SUPREME COURT
THIRD DIVISION

NATIONAL FEDERATION OF LABOR (NFL), AMADO MAGBANUA AND 141 OTHERS NAMELY: RODELIO PURISIMA, AURORA TAN, EFREN GARCIA, RONILO PARCON, HERMICILIA MANLUCOT, JOSEPHINE ADORABLE, EVELYN BERNARDO, ELONA WATIN, GERALDINE ACUNA, LOLITA UGUIS, VILMA BAYONA, JOCELYN TORRES, MYRNA TORRALBA, GUADALUPE SUMICAD, TERESITA NAMOCA, JERRY EBIAS, GERONIMO ALICANDO, MERLENE BANAWAG, JAIME NOBLEZA, ALEXANDER BALANCAR, CESAR ABDULA, JOSEPHINE FRANCISCO, ROEL LA TORRE, NICASIO BOLINGKIT, JIMMY BORADA, JOSELITO GERMO, JOHENES FABRICA, ZALDY TUPAZ, RAMON CAWILI, DELFIN OBA-OB, REYNALDO LONGNO, ARTEMIO GUNHURAN, DANILO JISON, CAPISTRANO MANLUCOT, ALEX ROGADOR, DANILO LONGNO, ALIPIO PETIL, JOEL ORONG, MELCHOR REFUGIO, JOSE ETOQUILLA, EDWIN GATPOLINTAN, MAXIMO ANADIO, ALICIA CATAYTAY, LYDIA ESPERAT, JOSEPHINE TALBA, LUCILLE ALICUNDO, GEMMA ALAWI, AIDA

SANTILLAN, EVANGELINE SOMOSA, ROSARIO AQUINO, EVELYN DULAP, ROSALINA GERMO, JOCELYN BASING, JESSICA NAPOLERYES, SUSAN DAYOT, JOVITA ALBON, SATURNINA GUEVARRA, JUVY BRITO, RUTH BUNTIS, ELENITA PACHES, BAING GARCIA, JOSEFA ROGADOR, JUDITH GABUYAN, AGNES PAJA, MARIEL DANAG, DELY BUCOY, EVANGELINE MONTUNO, DOLORES BOVLEZA, NORMA DE LEON, GLORIA ATILANO, PRECIOSA BAYTONG, EVELYN TANJUSAY, ARLENE HANDI, JENNIFER VILLANUEVA, LIGAYA DUARONG, FLORA SEBAYLOS, SALVACION CARPIO, EMILIANA SANTIAGO, DOLORES OBLINA, MADELYN JALAO, SOCORRO EDUARTE, CRESENCIA ALFORQUE, SUSANA TARROZA, EDWINA CABAS, NENITA TIMPANGCO, VICTORIA GAPASIN, CARINA ENRIQUEZ, EVELYN FERNANDEZ, MERCY CATAYLO, GREGORIA OSIN, FLORITA PADUA, TITA FRANCISCO, VICTORIA POGOSA, RITA SANCHEZ, LEILANIE DUMAGCO, TERESITA NOBLEZA, MA. DOLORES RAVAL, ABDULA BEDIO, ANNABELLE PAULINO, ANNALIZA LIM, JUANITA ALICANDO, RAYAMAY PANAS, RACHEL GABUYAN, ELIZABETH REGIDOR, ARLENE SUAN, LETICIA ENRIQUEZ, ELENA ETOQUILLA, GERTRUDES TUG, EDDIE TANJUSAY, MELQUIADES PINDULAS, REYNERIO ROJAS, SUSAN SALGAN, MA. ISABEL ALMONTE, LUZ DUNGOG, FLORINDA VALENTE, VIVENCIO ATUY, MAXIMA

ALFANTTA, WILLY RECTO, REYNALDO BANTILLAN, ERNESTO SEDENO, EDWINA CAWILI, ARACELI RAVAL, MARCELINA BULAC, MA. ELENA GERMAN, PILAR GENA, NESTOR ALAWI, HERCULANOLAS PINAS, GIDEON BRITO, JIMMY NOBLEZA, LORETO GERMAN, AMINA DASAN, ROSEBETH LIBRERO, ADELINA CABILIN, ELIZABETH MATAS, MYRNA PELISAN, MILAGROS DEL MUNDO, ANTONIETA BELARMINO, CLARIBEL CUSTODIO, VILMA JUMAWAN, JORELYN CAMUMOT, AND MA. CLARA SALVADOR,

***Petitioners*,**

-versus-

G.R. No. 113466
December 15, 1997

NATIONAL LABOR RELATIONS COMMISSION — FIFTH DIVISION (NLRC), PERMEX PRODUCER AND EXPORTER CORPORATION, TAN TAY CUAN, JENNIFER PUNZALAN, EDGAR LIM, DOMINIC TAN and GEORGE SYCHUAN,

***Respondents*.**

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D E C I S I O N

ROMERO, *J.*:

This is a Petition for *Certiorari* from the Decision of the National Labor Relations Commission dated August 6, 1993 affirming the consolidated decision jointly rendered by Labor Arbiters Reynaldo Villena and Allen Abubakar in RAB Case No. 09-02-00062-93 and 09-02-00069-93 involving illegal strike and unfair labor practice, the dispositive portion of which reads:

> "WHEREFORE, based on the foregoing we hereby declare:
>
> 1. That the strikes staged and conducted by respondents in NLRC RAB Case No. 09-02-00062-93 on January 25 and 26, 1993 and on February 11 to March 29, 1993 as illegal;
>
> 2. The complaint filed by complainants in NLRC Case. No. RAB 09-02-00069-93 against PERMEX, including its officers, for unfair labor practice with claims for damages and backwages, dismissed for lack of merit; and
>
> 3. Respondents in NLRC Case No. RAB 09-02-00062-93 liable jointly and severally to petitioner for moral and exemplary damages in the amount of P500,000.00, and P300,000.00 respectively, as prayed for in its Amended Complaint;
>
> 4. The dismissal of all respondents in NLRC Case No. 09-02-00062-93 as valid;
>
> 5. All other claims are hereby dismissed for lack of merit.
>
> SO ORDERED."

The facts, as culled from the record, are as follows:

Respondent PERMEX Producer and Exporter Corporation (hereinafter referred to as PERMEX for brevity) is a Zamboanga City-based corporation engaged in the business of fish and tuna export while its co-respondents are its corporate officers. Petitioners, on the other hand, are the National Federation of Labor (hereinafter referred to as NFL for brevity), a legitimate labor federation represented by its Regional Director for Western Mindanao Amado Magbanua, and 141 members of said union, who are dismissed employees of respondent corporation.

On January 23, 1993, NFL contends that 10 union officials who had attended a scheduled certification election conference the previous day were barred from entering the company premises and were prohibited to work therein, allegedly due to their union activities. The NLRC, however, upheld the contention of PERMEX that three of said workers asked to be excused from work while the rest were given time off in order to attend to union activities and were told to return on January 30, 1993. It thus found that the company's actuations did not consist in a lockout but were related to disciplinary matters not in any way connected with a labor dispute. Furthermore, the record shows that the ten (10) workers concerned did not report for work in the morning of January 22, 1993, although the pre-election conference was yet to be held at 1:30 in the afternoon of the same day. Yet another group of workers which attended the conference reported for work the next day. In the words of the NLRC:

> "If the group of ten were subjected to some disciplinary action by management, the same was justified not because of their union affiliations but for breach of company discipline. In other words, the group of ten were (sic) using their union activities to go on undertime or to justify their constant and frequent absences which evidently was a violation of company policy."[1]

Be that as it may, on January 25, 1993 said workers attempted to re-enter the company premises but were prevented from doing so, prompting several of their co-workers to seek an audience with the President and General Manager who was then within the premises. Their efforts having been allegedly rebuffed, over 200 workers staged a picket outside company premises. The gates were barricaded, thus

blocking ingress and egress of company vehicles, trapping 50 workers inside and paralyzing company operations. Additionally, 700 non-striking workers were prevented from working on January 26, 1997. The workers only returned to work on January 27, 1993 when a memorandum of agreement was forged the same day between representatives of PERMEX and NFL. Pursuant to the agreement, PERMEX issued a memorandum requiring the workers concerned to fully explain their participation in the above-mentioned strike. However, most workers refused to submit explanations, prompting the management to place them under preventive suspension effective February 13, 1993. Only about 40 workers who proffered satisfactory explanations were allowed to return to work.

On January 29, 1993, NFL filed a Notice of Strike with the National Conciliation and Mediation Board-Region IX of Zamboanga City. Said notice was contested by PERMEX on February 5, 1993 during the conciliation meeting, prompting NFL to file a new Notice of Strike the same day. Said Notice alleged discrimination, coercion, union busting, blacklisting of union members, intimidation and dismissal of union officers and members.

In the interim, on February 3, 1993 PERMEX filed Case No. RAB 09-02-00062-93 against Amado Magbanua et al. to declare the strike held on January 25 and 26 as illegal. This was assigned to Labor Arbiter Reynaldo S. Villena. Likewise, on February 8, 1993, NFL filed Case No. RAB 09-02-00069-93 against PERMEX for unfair labor practice and damages, the same being assigned to Labor Arbiter Allen Abubakar.

Another conciliation meeting was held on February 10, 1993 in connection with the February 5, 1993 Notice of Strike. However, on February 11, 1993 the workers affiliated with NFL barricaded the company gates, tying the same with ropes and chains and preventing non-striking workers from entering or leaving the premises. Thus, from February 12 to March. 2, 1993, the company was constrained to ferry its workers to and from the company premises through its wharf with the use of motorboats. On March 3, 1993, the striking workers cut the company fence leading to the wharf, gained control of the same, and chained close the last point of entrance and exit to and from the premises. The records also show that acts of coercion,

intimidation and harassment were committed by the striking workers, including the uttering of threats of bodily harm against non-striking workers and company officials.

On March 11, 1993 the Secretary of Labor assumed jurisdiction over the dispute pursuant to a petition of the NFL filed on January 29, 1993. He likewise issued a Return-to-Work Order to take effect within 24 hours from receipt thereof. PERMEX publicly announced through print and radio that all striking workers should return by March 15, 1993. However, the intercession of PNP agents notwithstanding, the same was ignored. It was only on March 29, 1993 that the workers finally lifted their picket lines.

Thereafter, Labor Arbiters Villena and Abubakar issued the consolidated decision now being assailed.

NFL then appealed to the NLRC. However, the NLRC's 5th Division, on August 6, 1993, affirmed the decision of the Labor Arbiter but awarded only P300,000.00 as compensatory damages to PERMEX. NFL's motion for reconsideration was denied, hence this petition for *certiorari* with this Court.

Petitioner contends that the NLRC committed grave abuse of discretion when the latter disregarded the affidavits and other evidence submitted by it, as well as by its failure to conduct actual open hearings to prove petitioner's claims. Furthermore, petitioner contends that the NLRC gravely abused its discretion when it upheld the dismissal of 141 employees on the basis of a resolution of the City Fiscal's Office finding a prima facie case against said employees for illegal acts committed during the strikes in question. Lastly, petitioner contends that "company internal reports" of spoiled products, which are unverified and unaudited are not competent evidence to prove damages caused by the concerted action of the workers.

We rule for the respondent.

The first issue raised by petitioner relates to the veracity of the factual findings of the NLRC and the Labor Arbiter. "At the outset, it should be noted that a petition for *certiorari* under Rule 65 of the Rules of

Court will prosper only if there is a showing of grave abuse of discretion or an act without or in excess of jurisdiction on the part of the National Labor Relations Commission. It does not include an inquiry as to the correctness of the evaluation of evidence which was the basis of the labor official or officer in determining his conclusion. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of witnesses nor substitute the findings of fact of an administrative tribunal which has gained expertise in its special field. Considering that the findings of fact of the Labor Arbiter and the NLRC are supported by evidence on record, the same must be accorded due respect and finality."[2]

Then too petitioner, with great vigor, argues that a full-blown trial should have been conducted by the NLRC in order to uncover the truth of the parties' respective assertions, the absence of which is alleged to constitute a denial of due process.

Petitioner should bear in mind that a formal or trial-type hearing is not at all times and in all instances essential to due process, the requirements of which are satisfied where parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand.[3] In instant case, its arguments are unavailing where the records show that they were given ample opportunity to present, as they did so present, affidavits and position papers where they set out their factual and legal arguments.

Furthermore, the holding of a trial is discretionary on the labor arbiter and cannot be demanded as a matter of right by the parties.[4] As further elucidated in Palomado vs. NLRC, et. al.[5] "we do not see how the failure of the arbiter to conduct a formal hearing could constitute 'grave abuse of discretion.' Sec. 3, Rule VII grants an arbiter wide latitude to 'determine whether there is a need for a formal hearing or investigation after the submission by the parties of their position papers and supporting proofs.' (P)etitioner believes that had there been a formal hearing, the arbiter's alleged mistaken reliance on some of the documentary evidence submitted by parties would have been cured and remedied by them, presumably through the presentation of controverting evidence. Evidently, this postulate is not in consonance with the need for speedy disposition of labor cases, for the parties may then willfully withhold their evidence and

disclose the same only during the formal hearing, thus creating surprises which could merely complicate the issues and prolong the trial. There is a dire need to lessen technicalities in the process of settling labor disputes."

In addition, and as stated earlier, it is a general rule that findings of administrative agencies are accorded not only respect but even finality. It is well established that findings of fact of the National Labor Relations Commission are binding on the Supreme Court, if supported by substantial evidence.

In the instant case, the findings of the NLRC that the strike held by NFL and its members on January 25-26 and again on February 11 - March 29 were illegal are supported by the evidence on record.

A strike (or lockout), to enjoy the protection of law, must observe certain procedural requisites mentioned in Art. 263 and the Implementing Rules, namely:

1) A notice of strike, with the required contents, should be filed with the DOLE, specifically the Regional Branch of the NCMB, copy furnished the employer of the union;

2) A cooling-off period must be observed between the filing of notice and the actual execution of the strike thirty (30) days in case of bargaining deadlock and fifteen (15) days in case of unfair labor practice. However, in the case of union busting where the union's existence is threatened, the cooling-off period need not be observed.

x x x

4) Before a strike is actually commenced, a strike vote should be taken by secret balloting, with a 24-hour prior notice to NCMB. The decision to declare a strike requires the secret-ballot approval of majority of the total union membership in the bargaining unit concerned.

5) The result of the strike vote should be reported to the NCMB at least seven (7) days before the intended strike or lockout, subject to the cooling-off period.[6]

The provisions hardly leave any room for doubt that the cooling-off period in Art. 264(c) and the seven-day strike ban after the strike-vote report prescribed in Art. 264(f) were meant to be, and should be deemed, mandatory [Art. 264 should now read Art. 263].[7]

In the case at bar, no notice of strike, as required by Art. 263 (c) was filed by NFL prior to the strike on January 25 and 26. No prior notice of the taking of a strike vote was furnished the NCMB, nor was the seven-day strike ban after the strike vote observed. Instead, the workers immediately barricaded company premises in the afternoon of January 25, 1996, completely disregarding the procedural steps prescribed by Art. 263 (c) and (f).

As for the strike commenced on February 11, only six days had elapsed from the filing of the Notice to Strike on February 5, 1993. In addition, various illegal acts were committed by the strikers during said strike. It can be gleaned from the record that the strikers destroyed company property and intimidated and harassed non-striking workers in violation of Art. 264 (e) of the Labor Code. Likewise, barricading, chaining and padlocking of gates to prevent free ingress and egress into company premises are also violations of the self-same article.[8]

Arguing that despite its failure to comply with the statutory requirements necessary for a valid strike, NFL asserts that the same can be declared legal for it was done in good faith, citing the cases of People's Industrial and Commercial Employees and Workers Organization (FFW) vs. People's Industrial and Commercial Corp.[9] and Philippine Metal Foundries Inc. vs. Court of Industrial Relations.[10] The reliance is misplaced. People's Industrial did not rule that the procedural steps can be dispensed with even if the union believed in good faith that the company was committing an unfair labor practice. While, it is true that Philippine Metal held that a strike cannot be declared as illegal for lack of notice, however, it is important to note that said case was decided in 1979. At this juncture, it must be stressed that with the enactment of Republic Act No.

6715[11] which took effect on March 21, 1989, the rule now is that such requirements as the filing of a notice of strike, strike vote, and notice given to the Department of Labor are mandatory in nature.[12]

Thus, even if the union acted in good faith in the belief that the company was committing an unfair labor practice, if no notice of strike and a strike vote were conducted, the said strike is illegal.[13]

Second, it is alleged that the dismissal of the 141 workers is based solely on a prima facie finding that they committed various unlawful acts while staging their strike, as certified by the City Prosecutor's Office. This allegation is not true. The dismissal is principally based on their refusal to return to work after the Secretary of Labor had assumed jurisdiction over the case on March 11, 1993. In fact, despite the efforts of PNP personnel through the District Commander to persuade the workers to comply with the Return-to-Work Order, the strike continued until March 29, 1993 when the workers dismantled their pickets. As held in St. Scholastica's College vs. Hon. Ruben Torres and Samahan ng Manggagawang Pang-edukasyon sa Sta. Escolastika[14] "(a) strike undertaken despite the issuance by the Secretary of Labor of an assumption or certification order becomes a prohibited activity and thus illegal, pursuant to the second paragraph of Art. 264 of the Labor Code, as amended. The union officers and members, as a result, are deemed to have lost their employment status for having knowingly participated in an illegal act." "Case law, likewise, provides that by staging a strike after the assumption or certification for arbitration, the workers forfeited their right to be readmitted to work, having abandoned their employment."[15]

NFL claims that its refusal to follow the return to work order issued by the Secretary of Labor was justified, since Permex was imposing certain conditions before admitting them back to work,[16] citing the contents of a prepared form executed by Permex.[17]

This claim lacks merit. Contrary to NFL's contention, it is quite obvious that the form was dated January 27, 1993, which was prior to the return-to-work order issued by the Secretary of Labor on March 11, 1993; thus, NFL's refusal has no factual basis. To salvage its position, NFL asserts that Permex issued the same memorandum even after the Secretary of Labor had issued the return-to-work order,

but in its lengthy (eighty-eight pages) petition,[18] no copy of the said memorandum was attached when it could have easily done so. Hence, NFL's reason in refusing to comply with the return-to-work order is nothing but a bare assertion, unsupported by any evidence on record.

Finally, as to the amount of damages awarded, respondent company submitted mere certifications by company officials that P300,000.00 worth of cooked fish were spoiled during the January 25-26 strike and that the respondent company lost about $3,431,630.00 in US commitments due to the paralyzation of company operations brought about by the February 11 - March 29 strike. The same were found by the Labor Arbiter to be self-serving and of no probative value; hence it only awarded moral and exemplary damages. The NLRC, on the other hand, deleted the award of moral and exemplary damages but awarded compensatory damages of P300,000.00, justifying the same in this wise:

> "The compensatory damages assessed upon NFL is more than justified. PERMEX has sustained huge damages and losses as a consequence of the illegal strike staged by NFL and its affiliated workers under the able direction of the union leadership. While it may be true that the NFL under Amado Magbanua and National President Ibarra Malonzo has appeared to have tried to diffuse and resolve the dispute, its intercession obviously came after so much damage has been done upon the company."[19]

It is only too clear that the damages awarded are not based on concrete proof. This Court has ruled that "(i)n order that damages may be recovered, the best evidence obtainable by the injured party must be presented. Actual or compensatory damages cannot be presumed, but must be duly proved, and so proved with a reasonable degree of certainty. A court cannot rely on speculation, conjecture or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have been suffered and on evidence of the actual amount thereof. If the proof is flimsy and insubstantial, no damages will be awarded."[20]

However, the strike dragged on for nearly 50 days, paralyzing respondent's operations; thus, "there is no room for doubt that some

species of injury was caused to private respondent. In the absence of competent proof on the actual damages suffered, private respondent is entitled to nominal damages — which, as the law says, is adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated and recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered."[21] We consider the amount of P300,000.00 just and reasonable under the circumstances.

In view of the foregoing, we do not find any grave abuse of discretion on the part of the NLRC in rendering the assailed decision.

WHEREFORE, the Petition is **DISMISSED** for lack of merit.

SO ORDERED.

Narvasa, *C.J.*, Melo, Francisco and Panganiban, *JJ.*, concur.

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[1] Rollo, p. 261.
[2] ComSavings Bank vs. NLRC, 257 SCRA 307.
[3] Llora Motors, Inc. vs. Franklin Drilon, 179 SCRA 175.
[4] Salonga vs. NLRC, 254 SCRA 111.
[5] 257 SCRA 680.
[6] The Labor Code with Comments and Cases, 1993 ed., Azucena, pp. 308-309.
[7] National Federation of Sugar Workers (NFSW) vs. Ovejera, 114 SCRA 354.
[8] Art. 263(e) — No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares.
[9] 112 SCRA 440 (1982).
[10] 90 SCRA 135 (1979).
[11] "The New Labor Relations Law."
[12] Lapanday Workers Union vs. NLRC, 248 SCRA 95 (1995).
[13] First City Interlink Transportation Co. vs. The Honorable Secretary Ma. Nieves Roldan-Confesor, G.R. No. 106316, May 5, 1997.
[14] 210 SCRA 565.
[15] Marcopper Mining Corp. vs. Acting Labor Secretary Jose Brillantes, et al., 254 SCRA 595.
[16] Rollo, p. 491.
[17] Annex "F" of position paper at RAB Level. Rollo, pp. 26-27.
[18] Rollo, pp. 3-95.
[19] Rollo, p. 262.

[20] DBP vs. CA, 249 SCRA 331.
[21] Lufthansa German Airlines vs. CA, 243 SCRA 600.