Commercial Employees and Workers Organization (FFW) vs. People's Industrial and Commercial Corp.* and *Philippine Metal Foundries, Inc. vs. Court of Industrial Relations*. The reliance is misplaced. *People's Industrial* did not rule that the procedural steps can be dispensed with even if the union believed in good faith that the company was committing an unfair labor practice. While, it is true that *Philippine Metal* held that a strike cannot be declared as illegal for lack of notice, however, it is important to note that said case was decided in 1979. At this juncture, it must be stressed that with the enactment of Republic Act No. 6715 which took effect on March 21, 1989, the rule now is that such requirements as the filing of a notice of strike, strike vote, and notice given to the Department of Labor are mandatory in nature.

Thus, even if the union acted in good faith in the belief that the company was committing an unfair labor practice, if no notice of strike and a strike vote were conducted, the said strike is illegal.

In *Lapanday Workers Union vs. NLRC*^[43] we held that a strike is the most preeminent of the economic weapons of workers which they unsheathe to force management to agree to an equitable sharing of the joint product of labor and capital. But we also emphasized that strikes exert some disquieting effects not only on the relationship between labor and management, but also on the general peace and

progress of society, not to mention the economic well-being of the State. It is a weapon that can either breathe life to or destroy the union and members in their struggle with management for a more equitable due of their labors. Hence, the decision to wield the weapon of strike must therefore rest on a rational basis, free from emotionalism, unswayed by the tempers and tantrums of a few hotheads, and firmly focused on the legitimate interest of the union which should not however be antithetical to the public welfare. In every strike staged by a union, the general peace and progress of society and public welfare are involved. Indeed, in his Order dated October 31, 1990, the SOLE stated:

“The Company is one of the biggest hotels in the country and contributes substantially to the tourism industry. It is recognized as one of the major sources of foreign exchange earnings of the country, housing a government-owned and controlled income generating agency financing vital development projects of the government. Clearly, the threatened work stoppage will result in huge financial losses not only to the hotel but likewise the country. The ongoing development projects of the government will be severely jeopardized and the economic recovery program of the government will be unduly hampered. Moreover, the security of employment of the more or less seven hundred (700) employees is in grave state not to mention other workers who are equally dependent on the continuous operations of the Company.”

These considerations have in the past guided this Office in consistently exercising its powers under Article 263(g) of the Labor Code, as amended, in addressing and handling labor disputes in the hotel industry.^[44]

Hence, the need for a union to adhere to and comply strictly with the procedural conditions sine qua non provided for by the law in staging a strike.

IN LIGHT OF ALL THE FOREGOING, the Petition is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. SP No. 53284^[45] and its Resolution in the same case Annex “B” of the

petition are **REVERSED AND SET ASIDE**. The Decision of the Labor Arbiter^[46] is **REINSTATED**.

Costs against the respondents.

SO ORDERED.

**Bellosillo, Austria-Martinez and Tinga, JJ., concur.
Quisumbing, J., on official leave.**

[1] Penned by Associate Justice Roberto A. Barrios, with Associate Justices Cancio C. Garcia and Bienvenido L. Reyes concurring.

[2] Penned by Associate Justice Roberto A. Barrios with Associate Justices Cancio C. Garcia and Bienvenido L. Reyes concurring.

[3] Rollo, p. 204.

[4] Id. at 204–205.

[5] Id. at 206.

[6] Id. at 209.

[7] Id. at 208.

[8] Id. at 208.

[9] Id. at 210.

[10] Id. at 214.

[11] Id. at 214–215.

[12] Id. at 58.

[13] Docketed as Case No. 02-00717-91.

[14] Rollo, p. 68.

[15] Id. at 83–84.

[16] Id. at 75.

[17] Id. at 77.

[18] Docketed as G.R. No. 104513.

[19] Rollo, pp. 84–85.

[20] 225 SCRA 94 (1993).

[21] Rollo, pp. 89–90.

[22] 192 SCRA 396 (1990).

[23] Rollo, p. 89.

[24] Id. at 91.

[25] 295 SCRA 494 (1998).

[26] Rollo, pp. 60–61.

[27] Id. at 58.

[28] 132 SCRA 690 (1984).

[29] 226 SCRA 499 (1993).

[30] 225 SCRA 94 (1993).

[31] Rollo, pp. 64–66.

- [32] Id. at 24.
- [33] Rollo, p. 44.
- [34] Rollo, p. 26.
- [35] Rollo, p. 57.
- [36] Article 263 (b) and (f) of the Labor Code.
- [37] First City Interlink Transportation Co., Inc. vs. Roldan-Confessor, 272 SCRA 124 (1997).
- [38] CCPBI Post-Workers Union vs. NLRC, 299 SCRA 410 (1998); First City Interlink Transportation Co. vs. Roldan-Confessor, 272 SCRA 124 (1997); National Federation of Labor vs. NLRC, 283 SCRA 275 (1997); Gold City Integrated Port Services, Inc. vs. NLRC, 245 SCRA 627 (1995); Lapanday Workers Union vs. NLRC, 248 SCRA 96 (1995).
- [39] Supra.
- [40] Id. at 411.
- [41] National Union of Workers in Hotels vs. NLRC, 287 SCRA 192 (1998).
- [42] 283 SCRA 275, 287–288 (1997).
- [43] 248 SCRA 95 (1995).
- [44] Rollo, pp. 86–87.
- [45] Annex “A,” Petition.
- [46] Annex “C,” Petition.