

MARSMAN & CO. INC., PETITIONER, VS. CONSOLIDATED LABOR ASSOCIATION OF THE PHILIPPINES, HON. JOSE S. BAUTISTA, HON. ARSENIO I. MARTINEZ, HON. BALTAZAR M. VILLANUEVA, AND HON. EMI...*G.R. No. L-17057. July 31, 1964*

Ponente: MAKALINTAL, J.

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In the Court of Industrial Relations, Marsman & Co., Inc., hereinafter referred to as the Company, was charged with unfair labor practice committed against sixty-nine officers and members of the Marsman & Company Employees and Laborers Association (hereinafter referred to as MARCELA or simply as the Union). The Court (Judge Jose S. Bautista), after hearing, found the Company guilty of the charge and ordered it to reinstate 60 of the aforementioned 69 complainants to their former positions or to similar ones with the same rate of pay, without back wages. On motions for reconsideration filed by the Union and by the Company, respectively, the Court en banc affirmed the decision—with Judge Arsenio I. Martinez concurring in the result; Judge Baltazar M. Villanueva concurring in the result in a special opinion; Judge Emiliano C. Tabigne filing a separate concurring and dissenting opinion; and Judge Amando C. Bugayong taking no part.

Both the Union and the Company appealed. The former claims that the 60 reinstated employees should be granted backpay (G. R. No. L-17038) while the latter questions the Industrial Court's finding of unfair labor practice (G-R. No. L-17057).

The facts, as found by the Industrial Court, are: The Company had in its employ approximately 320 persons, about 140 of whom were members of MARCELA and about 20 of the National Labor Union. On December 23, 1953 the Industrial Court named MARCELA as the employees' bargaining agent in regard to rates of pay, terms and conditions of employment. At that time MARCELA was affiliated with the Federation of Free Workers, or FFW, a national Labor Organization. On March 17, 1954 MARCELA-FFW submitted to the Company a set of proposals for collective bargaining, which the Company answered on March 24, 1954. In spite of negotiations held between the Company and the Union, they failed to reach an agreement; so on April 8, 1954 the Union tiled a notice of strike with the Department of Labor. Mediation by the Conciliation Service of that Department proved fruitless.

On June 4, 1954 the Union declared a strike and at the same time placed a "round-the-clock" picket line around the Company's premises in Intramuros, Manila. The tense situation in the strike zone prompted the Manila Police Department to send policemen thereto to preserve peace- Meanwhile the Labor Department's Conciliation Service continued to mediate between the representatives of the Union and of the Company.

On July 21, 1954 some 50 employees, of whom nine were members of the National Labor Union and one a member of MARCELA, entered the Company premises under police escort in order to return to work.

On July 30, 1954, in a conference called by Eleuterio Adevosio, then Secretary of Labor, the Union officials and members then present were prevailed upon by Adevosio to accept the proposal of Antonio de las Alas, Company vice-president, that they stop the strike and go back to work, and that when they were already working the company would discuss with them their demands. Upon being informed of the Union's acceptance of the proposal the strikers returned to work. The Company admitted back sixteen picketing strikers on August 9, 1954 and later on, it also reemployed non-union employees and a majority of the strikers. However, complainants herein were refused admittance and were informed by Company officials that they would not be reinstated unless they ceased to be active Union members and that in any case the Company already had enough men for its business operations.

As a result the strike and the picketing were resumed, because of which employees who had been admitted to work since July 21, 1954 had to stay inside the Company premises, where the Company furnished them food and quarters up to October 1954. Nevertheless some of those employees could go in and out after office hours to visit their families.

During the strike, some of the picketers and some non-strikers were arrested within the strike zone for having committed unlawful acts, and were duly charged therewith.

A petition for writ of injunction filed by the Company against MARCELA and its president, Buenaventura Bacay, on the ground that the strike and picket were being maintained illegally, was denied by the Court of First Instance of Manila, which pointed out that proper criminal complaints should have been filed against the individual strikers in the corresponding courts.

Because of the Company's consistent refusal to reinstate the 69 complainants even after repeated requests, the Confederation of Labor Associations of the Philippines (CLAP), to which the Union had affiliated after seceding from the FFW, initiated the present charge for unfair labor practice.

Initially the strike staged by the Union was meant to compel the Company to grant it certain economic benefits set forth in its proposal for collective bargaining. The strike was an economic one,[1] and the striking employees would have a right to be reinstated if, in the interim, the employer had not hired other permanent workers to replace them. For it is recognized that during the pendency of an economic strike an employer may take steps to continue and protect his business by supplying places left vacant by the strikers, and is not bound to discharge those hired for that purpose upon election of the strikers to resume their employment.[2] But the strike changed its character from the time the Company refused to reinstate complainants because of their union activities after it had offered to admit all the strikers and in fact did readmit the others. It was then converted into an unfair labor practice strike.

The Company disputes the Industrial Court's findings that (1) it offered to reinstate all the strikers; (2) the complainants made a timely acceptance of the offer; and (3) the Company's refusal to reinstate complainants was for the purpose of discouraging union activities.

Substantial evidence supports the findings of fact of the Court of Industrial Relations. Complainants Teodoro Bacalzo, Raymundo Mostoles-Cruz, Mariano Bautista, and Godofredo Garcia testified thus: They were all present at the July 30, 1954 conference called by then Labor Secretary Eleuterio Adevosio in order to settle the differences between the Company and the Union. It was during this conference that Antonio de las Alas, then the Company's vice-president, offered to take back all the strikers if they would only stop the strike and as further inducement promised that the Union's demands would be discussed when the strikers were already working. Adevosio convinced the Union Officers and members who were present to accept De las Alas' proposal.

The lower court's reasons, we think, amply answer the Company's contention that De las Alas could not, by his offer, have bound the Company because it was Velilla, and not he, who had the authority to deal with the strikers:

"The denial of respondent that Antonio de las Alas was not authorized by the Company but Amando L. Velilla to deal with the union with respect to the strike is not worthy of belief. First because then De las Alas was an executive Vice-President while Velilla was only the Secretary of the Company; second, while respondent wants to impress this Court that Velilla's authority to deal with the strikers was by virtue of the Board resolution, such document was not presented in Court; and third not even De las Alas was presented to make the denial."

The Company claims that the complainants applied for readmission only on June 7, 1955, more than a year after the offer, when the CLAP, in their behalf, wrote the Company asking for their reinstatement. Prior to said letter, however, complainants had, by various means, sought readmission. After De las Alas invitation to return to work was accepted by the Union officers and members, they informed all the other strikers accordingly. Thereupon the strikers terminated the strike and presented themselves for work at the Company's premises. Eighty one of the strikers were allowed to come back. But the Company's security guards, upon instructions of the Company officials, barred the entrance when complainants attempted to enter, and informed them that they had to write individual letters of application. So complainants complied with this requirement. It appears that the applications were scrutinized by a committee of employees composed of Salvador Bantique, assistant accountant of the mines division; Mariano Lee, purchasing agent; Juan de Vera, paymaster; and Regino Cruz, accountant. Then the applications were further screened by a personnel committee composed of Jan H. Marsman, Antonio de las Alas, Charles G. Herdman and Amando Velilla. None of the sixty-nine applications met with favorable action by either committee.

In addition to writing formal letters of application a member of the complainants phoned while others personally approached their respective chiefs of department in the Company. Some also went to see Salvador Bantique, chairman of the screening committee, and expressed their desire to work. Bantique, however, upon learning that the strikers, among them Eulogio Labrador, were still active union members, informed them that they should first disaffiliate from the union in order to be reinstated. Furthermore, Amando Velilla, when approached by a group of complainants, told the latter that they had been away for a long time; that the Company had enough employees and did not need additional help; that some of those whom he had invited to return refused; and that by that time (August, 1954) it was already too late for them to wish to return.

The Company alleges that it was economic reasons, i. e., its policy of retrenchment, not labor discrimination, which prevented it from rehiring complainants. This is disproved, however, by the fact that it not only readmitted the other strikers, but also hired new employees and even increased the salaries of its personnel by almost 50%. We are convinced that it was not business exigency but a desire to discourage union activities which prompted the Company to deny readmittance to complainants. This is an indubitable case of unfair labor practice.

The strike was illegal of purpose, the Company insists, first, because it was staged for a trifling reason: and second, the union 'demands, which had precipitated the strike, were already covered by an Industrial Court judgment, for the alteration, modification or setting aside of which a certain procedure has to be followed.

The Union began the strike because it believed in good faith that settlement of their demands was at an impasse and that further negotiations would only come to naught. It stopped the strike upon the belief they could go back to work. Then it renewed the strike (or it started a new strike) as a protest against the discrimination practiced by the Company. Both are valid grounds for going on a strike.

It is true that on August 14, 1952 the Industrial Court promulgated a decision in CIR Case No. 571-V, Marsman

and Company Employees and Laborer Association (MARCELA-FFW) vs. Marsman and Company, Inc. However, except for demand for general salary increases, the demands in said labor case were different from the demands which the Union made before it went on strike. For this reason, it did not have to ask for modification of the aforementioned judgment. It had only to give the proper strike notice, as in fact it did.

The Company further argues that since the methods used by the strikers were illegal, it had the right to refuse them readmission. Of the 69 complainants, nine, namely Alejandro Mojar, Manuel Mazo, Esteban Borja, Cecilio Walo, Eugenio Valenzuela, Elias Matic, Marcos Buccat, Malisimo Vargas and Ricardo Antonio were charged with and convicted of various crime like coercion, malicious mischief, physical injuries, breach of the peace, light threats, and damage to property, all Committed during the period from September 4, 1954 to October 12, 1954. Admittedly, the Company could not have condoned those acts which were committed after it had offered to reinstate the strikers. Nevertheless, as the lower court reasoned out it docs not appear that the aforementioned individual acts were authorized or even impliedly sanctioned by the Union. Hence, the other strikers who were innocent of and did not participate in the illegal acts should not foe punished by being deprived of their right of reinstatement. It is only those who had been found guilty who should be penalized by the loss of the right.[3]

We now come to the question of backpay. In an economic strike, the strikers are not entitled to backpay, since the employer should get the equivalent day's work for what he pays his employees- During the time that the strike was an economic one, complainants had no right to back pay. The Industrial Court could not have made a finding of unfair labor practice with respect to such time, as none had so far been committed. This being an unfair labor practice case, it cannot, therefore, order reinstatement much less back pay for that period.[4]

On the other hand, even after the court has made a finding of unfair labor practice, it still has the discretion to determine whether or not to grant back pay. Such discretion was not abused when it denied back wages to complainants, considering the climate of violence which attended the strike and picket that the complainants conducted. While the complainants ordered reinstated did not actively take part in the acts of violence, their minatory attitude towards the Company may be gathered from the fact that from the very first day of the strike policemen had to patrol the strike zone in order to preserve peace.

Wherefore, the judgment appealed from is affirmed, without costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes and Regala, JJ., concur.

[1] An economic strike is defined as one which is to forge wage or other concessions form the employer which he is not required by law to grant.

[2] Teller, Labor Disputes and Collective Bargaining, Vol. II 754-755.

[3] PECO vs. C.I.R. L-7156, May 31, 1955.

[4] Malaya Workers Union (PAFLU) vs. C.I.R. L-17880-81, April 23, 1963.

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