

FIRST DIVISION

[G.R. No. 122743 & 127215, December 12, 1997]

**TELEFUNKEN SEMICONDUCTORS EMPLOYEES UNION - FFW,
PETITIONER, VS. SECRETARY OF LABOR AND EMPLOYMENT AND
TEMIC TELEFUNKEN MICRO-ELECTRONICS (PHILS.), INC.,
RESPONDENT. TEMIC TELEFUNKEN MICRO-ELECTRONICS
(PHILS.) INC., PETITIONER, VS. HON. LEONARDO A.
QUISUMBING IN HIS CAPACITY AS SECRETARY OF LABOR AND
EMPLOYMENT, AND TELEFUNKEN SEMICONDUCTORS EMPLOYEES
UNION - FFW, RESPONDENTS.
D E C I S I O N**

BELLOSILLO, J.:

Two (2) petitions for *certiorari* are before us: first, the petition instituted by Telefunken Semiconductors Employees Union-FFW (UNION for brevity), questioning the exclusion of union officers, shop stewards and those with pending criminal charges in the order of the Acting Secretary of the Department of Labor and Employment (DOLE) directing the company to accept back all striking workers, docketed as G.R. No. 122743, and second, the petition filed a year later by Temic Telefunken Microelectronics (Phils.), Inc. (COMPANY for brevity), seeking to set aside altogether the writ of execution issued to implement the order, docketed as G.R. No. 127215.

On 25 August 1995 the dispute between the parties started when the COMPANY and the UNION reached a deadlock in their negotiations for a new collective bargaining agreement. Hence on 28 August 1995 the UNION filed a Notice of Strike with the National Conciliation and Mediation Board. On 8 September 1995, upon petition of the COMPANY considering the nature of its business and the corresponding effects to the country's economy, then Acting Secretary of Labor and Employment Jose S. Brillantes, after ascertaining that the labor dispute involved a matter of national interest, intervened and assumed jurisdiction over the dispute pursuant to Art. 263, par. (g), of the Labor Code.

Nevertheless, on 14 September 1995 the UNION struck. Two (2) days later, or on 16 September 1995, Acting Secretary Brillantes ordered the striking workers to return to work within twenty-four (24) hours. But the striking UNION members failed to return to work; instead, they continued with their pickets. As a result, on 23 September 1995 violence erupted in the picket lines. The service bus ferrying non-striking workers was stoned causing injuries to its passengers. Thereafter complaints for threats, defamation, illegal detention and physical injuries were filed against the strikers.

Meanwhile, on 26 September 1995 the COMPANY sent show cause memoranda to the UNION members who joined the strike and defied the return-to work orders, directing them to submit their written explanation why they should not be

disciplined or dismissed from employment. Not one reportedly submitted an explanation. Still, a number of UNION members continued refusing to return to work. Thus on 1 October 1995 the UNION members were placed under preventive suspension and asked to appear in the administrative hearing that was conducted. Only two (2) workers appeared. Consequently, on 2 October 1995 letters of termination for cause were personally delivered to UNION members who failed to report for work notwithstanding the assumption and return-to-work orders.

On 29 October 1995 Acting Secretary Brillantes issued an Order dated 27 October 1995 a portion of which reads -

Atty. Tito F. Genilo, Technical Assistant, Office of the Secretary, this Department, is hereby designated to immediately call the parties and hear and receive evidence on the matter of illegal strike, including the reciprocal demands of the parties for damages arising therefrom, and to submit the appropriate report and recommendations on the case within ten (10) days from termination of the proceedings thereon.

Pending resolution of the issue involving the legality of the strike, the Company is hereby directed to accept back all striking workers, except the Union Officers, shop stewards, and all those with pending criminal charges, whose termination shall be among the issues to be heard by Atty. Genilo.

Relative thereto, the parties are hereby directed to submit their position papers and evidence within ten (10) days from receipt of this Order (emphasis supplied).^[1]

On 9 November 1995 both the COMPANY and the UNION filed their respective motions for reconsideration. On 24 November 1995 Acting Secretary Brillantes issued an order modifying in part his 27 October 1995 Order, but affirmed that portion which excluded the union officers, shop stewards and those with pending criminal charges, from the order to accept back all striking workers pending the resolution of the issue involving the legality of the strike.

On 5 December 1995, the UNION, aggrieved by the Order of 27 October 1995 instituted a petition for certiorari before this Court questioning the order excluding all union officers, shop stewards and all those with pending criminal charges. The UNION argued that since, as stated in the Order of 27 October 1995, the "termination (of all union officers, shop stewards and all those with pending criminal charges) shall be among the issues to be heard by Atty. Genilo," they should not have been excluded at all in the first place, as their immediate exclusion is in effect termination without due process.

Meanwhile, as a result of the dispute, some 1,500 striking workers many of whom had been charged before the Office of the Prosecutor after 27 October 1995 have yet to be reinstated. On 7 December 1995 Acting Secretary Brillantes issued a clarificatory order the dispositive portion of which states -

WHEREFORE, as clarified above, we hereby rule that the phrase "those with pending criminal charges" shall only cover those workers with

pending criminal charges at the time of the issuance of the Order dated 27 October 1995. [2]

Pending resolution of the petition filed by the UNION before this Court, Secretary of Labor and Employment Leonardo A. Quisumbing issued a Writ of Execution the dispositive portion of which states -

ACCORDINGLY, A Writ of Execution is here issued commanding Sheriff Edgar Paredes of the National Capital Regional Office, this Department, to proceed to the premises of Temic Telefunken Microelectronics (Phils.) Inc., at the Temic Building, Bagsakan Road, FTI Estate, Taguig, Metro Manila, and execute fully and faithfully the Decision of the Secretary dated October 27, 1995 and November 24, 1995 by seeing the actual and physical reinstatement of the remaining striking workers listed in the 32 page Annex A who are yet to be readmitted as ordered in the Decisions under the same terms and conditions prevailing before the strike on September 14, 1995 and, if necessary, to seek the aid of the Taguig Police Station, Taguig, Metro Manila, which is here deputized for the purpose of aiding this Office in the enforcement of its Orders and to make a return within thirty (30) days from issuance of the Writ to the Office of the Secretary, copy furnished the Legal Service. [3]

The COMPANY filed a Motion to Quash, Recall or Suspend the Writ of Execution. On 17 October 1996 the motion was denied for lack of merit and an alias writ of execution was issued directing the reinstatement of the strikers in the payroll if actual and physical reinstatement was not possible. On 23 October 1996 the COMPANY filed a motion for reconsideration which on 21 November 1996 was denied. On 9 December 1996 the COMPANY, not satisfied with the rulings of the Secretary of Labor and Employment, petitioned this Court for a writ of certiorari.

In these twin petitions, the UNION argues that the exclusion of union officers, shop stewards and those with pending criminal charges from the directive to the COMPANY to accept back the striking workers is tantamount to illegal dismissal since the workers are in effect being terminated without due process of law. The COMPANY on the other hand maintains that the dismissal of those who failed to comply with the assumption and return-to-work orders is valid and in accordance with jurisprudence.

Furthermore, the COMPANY asserts that the Secretary of Labor and Employment should have refrained from issuing a writ of execution mandating the immediate reinstatement of some 1,500 dismissed striking workers since the exclusion of union officers, shop stewards and those with pending criminal charges from the directive to the COMPANY to accept back the striking workers is still pending before this Court. Also, the COMPANY claims that the Secretary of Labor gravely abused his discretion when he ruled that complaints lodged with the police authorities before 27 October 1995 and subsequently filed with the provincial prosecutor after 27 October 1995 are not within the ambit of the phrase "with pending criminal charges."

In the main, the consolidated case raise three (3) issues: whether the Secretary of Labor and Employment gravely abused his discretion, first, in excluding union officers, shop stewards and those with pending criminal charges in his order to the COMPANY to accept back the striking workers; second, in issuing a writ of execution

pending resolution of a related petition for certiorari before this Court; and third, in holding that complaints lodged before the police authorities before 27 October 1995 and subsequently filed with the provincial prosecutor after 27 October 1995 are not within the ambit of the phrase "with pending criminal charges."

We first resolve the exclusion of certain employees. In *Union of Filipro Employees v. Nestle Philippines, Inc.* [4] we said -

x x x an assumption and/or certification order of the Secretary of Labor automatically results in return-to-work of all striking workers, whether or not a corresponding order has been issued by the Secretary of Labor x x x Article 264 (g) is clear. Once an assumption/certification order is issued, strikes are enjoined, or if one has already taken place, all strikers shall immediately return to work.

A strike that is undertaken despite the issuance of the Secretary of Labor of an assumption or certification order becomes a prohibited activity and thus illegal, pursuant to the second paragraph of Art. 264 of the Labor Code as amended (*Zamboanga Wood Products, Inc. v. NLRC*, G.R. No. 82088, October 13, 1989; 178 SCRA 482).

In *Gold City Integrated Port Service, Inc. v. National Labor Relations Commission* [5] we explained -

The effects of such illegal strikes, outlined in Article 265 (now Article 264) of the Labor Code, make a distinction between workers and union officers who participate therein.

A union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost their employment status. An ordinary striking worker cannot be terminated for mere participation in an illegal strike. There must be proof that he committed illegal acts during a strike. A union officer, on the other hand, may be terminated from work when he knowingly participates in an illegal strike, and like other workers, when he commits an illegal act during a strike.

But as we said in *Batangas Laguna Tayabas Bus Company v. NLRC*- [6]

That is only half the picture. As the NLRC further explained, it was "not inclined to declare a wholesale forfeiture of employment status of all those who participated in the strike" because, first of all, there was an inadequate service of the certification order on the union as of the date the strike was declared and there was no showing that the striking members had been apprised of such order by the NAFLU x x x x We agree with the Solicitor General that the mere filing of charges against an employee for alleged illegal acts during a strike does not by itself justify his dismissal. The charges must be proved at an investigation duly called where the employee shall be given an opportunity to defend himself. This is true even if the alleged ground constitute a criminal offense x x x x

In the case before us, we cannot see how respondent Secretary of Labor and Employment arrived at his decision of excluding union officers, shop stewards and

those with pending criminal charges in his directive to the COMPANY to accept back the striking workers. For in the same assailed Order he said on the illegal strike issue -

Taking into account that the determination of this issue requires the appreciation of evidentiary matters and testimonies of the parties involved, this Office likewise finds it appropriate to conduct further hearing hereon. Hence, resolution on this issue is hereby deferred until the termination of the appropriate proceedings hereon.

Thus in the dispositive portion of his Order the Secretary of Labor stated that the termination of subject employees shall be among the issues yet to be heard by Atty. Genilo who was designated to "immediately call the parties and hear and receive evidence on the matter of illegal strike, including the reciprocal demands of the parties for damages arising therefrom x x x x" [7]

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. [8] But, the liability of each of the union officers and the workers, if any, has yet to be determined. More so in the instant case where the UNION alleges inadequate service upon the UNION leadership of the Assumption Order of 8 September 1995 and the return-to-work order of 16 September 1995. [9] Thus, did all or some of the UNION leaders knowingly participate in the illegal strike? Did any or all of the members of the UNION who then had pending criminal charges knowingly participate in the commission, if any, of illegal acts during the strike? The records do not bear the answers to these questions, but not expectedly so, for Atty. Genilo of the DOLE has yet to hear and receive evidence on the matter, and to submit a report and recommendation thereon.

Thus to exclude union officers, shop stewards and those with pending criminal charges in the directive to the COMPANY to accept back the striking workers without first determining whether they knowingly committed illegal acts would be tantamount to dismissal without due process of law. We therefore hold that the Honorable Secretary of Labor gravely abused his discretion in excluding union officers, shop stewards and those with pending criminal charges in the order to the COMPANY to accept back the striking workers pending resolution of the issue involving the legality of the strike.

We however sustain the authority of the Secretary of Labor and Employment to issue the assailed writ of execution- [10]

We likewise do not find any merit in the Company's contention that when the Union filed a Petition for Certiorari with the Supreme Court (docketed as G.R. No. 122743), with a prayer that the Company be directed to accept back all striking workers without any exception, it has effectively raised the matter to the Supreme Court.

We must emphasize that the issue involved in the certiorari case now pending before the Supreme Court is the legality of the exclusion of the