SUPREME COURT
FIRST DIVISION

NESTLE PHILIPPINES, INC.,
***Petitioner*,**

-versus-

G.R. No. 91231
February 4, 1991

THE NATIONAL LABOR RELATIONS COMMISSION and UNION OF FILIPRO EMPLOYEES,
***Respondents*.**
x----------x

D E C I S I O N

GRIÑO-AQUINO, *J.*:

Nestle Philippines, Inc., by this Petition for *Certiorari*, seeks to annul, on the ground of grave abuse of discretion, the decision dated August 8, 1989 of the National Labor Relations Commission (NLRC), Second Division, in Cert. Case No. 0522 entitled, "In Re: Labor Dispute of Nestle Philippines, Inc." insofar as it modified the petitioner's existing non-contributory Retirement Plan.

Four (4) collective bargaining agreements separately covering the petitioner's employees in its:

1. Alabang/Cabuyao factories;

2. Makati Administration Office. (Both Alabang/Cabuyao factories and Makati office were represented by the respondent, Union of Filipro Employees [UFE]);

3. Cagayan de Oro Factory represented by WATU; and

4. Cebu/Davao Sales Offices represented by the Trade Union of the Philippines and Allied Services (TUPAS),

all expired on June 30, 1987.

Thereafter, UFE was certified as the sole and exclusive bargaining agent for all regular rank-and-file employees at the petitioner's Cagayan de Oro factory, as well as its Cebu/Davao Sales Office.

In August, 1987, while the parties, were negotiating, the employees at Cabuyao resorted to a "slowdown" and walk-outs prompting the petitioner to shut down the factory. Marathon collective bargaining negotiations between the parties ensued.

On September 2, 1987, the UFE declared a bargaining deadlock. On September 8, 1987, the Secretary of Labor assumed jurisdiction and issued a return to work order. In spite of that order, the union struck, without notice, at the Alabang/Cabuyao factory, the Makati office and Cagayan de Oro factory on September 11, 1987 up to December 8, 1987. The company retaliated by dismissing the union officers and members of the negotiating panel who participated in the illegal strike. The NLRC affirmed the dismissals on November 2, 1988.

On January 26, 1988, UFE filed a notice of strike on the same ground of CBA deadlock and unfair labor practices. However, on March 30, 1988, the company was able to conclude a CBA with the union at the Cebu/Davao Sales Office, and on August 5, 1988, with the Cagayan de Oro factory workers. The union assailed the validity of those agreements and filed a case of unfair labor practice against the company on November 16, 1988.

After conciliation efforts of the National Conciliation and Mediation Board (NCMB) yielded negative results, the dispute was certified to the NLRC by the Secretary of Labor on October 28, 1988.

After the parties had filed their pleadings, the NLRC issued a resolution on June 5, 1989, whose pertinent disposition regarding the union's demand for liberalization of the company's retirement plan for its workers, provides as follows:

"x x x

"7. Retirement Plan

"The company shall continue implementing its retirement plan modified as follows:

"a) for fifteen years of service or less — an amount equal to 100% of the employee's monthly salary for every year of service;

"b) more than 15 but less than 20 years — 125% of the employee's monthly salary for every year of service;

"c) 20 years or more — 150% of the employee's monthly salary for every year of service." (pp. 58-59, Rollo.)

Both parties separately moved for reconsideration of the decision.

On August 8, 1989, the NLRC issued a resolution denying the motions for reconsideration. With regard to the Retirement Plan, the NLRC held:

"Anent management's objection to the modification of its Retirement Plan, We find no cogent reason to alter our previous decision on this matter.

"While it is not disputed that the plan is non-contributory on the part of the workers, this does not automatically remove it from the ambit of collective bargaining negotiations. On the contrary, the plan is specifically mentioned in the previous bargaining agreements (Exhibits 'R-1' and 'R-4'), thereby

> integrating or incorporating the provisions thereof to the agreement. By reason of its incorporation, the plan assumes a consensual character which cannot be terminated or modified at will by either party. Consequently, it becomes part and parcel of CBA negotiations.
>
> "However, We need to clarify Our resolution on this issue. When we increased the emoluments in the plan, the conditions for the availment of the benefits set forth therein remain the same." (p. 32, Rollo.)

On December 14, 1989, the petitioner filed this petition for *certiorari*, alleging that since its retirement plan is non-contributory, it (Nestle) has the sole and exclusive prerogative to define the terms of the plan "because the workers have no vested and demandable rights thereunder, the grant thereof being not a contractual obligation but merely gratuitous. At most the company can only be directed to maintain the same but not to change its terms. It should be left to the discretion of the company on how to improve or modify the same" (p. 10, Rollo).

The Court agrees with the NLRC's finding that the Retirement Plan was "a collective bargaining issue right from the start" (p. 109, Rollo) for the improvement of the existing Retirement Plan was one of the original CBA proposals submitted by the UFE on May 8, 1987 to Arthur Gilmour, president of Nestle Philippines. The union's original proposal was to modify the existing plan by including a provision for early retirement. The company did not question the validity of that proposal as a collective bargaining issue but merely offered to maintain the existing non-contributory retirement plan which it believed to be still adequate for the needs of its employees, and competitive with those existing in the industry. The union thereafter modified its proposal, but the company was adamant. Consequently, the impasse on the retirement plan become one of the issues certified to the NLRC for compulsory arbitration.

The company's contention that its retirement plan is non-negotiable, is not well-taken. The NLRC correctly observed that the inclusion of the retirement plan in the collective bargaining agreement as part of the package of economic benefits extended by the company to its

employees to provide them a measure of financial security after they shall have ceased to be employed in the company, reward their loyalty, boost their morale and efficiency and promote industrial peace, gives "a consensual character" to the plan so that it may not be terminated or modified at will by either party (p. 32, Rollo).

The fact that the retirement plan is non-contributory, i.e., that the employees contribute nothing to the operation of the plan, does not make it a non-issue in the CBA negotiations. As a matter of fact, almost all of the benefits that the petitioner has granted to its employees under the CBA — salary increases, rice allowances, midyear bonuses, 13th and 14th month pay, seniority pay, medical and hospitalization plans, health and dental services, vacation, sick & other leaves with pay — are non-contributory benefits. Since the retirement plan has been an integral part of the CBA since 1972, the Union's demand to increase the benefits due the employees under said plan, is a valid CBA issue. The deadlock between the company and the union on this issue was resolvable by the Secretary of Labor, or the NLRC, after the Secretary had assumed jurisdiction over the labor dispute (Art. 263, subparagraph [i] of the Labor Code).

The petitioner's contention, that employees have no vested or demandable right to a non-contributory retirement plan, has no merit for employees do have a vested and demandable right over existing benefits voluntarily granted to them by their employer. The latter may not unilaterally withdraw, eliminate or diminish such benefits (Art. 100, Labor Code; Tiangco, et al. vs. Hon. Leogardo, et al., 122 SCRA 267).

This Court ruled similarly in Republic Cement Corporation vs. Honorable Panel of Arbitrators, G.R. No. 89766, Feb. 19, 1990:

> "Petitioner's claim that retirement benefits, being non-contributory in nature, are not proper subjects for voluntary arbitration is devoid of merit. The expired CBA previously entered into by the parties included provisions for the implementation of a 'Retirement and Separation Plan.' It is only to be expected that the parties would seek a renewal or an improvement of said item in the new CBA. In fact, the parties themselves expressly included retirement benefits among the

> economic issues to be resolved by voluntary arbitration. Petitioner is estopped from now contesting the validity of the increased award granted by the arbitrators." (p. 145, Rollo.)

The NLRC's resolution of the bargaining deadlock between Nestle and its employees is neither arbitrary, capricious, nor whimsical. The benefits and concessions given to the employees were based on the NLRC's evaluation of the union's demands, the evidence adduced by the parties, the financial capacity of the Company to grant the demands, its longterm viability, the economic conditions prevailing in the country as they affect the purchasing power of the employees as well as its concomitant effect on the other factors of production, and the recent trends in the industry to which the Company belongs (p. 57, Rollo). Its decision is not vitiated by abuse of discretion.

WHEREFORE, the Petition for *Certiorari* is dismissed, with costs against the petitioner.

SO ORDERED.

Narvasa, Gancayco and Medialdea, *JJ.*, concur.
Cruz, *J.*, No part. Related to petitioner's counsel.