UNIVERSITY OF THE IMMACULATE CONCEPTION, PETITIONER, VS. OFFICE OF THE SECRETARY OF LABOR AND EMPLOYMENT, UIC TEACHING AND NON-TEACHING EMPLOYEES UNION-FFW, OFELIA DIAPUEZ, MELA...

G.R. Nos. 178085-86. September 14, 2015

Ponente: JARDELEZA, J.

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JARDELEZA, J.:

These consolidated cases stem from the labor dispute between petitioner University of the Immaculate Conception (UIC) and respondent UIC Teaching and Non-leaching Employees Union — FFW (the "Union") dating back to 1994. On January 23, 1995, the Secretary of Labor and Employment (the "Secretary") assumed jurisdiction over the dispute, docketed as OS-AJ-003-95, pursuant to his powers under Section 263(g) of the Labor Code.[1] The first consolidated case involves a question of whether the Secretary has the authority to order the creation of a tripartite committee to determine the amount of net incremental proceeds of tuition fee increases; the second case concerns the legality of the dismissal of 12 employees in connection with the labor dispute.

I

The following findings of fact by the Court of Appeals are undisputed:

> UIC is a non-stock, non-profit educational institution with campuses at Fr. Selga and Bonifacio Sts., Davao City. Private respondent [the Union] is the certified sole bargaining agent of UIC's rank and file employees.
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> On 20 June 1994, the Union filed a notice of strike on the grounds of bargaining deadlock and unfair labor practice. On 20 July 1994, the National Conciliation and Mediation Board (NCMB) called the parties to a conference where they agreed that an increase be granted to the workers in the amount equivalent to: seventy-five percent (75%) of increment on the tuition fee for the first year, eighty percent (80%) for the second year, and eighty percent (80%) for the third year.
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> On the same occasion, the UIC demanded the exclusion of secretaries, registrars, accounting personnel and guidance counselors from the bargaining unit, on account of their being confidential employees. When the parties agreed to submit this particular issue to voluntary arbitration, the arbitration panel sustained the UIC on 08 November 1994. The Union's motion for reconsideration thereto was denied by the arbitration panel on 08 February 1995.
>
> Accordingly, the UIC gave the affected employees namely: Melanie de la Rosa, Angelina Abadilla, Jovita Mamburan, Zenaida Canoy, Gemma Galope, Paulina Palma Gil, Lelian Concon, Mary Ann de Ramos, Alma Villacarlos, [Leah] Cruza, [Ofelia] Diapuez and Josie Boston [collectively, except Jovita Mamburan, the "Respondent Employees"] the option to choose between keeping their positions or resigning from the Union. When they elected to keep both their positions and their union membership, UIC sent them notices of termination on 21 February 1995, which led into a notice of strike filed by the Union on 10 March 1995.
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> In an Order dated 28 March 1995, the [Secretary] suspended the effects of the said termination pending the

> determination of its legality and ordered UIC to reinstate the respondent employees under the same conditions prevailing prior to the labor dispute. This Order was later modified by the [Secretary] directing the payroll reinstatement of the respondent employees, instead of physical reinstatement. On 15 September 1995, the UIC filed a petition for certiorari on the said payroll reinstatement. The Court of Appeals denied the same in its 08 October 2001 Decision and 10 January 2002 Resolution. These were affirmed by the Supreme Court on 14 January 2005 [448 SCRA 190],
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> On 20 June 2006, the [Secretary] issued a Resolution ruling that the respondent employees were illegally dismissed and directed UIC to reinstate them (except for Jovita Mamburan who died on 18 October 2003) and to pay them backwages and other benefits. UIC's motion for reconsideration thereto was denied by the [Secretary] on 18 September 2006.
>
> Meanwhile, on [20 January I995],[2] the Union filed its second notice of strike mostly on the grounds of bargaining deadlock on the issues of computing the seventy percent (70%) incremental proceeds and unfair labor practices. On 23 January 1995, the [Secretary] assumed jurisdiction over the dispute, issued a Return-to-Work Order and enjoined the parties to desist from all acts which might exacerbate the situation.
>
> On 08 October 1998, the [Secretary] issued an Order directing the parties to execute a collective bargaining agreement (CBA) embodying all items agreed upon by the parties and the salary increases consisting of the following: l[st] year - 75% of increment increase of tuition fee; 2[nd] year — 80% of increment increase of tuition fee; and 3[rd] year -80% of increment increase of tuition fee. The [Secretary] likewise upheld the validity of the strike declared by the Union on 20 January 1995. This Order was challenged by UIC before the Court of Appeals and the Supreme Court, both of which affirmed the same. The fallo of the Supreme Court decision reads:
>
> WHEREFORE, the Court DENIES the petition and enjoins the parties to comply with the directive of the Secretary of Labor and Employment to negotiate a collective bargaining agreement in good faith. No costs.
> SO ORDERED.

On 21 April 2004, UIC and the Union signed an Agreement (21 April 2004 Agreement hereafter) before the DOLE, the second paragraph of which provides:

> ["The parties agreed that all issues in this particular case have been settled, except the issue on whether the full settlement clause in the CBA to be signed by the parties bars the filing and/or continuation of alleged illegal dismissal cases which arose in the year 1994 and which the Secretary of Labor had ruled not to have been subsumed by the Assumption of Jurisdiction case pending with the Office of the Secretary which is agreed upon to be submitted for voluntary arbitration before the Honorable Secretary of Labor.]
>
> ["Likewise in the interpretation and implementation of the full settlement clause,][3] the parties agree that the net incremental proceeds for the five [5] school years of the CBA (1995-1996 to 1999-2000) will be computed and compared with the actual amount distributed to the employees for each of these five [5] years. If the amount distributed in any of these 5 school years is less than what is provided in the CBA, the University shall pay the deficiency. If the amount distributed in any of these 5 school years is more than what is provided in the CBA, the excess shall be chargeable to the [seventy percent] 70% share of the employees in the school year 2004-2005.

On 17 May 2004, the Union moved before the [Secretary] for the creation of a tripartite committee to compute the net. proceeds of the tuition fee increases for the school years 1995-2000. UIC opposed the motion stating that the computation should be done by the grievance machinery provided for in the CBA about to be signed by the parties.

On 08 June 2004, the parties signed the CBA (08 June 2004 CBA hereafter) for school years 1995-2000. On that occasion, (he parties agreed to rescind the aforequoted paragraph of the 21 April 2004 Agreement to give way for

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the signing of the CBA. The 08 June 2004 CBA was submitted to the Regional Labor Office on 14 July 2004.

As mentioned earlier, on 05 July 2004, the DOLE issued an Order granting the motion to create a tripartite committee. UIC moved for reconsideration but the same was denied in an Order dated 19 May 2005.

On 09 December 2004, the Union submitted bargaining proposals for school years 2005-2010, but U1C refused to bargain on the ground that out of more than 200 rank and file employees of the UIC, only 37 employees are members of the Union. UIC also disclosed that it refused to sign the application to register their 08 June 2004 CBA because it was ratified by only 47 employees.

Meanwhile, the Union named three (3) representatives to compose the tripartite committee. UIC, on the other hand, initially refused to name their representatives contending that the computation was no longer called for and that the 08 June 2004 CBA was not ratified. When UIC named its three representatives, the tripartite committee held meetings on 14 September 2005 and 18 October 2005 wherein both parties presented their respective computations. On 18 September 2006, the [Secretary] issued a [second] Resolution (18 September 2006 Resolution hereafter) disposing as follows:

> WHEREFORE, this Office hereby Orders:
>
> 1. The University to distribute the total amount of P11,070,473.00 to the affected employees in equal lump-sum amounts.
>
> 2. Any illegal dismissal |case] filed against the University shall continue, without further delay.
>
> SO ORDERED.[4]

On November 20, 2006, UIC filed two separate Petitions for Certiorari before the Court of Appeals. In the first petition, docketed as CA-G.R. SP No. 0I396-MIN (the "Net Incremental Proceeds Case"), UIC assailed the Secretary's order mandating the creation of a tripartite committee for the purpose of computing the net incremental proceeds, and the subsequent computation and award of Php11,070,473.00 representing the net incremental proceeds covering the school years 1995 to 2000.[5] In the second petition, docketed as CA-G.R. SP No. 01398-MIN (the "Illegal Dismissal Case"), UIC assailed the Secretary's finding that the Respondent Employees were illegally dismissed, as well as the award of full back wages and other monetary benefits.[6] The Court of Appeals ordered the consolidation of the two cases on December 14, 2006.[7]

On April 24, 2007, the Court of Appeals promulgated its Decision denying the consolidated petitions.[8] In the Net Incremental Proceeds Case, the appellate court held that the power of the Secretary to assume jurisdiction over labor disputes under Article 263(g) of the Labor Code is plenary and discretionary in nature, which necessarily involves the power to resolve questions incidental to the labor dispute.[9] The Court of Appeals also affirmed the amount of net incremental proceeds as computed by the tripartite committee, finding that U1C failed to substantiate its claims for deductions.[10] In the Illegal Dismissal Case, the Court of Appeals upheld the Secretary's conclusion that the Respondent Employees were illegally dismissed on the ground that UIC could not validly prevent them from joining the Union since they did not perform managerial functions. The appellate court opined that notwithstanding the confidential nature of Respondent Employees' position, they were not prohibited from joining the Union; hence, their dismissal by UIC was not legally justified.[11] The Court of Appeals subsequently denied UIC's motions for reconsideration on May 31, 2007.[12]

Aggrieved, UIC filed the present petition, where it essentially raises the same arguments with respect to the Secretary's creation of the tripartite committee, computation of net incremental proceeds, finding of illegal dismissal, and award of back wages.

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In its comment, respondent Union counters that it was constrained to file an urgent motion with the Office of the Secretary for the creation of a tripartite committee because there was no other way to solve the issue on computation of the incremental proceeds, considering that UIC had ignored and rejected the existence and efficacy of the CBA.[13] On the issue of the computation of the net incremental proceeds, the Union maintains that the parties had mutually agreed on the manner of computing the same.[14] With regard to the Illegal Dismissal Case, the Union points out that the Respondent Employees were dismissed on the same date that the termination notices were sent, in violation of their right to due process.[15]

In a separate comment filed by the Respondent Employees, they claim that they have the right to maintain their union membership not for the purpose of collective bargaining, but for legal representation in dealing with the employer; thus, there is no legal justification for their dismissal.[16] They further assert that the matter of back wages and other monetary benefits is already barred by res judicata since the Secretary's award merely complied with our ruling in G.R. No. 151379[17] affirming the payroll reinstatement of the Respondent Employees.[18]

On July 9, 2007, we issued a temporary restraining order directing the respondents to refrain from enforcing the Court of Appeals' April 24, 2007 Decision and May 31, 2007 Resolution.[19]

II

A

In LMG Chemicals Corporation v. Secretary of Labor, we already settled the extent of the Secretary's jurisdiction under Article 263(g):

> It is well settled in our jurisprudence that the authority of the Secretary of Labor to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to national interest includes and extends to all questions and controversies arising therefrom.. The power is plenary and discretionary in nature to enable him to effectively and efficiently dispose of the primary dispute.[20] (Emphasis in original.)

The powers of the Secretary in "national interest" cases are not set by metes and bounds. Rather, the Secretary is given wide latitude to adopt appropriate means to finally resolve the labor dispute. The doctrine of "great breadth of discretion"[21] possessed by the Secretary dates back to our earlier rulings which recognized the broad powers of the former Court of Industrial Relations (CIR), which had jurisdiction over national interest cases prior to the enactment of the Labor Code. In Philippine Marine Radio Officers' Association v. CIR, decided in 1957, we held that "[i]f the [CIR] is granted authority to find a solution in an industrial dispute and such solution consists in the ordering of employees to return back to work, it cannot be contended that the [CIR] does not have the power or jurisdiction to carry that solution into effect."[22] Again, in FEATI University v. Bautista: "Once the jurisdiction is acquired pursuant to the presidential certification, the CIR may exercise its broad powers as provided in Commonwealth Act 103. All phases of the labor dispute and the employer-employee relationship may be threshed out before the CIR, and the CIR may issue such order or orders as may be necessary to make effective the exercise of its jurisdiction."[23] Judicial authorities defining the scope of the former CIR's power in respect of national interest cases apply mutatis mutandis in cases involving the Secretary's assumption of jurisdiction under Article 263(g).

In the Secretary's exercise of such broad discretion, the prevailing rule is that we will not interfere or substitute the Secretary's judgment with our own, unless grave abuse is cogently shown.[24] And in determining whether the acts of the Secretary constitute grave abuse of discretion, the standard we apply is that of reasonableness.[25]

Here, the Secretary ordered the creation of a tripartite committee for the purpose of resolving one of the

contentious issues in OS-AJ-003-95, i.e., the computation of the net incremental proceeds under Republic Act No. 6728,[26] as increased by mutual agreement of the parties. It must be recalled that the second notice of strike filed by the Union on January 20, 1995 was triggered by, among others, the bargaining deadlock on the very issue of the correct computation of the net incremental proceeds. The notice of strike consequently prompted the Secretary to assume jurisdiction over the dispute. It cannot therefore be denied that the disposition of the net incremental proceeds issue is necessary to resolve the long-standing dispute between UIC and the Union. Put simply, there is a reasonable connection between the Secretary's order and the settlement of the labor dispute. Accordingly, we conclude that it is well within the allowable area of discretion that the Secretary ordered the creation of the tripartite committee.

The authority to create the tripartite committee flows from the jurisdiction conferred by Article 263(g) to the Secretary. A grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it[27]— also referred to as "incidental jurisdiction." Incidental jurisdiction includes the power and authority of an office or tribunal to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction, and for the enforcement of its judgment and mandates. Incidental jurisdiction is presumed to attach upon the conferment of jurisdiction over the main case, unless explicitly withheld by the legislature. In this regard, we find nothing in the Labor Code that prohibits the Secretary from creating ad hoc committees to aid in the resolution of labor disputes after he has assumed jurisdiction. The primary objective of Article 263(g) is not merely to terminate labor disputes between private parties; rather, it is the promotion of the common good considering that a prolonged strike or lockout in an industry indispensable to the national interest can be inimical to the economy.[28] Hence, provided that the Secretary's orders are reasonably connected with the objective of the law, as it is in this case, courts will not disturb the same.

B

UIC argues that the Secretary gravely abused his discretion because at the time he ordered the creation of the tripartite committee, the parties had already signed — but not yet ratified - - the final draft of the CBA, which contains grievance mechanism provisions. UIC posits that the grievance procedure in the signed CBA should apply insofar as the determination of the net incremental proceeds is concerned. In support of its contention, UIC cites University of San Agustin Employees' Union — FFW v. Court of Appeals,[29] where we held that the grievance machinery embodied in the CBA must be recognized and enforced by the Secretary. In response, the Union asserts that UIC itself had rejected and disregarded the execution and efficacy of the CBA and, thus, cannot rely on the grievance machinery contained in the same CBA.

UIC's reliance in University of San Agustin is misplaced. In said case, there was already a valid and subsisting live-year CBA between the parties. The CBA provided, among others, that the economic provisions shall be for a term of three years. Towards the end of the third year of the CBA, as the economic provisions were about to expire, the employer and the union reached an impasse on economic matters, ultimately resulting in a labor dispute.[30] Thus, at the time the dispute arose in University of San Agustin, the grievance machinery was in place. The existence of an effective CBA was an important factual consideration for the Court's holding that the grievance machinery must be respected.

In this case, however, the facts show that the CBA had not been ratified by the majority of all workers in the bargaining unit, as required by Article 231 of the Labor Code, when the Secretary mandated the creation of the tripartite committee. Compliance with the ratification requirement is mandatory; otherwise, the CBA is ineffective.[31] In fact, UIC itself admits that the CBA did not become effective for want of ratification.[32] The CBA not having been ratified, there was no enforceable grievance machinery to speak of— unlike in University of

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San Agustin. When the Secretary ordered the creation of the tripartite committee, the dispute was already almost a decade old. Certainly, the Secretary cannot be faulted for endeavoring to settle the issue involving the net incremental benefits once and for all.

UIC's additional argument that the matter of net incremental proceeds is a non-issue, since it would be covered by the full settlement clause in the CBA, deserves scant consideration. As already discussed, the CBA— including the full settlement clause — did not take effect. Furthermore, we observe that UIC is effectively proposing that the Union waived its rights to the net incremental proceeds when the latter subsequently agreed to disregard the second paragraph of the agreement dated April 21, 2004. However, for a waiver to be effective, it must be certain and unequivocal[33] and cannot be presumed.[34] We rule that the mere omission of the paragraph pertaining to the manner of computing the net incremental proceeds is insufficient to prove the intent of the Union to abandon the rights of its members with respect to such proceeds.

C

Next, UIC assails the tripartite committee's computation of the net incremental proceeds, which was affirmed by the Secretary and the Court of Appeals. UIC is essentially asking us to review and evaluate the probative value of the evidence presented below. Suffice it to say that such exercise is not proper in an appeal by certiorari. In a petition for review under Rule 45, only questions of law may be put in issue.[35] We cannot emphasize to litigants enough that the Supreme Court is not a trier of facts.[36] It is not our function to analyze or weigh the evidence all over again.[37] Corollary to this is the doctrine that findings of fact of labor tribunals, when affirmed by the Court of Appeals, are accorded not only great respect but even finality.[38] In this case, the tripartite committee, the Secretary, and the Court of Appeals were unanimous in disallowing the deductions being claimed by UIC. We find no cogent reason to disturb the same.

In any case, the rationale for the disallowance of deductions in the proceedings below, i.e., the amounts being claimed did not appear in UIC's audited financial statements, is consistent with established jurisprudence. In Asia Brewery v. TPMA,[39] we held:

> In Restaurante Las Conchas v. Llego, several employees filed a case for illegal dismissal after the employer closed its restaurant business. The employer sought to justify the closure through unaudited financial statements showing the alleged losses of the business. We ruled that such financial statements are mere self-serving declarations and inadmissible in evidence even if the employees did not object to their presentation before the Labor Arbiter. Similarly, in Uichico v. National Labor Relations Commission, the services of several employees were terminated on the ground of retrenchment due to alleged serious business losses suffered by the employer. We ruled that by submitting unaudited financial statements, the employer failed to prove the alleged business losses, viz:
> "... It is true that administrative and quasi-judicial bodies like the NLRC are not bound by the technical rules of procedure in the adjudication of cases. However, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. While the rules of evidence prevailing in the courts of law or equity are not controlling in proceedings before the NLRC, the evidence presented before it must at least have a modicum of admissibility for it to be given some probative value. The Statement of Profit and Losses submitted by Crispa, Inc. to prove its alleged losses, without the accompanying signature of a certified public accountant or audited by an independent auditor, are nothing but sell-serving documents which ought to be treated as a mere scrap of paper devoid of any probative value. For sure, this is not the kind of sufficient and convincing evidence necessary to discharge the burden of proof required of petitioners to establish the alleged losses suffered by Crispa, Inc. in the years immediately preceding 1990 that would justify the retrenchment of respondent employees. ..." (Emphasis in original.)

While the above-cited cases involve proof necessary to establish losses in cases of business closure or

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retrenchment, we see no reason why this rule should not equally apply to the determination of the proper level of wage award in cases where the Secretary of Labor assumes jurisdiction in a labor dispute pursuant to Article 263(g) of the Labor Code.[40] (Citations omitted.)

Parenthetically, we cannot agree with UIC's contention that the computation of the net incremental proceeds did not comply with our ruling in St. Joseph's College v. St. Joseph's College Workers' Association.[41] We note that the basic formula used by the tripartite committee, and agreed upon by the parties, is consistent with St. Joseph's College, including deductions for "non-paying students like scholars," "students who did not pay," "increase in salaries," and "increases in related benefits."[42] However, some of the amounts submitted by UIC were disallowed by the tripartite committee for being inadmissible and self-serving, based as they were on unaudited financial statements. As a result, certain items in the initial formula no longer appeared in the final computation. Such disallowance, however, should not be interpreted as a departure from St. Joseph 's College; it simply means that the deduction is effectively nil because the amounts claimed had not been adequately proved.

III

The resolution of the Illegal Dismissal Case rests upon the determination of whether or not a confidential employee's refusal to vacate his or her union membership is a valid ground for dismissal. The Secretary and the Court of Appeals believe it is not. We reverse.

As a preliminary matter, we clarify that the issue of whether or not the Respondent Employees are confidential employees has long been settled and its reexamination is already barred by res judicata. In VA Case No. XI-354-02-94 (the "Arbitration Case"), the panel of voluntary arbitrators had already determined that the Respondent Employees are confidential employees who must be excluded from the bargaining unit. The panel's decision dated November 8, 1994[43] and resolution of the motion for reconsideration dated February 8, 1995[44] became final and executory after we dismissed the Union's petition for certiorari on June 21, 1995[45] without any further incidents. The Arbitration Case having attained finality, the issues resolved therein may no longer be disturbed or modified.

A

The just causes for terminating an employee, confidential or not, are numerated in Article 282 of the Labor Code:

> Art. 282. Termination by employer. An employer may terminate an employment for any of the following causes:
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
>
> (e) Other causes analogous to the foregoing.

UIC cites willful disobedience and "loss of confidence" as the grounds for dismissing the Respondent Employees. In its termination letters dated February 21, 1995, UIC informed the Respondent Employees that because of their continued union membership notwithstanding the voluntary arbitration decision, "management no longer has any

trust and confidence in you in the delicate, sensitive and confidential position you hold."[46]

Generally, employers are given wide latitude in terminating the services of employees who perform functions which by their nature require the employer's full trust and confidence.[47] It is well established that an employer cannot be compelled to continue in employment an employee guilty of acts inimical to the interest of the employer and justifying loss of confidence in him.[48] It has been held that when an employee has been guilty of breach of trust or his employer has ample reason to distrust him, a labor tribunal cannot deny the employer the authority to dismiss him.[49] To constitute a valid ground for dismissal, it is sufficient that there be some reasonable basis, supported by substantial evidence, for such loss of confidence.[50]

Nonetheless, employers do not have unbridled authority to dismiss employees by simply invoking Article 282(c). The loss of confidence must be genuine and cannot be used as a subterfuge for causes which are illegal, improper and unjust.[51] "Loss of confidence as a ground for dismissal has never been intended to afford an occasion for abuse by the employer of its prerogative, as it can easily be subject to abuse because of its subjective nature.[52]

In Cruz v. Court of Appeals,[53] we summarized the guidelines when loss of confidence constitutes a valid ground for dismissal:

> [T]he language of Article 282(c) of the Labor Code states that the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Moreover, it must be based on substantial evidence and not on the employer's whims or caprices or suspicions otherwise, the employee would eternally remain at the mercy of the employer. Loss of confidence must not be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue working for the employer. In addition, loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence or that the employee concerned is entrusted with confidence with respect to delicate matters, such as the handling or care and protection of the property and assets of the employer. The betrayal of this trust is the essence of the offense for which an employee is penalized.[54]

In determining whether loss of confidence is a just cause for dismissal under Article 282(c), we laid down the following requisites in the 2008 case of Bristol Myers Squibb (Phils.), Inc. v. Baban:[55]

> (a) The employee must hold a position of trust and confidence.
>
> (b) There must be a willful ad that would justify the loss of trust and confidence.[56]

As a rule, loss of confidence may only be invoked by the employer against an employee occupying a position of responsibility, trust and confidence[57] — hence, the first requisite. Ordinarily, this would require us to make a determination with regard to the true nature of the Respondent Employees' positions. But given the facts of this case, noting in particular the final and executory decision in the Arbitration Case which deemed Respondent Employees as confidential employees, we only now need to determine whether confidential employees hold positions of trust and confidence.

The leading case explaining what is a "position of trust and confidence" is Mabeza v. NLRC,[58] where we held that:

> [L]oss of confidence should ideally apply only to cases involving employees occupying positions of trust and confidence or to those situations where the employee is routinely charged with the care and custody of the employer's money or property. To (he first class belong managerial employees, i.e., those vested with the

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> powers or prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions; and to the second class belong cashiers, auditors, property custodians, etc., or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property. ...[59]

Bristol Myers and subsequent cases[60] essentially follow the same formula by subdividing positions of trust and confidence into two classes: managerial employees and fiduciary rank-and-file employees. Respondent Employees fall under the latter category.

We understand that Mabeza's failure to specifically mention the category of "confidential employees" may cause some confusion, at least superficially, with respect to the applicability of Article 282(c) to this specific class of employees. For the sake of avoiding any future misperception, we rule that confidential employees must perforce hold positions of trust and confidence. Mabeza's silence regarding confidential employees may simply be attributed to the fact that confidential employees do not constitute a distinct category of employees based on the plain text of the Labor Code. But jurisprudence recognizes the existence of such category,[61] and it has been held that confidentiality may attach to a managerial, supervisory, or rank-and-file position.[62] As the commentator Azucena aptly notes:

> ... Confidentiality is not a matter of official rank, it is a matter of job content and authority. It is not measured by closeness to or distance from top management but by the significance of the jobholder's role in the pursuit of corporate objectives and strategy. In principle, every managerial position is confidential — one does not become a manager without having gained the confidence of the appointing authority. But not every confidential employee is managerial; lie may be a supervisory or even a rank-and-file employee. Confidentiality, in other words, cuts across the pyramid of jobs from the base to the apex, from messengerial to managerial.[63]

A confidential employee is defined as one entrusted with confidence on delicate matters, or with the custody, handling, or care and protection of the employer's property.[64] For all intents and purposes, the terms "confidential employee" and "employee holding a position of trust and confidence" are synonymous. Fundamentally, the two categories mentioned in Mabeza are simply subcategories of the broader category of confidential employees.

The essence of the second requisite is that the loss of confidence must be based on a willful breach of trust founded on clearly established facts.[65] Here, it is not disputed that the Respondent Employees refused to resign from the Union, notwithstanding the decision in the Arbitration Case. Respondent Employees do not claim that they were coerced into retaining their union membership; in fact, they even insist upon their right to join the Union. The voluntariness of Respondent Employees' refusal to vacate their union membership — which constitutes the "willful act" — is therefore unequivocally established.

We hold that the willful act of refusing to leave the Union is sufficient basis for UIC to lose its trust and confidence on Respondent Employees. There was just cause for dismissing the Respondent Employees. Our conclusion follows the same reasoning why we finally adopted the doctrine that confidential employees should be excluded from the bargaining unit and disqualified from joining any union:[66] employees should not be placed in a position involving a potential conflict of interests.[67] In this regard, the Court of Appeals erred in holding that Respondent Employees are allowed to join the Union.[68] If Respondent Employees were allowed to retain their union membership, UIC would not be assured of their loyalty because of the apparent conflict between the employees' personal interests and their duty as confidential employees. Such a result is likely to create an atmosphere of distrust between UIC and the confidential employees, and it would be nigh unreasonable to compel UIC to continue in employment persons whom it no longer trusts to handle delicate matters.

Finally, the Secretary cites Article 248 of the Labor Code to support his conclusion that Respondent Employees were illegally dismissed.[69] Article 248(a) considers as unfair labor practice an employer's act of interfering with, restraining or coercing employees in the exercise of their right to self-organization. However, it is well established that the right to self-organization under the Labor Code does not extend to managerial[70] and confidential employees,[71] while supervisory employees are not allowed to join the rank-and-file union.[72]In view of the limitation imposed upon these specific classes of employees, Article 248(a) should therefore be interpreted to cover only interference with the right to self-organization of bona fide members of the bargaining unit. The provision finds no application in this case which involves confidential employees who are, by law, denied the right to join labor unions.

B

Although there is just cause for dismissing the Respondent Employees, we find that UIC failed to comply with the mandatory two-notice due process requirement. Under our labor laws, the employer has the burden of proving that the dismissed employee has been served two written notices: (a) one to apprise him of the particular acts or omissions for which his dismissal is sought, and (b) the other to inform him of the employer's decision to dismiss him.[73] The first notice must state that the employer seeks dismissal for the act or omission charged against the employee; otherwise, the notice does not comply with the rules.[74] The records show that UIC sent only one such written notice to Respondent Employees on February 21, 1995, i.e., a notice of termination effective at the close of business of the same date.[75] We do not agree with UIC's submission that the agreement to arbitrate and the request to comply with the arbitration decision constitute the "first notice" required by law,[76] considering that UIC was unable to establish by substantial evidence that these categorically contain what is legally required to appear in the first notice. In fine, we agree with the observation of the Court of Appeals that the Respondent Employees were hastily terminated.[77]

Pursuant to the doctrine laid down in Agabon v. NLRC,[78] the dismissal for just cause remains valid but UIC should be held liable, by way of nominal damages, for non-compliance with procedural due process. Conformably with existing jurisprudence,[79] UIC is liable to pay each of the Respondent Employees the sum of Php30,000.00 as nominal damages.

C

Notwithstanding our ruling that there was just cause for dismissal, we reject UIC's claim for reimbursement of the amount it has paid to Respondent Employees for being contrary to established jurisprudence. The prevailing rule is that an employee cannot be compelled to reimburse the salaries and wages he received during the pendency of the appeal, notwithstanding the subsequent reversal of the order of reinstatement.[80] As we held in the case of Garcia v. Philippine Airlines, Inc., "it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court."[81]

Furthermore, in G.R. No. 151379, we already affirmed the Secretary's order to reinstate the Respondent Employees in UIC's payroll until the validity of their termination is finally resolved. Respondents correctly point out that the back wages now being disputed by UIC actually represent Respondent Employees' unpaid salaries pursuant to the order of payroll reinstatement in our previous decision. The Secretary precisely ordered the payment of back wages because UIC had been remiss in making payments, despite the immediately executory nature of a reinstatement order.[82]

IV

On November 23, 2007, UIC filed an Omnibus Motion[83] asking us to, among others, cite Alfredo Olvida in contempt for unauthorized practice of law. UIC alleges that Olvida, a non-lawyer, "has been preparing, signing and filing pleadings before this Honorable Court and even before the Court of Appeals in CA-G.R. SP Nos. 01396-MIN and 01398-MIN."[84] In a resolution dated February 11, 2008, we ordered Olvida to file a comment on the motion to cite him in contempt.[85] Olvida submitted his comment on April 10, 2008, in which he did not deny the allegations but justified his acts by stating that he is the Regional Legal Assistant of the Federation of Free Workers (FFW) and is authorized by the Union to handle the cases.[86] He also mentioned past instances wherein he prepared and signed pleadings for local affiliates of FFW in matters pending before the Supreme Court and the Court of Appeals, without having been held in contempt in those previous instances.[87]

Since the facts are not disputed, it is clear that Olvida willfully engaged in the unauthorized practice of law before the Supreme Court and the Court of Appeals in these consolidated cases. There can be no question that one who prepares, signs, and files pleadings in court is engaged in the practice of law.[88] Olvida is not covered by the exception under Article 222(a) of the Labor Code,[89]which only pertains to proceedings before the NLRC and labor arbiters and do not extend to courts of law. Not being a member of the Philippine Bar, Olvida had no authority to act as the Union's counsel in the proceedings before the Court of Appeals and, now, before us. Under Section 3(e), Rule 71 of the Rules of Court, the act of "[a]ssuming to be an attorney... and acting as such without authority" constitutes indirect contempt. Accordingly, we find Olvida guilty of indirect contempt.

We want to clarify, however, that our ruling on indirect contempt is the exception rather than the rule. Counsel for UIC ought to know that under the Rules of Court, a charge for indirect contempt must be initiated through a verified petition, unless the charge is directly made by the court against which the contemptuous act is committed.[90] In Mallari v. GSIS, we quoted with approval Justice Regalado's comments on Section 4 of Rule 71:

> This new provision clarifies with a regulatory norm the proper procedure for commencing contempt proceedings. While such proceeding has been classified as a special civil action under the former Rules, the heterogeneous practice, tolerated by the courts, has been for any party to file a mere motion without paying any docket or lawful fees therefor and without complying with the requirements for initiatory pleadings, which is now required in the second paragraph of this amended section. Worse, and as a consequence of unregulated motions for contempt, said incidents sometimes remain pending for resolution although the main case has already been decided. There are other undesirable aspects but, at any rate, the same may now be eliminated by this amendatory procedure.
>
> Henceforth, except for indirect contempt proceedings initiated motu proprio by order of or a formal charge by the offended court, all charges shall be commenced by a verified petition with full compliance with the requirements therefor and shall be disposed of in accordance with the second paragraph of this section.[91] (Emphasis in original.)

One exception to the above rule is that the Supreme Court may, incidental to its power to suspend its own rules whenever the interest of justice requires,[92] resolve an issue involving indirect contempt when there is (a) no factual controversy to be resolved or the case falls under the res ipsa loquitur rule and (b) only after granting the respondent the opportunity to comment.[93] We resolve UIC's pending motion on the basis of this exception, and only to fully dispose of all pending issues in these consolidated cases. While we do not condone the initiation of indirect contempt proceedings by mere motion without payment of the proper docket fees, requiring UIC to file a verified petition for indirect contempt will only serve to prolong the dispute between the parties.

WHEREFORE, the petition is PARTIALLY GRANTED and the appealed Decision dated April 24, 2007 and

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Resolution dated May 31, 2007 with respect to CA-G.R. SP. No. 01398-MIN are MODIFIED as follows: (1) petitioner's dismissal of Melanie de la Rosa, Angelina Abadilla, Zenaida Canoy, Gemma Galope, Paulina Palm a Gil, Lelian Concon, Mary Ann de Ramos, Alma Villacarlos, Leah Cruza, Ofelia Diapuez and Josie Boston is hereby declared valid for just cause and petitioner is therefore authorized to remove the aforementioned employees from its payroll upon finality of this decision; and (2) petitioner is ordered to pay each of the Respondent-Employees the sum of Thirty Thousand Pesos (Php30,000.00) as nominal damages for non-compliance with the mandatory procedural due process requirements. The Decision and Resolution are AFFIRMED in all other respects.

Petitioner's motion to cite Alfredo Olvida for indirect contempt is hereby GRANTED. Alfredo Olvida is ordered to pay a FINE of Two Thousand Pesos (Php2,000.00) for assuming to be an attorney and acting as such without authority, with a STERN WARNING that repetition of the same or similar offense in the future will be dealt with more severely.

Finally, the Temporary Restraining Order issued on July 9, 2007 is hereby LIFTED effective immediately.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Villarama, Jr., and Perez,[*] JJ., concur.

September 28, 2015

N O T I C E OF J U D G M E N T

Sirs/Mesdames:

Please take notice that on ___September 14, 2015___ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on October 1, 2015 at 2:45 p.m.

Very truly yours,
(SGD)
WILFREDO V. LAPITAN
Division Clerk of Court

---

[*] Designated as Acting Member in view of the leave of absence of Hon. Bienvenido L. Reyes, per Special Order No. 2084 dated June 29, 2015.

[1] Rollo, p. 101.

[2] Id.

[3] Id. at 166.

[4] Id. at 99-104.

[5] Id. at 15; 343-344.

[6] Id. at 15; 666.

[7] Id. at 373-374.

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[8] Id. at 97-123.

[9] Id. at 108-109

[10] Id. at 113-117.

[11] Id. at 119-121.

[12] Id. at 125-136.

[13] Id. at 986.

[14] Id. at 989-990.

[15] Id. at 995-996.

[16] Id at 1184-1186.

[17] University of Immaculate Conception, Inc. v. Secretary of Labor, January 14, 2005, 448 SCRA 190.

[18] Rollo, pp. 1179-1183.

[19] Id at 888-890.

[20] G.R. No. 127422, April 17, 2001, 356 SCRA 577, 585.

[21] Bachrach Transportation Co., Inc. v. Rural Transit Shop Employees' Association, G.R. No. L-26764, July 25, 1967, 20 SCRA 77 , 784.

[22] 102 Phil. 373, 383 (1957).

[23] G.R. No. L-21462, December 27, 1966, 18 SCRA 1191, 1221.

[24] Callex Refinery Employees' Association v. Brillantes, G.R. No. 123782, September 16, 1997, 279 SCRA 218,243-244.

[25] MERALCO v. Quisumbing, G.R. No. 127598, January 27, 1999, 302 SCRA 173, 192. Republic Act No. 6728, Section 5(2) provides:

> (2) ... tuition fees under subparagraph (c) may be increased, on the condition that seventy percent (70%) of the amount subsidized allotted for tuition fee or of the tuition fee increases shall go to the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel except administrators who are principal stockholders of the school, and may be used to cover increases as provided for in the collective bargaining agreements existing or in force at the lime when this Act is approved and made effective: Provided, That government subsidies are not used directly for salaries of teachers of non-secular subjects. ...

[27] Philippine Air Lines Employees' Association v. Philippine Air Lines, Inc., G.R. No. L-18559, June 30, 1964, II SCRA 387, 393.

[28] Philtread Workers Union v. Confesor, G.R. No. 117169, March 12, 1997, 269 SCRA 393, 399.

[29] G.R. No. 169632, March 28, 2006, 485 SCRA 526.

[30] Id. at 530.

[31] Associated Trade Unions v. Trajano, G.R. No. L-75321, June 20, 1988, 162 SCRA 3 18, 323.

[32] Rollo, pp. 43-44.

[33] Cabarles v. Maceda, G.R. No. 161330, February 20, 2007, 516 SCR.A 303, 3 16.

[34] Spouses Valderama v. Macalde, G.R. No. 165005, September 16, 2005, 470 SCRA 168, 183.

[35] Metropolitan Bank and Trust Company v. Ley Construction and Development Corporation, G.R. No. 185590, December 3. 2014; Eastern Shipping Lines, Inc. v. BPl/MS Insurance Corp., G.R. No. 193986, January 15, 2014, 713 SCRA 743; Limbauan v. Acosla, G.R. No. 148606, June 30, 2008, 556 SCRA 614.

[36] Carinan v. Spouses Cuelo, G.R. No. 198636, October 8, 2014; Spouses Rosele v. Briones, G.R. No. 176121, September 22, 2014, 735 SCRA 647; Meyr Enterprises Corporation v. Cordero, G.R. No. 197336, September 3, 2014, 734 SCRA 253; Primanila Plans, Inc. v. Securities and Exchange Commission, G.R. No. 193791, August 6, 2014, 732 SCRA 264; Angeles v. Bucad, G.R. No. 196249, July 21, 2014, 730 SCRA 295.

[37] De La Cruz v. Court of Appeals, G.R. No. 105213, December 4, 1996, 265 SCRA 299; Manila Lighter Transportation, Inc. v. Court of Appeals, G.R. No. 50373, February 15, 1990, 182 SCRA 251; Dihiansan v. Court of Appeals, G.R. No. L-49539, September 14, 1987, 153 SCRA 712.

[38] Libang, Jr. v. Indochina Ship Management, Inc., G.R. No. 189863, September 17, 2014, 735 SCRA 404; Laguna Autoparls Manufacturing Corporation v. Office of the Secretary of Labor, G.R. No. 157146, April 29, 2005, 457 SCRA 730; R Transport Corporation v. Ejandra, G.R. No. 148508, May 20, 2004, 428 SCRA 725.

[39] G.R. Nos. 171594-96, September 18, 2013, 706 SCRA 12.

[40] Id at 25-26.

[41] G.R. No. 155609, January 17, 2005, 448 SCRA 594.

[42] Rollo, p. 112.

[43] Id. at 848-855.

[44] Id at 862-863.

[45] Id. at 864.

[46] Id. at 78-79.

[47] Atlas Fertilizer Corporation v. NLRC, G.R. No. 120030, June 17, 1997, 273 SCRA 549.

[48] Tabacalera Insurance Co. v. NLRC, G.R. No. L-72555, July 31, 1987, 152 SCRA 667, 674-675, citing Manila Trading and Supply Co. v. Manila Trading Laborers Association, 83 Phil. 297 (1949); PECO v. PECO Employees' Union, 107 Phil. 1003 (I960); Nevans v. CIR, G.R. No. L-21510, June 29, 1968, 23 SCRA 1321; International Hardwood and Veneer Co. of the Phil. v. Leonardo, G.R. No. L-57429, October 28, 1982, 117 SCRA 967; Dole Phil. Inc., v. NLRC, G.R. No. L-55413, July 25, 1983, 123 SCRA 673, 677.

[49] Supra note 47.

[50] P.J. Lhuillier, Inc. v. NLRC, G.R. No. 158758. April 29, 2005, 457 SCRA 784, 797; Tahacalera Insurance Co. v. NLRC, supra.

[51] Mabeza v. NLRC, G.R. No. 118506, April 18, 1997, 271 SCRA 670, 683. Hernandez v. Court of Appeals, G.R. No. 84302, August 10, 1089, 176 SCRA 269, 276.

[52] G.R. No. 148544, July 12, 2006, 494 SCRA 643.

[54] Id. at 654-655.

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[55] G.R. No. 167449, December 17, 2008, 574 SCRA 198.

[56] Id at 205-206.

[57] Cruz v. Court of Appeals, supra; Gomales v. NLRC, G.R. No. 131653, March 26, 2001, 355 SCRA 195; Sanchez v. NLRC, G.R. No. 124348, August 19, 1999, 312 SCRA 727, 735.

[58] G.R. No. 118506, April 18, 1997, 271 SCRA 670.

[59] Id at 682.

[60] M+W Zander Philippines, Inc. v. Enriquez, G.R. No. 169173, June 5, 2009, 588 SCRA 590; Prudential Guarantee and Assurance Employee Labor Union v. NLRC, G.R. No. 185335, June 13, 2012, 672 SCRA 375; Hormillosa v. Coca-Cola Bottlers Phils., Inc., G.R. No. 198699, October 9, 2013, 707 SCRA 361.

[61] Metrolab Industries, Inc. v. Roldun-Confesor, G.R. No. 108855, February 28, 1996, 254 SCRA 182; National Association of Trade Unions v. Torres, G.R. No. 93468, December 29, 1994, 239 SCRA 546; Golden Farms, Inc. v. Ferrer-Calleja, G.R. No. 78755, July 19, 1989, 175 SCRA 471.

[65] United Pepsi-Cola Supervisory Union v. Laguesma, G.R. No. 122226, March 25, 1998, 288 SCRA 15.

[63] Azucena, The Labor Code with Comments and Cases, Vol. II, 7[th] Ed., 2010, p. 269.

[64]National Association of Trade Unions v. Torres, supra.

[65] Bristol Myers Squibb (Phils.), Inc. v. Baban, supra note 55; Standard Chartered Bank Employees' Union v. Standard Chartered Bank, G.R. No. 161933, April 22, 2008, 552 SCRA 284; MERALCO v. Quisumbing, G.R. No. 127598, January 27, 1999, 302 SCRA 173.

[66] Metrolab Industries, Inc. v. Roldan-Confesor, supra.

[67] San Miguel Corporation Supervisors and Exempt Employees' Union v. Laguesma, G.R. No. 110399, August 15, 1997, 277 SCRA 370, 375.

[68] Rollo, pp. 119-121.

[69] Id. at 157.

[70] LABOR CODE, Art. 245.

[71] Metrolab Industries, Inc. v. Roldan-Confesor, supra; San Miguel Corporation Supervisors and Exempt Employees' Union v. Laguesma, supra.

[72] Supra note 70.

[73] Sameer Overseas Placement Agency, Inc. v. Cabiles, G.R. No. 170139, August 5, 2014, 732 SCRA 22; Coca-Cola Bottlers Philippines, Inc. v. Garcia, G.R. No. 159625, January 31, 2008, 543 SCRA 364, 371-372; Challenge Socks Corporation v. Court of Appeals, G.R. No. 165268, November 8, 2005, 474 SCRA 356, 363-364.

[74] Manly Express, Inc. v. Payong, Jr., G.R. No. 167462, October 25, 2005, 474 SCRA 323, 330; Electro System Industries Corporation v. NLRC, G.R. No. 165282, October 5, 2005, 472 SCRA 199, 203; Tan v. NLRC, G.R. No. 128290, November 24, 1998, 299 SCRA 169, 185.

[75] Rollo, pp. 78-79.

[76] Id. at 83

[77] Id. at 121.

[78] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[79] Id.; Jaka Food Processing Corp. v. Pacot, G.R. No. 15 1378, March 28, 2005, 454 SCRA 119.

[80] College of the Immaculate Conception v. NLRC, G.R. No. 167563, March 22, 2010, 616 SCRA

[81] G.R. No. 164856, January 20, 2009, 576 SCRA 479, 493.

[82] See Castro, Jr. v. Ateneo De Naga University, G.R. No. 175293, July 23, 2014.

[83] Rollo, pp. 1220-1225.

[84] Id. at 1222.

[85] Id. at 1269.

[86] Id. at 1280.

[87] Id. at 1278-1280.

[88] Ulep v. The Legal Clinic, Inc., Bar Matter No. 553, June 17, 1993, 223 SCRA 378.

[89] Article. 222. Appearances and Fees. - (a) Non-lawyers may appear before the Commission or any Labor Arbiter only:

1. If they represent themselves; or
2. If they represent their organization or members thereof.

[90] RULES OF COURT, Rule 71, Sec. 4.

[91] G.R. No. 157659, January 25, 2010, 611 SCRA 32, 52.

[92] People v. Floras, G.R. No. 106581, March 3, 1997, 269 SCRA 62.

[93] See Siy v. NLRC, G.R. No. 158971, August 25, 2005, 468 SCRA 154; Lee v. RTC of Quezon City, G.R. No. 146006, April 22, 2005, 456 SCRA 538; See also Regalado, Remedial Law Compendium, Vol. I, 9[th] Revised Ed., 2010, p. 898.

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