SUPREME COURT
SECOND DIVISION

THE HONGKONG AND SHANGHAI BANKING CORPORATION EMPLOYEES UNION,
***Petitioner*,**

-versus-

G.R. No. 125038
November 6, 1997

NATIONAL LABOR RELATIONS COMMISSION AND THE HONGKONG AND SHANGHAI BANKING CORPORATION, LTD.,
***Respondents*.**
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D E C I S I O N

REGALADO, *J.*:

In an Order dated November 27, 1995,[1] respondent National Labor Relations Commission (NLRC) reversed and set aside the order issued by Labor Arbiter Felipe T. Garduque II which dismissed and remanded for further proceedings the case for unfair labor practice filed by private respondent Hongkong and Shanghai Banking Corporation, Ltd. (the "Bank") against petitioner Hongkong and Shanghai Banking Corporation Employees Union (the "Union"), the recognized bargaining representative of the Bank's regular rank and

file employees. This petition for *certiorari* impugns the aforesaid Order of respondent commission.

The case at bar arose from the issuance of a non-executive job evaluation program (JEP) lowering the starting salaries of future employees, resulting from the changes made in the job grades and structures, which was unilaterally implemented by the Bank retroactive to January 1, 1993. The program in question was announced by the Bank on January 18, 1993.

In a letter dated January 20, 1993,[2] the Union, through its President, Peter Paul Gamelo, reiterated its previous verbal objections to the Bank's unilateral decision to devise and put into effect the said program because it allegedly was in violation of the existing collective bargaining agreement (CBA) between the parties and thus constituted unfair labor practice. The Union demanded the suspension of the implementation of the JEP and proposed that the same be instead taken up or included in their upcoming CBA negotiations.

The Bank replied in a letter dated January 25, 1993[3] that the JEP was issued in compliance with its obligation under the CBA, apparently referring to Article III, Section 18 thereof which provides that:

> "Within the lifetime of this Agreement the BANK shall conduct a job evaluation of employee positions. The implementation timetable of the said exercise shall be furnished the UNION by the BANK within two (2) months from the signing of this Agreement."

This prompted the Union to undertake concerted activities to protest the implementation of the JEP, such as whistle blowing during office hours starting on March 15, 1993 up to the 23rd day, and writing to clients of the Bank allegedly to inform them of the real situation then obtaining and of an imminent disastrous showdown between the Bank and the Union.

The Union engaged in said activities despite the fact that as early as February 11, 1993,[4] it had already initiated the renegotiation of the non-representational provisions of the CBA by submitting their

proposal to the Bank, to which the latter submitted a reply. As a matter of fact, negotiations on the CBA commenced on March 5, 1993 and continued through March 24, 1993 when the Bank was forced to declare a "recess" to last for as long as the Union kept up with its concerted activities. The Union refused to concede to the demand of the Bank unless the latter agreed to suspend the implementation of the JEP.

Instead of acquiescing thereto, the Bank filed on April 5, 1993[5] with the Arbitration Branch of the NLRC a complaint for unfair labor practice against the Union allegedly for engaging in the contrived activities against the ongoing CBA negotiations between the Bank and the Union in an attempt to unduly coerce and pressure the Bank into agreeing to the Union's demand for the suspension of the implementation of the JEP. It averred that such concerted activities, despite the ongoing CBA negotiations, constitute unfair labor practice (ULP) and a violation of the Union's duty to bargain collectively under Articles 249 (c) and 252 of the Labor Code.

The Union filed a Motion to Dismiss[6] on the ground that the complaint states no cause of action. It alleged that its united activities were actually being waged to protest the Bank's arbitrary imposition of a job evaluation program and its unjustifiable refusal to suspend the implementation thereof. It further claimed that the unilateral implementation of the JEP was in violation of Article I, Section 3 of the CBA which prohibits a diminution of existing rights, privileges and benefits already granted and enjoyed by the employees. To be sure, so the Union contended, the object of the Bank in downgrading existing CBA salary scales, despite its sanctimonious claim that the reduced rates will apply only to future employees, is to torpedo the salary structure built by the Union through three long decades of periodic hard bargaining with the Bank and to thereafter replace the relatively higher-paid unionized employees with cheap newly hired personnel. In light of these circumstances, the Union insists that the right to engage in these concerned activities is protected under Article 246 of the Labor Code regarding non-abridgment of the right to self-organization and, hence, is not actionable in law.

In its Opposition,[7] the Bank stated that the Union was actually challenging merely that portion of the JEP providing for a lower rate

of salaries for future employees. Contrary to the Union's allegations in its motion to dismiss that the JEP had resulted in diminution of existing rights, privileges and benefits, the program has actually granted salary increases to, and in fact is already being availed of by, the rank and file staff. The Union's objections are premised on the erroneous belief that the salary rates for future employees is a matter which must be subject of collective bargaining negotiation. The Bank believes that the implementation of the JEP and the resultant lowering of the starting salaries of future employees, as long as there is no diminution of existing benefits and privileges being accorded to existing rank and file staff, is entirely, a management prerogative.

In an Order dated July 29, 1993,[8] the labor arbiter dismissed the complaint with prejudice and ordered the parties to continue with the collective bargaining negotiations, there having been no showing that the Union acted with criminal intent in refusing to comply with its duty to bargain but was motivated by the refusal of management to suspend the implementation of its job evaluation program, and that it is not evident that the concerted activities caused damage to the Bank. It concluded that, at any rate, the Bank is not left without recourse, in case more aggressive and serious acts be committed in the future by the Union, since it could institute a petition to declare illegal such acts which may constitute a strike or picketing.

On appeal, respondent NLRC declared that based on the facts obtaining in this case, it becomes necessary to resolve whether or not the Union's objections to the implementation of the JEP are valid and, if it is without basis, whether or not the concerted activities conducted by the Union constitute unfair labor practice. It held that the labor arbiter exceeded his authority when he ordered the parties to return to the bargaining table and continue with CBA negotiations, considering that his jurisdiction is limited only to labor disputes arising from those cases provided for under Article 217 of the Labor Code, and that the labor arbiter's participation in this instance only begins when the appropriate complaint for unfair labor practice due to a party's refusal to bargain collectively is filed. Consequently, the case was ordered remanded to the arbitration branch of origin for further proceedings in accordance with the guidelines provided for therein.

Hence, this petition.

The Union asserts that respondent NLRC committed grave abuse of discretion in failing to decide that it is not guilty of unfair labor practice considering that the concerted activities were actually directed against the implementation of the JEP and not at the ongoing CBA negotiations since the same were launched even before the start of negotiations. Hence, it cannot be deemed to have engaged in bad-faith bargaining. It claims that respondent NLRC gravely erred in remanding the case for further proceedings to determine whether the objections raised by the Union against the implementation of the JEP are valid or not, for the simple reason that such is not the issue involved in the complaint for ULP filed by the Bank but rather whether the Union is guilty of bargaining in bad faith in violation of the Labor Code. It is likewise averred that Labor Arbiter Garduque cannot be considered to have exceeded his authority in ordering the parties to proceed with the CBA negotiations because it was precisely a complaint for ULP which the Bank filed against the Union.

We find no merit in the petition.

The main issue involved in the present case is whether or not the labor arbiter correctly ordered the dismissal with prejudice of the complaint for unfair labor practice on the bases merely of the Complaint, the Motion to Dismiss as well as the Opposition thereto, filed by the parties. We agree with respondent NLRC that there are several questions that need to be threshed out before there can be an intelligent and complete determination of the propriety of the charges made by the Bank against the Union.

A perusal of the allegations and arguments raised by the parties in the Motion to Dismiss and the Opposition thereto will readily reveal that there are several issues that must preliminarily be resolved and which will require the presentation of evidence other than the bare allegations in the pleadings which have been filed, in order to ascertain the propriety or impropriety of the ULP charge against the Union.

Foremost among the issues requiring resolution are:

1. Whether or not the unilateral implementation of the JEP constitutes a violation of the CBA provisions requiring the Bank to furnish the Union with the job evaluation implementation timetable within two months from the signing of the CBA on July 30, 1990,[9] and prohibiting the diminution of existing rights, privileges and benefits already granted and enjoyed by the employees;[10]

2. Whether or not the concerted acts committed by the Union were done with just cause and in good faith in the lawful exercise of their alleged right under Article 246 of the Labor Code on non-abridgment of the right to self-organization; and

3. Whether or not the fixing of salaries of future employees pursuant to a job evaluation program is an exclusive management prerogative or should be subject of collective bargaining negotiation.

It does not fare petitioner any better that it had, wittingly or unwittingly, alleged in its Consolidated Reply[11] that the concerted actions began on January 22, 1993 even before the commencement of CBA negotiations which started in March, 1993. Apparently that was an attempt on the part of the Union to rectify the incriminating pronouncement of the labor arbiter in his questioned order to the effect that the challenged activities occurred from March 15 to 23, 1993 during the CBA negotiations. This seemingly conflicting factual allegations are crucial in resolving the issue of whether or not the concerted activities were committed in violation of the Union's duty to bargain collectively and would therefore constitute unfair labor practice.

Likewise, the labor arbiter, in finding that the Union was not motivated by any criminal intent in resorting to said concerted activities, merely gave a sweeping statement without bothering to explain the factual and evidentiary bases therefor. The declaration that there was no damage caused to the Bank by reason of such Union activities remains unsubstantiated. Nowhere is there any showing in the labor arbiter's order of dismissal from which it can be fairly inferred that such a statement is supported by even a preponderance

of evidence. What purportedly is an adjudication on the merits is in truth and in fact a short discourse devoid of evidentiary value but very liberal with generalities and hasty conclusions.

The fact that there is an alternative remedy available to the Bank, as the labor arbiter would suggest, will not justify an otherwise erroneous order. It bears emphasizing that by the very nature of an unfair labor practice, it is not only a violation of the civil rights of both labor and management but is also a criminal offense against the State which is subject to prosecution and punishment.[12] Essentially, a complaint for unfair labor practice is no ordinary labor dispute and therefore requires a more thorough analysis, evaluation and appreciation of the factual and legal issues involved.

One further point. The need for a more than cursory disposition on the unfair labor practice issue is made doubly exigent in view of the Bank's allegation in its Comment[13] that a strike has been launched by the Union specifically to protest the implementation of the JEP. Although the strike incident is not an issue in this case, this supervening event bespeaks the worsening situation between the parties that calls for a more circumspect assessment of the actual issues herein involved.

Necessarily, a determination of the validity of the Bank's unilateral implementation of the JEP or the Union's act of engaging in concerted activities involves an appraisal of their motives. In cases of this nature, motivations are seldom expressly avowed; and avowals are not always candid. There must thus be a measure of reliance on the administrative agency. It was incumbent upon the labor arbiter, in the first instance, to weigh such expressed motives in determining the effect of an otherwise equivocal act. The Labor Code does not undertake the impossible task of specifying in precise and unmistakable language each incident which constitutes an unfair labor practice. Rather, it leaves to the court the work of applying the law's general prohibitory language in light of infinite combinations of events which may be charged as violative of its terms.[14]

It has been held that the crucial question whether or not a party has met his statutory duty to bargain in good faith typically turns on the facts of the individual case. There is no per se test of good faith in

bargaining. Good faith or bad faith is an inference to be drawn from the facts. To some degree, the question of good faith may be a question of credibility. The effect of an employer's or a union's actions individually is not the test of good-faith bargaining, but the impact of all such occasions or actions, considered as a whole, and the inferences fairly drawn therefrom collectively may offer a basis for the finding of the NLRC.[15]

This, the court or the quasi-judicial agency concerned can do only after it has made a comprehensive review of the allegations made in the pleadings filed and the evidence presented in support thereof by the parties, but definitely not where, as in the present case, the accusation of unfair labor practice was negated and subsequently discharged on a mere motion to dismiss.

It is a well-settled rule that labor laws do not authorize interference with the employer's judgment in the conduct of his business. The Labor Code and its implementing rules do not vest in the labor arbiters nor in the different divisions of the NLRC nor in the courts managerial authority.[16] The hiring, firing, transfer, demotion, and promotion of employees has been traditionally identified as a management prerogative subject to limitations found in the law, a collective bargaining agreement, or in general principles of fair play and justice. This is a function associated with the employer's inherent right to control and manage effectively its enterprise. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied.[17]

Accordingly, this Court, in a number of cases, has recognized and affirmed the prerogative of management to implement a job evaluation program or a reorganization for as long as it is not contrary to law, morals or public policy.

Thus, in Batongbacal vs. Associated Bank, et al.,[18] involving the dismissal of an assistant vice-president for refusing to tender his courtesy resignation which the bank required in line with its reorganization plan, the Court held, among others, that it is not prepared to preempt the employer's prerogative to grant salary

increases to its employees by virtue of the implementation of the reorganization plan which thereby caused a distortion in salaries, notwithstanding that there is a semblance of discrimination in this aspect of the bank's organizational setup.

In the case of National Sugar Refineries Corporation vs. National Labor Relations Commission, et al.,[19] the petitioner implemented a job evaluation program affecting all employees, from rank and file to department heads. The JEP was designed to rationalize the duties and functions of all positions, reestablish levels of responsibility, and reorganize both wage and operational structures. Jobs were ranked according to effort, responsibility, training and working conditions and relative worth of the job. As a result, all positions were re-evaluated, and all employees were granted salary adjustments and increases in benefits commensurate to their actual duties and functions. With the JEP, the supervisory employees, who were members of the respondent Union therein and were formerly treated in the same manner as rank and file employees, were considered no longer entitled to overtime, rest day and holiday pay but their basic salaries increased by 50%. The respondents therein sued for recovery of those benefits.

In upholding management's prerogative to implement the JEP, the Court held therein that:

> "In the case at bar, private respondent union has miserably failed to convince this Court that the petitioner acted in bad faith in implementing the JE Program. There is no showing that the JE Program was intended to circumvent the law and deprive the members of respondent union of the benefits they used to receive.
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> It is the prerogative of management to regulate, according to its discretion and judgment, all aspects of employment. This flows from the established rule that labor law does not authorize the substitution of the judgment of the employer in the conduct of its business. Such management prerogative may be availed of without fear of any liability so long as it is exercised in good faith for the advancement of the employers' interest and not for the purpose of defeating or circumventing the rights of

> employees under special laws or valid agreement and are not exercised in a malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite."

Just recently, this Court had the occasion to reiterate and uphold the established and unequivocal right of an employer to implement a reorganization in the valid exercise of its management prerogative, thus:

> "Being a regular employee, petitioner is of the view that she had already acquired a vested right to the position of Executive Secretary, together with its corresponding grade, rank and salary, which cannot be impaired by the 1991 reorganization of CENECO.
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> In Aurelio vs. National Labor Relations Commission, et al., we upheld the power of the board of directors of a corporation to implement a reorganization, including the abolition of various positions, as implied or incidental to its power to conduct the regular business affairs of the corporation. In recognition of the right of management to conduct its own business affairs in achieving its purpose, we declared that management is at liberty, absent any malice on its part, to abolish positions which it deems no longer necessary.
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> This Court, absent any finding of bad faith on the part of management, will not deny it the right to such initiative simply to protect the person holding that office. In other words, where there is nothing that would indicate that an employee's position was abolished to ease him out of employment, the deletion of that position should be accepted as a valid exercise of management prerogative.
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> No ill will can be ascribed to private respondents as all the positions specified in the old plantilla were abolished and all other employees were given new appointments. In short,

> petitioner was not singled out. She was not the only employee affected by the reorganization. The reorganization was fair to petitioner, if not to all of the employees of CENECO.
>
> It should be remembered that petitioner's new appointment was made as a result of valid organizational changes. A thorough review of both the indispensable and the unessential positions was undertaken by a committee, specifically formed for this purpose, before the Board of Directors abolished all the positions. Based on the qualification and aptitude of petitioner, the committee and, subsequently, private respondent, deemed it best to appoint petitioner as Secretary of the Engineering Department. We cannot meddle in such a decision lest we interfere with the private respondents right to independently control and manage their operations absent any unfair or inequitable acts.
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> If the purpose of a reorganization is to be achieved, changes in positions and ranking of employees should be expected. To insist on one's old position and ranking after a reorganization would render such endeavor ineffectual. Here, to compel private respondents to give petitioner her old ranking would deprive them of their right to adopt changes in the cooperative's personnel structure as proposed by the Steering Committee.
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> x x x
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> As we have held, security of tenure, while constitutionally guaranteed, cannot be used to deprive an employer of its prerogatives under the law. Even if the law is solicitous of the welfare of the employees, it must also protect the right of an employer to exercise what are clearly management prerogatives."[20]

Notwithstanding the relevance of the foregoing disquisition, considering however the factual antecedents in this case, or the lack of a complete presentation thereof, we are constrained to refrain from ruling outright in favor of the Bank. While it would appear that remanding the case would mean a further delay in its disposition, we are not inclined to sacrifice equity and justice for procedural

technicalities or expediency. The order dismissing the complaint for ULP with prejudice, to say the least, leaves much to be desired.

Anent the question on whether or not the labor arbiter has jurisdiction to order the parties to return to and continue with the collective bargaining negotiations, there is a commentary to the effect that, as one of the reliefs which may be granted in ULP cases, the Court may, in addition to the usual cease and desist orders, issue an affirmative order to the employer to "bargain" with the bargaining agent, as the exclusive representative of its employees, with respect to the rate of pay, hours of work and other conditions of employment.[21] On this aspect, respondent NLRC stands to be reversed. Nevertheless, its directive on this point is deemed vacated and ineffectual by our decision to remand the case for further proceedings.

WHEREFORE, subject to the foregoing observation, the challenged disposition of respondent National Labor Relations Commission is hereby **AFFIRMED.**

SO ORDERED.

Puno and Mendoza, *JJ.*, concur.

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[1] Annex C, Petition; Rollo, 28; per Commissioner Victoriano R. Calaycay, with the concurrence of Presiding Commissioner Raul C. Aquino and Commissioner Rogelio I. Rayala.
[2] Annex E, Petition; Rollo, 42.
[3] Annex G, id.; ibid., 44.
[4] Annex H, id., ibid., 46.
[5] Annex J, id., ibid., 48.
[6] Annex K, id., ibid., 55.
[7] Annex L, Petition; Rollo, 62.
[8] Annex D, id., ibid., 36.
[9] Article I, Section 3.
[10] Article III, Section 18.
[11] Rollo, 140.
[12] Article 247, Labor Code.
[13] Rollo, 106.
[14] Republic Savings Bank vs. Court of Industrial Relations, et al., L-20303, September 27, 1967, 21 SCRA 226.
[15] 48 Am. Jur. 2d, Labor and Labor Relations, Sec. 1028, 828.

[16] Almodiel vs. NLRC, et al., G.R. No. 100641, June 14, 1993, 223 SCRA 341.
[17] Abbot Laboratories (Phils.), Inc. vs. NLRC, et al., G.R. No. 76959, October 12, 1987, 154 SCRA 713.
[18] G.R. No. 72977, December 21, 1988, 168 SCRA 600.
[19] G.R. No. 101761, March 24, 1993, 220 SCRA 452.
[20] Arrieta vs. NLRC, et al., G.R. No. 126230, September 18, 1997.
[21] Azucena, C.A., The Labor Code with Comments and Cases, Vol. II, 1993 rev. ed., 191.