

## THIRD DIVISION

[ G.R. No. 99266, March 02, 1999 ]

**SAN MIGUEL CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SECOND DIVISION, AND SAN MIGUEL CORPORATION EMPLOYEES UNION (SMCEU) - PTGWO, RESPONDENTS.**

### 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<sup>[1]</sup> 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)<sup>[2]</sup> 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 Corporation, 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").<sup>[3]</sup> 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:

**Sec.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:*

**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.

**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.*

**SEC. 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."*

x x x

**Sec. 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."*<sup>[4]</sup>

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.<sup>[5]</sup>

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<sup>[6]</sup> with the respondent *NLRC*, praying for: (1) the dismissal 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."*<sup>[7]</sup>

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