

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**LAPANDAY WORKERS UNION,
ARQUILAO BACOLOD, JOSE ERAD,
FERNANDO HERNANDO, EDDIE
ESTRELLA, CIRILO DAYAG, EDUARDO
POQUITA, CARLITO PEPITO, RENE
ARAO, JUANITO GAHUM, EMILIANO
MAGNO, PERLITO LISONDRA,
GREGORIO ALBARAN, ABRAHAM
BAYLON, DIONESIO TRUCIO, TOMAS
BASCO AND ROSARIO SINDAY,
*Petitioners,***

-versus-

**G.R. Nos. 95494-97
September 7, 1995**

**NATIONAL LABOR RELATIONS
COMMISSION AND LAPANDAY
AGRICULTURAL & DEVELOPMENT
CORPORATION,
*Respondents.***

X-----X

**LAPANDAY WORKERS UNION,
ARQUILAO BACOLOD, ET AL.,
*Petitioners,***

-versus-

**NATIONAL LABOR RELATIONS
COMMISSION AND CADECO AGRO
DEVELOPMENT PHILS., INC.,**

Respondents.

X-----X

**LAPANTAY WORKERS UNION,
ARQUILAO BACOLOD, ET AL.,**

Petitioners,

-versus-

**NATIONAL LABOR RELATIONS
COMMISSION AND LAPANTAY
AGRICULTURAL & DEVELOPMENT
CORPORATION,**

Respondents.

X-----X

**LAPANTAY WORKERS UNION, TOMAS
N. BASCO, ET AL.,**

Petitioners,

-versus-

**NATIONAL LABOR RELATIONS
COMMISSION AND LAPANTAY
AGRICULTURAL & DEVELOPMENT
CORPORATION,**

Respondents.

X-----X

DECISION

PUNO, J.:

Petitioner Lapanday Agricultural Workers Union (Union for brevity) and petitioners-workers of Lapanday Agricultural and Development Corporation and CADECO Agro Development Philippines Inc. seek to reverse the consolidated Decision, dated August 29, 1990,^[1] rendered by public respondent National Labor Relations Commission, declaring their strike illegal and ordering the dismissal of their leaders.

The background of the case:

Private respondents are sister companies engaged in the production of bananas. Their agricultural establishments are located in Davao City.

On the other hand, petitioner Lapanday Workers Union (Union) is the duly certified bargaining agent of the rank and file employees of private respondent. The Union is affiliated with the KMU-ANGLO. The other petitioners are all members of the Union.

The records show that petitioner Union has a collective bargaining agreement with private respondent covering the period from December 5, 1985 to November 30, 1988. A few months before the expiration of their CBA, private respondent initiated certain management policies which disrupted the relationship of the parties.

First, on August 1, 1988. Private respondents contracted Philippine Eagle Protectors and Security Agency Inc. to provide security service for their business premises located in Lapanday, Bandug, Callawa, Davao City and Guising, Davao Del Sur. Their contract also called for the protection of the lives and limbs of private respondents officers, employees and guests within company premises. The Union branded the security guards posted within the company premises as private respondents' "goons" and "special forces." It also accused the guards of intimidating and harassing their members.

Second, private respondents conducted seminar on Human Development and Industrial Relations (HDIR) for their managerial

and supervisory employee and later, the rank-and-filers to promote their social education and economic growth. Among the topics discussed in the seminar were the mission statement of the company, corporate values, and the Philippine political spectrum. The Union claimed that the module on the Philippines political spectrum lumped the ANGLO (Alliance of Nationalist and Genuine Labor Organization), with other outlawed labor organization such as the National Democratic Front or other leftist groups.

These issues were discussed during a labor-management meeting held on August 2, 1988. The labor group was represented by the Union, through its President, petitioner Arquilao Bacolod, and its legal counsel. After private respondents explained the issue, the Union agreed to allow its members to attend the HDIR seminar for the rank-and-filers. Nevertheless, on August 19 and 20, the Union directed its members not to attend the seminars scheduled on said dates. Earlier on, or on August 6, 1988, the Union led by petitioners Arquilao Bacolod and Rene Arao, picketed the premises of the Philippine Eagle Protectors to show their displeasure on the hiring of the guards.

Worse still, the Union filed on August 25, 1988, a Notice of Strike with the National Conciliation and Mediation Board (NCMB). It accused the company of practice consisting of coercion of employees intimidation of union member and union-busting.^[2] These were the same issues raised by the Union during the August 2, 1988 labor-management meeting.

On August 29, 1988, the NCMB called conciliation conference. The conference yielded the following agreement:

- (1) Union officers, including the officials of KMU-ANGLO, and the Executive Director of the NMB would attend the HDIR seminar on September 5, 1988; and
- (2) A committee shall convene on September 10, 1988, to establish guidelines governing the guards.

The Union official did attend the September 5, 1988 seminar. While they no longer objected to the continuation of the seminar, they

reiterated their demand for the deletion of the discussion pertaining to the KMU-ANGLO.

With the apparent settlement of their difference, private respondents notified the NCMB that there were no more basis for the notice of strike.

An unfortunate event broke the peace of the parties. On September 8, 1988, Danilo Martinez a member of the Board of Directors of the Union, was gunned down in his house in the presence of his wife and children. The gunman was later identified as Eledio Samson, an alleged member of security forces of private respondents.

On September 9, 1988, the day after the killing, most of the members of the Union refused to report for work. They returned to work the following day but they did not comply with the "quota system" adopted by the management to bolster production output. Allegedly, the Union instructed the workers to reduce their production to thirty percent (30%) Private respondents charged the Union with economic sabotage through slowdown.

On September 14, 1988, private respondents filed separate charges against the Union and its member for illegal strike, unfair labor practice and damages, with prayer for injunction. These cases were docketed as Case No RAB-11-09-00613-888 and RAB No. 11-09-00613-88 before Labor Arbiter Antonio Villanueva.

On September 17, 1988, petitioners skipped work to pay their last respect to the slain Danilo Martinez, who was laid to rest. Again, on September 23, 1988, petitioners did not report for work. Instead, they proceeded to private respondents' office at Lanang, carrying placards and posters which called for the removal of the security guards, the ouster of certain management officials, and the approval of their mass leave application. Their mass action did not succeed.

In a last ditch effort to settle the deteriorating dispute between the parties, City Mayor Rodrigo Duterte intervened. Dialogues were held on September 27 and 29, 1988 at the City Mayor's Office. Again, the dialogue proved fruitless as private respondents refused to withdraw the cases they earlier filed with public respondent.

On October 3, 1988, a strike vote conducted among the members of the union and those in favor of the strike won overwhelming support from the workers. The result of the strike vote as then submitted to the NCMB on October 10, 1988. Two days later, or on October 12, 1988, the Union struck.

On the bases of the foregoing facts. Labor Arbiter Antonio Villanueva ruled that the Union staged an illegal strike. The dispositive portion of the Decision, dated December 12, 1988, states:

“CONFORMABLY WITH ALL THE FOREGOING, judgment is hereby rendered:

- a) Declaring the strike staged by respondent (petitioners) to be illegal;
- b) Declaring the employees listed as respondents in the complaint and those mentioned in page 21 to have lost their employment status with complainant Lapanday Agricultural and Development Corporation and Cadeco Agro Development Philippines, Inc.; and
- c) Ordering respondents (petitioners in this case) to desist from further committing an illegal strike.”

Petitioners appealed the Villanueva decision respondent NLRC.

It also appears that on December 6, 1988, or before the promulgation of the decision of Arbiter Villanueva. the Union. together with Tomas Basco and 25 other workers, filed a complaint for unfair labor practice and illegal suspension against LADECO. The case was docketed as Case No. RAB 11- 7200780-88. On even date, another complaint for unfair labor practice and illegal dismissal was filed by the Union. together with Arguilao Bacolod and 58 other complainants. This was docketed as Case No. RAB-11-12-00779-88. These two (2) cases were heard by Labor Arbiter Newton Sancho.

Before the NLRC could resolve the appeal taken on the Villanueva decision in case No. RAB 11-09-00612-88 and RAB-11-09-00613-88. Labor Arbiter Sancho rendered a decision in the two (2) cases filed by

the Union against Private respondent LADECO and CADECO (Case Nos. RAB-12-00779-88 and RAB-11-12-00780-88). The Sancho decision, dated October 18, 1989, declared LADECO and CADECO guilty of unfair labor practices and illegal dismissal and ordered the reinstatement of the dismissed employee of private respondents, with backwages and other benefit. Significantly, the Sancho decision considered the refusal of the worker to report for work on September 9, 1988, justified by the circumstance then prevailing, the killing of Danilo Martinez on September 8, 1988.

Private respondents appealed the Sancho decision, claiming, among others, that labor arbiter Sancho erred in passing upon the legality of the strike stated by petitioners since said issue had already been passed upon by the Region Arbitration Branch and was still on appeal before the NLRC.

Considering that the four (4) cases before it arose from the same set of fact and involved substantially the same issues the NLRC rendered a consolidated decision, promulgated on August 29, 1990, upholding the Villanueva decision in Case Nos. RAB-11-09-00612 88 and RAB-11-09-00613-88. The dispositive Portion of the assailed NLRC decision states:

“WHEREFORE, Premises considered. a new judgment is entered in the four consolidated and above-captioned cases as follow:

- “1. The strike staged by the Lapanday Agricultural Workers Union is hereby declared to be (sic) illegal;
- “2. As a consequence thereof, the following employees-union officers are declared to have lost their employment status with Lapanday Agricultural and Development Corporation and CADECO Agro Development Philippines, to wit: Arguilao Bacolod, Jose Erad, Fernando Hernando, Eldie Estrella, Cerelo Dayag, Lucino Magadan, Rene Arao, Eduardo Poquita, Juanito Gahum, Emiliano Magno, Perlito Lisondra, Gregorio Albaron, Abraham Baylon, Dionisio Trocio, Tomas Basco and Rosario Sinday;

- “3. However. the individual respondents (union members), being merely rank and-file employee who merely joined the strike declared as illegal, are ordered reinstated b without backwages, the period they were out of work is deemed the penalty for the illegal strike they staged;
- “4. Ordering Lapanday Workers’ Union, its leaders and members, to desist from further committing an illegal strike; and
- “5. Dismissal the complaint for unfair labor practice, illegal suspension and illegal dismissal filed by the Lapanday Workers Union (LWU)-ANGLO and its members, for lack of merit.

“SO ORDERED.”

Petitioner filed a motion for reconsideration. It did not proper. Hence, the petition.

Petitioners now claim that public respondent NLRC gravely abused it discretion in: a) declaring that their activities, from September 9, 1988 to October 12, 1988. were strike activities; and b) declaring that the strike staged on October 12, 1988 was illegal.

The critical issue is the legality of the strike held on October 12, 1988, The applicable law are Articles 263 and 264 of the Labor Code, as amended by E.O. No. 111, dated December 24, 1986.^[3]

Paragraphs (c) and (f) of Article 263 of the Labor Code, as amended by E.O. 111, provides.

- “c) In cases of bargaining deadlocks. the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Ministry at least 30 days before the intended date thereof. In cases of unfair labor practice, the notice shall be 15 days and in the absence of a duly certified or recognized bargaining

agent, the notice of strike may be filed by any legitimate labor organization in behalf of its member. However, in case of dismissal from employment of union officer duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

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- “f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of director of the corporation or association or of the partner in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Ministry may, at its own initiative or upon the request of any affected party, supervise the conduct of secret ballot. In every case the union or the employer shall furnish the Ministry the result of the voting at least seven (7) days before the intended strike or lockout subject to the cooling-off period herein provided.”

Article 264 of the same Code reads:

“Art 264. Prohibited activities. — (a) No labor organization or employer shall declared a strike or lockout without first having bargained collectively in accordance with Title VII of this Book or without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the Ministry.

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“Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided that mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.” (Emphasis ours)

A strike is “any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute.”^[4] It is the most preeminent of the economic weapons or workers which they unsheathe to force management to agree to an equitable sharing of the joint product of labor and capital. Undeniably, strikes exert some disquieting effects not only on the relationship between labor and management but also on the general peace and progress of society. Our laws thus regulate their exercise within reasons by balancing the interests of labor and management together with the overarching public interest.

Some of the limitations on the exercise of the right of strike are provided for in paragraph (c) and (f) of Article 263 of the labor Code, as amended, supra. They provide for the procedural steps to be followed before staging a strike — filing of notice of strike, taking of strike vote, and reporting of the strike vote result to the Department of Labor and Employment. In *National Federation of Sugar Workers (NFSW) vs. Overseas, et al.*,^[5] we ruled that these steps are mandatory in character, thus:

“If only the filing of the strike notice and the strike-vote report would be deemed mandatory, but not the waiting periods so specifically and emphatically prescribed by law, the purposes (hereafter discussed) for which the filing of the strike notice and strike-vote report is required cannot be achieved.

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“So too, the 7-day strike-vote report is not without a purpose. As pointed out by the Solicitor General —

‘The submission of the report gives assurance that a strike vote has been taken and that, if the report concerning it is false, the majority of the members can take appropriate remedy before it is too late.’

The seven (7) day waiting period is intended to give the Department of Labor and Employment an opportunity to verify whether the projected strike really carries the imprimatur of the majority of the union members. The need for assurance that majority of the union members support the strike cannot be gainsaid. Strike is usually the last weapon of labor to be gainsaid. Strike compel capital to concede to its bargaining demands or to defend itself against unfair labor practices of management. It is a weapon that can either breathe life to or destroy the union and its members in their struggle with management for a more equitable due of their labors. The decision to wield the weapon of strike must, therefore, rest on a rational basis, free from emotionalism, unswayed by the tempers and tantrums of a few hothead, and firmly focused on the legitimate interest of the union which should not, however, be antithetical to the public welfare. Thus, our laws require the decision to strike to be the consensus of the majority for while majority is not infallible, still, it is the best hedge against haste and error. In addition, a majority vote assures the union it will go to war against management with the strength derived from unity and hence, with better chance to succeed. In *Batangas Laguna Tayabas Bus Company vs. NLRC*,^[6] we held:

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“The right to strike is one of the right recognized and guaranteed by the Constitution as an instrument of labor for its protection against exploitation by management. By virtue of this right, the workers are able to press their demands for better terms of employment with more energy and persuasiveness, poising the threat to strike at their reaction to employer’s intransigence. The strike is indeed a powerful weapon of the working class. But precisely because of this, it must be handled carefully like a sensitive explosive, but it blow up in the workers’ own hands. Thus, it must be declared only after the most thoughtful consultation among them, conducted in the only way allowed that is, peacefully, and in every case conformably to

reasonable regulation. Any violation of the legal requirements and strictures, will render the strike illegal, to the detriment of the very workers it is supposed to protect.

“Every war must be lawfully waged. A labor dispute demands no less observance of the rules, for the benefit of all concerned.”

Applying the law to the case at bar, we rule that strike conducted by the union on October 12, 1988 is plainly illegal as it was held within the seven (7) day waiting period provided for by paragraph (f), Article 263 of the Labor Code, as amended. The haste in holding the strike prevented the Department of Labor and Employment from verifying whether it carried the approval of the majority of the union members. It set to naught an important policy consideration of our law on strike. Considering this finding, we need not exhaustively rule on the legality of the work stoppage conducted by the union and some of their members on September 9 and 23, 1988. Suffice to state, that the ruling of the public respondent on the matter is supported by substantial evidence.

We affirm the decision of the public respondent limiting the penalty of dismissal only to the leaders of the illegal strike especially the officers of the union who served as its major player. They cannot claim good faith to exculpate themselves. They admitted knowledge of the law on strike, including its procedure. They cannot violate the law which ironically was cast to promote their interest.

We, likewise, agree with the public respondent that the union members who were merely instigated to participate in the illegal strike should be treated differently from their leaders. Part of our benign consideration for labor is the policy of reinstating rank-and-file workers who were merely misled in supporting illegal strikes. Nonetheless, these reinstated workers shall not be entitled to backwages as they should not be compensated for services skipped during the illegal strike.

IN VIEW WHEREOF, the Petition is dismissed for failure to show grave abuse of discretion on the part of the public respondent. Costs against the petitioners.

SO ORDERED.

**Narvasa, C.J., Regalado, Mendoza and Francisco, JJ.,
concur.**

[1] In Case Nos. RAB-11-09-00612-88, RAB-11-09-00613-88, RAB-11-12-00779-88 and RAB-12-00780-88, affirming the decision of Labor Arbiter Antonio Villanueva, dated December 12, 1988.

[2] Annex "C" of Petition, Rollo, p. 94.

[3] The complaint was filed before the effectivity of RA 6715 on March 21, 1989.

[4] Article 212(1) of the Labor Code, as amended.

[5] G.R. No. 59743, May 31, 1982 114 SCRA 354, 365.

[6] G.R. No. 1011858, August 21, 1992, 212 SCRA 792, 802.

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