

**SAMAHANG MANGGAGAWA SA SULPICIO LINES, INC.–NAFLU,
RODOLFO ALINDATO, ROQUE TAN, JESSIE LIM, SUSAN TOPACIO,
LYDDA PASCUAL, BERNARDO ALCANTARA, GELACIO DESQUITADO,
RODRIGO AVELINO...**

G.R. No. 140992. March 25, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

A strike is a powerful weapon of the working class. But like a sensitive explosive, it must be handled carefully, lest it blows up in the workers' own hands.[1] Thus, the right to strike has to be pursued within the bounds of law.

For our resolution is the instant petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[2] dated May 28, 1999 and the Resolution[3] dated November 25, 1999 rendered by the Court of Appeals in CA-G.R. SP No. 51322, entitled "Samahang Manggagawa sa Sulpicio Lines, Inc. – NAFLU vs. National Labor Relations Commission and Sulpicio Lines, Inc."

The factual antecedents as gleaned from the records are:

On February 5, 1991, Sulpicio Lines, Inc. (herein respondent) and the Samahang Manggagawa sa Sulpicio Lines Inc. – NAFLU (herein petitioner) executed a collective bargaining agreement (CBA) with a term of five (5) years (from October 17, 1990 to October 16, 1995).

After three (3) years or on December 15, 1993, petitioner union and respondent company started their negotiation on the CBA's economic provisions.[4] But this negotiation remained at stalemate.

On March 1, 1994, petitioner filed with the National Conciliation and Mediation Board (NCMB), National Capital Region, a notice of strike due to collective bargaining deadlock, docketed as NCMB-NCR-NS-03-118-94.

For its part, respondent, on March 21, 1994, filed with the Office of the Secretary, Department of Labor and Employment a petition praying that the Labor Secretary assume jurisdiction over the controversy.

On March 23, 1994, former Labor Secretary Nieves R. Confesor issued an Order assuming jurisdiction over the labor dispute pursuant to Article 263 (g) of the Labor Code, as amended, thus:

"WHEREFORE PREMISES CONSIDERED, this Office assumes jurisdiction over the labor dispute at Sulpicio Lines, Inc. pursuant to Article 263 (g) of the Labor Code, as amended.

"Accordingly, any strike or lockout whether actual or intended is hereby enjoined.

"Further, the parties are directed to cease and desist from committing any and all acts that might exacerbate the situation.

"SO ORDERED."

Meanwhile, on May 20, 1994, petitioner filed with the NCMB a second notice of strike alleging that respondent company committed acts[5] constituting unfair labor practice amounting to union busting, docketed as NCMB NCR-05-261-94.

Provoked by respondent's alleged unfair labor practice/s, petitioner union immediately conducted a strike vote. Thus, on May 20, 1994, about 9:30 o'clock in the morning, 167 rank-and-file employees, officers and members of petitioner, did not report for work and instead gathered in front of Pier 12, North Harbor at Manila.

As a remedial measure, former Labor Secretary Confesor issued an Order dated May 20, 1994 directing the striking employees to return to work; and certifying the labor dispute to the National Labor Relations Commission (NLRC) for compulsory arbitration. This certified labor dispute was docketed as NLRC Case No. CC-0083-94.

Meanwhile, respondent company filed with the NLRC a complaint for "illegal strike/clearance for termination," docketed as NLRC NCR Case No. 00-05-04705-94.

On September 29, 1995, the NLRC issued a Resolution[6] declaring the strike of petitioner's officers and members illegal, with notice to respondent of the option to terminate their (petitioner's officers) employment. In the same Resolution, the NLRC dismissed petitioner's complaint against respondent, thus:

"WHEREFORE, premises considered, after a careful and judicious consideration of the facts, arguments and evidence thus adduced, it is the considered opinion of this Commission that the union (Samahang Manggagawa sa Sulpicio Lines, Inc.) had clearly engaged in an illegal strike on May 20, 1994, when its officers and members actively participated in a well concerted refusal, stoppage and cessation to render work at Sulpicio Lines, Inc.. In clear violation not only of the procedural requirements of a valid strike, but worse, in clear and blatant contravention of the assumption order of the Secretary of Labor and Employment. Consequently, the following union officers named in the complaint, to wit:

- 1) Allan F. Aguhar 9) Rodrigo Avelino
- 2) Rodolfo Alindato 10) Leonardo Andrade
- 3) Roque Tan 11) Danilo Chua
- 4) Jessie Lim 12) Amando Eugenio
- 5) Susan Topacio 13) Calvin Lopez
- 6) Lydda Pascual 14) Andres Rasco, Jr.
- 7) Bernardo Alcantara 15) Cirilo Alon
- 8) Gelacio Dequitado

are declared to have lost their employment status with the company, and the latter may now, if it so desires, terminate their employment with it. The union's complaint against the company is hereby DISMISSED for lack of merit.

"SO ORDERED."

Petitioner filed a motion for reconsideration but was denied by the NLRC in a Resolution[7] dated January 15, 1996.

On March 19, 1996, petitioner filed with this Court a petition for certiorari assailing the NLRC Resolutions. Pursuant to our ruling in *St. Martin's Funeral Home vs. NLRC*,[8] we referred the petition to the Court of

Appeals for its appropriate action and disposition.

On May 28, 1999, the Court of Appeals rendered a Decision affirming the NLRC Resolutions. The Appellate Court held (1) that the NLRC has jurisdiction to resolve the issue of legality of the strike; (2) that the May 20, 1994 temporary work stoppage by the officers and members of petitioner amounted to an illegal strike; (3) that even assuming that respondent committed unfair labor practice/s, still, the strike is illegal because it failed to comply with the mandatory procedural requirements of a valid strike under Article 263 (c) and (f) of the Labor Code, as amended; and (4) that the dismissal of petitioner's officers who knowingly participated in an illegal strike is in accordance with Article 264 (a) of the Labor Code, as amended.

On October 20, 1995, petitioner filed a motion for reconsideration but was denied by the Court of Appeals in a Resolution dated November 25, 1999.

Hence, this petition for review on certiorari. Petitioner alleged that the Court of Appeals seriously erred (1) in holding that the one-day work stoppage of petitioner's officers and members is an illegal strike; (2) in sustaining the dismissal from the service of its officers; and (3) in ruling that the NLRC has jurisdiction over a petition to declare the strike illegal.

The basic issue for our determination is whether the strike staged by petitioner's officers and members is illegal. Articles 263 and 264 of the Labor Code, as amended, provide:

“ART. 263. STRIKES, PICKETING AND LOCKOUTS.

x x x

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike x x x with the Ministry (now Department) at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

x x x

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. x x x. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Ministry (now Department) may at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union x x x shall furnish the Ministry (now Department) the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.

x x x

ART. 264. PROHIBITED ACTIVITIES.

(a) No labor organization or employer shall declare a strike or lockout without first having bargained collectively in accordance with Title VII of this Book or without first having filed the notice required in the preceding article or without the necessary strike or lockout vote first having been obtained and reported to the Ministry (now Department).

x x x.”

Following are the Implementing Guidelines of the above provisions issued by the Department of Labor and Employment:

- A strike shall be filed with the Department of Labor and Employment at least 15 days if the issues raised are unfair labor practice or at least 30 days if the issue involved bargaining deadlock. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately;
- The strike shall be supported by a majority vote of the members of the union obtained by secret ballot in a meeting called for the purpose; and
- A strike vote shall be reported to the Department of Labor and Employment at least seven (7) days before the intended strike.

There is no showing that the petitioner union observed the 7-day strike ban; and that the results of the strike vote were submitted by petitioners to the Department of Labor and Employment at least seven (7) days before the strike.

We thus hold that for failing to comply with the mandatory requirements of Article 263 (c) and (f) of the Labor Code, the strike mounted by petitioner union on May 20, 1994 is illegal.

In *Gold City Integrated Port Service, Inc. vs. NLRC*,^[9] we stressed that “the language of the law leaves no room for doubt that the cooling-off period and the seven-day strike ban after the strike-vote report were intended to be mandatory.”

But petitioner insists that the strike can still be declared legal for it was done in good faith, being in response to what its officers and members honestly perceived as unfair labor practice or union busting committed by respondent.

Petitioner’s accusation of union busting is bereft of any proof. We scanned the records very carefully and failed to discern any evidence to sustain such charge.

In *Tiu vs. NLRC*,^[10] we held:

“x x x. It is the union, therefore, who had the burden of proof to present substantial evidence to support its allegations (of unfair labor practices committed by management).

“x x x.

“x x x, but in the case at bar the facts and the evidence did not establish even at least a rational basis why the union would wield a strike based on alleged unfair labor practices it did not even bother to substantiate during the conciliation proceedings. It is not enough that the union believed that the employer committed acts of unfair labor practice when the circumstances clearly negate even a prima facie showing to warrant such a belief.”

We explained in *National Federation of Labor vs. NLRC*^[11] that “with the enactment of Republic Act No. 6715 which took effect on March 21, 1989, the rule now is that such requirements as the filing of a notice of strike, strike vote, and notice given to the Department of Labor are mandatory in nature. Thus, even if the union acted in good faith in the belief that the company was committing an unfair labor practice, if no notice of strike and a strike vote were conducted, the said strike is illegal.”

In a desperate attempt to justify its position, petitioner insists that what transpired on May 20, 1994 was not a strike but merely a “one-day work absence”^[12] or a “simple act of absenteeism”.^[13]

We are not convinced. A strike, as defined in Article 212 (o) of the Labor Code, as amended, means “any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute.” The term “strike” shall comprise not only concerted work stoppages, but also slowdowns, mass leaves, sitdowns, attempts to damage, destroy or sabotage plant equipment and facilities, and similar activities.[14]

The basic elements of a strike are present in the case at bar. First, petitioner’s officers and members numbering 167, in a concerted manner, did not report for work on May 20, 1994; second, they gathered in front of respondent’s office at Pier 12, North Harbor at Manila to participate in a strike voting conducted by petitioner; and third, such union activity was an aftermath of petitioner’s second notice of strike by reason of respondent’s unfair labor practice/s. Clearly, what transpired then was a strike because the cessation of work by petitioner’s concerted action resulted from a labor dispute.

Invoking compassion, petitioner pleads that its officers who participated in the one-day strike should not be dismissed from the service, considering that respondent’s business activities were not interrupted, much less paralyzed. While we sympathize with their plight, however, we must take care that in the contest between labor and capital, the results achieved are fair and in conformity with the law.[15]

Pertinent is Article 264 (a) of the same Code, thus:

“ART. 264. PROHIBITED ACTIVITIES.

“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: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

x x x.”

It is worth reiterating that the strike is illegal for failure of petitioner to submit the strike vote to the Department of Labor and Employment at least seven (7) days prior thereto. Also, petitioner failed to prove that respondent company committed any unfair labor practice. Amid this background, the participation of the union officers in an illegal strike forfeits their employment status.

In *Telefunken Semiconductors Employees Union-FFW vs. Secretary of Labor and Employment*,[16] we explained –

“The effects of such illegal strikes, outlined in Article 265 (now Article 264) of the Labor Code, make a distinction between workers and union officers who participate therein.

“A 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 their employment status. An ordinary striking worker cannot be terminated for mere participation in an illegal strike. There must be proof that he committed illegal acts during a strike. A union officer, on the other hand, may be terminated from work when he knowingly participates in an illegal strike, and like other workers, when he commits an illegal act during a strike.”

Moreover, petitioner maintains that the Labor Arbiter, not the NLRC, should have taken cognizance of the case at bar. We do not agree.

In *International Pharmaceuticals, Inc. v. Secretary of Labor and Employment*,[17] we held:

‘x x x [T]he Secretary was explicitly granted by Article 263 (g) of the Labor Code the authority to assume

jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, and decide the same accordingly. Necessarily, this authority to assume jurisdiction over the said labor dispute must include and extend to all questions and controversies arising therefrom, including cases over which the Labor Arbiter has exclusive jurisdiction' (underscoring supplied).

"In the same manner, when the Secretary of Labor and Employment certifies the labor dispute to the NLRC for compulsory arbitration the latter is concomitantly empowered to resolve all questions and controversies arising therefrom including cases otherwise belonging originally and exclusively to the Labor Arbiter."

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Court of Appeals dated May 28, 1999 and November 25, 1999 are hereby AFFIRMED.

SO ORDERED.

Corona, and Carpio-Morales, JJ., concur.
Vitug, (Chairman), J., on official leave.

[1] See *Batangas Laguna Tayabas Bus Company vs. NLRC*, G.R. No. 101858, August 21, 1992, 212 SCRA 792.

[2] Annex "A", Petition for Review, Rollo at 63-78.

[3] Annex "B", id. at 80.

[4] The negotiated economic provisions of the CBA have a term of two (2) years from October 17, 1993 to October 16, 1995.

[5] Petitioner alleged the following unfair labor practices committed by respondent: (1) illegal mass dismissal of union officers and active members; (2) discrimination in wages; (3) coercion and intimidation; (4) illegal suspension; (5) illegal salary deduction; (6) illegal transfer of assignments; (7) oral defamation/harassment; (8) non-compliance with NLRC decision; (9) wage distortion; (10) gross violation of CBA provisions; (11) hiring of casuals to fill-up regular positions; and (12) interference in union activities.

[6] Annex "A", Petition for Certiorari, Rollo at 118-133.

[7] Annex "B", id. at 134-139.

[8] G.R. No. 130866, September 16, 1998, 295 SCRA 494, holding that the appeal from the NLRC should be initially filed with the Court of Appeals, no longer with this Court, pursuant to the doctrine of hierarchy of courts.

[9] G.R. No. 103560, July 6, 1995, 245 SCRA 628, 636, citing *National Federation of Sugar Workers (NFSW) vs. Ovejera*, 114 SCRA 354 (1982).

[10] G.R. No. 123276, August 18, 1997, 277 SCRA 680, 687.

[11] G.R. No. 113466, December 15, 1997, 283 SCRA 275, 287-288, citing *First City Interlink Transportation, Co. vs. The Honorable Secretary*, G.R. No. 106316, May 5, 1997.

[12] Annex "D", Petition for Review, Rollo at 98-99.

[13] Id. at 105.

[14] Section 2, PD No.823, as amended by PD No. 849.

[15] See *Reliance Surety and Insurance Co., Inc. vs. NLRC*, G.R. Nos. 86917-18, January 25, 1991, 139 SCRA

365.

[16] G.R. Nos. 122743 & 127215, December 12, 1997, 283 SCRA 145, 151, citing *Gold City Integrated Port Service, Inc. vs. NLRC*, 245 SCRA 627, 637-638 (1995).

[17] G.R. Nos. 92981-83, January 9, 1992, 205 SCRA 59, cited in *PASVIL/Pascual Liner, Inc. Workers Union-NAFLU vs. NLRC*, G.R. No. 124823, July 28, 1999, 311 SCRA 444, 451-452.

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