

VISAYAS COMMUNITY MEDICAL CENTER (VCMC), FORMERLY KNOWN AS METRO CEBU COMMUNITY HOSPITAL (MCCH), PETITIONER, VS. ERMA YBALLE, NELIA ANGEL, ELEUTERIA CORTEZ AND EVELYN ONG, RESPO...

G.R. No. 196156. January 15, 2014

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

The present petition was included in the four consolidated cases previously decided by this Court.[1] However, its reinstatement and separate disposition became necessary due to oversight in the issuance of the order of consolidation.

The Facts

Respondents were hired as staff nurses (Ong and Angel) and midwives (Yballe and Cortez) by petitioner Visayas Community Medical Center (VCMC), formerly the Metro Cebu Community Hospital, Inc. (MCCHI). MCCHI is a non-stock, non-profit corporation which operates the Metro Cebu Community Hospital (MCCH), a tertiary medical institution owned by the United Church of Christ in the Philippines (UCCP).

Considering the similar factual setting, we quote the relevant portions of the narration of facts in our Decision dated December 7, 2011 in *Abaria v. NLRC*[2]:

The National Federation of Labor (NFL) is the exclusive bargaining representative of the rank-and-file employees of MCCHI. Under the 1987 and 1991 Collective Bargaining Agreements (CBAs), the signatories were Ciriaco B. Pongasi, Sr. for MCCHI, and Atty. Armando M. Alforque (NFL Legal Counsel) and Paterno A. Lumapguid as President of NFL-MCCH Chapter. In the CBA effective from January 1994 until December 31, 1995, the signatories were Sheila E. Buot as Board of Trustees Chairman, Rev. Iyoy as MCCH Administrator and Atty. Fernando Yu as Legal Counsel of NFL, while Perla Nava, President of Nagkahiusang Mamumuo sa MCCH (NAMA-MCCH-NFL) signed the Proof of Posting.

On December 6, 1995, Nava wrote Rev. Iyoy expressing the union's desire to renew the CBA, attaching to her letter a statement of proposals signed/endorsed by 153 union members. Nava subsequently requested that the following employees be allowed to avail of one-day union leave with pay on December 19, 1995: Celia Sabas, Jesusa Gerona, Albina Bañez, Eddie Villa, Roy Malazarte, Ernesto Canen, Jr., Guillerma Remocaldo, Catalina Alsado, Evelyn Ong, Melodia Paulin, Sofia Bautista, Hannah Bongcaras, Ester Villarin, Iluminada Wenceslao and Perla Nava. However, MCCHI returned the CBA proposal for Nava to secure first the endorsement of the legal counsel of NFL as the official bargaining representative of MCCHI employees.

Meanwhile, Atty. Alforque informed MCCHI that the proposed CBA submitted by Nava was never referred to NFL and that NFL has not authorized any other legal counsel or any person for collective bargaining negotiations. By January 1996, the collection of union fees (check-off) was temporarily suspended by MCCHI in view of the existing conflict between the federation and its local affiliate. Thereafter, MCCHI attempted to

take over the room being used as union office but was prevented to do so by Nava and her group who protested these actions and insisted that management directly negotiate with them for a new CBA. MCCHI referred the matter to Atty. Alforque, NFL's Regional Director, and advised Nava that their group is not recognized by NFL.

In his letter dated February 24, 1996 addressed to Nava, Ernesto Canen, Jr., Jesusa Gerona, Hannah Bongcaras, Emma Remocaldo, Catalina Alsado and Albina Bañez, Atty. Alforque suspended their union membership for serious violation of the Constitution and By-Laws. Said letter states:

x x x x

On February 26, 1996, upon the request of Atty. Alforque, MCCHI granted one-day union leave with pay for 12 union members. The next day, several union members led by Nava and her group launched a series of mass actions such as wearing black and red armbands/headbands, marching around the hospital premises and putting up placards, posters and streamers. Atty. Alforque immediately disowned the concerted activities being carried out by union members which are not sanctioned by NFL. MCCHI directed the union officers led by Nava to submit within 48 hours a written explanation why they should not be terminated for having engaged in illegal concerted activities amounting to strike, and placed them under immediate preventive suspension. Responding to this directive, Nava and her group denied there was a temporary stoppage of work, explaining that employees wore their armbands only as a sign of protest and reiterating their demand for MCCHI to comply with its duty to bargain collectively. Rev. Iyoy, having been informed that Nava and her group have also been suspended by NFL, directed said officers to appear before his office for investigation in connection with the illegal strike wherein they reportedly uttered slanderous and scurrilous words against the officers of the hospital, threatening other workers and forcing them to join the strike. Said union officers, however, invoked the grievance procedure provided in the CBA to settle the dispute between management and the union.

On March 13 and 19, 1996, the Department of Labor and Employment (DOLE) Regional Office No. 7 issued certifications stating that there is nothing in their records which shows that NAMA-MCCH-NFL is a registered labor organization, and that said union submitted only a copy of its Charter Certificate on January 31, 1995. MCCHI then sent individual notices to all union members asking them to submit within 72 hours a written explanation why they should not be terminated for having supported the illegal concerted activities of NAMA-MCCH-NFL which has no legal personality as per DOLE records. In their collective response/statement dated March 18, 1996, it was explained that the picketing employees wore armbands to protest MCCHI's refusal to bargain; it was also contended that MCCHI cannot question the legal personality of the union which had actively assisted in CBA negotiations and implementation.

On March 13, 1996, NAMA-MCCH-NFL filed a Notice of Strike but the same was deemed not filed for want of legal personality on the part of the filer. The National Conciliation and Mediation Board (NCMB) Region 7 office likewise denied their motion for reconsideration on March 25, 1996. Despite such rebuff, Nava and her group still conducted a strike vote on April 2, 1996 during which an overwhelming majority of union members approved the strike.

Meanwhile, the scheduled investigations did not push through because the striking union members insisted on attending the same only as a group. MCCHI again sent notices informing them that their refusal to submit to investigation is deemed a waiver of their right to explain their side and management shall proceed to impose proper disciplinary action under the circumstances. On March 30, 1996, MCCHI sent termination letters to union leaders and other members who participated in the strike and picketing activities. On April 8, 1996, it also issued a cease-and-desist order to the rest of the striking employees stressing that the wildcat concerted activities spearheaded by the Nava group is illegal without a valid Notice of Strike and warning them that non-compliance will compel management to impose disciplinary actions against them. For their continued picketing activities despite the said warning, more than 100 striking employees were dismissed effective April 12 and 19, 1996.

Unfazed, the striking union members held more mass actions. The means of ingress to and egress from the hospital were blocked so that vehicles carrying patients and employees were barred from entering the premises. Placards were placed at the hospital's entrance gate stating: "Please proceed to another hospital" and "we are on protest." Employees and patients reported acts of intimidation and harassment perpetrated by union leaders and members. With the intensified atmosphere of violence and animosity within the hospital premises as a result of continued protest activities by union members, MCCHI suffered heavy losses due to low patient admission rates. The hospital's suppliers also refused to make further deliveries on credit.

With the volatile situation adversely affecting hospital operations and the condition of confined patients, MCCHI filed a petition for injunction in the NLRC (Cebu City) on July 9, 1996 (Injunction Case No. V-0006-96). A temporary restraining order (TRO) was issued on July 16, 1996. MCCHI presented 12 witnesses (hospital employees and patients), including a security guard who was stabbed by an identified sympathizer while in the company of Nava's group. MCCHI's petition was granted and a permanent injunction was issued on September 18, 1996 enjoining the Nava group from committing illegal acts mentioned in Art. 264 of the Labor Code.

On August 27, 1996, the City Government of Cebu ordered the demolition of the structures and obstructions put up by the picketing employees of MCCHI along the sidewalk, having determined the same as a public nuisance or nuisance per se.

Thereafter, several complaints for illegal dismissal and unfair labor practice were filed by the terminated employees against MCCHI, Rev. Iyoy, UCCP and members of the Board of Trustees of MCCHI.[3]

On August 4, 1999, Executive Labor Arbiter Reynoso A. Belarmino rendered his Decision[4] in the consolidated cases which included NLRC Case No. RAB-VII-02-0309-98 filed by herein respondents. The dispositive portion of said decision reads:

WHEREFORE, premises considered, judgment is hereby rendered dismissing the claim of unfair labor practice and illegal dismissal and declaring the termination of the following as an offshoot of the illegal strike: Perla Nava, Catalina Alsado, Albina Bañez, Hannah Bongcaras, Ernesto Canen, Jesusa Gerona and Guillerma Remocaldo but directing the respondent Metro Cebu Community Hospital to pay the herein complainants separation pay in the sum of THREE MILLION EIGHTY FIVE THOUSAND EIGHT HUNDRED NINETY SEVEN and [40]/100 (P3,085,897.40) detailed as follows:

x x x x

79. Erma Yballe

6/11/83 – 4/19/96: 12 years, 10 mos. (13 years)

$P5,000.00 \div 2 \times 13 = 32,500.00$

80. Eleuteria Cortez

12/13/[74][5] – 4/12/96: 21 years, 4 mos. (21 years)

$P5,000.00 \div 2 \times 21 = 52,500.00$

81. Nelia Angel

6/01/88 – 4/12/96: 7 years, 10 mos. (8 years)

$P5,000.00 \div 2 \times 8 = 20,000.00$

82. Evelyn Ong

7/07/86 – 4/12/96: 9 years, 9 mos. (10 years)

$P5,000.00 \div 2 \times 10 = 25,000.00$

x x x x

SO ORDERED.[6]

Executive Labor Arbiter Belarmino ruled that MCCHI and its administrators were not guilty of unfair labor practice. He likewise upheld the termination of complainants union officers who conducted the illegal strike. The rest of the complainants were found to have been illegally dismissed, thus:

We, however, see that the NAMA members deserve a different treatment. As the Court said, members of a union cannot be held responsible for an illegal strike on the sole basis of such membership, or even on an account of their affirmative vote authorizing the same. They become liable only if they actually participated therein (*ESSO Phil., Inc. vs. Malayang Manggagawa sa Esso* 75 SCRA 73). But the illegality of their participation is placed in a state of doubt they, being merely followers. Under the circumstances, We resort to Art. 4 of the Labor Code favoring the workingman in case of doubt in the interpretation and implementation of laws.

Obviously swayed by the actuations of their leaders, herein complainants ought to be reinstated as a matter of policy but without backwages for they cannot be compensated having skipped work during the illegal strike (*National Federation of Sugar Workers vs. Overseas et al.* 114 SCRA 354). But with their positions already taken over by their replacements and with strained relations between the parties having taken place, We deem it fair that complainants except for the seven officers, should be paid separation pay of one-half (1/2) month for every year of service by the respondent hospital.[7]

Respondents and their co-complainants filed their respective appeals before the National Labor Relations Commission (NLRC) Cebu City. On February 15, 2001, respondents and MCCHI jointly moved to defer resolution of their appeal (NLRC Case No. V-001042-99) in view of a possible compromise. Consequently, in its Decision[8] dated March 14, 2001, the NLRC's Fourth Division (Cebu City) resolved only the appeals filed by respondents' co-complainants. The dispositive portion of said decision reads:

WHEREFORE, premises considered, the decision of the Executive Labor Arbiter dismissing the complaint for unfair labor practice and illegal dismissal is **AFFIRMED** with **MODIFICATIONS** declaring the dismissal of all the complainants in RAB Case No. 07-02-0394-98 and RAB Case No. 07-03-0596-98 valid and legal. Necessarily, the award of separation pay and attorney's fees are hereby Deleted.

Resolution on RAB Case No. 07-02-0309-98 is hereby Deferred upon Joint Motion of the parties.

SO ORDERED.[9]

The NLRC denied the motion for reconsideration of the above decision under its Resolution[10] dated July 2, 2001.

Having failed to reach a settlement, respondents' counsel filed a motion to resolve their appeal on January 2, 2003. Thus, on March 12, 2003, the NLRC-Cebu City Fourth Division rendered its Decision,[11] as follows:

WHEREFORE, premises considered, the decision of the Executive Labor Arbiter dismissing the complaint for unfair labor practice and illegal dismissal is **AFFIRMED** with **MODIFICATIONS** declaring all the complainants to have been validly dismissed. Necessarily, the award of separation pay and attorney's fees are hereby Deleted.

SO ORDERED.[12]

In deleting the award of separation pay and attorney's fees, the NLRC emphasized that respondents and their co-complainants are guilty of insubordination, having persisted in their illegal concerted activities even after MCCHI had sent them individual notices that the strike was illegal as it was filed by NAMA-MCCH-NFL which is not a legitimate labor organization. It held that under the circumstances where the striking employees harassed,

threatened and prevented non-striking employees and doctors from entering hospital premises, blocked vehicles carrying patients to the hospital premises and caused anxiety to recuperating patients by displaying placards along the corridors of the hospital, and the resulting decrease in hospital admission, refusal of suppliers to make further deliveries due to fears of violence erupting as a result of picketing, and diminished income due to low admission rates, it would be unfair to saddle MCCHI with the burden of paying separation pay to complainants who were validly dismissed.

Respondents' motion for reconsideration was denied by the NLRC under its Resolution[13] dated April 13, 2004.

Meanwhile, the petition for certiorari filed by respondents' co-complainants in the Court of Appeals (CA) Cebu Station (CA-G.R. SP No. 66540) was initially dismissed by the CA's Eighth Division on the ground that out of 88 petitioners only 47 have signed the certification against forum shopping. On motion for reconsideration filed by said petitioners, the petition was reinstated but only with respect to the 47 signatories. Said ruling was challenged by complainants before this Court via a petition for review on certiorari, docketed as G.R. No. 154113 (Abaria, et al. v. NLRC, et al.).[14]

On October 17, 2008, the CA dismissed the petition in CA-G.R. SP No. 66540, as follows:

WHEREFORE, premises considered, judgment is hereby rendered AFFIRMING the Decision of the National Labor Relations Commission (NLRC) – Fourth Division dated March 14, 2001 in NLRC Case No. V-001042-99, WITH MODIFICATIONS to the effect that (1) the petitioners, except the union officers, shall be awarded separation pay equivalent to one-half (1/2) month pay for every year of service, and (2) petitioner Cecilia Sabas shall be awarded overtime pay amounting to sixty-three (63) hours.

SO ORDERED.[15]

The motion for reconsideration and motion for partial reconsideration respectively filed by the complainants and MCCHI in CA-G.R. SP No. 66540 were likewise denied by the CA.[16] Both parties elevated the case to this Court in separate petitions: G.R. No. 187778 (Perla Nava, et al. v. NLRC, et al.) and G.R. No. 187861 (Metro Cebu Community Hospital v. Perla Nava, et al.).

Herein respondents also filed in the CA a petition for certiorari assailing the March 12, 2003 Decision and April 13, 2004 Resolution of the NLRC, docketed as CA-G.R. SP No. 84998 (Cebu City). By Decision[17] dated November 7, 2008, the CA granted their petition, as follows:

WHEREFORE, the challenged Decision of public respondent dated March 12, 2003 and its Resolution dated April 13, 2004 are hereby REVERSED AND SET ASIDE. Private respondent Metro Cebu Community Hospital is ordered to reinstate petitioners Erma Yballe, Eleuteria Cortes, Nelia Angel and Evelyn Ong without loss of seniority rights and other privileges; to pay them their full backwages inclusive of their allowances and other benefits computed from the time of their dismissal up to the time of their actual reinstatement.

No pronouncement as to costs.

SO ORDERED.[18]

Petitioner filed a motion for reconsideration which the CA denied in its February 22, 2011 Resolution.[19]

The Case

The present petition (G.R. No. 196156) was filed on April 27, 2011.

Records showed that as early as August 3, 2009, G.R. Nos. 187861 and 187778 were consolidated with G.R. No. 154113 pending with the Third Division.[20] As to the present petition, it was initially denied under the June 8,

2011 Resolution[21] issued by the Second Division for failure to show any reversible error committed by the CA. Petitioner filed a motion for reconsideration to which respondents filed an opposition. Said motion for reconsideration of the earlier dismissal (June 8, 2011) remained unresolved by the Second Division which, on June 29, 2011, issued a resolution ordering the transfer of the present case to the Third Division.[22]

It is further recalled that on June 23, 2011, petitioner moved to consolidate the present case with G.R. Nos. 154113, 187861 and 187778 which was opposed by respondents. Under Resolution dated August 1, 2011, the Third Division denied the motion for consolidation, citing the earlier dismissal of the petition on June 8, 2011.[23] However, on motion for reconsideration filed by petitioner, said resolution was set aside on October 19, 2011 and the present case was ordered consolidated with G.R. Nos. 154113, 187778 and 187861 and transferred to the First Division where the latter cases are pending.[24]

On December 7, 2011, the Decision[25] in the consolidated cases (G.R. Nos. 154113, 187778, 187861 and 196156) was rendered, the dispositive portion of which states:

WHEREFORE, the petition for review on certiorari in G.R. No. 187861 is DENIED while the petitions in G.R. Nos. 154113, 187778 and 196156 are PARTLY GRANTED. The Decision dated October 17, 2008 of the Court of Appeals in CA-G.R. SP No. 66540 is hereby AFFIRMED with MODIFICATIONS in that MCCHI is ordered to pay the petitioners in G.R. Nos. 154113 and 187778, except the petitioners who are union officers, separation pay equivalent to one month pay for every year of service, and reasonable attorney's fees in the amount of P50,000.00. The Decision dated November 7, 2008 is likewise AFFIRMED with MODIFICATIONS in that MCCHI is ordered to pay the private respondents in G.R. No. 196156 separation pay equivalent to one month pay for every year of service, and that the award of back wages is DELETED.

The case is hereby remanded to the Executive Labor Arbiter for the recomputation of separation pay due to each of the petitioners union members in G.R. Nos. 154113, 187778 and 196156 except those who have executed compromise agreements approved by this Court.

No pronouncement as to costs.

SO ORDERED.[26]

On February 7, 2012, respondents filed a Motion for Reconsideration with Motion for Severance and Remand[27] asserting that they were denied due process as they had no opportunity to file a comment on the petition prior to the rendition of the Decision dated December 7, 2011. They also point out that the issues in the present case are different from those raised in the petitions filed by their co-complainants.

On June 18, 2012, this Court issued a Resolution (1) reinstating the petition and requiring the respondents to file their comment on the petition; and (2) denying the motion for remand to the Second Division.[28] Respondents thus filed their Comment, to which petitioner filed its Reply. Thereafter, the parties submitted their respective memoranda.

Issues

In their Memorandum, respondents submit that since the Decision dated December 7, 2011 in the consolidated cases of *Abaria v. NLRC* have already declared the dismissal of complainants union members as illegal but awarded separation pay and reasonable attorney's fees, the remaining issue to be resolved in this case is whether respondents are entitled to back wages and damages.

Petitioner, however, further assail the CA in (a) allowing respondents to change their theory on appeal, (b) finding that respondents did not commit illegal acts during the strike and (c) increasing the award of separation pay to one month pay for every year of service as held in the December 7, 2011 Decision in view of the damages suffered by

petitioner.

Respondents' Argument

Respondents maintain that there was no iota of evidence presented by petitioner that they took part in the illegal strike conducted by the Nava group or committed illegal acts like the blocking of ingress and egress in the hospital premises. They claim that they were never involved in work stoppage but instead were locked out by petitioner as they were unable to resume work because hospital security personnel prevented them from entering the hospital upon petitioner's instructions.

Claiming that they have consistently manifested their non-participation in the illegal strike before the regional arbitration branch, NLRC and the CA, respondents argue that there is absolutely no reason to delete the awards of back wages and separation pay in lieu of reinstatement.

Petitioner's Argument

Petitioner contends that respondents have surreptitiously changed their position from admitting in their pleadings before the NLRC their participation in the illegal strike to that of mere wearing of arm bands and alleged non-receipt of the notices in their appeal before the CA. They stress the established facts on record that: (1) respondents signed the March 18, 1996 collective reply of the union officers and members to the notices sent by petitioner regarding their illegal concerted activities, thus proving that they received the said notices; (2) acknowledged Perla Nava as their union leader which belies respondents' belated attempt to distance themselves from the Nava group who led the illegal strike; and (3) respondents did not, in their motion for reconsideration of the NLRC Decision dated March 12, 2003, make any denial of their participation in the illegal strike but even justified their resort thereto due to the prevailing labor dispute.

With the Decision in the consolidated cases (*Abaria v. NLRC*) having already upheld the consistent rule that dismissed employees who participated in an illegal strike are not entitled to back wages, petitioner prays that the previous rulings in *Philippine Diamond Hotel and Resort, Inc. (Manila Diamond Hotel) v. Manila Diamond Hotel Employees Union*,^[29] *G & S Transport Corporation v. Infante*,^[30] *Philippine Marine Officers' Guild v. Compañia Maritima, et al.*,^[31] and *Escario v. National Labor Relations Commission (Third Division)*^[32] be likewise applied in this case.

Our Ruling

The petition is partly meritorious.

Paragraph 3, Article 264(a) of the Labor Code provides that “. . .[a]ny 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 . . .”

In the Decision dated December 7, 2011, we declared as invalid the dismissal of MCCH employees who participated in the illegal strike conducted by NAMA-MCCH-NFL which is not a legitimate labor organization. Since there was no showing that the complainants committed any illegal act during the strike, they may not be deemed to have lost their employment status by their mere participation in the illegal strike. On the other hand, the union leaders (Nava group) who conducted the illegal strike despite knowledge that NAMA-MCCH-NFL is not a duly registered labor union were declared to have been validly terminated by petitioner.

We stress that the law makes a distinction between union members and union officers. A worker merely participating in an illegal strike may not be terminated from employment. It is only when he commits illegal acts during a strike that he may be declared to have lost employment status.^[33] In contrast, a union officer may be

terminated from employment for knowingly participating in an illegal strike or participates in the commission of illegal acts during a strike. The law grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment. It possesses the right and prerogative to terminate the union officers from service.[34]

In this case, the NLRC affirmed the finding of the Labor Arbiter that respondents supported and took part in the illegal strike and further declared that they were guilty of insubordination. It noted that the striking employees were determined to force management to negotiate with their union and proceeded with the strike despite knowledge that NAMA-MCCH-NFL is not a legitimate labor organization and without regard to the consequences of their acts consisting of displaying placards and marching noisily inside the hospital premises, and blocking the entry of vehicles and persons.

On appeal, the CA reversed the rulings of the Labor Arbiter and NLRC, ordered the reinstatement of respondents and the payment of their full back wages. The CA found that respondents' participation was limited to the wearing of armband and thus, citing *Bascon v. CA*,^[35] declared respondents' termination as invalid in the absence of any evidence that they committed any illegal act during the strike.

In the Decision dated December 7, 2011, we likewise ruled that the mass termination of complainants was illegal, notwithstanding the illegality of the strike in which they participated. However, since reinstatement was no longer feasible, we ordered MCCHI to pay the dismissed employees separation pay equivalent to one month pay for every year of service. The claim for back wages was denied, consistent with existing law and jurisprudence.

Respondents argue that the CA correctly awarded them back wages because while they "supported the protest action" they were not part of the Nava group who were charged with blocking the free ingress and egress of the hospital, threatening and harassing persons entering the premises, and making boisterous and unpleasant remarks. They deny any participation in the illegal strike and assert that no evidence of their actual participation in the strike was shown by petitioner.

We are not persuaded by respondents' attempt to dissociate themselves from the Nava group who led the illegal strike. In their motion for reconsideration filed before the NLRC, respondents no longer denied having participated in the strike but simply argued that no termination of employment in connection with the strike "staged by complainants" cannot be legally sustained because MCCHI "did not file a complaint or petition to declare the strike of complainants illegal or declare that illegal acts were committed in the conduct of the strike." Respondents further assailed the NLRC's finding that they were guilty of insubordination since "the proximate cause of the acts of complainants was the prevailing labor dispute and the consequent resort by complainants of [sic] a strike action."^[36] When the case was elevated to the CA, respondents shifted course and again insisted that they did not participate in the strike nor receive the March 15, 1996 individual notices sent by petitioner to the striking employees.

Respondents' inconsistent posture cannot be sanctioned. While there was indeed no evidence of any illegal act committed by respondents during the strike, the Labor Arbiter and NLRC were one in finding that respondents actively supported the concerted protest activities, signed the collective reply of union members manifesting that they launched the mass actions to protest management's refusal to negotiate a new CBA, refused to appear in the investigations scheduled by petitioner because it was the union's stand that they would only attend these investigations as a group, and failed to heed petitioner's final directive for them to desist from further taking part in the illegal strike. The CA, on the other hand, found that respondents' participation in the strike was limited to the wearing of armbands. Since an ordinary striking worker cannot be dismissed for such mere participation in the illegal strike, the CA correctly ruled that respondents were illegally dismissed. However, the CA erred in

awarding respondents full back wages and ordering their reinstatement despite the prevailing circumstances.

As a general rule, back wages are granted to indemnify a dismissed employee for his loss of earnings during the whole period that he is out of his job. Considering that an illegally dismissed employee is not deemed to have left his employment, he is entitled to all the rights and privileges that accrue to him from the employment.[37] The grant of back wages to him is in furtherance and effectuation of the public objectives of the Labor Code, and is in the nature of a command to the employer to make a public reparation for his illegal dismissal of the employee in violation of the Labor Code.[38]

Are respondents then entitled to back wages? This Court, in *G & S Transport Corporation v. Infante*,^[39] ruled in the negative:

With respect to backwages, the principle of a “fair day’s wage for a fair day’s labor” remains as the basic factor in determining the award thereof. If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed or otherwise illegally prevented from working. x x x In *Philippine Marine Officers’ Guild v. Compañia Maritima*, as affirmed in *Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union*, the Court stressed that for this exception to apply, it is required that the strike be legal, a situation that does not obtain in the case at bar. (Emphasis supplied)

The alternative relief for union members who were dismissed for having participated in an illegal strike is the payment of separation pay in lieu of reinstatement under the following circumstances: (a) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (b) reinstatement is inimical to the employer’s interest; (c) reinstatement is no longer feasible; (d) reinstatement does not serve the best interests of the parties involved; (e) the employer is prejudiced by the workers’ continued employment; (f) facts that make execution unjust or inequitable have supervened; or (g) strained relations between the employer and employee.[40]

In the Decision dated December 7, 2011, we held that the grant of separation pay to complainants is the appropriate relief under the circumstances, thus:

Considering that 15 years had lapsed from the onset of this labor dispute, and in view of strained relations that ensued, in addition to the reality of replacements already hired by the hospital which had apparently recovered from its huge losses, and with many of the petitioners either employed elsewhere, already old and sickly, or otherwise incapacitated, separation pay without back wages is the appropriate relief. x x x^[41]

In fine, we sustain the CA in ruling that respondents who are mere union members were illegally dismissed for participating in the illegal strike conducted by the Nava group. However, we set aside the order for their reinstatement and payment of full back wages.

WHEREFORE, the petition is PARTLY GRANTED. The Decision dated November 7, 2008 and Resolution dated February 22, 2011 of the Court of Appeals in CA-G.R. SP No. 84998 are hereby AFFIRMED with MODIFICATIONS. In lieu of reinstatement, petitioner Visayas Community Medical Center (formerly known as the Metro Cebu Community Hospital) is ordered to PAY respondents Erma Yballe, Evelyn Ong, Nelia Angel and Eleuteria Cortez separation pay equivalent to one month pay for every year of service. The award of back wages to the said respondents is DELETED.

The case is hereby remanded to the Executive Labor Arbiter for the recomputation of separation pay due to each of the respondents.

SO ORDERED.

Leonardo-De Castro,[*] (Acting Chairperson), Bersamin, Del Castillo, and Leonen,**] JJ. concur.

[*] Designated Acting Chairperson per Special Order No. 1226 dated May 30, 2012.

**] Designated additional member pursuant to the third paragraph, Section 7, Rule 2 of the Internal Rules of the Supreme Court.

[1] Abaria v. National Labor Relations Commission, G.R. Nos. 154113, 187778, 187861 & 196156, December 7, 2011, 661 SCRA 686.

[2] Id.

[3] Id. at 691-697.

[4] CA rollo, pp. 216-247.

[5] Rollo, p. 368.

[6] CA rollo, pp. 238-239, 246-247.

[7] Id. at 238.

[8] NLRC records (Vol. II), pp. 617-647. Penned by Commissioner Bernabe S. Batuhan and concurred in by Commissioner Edgardo M. Enerlan. Presiding Commissioner Irene E. Ceniza took no part.

[9] Id. at 647.

[10] Id. at 690-691.

[11] CA rollo, pp. 156-185. Penned by Commissioner Oscar S. Uy with Commissioner Edgardo M. Enerlan concurring.

[12] Id. at 185.

[13] Id. at 187-189.

[14] Abaria v. National Labor Relations Commission, supra note 1, at 698-699.

[15] Rollo, p. 546.

[16] Id. at 548-559.

[17] Id. at 64-76. Penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Franchito N. Diamante and Edgardo L. Delos Santos concurring.

[18] Id. at 75.

[19] Id. at 62-63. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Agnes Reyes-Carpio and Eduardo B. Peralta, Jr. concurring.

[20] Id. at 500.

[21] Id. at 476-477.

[22] Id. at 485.

[23] Id at 479-484.

[24] Id. at 687.

[25] Abaria v. National Labor Relations Commission, supra note 1.

[26] Id. at 716-717.

[27] Rollo, pp. 668-683.

[28] Id. at 717-A.

[29] 526 Phil. 679 (2006).

[30] 559 Phil. 701 (2007).

[31] 131 Phil. 218 (1968).

[32] G.R. No. 160302, September 27, 2010, 631 SCRA 261.

[33] Sta. Rosa Coca-Cola Plant Employees Union v. Coca-Cola Bottlers Phils., Inc., 541 Phil. 421, 440-441 (2007).

[34] Id. at 441.

[35] 466 Phil. 719 (2004).

[36] CA rollo, pp. 259-260.

[37] Escario v. National Labor Relations Commission (Third Division), supra note 32, at 272-273, citing Gold City Integrated Port Service, Inc. v. NLRC, 315 Phil. 698 (1995) and Cristobal v. Melchor, 189 Phil. 658 (1980).

[38] Id. at 273, citing Imperial Textile Mills, Inc. v. National Labor Relations Commission, G.R. No. 101527, January 19, 1993, 217 SCRA 237, 247.

[39] Supra note 30, at 714.

[40] Escario v. National Labor Relations Commission (Third Division), supra note 32, at 275.

[41] Supra note 1, at 715.

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