SUPREME COURT
FIRST DIVISION

ILAW AT BUKLOD NG MANGGAGAWA (IBM),
***Petitioner*,**

-versus-

G.R. No. 91980
June 27, 1991

NATIONAL LABOR RELATIONS COMMISSION (First Division), HON. CARMEN TALUSAN and SAN MIGUEL CORPORATION,
***Respondents*.**
x----------x

D E C I S I O N

NARVASA, *J.*:

The controversy at bar had its origin in the "wage distortions" affecting the employees of respondent San Miguel Corporation allegedly caused by Republic Act No. 6727, otherwise known as the Wage Rationalization Act.

Upon the effectivity of the Act on June 5, 1989, the union known as "Ilaw at Buklod Ng Manggagawa (IBM)" — said to represent 4,500 employees of San Miguel Corporation, more or less, "working at the various plants, offices, and warehouses located at the National Capital

Region" - presented to the company a "demand" for correction of the "significant distortion in (the workers') wages." In that "demand," the Union explicitly invoked Section 4 (d) of RA 6727 which reads as follows:

x x x

> "(d) x x x
>
> Where the application of the increases in the wage rates under this Section results in distortions as defined under existing laws in the wage structure within an establishment and gives rise to a dispute therein, such dispute shall first be settled voluntarily between the parties and in the event of a deadlock, the same shall be finally resolved through compulsory arbitration by the regional branches of the National Labor Relations Commission (NLRC) having jurisdiction over the workplace.
>
> It shall be mandatory for the NLRC to conduct continuous hearings and decide any dispute arising under this Section within twenty (20) calendar days from the time said dispute is formally submitted to it for arbitration. The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of the increase in the wage rates prescribed under this Section."

But the Union claims that "demand was ignored:[1]

> "The COMPANY ignored said demand by offering a measly across-the-board wage increase of P7.00 per day, per employee, as against the proposal of the UNION of P25.00 per day, per employee. Later, the UNION reduced its proposal to P15.00 per day, per employee by way of amicable settlement.
>
> When the COMPANY rejected the reduced proposal of the UNION the members thereof, on their own accord, refused to render overtime services, most especially at the Beer Bottling Plants at Polo, starting October 16, 1989."

In this connection, the workers involved issues a joint notice reading as follows:[2]

> "SAMA-SAMANG PAHAYAG: KAMING ARAWANG MANGGAGAWA NG POLO BREWERY PAWANG KASAPI NG ILAW AT BUKLOD NG MANGGAGAWA (IBM) AY NAGKAISANG NAGPASYA NA IPATUPAD MUNA ANG EIGHT HOURS WORK SHIFT PANSAMANTALA HABANG HINDI IPINATUTUPAD NG SMC MANAGEMENT ANG TAMANG WAGE DISTORTION."

The Union's position (set out in the petition subsequently filed in this Court, infra) was that the workers' refusal "to work beyond eight (8) hours everyday starting October 16, 1989" as a legitimate means of compelling SMC to correct "the distortion in their wages brought about by the implementation of the said laws (R.A. 6640 and R.A. 6727) to newly-hired employees."[3] That decision to observe the "eight hours work shift" was implemented on October 16, 1989 by "some 800 daily-paid workers at the Polo Plant's production line (of San Miguel Corporation [hereafter, simply SMC]), joined by others at statistical quality control and warehouse, all members of IBM."[4] There ensued thereby a change in the work schedule which had been observed by daily-paid workers at the Polo Plant for the past five (5) years, i.e., "ten (10) hours for the first shift and ten (10) to fourteen (14) hours for the second shift, from Mondays to Fridays.; (and on) Saturdays, eight (8) hours for both shifts" — a work schedule which, SMC says, the workers had "welcomed, and encouraged" because the automatic overtime built into the schedule "gave them a steady source of extra-income," and pursuant to which it (SMC) "planned its production targets and budgets."[5]

This abandonment of the long-standing schedule of work and the reversion to the eight-hour shift apparently caused substantial losses to SMC. Its claim is that there ensued "from 16 October 1989 to 30 November 1989 alone work disruption and lower efficiency (resulting in turn, in) lost production of 2,004,105 cases of beer.; that (i)n "money terms, SMC lost P174,657,598 in sales and P48,904,311 in revenues (and the) Government lost excise tax revenue of P42 Million, computed at the rate of P21 per case collectible at the plant."[6] These losses occurred despite such measures taken by SMC

as organizing "a third shift composed of regular employees and some contractuals," and appeals "to the Union members, through letters and memoranda and dialogues with their plant delegates and shop stewards," to adhere to the existing work schedule.

Thereafter, on October 18, 1989, SMC filed with the Arbitration Branch of the National Labor Relations Commission a complaint against the Union and its members "to declare the strike or slowdown illegal" and to terminate the employment of the union officers and shop stewards. The complaint was docketed as NLRC-NCR Case No. 00-10-04917.[7]

Then on December 8, 1989, on the claim that its action in the Arbitration Branch had as yet "yielded no relief," SMC filed another complaint against the Union and members thereof, this time directly with the National Labor Relations Commission, "to enjoin and restrain illegal slowdown and for damages, with prayer for the issuance of a cease-and-desist and temporary restraining order."[8] Before acting on the application for restraining order, the NLRC's First Division first directed SMC to present evidence in support of the application before a commissioner, Labor Arbiter Carmen Talusan. On December 19, 1989, said First Division promulgated a Resolution on the basis of "the allegations of the petitioner (SMC) and the evidence adduced ex-parte in support of their petition." The Resolution —

> 1) authorized the issuance of "a Temporary Restraining Order for a period of twenty (20) days upon a cash or surety bond in the amount of P50,000.00 DIRECTlNG the respondents to CEASE and DESIST from further committing the acts complained about particularly their not complying with the work schedule established and implemented by the company through the years or at the least since 1984, which schedule appears to have been adhered to by the respondents until October 16, 1989.;"
>
> 2) "set the incident on injunction for hearing before Labor Arbiter Carmen Talusan on 27 December 1989."

The Labor Arbiter accordingly scheduled the incident for hearing on various dates: December 27 and 29, 1989, January 8, 11, 16, and 19, 1990. The first two settings were cancelled on account of the unavailability of the Union's counsel. The hearing on January 8, 1990 was postponed also at the instance of said counsel who declared that the Union refused to recognize the NLRC's jurisdiction. The hearings set on January 11, 16 and 19, 1990 were taken up with the cross-examination of SMC's witness on the basis of his affidavit and supplemental affidavits. The Union thereafter asked the Hearing Officer to schedule other hearings. SMC objected. The Hearing Officer announced she would submit a report to the Commission relative to the extension of the temporary restraining order of December 9, 1989, supra, prayed for by SMC. Here the matter rested until February 14, 1990, when the Union filed the petition which commenced the special civil action of certiorari and prohibition at bar.[9]

In its petition, the Union asserted that:

1). the "central issue is the application of the Eight-Hour Labor Law (i.e.) (m)ay an employer force an employee to work everyday beyond eight hours a day?"

2). although the work schedule adopted by SMC with built-in "automatic overtime,"[10] "tremendously increased its production of beer at lesser cost," SMC had been paying its workers "wages far below the productivity per employee," and turning a deaf ear to the Union's demands for wage increases;

3). the NLRC had issued the temporary restraining order of December 19, 1989 "with indecent haste, based on ex parte evidence of SMC; and such an order had the effect of "forcing the workers to work beyond eight (8) hours a day, everyday."

4). the members of the NLRC had no authority to act as Commissioners because their appointments had not been confirmed by the Commission on Appointment; and

5). even assuming the contrary, the NLRC, as an essentially appellate body, had no jurisdiction to act on the plea for injunction in the first instance.

The petition thus prayed:

1) for judgment (a) annulling the Resolution of December 19, 1990; (b) declaring mandatory the confirmation by the Commission on Appointments of the appointments of National Labor Relations Commissioners; and (c) ordering the removal "from the 201 files of employees any and all memoranda or disciplinary action issued imposed to the latter by reason of their refusal to render overtime work;" and

2) pending such judgment restraining (a) the NLR Commissioners "from discharging their power and authority under R.A. 6715 prior to their re-appointment and or confirmation;" as well as (b) Arbiter Talusan and the Commission from acting on the matter or rendering a decision or issuing a permanent injunction therein, or otherwise implementing said Resolution of December 19, 1989.

In traverse of the petition, SMC filed a pleading entitled "Comment with Motion to Admit Comment as Counter-Petition," in which it contended that:

1) the workers' abandonment of the regular work schedule and their deliberate and wilful reduction of the Polo plant's production efficiency is a slowdown, which is an illegal and unprotected concerted activity;

2) against such a slowdown, the NLRC has jurisdiction to issue injunctive relief in the first instance;

3) indeed, the NLRC has "the positive legal duty and statutory obligation to enjoin the slowdown complained of and to compel the parties to arbitrate (and) to effectuate the important national policy of peaceful settlement of labor

disputes through arbitration;" accordingly, said NLRC "had no legal choice but to issue injunction to enforce the reciprocal no lockout-no slowdown and mandatory arbitration agreement of the parties ;"and

4) the NLRC "gravely abused its discretion when it refused to decide the application for injunction within the twenty day period of its temporary restraining order, in violation of its own rules and the repeated decisions of this Court."

It is SMC's submittal that the coordinated reduction by the Union's members of the work time theretofore willingly and consistently observed by them, thereby causing financial losses to the employer in order to compel it to yield to the demand for correction of "wage distortions," is an illegal and "unprotected" activity. It is, SMC argues, contrary to the law and to the collective bargaining agreement between it and the Union. The argument is correct and will be sustained.

Among the rights guaranteed to employees by the Labor Code is that of engaging in concerted activities in order to attain their legitimate objectives. Article 263 of the Labor Code, as amended, declares that in line with "the policy of the State to encourage free trade unionism and free collective bargaining, (w)orkers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection." A similar right to engage in concerted activities for mutual benefit and protection is tacitly and traditionally recognized in respect of employers.

The more common of these concerted activities as far as employees are concerned are: strikes — the temporary stoppage of work as a result of an industrial or labor dispute; picketing — the marching to and fro at the employer's premises, usually accompanied by the display of placards and other signs making known the facts involved in a labor dispute; and boycotts — the concerted refusal to patronize an employer's goods or services and to persuade others to a like refusal. On the other hand, the counterpart activity that management may licitly undertake is the lockout — the temporary refusal to furnish work on account of a labor dispute. In this connection, the same Article 263 provides that the "right of legitimate labor

organizations to strike and picket and of employer to lockout, consistent with the national interest, shall continue to be recognized and respected." The legality of these activities is usually dependent on the legality of the purposes sought to be attained and the means employed therefor.

It goes without saying that these joint or coordinated activities may be forbidden or restricted by law or contract. In the particular instance of "distortions of the wage structure within an establishment" resulting from "the application of any prescribed wage increase by virtue of a law or wage order," Section 3 of Republic Act No. 6727 prescribes a specific, detailed and comprehensive procedure for the correction thereof, thereby implicitly excluding strikes or lockouts or other concerted activities as modes of settlement of the issue. The provision[11] states that —

> "the employer and the union shall negotiate to correct the distortions. Any dispute arising from wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, such dispute shall be decided by the voluntary arbitrator or panel of voluntary arbitrators within ten (10) calendar days from the time said dispute was referred to voluntary arbitration.
>
> In cases where there are no collective agreements or recognized labor unions, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and, if it remains unresolved after ten (10) calendar days of conciliation, shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). It shall be mandatory for the NLRC to conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration.
>
> The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of any increase in

> prescribed wage rates pursuant to the provisions of law or Wage Order.
>
> x x x
>
> The legislative intent that solution of the problem of wage distortions shall be sought by voluntary negotiation or arbitration, and not by strikes, lockouts, or other concerted activities of the employees or management, is made clear in the rules implementing RA 6727 issued by the Secretary of Labor and Employment[12] pursuant to the authority granted by Section 13 of the Act.[13] Section 16, Chapter I of these implementing rules, after reiterating the policy that wage distortions be first settled voluntarily by the parties and eventually by compulsory arbitration, declares that, "Any issue involving wage distortion shall not be a ground for a strike/lockout."

Moreover, the collective bargaining agreement between the SMC and the Union, relevant provisions of which are quoted by the former without the latter s demurring to the accuracy of the quotation,[14] also prescribes a similar eschewal of strikes or other similar or related concerted activities as a mode of resolving disputes or controversies, generally, said agreement clearly stating that settlement of "all disputes, disagreements or controversies of any kind" should be achieved by the stipulated grievance procedure and ultimately by arbitration. The provisions are as follows:

> "Section 1. Any and all disputes, disagreements and controversies of any kind between the COMPANY and the UNION and or the workers involving or relating to wages, hours of work, conditions of employment and or employer-employee relations arising during the effectivity of this Agreement or any renewal thereof, shall be settled by arbitration in accordance with the procedure set out in this Article. No dispute, disagreement or controversy which may be submitted to the grievance procedure in Article IX shall be presented for arbitration unless all the steps of the grievance procedure are exhausted" (Article V — Arbitration).

> "Section 1. The UNION agrees that there shall be no strikes, walkouts, stoppage or slowdown of work, boycotts, secondary boycotts, refusal to handle any merchandise, picketing, sit-down strikes of any kind, sympathetic or general strikes, or any other interference with any of the operations of the COMPANY during the terms of this agreement" (Article VI).

The Union was thus prohibited to declare and hold a strike or otherwise engage in non-peaceful concerted activities for the settlement of its controversy with SMC in respect of wage distortions, or for that matter; any other issue "involving or relating to wages, hours of work, conditions of employment and/or employer-employee relations." The partial strike or concerted refusal by the Union members to follow the five-year-old work schedule which they had therefore been observing, resorted to as a means of coercing correction of "wage distortions," was therefore forbidden by law and contract and, on this account, illegal.

Awareness by the Union of the proscribed character of its members' collective activities, is clearly connoted by its attempt to justify those activities as a means of protesting and obtaining redress against said members working overtime every day from Monday to Friday (on an average of 12 hours), and every Saturday (on 8-hour shifts),[15] rather than as a measure to bring about rectification of the wage distortions caused by RA 6727 — which was the real cause of its differences with SMC. By concealing the real cause of their dispute with management (alleged failure of correction of wage distortion), and trying to make it appear that the controversy involved application of the eight-hour labor law, they obviously hoped to remove their case from the operation of the rules implementing RA 6727 that "Any issue involving wage distortion shall not be a ground for a strike/lockout." The stratagem cannot succeed.

In the first place, that it was indeed the wage distortion issue that principally motivated the Union's partial or limited strike is clear from the facts. The work schedule (with "built-in overtime") had not been forced upon the workers; it had been agreed upon between SMC and its workers at the Polo Plant and indeed, had been religiously followed with mutually beneficial results for the past five (5) years. Hence, it could not be considered a matter of such great prejudice to

the workers as to give rise to a controversy between them and management. Furthermore, the workers never asked, nor were there ever any negotiations at their instance, for a change in that work schedule prior to the strike. What really bothered them, and was in fact the subject of talks between their representatives and management, was the "wage distortion" question, a fact made even more apparent by the joint notice circulated by them prior to the strike, i.e., that they would adopt the eight-hour work shift in the meantime pending correction by management of the wage distortion (IPATUPAD MUNA ANG EIGHT HOURS WORK SHIFT PANSAMANTALA HABANG HINDI IPINATUTUPAD NG SMC MANAGEMENT ANG TAMANG WAGE DISTORTION").

In the second place, even if there were no such legal prohibition, and even assuming the controversy really did not involve the wage distortions caused by RA 6727, the concerted activity in question would still be illicit because contrary to the workers' explicit contractual commitment "that there shall be no strikes, walkouts, stoppage or slowdown of work, boycotts, secondary boycotts, refusal to handle any merchandise, picketing, sit-down strikes of any kind, sympathetic or general strikes, or any other interference with any of the operations of the COMPANY during the term of (their collective bargaining) agreement."[16]

What has just been said makes unnecessary resolution of SMC's argument that the workers' concerted refusal to adhere to the work schedule in force for the last several years, is a slowdown, an inherently illegal activity essentially illegal even in the absence of a no-strike clause in a collective bargaining contract, or statute or rule. The Court is in substantial agreement with the petitioner's concept of a slowdown as a "strike on the installment plan;" as a wilful reduction in the rate of work by concerted action of workers for the purpose of restricting the output of the employer, in relation to a labor dispute; as an activity by which workers, without a complete stoppage of work, retard production or their performance of duties and functions to compel management to grant their demands.[17] The Court also agrees that such a slowdown is generally condemned as inherently illicit and unjustifiable, because while the employees "continue to work and remain at their positions and accept the wages paid to them," they at the same time "select what part of their allotted tasks they care to

perform of their own volition or refuse openly or secretly, to the employer's damage, to do other work;" in other words, they "work on their own terms."[18] But whether or not the workers' activity in question - their concerted adoption of a different work schedule than that prescribed by management and adhered to for several years — constitutes a slowdown need not, as already stated, be gone into. Suffice it to say that activity is contrary to the law, RA 6727, and the parties' collective bargaining agreement.

The Union's claim that the restraining order is void because issued by Commissioners whose appointments had not been duly confirmed by the Commission on Appointments should be as it is hereby given short shift, for, as the Solicitor General points out, it is an admitted fact that the members of the respondent Commission were actually appointed by the President of the Philippines on November 18, 1989; there is no evidence whatever in support of the Union's bare allegation that the appointments of said members had not been confirmed; and the familiar presumption of regularity in appointment and in performance of official duty exists in their favor.[19]

Also untenable is the Union's other argument that the respondent NLRC Division had no jurisdiction to issue the temporary restraining order or otherwise grant the preliminary injunction prayed for by SMC and that, even assuming the contrary, the restraining order had been improperly issued. The Court finds that the respondent Commission had acted entirely in accord with applicable provisions of the Labor Code.

Article 254 of the Code provides that "No temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity, except as otherwise provided in Articles 218 and 264." Article 264 lists down specific "prohibited activities" which may be forbidden or stopped by a restraining order or injunction. Article 218 inter alia enumerates the powers of the National Labor Relations Commission and lays down the conditions under which a restraining order or preliminary injunction may issue, and the procedure to be followed in issuing the same.

Among the powers expressly conferred on the Commission by Article 218 is the power 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."

As a rule such restraining orders or injunctions do not issue ex parte, but only after compliance with the following requisites, to wit:

a) a hearing 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 acts have been threatened or committed charged with the duty to protect complainant's property;"

b) reception at the hearing of "testimony of witnesses, with opportunity for cross-examination, in support of the allegations of a complaint made under oath," as well as "testimony in opposition thereto, if offered.;"

c) "a finding of fact by the Commission, to the effect:

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

(2) That substantial and irreparable injury to complainant's property will follow;

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

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

(5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

However, a temporary restraining order may be issued ex parte under the following conditions:

a) the complainant "shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable;"

b) there is "testimony under oath, sufficient, if sustained, to justify the Commission in issuing a temporary injunction upon hearing after notice;"

c) the "complainant shall first file an undertaking with adequate security in an amount to be fixed by the Commission sufficient to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the Commission;" and

d) the "temporary restraining order shall be effective for no longer than twenty (20) days and shall become void at the expiration of said twenty (20) days."

The reception of evidence "for the application of a writ of injunction may be delegated by the Commission to any of its Labor Arbiters who shall conduct such hearings in such places as he may determine to be accessible to the parties and their witnesses and shall submit thereafter his recommendation to the Commission."

The record reveals that the Commission exercised the power directly and plainly granted to it by sub-paragraph (e) Article 217 in relation to Article 254 of the Code, and that it faithfully observed the procedure and complied with the conditions for the exercise of that power prescribed in said sub-paragraph (e). It acted on SMC's application for immediate issuance of a temporary restraining order ex parte on the ground that substantial and irreparable injury to its property would transpire before the matter could be heard, on notice; it, however, first direct SMC Labor Arbiter Carmen Talusan to receive SMC's testimonial evidence in support of the application and thereafter submit her recommendation thereon; it found SMC's evidence adequate and issued the temporary restraining order upon bond. No irregularity may thus be imputed to the respondent Commission in the issuance of that order.

In any event, the temporary restraining order had a lifetime of only twenty (20) days and became void ipso facto at the expiration of that period.

In view of the foregoing factual and legal considerations, all irresistibly leading to the basic conclusion that the concerted acts of the members of petitioner Union in question are violative of the law and their formal agreement with the employer, the latter's submittal, in its counter-petition that there was, in the premises, a "legal duty and obligation" on the part of the respondent Commission "to enjoin the unlawful and prohibited acts and omissions of petitioner IBM and the workers complained of"[20] — a proposition with which, it must be said, the Office of the Solicitor General concurs, asserting that the "failure of the respondent commission to resolve the application for a writ of injunction is an abuse of discretion especially in the light of the fact that the restraining order it earlier issued had already expired"[21] — must perforce be conceded.

WHEREFORE, the petition is **DENIED**, the counter-petition is **GRANTED**, and the case is **REMANDED** to the respondent Commission (First Division) with instructions to immediately take such action thereon as is indicated by and is otherwise in accord with, the findings and conclusions herein set forth. Costs against petitioner.

IT IS SO ORDERED.

Griño-Aquino and Medialdea, *JJ.*, concur.
Cruz, Jr., took no part.
Gancayco, *J.*, is on leave.

---

[1] Rollo, pp. 13: Petition, p. 12.
[2] Id., pp. 47-48, 98.
[3] Id., pp. 27-28.
[4] Id., pp. 97 et seq.
[5] Id., pp. 96-97.
[6] Id., p. 98.
[7] Id., p. 49.
[8] Id., pp. 42 et seq.: Annex B of petition.
[9] Id., pp. 34, 106-107.
[10] 10 hours for the first shift and 10 to 14 hours for the second shift, from Mondays to Fridays, giving the workers, according to Management, "a steady source of extra-income," see footnote 4, supra.
[11] Emphasis supplied; SEE also Sec. 4 (d), RA 6727, quoted at page 1, supra.
[12] On July 7, 1989, with effect as of July 1, 1989.
[13] "SEC. 13. The Secretary of Labor and Employment shall promulgate the necessary rules and regulations to implement the provisions of this Act."
[14] Rollo, p. 101.
[15] The Union opens its petition in this case with the statement that the "central issue in the case at bar is the application of the Eight-Hour Labor Law . . . (i.e., may) an employer force an employee to work everyday beyond eight hours a day?"
[16] SEE footnote 14 and related text.
[17] Rollo, pp. 109-110.
[18] Id., pp. 110-112.
[19] Id., pp. 242-243.
[20] Id., pp. 123-124.
[21] Id., pp. 244-246.