

COSMOS BOTTLING CORPORATION, Petitioner, vs. PABLO NAGRAMA, JR., Respondent.

G.R. No. 164403. March 04, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

LABOR disputes are often filled with acrimony. It is inevitable when the interest of labor clashes with that of capital. This one showcases labor and industry trading charges of abandonment, insubordination and illegal dismissal.

In resolving the controversy, We take another look at the dichotomies between question of law and question of fact, on one hand, and the doctrine of conclusive finality and doctrine of great respect and finality, on the other.

Sought to be set aside in this petition for review on certiorari are the following dispositions of the Court of Appeals (CA) in CA-G.R. SP No. 71229:[1] (a) Decision[2] dated April 6, 2004 which reversed and set aside the June 29, 2001 Resolution of the NLRC; and (b) Resolution[3] dated July 2, 2004 which denied the motion for reconsideration of petitioner.

The Facts

Petitioner Cosmos Bottling Corporation is a domestic corporation engaged in the business of manufacturing, bottling and selling soft drinks.[4] Respondent Pablo Nagrama, Jr. was initially employed by petitioner as a maintenance mechanic on June 24, 1993 at the Cosmos Plant in Cauayan, Isabela.[5] On September 17, 1996, he was elected by the local union as chief shop steward.

Respondent was designated by petitioner as waste water treatment operator effective September 27, 1999.[6] Petitioner hired Clean Flow Philippines, Inc. to conduct training seminars to acquaint petitioner's personnel on the operations of the water treatment plant.[7] Respondent was instructed to attend the seminar to be held on September 27-30, 1999.[8]

He failed to attend the first two (2) days of the seminar.[9] In a letter by his immediate supervisor, Josephine D. Calacien, dated September 29, 1999, respondent was informed that charges of abandonment of duty and gross insubordination had been lodged against him. He was required to submit his written explanation.[10]

Respondent filed his explanation on September 30, 1999. He contended that he had to attend to an administrative hearing for fellow unionists which were held at Santiago, Isabela; that before he went, he first secured permission from the plant controller.[11] He averred that as a union official, he is obligated to attend to the problems of his fellow union members.

Hearing was held on the twin charges against him. Respondent and officers of petitioner corporation testified. On October 29, 1999, he was formally terminated from service.

Respondent filed a complaint before the Labor Arbiter, contending that he was illegally dismissed and that

petitioner had committed unfair labor practices. In his Position Paper,[12] he explained his absences as follows:

- As Co-Chairman of the Grievance Committee of the Union, the scope of my responsibility included union members from the Cosmos Warehouse at Santiago, Isabela. Furthermore, there was no shop steward from the said warehouse who was available for the said hearing;
- I asked the permission of all of our managers for my attendance in the said administrative hearing as representative of the Union. Our managers (Mr. Gabuco, Mr. Guina, Mr. Lelis, Mrs. Orosco, and Mr. Pangon) all gave their consent;
- Accordingly, I attended the hearing on Arnel Brazuela's case on September 24, 1999, as Union representative. The said hearing started on 9:00 A.M. and ended at about noon. After the said hearing, I immediately went back to my post and resumed my work (I was still assigned at the advertising department during that time);
- Nobody questioned my attendance during the hearing. My immediate supervisor or anybody for that matter did not inform me that what I was doing was a violation of company policy;
- On September 28, 1999, another hearing was conducted regarding two other companions of Arnel Brazuela namely Joseph Salvador and Marcelino Estimada. They also sought my attendance and after obtaining the consent of our five managers, I attended the said hearing as union representative;
- As in previous instance, I immediately returned to my post after the termination of the hearing and resumed whatever tasks I was doing. Again, nobody questioned my appearance during the hearing. Neither was I warned that what I was doing was contrary to company rules;
- Another administrative hearing for the same case was conducted on September 29, 1999. With consent from my managers, I also attended the hearing. Nobody questioned my attendance therein;
- Another administrative hearing was conducted on September 30, 1999 and I again represented the union during the said hearing with my attendance therein having been previously cleared by our managers.[13]

On August 4, 1999, Labor Arbiter Ricardo N. Olarirez rendered judgment sustaining the legality of the dismissal of respondent. In ruling against him, the Labor Arbiter held:

WHEREFORE, premises considered, judgment is hereby rendered dismissing the above-entitled case for lack of merit. All other claims are hereby dismissed.[14]

The Labor Arbiter predicated the finding of abandonment on the admission made by respondent in a letter addressed to petitioner's management. The letter reads:

Ako po at ang aking buong sambahayan ay humihingi ng paumanhin sa nalabag kong batas paggawa sa Cosmos Bottling Corp. bunga lamang ito ng aking ginawang sobrang malasakit sa aking mga kasamahang sales force ng Santiago na sa kasalukuyan ay may hinaharap na kaso, dahil sila po ay humihingi ng payo kung ano ang dapat na pakikiharap na gagawin at ito po ang naging sanhi na pati ako ay hindi ko namalayan na nakagawa na rin pala ako ng paglabag sa batas paggawa. Kaya't kung mamarapatin po ninyo ay humihingi pa po ako ng pagkakataon pa na sana ay manatili pa po ang mga kabutihan na ipinakita ninyo sa akin, at ipinangangako ko po sa inyo na hindi na mauulit ang mga pangyayaring ito at idinadalangin ko po sa Dios nawa'y pagpalain po kayong lahat ng ating panginoong Dios sampu ng inyong buong sambahayan.[15]

Invoking Rule 129, Section 4 of the Rules of Court, the Labor Arbiter considered the letter as a judicial admission of guilt.[16] The Arbiter also ruled that the charge of unfair labor practice was without merit because it was not sufficiently shown that he was dismissed for his union activities.

Respondent appealed the matter to the National Labor Relations Commission (NLRC). In a Resolution[17] dated

June 29, 2001, the NLRC affirmed the decision of the Labor Arbiter, thus:

WHEREFORE, finding no cogent reason to modify, alter, much less reverse the decision appealed from, the same is AFFIRMED en toto and the instant appeal is DISMISSED for lack of merit.[18]

In denying the appeal, the NLRC stated:

Upon Our review of the record of the case, We conceive no abuse of discretion as to compel a reversal. Appellant failed to adduce convincing evidence to show that the Labor Arbiter in rendering the assailed decision had acted in a manner inconsistent with the criteria set forth in the foregoing pronouncement.

Neither are We persuaded to disturb the factual findings of the Labor Arbiter a quo. The material facts as found are all in accordance with the evidence presented during the hearing as shown by the record.[19]

Respondent's motion for reconsideration was to no avail. Undaunted, he elevated the matter to the CA via petition for certiorari, seeking to annul and reverse the NLRC Resolutions.[20]

On April 6, 2004, the CA reversed the NLRC ruling and granted the reliefs sought,[21] disposing as follows:

WHEREFORE, premises considered, the Court hereby GRANTS the petition and the assailed June 29, 2001 decision of the National Labor Relations Commission is hereby REVERSED and SET ASIDE and a new one is entered directing private respondents to:

- (1) Pay the petitioner full backwages, plus all other benefits, bonuses and general increases to which he would have been normally entitled, had he not been dismissed and had he not been forced to stop working;
- (2) Reinstatement the petitioner without loss of seniority rights and other privileges. If reinstatement is no longer feasible, then separation pay equivalent to one (1) month for every year of service in addition to full backwages is mandated;
- (3) Pay the petitioner an amount equivalent to 10% of the judgment award as attorney's fees;
- (4) Pay the cost of the suit.

SO ORDERED.[22]

The CA opined that the record is bare of any evidence to justify the termination of respondent Nagrama's employment.[23] It reiterated the rule that the burden was on the employer to prove abandonment.[24] It found that there was no evidence presented to show that the first requisite of abandonment, which is absence without a valid or justified reason, was present.[25] The justification of attendance at the administrative hearing of fellow union members in Santiago, Isabela was not refuted.[26] Nor was the fact that respondent was given permission by his managers to attend controverted.[27]

The second requisite, which is a clear intention to sever the employee-employer relationship, is also absent. The letter cited by the Labor Arbiter as proof of abandonment shows that respondent had no intention of severing the employee- employer relationship.[28] Moreover, the complaint for illegal dismissal shows a desire to return to work.[29]

Anent the issue of gross insubordination,[30] the CA found that respondent displayed a most commendable attitude by seeking consent from five (5) managers before absenting himself.[31] Although the second requisite of gross insubordination, which is willful disobedience, was present,[32] there was still no ground to terminate respondent's services since the crucial requisite of perverse mental attitude was lacking. His disobedience cannot be taken as just cause for dismissal due to gross insubordination.[33]

Issues

Dissatisfied, petitioner has come to Us via Rule 45, submitting the following questions for Our consideration:

- THE COURT OF APPEALS GRAVELY ERRED WHEN IT IGNORED THE FACT THAT THE EVIDENCE ON RECORD SUPPORTED THE DISMISSAL OF THE PETITIONER ON ACCOUNT OF ABANDONMENT AND GROSS INSUBORDINATION.
- THE COURT OF APPEALS VIOLATED THE DOCTRINE OF CONCLUSIVE FINALITY.[34]

Three (3) issues are hoisted for resolution. The first is whether or not the CA gravely erred in its judgment. The second is whether or not the CA violated the doctrine of conclusive finality. The third is whether or not the petition is violative of Rule 45 in that only questions of law should be raised. We shall resolve them in the reverse order, dealing with the procedural ahead of the substantive question.

Our Ruling

I. Questions of law and fact distinguished

Respondent claims that petitioner is raising questions of fact and not of law. Petitioner, for its part, claims that the propriety of the reversal of the CA of the factual findings of the NLRC and Labor Arbiter is a question of law insofar as the CA should have given finality to the factual findings of the administrative agencies. It is likewise argued that the CA committed an error in the application of the law when it reversed the factual findings of the NLRC.

The Court has made numerous dichotomies between questions of law and fact. A reading of these dichotomies shows that labels attached to law and fact are descriptive rather than definitive. We are not alone in Our difficult task of clearly distinguishing questions of fact from questions of law. The United States Supreme Court has ruled that: “we [do not] yet know of any other rule or principle that will unerringly distinguish a factual finding from a legal conclusion.”[35]

In *Ramos v. Pepsi-Cola Bottling Co. of the P.I.*,[36] the Court ruled:

There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts.[37]

We shall label this the doubt dichotomy.

In *Republic v. Sandiganbayan*,[38] the Court ruled:

x x x A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. In contrast, a question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[39]

For the sake of brevity, We shall label this the law application and calibration dichotomy.

In contrast, the dynamic legal scholarship in the United States has birthed many commentaries on the question of law and question of fact dichotomy. As early as 1944, the law was described as growing downward toward “roots of fact” which grew upward to meet it.[40] In 1950, the late Professor Louis Jaffe saw fact and law as a spectrum, with one shade blending imperceptibly into the other.[41] Others have defined questions of law as those that deal

with the general body of legal principles; questions of fact deal with “all other phenomena x x x.”[42] Kenneth Culp Davis also weighed in and noted that the difference between fact and law has been characterized as that between “ought” questions and “is” questions.[43]

A look back at the rationale behind appellate review provides some insight. Appellate review may be characterized by two (2) extremes.[44] The first is that an appellate court will defer in large part to a trial court’s or administrative tribunal’s determination where the lower tribunal is in a better position to make that determination than the appellate court. Conversely, where the appellate court is as capable of determining the question as is the trial court there is little or no deference accorded to the lower tribunal. Hence, questions of fact are accorded deference because the lower tribunal was present at the reception of evidence and had an opportunity to view the demeanor of witnesses and assess their credibility.

Questions of law, on the other hand, are traditionally accorded little or no deference because there is nothing intrinsic to their determination which gives the trial court any advantage over an appellate court.[45] As stated by Professor Davis: “those who see and hear the witnesses testify are in a better position to determine some aspects of fact questions than those who are limited to a cold record x x x.”[46]

With Our own jurisprudence and United States commentaries in mind, the question raised by petitioner is simply a question of fact. Petitioner is not asking Us to reassess the pleadings it submitted to the CA.[47] Petitioner is, in fact, asking Us to re-examine the evidence. It claims evidence was ignored by the CA which would prove abandonment and gross insubordination.

Ordinarily, We would not touch this issue. The findings of facts of the CA are as a general rule, conclusive and binding on the Supreme Court.[48] Our power of review is limited to questions of law. It is well established that the Court is not a trier of facts and does not routinely undertake the re- examination of the evidence presented by the contending parties during the trial of the case.

The Court, however, may determine the factual milieu of cases or controversies under specific circumstances, as follows:

(1) when the inference made is manifestly mistaken, absurd or impossible;

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(2)

when there is a grave abuse of discretion;

(3)

when the finding is grounded entirely on speculations, surmises or conjectures;

(4)

when the judgment of the Court of Appeals is based on misapprehension of facts;

(5)

when the findings of fact are conflicting;

(6)

when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary

to the admissions of both appellant and appellee;

(7)

when the findings of the Court of Appeals are contrary to those of the trial court;

(8)

when the findings of fact are conclusions without citation of specific evidence on which they are based;

(9)

when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and

(10)

when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[49];

The fifth cited circumstance is pertinent to the case at bar, in that petitioner asserts that the CA made findings of fact in conflict with those of the Labor Arbiter and NLRC. In *Philippine American Life and General Insurance Co. v. Gramaje*,[50] the Court, speaking through Justice Chico-Nazario, held:

As borne by the records, it appears that there is a divergence between the findings of facts of the Labor Arbiter as affirmed by the NLRC, and that of the Court of Appeals. Therefore, for the purpose of clarity and intelligibility, this Court will make an infinitesimal scrutiny of the findings of facts of the Labor Arbiter and the NLRC.[51]

Hence, despite petitioner raising a question of fact, We opt to take cognizance of the questions brought to Us by petitioner.

II. The doctrine of conclusive finality
is not applicable.

Petitioner next asserts that the CA violated the doctrine of conclusive finality when it reviewed the factual findings of the Labor Arbiter and the NLRC.[52]

The doctrine of conclusive finality is defined as the comity that courts extend to the executive branch and the recognition of the expertise of administrative agencies in dealing with particular questions of fact.[53] Simply put, the appellate court may defer to the factual findings of the administrative agency due to comity.

However, the prevailing doctrine with respect to administrative findings of fact has no conclusive finality. Rather, factual findings made by quasi-judicial and administrative bodies when supported by substantial evidence are accorded great respect and even finality by the appellate courts.[54] In *Ignacio v. Coca-Cola Bottlers Phils., Inc.*,[55] the Court held:

x x x Factual findings of the NLRC affirming those of the Labor Arbiter, both bodies deemed to have acquired expertise in matters within their jurisdictions, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on this Court. As long as their decisions are devoid of any unfairness or arbitrariness in the process of their deduction from the evidence proffered by the parties, all that is left is for the Court to stamp its affirmation and declare its finality.[56] (Underscoring supplied)

This was reiterated in *German Marine Agencies, Inc. v. National Labor Relations Commission*: [57]

The Supreme Court has always accorded respect and finality to the findings of fact of the NLRC, particularly if

they coincide with those of the Labor Arbiter, when supported by substantial evidence. The reason for this is that a quasi-judicial agency like the NLRC has acquired a unique expertise because its jurisdiction is confined to specific matters. Whether or not petitioners actually paid the balance of the sickness wages to private respondent is a factual question. In the absence of proof that the labor arbiter or the NLRC had gravely abused their discretion, the Court shall deem conclusive and cannot be compelled to overturn this particular factual finding.[58] (Underscoring supplied)

The doctrine of conclusive finality and doctrine of great respect and finality both apply to factual findings of administrative agencies in the exercise of their quasi-judicial function. The former has no evidentiary requirement while the latter must be supported by substantial evidence.[59] The former is based on comity, the latter is based on the doctrine that administrative agencies possess specialized knowledge and expertise in their respective fields.[60] The former is not used in the Philippine legal system while the latter is the established standard.[61]

Appellate courts may still review the factual findings of administrative agencies. The CA may resolve factual issues by express mandate of law. Batas Pambansa Blg. 129, as amended, expressly provides:

Section 9. Jurisdiction. – The Court of Appeals shall exercise:

- Original jurisdiction to issue writs of mandamus, prohibition, certiorari, habeas corpus, and quo warranto, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;
- Exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts; and
- Exclusive appellate jurisdiction over all final judgments, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commission, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, Except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph 4 of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or Appeals must be continuous and must be completed within three (3) months, unless extended by the Chief Justice.

Despite the respect given by the appellate courts to administrative findings of fact, the CA is empowered to resolve factual issues. A mere doctrine espousing comity cannot overcome the statutory mandate of the CA to resolve factual issues.

Moreover, neither the doctrine of conclusive finality nor the doctrine of great respect and finality has direct application to the case at bar. The CA did not simply review the decision of the NLRC. The CA took cognizance of a special civil action of certiorari. Verily, the CA did not per se review the facts found or the law applied by the NLRC. The CA reviewed the discretion of the NLRC.

By the very nature of a petition for certiorari, the appellate court reviews the exercise of jurisdiction of the lower tribunal.[62] In the case at bar, Nagrama, as petitioner, alleged that the NLRC acted with grave abuse of discretion in affirming the findings of the Labor Arbiter.[63] In a petition for certiorari, the correctness of the legal conclusions of the tribunal is not in issue per se. Rather, it is the exercise of jurisdiction by the tribunal.

As often repeated by this Court, for the special civil action of certiorari to lie, it must be shown that the tribunal, board or officer exercising judicial functions acted without or in excess of jurisdiction or with grave abuse of

discretion amounting to lack or excess of jurisdiction, and that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law for the purpose of amending or nullifying the proceeding.[64] The sole purpose of the writ of certiorari is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack of jurisdiction.[65] A special civil action of certiorari does not include correction of public respondent's evaluation of the evidence and factual findings thereon.[66]

The oft-quoted trichotomy proposed by Professor Rosenberg is informative: "[A]ll appellate Gaul is divided into three parts for review purposes: questions of fact, of law and of discretion." [67] The CA reviewed the discretion of the NLRC in the instant case, not the facts or the law.

The CA found that the NLRC acted with grave abuse of discretion since the decision lacked factual proof and also ignored established jurisprudence.[68] Thus, the CA concluded that the NLRC acted capriciously and whimsically in the exercise of its judgment.[69] The result of this error of jurisdiction was that the judgment of the NLRC was rendered void or at least voidable.[70] This is in sharp contrast to an error of judgment which is reversible only if it can be shown that prejudice has been caused thereby.[71]

III. There is no abandonment and gross insubordination.

Petitioner asserts that the CA gravely erred when it ignored evidence on record that would prove respondent's abandonment and gross insubordination.[72]

We yield to petitioner's call for a recalibration of the evidence because the factual findings of the NLRC and Labor Arbiter conflict with that of the CA.[73]

Two (2) elements must be satisfied for an employee to be guilty of abandonment.[74] The first is the failure to report for work or absence without valid or justifiable reason. The second is a clear intention to sever the employer-employee relationship. The second element is the more determinative factor and must be evinced by overt acts. Likewise, the burden of proof is on the employer to show the employee's clear and deliberate intent to discontinue his employment without any intention of returning; mere absence is not sufficient.

A review of the facts discloses that these twin elements are not present here. First, respondent's absence was justified under the circumstances. He was a shop steward, which recent jurisprudence qualifies as a union officer.[75] As an officer, he had a valid reason to attend the hearing of his union brothers. He also asked for and was given permission as can be seen from the minutes of his hearing.[76] Petitioner does not contest this fact. Permission negates any possibility of respondent abandoning his job.

As to the second requisite, We are not convinced that respondent intended to sever the employer-employee relationship with Cosmos. He immediately complied with the memo requiring him to explain his absence.[77] His failure to report directly to his Quality Assurance Supervisor and Analyst can be dismissed as failure to properly understand the instructions he was given, to wit:

JRF:

Apat ang pumirma dito. Hinde, may report kasi sa akin, kung hindi mo pa nakikita, eto ang report ng mga QA Analysts "this is to inform you that Mr. Pablo A. Nagrama, was transferred to a new assignment from Maintenance Mechanic to Waste Water Treatment operator is not reporting to the QA Department since the effectivity of the memo, up to this date of writing." Ibig sabihin, mula pa nu'ng date na ginagawa nila ito.

PN:

So mali pala ang ginagawa ko, Sir, na nagpupunta, dumidiretso ako sa Waste Water?

JRF & JBL: Mali 'yon.

PN:

Pasensiyahan n'yo ako, Sir, kasi dumidiretso ako sa Clean Flow.

JBL:

Binasa mo ba 'yung appointment letter mo? Nakalagay doon na dapat magrereport ka sa QA.

PN:

Kaya nga sinasabi ko kangina (JBL: Maliwanag naman sa memo mo) nagkulang ako diyan, may report ang QA na hindi ako nag-a-appear, hindi, Sir, nagpupunta ako ng Clean Flow eh.

JBL:

Kaya nga, 'di inaamin mo itong pangyayaring ito.

PN:

Inaamin ko, Sir.

JBL:

Okey.

JRF

Okey, go to the next case.[78]

Moreover, respondent filed a complaint for illegal dismissal.[79] A complaint for illegal dismissal shows a desire to continue work.[80] Verily, a review of the evidence shows that both elements of abandonment are lacking.

For gross insubordination, also called "willful disobedience of a lawful order," to lie, two (2) requisites are also necessary.[81] First, the assailed conduct must have been intentional and characterized by a wrongful and perverse attitude.[82] Second, the order violated must have been reasonable, lawful, and made known to the employee and should pertain to the duties which he has been engaged to discharge.[83]

There is no question that orders to attend the seminar are lawful instructions by petitioner. Respondent himself admitted his failure to obey these lawful instructions in his letter, to wit:

Ako po at ang aking buong sambahayan ay humihingi ng paumanhin sa nalabag kong batas paggawa sa Cosmos Bottling Corp. bunga lamang ito ng aking ginawang sobrang malasakit sa aking mga kasamahang sales force ng Santiago na sa kasalukuyan ay may hinaharap na kaso, dahil sila po ay humihingi ng payo kung ano ang dapat na pakikiharap na gagawin at ito po ang naging sanhi na pati ako ay hindi ko namalayan na nakagawa na rin pala ako ng paglabag sa batas paggawa. x x x[84]

The first element of gross insubordination, however, is lacking. A review of the records shows that respondent's failure to report to his quality assurance supervisor and failure to fully attend the seminar was in no way tainted by a wrongful or perverse attitude. His failure to secure a clearance from Clean Flow was due to his attendance to his union duties. Hence, there is no gross insubordination.

IV. A few words on motion to withdraw

Petitioner has filed a motion to withdraw dated December 27, 2007. However, it was brought to Our attention only recently. Petitioner prayed that “the instant case be closed, terminated and forever withdrawn from the business calendar of the Honorable Court’s Third Division by virtue of the Compromise Agreement entered into by the parties herein.”

We deny the motion to withdraw on three grounds:

First. The case has been submitted for decision on December 14, 2005.[85] The time for withdrawal of the appeal is governed by Section 3, Rule 50 of the 1997 Rules of Civil Procedure, viz.:

Sec. 3. Withdrawal of appeal. – An appeal may be withdrawn as of right at any time before the filing of appellee’s brief. Thereafter, the withdrawal may be allowed in the discretion of the court.

Verily, the withdrawal of this petition for review on certiorari, which is in the nature of an appeal, may be done as a matter of right at any time before the filing of the appellee’s brief or memorandum. After that period, the withdrawal may only be done with the consent of the court.[86]

The records unveil that the motion to withdraw was filed on December 27, 2007. At that time, the case has long been submitted for decision. The draft ponencia in this case has already been written and deliberated upon by the Division when the motion for withdrawal was brought to its attention.

The Court encourages parties to suits to settle their differences amicably through compromise. However, as far as practicable, compromises should be pursued at the earliest possible opportunity, and with notice to the court that the parties are exploring avenues towards a settlement. This is to avoid wasting the precious time of the court in deciding the case.

Second. The motion to withdraw petition is founded on a release, waiver and quitclaim, not on a compromise agreement. It is not a joint motion.

A compromise agreement is a contract whereby the parties make reciprocal concessions in order to resolve their differences and thus avoid or put an end to a lawsuit.[87] In forging a compromise, the parties adjust their difficulties in the manner they have agreed upon, disregarding the possible gain in litigation and keeping in mind that such gain is balanced by the danger of losing.[88]

Petitioner anchors the motion to withdraw on a compromise agreement it allegedly entered into with respondent Nagrama. However, what is apparent is that respondent had allegedly executed a Release, Waiver and Quitclaim in petitioner’s favor. The record is bereft of a compromise agreement. To put an end to a litigation already submitted for decision, the submission of a compromise agreement validly executed and voluntarily signed by the parties is necessary.

Here, the motion to withdraw was made at the sole instance of petitioner. The motion would have been more persuasive if both parties manifested a joint desire to terminate the proceedings.

Third. The parties may execute a compromise agreement even after the finality of this decision. They are not precluded from doing so. In a catena of cases, the Court has consistently ruled that even final and executory judgments may be compromised. In *Northern Lines, Inc. v. Court of Tax Appeals*, [89] the Court recognized the right to compromise final and executory judgments, as long as such right was exercised by the proper party litigants.[90]

In *Gatchalian v. Arlegui*,^[91] the Court upheld the right to compromise prior to the execution of a final judgment. The Court held that the final judgment had been novated and superseded by a compromise agreement. *Palanca v. Court of Industrial Relations*^[92] also sustained a compromise agreement, notwithstanding a final judgment in which only the amount of back wages was left to be determined. The Court found no evidence of fraud or of any showing that the agreement was contrary to law, morals, good customs, public order, or public policy.

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

[1] Entitled “Pablo Nagrama, Jr. v. National Labor Relations Commission, Cosmos Bottling Corporation, and Ernesto Cabuco, Respondents.”

[2] Rollo, pp. 21-30. Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Rodrigo V. Cosico and Mariano C. Del Castillo, concurring.

[3] Id. at 31-33.

[4] Id. at 45.

[5] Id. at 22.

[6] Id. at 45.

[7] Id.

[8] Id. at 111.

[9] Id. at 112.

[10] Id.

[11] Id. at 118.

[12] Id. at 102.

[13] Id. at 23.

[14] Id. at 88.

[15] Id. at 118.

[16] Id. at 86-88.

[17] Id. at 82-88.

[18] Id. at 88.

[19] Id. at 90.

[20] Id. at 168-181.

[21] Id. at 21-29.

[22] Id. at 28-29.

[23] Id. at 25.

[24] Id., citing *Labor v. National Labor Relations Commission*, G.R. No. 110388, September 14, 1995, 248 SCRA 183.

[25] Id.

[26] Id.

[27] Id.

[28] Id.

[29] Id. at 26, citing *Santos v. National Labor Relations Commission*, G.R. No. L-76991, October 28, 1988, 166 SCRA 759; *Labor v. National Labor Relations Commission*, *supra* note 24.

[30] Id.

[31] Id.

[32] Id. at 27.

[33] Id.

[34] Id. at 50.

[35] *Pullman-Standard v. Swint*, 456 US 273, 288 (1982).

[36] G.R. No. L-22533, February 9, 1967, 19 SCRA 289.

[37] *Ramos v. Pepsi-Cola Bottling Co. of the P.I.*, *id.* at 292.

[38] G.R. No. 135789, January 31, 2002, 375 SCRA 425, citing *Uniland Resources v. Development Bank of the Philippines*, G.R. No. 95909, August 16, 1991, 200 SCRA 751-755 and *Rodriguez v. Sandiganbayan*, G.R. No. 63118, September 1, 1989, 177 SCRA 220, 225; *China Road and Bridge Corporation v. Court of Appeals*, G.R. No. 137898, December 15, 2000, 348 SCRA 401; *Roman Catholic Archbishops of Manila v. Court of Appeals*, 327 Phil. 810 (1996).

[39] *Republic v. Sandiganbayan*, *id.* at 429.

[40] Paul, R.E., *Dobson v. Commissioner: The Stranger Ways of Law & Fact*, 57 Harv. L. Rev. 753, 812 (1944).

[41] Jaffe, L., *Judicial Review: Question of Law*, 69 Harv. L. Rev. 239, 240 (1955).

[42] Isaacs, *The Law and The Facts*, 22 Colum. L. Rev. 1 (1922).

[43] Davis, K., *Administrative Law Treatise* (1958), Sec. 30.

[44] *State v. Pepin*, 110 Wis. 2d 431, 435-436, 328 N.W. 2d 898 (1982).

[45] Id.

[46] See note 43.

[47] Rollo, pp. 288-289, citing *Moreno*, *Philippine Law Dictionary*, 3rd ed.

[48] *The Philippine American Life and General Insurance Co. v. Gramaje*, G.R. No. 156963, November 11, 2004, 442 SCRA 274; *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28,

2004, 428 SCRA 79, citing *Pestaño v. Sumayang*, G.R. No. 139875, December 4, 2000, 346 SCRA 870; *Bañas, Jr. v. Court of Appeals*, G.R. No. 102967, February 10, 2000, 325 SCRA 259; *Borromeo v. Sun*, G.R. No. 75908, October 22, 1999, 317 SCRA 176; *Lagrosa v. Court of Appeals*, G.R. Nos. 115981-82, August 12, 1999, 312 SCRA 298; *Security Bank and Trust Co. v. Triumph Lumber and Construction Corporation*, G.R. No. 126696, January 21, 1999, 301 SCRA 537.

[49] *Reyes v. Court of Appeals (Ninth Division)*, G.R. No. 110207, July 11, 1996, 258 SCRA 651, 659, citing *Floro v. Llenado*, G.R. No. 75723, June 2, 1995, 244 SCRA 713.

[50] *Supra* note 48.

[51] *Philippine American Life and General Insurance Co. v. Gramaje*, *id.* at 283.

[52] *Rollo*, p. 58.

[53] *Tañada and Carreon, Political Law of the Philippines*, 1962, Vol. 2, pp. 524-525.

[54] *Megaworld Globus Asia, Inc. v. DSM Const. & Dev't Corp.*, G.R. No. 153310, August 2, 2004, Resolution dated August 2, 2004; *Milestone Realty and Co., Inc. v. Court of Appeals*, 431 Phil. 119, 130 (2002), citing *Batingal v. Court of Appeals*, G.R. No. 128636, February 1, 2001, 351 SCRA 60, 66-67.

[55] G.R. No. 144400, September 19, 2001, 365 SCRA 418.

[56] *Ignacio v. Coca-Cola Bottlers Phils., Inc.*, *id.* at 424.

[57] G.R. No. 142049, January 30, 2001, 350 SCRA 629, citing *Travelaire & Tours Corp. v. National Labor Relations Commission*, G.R. No. 131523, August 20, 1998, 294 SCRA 505; *Gandara Mill Supply v. National Labor Relations Commission*, G.R. No. 126703, December 29, 1998, 300 SCRA 702; *Suarez v. National Labor Relations Commission*, G.R. No. 124723, July 31, 1998, 293 SCRA 496; *Autobus Workers' Union (AWU) v. National Labor Relations Commission*, G.R. No. 117453, June 26, 1998, 291 SCRA 219; *Prangan v. National Labor Relations Commission*, G.R. No. 126529, April 15, 1998, 289 SCRA 142; *International Pharmaceuticals, Inc. v. National Labor Relations Commission*, G.R. No. 106331, March 9, 1998, 287 SCRA 213; *National Union of Workers in Hotels, Restaurants and Allied Industries v. National Labor Relations Commission*, G.R. No. 125561, March 6, 1998, 287 SCRA 192; *Villa v. National Labor Relations Commission*, G.R. No. 117043, January 14, 1998, 284 SCRA 105.

[58] *German Marine Agencies, Inc. v. National Labor Relations Commission*, *id.* at 646-647.

[59] See note 53.

[60] *Calvo v. Vergara*, G.R. No. 134741, December 19, 2001, 372 SCRA 650; *Smith Kline & French Laboratories, Ltd. v. Court of Appeals*, G.R. No. 121267, October 23, 2001, 368 SCRA 9.

[61] It should be noted that there is a doctrine of conclusive finality in the United States. However, it refers to findings of the Secretary as to any fact if supported by substantial evidence as per Section 405(g) of 42 U.S.C. This was established in *Thomas v. Celebrezze*, 331 F. 2d 541, 543 (1964).

[62] *Rules of Civil Procedure*, Rule 65.

[63] *Rollo*, p. 174.

[64] *Philippine Commercial and Industrial Bank v. Court of Appeals*, G.R. No. 120739, July 20, 2000, 336 SCRA 258; *Asian Trading Corporation v. Court of Appeals*, G.R. No. 76276, February 15, 1999, 303 SCRA 152, 162; *Jamer v. National Labor Relations Commission*, G.R. No. 112630, September 5, 1997, 278 SCRA 632, 646;

Lalican v. Vergara, G.R. No. 108619, July 31, 1997, 276 SCRA 518, 529.

[65] Jalandoni v. Drilon, G.R. Nos. 115239-40, March 2, 2000, 327 SCRA 107, citing Building Care Corporation v. National Labor Relations Commission, G.R. No. 94237, February 26, 1997, 268 SCRA 666.

[66] Id.

[67] Rosenberg, Judicial Discretion of the Trial Court (Viewed From Above), 22 Syracuse L. Rev. 635, 645-646 (1971), citing Mead, Abuse of Discretion: Maine's Application of a Malleable Appellate Standard, 57 Me. L. Rev. 519, 523 (2005).

[68] Rollo, p. 28.

[69] Id.

[70] Bimeda v. Perez, 93 Phil. 636 (1953); Banco Español-Filipino v. Palanca, 37 Phil. 821 (1918).

[71] Id.

[72] Rollo, p. 50.

[73] The Philippine American Life and General Insurance Co. v. Gramaje, supra note 48.

[74] Villar v. National Labor Relations Commission, G.R. No. 130935, May 11, 2000, 331 SCRA 686; Millares v. National Labor Relations Commission, G.R. No. 110524, March 14, 2000, 328 SCRA 79; Philippine Industrial Security Agency Corporation v. Dapiton, G.R. No. 127421, December 8, 1999, 320 SCRA 124; Pare v. National Labor Relations Commission, G.R. No. 128957, November 16, 1999, 318 SCRA 179; Brew Master International, Inc. v. National Federation of Labor Unions (NAFLU), G.R. No. 119243, April 17, 1997, 271 SCRA 275.

[75] Santa Rosa Coca-Cola Plant Employees Union v. Coca-Cola Bottlers Phils., Inc., G.R. Nos. 164302-03, January 24, 2007, 512 SCRA 437.

[76] Rollo, pp. 121-142.

[77] Id. at 118.

[78] Id. at 127.

[79] Id. at 102.

[80] Labor v. National Labor Relations Commission, supra note 24; Santos v. National Labor Relations Commission, supra note 29.

[81] Labor Code, Art. 282(a).

[82] Id.

[83] Id.

[84] Rollo, p. 145.

[85] Per Supreme Court Third Division Resolution of even date.

[86] Ross Rica Sales Center, Inc. v. Ong, G.R. 132197, August 16, 2005, 467 SCRA 35.

[87] Magbanua v. Uy, G.R. No. 161003, May 6, 2005, 458 SCRA 184; Civil Code, Art. 2028; Manila International Airport Authority v. ALA Industries Corporation, G.R. No. 147349, February 13, 2004, 422 SCRA

603, 609; *Ramnani v. Court of Appeals*, 413 Phil. 194, 207 (2001); *Abarintos v. Court of Appeals*, 374 Phil. 157, 168 (1999); *Del Rosario v. Madayag*, 317 Phil. 883, 887 (1995).

[88] *Magbanua v. Uy*, *supra*; *Armed Forces of the Philippines Mutual Benefit Association, Inc. v. Court of Appeals*, G.R. No. 126745, July 26, 1999, 311 SCRA 143.

[89] G.R. Nos. L-41376-77, June 29, 1988, 163 SCRA 25.

[90] *Northern Lines, Inc. v. Court of Tax Appeals*, *id.* at 31.

[91] G.R. Nos. L-35615 & L-41360, February 17, 1977, 75 SCRA 234.

[92] 150-C Phil. 354 (1972).

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