SUPREME COURT
FIRST DIVISION

MARCOPPER MINING CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 119381
March 11, 1996

HON. ACTING SECRETARY OF LABOR JOSE BRILLANTES, NATIONAL MINES & ALLIED WORKERS UNION (NAMAWU), MARCOPPER EMPLOYEES LABOR UNION (MELU),
***Respondents*.**
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R E S O L U T I O N

KAPUNAN, *J.*:

This is a Petition for Certiorari under Rule 65 assailing the Order dated March 20, 1995 in NCMB-RBIV-NS-12-155-94 (NCMB-RBIV-TPM-01-005- 95) of public respondent Secretary of Labor and Employment, through Acting Secretary Jose Brillantes, insofar as it orders petitioner Marcopper Mining Corporation to accept workers it deemed dismissed.

On April 5, 1994, the Court issued a temporary restraining order, upon motion of petitioner.

The dispositive portion of the assailed resolution reads as follows:

> WHEREFORE, ABOVE PREMISES CONSIDERED, this Office hereby reiterates its directives for the striking workers to immediately return to work and for the company to accept back all returning workers under the same terms and conditions prevailing prior to the work stoppage.
>
> The legality of the strike and the termination handed down to the striking employees as well as their entitlement to additional year end profit bonus for 1994 shall be among the issues to be resolved at the compulsory arbitration proceedings.
>
> Furthermore, the Philippine National Police Command, Marinduque is hereby deputized to assist in the orderly and peaceful implementation of the Orders of this Office including the removal of barricades and other forms of obstruction to ensure free ingress to and egress from the company premises.
>
> Let the records of this case and subsequent pleadings be forwarded to the NLRC for its immediate and appropriate action.[1] (Emphasis)

Petitioner Marcopper Mining Corporation is a corporation, 49% of which equity is owned by the Philippine government. Petitioner is engaged in the exploitation, development and extraction of copper and other mineral ores by virtue of lease and other contracts with the Philippine government, through the Bureau of Mines and Geosciences and the Department of Environment and Natural Resources. it employs more than 1,000 workers.[2] One of petitioner's projects is the operation of the San Antonio Copper Project, an orebody with an estimated life of at least twenty years.

In December of 1994, petitioner granted its employees a year-end profit bonus, the amount of which was based on employment category, i.e., 75% of their monthly salary to rank-and file, 80% to security guards, and 90% to staff.

Private respondent National Mines and Allied Workers Union and its local chapter Marcopper Employees Labor Union (collectively "union") filed on December 26, 1994 a preventive mediation case with the Department of Labor and Employment Regional Office No. IV, alleging the following unfair labor practices: violation of collective bargaining agreement concerning job evaluation and discrimination against rank-and-file in connection with the grant of the profit bonus.[3]

The National Conciliation and Mediation Board (NCMB) conducted conciliation proceedings, but the parties failed to reach a settlement. Thus, respondents filed a Notice of Strike on December 28, 1994.[4]

In a letter dated January 17, 1995, Conciliator-Mediator Wilfredo P. Santos informed the union that the issues involved in the Notice of Strike are non-strikeable and are appropriate subjects of the grievance machinery with voluntary arbitration as the terminal step.[5]

On January 24, 1995, the union filed a second Notice of Strike, adding union busting through replacement of regular employees by casuals and contractuals as a third ground therefor.[6]

On February 20, 1995, petitioner filed with the Department of Labor and Employment a petition praying that the Secretary of Labor and Employment assume jurisdiction over the labor dispute pursuant to Article 263 of the Labor Code of the Philippines.[7] The petition was endorsed by Labor Undersecretary Bienvenido E. Laguesma to the NCMB.[8]

On February 24, 1995, the Secretary of Labor and Employment issued an order certifying the dispute for compulsory arbitration under Article 263 (g) of the Labor Code, enjoining any actual or intended strike or lockout, and directing the parties to cease and desist from committing acts which may exacerbate the dispute.[9]

The order was served on the union on February 24 (NAMAWU) and February 25, 1995 (MELU). Notwithstanding receipt of the order, on February 27, 1995, the union went on strike.[10]

Also on February 27, 1995, petitioner filed a Manifestation and Motion praying for an order directing the union and all striking workers to immediately return to work.[11] The following day, February 28, 1995, the Secretary of Labor and Employment issued an order reiterating his February 24, 1995 order, and directing all striking workers to return to work within twenty-four hours from receipt of the order and for Management to accept them under the same terms and conditions prevailing before the strike.[12]

On March 1, 1995, the union filed a motion for reconsideration of the Secretary's February 24 and February 28 orders.[13]

On March 4, 1995, petitioner issued a notice to return to work. Petitioner required all its rank-and-file employees to report for work on their respective regular shift schedule starting at 8:00 a.m. of March 5, 1995. Petitioner further informed the employees that those who fail to report for work within the specified period shall be considered as terminated for just cause, without need of further notice, and with loss of all accrued benefits; management would then be at liberty to hire replacement workers.[14]

Only about 40 workers returned to work.[15] Those workers who failed to heed the March 4, 1995 notice were each given final termination letters.[16] On March 8, 1995, the NCMB conducted a conciliation conference. Petitioner maintained that those workers who failed to return to work were deemed to have abandoned their employment and thus were legally dismissed. On the other hand, the union manifested that the dismissal of the workers was premature because its motion for reconsideration of the Secretary's orders was still pending.[17]

On March 9, 1995, Acting Secretary Jose Brillantes issued an order denying the union's motion for reconsideration for lack of merit.[18]

On March 10, 1995, the union filed a Manifestation/Compliance where it acknowledge receipt of the March 9, 1995 order and signified the workers willingness to abide by the same. The union manifested that petitioner however refused to accept the workers, and thus it prayed that the Secretary of labor and Employment order petitioner to reinstate said workers.[19]

On March 20, 1995, Acting Secretary Brillantes issued the assailed order subject of this petition for certiorari.

Petitioner asserts that the Secretary of Labor gravely abused his discretion when he ordered it to accept workers who defied the return-to-work order, as embodied in the certification order of February 24, 1995 he himself issued. Petitioner prays that the March 20, 1995 order be set aside insofar as it orders it to reinstate the dismissed workers, and that the Court declare the employees to have been legally dismissed.

The union filed its comment arguing in the main that the issue of whether the workers were legally dismissed must be resolved in the proceedings below, and that this Court is not the proper forum for the resolution of such issue.

The Solicitor General, instead of filing his comment, filed a Manifestation and Motion recommending that the petition be given due course, and view thereof, that the Secretary of Labor and Employment be made to file his own comment.

We grant the petition.

We agree that the Secretary, as stated by him in his March 20 order, did not make a determination that the termination of the employment of the workers was legal or illegal. He exercised his discretion to refer the issue to compulsory arbitration, and pending resolution thereof, directed that the status quo be maintained, with the view of preserving the precarious peace between petitioner and the more than 600 union workers. As explained by the Secretary in his order:

> Our earlier [February 24 and February 28, 1995] Orders merely direct the status quo without adjudicating on the merits of the parties' position and arguments on the issue at hand. The compulsory arbitration machinery will be the venue that will once and for all determine the respective claims of the litigants herein.

> It is the NLRC which is the proper forum for the "full and complete settlement or adjudication of all labor disputes between the parties, as well as issues that are relevant to or incidents of the certified case."[20]

We cannot however ignore the factual findings of the Secretary relative to the union's actuations subsequent to the issuance of the February 24, 1995 certification order.

In his February 28, 1995 order, the Secretary noted that "notwithstanding receipt of the [February 24, 1995] order, the Union went on strike on 27 February 1995." In the same order, the Secretary acknowledged that "it will not be amiss to point out that the Order certifying the labor dispute to the NLRC and enjoining any strike or lockout is by its character immediately executory." Yet the Secretary, inter alia, directed the workers to return to work and management to accept them.

The workers did not return to work.

In the assailed March 20, 1995 order, the Secretary reiterated that "despite the [February 24, 1995] Order the union went on strike on February 27, 1995 which constrained us to issue an Order on February 28, 1995 directing the workers to return to work and for Management to accept them back under the same terms and conditions prevailing before the strike." Despite such finding, the Secretary ordered petitioner to accept the workers.

We have held that a return-to-work order is a "statutory part and parcel"[21] of the Secretary's assumption or certification order. Article 263 (g) succinctly provides that:

> Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout.

Thus, following an assumption or certification order, returning to work, on the part of a worker, is "not a matter of option or voluntariness but obligation."[22] The sanction for failure to comply with such obligation, under the law, is loss of employment status.[23] Case law likewise provides that by staging a strike after the assumption of jurisdiction or certification for arbitration, workers forfeited their right to be readmitted to work, having abandoned their employment, and so could be validly replaced.[24]

We cannot countenance the Secretary's tolerance of the union's willful breach of the provisions of Article 263(g) as well as its defiance of the February 28, 1995 order. He cannot gloss over his findings showing prima facie the illegality of the union's actuations. It would be unfair, indeed unreasonable and oppressive, to compel petitioner to accept the workers who refused to return to work, pending arbitration proceedings.

We stress that it is the NLRC which must resolve the issues involved in the labor dispute. Our resolution in the instant case does not pre-empt the NLRC. We make no findings or ruling on the relative merits of the parties' positions. We rule simply that pending arbitration proceedings, petitioner cannot be compelled to accept the workers who failed to return to work.

We cannot but highlight the national interest involved in the instant case. Petitioner Marcopper operates the San Antonio Copper Project in Marinduque. The project is financed through long term loans granted by the Asian Development Bank and its co-financers, in the aggregate amount of US$40,000,000.00. It also supplies electrical power to the entire province of Marinduque.[25] In the assumption order of the Secretary, it was emphasized that:

> Any disruption in the operations of the Company will adversely affect its financial status and consequently its capacity to pay the loans acquired. Considering that the Company's project is basically financed by these loans, the continued operation of the project is threatened. Consequently, the means of livelihood of about 1,500 employees stands to suffer.

> Furthermore, the government will also be prejudiced by any work stoppage in the Company since it would mean loss of taxes and foreign exchange earnings from one of the major contributors of its sources of funds.
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> Any work stoppage will also adversely affect the whole province of Marinduque whose supply of electrical energy depends on the uninterrupted operations in the Company.[26]

We note from the records that following petitioner's manifestation, as concurred in by the union, the NLRC issued an Order dated May 31, 1995 holding in abeyance the hearings of the case[27] until the instant petition for certiorari is resolved.[28] We thus enjoin the NLRC to expedite the conciliation proceedings, and direct the NLRC to immediately set the case for hearing and terminate the compulsory arbitration proceedings within sixty (60) days, and to resolve the dispute within thirty (30) calendar days from submission for resolution thereof.[29]

CONSIDERING THE FOREGOING, the Court Resolved to **GRANT** the petition. The order of respondent Acting Secretary of Labor dated March 20, 1995 is hereby **SET ASIDE** insofar as it directs petitioner to accept, pending resolution of the issues raised in the compulsory arbitration proceedings before the NLRC, all returning workers under the same terms and conditions prior to the work stoppage.

The National Labor Relations Commission is directed to immediately set for hearing NLRC CC No. 0000106-95 and to terminate the compulsory arbitration proceedings within sixty (60) days, and to resolve the dispute within thirty (30) calendar days from submission for resolution thereof.

SO ORDERED.

Bellosillo, Vitug and Hermosisima, Jr., *JJ.*, concur.

SEPARATE OPINIONS

PADILLA, J., dissenting:

I am constrained to take a view different from the majority's. We cannot, in my opinion, overlook the fact that petitioner is engaged in an industry indispensable to the national interest. It is for this reason that the Secretary of Labor had assumed jurisdiction over the labor dispute and certified the same to the NLRC for compulsory arbitration.

The assumption by the Secretary of Labor of jurisdiction over the labor dispute had for its main purpose the resumption of petitioner's operations so essential to the national interest. And the referral by the Secretary of Labor of the labor dispute to the NLRC for compulsory arbitration was in recognition of the intense need to settle the nagging dispute between the parties so that the national interest could be enhanced by a lasting and enduring industrial peace in the petitioner's establishment.

It is, I believe, in the light of the foregoing considerations that we must view and weigh the now assailed 20 March 1995 order of the Secretary of Labor directing the employee to return to work and the management to accept such employees in accordance with terms and conditions of employment existing before the strike of 27 February 1995. It is true that the union members (employees) had failed to comply with earlier orders for them not to strike and, later, to break their strike and return to work. But these earlier non-compliances by the union with return to work orders should not, in my view, negate or dilute the authority of the Secretary of Labor who acts in the public interest, to re-order and direct anew a return to work by the union and acceptance by management of said union members, since the main concern in the premises is the immediate resumption of petitioner's operations as an industry indispensable to the national interest.

Besides, the case on the merits is still up for compulsory arbitration before the NLRC; and the legality of the union's non-compliance with

the Labor Secretary's earlier return to work order as well as of the strike itself is among the issues pending and threshable in the compulsory arbitration proceedings before the NLRC.

Nor can the immediate resumption of operations co-incident with a return to work of the union members (as well as their acceptance by petitioner) be considered oppressive on the petitioner for the reason that the terms and conditions of employment will be as of the time before the strike (until the compulsory arbitration proceedings are finished). Moreover, this "forced" or "interim" resumption of relations between petitioner and the union members, pending the outcome of the compulsory arbitration proceedings, is a risk factor which petitioner must implicitly assume by engaging in an industry indispensable to the national interest.

FOR THE FOREGOING REASONS, my vote is to **DISMISS** the petition and sustain the validity of the 20 March 1995 order of the Secretary of Labor.

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[1] Rollo, p. 24.
[2] Id., at 48.
[3] Id., at 36.
[4] Id., at 37.
[5] Id., at 39.
[6] Id., at 40.
[7] Id., at 26; Records, p. 21.
[8] Records, p. 22.
[9] See note 8, supra., p. 54.
[10] See note 12, infra.
[11] See note 8, supra., pp. 71-73
[12] Id., at 104.
[13] Id., at 77-78.
[14] See note 1, supra., pp. 51 and 52.
[15] Id., at 8.
[16] Id., at 53.
[17] See Records, p. 84.
[18] See note 1, supra., p. 56.
[19] Id., at 58-59.
[20] The New Rules of Procedure of the NLRC, rule IX, sec. 1.
[21] Sarmiento vs. Tuico, 162 SCRA 676 (1988), at 684.
[22] ID., at 685.

[23] Labor Code of the Philippines, art 264 (a) and (b); The New Rules of Procedure of the NLRC, rule IX, section 6.
[24] St Scholastica's College vs. Torres, 210 SCRA 565 (1992); Federation of Free of Free Workers vs. Inciong, 208 SCRA 157 (1992); Union of Filipro Employees vs. Nestle Philippines, 192 SCRA 396 (1990); Sarmiento vs. Tuico, supra.
[25] See note 1, supra., p. 48.
[26] See note 1, supra., p. 46.
[27] Docketed as NLRC CC No. 0000106-95.
[28] See note 8, supra., pp. 256-257.
[29] The New Rules of Procedure of the NLRC, Rule IX, section 4.