

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**TELEFUNKEN SEMICONDUCTORS
EMPLOYEES UNION-FFW,**
Petitioner,

-versus-

**G.R. No. 122743
December 12, 1997**

**SECRETARY OF LABOR AND
EMPLOYMENT AND TEMIC
TELEFUNKEN MICRO-ELECTRONICS
(PHILS.), INC.,**
Respondent.

X-----X

**TEMIC TELEFUNKEN MICRO-
ELECTRONICS (PHIL.), INC.,**
Petitioner,

-versus-

**G.R. No. 127215
December 12, 1997**

**HON. LEONARDO A. QUISUMBING in
his capacity as Secretary of Labor &
Employment, and TELEFUNKEN
SEMICONDUCTORS EMPLOYEES
UNION-FFW,**

Respondents.

X-----X

DECISION

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 (Phil.), 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 P. 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 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 cases 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 vs. Nestle Philippines, Inc.*,^[4] we said —

An assumption and/or certification order of the Secretary of Labor automatically results in a return-to-work of all striking workers, whether or not a corresponding order has been issued by the Secretary of Labor. 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 by 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. vs. NLRC*, G.R. No. 82088, October 13, 1989; 178 SCRA 482).

In *Gold City Integrated Port Service, Inc. vs. 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 vs. 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 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. 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 constitutes a criminal offense.

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.”^[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 only 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 Union officers, shop stewards and those against whom criminal charges were filed on October 27, 1995, *vis-a-vis*, this Office's return-to-work order. On the other hand, the pending issue before this Office is the propriety of the issuance of a Writ of Execution to enforce the twin orders dated October 27, 1995 and November 24, 1995 which have long become final and executory.

We need not remind the Company that the decision of this Office is final and executory ten (10) calendar days after receipt thereof by the parties. Thus, in clear and categorical language, Art. 263 (1) of the Labor Code, as amended, provides:

Art. 263 (1). The Secretary of Labor and Employment, the Commission or the Voluntary Arbitrator, shall decide or resolve the dispute, as the case may be. The decision of the President, the Secretary of Labor and Employment, the Commission or the Voluntary Arbitrator shall be final and executory ten (10) calendars days after receipt thereof by the parties.

In the case at bar, the Supreme Court did not issue any Temporary Restraining Order. There is therefore no legal impediment to the enforcement of the Writ of Execution and Alias Writ of Execution previously issued by this Office.

This, to say the least, is elementary. Thus, as correctly cited by the UNION,^[11] this Court in *Santiago vs. Vasquez*^[12] said —

Petitioner further posits, however, that the filing of the instant special civil action for certiorari divested the Sandiganbayan of its jurisdiction over the case therein. Whether generated by misconception or design, we shall address this proposition which, in the first place, had no reason for being and should not hereafter be advanced under like or similar procedural scenarios.

The original and special civil action filed with this Court is, for all intents and purposes, an invocation for the exercise of its supervisory powers over the lower courts. It does not have the effect of divesting the inferior courts of jurisdiction validly acquired over the case pending before them. It is elementary that the mere pendency of a special civil action for certiorari, commenced in relation to a case pending before a lower court, does not even interrupt the course of the latter when there is no writ of injunction restraining it. The inevitable conclusion is that for as long as no writ of injunction or restraining order is issued in the special civil action for certiorari, no impediment exists and there is nothing to prevent the lower court from exercising its jurisdiction and proceeding with the case pending before it. And, even if such injunctive writ or order is issued, the lower court nevertheless continues to retain its jurisdiction over the principal action.

The COMPANY likewise argues that the Secretary of Labor gravely abuse his discretion when he ruled that complaints filed with the police authorities before 27 October 1995 and subsequently with the provincial prosecutor after 27 October 1995 are not within the ambit of the phrase “with pending criminal charges.” Suffice it to say that this issue has been rendered moot. For, we have earlier said that no striker should have been excluded it appearing from the record that the strike has yet to be ruled upon and the liability of each striker still to be determined.

But if only for the sake of argument, the contention of the COMPANY is still specious. The Secretary of Labor could not have explained this point any better^[13] —

In clarifying the workers excluded by the Order dated 27 October 1995, we are guided by the principle that the return-to-work Order issued herein was designed to restore the Company's normal operations and at the same time provide employment to the greater majority of its employees pending resolution of the labor dispute. It would thus be absurd, nay, illogical for us to interpret and conclude that the phrase "those with pending criminal charges" covers criminal cases filed against the striking workers after the issuance of the Order dated 27 October 1995. To our mind, such an interpretation would open the floodgates to the massive exclusion from work of the striking workers thru the simple expedient of filing criminal charges against them long after the issuance of the return-to-work Order.

At best the raising of this issue by COMPANY appears to be an afterthought as the COMPANY has failed to seek the reversal of the Order of 7 December 1995 holding 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." The COMPANY merely questioned this ruling after a writ of execution was already issued on 27 June 1996, or long after the clarificatory order dated 7 December 1995 had become final and executory.

In fine, we repeat what the Solicitor General astutely observed in *Batangas Laguna Tayabas Bus Company vs. NLRC*^[14] —

The assailed Resolution does not prevent petitioner from continuing with its investigations and come up with evidence against these workers. But they have to be admitted back to their work first. This is clearly a situation where the social justice provisions of our laws and jurisprudence come in aid of labor. Since such investigations might be extended, intentionally or otherwise, the workers are in danger of losing their livelihood. As compared to the management that is in a position to wage an extended legal struggle against labor, the latter cannot do so. This is where the State intervenes to equalize matters between labor and management.

While this Court prefers to rule likewise on the legality or illegality of the strike and determine the individual liability of the strikers, if any, to put an end to this protracted labor dispute, this Court is unable to do so as the record is wanting of any evidence to support a conclusion. We thus order the Secretary of Labor to resolve the instant case with utmost dispatch and determine whether the strike was illegal and the liability of the individual strikers, if any.

A word of admonition to petitioner-employees who camped in front of the Supreme Court Building, commenced a “hunger strike,” and who now appear to have vowed to continue with their protest march until the end —

The right of petition is conceded to be an inherent right of the citizen under all free governments. However, such right, natural and inherent though it may be, has never been invoked to shatter the standards of propriety entertained for the conduct of courts. For, ‘it is a traditional conviction of civilized society everywhere that courts and juries, in the decision of issues of fact and law, should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies. Moreover, parties have a constitutional right to have their causes tried fairly in court by an impartial tribunal, uninfluenced by publication or public clamor. Every citizen has a profound personal interest in the enforcement of the fundamental right to have justice administered by the courts, under the protection and forms of law free from outside coercion or interference. The aforesaid acts of the respondents are therefore not only an affront to the dignity of this Court, but equally a violation of the above-stated right of the adverse parties and the citizenry at large. The Court will not hesitate in future similar situations to apply the full force of the law and punish for contempt those who attempt to pressure the Court into acting one way or the other in any case pending before it. Grievances, if any, must be ventilated through the proper channels, i.e., through appropriate petitions, motions or other pleadings in keeping

with the respect due to the Courts as impartial administrators of justice entitled to 'proceed to the disposition of its business in an orderly manner, free from outside interference obstructive of its functions and tending to embarrass the administration of justice.'^[15]

Here, the Court will do no less. It will not yield its judicial prerogatives to petitioning strikers if only to appease them, much less give in to their demand for a favorable decision and violate the basic tenets of due process. For when petitioners marched with their placards in front of the premises of the Court, pitched their tents on the sidewalk across the street and went on "hunger strike" while demanding an early disposition in their favor, until they moved over to the Department of Justice next door, the petition in G.R. No. 127215 was not even submitted yet for decision. The pleadings had yet to be completed.

Indeed, it would be unfeeling, if not unchristian, to ignore the "hunger strike" of the workers and allow them to be exposed to the elements - the cold of the night and the scorching heat of the noonday sun. But the strikers must realize that judicial decisions are not issued on pity and sympathy. They are weighed according to the established facts and the merits of the arguments of the parties. This Court at times may show compassion and mercy but it cannot hem and haw to lay aside its emotional nuance and sacrifice the broader interest of fair play and justice. Let this be a stern warning to all those who hanker for justice yet desire to obtain it through improper pressure and influence, e.g., demonstrations, pretensions, mass action, etc. This schematic artifice will take them nowhere. On the contrary, such wantonness and unrestrained misconduct gravely offend and affront the dignity of the Court.

WHEREFORE, the petition in G.R. No. 122743 is **GRANTED**. Respondent **TEMIC TELEFUNKEN MICROELECTRONICS (PHILS.), INC.**, is **ORDERED** to accept back immediately all striking workers of **TELEFUNKEN SEMICONDUCTORS EMPLOYEES UNION – FFW WITHOUT EXCEPTION**.

In G.R. No. 127215, the petition is **DISMISSED** for lack of merit. Accordingly, respondent Secretary of Labor and Employment is

DIRECTED to ensure the effective enforcement of the writ of execution he issued and determine **WITH DISPATCH** the legality of the strike as well as the liability of the individual strikers, if any. The members of the TELEFUNKEN SEMICONDUCTORS EMPLOYEES UNION – FFW are **WARNED** that a repetition of the same or similar mass demonstration within or about the premises of this Court will be dealt with severely.

SO ORDERED.

Davide, Jr., Vitug and Kapunan, JJ., concur.

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- [1] Order of Acting Secretary Jose S. Brillantes dated 27 October 1995, p. 21; Rollo of G.R. No. 127215, p. 167.
 - [2] Order of Acting Secretary Jose S. Brillantes dated 7 December 1995, p. 3; Rollo of G.R. No. 127215, p. 170.
 - [3] Rollo of G.R. No. 127215, pp. 54-55.
 - [4] G.R. Nos. 88710-13, 19 December 1990 192 SCRA 396, 411.
 - [5] G.R. Nos. 103599-60, 6 July 1995, 245 SCRA 627, 637-638.
 - [6] G.R. No. 101858, 21 August 1992, 212 SCRA 792, 799-801.
 - [7] Order of Acting Secretary Jose S. Brillantes of 27 October 1995, p. 20.
 - [8] St. Scholastica's College vs. Torres, G.R. No. 100158, 29 June 1992, 210 SCRA 565.
 - [9] Consolidated Reply filed by the UNION, p. 4; Rollo of G.R. No. 122743, p. 188.
 - [10] Order of Secretary of Labor Leonardo A. Quisumbing dated 21 November 1996, p. 5; Rollo of G.R. No. 127215, p. 51.
 - [11] Comment, pp. 5-6; Rollo of G.R. No. 127215, pp. 225-226.
 - [12] G.R. Nos. 99289-90, 27 January 1993, 217 SCRA 633, 647-648.
 - [13] Order of the Acting Secretary of Labor and Employment dated 7 December 1995, pp. 2-3; Rollo of G.R. No. 127215, pp. 169-170.
 - [14] See Note 6, p. 802.
 - [15] Nestle Philippines, Inc. vs. Sanchez, G.R. No. 75209, 30 September 1987, 154 SCRA 542, 546-547.