SUPREME COURT
THIRD DIVISION

ISALAMA MACHINE WORKS CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 100167
March 2, 1995

HON. LABOR RELATIONS COMMISSION, FIFTH DIVISION and ISALAMA MACHINE WORKS CORPORATION LABOR UNION-WORKERS ALLIANCE TRADE UNION AND/OR HENRY BAYGAN, NATHAN PURACAN, GREGORIO LAYSON, JR., NANDY VIRTUDAZO, JIMMY SACRO, CHARITO ESTRERA, DENISON AMBOAYEN, BIENVENIDO CABIL, MELCHOR MARTINEZ, FLORIDAN BILAR, NOEL LAYSON, EDISON ALMORADES, MA. CELESTINA CLEMEN, LEONCIO CUIZON, VENNIE OPORTO, RODOLFO IGNACIO and ALMIRANTE ZAGADO,
***Respondents*.**
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D E C I S I O N

VITUG, *J.*:

This Petition for *Certiorari* assails the Decision,[1] dated 09 June 1989, of the National Labor Relations Commission ("NLRC"), Fifth Division, Cagayan de Oro City, ordering the reinstatement, without back salaries, of private respondents, with the exception of Henry Baygan, and the Resolution[2] of 30 April 1991 of the same division denying the motion for reconsideration and, consistent with the Decision, requiring petitioner corporation to pay private respondents, in case the latter have not been reinstated actually or by payroll, back salaries, without qualification or deductions, from 25 July 1989 until their reinstatement (RABX Case No. 10-02-00107-88).

On 25 March 1987, petitioner Isalama Machine Works Corporation and private respondent Isalama Machine Works Corporation Labor Union-Workers Alliance Trade Union entered into a collective bargaining agreement ("CBA") covering the period from 01 November 1986 to 03 October 1989. Following the signing of the CBA, the union made repeated demands on the corporation, allegedly to no avail, for it to comply with the CBA provisions, i.e., to furnish the workers with safety shoes and free company laminated IDs and, in general, to improve the employee's working conditions.

On 21 December 1987, the corporation paid the workers the 13th month pay based on the average number of days actually worked during the year. The union, through its president, private respondent Henry Baygan, demanded that the 13th month pay should, instead, be made on the basis of a full one month basic salary. The corporation countered that its own computation of the 13th month pay accorded with the CBA provisions and Presidential Decree No. 851.

On 05 January 1988, the union filed a notice of strike with the Department of Labor and Employment, Region X, Cagayan de Oro, alleging the commission of unfair labor practice and CBA violation by the corporation. After several conferences, the National Conciliation and Mediation Board ("NCMB") succeeded in having the dispute amicably settled except for the 13th month pay differential which remained in contention. The union insisted that the failure of the corporation to implement fully the 13th month pay provision of the

CBA amounted to an unfair labor practice. The corporation argued that the 13th month pay was a mere money claim and therefore not a "strikeable issue." The case was ultimately indorsed to the NLRC for compulsory arbitration.

The above notwithstanding, the union still went on strike on 15 February 1988. The wide publicity accorded the strike, according to petitioner, had caused a dearth of work orders and withdrawal of existing job orders that forced it to adopt a rotation system of work. On 22 February 1988, it also filed with the Regional Arbitration Branch 10 of the NLRC a petition charging the union with conducting an illegal strike and engaging in an unfair labor practice (RABX Case No. 10-02-00107-88).

On 16 May 1988, the Executive Labor Arbiter rendered a decision holding the strike to be illegal and declaring Baygan and the "participating" union members[3] to have thereby lost their employment status. The dismissed employees appealed the decision of the Executive Labor Arbiter to the NLRC which, on 09 June 1989, promulgated its herein questioned decision ordering, except for Baygan, the reinstatement, without back salaries, of the dismissed union members.

The corporation filed a motion for the reconsideration of the NLRC Decision. On 30 April 1991, the NLRC resolved said motion thusly:

> "ACCORDINGLY, the Motion for Reconsideration is DENIED for lack of merit. No further motion for reconsideration shall henceforth be entertained.
>
> "Consistent with the disposition in the challenged resolution of June 9, 1989, the immediate reinstatement without backwages of the 16 aforenamed respondents to their former positions sans loss of seniority rights is hereby ordered. The cut-off date for the forbearance in the payment of backwages is up to July 24, 1989 which on record is the date of receipt of said disputed Resolution. Henceforth, in the event the aforenamed respondents have not been reinstated actually or by payroll, appellee is directed to pay backwages without qualifications or deductions from July 25, 1989 until they are reinstated.

"SO ORDERED."[4]

On 23 May 1991, the union filed with the NLRC a motion for execution of the judgment, asserting additionally that the corporation was operating under the new trade name, "Golden Engineering," owned and managed by the same family, of which change neither the employees nor the NLRC had been formally notified.

On 03 June 1991, before the motion for execution could be acted upon by the NLRC, the corporation filed the instant petition. The Court issued, on 01 July 1991, a temporary restraining order enjoining respondent NLRC from implementing its 09 June 1989 Decision and 30 April 1991 resolution.

Petitioner submits that private respondents cannot claim good faith in staging their strike since the attention of both parties had been called by the conciliator at the hearings before the NCMB to the "non-strikeable" character of the 13th month pay. Private respondents continue to claim, however, that the questioned 13th month pay should be considered a "strikeable issue." They have averred that the illegal work rotation scheme employed by petitioner has pushed them to the honest belief that the latter has, once again, perpetrated an unfair labor practice.

Section 3 of the "Omnibus Rules and Regulations Implementing Presidential Decree No. 851" generally states that all employees (subject to its exclusionary clauses) shall be entitled to the 13th month pay. Its Section 4 provides that employees "who are receiving not more than P1,000.00 a month" shall enjoy the 13th month pay "regardless of their position, designation or employment status, and irrespective of the method by which their wages are paid, provided that they have worked for at least one month during the calendar year." If an employee has worked for an employer for less than a year, he may still be entitled to the full 13th month pay provided his monthly wage is P1,000.00 or less and he has worked for the employer for at least one month.

The CBA contains, among other things, a "no strike" clause, thus —

> "During the term of this Agreement, the Company stipulates and agrees that there shall be no lockouts, and the Union in turn, as well as its officers and agents, stipulate and agree that there shall be no strike or will they authorize, instigate or engage in any work stoppage, slowdown or any other form of interruption of work by the employees and laborers that may hamper or impede the operations of the business of the Company."[5]

Parenthetically, the CBA likewise specifies that the company "agrees to grant one (1) month basic salary to all employees-workers as Christmas bonus" in compliance with Presidential Decree No. 851 but that a violation thereof will not constitute an unfair labor practice by an employer.

Article 248 of the Labor Code, in turn, provides:

> "ART. 248. Unfair labor practices of employers. — It shall be unlawful for an employer to commit any of the following unfair labor practice:
>
> x x x
>
> "(i) To violate a collective bargaining agreement."

The above provision, however, must be read together with Article 261 of the Labor Code; viz.:

> "ART. 261. Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators. — The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, gross

> violations of Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement." (Emphasis supplied.)

Hence, Section 1, Rule XIII, Book V, of the Omnibus Rules Implementing the Labor Code expresses:

> "Section 1. Grounds for strike and lockout. — A strike or lockout may be declared in cases of bargaining deadlocks and unfair labor practices. Violations of collective bargaining agreements, except flagrant and/or malicious refusal to comply with its economic provisions, shall not be considered unfair labor practice and shall not be strikeable."

In this case, the real reason for the strike is clearly traceable to the unresolved dispute between the parties on 13th month pay differentials under Presidential Decree No. 851, i.e., the proper manner of its application and computation. The Court does not see this issue, given the aforequoted provisions of the law and its implementing rules, to be constitutive of unfair labor practice. Section 9 of Rules and Regulations Implementing Presidential Decree No. 851, in fact, specifically states that "(n)onpayment of the thirteenth-month pay provided by the Decree and (the) rules shall be treated as money claims cases and shall be processed in accordance with the Rules Implementing the Labor Code of the Philippines and the Rules of the National Labor Relations Commission."

Private respondents, indeed, showed little prudence, if at all, in their precipitate and ill-considered strike. The NLRC likewise found private respondents to have violated Art. 264 (e)[6] of the Labor Code when they blocked and barricaded the entrance of petitioner's premises preventing free ingress and egress. Unfortunately for petitioner, however, the identity of those who committed those illegal acts during the strike, except for Baygan, had not been adequately established. Specifically, the NLRC said that no sufficient evidence could be found "to pin down the aforenamed 16 respondents as having committed illegal acts during the strike,"[7] that could warrant a loss of their employment status.[8] The dismissal of Baygan, however, was warranted. Being the union president and leader of the strike, his liability was greater than that of mere members,[9] and he

had the responsibility to ensure that his followers respected the law.[10]

Petitioner tells us that it can no longer accept the strikers due to its decision to close down its operations on account of damages and losses it has incurred because of the strike, and that Golden Engineering, which has taken over the business, is presently owned by one Alfredo Chan and not Charlie Chan of petitioner corporation.[11] This claim raises factual issues which evidently are still awaiting resolution by the NLRC in the motion for execution now pending before it. It is there, not here, where these issues can be finally resolved.

This case arose in 1988 or prior to the effectivity of Republic Act No. 6715; accordingly, the back salaries of the dismissed employee should be limited to three years, without deduction or qualification, following the rule in Maranaw Hotels and Resorts Corporation vs. Court of Appeals.[12]

WHEREFORE, the questioned Decision and Resolution of the NLRC are **AFFIRMED** subject to the **MODIFICATION** that the back salaries ordered to be paid should be limited, without deduction or qualification, to only three (3) years. No costs.

Feliciano, Romero, Melo and Francisco, *JJ.*, concur.

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[1] Penned by Commissioner Danilo S. Lorredo and concurred in by Presiding Commissioner Lourdes C. Javier.

[2] By Commissioner Leon G. Gonzaga, Jr. and concurred in by Presiding Commissioner Musib M. Buat and Commissioner Oscar N. Abella.

[3] Nathan Puracan, Gregorio Layson, Jr., Nandy Virtudazo, Jimmy Sacro, Charito Estrera, Denison Amboayan, Bienvenido Cabel, Melchor Martinez, Floridan Bilar, Noel Layson, Edison Almorade, Rodolfo Ignacio, Vennie Oporto, Leoncio Cuizon, Ma. Celestina Clemen and Almirante Zagado.

[4] Rollo, p. 67.

[5] Rollo, p. 48.

[6] "ART. 264. Prohibited activities. —
(e) No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares."

[7] Rollo, p. 66.

[8] In Progressive Worker's Union vs. Aguas (150 SCRA 429), the Court held that participating workers in a strike should be reinstated without backwages and, if reinstatement is not possible, paid a separation pay.
[9] See Continental Cement Corporation Labor Union (NLU) vs. Continental Cement Corporation, 189 SCRA 134, 141.
[10] The third paragraph of Art. 264 (a) of the Labor Code provides that "(a)ny 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 his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike."
[11] Rollo, p. 126-127.
[12] 215 SCRA 501; Republic Act No. 6715 only became effective on 21 March 1989.