

CAPITOL MEDICAL CENTER, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, JAIME IBABAO, JOSE BALLESTEROS, RONALD CENTENO, NARCISO SARMIENTO, EDUARDO CANAVERAL, SHERLITO...

G.R. NO. 147080. April 26, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 57500 and its Resolution denying the motion for reconsideration thereof.

The Antecedents[2]

Whether the respondent Capitol Medical Center Employees Association-Alliance of Filipino Workers (the Union, for brevity) was the exclusive bargaining agent of the rank-and-file employees of the petitioner Capitol Medical Center, Inc. had been the bone of contention between the Union and the petitioner. The petitioner's refusal to negotiate for a collective bargaining agreement (CBA) resulted in a union-led strike on April 15, 1993.

The Union had to contend with another union – the Capitol Medical Center Alliance of Concerned Employees (CMC-ACE) – which demanded for a certification election among the rank-and-file employees of the petitioner. Med-Arbiter Brigida Fadrigon granted the petition, and the matter was appealed to the Secretary of Labor and Employment (SOLE). Undersecretary Bienvenido E. Laguesma rendered a Resolution on November 18, 1994 granting the appeal. He, likewise, denied the motion filed by the petitioner and the CMC-ACE. The latter thereafter brought the matter to the Court which rendered judgment on February 4, 1997 affirming the resolution of Undersecretary Laguesma, thus:

1. Dismissing the petition for certification election filed by the Capitol Medical Center Alliance of Concerned Employees-United Filipino Services Workers for lack of merit; and
2. Directing the management of the Capitol Medical Center to negotiate a CBA with the Capitol Medical Center Employees Association-Alliance of Filipino Workers, the certified bargaining agent of the rank-and-file employees.[3]

The decision of the Court became final and executory. Thereafter, in a Letter dated October 3, 1997 addressed to Dr. Thelma N. Clemente, the President and Director of the petitioner, the Union requested for a meeting to discuss matters pertaining to a negotiation for a CBA, conformably with the decision of the Court.[4] However, in a Letter to the Union dated October 10, 1997, Dr. Clemente rejected the proposed meeting, on her claim that it was a violation of Republic Act No. 6713 and that the Union was not a legitimate one. On October 15, 1997, the petitioner filed a Petition for the Cancellation of the Union's Certificate of Registration with the Department of Labor and Employment (DOLE) on the following grounds:

- 3) Respondent has failed for several years to submit annually its annual financial statements and other

documents as required by law. For this reason, respondent has long lost its legal personality as a union.

4) Respondent also engaged in a strike which has been declared illegal by the National Labor Relations Commission.[5]

Apparently unaware of the petition, the Union reiterated its proposal for CBA negotiations in a Letter dated October 16, 1997 and suggested the date, time and place of the initial meeting. The Union further reiterated its plea in another Letter[6] dated October 28, 1997, to no avail.

Instead of filing a motion with the SOLE for the enforcement of the resolutions of Undersecretary Laguesma as affirmed by this Court, the Union filed a Notice of Strike on October 29, 1997 with the National Conciliation and Mediation Board (NCMB), serving a copy thereof to the petitioner. The Union alleged as grounds for the projected strike the following acts of the petitioner: (a) refusal to bargain; (b) coercion on employees; and (c) interference/ restraint to self-organization.[7]

A series of conferences was conducted before the NCMB (National Capital Region), but no agreement was reached. On November 6, 1997, the petitioner even filed a Letter with the Board requesting that the notice of strike be dismissed;[8] the Union had apparently failed to furnish the Regional Branch of the NCMB with a copy of a notice of the meeting where the strike vote was conducted.

On November 20, 1997, the Union submitted to the NCMB the minutes[9] of the alleged strike vote purportedly held on November 10, 1997 at the parking lot in front of the petitioner's premises, at the corner of Scout Magbanua Street and Panay Avenue, Quezon City. It appears that 178 out of the 300 union members participated therein, and the results were as follows: 156 members voted to strike; 14 members cast negative votes; and eight votes were spoiled.[10]

On November 28, 1997, the officers and members of the Union staged a strike. Subsequently, on December 1, 1997, the Union filed an ex parte motion with the DOLE, praying for its assumption of jurisdiction over the dispute. The Union likewise prayed for the imposition of appropriate legal sanctions, not limited to contempt and other penalties, against the hospital director/president and other responsible corporate officers for their continuous refusal, in bad faith, to bargain collectively with the Union, to adjudge the same hospital director/president and other corporate officers guilty of unfair labor practices, and for other just, equitable and expeditious reliefs in the premises.[11]

On December 4, 1997, the SOLE issued an Order, assuming jurisdiction over the ongoing labor dispute. The decretal portion of the order reads:

WHEREFORE, this Office now assumes jurisdiction over the labor disputes at Capitol Medical Center pursuant to Article 263(g) of the Labor Code, as amended. Consequently, all striking workers are directed to return to work within twenty-four (24) hours from the receipt of this Order and the management to resume normal operations and accept back all striking workers under the same terms and conditions prevailing before the strike. Further, parties are directed to cease and desist from committing any act that may exacerbate the situation.

Moreover, parties are hereby directed to submit within 10 days from receipt of this Order proposals and counter-proposals leading to the conclusion of the collective bargaining agreements in compliance with aforementioned Resolution of the Office as affirmed by the Supreme Court.

SO ORDERED.[12]

In obedience to the order of the SOLE, the officers and members of the Union stopped their strike and returned to work.

For its part, the petitioner filed a petition^[13] to declare the strike illegal with the National Labor Relations Commission (NLRC), docketed as NLRC NCR Case No. 00-12-08644-97. In its position paper, the petitioner appended the affidavit of Erwin Barbacena, the overseer of the property across the hospital which was being used as a parking lot, at the corner of Scout Magbanua Street and Panay Avenue, Quezon City. Also included were the affidavits of Simon J. Tingzon and Reggie B. Barawid, the petitioner's security guards assigned in front of the hospital premises. They attested to the fact that no secret balloting took place at the said parking lot from 6:00 a.m. to 7:00 p.m. of November 10, 1997.^[14] The petitioner also appended the affidavit of Henry V. Vera Cruz, who alleged that he was a member of the Union and had discovered that signatures on the Statements of Cash Receipt Over Disbursement submitted by the Union to the DOLE purporting to be his were not his genuine signatures;^[15] the affidavits of 17 of its employees, who declared that no formal voting was held by the members of the Union on the said date, were also submitted. The latter employees also declared that they were not members of any union, and yet were asked to sign documents purporting to be a strike vote attendance and unnumbered strike vote ballots on different dates from November 8 to 11, 1997.

In their position paper, the respondents appended the joint affidavit of the Union president and those members who alleged that they had cast their votes during the strike vote held on November 10, 1997.^[16]

In the meantime, on September 30, 1998, the Regional Director of the DOLE rendered a Decision denying the petition for the cancellation of the respondent Union's certificate of registration. The decision was affirmed by the Director of the Bureau of Labor Relations on December 29, 1998.

In a parallel development, Labor Arbiter Facundo L. Leda rendered a Decision on December 23, 1998 in NLRC NCR Case No. 00-12-08644-97 in favor of the petitioner, and declared the strike staged by the respondents illegal. The fallo of the decision reads:

- Declaring as illegal the strike staged by the respondents from November 28, 1997 to December 5, 1997;
- Declaring respondent Jaime Ibabao, in his capacity as union president, the other union officers, and respondents Ronald Q. Centeno, Michael Eustaquio and Henry Vera Cruz to have lost their employment status with petitioner; and
- Ordering the above respondents to pay, jointly and severally, petitioner the amount of Two Hundred Thousand Pesos (P200,000.00) by way of damages.^[17]

The Labor Arbiter ruled that no voting had taken place on November 10, 1997; moreover, no notice of such voting was furnished to the NCMB at least twenty-four (24) hours prior to the intended holding of the strike vote. According to the Labor Arbiter, the affidavits of the petitioner's 17 employees who alleged that no strike vote was taken, and supported by the affidavit of the overseer of the parking lot and the security guards, must prevail as against the minutes of the strike vote presented by the respondents. The Labor Arbiter also held that in light of Article 263(9) of the Labor Code, the respondent Union should have filed a motion for a writ of execution of the resolution of Undersecretary Laguesma which was affirmed by this Court instead of staging a strike.

The respondents appealed the decision to the NLRC which rendered a Decision^[18] on June 14, 1999, granting their appeal and reversing the decision of the Labor Arbiter. The NLRC also denied the petitioner's petition to declare the strike illegal. In resolving the issue of whether the union members held a strike vote on November 10, 1997, the NLRC ruled as follows:

We find untenable the Labor Arbiter's finding that no actual strike voting took place on November 10, 1997, claiming that this is supported by the affidavit of Erwin Barbacena, the overseer of the parking lot across the hospital, and the sworn statements of nineteen (19) (sic) union members. While it is true that no strike voting took place in the parking lot which he is overseeing, it does not mean that no strike voting ever took place at all

because the same was conducted in the parking lot immediately/directly fronting, not across, the hospital building (Annexes “1-J,” “1-K” to “1-K-6”). Further, it is apparent that the nineteen (19) (sic) hospital employees, who recanted their participation in the strike voting, did so involuntarily for fear of loss of employment, considering that their Affidavits are uniform and pro forma (Annexes “H-2” to “H-19”).[19]

The NLRC ruled that under Section 7, Rule XXII of DOLE Order No. 9, Series of 1997, absent a showing that the NCMB decided to supervise the conduct of a secret balloting and informed the union of the said decision, or that any such request was made by any of the parties who would be affected by the secret balloting and to which the NCMB agreed, the respondents were not mandated to furnish the NCMB with such notice before the strike vote was conducted.[20]

The petitioner filed a motion for the reconsideration of the decision, but the NLRC denied the said motion on September 30, 1999.[21]

The petitioner filed a petition for certiorari with the CA assailing the decision and resolution of the NLRC on the following allegation:

PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, ACTED CAPRICIOUSLY, AND CONTRAVENED THE LAW AND ESTABLISHED JURISPRUDENCE IN REVERSING THE LABOR ARBITER’S DECISION DATED DECEMBER 23, 1998 (ANNEX “E”) AND IN UPHOLDING THE LEGALITY OF THE STRIKE STAGED BY PRIVATE RESPONDENTS FROM NOVEMBER 28, 1997 TO DECEMBER 5, 1997.[22]

On September 29, 2000, the CA rendered judgment dismissing the petition and affirming the assailed decision and resolution of the NLRC.

The petitioner filed the instant petition for review on certiorari under Rule 45 of the Rules of Court on the following ground:

THE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE NLRC’S FINDING THAT RESPONDENTS COMPLIED WITH THE LEGAL REQUIREMENTS FOR STAGING THE SUBJECT STRIKE.[23]

The petitioner asserts that the NLRC and the CA erred in holding that the submission of a notice of a strike vote to the Regional Branch of the NCMB as required by Section 7, Rule XXII of the Omnibus Rules Implementing the Labor Code, is merely directory and not mandatory. The use of the word “shall” in the rules, the petitioner avers, indubitably indicates the mandatory nature of the respondent Union’s duty to submit the said notice of strike vote.

The petitioner contends that the CA erred in affirming the decision of the NLRC which declared that the respondents complied with all the requirements for a lawful strike. The petitioner insists that, as gleaned from the affidavits of the 17 union members and that of the overseer, and contrary to the joint affidavit of the officers and some union members, no meeting was held and no secret balloting was conducted on November 10, 1997.

The petitioner faults the CA and the NLRC for holding that a meeting for a strike vote was held on the said date by the respondents, despite the fact that the NLRC did not conduct an ocular inspection of the area where the respondent’s members allegedly held the voting. The petitioner also points out that it adduced documentary evidence in the form of affidavits executed by 17 members of the respondent union which remained rebutted. The petitioner also posits that the CA and the NLRC erred in reversing the finding of the Labor Arbiter; furthermore, there was no need for the respondent union to stage a strike on November 28, 1997 because it had filed an urgent motion with the DOLE for the enforcement and execution of the decision of this Court in G.R. No.

118915.

The petition is meritorious.

We agree with the petitioner that the respondent Union failed to comply with the second paragraph of Section 10, Rule XXII of the Omnibus Rules of the NLRC which reads:

Section 10. Strike or lockout vote. – 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 the purpose. A decision to declare a lockout must be approved by a majority of the Board of Directors of the employer, corporation or association or the partners obtained by a secret ballot in a meeting called for the purpose.

The regional branch of the Board 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 or the employer shall furnish the regional branch of the Board and notice of meetings referred to in the preceding paragraph at least twenty-four (24) hours before such meetings as well as the results of the voting at least seven (7) days before the intended strike or lockout, subject to the cooling-off period provided in this Rule.

Although the second paragraph of Section 10 of the said Rule is not provided in the Labor Code of the Philippines, nevertheless, the same was incorporated in the Omnibus Rules Implementing the Labor Code and has the force and effect of law.[24]

Aside from the mandatory notices embedded in Article 263, paragraphs (c) and (f) of the Labor Code, a union intending to stage a strike is mandated to notify the NCMB of the meeting for the conduct of strike vote, at least twenty-four (24) hours prior to such meeting. Unless the NCMB is notified of the date, place and time of the meeting of the union members for the conduct of a strike vote, the NCMB would be unable to supervise the holding of the same, if and when it decides to exercise its power of supervision. In *National Federation of Labor v. NLRC*, [25] the Court enumerated the notices required by Article 263 of the Labor Code and the Implementing Rules, which include the 24-hour prior notice to the NCMB:

- 1) A notice of strike, with the required contents, should be filed with the DOLE, specifically the Regional Branch of the NCMB, copy furnished the employer of the union;
- 2) A cooling-off period must be observed between the filing of notice and the actual execution of the strike thirty (30) days in case of bargaining deadlock and fifteen (15) days in case of unfair labor practice. However, in the case of union busting where the union's existence is threatened, the cooling-off period need not be observed.
- ...
- 4) Before a strike is actually commenced, a strike vote should be taken by secret balloting, with a 24-hour prior notice to NCMB. The decision to declare a strike requires the secret-ballot approval of majority of the total union membership in the bargaining unit concerned.
- 5) The result of the strike vote should be reported to the NCMB at least seven (7) days before the intended strike or lockout, subject to the cooling-off period.

A union is mandated to notify the NCMB of an impending dispute in a particular bargaining unit via a notice of strike. Thereafter, the NCMB, through its conciliator-mediators, shall call the parties to a conference at the soonest possible time in order to actively assist them in exploring all possibilities for amicable settlement. In the event of the failure in the conciliation/mediation proceedings, the parties shall be encouraged to submit their dispute for voluntary arbitration. However, if the parties refuse, the union may hold a strike vote, and if the

requisite number of votes is obtained, a strike may ensue. The purpose of the strike vote is to ensure that the decision to strike broadly rests with the majority of the union members in general and not with a mere minority, and at the same time, discourage wildcat strikes, union bossism and even corruption.[26] A strike vote report submitted to the NCMB at least seven days prior to the intended date of strike ensures that a strike vote was, indeed, taken. In the event that the report is false, the seven-day period affords the members an opportunity to take the appropriate remedy before it is too late.[27] The 15 to 30 day cooling-off period is designed to afford the parties the opportunity to amicably resolve the dispute with the assistance of the NCMB conciliator/mediator,[28] while the seven-day strike ban is intended to give the DOLE an opportunity to verify whether the projected strike really carries the imprimatur of the majority of the union members.[29]

The requirement of giving notice of the conduct of a strike vote to the NCMB at least 24 hours before the meeting for the said purpose is designed to (a) inform the NCMB of the intent of the union to conduct a strike vote; (b) give the NCMB ample time to decide on whether or not there is a need to supervise the conduct of the strike vote to prevent any acts of violence and/or irregularities attendant thereto; and (c) should the NCMB decide on its own initiative or upon the request of an interested party including the employer, to supervise the strike vote, to give it ample time to prepare for the deployment of the requisite personnel, including peace officers if need be. Unless and until the NCMB is notified at least 24 hours of the union's decision to conduct a strike vote, and the date, place, and time thereof, the NCMB cannot determine for itself whether to supervise a strike vote meeting or not and insure its peaceful and regular conduct. The failure of a union to comply with the requirement of the giving of notice to the NCMB at least 24 hours prior to the holding of a strike vote meeting will render the subsequent strike staged by the union illegal.

In this case, the respondent Union failed to comply with the 24-hour prior notice requirement to the NCMB before it conducted the alleged strike vote meeting on November 10, 1997. As a result, the petitioner complained that no strike vote meeting ever took place and averred that the strike staged by the respondent union was illegal.

Conformably to Article 264 of the Labor Code of the Philippines[30] and Section 7, Rule XXII of the Omnibus Rules Implementing the Labor Code,[31] no labor organization shall declare a strike unless supported by a majority vote of the members of the union obtained by secret ballot in a meeting called for that purpose. The requirement is mandatory and the failure of a union to comply therewith renders the strike illegal.[32] The union is thus mandated to allege and prove compliance with the requirements of the law.

In the present case, there is a divergence between the factual findings of the Labor Arbiter, on the one hand, and the NLRC and the CA, on the other, in that the Labor Arbiter found and declared in his decision that no secret voting ever took place in the parking lot fronting the hospital on November 10, 1997 by and among the 300 members of the respondent Union. Erwin Barbacena, the overseer of the only parking lot fronting the hospital, and security guards Simon Tingzon and Reggie Barawid, declared in their respective affidavits that no secret voting ever took place on November 10, 1997; 17 employees of the petitioner also denied in their respective statements that they were not members of the respondent Union, and were asked to merely sign attendance papers and unnumbered votes. The NLRC and the CA declared in their respective decisions that the affidavits of the petitioner's 17 employees had no probative weight because the said employees merely executed their affidavits out of fear of losing their jobs. The NLRC and the CA anchored their conclusion on their finding that the affidavits of the employees were uniform and pro forma.

We agree with the finding of the Labor Arbiter that no secret balloting to strike was conducted by the respondent Union on November 10, 1997 at the parking lot in front of the hospital, at the corner of Scout Magbanua Street and Panay Avenue, Quezon City. This can be gleaned from the affidavit of Barbacena and the joint affidavit of Tingzon and Barawid, respectively:

- That I am working as an overseer of a parking lot owned by Mrs. Madelaine Dionisio and located right in front of the Capitol Medical Center, specifically at the corner of Scout Magbanua Street and Panay Avenue, Quezon City;

- That on November 10, 1997, during my entire tour of duty from 6:00 a.m. to 6:00 p.m., no voting or election was conducted in the aforementioned parking space for employees of the Capitol Medical Center and/or their guests, or by any other group for that matter.[33]

...

- That I, Simon J. Tingzon, am a security officer of Veterans Philippine Scout Security Agency (hereinafter referred to as VPSSA), assigned, since July 1997 up to the present, as Security Detachment Commander at Capitol Medical Center (hereinafter referred to as CMC) located at Scout Magbanua corner Panay Avenue, Quezon City;

- That my (Tingzon) functions as such include over-all in charge of security of all buildings and properties of CMC, and roving in the entire premises including the parking lots of all the buildings of CMC;

- That I, Reggie B. Barawid, am a security guard of VPSSA, assigned, since June 1997 up to the present, as security guard at CMC;

- That my (Barawid) functions as such include access control of all persons coming in and out of CMC's buildings and properties. I also sometimes guard the parking areas of CMC;

- That on November 10, 1997, both of us were on duty at CMC from 7:00 a.m. to 7:00 p.m., with me (Barawid) assigned at the main door of the CMC's Main Building along Scout Magbanua St.;

- That on said date, during our entire tour of duty, there was no voting or election conducted in any of the four parking spaces for CMC personnel and guests.[34]

The allegations in the foregoing affidavits belie the claim of the respondents and the finding of the NLRC that a secret balloting took place on November 10, 1997 in front of the hospital at the corner of Scout Magbanua Street and Panay Avenue, Quezon City. The respondents failed to prove the existence of a parking lot in front of the hospital other than the parking lot across from it. Indeed, 17 of those who purportedly voted in a secret voting executed their separate affidavits that no secret balloting took place on November 10, 1997, and that even if they were not members of the respondent Union, were asked to vote and to sign attendance papers. The respondents failed to adduce substantial evidence that the said affiants were coerced into executing the said affidavits. The bare fact that some portions of the said affidavits are similarly worded does not constitute substantial evidence that the petitioner forced, intimidated or coerced the affiants to execute the same.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Decisions of the Court of Appeals and NLRC are SET ASIDE AND REVERSED. The Decision of the Labor Arbiter is REINSTATED. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Angelina Sandoval-Gutierrez (now an Associate Justice of the Supreme Court) and Elvi John S. Asuncion, concurring.

[2] Capitol Medical Center Alliance of Concerned Employees-Unified Filipino Service Workers v. Hon. Bienvenido E. Laguesma, G.R. No. 118915, 4 February 1997, 267 SCRA 503.

[3] Rollo, pp. 105-106.

[4] Id. at 124-125.

[5] Id. at 189.

[6] Id. at 140-141.

[7] CA Rollo, p. 141.

[8] Id. at 105.

[9] Id. at 143-150.

[10] Id. at 143.

[11] Id. at 429.

[12] Id. at 155.

[13] Id. at 67-70.

[14] Id. at 152-153.

[15] Rollo, pp. 176-188.

[16] Id. at 86-97.

[17] Id. at 238-239.

[18] Id. at 277-291.

[19] Id. at 287-288.

[20] Id. at 288-289.

[21] Id. at 299.

[22] Id. at 57-58.

[23] Id. at 17-18.

[24] Eastern Shipping Lines, Inc. v. POEA, G.R. No. L-76633, 18 October 1988, 166 SCRA 533.

[25] G.R. No. 113466, 15 December 1997, 283 SCRA 275. (Emphasis supplied)

[26] Primer on Strike, Picketing and Lockout, National Conciliation and Mediation Board – Department of Labor and Employment, Intramuros, Manila, 1996 ed., p. 6.

[27] Id.

[28] Id.

[29] Id. at 7.

[30] No strike or lockout shall be declared after assumption of jurisdiction by the President or the Department 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.

[31] Section 7. Strike or lockout vote. – 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 of referenda called for the purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the employer corporation or association or the partners in a partnership obtained by a secret ballot in a meeting called for the purpose.

[32] *Samahang Manggagawa sa Sulpicio Lines v. Sulpicio Lines, Inc.*, G.R. No. 140992, 25 March 2004, 426 SCRA 379; *Grand Boulevard Hotel v. Genuine Labor Organization of Workers in Hotel, Restaurant and Allied Industries*, 406 Phil. 688 (2003).

[33] CA Rollo, p. 152.

[34] *Id.* at 153.

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