

THIRD DIVISION

[G.R. No.174287, August 12, 2013]

**NATIONAL UNION OF BANK EMPLOYEES (NUBE), PETITIONER,
VS. PHILNABANK EMPLOYEES ASSOCIATION (PEMA) AND
PHILIPPINE NATIONAL BANK, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

Assailed in this petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure are the May 22, 2006 Decision^[1] and August 17, 2006 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 84606, which reversed the May 27, 2004 Decision^[3] of the Secretary of Labor and Employment acting as voluntary arbitrator, the dispositive portion of which states:

WHEREFORE, in light of the foregoing findings, the Bank is hereby ORDERED to release all union dues withheld and to continue remitting to NUBE-PNB chapter the members' obligations under the CBA, **LESS** the amount corresponding to the number of non-union members including those who participated in the unsuccessful withdrawal of membership from their mother union.

The parties are enjoined to faithfully comply with the above- mentioned resolution.

With respect to the **URGENT MOTION FOR INTERVENTION** filed by PEMA, the same is hereby denied without prejudice to the rights of its members to bring an action to protect such rights if deemed necessary at the opportune time.

SO ORDERED.^[4]

We state the facts.

Respondent Philippine National Bank (PNB) used to be a government-owned and controlled banking institution established under Public Act 2612, as amended by Executive Order No. 80 dated December 3, 1986 (otherwise known as *The 1986 Revised Charter of the Philippine National Bank*). Its rank-and-file employees, being government personnel, were represented for collective negotiation by the Philnabank Employees Association (PEMA), a public sector union.

In 1996, the Securities and Exchange Commission approved PNB's new Articles of Incorporation and By-laws and its changed status as a private corporation. PEMA affiliated with petitioner National Union of Bank Employees (NUBE), which is a labor federation composed of unions in the banking industry, adopting the name NUBE-

PNB Employees Chapter (NUBE-PEC).

Later, NUBE-PEC was certified as the sole and exclusive bargaining agent of the PNB rank-and-file employees. A collective bargaining agreement (CBA) was subsequently signed between NUBE-PEC and PNB covering the period of January 1, 1997 to December 31, 2001.

Pursuant to Article V on Check-off and Agency Fees of the CBA, PNB shall deduct the monthly membership fee and other assessments imposed by the union from the salary of each union member, and agency fee (equivalent to the monthly membership dues) from the salary of the rank- and-file employees within the bargaining unit who are not union members. Moreover, during the effectivity of the CBA, NUBE, being the Federation union, agreed that PNB shall remit P15.00 of the P65.00 union dues per month collected by PNB from every employee, and that PNB shall directly credit the amount to NUBE's current account with PNB.^[5]

Following the expiration of the CBA, the Philnabank Employees Association-FFW (PEMA-FFW) filed on January 2, 2002 a petition for certification election among the rank-and-file employees of PNB. The petition sought the conduct of a certification election to be participated in by PEMA-FFW and NUBE-PEC.

While the petition for certification election was still pending, two significant events transpired – the independent union registration of NUBE- PEC and its disaffiliation with NUBE.

With a legal personality derived only from a charter issued by NUBE, NUBE-PEC, under the leadership of Mariano Soria, decided to apply for a separate registration with the Department of Labor and Employment (DOLE). On March 25, 2002, it was registered as an independent labor organization under Registration Certificate No. NCR-UR-3-3790-2002.

Thereafter, on June 20, 2003, the Board of Directors of NUBE-PEC adopted a Resolution^[6] disaffiliating itself from NUBE. Cited as reasons were as follows:

x x x x

WHEREAS, in the long period of time that the Union has been affiliated with NUBE, the latter has miserably failed to extend and provide satisfactory services and support to the former in the form of legal services, training assistance, educational seminars, and the like;

WHEREAS, this failure by NUBE to provide adequate essential services and support to union members have caused the latter to be resentful to NUBE and to demand for the Union's disaffiliation from the former[;]

WHEREAS, just recently, NUBE displayed its lack of regard for the interests and aspirations of the union members by blocking the latter's desire for the early commencement of CBA negotiations with the PNB management[;]

WHEREAS, this strained relationship between NUBE and the Union is no

longer conducive to a fruitful partnership between them and could even threaten industrial peace between the Union and the management of PNB.

WHEREAS, under the circumstances, the current officers of the Union have no choice but to listen to the clamor of the overwhelming majority of union members for the Union to disaffiliate from NUBE.^[7]

The duly notarized Resolution was signed by Edgardo B. Serrana (President), Rico B. Roma (Vice-President), Rachel C. Latorre (Secretary), Valeriana S. Garcia (Director/Acting Treasurer), Ruben C. Medrano (Director), and Verlo C. Magtibay (Director). It is claimed that said Resolution was overwhelmingly ratified by about eighty-one percent (81%) of the total union membership.

On June 25, 2003, NUBE-PEC filed a Manifestation and Motion^[8] before the Med-Arbitration Unit of DOLE, praying that, in view of its independent registration as a labor union and disaffiliation from NUBE, its name as appearing in the official ballots of the certification election be changed to "Philnabank Employees Association (PEMA)" or, in the alternative, both parties be allowed to use the name "PEMA" but with PEMA-FFW and NUBE-PEC be denominated as "PEMA-Bustria Group" and "PEMA-Serrana Group," respectively.

On the same date, PEMA sent a letter to the PNB management informing its disaffiliation from NUBE and requesting to stop, effective immediately, the check-off of the P15.00 due for NUBE.^[9]

Acting thereon, on July 4, 2003, PNB informed NUBE of PEMA's letter and its decision to continue the deduction of the P15.00 fees, but stop its remittance to NUBE effective July 2003. PNB also notified NUBE that the amounts collected would be held in a trust account pending the resolution of the issue on PEMA's disaffiliation.^[10]

On July 11, 2003, NUBE replied that: it remains as the exclusive bargaining representative of the PNB rank-and-file employees; by signing the Resolution (on disaffiliation), the chapter officers have abandoned NUBE-PEC and joined another union; in abandoning NUBE-PEC, the chapter officers have abdicated their respective positions and resigned as such; in joining another union, the chapter officers committed an act of disloyalty to NUBE-PEC and the general membership; the circumstances clearly show that there is an emergency in NUBE-PEC necessitating its placement under temporary trusteeship; and that PNB should cease and desist from dealing with Serrana, Roma, Latorre, Garcia, Medrano, and Magtibay, who are expelled from NUBE-PEC.^[11] With regard to the issue of non-remittance of the union dues, NUBE enjoined PNB to comply with the union check-off provision of the CBA; otherwise, it would elevate the matter to the grievance machinery in accordance with the CBA.

Despite NUBE's response, PNB stood firm on its decision. Alleging unfair labor practice (ULP) for non-implementation of the grievance machinery and procedure, NUBE brought the matter to the National Conciliation and Mediation Board (NCMB) for preventive mediation.^[12] In time, PNB and NUBE agreed to refer the case to the Office of the DOLE Secretary for voluntary arbitration. They executed a Submission

Agreement on October 28, 2003.^[13]

Meantime, the DOLE denied PEMA's motion to change its name in the official ballots. The certification election was finally held on October 17, 2003. The election yielded the following results:

Number of eligible voters	3,742
Number of valid votes cast	2,993
Number of spoiled ballots	72
Total	3,065
Philnabank Employees Association-FFW	289
National Union of Bank Employees (NUBE)-Philippine National Bank (PNB) Chapter	2,683
No Union	21
Total	2,993 ^[14]

On April 28, 2004, PEMA filed before the voluntary arbitrator an Urgent Motion for Intervention,^[15] alleging that it stands to be substantially affected by whatever judgment that may be issued, because one of the issues for resolution is the validity of its disaffiliation from NUBE. It further claimed that its presence is necessary so that a complete relief may be accorded to the parties. Only NUBE opposed the motion, arguing that PEMA has no legal personality to intervene, as it is not a party to the existing CBA; and that NUBE is the exclusive bargaining representative of the PNB rank-and-file employees and, in dealing with a union other than NUBE, PNB is violating the duty to bargain collectively, which is another form of ULP.^[16]

Barely a month after, DOLE Acting Secretary Manuel G. Imson denied PEMA's motion for intervention and ordered PNB to release all union dues withheld and to continue remitting the same to NUBE. The May 27, 2004 Decision opined:

Before we delve into the merits of the present dispute, it behooves [Us] to discuss in passing the propriety of the MOTION FOR INTERVENTION filed by the Philnabank Employees Association (PEMA) on April 28, 2004, the alleged [break-away] group of NUBE- PNB Chapter.

A cursory reading of the motion reveals a denial thereof is not prejudicial to the individual rights of its members. They are protected by law.

Coming now to the main issues of the case, suffice it to say that after an evaluative review of the record of the case, taking into consideration the arguments and evidence adduced by both parties, We find that indeed no effective disaffiliation took place.

It is well settled that [l]abor unions may disaffiliate from their mother federations to form a local or independent union only during the 60-day freedom period immediately preceding the expiration of the CBA. [Tanduary Distillery Labor Union v. National Labor Relations Commission, et al.] However, such disaffiliation must be effected by a majority of the members in the bargaining unit. (Volkschel Labor Union v. Bureau of

Labor Relations).

Applying the foregoing jurisprudence to the case at bar, it is difficult to believe that a justified disaffiliation took place. While the record apparently shows that attempts at disaffiliation occurred sometime in June of 2003 x x x the latest result of a certification election dated 17 October 2003 mooted such disaffiliation.

Further, even if for the sake of argument an attempt at disaffiliation occurred, the record is bereft of substantial evidence to support a finding of effective disaffiliation. There might have been a mass withdrawal of the union members from the NUBE-PNB Chapter. The record shows, however, that only 289 out of 3,742 members shifted their allegiance from the mother union. Hence, they constituted a small minority for which reason they could not have successfully severed the local union's affiliation with NUBE.

Thus, since only a minority of the members wanted disaffiliation as shown by the certification election, it can be inferred that the majority of the members wanted the union to remain an affiliate of the NUBE. [Villar, et al. v. Inciong, et al.]. There being no justified disaffiliation that took place, the bargaining agent's right under the provision of the CBA on Check-Off is unaffected and still remained with the old NUBE-PNB Chapter. x x x

While it is true that the obligation of an employee to pay union dues is co-terminus with his affiliation [Philippine Federation of Petroleum Workers v. CIR], it is equally tenable that when it is shown, as in this case, that the withdrawal from the mother union is not supported by majority of the members, the disaffiliation is unjustified and the disaffiliated minority group has no authority to represent the employees of the bargaining unit. This is the import of the principle laid down in [Volkschel Labor Union v. Bureau of Labor Relations supra] and the inverse application of the Supreme Court decision in [Philippine Federation of Petroleum Workers v. CIR] regarding entitlement to the check-off provision of the CBA.

As a necessary consequence to our finding that no valid disaffiliation took place, the right of NUBE to represent its local chapter at the PNB, less those employees who are no longer members of the latter, is beyond reproach.

However, the Bank cannot be faulted for not releasing union dues to NUBE at the time when representation status issue was still being threshed out by proper governmental authority. Prudence dictates the discontinuance of remittance of union dues to NUBE under such circumstances was a legitimate exercise of management discretion apparently in order to protect the Bank's business interest. The suspension of the check-off provision of the CBA, at the instance of the latter made in good faith, under the present circumstances cannot give rise to a right of action. For having been exercised without malice much less evil motive and for not causing actual loss to the National Union of