SUPREME COURT
THIRD DIVISION

ASSOCIATION OF INDEPENDENT UNIONS IN THE PHILIPPINES (AIUP), JOEL DENSING, HENEDINO MIRAFUENTES, CHRISTOPHER PATENTES, AND ANDRES TEJANA,
***Petitioners*,**

-versus-

G.R. No. 120505
March 25, 1999

NATIONAL LABOR RELATIONS COMMISSION (NLRC), CENAPRO CHEMICAL CORPORATION and/or GO SING CHAN in his capacity as Managing Director,
***Respondents*.**
x----------x

D E C I S I O N

PURISIMA, *J.*:

The Petition for review on *Certiorari* at bar seeks to reinstate the Decision[1] of the Labor Arbiter insofar as it ordered the reinstatement and payment of backwages of the four petitioners herein. The said Decision was affirmed[2] in toto by the NLRC. On February 21, 1995, however, upon motion for reconsideration of the respondent

company, the NLRC came out with a Resolution[3] modifying its decision, by deleting therefrom the award of backwages, ordering payment of separation pay in lieu of reinstatement, and declaring the loss of employment status of petitioner Joel Densing.

The antecedent facts are as follows:

Joel Densing, Henedino Mirafuentes, Christopher Patentes, and Andres Tejana, the petitioners herein, were casual employees of respondent CENAPRO Chemicals Corporation. In the said company, the collective bargaining representative of all rank and file employees was CENAPRO Employees Association (CCEA), with which respondent company had a collective bargaining agreement (CBA). Their CBA excluded casual employees from membership in the incumbent union. The casual employees who have rendered at least one to six years of service sought regularization of their employment. When their demand was denied, they formed themselves into an organization and affiliated with the Association of Independent unions in the Philippines (AIUP). Thereafter, AIUP filed a petition for certification election, which petition was opposed by the respondent company. The CCEA anchored its opposition on the contract bar rule.

On May 4 and July 3, 1990, the union filed a notice of strike, minutes of strike vote, and the needed documentation, with the Department of Labor and Employment. The notice of strike cited as grounds therefor the acts of respondent company constituting unfair labor practice, more specifically coercion of employees and systematic union busting.

On July 23, 1992, the union proceeded to stage a strike, in the course of which, the union perpetrated illegal acts. The strikers padlocked the gate of the company. The areas fronting the gate of the company were barricaded and blocked by union strikers. The strikers also prevented and coerced other non-striking employees from reporting for work. Because of such illegal activities, the respondent company filed a petition for injunction with the NLRC, which granted a Temporary Restraining Order (TRO), enjoining the strikers from doing further acts of violence, coercion, or intimidation and from blocking free ingress and egress to the company premises.

Subsequently, or on July 25, 1990, to be precise, the respondent company filed a complaint for illegal strike. The day before, July 24, 1990, petitioners filed a complaint for unfair labor practice and illegal lockout against the respondent company.

In a consolidated Decision, dated September 10, 1993, the Labor Arbiter declared as illegal the strike staged by the petitioners, and dismissed the charge of illegal lockout and unfair labor practice. The dispositive portion of the Labor Arbiter's decision was to the following effect:

> "WHEREFORE, premises considered, judgment is hereby rendered finding the strike illegal and as a consequence thereto, the officers who participated in the illegal strike namely: Oscar Enicio, Jaime dela Piedra, Lino Isidro, Ariel Jorda, and Jose Catnubay are declared to have lost their employment status. CENAPRO is directed however to reinstate the other workers, except Ireneo Sagaral, Artemio Guinto, Ruben Tulod, Marcelo M. Matura, Gilbert Holdilla, Cesar Buntol, Rey Siarot, Lucio Nuneza, Jose Basco, Gervacio Baldespinosa, Jr., Cresecente Buntol, Dennis Pepito, Florencio Pepito, Edwin Ramayrat, Daniel Canete, and Vivencio Sinadjan who executed quitclaims in favor of CENAPRO and cenapro is being absolved from the charges of illegal lockout and unfair labor practice.
>
> SO ORDERED."[4]

In short, five (5) union officers were declared to have lost their employment status, fifteen (15) union members were not reinstated because they executed quit claims in favor of the respondent company, and six (6) workers, Rosalito Bantulan, Edward Regner, Joel Densing, Henedino Mirafuentes, Christopher Patentes, and Andres Tejana, were ordered to be reinstated.

On October 8, 1993, the Labor Arbiter issued an Order excluding Rosalito Bantulan and Edward Regner from the list of those to be reinstated and to be paid backwages. The remaining four (4) workers, Joel Densing, Henedino Mirafuentes, Christopher Patentes, and Andres Tejana, are the petitioners here.

On October 5, 1993, the respondent company appealed the aforesaid decision insofar as it ordered the reinstatement of some of the strikers.

On October 7, 1993, the petitioners also appealed the same decision of the Labor Arbiter.

Pending resolution of the said appeals, petitioner AUIP filed with the Labor Arbiter a Motion for Execution of the Labor Arbiter's Decision directing reinstatement of some of its members. The motion was granted in the Order dated October 15, 1993.

On December 7, 1993, respondent company presented a Manifestation/Motion praying that instead of reinstatement, it be allowed to pay separation pay to petitioners.

On December 16, 1993, petitioners presented a motion for payroll reinstatement, which motion was opposed by the respondent company, alleging mainly that the circumstances of the case have strained the relationship of the parties herein, rendering their reinstatement unwise and inappropriate. But such opposition was overruled by the Labor Arbiter. In his Order of March 23, 1994, the same Labor Arbiter issued a second writ of execution directing actual, if not payroll reinstatement of the strikers.

On April 6, 1994, respondent company appealed the second order for the reinstatement of the strikers, placing reliance on the same grounds raised in support of its first appeal.

In its Decision dated August 15, 1994, the NLRC affirmed in toto the Labor Arbiter's decision, dismissed both the appeal of private respondent and that of petitioners, and reiterated the Labor Arbiter's Order for the reinstatement of the herein petitioners, Joel Densing, Henedino Mirafuentes, Christopher Patentes, and Andres Tejana. The said decision disposed and directed as follows:

> "WHEREFORE, premises considered, these appeals are DISMISSED, and the decision of the Labor Arbiter is AFFIRMED in its entirety.

> Appellant Cenapro Chemical Corporation is hereby ordered to immediately comply with the Labor Arbiter's Order dated March 23, 1994 and to release the salaries of four (4) appellant-workers namely Joel Densing, Henedino Mirafuentes, Christopher Patentes, and Andres Tejana from October 15, 1993 and continue paying them up to the time this decision has become final and executory, less earnings earned elsewhere.
>
> SO ORDERED."[5]

Respondent company moved for reconsideration of that portion of the NLRC's decision ordering the reinstatement of the said strikers. Acting thereupon, the NLRC modified its Decision of August 15, 1994, by ordering the payment of separation pay in lieu of the reinstatement of the petitioners, deleting the award of backwages, and declaring the loss of employment status of Joel Densing. The dispositive portion of the said Amendatory Resolution, ruled thus:

> "WHEREFORE, the decision of the Commission promulgated on August 15, 1994 is hereby MODIFIED. In view of reinstatement to complainants Henedino Mirafuentes, Christopher Patentes, and Andres Tejana, appellant-movant CENAPRO Chemicals Corporation is directed to pay them the amount equivalent to one (1) month pay for every year of service and without backwages. As regards Joel Densing, he is declared to have lost his employment status.
>
> SO ORDERED."[6]

Hence, the present petition, theorizing that respondent NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in:

1) Entertaining the second appeal of the respondent company dated 6 April 1994 (the first appeal dated 5 October 1993) which was based on similar grounds.

2) Reversing its earlier Resolution of the first appeal promulgated 15 August 1994 by way of another contradictory and baseless ruling promulgated on 21 February 1995.

3) Depriving Henedino Mirafuentes, Christopher Patentes, and Andres Tejana of their right to reinstatement and backwages; and

4) Depriving Joel Densing of his right to reinstatement or separation pay with backwages.

It is decisively clear that although the grounds invoked in the two appeals were the same, the said appeals were separate and distinct remedies. Filed on October 5, 1993, the first appeal was from the decision of Labor Arbiter Nicasio Aninon, dated September 10, 1993, seeking loss of employment status of all the union members who participated in the illegal strike. The second appeal, dated April 6, 1994, was, in effect, an opposition to the second writ of execution issued on March 23, 1994. The second writ pertained to the order to effect immediate actual or payroll reinstatement of the four petitioners herein. The said appeals were acted upon separately by the NLRC, which did not act with grave abuse of discretion in entertaining such appeals.

When they filed the notice of strike, petitioners cited as their grounds therefor unfair labor practice, specifically coercion of employees and systematic union busting. But the said grounds were adjudged as baseless by the Labor Arbiter. The court quotes with approval the following findings of Labor Arbiter Aninon, to wit:

> "In fact, in the undated Joint Affidavit of Oscar Enecio, Edgardo Regner, Christopher Patentes, Edgar Sanchez, Ariel Jorda, and Jaime dela Piedra, the workers stated that what they considered as harassments and insults are those when they were scolded for little mistakes and memoranda for tardiness. These acts, if really committed cannot be considered as harassment and insults but were ordinary acts which employers have to do as part of their administrative supervision over their employees. Moreover, Oscar Enecio's testimony that some of his fellow union members like vice-president Jaime dela Piedra, Christopher Potentes and Herodino Mirafuentes, were also harass when they were made to work another eight (8) hours after their tour of duty deserves scant consideration not only

> because it is uncorroborated but he could not even give the dates when these workers were made to work for sixteen (16) hours, how many instances these happened and whether or not the workers have actually worked."[7]

The court discerns no basis for altering the aforesaid findings which have been affirmed by the NLRC.

The court is not persuaded by petitioners' allegation of union busting. The NLRC correctly ruled that the strike staged by petitioners was in the nature of a union-recognition-strike. A union-recognition-strike, as its legal designation implies, is calculated to compel the employer to recognize one's union, and not the other contending group, as the employees' bargaining representative to work out a collective bargaining agreement despite the striking union's doubtful majority status to merit voluntary recognition and lack of formal certification as the exclusive representative in the bargaining unit. It is undisputed that at the time the petition for certification election was filed by AIUP, the petitioner union, there was an existing CBA between the respondent company and CCEA, the incumbent bargaining representative of all rank and file employees. The petition should have not been entertained because of the contract bar rule. When a collective bargaining agreement has been duly registered in accordance with Article 231 of the Labor Code, a petition for certification election or motion for intervention may be entertained only within sixty (60) days prior to the expiry date of the said agreement.[8] Outside the said period, as in the present case, the petition for certification election or motion for intervention cannot be allowed. Hence, the conclusion that the respondent company did not commit the alleged union busting.

From the gamut of evidence on hand, it can be gathered that the strike staged by the petitioner union was illegal for the reasons, that:

1) The strikers committed illegal acts in the course of the strike. They formed human barricades to block the road, prevented the passage of the respondent company's truck, padlocked the company's gate, and prevented co-workers from entering the company premises.[9]

2) And violated the Temporary Restraining Order (TRO)[10] enjoining the union and/or its members from obstructing the company premises, and ordering the removal therefrom of all the barricades.

A strike is a legitimate weapon in the universal struggle for existence.[11] It is considered as the most effective weapon in protecting the rights of the employees to improve the terms and conditions of their employment.[12] But to be valid, a strike must be pursued within legal bounds. The right to strike as a means for the attainment of social justice is never meant to oppress or destroy the employer. The law provides limits for its exercise. Among such limits are the prohibited activities under Article 264 of the Labor Code, particularly paragraph (e), which states that no person engaged in picketing shall:

a) commit any act of violence, coercion, or intimidation or;

b) obstruct the free ingress to or egress from the employer's premises for lawful purposes or;

c) obstruct public thoroughfares.

Even if the strike is valid because its objective or purpose is lawful, the strike may still be declared invalid where the means employed are illegal. For instance, the strike was considered illegal as the "strikers formed a human cordon along the side of the Sta. Ana wharf and blocked all the ways and approaches to the launches and vessels of Petitioners."[13]

It follows therefore that the dismissal of the officers of the striking union was justified and valid. Their dismissal as a consequence of the illegality of the strike staged by them finds support in Article 264 (a) of the Labor Code, pertinent portion of which provides: "Any union officer who knowingly participates in an illegal strike and any union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status."

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 a just penalty or sanction for their unlawful acts. The officers' responsibility is greater than that of the members.[14]

The court finds merit in the finding by the Labor Arbiter and the NLRC that the respondent company committed no illegal lockout. Lockout means temporary refusal of the employer to furnish work as a result of an industrial or labor dispute.[15]

As observed by the Labor Arbiter, it was the appellant-workers who voluntarily stopped working because of their strike. In fact, the appellant workers admitted that non-striking workers who wanted to return to work were allowed to do so. Their being without work could not therefore be attributed to the employer's refusal to give them work but rather, to the voluntary withdrawal of their services in order to compel the company to recognize their union.[16]

The next aspect of the case to consider is the fate of the four petitioners herein. Decisive on the matter is the pertinent provision of Article 264 (a) of the Labor Code that: "any worker who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status." It can be gleaned unerringly from the aforecited provision of law in point, however, that an ordinary striking employee can not be terminated for mere participation in an illegal strike. There must be proof that he committed illegal acts during the strike[17] and the striker who participated in the commission of illegal act must be identified. But proof beyond reasonable doubt is not required. Substantial evidence available under the attendant circumstances, which may justify the imposition of the penalty of dismissal, may suffice.

In the landmark case of Ang Tibay vs. CIR,[18] the court ruled "Not only must there be some evidence to support a finding or conclusion, but the evidence must be "substantial". Substantial evidence is more than a mere scintilla. It means such relevant evidence that a reasonable mind might accept as sufficient to support a conclusion."

Respondent company contends that sufficient testimonial, documentary and real evidence, including the photographs supposedly taken by a certain Mr. Ponce, were presented at the

arbitration level. It is argued that the said pictures best show the participation of the strikers in the commission of illegal acts in the course of the strike. In connection therewith, it is worthy to point out the sole basis of the NLRC for declaring the loss of employment status of petitioner Joel Densing, to wit:

> "ATTY. PINTOR:
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> Q: Now, Mr. Ponce, on page 1 of your affidavit, paragraph 4 thereof, you alleged that: "While in the gate, I saw several strikers of Cenapro blocked its gate and prevented the truck from proceeding to its destination." Who were these several workers you referred to, in this affidavit of yours?
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> WITNESS:
>
> A. The strikers.
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> HON. LABOR ARBITER:
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> Q. Are you referring to the complainants in this case who are now present?
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> WITNESS:
>
> A. Yes sir, I am referring to AIU members.
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> HON. LABOR ARBITER:
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> Make it of record that the witness is referring to the five persons inside the court namely: Rosalito Bentulan, Ariel Jorda, Ranulfo Cabrestante, Jose Catnubay and Joel Densing."[19] (Emphasis supplied)

All things studiedly considered, the court is not convinced that the quantum of proof on record hurdled the substantiality of evidence test[20] to support a decision, a basic requirement in administrative adjudication. If the said pictures exhibited before the Labor Arbiter portrayed the herein petitioners performing prohibited acts during the strike, why were these pictures not exhibited for identification of

petitioners? Petitioners could have been identified in such pictures, if they were reflected therein, in the same manner that the lawyer who examined Mr. Ponce, asked witness Armamento to identify the Sheriff, Mr. Leahmon Tolo, thus:

> "ATTY. PINTOR:
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> Q I refer your attention Mr. Armamento to Exhibit "16". There is a person here wearing a short sleeve barong tagalog. Can you please tell the Honorable office if you will be able to identify this person?
>
> WITNESS:
>
> A Yes, this is the Sheriff, Mr. Leahmon Tolo."[21]

The identification of the alleged pictures of the strikers, if properly made, could have been categorized as substantial evidence, which a reasonable mind may accept as adequate to support a conclusion that Joel Densing participated in blocking the gate of respondent company.

Verily, the uncorroborated testimony of Mr. Ponce does not suffice to support a declaration of loss of employment status of Joel Densing. This could be the reason why the Labor Arbiter and the NLRC, in its decision dated August 15, 1994, upheld the reinstatement of Joel Densing.

The contention of petitioners that the factual findings by the Labor Arbiter, as trial officer in the case, deserve much weight is tenable. The NLRC is bound by the factual findings of the Labor Arbiter as the latter was in a better position to observe the demeanor and deportment of the witnesses. "Absent any substantial proof that the trial court's decision was based on speculation, the same must be accorded full consideration and should not be disturbed on appeal."[22]

Premises studiedly considered, we are of the ineluctable conclusion, and hold, that the NLRC gravely abused its discretion in declaring the loss of employment status of Joel Densing.

As regards the other petitioners, Henedino Mirafuentes, Christopher Patentes, and Andres Tejana, their reinstatement is warranted. In its resolution, the NLRC adjudged petitioners as "not entirely faultless" in light of the following revelation of Mr. Ponce, to wit:

> "ATTY. PINTOR:
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> Q. Mr. Ponce, I will refer you to a picture previously marked as our Annex "H". Showing to you the said picture. In said picture, there are persons who are lying on the road. Can you please identify who are these persons?
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> WITNESS:
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> A. They are the strikers.
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> ATTY. PINTOR:
>
> Q. Are you referring to the AIU strikers the complainants in this case?
>
> WITNESS:
>
> A. Yes, Sir."[23]

For the severest administrative penalty of dismissal to attach, the erring strikers must be duly identified. Simply referring to them as "strikers," "AIU strikers" complainants in this case" is not enough to justify their dismissal.

On the issue of reinstatement and payment of salaries, the court also find for petitioners. Telling on the monetary award is Article 223 of the Labor Code, the pertinent of which reads:

> "In any event, the decision of the labor arbiter reinstating a dismissed employee shall be immediately executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer,

> merely reinstated in the payroll. The posting of bond shall not stay the execution of the reinstatement provided therein."

The NLRC Resolution of February 21, 1995 does not state any plausible ground or basis for deleting the award for backwages. The mere fact that the petitioners were "not entirely faultless" is of no moment. Such finding below does not adversely affect their entitlement to backwages. As opined by the NLRC in its Decision of August 15, 1994, affirming in its entirety the conclusion arrived at by the Labor Arbiter "the only option left to the appellant-company is whether to physically reinstate appellant workers or to reinstate them on the payroll."

The unmeritorious appeal interposed by the respondent company, let alone the failure to execute with dispatch the award of reinstatement delayed the payroll reinstatement of petitioners. But their long waiting is not completely in vain, for the court holds that their (petitioners') salaries and backwages must be computed from October 15, 1993 until full payment of their separation pay, without any deduction. This is in consonance with the ruling in the case of Bustamante vs. NLRC,[24] where payment of full backwages without deductions was ordered. The four petitioners herein are entitled to reinstatement absent any just ground for their dismissal. Considering, however, that more than eight (8) years have passed since subject strike was staged, an award of separation pay equivalent to one (1) month pay for every year of service, in lieu of reinstatement, is deemed more practical and appropriate to all the parties concerned.

WHEREFORE, the petition is **GRANTED**; the Resolution of NLRC, dated February 21, 1995, is **SET ASIDE**, and the Decision of the Labor Arbiter of October 8, 1993 **REINSTATED**, with the modification that the petitioners, Joel Densing, Henedino Mirafuentes, Christopher Patentes, and Andres Tejana, be paid full backwages computed from October 15, 1993 until full payment of their separation pay. The payment of separation pay in lieu of reinstatement, is hereby authorized. No pronouncement as to costs.

SO ORDERED.

Romero, Vitug and Gonzaga-Reyes, *JJ.*, concur.
Panganiban, *J.*, concurs in the result.

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[1] Not appended to the Petition.
[2] Decision, dated Aug. 15, 1994; Annex "B"; Rollo, pp. 22-31.
[3] Dated February 21, 1995; Annex "A"; Rollo, pp. 16-20.
[4] Petition; Rollo, p. 6.
[5] Rollo, p. 31.
[6] Rollo, pp. 19-20.
[7] Decision; Rollo, pp. 28-29.
[8] Section 3, par. 2, Rule XI, Book V, of the Rules and Regulations implementing the Labor Code, as amended by D.O. No. 09, which took effect on 21 June 1997.
[9] Comment, citing TSN, Ponce, 17 June 1992; Rollo, pp. 63-66; Armamento, 7 December 1992, Rollo, pp. 66-67; de la Piedra, 19 February 1991, Rollo, pp. 68-69.
[10] Dated August 6, 1990; made permanent on August 28, 1990.
[11] Alcantara, Philippine Labor and Social Legislation, 1994, p. 565.
[12] Bisig ng Manggagawa sa Concrete Aggregates, Inc. vs. NLRC, 226 SCRA 499, p. 511.
[13] United Seamen's Union of the Philippines vs. Davao Shipowners Association, 20 SCRA 1226, 1236.
[14] Continental Cement Labor Union vs. Continental Cement Corporation, 189 SCRA 134, 141.
[15] Article 212 (p), Labor Code.
[16] Decision, Rollo, p. 28.
[17] Gold City Integrated Port Service Inc. vs. NLRC, 245 SCRA 627, p. 637.
[18] 69 Phil. 635, 642.
[19] Resolution; Annex "A", Rollo, pp. 17-18.
[20] Ang Tibay vs. CIR, 69 Phil. 635.
[21] Comment; Rollo, p. 67.
[22] People vs. Gelaver, 223 SCRA 310, p. 315 citing People vs. Martinada 194 SCRA 36 and Mercury Drug vs. CIR 56 SCRA 694.
[23] Resolution; Annex "A"; Rollo, pp. 18-19.
[24] 265 SCRA 61, p. 71.
