CHANROBLES PUBLISHING COMPANY

**SUPREME COURT**
**SECOND DIVISION**

**FILCON MANUFACTURING CORPORATION,**
***Petitioner*,**

***-versus-***

**G.R. No. 150166**
**July 26, 2004**

**LAKAS MANGGAGAWA SA FILCON-LAKAS MANGGAGAWA LABOR CENTER (LMF-LMLC),**
***Respondent*.**
**x----------x**

# D E C I S I O N

**CALLEJO, SR., *J.*:**

This is a Petition for Review of the Decision[1] and Resolution[2] of the Court of Appeals in CA–G.R. SP No. 54803 filed by petitioner Filcon Manufacturing Corporation.

## The Antecedents

The petitioner is a domestic corporation engaged in the manufacture of Converse rubber shoes.[3] Its factory was located at General Molina St., Parang, Marikina. In 1989, it employed 1,000 workers to meet its work commitments.[4]

Respondent Lakas Manggagawa sa Filcon-Lakas Manggagawa Labor Center was one of the legitimate labor organizations of the rank-and-file employees of the petitioner, while the Shoe Workers Association and Technology (SWAT) was the exclusive bargaining agent of such rank-and-file employees. It had an existing collective bargaining agreement (CBA) with the petitioner effective up to January 15, 1990. The employees of the petitioner worked in two shifts: from 8:00 a.m. to 2:00 p.m. and from 2:00 p.m. to 10:00 p.m. At around 8:00 p.m. on October 13, 1989, the power supply at the factory was interrupted, resulting in the stoppage of work. The employees who worked the second shift were directed to go home. Some of them acceded, but the others chose to wait for the resumption of the power supply. When the power supply remained unrestored, the employees went home at about 10:00 p.m.

The next day, the second shift employees who had waited for the resumption of the power supply discovered that their bundy cards reflected that they had logged out at 7:30 p.m. Enraged, they demanded an explanation and staged a strike. The employees did not receive any explanation from the management.[5] Instead, preventive suspension orders were issued the next day, October 15, 1989, to the following employees:

1. William Inocencio
2. Luis Villa
3. Noel Liwag
4. Lourdes Martin
5. Joel Floria
6. Joselito Cortez
7. Asuncion Dolot
8. Ronilo Mayordomo
9. Edwin de Guzman
10. Maximiano (sic) Bathan
11. Rene Noel Ciego[6]

After determining that the aforementioned employees spearheaded the strike, the petitioner terminated their employment. The employees thereafter filed complaints for illegal dismissal with the National Arbitration Branch of the National Labor Relations

Commission (NLRC). The petitioner, in turn, filed a complaint against the said employees to declare the strike illegal. The complaints were docketed as NLRC NCR Case Nos. 00-10-04910-89, 00-10-04921-89, 00-11-05361-89 and 00-11-05564-89, raffled to Labor Arbiter Nieves Vivar-de Castro.[7]

Pending the resolution of the complaints, the respondent union, Bisig Manggagawa and Kampil Katipunan, filed separate petitions for certification election before the Bureau of Labor Relations (BLR) in November 1989, within the freedom period. On June 18, 1990,[8] the respondent union filed a Notice of Strike before the National Conciliation and Mediation Board (NCMB), in which it alleged that the petitioner committed an unfair labor practice (ULP) by harassing, illegally suspending its members and illegally dismissing two union officers. The case was docketed as NCMB-NLRC-06-501-90. On June 25, 1990, a strike vote was conducted. Of the 641 votes cast, 623 voted to stage a strike while 17 voted "NO."[9]

On June 27, 1990, the respondent union received information that a truckload of raw materials was about to be transferred outside the company premises. Suspecting that the petitioner was attempting a runaway shop,[10] the respondent gathered a group of employees outside the factory gate to verify the report.[11] They put up barricades consisting of big stones, pieces of wood, benches, tables, tents and other means of obstruction, to prevent ingress and egress to and from the factory.[12]

At 3:00 p.m. on June 29, 1990, the petitioner attempted to make deliveries to its customers using a truck bearing plate number PLY-907 driven by Edgardo Iballa. However, some members of the respondent union intercepted the delivery truck. To prevent the truck from going any further, Nicolas Chavez, a member of the respondent union, laid down in front of the vehicle.[13] The other members of the respondent demanded to see what was inside the truck. Iballa stepped down and reported the incident to their warehouse manager, and both of them returned to where the truck was. When the door of the truck was opened, the members of the respondent saw boxes of converse shoes for delivery to customers. The picketing employees then unloaded and opened the boxes.[14] The warehouse manager recalled the delivery order and directed Iballa to return the truck to

the garage. When he reached the place, Iballa noticed that the truck's front tires were flat.[15] A closer examination revealed that they were punctured.[16]

To prevent the attempts to transfer its raw materials, members of the LMF-LMLC who were off duty formed picket lines at the factory's side gate.[17]

The already tense situation worsened when the respondent union staged a strike on July 3, 1990.[18] Placards, pieces of wood and stones and benches were placed at the factory's front and side gates.[19] On July 4, 1990, the petitioner filed a Petition for Injunction with Prayer for an Ex Parte Temporary Restraining Order with the NLRC against the respondent union, SWAT, Noel Mayordomo, John F. Almazan and Domingo Bonagua, praying that the respondent union's members be enjoined from picketing its premises, and desist from threatening the management personnel and non-strikers with bodily harm.[20] The case was docketed as NLRC-NCR QC No. 000035.

After failed negotiations, the petitioner filed on August 21, 1990 a complaint to declare the strike illegal, for violations of CBA provisions, and ULP with damages before the Arbitration Branch of the NLRC against the respondent union, SWAT, Filcon Employees Union-SWAT, Noel Mayordomo, John F. Almazan, Domingo Bonagua, Nicolas Chavez, Alfredo Jungco, Pablito Nava, Florentino Alejandro, Jonathan Josef, Emmanuel Fabiola, Rogelio dela Cruz, Pedro Ege, Restituto de Leon, Orsie Renales, Joel Bautista, Ferdinand Santo, Maria Teresita Notado, Ricardo Templo, Florendo Sereno, Maria Elena Presno, Renato Hermoso, Rodrigo Renales, Luis Villa, William Inocencio, Lourdes Martin, Josefina de Leon, Ranilo Mayordomo, Maximo Bathan, Joselito Cortez, Joel Floria, Edwin de Guzman, Noel Liwag, Natividad Taquic, Rene Ciego, Asuncion Dolot, Gemma Barcelon, Andres Namoro, Nicolas Leonardo, et al. The case was docketed as NLRC-NCR Case No. 00-08-04521-90.[21]

On August 30, 1990, the petitioner and the respondent entered into a "Compromise Agreement" to maintain the status quo ante litem. The agreement was attested to by the NCMB.

On the merits of the cases, the Labor Arbiter directed the parties to submit their respective position papers and other pleadings. The petitioner alleged the following in its position paper: (a) the respondent union had no legal personality to file a notice of strike because the SWAT was the exclusive bargaining agent of the rank-and-file employees; (b) that the pending certification election barred the filing of notice of strike; and, (c) that the filing of the notice of strike was violative of the existing CBA provisions, particularly the no-strike-no-lockout clause. The respondent, for its part, asserted that its agreement with the petitioner contained a non-retaliatory clause and thereby admitted, without any reservation, all the striking employees; as such, the petitioner condoned the effects of the illegality of the strike. Contending that it had acquired majority status by reason of the disaffiliation of the members of the SWAT, the respondent union insisted that it had legal personality to file a notice of strike. It further alleged that the strike was conducted peacefully and lawfully.

On the other hand, the SWAT asserted that since it was the exclusive bargaining agent of the rank-and-file employees of the petitioner, the respondent union did not have a personality to file a notice of strike before the NCMB. The SWAT, likewise, denied any participation in the wild cat strike, and claimed that its members and officers were coerced and intimidated by the respondent union's members. The parties then adduced testimonial and documentary evidence.

Pending the resolution of the complaint in NLRC-NCR No. 00-08-4521-90, Labor Arbiter Vivar-de Castro rendered a decision in NLRC NCR Case Nos. 00-10-04910-89, 00-10-04921-89, 00-11-05361-89 and 00-11-05564-89, declaring the following to have lost their employment status because of their participation in the October 1989 strike and the commission of prohibited acts during the same:

1. Noel Mayordomo
2. Lourdes Martin
3. Ronilo Mayordomo
4. Erwin de Guzman
5. Joel Floria
6. Asuncion Dolot
7. Rene Noel Ciego

8. Andres Namoro
9. William Inocencio
10. Luis Villa
11. Natividad Taquic
12. Nicolas Leonardo
13. Joselito Cortez
14. Maximiano (sic) Bathan[22]

Dissatisfied, the petitioner and the dismissed employees appealed the decision before the NLRC, docketed as NLRC NCR No. 000936-90.[23]

On October 28, 1993, Labor Arbiter Jovencio Ll. Mayor, Jr. rendered a decision in NLRC NCR Case No. 00-08-04521-90, finding the strike staged by the respondent union illegal and declared those who participated in the said strike to have lost their employment. The dispositive portion reads:

> WHEREFORE, premises considered, the strike staged by respondent LMF-LMLC is hereby declared illegal and as a consequence of which its Officers and members are hereby declared, to have legally lost their employment status, namely:
>
> 1. Nicolas Chavez
> 2. Alfredo Jungco
> 3. Pablito Nava
> 4. Florentino Alejandro
> 5. Jonathan Josef
> 6. Emmanuel Fabiola
> 7. Rogelio dela Cruz
> 8. Pedro Ege
> 9. Restituto de Leon
> 10. Orsie Renales
> 11. Joel Bautista
> 12. Ferdinand Santo
> 13. Maria Teresa Notado
> 14. Ricardo Templo
> 15. Florendo Sereno
> 16. Maria Elena Presno
> 17. Renato Hermoso

18. Rodrigo Renales
19. Luis Villa*
20. William Inocencio*
21. Lourdes Martin*
22. Josefina de Leon*
23. Ranilo Mayordomo*
24. Maximo Bathan*
25. Joselito Cortez*
26. Joel Floria*
27. Edwin de Guzman*
28. Noel Liwag*
29. Natividad Taquic*
30. Asuncion Dolot*
31. Andres Namoro*
32. Rene Ciego*
33. Gemma Barcelon
34. Nicolas Leonardo*[24]

The Labor Arbiter ruled that based on the records, the SWAT was the certified exclusive bargaining agent of the rank-and-file employees of the petitioner. Furthermore, the CBA expired on January 15, 1990 and was not renewed due to the filing by three unions, including the LMF-LMLC, of their respective petitions for certification election. However, since the CBA provided that it would continue to be in effect until a new one had been entered into, the no-strike-no-lockout clause was still in effect; as such, the contract bar rule was still applicable, and, consequently, the strike was illegal.[25] The Labor Arbiter, likewise, pointed out that the strike was based on a non-strikable ground, more specifically, an intra-union and inter-union conflict.

It was, likewise, held that the evidence submitted by the petitioner showed that the respondent union blocked the ingress and egress of the company in the course of their strike. Such actuations constituted prohibited acts under Article 264 of the Labor Code of the Philippines, as amended; hence, the strike staged by the respondent union was illegal. The Labor Arbiter also declared that the officers of the respondent, as well as the members who participated in the commission of the illegal acts, were deemed to have lost their employment status.[26] He further ruled that the compromise

agreement entered into by the parties on the maintenance of the status quo ante litem did not amount to a condonation or waiver by the petitioner of its right to ventilate and litigate the charge of illegal strike against the respondent union and its members.

Dissatisfied, the respondent union appealed the decision to the NLRC where it alleged that:

I.

THE HONORABLE LABOR ARBITER JOVENCIO Ll. MAYOR, JR., COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN HE RULED THAT THE SHOE WORKERS ASSOCIATION AND TECHNOLOGY (SWAT) IS THE SOLE AND EXCLUSIVE BARGAINING AGENT OF ALL THE RANK-AND-FILE EMPLOYEES OF APPELLEE FILCON MANUFACTURING CORPORATION.

II.

THE HONORABLE ARBITER JOVENCIO Ll. MAYOR, JR. COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN HE RULED THAT THE "NO-STRIKE" PROVISION OF THE COLLECTIVE BARGAINING AGREEMENT APPLIES TO THE RESPONDENT-APPELLANT LMF-LMLC.

III.

THE HONORABLE LABOR ARBITER JOVENCIO Ll. MAYOR, JR. COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN HE RULED THAT THE STRIKE WAS ILLEGAL FOR BEING BASED ON AN INTER-UNION AND/OR INTRA-UNION CONFLICT.

IV.

THE HONORABLE LABOR ARBITER JOVENCIO Ll. MAYOR, JR. COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN HE RULED THAT THE STRIKE WAS ILLEGAL FOR BLOCKING THE FREE INGRESS TO AND EGRESS FROM THE COMPANY PREMISES.

V.

THE HONORABLE LABOR ARBITER JOVENCIO Ll. MAYOR, JR. COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN HE RULED THAT THERE WAS NO CONDONATION OR WAIVER OF THE STRIKERS' PARTICIPATION IN THE STRIKE.

VI.

THE HONORABLE LABOR ARBITER JOVENCIO Ll. MAYOR, JR. COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN HE RULED THAT THE STRIKERS LOST THEIR EMPLOYMENT STATUS.[27]

In the meantime, on December 15, 1994, the NLRC affirmed the decision of the Labor Arbiter in NLRC NCR No. 0000936-90.[28]

On December 29, 1997, the NLRC rendered a decision in NLRC NCR Case No. 006088-94 affirming the decision of the Labor Arbiter on November 14, 1997.[29] It declared that the strike staged on June 27, 1990 was illegal because respondent union failed to observe the fifteen (15)-day cooling-off period and the seven (7)-day strike ban. It emphasized that nine days after the filing of the notice of strike and two days after the filing of the strike-vote report to the Department of Labor and Employment (DOLE), the members of the respondent had already engaged in concerted activities, such as picketing, in clear violation of Article 263(e) and (f) of the Labor Code.

The NLRC also stressed that the respondent did not have any personality to file a notice of strike because its petition for certification election before the BLR was still unresolved. It declared

that pursuant to Article 253 of the Labor Code, the SWAT remained to be the exclusive bargaining agent of the rank-and-file employees of the petitioner until the resolution of the petition for certification election.

Finally, the NLRC ruled that the illegality of the strike was further heightened when the officers and members of the respondent union joined efforts in blockading the ingress to and egress from the petitioner's factory.

The respondent union filed a motion for reconsideration of the decision,[30] but the NLRC issued a Resolution dated June 23, 1999 denying the same.[31]

The Case Before the Court of Appeals

Undaunted, respondent union filed a petition for certiorari with the Court of Appeals (CA) under Rule 65,[32] asserting as follows:

I.

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT RULED THAT SWAT – FILCON EMPLOYEES UNION REMAINED THE SOLE AND EXCLUSIVE BARGAINING AGENT OF ALL THE RANK-AND-FILE EMPLOYEES OF THE COMPANY.

II.

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT RULED THAT ONLY SWAT-FILCON EMPLOYEES UNION COULD VALIDLY DECLARE A STRIKE TO THE EXCLUSION OF ALL OTHER UNIONS AT THE COMPANY.

III.

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION

WHEN IT RULED THAT PETITIONER LMF-LMLC DID NOT COMPLY WITH THE PROCEDURAL REQUIREMENTS OF A STRIKE.

IV.

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT UPHELD THE FINDING OF THE LABOR ARBITER THAT ILLEGAL ACTS WERE COMMITTED DURING THE STRIKE.

V.

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT UPHELD THE RULING OF THE LABOR ARBITER DECLARING THAT THE MEMBERS OF PETITIONER LMF-LMLC HAD LOST THEIR EMPLOYMENT STATUS AS A RESULT OF THE ILLEGALITY OF THE STRIKE.[33]

In its comment on the petition, the petitioner insisted that the decision of the Labor Arbiter was fully and substantially supported by the established facts and record based on applicable laws and jurisprudence. It reiterated that the respondent union lacked the legal personality to file a notice of strike, considering that the sole and exclusive bargaining agent of its rank-and-file employees was the SWAT. Moreover, by engaging in concerted activities without observing the cooling-off period, the respondent union thereby conducted an illegal strike. The petitioner also reiterated that the officers and members of the respondent union participated in the prohibited activities, particularly the blockage of the ingress to and egress from the factory.

On June 8, 2001, the CA promulgated a decision reversing the decision of the NLRC. The dispositive portion reads:

WHEREFORE, finding merit in the Petition, this Court issues the writ of certiorari and sets aside the Decision of the respondent Commission dated December 29, 1997 and orders

> the dismissal of NLRC-NCR Case No. 00-0804521-90 and the reinstatement of the dismissed employees with full backwages and other benefits from the time they were dismissed up to the time of actual reinstatement.[34]

While it agreed with the NLRC that the strike staged by the respondent union was illegal, the CA ruled that by reason of the compromise agreement entered into by the parties on August 30, 1990, the petitioner had, in effect, condoned the misconduct of the striking employees. The CA emphasized that, under the agreement, the petitioner agreed to accept all workers without reservation, as evidenced by the non-retaliatory clause contained therein. Citing Article 2036, in tandem with Article 2028 of the New Civil Code, the CA emphasized that a compromise agreement comprises not only those objects which are definitely stated, but also those that are, by necessary implication, included therein. It stressed that the dismissal of the complaint for illegal strike was necessarily included in the compromise agreement entered into by the parties.

The petitioner filed a motion for reconsideration, alleging that the CA erred when it gave due course to the petition, considering that the assailed decision had become final and executory by reason of the respondent union's failure to include in its petition an explanation for resorting to service via registered mail in serving a copy of the petition on it, in violation of Section 11, Rule 13 of the Rules of Court. The petitioner further asserted that the CA erred in ruling that the ultimate intention of the parties in their compromise agreement was the condonation of the misconduct of its employees.

The CA denied the petitioner's motion in its October 11, 2001 Resolution.[35] Emphasizing the "Christian Dogma of preferential option for the poor,"[36] the CA ruled that, in the interest of justice, equity and fair play, it had to decide the case on the merits, prescinding from the respondent's procedural lapse.

## The Present Petition

The petitioner filed the instant petition, alleging as follows:

A. THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN REOPENING AND TAKING COGNIZANCE OF THE ISSUE ON THE EXISTENCE OF CONDONATION WHICH WAS NOT RAISED IN THE PETITION FOR CERTIORARI AND HAD ALREADY BEEN RESOLVED IN THE NEGATIVE. ASSUMING THAT SAID ISSUE COULD STILL BE REOPENED, THERE IS ABSOLUTELY NO SHOWING THAT THE LABOR ARBITER AND NLRC GRAVELY ABUSED THEIR DISCRETION IN HOLDING THAT THE COMPROMISE AGREEMENT DID NOT CONSTITUTE A CONDONATION OF THE ILLEGAL ACTS COMMITTED DURING THE STRIKE OR RENDERED MOOT THE PENDING COMPLAINT FOR ILLEGAL STRIKE.

B. THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN GIVING DUE COURSE TO THE PETITION FOR CERTIORARI DESPITE LMF-LMLC'S FAILURE TO COMPLY WITH THE MANDATORY REQUIREMENTS OF SECTION 11, RULE 13 OF THE 1997 RULES OF CIVIL PROCEDURE.

C. THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN ENTERTAINING THE PETITION FOR CERTIORARI WHICH WAS FILED OUT OF TIME.[37]

For its part, the respondent union asserts that by virtue of the compromise agreement, the petitioner had condoned the misconduct of its officers and members: staging a strike and engaging in prohibited activities in the course of such strike. Citing the case of Cebu International Finance Corporation vs. Court of Appeals[38] and Armed Forces of the Philippines Mutual Benefit Association, Inc. vs. Court of Appeals,[39] the respondent asserts that a compromise agreement has the effect of res judicata upon the parties. It stresses that the CA did not gravely abuse its discretion when it gave due course to its petition for certiorari.

The procedural issues for resolution are the following: (a) whether or not the decision of the NLRC had become final and executory when the respondent union filed its petition with the CA; and (b) whether or not the respondent union raised the issue of the petitioner's

condonation therein of its right to assail the illegality of strike under the compromise agreement; and, if in the negative, whether the CA erred in resolving such issue of condonation.

On the other hand, the substantive issues to be resolved are the following: (a) whether or not the strike staged by the respondent union on July 27, 1990 was illegal; (b) whether or not the union's officers and members lost their employment status as a consequence of the said strike; and, (c) whether or not the petitioner had condoned the misconduct of the strikers.

## The Ruling of the Court

The petitioner contends that under Section 11, Rule 13 of the Rules of Court, the filing and service of pleadings and other papers shall be effected personally.[40] A resort to other modes of service of pleadings must be accompanied by a written explanation; otherwise, such pleading shall be considered as not filed. The petitioner notes that the respondent's petition for certiorari under Rule 65 of the Rules of Court in the CA was served on it only by registered mail without, however, a written explanation why resort thereto was made. Citing the case of Solar Team Entertainment, Inc. vs. Ricafort, [293 SCRA 661 (1998)],[41] the petitioner argues that the petition for certiorari of the respondent is deemed not to have been filed and, consequently, the decision of the NLRC became final and executory.

Sec. 11. Priorities in modes of service and filing.

> Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

We agree with the petitioner.

Indeed, the records show that although the petition was filed personally with the CA, service of a copy thereof on the respondent was effected by registered mail without any explanation as to why

resort to such mode was made. In its motion for reconsideration of the CA decision, the petitioner sought the dismissal of the petition because of the respondent's failure to comply with Section 11, Rule 13 of the Rules of Court. The respondent was directed by the CA to comment on the motion, but the respondent failed to do so. The respondent even failed to comment on the petitioner's allegation that the decision of the NLRC had become final and executory on such ground; neither did the respondent offer any explanation in its memorandum in the present case. Evidently then, the CA erred when it resolved to deny the motion for reconsideration of its decision and gave due course to the petition for certiorari.

Even on the substantial issues, we find the petition meritorious.

On the issue of whether or not the petitioner condoned the strike of the members of the respondent union and waived its right to assail the illegality of the said strike under the compromise agreement, the CA ruled:

> A careful reading of the Compromise Agreement in the context of the factual milieu convinces this Court that it was, indeed, a compact between the parties to end their dispute and restore their cordial and mutually beneficial relationship. The Agreement explicitly stipulated that the strikers would stop their strike, lift their picket lines and resume work and the company would accept them back. The parties most significantly agreed to maintain and promote industrial piece, and shall not commit any act which might be construed as acts of harassment and retaliation. Accordingly, the strikers returned to work and the company accepted them back. It is difficult to see how an amicable resolution of the dispute between the petitioner and the private respondents could be effected without the dismissal of the case for illegal strike when that case was precisely the sword of Democles which hang over the latter's heads and consequently caused the instability and discord in the work place.
>
> The Labor Arbiter and respondent Commission held that the dismissal of the said cases was not mentioned in the Agreement. True, but it should be remembered that the Agreement which

was handwritten was made by the parties who are non-lawyers and cannot therefore be expected to be very precise in their terminology. Important to remember is the rule in Art. 2036 of the Civil Code which states that to be deemed included in the compromise agreement are not only those expressly stated therein but also those necessarily implied therefrom. This Court has no doubt that the parties intended to terminate the illegal strike case as implied from the expressly stipulated terms mentioned above. That subsequently, the respondent company pursued said case was nothing but a change of mind which cannot denigrate much less suppress the juridical effect of said Compromise Agreement.

The respondent Commission totally ignored the text and tenor of the Compromise Agreement and skewed the clear intention of the parties resulting in severe prejudice to the petitioner and its members. Considering the seriousness of the mistake and gravity of the resulting injury, this Court holds that, indeed, the respondent Commission gravely abused its discretion.

We do not agree with the CA. The compromise agreement executed by the parties attested by the NCMB reads:

A G R E E M E N T

1) The parties agree to maintain status quo prevailing immediately on the date of strike as follows:

a) The parties agree to immediately resume operations based upon the work schedules to be prepared by the Company and in the said work schedule. The 17 suspended workers shall be included. In the preparation of work schedules, no discrimination shall be committed and, if possible, all returning workers or employees be admitted to work within one (1) week from reliance of the schedules which will be released on the first week of September 1990;

(b) The parties shall maintain and promote industrial peace, and shall not commit any acts which might be construed as acts of harassment and retaliation.

2) The cases of Messrs. Renato Hermosa, Marcelino Sabado and Noel Celestial shall be submitted to voluntary arbitration and Mr. Alvin Villamor has been mutually chosen as the voluntary arbitrator.

3) The parties shall endeavor to facilitate the resolution for the certification election.

4) The Union shall lift its picket on August 31, 1990 and return to work in accordance therewith. However, consideration shall be given to employees who are unable to report to work immediately due to distance, illness and other similar consideration.

UNION
Sgd.
083090

MANAGEMENT
Sgd.
8/30/90

Attested by: Sgd.
for NCMB[42]

Under Article 2028 of the New Civil Code, a compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. A compromise under the said provision contemplates mutual concessions and mutual gains to avoid the expense and expenses of litigation or, when litigation has already begun, to end it because of the uncertainty of the result thereof. (Romero vs. Amparo, 91 Phil. 228 [1952]).[43] The caption of an agreement is not determinative of the true nature thereof. An agreement although captioned a compromise agreement may not, in fact and in law, be a compromise agreement. (Nieves vs. Court of Appeals, 198 SCRA 63 [1991]).[44]

It must be stressed that when the terms of a contract are clear and leave no doubt upon the intention of the parties, the literal meaning of such terms shall be controlling. The contemporaneous and subsequent acts of the parties shall also be principally considered.

(Palmares vs. Court of Appeals, 288 SCRA 422 [1998]). In construing a written contract, the reason behind and the circumstance surrounding its execution are of paramount importance to place the interpreter in the situation occupied by the parties concerned at the time the contract was executed. (Riso Tape and Chemical Corporation vs. Court of Appeals, 282 SCRA 544 [1998]).[45]

Even a cursory reading of the agreement of the parties will readily show that they did not thereby intend to write finis or put an end to the cases filed against each other in the Department of Labor and Employment (DOLE) and the NLRC. They merely agreed to maintain their status quo before the commencement of the complaints filed by them, without prejudice to the resolution by the Labor Arbiter of the factual and legal issues raised after the presentation of their respective evidence. The parties merely agreed that the respondent would stop its strike against the petitioner and lift its picket within the latter's premises, and, that the petitioner, in turn, would allow the members of the respondent union to return back to work to enable the petitioner to resume its business operations. The parties did not intend to put an end to the cases pending against each other. In point of fact, after the execution of the said agreement, the parties adduced their respective testimonial and documentary evidences on the factual and legal issues, instead of asking the Labor Arbiter and the DOLE to dismiss the complaints filed by the parties against each other. The parties' presentation of their respective evidence after the execution of their compromise agreement is conclusive proof that the said agreement is not the compromise agreement envisaged in Article 2028 of the New Civil Code. The contemporaneous and subsequent acts of the parties belie the ruling of the Court of Appeals that the petitioner waived its right to assail the illegality of the strike.

Considering the terms of the compromise agreement, it cannot thereby be concluded that the petitioner waived its right to assail the illegality of the strike staged by the respondent and defend the validity of its termination of the employment of the members of the respondent who staged a strike. It must be underscored that a waiver to be valid and effective must be couched in clear and unequivocal terms which leave no doubt as to the intention of a party to give up a right or benefit which legally pertains to him. (Thomson vs. Court of Appeals, 298 SCRA 280 [1998]).[46]

In this case, the Labor Arbiter, the NLRC and the CA are one that the strike staged by the respondent was illegal. We agree with the ruling of the Labor Arbiter, viz:

> The right to strike is not absolute. It comes into being and is safeguarded by law only if the acts intended to render material aid or protection to a labor union arise from a lawful ground, reason or motive. But if the motive which had impelled, prompted, moved or led members of a labor union or organization to stage a strike, even if they had acted in good faith in staging it, be unlawful, illegitimate, unjust, unreasonable or trivial, the strike may be declared illegal. (Interwood Employees Association vs. Interwood Hardwood and Veneer Company of the Philippines, 52 O.G. 3936) (underscoring supplied) For "the law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer." (Elizalde Int'l. vs. C.A., 108 SCRA 247). Thus, "a company has the right to dismiss its erring employees if only as a measure of self-protection against acts inimical to its interest." (Manila Trading and Supply Co. vs. Zulueta, 69 Phil. 403).[47]

As borne out by the record, respondent SWAT was certified as the sole and (sic) bargaining agent of all the rank-and-file employees of complainant Filcon Manufacturing Corporation whose Collective Bargaining Agreement expired last 15 January 1990 and was not renewed due to the filing of Petition for Certification Election by three (3) unions, namely: 1) Lakas Manggagawa sa Filcon-Lakas Manggagawa Labor Center; 2) Bisig ng Manggagawa; and 3) Kampli-Katipunan, which up to present is still pending before the Bureau of Labor Relations. In its Collective Bargaining Agreement, it provides that the provisions contained therein shall be in full force and effect until a new one has been entered into and one of the provisions therein reads that there shall be no strike nor lock-out. This provision must be given due respect by all the parties concerned. Thus, it is evident, therefore, that the contract bar rule applies, thereby, rendering the strike staged by respondent LMF-LMLC illegal. This is supported by evidence that respondent LMF-LMLC blocked the free ingress and egress of company premises during the

course of their strike. (Exhs. "B," "C," "D," "E," "F," "G," "H," "I," and "J"), in violation of paragraph e, Article 264 of the Labor Code, as amended, to wit:

> "Art. 264. PROHIBITED ACTIVITIES. –
>
> x x x x x x x x x
>
> (e) No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress or egress from the employer's premises for the lawful purposes or obstruct public thoroughfares." *(Underscoring supplied)*

Well-settled is the rule that strikes may only be allowed on grounds of CBA deadlock and unfair labor practices. Neither of this exist in the case at bar, as respondent LMF-LMLC failed to adduce evidence to the contrary except the sweeping allegation of its only witness who was dismissed from employment in 1989 or almost a year before the staging of the strike. Clearly, therefore, this Office is of the opinion and so holds that the strike was declared more on the ground of inter-union and intra-union conflict which is a non-strikeable issue pursuant to paragraph (b) of Article 263 of the Labor Code, as amended, to wit:

> "Art. 263. Strikes, Picketing and Lock-outs. –
>
> x x x x x x x x x
>
> (b) Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. The right of legitimate labor organizations to strike and picket and of employers to lockout, consistent with the national interest shall continue to be recognized and protected. However, no labor union may strike and no employer may declare a lockout on grounds involving inter-union and intra-union disputes." (underscoring supplied)

Thus, it cannot be gainsaid that respondent LMF-LMLC before it staged the strike, had complied with all the legal requisites, namely: 1) Notice of Strike; 2) Strike Vote, thus rendering the same legal.[48]

The NLRC affirmed the finding of the Labor Arbiter, viz:

> There is no justification to disturb the factual findings and conclusions of the Labor Arbiter since these are amply supported by the evidence on record.
>
> Thus, only nine (9) days after the respondent union filed its notice of strike, and two (2) days after the strike vote, the said respondent union engaged in concerted activities such as picketing and other acts which are clear indications of a strike. Quite evidently, the respondent failed to observe the cooling-off period as provided in Article 263, paragraphs (e) and (f) of the Labor Code, which ordains that a strike may only be conducted after fifteen (15) days from date of filing of the notice of strike, if the issue stated therein is one involving unfair labor practice, and after seven (7) days from strike voting. Even granting that one of the strikeable issues raised in the notice of strike was union busting allegedly committed through the dismissal of three (3) union officers and member, nonetheless, there is no proof that the very existence of the union was threatened due to the alleged acts of dismissals such that it was not justified of the respondent union to stage the questioned strike immediately even before the mandatory cooling-off period expired.
>
> What appears insurmountable as a clear proof of the illegality of the strike is that while it has yet to prove its majority status through a certification election, and worse during the pendency of a petition to that effect, the respondent union already assumed the role of a sole and exclusive bargaining agent. True enough, not one of the petitioners including the respondent union are in the certification election as they failed to garner the required majority of the total votes cast.

As correctly found by the Labor Arbiter, the incumbent union, FEU-SWAT, remained to be the sole and exclusive bargaining agent of the

company's rank-and-file employees. This finds support in Article 253 of the Labor Code which, in part, states:

> "ART. 253. Duty to bargain collectively when there exists a collective bargaining agreement. – x x x. It shall be the duty of both parties (FILCON & SWAT) to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties."

Thus, the respondent falsely assumed its rule when it filed a notice of strike during the 60-day freedom period, and while a petition for certification election was pending. As a matter of fact, a strike during the pendency of such petition is patently illegal.[49]

The findings of facts of the quasi-judicial tribunals, in this case the NLRC which affirmed the findings of the Labor Arbiter, when based on substantial evidence, have conclusive effect on this Court absent proof that the said findings are capricious or arbitrary.[50]

**IN LIGHT OF ALL THE FOREGOING**, the petition is **GRANTED**. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 54803 are **REVERSED AND SET ASIDE**. The decision of the NLRC is hereby **REINSTATED**. **No costs**.

**SO ORDERED**.

**Puno, *J.*, *(Chairman)*, Tinga, and Chico-Nazario, *JJ.*, concur. Austria-Martinez, *J.*, no part.**

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[1] Penned by Associate Justice Hilarion L. Aquino (retired), with Associate Justices Ma. Alicia Austria-Martinez (now Associate Justice of the Supreme Court) and Jose L. Sabio, Jr., concurring.
[2] Rollo, pp. 63-67.
[3] Id. at 13.
[4] Id. at 17.
[5] Id. at 1009-1029.
[6] Id. at 1020.

[7] Subsequently, all four (4) cases were consolidated under Labor Arbiter Nieves Vivar-de Castro.
[8] CA Rollo, p. 96.
[9] Id. at 99.
[10] Runaway shop – an employer who moves his business to another location or temporarily closes his business for anti-union purposes. (Black's Law Dictionary, 5th Edition, 1979, p. 1197).
[11] CA Rollo, p. 9.
[12] Id. at 148; Annexes "6-7."
[13] Id. at 149; Annex "8."
[14] Id. at 150-152; Annexes "11-18."
[15] Id. at 170.
[16] Id. at 153; Annexes "19-20."
[17] Id. at 10.
[18] Id.
[19] Id. at 146-147; Annexes "1-5."
[20] Id. at 154-162.
[21] Id. at 177-184.
[22] Rollo, p. 1010.
[23] Id. at 1009-1029.
[24] CA Rollo, pp. 31-32.
* They were dismissed prior to the July 3, 1990 strike.
* Resigned in November of 1989.
[25] Id. at 26-27.
[26] Id.
[27] Id. at 34-35.
[28] Rollo, pp. 1009-1029.
[29] CA Rollo, p. 70.
[30] Id. at 72-76.
[31] Id. at 78-80.
[32] Docketed as CA-G.R. SP No. 54803.
[33] CA Rollo, pp. 5-6.
[34] Id. at 237-A.
[35] Id. at 283.
[36] Id. at 281.
[37] Rollo, pp. 25-26.
[38] 316 SCRA 488 (1999).
[39] 311 SCRA 143 (1999).
[40] Sec. 11. Priorities in modes of service and filing. – Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service was not done personally. A violation of this rule may be cause to consider the paper as not filed.
[41] 293 SCRA 661 (1998)
[42] Rollo, pp. 136-137.
[43] Romero vs. Amparo, 91 Phil. 228 [1952]

[44] Nieves vs. Court of Appeals, 198 SCRA 63 [1991]
[45] Riso Tape and Chemical Corporation vs. Court of Appeals, 282 SCRA 544 [1998])
[46] Thomson vs. Court of Appeals, 298 SCRA 280 [1998]
[47] Manila Trading and Supply Co. vs. Zulueta, 69 Phil. 403
[48] Rollo, pp. 165-168.
[49] Id. at 227-229.
[50] Conti vs. NLRC, 271 SCRA 114 (1997); Martinez vs. NLRC, 272 SCRA 793 (1997); Philippine Airlines, Inc. vs. NLRC, 279 SCRA 445 (1997).

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