

FAR EASTERN UNIVERSITY – DR. NICANOR REYES MEDICAL FOUNDATION (FEU-NRMF) AND LILIA P. LUNA. M.D., PETITIONERS, VS. FEU-NRMF EMPLOYEES ASSOCIATION-ALLIANCE OF FILIPINO WORKERS (F...

G.R. NO. 168632. October 16, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, as amended, assailing the 22 March 2005 Decision[1] of the Court of Appeals in CA-G.R. SP No. 86690 and its 22 June 2005 Resolution[2] denying the Motion for Reconsideration of petitioner Far Eastern University -Dr. Nicanor Reyes Medical Foundation's (FEU-NRMF) Motion for Reconsideration. The challenged Decision disposed thus:

WHEREFORE, finding grave abuse of discretion, committed by public respondent NLRC, the instant petition is GRANTED. The assailed Resolution, dated 23 September 2002, and Order, dated 30 June 2004, are hereby REVERSED and SET ASIDE in so far as the illegality of the strike and loss of employment status of individual petitioners are concerned. All other respects are AFFIRMED. No costs at this instance.[3]

Petitioner FEU-NRMF is a medical institution duly organized and existing under the Philippine laws. On the other hand, respondent union is a legitimate labor organization and is the duly recognized representative of the rank and file employees of petitioner FEU-NRMF.

In 1994, petitioner FEU-NRMF and respondent union entered into a Collective Bargaining Agreement (CBA) that will expire on 30 April 1996.

In view of the forthcoming expiry, respondent union, on 21 March 1996, sent a letter-proposal[4] to petitioner FEU-NRMF stating therein their economic and non-economic proposals for the negotiation of the new CBA.

On 8 May 1996, petitioner FEU-NRMF sent a letter-reply[5] flatly rejecting respondent union's demands and proposed to maintain the same provisions of the old CBA. Petitioner FEU-NRMF reasoned that due to financial constraints, it cannot afford to accede to a number of their demands for educational and death benefits, uniforms, longevity pay, meal allowance and special pay, but nevertheless gave an assurance that it will seriously consider their proposal on salary increase.

In an effort to arrive at a compromise, subsequent conciliation proceedings were conducted before the National Conciliation and Mediation Board - National Capital Region (NCMB-NCR) but because of the unyielding stance of both parties, the negotiation failed.

On 6 August 1996, respondent union filed a Notice of Strike before NCMB-NCR on the ground of bargaining deadlock. A strike vote was conducted on 23 August 1996 and the result thereof was submitted to NCMB-NCR on 26 August 1996. After the expiration of the thirty-day cooling off period and the seven-day strike ban, respondent union, on 6 September 1996, staged a strike.[6]

Before the strike was conducted, respondent union, on 4 September 1996, offered a skeletal force of nursing and health personnel who will man the hospital's operation for the duration of the strike. For reasons unknown to respondent union, however, petitioner FEU-NRMF failed or refused to accept the offer.

For its part, petitioner FEU-NRMF, on 29 August 1996, filed a Petition for the Assumption of Jurisdiction or for Certification of Labor Dispute with the National Labor Relations Commission (NLRC), underscoring the fact that it is a medical institution engaged in the business of providing health care for its patients.[7]

Acting on the petition, the Secretary of Labor, on 5 September 1996, granted the petition and thus issued an Order[8] assuming jurisdiction over the labor dispute, thereby prohibiting any strike or lockout whether actual or impending, and enjoining the parties from committing any acts which may exacerbate the situation.

On 6 September 1996, Francisco Escuadra, the NLRC process server, certified that, on 5 September 1996 at around 4:00 P.M., he attempted to serve a copy of the Assumption of Jurisdiction Order to the union officers but since no one was around at the strike area, he just posted copies of the said Order at several conspicuous places within the premises of the hospital.

Claiming that they had no knowledge that the Secretary of Labor already assumed jurisdiction over the pending labor dispute as they were not able to receive a copy of the Assumption of Jurisdiction Order, striking employees continued holding a strike until 12 September 1996.

On 12 September 1996, the Secretary of Labor issued another Order[9] directing all the striking employees to return to work and the petitioner FEU-NRMF to accept them under the same terms and conditions prevailing before the strike. Accordingly, on 13 September 1996, a Return to Work Agreement was executed by the disputing parties, whereby striking employees agreed to return to their work and the petitioner FEU-NRMF undertook to accept them under status pro ante. On the same day, the striking employees returned to their respective stations.

Subsequently, petitioner FEU-NRMF filed a case before the NLRC, contending that respondent union staged the strike in defiance of the Assumption of Jurisdiction Order; hence, it was illegal. Further, the said strike was conducted in a deleterious and prejudicial manner, endangering the lives of the patients confined at the hospital. In its complaint docketed as NLRC-NCR No. 10-11-0733-96, petitioner FEU-NRMF specifically alleged that the striking employees effectively barricaded the ingress and egress of the hospital, thus, preventing trucks carrying the supplies of medicines and food for the patients from entering the hospital's premises. In one instance, an ambulance carrying a patient in critical condition was likewise prevented from passing through the blockade. Finally, respondent union also prevented patients from seeking medical assistance by blocking their way into the hospital. In order to redress the wrongful and illegal acts of the respondent union, petitioner FEU-NRMF prayed for the declaration that the strike is illegal and, resultantly, for the dismissal of the striking employees and decertification of the respondent union, plus damages.

In contrast, respondent union avers that petitioner FEU-NRMF refused to bargain collectively despite hefty financial gains and, thus, guilty of surface bargaining. Before staging a strike, respondent union complied with the procedural requirements by filing a notice of strike and strike vote with the NCMB-NCR. The thirty-day cooling off period and the seven-day strike ban was also fully observed. Respondent union also offered a skeletal work force but it was refused by petitioner FEU-NRMF. The strike was conducted in a peaceful and orderly manner where striking employees merely sat down outside the hospital's premises with their placards airing their grievances. Petitioner FEU-NRMF's allegation of sabotage, therefore, was merely concocted. Finally, respondent maintained that they did not defy any order of the Secretary of Labor because neither its officers nor its members were able to receive a copy of the same.

On 27 May 1998, the Labor Arbiter rendered a Decision[10] declaring the strike illegal and dismissing the union officers for conducting the strike in defiance of the Assumption of Jurisdiction Order. The dispositive portion of the decision reads:

WHEREFORE, a decision is hereby rendered cast in favor of complainants and against the respondents declaring the strike conducted by the latter last September 5-14, [1996] illegal and the following individual respondents officers of union employed by complainant hospital to have lost their employment status, Dante F. Sugcang, Virgilio P. Blanco, Fernando S.P. Villapando, Lorna M. Melecio, Florencia O. Reyes, Mercedita P. Mendoza and Leonor P. Vajar.

The prayer for decertification is hereby denied for lack of jurisdiction and the prayer for damages is likewise denied for lack of sufficient evidence.

Aggrieved, the respondent union filed a Partial Appeal[11] before the NLRC asserting that the Labor Arbiter gravely abused its discretion in denying a formal trial and in holding that the Assumption of Jurisdiction Order dated 5 September 1996 was properly served. In its Partial Appeal Memorandum[12] filed on 29 July 1998, respondent union claimed that the Labor Arbiter erred in declaring the strike illegal and in adjudging that the union officers have lost their employment status.

On 23 September 2002, the NLRC handed down a Resolution[13] affirming in toto the Decision of the Labor Arbiter dated 27 May 1998 and, thus, upheld the illegality of the strike and loss of employment status of the union officers. The NLRC found that during the conciliation proceedings before the NCMB-NCR, the union officers admitted that they were aware that the Secretary of Labor issued an Assumption of Jurisdiction Order which enjoined the strike they were conducting. There was, therefore, an utter defiance of the said Order, making the strike illegal. The union officers' dismissal is thus warranted. Undaunted, the respondent union filed a Motion for Reconsideration[14] which was likewise denied by the NLRC in its Resolution[15] dated 30 June 2004, for failure to present positive averment that the Resolution[16] dated 11 October 2002 contains palpable or patent errors as required by the NLRC Revised Rules of Procedure.

Consequently, the respondent union brought a Petition for Certiorari under Rule 65 before the Court of Appeals seeking to annul the NLRC Resolution dated 23 September 2002, affirming the Decision of the Labor Arbiter dated 27 May 1998 and the Resolution dated 30 June 2004, denying its Motion for Reconsideration. In its Petition[17] docketed as CA-G.R. SP No. 86690, FEU-NRMF Employees Association-Alliance of Filipino Workers (FEU-NRMFEA-AFW), Dante Sugcang, Virgilio Blanco, Norma Melencio and Florencia Reyes v. National Labor Relations Commission, and Far Eastern University - Dr. Nicanor Reyes Medical Foundation (FEU-NRMF), respondent union alleged that the public respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the aforesaid judgments which are contrary to law and established jurisprudence.

On 22 March 2005, the Court of Appeals rendered a Decision granting the Petition and reversing the assailed Resolution dated 23 September 2002, and Order dated 30 June 2004, as they were made with grave abuse of discretion amounting to lack or excess of jurisdiction. The appellate court found that no personal service was validly effected by the process server that could bind the striking employees.

Similarly ill-fated was petitioner FEU-NRMF's motion for reconsideration which was denied through the Court of Appeals' Resolution promulgated on 22 June 2005.[18]

Petitioners are now before this Court assailing the aforementioned decision and resolution of the Court of Appeals on the ground that the appellate court erred in reversing both the decisions of the Labor Arbiter and the NLRC.[19]

For our resolution are the following issues:

I.

WHETHER OR NOT SERVICE OF THE ASSUMPTION OF JURISDICTION ORDER WAS VALIDLY EFFECTED.

II.

WHETHER OR NOT THE STRIKE CONDUCTED BY THE RESPONDENT UNION WAS ILLEGAL.

III.

WHETHER OR NOT THE DISMISSAL OF THE UNION OFFICERS WAS VALID.

The crucial question for the determination of this Court, however, is whether the service of the Assumption of Jurisdiction Order was validly effected by the process server so as to bind the respondent union and hold them liable for the acts committed subsequent to the issuance of the said Order.

The certification/proof of service of the process server, Francisco A. Escudra, dated 6 September 1996, reads:

CERTIFICATION/PROOF OF SERVICE

This is to certify that on September 5, 1996 at around 4:00 P.M., I attempted to serve a copy of the Order of Assumption of Jurisdiction issued by the Secretary of Labor and Employment, to the officials of the FEU-NRMF Employees Association-AFL.

Since none of the officials of the said union was available to receive a copy of the said Order, I posted copies of the same at several conspicuous places within the premises of Far Eastern University Nicanor Reyes Medical Foundation (FEU-NRMF).

The copies of the Order were posted on September 5, 1996 at around 4:30 PM.

Manila, Philippines, 6 September 1996.[20]

It can be inferred from the foregoing that the process server resorted to posting the Order when personal service was rendered impossible since the striking employees were not present at the strike area. This mode of service, however, is not sanctioned by either the NLRC Revised Rules of Procedure or the Revised Rules of Court.

The pertinent provisions of the NLRC Revised Rules of Procedure[21] read:

Section 6. Service of Notices and Resolutions.

(a) Notices or summons and copies of orders, shall be served on the parties to the case personally by the Bailiff or duly authorized public officer within three (3) days from receipt thereof or by registered mail; Provided that in special circumstances, service of summons may be effected in accordance with the pertinent provisions of the Rules of Court; Provided further, that in cases of decisions and final awards, copies thereof shall be served on both parties and their counsel or representative by registered mail; Provided further, that in cases where a party to a case or his counsel on record personally seeks service of the decision upon inquiry thereon, service to said party shall be deemed effected upon actual receipt thereof; Provided finally, that where parties are so numerous, service shall be made on counsel and upon such number of complainants, as may be practicable, which shall be considered substantial compliance with Article 224(a) of the Labor Code, as amended. (Emphasis supplied.)

An Order issued by the Secretary of Labor assuming jurisdiction over the labor dispute is not a final judgment for it does not dispose of the labor dispute with finality. [22] Consequently, the rule on service of summons and orders, and not the proviso on service of decisions and final awards, governs the service of the Assumption of

Jurisdiction Order.

Under the NLRC Revised Rules of Procedure, service of copies of orders should be made by the process server either personally or through registered mail. However, due to the urgent nature of the Assumption of Jurisdiction Order and the public policy underlying the injunction carried by the issuance of the said Order, service of copies of the same should be made in the most expeditious and effective manner, without any delay, ensuring its immediate receipt by the intended parties as may be warranted under the circumstances. Accordingly, in this case, personal service is the proper mode of serving the Assumption of Jurisdiction Order.

It is also provided under the same rules that in special circumstances, service of summons may be effected in accordance with the pertinent provisions of the Rules of Court.[23]

Parenthetically, the manner upon which personal service may be made is prescribed by the following provisions of the Revised Rules of Court:

Rule 13. Filing and Service of Pleadings, Judgments And Other Papers.

Section 6. Personal service. - Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. if no person is found in his office, or his office is not known, or he has no office, then by leaving a copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.

Let it be recalled that the process server merely posted copies of the Assumption of Jurisdiction Order in conspicuous places in the hospital. Such posting is not prescribed by the rules, nor is it even referred to when the said rules enumerated the different modes of effecting substituted service, in case personal service is impossible by the absence of the party concerned.

Clearly, personal service effectively ensures that the notice desired under the constitutional requirement of due process is accomplished. If, however, efforts to find the party concerned personally would make prompt service impossible, service may be completed by substituted service, that is, by leaving a copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.

Substituted service derogates the regular method of personal service. It is therefore required that statutory restrictions for effecting substituted service must be strictly, faithfully and fully observed. Failure to comply with this rule renders absolutely void the substituted service along with the proceedings taken thereafter.[24] The underlying principle of this rigid requirement is that the person, to whom the orders, notices or summons are addressed, is made to answer for the consequences of the suit even though notice of such action is made, not upon the party concerned, but upon another whom the law could only presume would notify such party of the pending proceedings.[25]

Applying this principle in the case at bar, presumption of receipt of the copies of the Assumption of Jurisdiction Order could not be lightly inferred from the circumstances considering the adverse effect in case the parties failed to heed to the injunction directed by such Order. Worthy to note that in a number of cases, we have ruled that defiance of the assumption and return-to-work orders of the Secretary of Labor after he has assumed jurisdiction is a valid ground for the loss of employment status of any striking union officer or member.[26] Employment is a property right of which one cannot be deprived of without due process.[27] Due process here would demand that the respondent union be properly notified of the Assumption of Jurisdiction Order of the Secretary of Labor enjoining the strike and requiring its members to return to work. Thus, there must be a clear and unmistakable

proof that the requirements prescribed by the Rules in the manner of effecting personal or substituted service had been faithfully complied with. Merely posting copies of the Assumption of Jurisdiction Order does not satisfy the rigid requirement for proper service outlined by the above stated rules. Needless to say, the manner of service made by the process server was invalid and irregular. Respondent union could not therefore be adjudged to have defied the said Order since it was not properly apprised thereof. Accordingly, the strike conducted by the respondent union was valid under the circumstances.

For a strike to be valid, the following requisites must concur: (1) the thirty-day notice or the fifteen-day notice, in case of unfair labor practices; (2) the two-thirds (2/3) required vote to strike done by secret ballot; and (3) the submission of the strike vote to the Department of Labor and Employment at least seven days prior to the strike.[28] In addition, in case of strikes in hospitals, clinics and medical institutions, it shall be the duty of the striking employees to provide and maintain an effective and skeletal workforce of medical and other health personnel in order to insure the proper and adequate protection of the life and health of its patients.[29] These procedural requirements, along with the mandatory cooling off and strike ban periods had been fully observed by the respondent union.

It is true that the strike may still be declared invalid where the means employed are illegal even if the procedural requisites before staging a strike were satisfied.[30] However, in the absence of evidence to support the allegations that the respondent union did not commit illegal acts during the strike, we are constrained to dismiss the allegations and uphold the strike as a valid exercise of the worker's constitutional right to self-organization and collective bargaining.

The affidavits presented by the petitioner FEU-NRMF and relied upon by the Labor Arbiter and the NLRC, in arriving at the conclusion that the respondent union committed illegal acts during the strike, could not be given probative value by this Court as the adverse party was not given a chance to cross-examine the affiants. In a catena of labor cases, this Court has consistently held that where the adverse party is deprived of the opportunity to cross-examine the affiants, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.[31] Neither can this Court rely on the photographs supporting these allegations without verifying its authenticity.

Verily, this Court is not bound to uphold the erroneous findings of the administrative bodies. While it is well-settled that findings of facts of the Labor Arbiter, when affirmed by the NLRC, are entitled to great respect and are generally binding on this Court, it is equally settled that this Court will not uphold erroneous conclusions of the said bodies as when we find insufficient or insubstantial evidence on record to support these factual findings. The same holds true when it is perceived that far too much is concluded, inferred or deduced from the bare allegations or insufficient evidence appearing on the record.

Prescinding from the above, as the strike conducted by the respondent union is valid and legal, there is therefore no cogent reason to dismiss the union officers.

WHEREFORE, premises considered, the instant Petition is DENIED. Costs against the petitioner.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Penned by Associate Perlita J. Tria Tirona with Associate Justices Delilah Vidallon-Magtolis and Jose C. Reyes, Jr., concurring; rollo, pp. 68-80.

- [2] Id. at 82.
- [3] Id. at 79
- [4] Id. at 174-178.
- [5] Id. at 189-194.
- [6] Id. at 266-267.
- [7] Id. at 431.
- [8] CA rollo, pp. 423-424.
- [9] Id. at 113.
- [10] Id. at 145-156.
- [11] Id. at 157-171.
- [12] Id.
- [13] Id. at 173-181.
- [14] Id. at 182-194.
- [15] Id. at 195-196.
- [16] Id. at 172.
- [17] Id. at 2-23.
- [18] Id. at 82-83.
- [19] Id. at 1-67.
- [20] Id. at 111.
- [21] Rule III, Pleadings, Notices and Appearances.
- [22] *Telefunken Semiconductors Employees Union-FFW v. Court of Appeals*, G.R. Nos. 14013-14, 18 December 2000, 348 SCRA 565, 585.
- [23] Section 6(a), NLRC Revised Rules of Procedure.
- [24] *Sandoval II v. House of Representatives Electoral Tribunal*, 433 Phil. 290, 301 (2002).
- [25] Id.
- [26] *Telefunken Semiconductors Employees Union-FFW v. Court of Appeals*, supra note 22.
- [27] *JMM Promotion and Management, Inc. v. Court of Appeals*, 329 Phil. 87, 99-100 (1996).
- [28] *CCBPI Postmix Workers Union v. National Labor Relations Commission*, 359 Phil. 741, 757 (1998).
- [29] Article 263(g), Labor Code of the Philippines, as amended.
- [30] *Sukhothai Cuisine and Restaurant v. Court of Appeals*, G.R. No. 150437, 17 July 2006.
- [31] *Hornales v. National Labor Relations Commission*, 417 Phil. 263, 273 (2001).

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