

UNIVERSITY OF SAN AGUSTIN EMPLOYEES' UNION-FFW (USAEU-FFW), AND INDIVIDUAL UNION OFFICERS THEODORE NEIL LASOLA, MERLYN JARA, JULIUS MARIO, FLAVIANO MANALO, RENE CABALUM, HERMINI...*G.R. NO. 169632. March 28, 2006*

Ponente: GARCIA, J.

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By this petition for review on certiorari, petitioners University of San Agustin Employees' Union-FFW (Union) and its officers seek to reverse and set aside the Partially Amended Decision^[1] of the Court of Appeals (CA) dated August 23, 2005 in CA-G.R.SP No. 85317, reversing the Decision and Resolution of the Secretary of Labor and Employment (SOLE) dated April 6, 2004 and May 24, 2004, respectively. The assailed CA decision declared the strike conducted by the petitioner Union, illegal, and consequently, the co-petitioner union officers were deemed to have lost their employment status. It further vacated the SOLE's resolution of the economic issues involved in the case and directed the parties to resort to voluntary arbitration in accordance with the grievance machinery as embodied in their existing collective bargaining agreement (CBA).

The facts:

Respondent University of San Agustin (University) is a non-stock, non-profit educational institution which offers both basic and higher education courses. Petitioner Union is the duly recognized collective bargaining unit for teaching and non-teaching rank-and-file personnel of the University while the other individual petitioners are its officers.

On July 27, 2000, the parties entered into a 5-year CBA^[2] which, among other things, provided that the economic provisions thereof shall have a period of three (3) years or up to 2003. Complementary to said provisions is Section 3 of Article VIII of the CBA providing for salary increases for School Years (SY) 2000-2003, such increase to take the form of either a lump sum or a percentage of the tuition incremental proceeds (TIP).

The CBA contained a "no strike, no lockout" clause and a grievance machinery procedure to resolve management-labor disputes, including a voluntary arbitration mechanism should the grievance committee fail to satisfactorily settle such disputes.

Pursuant to the CBA, the parties commenced negotiations for the economic provisions for the remaining two years, i.e., SY2003-2004 and SY2004-2005. During the negotiations, the parties could not agree on the manner of computing the TIP, thus the need to undergo preventive mediation proceedings before the National Conciliation and Mediation Board (NCMB), Iloilo City.

The impasse respecting the computation of TIP was not resolved. This development prompted the Union to declare a bargaining deadlock grounded on the parties' failure to arrive at a mutually acceptable position on the manner of computing the seventy percent (70%) of the net TIP to be allotted for salary and other benefits for

SY2003-2004 and SY2004-2005.

Thereafter, the Union filed a Notice of Strike before the NCMB which was expectedly opposed by the University in a Motion to Strike Out Notice of Strike and to Refer the Dispute to Voluntary Arbitration,[3] invoking the "No strike, no lockout" clause[4] of the parties' CBA. The NCMB, however, failed to resolve the University's motion.

The parties then made a joint request for the SOLE to assume jurisdiction over the dispute. The labor dispute was docketed as OS-AJ-0032-2003. On September 18, 2003, an Assumption of Jurisdiction Order[5] (AJO) was issued by the SOLE, thus:

WHEREFORE, this Office hereby ASSUMES JURISDICTION over the labor dispute at the UNIVERSITY OF SAN AGUSTIN, pursuant to Article 263(g) of the Labor Code, as amended.

ACCORDINGLY, any strike or lockout whether actual or intended, is hereby strictly enjoined and the parties are directed to cease and desist from committing any act that might exacerbate the situation.

Finally, to expedite resolution of the dispute, the parties are directed to submit their respective position papers and evidence to this Office within TEN (10) calendar days from receipt hereof, with proof of service to the other party. REPLY thereto shall be submitted with proof of service to the other party, within five (5) calendar days from receipt of the other party's POSITION PAPER.

On September 19, 2003, the Union staged a strike. At 6:45 a.m. of the same day, Sheriffs Francisco L. Reyes and Rocky M. Francisco had arrived at San Agustin University to serve the AJO on the Union. At the main entrance of the University, the sheriffs saw some elements of the Union at the early stages of the strike. There they met Merlyn Jara, the Union's vice president, upon whom the sheriffs tried to serve the AJO, but who, after reading it, refused to receive the same, citing Union Board Resolution No. 3 naming the union president as the only person authorized to do so. The sheriffs explained to Ms. Jara that even if she refused to acknowledge receipt of the AJO, the same would be considered served. Sheriff Reyes further informed the Union that once the sheriffs post the AJO, it would be considered received by the Union.[6]

At approximately 8:45 a.m., the sheriffs posted copies of the AJO at the main gate of San Agustin University, at the main entrance of its buildings and at the Union's office inside the campus. At 9:20 a.m., the sheriffs served the AJO on the University.

Notwithstanding the sheriffs' advice as to the legal implication of the Union's refusal to be served with the AJO, the Union went ahead with the strike.

At around 5:25 p.m., the Union president arrived at the respondent University's premises and received the AJO from the sheriffs.

On September 24, 2003, the University filed a Petition to Declare Illegal Strike and Loss of Employment Status[7] at the National Labor Relations Commission (NLRC) Sub-regional Arbitration Branch No. VI in Iloilo City. The case was docketed as NLRC SRAB Case No. 06-09-50370-03, which the University later on requested to be consolidated with OS-AJ-0032-2003 pending before the SOLE. The motion for consolidation was granted by the Labor Arbiter in an Order dated November 7, 2003.[8]

On April 6, 2004, the SOLE rendered a Decision[9] resolving the various economic issues over which the parties had a deadlock in the collective bargaining, including the issue of legality/illegality of the September 19, 2003 strike. Dispositively, the decision reads:

WHEREFORE, the parties are hereby directed to conclude a memorandum of agreement embodying the foregoing dispositions to be appended to the current CBA. The petition to declare the strike illegal is hereby

DISMISSED for want of legal and factual basis. Consequently, there is no basis whatsoever to declare loss of employment status on the part of any of the striking union members.

SO ORDERED.

The University moved for a reconsideration of the said decision but its motion was denied by the SOLE in a Resolution[10] of May 24, 2004.

In time, the University elevated the matter to the CA by way of a petition for certiorari, thereat docketed as CA-G.R. SP No. 85317.

On March 4, 2005, the CA rendered a Decision[11] partially granting the University's petition. While the CA affirmed the rest of the SOLE's decision on the economic issues, particularly the formula to be used in computing the share of the employees in the tuition fee increase for Academic Year 2003-2004, it, however, reversed the SOLE's ruling as to the legality of the September 19, 2003 strike, to wit:

WHEREFORE, the foregoing premises considered, the petition is hereby partially GRANTED. The assailed Decision of the public respondent SOLE is hereby MODIFIED to the effect that the strike held by the [petitioners] on September 19, 2003 is illegal. Hence, the union officers are deemed to have lost their employment status.

The assailed Decision however, is AFFIRMED in all other respects.

SO ORDERED. (Word in bracket added).

Both parties filed their respective motions for partial reconsideration of the aforestated decision, the University excepting from the CA's decision insofar as the latter affirmed the SOLE's resolution of the economic issues. On the other hand, the Union sought reconsideration of the CA's finding of illegality of the September 19, 2003 strike.

In the meantime, on April 7, 2005, the University served notices of termination to the union officers who were declared by the CA as deemed to have lost their employment status.

On the same day — April 7, 2005 — in response to the University's action, the Union filed with the NCMB a second notice of strike, this time on ground of alleged union busting.

On April 22, 2005, the parties again took initial steps to negotiate the new CBA but said attempts proved futile. Hence, on April 25, 2005, the Union went on strike. In reaction, the University notified the Union that it was pulling out of the negotiations because of the strike.

On August 23, 2005, the CA, acting on the parties' respective motions for reconsideration, promulgated the herein challenged Partially Amended Decision.[12] Finding merit in the respondent University's motion for partial reconsideration, the CA ruled that the SOLE abused its discretion in resolving the economic issues on the ground that said issues were proper subject of the grievance machinery as embodied in the parties' CBA. Consequently, the CA directed the parties to refer the economic issues of the CBA to voluntary arbitration. The CA, however, stood firm in its finding that the strike conducted by the petitioner Union was illegal and its officers were deemed to have lost their employment status. Dispositively, the decision reads:

WHEREFORE, in view of all the foregoing premises, an amended judgment is hereby rendered by us GRANTING the petition for certiorari, SETTING ASIDE our original decision in this case which was promulgated on March 4, 2005, SETTING ASIDE also the Decision rendered by the public respondent SOLE on April 6, 2004 and DECLARING the strike held on September 19, 2003 by the [petitioner] Union as ILLEGAL. The union officers are therefore deemed to have lost their employment status.

The parties are hereby DIRECTED to refer the economic issues of the CBA to VOLUNTARY ARBITRATION, where the computation and determination of the TIP shall be in the manner directed in the body of this Decision.

SO ORDERED.

On September 20, 2005, the Union and its dismissed officers filed the instant petition raising the following basic issues:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN DECLARING ILLEGAL THE STRIKE OF THE PETITIONERS ON SEPTEMBER 19, 2003 AND IN DECLARING THE UNION OFFICERS AS DEEMED TO HAVE LOST THEIR EMPLOYMENT STATUS FOR THE ALLEGED FAILURE OF THE PETITIONERS TO IMMEDIATELY RETURN TO THEIR WORK WHEN THE ASSUMPTION OF JURISDICTION ORDER WAS DEEMED SERVED UPON THEM BY THE DOLE SHERIFFS AS OF 8:45 IN THE MORNING OF THAT DATE, WHEN, IN CASES WHERE THE STRIKE HAS ALREADY COMMENCED, THE SECRETARY OF LABOR AND EMPLOYMENT (SOLE) ALWAYS GIVES TWENTY-FOUR HOURS TO THE STRIKING WORKERS WITHIN WHICH TO RETURN TO WORK, AND TAKING INTO CONSIDERATION THE TOTALITY OF THE CONDUCT OF THE STRIKERS, AS WHAT THE SOLE HAD DONE, THE PETITIONERS HAVE NOT MANIFESTED NAKED DISPLAY OF RECALCITRANCE NOR SHOWN BAD FAITH TO THE RESPONDENT UNIVERSITY.

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN DIRECTING TO REFER THE ECONOMIC ISSUES OF THE LABOR DISPUTE TO VOLUNTARY ARBITRATION WHEN IT IS SETTLED BY JURISPRUDENCE THAT "THE LABOR SECRETARY'S AUTHORITY TO ASSUME JURISDICTION OVER A LABOR DISPUTE MUST INCLUDE AND EXTEND TO ALL QUESTIONS AND CONTROVERSIES ARISING THEREFROM, EVEN INCLUDING CASES OVER WHICH THE LABOR ARBITER HAS EXCLUSIVE JURISDICTION."

Prefatorily, we restate the time-honored principle that in petitions for review under Rule 45 of the Rules of Court, only questions of law may be raised. It is not our function to analyze or weigh all over again evidence already considered in the proceedings below, our jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court.[13] The resolution of factual issues is the function of lower courts, whose findings on these matters are received with respect. A question of law which we may pass upon must not involve an examination of the probative value of the evidence presented by the litigants.[14]

Here, however, the findings of fact of the CA are not in accord with the conclusions made by the SOLE regarding the legality of the subject strike. Consequently, we are compelled to make our own assessment of the evidence on record insofar as the strike issue is concerned.

We find the CA's conclusions to be well supported by evidence, particularly the Sheriff's Report.[14] As we see it, the SOLE was remiss in disregarding the sheriff's report. It bears stressing that said report is an official statement by the sheriff of his acts under the writs and processes issued by the court, in this case, the SOLE, in obedience to its directive and in conformity with law. In the absence of contrary evidence, a presumption exists that a sheriff has regularly performed his official duty. To controvert the presumption arising therefrom, there must be clear and convincing evidence.

The sheriff's report unequivocally stated the union officers' refusal to receive the AJO when served on them in the

morning of September 19, 2003. The September 16, 2003 Union's Board Resolution No. 3 which gave sole authority to its president to receive the AJO must not be allowed to circumvent the standard operating procedure of the Office of the Undersecretary for Labor Relations which considers AJOs as duly served upon posting of copies thereof on designated places. The procedure was adopted in order to prevent the thwarting of AJOs by the simple expedient of refusal of the parties to receive the same, as in this case. The Union cannot feign ignorance of this procedure because its counsel Atty. Mae M. Gellecanao-Laserna was a former Regional Director of the Department of Labor and Employment (DOLE).

To be sure, the Union was not able to sufficiently dispute the truth of the narration of facts contained in the sheriff's report. Hence, it was not unreasonable for the CA to conclude that there was a deliberate intent by the Union and its officers to disregard the AJO and proceed with their strike, which, by their act of disregarding said AJO made said strike illegal. The AJO was issued by the SOLE pursuant to Article 263(g) of the Labor Code, which reads:

Art. 263. Strikes, picketing, and lockouts. - ... (g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same. (Emphasis supplied).

Conclusively, when the SOLE assumes jurisdiction over a labor dispute in an industry indispensable to national interest or certifies the same to the NLRC for compulsory arbitration, such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout. Moreover, if one had already taken place, all striking workers shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. In *Trans-Asia Shipping Lines, Inc., et al. vs. CA, et al.*,^[16] the Court declared that when the Secretary exercises these powers, he is granted great breadth of discretion in order to find a solution to a labor dispute. The most obvious of these powers is the automatic enjoining of an impending strike or lockout or the lifting thereof if one has already taken place. Assumption of jurisdiction over a labor dispute, or the certification of the same to the NLRC for compulsory arbitration, always co-exists with an order for workers to return to work immediately and for employers to readmit all workers under the same terms and conditions prevailing before the strike or lockout.

In this case, the AJO was served at 8:45 a.m. of September 19, 2003. The strikers then should have returned to work immediately. However, they persisted with their refusal to receive the AJO and waited for their union president to receive the same at 5:25 p.m. The Union's defiance of the AJO was evident in the sheriff's report:

We went back to the main gate of the University and there NCMB Director Dadivas introduced us to the Union lawyer, Atty. Mae Lacerna a former DOLE Regional Director. Atty. Lacerna however refused to be officially served the Order again pointing to Board Resolution No. 3 passed by the Union officers. Atty. Lacerna then informed the undersigned Sheriffs that the Union president will accept the Order at around 5:00 o'clock in the afternoon. Atty. Lacerna told the undersigned Sheriff that only when the Union president receives the Order at 5:00 p.m. shall the Union recognize the Secretary of Labor as having assumed jurisdiction over the labor dispute.^[17]

Thus, we see no reversible error in the CA's finding that the strike of September 19, 2003 was illegal.

Consequently, the Union officers were deemed to have lost their employment status for having knowingly participated in said illegal act.

The Union's assertion of a well settled practice that the SOLE always gives twenty-four hours (24) to the striking workers within which to return to work, offers no refuge. Aside from the fact that this alleged well settled practice has no basis in law and jurisprudence, Article 263(g) of the Labor Code, *supra*, is explicit that if a strike has already taken place at the time of assumption of jurisdiction or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lock-out. This is compounded further by this Court's rulings which have never interpreted the phrase "immediately return to work" found in Article 263(g) to mean "within twenty four (24) hours." On the other hand, the tenor of these ponencias^[18] indicates an almost instantaneous or automatic compliance for a striker to return to work once an AJO has been duly served.

We likewise find logic in the CA's directive for the herein parties to proceed with voluntary arbitration as provided in their CBA. As we see it, the issue as to the economic benefits, which included the issue on the formula in computing the TIP share of the employees, is one that arises from the interpretation or implementation of the CBA. To be sure, the parties' CBA provides for a grievance machinery to resolve any "complaint or dissatisfaction arising from the interpretation or implementation of the CBA and those arising from the interpretation or enforcement of company personnel policies."^[19] Moreover, the same CBA provides that should the grievance machinery fail to resolve the grievance or dispute, the same shall be "referred to a Voluntary Arbitrator for arbitration and final resolution."^[20] However, through no fault of the University these processes were not exhausted. It must be recalled that while undergoing preventive mediation proceedings before the NCMB, the Union declared a bargaining deadlock, filed a notice of strike and thereafter, went on strike. The University filed a Motion to Strike Out Notice of Strike and to Refer the Dispute to Voluntary Arbitration^[21] but the motion was not acted upon by the NCMB. As borne by the records, the University has been consistent in its position that the Union must exhaust the grievance machinery provisions of the CBA which ends in voluntary arbitration.

The University's stance is consistent with Articles 261 and 262 of the Labor Code, as amended which respectively provide:

ART. 261. Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators. — The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Accordingly, violations of a collective bargaining agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the collective bargaining agreement. For purposes of this Article, gross violations of collective bargaining agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.

The Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators and shall immediately dispose and refer the same to the grievance machinery or voluntary arbitration provided in the collective bargaining agreement.

ART. 262. Jurisdiction over other labor disputes. — The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

The grievance machinery and no strike, no lockout[22] provisions of the CBA forged by the University and the Union are founded on Articles 261 and 262 quoted above. The parties agreed that practically all disputes — including bargaining deadlocks — shall be referred to the grievance machinery which ends in voluntary arbitration. Moreover, no strike or no lockout shall ensue while the matter is being resolved.

The University filed a Motion to Strike Out Notice of Strike and Refer the Dispute to Voluntary Arbitration[23] precisely to call the attention of the NCMB and the Union to the fact that the CBA provides for a grievance machinery and the parties' obligation to exhaust and honor said mechanism. Accordingly, the NCMB should have directed the Union to honor its agreement with the University to exhaust administrative grievance measures and bring the alleged deadlock to voluntary arbitration. Unfortunately, the NCMB did not resolve the University's motion thus paving the way for the strike on September 19, 2003 and the deliberate circumvention of the CBA's grievance machinery and voluntary arbitration provisions.

As we see it, the failure or refusal of the NCMB and thereafter the SOLE to recognize, honor and enforce the grievance machinery and voluntary arbitration provisions of the parties' CBA unwittingly rendered said provisions, as well as, Articles 261 and 262 of the Labor Code, useless and inoperative. As here, a union can easily circumvent the grievance machinery and a previous agreement to resolve differences or conflicts through voluntary arbitration through the simple expedient of filing a notice of strike. On the other hand, management can avoid the grievance machinery and voluntary arbitration provisions of its CBA by simply filing a notice of lockout.

In *Liberal Labor Union vs. Philippine Can Company*,[24] the Court viewed that the main purpose of management and labor in adopting a procedure in the settlement of their disputes is to prevent a strike or lockout. Thus, this procedure must be followed in its entirety if it is to achieve its objective. Accordingly, the Court in said case held:

The authorities are numerous which hold that strikes held in violation of the terms contained in a collective bargaining agreement are illegal, specially when they provide for conclusive arbitration clauses. These agreements must be strictly adhered to and respected if their ends have to be achieved.

It is noteworthy that in *Liberal*, management refused to submit names in connection with the formation of the grievance committee. Yet, the Court ruled in that case that labor still had no right to declare a strike, for its duty is to exhaust all available means within its reach before resorting to force. In the case at bench, the University, in filing its Motion to Strike Out Notice of Strike and to Refer the Dispute to Voluntary Arbitration before the NCMB, was insisting that the Union abide by the parties' CBA's grievance machinery and voluntary arbitration provisions. With all the more reasons then should the Union be directed to proceed to voluntary arbitration.

We are not unmindful of the Court's ruling in *International Pharmaceuticals, Inc. vs. Secretary of Labor, et al.*, [25] that the SOLE's jurisdiction over labor disputes must include and extend to all questions and controversies arising therefrom, including cases over which the Labor Arbiter has exclusive jurisdiction. However, we are inclined to treat the present case as an exception to that holding. For, the NCMB's inaction on the University's motion to refer the dispute to voluntary arbitration veritably forced the hand of the University to seek and accordingly submit to the jurisdiction of the SOLE. Considering that the CBA contained a no strike, no lockout and grievance machinery and voluntary arbitration clauses, the NCMB, under its very own Manual of Procedures in the Settlement and Disposition of Conciliation and Preventive Mediation Cases, should have declared as not duly filed the Union's Notice of Strike and thereafter, should have referred the labor dispute to voluntary arbitration pursuant to Article 261, supra, of the Labor Code. For sure, Section 6(c)(i), Rule VI, of the NCMB's Manual specifically provides:

Section 6. Action on non-strikeable issues — A strike or lockout notice anchored on grounds involving (1)

inter-union or intra-union disputes (2) violation of labor standard laws (3) pending cases at the DOLE Regional Offices, BLR, NLRC and its appropriate Regional Branches, NWPC and its Regional Wage Boards, Office of the Secretary, Voluntary Arbitrator, Court of Appeals and the Supreme Court (4) execution and enforcement of final orders, decisions, resolutions or awards of no. (3) above shall be considered not duly filed and the party so filing shall be notified of such finding in writing by the Regional Branch Director. On his part, the Conciliator-Mediator shall convince the party concerned to voluntarily withdraw the notice without prejudice to further conciliation proceedings. Otherwise, he shall recommend to the Regional Branch Director that the notice be treated as a preventive mediation case.

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c. Action on Notices Involving Issues Cognizable by the Grievance Machinery, Voluntary Arbitration or the National Labor Relations Commission.

i) Disputes arising from the interpretation or implementation of a collective bargaining agreement or from the interpretation or enforcement of company personnel policies shall be referred to the grievance machinery as provided for under Art. 261 of the Labor Code xxx (Emphasis supplied).

As quoted earlier, Article 261 of the Labor Code mentioned in the aforequoted Section 6(c)(i), Rule VI of the NCMB Manual refers to the jurisdiction of voluntary arbitrator or panel of voluntary arbitrators "to hear and decide all unresolved grievances arising from the interpretation or implementation of the CBA and those arising from the interpretation or enforcement of company personnel policies," hence "violations of a CBA, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the CBA." The same Article further states that the "Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment (DOLE) shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the Voluntary Arbitrator or panel of Voluntary Arbitrators and shall immediately dispose and refer the same to the Grievance Machinery or Voluntary Arbitration provided in the CBA."

As it were, Article 261 of the Labor Code, in relation to Section 6(c)(i), Rule VI of the NCMB Manual, provides the manner in which the NCMB must resolve notices of strike that involve non-strikeable issues. And whether the notice of strike or lockout involves inter-union or intra-union disputes, violation of labor standards laws or issues cognizable by the grievance machinery, voluntary arbitration or the NLRC, the initial step is for the NCMB to consider the notice of strike as not duly filed.

Centering on disputes arising from the interpretation or implementation of a CBA or from the interpretation or enforcement of company personnel policies, following Section 6(c)(i), Rule VI, supra, of the NCMB Manual, after the declaration that the notice of strike is "not duly filed," the labor dispute is to be referred to voluntary arbitration pursuant to Article 261, supra, of the Labor Code.

In short, the peculiar facts of the instant case show that the University was deprived of a remedy that would have enjoined the Union strike and was left without any recourse except to invoke the jurisdiction of the SOLE.

Following Liberal, this Court will not allow the no strike, no lockout, grievance machinery and voluntary arbitration clauses found in CBAs to be circumvented by the simple expedient of filing of a notice of strike or lockout. A similar circumvention made possible by the inaction of the NCMB on the University's Motion to Strike Out Notice of Strike and to Refer the Dispute to Voluntary Arbitration will not be countenanced. To rule otherwise would render meaningless Articles 261 and 262 of the Labor Code, as amended, as well as the voluntary arbitration clauses found in CBAs.

All told, we find no reversible error committed by the CA in rendering its assailed decision.

WHEREFORE, the petition is DENIED. The Partially Amended Decision dated August 23, 2005 of the Court of Appeals in CA-G.R. SP No. 85317 is AFFIRMED.

SO ORDERED.

Puno, CJ., Chairperson, Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Isaias P. Dicdican with Associate Justices Pampio A. Abarintos and Vicente L. Yap, concurring; Rollo, pp. 50-59.

[2] Rollo, pp. 371-381.

[3] Rollo, pp. 413-416.

[4] The provision reads:

"Section 1. Considering that the University is a non-stock, non-profit educational institution which needs a stable and peaceful atmosphere in the classroom, campus and academe in order to fully achieve its mission in fully educating the youth, the Union binds itself not to go on strike, picketing, work-slowdown, mass leave or any other concerted activity including but not limited to those mentioned in Section 2 hereof, during the lifetime of this Agreement, and likewise, the University agrees that no lockout against any or all of its workers shall take place during the lifetime of this Agreement. In case of unfair labor practice, except when the existence of the Union and/or the employment of Union offices are threatened, the Union instead of a strike or other acts mentioned in the Article, may resort to other remedies under the Labor Code (Art. XIII, Sec. 6, CBA)."

[5] Rollo, pp. 344-346.

[6] Sheriff's Report, Rollo, pp. 347-349.

[7] Rollo, pp. 407-412.

[8] Rollo, pp. 423-426.

[9] Rollo, pp. 350-368.

[10] Id. at 369-370.

[11] Id. at 60-71.

[12] Supra note 1.

[13] Mea Builders, Inc., et al. vs. Court of Appeals, et al., G.R. No. 121484, January 31, 2005, 450 SCRA 155.

[14] Naguiat vs. Court of Appeals, G.R. No. 118375, October 3, 2003, 412 SCRA 591, 595-596.

[14] Supra note 3.

[16] G.R. No. 145428, July 7, 2004; 433 SCRA 610.

[17] Rollo, p. 348.

[18] Union of Filipro Employees vs. Nestle Philippines, Inc., G.R. Nos. 88710-12, December 19, 1990, 192

SCRA 396; *St. Scholastica's College vs. Torres*, G.R. No. 100158, June 29, 1992, 210 SCRA 565; *Telefunken Semiconductors Employees Union-FFW vs. Court of Appeals*, G.R. Nos. 143013-14, December 18, 2000, 348 SCRA 565; *Grand Boulevard Hotel vs. Genuine Labor Organization of Workers in Hotel, Restaurant and Allied Industries (GLOWHRAIN)*, G.R. No. 153664, July 18, 2003, 406 SCRA 688.

[19] CBA, Article V, Section 1; Rollo, p. 375.

[20] *Ibid*, Section 4(f); Rollo, p. 376.

[21] *Supra* note 2.

[22] Article XIII of the CBA, Rollo, p. 380.

[23] *Supra* note 2.

[24] 91 Phil. 72 (1952).

[25] G.R. Nos. 92981-83, January 9, 1992, 205 SCRA 59.

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