

ST. JOHN COLLEGES, INC., PETITIONER, VS. ST. JOHN ACADEMY FACULTY AND EMPLOYEES UNION, RESPONDENT.

G.R. NO. 167892. October 27, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari assails the April 22, 2004 Decision[1] of the Court of Appeals in CA-G.R. SP No. 74519, which affirmed with modifications the June 28, 2002 Resolution[2] of the National Labor Relations Commission (NLRC) in NLRC CN RAB IV 5-10035-98-1, and its April 15, 2005 Resolution[3] denying petitioner's motion for reconsideration.

Petitioner St. John Colleges, Inc. (SJCI) is a domestic corporation which owns and operates the St. John's Academy (later renamed St. John Colleges) in Calamba, Laguna. Prior to 1998, the Academy offered a secondary course only. The high school then employed about 80 teaching and non-teaching personnel who were members of the St. John Academy Faculty & Employees Union (Union).

The Collective Bargaining Agreement (CBA) between SJCI and the Union was set to expire on May 31, 1997. During the ensuing collective bargaining negotiations, SJCI rejected all the proposals of the Union for an increase in worker's benefits. This resulted to a bargaining deadlock which led to the holding of a valid strike by the Union on November 10, 1997. In order to end the strike, on November 27, 1997, SJCI and the Union, through the efforts of the National Conciliation and Mediation Board (NCMB), agreed to refer the labor dispute to the Secretary of Labor and Employment (SOLE) for assumption of jurisdiction:

AGREEMENT AND JOINT PETITION FOR ASSUMPTION OF JURISDICTION

Both parties agree as follows:

- That the issue raised by the Union shall be referred to the Honorable Secretary of Labor by way of Assumption of Jurisdiction. Note this will serve as a joint petition for Assumption of Jurisdiction.
- Parties shall submit their respective position paper within 10 days upon the signing of this agreement and to be decided within two months.
- That management shall grant the employees cash advance of P1,800.00 each to be given on or before December 5, 1997 deductible after two months payable in two installments starting January 31, 1998. The decision re: assumption [of] jurisdiction has not been resolved.
- Union shall lift the picket immediately and remove all obstruction and return to work on Monday, December 1, 1997.
- No retaliatory action shall be undertaken by either party against each other in relation to the strike.[4]

After which, the strike ended and classes resumed. Subsequently, the SOLE issued an Order dated January 19, 1998 assuming jurisdiction over the labor dispute pursuant to Article 263 of the Labor Code. The parties were required to submit their respective position papers within ten (10) days from receipt of said Order.

Pending resolution of the labor dispute before the SOLE, the Board of Directors of SJCI approved on February 22, 1998 a resolution recommending the closure of the high school which was approved by the stockholders on even date. The Minutes[5] of the stockholders' meeting stated the reasons therefor, to wit:

98-3 CLOSURE OF THE SCHOOL

The President, Mr. Rivera, informed the stockholders that the Board at its meeting on February 15, 1998 unanimously approved to recommend to the stockholders the closure of the school because of the irreconcilable differences between the school management and the Academy's Union particularly the safety of our students and the financial aspect of the ongoing CBA negotiations.

After due deliberations, and upon motion of Dr. Jose O. Juliano seconded by Miss Eva Escalano, it was unanimously resolved, as it is hereby resolved, that the Board of St. John Colleges, Inc. be authorized to decide on the terms and conditions of closure, if such decision is made, to the best interest of the stockholders, parents and students.[6]

Thereafter, SJCI informed the Department of Labor and Employment (DOLE), Department of Education, Culture and Sports (DECS), parents, students and the Union of the impending closure of the high school which took effect on March 31, 1998.

Subsequently, some teaching and non-teaching personnel of the high school agreed to the closure. On April 2, 1998, SJCI informed the DOLE that as of March 31, 1998, 51 employees had received their separation compensation package while 25 employees refused to accept the same.

On May 4, 1998, the aforementioned 25 employees conducted a protest action within the perimeter of the high school. The Union filed a notice of strike with the NCMB only on May 7, 1998.

On May 19, 1998, SJCI filed a petition to declare the strike illegal before the NLRC which was docketed as NLRC Case No. RAB-IV-5-10035-98-L. It claimed that the strike was conducted in violation of the procedural requirements for holding a valid strike under the Labor Code.

On May 21, 1998, the 25 employees filed a complaint for unfair labor practice (ULP), illegal dismissal and non-payment of monetary benefits against SJCI before the NLRC which was docketed as RAB-IV-5-10039-98-L. The Union members alleged that the closure of the high school was done in bad faith in order to get rid of the Union and render useless any decision of the SOLE on the CBA deadlocked issues.

These two cases were then consolidated. On January 8, 1999, Labor Arbiter Antonio R. Macam rendered a Decision[7] dismissing the Union's complaint for ULP and illegal dismissal while granting SJCI's petition to declare the strike illegal coupled with a declaration of loss of employment status of the 25 Union members involved in the strike.

Meanwhile, in the proceedings before the SOLE, the Union filed a manifestation[8] to maintain the status quo on March 30, 1998 praying that SJCI be enjoined from closing the high school. It claimed that the decision of SJCI to close the high school violated the SOLE's assumption order and the agreement of the parties not to take any retaliatory action against the other. For its part, SJCI filed a motion to dismiss with entry of appearance[9] on October 14, 1998 claiming that the closure of the high school rendered the CBA deadlocked issues moot. Upon receipt of the Labor Arbiter's decision in the aforesaid consolidated cases, SJCI filed a second motion to dismiss[10] on February 1, 1999 arguing that the case had already been resolved.

Moreover, after the favorable decision of the Labor Arbiter, SJCI resolved to reopen the high school for school year 1999-2000. However, it did not restore the high school teaching and non-teaching employees it earlier terminated. That same school year SJCI opened an elementary and college department.

On July 23, 1999, the SOLE denied SJCI's motions to dismiss and certified the CBA deadlock case to the NLRC. It ordered the consolidation of the CBA deadlock case with the ULP, illegal dismissal, and illegal strike cases which were then pending appeal before the NLRC.

On June 28, 2002, the NLRC rendered judgment reversing the decision of the Labor Arbiter. It found SJCI guilty of ULP and illegal dismissal and ordered it to reinstate the 25 employees to their former positions without loss of seniority rights and other benefits, and with full backwages. It also required SJCI to pay moral and exemplary damages, attorney's fees, and two (2) months summer/vacation pay. Moreover, it ruled that the mass actions conducted by the 25 employees on May 4, 1998 could not be considered as a strike since, by then, the employer-employee relationship had already been terminated due to the closure of the high school. Finally, it dismissed, without prejudice, the certified case on the CBA deadlocked issues for failure of the parties to substantiate their respective positions.

On appeal, the Court of Appeals, in its Decision dated April 22, 2004, affirmed with modification the decision of the NLRC:

WHEREFORE, in light of the preceding discussions, the decision subject of the instant petition is hereby affirmed with a modification that in the computation of backwages, the two month unworked summer vacation should be excluded.

SO ORDERED.[11]

With the denial of its motion for reconsideration, SJCI interposed the instant petition essentially raising two issues: (1) whether it is liable for ULP and illegal dismissal when it closed down the high school on March 31, 1998 and (2) whether the Union is liable for illegal strike due to the protest actions which its 25 members undertook within the high school's perimeter on May 4, 1998.

The petition lacks merit.

Under Article 283 of the Labor Code, the following requisites must concur for a valid closure of the business: (1) serving a written notice on the workers at least one (1) month before the intended date thereof; (2) serving a notice with the DOLE one month before the taking effect of the closure; (3) payment of separation pay equivalent to one (1) month or at least one half (1/2) month pay for every year of service, whichever is higher, with a fraction of at least six (6) months to be considered as a whole year; and (4) cessation of the operation must be bona fide.[12] It is not disputed that the first two requisites were satisfied. The third requisite would have been satisfied were it not for the refusal of the herein private respondents to accept the separation compensation package. The instant case, thus, revolves around the fourth requisite, i.e., whether SJCI closed the high school in good faith.

Whether or not the closure of the high school was done in good faith is a question of fact and is not reviewable by this Court in a petition for review on certiorari save for exceptional circumstances. In fine, the finding of the NLRC, which was affirmed by the Court of Appeals, that SJCI closed the high school in bad faith is supported by substantial evidence and is, thus, binding on this Court. Consequently, SJCI is liable for ULP and illegal dismissal.

The determination of whether SJCI acted in bad faith depends on the particular facts as established by the evidence on record. Bad faith is, after all, an inference which must be drawn from the peculiar circumstances of a case. The two decisive factors in determining whether SJCI acted in bad faith are (1) the timing of, and reasons for the closure of the high school, and (2) the timing of, and the reasons for the subsequent opening of a college and elementary department, and, ultimately, the reopening of the high school department by SJCI after only one year from its closure.

Prior to the closure of the high school by SJCI, the parties agreed to refer the 1997 CBA deadlock to the SOLE for assumption of jurisdiction under Article 263 of the Labor Code. As a result, the strike ended and classes resumed. After the SOLE assumed jurisdiction, it required the parties to submit their respective position papers. However, instead of filing its position paper, SJCI closed its high school, allegedly because of the "irreconcilable differences between the school management and the Academy's Union particularly the safety of our students and the financial aspect of the ongoing CBA negotiations." Thereafter, SJCI moved to dismiss the pending labor dispute with the SOLE contending that it had become moot because of the closure. Nevertheless, a year after said closure, SJCI reopened its high school and did not rehire the previously terminated employees.

Under these circumstances, it is not difficult to discern that the closure was done to defeat the parties' agreement to refer the labor dispute to the SOLE; to unilaterally end the bargaining deadlock; to render nugatory any decision of the SOLE; and to circumvent the Union's right to collective bargaining and its members' right to security of tenure. By admitting that the closure was due to irreconcilable differences between the Union and school management, specifically, the financial aspect of the ongoing CBA negotiations, SJCI in effect admitted that it wanted to end the bargaining deadlock and eliminate the problem of dealing with the demands of the Union. This is precisely what the Labor Code abhors and punishes as unfair labor practice since the net effect is to defeat the Union's right to collective bargaining.

However, SJCI contends that these circumstances do not establish its bad faith in closing down the high school. Rather, it claims that it was forced to close down the high school due to alleged difficult labor problems that it encountered while dealing with the Union since 1995, specifically, the Union's illegal demands in violation of R.A. 6728 or the "Government Assistance to Students and Teachers in Private Education Act." Under R.A. 6728, the income from tuition fee increase is to be used as follows: (a) 70% of the tuition fee shall go to the payment of salaries, wages, allowances, and other benefits of teaching and non-teaching personnel, and (b) 20% of the tuition fee increase shall go to the improvement or modernization of the buildings, equipment, and other facilities as well as payment of the cost of operations. However, sometime in 1995, SJCI claims that it was forced to give-in to the demands of the Union by allocating 100% of the tuition fee increase for teachers' benefits even though the same was in violation of R.A. 6728 in order to end the on-going strike of the Union and avoid prolonged disturbances of classes. Subsequently or during the school year 1996-1997, SJCI claims that it obtained an approval from the DECS for a 30% tuition fee increase, however, only 10% was implemented. Despite this, the Union persisted in making illegal demands by filing a complaint before the DOLE claiming that they were entitled to the unimplemented 20% tuition fee increase. Finally, during the collective bargaining negotiations in 1997, the Union again made economic demands in excess of the 70% of the tuition fee increase under R.A. 6728. As a result, SJCI claims it had no choice but to refuse the Union's demands which thereafter led to the holding of a strike on November 10, 1998. It argues that the Union's alleged illegal demands was a valid justification for the closure of the high school considering that it was financially incapable of meeting said demands and that it would violate R.A. 6728 if it gave in to said demands which carried corresponding penalties to be imposed by the DECS.

We are not persuaded.

These alleged difficult labor problems merely show that SJCI and the Union had disagreements regarding workers' benefits which is normal in any business establishment. That SJCI agreed to appropriate 100% of the tuition fee increase to the workers' benefits sometime in 1995 does not mean that it was helpless in the face of the Union's demands because neither party is obligated to precipitately give in to the proposal of the other party during collective bargaining.[13] If SJCI found the Union's demands excessive, its remedy under the law is to refer the matter for voluntary or compulsory dispute resolution. Besides, this incident which occurred in 1995, could hardly establish the good faith of SJCI or justify the high school's closure in 1998.

Anent the Union's claim for the unimplemented 20% tuition fee increase in 1996, suffice it to say that it is erroneous to rule on said issue since the same was submitted before the Voluntary Arbitrator[14] and is not on appeal before this Court.[15] Besides, by referring the labor dispute to the Voluntary Arbitrator, the parties themselves acknowledged that there is a sufficient mechanism to resolve the said dispute. Again, we fail to see how this alleged labor problem in 1996 shows the good faith of SJCI in closing the high school in 1998.

With respect to SJCI's claim that during the 1997 CBA negotiations the Union made illegal demands because they exceeded the 70% limitation set by R.A. No. 6728, it is important to note that the alleged illegality or excessiveness of the Union's demands were the issues to be resolved by the SOLE after the parties agreed to refer the said labor dispute to the latter for assumption of jurisdiction. As previously mentioned, the SOLE certified the case to the NLRC, which on June 28, 2002, rendered a decision finding that there was insufficient evidence to determine the reasonableness of the Union's proposals. The NLRC found that SJCI failed to establish that the Union's demands were illegal or excessive. A review of the records clearly shows that the Union submitted a position paper detailing its demands in actual monetary terms. However, SJCI failed to establish how and why these demands were in excess of the limitation set by R.A. 6728. Up to this point in the proceedings, it has merely relied on its self-serving statements that the Union's demands were illegal and excessive. There is no basis, therefore, to hold that the Union ever made illegal or excessive demands.

At any rate, even assuming that the Union's demands were illegal or excessive, the important and crucial point is that these alleged illegal or excessive demands did not justify the closure of the high school and do not, in any way, establish SJCI's good faith. The employer cannot unilaterally close its establishment on the pretext that the demands of its employees are excessive. As already discussed, neither party is obliged to give-in to the other's excessive or unreasonable demands during collective bargaining, and the remedy in such case is to refer the dispute to the proper tribunal for resolution. This was what SJCI and the Union did when they referred the 1997 CBA bargaining deadlock to the SOLE; however, SJCI pre-empted the resolution of the dispute by closing the high school. SJCI disregarded the whole dispute resolution mechanism and undermined the Union's right to collective bargaining when it closed down the high school while the dispute was still pending with the SOLE.

The Labor Code does not authorize the employer to close down the establishment on the ground of illegal or excessive demands of the Union. Instead, aside from the remedy of submitting the dispute for voluntary or compulsory arbitration, the employer may file a complaint for ULP against the Union for bargaining in bad faith. If found guilty, this gives rise to civil and criminal liabilities and allows the employer to implement a lock out, but not the closure of the establishment resulting to the permanent loss of employment of the whole workforce.

In fine, SJCI undermined the Labor Code's system of dispute resolution by closing down the high school while the 1997 CBA negotiations deadlock issues were pending resolution before the SOLE. The closure was done in bad faith for the purpose of defeating the Union's right to collective bargaining. Besides, as found by the NLRC, the alleged illegality and excessiveness of the Union's demands were not sufficiently proved by SJCI. Even on the assumption that the Union's demands were illegal or excessive, SJCI's remedy was to await the resolution by the SOLE and to file a ULP case against the Union. However, SJCI did not have the power to take matters into its own hands by closing down the school in order to get rid of the Union.

SJCI next argues that the Union unduly endangered the safety and well-being of the students who joined the valid strike held on November 10, 1997, thus it closed down the high school on March 31, 1998. It claims that the Union coerced the students to join the protest actions to pressure SJCI to give-in to the demands of the Union.

However, SJCI provided no evidence to substantiate these claims except for its self-serving statements in its position paper before the Labor Arbiter and pictures belatedly attached to the instant petition before this Court.

However, the pictures were never authenticated and, on its face, only show that some students watched the Union members while they conducted their protest actions. More importantly, it is not true, as SJCI claims, that the Union admitted that it coerced the students to join the protest actions and recklessly placed the students in harm's way. In its Reply^[16] to SJCI's position paper before the Labor Arbiter, the Union categorically denied that it put the students in harm's way or pressured them to join the protest actions. Given this denial by the Union, it was incumbent upon SJCI to prove that the students were actually harmed or put in harm's way and that the Union coerced them to join the protest actions. The reason for this is that the employer carries the burden of proof to establish that the closure of the business was done in good faith. In the instant case, SJCI had the burden of proving that, indeed, the closure of the school was necessary to uphold the safety and well-being of the students.

SJCI presented no evidence to show that the protest actions turned violent; that the parents did not give their consent to their children who allegedly joined the protest actions; that the Union did not take the necessary steps to protect some of the students who allegedly joined the same; or that the Union forced or pressured the said students to join the protest actions. Moreover, if the problem was the endangerment of the students' well-being due to the protest actions by the Union, then the natural response would have been to immediately go after the Union members who allegedly coerced the students to join the protest actions and thereby endangered the students' safety. But no such action appears to have been undertaken by SJCI. There is even no showing that it prohibited its students from joining the protest actions or informed the parents of the activities of the students who allegedly joined the protest actions. This raises serious doubts as to whether SJCI was really looking after the welfare of its students or merely using them as a scapegoat to justify the closure of the school and thereby get rid of the Union.

Even assuming *arguendo* that the safety and well-being of some of the students who allegedly joined the protest actions were compromised, still, the closure was done in bad faith because it was done long after the strike had ended. Thus, there is no more danger to the students' well-being posed by the strike to speak of. It bears stressing that the closure was implemented on March 31, 1998 but the risk to the safety of the students had long ceased to exist as early as November 28, 1997 when the parties agreed to refer the labor dispute to the SOLE, thus, betraying SJCI's claim that it wanted to safeguard the interest of the students.

Furthermore, if SJCI was after the interests of the students, then it should not have closed the school because the parents and the students were vehemently opposed to the same, as shown by the letter dated March 9, 1998 written by Mr. Teofilo G. Mamplata, President of the Parents' Association, and addressed to the Secretary of DECS, to wit:

As per letters sent recently by the school Management to the teachers and parents, notifying of its closure on March 31, 1998, as decided upon by its Board of Trustees and Stockholders on February 22, 1998 no reasons were stated to justify said decision and action which will definitely affect adversely and to the detriment of the plight of parents, teachers, students and other personnel of the school.

In this connection and due to the urgency of the matter, we hereby reiterate our appeal with our prayer that the management and Board of Trustees of St. John Academy of Calamba, Laguna, be stopped from pursuing their most sudden, unfair, unfavorable and detrimental decision and action, and if warranted, sanctions be imposed against the erring party.^[17] (*Italics supplied*)

Along the same vein, the parents voiced out their strong objections to the proposed closure of the school, to wit:

PAHAYAG NG PAGTUTOL

Kami, mga magulang, mag-aaral, guro, propesyonal, manggagawa at iba pang sector ng pamayanan sa bayan ng Calamba, Laguna ay nagpapahayag ng pagtutol sa hindi makatarungang pagsasara ng paaralang SAINT

JOHN ACADEMY. Ang kagyat na pagsasara nito ay nagdulot ng malaking suliranin sa 2,300 estudyante (incoming 2nd year - 4th year), kagaya ng mga sumusunod:

- Kakaunti ang bilang ng paaralan sa Calamba;
- Walang paaralan na basta tatanggap sa 700 incoming third year at 800 incoming fourth year;
- Ang lahat ng "HONOR STUDENTS" ay mababaliwala ang kanilang pinagsikapan;
- Negatibo ang epekto sa moral ng mga batang estudyante ang pagkakaroon ng physical and moral displacement dahil sa biglaang pagsasara nito;
- Hindi lahat ng magulang ay kakayaning bumayad ng mataas na tuition fee sa ibang paaralan;
- Ang mataas na kalidad ng turo ng mga guro sa paaralang ito ay mahirap pantayan; at
- HIGIT NA LIGTAS SA SAKUNA ANG AMING MGA ANAK sa nasabing paaralan.

Bilang pagtutol sa pagsasara ng SAINT JOHN ACADEMY ay inilalagda namin ang aming pangalan sa libis nito. (56 signatures follow)[18] *[Italics supplied]*

Worth noting is the belief of the parents that the safety of their children was properly secured in said high school. This was obviously in response to the claim of SJCI that the school was being closed, inter alia, for the safety and well-being of the students. As correctly observed by the CA:

The petitioner urges this Court to believe that they closed down the school out of their sheer concern for the students, some of whom have started to sympathize and participate in the union's cause.

As intimated by the private respondent, however, the petitioner itself said that the closing down of the school was, inter alia, "because of irreconcilable differences between the school management and the Academy's Union." Indeed, this translates into an admission that the cessation of business was neither due to any patrician nor noble objective of protecting the studentry but because the administration no longer wished to deal with respondent Union.

We are further tempted to doubt the verity of the petitioner's claim that in deciding to shut down the school, it only had the welfare of its students in mind. There is evidence on record which hints otherwise. Apparently, the parents of the students were vehemently against the idea of closing down the academy as this would be, as it later did prove, more detrimental to the studentry. No less than Mr. Teofilo Mamplata, President of St. John Academy Parents Association of Calamba expressed the groups' aversion against such move and even wrote a letter to the then Secretary of the Department of Education seeking immediate intervention to enjoin the school from closing. This is an indication that the parents were unanimous in their sentiment that the shutdown would result in inconvenience and displacement of the students who had already been halfway through elementary school and high school. It turned out some were even forced to pay higher tuition fees just so they would be admitted in other academies.[19] *(Italics supplied)*

To recapitulate, there is insufficient evidence to hold that the safety and well-being of the students were endangered and/or compromised, and that the Union was responsible therefor. Even assuming arguendo that the students' safety and well-being were jeopardized by the said protest actions, the alleged threat to the students' safety and well-being had long ceased by the time the high school was closed. Moreover, the parents were vehemently opposed to the closure of the school because there was no basis to claim that the students' safety was at risk. Taken together, these circumstances lead to the inescapable conclusion that SJCI merely used the alleged safety and well-being of the students as a subterfuge to justify its actions.

SJCI next contends that the subsequent reopening of the high school after only one year from its closure did not

show that the previous decision to close the high school was tainted with bad faith because the reopening was done due to the clamor of the high school's former students and their parents. It claims that its former students complained about the cramped classrooms in the schools where they transferred.

The contention is untenable.

First, the fact that after one year from the time it closed its high school, SJCI opened a college and elementary department, and reopened its high school department showed that it never intended to cease operating as an educational institution. Second, there is evidence on record contesting the alleged reason of SJCI for reopening the high school, i.e., that its former students and their parents allegedly clamored for the reopening of the high school. In a letter[20] dated December 15, 2000 addressed to the NLRC, which has never been rebutted by SJCI, Mr. Mamplata, stated that -

Para po sa inyong kabatiran xxx isinara nila ang paaralang ito dahil sa mga nag-alsang guro.

Sa ganitong kalagayan kaming pamunuan at kasapi ng PTA ay nakipag-usap sa pamunuan ng paaralang ito na huwag naming isara dahil malaking epekto ito sa aming mga anak dahil noon ay kalagitnaan pa lamang ng pasukan. Sa kabila ng pakiusap naming ito ay hindi kami pinakinggan at sa halip ay tuluyang isinara. Sa kanilang ginawang ito marami sa mga bata ang hindi nakapasok sa ibang paaralan at ang iba naman ay nadoble ang pinagbayaran sa matrikula. Sa kabuuan nito ay malaking paghirap ang ginawa nila sa aming mga magulang at anak na nag-aaral sa paaralang ito dahil lamang sa panggigipit sa mga gurong walang tanging hangarin kundi bayaran sila ng naaayon sa itinakda ng batas.

Sa taong 1999-2000 ay muling binuksan ang paaralang ito na sabi nila ay sa kahilingan ng PTA. Alin kayang PTA ang tinutukoy nila. Paanong magkakaroon ng PTA samantalang ito ay nakasara at kami ang PTA bago ito isinara.

Kaya po pinaabot naming sa inyong kaalaman na kaming PTA ng paaralang (St. John Academy) ito ay hindi kailanman humiling sa kanila na pamuling buksan ito.[21] (Italics supplied)

Finally, when SJCI reopened its high school, it did not rehire the Union members. Evidently, the closure had achieved its purpose, that is, to get rid of the Union members.

Clearly, these pieces of evidence regarding the subsequent reopening of the high school after only one year from its closure further show that the high school's closure was done in bad faith.

Lastly, SJCI asserts that the strike conducted by the 25 employees on May 4, 1998 was illegal for failure to take the necessary strike vote and give a notice of strike. However, we agree with the findings of the NLRC and CA that the protest actions of the Union cannot be considered a strike because, by then, the employer-employee relationship has long ceased to exist because of the previous closure of the high school on March 31, 1998.

In sum, the timing of, and the reasons for the closure of the high school and its reopening after only one year from the time it was closed down, show that the closure was done in bad faith for the purpose of circumventing the Union's right to collective bargaining and its members' right to security of tenure. Consequently, SJCI is liable for ULP and illegal dismissal.

WHEREFORE, the petition is DENIED. The April 22, 2004 Decision and April 15, 2005 Resolution of the Court Appeals in CA-G.R. SP No. 74519 are AFFIRMED.

SO ORDERED.

Austria-Martinez and Chico-Nazario, JJ., concur.

Panganiban, C.J., (Chairperson), joins the opinion of Justice Callejo, Sr.

Callejo, Sr., please see concurring and dissenting opinion.

[1] Rollo, pp. 56-66. Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Salvador J. Valdez, Jr. and Arsenio J. Magpale.

[2] Id. at 114-129. Penned by Commissioner Ireneo B. Bernardo and concurred in by Commissioner Lourdes C. Javier.

[3] Id. at 68-71. Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Martin S. Villarama, Jr. and Regalado E. Maambong.

[4] CA rollo, p. 224.

[5] Id. at 222-223.

[6] Id. at 223.

[7] Rollo, pp. 99-107.

[8] NLRC Record of Certified Case, pp. 130.

[9] Id. at 174.

[10] Id. at 233.

[11] Rollo, p. 65.

[12] Mobil Employees Association v. National Labor Relations Commission, G.R. No. 79329, March 28, 1990, 183 SCRA 737, 745.

[13] General Milling Corporation v. Court of Appeals, G.R. No. 146728, February 11, 2004, 422 SCRA 514, 525.

[14] The records show that this case was filed with the NCMB, Voluntary Arbitration, Regional Office No. IV, Quezon City and before VA Reynaldo Garcia but the records do not reveal the docket number of said case.

[15] Parenthetically, the contention of the Union in the voluntary arbitrator case is, on its face, not totally devoid of merit. Basically, the Union argued that the 20% refund to the parents/students is contrary to SJCI's past practice of giving the full value of the tuition fee increase to its workers. The Union has made a case for diminution of workers benefits based on an alleged past practice of the company. Also, if the law unequivocally allocates the tuition fee increase for the benefit of the workers, then the Union might have reason to complain that the 20% refund of the tuition fee increase to the parents/students was illegal. In fine, it is difficult to resolve the merits of the voluntary arbitrator case on the basis of the position papers only since neither party was able to rebut the allegations of the other party. No replies appear to have been filed or the replies of both parties were not attached by SJCI to its petition before the CA. This is the problem of delving into the merits of this voluntary arbitrator case which is a non-issue in the instant case.

[16] Records of NLRC NCR CA No. 018460-99 (R2), Union's reply to SJCI's position paper, pp. 1-2.

[17] Rollo, p. 281.

[18] Id. at 282-283.

[19] Id. at 62-63.

[20] Id. at 284.

[21] Id.

CONCURRING AND DISSENTING OPINION

CALLEJO, SR., J.:

I vote to grant the petition.

As a rule, the findings of the NLRC, as affirmed by the CA, are conclusive on this Court. In this case, however, the findings of the Labor Arbiter are inconsistent with the findings of the NLRC and the appellate court. Thus, the Court, in the exercise of its equity jurisdiction, may look into the records of the case and review the questioned findings.[1] Indeed, while only legal issues may be raised under Rule 45 of the Rules of Court, the Court is not precluded from resolving factual issues, particularly if the findings of the Labor Arbiter are inconsistent with those of the NLRC and the CA, and in order to give justice to the litigants.[2]

The records show that the parties had agreed to refer their dispute to the SOLE for resolution and that the latter assumed jurisdiction over the dispute. The parties had also agreed to maintain the status quo and not to undertake any retaliatory action against the other while the dispute was pending before the SOLE. Moreover, during the conciliation proceedings, the parties were prohibited from doing any act which may disrupt or impede the early settlement of the dispute.

In case of a deadlock because of the intractable stance of the parties, they have two alternatives: (1) request the SOLE to settle the dispute; or (2) request the SOLE to certify the dispute to the NLRC for resolution. However, petitioner unilaterally abandoned the conciliation process and decided to close the school effective March 30, 1998, thereby aborting the conciliation process and depriving the SOLE of the opportunity to exercise his authority to resolve the dispute or certify the dispute to the NLRC. In the process, petitioner opted to terminate the employment of its teaching and non-teaching personnel who objected to the closure of the school, on their claim that the same was but a subterfuge resorted to by petitioner to coerce them into abandoning their demands for monetary benefits.

I agree with petitioner's contention that, under Article 283 of the Labor Code, it has the right to close the school either partially or totally. Article 283 of the Labor Code provides:

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 on the workers and the Ministry 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 his one (1) month pay or 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 (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.

Case law is that, if the employer decides to close his business, the SOLE cannot compel him to enter into a new CBA with the Union, for to do so would be to compel the employer to continue the business when he or she had already decided to close the establishment, and that would be judicial tyranny. The rule, however, does not apply if the employer acted in bad faith in closing the school.

Under the law, a closure or cessation of business operations, as an authorized ground of terminating employment, is not limited to those resulting from business losses or reverses. In fact, under Article 283 of the Labor Code, the payment of separation pay to employees terminated because of closure not due to losses is allowed. This clearly implies that an employer may close or cease business operations even if not suffering from serious losses or financial reverses.[3] Recognized as a valid exercise of management prerogative,[4] the determination of whether to cease or suspend operations is left to the better judgment of the employer who, in the regular conduct of business, is accorded rights and privileges to assure self-determination, independence and reasonable return of capital.[5] The Labor Code and its implementing rules and regulations do not vest managerial authority in the labor arbiters or in the different divisions of the NLRC or in the courts.[6] Even as the law is solicitous to the welfare of the employees, it also protects the right of an employer in the exercise of what are clearly management prerogatives.[7] It would, indeed, be stretching the intent and spirit of the law to unjustly meddle with the discretion of the employer in closing or ceasing business operations or undertaking just because it is not suffering from any loss or simply because it has to maintain its workers for continued employment;[8] such an act would be tantamount to a taking of property without due process of law.[9]

While the law acknowledges the management prerogative of closing one's business, it does not, however, allow the employer to disregard the basic requirements of the law;[10] hence, under Article 283 of the Labor Code, three requirements are necessary: (a) service of a written notice to the employees and to the DOLE at least one (1) month before the intended date thereof; (b) payment to the employees of termination pay amounting to at least one-half (1/2) month pay for every year of service, or one (1) month pay, whichever is higher; and (c) the cessation of business must be bona fide in character.[11]

In the case at bar, there is no question that petitioner had complied with the first two requisites. More than a month prior to March 31, 1998, it had informed both the DECS and the DOLE officials of its decision to cease the operations of the school. Similar notices were furnished to the terminated employees. Also, records reveal that, except as to the 25 Union members, all of the dismissed personnel received their two-month summer/vacation pay and 13[th] month pay in addition to the separation pay required by law.

Thus, the sole and essential query to be resolved is whether petitioner had exercised in good faith its management prerogative when it caused the closure of the school, which we answer in the affirmative.

The burden of proving, with sufficient and convincing evidence, that closure or suspension of business operations or undertaking is bona fide falls upon the employer.[12] In this jurisdiction, the standing rule is that an employer can lawfully close shop anytime so long as the cessation or withdrawal was veritably in pursuance of the employer's business interest and not for the purpose of defeating or circumventing the tenurial rights of the employees embodied in the Labor Code and its implementing rules and regulations, as well as in the collective and individual agreements.[13] Conversely, the State is bound to intervene where it is shown that the closure is motivated not by a desire to prevent further losses but to discourage the workers from organizing themselves into a union for more effective negotiations with management.[14]

In this case, the NLRC and the CA declared that petitioner was guilty of illegal dismissal for lack of genuine intent to close and cease the operations of the school. Both viewed that such closure was just a scheme of the petitioner designed to derail and frustrate the rights of respondent and its members to self-organization and

collective bargaining:

In resolving whether the cessation of operations of St. John was done bona fide, it is imperative that we turn to the facts which are established by evidence. Good faith, after all, is an inference which must be drawn from circumstances peculiar to each and every case.

The petitioner urges this Court to believe that they closed down the school out of their sheer concern for the students, some of whom have started to sympathize and participate in the union's cause.

As intimated by the private respondent, however, the petitioner itself said that the closing down of the school was, inter alia, "because of irreconcilable differences between school management and the Academy's Union." Indeed, this translates into an admission that the cessation of business was neither due to any patrician nor noble objective of protecting the studentry but because the administration no longer wished to deal with the respondent union.

We are further tempted to doubt the verity of the petitioner's claim that in deciding to shut down the school, it only had the welfare of its students in mind. There is evidence on record which hints otherwise. Apparently, the parents of the students were vehemently against the idea of closing down the academy as this would be, as it later did prove, more detrimental to the studentry. No less than Mr. Teofilo Mamplata, President of St. John Academy Parents Association of Calamba expressed the group's aversion against such move and even wrote a letter to the then Secretary of the Department of Education seeking immediate intervention to enjoin the school from closing. This is an indication that the parents were unanimous in their sentiment that the shutdown would result in inconvenience and displacement of the students who had already been halfway through elementary school and high school. It turned out some were even forced to pay higher tuition fees just so they would be admitted in other academies.

The said leader of the parent's association likewise wrote a letter to the NLRC explaining that contrary to the school's misrepresentations, the said association had nothing to do with the re-opening of the Academy:

Para po sa inyong kabatiran xxx isinara nila ang paaralang ito dahil sa mga nag-alsang mga guro.

Sa ganitong kalagayan kaming mga pamunuan at kasapi ng PTA ay nakipag-usap sa pamunuan ng paaralang ito na huwag namang isara dahil malaking epekto ito sa aming mga anak dahil noon ay kalagitnaan pa lamang ng pasukan. Sa kabila ng pakiusap naming ito ay hindi kami pinakinggan at sa halip ay tuluyang isinara. Sa kanilang ginawang ito marami sa mga bata ang hindi nakapasok sa ibang paaralan at ang iba naman ay nadoble ang pinagbayaran sa matrikula. Sa kabuuan nito ay malaking paghirap ang ginawa nila sa aming mga magulang at anak na nag-aaral sa paaralang ito dahil lamang sa panggigipit sa mga gurong walang tanging hangarin kundi bayaran sila ng naaayon sa itinakda ng batas.

Sa taong 1999-2000 ay muling binuksan ang paaralang ito na sabi nila ay sa kahilingan ng PTA. Alin kayang PTA ang tinutukoy nila. Paanong magkakaroon ng PTA samantalang ito ay nakasara at kami ang PTA noon bago ito isinara.

Kaya po pinaaabot namin sa inyong kaalaman na kaming PTA ng paaralang (St. John Academy) ito ay hindi kailanman humiling sa kanila na muling buksan ito."

Indeed, bad faith is made more manifest in the subsequent re-opening of St. John Academy. The records bear pictures and other documents proving that the said academy was inviting enrollees and accepting reservations for the following school year. Contrary to the insinuations of the petitioner, the re-opening was not exclusively intended for its college department. As photographs of banners for the Academy would show, the school was also wooing enrollees for its elementary and secondary departments for schoolyear 1999-2000.

It bears stressing the ratiocinations conveyed by the public respondent on the matter: The records show that in a meeting held on February 22, 1998, the stockholders of St. John Colleges, Inc., approved the recommendation

of the board of directors to close the Academy. However, barely a month after the said stockholders' meeting, the Academy's president prepared an application for tuition fee increase which he subscribed under oath on March 19, 1998. Moreover, in an "announcement" dated April 21, 1998 or only three (3) weeks after the closure of the Academy on March 31, 1998, the president of the Academy announced the opening of the college department for the school year 1998-1999.

While the Academy denies that it actually opened for school year 1998-1999 what is material is that while the Academy announced its closure on March 31, 1998, it was nevertheless making preparations for school year 1998-1999 and in fact even admitted opening classes for school year 1999-2000. Considering the circumstances, it cannot be said that there was ever any genuine intent on the part of the Academy to close and cease operations. It is clear that the supposed closure of the Academy was merely feigned and made in bad faith. Its purpose was to conveniently effect the termination of employment of the Union members without any just or authorized cause. xxx[15]

However, the findings of the NLRC, which the CA affirmed, are contrary to the evidence on record.

A thorough examination of the pleadings submitted, as well as a calibration of documentary evidence adduced by the parties, will readily show that the closure of the school was not a product of sheer whims and caprices of petitioner. Rather, it was the inevitable yet bitter pill which an employer had to swallow in order to save a well-founded business interest. Circumstances that transpired prior to the eventual closure of the school show that petitioner was already beset with difficult labor problems since 1995. This is evident in the letter[16] of Rivera dated March 18, 1998 addressed to Mrs. Armamento, which undisputedly narrated the factual antecedents of the case as follows: respondent went on strike in 1995; to avoid prolonged disturbance of classes, petitioner was forced to give in to its demands by appropriating 100% of tuition fee increase (70% went to their basic pay and 30% to other benefits); when petitioner's application for a 30% tuition fee increase for SY 1996-1997 was approved, the members of respondent filed a complaint before the DOLE claiming entitlement to 70% of the 30% tuition fee hike, despite the fact that only 10% thereof was implemented; finally, during the 1997 CBA negotiations, respondent persisted in soliciting economic demands that were in excess of the 70% limitation set by R.A. 6728 (otherwise known as Government Assistance To Students and Teachers In Private Education Act) for teaching and non-teaching personnel. On top of all these, respondent Union encouraged the students to join protest rallies, participate in meetings initiated by Union officers, and join non-school activities like walking from the school to the DOLE regional office in Mayapa, Laguna.

The records show that, sometime in July 1996, respondent wrote petitioner requesting for the distribution of incremental proceeds, including backwages from June 1, 1996, equivalent to 70% of the 30% approved tuition fee increase for SY 1996-1997. However, petitioner only released the incremental proceeds equivalent to 70% of the 10% tuition fee hike including backwages because it refunded to parents/students the collected 20% approved tuition fee increase. Nevertheless, respondent then argued that such refund was contrary to the normal standard procedure, bereft of legal basis, capricious and done with malicious intent constituting ULP. Before the Voluntary Arbitrator, the issue posed was whether the refund of the 20% tuition fee increase was valid and within the bounds of the existing CBA between the parties.[17] In answering the query, the Court finds the following position of petitioner tenable:

The [petitioner] applied for 30% increase in tuition [fee] in anticipation of a bigger increase in wage to be ordained by the government. When the 30% increase in tuition [fee] was implemented in June 1996, an announcement was made to the effect that the implementation is subject to the condition that if the minimum wage of the teachers and employees [of SJC] is attained by any portion of the 30% the remaining balance shall be returned to the parents/students. The real intention of the [petitioner] in applying for a 30% increase in tuition [fee] is to have management flexibility in the school operations and not to collect the highest approved

rate but rather to set a contingent fund for the expected salary/wage increase to be mandated by the government
xxx

After ascertaining that the minimum wage of teachers and employees is sufficiently covered by only 10% increase in tuition [fee], the management refunded the excess to the parents/students who made full payment [at] the start of enrollment. These parents/students represent a less than 10% of the entire student population. The rest who availed of the installment basis were adjusted xxx

The teachers and employees who are Union members were aware of the whole processes. That they can not expect to benefit from the 30% increase in tuition [fee] because the implementation of the increase was only 10% conditioned on their minimum wage. They were a part of the whole machinery of informing the parents and students of the increase in tuition [fee] and the possibility of refund in case the minimum wage is attained by any portion of the 30% increase in tuition fees. They were a party to the public announcement posted on the Bulletin Board. They cannot now claim ignorance of the entire processes because they were parties to the entire processes and helped the respondents convince the parents/students to conditionally pay the increase in tuition fees.[18]

Neither can the deadlock in the 1997 CBA negotiations be considered as the proximate cause behind the closure of the school. For sure, it was the tipping point to the cessation of the school's operations, but not the sole and only cause. Jurisprudence dictates that the crucial question whether or not a party has met its statutory duty to bargain in good faith typically turns on the facts of the individual case. There is no per se test of good faith in bargaining. Good faith or bad faith is an inference to be drawn from the facts. The effect of an employer's or a union's actions individually is not the test, but the impact of all such occasions or actions considered as a whole.[19] Also, it must be re-emphasized that it is not obligatory upon either side of a labor controversy to precipitately accept or agree to the proposals of the other.[20] Indeed, the duty to bargain "does not compel any party to agree to a proposal or to make any concession"[21] as failure of the parties to reach an accord is not equivalent to ULP under Article 248(g) for violation of the duty to bargain collectively.[22] The adamant insistence on a bargaining position to the point where the negotiations reach an impasse does not automatically establish bad faith. It cannot be inferred from a party's insistence to include or exclude a particular substantive provision unless it concerns matters which are trivial or patently tolerable. In such a case, a party has the right to insist on its position to the point of stalemate.[23]

Applying the foregoing rules in this case, I agree with petitioner's stance that the NLRC, including the CA, erred when it appreciated out of context the content of the Minutes of the February 22, 1998 meeting. In the Minutes, the stockholders unanimously agreed for the closure of the school because of the irreconcilable differences between school management and the Union. It must be noted, however, that the "irreconcilable differences" did not arise from the refusal of petitioner to bargain collectively or from its financial incapacity to meet respondent's demands; on the contrary, it was brought about by the fact that members of respondent Union had historically been resolute in their refusal to settle for less than what they claimed despite its direct violation of the provisions of R.A. 6728. Certainly, an illegal demand cannot be a source of any right. It cannot, in all instances, be granted and imposed upon a party on the other side of the bargaining table.

Section 5(2) of R.A. 6728 provides:

SEC. 5. Tuition Fee Supplement for Students in Private High School - xxx

(2) Assistance under paragraph (1), subparagraphs (a) and (b), shall be granted and tuition fees under subparagraph (c) may be increased, on the condition that seventy percent (70%) of the amount subsidized allotted for tuition fee or of the tuition fee increases shall go to the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel except administrators who are principal stockholders of

the school, and may be used to cover increases as provided for in the collective bargaining agreements existing or in force at the time when this Act is approved and made effective: Provided, That government subsidies are not used directly for salaries of teachers of non-secular subjects. At least twenty percent (20%) shall go to the improvement or modernization of buildings, equipment, libraries, laboratories, gymnasias and similar facilities and to the payment of other costs of operation. xxx (Emphasis supplied)

The foregoing provision allows a tuition fee increase only under the condition that at least 70% thereof shall be disbursed as salaries, wages, allowances and other benefits for teaching and non-teaching personnel. The law imposes this requirement without exceptions or qualifications.[24] On the other hand, the remaining 30% is exclusively intended for the use of the private educational institution. Thus, in *CIM vs. CIM Employee's Union*,[25] we held that the mandatory share of an educational institution in the SSS, Medicare and Pag-ibig premiums may only be charged against the 70% incremental tuition fee increase authorized under Sec. 5, par. (2), of R.A. 6728 and not to the 30% share of the employer:

xxx [S]alaries, wages, allowances and other benefits of teaching and non-teaching personnel are to be charged against the seventy percent (70%) incremental tuition fee increase. SSS, Medicare and Pag-Ibig fall under the category of "other benefits," hence, may very well be charged against the seventy percent (70%) incremental tuition fee increase which after all is for the benefit of petitioners' teaching and non-teaching personnel.

The law speaks of payment of "salaries, wages, allowances and other benefits." There is no specific prohibition against charging the employer's share to the incremental tuition fee increase. Hence, it cannot properly be said that the SSS, Medicare and Pag-Ibig premiums could be charged against the seventy percent (70%) incremental tuition fee increase but the employer's share of the contribution should be deducted from the remaining thirty percent (30%) or elsewhere. This would seem absurd. As we can see it, the employer's share in the SSS, Medicare and Pag-Ibig premiums is deemed integrated in the amount to be allocated for these benefits from the seventy percent (70%) incremental tuition fee increase. *Ubi lex non distinguit, nec nos distinguere debemus*. Where the law does not distinguish, courts should not distinguish. For sure, the seventy percent (70%) is not to be delivered whole to the employees but packaged in the form of salaries, wages, allowances, and other benefits which may be in the form of SSS, Medicare and Pag-Ibig premiums, all intended for the benefit of the employees. In other words, the private educational institution concerned has the discretion on the disposition of the seventy percent (70%) incremental tuition fee increase. It enjoys the privilege of determining how much increase in salaries to grant and the kind and amount of allowances and other benefits to give. The only precondition is that seventy percent (70%) of the incremental tuition fee increase goes to the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel.

On the other hand, the remaining thirty percent (30%) is intended, quite obviously, for the use of the educational institution itself, otherwise, it will be a diminution of the aliquot share of the employer which is specifically intended under Sec. 5, par. (2), of RA 6728, "for the improvement or modernization of buildings, equipment, libraries, laboratories, gymnasias and similar facilities and to the payment of other costs of operation." Plainly, SSS, Medicare and Pag-Ibig premiums cannot be lumped in this category.

x x x x

It may be noted in RA 6728 that there is no provision for return on investments similar to that in PD 451. Also, RA 6728 does not set a maximum limit as to the amount to be used in the improvement or modernization of buildings, equipment, libraries, laboratories, gymnasias and other similar facilities, and to the payment of other costs of operation. What it provides instead is a minimum which is twenty percent (20%). Therefore, not only twenty percent (20%) of the incremental tuition fee increase but the entire thirty percent (30%) balance from the incremental tuition fee increase is allocated for the improvement or modernization of buildings, equipment, libraries, laboratories, gymnasias and other similar facilities and to the payment of other costs of operation thus leaving nothing for return on investments, which would not be attractive to educational institutions; more so, if

they would still be required to charge their share in the SSS, Medicare and Pag-ibig premiums from sources other than the seventy percent (70%) incremental tuition fee increase.[26]

Verily, respondent's economic demands cannot be the subject of any strike or mass action simply because these demands are against the law. There is nothing to negotiate on because the law itself imposes that only 70% can be used to pay salaries and other benefits of the employees.

Even the NLRC had recognized the mandatory nature of Section 5(2) of R.A. 6728 when it held that the amount equivalent to 70% of the tuition fee increase is a limitation only on the disposition of the tuition fee increase, that is, it should automatically go to the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel. It added though that it is not a limitation on the amount of benefits that the parties may negotiate under the CBA. Thus, if there are other sources of funding, even in the absence of any tuition fee increase, the said increase in the amount of benefits may still be allowed.[27]

In sum, the NLRC ruled that even if there is no tuition fee increase, there could be an increase in salary and other employee benefits if the employer has other source/s of funding.[28] Despite this opinion, however, as established by the LA and not opposed by the NLRC and respondent, petitioner had no other source/s of funding aside from the tuition fee increase. Until the case reached this Court, respondent failed to adduce clear and convincing proof to show that petitioner is in fact engaged in any form of business from which it can earn substantial income, or at the very least, additional source of income to support the increase intractably demanded by its employees.

Even if petitioner failed to include in the discussion portion of its petition for certiorari before the CA the applicability of R.A. 6728, it nonetheless raised this issue in the synopsis or summary of the case.[29] Further, the matter was argued in depth in petitioner's Memorandum[30] and Supplemental Memorandum.[31] The appellate court could have considered the discussions on these pleadings in deciding the petition before it, but unfortunately for petitioner, it opted to ignore the same.

Nor can the subsequent re-opening of the school imply that petitioner was motivated by ill will when it ceased the school's operations. In contesting the three Manifestations[32] filed by the Union before the NLRC, petitioner's counter-statement must be given credence. It noted that the school started only as a high school when it was issued government recognition on April 7, 1953, and with authority to conduct, effective June 15, 1953, "complete academic secondary courses with vocational subjects (day)." At the time it closed on March 31, 1998 it was not yet offering subjects for college and elementary levels.[33] However, as early as September 24, 1996, petitioner had already filed an application[34] with the CHED to open a college department. Thus, when the opening of said department was announced three weeks after the closure, petitioner was merely putting into effect its filed application. Also, the "Application for Proposed Tuition and/or Other Fees for the School Year 1998-1999" pertains to the college level, not high school or elementary. Further, the Union members, being high school teachers and personnel, are not affected by the opening of the college department as none of them are, and claimed to be, qualified to teach college subjects. These circumstances show that petitioner was not in bad faith as to simulate the school's closure. Notably, all of these took place only after petitioner learned of the Labor Arbiter's favorable decision. Thus, in SY 1999-2000, petitioner's elementary (Grades 1 and 2), high school (1st to 4th year) and college (1st year only) were opened. In the tertiary level, it offered courses for Bachelor of Science in Business Administration and Bachelor of Arts with majors in Political Science, History or Economics. Petitioner did not renew its license but re-applied for the same.[35] Specifically, for its high school department, government recognition was granted on May 7, 1999 for Complete Secondary Course (NSEC) but effective only during the SY 1999-2000.[36]

In addition, there are other undisputed relevant factors that negate bad faith on the part of petitioner when it resorted to the ultimate option of closing the school. First, petitioner terminated all its employees regardless of

their union membership. It dismissed all of them without any discrimination against the officers and members of respondent Union. In fact, only one-third of the employees filed their complaint for illegal dismissal against petitioner. Second, the closure of the school was effected with the implied approval, if not with the express consent, of the DOLE and DECS regional officials. Respondent did not specifically deny the genuineness and due execution of the notices furnished by petitioner to these government offices. No contrary evidence was, likewise, presented by respondent to satisfactorily prove that both or either of the DOLE or DECS disapproved petitioner's decision to close the school. What is clear is that petitioner had informed the authorities, and in finding no oppositions thereto, it had resolved to continue with its plan of ceasing the operations of the school. Third, the closure was caused not only by the economic demands of respondent but also of the latter's acts of exploiting the students in its bid to pressure petitioner to conform to the unfair terms and conditions in the proposed CBA.

Photographs taken during the protest rallies conducted by the Union members visibly show that minor students actually took part in such activities.[37] While the Court recognizes the right of the workers to peaceably assemble in redress of their grievances, the abominable act of precariously putting in the balance of power the welfare of guileless students should not be countenanced. As correctly pointed out by petitioner:

Without a doubt, school age children have no place in such union activities. Participation in a labor strike has no direct bearing at that point to their education and it was unjustly prejudicial to their safety to expose them to a highly charged and volatile atmosphere xxx At the very least, the striking teachers, [the] supposed mentors and surrogate parents to young and impressionable minds[,] acted in a thoroughly reckless manner merely to advance their narrow interests. Indeed, the primary duty of petitioner SJC to ensure the physical safety of the minor children in the face of a potentially tumultuous situation, such as a strike, compelled it to resort to drastic measures.[38]

With respect to the mass action of the Union members on May 4, 1998, I agree with the majority that, as ruled by the NLRC and the CA, the Union members did not conduct an illegal strike, since by then, the employee-employer relationship had ceased. Based on the records, petitioner admitted that the school did not really operate or accept enrollees for the SY 1998-1999;[39] neither was it shown that it possessed the requisite government permits when the alleged strike was held. Consequently, the 25 Union members are entitled to the same separation package, i.e., separation pay plus two-month summer/vacation pay and 13[th] month pay, given to other dismissed employees. Although there is no specific law or rule as regards the payment of summer/vacation pay, justice and equity demands that the Union members who had honestly fought for their cause must be granted equal privileges given to those who no longer questioned the validity of the school's closure.

ACCORDINGLY, I vote to GRANT the petition.

[1] *Industrial Timber Corporation v. NLRC*, 339 Phil. 395, 404 (1997).

[2] *Nasipit Lumber Company v. National Organization of Workingmen (NOWM)*, G.R. No. 146225, November 25, 2004, 444 SCRA 158, 170.

[3] *J.A.T. General Services v. NLRC*, G.R. No. 148340. January 26, 2004, 421 SCRA 78, 88-89.

[4] *Industrial Timber Corporation v. Ababon, et al.*, G.R. No. 164518, January 25, 2001; *Capitol Medical Center, Inc. v. Meris*, G.R. No. 155098. September 16, 2005, 470 SCRA 125, 136; *Nasipit Lumber Company v. National Organization of Workingmen (NOWM)*, *supra* note 2, at 172.

[5] *Industrial Timber Corporation v. Ababon, et al.*, *supra*; and *Capitol Medical Center, Inc. v. Meris*, *supra*.

- [6] Hongkong and Shanghai Banking Corporation Employees Union v. NLRC, 346 Phil. 524, 534-535 (1997).
- [7] J.A.T. General Services v. NLRC, supra, at 78, 89.
- [8] Industrial Timber Corporation v. Ababon, et al., supra; Capitol Medical Center, Inc. v. Meris, supra, at 138; Nasipit Lumber Company v. National Organization of Workingmen (NOWM), supra, at 173; J.A.T. General Services v. NLRC, supra; Industrial Timber Corporation v. NLRC, supra, at 404-405; and San Pedro Hospital of Digos, Inc. v. Secretary of Labor, 331 Phil. 390, 406 (1996).
- [9] Nasipit Lumber Company v. National Organization of Workingmen (NOWM), supra; Industrial Timber Corporation v. NLRC, supra; and San Pedro Hospital of Digos, Inc. v. Secretary of Labor, supra.
- [10] Complex Electronics Employees Association vs. NLRC, 369 Phil. 666, 686 (1999).
- [11] Industrial Timber Corporation v. Ababon, et al., supra; J.A.T. General Services v. NLRC, supra, at 89-90; and Industrial Timber Corporation v. NLRC, supra, at 406.
- [12] Capitol Medical Center, Inc. v. Meris, supra, at 138; Nasipit Lumber Company v. National Organization of Workingmen (NOWM), supra, at 173; J.A.T. General Services v. NLRC, supra at 87; and Industrial Timber Corporation v. NLRC, supra at 405.
- [13] Industrial Timber Corporation v. Ababon, et al., supra; and, Alabang Country Club, Inc. v. NLRC, supra, at 345-346.
- [14] San Pedro Hospital of Digos, Inc. v. Secretary of Labor, supra, at 406.
- [15] Rollo, pp. 62-64.
- [16] CA rollo, pp. 146-147, 336-337.
- [17] Id. at 225-229.
- [18] Id. at 233-234.
- [19] General Milling Corporation v. Court of Appeals, G.R. No. 146728. February 11, 2004, 422 SCRA 514, 522; Hongkong and Shanghai Banking Corporation Employees Union v. NLRC, supra, at 534.
- [20] General Milling Corporation v. Court of Appeals, supra, at 525.
- [21] LABOR CODE, Art. 252, as amended.
- [22] Standard Chartered Bank Employees Union (NUBE) v. Confesor, G.R. No. 114974, June 16, 2004, 432 SCRA 308, 325.
- [23] Samahang Manggagawa sa Top Form Manufacturing-United Workers of the Philippines (SMTFM-UWP) v. NLRC, 356 Phil. 480, 493-494 (1998).
- [24] St. Joseph's College v. St. Joseph's College Workers' Association (SAMAHAN), G.R. No. 155609, January 17, 2005, 448 SCRA 594, 605.
- [25] 413 Phil 32 (2001).
- [26] CIM v. CIM Employee's Union, supra, at 38-41.
- [27] CA rollo, p. 70.
- [28] Id. at 95.

[29] Id. at 12.

[30] Id. at 194-221.

[31] Id. at 302-326.

[32] Id. at 113-123, 131-135.

[33] Id. at 316, 329.

[34] Id. at 330-333.

[35] Id. at 55, 82-83, 214-215.

[36] Id. at 149.

[37] Rollo, pp. 230-234.

[38] Id. at 21-22.

[39] CA rollo, pp. 82, 214.

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