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THIRD DIVISION

[G.R. No. 179402, September 30, 2008]

NATIONAL UNION OF WORKERS IN HOTELS, RESTAURANTS AND ALLIED INDUSTRIES--MANILA PAVILLION HOTEL CHAPTER, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ACESITE PHILIPPINES HOTEL CORPORATION, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated 30 May 2007 rendered by the Court of Appeals in CA-G.R. SP No. 96171, which affirmed the Resolution[2] dated 5 May 2006 of the National Labor Relations Commission (NLRC) in NLRC NCR CC No. 000307-05 NCMB NCR NS 09-199-05, dismissing for lack of merit the complaint for unfair labor practice filed by petitioner National Union of Workers in Hotels, Restaurants and Allied Industries-Manila Pavilion Hotel (NUWHRAIN) against Manila Pavilion Hotel (the Hotel).

Petitioner NUWHRAIN is a legitimate labor organization composed of rank-and-file employees of the Hotel,[3] while respondent Acesite Philippines Hotel Corporation is the owner and operator of said Hotel.[4]

The factual antecedents of the instant Petition are as follows:

The Hotel entered into a Collective Bargaining Agreement with HI-MANILA PAVILION HOTEL LABOR UNION (HIMPHLU), the exclusive bargaining agent of the rank-and-file employees of the Hotel. Both parties consented that the representation aspect and other non-economic provisions of the Collective Bargaining Agreement were to be effective for five years or until 30 June 2005; and the economic provisions of the same were to be effective for three years or until 30 June 2003. The parties subsequently re-negotiated the economic provisions of the Collective Bargaining Agreement and extended the term of their effectivity for another two years or until 30 June 2005.[5]

During the 60-day freedom period which preceded the expiration of the Collective Bargaining Agreement, starting on 1 May 2005 and ending on 30 June 2005, the Hotel and HIMPHLU negotiated the extension of the provisions of the existing Collective Bargaining Agreement for two years, effective 1 July 2005 to 30 June 2007. The parties signed the Memorandum of Agreement on 20 May 2005 and the employees ratified it on 27 May 2005.[6]

On 21 June 2005, NUWHRAIN was accorded by the Labor Relations Division of the

Department of Labor and Employment (DOLE) the status of a legitimate labor organization.[7] Thereafter, NUWHRAIN exercised the right to challenge the majority status of the incumbent union, HIMPHLU, by filing a Petition for Certification Election on 28 June 2005.[8]

On 5 July 2007, the Industrial Relations Division of the DOLE allowed the registration of the Memorandum of Agreement executed between HIMPHLU and the Hotel, extending the effectivity of the existing Collective Bargaining Agreement for another two years.[9]

After the lapse of the 60-day freedom period, but pending the disposition of the Petition for Certification Election filed by NUWHRAIN, HIMPHLU served the Hotel with a written demand dated 28 July 2005[10] for the dismissal of 36 employees following their expulsion from HIMPHLU for alleged acts of disloyalty and violation of its Constitution and by-laws. An Investigation Report[11] was attached to the said written demand, stating that the 36 employees, who were members of HIMPHLU, joined NUWHRAIN, in violation of Section 2, Article IV of the Collective Bargaining Agreement, which provided for a union security clause that reads: [12]

> Section 2. DISMISSAL PURSUANT TO UNION SECURITY CLAUSE. Accordingly, failure to join the UNION within the period specified in the immediately preceding section or failure to maintain membership with the UNION in good standing either through resignation or expulsion from the UNION in accordance with the UNION's Constitution and by-laws due to **disloyalty, joining another union** or non-payment of UNION dues shall be a **ground for the UNION to demand the dismissal** from the HOTEL of the employee concerned. **The demand shall be accompanied by the UNION's investigation report and the HOTEL shall act accordingly subject to existing laws and jurisprudence on the matter, provided, however, that the UNION shall hold the HOTEL free and harmless from any and all liabilities that may arise should the dismissed employee question in any manner the dismissal. The HOTEL shall not, however, be compelled to act on any such UNION demand if made within a period of sixty (60) days prior to the expiry date of this agreement.** (Emphasis provided)

On 1 August 2005, the Hotel issued Disciplinary Action Notices[13] (Notices) to the 36 employees identified in the written demand of HIMPHLU. The Notices directed the 36 employees to submit a written explanation for their alleged acts of disloyalty and violation of the union security clause for which HIMPHLU sought their dismissal.

The Hotel called the contending unions and the employees concerned for a reconciliatory conference in an attempt to avoid the dismissal of the 36 employees. The reconciliatory conferences facilitated by the Hotel were held on 5 August 2005 and 1 September 2005.[14] However, NUWHRAIN proceeded to file a Notice of Strike before the National Conciliation and Mediation Board (NCMB) on 8 September 2005 on the ground of unfair labor practice under Article 248, paragraphs (a) and (b) of the Labor Code.[15] The Secretary of Labor intervened and certified the case for compulsory arbitration with the NLRC. The case was docketed as NLRC NCR CC No. 000307-05 NCMB NCR NS 09-199-05, entitled *IN RE: Labor Dispute at Manila*

Pavilion Hotel.[16]

NUWHRAIN asserted that the Hotel committed unfair labor practice when it issued the Notices to the 36 employees who switched allegiance from HIMPHLU to NUWHRAIN. During the reconciliatory conference held on 5 August 2005, respondent's Vice President, Norma Azores, stated her preference to deal with HIMPHLU, while blaming NUWHRAIN for the labor problems of the Hotel. On 1 September 2005, the Resident Manager of the Hotel, Bernardo Corpus, Jr., implored NUWHRAIN's members to withdraw their Petition for Certification Election and reaffirm their membership in HIMPHLU. The Notices and the statements made by the officers of the respondent and the Hotel were allegedly intended to intimidate and coerce the employees in the exercise of their right to self-organization. NUWHRAIN claimed that it was entitled to moral damages in the amount of P50,000.00 and exemplary damages of P20,000.00[17]

Respondent countered that it merely complied with its contractual obligations with HIMPHLU when it issued the assailed Notices, and clarified that none of the 36 employees were dismissed by the Hotel. It further denied that respondent's Vice President Norma Azores and the Hotel's Resident Manager Bernardo Corpus, Jr. made the statements attributed to them, purportedly expressing their preference for HIMPHLU during the reconciliatory conferences. Thus, respondent insisted that it did not commit unfair labor practice, nor was it liable for moral and exemplary damages.[18]

In a Resolution[19] dated 5 May 2006, the NLRC pronounced that the Hotel was not guilty of unfair labor practice. Firstly, the NLRC adjudged that the execution of the Memorandum of Agreement between respondent and HIMPHLU, extending the effectivity of the existing Collective Bargaining Agreement, was entered into with the view of responding to the employees' economic needs, and not intended to interfere with or restrain the exercise of the right to self-organization of NUWHRAIN's members. Secondly, the NLRC determined that the issuance of the Notices directing the 36 employees to explain why they should not be dismissed was in compliance with the Collective Bargaining Agreement provisions regarding the union security clause. Even thereafter, the Hotel had not acted improperly as it did not wrongfully terminate any of the 36 employees. Thirdly, the NLRC interpreted the statements made by the officials of respondent and the Hotel during the reconciliatory conferences - encouraging the withdrawal of the Petition for Certification Election and the reaffirmation by the 36 employees of their membership in HIMPHLU - as proposed solutions to avoid the dismissal of the said employees. The NLRC concluded that these statements did not constitute unfair labor practice for they could not have coerced or influenced either of the contending unions, both of whom did not agree in the suggested course of action or to any other manner of settling the dispute. Finally, the NLRC declared that the claim for moral and exemplary damages of NUWHRAIN lacked sufficient factual and legal bases.

NUWHRAIN filed a Motion for Reconsideration of the foregoing NLRC Resolution. It was denied by the NLRC in another Resolution dated 30 June 2006.[20] Thus, NUWHRAIN filed a Petition for *Certiorari* before the Court of Appeals, docketed as C.A. G.R. SP No. 96171.

In the meantime, on 16 June 2006, the Certification Election for regular rank and

file employees of the Hotel was held, which HIMPHLU won. It was accordingly certified as the exclusive bargaining agent for rank and file employees of the Hotel.[21]

On 30 May 2007, the Court of Appeals promulgated its Decision[22] in C.A. G.R. SP No. 96171, upholding the Resolution dated 5 May 2006 of the NLRC in NLRC NCR CC No. 000307-05 NCMB NCR NS 09-199-05. It declared that the Hotel had acted prudently when it issued the Notices to the 36 employees after HIMPHLU demanded their dismissal. It clarified that these Notices did not amount to the termination of the employees concerned but merely sought their explanation on why the union security clause should not be applied to them. The appellate court also gave credence to the denial by the officers of the respondent and the Hotel that they made statements favoring HIMPHLU over NUWHRAIN during the reconciliatory conferences. The Court of Appeals further noted that the unhampered organization and registration of NUWHRAIN negated its allegation that the Hotel required its employees not to join a labor organization as a condition for their employment.

NUWHRAIN's Motion for Reconsideration of the aforementioned Decision of the Court of Appeals was denied by the same court in a Resolution dated 24 August 2007.[23]

Hence, the present Petition, in which NUWHRAIN makes the following assignment of errors:

I

> THE COURT OF APPEALS GAVE MORE PROBATIVE VALUE TO RESPONDENT HOTEL'S GENERAL AND UNSWORN DENIAL VERSUS THAT OF PETITIONER'S SWORN TESTIMONY NARRATING RESPONDENT'S HOTEL'S VIOLATION OF PETITIONER'S RIGHT TO SELF ORGANIZATION. SUCH A RULING CONTRADICTS EXISTING JURISPRUDENCE SUCH AS MASAGANA CONCRETE PRODUCTS INC. V. NLRC, G.R. NO. 106916, SEPTEBMER 3, 1999; JRS BUSINESS CORPORATION V. NLRC, 246 SCRA 445 [1995]; and ASUNCION V. NLRC, 362 SCRA 56 [2001].

II

> THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT HOTEL IS NOT GUILTY OF UNFAIR LABOR PRACTICE CONTRARY TO ARTICLE 248 OF THE LABOR CODE AND THE SUPREME COURT'S RULING IN PROGRESSINVE DEVELOPMENT CORPORATION V. CIR, 80 SCRA 434 [1977] and INSULAR LIFE ASSURANCE CO. LTC EMPLOYEES ASSOCIATION-NATU V. THE INSULAR LIFE ASSURANCE CO. LTD., 37 SCRA 244 [1971].[24]

The instant Petition lacks merit, and must accordingly be denied.

NUWHRAIN maintains that the respondent committed unfair labor practice when (1) the Hotel issued the Notices to the 36 employees, former members of HIMPHLU, who switched allegiance to NUWHRAIN; and (2) the officers of the respondent and the Hotel allegedly uttered statements during the reconciliatory conferences indicating their preference for HIMPHLU and their disapproval of NUWHRAIN. This argument is specious.

The records clearly show that the Notices were issued after HIMPHLU served the Hotel with a letter dated 28 July 2005, demanding the dismissal of 36 of its former members who joined NUWHRAIN. In its letter, HIMPHLU alleged that it had found these members guilty of disloyalty and demanded their dismissal pursuant to the union security clause in the Collective Bargaining Agreement. Had the Hotel totally ignored this demand, as NUWHRAIN suggests it should have done, the Hotel would have been subjected to a suit for its failure to comply with the terms of the Collective Bargaining Agreement.

"Union security" is a generic term which is applied to and comprehends "closed shop," "union shop," "maintenance of membership" or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment.[25] Article 248(e) of the Labor Code recognizes the effectivity of a union shop clause:

> Art. 248. *Unfair labor practices of employers*.
>
> (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 prevent the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except of those employees who are already members of another union at the time of the signing of the collective bargaining agreement** x x x. (Emphasis supplied.)

The law allows stipulations for "union shop" and "closed shop" as a means of encouraging workers to join and support the union of their choice in the protection of their rights and interests vis-à-vis the employer. By thus promoting unionism, workers are able to negotiate with management on an even playing field and with more persuasiveness than if they were to individually and separately bargain with the employer.[26] In *Villar v. Inciong*,[27] this Court held that employees have the right to disaffiliate from their union and form a new organization of their own; however, they must suffer the consequences of their separation from the union under the security clause of the Collective Bargaining Agreement.

In the present case, the Collective Bargaining Agreement includes a union security provision.[28] To avoid the clear possibility of liability for breaching the union security clause of the Collective Bargaining Agreement and to protect its own interests, the only sensible option left to the Hotel, upon its receipt of the demand of HIMPHLU for the dismissal of the 36 employees, was to conduct its own inquiry so as to make its own findings on whether there was sufficient ground to dismiss the said employees who defected from HIMPHLU. The issuance by the respondent of the Notices requiring the 36 employees to submit their explanations to the charges against them was the reasonable and logical first step in a fair investigation. It is important to note that the Hotel did not take further steps to terminate the 36 employees. Instead, it arranged for reconciliatory conferences between the contending unions in order to avert the possibility of dismissing the 36 employees for violation of the union security clause of the Collective Bargaining Agreement.

This Court, in *Malayang Samahan ng Manggagawa sa M. Greenfield v. Ramos*[29]