

SANTA ROSA COCA-COLA PLANT EMPLOYEES UNION, DONRICO V. SEBASTIAN, EULOGIO G. BATINO, SAMUEL A. ATANQUE, MANOLO C. ZABALJAUREGUI, DIONISIO TENORIO, EDWIN P. RELLORES, LUIS B. FEL...

G.R. NOS. 164302-03. January 24, 2007

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP Nos. 74174 and 74860, which affirmed the ruling of the National Labor Relations Commission (NLRC) in NLRC CA No. 030424-02, and the Labor Arbiter in NLRC Case No. RAB-IV-10-11579-99-L.

The Antecedents

The Sta. Rosa Coca-Cola Plant Employees Union (Union) is the sole and exclusive bargaining representative of the regular daily paid workers and the monthly paid non-commission-earning employees of the Coca-Cola Bottlers Philippines, Inc. (Company) in its Sta. Rosa, Laguna plant. The individual petitioners are Union officers, directors, and shop stewards.

The Union and the Company had entered into a three-year Collective Bargaining Agreement (CBA) effective July 1, 1996 to expire on June 30, 1999. Upon the expiration of the CBA, the Union informed the Company of its desire to renegotiate its terms. The CBA meetings commenced on July 26, 1999, where the Union and the Company discussed the ground rules of the negotiations. The Union insisted that representatives from the Alyansa ng mga Unyon sa Coca-Cola be allowed to sit down as observers in the CBA meetings. The Union officers and members also insisted that their wages be based on their work shift rates. For its part, the Company was of the view that the members of the Alyansa were not members of the bargaining unit. The Alyansa was a mere aggregate of employees of the Company in its various plants; and is not a registered labor organization. Thus, an impasse ensued.[2]

On August 30, 1999, the Union, its officers, directors and six shop stewards filed a “Notice of Strike” with the National Conciliation and Mediation Board (NCMB) Regional Office in Southern Tagalog, Imus, Cavite. The petitioners relied on two grounds: (a) deadlock on CBA ground rules; and (b) unfair labor practice arising from the company’s refusal to bargain. The case was docketed as NCMB-RBIV-NS-08-046-99.[3]

The Company filed a Motion to Dismiss[4] alleging that the reasons cited by the Union were not valid grounds for a strike. The Union then filed an Amended Notice of Strike on September 17, 1999 on the following grounds: (a) unfair labor practice for the company’s refusal to bargain in good faith; and (b) interference with the exercise of their right to self-organization.[5]

Meanwhile, on September 15, 1999, the Union decided to participate in a mass action organized by the Alyansa ng mga Unyon sa Coca-Cola in front of the Company’s premises set for September 21, 1999. 106 Union

members, officers and members of the Board of Directors, and shop stewards, individually filed applications for leave of absence for September 21, 1999. Certain that its operations in the plant would come to a complete stop since there were no sufficient trained contractual employees who would take over, the Company disapproved all leave applications and notified the applicants accordingly.[6] A day before the mass action, some Union members wore gears, red tag cloths stating “YES KAMI SA STRIKE” as headgears and on the different parts of their uniform, shoulders and chests.

The Office of the Mayor issued a permit to the Union, allowing it “to conduct a mass protest action within the perimeter of the Coca-Cola plant on September 21, 1999 from 9:00 a.m. to 12:00 noon.”[7] Thus, the Union officers and members held a picket along the front perimeter of the plant on September 21, 1999. All of the 14 personnel of the Engineering Section of the Company did not report for work, and 71 production personnel were also absent. As a result, only one of the three bottling lines operated during the day shift. All the three lines were operated during the night shift with cumulative downtime of five (5) hours due to lack of manning, complement and skills requirement. The volume of production for the day was short by 60,000 physical case[s] versus budget.[8]

On October 13, 1999, the Company filed a “Petition to Declare Strike Illegal”[9] alleging, inter alia, the following: there was a deadlock in the CBA negotiations between the Union and Company, as a result of which a Notice of Strike was filed by the Union; pending resolution of the Notice of Strike, the Union members filed applications for leave on September 21, 1999 which were disapproved because operations in the plant may be disrupted; on September 20, 1999, one day prior to the mass leave, the Union staged a protest action by wearing red arm bands denouncing the alleged anti-labor practices of the company; on September 21, 1999, without observing the requirements mandated by law, the Union picketed the premises of the Company in clear violation of Article 262 of the Labor Code; because of the slowdown in the work, the Company suffered losses amounting to P2,733,366.29; the mass/protest action conducted on September 21, 1999 was clearly a strike; since the Union did not observe the requirements mandated by law, i.e., strike vote, cooling-off period and reporting requirements, the strike was therefore illegal; the Union also violated the provision of the CBA on the grievance machinery; there being a direct violation of the CBA, the Union’s action constituted an unfair labor practice; and the officers who knowingly participated in the commission of illegal acts during the strike should be declared to have lost their employment status. The Company prayed that judgment be rendered as follows:

- Declaring the strike illegal;
- Declaring the officers of respondent Union or the individual respondents to have lost their employment status;
- Declaring respondent Union, its officers and members guilty of unfair labor practice for violation of the CBA; and
- Ordering the respondents to pay petitioner the following claims for damages:
 - Actual Damages in the amount of P 4,733,366.29
 - Moral Damages in the amount of Five (5) Million Pesos; and
 - Exemplary Damages in the amount of Two (2) Million Pesos.[10]

The Union filed an Answer with a Motion to Dismiss and/or to Suspend Proceedings[11] alleging therein that the mass action conducted by its officers and members on September 21, 1999 was not a strike but just a valid exercise of their right to picket, which is part of the right of free expression as guaranteed by the Constitution; several thousands of workers nationwide had launched similar mass protest actions to demonstrate their

continuing indignation over the ill effects of martial rule in the Philippines.[12]] It pointed out that even the officers and members of the Alyansa ng mga Unyon sa Coca-Cola had similarly organized mass protest actions. The Union insisted that officers and members filed their applications for leave for September 21, 1999 knowing fully well that there were no bottling operations scheduled on September 21 and 22, 1999; they even secured a Mayor's permit for the purpose. The workers, including the petitioners, merely marched to and fro at the side of the highway near one of the gates of the Sta. Rosa Plant, the loading bay for public vehicles. After 3 hours, everyone returned to work according to their respective shifting schedules. The Union averred that the petition filed by the Company was designed to harass and its officers and members in order to weaken the Union's position in the on-going collective bargaining negotiations.

In a letter to the Union President dated October 26, 1999, the NCMB stated that based on their allegations, the real issue between the parties was not the proper subject of a strike, and should be the subject of peaceful and reasonable dialogue. The NCMB recommended that the Notice of Strike of the Union be converted into a preventive mediation case. After conciliation proceedings failed, the parties were required to submit their respective position papers.[13] In the meantime, the officers and directors of the Union remained absent without the requisite approved leaves. On October 11, 1999, they were required to submit their explanations why they should not be declared AWOL.[14]

On November 26, 1999, the Labor Arbiter rendered a Decision[15] granting the petition of the Company. He declared that the September 21, 1999 mass leave was actually a strike under Article 212 of the Labor Code for the following reasons: based on the reports submitted by the Production and Engineering Department of the Company, there was a temporary work stoppage/slowdown in the company;[16] out of the usual three (3) lines for production for the day shift, only one line operated by probationary employees was functional and there was a cumulative downtime of five (5) hours attributed to the lack of manning complement and skills requirement. The Labor Arbiter further declared:

x x x [T]he September 21, 1999 activity of the union and the individual respondents herein fell within the foregoing definition of a strike. Firstly, the union itself had admitted the fact that on the date in question, respondent officers, together with their union members and supporters from the Alyansa ng mga Unyon sa Coca-Cola, did not report for their usual work. Instead, they all assembled in front of the Sta. Rosa Plant and picketed the premises. Very clearly, there was a concerted action here on the part of the respondents brought about a temporary stoppage of work at two out of three bottling lines at the Sta. Rosa Plant. According to Edwin Jaranilla, the Engineering Superintendent (Annex H, petition), all of his department's 14 engineering personnel did not report for work on September 21, 1999, and that only Line 2 operated on the day shift. Honorio Tacla, the Production Superintendent, testified (Annex H-1), that 71 production personnel were likewise absent from their respective work stations on September 21, 1999, and that only Line 2 operated on the day shift. Similarly, Federico Borja, Physical Distribution Superintendent, stated under oath (Annex H-2) that 12 personnel from his department did not report for work on September 21, 1999, and that no forklift servicing was done on Lines 1 and 3. From the foregoing testimonies, it is evident that respondents' concerted activity resulted in a temporary stoppage of work at the Sta. Rosa Plant of the company. Thirdly, such concerted activity by respondents was by reason of a labor dispute. Earlier, the union had filed a Notice of Strike against the company on account of a disagreement with the latter regarding CBA ground rules, i.e., the demand of the Union for Alyansa members from other plants to attend as observers during the CBA negotiation, and for the members of the negotiating panel to be paid their wages based on their work shift rate. Moreover, on September 20, 1999, one day before respondents' mass leave from work and concerted action, they had worn red tag cloth materials on different parts of their uniform which contained the words, "YES kami sa strike"; "Protesta kami"; "Sahod, karapatan, manggagawa ipaglaban"; and "Union busting itigil." (Annexes G, G-1, G-2 & G-3). These indicated that the concerted action taken by respondents against CCBPI was a result of or on account of a labor dispute.[17]

According to the Labor Arbiter, the strike conducted by the Union was illegal since there was no showing that the Union conducted a strike vote, observed the prescribed cooling-off period, much less, submitted a strike vote to the DOLE within the required time. Consequently, for knowingly participating in the illegal strike, the individual petitioners were considered to have lost their employment status.[18]

The Union appealed the decision to the NLRC. On July 31, 2002, the NLRC affirmed the decision of the Labor Arbiter with the modification that Union Treasurer Charlita M. Abrigo, who was on bereavement leave at the time, should be excluded from the list of those who participated in the illegal strike. She was thus ordered reinstated to her former position with full backwages and benefits.[19]

The Union and its officers, directors and the shop stewards, filed a petition for certiorari in the CA. The case was docketed as CA-G.R. SP No. 74174. Another petition was filed by Ricky G. Ganarial and Almira Romo, docketed as CA-G.R. SP No. 74860. The two cases were consolidated in the 6th Division of the CA.

Petitioners alleged the following in their respective petitions:

I

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION FOR HAVING DECLARED PETITIONERS TO HAVE LOST THEIR EMPLOYMENT WHEN FACTS WOULD SHOW PETITIONERS WERE NOT AFFORDED DUE PROCESS

II

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DECLARING THE PEACEFUL PICKETING CONDUCTED BY THE UNION AS ILLEGAL STRIKE DESPITE ABSENCE OF SUBSTANTIAL EVIDENCE ON THE INTENT TO CREATE TEMPORARY WORK STOPPAGE

III

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DECLARING THAT PETITIONERS HAVE LOST THEIR EMPLOYMENT FOR KNOWINGLY PARTICIPATING IN AN ILLEGAL STRIKE DESPITE THE FACT THAT PETITIONERS ARE NOT ELECTED OFFICERS OF THE UNION AND ARE MERE SHOP STEWARDS AND DESPITE THE FACT THAT THERE WAS NO PROOF THAT THEY COMMITTED ILLEGAL ACTS.[20]

The petitioners, likewise, raised the following, to wit:

WHETHER OR NOT PUBLIC RESPONDENT NLRC HAS GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN AFFIRMING THE DECISION OF THE LABOR ARBITER A QUO WHO COMMITTED SERIOUS ERRORS IN HIS FINDINGS OF FACTS WHEN HE DECLARED THAT THE STRIKE CONDUCTED BY THE RESPONDENTS ON SEPTEMBER 21, 1999 IS ILLEGAL.

WHETHER OR NOT PUBLIC RESPONDENT NLRC HAS GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN AFFIRMING THE DECISION OF THE LABOR ARBITER A QUO WHO COMMITTED SERIOUS ERRORS IN HIS FINDINGS OF FACTS WHEN HE DECLARED THAT INDIVIDUAL RESPONDENTS (NOW PETITIONERS), INCLUDING SIX (6) UNION SHOP STEWARDS, ARE CONSIDERED TO HAVE LOST THEIR EMPLOYMENT STATUS (EXCEPT CHARLITA ABRIGO) FOR KNOWINGLY PARTICIPATING IN SAID ILLEGAL STRIKE.[21]

On September 10, 2003, the CA rendered judgment dismissing the petition for lack of merit. It also declared that petitioners, in CA-G.R. SP No. 74860, were guilty of forum shopping.

Petitioners filed a motion for reconsideration which the appellate court denied; hence, the instant petition was filed based on the following grounds:

(1) THE HONORABLE COURT OF APPEALS HAS GRAVELY ABUSED ITS DISCRETION IN DISMISSING THE PETITION BEFORE IT FOR LACK OF MERIT WHEN IT IS CLEAR FROM THE EVIDENCE ON RECORD THAT THE SUBJECT MASS ACTION WAS A VALID EXERCISE OF THE WORKERS' CONSTITUTIONAL RIGHT TO PICKET WHICH IS PART OF THE RIGHT TO FREE EXPRESSION.

(2) THE NLRC GRAVELY ABUSED ITS DISCRETION IN AFFIRMING THE DECISION OF THE LABOR ARBITER A QUO WHEN IT CONCLUDED THAT AS A CONSEQUENCE OF THE ILLEGALITY OF THE STRIKE, THE DISMISSAL OF THE OFFICERS OF THE UNION IS JUSTIFIED AND VALID, IS NOT IN ACCORD WITH FACTS AND EVIDENCE ON RECORD.

(3) EVEN ASSUMING ARGUENDO THAT THE PROTEST MASS ACTION STAGED BY PETITIONERS ON SEPTEMBER 21, 1999 CONSTITUTES A STRIKE, THE NLRC SERIOUSLY ERRED WHEN IT AFFIRMED THE LABOR ARBITER'S DECISION DECLARING THE FORFEITURE OF EMPLOYMENT STATUS OF UNION OFFICERS AND SHOP STEWARDS (WHO HAVE NOT COMMITTED ANY ILLEGAL ACT DURING THE CONDUCT OF THE SAID MASS ACTION) FOR HAVING KNOWINGLY PARTICIPATED IN AN ILLEGAL STRIKE.[22]

The threshold issues in these cases are: (a) whether the September 21, 1999 mass action staged by the Union was a strike; (b) if, in the affirmative, whether it was legal; and (c) whether the individual officers and shop stewards of petitioner Union should be dismissed from their employment.

On the first and second issues, petitioners maintain that the September 21, 1999 mass protest action was not a strike but a picket, a valid exercise of their constitutional right to free expression and assembly.[23] It was a peaceful mass protest action to dramatize their legitimate grievances against respondent. They did not intend to have a work stoppage since they knew beforehand that no bottling operations were scheduled on September 21, 1999 pursuant to the Logistics Planning Services Mega Manila Production Plan dated September 15, 1999.[24] Thus, they applied for leaves of absences for September 21, 1999 which, however, were not approved. They also obtained a mayor's permit to hold the picket near the highway, and they faithfully complied with the conditions set therein. The protesting workers were merely marching to and fro at the side of the highway or the loading bay near one of the gates of the Company plant, certainly not blocking in any way the ingress or egress from the Company's premises. Their request to hold their activity was for four (4) hours, which was reduced to three (3) hours. Thereafter, they all went back to work. The bottling operations of the Company was not stopped, even temporarily. Since petitioner Union did not intend to go on strike, there was no need to observe the mandatory legal requirements for the conduct of a strike.

Petitioners also point out that members belonging to the IBM-KMU at the San Fernando Coca-Cola bottling plant staged simultaneous walkout from their work assignments for two consecutive days, on October 7 and 8, 1999. However, the Secretary of Labor and Employment (SOLE) declared that the walkout was considered a mass action, not a strike, and the officers of the IBM-KMU were only meted a three-day suspension. Respondent accepted the decision of the SOLE and no longer appealed the decision. Petitioners insist that this should, likewise, apply in the resolution of the issue of whether petitioners staged a strike or not, and whether the penalty of dismissal from the employment with the respondent is just and equitable.

Petitioners also insist that they were denied the right to due process because the decision of the Labor Arbiter was implemented even while their appeal was pending in the NLRC. The decision of the Labor Arbiter against them was to become final and executory only until after the NLRC shall have resolved their appeal with finality.

On the third issue, petitioners aver that even assuming that they had indeed staged a strike, the penalty of dismissal is too harsh. They insist that they acted in good faith. Besides, under Article 264 of the Labor Code, the dismissal of the Union officers who participated in an illegal strike is discretionary on the employer. Moreover, six (6) of the petitioners were shop stewards who were mere members of the Union and not officers thereof.

In its comment on the petition, respondent avers that the issues raised by petitioners are factual; hence, inappropriate in a petition for review on certiorari. Besides, the findings of the Labor Arbiter had been affirmed by the NLRC and the CA, and are, thus, conclusive on this Court.

Respondent further avers that the law offers no discretion as to the proper penalty that should be imposed against a Union official participating in an illegal strike. Contrary to the contention of petitioners, shop stewards are also Union officers. To support its claim, respondent cited *Samahan ng Manggagawa sa Moldex Products, Inc. v. National Labor Relations Commission*,^[25] *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Hoffa*,^[26] and *Coleman v. Brotherhood of Railway and Steamship Clerks, etc.*^[27]

The petition is denied for lack of merit.

The ruling of the CA that petitioners staged a strike on September 21, 1999, and not merely a picket is correct.

It bears stressing that this is a finding made by the Labor Arbiter which was affirmed by the NLRC^[28] and the CA.^[29] The settled rule is that the factual findings and conclusions of tribunals, as long as they are based on substantial evidence, are conclusive on this Court.^[30] The *raison d'être* is that quasi-judicial agencies, like the Labor Arbiter and the NLRC, have acquired a unique expertise since their jurisdictions are confined to specific matters. Besides, under Rule 45 of the Rules of Court, the factual issues raised by the petitioner are inappropriate in a petition for review on certiorari. Whether petitioners staged a strike or not is a factual issue.

Petitioners failed to establish that the NLRC committed grave abuse of its discretion amounting to excess or lack of jurisdiction in affirming the findings of the Labor Arbiter that petitioners had indeed staged a strike.

Article 212(o) of the Labor Code defines strike as a temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute. In *Bangalisan v. Court of Appeals*,^[31] the Court ruled that “the fact that the conventional term ‘strike’ was not used by the striking employees to describe their common course of action is inconsequential, since the substance of the situation, and not its appearance, will be deemed to be controlling.”^[32] The term “strike” encompasses not only concerted work stoppages, but also slowdowns, mass leaves, sit-downs, attempts to damage, destroy or sabotage plant equipment and facilities, and similar activities.^[33]

Picketing involves merely the marching to and fro at the premises of the employer, usually accompanied by the display of placards and other signs making known the facts involved in a labor dispute.^[34] As applied to a labor dispute, to picket means the stationing of one or more persons to observe and attempt to observe. The purpose of pickets is said to be a means of peaceable persuasion.^[35]

A labor dispute includes any controversy or matter concerning terms or conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.^[36]

That there was a labor dispute between the parties, in this case, is not an issue. Petitioners notified the respondent of their intention to stage a strike, and not merely to picket. Petitioners' insistence to stage a strike is evident in the fact that an amended notice to strike was filed even as respondent moved to dismiss the first notice. The basic

elements of a strike are present in this case: 106 members of petitioner Union, whose respective applications for leave of absence on September 21, 1999 were disapproved, opted not to report for work on said date, and gathered in front of the company premises to hold a mass protest action. Petitioners deliberately absented themselves and instead wore red ribbons, carried placards with slogans such as: “YES KAMI SA STRIKE,” “PROTESTA KAMI,” “SAHOD, KARAPATAN NG MANGGAGAWA IPAGLABAN,” “CBA-‘WAG BABOYIN,” “STOP UNION BUSTING.” They marched to and fro in front of the company’s premises during working hours. Thus, petitioners engaged in a concerted activity which already affected the company’s operations. The mass concerted activity constituted a strike.

The bare fact that petitioners were given a Mayor’s permit is not conclusive evidence that their action/activity did not amount to a strike. The Mayor’s description of what activities petitioners were allowed to conduct is inconsequential. To repeat, what is definitive of whether the action staged by petitioners is a strike and not merely a picket is the totality of the circumstances surrounding the situation.

A strike is the most powerful of the economic weapons of workers which they unsheathe to force management to agree to an equitable sharing of the joint product of labor and capital. It is a weapon that can either breathe life to or destroy the Union and its members in their struggle with management for a more equitable due to their labors.[37] The decision to declare a strike must therefore rest on a rational basis, free from emotionalism, envisaged by the tempers and tantrums of a few hot heads, and finally focused on the legitimate interests of the Union which should not, however, be antithetical to the public welfare, and, to be valid, a strike must be pursued within legal bounds. The right to strike as a means of attainment of social justice is never meant to oppress or destroy the employer.[38]

Since strikes cause disparity effects not only on the relationship between labor and management but also on the general peace and progress of society, the law has provided limitations on the right to strike. For a strike to be valid, the following procedural requisites provided by Art. 263 of the Labor Code must be observed: (a) a notice of strike filed with the DOLE 30 days before the intended date thereof, or 15 days in case of unfair labor practice; (b) strike vote approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in a meeting called for that purpose, (c) notice given to the DOLE of the results of the voting at least seven days before the intended strike. These requirements are mandatory and the failure of a union to comply therewith renders the strike illegal.[39] It is clear in this case that petitioners totally ignored the statutory requirements and embarked on their illegal strike. We quote, with approval, the ruling of the CA which affirmed the decisions of the NLRC and of the Labor Arbiter:

Since it becomes undisputed that the mass action was indeed a strike, the next issue is to determine whether the same was legal or not. Records reveal that the said strike did not comply with the requirements of Article 263 (F) in relation to Article 264 of the Labor Code, which specifically provides, thus:

ART. 263. STRIKES, PICKETING, AND LOCKOUTS

xxx xxx xxx xxx

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

the cooling-off period herein provided.

ART. 264. PROHIBITED ACTIVITIES

(a) No labor organization or employer shall declare a strike or lockout without first having bargained collectively in accordance with Title VII of this Book or without first having filed the notice required in the preceding article or without the necessary strike or lockout vote first having been obtained and reported to the Ministry.

No strike or lockout shall be declared after assumption of jurisdiction by the President or the Minister or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout.

Any worker whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full backwages. Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

xxx xxx xxx xxx

Applying the aforecited mandatory requirements to the case at bench, the Labor Arbiter found, thus:

In the present case, there is no evidence on record to show that respondents had complied with the above mandatory requirements of law for a valid strike. Particularly, there is no showing that respondents had observed the prescribed cooling-off period, conducted a strike vote, much less submitted a strike vote report to the Department of Labor within the required time. This being the case, respondents' strike on September 21, 1999 is illegal. In the recent case of CCBPI Postmix Workers Union vs. NLRC, 2999 (sic) SCRA 410, the Supreme Court had said: "It bears stressing that the strike requirements under Article 264 and 265 of the Labor Code are mandatory requisites, without which, the strike will be considered illegal. The evidence (sic) intention of the law in requiring the strike notice and strike-vote report as mandatory requirements is to reasonably regulate the right to strike which is essential to the attainment of legitimate policy objectives embodied in the law. Verily, substantial compliance with a mandatory provision will not suffice. Strict adherence to the mandate of the law is required.

Aside from the above infirmity, the strike staged by respondents was, further, in violation of the CBA which stipulated under Section 1, Article VI, thereof that,

SECTION 1. The UNION agrees that there shall be no strike, walkout, stoppage or slowdown of work, boycott, secondary boycott, refusal to handle any merchandise, picketing, sitdown strikes of any kind, sympathetic or general strike, or any other interference with any of the operations of the COMPANY during the term of this Agreement, so long as the grievance procedure for which provision is made herein is followed by the COMPANY.

Here, it is not disputed that respondents had not referred their issues to the grievance machinery as a prior step. Instead, they chose to go on strike right away, thereby bypassing the required grievance procedure dictated by the CBA.[40]

On the second and third issues, the ruling of the CA affirming the decisions of the NLRC and the Labor Arbiter ordering the dismissal of the petitioners-officers, directors and shop stewards of petitioner Union is correct.

It bears stressing, however, 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.[41] For knowingly participating in an illegal strike or participates in the commission of illegal acts during a strike, the law provides that a union officer may be terminated from employment.[42] 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.[43]

We quote, with approval, the following ruling of the Court of Appeals:

As to the imposition of the penalty provided for should an illegal strike be declared as such, We find no legal or factual reason to digress from the following disquisition of the Labor Arbiter, to wit:

No doubt, the strike conducted by respondents on September 21, 1999 is illegal. Under Article 264(a) of the Labor Code, it is stated that, 'Any union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status. xxx.' In the present case, CCBPI had already promptly notified respondents and their members of the disapproval of their leave. In fact, in the company notice (of the disapproval of their leave), CCBPI emphasized that "operations will come to a complete stop on September 21, 1999 if all the applications are approved." They were further informed that, 'there are no sufficiently trained contractual employees who can take over as replacements on that day' (Annexes "C," "C-1" to "C-18"). In other words, respondents had known beforehand that their planned mass leave would definitely result in a stoppage of the operations of the company for September 21, 1999. Still, respondents knowingly and deliberately proceeded with their mass action, unmindful of the ill effects thereof on the business operations of the company. In the case of *Association of Independent Unions in the Philippines v. NLRC*, 305 SCRA 219, the Supreme Court had ruled that,

Union officers are duty-bound to guide their members to respect the law. If instead of doing so, the officers urge the members to violate the law and defy the duly constituted authorities, their dismissal from the service is just penalty or sanction for their unlawful acts. The officers' responsibility is greater than that of the members.

Here, the law required respondents to follow a set of mandatory procedures before they could go on with their strike. But obviously, rather than call on their members to comply therewith, respondents were the first ones to violate the same.[44]

Petitioners cannot find solace in the Order of the Secretary of Labor and Employment (SOLE) in OS-A-J-0033-99, NCMB-RB 111-NS-10-44-99 and 11-51-99 involving the labor dispute between the Company and the Union therein (the Ilaw at Buklod ng Manggagawa Local No. 1, representing the daily paid rank and file members of the respondent, as well as the plant-based route helpers and drivers at its San Fernando Plant). In said case, the SOLE found that the simultaneous walkout staged on October 7 and 8, 1999 was indeed a mass action, initiated by the Union leaders. The acts of the Union leaders were, however, found to be illegal which warranted their dismissal, were it not for the presence of mitigating factors, i.e., the walkout was staged in support of their leaders in the course of the CBA negotiation which was pending for more than nine (9) months; the Plant was not fully disrupted as the Company was able to operate despite the severe action of the Union members, with the employment of casual and contractual workers; the Union had complied with the requirements of a strike and refrained from staging an actual strike.[45]

Neither can the petitioners find refuge in the rulings of this Court in *Panay Electric Company v. NLRC*[46] or in *Lapanday Workers Union v. NLRC*. [47] In the *Panay* case, the Court meted the suspension of the union officers, instead of terminating their employment status since the NLRC found no sufficient proof of bad faith on the part of the union officers who took part in the strike to protest the dismissal of their fellow worker, Enrique Huyan which was found to be illegal. In *Lapanday*, the Court actually affirmed the dismissal of the union officers who could not claim good faith to exculpate themselves. The officers, in fact, admitted knowledge of the law on strike,

including its procedure in conducting the same. The Court held that the officers cannot violate the law which was designed to promote their interests.

Finally, the contention of petitioners Elenette Moises, Almira Romo, Louie Labayani, Ricky Ganarial, Efren Galan and Jun Carmelito Santos who were appointed as shop stewards of the Union that they were mere members and not the officers of petitioner Union is barren of merit.

We agree with the observation of respondent that under Section 501(a) and (b) of the Landrum Griffin Act of 1959,[48] shop stewards are officers of the Union:

Sec. 501 (a) The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interest of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

(b) When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization.[49]

Under said Act, Section 3(q) thereof provides, as follows:

(q) "Officer, agent, shop steward, or other representative", when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried non-supervisory professional staff, stenographic, and service personnel.[50]

Admittedly, there is no similar provision in the Labor Code of the Philippines; nonetheless, petitioners who are shop stewards are considered union officers.

Officers normally mean those who hold defined offices. An officer is any person occupying a position identified as an office. An office may be provided in the constitution of a labor union or by the union itself in its CBA with the employer. An office is a word of familiar usage and should be construed according to the sense of the thing.[51]

Irrefragably, under its Constitution and By-Laws, petitioner Union has principal officers and subordinate officers, who are either elected by its members, or appointed by its president, including the standing committees each to be headed by a member of the Board of Directors. Thus, under Section 1, Article VI of petitioner Union's Constitution and By-Laws, the principal officers and other officers, as well as their functions/duties and terms of office, are as follows:

ARTICLE VI

PRINCIPAL OFFICERS

SECTION 1. The governing body of the UNION shall be the following officers who shall be elected through secret ballot by the general membership:

President

Auditor

Vice-President – two (2) Public Relations Officer

Secretary Sergeant-at-Arms

Treasurer Board of Directors – nine (9)

SECTION 2. The above officers shall administer Union's affairs, formulate policies and implement programs to effectively carry out the objectives of the UNION and the Labor Code of the Philippines and manage all the monies and property of the UNION.

SECTION 3. The officers of the UNION and the members of the Board of Directors shall hold office for a period of five (5) years from the date of their election until their successors shall have been duly elected and qualified; provided that they remain members of the UNION in good standing.[52]

Section 6, Article II of the CBA of petitioner Union and respondent defines the position of shop steward, thus:

SECTION 6. Shop Stewards. The UNION shall certify a total of eight (8) shop stewards and shall inform management of the distribution of these stewards among the departments concerned.

Shop Stewards, union officers and members or employees shall not lose pay for attending Union-Management Labor dialogues, investigations and grievance meetings with management.[53]

Section 6, Rule XIX of the Implementing Rules of Book V of the Labor Code mentions the functions and duties of shop stewards, as follows:

Section 2. Procedures in handling grievances. – In the absence of a specific provision in the collective bargaining agreement prescribing for the procedures in handling grievance, the following shall apply:

(a) An employee shall present this grievance or complaint orally or in writing to the shop steward. Upon receipt thereof, the shop steward shall verify the facts and determine whether or not the grievance is valid.

(b) If the grievance is valid, the shop steward shall immediately bring the complaint to the employee's immediate supervisor. The shop steward, the employee and his immediate supervisor shall exert efforts to settle the grievance at their level.

(c) If no settlement is reached, the grievance shall be referred to the grievance committee which shall have ten (10) days to decide the case.

Where the issue involves or arises from the interpretation or implementation of a provision in the collective bargaining agreement, or from any order, memorandum, circular or assignment issued by the appropriate authority in the establishment, and such issue cannot be resolved at the level of the shop steward or the supervisor, the same may be referred immediately to the grievance committee.

All grievance unsettled or unresolved within seven (7) calendar days from the date of its submission to the last step in the grievance machinery shall automatically be referred to a voluntary arbitrator chosen in accordance with the provisions of the collective bargaining agreement, or in the absence of such provisions, by mutual agreement of the parties.[54]

Thus, a shop steward is appointed by the Union in a shop, department, or plant serves as representative of the Union, charged with negotiating and adjustment of grievances of employees with the supervisor of the employer.[55] He is the representative of the Union members in a building or other workplace. Black's Law Dictionary defines a shop steward as a union official who represents members in a particular department. His duties include the conduct of initial negotiations for settlement of grievances.[56] He is to help other members when they have concerns with the employer or other work-related issues. He is the first person that workers turn to for assistance or information. If someone has a problem at work, the steward will help them sort it out or, if necessary, help them file a complaint.[57] In the performance of his duties, he has to take cognizance of and resolve, in the first instance, the grievances of the members of the Union. He is empowered to decide for himself whether the grievance or complaint of a member of the petitioner Union is valid, and if valid, to resolve the same with the supervisor failing which, the matter would be elevated to the Grievance Committee.

It is quite clear that the jurisdiction of shop stewards and the supervisors includes the determination of the issues arising from the interpretation or even implementation of a provision of the CBA, or from any order or memorandum, circular or assignments issued by the appropriate authority in the establishment. In fine, they are part and parcel of the continuous process of grievance resolution designed to preserve and maintain peace among the employees and their employer. They occupy positions of trust and laden with awesome responsibilities.

In this case, instead of playing the role of "peacemakers" and grievance solvers, the petitioners-shop stewards participated in the strike. Thus, like the officers and directors of petitioner Union who joined the strike, petitioners-shop stewards also deserve the penalty of dismissal from their employment.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. The Decision of the Court of Appeals is AFFIRMED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Delilah Vidallon-Magtolis (retired) and Hakim S. Abdulwahid, concurring; rollo, pp. 53-68.

[2] Rollo, p. 54.

[3] Records, p. 15.

[4] Rollo, pp. 143-148.

[5] Records, p. 43.

[6] Id. at 16-34.

[7] Rollo, pp.141-142.

[8] Records, pp. 50, 67-69.

[9] Id. at 1.

[10] Id. at 11-12.

[11] Id. at 78

[12] Id. at 35-36.

- [13] Id. at 113. Position Paper for the Respondents, Records, pp. 121-127; Position Paper for the Complainant CCBPI, Records, pp. 150-168.
- [14] Records, pp. 131-148.
- [15] Id. at 201-207.
- [16] Annexes “K,” “K-1,” and “K-2,” id. at 70-72.
- [17] Records, pp. 204-205.
- [18] Rollo, p. 97.
- [19] Id. at 83.
- [20] Id. at 59-60.
- [21] Id.
- [22] Id. at 32-33.
- [23] Id. at 34.
- [24] Annex “1,” id. at 85.
- [25] 381 Phil. 254 (2000).
- [26] 242 F. Supp. 246, May 14, 1965.
- [27] 340 F.2d 206, January 8, 1965.
- [28] Rollo, pp. 80-82.
- [29] Id. at 66.
- [30] *San Miguel Corporation v. MAERC Integrated Services, Inc.*, 453 Phil. 543, 557 (2003); *Cosmos Bottling Corporation v. NLRC*, 453 Phil. 151, 157 (2003).
- [31] G.R. No. 124678, July 31, 1997, 276 SCRA 619, 627.
- [32] Cited also in *Acosta v. Court of Appeals*, 389 Phil. 829, 836 (2000).
- [33] *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc.* G.R. No. 140992, March 25, 2004, 426 SCRA 319. *Bukluran ng Manggagawa sa Clothman Knitting Corp.-Solidarity of Unions in the Phils. For Empowerment and Reforms v. Court of Appeals*, G.R. No. 158158, January 17, 2005, 448 SCRA 642.
- [34] *Ilaw at Buklod ng Manggagawa (IBM) v. NLRC*, G.R. No. 91980, June 27, 1995.
- [35] *Dache v. Rose*, 28 N.Y.S. 2d 303 (1941).
- [36] Article 212 (I) Labor Code.
- [37] *Lapanday Workers Union v. NLRC*, G.R. Nos. 95494-97, September 7, 1995, 248 SCRA 95, 104-105.
- [38] *Association of Independent Unions in the Philippines v. NLRC*, G.R. No. 120505, March 25, 1999, 305 SCRA 219.
- [39] *Piñero v. NLRC*, G.R. No. 149610, August 20, 2004, 437 SCRA 112.
- [40] Rollo, pp. 63-65.
- [41] *Association of Independent Unions in the Philippines v. National Labor Relations Commission*, *supra* note

38; First City Interlink Transportation, Co. Inc. v. Secretary of Labor and Employment, G.R. No. 106316, May 5, 1997, 272 SCRA 124;

[42] Gold City Integrated Port Service, Inc. v. NLRC, G.R. No. 103560, July 6, 1995, 245 SCRA 627, 641.

[43] Id.

[44] Rollo, pp. 65-66.

[45] Id. at 102-104.

[46] G.R. No. 102672, October 4, 1995, 248 SCRA 688.

[47] Supra note 37.

[48] The Labor-Management Reporting and Disclosure Act (LMRDA), also known as the Landrum-Griffin Act deals with the relationship between a union and its members. The LMRDA of 1959 or the Landrum-Griffin Act of 1959 is an Act to provide for the reporting and disclosure of certain financial transactions and administrative practices of labor organizations and employers, to prevent abuses in the administration of trusteeships by labor organizations, to provide standards with respect to the election of officers of labor organizations, and for other purposes.

[49] Sections 501(a) and (b) deal on the “Fiduciary Responsibility of Officers of Labor Organizations,” (29 U.S.C 501).

[50] 29 U.S.C.402.

[51] National Labor Relations Board v. Coca-Cola Bottling Co. of Louisville, Inc., 100 L.Ed. 285 (1956).

[52] Rollo, pp. 350-351.

[53] Id. at 43.

[54] Id. at 159.

[55] Webster’s Third New International Dictionary.

[56] 5[th] Edition, 1979.

[57] The Shop Steward. <http://www.seiu32bj.org/cd/stewards.asp>, 11/22/06.

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