SUPREME COURT
THIRD DIVISION

PHILIPPINE DAIRY PRODUCTS CORPORATION and SAN MIGUEL CORPORATION — MAGNOLIA DAIRY PRODUCTS DIVISION,
***Petitioners*,**

-versus-

G.R. No. 106705
September 26, 1994

VOLUNTARY ARBITRATOR TITO F. GENILO OF THE DEPARTMENT OF LABOR AND EMPLOYMENT AND THE NATIONAL ORGANIZATION OF WORKINGMEN (NOWM),
***Respondents*.**
x----------x

D E C I S I O N

ROMERO, *J.*:

This case arose from the execution of the August 30, 1989 Resolution of this Court in G.R. No. 85577. In dismissing the petition therein for lack of merit, the Court held in full:

> "Individual private respondents are members of respondent union and are laborers supplied to petitioners by Skillpower

Corporation and Lipercon Services, Inc., on the basis of contracts of services. Upon expiration of the said contracts, individual private respondents were denied entry to petitioners' premises. Individual private respondents and respondent union thus filed separate complaints for illegal dismissal against petitioners San Miguel Corp., Skillpower Corporation and Lipercon Services, Inc., in the National Labor Relations Commission, National Capitol Region. After consolidation and voluntary arbitration, respondent Labor Arbiter Tito F. Genilo rendered a decision on July 29, 1988, declaring individual private respondents regular employees of petitioners and ordering the latter to reinstate the former and to pay them backwages. On motion for execution filed by private respondents, Labor Arbiter Genilo issued on October 20, 1988 an order directing, among others, the regularization of 'all the complainants which include those still working and those already terminated.' Hence, this petition for certiorari with injunction.

Petitioners contend that prior to reinstatement, individual private respondents should first comply with certain requirements, like submission of NBI and police clearances and submission to physical and medical examinations, since petitioners are deemed to be direct employers and have the right to ascertain the physical fitness and moral uprightness of its employees by requiring the latter to undergo periodic examinations, and that petitioners may not be ordered to employ on regular basis the other workers rendering services to petitioners by virtue of a similar contract of services between petitioners and Skillpower Corporation and Lipercon Services, Inc. because of such other workers who were parties to or not impleaded in the voluntary arbitration case.

Considering that the clearances and examinations sought by petitioners from private respondents are not 'periodic' in nature but are made preconditions for reinstatement, as in fact the petition filed alleged that reinstatement shall be effective upon compliance with such requirements, (pp. 5-6 thereof) which should not be the case because this is not a case of initial hiring, the workers concerned having rendered years of service to

petitioners who are considered direct employers, and that regularization is a labor benefit that should apply to all qualified employees similarly situated and may not be denied merely because some employees were allegedly not parties to or were not impleaded in the voluntary arbitration case, even as the finding of Labor Arbiter Genilo is to the contrary, this Court finds no grave abuse of discretion committed by Labor Arbiter Genilo in issuing the questioned order of October 20, 1988.

ACCORDINGLY, the Court Resolved to Dismiss the petition for lack of merit."[1] (Emphasis supplied)

After the motion for reconsideration was denied with finality in the Resolution of September 25, 1989 and the supplemental argument relating to the motion for reconsideration was noted without action, entry of judgment was accordingly made on October 18, 1989. The case was remanded for execution on November 6, 1989.

Even before the August 30, 1989 Resolution became final and executory, private respondents filed a petition to execute the judgment. Hearings were conducted on October 12, and 20, 1989 wherein petitioners failed to appear despite notice. Private respondents submitted three (3) separate lists of workers allegedly covered by the Court's Resolution consisting of 223 employees in the first list, excluding those who have already been regularized as mentioned in pages 4 to 6 thereof; 220 in the second and 45 in the third.[2] Because of the failure of petitioners to appear in the hearings, much less oppose the veracity of the lists of employees to be reinstated, the Voluntary Arbitrator approved said lists and granted private respondents' petition to execute judgment. The dispositive portion of the November 10, 1989 Order provides:

"WHEREFORE, let a partial Writ of Execution Issue ordering:

a) the regularization of employees listed in the Annex "A", except those who have already been regularized as mentioned in pages 4 to 6 thereof; and

b) the reinstatement and regularization of employees listed in Annexes "B" and "C".

> The notice of Attorney's lien filed by complainants' counsel is approved.
>
> Finally, the Socio-Economic Analyst of the NLRC, NCR Arbitration Branch is hereby directed to proceed to the premises of respondent company, inspect its books and records, compute the total amount individual complainants are entitled pursuant to the judgment award and submit a report thereon within fifteen (15) days from its completion.
>
> SO ORDERED."[3]

Petitioners filed a motion for reconsideration claiming that they were not notified of the hearings; hence, were denied their right to due process of law. A supplemental argument to the motion for reconsideration was filed contending that the order sought to be reconsidered was issued arbitrarily because no prior determination was made as to whether the employees listed in Annexes "A", "B" and "C" are similarly situated as the complainants in this case. A rejoinder was also filed averring that the positions wherein the similarly situated employees could be reinstated no longer exists for reasons not attributable to the petitioners.

The voluntary arbitrator in his Order dated December 27, 1989 found as improper the invocation of lack of due process as notices of hearing were properly relayed to petitioners through the RCPI, Sta. Cruz Branch. In addition, it held that the complaints in this case cannot be legally limited to the 85 original complainants (later found to be 88) as the August 29, 1989 Resolution of the Supreme Court applies, not only to them, but also to those still working but not yet regularized and those terminated during the pendency of the case.[4] Finally, it did not accept the contentions that the original complainants could no longer be reinstated since their positions were abolished because Annexes "D" and "E" showed that new employees were hired and regularized by petitioners at the PDPC and NCB-Tetra. Besides copies of the annexes were served upon the petitioners' counsel and no objection was interposed thereto. Thus, the original complainants mentioned in Annexes "A", "B" and "C" of the lists must be regularized or reinstated. However, as regards the individuals who

claimed to be "similarly situated," the November 10, 1989 Order was modified by requiring, in the interest of justice, that a determination be made first, thru a formal proceeding, of the legitimacy of their claim. Hence, the dispositive portion of the December 27, 1989 Order states:

> "WHEREFORE, except for the modifications mentioned above, the Order dated 10 November 1989 stands.
>
> Accordingly, let a partial Writ of Execution be issued reinstating/regularizing the complainants listed in Annexes "A", "B" and "C" (Lists of original complainants dated 21 December 1989).
>
> No further motion/opposition of similar nature shall be entertained.
>
> SO ORDERED."[5]

On January 30, 1990, Sheriff Alfredo C. Antonio, Jr. issued a partial return that the petitioners have refused to accept complainants listed in Annexes "A", "B" and "C" of the Alias Writ of Execution.

On February 2, 1990, private respondents filed a petition to (a) declare/hold petitioners in contempt; and corollarily (b) Deputize police/military agencies to effect their reinstatement.

In two separate oppositions date February 6 and 8, 1990, and reply, petitioners stressed their willingness to comply with the order of the Voluntary Arbitrator. However, they alleged that regularization would not apply to those whose employment were terminated in the valid exercise of their management prerogatives; to those who failed to serve the company for a tenure sufficient to vest them with the status of a regular employee; and those whose positions were abolished as a result of automation and the implementation of other labor-saving devices.

On March 30, 1990, petitioners filed a manifestation[6] explaining how they have fully complied with the decision of the Voluntary Arbitration dated November 10, 1989. It was alleged that the 88

original complainants were already regularized and have received all the amounts due them.[7] Furthermore, of the 232 names in the amended complaint (Annexes "A" to "A-56"), 13 were mentioned twice. Of the remaining 219, they have regularized or have initiated the process of regularizing 100 employees. Moreover, they claimed that 70 individuals in Annexes "A TO A-56" form part of the 88 original complaints who have already been regularized pursuant to the July 29, 1988 decision. Finally, the remaining 49 employees may neither be reinstated nor regularized on account of the labor-saving devices which have made their functions both redundant and unnecessary and the unavailability of positions to which they may be accomodated. However, they will be paid all monetary benefits which may be due them.

Meanwhile, pursuant to the November 10, 1989 Order, Ricardo O. Atienza,[8] Acting Chief, Research and Information Unit, NLRC, NCR, Arbitration Branch, submitted a Report dated March 23, 1990 where the computed amount of backwages and wage differentials of complainants entitled to the judgment award totaled P18,886,283.05.

Petitioners objected to the computation explaining that it should have been limited to those individuals whose names appear in Annexes "A" to "A-56" of the Amended Complaint. Moreover the computation of benefits pertaining to the original and impleaded complainants should be deleted since they have already executed the corresponding Releases and Quitclaims. On the other hand, respondent union prayed for a recomputation of the award and that the same be assigned to Mrs. Juanita Bautista, Corporate Auditing Examiner of the NLRC.

Hence, on July 27, 1990,[9] the Voluntary Arbitrator, after finding that the first computation was made without examining the pertinent records of the company, ordered that a recomputation be made by Mrs, Juanita Bautista who was directed to go to the premises of San Miguel Corporation (Magnolia Division) at 710 Aurora Boulevard, Quezon City, inspect its books and records and submit a report within fifteen days from its completion. Both parties were invited to send their respective representatives to witness the examination and recomputation.

The required report dated November 8, 1990[10] was submitted on the 12th of the same month. It covered the monetary benefits of complainant workers who were regularized and those who were terminated on account of abolition of their positions due to automation. Monetary benefits of complainant workers who were terminated but were not reinstated for lack of available positions were not included. The records submitted by both parties were used as bases in computing the monetary benefits such as wage differentials, 13th month pay differentials, cash value of vacation and sick leave and rice ration/subsidy. The total computed monetary benefits due complainant workers from March 1988 up to the date immediately prior to the regularization, and/or up to the date of termination was P1,638,324.95.

From the different unresolved pleadings before him, the Voluntary Arbitrator summarized the issues, as follows:

> "a. Whether or not this Honorable Office has jurisdiction to rule upon the claims made by individuals who are not impleaded as parties in this case but who are claimed to be similarly situated as the complainants included in Annexes "A" to "A-56" of the Amended Complaint; and
>
> b. Whether or not the respondent (petitioner herein) may refuse the reinstatement of employees whose positions have become redundant or have been abolished due to automation."[11]

It was the position of the private respondent union that the Court's Resolution of August 29, 1989 applies not only to the impleaded complainants but also to those who, though not impleaded, are similarly situated and considered by the union qualified for regularization.[12] Thus, petitioner's refusal to accomodate these similarly situated employees warrants their being cited for contempt.

On the other hand, petitioners maintained that the August 29, 1989 Resolution should apply to only two groups of complainants: (a) the 88 original complainants who have already been regularized and paid monetary benefits and (b) 232 other individual complainants whose names are included in Annexes "A" to "A-56". They were of the

opinion that the statement of the Court in the said Resolution that "regularization is a labor benefit that should apply to all qualified employees similarly situated and may not be denied merely because some employees were allegedly not parties to or were not impleaded in the voluntary arbitration case" cannot be taken as an authorization for the complainant union to determine the identity of employees similarly situated as the complainants in this case. Such statement only served to assure individuals, other than complainants, that should they overcome the burden of proving that they are similarly situated as the complainants, they may likewise qualify for regularization. Thus, it remained incumbent upon persons claiming to be similarly situated to prove the same in the appropriate forum upon the filing of the proper case where this issue may be litigated.[13] Moreover, they opposed the reinstatement of those whose positions have become more redundant or have been abolished, citing as legal basis Sec. 4, Book VI of the Implementing Regulations of the Labor Code.

The first issue was decided in favor of private respondent. It was noted that while in the Order dated October 20, 1988 jurisdiction was acquired only over the 88 original complainants and the 232 persons impleaded as parties in Annexes "A" to "A-56" of the amended complaint, it was modified by the August 29, 1989 Resolution of the Court and extends to those "similarly situated" by its clear and express pronouncement that "regularization is a labor benefit that should apply to all qualified employees similarly situated and may not be denied merely because some employees were allegedly not parties to or were not impleaded in the voluntary arbitration case." It was also observed that when the parties submitted the case for voluntary arbitration, their intention was for a complete and speedy resolution of the issues involved; hence, a partial ruling on the claim of private respondent would be inconsistent with the avowed intention of the parties.

The Voluntary Arbitrator observed that the 88 original complainants and the 232 complainants impleaded in Annexes "A" to "A-56" have been reinstated and regularized. The only claims left for consideration are those made by individuals whose basis for claiming regularization is their interpretation of the August 29, 1989 Resolution of the Court that the benefits of regularization accorded to

the 88 and 232 complainants should be extended to those similarly situated, be they impleaded or not.

Of the 181 individuals claiming to be similarly situated as the impleaded complainants, petitioners claimed to have regularized 80 on the basis of their judgment that these individuals are deserving such status.[14] On October 1, 1990, the union submitted an additional list of 53 individuals claiming to be similarly situated as the original complainants.[15] The Voluntary Arbitrator narrated how the parties themselves solved the problem of the "similarly situated" complainants.

> "For the sake of expediency and to the end that the claims of all those who may perceive themselves to have any interest in the disposition of this case may be resolved once and for all, the Union during the same hearing proposed, through Atty. Armando Ampil and Mr. Teofilo Rafols, that (1) those in Annexes 1 and 2 hereof actually working as contractuals be immediately regularized and (2) that, the Company exert efforts to regularize those not working. The Company replied that it has no available regular positions for all those listed in Annexes 1 and 2 hereof and that the most it could do is to exert best efforts to find regular positions in the Magnolia Plant for those actually working as contractuals; definitely, it has no regular positions available for those not now working as contractuals. After some discussion, the parties agreed as follows:
>
> > The Company will exert its best efforts to find positions in the Magnolia Dairy Plant for those listed in Annexes 1 and 2 hereof provided, of course, they meet the Company's normal hiring requirements and depending upon the availability of regular positions."[16]

The salary differentials and backwages of the 232 complainants were ordered paid by the Voluntary Arbitrator. The monetary benefits accruing to the 88 original complainants had been earlier settled.

In the previous order of November 10, 1989, the Voluntary Arbitrator directed the issuance of a partial writ of execution for the regularization of the employees listed in Annexes "A", "B" and "C".

However, it was disclosed that except for 38 individuals named therein, all of the names included in the said annexes have already been impleaded in Annexes "A" to "A-56" of the amended complaint. Of the 38 "similarly situated", 26 have already been regularized, according to petitioners, at the same time as the 80 employees likewise claiming to be similarly situated. There remained only 12 individuals from Annexes "A", "B" and "C".

With respect to the second issue, the Voluntary Arbitrator was in accord with petitioners' position based on Section 4 of Book VI of the Implementing Rules of the Labor Code which provides:

> "Section 4. Reinstatement to Former Position.
>
> x x x
>
> (b) In case the establishment where the employee is to be reinstated has closed or ceased operation or where his former position no longer exists at the time of reinstatement for reasons not attributable to the fault of the employer, the employer shall be entitled to separation pay equivalent to at least one (1) month salary or to one (1) month salary for every year of service, whichever is higher, a fraction of at least six (6) months being considered as one (1) whole year.
>
> And Annexes "B", "C", "D" and "E" of petitioners' reply dated February 11, 1990 which proved the fact of automation. Moreover, it observed that complainants "have not shown proof that they can properly operate the new machineries because the same need technical skill of operators."[17]

In addition, petitioners' undertaking in a compliance dated May 2, 1990 to accommodate in a special payroll employees whose positions have been abolished or whose functions have been declared redundant as a consequence of automation is deemed to have ceased because of the above ruling.

Complainants Prudencio Cruz, Rosendo Bangit, and Lalaine Upod, who were already regularized but were subsequently terminated on the ground that they have not met the required tenure, were to be

given priority by the Company in its re-hiring process since they have presented certifications to the effect that they have acquired tenurial security justifying their regularization as employees of the said company.

Based on the following discussion, the Voluntary Arbitrator, in his order dated November 12, 1990,[18] found no ground to cite petitioners in contempt holding:

> "There being no violation or refusal of the former (petitioners) to implement our Orders dated July 29, 1988 as well as that of October 20, 1988. Respondents (petitioners herein), in fact, have susbtantially complied with the same in good faith without any taint of arrogance and defiance. Whatever reluctance respondents (petitioners herein) have displayed in effecting new orders cannot be said to be in defiance of our orders as the same have legal basis and without any intention of thwarting the resolution of this case.
>
> WHEREFORE, premises considered:
>
> 1. Respondents are hereby directed to exert their best efforts to find regular positions in the Magnolia Dairy Plant for those workers under the special payroll (Annex 3 hereof), whose names are enumerated herein below:
>
>   1. Amor, Romulo
>   2. Angeles, Alfredo N.
>   3. Aquino, Agapito, Jr.
>   4. Aquino, Teresita O.
>   5. Balangon, Benito D.
>   6. Balmes, Ramon
>   7. Basto, Edwin
>   8. Bautista, Verallo
>   9. Cabaysa, Gregorio
>   10. Capina, Lilian Silaya
>   11. Casuga, Angelito
>   12. Catalan, Nerio
>   13. Cielo, Evelyn

14. Dacayanan, Meriam C.
15. David, Amalia
16. De la Cruz, Ruben S.
17. Decenilla, Elizalde
18. De la Cruz, Virgilio, Jr.
19. De la Torre, Elmer
20. De Leon, Edgardo J.
21. Dormiendo, Ernesto
22. Feliciano, James F.
23. Fernandez, Weldon
24. Ferrer, Marcial
25. Flores, Susana V.
26. Geromo, Joseleo
27. Gonzales, Arturo
28. Gregana, Margie M.
29. Jopillo, Bernard
30. Junio, Freddie
31. Juntilla, Rogelio
32. Laguda, Valentin
33. Lipio, Melchor V.
34. Lopez, T.C
35. Luyao, Rome
36. Madriaga, Emmanuel
37. Magbanua, Richard
38. Manipol, Eduardo
39. Moises, Edwin
40. Naval, Cristobal
41. Padilla, Armando
42. Paganan, Thelma
43. Revilla, Romero R.
44. Pineda, Jesse R.
45. Quizon, Teodorico
46. Rocamora, Eleuterio, Jr.
47. Senica, Wilhelmina
48. Soriano, Ana A.
49. Soriano, Eduardo M.
50. Soriano, Ricardo
51. Talingting, Vic
52. Tamayo, Vergel
53. Viray, Juanito C.

54. Virgilio, Buenaventura

including complainants Prudencio Cruz, Rosendo Bangit and Lalaine Upod.

2. Not being contrary to law, morals and public policy, the agreement entered into by the parties on October 1, 1990 covering the 'employees similarly situated' is hereby approved. Respondent is accordingly hereby directed to immediately implement the same, to wit:

   'The Company will exert its best efforts to find regular positions in the Magnolia Dairy Plant for those listed in Annexes 1 and 2 hereof provided, of course, they meet the Company's normal hiring requirements and depending upon the availability of regular positions.'

3. Respondents are hereby directed to pay the complainants and 'workers similarly situated' who have since been regularized pursuant to the Decision of the Voluntary Arbitrator their respective monetary entitlements as shown opposite their respective names in Appendices "1", "2" and "3" of the Report dated 8 November 1990 (Annex 4 hereof) submitted by Juanita O. Bautista, Sr. Labor and Employment Officer and noted by Ricardo O. Atienza, Acting Chief, Research and Information Unit of the NLRC, NCR.

The writ of execution issued under the November 10, 1989 Order of this Office is hereby withdrawn.

SO ORDERED."[19]

When the efforts of the parties to implement the abovequoted Order failed, a conference was held on February 8, 1991 where the parties agreed on the following terms:

"1. The employment of the nine (9) of the complainants under the special payroll shall be processed for regularization by 1 March 1991;

2. The rest of the complainants under the special payroll will be considered as contractuals pending efforts to relocate them, subject to management approval, on or before 1 March 1991;

3. The effectivity date of the employment of those still working shall be clarified; and

4. The monetary award shall be paid on or before 15 March 1991.[20]

When the stipulations in items (1) and (2) of the above agreement remained unfulfilled, complainants under the special payroll filed on March 4, 1991 a motion insisting on the strict enforcement of November 12, 1990 Order. Accordingly, the Voluntary Arbitrator on March 6, 1991 directed petitioners to comply strictly with the mandate of the November 12, 1990 Order by accepting the complainants enumerated under the special payroll as regular employees without further delay. It explained:

> "The employment of contractuals, the existence of which remains undisputed, has unduly deprived the original complainants of their right to regular employment, as clearly mandated by our Order of 12 November 1990. This, we feel is a serious breach of the company's obligation to exert its best efforts to find regular positions for the complainants under the special payroll. Indeed, the continued hiring by the company of contractuals performing the functions of a regular employee therein is certainly not consistent with its assumed duty to exercise best efforts in finding regular employment to the said complainants. Verily, the opportunity to acquire regular employment on the part of these complainants, as this is envisioned in our Order above-stated, has been severely limited, if not prejudiced, by the company's act of hiring contractuals.

> We find the company has voluntarily imposed upon itself the circumstances under which it could exercise the best efforts called for in our Order of 12 November 1990. We are, therefore, constrained to adopt the needed measures to ensure that our Order of 12 November 1990 may be properly implemented, specifically on the hiring of the complainants under the special payroll as regular employees of the company."[21]

On May 9, 1991, the Voluntary Arbitrator ordered the Examining Division of the NLRC to compute the wage differentials of the individuals named therein after it learned that petitioners have not yet complied with the order of November 12, 1990 granting wage differentials to the "similarly situated" employees mentioned in Annexes "1" and "1-C" therein. Petitioners sought reconsideration of this order for being baseless as there was nothing in the dispositive portion of the November 12, 1990 Order which mandates the payment of wage differential to the "similarly situated" employees.

On May 15, 1991, petitioners filed a manifestation of compliance[22] with the November 12, 1990 order informing the Voluntary Arbitrator that they have regularized 32 of the employees listed in the special payroll and paid the monetary entitlements of the 173 out of the 176 complainants and "workers similarly situated" enumerated in appendices "1", "2", and "3" of the Report dated November 8, 1990 submitted by Mrs. Juanita O. Bautista and which was attached to the November 12, 1990 decision as Annex 4. They prayed that an order be issued declaring petitioners to have fully and completely complied with the November 12, 1990 order.

On June 11, 1991, private respondent filed an opposition averring that the order prayed for by petitioners cannot be issued for being premature based on the following grounds: out of 43 employees placed under special payroll, only eighteen (18) were paid their monetary entitlements, thereby leaving twenty five (25) still unpaid; forty five (45) employees who were already regularized as of February 19, 1990 were not included in the computation submitted by Mrs. Juanita Bautista and Mr. Ricardo Atienza of NLRC, DOLE; there are still nine (9) employees who are original complainants and placed in special payrolls who have not yet been regularized; and there are four

(4) employees promised to be regularized but have not yet been regularized.

Petitioners filed a reply to the opposition[23] stating that the individuals mentioned in the opposition are not entitled to any monetary award since they were not included in the list. In addition, the commitment of "best efforts" does not include a guaranty that all the complainants, as well as those who perceive themselves to be similarly situated, will be regularized. Furthermore, private respondent union should have questioned the November 12, 1990 Order when it found the same unfavorable to them before it attained finality.

On July 11, 1991, private respondent filed an Ex-Parte Motion before the Court protesting the undue delay in the implementation of the decision in this case and praying that the Voluntary Arbitrator "be kindly directed to implement or execute the decision in this case, as affirmed by this Honorable Court, strictly in accordance with the tenor of said decision and in accordance with the protection to labor clause of the Constitution and in the Labor Code."[24]

In the Resolution of August 21, 1991, the Court referred the motion to Voluntary Arbitrator Tito F. Genilo and the NLRC for appropriate action.

On March 17, 1992,[25] the Voluntary Arbitrator resolved the January 24, 1992 motion of respondent union praying for a writ of execution for the employees mentioned in Annexes 1 and 2 of the November 12, 1990 Order, as well as the remaining nine employees under the special payroll who were not regularized by the company and the January 31, 1992 opposition of petitioners.[26] It was the contention of petitioners that, despite its best efforts, they could not find any available regular positions for the similarly situated employees mentioned in Annexes 1 and 2 of the November 12, 1990 Order and that the employees listed under the special payroll (original complainants) have already been regularized except nine of them who could no longer be reinstated due to unavailability of positions. Moreover, the motion for the issuance of a writ of execution lacked basis in fact and in law inasmuch as there was nothing more to execute with respect to the regularized complainants who had been

paid all their entitlements and had executed the necessary "Receipt, Release and Quitclaim."

Petitioners' argument was not sustained. The Voluntary Arbitrator recalled petitioners' failure to regularize nine complainants under the special payroll and to consider the rest of the complainants under the special payroll as contractuals pending efforts to relocate them as agreed by the parties on February 8, 1991. Because of their failure to abide by the said agreement and insistence on hiring contractual workers to the damage and prejudice of the nine remaining original complainants, as well as the similarly situated employees, the Voluntary Arbitrator concluded that:

> "Under the circumstances, we can only conclude that the respondent company has indeed been remiss in its obligation to find regular positions for the individual complainants as mandated by the Order dated 12 November 1990. Be that as it may, the best evidence to prove the non-availability of regular positions for the individual complainants is the 'plantilla' of the respondent company. Regrettably the respondent company failed to present the same."[27]

and ordered that:

> "WHEREFORE, judgment is hereby rendered ordering respondent company to reinstate as regular employees the nine (9) remaining complainants under the special payroll, namely: (1) Valentin Laguda, (2) Melchor Lipio, (3) Vergel Tamayo, (4) Margie Gregona, (5) Virgilio Buenaventura, (6) Angelito Casuga, (7) Edwin Basto, (8) Gregorio Cabaysa and, (9) Nerio Catalan, including the individual complainants mentioned in Annexes 1 and 2 of the Order dated 12 November 1990, but excluding those complainants who have already been regularized and those who have already accepted separation pay and executed the corresponding Receipt, Release and Quitclaim."[28]

A motion for reconsideration[29] was filed on the ground that the March 17, 1992 Order departed from the tenor of the final November 12, 1990 Order.

Before the March 17, 1992 Order could be implemented, public respondent Genilo indorsed the entire records of the case to the NLRC Chairman for information and appropriate action in view of his appointment as acting POEA Administrator.

On April 27, 1992, the parties, in a Memorandum of Agreement,[30] authorized Labor Arbiter Ernesto S. Dinopol to act as the Voluntary Arbitrator in the remaining pending incidents of the case. In a letter dated May 22, 1992, Labor Arbiter Dinopol sought the legal opinion of the Secretary as to whether he could indeed act as Voluntary Arbitrator in the case.

On May 26, 1992, petitioner filed a motion to inhibit alleging that respondent Genilo had exhibited his bias in deciding the case. Specifically, it was contended that he had already prejudged the merits of the case, as shown in several instances where he had ruled contrary to what the facts and the law warrant, to the detriment of petitioners who were denied the cold neutrality of an impartial judge.

On May 27, 1992, public respondent Genilo inhibited himself from further handling the case "if only to erase any suspicion of bias or partiality in favor of complainants,"[31] but not before explaining that since his decision was affirmed by the Supreme Court, the assertion of his bias was patently untrue. He observed that if he was really in favor of complainants, petitioners would not have waited this long to file the motion to inhibit.

On June 25, 1992,[32] respondent Genilo reconsidered his earlier inhibition based on an advisory from Director Dennis P. Ancheta that since his order reconsidering his inhibition has already become final and executory, he should continue hearing the same until its final stage of execution.

Petitioners' motion for reconsideration of the order recalling public respondent's inhibition was denied for lack of merit in the order of August 24, 1992.[33] In the same Order, motions to dismiss dated August 6, 7, 17 and 19, 1992 filed by 29 complainants manifesting settlement of their claims against petitioners as evidenced by the "Receipt, Release and Quitclaim" which they executed were approved.

On September 4, 1992, petitioners filed the instant petition charging public respondent Voluntary Arbitrator with having gravely abused his discretion and acting without jurisdiction when he altered the November 12, 1990 Order which had already become final and when he reconsidered his earlier order of inhibition.

We deny the petition.

It is petitioners' contention that the March 17, 1991 Order altered the November 12, 1990 Order requiring petitioners to exert their best efforts in regularizing those listed under the special payroll (original complainants who were denied regularization because their positions were abolished or were affected by automation) and those similarly situated employees (listed in Annexes 1 and 2) because the later order abandoned the "best efforts" requirement and, instead, ordered immediate regularization, without any qualification, of all the complainants. Moreover, it is petitioners' position that they had exerted efforts by regularizing at least 47 of the original complainants in addition to the more than 200 involved in the original complaint. This went beyond mere compliance because the February 8, 1991 agreement only required nine of the original complainants out of the complainants involved in the November 12, 1990 Order. Positions were found for all those in the special payroll except the seven to whom they are still committed to give separation pay. As regards to those similarly situated, the regular positions are now exhausted as they were given to original complainants; hence, they should be relieved of their demand for reinstatement of the similarly situated. Furthermore, the allegation of non-compliance or breach of the "best efforts" formula should not result in the automatic regularization of the complainants, as there is still a need for a formal proceeding to determine whether these complainants are indeed "similarly situated"; otherwise, petitioner's right to due process would be clearly violated. In case of failure to observe beset efforts, complainants are to be considered new applicants but with some measure of preference because they nonetheless have to qualify under the normal hiring requirements of the company and, provided further, that there are available regular positions. In short, complainants cannot just be regularized without their presenting proof of their similar status as those earlier regularized by petitioners.

Petitioners have presented the duly notarized affidavit of their responsible officer showing there were no longer available regular positions. The failure to present the plantilla should not be taken against them as the same is not the only proof of the availability or non-availability of the regular positions. Non-presentation of plantilla is not conclusive proof of petitioners' failure to substantiate their claim.

Respondents, on the other hand, contend that the different orders of the Voluntary Arbitrator should be seen as a series of orders in compliance with the implementation of the August 30, 1989 Resolution of the Court. These should be viewed altogether as clarificatory orders. Moreover, they alleged that petitioners are in bad faith.

Respondents observed that one year and six months had elapsed from the issuance of the November 12, 1990 Order without petitioners having fully complied with it, prompting the Voluntary Arbitrator to issue the March 17, 1992 Order. Moreover, they were remiss in presenting the company's plantilla to support their allegation that there were no available regular positions. However, respondent union belied this allegation of the company by pinpointing positions occupied by contractuals. Therefore, the Voluntary Arbitrator acted well within his authority and jurisdiction and in good faith when he issued the March 17, 1992 Order.

In the Order of November 12, 1990, the Voluntary Arbitrator directed petitioners to exert their best efforts to find regular positions for those workers under the special payroll, approved the agreement of October 1, 1990 where the parties agreed that petitioners would exert their best efforts to find regular positions in MDP for those listed in Annexes 1 and 2, provided they meet the normal hiring requirements and depending upon the availability of regular positions, and directed petitioners to pay complainants and the workers similarly situated who have been regularized their respective monetary entitlements.

The Order of March 17, 1992 ordered petitioners to reinstate as regular employees the nine remaining complainants under the special payroll, including the individual complainants mentioned in Annexes

1 and 2 of the November 12, 1990 Order but excluding those complainants who have already been regularized and those who have already accepted separation pay and executed the corresponding Receipt, Release and Quitclaim.

The latter Order required petitioners to reinstate certain employees, while the previous Order directed that the regularization be made on "best effort" basis. At first blush, it appears that there is merit in the contention of petitioners that respondent Voluntary Arbitrator altered his previous order. However, a careful reading of the March 17, 1992 and the interim orders issued by the Voluntary Arbitrator from November 12, 1990 up to March 17, 1992 will reveal the reasons for this apparent alteration.

It did not take long after the November 12, 1990 Order was issued, for respondent union to sense the failure of petitioners to comply with the same, prompting the calling of a conference on February 8, 1991 where the parties themselves agreed that nine of the complainants under the special payroll be regularized and the rest be considered as contractuals pending efforts to relocate them. This voluntary agreement likewise remained unfulfilled, compelling the Voluntary Arbitrator to issue the March 6, 1991 Order directing petitioners to regularize the complainants without delay. The reason behind this was petitioners' continued hiring of contractuals which seriously breached their obligation to exert best efforts to find regular positions for the complainants. A year after, with full implementation still to be accomplished, the Voluntary Arbitrator issued the March 17, 1992 Order directing petitioners to reinstate the nine remaining complainants in the special payroll and those in Annexes 1 and 2.

The sequence of orders issued by the Voluntary Arbitrator convinces the Court that he committed no grave abuse of discretion in issuing the Order of March 17, 1992. The supposed "alteration" cannot be said to be whimsical on his part. In fact, he had no other recourse but to issue the same after petitioners themselves failed to comply fully with the Order of November 12, 1990 on the basis of the "best efforts" formula when they hired contractuals instead of regularizing the complainants.

Petitioners' argument that the March 17, 1992 Order could not alter the final November 12, 1990 Order is without reason. When they failed to comply with the November 12, 1990 Order, they voluntarily entered into an agreement on February 8, 1991 which, in effect, altered the November 12, 1990 Order. Subsequently, the orders of March 6, 1991 and March 12, 1992 were issued. It was only thereafter that petitioners raised the argument that the November 12, 1990 Order had become final.

With respect to the second issue, it was petitioners' contention that the Voluntary Arbitrator committed grave abuse of discretion when he insisted on acting as such despite his earlier inhibition. Moreover, he had shown his bias and weakness when he succumbed to complainants' wishes, as shown by their continued access to the Voluntary Arbitrator almost everyday in following up to the case. Thus, petitioners were convinced that they had a well-founded suspicion that, in all probability, they could not secure a fair disposition of the case until and unless the execution is assigned to another authority.

On its part, respondents believed that no grave abuse of discretion was committed when the voluntary arbitrator recalled his earlier inhibition. If he did so, it was based on an advisory and because he did not assume the position of Deputy Administrator of the POEA.

When public respondent Voluntary Arbitrator was appointed as acting POEA Deputy Administrator, he indorsed the entire records of the case to the NLRC Chairman. This prompted the parties to enter into an agreement authorizing Labor Arbiter Dinopol to act as the Voluntary Arbitrator in the remaining pending incidents in the case. The latter, in turn, sought the opinion of the Secretary as to whether he could do so. Subsequently, petitioners filed a motion to inhibit public respondent on the ground of alleged bias. A day after, this was granted by public respondent "if only to erase any suspicion of bias or partiality in favor of complainants" although he believed the assertion was patently untrue. This was reconsidered upon receipt of an advisory from Director Dennis P. Ancheta that he must continue hearing the same until its final execution.

We do not find grave abuse of discretion in public respondent's act of reconsidering his earlier inhibition. First, he merely followed an advisory from a higher official. Second, we agree with him that the assertion of bias unfounded. His acts were all directed towards implementing the August 30, 1989 Resolution of the Court. If some of petitioners' motions were denied by him it was not because he favored complainants but because, by doing otherwise, he would run counter to the very Resolution he is mandated to execute. Similarly, if private respondents' motions were granted, he did so in obedience to the Court's August 30, 1989 Resolution. No longer was the outcome of the case in his hands. All that was left for him to do was to execute the Court's Resolution. Thus, it cannot be contended that he had prejudged the merits of the case. His Order of July 30, 1992 where he chastised respondent union negated the charge of bias in their favor. It stated:

> "One final note. We have taken with serious concern the intimidating and orchestrated actuations recently shown by some of the complainants herein. Notwithstanding our utmost impartiality in the handling of this case, the complainants concerned stage a demonstration against this Arbitrator and thereafter, employed pressure in almost all officials of DOLE in the hope that they can get what they want at the expense of the other party's right to due process of law.
>
> Enough is enough. The leadership of the National Organization of Workingmen (N.O.W.M.) is reminded of its solemn duty to guide and properly apprise the complainants not only of their statutory rights, but more importantly, of their legal obligations in the way of responsible unionism."

The Court cannot help but note that the motion for inhibition was filed five years after the commencement of the case and four years after the Court had affirmed public respondent's decision and ordered him to proceed with the implementation of the decision. Considering the foregoing reasons, it would redound to the best interests of both parties for public respondent to continue handling the case up to its full execution.

WHEREFORE, the petition is **DISMISSED**.

Feliciano, Melo and Vitug, *JJ.*, concur.
Bidin, *J.*, is on leave.

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[1] Rollo of G.R. No. 85577, pp. 186-189.
[2] Annexes "A", "B" and "C" according to Order of November 10, 1989, p. 2 "A", "B" and "B-1" according to Order of November 12, 1990, p. 2.
[3] Temporary Rollo, Annex "A", p. 3.
[4] Annexes "A", "B" and "C" of complainants' lists of original complainants dated 21 December 1989.
[5] Temporary Rollo, Annex "B", p. 3.
[6] Records, Vol. 3, pp. 155-145.
[7] Annexes "A" to A-75".
[8] Records, Vol. 3, 120-111.
[9] Ibid., Vol. 1, pp. 107-106.
[10] Rollo of G.R. No. 107605, pp. 76-82.
[11] Ibid., p. 56.
[12] Annexes "A", "B" and "B-1" to "Petition to Execute Judgment" dated September 18, 1989.
[13] Rollo of G.R. No. 106705, Annex "D", p. 7.
[14] Ibid., p. 70.
[15] Ibid., p. 66.
[16] Ibid., p. 59.
[17] Ibid., p. 62.
[18] Annex "D", pp. 49-82.
[19] Ibid., pp. 63-65.
[20] Records, Vol. 1, pp. 13-14.
[21] Ibid., pp. 12-13.
[22] Annex "E", pp. 83-86.
[23] Annex "F", pp. 87-92.
[24] Temporary Rollo, p. 3.
[25] Annex "A", pp. 27-38.
[26] Records, Vol. 4, 586-587.
[27] Annex "A", pp. 36-37.
[28] Ibid., pp. 37-38.
[29] Annex "H", pp. 122-127.
[30] Annex "I", p. 128.
[31] Annex "L", pp. 134-135.
[32] Annex "B", pp. 40-43.
[33] Annex "C", pp. 44-48.
