

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
THIRD DIVISION**

**LOPEZ SUGAR CORPORATION,  
*Petitioner,***

***-versus-***

**G.R. Nos. 75700-01  
August 30, 1990**

**FEDERATION OF FREE WORKERS,  
PHILIPPINE LABOR UNION  
ASSOCIATION (PLUA-NACUSIP) and  
NATIONAL LABOR RELATIONS  
COMMISSION,**

***Respondents.***

X-----X

**DECISION**

**FELICIANO, J.:**

In this Petition, petitioner Lopez Sugar Corporation seeks reversal of the Decision dated 2 July 1986 of public respondent National Labor Relations Commission (“NLRC”) which affirmed the decision of the

Labor Arbiter dated 30 September 1983. The Labor Arbiter (a) had denied petitioner's application to retrench some of its employees and (b) had ordered the reinstatement of twenty-seven (27) employees and to pay them full backwages from the time of termination until actual reinstatement.

Petitioner, allegedly to prevent losses due to major economic problems, and exercising its privilege under Article XI, Section 2 of its 1975-1977 Collective Bargaining Agreement ("CBA") entered into between petitioner and private respondent Philippine Labor Union Association ("PLUA-NACUSIP"), caused the retrenchment and retirement of a number of its employees.

Thus, on 3 January 1980, petitioner filed with the Bacolod District Office of the then Ministry of Labor and Employment ("MOLE") a combined report on retirement and application for clearance to retrench, dated 28 December 1979,<sup>[1]</sup> affecting eighty-six (86) of its employees. This was docketed as NLRC Case No. A-217-80. Of these eighty-six (86) employees, fifty-nine (59) were retired effective 1 January 1980 and twenty-seven (27) were to be retrenched effective 16 January 1980 "in order to prevent losses."

Also, on 3 January 1980, private respondent Federation of Free Workers ("FFW"), as the certified bargaining agent of the rank-and-file employees of petitioner, filed with the Bacolod District Office of the MOLE a complaint dated 27 December 1979 for unfair labor practices and recovery of union dues, docketed as NLRC Case No. A-198-80. In said complaint, FFW claimed that the terminations undertaken by petitioner were violative of the security of tenure of its members and were intended to "bust" the union and hence constituted an unfair labor practice. FFW claimed that after the termination of the services of its members, petitioner advised 110 casuals to report to its personnel office. FFW further argued that to justify retrenchment, serious business reverses must be "actual, real and amply supported by sufficient and convincing evidence." FFW prayed for reinstatement of its members who had been retired or retrenched.

Petitioner denied having hired casuals to replace those it had retired or retrenched. It explained that the announcement calling for 110

workers to report to its personnel office was only for the purpose of organizing a pool of extra workers which could be tapped whenever there were temporary vacancies by reason of leaves of absence of regular workers.

On 22 January 1980, another report on retirement affecting an additional twenty-five (25) employees effective 1 February 1980 was filed by petitioner.<sup>[2]</sup>

On 3 March 1980, petitioner filed its Position Paper in NLRC Case No. A-217-80 contending that certain economic factors jeopardizing its very existence rendered the dismissals necessary. Petitioner explained:

“As a business firm, the Applicant must earn [a] fair return of (sic) its investment. Its income is generated from the sales of the Central’s shares of sugar and molasses production. It has however no control of the selling price of both products. It is of common knowledge that for the past years the price of sugar has been very low. In order to survive, the Applicant has effected several forms of cost reduction. Now that there is hope in the price of sugar the applicant is again faced with two major economic problems, i.e., the stoppage of its railway operation and the spiralling cost of production.

The Applicant was forced to stop its railway operation because the owners of the land upon which the Applicant’s railway lines traverse are no longer willing to allow the Applicant to make further use of portions of their lands.

The other economic problem that confronted the Applicant is the using cost of labor, materials, supplies, equipment, etc. These two major economic problems the rising cost of production and the stoppage of its railway facilities, put together pose a very serious threat against the economic survival of the Applicant. In view of this, the Applicant was constrained to touch on the last phase of its cost reduction program which is the reduction of its workforce.

The Applicant as a business proposition must be allowed to earn income in order to survive. This is the essence of private enterprise. Being plagued with two major economic problems, the applicant is not expected to remain immobile. It has to react accordingly. As many other business firms have resorted to reduction of force in view of the present economic crisis obtaining here and abroad, the applicant was likewise compelled to do the same as a last alternative remedy for survival.”<sup>[3]</sup>

In a Decision dated 30 September 1983,<sup>[4]</sup> the Labor Arbiter denied petitioner’s application for clearance to retrench its employees on the ground that for retrenchment to be valid, the employer’s losses must be serious, actual and real and must be amply supported by sufficient and convincing evidence. The application to retire was also denied on the ground that petitioner’s prerogative to so retire its employees was granted by the 1975-77 collective bargaining agreement which agreement had long ago expired. Petitioner was, therefore, ordered to reinstate twenty-seven retired or retrenched employees represented by private respondent Philippine Labor Union Association (“PLUA”) and FFW and to pay them full backwages from the time of termination until actual reinstatement.

Both dissatisfied with the Labor Arbiter’s decision, petitioner and respondent FFW appealed the case to public respondent NLRC. On appeal, the NLRC, finding no justifiable reason for disturbing the Decision of the Labor Arbiter, affirmed that decision on 2 July 1986.<sup>[5]</sup>

Hence, this Petition for *Certiorari* making the following arguments:

1. That portions of the decision of public respondent NLRC dated July 2, 1986 affirming the decision of Labor Arbiter Ethelwoldo Ovejera dated September 30, 1983 are contrary to law and jurisprudence;
2. That said decision subject of this petition are in some respects not supported by evidence and self-contradictory;

3. That said decision subject of this petition were rendered with grave abuse of discretion and in excess of jurisdiction;
4. That the dismissals at bar are valid and based on justifiable grounds.<sup>[6]</sup>

Petitioner contends that the NLRC acted with grave abuse of discretion in denying its combined report on retirement and application for clearance to retrench. Petitioner argues that under the law, it has the right to reduce its workforce if made necessary by economic factors which would endanger its existence, and that for retrenchment to be valid, it is not necessary that losses be actually sustained. The existence of valid grounds to anticipate or expect losses would be sufficient justification to enable the employer to take the necessary actions to prevent any threat to its survival.

Upon the other hand, the Solicitor General argued that the Decision rendered by the Labor Arbiter and affirmed by the NLRC is supported by substantial evidence on record; that, therefore, no grave abuse of discretion was committed by public respondent NLRC when it rendered that Decision.

Article 283 of the Labor Code provides:

“Article 283. 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 termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial

reverses, the separation pay shall be equivalent to one (1) month pay or at least one half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.” (Emphasis supplied).

In its ordinary connotation, the phrase “to prevent losses” means that retrenchment or termination of the services of some employees is authorized to be undertaken by the employer sometime before the losses anticipated are actually sustained or realized. It is not, in other words, the intention of the lawmaker to compel the employer to stay his hand and keep all his employees until sometime after losses shall have in fact materialized;<sup>[7]</sup> if such an intent were expressly written into the law, that law may well be vulnerable to constitutional attack as taking property from one man to give to another. This is simple enough.

At the other end of the spectrum, it seems equally clear that not every assorted possibility of loss is sufficient legal warrant for reduction of personnel. In the nature of things, the possibility of incurring losses is constantly present, in greater or lesser degree, in the carrying on of business operations, since some, indeed many, of the factors which impact upon the profitability or viability of such operations may be substantially outside the control of the employer. Thus, the difficult question is determination of when, or under what circumstances, the employer becomes legally privileged to retrench and reduce the number of his employees.

We consider it may be useful to sketch the general standards in terms of which the acts of petitioner employer must be appraised. Firstly, the losses expected should be substantial and not merely de minimis in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the bonafide nature of the retrenchment would appear to be seriously in question. Secondly, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it

must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, i.e., cut other costs than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called “golden parachutes”, can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing “full protection” to labor, the employer’s prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means — e.g., reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc. — have been tried and found wanting.

Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees. In *Garcia vs. National Labor Relations Commission*,<sup>[8]</sup> the Court said:

“But it is essentially required that the alleged losses in business operations must be prove[n]. (*National Federation of Labor Unions [NAFLU] vs. Ople*, 143 SCRA 124 [1986]). Otherwise, said ground for termination would be susceptible to abuse by scheming employers who might be merely feigning business losses or reverses in their business ventures in order to ease out employees.”<sup>[9]</sup> (Emphasis supplied).

Whether or not an employer would imminently suffer serious or substantial losses for economic reasons is essentially a question of fact for the Labor Arbiter and the NLRC to determine. In the instant case, the Labor Arbiter found no sufficient and convincing evidence to sustain petitioner’s essential contention that it was acting in order to prevent substantial and serious losses. The Labor Arbiter said:

“There is no question that an employer may reduce its work force to prevent losses, however, these losses must be serious, actual and real. In the instant case, even assuming arguendo that applicant company was, in fact, surrounded by the major economic problems stated earlier, the question may be asked - will it suffer serious losses as a result of the said economic problems? We find the answer to be negative. We have scanned the records but failed to find evidence submitted to show that applicant company would suffer serious business losses or reverses as a consequence of the alleged major economic problems. In fact, applicant company asseverated that these problems only threatens its survival, hence, it had to reduce its work force. Another thing, while applicant company was retrenching its regular employees, it also hired the services of casuals. This militated its claim to reduce its work force to set up cost reduction. It must be stated that settled is the rule that serious business losses or reverses must be actual, real and amply supported by sufficient and convincing evidence.”<sup>[10]</sup> (Emphasis supplied).

We are in principle bound by such findings in accordance with well-established jurisprudence that the factual findings of labor administrative officials, if supported by substantial evidence, are entitled not only to great respect but even to finality,<sup>[11]</sup> unless, indeed, petitioner is able to show that the Labor Arbiter and the NLRC simply and arbitrarily disregarded evidence before them or had misapprehended evidence of such a nature as to compel a contrary conclusion if properly appreciated.

The submissions made by petitioner in this respect are basically that from the crop year 1975-1976 to the crop year 1980-1981, the amount of cane deliveries made to petitioner Central was declining and that the degree of utilization of the mill's capacity and the sugar recovery from the cane actually processed, were similarly declining.<sup>[12]</sup> Petitioner also argued that the competition among the existing sugar mills for the limited supply of sugar cane was lively and that such competition resulted in petitioner having to close approximately thirty-eight (38) of its railroad lines by the end of 1979.<sup>[13]</sup> According to the petitioner, the cost of producing one (1) Picul of sugar during

the same period (i.e., from crop year 1976-1977 to crop year 1979-1980) increased from P69.97 to P93.11.

The principal difficulty with petitioner's case as above presented was that no proof of actual declining gross and net revenues was submitted. No audited financial statements showing the financial condition of petitioner corporation during the above mentioned crop years were submitted. Since financial statements audited by independent external auditors constitute the normal method of proof of the profit and loss performance of a company, it is not easy to understand why petitioner should have failed to submit such financial statements.

Moreover, while petitioner made passing reference to cost reduction measures it had allegedly undertaken, it was, once more, a fairly conspicuous failure to specify the cost-reduction measures actually undertaken in good faith before resorting to retrenchment. Upon the other hand, it appears from the record that petitioner, after reducing its work force, advised 110 casual workers to register with the company personnel officer as extra workers. Petitioner, as earlier noted, argued that it did not actually hire casual workers but that it merely organize[d] a pool of 'extra workers' from which workers could be drawn whenever vacancies occurred by reason of regular workers going on leave of absence. Both the Labor Arbiter and the NLRC did not accord much credit to petitioner's explanation but petitioner has not shown that the Labor Arbiter and the NLRC were merely being arbitrary and capricious in their evaluation. We note also that petitioner did not claim that the retrenched and retired employees were brought into the "pool of extra workers" rather than new casual workers.

Petitioner next contends that the NLRC committed grave abuse of discretion in affirming the ruling of the Labor Arbiter that the retirements effected by petitioner were not valid since the basis therefor, i.e., Article XI, Section 2 of the 1975-1977 CBA, had by then already expired and was thus no longer enforceable or operative.<sup>[14]</sup> Article XI, Section 2 of the CBA provides:

“Section 2. — Any employee may apply for retirement after having rendered the equivalent of at least eighteen (18) years of

service to the COMPANY. The COMPANY, as a right, may retire any employee who has rendered twenty (20) years of service, or has reached the age of sixty (60) years. Employees who are physically incapacitated to continue to work in the COMPANY upon certification of the COMPANY Physician, shall be entitled to a separation pay equivalent to the retirement benefits herein provided for that may have accrued. The heirs or surviving legally married spouse of the deceased employee shall be granted by the COMPANY the amount equivalent to accrued retirement benefit of the deceased employee at the time of his death.”<sup>[15]</sup> (Emphasis supplied).

Petitioner argues that the CBA was “extended” not merely by implication, but by reciprocal acts — in the sense that even after the CBA had expired, petitioner continued to give, and the workers continued to receive, the benefits and exercise the prerogatives provided therein. Under these circumstances, petitioner urges, the employees are estopped from denying the extended effectivity of the CBA.

The Solicitor General, as well as private respondents, argue basically that petitioner’s right to retire its employees was coterminous with the life of the CBA.

On this point, we must find for petitioner. Although the CBA expired on 31 December 1977, it continued to have legal effects as between the parties until a new CBA had been negotiated and entered into. This proposition finds legal support in Article 253 of the Labor Code, which provides:

“Article 253 — Duty to bargain collectively when there exists a collective bargaining agreement. — When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement

during the 60-day period and/or until a new agreement is reached by the parties.” (Emphasis supplied).

Accordingly, in the instant case, despite the lapse of the formal effectivity of the CBA by virtue of its own provisions, the law considered the same as continuing in force and effect until a new CBA shall have been validly executed. Hence, petitioner acted within legal bounds when it decided to retire several employees in accordance with the CBA. That the employees themselves similarly acted in accordance with the CBA is plain from the record. Even after the expiration of the CBA, petitioner’s employees continued to receive the benefits and enjoy the privileges granted therein. They continued to avail of vacation and sick leaves as computed in accordance with Articles VII and VIII of the CBA. They also continued to avail of medical and dental aid under Article IX, death aid and bereavement leave under Articles X and XIV, insurance coverage under Article XVI and housing allowance under Article XVIII. Seventeen (17) employees even availed of Section XI (dealing with retirement) when they voluntarily retired between 1 January 1978 and 31 December 1980 and received retirement pay computed on the basis of Section 3 of the same article. If the workers chose to avail of the CBA despite its expiration, equity — if not the law — dictates that the employer should likewise be able to invoke the CBA.

The fact that several workers signed quitclaims will not by itself bar them from joining in the complaint. Quitclaims executed by laborers are commonly frowned upon as contrary to public policy and ineffective to bar claims for the full measure of the worker’s legal rights. In *AFP Mutual Benefit Association, Inc. vs. AFP-MBAI-EU*,<sup>[16]</sup> the Court held:

“In labor jurisprudence, it is well established that quitclaims and/or complete releases executed by the employees do not estop them from pursuing their claims arising from the unfair labor practice of the employer. The basic reason for this is that such quitclaims and/or complete releases are against public policy and, therefore, null and void. The acceptance of termination pay does not divest a laborer of the right to prosecute his employer for unfair labor practice acts. (*Cariño vs. ACCFA*, L-19808, September 29, 1966, 18 SCRA 183; *Philippine*

Sugar Institute vs. CIR, L-13475, September 29, 1960, 109 Phil. 452; Mercury Drug Co. vs. CIR, L-23357, April 30, 1974, 56 SCRA 694, 704).

In the Cariño case, *supra*, the Supreme Court, speaking thru Justice Sanchez, said:

‘Acceptance of those benefits would not amount to estoppel. The reason is plain. Employer and employee, obviously, do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of money. Because, out of job, he had to face the harsh necessities of life. He thus found himself in no position to resist money proffered. His, then, is a case of adherence, not of choice. One thing sure, however, is that petitioners did not relent their claim. They pressed it. They are deemed not to have waived any of their rights. *Renuntiatio non praesumitur.*’” (Emphasis supplied).

We conclude that because the attempted retrenchment on the part of the petitioner was legally ineffective, all retrenched employees should be reinstated and backwages paid them corresponding to a period of three (3) years without qualification or deduction, in accordance with the three-year rule laid down in a long line of cases.<sup>[17]</sup> In the case of employees who had received payments for which they had executed quitclaims, the amount of such payments shall be deducted from the backwages due to them. Where reinstatement is no longer possible because the positions they had previously filled are no longer in existence, petitioner shall pay backwages plus, in lieu of reinstatement, separation pay in the amount of one-month’s pay for every year of service including the three (3) year-period of putative service for which backwages will be paid. Upon the other hand, we find valid the retirement of those employees who were retired by petitioner pursuant to the applicable provisions of the CBA.

**WHEREFORE**, the Petition for *Certiorari* is partially **GRANTED** due course and the Decision dated 2 July 1986 of the public respondent NLRC is hereby **MODIFIED** to the extent that it had affirmed that portion of the Decision of the Labor Arbiter dated 30 September 1983 ordering the reinstatement of employees who had been retired by petitioner under the applicable provisions of the CBA.

Except as so modified, the Decision of the NLRC is hereby **AFFIRMED**. No pronouncement as to costs.

**SO ORDERED.**

**Fernan, C.J., Gutierrez, Jr., Bidin and Cortes, JJ., concur.**

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- [1] Rollo, pp. 38-39; Annexes “A” and “A-1” of Petition.  
[2] Id., pp. 40-41; Annexes “B” and “B-1” of the Petition.  
[3] Id., pp. 46-48; Annex “E” of Petition.  
[4] Id., pp. 86-100; Annex “J” of Petition.  
[5] Id., pp. 114-119; Annex “L” of Petition.  
[6] Id., p. 20.  
[7] *Indino vs. National Labor Relations Commission, et al.* G.R. No. 80352, September 29, 1989.  
[8] 153 SCRA 639 (1987); See also *Camara Shoes vs. Kapisanan ng Manggagawa sa Camara Shoes*, 173 SCRA 127 (1989); and *Indino vs. National Labor Relations Commission*, supra.  
[9] 153 SCRA at 651.  
[10] Rollo, p. 98.  
[11] *Mamerto vs. Inciong*, 118 SCRA 265 (1982); *Atlas Consolidated Mining and Development Corp. vs. National Labor Relations Commission*, 167 SCRA 758 (1988); *Reyes vs. Minister of Labor*, 170 SCRA 134 (1989); *Bristol Laboratories Employees Association-DFA, et al. vs. National Labor Relations Commission, et al.*, G.R. No. 87974, 2 July 1990.  
[12] In its Petition, petitioner alleged that:

“1. Based on its sugar mills’ rated capacity of 7,500 to 8,000 tons of cane per day, petitioner’s production figures were as follows:

<u>Crop Year</u> <u>(CY)</u>	<u>Cane Deliveries</u> <u>in Tons</u> <u>(Decrease)</u>	<u>Rate of</u> <u>Increase</u> <u>Utilization</u>	<u>Degree</u> <u>Mill</u> <u>in Piculs</u>	<u>Sugar</u> <u>Recoveries</u> <u>(Decrease)</u>	<u>Rate</u> <u>Increase</u> <u>_____</u>
1975-76	1,307,121.901		71.96%	2,047,29	
1976-77	1,282,189.530	(1%)	70.80%	1,934,830	(5%)
1977-78	1,004,490.358	(21%)	55.56%	1,709,504	(11%)
1978-79	1,161,604.791	15%	64.25%	1,884,611	10%
1979-80	1,163,662.687	.0177%	64.26%	1,854,115	(1%)
1980-81	1,008,643.990	(13%)	55.64%	1,594,310	(14%).

These figures show that there was a continued decrease in production, both in cane deliveries and in sugar recoveries from CY 1975-76 to CY 1977-78. While there were increases in cane deliveries in CY 1978-79 and CY 1979-80, this was more because of Petitioner’s increased trucking allowance which proved to be too expensive. But petitioner’s studies projected that such increase were temporary and would not hold, as tonnage of deliveries did fall in CY 1980-81 to a level only slightly higher than those in CY 1977-78.” (Rollo, p. 32).

- [13] Rollo, p. 33.
- [14] This CBA lapsed on 31 December 1977. The retirements, on the other hand, were made on 1 January 1980 and 1 February 1980.
- [15] Rollo, p. 143; Comment of the Solicitor General, p. 5.
- [16] 97 SCRA 715 (1980).
- [17] *Insular Life Assurance Co., Ltd. vs. National Labor Relations Commission*, 135 SCRA 697 (1985); *Lepanto Consolidated Mining Company vs. Encarnacion*, 136 SCRA 256 (1985); *Panay Railways, Inc. vs. NLRC*, 137 SCRA 480 (1985); *Atlas Consolidated Mining and Development Corp. vs. National Labor Relations Commission, et al.*, 167 SCRA 758 (1988).

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