

THIRD DIVISION

[G.R. No. 113541, November 22, 2001]

**THE HONGKONG AND SHANGHAI BANKING CORPORATION
EMPLOYEES UNION, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION AND THE HONGKONG AND SHANGHAI
BANKING CORPORATION LIMITED, RESPONDENTS.**

DECISION

SANDOVAL-GUTIERREZ, J.:

The instant petition for certiorari^[1] with prayer for a temporary restraining order assails the Resolution^[2] dated January 31, 1994 of the National Labor Relations Commission in NLRC IC CASE No. 000422-93, entitled "THE HONGKONG AND SHANGHAI BANKING CORPORATION, LIMITED, versus THE HONGKONG AND SHANGHAI BANKING CORPORATION EMPLOYEES UNION, *et al.*"

The challenged Resolution issued by the NLRC granted the preliminary injunction prayed for by The Hongkong and Shanghai Banking Corporation, Limited ("respondent bank") enjoining The Hongkong and Shanghai Banking Corporation Employees Union ("petitioner union"), its agents, sympathizers or anyone acting in its behalf from unlawfully barricading and/or obstructing the free ingress to and egress from the respondent bank's offices in Makati City and Ortigas Center, Pasig City.

On December 22, 1993, the officers and members of petitioner union staged a strike against respondent bank for its (1) arbitrary and unilateral reduction of the "CBA-established entry level of clerical pay rates" and (2) whimsical refusal to bargain collectively on wage rates, among others.

The next day, December 23, 1993, respondent bank filed a petition for injunction^[3] with the National Labor Relations Commission ("respondent NLRC") praying that petitioner union's acts of obstructing the ingress to and egress from the bank's premises be enjoined and, in the interim, a temporary restraining order be issued. Respondent bank claimed that the unlawful obstruction has caused grave and irreparable damage to its banking activities, and that unless these acts are restrained, it will continue to suffer greater injury.

At the initial hearing of the petition for injunction on December 28, 1993 before Labor Arbiter Jesus B. Afable (whom respondent NLRC delegated to receive evidence thereon), petitioner union orally prayed for the dismissal of the petition on the ground that respondent bank failed to specifically allege therein the provisions of Article 218 (e, 3 and 4) of the Labor Code, as amended, to wit:

"ART. 218. POWERS OF THE COMMISSION. - The Commission shall have the power and authority:

x x x

(e) To enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party: *Provided*, That no temporary or permanent injunction in any case involving or growing out of a labor dispute as defined in this Code shall be issued except after hearing x x x, and only after a finding of fact by the Commission, to the effect:

x x x

(3) That as to each item of relief to be granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(4) That complainant has no adequate remedy at law; and

x x x" (Emphasis ours)

On January 4, 1994, respondent bank filed a supplemental petition alleging that petitioner union's officers and members continue to commit acts of intimidation, coercion, and obstruction in violation of Article 264 (e)^[4] of the Labor Code.

Finding the petition and the supplemental petition to be in accordance with Article 218 of the Labor Code, respondent NLRC issued a Resolution^[5] on January 6, 1994 granting a temporary restraining order and setting the hearing of respondent bank's application for preliminary injunction, thus impliedly denying petitioner union's oral motion to dismiss the petition.

Petitioner union then filed a motion for reconsideration of the said Resolution but was denied by respondent NLRC in its Resolution of January 20, 1994. This Resolution also directed Labor Arbiter Afable to conduct trial on January 24, 25 and 26, 1994. During these dates, respondent bank presented testimonial, documentary and real evidence. Upon motion by petitioner union, the Labor Arbiter ordered the exclusion for being immaterial, of all evidence pertaining to the events prior to the said dates. Respondent bank then objected to this order of exclusion by filing an "Exception with Tender of Excluded Evidence (*Ex Abundante Cautelam*)". After respondent bank rested its case, petitioner union did not present evidence. Its counsel argued in open session for the dismissal of the petition, citing the insufficiency of evidence in support of the issuance of a temporary restraining order or preliminary injunction.

On January 31, 1994, respondent NLRC issued the questioned Resolution (1) denying petitioner union's oral motion to dismiss the petition; (2) issuing a writ of preliminary injunction in favor of respondent bank, and (3) directing the Labor Arbiter to conduct further hearing for the reception of additional evidence to sustain the issuance of a writ of permanent injunction.