

**ARELLANO UNIVERSITY EMPLOYEES AND WORKERS UNION,
CARLOS C. A. RIVAS, JR., SIMEON B. INOCENCIO, ROMULO D. JACOB,
NYMIA M. PINEDA, BENEDICTO I. NIETO, JR., LUIS JACINTO,
MILBERT M...**

G.R. NO. 139940. September 19, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Subject of the present petition for certiorari are the Court of Appeals Resolution of April 13, 1999[1] and Resolution of September 3, 1999[2] which dismissed petitioners' petition for certiorari for having been filed six days beyond the reglementary period under Section 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended by Supreme Court En Banc Resolution dated July 21, 1998 reading:

If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Emphasis and underscoring supplied)

Petitioners, in the main, plead for the application of substantial justice over procedural lapses, conformably to this Court's pronouncements in several cases, and a liberal construction of the Rules in order to promote its objective of securing a just disposition of every action or proceeding.[3]

The record shows that the September 3, 1999 Resolution of the Court of Appeals denying petitioners' motion for reconsideration was received by them on September 13, 1999. On September 27, 1999, petitioners filed a motion for 30-day extension of time to file petition which this Court granted.[4] On October 28, 1999, petitioners filed the present petition for certiorari.[5] Doubtless, petitioners could not have availed of such petition as a mere substitute for lost appeal,[6] hence, this Court treats it as one for review under Rule 45.

Indeed, Section 4 of Rule 65 of the 1997 Rules of Civil Procedure was amended by the July 21, 1998 Resolution of this Court En Banc by adding to it as second paragraph the above-quoted amendment.

The same Section was, however, subsequently amended by this Court's En Banc Resolution in A.M. No. 00-2-03-SC which took effect on September 1, 2000 providing for a 60-day period to file petition under Rule 65 from denial of a motion for reconsideration or new trial. As thus further amended, Section 4 of Rule 65 now reads:

SEC. 4. When and where petition filed. - The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion. (Emphasis and underscoring supplied)

The rule is settled that remedial statutes or modes of procedure, which do not create new rights or take away vested rights but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the purview of the general rule against the retroactive operation of statutes. They are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent. Hence, in a long line of cases,[7] the new period under Section 4 of Rule 65 was given retroactive application. Of course at the time the assailed Resolutions of the appellate court were issued in 1999, Section 4 of Rule 65 had not yet been amended by this Court's Resolution in A.M. No. 00-2-03- SC.

There being no reason why Section 4 of Rule 65, as amended in 2000 by this Court, may not be given retroactive application to petitioners' petition, it now gives said application. While, normally, a remand of the case to the appellate court for further proceedings is done,[8] this Court now opts to decide the petition on the merits to forestall further delay in its disposition.

On December 12, 1997, the Arellano University Employees and Workers Union (the Union), the exclusive bargaining representative of about 380 rank-and-file employees of Arellano University, Inc. (the University), filed with the National Conciliation and Mediation Board (NCMB) a Notice of Strike charging the University with Unfair Labor Practice (ULP) as follows:

- Interfering in union activities;
- Union Busting - violation of CBA's Article IV, Section 2;[9]
- Union Busting - disregarding the union's request to deduct penalties from its members who were absent and without justifiable reasons during union meetings; and
- Contracting Workout - the management is contracting out services and functions being performed by Union members.[10]

The Notice of Strike was docketed as NCMB-NCR-NS-12-520-97.

Subsequently or on December 17, 1997, a majority of the members of the Union filed a December 15, 1997 petition for audit[11] of union funds before the Office of the National Capital Region Director of the Department of Labor and Employment (DOLE) against the officers of the Union.

On March 11, 1998, the Regional Director of DOLE-NCR directed the Union officers to call a general membership meeting to, among other things, render an accounting of union funds amounting to P481,117.28 which were remitted per the check-off statement.[12]

Also on March 11, 1998, then DOLE Secretary Cresenciano B. Trajano certified the Notice of Strike for compulsory arbitration to the National Labor Relations Commission (NLRC) which the latter assigned to Labor Arbiter Cristeta D. Tamayo. The Labor Arbiter set the dispute for hearing/conference on July 3, 1998, July 17, 1998, and August 11, 1998. No settlement was reached by the parties, however.[13]

On July 28, 1998, the University moved for the consolidation with the ULP charge (NCMB-NCR- NS-12-520-97) the Interpleader[14] it filed against the Union and some of its members, docketed as NLRC NCR Case No. 00-02-02036-98 and pending before Labor Arbiter Felipe T. Garduque II, and the Complaint the Union filed for underpayment of wages arising from the change in the manner of computation of salary of employees and non-payment of Sunday pay, docketed as NLRC NCR Case No. 00-02-01422-98 and pending before Labor Arbiter Ramon Valentin T. Reyes, both of which involve the same parties.[15]

Before the NLRC could act on the University's motion for consolidation, DOLE Secretary Bienvenido E. Laguesma, by Order[16] of August 5, 1998, certified for compulsory arbitration to the NLRC a second Notice of

Strike filed by the Union on July 16, 1998, docketed as NCMB-NCR-NS-07-277-98, charging the University with the following:

- Violation of Collective Bargaining Agreement (CBA), Art. V - withholding of union and death benefits;
- Violation of CBA, Art. VI - non-granting of ten (10%) percent salary increase to some union members;
- Illegal/unauthorized deductions in the payroll;
- Union interference - circulating letters against the union; and
- Non-implementation of the retirement plan as approved by the BIR.[17]

A strike was in fact staged on August 5, 1998.

By the same Order of August 5, 1998, the DOLE Secretary directed the strikers to return to work within twenty-four (24) hours. The order was served upon the Union on August 6, 1998, and the following day, August 7, 1998, at about 3:00 p.m., the Union lifted its strike.[18]

The strike staged by the Union on August 5-7, 1998 prompted the University to file on August 24, 1998 a petition to declare the same illegal, docketed as NLRC-NCR Case No. 00-08-06897-98, which was also consolidated with the other cases.

Resolving the consolidated cases, the NLRC, by Decision[19] of October 12, 1998, disposed as follows:

WHEREFORE, judgment is hereby rendered declaring:

- That the Union's two notices of strike docketed as NCMB-NCR-NS-12-520-97 and NCMB-NCR-NS-07-277-98 were, to the extent as they concern the issues herein resolved, without merit;
- That as a consequence, the University is absolved from the charges of Unfair Labor Practice contained in said notices of strike;
- The loss of employment status of all the individual respondents in NLRC-NCR-Case No. 00-08-06897-98; and
- That there is no diminution of workers' benefits in NLRC-NCR Case No. 00-02-01422-98, because apart from the Union's failure to prove it, the University, based on existing laws, is correct in using 314 days as divisor in computing the daily wage of its daily paid employees.

SO ORDERED.[20] (Emphasis and underscoring supplied)

The NLRC found that what triggered the strike was the Union's suspicion that the petition for audit of union funds was initiated by the University. The NLRC, citing an Order of March 11, 1998 issued by the DOLE Regional Director, found the therein petitioners to have initiated, out of their own volition, the filing of the petition. It thus concluded that there was no factual basis to hold the University guilty of interference in union activities.[21]

On the allegation of union busting, the NLRC ruled that the refusal of the University to deduct penalties from the salaries of members of the Union who failed to attend meetings was based on Article IV, Section 2[22] of the CBA vis-à-vis Section 1[23] of the same Article which requires as condition for a valid checkoff prior submission to the management of individual checkoff authorizations, a requirement which was not met by the Union.[24] Besides, the NLRC held, the law mandates that the Union should not be "arbitrary, excessive or oppressive" in imposing a fine.[25]

On the claim that the University had been contracting out work, the NLRC held that the same was never raised

during the conciliation meetings at the NCMB level.[26]

Respecting the second Notice of Strike, the NLRC found that only the charges of violation of the CBA for withholding union dues and death benefits, and the non-implementation of the retirement plan, as approved by the BIR, were left for resolution as the Union dropped the other issues raised therein after the NCMB hearings on July 21, 1998 and July 28, 1998.[27]

Crediting the explanation of the University that its withholding of union dues and death aid benefits was upon the written request of several union members themselves, the NLRC held that no ULP was committed.

On the charge of non-implementation of the retirement plan by the University, the NLRC found that the same was baseless and it was in fact not ventilated before the NCMB.[28]

In NLRC NCR Case No. 00-02-02036-98, the NLRC ruled that the University may not be held guilty of ULP for refusal to heed the demand of the Union that salaries of its members be deducted for their failure to attend union meetings: firstly, because the Union itself failed to meet the requirements provided for in Sections 1 and 2, Article IV of the CBA; and secondly, an interpleader had been filed by the University for the parties to litigate their claims before the NLRC.[29] The NLRC also ruled that the resolution calling for such deduction was not valid as it was not even signed by the majority of Union officers and circulated to the members.[30]

In NLRC NCR Case No. 00-08-06897-98 (the University's petition to declare the strike staged by the Union on August 5-7, 1998 illegal), the NLRC granted the petition and declared the loss of employment status of all the strikers for knowingly defying the Return-to-Work Order of the DOLE Secretary dated August 5, 1998, said Order having been served upon the union on August 6, 1998 but it was only on August 7, 1998, at about 3:00 p.m., that the strike was lifted.[31]

In NLRC NCR Case No. 00-02-01422-98, the NLRC ruled that the University was correct in using 314 days as divisor, instead of 365 days, in computing the "equivalent daily rate"[32] of pay of a worker.

The Union et al. (hereafter petitioners) filed a motion for reconsideration of the NLRC decision which was denied by Resolution[33] of January 20, 1999. Hence, they elevated the decision to the Court of Appeals via petition for certiorari which was, as stated early on, dismissed.

In the present petition, petitioners insist that the University violated the CBA by withholding union dues and death benefits. The University counters that on the request of Union members in light of their gripes against the Union and its officers, it did withhold said dues and benefits which they deposited with the DOLE where the parties could settle the issues among themselves.

The then prevailing Rules Implementing the Labor Code, Book V[34], Rule XVIII provided that

Section 1. Right of union to collect dues. - The right of the incumbent bargaining representative to check off and to collect dues resulting therefrom shall not be affected by the pendency of a representation case or an intra-union dispute.[35] (Emphasis supplied)

To constitute ULP, however, violations of the CBA must be gross. Gross violation of the CBA, under Article 261 of the Labor Code, means flagrant and/or malicious refusal to comply with the economic provisions thereof. Evidently, the University can not be faulted for ULP as it in good faith merely heeded the above-said request of Union members.

On the NLRC's declaration of loss of employment status of the strikers, the pertinent provision of Article 264 of the Labor Code provides:

Article 264.

x x x x

" Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status" (Emphasis and underscoring supplied)

Under the immediately quoted provision, an ordinary striking worker may not be declared to have lost his employment status by mere participation in an illegal strike. There must be proof that he knowingly participated in the commission of illegal acts during the strike. While the University adduced photographs[36] showing strikers picketing outside the university premises, it failed to identify who they were. It thus failed to meet the "substantiality of evidence test"[37] applicable in dismissal cases.

Petitioner-union members must thus be reinstated to their former position, without backwages. If reinstatement is no longer possible, they should receive separation pay of One (1) Month for every year of service in accordance with existing jurisprudence.[38]

With respect to the union officers, as already discussed, their mere participation in the illegal strike warrants their dismissal.

As for petitioners' claim of substantial diminution of their salary on account of the divisor used by the University in its computation - 314 days, instead of 365 days, this Court finds nothing wrong therewith. Sundays being un-worked and considered unpaid rest days, while regular holidays as well as special holidays considered as paid days,[39] the factor used by the University merely complies with the basic rule in this jurisdiction of "no work, no pay." The right to be paid for un-worked days is generally limited to the ten legal holidays in a year.[40]

WHEREFORE, the Court of Appeals Resolution of April 13, 1999 and Resolution of September 3, 1999 are SET ASIDE.

The NLRC Decision of October 12, 1998 and Resolution of January 20, 1999 are AFFIRMED, with the MODIFICATION that the dismissal of petitioner-union members MONICO CALMA, CONSTANCIO BAYHONAN, BERNARDO SABLE, NESTOR BRINOSA, NANJI MACARAMPAT, EDUARDO FLORAGUE and DIONY S. LUMANTA is SET ASIDE, and they are thus ordered REINSTATED WITHOUT BACKWAGES. If their reinstatement is no longer possible, however, they should be given SEPARATION PAY at the rate of One (1) Month pay for every year of service.

SO ORDERED.

Quisumbing, (Chairman), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 205-207. Penned by Justice Marina L. Buzon with the concurrence of Justices Jesus M. Elbinias and Eugenio S. Labitoria.

[2] Id. at 208-209. Also penned by Justice Marina L. Buzon.

[3] Id. at 23.

[4] Id. at 3-4.

[5] Id. at 14.

[6] Vide Borja v. Court of Appeals, G.R. No. 95667, May 8, 1991, 196 SCRA 847, 851.

[7] Ramatek Philippines, Inc. v. De los Reyes, G.R. No. 139526, October 25, 2005, 474 SCRA 129, 139-141; Pobre v. Court of Appeals, G.R. No. 141805, July 8, 2005, 463 SCRA 50, 62-63; PCI Leasing and Finance, Inc. v. Go Ko, G.R. No. 148641, March 31, 2005, 454 SCRA 586, 590-592; Santiago v. Bergensen D.Y. Philippines, G.R. No. 148333, November 17, 2004, 442 SCRA 486, 489-491; Embassy of the Islamic Republic of Iran v. FOP Corporation, G.R. No. 145043, February 13, 2004, 422 SCRA 597, 601-602; San Luis v. Court of Appeals, G.R. No. 142649, September 13, 2001, 365 SCRA 279, 284-285; Serrano v. Court of Appeals, G.R. No. 139420, August 15, 2001, 363 SCRA 223, 228-229; Pfizer, Inc. v. Galan, G.R. No. 143389, May 25, 2001, 358 SCRA 240, 245-246; Unity Fishing Development Corp. v. Court of Appeals, G.R. No. 145415, February 2, 2001, 351 SCRA 140, 142-143.

[8] Vide Pobre v. Court of Appeals, supra; PCI Leasing and Finance, Inc. v. Go Ko, supra; Santiago v. Bergensen D.Y. Philippines, supra; Embassy of the Islamic Republic of Iran v. FOP Corporation, supra.

[9] ARTICLE IV. UNION DUES AND CHECK OFFS

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Section 2. Upon submission and delivery to the Management of the individual check off of the Union dues and assessments, the management will transmit monthly the amount collected to the treasurer of the Union. (NLRC Records, Vol. 7, Annex "E," p. 113).

[10] NLRC records, Vol. 7, Annex "D," p. 111; rollo, p. 54.

[11] NLRC records, Vol. 7, Annex "A," p. 88.

[12] Vide Order of Regional Director of DOLE-NCR Maximo Lim, NLRC records, Vol. 7, Annex "B," pp. 107-108.

[13] Rollo, p. 55.

[14] NLRC records, Vol. 7, Annex "OO," p. 224.

[15] Rollo, p. 55.

[16] NLRC records, Vol. 7, Annex "FFF," p. 304.

[17] Rollo, p. 55.

[18] Id. at 69.

[19] Id. at 53-74.

[20] Id. at 73.

[21] Id. at 59.

[22] Supra Note 9.

[23] ARTICLE IV. UNION DUES AND CHECK OFFS

Section 1. The Management agrees to check off or make payroll deductions of the Union dues and other agreement or assessments, once a month, provided the Union submits to the Management individual check off authorization. (NLRC records, Vol. 7, p. 113).

[24] Rollo, p. 60.

[25] Id. at 61.

[26] Ibid.

[27] Id. at 62.

[28] Id. at 64.

[29] Id. at 66.

[30] Id. at 67.

[31] Id. at 68-69.

[32] Id. at 71-72.

[33] Id. at 76-90.

[34] As amended by the Rules and Regulations Implementing RA 6715, and further amended by Department Order No. 09, Series of 1997, which took effect on June 21, 1997.

[35] Presently, the Implementing Rules of Book V, Section 1, Rule XIII (Department Order No. 40-03, Series of 2003) provides:

Section 1. Right of union to collect dues and agency fees. - The incumbent bargaining agent shall continue to be entitled to check-off and collect dues and agency fees despite the pendency of a representation case, other inter/intra-union disputes or related labor relations disputes.

[36] NLRC records, Vol 7, Annex "NNN-1" to Annex "NNN-10," pp. 317-320.

[37] Association of Independent Unions in the Philippines v. NLRC, G.R. No. 120505, March 25, 1999, 305 SCRA 219, 231-233.

[38] Vide Philippine Diamond Hotel and Resort, Inc. v. Manila Diamond Hotel Employees Union, G.R. No. 158075, June 30, 2006; Maranaw Hotels and Resort Corporation v. NLRC, 363 Phil. 163, 168 (1999); Gold City Integrated Port Service, Inc. v. NLRC, G.R. No. 103560, July 6, 1995, 245 SCRA 627, 641.

[39] Rollo, p. 72.

[40] Odango v. National Labor Relations Commission, G. R. No. 147420, June 10, 2004, 431 SCRA 633, 641.

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