

ILLEGAL STRIKES IN THE PHILIPPINES:

ANALYSIS AND COMMENTARY

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INTRODUCTION: THE CONSTITUTIONAL AND STATUTORY BASIS OF THE RIGHT TO STRIKE; SCOPE AND LIMITATIONS.

The law, and jurisprudence on the workers' right to strike in this jurisdiction have not been fully understood by both employees and employers, so much so that the kinds of legal issues being raised to the Supreme Court even today appear to be borne out of lack of basic appreciation of both the letter and the spirit of the laws. Empirical evidence indicates that both labor and capital have not fully comprehended the legal philosophy behind the constitutional and statutory provisions on strike.

Just because it has been enshrined as a constitutional right,¹ it should not be understood to mean that the right to strike is absolute. On the contrary, the fundamental law itself is quick to explicitly stress that the exercise of this right is subject to two (2) stringent conditions, to wit: that its exercise should be both peaceful and that it should be done in accordance with law. The Labor Code² further specifies that the exercise of this right should be consistent with national interest.

To paraphrase the well-written opening line of Mr. Justice Artemio V. Panganiban in *University of Santo Tomas Faculty Union v. Bitonio*,³ there is indeed

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¹CONST, art. XIII, §3.

²Art. 264.

³318SCRA185(1999).

a right way to do the right thing at the right time, by the right party for the right reason. Albeit the University of Santo Tomas case did not involve the right to strike, that apt reminder, coming from the highest court of the land, deserves much more than a symbolic adherence. Illegal strikers and those who are inclined to commit illegal and prohibited acts in the course of the strike should have been so forewarned.

However, events subsequent thereto indicated that, either the workers have not fully understood the rights and its limitations, or they are simply reckless and suicidal in the exercise thereof. In any case, the consequences of illegal strikes proved to be disastrous to the strikers and detrimental to the nation. Hundreds, if not thousands, of employees have lost their employment status. Even their usual defense of good faith is unavailing when strikes are declared illegal due to their commission of prohibited acts. This is because, under controlling law and jurisprudence, in *mala prohibita*, good faith is not admitted as a valid defense.⁴

Among others, the recent cases of *San Juan de Dios*⁵ and of *San Miguel*⁶ have underscored once again the compelling need to stress the far-reaching consequences of taking lightly the strict guidelines for strikes and the full gravity of the penalty for deviating from the limitations imposed by both the Constitution and the law.

In *San Juan de Dios*,⁷ the High Tribunal, speaking through Mr. Justice Romeo J. Callejo, Sr., declared in no uncertain terms that:

Despite the receipt of an order from the Secretary of Labor and Employment to return to their respective jobs, the union officers and members refused to do so and defied the same. Consequently, then, the strike staged by the union is a prohibited activity under Article 264 of the Labor Code. Hence, the dismissal of its officers is in order. The respondent foundation was, thus, justified in terminating the employment of the petitioner union's officers.

⁴ *Union of Filipino Employees v. Nestle*, 192 SCRA 396 (1990).

⁵ *San Juan de Dios Educational Foundation Employees Union-AFW v. San Juan de Dios Education Foundation*, G.R. No. 143341, May 28, 2004.

⁶ *San Miguel Corporation v. National Labor Relations Commission*, 403 SCRA 418 (2003).

⁷ See note 5, *supra*.

Meanwhile, in *San Miguel*,⁸ the Supreme Court, through the *ponencia* of Mr. Justice Adolfo S. Ascuna, held unequivocally, *inter alia*, that:

We cannot sanction the respondent-union's brazen disregard of legal requirements imposed purposely to carry out the *state policy of promoting voluntary modes of settling disputes*. The State's commitment to enforce mutual compliance therewith to foster industrial peace is affirmed by no less than our Constitution. Trade unionism and strikes are legitimate weapons of labor granted by our statutes. But misuse of these instruments can be the subject of judicial intervention to forestall grave injury to a business enterprise.

The rampant misuse of the right to strike has, in fact, resulted in tremendous damage to the Philippine economy and put a constant strain and irritation to the relationship between labor and capital. It has been reported that various multinational companies have closed their Philippine operation and transferred to China, Thailand or Vietnam due to the unusual turbulence in labor relations in the mid-1980s and early 1990s. Today, there is a relative serenity in the labor front but the decision coming out from the Highest Court are rulings on strikes that took place during those unstable years.

In the *San Miguel*,⁹ the Highest Court of the land had to remind the workers that:

A strike is considered as the most effective weapon in protecting the rights of the employees to improve the terms and conditions of their employment. However, to be valid, a strike must be pursued within legal bounds. One of the procedural requisites that Article 263 of the Labor Code and its Implementing Rules prescribe is the *filing of a valid notice of strike with the NCMB*. Imposed for the purpose of encouraging the *voluntary settlement of disputes*, this requirement has been held to be mandatory, the lack of which shall render a strike illegal.

The above reminder should also serve as a final warning to those who are prone to undermine the clear import of the law. Above all, they need to revisit the rationale of the constitutional provision as well as the statutes and jurisprudence on strikes.

Parties to the relationship of employers and employees have to be

⁸ See note 6, *supra*.

⁹*Id.*

reminded that when the Constitutional Commission of 1986 decided to elevate the right into a constitutional one, it was premised on a well-grounded fear that another dictator might emerge in the course of history, who would suspend or otherwise totally obliterate the all-important weapon of labor to undertake peaceful concerted actions in order to seek redress for legitimate grievances, including the staging of strikes in accordance with law. The present Charter's specific provision¹⁰ on the right to strike was brought about more by the fear of the past unfortunate experience under Martial Rule, by a strategic vision of a future for just and reasonable relations between labor and capital in this country.

Thus, the 1987 Charter succeeded, albeit unwittingly, in creating a wrong impression that, by constitutional fiat, the floodgates were opened to an absolute freedom to paralyze company operations, to stage mass actions nationwide as a means to create meaningful changes in the relation between labor and capital. That wrong impression brought about chaos in Philippine labor relations in 1987 and 1988 during the stewardship of the Department of Labor and Employment by then Secretary Augusto S. Sanchez.

The labor jurisprudence that unfolded thereafter, however, proved to be an unfortunate scenario for the workers who had been misled to commit illegal and prohibited acts in the course of exercising the right to strike. Such acts caused their loss of jobs and allegedly also brought about certain bankruptcies and ultimate closures of many business firms. It also left a negative mark on the country as a preferred investment area in Ask and the Pacific.

This brief dissertation, therefore, aims to clarify once more the rules of engagement in the exercise of this important right. It is not our intention to condemn the right itself for it, indisputably, is essential as a vital component of the total legal framework to afford full protection to labor. This thesis merely serves as a caveat, a regulating reminder to use the right to strike in a manner that does not do violence to the rights of others, consistent with the time-honored maxim of "*Sic utere tuo ut alienum non laedas.*"

¹⁰ CONST, art. XIII, § 3.

1. IS IT THE RIGHT THING TO DO IN THE FIRST PLACE? (THE TEST OF PROPRIETY OF THE ACT ITSELF)

The right to strike is intended for specific workers and aimed at achieving specific purposes. Thus, the first crucial test is the test of propriety of the use of the right to strike.

The staging of a strike is NOT the right thing to do insofar as government employees are concerned. This was enunciated by the Supreme Court, through Justice Irene Cortes in the case of *Social Security System Employees Association v. Court of Appeals*¹¹ thus:

The 1987 Constitution, in the Article on Social Justice and Human Rights, provides that the State "shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law (Art XIII, Sec. 3).

By itself, this provision would seem to recognize the right of all workers and employees, including those in the public sector, to strike. But the Constitution itself fails to expressly confirm this impression, for in the Sub-Article on the Civil Service Commission, it provides, after defining the scope of the civil service as "all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters," that "[t]he right to self-organization shall not be denied to government employees" [Art. IX (B), Sec. 2 (1) and (50)]. Parenthetically, the Bill of Rights also provides that "[t]he right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged" (Art III, Sec. 8). Thus, while there is no question that the Constitution recognizes the right of government employees to organize, it is silent as to whether such recognition also includes the right to strike.

Reference is made to the legislative intent and the legal philosophy of the provision allowing government employees to exercise the right to self-organization. The question is whether or not such right includes the right to strike. The High Court, in the afore-cited *Social Security System*¹² case noted that:

¹¹ 175 SCRA 686 (1989).

¹²*Id.*

Resort to the intent of the framers of the organic law becomes helpful in understanding the meaning of these provisions. A reading of the proceedings of the Constitutional Commission that drafted the 1987 Constitution would show that in recognizing the right of government employees to organize, the commissioners intended to limit the right to the formation of unions or associations only, without including the right to strike.

Constitutional Commissioner Lerum explained that

MR. LERUM. I think what I will try to say will not take that long. When we proposed this amendment providing for self-organization of government employees, it does not mean that because they have the right to organize, they also have the right to strike. That is a different matter. We are only talking about organizing, uniting as a union. With regard to the right to strike, everyone will remember that in the Bill of Rights, there is a provision that the right to form associations or societies whose purpose is not contrary to law shall not be abridged. Now then, if the purpose of the state is to prohibit the strikes coming from employees exercising government functions, that could be done because the moment that is prohibited, then the union which will go on strike will be an illegal union. And that provision is carried in Republic Act 875. In Republic Act 875, workers, including those from the government-owned and controlled corporation, are allowed to organize but they are prohibited from striking. So, the fear of our honorable Vice President is unfounded. It does not mean that because we approve this resolution, it carries with it the right to strike. That is a different matter. As a matter of fact, that subject is now being discussed in the Committee on Social Justice because we are trying to find a solution to this problem. We know that this problem exists; that the moment we allow anybody in the government to strike, then what will happen if the members of the Armed Forces will go on strike? What will happen to those people trying to protect us? So that is a matter of discussion in the Committee on Social Justice. But, I repeat, the right to form an organization does not carry with it the right to strike.¹³

The Supreme Court held that government employees cannot legally strike. Thus:

¹³I RECORD OF THE CONSTITUTIONAL COMMISSION 569.

But are employees of the SSS covered by the prohibition against strikes?

The Court is of the considered view that they are. Considering that under the 1987 Constitution "[t]he civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters" [Art. IX (B), Sec. 2 (1); see also Sec. 1 of E.O. No. 180 where the employees in the civil service are denominated as 'government employees'] and that the SSS is one such government-controlled corporation with an original charter, having been created under R.A. No. 1161, its employees are part of the civil services [NASECO v. NLRC, G.R. Nos. 69870 & 70925, November 24, 1988] and are covered by the Civil Service Commission's memorandum prohibiting strikes. This being the case, the strike staged by the employees of the SSS was illegal.

Government employees can not demand equal treatment vis-à-vis private firms' employees, because, as explained by the Court in the *Social Security System*¹⁴ case:

The statement of the Court in *Alliance of Government Workers v. Minister of Labor and Employment* [G.R. No. 60403, August 3, 1983, 124 SCRA 1] is relevant as it furnishes the rationale for distinguishing between workers in the private sector and government employees with regard to the right to strike:

The general rule in the past and up to the present is that "the terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof are governed by law" (Section 11, the Industrial Peace Act, R.A. No. 875, as amended and Article 277, the Labor Code, P.D. No. 442, as amended). Since the terms and conditions of government employment are fixed by law, government workers cannot use the same weapons employed by workers in the private sector to secure concessions from their employers. The principle behind labor unionism in private industry is that industrial peace cannot be secured through compulsion by law. Relations between private employers and their employees rest on essentially voluntary basis. Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and

¹⁴ See note 11, *supra*..

conditions of employment in the unionized private sector are settled through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules, and regulations, not through collective bargaining agreements.

The Court's conclusion was thus inevitable:

It is the stand, therefore, of this Commission that by reason of the nature of the public employer and the peculiar character of the public service, it must necessarily regard the right to strike given to unions in private industry as not applying to public employees and civil service employees. It has been stated that the Government, in contrast to the private employer, protects the interest of all people in the public service, and that accordingly, such conflicting interests as are present in private labor relations could not exist in the relations between government and those whom they employ.

2. IS IT UNDERTAKEN FOR THE RIGHT REASON? (THE TEST OF PROPRIETY OF PURPOSE)

The second question to ask when workers are confronted with the issues of "to strike or not to strike" would be to determine the propriety of such a concerted action relative to the nature of the labor dispute sought to be remedied. For, while the staging of a strike is admittedly an effective weapon granted to the workers, the availment thereof is limited to only two kinds of labor disputes,¹⁵ which are deadlock in collective bargaining (economic strikes) and unfair labor practices (political strikes). Thus, it is beyond debate that the right to strike is not a panacea for all forms of labor and industrial disputes.

In *San Juan de Dies*,¹⁶ the Court, in effect, pointed out that when the Secretary of Labor issued the Assumption Order and return-to-work order, the remedy of staging a strike should yield to compulsory arbitration. Therefore, when the strikers defied such orders, it was not merely the employer that the workers disobeyed. They willfully disobeyed the will of the State,

¹⁵ LABOR CODE, art. 263, ¶ g.

¹⁶G.R.No. 143341, May 28,2004.

in the lawful exercise of police power, through the Secretary of Labor. From the moment the orders were served upon the striking union, and upon the expiration of the prescribed period, the staging of a strike effectively ceased as an appropriate remedy. This was also the precedent established in *Philippine Airlines v. Secretary of Labor*.¹⁷

In *San Miguel*,¹⁸ the Court also pointed out, in effect, that when a notice of strike is transformed into a preventive mediation case, the proper remedy is changed from strike to mediation. For workers to insist on striking would be to pursue a right end using the wrong means. This is not allowed by kw. That was not allowed by the Supreme Court. For the end does not justify the means.

Thus, the High Court lamented:

In the present case, NCMB converted IBM's notices into preventive mediation as it found that the real issues raised are non-strikeable. Such order is in pursuance of the NCMB's duty to exert all efforts at mediation and conciliation to enable the parties to settle the dispute amicably, and in line with the State policy of favoring voluntary modes of settling labor disputes. In accordance with the Implementing Rules of the Labor Code, the said conversion had the effect of dismissing the notices of strike filed by respondent A case in point is *PAL v. Drilon*, where we declared a strike illegal for lack of a valid notice of strike, in view of the NCMB's conversion of the notice therein into a preventive mediation case. We ruled, thus:

The NCMB had declared the notice of strike as appropriate for preventive mediation. The effect of that declaration (which PALEA did not ask to be reconsidered or set aside) was to drop the case from the docket of notice of strikes, as provided in Rule 41 of the NCMB Rules, as if there was no notice of strike. During the pendency of preventive mediation proceedings no strike could be legally declared... The strike which the union mounted, while preventive mediation proceedings were ongoing, was aptly described by the petitioner as "an ambush."

¹⁷193 SCRA 223 (1991).

¹⁸403 SCRA 418 (2003).

It should also be pointed out that unions may not strike based on other grounds like wage distortion. In the case of *Ilaw at Buklod ng Manggagawa v. National Labor Relations Commission*,¹⁹ the High Court held that a wage distortion dispute is neither a case of unfair labor practice nor of a deadlock in collective bargaining. In fact, it was pointed out in that case that the law explicitly prohibits a strike based on wage distortion.

In another case,²⁰ the Supreme Court held that a “union-recognition strike” is not allowed by law, especially when it is staged prior to the freedom period. Both the end and the means are wrong. “A Union recognition strike, as the name implies, is calculated to compel the employer to recognize one's union and not the other contending group, as the employees' bargaining representative to work out a CBA (Collective Bargaining Agreement) despite the union's doubtful majority status to merit voluntary recognition and lack of formal certification as the exclusive representative in the bargaining unit.” In this case, it was clarified that strike was not the right thing to do and union-recognition was not the right reason therefor either.

This was also the ruling by the Court in the case of *Association of Independent Unions in the Philippines v. National Labor Relations Commission*.²¹ The Court also much earlier decided along the line of the legal principle enunciated in Article 263 (b) of the Labor Code that no labor union may strike based on grounds invoking inter-union and intra-union disputes. Witness are the following cases in the past

1. *Lusyn Marine Department Union v. Arsenio RoHati et. al*²²
2. *United Seamen's Union of the Philippines κ Davao Shippers' Association*²³
3. *United Restauror's Employees and Labor Union v. Torres*²⁴
4. *Caltex Filipino Managers and Supervisors Association v. CIR*²⁵

In *San Miguel Corporation v. National Labor Relations Commission*,²⁶ the Court held:

¹⁹198 SCRA 586 (1991).

²⁰*Pasvil/Pascual Liner v. National Labor Relations Commission*, 311 SCRA 444 (1999).

²¹305 SCRA 219 (1999).

²²86 Phil. 507 (1950).

²³20 SCRA 1226 (1967).

²⁴26 SCRA 435 (1968).

²⁵44 SCRA 351 (1972).

²⁶304 SCRA 1(1999).

In the case under consideration, the grounds relied upon by the private respondent union are non-strikeable. The issues which may lend substance to the notice of strike filed by the private respondent union are: collective bargaining deadlock and petitioner's alleged violation of the collective bargaining agreement. These grounds, however, appear more illusory than real.

In this case of *San Miguel*, the Court held that the disputes are proper for the grievance machinery and not for the strike area.

In *National Union Workers in Hotels, Restaurants, and Allied Industries v. National Labor Relations Commission*,²⁷ the Court speaking through Justice Florenz Regalado held that a "wild cat" strike is not the right thing to do to remedy an illegal dismissal case.

3. IS IT THE RIGHT WAY TO DO THE RIGHT THING? (THE TEST OF PROPRIETY OF METHODS)

Under the law,²⁸ the union should not just file a notice of strike,²⁹ it has to observe the Cooling-off Period, which is 15 days for unfair labor practice and 30 days for deadlock in collective bargaining. The union must conduct a strike vote by secret ballot. The strike vote results have to be submitted to the Department of Labor at least seven (7) days before the intended strike.³⁰ Any single deviation from these procedures shall render the strike illegal.

The filing of a strike notice is a *sine qua non* to the staging of a legal strike, absence of which necessarily makes the strike illegal. Thus, it was clarified in the case of *National Federation of Labor v. National Labor Relations Commission*³¹ that:

While, it is true that Philippine Metal held that a strike cannot be declared as illegal for lack of notice, however, it is important to note that said case was decided in 1979. At this juncture, it must be stressed that with the enactment of Republic Act No. 6715 which took effect on March 21, 1989, the rule now is that such requirements

²⁷287 SCRA192 (1998).

²⁸LABOR CODE, art 263.

²⁹*Id.*, art. 263, ¶ c.

³⁰*Id.*, art. 263, ¶ f.

³¹283 SCRA 275 (1997).

as the filing of a notice of strike, strike vote, and notice given to the Department of Labor are mandatory in nature. Thus, even if the union acted in good faith in the belief that the company was committing an unfair labor practice, if no notice of strike and a strike vote were conducted, the said strike is illegal.

The National Federation of Labor decision afore-quoted has also abrogated the ruling in Peoples' Industrial and Commercial Corp.³²

In the *San Miguel case*,³³ the High Tribunal held that the National Conciliation and Mediation Board (NCMB) has the power to declare a strike notice proper for preventive mediation. Such declaration has the effect of holding that there is no more notice of strike. It would thus be illegal to proceed with the strike without such notice.

Said the High Court

Clearly, therefore, applying the afore-cited ruling to the case at bar, when the NCMB ordered the preventive mediation on May 2, 1994, respondent had thereupon lost the notices of strike. In the case of *NUWHRAIN v. NLRC*, where the petitioner-union therein similarly defied a prohibition by the NCMB, we said:

Petitioners should have complied with the prohibition to strike ordered by the NCMB when the latter dismissed the notices of strike after finding that the alleged acts of discrimination of the hotel were not ULP, hence not "strikeable." The refusal of the petitioners to heed said proscription of the NCMB is reflective of bad faith.

Such disregard of the mediation proceedings was a blatant violation of the Implementing Rules, which explicitly oblige the parties to bargain collectively in good faith and prohibit them from impeding or disrupting the proceedings.

In the case of *Association of Independent Unions in the Philippines*,³⁴ Mr. Justice Fidel Purisima made it very clear for the Court, thus:

A strike though valid may be declared invalid where the means employed are illegal. Even if the strike is valid because its objective

³²112 SCRA 440 (1982).

³³403 SCRA 418 (2003).

³⁴305 SCRA 219 (1999).

or purpose is lawful, the strike may still be declared invalid where the means employed are illegal. For instance, the strike was considered illegal as the 'strikers formed a human cordon along the side of the Sta. Ana wharf and blocked all the ways and approaches to the launches and vessels of Petitioners'.

It was a case of the wrong way to do the right thing. Everything was declared wrong at the end.

In the case of *Filipino Pipe and Foundry Corp. v. National Labor Relations Commission*³⁵ the Court, also through Justice Fidel Purisima held:

The failure of the union to serve the company a copy of the notice of strike is a clear violation of Section 3, Rule XXII, Book V of the Rules Implementing the Labor Code - the constitutional precepts of due process mandate that the other party be notified of the adverse action of the opposing party. — Then too, the failure of the union to serve petitioner company a copy of the notice of strike is a clear violation of Section 3 of the aforesaid Rules. The constitutional precepts of due process mandate that the other party be notified of the adverse action of the opposing party. So also, the same Section provides for a mandatory thirty (30) day cooling-off period which the union ignored when it struck on March 3, 1986, before the 30th day from the time the notice of strike was filed on February 10, 1986.

In the case of *Reliance Surety and Insurance Co. v. National Labor Relations Commission*³⁶ the Supreme Court declared the strike illegal on three counts, to wit:

1. the union did not observe the 15-day Cooling-off Period for ULP strike,
2. the union did not prove that the strike was supported by a 2/3 vote (now a simple majority), and
3. there was no observance of a seven-day suspension of the right prior to the actual strike.

In the case of *Union of Filipino Employees v. Nestle*,³⁷ the Court likewise declared the strike illegal because:

³⁵318SCRA68(1999).

³⁶193SCRA365(1991).

³⁷192SCRA396(1990).

1. there was no observance of the mandatory cooling-off period, and
2. the 7-day period after submission of the strike vote results was not observed.

The Court explained the importance of complying with the 7-day waiting period in the case of *National Federation of Sugar Workers v. Ovejera*.³⁸ Thus:

The 7-day strike vote report is not without a purpose. Many disastrous strikes have been staged in the past based merely on the insistence of minority groups within the union. The submission of the report gives assurance that a strike vote has been taken and that, if the report concerning it is false, the majority of the members can take appropriate remedy before it is too late. If the purposes of the required strike notice and strike vote report are to be achieved, the periods prescribed for their attainment must be deemed mandatory.

The purpose of the seven-day waiting period was explained by the High Tribunal in the case of *Lapanday Workers Union v. National Labor Relations Commission*,³⁹ as follows:

The seven (7) day waiting period is intended to give the Department of Labor and Employment an opportunity to verify whether the projected strike really carries the imprimatur of the majority of the union members. The need for assurance that majority of the union members support the strike cannot be gainsaid. Strike is usually the last weapon of labor to compel capital to concede to its bargaining demands or to defend itself against unfair labor practices of management. It is a weapon that can either breathe life to or destroy the union and its members in their struggle with management for a more equitable due of their labors. The decision to wield the weapon of strike must, therefore, rest on a rational basis, free from emotionalism, unswayed by the tempers and tantrums of a few hotheads, and firmly focused on the legitimate interest of the union which should not, however, be antithetical to the public welfare. Thus, our laws require the decision to strike to be the consensus of the majority for while the majority is not infallible, still, it is the best hedge against haste and error. In addition, a majority vote assures

³⁸114 SCRA354 (1982).

³⁹248 SCRA95 (1995).

the union it will go to war against management with the strength derived from unity and hence, with better chance to succeed.

The Court has been very strict in the observance of the seven-day waiting period. In *Coca Cola Bottlers Phil. Inc. Postmix Workers' Union v. National Labor Relations Commission*,⁴⁰ it was strongly held that substantial compliance does not suffice. Thus:

In another attempt to sway this Court to accept the view that the union substantially complied with the strike requirements, the union theorized that since the strike vote was conducted on April 14, 1987, between 7:30 a.m. to 8:45 a.m., the strike held on April 20, 1987, at 8:30 a.m. should be considered as held exactly on the seventh day from the balloting, in accordance with the seven-day strike ban, as the counting of the seven days should be reckoned from April 14, 1987, at 8:45 a.m.

However, the last paragraph of Article 13 of the Civil Code provides for the correct manner of computing a period, to wit: 'Art 13 xxx. In computing a period, the first day shall be excluded and the last day included.'

Accordingly, since the strike vote was conducted and submitted to the DOLE on April 14, 1987, the seventh day fell on April 21, 1987. Since there is no dispute that the union struck on April 20, 1987, only the sixth day since the submission of the strike vote, the strike was patently illegal.

A strike conducted with force, threats, coercion, intimidation, physical violence, sabotage and similar acts made the strike illegal.

In the case of *Great Pacific Life Employees Union, et. al. v. Grepalife*,⁴¹ Mr. Justice Bellosillo spoke with authority for the Court in declaring the illegality of the strike, *viz.*

The right to strike, while constitutionally recognized, is not without legal constrictions. The Labor Code is emphatic against the use of violence, coercion and intimidation during a strike and to this end prohibits the obstruction of free passage to and from the employer's premises for lawful purposes. The sanction provided in par. (a) of

⁴⁰ 299 SCRA 410(1998).

⁴¹ 303 SCRA 113 (1999).

Art. 264 thereof is so severe that “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.

There is a long string of cases where violence, threats, coercions, and intimidations were held to taint the exercise of the right to strike with the stigma of illegality. The following are some of them:

1. *Alliance of Democratic Free Labor Organisation v. Laguesma*⁴²
2. *Midas Touch Food Corp. v. National Labor Relations Commission*⁴³
3. *Samahan ng Manggagawa sa Moldex Products v. National Labor Relations Commission*⁴⁴

No other strike can perhaps surpass the violence in the Nestle case.⁴⁵ It was a long drawn labor dispute starting from the stewardship of Secretary Bias F. Ople in the Department of Labor and Employment, up die time of Secretary Augusto S. Sanchez, and it even extended up to the time of Secretary Franklin M. Drilon. The battle was long and highly adversarial, resulting in tremendous loss of properties and even lives of both executives and rank-and-file employees. At the end, scores of union leaders and members lost their jobs.

Today, the erring strikers may have to be reminded that our penal law⁴⁶ imposes the penalty of *arresto mayor* and a fine not exceeding 300 pesos upon any person who, for the purpose of organizing, maintaining, or preventing coalitions of capital or labor, strike of laborers or lockout of employers, shall employ violence or threat in such a degree as to compel or force the laborers or employers in the free and legal exercise of their industry or work, if the act shall not constitute a more serious offense in accordance with the provisions thereof.

The Labor Code⁴⁷ itself provides:

No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress

⁴² 254 SCRA 565 (1996).

⁴³ 259 SCRA 652 (1996).

⁴⁴ 324 SCRA 242 (2000).

⁴⁵ *Union of Filipino Employees v. Nestle*, 192 SCRA 396 (1990).

⁴⁶ REV. PEN. CODE, art 289.

⁴⁷ Art 264, ¶ e.

from the employer's premises for lawful purposes, or obstruct public thoroughfares.

In *First City Infer/ink Transportation Co. Inc. v. Confesor*,⁴⁸ the High Court summarized the basic requirements as follows:

Pursuant to Article 263 (c) (f) of the Labor Code, the requisites for a valid strike are as follows:

- (1) a notice of strike filed with the Department of Labor at least 30 days before the intended date thereof or 15 days in case of unfair labor practice;
- (2) strike vote 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;
- (3) notice given to the Department of Labor and Employment of the results of the voting at least 7 days before the intended strike.

These requirements are mandatory.

The above enumeration is not complete. This paper provides the totality of the positive and negative requirements as outlined by law and further explained by jurisprudence.

4. IS IT THE RIGHT TIME TO DO THE RIGHT THING? (THE TEST OF PROPRIETY OF TIMING)

A strike can be staged legally only after the lapse of the cooling-off period as well as the 7-day waiting period, and after the parties shall have exhausted the available non-confrontational remedies, including the grievance procedures, the conciliation and mediation process, and the voluntary arbitration mechanism, which are the preferred modes of dispute-settlement in this jurisdiction.

In the *San Miguel* case,⁴⁹ the High Tribunal declared that unions should resort to strikes only after exhausting the internal remedies provided in the collective bargaining agreement. Thus:

⁴⁸ 272 SCRA 124 (1997).

⁴⁹ 403 SCRA 418 (2003).

Also noteworthy is public respondent's disregard of petitioner's argument pointing out the union's failure to observe the CBA provisions on grievance and arbitration. In the case of *San Miguel Corp. v. NLRC*, we ruled that the union therein violated the mandatory provisions of the CBA when it filed a notice of strike without availing of the remedies prescribed therein. Thus we held:

For failing to exhaust all steps in the grievance machinery and arbitration proceedings provided in the Collective Bargaining Agreement, the notice of strike should have been dismissed by the NLRC and private respondent union ordered to proceed with the grievance and arbitration proceeding. In the case of *Liberal Labor Union v. Phil. Can Co.*, the Court declared as illegal the strike staged by the union for not complying with the grievance procedure provided in the collective bargaining agreement.

Furthermore, the Court unequivocally admonished:

As in the abovesited case, petitioner herein evinced its willingness to negotiate with the union by seeking for an order from the NLRC to compel observance of the grievance and arbitration proceedings. Respondent however resorted to force without exhausting all available means within its reach. Such infringement of the aforesited CBA provisions constitutes further justification for the issuance of an injunction against the strike. As we said long ago: "*Strikes held in violation of the terms contained in a collective bargaining agreement are illegal especially when they provide for constructive arbitration clauses. These agreements must be strictly adhered to and respected if their ends have to be achieved.*"

There is likewise an array of cases in this jurisdiction where the Court has consistently declared as illegal those strikes which were conducted without first exhausting all the steps in the grievance procedures as contained in the existing CBA (Collective Bargaining Agreement), including the following, among others:

1. *United Seamens Union v. Davao Shippers Association*.⁵⁰
2. *Arica v. Minister of Labor*.⁵¹

⁵⁰ 20 SCRA1226 (1967).

⁵¹ 137SCRA267(1985).

3. *Union of Filipino Employees v. Nestle*⁵²
4. *San Miguel Corporation v. AFLRC*⁵³

The leading case was *Liberal Labor Union v. Philippine Can Co.*⁵⁴

In *First City Interlink v. Confesor*,⁵⁵ it was held that it was illegal to strike without first having conducted a strike vote and without first having observed the required seven-day strike ban from the date the strike vote has been reported to the Department of Labor and Employment. It was not the right time to do the right thing. In *Coca Cola Bottlers Phil Inc. Postmix Workers' Union*,⁵⁶ it was stressed that strict adherence to the proper procedure and proper timing is required. Substantial compliance is not enough. The same is true in *National Federation Labor v. National Labor Relations Commission*⁵⁷ and in *Reliance Surety v. National Labor Relations Commission*.⁵⁸

The Labor Code⁵⁹ requires that in the case of economic strikes, those based on deadlock, the effort to first bargain collectively is a *sine qua non* to the conduct of a strike. In this connection, in the case of *Insurefco Paper Pulp and Project Workers Union v. Insular Sugar Refining Corp.*,⁶⁰ the Court held:

The walkout was PREMATURE as it was declared without giving to the General Manager or the Board of Directors of the Company, reasonable time within which to consider and act on the demands submitted by the union.

It is NOT the right timing to stage a strike when there are pending conciliation proceedings involving the dispute. The Court, in *Filipino Pipe and Foundry Corp. v. National Labor Relations Commission*,⁶¹ citing Sec. 6 of Rule XXII, Book V of the Labor Code's Implementing Rules, viz.

During the proceedings, the parties shall not do any act which may disrupt or impede the early settlement of the dispute. They are

⁵²192 SCRA196 (1990).

⁵³304SCRA1 (1999).

⁵⁴91PhiL72 (1952).

⁵⁵2,72 SCRA 124 (1997).

⁵⁶299 SCRA 410 (1998).

⁵⁷283 SCRA 275 (1997).

⁵⁸193 SCRA 365 (1991).

⁵⁹ Art. 264, ¶ a, in relation to art. 252 and 253.

⁶⁰95 Phil. 761 (1954).

⁶¹318 SCRA 68 (1999).

obliged as part of the duty to bargain collectively in good faith, to participate fully and promptly in the conciliation meetings called by the regional branch of the board. The regional branch of the Board shall have the power to issue subpoenas requiring the attendance of the parties to the meetings.

In condemning the strike as illegal, the Court held in the *Filipino Pipe* case that:

What is more, the same strike blatantly disregarded the prohibition on the doing of any act which may impede or disrupt the conciliation proceedings, when the union staged the strike in the early morning of March 3, 1986, the very same day the conciliation conference was scheduled by the former Ministry of Labor.

In light of the foregoing, it is beyond cavil that subject strike staged by the union was illegal.

All the above periods and conditions are mandatory. In *Coca-Cola Bottlers Philippines Inc.*⁶²

As we stated in *Gold Qty Integrated Port Services, Inc. v. National Labor Relations Commission*, citing the case of *National Federation of Sugar Workers vs. Ovejera*, the language of law leaves no room for doubt that the cooling-off period and the seven-day strike ban after the strike-vote report were intended to be mandatory filing of the Notice of Strike, before the lapse of which, the union may not strike.

The Labor Code has established definite time limits that should be strictly followed. Those who deride, do so at their own risk.

5. IS IT STAGED IN A PEACEFUL MANNER? (THE TEST OF PEACEFULNESS OF STRIKES)

The Supreme Court condemned as illegal the strike in the case of *First City Interlink*.⁶³ due to the following reasons, *inter alia*:

Contrary to respondent Secretary's finding, the strike declared by the Union was attended by pervasive and widespread violence.

⁶²299 SCRA 410 (1998).

⁶³272 SCRA124 (1997).

The acts of violence committed were not mere isolated incidents which could normally occur during any strike. The hijacking of Fil-Transit Bus No. 148 at the intersection of EDSA and Quezon Avenue on Sunday, July 27, 1986, three days before the scheduled conciliation conference, reveals that it was staged in pursuance of a preconceived plan. This was followed by the barricading of the terminal in Alabang by means of five buses which had also been hijacked. In the days that followed, the strikers persisted in their violent acts, (1) the hijacking of 26 more buses which resulted in injuries to some employees and panic to the commuters; (2) the puncturing of tires; (3) the cutting of electric wirings, water hoses and fan belts; and (4) the alleged theft of expensive equipment such as fuel injections worth P30,000 each. The commission of these illegal acts was neither isolated nor accidental but deliberately employed to intimidate and harass the employer and the public. The strikers even resorted to the use of molotov bombs which were thrown into the petitioner's compound.

In *Association of Independent Unions*,⁶⁴ the Court emphasized the statutory limits of the workers' right to strike, viz.

A strike is a legitimate weapon in the universal struggle for existence. It is considered as the most effective weapon in protecting the rights of the employees to improve the terms and conditions of their employment. But to be valid, a strike must be pursued within legal bounds. The right to strike as a means for the attainment of social justice is never meant to oppress or destroy the employer. The law provides limits for its exercise. Among such limits are the prohibited activities under Article 264 of the Labor Code, particularly paragraph (e), which states that no person engaged in picketing shall: a) commit any act of violence, coercion, or intimidation or b) obstruct the free ingress to or egress from the employer's premises for lawful purposes or c) obstruct public thoroughfares.

In the case of *Grepalife*,⁶⁵ the High Tribunal warned:

The sanction provided in par. (a) of Art 264 thereof is so severe that 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.

⁶⁴305 SCRA 219 (1999).

⁶⁵303 SCRA 113 (1999).

Nevertheless, when the parties are *in pari delicto*, the law will leave them where it finds them. In the case of *Malayang Samahan ng mga Manggagawa sa M. Greenfield, et. al. v. Ramos*,⁶⁶ the High Court declared:

On the allegation of violence committed in the course of the strike, it must be remembered that the Labor Arbiter and the Commission found that "the parties are agreed that there were violent incidents x x x resulting to injuries to both sides, the union and management. The evidence on record show that the violence cannot be attributed to the striking employees alone for the company itself employed hired men to pacify the strikers. With violence committed on both sides, the management and the employees, such violence cannot be a ground for declaring the strike as illegal.

It can thus be concluded that the law is very strict when it comes to violence, threats, and intimidations employed during the strike.

6. IS IT IN COMPLIANCE WITH CONTRACTUAL STIPULATION?

One major issue to tackle is the "no strike, no lockout" clause. Is this binding? Can there be a valid total waiver of the constitutional right to strike? The string of jurisprudence in this jurisdiction has provided a clear answer to this question.

In the *San Miguel* case,⁶⁷ the Supreme Court succinctly held:

As to petitioner's allegation of violation of the *non-strike provision* in the CBA, jurisprudence has enunciated that such clauses *only bar strikes which are economic in nature, but not strikes grounded on unfair labor practices*. The notices filed in the case at bar alleged unfair labor practices, the initial determination of which would entail fact-finding that is best left for the labor arbiters. Nevertheless, our finding herein of the invalidity of the notices of strike dispenses with the need to discuss this issue.

The Court, through Justice Melo, explained this matter further in the case of *Master Iron Labor Union v. National Labor Relations Commission*:⁶⁸

⁶⁶ 326 SCRA 428 (2000).

⁶⁷ 403 SCRA 418 (2003).

⁶⁸ 219 SCRA 47 (1993).

In holding that the strike was illegal, the NLRC relied solely on the no-strike no-lockout provision of the CBA afore-quoted. As this Court has held in *Philippine Metal Foundries, Inc. vs. CIR* (90 SCRA 135 [1997]), a no-strike clause in a CBA is applicable only to economic strikes. Corollarily, if the strike is founded on an unfair labor practice of the employer, a strike declared by the union cannot be considered a violation of the no-strike clause.

An economic strike is defined as one which is to force wage or other concessions from the employer which he is not required by law to grant (*Consolidated Labor Association of the Philippines vs. Marsman & Co., Inc.* 11 SCRA 589 [1964]). In this case, petitioners enumerated in their notice of strike the following grounds: violation of CBA or the Corporation's practice of subcontracting workers; discrimination; coercion of employees; unreasonable suspension of union officials, and unreasonable refusal to entertain grievance.

In economic strikes, there is a possibility of said exercise being declared illegal if it violates the "no strike" clause. Thus, in *Philippine Air Lines v. Secretary of Labor*,⁶⁹ it was held:

A strike which violates the no-strike provision of the Collective Bargaining Agreement (CBA) is illegal as it was prematurely staged. There was an existing CBA which still had nine (9) months to run. Neither party to the agreement shall terminate nor modify such agreement during its lifetime. While either party may serve a written notice to terminate or modify the agreement at least sixty (60) days prior to the expiration date (freedom period), it shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the freedom period until a new agreement is reached by them.

The Court thus concluded that a "no strike" clause in a collective bargaining agreement is a valid stipulation, provided it is made applicable only to economic strikes.⁷⁰

In Unfair Labor Practice strikes, no waiver can hold since an act of unfair labor practice is deemed as an unlawful aggression and the strike is deemed a reasonable means to repel the aggression. In a sense, strike is basically a weapon of self-defense provided there is lack of sufficient provocation on the part of the union.

⁶⁹193 SCRA 223 (1991).

⁷⁰*Malayang Samahan ng mga Manggagawa sa M.Greenfield, et al u. Ramos*, 326 SCRA 428 (2000).

7. IS IT DONE IN A MANNER THAT IS CONSISTENT WITH NATIONAL INTEREST? (THE TEST OF CONSISTENCY WITH NATIONAL INTEREST)

Consistency with national interest means that whenever a dispute is assumed by the Secretary, precisely because it involves industries indispensable to national interest, the strike being staged based on said dispute must stop. To continue striking is not consistent with the imperatives of national interest.

In *Association of Independent Unions*,⁷¹ one of the causes of the strike's illegality was the violation of the Temporary Restraining Order. Thus:

From the gamut of evidence on hand, it can be gathered that the strike staged by the petitioner union was illegal for the reasons that:

- 1) The strikers committed illegal acts in the course of the strike. They formed human barricades to block the road, prevented the passage of the respondent company's truck, padlocked the company's gate, and prevented co-workers from entering the company premises.
- 2) And violated the Temporary Restraining Order (TRO) enjoining the union and/or its members from obstructing the company premises, and ordering the removal therefrom of all the barricades.

In the *San Juan De Dios case*,⁷² it was noted by the Court

The Commission held that the strike staged by the Union from August 26, 1994 to August 31, 1994 was, at its inception, legal and peaceful. However, the striking employees' defiance of the August 26, 1994 RTWO [Return to Work Order] of the SOLE rendered the strike illegal. Consequently, under Article 264 (a) paragraph 2 of the Labor Code, the officers and members of the Union who refused to return to work after the issuance of the certification/RTWO were deemed to have lost their employment status. It was also held that considering that the Union members did not know the consequences of their refusal to return to work, only the ranking officers of the Union, Le., the president, vice-president, secretary,

⁷¹305 SCRA 229 (1999).

⁷²G.R. No. 143341, May 28, 2004.

treasurer and PROs, should be deemed to have lost their employment status.

It was further held in the same case that:

Despite the receipt of an order from then Secretary of Labor and Employment to return to their respective jobs, the Union officers and members refused to do so and defied the same. Consequently, then, the strike staged by the Union is a prohibited activity under Article 264 of the Labor Code. Hence, the dismissal of its officers is in order. The respondent Foundation was, thus, justified in terminating the employment of the petitioner Union's officers.

In *Marcopper v. Brillantes*,⁷³ it was postulated that:

The return-to-work order is a valid statutory part and parcel of the assumption and certification orders given the predictable prejudice the strike could cause not only to the parties but more especially to the national interest. Stated otherwise, the assumption of jurisdiction or the certification to the National Labor Relations Commission (NLRC) has the effect of automatically enjoining the strike or lockout, whether actual or intended, even if the same has not been categorically stated or does not appear in the assumption or certification order. It is not a matter of option or voluntariness but of obligation. It must be discharged as a duty even against the worker's will. The worker must return to his job together with his co-workers so that the operation of the company can be resumed and it can continue serving the public and promoting its interest. It is executory in character and shall be strictly complied with by the parties even during the pendency of any petition questioning its validity precisely to maintain the status quo while the determination is being made.

In *Marcopper* and in many other cases,⁷⁴ the High Court warned:

The sanction for failure to comply with obligation, under the law, is loss of employment status. Case law likewise provides that by staging a strike after the assumption of jurisdiction or certification for arbitration, workers forfeited their right to be readmitted to

⁷³ 254 SCRA 595 (1996).

⁷⁴ Some of which are *St. Scholastica's College vs. Torres*, 210 SCRA 565 (1992); *Federation of Free Workers vs. Inciong*, 208 SCRA 157 (1992); *Union of Filipino Employees vs. Nestle Philippines*, 192 SCRA 396 (1990); *Sarmiento vs. Tuico*, 162 SCRA 676 (1988).

work, having abandoned their employment and so could be validly replaced.

In *Capitol Wireless*,⁷⁵ it was clarified that:

Unless there are cogent reasons, the Supreme Court will not alter, modify or reverse the factual findings of the Secretary of Labor and Employment in arriving at the decision to issue return-to-work order, because by reason of her official position, she is considered to have acquired expertise as her jurisdiction is confined to specific matters.

The Supreme Court likewise underscored the sense of urgency attendant to the issuance of an Assumption Order. In the case of *Telefunken*:⁷⁶

It is clear from the foregoing legal provision that the moment die Secretary of Labor assumes jurisdiction over a labor dispute in an industry indispensable to national interest, such assumption shall have the effect of automatically enjoining the intended or impending strike. It was not even necessary for die Secretary of Labor to issue another order directing them to return to work. The mere issuance of an assumption order by the Secretary of Labor automatically carries with it a return-to-work order, even if the directive to return to work is not expressly stated in the assumption order.

To continue striking when an Assumption Order has already been issued is contemptuous. Thus, Article 264 of the Code was quoted, as follows:

Article 264. Prohibited Activities, (a)

(a) xxx

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

Any union officer who knowingly participates in 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

⁷⁵264SCRA68(1996).

⁷⁶348 SCRA 565 (2000).

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.

The rationale and explanation was amply elucidated on in *Telefunken*:

The rationale of this prohibition is that once jurisdiction over the labor dispute has been properly acquired by the competent authority, that jurisdiction should not be interfered with by the application of the coercive processes of a strike. We have held in a number of cases that defiance to the assumption and return-to-work orders of the Secretary of Labor after he has assumed jurisdiction is a valid ground for loss of the employment status of any striking union officer or member.

All the above only means that strikers should strictly adhere to the provisions of law.

8. WHAT ARE THE LEGAL CONSEQUENCES OF AN ILLEGAL STRIKE? (FOCUS ON THE IMPLICATIONS)

In *Association of Independent Unions in the Philippines*,⁷⁷ the High Court stressed:

Decisive on the matter is the pertinent provision of the Labor Code that: "xx any worker xx who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status, xx" It can be gleaned unerringly from the aforesaid provision of law in point, however, that an ordinary striking employee can not be terminated for mere participation in an illegal strike. There must be proof that he committed illegal acts during the strike and the striker who participated in the commission of illegal act 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."

It is clear that the responsibility of union officers is much greater, compared with that of the ordinary union members. Thus, in the aforesaid case, it was held:

⁷⁷ 305 SCRA 219 (1999).

Union officers are duty bound to guide their members to respect the law. If instead of doing so, the officers urge the members to violate the law and defy the duly constituted authorities, their dismissal from the service is a just penalty or sanction for their unlawful acts. The officers' responsibility is greater than that of the members.⁷⁸

Accordingly, to whom much is given, much is expected by law. Hence:

It follows therefore that the dismissal of the officers of the striking union was justified and valid. Their dismissal as a consequence of the illegality of the strike staged by diem finds support in Article 264 (a) of the Labor Code, pertinent portion of which provides: "x x Any union officer who knowingly participates in an illegal strike and any x x union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status."⁷⁹

Mr. Justice Leo Quisumbing, a former Secretary of Labor, held for the Court in the case of *Coca-Cola Bottlers Philippines Inc. Postmix Workers Union*⁸⁰ that:

Although far from easy application in the field of labor management relations, well-settled is the rule that a union officer who knowingly participates in an illegal strike, or in the commission of illegal acts during a strike, may be terminated from his employment. An ordinary striking worker, however, may not be dismissed from his job for mere participation in an illegal strike. There must be proof that he committed illegal acts during an illegal strike. Thus, absent any clear, substantial and convincing proof of illegal acts omitted during an illegal strike, an ordinary striking worker or employee may not be terminated from work.

Anent the liability of union officers, the law specifies that:

It must be emphasized that the penalty of dismissal could be imposed only on union officers serving and acting as such, during the illegal strike held on April 20, 1987. As a necessary implication, if employees acted as union officers after said strike, they may not be held liable and therefore, could not be terminated.⁸¹

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ 299 SCRA 410 (1998).

⁸¹ *Id.*

With regard to the ordinary members, the law is more tolerant, on the premise that they might have been misled by their leaders or simply because they acted without much discernment

Ordinary union members are held to be deserving of a more liberal attitude. Thus:

Nevertheless, we are constrained to uphold the respondent Secretary's ruling that responsibility for these illegal acts must be on an individual and not collective basis. Therefore, although the strike was illegal because of the commission of the illegal acts, only the union officers and strikers who engaged in violent, illegal and criminal acts against the employer are deemed to have lost their employment status. Union members who were merely instigated to participate in the illegal strike should be treated differently.

But while mere members may be reinstated, the law looks with contempt at the union leaders who could have instigated the illegal strike. Thus, union officers may be singled out in denying reinstatement. In *Grepalife*⁸² the ruling was succinct:

A union officer has larger and heavier responsibilities than a union member. Union officers are duty bound to respect the law and to exhort and guide their members to do the same; their position mandates them to lead by example. By committing prohibited activities during the strike, de la Rosa as Vice President of petitioner UNION demonstrated a high degree of imprudence and irresponsibility. Verily, this justifies his dismissal from employment. Since the objective of the Labor Code is to ensure a stable but dynamic and just industrial peace, the dismissal of undesirable labor leaders should be upheld.

The legal consequence of a "wild cat" strike is loss of employment. In *National Union Workers in Hotels, Restaurants, and Allied Industries v. National Labor Relations Commission*,⁸³ the Court said:

We accordingly uphold the dismissal from employment of the 15 officers of the Junta who knowingly participated in the strike. An employer may lawfully discharge employees for participating in an unjustifiable wildcat strike and especially so in this case, because said

⁸²303 SCRA113 (1999).

⁸³287 SCRA192 (1998).

wild cat strike was an attempt to undermine the Union's position as the exclusive bargaining representative and was, therefore, an unprotected activity. The cessation from employment of the 15 Junta officers as a result of their participation in the illegal strike is a consequence of their defiant and capricious decision to participate therein.

In *First City Interlink*,⁸⁴ it was specified by the Court:

In Jackbilt Concrete Block Co., Inc. v. Norton & Harrison Co., the unjustified refusal of the striking employees to return to work and comply with the employer's requirement to undergo a medical examination was considered a waiver of their right to reinstatement

In *Philthread Workers' Union v. Confesor*,⁸⁵ it was held that the legal implication of slowdowns is ultimately to be considered an illegal strike. Thus:

It had been determined by the Labor Arbiter in NLRC-NCR Case No. 00-05-04156-94 that the work slowdowns conducted by the petitioner amounted to illegal strikes. It was shown that every time the respondent company failed to accede to the petitioner's demands, production always declined. This resulted to the significant drops in the figures of tires made, cured, and warehoused. However, when the demand of the petitioner union for the restoration of overtime work was allowed, production improved. The work slowdowns, which were in effect, strikes on installment basis, were apparently a pattern of manipulating production depending on whether the petitioner union's demands were met. These strikes, however, had greatly affected the respondent company that on November 11, 1994, it had indefinitely ceased operations because of tremendous financial losses.

Also, there is a need to produce evidence specifically linking union members to illegal acts committed during the strike. In the *Coca-Cola Bottlers Philippines Inc. Post Mix Workers Union* case,⁸⁶ the Court held:

An examination of the evidence on record fails to disclose any active participation in or the commission of illegal acts of the cited

⁸⁴ 272 SCRA192 (1997).

⁸⁵ 269 SCRA 393 (1997).

⁸⁶ 299 SCRA 429 (1999).

employees during the illegal strike. Such being the case, they incur no liability for the said strike. They cannot even be held responsible for an illegal strike solely on the basis of union membership. And since there is absolutely no showing, much less clear proof, that said employees actually participated in the commission of illegal acts during the said strike involved in this petition, there is no adequate basis for us to hold that these employees should be deemed to be among those who have lost their employment status, in consequence of a declaration of illegality of the strike. The terminated employees should therefore be entitled to reinstatement with backwages.

Furthermore, a "wholesale" dismissal not allowed by law. In *Bacus v. Ople*,⁸⁷ it was stressed:

A mere finding of the illegality of a strike should not be automatically followed by wholesale dismissal of the strikers from their employment.

Nevertheless, the selective admission of returning strikers may be justified by the facts. In *Grepalife*:⁸⁸

That respondent company opted to reinstate all the strikers except Domingo and de la Rosa is an option taken in good faith for the just and lawful protection and advancement of its interest. Readmitting the union members to the exclusion of Domingo and de la Rosa was nothing less than a sound exercise of management prerogative, an act of self-preservation in fact, designed to insure the maintenance of peace and order in the company premises. The dismissal of de la Rosa who had shown his capacity for unmitigated mischief was intended to avoid a recurrence of the violence that attended the fateful strike in November.

Moreover, damages may be slapped against the erring strikers.

However, the strike dragged on for nearly 50 days, paralyzing respondent's operations; thus, there is no room for doubt that some species of injury was caused to private respondent. In the absence of competent proof on the actual damage suffered, private respondent is entitled to nominal damages-which, as the law says, is adjudicated in order that a right of the plaintiff, which has been

⁸⁷ 132 SCRA 690 (1984).

⁸⁸ 303 SCRA 126 (1999).

⁸⁹ *National Federation of Labor v. National Labor Relations Commission*, 283 SCRA 275 (1997).

violated or invaded by the defendant, may be vindicated and recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered. We consider the amount of P300,000.00 just and reasonable under the circumstances.

9. THE ROLE OF THE STATE RE: STRIKES (REGULATOR AND RECONCILER)

The law vests upon the Secretary of Labor and Employment the plenary power to regulate the relations between labor and capital.⁹⁰ This regulation should not be deemed an infringement of the workers' right to strike. Thus, in *Philthread Workers' Union v. Confesor*:⁹¹

xxx - Article 263 (g) of the Labor Code does not violate the workers' constitutional right to strike. The section provides in part, viz: "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 . . ." The foregoing article clearly does not interfere with the workers' right to strike but merely regulates it, when in the exercise of such right, national interest will be affected. The rights granted by the Constitution are not absolute. They are still subject to control and limitation to ensure that they are not exercised arbitrarily. The interests of both the employers and employees are intended to be protected and not one of them is given undue preference.

This power of the Secretary of Labor partakes of the nature of police power. It includes the determination of which industry is important to national interest. Thus, in *Philthread*,⁹² the High Tribunal held:

The Labor Code vests upon the Secretary of Labor the discretion to determine what industries are indispensable to national interest. Thus, upon the determination of the Secretary of Labor that such industry is indispensable to the national interest, it will assume jurisdiction over the labor dispute of said industry. The assumption

⁹⁰ CONST. art. XIII, §3.

⁹¹ 269 SCRA 393 (1997).

⁹² *Id.*

of jurisdiction is in the nature of police power measure. This is done for the promotion of the common good considering that a prolonged strike or lockout can be inimical to the national economy. The Secretary of Labor acts to maintain industrial peace. Thus, his certification for compulsory arbitration is not intended to impede the worker's right to strike but to obtain a speedy settlement of the dispute.

There is no grave abuse of discretion when the Secretary of Labor assumes jurisdiction over a labor dispute based on clear consideration. Thus, in *Philthread*,⁹³ it was stressed:

The intervention of the Secretary of Labor was therefore necessary to settle die labor dispute which had lingered and which had affected both respondent company and petitioner union. Had it not been so, the deadlock will remain and the situation will remain uncertain. Thus, it cannot be deemed that the Secretary of Labor had acted with grave abuse of discretion in issuing die assailed order as she had a well-founded basis in issuing die assailed order.

The power of assumption is anchored on solid constitutional and legal basis. The *Philthread*⁹⁴ case further provides:

At any rate, it must be noted that Articles 263 (g) and 264 of the Labor Code have, been enacted pursuant to die police power of the State, which has been defined as the power inherent in a government to enact laws, within constitutional limits, to promote the order, safety, health, morals and general welfare of society (*People vs. Vera Reyes*, 67 Phil. 190). The police power, together with the power of eminent domain and the power of taxation, is an inherent power of government and does not need to be expressly conferred by the Constitution. Thus, it is submitted that the argument of petitioners that Articles 263 (g) and 264 of die Labor Code do not have any constitutional foundation is legally inconsequential.

The Court moreover held in *Philthread*⁹⁵ that Article 263 (g) of the Labor Code does not violate the workers' constitutional right to strike.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

It is settled in jurisprudence that the Labor Secretary's power of assumption embraces all issues arising from the dispute causing the strike. In the case of *International Pharmaceutical Inc. v. Secretary of Labor*,⁹⁶ Mr. Justice Florenz Regalado held for the High Court that:

The issue before us is whether or not the Secretary of xxx Labor xxx has the power to assume jurisdiction over a labor dispute and its incidental controversies, including ULP cases, causing or likely to cause a strike xxx in an industry indispensable to the national interest

xxx xxx xxx

In the present case, the Secretary was explicitly granted by Article

263 (g) of the Labor Code die authority to assume jurisdiction over a labor dispute causing or likely to cause a strike xxx in an industry indispensable to the national interest, and decide the same accordingly. Necessarily, this authority to assume jurisdiction over the said labor dispute must include and extend to all questions and controversies arising therefrom, including cases over which die Labor Arbiter has exclusive jurisdiction.

To amplify, the Secretary can even take cognizance of causes of action belonging to the exclusive and original jurisdiction of the Labor Arbiter (under Article 217, Labor Code), provided that the parties have raised the issues for resolution and the same are intertwined with the principal cause of action, even the issues of legality of strikes. Thus:

Moreover, Article 217 of die Labor Code is not without, but contemplates exceptions thereto. This is evident from the opening proviso therein reading: '(e) except as otherwise provided under this Code.' Plainly, Art 263 (g) of the Labor Code was meant to make both the Secretary (or the various regional directors) and the Labor Arbiters share jurisdiction, subject to certain conditions. Otherwise, the Secretary would not be able to effectively and efficiently dispose of die primary dispute. To hold the contrary may even lead to the absurd and undesirable result wherein the Secretary and the Labor Arbiter concerned may have diametrically opposed rulings.⁹⁷

⁹⁶205SCRA59(1992).

⁹⁷*Id.*

However, if the incidental issues were not submitted by the parties for resolution, the Secretary of Labor has no power to rule on them. In *Philippine Air Lines v. Drilon*,⁹⁸ Madam Justice Carolina Griño-Aquino castigated the Secretary of Labor, Franklin Drilon, for ruling on the issue of legality of strike, which was not at all raised. Thus:

- a) "Under Art. 263 of the Labor Code, the Labor Secretary's authority to resolve a labor dispute xxx encompasses only the issues in the dispute, NOT THE LEGALITY OR THE ILLEGALITY OF ANY STRIKE that may have been resorted to in the meantime (*Binamira vs. Ogan-Oceana* (148 SCRA 677, 1987). xxx
- b) "The legality or illegality of the strike was not submitted to the Secretary of Labor for resolution."
- c) "The jurisdiction to decide the legality of strikes xxx is vested in Labor Arbiters, not in the Secretary of Labor (Art. 217 par. (a) sub par 5 of the Labor Code.
- d) "In ruling on the legality of the PALEA strike, the Secretary of Labor acted without or in excess of his jurisdiction."

In *Philippine Air Lines*,⁹⁹ then Secretary Drilon was held without authority to prohibit an employer from exercising its management prerogative to discipline employees. The Court held:

- a) The Labor Secretary exceeded his jurisdiction when he restrained PAL from taking disciplinary action against its guilty employees, for, under Art. 263 of the Labor Code, all that the Secretary may enjoin is the holding of the strike, but not the company's right to take action against union officers who participated in the illegal strike and committed illegal acts.
- b) The prohibition which the Secretary issued to PAL constitutes an unlawful deprivation of property and denial of due process for it prevents PAL from seeking redress for the huge property losses that it suffered as a result of the union's illegal mass action.

In the same *Philippine Air Lines* case, the same Labor Secretary was put to blame for failing to exercise his powers under Article 263 (g), over the

⁹⁸193 SCRA 223 (1991).

⁹⁹*Id.*

disputes causing a strike which caused tremendous damage to the Company and great inconvenience to the riding public. The Court was direct to the point, *viz.*

a) xxx The Secretary xxx failed to act, for a period of seven (7) days on PAL's petition for him to assume jurisdiction over the labor dispute.

xxx xxx xxx

b) xxx The Secretary may have realized that he was partly to blame for PAL's damages because of his failure to act promptly and use his authority to avert the illegal strike under Art. 263 (g) of the Labor Code.”

Injunctions and restraining orders may be issued against strikers who commit prohibited acts under Article 264 of the Code. In the *San Miguel* case,¹⁰⁰ it was held:

Article 254 of the Labor Code provides that no temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity except as otherwise provided in Article 218 and 264 of the Labor Code. Under the first exception, Article 218 (e) of the Labor Code expressly confers upon the NLRC the power to 'enjoin or restrain actual and threatened commission of any or all prohibited or unlawful acts, or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party x x x.' The second exception, on the other hand, is when the labor organization or the employer engages in any of the 'prohibited activities' enumerated in Article 264.

When there is a threat of an imminent illegal strike, the employer has the right to ask for an injunction and the National Labor Relations Commission is duty-bound to issue it. This was clarified by the Court in the afore-cited *San Miguel* case.

Public respondent, in its decision, moreover ruled that there was a lack of factual basis in issuing the injunction. Contrary to the NLRC's

¹⁰⁰ 403 SCRA 418 (2003).

finding, we find that the time the injunction was being sought, there existed a threat to revive the unlawful strike as evidenced by the flyers then being circulated by the IBM-NCR Council which led the union. These flyers categorically declared: "Ipaalala n'yo sa management na hindi iniaatras ang ating Notice of Strike (NOS) at anumang oras ay pwede nating muling itirik and picket line, and were dated June 19, 1994, just a day after the union's manifestation with the NLRC that there existed no threat of commission of prohibited activities.

A strike that is about to be staged or is already being staged without a valid notice of strike can be stopped by the issuance of an injunction. In *San Miguel*,¹⁰¹ this has been stated:

Moreover, it bears stressing that Article 264 (a) of the Labor Code explicitly states that a declaration of strike without first having filed the required notice is a prohibited activity, which may be prevented through an injunction in accordance with Article 254. Clearly, public respondent should have granted the injunctive relief to prevent the grave damage brought about by the unlawful strike.

An innocent by-stander may ask for injunction if it is shown that a strike has unduly violated his right In *MSF Tire and Rubber, Inc. v. Court of Appeals*.¹⁰²

Second. Petitioner asserts that its status as an innocent bystander with respect to the labor dispute between Philtread and the Union entitles it to a writ of injunction from the civil courts and that the appellate court erred in not upholding its corporate personality as independent of Philtread's.

In *Philippine Association of Free Labor Unions (PAFLU) v. Cloribel*, this Court, through Justice J.B.L. Reyes, stated the 'innocent bystander' rule as follows:

The right to picket as a means of communicating the facts of a labor dispute is a phase of the freedom of speech guaranteed by the constitution. If peacefully carried out, it can not be curtailed even in the absence of employer-employee relationship.

However, the Supreme Court hastened to add that

¹⁰¹ *Id*

¹⁰² 311SCRA784(1999).

The right is, however, not an absolute one. While peaceful picketing is entitled to protection as an exercise of free speech, we believe the courts are not without power to confine or localize the sphere of communication or the demonstration to the parties to the labor dispute, including those with related interest, and to insulate establishments or persons with no industrial connection or having interest totally foreign to the context of the dispute. Thus the right may be regulated at the instance of third parties or 'innocent bystanders' if it appears that the inevitable result of its exercise is to create an impression that a labor dispute with which they have no connection or interest exists between them and the picketing union or constitute an invasion of their rights. In one case decided by this Court, we upheld a trial court's injunction prohibiting the union from blocking the entrance to a feed mill located within the compound of a flour mill with which the union had a dispute. Although sustained on a different ground, no connection was found between the two mills owned by two different corporations other than their being situated in the same premises. It is to be noted that in the instances cited, peaceful picketing has not been totally banned but merely regulated. And in one American case, a picket by a labor union in front of a motion picture theater with which the union had a labor dispute was enjoined by the court from being extended in front of the main entrance of the building housing the theater wherein other stores operated by third persons were located.

Not anybody however can seek refuge under this rule. The Court clarified in *MSF* that:

Thus, an 'innocent bystander' who seeks to enjoin a labor strike, must satisfy the court that aside from the grounds specified in Rule 58 of the Rules of Court, it is entirely different from, without any connection whatsoever to, either party to the dispute and, therefore, its interests are totally foreign to the context thereof. For instance, in *PAFLJU v. Cloribel*, supra, this Court held that Wellington and Galang were entirely separate entities, different from, and without any connection whatsoever to, the Metropolitan Bank and Trust Company, against whom the strike was directed, other than the incidental fact that they are the bank's landlord and co-lessee housed in the same building, respectively. Similarly, in *Liwayway Publications, Inc. v. Permanent Concrete Workers Union*, this Court ruled that Liwayway was an 'innocent bystander' and thus entitled to enjoin the union's

strike because Liwayway's only connection with the employer company was the fact that both were situated in the same premises.

In the case at bar, petitioner cannot be said not to have such connection to the dispute, as correctly observed by the appellate court

Going back to the private sector, in the case of *Bisig ng Manggagawa sa Concrete Aggregates v. National Labor Relations Commission*,¹⁰³ it would appear that the 1987 Constitution intends to limit the issuance of injunctions against the exercise of the right to strike. Mr. Justice R. Fund, speaking for the Court, declared, quoting Fr. Joaquin G. Bernas, S.J., a Commissioner in the 1986 Constitutional Commission, that:

"xxx the constitutional recognition of the right to strike does serve as a reminder that injunctions should be reduced to the barest minimum"

Having stated the foregoing premise, the Supreme Court declared in the same case that the public respondent National Labor Relations Commission failed to comply with the letter and spirit of Article 218 (e), (4) and (5) of the Labor Code. The powers of the National Labor Relations Commission under Article 218 are subject to certain conditions, as follows:

In the case at bar, the records will show that the respondent NLRC failed to comply with the letter and spirit of Article 218 (e), (4) and (5) of the Labor Code in issuing its Order of May 5, 1992. Article 218 (e) of the Labor Code provides both the procedural and substantive requirements which must strictly be complied with before a temporary or permanent injunction can issue in a labor dispute, viz:

Art 218. Powers of the Commission. - The Commission shall have the power and authority:

xxx xxx xxx

(e) To enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or

¹⁰³ 226 SCRA 499 (1993).

irreparable damage to any party or render ineffectual any decision in favor of such party: Provided, that no temporary or permanent injunction in any case involving or grooving out of a labor dispute as defined in this Code shall be issued except after hearing the testimony of witnesses, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and only after a finding of fact by the commission, to the effect

- (1) That prohibited or unlawful acts have been threatened and will be committed and will be continued unless restrained but no injunction or temporary restraining order shall be issued on account of any threat, prohibited or unlawful act, except against the person or persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;
- (2) That substantial and irreparable injury to complainant's property will follow,
- (3) That as to each item of relief to be granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
- (4) That complainant has no adequate remedy at law; and
- (5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Executive and other public officials of the province or city within which the unlawful have been threatened or committed charged with the duty to protect complainant's property.

Moreover, the Supreme Court condemned the issuance of *ex-parte* injunctions. Said the Court

To be sure, the issuance of an *ex-parte* temporary restraining order in a labor dispute is not per se prohibited. Its issuance, however, should be characterized by care and caution for the law requires that it be clearly justified by considerations of extreme necessity, i.e., when the commission of unlawful acts is causing substantial and irreparable injury to company properties and the company is, for the moment, bereft of an adequate remedy at law. This is as it ought to be, for imprudently issued temporary restraining orders

can break the back of employees engaged in a legal strike. Often times, they unduly tilt the balance of a labor warfare in favor of capital. When that happens, the deleterious effects of a wrongfully issued, ex parte temporary restraining order on the rights of striking employees can no longer be repaired for they simple monetization. Moreover, experience shows that ex parte applications for restraining orders are often based on fabricated facts and concealed truths. A more becoming sense of fairness, therefore, demands that such ex parte applications should be more minutely examined by hearing officers, lest, our constitutional policy of protecting labor against the issuance of indiscriminate injunctions. Stated otherwise, it behooves hearing officers receiving evidence in support of ex parte injunctions against employees in strike to take a more active stance in seeing to it that their right to social justice is in no way violated despite their absence. This equalizing stance was not taken in the case at bar by the public respondents.

Insofar as strikes in the government sector are concerned, it is well-settled that the civil courts have jurisdiction to issue injunction. In the *Social Security System* case,¹⁰⁴ it was explicitly declared that:

The strike staged by the employees of the SSS belonging to petitioner union being prohibited by law, an injunction may be issued to restrain

It is futile for the petitioner to assert that the subject labor dispute falls within the exclusive jurisdiction of the NLRC and, hence, the Regional Trial Court has no jurisdiction to issue a writ of injunction enjoining the continuance of the strike. The Labor Code itself provides that terms and conditions of employment of government employees shall be governed by the Civil Service Law, rules and regulations [Art. 276]. More importantly, E.O. No. 180 vests the Public Sector Labor-Management Council with jurisdiction over unresolved labor disputes involving government employees [Sec. 16]. Clearly, the NLRC has no jurisdiction over the dispute.

This being the case, the Regional Trial Court was not precluded, in the exercise of its general jurisdiction under B.P. Big. 129, as amended, from assuming jurisdiction over the SSS's complaint for damages

¹⁰⁴175 SCRA 686 (1989).

and issuing the injunctive writ prayed for therein. Unlike the NLRC, the Public Sector Labor-Management Council has not been granted by law authority to issue writs of injunction in labor disputes within its jurisdiction. Thus, since it is the Council, and not the NLRC, that has jurisdiction over the instant labor dispute, resort to the general courts of law for the issuance of a writ of injunction to enjoin the strike is appropriate.

10. CONCLUSION: THE TRENDS IN JURISPRUDENCE ON STRIKES IN THE PHILIPPINES

Mr. Justice Puno, in *Bisig*,¹⁰⁵ underscored the critical importance of the right to strike in less developed countries like the Philippines. Thus, said the Court through Justice Puno:

Strike has been considered the most effective weapon of labor in protecting the rights of employees to improve the terms and conditions of their employment. It may be that in highly developed countries, the significance of strike as a coercive weapon has shrunk in view of the preference for more peaceful modes of settling labor disputes. In underdeveloped countries, however, where the economic crunch continues to enfeeble the already marginalized working class, the importance of the right to strike remains undiminished as indeed it has proved many a time as the only coercive weapon that can correct abuses against labor. It remains as the great equalizer.

The Court then underscored the critical importance of the right to strike in the Philippines, *viz*:

In the Philippine milieu where social justice remains more as a rhetoric than a reality, labor has vigilantly fought to safeguard the sanctity of the right to strike. Its struggle to gain the right to strike has not been easy and effortless. Labor's early exercise of the right to strike collided with the laws on rebellion and sedition and sent its leaders languishing in prisons. The spectre of incarceration did not spur its leaders to sloth; on the contrary it spiked labor to work for its legitimization. This effort was enhanced by the flowering of liberal ideas in the United States which inevitably crossed our shores. It

¹⁰⁵ 226 SCRA 499 (1993)

¹⁰⁶ *Id.*

was enormously boosted by the American occupation of our country. Hence, on July 17, 1953, Congress gave statutory recognition to the right to strike when it enacted RA 875, otherwise known as the Industrial Peace Act. For nearly two (2) decades, labor enjoyed the right to strike until it was prohibited on September 12, 1972 upon the declaration of martial law in the country. The 14-year battle to end martial rule produced many martyrs and foremost among them were the radicals of the labor movement.

Justice Puno then elaborated in *Bisig*¹⁰⁶ that

It was not a mere happenstance, therefore, that after the final battle against martial rule was fought at EDSA in 1986, the new government treated labor with a favored eye. Among those chosen by then President Corason C. Aquino to draft the 1987 Constitution were recognized labor leaders like Eulogio Lerum, Jose D. Calderon, Bias D. Ople and Jaime S.L. Tadeo. These delegates helped craft into the 1987 Constitution its Article XTH entitled Social Justice and Human Rights.

The State's protection to labor, as enshrined in our Constitution, was explained by the High Tribunal, as follows:

For the first time in our constitutional history, the fundamental law of our land mandated the State to ". . . guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. This constitutional imprimatur given to the right to strike constitutes signal victory for labor. Our Constitutions of 1935 and 1973 did not accord constitutional level. With a constitutional matrix, enactment of a law implementing the right to strike was an inevitability. RA 6715 came into being on March 21, 1989, an intentional replication of RA 875. In light of the genesis of the right to strike, it ought to be obvious that the right should be read with a libertarian latitude in favor of labor. In the wise words of Father Joaquin G. Bernas, S.J., a distinguished commissioner of the 1987 Constitutional Commission "x x x the constitutional recognition of the right to strike does serve as a reminder that injunctions should be reduced to the barest minimum.

In addition to the above, this author wishes to add his own thoughts on the issues of strikes:

It was the great American President, John F. Kennedy, who once postulated that "*Those who make oppositions impossible, do make revolutions inevitable.*" Because President Ferdinand E. Marcos imposed repression upon the Filipinos by prohibiting strikes, demos, and small expressions of dissent, from 1972 to 1986, the big uprising in EDSA in 1986 became inevitable. Thus, any proposal to outlaw strike today will only serve to build up the anger, the repulsion, and the revolutionary fervor of the people.

In the context of Philippine labor laws, strikes are mere "temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute." Strikes therefore become a corollary right designed to support such other rights as the right to self-organization, collective bargaining, living wage, humane conditions of work, security of tenure, and other basic rights.

Without the right to strike, the workers will find it very hard to obtain concessions through collective bargaining. Without this right, even the right to self-organization will be easily repressed by the employers. The right to strike becomes a shield against unfair labor practices and other abuses. It is also weapon to advance the economic interests of the workers. However, it is a weapon that can also inflict wounds upon the hands of the workers themselves.

Like any right, the right to strike can be abused. It can be misused by those who propagate foreign ideologies in order to gain political mileage. It can even be abetted by business rivals in order to inflict economic sabotage on a competition in a very competitive market situation.

Although the right to strike has been elevated into a constitutional right, there are conditions that must be complied with during its exercise. First, the strike must be peaceful. Second, it must be done in accordance with law. The Labor Code also requires that the exercise of the right must be consistent with national interest

The procedural requirements prior to the exercise of the right are mandatory. They have to be followed. Any strike staged without any of the requirements being complied with may be declared illegal. Also, the Code enumerates certain prohibited acts, the commission of any of which may

result in the declaration of the strike's nullity. The consequences of illegal strikes are far-reaching. They may result in loss of employment

Also, once the President or the Secretary of Labor has assumed jurisdiction or has certified the dispute to compulsory arbitration, any strike should stop and the strikers should return to work. The Company should accept all strikers and the parties should proceed with the arbitration process. Any further concerted action shall be deemed illegal for being inconsistent to national interest

With all the above clarification, it is hoped that all parties concerned should be guided accordingly. While employers and the State itself are expected to respect the workers' right to strike, the strikers should be aware of the limits of such a right and be conscious of the serious implications of deviating therefrom.

