SUPREME COURT
THIRD DIVISION

UNION CARBIDE LABOR UNION (NLU),
***Petitioner*,**

-versus-

G.R. No. L-41314
November 13, 1992

UNION CARBIDE PHILIPPINES, INC. AND THE HON. SECRETARY OF LABOR,
***Respondents*.**
x----------x

D E C I S I O N

MELO, *J.*:

This refers to a Petition for Review of the Decision of the then Secretary of Labor Blas Ople handed down on February 7, 1975 which set aside the decision of the Arbitrator ordering reinstatement with backwages, and instead adjudged the payment of separation pay; and the resolution dated July 24, 1975 denying petitioner's motion for reconsideration for lack of merit.

The undisputed facts as found by the Secretary of Labor are as follows:

"Complainants Agapito Duro, Alfredo Torio, and Rustico Javillonar, were dismissed from their employment after an application for clearance to terminate them was approved by the Secretary of Labor on December 19, 1972. Respondent's application for clearance was premised on "willful violation of Company regulations, gross insubordination and refusal to submit to a Company investigation."

Prior events leading to the dismissal of complainants are recited in the Arbitrator's decision, which we quote:

> 'It appears that the Company is operating on three (3) shifts namely: morning, afternoon and night shifts. The workers in the third shift normally work from Monday to Saturday, the last working day being Friday or forty (40) hours a week or from Monday to Friday.
>
> 'Sometime in July 1972 there seems to be a change in the working schedule from Monday to Friday as contained in the collective bargaining agreement aforecited to Sunday thru Thursday. The change became effective July 5, 1972. The third shift employees were required to start the new work schedule from Sunday thru Thursday.
>
> 'On November 6, 1972, the night shift employees filed a demand to maintain the old working schedule from Monday thru Friday. (Letter of November 6, 1972 addressed to the Committee on Labor Relation, UCLU). The demand was referred to the Labor Management Relation Committee and discussed from November 15, up to November 24, 1972. In the discussions had, it was arrived at that all night shift operating personnel were allowed to start their work Monday and on Saturday. This excepted the employees in the maintenance and preparation crews whose work schedule is presumed to be maintained from Sunday to Thursday. The work schedule between management representatives and the alleged officers of the Union (Varias group) was approved and disseminated to take effect November 26, 1972. (Exh. "2" Respondent).

> 'In manifestation of their dissention to the new work schedule, the three respondents Duro, Torio, and Javillonar did not report for work on November 26, 1972 which was a Sunday since it was not a working day according to the provisions of the Collective Bargaining Agreement. (Exh. "A"-Complainant). Their absence caused their suspension for fourteen (14) days."(pp. 29-30, Rollo).

On May 4, 1973, the Arbitrator rendered a decision ordering the reinstatement with backwages of the complainants. On June 8, 1973, the National Labor Relations Commission dismissed respondent company's appeal for having been filed out of time. A motion for reconsideration which was treated as an appeal was then filed by respondent company before the Secretary of Labor, resulting in the modification of the Arbitrator's decision by awarding complainants separation pay. A motion for reconsideration subsequently filed by the petitioner was denied for lack of merit.

Hence, this petition.

The main issue in this case is whether or not the complainants could be validly dismissed from their employment on the ground of insubordination for refusing to comply with the new work schedule.

Petitioner alleges that the change in the company's working schedule violated the existing Collective Bargaining Agreement of the parties. Hence, complainants cannot be dismissed since their refusal to comply with the re-scheduled working hours was based on a provision of the Collective Bargaining Agreement. Petitioner further contends that the dismissal of the complainants violated Section 9, Article II of the 1973 Constitution which provides "the right of workers to self-organization, collective bargaining, security of tenure and just and humane conditions of work."

The petition has no merit.

Although Article XIX of the CBA provides for the duration of the agreement, which We quote:

> "This agreement shall become effective on September 1, 1971 and shall remain in full force and effect without change until August 31, 1974. Unless the parties hereto agree otherwise, negotiation for renewal, or renewal and modification, or a new agreement may not be initiated before July 1, 1974."

This does not necessarily mean that the company can no longer change its working schedule, for Section 2, Article II of the same CBA expressly provides that:

> "SECTION 2. In the exercise of its functions of management, the COMPANY shall have the sole and exclusive right and power, among other things, to direct the operations and the working force of its business in all respects; to be the sole judge in determining the capacity or fitness of an employee for the position or job to which he has been assigned; to schedule the hours of work, shifts and work schedules; to require work to be done in excess of eight hours or on Sundays or holidays as the exigencies of the service may require; to plan, schedule, direct, curtail and control factory operations and schedules of production; to introduce and install new or improved production methods or facilities; to designate the work and the employees to perform it; to select and hire new employees; to train new employees and improve the skill and ability of employees; to make rules and regulations governing conduct and safety; to transfer employees from one job to another or from one shift to another; to classify or reclassify employees; and to make such changes in the duties of its employees as the COMPANY may see fit or convenient for the proper conduct of its business."

Verily and wisely, management retained the prerogative, whenever exigencies of the service so require, to change the working hours of its employees. And as long as such prerogative is exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, this Court will uphold such exercise (San Miguel Brewery Sales Force Union (PTGWO) vs. Ople, 170 SCRA 25 [1989]).

Thus, in the case of Abbott Laboratories (Phil.), Inc. vs. NLRC (154 SCRA 713 [1987]), We ruled:

> "Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied." (p. 717).

Further, the incident complained of took place sometime in 1972, so there is no violation of the 1973 Constitution to speak of because the guarantee of security of tenure embodied under Section 9, Article II may not be given a retroactive effect. It is the basic norm that provisions of the fundamental law should be given prospective application only, unless legislative intent for its retroactive application is so provided.

As pointed out by Justice Isagani Cruz, to wit:

> "Finally, it should be observed that the provisions of the Constitution should be given only a prospective application unless the contrary is clearly intended. Were the rule otherwise, rights already acquired or vested might be unduly disturbed or withdrawn even in the absence of an unmistakable intention to place them within the scope of the Constitution." (p. 10, Constitutional Law, Isagani Cruz, 1991 Edition).

We agree with the findings arrived at by both Arbitrator and the Secretary of Labor that there is no unfair labor practice in this case. Neither was there gross and habitual neglect of complainants' duties. Nor did the act of complainants in refusing to follow the new working hours amount to serious misconduct or willful disobedience to the orders of respondent company.

Although no serious objections may be offered to the Arbitrator's conclusion to order reinstatement with backwages of the complainants, We now refrain from doing so considering that reinstatement is no longer feasible due to the fact that the controversy

started more than 20 years ago aside from the obviously strained relations between the parties.

WHEREFORE, the Decision appealed from is hereby **AFFIRMED.**

SO ORDERED.

Gutierrez, Jr., Bidin, Davide, Jr. and Romero, *JJ.*, concur.
