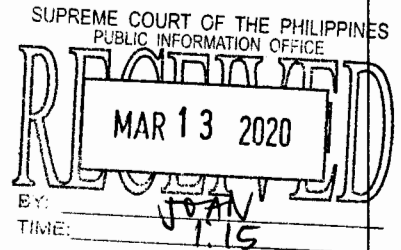




Republic of the Philippines  
**Supreme Court**  
Manila



**THIRD DIVISION**

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **January 22, 2020**, which reads as follows:*

**“G.R. No. 211746 (Edgardo C. Ilagan, Federico P. Urbano, Sr.,<sup>1</sup> Catalino B. Capuz, Romeo O. Castillo, Donatilo Manalo, Allan T. Eugenio, Arturo C. Guangco, Restituto L. Patron, Marcelo R. Aco, Gerardo A. Caguiling, Rolando A. Caramay,<sup>2</sup> Arnaldo L. Gregorio,<sup>3</sup> Leonides C. Landrito, Amadeo D. Molina, Melandro E. Pancho, Dominador G. Reyes, Jr.,<sup>4</sup> Edwin N. Reyes, and Lito A. Ynte v. Manila Electric Company [Meralco]) and G.R. No. 212077 (Manila Electric Company [Meralco] v. Edgardo C. Ilagan, Federico P. Urbano, Sr., Catalino B. Capuz, Romeo O. Castillo, Donatilo Manalo, Allan T. Eugenio, Arturo C. Guangco,<sup>5</sup> Restituto L. Patron, Marcelo R. Aco, Gerardo A. Caguiling, Rolando A. Caramay, Arnaldo L. Gregorio, Leonides C. Landrito, Amadeo D. Molina, Melandro E. Pancho, Dominador G. Reyes, Jr., Edwin N. Reyes, and Lito A. Ynte). – The Court NOTES:**

- (1) the Compliance dated October 17, 2019, filed by Atty. Garri T. Colabio, counsel for MERALCO in G.R. No. 212077, with the Show Cause Resolution dated July 4, 2018 for failure to file a reply to respondents’ comment on the petition for partial review on *certiorari* in G.R. No. 212077, stating that Atty. Raymond B. Yap, the counsel of record for petitioner, transferred from MERALCO Legal Office to another office in October 2015 and unloaded his MERALCO cases; however, an honest mistake was made by the MERALCO Legal’s administration office that this case was already closed and terminated due to the National Labor Relations Commission Entry of Judgment attached to the records of the case and the final Decision of the Court in G.R. No. 182893; thus, the records were stored in the vault and was not reassigned to another handling lawyer; and praying for the

<sup>1</sup>Referred to as Federico C. Urbano, Sr. in other parts of the records.

<sup>2</sup>Referred to as Rolando P. Caramay in other parts of the records.

<sup>3</sup>Referred to as Arnaldo A. Gregorio in other parts of the records.

<sup>4</sup>Referred to as Dominador R. Reyes in other parts of the records.

<sup>5</sup>Referred to as Arturo C. Guanco in other parts of the records.

indulgence of the Court with a commitment that the same mistake or any other matter that may delay the resolution of this petition shall not be repeated; and

- (2) MERALCO's reply dated October 17, 2019 to respondents' comment on the petition in G.R. No. 212077.

This is a Consolidated Appeal on *Certiorari* seeking to partially reverse the March 13, 2014 Amended Decision<sup>6</sup> of the Court of Appeals (*CA*), which modified its July 31, 2013 Decision<sup>7</sup> in CA-G.R. SP. No. 120245. The *CA* affirmed the August 6, 2003 Decision<sup>8</sup> of the National Labor Relations Commission (*NLRC*) in NLRC CERT. CN. 00206-01, a case for illegal dismissal and illegal strike.

### The Antecedents

On February 16, 2000, the Manila Electric Company (*MERALCO*) Employees and Workers Association (*MEWA*), the official bargaining unit of *MERALCO*, through its former President Juanito Rivera (*Rivera*), filed a Notice of Strike with the National Conciliation Mediation Board (*NCMB*) due to bargaining deadlock. After conducting a strike vote in June 2000, Rivera informed *NCMB* Administrator Buenaventura Magsalin of its result in a Letter dated July 12, 2000. The letter was served through registered mail on July 17, 2000. After four days, *MEWA* staged a strike.<sup>9</sup>

Petitioners Federico P. Urbano, Sr., Catalino B. Capuz, Romeo O. Castillo, Donatilo Manalo, Allan T. Eugenio, Arturo C. Guangco and Restituto L. Patron were the union officers who joined the strike; while petitioners Marcelo R. Aco, Gerardo A. Caguingin, Rolando A. Caramay, Arnaldo L. Gregorio, Leonides C. Landrito, Amadeo D. Molina, Melandro E. Pancho, Dominador G. Reyes, Jr., Edwin N. Reyes, Lito A. Ynte and Edgardo C. Ilagan were union members who also joined the same.

Labor Secretary Bienvenido Laguesma (*Sec. Laguesma*) issued an Assumption Order dated July 21, 2000, assuming jurisdiction and directing the striking workers to return to work within 24 hours from notice. Copies of the order were published in three (3) major newspapers on July 23, 2000 and

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<sup>6</sup>*Rollo* (G.R. No. 212077), pp. 36-42; penned by Associate Justice Mario V. Lopez with Associate Justices Jose C. Reyes, Jr. (now both Members of this Court) and Socorro B. Inting, concurring.

<sup>7</sup> *Id.* at 44-57.

<sup>8</sup>*Rollo* (G.R. No. 211746), pp. 82-105; penned by Commissioner Ernesto C. Verceles with Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo, concurring.

<sup>9</sup>*Rollo* (G.R. No. 212077), p. 45.

served to union officers and its lawyers. MERALCO's security guards also exhibited the order to the strikers but they refused to obey.<sup>10</sup>

On July 24, 2000, several strikers wearing masks chained and padlocked the three (3) gates of the MERALCO Center. They lay on the pavements and placed obstructions to block the entry and exit gates of MERALCO. Consequently, on July 25, 2000, Sec. Laguesma issued another Order reminding the parties to comply with the return-to-work order. He even deputized the PNP Chiefs of the National Capital Region, Region III and Region IV to ensure compliance.<sup>11</sup>

On August 2, 2000, MEWA and MERALCO executed an Agreement directing all employees who have not been placed on duty, except 13 union officers<sup>12</sup> and 13 members<sup>13</sup> facing charges, to report for work. MERALCO also issued a Memorandum stating that the resumption of office is without prejudice to an administrative investigation for prohibited acts committed during the strike and/or defiance of the Assumption Orders.<sup>14</sup> From August 7 to October 11, 2000, sixty-six (66) employees were terminated.

The dismissed employees denied any participation in the illegal strike, particularly, in blocking the ingress and egress of the MERALCO Center. Allegedly, they only formed human barricades and placed obstructions for collective self-defense because the guards used unnecessary force in dispersing them. Moreover, the photographs MERALCO presented failed to identify the persons who allegedly committed the prohibited acts because they had covered their faces. Lastly, they claimed that the July 21 and July 25 Assumption Orders were not duly served on the union officers and their counsel.<sup>15</sup>

On August 31, 2000, Sec. Laguesma enjoined the parties to respect the Agreement and directed MERALCO to reinstate the striking employees except those excluded in the Agreement. MEWA then filed an Urgent Motion for Execution of the Agreement. However, MERALCO opposed and sought to declare the strike illegal for failure to report the strike vote result at least

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<sup>10</sup> Id at 45-46.

<sup>11</sup> Id. at 46.

<sup>12</sup> Id.

The 13 union officers referred to in the Agreement are as follows: Juanito G. Rivera, Federico P. Urbano, Sr., Catalino B. Capuz, Romeo O. Castillo, Albert R. Diaz, Jr., Allant T. Eugenio, Jackson C. Flores, Arturo C. Guangco, Donatilo A. Manalo, Restituto L. Patron, Juanito G. Rivera, Chito I. Valdehueza, Epifanio S. Villegas and Manuel Tolentino.

<sup>13</sup> Id.

The 13 union members referred to are: Arnold Tulfo, Lito Ynte, Fortuanti Legaspi, Elpidio Gutierrez, Leonides Landrito, Teodoro Lopena, Jr., Ronnie Villa, Nestor Manalo, Gilbert Garcia, Imelda Villanueva, Arnaldo L. Gregorio, Nelson Malicdem and Nomerico Cruz.

<sup>14</sup> Id. at 47.

<sup>15</sup> Id.

seven (7) days before the strike. On October 24, 2000, Sec. Laguesma granted the Motion, but the Writ of Execution was not carried out.<sup>16</sup>

On January 31, 2001, Labor Undersecretary Jose M. Español, Jr. (*Usec. Español*) approved the Collective Bargaining Agreement (*CBA*), the terms and conditions of which were agreed upon by MEWA and MERALCO. Usec. Español declared that the legality of the dismissal of employees due to the strike should be decided through compulsory arbitration. The case was then elevated to the NLRC.

### ***The NLRC Ruling***

In its August 6, 2003 Decision,<sup>17</sup> the NLRC declared the strike illegal and sustained the dismissal of the 66 employees of MERALCO for committing prohibited activities and defying the return-to-work order issued by Sec. Laguesma. The NLRC ordered MERALCO to pay the 66 dismissed employees their separation pay.

Both parties filed their respective Motions for Reconsideration. The NLRC granted MERALCO's Motion for Partial Reconsideration and instead ordered MERALCO to give financial assistance of ₱10,000.00 to each of the 66 dismissed employees in lieu of separation pay. Hence, petitioners filed a Petition for *Certiorari* before the CA.

### ***The CA Ruling***

In its July 31, 2013 Decision, the CA ruled that the strike was illegal because MEWA failed to furnish NCMB the strike vote at least seven (7) days before the intended strike in violation of the seven (7)-day strike ban period. The CA further ruled that the union officers who joined the illegal strike were validly dismissed from office because a union officer may be terminated from employment for knowingly participating in an illegal strike. However, the union members who participated in the illegal strike were declared to be illegally dismissed by MERALCO because there was no proof that they committed prohibited activities during the illegal strike.

The CA held that MEWA's union officers are neither entitled to separation pay nor financial assistance for having knowingly participated in the illegal strike. As to the union members, the CA ordered them to be reinstated without payment of backwages.

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<sup>16</sup> Id. at 48.

<sup>17</sup> Supra note 8.

Both parties filed their respective Motions for Partial Reconsideration. Petitioners assert that the CA gravely abused its discretion when it: (1) declared that the union members are not entitled to the payment of backwages; (2) refused to consider that under the August 2, 2000 Agreement, MERALCO agreed to immediately reinstate the striking workers except for the 13 union officers and 13 members; and (3) affirmed the dismissal of the union officers on account of the strike.<sup>18</sup>

On the other hand, MERALCO asks for reconsideration of the ruling reinstating the union members who allegedly committed illegal acts during the strike. It attached the: (1) affidavits of the security guards identifying the union members and narrating what they did during the strike; and (2) scanned copies of photographs taken during the strike, which were already presented before the NLRC.<sup>19</sup>

The CA granted MERALCO's Motion for Partial Reconsideration and ruled that the union members who participated in the illegal strike, except for Arnaldo L. Gregorio and Edwin N. Reyes, were validly dismissed from employment because there is substantial evidence to prove that they participated in the illegal activities during the illegal strike.

Hence, both petitioners and MERALCO filed their separate Petitions for Review on *Certiorari*,<sup>20</sup> which were consolidated by the Court through its November 24, 2014 Resolution.<sup>21</sup>

### The Issues

The pivotal issues in this case are whether or not the CA erred in: a) affirming the ruling of the NLRC in declaring the strike as illegal; and b) ruling that the dismissal of petitioners from employment was valid.

Petitioners argue that there is no substantial evidence to prove that they participated in illegal activities during the strike; that the August 2, 2000 Agreement between the parties should be considered in settling the dispute; and that there must be an award of backwages to Arnaldo L. Gregorio and Edwin N. Reyes because there is no proof that they performed illegal acts during the strike. They also claim that the Court can review the factual findings of the NLRC and the CA because there is a misapprehension of facts.

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<sup>18</sup> *Rollo* (G.R. No. 212077), pp. 37-38.

<sup>19</sup> *Id.* at 38.

<sup>20</sup> G.R. No. 211746 (*Edgardo C. Ilagan, Federico P. Urbano, Sr., Catalino B. Capuz, et al. v. Manila Electric Company*); and G.R. No. 212077 (*Manila Electric Company v. Edgardo C. Ilagan, Federico P. Urbano, Sr., Catalino B. Capuz, et al.*)

<sup>21</sup> *Rollo* (G.R. No. 212077), p. 174.

For its part, MERALCO argues that Arnaldo L. Gregorio and Edwin N. Reyes were validly dismissed from employment because it was proven by the affidavits of the security guards that both joined petitioners in the illegal strike; that the issues raised by petitioners are factual in nature which the Court cannot resolve in an appeal by *certiorari*; and that the appeal must be dismissed with respect to petitioners Allan T. Eugenio, Arnaldo L. Gregorio, Amadeo D. Molina, Dominador G. Reyes, Jr. and Edwin N. Reyes because they did not sign nor verify the petition.

### **The Court's Ruling**

At the outset, it must be pointed out that the petition was not signed nor verified by Allan T. Eugenio, Arnaldo L. Gregorio, Amadeo D. Molina, Dominador G. Reyes, Jr. and Edwin N. Reyes. They cannot be recognized as petitioners for lack of legal standing before the Court thus, the petition as against them should be dismissed outright for their failure to prosecute their claims under Section 4,<sup>22</sup> Rule 7 of the Rules of Court.

It must also be pointed out that the issues raised by the petitioners are a mere rehash of what were already resolved and passed upon by the appellate court. The general rule is that in a Rule 45 Petition for Review on *Certiorari*, this Court will not review the factual determination of labor tribunals and the appellate court. In the exercise of its power to review, the CA can conclusively make a factual determination of whether the NLRC committed grave abuse of discretion.<sup>23</sup> Consequently, it is not our function to re-assess the evidence.<sup>24</sup>

In any event, the petition must be denied for lack of merit.

A strike is the most powerful weapon of workers in coming to an agreement with management as to the terms and conditions of employment. Premised on the concept of economic war between labor and management, staging a strike either gives life to or destroys the labor union and its members, as well as affect management and its members.<sup>25</sup>

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<sup>22</sup> RULES OF COURT, Rule 7, Section 4.  
Sec. 4. Verification.

Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

<sup>23</sup> See *Protective Maximum Security Agency, Inc. v. Celso E. Fuentes*, 753 Phil. 482, 504 (2015); citing *Maralit v. Philippine National Bank*, 613 Phil. 270, 289 (2009).

<sup>24</sup> *Id.*; citing *Go v. Court of Appeals*, 474 Phil. 404, 410 (2004).

<sup>25</sup> *Phimco Industries, Inc. v. Phimco Industries Labor Association (PILA)*, 642 Phil. 275, 289 (2010).

To be legitimate, a strike should not be antithetical to public welfare, and must be pursued within legal bounds. The right to strike as a means of attaining social justice is never meant to oppress or destroy anyone, least of all, the employer.<sup>26</sup> Since strikes affect not only the relationship between labor and management, but also the general peace and progress of the community, the law has provided limitations on the right to strike.<sup>27</sup>

Article 263<sup>28</sup> of the Labor Code, as amended by Republic Act (*R.A.*) No. 6715, and Rule XXII, Book V of the Omnibus Rules Implementing the Labor Code outline the following procedural requirements for a valid strike:

1. A notice of strike, with the required contents, should be filed with the DOLE, specifically the Regional Branch of the NCMB, copy furnished the employer of the union;
2. A cooling-off period must be observed between the filing of notice and the actual execution of the strike thirty (30) days in case of bargaining deadlock and fifteen (15) days in case of unfair labor practice. However, in the case of union busting where the unions existence is threatened, the cooling-off period need not be observed.

x x x x

4. Before a strike is actually commenced, a strike vote should be taken by secret balloting, with a 24-hour prior notice to NCMB. The decision to declare a strike requires the secret-ballot approval of majority of the total union membership in the bargaining unit concerned.
5. **The result of the strike vote should be reported to the NCMB at least seven (7) days before the intended strike or lockout, subject to the cooling-off period. (emphasis supplied)**

It is well-settled that these requirements are mandatory in nature and failure to comply therewith renders the strike illegal.<sup>29</sup>

In the instant case, MEWA did not comply with the seven-day strike ban rule which should be counted from the time the union furnished NCMB the strike vote result. Notably, MEWA also failed to furnish NCMB the results of the vote at least seven days before the intended strike. Although the letter

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<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Art. 263. Strikes, picketing and lockouts.

<sup>29</sup> *Pilipino Telephone Corporation v. Pilipino Telephone Employees Association (PILTEA)*, G.R. No. 160058; and *Pilipino Telephone Employees Association (PILTEA) v. NLRC*, G.R. No. 160094, 552 Phil. 432, 443-444 (2007).

containing the strike vote result was dated July 12, 2000, it was sent through registered mail only on July 17, 2000, which was four days before the strike. Consequently, NCMB did not have sufficient time to determine if the intended strike was approved by majority of the union workers.<sup>30</sup> Thus, the Court finds no compelling reason to depart from the findings of the NLRC and the CA regarding the illegality of the strike.

More importantly, petitioners committed prohibited acts during the said strike, as supported by the evidence on record. Article 264 of the Labor Code enumerates the prohibited acts during a strike, to wit:

**ARTICLE 264. Prohibited Activities.** (a) No Labor organization or employer shall declare a strike or lockout without first having bargained collectively in accordance with Title VII of this Book or without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the Ministry.

No strike or lockout shall be declared after assumption of jurisdiction by the President or the Minister or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout.

Any worker whose employment has been terminated as a consequence of any unlawful lockout shall be entitled to reinstatement with full backwages. **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.

x x x x

(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. (emphasis supplied)

The above-cited provision of the Labor Code presents a substantial distinction between the consequences of an illegal strike for union officers and mere members of the union. For union officers, knowingly participating in an illegal strike is a valid ground for termination of their employment but for union members who participated in an illegal strike, their employment may

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<sup>30</sup>Rollo (G.R. No. 212077), p. 52.



be terminated only if there is substantial evidence or proof that they committed prohibited and illegal acts during the strike.<sup>31</sup>

Considering that the July 21, 2000 strike was illegal for noncompliance with the provisions of law and its implementing rules, the union officers who joined the illegal strike were validly dismissed from employment.

As to the union members, except for Arnaldo L. Gregorio and Edwin N. Reyes, the Court agrees with the findings of the CA that there is substantial evidence to prove that they performed some of the prohibited acts mentioned in Article 264 of the Labor Code. The photographs submitted by MERALCO show the identities of the union members who committed the prohibited acts, which were corroborated by the security guards who were present during the strike. In their affidavits, the security guards identified petitioners Marcelo R. Aco, Gerardo A. Caguin, Rolando A. Caramay, Edgardo C. Ilagan, Leonides C. Landrito, Amadeo D. Molina, Melandro E. Pancho, Dominador G. Reyes, Jr. and Lito A. Ynte barricading the gates and preventing other employees from entering MERALCO's premises.<sup>32</sup> As such, they should be dismissed for their illegal acts during the illegal strike.

MERALCO, however, argues that both Arnaldo L. Gregorio and Edwin N. Reyes were validly dismissed because it was proven that they were also involved in the commission of prohibited acts during the illegal strike. The Court does not agree. A careful reading of the testimonies of the security guards relied upon by MERALCO reveals that they only saw Arnaldo L. Gregorio and Edwin N. Reyes joining the picket line without performing any illegal act during the strike. In *Solidbank Corporation v. Gamier*,<sup>33</sup> the Court explained the proof required to terminate union members, to wit:

**For the rest of the individual respondents who are union members, the rule is that an ordinary striking worker cannot be terminated for mere participation in an illegal strike. There must be proof that he or she committed illegal acts during a strike.** In all cases, the striker must be identified. But proof beyond reasonable doubt is not required. Substantial evidence available under the attendant circumstances, which may justify the imposition of the penalty of dismissal, may suffice. Liability for prohibited acts is to be determined on an individual basis.<sup>34</sup> (emphasis supplied)

<sup>31</sup>*Magdala Multipurpose & Livelihood Cooperative and Sanlor Motors Corp. v. Kilusang Manggagawa ng LGS*, 675 Phil. 861, 872 (2011).

<sup>32</sup>*Rollo* (G.R. No. 212077), p. 40.

<sup>33</sup>649 Phil. 54 (2010).

<sup>34</sup>*Id.* at 78-79.

Hence, absent any clear, substantial and convincing proof of illegal acts committed by Arnaldo L. Gregorio and Edwin N. Reyes during the strike, they cannot be arbitrarily dismissed by MERALCO from their employment.

Nevertheless, the Court agrees with the finding of the CA that Arnaldo L. Gregorio and Edwin N. Reyes should be reinstated without backwages. They are not entitled to backwages in view of the illegality of the said strike. In *G & S Transport Corporation v. Infante*,<sup>35</sup> the Court held:

It can now therefore be concluded that the acts of respondents do not merit their dismissal from employment because it has not been substantially proven that they committed any illegal act while participating in the illegal strike. x x x

x x x x

With respect to backwages, 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.**<sup>36</sup> (citations omitted, emphases supplied)

Under the circumstances, reinstatement without backwages suffices.

**WHEREFORE**, the petitions are **DENIED**. The Amended Decision dated March 13, 2014 of the Court of Appeals in CA-G.R. SP. No. 120245 is hereby **AFFIRMED**.

**SO ORDERED.”**

Very truly yours,

*Misa D C Batt*  
**MISAE L DOMINGO C. BATTUNG III**  
Division Clerk of Court

*gmr*  
2/22/20

<sup>35</sup>559 Phil. 701 (2007).

<sup>36</sup>Id. at 713-714.