PHILCOM EMPLOYEES UNION, PETITIONER, VS. PHILIPPINE GLOBAL COMMUNICATIONS AND PHILCOM CORPORATION,

G.R. NO. 144315. July 17, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] to annul the Decision[2] dated 31 July 2000 of the Court of Appeals in CA-G.R. SP No. 53989. The Court of Appeals affirmed the assailed portions of the 2 October 1998 and 27 November 1998 Orders of the Secretary of Labor and Employment in OS-AJ-0022-97.

The Facts

The facts, as summarized by the Court of Appeals, are as follows:

> Upon the expiration of the Collective Bargaining Agreement (CBA) between petitioner Philcom Employees Union (PEU or union, for brevity) and private respondent Philippine Global Communications, Inc. (Philcom, Inc.) on June 30, 1997, the parties started negotiations for the renewal of their CBA in July 1997. While negotiations were ongoing, PEU filed on October 21, 1997 with the National Conciliation and Mediation Board (NCMB) – National Capital Region, a Notice of Strike, docketed as NCMB-NCR-NS No. 10-435-97, due to perceived unfair labor practice committed by the company (Annex "1", Comment, p. 565, ibid.). In view of the filing of the Notice of Strike, the company suspended negotiations on the CBA which moved the union to file on November 4, 1997 another Notice of Strike, docketed as NCMB-NCR-NS No. 11-465-97, on the ground of bargaining deadlock (Annex "2", Comment, p. 566, ibid.)
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> On November 11, 1997, at a conciliation conference held at the NCMB-NCR office, the parties agreed to consolidate the two (2) Notices of Strike filed by the union and to maintain the status quo during the pendency of the proceedings (Annex "3", Comment, p. 567, ibid.).
>
> On November 17, 1997, however, while the union and the company officers and representatives were meeting, the remaining union officers and members staged a strike at the company premises, barricading the entrances and egresses thereof and setting up a stationary picket at the main entrance of the building. The following day, the company immediately filed a petition for the Secretary of Labor and Employment to assume jurisdiction over the labor dispute in accordance with Article 263(g) of the Labor Code.
>
> On November 19, 1997, then Acting Labor Secretary Cresenciano B. Trajano issued an Order assuming jurisdiction over the dispute, enjoining any strike or lockout, whether threatened or actual, directing the parties to cease and desist from committing any act that may exacerbate the situation, directing the striking workers to return to work within twenty-four (24) hours from receipt of the Secretary's Order and for management to resume normal operations, as well as accept the workers back under the same terms and conditions prior to the strike. The parties were likewise required to submit their respective position papers and evidence within ten (10) days from receipt of said order (Annex "4", Comment, pp. 610-611, ibid.). On November 28, 1997, a second order was issued reiterating the previous directive to all striking employees to return to work

immediately.

On November 27, 1997, the union filed a Motion for Reconsideration assailing, among others, the authority of then Acting Secretary Trajano to assume jurisdiction over the labor dispute. Said motion was denied in an Order dated January 7, 1998.

As directed, the parties submitted their respective position papers. In its position paper, the union raised the issue of the alleged unfair labor practice of the company hereunder enumerated as follows:

"(a) PABX transfer and contractualization of PABX service and position;

"(b) Massive contractualization;

"(c) Flexible labor and additional work/function;

"(d) Disallowance of union leave intended for union seminar;

"(e) Misimplementation and/or non-implementation of employees' benefits like shoe allowance, rainboots, raincoats, OIC shift allowance, P450.00 monthly allowance, driving allowance, motorcycle award and full-time physician;

"(f) Non-payment, discrimination and/or deprivation of overtime, restday work, waiting/stand by time and staff meetings;

"(g) Economic inducement by promotion during CBA negotiation;

"(h) Disinformation scheme, surveillance and interference with union affairs;

"(i) Issuance of memorandum/notice to employees without giving copy to union, change in work schedule at Traffic Records Section and ITTO policies; and

"(j) Inadequate transportation allowance, water and facilities."

(Annex A, Petition; pp. 110-182, ibid.)

The company, on the other hand, raised in its position paper the sole issue of the illegality of the strike staged by the union (Annex B, Petition; pp. 302-320, ibid.).

On the premise that public respondent Labor Secretary cannot rule on the issue of the strike since there was no petition to declare the same illegal, petitioner union filed on March 4, 1998 a Manifestation/Motion to Strike Out Portions of & Attachments in Philcom's Position Paper for being irrelevant, immaterial and impertinent to the issues assumed for resolution (Annex C, Petition; pp. 330-333, ibid.).

In opposition to PEU's Manifestation/Motion, the company argued that it was precisely due to the strike suddenly staged by the union on November 17, 1997 that the dispute was assumed by the Labor Secretary. Hence, the case would necessarily include the issue of the legality of the strike (Opposition to PEU'S Motion to Strike Out; Annex F, Petition; pp. 389-393, ibid.).[3]

On 2 October 1998, the Secretary of Labor and Employment ("Secretary") issued the first assailed order. The pertinent parts of the Order read:

Going now to the first issue at hand, a reading of the complaints charged by the Union as unfair labor practices would reveal that these are not so within the legal connotation of Article 248 of the Labor Code. On the contrary, these complaints are actually mere grievances which should have been processed through the grievance machinery or voluntary arbitration outlined under the CBA. The issues of flexible labor and additional functions, misimplementation or non-implementation of employee benefits, non-payment of overtime and other monetary claims and inadequate transportation allowance, are all a matter of

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implementation or interpretation of the economic provisions of the CBA subject to the grievance procedure.

Neither do these complaints amount to gross violations which, thus, may be treated as unfair labor practices outside of the coverage of Article 261. The Union failed to convincingly show that there is flagrant and/or malicious refusal by the Company to comply with the economic provisions stipulated in the CBA.

With respect to the charges of contractualization and economic inducement, this Office is convinced that the acts of said company qualify as a valid exercise of management prerogative. The act of the Company in contracting out work or certain services being performed by Union members should not be seen as an unfair labor practice act per se. First, the charge of massive contractualization has not been substantiated while the contractualization of the position of PABX operator is an isolated instance. Secondly, in the latter case, there was no proof that such contracting out interfered with, restrained or coerced the employees in the exercise of their right to self-organization. Thus, it is not unfair labor practice to contract out work for reason of reduction of labor cost through the acquisition of automatic machines.

Likewise, the promotion of certain employees, who are incidentally members of the Union, to managerial positions is a prerogative of management. A promotion which is manifestly beneficial to an employee should not give rise to a gratuitous speculation that such a promotion was made simply to deprive the union of the membership of the promoted employee (Bulletin Publishing Co. v. Sanchez, et. al., G.R. No. 74425, October 7, 1986).

There remains the issue on bargaining deadlock. The Company has denied the existence of any impasse in its CBA negotiations with the Union and instead maintains that it has been negotiating with the latter in good faith until the strike was initiated. The Union, on the other hand, contends otherwise and further prays that the remaining CBA proposals of the Union be declared reasonable and equitable and thus be ordered incorporated in the new CBA to be executed.

As pointed out by the Union, there are already thirty-seven (37) items agreed upon by the parties during the CBA negotiations even before these were suspended. Prior to this Office's assumption over the case, the Company furnished the Union its improved CBA counter-proposal on the matter of promotional and wage increases which however was rejected by the Union as divisive. Even as the Union has submitted its remaining CBA proposals for resolution, the Company remains silent on the matter. In the absence of any basis, other than the Union's position paper, on which this Office may make its determination of the reasonableness and equitableness of these remaining CBA proposals, this Office finds it proper to defer deciding on the matter and first allow the Company to submit its position thereon.

We now come to the question of whether or not the strike staged by the Union on November 17, 1997 is illegal. The Company claims it is, having been held on grounds which are non-strikeable, during the pendency of preventive mediation proceedings in the NCMB, after this Office has assumed jurisdiction over the dispute, and with the strikers committing prohibited and illegal acts. The Company further prays for the termination of some 20 Union officers who were positively identified to have initiated the alleged illegal strike. The Union, on the other hand, refuses to submit this issue for resolution.

Considering the precipitous nature of the sanctions sought by the Company, i.e., declaration of illegality of the strike and the corresponding termination of the errant Union officers, this Office deems it wise to defer the summary resolution of the same until both parties have been afforded due process. The non-compliance of the strikers with the return-to-work orders, while it may warrant dismissal, is not by itself conclusive to hold the strikers liable. Moreover, the Union's position on the alleged commission of illegal acts by the strikers during the strike is still to be heard. Only after a full-blown hearing may the respective liabilities of Union officers and members be determined. The case of Telefunken Semiconductors Employees Union-FFW v. Secretary of Labor and Employment and Temic Telefunken Micro-Electronics (Phils.), Inc. (G.R. No. 122743 and 127215, December 12, 1997) is instructive on this point:

> It may be true that the workers struck after the Secretary of Labor and Employment had assumed jurisdiction over the case and that they may have failed to immediately return to work even after the issuance of a return-to-work order, making their continued strike illegal. For, a return-to-work order is immediately effective and executory notwithstanding the filing of a motion for reconsideration. But, the liability of each of the union officers and the workers, if any, has yet to be determined. xxx xxx xxx.[4]

The dispositive portion of the Order reads:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered as follows:
>
> The Union's Manifestation/Motion to Implead Philcom Corporation is hereby granted. Let summons be issued to respondent Philcom Corporation to appear before any hearing that may hereafter be scheduled and to submit its position paper as may be required.
>
> The Union's Manifestation/Motion to Strike Out Portions of and Attachments in Philcom's Position Paper is hereby denied for lack of merit.
>
> The Union's charges of unfair labor practice against the Company are hereby dismissed.
>
> Pending resolution of the issues of illegal strike and bargaining deadlock which are yet to be heard, all the striking workers are directed to return to work within twenty-four (24) hours from receipt of this Order and Philcom and/or Philcom Corporation are hereby directed to unconditionally accept back to work all striking Union officers and members under the same terms and conditions prior to the strike. The parties are directed to cease and desist from committing any acts that may aggravate the situation.
>
> Atty. Lita V. Aglibut, Officer-In-Charge of the Legal Service, this Department is hereby designated as the Hearing Officer to hear and receive evidence on all matters and issues arising from the present labor dispute and, thereafter, to submit a report/recommendation within twenty (20) days from the termination of the proceedings.
>
> The parties are further directed to file their respective position papers with Atty. Lita V. Aglibut within ten (10) days from receipt of this Order.
>
> SO ORDERED.[5]

Philcom Corporation ("Philcom") filed a motion for reconsideration. Philcom prayed for reconsideration of the Order impleading it as party-litigant in the present case and directing it to accept back to work unconditionally all the officers and members of the union who participated in the strike.[6] Philcom also filed a Motion to Certify Labor Dispute to the National Labor Relations Commission for Compulsory Arbitration.[7]

For its part, Philcom Employees Union (PEU) filed a Motion for Partial Reconsideration. PEU asked the Secretary to "partially reconsider" the 2 October 1998 Order insofar as it dismissed the unfair labor practices charges against Philcom and included the illegal strike issue in the labor dispute.[8]

The Secretary denied both motions for reconsideration of Philcom and PEU in its assailed Order of 27 November 1998. The pertinent parts of the Order read:

> The question of whether or not Philcom Corporation should be impleaded has been properly disposed of in the assailed Order. We reiterate that neither the Company herein nor its predecessor was able to convincingly establish that each is a separate entity in the absence of any proof that there was indeed an actual closure and cessation of the operations of the predecessor-company. We would have accommodated the Company for a hearing on the matter had it been willing and prepared to submit evidence to controvert the finding that there was a mere merger. As it now stands, nothing on record would prove that the two (2) companies are separate and distinct from each other.

> Having established that what took place was a mere merger, we correspondingly conclude that the employer-employee relations between the Company and the Union officers and members was never severed. And in merger, the employees of the merged companies or entities are deemed absorbed by the new company (Filipinas Port Services, Inc. v. NLRC, et. al., G.R. No. 97237, August 16, 1991). Considering that the Company failed miserably to adduce any evidence to provide a basis for a contrary ruling, allegations to the effect that employer-employee relations and positions previously occupied by the workers no longer exist remain just that — mere allegations. Consequently, the Company cannot now exempt itself from compliance with the Order. Neither can it successfully argue that the employees were validly dismissed. As held in Telefunken Semiconductor Employees Union-FFW v. Secretary of Labor and Employment (G.R. Nos. 122743 and 122715, December 12, 1997), to exclude the workers without first ascertaining the extent of their individual participation in the strike or non-compliance with the return-to-work orders will be tantamount to dismissal without due process of law.
>
> With respect to the unfair labor practice charges against the Company, we have carefully reviewed the records and found no reason to depart from the findings previously rendered. The issues now being raised by the Union are the same issues discussed and passed upon in our earlier Order.
>
> Finally, it is our determination that the issue of the legality of the strike is well within the jurisdiction of this Office. The same has been properly submitted and assumed jurisdiction by the Office for resolution.[9]

The dispositive portion of the Order reads:

> WHEREFORE, there being no merit in the remaining Motions for Reconsideration filed by both parties, the same are hereby DENIED. Our 2 October 1998 Order STANDS. To expedite the resolution of the Motion to Certify Labor Dispute to the NLRC for Compulsory Arbitration, Philcom Employees Union is hereby directed to submit its Opposition thereto within ten (10) days from receipt of the copy of this Order.
>
> SO ORDERED.[10]

PEU filed with this Court a petition for certiorari and prohibition under Rule 65 of the Rules of Court assailing the Secretary's Orders of 2 October 1998 and 27 November 1998. This Court, in accordance with its Decision of 10 March 1999 in G.R. No. 123426 entitled National Federation of Labor (NFL) vs. Hon. Bienvenido E. Laguesma, Undersecretary of the Department of Labor and Employment, and Alliance of Nationalist Genuine Labor Organization, Kilusang Mayo Uno (ANGLO-KMU),[11] referred the case to the Court of Appeals.[12]

The Ruling of the Court of Appeals

On 31 July 2000, the Court of Appeals rendered judgment as follows:

> WHEREFORE, PREMISES CONSIDERED, this petition is hereby DENIED. The assailed portions of the Orders of the Secretary of Labor and Employment dated October 2, 1998 and November 27, 1998 are AFFIRMED.
>
> SO ORDERED.[13]

The Court of Appeals ruled that, contrary to PEU's view, the Secretary could take cognizance of an issue, even only incidental to the labor dispute, provided the issue must be involved in the labor dispute itself or otherwise submitted to him for resolution.

The Court of Appeals pointed out that the Secretary assumed jurisdiction over the labor dispute upon Philcom's petition as a consequence of the strike that PEU had declared and not because of the notices of strike that PEU filed with the National Conciliation and Mediation Board (NCMB).

The Court of Appeals stated that the reason of the Secretary's assumption of jurisdiction over the labor dispute

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was the staging of the strike. Consequently, any issue regarding the strike is not merely incidental to the labor dispute between PEU and Philcom, but also part of the labor dispute itself. Thus, the Court of Appeals held that it was proper for the Secretary to take cognizance of the issue on the legality of the strike.

The Court of Appeals also ruled that for an employee to claim an unfair labor practice by the employer, the employee must show that the act charged as unfair labor practice falls under Article 248 of the Labor Code. The Court of Appeals held that the acts enumerated in Article 248 relate to the workers' right to self-organization. The Court of Appeals stated that if the act complained of has nothing to do with the acts enumerated in Article 248, there is no unfair labor practice.

The Court of Appeals held that Philcom's acts, which PEU complained of as unfair labor practices, were not in any way related to the workers' right to self-organization under Article 248 of the Labor Code. The Court of Appeals held that PEU's complaint constitutes an enumeration of mere grievances which should have been threshed out through the grievance machinery or voluntary arbitration outlined in the Collective Bargaining Agreement (CBA).

The Court of Appeals also held that even if by Philcom's acts, Philcom had violated the provisions of the CBA, still those acts do not constitute unfair labor practices under Article 248 of the Labor Code. The Court of Appeals held that PEU failed to show that those violations were gross or that there was flagrant or malicious refusal on the part of Philcom to comply with the economic provisions of the CBA.

The Court of Appeals stated that as of 21 March 1989, as held in PAL vs. NLRC,[14] violations of CBAs will no longer be deemed unfair labor practices, except those gross in character. Violations of CBAs, except those gross in character, are mere grievances resolvable through the appropriate grievance machinery or voluntary arbitration as provided in the CBAs.

Hence, this petition.

The Issues

In assailing the Decision of the Court of Appeals, petitioner contends that:

- The Honorable Court of Appeals has failed to faithfully adhere with the decisions of the Supreme Court when it affirmed the order/resolution of the Secretary of Labor denying the Union's Manifestation/Motion to Strike Out Portions of & Attachments in Philcom's Position Paper and including the issue of illegal strike notwithstanding the absence of any petition to declare the strike illegal.

- The Honorable Court of Appeals has decided a question of substance in a way not in accord with law and jurisprudence when it affirmed the order/resolution of the Secretary of Labor dismissing the Union's charges of unfair labor practices.

- The Honorable Court of Appeals has departed from the edict of applicable law and jurisprudence when it failed to issue such order mandating/directing the issuance of a writ of execution directing the Company to unconditionally accept back to work the Union officers and members under the same terms and conditions prior to the strike and as well as to pay their salaries/backwages and the monetary equivalent of their other benefits from October 6, 1998 to date.[15]

The Ruling of the Court

The petition must fail.

PEU contends that the Secretary should not have taken cognizance of the issue on the alleged illegal strike

because it was not properly submitted to the Secretary for resolution. PEU asserts that after Philcom submitted its position paper where it raised the issue of the legality of the strike, PEU immediately opposed the same by filing its Manifestation/Motion to Strike Out Portions of and Attachments in Philcom's Position Paper. PEU asserts that it stated in its Manifestation/Motion that certain portions of Philcom's position paper and some of its attachments were "irrelevant, immaterial and impertinent to the issues assumed for resolution." Thus, PEU asserts that the Court of Appeals should not have affirmed the Secretary's order denying PEU's Manifestation/Motion.

PEU also contends that, contrary to the findings of the Court of Appeals, the Secretary's assumption of jurisdiction over the labor dispute was based on the two notices of strike that PEU filed with the NCMB. PEU asserts that only the issues on unfair labor practice and bargaining deadlock should be resolved in the present case.

PEU insists that to include the issue on the legality of the strike despite its opposition would convert the case into a petition to declare the strike illegal.

PEU's contentions are untenable.

The Secretary properly took cognizance of the issue on the legality of the strike. As the Court of Appeals correctly pointed out, since the very reason of the Secretary's assumption of jurisdiction was PEU's declaration of the strike, any issue regarding the strike is not merely incidental to, but is essentially involved in, the labor dispute itself.

Article 263(g) of the Labor Code provides:

> When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure the compliance with this provision as well as with such orders as he may issue to enforce the same.
>
> x x x x.

The powers granted to the Secretary under Article 263(g) of the Labor Code have been characterized as an exercise of the police power of the State, with the aim of promoting public good.[16] When the Secretary exercises these powers, he is granted "great breadth of discretion" in order to find a solution to a labor dispute. The most obvious of these powers is the automatic enjoining of an impending strike or lockout or its lifting if one has already taken place.[17]

In this case, the Secretary assumed jurisdiction over the dispute because it falls in an industry indispensable to the national interest. As noted by the Secretary ?

> [T]he Company has been a vital part of the telecommunications industry for 73 years. It is particularly noted for its expertise and dominance in the area of international telecommunications. Thus, it performs a vital role in providing critical services indispensable to the national interest. It is for this very reason that this Office strongly opines that any concerted action, particularly a prolonged work stoppage is fraught with dire consequences. Surely, the on-going strike will adversely affect not only the livelihood of workers and their dependents, but also the company's suppliers and dealers, both in the public and private sectors who depend

> on the company's facilities in the day-to-day operations of their businesses and commercial transactions. The operational viability of the company is likewise adversely affected, especially its expansion program for which it has incurred debts in the approximate amount of P2 Billion. Any prolonged work stoppage will also bring about substantial losses in terms of lost tax revenue for the government and would surely pose a serious set back in the company's modernization program.
>
> At this critical time when government is working to sustain the economic gains already achieved, it is the paramount concern of this Office to avert any unnecessary work stoppage and, if one has already occurred, to minimize its deleterious effect on the workers, the company, the industry and national economy as a whole.[18]

It is of no moment that PEU never acquiesced to the submission for resolution of the issue on the legality of the strike. PEU cannot prevent resolution of the legality of the strike by merely refusing to submit the issue for resolution. It is also immaterial that this issue, as PEU asserts, was not properly submitted for resolution of the Secretary.

The authority of the Secretary to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to national interest includes and extends to all questions and controversies arising from such labor dispute. The power is plenary and discretionary in nature to enable him to effectively and efficiently dispose of the dispute.[19]

Besides, it was upon Philcom's petition that the Secretary immediately assumed jurisdiction over the labor dispute on 19 November 1997.[20] If petitioner's notices of strike filed on 21 October and 4 November 1997 were what prompted the assumption of jurisdiction, the Secretary would have issued the assumption order as early as those dates.

Moreover, after an examination of the position paper[21] Philcom submitted to the Secretary, we see no reason to strike out those portions which PEU seek to expunge from the records. A careful study of all the facts alleged, issues raised, and arguments presented in the position paper leads us to hold that the portions PEU seek to expunge are necessary in the resolution of the present case.

On the documents attached to Philcom's position paper, except for Annexes MM-2 to MM-22 inclusive[22] which deal with the supposed consolidation of Philippine Global Communications, Inc. and Philcom Corporation, we find the other annexes relevant and material in the resolution of the issues that have emerged in this case.

PEU also claims that Philcom has committed several unfair labor practices. PEU asserts that there are "factual and evidentiary bases" for the charge of unfair labor practices against Philcom.

On unfair labor practices of employers, Article 248 of the Labor Code provides:

> Unfair labor practices of employers. ? It shall be unlawful for an employer to commit any of the following unfair labor practice:
>
> (a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;
>
> (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;
>
> (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 rights to self-organization;
>
> (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. x x x
>
> (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.

Unfair labor practice refers to acts that violate the workers' right to organize. The prohibited acts are related to the workers' right to self-organization and to the observance of a CBA. Without that element, the acts, no matter how unfair, are not unfair labor practices.[23] The only exception is Article 248(f), which in any case is not one of the acts specified in PEU's charge of unfair labor practice.

A review of the acts complained of as unfair labor practices of Philcom convinces us that they do not fall under any of the prohibited acts defined and enumerated in Article 248 of the Labor Code. The issues of misimplementation or non-implementation of employee benefits, non-payment of overtime and other monetary claims, inadequate transportation allowance, water, and other facilities, are all a matter of implementation or interpretation of the economic provisions of the CBA between Philcom and PEU subject to the grievance procedure.

We find it pertinent to quote certain portions of the assailed Decision, thus —

> A reading of private respondent's justification for the acts complained of would reveal that they were actually legitimate reasons and not in anyway related to union busting. Hence, as to compelling employees to render flexible labor and additional work without additional compensation, it is the company's explanation that the employees themselves voluntarily took on work pertaining to other assignments but closely related to their job description when there was slack in the business which caused them to be idle. This was the case of the International Telephone Operators who tried telemarketing when they found themselves with so much free time due to the slowdown in the demand for international line services. With respect to the Senior Combination Technician at the Cebu branch who was allegedly made to do all around work, the same happened only once when the lineman was absent and the lineman's duty was his ultimate concern. Moreover, the new assignment of the technicians at CTSS who were promoted to QCE were based on the job description of QCE, while those of the other technicians were merely temporary due to the promotion of several technicians to QCE (pars. 9-12, Philcom's Reply to PEU's Position Paper; Annex "E", Petition; pp. 350-351, ibid.).
>
> On the alleged misimplementation and/or non-implementation of employees' benefits, such as shoe allowance, rainboots, raincoats, OIC shift allowance, P450.00 monthly allowance, driving allowance, motorcycle award and full-time physician, the company gave the following explanation which this Court finds plausible, to wit:
>
> 16. The employees at CTSS were given One Thousand Pesos (P1,000.00) cash or its equivalent in purchase orders because it was their own demand that they be given the option to buy the pair of leather boots they want. For the Cebu branch, the employees themselves failed to include these benefits in the list of their demands during the preparation of the budget for the year 1997 despite the instruction given to them by the branch manager. According to the employees, they were not aware that they were entitled to these benefits. They thought that because they have been provided with two vans to get to their respective assignments, these benefits are available only to collectors, messengers and technicians in motorcycles.
>
> 17. The P450.00 monthly allowance was provided by the CBA to be given to counter clerks. However, the

position of counter clerks had been abolished in accordance with the reorganization plan undertaken by the company in April 1995, with the full knowledge of the Union membership. As a result of the abolition of the position of counter clerks, there was no more reason for granting the subject allowance.

18. The company more than satisfied the provision in the CBA to engage the services of a physician and provided adequate medical services. Aside from a part time physician who reports for duty everyday, the company has secured the services of Prolab Diagnostics, which has complete medical facilities and personnel, to serve the medical needs of the employees. x x x

19. The Union demands that a full-time physician to be assigned at the Head Office. This practice, is not provided in the CBA and, moreover is too costly to maintain. The medical services offered by Prolab [D]iagnostics are even better and more comprehensive than any full time physician can give. It places at the employees' disposal numerous specialists in various fields of medicine. It is beyond understanding why the Union would insist on having a full-time physician when they could avail of better services from Prolab Diagnostics.

(Philcom's Reply to PEU's Position Paper, pp.352, 354, ibid.)

On the issue of non-payment, discrimination and/or deprivation of overtime, restday work, waiting/stand by time and staff meeting allowance, suffice it to state that there is nothing on record to prove the same. Petitioner did not present evidence substantial enough to support its claim.

As to the alleged inadequate transportation allowance and facilities, the company posits that:

30. The transportation allowances given to the Dasmarinas and Pinugay employees are more than adequate to defray their daily transportation cost. Hence, there is absolutely no justification for an increase in the said allowance. In fact, said employees at Dasmarinas and Pinugay, who are only residing in areas near their place of work, are more privileged as they receive transportation expenses while the rest of the company workers do not.

31. As to the demand for clean drinking water, the company has installed sufficient and potable water inside the Head Office even before the strike was staged by the Union. Any person who visits the Makati Head Office can attest to this fact.

(Philcom's Reply to PEU's Position Paper, p. 357, ibid.)

Anent the allegation of PABX transfer and contractualization of PABX service and position, these were done in anticipation of the company to switch to an automatic PABX machine which requires no operator. This cannot be treated as ULP since management is at liberty, absent any malice on its part, to abolish positions which it deems no longer necessary (Arrieta vs. National Labor Relations Commission, 279 SCRA 326, 332). Besides, at the time the company hired a temporary employee to man the machine during daytime, the subject position was vacant while the assumption of the function by the company guard during nighttime was only for a brief period.

With respect to the perceived massive contractualization of the company, said charge cannot be considered as ULP since the hiring of contractual workers did not threaten the security of tenure of regular employees or union members. That only 160 employees out of 400 employees in the company's payroll were considered rank and file does not of itself indicate unfair labor practice since this is but a company prerogative in connection with its business concerns.

Likewise, the offer or promotions to a few union members is neither unlawful nor an economic inducement. These offers were made in accordance with the legitimate need of the company for the services of these employees to fill positions left vacant by either retirement or resignation of other employees. Besides, a promotion is part of the career growth of employees found competent in their work. Thus, in Bulletin

Publishing Corporation vs. Sanchez (144 SCRA 628, 641), the Supreme Court held that "(T)he promotion of employees to managerial or executive positions rests upon the discretion of management. Managerial positions are offices which can only be held by persons who have the trust of the corporation and its officers. It is the prerogative of management to promote any individual working within the company to a higher position. It should not be inhibited or prevented from doing so. A promotion which is manifestly beneficial to an employee should not give rise to a gratuitous speculation that such a promotion was made simply to deprive the union of the membership of the promoted employee, who after all appears to have accepted his promotion."

That the promotions were made near or around the time when CBA negotiations were about to be held does not make the company's action an unfair labor practice. As explained by the company, these promotions were based on the availability of the position and the qualification of the employees promoted (p. 6, Annex "4", Philcom's Reply to PEU's Position Paper; p. 380, ibid.)

On the union's charge that management disallowed leave of union officers and members to attend union seminar, this is belied by the evidence submitted by the union itself. In a letter to PEU's President, the company granted the leave of several union officers and members to attend a seminar notwithstanding that its request to be given more details about the affair was left unheeded by the union (Annex "Y", PEU's Position Paper; p. 222, ibid.). Those who were denied leave were urgently needed for the operation of the company.

On the ULP issue of disinformation scheme, surveillance and interference with union affairs, these are mere allegations unsupported by facts. The charge of "black propaganda" allegedly committed by the company when it supposedly posted two (2) letters addressed to the Union President is totally baseless. Petitioner presents no proof that it was the company which was behind the incident. On the purported disallowance of union members to observe the July 27, 1997 CBA meeting, the company explained that it only allowed one (1) employee from ITTO, instead of two (2), as it would adversely affect the operation of the group. It also took into consideration the fact that ITTO members represent only 20% of the union. Other union members from other departments of the company should have equal representation (Annex "L", Position Paper for the Union; pp. 205-206, ibid.). As to the alleged surveillance of the company guards during a union seminar, We find the idea of sending guards to spy on a mere union seminar quite preposterous. It is thus not likely for the company which can gain nothing from it to waste its resources in such a scheme.

On the issuance of memorandum/notice to employees without giving copy to union, change in work schedule at Traffic Records Section and ITTO policies, the company has sufficiently rebutted the same, thus:

27. The Union also whines about the failure of the company to furnish copies of memoranda or notices sent to employees and change of work schedules at the Traffic Records Section and ITTO policies. The CBA, however, does not obligate the Company to give the Union a copy of each and every memorandum or notice sent to employees. This would be unreasonable and impractical. Neither did the Union demand that they be furnished copies of the same. This is clearly a non-issue as copies of all memoranda or notices issued by management are readily available upon request by any employee or the Union.

28. Contrary to the allegations of the Union, the rationale and mechanics for the abolishment of the midnight schedule at the Traffic Record Services had been thoroughly and adequately discussed with the Union's President, Robert Benosa, and the staff of Traffic Record Services in the meeting held on May 9, 1997. The midnight services were abolished for purely economic reasons. The company realized that the midnight work can be handled in the morning without hampering normal operations. At the same time, the company will be able to save on cost. For this objective, the employees concerned agreed to create a manning and shifting schedule starting at 6:00 a.m. up to 10:00 p.m., with each employee rendering only eight hours of work every day without violating any provision of the labor laws or the CBA.[24]

The Court has always respected a company's exercise of its prerogative to devise means to improve its operations. Thus, we have held that management is free to regulate, according to its own discretion and judgment,

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all aspects of employment, including hiring, work assignments, supervision and transfer of employees, working methods, time, place and manner of work.[25]

This is so because the law on unfair labor practices is not intended to deprive employers of their fundamental right to prescribe and enforce such rules as they honestly believe to be necessary to the proper, productive and profitable operation of their business.[26]

Even assuming arguendo that Philcom had violated some provisions in the CBA, there was no showing that the same was a flagrant or malicious refusal to comply with its economic provisions. The law mandates that such violations should not be treated as unfair labor practices.[27]

PEU also asserts that the Court of Appeals should have issued an order directing the issuance of a writ of execution ordering Philcom to accept back to work unconditionally the striking union officers and members under the same terms and conditions prevailing before the strike. PEU asserts that the union officers and members should be paid their salaries or backwages and monetary equivalent of other benefits beginning 6 October 1998 when PEU received a copy of the Secretary's 2 October 1998 return-to-work order.

PEU claims that even if the "issue of illegal strike can be included in the assailed orders and that the union officers and members have been terminated as a result of the alleged illegal strike, still, the Secretary has to rule on the illegality of the strike and the liability of each striker." PEU asserts that the union officers and members should first be accepted back to work because a return-to-work order is immediately executory.[28]

We rule on the legality of the strike if only to put an end to this protracted labor dispute. The facts necessary to resolve the legality of the strike are not in dispute.

The strike and the strike activities that PEU had undertaken were patently illegal for the following reasons:

1. Philcom is engaged in a vital industry protected by Presidential Decree No. 823 (PD 823), as amended by Presidential Decree No. 849, from strikes and lockouts. PD 823, as amended, provides:

> Sec. 1. It is the policy of the State to encourage free trade unionism and free collective bargaining within the framework of compulsory and voluntary arbitration. Therefore, all forms of strikes, picketings and lockouts are hereby strictly prohibited in vital industries, such as in public utilities, including transportation and communications, x x x. (Emphasis supplied)

Enumerating the industries considered as vital, Letter of Instruction No. 368 provides:

> For the guidance of workers and employers, some of whom have been led into filing notices of strikes and lockouts even in vital industries, you are hereby instructed to consider the following as vital industries and companies or firms under PD 823 as amended:
>
> 1. Public Utilities:
>
> x x x x
>
> B. Communications:
>
> 1) Wire or wireless telecommunications such as telephone, telegraph, telex, and cable companies or firms; (Emphasis supplied)
>
> x x x x

It is therefore clear that the striking employees violated the no-strike policy of the State in regard to vital industries.

2. The Secretary had already assumed jurisdiction over the dispute. Despite the issuance of the return-to-work orders dated 19 November and 28 November 1997, the striking employees failed to return to work and continued with their strike.

Regardless of their motives, or the validity of their claims, the striking employees should have ceased or desisted from all acts that would undermine the authority given the Secretary under Article 263(g) of the Labor Code. They could not defy the return-to-work orders by citing Philcom's alleged unfair labor practices to justify such defiance.[29]

PEU could not have validly anchored its defiance to the return-to-work orders on the motion for reconsideration that it had filed on the assumption of jurisdiction order. A return-to-work order is immediately effective and executory despite the filing of a motion for reconsideration. It must be strictly complied with even during the pendency of any petition questioning its validity.[30]

The records show that on 22 November 1997, Philcom published in the Philippine Daily Inquirer a notice to striking employees to return to work.[31] These employees did not report back to work but continued their mass action. In fact, they lifted their picket lines only on 22 December 1997.[32] Philcom formally notified twice these employees to explain in writing why they should not be dismissed for defying the return-to-work order.[33] Philcom held administrative hearings on these disciplinary cases.[34] Thereafter, Philcom dismissed these employees for abandonment of work in defiance of the return-to-work order.[35]

A return-to-work order imposes a duty that must be discharged more than it confers a right that may be waived. While the workers may choose not to obey, they do so at the risk of severing their relationship with their employer.[36]

The following provision of the Labor Code governs the effects of defying a return-to-work order:

> ART. 264. Prohibited activities. ? (a) x x x x
>
> No strike or lockout shall be declared after assumption of jurisdiction by the President or the Minister or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout x x x x
>
> Any union officer who knowingly participates in 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. (Emphasis supplied)

A strike undertaken despite the Secretary's issuance of an assumption or certification order becomes a prohibited activity, and thus, illegal, under Article 264(a) of the Labor Code. The union officers who knowingly participate in the illegal strike are deemed to have lost their employment status. The union members, including union officers, who commit specific illegal acts or who knowingly defy a return-to-work order are also deemed to have lost their employment status.[37] Otherwise, the workers will simply refuse to return to their work and cause a standstill in the company operations while retaining the positions they refuse to discharge and preventing management to fill up their positions.[38]

Hence, the failure of PEU's officers and members to comply immediately with the return-to-work orders dated 19 November and 28 November 1997 cannot be condoned. Defiance of the return-to-work orders of the Secretary constitutes a valid ground for dismissal.[39]

3. PEU staged the strike using unlawful means and methods.

Even if the strike in the present case was not illegal per se, the strike activities that PEU had undertaken, especially the establishment of human barricades at all entrances to and egresses from the company premises and the use of coercive methods to prevent company officials and other personnel from leaving the company premises, were definitely illegal.[40] PEU is deemed to have admitted that its officers and members had committed these illegal acts, as it never disputed Philcom's assertions of PEU's unlawful strike activities in all the pleadings that PEU submitted to the Secretary and to this Court.

PEU's picketing officers and members prohibited other tenants at the Philcom building from entering and leaving the premises. Leonida S. Rabe, Country Manager of Societe Internationale De Telecommunications Aeronautiques (SITA), a tenant at the Philcom building, wrote two letters addressed to PEU President Roberto B. Benosa. She told Benosa that PEU's act of obstructing the free ingress to and egress from the company premises "has badly disrupted normal operations of their organization."[41]

The right to strike, while constitutionally recognized, is not without legal constrictions. Article 264(e) of the Labor Code, on prohibited activities, provides:

> No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares.

The Labor Code is emphatic against the use of violence, coercion, and intimidation during a strike and to this end prohibits the obstruction of free passage to and from the employer's premises for lawful purposes. A picketing labor union has no right to prevent employees of another company from getting in and out of its rented premises, otherwise, it will be held liable for damages for its acts against an innocent by-stander.[42]

The sanction provided in Article 264(a) is so severe that 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.[43]

By insisting on staging the prohibited strike and defiantly picketing Philcom's premises to prevent the resumption of company operations, the striking employees have forfeited their right to be readmitted.[44]

4. PEU declared the strike during the pendency of preventive mediation proceedings at the NCMB.

On 17 November 1997, while a conciliation meeting was being held at the NCMB in NCMB-NCR-NS 10-435-97, PEU went on strike. It should be noted that in their meeting on 11 November 1997, both Philcom and PEU were even "advised to maintain the status quo."[45] Such disregard of the mediation proceedings was a blatant violation of Section 6, Book V, Rule XXII of the Omnibus Rules Implementing the Labor Code, which explicitly obliges the parties to bargain collectively in good faith and prohibits them from impeding or disrupting the proceedings.[46] The relevant provision of the Implementing Rules provides:

> Section 6. Conciliation. ? x x x x
>
> During the proceedings, the parties shall not do any act which may disrupt or impede the early settlement of dispute. They are obliged, as part of their duty, to bargain collectively in good faith, to participate fully and promptly in the conciliation meetings called by the regional branch of the Board. x x x x

Article 264(a) of the Labor Code also considers it a prohibited activity to declare a strike "during the pendency of cases involving the same grounds for the same strike."

Lamentably, PEU defiantly proceeded with their strike during the pendency of the conciliation proceedings.

5. PEU staged the strike in utter disregard of the grievance procedure established in the CBA.

By PEU's own admission, "the Union's complaints to the management began in June 1997 even before the start

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of the 1997 CBA renegotiations."[47] Their CBA expired on 30 June 1997.[48] PEU could have just taken up their grievances in their negotiations for the new CBA. This is what a Philcom officer had suggested to the Dasmariñas staff when the latter requested on 16 June 1997 for an increase in transportation allowance.[49] In fact, when PEU declared the strike, Philcom and PEU had already agreed on 37 items in their negotiations for the new CBA.[50]

The bottom line is that PEU should have immediately resorted to the grievance machinery provided for in the CBA.[51] In disregarding this procedure, the union leaders who knowingly participated in the strike have acted unreasonably. The law cannot interpose its hand to protect them from the consequences of their illegal acts.[52]

A strike declared on the basis of grievances which have not been submitted to the grievance committee as stipulated in the CBA of the parties is premature and illegal.[53]

Having held the strike illegal and having found that PEU's officers and members have committed illegal acts during the strike, we hold that no writ of execution should issue for the return to work of PEU officers who participated in the illegal strike, and PEU members who committed illegal acts or who defied the return-to-work orders that the Secretary issued on 19 November 1997 and 28 November 1997. The issue of who participated in the illegal strike, committed illegal acts, or defied the return-to-work orders is a question of fact that must be resolved in the appropriate proceedings before the Secretary of Labor.

WHEREFORE, we DISMISS the petition and AFFIRM the Decision of the Court of Appeals in CA-G.R. SP No. 53989, with the MODIFICATION that the Secretary of Labor is directed to determine who among the Philcom Employees Union officers participated in the illegal strike, and who among the union members committed illegal acts or defied the return-to-work orders of 19 November 1997 and 28 November 1997. No pronouncement as to costs.

SO ORDERED.

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

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Fermin A. Martin, Jr., with Associate Justices Salvador J. Valdez, Jr. and Remedios S. Fernando, concurring. Rollo, pp. 869-888.

[3] Rollo, pp. 871-874.

[4] Id. at 582-583.

[5] Id. at 584.

[6] Id. at 585-595.

[7] Id. at 597-603.

[8] Id. at 605-612.

[9] Id. at 622-623.

[10] Id. at 623.

[11] 364 Phil. 44 (1999).

[12] Rollo, p. 637.

[13] Id. at 887-888.

[14] 347 Phil. 602 (1997).

[15] Rollo, pp. 52-53.

[16] Manila Diamond Hotel Employees' Union v. Court of Appeals, G.R. No. 140518, 16 December 2004, 447 SCRA 97.

[17] Trans-Asia Shipping Lines, Inc.-Unlicensed Crews Employees Union-Associated Labor Unions (Tasli-Alu) v. Court of Appeals, G.R. No. 145428, 7 July 2004, 433 SCRA 610.

[18] Rollo, pp. 691-692.

[19] LMG Chemicals Corporation v. Secretary of the Department of Labor and Employment, G.R. No. 127422, 17 April 2001, 356 SCRA 577; International Pharmaceuticals, Inc. v. Secretary of Labor, G.R. Nos. 92981-83, 9 January 1992, 205 SCRA 59.

[20] Rollo, p. 579.

[21] Id. at 422-440.

[22] Id. at 548-568.

[23] Great Pacific Life Employees Union v. Great Pacific Life Assurance Corporation, G.R. No. 126717, 11 February 1999, 303 SCRA 113; Cesario A. Azucena, Jr., II The Labor Code with Comments and Cases 210 (5th ed. 2004) [The Labor Code with Comments and Cases].

[24] Rollo, pp. 880-886.

[25] Unicorn Safety Glass, Inc. v. Basarte, G.R. No. 154689, 25 November 2004, 444 SCRA 287; Benguet Electric Cooperative v. Fianza, G.R. No. 158606, 9 March 2004, 425 SCRA 41.

[26] II The Labor Code with Comments and Cases 214.

[27] ART. 261, Labor Code. x x x Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, gross violations of Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.

[28] Rollo, pp. 110-112.

[29] Allied Banking Corp. v. NLRC, G.R. No. 116128, 12 July 1996, 258 SCRA 724.

[30] Telefunken Semiconductors Employees Union-FFW v. Sec. of Labor and Employment, 347 Phil. 447 (1997); St. Scholastica's College v. Torres, G.R. No. 100158, 29 June 1992, 210 SCRA 565.

[31] Rollo, p. 444.

[32] Id. at 35.

[33] Id. at 1006.

[34] Id. at 996.

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[35] Id. at 38-39.

[36] Asian Transmission Corporation v. NLRC, G.R. No. 88725, 22 November 1989, 179 SCRA 582.

[37] Grand Boulevard Hotel v. Genuine Labor Organization of Workers in Hotel, Restaurant and Allied Industries (GLOWHRAIN), 454 Phil. 463 (2003).

[38] St. Scholastica's College v. Torres, supra note 30.

[39] Allied Banking Corp. v. NLRC, supra note 29.

[40] Federation of Free Workers v. Inciong, G.R. No. 49983, 20 April 1992, 208 SCRA 157.

[41] Rollo, pp. 445-448.

[42] Liwayway Publications, Inc. v. Permanent Concrete Workers Union, 195 Phil. 51 (1981).

[43] Great Pacific Life Employees Union v. Great Pacific Life Assurance Corporation, supra note 23.

[44] St. Scholastica's College v. Torres, supra note 30.

[45] Rollo, p. 443.

[46] San Miguel Corp. v. NLRC, 451 Phil. 514 (2003).

[47] Rollo, p. 70.

[48] Id. at 579.

[49] Id. at 307.

[50] Id. at 583.

[51] Id. at 507-508.

[52] Tiu v. NLRC, 343 Phil. 478 (1997).

[53] II The Labor Code with Comments and Cases 443.

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