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FIRST DIVISION

[G.R. Nos. 88710-13. December 19, 1990]

UNION OF FILIPRO EMPLOYEES (UFE), MANUEL L. SARMIENTO, BENJAMIN M. ALTAREJOS, RODOLFO D. PAGLINAWAN, CARMELITA G. NUQUI, CORAZON Y SAZON, RODRIGO P. LUCAS, RUDOLPH C. ARMAS, EDUARDO A. ABELLA, ANGEL A. CANETE, JUANITO T. CAPILI, ADOLFO S. CASTILLO, JR., PONCIANO A. CARINGAL, ERIBERTO S. LEONARDO, ADELAIDA B. MIRA, EUGENIA C. NUÑEZ, PAZ B. SAN JOSE, VENUSITO S. SOLIS, EMMANUEL S. VILLENA, ALFONSO R. RICAFRENTE, MELANIO C. LANTIN, AMADOR M. MONTOJO, RODOLFO M. MUNSOD, RENATO P. DIAZ, RODRIGO M. URGELLES, CARLOS B. SAN JOSE, EUSTAQUIO E. BUNYI, NELSON P. CENTENO, SOTERO A. GACUTAN, GUILLERMO G. DE BORJA, DIONISIO H. NIPALES, EUGENIO S. SAN PEDRO, MANUEL DELA FUENTE, CARLO MEDINA, CESAR B. PONCE, JORGE B. CASTRO, JR., RICARDO AREVALO, REY M. BEO, FELIX ESGUERRA, REYNALDO ALMENANZA, MELITON C. ROXAS (as represented by his surviving spouse, MA. CORAZON ROXAS), ROMEO A. ARANDELA, ISIDRO A. NATIVIDAD, EMILIANO M. SAYAO, CELSO J. CENIDO, PAUL C. MEJARES, SILVERIO C. PAMPANG, DIONISIO S. CANLOBO, GILBERT C. NOBLE, RODOLFO D. CALONG-CALONG, SR., PEPITO Q. QUITLONG, DIONISIO C. COMPLETO, ANTONIO T. AVELINO, ANGELITO PAYABYAB, ISAIAS A. RIEZA, DEODITO M. BELARMINO, QUEZON G. MATEO, CARLITO PRE, CIPRIANO P. LUPEBA, EFREN P. DINSAY, WILDON C. BARROS, SUSAN A. BERRO, MANUEL A. LAVIN, ROY U. BACONGUIS, JEROME T. FIEL, ANASTACIO G. CABALLERO, JR., ROGELIO E. RAIZ, JOSE T. ISIDTO, ANGELITO M. ANICIETE,

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RAUL ROBERTO C. NANQUIL, LIZA T. VILLANUEVA, CESAR S. CRUZ, REYNALDO L. CALIGUIA, ERNESTO M. SOLOMON, OSCAR G. AGUINALDO, DIEGO P. OLIVA, JAIME D. NILLAS, ELPIDIO A. HERMOCILLA, DANTE L. ESCOSURA, FEDERICO P. CONTEMPRATO, LAURO C. MAKILING, RENATO O. MINDANAO, RAFAEL C. TURA AND QUINTIN J. PEDRIDO, JR., *petitioners, vs.* **NESTLÉ PHILIPPINES, INC., NATIONAL LABOR RELATIONS COMMISSION, HON. EDUARDO G. MAGNO, HON. ZOSIMO T. VASALLO and HON. EVANGELINE S. LUBATON,** *respondents*.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; STRIKES; RETURN-TO-WORK ORDER; AN ASSUMPTION AND/OR CERTIFICATION ORDER OF THE SECRETARY OF LABOR AUTOMATICALLY RESULTS IN A RETURN-TO-WORK OF ALL STRIKING WORKERS.—** We also wish to point out that an assumption and/or certification order of the Secretary of Labor automatically results in a return-to-work of all striking workers, whether or not a corresponding order has been issued by the Secretary of Labor. Thus, the striking workers erred when they continued with their strike alleging absence of a return-to-work order. Article 264(g) is clear. Once an assumption/certification order is issued, strikes are enjoined, or if one has already taken place, all strikers *shall immediately* return to work.

2. **ID; ID; ID; A STRIKE UNDERTAKEN DESPITE THE ISSUANCE OF AN ASSUMPTION ORDER IS ILLEGAL.—** A strike that is undertaken despite the issuance by the Secretary of Labor of an assumption or certification order becomes a *prohibited activity* and thus illegal, pursuant to the second paragraph of Art. 264 of the Labor Code as amended. The Union officers and members, as a result, are deemed to have lost their employment status for having knowingly participated in an illegal act.

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3. ID.; ID.; ID.; THE ILLEGALITY OF THE STRIKES AND THE DISMISSAL OF THE EMPLOYEES WHO PARTICIPATED THEREIN, UPHELD.— Thus, the NLRC correctly upheld the illegality of the strikes and the corresponding dismissal of the individual complainants because of their "brazen disregard of successive lawful orders of then Labor Ministers Blas F. Ople, Augusto Sanchez and Labor Secretary Franklin Drilon dated December 11, 1985, January 30, 1986 and February 4, 1986, respectively, and the cavalier treatment of the provisions of the Labor Code and the return-to-work orders of the Minister (now Secretary) of Labor and Employment, or Articles 264 and 265."

4. ID.; ID.; ID.; THE DETERMINATION OF THE LEGALITY OF THE STRIKE IS WITHIN THE ORIGINAL AND EXCLUSIVE JURISDICTION OF THE LABOR ARBITER.— NLRC has clarified that the question on the legality of strike was properly resolved by the Labor Arbiter, not only because the question is perfectly within the original and exclusive jurisdiction of the Labor Arbiter to adjudicate, but also because the issue was *not subsumed* by the Order of Labor Minister Sanchez, dated December 23, 1986, certifying the Notice of Strike dated December 4, 1986 for compulsory arbitration.

5. ID.; ID.; ID.; WHETHER OR NOT THE STRIKE IS ILLEGAL IS A PREJUDICIAL QUESTION TO THE ISSUE OF WHETHER OR NOT THE EMPLOYEES WERE ILLEGALLY DISMISSED.— Further clarifying that the issue of whether or not the strike staged on September 11, 1987 by UFE and its officials and members was illegal is a *prejudicial question* to the issue of whether or not the complainants were illegally dismissed. We shall not belabor the issue any further.

APPEARANCES OF COUNSEL

Banzuela, Flores, Miralles, Raneses, Sy, Taquio & Associates for petitioners.

Siguion Reyna, Montecillo & Ongsiako for private respondent.

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D E C I S I O N

MEDIALDEA, *J.*:

This petition assails the decision of the NLRC, dated November 2, 1988 on the consolidated appeals of petitioners, the dispositive portion of which provides as follows:

"1. In NLRC Case No. NCR-12-4007-85 and NLRC Case No. NCR-1-295-86 —

a. Declaring the strike illegal;

b. Declaring the following respondent union officers, namely: M.L. Sarmiento, B.M. Altarejos, R.D. Paglinawan, C.G. Nuqui, C.Y. Sazon, R. Armas, E. Abella, A.A. Cañete, A.B. Mira, P.C. Caringal, E. Leonardo, E.C. Nuñez, P.D. San Jose, E. Villena, A. Ricafrente, M. Lantin, A. Montojo, R. Monsud, R. Diaz, R. Urgelles, C. San Jose, E. Bunyi, N. Centeno, R. Gacutan, G. de Borja, N. Nipales, E. San Pedro, C. Ponce, J. Castro, R. Beo, E. Quino, M. Roxas, R. Arandela, W. Ramirez, I. Natividad, S. Pampang, D. Canlobo, R. Calong-Calong, G. Noble, E. Sayao, C. Cenido, P. Mijares, P. Quitlong, A. Avelino, L. Payabyab, I. Rieza, C. Pre, D. Belarmino, to have lost their employment status;

c. Ordering the reinstatement of the following respondents-appellants: Juanito Capili, Carlo Medina, Rodrigo Lucas, Adolfo Castillo, Jr., Venusito Solis, Ricardo Arevalo, Quezon G. Mateo, Jr., Dionisio Completo, Felix Esguerra, Manuel dela Fuente and Reymundo Almenanza, to their former or equivalent positions without loss of seniority rights but without backwages;

d. Declaring the union (UFE) guilty of unfair labor practice; and

e. Dismissing the union complaint for unfair labor practice.

2. In RAB-X-2-0047-86, the decision sought to be set aside is AFFIRMED and the individual respondents-appellants namely: Roy Baconguis, Jerome T. Fiel, Efren P. Dinsay, Anastacio G. Caballero, Susan E. Berro, Jose T. Isidto, Wilson C. Barros, Rogelio E. Raiz, Manuel A. Lavin, Cipriano P. Lupeba are hereby declared to have lost their employment status;

3. In NLRC-00-09-0385-87, the challenged decision is likewise AFFIRMED, except as it affects Cesar S. Cruz, who is ordered

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reinstated to his former or equivalent position without backwages." (pp. 417-418, *Rollo*)

and the resolution dated March 7, 1989, quoted as follows:

"NLRC CASE NO. NCR-12-4007-85 entitled *Union of Filipro Employees (UFE), Petitioner-Appellants, versus, Filipro, Inc., et al., Respondents-Appellees*, NLRC CASE NO. NCR-1-295-86 entitled *Nestle Phils., Inc., Petitioner-Appellee, versus, Union of Filipro Employees, et al., Respondents-Appellants*, NLRC CASE NO. RAB-X-2-0047-86 entitled *Nestle Phils., Inc., Petitioner-Appellee, versus, Cagayan de Oro Filipro Workers Union-WATU, et al., Respondents-Appellants*, NCR-00-09-0385-87 entitled *Union of Filipro Employees (UFE) and its officers, Complainants-Appellants, versus, Nestle Phils., et al., Respondents-Appellees*. The Commission sitting *en banc*, after deliberation, resolved to rectify par. 3 of the dispositive portion of our November 2, 1988 resolution by ordering the reinstatement of Quezon G. Mateo, Jr. and Dionisio Completo to their former or equivalent position without backwages and to deny the motion for reconsideration filed by appellants UFE and its Officials adversely affected by said resolution." (p. 429, *Rollo*)

In a lengthy and voluminous petition, dwelling largely on facts, petitioner Union of Filipro Employees and 70 union officers and a member (henceforth "UFE") maintain that public respondent NLRC had acted with grave abuse of discretion in its affirmance of the decisions of the Labor Arbiters *a quo*, declaring illegal the strikes staged by UFE.

Respondent NLRC premised its decision on the following sets of facts:

1. *In NCR 12-4007-85 and NCR 1-295-86:*

UFE filed a notice of strike on November 14, 1985, (BLR-NS-11-344-85) with the Bureau of Labor Relations against Filipro (now Nestle Philippines, Inc., ["Nestle"]). On December 4, 1988, UFE filed a complaint for Unfair Labor Practice (ULP) against Nestle and its officials for violation of the Labor Code (Art. 94) on Holiday Pay, non-implementation of the CBA provisions (Labor Management Corporation scheme), Financial Assistance and other unfair labor practice (p. 381, *Rollo*).

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Acting on Nestle's petition seeking assumption of jurisdiction over the labor dispute or its certification to the NLRC for compulsory arbitration, then Minister of Labor and Employment Blas F. Ople assumed jurisdiction over the dispute and issued the following order on December 11, 1985:

"WHEREFORE, this Office hereby assumes jurisdiction over the labor dispute at Filipro, Inc. pursuant to Article 264(g) of the Labor Code of the Philippines, as amended. In line with this assumption a strike, lockout, or any other form of concerted action such as slowdowns, sitdowns, noise barrages during office hours, which tend to disrupt company operations, are strictly enjoined.

Let a copy of this Order be published in three (3) conspicuous places inside company premises for strict compliance of all concerned." (p. 381-382, *Rollo*)

On December 20, 1985, UFE filed a petition for *certiorari* with prayer for issuance of temporary restraining order, with this Court (G.R. No. 73129) assailing the assumption of jurisdiction by the Minister. Notwithstanding the automatic injunction against any concerted activity, and an absence of a restraining order, the union members, at the instigation of its leaders, and in clear defiance of Minister Ople's Order of December 11, 1985, staged a strike and continued to man picket lines at the Makati Administrative Office and all of Nestle's factories and warehouses at Alabang, Muntinlupa, Cabuyao, Laguna, and Cagayan de Oro City. Likewise, the union officers and members distributed leaflets to employees and passersby advocating a boycott of company products (p. 383, *Rollo*).

On January 23, 1986, Nestle filed a petition to declare the strike illegal (NCR-1-295-86) premised on violation of the CBA provisions on "no strike/no lockout" clause and the grievance machinery provisions on settlement of disputes.

On January 30, 1986, then Labor Minister Ople issued another Order, with this disposition:

"WHEREFORE, in line with the Order of December 11, 1985, this Office hereby orders all the striking workers to report for work and the company to accept them under the same terms and conditions

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prevailing before the work stoppage within forty-eight (48) hours from notice of this Order.

The Director of Labor Relations is designated to immediately conduct appropriate hearings and meetings and submit his recommendations to enable this Office to decide the issues within thirty (30) days." (p. 383, *Rollo*)

Despite receipt of the second order dated January 30, 1986, and knowledge of a notice caused to be published by Nestle in the Bulletin on February 1, 1986, advising all workers to report to work not later than February 3, 1986, the officers and members of UFE continued with the strike.

On February 4, 1986, the Minister B. Ople denied their motion for reconsideration of the return-to-work order portion as follows:

"WHEREFORE, the motion for reconsideration is hereby denied and no further motion of similar nature shall be entertained.

"The parties are further enjoined from committing acts that will disrupt the peaceful and productive relations between the parties while the dispute is under arbitration as well as acts considered illegal by law for the orderly implementation of this Order like acts of coercion, harassment, blocking of public thoroughfares, ingress and egress to company premises for lawful purposes or those undertaken without regard to the rights of the other party.

"Police and military authorities are requested to assist in the proper and effective implementation of this Order." (p. 384, *Rollo*)

UFE defied the Minister and continued with their strike. Nestle filed criminal charges against those involved.

On March 13, 1986, the new Minister of Labor and Employment, Augusto B. Sanchez, issued a Resolution, the relevant portions of which stated thus:

"This Office hereby enjoins all striking workers to return-to-work immediately and management to accept them under the same terms and conditions prevailing previous to the work stoppage except as qualified in this resolution. The management of Nestle Philippines is further directed to grant a special assistance as suggested by this Ministry in an order dated 30 January 1986 to all striking employees

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covered by the bargaining units at Makati, Alabang, Cabuyao and Cagayan de Oro City in an amount equivalent to their weighted average monthly basic salary, plus the cash conversion value of the vacation leave credits for the year 1986, payable not later than five (5) days from the date of the actual return to work by the striking workers." (p. 385, *Rollo*)

On March 17, 1986, the strikers returned to work.

On March 31, 1986, We granted UFE's Motion to Withdraw its Petition for *Certiorari* (G.R. No. 73129) (p. 385, *Rollo*).

On April 23, 1986, Minister Sanchez rendered a Decision, the dispositive portion of which reads:

WHEREFORE, the Union charge for unfair labor practices is hereby dismissed for want of merit. Nestle Philippines is hereby directed to make good its promise to grant an additional benefit in the form of bonus equivalent to one (1) month's gross compensation to all employees entitled to the same in addition to the one-month weighted average pay granted by this office in the return-to-work Order." (p. 786, *Rollo*)

On June 6, 1986, Minister Sanchez modified the foregoing decision as follows:

"WHEREFORE, our 23 April 1986 Decision is hereby modified as follows:

"1. Nestle Philippines is directed to pay the Anniversary bonus equivalent to one month basic salary to all its employees in lieu of the one month gross compensation previously ordered by this office." (p. 787, *Rollo*)

On *November 13, 1987,* after trial on the merits, *Labor Arbiter Eduardo G. Magno* issued his decision, disposing as follows:

"WHEREFORE, judgment is hereby rendered:

"1. Declaring the strike illegal.

"2. Declaring all the respondent union officers, namely: M.L. Sarmiento, R.M. Alterejos, R.D. Paglinawan, C.G. Nuqui, C.Y. Sazon, R. Lucas, R. Armas, E. Abella, A.A. Cañete, J.T. Capili, A.S. Castillo, Jr., P.C. Caringal, E. Leonardo, E.B. Mira, E.C. Nuñez, P.D. San

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Jose, V. Solis, E. Villena, A. Ricafrente, M. Lantin, A. Mortojo, R. Munsod, R. Diaz, R. Urgelles, C. San Jose, E. Bunyi, N. Centeno, R. Gacutan, G. de Borja, N. Nipales, E. San Pedro, M. de la Fuente, C. Medina, C. Ponce, J. Castro Jr., R. Arevalo, R. Beo, F. Esguerra, R. Almenanza, E. Quino, M. Roxas, R. Arandela, W. Ramirez, I. Natividad, S. Pampang, D. Canlobo, G. Noble, E. Sayao, C. Cenido, F. Mijares, R. Calong-Calong, P. Quitlong, D. Completo, A. Avelino, L. Payabyab, I. Rieza, D. Belarmino, Q. Mateo, and C. Pre to have lost their employment status.

"3. Declaring the union guilty of unfair labor practice; and

"4. Dismissing the Union complaint for unfair labor practice." (pp. 380-381, *Rollo*)

2. *In RAB-X-2-0047-86:*

Filipro (Nestle) and the Cagayan de Oro Filipro Workers Union-WATU, renewed a 3-year contract, made effective from December 1, 1984 up to June 30, 1987. Petitioners signed the CBA as the duly-elected officers of the Union.

On January 19, 1985, the union officers, together with other members of the union sent a letter to Workers Alliance Trade Unions (WATU), advising them "that henceforth we shall administer the CBA by ourselves and with the help of the Union of Filipro Employees (UFE) to where we have allied ourselves." WATU disregarded the unions's advice, claiming to be the contracting party of the CBA. UFE filed a petition (Case No. CRD-M-88-326-85) for administration of the existing CBAs at Cebu, Davao and Cagayan de Oro bargaining units against TUPAS and WATU.

From *January 22, 1986 to March 14, 1986*, the rank and file employees of the company staged a strike at the instigation of the UFE officers, who had represented themselves as officers.

Nestle filed a petition to declare the strike illegal. The strikers countered that their strike was legal because the same was staged pursuant to the notice of strike filed by UFE on November 14, 1985 (BLR-NS-11-344-85), of which they claim to be members, having disaffiliated themselves from CDO-FWU-WATU.

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On November 24, 1987, *Executive Labor Arbiter Zosimo Vasallo* issued his decision, disposing as follows:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered:

"1. Declaring the strike illegal;

"2. Declaring respondent union guilty of unfair labor practice; and

"3. Declaring the following individual respondent Union officers namely: Roy Y. Baconguis, Jerome T. Fiel, Efren P. Dinsay, Anastacio G. Caballero, Susan E. Berro, Jose T. Isidro, Wilson C. Barros, Rogelio E. Raiz, Manuel A. Lavin and Cipriano P. Lupeba to have lost their employment status." (p. 388, *Rollo*)

3. *In NCR-00-09-03285-87*

(a) On August 13, 1986, UFE, its officers and members staged a walkout from their jobs, and participated in the Welga ng Bayan. Nestle filed a petition to declare the walkout illegal (NLRC Case No. SRB-IV-1831-87) (p. 392, *Rollo*);

(b) On September 21, 1986, complainants (UFE) again did not proceed to their work, but joined the picket line in sympathy with the striking workers of Southern Textile Mills, which became the subject of an Illegal Strike Petition (NLRC Case SRB-IV-I-1831-87) (p. 392, *Rollo*);

(c) On November 12, 1986, UFE its officers and members just left their work premises and marched towards Calamba in a demonstration over the slaying of a labor leader, x x x hence a complaint for Illegal Walkout (NLRC Case No. SRB-IV-1833-87) was filed by Nestle (p. 392, *Rollo*);

(d) On December 4, 1986, UFE filed a Notice of Strike with the Bureau of Labor Relations (BLR-NS-12-531-86) (to protest the unfair labor practices of Nestle, such as hiring of contractual workers to perform regular jobs and wage discrimination) (p. 392, *Rollo*);

(e) On December 23, 1986, then Minister Augusto S. Sanchez certified the labor dispute to the Commission for compulsory

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arbitration, strictly enjoining any intended or actual strike or lockout (p. 392, *Rollo*);

(f) On August 18, 1987, UFE union officers and members at the Cabuyao factory again abandoned their jobs and just walked out, leaving unfinished products on line and raw materials leading to their spoilage. The walk-out resulted in economic losses to the company. Nestle filed a Petition to Declare the Walkout Illegal. (NLRC Case No. SRB-IV-3-1898-87) (p. 407, *Rollo*);

(g) On August 21, 1987, UFE union officers and members at the Alabang factory also left their jobs in sympathy with the walkout staged by their Cabuyao counterparts. Nestle filed again a Petition to Declare the Strike Illegal (NLRC-NCR-Case No. 00-08-03003-87) (p. 407, *Rollo*);

(h) On August 27, 1987, UFE union members at the Alabang and Cabuyao factories, in disregard of the Memorandum of Agreement entered into by the Union and Management on August 21, 1987, (to exert their best efforts for the normalization of production targets and standards and to consult each other on any matter that may tend to disrupt production to attain industrial peace) participated in an indignation rally in Cabuyao because of the death of two (2) members of PAMANTIC, and in Alabang because one of their members was allegedly mauled by a policeman during the nationwide strike on August 26, 1987 (p. 408, *Rollo*);

(i) On September 4, 1987, around 6:00 P.M. all sections at the Alabang factory went on a 20-minute mealbreak simultaneously, contrary to the agreement and despite admonition of supervisors, resulting in complete stoppage of their production lines. Responsible officials namely: Eugenio San Pedro, Carlos Jose, and Cesar Ponce, were suspended from work for six (6) days without pay (p. 408, *Rollo*);

(j) From September 5 to 8, 1987, at the instigation of UFE union officers, all workers staged a sitdown strike; and

(k) On September 7, 1987, Cabuyao's culinary section's union members sympathized with the sitdown strike at Alabang,

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followed at 12:30 P.M. by the whole personnel of the production line and certain areas in the Engineering Department. These sitdown strikes at the Alabang and Cabuyao factories became the subject of two separate petitions to declare the strike illegal (NCR-Case No. 00-09-03168-87 and SRB-IB-9-1903-87, respectively) (p. 408, *Rollo*);

(l) On September 8, 1987, Hon. F. Drilon issued the following order:

"All the workers are hereby directed to return to work immediately, refrain from resorting to any further slowdown, sitdown strike, walkout and any other kind of activities that may tend to disrupt the normal operations of the company. The company is directed to accept all employees and to resume normal operations.

Parties are likewise directed to cease and desist from committing any and all acts that would aggravate the situation." (p. 394, *Rollo*)

(m) Despite the order, UFE staged a strike on September 11, 1987, *without notice of strike, strike vote and in blatant defiance* of then Labor Minister Sanchez's certification order dated November 23, 1986 and Secretary Drilon's return-to-work order dated September 8, 1987." (p. 409, *Rollo*);

(n) Nestle sent individual letter of termination dated September 14, 1987 dismissing them from the service effective immediately for knowingly instigating and participating in an illegal strike, defying the order of the Secretary of Labor, dated September 8, 1987, and other illegal acts (pp. 394-395, *Rollo*).

On September 22, 1987, UFE filed a complaint for Illegal Dismissal, ULP and damages (NLRC NCR-00-03285-87). *Labor Arbiter Evangeline Lubaton* ruled on both issues of dismissal and strike legality, upon the premise that the issue on validity of the dismissal of the individual complainants from employment "depends on the resolution of the issue on whether or not the strike declared by complainants was illegal."

The decision dated January 12, 1988, disposed as follows:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered:

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1. Dismissing the instant complaint for lack of merit; and

2. Confirming the dismissal of all individual complainants herein as valid and legally justified." (p. 376, *Rollo*)

UFE appealed, assailing the three decisions, except that rendered in Case No. NLRC-NCR-12-4007-85 (Complaint for Unfair Labor Practice Against UFE) "because it was already rendered moot and academic by the return to work agreement and order dated March 10 and 13, 1986, respectively." (p. 49, *Rollo*).

Upon UFE's subsequent motion, the three appeals were ordered consolidated and elevated to the NLRC *en banc* (p. 395, *Rollo*)

The NLRC affirmed the unanimous decisions of the three labor arbiters which declared the strikes illegal, premised on the view that "the core of the controversy rests upon the legality of the strikes."

In the petition before Us, UFE assigns several errors (pp. 63-321, *Rollo*), which We have summarized as follows:

1. that Articles 263 and 264 are no longer good laws, since compulsory arbitration has been curtailed under the present Constitution.

2. that the question on the legality of the strike was rendered moot and academic when Nestle management accepted the striking workers in compliance with the return-to-work order of then Minister of Labor Augusto Sanchez dated March 13, 1986, (citing the case of *Bisayan Land Transportation Co. v. CIR* (102 Phil. 439) and affirmed in the case of *Feati University Faculty Club (PAFLU) v. Feati University*, G.R. No. L-31503, August 15, 1974, 58 SCRA 395).

3. that the union did not violate the no-strike/no lock-out clause, considering that the prohibition applies to economic strikes, pursuant to *Philippine Metal Foundries v. CIR*, G.R. No. L-34948-49, May 15, 1979, 90 SCRA 135. UFE, it is claimed, premised their strike on a

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violation of the labor standard laws or non-payment of holiday pay, which is, in effect, a violation of the CBA.

4. on the commission of illegal and prohibited acts which automatically rendered the strike illegal, UFE claimed that there were no findings of specific acts and identifies of those participating as to render them liable (*ESSO Phils. v. Malayang Manggagawa sa ESSO*, G.R. No. L-36545, January 26, 1977, 75 SCRA 72; *Shell Oil Workers Union v. CIR*, G.R. No. L-28607, February 12, 1972, 43 SCRA 224). By holding the officers liable for the illegal acts of coercion, or denial of free ingress and egress, without specifying and finding out their specific participation therein, the Labor Arbiter resorted to the *principle of vicarious liability* which has since been discarded in the case of *Benguet Consolidated v. CIR*, G.R. No. L-24711, April 30, 1968, 23 SCRA 465.

We agree with the Solicitor General that the petition failed to show that the NLRC committed grave abuse of discretion in its affirmance of the decisions of the Labor Arbiters *a quo*.

At the outset, UFE questions the power of the Secretary of Labor under Art. 263(g) of the Labor Code to assume jurisdiction over a labor dispute tainted with national interests, or to certify the same for compulsory arbitration. UFE contends that Arts. 263 and 264 are based on the 1973 Constitution, specifically Sec. 9 of Art. II thereof, the pertinent portion of which reads:

"Sec. 9. x x x. The State may provide for compulsory arbitration." (p. 801, *Rollo*)

UFE argues that since the aforecited provision of Sec. 9 is no longer found in the 1987 Constitution, Arts. 263(g) and 264 of the Labor Code are now "unconstitutional and must be ignored."

We are not persuaded. We agree with the Solicitor General that on the contrary, both provisions are still applicable.

We quote:

"Article 7 of the New Civil Code declares that:

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'Article 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse or custom or practice to the contrary.

x x x x x x x x x.'

"In the case at bar, no law has ever been passed by Congress expressly repealing Articles 263 and 264 of the Labor Code. Neither may the 1987 Constitution be considered to have impliedly repealed the said Articles considering that there is no showing that said articles are inconsistent with the said Constitution. Moreover, no court has ever declared that the said articles are inconsistent with the 1987 Constitution.

"On the contrary, the continued validity and operation of Articles 263 and 264 of the Labor Code has been recognized by no less than the Congress of the Philippines when the latter enacted into law R.A. 6715, otherwise known as Herrera Law, Section 27 of which amended paragraphs (g) and (i) of Article 263 of the Labor Code.

"At any rate, it must be noted that Articles 263 (g) and 264 of the Labor Code have been enacted pursuant to the 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 the Labor Code do not have any constitutional foundation is legally inconsequential." (pp. 801-803, *Rollo*)

On the issue of the legality of the strike committed, UFE seeks to absolve itself by pointing out qualifying factors such as motives, good faith, absence of findings on specific participation and/or liability, and limiting the no-strike provision to economic strikes.

UFE completely misses the underlying principle embodied in Art. 264(g) on the settlement of labor disputes and this is, that assumption and certification orders are *executory in character* and are to be *strictly complied* with by the parties even during the pendency of any petition questioning their validity. This extraordinary authority given to the Secretary of Labor is aimed

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at arriving at a peaceful and speedy solution to labor disputes, without jeopardizing national interests.

Regardless therefore of their motives, or the validity of their claims, the striking workers must cease and/or desist from any and all acts that tend to, or undermine this authority of the Secretary of Labor, once an assumption and/or certification order is issued. They cannot, for instance, ignore return-to-work orders, citing unfair labor practices on the part of the company, to justify their actions. Thus, the NLRC in its decision, re-emphasized the nature of a return-to-work order within the context of Art. 264(g) as amended by BP Nos. 130 and 227:

"x x x x x x x x x

"One other point that must be underscored is that the return-to-work order is issued pending the determination of the legality or illegality of the strike. *It is not correct to say that it may be enforced only if the strike is legal and may be disregarded if the strike is illegal*, for the purpose precisely is to maintain the *status quo* while the determination is being made. Otherwise, the workers who contend that their strike is legal can refuse to return to work to their work and cause a standstill on the company operations while retaining the positions they refuse to discharge or allow the management to fill. Worse, they will also claim payment for work not done, on the ground that they are still legally employed although actually engaged in the activities inimical to their employer's interest. (Italics supplied)

"This is like eating one's cake and having it too, and at the expense of the management. Such an unfair situation surely was not contemplated by our labor laws and cannot be justified under the social justice policy, which is a policy of fairness to both labor and management. Neither can this unseemly arrangement be sustained under the due process clause as the order, if thus interpreted, would be plainly oppressive and arbitrary.

"x x x" (p. 415, *Rollo*)

Also, in the cases of *Sarmiento v. Judge Tuico*, (G.R. No. 75271-73; *Asian Transmission Corporation v. National Labor Relations Commission*, G.R. 77567, 27 June 88, 162 SCRA 676). We stated:

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"The return to work order does not so much *confer a right as it imposes a duty;* and *while as a right it may be waived*, it must be discharged as a duty even against the worker's will. Returning to work in this situation is not a matter of option or voluntariness but of obligation. The worker must return to his job together with his co-workers so the operations of the company can be resumed and it can continue serving the public and promoting its interest."

We also wish to point out that an assumption and/or certification order of the Secretary of Labor automatically results in a return-to-work of all striking workers, whether or not a corresponding order has been issued by the Secretary of Labor. Thus, the striking workers erred when they continued with their strike alleging absence of a return-to-work order. Article 264(g) is clear. Once an assumption/certification order is issued, strikes are enjoined, or if one has already taken place, all strikers *shall immediately* return to work.

A strike that is undertaken despite the issuance by the Secretary of Labor of an assumption or certification order becomes a *prohibited activity* and thus illegal, pursuant to the second paragraph of Art. 264 of the Labor Code as amended (*Zamboanga Wood Products, Inc. v. NLRC*, G.R. 82088, October 13, 1989; 178 SCRA 482). The Union officers and members, as a result, are deemed to have lost their employment status for having knowingly participated in an illegal act.

The NLRC also gave the following reasons:

1. The strike was staged in violation of the existing CBA provisions on "No Strike/No Lockout Clause" stating that a strike, which is in violation of the terms of the collective bargaining statement, is illegal, especially when such terms provide for conclusive arbitration clause (*Liberal Labor Union vs. Phil. Can Co.*, 91 Phil. 72; *Phil. Airlines vs. PAL Employees Association*, L-8197, October 31, 1958). The main purpose of such an agreement is to prevent a strike and it must, therefore, be adhered to strictly and respected if their ends are to be achieved (pp. 397-398, *Rollo*).

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2. Instead of exhausting all the steps provided for in the grievance machinery provided for in the collective bargaining agreement to resolve the dispute amicably and harmoniously within the plant level, UFE went on strike (p. 398, *Rollo*).

3. The prescribed mandatory cooling-off period and then 7-day strike and after submission of the report of strike vote at Nestle's Makati Offices and Muntinlupa and Cabuyao Plants were not complied with (NLRC-NCR-12-4007-85 & NCR-1-295-86), while no notice of strike was filed by respondents when they staged the strike at Nestle's Cagayan de Oro Plant (RABX-2-0047-86) contrary to the pertinent provision of Articles 263 and 264 of the Labor Code, emphasizing that "the mandatory character of these cooling-off periods has already been categorically ruled upon by the Supreme Court" (*National Federation of Sugar Workers (NFSW) vs. Ovejera, et al.,* 114 SCRA 354) (p. 402, *Rollo*).

4. In carrying out the strike, coercion, force, intimidation, violence with physical injuries, sabotage, and the use of unnecessary and obscene language or epithets were committed by the respondent officials and members of either UFE or WATU. It is well-settled that a strike conducted in this manner is illegal (*United Seamen's Union vs. Davao Shipowners Association,* 20 SCRA 1226). In fact, criminal cases were filed with the Makati Fiscal's Office (p. 402, *Rollo*).

Thus, the NLRC correctly upheld the illegality of the strikes and the corresponding dismissal of the individual complainants because of their "brazen disregard of successive lawful orders of then Labor Ministers Blas F. Ople, Augusto Sanchez and Labor Secretary Franklin Drilon dated December 11, 1985, January 30, 1986 and February 4, 1986, respectively, and the cavalier treatment of the provisions of the Labor Code and the return-to-work orders of the Minister (now Secretary) of Labor and Employment, or Articles 264 and 265 (now renumbered Arts. 263 and 264), providing in part as follows:

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"ART. 263. Strikes, picketing and lockouts. —

x x x x x x x x x

"(g) When in his opinion there exists a labor dispute causing or likely to cause strikes or lockouts adversely affecting the national interest, such as may occur in but not limited to public utilities, companies engaged in the generation or distribution of energy, banks, hospitals, and export-oriented industries including those within export processing zones, the Minister of Labor and Employment shall assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. *Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout.* The Minister may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same. (Italics supplied)

"The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries wherein (sic) his opinion labor disputes may adversely affect the national interest, and from intervening at any time and assuming jurisdiction over any labor dispute adversely affecting the national interest in order to settle or terminate the same.

x x x x x x x x x

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 Ministry.

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> *No strike or lockout shall be declared after assumption of jurisdiction by the President or the Minister or after certification or submission of the dispute to compulsory or voluntary arbitration* or during the pendency of cases involving the same grounds for the strike or lockout." ([pp. 399-401, *Rollo*]) (Italics supplied)

On the alleged lack of jurisdiction of Labor Arbiter Lubaton, NLRC has clarified that the question on the legality of strike was properly resolved by the Labor Arbiter, not only because the question is perfectly within the original and exclusive jurisdiction of the Labor Arbiter to adjudicate, but also because the issue was *not subsumed* by the Order of Labor Minister Sanchez, dated December 23, 1986, certifying the Notice of Strike dated December 4, 1986 for compulsory arbitration, further clarifying that the issue of whether or not the strike staged on September 11, 1987 by UFE and its officials and members was illegal is a *prejudicial question* to the issue of whether or not the complainants were illegally dismissed. We shall not belabor the issue any further.

ACCORDINGLY, the petition is DISMISSED, and the decision of public respondent NLRC, dated November 2, 1988, and its Resolution, dated March 7, 1989, are both AFFIRMED in their entirety. No costs.

S**O ORDERED.**

Narvasa (Chairman), Gancayco, and *Griño-Aquino, JJ.*, concur.

Cruz, J., no part. Related to one of the counsel.