SUPREME COURT
SECOND DIVISION

UNION OF FILIPINO WORKERS, (UFW),
***Petitioner*,**

-versus-

G.R. No. 98111
April 7, 1993

NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) AND MAKATI SPORTS CLUB, INC.,
***Respondents*.**
x----------x

D E C I S I O N

NOCON, *J.*:

This is a Petition on *Certiorari* of the Decision of the NLRC dated February 7, 1991 which dismissed NLRC Case No. NCR-00-08-03998-89 entitled Union of Filipino Workers v. Makati Sports Club, Inc. and the Resolution dated March 6, 1991 denying the Motion for Reconsideration of said Decision.

The case before the labor arbiter was for violation of Rep. Act No. 6727 and underpayment of separation pay filed by petitioner in behalf of its members against private respondent.

The labor arbiter's decision, which was reversed by the NLRC on appeal, ordered private respondent Makati Sports Club, Inc. to pay the additional P300.00 monthly wage increase and to compute separation pay according to the legislated wage increase without crediting the CBA wage increase.

The facts of the case are as follows:

Petitioner Union of Filipino Workers (UFW) is the certified bargaining agent of the rank and file employees of private respondent Makati Sports Club, Inc.[1] Private respondent Club is a non-stock, non-profit and non-commercial private membership club whose primary objective is to provide athletic facilities.[2] Petitioner and private respondent were negotiating for a collective bargaining agreement (CBA) when two notable events happened. Private respondent's clubhouse burned down on April 1, 1989, resulting in the threat of retrenchment.[3] The government also announced the imminent passage of a P25.00 daily wage increase for the private sector employees.[4]

When negotiations reached a deadlock, petitioner filed a notice of strike. The National Conciliation and Mediation Board intervened and conciliation proceedings went underway. An agreement was reached on May 17, 1989 stipulating the following:

> "1. On the CBA deadlock issues, the parties agreed as follows:
>
> (a) Wage increase: P750.00
>
> 1st year — P300.00
> 2nd year — 250.00
> 3rd year — 200.00.
>
> Legislated wages shall be credited to the said wage increases.
>
> (b) effectivity: January 1, 1989
>
> (c) financial assistance: P1,300

(d) signing bonus: P1,300

(e) no other CBA deadlock issue remains unresolved.

"2. On the retrenchment issue the parties agreed as follows:

(a) between 90 to 100 employees shall be retrenched

(b) separation pay shall be one month for every year of service

(c) implementation of retrenchment program shall be as follows:

1st phase (voluntary basis) — not later than May 26, 1989.
2nd phase (involuntary basis) — 'last in first out' on a per job classification basis.

"3. Both parties shall finalize the CBA and present the same to the Board of directors for final approval after which the signing ceremony will take place." (Minutes, May 17, 1989; Emphasis supplied)[5]

On June 19, 1989, the proposed CBA based on the foregoing agreement was approved by private respondent's Board of Directors and signed by the parties on June 22, 1989. It provides, among others:

"ARTICLE VIII
"WAGE INCREASE

"Section 1. ACROSS THE BOARD SALARY INCREASE: The Club shall grant to all regular employees within the appropriate bargaining unit a general wage increase across the board in accordance with the schedule below.

a) Effective January 1, 1989 — P300.00 a month per employee

b) Effective January 1, 1989 — P250.00 a month per employee
c) Effective January 1, 1991 — P200.00 a month per employee.

"Provided however, that only the increase in basic wages and service charges shall retroact to January 1, 1989 and there shall be no back computation on back payment of any other benefits accruing or arising from such retroactivity, including but not limited to, overtime premium, night differential, leave and/or other payments.

"The employees backwages of P300.00 per month per employee from January 1, 1989 to May 31, 1989, or a total of P1,500.00 per employee shall be paid not later July 5, 1989.

"The legislated increases above stipulated shall be credited to and shall form part of any salary increases that may be mandated by the Philippine government during each year in which case such increases shall take effect."[6] (Emphasis supplied).

On July 1, 1989, Republic Act No. 6727 took effect. It provided for a P25.00 daily wage increase across-the-board to those receiving P100.00 or less daily wages. Section 4 (d) of the law provides:

"Section 4. x x x

(d) If expressly provided for and agreed upon the collective bargaining agreements, all increases in the daily wage rates granted by the employers three (3) months before the effectivity of this Act shall be credited as compliance with the increase in the wage rates prescribed herein." (Emphasis supplied).

The Rules and Regulations implementing Rep. Act No. 6727,[7] specifically Section 8, provides:

"Section 8. Creditable Wage Increase

a. No wage increase shall be credited as compliance with the increase prescribed under the Act unless expressly provided under collective bargaining agreements and such wage increase shall be granted not earlier than April 1, 1989 but not later than July 1, 1989. Where the wage increase granted is less than the prescribed increase under the Act, the employer shall pay the difference." (Emphasis supplied).

Private respondent applied the aforequoted rule in crediting the P300.00 monthly wage increase per employee provided in their CBA to the wage increase provided for by Rep. Act No. 6727. The separation pay of the retrenched employees was computed on the basis of their basic pay, which included the P300.00 CBA wage increase, but did not include the wage increase granted under Rep. Act No. 6727.

Petitioner protested the crediting of the CBA increases to the legislated increases. It filed a complaint for violation of Rep. Act No. 6727 and underpayment of separation pay.[8] Petitioner claims that under section 4 (d) of Rep. Act No. 6727 and Section 8 (a) of the Rules and Regulations implementing said law, crediting of CBA wage increases to the compliance of Rep. Act No. 6727 is allowed where the following conditions are met, namely: a) the CBA expressly provides for crediting; and b) the wage increases must have been granted within three (3) months prior to the effectivity of the Act or within the period from April 1, 1989 to July 1, 1989.[9]

Petitioner agrees that the CBA provides, in Article VIII thereof, the crediting of CBA increases to future legislated wages. However, petitioner maintains that the wage increase of P300.00 monthly for the first year of the CBA, though signed only on June 22, 1989, is retroactive to January 1, 1989, the CBA wage increase is thus, outside of the time frame provided for in Rep. Act No. 6727 and its Implementing Rules of three (3) months prior to the effectivity of said Act or the period from April 1, 1989 to July 1, 1989.[10] Hence, petitioner claims that the CBA wage increase of P300.00 for the year 1989 cannot be validly credited as in compliance with the increase prescribed under Rep. Act No. 6727. The crediting made by private respondent was therefore illegal, and resulted in an erroneous computation of the separation pay for the retrenched employees.[11]

On the other hand, private respondent contends that the CBA expressly provided for the crediting of the CBA wage increases to the wage increases mandated by the government and that this was the real intention of the parties. That the CBA wage increases, having been granted on June 19, 1989, when the same was approved by private respondent's Board of Directors, although made retroactive to January 1, 1989, still falls within the period of crediting under Republic Act No. 6727. Therefore, its act of crediting the CBA increase to the legislated increase is legal and the computation of separation pay valid and correct.[12]

On March 12, 1990, Labor Arbiter Arthur L. Amansec rendered a Decision[13] in favor of petitioner, the dispositive portion of which, reads:

> "WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Club to:
>
> 1. Pay the present employees the additional P300.00 monthly each retroactive as of July 1, 1989 with two percent (2%) monthly interest until compliance is made;
>
> 2. To pay the differentials of separation pay to all retrenched employees in the amount of P652.00 multiplied by their length of service; and
>
> 3. To pay the amount equivalent to ten percent (10%) of the total monetary award as attorney's fees in favor of complainant's counsel.
>
> The Corporation (sic) Auditing Examiner of this Office is hereby directed to compute immediately the total award of this case, and to submit the same to the undersigned for appropriate action.
>
> SO ORDERED."

On appeal to the NLRC by private respondent the Decision of the Labor Arbiter was reversed and set aside for lack of cause of action.[14] In reversing the labor arbiter's ruling, the NLRC held, and We quote:

> "We find respondent's appeal meritorious.
>
> "The proximity of the signing of the herein parties' CBA providing for the respondent's employees' wage increases on 22 June 1989 and the date of the passage of Rep. Act. No. 6727 on June 19, 1989, albeit the same was made effective only on 1 July 1989, after fifteen days from its publication, stresses the fact that the impending passage of the latter was foremost in the minds of the herein parties when they inked the following stipulation:
>
> > 'Legislated wages shall be credited to said wage increases' (Agreement dated 17 May 1989).
>
> and again the following:
>
> > 'The increases above stipulated shall be credited to and shall form part of any salary increase that may be mandated during each year in which case such increase shall take effect.' (CBA dated 22 June 1989)
>
> "From the aforequoted covenants, the intendment of the herein parties appertaining the crediting of their wage increases under the CBA to government issuances had been clear and admit of no other interpretation other than what said stipulations purport to be. As aptly stated by the Supreme Court in the case of Filipinas Golf and Country Club Inc. vs. NLRC, PTGWO and Local Chapter 424, G.R. No. 62918, August 23, 1989. 'The intention of the parties whether or not to equate benefits under a Collective Bargaining Agreement with those granted by law must prevail and be given effect.'
>
> "Moreover, complainant capitalizing on the period of coverage for the crediting of said CBA wage increases to Rep. Act No. 6727 argues that said CBA wage increases were given on 1 January 1989 beyond the period of coverage, in question.

"We disagree. Records clearly show that it was only sometime on 17 May 1989, when conciliation was conducted on this very issue of wage increase, resulting in a deadlock in CBA negotiations that an agreement was reached to give complainant's members this added benefit then still made subject to the approval of respondent's Board of Directors.

"It can be gainsaid therefore, that prior to the approval of said wage increase by respondent's Board of Directors on 19 June 1989, there was no wage increase to speak of. Ergo, as of 18 June 1989, prior to the approval in point, there was nothing that can be credited to any wage increase mandated by law, not even Rep. Act No. 6727. Complainant's assertion to the effect that a wage increase was already granted on 1 January 1989 is absolutely misleading and untenable.

"In point of fact, the provision contained in the CBA particularly the following:

> 'The employees backwages of P300.00 per month per employee from January 1, 1989 to May 31, 1989, or a total of P1,500.00 per employee shall be paid not later than July 5, 1989.'

equivocably show that the benefit was given not later than July 5, 1989, as granted on approval of the same by respondent's Board of Directors on 19 June 1989.

"The retroactivity of said grant on 1 January 1989 is of no moment and does not to our mind alter the intendment of the parties when they entered into the agreement on 'crediting' in question. Besides, suffice it for us to point out, that regardless of the provision of Rep. Act No. 6727, the CBA of the parties have effectively become the law between themselves.

"All told, we find and so hold that there was a valid crediting by respondent of the wage increase under the CBA to the mandated wage increase provided for under Rep. Act No. 6727."[15]

Petitioner's motion for reconsideration was denied in a resolution dated March 6, 1991.[16]

Hence this petition. Petitioner seeks relief from private respondent's "violations of law and public respondent's arbitrary, nay, capricious exercise of judgment/discretion."[17]

In order to resolve whether the public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion, We must dispose of the three issues raised by petitioner.

First, whether or not the CBA wage increase can be credited to the wage increase mandated by Rep. Act No. 6727; second, whether or not there was underpayment of separation pay; and third, whether or not public respondent NLRC committed grave abuse of discretion by exercising jurisdiction over the appeal of private respondent.

As to the first issue, may private respondent validly credit the P300.00 monthly wage increase given under the CBA to the P25.00 daily wage increase mandated by Rep. Act 6727?

According to the law, crediting is allowed: a) "if expressly provided for and agreed upon in the collective bargaining agreements; and b) such increases were granted by the employers three months before the effectivity of this Act."[18]

It is undisputed that the CBA expressly provided for the crediting of wage increase under Art. VIII, Section 1, last paragraph, which We quote:

> "The increases above stipulated shall be credited to and shall form part of any salary increases that may be mandated by the Philippine government during each year in which case such increases shall take effect."[19]

The intention of the parties is clear and unmistakable. There is no doubt the first condition for valid crediting was met with the inclusion of the provision quoted above.

The second condition to be met refers to the time in which the CBA wage increase was given. It must have been granted between April 1 and July 1, 1989 in order for the wage increase to be validly credited to the increase granted by RA 6727.

Petitioner tenuously argues that even though the CBA was signed on June 22, 1989, the wage increase was not granted on the same day. The wage increase was granted on January 1, 1989, the date to which the increase was made effective or made retroactive. Having been 'granted' on January 1, 1989 and not June 22, 1989, the wage increase fell outside of the period allowed by law for valid crediting citing in support thereof the case of Filipinas Golf and Country Club v. NLRC,[20] wherein it was held "that in making the wage increases retroactive, the parties to all intents and purposes dated the existence of the CBA back to the effective date of the increase."

We are not persuaded.

While said case involved a similar question of creditability of wage increases, the above quoted statement was made not as a dogmatic rule, but only to support the conclusion of the case in favor of creditability of legislative wage increases to CBA wage increases because such was expressed in their CBA. The court in said case also held:

> "A survey of relevant decision of this Court fails to support the proposition implicit in the Labor Arbiter's decision that benefits granted by law may be claimed separately from and in addition to those granted by collective bargaining agreements under any and all circumstances. What seems, on the contrary, to be the common thrust of applicable rulings is that the intention of the parties whether or not to equate benefits under a collective bargaining agreement with those granted by law must prevail and be given effect.[21]
>
> "The manifest will and intent of the parties to treat the legislated increases as equivalent pro tanto to those stipulated in their collective bargaining agreement must be respected and given effect."[22]

The fact that the CBA wage increase was made effective on January 1, 1989 does not necessarily mean that the wage increase was granted on that date and not on the date of its signing. We have seen that the statement from Filipinas Golf v. NLRC which petitioner used, has failed to sustain its stand because it has no applicability to the case at bar. Before the CBA was signed, there was no wage increase to speak of. Hence it is only logical that the grant of the wage increase by the CBA, is considered to have been made at the time the CBA was signed on June 22, 1989.

We agree with public respondent's findings regarding the intention of the parties as regards crediting and the retroactivity of the wage increase benefits. The proximity of the signing of the CBA on June 22, 1989 to the passage of Rep. Act No. 6727, on June 19, 1989 coupled with the CBA stipulation favoring creditability, bolster the conclusion that the parties did not intend the duplication of wage increase benefits, but rather crediting the CBA wage increase as part of the legislated increase.

Public respondent NLRC also held that "(t)he retroactivity of said grant on January 1989 is of no moment and does not to Our mind alter the intendment of the parties when they entered into the agreement on 'crediting' in question. Besides, regardless of the provision of Rep. Act No. 6727, the CBA of the parties have effectively become the law between themselves."

The CBA wage increase having been granted on June 22, 1989, or within the period for 'crediting' as expressly provided in said CBA. We find that private respondent correctly credited the CBA wage increase to comply with the mandate of Rep. Act No. 6727 for a P25.00 daily wage increase.

We now proceed to the issue of underpayment of separation pay. Petitioner claims that the sixty-one retrenched employees were all entitled to the P25.00 daily wage increase because the effectivity of the retrenchment was after the effectivity of Rep. Act No. 6727 on July 1, 1989. Hence, the same must be made part of the computation of their separation pay.

Private respondent on the other hand, contends that the wage increment under Republic Act No. 6727 was not included in the computation of separation pay because the effective date of the retrenchment was June 30, 1989 and before the effectivity of Rep. Act 6727, and because the retrenched employees already executed affidavits of quit claim.[23]

There is no dispute that the retrenchment could be validly done. Petitioner raises the issue of the amount of separation pay that the retrenched employees are supposed to receive. To resolve this matter, it is necessary to determine the effectivity date of the retrenchment undertaken by private respondent. If it took place before July 1, 1989, then the wage increase mandated by Rep. Act No. 6727 should not be included in the computation of separation pay. If it took place on or after July 1, 1989, then the increase should form part of said separation pay.

Public respondent NLRC ruled that there was valid crediting of the CBA wage increase of P300.00 to the legislated wage increase of P25.00 daily or P652.00 monthly, and concluded that:

> "We find no flaw whatsoever in the computation of the retrenched employees' separation pay contrary to complainant's averments to that effect." (p. 12, Decision, February 7, 1991) [24]

We agree with the Decision[25] of the labor arbiter on the matter of separation pay.

Article 283 of the Labor Code, on retrenchment reads:

> "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 retrenchment to prevent losses, the separation pay shall be one month or at least one-half 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)

According to the labor arbiter, retrenchment is valid only when the following requisites have been met: a) it is to prevent losses; b) written notices were served on the workers and DOLE at least one month before the effective date of the retrenchment; and c) separation pay is paid to the affected workers.[26] He continues:

> "Applying this yardstick to the case at bar, there is no dispute that the cause of the retrenchment is to prevent losses. While the claims of the parties on the matter of the actual date of service of notice to the workers are conflicting. The uncontroverted fact is that the written notice of retrenchment was filed with DOLE only on June 22, 1989. Undisputed likewise is the fact that the payment of separation pay was partially made on July 5, 1989, and completed in the first week of August 1989.
>
> On the basis of the foregoing, it is the considered view of this Office that the retrenchment could not have validly taken effect on June 30, 1989. At the very least, its effectivity could be July 22, 1989, one month after respondent filed its retrenchment notice with DOLE. To consider June 30, 1989 as its effective date would be circumventing the law. This we cannot sustain.
>
> Correspondingly, the basis of computation of separation pay is the basic pay of the retrenched workers as of July 21, 1989. As such, it must include the wage increments of P25.00 daily or P652.00 monthly as mandated under Rep. Act No. 6727.

The acceptance by the retrenched workers of the separation pay as computed by respondent, and the subsequent execution and signing of quit claims do not extinguish respondent's obligation, and the retrenched workers' entitlement to the back differentials in separation pay. It is clear from the letter of complainant that the acceptance of the separation pay is under protest, thus:

> "We are therefore placing under protest the separation pay computation with the advice that the retrenched workers are

> ready and willing to accept whatever are your computations subject to this protest. (Annex "5", Complainant's Position Paper)"[27]

The findings of fact by the labor arbiter should be respected and left undisputed there being substantial evidence to support them. Furthermore, private respondents allegations that the workers were notified one month before June 30, 1989[28] are not supported by the evidence on record. Its claim that the DOLE was "officially notified" of the retrenchment by its presence during the conciliation proceedings, as per Conciliation Minutes dated May 17, 1989[29] cannot be sustained. The law requires that a written notice of retrenchment be filed with the DOLE one month before the intended date of retrenchment. The requirement of the law is very clear. It cannot be substituted by the Conciliation Minutes as claimed by private respondent. While the Conciliation Minutes form part of the files of the conciliator, its submission cannot constitute substantial compliance with the requirement of a written notice of retrenchment. Moreover, the said "Minutes" do not contain the details necessary to effect the retrenchment program, such as the names of the employees to be retrenched.

The effective date of the retrenchment, as found by the labor arbiter, could not have been June 30, 1989. At the very least, it could have been July 22, 1989 or one month after the retrenchment notice was filed with the DOLE. Hence, the basis for the computation of separation pay should be the basic pay of the retrenched workers as of July 22, 1989. It must therefore include the wage increments of P25.00 daily or P652.00 monthly as mandated by Rep. Act No. 6727, subject to crediting of the CBA wage increase of P300.00 monthly.

Public respondent NLRC clearly erred in disposing of the issue of underpayment of separation pay.

As to the third issue, petitioner claims that "public respondent committed grave abuse of discretion in assuming jurisdiction over the appeal of private respondent despite clear showing that the same was not perfected within the time frame allowed by law amounting to an exercise of judgment in excess of jurisdiction."[30]

Section 1 (a) of Rule VIII of the Revised Rules of the NLRC provides that:

> "Decisions or orders of a Labor Arbiter shall be final and executory unless appealed to the Commission by any or both of the parties within ten (10) calendar days from receipt of notice thereof."

Article 223 of the Labor Code (P.D. No. 442), as amended by Rep. Act No. 6727 provides that:

> "In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed." (Emphasis supplied)

Petitioner contends that private respondent's appeal from the decision of the Labor Arbiter was not perfected because private respondent failed to fulfill the requirement of posting a cash or surety bond in an amount equivalent to the monetary award within the ten day period from receipt of notice of the decision.[31] Private respondent filed the necessary bond only on October 12, 1990.

Under the facts of the case, petitioner's contentions cannot be sustained.

It is true that the posting of a surety or cash bond is a necessary step for the perfection of an appeal by an employer from a monetary judgment. The reason behind the requirement was stated in the case of Viron Garments v. NLRC:[32]

> "The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by an employer, is clearly lined in the provision that an appeal by the employer may be perfected 'only upon the posting of a cash or surety bond.' The word 'only' makes it perfectly clear, that the lawmakers intended the posting of a cash or surety bond by the

> employer to be the exclusive means by which an employer's appeal may be perfected.
>
> "The word 'may' refers to the perfection of an appeal as optional on the part of the defeated party, but not to the posting of an appeal bond, if he desires to appeal.
>
> "The requirement that the employer post a cash or surety bond to perfect its/ his appeal is apparently intended to assure the workers that if they prevail in this case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It was intended to discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employees' just and lawful claims."

However, despite the late filing of the bond by private respondent We rule that public respondent committed no grave abuse of discretion amounting to want of jurisdiction in giving due course to the appeal or private respondent for the following reasons:

> "Note that the decision appealed from by private respondent did not state the exact amount of monetary award. Rather, the labor arbiter ordered the NLRC's "Corporation Auditing Examiner" to immediately make the computation of the award. As pointed out by private respondent in its memorandum, "(u)p to this late date, no computations of any kind ha(ve) been submitted by the 'Corporation Auditing Examiner' in this case. It was the Commission's own appeal section, which finally (evaluated and) came up with a tentative computation which served as a basis for the respondent club to file the bond."[33]

On October 23, 1990, private respondent received an Order from the NLRC to submit its bond in the amount of P529,056.00 within ten calendar days from receipt.[34] Private respondent had actually filed the requisite bond on October 12, 1990, even before receipt of the said Order.[35] The situation in which private respondent found itself was therefore not clear-cut. The amount on which the bond would be based had not been computed until very much later. As We ruled in NAFLU v. Ladrido:[36] "Private respondent cannot be expected to post such appeal bond equivalent to the amount of the monetary award

when the amount thereof was not included in the decision of the labor arbiter." Said the court:

> "In the order of public respondent NLRC dated August 10, 1990, it is stated that '(T)he policy of the Commission in situations like this (and the labor arbiter should have been aware of this) is for the labor arbiter to forward records to the Commission [and that] thereafter, the Commission will cause the computation of the awards and issue an order directing the appellant to file the required bond.' This appears to be a practice of the NLRC to allow a belated filing of the required appeal bond, in the instance when the decision of the labor arbiter involves a monetary award that has not yet been computed, considering that the computation will still have to be made by that office. It is understood of course, that appellant has filed the appeal on time, as in this case."

Moreover, there is no showing that private respondent abused the leniency of the NLRC, which would merit the dismissal of its appeal as in the case of Italian Village v. NLRC.[37] Private respondent immediately filed the bond upon the determination of the amount of the award.

In the case of Rada v. NLRC[38] where the court allowed the late payment of the supersedeas bond, it held:

> "Besides, it was within the inherent power of the NLRC to have allowed late payment of the bond, considering that the aforesaid decision of the labor arbiter was received by private respondent on Oct. 3, 1989 and its appeal was duly filed on Oct. 13, 1989. However, said decision did not state the amount awarded as backwages and overtime pay, hence the amount of the supersedeas bond could not be determined. It was only in the order of NLRC of Feb. 16, 1990 that the amount of the supersedeas bond was specified and which bond, after an extension granted by the NLRC, was timely filed by private respondent."

We hold that giving due course to the appeal would better serve the ends of justice and the desired objective of resolving controversies on the merits.

WHEREFORE, the Petition is hereby **GRANTED** in so far as the issue of underpayment of separation pay is concerned, and the **DECISION** of the NLRC is hereby **MODIFIED** as outlined above. Private respondent is ordered to re-compute the separation pay of the retrenched employees using the basic pay as of July 22, 1989 as basis, subject to the crediting of the CBA monthly wage increase of P300.00. No pronouncement as to costs.

SO ORDERED.

Narvasa, *C.J.*, Padilla, Regalado and Campos, Jr., *JJ.*, concur.

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[1] Petitioner's Position Paper, p. 1; Rollo, p. 44.
[2] Private Respondent's Memorandum, p. 2; Rollo, p. 234.
[3] Supra, note 1.
[4] Private Respondent's Comment, p. 2; Rollo, p. 126.
[5] Id., Annex "A"; Rollo, p. 113.
[6] Records, pp. 23-24.
[7] July 7, 1989; Annex "D," Private Respondent's Comment; Rollo, p. 116.
[8] NLRC Case No. NCR-00-03998-89, Union of Filipino Workers v. Makati Sports Club, Inc.; Complaint; Rollo, p. 22.
[9] Petition, p. 16; Rollo, p. 47.
[10] Id.
[11] Public Respondent's Comment, p. 6; Rollo, p. 130.
[12] Id., p. 7; Rollo, p. 131.
[13] Decision of the Labor Arbiter, p. 9; Rollo, p. 61.
[14] Decision of the NLRC; Rollo, p. 24.
[15] Id., pp. 9-12; Rollo, pp. 32 - 35.
[16] Records, p. 134.
[17] Petition, p. 6; Rollo, p. 7.
[18] Sec. 4(d), Rep. Act No. 6727.
[19] Records, p. 24.
[20] 176 SCRA 625 (1989).
[21] Id., p. 632.
[22] Id., p. 633.
[23] Petitioner's Memorandum, p. 15; Rollo, p. 211.
[24] Id., p. 17; Rollo, p. 212.

[25] Rollo, p. 54.
[26] Decision of the Labor Arbiter, p. 7; Rollo, p. 60.
[27] Id., pp. 7-8; Rollo, pp. 60-61.
[28] Private Respondent's Memorandum, p. 16; Rollo, p. 248.
[29] Id., p. 17; Rollo, p. 249.
[30] Petition, p. 8; Rollo, p. 9.
[31] Art. 223, Pres. Dec. No. 442; Sec. 1(a), Rule VIII, Revised Rules of the NLRC.
[32] 207 SCRA 339 (1992).
[33] Private Respondent's Memorandum, pp. 20-21; Rollo, pp. 252-253.
[34] Id., p. 22; Rollo, p. 254.
[35] Id.
[36] 196 SCRA 833 (1991).
[37] 207 SCRA 204 (1992).
[38] 205 SCRA 69 (1992).