SUPREME COURT
THIRD DIVISION

SAN PEDRO HOSPITAL OF DIGOS,
***Petitioner*,**

-versus-

G.R. No. 104624
October 11, 1996

SECRETARY OF LABOR, THE SAN PEDRO HOSPITAL EMPLOYEES UNION — NATIONAL FEDERATION OF LABOR,
***Respondents*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

When is temporary suspension of business considered not done in good faith? Can the Secretary of Labor compel management to enter into a new collective bargaining agreement with the union while the business enterprise is undergoing a temporary, suspension of operations? Can the Secretary grant backwages without deciding the legality of a strike?

These questions are addressed by the Court in resolving this Petition for Certiorari, which seeks nullification of the Orders dated October 16, 1991[1] and January 31, 1992[2] of the Secretary of Labor and

Employment[3] rendered in DOLE Case No. NCMB-RBXI-NS-03-017-91 entitled "In Re: Labor Dispute at San Pedro Hospital of Digos". Said orders directed herein petitioner hospital to pay backwages for the period from June 21, 1991, to December 15, 1991 to returning workers who are members of the San Pedro Hospital Employees Union and to enter into a new collective bargaining agreement with the union.

The Facts

Petitioner San Pedro Hospital of Digos, Inc. is a charitable, non-stock, non-profit medical and educational training corporation. Petitioner had a three-year collective bargaining agreement (CBA) covering the period December 15, 1987 until December 15, 1990,[4] with herein private respondent, Nagkahiusang Mamumuo sa San Pedro Hospital of DIGOS — National Federation of Labor (NAMASAP-NFL), the exclusive bargaining agent of the hospital's rank-and-file workers.

On February 12, 1991, the parties formally commenced negotiations for the renewal of their CBA. and presented their respective proposals. The union's demands included wage increases and inclusion in the CBA of a provision for union shop.[5]

Respondent union proposed a cumulative salary increase of Sixty pesos per day for three years, broken down as follows: (a) thirty pesos per day for the first year; (b) twenty pesos per day for the second year; and (c) ten pesos per day for the third year. Petitioner, claiming it was incurring losses on account of a serious financial crisis, counter-offered an increase of two pesos per day for each of the three years of the new CBA, with a wage reopening clause. Petitioner also adamantly opposed the proposal for a union security clause.

After the parties failed to reach agreement on the issues, the union during the meeting of February 19, 1991 declared a deadlock.

On February 20, 1991, respondent union saturated petitioner's premises with streamers and picketed the hospital. The operations of the hospital having, come to a grinding halt, the hospital management considered the union actions as tantamount to a strike. However, it was only on March 4, 1991 that respondent union filed a

Notice of Strike with the National Conciliation and Mediation Board (NCMB). On April 10, 11, and 18, 1991, the NCMB held conciliation conferences but failed to settle the deadlock, as the parties remained adamant in their positions.[6]

On May 28, 1991, respondent union struck. Despite the NCMB's call for a conciliation conference, nurses and nurse aides who were members of the union abandoned their respective departments and joined the picket line a week later. Doctors began leaving the hospital and the number of patients dwindled. The last patient was discharged on June 10, 1991.

On June 12, 1991, a "Notice of Temporary Suspension of Operations" was issued by petitioner hospital and submitted to the local office of the NCMB on June 14, 1991. Similar notices were individually delivered to union members, but only fourteen out of the seventy-four rank-and-file employees/union members acknowledged receipt thereof. Petitioner also alleged that on June 13, 1991, the resident/consultant physicians abandoned the hospital because there were no more patients.[7]

On the same day, June 13, 1991, then Secretary of Labor Nieves Confessor assumed jurisdiction over the labor dispute and issued an Order[8] providing that:

> "WHEREFORE, ABOVE PREMISES CONSIDERED, this Office hereby assumes jurisdiction over the entire labor dispute at the San Pedro Hospital of Digos.
>
> Accordingly, all striking workers are hereby directed to return to work within twenty-four (24) hours from receipt of a copy of this Order and for the Hospital to accept all returning workers under the same terms and conditions of employment existing prior to the work stoppage.
>
> The parties are likewise directed to cease and desist from committing any act that may aggravate the prevailing precarious situation.

> To expedite the resolution of this dispute, the parties are directed to submit their respective position papers and evidence within ten (10) days from receipt of this Order."

However, this order was received by petitioner only on June 20, 1991. In the meantime, it had already notified the DOLE via its letter dated June 13, 1991, which was received by the DOLE on June 14, 1991, that it would temporarily suspend operations for six (6) months effective June 15, 1991, or up to December 15, 1991. Petitioner thus refused the return of its striking workers on account of such suspension of operations.

Several conferences were held by the NCMB Conciliator where petitioner stated that it would submit the necessary documents showing its serious financial condition "should the need be in earnest."[9]

On June 24, 1991, respondent union through its legal counsel wrote the Executive Conciliator/Mediator of the NCMB in Davao City informing the latter that the union members were willing to return to their former work assignments at the hospital in compliance with the June 13, 1991 order of the Labor Secretary.

On June 27, 1991, petitioner filed its position paper in which it maintained that the aforementioned order to accept all returning workers had become moot and academic in view of the suspension of its operations. Moreover, said order could not substitute for (and override) the decision of the petitioner hospital's Board of Trustees to suspend operations for six months, such decision being purely a management prerogative.[10]

Respondent union filed its own position paper on July 13, 1991 alleging that its very existence was threatened because management was convincing new employees not to join respondent union; that the union shop provision was necessitated precisely because of management's actuations; that petitioner was not in serious financial condition; and that petitioner acted in bad faith and circumvented the return-to-work order when it suspended operations.[11]

On October 11, 1991, DOLE Secretary Ruben D. Torres went to Digos, Davao del Sur and met respondent union's officers and members in a restaurant; petitioner was not represented in that meeting. The Secretary also visited the hospital without notice to petitioner.

Shortly thereafter, on October 16, 1991, Secretary Torres resolved the labor dispute and issued the questioned Order, wherein he ruled that the suspension of operations was not for a valid or justifiable cause but was actually for the purpose of defeating the workers' right to self-organization. But because the hospital had actually ceased operations, he held that it would be unjust and a sheer abuse of discretion to compel the hospital to continue operations and accept the returning workers, as it would infringe on petitioner's inherent right to manage and conduct its own business affairs. He thus decided to grant, by way of penalty, backwages for the workers from June 21, 1991, the date they were refused admittance by petitioner, until December 15, 1991, the expiration of the temporary suspension of the hospital's operation.[12]

Sec. Torres also enjoined petitioner to enter into a new CBA with respondent union and to adopt and incorporate therein a union shop provision because it was proven that petitioner had intervened in the workers' right to join or not to join a labor organization of their own choosing.[13] Petitioner was also directed to grant a wage increase of P3.00 each for the first three years of the new CBA. This last directive was prompted by the finding, that petitioner's Financial Statements for the years 1989 and 1990 (copies of which, incidentally, were submitted not by petitioner but by respondent union) showed that although petitioner incurred a loss of some P200,000 in 1990, its Balance Sheet revealed that it had a Fund Balance (Retained Earnings) of P3,159,791.00 as of year-end 1990, and therefore, it was financially capable of granting an increase in its employees' wages.[14] The dispositive portion of Secretary Torres' Order reads:[15]

> "WHEREFORE, judgment is hereby rendered:
>
> 1. Ordering the hospital to pay the wages of the returning workers who are members of the Union covering the period 21 June 1991 to 15 December 1991; and

2. Ordering the parties to enter and formalize a new collective bargaining agreement (CBA) embodying therein the dispositions hereinabove set forth as well as the provisions of the old CBA not otherwise touched upon by this Order."

On November 4, 1991, petitioner filed a Motion for Reconsideration of the abovequoted Order alleging that: (1) the Office of the Secretary of Labor had no jurisdiction to resolve the issue of the legality or illegality of the unions strike [since, in ordering the payment of backwages, he in effect ruled on the legality of the strike, which he was not authorized to do, jurisdiction therefor pertaining only to labor arbiters]; (2) the union members were not entitled to backwages because the temporary cessation of petitioners operation suspended the employer-employee relationship between the union members and petitioner; and (3) petitioner could not be obligated to enter into a new CBA because said employer-employee relationship no longer existed.

On December 15, 1991, petitioner formally ceased operations. Notices of its permanent closure were sent to NCMB and individual rank-and-file employees.

On January 31, 1992, the Secretary denied the Motion for Reconsideration, holding among other things that his Order of October 16, 1991 did not rule on the legality of the strike. Hence, this petition filed under Rule 65 of the Revised Rules of Court.

The Issues

Petitioner alleges that the Secretary of Labor gravely abused his discretion thus:[16]

"1. When he issued the two orders, subject of this case, without affording the hospital the opportunity to present evidence on its behalf.

2. In ordering the hospital to execute a new collective bargaining agreement with the union knowing fully well, as

he himself conceded, that the hospital had actually ceased operations.

3. In ordering the hospital to pay backwages to the members of the union; for in doing so, said public respondent to all intents and purposes ruled that the strike staged by the union was legal."

The main question is whether the Secretary of Labor and Employment acted correctly in issuing the Orders of October 16, 1991 and January 31, 1992.

The Court's Ruling

First Issue: Petitioner Was Afforded Opportunity to Present Evidence

Petitioner alleges that it was never given an opportunity to present its evidence, and that the Order of October 16, 1991 was influenced by the Secretary of Labor's meeting with the officers and members of respondent union when the former went to Digos, Davao del Sur on October 11, 1991.

Admittedly, Secretary Torres did visit petitioner's premises without notice to see for himself the actual situation therein obtaining. However, the evidence on record clearly shows that, contrary to petitioner's allegation, it was afforded opportunity to present its evidence, and that the Secretary's visit and meeting were not the reasons for the ruling in favor of respondent union, nor did they affect said Order. One, the assumption order of Secretary Confessor inter alia directed the parties to submit their respective position papers and evidence to enable the Secretary to resolve the dispute.[17] Two, petitioner submitted its position paper where it questioned the authenticity of the said order claiming that it (petitioner) received only an uncertified photocopy, and informed the Secretary of its suspension of operations.[18] It did not bother to prove its serious financial condition and thereby justify its suspension of operations and its refusal to accede to the demanded wage increases. Respondent union, on the other hand, attached a copy of petitioner's financial statements to its position paper to show that petitioner was

not in dire financial straits as it had a significant fund balance in 1990. Respondent union further alleged that petitioner could have afforded the wage increases since it had previously proposed an increase of P2.00 every year for each year of the new CBA which it later reduced to just P2.00 for three years. Also attached were the affidavits of Armand Anthony Gallardo, staff nurse, and Evangeline Montues, pharmacist, to show that petitioner had been persuading the new regular workers not to join respondent union.[19]

(In its Supplemental Position Paper, respondent union also alleged that when it struck, it complied fully with the law on strikes because a skeletal force was left to man the hospital and the gate was left open and not barricaded, and that it was petitioner that refused to admit patients and hired replacements for the strikers. It also alleged that the doctors did not withdraw from the hospital because it happened to be the best equipped in the locality.[20])

Three, based on these pleadings and supporting papers, the Secretary noted that petitioner hospital did not discuss and support its claim of serious financial crisis on account of losses incurred, necessitating temporary suspension of operations. He thus found that the temporary suspension was to avoid compliance with the return-to-work order, and not due to the supposed financial hemorrhage. His October 16, 1991 Order stated as follows:[21]

> "In the case under consideration, the Hospital failed to meet the conditional requirements that would justify the temporary cessation of its operations. To be sure, the facts and circumstances attendant to this case do not warrant a finding that the temporary suspension of the hospital's operations was for a valid or justifiable cause, and not for the purpose of defeating the rights of the workers to self-organization. This conclusion finds support from the following undisputed facts:
>
> > First, during the CBA negotiation and immediately prior to the closure, the Hospital never brought the issue of its alleged financial losses necessitating the temporary suspension of its operations;

> Secondly, the notice of temporary suspension dated 13 June 1991 filed by the Hospital made mention of its intention to submit the necessary documents of its alleged financial losses (Annex "A", Hospital's position paper). Until the present, however, the Hospital has not submitted these documents thereby creating serious doubts on the validity of the suspension of its operations. Be that as it may, a copy of the Financial Statements of the Hospital for the years 1989 and 1990, submitted by the Union, reveals that it (hospital) was not actually losing in its operations. While the Hospital may have incurred losses of P200,942.00 in 1990, its Balance Sheet reveals a Fund Balance (Retained Earnings) of P3,159,791.00 for the year 1990 (Annex "G-2" Union's Position Paper dated 4 July 1991); and
>
> Thirdly, the Union was not furnished a copy of the notice of temporary suspension. Worse still, the notice was filed on 14 June 1991 and was made effective the following day or on 15 June 1991, leaving the Union without sufficient time to adjust to the sudden and unexpected cessation of the hospital's operations, much less the opportunity to controvert the same.
>
> In the light of the undisputed facts narrated above, we are more inclined to sustain the view that the temporary suspension of the hospital's operations (was done) by the hospital, not because it is in financial crisis, but merely for the purpose of avoiding compliance with our Order dated 13 June 1991, directing it to accept all returning workers under the same terms and conditions of employment existing prior to the work stoppage. This being the case, we cannot give imprimatur to the actuation exhibited herein by the Hospital. For indeed, the Hospital had shown scant regard to the constitutional right of the members of the Union to self-organization and to negotiate for better terms and conditions of employment."

The foregoing excerpt clearly shows that Secretary Torres' visit was not the turning point insofar as his Order was concerned. On the

contrary said Order is clearly based on substantial evidence on record.

Petitioner also attacks Secretary Torres' conclusion that its temporary cessation of operations was not legitimate but for the purpose of circumventing the return-to-work order previously issued.

We are not persuaded. Temporary suspension of operations is recognized as a valid exercise of management prerogative provided it is not carried out in order to circumvent the provisions of the Labor Code or to defeat the rights of the employees under the Code.[22] The determination to cease or suspend operations is a prerogative of management that the State usually does not interfere with, as no business can be required to continue operating at a loss simply to maintain the workers in employment. Such an act would be tantamount to a taking of property without due process of law, which the employer has a right to resist. But where it is shown that the closure is motivated not by a desire to prevent 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.[23]

The burden of proving that such a temporary suspension is bona fide falls upon the employer. In this instance, petitioner had to establish the fact of its precarious financial health, that its cessation of operations was really necessitated by its financial condition, and that said condition would probably be alleviated or improved, or its losses abated, by undertaking such suspension of operation. Petitioner could have at least partly met the foregoing requirements by submitting its financial statements or records as proof of its financial crisis, since the purported financial hemorrhage would definitely have been reflected therein. Thus, petitioner's unexplained and continued failure to submit its financial statements could not but raise grave doubts as to the truth of the claimed financial crisis and the real purpose of the suspension of operations. It is not enough to merely raise this issue nor to discuss it only in passing. The precarious financial condition must be established by evidence, e.g., balance sheets and income statements, and the figures therein must be interpreted and discussed at length. Petitioner was recklessly pushing its luck when it believed that the Secretary could be convinced

without first obtaining and examining petitioner's financial statements and the notes thereto. The fact that the conciliator never asked for them is no sufficient excuse for not presenting the same, as such was petitioner's duty. Neither is it acceptable for petitioner to allege that the latest financial statements (for the year 1991) were still being prepared by its accountants and not yet ready for submission, since the financial statements for the prior years 1989 and 1990 would have sufficed.

It is a hornbook rule that employers who contemplate terminating the services of their workers must base their decisions on more than just flimsy excuses,[24] considering that the dismissal of an employee from work involves not only the loss of his position but, what is more important, his means of livelihood. The same principle applies in temporary suspension of operations, as in this case, considering that it involves laying off employees for a period of six months.

Petitioner, having wretchedly failed to justify by even the most rudimentary proof its temporary suspension of operations, must bear the consequences thereof. We thus hold that the Secretary of Labor and Employment did not act with grave abuse of discretion in finding the temporary suspension unjustified and illegal.

Second Issue: New CBA Despite Temporary Suspension?

Petitioner alleges that respondent Secretary acted in grave abuse of discretion when he ordered petitioner to enter into a new CBA despite his knowledge that it had actually ceased operations. As proof thereof, petitioner cites the portion of the assailed Order which reads that:

> "It must be noted, however, that the hospital had actually ceased operations. It would thus be sheer abuse of discretion on our part to compel the hospital to continue its operations and admit the returning workers."

We disagree. Clearly, the respondent Secretary was of the impression that petitioner would operate again after the lapse of the six-month suspension of operations on December 16, 1991, and so ordered the parties to enter into and formalize a new CBA to govern their relations upon resumption of operations. On the other hand, the

aforequoted portion of the Order must be understood in the context of the Secretary's finding that the temporary suspension was only for circumventing the return-to-work order, but in spite of which he held that he could not order petitioner to continue operations as "this would infringe on its inherent right to manage and conduct its own business affairs"; he thus ordered instead the payment of backwages to the returning workers who were refused admittance by petitioner on June 21, 1991. And as above adverted to, he also ordered the parties to execute a new CBA to govern their relations upon the expiry of the period of suspension and the resumption of normal operations.

Art. 286 of the Labor Code provides: "The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months shall not terminate employment." Section 12, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code provides that the employer-employee relationship shall be deemed suspended in case of the suspension of operation referred to above, it being implicitly assumed that once operations are resumed, the employer-employee relationship is revived and restored.

If a legitimate, valid and legal suspension of operations does not terminate but merely suspends the employee-employer relationship, with more reason will an invalid and illegal suspension of operations as in this case not affect the employment relationship.

The foregoing premises considered, it is clear that there is no basis for petitioner to claim that a new CBA should not be entered into or that collective bargaining should not be conducted during the effectivity of a temporary suspension of operations. In this instance, petitioner expressly represented that the suspension was to be for six months only. In the absence of any other information, the plain and natural presumption will be that petitioner would resume operations after six months, and therefore, it follows that a new CBA will be needed to govern the employment relations of the parties the old one having already expired. Clearly then, under the circumstances, the respondent Secretary cannot be faulted nor considered to have gravely abused his discretion for ordering the parties to enter into a new CBA.

Did the Secretary act in excess of jurisdiction in imposing the wage increases and union shop provision on the petitioner? We hold that he did not. While petitioner cannot be forced to abandon its suspension of operations even if said suspension he declared unjustified illegal and invalid, neither can petitioner evade its obligation to bargain with the union, using the cessation of its business as reason therefor. For, as already indicated above, the employer-employee relationship was merely suspended (and not terminated) for the duration of the temporary suspension. Using the suspension as an excuse to evade the duty to bargain is further proof of its illegality. It shows abuse of this option and bad faith on the part of petitioner. And since it refused to bargain, without valid and sufficient cause, the Secretary in the exercise of his powers under Article 263(i) of the Labor Code to decide and resolve labor disputes, properly granted the wage increase and imposed the union shop provision.

Considering that after the lapse of the six-month period on December 16, 1991, petitioner did not resume operations, it would border on the ridiculous to still try to enforce the October 16, 1991 Order and require the parties to negotiate the terms and conditions of employment. It goes without saying that the said Order directing the parties to enter into a new CBA is already moot and academic. We shall delve more into the complete cessation of business when discussing the fourth issue below.

Third Issue: Grant of Backwages Is Not An Adjudication on the Legality of the Strike

Petitioner charges the respondent Secretary with having gravely abused his discretion in ordering it to pay backwages to the union members because it is tantamount to ruling that the union's strike was legal — jurisdiction over which question pertains to the labor arbiter.

As support, petitioner cites Philippine Airlines, Inc. vs. Secretary of Labor and Employment,[25] where this Court ruled that:

> "Under Art. 263 of the Labor Code, the Labor Secretary's authority to resolve a labor dispute within 30 days from the

> date of assumption of jurisdiction, encompasses only the issues in the dispute, not the legality or illegality of any strike that may have been resorted to in the meantime (Binamira vs. Ogan-Occena, 148 SCRA 677, 685 [1987]).

x x x

In ruling on the legality of the PALEA strike, the Secretary of Labor acted without or in excess of his jurisdiction.

There is merit in PAL's contention that the Labor Secretary erred in declaring the strike valid and in prohibiting PAL from taking retaliatory or disciplinary action against the strikers for the damages suffered by the Airline as a result of the illegal work stoppage.

x x x

The Labor Secretary exceeded his jurisdiction when he restrained PAL from taking disciplinary action against its guilty employees, for, under Art. 263 of the Labor Code, all that the Secretary may enjoin is the holding of the strike, but not the company's right to take action against union officers who participated in the illegal strike and committed illegal acts. The prohibition which the Secretary issued to PAL constitutes an unlawful deprivation of property and denial of due process for it prevents PAL from seeking redress for the huge property losses that it suffered as a result of the union's illegal mass action.

We disagree. As pointed out by the Solicitor General, the said case is not in point because in this case the Secretary did not rule on the legality of the strike.

Respondent union struck before the Secretary of Labor assumed jurisdiction over the dispute. Thus, at first glance, the grant of backwages was not only dependent on the legality of the temporary suspension of operations by petitioner but also on the legality of the strike of respondent union.

However, it is undisputed that petitioner never questioned the legality of the strike. When Secretary Confessor assumed jurisdiction

over the labor dispute, she ordered the immediate return to work of the striking employees in order to restore the conditions of employment prior to the strike. The legality of the strike was not in question as far as Secretary Torres was concerned, when he assumed the office, and was not within the ambit of the jurisdiction conferred upon him by law. His concern was the labor dispute, i.e., the deadlock and the temporary suspension of operations. Thus, he ruled only on these matters, and not, as claimed by petitioner, on the legality or illegality of the strike. On the other hand, the grant of backwages was due to the illegality of the temporary suspension, not the illegality of the strike.

Under Article 263 (g) of the Labor Code, the Secretary is authorized to penalize an erring employer who refuses to accept returning employees by ordering such employer to pay backwages. This is within his jurisdiction and is warranted by his finding as to the invalidity of the temporary suspension.

In fine, the respondent Secretary of Labor did not act with grave abuse of discretion in ordering petitioner to pay backwages because it is not an adjudication on the legality of the strike.

Fourth Issue: Supervening Event

Notwithstanding that respondent Secretary did not act with grave abuse of discretion in issuing the challenged Orders, we cannot ignore the supervening event which occurred after December 15, 1991, i.e., the subsequent permanent cessation of operation of petitioner on account of losses.

Business reverses or losses are recognized by law as a just cause for terminating employment. This Court held in Columbia Development Corporation vs. Minister of Labor and Employment[26] that:

> "Precisely because reverses in a business venture are expected, the law recognizes the same as a just cause for terminating an employment [Art. 283(a) of the Labor Code] and in many instances, this Court has 'affirmed the right of an employer to lay off or dismiss employees because of losses in the operation of its business, lack of work and considerable reduction in the

> volume of his business.' [LVN Pictures and Workers Asso. vs. LVN Pictures, Inc., 35 SCRA 147 and the cases cited therein]."

Since this ground can be abused by scheming employers feigning business losses to ease out employees, substantive and procedural requirements are imposed before it can be resorted to. The Labor Code provides that:

> "Art. 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the 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."

Further, it is necessary that business reverses or losses be serious, actual and real.[27] The burden of establishing the truth as to these losses or reverses falls upon the employer.

Petitioner finally submitted its financial statements for 1990 as an annex to its petition.[28] And attached to its Reply to Comment were its financial statements for 1991.[29] The Statements of Revenues and Expenses revealed that in 1989, petitioner had a net profit of P106,102.00, but this was due to other income of P202,772.00, which offset losses from operations of P96,670.00.[30] In the following years, operating losses could not be offset by other income. In 1990, petitioner sustained a net loss of P200,942.00 despite other income of P203,092.00. In 1991, net loss mounted to P3,180,268.00,[31] completely wiping out its entire Fund Balance (retained earnings) of P3,159,791.00 from the previous year, and leaving a negative figure of P20,477.00. I his means that nothing was left of the entire capital of petitioner, which is why petitioner contends that it is not in any position to resume operations. Furthermore, petitioner s external auditors reported that the 1991 financial statements have not yet made any provisions for petitioner's liability resulting from this and other labor disputes.[32]

In both 1989 and 1990, the hospital's costs and operating expenses exceeded gross revenues, signaling serious financial trouble. When petitioner suspended operations in the second half of 1991, its gross revenues covered only 56% of operating expenses. The decrease in expenses to about half the prior years' was still too small to offset the revenues foregone. It seems that the temporary suspension turned out to have been more costly rather than beneficial. Eventually, its financial troubles resulted in the demise of petitioner as a going concern.

Petitioner's total assets in 1991 registered a drop of about P2.5 million from the previous year's P7.8 million, a staggering decline.[33] It had exhausted its Fund Balance completely. Considering that it had been operating mainly on the revenues it generated, the high risks of continuing operations were enough to make petitioner bail out.

We should mention that this case is different from Union of Filipino Workers vs. National Labor Relations Commission[34] because in the case at bar, financial trouble is reflected in petitioner's financial statements since 1989 and the cessation of operations was total.

The losses registered in 1989, 1990 and 1991 cannot be deemed "paltry."[35] Consider also the loss of doctors and patients prior to the temporary suspension. It is beyond cavil then that petitioner suffered serious and actual business reverses. In such a case, management has the final say as to whether it will continue to risk its capital in its business or not. This is properly its prerogative. Since there is basis for the permanent closure of the business, we cannot read into it any attempt to defeat the rights of its employees under the law, nor any oppressive and high-handed motives.

Thus, despite the absence of grave abuse of discretion on the part of the respondent Secretary, this Court cannot impose upon petitioner the directive to enter into a new CBA with the union for the very simple reason that to do so would be to compel petitioner to continue its business when it had already decided to close shop, and that would be judicial tyranny on our part.

Epilogue

It will be noted that while the Court ruled as improper the temporary suspension of petitioner's operation, it nonetheless sustained its permanent closure thereafter. To resolve this seeming contradiction, we repeat: we found no arbitrariness in the ruling of the then Secretary of Labor finding the suspension of operations as unwarranted because petitioner failed to adduce evidence before the conciliator to show that the hospital's financial condition at that time justified such suspension. On the other hand, before us, by presenting its later financial statements, petitioner was able to prove conclusively a supervening event, i.e., that its financial health had deteriorated to such an extent as to justify the complete cessation of its operations, and its permanent closure. Ironically, it was petitioner's temporary suspension of operations that made inevitable and irreversible (as well as legally tenable) its subsequent permanent closure.

The Court is grieved by the closure of the petitioner hospital, and what such closure meant, not only to petitioner, but to the public and especially patients and those in need of medical attention. It is even more sad that, by reason of such closure, petitioner's employees and staff, including doctors, nurses and other hospital workers, have had to be laid off. We would have wanted to see the parties amicably settle their differences and patch things up, in view of the crucial public service they rendered, particularly since, up to the time of its suspension of operation, the hospital was "the best equipped in the locality". However, all that is water under the bridge now, and there is really not much that this Court can do in the premises and at this time except to decide the instant case on the basis of the legal issues raised.

WHEREFORE, the Petition is partially **GRANTED**. The assailed Orders, insofar as they grant backwages from June 21, 1991 until December 15, 1991, are **AFFIRMED**. However, they are **MODIFIED** insofar as they directed the parties to enter into a new collective bargaining agreement, which directives are hereby **SET ASIDE** for being moot and academic.

SO ORDERED.

Narvasa, *C.J.*, Davide, Melo and Francisco, *JJ.*, concur.

---

[1] Rollo, pp. 22-30.
[2] Rollo, pp. 31-35.
[3] Secretary Ruben D. Torres.
[4] Rollo, pp. 3-4.
[5] Rollo, pp. 4-5.
[6] Rollo, pp. 5-6.
[7] Petitioner's Position Paper, p. 2; rollo, p. 37.
[8] Rollo, pp. 22-23.
[9] Rollo, p. 163.
[10] Petitioner's Position Paper, p. 3; rollo, p. 38.
[11] Position Paper for the Union, pp. 4-7; rollo, pp. 42-45.
[12] Rollo, pp. 25-26.
[13] Rollo, pp. 28-29.
[14] Rollo, p. 29.
[15] Rollo, p. 30.
[16] Petition, p. 8; rollo, p. 9.
[17] Rollo, p. 23.
[18] Rollo, pp. 36-38.
[19] Rollo, pp. 43-48.
[20] Rollo, p. 52.
[21] Rollo, pp. 25-27.
[22] Section 12, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code.
[23] Carmelcraft Corporation vs. NLRC, 186 SCRA 393, 397, June 6, 1990.
[24] Indino vs. NLRC, 178 SCRA 168, 175, September 29, 1989.
[25] 193 SCRA 223, 228-230, January 23, 1991.
[26] 146 SCRA 421, 428, December 29, 1986.
[27] Garcia vs. National Labor Relations Commission, 153 SCRA 639, 650-651, September 4, 1987.
[28] Rollo, pp. 58-66.
[29] Rollo, pp. 106-115. The auditing firm of Sycip, Gorres, Velayo & Co. examined and passed upon the financial statements for both 1990 and 1991.
[30] Rollo, p. 61.
[31] Rollo, p. 109.
[32] Rollo, p. 113.
[33] Rollo, p. 108-109.
[34] 207 SCRA 435, 442, March 23, 1992.
[35] Carmelcraft Corporation vs. NLRC, supra, pp. 396-397, June 6, 1990.
