Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ADAMSON UNIVERSITY FACULTY AND EMPLOYEES UNION, represented by its president, and ORESTES DELOS REYES, Petitioners, -versus- **ADAMSON UNIVERSITY,** Respondent.	**G.R. No. 227070** Present: LEONEN, *J., Chairperson,* GESMUNDO, CARANDANG, ZALAMEDA, and GAERLAN, *JJ.* **Promulgated:** March 9, 2020

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DECISION

LEONEN, *J.*:

The use of expletives as a casual expression of surprise or exasperation is not serious misconduct per se that warrants an employee's dismissal. However, the employee's subsequent acts showing willful and wrongful intent may be considered in determining whether there is a just cause for their employment termination.

This Court resolves the Petition[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals, which affirmed the Panel of Voluntary

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1 *Rollo*, pp. 12–39. Filed under Rule 45 of the Rules of Court.

2 Id. at 362–384. The Decision dated April 28, 2016 was penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court) and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang, of the Ninth Division, Court of Appeals, Manila.

3 Id. at 405. The Resolution dated August 17, 2016 was penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court) and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang of the Ninth Division, Court of Appeals, Manila.

Arbitrators' Decision[4] finding that Orestes Delos Reyes (Delos Reyes) was validly dismissed from employment.

Delos Reyes was a university professor and the assistant chairperson of the Social Sciences Department of Adamson University (Adamson).[5] He was also the president of the Adamson University Faculty and Employees Union (the Union), a duly registered labor union and the sole and exclusive bargaining agent of Adamson's faculty and non-academic personnel.[6]

On September 5, 2014, Adamson received an administrative complaint against Delos Reyes. Josephine Esplago (Josephine) had apparently sued him on behalf of her daughter, 17-year-old Paula Mae Perlas (Paula Mae), a third year psychology student at Adamson. Josephine claimed that Delos Reyes violated the University Code of Conduct and Republic Act No. 7610 for abusing her child, a minor.[7]

By Josephine's account, Paula Mae encountered Delos Reyes as the professor was about to enter the faculty room of the Department of Foreign Languages. Paula Mae was holding the doorknob on her way out of the office, while Delos Reyes held the doorknob on the other side. When Paula Mae stepped aside, Delos Reyes allegedly exclaimed the words "*anak ng puta*" and walked on without any remorse. This caused emotional trauma to Paula Mae.[8]

On September 11, 2014, the president of Adamson created an Ad Hoc Investigating and Hearing Committee (Ad Hoc Committee) to hear the case and later submit its findings and recommendations to the Vice President for Academic Affairs for decision-making.[9]

On September 12, 2014, the Ad Hoc Committee issued a show cause memorandum to Delos Reyes, asking him to explain within five days why he should not be charged with gross misconduct and unprofessional behavior.[10]

When Delos Reyes had initially not filed an answer, he was granted a three-day extension.[11] By then, he submitted a written explanation using the Union's letterhead and signing as its president, denying the accusations against him. Delos Reyes "also filed a counter-complaint against Paula Mae for maligning and tarnishing his established reputation in the university."[12]

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4 Id. at 276–286. The May 12, 2015 Decision was penned by the Panel of Voluntary Arbitrators, consisting of Chair Norberto M. Alensuela, Sr. and Members Jaime B. Montealegre and Elmer D. Nitura.
5 Id. at 364.
6 Id.
7 Id. at 204 and 365.
8 Id. at 204.
9 Id. at 365.
10 Id. at 366.
11 Id. at 154.
12 Id. at 366 and 370.

The two cases were consolidated, and the hearing was held on October 7, 2014. Delos Reyes was represented by counsel.[13]

On October 24, 2014, Delos Reyes was issued a Notice of Dismissal.[14] He sought reconsideration, but this was denied.[15] On October 30, 2014, Adamson put out a paid advertisement on the Philippine Daily Inquirer's newspaper and website, which Delos Reyes claimed tarnished his reputation by announcing his dismissal.[16]

Delos Reyes filed a Notice of Strike before the National Conciliation and Mediation Board, but the parties eventually agreed to refer the matter to voluntary arbitration.[17]

After evaluating the evidence, the Panel of Voluntary Arbitrators ruled that Delos Reyes was validly dismissed in its May 12, 2015 Decision.[18] It noted that as a teacher of a Catholic educational institution and the Union's president, Delos Reyes had been "expected to exhibit conduct worthy of emulation"[19] but failed to do so. It deemed his use of the words "*anak ng puta*" without the slightest provocation as a grave depravity, especially when directed at a minor student.[20] It also weighed against him other previously filed complaints that showed his unprofessional behavior.[21]

The dispositive portion of the Decision read:

> WHEREFORE, premises considered, judgment is hereby rendered DECLARING that the dismissal of individual complainant Orestes Delos Reyes is valid and DISMISSING the instant complaint for lack of merit.
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> SO ORDERED.[22]

Delos Reyes filed a Petition for Review, but this was denied.[23] In its April 28, 2016 Decision,[24] the Court of Appeals preliminarily found that Delos Reyes was "amply accorded his right to procedural due process."[25] It went on to find him guilty of gross misconduct after considering Paula Mae's minority

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13 Id. at 376.
14 Id. at 366.
15 Id. at 371.
16 Id. at 367.
17 Id. at 276.
18 Id. at 276–286.
19 Id. at 280.
20 Id. at 280–281.
21 Id. at 283–284.
22 Id. at 286.
23 Id. at 383.
24 Id. at 362–384.
25 Id. at 376.

and her family's circumstances.[26] It also found his defenses of alibi and denial unsubstantiated and weak against Paula Mae's positive and categorical testimony.[27]

The Court of Appeals further ruled that Adamson was not liable for unfair labor practice since Delos Reyes's dismissal did not threaten the Union's existence. According to it, his headship in the Union did not make him immune from suit or excuse him from liability for gross misconduct and unprofessional behavior.[28]

After the Court of Appeals had denied his Motion for Reconsideration in its August 17, 2016 Resolution,[29] Delos Reyes filed this Rule 45 Petition[30] against Adamson.

Petitioner claims that respondent treated his case with such disparity from cases involving other employees. He alleges that respondent has chosen not to dismiss other employees despite findings of sexual harassment or theft of class records.[31] He insists that the complaint against him was hastily acted upon without the parties being able to talk and clarify the matter.[32] Moreover, he argues that the Ad Hoc Committee was biased against him,[33] recalling how it tackled unrelated complaints that he was not afforded any opportunity to refute.[34] He further points out that unlike hearings for other employees, his was attended by the university counsel who assisted the Ad Hoc Committee.[35] He also claims that the Ad Hoc Committee acted as Paula Mae's counsel, providing her with pieces of evidence and leading her to change her version of where the incident took place.[36]

As to the actual incident, petitioner denies that he "unjustifiably, angrily" yelled "*anak ng puta*" at Paula Mae.[37] He points out inconsistencies in her testimony, arguing that he was in his classroom, and not where Paula Mae had claimed, when the incident happened. In any case, he insists that he had no motive to malign Paula Mae, who was never his student, and whom he did not know before this incident.[38]

Petitioner also contends that "*anak ng puta*" per se is neither defamatory nor constitutive of gross misconduct and unprofessional behavior.

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26 Id. at 379–380.
27 Id. at 380.
28 Id. at 383.
29 Id. at 405.
30 Id. at 12–39.
31 Id. at 20 and 480.
32 Id. at 22–23.
33 Id. at 23.
34 Id. at 26 and 480.
35 Id. at 28.
36 Id. at 28–29.
37 Id. at 27.
38 Id. at 23–24.

He argues that there was no proof that he had perverse or corrupt motivations in violating the school policy.[39]

Should he be found guilty, petitioner asserts that dismissal was too harsh a penalty for the alleged infraction, especially since it would have been his first offense after 20 years of service.[40] He attests that he was well loved by his students and that he had been professional throughout his stint, mindful of others' feelings.[41]

Petitioner further contends that his dismissal constitutes unfair labor practice as it was done on account of his union activities, which involved taking a stand against the school's K-12 policies. He claims that respondent saw the complaint as an opportunity to get rid of him for being critical of the school's actions. He also asserts that the dismissal was done at the time the Union was mourning the death of its secretary.[42]

In its Comment,[43] respondent argues that petitioner raises questions of fact not proper in a Rule 45 petition.[44] It also points out that he is bound by the Panel of Voluntary Arbitrators' Decision under the parties' Collective Bargaining Agreement, which provided that during arbitration, the Panel's decision shall be final and cannot be appealed.[45]

Moreover, respondent argues that petitioner impleads the Union in this case—even without being authorized to do so—just to intimidate Paula Mae and her mother. It points out that the Verification attached to the Petition only shows him as the petitioner. It also asserts that the controversy has no connection with the Union's activities or right to self-organize, as respondent and the Union still have a good relationship and have entered into a new Collective Bargaining Agreement.[46]

Maintaining that petitioner was accorded due process, respondent asserts that he was given an opportunity to be heard through his written explanation, memorandum, and an administrative hearing.[47]

As to the incident itself, respondent insists on petitioner's guilt for gross misconduct and unprofessional behavior.[48] It notes that Paula Mae was emotionally traumatized even weeks after the incident, as she was sensitive to words such as "*anak ng puta*," having been raised by a single mother and not

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39 Id. at 25 and 31.
40 Id. at 31.
41 Id. at 24–25.
42 Id. at 18 and 32.
43 Id. at 417–475.
44 Id. at 418 and 429–431.
45 Id. at 417 and 428.
46 Id. at 432.
47 Id. at 435–436.
48 Id. at 418.

being exposed to swearwords.[49] It contends that as a professor of a Catholic school, petitioner was expected to protect the students' interests and welfare.[50] It also notes that petitioner did not say "*anak ng puta*" jokingly, but in a harsh and angry manner.[51] Petitioner could not have said it in surprise either, respondent points out, because it was unlikely that he did not notice Paula Mae through the door's glass window.[52]

Respondent likewise argues that petitioner cannot deny the incident itself.[53] According to it, Paula Mae was not shown to have been motivated by ill will, and the minor inconsistencies in her testimony had already been clarified in the hearing.[54] Her testimony was also corroborated by three (3) students who witnessed the incident and talked to Paula Mae.[55] Against this, respondent posits that petitioner's alibi cannot prevail especially since his classroom was in the same building, a mere floor and a five-minute walk from the incident scene.[56]

Respondent points out that petitioner refused to apologize to Paula Mae; instead, he filed a complaint against her to ensure that she would withdraw her case.[57] It notes that he would do this every time a complaint is filed against him, causing the other party to withdraw or just amicably settle the matter.[58]

According to respondent, Paula Mae's case was among the many complaints that show petitioner's abrasive personality and propensity to repeat the same transgressions.[59] His unjust refusal to sign the receiving copy of the documents being served on him only adds to his unprofessional behavior, respondent notes.[60] It argues that employers may validly consider previous records, especially if offenses are similar in nature,[61] and can let go of an employee whose service is inimical to its interests.[62]

Respondent also argues that the length of petitioner's service does not mitigate his liability, but actually demands a greater responsibility to comply with workplace rules.[63] It asserts that petitioner's previous merits are immaterial and do not disprove the incident or negate his liability.[64]

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49 Id. at 418 and 442.
50 Id. at 447 and 458.
51 Id. at 448.
52 Id. at 447 and 459.
53 Id. at 445.
54 Id. at 437 and 469.
55 Id. at 445.
56 Id. at 446.
57 Id. at 443.
58 Id. at 461.
59 Id. at 418 and 449–450.
60 Id. at 464.
61 Id. at 451.
62 Id. at 457 and 468.
63 Id. at 457.
64 Id. at 432–433.

Respondent contends that it is not guilty of unfair labor practice, since the dismissal was not related to the Union's activities, its right to self-organize, or its existence; rather, it was solely due to petitioner's personal actions. Prior to the incident, respondent submits, it even extended him a cash advance of ₱200,000.00, showing their previously good relations.[65] In any case, respondent maintains that the Union president is not immune from suit or liability for gross misconduct or unprofessional behavior.[66]

Finally, as to the news of petitioner's dismissal being published, respondent states that this was done to protect its reputation against petitioner's untruthful public statements that he was dismissed for his views on the K-12 program. Respondent attests that it only sought to clarify that the cause of his dismissal was his misconduct.[67]

In his Reply,[68] petitioner explains that as the Union's president, he is sometimes in collision with the school management, especially when promoting the rights and welfare of association members and, occasionally, students.[69] He also points out that the cash advance of ₱200,000.00 is not an extraordinary accommodation, as it is given to all qualified employees.[70]

The issues for this Court's resolution are:

First, whether or not petitioner Orestes Delos Reyes was validly dismissed from employment; and

Second, whether or not his dismissal constitutes unfair labor practice.

This Court affirms the Court of Appeals' ruling.

We will no longer review the lower tribunals' factual findings. In a Rule 45 petition, this Court only considers questions of law. It is not our function to re-analyze evidence. In *Fuji Television Network, Inc. v. Espiritu*:[71]

> When a decision of the Court of Appeals under a Rule 65 petition is brought to this court by way of a petition for review under Rule 45, only questions of law may be decided upon. As held in *Meralco Industrial v. National Labor Relations Commission*:

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65 Id. at 470.
66 Id. at 472.
67 Id. at 433–434.
68 Id. at 479–482.
69 Id. at 480.
70 Id. at 481.
71 749 Phil. 388 (2014) [Per J. Leonen, Second Division].

> This Court is not a trier of facts. Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts. Besides, factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of appeals, are conclusive upon the parties and binding on this Court.

Career Philippines v. Serna, citing *Montoya v. Transmed*, is instructive on the parameters of judicial review under Rule 45:

> As a rule, only questions of law may be raised in a Rule 45 petition. In one case, we discussed the particular parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, as follows:
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> > In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; *we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct*. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.[72] (Emphasis in the original, citations omitted)

Here, both the Court of Appeals and the Panel of Voluntary Arbitrators found that petitioner exclaimed "*anak ng puta*" upon encountering Paula Mae. Their findings on his subsequent acts are also similar and were not shown to be devoid of support. The lower tribunals similarly considered the evidence by both parties. Thus, this Court accords weight to these findings.

This Court finds that petitioner was validly dismissed.

The following are grounds for termination under the Labor Code:

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[72] Id. at 415–416.

> ARTICLE 297. [282] *Termination by Employer.* — An employer may terminate an employment for any of the following causes:
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> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
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> (b) Gross and habitual neglect by the employee of his duties;
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> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
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> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
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> (e) Other causes analogous to the foregoing.

Petitioner was charged with gross misconduct and unprofessional behavior in violation of Section 16(4) of Batas Pambansa Blg. 232, or the Education Act of 1982.[73] The provision states:

> SECTION 16. *Teacher's Obligations.* — Every teacher shall:
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> 1. Perform his duties to the school by discharging his responsibilities in accordance with the philosophy, goals, and objectives of the school.
>
> 2. Be accountable for the efficient and effective attainment of specified learning objectives in pursuance of national development goals within the limits of available school resources.
>
> 3. Render regular reports on performance of each student and to the latter and the latter's parents and guardians with specific suggestions for improvement.
>
> 4. *Assume the responsibility to maintain and sustain his professional growth and advancement and maintain professionalism in his behavior at all times.*
>
> 5. Refrain from making deductions in students' scholastic ratings for acts that are clearly not manifestations of poor scholarship.
>
> 6. Participate as an agent of constructive social, economic, moral, intellectual, cultural and political change in his school and the community within the context of national policies. (Emphasis supplied)

In *National Labor Relations Commission v. Salgarino*,[74] this Court elaborated on what constitutes serious misconduct:

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73 *Rollo*, p. 202.

74 529 Phil. 355 (2006) [Per J. Chico-Nazario, First Division].

> Misconduct is defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character and *implies wrongful intent and not mere error of judgment*. The misconduct to be serious within the meaning of the act must be of such a grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must nevertheless be in connection with the work of the employee to constitute just cause from his separation.
>
> In order to constitute serious misconduct which will warrant the dismissal of an employee under paragraph (a) of Article 282 of the Labor Code, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been *performed with wrongful intent*.[75] (Emphasis in the original, citation omitted)

Misconduct is not considered serious or grave when it is not performed with wrongful intent. If the misconduct is only simple, not grave, the employee cannot be validly dismissed.[76]

A teacher exclaiming "*anak ng puta*" after having encountered a student is an unquestionable act of misconduct. However, whether it is serious misconduct that warrants the teacher's dismissal will depend on the context of the phrase's use. "*Anak ng puta*" is similar to "*putang ina*" in that it is an expletive sometimes used as a casual expression of displeasure, rather than a personal attack or insult. In *Pader v. People*:[77]

> In *Reyes vs. People*, we ruled that the expression *"putang ina mo"* is a common enough utterance in the dialect that is often employed, not really to slander but rather to express anger or displeasure. In fact, more often, it is just an expletive that punctuates one's expression of profanity. We do not find it seriously insulting that after a previous incident involving his father, a drunk Rogelio Pader on seeing Atty. Escolango would utter words expressing anger. Obviously, the intention was to show his feelings of resentment and not necessarily to insult the latter. Being a candidate running for vice mayor, occasional gestures and words of disapproval or dislike of his person are not uncommon.[78] (Citation omitted)

A review of the records reveals that the utterance in question, "*anak ng puta*," was an expression of annoyance or exasperation. Both petitioner and Paula Mae were pulling from each side of the door, prompting the professor to exclaim frustration without any clear intent to maliciously damage or cause emotional harm upon the student. That they had not personally known each other before the incident, and that petitioner had no personal vendetta against Paula Mae as to mean those words to insult her, confirm this conclusion.

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75 Id. at 368–369.
76 Id. at 368.
77 381 Phil. 932 (2000) [Per J. Pardo, First Division].
78 Id. at 936.

However, it is petitioner's succeeding acts that aggravated the misconduct he committed. He not only denied committing the act, but he also refused to apologize for it and even filed a counter-complaint against Paula Mae for supposedly tarnishing his reputation. He even refused to sign the receiving copy of the notices that sought to hold him accountable for his act.

While uttering an expletive out loud in the spur of the moment is not grave misconduct per se, the refusal to acknowledge this mistake and the attempt to cause further damage and distress to a minor student cannot be mere errors of judgment. Petitioner's subsequent acts are willful, which negate professionalism in his behavior. They contradict a professor's responsibility of giving primacy to the students' interests and respecting the institution in which he teaches. In the interest of self-preservation, petitioner refused to answer for his own mistake; instead, he played the victim and sought to find fault in a student who had no ill motive against him.

Indeed, had he been modest enough to own up to his first blunder, petitioner's case would have gone an entirely different way.

This Court likewise notes the Panel of Voluntary Arbitrators' factual finding that a similar complaint had already been filed against petitioner. In its Decision, it found:

> In another occasion, a complaint for verbal abuse was filed against individual complainant by certain parents for and in behalf of their daughter, a dean's lister of respondent Adamson. However, as indicated by their parents' subsequent letter to the Director of Office for Student Affairs, they agreed to withdraw the said complaint. Their decision to withdraw the complaint was due to the parties' understanding that herein individual complainant should also withdraw his separate complaint against their daughter and the same should not reflect to their daughter's academic record.[79]

The Panel of Voluntary Arbitrators also noted that his aggressive behavior extends to his colleagues:

> In particular, The Director of Human Resource Department Office called his attention through a memorandum for his display of unprofessional behavior. The Director personally witnessed complainant that he openly shouted and displayed dirty finger sign against his immediate superior Chairperson Milagros Urbano.
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> His subsequent Chairperson Dr. Josielyn Mendoza likewise previously filed a complaint against him for his unruly and disruptive behavior. Among others, Chairperson Mendoza stated that when she was

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[79] *Rollo*, p. 284.

presiding their social science faculty meeting and about to present a fellow professor to report the financial expenses during the previous academe conference, herein individual complainant suddenly interrupted and refused the report to proceed and angrily shouted at her "*Tama na! Mag prankahan tayo!*; that individual complainant exclaimed during the same meeting in front of the other faculty members that Professor Joseph Medillo seems to be the apple of the eyes of their Chairperson; that sometime in 2012, she was threatened by individual complainant saying "*Kapag binigay mokay Don-don xxx ang OJT... pasasabugin ko ang departamento xxx Wag kang tumawa, hindi ako nagbibiro, pasasabugin ko talaga ang departamento.*"; that she previously witnessed individual complainant challenging Professor Ricky Maano to a fist fight; that "although Prof. Delos Reyes and his infamous attitude was never an urban legend, I and the Social Science department (his mother department) have remained deaf and silent in dealing with all his temperaments through the years. There were already a number of incidents that Prof. Delos Reyes had shown his combative behaviour towards me as the chairperson of the department."

Another separate complaint, Chairperson Mendoza also stated that individual complainant without any provocation suddenly confronted her while she was having a chat with a professor. She reported that "he looked at me with furious eyes and poked a finger at my face and said: *Kaya ikaw tigilan mo na ang pagsasabi na walang ginagawa ang Union!* In a loud voice and in an intimidating manner. xxx *Pasalamat ka at nirerespeto pa kita dahil kay Buknoy!* Referring to my younger brother. xxx his notorious attitude and unprofessional behaviour is not unknown in the university. However, no matter how disruptive and unruly his behaviour may be towards other members of this University, he can freely do so with impunity."[80]

The Ad Hoc Committee had the same findings:

The Committee has been apprised as to the existence of a report and complaint pertaining to his drastic conduct and display of disrespectful behavior last September 1, 2014 when he confronted Dr. Josielyn M. Mendoza, his former Chair at the Social Sciences Department. Respondent has reportedly looked at Ms. Mendoza with furious eyes and poked a finger at her face and said "Kaya ikaw tigilan mo na ang pagsasabi mo na walang ginagawa ang Union!" in a loud voice and in an intimidating manner[.] She pointed in her letter-complaint that it was not the first time that respondent disrespected her. She further continued in her complaint that "His notorious attitude and unprofessional behavior is not unknown in the University. However, no matter how disruptive and unruly his behavior may be towards other members of this University he can freely do so with impunity."

In 2001, in his 201 File, the then Director for Human Resource Development Office, Ana Liza M. Ragos even cited the respondent with "display of unprofessional behavior in the office" when he was personally seen to have shouted words and resorted to dirty finger sign against his past Chairperson, Ms. Milagros Urbano. Even granting for the sake of argument, that there has been a heated exchange argument between the two, a dirty finger sign smacks of indiscipline and unprofessionalism.

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80 Id.

> On a final note, the open defiance and disrespect to school authorities and processes are magnified in this case as respondent refused to sign any order served on him. He even used, intentionally or unintentionally the letterhead of the AUFEA in his letters to the Committee and signed the same as AUFEA President when he is being complained of as a faculty member and not in his capacity as the Union President. This only shows that respondent had the propensity to commit and display among his peers and, more so, to the students a misbehavior which is a characteristics (*sic*) of misconduct.[81] (Citations omitted)

The reports reveal petitioner's pugnacious character and ill-mannered conduct. In *Sy v. Neat, Inc.*,[82] this Court discussed the principle of totality of infractions:

> In determining the sanction imposable on an employee, the employer may consider the former's past misconduct and previous infractions. Also known as the principle of totality of infractions, the Court explained such concept in *Merin v. National Labor Relations Commission, et al.*, thus:
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> > The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty. Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests. It has the right to dismiss such an employee if only as a measure of self-protection.[83] (Citation omitted)

Likewise, in *Sugue v. Triumph International (Phils.), Inc.*,[84] this Court stated that employers are not expected to retain an employee whose behavior causes harm to its establishment:

> Indeed, the law imposes many obligations on the employer such as providing just compensation to workers, and observance of the procedural

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81 Id. at 213–214.

82 *Sy v. Neat, Inc.*, G.R. No. 213748, November 27, 2017, 846 SCRA 612 [Per J. Peralta, Second Division].

83 Id. at 630–631.

84 597 Phil. 320 (2009) [Per J. Leonardo-De Castro, First Division].

> requirements of notice and hearing in the termination of employment. On the other hand, *the law also recognizes the right of the employer to expect from its workers not only good performance, adequate work and diligence, but also good conduct and loyalty. The employer may not be compelled to continue to employ such persons whose continuance in the service will patently be inimical to his interests.*[85] (Citation omitted)

Petitioner cannot rely on his 20-year stay in the university to shield him from liability. Quite the contrary, "the longer an employee stays in the service of the company, the greater is his responsibility for knowledge and compliance with the norms of conduct and the code of discipline in the company."[86]

For all these reasons, petitioner's dismissal was valid.

II

Likewise, respondent is not guilty of unfair labor practice.

The various acts of unfair labor practice are found under Article 259 of the Labor Code:

> ARTICLE 259. [248] *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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> (b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;
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> (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;
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> (d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters;
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> (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 stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an

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85 Id. at 341.

86 *Punzal v. ETSI Technologies, Inc.*,546 Phil. 704, 717–718 (2007) [Per J. Carpio Morales, Second Division].

appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement: *Provided,* That the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent;

(f) To dismiss, discharge or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;

(g) To violate the duty to bargain collectively as prescribed by this Code;

(h) To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or

(i) To violate a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, only the officers and agents of corporations, associations or partnerships who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable.

Unfair labor practices are violative of the constitutional right of workers to self-organize:

ARTICLE 258. [247] *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.

Consequently, unfair labor practices are not only violations of the civil rights of both labor and management but are also criminal offenses against the State which shall be subject to prosecution and punishment as herein provided.

Subject to the exercise by the President or by the Secretary of Labor and Employment of the powers vested in them by Articles 263 and 264 of this Code, the civil aspects of all cases involving unfair labor practices, which may include claims for actual, moral, exemplary and other forms of damages, attorney's fees and other affirmative relief, shall be under the jurisdiction of the Labor Arbiters. The Labor Arbiters shall give utmost priority to the hearing and resolution of all cases involving unfair labor practices. They shall resolve such cases within thirty (30) calendar days from the time they are submitted for decision.

Recovery of civil liability in the administrative proceedings shall bar recovery under the Civil Code.

> No criminal prosecution under this Title may be instituted without a final judgment finding that an unfair labor practice was committed, having been first obtained in the preceding paragraph. During the pendency of such administrative proceeding, the running of the period of prescription of the criminal offense herein penalized shall be considered interrupted: *Provided, however*, That the final judgment in the administrative proceedings shall not be binding in the criminal case nor be considered as evidence of guilt but merely as proof of compliance of the requirements therein set forth.

In *UST Faculty Union v. University of Santo Tomas*,[87] this Court ruled that the person who alleges the unfair labor practice has the burden of proving it with substantial evidence:

> The general principle is that one who makes an allegation has the burden of proving it. While there are exceptions to this general rule, in the case of ULP, the alleging party has the burden of proving such ULP.
>
> Thus, we ruled in *De Paul/King Philip Customs Tailor v. NLRC* that "a party alleging a critical fact must support his allegation with substantial evidence. Any decision based on unsubstantiated allegation cannot stand as it will offend due process".
>
> While in the more recent and more apt case of *Standard Chartered Bank Employees Union (NUBE) v. Confesor*, this Court enunciated:
>
> > **In order to show that the employer committed ULP under the Labor Code, substantial evidence is required to support the claim.** Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . .
>
> In other words, whether the employee or employer alleges that the other party committed ULP, it is the burden of the alleging party to prove such allegation with substantial evidence. Such principle finds justification in the fact that ULP is punishable with both civil and/or criminal sanctions.[88] (Emphasis in the original, citations omitted)

In determining whether an act of unfair labor practice was committed, the totality of the circumstances must be considered.[89] In *Great Pacific Life Employees Union v. Great Pacific Life Assurance Corporation*,[90] this Court discussed that if the unfair treatment does not relate to or affect the workers' right to self-organize, it cannot be deemed unfair labor practice. A dismissal of a union officer is not necessarily discriminatory, especially when that officer committed an act of misconduct. In fact, union officers are held to higher standards:

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87 602 Phil. 1016 (2009) [Per J. Velasco, Jr., Second Division].

88 Id. at 1025–1026.

89 *See Republic Savings Bank v. Court of Industrial Relations*, 128 Phil. 230 (1967) [Per J. Castro, En Banc].

90 362 Phil. 452 (1999) [Per J. Bellosillo, Second Division].

> *While an act or decision of an employer may be unfair, certainly not every unfair act or decision constitutes unfair labor practice* (ULP) as defined and enumerated under Art. 248 of the Labor Code.
>
> 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 be held liable under this provision if his conduct affects in whatever manner the right of an employee to self-organize.* The decision of respondent GREPALIFE to consider the top officers of petitioner UNION as unfit for reinstatement is not essentially discriminatory and constitutive of an unlawful labor practice of employers under the above-cited provision. Discriminating in the context of the Code involves either encouraging membership in any labor organization or is made on account of the employee's having given or being about to give testimony under the Labor Code. These have not been proved in the case at bar.
>
> To elucidate further, there can be no discrimination where the employees concerned are not similarly situated. *A union officer has larger and heavier responsibilities than a union member. Union officers are duty bound to respect the law and to exhort and guide their members to do the same; their position mandates them to lead by example.* By committing prohibited activities during the strike, de la Rosa as Vice President of petitioner UNION demonstrated a high degree of *imprudence and irresponsibility.* Verily, this justifies his dismissal from employment. Since the objective of the Labor Code is to ensure a stable but dynamic and just industrial peace, the dismissal of undesirable labor leaders should be upheld.
>
> It bears emphasis that the employer is free to regulate all aspects of employment according to his own discretion and judgment. This prerogative flows from the established rule that labor laws do not authorize substitution of judgment of the employer in the conduct of his business. Recall of workers clearly falls within the ambit of management prerogative. The employer can exercise this prerogative without fear of liability so long as it is *done in good faith for the advancement of his interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or valid agreements. It is valid as long as it is not performed in a malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite.*[91] (Emphasis supplied, citations omitted)

In this case, it is clear that petitioner's dismissal, which was brought about by his personal acts, does not constitute unfair labor practice as provided under the Labor Code. Dismissing him was not meant to violate the right of the university employees to self-organize. Neither was it meant to interfere with the Union's activities.[92] Likewise, petitioner failed to prove that the proceedings were done with haste and bias. Finally, petitioner cannot raise the defense that he was the Union's president; this does not make him immune from liability for his acts of misconduct.

Petitioner also insists that respondent's paid advertisement on the Philippine Daily Inquirer was meant to tarnish his and his family's

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[91] Id. at 463–465.
[92] Id.

reputation.[93] However, a reading of the advertisement reveals that it was only meant to clarify particular circumstances about the incident. It reads:

> **STATEMENT AND CLARIFICATION ON THE DISMISSAL FROM SERVICE OF A FACULTY MEMBER AT ADAMSON UNIVERSITY**
>
> Misleading information as to the reason for the dismissal from employment of Mr. Orestes delos Reyes, Jr. at Adamson University is being propagated inside and out of the campus. To put the record straight, the Administration hereby issues this statement regarding the finding of administrative culpability of Mr. delos Reyes, a faculty member and the sitting President of the Adamson University Faculty and Employees Association (AUFEA).
>
> Mr. delos Reyes was charged and found guilty of ***gross misconduct*** and ***unprofessional behavior*** in violation of Section 16 par. 4 of the Education Act of 1982 when he, without provocation, uttered abusive language, in a loud and sharp manner, to a minor female student.
>
> Please be informed of the following:
>
> ***There was a valid charge.*** Let it be known that the charges against Mr. delos Reyes stemmed from a complaint of abuse of a minor under RA 7610 filed by a BS Psychology student and her mother last September 2, 2014.
>
> ***There was an impartial body.*** The complaint has been taken cognizance of, heard and investigated by an impartial body created by the University President.
>
> ***There was due process and full accord of rights.*** Mr. delos Reyes has been fully accorded with his rights. He was given ample opportunity to explain his side. A hearing has been conducted and parties were given the right to confront the witnesses against them and adduce further evidence. Mr. delos Reyes was even represented by his counsel during the hearing.
>
> ***There is no connection between his stand on the K-12 issue and his dismissal.*** Contrary to Mr. delos Reyes's claims, he was not dismissed from service because of his stand on the K-12 program. Proceedings on the administrative complaint against him began on September 2, 2014, more than a month before the K-12 forum organized by the AUFEA on October 20 and 21, 2014. The University recognizes his right to freely express his viewpoint on the issue. This, however, is irrelevant to the charges made against him by the student and has no bearing on the decision to dismiss him.
>
> The administration wishes to underscore that culpability attaches to anyone, regardless of position and status. The speculation that Mr. de los Reyes is being singled out and persecuted, as being spread by unnamed individuals, thus, giving the insinuation of union busting is untrue and false. Position in the academe or in the union does not make one immune from liability or provide an exempting circumstance. Mr. de los Reyes has been charged in his capacity as member of Faculty and not his being the President of AUFEA. His other designation is by far immaterial to the charges leveled

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[93] Id. at 367.

against him.

> To this end, the Administration exhorts the community to be discerning and perceptive of the kind of information and talks being disseminated on the matter stated.[94] (Emphasis in the original)

An employer's management prerogative to dismiss an employee is valid as long as it is done in good faith and without malice. In *Wise and Co., Inc. v. Wise & Co., Inc. Employees Union-NATU*:[95]

> The Court holds that it is the prerogative of management to regulate, according to its discretion and judgment, all aspects of employment. This flows from the established rule that labor law does not authorize the substitution of the judgment of the employer in the conduct of its business. Such management prerogative may be availed of without fear of any liability so long as it is exercised in good faith for the advancement of the employers' interest and not for the purpose of defeating or circumventing the rights of employees under special laws or valid agreement and are not exercised in a malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite.[96] (Citations omitted)

In this case, this Court finds no bad faith on respondent's part in dismissing petitioner.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals' April 28, 2016 Decision and August 17, 2016 Resolution are **AFFIRMED.** Petitioner Orestes Delos Reyes was validly dismissed from employment.

SO ORDERED.

MARVIC M.V. F. LEONEN
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Associate Justice

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94 Id. at 115.
95 258-A Phil. 316 (1989) [Per J. Gancayco, First Division].
96 Id. at 321–322.

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
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.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

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.

DIOSDADO M. PERALTA
Chief Justice