

FIFTH DIVISION

[CA-G.R. SP. NO. 118035, November 28, 2014]

**STANDARD CHARTERED BANK EMPLOYEES UNION (SCBEU) -
NATIONAL UNION OF BANK EMPLOYEES (NUBE), PETITIONER,
VS. NATIONAL LABOR RELATIONS COMMISSION AND STANDARD
CHARTERED BANK, RESPONDENTS.**

D E C I S I O N

CRUZ, J.:

THE CASE

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the Decision dated June 18, 2010^[1] of the Fourth Division of the National Labor Relations Commission ("NLRC") in NLRC-LCC Case No. 07-000006-09 which declared the Notice of Strike filed by the petitioner as lacking basis in fact and law and the Decision dated November 19, 2010^[2] denying reconsideration thereof.

THE ANTECEDENTS

Petitioner Standard Chartered Bank Employees Union - National Union of Bank Employees ("SCBEU-NUBE") is the certified sole and exclusive bargaining representative of all rank-and-file employees of Standard Chartered Bank.

Respondent Standard Chartered Bank ("SCB") is a banking institution duly organized and existing under and by virtue of the laws of England and duly licensed to engage in banking activities under Philippine laws with principal office at Standard Chartered Bank, 6788 Ayala Avenue, Makati City.

On March 13, 2009, SCBEU-NUBE filed a Notice of Strike against SCB before the National Conciliation and Mediation Board ("NCMB") docketed as NCMB-NCR-NS-03-024 on the ground of alleged acts of unfair labor practice, to wit: (1) harassment of union officer; (2) union busting and; (3) violation of the collective bargaining agreement ("CBA").

On March 23, 2009, SCBEU-NUBE filed a second Notice of Strike against SCB with the NCMB docketed as NCMB-NCR-NS-0330-09 on the ground of alleged acts of unfair labor practice, more specifically, the: (1) Harassment of union officer Julius Fuentes; (2) Non-implementation of a final and executory decision dated October 8, 2008 of the Supreme Court in G.R. No. 165550 which upheld the out-patient medicine reimbursements of employees of SCB as well as the maternity benefits of the spouses of male employees; (3) Union busting through illegal dismissal of union officer Rose Ann Mallo.

SCBEU-NUBE filed two motions, namely: (1) for the issuance of subpoena to require

the appearance of the officers of SCB at the conciliation meetings^[3] and; (2) to punish SCB for contempt arising from the illegal termination of union officer Julius Fuentes and union members Edgardo Palanca, Jr., Jose Osorio, Allen Silab, Liezel Villarosa^[4].

On March 27, 2009, SCBEU-NUBE submitted the results of its strike balloting which shows that a majority of its members supports the strike.^[5] After the determination that SCB is an industry indispensable to the national interest pursuant to Section 22^[6], RA 8791^[7], the Secretary of the Department of Labor and Employment ("DOLE") certified the same for compulsory arbitration in accordance with Article 263 (g) of the Labor Code of the Philippines, as amended on April 3, 2009.^[8]

SCBEU-NUBE filed a Supplemental Manifestation and Motion dated April 7, 2009 seeking the suspension of the effects of termination Edgardo Palanca, Jr., Jose Osorio, Allen Silab, Liezel Villarosa and their reinstatement, which was denied in an Order dated June 26, 2009^[9].

Subsequently, the parties were called to a series of conferences to discuss the issues and seek the possibility of amicable settlement of the labor dispute which proved futile. After the parties submitted their respective position paper and other responsive pleadings, the NLRC rendered a decision in favor of SCB. In a Decision dated June 18, 2010, the NLRC declared the Notice of Strike as lacking in legal and factual basis.^[10] The NLRC ruled that: (1) Under the law, there are only 2 grounds for calling a strike: bargaining deadlock and unfair labor practice; (2) The alleged acts committed by SCB do not fall under unfair labor practices; (3) The preventive suspension and subsequent termination of Julius Fuentes, the termination of Jose Osorio, Andre Ramiro and Cyril Santellices constitute valid exercise of management prerogative to discipline employees and impose punishment for gross and habitual negligence; (4) Rose Ann Mallo was validly dismissed on the ground of redundancy under Article 283^[11] of the Labor Code of the Philippines; (5) These acts are not flagrant and/or malicious violations of the CBA economic provisions so as to amount to unfair labor practice, i.e.: (a) The non-granting of loans to Julius Fuentes, Anthony Morales and Janico Deocareza; (b) the hiring of agency/temporary personnel; (c) non-payment of out-patient and spousal maternity benefits despite a final and executory decision of the Supreme Court.

SCBEU-NUBE then filed a motion for reconsideration which was subsequently denied in a Decision dated November 19, 2010^[12].

Aggrieved, the petitioner filed this petition, raising the issues,

THE ISSUES BEFORE US

I.

WHETHER OR NOT THE EMPLOYER COMMITTED UNFAIR LABOR PRACTICES;

II.

WHETHER OR NOT THE ASSAILED DECISIONS ARE TANTAMOUNT TO GRAVE ABUSE OF DISCRETION.

Petitioner maintains that SCB committed unfair labor practices. In particular, it claims that SCB interfered with the exercise by the union officers/members of their rights to self-organization and collective bargaining. Petitioner avers that the union officer and members acted on the show cause notices sent by the SCB by filing a grievance notice. SCB did not comply with the grievance procedure and thus committed unfair labor practice. Petitioner asseverates that there was no valid redundancy in the case of union officer Rose Ann Mallo because SCB continued to hire people for its Cebu branch and the superfluity of her services has not been established by SCB. Petitioner insists that the true reason behind her termination is the anti-union animus or bias by SCB. Petitioner emphasizes that the strike vote shows that a big majority of the members found that the SCB committed unfair labor practices. With respect to the disallowance of loan applications of union officer and members, petitioner points out that there is no evidence of Bangko Sentral ng Pilipinas rules or company rules stating that sub-standard performance is a ground to reject loan availments. Petitioner posits that there is no proof that the hiring of agency/temporary personnel was to temporarily relieve employees on maternity leave, replace services which are seasonal and cannot be performed by existing regular employees, substitute employees who are on extended leave of absence, sick leave or leave without pay, on educational pursuit. SCB has not established the factual and legal impossibility of complying with the final and executory decision of the Supreme Court. Petitioner argues that the NLRC should have applied the "totality of conduct" doctrine, and, had this been applied, the totality of conduct of the SCB would demonstrate anti-union animus, bias or motive as can be gleaned from the following acts: (1) SCB's refusal to bargain over the grievances of union officer Fuentes and members Palanca, Silab, Villarosa, Osorio III, Ramiro and Santelices; (2) SCB's refusal to participate fully and promptly in the meetings called by the NCMB - NCR relative to the Notice of Strike; (3) SCB's gross violation of the CBA in refusing to comply with the Decision in SC G.R. No. 165550; (4) SCB's unsubstantiated claim of factual and legal impossibility relative to the Decision in SC G.R. No. 165550 constitutes further evidence of its anti-union animus, bias or motive; (5) The illegal preventive suspension of Union officer Fuentes, union members Palanca, Silab, Villarosa, Osorio III, Ramiro and Santelices; (6) SCB's illegal termination of Union officers Mallo and Fuentes, union members Palanca, Silab, Villarosa, Osorio III; (7) SCB terminated the employees to sow fear among strike voters and to bust the union; (8) SCB negotiated directly with Mallo instead of negotiating directly with the union which constitutes boulwarism, a form of unfair labor practice; (9) SCB deliberately failed to comply with Article III, Section 4 of the CBA on agency temporary personnel hiring; (10) The issuance of notices of termination pending conciliation-mediation of the labor dispute impeded and violated the duty to bargain collectively in good faith. Petitioner insists that SCB has been performing well, thus there is no basis for the termination of its employees. Based on the foregoing, petitioner concluded that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction.

In its Comment^[13] respondent argues that the petition must be dismissed outright for failure to attach clearly legible duplicate original or certified true copy of the judgment, order, resolution and such material portions of the record in violation of Section 3, Rule 46 of the Rules of Court in relation to Rule 65 of the Rules of Court.

SCB maintains that the petitioner's 2 notices of strike do not constitute lawful grounds for a valid strike under the law. Respondent claims that the alleged acts of harassment against Julius Fuentes do not constitute unfair labor practice because SCB was simply exercising its management prerogative to impose disciplinary action against erring employees. SCB claims that the alleged violation of the CBA provisions is not a valid subject of a notice of strike. The denial of the loan applications of some of the employees of SCB was based on its Staff Loan Policy which states that the bank may at its sole discretion deny the loan application of any employee who is underperforming. SCB denies having violated the CBA when it hired temporary and/or casual employees because the Memorandum of Agreement between the bank and the union expressly allows the former to do so. Respondent asseverates that the dismissal of Rose Ann Mallo, Julius Fuentes, Edgardo Panaca, Jr., Jon Osorio III, Allen Silab and Lizel Villarosa are valid and based on just and/or authorized causes under the law and does not amount to union busting. Article 248 of the Labor Code of the Philippines enumerates the acts of unfair labor practices. As such, there can be no implied unfair labor practice or ULP by analogy. The dismissal and separation from employment of the subject employees constitute valid exercise of the bank's management prerogatives: (1) Mallo was validly separated from service on the ground of redundancy which is an authorized cause for termination of employment under Article 283 of the Labor Code of the Philippines; (2) Fuentes, Palanca, Osorio, Silab and Villarosa were validly dismissed from employment on the grounds of gross inefficiency and gross and habitual neglect of duties which are just causes for termination of employment under Article 282 of the Labor Code of the Philippines; (3) In terminating the employment of Mallo, Fuentes, Palanca, Osorio, Silab and Villarosa, SCB never restrained, coerced or interfered with the workers' right to self-organization; (4) SCB neither committed unfair labor practice nor gross violation of the CBA when it allegedly failed to satisfy the judgment award of the Supreme Court in G.R. No. 165550 entitled "Standard Chartered Bank vs. Court of Appeals and Standard Chartered Bank Employees Union" because there is no health care insurance provider in the Philippines that is willing to cover the benefit of 100% outpatient medical reimbursement of prescription drugs.

OUR RULING

The petition lacks merit.

It has been said often enough that for the extraordinary remedy of certiorari to lie by reason of grave abuse of discretion, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all, in contemplation of law. The judgment must be rendered in a capricious, whimsical, arbitrary or despotic manner by reason of passion, prejudice or personal hostility.

An examination of the assailed decisions of the public respondent reveals that its findings were supported by substantial evidence on record. Absent any clear showing of abuse, arbitrariness or capriciousness, the findings of fact by the NLRC, especially when supported by substantial evidence, as in this case, are binding and conclusive upon Us. Thus, there exists no cogent reason for us to deviate from the challenged decisions.

A strike may legally be held because of either or both: (1) a collective bargaining deadlock and/or; (2) an unfair labor practice ("ULP"). A strike not based on any of

these two causes is necessarily tainted with illegality.

In the present case, SCBEU-NUBE filed two (2) notices of strike on the ground of ULP.

We affirm the finding of the NLRC that the acts enumerated by SCBEU-NUBE do not constitute ULP so as to support petitioner's strike.

The concept of ULP is embodied in Article 257 (formerly Article 247) of the Labor Code^[14]. In essence, ULP relates to the commission of acts that transgress the workers' right to organize. As specified in Articles 258 and 259 of the Labor Code, the prohibited acts must necessarily relate to the workers' right to self-organization^[15] and to the observance of the CBA.

Nelson Culili vs. Eastern Telecommunications Philippines, Inc., et., al.^[16], explains that:

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"In the past, we have ruled that "unfair labor practice refers to 'acts that violate the workers' right to organize.' The prohibited acts are related to the workers' right to self-organization and to the observance of a CBA." We have likewise declared that "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 only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize."

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Absent the said vital elements, the acts complained, although seemingly unjust, would not constitute ULP.^[17] It refers to "acts that violate the workers' right to organize." Without that element, the acts, even if unfair, are not ULP. An employer therefore may only be held liable for unfair labor practice if it can be shown that its acts affect in whatever manner the right of its employees to self-organize.^[18]

The general principle is that the one who makes an allegation has the burden of proving it. While there are exceptions to this general rule, in ULP cases, the alleging party has the burden of proving the ULP; and in order to show that the employer committed ULP under the Labor Code, substantial evidence is required to support the claim.

Substantial evidence, then as now, is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. Unfortunately, the SCBEU-NUBE, which had the burden of adducing substantial evidence to support its allegations of ULP as its ground for the two notices of strike, failed to discharge such burden.