SUPREME COURT
FIRST DIVISION

LUIS DE OCAMPO, JR., JOSE RODRIGO, EUGENIO ESQUEJO, VICTORINO TABERNERO, RIZALO DALIVA, FRANCISCO ACOSTA and 87 others listed in Annex "A" hereof,
***Petitioners*,**

-versus-

G.R. No. 81077
June 6, 1990

NATIONAL LABOR RELATIONS COMMISSION and MAKATI DEVELOPMENT CORPORATION,
***Respondents*.**
x----------x

D E C I S I O N

CRUZ, *J.*:

The Petition seeks a reversal of the Decision of the respondent NLRC dated June 8, 1984, the dispositive portion of which reads as follows:

WHEREFORE, the Decision appealed from is hereby MODIFIED as hereinabove indicated. Consequently, the application for clearance to dismiss the union officers is granted; the employment status of the

individual complainants who were project employees is also considered severed, not on account of illegality of the strike but due to the expiration of their employment contracts; and the respondent is ordered to reinstate, without back wages, the individual complainants who were regular employees except those who were officers of the union among them or paid separation pay at their option, equivalent to one month's pay or one-half month's pay for every year of service, whichever is greater.

It appears that on September 30, 1980, the services of 65 employees of private respondent Makati Development Corporation were terminated on the ground of the expiration of their contracts; that the said employees filed a complaint for illegal dismissal against the MDC on October 1,1980;[**] that on October 8, 1980, as a result of the aforementioned termination, the Philippine Transport and General Workers Association, of which the complainants were members, filed a notice of strike on the grounds of union-busting, subcontracting of projects which could have been assigned to the dismissed employees, and unfair labor practice; that on October 14, 1980, the PTGWA declared a strike and established picket lines in the perimeter of the MDC premises; that on November 4, 1980, the MDC filed with the Bureau of Labor Relations a motion to declare the strike illegal and restrain the workers from continuing the strike; that on that same day and several days thereafter the MDC filed applications for clearance to terminate the employment of 90 of the striking workers, whom it had meanwhile preventively suspended; that of the said workers, 74 were project employees under contract with the MDC with fixed terms of employment; and that on August 31, 1982, Labor Arbiter Apolinar L. Sevilla rendered a Decision[1] denying the applications for clearance filed by the MDC and directing it to reinstate the individual complainants with two months back wages each.

This is the Decision modified by the NLRC[2] which is now faulted by the petitioners for grave abuse of discretion. The contention is that the public respondent acted arbitrarily and erroneously in ruling that: a) the motion for reconsideration was filed out of time; b) the strike was illegal; and c) the separation of the project employees was justified.

Having considered the issues and the arguments of the parties in their respective pleadings, including the petitioners' ex parte motion for early resolution of this case, the Court makes the findings that follow.

On the first issue, we note that the rule on motions for reconsideration of the decision of the NLRC is now found in Rule X of the Revised Rules of the NLRC, providing thus:

> Section 9. Motions for reconsideration. — Motions for reconsideration of any order, resolution or decision of the Commission shall not be entertained except when based on palpable or patent errors, provided that the motion is under oath and filed within ten (10) calendar days from receipt of the order, resolution or decision, with proof of service that a copy of the same has been furnished, within the aforesaid reglementary period, the adverse party and provided further, that only one such motion shall be entertained.

Subject to the provisions of Section 3, Rule IX of these Rules, motions for reconsideration of an order, resolution or decision of a Division shall be resolved by the Division of origin.

However, this section was promulgated only on November 5, 1986, and became effective only on November 29, 1986, after the required publication.[3] It was therefore not yet in force when the required resolution in the present case was rendered in 1984.

Apparently agreeing that the reglementary period then was fifteen days, the Solicitor General argues that the petitioner's motion for reconsideration was nevertheless filed late on June 26, 1984, the decision of the NLRC having been rendered on June 7, 1984, or 19 days earlier.[4] This is not exactly accurate. The fact is Annex "C" of the petition shows that a copy of the Decision was received by the petitioner only on June 13, 1984, and it was from that date that the reglementary period commenced to run. This means that the motion for reconsideration was filed on time, only 13 days having elapsed before the deadline.

But this notwithstanding, we must hold that under the law then in force, to wit, PD No. 823 as amended by PD No. 849, the strike was indeed illegal. In the first place, it was based not on the ground of unresolved economic issues, which was the only ground allowed at that time, when the policy was indeed to limit and discourage strikes. Secondly, the strike was declared only after 6 days from the notice of strike and before the lapse of the 30-day period prescribed in the said law for a cooling-off of the differences between the workers and management and a possible avoidance of the intended strike. That law clearly provided:

> "Sec. 1. It is the policy of the state to encourage free trade unionism and free collective bargaining within the framework of compulsory and voluntary arbitration. Therefore all forms of strikes, picketing and lockout are hereby strictly prohibited in vital industries such as in public utilities, including transportation and communication, companies engaged in the manufacture or processing as well as in the distribution of fuel gas, gasoline and fuel or lubricating oil, in companies engaged in the production or processing of essential commodities or products for export, and in companies engaged in banking of any kind, as well as in hospitals and in schools and colleges.
>
> However, any legitimate labor union may strike and any employer may lockout in establishments not covered by General Order No. 5 only on grounds of unresolved economic issues in collective bargaining, in which case the union or the employer shall file a notice with the Bureau of Labor Relations at least 30 days before the intended strike or lockout." (Emphasis supplied)

It is our ruling that the leaders of the illegal strike were correctly punished with dismissal, but their followers (other than the contract workers) were properly ordered reinstated, considering their lesser degree of responsibility. The penalty imposed upon the leaders was only proper because it was they who instigated the strike even if they knew, or should have known, that it was illegal. It was also fair to rule that the reinstated strikers were not entitled to backpay as they certainly should not be compensated for services not rendered during

the illegal strike. In our view, this is a reasonable compromise between the demands of the workers and the rights of the employer.

Coming now to the last question, we stress the rule in Cartagenas vs. Romago Electric Co.,[5] that contract workers are not considered regular employees, their services being needed only when there are projects to be undertaken. The rationale of this rule is that if a project has already been completed, it would be unjust to require the employer to maintain them in the payroll while they are doing absolutely nothing except waiting until another project is begun, if at all. In effect, these stand-by workers would be enjoying the status of privileged retainers, collecting payment for work not done, to be disbursed by the employer from profits not earned. This is not fair by any standard and can only lead to a coddling of labor at the expense of management.

We believe, however, that this rule is not applicable in the case at bar, and for good reason. The record shows that although the contracts of the project workers had indeed expired, the project itself was still on-going and so continued to require the workers' services for its completion.[6] There is no showing that such services were unsatisfactory to justify their termination. This is not even alleged by the private respondent. One can therefore only wonder why, in view of these circumstances, the contract workers were not retained to finish the project they had begun and were still working on. This had been done in past projects. This arrangement had consistently been followed before, which accounts for the long years of service many of the workers had with the MDC.

It is obvious that the real reason for the termination of their services — which, to repeat, were still needed — was the complaint the project workers had filed and their participation in the strike against the private respondent. These were the acts that rendered them persona non grata to the management. Their services were discontinued by the MDC not because of the expiration of their contracts, which had not prevented their retention or rehiring before as long as the project they were working on had not yet been completed. The real purpose of the MDC was to retaliate against the workers, to punish them for their defiance by replacing them with more tractable employees.

Also noteworthy in this connection is Policy Instruction No. 20 of the Department of Labor, providing that "project employees are not entitled to separation pay if they are terminated as a result of the completion of the project or any phase thereof in which they are employed, regardless of the projects in which they had been employed by a particular construction company."[7] Affirmatively put, and interpreting it in the most liberal way to favor the working class, the rule would entitle project employees to separation pay if the projects they are working on have not yet been completed when their services are terminated. And this should be true even if their contracts have expired, on the theory that such contracts would have been renewed anyway because their services were still needed.

Applying this rule, we hold that the project workers in the case at bar, who were separated even before the completion of the project at the New Alabang Village and not really for the reason that their contracts had expired, are entitled to separation pay. We make this disposition instead of ordering their reinstatement as it may be assumed that the said project has been completed by this time. Considering the workers to have been separated without valid cause, we shall compute their separation pay at the rate of one month for every year of service of each dismissed employee, up to the time of the completion of the project.[8] We feel this is the most equitable way to treat their claim in light of their cavalier dismissal by the private respondent despite their long period of satisfactory service with it.

It is the policy of the Constitution to afford protection to labor in recognition of its role in the improvement of our welfare and the strengthening of our democracy. An exploited working class is a discontented working class. It is a treadmill to progress and a threat to freedom. Knowing this, we must exert all effort to dignify the lot of the employee, elevating him to the same plane as his employer, that they may better work together as equal partners in the quest for a better life. This is a symbiotic relationship we must maintain if such a quest is to succeed.

WHEREFORE, the appealed Decision of the NLRC is **AFFIRMED** but with the modification that the contract workers are hereby declared to have been illegally separated before the expiration of the project they were working on and so are entitled to separation pay

equivalent to one month salary for every year of service. No costs.

SO ORDERED.

Narvasa, Gancayco and Medialdea, *JJ.*, concur.
Griño-Aquino, *J.*, is on leave.

[**] On April 14, 1983, a compromise agreement subsequently approved by the NLRC en banc provided for the reinstatement of the workers and payment to them of one year backwage and separation pay by the MDC.
[1] Rollo, pp. 53-61.
[2] Rollo, pp. 45-52.
[3] Daily Express, dated November 13 and 14, 1986.
[4] Rollo, p. 115.
[5] G.R. No. 82973, September 15, 1989.
[6] Rollo, p. 60.
[7] Dated February 15, 1977.
[8] Art. 283, Labor Code.
