SUPREME COURT
SECOND DIVISION

REGINA S. BIBOSO, NENITA B. BISO, FE CUBIN, MAGELENDE H. DEMEGILLO, EMERITA O. PANALIGAN, NILDA P. TAYO, NELDA TORMON, ARDE M. VALENCIANO, MA. LINDA E. VILLA, and the VICMICO SUPERVISORY EMPLOYEES ASSOCIATION (VICSEA),
***Petitioners*,**

-versus-

G.R. No. L-44360
March 31, 1977

VICTORIAS MILLING COMPANY, INC. and the OFFICE OF THE PRESIDENT OF THE PHILIPPINES,
***Respondents*.**
x----------x

D E C I S I O N

FERNANDO, *J.*:

The present Constitution in expanding the mandate of protection to labor specifically casts on the State the obligation to assure workers security of tenure.[1] The decisive question in the controversy now before this Court is whether the mantle of such guarantee covers the

case of the nine petitioners, whose employment admittedly were on a probationary basis. It was the ruling of respondent Presidential Executive Assistant Jacobo C. Clave that its beneficent effects could not be invoked by them that is assailed before this Court. While their pleading is captioned petition for review, this Court considered it as a *certiorari* proceeding in view of the imputation that there was a grave abuse of discretion on his part, the issue of an alleged unfair labor practice indulged in by private respondent Victorias Milling Company being likewise raised by them. A careful examination of the records does not justify the rather serious accusation against respondent public official, who acted on behalf of the Office of the President. The petition is not impressed with merit.

The order of respondent Jacobo C. Clave, who as Presidential Executive Assistant acted on an appeal by private respondent from a decision of the Secretary of Labor dismissed the complaint of petitioners for reinstatement. He noted at the outset of such challenged order: "Individual complainants herein were employed by respondent as academic teachers in respondent's school, the St. Mary Mazzarello School, which is operated by respondent. On or about April 14, 1973, complainants were notified by the school Directress that they (complainants) were not going to be rehired for the school year 1973-74. The necessary report for such action was filed by respondent with the Department of Labor on May 28, 1973, informing that complainants' services were thus terminated after the business hours on June 30, 1973."[2] He then pointed out that petitioners were quite successful with the Arbitrator, the former National Labor Relations Commission under Presidential Decree No. 21, and the Secretary of Labor. It was private respondent that appealed to the Office of the President. After which, his order went into the basic issue thus: "This Office had examined and analyzed the various contracts identified during the hearing below and admitted by the complainants to have been signed by them which clearly show that the complainants were hired as teachers of the school on a year-to-year basis and that they reapplied before the expiration of the contracts and/or signed new ones, as the case may be, if the school decided to renew the same. None of the complainants who testified disputed the fact that they all signed identical contracts of employment which provided for a definite period of employment which provided for a definite period of employment expiring June 30

of the particular school year. Thus, under 'Status of Employment' of said contracts, the complainants were hired as 'temporary as and when required until June 30, 1973,' or whatever year the contract is supposed to terminate. To be specific, Exhs. '4, '5' and '6' signed by complainant Arde Valenciano show that she was hired on a yearly basis for school year 1970-71, and 1971-72. The same is true with Exhs. '13' and '14 signed by Linda Villa; Exhs. '16', '17', '18' and '19', signed by Emerita O. Panaligan; and Exhs. '22' and '23', signed by Magelinde Demegillo, all showing that they were hired on a year-to-year basis."[3] Reference was then made to "the official stand of the Department of Labor respecting recognition by the Labor Code of the policy of the Bureau of Private Schools settling the maximum probationary period for teachers at three years. Of pertinence hereto is the official letter dated March 12, 1975, of Undersecretary of Labor Amado G. Inciong to the President of the Coordinating Council of Private Educational Associations touching on the probationary period for teachers at three years, to wit: 'This refers to your letter of 5 March 1975 in connection with the probationary period for teachers. The Labor Code does not set the maximum probationary period at six months. Under the Labor Code, the probationary period is the period required to learn a skill, trade, occupation or profession. In other words, the Labor Code recognizes the policy of the Bureau of Private Schools settling the maximum probationary period for teachers at three years.'"[4] It was likewise made plain therein that as regards the allegation of unfair labor practice, the Office of the President "finds the same untenable."[5]

The petition, as noted at the outset, cannot prosper.

1. It is to be noted that in Philippine Air Lines, Inc. vs. Philippine Air Lines Employees Association,[6] after reference was made to the specific provision in the present Constitution not found in the 1935 Charter requiring the State to assure workers security of tenure, it was stressed that there should be "fealty to [such] constitutional command."[7] Such a mandate was construed in the subsequent case of Almira vs. B. F. Goodrich Philippines, Inc.,[8] that even in cases affording justification for disciplinary action to be taken by management against an employee, "where a penalty less punitive [than dismissal]

would suffice, whatever missteps may be committed by [the latter] ought not to be visited with a consequence so severe."[9] The opinion then went on to state: "It is not only because of the law's concern for the workingman. There is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on the wage-earner. The misery and pain attendant on the loss of jobs then could be avoided if there be acceptance of the view that under all the circumstances or this case, petitioners should not be deprived of their means of livelihood. Nor is this to condone what had been done by them. For all this while, since private respondent considered them separated from the service, they had not been paid. From the strictly juridical standpoint, it cannot be too strongly stressed, to follow Davis in his masterly work, Discretionary Justice, that where a decision may be made to rest on informed judgment rather than rigid rules, all the equities of the case must be accorded their due weight. Finally, labor law determinations, to quote from Bultmann, should be not only secundum rationem but also secundum caritatem."[10] That is a doctrine to which this case is whether it applies to the case of petitioners. The Office of the President answered in the negative. Thus it exercised its discretion. It cannot be said that an abuse could rightfully be imputed to it, much less one that is of such gravity that calls for judicial correction. What is decisive is that petitioners were well aware all the time that their tenure was for a limited duration. Upon its termination, both parties to the employment relationship were free to renew it or to let it lapse. It was the decision of private respondent that it should cease. The Office of the President could find nothing objectionable when it determined that the will of the parties as to the limited duration thereof should be respected. That was all that was decided.

2. This is by no means to assert that the security of tenure protection of the Constitution does not apply to probationary employees. The Labor Code has wisely provided for such a case thus: "The termination of employment of probationary employees and those employed with a fixed period shall be subject to such regulations as the Secretary of Labor may

prescribe to prevent the circumvention of the right of the employees to be secured in their employment as provided herein."[11] There is no question here, as noted in the assailed order of Presidential Executive Assistant Clave, that petitioners did not enjoy a permanent status. During such period they could remain in their positions and any circumvention of their rights, in accordance with the statutory scheme, subject to inquiry and thereafter correction by the Department of Labor. Thus there was the safeguard as to the duration of their employment being respected. To that extent, their tenure was secure. The moment, however, the period expired in accordance with contracts freely entered into, they could no longer invoke the constitutional protection. To repeat, that was what transpired in this case. The ruling of the Office of the President, now assailed, is not without support in law.

3. It would be a different matter of course had the failure to renew the contracts of petitioners been justly attributable to their joining petitioner labor union, Vicmico Supervisory Employees Association. That would be a clear case of an unfair labor practice.[12] There was such an allegation by them. The Office of the President found "the same untenable."[13] Nor did it stop there. It explained why: "The records disclose, and it is a fact admitted by the union, that the teachers of Don Bosco Technical Institute, also run and operated by respondent, are all members of the VICSEA. The allegation that the Company refused re-employment of complainants simply because they joined the VICSEA is negated by the fact that in a much bigger school, the Don Bosco Technical Institute, respondent has allowed the members of the faculty to join the VICSEA without any serious objection or reprisal. If at all the respondent had objected to the teachers of the St. Mary Mazzarello school being considered within the same bargaining unit as the other employees of the company, it was for the reason that the collective bargaining agreement itself provided for the exemption from coverage of employees hired for a definite period of employment, like the complainants herein, who were indisputably shown that the term of their contract of

> employment prior to the time that they become permanent under the Manual of the Bureau of Private Schools, was temporary in nature or for a definite period."[14]

In the comment submitted on behalf of respondent public official, reference was made to the admission by individual petitioners that before they joined such labor union, "they had serious differences with the school officials respecting their methods of teaching and conduct in school."[15] That was followed by a recital of what was testified to by some of the petitioners. Then came this portion of the comment: "The above-quoted testimonies of individual petitioners clearly show that their competence, efficiency, loyalty and integrity were in question long before they became members of petitioner union VICSEA and it was because of these failings on their part that their contracts to teach were not renewed. This also shown by Exhibit 39, (3) Some of the teachers retained to teach in the school were also members of petitioner union VICSEA. If respondent VICMICO was against individual petitioners joining the union, why did it not terminate the employment of these two teachers as well? (4) Don Bosco of Bacolod City, another school run by respondent VICMICO, is manned by teachers who are members of petitioner union VICSEA. Considering the foregoing circumstances, it is difficult to believe the submission of individual petitioners that they were terminated from employment because they joined petitioner union VICSEA. It would appear that it was the other way around. Knowing that their contracts were about to expire and that they would probably not be extended new ones, petitioners sought membership in petitioner union VICSEA to render it more difficult for respondent VICMICO to remove them from their teaching positions. This is indicated by the fact that petitioners became members of petitioner union VICSEA only in January, 1973. Before this date, individual petitioners were already being closely observed to gauge their performance for purposes of determining who shall be accorded permanent status. Thus, individual petitioners knew that they would either be made permanent or will be dropped from the faculty roster at the end of the school year 1972-73. So they joined the union. That the purpose of individual petitioners in joining the union is to avert their forthcoming removal from the faculty roster was impliedly admitted by one of the individual petitioners in her testimony: 'Q - But according to you, precisely, the reason why you joined the union was

because it would be very hard for the school to terminate you if you are already a member of the union, did you not say that? A — I said it!"[16] The memorandum for petitioners did stress testimony coming from the Directress of the school in question to show that the refusal to retain them in employment was due to their membership in the union. Certainly, it cannot be assumed that the Office of the President in the evaluation of the conflicting evidence did not take it into consideration. The conclusion it reached was adverse to petitioners. It is now well-settled that the *certiorari* jurisdiction of this Tribunal extends only to a grave abuse of discretion. There must be the element of arbitrariness or caprice. In the light of what appears of record, the conclusion that the decision reached by it is tainted by such infirmity is unwarranted.

WHEREFORE, the Petition for *Certiorari* is dismissed.

Barredo, Antonio and Concepcion Jr., *JJ*., concur.
Aquino, *J*., concurs in the result.

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[1] According to Article II, Section 9 of the Constitution: "The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."
[2] Petition, Annex I, 1.
[3] Ibid, 2-3.
[4] Ibid, 3-4.
[5] Ibid, 2.
[6] L-24626, June 28, 1974, 57 SCRA 489.
[7] Ibid, 496.
[8] L-34974, July 25, 1974, 58 SCRA 120.
[9] Ibid, 131.
[10] Ibid.
[11] Article 271 of the Labor Code (1974).
[12] According to Article 247 of the Labor Code: "Unfair labor practices of employers. - It shall be unfair labor practice for an employer: (a) To Interfere with, restrain or coerce employees in the exercise of their right to self-organization;"
[13] Petition, Annex I, 2.
[14] Ibid, 4-5.

[15] Comment of the then Acting Solicitor General Hugo E. Gutierrez, Jr. and Assistant Solicitor General Reynato S. Puno, 4.
[16] Ibid, 8-10.