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Makasiar, J., dissents. Suspension for three months of respondent from the practice of law, is justified by the adulterous acts in the hotels as the complainant was and is not legally divorced from her husband.

Antonio, J., reserves his vote.

Fernando, C.J. and *Teehankee, J.*, took no part.

Santos, J., is on leave.

SECOND DIVISION

[G.R. No. L-33015. September 10, 1979]

GOP-CCP WORKERS UNION, GERONIMO TRINIDAD, ROMULO FERNANDEZ, JOSE MEDENILLA, BENJAMIN DEL ROSARIO, LEONILA DE LEON, PEDRO MARCELINO, ISABEL ENRIQUEZ, DIOSDADO MARZAN, FERNANDO SOTELO, JUANITO MECUA, ERNESTO PUNO, ROGELIO MEDEL, ANTONIO LIMPIN, JOSE DUSABAN, ADOLFO DIGNADICE, CRISANTO SEBASTIAN and PEDRO PUYABAN, *petitioners, vs.* **COURT OF INDUSTRIAL RELATIONS, GENERAL OFFSET PRESS, INC., and CONTAINER CORPORATION OF THE PHILIPPINES,** *respondents.*

[G.R. No. L-47776. September 10, 1979]

GENERAL OFFSET PRESS, INC. and CONTAINER CORPORATION WORKERS UNION-PTGWO, REMUS HONOFRE, ANASTACIO SANCHEZ, ANDRES TUATIS & Other Members Listed in Annex "B" of Manifestation dated January 27, 1968, namely:

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RODRIGO AMANTE, GREGORIO AMILA, RICARDO ASTORGA, JUANITO BACANI, ERNESTO BAMBALAN, RODOLFO BONOVENTE, BENJAMIN BUNE, MONICO BATAC, VENANCIO BESA, INOCENCIO CABAL, ISIDRO CASTAÑEDA (Ferrer), FAUSTINO CHAVEZ, LEONARDO CHINGCUNGCO, UBALDO CUSTODIO, ROMEO DEANA, RAMON DIZON, RODOLFO DULAY, ILUMINADA ELIZARES, ISABEL ENRIQUEZ, FLAVIANO ESPINAS, CEFERINO FAELDONIA, MEDARDO FAELDONIA, ROMULO FERNANDEZ, RICARDO GATDULA, ANASTACIO GUICO, GEORGE HENSON, DOLORES HONOFRE, LEONILA DE LEON, ANASTACIO MAGAT, ALBERTO LUMICO, JUAN MAGAT, PEDRO MARCELINO, CRISANTA MARZAN, DIOSDADO MARZAN, ELISEO MARZAN, JUANITO MECUA, ROGELIO MEDEL, PABLITO ORTIZ, PEDRO POYAON, BIENVENIDO PAYONGAYONG, ANTONIO PEREZ, ERNESTO PUNO, BENIGNO PUYAWAN, OSCAR QUIAMCO, PABLO RAMOS, GREGORIA REYES, SALVADOR RIBOROSO, PROCESO RODRIGUEZ, BENJAMIN DEL ROSARIO, RENATO SARINAS, CRISANTO SEBASTIAN, SALVADOR SERRANO, FERNANDO SOTELO, NEMESIO SUANTE, AQUILINO TAYAMORA, GERONIMO TRINIDAD, PAZ TRINIDAD, RODOLFO VALDEZ, GERMAN VELASCO, EMILIANA VICTA and JOSE VILLANUEVA (all of General Offset Press, Inc.), FERMIN ABAINZA, VIRGILIO ALCANTARA, MARCELO ALCOREZA, REMEGIO AQUINO, TEODOLFO ARCANIO, FREDDIE DE ASIS, VICTORIANO BAMBALAN, DAVID BANDONG, ALFREDO BAUTISTA, ERNESTO BAUTISTA, CLARO CANCISIO, ANTONIO CHAVEZ, JOSE CHAVEZ, ROMEO DE LA CRUZ, RODOLFO DIGNADICE, JOSE DUSABAN, MARTIN ESTAVILLO, LAUREANO ESTEVEZ, CELEDONIO

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EVANGELISTA, RICARDO FEBRERO, RODRIGO FERE, EDUARDO FERRER, ENRIQUE FERRER, *SEVERINO FUENTES, FRANCISCO GALANG*, ROGELIO GALGUERRA, IGNACIO GERVACIO, ERNESTO GONZALES, CONCORDIO GRANADA, JOSE HONOFRE, ANTONIO LIMPIN, ILDEFONSO MANGASER, LEODEGARIO MARCELLANO, JOSEFINO MARGALLO, JOSE MEDENILLA, RODRIGO MANONGDO, JUAN MOSCA, MARIANO PEREZ, PEDRO PETRAS, FEDERICO RAMIREZ, EDELBERTO ROCA, EUGENIO SARMIENTO, RODOLFO SOLIDUM, SEVERINO SOLIS, JULIO *SOLOMON, MELCHOR TAMAYO and ANTONIO* VALENZUELA (all of Container Corporation of the Philippines), *petitioners, vs.* **Hon. RONALDO B. ZAMORA, as Presidential Assistant for Legal Affairs, OFFICE OF THE PRESIDENT OF THE PHILIPPINES, Hon. BLAS OPLE, as Secretary of Labor, NATIONAL LABOR RELATIONS COMMISSION, Hon. Arbiter NESTOR C. LIM, GENERAL OFFSET PRESS, INC., CONTAINER CORPORATION OF THE PHILIPPINES, BENITO PASCUAL, *ROBERTO HWANG and ROMEO* MONTEYRO,** *respondents.*

[G.R. No. L-30833. September 10, 1979]

GOP-CCP WORKERS UNION, *petitioner, vs.* **COURT OF INDUSTRIAL RELATIONS AND PHILIPPINE LABOR ALLIANCE COUNCIL (PLAC), Local 129, GOP-CCP CHAPTER,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; STRIKE OR WALKOUT; WHEN CONSIDERED ILLEGAL.— A strike or walkout on the basis of grievances which have not been submitted to the grievance committee, as stipulated in the agreement of the parties sanctioned by the CIR, is premature

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and illegal (*Insurefco Paper Pulp & Project Workers' Union vs. Insular Sugar Refining Corporation,* 95 Phil. 761. See 51 C.J.S. 1088 and 48 Am Jur 2nd 795)

2. ID.; ID.; ID.; WHEN CONSIDERED LAWFUL; CASE AT BAR.— To be lawful, a strike must be preceded by the requisite notice of intention to strike. It should have a lawful purpose and it should be executed through lawful means (*Maria Cristina Fertilizer Plant Employees Association vs. Maria Cristina Fertilizer Corporation*, L-33935, May 11, 1978, 83 SCRA 56, 66). In this case, the strike was not preceded by any notice. It was not peacefully conducted. It was in contravention of the "no strike, no lockout" stipulations of the collective bargaining agreements. The CIR correctly concluded that it was an illegal strike.

APPEARANCES OF COUNSEL

Samson S. Alcantara for petitioners GOP-CCP Workers Union.

Encarnacion, Fernandez, Quadra, Fernandez & Associates for petitioners in L-47776.

Generoso V. Jacinto Law Office for private respondents in L-33015 & L-47776.

Ernesto C. Estrella for private respondent in L-30833.

D E C I S I O N

AQUINO, *J.*:

These three related labor cases between the same union and employers and with the same factual background will be decided jointly.

L-33015. — This case involves the legality of a strike. The GOP-CCP Workers Union and its officers appealed from the resolution of the Court of Industrial Relations (CIR) affirming the order of Judge Emiliano C. Tabigne dated August 19, 1970. In that order, Judge Tabigne declared illegal the strike staged by the union on October 27, 1967, held that the officers of the union had lost their employee status, and authorized their

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employers, General Offset Press, Inc. and Container Corporation of the Philippines, to hire their replacements as the exigencies of their businesses may require (Case No. 4881-ULP).

The record discloses that on April 20, 1964 the union and the two above-named corporations, with plants in the same compound located at 62 Old Samson Road, Balintawak, Quezon City and alleged to be owned by one family, entered into collective bargaining agreements which would be effective for three years. By means of a supplementary agreement, the three-year term was extended to July 31, 1968.

The agreements contained arbitration clauses which outlined the grievance procedure for processing disputes regarding the terms of employment. They also included the following no-strike and no-lockout provisions:

"ARTICLE XXII — STRIKES, STOPPAGE OF WORK AND SETTLEMENT CLAUSE

"Section 1. The Union agrees that during the whole period of this agreement, there shall be no strike, walkouts, stoppage or slowdown of work, boycotts, secondary boycotts, refusals to handle any merchandise, picketing, sit down strikes of any kind, sympathetic or general strikes, and any other interference with any of the operation of the Company.

"Section 2. The Company agrees that there shall be no lockout either during the period of this agreement.

"Section 3. In case of any alleged unfair labor practice on the part of either party, there will be no strikes, lockouts, or any prejudicial action contemplated under the preceding Sections 1 and 2 until the *question or grievance is resolved by the proper court if not settled* through a grievance procedure therein outlined. x x x" (Exh. A-2 and B-2)

On October 26, 1967, two CIR prosecutors filed in behalf of the union and three dismissed employees named Remus Honofre, Anastacio Sanchez and Andres Tuatis a complaint for unfair labor practice against the two firms and their three officers named Benito Pascual, Robert Hwang and Romeo Monteyro.

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It was alleged in the complaint that the two firms failed to comply with their commitment to readjust the pay scales of the union members and that the three employees, Honofre, Sanchez and Tuatis, were dismissed because of their union membership and activities. The case was docketed as *Case No. 4873-ULP* and was assigned to *Judge Ansberto Paredes.*

On the following day, October 27, the union, without any notice, staged a strike and established picket lines at the plants of the two firms so as to implement their protest against the unfair labor practices complained of in Case No. 4873-ULP.

By way of retaliation, a countercharge for unfair labor practice was filed on November 7, 1967 by another CIR prosecutor in behalf of the two corporations against the union for having staged a strike in violation of the "no strike, no lock out" provisions and the grievance procedure outlined in the collective bargaining agreements. That case, docketed as Case No. 4881-ULP, was assigned to *Judge Tabigne.*

The union on December 20, 1967 sought the consolidation of the two cases due to identity of parties and close interweaving of issues but Judge Tabigne denied the consolidation.

In January, 1968, the union received a letter from the counsel of the two corporations, manifesting a desire for the formalization of a "return to work" agreement and requesting that the union should finalize its demands for the renewal of the collective bargaining agreements so that the negotiations might be started. The union signified its unqualified acceptance of that offer. It lifted its picket lines. The strikers held themselves in readiness to work immediately.

However, the two corporations allegedly refused to readmit the strikers with the exception of four of them. In view of that intransigent attitude of the employers, the union amended its complaint in *Case No. 4873-ULP* so as to charge such refusal as an additional unfair labor practice.

Believing that the amendment of the complaint in Case No. 4873-ULP constituted a prejudicial question in *Case No. 4881-ULP*, the union moved for a suspension of the proceedings in

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the latter case. Judge Tabigne denied the motion. The denial was affirmed by the CIR *en banc*.

After the two firms had presented their evidence in *Case No. 4881-ULP* in June, 1969, the union was required to present its evidence. It failed to do so. Hence, Judge Tabigne in his order of April 27, 1970 considered the case submitted for decision without the union's evidence. That order was affirmed by the CIR *en banc*. The union appealed from that order but it later withdrew its appeal.

As already stated, Judge Tabigne decided the case adversely to the union. His decision was affirmed by the court *en banc*. Judge Tabigne found (1) that when the strike was declared, there was no grievance pending between the union and the two employers and that, if there was such a grievance, the union did not avail itself of the procedure delineated in the collective bargaining agreements; (2) that there was no notice of the intention to go on strike and no such notice was filed with the Department of Labor; (3) that the strike, which contravened the said agreements, was characterized by coercion, intimidation and threats, and (4) that by means of picketing, the strikers, with their wooden placards, prevented the nonstriking employees from working.

Thus, Jesus C. Lopez, the plant manager of the Container Corporation of the Philippines, was threatened by the strikers that something would happen to him if he reported for work. On another occasion, the car of Lopez, who, with other employees, was reporting for work, was surrounded by the strikers and he was threatened with harm and insulted in this wise: "*Putang ina mo, para kang hindi Pilipino, salabusab.*" One of the strikers blocked the car of Lopez by placing a placard against the windshield. It was only through the intervention of a police lieutenant that Lopez was able to enter the premises of his employer. As a consequence of that incident, the strikers were charged in court with grave coercion.

On the same occasion, Rodolfo Ganzon, the driver of the General Offset Press, Inc., while approaching the gate to report for work, was stopped by Geronimo Trinidad, the president of

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the union. Trinidad sat on the hood of the truck driven by Ganzon and told him to stop; otherwise, something might happen to him and he might not be alive the next day. That incident also provoked the filing of a charge for grave coercion in the city court of Quezon City.

The CIR concluded that the strike was illegal, that it was in violation of the collective bargaining agreements and that the union did not bargain in good faith with the employers.

The union and its seventeen officers and agents, who were respondents in the unfair labor practice case, contend in this appeal in *Case No. 4881-ULP* that they were denied due process of law because the case was decided solely on the basis of complainants' evidence.

That contention is erroneous and unreasonable because the petitioners were given the opportunity to present their evidence but, to suit their purpose, they refused to do so. Their baseless pretext was that a prejudicial question was involved in the unfair labor practice case filed by them. It is incontestable that they were not denied due process at all.

Their argument that the CIR should have considered matters favorable to them although not presented in evidence is untenable. That procedure would not be fair to the employers who are also entitled to due process.

The petitioners argue that the CIR erred in deciding the unfair labor practice case filed by the employers without awaiting the outcome of the prior unfair labor practice case filed by the union. That argument appears to be preposterous in the light of subsequent events because the first unfair labor practice case was submitted for decision in the CIR in *1974* and was decided by a Labor Arbiter in *1975* and later passed upon by the National Labor Relations Commission and the Secretary of Labor and eventually decided by the Office of the President on November 18, *1977* (See pp. 38-40, *Rollo* of L-47776).

On the other hand, the instant case was decided by the CIR in *1970*. Had it been made to await the outcome of Case No.

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4873-ULP, it might still be undecided up to this time. The wheels of justice grind slowly. Delay is the bane of litigation.

The CIR did not gravely abuse its discretion when in its order of February 26, 1968 it denied the union's motion for the consolidation of the two unfair labor practice cases because "the facts, circumstances and remedies or reliefs prayed for" in the two cases "are at variance and entirely different" (pp. 78-81, *Rollo*)

The union brands as illegal the stipulation in the collective bargaining agreements that "in case of any alleged unfair labor practice on the part of either party, there will be no strikes, lockouts, or any prejudicial action x x x until the question or grievance is resolved by the proper court if not settled through a grievance procedure therein outlined."

The union's argument in support of that contention is vague and unconvincing. No specific statutory enactment was cited to show the illegality of that stipulation. The union merely avers that that stipulation contravenes Article 1701 of the Civil Code because it would permit capital to act oppressively against labor.

The legality of that kind of stipulation was inferentially upheld in *Liberal Labor Union vs. Philippine Can Company*, 91 Phil. 72, 78, where it was ruled: "The authorities are numerous which hold that strikes held in violation of the terms contained in a collective bargaining agreement are illegal, specially when they provide for conclusive arbitration clauses. These agreements must be strictly adhered to and respected if their ends have to be achieved." See Article 264 of the Labor Code regarding prohibition against strikes and lockouts.

In the *Liberal Labor Union* case, it appears that on February 26, 1949 the union and the company entered into a collective bargaining agreement. It was stipulated therein that if a laborer had a complaint, the same would first be resolved by a grievance committee. Then, if the decision was not satisfactory, the same would be referred to the top officials of the union and the company. And if still no settlement was reached, the matter would be submitted to the CIR.

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On March 14, 1949, the union declared a strike as a protest against the reduction of the wages of seven laborers. Later, the union filed in the CIR a petition wherein it prayed that the strike be declared legal. It was held that the strike was illegal because the union did not adhere to the procedure agreed upon for the settlement of disputes.

A strike or walkout on the basis of grievances which have not been submitted to the grievance committee, as stipulated in the agreement of the parties sanctioned by the CIR, is premature and illegal (*Insurefco Paper Pulp & Project Workers' Union vs. Insular Sugar Refining Corporation,* 95 Phil. 761. See 51 C.J.S. 1088 and 48 Am Jur 2nd 795)

The union in its fourth assignment of error argues that there is a total lack of evidence proving that the other members of the union had any complicity in the acts of coercion, intimidation and threats committed by some strikers like Geronimo Trinidad and Antonio Valenzuela who were both charged with grave coercion in the city court.

Trinidad was the union president. The intimidatory acts were committed in the presence of the other union members. They did not try to restrain the commission of those acts. Their presence and inaction were tantamount to assent to the commission of those acts.

Petitioners' last assignment of error is that the CIR erred in not granting their motion of July 27, 1970 to reopen the case. It will be recalled that Judge Tabigne in his order of *April 27, 1970* considered the case submitted for decision without petitioners' evidence. He decided the case on August 19, 1970. In his decision he stated that the motion for reopening was devoid of merit because the petitioners had been accorded sufficient opportunity to present their evidence and, therefore, the petitioners had not been denied due process.

Petitioners invoked Section 17 of Commonwealth Act No. 103, regarding "limit of effectiveness of award," to support their contention that the denial of their motion to reopen the case was erroneous. It should be noted that under Section 17,

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it is not mandatory or ministerial for the CIR to reopen any question involved in its award, order or decision. The reopening is discretionary with the CIR.

It is doubtful whether Section 17 sustains petitioners' contention that the CIR should have reopened the case three months after it had ordered that the case was submitted for decision. The truth was that the CIR was fed up with petitioners' dilatory tactics. Hence, it was disinclined to grant petitioners' motion to reopen the case.

The pervasive issue in this case is the legality of the strike. To be lawful, a strike must be preceded by the requisite notice of intention to strike. It should have a lawful purpose and it should be executed through lawful means (*Maria Cristina Fertilizer Plant Employees Association vs. Maria Cristina Fertilizer Corporation*, L-33935, May 11, 1978, 83 SCRA 56, 66).

In this case, the strike was not preceded by any notice. It was not peacefully conducted. It was in contravention of the "no strike, no lockout" stipulations of the collective bargaining agreements. The CIR correctly concluded that it was an illegal strike.

Since there is no merit in petitioners' appeal, Judge Tabigne's order of August 19, 1970 and the CIR's resolution of October 9, 1970 in Case No. 4881-ULP should be affirmed.

L-47776. — This is a special civil action of *certiorari* to set aside the decision of the Office of the President dated November 18, 1977 which affirmed the dismissal of the charges of unfair labor practice filed by the petitioners (the union and its one hundred eleven members) against General Offset Press, Inc. and Container Corporation of the Philippines, repeatedly referred to as CIR Case No. 4873-ULP.

As already stated, the said case was pending before Judge Ansberto Paredes. The CIR refused to consolidate it with the unfair labor practice case filed by the two companies against GOP-CCP Workers Union and its officers, CIR Case No. 4881-ULP, now L-33015, which has been disposed of earlier herein.

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After the abolition of the CIR, Case No. 4873-ULP was transferred to the National Labor Relations Commission.

The Labor Arbiter in his decision of May 27, 1975 dismissed the charges and refused to rule on complainants' petition for reinstatement with back wages because the matter of the legality of the strike was *sub judice* in L-33015, *ante*. As already stated, that decision was affirmed by the NLRC, by the Acting Secretary of Labor and, with the authority of the President of the Philippines, by the Presidential Assistant on Legal Affairs.

Thus, no less than four administrative officials of ascending rank ruled against the one hundred twelve petitioners. Presidential Assistant Ronaldo B. Zamora found that it was not proven that the two companies refused to bargain, or bargained in bad faith, concerning wage adjustments. He regarded as unfounded the charge that Honofre, Sanchez and Tuatis were dismissed because of their union activities.

He said that their dismissal was due to causes unconnected with their union activities.

Honofre was on an unauthorized leave of absence in view of his involvement in the alleged malversation of the money of his co-workers in a "*paluagan*" system. Sanchez and Tuatis were implicated in a theft case and were likewise on an unauthorized leave of absence because they were eluding the police.

These factual findings of the four administrative officials are binding on this Court and they render untenable petitioners' argument that the public respondents committed a grave abuse of discretion in not holding that the two companies were guilty of unfair labor practice.

In this *certiorari* case, which was filed on April 18, 1978, the principal issue is whether the two companies committed an unfair labor practice in refusing to readmit the one hundred fifteen striking members of the union despite their unconditional and voluntary offer to return to work on January 29, 1968.

The two companies refused to readmit the strikers because the agreement containing the conditions for their return to work

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was not formalized and because of the pendency of the case wherein the employers had sought a declaration that the strike was illegal (Annex NN and page 7 of memo, pp. 150 and 525 of *Rollo*).

In view of our finding in L-33015 or Case No. 4881-ULP that the strike was illegal, the corollary conclusion is that the two companies did not commit any unfair labor practice in refusing to readmit the strikers.

And considering that, as indicated hereinafter in the third case, L-30833, another union has supplanted the petitioner, GOP-CCP Workers Union, which at present has no member working in the two companies (Manifestation of April 16, 1979, pp. 454-6, *Rollo*), the cause of industrial peace would not be served if the one hundred eleven strikers or petitioners were to be reinstated.

Therefore, the petition should be dismissed and the decision of the Office of the President dated November 18, 1977 should be upheld. The individual petitioners have lost their status as employees of the two companies because of the illegality of their strike (*Maria Cristina Fertilizer Plant Employees Association-ALU vs. Maria Cristina Fertilizer Corporation*, L-33935, May 11, 1978, 83 SCRA 56, 66-67).

However, as a matter of compassionate justice, the strikers may be considered as dismissed employees entitled to the benefits of the Termination Pay Law as of October 27, 1967 when they stopped working.

The two companies should give the strikers separation pay if on that date they were already entitled to the benefits of that law (See *Adame vs. Court of Industrial Relations*, L-33221 and L-33262-63, April 28, 1975, 63 SCRA 469, 484).

L-30833. — As already stated in the two preceding cases, L-33015 and L-47776, in 1967, the GOP-CCP Workers Union had collected bargaining agreements with the General Offset Press, Inc. and the Container Corporation of the Philippines which were effective up to July 31, 1968. On October 27, 1967, or while the said agreements were in force, the union declared

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a strike as a protest against the alleged unfair labor practices committed by the said firms.

As a consequence of that strike, some members of the union shifted their allegiance to another union, the Philippine Labor Alliance Council (PLAC), Local 129, GOP-CCP Chapter.

On November 9, 1967, the PLAC filed with the Court of Industrial Relations a petition for the holding of a certification election to determine which union should be the sole bargaining agent of the workers in the two firms. Later, the PLAC asked that the certification election be restricted to the workers in the General Offset Press, Inc. (CIR Case No. 2048-MC)

The GOP-CCP Workers-Union was allowed to intervene in that certification election case. The two unions agreed that "a consent election" should be conducted by the CIR among the rank-and-file employees. Judge Amando C. Bugayong in his order of March 8, 1969 ordered the holding of the certification election on March 28, 1969 among the rank-and-file employees excluding those performing supervisory, confidential and managerial functions.

Judge Bugayong in that same order allowed to participate in the election the employees who were paid monthly (instead of only those workers who were paid daily). He also allowed to vote thirty-four employees, who were made permanent after the strike was declared, and those members of the GOP-CCP Workers Union who were involved in the unfair labor practice case filed by the company against the union. However, their votes were ordered segregated for further disposition by the court.

Disagreeing with those rulings of Judge Bugayong, the GOP-CCP Workers Union filed motions for reconsideration and for the suspension of the certification election. Those motions were not resolved right away. The election was held, as scheduled, on March 28, 1969. The GOP-CCP Workers Union did not take part in the election. The workers voted for the PLAC as their collective bargaining agent.

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On March 31, 1969, the GOP-CCP Workers Union filed a protest against the election and prayed that it be declared void. The PLAC filed an opposition to the protest. The CIR *en banc* in its resolution of June 16, 1969 affirmed Judge Bugayong's order. From that resolution, the GOP-CCP Workers Union appealed to this Court.

This Court in its resolution of December 11, 1978 required the parties to state whether there is an existing collective bargaining agreement between the General Offset Press, Inc. and its employees and whether supervening events have rendered the appeal moot and academic.

Respondent PLAC in its manifestation stated that a collective bargaining agreement was concluded between said union and the company on October 21, 1969; that thereafter the agreement was renewed every three years; that the latest one, duly certified by the Bureau of Labor Relations, is for the period from January 1, 1978 to December 31, 1980, and that at present the GOP-CCP Workers Union has no member working for the company, all the workers being affiliated with the PLAC, and they have ratified the collective bargaining agreement. The PLAC prayed that the case be dismissed for having become moot.

Appellant union in its manifestation *admitted that at present it has no member working for the company*. However, it countered that the issues in this appeal have not become moot because its members are still considered employees of the company, who can participate in future certification elections, and that the question of their reinstatement is pending before this Court in L-33015, *GOP-CCP Workers Union, et al. vs. Court of Industrial Relations*.

Appellant union contends that it was denied substantial justice because the certification election was held notwithstanding that it had moved for its suspension and for the reconsideration of the order scheduling it.

There is a ruling that in the absence of any restraining order issued by a competent court, the filing of a motion for reconsideration with the CIR *en banc* does not suspend *ipso*

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facto a scheduled certification election (*Philex Miners Union vs. National Mines & Allied Workers Union*, 116 Phil. 1282). Appellant union argues that the ruling in the *Philex* case does not apply to this case because the motion for suspension in that case was denied *before* the scheduled election was held.

In the instant case, the CIR held that appellant's motions were dilatory. It should be recalled that, originally, appellant union had agreed to the holding of the certification election. Foreseeing its defeat in the election, it resorted to the expedient of asking for the suspension of the certification election.

We hold that no injustice was perpetrated against the appellant when the certification election was held notwithstanding the pendency of its motions for reconsideration and for the suspension of the election. The CIR rightly sensed that those eleventh-hour maneuvers did not conduce to industrial peace and, instead, fomented uncertainty on the matter of representation of the workers.

The prior collective bargaining agreement expired on July 31, 1968. Appellant union, as the former collective bargaining agent, had lost the support of the majority of the workers. Another union had appeared on the scene. It was imperative that the question of representation should be set at rest as soon as possible. Hence, Judge Bugayong, with the consent of the two rival unions (appellant and the PLAC), set the certification election on March 28, 1969.

Considering that the appellant union did not take part in the election and that at present it has no member working for the company, it had ceased to have any interest in the issues raised by it, that is, whether the CIR erred in holding that the workers paid on a monthly basis should be allowed to vote and that the votes of the strikers and the scabs should be segregated. There is no point in resolving those issues at the behest of a union that has no member working for the company. (See *Velasco vs. Rosenberg*, 29 Phil. 212, 214.)

WHEREFORE, the petitions in these three cases are dismissed. In *L-33015*, the order of Judge Tabigne dated August 19, 1970 and the CIR's resolution of October 9, 1970 are affirmed.

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In *L-47776*, the decision rendered by Presidential Assistant Zamora is affirmed. The prayer of the individual petitioners for reinstatement and back wages is denied but respondents General Offset Press, Inc. and Container Corporation of the Philippines are directed to give separation pay under the Termination Pay Law to those strikers who were already entitled to the benefits of that law on October 27, 1967 when the illegal strike was declared and when they should be regarded as dismissed employees.

In *L-30833*, the union's appeal is dismissed for having become moot and academic. No costs.

SO ORDERED.

Barredo (Chairman), Antonio, Concepcion Jr., and *Abad Santos, JJ.*, concur.

Santos, J., is abroad.

EN BANC

[G.R. No. L-35281. September 10, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESSIE TAPALES *y* VARGAS and PEDRO CORAÑEZ *y* TATUALLA,** *defendants-appellants.*

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; PENALTY.— [W]hen Rape and Homicide co-exist in the commission of Robbery, it is paragraph 1 of Article 294 which applies, the Rape to be considered as an aggravating circumstance (*People vs. Ganal, et al.*, 85 Phil. 743 (1950); *People vs. Carillo*, 85 Phil. 611 (1950); *People vs. Bacsa,* 104 Phil. 136 (1958); *People vs.*