

**PICOP RESOURCES, INCORPORATED (PRI), PETITIONER, VS.
ANACLETO L. TAÑECA, GEREMIAS S. TATO, JAIME N. CAMPOS,
MARTINIANO A. MAGAYON, JOSEPH B. BALGOA, MANUEL G.
ABUCAY, MOISES M. ...**

G.R. No. 160828. August 09, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated July 25, 2003 and Resolution[2] dated October 23, 2003 of the Court of Appeals in CA-G.R. SP No. 71760, setting aside the Resolutions dated October 8, 2001[3] and April 29, 2002[4] of the National Labor Relations Commission in NLRC CA No. M-006309-2001 and reinstating the Decision[5] dated March 16, 2001 of the Labor Arbiter.

The facts, as culled from the records, are as follows:

On February 13, 2001, respondents Anacleto Tañeca, Loreto Uriarte, Joseph Balgoa, Jaime Campos, Geremias Tato, Martiniano Magayon, Manuel Abucay and fourteen (14) others filed a Complaint for unfair labor practice, illegal dismissal and money claims against petitioner PICOP Resources, Incorporated (PRI), Wilfredo Fuentes (in his capacity as PRI's Vice President/Resident Manager), Atty. Romero Boniel (in his capacity as PRI's Manager of Legal/Labor), Southern Philippines Federation of Labor (SPFL), Atty. Wilbur T. Fuentes (in his capacity as Secretary General of SPFL), Pascasio Trugillo (in his capacity as Local President of Nagkahiusang Mamumuo sa PICOP Resources, Inc.- SPFL [NAMAPRI-SPFL]) and Atty. Proculo Fuentes, Jr.[6] (in his capacity as National President of SPFL).

Respondents were regular rank-and-file employees of PRI and bona fide members of Nagkahiusang Mamumuo sa PRI Southern Philippines Federation of Labor (NAMAPRI-SPFL), which is the collective bargaining agent for the rank-and-file employees of petitioner PRI.

PRI has a collective bargaining agreement (CBA) with NAMAPRI-SPFL for a period of five (5) years from May 22, 1995 until May 22, 2000.

The CBA contained the following union security provisions:

Article II- Union Security and Check-Off

Section 6. Maintenance of membership.

6.1 All employees within the appropriate bargaining unit who are members of the UNION at the time of the signing of this AGREEMENT shall, as a condition of continued employment by the COMPANY, maintain their membership in the UNION in good standing during the effectivity of this AGREEMENT.

6.2 Any employee who may hereinafter be employed to occupy a position covered by the bargaining unit shall

be advised by the COMPANY that they are required to file an application for membership with the UNION within thirty (30) days from the date his appointment shall have been made regular.

6.3 The COMPANY, upon the written request of the UNION and after compliance with the requirements of the New Labor Code, shall give notice of termination of services of any employee who shall fail to fulfill the condition provided in Section 6.1 and 6.2 of this Article, but it assumes no obligation to discharge any employee if it has reasonable grounds to believe either that membership in the UNION was not available to the employee on the same terms and conditions generally applicable to other members, or that membership was denied or terminated for reasons other than voluntary resignation or non-payment of regular union dues. Separation under the Section is understood to be for cause, consequently, the dismissed employee is not entitled to separation benefits provided under the New Labor Code and in this AGREEMENT."[7]

On May 16, 2000, Atty. Proculo P. Fuentes (Atty. Fuentes) sent a letter to the management of PRI demanding the termination of employees who allegedly campaigned for, supported and signed the Petition for Certification Election of the Federation of Free Workers Union (FFW) during the effectivity of the CBA. NAMAPRI-SPFL considered said act of campaigning for and signing the petition for certification election of FFW as an act of disloyalty and a valid basis for termination for a cause in accordance with its Constitution and By-Laws, and the terms and conditions of the CBA, specifically Article II, Sections 6.1 and 6.2 on Union Security Clause.

In a letter dated May 23, 2000, Mr. Pascasio Trugillo requested the management of PRI to investigate those union members who signed the Petition for Certification Election of FFW during the existence of their CBA. NAMAPRI-SPFL, likewise, furnished PRI with machine copy of the authorization letters dated March 19, 20 and 21, 2000, which contained the names and signatures of employees.

Acting on the May 16 and May 23, 2000 letters of the NAMAPRI-SPFL, Atty. Romero A. Boniel issued a memorandum addressed to the concerned employees to explain in writing within 72 hours why their employment should not be terminated due to acts of disloyalty as alleged by their Union.

Within the period from May 26 to June 2, 2000, a number of employees who were served "explanation memorandum" submitted their explanation, while some did not.

In a letter dated June 2, 2000, Atty. Boniel endorsed the explanation letters of the employees to Atty. Fuentes for evaluation and final disposition in accordance with the CBA.

After evaluation, in a letter dated July 12, 2000, Atty. Fuentes advised the management of PRI that the Union found the member's explanations to be unsatisfactory. He reiterated the demand for termination, but only of 46 member-employees, including respondents.

On October 16, 2000, PRI served notices of termination for causes to the 31 out of the 46 employees whom NAMAPRI-SPFL sought to be terminated on the ground of "acts of disloyalty" committed against it when respondents allegedly supported and signed the Petition for Certification Election of FFW before the "freedom period" during the effectivity of the CBA. A Notice dated October 21, 2000 was also served on the Department of Labor and Employment Office (DOLE), Caraga Region.

Respondents then accused PRI of Unfair Labor Practice punishable under Article 248 (a), (b), (c), (d) and (e) of the Labor Code, while Atty. Fuentes and Wilbur T. Fuentes and Pascasio Trujillo were accused of violating Article 248 (a) and (b) of the Labor Code.

Respondents alleged that none of them ever withdrew their membership from NAMAPRI-SPFL or submitted to PRI any union dues and check-off disauthorizations against NAMAPRI-SPFL. They claimed that they continue to remain on record as bona fide members of NAMAPRI-SPFL. They pointed out that a patent manifestation of

one's disloyalty would have been the explicit resignation or withdrawal of membership from the Union accompanied by an advice to management to discontinue union dues and check-off deductions. They insisted that mere affixation of signature on such authorization to file a petition for certification election was not per se an act of disloyalty. They claimed that while it may be true that they signed the said authorization before the start of the freedom period, the petition of FFW was only filed with the DOLE on May 18, 2000, or 58 days after the start of the freedom period.

Respondents maintained that their acts of signing the authorization signifying support to the filing of a Petition for Certification Election of FFW was merely prompted by their desire to have a certification election among the rank-and-file employees of PRI with hopes of a CBA negotiation in due time; and not to cause the downfall of NAMAPRI-SPFL.

Furthermore, respondents contended that there was lack of procedural due process. Both the letter dated May 16, 2000 of Atty. Fuentes and the follow-up letter dated May 23, 2000 of Trujillo addressed to PRI did not mention their names. Respondents stressed that NAMAPRI-SPFL merely requested PRI to investigate union members who supported the Petition for Certification Election of FFW. Respondents claimed that they should have been summoned individually, confronted with the accusation and investigated accordingly and from where the Union may base its findings of disloyalty and, thereafter, recommend to management the termination for causes.

Respondents, likewise, argued that at the time NAMAPRI-SPFL demanded their termination, it was no longer the bargaining representative of the rank-and-file workers of PRI, because the CBA had already expired on May 22, 2000. Hence, there could be no justification in PRI's act of dismissing respondents due to acts of disloyalty.

Respondents asserted that the act of PRI, Wilfredo Fuentes and Atty. Boniel in giving in to the wishes of the Union in discharging them on the ground of disloyalty to the Union amounted to interference with, restraint or coercion of respondents' exercise of their right to self-organization. The act indirectly required petitioners to support and maintain their membership with NAMAPRI-SPFL as a condition for their continued employment. The acts of NAMAPRI-SPFL, Atty. Fuentes and Trujillo amounted to actual restraint and coercion of the petitioners in the exercise of their rights to self-organization and constituted acts of unfair labor practice.

In a Decision[8] dated March 16, 2001, the Labor Arbiter declared the respondents' dismissal to be illegal and ordered PRI to reinstate respondents to their former or equivalent positions without loss of seniority rights and to jointly and solidarily pay their backwages. The dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby entered:

1. Declaring complainants' dismissal illegal; and
2. Ordering respondents Picop Resources Inc. (PRI) and NAMAPRI-SPFL to reinstate complainants to their former or equivalent positions without loss of seniority rights and to jointly and solidarily pay their backwages in the total amount of P420,339.30 as shown in the said Annex "A" plus damages in the amount of P10,000.00 each, or a total of P210,000.00 and attorney's fees equivalent to 10% of the total monetary award.

SO ORDERED.[9]

PRI and NAMAPRI-SPFL appealed to the National Labor Relations Commission (NLRC), which reversed the decision of the Labor Arbiter; thus, declaring the dismissal of respondents from employment as legal.

Respondents filed a motion for reconsideration, but it was denied on April 29, 2001 for lack of merit.

Unsatisfied, respondents filed a petition for certiorari under Rule 65 before the Court of Appeals and sought the nullification of the Resolution of the NLRC dated October 8, 2001 which reversed the Decision dated March 16.

2001 of Labor Arbiter and the Resolution dated April 29, 2002, which denied respondent's motion for reconsideration.

On July 25, 2003, the Court of Appeals reversed and set aside the assailed Resolutions of the NLRC and reinstated the Decision dated March 16, 2001 of the Labor Arbiter.

Thus, before this Court, PRI, as petitioner, raised the following issues:

I

WHETHER AN EXISTING COLLECTIVELY (sic) BARGAINING AGREEMENT (CBA) CAN BE GIVEN ITS FULL FORCE AND EFFECT IN ALL ITS TERMS AND CONDITION INCLUDING ITS UNION SECURITY CLAUSE, EVEN BEYOND THE 5-YEAR PERIOD WHEN NO NEW CBA HAS YET BEEN ENTERED INTO.

II

WHETHER OR NOT AN HONEST ERROR IN THE INTERPRETATION AND/OR CONCLUSION OF LAW FALL WITHIN THE AMBIT OF THE EXTRAORDINARY REMEDY OF CERTIORARI UNDER RULE 65, REVISED RULES OF COURT.[10]

We will first delve on the technical issue raised.

PRI perceived a patent error in the mode of appeal elected by respondents for the purpose of assailing the decision of the NLRC. It claimed that assuming that the NLRC erred in its judgment on the legal issues, its error, if any, is not tantamount to abuse of discretion falling within the ambit of Rule 65.

Petitioner is mistaken.

The power of the Court of Appeals to review NLRC decisions via Rule 65 or Petition for Certiorari has been settled as early as in our decision in *St. Martin Funeral Home v. National Labor Relations Commission*.^[11] This Court held that the proper vehicle for such review was a Special Civil Action for Certiorari under Rule 65 of the Rules of Court, and that this action should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts.^[12] Moreover, it is already settled that under Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902^[10] (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of Batas Pambansa Blg. 129 as amended, known as the Judiciary Reorganization Act of 1980), the Court of Appeals - pursuant to the exercise of its original jurisdiction over Petitions for Certiorari - is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues. ^[13]

We now come to the main issue of whether there was just cause to terminate the employment of respondents.

PRI argued that the dismissal of the respondents was valid and legal. It claimed to have acted in good faith at the instance of the incumbent union pursuant to the Union Security Clause of the CBA.

Citing Article 253 of the Labor Code,^[14] PRI contends that as parties to the CBA, they are enjoined to keep the status quo and continue in full force and effect the terms and conditions of the existing CBA during the 60-day period and/or until a new agreement is reached by the parties.

Petitioner's argument is untenable.

"Union security" is a generic term, which is applied to and comprehends "closed shop," "union shop," "maintenance of membership," or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new

regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit, or the agreement is terminated. A closed shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part.[15]

However, in terminating the employment of an employee by enforcing the union security clause, the employer needs to determine and prove that: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the decision of the union to expel the employee from the union. These requisites constitute just cause for terminating an employee based on the union security provision of the CBA.[16]

As to the first requisite, there is no question that the CBA between PRI and respondents included a union security clause, specifically, a maintenance of membership as stipulated in Sections 6 of Article II, Union Security and Check-Off. Following the same provision, PRI, upon written request from the Union, can indeed terminate the employment of the employee who failed to maintain its good standing as a union member.

Secondly, it is likewise undisputed that NAMAPRI-SPFL, in two (2) occasions demanded from PRI, in their letters dated May 16 and 23, 2000, to terminate the employment of respondents due to their acts of disloyalty to the Union.

However, as to the third requisite, we find that there is no sufficient evidence to support the decision of PRI to terminate the employment of the respondents.

PRI alleged that respondents were terminated from employment based on the alleged acts of disloyalty they committed when they signed an authorization for the Federation of Free Workers (FFW) to file a Petition for Certification Election among all rank-and-file employees of PRI. It contends that the acts of respondents are a violation of the Union Security Clause, as provided in their Collective Bargaining Agreement.

We are unconvinced.

We are in consonance with the Court of Appeals when it held that the mere signing of the authorization in support of the Petition for Certification Election of FFW on March 19, 20 and 21, or before the "freedom period," is not sufficient ground to terminate the employment of respondents inasmuch as the petition itself was actually filed during the freedom period. Nothing in the records would show that respondents failed to maintain their membership in good standing in the Union. Respondents did not resign or withdraw their membership from the Union to which they belong. Respondents continued to pay their union dues and never joined the FFW.

Significantly, petitioner's act of dismissing respondents stemmed from the latter's act of signing an authorization letter to file a petition for certification election as they signed it outside the freedom period. However, we are constrained to believe that an "authorization letter to file a petition for certification election" is different from an actual "Petition for Certification Election." Likewise, as per records, it was clear that the actual Petition for Certification Election of FFW was filed only on May 18, 2000.[17] Thus, it was within the ambit of the freedom period which commenced from March 21, 2000 until May 21, 2000. Strictly speaking, what is prohibited is the filing of a petition for certification election outside the 60-day freedom period.[18] This is not the situation in this

case. If at all, the signing of the authorization to file a certification election was merely preparatory to the filing of the petition for certification election, or an exercise of respondents' right to self-organization.

Moreover, PRI anchored their decision to terminate respondents' employment on Article 253 of the Labor Code which states that "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." It claimed that they are still bound by the Union Security Clause of the CBA even after the expiration of the CBA; hence, the need to terminate the employment of respondents.

Petitioner's reliance on Article 253 is misplaced.

The provision of Article 256 of the Labor Code is particularly enlightening. It reads:

Article 256. Representation issue in organized establishments. - In organized establishments, when a verified petition questioning the majority status of the incumbent bargaining agent is filed before the Department of Labor and Employment within the sixty-day period before the expiration of a collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot when the verified petition is supported by the written consent of at least twenty-five percent (25%) of all the employees in the bargaining unit to ascertain the will of the employees in the appropriate bargaining unit. To have a valid election, at least a majority of all eligible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit. When an election which provides for three or more choices results in no choice receiving a majority of the valid votes cast, a run-off election shall be conducted between the labor unions receiving the two highest number of votes: Provided, That the total number of votes for all contending unions is at least fifty per cent (50%) of the number of votes cast.

At the expiration of the freedom period, the employer shall continue to recognize the majority status of the incumbent bargaining agent where no petition for certification election is filed.[19]

Applying the same provision, it can be said that while it is incumbent for the employer to continue to recognize the majority status of the incumbent bargaining agent even after the expiration of the freedom period, they could only do so when no petition for certification election was filed. The reason is, with a pending petition for certification, any such agreement entered into by management with a labor organization is fraught with the risk that such a labor union may not be chosen thereafter as the collective bargaining representative.[20] The provision for status quo is conditioned on the fact that no certification election was filed during the freedom period. Any other view would render nugatory the clear statutory policy to favor certification election as the means of ascertaining the true expression of the will of the workers as to which labor organization would represent them.[21]

In the instant case, four (4) petitions were filed as early as May 12, 2000. In fact, a petition for certification election was already ordered by the Med-Arbiter of DOLE Caraga Region on August 23, 2000.[22] Therefore, following Article 256, at the expiration of the freedom period, PRI's obligation to recognize NAMAPRI-SPFL as the incumbent bargaining agent does not hold true when petitions for certification election were filed, as in this case.

Moreover, the last sentence of Article 253 which provides for automatic renewal pertains only to the economic provisions of the CBA, and does not include representational aspect of the CBA. An existing CBA cannot constitute a bar to a filing of a petition for certification election. When there is a representational issue, the status quo provision in so far as the need to await the creation of a new agreement will not apply. Otherwise, it will create an absurd situation where the union members will be forced to maintain membership by virtue of the union security clause existing under the CBA and, thereafter, support another union when filing a petition for

certification election. If we apply it, there will always be an issue of disloyalty whenever the employees exercise their right to self-organization. The holding of a certification election is a statutory policy that should not be circumvented,[23] or compromised.

Time and again, we have ruled that we adhere to the policy of enhancing the welfare of the workers. Their freedom to choose who should be their bargaining representative is of paramount importance. The fact that there already exists a bargaining representative in the unit concerned is of no moment as long as the petition for certification election was filed within the freedom period. What is imperative is that by such a petition for certification election the employees are given the opportunity to make known of who shall have the right to represent them thereafter. Not only some, but all of them should have the right to do so. What is equally important is that everyone be given a democratic space in the bargaining unit concerned.[24]

We will emphasize anew that the power to dismiss is a normal prerogative of the employer. This, however, is not without limitations. The employer is bound to exercise caution in terminating the services of his employees especially so when it is made upon the request of a labor union pursuant to the Collective Bargaining Agreement. Dismissals must not be arbitrary and capricious. Due process must be observed in dismissing an employee, because it affects not only his position but also his means of livelihood. Employers should, therefore, respect and protect the rights of their employees, which include the right to labor.[25]

An employee who is illegally dismissed is entitled to the twin reliefs of full backwages and reinstatement. If reinstatement is not viable, separation pay is awarded to the employee. In awarding separation pay to an illegally dismissed employee, in lieu of reinstatement, the amount to be awarded shall be equivalent to one month salary for every year of service. Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits, or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement. But if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision. Moreover, respondents, having been compelled to litigate in order to seek redress for their illegal dismissal, are entitled to the award of attorney's fees equivalent to 10% of the total monetary award.[26]

WHEREFORE, the petition is DENIED. The Decision dated July 25, 2003 and the Resolution dated October 23, 2003 of the Court of Appeals in CA-G.R. SP No. 71760, which set aside the Resolutions dated October 8, 2001 and April 29, 2002 of the National Labor Relations Commission in NLRC CA No. M-006309-2001, are AFFIRMED accordingly. Respondents are hereby awarded full backwages and other allowances, without qualifications and diminutions, computed from the time they were illegally dismissed up to the time they are actually reinstated. Let this case be remanded to the Labor Arbiter for proper computation of the full backwages due respondents, in accordance with Article 279 of the Labor Code, as expeditiously as possible.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Remedios Salazar-Fernando, with Associate Justices Delilah Vidallon-Magtolis and Edgardo F. Sundiam, concurring; rollo, pp. 50-65.

[2] Id. at 48.

[3] Rollo, pp. 219-227.

[4] Id. at 233-234.

[5] Id. at 166-178.

[6] Now deceased.

[7] Emphasis supplied.

[8] Rollo, pp. 166-175.

[9] Id. at 175.

[10] Id. at 30.

[11] 356 Phil. 811 (1998).

[12] VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals, G.R. No. 153144, October 12, 2006, 504 SCRA 336, 348.

[13] Id.

[14] 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.

[15] Inguillo v. First Philippine Scales, Inc., G.R. No. 165407, June 5, 2009, 588 SCRA 471, 485-486.

[16] Alabang Country Club, Inc. v. National Labor Relations Commission, G.R. No. 170287, February 14, 2008, 545 SCRA 351, 362.

[17] Rollo, p. 131.

[18] Art. 253-A. Terms of a collective bargaining agreement. - Any Collective Bargaining Agreement that the parties may enter into shall, insofar as the representation aspect is concerned, be for a term of five (5) years. No petition questioning the majority status of the incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of the sixty-day period immediately before the date of expiry of such five-year term of the Collective Bargaining Agreement. All other provisions of the Collective Bargaining Agreement shall be renegotiated not later than three (3) years after its execution. Any agreement on such other provisions of the Collective Bargaining Agreement entered into within six (6) months from the date of expiry of the term of such other provisions as fixed in such Collective Bargaining Agreement, shall retroact to the day immediately following such date. If any such agreement is entered into beyond six months, the parties shall agree on the duration of retroactivity thereof. In case of a deadlock in the renegotiation of the Collective Bargaining Agreement, the parties may exercise their rights under this Code. (As amended by Section 21, Republic Act No. 6715, March 21, 1989).

[19] Emphasis supplied.

[20] Vassar Industries Employees Union [VIEU] v. Estrella, 172 Phil. 272, 278-279 (1978); Today's Knitting Free Workers Union v. Noriel, No. L-45057, February 28, 1977, 75 SCRA 450.

[21] Labor Code, Article 253-A.

[22] Rollo, pp. 130-136.

[23] Associated Labor Unions (ALU) v. Ferrer-Calleja, G.R. No. 85085, November 6, 1989, 179 SCRA 127, 134

[24] Id.

[25] Liberty Cotton Mills Workers Union v. Liberty Cotton Mills, Inc., 179 Phil. 317, 321-322 (1979); Cariño v. National Labor Relations Commission, G.R. No. 91086, May 8, 1990, 185 SCRA 177, 189.

[26] See General Milling Corporation v. Ernesto Casio, et al., G.R. No. 149552, March 10, 2010.

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