

SECOND DIVISION

[G.R. Nos. 158190-91, June 21, 2006]

**NISSAN MOTORS PHILIPPINES, INC., PETITIONER, VS.
SECRETARY OF LABOR AND EMPLOYMENT AND BAGONG
NAGKAKAISANG LAKAS SA NISSAN MOTOR PHILIPPINES, INC.
(BANAL-NMPI-OLALIA-KMU), RESPONDENTS.**

[G.R. Nos. 158276 and 158283. June 21, 2006]

**BAGONG NAGKAKAISANG LAKAS SA NISSAN MOTORS
PHILIPPINES, INC. (BANAL-NMPI-OLALIA-KMU), PETITIONER,
VS. COURT OF APPEALS (SPECIAL DIVISION OF FIVE),
SECRETARY OF LABOR AND EMPLOYMENT AND NISSAN MOTORS
PHILIPPINES, INC., RESPONDENTS.**

D E C I S I O N

GARCIA, J.:

Assailed and sought to be set aside in these petitions for review under Rule 45 of the Rules of Court are the Decision of the Court of Appeals (CA) dated February 7, 2003^[1] and its Resolution of May 15, 2003,^[2] in *CA-G.R. SP No. 69107* and *CA G.R. SP No. 69799*, denying the petitions for *certiorari* separately interposed by Nissan Motor Philippines, Inc. (Nissan Motor or Company) and Bagong Nagkakaisang Lakas sa Nissan Motor Philippines, Inc. (BANAL-NMPI-OLALIA-KMU).

Docketed as *G.R. Nos. 158190-91*, Nissan Motors petition excepts from the assailed ruling of the appellate court insofar as it affirmed (a) the award by the respondent Secretary of Labor and Employment of certain economic benefits to the company's rank-and-file workers and (b) the recall of the dismissal of 140 Union members. On the other hand, the petition of BANAL-NMPI-OLALIA-KMU (Union hereafter), docketed as *G.R. Nos. 158276 and 158283*, assails the respondent Secretary's holding that the Union and its members engaged in a concerted work slowdown despite the issuance of the assumption of jurisdiction order dated August 22, 2001,^[3] *infra*, and subsequent orders of similar import. The same petition raises too the issue respecting the correctness of the CA's resolution citing the Union's counsel for contempt.

In gist, the case turns on the labor dispute triggered by a collective bargaining deadlock between Nissan Motor and the Union resulting in the filing of four (4) notices of strike with the National Conciliation and Mediation Board (NCMB). Filed on December 4, 2000, the first *Notice of Strike* (NCMB-RBIV-LAG-NS-12-045-00), on the ground of alleged unfair labor practice, stemmed from the suspension of about 140 company employees, following the November 15, 2000 disruptive protest action arising from the employees' demand for payment of the 2nd half of their 13th month pay. The Union filed the second strike notice (NCMB-RBIV-LAG-NS-07-027-01) on

July 24, 2001 on the ground of deadlock in collective bargaining involving a mix of economic and non-economic issues.

On August 22, 2001, the Department of Labor and Employment (DOLE), upon Nissan Motors petition, issued an order assuming jurisdiction over the dispute at Nissan Motor. In it, the DOLE Secretary expressly enjoined any strike or lockout and directed the parties to cease and desist from committing any act that might exacerbate the situation, and for the Union to refrain from any slowdown and other similar activities that may disrupt company operations or bring its production to below its normal and usual levels.

What happened next is summarized in the Decision of the respondent DOLE Secretary dated December 5, 2001,^[4] viz:

On 27 August 2001, the Union filed a 3rd Notice of Strike on the ground of illegal lockout, illegal suspension, union busting . . .

xxx xxx xxx

On 12 September 2001, [the DOLE] issued an Order directing that the 3rd Notice of Strike be consolidated with the first two notices ; reiterating the injunction against strike or lockout, and directing the parties to cease and desist from committing acts which may aggravate the situation and to refrain from any slowdown.

On 18 September 2001, the Union filed a [reiterative] Urgent Petition to Suspend the Effects of Termination of union officers and members, now numbering 43 .

On 24 September 2001, the Company filed its Position Paper.

On 18 September 2001, the Union filed a 4th Notice of Strike on grounds of alleged illegal dismissal of eighteen (18) union officials, illegal lockout on account of the forced leave, coercion/intimidation, union busting and non-payment of salaries for the period August 15-30, 2001.

On 28 September 2001, Acting [DOLE] Secretary Arturo D. Brion issued an Order consolidating the 4th notice of strike with the first three (3) notices and reiterating the injunction contained in the assumption of jurisdiction order of 22 August 2001 and the Order of 12 September 2001.

xxx xxx xxx

On 05 October 2001, the Company filed a Motion to Deputize PNP Laguna to Secure, Maintain and Preserve Free Ingress and Egress of NMPI, alleging that despite the injunctions against any slowdown and strike, the Union went on actual strike on 01 October 2001, picketed and blocked the company offices, and plant premises; unlawfully blocked and obstructed all entrances and exits points.

On 08 October 2001, the Union filed a Mosyon Laban sa Deputasyon [ng PNP],'. . .

xxx xxx xxx

On 13 October 2001, the Secretary of Labor issued an Order deputizing the [PNP] . . .

On 22 October 2001, the Union filed a Supplemental Position Paper with Reply alleging that the bargaining unit at NMPI is composed of 360 highly skilled employees; that the workers are always on forced leave; work is only for 4 or 5 days. The average daily salary of employees is P400.00 which is allegedly below the poverty line . The average monthly salary of employees is P10,000.00 for rank and file P20,000.00 for supervisory (sic).

The Union states further that the Company realized P3.2 Billion in gross sale for the year 2000; that it is very flexible with the pricing of its products which price ranges from P750,000.00 to P1.3 Million; that the estimated direct labor cost is only P68.180 Million.

On the political issues, the Union alleges that 140 union officers and members were placed under suspension from 3-6 days without observing procedural due process. xxx. The Union alleges too that the Company abused its prerogative in imposing discipline . . .

The Union accuses the Company of violating the assumption of jurisdiction order by falsely accusing the Union of committing slowdown and placing them on forced leave, as on (sic) June 18, 30, July 7, 14, & 21. While all these were taking place and up until 23 July, the Union claims, the CKD parts have not arrived thus, the low production.

The Union claims that after the filing of the 2nd notice of strike, the Company charged the Union with engaging in work slowdown. Despite explanation that the low production was due to many reasons none of which is attributable to a slowdown; . . .The Union requested for grievance but the Company ignored it.

The Union claims that the charge against the employees of violation of the assumption of jurisdiction order is just a [union busting] ploy . . . It claims likewise that the Company also violated the assumption order, therefore the principle of *pari delicto* applies to both parties.

The Union explained also its position on the CBA deadlock . . .

On 26 October 2001, the Company filed its Reply to the Unions Position Paper [later followed by] a Rejoinder to the Unions Reply [therein alleging] ... that the first notice of strike is totally without merit as the Unions charge of [UPL] is not supported by the events xxx.

The charge of *illegal suspension of more or less 140 union members ranging from 3 to 6 days* is without merit as the action was in the exercise of managements prerogative to instill discipline among its employees. The Company asserts that the suspension was a sanction for the employees misconduct committed on 15 November 2000, by refusing to go back to their assigned workstations, and instead demanding payment of the 2nd half of their 13th month pay. The suspension from work was imposed as a disciplinary measure under the Company Rules . . . and after observance of due process, the Company alleges. The

Company notes that the subject employees failed to submit satisfactory explanation within the 48-hour period granted to them. The incident was recorded in the Companys Exhibits . . . A copy of the Notice of Charge, marked as Exhibit J, a copy of the Notice of Suspension, marked as Exhibit K, and the Affidavit of Mr. Artemio del Rosario, marked as Exhibit M were submitted to further support the claim of validity of the suspension.

Anent the said 13th month-pay related issue, the Company states that the statutory deadline for payment of the 13th month-pay is December 24th of the applicable year, thus the demand for early payment is not in order. The 13th month pay was released as promised on 29 November 2000.

On the 2nd Notice of Strike, the Company states that it is incapable of meeting the [capricious] economic demands of the Union [which are] being made despite the continued losses suffered by NMPI over the last four (4) years of its operations amounting to about P1.490 Billion. Notwithstanding the reduction of the Unions total package, it would still cost P212,081,987.00 or 309.5% increase over the previous CBA; whereas the Companys last offer before withdrawing the same was a package amounting to P35, 386,458.00 which represents a 52.5% increase over the previous CBA. This package consists in:

- | | | |
|------------------------------------|---------------------------|-------------|
| a. Annual Salary | - P900.00 + P160.00 merit | |
| increase | increase | |
| | | |
| b. Signing bonus | - P3,000.00 | |
| | | |
| c. Maternity assistance - Normal P | | 6, 500.00 |
| Caesarian | | P13,000.00 |
| Miscarriage | | P 3, 900.00 |

xxx xxx xxx

- p. Overtime pay premium Increase for ordinary day, special holiday, rest day and regular day

xxx xxx xxx

The Company maintains that the losses [in] its last four (4) years of operations, from 1997 to 2000, resulted in net losses amounting to P1.490 Billion, owing to such factors as the 1997 Asian economic meltdown, , and the Companys limited motor vehicle market share . . . Copies of its audited financial statements were submitted as Annexes B, C, D, and E of the Affidavit of Mr. Valentino de Leon, **Exhibit L of** the Companys Position Paper.

The Company contends that overall, NMPIs total market share in the year 2000 was lower than the previous year and among the lowest in the industry. . . These factors militate against drastic award of economic benefits . . . as such could adversely affect the Companys survival.

The Company states too, that the slowdown carried out by the Union after the filing of the 2nd strike notice, was in violation of the cooling off period prescribed by law, therefore illegal.

Moreover, the slowdown violates . . . the CBA. The Company submitted a sworn affidavit of Mr. Manolito E. Burgos, Exhibit O of the Position Paper, to prove the fact that a slowdown was in fact carried out which adversely affected NMPIs normal production . . .

On the matter of the dismissal of 19 Union officers and 25 members . . . after the issuance of the Assumption of Jurisdiction Order . . ., the Company asserts that the subject employees defied the Order by continuing to carry on the slowdown . . . The Unions refusal to formally acknowledge receipt of the Order of 22 August 2001, cannot thwart the efficacy of the said Order . . . Citing several [SC] decisions on the matter, the Company maintains that this blatant defiance of the DOLE orders left it with no choice but to declare the concerned employees to have forfeited or lost their jobs.

The Company averred that the dismissal was preceded by observance of due process. To prove this, it submitted **Exhibit M** (Affidavit of Mr. Artemio A. del Rosario) and its Annexes , consisting in the notices to explain and the notices of dismissal.

xxx xxx xxx

In its Reply to the Unions Position Paper, the Company contends that the unofficial figures given to Administrator Olalia should not be used as NMPIs last position since these were never directly presented by the Company to the Union as they are confidential information.

The Company alleges that the Unions computation of the incremental direct cost over the three (3) year period is totally incorrect and misleading as annual increases are cumulative. Moreover, there is not basis for comparing total labor cost against total sales revenues. While labor cost may be just a small percentage of total sales revenue, NMPI is incurring tremendous losses because of big overhead cost . . .

xxx xxx xxx

The Company confirmed that it unofficially offered P3,000.00 only, however, the basis for signing bonus no longer exist because the parties did not reach any agreement on the CBA. The signing bonus is premised on goodwill which no longer existed . . . (Underlining and words in bracket added; emphasis in the original.)

On December 5, 2001, public respondent DOLE Secretary Patricia A. Sto. Tomas issued her assailed Decision, the fallo of which reads:

WHEREFORE, in the light of the foregoing discussions, this Office orders the following: