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

**GREAT PACIFIC LIFE EMPLOYEES UNION and RODEL P. DE LA ROSA,**
***Petitioners*,**

***-versus-***

**G.R. No. 126717**
**February 11, 1999**

**GREAT PACIFIC LIFE ASSURANCE CORPORATION, LABOR ARBITER JOVENCIO LL. MAYOR JR. and NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION),**
***Respondents*.**
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**D E C I S I O N**

**BELLOSILLO, *J.*:**

GREAT PACIFIC LIFE EMPLOYEES UNION and Great Pacific Life Assurance Corporation entered sometime in 1990 into a Collective Bargaining Agreement (CBA) to take effect 1 July 1990 until 30 June 1993.

On 18 May 1993, or about a month and a half before the expiration of the CBA, the parties submitted their respective proposals and counter-proposals to serve as bases for their discussions on its

projected renewal. The ensuing series of negotiations however resulted in a deadlock prompting petitioner Great Pacific Life Employees Union (UNION hereon) on 23 September 1993 to file a notice of strike with the National Conciliation and Mediation Board (NCMB) of the Department of Labor. Despite several conciliatory conferences before the Board, the impasse could not be resolved. Thus, on 3 November 1993 petitioner UNION led by its President Isidro Alan B. Domingo and Vice President Rodel P. de la Rosa went on strike.

On 6 November 1993 respondent Great Pacific Life Assurance Corporation (GREPALIFE hereon) required all striking employees to explain in writing within forty-eight (48) hours why no disciplinary action, including possible dismissal from employment, should be taken against them for committing illegal acts against the company in the course of the strike, particularly on 4 and 5 November. They were warned that failure to submit their explanations within the prescribed period would be construed as waiver of their right to be heard. The company directive was apparently triggered by some violent incidents that took place while the strike was in progress. Strikers reportedly blocked all points of ingress and egress of the company premises in Makati City thus preventing GREPALIFE employees reporting for work from entering their respective offices. These employees and third persons doing business with the company, including lessees of the GREPALIFE building, were allegedly forced by the strikers to submit their cars/vehicles, bags and other belongings to illegal search.[1]

Complying with the order, UNION President Alan B. Domingo and some strikers explained that they did not violate any law as they were merely exercising their constitutional right to strike. Petitioner Rodel P. de la Rosa and the rest of the strikers however ignored the management directive.

GREPALIFE found the explanation of Domingo totally unsatisfactory and considered de la Rosa as having waived his right to be heard. Thus on 16 November 1993 both UNION officers were notified of the termination of their services, effective immediately, as Senior Benefits Clerk and Senior Data Analyst, respectively.[2] All other strikers whose explanations were found unacceptable or who failed to submit written

explanations were likewise dismissed.[3] Notwithstanding their dismissal from employment, Domingo and de la Rosa continued to lead the members of the striking union in their concerted action against management.

In the meantime, the NCMB resumed conciliatory conferences between the disputants. On 11 February 1994 respondent GREPALIFE submitted a draft Agreement denominated by petitioner UNION as the "last and final offer by Management," which proposed among others that —

4. Employees/members of the Union subject of dismissal notices shall be reinstated under the same terms and conditions prior to their dismissal.

5. The reinstatement of the employees mentioned in #4 shall be conditioned upon the submission by Alan B. Domingo and Rodel P. de la Rosa of their voluntary resignations to the Company upon the signing of this agreement.

6. It is agreed and understood that Messrs. Domingo's and de la Rosa's resignation while being effective thirty (30) days after submission, shall mean that they need not report to the Company any longer. For the duration of the thirty (30) day period, they shall be considered on leave with pay if they still have any outstanding vacation leave credits for 1993 and 1994.

7. Messrs. Domingo and de la Rosa, as a showing of the Company's magnanimity, shall be extended/given separation pay at the rate of one (1) month basic pay per year of service based on the new CBA rates.[4]

On 14 February 1994 petitioner UNION in assenting to the offers expressed that —

> Management will make a full and immediate implementation of all the terms and conditions agreed upon.

> On its part, the Union shall forthwith lift the picket lines at the premises of the Company. All employees concerned shall terminate the strike and shall return to work promptly at the start of working hours on February 16, 1994.
>
> This acceptance should not be interpreted to mean acquiescence by the Union to any portion of the aforementioned "last and final offer of Management" which may be deemed to be contrary to law or public policy, the said offer being the sole responsibility of Management. Furthermore, it is understood that should any portion of said offer be held invalid, the remainder of said offer which has been herein accepted shall not be affected thereby.[5]

On 15 February 1994 the UNION and GREPALIFE executed a Memorandum of Agreement (MOA) before the NCMB which ended their dispute. The MOA provided in its par. 4 (on dismissals) that —

> (a) (Except for Domingo and de la Rosa) employees/members of the Union subject of dismissal notices on account of illegal acts committed in the course of the strike shall be given amnesty by the Company and be reinstated (under) the same terms and conditions prior to their dismissals following the signing of this Agreement; (b) Messrs. Domingo and de la Rosa hereby reserve their right to question before the NLRC the validity or legality of their dismissal from employment.[6]

On 16 February 1994 Domingo and de la Rosa filed a joint letter of resignation with respondent company but emphasized therein that "(their) resignation is submitted only because the same is demanded by the Company, and it should not be understood as a waiver — as none is expressly or impliedly made — of whatever rights (they) may have under existing contracts and labor and social legislations."[7] The MOA was subsequently incorporated in a new CBA which was signed on 4 March 1994 but made effective on 1 July 1993 until 30 June 1996.

On 2 June 1994 Domingo and de la Rosa sued GREPALIFE for illegal dismissal, unfair labor practice and damages.

The Labor Arbiter sustained the charge of illegal dismissal. He found that the evidence of respondent company consisting of affidavits of its employees was self-serving and inadequate to prove the illegal acts allegedly committed during the strike by Domingo and de la Rosa. Calling attention to the fifth paragraph of the "last and final offer" of respondent company, he rationalized that if indeed there was justifiable ground to terminate complainants' employment, there would have been no need for the company to demand the resignation of the two union officers in exchange for the reinstatement of all other strikers. He branded this "offer" as nothing more than a scheme to get rid of the complainants, noting the undue haste with which their services were terminated by respondent company. This, he observed, constituted nothing less than a deprivation of due process of law. Thus, on 25 July 1995 the Labor Arbiter ordered respondent GREPALIFE to reinstate complainants to their former positions without loss of seniority rights, with one (1) year back wages without qualification or deduction computed from 16 November 1993, the date of their dismissal. The other claims were dismissed for insufficiency of evidence.[8]

Both parties appealed to the National Labor Relations Commission (NLRC). Respondent NLRC rejected the finding below that Domingo and de la Rosa were illegally dismissed, contending that a just cause for dismissal had been sufficiently established. However, it agreed that respondent company failed to comply strictly with the requirements of due process prior to termination. In its decision dated 14 May 1996, it modified the ruling of the Labor Arbiter by directing respondent GREPALIFE to pay complainants their one (1) month salary[9] for non-observance of due process prior to their dismissal. Considering that at the final negotiation for the settlement respondent company offered complainants separation pay of one (1) month salary for every year of service based on the new CBA rates in exchange for their voluntary resignation, the NLRC additionally ordered payment of such amount.[10]

On 19 June 1996 respondent GREPALIFE's motion for reconsideration was denied. Pending finality thereof, respondent company and Domingo entered into a compromise agreement[11] which they submitted to the NLRC for approval. On 10 July 1996 the

NLRC considered the case against Domingo terminated,[12] and denied on 16 August 1996 de la Rosa's motion for reconsideration.[13]

Pleading before us, petitioner de la Rosa raises two (2) issues. He asserts that he was illegally dismissed because his actual participation in the illegal acts during the strike invoked by GREPALIFE as basis for his dismissal was not adequately established. He also complains that he was later on forced to resign by management.

We hold that the NLRC did not commit grave abuse of discretion. The right to strike, while constitutionally recognized, is not without legal constrictions.[14] The Labor Code is emphatic against the use of violence, coercion and intimidation during a strike and to this end prohibits the obstruction of free passage to and from the employer's premises for lawful purposes. The sanction provided in par. (a) of Art. 264 thereof is so severe that "any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status."[15]

GREPALIFE submitted before the Labor Arbiter several affidavits of its employees which de la Rosa did not refute. Of these documents, two (2) specifically described the incidents that transpired during the strike on 4 and 5 November 1993. Security guard Rodrigo S. Butalid deposed —

> 3. Since 3 November 1993, I have noticed that the striking employees have been doing the following: (a) The striking employees are picketing at the entrance and exit gates. (b) The striking employees would surround every vehicle including vehicles of lessees of the Grepalife Building, that would enter the Grepalife premises, inspect the same and ask the driver of the vehicle to open the trunk of the vehicle so that the striking employees can see whether there are Grepalife business documents found therein. The vehicle which is being inspected cannot enter the Grepalife premises as the striking employees would place a wooden bench in front of the vehicle. This wooden bench is only removed to enable the vehicle to enter the Grepalife premises once the signal has been given by the striking employees, who stand at the sides and at the back of the vehicle, to the other striking

employees who stand in front of the vehicle that the vehicle has already been inspected and cleared. (c) If the striking employees find Grepalife business documents in the vehicle being inspected, the striking employees would prevent the vehicle from entering the Grepalife premises. (d) The striking employees do not allow Grepalife employees to enter the Grepalife premises. Occasionally however, the striking employees will allow a Grepalife employees to enter the Grepalife office but on the condition that they will only get their personal belongings. (e) All persons who wish to enter the Grepalife premises are frisked and their bags/brief cases inspected. If a person is found to carry any Grepalife business document, he is not allowed to enter the Grepalife premises. In the alternative, he would be allowed to enter but the Grepalife business document in his possession will be confiscated from him before he is allowed to enter;

4. Among those who I have seen to have participated in the foregoing activities are the following persons: (a) Alan B. Domingo, who I know to be the President of the Union; (b) Rodel P. de la Rosa, who I know to be the Vice-President of the Union;

The affidavit of another security guard, Wilson S. Concha, was of similar import.

Petitioner de la Rosa assails the inherent weakness of the sworn statements of these security guards. But while it is true that affidavits may be regarded as infirm evidence[16] before the regular courts unless the affiants are presented on the stand, such affidavits by themselves are acceptable in proceedings before the Labor Arbiter. Under Sec. 7, Rule V, of the New Rules of Procedure of the NLRC, these proceedings, save for the constitutional requirements of due process, are not to be strictly governed by the technicalities of law and procedural rules. Section 3, par. 2, of the same Rule, provides that verified position papers are to be accompanied by all supporting documents including the affidavits of the parties' respective witnesses in lieu of direct testimony. It is therefore a clear mandate that the Labor Arbiter may employ all reasonable means to ascertain the facts of the controversy before him.

Since de la Rosa did not present countervailing evidence, the NLRC correctly appreciated the affidavits of the two (2) security guards as having adequately established the charges leveled against de la Rosa thus justifying his dismissal from employment.

We now turn to the claim of de la Rosa that he was forced to resign. It is true that the draft Agreement submitted by respondent company before the NCMB expressly proposed that the reinstatement of its dismissed employees should be conditioned on the voluntary resignations of Domingo and de la Rosa upon the signing of the Agreement. It is also true that petitioner UNION was amenable to this proposition. But the unalternable fact is that the MOA that was subsequently finalized and executed did not carry this conditionality. Paragraph 4 (b) thereof merely expressed a reservation by Domingo and de la Rosa of their right to question before the NLRC the legality of their dismissal from employment. Obviously they were referring to their dismissal on 16 November 1993 due to the illegal acts they allegedly committed in the course of the strike, and not to the voluntary resignation they were supposed to tender to management.

Significantly, the joint letter of resignation submitted by Domingo and de la Rosa a day after the MOA was executed was never acted upon by respondent company. And rightly so for, having been earlier dismissed (i.e., on 16 November 1993), these two (2) union officers had no more employment to resign from. To be sure, under the MOA their resignations were no longer a condition imposed by respondent company for the eventual reinstatement of the other strikers. This being the case, de la Rosa cannot now complain that he was forced to resign. Did he not explicitly acknowledge in his complaint with the Labor Arbiter that his cause of action was the illegal termination of his services on 16 November 1993?[17]

Petitioner de la Rosa also claims that respondent company unreasonably singled out the top officers of the UNION, including himself as unfit for reinstatement. Insisting that this act constitutes unfair labor practice, he demands entitlement to moral and exemplary damages.

We disagree. While an act or decision of an employer may be unfair, certainly not every unfair act or decision constitutes unfair labor practice (ULP) as defined and enumerated under Art. 248 of the Labor Code.[18]

There should be no dispute that all the prohibited acts constituting unfair labor practice in essence relate to the workers' right to self-organization. Thus, an employer may be held liable under this provision if his conduct affects in whatever manner the right of an employee to self-organize. The decision of respondent GREPALIFE to consider the top officers of petitioner UNION as unfit for reinstatement is not essentially discriminatory and constitutive of an unlawful labor practice of employers under the above-cited provision. Discriminating in the context of the Code involves either encouraging membership in any labor organization or is made on account of the employee's having given or being about to give testimony under the Labor Code. These have not been proved in the case at bar.

To elucidate further, there can be no discrimination where the employees concerned are not similarly situated.[19] A union officer has larger and heavier responsibilities than a union member. Union officers are duty bound to respect the law and to exhort and guide their members to do the same; their position mandates them to lead by example. By committing prohibited activities during the strike, de la Rosa as Vice President of petitioner UNION demonstrated a high degree of imprudence and irresponsibility. Verily, this justifies his dismissal from employment. Since the objective of the Labor Code is to ensure a stable but dynamic and just industrial peace, the dismissal of undesirable labor leaders should be upheld.[20]

It bears emphasis that the employer is free to regulate all aspects of employment according to his own discretion and judgment. This prerogative flows from the established rule that labor laws do not authorize substitution of judgment of the employer in the conduct of his business. Recall of workers clearly falls within the ambit of management prerogative.[21] The employer can exercise this prerogative without fear of liability so long as it is done in good faith for the advancement of his interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or valid agreements. It is valid as long as it is not performed in a

malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite.

That respondent company opted to reinstate all the strikers except Domingo and de la Rosa is an option taken in good faith for the just and lawful protection and advancement of its interest. Readmitting the union members to the exclusion of Domingo and de la Rosa was nothing less than a sound exercise of management prerogative, an act of self-preservation in fact, designed to insure the maintenance of peace and order in the company premises.[22] The dismissal of de la Rosa who had shown his capacity for unmitigated mischief was intended to avoid a recurrence of the violence that attended the fateful strike in November.

**WHEREFORE**, the petition is **DISMISSED**. The decision of respondent National Labor Relations Commission dated 14 May 1996 (a) finding that petitioner Rodel P. de la Rosa was legally dismissed, and, (b) ordering respondent Great Pacific Life Assurance Corporation to pay petitioner his one (1) month salary for its failure to comply strictly with due process prior to the latter's termination and his one (1) month salary per year of service based on the new CBA rates as separation pay, as well as its Resolution dated 16 August 1996 denying reconsideration, is **AFFIRMED.**

**SO ORDERED.**

**Puno, Mendoza, Quisumbing and Buena, *JJ.*, concur.**

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[1] Records, pp. 27, and 28.
[2] Id., pp. 29 and 30.
[3] Id., pp. 31-45.
[4] Id., pp. 46-A and 46-B.
[5] Id., p. 47.
[6] Id., p. 49.
[7] Id., p. 52.
[8] Decision penned by Labor Arbiter Jovencio Ll. Mayor Jr.; Rollo, pp. 117-118.
[9] Per petitioner de la Rosa, this amounted to P6,418.00; Records, p. 3.
[10] Decision penned by Presiding Commissioner Lourdes C. Javier, concurred in by Commissioners Ireneo B. Bernardo and Joaquin A. Tanodra; Rollo, pp. 223-224.

[11] In consideration of P103,841.62 as full settlement of Domingo's claim against GREPALIFE; id., pp. 350-351.
[12] Id., pp. 362-363.
[13] Id., pp. 373-374.
[14] Art. 264, par. (e) (on prohibited activities), The Labor Code of the Philippines.
[15] Cesario A. Azucena Jr., The Labor Code with Comments and Cases, 1993 Ed., Book II, p. 332.
[16] People vs. Canada, G.R. No. 112176, 6 February 1996, 253 SCRA 277.
[17] See Note 9.
[18] Art. 248. Unfair Labor Practices of Employers. — It shall be unlawful for an employer to commit any of the following unfair labor practices: (a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization; (b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs; (c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization; (d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters; (e) To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective agreement: Provided, that the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent; (f) To dismiss, discharge, or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code; (g) To violate the duty to bargain collectively as prescribed by this Code; (h) To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or (i) To violate a collective bargaining agreement. The provisions of the preceding paragraph notwithstanding, only the officers and agents of corporations, associations or partnership who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable.
[19] Wise and Co. vs. Wise and Co. Employees Union - NATU, G.R. No. 87672, 13 October 1989, 178 SCRA 536.

[20] Continental Cement Corporation Labor Union (NLU) vs. Continental Cement Corporation, G.R. No. 51544, 30 August 1990, 189 SCRA 134.
[21] Manila Electric Company vs. NLRC, G.R. No. 114129, 24 October 1996, 263 SCRA 531.
[22] Pagkakaisang Itinaguyod Ng Mga Manggagawa sa Ang Tibay (PIMA) vs. Ang Tibay, Inc., No. L-22273, 16 May 1967, 20 SCRA 45.