SUPREME COURT
SECOND DIVISION

KIOK LOY, doing business under the name and style SWEDEN ICE CREAM PLANT,
***Petitioner*,**

-versus-

G.R. No. L-54334
January 22, 1986

NATIONAL LABOR RELATIONS COMMISSION (NLRC) and PAMBANSANG KILUSAN NG PAGGAWA (KILUSAN),
***Respondents*.**
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D E C I S I O N

CUEVAS, *J.*:

Petition for *Certiorari* to annul the Decision[1] of the National Labor Relations Commission (NLRC) dated July 20, 1979 which found petitioner Sweden Ice Cream guilty of unfair labor practice for unjustified refusal to bargain, in violation of par. (g) of Article 249[2] of the New Labor Code,[3] and declared the draft proposal of the Union for a collective bargaining agreement as the governing collective bargaining agreement between the employees and the management.

The pertinent background facts are as follows:

In a certification election held on October 3, 1978, the Pambansang Kilusan ng Paggawa (Union for short), a legitimate labor federation, won and was subsequently certified in a resolution dated November 29, 1978 by the Bureau of Labor Relations as the sole and exclusive bargaining agent of the rank-and-file employees of Sweden Ice Cream Plant (Company for short). The Company's motion for reconsideration of the said resolution was denied on January 25, 1978.

Thereafter, and more specifically on December 7, 1978, the Union furnished[4] the Company with two copies of its proposed collective bargaining agreement. At the same time, it requested the Company for its counter proposals, Eliciting no response to the aforesaid request, the Union again wrote the Company reiterating its request for collective bargaining negotiations and for the Company to furnish them with its counter proposals. Both requests were ignored and remained unacted upon by the Company.

Left with no other alternative in its attempt to bring the Company to the bargaining table, the Union, on February 14, 1979, filed a "Notice of Strike," with the Bureau of Labor Relations (BLR) on ground of unresolved economic issues in collective bargaining.[5]

Conciliation proceedings then followed during the thirty-day statutory cooling-off period. But all attempts towards an amicable settlement failed, prompting the Bureau of Labor Relations to certify the case to the National Labor Relations Commission (NLRC) for compulsory arbitration pursuant to Presidential Decree No. 823, as amended. The labor arbiter, Andres Fidelino, to whom the case was assigned, set the initial hearing for April 29, 1979. For failure however, of the parties to submit their respective position papers as required, the said hearing was cancelled and reset to another date. Meanwhile, the Union submitted its position paper. The Company did not, and instead requested for a resetting which was granted. The Company was directed anew to submit its financial statements for the years 1976, 1977, and 1978.

The case was further reset to May 11, 1979 due to the withdrawal of the Company's counsel of record, Atty. Rodolfo dela Cruz. On May 24, 1978, Atty. Fortunato Panganiban formally entered his appearance as counsel for the Company only to request for another postponement allegedly for the purpose of acquainting himself with the case. Meanwhile, the Company submitted its position paper on May 28, 1979.

When the case was called for hearing on June 4, 1979 as scheduled, the Company's representative, Mr. Ching, who was supposed to be examined, failed to appear. Atty. Panganiban then requested for another postponement which the labor arbiter denied. He also ruled that the Company has waived its right to present further evidence and, therefore, considered the case submitted for resolution.

On July 18, 1979, labor arbiter Andres Fidelino submitted its report to the National Labor Relations Commission. On July 20, 1979, the National Labor Relations Commission rendered its decision, the dispositive portion of which reads as follows:

> "WHEREFORE, the respondent Sweden Ice Cream is hereby declared guilty of unjustified refusal to bargain, in violation of Section (g) Article 248 (now Article 249), of P.D. 442, as amended. Further, the draft proposal for a collective bargaining agreement (Exh."E") hereto attached and made an integral part of this decision, sent by the Union (Private respondent) to the respondent (petitioner herein) and which is hereby found to be reasonable under the premises, is hereby declared to be the collective agreement which should govern the relationship between the parties herein.
>
> SO ORDERED." (Words in parenthesis supplied)

Petitioner now comes before Us assailing the aforesaid decision contending that the National Labor Relations Commission acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction in rendering the challenged decision. On August 4, 1980, this Court dismissed the petition for lack of merit. Upon motion of the petitioner, however, the

Resolution of dismissal was reconsidered and the petition was given due course in a Resolution dated April 1, 1981.

Petitioner Company now maintains that its right to procedural due process has been violated when it was precluded from presenting further evidence in support of its stand and when its request for further postponement was denied. Petitioner further contends that the National Labor Relations Commission's finding of unfair labor practice for refusal to bargain is not supported by law and the evidence considering that it was only on May 24. 1979 when the Union furnished them with a copy of the proposed Collective Bargaining Agreement and it was only then that they came to know of the Union's demands; and finally, that the Collective Bargaining Agreement approved and adopted by the National Labor Relations Commission is unreasonable and lacks legal basis.

The petition lacks merit. Consequently, its dismissal is in order.

Collective bargaining which is defined as negotiations towards a collective agreement,[6] is one of the democratic frameworks under the New Labor Code, designed to stabilize the relation between labor and management and to create a climate of sound and stable industrial peace. It is a mutual responsibility of the employer and the Union and is characterized as a legal obligation. So much so that Article 249, par. (g) of the Labor Code makes it an unfair labor practice for an employer to refuse "to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work, and all other terms and conditions of employment including proposals for adjusting any grievance or question arising under such an agreement and executing a contract incorporating such agreement, if requested by either party."

While it is a mutual obligation of the parties to bargain, the employer, however, is not under any legal duty to initiate contract negotiation.[7] The mechanics of collective bargaining is set in motion only when the following jurisdictional preconditions are present, namely, (1) possession of the status of majority representation of the employees' representative in accordance with any of the means of selection or designation provided for by the Labor Code; (2) proof of majority

representation; and (3) a demand to bargain under Article 251, par. (a) of the New Labor Code all of which preconditions are undisputedly present in the instant case.

From the over-all conduct of petitioner company in relation to the task of negotiation, there can be no doubt that the Union has a valid cause to complain against its (Company's) attitude, the totality of which is indicative of the latter's disregard of, and failure to live up to, what is enjoined by the Labor Code — to bargain in good faith.

We are in total conformity with respondent NLRC's pronouncement that petitioner Company is GUILTY of unfair labor practice. It has been indubitably established that (1) respondent Union was a duly certified bargaining agent; (2) it made a definite request to bargain, accompanied with a copy of the proposed Collective Bargaining Agreement, to the Company not only once but twice which were left unanswered and unacted upon; and (3) the Company made no counter proposal whatsoever all of which conclusively indicate lack of a sincere desire to negotiate.[8] A Company's refusal to make counter proposal if considered in relation to the entire bargaining process, may indicate bad faith and this is specially true where the Union's request for a counter proposal is left unanswered.[9] Even during the period of compulsory arbitration before the NLRC, petitioner Company's approach and attitude — stalling the negotiation by a series of postponements, non-appearance at the hearing conducted, and undue delay in submitting its financial statements, lead to no other conclusion except that it is unwilling to negotiate and reach an agreement with the Union. Petitioner has not at any instance, evinced good faith or willingness to discuss freely and fully the claims and demands set forth by the Union much less justify its opposition thereto.[10]

The case at bar is not a case of first impression, for in the Herald Delivery Carriers Union (PAFLU) vs. Herald Publications[11] the rule had been laid down that "unfair labor practice is committed when it is shown that the respondent employer, after having been served with a written bargaining proposal by the petitioning Union, did not even bother to submit an answer or reply to the said proposal. This doctrine was reiterated anew in Bradman vs. Court of Industrial Relations[12] wherein it was further ruled that "while the law does not

compel the parties to reach an agreement, it does contemplate that both parties will approach the negotiation with an open mind and make a reasonable effort to reach a common ground of agreement."

As a last-ditch attempt to effect a reversal of the decision sought to be reviewed, petitioner capitalizes on the issue of due process claiming, that it was denied the right to be heard and present its side when the Labor Arbiter denied the Company's motion for further postponement.

Petitioner's aforesaid submittal failed to impress Us. Considering the various postponements granted in its behalf, the claimed denial of due process appeared totally bereft of any legal and factual support. As herein earlier stated, petitioner had not even honored respondent Union with any reply to the latter's successive letters, all geared towards bringing the Company to the bargaining table. It did not even bother to furnish or serve the Union with its counter proposal despite persistent requests made therefor. Certainly, the moves and overall behavior of petitioner-company were in total derogation of the policy enshrined in the New Labor Code which is aimed towards expediting settlement of economic disputes. Hence, this Court is not prepared to affix its imprimatur to such an illegal scheme and dubious maneuvers.

Neither are WE persuaded by petitioner-company's stand that the Collective Bargaining Agreement which was approved and adopted by the NLRC is a total nullity for it lacks the company's consent, much less its argument that once the Collective Bargaining Agreement is implemented, the Company will face the prospect of closing down because it has to pay a staggering amount of economic benefits to the Union that will equal if not exceed its capital. Such a stand and the evidence in support thereof should have been presented before the Labor Arbiter which is the proper forum for the purpose.

We agree with the pronouncement that it is not obligatory upon either side of a labor controversy to precipitately accept or agree to the proposals of the other. But an erring party should not be tolerated and allowed with impunity to resort to schemes feigning negotiations by going through empty gestures.[13] More so, as in the instant case, where the intervention of the National Labor Relations Commission

was properly sought for after conciliation efforts undertaken by the BLR failed. The instant case being a certified one, it must be resolved by the NLRC pursuant to the mandate of P.D. 873, as amended, which authorizes the said body to determine the reasonableness of the terms and conditions of employment embodied in any Collective Bargaining Agreement. To that extent, utmost deference to its findings of reasonableness of any Collective Bargaining Agreement as the governing agreement by the employees and management must be accorded due respect by this Court.

WHEREFORE, the instant petition is **DISMISSED**. The temporary restraining order issued on August 27, 1980, is **LIFTED** and **SET ASIDE**.

No pronouncement as to costs.

SO ORDERED.

Concepcion Jr., Abad Santos, Escolin and Alampay, *JJ.*, concur.

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[1] Pages 23-26, Rollo.
[2] Previously Article 248 renumbered as Article 249 by Batas Pambansa Blg. 70, May 1, 1980.
[3] P.D. 442, as amended.
[4] Thru a letter attached thereto to BLR Resolution.
[5] BLR-S-2-692-79.
[6] Pampanga Bus Co. vs. Pambusco Employees, 68 Phil. 541.
[7] National Labor Relations Board vs. Columbian Enameling & Stamping Co., 306 U.S. 292 '83 L. Ed. 660, 59 Ct 501 (1939).
[8] National Labor Relations Board vs. George Piling & Sons Co., 119 F. (2nd) 32.
[9] Teller, II Labor Disputes & Collective Bargaining 889, citing Glove Cotton Mills vs. NLRB, 103 F. (2nd) 91.
[10] Herald Delivery Carriers Union (PAFLU) vs. Herald Publications, Inc., 55 SCRA 713 (1974), citing NLRB vs. Piling & Sons, Co., 119 F. (2nd) 32 (1941).
[11] 55 SCRA 713 (1974).
[12] 78 SCRA 10 (1977), citing Prof. Archibald Cox, "The Duty to Bargain in Good Faith", 71 Harv. Law Rev. 1401, 1405 (1934).
[13] Rothenberg on Labor Relations, p. 435, citing NLRB vs. Boss Mfg. Co., 107 F. (2nd) 574; NLRB vs. Sunshine Mining Co., 110 F (2nd) 780; NLRB vs. Condenser Corp., 128 F. (2nd) 67.