Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JAN 23 2018

THIRD DIVISION

ERGONOMIC SYSTEMS PHILIPPINES, INC., PHILLIP C. NG and MA. LOURMINDA O. NG,
Petitioners,

- *versus* -

EMERITO C. ENAJE, BENEDICTO P. ABELLO, ALEX M. MALAYLAY, FRANCISCO Q. ENCABO, JR., RICO SAMSON, ROWENA BETITIO, FELIPE N. CUSTOSA, JAIME A. JUATAN, LEOVINO J. MULINTAPANG, NELSON L. ONTE, EMILIANO P. RONE, ROLIETO LLAMADO, AMORPIO R. ADRIANO, JIMMY ALCANTARA, BERNARDO ANTONI, HERMINITO BEDRIJO, ROMEO BELARMINO, YOLANDA CANOPIN, ALMELITO CUABO, RICARDO DEL PILAR, ELMER DESQUITADO, WINEFREDO DESQUITADO, DEMETRIO DIAZ, ERICK ECRAELA, QUINTERO ENRIQUEZ, CRISANTO FERNANDEZ, ROMMEL FLORES, NELSON FRIAS, PEDRITO GIRON, DOMINADOR C. GUIMALDO, JR., AMBROSIO

G.R. No. 195163

Present:

VELASCO, JR., *J.*,
Chairperson,
BERSAMIN,*
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:

December 13, 2017

* On Official Leave.

HENARES, TERENCIO HENARES, ALBERT LACHICA, ALBERTO LORENZO, JOEL MALAYLAY, SUSAN MALBAS, ROLANDO MAMARIL, TEDDY MONTIBLE, FERNANDO OFALDA, RONNIE V. OLIVAY, RAUL PAGOLONG, LORENZO RANIEGO, AMADO V. SAMSON IV, ROEL P. SORIANO, JONATHAN SUALIBIO, ESTEBAN SUMICAO, JOSEPH TABADAY, EPIFANIO TABAREZ, REGIE TOTING, REYNALDO TOTING, NORMAN VALENZUELA, ROLANDO YONSON, DIOSCORO BALAJADIA, NERRY BALINAS, NOEL BALMEO, ARNALDO A. CASTRO, GERONCIO DELA CUEVA, ALBERTO GAPASIN, JULIUS GENOVA, LORETO GRACILLA, JR., ROBERTO S. INGIENTE, ROQUE JOVEN, PATERNO LINOGO, ISAGANI MASANGKA, ANGELITO MONTILLA, PECIFICO NIGPARANON, NOBE SALVADOR, MANUEL OAVENGA, REYNADO ORTIZ, ROMEO QUINTANA, JERNALD REMOTIN, REYNALDO ROBLESA, SAMUEL ROSALES, ROBERTO SANTOS, RONALDO M. SANTOS, ROCKY TALOLONG, EMILIO TONGA, BERNARDO VALDEZ, DANTE L. VELASCO, RENE V. VICENTE, JAIME BENTUCO, MARINO CACAO, CARLITO DELA CERNA, CHRISTOPHER MASAGCA, CHRISTOPHER PALOMARES, ROLANDO PATOTOY, ASER PESADO, JR., LEONILO RICAFORT, FELIX SANCHEZ and FRANCIS O. ZANTUA,

Respondents.

x -x

DECISION

MARTIRES, *J.*:

This is a petition for review on certiorari assailing the Decision,[1] dated 21 September 2010, and Resolution,[2] dated 14 January 2011, of the Court of Appeals *(CA),* in CA-G.R. SP No. 102802, which affirmed with modification the decision,[3] dated 31 October 2007, and resolution,[4] dated 21 December 2007, of the National Labor Relations Commission *(NLRC)* in NLRC NCR No. RAB IV-01-16813-03-L. The NLRC, in turn, affirmed the decision,[5] dated 31 January 2005, of Labor Arbiter Generoso V. Santos *(LA)* in NLRC NCR No. RAB IV-01-16813-03-L, a case for illegal dismissal and unfair labor practice.

THE FACTS

Respondents were union officers and members of Ergonomic System Employees Union–Workers Alliance Trade Unions *(local union).* On 29 October 1999, the local union entered into a Collective Bargaining Agreement *(CBA)*[6] with petitioner Ergonomic Systems Philippines, Inc. *(ESPI)*,[7] which was valid for five (5) years or until October 2004. The local union, which was affiliated with Workers Alliance Trade Unions–Trade Union Congress of the Philippines *(Federation),* was not independently registered. Thus, on 15 November 2001, before the CBA expired, the union officers secured the independent registration of the local union with the Regional Office of the Department of Labor and Employment *(DOLE).* Later on, the union officers were charged before the Federation and investigated for attending and participating in other union's seminars and activities using union leaves without the knowledge and consent of the Federation and ESPI as well as in initiating and conspiring in the disaffiliation before the freedom period.[8]

On 10 January 2002, the Federation rendered a decision[9] finding respondents-union officers Emerito C. Enaje, Benedicto P. Abello, Alex M. Malaylay, Francisco G. Encabo, Jr., Rico Samson, Rowena Betitio, Felipe N. Custosa, Jaime A. Juatan, Leovino Mulintapang, Nelson L. Onte,

---

1 *Rollo*, pp. 40-55; penned by Associate Justice Antonio L. Villamor with Associate Justice Jose C. Reyes, Jr. and Associate Justice Amy C. Lazaro-Javier, concurring.
2 Id. at 57-58.
3 Id. at 92-100; penned by Commissioner Gregorio O. Bilog III with Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo, concurring.
4 Id. at 102-104.
5 Id. at 76-90.
6 Id. at 59-71.
7 Also referred as "Ergonomics Systems Philippines, Inc." in some parts of the rollo.
8 *Rollo*, p. 77.
9 Id. at 72-A-73.

Emiliano P. Rone, and Rolieto Llamado guilty of disloyalty. They were penalized with immediate expulsion from the Federation.[10]

On 11 January 2002, the Federation furnished ESPI with a copy of its decision against respondents-union officers and recommended the termination of their employment by invoking Sections 2 and 3, Article 2 of the CBA.[11]

ESPI notified respondents-union officers of the Federation's demand and gave them 48 hours to explain. Except for Nelson Onte, Emiliano Rone, and Rico Samson, the rest of the officers refused to receive the notices. Thereafter, on 20 February 2002, respondents-union officers were issued letters of termination, which they again refused to receive. On 26 February 2002, ESPI submitted to the DOLE a list of the dismissed employees. On the same day, the local union filed a notice of strike with the National Conciliation and Mediation Board *(NCMB).*[12]

From 21 February to 23 February 2002, the local union staged a series of noise barrage and "slow down" activities. Meanwhile, on 22 February 2002, 40 union members identified as: Amorpio Adriano, Jimmy Alcantara, Bernardo Antoni, Herminito Bedrijo, Romeo Belarmino, Yolanda Canopin, Almelito Cuabo, Ricardo Del Pilar, Elmer Desquitado, Winefredo Desquitado, Demetrio Diaz, Erick Ecraela, Quintero Enriquez, Crisanto Fernandez, Rommel Flores, Nelson Frias, Pedrito Geron, Dominador Guimaldo, Ambrosio Henarez, Terencio Henares, Albert Lachica, Alberto Lorenzo, Joel Malaylay, Susan Malbas, Rolando Manaril, Teddy Montible, Fernando Ofaldo, Ronie Olivay, Raul Pagolong, Lorenzo Raniego, Amado Samson-Ty, Roel Soriano, Jonathan Sualibio, Esteban Sumicao, Joseph Tabaday, Epifanio Tabarez, Regie Toting, Reynaldo Toting, Norman Valenzuela and Rolando Yonson ***refused to submit their Daily Production Reports (DPRs)***.

On 26 February 2002, 28 union members namely Dioscoro Balajadia, Nerry Balinas, Noel Balmeo, Arnaldo Castro, Geroncio Dela Cueva, Alberto Gapasin, Julius Genova, Loreto Gracilla, Roberto Ingiente, Jr., Roque Joven, Paterno Linogo, Isagani Masangka, Angelito Montilla, Pecifico Nigparanon, Salvador Nobe, Manuel Oavenga, Reynaldo Ortiz, Romeo Quintana, Jernard Remotin, Reynaldo Roblesa, Samuel Rosales, Roberto Santos, Ronaldo Santos, Rocky Talolong, Emilio Tonga, Bernardo Valdez, Dante Velasco and Rene Vicente ***abandoned their work and held a picket line outside the premises of ESPI.***

---

10 Id. at 77.
11 Id. at 78.
12 Id.

Then, from 26 February 2002 to 2 March 2002, 10 union members, namely Jaime Bentuco, Marina Cacao, Carlito Dela Cerna, Christopher Masagca, Christopher Palomares, Rolando Patotoy, Aser Pesado, Jr., Leonilo Ricafort, Felix Sanchez and Francis Santua did not report for work without official leave. The union members were required to submit their explanation why they should not be sanctioned for their refusal to submit DPRs and abandonment of work, but they either refused to receive the notices or received them under protest. Further, they did not submit their explanation as required. Subsequently, for refusal to submit DPRs and for abandonment, respondents-union members were issued letters of termination.[13]

On 27 January 2003, the respondents filed a complaint for illegal dismissal and unfair labor practice against ESPI, Phillip C. Ng, and Ma. Lourminda O. Ng *(petitioners)*.[14]

The Labor Arbiter's Ruling

In a decision, dated 31 January 2005, the LA held that the local union was the real party in interest and the Federation was merely an agent in the CBA; thus, the union officers and members who caused the implied disaffiliation did not violate the union security clause. Consequently, their dismissal was unwarranted. Nevertheless, the LA ruled that since ESPI effected the dismissal in response to the Federation's demand which appeared to be justified by a reading of the union security clause, it would be unjust to hold ESPI liable for the normal consequences of illegal dismissal.

The LA further opined that there was no ground for the dismissal of the union members because the refusal to submit DPRs and failure to report for work were meant to protest the dismissal of their officers, not to sever employer-employee relationship. He added that neither ESPI nor the respondents were at fault for they were merely protecting their respective interests. In sum, the LA ordered all the respondents to return to work but without back wages. The *fallo* reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the complainants to report back to their former jobs within ten (10) days from receipt of this Decision and the respondent company is in turn directed to accept them back but without back wages. In the event however, that this is no longer possible, the respondent company is ordered to pay the complainants their separation pay computed at one-half

[13] Id. at 79-80.
[14] Id. at 80.

> (1/2) month salary for every year of service, a fraction of at least six (6) months to be considered as one (1) whole year. The respondent is likewise ordered to pay complainants attorney's fees equivalent to ten (10%) percent of the total thereof as attorney's fees.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[15]

Unconvinced, petitioners and respondents appealed before the NLRC.

The NLRC Ruling

In a decision, dated 31 October 2007, the NLRC affirmed the ruling of the LA. It adjudged that the dismissal of the union officers was effected only in response to the demand of the Federation and to comply with the union security clause under the CBA. The NLRC concluded that since there was no disloyalty to the union, but only disaffiliation from the Federation which was a mere agent in the CBA, the cause for the respondents' dismissal was non-existent. It disposed the case in this wise:

> WHEREFORE, premises considered, the appeals separately filed by complainants and respondents from the Decision of Labor Arbiter Generoso V. Santos dated January 31, 2005 are both DISMISSED for lack of merit.
>
> The appeal filed by complainants from the Order dated January 4, 2007 is likewise DISMISSED for lack of merit.
>
> The assailed Orders are hereby AFFIRMED.
>
> SO ORDERED.[16]

Undeterred, petitioners and respondents moved for reconsideration. Their motions, however, were denied by the NLRC in a resolution, dated 21 December 2007.

The CA Ruling

In its decision, dated 21 September 2010, the CA affirmed with modification the NLRC ruling. It held that ESPI and the respondents acted in good faith when the former dismissed the latter and when the latter, in turn, staged a strike without complying with the legal requirements. The CA, however, pronounced that the concept of separation pay as an alternative to

---

[15] Id. at 90.
[16] Id. at 99.

reinstatement holds true only in cases wherein there is illegal dismissal, a fact which does not exist in this case. The dispositive portion reads:

> WHEREFORE, the instant petition is PARTIALLY GRANTED. The Decision of the Labor Arbiter, as sustained by the National Labor Relations Commission, reverting the employer-employee position of the parties to the status quo ante is AFFIRMED, with MODIFICATION, in that the provision on the award of separation pay in lieu of reinstatement is deleted.
>
> SO ORDERED.[17]

Aggrieved, petitioners and respondents moved for reconsideration but the same was denied by the CA in a resolution, dated 14 January 2011.

Hence, this petition.

ISSUES

I. WHETHER THE FEDERATION MAY INVOKE THE UNION SECURITY CLAUSE IN DEMANDING THE RESPONDENTS' DISMISSAL;

II. WHETHER THE STRIKE CONDUCTED BY THE RESPONDENTS COMPLIED WITH THE LEGAL REQUIREMENTS;

III. WHETHER THE RESPONDENTS' DISMISSAL FROM EMPLOYMENT WAS VALID.

The petitioners argue that the respondents failed to comply with two (2) of the procedural requirements for a valid strike, i.e., taking of a strike vote and observance of the seven-day period after submission of the strike vote report; that mere participation of union officers in the illegal strike is a ground for termination of employment; that the union members committed illegal acts during the strike which warranted their dismissal, i.e., obstruction of the free ingress to and egress from ESPI's premises and commission of acts of violence, coercion or intimidation; that the respondents are not entitled to reinstatement or separation pay because they were validly dismissed from employment; that the union members who unjustly refused to submit their DPRs and abandoned their work were rightfully terminated because their acts constituted serious misconduct or willful disobedience of lawful orders; and that reinstatement is no longer

---

[17] Id. at 54.

possible because the industrial building owned by Ergo Contracts Philippines, Inc. was totally destroyed by fire on 6 February 2005.[18]

In their comment,[19] the respondents counter that they were not legally terminated because the grounds relied upon by the petitioners were non-existent; that as ruled by the NLRC, they merely disaffiliated from the Federation but they were not disloyal to the local union; that reinstatement is not physically impossible because it was the industrial building owned by Ergo Contracts Philippines, Inc. that was gutted down by fire, not that of ESPI; that even if the manufacturing plant of ESPI was indeed destroyed by fire, the petitioners have other offices around the country where the respondents may be reinstated; and that having failed to comply with the order to reinstate them and having ceased operations, the petitioners must be ordered to pay their separation pay.

In their reply,[20] the petitioners aver that the respondents violated the union security clause under the CBA; that their termination was effected in response to the Federation's demand to dismiss them; that they did not comply with the requisites of a valid strike; that they refused to submit their DPRs and abandoned their work; and that the award of separation pay had no basis because the respondents had been legally dismissed from their employment.

THE COURT'S RULING

Only the local union may invoke the union security clause in the CBA.

The controversy between ESPI and the respondents originated from the Federation's act of expelling the union officers and demanding their dismissal from ESPI. Thus, to arrive at a proper resolution of this case, one question to be answered is whether the Federation may invoke the union security clause in the CBA.

"Union security is a generic term, which is applied to and comprehends 'closed shop,' 'union shop,' 'maintenance of membership,' or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees, who are union

---

18 Petition for Review on Certiorari; id. at 9-35.
19 Id. at 125-132.
20 Id. at 168-180.

members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit, or the agreement is terminated. A closed shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part."[21]

Before an employer terminates an employee pursuant to the union security clause, it needs to determine and prove that: (1) the union security clause is applicable; (2) the union is requesting the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the decision of the union to expel the employee from the union.[22]

In this case, the primordial requisite, i.e., the union is requesting the enforcement of the union security provision in the CBA, is clearly lacking. Under the Labor Code, a chartered local union acquires legal personality through the charter certificate issued by a duly registered federation or national union and reported to the Regional Office.[23] "A local union does not owe its existence to the federation with which it is affiliated. It is a separate and distinct voluntary association owing its creation to the will of its members. Mere affiliation does not divest the local union of its own personality, neither does it give the mother federation the license to act independently of the local union. It only gives rise to a contract of agency, where the former acts in representation of the latter. Hence, local unions are considered principals while the federation is deemed to be merely their agent."[24]

The union security clause in the CBA between ESPI and the local union provides:

> SECTION 1. Union Shop. All regular, permanent employees covered by this Agreement who are members of the UNION as of the date of effectivity of this Agreement as well as any employees who shall subsequently become members of the UNION during the lifetime of this Agreement or any extension, thereof, shall as a condition of continued employment, maintain their membership in the UNION during the term of this Agreement or any extension thereof.

---

21 *PICOP Resources, Incorporated (PRI) v. Tañeca*, 641 Phil. 175, 187-188 (2010).

22 *PICOP Resources, Inc. v. Dequilla*, 678 Phil. 118, 127-128 (2011).

23 Article 234-A (As renumbered).

24 *Coastal Subic Bay Terminal, Inc. v. Department of Labor and Employment — Office of the Secretary*, 537 Phil. 459, 471 (2006).

x x x x

SECTION 3. The COMPANY shall terminate the services of any concerned employee when so requested by the UNION for any of the following reasons:

a. Voluntary Resignation from the Union during the term of this Agreement or any extension thereof;

b. Non-payment of membership fee, regular monthly dues, mutual aid benefit and other assessments submitted by the UNION to the COMPANY;

c. Violation of the UNION Constitution and Bylaws. The UNION shall furnish the COMPANY a copy of their Constitution and Bylaws and any amendment thereafter.

d. Joining of another Union whose interest is adverse to the UNION, AWATU, during the lifetime of this Agreement.

e. Other acts which are inimical to the interests of the UNION and AWATU.[25]

There is no doubt that the union referred to in the foregoing provisions is the Ergonomic Systems Employees Union or the local union as provided in Article I of the CBA.[26] A perusal of the CBA shows that the local union, not the Federation, was recognized as the sole and exclusive collective bargaining agent for all its workers and employees in all matters concerning wages, hours of work, and other terms and conditions of employment. Consequently, only the union may invoke the union security clause in case any of its members commits a violation thereof. Even assuming that the union officers were disloyal to the Federation and committed acts inimical to its interest, such circumstance did not give the Federation the prerogative to demand the union officers' dismissal pursuant to the union security clause which, in the first place, only the union may rightfully invoke. Certainly, it does not give the Federation the privilege to act independently of the local union. At most, what the Federation could do is to refuse to recognize the local union as its affiliate and revoke the charter certificate it issued to the latter. In fact, even if the local union itself disaffiliated from the Federation, the latter still has no right to demand the dismissal from employment of the union officers and members because concomitant to the union's prerogative to affiliate with a federation is its right to disaffiliate therefrom which the Court explained in *Philippine Skylanders, Inc. v. NLRC*,[27] *viz*:

---

25 *Rollo*, p. 60.
26 Id. at 59.
27 426 Phil. 35 (2002).

> The right of a local union to disaffiliate from its mother federation is not a novel thesis unillumined by case law. In the landmark case of *Liberty Cotton Mills Workers Union vs. Liberty Cotton Mills, Inc.*, we upheld the right of local unions to separate from their mother federation on the ground that as separate and voluntary associations, local unions do not owe their creation and existence to the national federation to which they are affiliated but, instead, to the will of their members. The sole essence of affiliation is to increase, by collective action, the common bargaining power of local unions for the effective enhancement and protection of their interests. Admittedly, there are times when without succor and support local unions may find it hard, unaided by other support groups, to secure justice for themselves.
>
> Yet the local unions remain the basic units of association, free to serve their own interests subject to the restraints imposed by the constitution and bylaws of the national federation, and free also to renounce the affiliation upon the terms laid down in the agreement which brought such affiliation into existence.[28]

In sum, the Federation could not demand the dismissal from employment of the union officers on the basis of the union security clause found in the CBA between ESPI and the local union.

A strike is deemed illegal for failure to take a strike vote and to submit a report thereon to the NCMB.

A strike is the most powerful weapon of workers in their struggle with management in the course of setting their terms and conditions of employment. As such, it either breathes life to or destroys the union and its members.[29]

Procedurally, for a strike to be valid, it must comply with Article 278[30] of the Labor Code, which requires that: (a) a notice of strike be filed with the NCMB 30 days before the intended date thereof, or 15 days in case of unfair labor practice; (b) a strike vote be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in a meeting called for that purpose; and (c) a notice be given to the NCMB of the results of the voting at least seven days before the intended strike. These requirements are mandatory, and the union's failure to comply renders the strike illegal.[31]

---

28 Id. at 44.

29 *Phimco Industries, Inc. v. Phimco Industries Labor Association*, 642 Phil. 275, 289 (2010).

30 As renumbered.

31 *Piñero v. National Labor Relations Commission*, 480 Phil. 534, 542 (2004).

The union filed a notice of strike on 20 February 2002.[32] The strike commenced on 21 February 2002.[33] The strike vote was taken on 2 April 2002[34] and the report thereon was submitted to the NCMB on 4 April 2002.[35] Indeed, the first requisite or the cooling-off period need not be observed when the ground relied upon for the conduct of strike is union-busting.[36] Nevertheless, the second and third requirements are still mandatory. In this case, it is apparent that the union conducted a strike without seeking a strike vote and without submitting a report thereon to the DOLE. Thus, the strike which commenced on 21 February 2002 was illegal.

Liabilities of union officers and members

Article 279(a)[37] of the Labor Code provides:

> Art. 279. *Prohibited activities.* – (a) x x x
>
> x x x x
>
> Any 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.

In the determination of the consequences of illegal strikes, the law makes a distinction between union members and union officers. The services of an ordinary union member cannot be terminated for mere participation in an illegal strike; proof must be adduced showing that he or she committed illegal acts during the strike. A union officer, on the other hand, may be dismissed, not only when he actually commits an illegal act during a strike, but also if he knowingly participates in an illegal strike.[38]

---

32 *Rollo*, p. 85.
33 Id.
34 CA *rollo*, pp. 149-154.
35 *Rollo*, p. 87.
36 Article 278-C, Labor Code (as renumbered).
37 As renumbered.
38 *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc.*, 470 Phil. 115, 127-128 (2004).

In the present case, respondents-union officers stand to be dismissed as they conducted a strike despite knowledge that a strike vote had not yet been approved by majority of the union and the corresponding strike vote report had not been submitted to the NCMB.

With respect to respondents-union members, the petitioners merely alleged that they committed illegal acts during the strike such as obstruction of ingress to and egress from the premises of ESPI and execution of acts of violence and intimidation. There is, however, a dearth of evidence to prove such claims. Hence, there is no basis to dismiss respondents-union members from employment on the ground that they committed illegal acts during the strike.

Dismissed respondents-union members are not entitled to back wages.

While it is true that the award of back wages is a legal consequence of a finding of illegal dismissal, in *G & S Transport Corporation v. Infante*,[39] the Court pronounced that the dismissed workers are entitled only to reinstatement considering that they did not render work for the employer during the strike, viz:

> **With respect to back wages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof.** If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed or otherwise illegally prevented from working. While it was found that respondents expressed their intention to report back to work, the latter exception cannot apply in this case. In *Philippine Marine Officers' Guild v. Compañia Maritima*, as affirmed in *Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union*, the Court stressed that **for this exception to apply, it is required that the strike be legal**, a situation that does not obtain in the case at bar.[40] (emphases supplied)

Thus, in the case at bar, respondents-union members' reinstatement without back wages suffices for the appropriate relief. Fairness and justice dictate that back wages be denied the employees who participated in the illegal concerted activities to the great detriment of the employer.[41]

---

[39] 559 Phil. 701 (2007).

[40] Id. at 714.

[41] *Abaria, et al. v. National Labor Relations Commission, et al.*, 678 Phil. 64, 100 (2011).

Nevertheless, separation pay is made an alternative relief in lieu of reinstatement in certain circumstances, like: (a) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (b) reinstatement is inimical to the employer's interest; (c) reinstatement is no longer feasible; (d) reinstatement does not serve the best interests of the parties involved; (e) the employer is prejudiced by the workers' continued employment; (f) facts that make execution unjust or inequitable have supervened; or (g) strained relations between the employer and employee.[42]

Given the lapse of considerable time from the occurrence of the strike, the Court rules that the award of separation pay of one (1) month salary for each year of service, in lieu of reinstatement, is in order. This relief strikes a balance between the respondents-union members who may not have known that they were participating in an illegal strike but who, nevertheless, have rendered service to the company for years prior to the illegal strike which caused a rift in their relations, and the employer who definitely suffered losses on account of respondents-union members' failure to report to work during the illegal strike.

WHEREFORE, the petition is **PARTIALLY GRANTED.** The 21 September 2010 Decision and 14 January 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 102802 are **AFFIRMED** with **MODIFICATION** in that petitioners are hereby **ORDERED** to pay each of the above-named individual respondents, except union officers who are hereby declared validly dismissed, separation pay equivalent to one (1) month salary for every year of service. Whatever sums already received from petitioners under any release, waiver or quitclaim shall be deducted from the total separation pay due to each of them.

SO ORDERED.

SAMUEL R. MARTIRES
Associate Justice

---

[42] *Escario v. National Labor Relations Commission*, 645 Phil. 503, 516 (2010).

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

(On Official Leave)
LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

JAN