

**PETER PAUL PHILIPPINES CORPORATION, PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION, NORBERTO
VILLADIEGO, ROMULO GARCIA, ROLANDO CARINGAL, RESTITUTO
CONCHELA, FELICIANO AQUIL...**

G.R. No. 103219. May 18, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

The issue before us is the correct interpretation of a collective bargaining agreement. This is a legal question. There is no dispute about the facts.

The private respondents were employed by the petitioner as company guards. On April 28, 1984, PD 1919 was issued providing inter alia that no license shall be issued to any company guard force with less than thirty members. Consequently, the petitioner's guard force, being less than the required number, was disbanded. On March 11, 1985, the services of the private respondents were terminated. All of them were granted separation pay, which they accepted without protest.

On June 15, 1989, the private respondents filed a complaint against the petitioner for not giving them the right to recommend their substitutes in accordance with Article IV of their collective bargaining agreement. The pertinent provisions follow:

VACANCIES

With the exception of those employees terminated for cause pursuant to the attached retirement plan, any vacancy occurring due to the death, disability or retirement of an eligible, regular employee under said Retirement Plan shall be filled on a trial basis by a recommendee of the heir of the deceased, disabled, or retired employee if found to be 18 years of age or over for males, 21 years of age or over for females, but not exceeding 45 years of age, provided that they are suitable for the job, physically and medically, except if already employed on regular status.

In case no substitute has been nominated within the period of 30 days from the date of the vacancy, the COMPANY shall have the exclusive right and discretion to appoint a substitute of its choice to said vacancy. In case a substitute is in fact nominated but said nominee failed to qualify for the vacancy, a replacement nominee must be named within seven (7) days from the date of disqualification of the original nominee. If this privilege is not availed of, Union may nominate a qualified substitute and management upon its discretion, may place the said nominee on trial.

The trial period shall extend up to 3 months, after which time the nominee or recommendee may be appointed "Regular" if found satisfactory or removed from said position.

In the event of reduction of personnel due to technological changes, those employees affected by such reduction may be offered any suitable available permanent vacancy. (Emphasis supplied)

On February 22, 1991, Labor Arbiter Ambrosio R. Sison rendered judgment in favor of the private respondents[1] and required the petitioner to allow them to recommend their substitute in line with the retirement plan. He also awarded them attorney's fees. The decision relied heavily on an earlier NLRC case entitled *Macasaet v. Peter Paul*,[2] where it was held in part:

The argument, therefore, that the position of security guard from which complainant-appellant was retired was already abolished by virtue of PD 1919 is therefore of no moment in the light of the fact that Nenita Montierro, a substitute of another retired security guard was admitted not as a guard but to the company's hospital. Besides, we have taken note of the fact that nothing in the provisions of substitution, in question provides that the substitute should fill exclusively the position vacated by the retiree. The said provision, in the light of past experience with the company may safely be construed as a substitution as an employee of the company and not exclusively as a substitution to the position vacated within the company.

In fine, we find and so hold that complainant herein cannot be divested in part of his right and privileges provided under the company's retirement plan. Clearly, he has a vested right to it. To divest him of it is an outright discrimination which we cannot in conscience countenance.

On appeal, the NLRC affirmed,[3] also laying emphasis on the *Macasaet* case. The petitioner then came to this Court, complaining that the public respondent committed grave abuse of discretion in sustaining the labor arbiter. Specifically, it argues that the private respondents are not covered by the collective bargaining agreement; that they are not entitled to the claimed right of substitution; and that their claim is barred by the CBA, as well as by laches and prescription.

Required to comment, the Solicitor General expressed support for the petition and suggested that the NLRC be given a chance to submit its own comment. It did so but rather half-spiritedly, five of its six-page comment being devoted to the narration of the facts. The single page of justification maintained that the private respondents should be considered regular employees rather than company guards. The private respondents had a different view. They said that the question of whether or not they were covered by the collective bargaining agreement was basically factual and that the right of substitution was based on a company policy to which they had acquired a vested right.

We rule for the petitioner.

It is quite obvious that the private respondents, as company guards, are outside the scope of the collective bargaining agreement, which provides in its Article I (A) as follows:

The COMPANY recognizes the UNION as the sole and exclusive agent for all regular non-supervisory employees excluding supervisory, Security Guards, and the Monthly Employees. (Emphasis supplied)

The contention that the private respondents are regular employees because their services are "very necessary" to the security of the company cannot prevail against the unmistakable intent of the provision. To allow the private respondents' interpretation would open the same right of substitution to the other employees therein excluded, to wit, supervisory employees and monthly employees, whose services are also "very necessary" to the petitioner.

Even on the assumption that the private respondents are covered by the collective bargaining agreement, their claim of substitution would still have to be denied.

There is, to begin with, no vacancy to be filled by the private respondents' recommended substitutes. The reason is that the private respondents were not removed or otherwise separated from their positions; it was the positions themselves that were abolished. It is elementary that abolition does not create a vacancy. Vacancy presupposes an existing position without an incumbent.

There are four kinds of vacancies, to wit, the original, the constructive, the accidental, and the absolute; and in every case there is a position to be filled.[4] In the case at bar, the company security force was disbanded because it could not secure a license and as a consequence all the positions therein ceased to exist. The substitution of the private respondents was no longer possible because there were no more positions to be filled.

Furthermore, the CBA clearly specifies the different causes of vacancy that will give rise to the right of substitution. The vacancy must occur "due to the death, disability or retirement" of the employee. The provision does not include the abolition of the position, which is a separate mode of terminating employment and was the cause of the private respondents' separation.

Reliance on the Macasaet case is misplaced because it is not on all fours with the present petition. The cause of the separation in that case was retirement of the security guard, not abolition of his position. Moreover, contrary to the respondents' suggestion, the appointee in that case was not really a substitute because she was appointed to a different position, i.e., in the petitioner's hospital, and on the strength of her own qualifications. She was not employed merely because of the retired guard's recommendation and neither was she appointed as his substitute.

The other equally formidable obstacle to the private respondent's claim is their delay in asserting it. The provisions they themselves invoke clearly required them to nominate their substitutes within thirty days from the date the vacancy occurred. Even if it were conceded that the abolition of their positions did result in the corresponding vacancies, the same occurred on the date of their separation, to wit, March 11, 1985. That was when their cause of action accrued. Yet, they invoked it only on June 15, 1989, or more than four years later.

In fact, their complaint was tardy even under Article 290 of the Labor Code, which provides that all complaints for unfair labor practices under Book V should be filed within one year and shall thereafter be barred. The same article states that offenses penalized under the Code shall prescribe within three years from their commission.

Even if there were really a company policy allowing a separated employee to recommend his substitute, such policy cannot be the basis or source of a demandable legal right. As a mere gesture of goodwill on the part of the petitioner, it cannot be insisted upon by the private respondents, who are clearly not allowed this accommodation under the CBA.

The Court finds that the public respondent did commit grave abuse of discretion in awarding the private respondents a right to which they were not entitled. While it is the policy of the Court to resolve doubts in favor of labor whenever it conflicts with management, that policy applies only when there are indeed doubts to be resolved.

We find none here. The provisions of the CBA are clear. It is the private respondents' claim that is ambiguous, and we must therefore reject it.

ACCORDINGLY, the petition is GRANTED. The challenged decision of the NLRC is SET ASIDE. The temporary restraining order dated March 30, 1992, is made PERMANENT. It is so ordered.

Griño-Aquino, Bellosillo, and Quiason, JJ., concur.

[1] Rollo, p. 58.

[2] RB-IV-2-1547-85.

[3] Rollo, pp. 69-75.

[4] Mechem, Law of Public Officers, Sec. 127.

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