SUPREME COURT
SECOND DIVISION

UNIVERSITY OF THE IMMACULATE CONCEPCION, SR. MARIA JACINTA DE BELEN, RVM, DR. ELVIGIA C. SANCHEZ, DR. ALICIA SAYSON, and SR. MARIA FULACHE, RVM,
***Petitioners*,**

-versus-

G.R. No. 144702
July 31, 2001

U.I.C. TEACHING AND NON-TEACHING PERSONNEL AND EMPLOYEES UNION, ELMAN GUBATON, GEORGE VERGARA, VICTORIA RANESES, TERESITA ABEAR, GERARDO BETANIO, ROBERTO MAGALLEN, JANET JOAN MAGTURO, EDNA DEL MUNDO, HELEN RODRIGUEZ, MARIETTA BALANAY, ELLMAR ROSALES, PIO GALASANAY, MAILA JOAQUIN, ROSITA ABEAR, PETER JOHN BARTE, RUBEN GARAUTA, HENRY NARBAY, EVANGELINE BRAGA,
***Respondents*.**
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D E C I S I O N

MENDOZA, *J.*:

This is a Petition for Review on Certiorari of the Decision,[1] dated February 18, 2000, and Resolution,[2] dated August 18, 2000, of the Court of Appeals, affirming the decision of the National Labor Relations Commission which set aside the decision of the Labor Arbiter.

The background of this case is as follows:

Petitioner University of the Immaculate Concepcion (UIC) is an educational institution in Davao City run by the Religious of the Virgin Mary. Petitioners Sister Maria Jacinta de Belen, RVM, Dr. Elvigia Sanchez, Dr. Alicia M. Sayson, and Sister Maria Fulache, RVM, are the President, Vice President for Academics, Vice President for Administration, and Director of Libraries of the UIC, respectively. On the other hand, respondent UIC Teaching and Non-Teaching Personnel and Employment Union is the labor representative of both the teaching and non-teaching employees of the UIC, while respondents Elman Gubaton, George Vergara, and Victoria Raneses were former employees of the UIC.

Petitioner UIC terminated the services of respondent Gubaton as a college professor after finding him guilty of (1) accepting money as consideration for the grades he gives to students; (2) brokering grades for other teachers for money; and (3) borrowing money from students without paying them. On March 8, 1994, Gubaton and the union filed a suit for unfair labor practice, illegal suspension, moral and exemplary damages, and attorney's fees before the Regional Arbitration Branch No. XI of Davao City. Gubaton questioned his suspension and eventual dismissal on the ground that the offenses with which he was charged had taken place long before the union was organized and that he was dismissed because of his union activities. Gubaton claimed that he was denied due process as the investigation on the charges against him proceeded in his absence.

As no amicable settlement had been reached, the Labor Arbiter on March 28, 1994 directed both parties to file their position papers.

Meanwhile, 16 other employees of the UIC were terminated en masse from employment. On April 11, 1994, respondent union, together with respondents Vergara, Raneses, and 14 probationary teachers, filed a complaint for unfair labor practices resulting in discriminatory dismissal, union-busting, damages, and attorney's fees. They claimed that they had been dismissed by the UIC on the pretext that Vergara's continued employment had become redundant and that the work performance of the 15 other probationary employees was unsatisfactory.

On April 21, 1994, the two complaints were consolidated, and, after the parties failed to amicably settle the cases, the Labor Arbiter directed them simultaneously to submit their respective position papers. Both parties submitted their position papers.[3] Petitioners filed a Motion For Leave To Submit Reply and, on August 8, 1994, a Motion To Require Complainants To Furnish Respondent With Annexes To Their Position Paper. The Labor Arbiter granted both motions in her Order dated August 10, 1994.

On August 15, 1994, respondents asked the Labor Arbiter to consider the position paper submitted by petitioners as a mere scrap of paper on the ground that it was not verified.

Petitioners then filed on August 18, 1994 a Motion to Withdraw Motion For Leave To Submit Reply and Motion To Strike Out Complainant's Position Paper and To Have Case Submitted For Resolution on the Basis of Respondents' Position Paper on account of the long delay committed by respondents (complainants therein) in the submission of their position paper. On August 22, 1994, respondents filed a Manifestation contending that the rule on verification of position papers cannot apply to them considering that their consolidated position paper was supported by nine statements of different affiants and that, following the ruling in G & P Manpower vs. NLRC,[4] the lack of a verification in their position paper was merely a formal, and not a substantial, defect.

On June 1, 1995, the Labor Arbiter rendered a decision, the dispositive portion of which reads:

WHEREFORE, IN THE LIGHT OF THE FOREGOING, this Office hereby:

1. Declares the termination of Elman Gubaton legal;

2. Orders respondents to pay Elman Gubaton Ten Thousand (P10,000.00) Pesos for having been denied procedural due process;

3. Finds the respondents guilty of unfair labor practice in violation of Section a, Art. 248 of the Labor Code of the Philippines;

4. a. Orders the reinstatement of fourteen (14) teachers to their former position with backwages without reduction in their teaching load prior to their dismissal and without loss of seniority rights and other benefits arising from contract, law or company practice/policy, whichever is higher vis-a-vis the computed award in No. 7 thereof;

   b. Orders the reinstatement of George Vergara and Victoria Raneses to their former or substantially the same position with backwages from the date of their dismissal up to the time they are actually taken into active employment without loss of seniority rights, benefits or privileges;

   The sixteen (16) complainants' reinstatement whether physically or in payroll is immediately executory within the 10-day period to appeal.

   And in case of appeal, the monetary benefits herein granted and all other benefits due the complainants shall accrue but in no case exceeding the 3-year jurisprudential limit;

5. Declares the status of Evangeline Gumisal Braga as permanent/regular;

6. Awards the total amount of NINE HUNDRED SIX THOUSAND EIGHT HUNDRED NINETY AND 83/100 (P906,890.83) PESOS as backwages and 13th month pay to all sixteen (16) complainants as individually stated above;

7. Awards the amount of FOUR HUNDRED EIGHTY THOUSAND (P480,000.00) PESOS as moral damages for the harassment, mental anguish suffered by the complainants due to the illegal and inopportune termination of their employment and in addition thereto the amount of P320,000.00 as exemplary damages to preclude/stop respondents from committing future similar offenses;

8. Orders the University of Immaculate Concepcion and individual respondents to cease and desist from further committing such other unfair labor practices; and

9. Awards 10% attorney's fees on the total monetary award.

SO ORDERED.[5]

Petitioners appealed to the NLRC and asked for a writ of preliminary injunction to enjoin the Labor Arbiter and the Sheriff from executing the decision pending appeal.

On March 29, 1996, the NLRC rendered its resolution, the dispositive portion of which reads as follows:

WHEREFORE, the judgment appealed from is SET ASIDE. A new one is entered declaring as follows:

1. The termination of Elman Gubaton is hereby Affirmed as valid and legal. However, for the simple violation of his right to due process, respondents are ordered to indemnify him the reduced amount of Five Thousand (P5,000.00) Pesos;

2. The decision of the Labor Arbiter below finding respondents guilty of unfair labor practice is likewise set aside. The facts and the evidence do not clearly show respondents were engaged in union busting nor acts of unfair labor practice;

3. The termination of GEORGE VERGARA and VICTORIA RANESES is Affirmed to be illegal. Hence, they are ordered REINSTATED to their former or substantially the same positions with full backwages from the date of their dismissal up to the date of actual reinstatement without loss of seniority rights and other privileges consistent with RA 6715;

4. The ruling below finding the 14 probationary teachers to have been illegally terminated is also set aside in favor of a finding that the non-renewal of their employment contracts with fixed periods was not one of dismissal but rather a case of EXPIRATION of the period indicated in their employment contracts. There being no case of illegal dismissal, they are consequently not entitled to the remedies of reinstatement nor of backwages, but without prejudice to payment in their favor by respondents of any unpaid 13th month pay benefits during the periods covered by their employment contracts with respondent UIC;

5. Despite our finding of absence of illegal dismissal of the fourteen (14) teachers, since the contested decision of the Labor Arbiter below called for their reinstatement whether physically or in payroll to be immediately executory, a decree that has not been complied with pending appeal, respondents by reason thereof are hereby ordered to pay their backwages from the date of receipt of the Labor Arbiter's decision up to the promulgation of this Resolution on the basis of their respective salary rates reckoned from the date immediately prior to their dismissal. This is in consonance with Section 16, Rule V of the New Rules of Procedure of the Commission;

6. The awards of moral and exemplary damages in favor of complainants are hereby Deleted for lack of merit and for lack of clear evidence showing that the acts of respondents were characterized with bad faith, malice or oppression on their part;

7. 10% attorney's fees based on the foregoing total award are awarded in favor of complainants; and

8. Respondents' petition for injunctive relief is hereby Denied for lack of merit. As an equitable remedy, injunction is proper only in those cases where a litigant has no adequate remedy at law available to him. Having appealed the decision of the Labor Arbiter below, the same is deemed an adequate remedy at law which precludes respondents from availing of injunctive remedies such as the filing of an injunctive suit.

SO ORDERED.[6]

Petitioners again appealed to the Court of Appeals. On February 18, 2000, the appeals court affirmed the decision of the NLRC with modification as to the award of attorney's fees.[7] On motion for consideration of petitioners, the Court of Appeals, in a resolution dated August 18, 2000, modified its decision by deleting the award of backwages in favor of the 14 probationary teachers found to have been validly discussed as petitioners had no legal obligation to pay them. As modified, the dispositive portion of the decision of the Court of Appeals reads as follows:

> WHEREFORE, the petition for certiorari is hereby granted and the appealed decision is modified by deleting the award of backwages in paragraph 5 and attorney's fees in paragraph 7 of the dispositive portion thereof. In all others, the same is AFFIRMED.
>
> SO ORDERED.[8]

Hence this petition.

First. Petitioners contend that the decision of the Labor Arbiter is a patent nullity because of partiality and bias in favor of respondents. In support of their allegation, petitioners point out the following: (1) the Labor Arbiter's admission of respondents' belated position paper; (2) her alleged refusal to allow petitioners to submit counter-evidence to refute the allegations in respondents' position paper; (3) her refusal to schedule the cases for hearing; (4) her failure to act on petitioners' Motion To Withdraw Motion For Leave To Submit Reply, And Motion To Strike Out Complainant's Position Paper And To Have The Case Submitted For Resolution On The Basis Of Respondents' Position Paper; (5) her failure to issue the order required under Rule V, §5 of the NLRC Rules of Procedure informing the parties that she finds no necessity to set the cases for hearing after the parties have submitted their respective position papers; and (6) her inclusion in her decision of her personal observations regarding the university at an earlier time when she was the med-arbiter in the certification elections held therein.[9]

Petitioners' contention has no merit. In admitting the respondents' position paper, albeit late, the Labor Arbiter acted within her discretion. In fact, she is enjoined by law to use every reasonable means to ascertain the facts in each case speedily and objectively, without technicalities of law or procedure, all in the interest of due process.[10] Indeed, the failure to submit a position paper on time is not a ground for striking out the paper from the records, much less for dismissing a complaint in the case of the complainant. Consequently, there is no basis for petitioners' demand that the case be decided solely on the basis of petitioners' position paper. Otherwise, respondents would be deprived of due process and the protection accorded to labor by the Constitution and the law.[11]

Nor is the Labor Arbiter to blame for petitioners' failure to submit counter-evidence. Due to their inordinate desire to have respondents' position paper expunged from the records on the ground of tardiness, petitioners withdrew their motion for leave to file their reply, although their motion had already been granted by the Labor Arbiter. Petitioners' contention that a hearing should have been set is without merit. This is not something which the parties can demand as a

matter of right. It is within the discretion of the Labor Arbiter to decide a case based solely on the position papers and supporting documents without a formal trial,[12] although it should be stated that in this case petitioners were heard on their defenses before the NLRC since their counter-evidence was admitted on appeal as allowed by the rules.[13] However, the NLRC, after considering the evidence of the parties, including that submitted only on appeal, in fact set aside the decision of the Labor Arbiter.

It is unsporting for a party to impute partiality on the part of the Labor Arbiter just because the decision is adverse to him. Error in judgment is not equivalent to undue bias nor to grave abuse of discretion amounting to an excess or lack of jurisdiction which renders the decision null and void.

Second. Petitioners contend that the Labor Arbiter, the NLRC, and the Court of Appeals erred in not finding that respondents George Vergara and Victoria Raneses were validly dismissed, the former on the ground of redundancy, while the latter, whom they claimed was merely a probationary employee, because of unsatisfactory performance.

They claim that Vergara was a former scholar in electronics of the UIC. After he graduated, he was hired by the UIC as a school electrician. Later, the tasks that Vergara usually performed in campus were also being done for free by a student-trainee under the same scholarship program he has undergone. Petitioners claim that since there was duplication of the tasks being performed by Vergara and the student-scholar, they have a right to terminate Vergara's services in order to cut costs.[14]

Petitioners also deny the finding that respondent Raneses has been an employee of the UIC since 1985. They claim that she was originally employed as a secretary by the school's alumni association and that the UIC hired her only on a probationary basis on November 1, 1993. Raneses was dismissed on April 30, 1994 after her services had been found by petitioners to have been below standards.[15]

We find the contentions to be without merit.

Factual findings of labor administrative officials, if supported by substantial evidence, are accorded not only great respect but even finality by this Court, unless there is a showing that the Labor Arbiter and the NLRC arbitrarily disregarded evidence before them or had misapprehended evidence of such nature as to compel a contrary conclusion if properly appreciated.[16] In the case of respondents Vergara and Raneses, this Court finds no cogent reason for overturning the findings of the Labor Arbiter and the NLRC.

A. With respect to Vergara, this Court has held that there is redundancy when the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. A position is redundant when it is superfluous, and superfluity of a position may be the outcome of a number of factors, such as the overhiring of workers, a decreased volume of business, or the dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise.[17] Petitioners do not claim that the position of school electrician has become useless or redundant such that it had to be abolished. That there is need for an electrician is shown by the fact that the work performed by Vergara is being performed by the student-scholar. Moreover, as the Court of Appeals correctly stated:

> There is no showing that there were two (2) positions for school electricians, and that in order to achieve a reduction in personnel, one position for electrician was abolished resulting in one position for school electrician and the consequent termination of the employment of the person occupying the position. Rather, the facts show that there was only one position for electrician which was occupied by Vergara. When the time came that the student-trainee became capable of performing the functions of Vergara, the latter's employment was terminated and the student-trainee took the vacated position. Clearly there was here no abolition of position to achieve a reduction in the number of electricians employed by the UIC.[18]

In other words, the student-trainee merely replaced respondent Vergara as school electrician because petitioners found it to their advantage to let the work be done by the student for free.

B. With regard to Raneses' case, petitioners alleged in their position paper that the then president of the UIC, Sr. Irmina Roa, hired Raneses in 1985 to work as secretary of both the university and the alumni association and that the two entities paid her salaries on a 50-50 basis. Petitioners now claim that they committed an honest mistake in making that statement. However, it is puzzling why the UIC should subsidize 50% of Raneses' salary if she was not its employee.

Petitioners contend that there is no employer-employee relationship between the UIC and Raneses as the former never exercised the power of control over the work nor the schedule of the latter. However, in view of the above findings and the absence of any corroborative proof on this matter, this assertion cannot be given credence.

On the basis of the foregoing, the findings that respondents Vergara and Raneses were illegally dismissed should stand. Consequently, they are entitled to reinstatement and to full backwages, inclusive of allowances and other benefits or their monetary equivalent, from the time their compensations were withheld from them up to the time of their actual reinstatement.[19]

Third. Petitioners question the award of P5,000.00 as indemnity to respondent Elman Gubaton based on the finding that, although his dismissal was for just cause, he was denied procedural due process because the UIC proceeded with the hearing in his absence. Petitioners contend that Gubaton was afforded a hearing but decided to boycott the same when his motion for postponement was denied despite his being represented by his union.[20] We find this allegation meritorious.

Contrary to the findings of the Labor Arbiter and the NLRC, Gubaton was informed of the charges against him in a letter to him dated February 2, 1994. In his letter-reply dated February 4, 1994, Gubaton denied the charges and demanded a formal investigation during which time he would be represented either by his union or by a lawyer. He requested that he be informed in writing of the date and time of the investigation.[21] Accordingly, Gubaton was notified that the investigation would be held on March 3, 1994 at 8:00 a.m. at the

UIC's conference room. Gubaton received the letter on February 23, 1994. Then, on March 2, 1994, Gubaton filed a motion to postpone the scheduled hearing on the ground that his lawyer was out of town. During the hearing, he reiterated his motion, but the same was denied on the basis of his earlier statement that he would be represented either by his union or his counsel and that two high-ranking officers of the union, who were in fact members of the investigating committee, were present so that his rights and interests were adequately protected. As Gubaton and the two officers of the union walked out of the investigation, the committee was constrained to proceed with the hearing without him. Indeed, the records show that the investigating committee encouraged him to stay and hear the testimonies of the witnesses and afterward present his evidence, but Gubaton did not return. Eight witnesses testified to support the charges against Gubaton. On the basis of the uncontroverted evidence presented, he was found guilty as charged and was later terminated from employment.[22]

In view of the foregoing, we are constrained to reverse the finding that Gubaton was denied the right to be heard. The requirement of due process is satisfied as long as a party is given a reasonable opportunity to explain his side.[23] In this case, he was afforded the opportunity to be heard, but he chose not to participate in the proceedings when his request for postponement was denied. Hence, the award of the indemnity in the amount of P5,000.00 to Gubaton should be deleted.

WHEREFORE, the decision dated February 18, 2000, and resolution, dated August 18, 2000, of the Court of Appeals are **AFFIRMED** with the **MODIFICATION** that the amount of P5,000.00 awarded to respondent Elman Gubaton is **DELETED**.

SO ORDERED.

Bellosillo, Quisumbing and De Leon, Jr., *JJ.*, concur.
Buena, *J.*, on official business, abroad.

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[1] Penned by Associate Justice Buenaventura J. Guerrero and concurred in by Associate Justices Hilarion L. Aquino and Mercedes Gozo-Dadole.

[2] Petition, Annex B; Rollo, pp. 75-76.
[3] Petition, Annex F; Rollo, pp. 117-130.
[4] 208 SCRA 166 (1992).
[5] Petition, Annex F; Rollo, pp. 157-160.
[6] Id., Annex C; id., pp. 106-108.
[7] Id., Annex A; id., p. 73.
[8] Id., Annex B; id, p. 76.
[9] Rollo, pp. 21-38.
[10] Panlilio vs. NLRC, 281 SCRA 53 (1997).
[11] Rule V, §15, RULES OF PROCEDURE OF THE NLRC; FEM's Elegance Lodging House vs. Murillo, 240 SCRA 94 (1995).
[12] Consolidated Rural Bank (Cagayan Valley), Inc. vs. NLRC, 301 SCRA 223 (1999).
[13] Panlilio vs. NLRC, supra.
[14] Rollo, pp. 43-49.
[15] Id., pp. 49-54.
[16] American Home Assurance Co. vs. NLRC, 259 SCRA 280 (1996).
[17] Id.
[18] Petition, Annex A; Rollo, p. 66.
[19] De Paul/King Philip Customs Tailor vs. NLRC, 304 SCRA 448 (1999).
[20] Rollo, pp. 38-43.
[21] CA Rollo, pp. 92-93.
[22] Id., pp. 94-98.
[23] Cindy & Lynsy Garment vs. NLRC, 284 SCRA 38 (1998).