Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

T & H SHOPFITTERS CORPORATION/GIN QUEEN CORPORATION, STINNES HUANG, BEN HUANG and ROGELIO MADRIAGA,
Petitioners,

- versus -

T & H SHOPFITTERS CORPORATION/GIN QUEEN WORKERS UNION, ELPIDIO ZALDIVAR, DARIOS GONZALES, WILLIAM DOMINGO, BOBBY CASTILLO, JIMMY M. PASCUA, GERMANO M. BAJO, RICO L. MANZANO, ALLAN L. CALLORINA, ROMEO BLANCO, GILBERT M. GARCIA, CARLOS F. GERILLO, EDUARDO A. GRANDE, EDILBRANDO MARTICIO, VIVENCIO SUSANO, ROLANDO GARCIA, JR., MICHAEL FABABIER, ROWELL MADRIAGA, PRESNIL TOLENTINO, MARVIN VENTURA, FRANCISCO RIVARES, PLACIDO TOLENTINO and ROLANDO ROMERO,
Respondents.

G.R. No. 191714

Present:

VELASCO, JR., *J., Chairperson.*
PERALTA,
BERSAMIN,*
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

February 26, 2014

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* Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1640 dated February 19, 2014.

D E C I S I O N

MENDOZA, J.:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are: 1) the November 12, 2009 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 107188, which affirmed the July 24, 2007 and November 13, 2008 Decision[2] of the National Labor Relations Commission *(NLRC)*; and 2) its March 24, 2010 Resolution[3] denying reconsideration of its decision.

The Facts

On September 7, 2004, the T&H Shopfitters Corporation/ Gin Queen Corporation workers union *(THS-GQ Union)* and Elpidio Zaldivar,[4] Darios Gonzales, William Domingo, Bobby Castillo, Jimmy M. Pascua, Germano M. Bajo,[5] Rico L. Manzano, Allan L. Callorina,[6] Romeo Blanco, Gilbert M. Garcia, Carlos F. Gerillo, Eduardo A. Grande, Edilbrando Marticio, Vivencio Susano, Rolando Garcia, Jr., Michael Fababier, Rowell Madriaga, Presnil Tolentino, Marvin Ventura, Francisco Rivares, Placido Tolentino, and Rolando Romero *(respondents)*, all of whom are officers and/or members of THS-GQ union, filed their Complaint[7] for Unfair Labor Practice *(ULP)* by way of union busting, and Illegal Lockout, with moral and exemplary damages and attorney's fees, against T&H Shopfitters Corporation *(T&H Shopfitters)* and Gin Queen Corporation *(Gin Queen)* (collectively referred to as "*petitioners*"), before the Labor Arbiter *(LA)*.

Respondents treated T&H Shopfitters and Gin Queen as a single entity and their sole employer. In their desire to improve their working conditions, respondents and other employees of petitioners held their first formal meeting on November 23, 2003 to discuss the formation of a union. The following day or on November 24, 2003, seventeen (17) employees were barred from entering petitioners' factory premises located in Castillejos, Zambales, and ordered to transfer to T&H Shopfitters' warehouse at Subic Bay Freeport Zone *(SBFZ)* purportedly because of its expansion. Afterwards, the said seventeen (17) employees were repeatedly ordered to go on forced leave due to the unavailability of work.

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[1] *Rollo*, pp. 34-45. Penned by Associate Justice Jose C. Reyes with Presiding Justice Conrado M. Vasquez and Associate Justice Apolinario D. Bruselas, Jr., concurring.
[2] Id. at 81-90 and 91-93, respectively.
[3] Id. at 47.
[4] Also referred to as Elpidio Saldivar in the Certification Against Non-forum Shopping filed before the LA, id. at 105.
[5] Also referred to as Germano P. Bajo in the Certification Against Non-forum Shopping filed before the LA, id.
[6] Also referred to as Allan F. Callorina in the Certification Against Non-forum Shopping filed before the LA, id.
[7] Id. at 104-106.

On December 18, 2003, the Department of Labor and Employment *(DOLE)*, Regional Office No. III issued a certificate of registration in favor of THS-GQ Union.

Respondents contended that the affected employees were not given regular work assignments, while subcontractors were continuously hired to perform their functions. This development prompted respondents to seek the assistance of the National Conciliation and Mediation Board. Subsequently, an agreement between petitioners and THS-GQ Union was reached. Petitioners agreed to give priority to regular employees in the distribution of work assignments. Respondents averred, however, that petitioners never complied with its commitment but instead hired contractual workers.

On March 24, 2004, THS-GQ Union filed a petition for certification election. On July 12, 2004, an order was issued to hold the certification election in both T&H Shopfitters and Gin Queen. Eventually, the certification election was scheduled on October 11, 2004.

Meanwhile, through a memorandum, dated August 17, 2004, petitioner Ben Huang *(Huang)*, Director for Gin Queen, informed its employees of the expiration of the lease contract between Gin Queen and its lessor in Castillejos, Zambales and announced the relocation of its office and workers to Cabangan, Zambales. Some of the respondents, who visited the site in Cabangan, discovered that it was a *"talahiban"* or grassland. Later, the said union officers and members were made to work as grass cutters in Cabangan, under the supervision of a certain Barangay Captain Greg Pangan. Due to these circumstances, the employees assigned in Cabangan did not report for work. As a consequence, the THS-GQ Union president was made to explain why he should not be terminated for insubordination. The other employees who likewise failed to report in Cabangan were meted out with suspension.

On October 10, 2004, petitioners sponsored a field trip to Iba, Zambales, for its employees. The officers and members of the THS-GQ Union were purportedly excluded from the field trip. On the evening of the field trip, a certain Angel Madriaga, a sales officer of petitioners, campaigned against the union in the forthcoming certification election.

The following day or on October 11, 2004, the employees were escorted from the field trip to the polling center in Zambales to cast their votes. On October 13, 2004, the remaining employees situated at the SBFZ plant cast their votes as well. Due to the heavy pressure exerted by petitioners, the votes for "no union" prevailed. On October 14, 2004, the THS-GQ Union filed its protest with respect to the certification election proceedings.

Respondents averred that the following week after the certification elections were held, petitioners retrenched THG-GQ Union officers and

members assigned at the Zambales plant. Respondents claimed that the work weeks of those employees in the SBFZ plant were drastically reduced to only three (3) days in a month.

In its defense, Gin Queen, claiming that it is a corporation separate and distinct from T&H Shopfitters, stressed that respondents were all employees. Gin Queen claimed that due to the decrease in orders from its customers, they had to resort to cost cutting measures to avoid anticipated financial losses. Thus, it assigned work on a rotational basis. It was of the impression that the employees, who opposed its economic measures, were merely motivated by spite in filing the complaint for ULP against it.

In addition, Gin Queen explained that its transfer from Castillejos, Zambales to Cabangan, Zambales was a result of the expiration of its lease agreement with Myra D. Lumibao *(Myra)*, its lessor. Since the Cabangan site was bare and still required construction, Gin Queen offered work, to employees who opted to stay, on rotation as well.

In its Decision,[8] dated December 21, 2005, the LA dismissed respondents' complaint and all their money claims for lack of merit.

In dismissing the complaint, the LA explained:

> x x x x.
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> In the case at bar, we carefully examined the grounds raised by the complainants [herein respondents] as basis for claiming that the respondents [herein petitioners] committed unfair labor practices by way of illegal lockout, one of which is the alleged transfer of 17 workers to Subic Bay Freeport Zone, however, we are dismay *(sic)* to know that not even one of these 17 workers is a complainant in these cases. While the labor union may represent its members in filing cases before this Office, at least these members must show their intention to file a case by signing in the complaint to prove that they have grievances against their employer which was lacking in these cases. Further, there was no showing that the transfer of these 17 workers is considered an unfair labor practice of the respondents considering that their transfer was effected long before the union was organized.
>
> We also analyzed the allegations of the complainants that the transfer of the working cite *(sic)* of the respondent Gin Queen Corporation was a part of the unfair labor practices committed by the respondents, however, the complainants failed miserably to controvert the documentary evidence adduced by the respondent Gin Queen Corporation that the lease contract agreement of the place had already expired and it was the management prerogative to transfer as a cost cutting measures. Again the transfer of the place of work would not be considered as unfair labor practice.

[8] Id. at 203-215.

> Complainants alleged that the respondents committed unfair labor practices by means of 'lockout' wherein the respondents should have temporarily refused to provide work to the complainants by a result of labor or industrial dispute. Complainants failed to show that the rotation of work for them is considered an unfair labor practice and considered a 'Lockout'. Complainants rather submitted several notices showing that the company has no sufficient orders coming from clients and does not have enough raw materials for production as basis for these complainants not to render work and be rotated, and thus controvert their allegations that there was 'lockout' committed by the respondents. Further, the documentary evidences adduced by the complainants clearly show that respondents never terminated the complainants when they were given their notices of suspension negating the claim that there was 'lockout' committed by respondents.
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> x x x x.[9]

Aggrieved, respondents appealed to the NLRC. In its July 24, 2007 Decision, the NLRC *reversed* the LA decision and ruled in favor of respondents. The dispositive portion of the said decision reads:

> **WHEREFORE**, the decision appealed from is hereby **REVERSED**.
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> Respondents T & H Shopfitters Corp., Gin Queen Corp. (or 'MDL', as it is now called), Stennis Huang, as well as the presidents of the respondent corporations as of November 2003 and the date of the execution of this decision are hereby ordered to pay each of the complainants moral and exemplary damages amounting to ₱50,000.00 and P35,000.00 respectively. In addition, they shall pay the complainants attorney's fees equivalent to ten percent (10%) of the total judgment award.
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> SO ORDERED.

In granting the appeal, the NLRC reasoned:

> Based on the above-mentioned affidavits,[10] it may be concluded that the respondents [herein petitioners] committed unfair labor practice acts consisting in interfering with the exercise of the employees' right to self-organization (specifically, sponsoring a field trip on the day preceding the certification election, warning the employees of dire consequences should the union prevail, and escorting them to the polling center) and discriminating in regard to conditions of employment in order to discourage union membership (assigning union officers and active union members as grass cutters on rotation basis).

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[9] Citations omitted.

[10] Executed by herein respondent Elpidio Zaldivar; and a certain Darius Bustamante, who is not a party in the present case.

> x x x x
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> Furthermore, it is noteworthy that, based on their Articles of Incorporation, T & H Corporation and Gin Queen Corporation are engaged in the same line of business.
>
> It should also be noted that respondents did not controvert the allegations to the effect that Myra D. Lumibao, the supposed lessor of respondent corporations, is the wife of respondent Stennis Huang, and that Gin Queen Corporation has been renamed 'MDL', but still carries on the same business in the same premises using the same machines and facilities. These circumstances, together with the supposed assignment of respondent Stennis Huang's interest in Gin Queen Corporation to a third party are badges of fraud that justify the piercing of the veil of corporate fiction. x x x
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> Thus, based on the foregoing, respondents T & H Shopfitters Corporation, Gin Queen Corporation (now known as 'MDL') and Stennis Huang, as well as the presidents of the respondent corporations as of November 2003 and the date of execution of this decision may be held liable for unfair labor practice and the corresponding award of moral and exemplary damages.[11]

Petitioners filed a motion for reconsideration but the NLRC denied the same in its November 13, 2008 Decision.

Dissatisfied with the adverse ruling, petitioners instituted a petition for *certiorari* under Rule 65 of the Rules of Court before the CA arguing grave abuse of discretion on the part of the NLRC in reversing the LA decision.

In its Decision, dated November 12, 2009, the CA *sustained* the NLRC ruling. The *fallo* of which reads:

> WHEREFORE, premises considered, the petition for certiorari is DENIED. The NLRC Decisions dated July 24, 2007 and November 13, 2008 in NLRC NCR CA NO. 048258 (NLRC RAB III-09-7882-04, NLRC RAB III-09-7980-04) are AFFIRMED.
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> SO ORDERED.

The CA held that errors of judgment are not within the province of a special civil action for *certiorari*. It declared that factual findings of quasi-judicial agencies that had acquired expertise in matters entrusted to their jurisdiction were accorded not only respect but finality if they were supported by substantial evidence. The CA noted that the NLRC considered the evidence and applied the law in this case, thus, no grave abuse of discretion could be imputed on the part of the NLRC in reversing the LA ruling.

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[11] Citations omitted.

Petitioners moved for reconsideration but the same was denied by the CA in its March 24, 2010 Resolution.

Not in conformity with the ruling of the CA, petitioners seek relief with this Court raising the following

ISSUES

I. WHETHER OR NOT PETITIONERS T & H SHOPFITTERS CORPORATION AND GIN QUEEN CORPORATION ARE ONE AND THE SAME CORPORATION.

II. WHETHER OR NOT PETITIONER GIN QUEEN CORPORATION IS LIABLE TO THE RESPONDENTS FOR UNFAIR LABOR PRACTICE.

III. WHETHER OR NOT THE AWARD OF MORAL AND EXEMPLARY DAMAGES IN FAVOR OF THE RESPONDENTS IS PROPER.

IV. WHETHER OR NOT THE AWARD OF TEN PERCENT (10%) ATTORNEY'S FEES IN FAVOR OF THE RESPONDENT IS PROPER.[12]

Simply put, the issue for the Court's resolution is whether ULP acts were committed by petitioners against respondents in the case at bench.

In support of their position, petitioners stress that T&H Shopfitters and Gin Queen are corporations separate and distinct from each other. Consequently, T&H Shopfitters and Stinnes Huang, an officer of T&H Shopfitters, cannot be held liable for ULP for the reason that there is no employer-employee relationship between the former and respondents. Further, Gin Queen avers that its decision to implement an enforced rotation of work assignments for respondents was a management prerogative permitted by law, justified by the decrease in the orders it received from its customers. It explains that its failure to present concrete proof of its decreasing orders was due to the impossibility of proving a negative assertion. It also asserts that the transfer from Castillejos to Cabangan was made in good faith and solely because of the expiration of its lease contract in Castillejos.

The Court's Ruling

As to the issue of ULP, petitioners' argument is utterly without merit.

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[12] *Rollo*, p. 16.

In the case at bench, petitioners are being accused of violations of paragraphs (a), (c), and (e) of Article 257 (formerly Article 248) of the Labor Code,[13] to wit:

> Article 257. *Unfair labor practices of employers.*––It shall be unlawful for an employer to commit any of the following unfair labor practices:
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> (a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;
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> x x x x
>
> (c) To contract out services or functions being performed by union members when such will interfere with, restrain, or coerce employees in the exercise of their right to self-organization;
>
> x x x x
>
> (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. x x x

The concept of ULP is embodied in Article 256 (formerly Article 247) of the Labor Code,[14] which provides:

> Article 256. *Concept of unfair labor practice and procedure for prosecution thereof.*––Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.
>
> x x x x

In essence, ULP relates to the commission of acts that transgress the workers' right to organize. As specified in Articles 248 [now Article 257] and 249 [now Article 258] of the Labor Code, the prohibited acts must necessarily relate to the workers' right to self-organization x x x.[15]

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[13] Renumbered pursuant to Republic Act No. 10151.
[14] Renumbered pursuant to Republic Act No. 10151.
[15] *Baptista v. Villanueva*, G.R. No. 194709, July 31, 2013.

In the case of *Insular Life Assurance Co., Ltd. Employees Association – NATU v. Insular Life Assurance Co. Ltd.*,[16] this Court had occasion to lay down the test of whether an employer has interfered with and coerced employees in the exercise of their right to self-organization, that is, whether the employer has engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employees' rights; and that it is not necessary that there be direct evidence that any employee was in fact intimidated or coerced by statements of threats of the employer if there is a reasonable inference that anti-union conduct of the employer does have an adverse effect on self-organization and collective bargaining.

The questioned acts of petitioners, namely: 1) sponsoring a field trip to Zambales for its employees, to the exclusion of union members, before the scheduled certification election; 2) the active campaign by the sales officer of petitioners against the union prevailing as a bargaining agent during the field trip; 3) escorting its employees after the field trip to the polling center; 4) the continuous hiring of subcontractors performing respondents' functions; 5) assigning union members to the Cabangan site to work as grass cutters; and 6) the enforcement of work on a rotational basis for union members, all reek of interference on the part of petitioners.

Indubitably, the various acts of petitioners, taken together, reasonably support an inference that, indeed, such were all orchestrated to restrict respondents' free exercise of their right to self-organization. The Court is of the considered view that petitioners' undisputed actions prior and immediately before the scheduled certification election, while seemingly innocuous, unduly meddled in the affairs of its employees in selecting their exclusive bargaining representative. In *Holy Child Catholic School v. Hon. Patricia Sto. Tomas*,[17] the Court ruled that a certification election was the sole concern of the workers, save when the employer itself had to file the petition x x x, but even after such filing, its role in the certification process ceased and became merely a bystander. Thus, petitioners had no business persuading and/or assisting its employees in their legally protected independent process of selecting their exclusive bargaining representative. The fact and peculiar timing of the field trip sponsored by petitioners for its employees not affiliated with THS-GQ Union, although a positive enticement, was undoubtedly extraneous influence designed to impede respondents in their quest to be certified. This cannot be countenanced.

Not content with achieving a "no union" vote in the certification election, petitioners launched a vindictive campaign against union members by assigning work on a rotational basis while subcontractors performed the latter's functions regularly. Worse, some of the respondents were made to

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[16] 147 Phil. 194 (1971).
[17] G.R. No. 179146, July 23, 2013.

work as grass cutters in an effort to dissuade them from further collective action. Again, this cannot be countenanced.

More importantly, petitioners' bare denial of some of the complained acts and unacceptable explanations, a mere afterthought at best, cannot prevail over respondents' detailed narration of the events that transpired. At this juncture, it bears to emphasize that in labor cases, the quantum of proof necessary is substantial evidence,[18] or that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[19]

In fine, mindful of the nature of the charge of ULP, including its civil and/or criminal consequences, the Court finds that the NLRC, as correctly sustained by the CA, had sufficient factual and legal bases to support its finding of ULP.

Anent the issue on the award of attorney's fess, the applicable law concerning the grant thereof in labor cases is Article 111[20] of the Labor Code. Pursuant thereto, the award of 10% attorney's fees is limited to cases of unlawful withholding of wages. In this case, however, the Court cannot find any claim or proof that petitioners unlawfully withheld the wages of respondents. Consequently, the grant of 10% attorney's fees in favor of respondents is not justified under the circumstances. Accordingly, the Court deems it proper to delete the same.

WHEREFORE, the November 12, 2009 Decision of the Court of Appeals and its March 24, 2010 Resolution, in CA-G.R. SP No. 107188, are **AFFIRMED**, except with respect to the award of attorney's fees which is hereby **DELETED.**

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[18] *Antiquina v. Magsaysay Maritime Corporation*, G.R. No. 168922, April 13, 2011, 648 SCRA 659, 675, citing *National Union of Workers in Hotels, Restaurants and Allied Industries-Manila Pavilion Hotel Chapter v. National Labor Relations Commission*, G.R. No. 179402, September 30, 2008, 567 SCRA 291.

[19] *Surigao Del Norte Electric Cooperative v. Gonzaga*, G.R. No. 187722, June 10, 2013, citing *Caltex Philippines, Inc. v. Agad*, G.R. No. 162017, April 23, 2010, 619 SCRA 196, 207.

[20] Art. 111. Attorney's fees.

a. In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

b. It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice