

NATIONAL UNION OF WORKERS IN THE HOTEL RESTAURANT AND ALLIED INDUSTRIES (NUWHRAIN-APL-IUF) DUSIT HOTEL NIKKO CHAPTER, PETITIONER, VS. THE HONORABLE COURT OF APPEALS (FORMER EIGH...

G.R. No. 163942. November 11, 2008

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

In G.R. No. 163942, the Petition for Review on Certiorari under Rule 45 of the National Union of Workers in the Hotel Restaurant and Allied Industries Dusit Hotel Nikko Chapter (Union) seeks to set aside the January 19, 2004 Decision[1] and June 1, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 76568 which affirmed the October 9, 2002 Decision[3] of the National Labor Relations Commission (NLRC) in NLRC NCR CC No. 000215-02.

In G.R. No. 166295, the Petition for Certiorari under Rule 65 of the Union seeks to nullify the May 6, 2004 Decision[4] and November 25, 2004 Resolution[5] of the CA in CA-G.R. SP No. 70778 which affirmed the January 31, 2002[6] and March 15, 2002[7] Orders of the Secretary of Labor and Employment, Patricia A. Sto. Tomas (Secretary).

Evolution of the Present Petitions

The Union is the certified bargaining agent of the regular rank-and-file employees of Dusit Hotel Nikko (Hotel), a five star service establishment owned and operated by Philippine Hoteliers, Inc. located in Makati City. Chiyuki Fuijimoto and Esperanza V. Alvez are impleaded in their official capacities as the Hotel's General Manager and Director of Human Resources, respectively.

On October 24, 2000, the Union submitted its Collective Bargaining Agreement (CBA) negotiation proposals to the Hotel. As negotiations ensued, the parties failed to arrive at mutually acceptable terms and conditions. Due to the bargaining deadlock, the Union, on December 20, 2001, filed a Notice of Strike on the ground of the bargaining deadlock with the National Conciliation and Mediation Board (NCMB), which was docketed as NCMB-NCR-NS-12-369-01. Thereafter, conciliation hearings were conducted which proved unsuccessful. Consequently, a Strike Vote[8] was conducted by the Union on January 14, 2002 on which it was decided that the Union would wage a strike.

Soon thereafter, in the afternoon of January 17, 2002, the Union held a general assembly at its office located in the Hotel's basement, where some members sported closely cropped hair or cleanly shaven heads. The next day, or on January 18, 2002, more male Union members came to work sporting the same hair style. The Hotel prevented these workers from entering the premises claiming that they violated the Hotel's Grooming Standards.

In view of the Hotel's action, the Union staged a picket outside the Hotel premises. Later, other workers were also prevented from entering the Hotel causing them to join the picket. For this reason the Hotel experienced a severe

lack of manpower which forced them to temporarily cease operations in three restaurants.

Subsequently, on January 20, 2002, the Hotel issued notices to Union members, preventively suspending them and charging them with the following offenses: (1) violation of the duty to bargain in good faith; (2) illegal picket; (3) unfair labor practice; (4) violation of the Hotel's Grooming Standards; (5) illegal strike; and (6) commission of illegal acts during the illegal strike. The next day, the Union filed with the NCMB a second Notice of Strike on the ground of unfair labor practice and violation of Article 248(a) of the Labor Code on illegal lockout, which was docketed as NCMB-NCR-NS-01-019-02. In the meantime, the Union officers and members submitted their explanations to the charges alleged by the Hotel, while they continued to stage a picket just inside the Hotel's compound.

On January 26, 2002, the Hotel terminated the services of twenty-nine (29) Union officers and sixty-one (61) members; and suspended eighty-one (81) employees for 30 days, forty-eight (48) employees for 15 days, four (4) employees for 10 days, and three (3) employees for five days. On the same day, the Union declared a strike. Starting that day, the Union engaged in picketing the premises of the Hotel. During the picket, the Union officials and members unlawfully blocked the ingress and egress of the Hotel premises.

Consequently, on January 31, 2002, the Union filed its third Notice of Strike with the NCMB which was docketed as NCMB-NCR-NS-01-050-02, this time on the ground of unfair labor practice and union-busting.

On the same day, the Secretary, through her January 31, 2002 Order, assumed jurisdiction over the labor dispute and certified the case to the NLRC for compulsory arbitration, which was docketed as NLRC NCR CC No. 000215-02. The Secretary's Order partly reads:

WHEREFORE, in order to have a complete determination of the bargaining deadlock and the other incidents of the dispute, this Office hereby consolidates the two Notices of Strike - NCMB-NCR-NS-12-369-01 and NCMB-NCR-NS-01-019-02 - and CERTIFIES the entire labor dispute covered by these Notices and the intervening events, to the NATIONAL LABOR RELATIONS COMMISSION for compulsory arbitration pursuant to Article 263 (g) of the Labor Code, as amended, under the following terms:

x x x x

d. the Hotel is given the option, in lieu of actual reinstatement, to merely reinstate the dismissed or suspended workers in the payroll in light of the special circumstances attendant to their reinstatement;

x x x x

SO ORDERED. (Emphasis added.)

Pursuant to the Secretary's Order, the Hotel, on February 1, 2002, issued an Inter-Office Memorandum,[9] directing some of the employees to return to work, while advising others not to do so, as they were placed under payroll reinstatement.

Unhappy with the Secretary's January 31, 2002 Order, the Union moved for reconsideration, but the same was denied per the Secretary's subsequent March 15, 2002 Order. Affronted by the Secretary's January 31, 2002 and March 15, 2002 Orders, the Union filed a Petition for Certiorari with the CA which was docketed as CA-G.R. SP No. 70778.

Meanwhile, after due proceedings, the NLRC issued its October 9, 2002 Decision in NLRC NCR CC No. 000215-02, in which it ordered the Hotel and the Union to execute a CBA within 30 days from the receipt of the decision. The NLRC also held that the January 18, 2002 concerted action was an illegal strike in which illegal acts were committed by the Union; and that the strike violated the "No Strike, No Lockout" provision of the CBA,

which thereby caused the dismissal of 29 Union officers and 61 Union members. The NLRC ordered the Hotel to grant the 61 dismissed Union members financial assistance in the amount of ½ month's pay for every year of service or their retirement benefits under their retirement plan whichever was higher. The NLRC explained that the strike which occurred on January 18, 2002 was illegal because it failed to comply with the mandatory 30-day cooling-off period^[10] and the seven-day strike ban,^[11] as the strike occurred only 29 days after the submission of the notice of strike on December 20, 2001 and only four days after the submission of the strike vote on January 14, 2002. The NLRC also ruled that even if the Union had complied with the temporal requirements mandated by law, the strike would nonetheless be declared illegal because it was attended by illegal acts committed by the Union officers and members.

The Union then filed a Motion for Reconsideration of the NLRC's Decision which was denied in the February 7, 2003 NLRC Resolution. Unfazed, the Union filed a Petition for Certiorari under Rule 65 with the CA, docketed as CA-G.R. SP No. 76568, and assailed both the October 9, 2002 Decision and the February 7, 2003 Resolution of the NLRC.

Soon thereafter, the CA promulgated its January 19, 2004 Decision in CA-G.R. SP No. 76568 which dismissed the Union's petition and affirmed the rulings of the NLRC. The CA ratiocinated that the Union failed to demonstrate that the NLRC committed grave abuse of discretion and capriciously exercised its judgment or exercised its power in an arbitrary and despotic manner.

For this reason, the Union filed a Motion for Reconsideration which the CA, in its June 1, 2004 Resolution, denied for lack of merit.

In the meantime, the CA promulgated its May 6, 2004 Decision in CA-G.R. SP No. 70778 which denied due course to and consequently dismissed the Union's petition. The Union moved to reconsider the Decision, but the CA was unconvinced and denied the motion for reconsideration in its November 25, 2004 Resolution.

Thus, the Union filed the present petitions.

The Union raises several interwoven issues in G.R. No. 163942, most eminent of which is whether the Union conducted an illegal strike. The issues presented for resolution are:

-A-

WHETHER OR NOT THE UNION, THE 29 UNION OFFICERS AND 61 MEMBERS MAY BE ADJUDGED GUILTY OF STAGING AN ILLEGAL STRIKE ON JANUARY 18, 2002 DESPITE RESPONDENTS' ADMISSION THAT THEY PREVENTED SAID OFFICERS AND MEMBERS FROM REPORTING FOR WORK FOR ALLEGED VIOLATION OF THE HOTEL'S GROOMING STANDARDS

-B-

WHETHER OR NOT THE 29 UNION OFFICERS AND 61 MEMBERS MAY VALIDLY BE DISMISSED AND MORE THAN 200 MEMBERS BE VALIDLY SUSPENDED ON THE BASIS OF FOUR (4) SELF-SERVING AFFIDAVITS OF RESPONDENTS

-C-

WHETHER OR NOT RESPONDENTS IN PREVENTING UNION OFFICERS AND MEMBERS FROM REPORTING FOR WORK COMMITTED AN ILLEGAL LOCK-OUT^[12]

In G.R. No. 166295, the Union solicits a riposte from this Court on whether the Secretary has discretion to impose "payroll" reinstatement when he assumes jurisdiction over labor disputes.

The Court's Ruling

The Court shall first dispose of G.R. No. 166295.

According to the Union, there is no legal basis for allowing payroll reinstatement in lieu of actual or physical reinstatement. As argued, Art. 263(g) of the Labor Code is clear on this point.

The Hotel, on the other hand, claims that the issue is now moot and any decision would be impossible to execute in view of the Decision of the NLRC which upheld the dismissal of the Union officers and members.

The Union's position is untenable.

The Hotel correctly raises the argument that the issue was rendered moot when the NLRC upheld the dismissal of the Union officers and members. In order, however, to settle this relevant and novel issue involving the breadth of the power and jurisdiction of the Secretary in assumption of jurisdiction cases, we now decide the issue on the merits instead of relying on mere technicalities.

We held in *University of Immaculate Concepcion, Inc. v. Secretary of Labor*:

With respect to the Secretary's Order allowing payroll reinstatement instead of actual reinstatement for the individual respondents herein, an amendment to the previous Orders issued by her office, the same is usually not allowed. Article 263(g) of the Labor Code aforementioned states that all workers must immediately return to work and all employers must readmit all of them under the same terms and conditions prevailing before the strike or lockout. The phrase "under the same terms and conditions" makes it clear that the norm is actual reinstatement. This is consistent with the idea that any work stoppage or slowdown in that particular industry can be detrimental to the national interest.[13]

Thus, it was settled that in assumption of jurisdiction cases, the Secretary should impose actual reinstatement in accordance with the intent and spirit of Art. 263(g) of the Labor Code. As with most rules, however, this one is subject to exceptions. We held in *Manila Diamond Hotel Employees' Union v. Court of Appeals* that payroll reinstatement is a departure from the rule, and special circumstances which make actual reinstatement impracticable must be shown.[14] In one case, payroll reinstatement was allowed where the employees previously occupied confidential positions, because their actual reinstatement, the Court said, would be impracticable and would only serve to exacerbate the situation.[15] In another case, this Court held that the NLRC did not commit grave abuse of discretion when it allowed payroll reinstatement as an option in lieu of actual reinstatement for teachers who were to be reinstated in the middle of the first term.[16] We held that the NLRC was merely trying its best to work out a satisfactory ad hoc solution to a festering and serious problem.[17]

The peculiar circumstances in the present case validate the Secretary's decision to order payroll reinstatement instead of actual reinstatement. It is obviously impracticable for the Hotel to actually reinstate the employees who shaved their heads or cropped their hair because this was exactly the reason they were prevented from working in the first place. Further, as with most labor disputes which have resulted in strikes, there is mutual antagonism, enmity, and animosity between the union and the management. Payroll reinstatement, most especially in this case, would have been the only avenue where further incidents and damages could be avoided. Public officials entrusted with specific jurisdictions enjoy great confidence from this Court. The Secretary surely meant only to ensure industrial peace as she assumed jurisdiction over the labor dispute. In this case, we are not ready to substitute our own findings in the absence of a clear showing of grave abuse of discretion on her part.

The issues raised in G.R. No. 163942, being interrelated, shall be discussed concurrently.

To be determined whether legal or not are the following acts of the Union:

- (1) Reporting for work with their bald or cropped hair style on January 18, 2002; and
- (2) The picketing of the Hotel premises on January 26, 2002.

The Union maintains that the mass picket conducted by its officers and members did not constitute a strike and was merely an expression of their grievance resulting from the lockout effected by the Hotel management. On the other hand, the Hotel argues that the Union's deliberate defiance of the company rules and regulations was a concerted effort to paralyze the operations of the Hotel, as the Union officers and members knew pretty well that they would not be allowed to work in their bald or cropped hair style. For this reason, the Hotel argues that the Union committed an illegal strike on January 18, 2002 and on January 26, 2002.

We rule for the Hotel.

Art. 212(o) of the Labor Code defines a strike as "any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute."

In *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*, we cited the various categories of an illegal strike, to wit:

Noted authority on labor law, Ludwig Teller, lists six (6) categories of an illegal strike, viz.:

(1)

[when it] is contrary to a specific prohibition of law, such as strike by employees performing governmental functions; or

(2)

[when it] violates a specific requirement of law[, such as Article 263 of the Labor Code on the requisites of a valid strike]; or

(3)

[when it] is declared for an unlawful purpose, such as inducing the employer to commit an unfair labor practice against non-union employees; or

(4)

[when it] employs unlawful means in the pursuit of its objective, such as a widespread terrorism of non-strikers [for example, prohibited acts under Art. 264(e) of the Labor Code]; or

(5)

[when it] is declared in violation of an existing injunction[, such as injunction, prohibition, or order issued by the DOLE Secretary and the NLRC under Art. 263 of the Labor Code]; or

(6)

[when it] is contrary to an existing agreement, such as a no-strike clause or conclusive arbitration clause.[18]

With the foregoing parameters as guide and the following grounds as basis, we hold that the Union is liable for conducting an illegal strike for the following reasons:

First, the Union's violation of the Hotel's Grooming Standards was clearly a deliberate and concerted action to undermine the authority of and to embarrass the Hotel and was, therefore, not a protected action. The appearances of the Hotel employees directly reflect the character and well-being of the Hotel, being a five-star hotel that

provides service to top-notch clients. Being bald or having cropped hair per se does not evoke negative or unpleasant feelings. The reality that a substantial number of employees assigned to the food and beverage outlets of the Hotel with full heads of hair suddenly decided to come to work bald-headed or with cropped hair, however, suggests that something is amiss and insinuates a sense that something out of the ordinary is afoot. Obviously, the Hotel does not need to advertise its labor problems with its clients. It can be gleaned from the records before us that the Union officers and members deliberately and in apparent concert shaved their heads or cropped their hair. This was shown by the fact that after coming to work on January 18, 2002, some Union members even had their heads shaved or their hair cropped at the Union office in the Hotel's basement. Clearly, the decision to violate the company rule on grooming was designed and calculated to place the Hotel management on its heels and to force it to agree to the Union's proposals.

In view of the Union's collaborative effort to violate the Hotel's Grooming Standards, it succeeded in forcing the Hotel to choose between allowing its inappropriately hair styled employees to continue working, to the detriment of its reputation, or to refuse them work, even if it had to cease operations in affected departments or service units, which in either way would disrupt the operations of the Hotel. This Court is of the opinion, therefore, that the act of the Union was not merely an expression of their grievance or displeasure but, indeed, a calibrated and calculated act designed to inflict serious damage to the Hotel's finances or its reputation. Thus, we hold that the Union's concerted violation of the Hotel's Grooming Standards which resulted in the temporary cessation and disruption of the Hotel's operations is an unprotected act and should be considered as an illegal strike.

Second, the Union's concerted action which disrupted the Hotel's operations clearly violated the CBA's "No Strike, No Lockout" provision, which reads:

ARTICLE XXII - NO STRIKE/WORK STOPPAGE AND LOCKOUT

SECTION 1. No Strikes

The Union agrees that there shall be no strikes, walkouts, stoppage or slow-down of work, boycott, refusal to handle accounts, picketing, sit-down strikes, sympathy strikes or any other form of interference and/or interruptions with any of the normal operations of the HOTEL during the life of this Agreement.

The facts are clear that the strike arose out of a bargaining deadlock in the CBA negotiations with the Hotel. The concerted action is an economic strike upon which the afore-quoted "no strike/work stoppage and lockout" prohibition is squarely applicable and legally binding.[19]

Third, the Union officers and members' concerted action to shave their heads and crop their hair not only violated the Hotel's Grooming Standards but also violated the Union's duty and responsibility to bargain in good faith. By shaving their heads and cropping their hair, the Union officers and members violated then Section 6, Rule XIII of the Implementing Rules of Book V of the Labor Code.[20] This rule prohibits the commission of any act which will disrupt or impede the early settlement of the labor disputes that are under conciliation. Since the bargaining deadlock is being conciliated by the NCMB, the Union's action to have their officers and members' heads shaved was manifestly calculated to antagonize and embarrass the Hotel management and in doing so effectively disrupted the operations of the Hotel and violated their duty to bargain collectively in good faith.

Fourth, the Union failed to observe the mandatory 30-day cooling-off period and the seven-day strike ban before it conducted the strike on January 18, 2002. The NLRC correctly held that the Union failed to observe the mandatory periods before conducting or holding a strike. Records reveal that the Union filed its Notice of Strike on the ground of bargaining deadlock on December 20, 2001. The 30-day cooling-off period should have been until January 19, 2002. On top of that, the strike vote was held on January 14, 2002 and was submitted to the NCMB only on January 18, 2002; therefore, the 7-day strike ban should have prevented them from holding a

strike until January 25, 2002. The concerted action committed by the Union on January 18, 2002 which resulted in the disruption of the Hotel's operations clearly violated the above-stated mandatory periods.

Last, the Union committed illegal acts in the conduct of its strike. The NLRC ruled that the strike was illegal since, as shown by the pictures[21] presented by the Hotel, the Union officers and members formed human barricades and obstructed the driveway of the Hotel. There is no merit in the Union's argument that it was not its members but the Hotel's security guards and the police officers who blocked the driveway, as it can be seen that the guards and/or police officers were just trying to secure the entrance to the Hotel. The pictures clearly demonstrate the tense and highly explosive situation brought about by the strikers' presence in the Hotel's driveway.

Furthermore, this Court, not being a trier of facts, finds no reason to alter or disturb the NLRC findings on this matter, these findings being based on substantial evidence and affirmed by the CA.[22] Factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind us when supported by substantial evidence.[23] Likewise, we are not duty-bound to delve into the accuracy of the factual findings of the NLRC in the absence of clear showing that these were arrived at arbitrarily and/or bereft of any rational basis.[24]

What then are the consequent liabilities of the Union officers and members for their participation in the illegal strike?

Regarding the Union officers and members' liabilities for their participation in the illegal picket and strike, Art. 264(a), paragraph 3 of the Labor Code provides that "[a]ny 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 x x x." The law makes a distinction between union officers and mere union members. Union officers may be validly terminated from employment for their participation in an illegal strike, while union members have to participate in and commit illegal acts for them to lose their employment status.[25] Thus, it is necessary for the company to adduce proof of the participation of the striking employees in the commission of illegal acts during the strikes.[26]

Clearly, the 29 Union officers may be dismissed pursuant to Art. 264(a), par. 3 of the Labor Code which imposes the penalty of dismissal on "any union officer who knowingly participates in an illegal strike." We, however, are of the opinion that there is room for leniency with respect to the Union members. It is pertinent to note that the Hotel was able to prove before the NLRC that the strikers blocked the ingress to and egress from the Hotel. But it is quite apparent that the Hotel failed to specifically point out the participation of each of the Union members in the commission of illegal acts during the picket and the strike. For this lapse in judgment or diligence, we are constrained to reinstate the 61 Union members.

Further, we held in one case that union members who participated in an illegal strike but were not identified to have committed illegal acts are entitled to be reinstated to their former positions but without backwages.[27] We then held in *G & S Transport Corporation v. Infante*:

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 Officer's 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.[28]

In this light, we stand by our recent rulings and reinstate the 61 Union members without backwages.

WHEREFORE, premises considered, the CA's May 6, 2004 Decision in CA-G.R. SP No. 70778 is hereby AFFIRMED.

The CA's January 19, 2004 Decision in CA-G.R. SP No. 76568 is hereby SET ASIDE. The October 9, 2002 Decision of the NLRC in NLRC NCR CC No. 000215-02 is hereby AFFIRMED with MODIFICATIONS, as follows:

The 29 Union officials are hereby declared to have lost their employment status, to wit:

- LEO ANTONIO ATUTUBO
- EDWIN E. BALLESTEROS
- LORETTA DIVINA DE LUNA
- INISUSAN DE VELEZ
- DENNIS HABER
- MARITES HERNANDEZ
- BERNARD HUGO
- NORZAMIA INTAL
- LAURO JAVIER
- SHANE LAUZ
- MAY BELEN LEANO
- EDGAR LINGHON
- MILAGROS LOPEZ
- JOSE MUZONES
- RAY NERVA
- JESUS NONAN
- MARLYN OLLERO
- CATHY ORDUNA
- REYNALDO RASING
- JUSTO TABUNDA
- BARTOLOME TALISAYON
- JUN TESORO
- LYNDON TESORO
- SALVADOR TIPONES
- SONNY UY

- WILFREDO VALLES, JR.
- MEL VILLAHUCO
- EMMA Q. DANAQ
- JORDAN ALEJANDRO

The 61 Union members are hereby REINSTATED to their former positions without backwages:

- DANILO AGUINALDO
- CLARO ABRANTE
- FELIX ARRIESGADO
- DAN BAUTISTA
- MA. THERESA BONIFACIO
- JUAN BUSCANO
- ELY CHUA
- ALLAN DELAGON
- FRUMENCIO DE LEON
- ELLIE DEL MUNDO
- EDWIN DELOS CIENTOS
- SOLOMON DIZON
- YLOTSKI DRAPER
- ERLAND COLLANTES
- JONAS COMPENIDO
- RODELIO ESPINUEVA
- ARMANDO ESTACIO
- SHERWIN FALCES
- JELA FRANZUELA
- REY GEALOGO
- ALONA GERNOMINO
- VINCENT HEMBRADOR
- ROSLYN IBARBIA
- JAIME IDIOMA, JR.
- OFELIA LLABAN
- RENATON LUZONG

- TEODULO MACALINO
- JAKE MACASAET
- HERNANIE PABILONIA
- HONORIO PACIONE
- ANDREA VILLAFUERTE
- MARIO PACULAN
- JULIO PAJINAG
- JOSELITO PASION
- VICENTE PASIOLAN
- HAZEL PENA
- PEDRO POLLANTE
- EDUARDO RAMOS
- IMELDA RASIN
- DELFIN RAZALAN
- EVANGELINE REYES
- RODOLFO REYES
- BRIGILDO RUBIO
- RIO SALCEDO
- JUANITO SANCHEZ
- MA. THERESA SANCHEZ
- DONATO SAN AGUSTIN
- RICARDO SOCORRO
- VALERIO SOLIS
- DOMINADOR SUAREZ
- ORLANDO TABUGOCA
- HELEN TALEON
- ROBERT TANEGRA
- LOURDES TAYAG
- ROLANDO TOLENTINO
- REYNALDO TRESNADO
- RICHARD SABLADA

- MAE YAP-DIANGCO
- GILBERTO VEDASTO
- DOMINGO VIDAROSAGA
- DAN VILLANUEVA

In view of the possibility that the Hotel might have already hired regular replacements for the afore-listed 61 employees, the Hotel may opt to pay SEPARATION PAY computed at one (1) month's pay for every year of service in lieu of REINSTATEMENT, a fraction of six (6) months being considered one year of service.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Reyes,[*] and Leonardo-De Castro,[*] JJ., concur.

* Additional members as per April 23, 2008 raffle. Justices Dante O. Tinga and Arturo D. Brion inhibited.

[1]Rollo (G.R. No. 163942), pp. 90-100. Penned by then Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Bienvenido L. Reyes and Arsenio J. Magpale.

[2] Id. at 103.

[3] Id. at 238-285. Penned by Presiding Commissioner Roy V. Señeres and concurred in by Commissioner Vicente S.E. Veloso.

[4] Rollo (G.R. No. 166295), pp. 20-28. Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Marina L. Buzon and Mariano C. Del Castillo.

[5]Id. at 29-30.

[6] Id. at 31-36.

[7]Id. at 37-45.

[8]Rollo (G.R. No. 163942), p. 700.

[9]Id. at 361-373.

[10]ART. 263. STRIKES, PICKETING, AND LOCKOUTS

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 Ministry 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 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.

[11] ART. 263(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 Ministry 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 results of the voting at least seven [7] days before the intended strike or lockout, subject to the cooling-off period herein provided.

[12]Rollo (G.R. No. 163942), p. 36.

[13]G.R. No. 151379, January 14, 2005, 448 SCRA 190, 201.

[14]G.R. No. 140518, December 16, 2004, 447 SCRA 97, 106.

[15] University of Immaculate Concepcion, Inc., *supra* at 202.

[16]University of Santo Tomas v. NLRC, G.R. No. 89920, October 18, 1990, 190 SCRA 758.

[17] *Id.* at 769.

[18] G.R. Nos. 158786 & 158789 & 158798-99, October 19, 2007, 537 SCRA 171, 199-200; citing II Azucena, Jr., THE LABOR CODE 528 (6th ed., 2007).

[19]Philippine Metal Foundaries, Inc. v. CIR, Nos. L-34948-49, May 15, 1979, 90 SCRA 135, 141.

[20]Now Rule XXII, Sec. 9, par. 2 of the RULES IMPLEMENTING BOOK V OF THE LABOR CODE.

[21] Rollo (G.R. No. 163942), pp. 1442-1443.

[22] Stamford Marketing Corporation v. Julian, G.R. No. 145496, February 24, 2004, 423 SCRA 633, 651.

[23] Honda Phils., Inc. v. Samahan ng Malayang Manggagawa sa Honda, G.R. No. 145561, June 15, 2005, 460 SCRA 186, 191.

[24] Toyota Motor Phils. Corp. Workers Association (TMPCWA), *supra* note 18, at 208.

[25] *Id.* at 209.

[26]*Id.* at 212.

[27] 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, 212 & 217.

[28] G.R. No. 160303, September 13, 2007, 533 SCRA 288, 301.

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