

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**AHS/PHILIPPINES EMPLOYEES  
UNION [FFW], B.A. AGANON, D.T.  
GUILLES, E.G. SULIT and E.C.  
RODRIGUEZ,<sup>[\*]</sup>**

*Petitioners,*

*-versus-*

**G.R. No. 73721  
March 30, 1987**

**THE NATIONAL LABOR RELATIONS  
COMMISSION and AHS/PHILIPPINES,  
INC.,**

*Respondents.*

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**DECISION**

**FERNAN, J.:**

Assailed in this Petition for *Certiorari* with Prayer for a Writ of Preliminary Injunction is the Decision dated December 27, 1985 of the National Labor Relations Commission [NLRC] in NCR-9-3217-84 entitled, "AHS/Philippines, Inc., Complainant-Appellee, versus AHS/Philippines Employees Union [FFW], B.A. Aganon, D.T. Guilles, E.G. Sulit and E.C. Rodriguez, Respondents-Appellants," which affirmed the labor arbiter's decision declaring the strike held by petitioners as illegal, but with the modification that individual

petitioners be reinstated to their former positions, or paid separation pay or the economic package offered by the company, if reinstatement is impossible.<sup>[1]</sup>

Petitioner AHS/Philippines Employees Union [FFW] was the recognized collective bargaining agent of the rank-and-file employees of private respondent AHS/Philippines Inc., a company engaged in the sale of hospital and laboratory equipment and Berna and Pharmaton products. A collective bargaining agreement [CBA] was concluded between the parties for the period commencing December 1, 1981 to November 30, 1984.

On July 26, 1984, petitioner union filed a notice of strike with the Bureau of Labor Relations, listing as ground therefor unfair labor practice consisting in: 1] diminution of benefits, 2] union busting, 3] illegal termination and 4] harassment.<sup>[2]</sup> A second notice of strike was thereafter filed on August 3, 1984 on substantially the same grounds and the additional charges of refusal to bargain, violation of the CBA and dismissal of union officers and members.<sup>[3]</sup>

On August 15, 1984, petitioner union struck. A picket was staged at private respondent company's premises at Pasong Tamo in Makati.

When the conciliation meetings conducted by the Bureau of Labor Relations proved unavailing, private respondent company filed a petition to declare the strike illegal.<sup>[4]</sup> After issues had been joined with petitioner union's submission of its position paper, hearings ensued before Labor Arbiter Virginia Son.

On March 26, 1985, Labor Arbiter Son rendered a decision declaring the strike staged by petitioner union illegal and ordering the lifting of the picket established in the premises of private respondent company. All the officers of the union who joined and were responsible for the declaration of said strike were deemed to have lost their employment status, while the other non-officer employees who sympathized and joined the strike were ordered reinstated to their former or equivalent positions without strike duration pay, or paid separation pay or the economic package offered by the company, whichever is higher, in case reinstatement was not possible.<sup>[5]</sup>

Dissatisfied, petitioners appealed the labor arbiter's ruling to the NLRC en banc, which rendered the assailed decision. Hence, this petition.

On July 30, 1986, after public and private respondents had submitted their respective comments to the petition, the Court resolved to dismiss the petition for lack of merit.<sup>[6]</sup> A motion for reconsideration filed by union president Lorenzo Leones and vice-president Ernesto Ilagan<sup>[7]</sup> was denied on September 8, 1986.<sup>[8]</sup> Upon receipt of the notice of said denial, petitioners forthwith filed a motion with leave of Court to allow petitioners to file last or final motion for reconsideration, on the ground, among others, that the first motion for reconsideration was filed by the aforesaid union officers without the assistance of counsel.<sup>[9]</sup> The motion was opposed by private respondent company.<sup>[10]</sup>

Pending action on this motion, the Kilusang Mayo Uno [KMU] staged a picket in front of the P. Faura gate of this Court on October 27, 1986 in protest of the dismissal by the Court of the petition at bar. Reacting to the circular signed by Nick Elman of the KMU distributed to the public during the picket, respondent company filed a motion to cite petitioners the KMU and Nick Elman in contempt of court. The alleged contemptors, upon being required, submitted their joint comment on the contempt charge,<sup>[11]</sup> to which respondent company filed a reply.<sup>[12]</sup>

Meanwhile, the case was heard on November 10, 1986,<sup>[13]</sup> after which the Court resolved to require the parties to file their respective memoranda within 20 days.<sup>[14]</sup> The parties complied with this order.

In a manifestation dated December 2, 1986, counsel for private respondent company informed the Court that in January 1987, private respondent would close its operations in the Philippines because of the continuing losses being sustained by its Philippine operations and the uncertainty of business recovery in the immediate future.<sup>[15]</sup> Petitioners filed a counter-manifestation and motion for early resolution.<sup>[16]</sup>

Because petitioners submitted a supplemental memorandum, the Court required private respondent company to file its own

supplemental memorandum in reply to petitioners' supplemental memorandum. After private respondent had done so, the Court resolved to set aside its resolutions of July 30 and September 8, 1986 and to give due course to the petition.

In concluding that the strike declared by petitioners was illegal for being based on trivial grounds, public respondent NLRC ruled on the issues alleged in the notice of strike in this wise:

1. On the dismissal of fourteen [14] rank and file employees by respondent company, which according to petitioner union triggered the first notice of strike, the NLRC, while conceding that these employees had rendered service to respondent company for more than six [6] months when they were dismissed and that they performed activities which were usually necessary or desirable in the usual business of respondent company, took note that their services were engaged under a contract entered into by respondent company with a placement agency and that petitioner union never demanded that they be converted into regular employees nor instituted any grievance or complaint in behalf of said employees until some of them wrote petitioner union for assistance after their dismissal. On the basis of these observations, respondent NLRC concluded that petitioner union had no personality to represent said employees as their category as regular employees eligible for membership in the union under the terms of the CBA has not yet been finally determined at grievance or by final judgment and the assistance sought by them did not vest petitioner union with the legal personality to represent them, much less use their dismissal as a ground to strike.<sup>[17]</sup>
2. With respect to the increase in the area sales quota of the union president and vice-president, the NLRC found the increase justified by the change in the sales organization in January 1984, whereby each field representative, instead of carrying both Berna and Pharmaton products, would concentrate only on either one. It further observed that it was only after six [6] months after the plan had been in operation and when the union president failed to meet his

quota that said union president filed his grievance; that the grievance was being threshed out in accordance with the grievance procedure outlined in the CBA and that any delay in the resolution thereof was not entirely attributable to the company. Moreover, respondent NLRC found the setting of the area sales quota not to be ill-motivated nor related to the president's union activities. Hence, it concluded that the union president's grievance was not a valid ground for a strike.<sup>[18]</sup>

3. As regards the non-implementation of the yearly increase in per diems and allowances, public respondent concurred with the observation of the Labor Arbiter that there was no such provision in the CBA so that said issue could not be a proper ground for the notice of strike or the strike itself.<sup>[19]</sup>
4. Likewise not considered by the NLRC as a valid ground for strike was the failure of respondent company to provide space for a union office as stipulated under Art. XV, Section 1 of the CBA. The NLRC attributed such failure to the complacency exhibited by petitioner union in not taking up the matter again with respondent company after petitioner union rejected the set of rules drawn up by respondent company with respect to the use of the office in accordance with the CBA provision that the use of such office would be subject to any rules and regulations to be agreed upon by both union and company.<sup>[20]</sup>
5. Anent the recall by respondent company of the cars assigned to the field representatives, the NLRC found no violation of the CBA nor any unfair labor practice to have been committed by respondent company by reason thereof. Referring to Art. XIV, Sec. 2 of the CBA which granted to the assignee of a car to be disposed of the first priority to purchase the car at fifty [50] percent of the appraised market value, the NLRC found no indication that the cars were to be disposed of and therefore the CBA provision invoked by petitioner union had not come into operation. This being the case, such recall could not be a ground for a strike.<sup>[21]</sup>

6. The dismissal of 31 employees of respondent company's Pharmaceutical Division, the additional ground cited in the second notice of strike, was found by the NLRC to have been dictated by the change in the marketing strategy of Berna and Pharmaton products and not for the purpose of union-busting. Respondent NLRC gave credence to respondent company's claim that as early as October 1983, its operations had been seriously affected by the suspension of trade and foreign credit facilities, which situation grew worse in early 1984 when its suppliers of Berna and Pharmaton products insisted on a cash L/C basis or full guarantee by the mother company. As respondent company could not comply with these requirements, it decided to strengthen its other division, the HML Division, which sold hospital and laboratory equipment bought from the parent company. It posted a job-opening notice for 7 to 10 medical representatives and one field supervisor for the HML Division, Amelita Calderon, a member of petitioner union applied for the position of medical representative, but was rejected for lack of the necessary educational attainment and unwillingness to accept provincial assignments.

When the economic crisis continued until mid-year of 1984, respondent company decided to change its marketing strategy for the Berna and Pharmaton products to ensure the whole company's viability. Instead of ethical selling through the field representatives, it was decided to shift to the over-the-counter [OTC] method and to appoint Zuellig Pharma as national distributor. As this move would result in the abolition of the Pharmaceutical Division, the union president was advised on July 26, 1984 of the impending dissolution of said division and was asked to suggest ways and means by which the termination could be effected in the smoothest manner possible and with least pain. When on August 1, 1984, the union president categorically stated to the company president that the union would oppose any termination at all costs, respondent company decided to proceed with the announcement of the termination by serving notice on the same day to the 31 employees of the Pharmaceutical Division, said termination to take effect immediately upon service thereof. In lieu of the 30-day notice required by law, the employees were paid one month's salary. Fifteen accepted their termination.

Petitioners seek reversal of the above-cited NLRC findings and conclusions on the following grounds:

- A. THE ASSAILED DECISION WHOLLY DISREGARDED VIOLATIONS BY THE COMPANY OF ART. 284 OF THE LABOR CODE AS WELL AS THE STIPULATED PROCEDURES GOVERNING DISMISSALS IN THE PARTIES' COLLECTIVE BARGAINING AGREEMENT;
- B. THE NLRC ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT AFFIRMED THAT THE DISMISSAL OF THE FOURTEEN [14] EMPLOYEES ON JULY 26, 1984 WAS NOT A PROPER GROUND FOR A STRIKE DESPITE CONFERMENT BY LAW OF REGULAR STATUS TO THEIR EMPLOYMENT;
- C. THE NLRC GRAVELY ERRED IN HOLDING THAT THE QUADRUPLING OF THE UNION PRESIDENT'S AREA SALES QUOTA WAS NOT AN ACT OF DISCRIMINATION AND HENCE NOT A VALID GROUND FOR STRIKE; and
- D. THE COMMISSION ACTED CAPRICIOUSLY, UNREASONABLY AND WITHOUT LEGAL BASIS WHEN IT RULED THAT THE CLOSURE OF THE PHARMACEUTICAL DIVISION AND THE SUBSEQUENT TRANSFER OF ITS DISTRIBUTION FUNCTIONS TO ANOTHER COMPANY IS NOT AN UNFAIR LABOR PRACTICE.

Grounds A and B cited by petitioners are interrelated and will be discussed jointly.

Concededly, retrenchment to prevent losses is considered a just cause for terminating employment<sup>[22]</sup> and the decision whether to resort to such move or not is a management prerogative.<sup>[23]</sup> Basic, however, in human relations is the precept that "every person must, in the exercise of his rights, and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith."<sup>[24]</sup>

Thus, in the case of Remerco Garments Manufacturing vs. Minister of Labor and Employment, et al.,<sup>[25]</sup> We stated that:

“Basically, the right of an employer to dismiss an employee differs from and should not be confused with the manner in which such right is exercised. It must not be oppressive and abusive since it affects one’s person and property.”

Due perhaps to the fact that private respondent company presented a legally tenable ground for dismissing the 31 employees of its Pharmaceutical Division, both the labor arbiter and respondent NLRC totally missed the point petitioners were trying to drive home, i.e. that the manner by which the retrenchment was effected by respondent company ran counter to both law and the collective bargaining agreement.

Art. 284 of the Labor Code of the Philippines, as amended by Sec. 15 of Batas Pambansa Blg. 130, provides:

“Art. 284. Closure of establishment and reduction of personnel. — 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 workers and the Ministry of Labor and Employment at least one [1] month before the intended date thereof. In case of retrenchment to prevent losses and in cases of closure 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 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 one [1] whole year.”

In the case at bar, respondent company offered to pay the 31 dismissed employees one month salary in lieu of the one [1] month written notice required by law. This practice was allowed under the Termination Pay Laws<sup>[26]</sup> whereby if the employee is dismissed on the

basis of just cause, the employer is not required to serve advance written notice based on the number of years the employee has served the employer, nor is the employer required to grant termination pay. It is only where the dismissal is without just cause that the employer must serve timely notice on the employee, otherwise the employer is obliged to pay the required termination compensation, except where other applicable statutes provide a different remedy.<sup>[27]</sup> Otherwise stated, it was the employer's failure to serve notice upon the employee, not the cause for the dismissal, that rendered the employer answerable for terminal pay.<sup>[28]</sup> Thus, notice may effectively be substituted by payment of the termination pay.

Under the New Labor Code, however, even if the dismissal is based on a just cause under Art. 284, the one-month written notice to both the affected employee and the Minister of Labor is required, on top of the separation pay. Hence, unlike in the old termination pay laws, payment of a month's salary cannot be considered substantial compliance with the provisions of Art. 284 of the Labor Code. Since the dismissal of the 31 employees of the Pharmaceutical Division of respondent company was effected in violation of the above-cited provision, the same is illegal.

Needless to say, in the absence of a showing that the illegal dismissal was dictated by anti-union motives, the same does not constitute an unfair labor practice as would be a valid ground for a strike. The remedy is an action for reinstatement with backwages and damages. Nevertheless, We take this actuation of respondent company as evidence of the abusive and oppressive manner by which the retrenchment was effected. And while the lack of proper notice could not be a ground for a strike, this does not mean that the strike staged by petitioner union was illegal because it was likewise grounded on a violation by respondent company of the CBA, enumerated as an unfair labor practice under Art. 249 [i] of the Labor Code.

Appearing on record is the testimony of Carlito V. Santos, Controller of respondent company that the "principal strategy to shift to one distributor came as early as July."<sup>[29]</sup> In spite of this, petitioner union was never consulted on the matter as provided under Section 4, Article VIII of the CBA as follows:

“Section 4. Consultations on Lay-Offs and Terminations.

- a. the COMPANY agrees that whenever it will lay-off or terminate any covered employee for economic or other reasons, the UNION shall be consulted prior to such lay off/termination.”<sup>[30]</sup>

Verily, union president Lorenzo Leones was told by respondent company’s president and managing director, Constancio V. Halili, Jr. on July 25, 1984 about the impending closure, but contrary to the NLRC’s assessment, said notice cannot be taken as a substantial compliance with the above-cited CBA provision. The July 25, 1984 meeting was called by Halili for the purpose of discussing Leones’ grievance over the latter’s increase in area sales quota. The information about the closure was a mere “by the way” or an “incidentally,” a lip service, which does not constitute compliance in good faith of the CBA provision on consultation.

It appears that paying lip service to the CBA is a practice resorted to by respondent company. Thus, it posted for two days a job-opening notice for 7-10 field representatives and one supervisor in the HML Division as required by the CBA, but without disclosing that the Pharmaceutical Division was about to be dissolved. Feeling secure in their positions, the field representatives in the Pharmaceutical Division would naturally be uninterested in applying for the same position in the other division. Furthermore, respondent company listed educational requirements calculated to disqualify would-be-applicants from the Pharmaceutical Division who were mostly commerce graduates, but eventually hired applicants who did not possess the required educational attainment.

Another evidence that respondent company intended to terminate the 31 employees of the Pharmaceutical Division without prior consultation with petitioner union is the recall of the cars assigned to the field representatives. Two memoranda dated July 23 and 24 addressed to the HML Division and the Pharmaceutical Division, respectively, were sent out, directing the field representatives to turnover their respective cars for inspection at the nearby Cressida Motors. The memorandum to the HML Division indicated July 26, 1984 as the date of release of the cars to the field representatives,

while that to the Pharmaceutical Division merely mentioned “cut-off dates this July.”<sup>[31]</sup> The reason given by respondent company for the recall was that estimates of car maintenance and repair costs were to be reported by Carlito Santos to its Regional Office in Australia. This is obviously an afterthought because the testimony of said Carlito Santos was that he left for Sydney, Australia on July 24, 1984 and stayed there only for three [3] days or until July 27, 1984.<sup>[32]</sup> While the recall of the cars per se did not constitute a violation of Section 2, Article XIV of the CBA on the car purchase option, We consider the same as an indicia of the blatant disregard by private respondent company of the CBA provision on consultation.

In the same manner that We found the dismissal of the 31 employees of the Pharmaceutical Division in itself not to be constitutive of an unfair labor practice, so must the dismissal of the 14 rank-and-file employees be characterized. In the first instance it is not disputed that these employees were hired by respondent company thru a placement agency. In the absence of any evidence that the placement agency did not have substantial capital or investment in the form of tools, equipment machineries, work premises, among others, We cannot conclude that the arrangement between respondent company and said placement agency was “Labor-only” contracting as to make respondent company the direct employer of these 14 employees.<sup>[33]</sup> In the second place, even if such conclusion is reached and the 14 employees be deemed regular employees of respondent company, their dismissal, not having been shown in the least manner to be connected with union affiliation or activities cannot be considered an unfair labor practice, and therefore, not a valid ground for a strike.

We agree with petitioners that respondent NLRC gravely abused its discretion in concluding that the increase in the area sales quota of union president Leones was not an act of discrimination. The NLRC found the increase in the area sales quota justified by the change in the sales organization. It, however, overlooked a very important and crucial factor: that unlike the other field representatives whose quotas were increased by an average of 98%, that of the union president and vice-president were increased 400% and 300%, respectively. No valid explanation was advanced by respondent company for such marked difference. Considered in the light of the anti-union attitude exhibited by respondent company in transferring union president Leones from

the main office in Manila to Cebu when the union was still being organized, and which act was found by the NLRC as constituting unfair labor practice and union-busting in connection with the application for clearance to terminate Leones filed by respondent company,<sup>[34]</sup> the uneven application of its marketing plan by respondent company is patently an act of discrimination, considered as an unfair labor practice under Art. 249[e] of the Labor Code.

“It has previously been indicated that an employer may treat freely with an employee and is not obliged to support his actions with a reason or purpose. However, where the attendant circumstances, the history of employer’s past conduct and like considerations, coupled with an intimate connection between the employer’s action and the union affiliations or activities of the particular employee or employees taken as a whole raise a suspicion as to the motivation for the employer’s action, the failure of the employer to ascribe a valid reason therefor may justify an inference that this unexplained conduct in respect of the particular employee or employees was inspired by the latter’s union membership or activities. While the presence of this mere suspicion neither takes the place of evidence that the employer’s conduct was improperly motivated nor dispenses with the requirement of proof of the fact, such suspicion, when coupled with other facts which in themselves, might have been inadequate to support an adverse finding against the employer, may suffice to sustain a finding that the employer’s action violated the prohibition of the Act.”<sup>[35]</sup>

The contempt charge against petitioner union, KMU and Nick Elman was predicated mainly on the statement appearing in the circular apparently authored by Nick Elman, to wit:

“It is an open secret, that most of the Supreme Court Justices belong to the upper privileged class and some of them belonged at one time or another, to law firms that serve the interests of giant transnational corporations as corporate counsels and retainers and this ruling merely confirmed the perceived apparent pro-multinational, pro-capital, anti-labor, anti-union and anti-strike posture of personalities in the Supreme Court.”<sup>[36]</sup>

And on the fact that at the time the picket was staged, the case was still sub judice.

Oliveros vs. Villaluz, 57 SCRA 163, is but one of the numerous authorities enunciating the principle that “ the power to punish for contempt should be used sparingly, with caution, deliberation and with due regard to the provisions of the law and the constitutional rights of the individual.” On this basis, We clear the alleged contemptors of the charge against them.

To our mind, the statements complained of are mere expressions of opinion intended not so much to bring the Court in disrepute as to advance the cause of labor. It must be noted that the picket was staged only eight [8] months after the EDSA Revolution which saw the ouster of the past dispensation and the restoration of the basic rights to the people. Freedom of speech, much repressed during the previous regime, had only begun to take wings again. Taken against this background, We understand the overzealousness demonstrated by the KMU and Nick Elman in exercising their freedom of speech and expression and are inclined to give more weight to said constitutional rights than to the Court’s inherent power to preserve its dignity to which the power to punish for contempt appertains.

Although the picket was staged when the motion for leave to file a final and last motion for reconsideration was still pending action by the Court, the KMU and Nick Elman, not being parties to the case, were unaware of such fact. They believed the case to have been finally disposed of in view of the final denial of the first motion for reconsideration. On the other hand, there is no sufficient proof that petitioner union had participated in the picket nor in the preparation of the circular under consideration.

**WHEREFORE**, the petition is hereby granted. The decision of the NLRC dated December 27, 1985 in NCR-9-3217-84 is set aside and the strike staged by petitioner union is declared to be legal. Respondent company AHS/Philippines, Inc. is hereby found guilty of unfair labor practices. Since reinstatement of individual petitioners is no longer possible in view of the cessation of its operations in the Philippines, respondent company is ordered to pay said individual

petitioners, except E.C. Rodriguez, backwages from August 15, 1984 until Respondent company's closure as well as the separation pay mandated under Art. 284 of the Labor Code. Furthermore, respondent company is hereby ordered to pay the fifteen [15] employees of the Pharmaceutical Division who did not accept their termination, backwages from August 1, 1984 until Respondent company's closure and the economic package being offered by respondent company as stated in its letters of termination.

The contempt charge against petitioner union, KMU and Nick Elman is dismissed.

**SO ORDERED.**

**Gutierrez, Jr., Paras, Padilla, Bidin and Cortes, JJ., concur.**

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[\*] Petitioner E.C. Rodriguez submitted his resignation and accepted his resignation benefits from respondent company during the pendency of the case. [Comment on the Petition, p. 68, Rollo.]

[1] Annex "A", Petition, pp. 50-51, Rollo.

[2] Annex "D", Supplemental Memorandum of the Petitioners, p. 285, Rollo.

[3] Annex "D-2", Supplemental Memo, p. 287, Rollo.

[4] Annex "H", Supplemental Memo, p. 292, Rollo.

[5] p. 24, Rollo.

[6] p. 104, Rollo.

[7] p. 105, Rollo.

[8] p. 131, Rollo.

[9] p. 133, Rollo.

[10] p. 157, Rollo.

[11] p. 193, Rollo.

[12] p. 313, Rollo.

[13] p. 144, Rollo.

[14] p. 165, Rollo.

[15] p. 191, Rollo.

[16] p. 309, Rollo.

[17] pp. 36-37, Rollo.

[18] pp. 37-40, Rollo.

[19] pp. 40-41, Rollo.

[20] pp. 41-42, Rollo.

[21] pp. 42-44, Rollo.

[22] Art. 284, Labor Code of the Philippines.

- [23] Special Events & Central Shipping Office Workers Union vs. San Miguel Corporation, 122 SCRA 557.
- [24] Art. 19, Civil Code of the Philippines.
- [25] 135 SCRA 167.
- [26] R.A. 1052 and R.A. 1787.
- [27] Pepito vs. Secretary of Labor, 122 SCRA 834.
- [28] Phil. Refining Co., Inc. vs. Garcia, et al., 18 SCRA 107.
- [29] t.s.n., of 12-12-84 Hearing Page 17.
- [30] Exh. "C", p. 19, NLRC Records.
- [31] Annex B, Reply to Position Paper, NLRC Records.
- [32] T.s.n., 12-12-84 Hearing, p. 54.
- [33] Art. 106, Labor Code.
- [34] pp. 116-117, Rollo.
- [35] Rothenberg on Labor Relations, pp. 401-402.
- [36] p. 155, Rollo.