

## THIRD DIVISION

[ G.R. No. 170830, August 11, 2010 ]

**PHIMCO INDUSTRIES, INC., PETITIONER, VS. PHIMCO INDUSTRIES LABOR ASSOCIATION (PILA), AND ERLINDA VAZQUEZ, RICARDO \* SACRISTAN, LEONIDA CATALAN, MAXIMO PEDRO, NATHANIELA DIMACULANGAN, \* RODOLFO MOJICO, ROMEO CARAMANZA, REYNALDO GANITANO, ALBERTO BASCONCILLO, \*\* AND RAMON FALCIS, IN THEIR CAPACITY AS OFFICERS OF PILA, AND ANGELITA BALOSA, \*\*\* DANILO BANAAG, ABRAHAM CADAY, ALFONSO CLAUDIO, FRANCISCO DALISAY, \*\*\* ANGELITO DEJAN, \*\*\*\*\* PHILIP GARCES, NICANOR ILAGAN, FLORENCIO LIBONGCOGON, \*\*\*\*\* NEMESIO MAMONONG, TEOFILO MANALILI, ALFREDO PEARSON, \*\*\*\*\* MARIO PEREA, \*\*\*\*\* RENATO RAMOS, MARIANO ROSALES, PABLO SARMIENTO, RODOLFO TOLENTINO, FELIPE VILLAREAL, ARSENIO ZAMORA, DANILO BALTAZAR, ROGER CABER, \*\*\*\*\* REYNALDO CAMARIN, BERNARDO CUADRA, \*\*\*\*\* ANGELITO DE GUZMAN, GERARDO FELICIANO, \*\*\*\*\* ALEX IBAÑEZ, BENJAMIN JUAN, SR., RAMON MACAALAY, GONZALO MANALILI, RAUL MICIANO, HILARIO PEÑA, TERESA PERMOCILLO, \*\*\*\*\* ERNESTO RIO, RODOLFO SANIDAD, RAFAEL STA. ANA, JULIAN TUGUIN AND AMELIA ZAMORA, AS MEMBERS OF PILA, RESPONDENTS.**

## DECISION

**BRION, J.:**

Before us is the petition for review on *certiorari*<sup>[1]</sup> filed by petitioner Phimco Industries, Inc. (*PHIMCO*), seeking to reverse and set aside the decision,<sup>[2]</sup> dated February 10, 2004, and the resolution,<sup>[3]</sup> dated December 12, 2005, of the Court of Appeals (CA) in CA-G.R. SP No. 70336. The assailed CA decision dismissed PHIMCO's petition for *certiorari* that challenged the resolution, dated December 29, 1998, and the decision, dated February 20, 2002, of the National Labor Relations Commission (NLRC); the assailed CA resolution denied PHIMCO's subsequent motion for reconsideration.

### FACTUAL BACKGROUND

The facts of the case, gathered from the records, are briefly summarized below.

PHIMCO is a corporation engaged in the production of matches, with principal address at Phimco Compound, Felix Manalo St., Sta. Ana, Manila. Respondent

Phimco Industries Labor Association (*PILA*) is the duly authorized bargaining representative of PHIMCO's daily-paid workers. The 47 individually named respondents are PILA officers and members.

When the last collective bargaining agreement was about to expire on December 31, 1994, PHIMCO and PILA negotiated for its renewal. The negotiation resulted in a deadlock on economic issues, mainly due to disagreements on salary increases and benefits.

On March 9, 1995, PILA filed with the National Conciliation and Mediation Board (*NCMB*) a Notice of Strike on the ground of the bargaining deadlock. Seven (7) days later, or on March 16, 1995, the union conducted a strike vote; a majority of the union members voted for a strike as its response to the bargaining impasse. On March 17, 1995, PILA filed the strike vote results with the NCMB. Thirty-five (35) days later, or on April 21, 1995, PILA staged a strike.

On May 3, 1995, PHIMCO filed with the NLRC a petition for preliminary injunction and temporary restraining order (*TRO*), to enjoin the strikers from preventing - through force, intimidation and coercion - the ingress and egress of non-striking employees into and from the company premises. On May 15, 1995, the NLRC issued an *ex-parte* TRO, effective for a period of twenty (20) days, or until June 5, 1995.

On June 23, 1995, PHIMCO sent a letter to thirty-six (36) union members, directing them to explain within twenty-four (24) hours why they should not be dismissed for the illegal acts they committed during the strike. Three days later, or on June 26, 1995, the thirty-six (36) union members were informed of their dismissal.

On July 6, 1995, PILA filed a complaint for unfair labor practice and illegal dismissal (*illegal dismissal case*) with the NLRC. The case was docketed as NLRC NCR Case No. 00-07-04705-95, and raffled to Labor Arbiter (*LA*) Pablo C. Espiritu, Jr.

On July 7, 1995, then Acting Labor Secretary Jose S. Brillantes assumed jurisdiction over the labor dispute, and ordered all the striking employees (except those who were handed termination papers on June 26, 1995) to return to work within twenty-four (24) hours from receipt of the order. The Secretary ordered PHIMCO to accept the striking employees, under the same terms and conditions prevailing prior to the strike.<sup>[4]</sup> On the same day, PILA ended its strike.

On August 28, 1995, PHIMCO filed a Petition to Declare the Strike Illegal (*illegal strike case*) with the NLRC, with a prayer for the dismissal of PILA officers and members who knowingly participated in the illegal strike. PHIMCO claimed that the strikers prevented ingress to and egress from the PHIMCO compound, thereby paralyzing PHIMCO's operations. The case was docketed as NLRC NCR Case No. 00-08-06031-95, and raffled to LA Jovencio LI. Mayor.

On March 14, 1996, the respondents filed their Position Paper in the illegal strike case. They countered that they complied with all the legal requirements for the staging of the strike, they put up no barricade, and conducted their strike peacefully, in an orderly and lawful manner, without incident.

LA Mayor decided the case on February 4, 1998,<sup>[5]</sup> and found the strike illegal; the

respondents committed prohibited acts during the strike by blocking the ingress to and egress from PHIMCO's premises and preventing the non-striking employees from reporting for work. He observed that it was not enough that the picket of the strikers was a moving picket, since the strikers should allow the free passage to the entrance and exit points of the company premises. Thus, LA Mayor declared that the respondent employees, PILA officers and members, have lost their employment status.

On March 5, 1998, PILA and its officers and members appealed LA Mayor's decision to the NLRC.

### **THE NLRC RULING**

The NLRC decided the appeal on December 29, 1998, and set aside LA Mayor's decision.<sup>[6]</sup> The NLRC did not give weight to PHIMCO's evidence, and relied instead on the respondents' evidence showing that the union conducted a peaceful moving picket.

On January 28, 1999, PHIMCO filed a motion for reconsideration in the illegal strike case.<sup>[7]</sup>

In a parallel development, LA Espiritu decided the union's illegal dismissal case on March 2, 1999. He ruled the respondents' dismissal as illegal, and ordered their reinstatement with payment of backwages. PHIMCO appealed LA Espiritu's decision to the NLRC.

Pending the resolution of PHIMCO's motion for reconsideration in the illegal strike case and the appeal of the illegal dismissal case, PHIMCO moved for the consolidation of the two (2) cases. The NLRC acted favorably on the motion and consolidated the two (2) cases in its Order dated August 5, 1999.

On February 20, 2002, the NLRC rendered its Decision in the consolidated cases, ruling totally in the union's favor.<sup>[8]</sup> It dismissed the appeal of the illegal dismissal case, and denied PHIMCO's motion for reconsideration in the illegal strike case. The NLRC found that the picket conducted by the striking employees was not an illegal blockade and did not obstruct the points of entry to and exit from the company's premises; the pictures submitted by the respondents revealed that the picket was moving, not stationary. With respect to the illegal dismissal charge, the NLRC observed that the striking employees were not given ample opportunity to explain their side after receipt of the June 23, 1995 letter. Thus, the NLRC affirmed the Decision of LA Espiritu with respect to the payment of backwages until the promulgation of the decision, plus separation pay at one (1) month salary per year of service in lieu of reinstatement, and 10% of the monetary award as attorney's fees. It ruled out reinstatement because of the damages sustained by the company brought about by the strike.

On March 14, 2002, PHIMCO filed a motion for reconsideration of the consolidated decision.

On April 26, 2002, without waiting for the result of its motion for reconsideration, PHIMCO elevated its case to the CA through a petition for *certiorari* under Rule 65 of

the Rules of Court.<sup>[9]</sup>

### **THE CA RULING**

In a Decision<sup>[10]</sup> promulgated on February 10, 2004, the CA dismissed PHIMCO's petition for *certiorari*. The CA noted that the NLRC findings, that the picket was peaceful and that PHIMCO's evidence failed to show that the picket constituted an illegal blockade or that it obstructed the points of entry to and exit from the company premises, were supported by substantial evidence.

PHIMCO came to us through the present petition after the CA denied<sup>[11]</sup> PHIMCO's motion for reconsideration.<sup>[12]</sup>

### **THE PETITION**

The petitioner argues that the strike was illegal because the respondents committed the prohibited acts under Article 264(e) of the Labor Code, such as blocking the ingress and egress of the company premises, threat, coercion, and intimidation, as established by the evidence on record.

### **THE CASE FOR THE RESPONDENTS**

The respondents, on the other hand, submit that the issues raised in this case are factual in nature that we cannot generally touch in a petition for review, unless compelling reasons exist; the company has not shown any such compelling reason as the picket was peaceful and uneventful, and no human barricade blocked the company premises.

### **THE ISSUE**

In *Montoya v. Transmed Manila Corporation*,<sup>[13]</sup> we laid down the basic approach that should be followed in the review of CA decisions in labor cases, thus:

In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?

In this light, the core issue in the present case is whether the CA correctly ruled that the NLRC did not act with grave abuse of discretion in ruling that the union's strike was legal.

### **OUR RULING**

#### ***We find the petition partly meritorious. Requisites of a valid strike***

A strike is the most powerful weapon of workers in their struggle with management in the course of setting their terms and conditions of employment. Because it is premised on the concept of economic war between labor and management, it is a weapon that can either breathe life to or destroy the union and its members, and one that must also necessarily affect management and its members.<sup>[14]</sup>

In light of these effects, the decision to declare a strike must be exercised responsibly and must always rest on rational basis, free from emotionalism, and unswayed by the tempers and tantrums of hot heads; it must focus on legitimate union interests. To be legitimate, a strike should not be antithetical to public welfare, and must be pursued within legal bounds. The right to strike as a means of attaining social justice is never meant to oppress or destroy anyone, least of all, the employer.<sup>[15]</sup>

Since strikes affect not only the relationship between labor and management but also the general peace and progress of the community, the law has provided limitations on the right to strike. Procedurally, for a strike to be valid, it must comply with Article 263<sup>[16]</sup> of the Labor Code, which requires that: (a) a notice of strike be filed with the Department of Labor and Employment (DOLE) 30 days before the intended date thereof, or 15 days in case of unfair labor practice; (b) a strike vote be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in a meeting called for that purpose; and (c) a notice be given to the DOLE of the results of the voting at least seven days before the intended strike.

These requirements are mandatory, and the union's failure to comply renders the strike illegal.<sup>[17]</sup> The 15 to 30-day cooling-off period is designed to afford the parties the opportunity to amicably resolve the dispute with the assistance of the NCMB conciliator/mediator, while the seven-day strike ban is intended to give the DOLE an opportunity to verify whether the projected strike really carries the imprimatur of the majority of the union members.<sup>[18]</sup>

In the present case, the respondents fully satisfied the legal procedural requirements; a strike notice was filed on March 9, 1995; a strike vote was reached on March 16, 1995; notification of the strike vote was filed with the DOLE on March 17, 1995; and the actual strike was launched only on April 25, 1995.

#### ***Strike may be illegal for commission of prohibited acts***

Despite the validity of the purpose of a strike and compliance with the procedural requirements, a strike may still be held illegal where the ***means employed*** are