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SUPREME COURT
THIRD DIVISION

DIVINE WORD UNIVERSITY OF TACLOBAN,
***Petitioner*,**

-versus-

G.R. No. 91915
September 11, 1992

SECRETARY OF LABOR AND EMPLOYMENT and DIVINE WORD UNIVERSITY EMPLOYEES UNION-ALU,
***Respondents*.**
x--x

D E C I S I O N

ROMERO, *J*.:

Assailed in this Petition for *Certiorari* for being violative of the "constitutional right of employees to self-organization which includes the right to form, join or assist labor organizations of their own choosing for purposes of collective bargaining,"[1] are the Orders of May 23, 1989 and January 17, 1990 issued by then Secretary of Labor and Employment Franklin H. Drilon and Acting Secretary of Labor and Employment Dionisio D. de la Serna, respectively.

Culled from the records are the following facts which led to the filing of the instant petition:

On September 6, 1984, Med-Arbiter Bienvenido C. Elorcha certified the Divine Word University Employees Union (DWUEU) as the sole and exclusive bargaining agent of the Divine Word University (University for brevity). On March 7, 1985, DWUEU submitted its collective bargaining proposals. On March 26, 1985, the University replied and requested a preliminary conference to be held on May 28, 1985. However, two days before the scheduled conference or on May 26, 1985, DWUEU's resigned vice-president Mr. Brigido Urminita (or Urmeneta) wrote a letter addressed to the University unilaterally withdrawing the CBA proposals. Consequently, the preliminary conference was cancelled.[2]

After almost three years, or on March 11, 1988, DWUEU, which had by then affiliated with the Associated Labor Union,[3] requested a conference with the University for the purpose of continuing the collective bargaining negotiations.[4] Not having heard from the University, DWUEU-ALU sent a follow-up letter on March 23, 1988 reiterating its request for a conference and warning the University against committing acts of interference through its various meetings with both the academic and non-academic employees regarding their union affiliation and activities. Despite the letter, the University persisted in maintaining silence.

On April 25, 1988, DWUEU-ALU filed with the National Conciliation and Mediation Board of the Department of Labor and Employment a notice of strike on the grounds of bargaining deadlock and unfair labor practice acts, specifically, refusal to bargain, discrimination and coercion on (sic) employees.[5] The conferences which were held after the filing of the notice of strike led to the conclusion of an agreement between the University and DWUEU-ALU on May 10, 1888 with the following terms:

> "1. Union will submit their (sic) CBA proposals on Friday, May 13, 1988 for whatever action management will take.

2. Union and management agrees (sic) to sit down and determine (sic) the number of employees that will represent their bargaining unit.

3. Conciliation proceedings is (sic) temporarily suspended until the parties inform this office of further development.

4. The issues of discrimination: re Ms. Colinayo and Ms. Cinco Flores is settled.

5. Issue (sic) on coercion and refusal to bargain shall be subject of continuing dialogue.

6. Atty. Jacinto shall be given 10 days notice in the next conciliation meeting."[6]

However, it turned out that an hour before the May 10, 1988 agreement was concluded, the University had filed a petition for certification election with the Region VIII office of the Department of Labor and Employment.[7]

On the other hand, on May 19, 1988, DWUEU-ALU, consonant with the agreement, submitted its collective bargaining proposals. These were ignored by the University. Thereafter, through the National Conciliation and Mediation Board (NCMB) of Region VIII, marathon conciliation conferences were conducted but to no avail. Hence, on August 25, 1988, then Secretary of Labor Franklin M. Drilon, exercising his powers under Art. 263(g) of the Labor Code, issued an Order assuming jurisdiction over the labor dispute and directing all striking workers to report back to work within twenty-four (24) hours and the management to accept them back under the same terms and conditions prevailing prior to the work stoppage. The Secretary also designated the NCMB to hear the case and to submit its report thereon.[8]

On the same day, Med-Arbiter Rodolfo S. Milado, acting on the University's petition for certification election, issued an Order directing the conduct of a certification election to be participated in by DWUEU-ALU and "no union," after he found the petition to be "well-supported in fact and in law."[9]

Said Order prompted the DWUEU-ALU to file with the Secretary of Labor an urgent motion seeking to enjoin Milado from further acting on the matter of the certification election. On September 20, 1988, the Labor Secretary granted said motion and directed Milado to hold in abeyance any and all certification election proceedings at the University pending the resolution of the labor dispute.[10] The Labor Secretary's Order, predicated on his extraordinary powers under Art. 263 (g) of the Labor Code, conformed with this Court s Resolution of October 29, 1987 in the Bulletin Today cases (G.R. Nos. 79276 and 79883) where the issue of strong disagreement among the parties on the question of representation was deemed subsumed in the labor dispute certified for compulsory arbitration. The Secretary added:

> "Underscoring the necessity to conform with this settled doctrine is the fact that the dispute over which this Office assumed jurisdiction arose from the alleged continued refusal by the University to negotiate a CBA with the Union despite the latter's certification as exclusive bargaining agent in 1984. Necessarily related thereto is the representativity issue raised by the University in its certification election petition. The resolution of these issues in one proceeding is, in the words of the Supreme Court, 'meet and proper in view of the very special circumstances obtaining in this case, and will prevent split jurisdiction and that multiplicity of proceedings which the law abhors' (24 December 1987 [should be December 17, 1987] resolution of the Supreme Court in the Bulletin Today cases, supra).
>
> Moreover, to allow a certification election to proceed at this point in time might further rupture the already strained labor-management relations pervading at the University. The assumption order issued by this Office merely served as a temporary bond to hold together such a fragile relationship. More importantly, the projected election hastily decreed would preempt the proper resolution of the issues raised and pursued so zealously by the employees that prompted them to stage their strike."[11]

The NCMB of Region VIII conducted hearings on the case from October 17-18, 1988. On October 26, 1988, the Divine Word University Independent Faculty and Employees Union (DWUIFEU), which was registered earlier that day, filed a motion for intervention alleging that it had "at least 20% of the rank and file employees" of the University.[12]

Exercising once again his extraordinary powers under Art. 263(g) of the Labor Code, the Secretary consolidated "the entire labor dispute including all incidents arising therefrom, or necessarily related thereto" in his Order of May 23, 1989[13] and the following cases were "subsumed or consolidated to the labor dispute": the petition for certification election docketed as MED-ARB-Case No. 5-04-88, the DWUEU's complaint docketed as NLRC Case No. 8-0321-88, and the University's complaint docketed as NLRC Case No. 8-0323-88. Thus, in said Order of May 23, 1989, the Secretary of Labor resolved these issues: "(1) whether there was refusal to bargain and an impasse in bargaining; (2) whether the complaints for unfair labor practices against each other filed by both parties, including the legality of the strike with the NLRC, which later on was subsumed by the assumption Order, are with merits; and, (3) whether or not the certification election can be passed upon by this Office."

On the first issue, the Secretary of Labor said:

> "It is a matter of record that when the Union filed its Notice of Strike (Exh. A) two of the issues it raised were bargaining deadlock and refusal to bargain. It is also worth mentioning that the CBA proposals by the Union were submitted on March 7, 1985 (Exh. 9) after Med-Arbiter Bienvenido Elorcha issued a certification election Order dated September 6, 1984 (Exh. 4). An examination of the CBA proposals submitted by the Union of the University showed there was (sic) some negotiations that has (sic) taken place as indicated on the handwritten notations made in the CBA proposal (Exh. F). The said proposals include among others, union scope, union recognition, union security, union rights, job security, practices and privileges, terms and conditions of work, leave of absence, hours of work, compensation salary and wages, workers' rights and safety,

workers' education, retirement longevity pay, strike and lockouts and grievance machinery.

"The said CBA proposals were indorsed by DWU President to Atty. Generosa R. Jacinto, Divine Word University legal counsel together with a copy of the Union CBA proposals. The submission of the CBA proposals and the reply letter of the DWU counsel, dated March 26, 1985 to the Union indicated that the CBA negotiations process was set into motion. DWU's counsel even suggested that the preliminary conference between the union and the university be scheduled on 28 May 1985 at 2:30 P.M. which unfortunately did not take place due to the alleged withdrawal of the CBA proposals.

"Undeniably, the Union and the DWU have not been able to conclude a CBA since its certification on 6 September 1984 by then Med-Arbiter Bienvenido Elorcha. But the non-conclusion of a CBA within one year, as in this case, does not automatically authorize the holding of a certification election when it appears that a bargaining deadlock issue has been submitted to conciliation by the certified bargaining agent. The records show that the Notice of Strike was filed by the Union on 25 April 1988, citing bargaining deadlock as one of the grounds (Annex '1'), while the Petition for Certification Election was filed by the DWU on 10 May 1988. The filing of the notice of strike was precipitated by the University's act of not replying to the Union's letters of March 11 and March 23, 1988.

"This being the case, Section 3, Rule V, Book V of the Rules Implementing the Labor Code applies and we quote:

> 'Sec. 3. When to file. In the absence of a collective bargaining agreement submitted in accordance with Article 231 of the Code, a petition for certification election may be filed at any time. However, no certification election may be held within one year from the date of issuance of declaration of a final certification election result. Neither may a representation question be entertained it (sic) before the filing of a petition for certification election, a bargaining deadlock to which an

> > incumbent or certified bargaining agent is a party has been submitted to conciliation or arbitration or had become the subject of a valid notice of strike or lockout.'

> "Clearly, a bargaining deadlock exists and as a matter of fact this is being conciliated by the National Conciliation and Mediation Board at the time the University filed its Petition for Certification Election on 10 May 1988. In fact the deadlock remained unresolved and was in fact mutually agreed upon to be conciliated further by the NCMB as per items 1 and 5 of the 'Agreement' (Exhibit 'L').

> "The aforequoted rule clearly barred the Med-Arbiter from further entertaining the petition for certification election. Furthermore, the various communications sent to the University by the Union prior to the filing of the notice of strike was enough opportunity for the former to raise the issue of representation if it really casts doubt to the majority status of the Union. More importantly, if DWU indeed doubted the status of the union, how come it entered into an agreement with the latter on May 10, 1988. Apparently, the move to file the petition on the same day was an afterthought on the part of the University which this Office considers as fatal."[14]

The same Order dismissed not only the case filed by DWUEU-ALU for unfair labor practice on the ground of the union's failure to prove the commission of the unfair labor practice acts specifically complained of (NLRC Case No. 8-0321-88) but also the complaint filed by the University for unfair labor practices and illegal strike for "obvious lack of merit brought about by its utter failure to submit evidence" (NLRC Case No. 8-0323-88).

Citing the Bulletin Today cases, the said Order pronounced as untenable the University s claim that the assumption Order earlier issued by the Office of the Secretary of Labor merely held in abeyance the holding of a certification election and that the representation issue was not deemed consolidated by virtue of the said assumption Order. Accordingly, the Order has this dispositive portion:

> "WHEREFORE, ALL THE FOREGOING PREMISES CONSIDERED, the Divine Word University of Tacloban and the Divine Word University Employees Union are hereby directed to enter into a collective bargaining agreement by adopting the Union's CBA proposals sent to the DWU President on 19 May 1988 (Exhibit '6'). DWU is hereby warned that any unwarranted delay in the execution of the collective bargaining agreement will be construed as an unfair labor practice act. Moreover, the petition for certification election filed by the University is hereby dismissed for lack of merit and the Order of Med-Arbiter Rodolfo Milado set aside. Likewise, NLRC CASES Nos. 8-0321-88 and 8-0323 filed by the Union and the DWU, respectively, are hereby dismissed for lack of merit.
>
> SO ORDERED."[15]

The University filed a motion for the reconsideration of said Order. It was opposed by the DWUEU-ALU. However, since on May 5, 1989 the DWUEU-ALU had filed a second notice of strike charging the University with violation of the return-to-work order of the Secretary of Labor and unfair labor practices such as dismissal of union officers, coercion of employees and illegal suspension,[16] the Office of the Secretary called for a series of conciliation and mediation conferences between the parties. At the July 5, 1989 conference, the University agreed to submit its proposals on how to settle amicably the labor dispute on or before July 17, 1989.

On said date, however, the University failed to appear. Instead, its representative phoned in a request for the resetting of the conference purportedly because its Board of Directors had failed to muster a quorum. Hence, after so informing ALU's Eastern Visayas Vice-President, the conference was rescheduled for July 19, 1989. The University once again failed to appear.

In view of the University's intransigence, the DWUEU-ALU pursued its second notice of strike on November 24, 1989. Four days later, the University filed with the Office of the Secretary of Labor a motion praying that said Office assume jurisdiction over the dispute or certify the same to the NLRC for compulsory arbitration on the ground that the strike affected not only the University but also its other academic

and non-academic employees, the students and their parents. On December 4, 1989, the Office of the Secretary of Labor received a Resolution passed by the students of the University urging said Office's assumption of jurisdiction over the labor dispute and the earliest resolution of the case.

Consequently, on December 29, 1989, Secretary Drilon issued an Order reiterating the August 28, 1988 Order which assumed jurisdiction over the labor dispute. He ordered all striking workers to return to work within 24 hours and the University to accept them back under the same terms and conditions of employment; deemed the issues raised in the May 5, 1989 notice of strike as "subsumed in this case"; ordered the Director of Regional Office No. VIII to hear the issues raised in said notice of strike and to submit his findings and recommendations within ten days from submission of the case by the parties, and enjoined the parties to cease and desist from any act that may "aggravate the employer-employee relationship."

On January 17, 1990, Acting Secretary of Labor Dionisio L. de la Serna, "dismissed" for lack of merit the University's motion for reconsideration and affirmed the Order of May 23, 1989. He noted the fact that the March 7, 1985 collective bargaining proposals of the DWUEU had not been validly withdrawn as the union's Vice-President had resigned and the withdrawal was signed only by three of the eight members of the Executive Board of said union. Granting that the withdrawal was valid, the Acting Secretary believed that it did not "exculpate the University from the duty to bargain with the Union" because the collective bargaining processes had been "set in motion from the time the CBA proposals was (sic) received by the University until the impasse took place on account of its failure to reply to the Union's letters pursuing its CBA Proposals dated March 11 and 23, 1988."

On the University's assertion that no negotiations took place insofar as the March 7, 1985 collective bargaining proposals are concerned, the Acting Secretary found that:

> "The records indicate otherwise Conciliation meetings were conducted precisely to discuss the CBA proposals the Union submitted to the University on March 7, 1985. As a matter of

fact, the University admitted the existence of the deadlock when a provision was incorporated in the agreement it signed on May 10, 1988 with the Union which reads:

> 'a. That on the matter of Bargaining Deadlock —
>
> 1. Union will submit their (renewed) CBA proposals on Friday May 13, 1988 for whatever action management will take.
>
> 2. Union and Management agree to sit down and determine the number of employees that will represent (constitute) their bargaining unit.
>
> x x x'

On account of the deadlock regarding the March 7, 1985 CBA proposals, it was agreed that the Union submit a renewed CBA proposal which it did on May 19, 1988. The records indicate that no response was made by the University. The uncooperative posture of the University to respond and continue with the negotiations could very well be explained when one (1) hour prior to the start of the conciliation on May 10, 1988, the University filed a Petition for Certification with (sic) Regional Office. The surreptitious filing of the petition and at the same time cunningly entering into an agreement which required the Union to submit a renewed CBA proposal, is patently negotiating in bad faith. The University should have candidly and timely raised the issue of representation, if it believed that such issue was valid, not by entering into an agreement. The May 10, 1988 Agreement only served to falsely heighten the expectations of the Union and this Office that a mutually acceptable settlement of the dispute was in the offing. This Office cannot tolerate such actuations by the University."[17]

The Acting Secretary then concluded that for reneging on the agreement of May 10, 1988 and for its "reluctance and subscription to legal delay," the University should be "declared in default." He also maintained that since under the circumstances the University cannot

claim deprivation of due process, the Office of the Secretary of Labor may rightfully impose the Union's May 19, 1988 collective bargaining agreement proposals *motu proprio*. On the University's contention that the motion for intervention of the DWU-IFEU was not resolved, the Acting Secretary ruled that said motion was in effect denied when the petition for certification election filed by the University was dismissed in the Order of May 23, 1989.

Hence, the University had recourse to instant petition.

In its petition for certiorari and prohibition with preliminary injunction filed on February 9, 1990, the University raises as grounds therefor the following:

> "A. Respondent Secretary committed grave and patent abuse of discretion amounting to lack of jurisdiction in issuing his order dated 17 January 1990 finally denying petitioner's motion for reconsideration in the face of the order dated 29 December 1989 and subsequent acts of DOLE official subsuming the second notice of strike with the first notice of strike.
>
> B. In the absence of a certified CBA and there having been no certification election held in petitioner unit for more than five (5) years, a certification election is mandatory.
>
> C. Respondent Secretary committed grave and patent abuse of discretion in issuing his orders dated 23 May 1989 and 17 January 1990 disregarding evidence on record, provisions of law and established jurisprudence.
>
> D. Petitioner was denied due process."[18]

Citing the dispositive portion of the December 29, 1989 Order of the Secretary of Labor which states that the issues raised in the May 5, 1989 notice of strike "are ordered subsumed in this case" and elaborating on the meaning of the word "subsume," i.e., "to include within a larger class, group, order, etc.,"[19] the petitioner University argues that the Secretary of Labor "cannot resolve petitioner's and (intervenor) DWU-IFEU's motions for reconsideration (in the NS. 1)

of the Order dated 23 May 1989 until the proceedings in the subsumed NS. 2 are terminated." It opines that since the Regional Director is an extension of the Secretary of Labor, the latter should have waited for the recommendation of the former on the issues in notices of strike nos. 1 and 2 before the he issued the Order of January 17, 1990.

We agree with the Acting Secretary of Labor's observation that the action for intervention had in effect been denied by the dismissal of the petition for certification election in the May 23, 1989 Order. The sub silencio treatment of the motion for intervention in said Order does not mean that the motion was overlooked. It only means, as shown by the findings of facts in the same Order, that there was no necessity for the holding of a certification election wherein the DWU-IFEU could participate. In this regard, petitioner's undue interest in the resolution of the DWU-IFEU's motion for intervention becomes significant since a certification election is the sole concern of employees except where the employer itself has to file a petition for certification election. But once an employer has filed said petition, as the petitioner did in this case, its active role ceases and it becomes a mere bystander. Any uncalled-for concern on the part of the employer may give rise to the suspicion that it is batting for a company union.[20]

Petitioner's contention that the Acting Secretary of Labor should have deferred the issuance of the Order of January 17, 1990 until after his receipt of the Regional Director's recommendation on the notices of strike is, under the circumstances, untenable. Ideally, a single decision or order should settle all controversies resulting from a labor dispute. This is in consonance with the principle of avoiding multiplicity of suits. However, the exigencies of a case may also demand that some matters be threshed out and resolved ahead of the others. Any contrary interpretation of the Secretary of Labor's powers under Art. 263(g) of the Labor Code on this matter would only result in confusion and delay in the resolution of the manageable aspects of the labor dispute.

In this case, resolution of the motion for reconsideration at the earliest possible time was urgently needed to set at rest the issues regarding the first notice of strike, the certification election and the

unfair labor practice cases filed by the University and the DWUEU-ALU. The nature of the business of the University demanded immediate and effective action on the part of the respondent public officials. Otherwise, not only the contending parties in the dispute would be adversely affected but more importantly, the studentry and their parents. It should be emphasized that on January 17, 1990, the second notice of strike could not have been resolved as yet considering that at that time, Regional Director Teddy S. Cabeltes was still conducting the conference between the parties in pursuance of the directive in the Order of December 19, 1989. The Secretary, or for that matter, the Acting Secretary, could not have intended the efforts of the Regional Director to be inutile or fruitless. Thus, when he set aside the issues raised in the second notice of strike, the Acting Secretary was acting in accordance with the exigencies of the circumstances of the case. Hardly can it be said to be an abuse of his discretion.

On the issue of whether or not a certification election should have been ordered by the Secretary of Labor, pertinent are the following respective provisions of the Labor Code and Rule V, Book V of the Implementing Rules and Regulations of the same Code:

> "ART. 258. When an employer may file petition. — When requested to bargain collectively, an employer may petition the Bureau for an election. If there is no existing certified collective bargaining agreement in the unit, the Bureau shall, after hearing, order a certification election."

All certification cases shall be decided within twenty (20) working days.

The Bureau shall conduct a certification election within twenty (20) days in accordance with the rules and regulations prescribed by the Secretary of Labor.

> Sec. 3. When to file. — In the absence of a collective bargaining agreement duly registered in accordance with Article 231 of the Code, a petition for certification election may be filed at any time. However, no certification election may be held within one year from the date of issuance of a final certification election

> result. Neither may a representation question be entertained if, before the filing of a petition for certification election, a bargaining deadlock to which an incumbent or certified bargaining agent is a party had been submitted to conciliation or arbitration or had become the subject of valid notice of strike or lockout. (Emphasis supplied)

If a collective bargaining agreement has been duly registered in accordance with Article 231 of the Code, a petition for certification election or a motion for intervention can only be entertained within sixty (60) days prior to the expiry date of such agreement."

These provisions make it plain that in the absence of a collective bargaining agreement, an employer who is requested to bargain collectively may file a petition for certification election any time except upon a clear showing that one of these two instances exists: (a) the petition is filed within one year from the date of issuance of a final certification election result or (b) when a bargaining deadlock had been submitted to conciliation or arbitration or had become the subject of a valid notice of strike or lockout.

While there is no question that the petition for certification election was filed by the herein petitioner after almost four years from the time of the certification election and, therefore, there is no question as to the timeliness of the petition, the problem appears to lie in the fact that the Secretary of Labor had found that a bargaining deadlock exists.

A "deadlock" is defined as the "counteraction of things producing entire stoppage: a state of inaction or of neutralization caused by the opposition of persons or of factions (as in government or a voting body): standstill."[21] There is a deadlock when there is a "complete blocking or stoppage resulting from the action of equal and opposed forces; as, the deadlock of a jury or legislature."[22] The word is synonymous with the word impasse[23] which, within the meaning of the American federal labor laws, "presupposes reasonable effort at good faith bargaining which, despite noble intentions, does not conclude in agreement between the parties."[24]

A thorough study of the records reveals that there was no "reasonable effort at good faith bargaining" specially on the part of the University. Its indifferent attitude towards collective bargaining inevitably resulted in the failure of the parties to arrive at an agreement. As it was evident that unilateral moves were being undertaken only by the DWUEU-ALU, there was no "counteraction" of forces or an impasse to speak of. While collective bargaining should be initiated by the union, there is a corresponding responsibility on the part of the employer to respond in some manner to such acts. This is clear from the provisions of the Labor Code Art. 250(a) of which states:

> "ART. 250. Procedure in collective bargaining. — The following procedures shall be observed in collective bargaining:
>
> (a) When a party desires to negotiate an agreement, it shall serve a written notice upon the other party with a statement of its proposals. The other party shall make a reply thereto not later than ten (10) calendar days from receipt of such notice.
>
> (b) Should differences arise on the basis of such notice and reply, either party may request for a conference which shall begin not later than ten (10) calendar days from the date of request.
>
> (c) If the dispute is not settled, the Board shall intervene upon request of either or both parties or at its own initiative and immediately call the parties to conciliation meetings. The Board shall have the power to issue subpoenas requiring the attendance of the parties to such meetings. It shall be the duty of the parties to participate fully and promptly in the conciliation meetings the Board may call;
>
> (d) During the conciliation proceedings in the Board, the parties are prohibited from doing any act which may disrupt or impede the early settlement of the disputes; and

(e) The Board shall exert all efforts to settle disputes amicably and encourage the parties to submit their case to a voluntary arbitrator."

Considering the procedure outlined above, the Court cannot help but notice that the DWUEU was not entirely blameless in the matter of the delay in the bargaining process. While it is true that as early as March 7, 1985, said union had submitted its collective bargaining proposals and that, its subsequent withdrawal by the DWUEU Vice-President being unauthorized and therefore ineffective, the same proposals could be considered as subsisting, the fact remains that said union remained passive for three years. The records do not show that during this three-year period, it exerted any effort to pursue collective bargaining as a means of attaining better terms of employment.

It was only after its affiliation with the ALU that the same union, through the ALU Director for Operations, requested an "initial conference" for the purpose of collective bargaining.[25] That the DWUEU abandoned its collective bargaining proposals prior to its affiliation with ALU is further confirmed by the fact that in the aforequoted May 10, 1988 agreement with the University, said Union bound itself to submit a new set of proposals on May 13, 1988. Under the circumstances, the agreement of May 10, 1988 may as well be considered the written notice to bargain referred to in the aforequoted Art. 250(a) of the Labor Code, which thereby set into motion the machinery for collective bargaining, as in fact, on May 19, 1988, DWUEU-ALU submitted its collective bargaining proposals.

Be that as it may, the Court is not inclined to rule that there has been a deadlock or an impasse in the collective bargaining process. As the Court earlier observed, there has not been a "reasonable effort at good faith bargaining" on the part of the University. While DWUEU-ALU was opening all possible avenues for the conclusion of an agreement, the record is replete with evidence on the University's reluctance and thinly disguised refusal to bargain with the duly certified bargaining agent, such that the inescapable conclusion is that the University evidently had no intention of bargaining with it. Thus, while the Court recognizes that technically, the University has the right to file the petition for certification election as there was no bargaining deadlock

to speak of, to grant its prayer that the herein assailed Orders be annulled would put an unjustified premium on bad faith bargaining.

Bad faith on the part of the University is further exemplified by the fact that an hour before the start of the May 10, 1988 conference, it surreptitiously filed the petition for certification election. And yet during said conference, it committed itself to "sit down" with the Union. Obviously, the University tried to preempt the conference which would have legally foreclosed its right to file the petition for certification election. In so doing, the University failed to act in accordance with Art. 252 of the Labor Code which defines the meaning of the duty to bargain collectively as "the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith." Moreover, by filing the petition for certification election while agreeing to confer with the DWUEU-ALU, the University violated the mandate of Art. 19 of the Civil Code that "(e)very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."

Moreover, the University's unscrupulous attitude towards the DWUEU-ALU is also betrayed by its belated questioning of the status of the said union. The communications between them afforded the University ample opportunity to raise the issue of representation if indeed it was doubtful of the DWUEU-ALU's status as a majority union, but it failed to do so. On the other hand, in the agreement of May 10, 1988, the University even agreed "to sit down and determine the number of employees that will represent their bargaining unit." This clearly indicates that the University recognized the DWUEU-ALU as the bargaining representative of the employees and is, therefore, estopped from questioning the majority status of the said union.

Hence, petitioner's contention that the DWUEU-ALU's proposals may not be unilaterally imposed on it on the ground that a collective bargaining agreement is a contract wherein the consent of both parties is indispensable is devoid of merit. A similar argument had already been disregarded in the case of Kiok Loy vs. NLRC,[26] where we upheld the order of the NLRC declaring the union's draft CBA proposal as the collective agreement which should govern the

relationship between the parties. Kiok Loy vs. NLRC is applicable in the instant case considering that the facts therein have also been indubitably established in this case. These factors are: (a) the union is the duly certified bargaining agent; (b) it made a definite request to bargain and submitted its collective bargaining proposals, and (c) the University made no counter proposal whatsoever. As we said in Kiok Loy, "[a] company's refusal to make counter proposal if considered in relation to the entire bargaining process, may indicate bad faith and this is especially true where the Union's request for a counter proposal is left unanswered."[27] Moreover, the Court added in the same case 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."[28]

That being the case, the petitioner may not validly assert that its consent should be a primordial consideration in the bargaining process. By its acts, no less than its inaction which bespeak its insincerity, it has forfeited whatever rights it could have asserted as an employer. We, therefore, find it superfluous to discuss the two other contentions in its petition.

WHEREFORE, the instant Petition is hereby **DISMISSED** for lack of merit. This Decision is immediately executory. Costs against the petitioner.

SO ORDERED.

Bidin, Davide, Jr. and Melo, *JJ.*, concur.
Gutierrez, Jr., *J.*, is on leave.

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[1] Petition, p. 3; Rollo, p. 4.
[2] Rollo, p. 101.
[3] DWUEU became an affiliate of ALU on February 9, 1988 upon the issuance of Charter Certificate No. 347. Rollo, p. 73.
[4] DWUEU-ALU's Comment, p. 2; Rollo, p. 298.
[5] Annex "A" of Petition; Rollo, p. 63.
[6] Annex "B-1" of Petition; Rollo, p. 66.
[7] Annex "B" of Petition; Rollo, pp. 64-65.

[8] Annex "C" of Petition; Rollo, pp. 67-69.
[9] Annex "D" of Petition; Rollo, pp. 70-77.
[10] Annex "E" of Petition; Rollo, p. 78-79.
[11] Id.
[12] Annex "G" of Petition; Rollo, pp. 97-98.
[13] Annex "H" of Petition; Rollo, pp. 100-104.
[14] Ibid., pp. 102-103.
[15] Ibid., p. 104.
[16] Rollo, p. 177.
[17] Rollo, pp. 201-202.
[18] Petition, p. 18; Rollo, p. 19.
[19] Petition, p. 19; Rollo, p. 20.
[20] See: Trade Unions of the Philippines and Allied Services vs. Trajano, G.R. No. 61153, January 17, 1983, 120 SCRA 64, 66.
[21] Webster's Third New International Dictionary, 1986 Ed., p. 580.
[22] Webster's New Twentieth Century Dictionary, 2nd Ed., p. 465.
[23] William C. Burton's Legal Thesaurus, 1980 Ed., p. 133.
[24] N.L.R.B. vs. Bancroft, 635 F.2d 492 (1981).
[25] Rollo, p. 154.
[26] G.R. No. 54334, January 22, 1986, 141 SCRA 179.
[27] Ibid., p. 186.
[28] Ibid., p. 188.

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