SUPREME COURT
THIRD DIVISION

MASTER IRON LABOR UNION (MILU), WILFREDO ABULENCIA, ROGELIO CABANA, LOPITO SARANILLA, JESUS MOISES, BASILIO DELA CRUZ, EDGAR ARANES, BASILIO DELA CRUZ, EDGAR ARANES, ELY BORROMEO, DANIEL BACOLON, MATIAS PAJIMULA, RESTITUTO PAYABYAB, MELCHOR BOSE, TEOFILO ANTOLIN, ROBERT ASPURIA, JUSTINO BOTOR, ALFREDO FABROS, AGAPITO TABIOS, BERNARDO ALFON, BENIGNO BARCENA, BERNARDO ALFON, BENIGNO BARCENA BERNARDO NAVARRO, MOISES LABRADOR, ERNESTO DELA CRUZ, EDUARDO ESPIRITU, IGNACIO PAGTAMA, BAYANI PEREZ, SIMPLICIO PUASO, EDWIN VELARDE, BEATO ABOGADO, DANILO SAN ANTONIO, BERMESI BORROMEO and JOSE BORROMEO,
***Petitioners*,**

-versus-

G.R. No. 92009
February 17, 1993

NATIONAL LABOR RELATIONS COMMISSION and MASTER IRON WORKS AND CONSTRUCTION CORPORATION,

Respondents.

x----------x

D E C I S I O N

MELO, *J.*:

The Petition for *Certiorari* before us seeks to annul and to set aside the decision of the National Labor Relations Commission (Second Division) dated July 12, 1956 which affirmed that of Labor Arbiter Fernando V. Cinco declaring illegal the strike staged by petitioners and terminating the employment of the individual petitioners.

The Master Iron Works Construction Corporation (Corporation for brevity) is a duly organized corporate entity engaged in steel fabrication and other related business activities. Sometime in February 1987, the Master Iron Labor Union (MILU) entered into a collective bargaining agreement (CBA) with the Corporation for the three-year period between December 1, 1986 and November 30, 1989 (Rollo, p. 7). Pertinent provisions of the CBA state:

> "SECTION 1. That there shall be no strike and no lockout, stoppage or shutdown of work, or any other interference with any of the operation of the COMPANY during the term of this AGREEMENT, unless allowed and permitted by law."
>
> "SECTION 2. Service Allowance. — The COMPANY agrees to continue the granting of service allowance of workers

assigned to work outside the company plant, in addition to his daily salary, as follows:

(a) For those assigned to work outside the plant but within Metro Manila, the service allowance shall be P12.00;

(b) For those assigned to work outside Metro Manila, the service allowance shall be P25.00/day;

(c) The present practice of conveying to and from the jobsites of workers assigned to work outside of the company plant shall be maintained."

Right after the signing of the CBA, the Corporation subcontracted outside workers to do the usual jobs done by its regular workers including those done outside of the company plant. As a result, the regular workers were scheduled by the management to work on a rotation basis allegedly to prevent financial lasses thereby allowing the workers only ten (10) working days a month (Rollo, p. 8). Thus, MILU requested implementation of the grievance procedure which had also been agreed upon in the CBA, but the Corporation ignored the request.

Consequently, on April 8, 1987, MILU filed a notice of strike (Rollo, p. 54) with the Department of Labor and Employment. Upon the intervention of the DOLE, through one Atty. Bobot Hernandez, the Corporation and MILU reached an agreement whereby the Corporation acceded to give back the usual work to its regular employees who are members of MILU (Rollo, p. 55).

Notwithstanding said agreement, the Corporation continued the practice of hiring outside workers. When the MILU president, Wilfredo Abulencia, insisted in doing his regular work of cutting steel bars which was being done by casual workers, a supervisor reprimanded him, charged him with insubordination and suspended him for three (3) days (Rollo, pp. 9 & 51-52). Upon the request of MILU, Francisco Jose of the DOLE called for conciliation conferences. The Corporation, however, insisted that the hiring of casual workers was a management prerogative later ignored

subsequent scheduled conciliation conferences (Rollo, pp. 51-52 & 57-58).

Hence, on July 9, 1987, MILU filed a notice of strike on the following grounds: (a) violation of CBA; (b) discrimination; (c) unreasonable suspension of union officials; and (d) unreasonable refusal to entertain grievance (Rollo, p. 9). On July 24, 1987, MILU staged the strike, maintaining picket lines on the road leading to the Corporation's plant entrance and premises.

At about 11 o'clock in the morning of July 28, 1987, CAPCOM soldiers, who had been summoned by the Corporation's counsel, came and arrested the picketers. They were brought to Camp Karingal and, the following day, to the Caloocan City jail. Charges for illegal possession of firearms and deadly weapons were lodged against them. Later, however, those charges were dismissed for failure of the arresting CAPCOM soldiers to appear at the investigation (Rollo, p. 10). The dispersal of the picketlines by the CAPCOM also resulted in the temporary lifting of the strike.

On August 4, 1987, the Corporation filed with the NLRC National Capital Region arbitration branch a petition to declare the strike illegal (Rollo, p. 40). On September 7, 1987, MILU, with the assistance of the Alyansa ng Manggagawa sa Valenzuela (AMVA), re-staged the strike. Consequently, the Corporation filed a petition for injunction before the NLRC which, on September 24, 1987, issued an order directing the workers to remove the barricades and other obstructions which prevented ingress to and egress from the company premises. The workers obliged on October 1, 1987 (Rollo, p. 25). On October 22, 1987, through its president, MILU offered to return to work in a letter which states:

> "22 Okt. 1987
>
> Mr. Elieze Hao
> Master Iron Works & Construction Corp.
> 790 Bagbagin, Caloocan City
>
> Dear Sir,

Ang unyon, sa pamamagitan ng nakalagda sa ibaba, ay nagmumungkahi, nagsusuhestiyon o nag-oofer sa inyong pangasiwaan ng aming kahilingan na bumalik na sa trabaho dahilan din lang sa kalagayan na tuloy ang ating pag-uusap para sa ikatitiwasay ng ating relasyon. Gusto naming manatili ang ating magandang — pagtitinginan bilang magkasangga para sa ika-uunlad ng ating kumpanya. Sana ay unawain niyo kami dahil kailangan namin ng trabaho.

Gumagalang,

(Sgd.)WILFREDO ABULENCIA
Pangulo"
(Rollo, p. 590).

On October 30, 1987, MILU filed a position paper with counter-complaint before the NLRC. In said counter-complaint, the workers charged the Corporation with unfair labor practice for subcontracting work that was normally done by its regular workers thereby causing the reduction of the latter's workdays; illegal suspension of Abulencia without any investigation; discrimination for hiring casual workers in violation of the CBA, and illegal dispersal of the picket lines by CAPCOM agents (Rollo, pp. 26-27).

In due course, a Decision dated March 16, 1988 was rendered by Labor Arbiter Fernando Cinco declaring illegal the strike staged by MILU. The dispositive portion of the decision reads:

"WHEREFORE, in the light of the foregoing premises, judgment is hereby rendered, as follows:

1. Declaring the strike by the respondents illegal and unlawful;

2. Ordering the cancellation of the registered permit of respondent union MILU for having committed an illegal strike;

3. Ordering the termination of employment status of the individual respondents, including the forfeiture of

whatever benefits are due them under the law, for having actively participated in an illegal strike, namely: Wilfredo Abulencia, President; Rogelio Cabana, Vice-President; Lopito Saranilla, Secretary; Jesus Moises, Treasurer; Basilio dela Cruz, Auditor; as Members of the Board: Edgar Aranes, Melchor Bose Restituto Payabyab, Matias Pajimula, Daniel Bacolon, and Ely Borromeo, as Members of the Union: Teofilo Antolin, Robert Aspuria, Justino Botor, Alfredo Fabros, Agapito Tabios, Bernardo Alfon, Benigno Barcena, Bernardo Navarro, Moises Labrador, Ernesto dela Cruz, Eduardo Espiritu, Ignacio Pagtama Bayani Perez, Simplicio Puaso, Edwin Velarde, Beato Abogado, Danilo San Antonio, Bermes Borromeo, and Jose Borromeo.

The respondents as appearing in Annex 'A' of the Petition, but not included as among those whose employment status were terminated as above-mentioned, are given priority of reinstatement, without backwages, in the petitioner starts its normal operations, or shall be paid their separation pay according to law.

4. Ordering the respondents to cease and desist from further committing the illegal acts complained of;

5. Ordering Respondent Union to pay the amount of P10,000.00 to Petitioner's Counsel as attorney's fees;

6. Ordering the dismissal of the claim for damages for lack of merit; and

7. Ordering the dismissal of the counter-complaint in view of the filing of a separate complaint by the respondents.

SO ORDERED." (pp. 35-36, Rollo.)

On appeal to the NLRC, MILU and the individual officers and workers named in Labor Arbiter Cinco's decision alleged that said

labor arbiter gravely abused his discretion and exhibited bias in favor of the Corporation in disallowing their request to cross-examine the Corporation's witnesses, namely, Corporate Secretary Eleazar Hao, worker Daniel Ignacio and foreman Marcial Barcelon, who all testified on the manner in which the strike was staged and on the coercion and intimidation allegedly perpetrated by the strikers (Rollo, p. 151).

The Second Division of the NLRC affirmed with modifications the decision of the labor arbiter. The decision, which was promulgated on July 12, 1989 with Commissioners Domingo H. Zapanta and Oscar N. Abella concurring and Commissioner Daniel M. Lucas, Jr. dissenting, disagreed with the labor arbiter on the "summary execution of the life of Master Iron Labor Union (MILU)" on the grounds that the Corporation did not specifically pray for the cancellation of MILU's registration and that pursuant to Articles 239 and 240 of the Labor Code, only the Bureau of Labor Relations may cancel MILU's license or certificate of registration. It also deleted the award of P10,000.00 as attorney's fees for lack of sufficient basis but it affirmed the labor arbiter with regard to the declaration of illegality of the strike and the termination of employment of certain employees and the rest of the dispositive portion of the labor arbiter's decision (Rollo, pp. 48-49).

In his dissent, Commissioner Lucas stated that he is "for the setting aside of the decision appealed from, and remanding of the case to the labor arbiter of origin, considering that respondent's countercharge or complaint for unfair labor practice was not resolved on the merits" (Rollo, p. 49).

MILU filed a motion for the reconsideration but the same was denied by the NLRC for lack of merit in its Resolution of August 9, 1989 (Rollo, p. 50).

Hence, the instant petition.[1]

Petitioners contend that notwithstanding the non-strike provision in the CBA, the strike they staged was legal because the reasons therefor are non-economic in nature. They assert that the NLRC abused its discretion in holding that there was "failure to exhaust the provision on grievance-procedure" in view of the fact that they themselves

sought grievance meetings but the Corporation ignored such requests. They charge the NLRC with bias in failing to give weight to the fact that the criminal charges against the individual petitioners were dismissed for failure of the CAPCOM soldiers to testify while the same individual strikers boldly faced the charges against them. Lastly, they aver that the NLRC abused its discretion in holding that the worker's offer to return to work was conditional.

In holding that the strike was illegal, the NLRC relied solely on the no-strike no-lockout provision of the CBA aforequoted. As this Court has held in Philippine Metal Foundries, Inc. vs. CIR (90 SCRA 135 [1979]), a no-strike clause in a CBA is applicable only to economic strikes. Corollarily, if the strike is founded on an unfair labor practice of the employer, a strike declared by the union cannot be considered a violation of the no-strike clause.

An economic strike is defined as one which is to force wage or other concessions from the employer which he is not required by law to grant (Consolidated Labor Association of the Philippines vs. Marsman & Co., Inc., 11 SCRA 589 [1964]). In this case, petitioners enumerated in their notice of strike the following grounds: violation of CBA or the Corporation's practice of subcontracting workers; discrimination; coercion of employees; unreasonable suspension of union officials, and unreasonable refusal to entertain grievance.

Private respondent contends that petitioners' clamor for the implementation of Section 2, Article VIII of the CBA on service allowances granted to workers who are assigned outside the company premises is an economic issue (Rollo, p. 70). On the contrary, petitioners decry the violation of the CBA, specifically the provision granting them service allowances. Petitioners are not, therefore, already asking for an economic benefit not already agreed upon, but are merely asking for the implementation of the same. They aver that the Corporation's practice of hiring subcontractors to do jobs outside of the company premises was a way "to dodge paying service allowance to the workers" (Rollo, pp. 61 & 70).

Much more than an economic issue, the said practice of the Corporation was a blatant violation of the CBA — an unfair labor practice on the part of the employer under Article 248(i) of the Labor

Code. Although the end result, should the Corporation be required to observe the CBA, may be economic in nature because the workers would then be given their regular working hours and therefore their just pay, not one of the said grounds is an economic demand within the meaning of the law on labor strikes. Professor Perfecto Fernandez, in his book Law on Strikes, Picketing and Lockouts (1981 edition, pp. 144-145), states that an economic strike involves issues relating to demands for higher wages, higher pension or overtime rates, pensions, profit sharing, shorter working hours, fewer work days for the same pay, elimination of night work, lower retirement age, more healthful working conditions, better health services, better sanitation and more safety appliances. The demands of the petitioners, being covered by the CBA, are definitely within the power of the Corporation to grant and therefore the strike was not an economic strike.

The other grounds, i.e., discrimination, unreasonable suspension of union officials and unreasonable refusal to entertain grievance, had been ventilated before the Labor Arbiter. They are clearly unfair labor practices as defined in Article 248 of the Labor Code.[2] The subsequent withdrawal of petitioners' complaint for unfair labor practice (NLRC-NCR Case No. 00-11-04132-87) which was granted by Labor Arbiter Ceferina Diosana who also considered the case closed and terminated (Rollo, pp. 97 & 109) may not, therefore, be considered as having converted their other grievances into economic demands.

Moreover, petitioners staged the strike only after the Corporation had failed to abide by the agreement forged between the parties upon the intervention of no less than the DOLE after the union had complained of the Corporation's unabated subcontracting of workers who performed the usual work of the regular workers. The Corporation's insistence that the hiring of casual employees is a management prerogative betrays its attempt to coat with legality the illicit curtailment of its employees' rights to work under the terms of the contract of employment and to a fair implementation of the CBA.

While it is true that an employer's exercise of management prerogatives, with or without reason, does not per se constitute unjust discrimination, such exercise, if clearly shown to be in grave abuse of

discretion, may be looked into by the courts (National Federation of Labor Unions vs. NLRC, 202 SCRA 346 [1991]). Indeed, the hiring, firing, transfer, demotion, and promotion of employees are traditionally identified as management prerogatives. However, they are not absolute prerogatives. They are subject to limitations found in law, a collective bargaining agreement, or general principles of fair play and Justice (University of Sto. Tomas vs. NLRC, 190 SCRA 758 [1990] citing Abbott Laboratories [Phil.]. Inc. vs. NLRC, 154 SCRA 713 [1987]. The Corporation's assertion that it was exercising a management prerogative in hiring outside workers being contrary to the contract of employment which, of necessity, states the expected wages of the workers, as well as the CBA, is therefore untenable.

Private respondents failure to traverse petitioners' allegation that the NLRC abused its discretion in holding that the provision on grievance procedure had not been exhausted clearly sustains such allegation and upholds the petitioners' contention that the Corporation refused to undergo said procedure. It should be remembered that a grievance procedure is part of the continuous process of collective bargaining (Republic Savings Bank vs. CIR, et al., 21 SCRA 226 [1967]). It is intended to promote a friendly dialogue between labor and management as a means of maintaining industrial peace. The Corporation's refusal to heed petitioners' request to undergo the grievance procedure clearly demonstrated its lack of intent to abide by the terms of the CBA.

Anent the NLRC's finding that Abulencia's offer to return to work is conditional, even a cursory reading of the letter aforequoted would reveal that no conditions had been set by petitioners. It is incongruous to consider as a "condition" the statement therein that the parties would continue talks for a peaceful working relationship ("tuloy tuloy ang ating pag-uusap sa ikatitiwasay ng ating relasyon"). Conferences form part of the grievance procedure and their mere mention in Abulencia's letter did not make the same "conditional".

In the same manner, the following findings of the Labor Arbiter showed the illegal breakup of the picket lines by the CAPCOM:

> "d) On 28 July 1987, CAPCOM soldiers, on surveillance mission, arrived at the picket line of respondents and

searches were made on reported deadly weapons and firearms in the possession of the strikers. Several bladed weapons and firearms in the possession of the strikers were confiscated by the CAPCOM soldiers, as a result of which, the apprehended strikers were brought to Camp Tomas Karingal in Quezon City for proper investigation and filing of the appropriate criminal charges against them. The strikers who were charged of illegal possession of deadly weapon and firearms were: Edgar Aranes, Wilfredo Abulencia, Ernesto dela Cruz, Beato Abogado, Lopito Saranilla, Restituto Payabyab, Jose Borromeo and Rogelio Cabana. Criminal informations were filed by Inquest Fiscal, marked as Exhibits 'E', 'E-1 to E-B'. These strikers were jailed for sometime until they were ordered released after putting up the required bail bond. Other strikers were also arrested and brought to Camp Tomas Karingal, and after proper investigation as to their involvement in the offense charged, they were released for lack of prima facie evidence. They are Edwin Velarde, Bayani Perez, Daniel Bacolon, Jesus Moises, Robert Aspurias and Benigno Barcena.

After the strikers who were arrested were brought to Camp Tomas Karingal on 28 July 1987, the rest of the strikers removed voluntarily their human and material barricades which were placed and posted at the road leading to the premises of the Company." (Rollo, p. 32).

The bringing in of CAPCOM soldiers to the peaceful picket lines without any reported outbreak of violence, was clearly in violation of the following prohibited activity under Article 264 of the Labor Code:

> "(d) No public official or employee, including officers and personnel of the New armed Forces of the Philippines or the Integrated National Police, or armed person, shall bring in, introduce or escort in any manner any individual who seeks to replace strikers in entering or leaving the premises of a strike area, or work in place of the strikers. The police force shall keep out of the picket lines unless actual violence or other criminal acts occur therein: Provided, That nothing herein shall be interpreted to prevent any

> public officer from taking any measure necessary to maintain peace and order, protect life and property, and/or enforce the law and legal order." (Emphasis supplied.)

As the Labor Arbiter himself found, no pervasive or widespread coercion or violence were perpetrated by the petitioners as to warrant the presence of the CAPCOM soldiers in the picket lines. In this regard, worth quoting is the following excerpt of the decision in Shell Oil Workers' union vs. Shell Company of the Philippines, Ltd., 39 SCRA 276 [1971], which was decided by the Court under the old Industrial Peace Act but which excerpt still holds true:

> "What is clearly within the law is the concerted activity of cessation of work in order that .. employer cease and desist from an unfair labor practice. That the law recognizes as a right. There is though a disapproval of the utilization of force to attain such an objective. For implicit in the very concept of a legal order is the maintenance of peaceful ways. A strike otherwise valid, if violent in character, may be placed beyond the pale. Care is to be taken, however, especially where an unfair labor practice is involved, to avoid stamping it with illegality just because it is tainted by such acts. To avoid rendering illusory the recognition of the right to strike, responsibility in such a case should be individual and not collective. A different conclusion would be called for, of course, if the existence of force while the strike lasts is pervasive and widespread, consistently and deliberately resorted to as a matter of policy. It could be reasonably concluded then that even if justified as to ends, it becomes illegal because of the means employed." (at p. 292.)

All told, the strike staged by the petitioners was a legal one even though it may have been called to offset what the strikers believed in good faith to be unfair labor practices on the part of the employer (Ferrer et al. vs. Court of Industrial Relations. et al., 17 SCRA 352 [1966]. Verily, such presumption of legality prevails even if the allegations of unfair labor practices are subsequently found out to be untrue (People's Industrial and Commercial Employees and Workers Org. [FFW] vs. People's Industrial and Commercial Corporation, 112 SCRA 440 [1982]). Consonant with these jurisprudential

pronouncements, is Article 263 of the Labor Code which clearly states "the policy of the State to encourage free trade unionism and free collective bargaining". Paragraph (b) of the sale article guarantees the workers' "right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection" and recognizes the "right of legitimate labor organizations to strike and picket and of employers to lockout" so long as these actions are "consistent with the national interest" and the grounds therefor do not involve inter-union and intra-union disputes.

The strike being legal, the NLRC gravely abused its discretion in terminating the employment of the individual petitioners, who, by operation of law, are entitled to reinstatement with three years backwages. Republic Act No. 6715 which amended Art. 279 of the Labor Code by giving "full backwages inclusive of allowances" to reinstated employees, took effect fifteen days from the publication of the law on March 21, 1989. The decision of the Labor Arbiter having been promulgated on March 16, 1988, the law is not applicable in this case.

WHEREFORE, the questioned Decision and Resolution of the NLRC as well as the decision of the Labor Arbiter are hereby **SET ASIDE** and the individual petitioners are reinstated to their positions, with three years backwages and without loss of seniority rights and other privileges. Further, respondent corporation is ordered to desist from subcontracting work usually performed by its regular workers.

SO ORDERED.

Feliciano, Bidin, Davide, Jr. and Romero, *JJ.*, concur.
Gutierrez, Jr., *J.*, On terminal leave.

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[1] The Solicitor General at first refused to file a comment on the petition in view of his stand which is contrary to that of the NLRC (Rollo, p. 81). Hence, the NLRC itself was directed to file comment on the petition in the Resolution of June 20, 1990 (Rollo, p. 83). The NLRC's Legal Division filed two motions for extension of time to file comment (Rollo, pp. 86 & 90). However, in the Resolution of November 14, 1990 (Rollo, p. 110), the Court

noted the private respondent's manifestation and motion "pending filing of comment by the Solicitor General on the petition." The NLRC Legal Division having failed to file comment within the extended period to file the same, in the Resolution of December 10, 1990, the Court dispensed with the filing of the NLRC's comment. On December 14, 1990, the Solicitor General, taking note of the Resolution of November 14, 1990, requested a new period within which to file comment for the NLRC. On January 21, 1991, he filed said comment praying that the NLRC decision be set aside and instead judgment be rendered directing the reinstatement of the individual petitioners with backwages and without loss of seniority rights and other employment privileges and enjoining the private respondent from subcontracting work regularly within the functions of petitioners (Rollo, p. 122).

[2] ART. 248. Unfair labor practices of employers. — It shall be unlawful for an employer to commit any of the following unfair labor practice:

(a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;

(c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizations or supporters;

(e) To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective agreement: Provided, that the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent;

(f) To dismiss, discharge, or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;

(g) To violate the duty to bargain collectively as prescribed by this Code;

(h) To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or

(i) To violate a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, only the officers and agents of corporations, associations or partnerships who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable."