

BAGONG PAGKAKAISA NG MANGGAGAWA NG TRIUMPH INTERNATIONAL, REPRESENTED BY SABINO F. GRAGANZA, UNION PRESIDENT, AND REYVILOSA TRINIDAD, PETITIONERS, VS. SECRETARY OF THE DEPARTMENT...

G.R. No. 167401. July 05, 2010

Ponente: BRION, J.

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BRION, J.:

Before the Court are two separate petitions[1] which were consolidated pursuant to our Resolution dated June 8, 2005.[2] The first,[3] filed by the Bagong Pagkakaisa ng Manggagawa ng Triumph International (union), seeks to set aside the decision[4] of the Court of Appeals (CA) in CA-G.R. SP No. 60516, and the subsequent resolution[5] of March 10, 2005, on the parties' motion for reconsideration. The second,[6] filed by Triumph International (Phils.), Inc. (company), prays for the annulment of the same decision and resolution with respect to the illegal dismissal issue.

THE ANTECEDENTS

The relevant facts, clearly laid out in the challenged CA decision, are summarized below.

The union and the company had a collective bargaining agreement (CBA) that expired on July 18, 1999. The union seasonably submitted proposals to the company for its renegotiation. Among these proposals were economic demands for a wage increase of P180.00 a day, spread over three (3) years, as follows: P70.00/day from July 19, 1999; P60.00/day from July 19, 2000, and P50.00/day from July 19, 2001. The company countered with a wage increase offer, initially at P42.00 for three years, then increased it to P45.00, also for three years.

The negotiations reached a deadlock, leading to a Notice of Strike the union filed on October 15, 1999.[7] The National Conciliation and Mediation Board (NCMB) exerted efforts but failed to resolve the deadlock.

On November 15, 1999, the company filed a Notice of Lock-out[8] for unfair labor practice due to the union's alleged work slowdown. The union went on strike three days later, or on November 18, 1999.

On January 27, 2000, Secretary Bienvenido E. Laguesma (Labor Secretary) of the Department of Labor and Employment (DOLE) assumed jurisdiction over the labor dispute, pursuant to Article 263(g) of the Labor Code.[9] The Labor Secretary directed all striking workers to return to work within twenty-four (24) hours from receipt of the assumption order, while the company was directed to accept them back to work under the same terms and conditions existing before the strike. The Labor Secretary also required the parties to submit their respective position papers.

On February 2 and 3, 2000, several employees attempted to report for work, but the striking employees prevented them from entering the company premises.

In a petition dated February 8, 2000,[10] the company asked the Labor Secretary to issue an order directing the union to allow free ingress to and egress from the company premises; to dismantle all structures obstructing free ingress and egress; and, to deputize the Philippine National Police to assist the DOLE in the peaceful implementation of the Labor Secretary's January 27, 2000 order.

The Labor Secretary reiterated his directives in another order dated February 22, 2000,[11] and deputized Senior Superintendent Manuel A. Cabigon, Director of the Southern Police District, "to assist in the peaceful and orderly implementation of this Order."

At a conciliation meeting held on February 29, 2000, the company agreed to extend the implementation of the return-to-work order until March 6, 2000.[12] The union, through a letter dated March 2, 2000,[13] advised the NCMB Administrator of the union executive board's decision to return to work the following day. In a letter also dated March 2, 2000,[14] the company advised the NCMB Administrator that it was willing to accept all returning employees, without prejudice to whatever legal action it may take against those who committed illegal acts. The company also stated that all the union officers and members and the union board members would be placed under preventive suspension, pending investigation of their alleged illegal acts.

The striking employees returned to work on March 3 and 4, 2000 but twenty (20) union officers and a shop steward were not allowed entry into the company premises. The excluded union leaders were each served identical letters[15] directing them to explain in writing why their employment should not be terminated or why no disciplinary action should be imposed on them for defying and violating the Labor Secretary's assumption order of January 27, 2000 and the second return-to-work order of February 22, 2000; for blocking and resisting the entry of returning employees on February 2, 3, and 8, 2000; for acts of violence committed on February 24 and 25, 2000; and for defying the company's return-to-work order of all employees on February 8, 2000.[16]

On March 6, 2000, the twenty-one (21) union officers, by motion, asked the Labor Secretary to issue a reinstatement order and to cite the company for contempt. On March 9, 2000, the Labor Secretary directed the company to accept the union officers and the shop steward back to work, without prejudice to the continuation of the investigation.[17]

At the conciliation meeting of March 15, 2000, the company agreed to reinstate the union officers in the payroll effective March 13, 2000[18] and withdrew its notice of lockout.[19]

On March 21, 2000, the union officers again received identically worded letters requiring them to explain in writing within twenty-four (24) hours why no disciplinary action, including dismissal, should be taken against them for leading, instigating, and participating in a deliberate work slowdown during the CBA negotiations.[20]

The union officers explained, as required, through their respective affidavits,[21] and a hearing followed on May 5, 2000. Thereafter, the union officers were each served a notice of termination of employment effective at the close of office hours on May 11, 2000.[22]

On June 8, 2000, the union and the officers filed a petition to cite the company and its responsible officers for contempt, and moved that a reinstatement order be issued.[23] They claimed that: (1) the company officials violated the Labor Secretary's return-to-work order when these officials placed them under preventive suspension and refused them entry into the company premises; (2) the company also violated the March 9, 2000 order of the Labor Secretary when they were reinstated only in the payroll; and (3) the company committed unfair labor practice and dismissed them without basis.

THE LABOR SECRETARY'S DECISION

The Labor Secretary resolved the bargaining deadlock[24] and awarded a wage increase of P48.00 distributed over three years, as follows:[25]

Effective July 19, 1999 - P15.00/day

Effective July 19, 2000 - P16.00/day

Effective July 19, 2001 - P17.00/day

The union's other economic demands and non-economic proposals were all denied.

The union moved for the reconsideration[26] of the Labor Secretary's decision, while the company moved for its own partial reconsideration.[27] The Labor Secretary denied both motions, declaring that the petition to cite the company and its responsible officers for contempt had already been rendered moot and academic.[28] He also ruled that the legality of the union officers' dismissal properly falls within the original and exclusive jurisdiction of the labor arbiter under Article 217 of the Labor Code.

The union elevated the case to the CA, through a petition for certiorari under Rule 65 of the Rules of Court,[29] on the following grounds:

- The Labor Secretary committed grave abuse of discretion amounting to lack or excess of jurisdiction when he denied the proposals of the 1,130 union members to improve the existing CBA.
- The Labor Secretary committed grave abuse of discretion when he declared that the issue of reinstatement of the officers of the union and the petition to cite the company and its responsible officers for contempt had become academic.

The union insisted on its demanded P180.00 daily wage increase distributed over three years (1999 to 2001), arguing that the demand is just, fair and reasonable based on the company's capacity to pay and the company's bargaining history. It noted that the company gave a P55.00 increase for the years 1993-1995, and P64.00 for the years 1996 to 1998. It also objected the rejection of its other economic demands and non-economic proposals.

The union also contended that the company and its responsible officers should have been held in contempt for violating the Labor Secretary's return-to-work order. It argued that the officers should have been reinstated in the absence of substantial evidence supporting the charges against them.

The company responded by praying for the dismissal of the petition for lack of abuse of discretion on the part of the Labor Secretary. It posited that the P48.00 wage increase award is more than reasonable, and that the Labor Secretary properly stayed his hand on the issue of illegal dismissal as the matter was beyond his jurisdiction. The company likewise argued that any question on the award had been mooted by the workers' acceptance of the wage increase.

While the petition was pending, individual settlements were reached between certain individual petitioners (Cenon N. Dionisio, Catalina N. Velasquez, Nila P. Tresvalles, Vivian A. Arcos, Delia N. Soliven, Leticia S. Santos, Emerita D. Maniebo, Conchita R. Encinas, Elpidia C. Cancino, Consolacion S. Umalia, Nenette N. Gonzales, Creselita D. Rivera, and Rolando O. Madera) and the company. These petitioners executed their respective Release, Waiver and Quitclaim after receiving their separation pay and other benefits from the company.[30]

In light of these developments and the workers' acceptance of the wage award (except for the union officers), the company moved for the dismissal of the petition.[31] The union and the remaining union officers opposed the motion, contending that the workers' acceptance of the awarded wage increase cannot be considered a waiver of

their demand; the receipt of the P48.00 award was merely an advance on their demand. The Release, Waiver and Quitclaim executed by the 13 officers, on the other hand, cannot bind the officers who opted to maintain the petition.

On December 17, 2001, two more officers - Juliana D. Galo and Remedios C. Barque - also executed their respective Release, Waiver and Quitclaim.[32]

THE CA DECISION

The CA found the petition partly meritorious. It affirmed the Labor Secretary's wage increase award, but modified his ruling on the dismissal of the union officers.[33]

On the wage issue and related matters, the CA found the Labor Secretary's award legally in order. It noted the following factors supportive of the award:

- The average daily salary of an employee of P310.00 is more than the statutory minimum wage as admitted by the union itself.
- The company grants to its employees forty-two (42) other monetary and welfare benefits.
- The increase in the wages of the employees carries with it a corresponding increase in their salary-based benefits.
- The wage increase granted to workers employed in the industry is less than the increase proposed by the company.
- The Asian financial crisis.

The CA also noted that, in the meantime, the parties had executed a new CBA for the years 2002 to 2005 where they freely agreed on a total P45.00/day wage increase distributed over three years.

On the other hand, the CA faulted the Labor Secretary for not ruling on the dismissal of the union officers. It took exception to the Labor Secretary's view that the dismissal question is within the exclusive jurisdiction of the labor arbiter pursuant to Article 217 of the Labor Code. It invoked the ruling of this Court in *Interphil Laboratories Employees Union-FFW v. Interphil Laboratories, Inc.*,[34] which, in turn, cited *International Pharmaceuticals, Inc. v. Secretary of Labor*,[35] where we held that the Labor Secretary has jurisdiction over all questions and controversies arising from an assumed dispute, including cases over which the labor arbiter has exclusive jurisdiction.

The CA pointed out that while the labor dispute before the Labor Secretary initially involved a bargaining deadlock, a related strike ensued and charges were brought against the union officers (for defiance of the return-to-work order of the Labor Secretary, and leading, instigating, and participating in a deliberate work slowdown during the CBA negotiations) resulting in their dismissal from employment; thus, the dismissal is intertwined with the strike that was the subject of the Labor Secretary's assumption of jurisdiction.

The CA, however, avoided a remand of the illegal dismissal aspect of the case to the Labor Secretary on the ground that it would compel the remaining six officers, lowly workers who had been out of work for four (4) years, to go through the "calvary" of a protracted litigation. In the CA's view, it was in keeping with justice and equity for it to proceed to resolve the dismissal issue itself.

The six remaining officers of the union - Reyvilosa Trinidad, Eloisa Figura, Jerry Jaicten, Rowell Frias, Margarita Patingo, and Rosalinda Olangar (shop steward) - all stood charged with defying (1) the Labor Secretary's return-to-work order of January 27, 2000,[36] and (2) the company's general notice for the return of all employees

on February 8, 2000.[37] Later, they were also charged with leading, instigating, and participating in a deliberate slowdown during the CBA negotiations.

The charges were supported by the affidavits of Ernesto P. Dayag, Salvio Bayon, Victoria Sanchez, Lyndon Dinglasan, Teresita Nacion, Herman Vinoya, and Leonardo Gomez.[38] The CA noted that in all these affidavits, "no mention was ever made of [anyone] of the six (6) remaining individual petitioners, save for Reyvilosa Trinidad. Also, none of the said affidavits even hinted at the culpabilities of petitioners Eloisa Figura, Jerry Jaicten, Rowell Frias, Margarita Patingo, and Rosalinda Olangar for the alleged illegal acts imputed to them." [39]

For failure of the company to prove by substantial evidence the charges against the remaining officers, the CA concluded that their employment was terminated without valid and just cause, making their dismissal illegal.

With respect to Trinidad, the CA found that her presence in the picket line and participation in an illegal act - obstructing the ingress to and egress from the company's premises - were duly established by the affidavit of Bayon.[40] For this reason, the CA found Trinidad's dismissal valid.

The appellate court thus affirmed the May 31, 2000[41] order of the Labor Secretary and modified the resolution dated July 14, 2000.[42]

The CA denied the motions for reconsideration that the union and its officers, and the company filed.[43] Hence, the present petitions.

THE PETITIONS

G.R. No. 167401

The petition is anchored on the following grounds -

- The CA erred in sustaining the Labor Secretary's wage increase award of P48.00/day spread over three years.
- The CA erred in finding the dismissal of Trinidad valid.

The union presents the following arguments -

On the CBA Award

The union contends that the CBA wage increases from 1994 to 1998 ranged from P16.00/day to P27.00/day for every year of the CBA period; the arguments behind the company's decreased wage offer were the same arguments it raised in previous CBA negotiations; the alleged financial crisis in the region on which the CBA award was based actually did not affect the company because it sourced its raw materials from its mother company, thereby avoiding losses; the company's leading status in the industry in terms of wages should not be used in the determination of the award; rather, it should be based on the company's financial condition and its number one rank among 7,000 corporations in the country manufacturing ladies', girls', and babies' garments, and number 46 in revenues with gross revenues of P1.08B, assets of P525.5M and stockholders' equity of P232.1M; in granting only a wage increase out of 44 items in its proposal, the award disregarded the factors on which its demands were based such as the peso devaluation and the daily expenditure of P1,400.00/day for a family of six (6) as found by the National Economic and Development Authority.

On the Dismissal of Reyvilosa Trinidad

The union seeks a reversal of the dismissal of Trinidad. It argues that she was dismissed for alleged illegal acts based solely on the self-serving affidavits executed by officers of the company; the strike had not been declared illegal for the company had not initiated an action to have it declared illegal; Trinidad was discriminated against

because of the four union officers mentioned in the affidavits, three were granted one month separation pay plus other benefits to settle the dispute in regard to the three; also the same arrangement was entered into with the other officers, which resulted in the signing of the waiver, quitclaim and release; the only statement in the affidavits against Trinidad was her alleged megaphone message to the striking employees not to return to work.

The union thus asks this Court to modify the assailed CA ruling through an order improving the CBA wage award and the grant of the non-wage proposals. It also asks that the dismissal of Trinidad be declared illegal, and that the company be ordered to pay the union moral and exemplary damages, litigation expenses, and attorney's fees.

G.R. No. 167407

For its part, the company seeks to annul the CA rulings on the dismissal issue, on the following grounds -

- The CA erred in ruling that the Labor Secretary abused his discretion in not resolving the issue of the validity of the dismissal of the officers of the union.
- The CA erred in resolving the factual issue of dismissal instead of remanding the case for further proceedings.
- In resolving the issue, the company was deprived of its right to present evidence and, therefore, to due process of law.

The company submits that the Labor Secretary has no authority to decide the legality or illegality of strikes or lockouts, jurisdiction over such issue having been vested on the labor arbiters pursuant to Article 217 of the Labor Code; under Article 263 of the Code, the Labor Secretary's authority over a labor dispute encompasses only the issues, not the legality or illegality of any strike that may have occurred in the meantime.[44] It points out that before the Labor Secretary can take cognizance of an incidental issue such as a dismissal question, it must first be properly submitted to him, as in the case of *International Pharmaceuticals, Inc. v. Secretary of Labor*[45] where the Labor Secretary was adjudged to have the power to assume jurisdiction over a labor dispute and its incidental issues such as unfair labor practices subject of cases already ongoing before the National Labor Relations Commission (NLRC).

The company takes exception to the CA ruling that it submitted the dismissal issue to the Labor Secretary claiming that it can be seen from its opposition to the union's petition to cite the company for contempt;[46] that it consistently maintained that the Labor Secretary has no jurisdiction over the dismissal issue; that the affidavits it submitted to the Labor Secretary were only intended to establish the union's violation of the return-to-work orders and, to support its petition, on February 8, 2000,[47] for the issuance of a return-to-work order; and, that the CA overstepped its jurisdiction when it ruled on a factual issue, the sole office of certiorari being the corrections of errors of jurisdiction, including the commission of grave abuse of discretion.

The company likewise disputes the CA's declaration that it took into consideration all the evidence on the dismissal issue, claiming that the evidence on record is deficient, for it did not have the opportunity to adduce evidence to prove the involvement of the union officers in the individual acts for which they were dismissed; had it been given the opportunity to present evidence, it could have done so. To prove its point, it included in its motion for partial reconsideration[48] a copy of the information,[49] charging union officers Nenette Gonzales and Margarita Patingo of malicious mischief for stoning a company vehicle on February 25, 2000, while the strike was ongoing.

Even assuming that it could no longer submit evidence on the dismissal of the union officers, the company posits that sufficient grounds exist to uphold the dismissals. It maintains that the officers are liable to lose their employment status for knowingly staging a strike after the assumption of jurisdiction by the Labor Secretary and

in defying the return-to-work mandated by the assumption, which are considered prohibited activities under Article 264(a) of the Labor Code, not to mention that without first having filed a notice, when the union officers and members engaged in and instigated a work slowdown, a form of strike, without complying with the procedural requirements for staging a strike, the union officers had engaged in an illegal strike.

The parties practically reiterated these positions and the positions taken below in their respective comments to each other's petition.

THE COURT'S RULING

The CBA Award

We affirm the CA's disposition, upholding the Labor Secretary's award in resolving the bargaining deadlock between the union and the company for their 1999-2001 CBA.

We find no compelling justification to disturb the award. We are convinced, as the appellate court was, of the reasonableness of the award. It was based on the prevailing economic indicators in the workplace, in the industry, and in the local and regional economy. As well, it took into account the comparative standing of the company in terms of employees' wages and other economic benefits. We find the following factors as sufficient justification for the award:

- The regional financial crisis and the downturn in the economy at the time, impacting on the performance of the company as indicated in its negative financial picture in 1999.
- The company's favorable comparison with industry standards in terms of employee benefits, especially wages. Its average daily basic wage of P310.00 is 40% higher than the statutory minimum wage of P223.50, and superior to the industry's average of P258.00. For the years prior to the 1999 negotiations, its aggregate daily wage increase of P64.00 surpassed the statutory minimum increase of P33.00.
- The forty-two (42) non-wage benefit programs of the company which undeniably extend the reach of the employees' cash wage in enhancing the well-being of the employees and their families.

The Labor Secretary's Order of May 31, 2000 fully explained these considerations as follows:[50]

We fully agree with the Union that relations between management and labor ought to be governed by the higher precepts of social justice as enshrined in the Constitution and in the laws. We further agree with it that the worker's over-all well-being is as much affected by his wages as by other macro-economic factors as the CPI, cost of living, the varied needs of the family. Yet, the other macro-economic factors cited by the company such as the after-effects of the regional financial crisis, the existing unemployment rate, and the need to correlate the rate of wage increase with the CPI are equally important. Of course[,] other macro-economic factors such as the contraction of sales and production as well as the growing lack of direct investors, are also important considerations. It is noteworthy that both the Union and Management recognize that the entire gamut of macro-economic factors necessarily impact on the micro-economic conditions of an individual company even in terms of wage increases.

The Union also makes mention of the need to factor in the industry where the employer belongs x x x. This is affirmed by the Company when it provides a comparison with the other key players in the industry. It has been properly shown that its prevailing levels of wages and other benefits are, generally, superior to its counterparts in the local garments industry. x x x

But even as we agree with the Union that the Company's negative financial picture for 1999 should not be an overriding consideration in coming up with an adjudicated wage increase, We cannot make the historical wage increases as our starting point in determining the appropriate wage adjustment. The Company's losses for 1999

which, even the Union recognizes, amounts to millions of pesos, coupled with the current economic tailspin warrant a more circumspect view[.]

Cognizance is likewise made of the Company's 42 non-wage benefits programs which substantially [answer] the Union's concerns with respect to the living wage and the needs of a family. It would not be amiss to mention that said benefits have their corresponding monetary valuations that in effect increase a worker's daily pay. Likewise, the needed family expenditure is answered for not solely by an individual family member's income alone, but also from other incomes derived by the entire family from all possible sources.

Considering the foregoing circumstances, We deem it reasonable and fair to balance our award on wages.

The conclusions of the Labor Secretary, drawn as they were from a close examination of the submissions of the parties, do not indicate any legal error, much less any grave abuse of discretion. We accord respect to these conclusions as they were made by a public official especially trained in the delicate task of resolving collective bargaining disputes, and are on their face just and reasonable. "[U]nless there is a clear showing of grave abuse of discretion, this Court cannot, and will not, interfere with the labor expertise of the public respondent Secretary of Labor," as the Court held in *Pier Arrastre and Stevedoring Services v. Ma. Nieves Roldan-Confesor, et al.*[51]

We also note that during the pendency of the present dispute, the parties entered into a new CBA for the years 2000-2005, providing for a P45.00/day wage increase for the workers. The CA cited this agreed wage adjustment as an indication of the reasonableness of the disputed award. The Labor Secretary himself alluded to "the letter-manifestation received by this Office on 15 June 2000 containing the signatures of some 700 employees of the Company indicating the acceptance of the award rendered in the 31 May 2000 Order." [52] There was also the manifestation of the company dated February 7, 2006, advising the Court that it concluded another CBA with the union providing for a wage increase of P22.00/day effective July 19, 2005; P20.00/day for July 19, 2006; and P20.00/day for July 19, 2007.[53] The successful negotiation of two collective agreements even before the parties could sit down and formalize the 1999-2001 CBA highlights the need for the parties to abide by the decision of the Labor Secretary and move on to the next phase of their collective bargaining relationship.

The Illegal Dismissal Issue

Before we rule on the substantive aspect of this issue, we deem it proper to resolve first the company's submission that the CA erred: (1) in ruling that the Labor Secretary gravely abused his discretion in not deciding the dismissal issue; and, (2) in deciding the factual issue itself, instead of remanding the case, thereby depriving it of the right to present evidence on the matter.

We agree with the CA's conclusion that the Labor Secretary erred, to the point of abusing his discretion, when he did not resolve the dismissal issue on the mistaken reading that this issue falls within the jurisdiction of the labor arbiter. This was an egregious error and an abdication of authority on the matter of strikes - the ultimate weapon in labor disputes that the law specifically singled out under Article 263 of the Labor Code by granting the Labor Secretary assumption of jurisdiction powers. Article 263(g) is both an extraordinary and a preemptive power to address an extraordinary situation - a strike or lockout in an industry indispensable to the national interest. This grant is not limited to the grounds cited in the notice of strike or lockout that may have preceded the strike or lockout; nor is it limited to the incidents of the strike or lockout that in the meanwhile may have taken place. As the term "assume jurisdiction" connotes, the intent of the law is to give the Labor Secretary full authority to resolve all matters within the dispute that gave rise to or which arose out of the strike or lockout; it includes and extends to all questions and controversies arising from or related to the dispute, including cases over which the labor arbiter has exclusive jurisdiction.[54]

In the present case, what the Labor Secretary refused to rule upon was the dismissal from employment that

resulted from the strike. Article 264 significantly dwells on this exact subject matter by defining the circumstances when a union officer or member may be declared to have lost his employment. We find from the records that this was an issue that arose from the strike and was, in fact, submitted to the Labor Secretary, through the union's motion for the issuance of an order for immediate reinstatement of the dismissed officers and the company's opposition to the motion. Thus, the dismissal issue was properly brought before the Labor Secretary and this development in fact gave rise to his mistaken ruling that the matter is legally within the jurisdiction of the labor arbiter to decide.

We cannot disagree with the CA's sympathies when it stated that a remand of the case "would only compel the individual petitioners, x x x lowly workers who have been out of work for more than four (4) years, to tread once again the [calvary] of a protracted litigation." [55] The dismissal issue and its resolution, however, go beyond the realm of sympathy as they are governed by law and procedural rules. The recourse to the CA was through the medium of a petition for certiorari under Rule 65 - an extraordinary but limited remedy. The CA was correct in declaring that the Labor Secretary had seriously erred in not ruling on the dismissal issue, but was totally out of place in proceeding to resolve the dismissal issue; its action required the prior and implied act of suspending the Rules of Court - a prerogative that belongs to this Court alone. In the recent case of *Marcos-Araneta v. Court of Appeals*, [56] we categorically ruled that the CA cannot resolve the merits of the case on a petition for certiorari under Rule 65 and must confine itself to the jurisdictional issues raised. Let this case be another reminder to the CA of the limits of its certiorari jurisdiction.

But as the CA did, we similarly recognize that undue hardship, to the point of injustice, would result if a remand would be ordered under a situation where we are in the position to resolve the case based on the records before us. As we said in *Roman Catholic Archbishop of Manila v. Court of Appeals*: [57]

[w]e have laid down the rule that the remand of the case to the lower court for further reception of evidence is not necessary where the Court is in a position to resolve the dispute based on the records before it. On many occasions, the Court, in the public interest and for the expeditious administration of justice, has resolved actions on the merits instead of remanding them to the trial court for further proceedings, such as where the ends of justice, would not be subserved by the remand of the case. [58]

Thus, we shall directly rule on the dismissal issue. And while we rule that the CA could not validly rule on the merits of this issue, we shall not hesitate to refer back to its dismissal ruling, where appropriate.

The first question to resolve is the sufficiency of the evidence and records before us to support a ruling on the merits. We find that the union fully expounded on the merits of the dismissal issue while the company's positions find principal support from the affidavits of Dayag, Bayon, Sanchez, Dinglasan, Nacion, Vinoya, and Gomez. The affidavits became the bases of the individual notices of termination of employment sent to the union officers. The parties' affidavits and their submitted positions constitute sufficient bases to support a decision on the merits of the dismissal issue.

The dismissed union officers of the union originally numbered twenty-one (21), twenty (20) of whom - led by union President Cenon Dionisio - were executive officers and members of the union board. Completing the list was shop steward Olangar. As mentioned earlier, fifteen (15) of the dismissed officers, including Dionisio, executed a Release, Waiver and Quitclaim and readily accepted their dismissal. [59] Those who remained to contest their dismissal were Reyvilosa N. Trinidad, 2nd Vice-President; Eloisa Figura, Asst. Secretary; Jerry Jaicten, PRO; Rowell Frias, Board Member; Margarita Patingo, Board Member; and Rosalinda Olangar, Shop Steward.

The officers of the union subject of the petition were dismissed from the service for allegedly committing illegal

acts (1) during the CBA negotiations and (2) during the strike declared by the union, shortly after the negotiations reached a deadlock. The acts alluded to under the first category[60] involved "leading, instigating, participating in a deliberate slowdown during the CBA negotiations" and, under the second,[61] the alleged defiance and violation by the union officers of the assumption of jurisdiction and the return-to-work order of the Labor Secretary dated January 27, 2000, as well as the second return-to-work order dated February 22, 2000. More specifically, in the course of the strike, the officers were charged with blocking and preventing the entry of returning employees on February 2, 3, and 8, 2000; and on February 24 and 25, 2000, when acts of violence were committed. They likewise allegedly defied the company's general return-to-work notice for the return of all employees on February 8, 2000.[62]

The CA erred in declaring that except for Trinidad, the company failed to prove by substantial evidence the charges against the remaining union officers, thus making this dismissal illegal. The appellate court noted that in all the affidavits the company submitted as evidence "no mention was ever made of [anyone] of the six (6) remaining individual petitioners, save for Reyvilosa Trinidad. Also, none of the said affidavits even hinted at the culpabilities of petitioners Eloisa Figuna, Jerry Jaicten, Rowell Frias, Margarita Patingo and Rosalinda Olangar for the alleged illegal acts imputed to them." [63]

The charges on which the company based its decision to dismiss the union officers and the shop steward may be grouped into the following three categories: (1) defiance of the return-to-work order of the Labor Secretary, (2) commission of illegal acts during the strike, and (3) leading, instigating and participating in a deliberate work slowdown during the CBA negotiations.

While it may be true that the affidavits the company submitted to the Labor Secretary did not specifically identify Figuna, Jaiden, Frias, Patingo and Olangar to have committed individual illegal acts during the strike, there is no dispute that the union defied the return-to-work orders the Labor Secretary handed down on two occasions, first on January 27, 2000 (more than two months after the union struck on November 18, 1999) and on February 22, 2000. In decreeing a return-to-work for the second time, the Labor Secretary noted:

To date, despite the lapse of the return-to-work period indicated in the Order, the Union continues with its strike. A report submitted by NCMB-NCR even indicated that all gates of the Company are blocked thereby preventing free ingress and egress to the premises.[64]

Under the law,[65] the Labor Secretary's assumption of jurisdiction over the dispute or its certification to the National Labor Relations Commission for compulsory arbitration shall have the effect of automatically enjoining the intended or impending strike or lockout and all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions before the strike or lockout. The union and its officers, as well as the workers, defied the Labor Secretary's assumption of jurisdiction, especially the accompanying return-to-work order within twenty-four (24) hours; their defiance made the strike illegal under the law[66] and applicable jurisprudence.[67] Consequently, it constitutes a valid ground for dismissal.[68] Article 264(a), paragraph 3 of the Labor Code provides that "Any 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."

The union officers were answerable not only for resisting the Labor Secretary's assumption of jurisdiction and return-to-work orders; they were also liable for leading and instigating and, in the case of Figuna, for participating in a work slowdown (during the CBA negotiations), a form of strike[69] undertaken by the union without complying with the mandatory legal requirements of a strike notice and strike vote. These acts are similarly prohibited activities.[70]

There is sufficient indication in the case record that the union officers, collectively, save for shop steward Olangar, were responsible for the work slowdown, the illegal strike, and the violation of the Labor Secretary's assumption order, that started with the slowdown in July 1999 and lasted up to March 2000 (or for about ten (10) months).[71] These illegal concerted actions could not have happened at the spur of the moment and could not have been sustained for several months without the sanction and encouragement of the union and its officers; undoubtedly, they resulted from a collective decision of the entire union leadership and constituted a major component of the union's strategy to obtain concessions from the company management during the CBA negotiations.

That the work slowdown happened is confirmed by the affidavits[72] and the documentary evidence submitted by the company. Thus, Ernesto P. Dayag, a security officer of the agency servicing the company (Tamaraw Security Service, Inc.) stated under oath that in October 1999, the union members were engaging in a noise-barrage everyday and when it was time to go back to work at noontime, they would mill around the production area or were at the toilet discussing the ongoing CBA negotiations (among others), and were slow in their movements; in late October (October 27, 1999), they did the same thing at about seven o'clock in the morning which was already time for work; even those who were already working were deliberately slow in their movements. On November 12, 1999, when union officer Lisa Velasquez talked to the union members at lunchtime regarding the CBA negotiations, only about 50% of the union members returned to their work stations.

Victoria P. Sanchez, a sewer in the company's production department, deposed that sometime in the middle of September 1999, the sewers were told by the shop stewards to reduce their efficiency below 75%. They followed the order as it came from a decision of the union officers at a meeting. It was not difficult to comply with the order because they only had to slow down at the pre-production and early segments of the production line so that the rest of the line would suffer.

Teresita T. Nacion, another sewer, corroborated Sanchez's deposition stating that in mid-September 1999, during the CBA negotiations, the sewers were told by the shop stewards to reduce their efficiency below 75% pursuant to the union decision to slow down production so that the company would suffer losses.

The work slowdown resulted in production losses to the company which it documented and submitted in evidence[73] before the Labor Secretary and was summarized in the affidavit[74] of Leonardo T. Gomez, who testified on the impact of the decrease of the workers' production efficiency that peaked in September, October, and November 1999, resulting in a financial loss to the company of P69.277M. Specifically, the company's efficiency record for the year 1999[75] posted Eloisa C. Figura's[76] work performance from April to June 1999 at 77.19% and from July to November 1999 at 51.77%, a substantial drop in her efficiency.

The union's two-pronged strategy to soften the company's stance in the CBA negotiations culminated in its declaration of a strike on November 18, 1999, which prompted the Labor Secretary's intervention through an assumption of jurisdiction. Judging from the manner the union staged the strike, it is readily apparent that the union's objective was to paralyze the company and to maintain the work stoppage for as long as possible.

This is the economic war that underlies the Labor Code's strike provisions, and which the same Code also tries to temper by regulation. Thus, even with the assumption of jurisdiction and its accompanying return-to-work order, the union persisted with the strike and prevented the entry to the company premises of workers who wanted to report back for work. In particular, Salvio Bayon, a company building technician and a member of the union, deposed that at about seven o'clock in the morning of February 3, 2000, he and ten (10) of his co-employees attempted to enter the company premises, but they were prevented by a member of the strikers, led by union President Canon Dionisio and other officers of the union; the same thing happened on February 8, 24 and 28,

2000.[77]

In the face of the union's defiance of his first return-to-work order, the Labor Secretary issued a second return-to-work directive on February 22, 2000 where the labor official noted that despite the lapse of the return-to-work period indicated in the order, the union continued with its strike.[78] At a conciliation meeting on February 29, 2000, the company agreed to extend the implementation of the return-to-work order to March 6, 2000.[79] The union, through a letter dated March 2, 2000,[80] advised the NCMB administrator of the decision of the union executive board for the return to work of all striking workers the following day. In a letter also dated March 2, 2000,[81] the company also advised the NCMB Administrator that it was willing to accept all returning employees, without prejudice to whatever legal action it may take against those who committed illegal acts.

The above union letter clearly shows the involvement of the entire union leadership in defying the Labor Secretary's assumption of jurisdiction order as well as return-to-work orders. From the illegal work slowdown to the filing of the strike notice, the declaration of the strike, and the defiance of the Labor Secretary's orders, it was the union officers who were behind the every move of the striking workers; and collectively deciding the twists and turns of the strike which even became violent as the striking members prevented and coerced returning workers from gaining entry into the company premises. To our mind, all the union officers who knowingly participated in the illegal strike knowingly placed their employment status at risk.

In a different vein, the union faulted the company for having dismissed the officers, there being no case filed on the legality or illegality of the strike. We see no merit in this argument. In *Gold City Integrated Port Service, Inc. v. NLRC*,[82] we held that "[t]he law, in using the word 'may,' grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment." We reiterated this principle in *San Juan De Dios Educational Foundation Employees Union-Alliance of Filipino Workers v. San Juan De Dios Educational Foundation, Inc.*,[83] where we stated that "Despite the receipt of an order from the SOLE to return to their respective jobs, the Union officers and members refused to do so and defied the same. Consequently, then, the strike staged by the Union is a prohibited activity under Article 264 of the Labor Code. Hence, the dismissal of its officers is in order. The respondent Foundation was, thus, justified in terminating the employment of the petitioner Union's officers."

The union attempted to divert attention from its defiance of the return-to-work orders with the specious submission that it was the company which violated the Labor Secretary's January 27, 2000 order, by not withdrawing its notice of lockout.[84]

The evidence indicates otherwise. The Labor Secretary himself, in his order of February 22, 2000,[85] noted that the union continued its strike despite the lapse of the return-to-work period specified in his January 27, 2000 order. There is also the report of the NCMB-NCR clearly indicating that all gates of the company were blocked, thereby preventing free ingress to and egress from the company premises. There, too, was the letter of the company personnel manager, Ralph Funtilla, advising the union that the company will comply with the Labor Secretary's January 27, 2000 order; Funtilla appealed to the striking employees and the officers to remove all the obstacles and to lift their picket line to ensure free ingress and egress.[86] Further, as we earlier noted, the union itself, in its letter of March 2, 2000, advised the NCMB that the union board of directors had decided to return to work on March 3, 2000 indicating that they had been on strike since November 18, 1999 and were defiant of the return-to-work orders since January 28, 2000.

As a final point, the extension of the return-to-work order and the submission of all striking workers, by the company, cannot in any way be considered a waiver that the union officers can use to negate liability for their actions, as the CA opined in its assailed decision.[87] In the first place, as clarified by Funtilla's letter to the

NCMB dated March 2, 2000,[88] the company will accept all employees who will report for work up to March 6, 2000, without prejudice to whatever legal action it may take against those who committed illegal acts. He also clarified that it extended the return-to-work, upon request of the union and the DOLE to accommodate employees who were in the provinces, who were not notified, and those who were sick.

As a point of law, we find that the company did not waive the right to take action against the erring officers, and this was acknowledged by the Labor Secretary himself in his order of March 9, 2000,[89] when he directed the company "to accept back to work the twenty (20) union officers and one (1) shop steward[,] without prejudice to the Company's exercise of its prerogative to continue its investigation." The order was issued upon complaint of the union that the officers were placed under preventive suspension.

For having participated in a prohibited activity not once, but twice, the union officers, except those our Decision can no longer reach because of the amicable settlement they entered into with the company, legally deserve to be dismissed from the service. For failure of the company, however, to prove by substantial evidence the illegal acts allegedly committed by Rosalinda Olangar, who is a shop steward but not a union officer, we find her dismissal without a valid cause.

WHEREFORE, premises considered, judgment is hereby rendered AFFIRMING with MODIFICATION the challenged decision and resolution of the Court of Appeals in CA-G.R. SP No. 60516, as follows:

- The collective bargaining award of DOLE Secretary Bienvenido E. Laguesma, contained in his order dated May 31, 2000, is fully AFFIRMED;
- The dismissal of REYVILOSA TRINIDAD, union 2[nd] Vice-President, is likewise AFFIRMED;
- The dismissal of ELOISA FIGURA, Assistant Secretary; JERRY JAICTEN, Press Relations Officer; and ROWELL FRIAS, Board Member, is declared VALID and for a just cause; and
- The dismissal of ROSALINDA OLANGAR is declared illegal. The CA award is SUSTAINED in her case.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, [*]Abad, and Villarama, Jr., JJ., concur.

[*] Designated additional Member of the Third Division, in view of the retirement of former Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

[1] Filed under Rule 45 of the Rules of Court.

[2] Rollo (G.R. No. 167407), p. 1150.

[3] G.R. No. 167401.

[4] Rollo (G.R. No. 167401), pp. 35-71. *Bagong Pagkakaisa ng Manggagawa ng Triumph International, et al. v. Hon. Bienvenido Laguesma, et al.*, promulgated on August 19, 2004. Penned by Associate Justice Perlita J. Tria-Tirona, and concurred in by Associate Justice Ruben T. Reyes (retired member of this Court) and Associate Justice Jose C. Reyes, Jr.

[5] *Id.* at 72-79.

[6] Rollo (G.R. No. 167407).

- [7] Rollo (G.R. No. 167401), pp. 306-307.
- [8] Rollo (G.R. No. 167407), p. 290.
- [9] Rollo (G.R. No. 167401), pp. 265-266.
- [10] Id. at 320-323.
- [11] Rollo (G.R. No. 167407), pp. 247-248.
- [12] Id. at 317.
- [13] Id. at 318.
- [14] Id. at 319.
- [15] Id. at 785-824.
- [16] Id. at 309-310.
- [17] Rollo (G.R. No.167401), pp. 269-270.
- [18] Rollo (G.R. No.167407), p. 346.
- [19] Id. at 299-300.
- [20] Id. at 367-383.
- [21] Id. at 486-784.
- [22] Id. at 785-824; dated May 11, 2000.
- [23] Rollo (G.R. No. 167401), pp. 584-662.
- [24] On May 31, 2000.
- [25] Rollo (G.R. No. 167401), pp. 274-282.
- [26] Id. at 664-738.
- [27] Id. at 740-743.
- [28] Id. at 284-289.
- [29] CA-G.R. SP No. 60516.
- [30] Rollo (G.R. No. 167407), pp. 1117-1142.
- [31] Rollo (G.R. No. 167401), p. 53.
- [32] Rollo (G.R. No. 167407), pp. 1143-1146.
- [33] Supra note 4.
- [34] G.R. No. 142824, December 19, 2001, 372 SCRA 658.
- [35] G.R. Nos. 92981-83, January 9, 1992, 205 SCRA 59.
- [36] Supra note 9, at 3.
- [37] Supra note 16, at 5.

[38] Rollo (G.R. No. 167407), pp. 465-478.

[39] Id. at 69; CA decision, p. 34, last paragraph.

[40] Id. at 467-468.

[41] Supra note 24.

[42] Supra note 28.

[43] Supra note 5.

[44] Philippine Airlines v. Secretary of Labor and Employment, G.R. No. 88210, 193 SCRA 223.

[45] Supra note 35.

[46] Rollo (G.R. No. 167407), pp. 347-354.

[47] Id. at 302-305.

[48] Supra note 27.

[49] Rollo (G.R. No. 167407), p. 1103.

[50] Supra note 24.

[51] 311 Phil. 311 (1995).

[52] Rollo (G.R. No. 167401), p. 287.

[53] Id. at 794-815.

[54] Supra note 34.

[55] Rollo (G.R. No. 167401), p. 77.

[56] G.R. No. 154096, August 22, 2008; see also Silverio v. CA, G.R. No. L-39861, March 17, 1986, 141 SCRA 527.

[57] G.R. No. 77425, June 19, 1991, 198 SCRA 300.

[58] Id. at 303.

[59] Supra note 30.

[60] Supra note 20, at 5.

[61] Supra note 15, at 4.

[62] Supra note 16, at 5.

[63] Supra note 39.

[64] Rollo (G.R. No. 167407), p. 248, par. 2.

[65] LABOR CODE, Article 263(g) - When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or

impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure the compliance with this provision as well as with such orders as he may issue to enforce the same.

[66] LABOR CODE, Article 264.

[67] *University of San Agustin Employees Union-FFW v. Court of Appeals*, G.R. No. 169632, March 28, 2006, 485 SCRA 526.

[68] *Philcom Employees Union v. Philippine Global Communications*, G.R. No. 141667, July 17, 2006, 495 SCRA 214.

[69] *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. NLRC*, G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171.

[70] *Supra* note 64.

[71] *Rollo* (G.R. No. 167407), pp. 314-316.

[72] *Supra* note 38.

[73] *Supra* note 69.

[74] *Rollo* (G.R. No. 167407), pp. 477-478.

[75] *Id.* at 479-480.

[76] One of the six union officers who pursued the union petition.

[77] *Id.* at 467-468, Bayon's affidavit.

[78] *Supra* note 11.

[79] *Supra* note 12.

[80] *Supra* note 13.

[81] *Supra* note 14.

[82] G.R. No. 103560, July 6, 1995, 245 SCRA 627, 630.

[83] G.R. No. 143341, May 28, 2004, 430 SCRA 193, 207.

[84] *Rollo* (G.R. No. 167407), p. 1204; Union Comment, par. 10.

[85] *Supra* note 11.

[86] *Rollo* (G.R. No. 167407), p. 307.

[87] *Id.* at 70; CA Decision, p. 35, par. 4.

[88] *Id.* at 319.

[89] *Supra* note 17.

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