MANILA MINING CORP. EMPLOYEES ASSOCIATION-FEDERATION OF FREE WORKERS CHAPTER, SAMUEL G. ZUÑIGA, IN HIS CAPACITY AS PRESIDENT, PETITIONERS, VS. MANILA MINING CORP. AND/OR ARTEMIO...

G.R. Nos. 178222-23. September 29, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

This petition for review on certiorari seeks a reversal of the 30 June 2006 Decision[1] of the Court of Appeals in CA-G.R. SP No. 86073 and its Resolution[2] in the same case dated 30 May 2007.

Respondent Manila Mining Corporation (MMC) is a publicly-listed corporation engaged in large-scale mining for gold and copper ore. MMC is required by law to maintain a tailings containment facility to store the waste material generated by its mining operations. Consequently, MMC constructed several tailings dams to treat and store its waste materials. One of these dams was Tailings Pond No. 7 (TP No. 7), which was constructed in 1993 and was operated under a permit issued by the Department of Environment and Natural Resources (DENR), through its Environmental Management Bureau (EMB) in Butuan City, Agusan del Norte.[3]

On 10 January 2000, eleven (11) rank-and-file employees of MMC, who later became complainants before the labor arbiter, attended the organizational meeting of MMC-Makati Employees Association-Federation of Free Workers Chapter (Union). On 3 March 2000, the Union filed with the Department of Labor and Employment (DOLE) all the requirements for its registration. The Union acquired its legitimate registration status on 30 March 2000. Subsequently, it submitted letters to MMC relating its intention to bargain collectively. On 11 July 2001, the Union submitted its Collective Bargaining Agreement (CBA) proposal to MMC.

Upon expiration of the tailings permit on 25 July 2001, DENR-EMB did not issue a permanent permit due to the inability of MMC to secure an Environmental Compliance Certificate (ECC). An essential component of an ECC is social acceptability or the consent of the residents in the community to allow TP No. 7 to operate, which MMC failed to obtain.[4] Hence, it was compelled to temporarily shut down its mining operations, resulting in the temporary lay-off of more than 400 employees in the mine site.

On 30 July 2001, MMC called for the suspension of negotiations on the CBA with the Union until resumption of mining operations.[5]

Among the employees laid-off, complainants Samuel Zuñiga, Myrna Maquio, Doroteo Torre, Arsenio Mark Perez, Edmundo Galvez, Diana Ruth Rellores, Jonathan Araneta, Teresita Lagman, Reynaldo Anzures, Gerardo Opena, and Edwin Tuazon, together with the Union filed a complaint before the labor arbiter[6] on even date praying for reinstatement, recognition of the Union as the sole and exclusive representative of its rank-and-file employees, and payment of moral and exemplary damages and attorney's fees.[7]

In their Position Paper,[8] complainants challenged the validity of their lay-off on the averment that MMC was

not suffering from business losses. They alleged that MMC did not want to bargain collectively with the Union, so that instead of submitting their counterproposal to the CBA, MMC decided to terminate all union officers and active members. Petitioners questioned the timing of their lay-off, and alleged that first, there was no showing that cost-cutting measures were taken by MMC; second, no criteria were employed in choosing which employees to lay-off; and third, the individuals laid-off were those who signed the attendance sheet of the union organizational meeting. Petitioners likewise claimed that they were denied due process because they were not given a 30-day notice informing them of the lay-off. Neither was the DOLE informed of this lay-off, as mandated by law.[9]

Respondents justified the temporary lay-off as bona fide in character and a valid management prerogative pending the issuance of the permit to continuously operate TP No. 7.

The labor arbiter ruled in favor of MMC and held that the temporary shutdown of the mining operation, as well as the temporary lay-off of the employees, is valid.[10]

On appeal, the National Labor Relations Commission (NLRC) modified the judgment of the labor arbiter and ordered the payment of separation pay equivalent to one month pay for every year of service. It ratiocinated that the temporary lay-off, which exceeded more than six (6) months, had the effect of severance of the employer-employee relationship. The dispositive portion of the Decision read:

> WHEREFORE, the assailed decision is, as it is hereby, Vacated and Set Aside and a new one entered ordering respondent Manila Mining Corporation to pay the individual complainants their separation pay computed as follows:
>
> 1.
>
> Samuel G. [Z]uñiga
>
> From Feb. 1, 1995 to
>
> July 27, 2001 = 7 yrs.
>
> P14,300/mo.
>
> P14,300 x 7 yrs. x ½
>
> P 50,050.00
>
> 2.
>
> Myrna Maquio
>
> From March 1992 to
>
> July 27, 2001 = 9 yrs.

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P14,000/mo.

P14,000 x 9 yrs. x ½

P 63,000.00

3.

Doroteo J. Torre

From July 1983 to

July 27, 2001 = 18 yrs.

P10,000/mo.

P10,000 x 18 yrs. x ½

P 90,000.00

4.

Arsenio Mark M. Perez

From June 1996 to

July 27, 2001 = 5 yrs.

P9,500/mo.

P9,500 x 5 yrs. x ½

P 23,750.00

5.

Edmundo M. Galvez

From June 1997 to

July 27, 2001 = 4 yrs.

P9,500/mo.

P9,500 x 4 yrs. x ½

P 19,000.00

6.

Jonathan Araneta

From March 1992 to

July 27, 2001 = 9 yrs.

P15,500/mo.

P15,500 x 9 yrs. x ½

P 69,750.00

7.

Teresita D. Lagman

From August 1980 to

July 27, 2001 = 20 yrs.

P10,900/mo.

P10,900 x 20 yrs. x ½

P109,000.00

8.

Gerardo Opena

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From October 1997 to

July 27, 2001 = 4 yrs.

P8,250/mo.

P8,250 x 4 yrs. x ½

P 16,500.00

9.

Edwin Tuazon

From August 1994 to

July 27, 2001 = 8 yrs.

P7,000/mo.

P7,000 x 8 yrs. x ½

P 28,000.00

GRAND TOTAL

P469,050.00

In addition respondent company is hereby ordered to pay attorney's fees to complainants equivalent to 10% of the award. [11]

In an Order[12] dated 31 May 2004, the NLRC affirmed its Resolution.

Dissatisfied, both parties separately filed their petitions for certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 86073 and CA G.R. SP No. 86163.

The two petitions were consolidated upon motion by MMC in a Resolution dated 3 February 2005.

In its Decision dated 30 June 2006, the Court of Appeals modified the NLRC ruling, thus:

> WHEREFORE, the instant petition is partially GRANTED and the challenged Resolution dated August 29, 2003 of public respondent National Labor Relations Commission in NLRC NCR CA No. 033111-(CA No. 033111-02) is MODIFIED insofar as it holds MMC liable to pay the Union attorney's fees equivalent to 10% of the award, which portion of the questioned decision is now SET ASIDE.

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> The monetary award of separation pay is maintained, but is MODIFIED from one (1) month pay for every year of service to ONE-HALF (1/2) MONTH PAY for every year of service, a fraction of at least six (6) months being considered as one (1) whole year.[13]

Both parties filed their respective motions for reconsideration but in a Resolution dated 30 May 2007, the Court of Appeals denied the motions for lack of merit.[14]

Only the Union elevated the case to this Court via the instant petition for review on certiorari. The Union attributes bad faith on the part of MMC in implementing the temporary lay-off resulting in the complainants' constructive dismissal. The Union alleges that the failure to obtain a permit to operate TP No. 7 is largely due to failure on the part of MMC to comply with the DENR-EMB's conditions.[15]

The Union claims that the temporary lay-off was effected without any proper notice to the DOLE as mandated by Article 283 of the Labor Code. It further maintains that MMC did not observe the jurisprudential criteria in the selection of the employees to be laid-off.[16]

The Union insists that MMC is guilty of unfair labor practice when it unilaterally suspended the negotiation for a CBA. The Union avers that the lay-off and subsequent termination of complainants were due to the formation of the union at MMC.[17]

MMC defends the temporary lay-off of the employees as valid and done in the exercise of management prerogative. It concedes that upon expiration of the 6-month period, coupled with losses suffered by MMC, the complainants were constructively dismissed. However, MMC takes exception to the application of Article 286 of the Labor Code in that the 6-month period cannot and will not apply to the instant case in order to consider the employees terminated and to support the payment of separation pay. MMC explains that the 6-month period does not refer to a situation where the employer does not have any control over the nature, extent and period of the temporary suspension of operations. MMC adds that the suspension of MMC's operations is left primarily to the discretion of the DENR-EMB, which has the authority to issue MMC's permit to operate TP No. 7.[18]

MMC further submits that where the closure is due to serious business losses, such as in this case where the aggregate losses amounted to over P880,000,000.00, the law does not impose any obligation upon the employer to pay separation benefits.[19]

With respect to the charge of unfair labor practice, MMC avers that it merely deferred responding to the Union's letter-proposal until the resumption of its mining operations. It went to claim further that the employment relationship between the parties was suspended at the time the request to bargain was made.[20]

The issue of MMC's temporary suspension of business operations resulting in the temporary lay-off of some of its employees was squarely addressed by the labor tribunals and the Court of Appeals. They sustained in unison the validity of the temporary suspension, as well as the temporary lay-off.

We agree. The lay-off is neither illegal nor can it be considered as unfair labor practice.

Despite all efforts exerted by MMC, it did not succeed in obtaining the consent of the residents of the community where the tailings pond would operate, one of the conditions imposed by DENR-EMB in granting its application for a permanent permit. It is precisely MMC's faultless failure to secure a permit which caused the temporary shutdown of its mining operations. As aptly put by the Court of Appeals:

> The evidence on record indeed clearly shows that MMC's suspension of its mining operations was bonafide and the reason for such suspension was supported by substantial evidence. MMC cannot conduct mining operations without a tailings disposal system. For this purpose, MMC operates TP No. 7 under a valid permit from the Department of Environment and Natural Resources (DENR) through its Environmental Management

> Bureau (EMB). In fact, a "Temporary Authority to Construct and Operate" was issued on January 25, 2001 in favor of MMC valid for a period of six (6) months or until July 25, 2001. The NLRC did not dispute MMC's claim that it had timely filed an application for renewal of its permit to operate TP No. 7 but that the renewal permit was not immediately released by the DENR-EMB, hence, MMC was compelled to temporarily shutdown its milling and mining operations. Here, it is once apparent that the suspension of MMC's mining operations was not due to its fault nor was it necessitated by financial reasons. Such suspension was brought about by the non-issuance of a permit for the continued operation of TP No. 7 without which MMC cannot resume its milling and mining operations. x x x.[21] [Emphasis supplied.]

Unfair labor practice cannot be imputed to MMC since, as ruled by the Court of Appeals, the call of MMC for a suspension of the CBA negotiations cannot be equated to "refusal to bargain."

Article 252 of the Labor Code defines the phrase "duty to bargain collectively," to wit:

> ARTICLE 252. Meaning of duty to bargain collectively. - The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreements [and executing a contract incorporating such agreements] if requested by either party but such duty does not compel any party to agree to a proposal or to make any concession.

For a charge of unfair labor practice to prosper, it must be shown that the employer was motivated by ill-will, bad faith or fraud, or was oppressive to labor. The employer must have acted in a manner contrary to morals, good customs, or public policy causing social humiliation, wounded feelings or grave anxiety. While the law makes it an obligation for the employer and the employees to bargain collectively with each other, such compulsion does not include the commitment to precipitately accept or agree to the proposals of the other. All it contemplates is that both parties should approach the negotiation with an open mind and make reasonable effort to reach a common ground of agreement.[22]

The Union based its contention on the letter request by MMC for the suspension of the collective bargaining negotiations until it resumes operations.[23] Verily, it cannot be said that MMC deliberately avoided the negotiation. It merely sought a suspension and in fact, even expressed its willingness to negotiate once the mining operations resume. There was valid reliance on the suspension of mining operations for the suspension, in turn, of the CBA negotiation. The Union failed to prove bad faith in MMC's actuations.

Even as we declare the validity of the lay-off, we cannot say that MMC has no obligation at all to the laid-off employees. The validity of its act of suspending its operations does not excuse it from paying separation pay.

MMC seeks refuge in Article 286 which provides:

> ART. 286. When employment not deemed terminated. â”€ The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

Article 286 of the Labor Code allows the bona fide suspension of operations for a period not exceeding six (6) months. During the suspension, an employee is not deemed terminated. As a matter of fact, the employee is entitled to be reinstated once the employer resumes operations within the 6-month period. However, Article 286 is silent with respect to the rights of the employee if the suspension of operations lasts for more than 6 months. Thus is bred the issue regarding the responsibility of MMC toward its employees.

MMC subscribes to the view that for purposes of determining employer responsibility, an employment should likewise not be deemed terminated, should the suspension of operation go beyond six (6) months as long as the continued suspension is due, as in this case, to a cause beyond the control of the employer.

We disagree.

As correctly elucidated upon by the Court of Appeals:

> We observe that MMC was forced by the circumstances, hence, it resorted to a temporary suspension of its mining and milling operations. It is clear that MMC had no choice. It would be well to reiterate at this juncture that the reason for such suspension cannot be attributed to DENR-EMB. It is thus, evident, that the MMC declared temporary suspension of operations to avert further losses.[24]

The decision to suspend operation ultimately lies with the employer, who in its desire to avert possible financial losses, declares, as here, suspension of operations.

Article 283 of the Labor Code applies to MMC and it provides:

> ARTICLE 283.Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Said provision is emphatic that an employee, who was dismissed due to cessation of business operation, is entitled to the separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. And it is jurisprudential that separation pay should also be paid to employees even if the closure or cessation of operations is not due to losses.[25]

The Court is not impressed with the claim that actual severe financial losses exempt MMC from paying separation benefits to complainants. In the first place, MMC did not appeal the decision of the Court of Appeals which affirmed the NLRC's award of separation pay to complainants. MMC's failure had the effect of making the awards final so that MMC could no longer seek any other affirmative relief. In the second place, the non-issuance of a permit forced MMC to permanently cease its business operations, as confirmed by the Court of Appeals. Under Article 283, the employer can lawfully close shop anytime as long as cessation of or withdrawal from business operations is bona fide in character and not impelled by a motive to defeat or circumvent the tenurial rights of employees, and as long as he pays his employees their termination pay in the amount corresponding to their length of service.[26] The cessation of operations, in the case at bar is of such nature. It was proven that MMC stopped its operations precisely due to failure to secure permit to operate a tailings pond. Separation pay must nonetheless be given to the separated employees.

Finding no cogent reason to disturb its ruling, we affirm the Decision of the Court of Appeals.

BASED ON THE FOREGOING, the petition is DENIED. The Decision of the Court of Appeals is AFFIRMED. No costs.

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SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Del Castillo, JJ., concur.

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[1] Penned by Associate Justice Bienvenido I. Reyes with Associate Justices Regalado E. Maambong and Enrico A. Lanzanas, concurring. Rollo, pp. 39-59

[2] Id. at 61-64.

[3] Id. at 482.

[4] Id. at 355.

[5] CA rollo, p. 147.

[6] Florentino R. Darlucio.

[7] Records, p. 74.

[8] CA rollo, pp. 87-402.

[9] Id. at 86-92.

[10] Rollo, p. 73.

[11] Id. at 117-119.

[12] Id. at 162-163.

[13] Id. at 59.

[14] Id. at 63-64.

[15] Id. at 15.

[16] Id. at 16.

[17] Id. at 30.

[18] Id. at 364.

[19] Id. at 375.

[20] Id. at 384.

[21] Id. at 48-49.

[22] Union of Filipro Employer-Drug, Food and Allied Industries Unions-Kilusang Mayo Uno v. Nestle Philippines, Incorporated, G.R. Nos. 158930-31, 3 March 2008, 547 SCRA 323, 333-334.

[23] CA rollo, p. 147.

[24] Rollo, pp. 53-54.

[25] Eastridge Golf Club, Inc. v. Eastridge Golf Club, Inc. Labor Union-Super, G.R. No. 166760, 22 August 2008, 563 SCRA 93, 106-107; J.A.T. General Services v. National Labor Relations Commission, G.R. No. 148340, 26 January 2004, 421 SCRA 78, 89-90.

[26] Industrial Timber Corporation v. Ababon, G.R. No. 164518, 25 January 2006, 480 SCRA 171, 185-186.

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