SUPREME COURT
FIRST DIVISION

SANYO PHILIPPINES WORKERS UNION-PSSLU LOCAL CHAPTER NO. 109 AND/OR ANTONIO DIAZ, PSSLU NATIONAL PRESIDENT,
***Petitioners*,**

-versus-

G.R. No. 101619
July 8, 1992

HON. POTENCIANO S. CANIZARES, in his capacity as Labor Arbiter; BERNARDO YAP, RENATO BAYBON, SALVADOR SOLIBEL, ALLAN MISTERIO, EDGARDO TANGKAY, LEONARDO DIONISIO, ARNEL SALVO, REYNALDO RICOHERMOSO, BENITO VALENCIA, GERARDO LASALA AND ALEXANDER ATANASIO,
***Respondents*.**
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D E C I S I O N

MEDIALDEA, *J.*:

This Petition seeks to nullify: 1) the order of respondent Labor Arbiter POTENCIANO Cañizares dated August 6, 1991 deferring the

resolution of the motion to dismiss the complaint of private respondents filed by petitioner Sanyo Philippines Workers Union-PSSLU Local Chapter No. 109 (PSSLU, for brevity) on the ground that the labor arbiter had no jurisdiction over said complaint and 2) the order of the same respondent clarifying its previous order and ruling that it had jurisdiction over the case.

The facts of the case are as follows:

PSSLU had an existing CBA with Sanyo Philippines Inc. (Sanyo, for short) effective July 1, 1989 to June 30, 1994. The same CBA contained a union security clause which provided:

> "Section 2. All members of the union covered by this agreement must retain their membership in good standing in the union as condition of his/her continued employment with the company. The union shall have the right to demand from the company the dismissal of the members of the union by reason of their voluntary resignation from membership or willful refusal to pay the Union Dues or by reasons of their having formed, organized, joined, affiliated, supported and/or aided directly or indirectly another labor organization, and the union thus hereby guarantees and holds the company free and harmless from any liability whatsoever that may arise consequent to the implementation of the provision of this article." (pp. 5-6, Rollo)

In a letter dated February 7, 1990, PSSLU, through its national president, informed the management of Sanyo that the following employees were notified that their membership with PSSLU were cancelled for anti-union, activities, economic sabotage, threats, coercion and intimidation, disloyalty and for joining another union: Benito Valencia, Bernardo Yap, Arnel Salvo, Renato Baybon, Eduardo Porlaje, Salvador Solivel, Conrado Sarol, Angelito Manzano, Allan Misterio, Reynaldo Ricohermoso, Mario Ensay and Froilan Plamenco. The same letter informed Sanyo that the same employees refused to submit themselves to the union's grievance investigation committee (p. 53, Rollo). It appears that many of these employees were not members of PSSLU but of another union, KAMAO.

On February 14, 1990, some officers of KAMAO, which included Yap, Salvo, Baybon, Solibel, Valencia, Misterio and Ricohermoso executed a pledge of cooperation with PSSLU promising cooperation with the latter union and among others, respecting, accepting and honoring the CBA between Sanyo and specifically:

> "1. That we shall remain officers and members of KAMAO until we finally decide to rejoin Sanyo Phil. Workers Union-PSSLU;
>
> "2. That henceforth, we support and cooperate with the duly elected union officers of Sanyo Phil. Workers Union-PSSLU in any and all its activities and programs to insure industrial peace and harmony;
>
> "3. That we collectively accept, honor, and respect the Collective Bargaining Agreement entered into between Sanyo Phil. Inc. and Sanyo Phil. Workers Union-PSSLU dated February 7, 1990;
>
> "4. That we collectively promise not to engage in any activities inside company premises contrary to law, the CBA and existing policies;
>
> "5. That we are willing to pay our individual agency fee in accordance with the provision of the Labor Code, as amended;
>
> "6. That we collectively promise not to violate this pledge of cooperation." (p. 55, Rollo)

On March 4, 1991, PSSLU through its national and local presidents, wrote another letter to Sanyo recommending the dismissal of the following non-union workers: Bernardo Yap, Arnel Salvo, Renato Baybon, Reynaldo Ricohermoso, Salvador Solibel, Benito Valencia, and Allan Misterio, allegedly because: 1) they were engaged and were still engaging in anti-union activities; 2) they willfully violated the pledge of cooperation with PSSLU which they signed and executed on February 14, 1990; and 3) they threatened and were still threatening with bodily harm and even death the officers of the union (pp. 37-38, Rollo)

Also recommended for dismissal were the following union members who allegedly joined, supported and sympathized with a minority union, KAMAO: Gerardo Lasala, Legardo Tangkay, Alexander Atanacio, and Leonardo Dionisio.

The last part of the said letter provided:

> "The dismissal of the above-named union members is without prejudice to receive (sic) their termination pay if management decide (sic) to grant them benefits in accordance with law. The union hereby holds the company free and harmless from any liability that may arise consequent to the implementation by the company of our recommendations for the dismissal of the above-mentioned workers.
>
> "It is however suggested that the Grievance Machinery be convened pursuant to Section 3, Article XV of the Collective Bargaining Agreement (CBA) before their actual dismissal from the company." (p. 38, Rollo)

Pursuant to the above letter of the union, the company sent a memorandum to the same workers advising them that:

> "As per the attached letter from the local union President SPWU and the federation President, PSSLU, requesting management to put the herein mentioned employees on preventive suspension, effective immediately, preliminary to their subsequent dismissal, please be informed that the following employees are under preventive suspension effective March 13, 1991 to wit:
>
> 1. Bernardo Yap
> 2. Renato Baybon
> 3. Salvador Solibel
> 4. Allan Misterio
> 5. Edgardo Tangkay
> 6. Leonardo Dionisio
> 7. Arnel Salvo
> 8. Reynaldo Ricohermoso

9. Benito Valencia
10. Gerardo Lasala
11. Alexander Atanacio

> "The above listed employees shall not be allowed within company premises without the permission of management.
>
> "As per request of the union's letter to management, should the listed employees fail to appeal the decision of the union for dismissal, then effective March 23, 1991, said listed employees shall be considered dismissed from the company." (p. 39, Rollo)

The company received no information on whether or not said employees appealed to PSSLU. Hence, it considered them dismissed as of March 23, 1991 (p. 40, Rollo)

On May 20, 1991, the dismissed employees filed a complaint (pp. 32-35, Rollo) with the NLRC for illegal dismissal. Named respondents were PSSLU and Sanyo.

On June 20, 1991, PSSLU filed a motion to dismiss the complaint alleging that the Labor Arbiter was without jurisdiction over the case, relying on Article 217 (c) of P.D. 442, as amended by Section 9 of Republic Act No. 6715 which provides that cases arising from the interpretation or implementation of the collective bargaining agreements shall be disposed of by the labor arbiter by referring the same to the grievance machinery and voluntary arbitration.

The complainants opposed the motion to dismiss complaint on these grounds: 1) the series of conferences before the National Conciliation and Mediation Board had been terminated; 2) the NLRC Labor Arbiter had jurisdiction over the case which was a termination dispute pursuant to Article 217 (2) of the Labor Code; and 3) there was nothing in the CBA which needs interpretation or implementation (pp. 44-46, Rollo).

On August 7, 1991, the respondent Labor Arbiter issued the first questioned order. It held that:

x x x

> "While there are seemingly contradictory provisions in the aforecited article of the Labor Code, the better interpretation will be to give effect to both, and termination dispute being clearly spelled as falling under the jurisdiction of the Labor Arbiter, the same shall be respected. The jurisdiction of the grievance machinery and voluntary arbitration shall cover other controversies.
>
> "However, the resolution of the instant issue shall be suspended until both parties have fully presented their respective positions and the said issue shall be included in the final determination of the above-captioned case.
>
> "WHEREFORE, the instant Motions to Dismiss are hereby held pending.
>
> "Consequently, the parties are hereby directed to submit their position papers and supporting documents pursuant to Section 2, Rule VII of the Rules of the Commission on or before the hearing on the merit of this case scheduled on August 29, 1991 at 11:00 a.m." (p. 23, Rollo)

On August 27, 1991, PSSLU filed another motion to resolve motion to dismiss complaint with a prayer that the Labor Arbiter resolve the issue of jurisdiction.

On September 4, 1991, the respondent Labor Arbiter issued the second questioned order which held that it was assuming jurisdiction over the complaint of private respondents, in effect, holding that it had jurisdiction over the case.

On September 19, 1991, PSSLU filed this petition alleging that public respondent Labor Arbiter cannot assume jurisdiction over the complaint of public respondents because it had no jurisdiction over the dispute subject of said complaint. It is their submission that under Article 217(c) of the Labor Code, in relation to Article 261 thereof, as well as Policy Instruction No. 6 of the Secretary of Labor, respondent Arbiter has no jurisdiction and authority to take cognizance of the complaint brought by private respondents which

involves the implementation of the union security clause of the CBA. The function of the Labor Arbiter under the same law and rule is to refer this case to the grievance machinery and voluntary arbitration.

In its comment, private respondents argue that Article 217(a) 2 and 4 of the Labor Code is explicit, to wit:

> "ART. 217. Jurisdiction of the Labor Arbiters and the Commission.
>
> "a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide the following cases involving all workers,
>
> x x x
>
> "2) Termination disputes,
>
> x x x
>
> "4) Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations."

The private respondents also claimed that insofar as Salvo, Baybon, Ricohermoso, Solibel, Valencia, Misterio and Lasala were concerned, they joined another union, KAMAO during the freedom period which commenced on May 1, 1989 up to June 30, 1989 or before the effectivity of the July 1, 1989 CBA. Hence, they are not covered by the provisions of the CBA between Sanyo and PSSLU. Private respondents Tanghay, Atanacio and Dionisio admit that in September 1989, they resigned from KAMAO and rejoined PSSLU (pp. 66(a)-68, Rollo).

For its part, public respondent, through the Office of the Solicitor General, is of the view that a distinction should be made between a case involving "interpretation or implementation of collective bargaining agreement or "interpretation" or "enforcement" of company personnel policies, on the one hand and a case involving termination, on the other hand. It argued that the case at bar does not involve an "interpretation or implementation" of a collective

bargaining agreement or "interpretation or enforcement" of company policies but involves a "termination." Where the dispute is just in the interpretation, implementation or enforcement stage, it may be referred to the grievance machinery set up in the CBA or by voluntary arbitration. Where there was already actual termination, i.e., violation of rights, it is already cognizable by the Labor Arbiter.

Article 217 of the Labor Code defines the jurisdiction of the Labor Arbiter.

> "Article 217. Jurisdiction of Labor Arbiters and the Commission. a) Except as otherwise provided under this Code the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide within thirty (30) calendar days after the submission of the case by the parties for decision without extension even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:
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> 1. Unfair labor practice cases;
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> 2. Termination disputes;
>
> 3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
>
> 4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
>
> 5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts;
>
> 6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household

service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements."

It is clear from the above article that termination cases fall under the jurisdiction of the Labor Arbiter. It should be noted however that said article at the outset excepted from the said provision cases otherwise provided for in other provisions of the same Code, thus the phrase "Except as otherwise provided under this Code." Under paragraph (c) of the same article, it is expressly provided that "cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation and enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

It was provided in the CBA executed between PSSLU and Sanyo that a member's voluntary resignation from membership, willful refusal to pay union dues and his/her forming, organizing, joining, supporting, affiliating or aiding directly or indirectly another labor union shall be a cause for it to demand his/her dismissal from the company. The demand for the dismissal and the actual dismissal by the company on any of these grounds is an enforcement of the union security clause in the CBA. This act is authorized by law provided that enforcement should not be characterized by arbitrariness (Manila Mandarin Employee Union vs. NLRC, G.R. No. 76989, 29 Sept. 1987, 154 SCRA 368) and always with due process (Tropical Hut Employees Union vs. Tropical Food Market, Inc., L-43495-99. Jan. 20, 1990).

The reference to a Grievance Machinery and Voluntary Arbitrators for the adjustment or resolution of grievances arising from the interpretation or implementation of their CBA and those arising from the interpretation or enforcement of company personnel policies is mandatory. The law grants to voluntary arbitrators original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies (Art. 261, Labor Code).

In its order of September 4, 1991, respondent Labor Arbiter explained its decision to assume jurisdiction over the complaint, thus:

> "The movants failed to show (1) the provisions of the CBA to be implemented, and (2) the grievance machinery and voluntary arbitrator already formed and properly named. What self-respecting judge would `refer a case from his responsibility to a shadow? To whom really and specifically shall the case be indorsed or referred? In brief, they could have shown the (1) existence of the grievance machinery and (2) its being effective.
>
> "Furthermore, the aforecited law merely directs the `referral' cases. It does not expressly confer jurisdiction on the grievance machinery or voluntary arbitration panel, created or to be created. Article 260 of the Labor Code describes the formation of the grievance and voluntary arbitration. All this of course shall be on voluntary basis. Is there another meaning of voluntary arbitration? (The herein complainant have strongly opposed the motion to dismiss. Would they go willingly to the grievance machinery and voluntary arbitration which are installed by their opponents if directed to do so?)" (p. 26, Rollo)

The failure of the parties to the CBA to establish the grievance machinery and its unavailability is not an excuse for the Labor Arbiter to assume jurisdiction over disputes arising from the implementation and enforcement of a provision in the CBA. In the existing CBA between PSSLU and Sanyo, the procedure and mechanics of its establishment had been clearly laid out as follows:

> "ARTICLE XV — GRIEVANCE MACHINERY.

"Section 1. Whenever any controversy should arise between the company and the union as to the interpretation or application of the provision of this agreement, or whenever any difference shall exist between said parties relative to the terms and conditions of employment, an earnest effort shall be made to settle such controversy in substantially the following manner:

First Step. (Thru Grievance) The dispute shall initially be resolved by conference between the management to be represented by the Management's authorized representatives on the one hand, and the Union to be represented by a committee composed of the local union president and one of the local union officer appointed by the local union president, on the other hand within three days from date of concurrence of grievance action. In the absence of the local union president, he (shall) appoint another local union officer to take over in his behalf. Where a controversy personally affects an employee, he shall not be allowed to be a member of the committee represented by the union.

Second Step. (Thru Arbitrator mutually chosen) Should such dispute remain unsettled after twenty (20) days from the first conference or after such period as the parties may agree upon in specified cases, it shall be referred to an arbitrator chosen by the consent of the company and the union. In the event of failure to agree on the choice of voluntary arbitrator, the National Conciliation and Mediation Board, Department of Labor and Employment shall be requested to choose an Arbitrator in accordance with voluntary arbitration procedures.

"Section 2. The voluntary Arbitrator shall have thirty (30) days to decide the issue presented to him and his decision shall be final, binding and executory upon the parties. He shall have no authority to add or subtract from and alter any provision of this agreement. The expenses of voluntary arbitration including the fee of the arbitrator shall be shared equally by the company and the union. In the event the arbitrator chosen either by the mutual agreement of the company and the union by (the) way of voluntary arbitration or by the National Conciliation and

> Meditation Board (NCMB) failed to assume his position, died, become disabled or any other manner failed to function and or reach a decision, the company and the union shall by mutual agreement choose another arbitrator; in the event of failure to agree on the choice of a new voluntary arbitrator, the matter shall again be referred back to the NCMB who shall be requested again to choose a new arbitrator as above provided. Any grievance not elevated or processed as above provided within the stipulated period shall be deemed settled and terminated.
>
> "Section 3. It is hereby agreed that decisions of the union relative to their members, for implementation by the COMPANY, should be resolved for review thru the Grievance Machinery; and management be invited to participate in the Grievance procedure to be undertaken by the union relative to (the) case of the union against members." (pp. 134-135, Rollo)

All that needs to be done to set the machinery into motion is to call for the convening thereof. If the parties to the CBA had not designated their representatives yet, they should be ordered to do so.

The procedure introduced in RA 6715 of referring certain grievances originally and exclusively to the grievance machinery and when not settled at this level, to a panel of voluntary arbitrators outlined in CBA's does not only include grievances arising from the interpretation or implementation of the CBA but applies as well to those arising from the implementation of company personnel policies. No other body shall take cognizance of these cases. The last paragraph of Article 261 enjoins other bodies from assuming jurisdiction thereof:

> "The commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the Voluntary Arbitrator or panel of voluntary arbitrators and shall immediately dispose and refer the same to the grievance machinery or voluntary arbitration provided in the Collective Bargaining Agreement."

In the instant case, however, We hold that the Labor Arbiter and not the Grievance Machinery provided for in the CBA has the jurisdiction to hear and decide the complaints of the private respondents. While it appears that the dismissal of the private respondents was made upon the recommendation of PSSLU pursuant to the union security clause provided in the CBA, We are of the opinion that these facts do not come within the phrase "grievances arising from the interpretation or implementation of (their) Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies," the jurisdiction of which pertains to the Grievance Machinery or thereafter, to a voluntary arbitrator or panel of voluntary arbitrators. Article 260 of the Labor Code on grievance machinery and voluntary arbitrator states that "(t)he parties to a Collective Bargaining Agreement shall include therein provisions that will ensure the mutual observance of its terms and conditions. They shall establish a machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of their Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies". It is further provided in said article that the parties to a CBA shall name or designate their respective representatives to the grievance machinery and if the grievance is not settled in that level, it shall automatically be referred to voluntary arbitrators (or panel of voluntary arbitrators designated in advance by the parties. It need not be mentioned that the parties to a CBA are the union and the company. Hence, only disputes involving the union and the company shall be referred to the grievance machinery or voluntary arbitrators.

In the instant case, both the union and the company are united or have come to an agreement regarding the dismissal of private respondents. No grievance between them exists which could be brought to a grievance machinery. The problem or dispute in the present case is between the union and the company on the one hand and some union and non-union members who were dismissed, on the other hand. The dispute has to be settled before an impartial body. The grievance machinery with members designated by the union and the company cannot be expected to be impartial against the dismissed employees. Due process demands that the dismissed workers grievances be ventilated before an impartial body. Since there has

already been an actual termination, the matter falls within the jurisdiction of the Labor Arbiter.

ACCORDINGLY, the petition is **DISMISSED**. Public respondent Labor Arbiter is directed to resolve the complaints of private respondents immediately.

SO ORDERED.

Cruz, Griño-Aquino and Bellosillo, *JJ.*, concur.
