PICOP RESOURCES, INCORPORATED (PRI), REPRESENTED IN THIS PETITION BY MR. WILFREDO D. FUENTES, IN HIS CAPACITY AS SENIOR VICE-PRESIDENT AND RESIDENT MANAGER, PETITIONER, VS. RICA...

G.R. No. 172666. December 07, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review assailing the April 14, 2005 Decision[1] of the Court of Appeals (CA) which reversed and set aside the Resolutions[2] of the National Labor Relations Commission (NLRC) dated December 27, 2002 and March 28, 2003, and reinstated the June 9, 2001 Decision[3] of the Labor Arbiter (LA), which declared the dismissal of the private respondents as illegal.

The Facts

Ricardo Dequilla, Cesar Atienza and Aniceto Orbeta (private respondents) were regular rank-and-file employees of Picop Resources, Inc. (PICOP) and members of the NAMAPRI-SPFL, a duly registered labor organization and existing bargaining agent of the PICOP rank-and-file employees. PICOP and NAMAPRI-SPFL had a collective bargaining agreement (CBA) which would expire on May 22, 2000.

On May 16, 2000, the late Atty. Proculo P. Fuentes, Jr. (Atty. Fuentes), then National President of the Southern Philippines Federation of Labor (SPFL), advised the PICOP management to terminate about 800 employees due to acts of disloyalty, specifically, for allegedly campaigning, supporting and signing a petition for the certification of a rival union, the Federation of Free Workers Union (FFW) before the 60-day "freedom period" and during the effectivity of the CBA. Such acts of disloyalty were construed to be a valid cause for termination under the terms and conditions of the CBA. Based on the CBA, the freedom period would start on March 22, 2000.

Acting on the advice of Atty. Fuentes, Atty. Romero Boniel (Atty. Boniel), Manager of the PICOP Legal and Labor Relations Department, issued a memorandum directing the employees concerned to explain within seventy-two (72) hours why their employment should not be terminated due to alleged acts of disloyalty. Upon receiving their explanation letters, Atty. Boniel endorsed the same to Atty. Fuentes who then requested the termination of 46 employees found guilty of acts of disloyalty.

On October 16, 2000, PICOP served a notice of termination due to acts of disloyalty to 31 of the 46 employees. Private respondents were among the 31 employees dismissed from employment by PICOP on November 16, 2000.

Enraged at what management did to them, private respondents filed a complaint before the NLRC Regional Arbitration Branch No. XIII, Butuan City, for Unfair Labor Practice and Illegal Dismissal with money claims, damages and attorney's fees.

LA Ruling

On June 9, 2001, after the parties submitted their respective position papers, the LA rendered a decision declaring as illegal the termination of the private respondents. The dispositive portion of the LA Decision reads:

> WHEREFORE, premises considered, judgment is hereby entered:
>
> - Declaring complainants' dismissal illegal; and
>
> - Ordering respondents PRI and NAMPRI-SPFL to reinstate complainants to their former or equivalent positions without loss of seniority rights and to jointly and solidarily pay their backwages in the total amount of P177,403.68, as shown in the computation, hereto attached and marked as Annex "A" hereof, plus damages in the amount of P10,000.00 each and attorney's fees equivalent to 10% of the total monetary award.
>
> SO ORDERED. [4]

NLRC Ruling

PICOP elevated the LA decision to the NLRC but its appeal was dismissed in the November 19, 2002 NLRC Resolution.[5] On motion for reconsideration, however, the NLRC issued another resolution,[6] dated December 27, 2002, reversing and setting aside its November 19, 2002 Resolution, the dispositive portion of which reads:

> WHEREFORE, foregoing premises considered, the above resolution dated November 19, 2002, is Reversed and Set Aside. In lieu thereof, a new judgment is rendered DISMISSING the above-entitled case for lack of merit.
>
> SO ORDERED.[7]

CA Ruling

Upon the denial of their motion for reconsideration, the private respondents brought the case to the CA. On April 14, 2005, the CA rendered the subject decision reversing and setting aside the December 27, 2002 NLRC resolution and reinstating the June 9, 2001 Decision of the LA. The decretal portion of the CA decision reads:

> WHEREFORE, premises considered, [the] instant petition is GRANTED and the assailed resolutions of the Public Respondent NLRC are hereby REVERSED and SET ASIDE. In view thereof, ordered REINSTATED is the Decision of Acting Executive Labor Arbiter Rogelio P. Legaspi dated 09 June 2001 which reads:
>
> WHEREFORE, premises considered, judgment is hereby entered:
>
> - Declaring complainants' dismissal illegal; and
>
> - Ordering Respondents PRI and NAMPRI-SPFL to reinstate Complainants to their former or equivalent positions without loss of seniority rights and to jointly and solidarily pay their backwages in the total amount of P177,403.68, plus damages in the amount of P10,000.00 each and attorney's fees equivalent to 10% of the total monetary award.
>
> SO ORDERED.[8]

The CA ruled, among others, that although private respondents signed an authorization for the filing of the petition for certification election of a rival union, PICOP Democratic Trade Unionist-Federation of Free Workers (FFW), such act was not a sufficient ground to terminate the employment of private respondents. It explained:

> Ruminating from the alleged violation of the CBA, We see no reason, sufficient and compelling enough, to sustain the Public Respondent's raison d'etre in overturning the Labor Arbiter's ruling in favor of the Petitioners. While it is true that Petitioners signed the authorization in support of the Petition for certification

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> election of FFW before the "freedom period," such act is not a sufficient ground to terminate the employment of the Petitioners in as much as the petition itself was filed during the freedom period. Hence, there is nil a basis to impute acts of disloyalty to Petitioners. Imputations of an alleged violation of the CBA should not arise from a vague and all embracing definition of alleged "acts of disloyalty." Neither should it arise from speculative inferences where no evidence appears from the record that Respondent NAMAPRI-SPFL expressly defined "acts of disloyalty." Besides, to Our mind, signing an authorization for the filing of the petition for certification election does not constitute an act of disloyalty per se. There must be proof of contemporaneous acts of resignation or withdrawal of their membership from the Respondent NAMAPRI-SPFL to which they are members. Respondents miserably failed to present evidence to justify a valid termination of employees in pursuance to the CBA allegedly violated. Petitioners, in fact remained in good standing, a continuing requirement for retaining their employment in the Respondent PRI. Petitioners neither joined nor affiliated with FFW and continuously paid their union dues with Respondent NAMAPRI-SPFL. Consequently, this lends credence to the Labor Arbiter's ruling that Petitioners' dismissal was indeed illegal.
>
> Likewise, the advise of the Respondent NAMAPRI-SPFL to the Respondent PRI to effect the termination of employees, including herein Petitioners, finds no basis in fact and in law considering that at the time the Respondent PRI dismissed the Petitioners, among others, on 16 November 2000, there was no more CBA to speak of after it had already expired on 22 May 2000.[9]

The CA further agreed with private respondents that Article 256 and not Article 253, of the Labor Code applied in this case. The CA discussed this point as follows:

> We are inclined to favor Petitioner's stance that Article 256, supra, is applicable. The issue of acts of disloyalty relates more to a direct connection on the alleged violation or breach of loyalty to the majority status of the incumbent union than on violation of the terms and conditions of the agreement under Article 253, supra, as the Respondents would want Us to believe. Article 256 provides that at the expiration of the 60-day period reckoned from the expiration date of the CBA, the employer shall continue to recognize the majority status of the incumbent bargaining agent only where no petition for certification election is filed. However, as earlier pointed, a petition was already filed by the Petitioners, among others, during the 60-day freedom period. Clearly, from the imports of said provision, it will render nugatory the purpose of the law providing for a freedom period for the filing of a petition for certification election should the act of signing/filing the said petition be interpreted as an act of disloyalty and will render farce the need for a certification election as an instrument of ascertaining the true expression of the will of the workers as to which labor organization would represent them.
>
> To construe the provision of law in Article 253, supra, as imposing a restriction against the signing and filing a petition for certification election during the freedom period, is to violate the constitutional right of the employees to organize freely. It is a basic precept of statutory construction that statutes should be construed not so much according to the letters that killeth but in line with the purpose for which they have been enacted.[10]

Not in conformity with the CA decision, PICOP filed this petition for review posing the following

ISSUES

> WHETHER [OR NOT] AN EXISTING COLLECTIVE BARGAINING AGREEMENT (CBA) CAN BE GIVEN ITS FULL FORCE AND EFFECT IN ALL ITS TERMS AND CONDITIONS INCLUDING ITS UNION SECURITY CLAUSE, EVEN BEYOND THE 5-YEAR PERIOD WHEN NO NEW CBA HAS YET BEEN ENTERED INTO?
>
> WHETHER OR NOT AN HONEST ERROR IN THE INTERPRETATION AND/OR CONCLUSION OF LAW FALLS WITHIN THE AMBIT OF THE EXTRA ORDINARY REMEDY OF CERTIORARI UNDER RULE 65, REVISED RULES OF COURT.[11]

PICOP basically argues that Article 253 of the Labor Code applies in this case. Article 253 of the Labor Code provides that the terms and conditions of a CBA remain in full force and effect even beyond the 5-year period when no new CBA has yet been reached. It claims that the private respondents violated this provision when they campaigned for, supported and signed FFW's petition for certification election on March 19 and 20, 2000, before the onset of the freedom period. It further argues that private respondents were not denied due process when they were terminated. Finally, it claims that the decision of the NLRC on the issues raised was not without merit. Even assuming that it erred in its judgment on the legal issues raised, its error is not equivalent to an abuse of discretion that should fall within the ambit of the extraordinary remedy of certiorari.

Private respondents' position

Private respondents argue that the substantial arguments raised by PICOP in this petition are basically a rehash of the same issues and arguments contained in its Motion for Reconsideration of the CA decision. Private respondents adopted and repleaded the ruling of the CA in their Comment[12] on this petition.

The Court's Ruling

The petition merits a denial.

There is no question that in the CBA entered into by the parties, there is a union security clause. The clause imposes upon the workers the obligation to join and maintain membership in the company's recognized union as a condition for employment.

> "Union security" is a generic term, which is applied to and comprehends "closed shop," "union shop," "maintenance of membership," or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit, or the agreement is terminated. A closed shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part.[13]

There is no dispute that private respondents were members of NAMAPRI-SPFL who were terminated by PICOP due to alleged acts of disloyalty. It is basic in labor jurisprudence that the burden of proof rests upon management to show that the dismissal of its worker was based on a just cause. When an employer exercises its power to terminate an employee by enforcing the union security clause, it needs to determine and prove the following: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the decision of the union to expel the employee from the union.[14]

In this case, the resolution thereof hinges on whether PICOP was able to show sufficient evidence to support the decision of the union to expel private respondents from it.

PICOP basically contends that private respondents were justly terminated from employment for campaigning, supporting and signing a petition for the certification of FFW, a rival union, before the 60-day "freedom period" and during the effectivity of the CBA. Their acts constitute an act of disloyalty against the union which is valid cause for termination pursuant to the Union Security Clause in the CBA.

The Court finds Itself unable to agree.

Considering the peculiar circumstances, the Court is of the view that the acts of private respondents are not enough proof of a violation of the Union Security Clause which would warrant their dismissal. PICOP failed to show in detail how private respondents campaigned and supported FFW. Their mere act of signing an authorization for a petition for certification election before the freedom period does not necessarily demonstrate union disloyalty. It is far from being within the definition of "acts of disloyalty" as PICOP would want the Court to believe. The act of "signing an authorization for a petition for certification election" is not disloyalty to the union per se considering that the petition for certification election itself was filed during the freedom period which started on March 22, 2000.

Moreover, as correctly ruled by the CA, the records are bereft of proof of any contemporaneous acts of resignation or withdrawal of union membership or non-payment of union dues. Neither is there proof that private respondents joined FFW. The fact is, private respondents remained in good standing with their union, NAMAPRI-SPFL. This point was settled in the case of PICOP Resources, Incorporated (PRI) v. Anacleto L. Tañeca,[15] where it was written:

> However, as to the third requisite, we find that there is no sufficient evidence to support the decision of PRI to terminate the employment of the respondents.
>
> PRI alleged that respondents were terminated from employment based on the alleged acts of disloyalty they committed when they signed an authorization for the Federation of Free Workers (FFW) to file a Petition for Certification Election among all rank-and-file employees of PRI. It contends that the acts of respondents are a violation of the Union Security Clause, as provided in their Collective Bargaining Agreement.
>
> We are unconvinced.
>
> We are in consonance with the Court of Appeals when it held that the mere signing of the authorization in support of the Petition for Certification Election of FFW on March 19, 20 and 21, or before the "freedom period," is not sufficient ground to terminate the employment of respondents inasmuch as the petition itself was actually filed during the freedom period. Nothing in the records would show that respondents failed to maintain their membership in good standing in the Union. Respondents did not resign or withdraw their membership from the Union to which they belong. Respondents continued to pay their union dues and never joined the FFW.
>
> Significantly, petitioner's act of dismissing respondents stemmed from the latter's act of signing an authorization letter to file a petition for certification election as they signed it outside the freedom period. However, we are constrained to believe that an "authorization letter to file a petition for certification election" is different from an actual "Petition for Certification Election." Likewise, as per records, it was clear that the actual Petition for Certification Election of FFW was filed only on May 18, 2000. Thus, it was within the ambit of the freedom period which commenced from March 21, 2000 until May 21, 2000. Strictly speaking, what is prohibited is the filing of a petition for certification election outside the 60-day freedom period. This is not the situation in this case. If at all, the signing of the authorization to file a certification election was merely preparatory to the filing of the petition for certification election, or an exercise of respondents' right to self-organization.[16]

Finally, PICOP insists that Article 253 of the Labor Code applies in this case, not Article 256 thereof. The Court agrees with the CA that its argument is misplaced. This issue was tackled and settled in the same PICOP Resources, Incorporated (PRI) v. Tañeca case, to wit:

> Moreover, PRI anchored their decision to terminate respondents' employment on Article 253 of the Labor Code which states that "it shall be the duty of both parties to keep the status quo and to continue in full force

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and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties." It claimed that they are still bound by the Union Security Clause of the CBA even after the expiration of the CBA; hence, the need to terminate the employment of respondents.

Petitioner's reliance on Article 253 is misplaced.

The provision of Article 256 of the Labor Code is particularly enlightening. It reads:

Article 256. Representation issue in organized establishments. - In organized establishments, when a verified petition questioning the majority status of the incumbent bargaining agent is filed before the Department of Labor and Employment within the sixty-day period before the expiration of a collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot when the verified petition is supported by the written consent of at least twenty-five percent (25%) of all the employees in the bargaining unit to ascertain the will of the employees in the appropriate bargaining unit. To have a valid election, at least a majority of all eligible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit. When an election which provides for three or more choices results in no choice receiving a majority of the valid votes cast, a run-off election shall be conducted between the labor unions receiving the two highest number of votes: Provided, That the total number of votes for all contending unions is at least fifty per cent (50%) of the number of votes cast.

At the expiration of the freedom period, the employer shall continue to recognize the majority status of the incumbent bargaining agent where no petition for certification election is filed.

Applying the same provision, it can be said that while it is incumbent for the employer to continue to recognize the majority status of the incumbent bargaining agent even after the expiration of the freedom period, they could only do so when no petition for certification election was filed. The reason is, with a pending petition for certification, any such agreement entered into by management with a labor organization is fraught with the risk that such a labor union may not be chosen thereafter as the collective bargaining representative. The provision for status quo is conditioned on the fact that no certification election was filed during the freedom period. Any other view would render nugatory the clear statutory policy to favor certification election as the means of ascertaining the true expression of the will of the workers as to which labor organization would represent them.

In the instant case, four (4) petitions were filed as early as May 12, 2000. In fact, a petition for certification election was already ordered by the Med-Arbiter of DOLE Caraga Region on August 23, 2000. Therefore, following Article 256, at the expiration of the freedom period, PRI's obligation to recognize NAMAPRI-SPFL as the incumbent bargaining agent does not hold true when petitions for certification election were filed, as in this case.

Moreover, the last sentence of Article 253 which provides for automatic renewal pertains only to the economic provisions of the CBA, and does not include representational aspect of the CBA. An existing CBA cannot constitute a bar to a filing of a petition for certification election. When there is a representational issue, the status quo provision in so far as the need to await the creation of a new agreement will not apply. Otherwise, it will create an absurd situation where the union members will be forced to maintain membership by virtue of the union security clause existing under the CBA and, thereafter, support another union when filing a petition for certification election. If we apply it, there will always be an issue of disloyalty whenever the employees exercise their right to self-organization. The holding of a certification election is a statutory policy that should not be circumvented, or compromised.

Time and again, we have ruled that we adhere to the policy of enhancing the welfare of the workers. Their freedom to choose who should be their bargaining representative is of paramount importance. The fact that there already exists a bargaining representative in the unit concerned is of no moment as long as the petition for certification election was filed within the freedom period. What is imperative is that by such a petition for

> certification election the employees are given the opportunity to make known of who shall have the right to represent them thereafter. Not only some, but all of them should have the right to do so. What is equally important is that everyone be given a democratic space in the bargaining unit concerned.
>
> We will emphasize anew that the power to dismiss is a normal prerogative of the employer. This, however, is not without limitations. The employer is bound to exercise caution in terminating the services of his employees especially so when it is made upon the request of a labor union pursuant to the Collective Bargaining Agreement. Dismissals must not be arbitrary and capricious. Due process must be observed in dismissing an employee, because it affects not only his position but also his means of livelihood. Employers should, therefore, respect and protect the rights of their employees, which include the right to labor. [17]

Considering that private respondents were illegally dismissed, basic law provides that they shall be entitled to the benefit of full backwages and reinstatement unless the latter is no longer viable, in which case, a grant of separation pay shall be awarded equivalent to one month salary for every year of service.

> X x x Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits, or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement. But if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision X x x.[18]

Private respondents are also entitled to an award of attorney's fees equivalent to 10% of the total monetary award as they were compelled to litigate in order to seek redress for their illegal dismissal.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Peralta,[*] (Acting Chairperson), Abad, Sereno,[**]and Perlas-Bernabe, JJ., concur.

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[*] Designated as Acting Chairperson per Special Order No. 1166 dated November 28, 2011.

[**] Designated as additional member per Special Order No. 1167 dated November 28, 2011.

[1] Rollo, pp. 35-49. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate JusticeTeresita Dy-Liacco Flores and Associate Justice Edgardo A. Camello.

[2] Id. at 87-90 and 110-112.

[3] Id. at 51-52.

[4] Id. at 51-52.

[5] Id. at 69-71.

[6] Id. at 87-90.

[7] Id. at 90.

[8] Id. at 48.

[9] Id. at 42-44.

[10] Id. at 45-46.

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[11] Id. at 16.

[12] Id. at 248-256.

[13] PICOP Resources, Incorporated (PRI) v. Anacleto L. Tañeca, G.R. No. 160828, August 9, 2010, 627 SCRA 56, 66-67.

[14] Id.

[15] Id.

[16] Id. at 68-69.

[17] Id. at 69-73.

[18] Id. at 73.

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