SUPREME COURT
SECOND DIVISION

PHILIPPINE LONG DISTANCE TELEPHONE CO. INC.,

Petitioner,

-versus-

G.R. No. 162783
July 14, 2005

MANGGAGAWA NG KOMUNIKASYON SA PILIPINAS and the COURT OF APPEALS,

Respondents.

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D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari* which seeks the reversal and setting aside of the Decision[1] and Resolution[2] of the Court of Appeals dated 25 November 2003 and 19 March 2004, respectively. The said Decision and Resolution nullified the Order of

the Secretary of the Department of Labor and Employment (the Secretary) dated 02 January 2003 in NCMB-NCR-NS-11-405-02 and NCMB-NCR-NS-11-412-02 which enjoined the strike staged by the private respondent, and ordered the striking workers to return to work within twenty-four (24) hours, except those who were terminated from service due to redundancy. The exemption of the employees who were terminated from service due to redundancy from the return-to-work order is the hub of the controversy.

THE FACTS

Petitioner Philippine Long Distance Telephone Co., Inc. (PLDT) is a domestic corporation engaged in the telecommunications business. Private respondent Manggagawa ng Komunikasyon sa Pilipinas (MKP) is a labor union of rank and file employees in PLDT.

The members of respondent union learned that a redundancy program would be implemented by the petitioner. Thereupon it filed a Notice of Strike with the National Conciliation and Mediation Board (NCMB) on 04 November 2002 (NCMB-NCR-NS-11-405-02).[3] The Notice fundamentally contained the following:

UNFAIR LABOR PRACTICES, to wit:

1. PLDT's abolition of the Provisioning Support Division. Such action together with the consequent redundancy of PSD employees and the farming out of the jobs to casuals and contractuals, violates the duty to bargain collectively with MKP in good faith.

2. PLDT's unreasonable refusal to honor its commitment before this Honorable Office that it will provide MKP its comprehensive plan/s with respect to personnel downsizing/reorganization and closure of exchanges. Such refusal violates its duty to bargain collectively with MKP in good faith.

3. PLDT's continued hiring of "contractual", "temporary", "project" and "casual" employees for regular jobs performed by union members, resulting in the decimation of the union

membership and in the denial of the right to self-organization to the concerned employees.

4. PLDT's gross violation of the legal and CBA provisions on overtime work and compensation.

5. PLDT's gross violation of the CBA provisions on promotions and job grade re-evaluation or reclassification.

On 11 November 2002, another Notice of Strike was filed by the private respondent (NCMB-NCR-NS-11-412-02), which contained the following:

UNFAIR LABOR PRACTICES, to wit:

1. PLDT's alleged restructuring of its GMM Operation Services effective December 31, 2002 and its closure [o]f traffic operations at the Batangas, Calamba, Davao, Iloilo, Lucena, Malolos and Tarlac Regional Operator Services effective December 31, 2002. These twin moves unjustly imperil the job security of 503 of MKP's members and will substantially decimate the parties' bargaining unit. And in the light of PLDT's previous commitment before this Honorable Office that it will provide MKP its comprehensive plan/s with respect to personnel downsizing/reorganization and closure of exchanges and of its more recent declaration that the Davao operator services will not be closed, these moves are treacherous and are thus violative of PLDT's duty to bargain collectively with MKP in good faith. That these moves were effected with PLDT paying only lip service to its duties under Art. Iii, Section 9 of the parties' CBA signifies PLDT's gross violation of said CBA.

A number of conciliation meetings, conducted by the NCMB, National Capital Region, were held between the parties. However, these efforts proved futile.

On 23 December 2002, the private respondent staged a strike. On 31 December 2002, three hundred eighty three (383) union members

were terminated from service pursuant to PLDT's redundancy program.

On 02 January 2003, the Secretary, Patricia Sto. Tomas, issued an Order[4] in NCMB-NCR-NS-11-405-02 and NCMB-NCR-NS-11-412-02. Portions of the Order are reproduced hereunder:

> PLDT is the largest telecommunications entity in the Philippines whose operations are closely linked with the country's other telecommunication companies. It operates the country's international gateway system through which overseas telecommunications are made. Its operations are also vital to the services of cellular phone companies. The Company employs more or less 13,000 employees, about 7,000 of whom are members of the union. A work stoppage at PLDT, without doubt, will adversely affect the smooth operations of PLDT as well as those other telecommunication companies dependent upon the continuous operations of PLDT to the detriment of the public.
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> Undoubtedly, PLDT's operations is impressed with public and national interest as communication plays a vital role in furtherance of trade, commerce, and industry specially at this time of globalized economy where information is vital to economic survival. Work stoppage at PLDT will also adversely effect the ordinary day-to-day life of the public in areas of its franchise. Communication is also a component of state security.
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> x x x
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> These considerations have in the past guided this Office in consistently exercising its powers under Article 263(g) of the Labor Code, as amended, in handling labor disputes involving the Philippine Long Distance Telephone Company and other telecommunications companies.
>
> WHEREFORE, FOREGOING PREMISES CONSIDERED, this Office hereby CERTIFIES the labor dispute at the Philippine Long Distance Telephone Company to the National Labor

> Relations Commission (NLRC) for compulsory arbitration pursuant to Article 263(g) of the Labor Code as amended.
>
> Accordingly, the strike staged by the Union is hereby enjoined. All striking workers are hereby directed to return to work within twenty four (24) hours from receipt of this Order, except those who were terminated due to redundancy.[5] The employer is hereby enjoined to accept the striking workers under the same terms and conditions prevailing prior to the strike. The parties are likewise directed to cease and desist from committing any act that might worsen the situation.
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> A Motion for Partial Reconsideration[6] dated 13 January 2003 was filed by the private respondent with the Office of the Secretary. It alleged that the Order dated 02 January 2003 was issued by the Secretary with grave abuse of discretion. It contended that the petitioner should have been ordered to admit all workers under the same terms and conditions prevailing before the strike. Those who were dismissed pursuant to the petitioner's redundancy program should not have been excluded. In doing so, the Secretary, in consequence, prejudged the case and effectively declared the dismissal as valid.
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> The petitioner filed an Opposition to the "Motion for Partial Reconsideration"[7] dated 24 January 2003. It asserted that Article 263(g) of the Labor Code refers to a discretionary power on the part of the Secretary, and thus recognizes that the Secretary has broad powers and wide discretion to do as may be necessary to resolve the labor dispute.

On 24 February 2003, the Secretary issued another Order,[8] quoted hereunder:

> In the interest of expeditious labor justice and pursuant to the Order of this Office dated January 2, 2003 certifying the instant labor dispute to the National Labor Relations Commission (NLRC), and in order to avoid any splitting the cause of action and multiplicity of suits, which are obnoxious to the orderly administration of justice, the Motion for Partial

> Reconsideration filed by the Union, Manggagawa ng Komunikasyon sa Pilipinas (MKP) is merely NOTED without action.
>
> WHEREFORE, premises considered, let the Motion for Partial Reconsideration, together with documents filed in connection thereto, be immediately referred to the NLRC for its appropriate action.

Henceforth, this Office shall no longer entertain any motions of similar nature. The parties are hereby directed to address all their pleadings and motions to the NLRC.

As the private respondent had no other plain, speedy and adequate remedy in the ordinary course of law, it filed a petition for certiorari and mandamus[9] under Rule 65 of the 1997 Rules on Civil Procedure before the Court of Appeals. In the main, it argued that Article 263(g) of the Labor Code is very clear that once a strike is certified to the National Labor Relations Commission (NLRC) for compulsory arbitration, it is the direct mandate of the law that an employer should readmit all striking workers under the same terms and conditions prevailing before the strike. It prayed that the Orders of the Secretary dated 02 January 2003 and 24 February 2003 be set aside and, in their place, a new order be rendered directing PLDT to immediately readmit the alleged redundant employees under the same terms and conditions prevailing prior to the strike.

The petitioner filed its Comment[10] with the Court of Appeals and contended that there was no abuse of discretion when the Secretary issued the two assailed Orders. The Secretary, it asserted, validly exercised the plenary powers granted by Article 263(g) of the Labor Code. This proviso, it pointed out, refers to a discretionary power on the part of the Secretary, and recognizes that the latter has broad powers and wide discretion to do as may be necessary to resolve the labor dispute.

On 25 November 2003, the Court of Appeals promulgated its Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Petition is GRANTED and the assailed Order[s] of respondent Secretary in NCMB-NCR-NS-11-405-02 and NCMB-NCR-NS-11-412-02 [are] hereby SET ASIDE and NULLIFIED for being contrary to law. No costs.[11]

A Motion for Reconsideration[12] was filed by the petitioner before the Court of Appeals, which was, however, denied in a Resolution[13] dated 19 March 2004.

The petitioner then filed a Petition for Review on Certiorari under Rule 45[14] before this Court. The private respondent was thereafter required to file its Comment, which it did.

On 01 June 2005, the Court gave due course to the petition, and the case was subsequently submitted for decision.

ASSIGNMENT OF ERRORS

The petitioner assigns as errors the following:

I

> THE COURT OF APPEALS DID NOT RULE IN ACCORD WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT, WHICH RECOGNIZE THAT THE SECRETARY'S EXERCISE OF ART. 263(G), LABOR CODE POWERS IS BROAD, PLENARY AND ENTITLED TO RESPECT.

II

> THE COURT OF APPEALS DEPARTED FROM THE USUAL COURSE OF PROCEEDINGS WHEN IT ISSUED THE WRIT OF CERTIORARI DESPITE (A) THE ABSENCE OF "GRAVE ABUSE OF DISCRETION" BY THE SECRETARY OF LABOR; AND (B) THE AVAILABILITY OF OTHER RELIEF TO MKP.

III

THE MANIFEST AND GRAVE ERROR OF THE COURT OF APPEALS IS EVIDENT FROM THE DECISION'S INTERNAL INCONSISTENCIES.

IV

CONTRARY TO MKP'S ALLEGATIONS THAT IT WAS RENDERED WITH GRAVE ABUSE OF DISCRETION, THE SECRETARY'S ASSUMPTION ORDER IS PRACTICAL, PRESERVES THE PARTIES' RIGHTS TO REDRESS, AND IS NOT UNPRECEDENTED.[15]

ISSUES

Culled from the above assignment of errors, the issues that must be addressed by this Court are:

I

WHETHER OR NOT THE SPECIAL CIVIL ACTION FOR CERTIORARI INSTITUTED BY THE RESPONDENT BEFORE THE COURT OF APPEALS WAS PROCEDURALLY PRECISE; and

II

WHETHER THE SUBJECT ORDERS OF THE SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT EXCLUDING FROM THE RETURN-TO-WORK ORDER THE WORKERS DISMISSED DUE TO THE REDUNDANCY PROGRAM OF PETITIONER, ARE VALID OR NOT.

THE COURT'S RULINGS

On the procedural issue:

The petitioner is of the view that a special civil action for certiorari which was instituted by the private respondent before the Court of Appeals was not the proper remedy. It maintained that the Court of Appeals should have recognized that the Secretary did not abuse her discretion in any way, much less in a grave and patent, or an arbitrary or despotic manner, or that she somehow exercised her judgment in a capricious and whimsical way, which is required for the certiorari writ to issue. It also averred that the private respondent had other available reliefs, and that its plainer, speedier and adequate recourse is the proceedings now underway before the NLRC, to which the Secretary referred the parties' labor dispute.[16]

In its answer, the private respondent averred that the special civil action for certiorari filed with the Court of Appeals was not barred by the supposed other remedy available to MKP. The petitioner, in propositioning that the private respondent should have pursued its relevant claim before the NLRC, is in fact wrongly suggesting that the NLRC can decide whether the Secretary had indeed acted in grave abuse of discretion when she excluded 383 of its members from returning to work in her certification order.[17]

We rule that the institution of the special civil action for certiorari before the Court of Appeals was procedurally sound.

Section 1, Rule 65 of the 1997 Rules on Civil Procedure provides:

> Section 1. Petition for *Certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may

> file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

It is the position of the private respondent that the Secretary committed an error of jurisdiction when she excluded from her return-to-work order the alleged redundant strikers, which should be corrected by a special civil action for certiorari. While she has the power to certify the strike to the NLRC for compulsory arbitration, she did not have the power to exclude a certain class of strikers from returning to work. Further, the private respondent contended that in issuing her assailed orders, the Secretary exceeded her authority.[18]

The position taken by the private respondent is correct. The special civil action for certiorari was justly availed of by the private respondent.

In a special civil action of certiorari, the only question that may be raised is whether or not the respondent has acted without or in excess of jurisdiction or with grave abuse of discretion.[19] This was precisely what was raised by the private respondent in its petition before the Court of Appeals. The respondent asserted in the court a quo that the Secretary violated the law and jurisprudence, and exceeded her authority when she expressly prevented from returning to work those who were terminated due to alleged redundancy while the strike was ongoing.[20]

The remedy of an aggrieved party in a Decision or Resolution of the Secretary is to timely file a motion for reconsideration as a precondition for any further or subsequent remedy, and then seasonably file a special civil action for certiorari under Rule 65 of the 1997 Rules on Civil Procedure.[21]

This was precisely done by the private respondent.

On the substantive issue:

Article 263(g) of the Labor Code, as amended, which is pertinent to the resolution of the case at bar, provides:

> Art 263. Strikes, picketing, and lockouts. –
>
> x x x
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> (g) When in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. 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 shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. (Emphasis supplied.)

In deciding the case, the Court of Appeals made the following observation:

> The phrase "all striking or locked out employees" and "readmit all workers" does not distinguish or qualify and emphatically is a catch all embracing enumeration of who should be returned to work. "Where the law does not distinguish, courts should not distinguish (Recaña vs. Court of Appeals, 349 SCRA 24 [2001])."[22]

In the main, the petitioner contends that the Court of Appeals gave a narrow and too literal interpretation of Article 263(g) to justify its reversal of the Secretary's "qualified" return-to-work Order. The Court of Appeals erroneously favored a rule of statutory construction:

ubi lex non distinguit nec nos distinguere debemos. Where the law does not distinguish, courts should not distinguish.[23]

The Secretary's power, according to the petitioner, is broad and plenary, and is granted great breadth of discretion. Secretary Sto. Tomas, in issuing the assailed orders, acted with appropriate discretion, because she was secure in the knowledge that the courts have recognized her broad and plenary powers under Art. 263(g).

The private respondent, in its Comment, contended that it is untenable for PLDT to stubbornly argue that the Secretary has such great breadth of discretion that even encompasses her questioned directives.[24] While conceding that the Secretary's powers under Art. 263(g) may undoubtedly be plenary and discretionary, the same are not absolute and still subject to the limitations set by law.[25]

The petition must fail.

When the Secretary exercises the powers granted by Article 263(g) of the Labor Code, he is, indeed, granted great breadth of discretion. However, the application of this power is not without limitation, lest the Secretary would be above the law. Discretion is defined as the act or the liberty to decide, according to the principles of justice and one's ideas of what is right and proper under the circumstances, without wilfullness or favor.[26] Where anything is left to any person to be done according to his discretion, the law intends it must be done with a sound discretion, and according to law. The discretion conferred upon officers by law is not a capricious or arbitrary discretion, but an impartial discretion guided and controlled in its exercise by fixed legal principles. It is not a mental discretion to be exercised *ex gratia*, but a legal discretion to be exercised in conformity with the spirit of the law, and in a manner to subserve and not to impede or defeat the ends of substantial justice.[27] From the foregoing, it is quite apparent that no matter how broad the exercise of discretion is, the same must be within the confines of law. Thus, the wide latitude of discretion given the Secretary under Art. 263(g) shall and must be within the sphere of law.

Our ruling in the case of Phimco Industries, Inc. vs. Brillantes[28] was most appropriately and auspiciously alluded to by the private respondent. In this case we held:

> This is precisely why the law sets and defines the standard: even in the exercise of his power of compulsory arbitration under Article 263(g) of the Labor Code, the Secretary must follow the law. For "when an overzealous official by-passes the law on the pretext of retaining a laudable objective, the intendment or purpose of the law will lose its meaning as the law itself is disregarded."
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> As Article 263(g) is clear and unequivocal in stating that ALL striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit ALL workers under the same terms and conditions prevailing before the strike or lockout, then the unmistakable mandate must be followed by the Secretary.

In the case of Trans-Asia Shipping Lines, Inc. – Unlicensed Crews Employees Union – Associated Labor Unions (TASLI–A LU) vs. Court of Appeals,[29] we held:

> Assumption of jurisdiction over a labor dispute, or as in this case the certification of the same to the NLRC for compulsory arbitration, always co-exists with an order for workers to return to work immediately and for employers to readmit all workers under the same terms and conditions prevailing before the strike or lockout.

Time and again, this Court has held that when an official bypasses the law on the asserted ground of attaining a laudable objective, the same will not be maintained if the intendment or purpose of the law would be defeated.[30]

One last piece. Records would show that the strike occurred on 23 December 2002. Article 263(g) directs that the employer must readmit all workers under the same terms and conditions prevailing before the strike. Since the strike was held on the aforementioned

date, then the condition prevailing before it, which was the condition present on 22 December 2002, must be maintained.

Undoubtedly, on 22 December 2002, the members of the private respondent who were dismissed due to alleged redundancy were still employed by the petitioner and holding their respective positions. This is the status quo that must be maintained.

WHEREFORE, finding no reversible error in the assailed Decision and Resolution of the Court of Appeals dated 25 November 2003 and 19 March 2004 respectively, both are hereby **AFFIRMED**. Costs against petitioner.

SO ORDERED.

PUNO, *J.*, *(Chairman)*, AUSTRIA-MARTINEZ, CALLEJO, SR., and TINGA, *JJ.*, Concur.

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[1] Rollo, pp. 33-41; penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong concurring.
[2] Rollo, p. 43.
[3] Rollo, pp. 64-65.
[4] Rollo, pp. 60-62.
[5] Emphasis supplied.
[6] Rollo, pp. 68-75.
[7] Rollo, pp. 76-82.
[8] Rollo, p. 63.
[9] CA Rollo, pp. 2-17.
[10] CA Rollo, pp. 67-75.
[11] Rollo, p. 41.
[12] CA Rollo, pp. 139-154.
[13] CA Rollo, p. 196.
[14] Rollo, pp. 3-26.
[15] Rollo, p. 9.
[16] Rollo, p. 15.
[17] Rollo, p. 137.
[18] CA Rollo, p. 13.
[19] Arceta vs. Mangrobang, G.R. No. 152895, 15 June 2004.
[20] CA Rollo, p. 8.

[21] University of Immaculate Concepcion vs. Secretary of Labor and Employment, G.R. No. 143557, 25 June 2004, citing National Federation of Labor vs. Laguesma, G.R. No. 123426, 10 March 1999.
[22] Rollo, p. 39.
[23] Rollo, p. 11.
[24] Rollo, p. 134.
[25] Rollo, p. 135.
[26] Lamb vs. Phipps, 22 Phil. 488.
[27] See dissenting opinion of J. Trent in Lamb vs. Phipps, 22 Phil 488.
[28] G.R. No. 120751, 17 March 1999, 304 SCRA 747, citing Colgate Palmolive Philippines, Inc. vs. Ople, G.R. No. L-73681, 30 June 1988, 163 SCRA 323,330.
[29] G.R. No. 145428, 07 July 2004, citing Asian Transmission Corporation vs. NLRC, G.R. No. 88725, 22 November 1989, 179 SCRA 582.
[30] Manila Diamond Hotel Employees' Union vs. The Court of Appeals, et al., G.R. No. 140518, 16 December 2004, citing Colgate-Palmolive Phils., Inc. vs. Ople, 163 SCRA 323, 330 (1998).