

(With Res. of Feb. 26, 1965)

G.R. No. 19778. September 30, 1964

Ponente: REGALA, J.

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REGALA, J.:

On July 10, 1956, Cromwell Commercial Co. and the Cromwell Commercial Employees and Laborers Union (PTUC) signed a collective bargaining agreement which provided, among other things, for the following:

"3. The Company agrees to consider as permanent employees and workers all those who have rendered three (3) months continuous, satisfactory service, and as such shall be entitled to all privileges enjoyed by all permanent and regular employees; provided, however, that the COMPANY reserves the right to dismiss any employee for cause;"

"6. A 'Grievance Committee' composed of three (3) representatives appointed by the COMPANY and three (3) UNION members elected by the UNION shall be immediately constituted. This Committee shall meet not more than once a week as may be called by proper notice of any three (3) members of said committee to hear and decide any differences on labor-management relations. The committee shall hear the grievance and the witnesses of the parties concerned, if any, and shall submit its recommendation to the President of the COMPANY who shall decide the same, within thirty (30) days from transmittal of said recommendation by the President's representative In the Philippines:

"7. Considering that the COMPANY has put into effect, effective April 16, 1956, a minimum wage of P140.00 a month to permanent employees in its office and has given merit increase to a few others, the COMPANY agrees in principle to the demand of the UNION for a general increase of salaries and wages, if the financial position of the COMPANY shows that it can afford to give an increase after the second quarter of 1956 but reserves its decision as to the amount. The COMPANY further reserves its right as to whether to give or not to give increases to those who already received merit increases effective April 16, 1956, provided, however, that those whose salaries were slashed in 1956 and were restored on April 16, 1956. shall not be considered as having received a merit increase;"

"10. That the COMPANY shall restore all salesmen to the status of salary basis effective May 1, 1956 and shall also restore the helpers allowance of provincial salesmen effective the same date;"

"12. The COMPANY agrees in principle to consider the giving of a share of its profits to its employees and workers, the amount and the time to depend in the sole discretion of the management of the COMPANY."

However, it appears that, contrary to paragraph 7, the company gave no salary increase to its employees, except to three who were not union members, despite the fact that it had made a P90,000 profit at the close of the second quarter of 1956.

With respect to paragraph 10 of the agreement, it appears that salesmen of the company used to be paid on a straight salary basis. Some were receiving P300, others P320 while still others were getting P350 a month. In addition, those assigned to the provinces were given a so-called helper's allowance of P120 a month, a per diem of P8 and an allowance for postage and other expenses incurred in remitting their collections. For some reason,

however, the company reduced the salary of salesmen to P200 a month and their helper's allowance from P120 to P60 a month, although it paid them a commission of 1 per cent of their collections.

This is the reason why paragraph 10, which provided for the restoration of cuts in the salaries and allowances of salesmen, was inserted in the agreement. But instead of restoring the salaries in full, the company merely paid P300 even to those who, before salaries were reduced, were already receiving P320 or P350 a month. The so-called helper's allowance, which as already stated had been reduced from P120 to P60 a month, was not restored at all.

What is worse, effective March 1, 1957, the company reverted all salesmen to salary and commission basis, stopped their helper's allowance altogether and discontinued the payment of per diem and other allowances to provincial salesmen, so much so that the latter found themselves again in the same situation they were in before the signing of the collective bargaining agreement. Worst of all the company increased the quotas of some salesmen and threatened them with dismissal if they could not fill their quotas.

These changes in the working conditions in the company and the latter's failure to carry out its part of the agreement became a source of complaint among the employees. But beyond promising that the matter would be looked into as soon as its President arrived from the United States, the company did nothing. The grievance machinery set up in the agreement could not function on account of the company's refusal to name its representatives in the committee.

Meanwhile, daily wage employees in the shipping department began agitating for the application of paragraph 10 to them. In a letter sent to the company on March 2, 1957, Jose J. Hernandez of the Philippine Trade Union Council asked that these employees be put on a monthly salary basis. He also called attention to the failure of the company to send representatives to the grievance committee.

Three days after, the company dismissed Francisco Gaddi and Crescenciano Andrada, leaders of the shipping department employees. And so on March 7, the union dispatched another letter to the company, calling attention to the contents of its March 2 letter and protesting the dismissal of Gaddi and Andrada. It gave the company 48 hours within which to act on its grievance and reinstate the dismissed employees.

On March 6, the company President replied, stating in part that—

"* * * Effective March 1st, I reduced all salesmen's salaries, I discontinued the helper's allowance and, in the case of provincial salesmen, I discontinued the payment of any per diems."

In another letter sent the following day, the company explained that the relief of Gaddi and Andrada was in line with its policy of laying off extra employees.

From then on the relation between the company and the union steadily deteriorated.

On March 8, the company took back the keys from the warehouseman and ordered the salesmen to put their trucks in the garage.

On March 9, the parties met to resolve their differences only to part ways later-still poles apart.

Finally, on March 11, the union struck and picketed the premises of the company.

The company in turn gave the strikers until 8 a.m. of March 11, 1957 within which to return to work otherwise they would be considered dismissed for cause. It warned them that the strike was illegal for being against the no-strike clause of the collective bargaining agreement.

In a conference called by the Department of Labor, the strikers offered to return to work provided the company

observed the provisions of the bargaining contract. But the company insisted that the strikers could be taken back only under the terms of its March 1 order. As already stated, this order reverted salesmen to salary and commission basis, abolished their helper's allowance and stopped the payment of per diem and other allowances to provincial salesmen.

In addition, the company set as price for continued conciliation conference the remittance by the salesmen of their collections and the return of delivery trucks and stocks on hand. The union replied that the strikers had not lost their employee status and that at any rate they were bonded. It offered though to deposit with the Conciliation Service of the Department of Labor the things demanded by the company, but the company was unyielding in its demand. Anyway, nothing came out of the conference. The employees gradually gave up the strike and the salesmen later settled their accounts and returned the property of the company.

On September 19, 1957 this case was filed in the Court of Industrial Relations, charging the company, together with its President and Vice President, with unfair labor practice. After trial, the court rendered judgment as follows:

"IN VIEW OF ALL THE FOREGOING, the Respondent and all its officers and agents are hereby ordered:

"(1) To cease and desist from:

- a) refusing to bargain collectively in good faith with the Union.
- b) refusing to bargain collectively in good faith with respect to the grievance of the Union by appointing its representatives to the grievance committee as provided for in the said agreement.
- c) making changes in the working conditions of the salesmen who are members of the Union with respect to their salaries and the helper's allowance of provincial salesmen without complying with the requirements of Sec. 13 of Republic Act 875.

"(2) To take the following affirmative acts which the Court finds will effectuate the policy of the Act:

- a) to reinstate Francisco Gaddi with half back pay from March 5, 1957 to actual date of his reinstatement, minus whatever salaries he might have earned during the pendency of this case, unless he has found a substantial employment elsewhere. And with respect to Cresenciano Andrada, his one half back wages shall be from March 5, 1957 until the date he committed illegal acts in the picket line. Angel Dario is not entitled to reinstatement.
- b) to reinstate salesmen Antonio Jacinto, Celestino Gualberto, Constantino Atienza, Elias Berroya, and Pedro del Rosario with half backwages from the date they have cleared their accountabilities or responsibilities with the Company, minus what they have earned during the pendency of the dispute unless they have found substantial employment elsewhere. The case of Teofilo Nunez is dismissed as heretofore indicated. With respect to Roberto Dijamco as also mentioned, there is a pending separate unfair labor practice in the Court (Case No. 1271-ULP).
- c) To reinstate all the strikers listed in Annex 'A' of the complaint, without backwages, in view of the circumstances, as explained on the subject of the strike, unless they have found substantial employment elsewhere during the pendency of this case.

"In addition, respondent is hereby ordered to post a copy of this order in the company's bulletin board, if any or in default thereof, in any conspicuous place at company's premises and report to the Court as soon as possible its compliance."

The union moved for a reconsideration of the decision, contending that the trial judge erred (1) in awarding only

half back wages to Francisco Gaddi and the five salesmen, (2) in awarding no back wages to the rest of the strikers and (3) in denying reinstatement to Cresenciano Andrada and Angel Dario and to those who might have found substantially equivalent employment elsewhere. The court en banc affirmed the decision. Hence, this appeal.

The issues in this appeal relate to the power of the Court of Industrial Relations to order reinstatement and the payment of back wages in unfair labor practice cases as a means of effectuating the policy of the law.

Section 5 (c) of the Industrial Peace Act states:

"* * * If, after investigation, the Court shall be of the opinion that any person named in the complaint has engaged in or is engaging in any unfair labor practice, then the Court shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and take such affirmative action, as will effectuate the policies of this Act, including (but not limited to) reinstatement of employees with or without back-pay and including rights of the employees prior to dismissal including seniority. * * *"

At the outset, two types of employees involved in this case must be distinguished, namely, those who were discriminatorily dismissed for union activities and those who voluntarily went on strike. To the first class belong Francisco Gaddi and Cresenciano Andrada, both of whom, as earlier shown, had been dismissed for union activities, and the five salesmen who were virtually locked out by the company when they were ordered to put their trucks in the garage. To the second class belong those who declared a strike on March 11, 1957, following the failure of the company-union conference to settle their dispute.

Both types of employees are entitled to reinstatement. Indeed, it is said that striking employees are entitled to reinstatement whether or not the strike was the consequence of the employer's unfair labor practice, unless, where the strike was not due to any unfair labor practice, the employer has hired others to take the place of the strikers and has promised them continued employment. (Teller, 2 Labor Disputes and Collective Bargaining, Sec. 371, pp. 396-397)

From this rule, however, must be excepted those who, although discriminatorily discharged, must nevertheless be denied reinstatement because of (1) unlawful conduct or (2) because of violence. For while the Court of Industrial Relations has indeed discretion in determining the remedy in case of unfair labor practice, its discretion is not unbounded. (Big Five Products Workers Union-CLP vs. Court of Industrial Relations, et al., G. R. No. L-17600, July 31, 1963) It cannot exercise its right beyond the point which the object of "effectuation" of the Act requires. It can not order the reinstatement of those convicted of violence upon the employer's property. (Rothenberg on Labor Relations, 573-574; Philippine Education Co., Inc. vs. Court of Industrial Relations, et al., G. R. No. L-7156, May 31, 1955; Consolidated Labor Ass'n. of the Phils. vs. Marsman & Co., Inc., et al., G. R. No. L-17038, July 31, 1964)

Such is the case of Cresenciano Andrada and Angel Dario who were found guilty of acts of violence consisting of hurling stones which smashed glass windows of the building of the company and the headlights of a car and the utterance of obscenities such as "putang ina."

But the union contends that the acts committed by Andrada and Dario were not so serious as to call for the forfeiture of their rights to reinstatement. It is not for Us to judge the effect of misconduct by employees. That is primarily for the Court of Industrial Relations to determine. (See KLRB vs. Weissman Co., 170 F(2d) 952). In the absence of proof of abuse of discretion on the part of the Court of Industrial Relations, this Court will not interfere with the exercise of that discretion.

The same thing may be said of the denial of reinstatement to those who might have found substantial employment

elsewhere. We agree with the union that under the ruling of *Phelps Dodge Corp. vs. NLRB*, 313 U.S. 177, 85 L. ed. 1271 (See also Cox and Bok, *Cases on Labor Law*, 250, 5th ed.), the mere fact that strikers or dismissed employees have found such employment elsewhere is not necessarily a bar to their reinstatement.^[1] But it is just as time to say that the Phelps Dodge case did not rule that in any event discriminatorily dismissed employees must be ordered reinstated even though they have in the meanwhile found substantially equivalent employment somewhere else. While denying that employees who have obtained equivalent employment are ineligible as a matter of law to reinstatement, the Supreme Court of the United States at the same time denied also that the definition of the term "employee" can be disregarded by the National Labor Relations Board in exercising its powers under Section 10 (c) of the Wagner Act, which corresponds to Section 5 (c) of our Industrial Peace Act, to direct the taking of affirmative action by an employer to remedy unfair labor practices. According to the Court, it is for the Board in each case to weigh the particular facts and to determine, in the exercise of wise administrative discretion, whether the Act would best be effectuated by directing reinstatement despite the fact that the given employee has found equivalent employment.

Obviously it was after considering the facts in this case that the Court of Industrial Relations predicated the reinstatement of the employees concerned on the fact that they had not found substantially equivalent employment elsewhere. Thus, it made clear in the dispositive portion of its decision that it was ordering the taking of affirmative acts "which the Court finds will effectuate the policy of the Act." The union has not shown that in so doing the Court of Industrial Relations abused its discretion.

Coming now to the question of backpay, the decision under review directs the company "to reinstate all the strikers listed in Annex 'A' of the complaint, without back wages, in view of the circumstances, as explained on the subject of the strike, unless they have found substantial employment elsewhere during the pendency of this case." The union assails this order as erroneous. According to the union, it is unfair to deny backwages to the strikers after finding that the strike declared by them was legal because it was provoked by unfair labor practices of the company. Indeed a reading of the 46-page decision of the Court of Industrial Relations fails to yield the reason that impelled the court to deny backwages to the strikers.

Nevertheless, We believe that the denial of backpay may be justified, although on a different ground. For this purpose, We shall advert again to the distinction earlier made between discriminatorily dismissed employees and those who struck, albeit in protest against the company's unfair labor practice. Discriminatorily dismissed employees receive back pay from the date of the act of discrimination, that is from the day of their discharge. On this score, the pay from the date of the act of discrimination, that is from the day of their discharge. On this score, the award of backpay to Gaddi, Andrada and the salesmen may be justified. The salesmen, as already stated, were practically locked out when they were ordered to put their trucks in the garage; they did not voluntarily strike. (See *Macleod & Co. of the Phils. vs. Progressive Federation of Labor*, 97 Phil., 205) Hence, the award of backwages.

In contrast, the rest of the employees struck as a voluntary act of protest against what they considered unfair labor practices of the company. The stoppage of their work was not the direct consequence of the company's unfair labor practice. Hence their economic loss should not be shifted to the employer. (See *Dinglasan vs. National Labor Union*, 106 Phil., 671). As explained by the National Labor Relations Board in the case of *American Manufacturing Co.*, 5 NLRB 443, "When employees voluntarily go on strike, even if in protest against unfair labor practices, it has been our policy not to award them back pay during the strike. However, when the strikers abandon the practices and the employer either refuses to reinstate them or imposes upon their reinstatement new conditions that constitute unfair labor practices, We are of the opinion that the considerations impelling our refusal to award back pay are no longer controlling. Accordingly, We hold that where, as in this case, an employer

refuses to reinstate strikers except upon their acceptance of new conditions that discriminate against them because of their union membership or activities, the strikers who refuse to accept the conditions and are consequently refused reinstatement are entitled to be made whole for any losses of pay they may have suffered by reason of the respondent's discriminatory acts." (Quoted in Teller, 2 Labor Disputes and Collective Bargaining Sec. 371, pp. 997-998)

While it is true that the strikers in this case offered to return to work on March 14, 1957, We find that their offer was conditional. Their offer was predicated on the company's observance of the provisions of the collective bargaining agreement—the very bone of contention between the parties by reason of which the union walked out. To be effective so as to entitle the strikers to backpay, the offer must have been unconditional. The strikers must have offered to return to work under the same conditions under which they worked just before their strike so that the company's refusal would have placed on the latter the blame for their economic loss. But that is not the case here. Indeed the offer of the company to accept the strikers under the conditions obtaining before the strike (without prejudice of course to taking up the grievances of the strikers) can be considered in its favor in denying backwages to strikers. (Dinglasan vs. National Labor Union, G. R. No. L-14183, Nov. 28, 1959.)

Nor may it be said that the strikers could not have offered to return to work because the company dismissed them upon their failure to return to work on March 14, 1957. For the notice given by the company was merely a "tactical" threat designed to break the strike and not really to discharge the striking employees. (Majestic Mfg. Co., et al., 64 NLRB 961; Rockwood Stove Works, 63 NLRB 1297; American Mfg. Co., 7 NLRB 553)

Wherefore, the decision and resolution of the Court of Industrial Relations appealed from are hereby affirmed, without pronouncements as to costs.

Bengzon, C.J., Bautista Angelo, Paredes, Dizon, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

[1]The view that discriminatorily discharged employees who have found substantially equivalent jobs elsewhere are no longer entitled to reinstatement is based on Section 2(d) of the law which defines the term "employee" as including "any employee and not be limited to the employee of a particular employer unless the Act explicitly states otherwise and shall include any individual whose work has ceased as consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other substantially equivalent and regular employment." Cf. Far Eastern University vs. Court of Industrial Relations, et al., G. R. No. L-17620, Aug. 31, 1962.

DISSENTING OPINION

REYES, J.B.L., J.:

I can not agree to the ruling laid down in the opinion in so far as it denies backpay to the reinstated laborers. There is no dispute that the employer was the first to infringe the collective bargaining agreement by refusing to implement its provisions, particularly by its March 1 order, and by insisting on it as a condition for taking back the strikers. I can not see how the objectives and policies of the Industrial Peace Act can be said to be promoted by placing the economic loss on the strikers, denying them backpay; the discouraging of unfair labor practices is certainly one of those policies, and the denial of backpay to the victims of unfair labor practices is a direct encouragement for the employer to continue its reproachable misconduct.

While the laborers technically violated the no-strike clause, the facts as found reveal that the employer goaded the

laborers into striking, by repeatedly violating the collective bargaining agreement and by preventing the organization of the grievance committee through the Company's refusal to name its representatives therein.

Concepcion, J., concurs.

RESOLUTION

REGALA, J.:

The facts of this case are stated in the decision of this Court which was promulgated on September 30, 1964.

Briefly, our decision rules that as for as reinstatement is concerned, both employees who are discriminatorily dismissed as well as those who strike because of the employer's unfair labor practice are entitled to reinstatement. Excepted from the rule are those who, on account of violence or other misconduct during the strike, or who, because of subsequent employment elsewhere, must be deemed to have forfeited the right to reinstatement, having in view the policies of the Industrial Peace Act. With respect to backwages, however, we hold that only discriminatorily dismissed employees are entitled to back pay. Those who voluntarily strike, even if it be in protest against unfair labor practice, are not entitled to backwages unless, after giving up the strike and presenting themselves to the employer, the latter should refuse to reinstate them or should reinstate them subject to new conditions that are also discriminatory.

On the basis of the foregoing, we affirmed the decision of the Court of Industrial Relations.

The union has filed a motion for reconsideration. First of all, it contends that in the absence of good faith or similar circumstances on the part of the employer, the Court of Industrial Relations has no discretion to award half backwages only to reinstated employees. Full backpay should have been given instead and this Court should have ordered this in its decision, so it is averred.

To begin with, we note that this point is being raised for the first time only now. Section 7 of Rule 51 states that "no error which does not affect the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in the brief, save as the court, at its option, may notice plain errors not specified, and also clerical errors." Now, the fact that full back pay was not given certainly cannot be stigmatized as "plain error," much less a clerical one. As noted in the decision of the Court of Industrial Relations, the salesmen were not exactly justified in refusing to turn over their collections to the company. Nor is this the first case that one half instead of full, backwages are awarded.

It is also contended that those who struck in protest against the company's unfair labor practice should be given backwages because the company refused to take them back except under the conditions contained in its March 1 order. On this point, the decision states:

"In contrast, the rest of the employees struck as a voluntary act of protest against what they considered unfair labor practice of the company. The stoppage of their work was not the direct consequence of the company's unfair labor practice. Hence, their economic loss should not be shifted to the employer. (See *Dinglasan vs. National Labor Union*, 106 Phil. 671). As explained by the National Labor Relations Board in the case of *American Manufacturing Co.*, 5 NLRB 443, 'When employees voluntarily go on strike even if in protest against unfair labor practices, it has been our policy not to award them back pay during the strike. However, when the strikers abandon the strike and apply for reinstatement despite the unfair labor practice and the employer either refuses to reinstate them or imposes upon their reinstatement new conditions that constitute unfair labor practice, We are of the opinion that the considerations impelling our refusal to award back pay are no longer controlling. Accordingly, we hold that where, as in this case, an employer refuses to reinstate strikers

except upon their acceptance of new conditions that discriminate against them because of their union membership or activities, the strikers who refuse to accept the conditions and are consequently refused reinstatement are entitled to be made whole for any losses of pay they may have suffered by reason of the respondent's discriminatory acts.' (Quoted in Teller, 2 Labor Disputes and Collective Bargaining, Sec. 371, pp. 997-998)"

Now, it is clear that the statement of the rule that those who strike voluntarily—even if in protest of unfair labor practice—are entitled to backpay only—

"when the strikers abandon the strike and apply for reinstatement despite the unfair labor practice and the employer either refuses to reinstate them or imposes upon their reinstatement new conditions that constitute unfair labor practice."

In insisting therefore on the company's observance of the collective bargaining agreement as condition for returning to work, the strikers did not in fact abandon their strike, because the company's non-observance of their agreement was precisely the reason for their strike. This is the reason why we said that to be entitled to back pay, the strikers must have offered to return to work under the same conditions just before their strike so as to place on the company the blame for the strikers' economic loss.

By underscoring certain portions of the decision in the American Manufacturing case, the dissenting opinion seems to imply that on the contrary, the voluntary strikers in this case should be given backwages. But if the strikers in the former case were awarded backwages, it is because their unconditional offer to return to work, their employer refused to take them back except under "new conditions that discriminate against them." These new conditions were that these employees should sign a new contract as new employees and undergo medical examination. In contrast, no such conditions were imposed by the company in this case.

If the American Manufacturing case is being cited, it is for the general principle it lays namely, that "When employees voluntarily go on strike, Even if in protest against unfair labor practices, it has been our policy not to award them back pay during the strike."

Now, even in the English system, with its strict adherence to precedent,[1] to distinguish one case from another held to be the rule is not to deny its force as a precedent. As Professor Hart puts it—

"* * * whatever authoritative status a rule extracted from precedent may have, it is compatible with the exercise by courts that are bound by it of the following two types of creative or legislative activity. On the one hand courts deciding a later case may reach an opposite decision to that in a precedent by narrowing the rule extracted from the precedent, and admitting; some exception to it not before considered, or, if considered, left open. This process of 'distinguishing' the earlier case involves finding some legally relevant difference between it and the present case, and the class of such differences can never be exhaustively determined. * * *" (The Concept of Law 131).

Anent the claim that the notice given by the company to the employees was not a mere "tactical" threat calculated to make them go back to work, suffice it to say that if the strikers had anyway the right to reinstatement, no amount of notice of dismissal could negate that right. Any notice to that effect, therefore, could not be anything but a "tactical" threat.

Still on this point, the dissenting opinion states that without a grievance committee (for the failure to constitute which the company was found at fault by the Court of Industrial Relations) it is improbable, not to say inconceivable, that the laborers would "forego the right to strike without any alternative method to have their grievances redressed." The opinion goes on that "the bargaining contract is indivisible, and the employer, who was the first to breach it by blocking the organization of the grievances committee, has no right whatsoever to

claim enforcement of the no-strike clause."

The remedy for violation of a provision of an agreement is not another infraction of that agreement. We still have courts open for the redress of grievances.

Finally, it is contended that Andrada and Dario should have been ordered reinstated, because the Court of Industrial Relations itself recognized that minor misdemeanor is an insufficient ground for denying reinstatement.

To be sure, what this Court said is that the Court of Industrial cannot order the reinstatement of those who are guilty of violence on the company's property and that whether a misconduct is serious or not is for the Court of Industrial Relations to determine and only in cases of abuse of discretion will this Court step in. In other words, this Court did not agree with Court of Industrial Relations observation that occasional infractions of rules brought about by the rising temper may not justify denial of reinstatement. And this Court also said that the question of whether or not those already employed elsewhere should be reinstated is the task of the Court of Industrial Relations and where there is no abuse of discretion, this Court will not interfere. Now the union says it is hard to show abuse of discretion. We think it rather plain that that is no excuse for not proving abuse of discretion. To reinstate all employees irrespective of whether they have found employment elsewhere would be to negate the injunction that the question is one of discretion to be determined if the order would effectuate the policies of the law.

In view of all the foregoing, the motion for reconsideration is denied.

Bengzon C.J., Bautista Angelo, Paredes, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

[1] Close emphasis on material facts is what distinguishes the English Attitude to decided cases from that of continental jurists who in general regard a judgment as a theoretical answer to rather abstract question of law. (See Paton, A Text-Book of "Jurisprudence 160 [2d ed.]

DISSENTING OPINION

REYES, J.B.L., J.:

My vote is for the reconsideration of the decision for the reasons expressed in my original dissent. While there was no-strike clause in the collective bargaining agreement, operation of that clause was manifestly dependent on the constitution of the grievances committee also provided therein, for it is highly improbable, not to say inconceivable, that the laborers would forego the right to strike without any alternative method to have their grievances redressed. The bargaining contract is indivisible, and the employer, who was the first to breach it by blocking the organization of the grievances committee, has no right whatsoever to claim enforcement, of the no-strike clause. The employer can not disregard what is unfavorable to him and seek the benefit of those stipulations that are in his favor.

By the same token, I do not believe the rule of the American Manufacturing case (5/NLRB 443) on employees who voluntarily go on strike applies in the present case. In the proceedings before us the employees were practically provoked into a strike because the employer blocked any other reasonable way to ventilate their complaints against management. In fact, the decision cited really favors the granting of backpay to laborers in the present case, who offered to return to work and abandon the strike, but whom the employer refused to readmit, imposing the condition that its March 1st order be accepted. Said the NLRB in the case cited (at p. 467):

There is, therefore, no question in my mind that those laborers are entitled to backpay, at the very least from and after March 14, 1957.

"When employees voluntarily go on strike, even if in protest against unfair labor practices, it has been our policy not to award them back pay during the strike. However, when the strikers abandon the strike and apply for reinstatement despite the unfair labor practices, and the employer either refuses to reinstate them or imposes upon their reinstatement new conditions that constitute unfair labor practices, we are of the opinion that the considerations impelling our refusal to award back pay are no longer controlling. Accordingly, we hold that where, as in this case, an employer refuses to reinstate strikers except upon their acceptance of new conditions that discriminate against them because of their union membership or activities, the strikers who refuse to accept the conditions and are consequently refused reinstatement are entitled to be made whole for any losses of pay they may have suffered by reason of the respondent's discriminatory acts. Here the strikers who were refused reinstatement except on the conditions set forth by the respondent are entitled to reinstatement with back pay from July 27, 1937, to the dates on which the respondent offers them reinstatement, less any amounts earned by them in the meantime." (Italics supplied)

Concepcion, J., concurs.

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