SUPREME COURT
FIRST DIVISION

HAWAIIAN-PHILIPPINE COMPANY,
***Petitioner*,**

-versus-

G.R. No. L-30675
September 30, 1982

COURT OF INDUSTRIAL RELATIONS and CONGRESS OF INDEPENDENT ORGANIZATIONS (CIO),
***Respondents*.**
x----------x

D E C I S I O N

GUTIERREZ, JR., *J.*:

This is a Petition for Review of a Resolution of the Court of Industrial Relations en banc dissolving and setting aside the orders of the trial judge of the same court that enjoined and restrained the respondent Congress of Independent Organizations-ALU from picketing the premises of the petitioner's compound.

On May 6, 1968, the Hawaiian-Philippine Company filed a petition with the respondent Court of Industrial Relations, docketed as Case No. 2581-V, seeking to declare the strike staged on April 19, 1968, by respondent Congress of Independent Organizations-ALU illegal. Pending resolution on the legality of the strike, the company,

invoking Section 9 of Republic Act No. 875, prayed that a temporary restraining order be issued to enjoin respondent CIO-ALU and those joining the strike from —

> "(a) Blocking, obstructing or staying upon the entrance into and exists out of the Hawaiian-Philippine Company properties at Silay-Hawaiian Central, Negros Occidental, or illegally occupying portions of the public highway fronting the said properties;
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> "(b) Blocking, obstructing, coercing, intimidating or preventing the entry or exit of any person, entering upon or leaving said Company's gates or entrances; or preventing free access of any person desiring to perform work inside the mill compound in pursuance of their employment or livelihood or going out of the same."

Trial Judge Hon. Joaquin Salvador conducted a preliminary hearing ex parte on the said petition and, thereafter, issued his order dated May 10, 1968, the dispositive portion of which states:

> "IN VIEW OF THE FOREGOING, this Court hereby orders the following:
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> > "(1) To preserve the rights of all concerned, the respondent union, its members and officers, agents and/or persons associated and acting for and its behalf, pending determination of whether or not a writ of preliminary injunction should issue, is hereby ordered not to illegally prevent or block the ingress or egress of vehicles (whether motorized or not) belonging to petitioner company, its customers, suppliers and employees; and not to illegally prevent or in any way or manner hamper or impede the free and customary entry and exit of persons desiring to deal business with petitioner company and of the non-striking employees desiring to report for work in going to and fro the premises of petitioner company.

> "(2) Let a copy of the petition for issuance of a writ of preliminary injunction be served on the respondent union and the Deputy Clerk of Court is hereby instructed to set the motion for continuous hearing beginning May 20, 1968.
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> "(3) The Provincial Commander of Negros Occidental and the Chief of Police of Silay City and their deputies and agents are hereby ordered to observe and assure compliance of this Order by all parties concerned, until such further Orders from this Court, and thereafter, to submit a report to this Court regarding implementation of this Order."

Upon receipt on May 13, 1968 by respondent CIO-ALU of the restraining order and a copy of the company's petition it filed its Answer to the Petition & Urgent Motion for reconsideration. A formal hearing was conducted at Bacolod City. After receiving evidence, the trial judge promulgated an Order on July 12, 1968, with the following dispositive portion:

> "IN VIEW OF THE FOREGOING, the respondent union, its officers and agents and any and all persons acting under it are hereby preliminarily enjoined from picketing the entrances of petitioner pending the final determination of this case.
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> "The petitioner is hereby required to post a bond of P5,000.00 to answer for any improvident issuance of this Writ.
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> "The Chief of Police of Silay City and/or the Provincial Commander of the P.C. in Negros Occidental is hereby directed to enforce the terms of this Order.
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> "Lastly, the terms of the Order of May 10, 1968, are hereby incorporated herein by way of complementing this Order."

On July 29, 1968, respondent CIO-ALU filed a motion for reconsideration of the foregoing order. Petitioner filed its opposition to the motion.

The parties were heard on oral argument by the respondent court en banc. In a resolution issued on May 26, 1969, the court, by a majority opinion of its three members (Presiding Judge Arsenio I. Martinez, Associate Judge Amado C. Bugayong and Associate Judge Ansberto P. Paredes), resolved to vacate the Order dated July 12, 1968, on the ground that the restraining order could not validly be issued on the basis of Rule 58 of the Rules of Court since a labor dispute was involved, that the provisions of Republic Act 875 on injunctions should have been made to control and that under Section 9 of Republic Act 875 the Orders of May 10, 1968 and July 12, 1968, are void because the first was issued ex parte and in the second, no law enforcement officers were made to testify and declare on the matter of protection.

Hence, the instant petition was filed.

On September 19, 1969, this Court issued a Writ of Preliminary Injunction restraining the respondent court from giving effect to its resolution en banc dated October 7, 1968, dissolving and setting aside the Orders of the Trial Judge dated May 10, 1968 and July 12, 1968 issued in Case No. 2581-V of the Court of Industrial Relations, and from further proceeding in the said case.

The issues raised are: (1) whether or not a labor dispute existed between the petitioner and the respondent union; and (2) whether or not the trial judge correctly issued the restraining order on the basis of Rule 58 of the Rules of Court.

With respect to the first issue, it was the view of the trial judge that since there was a pending petition for certification by two labor unions (respondent union being one of them), the respondent union cannot claim to have the legitimate representation in behalf of the majority of the employees until such time as the petition for certification was finally resolved. According to him, under the provisions of Section 2(j) of Republic Act No. 875, a labor dispute may include a controversy concerning the "representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment." So within the context of the law, no representation may accrue or be exercised by the respondent

union. Thus, there was no labor dispute between the petitioner and the respondent union.

We find the contention of the trial judge untenable. There was a labor dispute. It must be noted that before the institution of Case No. 2581-V, two formal complaints for unfair labor practice (Case No. 159 ULP-Iloilo and Case No. 160 ULP-Iloilo) had been filed on August 18, 1967 and August 19, 1967, respectively, by the respondent union against the petitioner, due to the latter s refusal to recognize, deal, and negotiate with the respondent union as the sole and exclusive bargaining agent of its rank and file workers and security guards in accordance with their Collective Bargaining Agreement, and management refusal to respect and observe the terms and conditions of the said Collective Bargaining Agreement. This refusal eventually led to the declaration of the strike by the respondent union. Thus, the strike itself arose from and was part of the labor dispute.

Anent the second issue, the trial judge pointed out that since the conduct of the strike had been characterized by the employment of violence and coercive acts, the court may act under the provision of the Rules of Court or under Republic Act 875 in adopting measures it feels are necessary.

On this point, petitioner contends that the provisions of Republic Act No. 875 on injunctions do not apply and may not be invoked even though a labor dispute is involved because the acts sought to be enjoined had the elements of force, violence, or fraud on the part of the respondents. It is further claimed that the activities which are immunized by the law from restraint by injunctions are those which are conducted legally.

Upon the other hand, the respondent union asserts that the issuance of the Order dated May 10, 1968, by the trial judge was unlawful and improper on the grounds that: (1) it was issued ex parte and without notice; (2) the order did not clearly state that it shall be effective for no longer than five (5) days; and (3) the petitioner was not required to put up a bond, as condition precedent for its issuance, as required by Section 9(d) of Republic Act No. 875.

The pertinent portions of Section 9(d) of Republic Act No. 875 which should have been followed provide:

> "(d) No court of the Philippines shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after finding of fact by the Court, to the effect:
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> x x x
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> "Such hearing shall be held after due and personal notice thereof has been given, in such manner as the Court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the province or city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: Provided, however, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the Court in issuing a temporary injunction upon hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the Court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs, (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the Court." (Italics supplied)

The settled rule is where a case involves a labor dispute, the provisions of the Magna Charta of Labor (R.A. 875) should be strictly followed. *(Republic Flour Mills vs. Reyes, 18 SCRA 796; Seno vs. Mendoza, 21 SCRA 1124; Associated Watchmen and Security Union vs. U.S. Lines, 101 Phil. 896)*

WHEREFORE, the instant petition is hereby and the denied the writ of preliminary injunction issued on September 19, 1969, is dissolved.

SO ORDERED.

Teehankee *J.*, *(Chairman)*, Makasiar, Melencio-Herrera, Plana, Vasquez and Relova, *JJ.*, concur.