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SECOND DIVISION

[G.R. No. 127516, May 28, 1999]

ATLANTIC GULF AND PACIFIC COMPANY OF MANILA, INC. (AG&P), PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SECOND DIVISION, ENRIQUE M. GAMBOA, CLARO M. TUASON AND JOHN DIN, RESPONDENTS.

D E C I S I O N

PUNO, J.:

In this special civil action for *certiorari*, petitioner assails the Decision dated 30 September 1996, as well as Resolution dated 6 December 1996 of public respondent National Labor Relations Commission (NLRC), Second Division, in NLRC NCR Case No. 05-02295-89 invalidating its redundancy program and the separation from service of private respondents.

It is of public notice that in the late 1980's, the construction industry experienced a major slump. In 1987, petitioner, a corporation engaged in general construction work, reportedly incurred huge operating losses of P134.8 million and net losses of P35.42 million. To save itself, petitioner implemented on 1 March 1988, a redundancy program wherein one hundred seventy seven (177) employees occupying rank and file, managerial and staff positions were separated from employment. Among them were private respondents Gamboa, Tuason, and Din, all members of the AG&P United Rank and File Association (AG&P URFA), the certified collective bargaining representative for all rank and file employees of petitioner. These employees received all the benefits due them under the Labor Code. As separation pay equivalent to one (1) month salary for every year of service, respondent Gamboa received P149,261.13; respondent Tuazon was paid P99,037.26; and respondent Din was given P46,111.56. They also signed releases indicating their conformity with petitioner's redundancy program.[1]

More than a year after, or on 16 May 1989, petitioner was charged with unfair labor practice and illegal dismissal by private respondents. On 31 January 1991, Labor Arbiter Crisencio J. Ramos rendered a Decision in favor of private respondents. The dispositive portion of the decision reads:

> "WHEREFORE, premises considered, judgment is hereby rendered in this case as follows:
>
> "1. declaring respondent's redundancy program as illegal;
>
> "2. ordering respondents to reinstate complainants to their previous of equivalent positions without loss of seniority rights with full backwages, to pay complainants backwages from April 1, 1988 to January 31, 1991 (2 years and 10 months) as follows:

John Din ----------P 90,221.72

Enrique Gamboa ---------- 101,583.60

Claro Tuason ---------- 99,373.50

P291,178.82

"3. ordering respondents to pay complainants ten percent (10%) of the total award as attorney's fees or P29,117.88.

"The claims for moral and exemplary damages are denied for lack of sufficient basis.

"SO ORDERED."[2]

Arbiter Ramos held that the complaint of the private respondents was similar to the four (4) complaints[3] for illegal dismissal and unfair labor practice filed on 14 March 1988, by the AG&P URFA and thirty-six (36) union members against the petitioner. In these cases, the Third Division of the NLRC found petitioner guilty of the charge of unfair labor practice and illegal dismissal and ordered the reinstatement of complainants without loss of seniority rights and the payment of their full backwages plus attorney's fees. Arbiter Ramos adopted this ruling, thus:

x x x

"The evidence on hand provides us with no reason to deviate from the findings of the Commission in NLRC-NCR CASE NO. 00-03-1072-88 (and other cases related/consolidated thereto). As correctly found by the Commission, the termination of complainants from their work was placed under the guise of a redundancy program. The implementation of this program, effected in the wake of developments arising between the union and the company, particularly the strike in September 22 to October 18, 1987; the assumption of jurisdiction by the Secretary of Labor which subsequently rendered a decision on the economic issues of the strike and the CBA; and the pendency of the motion for reconsideration filed by both company and union with the Secretary of Labor (sic).

"It was also borne out by the evidence, and viewed correctly by the Honorable Commission, that the company's redundancy program has no basis for implementation on account of the substantial profits obtained by the company from 1983 to 1988.

"Thus, the redundancy program was but a mere scheme to get rid of the complainants, all active union members, from further working at the company and to continue championing the cause of labor - which act constitutes not only illegal dismissal but unfair labor practice as well.

"The receipt by the complainants of their respective separation pay, even if without protestation or reservation, does not stop them from asserting their right to security of tenure and self organization. As mere salaried

employees, complainants were faced with no other choice but to accept the money to enable them to meet the demands of everyday living.

"In view of the foregoing and considering further that the individual complainants herein are similarly situated with the complainants in the aforementioned cases previously decided by the commission, we are constrained to rule in favor of complainants."[4]

In the meanwhile, the NLRC was reorganized pursuant to R.A. No. 6715, otherwise known as the New Labor Relations Law. The aforementioned decision of the former Third Division of the NLRC went to its First Division. After admitting on appeal evidence of losses sustained by the petitioner from 1987 up to 1990, the First Division set aside the decision of its former Third Division and dismissed the employees' complaints for illegal dismissal. After their motion for reconsideration was denied, complainants filed a petition[5] before this Court alleging grave abuse of discretion on the part of the NLRC. On 29 November 1996, the Second Division of this Court, through Mr. Justice Vicente V. Mendoza, denied the petition.

Going back to the case at bar, public respondent, on appeal affirmed *in toto* the decision of Labor Arbiter Ramos in a Decision dated 30 September 1996. Petitioner moved for reconsideration but its motion was denied in a Resolution dated 6 December 1996. Hence, this petition.

Petitioner contends:

"1. The NLRC cannot overturn the decision of the Supreme Court dated November 29, 1996 in the case of AG&P [United] Rank and File Association v. NLRC [First Division] and AG&P (G.R. No. 108259) upholding the legality of the redundancy program of AG&P.

"2. The NLRC ignored the fact that the present case is similarly situated to the facts of NLRC Case No. 00-03-01072-88, NLRC Case No. 00-03-01248-88, NLRC Case No. 00-05-01970-88, NLRC Case No. 00-05-01972-88 which were the cases in review in AG&P [United] Rank and File Association v. NLRC [First Division] and AG&P (G.R. No. 108259).

"3. The dismissal of the private respondents was in accordance with law and public policy."[6]

The petition is impressed with merit.

The key issue is whether our Decision in G.R. No. 108259 is applicable to the case at bar. No less than the Solicitor General[7] makes the submission that said Decision is decisive of the case at bar. We quote *in extenso* the well taken view of the Solicitor General, *viz:*

x x x

"It should be noted that this case is similar to and, in fact, ought to be regarded as part of the cases filed by the employees affected by AG&P's retrenchment program in 1988.

"In [the] implementation of its retrenchment program in 1988, AG & P laid off 177 of its employees. Thirty-six (36) of these employees, which excludes private respondents, filed complainants for illegal dismissal and unfair labor practice with the NLRC-NCR. These complaints, docketed as NLRC-NCR Cases Nos. 00-03-01072, 00-01248-88, 00-05-01970-88 and 00-05-01972-88, were heard by Labor Arbiter Quintin Mendoza who, in his decision dated 8 November 1988 (pp. 181-187, Record), dismissed them for lack of merit.

"On appeal, the NLRC's Third Division reversed the aforesaid Labor Arbiter's Decision in its Resolution dated 20 March 1989 (pp. 24-30, Record) and declared AG & P's redundancy program as illegal and, consequently, found AG & P guilty of unfair labor practice. AG & P moved for a reconsideration. On 29 May 1992, the NLRC's First Division, to which the case was reassigned, rendered a Resolution (pp. 424-430, Record) which reconsidered the Resolution of the NLRC's Third Division and reinstated Labor Arbiter's Decision in its Resolution dated 20 March 1989 (pp. 24-30, Record) and declared AG & P's redundancy program as illegal and, consequently, found AG & P guilty of unfair labor practice. AG & P moved for a reconsideration. On 29 May 1992, the NLRC's First Division, to which the case was reassigned, rendered a Resolution (pp. 424-430, Record) which reconsidered the Resolution of the NLRC's Third Division and reinstated Labor Arbiter Mendoza's Decision. After the employees' motion for reconsideration was denied by the NLRC in a Resolution dated 29 October 1992, they filed a petition for certiorari before this Honorable Court, docketed as G.R. No. 108259 (AG & P United Rank and File Association, et. al. vs. NLRC, et al.). In this case, the employees squarely raised the issue of the validity of AG & P's redundancy/retrenchment program as well as the validity of the termination of their employment.

"Subsequently, private respondents filed on 16 May 1989 their own complaint a quo with [the] NLRC-NCR, where it was docketed as NLRC-NCR Case No. 00-05-02295-89. They raised the same issues posed in the earlier complaints filed by their thirty six (36) co-employees. The complaint was filed at the time the NLRC's Third Division already rendered its Resolution finding AG & P's retrenchment program as illegal and declaring it guilty of unfair labor practice in dismissing the 36 complaining AG & P employees but before the NLRC's First Division set aside the same Resolution.

"As already adverted to, Labor Arbiter Cresencio Ramos and the NLRC's Second Division both ruled in favor of private respondents, following the Resolution of the NLRC's Third Division in the former cases.

"Since the cases a quo stemmed from the same circumstances as the ones previously filed by the thirty six (36) AG & P employees, they share the same core issue: Was the redundancy/retrenchment program undertaken by AG & P in 1988 and the resulting termination of the employment of 177 of its employees, including private respondents herein, valid?