SUKHOTHAI CUISINE AND RESTAURANT, PETITIONER, VS. COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE LABOR ALLIANCE COUNCIL (PLAC) LOCAL 460 SUKHOTHAI RESTAURANT ...

G.R. NO. 150437. July 17, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before this Court is a petition for certiorari under Rule 45 questioning the Decision[1] dated August 8, 2001 promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 63864 which affirmed in toto the Decision dated November 29, 2000 of the National Labor Relations Commission (NLRC); and the CA Resolution[2] dated October 18, 2001 which denied the petitioner's Motion for Reconsideration.

This case originated from a complaint for illegal strike filed with the NLRC by the petitioner[3] against private respondents due to an alleged "wildcat strike" and other concerted action staged in the company premises on June 24, 25 and 26, 1999.

The undisputed facts are as follows:

Sometime in March 1998, the majority of the employees of the petitioner organized themselves into a union which affiliated with the Philippine Labor Alliance Council (PLAC), and was

designated as PLAC Local 460 Sukhothai Restaurant Chapter (Union).[4]

On December 3, 1998, private respondent Union filed a Notice of Strike with the National Conciliation and Mediation Board (NCMB) on the ground of unfair labor practice, and particularly, acts of harassment, fault-finding, and union busting through coercion and interference with union affairs. On December 10, 1998, in a conciliation conference, the representatives of the petitioner agreed and guaranteed that there will be no termination of the services of private respondents during the pendency of the case, with the reservation of the management prerogative to issue memos to erring employees for the infraction, or violation of company policies. On the following day, or on December 11, 1998, a Strike Vote was conducted and supervised by NCMB personnel, and the results of the vote were submitted to the NCMB on December 21, 1998.

On January 21, 1999, the petitioner and the Union entered into a Submission Agreement, thereby agreeing to submit the issue of unfair labor practice - the subject matter of the foregoing Notice of Strike and the Strike Vote - for voluntary arbitration with a view to prevent the strike.

On March 24, 1999, during the pendency of the voluntary arbitration proceedings, the petitioner, through its president, Ernesto Garcia, dismissed Eugene Lucente, a union member, due to an alleged petty quarrel with a co-employee in February 1999. In view of this termination, private respondent Union filed with the NLRC a complaint for illegal dismissal.

In the morning of June 24, 1999, private respondent Jose Lanorias, a union member, was relieved from his post, and his employment as cook, terminated. Subsequently, respondent Billy Bacus, the union vice-president, conferred with Ernesto Garcia and protested Lanorias's dismissal. Shortly thereafter, respondents staged a "wildcat strike."

On June 25, 1999, a Notice of Strike was re-filed by the private respondents and the protest, according to the respondents, was converted into a "sit-down strike." On the next day, or on June 26, 1999, the same was transformed into an "actual strike."

On June 29, 1999, the petitioner filed a complaint for illegal strike with the NLRC against private respondents, seeking to declare the strike illegal, and to declare respondents, who participated in the commission of illegal acts, to have lost their employment status. Having arrived at no amicable settlement, the parties submitted their position papers, together with supporting documents, affidavits of witnesses, and photographs, in compliance with the orders of the Labor Arbiter. On October 12, 1999, the Labor Arbiter rendered a Decision the dispositive portion of which reads:

> WHEREFORE, premises considered, respondents are hereby declared to have staged an illegal strike, and the employment of union officers and all individual respondents are deemed validly terminated in accordance with law.
>
> Finally, all individual respondents are hereby directed to immediately remove their picket lines and all physical obstructions that impede ingress and egress to petitioner's premises.
>
> SO ORDERED.[5]

The principal question before the Labor Arbiter was whether the private respondents staged an illegal strike. Ruling in the affirmative, the Labor Arbiter held that the Notice of Strike dated December 3, 1998 as well as the Strike Vote of December 11, 1998 referred to a prior dispute submitted for voluntary arbitration and, hence, they cannot apply to the strike staged about six months later, which commenced on June 24, 1999 and ended on June 26, 1999; that, for these reasons, the Union failed to comply with the mandatory requisites for a lawful strike; that the issuance of memos by the petitioner to instill discipline on erring employees is a lawful exercise of management prerogative and do not amount to acts of unfair labor practice; that, instead of resorting to a strike, private respondents should have availed of the proper legal remedies such as the filing of complaints for illegal suspension or illegal dismissal with the NLRC; that, the root causes of the controversy are the petition for certification election and petition for cancellation of union registration which were then pending before the Department of Labor as well as the issue on unfair labor practice then pending before the voluntary arbitrator, and, hence, the parties should have awaited the resolution of the cases in the proper fora; and that even if private respondents complied with all the requisites of a valid strike, the strike is still illegal due to the commission of prohibited acts, including the obstruction of free ingress and egress of the premises, intimidation, and threat inflicted upon non-striking employees.

Private respondents appealed to the NLRC which, on November 29, 2000, promulgated its Decision the dispositive portion of which states:

> WHEREFORE, the appeal is hereby granted. Accordingly, the Decision dated October 12, 1999 in the above entitled case is hereby vacated and set-aside. Consequently, the complaint of illegal strike is hereby dismissed for lack of merit.
>
> All striking workers are hereby ordered to return to work immediately and Sukhothai Restaurant to accept them back to their former or equivalent positions. If the same is no longer possible, Sukhothai Restaurant is ordered to pay them separation pay equivalent to one month salary for every year of service reckoned from

their initial date of employment up to the present.

SO ORDERED.[6]

In overruling the Labor Arbiter, the NLRC held that the petitioner is guilty of union busting; that the petitioner violated the Submission Agreement dated December 10, 1998 in that no termination shall be effected during the voluntary arbitration proceedings and, hence, the strike was justified; that the Notice of Strike and Strike Vote dated December 3, 1998 and December 11, 1998, respectively, are applicable to the strike of June 24, 25, and 26, 1999 since the same issues of unfair labor practice were involved and that unfair labor practices are continuing offenses; that even if the foregoing Notice of Strike and Strike Vote were not applicable, the Union may take action immediately since the petitioner is guilty of union busting; and that the re-filing of a Notice of Strike on June 25, 1999 cured the defect of non-compliance with the mandatory requirements.

After the NLRC denied the Motion for Reconsideration, the petitioner appealed to the CA and raised the following issues:

I. WHETHER OR NOT THE STRIKE STAGED BY THE

PRIVATE RESPONDENTS IS LEGAL; and

II. WHETHER OR NOT THE PRIVATE RESPONDENTS WHO PARTICIPATED IN THE STRIKE AND COMMITTED ILLEGAL ACTS WERE PROPERLY AND VALIDLY DECLARED TO HAVE LOST THEIR EMPLOYMENT STATUS.[7]

As stated above, the CA denied the petition and affirmed the NLRC. Petitioner is now before this Court, raising the following grounds:

I. THE COURT OF APPEALS GRAVELY ERRED AND DECIDED THE ISSUES IN THE INSTANT CASE IN A MANNER CONTRARY TO ESTABLISHED LAW AND JURISPRUDENCE BY RULING THAT THE WILDCAT STRIKE OF JUNE 24, 1999 IS VALID AND LEGAL DESPITE CLEAR AND INCONTROVERTIBLE EVIDENCE THAT:

A. PRIVATE RESPONDENTS FAILED TO COMPLY WITH THE REQUISITES FOR A VALID STRIKE AS PRESCRIBED BY THE PERTINENT PROVISIONS OF THE LABOR CODE;

B. THERE WERE NO STRIKEABLE ISSUES; AND

C. PRIVATE RESPONDENTS COMMITTED ILLEGAL AND PROHIBITED ACTS DURING THE STRIKE.

II. THE COURT OF APPEALS GRAVELY ERRED BY FAILING TO ADDRESS THE OTHER ISSUES RAISED BY THE PETITIONER IN ITS PETITION FOR CERTIORARI WHICH FAILURE AMOUNTED TO A DENIAL OF ITS RIGHT TO DUE PROCESS OF LAW.[8]

The petition is meritorious.

The questions before this Court are whether the strike staged by the private respondents is illegal; and whether private respondents are deemed to have lost their employment status by participating in the commission of illegal acts during the strike.

Respondents insist that the filing of the Notice of Strike on December 3, 1998, the Strike Vote of December 11, 1998, the submission of the results of the vote to the NCMB on December 21, 1998, and their observation of the 15-day cooling-off period in case of unfair labor practice as well as the seven-day reporting period of the results of the strike vote, all satisfy the mandatory requirements under Article 263[9] of the Labor Code and are

applicable to the June 1999 strike. In support of this theory, respondents invoke Article 263(f) in that the decision to strike is valid for the duration of the dispute based on substantially the same grounds considered when the strike vote was taken, thus, there is no need to repeat the process. Furthermore, according to the respondents, even assuming for the sake of argument that the Notice of Strike and Strike Vote in December 1998 cannot be made to apply to the concerted actions in June 1999, these requirements may nonetheless be dispensed with since the petitioner is guilty of union busting and, hence, the Union can take action immediately.

The undisputed fact, however, is that at the time the strike was staged in June 1999, voluntary arbitration between the parties was ongoing by virtue of the January 21, 1999 Submission Agreement. The issue to be resolved under those proceedings pertained to the very same issues stated in the Notice of Strike of December 3, 1998: the commission of unfair labor practices, such as acts of harassment, fault-finding, and union busting through coercion and interference with union affairs.

Article 264 of the Labor Code provides:

> Art. 264. Prohibited activities. -
>
> x x x x
>
> No strike or lockout shall be declared after assumption of jurisdiction by the President or the Secretary 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 (emphasis supplied)

This Court has held that strikes staged in violation of agreements providing for arbitration are illegal, since these agreements must be strictly adhered to and respected if their ends are to be achieved.[10] The rationale of the prohibition under Article 264 is that once jurisdiction over the labor dispute has been properly acquired by competent authority, that jurisdiction should not be interfered with by the application of the coercive processes of a strike.[11] Indeed it is among the chief policies of the State to promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation, and conciliation, as modes of settling labor, or industrial disputes.[12] In Alliance of Government Workers v. Minister of Labor,[13] Chief Justice Fernando declared that the principle behind labor unionism in private industry is that industrial peace cannot be secured through compulsion by law. Relations between private employers and their employees rest on an essentially voluntary basis, subject to the minimum requirements of wage laws and other labor and welfare legislation.[14]

The alleged dismissals of Lucente and respondent Lanorias, both union members, which allegedly triggered the wildcat strike, are not sufficient grounds to justify the radical recourse on the part of the private respondents. The questions that surround their dismissal, as private respondents so affirm, are connected to the alleged breach of the "guarantee" by the petitioner not to dismiss its employees during the pendency of the arbitration case, the very questions which they also link to the other incidents of unfair labor practices allegedly committed by the petitioner'these matters should have been raised and resolved in the voluntary arbitration proceedings that were commenced precisely to address them. On the other hand, if private respondents believed that the disciplinary measures had nothing to do with the issues under arbitration, then they should have availed of the appropriate remedies under the Labor Code, such as the institution of cases of illegal dismissal[15] or, by agreement of the parties, the submission of the cases to the grievance machinery of the CBA, if one is available, so that they may be subjected to separate voluntary arbitration proceedings,[16] or simply seek to terminate the pending voluntary arbitration case and complete the mandatory procedure for a lawful strike. Private respondents should have availed themselves of any of these alternative remedies instead of resorting to a drastic and unlawful measure,

specifically, the holding a wildcat strike.[17] And because of the fact that the Union was fully aware that the arbitration proceedings were pending, good faith cannot be invoked as a defense.[18]

For failing to exhaust all steps in the arbitration proceedings by virtue of the Submission Agreement, in view of the proscription under Article 264 of the Labor Code, and the prevailing state policy as well as its underlying rationale, this Court declares that the strike staged by the private respondents is illegal.[19]

With respect to respondents' averment that assuming arguendo that the Notice of Strike and Strike Vote in December 1998 cannot be made to apply to the strike in June 1999, the requirements for a valid strike may nonetheless be dispensed

with in case of union busting,[20] the Court finds it unnecessary to discuss the question at length, especially in view of the foregoing declaration that the strike is illegal, as well as the considerations of established doctrine: 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,[21] and in case of union busting where the existence of the union is threatened, it is only the 15-day cooling-off period that may be dispensed with.

Article 263(f) in part states: "In every case, the union or the employer shall furnish the Department the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided." This provision should be read with Section 3, Rule XXII, Book V of the Rules Implementing the Labor Code, then applicable at the time of the dispute, the relevant provisions of which state:

> However, in case of unfair labor practice involving the dismissal from employment of any union officer 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 fifteen-day cooling-off period shall not apply and the union may take action immediately after the strike vote is conducted and the results thereof submitted to the appropriate regional branch of the Board. (emphasis supplied)

The NCMB Primer on Strike, Picketing, and Lockout (January 31, 1992) provide the same wording. The foregoing provision of the implementing rules should also be compared to the provisions of the Labor Code under Article 263(c):

> (c) x x x 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 implementing rules clarify Article 263(c) in that the union may strike "immediately" provided that the strike vote is conducted, the results thereof submitted "in every case" at least seven days before the intended strike or lockout. In sum, in case of alleged union busting, the three remaining requirements - notice, strike vote, and seven-day report period - cannot be dispensed with.[22]

What is more, the strike had been attended by the widespread commission of prohibited acts. Well-settled is the rule that even if the strike were to be declared valid because its objective or purpose is lawful, the strike may still be declared invalid where the means employed are illegal.[23] Among such limits are the prohibited activities under Article 264 of the Labor Code, particularly paragraph (e), which states that no person engaged in picketing shall:

> a) commit any act of violence, coercion, or intimidation or
> b) obstruct the free ingress to or egress from the employer's premises for lawful purposes, or
> c) obstruct public thoroughfares.

The following acts have been held to be prohibited activities: where the strikers shouted slanderous and scurrilous

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words against the owners of the vessels;[24] where the strikers used unnecessary and obscene language[25] or epithets to prevent other laborers to go to work,[26] and circulated libelous statements against the employer which show actual malice;[27] where the protestors used abusive and threatening language towards the patrons of a place of business or against co-employees, going beyond the mere attempt to persuade customers to withdraw their patronage;[28] where the strikers formed a human cordon and blocked all the ways and approaches to the launches and vessels of the vicinity of the workplace[29] and perpetrated acts of violence and coercion to prevent work from being performed;[30] and where the strikers shook their fists and threatened non-striking employees with bodily harm if they persisted to proceed to the workplace.[31] Permissible activities of the picketing workers do

not include obstruction of access of customers.[32]

The evidence in the record clearly and extensively shows that the individual respondents engaged in illegal acts during the strike, such as the intimidation and harassment of a considerable number of customers to turn them away and discourage them from patronizing the business of the petitioner;[33] waving their arms and shouting at the passersby, "Huwag kayong pumasok sa Sukhothai!"[34] and "Nilagyan na namin ng lason ang pagkain d"yan!"[35] as well as numerous other statements made to discredit the reputation of the establishment;[36] preventing the entry of customers;[37] angry and unruly behavior calculated to cause commotion[38] which affected neighboring establishments within the mall;[39] openly cursing and shouting at the president in front of customers[40] and using loud and abusive language, such as "Putang ina niyong lahat!", toward the rest of the management[41] as well as their co-workers who refused to go on strike;[42] physically preventing non-strikers from entering the premises,[43] as well as deliberately blocking their movements inside the restaurant,[44] at times by sharply bumping into them[45] or through indecent physical contact;[46] openly threatening non-strikers with bodily harm, such as "Pag hindi sila pumayag, upakan mo!";[47] and shouting at the security guard "Granada!" which caused panic among the customers and prompted security to report a possible death threat to management and the security agency.[48]

In the determination of the liabilities of the individual respondents, the applicable provision is Article 264(a) of the Labor Code:

> Art. 264. Prohibited Activities - (a) x x x
>
> x x x x
>
> x x x x Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: 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 x

In Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc.[49] this Court explained that the effects of such illegal strikes, outlined in Article 264, make a distinction between workers and union officers who participate therein: an ordinary striking worker cannot be terminated for mere participation in an illegal strike. There must be proof that he or she 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.[50] In all cases, the striker must be identified. But proof beyond reasonable doubt is not required. Substantial evidence available under the attendant circumstances, which may justify the imposition of the penalty of dismissal, may suffice.[51] Liability for prohibited acts is to be determined

on an individual basis:

Private
Respondent

Rank in
Respondent
Union

Illegal Acts

Emmanuel Cayno

President

Knowingly participating in an illegal strike; shouting at the security guard "Granada!" which caused panic among the customers;[52] Intimidating, harassing, preventing, and discouraging customers from entering the restaurant;[53] publicly denouncing the reputation of the establishment;[54] openly threatening non-strikers with bodily harm;[55]

Billy Bacus

Vice Preside

Knowingly participating in an illegal strike; Intimidating, harassing, preventing, and discouraging customers from entering the restaurant;[56] use of abusive language towards management or non-strikers;[57] deliberately blocking the movements of management or non-strikersinside the restaurant;[58]

Analiza Cablay

Secretary

Knowingly participating in an illegal strike; Intimidating, harassing,

preventing, and discouraging customers from entering the restaurant;[59]

Jose Neil Arcilla

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Treasurer

Knowingly participating in an illegal strike; Intimidating, harassing, preventing, and discouraging customers from entering the restaurant;[60] publicly denouncing the reputation of the establishment;[61] coercing non-strikers to strike;[62] Cursing and use of abusive language towards management, non-strikers, or customers;[63]

el Esancha

Auditor

Knowingly participating in an illegal strike; intimidating, harassing, preventing,

and discouraging customers from entering the restaurant;[64]

Claudio Panaligan

Board Member

Knowingly participating in an illegal strike; use of abusive language towards management, non-strikers, or customers; [65] intimidating, harassing, preventing, and discouraging customers from entering the restaurant;[66] deliberately blocking the movements of management or non-strikers inside the restaurant;[67]

Rey Arsenal

Member

Intimidating, harassing, preventing, and discouraging customers from entering

the restaurant;[68]

Alex Martinez

Member

Intimidating, harassing, preventing, and discouraging customers from entering the restaurant;[69]

Hermie Raz

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Member

Cursing and use of abusive language towards management, non-strikers, or

customers;[70] deliberately blocking the movements of management or non-strikers inside the restaurant; [71] intimidating, harassing, preventing, and discouraging customers from entering the restaurant;[72]

Jose Lanorias

Member

Intimidating, harassing, preventing, and discouraging customers from entering the restaurant;[73]

Lito Arce

Member

Id.[74]

Cesar Sangreo

Member

Id.[75]

Rolando Fabregas

Member

Id.[76]

Jimmy Balan

Member

Id.;[77] deliberately blocking movements of non-strikers inside the restaurant by sharply bumping into them[78]or through indecent

physical contact;[79] cursing and use of abusive language towards management, non-strikers, or customers;[80]

Joven Lualhati

Member

Intimidating, harassing, preventing,

and discouraging customers from entering the restaurant;[81]

Antonio Enebrad

Member

Id.[82]

Edgar Eugenio

Member

Id.;[83] cursing and use of abusive language towards management,

non-strikers, or customers;[84]

Albert Agbuya

Member

Intimidating, harassing, preventing, and discouraging customers from entering the restaurant;[85]

Arnel Salvador

Member

Id.[86]

Ricky Del Prado

Member

Id.[87]

Bernie Del Mundo

Member

Id.[88]

Roberto Eco

Member

Id.[89]

Joven Talidong

Member

Id.[90]

Leny Lucente

Member

Id.;[91] threatening non-strikers with bodily harm;[92]

Rigoberto Tubaon

Member

Intimidating, harassing, preventing, and discouraging customers from entering the restaurant;[93] cursing and use of abusive language towards management, non-strikers, or customers;[94]

Merly Naz

Member

Intimidating, harassing, preventing, and discouraging customers from entering the restaurant;[95] cursing and use of abusive language towards management, non-strikers, or customers;[96]

Lino Salubre

Member

Preventing and discouraging customers from entering the restaurant;[97]

Rolando Pugong

Member

Preventing and discouraging customers from entering the restaurant;[98]

John Bathan

Member

Intimidating, harassing, preventing, and discouraging customers from entering the restaurant;[99]

Thus, the Labor Arbiter is correct in ruling that the employment of all individual private respondents are deemed validly terminated.

WHEREFORE, the petition is granted. The Decision and Resolution of the Court of Appeals together with the Decision dated November 29, 2000 of the National Labor Relations Commission are REVERSED and SET

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ASIDE. The Decision of the Labor Arbiter dated October 12, 1999 is REINSTATED. The Court finds the strike illegal and, as a consequence thereto, the union officers who participated in the illegal strike and in the commission of illegal acts, namely, Emmanuel Cayno, Billy Bacus, Analiza Cablay, Jose Neil Arcilla, Roel Esancha, and Claudio Panaligan, as well as the union members who participated in the commission of illegal acts during the strike, namely, Rey Arsenal, Alex Martinez, Hermie Raz, Jose Lanorias, Lito Arce, Cesar Sangreo, Rolando Fabregas, Jimmy Balan, Joven Lualhati, Antonio Enebrad, Edgar Eugenio, Albert Agbuya, Arnel Salvador, Ricky Del Prado, Bernie Del Mundo, Roberto Eco, Joven Talidong, Leny Lucente, Rigoberto Tubaon, Merly Naz, Lino Salubre, Rolando Pugong, and John Bathan, all private respondents, are hereby declared to have lost their employment status.

No pronouncement as to costs.

SO ORDERED.

Panganiban, C.J., (Chairman), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Eliezer R. De Los Santos, with Associate Justices Godardo A. Jacinto (now retired) and Bernardo P. Abesamis (now retired), concurring.

[2] Id.

[3] The name of the petitioner as a party-in-interest should read "Rosemich, Inc." which is the legal entity that owns and manages the Sukhothai restaurants at the SM Megamall Bldg. A and at the Ayala Center (Glorietta 3) branches. See rollo, pp. 240, 243, 245, 247. The caption may also read "Rosemich, Inc., doing business under the name and style Sukhothai Cuisine and Restaurant."

[4] At the time of the suit, the Union membership included the employees of both the SM Mega Mall (Mandaluyong) and Glorietta III (Ayala Center, Makati City) branches of the petitioner.

[5] Rollo, pp. 87-88.

[6] Id.at 100-101.

[7] CA rollo, p. 16.

[8] Rollo, p. 30.

[9] Labor Code, Art. 263. Strikes, picketing and lockouts. - (a) x x x x

x x x x

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Department at least thirty (30) days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be fifteen (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 x

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(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. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. 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 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 or the employer shall furnish the Department the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided. (emphasis supplied)

[10] San Miguel Corp. v. National Labor Relations Commission, 451 Phil. 514, 527 (2003); Insurefco Paper Pulp & Project Workers' Union v. Insular Sugar Refining Corp., 95 Phil. 761, 768 (1954).

[11] Telefunken Semiconductors Employees Union v. Court of Appeals, 401 Phil. 776, 795 (2000); Zamboanga Wood Products, Inc. v. National Labor Relations Commission, G.R. No. 82088, October 13, 1989, 178 SCRA 482, 491.

[12] The Labor Code of the Philippines, P.D. No. 442, as amended, Art. 211 (1974).

[13] 209 Phil. 1 (1983).

[14] Id.at 15. See Social Security System Employees Association (SSSEA) v. Court of Appeals, G.R. No. 85279, July 28, 1989, 175 SCRA 686, 697 (reiterating the foregoing labor-relations policy). A dispute pending in voluntary arbitration (or compulsory arbitration) cannot be the subject of a strike or lockout notice. 2 C.A. Azucena, The Labor Code With Comments and Cases 377 (1999), interpreting The Labor Code of the Philippines, P.D. No. 442, as amended, Art. 264 (1974).

[15] See The Labor Code of the Philippines, P.D. No. 442, as amended, Art. 217(a)(2) (1974). See generally National Union of Workers in Hotels, Restaurants and Allied Industries (NUWHRAIN) - Peninsula Manila Chapter v. National Labor Relations Commission, 350 Phil. 641, 651 (1998).

[16] Labor Code, Articles 260 and 262 provide:

Article 260. Grievance Machinery and Voluntary Arbitration. - The parties to a Collective Bargaining Agreement shall include therein provisions that will ensure the mutual observance of its terms and conditions. They shall establish a machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of their Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies.

x x x x

For this purpose, parties to a Collective Bargaining Agreement shall name and designate in advance a Voluntary Arbitrator or panel of Voluntary Arbitrators, or include in the agreement a procedure for the selection of such Voluntary Arbitrator or panel of Voluntary Arbitrators, preferably from the listing of qualified Voluntary Arbitrators duly accredited by the Board. In case the parties fail to select a Voluntary Arbitrator or panel of Voluntary Arbitrators, the Board shall designate the Voluntary Arbitrator or panel of Voluntary Arbitrators, as may be necessary, pursuant to the selection procedure agreed upon in the Collective Bargaining Agreement, which shall act with the same force and effect as if the Arbitrator or panel of Arbitrators has been selected by the parties as described above.

Article 262. Jurisdiction over other labor disputes. - The Voluntary Arbitrator or panel of Voluntary Arbitrators,

upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

See National Union of Workers in Hotels, Restaurants and Allied Industries (NUWHRAIN) - Peninsula Manila Chapter v. National Labor Relations Commission, supra note 15.

[17] National Union of Workers in Hotels, Restaurants and Allied Industries (NUWHRAIN) - Peninsula Manila Chapter v. National Labor Relations Commission, supra note 15, at 652.

[18] First City Interlink Transportation Co., Inc.. v. Sec. Confesor, 338 Phil. 635, 644 (1997) (holding that the union cannot invoke good faith when conciliation meetings were ongoing). A mere claim of good faith would not justify the holding of a strike under the aforesaid exception as, in addition thereto, the circumstances must have warranted such belief. It is therefore, 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 sustain such belief. National Union of Workers in Hotels, Restaurants and Allied Industries (NUWHRAIN) - Peninsula Manila Chapter v. National Labor Relations Commission, supra note 15, at 650; Tiu v. National Labor Relations Commission, 343 Phil. 478, 486-487 (1997).

[19] San Miguel Corp. v. National Labor Relations Commission, supra note 10, at 527; San Miguel Corp. v. National Labor Relations Commission, 363 Phil. 377, 384 (1999).

[20] The Labor Code, Article 263(c), provides in part: -x x x 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."

[21] Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc., G.R. No. 140992, March 25, 2004, 426 SCRA 319, 325; Gold City Integrated Port Service, Inc. v. National Labor Relations Commission , 315 Phil. 698, 709 (1995); Union of Filipro Employees v. Nestl" Philippines, Inc., G.R. Nos. 88710-13, December 19, 1990, 192 SCRA 396, 411-412; National Federation of Sugar Workers (NFSW) v. Ovejera, 199 Phil. 537, 550 (1982). The claim of good faith is not a valid excuse to dispense with the procedural steps for a lawful strike. Grand Boulevard Hotel, Inc. v. Genuine Labor Organization of Workers in Hotel, Restaurant and Allied Industries (GLOWHRAIN), 454 Phil. 463, 490 (2003).

[22] See 2 C.A. Azucena, The Labor Code With Comments and Cases, pp. 421-422 (1999).

[23] Association of Independent Unions in the Philippines (AIUP) v. National Labor Relations Commission, 364 Phil. 697, 707 (1999).

[24] United Seamen's Union of the Philippines v. Davao Shipowners Association, G.R. Nos. L-18778 & L-18779, August 31, 1967, 20 SCRA 1226, 1240.

[25] Cromwell Commercial Employees and Laborers Union (PTUC) v. Court of Industrial Relations, G.R. No. L-19778, September 30, 1964, 12 SCRA 124, 132.

[26] Liberal Labor Union v. Philippine Can Co., 91 Phil. 72, 78 (1952).

[27] Linn v. United Plan Guard Workers, 15 L.Ed 2d 582.

[28] 31 Am. Jur. " 245, p. 954; 116 A.L.R. 477, 505; 32 A.L.R. 756; 27 A.L.R. 375; cited in 2 C.A. Azucena, The Labor Code With Comments and Cases p.500 (1999).

[29] Association of Independent Unions in the Philippines (AIUP) v. National Labor Relations Commission,

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supra note 23, at 706-707; United Seamen's Union of the Philippines v. Davao Shipowners Association, supra note 24, at 1236.

[30] Id.

[31] Id.; The following likewise have been found to be illegal acts: where strikers hijacked the employer's bus and barricaded the terminal by means of five buses which had also been hijacked; the hijacking of 26 more buses which resulted in injuries to some employees and panic to the commuters; the destruction of company property; and the use of molotov bombs thrown into the work compound, First City Interlink Transportation Co., Inc. v. Sec. Confesor, supra note 18, at 645; where non-strikers were mauled and suffered physical injuries inflicted by the strikers, United Seamenï¿½s Union of the Philippines v. Davao Shipowners Association, supra note 24, at 1237; Shell Oil Workers Union v. Shell Company of the Philippines, Ltd., 148-A Phil. 229, 247; the breaking of the truck side and windows, and throwing of empty bottles at non-strikers, Philippine Marine Officersï¿½ Guild v. Compania Maritima, 131 Phil. 218, 232 (1968); where the strikers resorted to terrorism to prevent non-strikers from working, Liberal Labor Union v. Philippine Can Co.,supra note 26, at 78; where acts of sabotage were committed against property, National Labor Union, Inc. v. Court of Industrial Relations, 70 Phil. 300; and where the strikers committed acts of violence by hurling stones which smashed glass windows of the building of the company and headlights of the car, Cromwell Commercial Employees and Laborers Union (PTUC) v. Court of Industrial Relations, supra note 25, at 132. Moreover, authorities are of the view that where the picketing is so conducted as to amount to a nuisance, the picketing is unlawful. The following have been deemed acts of nuisance: where the obstruction to the free use of property so as substantially to interfere with the comfortable enjoyment of life or property; where the picketing constitutes an unlawful obstruction to the free passage or use, in the customary manner, of a street, 31 Am. Jur. ï¿½ 248, p. 955, cited in 2 C.A. Azucena, The Labor Code With Comments and Cases p. 499 (1999); where there is an obstruction of access of customers, since pickets may not aggressively interfere with the right of peaceful ingress and egress to and from the employerï¿½s shop; where the entrance to the place of business is obstructed by protesters parading around in a circle or lying on the sidewalk, 31 Am. Jur. ï¿½ 249, p. 955, cited in 2 C.A. Azucena, The Labor Code With Comments and Cases p. 499 (1999); where vandalism and acts of a less terroristic nature are carried out to cause physical discomfort to the employerï¿½s customers, 48-A Am. Jur. 2d 2059, pp. 427-28, cited in 2 C.A. Azucena, The Labor Code With Comments and Cases p. 499 (1999); and where words or acts are calculated and intended to cause an ordinary person to fear an injury to his person, business, or property; where there is display of force without actual use thereof may be intimidation, id. Authorities are also of the view that the following means used to carry on a picketing or strike were illegal: where the strikers conspired to injure the business by inducing willing patrons and would-be patrons to withdraw or withhold patronage by assembling at or near the entrance of the restaurant during all business hours and continuously announcing in a loud voice, audible for a great distance, that the restaurant was unfair to the labor union; by disparaging the restaurant, charging that the prices were higher and the food worse than in any other restaurant; and by attacking the character of those who did patronize, saying that their mental caliber and moral fiber fell below the average. Truax v. Corrigan, 257 U.S. 312 (1921), cited in 2 C.A. Azucena, The Labor Code With Comments and Cases pp. 500-501 (1999). But minor disorders where rising passions resulting in the exchange of hot words in the picket line do not impede or diminish the right to strike. Insular Life Assurance Co., Ltd. Employees Association-NATU v. The Insular Life Assurance Co., Ltd., 147 Phil. 194, 220-221 (1971); Republic Steel Co. v. National Labor Relations Board 107 F. 2d 472, cited in Mathews, Labor Relations and the Law 378; 2 C.A. Azucena, The Labor Code With Comments and Cases p. 449 (1999).

[32] C.A. Azucena, Everyoneï¿½s Labor Code 268 (2001) (interpreting Art. 264(e) of the Labor Code).

[33] Affidavit of Ernest A. Briza dated July 8, 1999, rollo, pp. 236-237; Affidavit of Ernesto J. Garcia dated July

15, 1999, id. at 240-242; Affidavit of Marissa C. Ileto dated July 15, 1999, id. at 243-244; Affidavit of Ruben T. Tabonares, Jr. dated July 15, 1999, id. at 252; Affidavit of Leolito S. Adim dated July 21, 1999, id. at 253; Affidavit of Julius M. Dela Cruz dated September 20, 1999, id. at 258; Affidavit of Rianna de Belen dated September 20, 1999, id. at 261-262.

[34] Affidavit of Ernest A. Briza, supra; Affidavit of Ernesto J. Garcia, supra; Affidavit of Ruben T. Tabonares, Jr., supra; Affidavit of Julius M. Dela Cruz, supra.

[35] Affidavit of Rico G. Calixijan, supra.

[36] Affidavit of Rianna de Belen, supra.

[37] Affidavit of Ma. Teresa Dela Cruz dated July 15, 1999; Rollo, p. 239.

[38] Affidavit of Ruben T. Tabonares, Jr., supra; Affidavit of Leolito S. Adim, supra; Affidavit of Rianna de Belen, supra.

[39] Affidavit of Rianna de Belen, supra.

[40] Affidavit of Ma. Teresa Dela Cruz, supra; Affidavit of Ernesto J. Garcia, supra.

[41] Affidavit of Rosario V. Garcia dated July 15, 1999; rollo, p. 249; Affidavit of Ruben T. Tabonares, Jr., supra; Affidavit of Teresa Ileto-Severino dated September 20, 1999, rollo, p. 259; Affidavit of Julius M. Dela Cruz, supra.

[42] Affidavit of Joanna Lisa A. Morata dated July 15, 1999, rollo, p. 245; Affidavit of Ruben T. Tabonares, Jr., supra; Affidavit of Julius M. Dela Cruz, supra; Affidavit of Rianna de Belen, supra.

[43] Affidavit of Rosario V. Garcia, supra.

[44] Affidavit of Joanna Lisa A. Morata, supra; Affidavit of Julius M. Dela Cruz, supra.

[45] Affidavit of Lucille Entong dated September 20, 1999, rollo, p. 257; Affidavit of Julius M. Dela Cruz, supra.

[46] Affidavit of Lucille Entong, supra; Affidavit of Julius M. Dela Cruz, supra.

[47] Affidavit of Dante Versola dated July 15, 1999, rollo, p. 254; Affidavit of Rico G. Calixijan, supra; Affidavit of Lucille Entong, supra.

[48] Affidavit of Erwin B. Gonzaga dated September 20, 1999, rollo, p. 264.

[49] Supra note 21; Telefunken Semiconductors Employees Union-FFW v. Secretary of Labor and Employment, 347 Phil. 447, 454-455 (1997); Gold City Integrated Port Service, Inc. v. National Labor Relations Commission, supra note 21, at 709-710.

[50] Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc., supra note 21, at 328; Union officers are duty bound to guide their members to respect the law. If instead of doing so, the officers urge the members to violate the law and defy the duly constituted authorities; their dismissal from the service is a just penalty or sanction for their unlawful acts. The officers' responsibility is greater than that of the members. Association of Independent Unions in the Philippines (AIUP) v. National Labor Relations Commission, supra note 23, at 708; Continental Cement Labor Union v. Continental Cement Corporation, G.R. No. 51544, August 30, 1990, 189 SCRA 134, 141; First City Interlink Transportation Co., Inc. v. Sec. Confesor, supra note 18, at 644; Lapanday Workers Union v. National Labor Relations Commission, G.R. Nos. 95494-97, September 7, 1995, 248 SCRA 95, 106.

[51] Association of Independent Unions in the Philippines (AIUP) v. National Labor Relations Commission, supra note 23, at 709.

[52] Affidavit of Erwin B. Gonzaga, supra.

[53] Affidavit of Ernest A. Briza, supra; Affidavit of Ernesto J. Garcia, supra; Affidavit of Teresa Ileto-Severino, supra.

[54] Affidavit of Rico G. Calixijan, supra.

[55] Id.

[56] Affidavit of Teresa Ileto-Severino, supra.

[57] Affidavit of Ma. Teresa Dela Cruz, supra.

[58] Affidavit of Joanna Lisa A. Morata, supra; Affidavit of Rosario V. Garcia, supra.

[59] Affidavit of Ernest A. Briza, supra; Affidavit of Ernesto J. Garcia, supra; Affidavit of Marissa C. Ileto dated July 15, 1999, rollo, pp. 243-244; Affidavit of Teresa Ileto-Severino, supra.

[60] Affidavit of Ernest A. Briza, supra; Affidavit of Ernesto J. Garcia, supra; Affidavit of Teresa Ileto-Severino, supra.

[61] Affidavit of Rico G. Calixijan, supra.

[62] Affidavit of Dante Versola, supra.

[63] Id.

[64] Affidavit of Teresa Ileto-Severino, supra.

[65] Affidavit of Joanna Lisa A. Morata, supra; Affidavit of Teresa Ileto-Severino, supra.

[66] Affidavit of Teresa Ileto-Severino, supra.

[67] Affidavit of Joanna Lisa A. Morata, supra.

[68] Affidavit of Ernest A. Briza, supra; Affidavit of Ernesto J. Garcia, supra; Affidavit of Teresa Ileto-Severino, supra.

[69] Affidavit of Teresa Ileto-Severino, supra.

[70] Affidavit of Ma. Teresa Dela Cruz, supra; Affidavit of Ernesto J. Garcia, supra; Affidavit of Joanna Lisa A. Morata, supra; Affidavit of Rosario V. Garcia, supra; Affidavit of Lucille Entong, supra; Affidavit of Teresa Ileto-Severino, supra; Affidavit of Rianna de Belen, supra.

[71] Affidavit of Joanna Lisa A. Morata, supra.

[72] Affidavit of Teresa Ileto-Severino, supra.

[73] Id.

[74] Id.

[75] Affidavit of Ernest A. Briza, supra; Affidavit of Ernesto J. Garcia, supra; Affidavit of Teresa Ileto-Severino, supra.

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[76] Affidavit of Teresa Ileto-Severino, supra.

[77] Affidavit of Ernesto J. Garcia, supra; Affidavit of Joanna Lisa A. Morata, supra; Affidavit of Teresa Ileto-Severino, supra.

[78] Affidavit of Lucille Entong, supra; Affidavit of Julius M. Dela Cruz, supra.

[79] Affidavit of Lucille Entong, supra; Affidavit of Julius M. Dela Cruz, supra.

[80] Affidavit of Rianna de Belen, supra.

[81] Affidavit of Teresa Ileto-Severino, supra.

[82] Id.

[83] Affidavit of Ernesto J. Garcia, supra; Affidavit of Teresa Ileto-Severino, supra.

[84] Affidavit of Lucille Entong, supra; Affidavit of Teresa Ileto-Severino, supra; Affidavit of Rianna de Belen, supra.

[85] Affidavit of Ernesto J. Garcia, supra; Affidavit of Joanna Lisa A. Morata, supra; Affidavit of Teresa Ileto-Severino, supra.

[86] Affidavit of Teresa Ileto-Severino, supra; Affidavit of Ernesto J. Garcia, supra.

[87] Affidavit of Teresa Ileto-Severino, supra.

[88] Id.

[89] Affidavit of Ernesto J. Garcia, supra; Affidavit of Teresa Ileto-Severino, supra.

[90] Affidavit of Teresa Ileto-Severino, supra; Affidavit of Ernest A. Briza, supra; Affidavit of Ernesto J. Garcia, supra.

[91] Affidavit of Ernesto J. Garcia, supra; Affidavit of Teresa Ileto-Severino, supra.

[92] Affidavit of Dante Versola, supra.

[93] Affidavit of Ernesto J. Garcia, supra; Affidavit of Teresa Ileto-Severino, supra.

[94] Affidavit of Lucille Entong, supra.

[95] Affidavit of Ernest A. Briza, supra.

Affidavit of Marissa C. Ileto, supra; Affidavit of Teresa Ileto-Severino, supra.

[96] Affidavit of Lucille Entong, supra.

[97] Affidavit of Ernesto J. Garcia, supra.

[98] Id.

[99] Affidavit of Teresa Ileto-Severino, supra.

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