SUPREME COURT
THIRD DIVISION

SAN MIGUEL CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 99266
March 2, 1999

NATIONAL LABOR RELATIONS COMMISSION, SECOND DIVISION, AND SAN MIGUEL CORPORATION EMPLOYEES UNION (SMCEU) - PTGWO,
***Respondents*.**
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D E C I S I O N

PURISIMA, *J.*:

At bar is a Petition for Certiorari under Rule 65 of the Revised Rules of Court, assailing the Resolution[1] of the National Labor Relations Commission in NLRC NCR CASE NO. 00094-90, which dismissed the complaint of San Miguel Corporation (SMC), seeking to dismiss the notice of strike given by the private respondent union and to compel the latter to comply with the provisions of the Collective Bargaining Agreement (CBA)[2] on grievance machinery, arbitration, and the no-strike clause, with prayer for the issuance of a temporary restraining order.

The antecedent facts are as follows:

In July 1990, San Miguel Cooperation, alleging the need to streamline its operations due to financial losses, shut down some of its plants and declared 55 positions as redundant, listed as follows: seventeen (17) employees in the Business Logistics Division ("BLD"), seventeen (17) in the Ayala Operations Center (AOC), and eighteen (18) in the Magnolia-Manila Buying Station ("Magnolia-MBS").[3] Consequently, the private respondent union filed several grievance cases for the said retrenched employees, praying for the redeployment of the said employees to the other divisions of the company.

The grievance proceedings were conducted pursuant to Sections 5 and 8, Article VIII of the parties' 1990 Collective Bargaining Agreement providing for the following procedures, to wit:

> SECTION 5. Processing of Grievance. — Should a grievance arise, an earnest effort shall be made to settle the grievance expeditiously in accordance with the following procedures:
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> > Step 1. — The individual employee concerned and the Union Directors, or the Union Steward shall, first take up the employee's grievance orally with his immediate superior. If no satisfactory agreement or adjustment of the grievance is reached, the grievance shall, within twenty (20) working days from the occurrence of the cause or event which gave rise to the grievance, be filed in writing with the Department Manager or the next level superior who shall render his decision within ten (10) working days from the receipt of the written grievance. A copy of the decision shall be furnished the Plant Personnel Officer.
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> > Step 2. — If the decision in Step 1 is rejected, the employee concerned may elevate or appeal this in writing to the Plant Manager/Director or his duly authorized representative within twenty (20) working days from the receipt of the Decision of the Department Manager. Otherwise, the decision in Step 1 shall be deemed accepted by the employee.

The Plant Manager/Director assisted by the Plant Personnel Officer shall determine the necessity of conducting grievance meetings. If necessary, the Plant Manager/Director and the Plant Personnel Officer shall meet the employee concerned and the Union Director/Steward on such date(s) as may be designated by the Plant Manager. In every plant/office, Grievance Meetings shall be scheduled at least twice a month.

The Plant Manager shall give his written comments and decision within ten (10) working days after his receipt of such grievance or the date of submission of the grievance for resolution, as the case may be. A copy of his Decision shall be furnished the Employee Relations Directorate.

Step 3. — If no satisfactory adjustment is arrived at Step 2, the employee may appeal the Decision to the Conciliation Board as provided under Section 6 hereof, within fifteen (15) working days from the date of receipt of the decision of the Plant Manager/Director or his designate. Otherwise, the decision in Step 2 shall be deemed accepted by the employee.

The Conciliation Board shall meet on the grievance in such dates as shall be designated by the Division/Business Unit Manager or his representative. In every Division/Business Unit, Grievance Meetings of the Conciliation Board shall be scheduled at least once a month.

The Conciliation Board shall have fifteen (15) working days from the date of submission of the grievance for resolution within which to decide on the grievance.

SECTION 6. Conciliation Board. — There shall be a conciliation Board per Business Unit or Division. Every Conciliation Board shall be composed of not more than five (5) representatives each from the Company and the Union. Management and the Union may be assisted by their respective legal counsels.

> In every Division/Business Unit, the names of the Company and Union representatives to the Conciliation Board shall be submitted to the Division/Business Unit Manager not later than January of every year. The Conciliation Board members shall act as such for one (1) year until removed by the Company or the Union, as the case may be."
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> x x x
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> SECTION 8. Submission to Arbitration. — If the employee or Union is not satisfied with the Decision of the Conciliation Board and desires to submit the grievance to arbitration, the employee or the Union shall serve notice of such intention to the Company within fifteen (15) working days after receipt of the Board's decision. If no such written notice is received by the Company within fifteen (15) working days, the grievance shall be considered settled on the basis of the company's position and shall no longer be available for arbitration."[4]

During the grievance proceedings, however, most of the employees were redeployed, while others accepted early retirement. As a result only 17 employees remained when the parties proceeded to the third level (Step 3) of the grievance procedure. In a meeting on October 26, 1990, petitioner informed private respondent union that if by October 30, 1990, the remaining 17 employees could not yet be redeployed, their services would be terminated on November 2, 1990. The said meeting adjourned when Mr. Daniel S. L. Borbon II, a representative of the union, declared that there was nothing more to discuss in view of the deadlock.[5]

On November 7, 1990 the private respondent filed with the National Conciliation and Mediation Board (NCMB) of the Department of Labor and Employment (DOLE) a notice of strike on the following grounds: a) bargaining deadlock; b) union busting; c) gross violation of the Collective Bargaining Agreement (CBA), such as non-compliance with the grievance procedure; d) failure to provide private respondent with a list of vacant positions pursuant to the parties' side

agreement that was appended to the 1990 CBA; and e) defiance of voluntary arbitration award. Petitioner on the other hand, moved to dismiss the notice of strike but the NCMB failed to act on the motion.

On December 21, 1990, petitioner SMC filed a complaint[6] with the respondent NLRC, praying for: (1) the dismissal of the notice of strike; (2) an order compelling the respondent union to submit to grievance and arbitration the issue listed in the notice of strike; (3) the recovery of the expenses of litigation.

On April 16, 1991, respondent NLRC came out with a minute resolution dismissing the complaint; holding, thus:

> "NLRC NCR IC NO. 000094-90, entitled San Miguel Corporation, Complainant -versus- San Miguel Corporation Employees Union-PTWO (SMCEU), Respondent. — Considering the allegations in the complaint to restrain Respondent Union from declaring a strike and to enforce mutual compliance with the provisions of the collective bargaining agreement on grievance machinery, and the no-strike clause, with prayer for issuance of temporary restraining order, and the evidence adduced therein, the Answer filed by the respondent and the memorandum filed by the complainant in support of its application for the issuance of an injunction, the Second Division, after due deliberation, Resolved to dismiss the complaint for lack of merit."[7]

Aggrieved by the said resolution, petitioner found its way to this court via the present petition, contending that:

> "I
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> IT IS THE POSITIVE LEGAL DUTY OF RESPONDENT NLRC TO COMPEL ARBITRATION AND TO ENJOIN A STRIKE IN VIOLATION OF A NO STRIKE CLAUSE.
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> II
>
> INJUNCTION IS THE ONLY IMMEDIATE, EFFECTIVE SUBSTITUTE FOR THE DISASTROUS ECONOMIC

> WARFARE THAT ARBITRATION IS DESIGNED TO AVOID."[8]

On June 3, 1991, to preserve the status quo, the Court issued a Resolution[9] granting petitioner's prayer for the issuance of a Temporary Restraining Order.

The Petition is impressed with merit.

Rule XXII, Section I, of the Rules and Regulations Implementing Book V the Labor Code[10] reads:

> "SECTION 1. Grounds for strike and lockout. — A strike or lockout may be declared in cases of bargaining deadlocks and unfair labor practices. Violations of the collective bargaining agreements, except flagrant and/or malicious refusal to comply with its economic provisions, shall not be considered unfair labor practice and shall not be strikeable. No strike or lockout may be declared on grounds involving inter-union and intra-union disputes or on issues brought to voluntary or compulsory arbitration."

In the case under consideration, the grounds relied upon by the private respondent union are non-strikeable. The issues which may lend substance to the notice of strike filed by the private respondent union are: collective bargaining deadlock and petitioner's alleged violation of the collective bargaining agreement. These grounds, however, appear more illusory than real.

Collective Bargaining Deadlock is defined as "the situation between the labor and the management of the company where there is failure in the collective bargaining negotiations resulting in a "stalemate."[11] This situation is non-existent in the present case since there is a Board assigned on the third level (Step 3) of the grievance machinery to resolve the conflicting views of the parties. Instead of asking the Conciliation Board composed of five representatives each from the company and the union, to decide the conflict, petitioner declared a deadlock, and thereafter, filed a notice of strike. For failing to exhaust all the steps in the grievance machinery and arbitration proceedings provided in the Collective Bargaining Agreement, the notice of strike

should have been dismissed by the NLRC and private respondent union ordered to proceed with the grievance and arbitration proceedings. In the case of Liberal Labor Union vs. Phil. Can Co.,[12] the court declared as illegal the strike staged by the union for not complying with the grievance procedure provided in the collective bargaining agreement, ruling that:

> "The main purpose of the parties in adopting a procedure in the settlement of their disputes is to prevent a strike. This procedure must be followed in its entirety if it is to achieve its objective strikes held in violation of the terms contained in the collective bargaining agreement are illegal, specially when they provide for conclusive arbitration clauses. These agreements must be strictly adhered to and respected if their ends have to be achieved."[13]

As regards the alleged violation of the CBA, we hold that such a violation is chargeable against the private respondent union. In abandoning the grievance proceedings and stubbornly refusing to avail of the remedies under the CBA, private respondent violated the mandatory provisions of the collective bargaining agreement.

Abolition of departments or positions in the company is one of the recognized management prerogatives.[14] Noteworthy is the fact that the private respondent does not question the validity of the business move of petitioner. In the absence of proof that the act of petitioner was ill-motivated, it is presumed that petitioner San Miguel Corporation acted in good faith. In fact, petitioner acceded to the demands of the private respondent union by redeploying most of the employees involved; such that from an original 17 excess employees in BLD, 15 were successfully redeployed. In AOC, out of the 17 original excess, 15 were redeployed. In the Magnolia-Manila Buying Station, out of 18 employees, 6 were redeployed and only 12 were terminated.[15]

So also, in filing complaint with the NLRC, petitioner prayed that the private respondent union be compelled to proceed with the grievance and arbitration proceedings. Petitioner having evinced its willingness to negotiate the fate of the remaining employees affected, there is no ground to sustain the notice of strike of the private respondent union.

All things studiedly considered, we are of the ineluctable conclusion, and so hold, that the NLRC gravely abused its discretion in dismissing the complaint of petitioner SMC for the dismissal of the notice of strike, issuance of a temporary restraining order, and an order compelling the respondent union to settle the dispute under the grievance machinery of their CBA.

WHEREFORE, the instant petition is hereby **GRANTED**. Petitioner San Miguel Corporation and private respondent San Miguel Corporation Employees Union - PTGWO are hereby directed to complete the third level (Step 3) of the Grievance Procedure and proceed with the Arbitration proceedings if necessary. No pronouncement as to costs.

SO ORDERED.

Romero and Gonzaga-Reyes, *JJ.*, concur.
Vitug, *J.*, abroad on official business.
Panganiban, *J.*, is on leave.

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[1] Dated April 16, 1991; Rollo, pp. 183-184.
[2] Annex "A" of Petition.
[3] Complaint, Annex "F"; Rollo, p. 53.
[4] Annex "A", Petition; Collective Bargaining Agreement, pp. 18-19.
[5] Annex "B-3", Petition; Rollo, p. 31.
[6] Annex "F", Petition; Rollo, pp. 48-65.
[7] Annex "J", Petition; Rollo, p. 183.
[8] Rollo, p. 14.
[9] Rollo, p. 185.
[10] As amended by D.O. No. 09 which took effect on June 21, 1997.
[11] Tayag & P. F. Jardiniano, Dictionary of Philippine Labor Terms, p. 36.
[12] 91 Phil. 72.
[13] Id., p. 77-78, citing: Shop N . Save vs. Retail Food Clerks Union (1940) Cal. Super. Ct. CCT. Tab. Case 91-18675; 2 A.L.R. Ann., 2nd Series, pp. 1278-1282.
[14] Dangan vs. NLRC et al., 127 SCRA 706, p. 713.
[15] Complaint, Annex "A"; Rollo, p. 54.