

# CHANROBLES PUBLISHING COMPANY

## SUPREME COURT FIRST DIVISION

TROPICAL HUT EMPLOYEES' UNION-  
CGW, JOSE ENCINAS, JOSE LUIS  
TRIBINO, FELIPE DURAN, MANUEL  
MANGYAO, MAMERTO CAHUCOM,  
NEMESIO BARRO, TEODULFO  
CAPAGNGAN, VICTORINO ABORRO,  
VIDAL MANTOS, DALMACIO DALDE,  
LUCIO PIASAN, CANUTO LABADAN,  
TERESO ROMERDE, CONRADO  
ENGALAN, SALVADOR NERVA,  
BERNARDO ENGALAN, BONIFACIO  
CAGATIN, BENEDICTO VALDEZ,  
EUSEBIO SUPILANAS, ALFREDO  
HAMAYAN, ASUERO BONITO,  
GAVINO DEL CAMPO, ZACARIAS  
DAMING, PRUDENCIO LADION,  
FULGENCIO BERSALUNA, ALBERTO  
PERALES, ROMEO MAGRAMO,  
GODOFREDO CAMINOS, GILDARDO  
DUMAS, JORGE SALDIVAR, GENARO  
MADRIO, SEGUNDINO KUIZON, LUIS  
SANDOVAL, NESTOR JAPAY,  
ROGELIO CUIZON, RENATO  
ANTIPADO, GREGORIO CUEVO,  
MARTIN BALAZUELA, CONSTANCIO  
CHU, CRISPIN TUBLE, FLORENCIO  
CHIU, FABIAN CAHUCOM, EMILIANO  
VILLAMOR, RESTITUTO HANDAYAN,  
VICTORINO ESPEDILLA, NOEL CHUA,  
ARMANDO ALCORANO, ELEUTERIO  
TAGUIK, SAMSON CRUDA, DANILO  
CASTRO, CENON VALLENAS, DANILO

**CAWALING, SIMPLICIO GALLEROS,  
PERFECTO CUIZON, PROCESO  
LAUROS, ANICETO BAYLON, EDISON  
ANDRES, REYNALDO BAGOIN,  
IRENEO SUPANGAN, RODRIGO  
CAGATIN, TEODORO ORENCIO,  
ARMANDO LUAYON, JAIME NERVA,  
NARCISO CUIZON, ALFREDO DEL  
ROSARIO, EDUARDO LORENZO,  
PEDRO ARANGO, VICENTE  
SUPANGAN, JACINTO BANAL AND  
BONIFACIO PUERTO,**

*Petitioners,*

*-versus-*

**G.R. No. 43495-99  
January 20, 1990**

**TROPICAL HUT FOOD MARKET, INC.,  
ESTELITA J. QUE, ARTURO DILAG,  
MARCELINO LONTOK, JR., NATIONAL  
ASSOCIATION OF TRADE UNIONS  
(NATU), NATIONAL LABOR  
RELATIONS COMMISSION (NLRC),  
HON. DIEGO P. ATIENZA, GERONIMO  
Q. QUADRA, FEDERICO C.  
BORROMEO, AND HON. BLAS F.  
OPLE,**

*Respondents.*

X-----X

**DECISION**

**MEDIALDEA, J.:**

This is a Petition for *Certiorari* under Rule 65 seeking to set aside the decisions of the public respondents Secretary of Labor and National Labor Relations Commission which reversed the Arbitrators' rulings in favor of petitioners herein.

The following factual background of this case appears from the record:

On January 2, 1968, the rank and file workers of the Tropical Hut Food Market, Incorporated, referred to herein as respondent company, organized a local union called the Tropical Hut Employees Union, known for short as the THEU, elected their officers, adopted their constitution and by-laws and immediately sought affiliation with the National Association of Trade Unions (NATU). On January 3, 1968, the NATU accepted the THEU application for affiliation. Following such affiliation with NATU, Registration Certificate No. 5544-IP was issued by the Department of Labor in the name of the Tropical Hut Employees Union — NATU. It appears, however, that NATU itself as a labor federation, was not registered with the Department of Labor.

After several negotiations were conducted between THEU-NATO, represented by its local president and the national officers of the NATU, particularly Ignacio Lacsina, President, Pacifico Rosal, Executive Vice-President and Marcelino Lontok, Jr., Vice President, and respondent Tropical Hut Food Market, Incorporated, thru its President and General Manager, Cesar Azcona, Sr., a Collective Bargaining Agreement was concluded between the parties on April 1, 1968, the term of which expired on March 31, 1971. Said agreement contained these clear and unequivocal terms:

“This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 1968, by and between:

The Tropical Hut Food Market, Inc., a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Quezon City, represented in this Act by its President,

Cesar B. Azcona (hereinafter referred to as the Company).

— *and* —

The Tropical Hut Employees Union - NATU, a legitimate labor organization duly organized and existing in accordance with the laws of the Republic of the Philippines, and affiliated with the National Association of Trade Unions, with offices at San Luis Terraces, Ermita, Manila, and represented in this Act by its undersigned officers (hereinafter referred to as the UNION).

Witnesseth:

X X X

“Article I  
“Coverage and Effectivity

“Section 1. The COMPANY recognizes the UNION as the sole and exclusive collective bargaining agent for all its workers and employees in all matters concerning wages, hours of work, and other terms and conditions of employment.

X X X

“Article III  
“Union Membership and Union Checkoff

“Section 1 — Employees who are already members of the UNION at the time of the signing of this Agreement or who become so thereafter shall be required to maintain their membership therein as a condition of continued employment.

X X X

Section 3 — Any employee who is expelled from the UNION for joining another federation or forming another union, or who fails or refuses to maintain his membership therein as required, x x x shall, upon written request of the UNION, be discharged by the COMPANY.” (Rollo, pp. 667-670)

And attached to the Agreement as Appendix “A” is a check-off Authorization Form, the terms of which are as follows:

“We, the undersigned, hereby designate the NATIONAL Association of Trade Unions, of which the TROPICAL HUT EMPLOYEES UNION is an affiliate as sole collective bargaining agent in all matters relating to salary rates, hours of work and other terms and conditions of employment in the Tropical Hut Food Market, Inc. and we hereby authorize the said company to deduct the amount of Four (P4.00) Pesos each every month as our monthly dues and to deliver the amount to the Treasurer of the Union or his duly authorized representatives.” (Rollo, pp. 680-684)

On May 21, 1971, respondent company and THEU-NATU entered into a new Collective Bargaining Agreement which ended on March 31, 1974. This new CBA incorporated the previous union-shop security clause and the attached check-off authorization form.

Sometime in July, 1973, Arturo Dilag, incumbent President of THEU-NATU, was appointed by the respondent company as Assistant Unit Manager. On July 24, 1973, he wrote the general membership of his union that for reason of his present position, he was resigning as President of the THEU-NATU effective that date. As a consequence thereof, his Vice-President, Jose Encinas, assumed and discharged the duties of the presidency of the THEU-NATU.

On December 19, 1973, NATU received a letter dated December 15, 1973, jointly signed by the incumbent officers of the local union informing the NATU that THEU was disaffiliating from the NATU federation. On December 20, 1973, the Secretary of the THEU, Nemesio Barro, made an announcement in an open letter to the general membership of the THEU, concerning the latter’s disaffiliation from the NATU and its affiliation with the

Confederation of General Workers (CGW). The letter was passed around among the members of the THEU-NATU, to which around one hundred and thirty-seven (137) signatures appeared as having given their consent to and acknowledgment of the decision to disaffiliate the THEU from the NATU.

On January 1, 1974, the general membership of the so-called THEU-CGW held its annual election of officers, with Jose Encinas elected as President. On January 3, 1974, Encinas, in his capacity as THEU-CGW President, informed the respondent company of the result of the elections. On January 9, 1974, Pacifico Rosal, President of the Confederation of General Workers (CGW), wrote a letter in behalf of complainant THEU-CGW to the respondent company demanding the remittance of the union dues collected by the Tropical Hut Food Mart, Incorporated to the THEU-CGW, but this was refused by the respondent company.

On January 11, 1974, the NATU thru its Vice-President Marcelino Lontok, Jr., wrote Vidal Mantos, requiring the latter to assume immediately the position of President of the THEU-NATU in place of Jose Encinas, but the position was declined by Mantos. On the same day, Lontok, Jr., informed Encinas in a letter, concerning the request made by the NATU federation to the respondent company to dismiss him (Encinas) in view of his violation of Section 3 of Article III of the Collective Bargaining Agreement. Encinas was also advised in the letter that NATU was returning the letter of disaffiliation on the ground that:

- “1. Under the restructuring program NOT of the Bureau of Labor but of the Philippine National Trade Union Center in conjunction with the NATU and other established national labor centers, retail clerks and employees such as our members in the Tropical Hut pertain to Industry II which by consensus, has been assigned already to the jurisdiction of the NATU;
- “2. The right to disaffiliate belongs to the union membership who-on the basis of verified reports received by - have not even been consulted by you regarding the matter;

- “3. Assuming that the disaffiliation decision was properly reached; your letter nevertheless is unacceptable in view of Article V, Section 1, of the NATU Constitution which provides that ‘withdrawal from the organization shall be valid provided three (3) months notice of intention to withdraw is served upon the National Executive Council.’”  
(p. 281, Rollo)

In view of NATU’s request, the respondent company, on the same day, which was January 11, 1974, suspended Encinas pending the application for clearance with the Department of Labor to dismiss him. On January 12, 1974, members of the THEU-CGW passed a resolution protesting the suspension of Encinas and reiterated their ratification and approval of their union’s disaffiliation from NATU and their affiliation with the Confederation of General Workers (CGW). It was Encinas’ suspension that caused the filing of NLRC Case No. LR-2511 on January 11, 1974 against private respondents herein, charging them of unfair labor practice.

On January 15, 1974, upon the request of NATU, respondent company applied for clearance with the Secretary of Labor to dismiss the other officers and members of THEU-CGW. The company also suspended them effective that day. NLRC Case No. LR-2521 was filed by THEU-CGW and individual complainants against private respondents for unfair labor practices.

On January 19, 1974, Lontok, acting as temporary chairman, presided over the election of officers of the remaining THEU-NATU in an emergency meeting pending the holding of a special election to be called at a later date. In the alleged election, Arturo Dilag was elected acting THEU-NATU President together with the other union officers. On February 14, 1974, these temporary officers were considered as having been elected as regular officers for the year 1974.

On January 30, 1974, petitioner THEU-CGW wrote a letter to Juan Ponce Enrile, Secretary of National Defense, complaining of the unfair labor practices committed by respondent company against its members and requesting assistance on the matter. The aforementioned letter contained the signatures of one hundred forty-three (143) members.

On February 24, 1974, the secretary of THEU-NATU, notified the entire rank and file employees of the company that they will be given forty-eight (48) hours upon receipt of the notice within which to answer and affirm their membership with THEU-NATU. When the petitioner employees failed to reply, Arturo Dilag advised them thru letters dated February 26, March 2 and 5, 1974, that the THEU-NATU shall enforce the union security clause set forth in the CBA, and that he had requested respondent company to dismiss them.

Respondent company, thereafter, wrote the petitioner employees demanding the latter's comment on Dilag's charges before action was taken thereon. However, no comment or reply was received from petitioners. In view of this, Estelita Que, President/General Manager of respondent company, upon Dilag's request, suspended twenty four (24) workers on March 5, 1974, another thirty seven (37) on March 8, 1974 and two (2) more on March 11, 1974, pending approval by the Secretary of Labor of the application for their dismissal.

As a consequence thereof, NLRC Case Nos. LR-2971, LR-3015 and an unnumbered case were filed by petitioners against Tropical Hut Food Market, Incorporated, Estelita Que, Hernando Sarmiento and Arturo Dilag.

It is significant to note that a joint letter petition signed by sixty-seven (67) employees was filed with the Secretary of Labor, the NLRC Chairman and Director of Labor Relations to cancel the words NATU after the name of Tropical Hut Employees Union under Registration Certificate No. 5544 IP. Another letter signed by one hundred forty six (146) members of THEU-CGW was sent to the President of the Philippines informing him of the unfair labor practices committed by private respondents against THEU-CGW members.

After hearing the parties in NLRC Cases Nos. 2511 and 2521 jointly filed with the Labor Arbiter, Arbitrator Daniel Lucas issued an order dated March 21, 1974, holding that the issues raised by the parties became moot and academic with the issuance of NLRC Order dated February 25, 1974 in NLRC Case No. LR-2670, which directed the holding of a certification election among the rank-and-file workers of the respondent company between the THEU-NATU and TUEU-CGW.

He also ordered: a) the reinstatement of all complainants; b) for the respondent company to cease and desist from committing further acts of dismissals without previous order from the NLRC and for the complainant Tropical Hut Employees Union-CGW to file representation cases on a case to case basis during the freedom period provided for by the existing CBA between the parties. (pp. 91-93, Rollo)

With regard to NLRC Case Nos. LR-2971, LR-3015, and the unnumbered case, Arbitrator Cleto T. Villatuya rendered a decision dated October 14, 1974, the dispositive portion of which states:

“Premises considered, a DECISION is hereby rendered ordering respondent company to reinstate immediately the sixty three (63) complainants to their former positions with back wages from the time they were illegally suspended up to their actual reinstatement without loss of seniority and other employment rights and privileges, and ordering the respondents to desist from further committing acts of unfair labor practice. The respondent company’s application for clearance filed with the Secretary of Labor to terminate the subject complainants’ services effective March 20 and 23, 1974, should be denied.

SO ORDERED.” (pp. 147-148, Rollo)

From the orders rendered above by Arbitrator Daniel Lucas in NLRC Cases Nos. LR-2511 and LR-2521 and by Arbitrator Cleto Villatuya in NLRC Cases Nos. LR-2971, LR-3015, and the unnumbered case, all parties thereto, namely, petitioners herein, respondent company, NATU and Dilag appealed to the National Labor Relations Commission.

In a decision rendered on August 1, 1975, the National Labor Relations Commission found the private respondents’ appeals meritorious, and stated, inter alia:

“WHEREFORE, in view of the foregoing premises, the Order of Arbitrator Lucas in NLRC CASE NOS. LR-2511, 2521 and the decision of Arbitrator Villatuya in NLRC CASE NOS. LR-2971, 3015 and the unnumbered Case are hereby REVERSED.

Accordingly, the individual complainants are deemed to have lost their status as employees of the respondent company. However, considering that the individual complainants are not presumed to be familiar with nor to have anticipated the legal mesh they would find themselves in, after their 'disaffiliation' from National Association of Trade Unions and the THEU-NATU, much less the legal consequences of the said action which we presume they have taken in all good faith; considering, further, that the thrust of the new orientation in labor relations is not towards the punishment of acts violative of contractual relations but rather towards fair adjustments of the resulting complications; and considering, finally, the consequent economic hardships that would be visited on the individual complainants, if the law were to be strictly enforced against them, this Commission is constrained to be magnanimous in this instant, notwithstanding its obligation to give full force and effect to the majesty of the law, and hereby orders the respondent company, under pain of being cited for contempt for failure to do so, to give the individual complainants a second chance by reemploying them upon their voluntary reaffirmation of membership and loyalty to the Tropical Hut Employees Union-NATU and the National Association of Trade Unions in the event it hires additional personnel.

“SO ORDERED.” (pp. 312-313, Rollo)

The petitioner employees appealed the decision of the respondent National Labor Relations Commission to the Secretary of Labor. On February 23, 1976, the Secretary of Labor rendered a decision affirming the findings of the Commission, which provided, inter alia:

“We find, after a careful review of the record, no sufficient justification to alter the decision appealed from except that portion of the dispositive part which states:

‘This Commission x x x hereby orders respondent company under pain of being cited for contempt for failure to do so, to give the individual complainants a second chance by reemploying them upon their voluntary

reaffirmation of membership and loyalty to the Tropical Hut Employees Union-NATU and the National Association of Trade Union in the event it hires additional personnel.’

“Compliance by respondent of the above undertaking is not immediately feasible considering that the same is based on an uncertain event, i.e., reemployment of individual complainants’ in the event that management hires additional personnel,’ after they shall have reaffirmed their loyalty to THEU-NATU, which is unlikely.

“In lieu of the foregoing, and to give complainants positive relief pursuant to Section 9, Implementing Instruction No. 1, dated November 9, 1972, respondent is hereby ordered to grant to all the individual complainants financial assistance equivalent to one (1) month salary for every year of service.

“WHEREFORE, with the modification as above indicated, the Decision of the National Labor Relations Commission is hereby affirmed.

“SO ORDERED.” (pp 317-318, Rollo)

From the various pleadings filed and arguments adduced by petitioners and respondents, the following issues appear to be those presented for resolution in this petition to wit: 1) whether or not the petitioners failed to exhaust administrative remedies when they immediately elevated the case to this Court without an appeal having been made to the Office of the President; 2) whether or not the disaffiliation of the local union from the national federation was valid; and 3) whether or not the dismissal of petitioner employees resulting from their union’s disaffiliation from the mother federation was illegal and constituted unfair labor practice on the part of respondent company and federation.

We find the petition highly meritorious.

The applicable law then is the Labor Code, PD 442, as amended by PD 643 on January 21, 1975, which states:

“Art. 222. Appeal —

X X X

Decisions of the Secretary of Labor may be appealed to the President of the Philippines subject to such conditions or limitations as the President may direct.” (Emphasis ours)

The remedy of appeal from the Secretary of Labor to the Office of the President is not a mandatory requirement before resort to courts can be had, but an optional relief provided by law to parties seeking expeditious disposition of their labor disputes. Failure to avail of such relief shall not in any way serve as an impediment to judicial intervention. And where the issue is lack of power or arbitrary or improvident exercise thereof, decisions of the Secretary of Labor may be questioned in a certiorari proceeding without prior appeal to the President (Arrastre Security Association — TUPAS vs. Ople, No. L-45344, February 20, 1984, 127 SCRA 580). Since the instant petition raises the same issue of grave abuse of discretion of the Secretary of Labor amounting to lack of or in excess of jurisdiction in deciding the controversy, this Court can properly take cognizance of and resolve the issues raised herein.

This brings Us to the question of the legality of the dismissal meted to petitioner employees. In the celebrated case of Liberty Cotton Mills Workers Union vs. Liberty Cotton Mills, L-33187, September 4, 1975, 66 SCRA 512, We held that the validity of the dismissals pursuant to the union security clause in the collective bargaining agreement hinges on the validity of the disaffiliation of the local union from the federation.

The right of a local union to disaffiliate from its mother federation is well-settled. A local union, being a separate and voluntary association, is free to serve the interest of all its members including the freedom to disaffiliate when circumstances warrant. This right is consistent with the constitutional guarantee of freedom of association (Volkschel Labor Union vs. Bureau of Labor Relations, No. L-45824, June 19, 1985, 137 SCRA 42).

All employees enjoy the right to self organization and to form and join labor organizations of their own choosing for the purpose of collective bargaining and to engage in concerted activities for their mutual aid or protection. This is a fundamental right of labor that derives its existence from the Constitution. In interpreting the protection to labor and social justice provisions of the Constitution and the labor laws or rules or regulations, We have always adopted the liberal approach which favors the exercise of labor rights.

Relevant on this point is the basic principle We have repeatedly affirmed in many rulings:

“The locals are separate and distinct units primarily designed to secure and maintain an equality of bargaining power between the employer and their employee-members in the economic struggle for the fruits of the joint productive effort of labor and capital; and the association of the locals into the national union (PAFLU) was in furtherance of the same end. These associations are consensual entities capable of entering into such legal relations with their members. The essential purpose was the affiliation of the local unions into a common enterprise to increase by collective action the common bargaining power in respect of the terms and conditions of labor. Yet the locals remained the basic units of association, free to serve their own and the common interest of all, subject to the restraints imposed by the Constitution and By Laws of the Association, and free also to renounce the affiliation for mutual welfare upon the terms laid down in the agreement which brought it into existence.” (Adamson & Adamson, Inc. vs. CIR, No. L-35120, January 31, 1984, 127 SCRA 268; Elisco-Elirol Labor Union (NAFLU) vs. Noriel, No. L-41955, December 29, 1977, 80 SCRA 681; Liberty Cotton Mills Workers Union vs. Liberty Cotton Mills, Inc., supra).

The inclusion of the word NATU after the name of the local union THEU in the registration with the Department of Labor is merely to stress that the THEU is NATU’s affiliate at the time of the registration. It does not mean that the said local union cannot stand on its own. Neither can it be interpreted to mean that it cannot pursue its own interests independently of the federation. A local

union owes its creation and continued existence to the will of its members and not to the federation to which it belongs.

When the local union withdrew from the old federation to join a new federation, it was merely exercising its primary right to labor organization for the effective enhancement and protection of common interests. In the absence of enforceable provisions in the federation's constitution preventing disaffiliation of a local union, a local may sever its relationship with its parent (People's Industrial and Commercial Employees and Workers Organization (FFW) vs. People's Industrial and Commercial Corporation, No. 37687, March 15, 1982, 112 SCRA 440).

There is nothing in the constitution of the NATU or in the constitution of the THEU-NATU that the THEU was expressly forbidden to disaffiliate from the federation (pp. 62, 281, Rollo). The alleged non-compliance of the local union with the provision in the NATU Constitution requiring the service of three months notice of intention to withdraw did not produce the effect of nullifying the disaffiliation for the following grounds: firstly, NATU was not even a legitimate labor organization, it appearing that it was not registered at that time with the Department of Labor, and therefore did not possess and acquire, in the first place, the legal personality to enforce its constitution and laws, much less the right and privilege under the Labor Code to organize and affiliate chapters or locals within its group, and secondly, the act of non-compliance with the procedure on withdrawal is premised on purely technical grounds which cannot rise above the fundamental right of self-organization.

Respondent Secretary of Labor, in affirming the decision of the respondent Commission, concluded that the supposed decision to disaffiliate was not the subject of a free and open discussion and decision on the part of the THEU-NATU general membership (p. 305, Rollo). This, however, is contradicted by the evidence on record. Moreover, We are inclined to believe Arbitrator Villatuya's findings to the contrary, as follows:

“However, the complainants refute this allegation by submitting the following: a) Letter dated December 20, 1973 signed by 142 members (Exhs. ‘B to B-5’); b) resolution dated January 12,

1974, signed by 140 members (Exhs. 'H to H-6'); letter dated February 26, 1974 to the Department of Labor signed by 165 members (Exhs.'I to I-10'); d) letter dated January 30, 1974 to the Secretary of the National Defense signed by 144 members (Exhs. 'o to o-5') and; e) letter dated March 6, 1974 signed by 146 members addressed to the President of the Philippines (Exhs. 'HH to HH-5'), to show that in several instances, the members of the THEU-NATU have acknowledged their disaffiliation from NATU. The letters of the complainants also indicate that an overwhelming majority have freely and voluntarily signed their union's disaffiliation from NATU, otherwise, if there was really deception employed in securing their signatures as claimed by NATU/Dilag, it could not be possible to get their signatures in five different documents." (p. 144, Rollo)

We are aware of the time-honored doctrine that the findings of the NLRC and the Secretary of Labor are binding on this Court if supported by substantial evidence. However, in the same way that the findings of facts unsupported by substantial and credible evidence do not bind this Court, neither will We uphold erroneous conclusions of the NLRC and the Secretary of Labor when We find that the latter committed grave abuse of discretion in reversing the decision of the labor arbiter (*San Miguel Corporation vs. NLRC*, L-50321, March 13, 1984, 128 SCRA 180). In the instant case, the factual findings of the arbitrator were correct against that of public respondents.

Further, there is no merit in the contention of the respondents that the act of disaffiliation violated the union security clause of the CBA and that their dismissal as a consequence thereof is valid. A perusal of the collective bargaining agreements shows that the THEU-NATU, and not the NATU federation, was recognized as the sole and exclusive collective bargaining agent for all its workers and employees in all matters concerning wages, hours of work and other terms and conditions of employment (pp. 667-706, Rollo). Although NATU was designated as the sole bargaining agent in the check-off authorization form attached to the CBA, this simply means it was acting only for and in behalf of its affiliate. The NATU possessed the status of an agent while the local union remained the basic principal union which entered into contract with the respondent company. When the THEU

disaffiliated from its mother federation, the former did not lose its legal personality as the bargaining union under the CBA. Moreover, the union security clause embodied in the agreements cannot be used to justify the dismissals meted to petitioners since it is not applicable to the circumstances obtaining in this case. The CBA imposes dismissal only in case an employee is expelled from the union for joining another federation or for forming another union or who fails or refuses to maintain membership therein. The case at bar does not involve the withdrawal of merely some employees from the union but of the whole THEU itself from its federation. Clearly, since there is no violation of the union security provision in the CBA, there was no sufficient ground to terminate the employment of petitioners.

Public respondents considered the existence of Arturo Dilag's group as the remaining true and valid union. We, however, are inclined to agree instead with the Arbitrator's findings when he declared:

“Much more, the so called THEU-NATU under Dilag's group which assumes to be the original THEU-NATU has a very doubtful and questionable existence not to mention that the alleged president is performing supervisory functions and not qualified to be a bona fide member of the rank and file union.”  
(p. 146, Rollo)

Records show that Arturo Dilag had resigned in the past as President of THEU-NATU because of his promotion to a managerial or supervisory position as Assistant Unit Manager of respondent Company. Petitioner Jose Encinas replaced Dilag as President and continued to hold such position at the time of the disaffiliation of the union from the federation. It is therefore improper and contrary to law for Dilag to reassume the leadership of the remaining group which was alleged to be the true union since he belonged to the managerial personnel who could not be expected to work for the betterment of the rank and file employees. Besides, managers and supervisors are prohibited from joining a rank and file union (Binalbagan Isabela Sugar Co., Inc. (BISCOM) vs. Philippine Association of Free Labor Unions (PAFLU), et al., L-18782, August 29, 1963, 8 5CRA 700). Correspondingly, if a manager or supervisor organizes or joins a rank and file union, he will be required to resign

therefrom (Magalit, et al. vs. Court of Industrial Relations, et al., L-20448, May 25, 1965, 14 SCRA 72).

Public respondents further submit that several employees who disaffiliate their union from the NATU subsequently retracted and reaffirmed their membership with the THEU-NATU. In the decision which was affirmed by respondent Secretary of Labor, the respondent Commission stated that:

“Out of the alleged one hundred and seventy-one (171) members of the THEU-CGW whose signatures appeared in the ‘Analysis of Various Documents Signed by Majority Members of the THEU-CGW, (Annex ‘T’, Complainants), which incidentally was relied upon by Arbitrator Villatuya in holding that Complainant THEU-CGW commanded the majority of employees in respondent company, ninety-three (93) of the alleged signatories reaffirmed their membership with the THEU-NATU and renounced whatever correction they may have had with other labor unions, (meaning the complainant THEU-CGW) either through resolution or membership application forms they have unwittingly signed.” (p. 306, Rollo)

Granting arguendo, that the fact of retraction is true, the evidence on record shows that the letters of retraction were executed on various dates beginning January 11, 1974 to March 8, 1974 (pp. 278-280, Rollo). This shows that the retractions were made more or less after the suspension pending dismissal on January 11, 1974 of Jose Encinas, formerly THEU-NATU President, who became THEU-CGW President, and the suspension pending their dismissal of the other elected officers and members of the THEU-CGW on January 15, 1974. It is also clear that some of the retractions occurred after the suspension of the first set of workers numbering about twenty-four (24) on March 5, 1974. There is no use in saying that the retractions obliterated the act of disaffiliation as there are doubts that they were freely and voluntarily done especially during such time when their own union officers and co-workers were already suspended pending their dismissal.

Finally, with regard to the process by which the workers were suspended or dismissed, this Court finds that it was hastily and

summarily done without the necessary due process. The respondent company sent a letter to petitioners herein, advising them of NATU/Dilag's recommendation of their dismissal and at the same time giving them forty-eight (48) hours within which to comment (p. 637, Rollo). When petitioners failed to do so, respondent company immediately suspended them and thereafter effected their dismissal. This is certainly not in fulfillment of the mandate of due process, which is to afford the employee to be dismissed an opportunity to be heard.

The prerogative of the employer to dismiss or lay-off an employee should be done without abuse of discretion or arbitrariness, for what is at stake is not only the employee's name or position but also his means of livelihood. Thus, the discharge of an employee from his employment is null and void where the employee was not formally investigated and given the opportunity to refute the alleged findings made by the company (De Leon vs. NLRC, L-52056, October 30, 1980, 100 SCRA 691). Likewise, an employer can be adjudged guilty of unfair labor practice for having dismissed its employees in line with a closed shop provision if they were not given a proper hearing (Binalbagan-Isabela Sugar Co., Inc., (BISCOM) vs. Philippine Association of Free Labor Unions (PAFLU) et al., L-18782, August 29, 1963, 8 SCRA 700).

In view of the fact that the dispute revolved around the mother federation and its local, with the company suspending and dismissing the workers at the instance of the mother federation, then, the company's liability should be limited to the immediate reinstatement of the workers. And since their dismissals were effected without previous hearing and at the instance of NATU, this federation should be held liable to the petitioners for the payment of their backwages, as what We have ruled in the Liberty Cotton Mills Case (supra).

**ACCORDINGLY**, the petition is hereby **GRANTED** and the assailed decision of respondent Secretary of Labor is **REVERSED** and **SET ASIDE**, and the respondent company is hereby ordered to immediately reinstate all the petitioner employees within thirty (30) days from notice of this decision. If reinstatement is no longer feasible, the respondent company is ordered to pay petitioners separation pay equivalent to one (1) month pay for every year of

service. The respondent NATU federation is directed to pay petitioners the amount of three (3) years backwages without deduction or qualification. This decision shall be immediately executory upon promulgation and notice to the parties.

**SO ORDERED.**

**Narvasa, Cruz, Gancayco and Griño-Aquino, *JJ.*, concur.**

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