SUPREME COURT
SECOND DIVISION

DELA SALLE UNIVERSITY,
***Petitioner*,**

-versus-

G.R. No. 109002
April 12, 2000

DELA SALLE UNIVERSITY EMPLOYEES ASSOCIATION (DLSUEA) and BUENAVENTURA MAGSALIN,
***Respondents*.**
x----------x

DELA SALLE UNIVERSITY EMPLOYEES ASSOCIATION-NATIONAL FEDERATION OF TEACHERS AND EMPLOYEES UNION (DLSUEA-NAFTEU),
***Petitioner*,**

-versus-

G.R. No. 110072
April 12, 2000

DELA SALLE UNIVERSITY and BUENAVENTURA MAGSALIN,
***Respondents*.**
x----------x

D E C I S I O N

BUENA, *J.*:

Filed with this Court are two Petitions for Certiorari,[1] the first petition with preliminary injunction and/or temporary restraining order,[2] assailing the decision of voluntary arbitrator Buenaventura Magsalin, dated January 19, 1993, as having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction. These two petitions have been consolidated inasmuch as the factual antecedents, parties involved and issues raised therein are interrelated.[3]

The facts are not disputed and, as summarized by the voluntary arbitrator, are as follows. On December 1986, Dela Salle University *(hereinafter referred to as UNIVERSITY)* and Dela Salle University Employees Association-National Federation of Teachers and Employees Union (DLSUEA-NAFTEU), which is composed of regular non-academic rank and file employees,[4] (hereinafter referred to as UNION) entered into a collective bargaining agreement with a life span of three (3) years, that is, from December 23, 1986 to December 22, 1989.[5] During the freedom period, or 60 days before the expiration of the said collective bargaining agreement, the Union initiated negotiations with the University for a new collective bargaining agreement[6] which, however, turned out to be unsuccessful, hence, the Union filed a Notice of Strike with the National Conciliation and Mediation Board, National Capital Region.[7] After several conciliation-mediation meetings, five (5) out of the eleven (11) issues raised in the Notice of Strike were resolved by the parties. A partial collective bargaining agreement was thereafter executed by the parties.[8] On March 18, 1991, the parties entered into a Submission Agreement, identifying the remaining six (6) unresolved issues for arbitration, namely: "(1) scope of the bargaining unit, (2) union security clause, (3) security of tenure, (4) salary increases for the third and fourth years [this should properly read second and third years][9] of the collective bargaining agreement, (5) indefinite union leave, reduction of the union president's workload, special leave, and finally, (6) duration of the agreement."[10] The parties appointed Buenaventura Magsalin as voluntary arbitrator.[11]

On January 19, 1993, the voluntary arbitrator rendered the assailed decision.[12]

In the said decision, the voluntary arbitrator, on the first issue involving the scope of the bargaining unit, ruled that "the Computer Operators assigned at the CSC *[Computer Services Center]*, just like any other Computer Operators in other units, should be included as members of the bargaining unit,"[13] after finding that "evidently, the Computer Operators are presently doing clerical and routinary work and had nothing to do with the setting of management policies for the University, as may be gleaned from the duties and responsibilities attached to the position and embodied in the CSC *[Computer Services Center]* brochure. They may have, as argued by the University, access to vital information regarding the University's operations but they are not necessarily confidential."[14] Regarding the discipline officers, the voluntary arbitrator "believes that this type of employees belong (sic) to the rank-and-file on the basis of the nature of their job."[15] With respect to the employees of the College of St. Benilde, the voluntary arbitrator found that the College of St. Benilde has a personality separate and distinct from the University and thus, held "that the employees therein are outside the bargaining unit of the University's rank-and-file employees."[16]

On the second issue regarding the propriety of the inclusion of a union shop clause in the collective bargaining agreement, in addition to the existing maintenance of membership clause, the voluntary arbitrator opined that a union shop clause "is not a restriction on the employee's right of (sic) freedom of association but rather a valid form of union security while the CBA is in force and in accordance with the Constitutional policy to promote unionism and collective bargaining and negotiations. The parties therefore should incorporate such union shop clause in their CBA."[17]

On the third issue with respect to the use of the "last-in-first-out" method in case of retrenchment and transfer to other schools or units, the voluntary arbitrator upheld the "elementary right and prerogative of the management of the University to select and/or choose its employees, a right equally recognized by the Constitution and the law. The employer, in the exercise of this right, can adopt valid and equitable grounds as basis for lay-off or separation, like

performance, qualifications, competence, etc. Similarly, the right to transfer or reassign an employee is an employer's exclusive right and prerogative."[18]

Regarding the fourth issue concerning salary increases for the second and third years of the collective bargaining agreement, the voluntary arbitrator opined that the "proposed budget of the University for SY 1992-93 could not sufficiently cope up with the demand for increases by the Union. With the present financial condition of the University, it cannot now be required to grant another round of increases through collective bargaining without exhausting its coffers for other legitimate needs of the University as an institution,"[19] thus, he ruled that "the University can no longer be required to grant a second round of increase for the school years under consideration and charge the same to the incremental proceeds."[20]

On the fifth issue as to the Union's demand for a reduction of the workload of the union president, special leave benefits and indefinite union leave with pay, the voluntary arbitrator rejected the same, ruling that unionism "is no valid reason for the reduction of the workload of its President,"[21] and that there is "no sufficient justification to grant an indefinite leave."[22] Finding that the Union and the Faculty Association are not similarly situated, technically and professionally,[23] and that "while professional growth is highly encouraged on the part of the rank-and-file employees, this educational advancement would not serve in the same degree as demanded of the faculty members,"[24] the voluntary arbitrator denied the Union's demand for special leave benefits.

On the last issue regarding the duration of the collective bargaining agreement, the voluntary arbitrator ruled that "when the parties forged their CBA and signed it on 19 November 1990, where a provision on duration was explicitly included, the same became a binding agreement between them. Notwithstanding the Submission Agreement, thereby reopening this issue for resolution, this Voluntary Arbitrator is constrained to respect the original intention of the parties, the same being not contrary to law, morals or public policy."[25] As to the economic aspect of the collective bargaining agreement, the voluntary arbitrator opined that the "economic

provisions of the CBA shall be re-opened after the third year in compliance with the mandate of the Labor Code, as amended."[26]

Subsequently, both parties filed their respective motions for reconsideration which, however, were not entertained by the voluntary arbitrator "pursuant to existing rules and jurisprudence governing voluntary arbitration cases."[27]

On March 5, 1993, the University filed with the Second Division of this Court, a petition for certiorari with temporary restraining order and/or preliminary injunction assailing the decision of the voluntary arbitrator, as having been rendered "in excess of jurisdiction and/or with grave abuse of discretion."[28] Subsequently, on May 24, 1993, the Union also filed a petition for certiorari with the First Division.[29] Without giving due course to the petition pending before each division, the First and Second Divisions separately resolved to require the respondents in each petition, including the Solicitor General on behalf of the voluntary arbitrator, to file their respective Comments.[30] Upon motion by the Solicitor General dated July 29, 1993, both petitions were consolidated and transferred to the Second Division.[31]

In his consolidated Comment[32] filed on September 9, 1993 on behalf of voluntary arbitrator Buenaventura C. Magsalin, the Solicitor General agreed with the voluntary arbitrator's assailed decision on all points except that involving the employees of the College of St. Benilde. According to the Solicitor General, the employees of the College of St. Benilde should have been included in the bargaining unit of the rank-and-file employees of the University.[33] The Solicitor General came to this conclusion after finding "sufficient evidence to justify the Union's proposal to consider the University and the CSB *[College of St. Benilde]* as only one entity because the latter is but a mere integral part of the University," to wit:[34]

> "1. One of the duties and responsibilities of the CSB's Director of Academic Services is to coordinate with the University's Director of Admissions regarding the admission of freshmen, shiftees and transferees *(Annex "3" of the University's Reply)*;

"2. Some of the duties and responsibilities of the CSB's Administrative Officer are as follows:

'A.

'4. Recommends and implements personnel policies and guidelines (in accordance with the Staff Manual) as well as pertinent existing general policies of the university as a whole.

'12. Conducts and establishes liaison with all the offices concerned at the Main Campus as well (sic) with other government agencies on all administrative-related matters.

'B.

'7. Handles processing, canvassing and direct purchasing of all requisitions worth more than P10,000 or less. Coordinates and canvasses with the Main Campus all requisitions worth more than P10,000.00.

'C.

'7. Plans and coordinates with the Security and Safety Committee at the Main Campus the development of a security and safety program during times of emergency or occurrence of fire or other natural calamities. *(Annex "4" of the University's Reply).*'

"3. The significant role which the University assumes in the admission of students at the CSB is revealed in the following provisions of the CSB's Bulletin for Arts and Business Studies Department for the school year 1992-1993, thus:

'Considered in the process of admission for a (sic) high school graduate applicants are the following criteria: results of DLSU College Entrance Examination.

'Admission requirements for transferees are: and an acceptable score in the DLSU admission test.

'Shiftees from DLSU who are still eligible to enroll may be admitted in accordance with the DLSU policy on shifting. Considering that there sometimes exist exceptional cases where a very difficult but temporary situation renders a DLSU student falling under this category a last chance to be re-admitted provided he meets the cut-off scores required in the qualifying examination administered by the university.

'He may not be remiss in his study obligations nor incur any violation whatsoever, as such will be taken by the University to be an indication of his loss of initiative to pursue further studies at DLSU. In such (sic) a case, he renders himself ineligible to continue studying at DLSU. DLSU thus reserves the right to the discontinuance of the studies of any enrollee whose presence is inimical to the objectives of the CSB/DLSU.

'As a college within the university, the College of St. Benilde subscribes to the De La Salle Mission." *(Annexes "C-1," "C-2," and "C-3" of the Union's Consolidated Reply and Rejoinder)*'

"4. The academic programs offered at the CSB are likewise presented in the University's Undergraduate Prospectus for school year 1992-1993 *(Annex "D" of the Union's Consolidated Reply and Rejoinder).*

"5. The Leave Form Request *(Annex "F" of the Union's Position Paper)* at the CSB requires prior permission from the University anent leaves of CSB employees, to wit:

'AN EMPLOYEE WHO GOES ON LEAVE WITHOUT PRIOR PERMISSION FROM THE UNIVERSITY OR WHO OVEREXTENDS THE PERIOD OF HIS APPROVED LEAVE WITHOUT SECURING AUTHORITY FROM THE UNIVERSITY, OR WHO REFUSE TO BE

RECALLED FROM AN APPROVED LEAVE SHALL BE CONSIDERED ABSENT WITHOUT LEAVE AND SHALL BE SUBJECT TO DISCIPLINARY ACTION.'

"6. The University officials themselves claimed during the 1990 University Athletic Association of the Philippines (UAAP) meet that the CSB athletes represented the University since the latter and the CSB comprise only one entity."

On February 9, 1994, this Court resolved to give due course to these consolidated petitions and to require the parties to submit their respective memoranda.[35]

In its memorandum filed on April 28, 1994, 36 pursuant to the above-stated Resolution,[37] the University raised the following issues for the consideration of the Court:[38]

I.

"WHETHER OR NOT GRAVE ABUSE OF DISCRETION WAS COMMITTED BY THE VOLUNTARY ARBITRATOR WHEN HE INCLUDED, WITHIN THE BARGAINING UNIT COMPRISING THE UNIVERSITY'S RANK-AND-FILE EMPLOYEES, THE COMPUTER OPERATORS ASSIGNED AT THE UNIVERSITY'S COMPUTER SERVICES CENTER AND THE UNIVERSITY'S DISCIPLINE OFFICERS, AND WHEN HE EXCLUDED THE COLLEGE OF SAINT BENILDE EMPLOYEES FROM THE SAID BARGAINING UNIT.

II.

"WHETHER OR NOT GRAVE ABUSE OF DISCRETION WAS COMMITTED BY THE VOLUNTARY ARBITRATOR WHEN HE UPHELD THE UNION'S DEMAND FOR THE INCLUSION OF A UNION SHOP CLAUSE IN THE PARTIES' COLLECTIVE BARGAINING AGREEMENT.

III.

"WHETHER OR NOT GRAVE ABUSE OF DISCRETION WAS COMMITTED BY THE VOLUNTARY ARBITRATOR WHEN HE DENIED THE UNION'S PROPOSAL FOR THE "LAST-IN-FIRST-OUT" METHOD OF LAY-OFF IN CASES OF RETRENCHMENT.

IV.

"WHETHER OR NOT GRAVE ABUSE OF DISCRETION WAS COMMITTED BY THE VOLUNTARY ARBITRATOR WHEN HE RULED THAT THE UNIVERSITY CAN NO LONGER BE REQUIRED TO GRANT A SECOND ROUND OF WAGE INCREASES FOR THE SCHOOL YEARS 1991-92 AND 1992-93 AND CHARGE THE SAME TO THE INCREMENTAL PROCEEDS.

V.

"WHETHER OR NOT GRAVE ABUSE OF DISCRETION WAS COMMITTED BY THE VOLUNTARY ARBITRATOR WHEN HE DENIED THE UNION'S PROPOSALS ON THE DELOADING OF THE UNION PRESIDENT, IMPROVED LEAVE BENEFITS AND INDEFINITE UNION LEAVE WITH PAY."

The Union, on the other hand, raised the following issues, in its memorandum,[39] filed pursuant to Supreme Court Resolution dated February 9, 1994,[40] to wit; that the voluntary arbitrator committed grave abuse of discretion in:

"(1) FAILING AND/OR REFUSING TO PIERCE THE VEIL OF CORPORATE FICTION OF THE COLLEGE OF ST. BENILDE-DLSU DESPITE THE PRESENCE OF SUFFICIENT BASIS TO DO SO AND IN FINDING THAT THE EMPLOYEES THEREAT ARE OUTSIDE OF THE BARGAINING UNIT OF THE DLSU'S RANK-AND-FILE EMPLOYEES. HE ALSO ERRED IN HIS INTERPRETATION OF THE APPLICATION OF THE DOCTRINE;

"(2) DENYING THE PETITIONER'S PROPOSAL FOR THE 'LAST-IN FIRST-OUT' METHOD OF LAY-OFF IN CASE OF RETRENCHMENT AND IN UPHOLDING THE ALLEGED MANAGEMENT PREROGATIVE TO SELECT AND CHOOSE ITS EMPLOYEES DISREGARDING THE BASIC TENETS OF SOCIAL JUSTICE AND EQUITY UPON WHICH THIS PROPOSAL WAS FOUNDED;

"(3) FINDING THAT THE MULTISECTORAL COMMITTEE IN THE RESPONDENT UNIVERSITY IS THE LEGITIMATE GROUP WHICH DETERMINES AND SCRUTINIZES ANNUAL SALARY INCREASES AND FRINGE BENEFITS OF THE EMPLOYEES;

"(4) HOLDING THAT THE 70% SHARE IN THE INCREMENTAL TUITION PROCEEDS IS THE ONLY SOURCE OF SALARY INCREASES AND FRINGE BENEFITS OF THE EMPLOYEES;

"(5) FAILING/REFUSING/DISREGARDING TO CONSIDER THE RESPONDENT UNIVERSITY'S FINANCIAL STATEMENTS FACTUALLY TO DETERMINE THE FORMER'S CAPABILITY TO GRANT THE PROPOSED SALARY INCREASES OVER AND ABOVE THE 70% SHARE IN THE INCREMENTAL TUITION PROCEEDS AND IN GIVING WEIGHT AND CONSIDERATION TO THE RESPONDENT UNIVERSITY'S PROPOSED BUDGET WHICH IS MERELY AN ESTIMATE.

"(6) FAILING TO EQUATE THE POSITION AND RESPONSIBILITIES OF THE UNION PRESIDENT WITH THOSE OF THE PRESIDENT OF THE FACULTY ASSOCIATION WHICH IS NOT EVEN A LEGITIMATE LABOR ORGANIZATION AND IN SPECULATING THAT THE PRESIDENT OF THE FACULTY ASSOCIATION SUFFERS A CORRESPONDING REDUCTION IN SALARY ON THE ACCOUNT OF THE REDUCTION OF HIS WORKLOAD; IN FAILING TO APPRECIATE THE EQUAL RIGHTS OF THE MEMBERS OF THE UNION AND OF THE FACULTY FOR PROFESSIONAL ADVANCEMENT

> AS WELL AS THE DESIRABLE EFFECTS OF THE INSTITUTIONALIZATION OF THE SPECIAL LEAVE AND WORKLOAD REDUCTION BENEFITS."[41]

The question which now confronts us is whether or not the voluntary arbitrator committed grave abuse of discretion in rendering the assailed decision, particularly, in resolving the following issues: (1) whether the computer operators assigned at the University's Computer Services Center and the University's discipline officers may be considered as confidential employees and should therefore be excluded from the bargaining unit which is composed of rank and file employees of the University, and whether the employees of the College of St. Benilde should also be included in the same bargaining unit; (2) whether a union shop clause should be included in the parties' collective bargaining agreement, in addition to the existing maintenance of membership clause; (3) whether the denial of the Union's proposed "last-in-first-out" method of laying-off employees, is proper; (4) whether the ruling that on the basis of the University's proposed budget, the University can no longer be required to grant a second round of wage increases for the school years 1991-92 and 1992-93 and charge the same to the incremental proceeds, is correct; (5) whether the denial of the Union's proposals on the deloading of the union president, improved leave benefits and indefinite union leave with pay, is proper; (6) whether the finding that the multi-sectoral committee in the University is the legitimate group which determines and scrutinizes the annual salary increases and fringe benefits of the employees of the University, is correct; and (7) whether the ruling that the 70% share in the incremental tuition proceeds is the only source of salary increases and fringe benefits of the employees, is proper.

Now, before proceeding to the discussion and resolution of the issues raised in the pending petitions, certain preliminary matters call for disposition. As we reiterated in the case of Caltex Refinery Employees Association (CREA) vs. Jose S. Brillantes,[42] the following are the well-settled rules in a petition for certiorari involving labor cases:

> "First, the factual findings of quasi-judicial agencies *(such as the Department of Labor and Employment)*, when supported by substantial evidence, are binding on this Court and entitled

to great respect, considering the expertise of these agencies in their respective fields. It is well-established that findings of these administrative agencies are generally accorded not only respect but even finality.[43]

"Second, substantial evidence in labor cases is such amount of relevant evidence which a reasonable mind will accept as adequate to justify a conclusion.[44]

"Third, in Flores vs. National Labor Relations Commission,[45] we explained the role and function of Rule 65 as an extraordinary remedy:

> "It should be noted, in the first place, that the instant petition is a special civil action for certiorari under Rule 65 of the Revised Rules of Court. An extraordinary remedy, its use is available only and restrictively in truly exceptional cases — those wherein the action of an inferior court, board or officer performing judicial or quasi-judicial acts is challenged for being wholly void on grounds of jurisdiction. The sole office of the writ of certiorari is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. It does not include correction of public respondent NLRC's evaluation of the evidence and factual findings based thereon, which are generally accorded not only great respect but even finality.
>
> "No question of jurisdiction whatsoever is being raised and/or pleaded in the case at bench. Instead, what is being sought is a judicial re-evaluation of the adequacy or inadequacy of the evidence on record, which is certainly beyond the province of the extraordinary writ of certiorari. Such demand is impermissible for it would involve this Court in determining what evidence is entitled to belief and the weight to be assigned it. As we have reiterated countless times, judicial review by this Court in labor cases does not go so far as to evaluate the sufficiency of the evidence upon which the proper labor

> officer or office based his or its determination but is limited only to issues of jurisdiction or grave abuse of discretion amounting to lack of jurisdiction." *(emphasis supplied).*

With the foregoing rules in mind, we shall now proceed to discuss the merit of these consolidated petitions.

We affirm in part and modify in part.

On the first issue involving the classification of the computer operators assigned at the University's Computer Services Center and discipline officers, the University argues that they are confidential employees and that the Union has already recognized the confidential nature of their functions when the latter agreed in the parties' 1986 collective bargaining agreement to exclude the said employees from the bargaining unit of rank-and-file employees. As far as the said computer operators are concerned, the University contends that "the parties have already previously agreed to exclude all positions in the University's Computer Services Center (CSC), which include the positions of computer operators, from the collective bargaining unit."[46] The University further contends that "the nature of the work done by these Computer Operators is enough justification for their exclusion from the coverage of the bargaining unit of the University's rank-and-file employees."[47] According to the University, the Computer Services Center, where these computer operators work, "processes data that are needed by management for strategic planning and evaluation of systems. It also houses the University's confidential records and information [e. g. student records, faculty records, faculty and staff payroll data, and budget allocation and expenditure related data] which are contained in computer files and computer-generated reports. Moreover, the Computer Operators are in fact the repository of the University's confidential information and data, including those involving and/or pertinent to labor relations."[48]

As to the discipline officers, the University maintains that "they are likewise excluded from the bargaining unit of the rank-and-file employees under the parties' 1986 CBA. The Discipline Officers are clearly alter egos of management as they perform tasks which are

inherent in management [e. g. enforce discipline, act as peace officers, secure peace and safety of the students inside the campus, conduct investigations on violations of University regulations, or of existing criminal laws, committed within the University or by University employees]"[49] The University also alleges that "the Discipline Officers are privy to highly confidential information ordinarily accessible only to management."[50]

With regard to the employees of the College of St. Benilde, the Union, supported by the Solicitor General at this point, asserts that the veil of corporate fiction should be pierced, thus, according to the Union, the University and the College of St. Benilde should be considered as only one entity because the latter is but a mere integral part of the University.[51]

The University's arguments on the first issue fail to impress us. The Court agrees with the Solicitor General that the express exclusion of the computer operators and discipline officers from the bargaining unit of rank-and-file employees in the 1986 collective bargaining agreement does not bar any re-negotiation for the future inclusion of the said employees in the bargaining unit. During the freedom period, the parties may not only renew the existing collective bargaining agreement but may also propose and discuss modifications or amendments thereto. With regard to the alleged confidential nature of the said employees' functions, after a careful consideration of the pleadings filed before this Court, we rule that the said computer operators and discipline officers are not confidential employees. As carefully examined by the Solicitor General, the service record of a computer operator reveals that his duties are basically clerical and non-confidential in nature.[52] As to the discipline officers, we agree with the voluntary arbitrator that based on the nature of their duties, they are not confidential employees and should therefore be included in the bargaining unit of rank-and-file employees.

The Court also affirms the findings of the voluntary arbitrator that the employees of the College of St. Benilde should be excluded from the bargaining unit of the rank-and-file employees of Dela Salle University, because the two educational institutions have their own separate juridical personality and no sufficient evidence was shown to justify the piercing of the veil of corporate fiction.[53]

On the second issue involving the inclusion of a union shop clause in addition to the existing maintenance of membership clause in the collective bargaining agreement, the University avers that "it is in the spirit of the exercise of the constitutional right to self-organization that every individual should be able to freely choose whether to become a member of the Union or not. The right to join a labor organization should carry with it the corollary right not to join the same. This position of the University is but in due recognition of the individual's free will and capability for judgment."[54] The University assails the Union's demand for a union shop clause as "definitely unjust and amounts to oppression. Moreover, such a demand is repugnant to democratic principles and the constitutionally guaranteed freedom of individuals to join or not to join an association as well as their right to security of tenure, particularly, on the part of present employees."[55]

The Union, on the other hand, counters that the Labor Code, as amended, recognizes the validity of a union shop agreement in Article 248 thereof which reads:

> "ARTICLE 248. Unfair labor practices of employers. —
>
> x x x x x x x x x
>
> (e) To discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall prevent the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except of those employees who are already members of another union at the time of the signing of the collective bargaining agreement." *(emphasis supplied)*

We affirm the ruling of the voluntary arbitrator for the inclusion of a union shop provision in addition to the existing maintenance of membership clause in the collective bargaining agreement. As the Solicitor General asserted in his consolidated Comment, the University's reliance on the case of Victoriano vs. Elizalde Rope

Workers' Union[56] is clearly misplaced. In that case, we ruled that "the right to join a union includes the right to abstain from joining any union. The right to refrain from joining labor organizations recognized by Section 3 of the Industrial Peace Act is, however, limited. The legal protection granted to such right to refrain from joining is withdrawn by operation of law, where a labor union and an employer have agreed on a closed shop, by virtue of which the employer may employ only members of the collective bargaining union, and the employees must continue to be members of the union for the duration of the contract in order to keep their jobs."[57]

On the third issue regarding the Union's proposal for the use of the "last-in-first-out" method in case of lay-off, termination due to retrenchment and transfer of employees, the Union relies on social justice and equity to support its proposition, and submits that the University's prerogative to select and/or choose the employees it will hire is limited, either by law or agreement, especially where the exercise of this prerogative might result in the loss of employment.[58] The Union further insists that its proposal is "in keeping with the avowed State policy '(q) To ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare' *(Art. 211, Labor Code, as amended)*."[59]

On the other hand, the University asserts its management prerogative and counters that "while it is recognized that this right of employees and workers to 'participate in policy and decision-making processes affecting their rights and benefits as may be provided by law' has been enshrined in the Constitution *(Article III, [should be Article XIII], Section 3, par. 2)*, said participation, however, does not automatically entitle the Union to dictate as to how an employer should choose the employees to be affected by a retrenchment program. The employer still retains the prerogative to determine the reasonable basis for selecting such employees."[60]

We agree with the voluntary arbitrator that as an exercise of management prerogative, the University has the right to adopt valid and equitable grounds as basis for terminating or transferring employees. As we ruled in the case of Autobus Workers' Union (AWU) and Ricardo Escanlar vs. National Labor Relations Commission,[61] "a valid exercise of management prerogative is one

which, among others, covers: work assignment, working methods, time, supervision of workers, transfer of employees, work supervision, and the discipline, dismissal and recall of workers. Except as provided for, or limited by special laws, an employer is free to regulate, according to his own discretion and judgment, all aspects of employment." *(emphasis supplied)*

On the fourth issue involving the voluntary arbitrator's ruling that on the basis of the University's proposed budget, the University can no longer be required to grant a second round of wage increases for the school years 1991-92 and 1992-93 and charge the same to the incremental proceeds, we find that the voluntary arbitrator committed grave abuse of discretion amounting to lack or excess of jurisdiction. As we ruled in the case of Caltex Refinery Employees Association (CREA) vs. Jose S. Brillantes,[62] "we believe that the standard proof of a company's financial standing is its financial statements duly audited by independent and credible external auditors."[63] Financial statements audited by independent external auditors constitute the normal method of proof of profit and loss performance of a company.[64] The financial capability of a company cannot be based on its proposed budget because a proposed budget does not reflect the true financial condition of a company, unlike audited financial statements, and more importantly, the use of a proposed budget as proof of a company's financial condition would be susceptible to abuse by scheming employers who might be merely feigning dire financial condition in their business ventures in order to avoid granting salary increases and fringe benefits to their employees.

On the fifth issue involving the Union's proposals on the deloading of the union president, improved leave benefits and indefinite union leave with pay, we agree with the voluntary arbitrator's rejection of the said demands, there being no justifiable reason for the granting of the same.

On the sixth issue regarding the finding that the multi-sectoral committee in the University is the legitimate group which determines and scrutinizes the annual salary increases and fringe benefits of the employees of the University, the Court finds that the voluntary arbitrator did not gravely abuse his discretion on this matter. From our reading of the assailed decision, it appears that during the parties'

negotiations for a new collective bargaining agreement, the Union demanded for a 25% and 40% salary increase for the second and third years, respectively, of the collective bargaining agreement.[65] The University's counter-proposal was for a 10% increase for the third year.[66] After the meeting of the multi-sectoral committee on budget, which is composed of students, parents, faculty, administration and union, the University granted across-the-board salary increases of 11.3% and 19% for the second and third years, respectively.[67] While the voluntary arbitrator found that the said committee "decided to grant the said increases based on the University's viability which were exclusively sourced from the tuition fees," no finding was made as to the basis of the committee's decision. Be that as it may, assuming for the sake of argument that the said committee is the group responsible for determining wage increases and fringe benefits, as ruled by the voluntary arbitrator, the committee's determination must still be based on duly audited financial statements following our ruling on the fourth issue.

On the seventh and last issue involving the ruling that the 70% share in the incremental tuition proceeds is the only source of salary increases and fringe benefits of the employees, the Court deems that any determination of this alleged error is unnecessary and irrelevant, in view of our rulings on the fourth and preceding issues and there being no evidence presented before the voluntary arbitrator that the University held incremental tuition fee proceeds from which any wage increase or fringe benefit may be satisfied.

WHEREFORE, premises considered, the petitions in these consolidated cases, G.R. No. 109002 and G.R. No. 110072 are partially **GRANTED**. The assailed decision dated January 19, 1993 of voluntary arbitrator Buenaventura Magsalin is hereby **AFFIRMED** with the modification that the issue on salary increases for the second and third years of the collective bargaining agreement be **REMANDED** to the voluntary arbitrator for definite resolution within one month from the finality of this Decision, on the basis of the externally audited financial statements of the University already submitted by the Union before the voluntary arbitrator and forming part of the records.

SO ORDERED.

Bellosillo, Mendoza, Quisumbing and De Leon, Jr., *JJ.*, concur.

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[1] Docketed as G.R. Nos. 109002 and 110072.
[2] G.R. No. 109002, filed by Dela Salle University.
[3] As per Resolution dated August 11, 1993 in Rollo (G.R. No. 109002), p. 131; and Resolution dated August 18, 1993 in Rollo (G.R. No. 110072), p. 99.
[4] Rollo (G.R. No. 109002), p. 3.
[5] Ibid., p. 23.
[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Ibid., p. 25.
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] Ibid., p. 24.
[15] Ibid.
[16] Ibid.
[17] Ibid., p. 25.
[18] Ibid.
[19] Ibid., p. 26.
[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] Ibid.
[24] Ibid., p. 27.
[25] Ibid.
[26] Ibid.
[27] Ibid., p. 28.
[28] Rollo (G.R. No. 109002), p. 2.
[29] Rollo (G.R. No. 110072), p. 2.
[30] Resolution dated March 17, 1993 at Rollo (G.R. No. 109002), p.91 and Resolution dated June 7, 1993 at Rollo (G.R. No. 110072), p. 91.
[31] Resolution dated August 11, 1993 in Rollo (G.R. No. 109002), p. 131; and Resolution dated August 18, 1993 in Rollo (G.R. No. 110072), p. 99.
[32] Rollo (G.R. No. 110072), p. 107.
[33] Ibid., p. 115.
[34] Ibid., pp. 116-119.
[35] Ibid., p. 193 and in Rollo (G.R. No. 109002), p. 151.
[36] Rollo (G.R. No. 109002), p. 198.
[37] Ibid., p. 151.

[38] Ibid., pp.205-506.
[39] Ibid., p. 111.
[40] The Resolution dated February 9, 1994 was issued by the Second Division of this Court.
[41] Rollo (G.R. No. 109002), pp. 233-234.
[42] 279 SCRA 218, 227-228 (1997), penned by J. Panganiban.
[43] Footnotes omitted.
[44] Ibid.
[45] 253 SCRA 494, 497 (1996).
[46] Rollo (G.R. No. 109002), p. 209.
[47] Ibid., p. 210.
[48] Ibid., pp. 210-211.
[49] Ibid., p. 211.
[50] Ibid., pp. 211-212.
[51] Rollo (G.R. No. 110072), pp. 116-119.
[52] Ibid., p. 114.
[53] Rollo (G.R. No. 109002), p. 24.
[54] Ibid., p. 218.
[55] Ibid.
[56] 59 SCRA 54 (1974).
[57] 59 SCRA 54, 67 (1974).
[58] Rollo (G.R. No. 109002), pp. 245-256.
[59] Ibid., p. 247.
[60] Ibid., pp. 220-221.
[61] 291 SCRA 219 (1998).
[62] 279 SCRA 218, 231 (1997) citing Saballa vs. National Labor Relations Commission, 260 SCRA 697, 709, August 22, 1996 per Panganiban, J., also citing Lopez Sugar Corporation vs. Federation of Free Workers, 189 SCRA 179, 190, August 30, 1990.
[63] Ibid.
[64] Saballa vs. National Labor Relations Commission, 260 SCRA 697, 709, (1996).
[65] Rollo (G.R. No. 109002), p. 25.
[66] Ibid.
[67] Ibid.