SUPREME COURT
THIRD DIVISION

ME-SHURN CORPORATION AND SAMMY CHOU,
***Petitioners*,**

-versus-

G.R. No. 156292
January 11, 2005

ME-SHURN WORKERS UNION-FSM AND ROSALINA[*] CRUZ,
***Respondents*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

To justify the closure of a business and the termination of the services of the concerned employees, the law requires the employer to prove that it suffered substantial actual losses. The cessation of a company's operations shortly after the organization of a labor union, as well as the resumption of business barely a month after, gives credence to the employees' claim that the closure was meant to discourage union membership and to interfere in union activities. These acts constitute unfair labor practices.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to annul the November 29, 2002 Decision[2] of the Court of Appeals (CA) in CA-GR SP No. 69675, the decretal portion of which reads:

> "UPON THE VIEW WE TAKE OF THIS CASE, THUS, the judgment must be, as it hereby is, AFFIRMED, and the present petition DISMISSED for lack of merit. Costs shall be taxed against petitioners."[3]

The affirmed November 29, 2001 Decision[4] of the National Labor Relations Commission (NLRC), Third Division, disposed as follows:

> "WHEREFORE, the decision appealed from is hereby SET ASIDE, and respondent Me-Shurn Corp. is hereby ordered to pay the complainants who appeared in the proceedings conducted by the Labor Arbiter their full backwages from the date their wages were withheld from them to the date of the finality of this decision." [5]

The Facts

On June 7, 1998, the regular rank and file employees of Me-Shurn Corporation organized Me-Shurn Workers Union-FSM, an affiliate of the February Six Movement (FSM).[6] Respondent union had a pending application for registration with the Bureau of Labor Relations (BLR) through a letter dated June 11, 1998.[7]

Ten days later, or on June 17, 1998, petitioner corporation started placing on forced leave all the rank and file employees who were members of the union's bargaining unit.[8]

On June 23, 1998, respondent union filed a Petition for Certification Election with the Med-Arbitration Unit of the Department of Labor and Employment (DOLE), Regional Office No. 3.[9]

Instead of filing an answer to the Petition, the corporation filed on July 27, 1998, a comment stating that it would temporarily lay off

employees and cease operations, on account of its alleged inability to meet the export quota required by the Board of Investment.[10]

While the Petition was pending, 184 union members allegedly submitted a retraction/withdrawal thereof on July 14, 1998. As a consequence, the med-arbiter dismissed the Petition. On May 7, 1999, Department of Labor and Employment (DOLE) Undersecretary Rosalinda Dimapilis-Baldoz granted the union's appeal and ordered the holding of a certification election among the rank and file employees of the corporation.[11]

Meanwhile, on August 4, 1998, respondent union filed a Notice of Strike against petitioner corporation on the ground of unfair labor practice (illegal lockout and union busting). This matter was docketed as Case No. NCMB-RO3-BEZ-NZ-08-42-98.[12]

On August 31, 1998, Chou Fang Kuen (alias Sammy Chou, the other petitioner herein) and Raquel Lamayra (the Filipino administrative manager of the corporation) imposed a precondition for the resumption of operation and the rehiring of laid off workers. He allegedly required the remaining union officers to sign an Agreement containing a guarantee that upon their return to work, no union or labor organization would be organized. Instead, the union officers were to serve as mediators between labor and management.[13] After the signing of the Agreement, the operations of the corporation resumed in September 1998.[14]

On November 5, 1998, the union reorganized and elected a new set of officers. Respondent Rosalina Cruz was elected president.[15] Thereafter, it filed two Complaints docketed as NLRC Case Nos. RAB-III-11-9586-98 and RAB-III-09-0322-99. These cases were consolidated and assigned to Labor Arbiter Henry Isorena for compulsory arbitration. Respondents charged petitioner corporation with unfair labor practice, illegal dismissal, underpayment of wages and deficiency in separation pay, for which they prayed for damages and attorney's fees.

The corporation countered that because of economic reversals, it was compelled to close and cease its operations to prevent serious business losses; that under Article 283 of the Labor Code, it had the

right to do so; that in August 1998, it had paid its 342 laid off employees separation pay and benefits in the total amount of P1,682,863.88; and that by virtue of these payments, the cases had already become moot and academic. It also averred that its resumption of operations in September 1998 had been announced and posted at the Bataan Export Processing Zone, and that some of the former employees had reapplied.

Petitioner corporation questioned the legality of the representation of respondent union. Allegedly, it was not the latter, but the Me-Shurn Independent Employees' Union -- with Christopher Malit as president -- that was recognized as the existing exclusive bargaining agent of the rank and file employees and as the one that had concluded a Collective Bargaining Agreement (CBA) with the corporation on May 19, 1999.[16] Hence, the corporation asserted that Undersecretary Dimapilis-Baldoz's Decision ordering the holding of a certification election had become moot and academic.

On the other hand, respondents contested the legality of the formation of the Me-Shurn Independent Employees' Union and petitioners' recognition of it as the exclusive bargaining agent of the employees. Respondents argued that the pendency of the representation issue before the DOLE had barred the alleged recognition of the aforementioned union.

Labor Arbiter Isorena dismissed the Complaints for lack of merit. He ruled that (1) actual and expected losses justified the closure of petitioner corporation and its dismissal of its employees; (2) the voluntary acceptance of separation pay by the workers precluded them from questioning the validity of their dismissal; and (3) the claim for separation pay lacked factual basis.[17]

On appeal, the NLRC reversed the Decision of Labor Arbiter Isorena. Finding petitioners guilty of unfair labor practice, the Commission ruled that the closure of the corporation shortly after respondent union had been organized, as well as the dismissal of the employees, had been effected under false pretenses. The true reason therefor was allegedly to bar the formation of the union. Accordingly, the NLRC held that the illegally dismissed employees were entitled to back wages.[18]

After the denial of their Motion for Reconsideration,[19] petitioners elevated the cases to the CA via a Petition for Certiorari under Rule 65.[20] They maintained that the NLRC had committed grave abuse of discretion and serious errors of fact and law in reversing the Decision of the labor arbiter and in finding that the corporation's cessation of operations in August 1998 had been tainted with unfair labor practice.

Petitioners added that respondent union's personality to represent the affected employees had already been repudiated by the workers themselves in the certification election conducted by the DOLE. Pursuant to the Decision of Undersecretary Dimapilis-Baldoz in Case No. RO3 00 9806 RU 001, a certification election was held on September 7, 2000, at the premises of petitioner corporation under the supervision of the DOLE. The election had the following results:

> "Me Shurn Workers Union-FSM – 1
>
> No Union – 135
>
> Spoiled – 2
>
> Challenged – 52
>
> Total Votes Cast – 190"[21]

Ruling of the Court of Appeals

The CA dismissed the Petition because of the failure of petitioners to submit sufficient proof of business losses. It found that they had wanted merely to abort or frustrate the formation of respondent union. The burden of proving that the dismissal of the employees was for a valid or authorized cause rested on the employer.

The appellate court further affirmed the union's legal personality to represent the employees. It held that (1) registration was not a prerequisite to the right of a labor organization to litigate; and (2) the cases may be treated as representative suits, with respondent union acting for the benefit of all its members.

Hence, this Petition.[22]

Issues

In their Supplemental Memorandum, petitioners submit the following issues for our consideration:

> "(1) Whether the dismissal of the employees of petitioner Meshurn Corporation is for an authorized cause, and
>
> (2) Whether respondents can maintain a suit against petitioners."[23]

The Court's Ruling

The Petition lacks merit.

First Issue:

Validity of the Dismissal

The reason invoked by petitioners to justify the cessation of corporate operations was alleged business losses. Yet, other than generally referring to the financial crisis in 1998 and to their supposed difficulty in obtaining an export quota, interestingly, they never presented any report on the financial operations of the corporation during the period before its shutdown. Neither did they submit any credible evidence to substantiate their allegation of business losses.

Basic is the rule in termination cases that the employer bears the burden of showing that the dismissal was for a just or authorized cause. Otherwise, the dismissal is deemed unjustified. Apropos this responsibility, petitioner corporation should have presented clear and convincing evidence[24] of imminent economic or business reversals as a form of affirmative defense in the proceedings before the labor arbiter or, under justifiable circumstances, even on appeal with the NLRC.

However, as previously stated, in all the proceedings before the two quasi-judicial bodies and even before the CA, no evidence was submitted to show the corporation's alleged business losses. It is only now that petitioners have belatedly submitted the corporation's income tax returns from 1996 to 1999 as proof of alleged continued losses during those years.

Again, elementary is the principle barring a party from introducing fresh defenses and facts at the appellate stage.[25] This Court has ruled that matters regarding the financial condition of a company -- those that justify the closing of its business and show the losses in its operations -- are questions of fact that must be proven below.[26] Petitioners must bear the consequence of their neglect. Indeed, their unexplained failure to present convincing evidence of losses at the early stages of the case clearly belies the credibility of their present claim.[27]

Obviously, on the basis of the evidence -- or the lack thereof -- the appellate court cannot be faulted for ruling that the NLRC did not gravely abuse its discretion in finding that the closure of petitioner corporation was not due to alleged financial losses.

At any rate, even if we admit these additional pieces of evidence, the circumstances surrounding the cessation of operations of the corporation reveal the doubtful character of its supposed financial reason.

First, the claim of petitioners that they were compelled to close down the company to prevent further losses is belied by their resumption of operations barely a month after the corporation supposedly folded up.

Moreover, petitioners attribute their loss mainly to their failure to obtain an export quota from the Garments and Textile Export Board (GTEB). Yet, as pointed out by respondents, the corporation resumed its business without first obtaining an export quota from the GTEB. Besides, these export quotas pertain only to business with companies in the United States and do not preclude the corporation from exporting its products to other countries. In other words, the

business that petitioner corporation engaged in did not depend entirely on exports to the United States.

If it were true that these export quotas constituted the determining and immediate cause of the closure of the corporation, then why did it reopen for business barely a month after the alleged cessation of its operations?

Second, the Statements of Income and Deficit for the years 1996 and 1997 show that at the beginning of 1996, the corporation had a deficit of P2,474,505. Yet, the closure was effected only after more than a year from such year-end deficit; that is, in the middle of 1998, shortly after the formation of the union.

On the other hand, the Statement of Income and Deficit for the year 1998 does not reflect the extent of the losses that petitioner corporation allegedly suffered in the months prior to its closure in July/August 1998. This document is not an adequate and competent proof of the alleged losses, considering that it resumed operations in the succeeding month of September.

Upon careful study of the evidence, it is clear that the corporation was more profitable in 1997 than in 1996. By the end of 1997, it had a net income of P1,816,397.

If petitioners were seriously desirous of averting losses, why did the corporation not close in 1996 or earlier, when it began incurring deficits? They have not satisfactorily explained why the workers' dismissal was effected only after the formation of respondent union in September 1998.

We also take note of the allegation that after several years of attempting to organize a union, the employees finally succeeded on June 7, 1998. Ten days later, without any valid notice, all of them were placed on forced leave, allegedly because of lack of quota.

All these considerations give credence to their claim that the closure of the corporation was a mere subterfuge, "a systematic approach intended to dampen the enthusiasm of the union members."[28]

Third, as a condition for the rehiring of the employees, the union officers were made to sign an agreement that they would not form any union upon their return to work. This move was contrary to law.

Fourth, notwithstanding the Petition for Certification Election filed by respondents and despite knowledge of the pendency thereof, petitioners recognized a newly formed union and hastily signed with it an alleged Collective Bargaining Agreement. Their preference for the new union was at the expense of respondent union. Moncada Bijon Factory vs. CIR[29] held that an employer could be held guilty of discrimination, even if the preferred union was not company-dominated.

Fifth, petitioners were not able to prove their allegation that some of the employees' contracts had expired even before the cessation of operations. We find this claim inconsistent with their position that all 342 employees of the corporation were paid their separation pay plus accrued benefits in August 1998.

Sixth, proper written notices of the closure were not sent to the DOLE and the employees at least one month before the effectivity date of the termination, as required under the Labor Code. Notice to the DOLE is mandatory to enable the proper authorities to ascertain whether the closure and/or dismissals were being done in good faith and not just as a pretext for evading compliance with the employer's just obligations to the affected employees.[30] This requirement is intended to protect the workers' right to security of tenure. The absence of such requirement taints the dismissal.

All these factors strongly give credence to the contention of respondents that the real reason behind the shutdown of the corporation was the formation of their union. Note that, to constitute an unfair labor practice, the dismissal need not entirely and exclusively be motivated by the union's activities or affiliations. It is enough that the discrimination was a contributing factor.[31] If the basic inspiration for the act of the employer is derived from the affiliation or activities of the union, the former's assignment of another reason, no matter how seemingly valid, is unavailing.[32]

Concededly, the determination to cease operations is a management prerogative that the State does not usually interfere in. Indeed, no business can be required to continue operating at a loss, simply to maintain the workers in employment. That would be a taking of property without due process of law. But where it is manifest that the closure is motivated not by a desire to avoid further losses, but to discourage the workers from organizing themselves into a union for more effective negotiations with management, the State is bound to intervene.[33]

Second Issue:

Legal Personality of Respondent Union

Neither are we prepared to believe petitioners' argument that respondent union was not legitimate. It should be pointed out that on June 29, 1998, it filed a Petition for Certification Election. While this Petition was initially dismissed by the med-arbiter on the basis of a supposed retraction, note that the appeal was granted and that Undersecretary Dimapilis-Baldoz ordered the holding of a certification election.

The DOLE would not have entertained the Petition if the union were not a legitimate labor organization within the meaning of the Labor Code. Under this Code, in an unorganized establishment, only a legitimate union may file a petition for certification election.[34] Hence, while it is not clear from the record whether respondent union is a legitimate organization, we are not readily inclined to believe otherwise, especially in the light of the pro-labor policies enshrined in the Constitution and the Labor Code.[35]

Verily, the union has the requisite personality to sue in its own name in order to challenge the unfair labor practice committed by petitioners against it and its members.[36] "It would be an unwarranted impairment of the right to self-organization through formation of labor associations if thereafter such collective entities would be barred from instituting action in their representative capacity." [37]

Finally, in view of the discriminatory acts committed by petitioners against respondent union prior to the holding of the certification election on September 27, 2000 -- acts that included their immediate grant of exclusive recognition to another union as a bargaining agent despite the pending Petition for certification election -- the results of that election cannot be said to constitute a repudiation by the affected employees of the union's right to represent them in the present case.

WHEREFORE, the Petition is **DENIED**, and the assailed Decision **AFFIRMED**. Costs against the petitioners.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio-Morales, and Garcia, *JJ*., concur.

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* In some pleadings also spelled as "Rosalinda".
[1] Rollo, pp. 3-24.
[2] Annex 1 of Petition; id., pp. 26-36. Penned by Justice Renato C. Dacudao and concurred in by Justices Eugenio S. Labitoria (Division chairman) and Danilo B. Pine.
[3] CA Decision, p. 11; id., p. 36.
[4] Annex 5 of Petition; id., pp. 65-70. Penned by Commissioner Ireneo B. Bernardo and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo.
[5] NLRC Decision, p. 5; id., p. 69.
[6] Rollo, p. 27.
[7] Ibid.
[8] Respondents' Memorandum, p. 2; id., p. 152.
[9] Rollo, p. 27.
[10] Id., p. 28.
[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] Rollo, p. 30.
[15] Id., p. 28.
[16] Id., p. 53.
[17] Annex 3; id., pp. 46-58.
[18] Annex 5; id., pp. 65-70.
[19] See NLRC Resolution dated January 24, 2002; CA rollo, p. 46.
[20] CA rollo, pp. 2-17.

[21] See Certification from DOLE Regional Office No. III signed by Geraldine M. Panlilio; id., p. 103.
[22] This case was deemed submitted for decision on August 20, 2004, upon this Court's receipt of petitioners' Supplemental Memorandum signed by Attys. Ma. Victoria A. Soriano-Villadolid, Michelle L. Yulo and Jean-Paul A. Acut. Earlier, on April 5, 2004, petitioners submitted their regular Memorandum signed by Atty. Alan A. Leynes. Respondents' Memorandum, signed by Atty. Benjamin C. Alar, was received by this Court on April 1, 2004.
[23] Petitioners' Supplemental Memorandum, pp. 5-6; rollo, pp. 191-192. See also the statement of issues in petitioners' regular Memorandum; rollo, p. 163.
[24] Camara Shoes vs. Kapisanan ng mga Manggagawa sa Camara Shoes, 173 SCRA 127, May 5, 1989; Garcia vs. National Labor Relations Commission, 153 SCRA 639, September 4, 1987; National Federation of Labor Unions vs. Ople, 143 SCRA 124, July 22, 1986; Manila Hotel Corporation vs. NLRC, 141 SCRA 169, January 22, 1986.
[25] CLLC E.G. Gochengco Workers Union vs. NLRC, 161 SCRA 655, May 30, 1988.
[26] Philippine Engineering Corporation vs. Court of Industrial Relations, 41 SCRA 89, September 30, 1971.
[27] Camara Shoes vs. Kapisanan ng mga Manggagawa sa Camara Shoes, supra.
[28] Philippine Engineering Corporation vs. Court of Industrial Relations; supra, p. 99; per Zaldivar, J.
[29] 4 SCRA 756, March 30, 1962 (also cited in Philippine Charity Sweepstakes Office vs. The Association of Sweepstakes Staff Personnel, 115 SCRA 34, July 16, 1982).
[30] Guerrero vs. National Labor Relations Commission, 261 SCRA 301, August 30, 1996. See also Wiltshire File Co., Inc. vs. NLRC, 193 SCRA 665, February 7, 1991.
[31] Philippine Engineering Corporation vs. Court of Industrial Relations, supra.
[32] Ibid.
[33] Carmelcraft Corporation vs. NLRC, 186 SCRA 393, June 6, 1990.
[34] Article 257, Labor Code.
[35] Article 246, ibid.
[36] Article 242, ibid; La Carlota Sugar Central vs. CIR, 64 SCRA 78, May 19, 1975.
[37] La Carlota Sugar Central vs. CIR; supra, p. 82; per Fernando, J.