

THIRD DIVISION

[G.R. NO. 144315, July 17, 2006]

**PHILCOM EMPLOYEES UNION, PETITIONER, VS. PHILIPPINE
GLOBAL COMMUNICATIONS AND PHILCOM CORPORATION,**

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review^[1] to annul the Decision^[2] dated 31 July 2000 of the Court of Appeals in CA-G.R. SP No. 53989. The Court of Appeals affirmed the assailed portions of the 2 October 1998 and 27 November 1998 Orders of the Secretary of Labor and Employment in OS-AJ-0022-97.

The Facts

The facts, as summarized by the Court of Appeals, are as follows:

Upon the expiration of the Collective Bargaining Agreement (CBA) between petitioner Philcom Employees Union (PEU or union, for brevity) and private respondent Philippine Global Communications, Inc. (Philcom, Inc.) on June 30, 1997, the parties started negotiations for the renewal of their CBA in July 1997. While negotiations were ongoing, PEU filed on October 21, 1997 with the National Conciliation and Mediation Board (NCMB) – National Capital Region, a Notice of Strike, docketed as NCMB-NCR-NS No. 10-435-97, due to perceived unfair labor practice committed by the company (Annex "1", Comment, p. 565, *ibid.*). In view of the filing of the Notice of Strike, the company suspended negotiations on the CBA which moved the union to file on November 4, 1997 another Notice of Strike, docketed as NCMB-NCR-NS No. 11-465-97, on the ground of bargaining deadlock (Annex "2", Comment, p. 566, *ibid.*)

On November 11, 1997, at a conciliation conference held at the NCMB-NCR office, the parties agreed to consolidate the two (2) Notices of Strike filed by the union and to maintain the status *quo* during the pendency of the proceedings (Annex "3", Comment, p. 567, *ibid.*).

On November 17, 1997, however, while the union and the company officers and representatives were meeting, the remaining union officers and members staged a strike at the company premises, barricading the entrances and egresses thereof and setting up a stationary picket at the main entrance of the building. The following day, the company immediately filed a petition for the Secretary of Labor and Employment to assume jurisdiction over the labor dispute in accordance with Article

263(g) of the Labor Code.

On November 19, 1997, then Acting Labor Secretary Cresenciano B. Trajano issued an Order assuming jurisdiction over the dispute, enjoining any strike or lockout, whether threatened or actual, directing the parties to cease and desist from committing any act that may exacerbate the situation, directing the striking workers to return to work within twenty-four (24) hours from receipt of the Secretary's Order and for management to resume normal operations, as well as accept the workers back under the same terms and conditions prior to the strike. The parties were likewise required to submit their respective position papers and evidence within ten (10) days from receipt of said order (Annex "4", Comment, pp. 610-611, *ibid.*). On November 28, 1997, a second order was issued reiterating the previous directive to all striking employees to return to work immediately.

On November 27, 1997, the union filed a Motion for Reconsideration assailing, among others, the authority of then Acting Secretary Trajano to assume jurisdiction over the labor dispute. Said motion was denied in an Order dated January 7, 1998.

As directed, the parties submitted their respective position papers. In its position paper, the union raised the issue of the alleged unfair labor practice of the company hereunder enumerated as follows:

- "(a) PABX transfer and contractualization of PABX service and position;
- "(b) Massive contractualization;
- "(c) Flexible labor and additional work/function;
- "(d) Disallowance of union leave intended for union seminar;
- "(e) Misimplementation and/or non-implementation of employees' benefits like shoe allowance, rainboots, raincoats, OIC shift allowance, P450.00 monthly allowance, driving allowance, motorcycle award and full-time physician;
- "(f) Non-payment, discrimination and/or deprivation of overtime, restday work, waiting/stand by time and staff meetings;
- "(g) Economic inducement by promotion during CBA negotiation;
- "(h) Disinformation scheme, surveillance and interference with union affairs;
- "(i) Issuance of memorandum/notice to employees without giving copy to union, change in work schedule at Traffic Records Section and ITTO policies; and
- "(j) Inadequate transportation allowance, water and facilities."

(Annex A, Petition; pp. 110-182, *ibid.*)

The company, on the other hand, raised in its position paper the sole issue of the illegality of the strike staged by the union (Annex B, Petition; pp. 302-320, *ibid.*).

On the premise that public respondent Labor Secretary cannot rule on the issue of the strike since there was no petition to declare the same illegal, petitioner union filed on March 4, 1998 a Manifestation/Motion to Strike Out Portions of & Attachments in Philcom's Position Paper for being irrelevant, immaterial and impertinent to the issues assumed for resolution (Annex C, Petition; pp. 330-333, *ibid.*).

In opposition to PEU's Manifestation/Motion, the company argued that it was precisely due to the strike suddenly staged by the union on November 17, 1997 that the dispute was assumed by the Labor Secretary. Hence, the case would necessarily include the issue of the legality of the strike (Opposition to PEU'S Motion to Strike Out; Annex F, Petition; pp. 389-393, *ibid.*).^[3]

On 2 October 1998, the Secretary of Labor and Employment ("Secretary") issued the first assailed order. The pertinent parts of the Order read:

Going now to the first issue at hand, a reading of the complaints charged by the Union as unfair labor practices would reveal that these are not so within the legal connotation of Article 248 of the Labor Code. On the contrary, these complaints are actually mere grievances which should have been processed through the grievance machinery or voluntary arbitration outlined under the CBA. The issues of flexible labor and additional functions, misimplementation or non-implementation of employee benefits, non-payment of overtime and other monetary claims and inadequate transportation allowance, are all a matter of implementation or interpretation of the economic provisions of the CBA subject to the grievance procedure.

Neither do these complaints amount to gross violations which, thus, may be treated as unfair labor practices outside of the coverage of Article 261. The Union failed to convincingly show that there is flagrant and/or malicious refusal by the Company to comply with the economic provisions stipulated in the CBA.

With respect to the charges of contractualization and economic inducement, this Office is convinced that the acts of said company qualify as a valid exercise of management prerogative. The act of the Company in contracting out work or certain services being performed by Union members should not be seen as an unfair labor practice act per se. First, the charge of massive contractualization has not been substantiated while the contractualization of the position of PABX operator is an isolated instance. Secondly, in the latter case, there was no proof that such contracting out interfered with, restrained or coerced the employees in the exercise of their right to self-organization. Thus, it is not unfair labor

practice to contract out work for reason of reduction of labor cost through the acquisition of automatic machines.

Likewise, the promotion of certain employees, who are incidentally members of the Union, to managerial positions is a prerogative of management. A promotion which is manifestly beneficial to an employee should not give rise to a gratuitous speculation that such a promotion was made simply to deprive the union of the membership of the promoted employee (*Bulletin Publishing Co. v. Sanchez, et. al.*, G.R. No. 74425, October 7, 1986).

There remains the issue on bargaining deadlock. The Company has denied the existence of any impasse in its CBA negotiations with the Union and instead maintains that it has been negotiating with the latter in good faith until the strike was initiated. The Union, on the other hand, contends otherwise and further prays that the remaining CBA proposals of the Union be declared reasonable and equitable and thus be ordered incorporated in the new CBA to be executed.

As pointed out by the Union, there are already thirty-seven (37) items agreed upon by the parties during the CBA negotiations even before these were suspended. Prior to this Office's assumption over the case, the Company furnished the Union its improved CBA counter-proposal on the matter of promotional and wage increases which however was rejected by the Union as divisive. Even as the Union has submitted its remaining CBA proposals for resolution, the Company remains silent on the matter. In the absence of any basis, other than the Union's position paper, on which this Office may make its determination of the reasonableness and equitableness of these remaining CBA proposals, this Office finds it proper to defer deciding on the matter and first allow the Company to submit its position thereon.

We now come to the question of whether or not the strike staged by the Union on November 17, 1997 is illegal. The Company claims it is, having been held on grounds which are non-strikeable, during the pendency of preventive mediation proceedings in the NCMB, after this Office has assumed jurisdiction over the dispute, and with the strikers committing prohibited and illegal acts. The Company further prays for the termination of some 20 Union officers who were positively identified to have initiated the alleged illegal strike. The Union, on the other hand, refuses to submit this issue for resolution.

Considering the precipitous nature of the sanctions sought by the Company, i.e., declaration of illegality of the strike and the corresponding termination of the errant Union officers, this Office deems it wise to defer the summary resolution of the same until both parties have been afforded due process. The non-compliance of the strikers with the return-to-work orders, while it may warrant dismissal, is not by itself conclusive to hold the strikers liable. Moreover, the Union's position on the alleged commission of illegal acts by the strikers during the strike is still to be heard. Only after a full-blown hearing may the respective liabilities of Union officers and members be determined. The case of Telefunken

Semiconductors Employees Union-FFW v. Secretary of Labor and Employment and Temic Telefunken Micro-Electronics (Phils.), Inc. (G.R. No. 122743 and 127215, December 12, 1997) is instructive on this point:

It may be true that the workers struck after the Secretary of Labor and Employment had assumed jurisdiction over the case and that they may have failed to immediately return to work even after the issuance of a return-to-work order, making their continued strike illegal. For, a return-to-work order is immediately effective and executory notwithstanding the filing of a motion for reconsideration. But, the liability of each of the union officers and the workers, if any, has yet to be determined. xxx
xxx xxx.^[4]

The dispositive portion of the Order reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered as follows:

The Union's Manifestation/Motion to Implead Philcom Corporation is hereby granted. Let summons be issued to respondent Philcom Corporation to appear before any hearing that may hereafter be scheduled and to submit its position paper as may be required.

The Union's Manifestation/Motion to Strike Out Portions of and Attachments in Philcom's Position Paper is hereby denied for lack of merit.

The Union's charges of unfair labor practice against the Company are hereby dismissed.

Pending resolution of the issues of illegal strike and bargaining deadlock which are yet to be heard, all the striking workers are directed to return to work within twenty-four (24) hours from receipt of this Order and Philcom and/or Philcom Corporation are hereby directed to unconditionally accept back to work all striking Union officers and members under the same terms and conditions prior to the strike. The parties are directed to cease and desist from committing any acts that may aggravate the situation.

Atty. Lita V. Aglibut, Officer-In-Charge of the Legal Service, this Department is hereby designated as the Hearing Officer to hear and receive evidence on all matters and issues arising from the present labor dispute and, thereafter, to submit a report/recommendation within twenty (20) days from the termination of the proceedings.

The parties are further directed to file their respective position papers with Atty. Lita V. Aglibut within ten (10) days from receipt of this Order.

SO ORDERED.^[5]

Philcom Corporation ("Philcom") filed a motion for reconsideration. Philcom prayed for reconsideration of the Order impleading it as party-litigant in the present case