606 Phil. 490

THIRD DIVISION

[G.R. No. 165756, June 05, 2009]

HOTEL ENTERPRISES OF THE PHILIPPINES, INC. (HEPI), OWNER OF HYATT REGENCY MANILA, PETITIONER, VS. SAMAHAN NG MGA MANGGAGAWA SA HYATT-NATIONAL UNION OF WORKERS IN THE HOTEL AND RESTAURANT AND ALLIED INDUSTRIES (SAMASAH-NUWHRAIN), RESPONDENT.

DECISION

NACHURA, J.:

The Constitution affords full protection to labor, but the policy is not to be blindly followed at the expense of capital. Always, the interests of both sides must be balanced in light of the evidence adduced and the peculiar circumstances surrounding each case.

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision[1] dated July 20, 2004 and the Resolution[2] dated October 20, 2004 in CA-G.R. SP No. 81153. The appellate court, in its decision and resolution, reversed the April 3, 2003 Resolution[3] of the National Labor Relations Commission (NLRC) and reinstated the October 30, 2002 Decision[4] issued by Labor Arbiter Aliman Mangandog upholding the legality of the strike staged by the officers and members of respondent Samahan ng mga Manggagawa sa Hyatt-National Union of Workers in the Hotel Restaurant and Allied Industries (Union).

We trace the antecedent facts below.

Respondent Union is the certified collective bargaining agent of the rank-and-file employees of Hyatt Regency Manila, a hotel owned by petitioner Hotel Enterprises of the Philippines, Inc. (HEPI).

In 2001, HEPI's hotel business suffered a slump due to the local and international economic slowdown, aggravated by the events of September 11, 2001 in the United States. An audited financial report made by Sycip Gorres Velayo (SGV) & Co. on January 28, 2002 indicated that the hotel suffered a gross operating loss amounting to P16,137,217.00 in 2001,[5] a staggering decline compared to its P48,608,612.00 gross operating profit[6] in year 2000.[7]

	2000	2001
Income from Hotel Operations	P 78,434,103	P 12,230,248
Other Deductions		

Provision for hotel rehabilitation	20,000,000	20,000,000
Provision for replacements of and additions to furnishings and equipment	9,825,491	8,367,465
	29,825,491	28,367,465
Gross Operating Profit (Loss)	P 48,608,612	(P 16,137,217)

According to petitioner, the management initially decided to cost-cut by implementing energy-saving schemes: prioritizing acquisitions/purchases; reducing work weeks in some of the hotel's departments; directing the employees to avail of their vacation leaves; and imposing a moratorium on hiring employees for the year 2001 whenever practicable.[8]

Meanwhile, on August 31, 2001, the Union filed a notice of strike due to a bargaining deadlock before the National Conciliation Mediation Board (NCMB), docketed as NCMB-NCR-NS 08-253-01.[9] In the course of the proceedings, HEPI submitted its economic proposals for the rank-and-file employees covering the years 2001, 2002, and 2003. The proposal included manning and staffing standards for the 248 regular rank-and-file employees. The Union accepted the economic proposals. Hence, a new collective bargaining agreement (CBA) was signed on November 21, 2001, adopting the manning standards for the 248 rank-and-file employees.[10]

Then, on December 21, 2001, HEPI issued a memorandum offering a "Special Limited Voluntary Resignation/Retirement Program" (SLVRRP) to its regular employees. Employees who were qualified to resign or retire were given separation packages based on the number of years of service.[11] The vacant positions, as well as the regular positions vacated, were later filled up with contractual personnel and agency employees.[12]

Subsequently, on January 21, 2002, petitioner decided to implement a downsizing scheme after studying the operating costs of its different divisions to determine the areas where it could obtain significant savings. It found that the hotel could save on costs if certain jobs, such as engineering services, messengerial/courier services, janitorial and laundry services, and operation of the employees' cafeteria, which by their nature were contractable pursuant to existing laws and jurisprudence, were abolished and contracted out to independent job contractors. After evaluating the hotel's manning guide, the following positions were identified as redundant or in excess of what was required for the hotel's actual operation given the prevailing poor business condition, *viz.*: a) housekeeping attendant-linen; b) tailor; c) room attendant; d) messenger/mail clerk; and e) telephone technician.[13] The effect was to be a reduction of the hotel's rank-and file employees from the agreed number of 248 down to just 150[14] but it would generate estimated savings of around P9,981,267.00 per year.[15]

On January 24, 2002, petitioner met with respondent Union to formally discuss the downsizing program.[16] The Union opposed the downsizing plan because no substantial evidence was shown to prove that the hotel was incurring heavy financial

losses, and for being violative of the CBA, more specifically the manning/staffing standards agreed upon by both parties in November 2001.[17] In a financial analysis made by the Union based on Hyatt's financial statements submitted to the Securities and Exchange Commission (SEC), it noted that the hotel posted a positive profit margin with respect to its gross operating and net incomes for the years 1998, 1999, 2000, and even in 2001.[18] Moreover, figures comprising the hotel's unappropriated retained earnings showed a consistent increase from 1998 to 2001, an indication that the company was, in fact, earning, contrary to petitioner's assertion. The net income from hotel operations slightly dipped from P78,434,103.00 in 2000 to P12,230,248.00 for the year 2001, but nevertheless remained positive.[19] With this, the Union, through a letter, informed the management of its opposition to the scheme and proposed instead several cost-saving measures.[20]

Despite its opposition, a list of the positions declared redundant and to be contracted out was given by the management to the Union on March 22, 2002.[21] Notices of termination were, likewise, sent to 48 employees whose positions were to be retrenched or declared as redundant. The notices were sent on April 5, 2002 and were to take effect on May 5, 2002.[22] A notice of termination was also submitted by the management to the Department of Labor and Employment (DOLE) indicating the names, positions, addresses, and salaries of the employees to be terminated. [23] Thereafter, the hotel management engaged the services of independent job contractors to perform the following services: (1) janitorial (previously, stewarding and public area attendants); (2) laundry; (3) sundry shop; (4) cafeteria;[24] and (5) engineering.[25] Some employees, including one Union officer, who were affected by the downsizing plan were transferred to other positions in order to save their employment.[26]

On April 12, 2002, the Union filed a notice of strike based on unfair labor practice (ULP) against HEPI. The case was docketed as NCMB-NCR-NS-04-139-02.[27] On April 25, 2002, a strike vote was conducted with majority in the bargaining unit voting in favor of the strike.[28] The result of the strike vote was sent to NCMB-NCR Director Leopoldo de Jesus also on April 25, 2002.[29]

On April 29, 2002, HEPI filed a motion to dismiss notice of strike which was opposed by the Union. On May 3, 2002, the Union filed a petition to suspend the effects of termination before the Office of the Secretary of Labor. On May 5, 2002, the hotel management began implementing its downsizing plan immediately terminating seven (7) employees due to redundancy and 41 more due to retrenchment or abolition of positions.[30] All were given separation pay equivalent to one (1) month's salary for every year of service.[31]

On May 8, 2002, conciliation proceedings were held between petitioner and respondent, but to no avail. On May 10, 2002, respondent Union went on strike. A petition to declare the strike illegal was filed by petitioner on May 22, 2002, docketed as NLRC-NCR Case No. 05-03350-2002.

On June 14, 2002, Acting Labor Secretary Manuel Imson issued an order in NCM-NCR-NS-04-139-02 (thence, NLRC Certified Case No. 000220-02), certifying the

labor dispute to the NLRC for compulsory arbitration and directing the striking workers, except the 48 workers earlier terminated, to return to work within 24 hours. On June 16, 2002, after receiving a copy of the order, members of respondent Union returned to work.[32] On August 1, 2002, HEPI filed a manifestation informing the NLRC of the pending petition to declare the strike illegal. Because of this, the NLRC, on November 15, 2002, issued an order directing Labor Arbiter Aliman Mangandog to immediately suspend the proceedings in the pending petition to declare the strike illegal and to elevate the records of the said case for consolidation with the certified case.[33] However, the labor arbiter had already issued a Decision[34] dated October 30, 2002 declaring the strike legal.[35] Aggrieved, HEPI filed an appeal *ad cautelam* before the NLRC questioning the October 30, 2002 decision.[36] The Union, on the other hand, filed a motion for reconsideration of the November 15, 2002 Order on the ground that a decision was already issued in one of the cases ordered to be consolidated.[37]

On appeal, the NLRC reversed the labor arbiter's decision. In a Resolution[38] dated April 3, 2003, it gave credence to the financial report of SGV & Co. that the hotel had incurred huge financial losses necessitating the adoption of a downsizing scheme. Thus, NLRC declared the strike illegal, suspended all Union officers for a period of six (6) months without pay, and dismissed the ULP charge against HEPI. [39]

Respondent Union moved for reconsideration, while petitioner HEPI filed its partial motion for reconsideration. Both were denied in a Resolution[40] dated September 24, 2003.

The Union filed a petition for *certiorari* with the CA on December 19, 2003[41] questioning in the main the validity of the NLRC's reversal of the labor arbiter's decision.[42] But while the petition was pending, the hotel management, on December 29, 2003, issued separate notices of suspension against each of the 12 Union officers involved in the strike in line with the April 3, 2003 resolution of the NLRC.[43]

On July 20, 2004, the CA promulgated the assailed Decision,[44] reversing the resolution of the NLRC and reinstating the October 30, 2002 decision of the Labor Arbiter which declared the strike valid. The CA also ordered the reinstatement of the 48 terminated employees on account of the hotel management's illegal redundancy and retrenchment scheme and the payment of their backwages from the time they were illegally dismissed until their actual reinstatement.[45] HEPI moved for reconsideration but the same was denied for lack of merit.[46]

Hence, this petition.

The issue boils down to whether the CA's decision, reversing the NLRC ruling, is in accordance with law and established facts.

We answer in the negative.

To resolve the correlative issues (*i.e.*, the validity of the strike; the charges of ULP

against petitioner; the propriety of petitioner's act of hiring contractual employees from employment agencies; and the entitlement of Union officers and terminated employees to reinstatement, backwages and strike duration pay), we answer first the most basic question: Was petitioner's downsizing scheme valid?

The pertinent provision of the Labor Code states:

> ART. 283. x x x
>
> The employer may also terminate the employment of any 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 worker 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 his 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 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.

Retrenchment is the reduction of work personnel usually due to poor financial returns, aimed to cut down costs for operation particularly on salaries and wages.[47] Redundancy, on the other hand, exists where the number of employees is in excess of what is reasonably demanded by the actual requirements of the enterprise.[48] Both are forms of downsizing and are often resorted to by the employer during periods of business recession, industrial depression, or seasonal fluctuations, and during lulls in production occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program, or introduction of new methods or more efficient machinery or automation.[49] Retrenchment and redundancy are valid management prerogatives, provided they are done in good faith and the employer faithfully complies with the substantive and procedural requirements laid down by law and jurisprudence.[50]

For a valid retrenchment, the following requisites must be complied with: (1) the retrenchment is necessary to prevent losses and such losses are proven; (2) written notice to the employees and to the DOLE at least one month prior to the intended date of retrenchment; and (3) payment of separation pay equivalent to one-month pay or at least one-half month pay for every year of service, whichever is higher.[51]

In case of redundancy, the employer must prove that: (1) a written notice was served on both the employees and the DOLE at least one month prior to the intended date of retrenchment; (2) separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher, has been paid; (3) good faith in abolishing the redundant positions; and (4) adoption of