

**HERMINIGILDO INGUILLO AND ZENAIDA BERGANTE, PETITIONERS,
VS. FIRST PHILIPPINE SCALES, INC. AND/OR AMPARO POLICARPIO,
MANAGER, RESPONDENTS.***G.R. No. 165407. June 05, 2009*

Ponente: PERALTA, J.

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Assailed in this petition for review under Rule 45 of the Rules of Court are the Court of Appeals (1) Decision[1] dated March 11, 2004 in CA-G.R. SP No. 73992, which dismissed the Petition for Certiorari of petitioners Zenaida Bergante (Bergante) and Herminigildo Inguillo (Inguillo); and (2) Resolution[2] dated September 17, 2004 denying petitioners' Motion for Reconsideration. The appellate court sustained the ruling of the National Labor Relations Commission (NLRC) that petitioners were validly dismissed pursuant to a Union Security Clause in the collective bargaining agreement.

The facts of the case are as follows:

First Philippine Scales, Inc. (FPSI), a domestic corporation engaged in the manufacturing of weighing scales, employed Bergante and Inguillo as assemblers on August 15, 1977 and September 10, 1986, respectively.

In 1991, FPSI and First Philippine Scales Industries Labor Union (FPSILU)[3] entered into a Collective Bargaining Agreement (CBA),[4] the duration of which was for a period of five (5) years starting on September 12, 1991 until September 12, 1996. On September 19, 1991, the members of FPSILU ratified the CBA in a document entitled RATIPIKASYON NG KASUNDUAN.[5] Bergante and Inguillo, who were members of FPSILU, signed the said document.[6]

During the lifetime of the CBA, Bergante, Inguillo and several FPSI employees joined another union, the Nagkakaisang Lakas ng Manggagawa (NLM), which was affiliated with a federation called KATIPUNAN (NLM-KATIPUNAN, for brevity). Subsequently, NLM-KATIPUNAN filed with the Department of Labor and Employment (DOLE) an intra-union dispute[7] against FPSILU and FPSI. In said case, the Med-Arbiter decided[8] in favor of FPSILU. It also ordered the officers and members of NLM-KATIPUNAN to return to FPSILU the amount of P90,000.00 pertaining to the union dues erroneously collected from the employees. Upon finality of the Med-Arbiter's Decision, a Writ of Execution[9] was issued to collect the adjudged amount from NLM-KATIPUNAN. However, as no amount was recovered, notices of garnishment were issued to United Coconut Planters Bank (Kalookan City Branch)[10] and to FPSI[11] for the latter to hold for FPSILU the earnings of Domingo Grutas, Jr. (Grutas) and Inguillo, formerly FPSILU's President and Secretary for Finance, respectively, to the extent of P13,032.18. Resultantly, the amount of P5,140.55 was collected,[12] P1,695.72 of which came from the salary of Grutas, while the P3,444.83 came from that of Inguillo.

Meanwhile, on March 29, 1996, the executive board and members of the FPSILU addressed a document dated March 18, 1996 denominated as "Petisyon"[13] to FPSI's general manager, Amparo Policarpio (Policarpio), seeking the termination of the services of the following employees, namely: Grutas, Yolanda Tapang, Shirley

Tapang, Gerry Trinidad, Gilbert Lucero, Inguillo, Bergante, and Vicente Go, on the following grounds:[14] (1) disloyalty to the Union by separating from it and affiliating with a rival Union, the NLM-KATIPUNAN; (2) dereliction of duty by failing to call periodic membership meetings and to give financial reports; (3) depositing Union funds in the names of Grutas and former Vice-President Yolanda Tapang, instead of in the name of FPSILU, care of the President; (4) causing damage to FPSI by deliberately slowing down production, preventing the Union to even attempt to ask for an increase in benefits from the former; and (5) poisoning the minds of the rest of the members of the Union so that they would be enticed to join the rival union.

On May 13, 1996, Inguillo filed with the NLRC a complaint against FPSI and/or Policarpio (respondents) for illegal withholding of salary and damages, docketed as NLRC-NCR-Case No. 00-05-03036-96.[15]

On May 16, 1996, respondents terminated the services of the employees mentioned in the "Petisyon."

The following day, two (2) separate complaints for illegal dismissal, reinstatement and damages were filed against respondents by: (1) NLM-KATIPUNAN, Grutas, Trinidad, Bergante, Yolanda Tapang, Go, Shirley Tapang and Lucero[16] (Grutas complaint, for brevity); and (2) Inguillo[17] (Inguillo complaint). Both complaints were consolidated with Inguillo's prior complaint for illegal withholding of salary, which was pending before Labor Arbiter Manuel Manansala. After the preliminary mandatory conference, some of the complainants agreed to amicably settle their cases. Consequently, the Labor Arbiter issued an Order[18] dated October 1, 1996, dismissing with prejudice the complaints of Go, Shirley Tapang, Yolanda Tapang, Grutas, and Trinidad.[19] Lucero also settled the case after receiving his settlement money and executing a Quitclaim and Release in favor of FPSI and Policarpio.[20]

Bergante and Inguillo, the remaining complainants, were directed to submit their respective position papers, after which their complaints were submitted for resolution on February 20, 1997.[21]

In their Position Paper,[22] Bergante and Inguillo claimed that they were not aware of a petition seeking for their termination, and neither were they informed of the grounds for their termination. They argued that had they been informed, they would have impleaded FPSILU in their complaints. Inguillo could not think of a valid reason for his dismissal except the fact that he was a very vocal and active member of the NLM-KATIPUNAN. Bergante, for her part, surmised that she was dismissed solely for being Inguillo's sister-in-law. She also reiterated the absence of a memorandum stating that she committed an infraction of a company rule or regulation or a violation of law that would justify her dismissal.

Inguillo also denounced respondents' act of withholding his salary, arguing that he was not a party to the intra-union dispute from which the notice of garnishment arose. Even assuming that he was, he argued that his salary was exempt from execution.

In their Position Paper,[23] respondents maintained that Bergante and Inguillo's dismissal was justified, as the same was done upon the demand of FPSILU, and that FPSI complied in order to avoid a serious labor dispute among its officers and members, which, in turn, would seriously affect production. They also justified that the dismissal was in accordance with the Union Security Clause in the CBA, the existence and validity of which was not disputed by Bergante and Inguillo. In fact, the two had affixed their signatures to the document which ratified the CBA.

In his Decision[24] dated November 27, 1997, the Labor Arbiter dismissed the remaining complaints of Bergante and Inguillo and held that they were not illegally dismissed. He explained that the two clearly violated the Union Security Clause of the CBA when they joined NLM-KATIPUNAN and committed acts detrimental to the interests of FPSILU and respondents. The dispositive portion of the said Decision states:

WHEREFORE, premises considered, judgment is hereby rendered:

- Declaring respondents First Philippines Scales, Inc. (First Philippine Scales Industries [FPSI] and Amparo Policarpio, in her capacity as President and General Manager of respondent FPSI, not guilty of illegal dismissal as above discussed. However, considering the length of services rendered by complainants Herminigildo Inguillo and Zenaida Bergante as employees of respondent FPSI, plus the fact that the other complainants in the above-entitled cases were previously granted financial assistance/separation pay through amicable settlement, the afore-named respondents are hereby directed to pay complainants Herminigildo Inguillo and Zenaida Bergante separation pay and accrued legal holiday pay, as earlier computed, to wit:

Herminigildo Inguillo

Separation pay.....

P22,490.00

Legal Holiday Pay.....

839.00

Total

23,329.00

Zenaida Bergante

Separation pay.....

P43,225.00

Legal Holiday Pay.....

839.00

Total

44,064.00

- Directing the afore-named respondents to pay ten (10%) percent attorney's fees based on the total monetary award to complainants Inguillo and Bergante.

- Dismissing the claim for illegal withholding of salary of complainant Inguillo for lack of merit as above discussed.
- Dismissing the other money claims and/or other charges of complainants Inguillo and Bergante for lack of factual and legal basis.
- Dismissing the complaint of complainant Gilberto Lucero with prejudice for having executed a Quitclaim and Release and voluntary resignation in favor of respondents FPSI and Amparo Policarpio as above-discussed where the former received the amount of P23,334.00 as financial assistance/separation pay and legal holiday pay from the latter.

SO ORDERED.[25]

Bergante and Inguillo appealed before the NLRC, which reversed the Labor Arbiter's Decision in a Resolution[26] dated June 8, 2001, the dispositive portion of which provides:

WHEREFORE, the assailed decision is set aside. Respondents are hereby ordered to reinstate complainants Inguillo and Bergante with full backwages from the time of their dismissal up [to] their actual reinstatement. Further, respondents are also directed to pay complainant Inguillo the amount representing his withheld salary for the period March 15, 1998 to April 16, 1998. The sum corresponding to ten percent (10%) of the total judgment award by way of attorney's fees is likewise ordered. All other claims are ordered dismissed for lack of merit.

SO ORDERED.[27]

In reversing the Labor Arbiter, the NLRC[28] ratiocinated that respondents failed to present evidence to show that Bergante and Inguillo committed acts inimical to FPSILU's interest. It also observed that, since the two (2) were not informed of their dismissal, the justification given by FPSI that it was merely constrained to dismiss the employees due to persistent demand from the Union clearly proved the claim of summary dismissal and violation of the employees' right to due process.

Respondents filed a Motion for Reconsideration, which was referred by the NLRC to Executive Labor Arbiter Vito C. Bose for report and recommendation. In its Resolution[29] dated August 26, 2002, the NLRC adopted in toto the report and recommendation of Arbiter Bose which set aside its previous Resolution reversing the Labor Arbiter's Decision. This time, the NLRC held that Bergante and Inguillo were not illegally dismissed as respondents merely put in force the CBA provision on the termination of the services of disaffiliating Union members upon the recommendation of the Union. The dispositive portion of the said Resolution provides:

WHEREFORE, the resolution of the Commission dated June 8, 2001 is set aside. Declaring the dismissal of the complainants as valid, [t]his complaint for illegal dismissal is dismissed. However, respondents are hereby directed to pay complainant Inguillo the amount representing his withheld salary for the period March 15, 1998 to April 16, 1998, plus ten (10%) percent as attorney's fees.

All other claims are ordered dismissed for lack of merit.

SO ORDERED.[30]

Not satisfied with the disposition of their complaints, Bergante and Inguillo filed a petition for certiorari under Rule 65 of the Rules of Court with the Court of Appeals (CA). The CA dismissed the petition for lack of merit[31] and denied the subsequent motion for reconsideration.[32] In affirming the legality of the dismissal, the CA ratiocinated, thus:

x x x on the merits, we sustain the view adopted by the NLRC that:

x x x it cannot be said that the stipulation providing that the employer may dismiss an employee whenever the union recommends his expulsion either for disloyalty or for any violation of its by-laws and constitution is illegal or constitutive of unfair labor practice, for such is one of the matters on which management and labor can agree in order to bring about the harmonious relations between them and the union, and cohesion and integrity of their organization. And as an act of loyalty, a union may certainly require its members not to affiliate with any other labor union and to consider its infringement as a reasonable cause for separation.

The employer FPSI did nothing but to put in force their agreement when it separated the disaffiliating union members, herein complainants, upon the recommendation of the union. Such a stipulation is not only necessary to maintain loyalty and preserve the integrity of the union, but is allowed by the Magna Carta of Labor when it provided that while it is recognized that an employee shall have the right of self-organization, it is at the same time postulated that such rights shall not injure the right of the labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein. Having ratified their CBA and being then members of FPSILU, the complainants owe fealty and are required under the Union Security clause to maintain their membership in good standing with it during the term thereof, a requirement which ceases to be binding only during the 60-day freedom period immediately preceding the expiration of the CBA, which was not present in this case.

x x x the dismissal of the complainants pursuant to the demand of the majority union in accordance with their union security [clause] agreement following the loss of seniority rights is valid and privileged and does not constitute unfair labor practice or illegal dismissal.

Indeed, the Supreme Court has for so long a time already recognized a union security clause in the CBA, like the one at bar, as a specie of closed-shop arrangement and trenchantly upheld the validity of the action of the employer in enforcing its terms as a lawful exercise of its rights and obligations under the contract.

The collective bargaining agreement in this case contains a union security clause—a closed-shop agreement.

A closed-shop agreement is an agreement whereby an employer binds himself to hire only members of the contracting union who must continue to remain members in good standing to keep their jobs. It is "the most prized achievement of unionism." It adds membership and compulsory dues. By holding out to loyal members a promise of employment in the closed-shop, it welds group solidarity. (*National Labor Union v. Aguinaldo's Echague Inc.*, 97 Phil. 184). It is a very effective form of union security agreement.

This Court has held that a closed-shop is a valid form of union security, and such a provision in a collective bargaining agreement is not a restriction of the right of freedom of association guaranteed by the Constitution. (*Lirag Textile Mills, Inc. v. Blanco*, 109 SCRA 87; *Manalang v. Artex Development Company, Inc.*, 21 SCRA 561.)[33]

Hence, the present petition.

Essentially, the Labor Code of the Philippines has several provisions under which an employee may be validly terminated, namely: (1) just causes under Article 282;[34] (2) authorized causes under Article 283;[35] (3) termination due to disease under Article 284;[36] and (4) termination by the employee or resignation under Article 285.[37] While the said provisions did not mention as ground the enforcement of the Union Security Clause in the CBA, the dismissal from employment based on the same is recognized and accepted in our jurisdiction.[38]

"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.[39] 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.[40] 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.[41]

In their Petition, Bergante and Inguillo assail the legality of their termination based on the Union Security Clause in the CBA between FPSI and FPSILU. Article II[42] of the CBA pertains to Union Security and Representatives, which provides:

The Company hereby agrees to a UNION SECURITY [CLAUSE] with the following terms:

- All bonafide union members as of the effective date of this agreement and all those employees within the bargaining unit who shall subsequently become members of the UNION during the period of this agreement shall, as a condition to their continued employment, maintain their membership with the UNION under the FIRST PHIL. SCALES INDUSTRIES LABOR UNION Constitution and By-laws and this Agreement;
- Within thirty (30) days from the signing of this Agreement, all workers eligible for membership who are not union members shall become and to remain members in good standing as bonafide union members therein as a condition of continued employment;
- New workers hired shall likewise become members of the UNION from date they become regular and permanent workers and shall remain members in good standing as bonafide union members therein as a condition of continued employment;
- In case a worker refused to join the Union, the Union will undertake to notify workers to join and become union members. If said worker or workers still refuses, he or they shall be notified by the Company of his/her dismissal as a consequence thereof and thereafter terminated after 30 days notice according to the Labor Code.
- Any employee/union member who fails to retain union membership in good standing may be recommended for suspension or dismissal by the Union Directorate and/or FPSILU Executive Council for any of the following causes:
 - a) Acts of Disloyalty; b) Voluntary Resignation or Abandonment from the UNION; c) Organization of or joining another labor union or any labor group that would work against the UNION; d) Participation in any unfair labor practice or violation of the Agreement, or activity derogatory to the UNION decision; e) Disauthorization of, or Non-payment of, monthly membership dues, fees, fines and other financial assessments to the Union; f) Any criminal violation or violent conduct or activity against any UNION member without justification and affecting UNION rights or obligations under the said Agreement.

Verily, the aforesaid provision requires all members to maintain their membership with FPSILU during the lifetime of the CBA. Failing so, and for any of the causes enumerated therein, the Union Directorate and/or FPSILU Executive Council may recommend to FPSI an employee/union member's suspension or dismissal. Records show that Bergante and Inguillo were former members of FPSILU based on their signatures in the document which ratified the CBA. It can also be inferred that they disaffiliated from FPSILU when the CBA was still in force and subsisting, as can be gleaned from the documents relative to the intra-union dispute between FPSILU and NLM-KATIPUNAN. In view of their disaffiliation, as well as other acts allegedly detrimental to the interest of both FPSILU and FPSI, a "Petisyon" was submitted to Policarpio, asking for the termination of the services of employees who failed to maintain their Union membership.

The Court is now tasked to determine whether the enforcement of the aforesaid Union Security Clause justified herein petitioners' dismissal from the service.

In terminating the employment of an employee by enforcing the Union Security Clause, the employer needs only 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 union's decision to expel the employee from the union or company.[43]

We hold that all the requisites have been sufficiently met and FPSI was justified in enforcing the Union Security Clause, for the following reasons:

First. FPSI was justified in applying the Union Security Clause, as it was a valid provision in the CBA, the existence and validity of which was not questioned by either party. Moreover, petitioners were among the 93 employees who affixed their signatures to the document that ratified the CBA. They cannot now turn their back and deny knowledge of such provision.

Second. FPSILU acted on its prerogative to recommend to FPSI the dismissal of the members who failed to maintain their membership with the Union. Aside from joining another rival union, FPSILU cited other grounds committed by petitioners and the other employees which tend to prejudice FPSI's interests, i.e., dereliction of duty - by failing to call periodic membership meetings and to give financial reports; depositing union funds in the names of Grutas and former Vice-President Yolanda Tapang, instead of in the name of FPSILU care of the President; causing damage to FPSI by deliberately slowing down production, preventing the Union from even attempting to ask for an increase in benefits from the former; and poisoning the minds of the rest of the members of the Union so that they would be enticed to join the rival union.

Third. FPSILU's decision to ask for the termination of the employees in the "Petisyon" was justified and supported by the evidence on record. Bergante and Inguillo were undisputably former members of FPSILU. In fact, Inguillo was the Secretary of Finance, the underlying reason why his salary was garnished to satisfy the judgment of the Med-Arbiter who ordered NLM-KATIPUNAN to return the Union dues it erroneously collected from the employees. Their then affiliation with FPSILU was also clearly shown by their signatures in the document which ratified the CBA. Without a doubt, they committed acts of disloyalty to the Union when they failed not only to maintain their membership but also disaffiliated from it. They abandoned FPSILU and even joined another union which works against the former's interests. This is evident from the intra-union dispute filed by NLM-KATIPUNAN against FPSILU. Once affiliated with NLM-KATIPUNAN, Bergante and Inguillo proceeded to recruit other employees to disaffiliate from FPSILU and even collected Union dues from them.

In *Del Monte Philippines*,[44] the stipulations in the CBA authorizing the dismissal of employees are of equal import as the statutory provisions on dismissal under the Labor Code, since a CBA is the law between the company and the Union, and compliance therewith is mandated by the express policy to give protection to labor. In *Caltex Refinery Employees Association (CREA) v. Brillantes*,[45] the Court expounded on the effectiveness of union security clause when it held that it is one intended to strengthen the contracting union and to protect it from the fickleness or perfidy of its own members. For without such safeguards, group solidarity becomes uncertain; the union becomes gradually weakened and increasingly vulnerable to company machinations. In this security clause lies the strength of the union during the enforcement of the collective bargaining agreement. It is this clause that provides labor with substantial power in collective bargaining.

Nonetheless, while We uphold dismissal pursuant to a union security clause, the same is not without a condition or restriction. For to allow its untrammelled enforcement would encourage arbitrary dismissal and abuse by the employer, to the detriment of the employees. Thus, to safeguard the rights of the employees, We have said time

and again that dismissals pursuant to union security clauses are valid and legal, subject only to the requirement of due process, that is, notice and hearing prior to dismissal.[46] In like manner, We emphasized that the enforcement of union security clauses is authorized by law, provided such enforcement is not characterized by arbitrariness, and always with due process.[47]

There are two (2) aspects which characterize the concept of due process under the Labor Code: one is substantive--whether the termination of employment was based on the provisions of the Labor Code or in accordance with the prevailing jurisprudence; the other is procedural - the manner in which the dismissal was effected.

The second aspect of due process was clarified by the Court in *King of Kings Transport v. Mamac*,[48] stating, thus:

(1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. x x x

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.

Corollarily, procedural due process in the dismissal of employees requires notice and hearing. The employer must furnish the employee two written notices before termination may be effected. The first notice apprises the employee of the particular acts or omissions for which his dismissal is sought, while the second notice informs the employee of the employer's decision to dismiss him.[49] The requirement of a hearing, on the other hand, is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.[50]

In the present case, the required two notices that must be given to herein petitioners Bergante and Inguillo were lacking. The records are bereft of any notice that would have given a semblance of substantial compliance on the part of herein respondents. Respondents, however, aver that they had furnished the employees concerned, including petitioners, with a copy of FPSILU's "Petisyon." We cannot consider that as compliance with the requirement of either the first notice or the second notice. While the "Petisyon" enumerated the several grounds that would justify the termination of the employees mentioned therein, yet such document is only a recommendation by the Union upon which the employer may base its decision. It cannot be considered a notice of termination. For as agreed upon by FPSI and FPSILU in their CBA, the latter may only recommend to the former a Union member's suspension or dismissal. Nowhere in the controverted Union Security Clause was there a mention that once the union gives a recommendation, the employer is bound outright to proceed with the termination.

Even assuming that the "Petisyon" amounts to a first notice, the employer cannot be deemed to have substantially complied with the procedural requirements. True, FPSILU enumerated the grounds in said "Petisyon." But a perusal of each of them leads Us to conclude that what was stated were general descriptions, which in no way

would enable the employees to intelligently prepare their explanation and defenses. In addition, the "Petisyon" did not provide a directive that the employees are given opportunity to submit their written explanation within a reasonable period. Finally, even if We are to assume that the "Petisyon" is a second notice, still, the requirement of due process is wanting. For as We have said, the second notice, which is aimed to inform the employee that his service is already terminated, must state that the employer has considered all the circumstances which involve the charge and the grounds in the first notice have been established to justify the severance of employment. After the claimed dialogue between Policarpio and the employees mentioned in the "Petisyon," the latter were simply told not to report for work anymore.

These defects are bolstered by Bergante and Inguillo who remain steadfast in denying that they were notified of the specific charges against them nor were they given any memorandum to that effect. They averred that had they been informed that their dismissal was due to FPSILU's demand/petition, they could have impleaded the FPSILU together with the respondents. The Court has always underscored the significance of the two-notice rule in dismissing an employee and has ruled in a number of cases that non-compliance therewith is tantamount to deprivation of the employee's right to due process.[51]

As for the requirement of a hearing or conference, We hold that respondents also failed to substantially comply with the same. Policarpio alleged that she had a dialogue with the concerned employees; that she explained to them the demand of FPSILU for their termination as well as the consequences of the "Petisyon"; and that she had no choice but to act accordingly. She further averred that Grutas even asked her to pay all the involved employees one (1)-month salary for every year of service, plus their accrued legal holiday pay, but which she denied. She informed them that it has been FPSI's practice to give employees, on a case-to-case basis, only one-half ($\frac{1}{2}$) month salary for every year of service and after they have tendered their voluntary resignation. The employees refused her offer and told her that they will just file their claims with the DOLE.[52]

Policarpio's allegations are self-serving. Except for her claim as stated in the respondent's Position Paper, nowhere from the records can We find that Bergante and Inguillo were accorded the opportunity to present evidence in support of their defenses. Policarpio relied heavily on the "Petisyon" of FPSILU. She failed to convince Us that during the dialogue, she was able to ascertain the validity of the charges mentioned in the "Petisyon." In her futile attempt to prove compliance with the procedural requirement, she reiterated that the objective of the dialogue was to provide the employees "the opportunity to receive the act of grace of FPSI by giving them an amount equivalent to one-half ($\frac{1}{2}$) month of their salary for every year of service." We are not convinced. We cannot even consider the demand and counter-offer for the payment of the employees as an amicable settlement between the parties because what took place was merely a discussion only of the amount which the employees are willing to accept and the amount which the respondents are willing to give. Such non-compliance is also corroborated by Bergante and Inguillo in their pleadings denouncing their unjustified dismissal. In fine, We hold that the dialogue is not tantamount to the hearing or conference prescribed by law.

We reiterate, FPSI was justified in enforcing the Union Security Clause in the CBA. However, We cannot countenance respondents' failure to accord herein petitioners the due process they deserve after the former dismissed them outright "in order to avoid a serious labor dispute among the officers and members of the bargaining agent." [53] In enforcing the Union Security Clause in the CBA, We are upholding the sanctity and inviolability of contracts. But in doing so, We cannot override an employee's right to due process.[54] In *Carino v. National Labor Relations Commission*, [55] We took a firm stand in holding that:

The power to dismiss is a normal prerogative of the employer. However, this is not without limitation. 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 x x x. 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 respect and protect the rights of their employees, which include the right to labor."

Thus, as held in that case, "the right of an employee to be informed of the charges against him and to reasonable opportunity to present his side in a controversy with either the company or his own Union is not wiped away by a Union Security Clause or a Union Shop Clause in a collective bargaining agreement. An employee is entitled to be protected not only from a company which disregards his rights but also from his own Union, the leadership of which could yield to the temptation of swift and arbitrary expulsion from membership and mere dismissal from his job." [56]

In fine, We hold that while Bergante and Inguillo's dismissals were valid pursuant to the enforcement of Union Security Clause, respondents however did not comply with the requisite procedural due process. As in the case of *Agabon v. National Labor Relations Commission*, [57] where the dismissal is for a cause recognized by the prevailing jurisprudence, the absence of the statutory due process should not nullify the dismissal or render it illegal, or ineffectual. Accordingly, for violating Bergante and Inguillo's statutory rights, respondents should indemnify them the amount of P30,000.00 each as nominal damages.

In view of the foregoing, We see no reason to discuss the other matters raised by petitioners.

WHEREFORE, premises considered, the instant Petition is DENIED. The Court of Appeals Decision dated March 11, 2004 and Resolution dated September 17, 2004, in CA-G.R. SP No. 73992, are hereby AFFIRMED WITH MODIFICATION in that while there was a valid ground for dismissal, the procedural requirements for termination, as mandated by law and jurisprudence, were not observed. Respondents First Philippine Scales, Inc. and/or Amparo Policarpio are hereby ORDERED to PAY petitioners Zenaida Bergante and Herminigildo Inguillo the amount of P30,000.00 each as nominal damages. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio*, Corona**, and Nachura, JJ., concur.

[*] Designated to sit as an additional member, per Special Order No. 646 dated May 15, 2009.

[**] Designated to sit as an additional member, per Special Order No. 631 dated April 29, 2009.

[1] Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Josefina Guevara- Salonga and Arturo D. Brion (now a member of the Court), concurring; rollo, pp. 37-51.

[2] Id. at 53-54.

[3] Sometimes referred to as "FPSI Independent Labor Union" in other pleadings. See note 13.

[4] CA rollo, pp. 189-197.

[5] Id. at 198-199.

[6] Id. at 198.

[7] Entitled: "In re: Intra Union Dispute at First Philippine Scales Industries, Nagkakaisang Lakas ng Manggagawa (NLM)-Katipunan, Petitioner - versus - First Philippine Scales Industries (Independent) Labor Union, Respondent; First Philippine Scales Industries, Employer," docketed as Case No. OD-M-9503-046 (OS-A-7-140-95).

[8] Per Decision dated May 17, 1995.

[9] CA rollo, pp. 120-123.

[10] Id. at 124.

[11] Id. at 125.

[12] Id. at 126.

[13] Id. at 127-128. The grounds mentioned in the "Petisyon" are quoted as follows:

- Ang mga opisyaes na ito, ay ang mga dating [miyembro] at opisyaes ng F.P.S.I. Independent Labor Union, na rehistrado sa DOLE bilang isang lehitimong Union, at sila'y tumiwalag upang magtayo o magtatag ng panibagong Union;
- Hindi rin siya nagpatawag ng meeting kung ano na ang nangyari sa aming Union at ang aming Union fund. Hindi rin siya nag-submit ng financial statement sa DOLE;
- Sila rin ang dahilan kung bakit naantala ang aming pakikipagnegosasyon sa inyo sa nalalabing dalawang taon;
- Nilabag din ni Domingo Grutas ang aming karapatan bilang isang [miyembro] ng Union, dahil gumawa siya ng desisyon na lingid sa kaalaman ng kanyang kasamang opisyaes at [miyembro];
- Dahil sa kanilang panggugulo bumagsak ang ating produkto at yon ang dahilan kung bakit hindi namin nakamit ang mga [benepisyo] na dapat naming hilingin at matanggap sa inyo;
- Dahil sa kaguluhang iyon nawala ang aming team work, at pagkakaisa sa paggawa upang tumaas ang ating produkto, at hindi kahiya-hiya kung hihiling kami ng karagdagang [benepisyo];
- Hindi rin namin nakamit ang kanilang kooperasyon dahil hindi sila nakikipag-usap at nakikiisa sa amin, bagkus, nagmamalaki pa, at nagbabalak pang manggulo muli;
- Nilalason din nila ang isipan ng ibang [miyembro] ng aming Union upang kumalas ito sa aming samahan;
- Ang paglustay ng aming [pondo] na lingid sa aming kaalaman at pagdeposito ng pera sa pangalan ng Presidente na si Domingo Grutas at Vice Presidente Yolanda Tapang, at hindi sa pangalan ng aming Union sa pangangalaga ng aming Tresurero;

Kaya mahigpit po naming hinihiling sa inyong butihing opisina na tanggalin sila para wala nang hadlang at balakid sa aming pagsusumikap na gumanda at mapabuti ang daloy ng ating produkto upang makamit din namin ang iba pang [benepisyo]. (Emphasis supplied).

[14] See CA Decision, rollo, p. 39.

[15] Records, p. 2

[16] Docketed as NLRC-NCR-Case No. 00-05-03144-96; id. at 13-14.

[17] Docketed as NLRC-NCR-Case No. 00-05-03138-96; id. at 28.

[18] Records, pp. 46-47.

[19] Id. at 40-44. The aforesaid complainants, agreeing to amicably settle their cases, executed a Quitclaim and Release upon receipt from FPSI of a financial consideration, as follows:

Vicente Go

P23,263.00

Shirley Tapang

P27,813.00

Yolanda Tapang

P39,740.00

Domingo Grutas

P23,589.00

Gerry Trinidad

P23,454.00

[20] Id. at 85.

[21] Id. at 135.

[22] Id. at 59-67.

[23] Id. at 72-80.

[24] CA rollo, pp. 45-66.

[25] Id. at 65-66.

[26] Id. at 67-73.

[27] Id. at 73.

[28] Penned by Commissioner Vicente S.E. Veloso, with Presiding Commissioner Roy V. Señeres and Commissioner Alberto R. Quimpo, concurring.

[29] CA rollo, pp. 75-85.

[30] Id. at 84.

[31] Rollo, pp. 37-51.

[32] Id. at 53-54.

[33] Id. at 45-47.

[34] ART. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[35] ART. 283. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice to the workers and the Ministry of Labor and Employment [Department of Labor and Employment] at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half ($\frac{1}{2}$) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[36] ART. 284. Disease as ground for termination. - An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[37] ART. 285. Termination by employee. - (a) An employee may terminate without just cause the employer-employee relationship by serving a written notice on the employer at least one (1) month in advance. The employer upon whom no such notice was served may hold the employee liable for damages.

(b) An employee may put an end to the relationship without serving any notice to the employer for any of the following just causes:

- Serious insult by the employer or his representative on the honor and person of the employee;
- Inhuman and unbearable treatment accorded the employee by the employer or his representative;
- Commission of a crime or offense by the employer or his representative against the person of the employee or any of the foregoing.

[38] *Alabang Country Club, Inc. v. NLRC*, G.R. No. 170287, February 14, 2008, 545 SCRA 351, 361, citing *Del Monte Philippines v. Saldivar*, 504 SCRA 192, 203-204 (2006).

[39] *National Union of Workers in Hotels, Restaurants and Allied Industries-Manila Pavilion Hotel Chapter v. NLRC*, G.R. No. 179402, September 30, 2008, citing *Azucena, C.A.*, *The Labor Code with Comments and Cases*, Volume 2, Fifth Edition, 2004, p. 242. The other common types of union security clause are defined and distinguished in the LABSTAT Updates of the Department of Labor and Employment, Vol. 1 No. 12, August 1997, to wit: (a) Open shop, which is an arrangement on recruitment whereby an employer may hire any employee, union member or not, but the new employee must join the union within a specified time and remain a member in good standing; (b) Agency shop, which is an arrangement whereby non-members of the contracting union must pay the union a sum equal to union dues known as "agency fees" for the benefits they received as a consequence of the bargaining negotiations effected through the efforts of the union; and (c) Check off, which is an arrangement by a union with the employer for dues to be deducted regularly from the members' salaries wherein the sum collected is remitted to the union by check. (Emphasis supplied).

[40] *Alabang Country Club, Inc. v. NLRC*, supra note 38, p. 361, citing 48 Am Jur 2d, § 797, p. 509.

[41] *Del Monte Philippines, Inc. v. Saldivar*, G.R. No. 158620, October 11, 2006, 504 SCRA 192, 202-203, citing *ROTHENBERG ON LABOR RELATIONS*, p. 48; cited in *Confederated Sons of Labor v. Anakan Lumber Co.*, et al., 107 Phil. 915, 918 (1960).

[42] Records, pp. 89-90. (Emphasis supplied).

[43] *Alabang Country Club, Inc. v. NLRC*, supra note 38, at 362.

[44] Supra note 38, at 201.

[45] G.R. No. 123782, September 16, 1997 SCRA 218, 236. In said case, one of the issues presented by the parties was their disagreement on the enforcement of union security clause in the CBA. The Secretary of Labor however considered the issue as procedural and failed to give a valid reason for avoiding the same. The Court held that the Secretary of Labor committed grave abuse of discretion as he should have taken cognizance of the issue which is not merely incidental to but essentially involved in the labor dispute itself, or which is otherwise submitted to him for resolution. The Court went on to rule that it was precisely why the secretary assumed jurisdiction over the labor dispute over which he has jurisdiction at his level.

[46] *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*, G.R. No. 113907, February 28, 2000, 326 SCRA 428, 470-471.

[47] Id. at 463, citing *Sanyo Philippines Workers Union-PSSLU v. Canizares*, 211 SCRA 361 (1992).

[48] G.R. No. 166208, June 29, 2007, 526 SCRA 116, 125-126. (Underscoring ours).

[49] *Landtex Industries and William Go v. Ayson*, G.R. No. 150278, August 9, 2007, 529 SCRA 631, 652.

[50] Id. at 652.

[51] *Bughaw, Jr. v. Treasure Island Industrial Corporation*, G.R. No. 173151, March 28, 2008, 550 SCRA 307,

322.

[52] Respondents' Position Paper, records, pp. 72-81, 76.

[53] Records, p. 79.

[54] Supra note, 44, at 462.

[55] G.R. No. 91086, May 8, 1990, 185 SCRA 177, cited in *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*, supra note 45, at 462. (Emphasis and underscoring supplied).

[56] Id. at 188-189.

[57] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

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