

## **HOTEL ENTERPRISES OF THE PHILIPPINES, INC. (HEPI), OWNER OF HYATT REGENCY MANILA, PETITIONER, VS. SAMAHAN NG MGA MANGGAGAWA SA HYATT-NATIONAL UNION OF WORKERS IN THE HOTEL AND R...**

*G.R. No. 165756. June 05, 2009*

Ponente: NACHURA, J.

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### **NACHURA, J.:**

The Constitution affords full protection to labor, but the policy is not to be blindly followed at the expense of capital. Always, the interests of both sides must be balanced in light of the evidence adduced and the peculiar circumstances surrounding each case.

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision[1] dated July 20, 2004 and the Resolution[2] dated October 20, 2004 in CA-G.R. SP No. 81153. The appellate court, in its decision and resolution, reversed the April 3, 2003 Resolution[3] of the National Labor Relations Commission (NLRC) and reinstated the October 30, 2002 Decision[4] issued by Labor Arbiter Aliman Mangandog upholding the legality of the strike staged by the officers and members of respondent Samahan ng mga Manggagawa sa Hyatt-National Union of Workers in the Hotel Restaurant and Allied Industries (Union).

We trace the antecedent facts below.

Respondent Union is the certified collective bargaining agent of the rank-and-file employees of Hyatt Regency Manila, a hotel owned by petitioner Hotel Enterprises of the Philippines, Inc. (HEPI).

In 2001, HEPI's hotel business suffered a slump due to the local and international economic slowdown, aggravated by the events of September 11, 2001 in the United States. An audited financial report made by Sycip Gorres Velayo (SGV) & Co. on January 28, 2002 indicated that the hotel suffered a gross operating loss amounting to P16,137,217.00 in 2001,[5] a staggering decline compared to its P48,608,612.00 gross operating profit[6] in year 2000.[7]

2000

2001

Income from Hotel Operations

P 78,434,103

P 12,230,248

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Other Deductions

Provision for hotel rehabilitation

20,000,000

20,000,000

Provision for replacements of and additions to furnishings and equipment

9,825,491

8,367,465

29,825,491

28,367,465

Gross Operating Profit (Loss)

P 48,608,612

(P 16,137,217)

According to petitioner, the management initially decided to cost-cut by implementing energy-saving schemes: prioritizing acquisitions/purchases; reducing work weeks in some of the hotel's departments; directing the employees to avail of their vacation leaves; and imposing a moratorium on hiring employees for the year 2001 whenever practicable.[8]

Meanwhile, on August 31, 2001, the Union filed a notice of strike due to a bargaining deadlock before the National Conciliation Mediation Board (NCMB), docketed as NCMB-NCR-NS 08-253-01.[9] In the course of the proceedings, HEPI submitted its economic proposals for the rank-and-file employees covering the years 2001, 2002, and 2003. The proposal included manning and staffing standards for the 248 regular rank-and-file employees. The Union accepted the economic proposals. Hence, a new collective bargaining agreement (CBA) was signed on November 21, 2001, adopting the manning standards for the 248 rank-and-file employees.[10]

Then, on December 21, 2001, HEPI issued a memorandum offering a "Special Limited Voluntary Resignation/Retirement Program" (SLVRRP) to its regular employees. Employees who were qualified to resign or retire were given separation packages based on the number of years of service.[11] The vacant positions, as well as the regular positions vacated, were later filled up with contractual personnel and agency employees.[12]

Subsequently, on January 21, 2002, petitioner decided to implement a downsizing scheme after studying the operating costs of its different divisions to determine the areas where it could obtain significant savings. It found that the hotel could save on costs if certain jobs, such as engineering services, messengerial/courier services, janitorial and laundry services, and operation of the employees' cafeteria, which by their nature were contractable pursuant to existing laws and jurisprudence, were abolished and contracted out to independent job contractors. After evaluating the hotel's manning guide, the following positions were identified as redundant or in excess of what was required for the hotel's actual operation given the prevailing poor business condition, viz.: a) housekeeping attendant-linen; b) tailor; c) room attendant; d) messenger/mail clerk; and e) telephone technician.[13] The effect was to be a reduction of the hotel's rank-and file employees from the agreed number of 248 down to just 150[14] but it would generate estimated savings of around P9,981,267.00 per year.[15]

On January 24, 2002, petitioner met with respondent Union to formally discuss the downsizing program.[16] The Union opposed the downsizing plan because no substantial evidence was shown to prove that the hotel was incurring heavy financial losses, and for being violative of the CBA, more specifically the manning/staffing standards agreed upon by both parties in November 2001.[17] In a financial analysis made by the Union based on Hyatt's financial statements submitted to the Securities and Exchange Commission (SEC), it noted that the hotel posted a positive profit margin with respect to its gross operating and net incomes for the years 1998, 1999, 2000, and even in 2001.[18] Moreover, figures comprising the hotel's unappropriated retained earnings showed a consistent increase from 1998 to 2001, an indication that the company was, in fact, earning, contrary to petitioner's assertion. The net income from hotel operations slightly dipped from P78,434,103.00 in 2000 to P12,230,248.00 for the year 2001, but nevertheless remained positive.[19] With this, the Union, through a letter, informed the management of its opposition to the scheme and proposed instead several cost-saving measures.[20]

Despite its opposition, a list of the positions declared redundant and to be contracted out was given by the management to the Union on March 22, 2002.[21] Notices of termination were, likewise, sent to 48 employees whose positions were to be retrenched or declared as redundant. The notices were sent on April 5, 2002 and were to take effect on May 5, 2002.[22] A notice of termination was also submitted by the management to the Department of Labor and Employment (DOLE) indicating the names, positions, addresses, and salaries of the employees to be terminated.[23] Thereafter, the hotel management engaged the services of independent job contractors to perform the following services: (1) janitorial (previously, stewarding and public area attendants); (2) laundry; (3) sundry shop; (4) cafeteria;[24] and (5) engineering.[25] Some employees, including one Union officer, who were affected by the downsizing plan were transferred to other positions in order to save their employment.[26]

On April 12, 2002, the Union filed a notice of strike based on unfair labor practice (ULP) against HEPI. The case was docketed as NCMB-NCR-NS-04-139-02.[27] On April 25, 2002, a strike vote was conducted with majority in the bargaining unit voting in favor of the strike.[28] The result of the strike vote was sent to NCMB-NCR Director Leopoldo de Jesus also on April 25, 2002.[29]

On April 29, 2002, HEPI filed a motion to dismiss notice of strike which was opposed by the Union. On May 3, 2002, the Union filed a petition to suspend the effects of termination before the Office of the Secretary of Labor. On May 5, 2002, the hotel management began implementing its downsizing plan immediately terminating seven (7) employees due to redundancy and 41 more due to retrenchment or abolition of positions.[30] All were given separation pay equivalent to one (1) month's salary for every year of service.[31]

On May 8, 2002, conciliation proceedings were held between petitioner and respondent, but to no avail. On May 10, 2002, respondent Union went on strike. A petition to declare the strike illegal was filed by petitioner on May 22, 2002, docketed as NLRC-NCR Case No. 05-03350-2002.

On June 14, 2002, Acting Labor Secretary Manuel Imson issued an order in NCM-NCR-NS-04-139-02 (thence, NLRC Certified Case No. 000220-02), certifying the labor dispute to the NLRC for compulsory arbitration and directing the striking workers, except the 48 workers earlier terminated, to return to work within 24 hours. On June 16, 2002, after receiving a copy of the order, members of respondent Union returned to work.[32] On August 1, 2002, HEPI filed a manifestation informing the NLRC of the pending petition to declare the strike illegal. Because of this, the NLRC, on November 15, 2002, issued an order directing Labor Arbiter Aliman Mangandog to immediately suspend the proceedings in the pending petition to declare the strike illegal and to elevate the records of the said case for consolidation with the certified case.[33] However, the labor arbiter had already issued a Decision[34] dated October 30, 2002 declaring the strike legal.[35] Aggrieved, HEPI filed an appeal *ad cautelam* before the NLRC questioning the October 30, 2002 decision.[36] The Union, on the other hand, filed a

motion for reconsideration of the November 15, 2002 Order on the ground that a decision was already issued in one of the cases ordered to be consolidated.[37]

On appeal, the NLRC reversed the labor arbiter's decision. In a Resolution[38] dated April 3, 2003, it gave credence to the financial report of SGV & Co. that the hotel had incurred huge financial losses necessitating the adoption of a downsizing scheme. Thus, NLRC declared the strike illegal, suspended all Union officers for a period of six (6) months without pay, and dismissed the ULP charge against HEPI.[39]

Respondent Union moved for reconsideration, while petitioner HEPI filed its partial motion for reconsideration. Both were denied in a Resolution[40] dated September 24, 2003.

The Union filed a petition for certiorari with the CA on December 19, 2003[41] questioning in the main the validity of the NLRC's reversal of the labor arbiter's decision.[42] But while the petition was pending, the hotel management, on December 29, 2003, issued separate notices of suspension against each of the 12 Union officers involved in the strike in line with the April 3, 2003 resolution of the NLRC.[43]

On July 20, 2004, the CA promulgated the assailed Decision,[44] reversing the resolution of the NLRC and reinstating the October 30, 2002 decision of the Labor Arbiter which declared the strike valid. The CA also ordered the reinstatement of the 48 terminated employees on account of the hotel management's illegal redundancy and retrenchment scheme and the payment of their backwages from the time they were illegally dismissed until their actual reinstatement.[45] HEPI moved for reconsideration but the same was denied for lack of merit.[46]

Hence, this petition.

The issue boils down to whether the CA's decision, reversing the NLRC ruling, is in accordance with law and established facts.

We answer in the negative.

To resolve the correlative issues (i.e., the validity of the strike; the charges of ULP against petitioner; the propriety of petitioner's act of hiring contractual employees from employment agencies; and the entitlement of Union officers and terminated employees to reinstatement, backwages and strike duration pay), we answer first the most basic question: Was petitioner's downsizing scheme valid?

The pertinent provision of the Labor Code states:

ART. 283. x x x

The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the [Department] of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a 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. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

Retrenchment is the reduction of work personnel usually due to poor financial returns, aimed to cut down costs

for operation particularly on salaries and wages.[47] Redundancy, on the other hand, exists where the number of employees is in excess of what is reasonably demanded by the actual requirements of the enterprise.[48] Both are forms of downsizing and are often resorted to by the employer during periods of business recession, industrial depression, or seasonal fluctuations, and during lulls in production occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program, or introduction of new methods or more efficient machinery or automation.[49] Retrenchment and redundancy are valid management prerogatives, provided they are done in good faith and the employer faithfully complies with the substantive and procedural requirements laid down by law and jurisprudence.[50]

For a valid retrenchment, the following requisites must be complied with: (1) the retrenchment is necessary to prevent losses and such losses are proven; (2) written notice to the employees and to the DOLE at least one month prior to the intended date of retrenchment; and (3) payment of separation pay equivalent to one-month pay or at least one-half month pay for every year of service, whichever is higher.[51]

In case of redundancy, the employer must prove that: (1) a written notice was served on both the employees and the DOLE at least one month prior to the intended date of retrenchment; (2) separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher, has been paid; (3) good faith in abolishing the redundant positions; and (4) adoption of fair and reasonable criteria in ascertaining which positions are to be declared redundant and accordingly abolished.[52]

It is the employer who bears the onus of proving compliance with these requirements, retrenchment and redundancy being in the nature of affirmative defenses.[53] Otherwise, the dismissal is not justified.[54]

In the case at bar, petitioner justifies the downsizing scheme on the ground of serious business losses it suffered in 2001. Some positions had to be declared redundant to cut losses. In this context, what may technically be considered as redundancy may verily be considered as a retrenchment measure.[55] To substantiate its claim, petitioner presented a financial report covering the years 2000 and 2001 submitted by the SGV & Co., an independent external auditing firm.[56] From an impressive gross operating profit of P48,608,612.00 in 2000, it nose-dived to negative P16,137,217.00 the following year. This was the same financial report submitted to the SEC and later on examined by respondent Union's auditor. The only difference is that, in respondent's analysis, Hyatt Regency Manila was still earning because its net income from hotel operations in 2001 was P12,230,248.00. However, if provisions for hotel rehabilitation as well as replacement of and additions to the hotel's furnishings and equipments are included, which respondent Union failed to consider, the result is indeed a staggering deficit of more than P16 million. The hotel was already operating not only on a slump in income, but on a huge deficit as well. In short, while the hotel did earn, its earnings were not enough to cover its expenses and other liabilities; hence, the deficit. With the local and international economic conditions equally unstable, belt-tightening measures logically had to be implemented to forestall eventual cessation of business.

Losses or gains of a business entity cannot be fully and satisfactorily assessed by isolating or highlighting only a particular part of its financial report. There are recognized accounting principles and methods by which a company's performance can be objectively and thoroughly evaluated at the end of every fiscal or calendar year. What is important is that the assessment is accurately reported, free from any manipulation of figures to suit the company's needs, so that the company's actual financial condition may be impartially and accurately gauged.

The audit of financial reports by independent external auditors is strictly governed by national and international standards and regulations for the accounting profession.[57] It bears emphasis that the financial statements submitted by petitioner were audited by a reputable auditing firm and are clear and substantial enough to prove that the company was in a precarious financial condition.

In the competitive and highly uncertain world of business, cash flow is as important as - and oftentimes, even more critical than - profitability.[58] So long as the hotel has enough funds to pay its workers and satisfy costs for operations, maintenance and other expenses, it may survive and bridge better days for its recovery. But to ensure a viable cash flow amidst the growing business and economic uncertainty is the trick of the trade. Definitely, this cannot be achieved if the cost-saving measures continuously fail to cap the losses. More drastic, albeit painful, measures have to be taken.

This Court will not hesitate to strike down a company's redundancy program structured to downsize its personnel, solely for the purpose of weakening the union leadership.[59] Our labor laws only allow retrenchment or downsizing as a valid exercise of management prerogative if all other else fail. But in this case, petitioner did implement various cost-saving measures and even transferred some of its employees to other viable positions just to avoid the premature termination of employment of its affected workers. It was when the same proved insufficient and the amount of loss became certain that petitioner had to resort to drastic measures to stave off P9,981,267.00 in losses, and be able to survive.

If we see reason in allowing an employer not to keep all its employees until after its losses shall have fully materialized,[60] with more reason should we allow an employer to let go of some of its employees to prevent further financial slide.

This, in turn, gives rise to another question: Does the implementation of the downsizing scheme preclude petitioner from availing the services of contractual and agency-hired employees?

In *Asian Alcohol Corporation v. National Labor Relations Commission*, [61] we answered in the negative. We said:

In any event, we have held that an employer's good faith in implementing a redundancy program is not necessarily destroyed by availment of the services of an independent contractor to replace the services of the terminated employees. We have previously ruled that the reduction of the number of workers in a company made necessary by the introduction of the services of an independent contractor is justified when the latter is undertaken in order to effectuate more economic and efficient methods of production. In the case at bar, private respondent failed to proffer any proof that the management acted in a malicious or arbitrary manner in engaging the services of an independent contractor to operate the Laura wells. Absent such proof, the Court has no basis to interfere with the bona fide

With petitioner's downsizing scheme being valid, and the availment of contractual and agency-hired employees legal, the strike staged by officers and members of respondent Union is, perforce, illegal.

Given the foregoing finding, the only remaining question that begs resolution is whether the strike was staged in good faith. On this issue, we find for the respondent.

Procedurally, a strike to be valid must comply with Article 263 of the Labor Code, which pertinently reads:

Article 263. x x x

x x x x

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the [Department] at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of

the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

(d) The notice must be in accordance with such implementing rules and regulations as the [Secretary] of Labor and Employment may promulgate.

(e) During the cooling-off period, it shall be the duty of the [Department] to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for the purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The [Department] may at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the [Department] the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.

Accordingly, the requisites for a valid strike are: (a) a notice of strike filed with the DOLE 30 days before the intended date thereof or 15 days in case of ULP; (b) a strike vote approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in a meeting called for that purpose; and (c) a notice to the DOLE of the results of the voting at least seven (7) days before the intended strike.[62] The requirements are mandatory and failure of a union to comply therewith renders the strike illegal.[63]

In this case, respondent fully satisfied the procedural requirements prescribed by law: a strike notice filed on April 12, 2002; a strike vote reached on April 25, 2002; notification of the strike vote filed also on April 25, 2002; conciliation proceedings conducted on May 8, 2002; and the actual strike on May 10, 2002.

Substantively, however, there appears to be a problem. A valid and legal strike must be based on "strikeable" grounds, because if it is based on a "non-strikeable" ground, it is generally deemed an illegal strike. Corollarily, a strike grounded on ULP is illegal if no acts constituting ULP actually exist. As an exception, even if no such acts are committed by the employer, if the employees believe in good faith that ULP actually exists, then the strike held pursuant to such belief may be legal. As a general rule, therefore, where a union believes that an employer committed ULP and the surrounding circumstances warranted such belief in good faith, the resulting strike may be considered legal although, subsequently, such allegations of unfair labor practices were found to be groundless.[64]

Here, respondent Union went on strike in the honest belief that petitioner was committing ULP after the latter decided to downsize its workforce contrary to the staffing/manning standards adopted by both parties under a CBA forged only four (4) short months earlier. The belief was bolstered when the management hired 100 contractual workers to replace the 48 terminated regular rank-and-file employees who were all Union members.[65] Indeed, those circumstances showed prima facie that the hotel committed ULP. Thus, even if technically there was no legal ground to stage a strike based on ULP, since the attendant circumstances support the belief in good faith that petitioner's retrenchment scheme was structured to weaken the bargaining power of the Union, the strike, by exception, may be considered legal.

Because of this, we view the NLRC's decision to suspend all the Union officers for six (6) months without pay to be too harsh a punishment. A suspension of two (2) months without pay should have been more reasonable and

just. Be it noted that the striking workers are not entitled to receive strike-duration pay, the ULP allegation against the employer being unfounded. But since reinstatement is no longer feasible, the hotel having permanently ceased operations on July 2, 2007,[66] we hereby order the Labor Arbiter to instead make the necessary adjustments in the computation of the separation pay to be received by the Union officers concerned.

Significantly, the Manifestations[67] filed by petitioner with respect to the quitclaims executed by members of respondent Union state that 34 of the 48 employees terminated on account of the downsizing program have already executed quitclaims on various dates.[68] We, however, take judicial notice that 33 of these quitclaims failed to indicate the amounts received by the terminated employees.[69] Because of this, petitioner leaves us no choice but to invalidate and set aside these quitclaims. However, the actual amount received by the employees upon signing the said documents shall be deducted from whatever remaining amount is due them to avoid double recovery of separation pay and other monetary benefits. We hereby order the Labor Arbiter to effect the necessary computation on this matter.

For this reason, this Court strongly admonishes petitioner and its counsel for making its former employees sign quitclaim documents without indicating therein the consideration for the release and waiver of their employees' rights. Such conduct on the part of petitioner and its counsel is reprehensible and puts in serious doubt the candor and fairness required of them in their relations with their hapless employees. They are reminded to observe common decency and good faith in their dealings with their unsuspecting employees, particularly in undertakings that ultimately lead to waiver of workers' rights. This Court will not renege on its duty to protect the weak against the strong, and the gullible against the wicked, be it for labor or for capital.

However, with respect to the second batch of quitclaims signed by 85 of the remaining 160 employees who were terminated following Hyatt's permanent closure,[70] we hold that these are valid and binding undertakings. The said documents indicate that the amount received by each of the employees represents a reasonable settlement of their monetary claims against petitioner and were even signed in the presence of a DOLE representative. A quitclaim, with clear and unambiguous contents and executed for a valid consideration received in full by the employee who signed the same, cannot be later invalidated because its signatory claims that he was pressured into signing it on account of his dire financial need. When it is shown that the person executing the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.[71]

WHEREFORE, the petition is PARTLY GRANTED. The downsizing scheme implemented by petitioner is hereby declared a valid exercise of management prerogative. The penalty of six (6) months suspension without pay imposed in the April 3, 2003 NLRC Resolution[72] is hereby reduced to two (2) months, to be considered in the Labor Arbiter's computation of the separation pay to be received by the Union officers concerned. The first batch of quitclaims signed by 33 of the 48 terminated employees is hereby declared invalid and illegal for failure to state the proper consideration therefor, but the amount received by the employees concerned, if any, shall be deducted from their separation pay and other monetary benefits, subject to the computation to be made by the Labor Arbiter. The second batch of quitclaims signed by 85 of the 160 terminated employees, following Hyatt Regency Manila's permanent closure, is declared valid and binding.

### **SO ORDERED.**

Ynares-Santiago, (Chairperson), Carpio,[\*] Corona,\*\*] and Peralta, JJ., concur.

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[\*] Additional member in lieu of Associate Justice Conchita Carpio Morales per Special Order No. 646 dated May

15, 2009.

[\*\*] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 631 dated April 29, 2009.

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Cancio C. Garcia (a retired member of this Court) and Hakim S. Abdulwahid, concurring; rollo, pp. 108-135.

[2] Rollo, pp. 136-139.

[3] Id. at 140-178.

[4] CA rollo, pp. 102-110.

[5] Rollo, p. 1768.

[6] Id. at 1796.

[7] Id. at 151.

[8] Id. at 114-115.

[9] Id. at 108.

[10] Id. at 108, 285.

[11] Id. at 115.

[12] Id. at 108.

[13] Id. at 115.

[14] Id. at 109.

[15] Id. at 1772.

[16] Id. at 116.

[17] Id. at 109.

[18] Id. at 156-157.

[19] Id. at 1503-1504.

[20] Id. at 115.

[21] Id.

[22] Id. at 110, 116.

[23] Id. at 115.

[24] Id.

[25] Id. at 156.

[26] Id. at 162.

[27] Id. at 109-110.

[28] CA rollo, pp. 209-211.

[29] Id. at 209.

[30] Rollo, p. 156.

[31] Id. at 163.

[32] Id. at 112.

[33] CA rollo, p. 1557-1561.

[34] Supra note 4.

[35] The dispositive portion of the October 30, 2002 Decision reads:

WHEREFORE, foregoing premises considered, the Petition is DISMISSED for lack of merit and the strike staged (sic) on May 10, 2002 by the respondents is hereby declared legal.

The petitioner is liable for unfair labor practice. Accordingly, the petitioner is ordered to pay the striking employees strike duration pay and moral and exemplary damages in the amount of Php 100,000.00 to each of the Union officers and members, and attorney's fees equivalent to ten percent (10%) of the total award due to them.

All other claims are dismissed for lack of merit.

SO ORDERED. (Id. at 110.)

[36] Rollo, pp. 1433-1519.

[37] Id. at 1562-1582.

[38] Supra note 3.

[39] The decretal portion of the NLRC Resolution dated April 3, 2003 reads:

WHEREFORE, considering the foregoing premises, judgment is hereby rendered as follows:

1. The downsizing program of Hyatt Regency Manila effective May 5, 2002 is hereby declared valid and lawful.
2. The charge of unfair labor practice consisting of Union busting and unlawful contracting out of services or functions is hereby dismissed for lack of merit.
3. The strike conducted by SAMASAH-NUWHRAIN, its officers and members from May 10, 2002 is hereby declared illegal. All the Union Officers are hereby suspended for six (6) months without pay, namely: EDWIN BUSTILLOS, FERNANDO TESSALONA, ANTONIO DE PEDRO, JOAQUIN BULAO, LAARNI APOSTOL, BENIGNO ROMANO, REYNALDO TAYAG, JOSE WYN AGNER, DANILO DALUZ, PILAR BERNAL, ALCANTAR VIZON, PAUL TEOTICO, ANTHONY ADVENTO, ROLANDO TENORIO and ALEX BAYKER.

SO ORDERED. (Id. at 177.)

[40] Rollo, pp. 179-181.

[41] Docketed as CA-G.R. SP No. 81153.

[42] Rollo, p. 120.

[43] Id. at 2083-2094.

[44] Id. at 108-135.

[45] The dispositive portion of the July 20, 2004 CA decision reads:

WHEREFORE, premises considered, the assailed Resolutions dated April 3, 2003 and September 24, 2003 of public respondent NLRC in NLRC-NCR NS 04-139-02/NLRC-NCR Certified Case No. 000220-02/NLRC 00-05-03350-02 CA No. 03380-02 are hereby REVERSED AND SET ASIDE.

The Labor Arbiter's Decision dated October 30, 2002 is hereby REINSTATED.

The forty-eight (48) dismissed employees as a result of the illegal redundancy and retrenchment programs are hereby REINSTATED to their former positions without loss of seniority rights with payment of backwages from the time they were illegally dismissed up to their actual reinstatement.

SO ORDERED. (Id. at 135.)

[46] Rollo, pp. 136-139.

[47] J.A.T. Gen. Services v. NLRC, 465 Phil. 785, 794 (2004).

[48] Wiltshire File Co., Inc. v. NLRC, G.R. No. 82249, February 7, 1991, 193 SCRA 665, 672.

[49] F.F. Marine Corporation v. National Labor Relations Commission, Second Division, G.R. No. 152039, April 8, 2005, 455 SCRA 154, 164-165.

[50] Id. at 165.

[51] The following states the jurisprudential guidelines to justify retrenchment:

Firstly, the losses expected should be substantial and not merely de minimis in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the bona fide nature of the retrenchment would appear to be seriously in question. Secondly, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, i.e., cut other costs than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means - e.g., reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc.—have been tried and found wanting.

Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees. (Id. at 165-166.)

[52] Lopez Sugar Corporation v. Franco, G.R. No. 148195, May 16, 2005, 458 SCRA 515, 529.

[53] Manatad v. Philippine Telegraph and Telephone Corporation, G.R. No. 172363, March 7, 2008, 548 SCRA

64, 74.

[54] F.F. Marine Corporation v. National Labor Relations Commission, Second Division, *supra* note 49, at 167.

[55] Asian Alcohol Corporation v. NLRC, G.R. No. 131108, March 25, 1999, 305 SCRA 416, 432.

[56] Annex "A" of HEPI's position paper; rollo, pp. 1794-1796.

[57] Manatad v. Philippine Telegraph and Telephone Corporation, *supra* note 53, at 79.

[58] MGG Marine Services, Inc. v. NLRC, 328 Phil. 1046, 1066.

[59] Lopez Sugar Corporation v. Franco, *supra* note 52, at 530.

[60] Asian Alcohol Corporation v. NLRC, *supra* note 55, at 432.

[61] *Supra*, at 435-436, citing *De Ocampo v. NLRC*, 213 SCRA 652, 662 (1992).

[62] First City Interlink Transportation Co., Inc. v. Roldan-Confesor, G.R. No. 106316, May 5, 1997, 272 SCRA 124, 130-131.

[63] CCBPI Postmix Workers Union v. NLRC, G.R. Nos. 114521, 123491, November 27, 1998, 299 SCRA 410; National Federation of Labor v. NLRC, G.R. No. 113466, December 15, 1997, 283 SCRA 275; First City Interlink Transportation Co., Inc. v. Roldan Confesor, *supra*; Lapanday Workers Union v. National Labor Relations Commission, G.R. Nos. 95494-97, September 7, 1995, 248 SCRA 95; Gold City Integrated Port Service, Inc. v. National Labor Relations Commission, G.R. Nos. 103560, 103599, July 6, 1995, 245 SCRA 627.

[64] NUWHRAIN - Peninsula Manila Chapter v. NLRC, 350 Phil. 641, 649-650 (1998).

[65] Rollo, p. 2236.

[66] *Id.* at 2584-2603; notices of permanent closure.

[67] *Id.* at 2427-2470, 2488-2629.

[68] *Id.* at 2431-2470, 2492-2493, 2607, 2611.

[69] *Id.* at 2431-2470.

[70] *Id.* at 2496-2629.

[71] *Periquet v. National Labor Relations Commission*, G.R. No. 91298, June 22, 1990, 186 SCRA 724, 731.

[72] *Supra* note 3.

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