

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**UST FACULTY UNION,
*Petitioner,***

-versus-

**G.R. No. 89885
August 6, 1990**

**NATIONAL LABOR RELATIONS
COMMISSION, UNIVERSITY OF
SANTO TOMAS, NORBERTO
CASTILLO, NORMA LERMA, TERESITA
CENDANA and DIONISIO CABEZON,
*Respondents.***

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DECISION

GANCAYCO, J.:

The right of a union to intervene in the extension of the service of a retired employee is the question submitted in this Petition.

On May 17, 1986, the UST Faculty Union (Union for short) and the University of Sto. Tomas (UST for short) entered into a collective bargaining agreement which provided as follows:

“Section 1. Retirement age. — It is hereby agreed and stipulated that the compulsory retirement age for faculty members is 65

years, provided that faculty members who have reached the age of 65 years may be granted extension of tenure unless they are physically incapacitated or are manifestly inefficient or incompetent, or are otherwise removed for cause. They shall continue to enjoy the usual benefits and privileges until the extension of their tenure is validly denied by the UNIVERSITY in consultation with the UNION or until they are validly separated from the service, provided that their period of extended service shall not be credited for purposes of retirement.’ (Emphasis supplied)”^[1]

On July 6, 1986, Tranquilina J. Marilio, a faculty member of the Faculty of Pharmacy, reached the retirement age of 65. She was allowed to continue her teaching stint until the end of schoolyear 1986-1987 and was further allowed an extension of tenure for the schoolyear 1987-1988. However, she was denied extension of tenure for the schoolyear 1988-1989.

In the same school year (1988-1989), Professor Francisco Bonifacio of the College of Education was denied extension of tenure after he reached the age of 65. Several faculty members of the Department of Civil Law were allegedly similarly denied extension of tenure.

On July 12, 1988, a complaint for unfair labor practice was lodged by the Union with the arbitration branch of the public respondent National Labor Relations Commission (NLRC). A decision was rendered by Labor Arbiter Bienvenido V. Hermogenes on December 15, 1988 dismissing the case for lack of merit. The Union appealed to the public respondent which in due course promulgated a resolution on June 30, 1989 affirming the appealed decision. A motion for reconsideration of said decision filed by petitioner was denied in a resolution dated September 4, 1989.

Hence, the herein petition where it is alleged that the public respondent acted with grave abuse of discretion amounting to lack of jurisdiction based on the following submissions:

- “I. The Honorable Public Respondent acted with grave abuse of discretion amounting to lack of jurisdiction when it disregarded Section 1, Article XII of the Collective

Bargaining Agreement and rendered the said provision nugatory.

- II. The Honorable Public Respondent acted with grave abuse of discretion amounting to lack of jurisdiction when it allowed the Respondents to modify the Collective Bargaining Agreement during its lifetime by adding new terms and conditions not found therein.
- III. The Honorable Public Respondent acted with grave abuse of discretion amounting to lack of jurisdiction when it dismissed the Appeal of the Petitioner in NLRC-NCR Case No. 00-07-02880-88 instead of declaring that the Respondents are guilty of Unfair Labor Practice for violating Section I, Article XII.
- IV. The Honorable Public Respondent acted with grave abuse of discretion amounting to lack of jurisdiction when it did not order the Respondents to jointly and severally pay the Petitioner damages for breach of contract.”^[2]

The petition is devoid of merit.

A reading of the aforesaid Section 1, Article XII of the Collective Bargaining Agreement shows the following: (1) that the compulsory age for retirement for a faculty member is 65 years; (2) upon having reached the age of 65 years they may be granted an extension of tenure unless they are manifestly inefficient or incompetent or are otherwise removed for cause; (3) that they shall continue to enjoy the usual benefits and privileges until the extension of their tenure is validly denied by the university in consultation with the Union or until they are validly separated from the service; and (4) that the period of extended service shall not be credited for purposes of retirement.

It is important to state that upon the compulsory retirement of an employee or official in the public or private service his employment is deemed terminated. The matter of extension of service of such employee or official is addressed to the sound discretion of the employer. It is a privilege only the employer can grant.

In the present case, under the rule aforestated, a member of the faculty of UST who reaches the age of 65 is retired or separated from the service thereby. However, the UST may grant extension of tenure to such a retiree unless they are manifestly inefficient or manifestly physically incapacitated or are otherwise removed for cause.

The grant of such extension may be made in accordance with existing rules and regulations of the UST. It appears that on March 1, 1988, the Rector of the UST laid down the procedure for the extension of service of retired faculty members as follows:

- “1. He must apply in writing to the Dean of his College of Affiliation;
- “2. His application is subject to the decision of the Dean and the Faculty Council en banc;
- “3. A majority vote of the Dean and the Faculty Council en banc is required for the recommendation of the extension of appointment to the Council of Regents and Academic Senate;
- “4. The Council of Regents and the Academic Senate must meet separately for purposes of making their respective decision subject to the approval of the Father Rector.

GUIDELINES FOR THE EXTENSION OF RETIRED FACULTY MEMBERS:

1. Must be mentally and physically fit to discharge his obligation as a faculty member;
2. His subject is highly specialized and that presently there is no available replacement to take the place of (the) mandatory retired faculty member once he gets out of the service. For this reason, Deans are required to prepare younger faculty members for purposes of replacement;

3. A retired faculty member whose age is above 70 is no longer qualified for extension of services.”^[3]

Under the foregoing rules, for a retiree to be granted extension, he must apply in writing to the Dean of the college to which he or she is affiliated. His application is subject to the decision of the Dean and Faculty Council en banc, a majority of the vote of which is required for a recommendation of the extension of the applicant to the Council of Regents and Academic Senate. The Council of Regents and Academic Senate will then meet separately and make the decision subject to the approval of the Father Rector.

When the decision is for a denial of the extension of tenure of a retiree the decision should be made in consultation with the Union. However, such consultation is not necessary when the retiree is validly separated from the service.

In the case of Prof. Mariño, she was, as aforesaid, allowed an extension of two (2) years in her teaching stint in the Faculty of Pharmacy for the schoolyears 1986-1988. However, she was denied extension of tenure for the schoolyear 1988-1989. Contrary to the claim of petitioner that there was no consultation with the Union, it appears that on June 20, 1988, the Union wrote the Rector of UST on the matter of extension of the service of Prof. Mariño. In a letter of June 27, 1988, the Union was informed by the Rector of the reasons why the extension was denied, as follows:

- “1. No recommendation on Mrs. Mariño’s extension for another year was made by the Dean and Faculty Council of the Faculty of Pharmacy, which recommendation is condition sine qua non for the yearly grant of extension.
2. The two (2) subjects assigned to and being handled by Mrs. Mariño last second semester of school year 1987-1988 are general and common subjects not necessitating the specialized knowledge of Mrs. Mariño and which can properly, sufficiently and adequately handled by non-extendee regular, tenured, willing and able faculty members.

3. It is the position of Management that the matter of extension of the term of service of professors beyond the compulsory retirement age of sixty five (65) years is not a matter of right, legally enforceable and demandable, but a mere privilege which the University may withhold in the rightful exercise of its discretionary power and prerogative. To make it a legally enforceable and demandable right would certainly defeat the very purpose and reason behind the compulsory retirement scheme and would prevent the infusion of young blood in the academic community of the University.
4. While it is true that the Collective Bargaining Agreement (CBA) provides for 'consultation with the union' in cases of denial of extension, however, in this particular case of Mrs. Mariño, it is the position of Management that no further consultation is necessary since her case has been the subject of discussion for quite sometime between the union and Management as shown by the numerous exchange of communications thereon.

In any event, the consultation provision in the CBA does not operate to totally deprive the University of its sole and exclusive prerogative and discretion to determine the professors who deserve to be extended. The clause 'Consultation with the Union' in the CBA should not be interpreted or construed to mean 'approval' or 'consent' of the Union. Consultation, however we define the term, legally, literally or otherwise, only means that management will hear the advice, position or opinion of the Union, but has no legal duty or obligation to priority secure the approval or consent thereof. The Union's role, therefore, is nothing but advisory in nature; and being so, management may either adopt or reject it, wholly or partly. In other words, the final decision still rests with Management."^[4]

The Court agrees with the position of the UST that the required consultation with the Union as provided in the CBA should be interpreted to mean as one which is advisory in character and as such, the opinion of the Union is not binding on the UST authorities. The

final say as to the denial of extension of a retiree still rests with the employer, the UST.

Moreover, it appears that there are two (2) reasons why extension was not granted to Prof. Mariño, namely: (1) she did not apply for an extension so no recommendation for her extension could have been granted; and (2) the subjects assigned to her do not require specialized knowledge and may be adequately handled by non-extendee regular faculty members.

Consequently, the Court holds that in the case of Prof. Mariño, she was validly separated from the service not only because she did not apply for an extension but because her service does not appear to be indispensable. In accordance with the aforestated CBA, inasmuch as she was validly separated, a consultation with the Union was unnecessary.

The separation from the service provided for in the aforestated CBA agreement should not be interpreted to mean the valid causes for separation as provided for by law. When the compulsory retirement age is reached by an employee or official he is thereby effectively separated from the service. However, the employer would be the best judge as to the grounds that may warrant a grant or denial of the extension of service of an employee or official. The Court finds that there is cogent basis in the denial of the extension of Prof. Mariño in this instance.

In the case of Prof. Francisco Bonifacio, the non-extension of his service was because he did not apply for the same but also because at the time he retired there was an administrative case against him for allegedly immoral acts. Nevertheless, he executed an affidavit stating that he did not authorize the filing of the petition in his behalf and that he is not interested in the extension of his service.^[5]

In the case of the three (3) professors of the Faculty of Civil Law, namely: Messrs. Jose Feria, Antonio Gregorio (deceased) and Voltaire Garcia, aside from the fact that none of them applied for the extension of tenure, all of them have reached the age of 70 beyond which no extension may be granted under the rules of the school.

The public respondent did not commit a grave abuse of discretion in dismissing the complaint of petitioner. In the same light, the UST did not commit an unfair labor practice in denying the extension of the service of Prof. Mariño even without consultation with petitioner.

WHEREFORE, the Petition is **DISMISSED,** without pronouncement as to costs.

SO ORDERED.

**Cruz, Griño-Aquino and Medialdea, JJ., concur.
Narvasa, J., took no part.**

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- [1] Annex A to the petition; page 5, Rollo.
 - [2] Pages 8-9, Rollo.
 - [3] Annex A to the petition; page 137, Rollo.
 - [4] Annex B to the Comment; pages 139-140, Rollo.
 - [5] Annexes E to E-1, Comment of the Private Respondent.