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SECOND DIVISION

[G.R. No. 163942, November 11, 2008]

NATIONAL UNION OF WORKERS IN THE HOTEL RESTAURANT AND ALLIED INDUSTRIES (NUWHRAIN-APL-IUF) DUSIT HOTEL NIKKO CHAPTER, PETITIONER, VS. THE HONORABLE COURT OF APPEALS (FORMER EIGHTH DIVISION), THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), PHILIPPINE HOTELIERS INC., OWNER AND OPERATOR OF DUSIT HOTEL NIKKO AND/OR CHIYUKI FUJIMOTO, AND ESPERANZA V. ALVEZ, RESPONDENTS.

[G.R. No. 166295]

NUWHRAIN-DUSIT HOTEL NIKKO CHAPTER, PETITIONER, VS. SECRETARY OF LABOR AND EMPLOYMENT AND PHILIPPINE HOTELIERS, INC., RESPONDENTS.

D E C I S I O N

VELASCO JR., J.:

In G.R. No. 163942, the Petition for Review on Certiorari under Rule 45 of the National Union of Workers in the Hotel Restaurant and Allied Industries Dusit Hotel Nikko Chapter (Union) seeks to set aside the January 19, 2004 Decision[1] and June 1, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 76568 which affirmed the October 9, 2002 Decision[3] of the National Labor Relations Commission (NLRC) in NLRC NCR CC No. 000215-02.

In G.R. No. 166295, the Petition for Certiorari under Rule 65 of the Union seeks to nullify the May 6, 2004 Decision[4] and November 25, 2004 Resolution[5] of the CA in CA-G.R. SP No. 70778 which affirmed the January 31, 2002[6] and March 15, 2002[7] Orders of the Secretary of Labor and Employment, Patricia A. Sto. Tomas (Secretary).

Evolution of the Present Petitions

The Union is the certified bargaining agent of the regular rank-and-file employees of Dusit Hotel Nikko (Hotel), a five star service establishment owned and operated by Philippine Hoteliers, Inc. located in Makati City. Chiyuki Fuijimoto and Esperanza V. Alvez are impleaded in their official capacities as the Hotel's General Manager and Director of Human Resources, respectively.

On October 24, 2000, the Union submitted its Collective Bargaining Agreement (CBA) negotiation proposals to the Hotel. As negotiations ensued, the parties failed to arrive at mutually acceptable terms and conditions. Due to the bargaining deadlock, the Union, on December 20, 2001, filed a Notice of Strike on the ground

of the bargaining deadlock with the National Conciliation and Mediation Board (NCMB), which was docketed as NCMB-NCR-NS-12-369-01. Thereafter, conciliation hearings were conducted which proved unsuccessful. Consequently, a Strike Vote[8] was conducted by the Union on January 14, 2002 on which it was decided that the Union would wage a strike.

Soon thereafter, in the afternoon of January 17, 2002, the Union held a general assembly at its office located in the Hotel's basement, where some members sported closely cropped hair or cleanly shaven heads. The next day, or on January 18, 2002, more male Union members came to work sporting the same hair style. The Hotel prevented these workers from entering the premises claiming that they violated the Hotel's Grooming Standards.

In view of the Hotel's action, the Union staged a picket outside the Hotel premises. Later, other workers were also prevented from entering the Hotel causing them to join the picket. For this reason the Hotel experienced a severe lack of manpower which forced them to temporarily cease operations in three restaurants.

Subsequently, on January 20, 2002, the Hotel issued notices to Union members, preventively suspending them and charging them with the following offenses: (1) violation of the duty to bargain in good faith; (2) illegal picket; (3) unfair labor practice; (4) violation of the Hotel's Grooming Standards; (5) illegal strike; and (6) commission of illegal acts during the illegal strike. The next day, the Union filed with the NCMB a second Notice of Strike on the ground of unfair labor practice and violation of Article 248(a) of the Labor Code on illegal lockout, which was docketed as NCMB-NCR-NS-01-019-02. In the meantime, the Union officers and members submitted their explanations to the charges alleged by the Hotel, while they continued to stage a picket just inside the Hotel's compound.

On January 26, 2002, the Hotel terminated the services of twenty-nine (29) Union officers and sixty-one (61) members; and suspended eighty-one (81) employees for 30 days, forty-eight (48) employees for 15 days, four (4) employees for 10 days, and three (3) employees for five days. On the same day, the Union declared a strike. Starting that day, the Union engaged in picketing the premises of the Hotel. During the picket, the Union officials and members unlawfully blocked the ingress and egress of the Hotel premises.

Consequently, on January 31, 2002, the Union filed its third Notice of Strike with the NCMB which was docketed as NCMB-NCR-NS-01-050-02, this time on the ground of unfair labor practice and union-busting.

On the same day, the Secretary, through her January 31, 2002 Order, assumed jurisdiction over the labor dispute and certified the case to the NLRC for compulsory arbitration, which was docketed as NLRC NCR CC No. 000215-02. The Secretary's Order partly reads:

> WHEREFORE, in order to have a complete determination of the bargaining deadlock and the other incidents of the dispute, this Office hereby consolidates the two Notices of Strike - NCMB-NCR-NS-12-369-01 and NCMB-NCR-NS-01-019-02 - and CERTIFIES the entire labor dispute covered by these Notices and the intervening events, to the NATIONAL LABOR RELATIONS COMMISSION for compulsory arbitration pursuant to

> Article 263 (g) of the Labor Code, as amended, under the following terms:
>
> x x x x
>
> d. the Hotel is given the option, in lieu of actual reinstatement, to merely **reinstate** the dismissed or suspended workers in the **payroll** in light of the special circumstances attendant to their reinstatement;
>
> x x x x
>
> SO ORDERED. (Emphasis added.)

Pursuant to the Secretary's Order, the Hotel, on February 1, 2002, issued an Inter-Office Memorandum,[9] directing some of the employees to return to work, while advising others not to do so, as they were placed under payroll reinstatement.

Unhappy with the Secretary's January 31, 2002 Order, the Union moved for reconsideration, but the same was denied per the Secretary's subsequent March 15, 2002 Order. Affronted by the Secretary's January 31, 2002 and March 15, 2002 Orders, the Union filed a Petition for Certiorari with the CA which was docketed as CA-G.R. SP No. 70778.

Meanwhile, after due proceedings, the NLRC issued its October 9, 2002 Decision in NLRC NCR CC No. 000215-02, in which it ordered the Hotel and the Union to execute a CBA within 30 days from the receipt of the decision. The NLRC also held that the January 18, 2002 concerted action was an illegal strike in which illegal acts were committed by the Union; and that the strike violated the "No Strike, No Lockout" provision of the CBA, which thereby caused the dismissal of 29 Union officers and 61 Union members. The NLRC ordered the Hotel to grant the 61 dismissed Union members financial assistance in the amount of ½ month's pay for every year of service or their retirement benefits under their retirement plan whichever was higher. The NLRC explained that the strike which occurred on January 18, 2002 was illegal because it failed to comply with the mandatory **30-day cooling-off period**[10] and the **seven-day strike ban**,[11] as the strike occurred only 29 days after the submission of the notice of strike on December 20, 2001 and only four days after the submission of the strike vote on January 14, 2002. The NLRC also ruled that even if the Union had complied with the temporal requirements mandated by law, the strike would nonetheless be declared illegal because it was attended by illegal acts committed by the Union officers and members.

The Union then filed a Motion for Reconsideration of the NLRC's Decision which was denied in the February 7, 2003 NLRC Resolution. Unfazed, the Union filed a Petition for Certiorari under Rule 65 with the CA, docketed as CA-G.R. SP No. 76568, and assailed both the October 9, 2002 Decision and the February 7, 2003 Resolution of the NLRC.

Soon thereafter, the CA promulgated its January 19, 2004 Decision in CA-G.R. SP No. 76568 which dismissed the Union's petition and affirmed the rulings of the NLRC. The CA ratiocinated that the Union failed to demonstrate that the NLRC committed grave abuse of discretion and capriciously exercised its judgment or exercised its power in an arbitrary and despotic manner.

For this reason, the Union filed a Motion for Reconsideration which the CA, in its June 1, 2004 Resolution, denied for lack of merit.

In the meantime, the CA promulgated its May 6, 2004 Decision in CA-G.R. SP No. 70778 which denied due course to and consequently dismissed the Union's petition. The Union moved to reconsider the Decision, but the CA was unconvinced and denied the motion for reconsideration in its November 25, 2004 Resolution.

Thus, the Union filed the present petitions.

The Union raises several interwoven issues in G.R. No. 163942, most eminent of which is whether the Union conducted an illegal strike. The issues presented for resolution are:

-A-

> WHETHER OR NOT THE UNION, THE 29 UNION OFFICERS AND 61 MEMBERS MAY BE ADJUDGED GUILTY OF STAGING AN ILLEGAL STRIKE ON JANUARY 18, 2002 DESPITE RESPONDENTS' ADMISSION THAT THEY PREVENTED SAID OFFICERS AND MEMBERS FROM REPORTING FOR WORK FOR ALLEGED VIOLATION OF THE HOTEL'S GROOMING STANDARDS

-B-

> WHETHER OR NOT THE 29 UNION OFFICERS AND 61 MEMBERS MAY VALIDLY BE DISMISSED AND MORE THAN 200 MEMBERS BE VALIDLY SUSPENDED ON THE BASIS OF FOUR (4) SELF-SERVING AFFIDAVITS OF RESPONDENTS

-C-

> WHETHER OR NOT RESPONDENTS IN PREVENTING UNION OFFICERS AND MEMBERS FROM REPORTING FOR WORK COMMITTED AN ILLEGAL LOCK-OUT[12]

In G.R. No. 166295, the Union solicits a riposte from this Court on whether the Secretary has discretion to impose "payroll" reinstatement when he assumes jurisdiction over labor disputes.

The Court's Ruling

The Court shall first dispose of G.R. No. 166295.

According to the Union, there is no legal basis for allowing payroll reinstatement in lieu of actual or physical reinstatement. As argued, Art. 263(g) of the Labor Code is clear on this point.

The Hotel, on the other hand, claims that the issue is now moot and any decision would be impossible to execute in view of the Decision of the NLRC which upheld the dismissal of the Union officers and members.

The Union's position is untenable.

The Hotel correctly raises the argument that the issue was rendered moot when the NLRC upheld the dismissal of the Union officers and members. In order, however, to settle this relevant and novel issue involving the breadth of the power and jurisdiction of the Secretary in assumption of jurisdiction cases, we now decide the issue on the merits instead of relying on mere technicalities.

We held in *University of Immaculate Concepcion, Inc. v. Secretary of Labor*:

> With respect to the Secretary's Order allowing payroll reinstatement instead of actual reinstatement for the individual respondents herein, an amendment to the previous Orders issued by her office, the same is usually not allowed. Article 263(g) of the Labor Code aforementioned states that all workers must immediately return to work and all employers must readmit all of them under the same terms and conditions prevailing before the strike or lockout. The phrase "under the same terms and conditions" makes it clear that the norm is actual reinstatement. This is consistent with the idea that any work stoppage or slowdown in that particular industry can be detrimental to the national interest.[13]

Thus, it was settled that in assumption of jurisdiction cases, the Secretary should impose actual reinstatement in accordance with the intent and spirit of Art. 263(g) of the Labor Code. As with most rules, however, this one is subject to exceptions. We held in *Manila Diamond Hotel Employees' Union v. Court of Appeals* that payroll reinstatement is a departure from the rule, and special circumstances which make actual reinstatement impracticable must be shown.[14] In one case, payroll reinstatement was allowed where the employees previously occupied confidential positions, because their actual reinstatement, the Court said, would be impracticable and would only serve to exacerbate the situation.[15] In another case, this Court held that the NLRC did not commit grave abuse of discretion when it allowed payroll reinstatement as an option in lieu of actual reinstatement for teachers who were to be reinstated in the middle of the first term.[16] We held that the NLRC was merely trying its best to work out a satisfactory ad hoc solution to a festering and serious problem.[17]

The peculiar circumstances in the present case validate the Secretary's decision to order payroll reinstatement instead of actual reinstatement. It is obviously impracticable for the Hotel to actually reinstate the employees who shaved their heads or cropped their hair because this was exactly the reason they were prevented from working in the first place. Further, as with most labor disputes which have resulted in strikes, there is mutual antagonism, enmity, and animosity between the union and the management. Payroll reinstatement, most especially in this case, would have been the only avenue where further incidents and damages could be avoided. Public officials entrusted with specific jurisdictions enjoy great confidence from this Court. The Secretary surely meant only to ensure industrial peace as she assumed jurisdiction over the labor dispute. In this case, we are not ready to substitute our own findings in the absence of a clear showing of grave abuse of discretion on her part.