EDEN GLADYS ABARIA, ROMULO ALFORQUE, ELENA ALLA, EVELYN APOSTOL, AMELIA ARAGON, BEATRIZ ALBASTRO, GLORIA ARDULLES, GLENDA BANTILAN, VIRGILIE BORINAGA, ROLDAN CALDERON, ILDEBRAND...

G.R. No. 154113. December 07, 2011

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

The consolidated petitions before us involve the legality of mass termination of hospital employees who participated in strike and picketing activities.

The factual antecedents:

Metro Cebu Community Hospital, Inc. (MCCHI), presently known as the Visayas Community Medical Center (VCMC), is a non-stock, non-profit corporation organized under the laws of the Republic of the Philippines. It operates the Metro Cebu Community Hospital (MCCH), a tertiary medical institution located at Osmeña Boulevard, Cebu City. MCCH is owned by the United Church of Christ in the Philippines (UCCP) and Rev. Gregorio P. Iyoy is the Hospital Administrator.

The National Federation of Labor (NFL) is the exclusive bargaining representative of the rank-and-file employees of MCCHI. Under the 1987 and 1991 Collective Bargaining Agreements (CBAs), the signatories were Ciriaco B. Pongasi, Sr. for MCCHI, and Atty. Armando M. Alforque (NFL Legal Counsel) and Paterno A. Lumapguid as President of NFL-MCCH Chapter. In the CBA effective from January 1994 until December 31, 1995, the signatories were Sheila E. Buot as Board of Trustees Chairman, Rev. Iyoy as MCCH Administrator and Atty. Fernando Yu as Legal Counsel of NFL, while Perla Nava, President of Nagkahiusang Mamumuo sa MCCH (NAMA-MCCH-NFL) signed the Proof of Posting. [1]

On December 6, 1995, Nava wrote Rev. Iyoy expressing the union's desire to renew the CBA, attaching to her letter a statement of proposals signed/endorsed by 153 union members. Nava subsequently requested that the following employees be allowed to avail of one-day union leave with pay on December 19, 1995: Celia Sabas, Jesusa Gerona, Albina Bañez, Eddie Villa, Roy Malazarte, Ernesto Canen, Jr., Guillerma Remocaldo, Catalina Alsado, Evelyn Ong, Melodia Paulin, Sofia Bautista, Hannah Bongcaras, Ester Villarin, Iluminada Wenceslao and Perla Nava. However, MCCHI returned the CBA proposal for Nava to secure first the endorsement of the legal counsel of NFL as the official bargaining representative of MCCHI employees. [2]

Meanwhile, Atty. Alforque informed MCCHI that the proposed CBA submitted by Nava was never referred to NFL and that NFL has not authorized any other legal counsel or any person for collective bargaining negotiations. By January 1996, the collection of union fees (check-off) was temporarily suspended by MCCHI in view of the existing conflict between the federation and its local affiliate. Thereafter, MCCHI attempted to take over the room being used as union office but was prevented to do so by Nava and her group who protested these actions and

insisted that management directly negotiate with them for a new CBA. MCCHI referred the matter to Atty. Alforque, NFL's Regional Director, and advised Nava that their group is not recognized by NFL. [3]

In his letter dated February 24, 1996 addressed to Nava, Ernesto Canen, Jr., Jesusa Gerona, Hannah Bongcaras, Emma Remocaldo, Catalina Alsado and Albina Bañez, Atty. Alforque suspended their union membership for serious violation of the Constitution and By-Laws. Said letter states:

> During the last General Membership Meeting of the union on February 20, 1996, you openly declared that you recognized the officers of the KMU not those of the NFL, that you submit to the stuctures [sic] and authority of the KMU not of the NFL, and that you are loyal only to the KMU not to the NFL.
>
> Also, in the same meeting, you admitted having sent a proposal for a renewed collective bargaining agreement to the management without any consultation with the NFL. In fact, in your letter dated February 21, 1996 addressed to Rev. Gregorio Iyoy, the Administrator of the hospital, you categorically stated as follows: "We do not need any endorsement from NFL, more particularly from Atty. Armando Alforque to negotiate our CBA with MCCH." You did not only ignore the authority of the undersigned as Regional Director but you maliciously prevented and bluntly refused my request to join the union negotiating panel in the CBA negotiations.
>
> Your above flagrant actuations, made in the presence of the union membership, constitute the following offenses:
>
> 1. Willful violation of the Constitution and By-Laws of the Federation and the orders and decisions of duly constituted authorities of the same (Section 4 (b), Article III), namely:
>
> a) Defying the decision of the organization disaffiliating from the KMU; and
>
> b) Section 9 (b), Article IX which pertains to the powers and responsibilities of the Regional Director, particularly, to negotiate and sign collective bargaining agreement together with the local negotiating panel subject to prior ratification by the general membership;
>
> 2. Joining or assisting another labor organization or helping in the formation of a new labor organization that seeks or tends to defeat the purpose of the Federation (Section 4 (d), Article III) in relation to the National Executive Board's Resolution No. 8, September 26-27, 1994, to wit:
>
> "Pursuant to the NEB Resolution disaffiliating from the KMU dated September 11, 1993, the NEB in session hereby declare that KMU is deemed an organization that seeks to defeat the objective of establishing independent and democratic unions and seeks to replace the Federation as exclusive representative of its members.
>
> Committing acts that tend to alienate the loyalty of the members to the Federation, subvert its duly constituted authorities, and divide the organization in any level with the objective of establishing a pro-KMU faction or independent union loyal to the KMU shall be subject to disciplinary action, suspension or expulsion from union membership, office or position in accordance with paragraph[s] d and f of Section 4, Article III, and paragraph h, Section 6, Article VI, paragraph d, Section 9, Article IX."

You are, therefore, directed to submit written explanation on the above charges within five (5) days from receipt hereof. Failure on your part shall be considered a waiver of your right to be heard and the Federation will act accordingly.

Considering the gravity of the charges against you, the critical nature of the undertaking to renew the collective bargaining agreement, and the serious threat you posed to the organization, you are hereby placed under temporary suspension from your office and membership in the union immediately upon receipt hereof pending investigation and final disposition of your case in accordance with the union's constitution and by-laws.

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For your guidance and compliance. [4]

On February 26, 1996, upon the request of Atty. Alforque, MCCHI granted one-day union leave with pay for 12 union members. [5] The next day, several union members led by Nava and her group launched a series of mass actions such as wearing black and red armbands/headbands, marching around the hospital premises and putting up placards, posters and streamers. Atty. Alforque immediately disowned the concerted activities being carried out by union members which are not sanctioned by NFL. MCCHI directed the union officers led by Nava to submit within 48 hours a written explanation why they should not be terminated for having engaged in illegal concerted activities amounting to strike, and placed them under immediate preventive suspension. Responding to this directive, Nava and her group denied there was a temporary stoppage of work, explaining that employees wore their armbands only as a sign of protest and reiterating their demand for MCCHI to comply with its duty to bargain collectively. Rev. Iyoy, having been informed that Nava and her group have also been suspended by NFL, directed said officers to appear before his office for investigation in connection with the illegal strike wherein they reportedly uttered slanderous and scurrilous words against the officers of the hospital, threatening other workers and forcing them to join the strike. Said union officers, however, invoked the grievance procedure provided in the CBA to settle the dispute between management and the union. [6]

On March 13 and 19, 1996, the Department of Labor and Employment (DOLE) Regional Office No. 7 issued certifications stating that there is nothing in their records which shows that NAMA-MCCH-NFL is a registered labor organization, and that said union submitted only a copy of its Charter Certificate on January 31, 1995. [7] MCCHI then sent individual notices to all union members asking them to submit within 72 hours a written explanation why they should not be terminated for having supported the illegal concerted activities of NAMA-MCCH-NFL which has no legal personality as per DOLE records. In their collective response/statement dated March 18, 1996, it was explained that the picketing employees wore armbands to protest MCCHI's refusal to bargain; it was also contended that MCCHI cannot question the legal personality of the union which had actively assisted in CBA negotiations and implementation. [8]

On March 13, 1996, NAMA-MCCH-NFL filed a Notice of Strike but the same was deemed not filed for want of legal personality on the part of the filer. The National Conciliation and Mediation Board (NCMB) Region 7 office likewise denied their motion for reconsideration on March 25, 1996. Despite such rebuff, Nava and her group still conducted a strike vote on April 2, 1996 during which an overwhelming majority of union members approved the strike. [9]

Meanwhile, the scheduled investigations did not push through because the striking union members insisted on attending the same only as a group. MCCHI again sent notices informing them that their refusal to submit to investigation is deemed a waiver of their right to explain their side and management shall proceed to impose proper disciplinary action under the circumstances. On March 30, 1996, MCCHI sent termination letters to union leaders and other members who participated in the strike and picketing activities. On April 8, 1996, it also issued a cease-and-desist order to the rest of the striking employees stressing that the wildcat concerted activities spearheaded by the Nava group is illegal without a valid Notice of Strike and warning them that non-compliance will compel management to impose disciplinary actions against them. For their continued picketing activities despite the said warning, more than 100 striking employees were dismissed effective April 12 and 19, 1996.

Unfazed, the striking union members held more mass actions. The means of ingress to and egress from the hospital were blocked so that vehicles carrying patients and employees were barred from entering the premises. Placards were placed at the hospital's entrance gate stating: "Please proceed to another hospital" and "we are on protest." Employees and patients reported acts of intimidation and harassment perpetrated by union leaders and members. With the intensified atmosphere of violence and animosity within the hospital premises as a result of

continued protest activities by union members, MCCHI suffered heavy losses due to low patient admission rates. The hospital's suppliers also refused to make further deliveries on credit.

With the volatile situation adversely affecting hospital operations and the condition of confined patients, MCCHI filed a petition for injunction in the NLRC (Cebu City) on July 9, 1996 (Injunction Case No. V-0006-96). A temporary restraining order (TRO) was issued on July 16, 1996. MCCHI presented 12 witnesses (hospital employees and patients), including a security guard who was stabbed by an identified sympathizer while in the company of Nava's group. MCCHI's petition was granted and a permanent injunction was issued on September 18, 1996 enjoining the Nava group from committing illegal acts mentioned in Art. 264 of the Labor Code. [10]

On August 27, 1996, the City Government of Cebu ordered the demolition of the structures and obstructions put up by the picketing employees of MCCHI along the sidewalk, having determined the same as a public nuisance or nuisance per se. [11]

Thereafter, several complaints for illegal dismissal and unfair labor practice were filed by the terminated employees against MCCHI, Rev. Iyoy, UCCP and members of the Board of Trustees of MCCHI.

On August 4, 1999, Executive Labor Arbiter Reynoso A. Belarmino rendered his decision [12] dismissing the complaints for unfair labor practice in NLRC Case Nos. RAB-VII-02-0309-98, RAB-VII-02-0394-98 and RAB-VII-03-0596-98 filed by Nava and 90 other complainants. Executive Labor Arbiter Belarmino found no basis for the charge of unfair labor practice and declared the strike and picketing activities illegal having been conducted by NAMA-MCCH-NFL which is not a legitimate labor organization. The termination of union leaders Nava, Alsado, Bañez, Bongcaras, Canen, Gerona and Remocaldo were upheld as valid but MCCHI was directed to grant separation pay equivalent to one-half month for every year of service, in the total amount of P3,085,897.40 for the 84 complainants. [13]

Complainants appealed to the Commission. On March 14, 2001, the NLRC's Fourth Division rendered its Decision, [14] the dispositive portion of which reads:

> WHEREFORE, premises considered, the decision of the Executive Labor Arbiter dismissing the complaint for unfair labor practice and illegal dismissal is AFFIRMED with MODIFICATIONS declaring the dismissal of all the complainants in RAB Case No. 07-02-0394-98 and RAB Case No. 07-03-0596-98 valid and legal. Necessarily, the award of separation pay and attorney's fees are hereby Deleted.
>
> Resolution on RAB Case No. 07-02-0309-98 is hereby Deferred upon Joint Motion of the parties.
>
> SO ORDERED. [15]

In its Resolution dated July 2, 2001, the NLRC denied complainants' motion for reconsideration. [16]

Complainants elevated the case to the Court of Appeals (CA) (Cebu Station) via a petition for certiorari, docketed as CA-G.R. SP No. 66540. [17]

In its Resolution dated November 14, 2001, the CA's Eighth Division dismissed the petition on the ground that out of 88 petitioners only 47 have signed the certification against forum shopping. [18] Petitioners moved to reconsider the said dismissal arguing that the 47 signatories more than constitute the principal parties as the petition involves a matter of common concern to all the petitioning employees. [19] By Resolution [20] dated May 28, 2002, the CA reinstated the case only insofar as the 47 petitioners who signed the petition are concerned.

Petitioners challenged the validity of the November 14, 2001 and May 28, 2002 resolutions before this Court in a petition for review on certiorari, docketed as G.R. No. 154113.

Meanwhile, the NLRC's Fourth Division (Cebu City) rendered its Decision [21] dated March 12, 2003 in RAB Case Nos. 07-02-0309-98 (NLRC Case No. V-001042-99) pertaining to complainants Erma Yballe, Evelyn Ong, Nelia Angel and Eleuteria Cortez as follows:

> WHEREFORE, premises considered, the decision of the Executive Labor Arbiter dismissing the complaint for unfair labor practice and illegal dismissal is AFFIRMED with MODIFICATIONS declaring all complainants to have been validly dismissed. Necessarily, the award of separation pay and attorney's fees are hereby Deleted.
>
> SO ORDERED. [22]

The NLRC likewise denied the motion for reconsideration filed by complainants Yballe, et al. in its Resolution dated April 13, 2004. [23]

On October 17, 2008, the CA rendered its Decision [24] in CA-G.R. SP No. 66540, the dispositive portion of which states:

> WHEREFORE, premises considered, judgment is hereby rendered AFFIRMING the Decision of the National Labor Relations Commission (NLRC) – Fourth Division dated March 14, 2001 in NLRC Case No. V-001042-99, WITH MODIFICATIONS to the effect that (1) the petitioners, except the union officers, shall be awarded separation pay equivalent to one-half (1/2) month pay for every year of service, and (2) petitioner Cecilia Sabas shall be awarded overtime pay amounting to sixty-three (63) hours.
>
> SO ORDERED. [25]

Petitioners filed a motion for reconsideration while private respondents filed a motion for partial reconsideration questioning the award of separation pay. The former also invoked the decision of this Court in Bascon v. Court of Appeals, [26] while the latter argued for the application of the ruling in decision rendered by the CA (Cebu City) in Miculob v. NLRC, et al. (CA-G.R. SP No. 84538), [27] both involving similar complaints filed by dismissed employees of MCCHI.

By Resolution [28] dated April 17, 2009, the CA denied both motions:

> WHEREFORE, the petitioners' Motion for Reconsideration and the private respondent[s'] Motion for Partial Reconsideration of the October 17, 2008 Decision are both DENIED for lack of merit.
>
> The Motions for Substitution of Counsel and Compromise Agreements submitted by petitioners Bernardito Lawas, Avelina Bangalao, Dailenda Hinampas and Daylinda Tigo are hereby approved. Consequently, said petitioners are ordered dropped from the list of petitioners and the case is deemed dismissed as to them.
>
> SO ORDERED. [29]

Complainants Yballe, et al. also challenged before the CA the March 12, 2003 Decision and April 13, 2004 Resolution of the NLRC in a petition for certiorari, docketed as CA-G.R. SP No. 84998 (Cebu City). By Decision [30] dated November 7, 2008, the CA granted their petition, as follows:

> WHEREFORE, the challenged Decision of public respondent dated March 12, 2003 and its Resolution dated April 13, 2004 are hereby REVERSED AND SET ASIDE. Private respondent Metro Cebu Community Hospital is ordered to reinstate petitioners Erma Yballe, Eleuteria Cortes, Nelia Angel and Evelyn Ong without loss of seniority rights and other privileges; to pay them their full backwages inclusive of their allowances and other benefits computed from the time of their dismissal up to the time of their actual reinstatement.
>
> No pronouncement as to costs.
>
> SO ORDERED. [31]

Private respondents (MCCHI, et al.) moved to reconsider the above decision but the CA denied their motion on February 22, 2011. [32]

Both petitioners and private respondents in CA-G.R. SP No. 66540 appealed to this Court. Private respondent MCCHI in CA-G.R. SP No. 84998, under its new name Visayas Community Medical Center (VCMC), filed a petition for certiorari in this Court.

In G.R. No. 187778, petitioners Nava, et al. prayed that the CA decision be set aside and a new judgment be entered by this Court (1) declaring private respondents guilty of unfair labor practice and union busting; (2) directing private respondents to cease and desist from further committing unfair labor practices against the petitioners; (3) imposing upon MCCH the proposed CBA or, in the alternative, directing the hospital and its officers to bargain with the local union; (4) declaring private respondents guilty of unlawfully suspending and illegally dismissing the individual petitioners-employees; (5) directing private respondents to reinstate petitioners-employees to their former positions, or their equivalent, without loss of seniority rights with full backwages and benefits until reinstatement; and (6) ordering private respondents to pay the petitioners moral damages, exemplary damages, legal interests, and attorney's fees. [33]

On the other hand, petitioner MCCHI in G.R. No. 187861 prayed for the modification of the CA decision by deleting the award of separation pay and reinstating the March 14, 2001 decision of the NLRC. [34]

In G.R. No. 196156, MCCHI/VCMC prayed for the annulment of the November 7, 2008 Decision and February 22, 2011 Resolution of the CA, for this Court to declare the dismissal of respondents Yballe, et al. as valid and legal and to reinstate the March 12, 2003 Decision and April 13, 2004 Resolution of the NLRC.

G.R. No. 187861 was consolidated with G.R. Nos. 154113 and 187778 as they involve similar factual circumstances and identical or related issues. G.R. No. 196156 was later also consolidated with the aforesaid cases.

The issues are: (1) whether the CA erred in dismissing the petition for certiorari (CA-G.R. SP No. 66540) with respect to the petitioners in G.R. No. 154113 for their failure to sign the certification against forum shopping; (2) whether MCCHI is guilty of unfair labor practice; (3) whether petitioning employees were illegally dismissed; and (4) if their termination was illegal, whether petitioning employees are entitled to separation pay, backwages, damages and attorney's fees.

Dropping of petitioners who did not sign the certification
against forum shopping improper

The Court has laid down the rule in Altres v. Empleo [35] as culled from "jurisprudential pronouncements", that the certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

In the case at bar, the signatures of 47 out of 88 petitioning employees in the certification against forum shopping constitute substantial compliance with the rule. There is no question that they shared a common interest and invoked a common cause of action when they filed suit before the Labor Arbiter and NLRC questioning the validity of their termination and charging MCCHI with unfair labor practice. Thus, when they appealed their case to the CA, they pursued the same as a collective body, raising only one argument in support of their cause of action, i.e., the illegal dismissal allegedly committed by MCCHI when union members resorted to strike and mass

actions due to MCCHI's refusal to bargain with officers of the local chapter. There is sufficient basis, therefore, for the 47 signatories to the petition, to speak for and in behalf of their co-petitioners and to file the Petition for Certiorari in the appellate court. [36] Clearly, the CA erred in dropping as parties-petitioners those who did not sign the certification against forum shopping.

However, instead of remanding the case to the CA for it to resolve the petition with respect to the herein petitioners in G.R. No. 154113, and as prayed for, the Court shall consider them parties-petitioners in CA-G.R. SP No. 66540,which case has already been decided and now subject of appeal in G.R. No. 187778.

MCCHI not guilty of
unfair labor practice

Art. 248 (g) of the Labor Code, as amended, makes it an unfair labor practice for an employer "[t]o violate the duty to bargain collectively" as prescribed by the Code. The applicable provision in this case is Art. 253 which provides:

> ART. 253. Duty to bargain collectively when there exists a collective bargaining agreement. – When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties.

NAMA-MCCH-NFL charged MCCHI with refusal to bargain collectively when the latter refused to meet and convene for purposes of collective bargaining, or at least give a counter-proposal to the proposed CBA the union had submitted and which was ratified by a majority of the union membership. MCCHI, on its part, deferred any negotiations until the local union's dispute with the national union federation (NFL) is resolved considering that the latter is the exclusive bargaining agent which represented the rank-and-file hospital employees in CBA negotiations since 1987.

We rule for MCCHI.

Records of the NCMB and DOLE Region 7 confirmed that NAMA-MCCH-NFL had not registered as a labor organization, having submitted only its charter certificate as an affiliate or local chapter of NFL. [37] Not being a legitimate labor organization, NAMA-MCCH-NFL is not entitled to those rights granted to a legitimate labor organization under Art. 242, specifically:

> (a) To act as the representative of its members for the purpose of collective bargaining;
>
> (b) To be certified as the exclusive representative of all the employees in an appropriate collective bargaining unit for purposes of collective bargaining;
>
> x x x x

Aside from the registration requirement, it is only the labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit which is the exclusive representative of the employees in such unit for the purpose of collective bargaining, as provided in Art. 255. [38] NAMA-MCCH-NFL is not the labor organization certified or designated by the majority of the rank-and-file hospital employees to represent them in the CBA negotiations but the NFL, as evidenced by CBAs concluded in 1987, 1991 and 1994. While it is true that a local union has the right to disaffiliate from the national federation, NAMA-MCCH-NFL has not done so as there was no any effort on its part to comply with the legal requisites for a valid disaffiliation during the "freedom period" [39] or the last 60 days of the last year of the CBA, through a majority vote in a secret balloting

in accordance with Art. 241 (d). [40] Nava and her group simply demanded that MCCHI directly negotiate with the local union which has not even registered as one.

To prove majority support of the employees, NAMA-MCCH-NFL presented the CBA proposal allegedly signed by 153 union members. However, the petition signed by said members showed that the signatories endorsed the proposed terms and conditions without stating that they were likewise voting for or designating the NAMA-MCCH-NFL as their exclusive bargaining representative. In any case, NAMA-MCCH-NFL at the time of submission of said proposals was not a duly registered labor organization, hence it cannot legally represent MCCHI's rank-and-file employees for purposes of collective bargaining. Hence, even assuming that NAMA-MCCH-NFL had validly disaffiliated from its mother union, NFL, it still did not possess the legal personality to enter into CBA negotiations. A local union which is not independently registered cannot, upon disaffiliation from the federation, exercise the rights and privileges granted by law to legitimate labor organizations; thus, it cannot file a petition for certification election. [41] Besides, the NFL as the mother union has the right to investigate members of its local chapter under the federation's Constitution and By-Laws, and if found guilty to expel such members. [42] MCCHI therefore cannot be faulted for deferring action on the CBA proposal submitted by NAMA-MCCH-NFL in view of the union leadership's conflict with the national federation. We have held that the issue of disaffiliation is an intra-union dispute [43] which must be resolved in a different forum in an action at the instance of either or both the federation and the local union or a rival labor organization, not the employer. [44]

Not being a legitimate labor organization nor the certified exclusive bargaining representative of MCCHI's rank-and-file employees, NAMA-MCCH-NFL cannot demand from MCCHI the right to bargain collectively in their behalf. [45] Hence, MCCHI's refusal to bargain then with NAMA-MCCH-NFL cannot be considered an unfair labor practice to justify the staging of the strike. [46]

Strike and picketing activities
conducted by union officers and
members were illegal

Art. 263 (b) of the Labor Code, as amended, provides:

> ART. 263. Strikes, picketing and lockouts. – x x x
>
> (b) Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. The right of legitimate labor organizations to strike and picket and of employers to lockout, consistent with the national interest, shall continue to be recognized and respected. However, no labor union may strike and no employer may declare a lockout on grounds involving inter-union and intra-union disputes.
>
> x x x x (Emphasis supplied.)

As borne by the records, NAMA-MCCH-NFL was not a duly registered or an independently registered union at the time it filed the notice of strike on March 13, 1996 and when it conducted the strike vote on April 2, 1996. It could not then legally represent the union members. Consequently, the mandatory notice of strike and the conduct of the strike vote report were ineffective for having been filed and conducted by NAMA-MCCH-NFL which has no legal personality as a legitimate labor organization, in violation of Art. 263 (c), (d) and (f) of the Labor Code and Rule XXII, Book V of the Omnibus Rules Implementing the Labor Code. [47]

Art. 263 of the Labor Code provides:

> ART. 263. Strikes, picketing and lockouts. — (a) x x x

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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 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting, where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately. (As amended by Executive Order No. 111, December 24, 1986.)

(d) The notice must be in accordance with such implementing rules and regulations as the Department of Labor and Employment may promulgate.

x x x x

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. 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 Ministry the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided. (As amended by Batas Pambansa Bilang 130, August 21, 1981 and further amended by Executive Order No. 111, December 24, 1986.) (Emphasis supplied.)

Rule XXII, Book V of the Omnibus Rules Implementing the Labor Code reads:

RULE XXII

CONCILIATION, STRIKES AND LOCKOUTS

x x x x

SEC. 6. Who may declare a strike or lockout. — Any certified or duly recognized bargaining representative may declare a strike in cases of bargaining deadlocks and unfair labor practices. The employer may declare a lockout in the same cases. In the absence of a certified or duly recognized bargaining representative, any legitimate labor organization in the establishment may declare a strike but only on grounds of unfair labor practice. (Emphasis supplied.)

Furthermore, the strike was illegal due to the commission of the following prohibited activities [48]: (1) violence, coercion, intimidation and harassment against non-participating employees; and (2) blocking of free ingress to and egress from the hospital, including preventing patients and their vehicles from entering the hospital and other employees from reporting to work, the putting up of placards with a statement advising incoming patients to proceed to another hospital because MCCHI employees are on strike/protest. As shown by photographs [49] submitted by MCCHI, as well as the findings of the NCMB and Cebu City Government, the hospital premises and sidewalk within its vicinity were full of placards, streamers and makeshift structures that obstructed its use by the public who were likewise barraged by the noise coming from strikers using megaphones. [50] On the other hand, the affidavits [51] executed by several hospital employees and patients narrated in detail the incidents of harassment, intimidation, violence and coercion, some of these witnesses have positively identified the perpetrators. The prolonged work stoppage and picketing activities of the striking employees severely disrupted hospital operations that MCCHI suffered heavy financial losses.

The findings of the Executive Labor Arbiter and NLRC, as sustained by the appellate court, clearly established that the striking union members created so much noise, disturbance and obstruction that the local government authorities eventually ordered their removal for being a public nuisance. This was followed by an injunction from the NCMB enjoining the union leaders from further blocking the free ingress to and egress from the hospital, and from committing threats, coercion and intimidation against non-striking employees and patients/vehicles desiring to enter for the purpose of seeking medical treatment/confinement. By then, the illegal strike had lasted for almost five months.

Consequences of illegal strike to
union officers and members

Art. 264 (a) of the Labor Code, as amended, provides for the consequences of an illegal strike to the participating workers:

> 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.

The above provision makes a distinction between workers and union officers who participate in an illegal strike: 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. [52]

Considering their persistence in holding picketing activities despite the declaration by the NCMB that their union was not duly registered as a legitimate labor organization and the letter from NFL's legal counsel informing that their acts constitute disloyalty to the national federation, and their filing of the notice of strike and conducting a strike vote notwithstanding that their union has no legal personality to negotiate with MCCHI for collective bargaining purposes, there is no question that NAMA-MCCH-NFL officers knowingly participated in the illegal strike. The CA therefore did not err in ruling that the termination of union officers Perla Nava, Catalina Alsado, Albina Bañez, Hannah Bongcaras, Ernesto Canen, Jesusa Gerona and Guillerma Remocaldo was valid and justified.

With respect to the dismissed union members, although MCCHI submitted photographs taken at the picket line, it did not individually name those striking employees and specify the illegal act committed by each of them. As to the affidavits executed by non-striking employees, they identified mostly union officers as the persons who blocked the hospital entrance, harassed hospital employees and patients whose vehicles were prevented from entering the premises. Only some of these witnesses actually named a few union members who committed similar acts of harassment and coercion. Consequently, we find no error committed by the CA in CA-G.R. SP No. 66540 when it modified the decision of the NLRC and ruled that the dismissal of union members who merely participated in the illegal strike was illegal. On the other hand, in CA-G.R. SP No. 84998, the CA did not err in ruling that the dismissal of Yballe, et al. was illegal; however, it also ordered their reinstatement with full back wages.

Dismissed union members not
entitled to backwages but should
be awarded separation pay in lieu

of reinstatement

Since there is no clear proof that union members actually participated in the commission of illegal acts during the strike, they are not deemed to have lost their employment status as a consequence of a declaration of illegality of the strike.

Petitioners in G.R. Nos. 154113 and 187778 assail the CA in not ordering their reinstatement with back wages. Invoking stare decisis, they cited the case of Bascon v. Court of Appeals [53] decided by this Court in 2004 and which involved two former hospital employees who likewise sued MCCHI after the latter terminated their employment due to their participation in the same illegal strike led by NAMA-MCCH-NFL. In said case we ruled that petitioners Cole and Bascon were illegally dismissed because MCCHI failed to prove that they committed illegal acts during the strike. We thus ordered the reinstatement of petitioners Bascon and Cole without loss of seniority rights and other privileges and payment of their back wages inclusive of allowances, and other benefits computed from the time they were dismissed up to the time of their actual reinstatement. Bascon was also the basis of the award of back wages in CA-G.R. SP No. 84998.

Stare decisis et non quieta movere. Stand by the decision and disturb not what is settled. Under the doctrine of stare decisis, once a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same, [54] even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of stare decisis is a bar to any attempt to relitigate the same issue. [55]

The doctrine though is not cast in stone for upon a showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of stare decisis, the Court is justified in setting it aside. [56] For the Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification. [57]

Although the Bascon case involved the very same illegal strike in MCCHI which led to the termination of herein petitioners, its clearly erroneous application of the law insofar only as the award of back wages warrants setting aside the doctrine. Indeed, the doctrine of stare decisis notwithstanding, the Court has abandoned or overruled precedents whenever it realized that the Court erred in the prior decisions. “Afterall, more important than anything else is that this Court should be right.” [58]

In G & S Transport Corporation v. Infante, [59] the Court explained the rationale for its recent rulings deleting back wages awarded to the dismissed workers if the strike was found to be illegal. Considering that they did not render work for the employer during the strike, they are entitled only to reinstatement.

> With respect to backwages, the principle of a “fair day’s wage for a fair day’s labor” remains as the basic factor in determining the award thereof. If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed or otherwise illegally prevented from working. While it was found that respondents expressed their intention to report back to work, the latter exception cannot apply in this case. In Philippine Marine Officers’ Guild v. Compañia Maritima, as affirmed in Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union, the Court stressed that for this exception to apply, it is required that the strike be legal, a situation that does not obtain in the case at bar.
>
> Under the circumstances, respondents’ reinstatement without backwages suffices for the appropriate relief. If

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> reinstatement is no longer possible, given the lapse of considerable time from the occurrence of the strike, the award of separation pay of one (1) month salary for each year of service, in lieu of reinstatement, is in order. [60] (Emphasis supplied.)

The CA decision in CA-G.R. SP No. 66540 ordering the payment of separation pay in lieu of reinstatement without back wages is thus in order, to conform to the policy of a fair day's wage for a fair day's labor. The amount of separation pay is increased to one month pay for every year of service, consistent with jurisprudence. Accordingly, the decision in CA-G.R. SP No. 84998 is modified by deleting the award of back wages and granting separation pay in lieu of reinstatement.

It is to be noted that as early as April 8, 1996, union members who took part in the concerted activities have been warned by management that NAMA-MCCH-NFL is not a legitimate labor organization and its notice of strike was denied by the NCMB, and directed to desist from further participating in such illegal activities. Despite such warning, they continued with their picketing activities and held more mass actions after management sent them termination notices. The prolonged work stoppage seriously disrupted hospital operations, which could have eventually brought MCCHI into bankruptcy had the City Government of Cebu not issued a demolition order and the NLRC Region 7 not formally enjoined the prohibited picketing activities. Also, the illegal dismissal complaints subsequently filed by the terminated employees did not obliterate the fact that they did not suffer loss of earnings by reason of the employer's unjustified acts, there being no unfair labor practice committed by MCCHI. Hence, fairness and justice dictate that back wages be denied the said employees who participated in the illegal concerted activities to the great detriment of the employer.

Separation pay is made an alternative relief in lieu of reinstatement in certain circumstances, like: (a) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (b) reinstatement is inimical to the employer's interest; (c) reinstatement is no longer feasible; (d) reinstatement does not serve the best interests of the parties involved; (e) the employer is prejudiced by the workers' continued employment; (f) facts that make execution unjust or inequitable have supervened; or (g) strained relations between the employer and employee. [61]

Considering that 15 years had lapsed from the onset of this labor dispute, and in view of strained relations that ensued, in addition to the reality of replacements already hired by the hospital which had apparently recovered from its huge losses, and with many of the petitioners either employed elsewhere, already old and sickly, or otherwise incapacitated, separation pay without back wages is the appropriate relief. We note that during the pendency of the cases in this Court, some of the petitioners have entered into compromise agreements with MCCHI, all of which were duly approved by this Court. Thus, excluded from the herein monetary awards are the following petitioners whose compromise agreements have been approved by this Court and judgment having been entered therein: Gloria Arguilles, Romulo Alforque, Gerna Patigdas-Barte, Daylinda Tigo Merlyn Nodado, Ramon Tagnipis, Bernabe Lumapguid, Romeo Empuerto, Marylen Labra, Milagros Castillo Bernadette Pontillas-Tibay, Constancio Pagador, Nolan Alvin Panal, Edilberto Villa, Roy Malazarte, Felecianita Malazarte and Noel Hortelano.

Attorney's fees

The dismissed employees having been compelled to litigate in order to seek redress and protect their rights, they are entitled to reasonable attorney's fees pursuant to Art. 2208 (2) of the Civil Code. In view of the attendant circumstances of this case, we hold that attorney's fees in the amount of P50,000.00 is reasonable and justified. However, the respondents in G.R. No. 196156 are not entitled to the same relief since they did not appeal from the CA decision which did not include the award of attorney's fees.

WHEREFORE, the petition for review on certiorari in G.R. No. 187861 is DENIED while the petitions in G.R. Nos. 154113, 187778 and 196156 are PARTLY GRANTED. The Decision dated October 17, 2008 of the Court of Appeals in CA-G.R. SP No. 66540 is hereby AFFIRMED with MODIFICATIONS in that MCCHI is ordered to pay the petitioners in G.R. Nos. 154113 and 187778, except the petitioners who are union officers, separation pay equivalent to one month pay for every year of service, and reasonable attorney's fees in the amount of P50,000.00. The Decision dated November 7, 2008 is likewise AFFIRMED with MODIFICATIONS in that MCCHI is ordered to pay the private respondents in G.R. No. 196156 separation pay equivalent to one month pay for every year of service, and that the award of back wages is DELETED.

The case is hereby remanded to the Executive Labor Arbiter for the recomputation of separation pay due to each of the petitioners union members in G.R. Nos. 154113, 187778 and 196156 except those who have executed compromise agreements approved by this Court.

No pronouncement as to costs.

SO ORDERED.

Corona (Chairperson), Leonardo-De Castro, Bersamin, and Del Castillo, JJ., concur.

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[1] NLRC records (Vol. I), pp. 221-234; rollo (G.R. No. 154113), pp. 170-205.

[2] Rollo (G.R. No. 154113), pp. 212-235.

[3] Id. at 236-243.

[4] Id. at 244-245.

[5] Id. at 246.

[6] Id. at 247-248, 260-263.

[7] NLRC records (Vol. II), pp. 307-308.

[8] Rollo (G.R. No. 154113), pp. 252-259.

[9] Id. at 250-251; NLRC records (Vol. II), pp. 309-310.

[10] NLRC records (Vol. II), pp. 345-355.

[11] Id. at 360-369.

[12] Rollo (G.R. No. 187778), pp. 265-297; NLRC records (Vol. I), pp. 407-439.

[13] Rogelio Dabatos, Cecilia Sabas, Pepito Llagas, Edna Albo, Johanne del Mar, Elsa Bucao, Elena Alia, Elizabeth Ramon, Elma Entece, Aileen Catacutan, Ruth Banzon, Dioscoro Gabunada, Avelina Bangalao, Luz Cabase, Gerna Patigdas, Shirley Rose Reyes, Amelia Aragon, Nema Belocura, Merlyn Nodado, Noel Hortelano, Virgilie Borinaga, Josefina Reyes, Hermelo dela Torre, Raymundo Delatado, Norberta Caca, Romulo Alforque, Era Canen, Solomon delos Reyes, Daniela Yosores, Dailinda Hinampas, Roy Malazarte, Ronald Tumulak, Danilo Zamora, Jose Gonzaga, Felecianita Malazarte, Virgencita Casas, Romeo Empuerto, Daylinda Tigo, Agustin Alfornon, Rico Gascon, Teofilo Henampas, Beatriz Arbasto, Eden Gladys Albaria, Milagros Castillo, Emilio Lao, Crisanta Genegaboas, Silverio Lao, Dario Labrador, Procomeo Salupan, Pedro Cabatingan, Edilberto Villa, Samuel Saliente, Jr., Leoncio Vallinas, Lannie Fernandez, Roberta Jayma, Bernadette Tibay, Cornelio Maribojo, Lucineil Gabayeron, Oscar delos Santos, Rolando Redilosa, Rodney Rex Lerias, Bernardito Lawas, Gloria

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[14] NLRC records (Vol. II), pp. 617-647. Penned by Commissioner Bernabe S. Batuhan and concurred in by Presiding Commissioner Irenea E. Ceniza and Commissioner Edgardo M. Enerlan.

[15] Id. at 647.

[16] Id. at 690-691.

[17] CA rollo, pp. 2-39.

[18] Id. at 332.

[19] Id. at 347-357.

[20] Id. at 377-378.

[21] Rollo (G.R. No. 196156), pp. 332-361. Penned by Commissioner Oscar S. Uy with Commissioner Edgardo M. Enerlan concurring.

[22] Id. at 361.

[23] Id. at 363-365.

[24] CA rollo, pp. 491-512. Penned by Associate Justice Francisco P. Acosta with Associate Justices Amy C. Lazaro-Javier and Rodil v. Zalameda concurring.

[25] Id. at 511.

[26] G.R. No. 144899, February 5, 2004, 422 SCRA 122.

[27] CA rollo, pp. 398-408.

[28] Id. at 762-774. Penned by Associate Justice Francisco P. Acosta with Associate Justices Amy C. Lazaro-Javier and Rodil V. Zalameda.

[29] Id. at 774.

[30] Rollo (G.R. No. 196156), pp. 64-76. Penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Franchito N Diamante and Edgardo L. Delos Santos concurring.

[31] Id. at 75.

[32] Id. at 62-63.

[33] Rollo (G.R. No. 187778), pp. 45-46.

[34] Rollo (G.R. No. 187861), p. 37.

[35] G.R. No. 180986, December 10, 2008, 573 SCRA 583, 596-597.

[36] Vide: Espina v. Court of Appeals, G.R. No. 164582, March 28, 2007, 519 SCRA 327, 344-345.

[37] Supra note 7.

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[38] Art. 255. Exclusive bargaining representation and workers' participation in policy and decision-making. – The labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining. x x x

See Philippine Diamond Hotel and Resort, Inc. (Manila Diamond Hotel) v. Manila Diamond Hotel Employees Union, G.R. No. 158075, June 30, 2006, 494 SCRA 195, 207-208.

[39] See The Labor Code With Comments and Cases by C.A. AZUCENA, JR., Vol. II, 6[th] Ed., p. 191.

[40] Art. 241. Rights and conditions of membership in a labor organization. – The following are the rights and conditions of membership in a labor organization:

x x x x

(d) The members shall determine by secret ballot, after due deliberation, any question of major policy affecting the entire membership of the organization, unless the nature of the organization or force majeure renders such secret ballot impractical, in which case the board of directors of the organization may make the decision in behalf of the general membership.

[41] See Villar v. Inciong, Nos. L-50283-84, April 20, 1983, 121 SCRA 444, 460-461.

[42] Id. at 457-458.

[43] An intra-union dispute refers to any conflict between and among union members, including grievances arising from any violation of the rights and conditions of membership, violation of or disagreement over any provision of the union's constitution and by-laws, or disputes arising from chartering or disaffiliation of the union. Sections 1 and 2, Rule XI of Department Order No. 40-03, Series of 2003 of the DOLE enumerate the following circumstances as inter/intra-union disputes, viz:

RULE XI
INTER/INTRA-UNION DISPUTES AND
OTHER RELATED LABOR RELATIONS DISPUTES
Section 1.Coverage. - Inter/intra-union disputes shall include:

x x x x

(e) validity/invalidity of union affiliation or disaffiliation;

x x x x (Emphasis supplied.) (Employees Union of Bayer Phils. v. Bayer Philippines, Inc., G.R. No. 162943, December 6, 2010, 636 SCRA 473, 487.)

[44] Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc., G.R. No. 190515, June 6, 2011, p. 7.

[45] See Philippine Diamond Hotel and Resort, Inc. (Manila Diamond Hotel) v. Manila Diamond Hotel Employees Union, supra note 38 at 208.

[46] Id. at 209.

[47] Magdala Multipurpose & Livelihood Cooperative v. Kilusang Manggagawa ng LGS, et al., G.R. Nos. 191138-39, October 19, 2011, p. 6.

[48] Art. 264 (e) of the Labor Code 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."

[49] NLRC records (Vol. II), pp. 326-327.

[50] Id. at 356-368.

[51] Id. at 122-135, 151-158.

[52] Sukhothai Cuisine and Restaurant v. Court of Appeals, G.R. No. 150437, July 17, 2006, 495 SCRA 336, 355,citing Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc., G.R. No. 140992, March 25, 2004, 426 SCRA 319, 327-328; Telefunken Seminconductors Employees Union-FFW v. Secretary of Labor and Employment, 347 Phil. 447, 454-455 (1997); and Gold City Integrated Port Service, Inc. v. NLRC, 315 Phil. 698, 709-710 (1995).

[53] Supra note 26.

[54] Tala Realty Services Corporation v. Court of Appeals, G.R. Nos. 130088, 131469, 155171, 155201 & 166608, April 7, 2009, 584 SCRA 63, 79.

[55] Grand Placement and General Services Corporation v. Court of Appeals, G.R. No. 142358, January 31, 2006, 481 SCRA 189, 203-204, citing Villena v. Chavez, G.R. No. 148126, November 10, 2003, 415 SCRA 33, 42-43; Ayala Corporation v. Rosa-Diana Realty and Development Corp., G.R. No. 134284, December 1, 2000, 346 SCRA 663, 671; Tung Chin Hui v. Rodriguez, 395 Phil. 169, 177 (2000); and Negros Navigation Co., Inc. v. CA, 346 Phil. 551, 563 (1997).

[56] Philippine Guardians Brotherhood, Inc. (PGBI) v. Commission on Elections, G.R. No. 190529, April 29, 2010, 619 SCRA 585, 595.

[57] Limketkai Sons Milling, Inc. v. Court of Appeals, G.R. No. 118509, September 5, 1996, 261 SCRA 464, 467.

[58] Alonso v. Cebu Country Club, Inc., G.R. No. 130876, January 31, 2002, 375 SCRA 390, 409.

[59] G.R. No. 160303, September 13, 2007, 533 SCRA 288.

[60] Id. at 301-302. See also National Union of Workers in the Hotel Restaurant and Allied Industries (NUWHRAIN-APL-IUF) Dusit Hotel Nikko Chapter v. Court of Appeals, G.R. Nos. 163942 & 166295, November 11, 2008, 570 SCRA 598, 617-618 and Solidbank Corporation v. Gamier, G.R. Nos. 159460 & 159461, November 15, 2010, 634 SCRA 554, 581-582.

[61] Escario v. National Labor Relations Commission (Third Division), G.R. No. 160302, September 27, 2010, 631 SCRA 261, 275.

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