

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**SAMAHANG MANGGAGAWA NG VIA
MARE,**

Petitioner,

-versus-

**G.R. No. L-52169
June 30, 1980**

**HON. CARMELO C. NORIEL, VIA
MARE CATERING SERVICES and
FOOD SPECIALTIES, INC., and
GLENDA R. BARRETTO,**

Respondents.

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DECISION

ABAD SANTOS, J.:

The only issue in this Petition for *Certiorari* is whether or not respondent Director Carmelo C. Noriel of the Bureau of Labor Relations had been divested of his jurisdiction to settle a labor dispute between the petitioner and the Via Mare Catering Services and Food Specialties, Inc. Respondent director ruled that he had lost jurisdiction in view of the corporation's application to terminate the employment of some of the petitioner's members with the Regional Director of the National Capital Region. At this juncture, we can readily say that the respondent director had not been divested of his

jurisdiction and we have yet to see a more shabby treatment of workers than that accorded by the corporation to its employees in this case.

The facts are well-settled in the comment of the Solicitor General:

“On October 13, 1979, petitioner Samahang Manggagawa Ng Via Mare (SAMAVIM), a duly organized labor union, requested respondent corporation, Via Mare Catering Services and Food Specialties, Inc., to enter into a collective bargaining agreement therewith submitting proposals (Petition, pp. 1-2).

Thereafter, petitioner twice reiterated its request to aforesaid respondents to negotiate a collective bargaining agreement. Instead, respondent corporation allegedly terminated four (4) of petitioner-union’s members (Petition, p.2).

On November 19, 1979, petitioner filed a Notice of Strike with the Ministry of Labor, claiming that respondent corporation neither assented harassed petitioner’s union members (Petition, p. 2; ANNEX “A”).

The Bureau of Labor Relations, of which respondent Honorable Carmelo C. Noriel is Director, assumed jurisdiction over the labor dispute and through Med-Arbiter Roberto Landas, summoned petitioner and respondent corporation to a conference/hearing on November 20, 1979. At the scheduled conference/hearing before Med—Arbiter Landas, the parties arrived at the following agreement (Petition, p. 3; ANNEX “B”):

‘Representative of management appeared and manifested that he will met with counsel of the union tomorrow, 21 November 1979 at Via Mare at 8:00 a.m. to discuss when will (sic) top management will be available to discuss the terms and conditions of employment.

‘Counsel of management assured the union that Via Mare Catering Services and Food Specialties, Inc., will negotiate with the union.’ (Italics for emphasis)

On November 21, 1979, petitioner and respondent corporation entered into the following 'Preliminary Agreement' (Petition, p. 3; ANNEX "C"):

- '1. That they would meet on November 24, 1979, at 5:00 p.m., at Via Mare for the purpose of informing and determining from either party the CPA panelist and the schedule of negotiation;
- '2. That the initial negotiation shall be held, at the very earliest November 27, 1979 or November 28, 1979;

On November 24, 1979, petitioner and respondent corporation entered into the following 'Initial Agreement' (Petition, p. 4; ANNEX "D"):

- '1. That management recognize the fact that SAMAVIM, (i.e., petitioner) is duly registered Union in the establishment and accepts the fact of their constitution;
- '2. That management panelist to the negotiation would be make known to the Union on November 27, 1979;
- '3. That after the panelist, Union and Management shall have met, which at the earliest shall be on November 28, 1979, and there shall negotiation on the proposed CBA be started;

Petitioner and respondent corporation met on November 27, 1979. But on that date, respondent corporation refused to negotiate a collective bargaining agreements as they had previously committed themselves. On November 28, 1979, therefore, petitioner's members staged a walk-out, duly informing the Bureau of Labor Relations thereof (Petition, pp. 4-5; ANNEX "E").

On November 29, 1979, respondent Noriel issued the following Return-To-Work Order (Petition, p. 5; ANNEX “F”).

‘All striking workers of the Via Mare Catering Services & Food Specialties, Inc., are hereby ordered to return to work immediately and to desist from striking whether the strike is for cause or otherwise. The Management is likewise ordered to allow all workers to return to work under the same terms and conditions prevailing previous to the work stoppage.

‘This order shall be without prejudice to whatever action any party might take under existing law, decree, rules and regulation.’

Petitioner and respondent corporation were also ordered by Med-Arbiter Victoriano Calaycay to appear before the Bureau of Labor Relations on December 3, 1979. In the meantime, petitioner’s members returned to work (Petition, p. 5).

On December 3, 1979, before the Bureau of Labor Relations, petitioner and respondent corporation entered into an agreement (Petition, p. 5; ANNEX “G”) which provided among other things, the following:

‘1. There will be a consent election;

x x x

‘6. That the parties will meet on December 17, 1979 to determine the eligible voters and date of election.’

However, on December 4, 1979, respondent corporation, through their General Manager, respondent Glenda R. Barreto, terminated seventy three (73) union members, after having allowed them to work for one day, without prior clearance from the Ministry of Labor, and employed other persons to replace the terminated union members (Petition, pp. 5-6).

On December 4, 1979, petitioner filed a motion to cite the private respondents in contempt for alleged violation of respondent Noriel's Return-To-Work Order, alleged union-busting activities, and alleged bad faith in dealing with petitioner (Petition, p. 6; ANNEX "H").

Pursuant to a summon, petitioner and respondent corporation appeared before Med-Arbitrator Victoriano Calaycay on December 5, 1979. On that date, respondent corporation, through counsel, stated that the terminated employees will be reinstated and that the date of their re-acceptance will be known at the hearing which was set on December 7, 1979 (Petition, p. 6).

Respondent corporation's counsel did not appear at the hearing scheduled on December 7, 1979, thus prompting petitioner to ask for the resolution of its motion to declare private respondent in contempt. Respondent Noriel was, however, at that time in Hongkong. Upon his return to the Philippines, he allegedly refused to act on the motion on the ground that he had lost jurisdiction over the labor dispute with the filing on the part of respondent corporation of an application to clear the termination of seventy-three (73) of petitioner's members. According to respondent Noriel, jurisdiction over the case now lies with the Honorable Director Francisco Estrella, Regional IV, National Capital Region, who takes cognizance of such applications (Petition, p. 7).

Petitioner further alleges that on or about November 27, 1979, respondent corporation filed a 'Petition For Certification Elections' before the Bureau of Labor Relations, which petition was docketed as LRC-M-515-79, but remains unserved on petitioner (Petition, p. 7)."

From the foregoing narration it is clear that the private respondents did not comply with their duty to bargain collectively with the petitioner as provided in Articles 252 and 253 of the Labor Code (P.D. No. 442, as amended), namely:

"Art. 252. Duty to bargain collectively in the absence of collective bargaining agreements. — In the absence of an

agreement or other voluntary arrangement providing for a more expeditious manner of collective bargaining, it shall be the duty of the employer and the representatives of the employees to bargain collectively in accordance with the provisions of this Code.

“ART. 253. Meaning of duty to bargain collectively. — The duty to bargain collectively means the performance of a mutual obligation 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 agreement and executing a contract incorporating such agreements if request by their party, but such duty does not compel any party to agree to a proposal or to make any concession.”

As correctly observed by the Solicitor General: “Under the circumstances, the application for clearance file by respondent corporation relative to the members of petitioner-union who were dismissed, is highly suspect as a means to frustrate the intention of respondent corporation not to bargain collectively with petitioner. By this strategem, the membership of petitioner union would be depleted, thus assuring its defeat in the event of a consent or certification election. In this light, said application for clearance cannot be used to defeat the jurisdiction of respondent Director Noriel.”

Moreover, the only question before Director Noriel is whether or not the petitioner is the exclusive bargaining representative of the employees working for the respondent corporation in respect of which both the petitioner and the respondent corporation agreed to hold a consent or certification election including in the voting those employees who had been dismissed by the corporation conformably to the statement of the corporation’s counsel during the hearing before Us on January 9, 1980. Upon the other hand, the issue before Regional Director Estrella is whether or not the termination of the employment of some of the petitioner’s members is justified. The two questions are unrelated and can be resolved independently of each

other especially since it had been stated as aforesaid that even the dismissed employees could take part in the certification election.

WHEREFORE, respondent Director Carmelo C. Noriel is hereby ordered to proceed with the holding of the certification election as had been agreed between the petitioner and the respondent corporation. Costs against the private respondents.

SO ORDERED.

**Barredo, Aquino, Concepcion, Jr. and De Castro, JJ.,
concur.**