SUPREME COURT
SECOND DIVISION

ALBERTO S. SILVA, EDILBERTO VIRAY ANGELES BARON, CEFERINO ROMERO, JAIME ACEVEDO, RODOLFO JUAN, ANDREW DE LA ISLA, BAYANI PILAR, ULDARICO GARCIA, ANANIAS HERMOCILLA, WALLY LEONES, PABLO ALULOD, RODOLFO MARIANO, HERNANI ABOROT, CARLITO CHOSAS, VALERIANO MAUBAN, RENAN HALILI, MANOLITO CUSTODIO, NONILON DAWAL, RICARDO ESCUETA, SEVERINO ROSETE, ERNESTO LITADA, ERNESTO BARENG, BONIFACIO URBANO, VICENTE SANTOS, MARIO CREDO, BERNABE GERONIMO, ERNESTO BANAY, PASTOR VELUZ, RICARDO CUEVAS, FELOMENO BALLON, ORLANDO MENDOZA, ANICETO ARBAN, GERONIMO ESPLANA, VICENTE CHAVEZ, STEVE VELECINA, and RICARDO B. VENTURA,
Petitioners,

-versus-

G.R. No. 110226
June 19, 1997

NATIONAL LABOR RELATIONS COMMISSION and PHILTREAD

(FIRESTONE) TIRE AND RUBBER CORPORATION,

Respondents.

x----------x

D E C I S I O N

ROMERO, *J.*:

Petitioners, all former employees of private respondent Philtread (Firestone) Tire and Rubber Corporation (Philtread, for brevity), impute grave abuse of discretion on the National Labor Relations Commission (NLRC)[1] for issuing two resolutions, dated April 7, 1993, and November 18, 1992, which reconsidered a resolution it rendered on April 15, 1992. They allege that its resolution of April 15, 1992 became final and executory when Philtread failed to seasonably file a motion for reconsideration within the ten-day reglementary period required by Article 223 of the Labor Code.

The record unfolds the following facts:

Sometime in 1985, petitioners, then rank-and-file employees and members of Philtread Workers Union (PWU), volunteered for, and availed of, the retrenchment program instituted by Philtread with the understanding that they would have priority in re-employment in the event that the company recovers from its financial crisis, in accordance with Section 4, Article III of the Collective Bargaining Agreement concluded on July 5, 1983.[2]

In November 1986, Philtread, apparently having recovered from its financial reverses, expanded its operations and hired new personnel. Upon discovery of this development, petitioners filed their respective applications for employment with Philtread, which however, merely agreed to consider them for future vacancies. Subsequent demands for re-employment made by petitioners were ignored. Even the request of the incumbent union for Philtread to stop hiring new

personnel until petitioners were first hired failed to elicit any favorable response.

Thus, on December 5, 1988, petitioners lodged a complaint[3] with the National Capital Region Arbitration Branch of the NLRC for unfair labor practice (ULP), damages and attorney's fees against Philtread.

Both parties submitted their respective position papers. On its part, Philtread moved for the dismissal of the complaint based on two grounds, namely: (1) that the NLRC lacked jurisdiction, there being no employer-employee relationship between it and petitioners and that the basic issue involved was the interpretation of a contract, the CBA, which was cognizable by the regular courts; and (2) that petitioners had no locus standi, not being privy to the CBA executed between the union and Philtread.

Petitioners, however, challenging Philtread's motion to dismiss, stressed that the complaint was one for unfair labor practice precipitated by the unjust and unreasonable refusal of Philtread to re-employ them, as mandated by the provisions of Section 4, Article III of the 1986 and 1983 CBAs. Being one for unfair labor practice, petitioners concluded that the NLRC had jurisdiction over the case, pursuant to Article 217 (a) (1) of the Labor Code.

On August 31, 1989, Labor Arbiter Edgardo M. Madriaga rendered a decision dismissing the complaint but directing Philtread to give petitioners priority in hiring, as well as those former employees similarly situated for available positions provided they meet the necessary current qualifications.[4] In dismissing the complaint, the Labor Arbiter, however, did not tackle the jurisdictional issue posed by Philtread in its position paper. Instead, he dwelt solely on the question whether the petitioners were entitled to priority in re-employment on the basis of the CBA.

Petitioners duly appealed the decision of the Labor Arbiter to the NLRC. Philtread opted not to interpose an appeal despite the Labor Arbiter's failure to rule squarely on the question of jurisdiction.

On April 15, 1992, the NLRC issued a resolution reversing the decision of the Labor Arbiter. It directed Philtread to re-employ

petitioners and other employees similarly situated, regardless of age qualifications and other pre-employment conditions, subject only to existing vacancies and a finding of good physical condition. This resolution was received by Atty. Abraham B. Borreta of the law firm of Borreta, Gutierrez and Leogardo on May 5, 1992, as shown by the bailiff's return.

Subsequently, Atty. Borreta filed with the NLRC on May 20, 1992, an ex parte manifestation explaining that he was returning the copy of the resolution rendered on April 15, 1992, which, according to him, was erroneously served on him by the process server of the NLRC. He alleged that in the several conciliation conferences held, it was Atty. Daniel C. Gutierrez who exclusively handled the case on behalf of Philtread and informed the Labor Arbiter and petitioners that the law firm of Borreta, Gutierrez and Leogardo had already been dissolved.

Being of the impression that the April 15, 1992 resolution of the NLRC had been properly served at the address of the law firm of Atty. Gutierrez and that no seasonable motion for reconsideration was ever filed by Philtread, petitioners moved for its execution.

On November 18, 1992, the NLRC, acting on a motion for reconsideration filed by Atty. Gutierrez, promulgated one of its challenged resolutions dismissing the complaint of petitioners. It ruled that while petitioners had standing to sue, the complaint should have been filed with the voluntary arbitrator, pursuant to Article 261 of the Labor Code, since the primary issue was the implementation and interpretation of the CBA.

Dismayed by the NLRC's sudden change of position, petitioners immediately moved for reconsideration. They pointed out that the NLRC's reliance on Article 261 of the Labor Code was patently erroneous because it was the amended provision which was being cited by the NLRC. They added that the amendment of Article 261 introduced by Republic Act No. 6715 took effect only on March 21, 1989, or after the filing of the complaint on December 5, 1988. This being the case, petitioners argued that the subsequent amendment cannot retroactively divest the Labor Arbiter of the jurisdiction already acquired in accordance with Articles 217 and 248 of the Labor Code. Petitioners further stressed that the resolution of April 15,

1992, had already become final and executory since Philtread's counsel of record did not file any motion for reconsideration within the period of ten (10) days from receipt of the resolution on May 5, 1992.

The NLRC, however, was not convinced by petitioners' assertions. In another resolution issued on April 7, 1993, it affirmed its earlier resolution dated November 18, 1992, ruling that even before the amendatory law took effect, matters involving bargaining agreements were already within the exclusive jurisdiction of the voluntary arbitrator, as set forth in Article 262 of the Labor Code. Hence, this petition.

As stated at the outset, petitioners fault the NLRC for issuing the assailed resolutions even when the resolution sought to be reconsidered had already attained finality upon Philtread's failure to timely move for its reconsideration. They posit that since the bailiff's return indicated May 5, 1992, as the date of receipt of the April 15, 1992 resolution by the law firm of Borreta, Gutierrez and Leogardo, Philtread's counsel of record, then Philtread only had ten (10) calendar days or until May 15, 1992, within which to file a motion for reconsideration. Since Philtread indisputably failed to file any such motion within said period, petitioners deemed it highly irregular and capricious for the NLRC to still allow reconsideration of its April 15, 1992 resolution.

The petition is impressed with merit.

Time and again, this Court has been emphatic in ruling that the seasonable filing of a motion for reconsideration within the 10-day reglementary period following the receipt by a party of any order, resolution or decision of the NLRC, is a mandatory requirement to forestall the finality of such order, resolution or decision.[5] The statutory bases for this is found in Article 223 of the Labor Code[6] and Section 14, Rule VII of the New Rules of Procedure of the National Labor Relations Commission.[7]

In the case at bar, it is uncontroverted that Philtread's counsel filed a motion for reconsideration of the April 15, 1992 resolution only on June 5, 1992,[8] or 31 days after receipt of said resolution.[9] It was

thus incumbent upon the NLRC to have dismissed outright Philtread's late motion for reconsideration. By doing exactly the opposite its actuation was not only whimsical and capricious but also a demonstration of its utter disregard for its very own rules. Certiorari, therefore, lies.

To be sure, it is settled doctrine that the NLRC, as an administrative and quasi-judicial body, is not bound by the rigid application of technical rules of procedure in the conduct of its proceedings.[10] However, the filing of a motion for reconsideration and filing it ON TIME are not mere technicalities of procedure. These are jurisdictional and mandatory requirements which must be strictly complied with. Although there are exceptions to said rule, the case at bar presents no peculiar circumstances warranting a departure therefrom.

The Court is aware of Philtread's obvious attempt to skirt the requirement for seasonable filing of a motion for reconsideration by persuading us that both the Labor Arbiter and the NLRC have no jurisdiction over petitioners' complaint. Jurisdiction, Philtread claims, lies instead with the voluntary arbitrator so that when the Labor Arbiter and the NLRC took cognizance of the case, their decisions thereon were null and void and, therefore, incapable of attaining finality. In short, Philtread maintains that the ten-day reglementary period could not have started running and, therefore, its motion could not be considered late

The argument is not tenable. While we agree with the dictum that a void judgment cannot attain finality, said rule, however, is only relevant if the tribunal or body which takes cognizance of a particular subject matter indeed lacks jurisdiction over the same. In this case, the rule adverted to is misapplied for it is actually the Labor Arbiter and the NLRC which possess jurisdiction over petitioners' complaint and NOT the voluntary arbitrator, as erroneously contended by Philtread.

In this regard, we observe that there is a confusion in the minds of both Philtread and the NLRC with respect to the proper jurisdiction of the voluntary arbitrator. They appear to share the view that once the question involved is an interpretation or implementation of CBA

provisions, which in this case is the re-employment clause, then the same necessarily falls within the competence of the voluntary arbitrator pursuant to Article 261 of the Labor Code.

Respondents' posture is too simplistic and finds no support in law or in jurisprudence. When the issue concerns an interpretation or implementation of the CBA, one cannot immediately jump to the conclusion that jurisdiction is with the voluntary arbitrator. There is an equally important need to inquire further if the disputants involved are the union and the employer; otherwise, the voluntary arbitrator cannot assume jurisdiction. To this effect was the ruling of the Court in Sanyo Philippines Workers Union-PSSLU vs. Canizares,[11] where we clarified the jurisdiction of the voluntary arbitrator in this manner:

> "In the instant case, however, We hold that the Labor Arbiter and not the Grievance Machinery provided for in the CBA has the jurisdiction to hear and decide the complaints of the private respondents. While it appears that the dismissal of the private respondents was made upon the recommendation of PSSLU pursuant to the union security clause provided in the CBA, We are of the opinion that these facts do not come within the phrase 'grievances arising from the interpretation or implementation of (their) Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies,' the jurisdiction of which pertains to the Grievance Machinery or thereafter, to a voluntary arbitrator or panel of voluntary arbitrators. Article 260 of the Labor Code on grievance machinery and voluntary arbitrator states that '(t)he parties to a Collective Bargaining Agreement shall include therein provisions that will ensure the mutual observance of its terms and conditions. They shall establish a machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of their Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies.' It is further provided in said article that the parties to a CBA shall name or designate their respective representatives to the grievance machinery and if the grievance is not settled in that level, it shall automatically be referred to voluntary arbitrators

(or panel of voluntary arbitrators) designated in advance by the parties. It need not be mentioned that the parties to a CBA are the union and the company. Hence, only disputes involving the union and the company shall be referred to the grievance machinery or voluntary arbitrators."*(Emphasis supplied)*

Since the contending parties in the instant case are not the union and Philtread, then pursuant to the Sanyo doctrine, it is not the voluntary arbitrator who can take cognizance of the complaint, notwithstanding Philtread's claim that the real issue is the interpretation of the CBA provision on re-employment.

The Court, however, does not write finis to the discussion. A more important question arises: If the voluntary arbitrator could not have assumed jurisdiction over the case, did the Labor Arbiter and the NLRC validly acquire jurisdiction when both of them entertained the complaint?

A brief review of relevant statutory provisions is in order.

We note that at the time petitioners filed their complaint for unfair labor practice, damages and attorney's fees on December 5, 1988, the governing provision of the Labor Code with respect to the jurisdiction of the Labor Arbiter and the NLRC was Article 217 which states:

"ART. 217. Jurisdiction of Labor Arbiters and the Commission. — (a) The Labor Arbiters shall have the original and exclusive jurisdiction to hear and decide within thirty (30) working days after submission of the case by the parties for decision, the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;

2. Those that workers may file involving wages, hours of work and other terms and conditions of employment;

3. All money claims of workers, including those based on non- payment or underpayment of wages, overtime compensation, separation pay and other

benefits provided by law or appropriate agreement, except claims for employees' compensation, social security, medicare and maternity benefits;

4. Cases involving household services; and

5. Cases arising from any violation of Article 265 of this Code, including questions involving the legality of strikes and lockouts.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters."

Articles 261 and 262, on the other hand, defined the jurisdiction of the voluntary arbitrator, viz.:

"ART. 261. Grievance machinery. — Whenever a grievance arises from the interpretation or implementation of a collective agreement, including disciplinary actions imposed on members of the bargaining unit, the employer and the bargaining representative shall meet to adjust the grievance. Where there is no collective agreement and in cases where the grievance procedure as provided herein does not apply, grievances shall be subject to negotiation, conciliation or arbitration as provided elsewhere in this Code.

ART. 262. Voluntary arbitration. — All grievances referred to in the immediately preceding Article which are not settled through the grievance procedure provided in the collective agreement shall be referred to voluntary arbitration prescribed in said agreement: Provided, That termination disputes shall be governed by Article 278 of this Code, as amended, unless the parties agree to submit them to voluntary arbitration."

Under the above provisions then prevailing, one can understand why petitioners lodged their complaint for ULP with the Labor Arbiter. To their mind, Philtread's refusal to re-employ them was tantamount to a violation of the re-employment clause in the 1983 CBA which was also substantially reproduced in the 1986 CBA. At the time, any violation of the CBA was unqualifiedly treated as ULP of the employer

falling within the competence of the Labor Arbiter to hear and decide. Thus:

> "ART. 248. Unfair labor practices of employers. — It shall be unlawful for an employer to commit any of the following unfair labor practice:
>
> x x x
>
> (i) To violate a collective bargaining agreement."

On March 21, 1989, however, Republic Act 6715,[12] or the so-called "Herrera-Veloso Amendments," took effect, amending several provisions of the Labor Code, including the respective jurisdictions of the Labor Arbiter, the NLRC and the voluntary arbitrator. As a result, the present jurisdiction of the Labor Arbiter and the NLRC is as follows:

> "ART. 217. Jurisdiction of Labor Arbiters and the Commission. — (a) Except as otherwise provided under this Code the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non- agricultural:
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> 1. Unfair labor practice cases;
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> 2. Termination disputes;
>
> 3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
>
> 4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements."

while that of the voluntary arbitrator is defined in this wise:

"ART. 261. Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators. — The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, gross violations of Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement." *(Emphasis supplied)*

> "ART. 262. Jurisdiction over other labor disputes. — The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks."

With the amendments introduced by RA 6715, it can be gleaned that the Labor Arbiter still retains jurisdiction over ULP cases. There is, however, a significant change: The unqualified jurisdiction conferred upon the Labor Arbiter prior to the amendment by RA 6715 has been narrowed down so that "violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice but as grievances under the Collective Bargaining Agreement. It is further stated that "gross violations of Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement." Hence, for a ULP case to be cognizable by the Labor Arbiter, and the NLRC to exercise its appellate jurisdiction, the allegations in the complaint should show prima facie the concurrence of two things, namely: (1) gross violation of the CBA; and (2) the violation pertains to the economic provisions of the CBA.

In several instances prior to the instant case, the Court already made its pronouncement that RA 6715 is in the nature of a curative statute. As such, we declared that it can be applied retroactively to pending cases. Thus in Briad Agro Development Corporation vs. Dela Cerna,[13] we held:

> "Republic Act No. 6715, like its predecessors, Executive Order No. 111 and Article 217, as amended, has retroactive application. Thus, when this new law divested Regional Directors of the power to hear money claims, the divestment affected pending litigations. It also affected this particular case. *(Note that under par. 6, where the claim does not exceed P5,000.00, regional directors have jurisdiction).*

In Garcia vs. Martinez, we categorically held that amendments relative to the jurisdiction of labor arbiters *(under Presidential Decree No. 1367, divesting the labor arbiter of jurisdiction)* partake of the nature of curative statutes, thus:

It now appears that at the time this case was decided the lower court had jurisdiction over Velasco's complaint although at the time it was filed said court was not clothed with such jurisdiction. The lack of jurisdiction was cured by the issuance of the amendatory decree which is in the nature of a curative statute with retrospective application to a pending proceeding, like Civil Case No. 9657. *(See 82 C.J.S. 1004).*

Garcia has since been uniformly applied in subsequent cases. Thus, in Calderon vs. Court of Appeals, reiterated that PD No. 1367 [is] curative and retrospective in nature.

The Decision of this case, finally, acknowledged the retrospective characteristics of Executive Order No. 111."

With the Briad ruling in place, the implication is that the qualified jurisdiction of the Labor Arbiter and the NLRC should have been applied when the ULP complaint was still pending. This means that petitioners should have been required to show in their complaint the gross nature of the CBA violation, as well as the economic provision violated, without which the complaint would be dismissible. Herein lies the problem. The Court's appreciation of petitioners' cause of action is that, while it would make out a case for ULP, under present law, however, the same falls short of the special requirements necessary to make it cognizable by the Labor Arbiter and the NLRC. Unsubstantiated conclusions of bad faith and unjustified refusal to re-employ petitioners, to our mind, do not constitute gross violation of the CBA for purposes of lodging jurisdiction with the Labor Arbiter and the NLRC. Although evidentiary matters are not required (and even discouraged) to be alleged in a complaint, still, sufficient details supporting the conclusion of bad faith and unjust refusal to re-employ petitioners must be indicated. Furthermore, it is even doubtful if the CBA provision on re-employment fits into the accepted notion of an economic provision of the CBA. Thus, given the foregoing considerations, may the Briad doctrine be applied to the instant case and cause its dismissal for want of jurisdiction of the Labor Arbiter and the NLRC?

Upon a careful and meticulous study of Briad, the Court holds that the rationale behind it does not apply to the present case. We adopt instead the more recent case of Erectors, Inc. vs. National Labor Relations Commission,[14] where we refused to give retroactive application to Executive Order No. 797 which created the Philippine Overseas Employment Administration (POEA). Under said law, POEA was vested with "original and exclusive jurisdiction over all cases, including money claims, involving employer-employee relations arising out of or by virtue of any law or contract involving Filipino workers for overseas employment,"[15] which jurisdiction was originally conferred upon the Labor Arbiter. As in the instant case, the Labor Arbiter's assumption of jurisdiction therein was likewise questioned in view of the subsequent enactment of E.O. 797. In ruling against the retroactive application of the law, the Court explained its position as follows:

> "The rule is that jurisdiction over the subject matter is determined by the law in force at the time of the commencement of the action. On March 31, 1982, at the time private respondent filed his complaint against the petitioner, the prevailing laws were Presidential Decree No. 1691 and Presidential Decree No. 1391 which vested the Regional Offices of the Ministry of Labor and the Labor Arbiters with 'original and exclusive jurisdiction over all cases involving employer-employee relations including money claims arising out of any law or contracts involving Filipino workers for overseas employment.' At the time of the filing of the complaint, the Labor Arbiter had clear jurisdiction over the same.
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> E.O. No. 797 did not divest the Labor Arbiter's authority to hear and decide the case filed by private respondent prior to its effectivity. Laws should only be applied prospectively unless the legislative intent to give them retroactive effect is expressly declared or is necessarily implied from the language used. We fail to perceive in the language of E.O. No. 797 an intention to give it retroactive effect.
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> The case of Briad Agro Development Corp. vs. Dela Cerna cited by the petitioner is not applicable to the case at bar. In Briad, the Court applied the exception rather than the general rule. In

this case, Briad Agro Development Corp. and L.M. Camus Engineering Corp. challenged the jurisdiction of the Regional Director of the Department of Labor and Employment over cases involving workers' money claims, since Article 217 of the Labor Code, the law in force at the time of the filing of the complaint, vested in the Labor Arbiters exclusive jurisdiction over such cases. The Court dismissed the petition in its Decision dated June 29, 1989. It ruled that the enactment of E.O. No. 111, amending Article 217 of the Labor Code, cured the Regional Director's lack of jurisdiction by giving the Labor Arbiter and the Regional Director concurrent jurisdiction over all cases involving money claims. However, on November 9, 1989, the Court, in a Resolution, reconsidered and set aside its June 29 Decision and referred the case to the Labor Arbiter for proper proceedings, in view of the promulgation of Republic Act (R.A.) 6715 which divested the Regional Directors of the power to hear money claims. It bears emphasis that the Court accorded E.O. No. 111 and R.A. 6715 a retroactive application because as curative statutes, they fall under the exceptions to the rule on prospectivity of laws.

E.O. No. 111, amended Article 217 of the Labor Code to widen the worker's access to the government for redress of grievances by giving the Regional Directors and Labor Arbiters concurrent jurisdiction over cases involving money claims. This amendment, however, created a situation where the jurisdiction of the Regional Directors and the Labor Arbiters overlapped. As a remedy, R.A. 6715 further amended Article 217 by delineating their respective jurisdictions. Under R.A. 6715, the Regional Director has exclusive original jurisdiction over cases involving money claims provided: (1) the claim is presented by an employer or person employed in domestic or household service, or househelper under the Code; (2) the claimant, no longer being employed, does not seek reinstatement; and (3) the aggregate money claim of the employee or househelper does not exceed P5,000.00. All other cases within the exclusive and original jurisdiction of the Labor Arbiter. E.O. No. 111 and R.A. 6715 are therefore curative statutes. A curative statute is enacted to cure defects in a prior law or to validate legal proceedings, instruments or acts of public authorities which

> would otherwise be void for want of conformity with certain existing legal requirements.
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> The law at bar, E.O. No. 797, is not a curative statute."

We do not find any reason why the Court should not apply the above ruling to the case at bar, notwithstanding the fact that a different law is involved. Actually, this is not the first time that the Court refused to apply RA 6715 retroactively.[16] Our previous decisions on whether to give it retroactive application or not depended to a great extent on what amended provisions were under consideration, as well as the factual circumstances to which they were made to apply. In Briad, the underlying reason for applying RA 6715 retroactively was the fact that prior to its amendment, Article 217 of the Labor Code, as amended by then Executive Order No. 111, created a scenario where the Labor Arbiters and the Regional Directors of the Department of Labor and Employment (DOLE) had overlapping jurisdiction over money claims. This situation was viewed as a defect in the law so that when RA No. 6715 was passed and delineated the jurisdiction of the Labor Arbiters and Regional Directors, the Court deemed it a rectification of such defect; hence, the conclusion that it was curative in nature and, therefore, must be applied retroactively.

The same thing cannot be said of the case at bar. Like in Erectors, the instant case presents no defect in the law requiring a remedy insofar as the jurisdiction of the Labor Arbiter and the Voluntary Arbitrator is concerned. There is here no overlapping of jurisdiction to speak of because matters involving interpretation and implementation of CBA provisions, as well as interpretation and enforcement of company personnel policies, have always been determined by the Voluntary Arbitrator even prior to RA 6715. Similarly, all ULP cases were exclusively within the jurisdiction of the Labor Arbiter. What RA 6715 merely did was to re-apportion the jurisdiction over ULP cases by conferring exclusive jurisdiction over such ULP cases that do not involve gross violation of a CBA's economic provision upon the voluntary arbitrator. We do not see anything in the act of re-apportioning jurisdiction curative of any defect in the law as it stood prior to the enactment of RA 6715. The Court view it as merely a matter of change in policy of the lawmakers, especially since the 1987 Constitution adheres to the preferential use of voluntary modes of

dispute settlement.[17] This, instead of the inherent defect in the law, must be the rationale that prompted the amendment. Hence, we uphold the jurisdiction of the Labor Arbiter which attached to this case at the time of its filing on December 5, 1988.

Finally, the contention that it was Atty. Gutierrez who exclusively represented Philtread and that the law firm of Borreta, Gutierrez and Leogardo had been dissolved, are lame excuses to cast doubt on the propriety of service to Atty. Borreta. It must be noted that the complaint of petitioners was filed on December 5, 1988. Presumably, the preliminary conferences adverted to by Atty. Borreta, where Atty. Gutierrez supposedly declared that he was exclusively representing Philtread, transpired at around that date. The Court, however, is surprised to discover that the record bears a Notice of Change of Address dated March 12, 1990, filed by Atty. Gutierrez, indicating therein that the counsel for respondent (Philtread) was "Borreta, Gutierrez and Leogardo" whose address could be found at the "3rd Floor, Commodore Condominium Arquiza corner M. Guerrero Streets, Ermita, Manila." If, indeed, Atty. Gutierrez declared during the Labor Arbiter's proceedings that he was exclusively representing Philtread, why then did he use the firm's name, and its new address at that, in the aforementioned notice to the NLRC? Moreover, why did Atty. Borreta take fifteen days to file his Manifestation and inform the NLRC of the "improper" service of the resolution to him? Why did he not object immediately to the service by the bailiff? Considering that Atty. Gutierrez and Atty. Borreta were once partners in their law firm, it behooves Atty. Borreta to have at least advised his former partner of the receipt of the resolution. As a lawyer, his receipt of the adverse resolution should have alerted him of the adverse consequences which might follow if the same were not acted upon promptly, as what in fact happened here. As for Atty. Gutierrez, if the law firm of Borreta, Gutierrez, and Leogardo were really dissolved, it was incumbent upon him not to have used the firm's name in the first place, or he should have withdrawn the appearance of the firm and entered his own appearance, in case the dissolution took place midstream. By failing to exercise either option, Atty. Gutierrez cannot now blame the NLRC for serving its resolution at the address of the firm still on record.[18] To our mind, these excuses cannot camouflage the clever ploy of Philtread's counsel to earn a last chance to move for

reconsideration. This Court, it bears emphasizing, is not impressed, but looks incredulously at such superficial moves.

WHEREFORE, the instant petition is hereby **GRANTED**. The assailed resolutions of the NLRC dated November 18, 1992, and April 7, 1993, are **SET ASIDE**, while its resolution dated April 15, 1992, is **REINSTATED** for immediate execution.

SO ORDERED.

Regalado, Puno, Mendoza and Torres, Jr., *JJ*., concur.

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[1] First Division.
[2] Rollo, p. 6.
[3] Docketed as NLRC-NCR Case No. 12-04975-88. Rollo, p. 7.
[4] Decision, Rollo, p. 38.
[5] Labudahon vs. National Labor Relations Commission, 251 SCRA 129 (1995); Zapata vs. National Labor Relations Commission, 175 SCRA 56 (1989); G.A. Yupangco vs. National Labor Relations Commission, G.R. No. 102191, February 17, 1992; Flores vs. National Labor Relations Commission, 256 SCRA 735 (1996).
[6] Art. 223. "(T)he decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties."
[7] 7. "Section 14. Motions for Reconsideration. — Motions for reconsideration of any order, resolution or decision of the Commission shall not be entertained except when based on palpable or patent errors, provided that the motion is under oath and filed within ten (10) calendar days from receipt of the order, resolution or decision, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party and provided further, that only one such motion from the same party shall be entertained." (Emphasis supplied).
[8] Rollo, pp. 58-65.
[9] Ibid., p. 50.
[10] Article 221, Labor Code, as amended.
[11] 211 SCRA 361 (1992).
[12] The New Labor Relations Law.
[13] 179 SCRA 269 (1989).
[14] 256 SCRA 629 (1996).
[15] Section 4(a), E.O. 797.
[16] Cf. Inciong vs. NLRC, 185 SCRA 651 (1990), as regards immediate execution of an order to reinstate an employee; Lantion vs. NLRC, 181 SCRA 513 (1990) on the issue of backwages.
[17] Section 3, Article XIII.

[18] Cf. B.R. Sebastian Enterprises, Inc. vs. Court of Appeals, 206 SCRA 28 (1992).