SUPREME COURT
SECOND DIVISION

LVN PICTURES EMPLOYEES AND WORKERS ASSOCIATION (NLU),
***Petitioner*,**

-versus-

G.R. No. L-23495
September 30, 1970

LVN PICTURES, INC.,
***Respondent*.**
x----------x

LVN PICTURES CHECKERS' UNION (NLU),
***Petitioner*,**

-versus-

G.R. No. L-26432
September 30, 1970

LVN PICTURES, INC. and/or DALISAY PICTURES, INC., and the COURT OF INDUSTRIAL RELATIONS,
***Respondents*.**
x----------x

D E C I S I O N

CASTRO, *J.*:

These two Appeals by *Certiorari* taken by the respective complainants from the Decision and the Resolution dated October 8, 1963 and August 29, 1964, respectively, of the Court of Industrial Relations (CIR) in case 2879-ULP (LVN Pictures Employees and Workers Association [NLU] vs. LVN Pictures, Inc.), and from the decision and the resolution dated June 2, 1966 and July 18, 1966, respectively, of the same court in case 3013-ULP (LVN Pictures Checkers' Union [NLU] vs. LVN Pictures, Inc. and/or Dalisay Pictures, Inc.), are here considered together because all the complainants in both cases were former employees of the LVN Pictures, Inc. and the two cases involve similar, if not identical, factual situations and issues.

The LVN Pictures, Inc. (hereinafter referred to as the LVN) was a corporation engaged in the business of producing Tagalog movies. Among its employees were the members of the LVN Pictures Employees and Workers Association (NLU) (hereinafter referred to as the EWA) with which it executed on April 23, 1959 a collective bargaining agreement to expire on December 31, 1960. During their employment with LVN, the members of the EWA served in various capacities in the LVN, such as cameramen and their assistants, soundmen and their assistants, sound technicians, carpenters, electricians, drivers, laboratory personnel, and laborers doing odd jobs.

Previous to the year 1957, the LVN was realizing profits from its business. However, from 1957 to 1961, it suffered heavy losses in its movie production due to causes beyond its control. As of May 31, 1961 its total losses amounted to P1,560,985.14, while its paid-up capital as of the said date was only P1,204.000. Thus the losses exceeded the paid-up capital by P356,985.14. Also as of May 31, 1961, the company's total liabilities reached P1,189,946.19 while its total assets

were only P853,961.05, so that its liabilities exceeded its assets, by P335,985.14. In addition, outstanding loans due from it amounted to P527,960.53. Of its overdraft line of P200,000 with the Philippine National Bank which served as part of its operating capital, it had used and withdrawn the total sum of P199,303.45, leaving the amount of only P696.55. LVN had likewise used and withdrawn P199,167.95 of its overdraft line in the amount of P200,000 with the Commercial Bank & Trust Company, leaving a balance of P832.05.

Notwithstanding the foregoing adverse financial posture, the LVN continued to operate its movie production with the expectation that it would recoup part of its losses and investments. And in order to avoid immediate closure of business, as well as lay-off of employees, the management of the LVN, by letter dated March 14, 1960, proposed to the EWA a change in the payment of salaries and wages of the employees from salary or wage basis to the "pakiao" system per picture. This proposal was however rejected by the union in its letter of March 31, 1960. On April 8, 1960 the LVN asked the EWA to reconsider its decision on the "pakiao" system, to no avail. Again, on January 25, 1961, the LVN proposed to reduce the monthly compensation of all its employees and laborers regardless of whether or not they were union members, according to the following scale:

"from P175.00 to P190.00	5%
"from 200.00 to 350.00	10%
"from 400.00 up	20%

The salaries and/or wages of employees and workers below P175 as well as the daily wage earners were not to be affected. This proposal was approved by the board of directors of the LVN as a measure to stave off the mounting losses in the operation of its Tagalog movie production. But it was also rejected by the EWA in its letter of February 15, 1961.

After the expiration of the term of the collective bargaining contract, the EWA proposed negotiations for a new contract on February 24, 1961. In a letter-reply dated March 2, 1961, the LVN informed the EWA that on March 15, 1961 the LVN stockholders would hold a meeting at which one of the matters to be discussed was whether because of the financial losses of the corporation, it would still

continue to make pictures. The LVN therefore advised the union that it would answer neither yes nor no to the proposed negotiations but would await the outcome of the stockholders' meeting.

By letter dated March 20, 1961, the LVN informed the EWA that, because of huge losses incurred and the many obligations of the former which could not be met, the stockholders had agreed not to invest additional capital and to stop producing new moving pictures, and to finish only the pictures that were then under production. Moreover, in view of the refusal of the EWA to consider the LVN's proposals and because of the mounting losses, the LVN's board of directors decided to close its movie production as of May 31, 1961.

As a necessary consequence of the stoppage of its movie production after May 31, 1961, the LVN was compelled to dismiss all its personnel employed in the said movie production, among them the 84 employees and/or workers of the EWA. The equipments and properties of the LVN were kept in the studio premises under the care of a skeleton force selected for the purpose. Thereafter, in order to secure rents to meet some of its obligations the LVN leased its equipments and properties for the production of moving pictures to the Tagalog Ilang-Ilang Productions, Arriba Productions, Inc., Manuel M. Lagunsad Productions, Galaxy Productions, Inc., Dalisay Pictures, Inc., Magna East Productions and other producers, at P13,000 per picture. In the production of moving pictures, the several lessees employed their own personnel to handle the leased properties and equipments of the LVN. There were some instances when these lessees employed former workers and employees of the LVN.

On May 31, 1961 the Dalisay Pictures, Inc. (hereinafter referred to as the DPI) was incorporated, capitalized at P100,000 which was wholly subscribed and fully paid by its incorporators, as follows: Delfin Buencamino, 1,000 shares, P50,000; Encarnacion Luna, 400 shares, P20,000; Maria Sevilla, 200 shares, P10,000; Jose T. Beltran, 200 shares, P10,000; and Nicanor S. Sison, 200 shares, P10,000.

On January 16, 1961, the LVN Pictures Checkers' Union (NLU) (hereinafter referred to as the LPCU) was organized and was registered with the Department of Labor on February 21, 1961. On February 27, 196] it sent a letter to the LVN containing collective

bargaining proposals. The LVN informed the LPCU that the former's stockholders would meet to decide whether or not it would continue production of pictures. On March 24, 1961 all the members of LPCU received identical letters informing them that the LVN would stop its movie production business effective May 31, 1961. Thereafter, the LVN began reducing the work-load of the members of LPCU and, in November 1961, dismissed them from employment.

On July 18, 1961 the EWA filed a complaint charging the LVN with violations of section 4(a) (1) and (4) of Republic Act 875 (Industrial Peace Act), consisting of alleged union interference by the LVN and/or discriminatory dismissal of 84 employees and workers because of their membership in the EWA. The LPCU likewise filed on October 20, 1961 a complaint against the LVN and the DPI for alleged violations of sec. 4(a) (1), (4) and (6) in relation to sections 12 and 13 of the Industrial Peace Act, consisting of alleged acts of discrimination, shortening of working hours and/or days, and forced dismissals. In both cases the CIR decided in favor of the respondents, holding the latter not guilty of unfair labor practices in dismissing the employees-members of the EWA and the LPCU, and, in the latter case filed by the LPCU, declaring that the DPI is a business establishment and entity separate and distinct from the LVN. The motions for reconsideration filed by the respective complainants were denied by the CIR.

Hence, these appeals.

The numerous issues raised in both appeals can be capsulized into two main issues: (1) Is the LVN guilty of unfair labor practice in dismissing it employees who are members of the EWA and the LPCU? (2) Are the LVN and the DPI one and the same corporation or entity?

We resolve both issues in favor of the respondents LVN and DPI, and affirm the CIR decisions and resolutions appealed from.

1. The evidence in both appealed cases is clear that the LVN incurred losses from 1957 to 1961, reducing it to a state of practical bankruptcy. Thus, the respondent CIR found that as of December 31, 1957, the LVN suffered a net loss of P364,320.32; December 31, 1958, P210,857.01; December 31, 1959,

P393,644.29; December 31, 1960, P399,085.85; and December 31, 1961, P333,714.60. As of May 31, 1961, the total losses suffered by LVN amounted to P1,560,985.14, whereas its paid-up capital was only P1,204,000.00 — the former exceeding the latter by P356,785.14. The liabilities of the LVN as of May 31, 1961 totalled P1,189,946.19, while its total assets were only P853,961.05, the total liabilities exceeding the total assets by P335,985.14. On top of these, the LVN as of May 31, 1961 had loans due from it in the amount of P527,960.53. It had an overdraft line of P200,000 with the Philippine National Bank which served as part of its operating capital, but of this amount it had already withdrawn and used the total sum of P199,303.45 as of May 31, 1961, leaving a balance of only P696.55. It had also as of the aforementioned date withdrawn and used P199,167.95 of its P200,000 overdraft line with the Commercial Bank & Trust Company, leaving a balance of only P832.05. Its yearly balance sheets, yearly profit and loss statements, and yearly income tax returns unquestionably proved that the LVN became insolvent due to heavy financial losses suffered in good faith and in the ordinary course of business operations from 1957 to May 31, 1961. Thus, it was constrained to stop its movie production business. Since its operating capital of P400,000 consisting of an overdraft line in the amount of P200,000 each with the Philippine National Bank and the Commercial Bank & Trust Company, was nearly completely exhausted as of May 31, 1961, it is clear that when the LVN completely stopped its movie production business on May 31, 1961, it was not only insolvent but was also without any operating capital.

It is to the credit of the LVN, however, that it did not decide to stop producing movies immediately. Notwithstanding its insolvency and before it finally closed its business on May 31, 1961, it had in good faith attempted to avail of all possible arrangements with its employees to avoid the complete closure of its business. It proposed various remedial measures, e.g., the payment of wages or salaries on the pakiao system per picture, and the gradual reduction of the employees' salaries. Unfortunately, these proposals were flatly rejected. To avoid total bankruptcy, the LVN had no alternative but to closed and stop its movie production business. The employees, by their refusal to

meet the LVN halfway, in effect "killed the goose that laid the golden eggs." It is not therefore correct to say that when the LVN proposed the "pakiao" system and the reduction of wages for both union and non-union members, it was committing an unfair labor practice. It was merely trying, understandably and justifiably, to stave off eventual bankruptcy and the ultimate folding-up of its movie production business. Neither can the LVN be accused of being anti-labor when it gradually reduced the working hours of the checkers and finally laid them off. The members of the LPCU were theater checkers of the LVN. Their services were needed only in the exhibition of new pictures which were shown on percentage basis, in order that the LVN might receive its lawful share in the gross gate receipts. However, since the LVN stopped its movie production business on May 31, 1961, and its second-run or old pictures were being exhibited on flat-rate rental basis, there was no longer any need to employ checkers.

The argument is advanced that the LVN refused to bargain when it put off answering the proposals of the EWA and the LPCU pending the stockholders' meeting. We do not agree. It was entirely reasonable for the LVN to hold in abeyance its answers to the proposals because whether or not it would still enter into a collective bargaining agreement with the EWA and the LPCU would depend on the consensus that would be arrived at by the stockholders. There would be neither rhyme nor reason for a collective bargaining agreement if the company would decide — as it did decide — to stop producing moving pictures, because the resultant ultimate effect would be the dismissal or separation of employees. In fact, subsequent events proved the prudence of the action taken by the LVN. When the stockholders decided to stop movie production as of May 31, 1961, the LVN was compelled to dismiss its employees because there was no more work for them. Had the LVN agreed to enter into collective bargaining agreements with the two unions without awaiting the result of the stockholders' meeting, the contracts would have become inutile anyway because it was closing shop.

The petitioners in both cases also allege that non-union members were employed by the LVN even after May 31, 1961. This is not

correct. The truth is that although the LVN studio equipments and movie apparatus were being used in the production of pictures, they were being used not to produce LVN pictures but were leased to small independent producers. The several lessees employed former workers of the LVN but the employment of these people depended solely upon the discretion of the different lessees, without any participation of or interference from the LVN.

The petitioners also contend that the LVN was not "really losing" because its assets, namely, all the 320 finished films, were undervalued at only P320, or at P1.00 book value per picture, when they were actually earning thousands of pesos. We find no merit in this argument. In determining the yearly profit or loss of a business enterprise, what is taken into account under section 28, Chapter IV of the National Internal Revenue Code (Act No. 466, as amended), are the "gross income computed under section twenty nine, less the deductions allowed by section thirty" of the said Act. A perusal of the said pertinent provisions of the Tax Code will clearly show that the book value or inventory value of assets (such as the 320 finished films book-valued at P1.00 per picture) is immaterial and is not considered in the preparation of the yearly profit and loss statement which is usually attached to the yearly balance sheet. What are considered only are the incomes (not book value of assets) and the expenses or deductions allowed in section 30 of the Tax Code. What is relevant and material, therefore, for purposes of determining the yearly profit or loss of a corporation like the LVN is that all such incomes are duly reported. And this has been done by the LVN.

Besides, this rate of depreciation has been observed and adhered to strictly by the LVN since 1946, and sanctioned and allowed by the Bureau of Internal Revenue which, up to now, has not found any occasion to object to the said system of full depreciation after a period of 6 months from the date of first exhibition. Indeed, under this procedure the LVN made and realized annual profits from 1946 to 1956, inclusive, as aforementioned. However, as hereinfore explained, it suffered losses in its movie production business from 1957 to 1961.

The amount of P10,124,400, allegedly earned by these finished films from 1958 to 1961, included both the earnings from the old pictures that were continued to be exhibited even after the period of six months, and the incomes realized from the exhibition of all new pictures produced at an average of 22 new pictures a year from 1956 to May 31, 1961. Therefore, the said amount of P10,124,400.00 represented practically the total gross income of the LVN in the period of five years as reflected in the yearly operating account and yearly profit and loss statements attached to its yearly balance sheets. Thus, the petitioners' allegation that the said amount of P10,124,400.00 represented only the earnings of the 320 finished films book-valued at P1.00 each, is inaccurate and misleading.

This Court, in a number of cases, has recognized and affirmed the right of an employer to lay off or dismiss employees because of losses in the operation of its business,[1] lack of work,[2] and considerable reduction in the volume of his business.[3] We have held that such acts of dismissal do not constitute unfair labor practice.[4] Indeed, "an employer may close his business, provided the same is done in good faith and is due to causes beyond his control. To rule otherwise would be oppressive and inhuman."[5]

The respondent CIR found for a fact, and our own independent study of the evidence shows, that the LVN suffered tremendous losses, completely depleting its capital which was needed to operate and continue its business of producing moving pictures. In order to avoid immediate lay-off of employees and the closure of its business, the LVN proposed to the EWA a change in the payment of salaries and wages of the employees and workers from salary or wage basis to the "pakiao" system; and when this was rejected by the union, it offered to reduce the monthly compensation of all the employees (except those receiving less than P175 a month and the daily wage earners) regardless of their union membership, and this too was rejected. In order to avoid further losses and in view of the refusal of the union to cooperate in alleviating its mounting losses, the LVN was left with no alternative but to close its movie production as of May 31, 1961 and to dismiss its employees. This the LVN had the right to do,

and it did so in good faith. We are not unmindful of the plight of the employees in this case, but we consider it oppressive to compel the LVN to continue its business of producing movies when to do so would only result in its incurring further losses.

Under the Termination Pay Law (R.A. 1052, sec. 1, as amended by R.A. 1787), one of the just causes for terminating an employment without a definite period by the employer, is the closing or cessation of operations of the establishment or enterprise, unless the closing is for the purpose of defeating the intention of the said law. Since the LVN in good faith stopped its movie production business on May 31, 1961, it could therefore legally dismiss its employees. But before doing so, it gave them sufficient notice and an ample period within which to look for other employments. Therefore, contrary to the petitioners' allegation, the Termination Pay Law applies.

2. Anent the second issue, the CIR found that the DPI is an entity separate and distinct from the LVN. Thus, the CIR held in case 3013-ULP (LVN Pictures Checkers' Union [NLU] vs. LVN Pictures, et al.) that:

> "The Dalisay Pictures, Inc. is a separate and distinct entity from the LVN Pictures, Inc., hence, it cannot be said that there was bad faith in the termination of the employees mentioned in paragraph 5(a) of the complaint. The Articles of Incorporation of the Dalisay Pictures Inc. (Annex '2' RCA) duly registered with the Securities and Exchange Commission shows that the incorporators of the said corporation are Encarnacion Luna, Maria Sevilla, Delfin Buencamino, Nicanor S. Sison, Jose T. Beltran, who are entirely different from the owners of the LVN Pictures, namely, the De Leon family, Villongco and the Navoa family. Hence, the two corporations are distinct and separate from each other. The only point of contact between the Dalisay Pictures, Inc. and the LVN Pictures, Inc. is when the former leases its movie equipment with the latter."

To the same tenor is the CIR's holding in case 2879-ULP (LVN Pictures Employees & Workers Association [NLU] vs. LVN Pictures, Inc.) which states, inter alia:

> "The lessees Dalisay Pictures, Inc., Ilang-Ilang Productions, Arriba Productions, Inc., and Magna East Productions, are separate and distinct business establishments and/or entities from the LVN Pictures, Inc. These are separate and distinct corporate entities and independent from each other. They pursue their business enterprises according to their respective incorporation papers. They produce movie pictures of their own choice employing their own capital and separate personnel force without the intervention and interference of the respondent LVN Pictures, Inc. These firms leased the equipments and production properties of the latter (LVN Pictures, Inc.) with rents properly paid by them."

The foregoing factual findings of the CIR are supported by substantial evidence on record and therefore are conclusive. The rule is now firmly established that the CIR findings of fact are not to be disturbed on appeal as long as they are supported by such material and relevant evidence as a reasonable mind might accept as adequate to support a conclusion,[6] the appeal to the Supreme Court being then confined to questions of law.[7] We can not therefore disturb the CIR findings of fact on the matter of the separate identities of the LVN and the DPI.

3. We have noted that in the second case at bar (LVN Pictures Checkers' Union [NLU], L-26432), the CIR awarded one-month pay to each of the workers involved therein, in addition to holding that they should be given the first preference in the event the LVN would operate anew.

The award of one-month pay to the members of the LPCU is not justified under the circumstances. For it is now settled that when an employment is terminated for a just cause as defined in section 1 of Rep. Act 1052, as amended by Rep. Act 1787, because of the losses incurred by the business, the employee whose services are terminated or dispensed with is not entitled to separation pay.[8] However,

because the LVN did not appeal from the said portion of the decision awarding a month's pay to each of the members of the LPCU, nor discussed or called the attention of this Court to this error, we are not authorized to consider this unassigned error.[9]

ACCORDINGLY, the appealed Decisions and Resolutions of the Court of Industrial Relations in case 2879-ULP (LVN Pictures Employees and Workers Association [NLU] vs. LVN Pictures, Inc.) and in case 3013-ULP (LVN Pictures Checkers' Union [NLU] vs. LVN Pictures, Inc., et al.) are affirmed. No pronouncement as to costs.

Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo and Makasiar, *JJ.*, concur.
Reyes, *J.*, did not take part.
Concepcion, *C.J.*, and Villamor, *J.*, are on official leave.

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[1] Phil. American Embroideries, Inc. vs. Embroidery & Garment Workers Union, 26 SCRA 634, 643 (1969); Northern Luzon Transportation Co. vs. CIR, et al., 73 Phil. 41.
[2] Union of Philippine Education Employees vs. Philippine Education Co., L-7161, May 19, 1955, 97 Phil. 954.
[3] Gregorio Araneta Employees Union, et al. vs. Arsenio Roldan, et al., 97 Phil. 304 (1955).
[4] Phil. American Embroideries, Inc. case, supra; and Gregorio Araneta Employees Union case, supra.
[5] Tiong King vs. CIR, 90 Phil. 564, 568 (1951).
[6] Gonzales vs. Victory Labor Union (VICLU), 30 SCRA 47, 49, and cases cited therein; Moran, Vol. 2, 1970 ed., p. 467.
[7] Manila Pencil Co., Inc. vs. CIR, 14 SCRA 955; Dee C. Chuan & Sons, Inc. vs. Nahag, et al., 95 Phil. 837, 841, and cases cited therein.
[8] Phil. Refining Co. vs. Garcia, et al., 18 SCRA 107 (1966); Employees & Laborers Cooperative Asso. vs. National Union of Restaurant Workers, 7 SCRA 421, 424-425 (1963).
[9] See Miguel vs. Court of Appeals, 29 SCRA 760.