4/6/16

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

THE HONGKONG & SHANGHAI BANKING CORPORATION EMPLOYEES UNION, MA. DALISAY P. DELA CHICA, MARVILON B. MILITANTE, DAVID Z. ATANACIO, JR., CARMINA C. RIVERA, MARIO T. FERMIN(†), ISABELO E. MOLO, RUSSEL M. PALMA, IMELDA G. HERNANDEZ, VICENTE M. LLACUNA, JOSEFINA A. ORTIGUERRO, MA. ASUNCION G. KIMSENG, MIGUEL R. SISON, RAUL P. GERONIMO, MARILOU E. CADENA, ANA N. TAMONTE, AVELINO Q. RELUCIO, JORALYN R. GONGORA, CORAZON E. ALBOS, ANABELLA J. GONZALES, MA. CORAZON Q. BALTAZAR, MARIA LUZ I. JIMENEZ, ELVIRA A. ORLINA, SAMUEL B. ELLARMA, ROSARIO A. FLORES, EDITHA L. BROQUEZA, REBECCA T. FAJARDO, MA. VICTORIA C. LUNA, MA. THERESA G. GALANG, BENIGNO V. AMION, GERARDO J. DE LEON, ROWENA T. OCAMPO, MALOU P. DIZON, RUBEN DE C. ATIENZA, MELO E. GABA, HERNAN B. CAMPOSANTO, NELIA D. M. DERIADA, LOLITO L. HILIS, GRACE C. MABUNAY, FE ESPERANZA C. GERONG, MANUEL E. HERRERA, JOSELITO J. GONZAGA, ULDARICO D. PEDIDA, ROSALINA JULIET B. LOQUELLANO, MARCIAL F. GONZAGA, MERCEDES R. PAULE, JOSE TEODORO A. MOTUS, BLANCHE D. MOTUS,

G.R. No. 156635

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

JAN 11 2016

DAISY M. FAGUTAO, ANTONIO A. DEL ROSARIO, EMMANUEL JUSTIN S. GREY, FRANCISCA DEL MUNDO, JULIETA A. CRUZ, RODRIGO J. DURANO, CATALINA R. YEE, MENANDRO CALIGAGAN, MAIDA M. SACRO MILITANTE, LEONILA M. PEREZ, and EMMA MATEO,
Petitioners,

- *versus* -

NATIONAL LABOR RELATIONS COMMISSION and THE HONGKONG & SHANGHAI BANKING CORPORATION, LTD.,
Respondents.

x -x

DECISION

BERSAMIN, *J.*:

A strike staged without compliance with the requirements of Article 263[1] of the *Labor Code* is illegal, and may cause the termination of the employment of the participating union officers and members. However, the liability for the illegal strike is individual, not collective. To warrant the termination of an officer of the labor organization on that basis, the employer must show that the officer knowingly participated in the illegal strike. An ordinary striking employee cannot be terminated based solely on his participation in the illegal strike, for the employer must further show that the employee committed illegal acts during the strike.

The Case

Under appeal is the decision promulgated on January 31, 2002 by the Court of Appeals (CA) in CA-G.R. SP No. 56797 entitled *The Hongkong & Shanghai Banking Corporation Employees Union, et al. v. National Labor Relations Commission and The Hongkong & Shanghai Banking Corporation, Ltd.*,[2] which disposed as follows:

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[1] Now Article 278 pursuant to DOLE Department Advisory No. 01, Series of 2015.

[2] *Rollo*, pp. 77-89; penned by Associate Justice Elvi John S. Asuncion, concurred by Associate Justice Rebecca De Guia-Salvador (retired) and Associate Justice Romeo A. Brawner (later Presiding Justice/retired/deceased).

> **WHEREFORE**, the instant petition is **DISMISSED** and the questioned decision of the National Labor Relations Commission is **AFFIRMED** with **MODIFICATION**.
>
> Private respondent Hongkong & Shanghai Banking Corporation is ordered to pay each of the following: Isabelo Molo, Elvira Orlina, Samuel Ellarma, Rosario Flores, Rebecca Fajardo, Ma. Victoria Luna, Malou Dizon, Ruben Atienza, Melo Gaba, Nelia Deriada, Fe Esperanza Gerong, Manuel Herrera, Rosalina Juliet Loquellano, Mercedes Paule, Binche Motus, Antonio del Rosario, Francisca del Mundo and Maida Militante:
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> (a) full backwages from the time of their dismissal in 1993 up to the time this decision becomes final; and
>
> (b) separation pay equivalent to one-half (1/2) month salary for every year of service up to 1993.
>
> SO ORDERED.[3]

Also under review is the resolution promulgated on December 9, 2002 whereby the CA denied the petitioners' motion for reconsideration.[4]

Antecedents

In the period material to this case, petitioner Hongkong & Shanghai Banking Corporation Employees Union (Union) was the duly recognized collective bargaining agent of the rank-and-file employees of respondent Hongkong & Shanghai Banking Corporation (HSBC). A collective bargaining agreement (CBA) governed the relations between the Union and its members, on one hand, and HSBC effective April 1, 1990 until March 31, 1993 for the non-representational (economic) aspect, and effective April 1, 1990 until March 31, 1995 for the representational aspect.[5] The CBA included a salary structure of the employees comprising of grade levels, entry level pay rates and the individual pays depending on the length of service.[6]

On January 18, 1993, HSBC announced its implementation of a job evaluation program (JEP) retroactive to January 1, 1993. The JEP consisted of a job designation per grade level with the accompanying salary scale providing for the minimum and maximum pay the employee could receive per salary level.[7] By letter dated January 20, 1993,[8] the Union demanded the suspension of the JEP, which it labeled as an unfair labor practice (ULP). In

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3 Id. at 88-89.
4 Id. at 93-94.
5 Id. at 1178-1218.
6 Id. at 138-143.
7 Id. at 79.
8 Id. at 150.

another letter dated January 22, 1993, the Union informed HSBC that it would exercise its right to concerted action. On the same day of January 22, 1993, the Union members started picketing during breaktime while wearing black hats and black bands on their arms and other appendages.[9] In its letter dated January 25, 1993, HSBC responded by insisting that the JEP was an express recognition of its obligation under the CBA.[10] The Union's concerted activities persisted for 11 months,[11] notwithstanding that both sides had meanwhile started the re-negotiation of the economic provisions of their CBA[12] on March 5, 1993.[13] The continued concerted actions impelled HSBC to suspend the negotiations on March 19, 1993,[14] and to issue memoranda, warnings and reprimands to remind the members of the Union to comply with HSBC's Code of Conduct.

Due to the sustained concerted actions, HSBC filed a complaint for ULP in the Arbitration Branch of the National Labor Relations Commission (NLRC), docketed as NLRC-NCR Case No. 00-04-02481-93. The Labor Arbiter's decision was appealed to the NLRC whose disposition to remand the case to the Labor Arbiter for further proceedings was in turn assailed. Ultimately, in G.R. No. 125038 entitled *The Hongkong & Shanghai Banking Corporation Employees Union v. National Labor Relations Commission and The Hongkong & Shanghai Banking Corporation, Ltd.*, the Court affirmed the disposition of the NLRC, and directed the remand of the case to the Labor Arbiter for further proceedings.[15]

The Union conducted a strike vote on December 19, 1993 after HSBC accorded regular status to Patrick King, the first person hired under the JEP. The majority of the members of the Union voted in favor of a strike.[16] The following day, the Union served its letter on HSBC in protest of the continued implementation of the JEP, and insisted that HSBC's modification of the salary structure under the JEP constituted ULP.

On December 22, 1993, at around 12:30 p.m., the Union's officers and members walked out and gathered outside the premises of HSBC's offices on Ayala Avenue, Makati and Ortigas Center, Pasig.[17] According to HSBC, the Union members blocked the entry and exit points of the bank premises, preventing the bank officers, including the chief executive officer, from entering and/or leaving the premises.[18] This prompted HSBC to resort to a petition for *habeas corpus* on behalf of its officials and employees thus

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9 Id. at 18.
10 Id. at 1117.
11 Supra note 8.
12 Supra note 9.
13 Supra note 8.
14 *Rollo,* p. 443.
15 G.R. No. 125038, November 6, 1997, 281 SCRA 509.
16 *Rollo,* p. 20.
17 Id. at 444.
18 Id. at 445.

prevented from leaving the premises, whom it airlifted on December 24, 1993 to enable them to leave the bank premises.[19]

On December 24, 1993, HSBC filed its complaint to declare the strike illegal.[20] The HSBC also petitioned for injunction (with prayer for temporary restraining order (TRO)/writ of prohibitory injunction) in the NLRC, which issued the TRO on January 6, 1994, and the writ of preliminary injunction on January 31, 1994.[21] On November 22, 2001, the Court upheld the actions taken in that case in *The Hongkong and Shanghai Banking Corporation Employees Union v. National Labor Relations Commission and The Hongkong and Shanghai Banking Corporation Limited.*[22]

In the meantime, HSBC issued return-to-work notices to the striking employees on December 22, 1993. Only 25 employees complied and returned to work. Due to the continuing concerted actions, HSBC terminated the individual petitioners on December 27, 1993.[23] The latter, undeterred, and angered by their separation from work, continued their concerted activities.

Ruling of the Labor Arbiter

On August 2, 1998, Labor Arbiter (LA) Felipe P. Pati declared the strike illegal for failure of the Union to file the notice of strike with the Department of Labor and Employment (DOLE); to observe the cooling-off period; and to submit the results of the strike vote to the National Conciliation and Mediation Board (NCMB) pursuant to Article 263 of the *Labor Code*. He concluded that because of the illegality of the strike the Union members and officers were deemed to have lost their employment status. He disposed thusly:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. The 22 December 1993 strike conducted by the union is hereby declared illegal;
>
> 2. The following Union officers and members who participated in the 22 December 1993 strike are hereby deemed to have lost their employment status as of that date, namely: Dalisay Dela Chica, Isabelo Molo, Danilo Alonso, Alvar Rosales, Russel Palma, Imelda Hernandez, Vicente Llacuna, Josefina Ortiguero, Agustin Iligan, Ma. Asuncion Kimseng, Miguel Sison, Raul Geronimo, Marilou Cadena, Ana Tamonte, Yolanda Enciso, Avelino Relucio, Joralyn Gongora, Corazon Albos, Anabella Gozales, Ma. Corazon Baltazar, Maria Luz

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19 Id. at 446.
20 Id. at 20.
21 Id. at 447.
22 G.R. No. 113541, November 20, 2001, 370 SCRA 193.
23 *Rollo*, p. 446.

Jimenez, Concordio Madayag, Elvira Orlina, Ma. Lourdes Austria, Josephine Landas, Samuel Ellarma, Rosario Flores, Editha Broqueza, Marina Salvacion, Ma. Cecilia Ocampo, Rebecca Fajardo, Ma. Victoria Luna, Ma. Theresa Ofelia Galang, Benigno Amion, Mercedes Castro, Gerardo de Leon, Rowena Ocampo, Malou Dizon, Juliet Dacumos, Blandina dela Pena, Ruben Atienza, Ma. Fe Temporal, Mello Gaba, Herman Camposanto, Nelia Deriada, Lolito Hilis, Ma. Dulce Abellar, Grace Mabunay, Fe Esperanza Gerong, Romeo Tumlos, Sonia Argos, Manuel Herrera, Joselito Gonzaga, Uldarico Pedida, Cynthia Calangi, Rosalina Loquellano, Marcial Gonzaga, Mercedes Paule, Jess Nicolas, Teodoro Motus, Blanche Motus, Daisy Martinez Fagutao, Antonio del Rosario, Emmanuel Justin Grey, Francisca del Mundo, Juliet Cruz, Rodrigo Durano, Carmina Rivera, David Atanacio, Jr., Ofelia Rabuco, Alfred Tan Jr., Catalina Yee, Menandro Caligaga, Melorio Maida Militante, Antonio Marilon, and Leonila Peres, Emma Mateo, Felipe Vital, Jr., Marlo Fermin, and Virgilio Reli;

3. The Union, its officers and members are hereby held jointly and severally liable to pay the Bank the amount of ₱45,000.00 as actual damages.

All the other claims for moral and exemplary damages are denied for lack of merit.

SO ORDERED.[24]

Decision of the NLRC

On appeal, the NLRC modified the ruling of LA Pati, and pronounced the dismissal of the 18 Union members unlawful for failure of HSBC to accord procedural due process to them, *viz.*:

x x x [W]e note, however, that as per the submission of the parties, not all the respondents (members) have been identified by complainant as having violated the law on free ingress and egress (i.e., Article 264[e]). A meticulous review of the testimonies given during trial and a comparison of the same show that 25 respondents were not named by complainant's witnesses.

Of the 25, 6 of them (Rabuco, Salvacion, Castro, Dacumos, Calangi and Nicolas) have already settled with the complainant during the pendency of the appeal. Of the remaining 19, one respondent is a union officer (Rivera) while the remaining 18 respondents (Molo, Orlina, Ellarma, Flores, Fajardo, Luna, Dizon, Atienza, Gaba, Deriada, Gerong, Herrera, Loquellano, Paule, Motus, Del Rosario, Mundo and Militante) are neither officers nor members who have been pinpointed as having committed illegal act[s]. We, therefore, disagree with the Labor Arbiter's

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[24] Id. at 1139-1141.

generalization that these 18 respondents have similarly lost their employment status simply because they participated in or acquiesced to the holding of the strike.

x x x x

Only insofar as the xxx 18 respondents are concerned, We rule that complainant did fail to give them sufficient opportunity to present their side and adequate opportunity to answer the charges against them. More was expected from complainant and its observance of due process may not be dispensed with no matter how brazen and blatant the violation of its rules and regulations may have perceived. The twin requirement of notice and hearing in termination cases are as much indispensable and mandatory as the procedural requirements enumerated in Article 262 of the Labor Code. In this case, We cannot construe complainant's notice to return-to-work as substantial compliance with due process requirement.

Contrary however to respondents' insistence that complainant failed to observe due process in the case of the 18 respondents does not mean that they are automatically entitled to backwages or reinstatement. Consistent with decided cases, these respondents are entitled only to indemnity for complainant's omission, specifically to the amount of ₱5,000.00 each. x x x

As a final word, and only as regard these 18 respondents, We take note of the fact that they have remained silent spectators, if not mere by-standers, in the illegal strike and illegal acts committed by the other individual respondents, and since the grounds for which they have been terminated do not involve moral turpitude, the consequences for their acts must nevertheless be tempered with some sense of compassion. Consistent with prevailing jurisprudence and in the interest of social justice, We find the award of separation pay to each of the 18 respondents equivalent to one-half (1/2) month salary for every year of service as equitable and proper.

x x x x

WHEREFORE, the decision dated 26 August 1998 is hereby AFFIRMED with the modification that complainant is ordered to pay (a) ₱5,000.00 and (b) one-half (1/2) month salary for every year of service up to December 1993 to each of the following respondents: Isabelo Molo, Elvira Orlina, Samuel Ellarma, Rosario Flores, Rebecca Fajardo, Ma. Victoria Luna, Malou Dizon, Ruben Atienza, Melo Gaba, Nelia Deriada, Fe Esperanza Gerong, Manuel Herrera, Rosalina Juliet Loquellano, Mercedes Paule, Binche Motus, Antonio del Rosario, Francisca del Mundo and Maida Militante.

SO ORDERED.[25]

The petitioners filed their motion for reconsideration, but the NLRC denied their motion.[26]

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[25] Id. at 1154-1158.
[26] Records, Vol. VIII, pp. 640-642.

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Judgment of the CA

On *certiorari*, the CA, through the assailed judgment promulgated on January 31, 2002,[27] deleted the award of indemnity, but ordered HSBC to pay backwages to the 18 employees in accordance with *Serrano v. National Labor Relations Commission*,[28] to wit:

> In *Ruben Serrano v. NLRC and Isetann Department Store* xxx, the Court ruled that an employee who is dismissed, whether or not for just or authorized cause but without prior notice of his termination, is entitled to full backwages from the time he was terminated until the decision in his case becomes final, when the dismissal was for cause; and in case the dismissal was without just or valid cause, the backwages shall be computed from the time of his dismissal until his actual reinstatement. In the case at bar, where the requirement of notice and hearing was not complied with, the aforecited doctrine laid down in the *Serrano* case applies.[29]

On motion for reconsideration, the CA reiterated its judgment, and denied HSBC's motion to delete the award of backwages.[30]

Hence, this appeal by petition for review on *certiorari*.

Pending the appeal, petitioners Elvira A. Orlina, Rosario A. Flores, Ma. Victoria C. Luna, Malou Dizon, Fe Esperanza Gerong, Francisca del Mundo, and Ruben Atienza separately presented motions to withdraw as petitioners herein by virtue of their having individually executed compromise agreements/quitclaims with HSBC.[31] The Court granted all the motions to withdraw;[32] hence, this adjudication relates only to the remaining petitioners.

Issues

The remaining petitioners raise the following grounds in support of their appeal, namely:

> I
> THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN HOLDING THAT ALL THE PETITIONERS WERE VALIDLY DISMISSED

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27 Supra note 1.
28 G.R. No. 117040, January 27, 2000, 323 SCRA 445.
29 *Rollo*, p. 88.
30 Id. at 93-94.
31 Id. at 270, 285-288, 1344-1362.
32 Id. at 272, 305 and 1363.

A

The Court of Appeals cannot selectively apply the right to due process in determining the validity of the dismissal of the employee

B

The refusal to lift the strike upon orders of the HSBC is not just cause for the dismissal of the employees

C

The HSBC is liable for damages for having acted in utter bad faith by dismissing the petitioners after having previously submitted the dispute to the NLRC

D

Union officers who did not knowingly participate in the strike do not lose their employment status

E

The responsibility for illegal acts committed in the course of a strike is individual and not collective

F

The January 5, 1994 incident does not warrant the dismissal of the petitioners involved thereat

G

The penalty, if any, imposable on union officers should be suspension and not dismissal

II

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN HOLDING THAT THE STRIKE WAS ILLEGAL

A

The test of good faith laid down by this Honorable Court is whether the union is of the reasonable belief that the management was committing an unfair labor practice

B

The decision as to when to declare the strike is wholly dependent on the union, and the same cannot negate good faith

C

The Court of Appeals committed grave error in concluding that this Court had already ruled on the validity of the implementation of the Job Evaluation Program and no longer considered the evidence presented by petitioners to establish unfair labor practice on the part of the HSBC

D

The doctrine automatically making a strike illegal due to non-compliance with the mandatory procedural requirements needs to be revisited

The petitioners argue that they were illegally dismissed; that the CA erred in selectively applying the twin notice requirement; that in the case of the Union officers, there must be a prior showing that they had participated in the illegal strike before they could be terminated from employment, but that HSBC did not make such showing, as, in fact, petitioners Carmina C. Rivera and Mario T. Fermin were on leave during the period of the strike;[33] that they could not be dismissed on the ground of insubordination or abandonment in view of participation in a concerted action being a guaranteed right; that their participation in the concerted activities out of their sincere belief that HSBC had committed ULP in implementing the JEP constituted good faith to be appreciated in their favor; that their actions merited only their suspension at most, not the extreme penalty of dismissal; and that the prevailing rule that non-compliance with the procedural requirements under the *Labor Code* before staging a strike would invalidate the strike should be revisited because the amendment under Batas Pambansa Blg. 227 indicated the legislative intent to ease the restriction on the right to strike.

HSBC counters that the appeal raises factual issues already settled by the CA, NLRC, and the LA, rendering such issues inappropriate for determination in this appeal; that it was not liable for illegal dismissal because the petitioners had willfully staged their illegal strike without prior compliance with Article 263 of the *Labor Code*;[34] that the procedural requirements of Article 263 of the *Labor Code* were mandatory and indispensable conformably with Article 264[35] of the *Labor Code*, which, in relation to Article 263(c), (d) and (f), expressly made such non-compliance a prohibited activity; that for this reason Article 264 penalized the Union officers who had participated in the illegal strike with loss of their employment status;[36] that good faith could not be accorded to the petitioners because aside from the non-compliance with the mandatory procedure, they did not present proof to show that the strike had been held for a lawful purpose, or that the JEP had amounted to ULP, or that they had made a sincere effort to settle the disagreement;[37] and that as far as the 18 employees were concerned, they were entitled only to nominal damages, not backwages, following the ruling in *Agabon v. National Labor Relations Commission*[38] that meanwhile modified the doctrine in *Serrano v. National Labor Relations Commission.*[39]

Two main issues to be resolved are, therefore, namely: (1) whether the strike commenced on December 22, 1993 was lawfully conducted; and (2)

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33 Id. at 28-29.
34 Id. at 254-258.
35 Now Art. 279 pursuant to DOLE Department Advisory No. 01, Series of 2015.
36 Id. at 519-520.
37 Id. at 523-533.
38 G.R. No. 158693, November 17, 2004, 442 SCRA 573.
39 *Rollo*, pp. 545-548.

whether the petitioners were illegally dismissed.

Ruling of the Court

We **PARTLY GRANT** the petition for review on *certiorari*.

I
Non-compliance with Article 263 of the *Labor Code* renders a labor strike illegal

The right to strike is a constitutional and legal right of all workers because the strike, which seeks to advance their right to improve the terms and conditions of their employment, is recognized as an effective weapon of labor in their struggle for a decent existence. However, the right to strike as a means for the attainment of social justice is never meant to oppress or destroy the employers. Thus, the law prescribes limits on the exercise of the right to strike.[40]

Article 263 of the *Labor Code* specifies the limitations on the exercise of the right to strike, *viz.*:

> Article 263. *Strikes, picketing, and lockouts*. x x x
>
> x x x x
>
> (c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employers may file a notice of lockout with the [Department] at least 30 days before the intended date thereof. In cases of unfair labor practices, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting, where the existence of the union is threatened, the 15-day cooling off period shall not apply and the union may take action immediately.
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> (d) The notice must be in accordance with such implementing rules and regulations as the [Secretary] of Labor and Employment may promulgate.
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> (e) During the cooling-off period, it shall be the duty of the [Department] to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of

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[40] *Steel Corporation of the Philippines v. SCP Employees Union-National Federation of Labor Unions*, G.R. Nos. 169829-30, April 18, 2008, 551 SCRA 594, 607; *Association of Independent Unions in the Philippines (AUIP) v. National Labor Relations Commission*, G.R. No. 120505, March 25, 1999, 305 SCRA 219, 229.

> the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.
>
> (f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The [Department] may, at its own initiative or upon request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the [Department] the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.
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> x x x x

The procedural requirements for a valid strike are, therefore, the following, to wit: (1) a notice of strike filed with the DOLE at least 30 days before the intended date thereof, or 15 days in case of ULP; (2) a strike vote approved by the majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in a meeting called for that purpose; and (3) a notice of the results of the voting at least seven days before the intended strike given to the DOLE. These requirements are mandatory, such that non-compliance therewith by the union will render the strike illegal.[41]

According to the CA, the petitioners neither filed the notice of strike with the DOLE, nor observed the cooling-off period, nor submitted the result of the strike vote. Moreover, although the strike vote was conducted, the same was done by open, not secret, balloting,[42] in blatant violation of Article 263 and Section 7, Rule XIII of the *Omnibus Rules Implementing the Labor Code*.[43] It is not amiss to observe that the evident intention of the requirements for the strike-notice and the strike-vote report is to reasonably regulate the right to strike for the attainment of the legitimate policy objectives embodied in the law.[44] As such, the petitioners committed a prohibited activity under Article 264(a) of the *Labor Code*, and rendered their strike illegal.

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[41] *Hotel Enterprises of the Philippines, Inc. (HEPI) v. Samahan ng mga Manggagawa sa Hyatt-National Union of Workers in the Hotel and Restaurant and Allied Industries (SAMASAH-NUWHRAIN)*, G.R. No. 165756, June 5, 2009, 588 SCRA 497, 515; *First City Interlink Transportation Co., Inc. v. Roldan-Confesor*, G.R. No. 106316, May 5, 1997, 272 SCRA 124,130-131.

[42] *Rollo*, p. 84.

[43] Section 10. Strike or lockout vote. A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in meetings of referenda called for the purpose. x x x.

[44] *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*, G.R. Nos. 158786 and 158789, October 19, 2007, 537 SCRA 171, 203.

We underscore that the language of the law itself unmistakably bears out the mandatory character of the limitations it has prescribed, to wit:

> Art. 264. Prohibited activities. - (a) **No labor organization or employer shall declare a strike or lockout** without first having bargained collectively in accordance with Title VII of this Book or **without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the [Department]**. (emphasis supplied)
>
> x x x x

Accordingly, the petitioners' plea for the revisit of the doctrine to the effect that the compliance with Article 263 was mandatory was entirely unwarranted. It is significant to remind that the doctrine has not been established by judicial declaration but by congressional enactment. *Verba legis non est recedendum*. The words of a statute, when they are clear, plain and free from ambiguity, must be given their literal meaning and must be applied without interpretation.[45] Had the legislators' intention been to relax this restriction on the right of labor to engage in concerted activities, they would have stated so plainly and unequivocally.

II
Commission of unlawful acts during the strike further rendered the same illegal

The petitioners insist that all they did was to conduct an orderly, peaceful, and moving picket. They deny employing any act of violence or obstruction of HSBC's entry and exit points during the period of the strike.

The contrary was undeniably true. The strike was far from orderly and peaceful. HSBC's claim that from the time when the strike was commenced on December 22, 1993 the petitioners had on several instances obstructed the ingress into and egress from its offices in Makati and in Pasig was not competently disputed, and should thus be accorded credence in the light of the records. We agree with HSBC, for all the affidavits[46] and testimonies of its witnesses,[47] as well as the photographs[48] and the video recordings[49] reviewed by LA Pati depicted the acts of obstruction, violence and intimidation committed by the petitioners during their picketing. It was undeniable that such acts of the strikers forced HSBC's officers to resort to

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[45] *National Federation of Labor v. National Labor Relations Commission (5th Division)*, G.R. No. 127718, March 2, 2000, 327 SCRA 158, 165.
[46] *Rollo*, pp. 634-730.
[47] CA *rollo*, Volume II, pp. 638-1764 (Annexes "11" to "22").
[48] Records, Volume III, p. 232 (Exhibits "K" – "K-240").
[49] Records, Volume IX.

unusual means of gaining access into its premises at one point.[50] In this connection, LA Pati even observed as follows:

> [I]t must be pointed out that the Bank has shown by clear and indubitable evidence that most of the respondents have actually violated the pr[o]scription provided for in paragraph (b) of Article 264 on free ingress and egress. The incident depicted in the video footage of 05 January 1994, which has been viewed several times during the trial and even privately, demonstrates beyond doubt that **the picket was a non-moving, stationary one – nothing less but a barricade. This office is more than convinced that the respondents, at least on that day, have demonstrated an abnormally high degree of hatred and anger at the Bank and its officers (including the Bank's chief executive officer who fell to the ground as a result of the pushing and shoving) leading them to do anything to carry out their resolve not to let anymore inside the Bank.** Additionally, as observed by this Labor Arbiter, the tensed and disquieting relation between the parties became all the more apparent during the actual hearings as clearly evident from the demeanor and actuations of the respondents.[51] (Emphasis supplied)

The situation during the strike actually went out of hand because of the petitioners' illegal conduct, compelling HSBC to secure an injunction from the NLRC as well as to file its petition for *habeas corpus* in the proper court in the interest of its trapped officers and employees; and at one point to lease an helicopter to extract its employees and officers from its premises on the eve of Christmas Day of 1993.

For sure, the petitioners could not justify their illegal strike by invoking the constitutional right of labor to concerted actions. Although the Constitution recognized and promoted their right to strike, they should still exercise the right *within the bounds of law*.[52] Those bounds had been well-defined and well-known. Specifically, Article 264(e) of the *Labor Code* expressly enjoined the striking workers engaged in picketing from committing any act of violence, coercion or intimidation, or from obstructing the free ingress into or egress from the employer's premises for lawful purposes, or from obstructing public thoroughfares.[53] The

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[50] *Rollo,* pp. 657-658; Arturo Sule, HSBC's Assistant Manager of the Technical Services Division, attested that he entered and exited from the Ayala Branch on December 22, 1993 through a ladder from the rear parking compound of the adjacent building of Security Bank; that on December 23, 1993, he and other bank officers went to the parking area looking for ropes and ladders to use to gain entry, but they were foiled by the strikers who had meanwhile discovered their attempt to enter; and that the threats of harm from the strikers who had gathered outside the building forced him and his fellow bank officers to seek refuge in the guardhouse in the basement of Security Bank, whose guards allowed them do so.

[51] Id. at 1136-1137.

[52] Section 3, Article XIII of the 1987 Constitution explicitly states:

> Section 3. x x x
>
> It 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.** x x x. (bold emphasis supplied)

[53] See Appendix 4, *Guidelines Governing Labor Relations, Primer on Strike, Picketing and Lockout* (Second Edition), http://ncmb.ph/Publications /Manual%20on520Strike/MOS.HTM, (last visited February 8, 2016).

employment of prohibited means in carrying out concerted actions injurious to the right to property of others could only render their strike illegal. Moreover, their strike was rendered unlawful because their picketing which constituted an obstruction to the free use of the employer's property or the comfortable enjoyment of life or property, when accompanied by intimidation, threats, violence, and coercion as to constitute nuisance, should be regulated.[54] In fine, the strike, even if justified as to its ends, could become illegal because of the means employed, especially when the means came within the prohibitions under Article 264(e) of the *Labor Code*.[55]

III
Good faith did not avail because of the patent violation of Article 263 of the *Labor Code*

The petitioners assert their good faith by maintaining that their strike was conducted out of their sincere belief that HSBC had committed ULP in implementing the JEP. They had also hoped that HSBC would be willing to negotiate matters related to the JEP considering that the economic aspect of the CBA was set to expire on March 31, 1993.

We rule out good faith on the part of the petitioners.

The petitioners' disregard of the procedural requirements for conducting a valid strike negated their claim of good faith. For their claim to be upheld, it was not enough for them to believe that their employer was guilty of ULP, for they must also sufficiently show that the strike was undertaken with a modicum of obeisance to the restrictions on their exercise of the right to strike prior to and during its execution as prescribed by the law. They did not establish their compliance with the requirements specifically for the holding of the strike vote and the giving of the strike notice.[56]

The petitioners should entirely bear the consequence of their non-compliance with the legal requirements. As we said in *Pilipino Telephone Corporation v. Pilipino Telephone Employees Association (PILTEA)*:[57]

> [W]e do not find any reason to deviate from our rulings in *Gold City Integrated Port Service, Inc. and Nissan Motors Philippines, Inc.* It bears emphasis that the strike staged by the Union in the instant case was

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[54] *A. Soriano Aviation v. Employees Association of A. Soriano Aviation*, G.R. No. 166879, August 14, 2009, 596 SCRA 189, 196.

[55] *PHIMCO Industries, Inc. v. PHIMCO Industries Labor Association (PILA)*, G.R. No. 170830, August 11, 2010, 628 SCRA 119, 135.

[56] *National Federation of Labor v. National Labor Relations Commission*, G.R. No. 113466, December 15, 1997, 283 SCRA 275, 287-288 citing *First City Interlink Transportation Co. v. Roldan-Confesor*, G.R. No. 106316, May 5, 1997, 272 SCRA 124, 132.

[57] G.R. No.160058, June 22, 2007, 525 SCRA 361.

illegal for its procedural infirmities and for defiance of the Secretary's assumption order. The CA, the NLRC and the Labor Arbiter were unanimous in finding that bad faith existed in the conduct of the subject strike. The relevant portion of the CA Decision states:

> x x x **We cannot go to the extent of ascribing good faith to the means taken in conducting the strike**. The requirement of the law is simple, that is—1. Give a Notice of Strike; 2. Observe the cooling period; 3. Observe the mandatory seven day strike ban; 3. If the act is union busting, then the union may strike doing away with the cooling-off period, subject only to the seven-day strike ban. To be lawful, a strike must simply have a lawful purpose and should be executed through lawful means. **Here, the union cannot claim good faith in the conduct of the strike because, as can be gleaned from the findings of the Labor Arbiter, this was an extensively coordinated strike having been conducted all throughout the offices of PILTEL all over the country. Evidently, the strike was planned**. Verily, they cannot now come to court hiding behind the shield of "good faith." Be that as it may, petitioners claim good faith only in so far as their grounds for the strike but not on the conduct of the strike. Consequently, they still had to comply with the procedural requirements for a strike, which, in this case, they failed to do so.[58]

IV
The finding on the illegal strike did not justify the wholesale termination of the strikers from employment

The next issue to resolve is whether or not HSBC lawfully dismissed the petitioners for joining the illegal strike.

As a general rule, the mere finding of the illegality of the strike does not justify the wholesale termination of the strikers from their employment.[59] To avoid rendering the recognition of the workers' right to strike illusory, the responsibility for the illegal strike is individual instead of collective.[60] The last paragraph of Article 264(a) of the *Labor Code* defines the norm for terminating the workers participating in an illegal strike, *viz.*:

> Article 264. Prohibited Activities – x x x
>
> x x x x
>
> Any worker whose employment has been terminated as a consequence of any unlawful lockout shall be entitled to reinstatement with full backwages. **Any union officer who knowingly participates in**

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[58] Id. at 380.

[59] *Bacus v. Ople*, G.R. No. L-56856, October 23, 1984, 132 SCRA 690, 703.

[60] *Shell Oil Workers' Union v. Shell Company of the Phil.*, G.R. No. L-28607, February 12, 1972, 43 SCRA 224, 228.

> **an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status**: *Provided,* That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike. (emphasis supplied)

Conformably with Article 264, we need to distinguish between the officers and the members of the union who participate in an illegal strike. The officers may be *deemed terminated* from their employment upon a finding of their *knowing participation in the illegal strike*, but the members of the union shall suffer the same fate only if they are shown to have *knowingly participated in the commission of illegal acts during the strike.* Article 264 expressly requires that the officer must have "knowingly participated" in the illegal strike. We have explained this essential element in *Club Filipino, Inc. v. Bautista*,[61] thusly:

> Note that the verb "participates" is preceded by the adverb "knowingly." This reflects the intent of the legislature to require "knowledge" as a condition *sine qua non* before a union officer can be dismissed from employment for participating in an illegal strike. The provision is worded in such a way as to make it very difficult for employers to circumvent the law by arbitrarily dismissing employees in the guise of exercising management prerogative. This is but one aspect of the State's constitutional and statutory mandate to protect the rights of employees to self-organization.[62]

The petitioners assert that the CA erroneously affirmed the dismissal of Carmina Rivera and Mario Fermin by virtue of their being officers of the Union despite lack of proof of their having participated in the strike.

The assertion is partly correct.

In the case of Fermin, HSBC did not satisfactorily prove his presence during the strike, much less identify him as among the strikers. In contrast, Union president Ma. Dalisay dela Chica testified that Fermin was not around when the Union's Board met after the strike vote to agree on the date of the strike.[63] In that regard, Corazon Fermin, his widow, confirmed the Union president's testimony by attesting that her husband had been on leave from work prior to and during the strike because of his heart condition.[64] Although Corazon also attested that her husband had fully supported the strike, his extending moral support for the strikers did not constitute sufficient proof of his participation in the strike in the absence of a showing of any overt participation by him in the illegal strike. The burden of proving the overt

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61 G.R. No. 168406, July 13, 2009, 592 SCRA 471.
62 Id. at 478-479.
63 Records Vol. XVIII, TSN dated August 21, 1996, pp. 18-19.
64 *Rollo*, pp. 218-219.

participation in the illegal strike by Fermin solely belonged to HSBC, which did not discharge its burden. Accordingly, Fermin, albeit an officer of the Union, should not be deemed to have lost his employment status.

However, the dismissal of Rivera and of the rest of the Union's officers, namely: Ma. Dalisay dela Chica, Marvilon Militante and David Atanacio, is upheld. Rivera admitted joining the picket line on a few occasions.[65] Dela Chica, the Union president, had instigated and called for the strike on December 22, 1993.[66] In addition, HSBC identified Dela Chica[67] and Militante[68] as having actively participated in the strike. Their responsibility as the officers of the Union who led the illegal strike was greater than the responsibility of the members simply because the former had the duty to guide their members to obey and respect the law.[69] When said officers urged and made their members violate the law, their dismissal became an appropriate penalty for their unlawful act.[70] The law granted to HSBC the option to dismiss the officers as a matter of right and prerogative.[71]

Unlike the Union's officers, the ordinary striking members could not be terminated for merely taking part in the illegal strike. Regardless of whether the strike was illegal or not, the dismissal of the members could be upheld only upon proof that they had committed illegal acts during the strike. They must be specifically identified because the liability for the prohibited acts was determined on an individual basis.[72] For that purpose, substantial evidence available under the attendant circumstances justifying the penalty of dismissal sufficed.[73]

We declare the illegality of the termination of the employment of the 18 members of the Union for failure of HSBC to prove that they had committed illegal acts during the strike. We also declare that Daisy Fagutao was unlawfully dismissed because HSBC did not adduce substantial evidence establishing her presence and her commission of unlawful acts

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65 Id. at 224.

66 Records Vol. XVIII, TSN dated July 19, 1996, pp. 37-41.

67 Records Vol. I, p. 189; HSBC's witness, Stephen So, declared in his affidavit that on December 22, 1993, he met with Dela Chica at the rear entrance of the bank's premise, and she urged him not to make any attempt to enter the bank.

68 See Affidavits of Amelia Garcia (Records Vol. I, p. 207), David Hodgkinson (Records Vol. I, pp. 126-127), Mark Ivan Boyne (Records Vol. I, pp. 231-232), Stuart Paterson Milne (Records Vol. I, p. 233-234), Elaine Dichupa (Records Vol. II, pp. 142-143), Anna Marie Andres (Records Vol. I, pp. 235-237), Alejandro Custodio (Records Vol. I, pp. 238-239), Stephen Charles Banner (Records Vol. I, pp. 240-241), Rafael Laurel, Jr. (Records Vol. I, pp. 250-251) identified Militante to be actively participating and engaging in prohibited acts on several occasions.

69 Supra note 55, at 381.

70 *Association of Independent Unions in the Philippines (AUIP) v. NLRC*, G.R. No. 120505, March 25, 1999, 305 SCRA 219, 230.

71 *Gold City Integrated Port Service, Inc. v. National Labor Relations Commission*, G.R. No. 103560, July 6, 1995, 245 SCRA 627, 641.

72 *Solidbank Corporation v. Gamier*, G.R. No. 159460, November 15, 2010, 634 SCRA 554, 580.

73 *Association of Independent Unions in the Philippines (AIUP) v. National Labor Relations Commission*, G.R. No. 120505, March 25, 1999, 305 SCRA 219, 231.

during the strike.

We clarify that the 18 employees, including Fagutao and Union officer Fermin, were illegally dismissed because of lack of any valid ground to dismiss them, and for deprivation of procedural due process. Thus, we take exception to that portion of the NLRC ruling that held:

> We here note that all of the herein named respondents were terminated by complainant for reasons other than their holding of an participation in the illegal strike. Specifically, the grounds for their termination were enumerated in the notices of termination sent out by complainant as follows: abandonment, insubordination and seriously hampering operations. To Our mind, the complainant in the exercise of its management prerogative, had every reason to discipline these respondents for their disregard of the complainant's return-to-work order and for the damage sustained by reason thereof. Although these 18 respondents did not commit any illegal act during the strike, We can not simply ignore the fact that they nonetheless breached complainant's rules and regulations and which acts serve as valid causes to terminate their employment. These respondents took a risk when they refused to heed complainant's lawful order and knowingly caused damage and prejudice to complainant's operations; they should be prepared to take the consequences and be held accountable for their actions. Whether or not complainant observed due process prior to the termination of these respondents is however a totally different matter.[74]

We hold that said employees' right to exercise their right to concerted activities should not be defeated by the directive of HSBC for them to report back to work. Any worker who joined the strike did so precisely to assert or improve the terms and conditions of his work.[75] Otherwise, the mere expediency of issuing the return to work memorandum could suffice to stifle the constitutional right of labor to concerted actions. Such practice would vest in the employer the functions of a strike breaker,[76] which is prohibited under Article 264(c) of the *Labor Code*.

The petitioners' refusal to leave their cause against HSBC constituted neither insubordination nor abandonment. For insubordination to exist, the order must be: (1) reasonable and lawful; (2) sufficiently known to the employee; and (3) in connection to his duties.[77] None of these elements existed in this case.

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[74] *Rollo*, pp. 1155-1156.

[75] *Batangas Laguna Tayabas Bus Company v. NLRC*, G.R. No. 101858, August 21, 1992, 212 SCRA 792, 800.

[76] Strike-breaker is defined as "any person who obstructs, impedes, or interferes with by force, violence, coercion, threats, or intimidation any peaceful picketing affecting wages, hours or conditions of work or in the exercise of the right of self-organization or collective bargaining. (Art. 219[r], *Labor Code*)

[77] *Pharmacia and Upjohn Inc. v. Albayda Jr.*, G.R. No. 172724, August 23, 2010, 628 SCRA 544, 567.

As to abandonment, two requirements need to be established, namely: (1) the failure to report for work or absence must be without valid or justifiable reason; and (2) there must be a clear intention to sever the employer-employee relationship. The second element is the more decisive factor and must be manifested by overt acts.[78] In that regard, the employer carries the burden of proof to show the employee's deliberate and unjustified refusal to resume his employment without any intention of returning.[79] However, the petitioners unquestionably had no intention to sever the employer-employee relationship because they would not have gone to the trouble of joining the strike had their purpose been to abandon their employment.[80]

Moreover, we cannot subscribe to the view that the striking employees should be dismissed for having seriously hampered and damaged HSBC's operations. In this aspect of the case, HSBC did not discharge its burden to prove that the acts of the employees constituted any of the just causes under the *Labor Code* or were prohibited under the company's code of conduct as to warrant their dismissal.

V
Non-compliance with due process resulted in illegal dismissal; the employer's liability depended on the availing circumstances

While Article 264 authorizes the termination of the union officers and employees, it does not remove from the employees their right to due process. Regardless of their actions during the strike, the employees remain entitled to an opportunity to explain their conduct and why they should not be penalized. In *Suico v. National Labor Relations Commission*,[81] we have reiterated the need for the employers to comply with the twin-notice requirement despite the cause for the termination arising from the commission of the acts prohibited by Article 264, thus:

> Art. 277(b) in relation to Art. 264(a) and (e) recognizes the right to due process of all workers, without distinction as to the cause of their termination. Where no distinction is given, none is construed. Hence, the foregoing standards of due process apply to the termination of employment of Suico, et al. even if the cause therefor was their supposed involvement in strike-related violence prohibited under Art. 264 (a) and (e).[82]

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78 *Aboitiz Haulers, Inc. Dimapatoi*, G. R. No. 148619, September 19, 2006, 502 SCRA 271, 291.
79 *F.R.F. Enterprises, Inc. v. National Labor Relations Commission*, G.R. No. 105998, April 21 1995, 243 SCRA 593, 597.
80 Id.
81 G.R. No. 146762, January 30, 2007, 513 SCRA 325.
82 Id. at 342.

Consequently, failure of the employer to accord due process to its employees prior to their termination results in illegal dismissal.

The petitioners maintain that the CA applied the twin-notice requirement in favor of the 18 employees. HSBC disagrees, claiming instead that the award of backwages in favor of said employees should be modified following *Agabon*.

We partially agree with both parties.

Article 277(b)[83] of the *Labor Code* mandates compliance with the twin-notice requirement in terminating an employee, *viz.*:

> Article 277. Miscellaneous Provisions. –
>
> x x x x
>
> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, **the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires**, in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. x x x (Emphasis supplied)

In *King of Kings Transport, Inc. v. Mamac*,[84] we have laid down the contents of the notices to be served upon an employee prior to termination, as follows:

> (1) The first written notice to be served on the employees should **contain the specific causes or grounds for termination** against them, and **a directive that the employees are given the opportunity to submit their written explanation within a reasonable period**. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, **the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice**. Lastly,

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[83] Now Article 292 pursuant to DOLE Department Advisory No. 01, Series of 2015.
[84] G.R. No. 166208, June 29, 2007, 526 SCRA 116.

the **notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees**.

x x x x

(3) After determining that termination of employment is justified, the employers shall serve the employees **a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.**[85] (Emphasis supplied)

HSBC admitted issuing two *pro forma* notices to the striking employees. The first notice, sent on December 22, 1993, reads as follows:

Re: NOTICE OF RETURN TO WORK

On _____ at _____ o'clock in the morning/afternoon, you "walked-out" by leaving your assigned work station without prior permission/leave during work hours.

You are hereby directed to **report back for work at the start of banking hours on the day immediately following knowledge or receipt of this notice.** Should you report for work no disciplinary action shall be imposed on you. This is without prejudice to any action the Bank may take against the Union.

Should you fail to report back for work within the period abovestated, the Bank shall be forced to terminate your employment and take all appropriate measures to continue serving its clients.[86]

As the notice indicates, HSBC did not fully apprise the strikers of the ground under the *Labor Code* that they had supposedly violated. It also thereby deprived them the ample opportunity to explain and justify their actions. Instead, it manifested therein its firm resolve to impose the extreme penalty of termination should they not comply with the order. Plainly, the tenor of the notice was short of the requirements of a valid first notice.

The second notice was as follows:

Re: NOTICE OF TERMINATION

On _____, 1993, you and a majority of the rank-and-file staff "walked out" by leaving your respective work stations without prior leave and failed to return.

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[85] Id. at 125-126.
[86] *Rollo*, p. 594.

> You were directed to report back for work when a copy of the Bank's Memorandum/Notice to Return to Work dated _____ 1993 was:
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> 1. [ ] Posted on the Bank's premises on _____
> 2. [ ] served on your (sic) personally on _____.
> 3. [ ] delivered to your last known address on file with the Bank and received by you (your representative) on _____.
>
> Despite being directed to return to work, you have failed to comply.
>
> Your "walk-out" is an illegal act amounting to abandonment, insubordination, and seriously hampering and damaging the bank's operations. Consequently, your employment with the Bank is terminated effective _____, 1993.[87]

The second notice merely ratified the hasty and unilateral decision to terminate the petitioners without the benefit of a notice and hearing. Hence, this notice should be struck down for having violated the right of the affected employees to due process.

The failure by HSBC to strictly observe the twin-notice requirement resulted in the illegal dismissal. However, the extent of its liability should depend on the distinct circumstances of the employees.

HSBC should be held liable for two types of illegal dismissal — the first type was made without both substantive and procedural due process, while the other was based on a valid cause but lacked compliance with procedural due process. To the first type belonged the dismissal of Fermin, Fagutao and the 18 employees initially identified by the NLRC, while the second type included the rest of the petitioners.

HSBC maintains that the dismissed 18 employees should not be entitled to backwages in conformity with *Agabon*.

We disagree. *Agabon* involved the second type of dismissal, not the first type to which the 18 employees belonged. The rule for employees unlawfully terminated without substantive and procedural due process is to entitle them to the reliefs provided under Article 279[88] of the *Labor Code*, that is, reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was withheld up to the time of actual reinstatement. However, the award of

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87 Id. at 596.

88 Now Article 294 pursuant to DOLE Department Order No. 01, Series of 2015.

backwages is subject to the settled policy that when employees voluntarily go on strike, no backwages during the strike shall be awarded.[89]

As regards reinstatement, the lapse of 22 years since the strike now warrants the award of separation pay *in lieu of* reinstatement, the same to be equivalent of one (1) month for every year of service.[90] Accordingly, Fermin who did not participate in the strike, should be paid full backwages plus separation pay of one (1) month per year of service, while petitioners Isabelo Molo, Samuel Ellarma, Rebecca Fajardo, Melo Gaba, Nelia Deriada, Manuel Herrera, Rosalina Juliet Loquellano, Mercedes Paule, Blanche Motus, Antonio del Rosario, Maida Militante and Daisy Fagutao, who admitted their participation in the strike, were entitled to backwages except during the period of the strike, and to separation pay of one (1) month per year of service in lieu of reinstatement.

In *Agabon*, we said that a dismissal based either on a just or authorized cause but effected without due process should be upheld. The employer should be nonetheless liable for non-compliance with procedural due process by paying indemnity in the form of nominal damages amounting to ₱30,000.00.

In view of the non-observance of procedural due process by HSBC, the following petitioners should be entitled to nominal damages of ₱30,000.00 each,[91] namely: Ma. Dalisay dela Chica, Marvilon Militante, David Atanacio, Carmina Rivera, Russel Palma, Imelda Hernandez, Vicente Llacuna, Josefina A. Ortiguerro, Ma. Asuncion Kimseng, Miguel R. Sison, Raul P. Geronimo, Marilou Cadena, Ana Tamonte, Avelino Relucio, Joralyn Gongora, Corazon Albos, Anabella Gonzales, Ma. Corazon Baltazar, Maria Luz Jimenez, Editha Broqueza, Ma. Theresa Galang, Benigno Amoin, Gerardo de Leon, Rowena Ocampo, Hernan Camposanto, Lolito Hilis, Grace Mabunay, Joselito Gonzaga, Uldarico Pedida, Marcial Gonzaga, Jose Teodoro Motus, Emmanuel Justin Grey, Julieta Cruz, Rodrigo Durano, Catalina Yee, Menandro Caligagan, Leonila Perez, and Emma Mateo.

ACCORDINGLY, the Court **AFFIRMS** the decision promulgated on January 31, 2002 in CA-G.R. SP No. 56797 with **MODIFICATION** that respondent Hongkong & Shanghai Banking Corporation (HSBC) shall pay:

1. Mario S. Fermin, full backwages and separation pay equivalent to one (1) month per year of service in lieu of reinstatement;

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[89] *Philippine Diamond Hotel & Resort, Inc. (Manila Diamond Hotel) v. Manila Diamond Hotel Employees Union*, G.R. No. 158075, June 30, 2006, 494 SCRA 195, 214.

[90] *G&S Transport Corporation v. Infante*, G. R. No. 160303, September 13, 2007, 533 SCRA 288, 302.

[91] *Phimco Industries, Inc. v. Phimco Industries Labor Association (PILA)*, G.R. No. 170830, August 11, 2010, 628 SCRA 119, 152.

2. Isabelo Molo, Samuel Ellarma, Rebecca Fajardo, Melo Gaba, Nelia Deriada, Manuel Herrera, Rosalina Juliet Loquellano, Mercedes Paule, Blanche Motus, Antonio del Rosario, Maida Militante and Daisy Fagutao, backwages except during the period of the strike, and separation pay equivalent to one (1) month per year of service in lieu of reinstatement; and

3. Ma. Dalisay dela Chica, Marvilon Militante, David Atanacio, Carmina Rivera, Russel Palma, Imelda Hernandez, Vicente Llacuna, Josefina A. Ortiguerro, Ma. Asuncion Kimseng, Miguel R. Sison, Raul P. Geronimo, Marilou Cadena, Ana Tamonte, Avelino Relucio, Joralyn Gongora, Corazon Albos, Anabella Gonzales, Ma. Corazon Baltazar, Maria Luz Jimenez, Editha Broqueza, Ma. Theresa Galang, Benigno Amion, Gerardo de Leon, Rowena Ocampo, Hernan Camposanto, Lolito Hilis, Grace Mabunay, Joselito Gonzaga, Uldarico Pedida, Marcial Gonzaga, Jose Teodoro Motus, Emmanuel Justin Grey, Julieta Cruz, Rodrigo Durano, Catalina Yee, Menandro Caligagan, Leonila Perez and Emma Mateo, indemnity in the form of nominal damages in the amount of ₱30,000.00 each.

No pronouncement as to costs.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice