

**NATIONAL MINES AND ALLIED WORKERS' UNION
(NAMAWU-WIF) JUANITO DE LA CRUZ, MARIANO MARQUEZ,
CONSTANCIO PASTOR, RICARDO EVARDOLAZA, CRISTINA MERANO,
ET AL., PETITIONERS, VS. NATIO...**

G.R. No. 59596. November 19, 1982

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioners, labor union and employees of the respondent First Manufacturing Company of the Philippines, contend that the respondent is guilty of unfair labor practice in dismissing the individual petitioners from their employment and that the November 9, 1979 resolution of the respondent commission should be revised such that the order for their reinstatement should include the payment of full back-wages and no loss of seniority rights.

The background facts of the case are given in the comment filed by the Solicitor-General.

"1. On February 10, 1978, the labor union NAMAWU and an alleged majority of the rank-and-file workers of the respondent company filed a petition with the Bureau of Labor Relations for certification election. Respondent company received a copy of the petition, but without the alleged list of workers containing their signatures. After securing a photocopy thereof, respondent Company was convinced that the signature of one worker, Ernesto Vargas, out of the fifty listed workers, was forged. Hence, respondent Company filed its opposition to the certification election. It also filed charges against four workers allegedly involved in the forgery before the Quezon City fiscal's office.

"2. Respondent Company also filed an application for clearance with the Bureau of Labor Relations to terminate the employment of the four employees, namely: Juan Enero, Sergio Cabrera, Gerardo Mateo and Florita Ragandan, allegedly involved in the forgery. However, the NBI later submitted its report that there was no forgery. Respondent Company thus expressed 'its profound regrets for the action' taken against said employees who were then ordered reinstated to their former positions with backwages by the labor arbiter in a decision dated July 12, 1979.

"3. On June 5, 1979, Jose Garcia, Jr., another employee and acknowledged local board chairman of the NAMAWU's chapter in the respondent Company was 'temporarily laid-off', but said employee filed a complaint against the respondent Company for illegal dismissal. The Bureau of Labor Relations rendered its decision for Garcia's reinstatement with backwages, but on appeal, said decision was modified by the deletion of the award of backwages.

"4. On June 17, 1978, the Bureau of Labor Relations found the petition for certification to be sufficient in form and substance, and ordered the immediate holding of said election. But respondent Company filed successive motions for reconsideration which delayed the holding of the election until January 20, 1979.

"5. Under date of December 4, 1978, respondent Company filed an application to shutdown its business with the Ministry of Labor, effective December 15, 1978. However, respondent Company withdrew sometime in January 1979 its application to shutdown its business.

"6. On January 6, 1979, respondent Company called a general meeting of its workers wherein they were informed that the company was making a gradual transfer of company premises from No. 3 Oliveros Drive, Bo. Kangkong, Quezon City, to No. 23 Homart Road, Bo. Kangkong, Quezon City, about a kilometer away from its old site, effective Monday morning, January 9, 1979.

"7. On January 9, 1979, individual petitioners and some other employees reported for work at the old site, but the security guards there refused them entrance and instructed them to report for work at the new site. No memorandum was furnished them of such transfer.

"8. Respondent Company later issued a written Memorandum dated January 11, 1979 addressed to the guards on duty at the old site, directing the guards not to admit herein individual petitioners and other listed employees therein 'unless on written authority' and for said employees instead 'to report to the new company offices at No. 23 Homart Rd., Bo. Kangkong, Quezon City, effective immediately'. Except for Ngo and David, individual petitioners went to the new site on January 11 and 12, 1979, staying there for an hour or so, but did not do any work, as there were no assignments of work given them at the new site.

"9. On January 15, 1979, herein labor union and individual petitioners filed a complaint with the respondent Commission against respondent Company for 'unfair labor practice, illegal dismissal, harassment, and dismissal without prior clearance.'

"10. Respondent Company in turn filed a 'Counter-Complaint' against herein individual petitioners for 'gross insubordination, malicious neglect of duties and/or abandonment of duties and/or unlawful severance of employer-employee relationship'.

"11. In the meantime, pre-election campaigns went on high gear in the company's premises. On the certification election day, January 20, 1979, both the members of the NAMAWU local chapter and the opposite camp of employees who wanted a 'non-union status' for the company, made known their fighting stance, before the actual voting, by wearing their respective T-shirts. After the voting and the unchallenged ballots were counted, a convincing majority of the workers voted for a 'non-union status' of the company.

"12. But the labor dispute among the parties continued, they submitted their respective position papers and other evidence to support their complaint and counter-complaint. On October 25, 1979, Labor Arbiter Pelagio A. Carpio rendered the decision, finding the respondent Company not guilty of unfair labor practice, and individual petitioners not guilty of abandonment of work but merely refusal to report to their assignments; hence, he ordered respondent Company to reinstate the individual petitioners to their former positions without backwages."

We agree with the Solicitor General[*1] that the respondent commission in affirming in toto the erroneous decision of the labor arbiter misappreciated the evidence on record and wrongly applied the law, thus committing grave abuse of discretion.

The efforts of the private respondent to keep NAMAWU from becoming the exclusive collective bargaining agent in the company are convincingly clear. Four active members of NAMAWU were falsely charged with falsification and dismissed when the petition for certification election was filed. The chairman of the union's board of directors was "temporarily laid off" at the height of the campaign for support among the employees and had to be ordered reinstated by the labor ministry.

The holding of certification elections was ordered on June 17, 1978 but could not be held for several months because of the appeal and three motions for reconsideration filed by the respondent employer with the Bureau of Labor Relations.

The company applied for a clearance on December 1, 1978 to close its business operations, thus threatening a shutdown which would coincide with the Christmas season and before the holding of the certification elections.

The petitioners allege that it was during this period when the company sowed fear among the workers so that they would disaffiliate from NAMA-WU. The company allegedly told workers that if NAMA-WU should win in the elections, the company would certainly shutdown and all employees would lose their employment whereas a No Union vote would cause the company not to stop operations.

Nine days before the certification elections held on January 20, 1979, the individual petitioners were dismissed for gross insubordination and abandonment of duties thus prompting the filing of the instant case.

During the holding of certification elections, workers paraded around in T-shirts with the words "NO UNION" prominently printed on them. It is rather unusual that workers not affiliated with any union would go to the trouble and expense of ordering "No Union" T-shirts to be worn during the casting of ballots in the certification election.

The "no union" votes won during the election. The company never went through with its plan to stop operations. It withdrew its application for clearance to stop business operations.

We find the private respondent's contention that the petitioners are guilty of gross insubordination, malicious neglect of duties, abandonment of duties, and unlawful severance of employer-employee relationship illogical and without any factual basis.

On January 6, 1979, the company informed its workers that a gradual transfer of business from the old premises to a new site one kilometer away would be effected. On Monday, January 9, 1979 when the petitioners reported for work at the old site, they were refused entry. No memorandum or orders about their place of work was given to them. They were simply refused admission by security guards. On January 11, 1979, the company issued a memorandum regarding the petitioners' transfer but to the guards on duty at the old site and not to the workers concerned. Somehow, the petitioners learned of the memo and reported for work at the new site. They stayed at the place of work but were given no work and no assignments. As stated by the Solicitor General, there is no showing that in only two days from the January 9, 1979 commencement of the proposed gradual transfer, there would be equipment, machineries, and materials for these petitioners suddenly "transferred" to the new site to enable them to do any work.

The citation from *San Miguel Brewery, Inc. v. Santos* (2 SCRA 1081, 1088) where the employer's acts against unionism were very much less, is appropriate:

"It has previously been indicated that an employer may treat freely with an employee and is not obliged to support his actions with a reason or purpose. However, where the attendant circumstances, the history of the employer's past conduct and like considerations, coupled with an intimate connection between the employer's action and the union affiliations or activities of the particular employee or employees taken as a whole raise a suspicion as to the motivation for the employer's action, the failure of the employer to ascribe a valid reason therefor may justify an inference that his unexplained conduct in respect of the particular employee or employees was inspired by the latter's union membership or activities. While the presence of this mere suspicion neither takes the place of evidence that the employer's conduct was improperly motivated nor dispenses with the requirement of proof of the fact, such suspicion, when coupled with other facts which, in themselves, might have been inadequate to support an adverse finding against the employer, may suffice to sustain a finding that the employer's actions violated the prohibition of the Act." (Rothenberg on Labor Relations, pp. 401-402, and the cases cited therein)"

It is also the established rule that an employer who commits an unfair labor practice may be required to reinstate with full backwages the workers affected by such act. (*Compania Maritima v. United Seamen's Union*, 104 Phil. 7; *Talisay Silay Milling Co. v. CIR*, 106 Phil. 1081; *Velez v. PAV Watchmen's Union*, 107 Phil. 689; *Phil. Sugar*

Institute v. CIR et al., 109 Phil. 452; Big Five Products Workers Union v. CIR, 8 SCRA 559; MD Transit & Taxi Co. v. De Guzman, 7 SCRA 726).

The labor arbiter who, in spite of the facts of the case, found the acts of the employer insufficient and not substantial enough to warrant a finding of dismissal due to union activities could not bring himself to go all the way in favor of the employer. He ruled that there was no insubordination or abandonment and that there was every reason for the petitioners to want to cling to their work. He ordered reinstatement but without any backwages. In affirming in its entirety such an inconsistent and illogical ruling so derogatory to the rights of the workers and the protections given them by the Constitution and statutes, the respondent commission committed grave abuse of discretion.

WHEREFORE, the petition is granted. The October 25, 1979 decision of the labor arbiter and the November 9, 1981 resolution of the respondent commission are hereby set aside. The private respondent is ordered to reinstate the individual petitioners with full backwages and without any loss of seniority rights. Costs against the private respondent.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Vasquez, and Relova, JJ., concur.

[1] Solicitor General Estelito P. Mendoza was assisted by Assistant Solicitor General Ruben E. Agpalo, and Solicitor Deusdedit B. Quijano.

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