

PHILIPPINE FEDERATION OF PETROLEUM WORKERS (PFPW) AND MALAYANG MANGGAGAWA SA ESSO, PETITIONERS, VS. COURT OF INDUSTRIAL RELATIONS AND ESSO STANDARD EASTERN, INC., RESPONDENTS.

G.R. No. L-26346. February 27, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Two separate appeals from a decision of the Court of Industrial Relations on an industrial dispute and strike declared on February 19, 1965, by members of the Malayang Manggagawa sa Esso (MME) and certified on November 5, 1965 to said court by the President of the Philippines.

On November 13, 1965, the striking union, MME, affiliate of the Philippine Federation of Petroleum Workers and the employer-company, Esso Standard Eastern, Inc. (ESSO), concluded without the trial court's intervention, a return to work agreement pending the resolution of their labor dispute by the industrial court, and jointly sought the court's approval thereof, which was granted in a partial decision dated November 27, 1965, enjoining the parties to comply with the terms thereof.

This gave a peculiar aspect to the case at bar, as noted by the trial court itself in its decision in that "the parties to the labor dispute have agreed on a set of proposals to be litigated as issues in this case, and the same parties have by express stipulation reserved determination of other issues in cases now pending determination in other branches of this Court."

Thus, of eleven demands filed by the striking union after the filing of the joint motion for approval of the return to work agreement dated November 12, 1965 - although the trial court had earlier issued in open court an order on November 5, 1965, for the union to formalize in a petition all its demands in connection with the case - the trial court in its decision at bar dismissed outright four demands since they "are not any of those specifically provided as litigable issues in these proceedings and are issues in the other cases pending before the different salas of the court of industrial relations. The parties themselves by the terms of their Return to Work Agreement of November 12, 1965 have reserved these cases for judicial determination in the different salas where they are now pending consideration."

These four dismissed demands^[1] involved three demands of the striking union for reinstatement with back wages of its members, strike duration pay and discharge of all scabs, strike breakers or replacements and the giving back of such positions to the returnees to work, and stoppage of further acts of discrimination and coercion against the striking union's members - and were held by the trial court to depend on the determination of the legality of the strike as well as the alleged confabulation between the company and a rival union, the Citizens Labor Union (CLU), which were issues reserved by the parties' agreement for resolution by other branches of the industrial court in two other pending cases of unfair labor practice. (Cases Nos. 4289-ULP and 4301-ULP). The fourth dismissed demand was for the company to turn over to MME the union dues checked off under the company's

collective bargaining agreement with its rival CLU from employees who are its (MME) members, which the trial court held should be re-solved in the pending certification election case, (Case No. 1459-MC).

This left six demands[2] to be passed upon by the trial court in the case below. The irregularity and undesirability of such a splitting of the issues and piece-meal procedure could not but be noted by the trial court itself in its decision in this wise: "Before proceeding, however, with the determination of the demands so mentioned, it must be emphasized that this is a proceeding arising out of a certification by the President of the Philippines, pursuant to Section 10 of Republic Act No. 875. It indicates the degree of urgency required in the settlement of the terms and conditions of employment involved in the labor dispute. If in the course of arriving at a fair and just determination certain aspects obtaining in the other cases between the parties have to be resolved, or that certain evidentiary matters might come up for evaluation, which aspects and/or matters may likewise be subject to a similar or different evaluation in the other cases between the same parties, then this Court may not shirk from its duty to determine the same, in compliance with the directives of the presidential certification and the mandates of the law decreeing such certification."

While none of the parties specifically assigned as error this irregular procedure, (since they were mainly responsible therefor in having split the issues and expressly reserved other issues for determination in the other cases pending in other branches of the industrial court), the Court takes note thereof and declares that such a procedure was erroneous. As noted by the trial court itself, this proceeding arises out of a certification by the President of the Philippines under section 10 of Republic Act No. 875[3] and per se indicates the degree of urgency required in the settlement of the terms and conditions of employment involved in the labor dispute. The industrial court, in such cases, is empowered to act therein with the broad powers and jurisdiction granted it by law,[4] including the power of conciliation and compulsory arbitration; it is empowered to order the return to work of the workers with or without backpay, and "shall not be restricted to the specific relief or demands made by the parties to the industrial dispute, but may include in the award, order or decision any matter or determination which may be deemed necessary or expedient for the purpose of settling the dispute or of preventing further industrial disputes." [5]

Where the industrial dispute has been certified by the President to the industrial court, therefore, all issues involved in the industrial dispute should be aired and determined in the case, where the dispute as certified by the President is docketed. The parties should not be permitted to isolate other germane issues or demands and reserve them for determination in the other cases pending before other branches of the industrial court, as was done here. All such other pending cases should be consolidated in, or at least jointly tried[6] by, the branch which has taken cognizance of the case over the certified industrial dispute towards the end that all the issues and demands may be finally determined and the dispute definitely settled, rather than merely arrive at a piece-meal settlement as in the case at bar, with the added disadvantage as noted by the trial court that in passing upon certain issues before it, it would have to rule upon certain aspects likewise involved in the other cases and on which the other branches might reach a contrary evaluation and conclusion.

Concretely applied to the case at bar, the trial court, therefore, should not have approved the return to work agreement submitted independently and with exclusion of relevant issues by the parties, but as the branch where the dispute as certified by the President was docketed, required the consolidation, or arranged with the other branches for the joint trial, of all the other cases pending in the other branches, with the certification and compulsory arbitration case before it, after which it could have issued a return to work order, and thus avoided the anomalous situation confronting us where the full resolution of this certified dispute is deferred and made to await and depend on the separate decisions of the other branches of the industrial court in other cases. Certainly, the issues involved in said cases and covered by the four demands of the striking union dismissed outright by the trial

court (since the parties were erroneously permitted to reserve them for separate determination by the other branches of the industrial court, as above stated) - dealing as they do with alleged acts of discrimination and coercion against the members of the striking union (MME) and of alleged confabulation between the company and the rival union (CLU) as well as with the legality of the strike - were hardly segregable from the very core of the dispute which the trial court was empowered and called upon to settle as a whole.

We believe that this would have been the most expeditious procedure to resolve all issues in the urgent industrial dispute certified to the industrial court as involving the national interest, unlike that followed in the case at bar, where the lower court was compelled to hand down its piecemeal decision, instead of conclusively settling the dispute as authorized by law, since resolution of the other related cases had to await the decision yet to be handed down by the other branches where they were pending. As a practical matter, this would have saved the time of the industrial court and parties and would avoid needless duplication of effort and hearings. More importantly, as a matter of public interest since all the issues involved in the cases which gave rise to the industrial dispute and strike were all related and did not involve mere economic demands but unfair labor practice charges which are specially impressed with public interest - public policy would have been subserved by the consolidation or joint trial of all the cases to enable the industrial court to discharge its task of finally settling the dispute once and for all and preventing further industrial disputes, rather than leaving a number of related issues unresolved to await the decisions of other branches of said court.

In the light of this fait accompli which impeded the total settlement of the urgent dispute to the prejudice of the workers, the Court will proceed to the review of the trial court's decision on the limited issues and demands taken cognizance of and subject of the present appeals. These six demands of the striking union were the following:

"No. 1. - That the position of Assistant truck drivers or truck helpers and fillers should not be abolished;

"No. 2. - In the event that the Can Plant is closed, all employees therein will be transferred to other plant duties and their position titled will not be changed nor will their wages presently earned be reduced;

"No. 3. - No change in terms and conditions of employment of employees assigned now to the Manila International Airport or JOCASP which includes, among others, meal allowances and overtime shall be made;

"No. 5. - That Rodolfo Espiritu and Reynaldo Recio, Vice-President and Secretary, respectively, of petitioner union be reinstated immediately;

"No. 7. - The retirement age of employees shall be 60, as has been the previous practice of the Company, and all those who have been retired by the Company at earlier than the age of 60 shall be reinstated; and

"No. 9. - The memorandum of agreement dated January 6, 1965 be declared invalid and that any loss of benefits by reason of the enforcement of such agreement be restored to the employees concerned."

In ruling upon these demands, the trial court first gave the following background facts:

"The predecessor of the respondent company was Standard Vacuum Co. In 1960, the latter was split into the present company and Mobil Philippines. The respondent absorbed all the working force in Luzon (t.s.n. 35, 36, Feb. 18, 1966; 23-24, Feb. 17, 1966). The Pandacan terminal to which most of the employees involved in this case were assigned is the main distribution center for bulk and package products both during the time of Standard Vacuum Company and subsequently when the splitting of this company took place afterwards. Because of this development plus improved and more efficient operating conditions, respondent company realized that it has extra or excess personnel, which later on were termed redundant employees.

"On April 8, 1963, respondent company and the Citizens Labor Union (the majority bargaining

representative) executed a Collective Bar-gaining Agreement (Exhibits 'M' & '1') for a period of three years (up to July 8, 1966). At the time of the signing of this Agreement, almost all if not all of the present members of the petitioner MME were then members of the contracting union including its incumbent president.

“Among the pertinent provisions of this Agreement are the following and we quote:

”Section 1, Article II -- Nothing in this Agreement contained shall be deemed to limit the Company in any way in the exercise of the regular and customary functions of Manage-ment.

”Section 2 (supra) -- The Union acknowledges that the Company, in the exercise of these functions of management, has the sole and exclusive right among others, but not limited to, determine the number and locations of the work sites; select and direct the work-ing force; assign work including the transfer of tasks among and between the jobs; change the means, methods, processes and schedule of operations; determine the complement and schedule of the various units, promote, trans-fer, lay off employees; maintain order, sus-pend, demote, discipline and discharge employ-ees for causes; and maintain the efficiency of employees.

”It is expressly understood that the exer-cise by the Company of any of the foregoing functions shall not alter any of the specific pro-visions of this Agreement, nor shall they be used to discriminate against any employee because of membership in the Union. It is further under-stood that, in determining reassignments, em-ployees will be assigned normally to related and comparable work whenever this is feasible and consistent with efficient operations. Such reassignments will be prompted normally by emergencies, operational needs of the business and/or lack of work.

X X X X X

”Section 2, Article IX -- An employee who has completed three (3) consecutive years of service, but less than ten (10) years of ser-vice, and who is terminated by the Company, will be granted a termination allowance of three (3) weeks' base pay for each year of credited service.

”An employee who has completed ten (10) or more consecutive years of service and who is terminated by the Company will be granted termination allowance of one (1) month's base pay for each year of credited service.

X X X X X X

“There appears to be no dispute as far as the validity of this Collective Bargaining Agreement is concerned. What appears to be in controversy is the interpretation of the different provisions of the same.

“In the Memorandum dated September 30, 1963 (Exh. '15'), approximately five months after the above-mentioned Collective Bargaining Agree-ment, respondent company offered a special sepa-ration payment due to extensive redundancy exist-ing at its Pandacan Terminal. The memorandum in question indicated that the same is by applica-tion on a voluntary basis, and the deadline for the filing of applications was set on October 4, 1963.

“On November 8, 1963, another agreement appears to have been executed between the Citi-zens Labor Union and respondent company (Exh. '17'). This agreement while emphasizing that the same is not a renegotiation of the Agreement of April 8, 1963, superseded and added certain terms and conditions to the said April 8, 1963, Agreement.

“The relevant portions of the Agreement are quoted as follows:

“X X X X X X X X

”Regular employees may continue to work up to the age of sixty (60) so they may enjoy Social Security Benefits provided the employee upon examination is found to be medically and physically fit.

""x x x x x

"" 9. This agreement shall not in any way be considered as a renegotiation or change in any term or condition in the Working Agree-ment of April 8, 1963 or a waiver of the rights, responsibilities and obligations of each party to the other as contained therein, and that said Working Agreement of April 8, 1963 will continue in full force and effect until its expira-tion date, without modification of any kind whatsoever.

"On January 6, 1965 another Memorandum of Agreement was executed between the Citizens Labor Union and respondent company (Exh. 'B'). It is to be noted that this Agreement was acknowledged before a Notary Public on January 15, 1965. Em-phasis was again laid in this Agreement that the same is not to be considered as a remegotiation or a change of the Collective Bargaining Agreement on April 8, 1963. The terms and conditions of this Agreement (Exh. 'B') are substantially similar to terms and conditions of the Return to Work Agree-ment of November 12, 1965, and the retirement age of eligible employees was placed at 55 years.

"It is well to pause and note certain signifi-cant aspects of the circumstances thus far narrated as follows:

(a) The present members of the MME, with the exception of one as admitted by petitioner, were all members of the Citizens Labor Union at the time the Agreement of April 8, 1963 was executed as well as the Agreement November 8, 1963;

(b) That respondent company, as early as April 8, 1963, has the acknowledged right to terminate employees covered by the agreement either due to excess of work force or improved means of operation;

(c) That the different Agreements, e. g. of April 8, 1963, November 8, 1963, January 6, 1965 cannot be dissociated and be treated as inde-pendent of each other in view of the express provisions in the latter agreement that what-ever has been agreed upon cannot be consi-dered as a renegotiation of April 8, 1963 Agreement;

(d) That in the several agreements mentioned (Exh. 'M', Exh. '17', Exh. 'B') the retirement age has been variously mentioned at either 55 or 60 years of age;

(e) That it was only on the Agreement of January 6, 1965 that the respondent company seemed to have actively and compulsorily exercised its rights to terminate its employees under cer-tain conditions due to redundancy;

(f) The principle of seniority seems to be the main and only factor, hence the LIFO lists, meaning last in first out, where the less senior employees are first to be terminated. While the Agreement of April 8, 1963 speaks of ability to perform the work and physical fitness (Article X, Exh. 'M') before length of service is taken into consideration, yet it is likewise to be noted that this sole criterion on seniority in respect to termination due to redundancy has not been seriously questioned, nor was it ever made an issue. In fact petitioner MME in certain portions of the evidence questioned that some employees who were less senior were said to have been excluded from the lists.

"The succeeding events after January 7, 1965 Agreement and before the strike of February 19, 1965 seem to be in a confused state. At one point petitioner MME it would seem knew of this Agreement of January 6, 1965 and this was one of the reasons of the strike (t.s.n 10, Nov. 6, 1965). In another instance the same peti-tioner said they saw this Agreement while they were already on strike (t. s. n. 44, Dec. 2, 1965). At any rate it would seem that the petitioner MME was apprised of the terms of the January 6, 1965 Agreement in the conciliation talks prior to the strike (t. s. n. 35, Dec. 3, 1965). It is likely therefore, that one of the reasons for the strike of the petitioner on Feb. 19, 1965 was their disagreement to the said Agreement of Jan. 6, 1965.

"On February 15, 1965, the president of petitioner MME sent a letter to the Superintendent of respondent's Pandacan Terminal (Exh. 'H' and '6') protesting the notice from respondent's Dispatching Office that drivers of tank trucks 'are being required to proceed to their respective destination without being accompanied by one (1) truck helper each, as usual.' Petitioner claimed that this was a change in a condition of employment which may

not be done without a Court order -- referring to the proceedings in 1459-MC quoted above.

"The following day, February 16, 1965, respondent company's Terminal Superintendent answered 'That inasmuch as you are bringing to our attention a grievance regarding working conditions, we suggest that you follow the grievance proce-dure as stipulated in the Working Agreement under Article '12' (Exhibit '8').

"Another letter was sent by petitioner MME (Exh. '7') stating therein the status quo mentioned during the hearing of Case No. 1459-MC, that no grievance could be possible, as petitioner claims that under the contract [it is] the Citizens Labor Union and not the petitioner MME who must bring the matter as a grievance and the former cannot be expected to file the grievance because 'it has in fact agreed to the abolition of the position of truck helpers and other bargainable positions in the contract.' The letter, also stated the suspension of two (2) truck drivers on February 16, 1966, both MME members, for refusal to drive [without] the usual truck helpers. And on February 17, 1965, two more drivers were suspended, for the same reason.

"The above incidents starting with the hear-ing of February 22, 1965 up to the dismissal of the four (4) truck drivers mentioned, is (sic) claimed by the petitioner MME as one of their reasons for striking.

"On February 19, 1965 petitioner MME struck."

The trial court in its decision denied five of the demands, and granted that against the reduction of the retirement age of the employees from 60 years to 55 years, subject to certain conditions therein stated, as follows:

"(1) By way of supplementing the Partial Deci-sion of this Court of November 27, 1965 and relative to Demands Nos. 1, 2, 3, 5 and 9.

"(a) Respondent company is allowed to abolish the positions of Assistant Truck Drivers or truck helpers and fillers;

"(b) The can plant of respondent company is hereby allowed to be closed and those employ-ees if any, remaining as Can Plant Operators after the redundancy program is completed, will be transferred to other plant duties and, when reassigned, their position titles will not be changed nor will their wages presently earned be reduced;

"(c) The terms and conditions of employment of employees assigned to the Manila Inter-national Airport of JOCASP shall be the terms embodied in paragraph 5(f) of the Return to Work Agreement of November 12, 1965;

"(d) The immediate reinstatement of Rodolfo Espiritu and Reynaldo Recio is denied. Respondent company is, however, enjoined to give preference to the re-employment of these persons;

"(e) The Memorandum Agreement of Jan-uary 6, 1965 (Exhibit 'B') is hereby declared va-lid, without prejudice to issues arising from the same and now pending in CIR Cases Nos. 3903-ULP, 3934-ULP, 1459-MC, 4289-ULP and 4301-ULP as mentioned in paragraph 7 of the Return to Work Agreement of November 12, 1965;

"(2) Demand No. 7 is granted subject to the following conditions:

"(a) All employees who were retired at 55 years or over and below 60 years shall be entitled to reinstatement, provided, any benefits received by them on account of said retirement shall first be reimbursed to respondent company, to start not less than sixty (60) days from receipt of this Decision and to be deducted monthly from their pay envelopes in twelve equal installments."[7]

Hence, these appeals by the parties, after the industrial court's en banc denial of their respective motions for partial reconsideration of the portions of the decision adverse to them.

1. We shall start this review with the major demand of the striking union (MME) for maintenance of the retirement age of the company's employees at age 60 in accordance with the collective bargaining agreement with

the CLU and for the reinstatement of those employees retired at an earlier age under the company's supplementary agreement of January 6, 1965 with the CLU. A resolution of this issue will help in considering the other demands as denied by respondent court and appealed from in turn by the MME. As stated above, this was the only demand of the MME granted by respondent court and from which the company has appealed.

Respondent court thus laid the basis for the granting of this demand; "One of the provisions of the Agreement of November 8, 1963 is to the effect that regular employees may continue to work up to the age of 60. Then in the Memo-randum of Agreement of January 6, 1965, this age was re-duced to 55 years. It must be remembered that the benefits and advantages of a Collective Bargaining Agreement once made by the duly recognized bargaining representative are open and available to all employees within the coverage of the agreement. The respondent company having agreed at one instance to the 60 years age retirement cannot now renege on this provision no matter how monetarily attractive is the retirement benefit. It is here where the Court should legitimately interfere because retirement is more than a mere term or condition of employment. It involves the livelihood and welfare of the employee himself. The same may be sub-ject to bargaining or negotiations, but once agreed, every employee within the appropriate unit who is expected to avail of such benefit cannot be deprived of the same by sub-sequent negotiations of the representative union." Respon-dent court, however, ordered that the amounts received by the prematurely retired employees whose reinstatement it had ordered should be reimbursed to the company by deduction from their pay enveloped in twelve equal installments.

On appeal, the company contends that its retirement of such employees at age 55 or over and below 60, for a period of one year as provided for in its memorandum of agreement of January 6, 1965 with the CLU as the employ-ees' bargaining agent, and in pursuance of its legitimate redundancy program, was valid and legal.

No error was committed by respondent court since it correctly held that as the retirement age of the company's workers was definitely fixed at 60 years in the supplemental agreement of November 8, 1963, such retirement age, assur-ing the very livelihood and welfare of the employees and their security of employment, became the law between the company and each of its employees for the duration of the stipulated three-year period of their collective bargaining agreement up to July 8, 1966. The same could no longer be subject to revision or reduction during the life of the agreement without the consent or ratification of the employees, and no worker could be deprived of such vested contractual right by subsequent unauthorized negotiations of the representative union.[8]

This view is further strengthened when it is taken into account that in December, 1964, a good number of the company's employees, said to be a majority, disaffiliated from the CLU which had concluded the subsisting agreement of April 8, 1963 and joined the MME; on January 7, 1965, the MME filed with the industrial court its petition for certification election (Case 1459-MC) praying that it be certified, in lieu of the CLU, as the exclusive bargaining agent of all the employees and author-ized to administer the agreement during its remaining term on the ground that it represented the majority of said employees and that the CLU had lost its majority status and could no longer be considered as their bargaining representative; at the certification election conducted by the Labor Department on March 22, 1965, pursuant to the industrial court's order, which the CLU boycotted, the MME obtained the votes of more than one-half of the rank and file employees of the ESSO Pan-dacan Terminal Unit eligible to vote (185 out of 202 employees who voted, from a total 351 employees eligible to vote) and was certified on April 26, 1965 by the industrial court as the sole and exclusive bargaining representative of the employees.

The case was elevated by the CLU to this Court by its petitions of May 9, 1965 and June 10, 1965, both entitled Citizens Labor Union-CLU vs. C. I. R.[9] Since the bargain-ing agreement had thereafter expired on July 8, 1966, and in view of "the manifestation, advanced with vehemance, of both the CLU and the ESSO that after the secret ballot election held on March 22, 1965, the employee composition has substantially changed because a great

number of the employees and laborers in the Pandacan Terminal unit have left their employment, retired, or been compulsorily laid off with the approval of the CIR. On its part, ES SO further claims that the salient facts obtaining in the two cases before us have been so altered by the lapse of time and by developments shaped and brought about by the parties themselves, that 'nothing will be gained if an altered factual situation is com-pelled to await a decision applicable to an entirely different set of facts,'" this Court ordered the remand of the cases to the industrial court for further action as warranted by the environmental circumstances.

Against the above backdrop, the facts noted by the industrial court that the agreement dated January 6, 1965 between the CLU and the company was actually acknowledged before a notary public only on January 15, 1965 (after the MME's petition for certification election challenging the CLU's majority status had been filed on January 7, 1965) and that "it was only on the agreement of January 6, 1965 that the respondent company seemed to have actively and compulsorily exercised its rights to terminate its employees under certain conditions due to redundancy" gain great significance.

The company thereby at its own risk, aware as it was of the binding effect of the retirement age of 60 fixed in the subsisting agreement, which by its own terms "is the full settlement between the parties for the duration (t)hereof" (Article XVI) and of the uncertain majority status of the CLU by virtue of the disaffiliation of a great number of its members who joined the MME, entered into the so-called supplementary agreement of January 6, 1965 and sought to enforce the reduced retirement age of 55 therein provided, notwithstanding the ex-press disclaimer therein that it "shall not in any way be con-sidered as a renegotiation or change in any term or condition in the Working Agreement of April 8, 1963 . . . and that said Working Agreement ... will continue in full force and effect until its expiration date, without modification of any kind what-ever."

Prior to the agreement dated January 6, 1965 or January 15, 1965, the date of its acknowledgment, as noted by the industrial court, the company had not sought to actively and compulsorily retire its employees at 55 or to terminate them under its so-called excess employees or redundancy program. The split of its predecessor company, Stanvac, into Esso and Mobil Philippines, which caused its so-called redundant employees allegedly by its absorption of all the working force in Luzon, had occurred since 5 years ago in 1960. Yet, it had renewed on April 8, 1963 a three-year collective bargaining agreement with the CLU as the full settlement of the terms and conditions of employment of its employees for the duration of the agreement.

The company was apparently satisfied with the status quo of its relations with the employees as long as they all pertained to the CLU, for it had agreed to no cutbacks of redundant employees, nor does it claim to have incurred losses in its business.[10] Yet, when the MME came on the scene and claimed to be entitled to be the recognized representative of the employees under the subsisting agreement, it forced the situation and entered into the agreement of January 6, 1965 with the CLU to advance the retire-ment age to 55 and to enforce other cut-backs of its employees, knowing full well that the very authority of the CLU to represent the employees who had precisely disaffiliated from the CLU and joined the MME was open to serious question and was being ven-tilated before the industrial court.

Then, too, even if the CLU could legally be considered by it as the representative of the employees, the CLU had no authority to negotiate on, much less waive, the vested contractual right of the employees to their security of employment up to age 60. It hardly seems disputable, then, that its agreement of January 6, 1965 with the CLU served both the company's and the CLU's ends to thwart the majority support for the MME, which had won the certification election held on March 22, 1965. Thus, in their com-mon stand in CLU vs. CIR, supra, with the passage of time, they did succeed in effect in nullifying the results of the election and by virtue of the company's sudden realization of its redundancy program and unrelenting enforcement thereof, pursuant to its January 6, 1965 agreement with the CLU, were able to use it to represent to this Court in the said case that "the employee

com-position has substantially changed because a great number of the employees and laborers in the Pandacan Terminal unit have left their employment, retired, or been compulsorily laid off with the approval of the CIR."

The industrial court's disauthorization of the advanced retirement must, therefore, be affirmed. However, in view of the time that has elapsed since its decision of April 27, 1966 without its reinstatement order for the employees prematurely retired at 55 years or over and below 60 years having been implemented due to this appeal, and they must by now have reached the stipulated retirement age of 60, the award should be modified to the effect that all such compulsorily prematurely retired employees shall be paid back wages from date of such premature retirement to the date of their contractual compulsory retirement at age 60; they shall be entitled likewise to the retirement benefits stipulated under the collective bargaining agreement of April 8, 1963 or subsequent renewals thereof from which must be deducted, however, the amount of any benefits received by them on account of and at the time of their premature retirement.

2. Conformably to the foregoing, respondent court's denial of the MME's two demands against the abolition of the positions of assistant truck drivers or truck helpers and fillers and against the company's change of the terms and conditions of employment of employees assigned to the MIA or JOCASP (demands Nos. 1 and 3, resolved in paragraph 1 (a) and (c) of the decision's dispositive part, *supra*) should be set aside.

The two separate positions of assistant truck drivers or truck helpers and fillers, with their corresponding wage rates, were duly provided for and defined in the collective bargaining agreement. The assistants' work in the care of the huge delivery trucks, some of whom have 24,000 liters capacity and several compartments, and in the unloading of products at delivery points and standing by with a fire extinguisher while the driver operates the truck's pumping unit for unloading, the fillers' work of loading the tank trucks at the terminal compound, and the transfer of their duties to the driver alone, who was given an increased wage of P1.60 a day for the filling of the truck and driving without a helper, were discussed by the parties at the trial.

The MME also objected to the assignment to the Manila International Airport or JOCASP units of the company of employees formerly assigned to the Pandacan terminal, without transportation and meal allowances which were discontinued by the company, notwithstanding the additional financial burden on the employees who had made their residence at Pandacan, which instead gave them a wage increase of P1.60 per day.

Respondent court denied the MME's demands, ruling that it did not wish to substitute its judgment "for a purely management function who is in a better position to determine its day to day business operations."

The actions of the company in abolishing the positions and withdrawing the benefits previously enjoyed by the employees by virtue of its agreement of January 6, 1965 with the CLU, whose right to represent the employees was being challenged by the MME, were tainted, however, as stated above, by their common end of thwarting the majority support for the MME. Indeed, as of the time of the execution of said agreement of January 6, 1965, whereby the CLU strangely enough yielded hard-won benefits and terms of employment in the collective bargaining agreement, the record does not indicate that the company was justified in considering the CLU as the majority bargaining representative, for its loss of majority status was in fact borne out by the results of the March 22, 1965 certification election. The benefits of the subsisting collective bargaining agreement may not be peremptorily modified without the 30-day notice required by law^[11] nor summarily set aside and disregarded, since relations between capital and labor are not merely contractual but are impressed with public interest such that labor contracts must yield to the common good.^[12] There is no claim here that the employees had been duly notified by the CLU of, much less that they had ratified the modifications provided in the January 6, 1965 agreement which worked against their interest.^[13]

3. Respondent court's resolution of the MME's two other demands (Nos. 2 and 5, resolved in paragraph 1 (b) and

(d) of the decision's dispositive part, *supra*), allowing the closure of the company's can plant and denying the reinstatement of the MME's vice president and secretary, the former having voluntarily applied for and secured termination benefits, apparently bear the MME's acquiescence. They have not been assigned as errors in the MME's brief and respondent's court's action on these two items is affirmed.

4. On the MME's sixth demand (No. 9), respondent court's resolution declared valid the memorandum agreement of January 6, 1965 assailed by the MME "without prejudice to issues arising from the same and now pending in CIR Cases Nos. 3903-ULP, 3934-ULP, 1459-MC, 4289-ULP and 4301-ULP as mentioned in paragraph 7 of the Return to Work Agreement of November 12, 1965." This appears to be in consonance with the parties' express reservation for separate determination of other issues in the other cases pending in other branches of the industrial court, dealt with in the first part of this decision. The MME in its brief has not raised specific particulars wherein its members have been pre-judged by said agreement and on which the Court can pass judgment. Respondent court, while declaring the said agreement valid, made the express reservation that it was not passing upon the MME's charges of discrimination on the part of the company in the implementation of the agreement and expressly held that "Both parties it must be reiterated, have reserved these discriminatory aspects for determination in the different cases now pending, also in this Court. Since these matters are not necessary in the determination of the issues before this Court certainly their final resolution are left to the various cases in the other salas." Respondent court's action, as thus qualified, is therefore affirmed.

5. With regard to the MME's demand that the company turn over to it the union dues checked off under the company's collective bargaining agreement with the CLU from employees who disaffiliated from CLU and instead joined it (MME), respondent court had dismissed the same, on the ground that its resolution properly pertained to the certification election case between the rival unions. Respondent court committed no error in refusing MME's demand for the turn over to it of the checked off dues, since its right thereto depended upon its officially re-placing the CLU as the certified bargaining representative of the employees.

The MME contends in its brief on appeal, however, that respondent court erred in allowing the company to continue checking off the union dues for the CLU despite the employees disaffiliation from said union and their written individual revocation of their previous check-off authorizations. The company in turn justified its action of continuing to make such deductions and remitting the checked-off dues to the CLU on the ground that its collective bargaining agreement with the CLU provided that the check-off authorization would be irrevocable for the three-year duration of the agreement as a security for the union (CLU).

It was error on the part of respondent court to allow the company to continue the check off of dues for the CLU of employees who had withdrawn their authorization by virtue of their affiliation with the MME. As stated by Justice Montemayor in *Pagkakaisa.. (PAFLU) vs. Enriquez*,^[14] the employees' check off authorization, even if declared irrevocable, is good only as long as they remain members of the union concerned, because as such members they were obliged to pay the corresponding dues and assessments to their union; "(H)owever, the moment that they separated from and left the union and joined another labor organization, then they were no longer obliged to pay said dues and assessments; naturally, there would be no longer any reason or occasion for the company to continue making deductions."

However, since after the expiry of the CLU's bargaining agreement on December 31, 1966, respondent court had directed that all union dues checked off from all employees be deposited in court pending the results of the new certification election (Case No. 1820-MC) and the company duly complied therewith,^[15] the question has become moot.

ACCORDINGLY, judgment is hereby rendered affirming the decision appealed from insofar as paragraph 1,

sub-paragraphs (b), (d) and (e) as well as paragraph 2, sub-para-graph (a) of the dispositive part thereof (supra)[16] are concerned; the award in said paragraph 2(a) disauthorizing the advanced retirement of employees is however modified in the manner indicated in the last paragraph of paragraph 1 of this decision.[17] The respondent court's denial of the two demands covered in paragraph 1(a) and (c) of the dis-positive part of the appealed decision is set aside, and the abolished positions and with-drawn benefits are ordered restored, as prayed for. With costs in both cases against Esso Standard Eastern, Inc.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal Zaldivar, Ruiz Castro, Fernando, Villamor, and Makasiar, JJ., concur.

Barredo, J., reserves his vote.

[1] These four demands were numbered Nos. 4, 8, 10 and 11 in the list filed by the union.

[2] The eleventh demand (No. 6) was that the company should not declare any position redundant without notice or hearing the side of the unions. It was considered by the trial court as a restatement of the union's stand against the company's "redundancy program" for reassignment of excess employees and abolition of certain job positions, and is taken up in the trial court's decision.

[3] "SEC. 10. Labor Disputes in Industries Indispensable to the National Interest. -- When in the opinion of the President of the Philippines there exists a labor dispute in an industry indispensable to the national interest and when such labor dispute is certified by the President to the Court of Industrial Relations, said Court may cause to be issued a restraining order forbidding the employees to strike or the employer to lock-out the employees, pending an investigation by the Court, and if no other solution to the dispute is found, the Court may issue an order fixing the terms and conditions of employment.

[4] Commonwealth Act No. 103.

[5] *Idem*, section 13; *Luzon Stevedoring Corporation vs. C.I.R.*, 15 SCRA 660, 677 (Dec. 31, 1965).

[6] See *Phil. Steam Navigation Co. vs. Phil. Marine Officers Guild, et al.*, 15 SCRA 174 (Oct. 29, 1965), where various unfair labor practices filed by the union against three shipping companies as well as against the union were jointly tried with the case over the certified industrial dispute, and a single decision rendered resolving all the cases and issues.

[7] Emphasis supplied.

[8] See *Heirs of T. M. Cruz vs. C.I.R.* and *Bulos vs. C.I.R.*, 30 SCRA 917 (Dec. 27, 1969) and *La Campana Food Products Inc. etc. Employ-ees' Association vs. C.I.R.*, 18 SCRA 314 (May 22, 1969).

[9] L-24320 and L-24421, jointly decided. 18 SCRA 624 (Nov. 12, 1966); emphasis supplied.

[10] *LVN Pictures Employees and Workers Assn. vs. LVN Pictures, Inc.*, 35 SCRA 147 (Sept. 30, 1970).

[11] "SEC. 13. x x x (W)here there is in effect a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate or modify such agreement, unless it has served a written notice upon the other party of the proposed termination or modification at least thirty days prior to the expiration date of the agreement, or in the absence of an ex-press provision concerning the period of validity of such agreement prior to the time it is intended to have such termination or modification take effect. " (RA 875).

[12] *Majestic & Republic Theaters Employees Assn. vs. CIR*, 4 SCRA 457 (1962), citing Art. 1700, Civil Code.

[13] See Heirs of T. M. Cruz vs. CIR and Bulos vs. CIR, *supra*, fn. 8.

[14] 108 Phil. 1010, 1018.

[15] ESSO's brief in L-26346, p. 91.

[16] At pages 12 and 13 of this decision.

[17] At page 17 of this decision.

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