

**BISIG NG MANGGAGAWA SA CONCRETE AGGREGATES, INC.,
(BIMCAI) FSM, AND ITS UNION OFFICERS & MEMBERS, ETC.,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION,
LABOR ARBITER ERNIL...**

G.R. No. 105090. September 16, 1993

Ponente: PUNO, J.

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PUNO, J.:

The restoration of the right to strike is the most valuable gain of labor after the EDSA revolution. It is the employees' sole weapon which can effectively protect their basic rights especially in a society where the levers of powers are nearly monopolized by the propertied few or their franchisees. In recognition of its importance, our Constitution has accorded the right to strike a distinct status while our laws have assured that its rightful exercise will not be negated by the issuance of unnecessary injunctions. The impugned Order of the public respondents in the case at bar infringes petitioners' right to strike and hence must be struck down.

The labor conflict between the parties broke out in the open when the petitioner union[1] struck on April 6, 1992 protesting issues ranging from unfair labor practices and union busting allegedly committed by the private respondent.[2] The union picketed the premises of the private respondent at Bagumbayan and Longos in Quezon City; Angono and Antipolo in Rizal; San Fernando, Pampanga and San Pedro, Laguna.

The strike hurt the private respondent. On April 8, 1992, it filed with the NLRC a petition for injunction[3] to stop the strike which it denounced as illegal. It alleged:

x x x

"13. On April 6, 1992, at around 7:00 P.M., respondents led by its officers and some members staged a wild-cat strike, without a valid notice of strike, nor observing cooling-off period, and made even during the pendency of a preventive mediation proceedings which was still scheduled for April 10, 1992;

"14. And during the said wild-cat strike, respondents have set-up makeshifts, tents, banners and streamers and other man-made obstructions at the main plant and offices of petitioner which effectively impeding, as in fact still effectively impeding the ingress and egress of persons who have lawful business with the petitioner;

"15. Furthermore, respondents have resorted, as in fact still resorting to, unlawful and illegal acts including among others threats, intimidations and coercions against persons who have lawful business with the petitioner and the non-striking employees who wish to return to work;

"16. Without complying with the legal requirements for a valid strike, respondents' staging of the said 'wild-cat strike', is by law considered as illegal or unlawful act which must be enjoined;

"17. As a direct result of the aforesaid unlawful and illegal acts of the respondents, petitioner which has on-going projects for the government and other private entities which require completion on and agreed schedule, is at great and imminent danger to suffer substantial damages and injury, which if not urgently

redressed, will inevitably become irreparable;

“18. Said prohibited and unlawful acts have been threatened and will continuously be committed unless the injunction or temporary restraining order be issued against the respondents; (pp. 2-5, Records).

x x x.

“23. The injury and damages to the government of Republic of the Philippines, the petitioner and other persons are unavoidable, so much so that the issuance of a Temporary Restraining Order without notice becomes imperative, as the police officers or agents of authority called upon to enforce the right to ingress and egress are unable to do so; (p. 6, *ibid*)”

The petition was set for hearing on April 13, 1992 at 3 p.m. The union, however, claimed that it was not furnished a copy of the petition. Allegedly, the company misrepresented its address to be at Rm. 205-6 Herald Bldg., Muralla St., Intramuros, Manila.

On April 13, 1992, the NLRC heard the evidence of the company alone. The *ex parte* hearing started at 2:30 p.m. where testimonial and documentary evidence were presented.[4] Some thirty (30) minutes later, an Ocular Inspection Report was submitted by an unnamed NLRC representative[5] which reads:

“OCULAR INSPECTION REPORT

Authorization dated April 13, 1992 was issued to the effect of directing the undersigned to conduct an ocular inspection of the premises of the petitioner located at Bagumbayan, Quezon City.

The inspection was conducted immediately upon receipt hereof.

OBSERVATION

The passage was obstructed with pieces of rock, an old ladder, pieces of wood and other hard objects that gave rise to a strong indication that the passage to and from the premises was not free. The barricades and obstruction were put up fifty (50) meters or less away from the main gate.

The business operation was completely paralyzed (*sic*) as no person was noticed inside the company compound. No persons and/or vehicles were seen entering and leaving the premises. Ingress to and egress from the company is presumed to be not free.”

Before the day was over, the respondent NLRC (First Division) issued a temporary restraining order against the union, *viz*:

“x x x RESOLVED, to issue a Temporary Restraining Order valid for twenty (20) days, subject to petitioner’s posting of a cash or surety bond of Twenty Thousand (P20,000.00) Pesos conditioned to recompense respondents for any loss, expense or damage they may suffer in the event it is eventually found out that petitioner is not entitled to the relief sought and herein granted, DIRECTING: a) the respondents, their agents and sympathizers to remove (subject to their right to conduct a lawful picket) the man-made barricades/obstructions complained of and to direct from further preventing and/or impeding the free ingress to and egress from petitioner’s main plant and office premises of its employees, officials, vehicles, customers or any party who may want to transact business thereat through the use of any obstructive means prohibited by law; b) any officer from the Legal Division of this Commission to ensure compliance of the foregoing restraining order and where necessary, to enlist in the implementation of this Order, as deputized enforcement officers, the assistance of peace officers of this government that has jurisdiction over the strike areas; c) Labor Arbiter Ernilo V. Penalosa to immediately set this case for further hearing with the aim of affording respondents enough opportunity to contest/oppose the issuance of temporary/permanent injunction prayed for in the petition and to submit a report to this Commission within ten (10) days from termination of said

hearing”.

No copy of this Order was furnished the union. The union learned of the Order only when it was posted on April 15, 1992 at the premises of the company. On April 21, 1992, it filed its Opposition/Answer to the petition for Injunction. Among others, it alleged:

x x x

“9. The allegation in paragraph 13 of an alleged illegal strike for the reasons stated therein is denied. It is also added that the question of strike legality is outside the original jurisdiction of the NLRC except if the labor dispute has been certified to it for compulsory arbitration. Hence, not only is paragraph 13 denied, denial is made likewise of paragraph 16 which asks that the strike must be enjoined. Paragraph 16 is irrelevant to the cause of action in injunction because only the illegal or unlawful acts maybe enjoined. The strike itself cannot be enjoined unless certified by the honorable Secretary of Labor to the NLRC for compulsory arbitration.

“9. Paragraphs 14, 15, 17, 18, and 19 of the allegations supporting the cause of action are also denied for being self-serving and premature.

“10. Respondents also deny the allegation in paragraph 20 as the public officers charged with the duty to protect the petitioner’s property are able and willing to furnish adequate protection as shown by the fact that when the temporary restraining order was served, the police and other law enforcement agency personnel came immediately to respond and enforced the order peacefully”.

On April 24, 1992, the union also filed its own Petition for Injunction to enjoin the company “from asking the aid of the police and the military officer in escorting scabs to enter the struck establishment.”

The records show that the case was heard on April 24 and 30, May 4 and 5, 1992 by respondent Labor Arbiter Enrilo Peñalosa.[6] On April 30, 1992, the company filed a Motion for the Immediate Issuance of Preliminary Injunction wherein it alleged:

“x x x

“7. In the meantime, the respondents are still committing illegal acts, by resorting to grave threats, intimidation against the non--striking employees and persons with lawful transactions with the company since April 20, 1992, continuously up to this time, either by actual threats and intimidation whenever these persons attempt to report to work or transact business with the company, or by calling at their houses or places of residence, and then and there coerce not to report for work on pain of bodily harm; As proof thereof, petitioner attaches the affidavit of Atty. Elmer Jolo, Augusto Bautista, Ronnie Mercado, among others, as Annexes “A”, “B” & “C” and made integral parts thereof.

“8. For these reasons, said workers and persons are constrained to refrain from reporting for work or from transacting business with the company;

“9. Finally, no less than the president of the Union, supported by the leaders of the strikers, threatened that upon the expiration of the validity of the temporary restraining order, they will ‘sisimentuhin namin ang gates ng Concrete Aggregates na kahit ipis ay hindi makakapasok at makakalabas’ (‘We will cement the gates of the Concrete Aggregates that even cockroaches could not pass through’);”

The union got wind of the motion only on May 4, 1992. The next days, May 5, 1992, it opposed the motion, alleging:

“x x x

“They were never furnished by the petitioner with a copy of the original petition for injunction filed on April 8, 1992 because as seen from the petition, petitioner addressed the respondents at Rm. 205-206 Herald Bldg.,

Muralla St., Manila as stated in paragraph 2 of the said petition and they came to know only of the same when Commission issued a temporary restraining order dated April 15, 1992 which was served to them at the picket line on April 15, 1992 and thus they opposed the same on April 20, 1992 (pp. 99-100, Records).

“x x x. The suspicion is that same is deliberate in order for the union not to be able to immediately oppose the petition praying for a temporary restraining order and so petitioner was scot-free when it presented ex-parte evidence. The motion for the immediate issuance of a preliminary injunction foisted upon the Honorable Commission with affidavits of employees debunked by cross-examination and officers of the company making fantastic claims is an attempt to have lightning strike twice at the same place. We hope this Honorable Commission is not fooled and therefore we beseech it to examine carefully the pleadings and the transcript on this question of threat or prohibited acts.

“x x x x x x x x

“The allegation of damages if no injunction is secured is therefore premature and irrelevant in this proceedings because there is no proof that the strike is illegal. For if the strike is legal then both sides must bear their own losses in an economic contest: the company - loss of income; the workers - loss of wages. These are the stakes in an economic dispute. The desperate company posture to enjoin even the strike itself is shown by its letter to the Secretary of Labor dated April 6, 1992, a copy of which is hereto attached as Annex “A”. The Secretary of Labor has not yet acted on this request. The company believes probably that an injunction petition would substitute the provision of Art. 263 of the Labor Code.”

The same day, however, the respondent NLRC issued its disputed Order[7] granting the company’s motion for preliminary injunction. It reads:

“It appears that despite the issuance of a temporary restraining order on April 14, 1991, the respondents have not ceased in committing the illegal acts being enjoined. As shown by petitioner during the hearings of its main petition for preliminary and/or permanent injunction, held on the first day of the implementation of the temporary restraining order on April 20, 1992 and the day thereafter, respondents, thru the formation of human blockade, have prevented the company vehicles and Employees’ Shuttle Buses from entering the company premises, and through force and intimidation made the non--striking employees on board the vehicles and buses to get down: that even the company’s Assistant Manager for Operations, Mr. Ronnie Mercado, who tried to help the non-striking employees to enter the company premises was blocked by the strikers and was even told “wala kaming pakialam sa restraining order ninyo, basta hindi namin papapasukin para magtrabaho ang sino mang empleyado ng Concrete Aggregates. Bubugbugin namin kayo pag kayo nagpilit.” He was further told that “Ikaw Mercado huwag kang mapapel dito baka my mangyari sa iyo.” As a result of the said blockade, threats and intimidation, more or less 100 non-striking employees now, have not been able to report for work; moreover, the inability of the company’s Longos Plant to operate fully had caused it to lose the contracted RMC Sales of around 10,000 cubic meters worth around P10 million, not to mention the expected loss in sales for the next three (3) months at P14 million per month since no customers, regular or prospective, could transact business with the company. But foremost of all, it has been shown that no less than the President of the Union, Ramos Banas, with the support of the leaders of the strikers, has threatened that upon the expiration of the validity of the temporary restraining order on May 5, 1992, they will not only barricade the gates of the company but even seal them all so that “even cockroaches could not pass through.

“While respondents witnesses, who were mentioned in the testimonies/affidavits of petitioner’s witnesses, tried to deny the illegal acts imputed against them, the fact remains undisputed that when the convoy of the company cars and Employees Shuttle Buses with reporting non-striking employees on board were about to enter the compound of the company’s Longos Plant in Quezon City, they were stopped by the respondents on the lame excuse that they were only to inquire as to who were those on board and that they asked those who are allegedly non employees of the petitioner to get down. It has been substantially established that out of the work force of the Longos Plant, about 100 more or less employees have not been able to enter the plant premises

from April 20, 1991 up to the present, for fear of bodily harm from the strikers. Likewise, if it were true, as claimed, that no threats and intimidation were committed against the company officials who were to report for work, then there is no reason why the Manager for Operations, Ronnie Mercado, should be complaining to the police nearby and for the latter to advise respondents Ramon Banas and Ernest Lascona behave well. Moreover, there is merit to the claim of petitioner that even contract workers hired by it who, even before the strike and up to the present, were assigned to work inside the premises of the Longos were denied entrance by the strikers for their being alleged scabs. With this admission regarding the contract worker, there is reason to believe the truth and veracity of the statement as of petitioner's witnesses, especially the reasonable fear that after the lapse of the twenty (20) days duration of the temporary restraining order, the respondents-strikers will again resort to barricading the entrances of petitioner's plants to prevent anyone from entering the said plants' premises.

"On the bases of all the foregoing facts and circumstances, the First Division of this Commission, after due deliberation hereby RESOLVED: (pending conclusion of the hearing on petitioner's main petition of April 24, 1991), to issue preliminary injunction: a) enjoining the respondents, their representative and symphatizers, if any, without prejudice to their right to conduct a peaceful and lawful picket, from preventing the non-striking employees, officials of the company and their vehicles, customers and visitors free ingress to and egress from petitioner's plant and premises; directing them to make the ingress to and egress from said premises free from any and all obstruction at all times; and requiring them to desist from further threatening and intimidating at their houses or elsewhere the non-striking employees who up to now could not report for work and to allow them to report for work unmolested: b) directing them, despite the union president's statement that none of the feared illegal acts will be committed after the lapse of the temporary restraining order, to refrain from doing any illegal act which will exacerbate the situation upon the expiration of the temporary restraining order: c) applying the cash or surety bond of P20,000.00 posted by petitioner for the temporary restraining order that will expire on May 5, 1992 as the case or surety bond for this preliminary injunction: d) deputizing any officer from the Legal Division of this Commission to effectively enforce and implement this injunctive order and, if necessary, to enlist the assistance of the PNP or other peace officers having jurisdiction over the strike areas in the enforcement and implementation of this Order.

Let two (2) copies of this injunctive order be posted in two (2) conspicuous places of each of the strike areas by the Bailiff of this Commission for the information and proper guidance of all concerned.

SO ORDERED."

The union then filed the instant petition for certiorari and mandamus raising the following issues:

"x x x

"3. Whether or not the respondent NLRC can issue a preliminary injunction, as it did issue, after the lapse of a twenty day temporary restraining order without regard to the specific provision of Article 218 (e) of the Labor Code, x x x, considering that in the Order dated May 5, 1992 (attached as Annex "E" of this petition) there is no finding of fact by the respondent NLRC in any of the five pages of the aforesaid Order, to the effect that, as required by law, "(4) That complainant has no adequate remedy at law; and (5) That the public officers charged with the duty to protect complainants property are unable or unwilling to furnish adequate protection.

"4. Whether or not public respondent NLRC and Labor Arbiter have unlawfully neglected the performance of an act which the law enjoins as a duty resulting from office considering that after petitioner also filed on April 24, 1992 a petition asking a temporary restraining order and injunction against the escorting by police authorities of individuals 'who seek to replace the strikers in entering or leaving the premises of a strike area or work in the place of the strikers and that the police force will keep out of the picket lines unless actual violence or other criminal acts occur therein' as provided by Article 264 (d) of the Labor Code, considering that the Labor Arbiter reluctantly allowed petitioners to present their evidence in support of their petition to enjoin the scabs being escorted by the police; WHILE in contrast, it continuously set the motion for immediate

issuance of preliminary injunction of private respondents on April 30, 1992, May 4 and 5, 1992 and issued a temporary restraining order in favor of the respondent corporation in an hour.”

We ordered the public and private respondents to comment on the petition.[8] In its 29-page Comment, Solicitor General Raul I. Goco[9] took the position that the petition is impressed with merit. In contrast, the private respondent company, defended the validity of the Order dated May 5, 1992 of the NLRC.[10] Similarly, the NLRC contended that it did not abuse its discretion in issuing the disputed Order.[11]

We find for the petitioners.

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

In the Philippine milieu where social justice remains more as a rhetoric than a reality, labor has vigilantly fought to safeguard the sanctity of the right to strike. Its struggle to gain the right to strike has not been easy and effortless. Labor’s early exercise of the right to strike collided with the laws on rebellion and sedition and sent its leaders languishing in prisons. The spectre of incarceration did not spur its leaders to sloth; on the contrary it spiked labor to work for its legitimization. This effort was enhanced by the flowering of liberal ideas in the United States which inevitably crossed our shores. It was enormously boosted by the American occupation of our country. Hence, on June 17, 1953, Congress gave statutory recognition to the right to strike when it enacted RA 875, otherwise known as the Industrial Peace Act. For nearly two (2) decades, labor enjoyed the right to strike until it was prohibited on September 12, 1972 upon the declaration of martial law in the country. The 14-year battle to end martial rule produced many martyrs and foremost among them were the radicals of the labor movement. It was not a mere happenstance, therefore, that after the final battle against martial rule was fought at EDSA in 1986, the new government treated labor with a favored eye. Among those chosen by then President Corazon C. Aquino to draft the 1987 Constitution were recognized labor leaders like Eulogio Lerum, Jose D. Calderon, Blas D. Ople and Jaime S.L. Tadeo. These delegates helped craft into the 1987 Constitution its Article XIII entitled Social Justice and Human Rights. For the first time in our constitutional history, the fundamental law of our land mandated the State to “... guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law.”[12] This constitutional imprimatur given to the right to strike constitutes signal victory for labor. Our Constitutions of 1935 and 1973 did not accord constitutional status to the right to strike. Even the liberal US Federal Constitution did not elevate the right to strike to a constitutional level. With a constitutional matrix, enactment of a law implementing the right to strike was an inevitability. RA 6715 came into being on March 21, 1989, an intentional replication of RA 875.[13] In light of the genesis of the right to strike, it ought to be obvious that the right should be read with a libertarian latitude in favor of labor. In the wise words of Father Joaquin G. Bernas, S.J., a distinguished commissioner of the 1987 Constitutional Commission “x x x the constitutional recognition of the right to strike does serve as a reminder that injunctions, should be reduced to the barest minimum”.[14]

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

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

x x x x x x x x

(e) To enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party: Provided, That no temporary or permanent injunction in any case involving or growing out of a labor dispute as defined in this Code shall be issued except after hearing the testimony of witnesses, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and only after a finding of fact by the commission, to the effect:

“(1) That prohibited or unlawful acts have been threatened and will be committed and will be continued unless restrained but no injunction or temporary restraining order shall be issued on account of any threat, prohibited or unlawful act, except against the person or persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

“(2) That substantial and irreparable injury to complainants property will follow;

“(3) That as to each item of relief to be granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

“(4) That complainant has no adequate remedy at law; and

“(5) That the public officers charged with the duty to protect complainants property are unable or unwilling to furnish adequate protection.

“Such hearing shall be held after due and personal notice thereof has been served, in such manner as the Commission shall direct, to all known persons against whom relief is sought, and also to the Chief Executive and other public officials of the province or city within which the unlawful have been threatened or committed charged with the duty to protect complainant’s property: x x x” (Underlining ours)

In his Comment, the Solicitor General cited various evidence on record showing the failure of public respondents to fulfill the requirements, especially of paragraphs four (4) and five (5) of the above cited law. We quote with approval the pertinent portions of the Comment:

x x x

“It must be noted that to support the claim of threats, intimidation, unlawful and prohibited acts, etc. allegedly committed by the union against the non-striking employees, the company even submitted a joint affidavit signed by Joselito Concepcion, Renato Trambulo and Armando Arcos. Said affidavit reads-

‘JOINT AFFIDAVIT

‘We, ARMANDO ARCOS, CESAR NAVARRO and RENATO TRAMBULO residents of Dasmarinas, Cavite and JOSELITO CONCEPCION of Binangonan, Rizal all of legal age, Filipino after having been sworn hereby depose and say:

‘That we are contract worker (sic) of CAC under Engr. Mercado;

‘That last April 20, 1992 at around 8:00 A.M. we were denied entry at the Longos Plant by striking workers particularly Ramon Banas, Ricardo Manalang, Rodrigo Manalang, Rodrigo Lauihon and Ernesto Lascona;

‘That the abovenamed persons stopped us at the gate of Longos Plant, told us to get off the bus, and in threatening manner told us to leave and vacate the premises otherwise something bad will happen to us;

‘That because of this unlawful, illegal and felonious acts of the said persons we were compelled to do something against our will that is to leave without being able to report for work;

‘That the abovenamed person and the herein complainants are residents of barangays in different cities and municipalities hence the matter is not covered by PD 1508;

‘That we are executing this affidavit to charge Ramon Banas, Ricardo Manalang, Rodrigo Lauihon and Ernesto Lascana with Grave Coercion.’ (Exh. “I”, p. 896, Records) (Underscoring Supplied).

“However, when presented before the Labor Arbiter, the affiants themselves controverted the allegations in said joint-affidavit. They innocently divulged having signed the prepared affidavit without first reading the same. Likewise, they admitted that they did not see or hear Banas, Manalang, Lacuna and Lacejon threatened the group of “non-strikers” including themselves of bodily harm (pp. 13-14, 20-21, 35--37, 46-47, 49-50, 54-61, TSN, April 24, 1992). They testified, thus -

‘CROSS-EXAMINATION OF JOSELITO CONCEPCION

‘ARBITER PEÑALOSA:

The question is . . . who prepared the affidavit? Alam mo raw ba kung sino ang gumawa ng affidavit na ito?

ATTY. ESPINAS:

Sinong gumawa?

ATTY. MACARUBBO:

Para sa iyo?

MR. CONCEPCION:

Si Attorney po.

(pp. 20, 21, *ibid*)

‘DIRECT TESTIMONY OF RENATO TRAMBULO

ATTY. MACARUBBO:

Mr. Witness, did you sign an affidavit dated April 24, 1992?

MR. TRAMBULO:

Yes, Sir.

ATTY. MACARUBBO:

Have you read this affidavit?

MR. TRAMBULO:

Hindi pa ho.

x x x x x x x x

ATTY. MACARUBBO:

Perhaps, what you meant is . . .

ATTY. ESPINAS:

No, no, no, . . . You can ask another question. His answer is - Before I, signed it but I have not read it yet.

ATTY. MACARUBBO:

What do you mean that you have not read this?

MR. TRAMBULO:

Sa akin lang po, iyong sinabi sa akin na . . . iyong hinarang kami, pinababa kami . . . iyon lang po ang alam ko. Wala na po akong ibang alam.

ATTY. MACARUBBO:

Hinarang ka?

MR. TRAMBULO:

Hinarang kami, pinababa kami dahil hindi daw kami empleyado sa kompanya.

ATTY. MACARUBBO:

At iyon ang ibig sabihin nito?

MR. TRAMBULO:

‘CROSS-EXAMINATION OF RENATO TRAMBULO

ATTY. ESPINAS:

What did Lacejon said (sic)

MR. TRAMBULO:

Pinababa na lang po kami sa service. Sabi niya, bumaba na kayo dahil hindi naman kayo empleyado ng Concrete, kaya bumaba na lang po kami.

(pp. 46-47, 49-50, id)

‘TESTIMONY OF ARMANDO ARCOS:

ATTY. ESPINAS:

Cross-examination. Sinabi ba ng mga taong ito na kung hindi kayo bababa, masama ang mangyayri sa inyo? Meron bang sinabing ganoon?

ATTY. ARCOS:

Wala ho.

ATTY. ESPINAS:

Dito sa second paragraph which says . . . told you to leave and vacate the premises otherwise something bad will happen to us. Kung hindi kayo umalis . . . walang sinabing ganoon?

MR. ARCOS:

Wala naman ho.

x x x x x x x x

ATTY. ESPINAS:

Sino ang nagsabi sa inyo na “Hindi naman kayo empleyado, bumaba na kayo?”

MR. ARCOS:

Si Lacejon. Iyong may salamin.

ATTY. ESPINAS:

Pero walang sinabi si Lacejon na kung hindi kayo bababa may masamang mangyayari sa inyo?

MR. ARCOS:

Wala naman ho.

(pp. 59-61, id)

Moreover, no less than Mr. Ronnie Mercado, the Assistant Manager for Operations of the Company, testified that after the issuance of the ex parte temporary restraining order, the barricade blocking the gates were removed and people were allowed free ingress and egress (please see also pp. 70-71, 96, TSN, April 30, 1992). He stated, thus -

‘CROSS-EXAMINATION OF MR. MERCADO

ATTY. ESPINAS:

So after the temporary restraining order, were the barricade removed?

MR. WITNESS:

Those blocking the gates, yes.

x x x x x x x x

ATTY. ESPINAS:

But the barricades blocking the gates were already removed.

MR. WITNESS:

The barricades blocking the gates were already removed.

(pp. 66-67, TSN, April 30, 1992)

x x x x x x x x

ATTY. ESPINAS:

Let us go to Antipolo. After the restraining order the people were able to enter?

MR. WITNESS:

After the restraining order the people can already enter.

ATTY. ESPINAS:

They were escorted by the police?

MR. WITNESS:

No, sir. (P. 75, ibid) (Underscoring ours)

x x x x x x x x

ATTY. ESPINAS:

O, lahat ng gustong pumasok, makakapasok na ngayon?

MR. WITNESS:

Yes, sir.'

(p. 85, *ibid*)

"Furthermore, Atty. Elmer Jolo, the Personnel Manager joined by Mr. Mercado, disclosed that the public authorities charged to protect the company's properties were neither unwilling or unable to furnish adequate protection. As a matter of fact, the police regularly patrolling the area, was never requested assistance. Thus ?

'CROSS-EXAMINATION OF ATTY. ELMER JOLO

ATTY. ESPINAS:

Did you not ask the assistance of the San Pedro policemen on this matter of obstruction and other similar activities in obstructing the gates of the plant?

MR. WITNESS:

I did not.

ATTY. ESPINAS:

Did you not ask the policemen of Angono, Rizal to help you on this matter again of extracting the trucks which were supposed to deliver pre-stress material of that day?

MR. WITNESS:

Personally I did not because I leave this police matter to my chief security officer.

ATTY. ESPINAS:

Did your chief security officer ask the assistance of the policemen of Quezon City with respect to the Longos Plant?

MR. WITNESS:

That I do not know.

ATTY. Espinas:

Did you ask the aid of the policemen at Bagumbayan, Quezon City to help you regarding the incident of April 6, 1992 at 7:00 p.m.?

MR. WITNESS:

I did not personally because I instructed this police matter to my chief security officer.

ATTY. ESPINAS:

Did your chief security officer seek the aid of the policemen?

MR. WITNESS:

That I do not know.

(pp. 41-43, TSN, April 30, 1992)

‘CROSS-EXAMINATION OF MR. MERCADO

ATTY. ESPINAS:

The policemen are from Quezon city.

MR. WITNESS:

I think so, kasi nagpa-patrol sila.

ATTY. ESPINAS:

Nagpatrol? They were called by the company?

MR. WITNESS:

No, sir, kaya lang parati silang umiiikot diyan.

ATTY. ESPINAS:

So the policemen were present patrolling?

MR. WITNESS:

Paminsan-minsan sumulpot lang.’

(pp. 85-86, id)

The foregoing testimonies of the senior officers of the company are further buttressed by the admission of one of the laborers, also presented as witness by the company, who testified that -

‘CROSS-EXAMINATION OF AUGUSTUS BAUTISTA

ATTY. ESPINAS:

But they were not bodily stopped from entering after the 21. Were they?

MR. WITNESS:

No.

(p. 124, TSN, April 30, 1992)

x x x x x x x x

ATTY. ESPINAS:

In other words, aside from the police there is a security office detained?

MR. WITNESS:

Yes, we have our own.

ATTY. ESPINAS:

And the security officer can request the aid of the policemen?

MR. WITNESS:

Yes.’

(pp. 128-129, id)

“Verily, the factual circumstances proven by the evidence show that there was no concurrence of the five (5) prerequisites mandated by Art. 218 (e) of the Labor Code. Thus there is no justification for the issuance of the questioned Order of preliminary injunction.”

The Comments of the private and public respondents did not dispute the correctness of these documentary and testimonial evidence.

Moreover, the records reveal the continuing misuse of unfair strategies to secure ex parte temporary restraining orders against striking employees. Petitioner union did not receive any copy of private respondent’s petition for injunction in Case No. 000249-92 filed on April 8, 1992. Its address as alleged by the private respondent turned out to be “erroneous”.[15] Consequently, the petitioner was denied the right to attend the hearing held on April 13, 1992 while the private respondent enjoyed a field day presenting its evidence ex parte. On the basis of uncontested evidence, the public respondent, on the same day April 13, 1992, temporarily enjoined the petitioner from committing certain alleged illegal acts. Again, a copy of the Order was sent to the wrong address of the petitioner. Knowledge of the Order came to the petitioner only when its striking members read it after it was posted at the struck areas of the private respondent.

To be sure, the issuance of an ex parte temporary restraining order in a labor dispute is not per se prohibited. Its issuance, however, should be characterized by care and caution for the law requires that it be clearly justified by considerations of extreme necessity, i.e., when the commission of unlawful acts is causing substantial and irreparable injury to company properties and the company is, for the moment, bereft of an adequate remedy at law. This is as it ought to be, for imprudently issued temporary restraining orders can break the back of employees engaged in a legal strike. Often times, they unduly tilt the balance of a labor warfare in favor of capital. When that happens, the deleterious effects of a wrongfully issued, ex parte temporary restraining order on the rights of striking employees can no longer be repaired for they defy simple monetization. Moreover, experience shows that ex parte applications for restraining orders are often based on fabricated facts and concealed truths. A more becoming sense of fairness, therefore, demands that such ex parte applications should be more minutely examined by hearing officers, lest, our constitutional policy of protecting labor becomes nothing but a synthetic shibboleth. The immediate need to hear and resolve these ex parte applications does not provide any excuse to lower our vigilance in protecting labor against the issuance of indiscriminate injunctions. Stated otherwise, it behooves hearing officers receiving evidence in support of ex parte injunctions against employees in strike to take a more active stance in seeing to it that their right to social justice is in no way violated despite their absence. This equalizing stance was not taken in the case at bar by the public respondents.

Nor do we find baseless the allegation by petitioner that the public respondents have neglected to resolve with reasonable dispatch its own Petition for Injunction with prayer for a temporary restraining order dated April 25, 1992. The petition invoked Article 264 (d) of the Labor Code[16] to enjoin the private respondent from using the military and police authorities to escort scabs at the struck establishment. Sadly contrasting is the haste with which public respondents heard and acted on a similar petition for injunction filed by the private respondent. In the case of the private respondent, its prayer for an ex parte temporary restraining order was heard on April 13, 1992 and it was granted on the same day. Its petition for preliminary injunction was filed on April 30, 1992, and was granted on May 5, 1992. In the case of petitioner, its petition for injunction was filed on April 24, 1992, and to date, the records do not reveal whether the public respondent has granted or denied the same. The disparate treatment is inexplicable considering that the subject matters of their petition are of similar importance to the parties and to the public.

IN VIEW WHEREOF, the petition for certiorari and mandamus is granted. The Order dated May 5, 1992 of the public respondent in NLRC NCR IC No. 000249-92 is annulled and set aside. The public respondents are likewise ordered to hear and resolve, with deliberate speed petitioner's petition for injunction filed on April 30, 1992.

SO ORDERED.

Padilla, Regalado, and Nocon, JJ., concur.
Narvasa, C.J., (Chairman), J., on leave.

[1] Hereinafter referred to as Union.

[2] Hereinafter referred to as company.

[3] NCR-IC No. 000249-92

[4] Atty. Elmer Jolo, Mr. Aurelio Isidro and Mr. Camilo Tolentino testified. Offered as evidence were Exhibits "A" to "H"

[5] Comment of the OSG, p. 126

[6] In the hearing of April 24; 1992, Messrs. Joselito Concepcion, Renato Trambulo and Armando Arcos testified for the company. In the hearing of April 30, 1992, the witnesses who testified for the company on April 13, 1992 were cross examined; in the hearing of May 4, 1992, Mr. Ramon Banas testified for the union while Messrs. Jose Gonzales and Camilo Tolentino testified for the company.

[7] It was signed by Chairman Bartolome S. Carale and Commissioner Romeo B. Putong. Commissioner Vicente S.E. Veloso was on leave.

[8] Resolution of May 25, 1992.

[9] He was assisted by Asst. Solicitor General Deusdedit B. Quijano and Solicitor Nyriam Susan O. Sedillo

[10] Comment dated August 24, 1992 consisting of thirteen (13) pages.

[11] Comment signed by Atty. Florentino R. Darlucio consisting of eight (8) pages.

[12] Par. 2, sec. 3, Art. XIII; underlining supplied.

[13] Compare sec. 9 of the RA 875 with Art. 218 (e) of the Labor Code.

[14] The Constitution of the Republic of the Philippines: A Commentary, Vol II, 1988 ed., p. 473. In this regard, Art. 254 of the Labor Code provides: "Art. 254. Injunction prohibited - No temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity, except as otherwise provided in Article 218 and 264 of this Code."

[15] Comment of OSG, p. 128 Rollo; Par. 6 of Petition, p. 10, Rollo;

[16] "(d) No public official or employee, including officers and personnel of the New Armed Forces of the Philippines or the Integrated National Police, or armed person, shall bring in, introduce or escort in any manner any individual who seeks to replace strikers in entering or leaving the premises of a strike area, or work in place of the strikers. The police force shall keep out of the picket lines unless actual violence or other criminal acts occur therein: x x x"

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