Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SLORD DEVELOPMENT CORPORATION,
Petitioner,

- versus -

BENERANDO M. NOYA,
Respondent.

G.R. No. 232687

Present:

CARPIO, *J.*, Chairperson,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR.,* and
HERNANDO,** *JJ.*

Promulgated:
04 FEB 2019

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DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated January 25, 2017 and the Resolution[3] dated July 7, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 138705, which reversed and set aside the Decision[4] dated September 30, 2014 and the Resolution[5] dated November 14, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 09-002333-14. The NLRC declared that while respondent Benerando M. Noya (respondent) committed an act of disloyalty that caused his expulsion from the union and legal dismissal from work pursuant to the closed shop provision of the Collective Bargaining Agreement (CBA), petitioner Slord Development Corporation (petitioner)

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* On official leave.
** Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.
1 *Rollo*, pp. 10-48.
2 Id. at 49-61. Penned by Associate Justice Pedro B. Corales with Associate Justices Sesinando E. Villon and Rodil V. Zalameda, concurring.
3 Id. at 62-64.
4 Id. at 180-187. Penned by Presiding Commissioner Alex A. Lopez with Commissioners Gregorio O. Bilog, III and Pablo C. Espiritu, Jr., concurring.
5 Id. at 174-175. Penned by Presiding Commissioner Alex A. Lopez with Commissioner Pablo C. Espiritu, Jr., concurring.

failed to properly observe the procedure in dismissing respondent, and thereby, ordered petitioner to pay respondent ₱10,000.00 as nominal damages.

The Facts

Respondent was employed on September 9, 2008 as a welder by petitioner, a domestic corporation engaged in the business of manufacturing and processing of sardines and other canned goods.[6] Respondent's employment was covered by a CBA[7] effective April 14, 2009 to April 15, 2014 between petitioner and Nagkakaisang Lakas ng Manggagawa-Katipunan (NLM-Katipunan), the company's sole and exclusive bargaining agent for all the regular rank-and-file employees.[8] Among its provisions was a union security clause, which reads:

> ARTICLE II
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> **UNION SECURITY**
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> x x x x
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> Section 3. Dismissal. – Any new employee covered by the bargaining unit, who attains regular status in the COMPANY but fails to join the UNION mentioned in Section 2 hereof, and any union member who is expelled from the UNION or fails to maintain their membership in the UNION, like:
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> 1) non-payment of union dues;
> 2) resignation or abandonment from the UNION;
> 3) refusal to sign check-off authorization in favor of the UNION;
> 4) organizing or joining another labor UNION or any other labor group;
> 5) violation of UNION's Constitution and By-Laws;
> 6) any criminal act or violent conduct of activity against the UNION and its members;
> 7) participation in any unfair labor practice or violation of this agreement; and
> 8) refusal to abide with any resolution passed by the Board of Directors of the General Membership of the UNION and by NLM-KATIPUNAN, shall upon written demand to the COMPANY by the UNION, be dismissed from employment by the COMPANY.
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> x x x x[9]

Petitioner claimed that sometime in December 2013, respondent asked several employees to affix their signatures on a blank sheet of yellow

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6 See id. at 50 and 181.
7 Dated October 30, 2009. Id. at 217-231.
8 See id. at 217.
9 Id. at 218.

paper for the purpose of forming a new union, prompting the president of NLM-Katipunan to file expulsion proceedings against him for disloyalty.[10] Subsequently, or on February 9, 2014, respondent organized[11] a new union named the Bantay Manggagawa sa SLORD Development Corporation (BMSDC), which he registered with the Department of Labor and Employment (DOLE) on February 20, 2014.[12]

In the ensuing investigation, respondent failed to appear and participate at the scheduled hearings before the union. Thus, NLM-Katipunan resolved, [13] with the ratification of its members, to expel respondent on the ground of disloyalty. Accordingly, a notice of expulsion[14] dated February 27, 2014 was issued by NLM-Katipunan to respondent. Subsequently, a letter[15] dated March 16, 2014 was sent by NLM-Katipunan to petitioner, demanding his termination from employment pursuant to the union security clause of the CBA. After notifying respondent of the union's decision to expel him and showing him all the documents attached to the union's demand for his dismissal, respondent's employment was terminated on March 19, 2014.[16]

Consequently, respondent filed a complaint[17] for illegal dismissal, unfair labor practice, and illegal deduction against petitioner before the National Labor Relations Commission (NLRC), asserting that he did not violate any CBA provision since he validly organized BMSDC during the freedom period.[18]

The Labor Arbiter's (LA) Ruling

In a Decision[19] dated August 27, 2014, the LA dismissed the case for lack of merit,[20] ruling that respondent's dismissal was neither illegal nor an unfair labor practice. Among others, the LA held that petitioner was duty-bound to terminate respondent's employment after having been expelled by NLM-Katipunan for organizing a rival union. Notably, NLM-Katipunan has a valid closed shop agreement in the CBA that required the members to remain with the union as a condition for continued employment.[21]

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10 See *Sinumpaang Salaysay* of the President of NLM-Katipunan Lolita Abong dated January 26, 2014; CA *rollo*, pp. 184-185.
11 See Application for Registration dated February 27, 2014; id. at 83-84.
12 See *rollo*, p. 52.
13 See Resolution Blg. 02-19-14 dated February 19, 2014; CA *rollo*, pp. 205-208.
14 See letter re: Notice of Expulsion as Member of [NLM-Katipunan]; id. at 209.
15 See letter re: Certification and Demand for the Dismissal of Employment of [Respondent]; id. at 181-182.
16 Id. at 211.
17 See Complaint (CA *rollo*, p. 238 and its dorsal portion) and Complaint/Request for Assistance (id. at 239) dated April 30, 2014.
18 See *rollo*, p. 53.
19 Id. at 200-209. Penned by Labor Arbiter Alberto S. Abalayan.
20 Id. at 209.
21 Id. at 207-208.

Aggrieved, respondent appealed[22] to the NLRC.

The NLRC Ruling

In a Decision[23] dated September 30, 2014, the NLRC affirmed the LA Decision with modification, ordering petitioner to pay respondent ₱10,000.00 as nominal damages.[24] In so ruling, the NLRC held that while respondent had committed an act of disloyalty that caused his expulsion from NLM-Katipunan and subsequent dismissal from work pursuant to the closed shop agreement provision of the CBA, petitioner failed to provide respondent ample opportunity to defend himself through written notices and subsequent hearing.[25]

Dissatisfied, respondent moved for reconsideration[26] but the same was denied in a Resolution[27] dated November 14, 2014. Hence, respondent elevated the matter to the CA via a petition for *certiorari*,[28] docketed as CA-G.R. SP No. 138705.

The CA Ruling

In a Decision[29] dated January 25, 2017, the CA granted respondent's petition, finding his dismissal to be illegal.[30] Accordingly, it ordered petitioner to immediately reinstate respondent and pay his full backwages and other allowances, computed from the time he was illegally dismissed up to the time of actual reinstatement, plus attorney's fees equivalent to ten percent (10%) of the total monetary award.[31] It found no just cause in terminating respondent's employment for lack of sufficient evidence to support the union's decision to expel him, explaining that the act of soliciting signatures on a blank yellow paper was not prohibited under the Labor Code nor could it be automatically considered as an act of disloyalty. Finally, it also found respondent to have been deprived of procedural due process.[32]

Petitioner moved for reconsideration[33] but the same was denied in a Resolution[34] dated July 7, 2017; hence, this petition.

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22 See Memorandum of Appeal dated September 4, 2014; id. at 188-199.
23 Id. at 180-187.
24 Id. at 187.
25 See id. at 184-186.
26 See motion for reconsideration dated October 20, 2014; id. at 176-179.
27 Id. at 174-175.
28 Dated December 18, 2014. Id. at 119-127.
29 Id. at 49-61.
30 See id. at 59-60.
31 Id. at 60.
32 See id. at 57-59.
33 See motion for reconsideration dated February 17, 2017; id. at 65-81.
34 Id. at 62-64.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA was correct in ruling that respondent was illegally dismissed.

The Court's Ruling

The petition is meritorious.

At the outset, it bears stressing that only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure.[35] When supported by substantial evidence, the Court cannot inquire into the veracity of the CA's factual findings, which are final, binding, and conclusive upon this Court. However, when the CA's factual findings are contrary to those of the administrative body exercising quasi-judicial functions from which the action originated, [36] the Court may examine the facts only for the purpose of resolving allegations and determining the existence of grave abuse of discretion. This is consistent with the ruling that in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of whether the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision.[37]

In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refer to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition. [38]

Under the parameter above-described and after a thorough evaluation of the evidence, the Court finds that the CA erroneously ascribed grave abuse of discretion on the part of the NLRC, whose Decision was supported by substantial evidence and consistent with law and jurisprudence.

Case law states that in order to effect a valid dismissal of an employee, both substantial and procedural due process must be observed by the employer.[39] An employee's right not to be dismissed without just or authorized cause, as provided by law, is covered by his right to substantial

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35 See *Leoncio v. MST Marine Services (Phils.), Inc.*, G.R. No. 230357, December 6, 2017.

36 See *One Shipping Corp. v. Peñafiel*, 751 Phil. 204, 209-210 (2015).

37 See *Maricalum Mining Corporation v. Florentino*, G.R. Nos. 221813 & 222723, July 23, 2018; citations omitted.

38 *Quebral v. Angbus Construction, Inc.*, 798 Phil. 179, 188 (2016).

39 See *Sang-an v. Equator Knights Detective and Security Agency, Inc.*, 703 Phil. 492, 500 (2013).

due process. On the other hand, compliance with procedure provided in the Labor Code constitutes the procedural due process right of an employee.[40]

While not explicitly mentioned in the Labor Code,[41] case law recognizes that dismissal from employment due to the enforcement of the union security clause in the CBA is another just cause for termination of employment.[42] Similar to the enumerated just causes in the Labor Code, the violation of a union security clause amounts to a commission of a wrongful act or omission out of one's own volition; hence, it can be said that the dismissal process was initiated not by the employer but by the employee's indiscretion.[43] Further, a stipulation in the CBA authorizing the dismissal of employees is of equal import as the statutory provisions on dismissal under the Labor Code, since a CBA is the law between the company and the union and compliance therewith is mandated by the express policy to give protection to labor;[44] thus, there is parallel treatment between just causes and violation of the union security clause.

Pertinent is Article 259 (formerly 248), paragraph (e) of the Labor Code, which states that "[n]othing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. x x x" The stipulation in a CBA based on this provision of the Labor Code is commonly known as the "union security clause."

"Union security is a generic term which is applied to and comprehends 'closed shop,' 'union shop,' 'maintenance of membership' or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit, or the agreement is terminated. A closed shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer

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40 See *Brown Madonna Press Inc. v. Casas*, 759 Phil. 479, 496-497 (2015).

41 See Article 297 (formerly 282) of the Labor Code, as renumbered pursuant to Section 5 of Republic Act No. (RA) 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," approved on June 21, 2011. See also Department Advisory No. 01, Series of 2015 of the Department of Labor and Employment entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED."

42 See *PICOP Resources, Inc. v. Tañeca*, 641 Phil. 175, 188 (2010), citing *Alabang Country Club, Inc. v. NLRC*, 569 Phil. 68, 78 (2008).

43 See *Celebes Japan Foods Corporation v. Yermo*, 617 Phil. 626, 634-635 (2009).

44 See *General Milling Corporation v. Casio*, 629 Phil. 12, 30 (2010).

and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part."[45]

This is consistent with the State policy to promote unionism to enable workers to negotiate with management on an even playing field and with more persuasiveness than if they were to individually and separately bargain with the employer. Thus, the law has allowed stipulations for "union shop" and "closed shop" as means of encouraging workers to join and support the union of their choice in the protection of their rights and interest vis-à-vis the employer. [46]

To validly terminate the employment of an employee through the enforcement of the union security clause, the following requisites must concur: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the decision of the union to expel the employee from the union.[47]

In this case, the Court finds the confluence of the foregoing requisites, warranting the termination of respondent's employment.

It is undisputed that the CBA contains a closed shop agreement stipulating that petitioner's employees must join NLM-Katipunan and remain to be a member in good standing; otherwise, through a written demand, NLM-Katipunan can insist the dismissal of an employee. Notably, the Court has consistently upheld the validity of a closed shop agreement as a form of union security clause. In *BPI v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank*,[48] the Court has explained that:

> When certain employees are obliged to join a particular union as a requisite for continued employment, as in the case of Union Security Clauses, this condition is a valid restriction of the freedom or right not to join any labor organization because it is in favor of unionism. This Court, on occasion, has even held that a union security clause in a CBA is not a restriction of the right of freedom of association guaranteed by the Constitution.
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> Moreover, a closed shop agreement is an agreement whereby an employer binds himself to hire only members of the contracting union who

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45 See *Ergonomic Systems Philippines, Inc. v. Enaje*, G.R. No. 195163, December 13, 2017, citing *PICOP Resources, Incorporated v. Tañeca*, 641 Phil. 175, 187-188 (2010).

46 See *BPI v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank*, 674 Phil. 609, 623 (2011); citation omitted.

47 See *General Milling Corporation v. Casio*, supra note 44.

48 642 Phil. 47 (2010).

> must continue to remain members in good standing to keep their jobs. It is "the most prized achievement of unionism." It adds membership and compulsory dues. By holding out to loyal members a promise of employment in the closed shop, it wields group solidarity.[49]

Further, records show that NLM-Katipunan requested the enforcement of the union security clause by demanding the dismissal of respondent from employment. In a letter[50] dated March 16, 2014, NLM-Katipunan asked petitioner to dismiss respondent from employment for having committed an act of disloyalty in violation of the CBA's union security clause. NLM-Katipunan explained that respondent solicited support from employees and thereafter, formed and organized a new union outside the freedom period, or from February 14, 2014 to April 14, 2014.

Finally, there is sufficient evidence to support the union's decision to expel respondent. Particularly, NLM-Katipunan presented to petitioner: (*a*) a written statement of one Elaine Rosel (Rosel), stating that respondent and one Henry Cabasa went to her house on December 13, 2013 to convince her to join in forming another union and made her sign on a yellow paper;[51] (*b*) a joint written statement of Meliorita V. Nolla and Emilda S. Rubido, corroborating Rosel's claim; [52] (*c*) a written statement of one Joselito Gonzales (Gonzales), attesting to respondent's act of soliciting signatures for the purpose of forming a new union;[53] (*d*) an affidavit[54] of NLM-Katipunan President Lolita Abong, further corroborating Gonzales' statement and formally lodging a complaint against respondent before the union;[55] and (*e*) an application for registration[56] of BMSDC, showing that respondent formed and organized BMSDC on February 9, 2014.[57]

Notably, in contrast to the factual milieu of *PICOP Resources, Incorporated v. Tañeca*,[58] which was relied upon by the CA, respondent, in this case, did not only solicit support in the formation of a new union but actually formed and organized a rival union, BMSDC, outside the freedom period. Similarly, in *Tanduay Distillery Labor Union v. NLRC*,[59] the Court ruled that the organization by union members of a rival union outside the freedom period, without first terminating their membership in the union and without the knowledge of the officers of the latter union, is considered an act

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49 Id. at 89-90.
50 CA *rollo*, pp. 181-182.
51 See *Salaysay* dated January 10, 2014; id. at 196.
52 See *Salaysay* received on February 11, 2014; id. at 195.
53 See *Salaysay* dated January 17, 2014; id. at 186.
54 Id. at 184-185.
55 See *rollo*, pp. 183-184. See also id. at 206-207.
56 See CA *rollo*, pp. 83-84.
57 See id.
58 In *PICOP Resources, Incorporated v. Tañeca* (supra note 45), the union members did not actually join or form another union but merely signed an authorization letter supporting the petition for certification election of another union.
59 233 Phil. 488 (1987).

of disloyalty, for which the union members may be sanctioned.[60] As an act of loyalty, a union may require its members not to affiliate with any other labor union and to consider its infringement as a reasonable cause for separation, pursuant to the union security clause in its CBA. Having ratified the CBA and being members of the union, union members owe fealty and are required under the union security clause to maintain their membership in good standing during the term thereof. This requirement ceases to be binding only during the sixty (60)-day freedom period immediately preceding the expiration of the CBA, which enjoys the principle of sanctity or inviolability of contracts guaranteed by the Constitution.[61]

Thus, based on the above-discussed circumstances, the NLRC did not gravely abuse its discretion in ruling that there existed just cause to validly terminate respondent's employment. This notwithstanding, petitioner, however, failed to observe the proper procedure in terminating respondent's employment, warranting the payment of nominal damages.

In *Distribution & Control Products, Inc. v. Santos*,[62] the Court has explained that procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two (2) written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.[63]

Here, records fail to show that petitioner accorded respondent ample opportunity to defend himself through written notices and subsequent hearing. Thus, as held by the NLRC, as affirmed by the CA, respondent's right to procedural due process was violated, entitling him to the payment of nominal damages, which the Court deems proper to increase from ₱10,000.00 to ₱30,000.00 in line with existing jurisprudence. It is settled that in cases involving dismissals for just cause but without observance of the twin requirements of notice and hearing, the validity of the dismissal shall be upheld, but the employer shall be ordered to pay nominal damages in the amount of ₱30,000.00.[64]

WHEREFORE, the petition is **GRANTED**. The Decision dated January 25, 2017 and the Resolution dated July 7, 2017 of the Court of Appeals in CA-G.R. SP No. 138705 are hereby **REVERSED** and **SET ASIDE**. The Decision dated September 30, 2014 and the Resolution dated

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60 See id. at 502-504; citing *Manalang v. Artex Development Co. Inc.*, 128 Phil. 597, 602-605 (1967) and *Ang Malayang Manggagawa ng Ang Tibay Enterprises v. Ang Tibay*, 102 Phil. 669, 674-675 (1957).

61 See id. at 500.

62 G.R. No. 212616, July 10, 2017, 830 SCRA 452.

63 See id. at 463.

64 See *Ortiz v. DHL Philippines Corporation*, G.R. No. 183399, March 20, 2017, 821 SCRA 27, 40.

November 14, 2014 of the National Labor Relations Commission in NLRC LAC No. 09-002333-14 are **REINSTATED** with the **MODIFICATION** increasing the award of nominal damages to ₱30,000.00.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

On official leave
JOSE C. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

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

LUCAS P. BERSAMIN
Chief Justice