SUPREME COURT
THIRD DIVISION

UNIVERSITY OF STO. TOMAS,
***Petitioner*,**

-versus-

G.R. No. 89920
October 18, 1990

NATIONAL LABOR RELATIONS COMMISSION, UST FACULTY UNION,
***Respondents*.**
x----------x

D E C I S I O N

GUTIERREZ, JR., *J.*:

May a university, pending resolution by the National Labor Relations Commission (NLRC) of its labor dispute with its union, comply with a readmission order by granting substantially equivalent academic assignments, in lieu of actual reinstatement, to dismissed faculty members?

On June 19, 1989, the University of Sto. Tomas (UST), through its Board of Trustees, terminated the employment of all sixteen union officers and directors of respondent UST Faculty Union on the ground that "in publishing or causing to be published in Strike Bulletin No. 5 dated August 4, 1987, the libelous and defamatory attacks against the Father Rector, (each of them) has committed the

offenses of grave misconduct, serious disrespect to a superior and conduct unbecoming a faculty member." (Rollo p. 41)

As a result of the dismissal of said employees, some faculty members staged mass leaves of absence on June 28, 1989 and several days thereafter, disrupting classes in all levels at the University. (Rollo, pp. 53, 92)

On July 5, 1989, the faculty union filed a complaint for illegal dismissal and unfair labor practice with the Department of Labor and Employment. (Rollo, p. 42)

On July 7, 1989, the labor arbiter, on a prima facie showing that the termination was causing a serious labor dispute, certified the matter to the Secretary of Labor and Employment for a possible suspension of the effects of termination. (Rollo, p. 51)

Secretary Franklin Drilon subsequently issued an order dated July 11, 1989, the decretal portion of which reads as follows:

> "WHEREFORE, ABOVE PREMISES CONSIDERED, and in the interest of industrial peace and pursuant to Section 33 (b) of RA 6715, the effects of the termination of Ma. Melvyn Alamis, Eduardo Mariño, Jr., Urbano Agalabia, Anthony Cura, Norma Collantes, Fulvio Guerrero, Corinta Barranco, Porfirio Jose Guico, Lily Matias, Rene Sison, Henedino Brondial, Myrna Hilario, Ronaldo Asuncion, Nilda Redoblado, Zenaida Burgos, and Milagros Nino are hereby suspended and management is likewise ordered to accept them back to work under the same terms and conditions prevailing prior to their dismissal.
>
> "In furtherance of this Order, all faculty members are directed to immediately report back for work and for management to accept them back under the same terms and conditions prevailing prior to the strike.
>
> "Labor Arbiter Nieves de Castro is hereby directed to proceed with the case pending before her and to expedite the resolution of the same.

> "Pending resolution, the parties are directed to cease and desist from committing any and all acts that might exacerbate the situation." (Rollo, p. 54)

Petitioner UST filed a motion for reconsideration on July 12, 1989 asking the Secretary of Labor and Employment to either assume jurisdiction over the present case or certify it to the National Labor Relations Commission (NLRC) for compulsory arbitration without suspending the effects of the termination of the 16 dismissed faculty members. (Rollo, pp. 55-64)

On July 18, 1989, Secretary Drilon, acting on said motion for reconsideration, issued another order modifying his previous order. The dispositive portion of the new order is quoted below:

> "WHEREFORE, ABOVE PREMISES CONSIDERED, the Order dated 11 July 1989 is hereby modified. Accordingly, this Office hereby certifies the labor dispute to the National Labor Relations Commission for compulsory arbitration pursuant to Article 263(g) of the Labor Code, as amended by Section 27 of RA 6715.
>
> "In accordance with the above, the University of Santo Tomas is hereby ordered to readmit all its faculty members, including the sixteen (16) union officials, under the same terms and conditions prevailing prior to the present dispute.
>
> "The NLRC is hereby instructed to immediately call the parties and expedite the resolution of the dispute.
>
> "The directive to the parties to cease and desist from committing any act that will aggravate the situation is hereby reiterated." (Rollo, p. 81)

The petitioner filed a motion for clarification dated July 20, 1989 which was subsequently withdrawn. (Rollo, p. 94)

On July 27, 1989, Secretary Drilon issued another order that contained the following dispositive portion:

> "WHEREFORE, ABOVE PREMISES CONSIDERED, the Order dated 18 July 1989 directing the readmission of all faculty members, including the 16 union officials, under the same terms and conditions prevailing prior to the instant dispute is hereby affirmed.
>
> "The NLRC is hereby ordered to immediately call the parties and ensure the implementation of this Order.
>
> "No further motion of this and any nature shall be entertained." (Rollo, p. 103)

The NLRC subsequently called the parties to a conference on August 11, 1989 before its Labor Arbiter Romeo Go. (Rollo, p. 9)

On August 14, 1989, the respondent union filed before the NLRC a motion to implement the orders of the Honorable Secretary of Labor and Employment dated July 11, 18 and 27, 1989 and to cite Atty. Joselito Guianan Chan (the petitioner's in-house counsel) for contempt. (Rollo, p. 104) The petitioner, on August 25, 1989, filed its opposition to the private respondent's motion. (Rollo, p 112)

On September 6, 1989, the NLRC issued a resolution, which is the subject of this petition for certiorari, set forth below:

> "Certified Case No. 0531 IN RE: LABOR DISPUTE at the University of Santo Tomas. — Acting on the Motion to Implement the Orders of the Honorable Secretary of Labor and Employment dated July 11, 18, and 27, 1989 and to cite Joselito Guianan Chan for Contempt dated August 14, 1989 and the Urgent Ex-Parte Motion to Implement Certification Orders of the Honorable Secretary of Labor and Employment dated July 18 and 17, (Sic) 1989 and the subsequent Manifestation dated September 4, 1989, all filed by the UST Faculty Union; and considering the Opposition to Union's Motion to Cite Atty. Joselito Guianan Chan for Contempt and Comments on its Motion to Implement the Orders of the Honorable Secretary of Labor and Employment dated July 11, 18 and 27, 1989 filed on August 25, 1989 by UST through its counsel, the Commission, after deliberation, resolved, to wit:

a) The University is hereby directed to comply and faithfully abide with the July 11, 18 and 27, 1989 Orders of the Secretary of Labor and Employment by immediately reinstating or readmitting the following faculty members under the same terms and conditions prevailing prior to the present dispute or merely reinstate them in the payroll.

a) Ronaldo Asuncion

b) Lily Matias

c) Nilda Redoblado

d) Zenaida Burgos

e) Eduardo Mariño, Jr.

f) Milagros Nino

g) Porfirio Guico.

b) To fully reinstate, by giving him additional units or through payroll reinstatement, Prof. Urbano Agalabia who was assigned only six (6) units;

c) To fully reinstate or reinstate through payroll, Prof. Fulvio Guerrero, who was assigned only three (3) units;

d) The University is directed to pay the above-mentioned faculty members full backwages starting from July 13, 1989, the date the faculty members presented themselves for reinstatement up to the date of actual reinstatement or payroll reinstatement.

e) The payroll reinstatement of the above-named faculty members hereby allowed only up to the end of the First semester 1989; Next semester, the University is

directed to actually reinstate the faculty members by giving them their normal teaching loads;

f) The University is directed to cease and desist from offering the aforementioned faculty members substantially equivalent academic assignments as this is not compliance in good faith with the Orders of the Secretary of Labor and Employment." (Rollo, pp. 30-31)

Acting on an urgent motion for the issuance of a writ of preliminary injunction and/or restraining order, the Court resolved to issue a temporary restraining order dated October 25, 1989 enjoining respondents from enforcing or executing the assailed NLRC resolution. (Rollo, p. 160)

The petitioner assigns the following errors:

I

THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (NLRC) GRAVELY ABUSED ITS DISCRETION IN A MANNER AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED RESOLUTION WHICH ORDERS THE ALTERNATIVE REMEDIES OF ACTUAL REINSTATEMENT OR PAYROLL REINSTATEMENT OF THE DISMISSED FACULTY MEMBERS.

II

THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DIRECTED THE UNIVERSITY TO PAY SOME OF THE DISMISSED FACULTY MEMBERS ASSIGNED TO HANDLE SUBSTANTIALLY EQUIVALENT ACADEMIC ASSIGNMENTS, 'FULL BACKWAGES STARTING FROM JULY 13, 1989, THE DATE THE FACULTY MEMBERS PRESENTED THEMSELVES FOR REINSTATEMENT UP TO THE DATE OF

ACTUAL REINSTATEMENT OR PAYROLL REINSTATEMENT.'

III

THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT CONSIDERED AS 'NOT COMPLIANCE IN GOOD FAITH WITH THE ORDERS OF THE SECRETARY OF LABOR AND EMPLOYMENT' THE UNIVERSITY'S ACT OF GRANTING TO SOME OF THE DISMISSED FACULTY MEMBERS, SUBSTANTIALLY EQUIVALENT ACADEMIC ASSIGNMENTS.

IV

THE HONORABLE NLRC GRAVELY ABUSED ITS DISCRETION WHEN IT ARROGATED UPON ITSELF THE EXERCISE OF THE RIGHT AND PREROGATIVES REPOSED BY LAW TO THE PETITIONER UNIVERSITY IN THE LATTER'S CAPACITY AS EMPLOYER. (Rollo, pp. 9-10)

We shall deal with the first and third assignment of errors jointly because they are interrelated.

The petitioner states in its petition that: a) It has already actually reinstated six of the dismissed faculty members, namely: Professors Alamis, Collantes, Hilario, Barranco, Brondial and Cura; b) As to Professors Agalabia and Guerrero, whose teaching assignments were partially taken over by new faculty members, they were given back their remaining teaching loads (not taken by new faculty members) but were likewise given substantially equivalent academic assignments corresponding to their teaching loads already taken over by new faculty members; c) The remaining seven faculty members, to wit: Professors Asuncion, Mariño, Jr., Matias, Redoblado, Burgos, Nino and Guico, were given substantially equivalent academic assignments in lieu of actual teaching loads because all of their teaching loads originally assigned to them at the start of the first semester of school year 1989-1990 were already taken over by new

faculty members; d) One dismissed faculty member, Rene Sison, had been "absent without official leave" or AWOL as early as the start of the first semester. (Rollo, pp. 11-12)

The petitioner advances the argument that its grant of substantially equivalent academic assignments to some of the dismissed faculty members, instead of actual reinstatement, is well-supported by just and valid reasons. It alleges that actual reinstatement of the dismissed faculty members whose teaching assignments were previously taken over by new faculty members is not feasible nor practicable since this would compel the petitioner university to violate and terminate its contracts with the faculty members who were assigned to and had actually taken over the courses. The petitioner submits that it was never the intention of the Secretary of Labor to force it to break employment contracts considering that those ordered temporarily reinstated could very well be accommodated with substantially equivalent academic assignments without loss in rank, pay or privilege. Likewise, it claims that to change the faculty member when the semester is about to end would seriously impair and prejudice the welfare and interest of the students because dislocation, confusion and loss in momentum, if not demoralization, will surely ensue once the change in faculty is effected. (Rollo, pp. 13-14)

The petitioner also avers that the faculty members who were given substantially equivalent academic assignments were told by their respective deans to report to the Office of Academic Affairs and Research for their academic assignments but the said faculty members failed to comply with these instructions. (Rollo, p. 118) Thus, the petitioner postulates, mere payroll reinstatement which would give rise to the obligation of the University to pay these faculty members, even if the latter are not working, would squarely run counter to the principle of "No Work, No Pay." (Rollo, p. 15)

The respondent UST Faculty Union, on the other hand, decries that the petitioner is using the supposed substantially equivalent academic assignments as a vehicle to embarrass and degrade the union leaders and that the refusal of the petitioner to comply with the return-to-work order is calculated to deter, impede and discourage the union leaders from pursuing their union activities. (Rollo, pp. 246, 254)

It also claims that the dismissed faculty members were hired to perform teaching functions and, indeed, they have rendered dedicated teaching service to the University students for periods ranging from 12 to 39 years. Hence, they maintain, their qualifications are fitted for classroom activities and the assignment to them of non-teaching duties, such as (a) book analysis; (b) syllabi-making or revising; (c) test questions construction; (d) writing of monographs and modules for students' use in learning "hard to understand" topics on the lectures; (e) designing modules, transparencies, charts, diagrams for students' use as learning aids; and (f) other related assignments, is oppressive. (Rollo, pp. 243-244).Court refers to Article 263 (g), first paragraph, of the Labor Code, as amended by Section 27 of Republic Act No. 6715, which provides:

> (g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same. (Emphasis ours.)

It was in compliance with the above provision that Secretary Drilon issued his July 18, 1989 order to "readmit all its faculty members, including the sixteen (16) union officials, under the same terms and conditions prevailing prior to the present dispute." (Rollo, p. 81) And

rightly so, since the labor controversy which brought about a temporary stoppage of classes in a university populated by approximately 40,000 students affected national interest.

After the petitioner filed a motion for clarification which, however, was subsequently withdrawn, Secretary Drilon issued another order dated July 27, 1989 affirming his July 18 order and directing the NLRC to immediately call the parties and "ensure the implementation of this order" (Rollo, p. 103)

The NLRC was thereby charged with the task of implementing a valid return-to-work order of the Secretary of Labor. As the implementing body, its authority did not include the power to amend the Secretary's order. Since the Secretary's July 18 order specifically provided that the dismissed faculty members shall be readmitted under the same terms and conditions prevailing prior to the present dispute, the NLRC should have directed the actual reinstatement of the concerned faculty members. It therefore erred in granting the alternative remedy of payroll reinstatement which, as it turned, only resulted in confusion. The remedy of payroll reinstatement is nowhere to be found in the orders of the Secretary of Labor and hence it should not have been imposed by the public respondent NLRC. There is no showing that the facts called for this type of alternative remedy.

For the same reason, we rule that the grant of substantially equivalent academic assignments can not be sustained. Clearly, the giving of substantially equivalent academic assignments, without actual teaching loads, cannot be considered a reinstatement under the same terms and conditions prevailing before the strike. Within the context of Article 263(g), the phrase "under the same terms and conditions" contemplates actual reinstatement or the return of actual teaching loads to the dismissed faculty members. There are academic assignments such as the research and writing of treatises for publication or full-time laboratory work leading to exciting discoveries which professors yearn for as badges of honor and achievement. The assignments given to the reinstated faculty members do not fall under such desirable categories.

Article 263(g) was devised to maintain the status quo between the workers and management in a labor dispute causing or likely to cause

a strike or lockout in an industry indispensable to the national interest, pending adjudication of the controversy. This is precisely why the Secretary of Labor, in his July 11, 1989 order, stated that "Pending resolution, the parties are directed to cease and desist from committing any and all acts that might exacerbate the situation." (Rollo, p. 54) And in his order of July 18, he decreed that "The directive to the parties to cease and desist from committing any act that will aggravate the situation is hereby reiterated." (Rollo, p. 81)

The grant of substantially equivalent academic assignments of the nature assigned by the petitioner would evidently alter the existing status quo since the temporarily reinstated teachers will not be given their usual teaching loads. In fact, the grant thereof aggravated the present dispute since the teachers who were assigned substantially equivalent academic assignments refused to accept and handle what they felt were degrading or unbecoming assignments, in turn prompting the petitioner University to withhold their salaries. (Rollo, p. 109)

We therefore hold that the public respondent NLRC did not commit grave abuse of discretion when it ruled that the petitioner should "cease and desist from offering the aforementioned faculty members substantially equivalent academic assignments as this is not compliance in good faith with the order of the Secretary of Labor and Employment."

It was error for the NLRC to order the alternative remedies of payroll reinstatement or actual reinstatement. However, the order did not amount to grave abuse of discretion. Such error is merely an error of judgment which is not correctible by a special civil action for certiorari. The NLRC was only trying its best to work out a satisfactory ad hoc solution to a festering and serious problem. In the light of our rulings on the impropriety of the substantially equivalent academic assignments and the need to defer the changes of teachers until the end of the first semester, the payroll reinstatement will actually minimize the petitioner's problems in the payment of full backwages.

As to the second assignment of error, the petitioner contends that the NLRC committed grave abuse of discretion in awarding backwages

from July 13, 1989, the date the faculty members presented themselves for work, up to the date of actual reinstatement, arguing that the motion for reconsideration seasonably filed by the petitioner had effectively stayed the Secretary's order dated July 11, 1989.

The petitioner's stand is unmeritorious. A return-to-work order is immediately effective and executory despite the filing of a motion for reconsideration by the petitioner. As pointed out by the Court in Philippine Air Lines Employees Association (PALEA) vs. Philippine Air Lines, Inc. (38 SCRA 372 [1971]):

> "The very nature of a return-to-work order issued in a certified case lends itself to no other construction. The certification attests to the urgency of the matter affecting as it does an industry indispensable to the national interest. The order is issued in the exercise of the court's compulsory power of arbitration, and therefore must be obeyed until set aside. To say that its effectivity must wait affirmance in a motion for reconsideration is not only to emasculate it but indeed to defeat its import, for by then the deadline fixed for the return-to-work would, in the ordinary course, have already passed and hence can no longer be affirmed insofar as the time element is concerned."

Additionally, although the Secretary's order of July 11 was modified by the July 18 order, the return-to-work portion of the earlier order which states that "the faculty members should be admitted under the same terms and conditions prevailing prior to the dispute" was affirmed.

We likewise affirm the NLRC's finding that the dismissed teachers presented themselves for reinstatement on July 13, 1989 since the factual findings of quasi-judicial agencies like the NLRC are generally accorded not only respect but even finality if such findings are supported by substantial evidence. (Mamerto vs. Inciong, 118 SCRA 265 [1982]; Baby Bus, Inc. vs. Minister of Labor, 158 SCRA 221 [1988]; Packaging Products Corporation vs. National Labor Relations Commission, 152 SCRA 210 [1987]; Talisay Employees' and Laborers Association (TELA) vs. Court of Industrial Relations, 143 SCRA 213

[1986]). There is no showing that such substantial evidence is not present.

The petitioner, however, stresses that since the faculty members who were given substantially equivalent academic assignments did not perform their assigned tasks, then they are not entitled to backwages. (Rollo, p. 19) The petitioner is wrong. The reinstated faculty members' refusal to assume their substantially equivalent academic assignments does not contravene the Secretary's return-to-work order. They were merely insisting on being given actual teaching loads, on the return-to work order being followed. We find their persistence justified as they are rightfully and legally entitled to actual reinstatement. Since the petitioner University failed to comply with the Secretary's order of actual reinstatement, we adjudge that the NLRC's award of backwages until actual reinstatement is correct.

With respect to the fourth assignment of error, the petitioner expostulates that as employer, it has the sole and exclusive right and prerogative to determine the nature and kind of work of its employees and to control and manage its own operations. Thus, it objects to the NLRC's act of substituting its judgment for that of the petitioner in the conduct of its affairs and operations. (Rollo, pp. 23-24)

Again, we cannot sustain the petitioner's contention. The hiring, firing, transfer, demotion and promotion of employees are traditionally identified as management prerogatives. However, these are not absolute prerogatives. They are subject to limitations found in law, a collective bargaining agreement, or general principles of fair play and justice. (Abbott Laboratories [Phil.] Inc. vs. NLRC, 154 SCRA 713 [1987]).

Article 263(g) is one such limitation provided by law. To the extent that Art. 263(g) calls for the admission of all workers under the same terms and conditions prevailing before the strike, the petitioner University is restricted from exercising its generally unbounded right to transfer or reassign its employees. The public respondent NLRC is not substituting its own judgment for that of the petitioner in the conduct of its own affairs and operations; it is merely complying with the mandate of the law.

The petitioner manifests the fear that if the temporarily reinstated faculty members will be allowed to handle actual teaching assignments in the classroom, the latter would take advantage of the situation by making the classroom the forum not for the purpose of imparting knowledge to the students but for the purpose of assailing and lambasting the administration. (Rollo, p. 330) There may be a basis for such a fear. We can even state that such concern is not entirely unfounded nor farfetched. However, such a fear is speculative and does not warrant a deviation from the principle that the dismissed faculty members must be actually reinstated pending resolution of the labor dispute. Unpleasant situations are sometimes aftermaths of bitter labor disputes. It is the function of Government to fairly apply the law and thereby minimize the dispute's harmful effects. It is in this light that the return to work order should be viewed and obeyed.

One thing has not escaped this Court's attention. Professors Alamis, Cura, Collantes, Barranco, Brondial and Hilario were already reinstated by the petitioner in compliance with the Secretary's return-to-work order. Knowing this to be a fact, the NLRC, in its assailed resolution, dealt only with the fate of the remaining faculty members who were given substantially equivalent academic assignments. The names of the aforementioned faculty members appear nowhere in the disputed NLRC order. Inasmuch as these faculty members actually reinstated were not covered by the NLRC resolution, then it follows that they were likewise not covered by the Court's temporary restraining order enjoining respondents from enforcing or executing the NLRC resolution. The effects of the temporary restraining order did not extend to them. Yet, after the Court issued the temporary restraining order, the petitioner lost no time in recalling their actual teaching assignments and giving them, together with the rest of the dismissed faculty members, substantially equivalent academic assignments.

The petitioner's dogmatic insistence in issuing substantially equivalent academic assignments stems from the fact that the teaching loads of the dismissed professors have already been assigned to other faculty members. It wants us to accept this remedy as one resorted to in good faith. And yet, the petitioner's employment of the temporary restraining order as a pretext to enable it to substitute

substantially equivalent academic assignments even for those who were earlier already reinstated to their actual teaching loads runs counter to the dictates of fair play.

With respect to the private respondent's allegation of union-busting by the petitioner, we do not at this time pass upon this issue. Its determination falls within the competence of the NLRC, as compulsory arbitrator, before whom the labor dispute is under consideration. We are merely called upon to decide the propriety of the petitioner University's grant of substantially equivalent academic assignments pending resolution of the complaint for unfair labor practice and illegal dismissal filed by the private respondent.

Although we pronounce that the dismissed faculty members must be actually reinstated while the labor dispute is being resolved, we have to take into account the fact that at this time, the first semester for school year 1990-1991 is about to end. To change the faculty members around the time of final examinations would adversely affect and prejudice the students whose welfare and interest we consider to be of primordial importance and for whom both the University and the faculty union must subordinate their claims and desires. This Court therefore resolves that the actual reinstatement of the non-reinstated faculty members, pending resolution of the labor controversy before the NLRC, may take effect at the start of the second semester of the school year 1990-1991 but not later. With this arrangement, the petitioner's reasoning that it will be violating contracts with the faculty members who took over the dismissed professors' teaching loads becomes moot considering that, as it alleges in its petition, it operates on a semestral basis.

Under the principle that no appointments can be made to fill items which are not yet lawfully vacant, the contracts of new professors cannot prevail over the right to reinstatement of the dismissed personnel. However, we apply equitable principles for the sake of the students and order actual reinstatement at the start of the second semester.

WHEREFORE, the Petition is hereby **DISMISSED**. However, the NLRC Resolution dated September 6, 1989 is **MODIFIED** and the petitioner University of Sto. Tomas is directed to temporarily

reinstate, pending and without prejudice to the outcome of the labor dispute before the National Labor Relations Commission, the sixteen (16) dismissed faculty members to their actual teaching assignments, at the start of the second semester of the school year 1990-1991. Prior to their temporary reinstatement to their actual teaching loads, the said faculty members shall be entitled to full wages, backwages, and other benefits. The Temporary Restraining Order dated October 25, 1989 is hereby **LIFTED**.

SO ORDERED.

Fernan, *C.J.*, Bidin and Cortes, *JJ.*, concur.
Feliciano, *J.*, on leave.