# KASAPIAN NG MALAYANG MANGGAGAWA SA COCA-COLA (KASAMMA-CCO)-CFW LOCAL 245, PETITIONER, VS. THE HON. COURT OF APPEALS AND COCA-COLA BOTTLERS’ PHILS., INC., RESPONDENTS.

*G.R. NO. 159828. April 19, 2006*

Ponente: CHICO-NAZARIO, J.

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**CHICO-NAZARIO, J.:**

Before Us is a Petition for Review on Certiorari under Rule 45 of the Rules of Civil Procedure assailing the Decision[1] of the Court of Appeals which affirmed the Decision[2] of public respondent National Labor Relations Commission (NLRC) dismissing petitioner's complaint against private respondent for violations of the Memorandum of Agreement (MOA)/Collective Bargaining Agreement (CBA), nonpayment of overtime pay and 13[th]month pay, illegal dismissal, unfair labor practice, recovery of moral and exemplary damages and attorney's fees.

On 30 June 1998, the CBA for the years 1995-1998 executed between petitioner union and private respondent company expired. As the duly certified collective bargaining agent for the rank-and-file employees of private respondent's Manila and Antipolo plants, petitioner submitted its demands to the company for another round of collective bargaining negotiations. However, said negotiations came to a gridlock as the parties failed to reach a mutually acceptable agreement with respect to certain economic and non-economic issues.

Thereafter, petitioner filed a notice of strike on 11 November 1998 with the National Conciliation and Mediation Board (NCMB), National Capital Region, on the ground of CBA negotiation deadlock. With the aim of resolving the impasse, several conciliation conferences were conducted but to no avail as the parties failed to reach a settlement. On 19 December 1998, petitioner held the strike in private respondent's Manila and Antipolo plants.

Subsequently, through the efforts of NCMB Administrator Buenaventura Magsalin, both parties came to an agreement settling the labor dispute. Thus, on 26 December 1998, both parties executed and signed a MOA providing for salary increases and other economic and non-economic benefits. It likewise contained a provision for the regularization of contractual, casual and/or agency workers who have been working with private respondent for more than one year. Said MOA was later incorporated to form part of the 1998-2001 CBA and was thereafter ratified by the employees of the company.

Pursuant to the provisions of the MOA, both parties identified 64 vacant regular positions that may be occupied by the existing casual, contractual or agency employees who have been in the company for more than one year. Fifty-eight (58)[3] of those whose names were submitted for regularization passed the screening and were thereafter extended regular employment status, while the other five failed the medical examination and were granted six months within which to secure a clean bill of health. Within the six-month period, three[4] of the five employees who have initially failed in the medical examination were declared fit to work and were accorded regular employment status. Consequently, petitioner demanded the payment of salary and other benefits to the

newly regularized employees retroactive to 1 December 1998, in accord with the MOA. However, the private respondent refused to yield to said demands contending that the date of effectivity of the regularization of said employees were 1 May 1999 and 1 October 1999. Thus, on 5 November 1999, petitioner filed a complaint before the NLRC for the alleged violations of the subject MOA by the private respondent.

Meanwhile, a certification election was conducted on 17 August 1999 pursuant to the order of the Department of Labor and Employment (DOLE) wherein the KASAMMA-CCO Independent surfaced as the winning union and was then certified by the DOLE as the sole and exclusive bargaining agent of the rank-and-file employees of private respondent's Manila and Antipolo plants for a period of five years from 1 July 1999 to 30 June 2004. On 23 August 1999, the KASAMMA-CCO Independent demanded the renegotiation of the CBA which expired on 30 June 1998. Such request was denied by private respondent on the contention that there was no basis for said demand as there was already an existing CBA which was negotiated and concluded between petitioner and private respondent, thus, it was untimely to reopen the said CBA which was yet to expire on 30 June 2001.

On 9 December 1999, despite the pendency of petitioner's complaint before the NLRC, private respondent closed its Manila and Antipolo plants resulting in the termination of employment of 646 employees. On the same day, about 500 workers were given a notice of termination effective 1 March 2000 on the ground of redundancy. The affected employees were considered on paid leave from 9 December 1999 to 29 February 2000 and were paid their corresponding salaries. On 13 December 1999, four days after its closure of the Manila and Antipolo plants, private respondent served a notice of closure to the DOLE.

As a result of said closure, on 21 December 1999, petitioner amended its complaint filed before the NLRC to include "union busting, illegal dismissal/illegal lay-off, underpayment of salaries, overtime, premium pay for holiday, rest day, holiday pay, vacation/sick leaves, 13th month pay, moral and exemplary damages and attorney's fees."

On 14 January 2000, KASAMMA-CCO Independent filed a notice of strike due to unfair labor practice with the NCMB-NCR. Failing to arrive at an amicable settlement of the labor dispute with the private respondent, KASAMMA-CCO Independent held a strike from 9 March 2000 to 4 May 2000. On 4 May 2000, the Secretary of Labor issued an order assuming jurisdiction over the labor dispute subject of the strike and certified the case to the NLRC for compulsory arbitration.

On 9 July 2001, the NLRC rendered its Decision dismissing the complaint for lack of merit. According to the Commission:

> Evaluating, with utmost caution, both parties' contrasting factual version, supporting proofs, related legal excerpts and applicable jurisprudential citations, we discern that, under the Memorandum of Agreement (MOA) dated December 26, 1998, the 61 regularized employees are not entitled to their claims for the P60.00 per day salary increase, mid-year gratuity pay of P5,000.00, one sack of rice, and overtime and thirteenth month differentials effective December 1, 1998 onward.
>
> Initially, under the MOA, only the employees who were regular on July 1998 and continued being such upon the signing of the MOA on December 26, 1998 deserve retroactive payment of the MOA benefits amounting to a lump sum of P35,000.00.
>
> This entitlement springs from the following pertinent provisions of the MOA:
> "All covered employees who were regular as of July 1, 1998 and upon the signing of this Agreement shall each be entitled to a lump sum in the amount of THIRTY FIVE THOUSAND PESOS (P35,000.00) which shall, subject to the ratification of the employees within the bargaining unit, be released on or before 31 December 1998.


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> "The aforesaid amount shall be in lieu of the wage increase as well as THE Operation Performances Incentive DESCRIBED UNDER Item 11(B) hereof, all premium pay, the 13th month and 14th month pay differentials, sick leave and vacation leave credits for the period July 1, 1998 to December 31, 1999." Underscoring supplied)

In the case at bar, since the 61 regularized employees were regularized only on May 1, 1999 and October 1, 1999, as the case may be, they therefore have no right whatsoever to claim entitlement to the MOA benefits.

Moreover, CFW Local 245's insistence that the 61 regularized employees became regular on December 1, 1998 is non sequitor. It merely flows from its specious interpretation of the MOA provisions. The MOA does not provide that non-regular employees who would be deployed to fill up vacant plantilla positions covered by the 1998 and 1999 manpower budget of CCBPC should be automatically considered regular effective December 1, 1998. What the MOA stipulates are that: 1) effective December 1, 1998, non-regular employees who have been occupying the position to be filled up for at least one year shall be given priority in filling up the positions; and 2) that in that case, they will not undergo the company's regular recruitment procedures, like interviews and qualifying examinations.

The only importance of the date of December 1, 1998 is its being the reckoning date from which the one year employment requirement should be computed. Consequently, under the MOA, only the non-regular employees who had worked with the company for at least a year counted retroactively from December 1, 1998 should be given priority in the filling up of vacant plantilla positions.

Anyway, even assuming ex gratia argumenti that the 61 regularized employees were regularized effective December 1, 1998, they, still, are not entitled to the MOA benefits. As discussed above, only employees who were regular on July 1, 1998 and were still so until the signing of the MOA on December 26, 1998 could be covered by the retroactivity clause.

Furthermore, entitling the 61 regularized employees to the MOA benefits would certainly infringe the well-entrenched principle of "no-work-no-pay". Since such employees started becoming regular only on May 1, 1999 and October 1, 1999, as the case may be, it would thus be most unfair to require CCBPI to pay them for their unworked period, for they would certainly, be unjustly enriched at the expense of CCBPI.

We also hold that the allegedly redundant six hundred thirty-nine (639) employees were not illegally dismissed.

Initially, there was just cause for the employees' dismissal.

It bears to stress that, aimed at 1) attaining efficiency and cost effectiveness, 2) maximizing its production capacity and 3) ensuring that its customers obtain products manufactured only under the most stringent quality standards of CCBPI's modern, technologically advanced production plants, CCBPI conducted an extensive study on the operational mechanics of its Manila and Antipolo plants.

From this study, it was established that there was inadequate water supply at CCBPI's Manila and Antipolo plants. As a consequence, the company was constrained to transport water from several sources to its production line in Manila in 1998 and 1999. Worse, it was discovered that the quality of water supply was fast deteriorating due to the rise of its salt level. This reality prompted the company to reduce its production capacity. Moreover, the bottling process of treating this water of decadent quality resulted in higher production costs. Under these twin conditions, the company could not thus efficiently continue on with its operations.

The study also reveals the decadent state of the production equipment of CCBPI's Manila and Antipolo Plants. Their production lines were among the oldest and hence, had very low line efficiency. In comparison with the line efficiency of 71.18% of the company's other plants, the Manila and Antipolo Plants had only efficiency ratings of

61.09% and 58.39%, respectively. Whereas the other production lines had an average wastage rating of 1.01%, the twin plants had a higher average wastage ratings of 2.05% and 1.77%, respectively. The company's production studies in 1998 and 1999 likewise reveal substantial issues on Good Manufacturing Practice (GMP) and process control for such plants.

From this study, the impracticability of rehabilitating the twin plants was also found out. Although the problems cited may be remedied by way of a major reconstruction, this would, however, entail an investment of huge capital. Further, the congestion of the twin plants' sites would render impracticable such a major reconstruction. Besides, there was utter lack of effective solution to the retrograding water supply.

The foregoing significant facts are substantially evidenced by the Technical Evaluation of Production Requirements, Annex "20", CCBPI's Rejoinder; Affidavit of its Operations Manager dated 3 March 2000, Annex "1", its Position Paper dated 20 July 2000; and Certification dated May 21, 2001 of Mr. Bruce A. Herbert, its Sur-Rejoinder.

To solve the problems cited, however, CCBPI, as soundly recommended by the study, integrated the production capacities of the different CCBPI modern and technologically advanced production facilities. This imperative integration indispensably prompted CCBPI to close, its production lines at the Manila and Antipolo Plants.

This measure taken by CCBPI indeed draws jurisprudential justification from the following sound pronouncement of the Supreme Court:

> "Business enterprises today are faced with the pressures of economic recession, stiff competition and labor unrest. Thus, businessmen are always pressured to adopt certain changes and programs in order to enhance their profits and protect their investments. Such changes may take various forms. Management may even choose to close a branch, department, a plant, or a shop." (Philippine Engineering Corp. vs. CR, 41 SCRA 89)

Urgently propelled by this closure, CCBPI inevitably redundated the services of 639 employees based at the Manila and Antipolo Plants. The fact that their services became superfluous or in excess of what were reasonably demanded by the actual requirements of the company as a consequence of the closure certainly shows the undertone of good faith on CCBPI's part in resorting to the redundation measure.

Well in support of this urgent economic measure taken is the following postulation of the Supreme Court in the case of Wiltshire File Co., Inc. vs. NLRC, et al., 193 SCRA 665:

> "We believe that redundancy, for purposes of our Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is a superfluity, and superfluity of a position or positions may be the outcome of a number of facets, such as over hiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprises. The employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business.
>
> "x x x.
>
> "x x x The characterization of (the employee's) service as no longer necessary or sustainable, and therefore properly terminable, was an exercise of business judgment on the part of (the employer). The wisdom or soundness of such characterizing or decision was not subject to discretionary review on the part of the Labor Arbiter nor of the NLRC so long, of course, as violation of law or merely arbitrary and malicious action is not shown. X x x The determination of the continuing necessity of a particular officer or position in a business corporation is management's prerogative, and the courts will not interfere with the exercise of such so long as no abuse of discretion or merely arbitrary or malicious action on the part of management is shown."

Another reason why the dismissal of the 639 employees was legal is that the same was attended by the observance of the requirements of due process. Indeed, as early as 9 December 1999, more than thirty (30) days prior to their actual dismissal on 1 March 2000, CCBPI served on the affected employees a written notice informing them of the closure of the two plants and subsequent redundation. Later, by 13 December 1999, CCBPI filed with the DOLE the required written notice informing it of the subject closure and consequent redundation.

This finding is perfectly in line with the following applicable legal excerpts:

> "ART. 283. Closure of establishment and reduction of personnel. ---The employer may also terminate the employment of any employee due to ".redundancy". or the closing or cessation of operation of the establishment or undertaking "by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof."
>
> "For termination of employment based on just causes defined in Article 282 of the Labor Code:
>
> (1) A written notice served [on] the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side;
>
> (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
>
> (iii) a written notice of termination served on the employee, indicating that upon, due consideration of all the circumstances, grounds have been established to justify his termination.
>
> "For termination of employment as defined in Article 283 of the Labor Code, the requirement of due process shall be deemed complied with upon the service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least thirty days before [effectivity] of the termination, specifically the ground or grounds for termination." (Par. D, Section 2, Rule 1, Book VI, Omnibus Rules Implementing the Labor Code)

Needless to state, having been lawfully redundated, as comprehensively discussed above, the affected employees are entitled to payment of separation pay equivalent to one (1) month pay for every year of service, pursuant to Article 283 of the Labor Code which provides:

> "In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to separation pay equivalent to at least his one (1) month pay or to at least One (1) month pay for every year of service, whichever is higher."

However, due to the economic adversity besetting our workers today brought about by the ever increasing standards of living, CCBPI realized that such a legal package was no longer conformable with such on obtaining economic reality. Accordingly, CCBPI granted the affected employees separation package much bigger than that legal separation package. Specifically, CCBPI paid affected employees with less than fifteen (15) years of service 150% monthly salary for every year of service and those with fifteen (15) years and above of service 195%.

x x x x

We, moreover, view that CCBPI is not guilty of unfair labor practice.

Contrary to KASAMMA-CCO-Independent's contention, CCBPI did not resort to the closure of Manila and Antipolo plants and resultant redundation of their 637 employees just to prevent the renegotiation of the CBA entered into between CCBPI and CFW Local 245. First, there is no substantial evidence on record supporting this claim. Secondly, as exhaustively explained supra, CCBPI's decision to undertake the subject closure and


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subsequent redundation was due to legitimate business considerations, namely 1) the production lines at the two plants had very low line efficiency; 2) the quality of water supply at such plants was rapidly deteriorating; and 3) the rehabilitation of such plants was not feasible due to the huge capital investment required as well as the congestion of their areas.

x x x x

WHEREFORE, premises considered, KASAMMA-CCO Independent, and CFW Local 245's charges in the instant labor dispute for non-grant of the CBA salary increase, mid-year gratuity, one sack of rice, overtime pay and thirteenth (13th) month pay; illegal dismissal; unfair labor practice; and recovery of moral and exemplary damages and attorney's fees are hereby DISMISSED for lack of merit.

Petitioner Coca-Cola Bottlers Phils., Inc., however, is directed to grant the separation package adverted above to the affected employees who have not yet received the same. Further, the company is ordered to accord the affected employees priority in rehiring in the event the company needs, in the future, additional personnel.[5]

Petitioner's motion for reconsideration was denied in a resolution dated 24 September 2001, thus on 22 November 2001 petitioner filed a petition for certiorari before the Court of Appeals, which was disposed by the appellate court in this wise:

> After painstaking efforts and a careful examination of the records, we rule against the contention of the petitioner. The conflicting factual submissions of the parties in the case at bar cannot close our eyes to the fact that the instant case pose upon an obligation on this Court to review and re-examine the factual findings and to re-evaluate the pieces of evidence which supported the conclusion of the public respondent in its disposition of the present controversy. This issue has already been settled in Deles, Jr. vs. NLRC [327 SCRA 540 (2000)], where the Supreme Court ruled:
> "On its face, petitioner's contention would require the Court to delve into the findings of fact a quo. This we cannot do. In the review of NLRC decisions through a special civil action for certiorari, we are confined only to issues of want of jurisdiction and grave abuse of discretion on the part of the labor tribunal. We are precluded from inquiring unto the correctness of the evaluation of that evidence that underpins the labor tribunal's conclusion on matters of fact. Nor could we examine the evidence, re-evaluate the credibility of the witnesses, nor substitute our findings of fact for those of an administrative body which has the authority and expertise in its specialized field. Arguably, there may even be an error in judgment. This however is not within the ambit of the extraordinary remedy of certiorari."

Moreover, the pronouncement of the High Tribunal in Dela Salle University v. Dela Salle University Employees Association [330 SCRA 363 (2000)], citing established jurisprudence, has clarified the guidelines in the resolution of petitions for certiorari involving labor cases in this wise:

> "As we reiterated in the case of Caltex Refinery Employees Association (CREA) vs. Jose S. Brillantes, the following are the well-settled rules in a petition for certiorari involving labor cases.First, the factual findings of quasi-judicial agencies (such as the DOLE), when supported by substantial evidence, are binding on this Court and entitled to great respect, considering the expertise of these agencies in their respective fields. It is well established that findings of these administrative agencies are generally accorded not only respect but even finality.Second, substantial evidence in labor cases is such amount of relevant evidence which a reasonable mind will accept as adequate to justify a conclusion.Third, in Flores vs. NLRC, we explained the role and function of Rule 65 as an extraordinary remedy. It should be noted, in the first place, that the instant petition is a special civil action for certiorari under Rule 65 of the Rules of Court. An extraordinary remedy, its use is available only and restrictively in truly exceptional cases - those wherein the action of an inferior court, board or officer performing judicial or quasi-judicial acts is challenged for being wholly void on grounds of jurisdiction.The sole office of the writ of certiorari is the correction of errors of jurisdiction including the

> commission of grave abuse of discretion amounting to lack or excess of jurisdiction. It does not include correction of public respondent NLRC's evaluation of the evidence and the factual findings based thereon, which are generally accorded not only great respect but even finality."

In the light of the rulings established under the abovecited cases, we find no ground for disturbing the factual findings of the public respondent vis-á-vis its resolution with regard to the issue of the validity of the claims of the newly-regularized members of the petitioner union, as the same is supported by substantial evidence and in accord with established jurisprudence herein cited. It must be stressed that factual findings of labor officials are conclusive and binding on the Supreme Court when supported by substantial evidence.

Anent the issue of the closure of the Manila and Antipolo plants of the private respondent which resulted in the termination from employment of 639 or 646 employees working under the said facilities, we find the same in order and in accord with law.

x x x x

It must be noted that in sustaining the contention of the private respondent on the said issue, the public respondent has relied on the grounds asserted by the private respondent as basis in effecting the closure and the resultant cessation of business operations in the aforesaid plants. The recent accretion to the corpus of our jurisprudence is the principle enunciated in National Federation of Labor vs. NLRC [327 SCRA 158 (2000)] which holds the view that:

> The closure of establishment contemplated under Article 283 of the Labor Code is a unilateral and voluntary act on the part of the employer to close the business establishment as may be gleaned from the use of the word "may" - it does not contemplate a situation where the closure of the business establishment is forced upon the employer and ultimately for the benefit of the employees.
>
> Although the Constitution provides for protection to labor, capital and management must also be protected under a regime of justice and the rule of law.

Hence, the claim of the petitioner that the technical evaluation of the private respondent which served as basis for the closure of the said facilities must be presented to the petitioner union first before the private respondent can implement the said action is bereft of legal basis. The same fate must suffer with respect to the claim of the petitioner that a prior consultation is a condition sine qua non as required under the Labor Code vis-á-vis the provision on the participation of the employees in the decision-making processes of the employer private respondent, before the latter can effectuate the said closure, is devoid of legal and jurisprudential basis.

As aptly stated by an authority in labor laws [Cesario A. Azucena, Jr., Everyone's Labor Code, 2001 Edition, p. 302], the author opined that even if the business is not losing but its owner, for reasons of his own, wants to stop doing business, he can lawfully do so anytime provided he is in good faith. He further lamented in saying that "just as no law forces anyone to go into business, no law compels anybody to stay in business."

Moreover, the private respondent has complied with the aforesaid requirements of the law when it decided to close the said establishments. The records disclose that the alleged redundant, or more appropriately, separated employees affected by the said closure were in fact individually served with a notice of termination. All of the subject employees were offered and given a separation package by the private respondent more than what is provided by the law and more than what is stipulated under their CBA, although, some refused to accept the said benefits, and insisted on their being reinstated. We take note that as of the present, 546 of the 639 terminated or separated employee-members of the petitioner union were ale to receive the said separation benefits. Moreover, the receipt of the said separation benefits was admitted by the petitioner. The Department of Labor and Employment (DOLE) was also notified of such closure through a letter sent by the private respondent dated

December 10, 1999.

The petitioner claims that the private respondent failed to comply with the one-month notice requirement as required under the said legal provision since the subject employees were no longer allowed to report for work effective immediately upon receipt of their termination notice. However, they were still paid their salaries effective from December 9, 1999 until February 29, 2000, although they did not anymore render service for the period. Significantly, this peculiar fact which petitioner claims as an indirect circumvention of the said law has already been addressed, albeit by analogy, in the recent case of Serrano v. NLRC [331 SCRA 341 (2000)]. In the said case, the Supreme Court held:

> In that case (Associate Labor Unions-VIMCONTU vs. NLRC [204 SCRA 913]), the employees and the then Ministry of Labor and Employment (MOLE) were notified in writing on August 5, 1983 that the employees' services would cease on august 31, 1983 but that they would be paid their salaries and other benefits until September 5, 1983. It was held that such written notice was "more than substantial compliance with the notice requirement of the Labor Code."
> Indeed, there was more than substantial compliance with the law in that case because, in addition to the advance written notice required under Art. 284 (now Art. 283) of the Labor Code, the employees were paid for five days, from September 1 to 5, 1993, even if they rendered no service for the period.Had private respondent given a written notice to the petitioner on October 1, 1991, at the latest, that effective October 31, 1991 his employment would cease although from October 1 he would no longer be required to work, there would be basis for private respondent's boast that "[p]ayment of this salary even [if he is] no longer working is effective notice and is much better than 30 days formal notice but working until the end of the 30 days period." This is not the case here, however. What happened here was that on October 11, 1991, petitioner was given a memorandum terminating his employment effective on the same day on the ground of retrenchment (actually redundancy).

x x x

WHEREFORE, premises considered, the instant petition is DISMISSED for lack of merit. The assailed decision dated July 9, 2001 and the Order dated September 24, 2001 issued by public respondent National Labor Relations Commission (NLRC) are hereby AFFIRMED. No costs.[6]

Petitioner's motion for reconsideration was denied in a resolution dated 5 September 2003. Hence, the instant petition.

Petitioner presents before this Court two issues for resolution, namely: 1) whether or not private respondent violated the terms and conditions contained in the MOA dated 26 December 1998 when it did not recognize the regularization of the 61 employees as effective on 1 December 1998; and 2) whether or not the closure of private respondent's Manila and Antipolo plants, resulting in the termination of employment of 646 employees, was legal.

In dismissing the petition before it, the Court of Appeals opined that the resolution of the validity of the claims of the newly regularized employees would entail a review and re-examination of the factual findings and the re-evaluation of the pieces of evidence which supported the conclusion of the NLRC in the latter's disposition of the instant controversy. We do not agree with the Court of Appeals. The said issue is not a question of fact which will necessitate the appellate court to again examine the evidence. It is, rather, a question of law. There is a question of law when the issue does not call for an examination of the probative value of evidence presented, the truth or falsehood of facts being admitted and the doubt concerns the correct application of law and jurisprudence on the matter.[7] On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts. When there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct is a question of law.[8]


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What is necessary in determining whether the private respondent violated the provisions of the MOA with respect to the date of regularization of the 61 employees is an interpretation of the pertinent provision of the MOA as agreed upon by the parties. It must be noted that both parties admit the existence of said MOA and that they have voluntarily entered into said agreement. Furthermore, neither of the parties deny that the 61 employees have indeed been regularized by private respondent. Clearly, as the facts are admitted by the parties, the appellate court does not have to inquire into the veracity of any fact in order to establish the rights of the parties. All that the Court of Appeals must do is to interpret the provisions of the MOA and resolve whether said regularization must be made retroactive to 1 December 1998, which according to petitioner is provided for under the said MOA. The MOA, being a contract freely entered into by the parties, now constitute as the law between them, and the interpretation of its contents purely involves an evaluation of the law as applied to the facts herein.

Thus, the issue being a question of law, this Court will now endeavor to resolve such matter. According to the pertinent provision of the MOA:

1. Non-economic issues

> A. Filling-up of vacant regular plantilla positions; regularization
>
> The company shall fill-up all vacant plantilla positions covered by the 1998 manpower budget as already identified by the Task Force created by the parties for the purpose following the following procedures:
>
> 1. Non-regular employee (casual, contractual or agency worker) who has already served the company and is presently occupying or has occupied the position to be filled-up for at least one (1) year shall be given priority in filling-up the position by converting his non-regular employment status to regular employment status, effective 01 December 1998 without need of undergoing through the company's regular recruitment procedures such as interview and qualifying examination. x x x[9]

It is the contention of petitioner that the date 1 December 1998 refers to the effective date of regularization of said employees, while private respondent maintains that said date is merely the reckoning date from which the one year employment requirement shall be computed. We agree with petitioner. It is erroneous for the NLRC to conclude that the regularization of the 61 employees does not retroact to 1 December 1998. A fastidious reading of the above quoted provision will clearly point to the conclusion that what is pertained to by the phrase "effective December 1, 1998" is the phrase immediately preceding it which is "converting his non-regular employment status to regular employment status." It will be defying logic to adopt private respondent's contention that the phrase "effective December 1, 1998" designates the period when the non-regular employees will be given priority in filling-up the positions, simply because the MOA was signed only on 26 December 1998. Therefore, it is logically absurd that the company will only begin to extend priority to these employees on a date that has already passed, when in fact they have already extended priority to these employees by agreeing to the contents of the MOA and signing said agreement. Consequently, we hold that the effectivity date of the regularization of the 61 employees was 1 December 1998.

We, too, cannot agree with the NLRC's rationale that entitling the 61 regularized employees to the MOA benefits would certainly infringe the well-entrenched principle of "no-work-no-pay," since they only became regular, according to private respondent, on 1 May 1999 and 1 October 1999. As stated in the MOA, only those who have worked with the company for one year as of 1 December 1998 and are still working for the company as of the signing of the MOA, will be considered for regularization. Evidently, it is erroneous for the NLRC to conclude that extending to them the benefits of the MOA would violate the principle of "no-work-no-pay" as they are actually rendering service to the company even before 1 December 1998, and continued to do so thereafter. Truly, they were accorded the status of regular employees precisely because they were rendering service to the company

for the required period.

Moreover, at this point it must be stressed that under Article 280 of the Labor Code, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. Also, under the law, a casual employee is only casual for one year, and it is the passage of time that gives him a regular status. Hence, even without the subject MOA provision, the 61 employees must be extended regular employment status after the lapse of one year. Even if we were to follow private respondent's contention that the date 1 December 1998 provided in the MOA is merely a reckoning date to determine who among the non-regular employees have rendered one year of service as of said date, all those who have been with the company for one year by said date must automatically be considered regular employees by operation of law. Therefore, contrary to the interpretation of the NLRC, private respondent violated the provision of the MOA when it did not consider the regularization of the 61 employees effective 1 December 1998, and accorded to them the full benefits of the MOA.

Relative to the issue of whether the closure of private respondent's Manila and Antipolo plants was legal, we agree in the conclusions of the NLRC and the Court of Appeals that the closure of said plants is for an authorized cause.

As correctly pointed out by the NLRC, the Court has already resolved that the characterization of the employee's service as no longer necessary or sustainable, and therefore properly terminable, is an exercise of business judgment on the part of the employer.[10] The wisdom or soundness of such characterizing or decision is not subject to discretionary review on the part of the Labor Arbiter nor of the NLRC so long, of course, as violation of law or merely arbitrary and malicious action is not shown.[11] The determination of the continuing necessity of a particular officer or position in a business corporation is management's prerogative, and the courts will not interfere with the exercise of such so long as no abuse of discretion or merely arbitrary or malicious action on the part of management is shown.[12] In the case at bar, the closure of the Manila and Antipolo plants and the resulting termination of the employment of 646 employees is not tainted with bad faith. As found by the NLRC, the private respondent's decision to close the plant was a result of a study conducted which established that the most prudent course of action for the private respondent was to stop operations in said plants and transfer production to other more modern and technologically advanced plants of private respondent.

Other than its mere allegations, petitioner union failed to show that the closure of the two plants was without factual basis and done in utter bad faith. No evidence was presented by petitioner to prove its assertion that private respondent resorted to the closure of the Manila and Antipolo plants to prevent the renegotiations of the CBA entered into between the parties. As adequately explained by the NLRC, the subject closure and the resulting termination of the 639 employees was due to legitimate business considerations, as evidenced by the technical study conducted by private respondent.

Anent the allegation that private respondent failed to comply with the notice requirements as provided by the Labor Code in the cessation of its operations, we have already settled this matter in a similar case which was accordingly cited by the appellate court. In the case of Serrano v. National Labor Relations Commission,[13] we held that:

> In that case [Associate Labor Unions-VIMCONTU v. NLRC (204 SCRA 913)], the employees and the then Ministry of Labor and Employment (MOLE) were notified in writing on August 5, 1983 that the employees' services would cease on August 31, 1983 but that they would be paid their salaries and other benefits until September 5, 1983. It was held that such written notice was "more than substantial compliance" with the notice requirement of the Labor Code.


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> Indeed, there was "more than substantial compliance" with the law in that case because, in addition to the advance written notice required under Art. 284 (now Art. 283) of the Labor Code, the employees were paid for five days, from September 1 to 5, 1993, even if they rendered no service for the period. x x x Had private respondent given a written notice to the petitioner on October 1, 1991, at the latest, that effective October 31, 1991 his employment would cease although from October 1 he would no longer be required to work, there would be basis for private respondent's boast that "[p]ayment of this salary even [if he is] no longer working is effective notice and is much better than 30 days formal notice but working until the end of the 30 days period.- This is not the case here, however. What happened here was that on October 11, 1991, petitioner was given a memorandum terminating his employment effective on the same day on the ground of retrenchment (actually redundancy).[14]

In the instant case, the employees were served notice on 9 December 1999 that their employment were being severed effective 1 March 2000; however they were no longer required to report for work but they will continue to receive their salary up to 29 February 2000. Therefore, as enunciated in the ruling in Serrano v. NLRC, said act of private respondent constitutes substantial compliance with the notice requirement of the Labor Code.

WHEREFORE, premises considered, the assailed Decisions of the Court of Appeals in CA-G.R. SP No. 67775 and of the National Labor Relations Commission in NLRC Case No. 30-11-00466-99 and NLRC CC No. 000182-00 are hereby AFFIRMED with MODIFICATION. The 61 subject employees are hereby declared regular employees as of 1 December 1998 and are entitled to the CBA salary increase, mid-year gratuity pay, one sack of rice, overtime pay and thirteenth (13th) month pay as provided for in the Memorandum of Agreement. No costs.

**SO ORDERED.**

Panganiban, (Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

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[1] CA-G.R. SP No. 67775, dated 16 May 2003, penned by Associate Justice Amelita G. Tolentino with Associate Justices Mariano C. Del Castillo and Rosemari Declaro Carandang, concurring.

[2] NLRC-NCR Case No. 30-11-00466-99 and NLRC CC No. 000182-00, dated 9 July 2001.

[3] "Esteban P. Ababao, Jose P. Abinado, Rustom P. Butlay, Edwin C. Cac, Ruben N. Casanares, Elmer Cerna, Hermie R. Crisostomo, Herminio R. de los Reyes, Orlando R. Binfotan, Rene B. Dumadag, Virgilio B. Enriquez, Dominador P. Gapac, Joselito D. Ilrao, Sol Jr. S. Ibuyan, Nazarito A. Clariosa, Julio C. Laurio, Antonio Lontoc, Romulo S. Macandili, Marlon C. Palomado, Marcelo S. Rapiz, Gerry Raza, Richard Rutor, Rolando P. Samoy, Cesar S. Sarmiento, Johathan B. Segura, Ramon A. Subang, Rommel Aguirre, Silverio Amo, Rodrigo Antonio, Rolando Antonio, Edwin Aumentado, Alejandro Austria, Noel Bagos, Edilberto Bantigue, Virgilio Belmores, Marcelino Benitez, Nelson Canta, Eddie Casimiro, Ferdinand Cruz, Crisanto de Jesus, Nicolas de la Rosa, Raul Bianopra, Ronnie Dizon, Elino Endrina, Antoner Isla, Edwin Janohan, Marvin Magistrado, Eugenio Maniacup, Virgilio Marquez, Noel Medina, Larry Navarro, Edwin Olaviaga, Noel Pontojas, Leopoldo Sagaral, Angelito San Diego, Wilfredo Tablan, Joseph Teves, and Arnold Tungol."

[4] Gregorio Alipio, Eduardo Flores and Ramilo Guevarra.

[5] Rollo, pp. 79-89.

[6] Id., pp. 79-88.

[7] Morales v. The Board of Regents of the University of the Philippines, G.R. No. 161172, 13 December 2004, 446 SCRA 227, 237, citing Roman Catholic Archbishop of Manila v. Court of Appeals, 327 Phil. 810, 825-826


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(1996).

[8] Id. citing Far East Marble (Philippines), Inc. v. Court of Appeals, G.R. No. 94093, 10 August 1993, 225 SCRA 249, 255.

[9] Rollo, p. 134.

[10] Wiltshire File Co., Inc. v. National Labor Relations Commission, G.R. No. 82249, 7 February 1991, 193 SCRA 665, 673.

[11] Id.

[12] Id.

[13] 387 Phil. 345 (2000).

[14] Id., pp. 355-356.


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