PHIMCO INDUSTRIES, INC., PETITIONER, VS. PHIMCO INDUSTRIES LABOR ASSOCIATION (PILA), AND ERLINDA VAZQUEZ, RICARDO SACRISTAN, LEONIDA CATALAN, MAXIMO PEDRO, NATHANIELA DIMACULANG...

G.R. No. 170830. August 11, 2010

Ponente: BRION, J.

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BRION, J.:

Before us is the petition for review on certiorari[1] filed by petitioner Phimco Industries, Inc. (PHIMCO), seeking to reverse and set aside the decision,[2] dated February 10, 2004, and the resolution,[3] dated December 12, 2005, of the Court of Appeals (CA) in CA-G.R. SP No. 70336. The assailed CA decision dismissed PHIMCO's petition for certiorari that challenged the resolution, dated December 29, 1998, and the decision, dated February 20, 2002, of the National Labor Relations Commission (NLRC); the assailed CA resolution denied PHIMCO's subsequent motion for reconsideration.

FACTUAL BACKGROUND

The facts of the case, gathered from the records, are briefly summarized below.

PHIMCO is a corporation engaged in the production of matches, with principal address at Phimco Compound, Felix Manalo St., Sta. Ana, Manila. Respondent Phimco Industries Labor Association (PILA) is the duly authorized bargaining representative of PHIMCO's daily-paid workers. The 47 individually named respondents are PILA officers and members.

When the last collective bargaining agreement was about to expire on December 31, 1994, PHIMCO and PILA negotiated for its renewal. The negotiation resulted in a deadlock on economic issues, mainly due to disagreements on salary increases and benefits.

On March 9, 1995, PILA filed with the National Conciliation and Mediation Board (NCMB) a Notice of Strike on the ground of the bargaining deadlock. Seven (7) days later, or on March 16, 1995, the union conducted a strike vote; a majority of the union members voted for a strike as its response to the bargaining impasse. On March 17, 1995, PILA filed the strike vote results with the NCMB. Thirty-five (35) days later, or on April 21, 1995, PILA staged a strike.

On May 3, 1995, PHIMCO filed with the NLRC a petition for preliminary injunction and temporary restraining order (TRO), to enjoin the strikers from preventing - through force, intimidation and coercion - the ingress and egress of non-striking employees into and from the company premises. On May 15, 1995, the NLRC issued an ex-parte TRO, effective for a period of twenty (20) days, or until June 5, 1995.

On June 23, 1995, PHIMCO sent a letter to thirty-six (36) union members, directing them to explain within twenty-four (24) hours why they should not be dismissed for the illegal acts they committed during the strike.

Three days later, or on June 26, 1995, the thirty-six (36) union members were informed of their dismissal.

On July 6, 1995, PILA filed a complaint for unfair labor practice and illegal dismissal (illegal dismissal case) with the NLRC. The case was docketed as NLRC NCR Case No. 00-07-04705-95, and raffled to Labor Arbiter (LA) Pablo C. Espiritu, Jr.

On July 7, 1995, then Acting Labor Secretary Jose S. Brillantes assumed jurisdiction over the labor dispute, and ordered all the striking employees (except those who were handed termination papers on June 26, 1995) to return to work within twenty-four (24) hours from receipt of the order. The Secretary ordered PHIMCO to accept the striking employees, under the same terms and conditions prevailing prior to the strike.[4] On the same day, PILA ended its strike.

On August 28, 1995, PHIMCO filed a Petition to Declare the Strike Illegal (illegal strike case) with the NLRC, with a prayer for the dismissal of PILA officers and members who knowingly participated in the illegal strike. PHIMCO claimed that the strikers prevented ingress to and egress from the PHIMCO compound, thereby paralyzing PHIMCO's operations. The case was docketed as NLRC NCR Case No. 00-08-06031-95, and raffled to LA Jovencio Ll. Mayor.

On March 14, 1996, the respondents filed their Position Paper in the illegal strike case. They countered that they complied with all the legal requirements for the staging of the strike, they put up no barricade, and conducted their strike peacefully, in an orderly and lawful manner, without incident.

LA Mayor decided the case on February 4, 1998,[5] and found the strike illegal; the respondents committed prohibited acts during the strike by blocking the ingress to and egress from PHIMCO's premises and preventing the non-striking employees from reporting for work. He observed that it was not enough that the picket of the strikers was a moving picket, since the strikers should allow the free passage to the entrance and exit points of the company premises. Thus, LA Mayor declared that the respondent employees, PILA officers and members, have lost their employment status.

On March 5, 1998, PILA and its officers and members appealed LA Mayor's decision to the NLRC.

THE NLRC RULING

The NLRC decided the appeal on December 29, 1998, and set aside LA Mayor's decision.[6] The NLRC did not give weight to PHIMCO's evidence, and relied instead on the respondents' evidence showing that the union conducted a peaceful moving picket.

On January 28, 1999, PHIMCO filed a motion for reconsideration in the illegal strike case.[7]

In a parallel development, LA Espiritu decided the union's illegal dismissal case on March 2, 1999. He ruled the respondents' dismissal as illegal, and ordered their reinstatement with payment of backwages. PHIMCO appealed LA Espiritu's decision to the NLRC.

Pending the resolution of PHIMCO's motion for reconsideration in the illegal strike case and the appeal of the illegal dismissal case, PHIMCO moved for the consolidation of the two (2) cases. The NLRC acted favorably on the motion and consolidated the two (2) cases in its Order dated August 5, 1999.

On February 20, 2002, the NLRC rendered its Decision in the consolidated cases, ruling totally in the union's favor.[8] It dismissed the appeal of the illegal dismissal case, and denied PHIMCO's motion for reconsideration in the illegal strike case. The NLRC found that the picket conducted by the striking employees was not an illegal blockade and did not obstruct the points of entry to and exit from the company's premises; the pictures submitted

by the respondents revealed that the picket was moving, not stationary. With respect to the illegal dismissal charge, the NLRC observed that the striking employees were not given ample opportunity to explain their side after receipt of the June 23, 1995 letter. Thus, the NLRC affirmed the Decision of LA Espiritu with respect to the payment of backwages until the promulgation of the decision, plus separation pay at one (1) month salary per year of service in lieu of reinstatement, and 10% of the monetary award as attorney's fees. It ruled out reinstatement because of the damages sustained by the company brought about by the strike.

On March 14, 2002, PHIMCO filed a motion for reconsideration of the consolidated decision.

On April 26, 2002, without waiting for the result of its motion for reconsideration, PHIMCO elevated its case to the CA through a petition for certiorari under Rule 65 of the Rules of Court.[9]

THE CA RULING

In a Decision[10] promulgated on February 10, 2004, the CA dismissed PHIMCO's petition for certiorari. The CA noted that the NLRC findings, that the picket was peaceful and that PHIMCO's evidence failed to show that the picket constituted an illegal blockade or that it obstructed the points of entry to and exit from the company premises, were supported by substantial evidence.

PHIMCO came to us through the present petition after the CA denied[11]PHIMCO's motion for reconsideration.[12]

THE PETITION

The petitioner argues that the strike was illegal because the respondents committed the prohibited acts under Article 264(e) of the Labor Code, such as blocking the ingress and egress of the company premises, threat, coercion, and intimidation, as established by the evidence on record.

THE CASE FOR THE RESPONDENTS

The respondents, on the other hand, submit that the issues raised in this case are factual in nature that we cannot generally touch in a petition for review, unless compelling reasons exist; the company has not shown any such compelling reason as the picket was peaceful and uneventful, and no human barricade blocked the company premises.

THE ISSUE

In Montoya v. Transmed Manila Corporation,[13] we laid down the basic approach that should be followed in the review of CA decisions in labor cases, thus:

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?

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In this light, the core issue in the present case is whether the CA correctly ruled that the NLRC did not act with grave abuse of discretion in ruling that the union's strike was legal.

OUR RULING

We find the petition partly meritorious.

Requisites of a valid strike

A strike is the most powerful weapon of workers in their struggle with management in the course of setting their terms and conditions of employment. Because it is premised on the concept of economic war between labor and management, it is a weapon that can either breathe life to or destroy the union and its members, and one that must also necessarily affect management and its members.[14]

In light of these effects, the decision to declare a strike must be exercised responsibly and must always rest on rational basis, free from emotionalism, and unswayed by the tempers and tantrums of hot heads; it must focus on legitimate union interests. To be legitimate, a strike should not be antithetical to public welfare, and must be pursued within legal bounds. The right to strike as a means of attaining social justice is never meant to oppress or destroy anyone, least of all, the employer.[15]

Since strikes affect not only the relationship between labor and management but also the general peace and progress of the community, the law has provided limitations on the right to strike. Procedurally, for a strike to be valid, it must comply with Article 263[16] of the Labor Code, which requires that: (a) a notice of strike be filed with the Department of Labor and Employment (DOLE) 30 days before the intended date thereof, or 15 days in case of unfair labor practice; (b) a strike vote be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in a meeting called for that purpose; and (c) a notice be given to the DOLE of the results of the voting at least seven days before the intended strike.

These requirements are mandatory, and the union's failure to comply renders the strike illegal.[17] The 15 to 30-day cooling-off period is designed to afford the parties the opportunity to amicably resolve the dispute with the assistance of the NCMB conciliator/mediator, while the seven-day strike ban is intended to give the DOLE an opportunity to verify whether the projected strike really carries the imprimatur of the majority of the union members.[18]

In the present case, the respondents fully satisfied the legal procedural requirements; a strike notice was filed on March 9, 1995; a strike vote was reached on March 16, 1995; notification of the strike vote was filed with the DOLE on March 17, 1995; and the actual strike was launched only on April 25, 1995.

Strike may be illegal for commission of prohibited acts

Despite the validity of the purpose of a strike and compliance with the procedural requirements, a strike may still be held illegal where the means employed are illegal.[19] The means become illegal when they come within the prohibitions under Article 264(e) of the Labor Code which provides:

> No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares.

Based on our examination of the evidence which the LA viewed differently from the NLRC and the CA, we find the PILA strike illegal. We intervene and rule even on the evidentiary and factual issues of this case as both the NLRC and the CA grossly misread the evidence, leading them to inordinately incorrect conclusions, both factual and legal. While the strike undisputably had not been marred by actual violence and patent intimidation, the picketing that respondent PILA officers and members undertook as part of their strike activities effectively

blocked the free ingress to and egress from PHIMCO's premises, thus preventing non-striking employees and company vehicles from entering the PHIMCO compound. In this manner, the picketers violated Article 264(e) of the Labor Code.

The Evidence

We gather from the case record the following pieces of relevant evidence adduced in the compulsory arbitration proceedings.[20]

For the Company

1. Pictures taken during the strike, showing that the respondents prevented free ingress to and egress from the company premises;[21]

2. Affidavit of PHIMCO Human Resources Manager Francis Ferdinand Cinco, stating that he was one of the employees prevented by the strikers from entering the PHIMCO premises;[22]

3. Affidavit of Cinco, identifying Erlinda Vazquez, Ricardo Sacristan, Leonida Catalan, Maximo Pedro, Nathaniela R. Dimaculangan, Rodolfo Mojico, Romeo Caramanza, Reynaldo Ganitano, Alberto Basconcillo, and Ramon Falcis as PILA officers;[23]

4. Affidavit of Cinco identifying other members of PILA;[24]

5. Folder 1, containing pictures taken during the strike identifying and showing Leonida Catalan, Renato Ramos, Arsenio Zamora, Reynaldo Ganitano, Amelia Zamora, Angelito Dejan, Teresa Permocillo, and Francisco Dalisay as the persons preventing Cinco and his group from entering the company premises;[25]

6. Folder 2, with pictures taken on May 30, 1995, showing Cinco, together with non-striking PHIMCO employees, reporting for work but being refused entry by strikers Teofilo Manalili, Nathaniela Dimaculangan, Bernando Cuadra, Maximo Pedro, Nicanor Ilagan, Julian Tuguin, Nemesio Mamonong, Abraham Caday, Ernesto Rio, Benjamin Juan, Sr., Ramon Macaalay, Gerardo Feliciano, Alberto Basconcillo, Rodolfo Sanidad, Mariano Rosales, Roger Caber, Angelito de Guzman, Angelito Balosa and Philip Garces who blocked the company gate;[26]

7. Folder 3, with pictures taken on May 30, 1995, showing the respondents denying free ingress to and egress from the company premises;[27]

8. Folder 4, with pictures taken during the strike, showing that non-striking employees failed to enter the company premises as a result of the respondents' refusal to let them in;[28]

9. Affidavit of Joaquin Aguilar stating that the pictures presented by Cinco were taken during the strike;[29]

10. Pictures taken by Aguilar during the strike, showing non-striking employees being refused entry by the respondents;[30]

11. Joint affidavit of Orlando Marfil and Rodolfo Digo, identifying the pictures they took during the strike, showing that the respondents blocked ingress to and egress from the company premises;[31] and,

12. Testimonies of PHIMCO employees Rodolfo Eva, Aguilar and Cinco, as well as those of PILA officers Maximo Pedro and Leonida Catalan.

For the Respondents

1. Affidavit of Leonida Catalan, stating that the PILA strike complied with all the legal requirements, and the

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strike/picket was conducted peacefully with no incident of any illegality;[32]

2. Affidavit of Maximo Pedro, stating that the strike/picket was conducted peacefully; the picket was always moving with no acts of illegality having been committed during the strike;[33]

3. Certification of Police Station Commander Bienvenido de los Reyes that during the strike there was no report of any untoward incident;[34]

4. Certification of Rev. Father Erick Adeviso of Dambanang Bayan Parish Church that the strike was peaceful and without any untoward incident;[35]

5. Certification of Priest-In-Charge Angelito Fausto of the Philippine Independent Church in Punta, Santa Ana, that the strike complied with all the requirements for a lawful strike, and the strikers conducted themselves in a peaceful manner;[36]

6. Clearance issued by Punong Barangay Mario O. dela Rosa and Barangay Secretary Pascual Gesmundo, Jr. that the strike from April 21 to July 7, 1995 was conducted in an orderly manner with no complaints filed;[37] and,

7. Testimonies at the compulsory arbitration proceedings.

In its resolution of December 29, 1998,[38] the NLRC declared that "the string of proofs" the company presented was "overwhelmingly counterbalanced by the numerous pieces of evidence adduced by respondents x x x all depicting a common story that respondents put up a peaceful moving picket, and did not commit any illegal acts x x x specifically obstructing the ingress to and egress from the company premises[.]"[39]

We disagree with this finding as the purported "peaceful moving picket" upon which the NLRC resolution was anchored was not an innocuous picket, contrary to what the NLRC said it was; the picket, under the evidence presented, did effectively obstruct the entry and exit points of the company premises on various occasions.

To strike is to withhold or to stop work by the concerted action of employees as a result of an industrial or labor dispute.[40] The work stoppage may be accompanied by picketing by the striking employees outside of the company compound. While a strike focuses on stoppage of work, picketing focuses on publicizing the labor dispute and its incidents to inform the public of what is happening in the company struck against. A picket simply means to march to and from the employer's premises, usually accompanied by the display of placards and other signs making known the facts involved in a labor dispute.[41] It is a strike activity separate and different from the actual stoppage of work.

While the right of employees to publicize their dispute falls within the protection of freedom of expression[42] and the right to peaceably assemble to air grievances,[43] these rights are by no means absolute. Protected picketing does not extend to blocking ingress to and egress from the company premises.[44] That the picket was moving, was peaceful and was not attended by actual violence may not free it from taints of illegality if the picket effectively blocked entry to and exit from the company premises.

In this regard, PHIMCO employees Rodolfo Eva and Joaquin Aguilar, and the company's Human Resources Manager Francis Ferdinand Cinco testified during the compulsory arbitration hearings:

> ATTY. REYES: this incident on May 22, 1995, when a coaster or bus attempted to enter PHIMCO compound, you mentioned that it was refused entry. Why was this (sic) it refused entry?
>
> WITNESS: Because at that time, there was a moving picket at the gate that is why the bus was not able to enter.[45]
>
> x x x x

Q: Despite this TRO, which was issued by the NLRC, were you allowed entry by the strikers?

A: We made several attempts to enter the compound, I remember on May 7, 1995, we tried to enter the PHIMCO compound but we were not allowed entry.

Q: Aside from May 27, 1995, were there any other instances wherein you were not allowed entry at PHIMCO compound?

A: On May 29, I recall I was riding with our Production Manager with the Pick-up. We tried to enter but we were not allowed by the strikers.[46]

x x x x

ARBITER MAYOR: How did the strikers block the ingress of the company?

A: They hold around, joining hands, moving picket.[47]

x x x x

ARBITER MAYOR: Reform the question, and because of that moving picket conducted by the strikers, no employees or vehicles can come in or go out of the premises?

A: None, sir.[48]

These accounts were confirmed by the admissions of respondent PILA officers Maximo Pedro and Leonida Catalan that the strikers prevented non-striking employees from entering the company premises. According to these union officers:

ATTY. CHUA: Mr. witness, do you recall an incident when a group of managers of PHIMCO, with several of the monthly paid employees who tried to enter the PHIMCO compound during the strike?

MR. PEDRO: Yes, sir.

ATTY. CHUA: Can you tell us if these (sic) group of managers headed by Francis Cinco entered the compound of PHIMCO on that day, when they tried to enter?

MR. PEDRO: No, sir. They were not able to enter.[49]

x x x x

ATTY. CHUA: Despite having been escorted by police Delos Reyes, you still did not give way, and instead proceeded with your moving picket?

MR. PEDRO: Yes, sir.

ATTY. CHUA: In short, these people were not able to enter the premises of PHIMCO, Yes or No.

MR. PEDRO: Yes, sir.[50]

x x x x

ATTY. CHUA: Madam witness, even if Major Delos Reyes instructed you to give way so as to allow the employees and managers to enter the premises, you and your co-employees did not give way?

MS. CATALAN: No sir.

ATTY. CHUA: the managers and the employees were not able to enter the premises?

MS. CATALAN: Yes, sir.[51]

The NLRC resolution itself noted the above testimonial evidence, "all building up a scenario that the moving picket put up by [the] respondents obstructed the ingress to and egress from the company premises[,]"[52] yet it ignored the clear import of the testimonies as to the true nature of the picket. Contrary to the NLRC characterization that it was a "peaceful moving picket," it stood, in fact, as an obstruction to the company's points of ingress and egress.

Significantly, the testimonies adduced were validated by the photographs taken of the strike area, capturing the strike in its various stages and showing how the strikers actually conducted the picket. While the picket was moving, it was maintained so close to the company gates that it virtually constituted an obstruction, especially when the strikers joined hands, as described by Aguilar, or were moving in circles, hand-to-shoulder, as shown by the photographs, that, for all intents and purposes, blocked the free ingress to and egress from the company premises. In fact, on closer examination, it could be seen that the respondents were conducting the picket right at the company gates.[53]

The obstructive nature of the picket was aggravated by the placement of benches, with strikers standing on top, directly in front of the open wing of the company gates, clearly obstructing the entry and exit points of the company compound.[54]

With a virtual human blockade and real physical obstructions (benches and makeshift structures both outside and inside the gates),[55] it was pure conjecture on the part of the NLRC to say that "[t]he non-strikers and their vehicles were x x x free to get in and out of the company compound undisturbed by the picket line."[56] Notably, aside from non-strikers who wished to report for work, company vehicles likewise could not enter and get out of the factory because of the picket and the physical obstructions the respondents installed. The blockade went to the point of causing the build up of traffic in the immediate vicinity of the strike area, as shown by photographs.[57] This, by itself, renders the picket a prohibited activity. Pickets may not aggressively interfere with the right of peaceful ingress to and egress from the employer's shop or obstruct public thoroughfares; picketing is not peaceful where the sidewalk or entrance to a place of business is obstructed by picketers parading around in a circle or lying on the sidewalk.[58]

What the records reveal belies the NLRC observation that "the evidence x x x tends to show that what respondents actually did was walking or patrolling to and fro within the company vicinity and by word of mouth, banner or placard, informing the public concerning the dispute."[59]

The "peaceful moving picket" that the NLRC noted, influenced apparently by the certifications (Mayor delos Reyes, Fr. Adeviso, Fr. Fausto and Barangay Secretary Gesmundo presented in evidence by the respondents, was "peaceful" only because of the absence of violence during the strike, but the obstruction of the entry and exit points of the company premises caused by the respondents' picket was by no means a "petty blocking act" or an "insignificant obstructive act."[60]

As we have stated, while the picket was moving, the movement was in circles, very close to the gates, with the strikers in a hand-to-shoulder formation without a break in their ranks, thus preventing non-striking workers and vehicles from coming in and getting out. Supported by actual blocking benches and obstructions, what the union demonstrated was a very persuasive and quietly intimidating strategy whose chief aim was to paralyze the operations of the company, not solely by the work stoppage of the participating workers, but by excluding the company officials and non-striking employees from access to and exit from the company premises. No doubt, the strike caused the company operations considerable damage, as the NLRC itself recognized when it ruled out the reinstatement of the dismissed strikers.[61]

Intimidation

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Article 264(e) of the Labor Code tells us that picketing carried on with violence, coercion or intimidation is unlawful.[62] According to American jurisprudence, what constitutes unlawful intimidation depends on the totality of the circumstances.[63] Force threatened is the equivalent of force exercised. There may be unlawful intimidation without direct threats or overt acts of violence. Words or acts which are calculated and intended to cause an ordinary person to fear an injury to his person, business or property are equivalent to threats.[64]

The manner in which the respondent union officers and members conducted the picket in the present case had created such an intimidating atmosphere that non-striking employees and even company vehicles did not dare cross the picket line, even with police intervention. Those who dared cross the picket line were stopped. The compulsory arbitration hearings bear this out.

Maximo Pedro, a PILA officer, testified, on July 30, 1997, that a group of PHIMCO managers led by Cinco, together with several monthly-paid employees, tried to enter the company premises on May 27, 1995 with police escort; even then, the picketers did not allow them to enter.[65]Leonida Catalan, another union officer, testified that she and the other picketers did not give way despite the instruction of Police Major de los Reyes to the picketers to allow the group to enter the company premises.[66] (To be sure, police intervention and participation are, as a rule, prohibited acts in a strike, but we note this intervention solely as indicators of how far the union and its members have gone to block ingress to and egress from the company premises.)

Further, PHIMCO employee Rodolfo Eva testified that on May 22, 1995, a company coaster or bus attempted to enter the PHIMCO compound but it was refused entry by the "moving picket."[67] Cinco, the company personnel manager, also testified that on May 27, 1995, when the NLRC TRO was in force, he and other employees tried to enter the PHIMCO compound, but they were not allowed entry; on May 29, 1995, Cinco was with the PHIMCO production manager in a pick-up and they tried to enter the company compound but, again, they were not allowed by the strikers.[68] Another employee, Joaquin Aguilar, when asked how the strikers blocked the ingress of the company, replied that the strikers "hold around, joining hands, moving picket" and, because of the moving picket, no employee or vehicle could come in and go out of the premises.[69]

The evidence adduced in the present case cannot be ignored. On balance, it supports the company's submission that the respondent PILA officers and members committed acts during the strike prohibited under Article 264(e) of the Labor Code. The testimonies of non-striking employees, who were prevented from gaining entry into the company premises, and confirmed no less by two officers of the union, are on record.

The photographs of the strike scene, also on record, depict the true character of the picket; while moving, it, in fact, constituted a human blockade, obstructing free ingress to and egress from the company premises, reinforced by benches planted directly in front of the company gates. The photographs do not lie - these photographs clearly show that the picketers were going in circles, without any break in their ranks or closely bunched together, right in front of the gates. Thus, company vehicles were unable to enter the company compound, and were backed up several meters into the street leading to the company gates.

Despite all these clear pieces of evidence of illegal obstruction, the NLRC looked the other way and chose not to see the unmistakable violations of the law on strikes by the union and its respondent officers and members. Needless to say, while the law protects the rights of the laborer, it authorizes neither the oppression nor the destruction of the employer.[70] For grossly ignoring the evidence before it, the NLRC committed grave abuse of discretion; for supporting these gross NLRC errors, the CA committed its own reversible error.

Liabilities of union

officers and members

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In the determination of the liabilities of the individual respondents, the applicable provision is Article 264(a) of the Labor Code:

> Art. 264. Prohibited activities. - (a) x x x
>
> x x x x
>
> Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

We explained in Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc.[71] that the effects of illegal strikes, outlined in Article 264 of the Labor Code, make a distinction between participating workers and union officers. The services of an ordinary striking worker cannot be terminated for mere participation in an illegal strike; proof must be adduced showing that he or she committed illegal acts during the strike. The services of a participating union officer, on the other hand, may be terminated, not only when he actually commits an illegal act during a strike, but also if he knowingly participates in an illegal strike.[72]

In all cases, the striker must be identified. But proof beyond reasonable doubt is not required; substantial evidence, available under the attendant circumstances, suffices to justify the imposition of the penalty of dismissal on participating workers and union officers as above described.[73]

In the present case, respondents Erlinda Vazquez, Ricardo Sacristan, Leonida Catalan, Maximo Pedro, Nathaniela Dimaculangan, Rodolfo Mojico, Romeo Caramanza, Reynaldo Ganitano, Alberto Basconcillo,and Ramon Falcis stand to be dismissed as participating union officers, pursuant to Article 264(a), paragraph 3, of the Labor Code. This provision imposes the penalty of dismissal on "any union officer who knowingly participates in an illegal strike." The law grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment.[74]

PHIMCO was able to individually identify the participating union members thru the affidavits of PHIMCO employees Martimer Panis[75] and Rodrigo A. Ortiz,[76] and Personnel Manager Francis Ferdinand Cinco,[77] and the photographs[78] of Joaquin Aguilar. Identified were respondents Angelita Balosa, Danilo Banaag, Abraham Caday, Alfonso Claudio, Francisco Dalisay, Angelito Dejan, Philip Garces, Nicanor Ilagan, Florencio Libongcogon, Nemesio Mamonong, Teofilo Manalili, Alfredo Pearson, Mario Perea, Renato Ramos, Mariano Rosales, Pablo Sarmiento, Rodolfo Tolentino, Felipe Villareal, Arsenio Zamora, Danilo Baltazar, Roger Caber, Reynaldo Camarin, Bernardo Cuadra, Angelito de Guzman, Gerardo Feliciano, Alex Ibañez, Benjamin Juan, Sr., Ramon Macaalay, Gonzalo Manalili, Raul Miciano, Hilario Peña, Teresa Permocillo, Ernesto Rio, Rodolfo Sanidad, Rafael Sta. Ana, Julian Tuguin and Amelia Zamora as the union members who actively participated in the strike by blocking the ingress to and egress from the company premises and preventing the passage of non-striking employees. For participating in illegally blocking ingress to and egress from company premises, these union members stand to be dismissed for their illegal acts in the conduct of the union's strike.

PHIMCO failed to observe due process

We find, however, that PHIMCO violated the requirements of due process of the Labor Code when it dismissed the respondents.

Under Article 277(b)[79] of the Labor Code, the employer must send the employee, who is about to be terminated, a written notice stating the cause/s for termination and must give the employee the opportunity to be

heard and to defend himself.

We explained in Suico v. National Labor Relations Commission,[80] that Article 277(b), in relation to Article 264(a) and (e) of the Labor Code recognizes the right to due process of all workers, without distinction as to the cause of their termination, even if the cause was their supposed involvement in strike-related violence prohibited under Article 264(a)and (e) of the Labor Code.

To meet the requirements of due process in the dismissal of an employee, an employer must furnish him or her with two (2) written notices: (1) a written notice specifying the grounds for termination and giving the employee a reasonable opportunity to explain his side and (2) another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee.[81]

In the present case, PHIMCO sent a letter, on June 23, 1995, to thirty-six (36) union members, generally directing them to explain within twenty-four (24) hours why they should not be dismissed for the illegal acts they committed during the strike; three days later, or on June 26, 1995, the thirty-six (36) union members were informed of their dismissal from employment.

We do not find this company procedure to be sufficient compliance with the due process requirements that the law guards zealously. It does not appear from the evidence that the union officers were specifically informed of the charges against them and given the chance to explain and present their side. Without the specifications they had to respond to, they were arbitrarily separated from work in total disregard of their rights to due process and security of tenure.

As to the union members, only thirty-six (36) of the thirty-seven (37) union members included in this case were notified of the charges against them thru the letters dated June 23, 1995, but they were not given an ample opportunity to be heard and to defend themselves; the notice of termination came on June 26, 1995, only three (3) days from the first notice - a perfunctory and superficial attempt to comply with the notice requirement under the Labor Code. The short interval of time between the first and second notice speaks for itself under the circumstances of this case; mere token recognition of the due process requirements was made, indicating the company's intent to dismiss the union members involved, without any meaningful resort to the guarantees accorded them by law.

Under the circumstances, where evidence sufficient to justify the penalty of dismissal has been adduced but the workers concerned were not accorded their essential due process rights, our ruling in Agabon v. NLRC[82] finds full application; the employer, despite the just cause for dismissal, must pay the dismissed workers nominal damages as indemnity for the violation of the workers' right to statutory due process. Prevailing jurisprudence sets the amount of nominal damages at P30,000.00, which same amount we find sufficient and appropriate in the present case.[83]

WHEREFORE, in light of all the foregoing, we hereby REVERSE and SET ASIDE the decision dated February 10, 2004 and the resolution dated December 12, 2005 of the Court of Appeals in CA-G.R. SP No. 70336, upholding the rulings of the National Labor Relations Commission.

The Decision, dated February 4, 1998, of Labor Arbiter Jovencio Ll. Mayor should prevail and is REINSTATED with the MODIFICATION that Erlinda Vazquez, Ricardo Sacristan, Leonida Catalan, Maximo Pedro, Nathaniela Dimaculangan, Rodolfo Mojico, Romeo Caramanza, Reynaldo Ganitano, Alberto Basconcillo, Ramon Falcis, Angelita Balosa, Danilo Banaag, Abraham Caday, Alfonso Claudio, Francisco Dalisay, Angelito Dejan, Philip Garces, Nicanor Ilagan, Florencio Libongcogon, Nemesio Mamonong, Teofilo Manalili, Alfredo Pearson, Mario Perea, Renato Ramos, Mariano Rosales, Pablo Sarmiento, Rodolfo Tolentino, Felipe Villareal, Arsenio Zamora,

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Danilo Baltazar, Roger Caber,Reynaldo Camarin, Bernardo Cuadra, Angelito de Guzman, Gerardo Feliciano, Alex Ibañez, Benjamin Juan, Sr., Ramon Macaalay, Gonzalo Manalili, Raul Miciano, Hilario Peña, Teresa Permocillo, Ernesto Rio, Rodolfo Sanidad, Rafael Sta. Ana, Julian Tuguin, and Amelia Zamora are each awarded nominal damages in the amount of P30,000.00. No pronouncement as to costs.

SO ORDERED.

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

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

[*] Spelled as "Nathaniel Dimaculangan" in other parts of the record.

[**] Spelled as "Alberto Basconillo" and "Alberto Basconilo" in other parts of the record.

[***]Spelled as "Angelito Balosa" in other parts of the record.

[****] Known as "Francisco Dalisay, Jr." in other parts of the record.

[*****]Spelled as "Angelito Dizon" in other parts of the record.

[******]Spelled as "Glorencio Liboncogon" in other parts of the record.

[*******]Spelled as "Alfredo Peason" in other parts of the record.

[********]Spelled as "Mario Pedro" in other parts of the record.

[*********]Spelled as "Roger Cabu" in other parts of the record.

[**********]Spelled as "Fernando Cuadra" in other parts of the record.

[***********]Spelled as "Genaro Felicario" and "Genaro Feliciano" in other parts of the record.

[************]Spelled as "Theresa Permocillo" in other parts of the record.

[1] Filed under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr., with the concurrence of Associate Justices Roberto A. Barrios and Arsenio J. Magpale; rollo, pp. 8-15.

[3] Penned by Associate Justice Roberto A. Barrios, with the concurrence of Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso; id. at 17-19.

[4] In Phimco Industries, Inc. v. Actg. Sec. of Labor Brillantes (364 Phil. 402, 410 [1999]), we held that the labor secretary acted with grave abuse of discretion in assuming jurisdiction over a labor dispute without any showing that the disputants were engaged in an industry indispensable to national interest; PHIMCO, a match factory, though of value, can hardly be considered as an industry "indispensable to the national interest" as it cannot be in the same category as "generation or distribution of energy, or those undertaken by banks, hospitals, and export-oriented industries."

[5] Rollo, pp. 60-80.

[6] Id. at 81-101.

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[7] Id. at 102-137.

[8] Id. at 138-177.

[9] Id. at 178-202.

[10] Supra note 2.

[11] Supra note 3.

[12] Rollo, pp. 204-214.

[13] G.R. No. 183329, August 27, 2009, 597 SCRA 334.

[14] Lapanday Workers Union v. NLRC, G.R. Nos. 95494-97, September 7, 1995, 248 SCRA 95, 104-105.

[15] Asso. of Independent Unions in the Phil. v. NLRC, 364 Phil. 697, 707 (1999).

[16] Art. 263. Strikes, picketing, and lockouts. x x x

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the [Department] at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

(d) The notice must be in accordance with such implementing rules and regulations as the [Secretary] of Labor and Employment may promulgate.

(e) During the cooling-off period, it shall be the duty of the [Department] to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The [Department] may at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the [Department] the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.

[17] Piñero v. National Labor Relations Commission, 480 Phil. 534, 542 (2004); Grand Boulevard Hotel v. GLOWHRAIN, 454 Phil. 463, 488 (2003).

[18] Capitol Medical Center, Inc. v. NLRC, 496 Phil. 707, 717 (2005), citing Primer on Strike, Picketing and Lockout, National Conciliation and Mediation Board - Department of Labor and Employment, Intramuros, Manila, 1996 ed., p. 6.

[19] Sukhothai Cuisine and Restaurant v. Court of Appeals, G.R. No. 150437, July 17, 2006, 495 SCRA 336;

Asso. of Independent Unions in the Philippines v. NLRC, supra note 15.

[20] Rollo, pp. 67-74; LA decision, pp. 8-15.

[21] Exhibits "A" to "A-105."

[22] Exhibit "D."

[23] Exhibit "D-2."

[24] Exhibit "D-3."

[25] Exhibits "F" to "F-7."

[26] Exhibits "G" to "G-4."

[27] Exhibits "H" to "H-12."

[28] Exhibits "I" to "I-3."

[29] Exhibit "J."

[30] Exhibits "K" and "K-1."

[31] Exhibit "L."

[32] Exhibits "1," "1-A," & "1-B."

[33] Exhibits "10" and "10-A."

[34] Exhibit "11."

[35] Exhibit "12."

[36] Exhibit "13."

[37] Exhibit "14."

[38] Supra note 6.

[39] Rollo, p. 92; NLRC resolution, p. 12, par. 1.

[40] Article 212(o), Labor Code.

[41] Santa Rosa Coca-Cola Plant Employees Union v. Coca-Cola Bottlers Phils., Inc., G.R. Nos. 164302-03, January 24, 2007, 512 SCRA 437, 454; Ilaw at Buklod ng Manggagawa (IBM) v. NLRC, G.R. No. 91980, June 27, 1991, 198 SCRA 586, 594.

[42] CONSTITUTION, Art. III, Sec. 4; Gonzales v. Commission on Elections, 137 Phil. 471 (1969); The Insular Life Assurance Co., Ltd. Employees Association-NATU v. The Insular Life Assurance Co., Ltd., 147 Phil. 194 (1971); Zaldivar v. Sandiganbayan, 243 Phil. 988 (1988); ABS-CBN Broadcasting Corporation v. Commission on Elections, 380 Phil. 780 (2000); Chavez v. Secretary Gonzalez, G.R. No. 168337, February 15, 2008, 545 SCRA 441; Schenck v. United States, 249 U.S. 47 (1919); Near v. Minnesota, 283 U.S. 697 (1931); New York Times v. United States, 403 U.S. 713 (1971).

[43] CONSTITUTION, Art. III, Sec. 4; Philippine Blooming Mills Employees Association v. Philippine Blooming Mills, 151-A Phil. 656 (1973); J.B.L. Reyes v. Mayor Bagatsing, 210 Phil. 457 (1983); De la Cruz v. Court of Appeals, 364 Phil. 786 (1999); Acosta v. Court of Appeals, 389 Phil. 829 (2000); Bayan v. Ermita, G.R.

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No. 169838, April 25, 2006, 488 SCRA 1.

[44] 48 Am. Jur. 2d, Sec. 3562, p. 623, citing I.T.O. Corp. of Baltimore (1981) 255 NLRB 1050, 107 BNA LRRM 1035, 1980-81 CCH NLRB, par. 18055. See also 48 Am. Jur. 2d, Sec. 739, p. 456, citing Ark C 5-71-214.

[45] TSN dated June 28, 1995, testimony of Rodolfo Eva, a union officer.

[46][ ]TSN dated August 27, 1996, p. 8, testimony of Francis Ferdinand Cinco.

[47] TSN dated February 11, 1997, p. 12, testimony of Joaquin Aguilar.

[48] TSN dated March 3, 1997, p. 33, testimony of Joaquin Aguilar.

[49] TSN dated July 30, 1997, pp. 5-8, testimony of Maximo Pedro.

[50][ ]Id. at 15-17.

[51] TSN dated August 13, 1997, p. 30, testimony of Leonida Catalan.

[52] Rollo, p. 92; NLRC resolution, p. 12, first paragraph, last sentence.

[53] Id. at 117,119,120,123,126 and 127.

[54] Id. at 118.

[55] Id. at 121-124.

[56] Id. at 94; NLRC resolution, p.14, par.1.

[57] Id. at 124

[58] 2 C.A. Azucena, The Labor Code, with Comment and Cases, p. 612 (2007), citing 31 Am. Jur. 249, p. 955.

[59] Rollo, p. 94; NLRC resolution, p. 14, par. 2.

[60] Id. at 95-96; NLRC resolution, pp. 15-16, last paragraph.

[61] Id. at 176; NLRC decision, p. 39, par. 2.

[62] See also Section 13, Rule XXII, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-03, series of 2003, February 17, 2003.

[63] 48 Am. Jur. 2d, Sec. 2461, p. 1263.

[64] 48-A Am. Jur. 2d, Sec. 2059, pp. 427-428.

[65] Supra note 46.

[66] Supra note 32.

[67] Supra note 45.

[68] Supra note 46.

[69] Supra notes 47 and 48.

[70] Colgate-Palmolive Philippines, Inc. v. Ople, 246 Phil. 331(1988).

[71] G.R. No. 140992, March 25, 2004, 426 SCRA 319.

[72] Id. at 328.

[73] Asso. of Independent Unions in the Phil. v. NLRC, supra note 15, at 709.

[74] Santa Rosa Coca-Cola Plant Employees Union v. Coca-Cola Bottlers Phils., Inc., supra note 41 at 458-459; Gold City Integrated Port Service, Inc. v. NLRC, G.R. No. 103560, July 6, 1995, 245 SCRA 627, 641.

[75] Exhibit "36."

[76] Exhibit "38."

[77] Exhibit "5."

[78] Exhibits "6" to "6-M," "37" to "37-M," "39" to "40-A."

[79] ART. 277. Miscellaneous provisions. -

x x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

[80] G.R. No. 146762, January 30, 2007, 513 SCRA 325, 342. See also Stamford Marketing Corp. v. Julian, 468 Phil. 34, 52-53 (2004).

[81] Omnibus Rules Implementing the Labor Code, Book VI, Rule 1, Sec. 2(a) and (c).

[82] 485 Phil. 248 (2004).

[83] Ancheta v. Destiny Financial Plans Plans, Inc., G.R. No. 179702, February 16, 2010; RTG Construction, Inc. v. Facto, G.R. No. 163872, December 21, 2009; Formantes v. Duncan Pharmaceuticals, Phils., Inc., G.R. No.170661, December 4, 2009, 607 SCRA 268, 287; Jose, Jr. v. Michaelmar Phils., Inc., G.R. No. 169606, November 27, 2009, 606 SCRA 116, 136; Faeldonia v. Tong Yak Groceries, G.R. No. 182499, October 2, 2009. See also Suico v. National Labor Relations Commission, G.R. Nos. 146762, 153584 & 163793, January 30, 2007, 513 SCRA 325, 347.

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