SUPREME COURT
SECOND DIVISION

PHILIPPINE TUBERCULOSIS SOCIETY, INC.,
***Petitioner*,**

-versus-

G.R. No. 115414
August 25, 1998

NATIONAL LABOR UNION and NATIONAL LABOR RELATIONS COMMISSION,
***Respondents*.**
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D E C I S I O N

MENDOZA, *J.*:

This is a Petition for *Certiorari* to set aside the Decision dated August 31, 1993, and the resolution, dated April 20, 1994, of the National Labor Relations Commission declaring the retrenchment of one hundred sixteen (116) employees of petitioner Philippine Tuberculosis Society, Inc. invalid and ordering the reinstatement of thirty-eight (38) employees and the payment of backwages to them. The rest of the employees were dropped from the complaint after it

was found that they had executed deeds of quitclaim releasing petitioner from liability.

The facts of the instant case are as follows:

The Philippine Tuberculosis Society, Inc. is a non-stock and non-profit domestic corporation with the primary objective of fighting tuberculosis in the Philippines. It has employees who are represented by private respondent National Labor Union.

In the proceedings before the NLRC, it was shown that, in 1989, the Society began to experience serious financial difficulties when it incurred a deficit of P2 million. The shortfall increased to P9,100,000.00 in 1990 and was certain to become worse were it not for quick measures taken by petitioner.[1]

First, the Society leased a property in Tayuman to a fastfood outlet, cancelled its service agreement with a janitorial company, and sold its equity in the Philippine Long Distance Telephone Company (PLDT). Second, it withdrew from the Pag-Ibig Fund Program, negotiated with the Government Service Insurance System for the restructuring of its obligations, and applied for exemption from minimum wage increases. Finally, it disapproved the overtime pay of supervisory and managerial employees, obtained the waiver of personnel of their entitlement to wage differentials, and implemented the retrenchment of one hundred sixteen (116) employees.[2] The retrenchment is the subject of the present suit.

On September 27, 1991, respondent NLU filed a notice of strike against the Society with the National Conciliation and Mediation Board (NCMB), charging the Society with unfair labor practice in terminating the services of the aforementioned employees.

Conferences were scheduled by the NCMB, which however failed to resolve the case. On November 6, 1991, then Secretary of Labor and Employment Ruben Torres certified the case to the NLRC on the ground that the labor dispute seriously affected the national interest.

On August 31, 1993, the NLRC rendered a decision declaring as invalid the retrenchment of the employees concerned on the ground

that the Society did not take seniority into account in their selection. The NLRC held:

> The seniority factor, an indispensable criterium for a retrenchment program to be valid, was admittedly not employed in the selection process. It was omitted in favor of the very subjective criteria of dependability, adaptability, trainability, job performance, discipline, and attitude towards work. Because of this failure, a number of those retrenched were senior in years of service to some of those retained. This failure certainly invalidates the retrenchment program.[3]

In its resolution dated April 20, 1994, the NLRC excluded seventy-eight (78) of the one hundred sixteen (116) employees whom it had ordered reinstated on the ground that they had executed deeds of quitclaim releasing the Society from further liability. The resolution of the NIRC stated:

> Finding that there is no opposition to the said quitclaims, the same are approved and the employees who executed the same excluded/dropped as complainants herein who are to be reinstated as ordered.
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> WHEREFORE, the resolution of this Commission promulgated on August 31, 1993 is hereby modified by dropping/deleting the herein above-named employees who executed quitclaims as party complainants.[4]

In its present petition, the Society charges that:

> RESPONDENT COMMISSION COMMITTED PALPABLE AND PATENT ERROR IN DECLARING AS INVALID THE RETRENCHMENT PROGRAM IMPLEMENTED BY RESPONDENT FOR FAILURE TO EMPLOY THE CRITERIUM OF SENIORITY IN THE SELECTION PROCESS OF THE EMPLOYEES TO BE RETRENCHED.[5]

Article 283 of the Labor Code provides:

The employer may also terminate the employment of an employee due to the installation of labor-saving devices, redundancy. retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this title by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to at least one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

Clearly, retrenchment or reduction of the workforce in cases of financial difficulties is recognized as a ground for the termination of employment. In Sebuguero vs. NLRC,[6] this Court essayed on the nature of this form of termination of employment, thus:

> "Retrenchment is the termination of employment initiated by the employer through no fault of the employees and without prejudice to the latter, resorted to by management during periods of business recession, industrial depression or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery or of automation. Simply put it is an act of the employer of dismissing employees because of losses in the operation of a business, lack of work, and considerable reduction on the volume of his business, a right consistently recognized and affirmed by this Court.
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> Although petitioner is a non-stock and non-profit organization. retrenchment as a measure adopted to stave off threats to its existence is available to it. Article 278 of the Labor Code states that the fiscal measures recognized therein which an employer

> may validly adopt apply to all establishments or undertakings, whether for profit or not."

However, the employer's prerogative to layoff employees is subject to certain limitations set forth in Lopez Sugar, Corporation vs. Federation of Free Workers[7] as follows:

> Firstly, the losses expected should e substantial and not merely de minimis in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the bonafide nature of the retrenchment would appear to be seriously in question. Secondly, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses. i.e., cut other costs than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means — e.g. reduction of both management and rank-and-file bonuses and salaries going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc. — have been tried and found wanting.
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> Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is

> readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees.

In addition to the above, the retrenchment must be implemented in a just and proper manner. As held in Asiaworld Publishing House, Inc. vs. Ople.[8]

there must be fair and reasonable criteria to be used in selecting employees to be dismissed, such as: (a) less preferred status (e.g. temporary employee): (b) efficiency rating; and (c) seniority.

In this case, respondent NLU denies that the Society has suffered financial reverses and alleges that the real reason for the layoff of the employees was the desire of the Society's board of directors to cut expenses in anticipation of loss of government aid as a result of the elimination of the President's power to nominate candidates to the board. In addition, respondent union charges that the funds for the payment of salaries and other obligations are being used in stock trading. For these reasons. respondent prays that the resolution, dated April 20, 1994, of the NLRC, insofar as it excludes from reinstatement and the payment of backwages the seventy-eight (78) employees who signed quitclaims releasing petitioner from liability, be set aside.[9]

As the union has not filed a petition for *certiorari*, its role in this case as respondent is to defend the resolution, not to seek its annulment. However, instead of filing a comment as required in the resolution of this Court, respondent NLU filed a "Comment and Petition." This attempt to make the comment likewise serve as a petition cannot make up for the union's failure to file a separate petition. It should be noted that the union's "Comment and Petition" was filed more than the three (3) months considered as the reasonable period" after receipt of the NLRC resolution. In addition, it is dismissible for failure of the union to pay the filing fee the and to comply with the requirements to attach to the petition a certified true copy of the resolution being questioned, indicate the date of receipt of the same, and attach a certificate of nonforum shopping.

Consequently, whether petitioner has indeed suffered financial distress justifying the retrenchment of employees cannot be raised in issue by the union. The exclusion from the order to reinstate and to pay backwages of the seventy-eight (78) employees who signed quitclaims releasing petitioner from liability is not in issue either. Indeed, this action was brought by petitioner on the sole issue of whether in disregarding seniority as a factor in laying off the remaining thirty-eight (38) employees petitioner acted arbitrarily.

It should also be pointed out that what respondent is raising are actually questions of fact, the determination of which is beyond the scope of a petition for *certiorari*. Our function in this case is limited to determining whether the NLRC committed grave abuse of discretion when it ruled that seniority is an indispensable factor in determining the particular employees subject of retrenchment. In determining this question, our function is at an end the moment we find that there is substantial evidence to support the labor agency's decision. Of course, the substantiality of the evidence must take into account whatever matters included in the record which fairly detract from its weight.

Indeed, there is substantial evidence in the record to support the NLRC's finding that the Society suffered financial distress as a result of growing deficits which were not likely to abate. Petitioner presented to the NLRC the balance sheets, financial statements, and the reports of its external auditors for the years 1989 and 1990. We cannot, therefore, say that the finding of the NLRC is unsupported by substantial evidence. Accordingly, the NLRC could rightly conclude:

> Given the claim of the Society that its present financial troubles were occasioned by a dearth of funding from its traditional sources of revenue it is our considered view that the Society's claim to retrench employees is valid.[10]

Nor do we think the NLRC erred in holding that though the Society was justified in ordering a retrenchment invalid. That is because in selecting the employees, the Society disregarded altogether the factor of seniority. As the NLRC noted:

We noted with concern that the criteria used by the Society failed to consider the seniority factor in choosing those to be retrenched, a failure which, to our mind, should invalidate the retrenchment, as the omission immediately makes the selection process unfair and unreasonable. Things being equal, retaining a newly hired employee and dismissing one who had occupied the position for years, even if the scheme should result in savings for the employer, since he would be paying the newcomer a relatively smaller wage, is simply unconscionable and violative of the senior employee's tenurial rights. In Villena vs. NLRC, 193 SCRA 686. February 7, 1991, the Supreme Court considered the seniority factor an important ingredient for the validity of a retrenchment program. According to the Court, the following legal procedure should be observed for a retrenchment to be valid: (a) one-month prior notice to the employee as prescribed by Article 282 of the Labor Code; and b) use of a fair and reasonable criteria in carrying out the retrenchment program, such as 1) less preferred status (as in the case of temporary employees) 2) efficiency rating, 3) seniority, and 4) proof of claimed financial losses.

Amelita Doria, one of the employees retrenched, for instance. worked with the Society for 31 years, her latest position being that of a Head Nurse. From 1982 up to 1990, she was President of the QI Nurses Association. Another employee retrenched, despite being more senior than those retained, was Isabel Guille, a nurse who worked for the Society for 11 years. She was the incumbent President of the QI Nurses Association at the time of her retrenchment. Buenaventura Vazquez worked with the Society since 1958 continuously up to 1991, when he was included among those retrenched. What makes his case particularly noticeable is that he was retrenched after he filed an application for retirement as he was already of retirable age. Relatedly, he swears in an Affidavit that as an audit examiner, "I know full (sic) well that the PTS is not bankrupt and in financial distress as it has many real estate properties and assets to pay benefits to retiring and separated employees. After all the PTS is a non-profit organization established for profit." Another is Premia Dumlao, who submitted an Affidavit attesting to the fact that she worked with the Society since 1955 continuously up to

> 1991, when she was retrenched despite her 37 years of service with the Society. She attests that her "retrenchment is arbitrary and illegal as the guidelines did not provide for the consideration of the ages, lengths of service and retirability of the retrenched employees."[11]

Petitioner claims that the retrenchment of employees was based on a number of criteria, to wit: 1) whether the positions of the employees are to be retained or abolished; 2) the qualifications required by the positions to be retained, modified, or created; and 3) the attitude, discipline, efficiency, flexibility, and trainability of the employees.[12] Petitioner has not shown, however, that the four employees were selected for retrenchment because they did not meet these criteria. All it says is the following:

> 22. Petitioner PTSI respectfully submits that the fallacy of the above-stated decision lies in the respondent NLRC's appreciation of complainants Amelita Doria's (thereafter Doria). Isabel Guillen's (hereafter Guillen). Buenaventura Vasquez's (hereafter Vasquez) and Premia Dumlao's (hereafter Dumlao) assertions, Respondent NLRC swallowed hook, line and sinker the complainants' allegation that they were retrenched because of their old age to pre-empt their retirements. This is not wholly accurate, the reasons are that.
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> 23. First. petitioner PTSI did not solely base its recommendation to retrench the complainants because of their old age. Taking into consideration the nature and demands of the positions held by the employees and the need to provide efficient health and medical services to tubercular patients, petitioner PTSI also took into consideration other criteria such as "dependability, adaptability, trainability and actual job performance and attitude towards work."
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> 24. The evidence on record would show that complainants ratings with respect to the criteria of dependability, actual job performance and attitude towards work do not meet the standards of petitioner PTSI. The evaluation reveals that:

a] Complainant Doria was not willing to work on rotation basis, especially on night duty. This jeopardizes the efficiency of petitioner PTSI to provide the best possible care to its patients, not to mention a possible demoralization among her other co-workers for the preferential treatment that would be given to her.

b] Complainants Dumlao and Guillen were not able to cope with the workload of a nursing aide and a nurse, respectively.

c] Complainant Vasquez, on the other hand, had already applied for retirement under RA 660.

25. In other words, there is present in this case legal basis to justify the retrenchment of the employees. Mere seniority of an employee, should not shield said employee from the effects of an employer's exercise of the right to retrench due to serious financial reverses, especially if proof of such losses had been established by competent evidence.[13]

Beyond these generalizations, petitioner has not explained why the said employees had to be laid off without considering their many years of service to the Society. The fact that these employees had accumulated seniority credits indicates that they had been retained in the employ of the Society because of loyal and efficient service. The burden of proving the contrary is on petitioner.

WHEREFORE, the Petition is hereby **DISMISSED** for lack of showing that in rendering its decision dated August 31, 1993, and its resolution, dated April 20, 1994, the National Labor Relations Commission committed grave abuse of discretion.

SO ORDERED.

Melo, Puno and Martinez, *JJ.*, concur.
Regalado, *J.*, is on leave.

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[1] Rollo, p 19.

[2] Id., pp. 20-21.
[3] Id., pp. 34-35.
[4] Id., pp. 41-42.
[5] Id., p. 9.
[6] 248 SCRA 532, 542 (1995).
[7] 189 SCRA 170, 186-87 (1990).
[8] 152 SCRA 219, 225 (1987).
[9] Comment and Petition, p. 10, Rollo, p. 119.
[10] Rollo, pp. 27-28.
[11] Id., pp. 32-34.
[12] Id., p. 23.
[13] Id., pp. 10-11.