Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

PHILIPPINE JOURNALISTS INC., ROLAND DE JESUS, FE SISCAR, EUGENIA ABANIA, SARAH BUAN, FRANCIS RIVADELO, and MICHAEL MOSQUEDA, *Petitioners,*	**G.R. No. 208027**
	Present:
- versus -	BERSAMIN, *C.J.*, DEL CASTILLO, JARDELEZA,* GESMUNDO, *and* CARANDANG, *JJ.*
ERIKA MARIE R. DE GUZMAN and EDNA QUIRANTE, *Respondents.*	Promulgated: APR 01 2019

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DECISION

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to reverse the November 7, 2012 Decision[2] and July 4, 2013 Resolution[3] of the Court of Appeals (CA) dismissing the Petition for *Certiorari*[4] in CA-G.R. SP-No. 123901 and denying herein petitioners' Motion for Reconsideration,[5] respectively.

Factual Antecedents

As held by the CA, the facts are, as follows:

> Erika R. [sic] Marie de Guzman and Edna Quirante[6] are both employees of Philippine Journalists, Inc.[7] ('PJI'). De Guzman started with the company on 11 May 1994 and left the company on 15 November 2008. She was an Ad Taker/Account Executive with a salary of Php23,000.00 plus commission. On the other hand, Quirante was employed since 05 September 1989 and was the HRD Supervisor at the time of the cessation of her employment on 15 March 2009 with a salary of Php25,522.20.

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* On official leave.
1 *Rollo*, pp. 33-58.
2 Id. at 64-77; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon.
3 Id. at 78-79.
4 Id. at 336-371.
5 Id. at 378-402.
6 Herein respondents.
7 Herein petitioner.

On 28 October 2008 and 23 January 2009 respectively, [respondents], in separate letters, informed the company of their desire to avail of the company's optional retirement plan as embodied in the Collective Bargaining Agreement.

Because of PJI's failure and refusal to process the payment of the optional retirement benefits due them, [respondents] filed a complaint for unfair labor practice and money claims, nonpayment of optional retirement benefits and service incentive leave against PJI and its corporate officers,[8] x x x

On 29 April 2010, the Labor Arbiter dismissed the complaint for lack of merit.[9] According to the Labor Arbiter, the Collective Bargaining Agreement categorized certain positions as managerial and are therefore excluded from the bargaining unit. [Respondents] are not rank and file employees and therefore not entitled to optional retirement benefits.

[Respondents] appealed the Labor Arbiter's ruling to the NLRC-Fifth Division. x x x[10]

Ruling of the National Labor Relations Commission (NLRC)

In finding for the respondents, the NLRC in its December 29, 2011 Decision[11] ruled:

As to the existence of an approved optional Retirement Plan, We sustain [respondents'] contention.

Section 3, Article XIV of the CBA provides:

'Section 3. Optional Retirement. A regular employee who [h]as continuously rendered five (5) years of service, may optionally retire from employment with the COMPANY. A qualified employee who avails himself an optional retirement shall receive optional retirement pay computed on the basis of the approved Retirement Plan.'

The language of this provision is clear and leaves no room for interpretation. Clearly an 'approved optional retirement plan' is no longer required as the optional retirement pay shall be 'computed on the basis of the Approved Retirement Plan' which is provided for in Section 2 of the same Article of the CBA. x x x

x x x x

The CBA however specifically provides that the word 'employee' 'when used in this Agreement without any classification shall be deemed to refer only to person within the appropriate bargaining unit as herein defined.'

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[8] Additional petitioners herein.

[9] See Decision dated April 29, 2010 penned by Labor Arbiter Geobel A. Bartolabac, *rollo*, pp. 230-235.

[10] *Rollo*, pp. 65-66.

[11] Id. at 325-333; penned by Commissioner Mercedes R. Posada-Lacap and concurred in by Presiding Commissioner Leonardo L. Leonida and Commissioner Dolores M. Peralta-Beley.

> The preceding paragraph of the same Section 1 defined appropriate bargaining unit as 'covered by this AGREEMENT consists of regular rank-and-file employees except those occupying the position/job classifications enumerated in Annex A hereof assigned to its various operations in Metro Manila and other branches of operations which the COMPANY may establish in the Philippines during the term of this AGREEMENT.'
>
> [Respondent] De Guzman maintains that she was 'occupying the position of Ad Taker/Account Executive which is covered by the CBA.' However as found by the Labor Arbiter 'complainant De Guzman did not also deny the fact that aside from being Ad Taker, she is actually the Executive Security of the Chairman of respondent PJI.' On the other hand, Quirante was the HR Supervisor and in fact the Officer-in-Charge of the said department at the time of her application for retirement. Admittedly, they belong to the listed employees in Annex A of the CBA who are excluded from its coverage.
>
> [Respondents] argued that even if there are categories of employees who are excluded from the coverage of the CBA, the company, as a matter of practice, has extended benefits under the CBA to those who have been excluded. They cite in particular the cases of former employees, Nepthalie Hernandez, Ferdinand Trinidad, and Atty. Liza Madera, who availed of, and were granted optional retirement benefits despite being managerial employees.
>
> On this point, We sustain the [respondents] x x x. While [petitioners] argue that Ferdinand Trinidad was a rank and file employee they were silent with respect to Nepthalie E. Hernandez and Atty. Julie Interior-Madeja who both executed an affidavit in support of [respondents'] contention.
>
> We also took note of the fact that [respondents] have served or have been with the [PJI] for fourteen (14) and almost twenty (20) years respectively. Had it not been true that it has been a practice for [PJI] to grant [its] employees including managerial/confidential employees optional retirement benefits in accordance with the CBA, they would not have filed an application for optional retirement. There is nothing on record that would suggest why [respondents] would sever their relationships with [petitioners] except for their intention to avail of the benefits under the optional retirement plan.
>
> Jurisprudence has not laid down any rule specifying a minimum number of years within which a company practice must be exercised in order to constitute voluntary company practice. Thus, it can be six (6) years, three (3) years, or even as short as two (2) years. Petitioner cannot shirk away from its responsibility by merely claiming that it was a mistake or an error.
>
> IN VIEW OF THE FOREGOING, the appealed decision is hereby SET ASIDE and another one entered finding [respondents] entitled to Optional Retirement Benefits under Section 3 in relation to Section 2 Article XIV of the CBA. Consequently, [petitioners] are therefore ordered to pay [respondents] the aforecited benefits.
>
> SO ORDERED.[12]

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[12] Id. at 329-333.

Ruling of the Court of Appeals

Petitioners filed before the CA a Petition for *Certiorari*. On November 7, 2012, the CA rendered the assailed Decision, decreeing thus:

> The petition lacks merit.
>
> x x x x
>
> x x x The provision of the CBA granting x x x optional retirement is clear.
>
> Article XIV
> Separation, Resignation and Retirement
>
> Section 3. *Optional Retirement*. A regular employee who has continuously rendered five (5) years of service, may optionally retire from employment with the company. A qualified employee who avails himself of optional retirement shall receive optional retirement pay computed on the basis of the approved Retirement Plan.
>
> Hence, the option to retire is on the employee, not on the employer. The only requirement is that he/she has rendered five (5) continuous years of service.
>
> x x x x
>
> Petitioners insist that x x x respondents are not covered by the CBA pursuant to the provisions thereof, *viz.*:
>
> *Article 1*
>
> *Section 1: Appropriate Bargaining Unit.*
>
> *x x x*
>
> *Consequently, positions/job classifications as of the effectivity of this AGREEMENT enumerated in Annex A hereof are considered as managerial, probationary and contractual and are therefore, excluded from the bargaining unit.*
>
> x x x x
>
> As found out by both the Labor Arbiter and the NLRC, Quirante and De Guzman belong to the listed employees who are excluded from the coverage of the CBA. Quirante was the Supervisor of the HR Department, hence a managerial employee. De Guzman, aside from being an Ad Taker, was the Executive Security of the Chairman of PJI, thus receiving a salary commensurate to the position of an executive staff.
>
> Therefore, De Guzman and Quirante are not entitled to the optional retirement benefits pursuant to the provisions of the CBA.
>
> **Nonetheless, they can still avail of the optional retirement benefits because it has been a *company practice* to grant retirement benefits to PJI**

employees.

As to what constitutes company practice, the pronouncement in *Philippine Appliance Corporation v. Court of Appeals,* as accentuated in *Metropolitan Bank and Trust Company v. NLRC* and in *Eastern Telecommunications Philippines, Inc. v. Eastern Telecoms Employees Union* is instructive:

> To be considered a 'regular practice', however, the giving of the bonus should have been done over a long period of time, and must be shown to have been consistent and deliberate. **The test or rationale of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof.**

As can be gleaned from the affidavits appended in this petition, two (2) PJI employees who *do not belong to the* rank-and-file were previously granted an optional retirement privilege. These were Nepthalie E. Hernandez[13] and Atty. Julie Interior Madeja.[14]

Essentially, PJI does not refute that Fernandez and Madera are not rank and file employees. PJI granted the optional retirement benefits knowing fully well that they are not entitled under the CBA.

In *Pag-asa Steel Works v. CA*, it was enunciated that:

> x x x to ripen into a company practice that is demandable as a matter of right, the giving of the increase should not be by reason of a strict legal or contractual obligation, **but by reason of an act of liberality on the part of the employer**.
>
> x x x x

Thus, the grant of optional retirement benefits has ripened into a '*company practice*' or company usage that may be considered an enforceable obligation.

Significantly, Fernandez availed of the optional retirement benefits in 2003. On one hand, Atty. Madera retired optionally in 2001. Clearly, PJI consistently granted optional retirement benefits in a considerable length of two years.

As elucidated in *Metropolitan Bank and Trust Company v. NLRC:*

> With regard to the length of time the company practice should have been exercised to constitute voluntary employer practice which cannot be unilaterally withdrawn by the employer, jurisprudence has not laid down any hard and fast rule. In the case of *Davao Fruits Corporation v. Associated Labor Unions*, the company practice of including in the computation of the 13th-month pay the maternity leave pay and cash equivalent of unused vacation and sick leave lasted **for six (6) years.** In another case,

[13] Fernandez in some parts of the records.

[14] Madera in some parts of the records.

> *Tiangco v. Leogardo, Jr.*, the employer carried on the practice of giving a fixed monthly emergency allowance from November 1976 to February 1980, or **three (3) years and four (4) months**. While in *Sevilla Trading v. Semana,* the employer kept the practice of including non-basic benefits such as paid leaves for unused sick leave and vacation leave in the computation of their 13th-month pay for **at least two (2) years**. In all these cases, this Court held that the grant of these benefits has ripened into company practice or policy which cannot be peremptorily withdrawn. **The common denominator in these cases appears to be the regularity and deliberateness of the grant of benefits over a significant period of time.**

Thus, the grant of optional retirement benefits by PJI, even if it is not obliged under the CBA, already constitutes voluntary employer practice which cannot be unilaterally withdrawn or diminished by the employer without violating the spirit and intendment of Article 100 of the Labor Code, to wit:

> Art. 100. *Prohibition against elimination or diminution of benefits.* - Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

From the foregoing, it is therefore clear that the assailed ruling is in accord with established jurisprudence, thus NLRC did not abuse its discretion, least of all gravely.

x x x x

WHEREFORE, in view of the foregoing, the petition is DENIED for utter lack of merit. The assailed NLRC Decision dated 29 December 2011 is hereby AFFIRMED.

SO ORDERED.[15] (Citations omitted)

Petitioners filed a motion for reconsideration, but the CA denied the same through its July 4, 2013 Resolution. Hence, the instant Petition.

Issues

Petitioners submit that the issues to be resolved are, as follows:

WHAT IS THE DISTINCTION BETWEEN COMPULSORY RETIREMENT BENEFIT AND OPTIONAL RETIREMENT BENEFIT.

WHETHER OR NOT THE OPTIONAL RETIREMENT BENEFIT CAN BE DEMANDED AS A MANDATORY BENEFIT BY A REGULAR EMPLOYEE WHO VOLUNTARILY RESIGNS EVEN WITHOUT AN

[15] Id. at 69-76.

OPTIONAL RETIREMENT PROGRAM APPROVED BY THE MANAGEMENT.[16]

Petitioners' Arguments

In their Petition seeking a reversal of the assailed CA dispositions and the reinstatement instead of the April 29, 2010 Decision of the Labor Arbiter, petitioners argue that a distinction must be made between compulsory retirement benefit and that optional retirement benefit, in that while the former may be demanded as a matter of right pursuant to Article 287 of the Labor Code,[17] the latter may not. Petitioners contend that what respondents availed of was optional retirement, which was not demandable as a matter of right, but needed the approval of management. They also stress that under the CBA, an employee who had continuously rendered five years of service may optionally retire only if there is an approved retirement plan, and that the optional retirement is subject to management approval; that management consent and approval of the optional retirement is the most important condition for the grant of optional retirement benefits, as the employer must be financially ready to assume the obligation of paying out the retiring employee's benefits. Petitioners allege that PJI was suffering losses at the time respondents applied for optional retirement, and in fact the company implemented a retrenchment program owing to these losses. They also aver that there was no express company policy on optional retirement at the time that respondents applied for the same, but with respect to those employees who were granted optional retirement benefits in the past, these were covered by an existing approved optional retirement program as attested to by one of those who availed of

[16] Id. at 39.

[17] Art. 287 (now Art. 302 as re-numbered). *Retirement.* - Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half ($^1/_2$) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one-half ($^1/_2$) month salary shall mean fifteen (15) days plus one-twelfth ($^1/_{12}$) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

An underground mining employee upon reaching the age of fifty (50) years or more, but not beyond sixty (60) years which is hereby declared the compulsory retirement age for the underground mine workers, who has served at least five (5) years as underground mine worker, may retire and shall be entitled to all the retirement benefits provided for in this Article.

Retail, service and agricultural establishments or operations employing not more than (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions provided under Article 288 of this Code.

Nothing in this Article shall deprive any employee of benefits to which he may be entitled under existing laws or company policies and practices.

the program, Atty. Madera, and two other longtime PJI employees, Carolina Mendoza and Ernesto San Agustin.

Respondents' Arguments

Respondents failed to file their Comment despite repeated directives to do so such that, on January 8, 2018, the Court resolved to consider the filing of such comment as waived, and to require petitioners to manifest if they are willing to submit the case for decision on the basis of the pleadings filed.[18] This was reiterated in another Resolution[19] dated July 23, 2018; however, nothing was forthcoming from petitioners. Hence, the Court resolved to proceed to judgment.

Our Ruling

The Court denies the Petition.

Petitioners claim that respondents are not entitled to optional retirement benefits since PJI was in fact suffering business losses, such that it implemented a retrenchment program in 2005. However, this fact is not evident from the record. Quite the contrary, in *Philippine Journalists, Inc. v. National Labor Relations Commission*,[20] it became evident that PJI was not suffering from claimed business reverses such that it was compelled to reinstate several employees it originally fired as a result of a retrenchment program it undertook but which the NLRC officially found to be without basis. There was also the undisputed findings of fact that during that time, PJI office renovations were being made as evidenced by numerous purchase orders; that certain employees were granted merit increases; that a Christmas party for employees was held at a plush hotel; and that PJI executives refused to forego their quarterly bonuses.

Petitioners' claim of business reverses is supported solely by a statement contained in a supposed 2005 agreement between PJI and its employees, a "Memorandum of Understanding x x x,"[21] to the effect that PJI "suffered financial reverses x x x since 1997, as declared by the Supreme Court" - which is otherwise self-serving, at the very least, and untrue, within the context of the findings of facts in the above-mentioned decided case. Other than this claim, petitioners have not shown any other proof of business losses. PJI's act of reinstating its employees only proves that it could not have been suffering business losses at the time; petitioners were unable to rebut or disprove the finding in the above-cited case that PJI was not incurring financial reverses, but in fact accepted such finding with finality when it

[18] Id. at 463.
[19] Id., unpaginated.
[20] 532 Phil. 531 (2006).
[21] *Rollo*, pp. 126-127.

reinstated its illegally retrenched employees.

The CA ruled in respondents' favor on the ground that PJI's grant of optional retirement benefits to its managerial employees and executive staff had ripened into a company practice that it could not deny to respondents but grant to others in contravention of the non-diminution provision in the Labor Code, to wit:

> ART. 100. *Prohibition against elimination or diminution of benefits.* - Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

The Court finds the CA pronouncement tenable, not only because its factual findings must be upheld as this Court is not a trier of facts, but that, given the factual milieu, it appears that petitioners' denial of respondents' application for optional retirement was unfair as it granted the same privilege to others previously. Indeed, PJI appears to discriminate against its core employees, while it favors those in the upper tier; it had been found guilty of illegal dismissal based on an illegal retrenchment scheme, while upper management continued to enjoy its perks and privileges and refused to tighten its belt in this respect. While respondents are not considered as belonging to the rank-and-file, they do not belong to the upper echelon of PJI management either: De Guzman was Executive Security to the Chairman, while Quirante was HR Supervisor - not exactly juicy positions that find immediate favor with management.

Furthermore, the CA's ruling is correct in light of PJI's conduct of pursuing a scheme to reduce its personnel by any means necessary, which is both unfair and prejudicial to the interests of labor. Take for example respondents' case. Operating under the honest belief that they could avail of an optional retirement scheme that PJI allowed with respect to other employees in the past, respondents tendered their respective resignation letters on the *sole* ground that they were availing of the company's optional retirement package. Instead of clarifying the matter with respondents, petitioners treated the latters' actions with a lack of understanding and sympathy. If petitioners believed that respondents were not entitled to avail of the optional retirement scheme which respondents in good faith thought was available to them, and which was obviously the sole reason for tendering their resignations, then petitioners should have at least put their respective resignations on hold pending clarification of the issues. Instead, petitioners immediately took a hostile stance, and quickly grabbed the opportunity to declare respondents separated from PJI by voluntary resignation with its concomitant effects such as non-payment of benefits, separation pay, etc. They did not take time to explain, if so, that the optional retirement program was no longer in effect and give respondents the opportunity to reconsider their actions. This is tantamount to bad faith, considering the factual milieu and petitioners' conduct, where they have consistently shown an interest in dismissing their employees, yet keeping for themselves their corporate

bonuses, perks, and privileges.

Finally, PJI's bad faith is evident from its 2005 "Memorandum of Understanding x x x" with its employees, where it falsely declared that PJI "suffered financial reverses x x x since 1997, as declared by the Supreme Court." As earlier shown, this statement is untrue, yet petitioners deliberately included this false claim in its agreement with its employees in order to secure concessions favorable to them. In other words, petitioners deceived their employees and used this false claim to deprive the latter of a fair appraisal of the facts and circumstances during negotiations leading to such agreement.

> To be considered as a regular company practice, the employee must prove by substantial evidence that the giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately. Jurisprudence has not laid down any hard-and-fast rule as to the length of time that company practice should have been exercised in order to constitute voluntary employer practice. The common denominator in previously decided cases appears to be the regularity and deliberateness of the grant of benefits over a significant period of time. It requires an indubitable showing that the employer agreed to continue giving the benefit knowing fully well that the employees are not covered by any provision of the law or agreement requiring payment thereof. In sum, the benefit must be characterized by regularity, voluntary and deliberate intent of the employer to grant the benefit over a considerable period of time.[22]

The grant of optional retirement benefits to two management employees in the past was voluntary, deliberate, and done with sufficient regularity as would indicate that this had become a company practice within PJI, which petitioners now refuse to apply in the case of respondents, on the pretext that the company was losing money at that time. But PJI was not incurring losses, and was in fact exhibiting conduct inconsistent with the claim. What is clear is that it engaged in unfair labor activities and took an anti-labor stance at the expense of its employees, including respondents. PJI has shown that its employees' interests take a backseat to the perks and prerogatives of management. This cannot be countenanced.

WHEREFORE, the Petition is **DENIED**. The November 7, 2012 Decision and July 4, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 123901 are **AFFIRMED *in toto***.

In addition, the judgment award in favor of respondents or their retirement and other benefits shall earn interest of 12% *per annum*, computed from the filing of the Complaint up to June 30, 2013, and thereafter, 6% *per annum* from July 1, 2013 until their full satisfaction.

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[22] *Vergara, Jr. v. Coca-Cola Bottlers Philippines, Inc.*, 707 Phil. 255, 262-263 (2013).

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

LUCAS P. BERSAMIN
Chief Justice

(On official leave)
FRANCIS H. JARDELEZA
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LUCAS P. BERSAMIN
Chief Justice