SUPREME COURT
FIRST DIVISION

INDUSTRIAL TIMBER CORPORATION,
***Petitioner*,**

-versus-

G.R. Nos. 107302-06
June 10, 1997

NATIONAL LABOR RELATIONS COMMISSION (5th Division), ITC BUTUAN LOGS LABOR UNION-WATU, OSCAR MONTEROSO and DODONG MORDENO,
***Respondents*.**

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INDUSTRIAL TIMBER CORPORATION,
***Petitioner*,**

-versus-

G.R. Nos. 108559-60
June 10, 1997

NATIONAL LABOR RELATIONS COMMISSION (5th Division), ITC BUTUAN LOGS LABOR UNION-WATU, OSCAR MONTEROSO and DODONG MORDENO,
***Respondents*.**

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D E C I S I O N

KAPUNAN, *J.*:

Industrial Timber Corporation (ITC) is a corporation registered under Philippine laws and is engaged in the business of manufacturing and processing veneer and plywood products. It used to operate a veneer processing plant known as the Butuan Logs Plant and a veneer and plywood processing plant known as the Stanply Plant. Both plants occupied a single compound with a common point for ingress and egress and were both leased from Industrial Plywood Group Corporation. Both plants had also two (2) distinct bargaining units represented by separate labor unions and had separate collective bargaining agreements with their respective principals. ITC Butuan Logs Workers Union-WATU (Union) represented the rank and file employees of the Butuan Logs Plant.

Sometime in 1989, ITC decided to permanently stop and close its veneer production at its Butuan Logs Plant "due to impending heavy financial losses resulting from high production costs, erratic supply of raw materials and depressed prices and market conditions for its wood products." Accordingly, on November 9, 1989, ITC served a written notice to all its employees in the said plant and to the Butuan District Office of the Department of Labor and Employment (DOLE) stating that effective December 10, 1989 or thirty (30) days thereafter, it would cease operations at said plant.

After receiving the notice, the employees therein, through their union representative, filed a formal objection to the intended shutdown. Consequently, conciliation proceedings were conducted at the DOLE District Office pursuant to the provisions of the Collective Bargaining Agreement (CBA) on grievances. The parties, however, failed to settle their differences.

On November 25, 1989, ITC formally notified the Union in a letter addressed to Oscar Monteroso, Union president, of the availability for release of separation pay and other CBA benefits consisting of the

monetary value of unused vacation and sick leave credits, house repair benefits and the mandatory 13th month pay. Only sixty-three (63) employees availed of the foregoing and subsequently received said separation pay and other CBA benefits.

On November 29, 1989, the Union filed a notice of strike with the National Conciliation and Mediation Board which conducted a conciliation meeting. Again, conciliation failed. On December 17, 1989, the Union conducted a strike vote. Sixty-two (62) of the one hundred seventy-three (173) members voted in favor of staging a strike.

As scheduled, plant operations ceased on December 10, 1989 and it has not resumed operations since then.

On January 14, 1990 or a few days thereafter, the Union staged a strike at the common gate of the closed Butuan Logs Plant and the Stanply Plant which, incidentally, has resumed operations after annual maintenance servicing.

When the futility of their protest action dawned on them, the members of the Union, sought judicial redress. On January 18, 1990, a complaint for illegal shutdown against ITC was filed by the Union in representation of its members with the Sub-Regional Arbitration Branch of the National Labor Relations Commission (NLRC) at Butuan City, Branch X, where said case was docketed as NLRC Case No. SRAB-10-01-00024-90. The Union sought its members' reinstatement and recovery of backwages. It, likewise, charged ITC with violation of Republic Act No. 6727 for non-payment of wage increases. The complaint was subsequently amended to include claims for payment of CBA benefits and recovery of damages and attorney's fees.

On February 6, 1990, ITC for its part filed a complaint for illegal strike with a prayer for an award of damages against the union and its officers, likewise with the Sub-Regional Arbitration Branch mentioned above. Said case was docketed as NLRC Case No. SRAB-10-02-00067-90.

On March 29, 1990, the labor arbiter rendered a consolidated decision of the two (2) cases, the dispositive portion of which reads:

> WHEREFORE, in view of all the foregoing, judgment is hereby entered in NLRC Case No. SRAB-10-01-00024-90 (Illegal shutdown, etc.) dismissing the complaint for illegal shutdown and violation of R.A. 6727 but ordering respondent Industrial Timber Corporation and the Manager Tomas Tangsoc, Jr. to jointly and severally pay its employees who did not opt to receive separation benefits, separation pay consisting of one-half (½) month salary for every year of service, a period of at least six (6) months being considered one year and all the CBA benefits namely:
>
> 1. monetary value of unused vacation and sick leave;
>
> 2. house repairs benefits and
>
> 3. 13th month pay
>
> 4. fiesta subsidy
>
> All the rest of the claims in this case are dismissed for lack of merit.
>
> In NLRC Case No. SRAB-10-02-00067-90, the strike staged by the Workers Alliance Trade Union (WATU), ITC Butuan Logs Labor Union is hereby and so declared illegal and the Union and its members are hereby ordered to desist from conducting any strike or picket in the premises of both Stanply and Butuan Logs Plants.
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> The rest of the claims in this case are dismissed for lack of merit.
>
> SO ORDERED.[1]

Obviously aggrieved by the ruling, the Union appealed the Decision of the labor arbiter to the NLRC.

In a Resolution dated August 30, 1991, the NLRC issued the assailed Resolution, the decretal portion of which reads:

> WHEREFORE, the decision appealed from is Reversed and Set Aside and a new one entered declaring respondent ITC Butuan Logs, Inc. guilty of illegal shutdown while the strike staged by complainant union (ITC Butuan Logs Workers Union-WATU) and members is hereby declared valid and lawful exercise of their right to peaceful assembly and petition for redress of grievances. Accordingly, respondent corporation (ITC Butuan Logs, Inc.) is hereby ordered, through its corporate officers, to pay complainant workers the following:
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> 1. Backwages equivalent to six (6) months based on their last salary as adjusted by R.A. 6727 and under the CBA effective December 11, 1989 without qualification or deduction;
>
> 2. Salary differential of P1.50 each effective July 1, 1989 up to December 10, 1989;
>
> 3. Separation pay equivalent to one (1) month salary each in lieu of reinstatement for every year of service based on their adjusted salary as set forth above plus all CBA fringe benefits; and
>
> 4. Assessed to pay attorney's fees fixed at the rate of ten (10%) percent equivalent to the aggregate monetary award.
>
> The rest of the claims are dismissed. With costs against respondent corporation.
>
> SO ORDERED.[2]

A motion for reconsideration of the said resolution was filed by ITC but the same was denied for lack of merit in a Resolution dated August 25, 1992 which dispositively reads as follows:

> WHEREFORE, the motion for reconsideration of respondent corporation is Denied for lack of merit. The application of complainant union to pierce the veil of corporate fiction of both respondent ITC and Industrial Plywood Group Corporation is likewise Denied as well as the rest of the claims of the union for lack of basis. The Acting Fiscal Examiner of this Commission is directed to compute the monetary benefits in favor of the terminated workers who are members of complainant union and to submit his report for approval. This order is final and no further motion will be entertained, except with respect to the manner of execution of the judgment of the Commission.
>
> SO ORDERED.[3]

Hence, the instant petition for *certiorari* anchored on the following assignment of errors attributed to the NLRC, thus:

> 5.1. The NLRC relied on mere conjectures and speculations absolutely without support from the evidence on record in holding that the closure of petitioner's Butuan Logs Plant was illegal.
>
> 5.2. The NLRC grossly violated and disregarded the law and settled jurisprudence upholding the inherent right of the employer to manage his business in holding that the closure of the Butuan Logs Plant was illegal.
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> 5.3. Assuming arguendo that the NLRC correctly found that the closure of the Butuan Logs Plant was illegal and that petitioner violated R.A. 6727, the NLRC seriously erred nonetheless in awarding money claims to all complainants in general despite unrebutted evidence on record establishing that 179 out of 189 complainants have voluntarily entered into an amicable settlement with petitioner and accordingly withdrew from the case.
>
> 5.4. In refusing to declare the strike illegal, the NLRC ignored the fact that, as incontrovertibly established by the evidence on record, the Union did not comply with the legal requirements for a valid strike and the strikers, in concert with one another,

committed illegal acts during the strike in furtherance of the objectives of the strike.

5.5. The NLRC erroneously applied Section 8, Chapter I of the Implementing Rules of R.A. 6727 in finding that petitioner is liable to pay the P1.50 difference between the wage increase granted in the CBA and the wage increase legislated under R.A. 6727.[4]

In fine, this Court is presented with the following issues for consideration and resolution, to wit: (a) whether or not petitioner ITC is guilty of illegal shutdown of its Butuan Logs Plant; (b) whether or not respondent Union and its members are guilty of staging an illegal strike; and (c) whether or not money claims should be awarded to the Union members.

Petitioner corporation asseverates that the closure of the Butuan Logs Plant was purely based on sound management decision arrived at after thorough and considerable assessment and evaluation of the company's impending economic predicament. The closure was the only remaining remedy available to the petitioner in order to prevent imminent heavy losses on account of high production costs, erratic supply of raw materials, depressed prices and poor market conditions for its wood products. To justify and substantiate its threatening economic difficulty, petitioner submitted a certification executed by an independent certified public accountant showing in detail the heavy losses petitioner would have to suffer should it continue operating its business, thus:

TO WHOM IT MAY CONCERN:

This is to certify that the manufacturing cost incurred by INDUSTRIAL TIMBER CORPORATION in producing plywood can be broken down as follows:

PER PANEL 5.00 MM

Logs used	P43.45
Glue cost	24.92
Log preparation	1.52

Peeling	4.58	
Drying	2.83	
Dry veneer preparation	9.68	
Gluing & pressing	1.83	
Sizing/Finishing	2.14	
Crating	1.30	
Electrical power/allocation	4.98	
Steam power/allocation	4.18	
Shipping	6.54	
Total variable cost		P107.95
Programmed	0.79	
Committed	2.33	
Total period cost		3.12
Administrative expenses	11.75	
Other expenses (income)	0.00	11.75
TOTAL MANUFACTURING COST		P122.82
		======

The current selling price of 5.00 mm is P110.00 per panel. The difference between the manufacturing cost and selling price (P12.82), at 8,000 panels per day production, or a net lost of P102,560.00 per day.

Based on the above premises and considering the fact of stoppage of operation from time to time due to low supply of Raw Materials (Logs) the Corporation will have to sustain additional expenses without any production. Hence continuance of operation will mean more losses to the Corporation. Thus closure of one plant is a wise move to save the Corporation.

(Sgd.)
VIRGINIA P. CANLAS
PTR No. 1123448
January 30, 1990
Mandaluyong, M.M.[5]

In addition, petitioner contends that the Butuan Logs Plant was merely a veneering plant which produced veneer, an essential component of plywood manufactured by the Stanply Plant which, incidentally, has also the capacity and capability to produce veneer.

Respondent Union, on the other hand, claims that the closure of the plant was just a smoke screen to mask the true intention of the petitioner which was to bust the Union. It alleges that petitioner's pretended avowals of economic distress were negated by the latter's good and robust economic status at the time of the closure though it submitted no evidence to prove its allegation. Concomitantly, respondent Union avers that the certification executed by an independent public accountant showing the company's impending financial debacle did not constitute as substantial proof sufficient to discharge it of the burden of proving its plight as required by law. On its part, respondent Union neither rebutted the contents of the certification nor presented any evidence to the contrary.

The petition is impressed with merit.

At the outset, we reiterate the rule that in *certiorari* proceedings under Rule 65, this Court does not assess and weigh the sufficiency of evidence upon which the labor arbiter and public respondent NLRC based their resolutions. Our query is limited to the determination of whether or not public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering the assailed Resolutions.[6] However, where the findings of the NLRC contradict those of the labor arbiter, this Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings,[7] as in the case at bar.

Article 283 of the New Labor Code provides thusly:

> ART. 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the

> provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

The foregoing article clearly provides inter alia that the employer may terminate the employment of his employees to prevent losses. Closure or cessation of operations for economic reasons is, therefore, recognized as a valid exercise of management prerogative. The determination to cease operations is a prerogative of management which the State does not usually interfere with, as no business or undertaking must be required to continue operating at a loss simply because it has to maintain its workers in employment. Such an act would be tantamount to a taking of property without due process of law.[8]

However, the burden of proving that such closure is bona fide falls upon the employer. In this case, petitioner corporation presented the analysis of an independent certified public accountant,[9] showing in detail the imminent losses it would suffer should it continue its operations. It is understandable that no audited financial statements or other similar documents were presented as the company is claiming impending future losses, not past or actual ones. Moreover, the fact that petitioner company has ceased operations and has not resumed to do so only reinforces its claim to a valid closure, not to mention the other established fact that its Stanply Plant has also the capacity and capability to produce veneer, the product it solely manufactured in its now closed plant.

At any rate, we held in a recent case that an employer may close or cease his business operations even if he were not suffering from business losses or financial reverses, thus:

> In any case, Article 283 of the Labor Code is clear that an employer may close or cease his business operations or undertaking even if he is not suffering from serious business losses or financial reverses, as long as he pays his employees their termination pay in the amount corresponding to their length of service. It would, indeed, be stretching the intent and spirit of the law if we were to unjustly interfere in management's prerogative to close or cease its business operations just because said business operation or undertaking is not suffering from any loss. This Court, in the case of Maya Farms Employees Organization, et al. vs. NLRC, et al. held that:
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> > 'The rule is well-settled that labor law discourage interference with an employer's judgment in the conduct of his business. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. As long as the company's exercise of the same is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.'

In Dangan vs. NLRC, this Court had occasion to reiterate management's prerogative to close or abolish a department or section of the employer's establishment for economic reasons. We reasoned out that since the greater right to close the entire establishment and cease operations due to adverse economic conditions is granted an employer, the closure of a part thereof to minimize expenses and reduce capitalization should similarly be recognized.

Likewise, this Court held in the case of Special Events & Central Shipping Office Workers Union vs. San Miguel Corp. that the determination of the usefulness of a section, being a company prerogative, the closure may not be questioned, specially in this case where it is impelled by economic reasons due to the continuous losses

sustained in its operation, coupled with the lack of demand for the services of such section.[10]

The foregoing notwithstanding, petitioner corporation complied with the requirements mandated by law to effectuate valid termination of employment on account of closure. Under the law, for an employer to validly terminate the service of his employees under the aforesaid ground, he has to comply with two (2) requirements, namely: (a) serving a written notice on the workers and the DOLE at least one (1) month before the effective date of the closure and (b) payment of separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher, with a fraction of at least six (6) months to be considered one (1) whole year.

The records bear out that petitioner had sufficiently complied with the aforecited requirements. It informed its employees and the DOLE District Office at Butuan of the termination of service of the employees effective December 10, 1989 in a Letter dated November 9, 1989. The employees were, likewise, informed of the availability for release of the funds for their separation pay and other CBA benefits. Unfortunately, only 63 employees availed of the benefits. The rest chose to file the instant action.

Anent the issue of whether or not the strike staged within the premises of the petitioner on January 14, 1990 was legal or not, we adopt the findings and conclusions made by the labor arbiter, substantiated as they are by the evidence on record, thus:

> At first impression, this forum is readily tempted to opine that the issues of illegal strike has become moot and academic. The records reveal that it has become undisputed that the Union staged a strike only on January 15, 1990 and for a few days thereafter, as of now, the Union has disbanded and appearances would indicate that whatever concerted action it took has passed into the diplomatic and legal province, such that it is precisely why this Branch is now called upon to compulsorily adjudicate on the issues.

The company in trying to obtain a judicial declaration that the strike conducted by the Union on January 15, 1990 and for a few days thereafter was illegal relies on two grounds namely:

1. That the Union failed to garner the majority vote requirements to sustain a valid strike vote. At the time the notice of strike was filed, the rank and file employees at Butuan Logs plant numbered 176. This notwithstanding only 62 of the said employees voted on December 27, 1989, a number less than the majority required by law.

2. That the Union by the use of intimidation, force of numbers, harassment had successfully prevented the company's supervisory and administrative personnel from reporting to work at its Stanply Plant Operation. Which had resulted in the temporary stoppage of work at said plant. That the Union had in fact barricaded the common gate of Stanply and Butuan Logs plants. To substantiate this allegations, the company submitted in evidence as annexes '6', '7', '8', '9' and '10' of its position paper, the affidavits of Romeo Burdeous, and Hermilondo Paque, Stanply Plant Supervisors, Alejandra Perlita P. Yayon, Quality Control Supervisor and Engr. Jaime C. Gacula, Plant Engineer.

The company then states that it suffered losses amounting to 2 million pesos daily owing to the fact that its Stanply plant remained non-operational. These losses were incurred because the supervisory and administrative personnel could not enter the Stanply working premises thereby penalyzing the plant and in the process causing administrative expenses.

The company then asks for the following reliefs and remedies, to wit:

WHEREFORE, it is most respectfully prayed of this Honorable Labor Arbiter to issue an Order:

1. Declaring the strike staged by all the herein respondents as ILLEGAL;

2. Condemning all of them to pay IN SOLIDUM damages in the amount of P2 Million daily covering the periods that the Stanply operation had been non-operational, as well as the administrative expenses which petitioner is bound to pay to its workers at its Stanply operations who reported for work but did not actually work; and

3. Declaring to have lost the employment status of all the strikers with petitioners' Butuan Logs plant.

The Union, brushing aside the allegations of the company in its manifestations dated February 25, 1990 maintains that the strike vote constituted a majority of the union members. It alleges that at the time the strike vote was taken, the remaining work force numbered only 98 because the others had opted to receive separation benefits. That 98 should therefore be the basis for the determination of the majority and because 62 had voted 'yes' the requirement of the law was therefore complied with.

The Union in assailing the allegations of the company of intimidation, harassment and the putting up of barricade to prevent egress and ingress in the stanply plant, likewise states that it did not really stage a strike in the legal meaning of the word. What is really conducted was only a peaceful exercise of the constitutional right of assembly and expression. To air their grievance and announce their tragic plight. That actually a strike was an exercise in futility because it could serve no purpose at all. The Butuan Logs plant had already stopped operations and therefore a strike which has for its purpose a temporary stoppage of work could not attain such as objective considering that the establishment struck against was already closed. In a Nutshell the Union says that whatever a strike could hope to accomplish was already preempted by the company.

The Union, however, is steadfast in maintaining that the 'strike' was conducted in accordance with law and emphatically states that:

> 35. Let it be emphasized however that the concerted action staged by the Union on January 15, 1990 was all within the bounds of law, propriety, decency and public order as may be shown by the following:

a) Ingress and egress were observed and provided for as shown by Annexes 'J' to 'S';

b) The concerted action was peaceful and not marred by violence or intimidation;

c) No injury to persons nor damage to property has been inflicted;

d) No violation of personal and property rights was committed;

e) No disturbance to public peace was made.

and to evidence such orderly, demonstration of public display of grievances presented as evidence, Annex 'M', 'N', 'O', 'P', 'Q', 'R' and 'S' which are photographs depicting the untrammeled and unblocked working place of the company, particularly the gates thereof.

To summarize therefore, the Union contends that its concerted action which was not really a 'strike' in the real and legal meaning of the word was nonetheless carried out with due observance of the law, both in the formalities and its actual conduct.

Under the circumstances, what then is this Branch to do? The Union says that it conducted a perfectly legal strike and in the same breath says that it did not. That what it did while being a concerted action was only a public display of grievances.

Be that as it may, this Branch finds and so holds that the strike was illegal. It cannot agree to the contention of the Union that the majority of its members voted 'yes' to the strike. It must be borne in mind that there was 178 union members at the time the plant was still operating. The fact that more than 60 of them opted to receive separation benefits did not automatically sever their employee-employer relationship. While this is a legal nicety, it is undisputed that the Union itself recognize this legal propositions, as it in fact seeks the reinstatement of all its members. In other words, the Union

contending that the shutdown was illegal and that its members were illegally dismissed cannot now say that the more than 60 members were legally dismissed. It cannot have its cake and eat it too. It cannot say that in the illegal shutdown case, its members were illegally dismissed but in the illegal strike case maintain that they were legally dismissed so as to cause the non-appreciation of their votes or non-voting. This intransigence and illogical culpability which is self-serving cannot be tolerated by this Branch. In fine, consistency must be upheld in all the legal ramifications of these cases and consequently, this Branch finds that no majority vote as demanded by the law was obtained. 178 members divided by 2 plus 1 equals 89 and this is the number which is the necessary majority to give legality to the strike. This Branch also take note of the fact that this inconsistent stand is also displayed by the Union in its notion of a 'strike'. After undergoing the rigorous formalities of a strike and defending its legality, it suddenly contradicts itself by saying it did not strike. This Branch cannot fathom nor countenance this legal 'somersaults.'

There is no need therefore to belabor the issue as to whether the strike was conducted in the manner delineated by law. The strike, whatever it was, was illegal from its inception and the events thereafter cannot cure it from its legal abnormality.[11]

In view of the foregoing, we find that respondent NLRC gravely abused its discretion in issuing the challenged resolutions.

WHEREFORE, herein Petitions are hereby **GRANTED**. The assailed Resolutions of respondent National Labor Relations Commission dated August 30, 1991 and August 25, 1992 are hereby **REVERSED** and **SET ASIDE** and the Decision of the labor arbiter dated March 29, 1990 is hereby **REINSTATED**.

The case is remanded to the NLRC to determine with reasonable dispatch whether or not 179 out of 189 of herein complainants have voluntarily executed quitclaims or waivers in favor of petitioner corporation and, corollarily, who among the remaining employees are still entitled to separation pay and other benefits granted in the decision of the labor arbiter and, thereafter, make appropriate dispositions thereon.

SO ORDERED.

Bellosillo, Vitug and Hermosisima, Jr., *JJ*., concur. Padilla, *J*., is on leave.

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[1] Rollo, pp. 78-79.
[2] Id., at 37.
[3] Id., at 56-57.
[4] Id., at 8-20.
[5] Original Records, p. 100.
[6] Building Care Corporation vs. NLRC, et al., G.R. No. 94237, February 26, 1997; Flores vs. NLRC, 253 SCRA 494 [1996]; Ilocos Sur Electric Cooperative, Inc. vs. NLRC, 241 SCRA 36 [1995].
[7] Hilario Magcalas, et al. vs. NLRC, et al., G.R. No. 100333, March 13, 1997; Raycor Aircontrol Systems, Inc. vs. NLRC, et al., G.R. No. 114290, September 9, 1996.
[8] San Pedro Hospital of Digos, Inc. vs. Secretary of Labor, et al., G.R. No. 104624, October 11, 1996.
[9] See Note 5, supra.
[10] Catatista vs. NLRC, 247 SCRA 46, 54-55 [1995].
[11] See Note 1, supra, pp. 71-77.
