Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEPSI-COLA PRODUCTS PHILIPPINES, INC., Petitioner,	**G.R. No. 175002** Present:
- versus -	CARPIO, *J.* Chairperson, BRION, DEL CASTILLO, PEREZ, and PERLAS-BERNABE, *JJ.*
ANECITO MOLON, AUGUSTO TECSON, JONATHAN VILLONES, BIENVENIDO LAGARTOS, JAIME CADION,[+] EDUARDO TROYO, RODULFO MENDIGO, AURELIO MORALITA, ESTANISLAO MARTINEZ, REYNALDO VASQUEZ, ORLANDO GUANTERO, EUTROPIO MERCADO, FRANCISCO GABON, ROLANDO ARANDIA, REYNALDO TALBO, ANTONIO DEVARAS, HONORATO ABARCA, SALVADOR MAQUILAN, REYNALDO ANDUYAN, VICENTE CINCO, FELIX RAPIZ, ROBERTO CATAROS, ROMEO DOROTAN, RODOLFO ARROPE, DANILO CASILAN, and SAUNDER SANTIAGO REMANDABAN III, Respondents.	Promulgated: FEB 18 2013

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D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the March 31, 2006 Decision[2] and September 18, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. S.P. No. 82354 which reversed and set aside the September 11, 2002 Decision[4] of the National Labor Relations Commission (NLRC) in NLRC Certified Case No. V-000001-2000.[5] The assailed CA issuances declared the illegality of respondents' retrenchment as well as held petitioner guilty of unfair labor practice (ULP), among others.

The Facts

Petitioner Pepsi-Cola Products Philippines, Inc. (Pepsi) is a domestic corporation engaged in the manufacturing, bottling and distribution of soft drink products. In view of its business, Pepsi operates plants all over the Philippines, one of which is located in Sto. Niño, Tanauan, Leyte (Tanauan Plant).

Respondents, on the other hand, are members of the Leyte Pepsi-Cola Employees Union-Associated Labor Union (LEPCEU-ALU), a legitimate labor organization composed of rank-and-file employees in Pepsi's Tanauan Plant, duly registered with the Department of Labor and Employment (DOLE) Regional Office No. 8.[6]

In 1999, Pepsi adopted a company-wide retrenchment program denominated as Corporate Rightsizing Program.[7] To commence with its program, it sent a notice of retrenchment to the DOLE[8] as well as individual notices to the affected employees informing them of their termination from work.[9] Subsequently, on July 13, 1999, Pepsi notified the DOLE of the initial batch of forty-seven (47) workers to be retrenched.[10] Among these employees were six (6) elected officers and twenty-nine (29) active members of the LEPCEU-ALU, including herein respondents.[11]

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1 *Rollo*, pp. 3-53.

2 Id. at 55-70. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Enrico A. Lazanas and Apolinario D. Bruselas, Jr., concurring.

3 Id. at 72-73. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Agustin S. Dizon and Priscilla Baltazar-Padilla, concurring.

4 CA *rollo*, pp. 103-136. Penned by Presiding Commissioner Irenea E. Ceniza, with Commissioner Oscar S. Uy, concurring and Commissioner Edgardo M. Enerlan, dissenting.

5 Id. at 103-104. Certified Case In Re: Labor Dispute at Pepsi-Cola Products Philippines, Inc. NLRC Certified Case No. V-000001-2000 (NCR CC No. 000171-99), NCMB-RBVIII-NS-07-10-99 and NCMB-RBVIII-NS-07-14-99. **Subsumed Cases**: (1) RAB Case No. VIII-7-0301-99 (For: Illegal Strike Under Article 217 of the Labor Code); (2) NLRC Injunction Case No. V-000013-99; (3) RAB Case No. VIII-9-0432-99 to 9-0560-99; and (4) RAB Case No. VIII-9-0459-99; **Consolidated Cases**: (1) RAB Case No. VIII-03-0246-2000 to 03-0259-2000; and (2) NLRC Injunction Case No. V-000003-2001.

6 Id. at 44. Registered on February 25, 1997, with Registration Number R0800-97-02-UR-63.

7 *Rollo*, p. 56.

8 NLRC records, pp. 439-440. Through a letter dated June 28, 1999 sent by Eduardo T. Dabbay, General Manager of the Tanauan Plant.

9 *Rollo*, p. 56.

10 Id.

11 NLRC records, p. 44.

On July 19, 1999, LEPCEU-ALU filed a Notice of Strike before the National Conciliation and Mediation Board (NCMB) due to Pepsi's alleged acts of union busting/ULP.[12] It claimed that Pepsi's adoption of the retrenchment program was designed solely to bust their union so that come freedom period, Pepsi's company union, the Leyte Pepsi-Cola Employees Union-Union de Obreros de Filipinas #49 (LEPCEU-UOEF#49) – which was also the incumbent bargaining union at that time – would garner the majority vote to retain its exclusive bargaining status.[13] Hence, on July 23, 1999, LEPCEU-ALU went on strike.[14]

On July 27, 1999, Pepsi filed before the NLRC a petition to declare the strike illegal with a prayer for the loss of employment status of union leaders and some union members.[15] On even date, then DOLE Secretary Bienvenido A. Laguesma certified the labor dispute to the NLRC for compulsory arbitration.[16] A return-to-work order was also issued.[17]

Incidentally, one of the respondents, respondent Saunder Santiago Remandaban III (Remandaban), failed to report for work within twenty-four (24) hours from receipt of the said order. Because of this, he was served with a notice of loss of employment status (dated July 30, 1999) which he challenged before the NLRC, asserting that his absence on that day was justified because he had to consult a physician regarding the persistent and excruciating pain of the inner side of his right foot.[18]

Eventually, Pepsi and LEPCEU-ALU agreed to settle their labor dispute arising from the company's retrenchment program and thus, executed the Agreement dated September 17, 1999 which contained the following stipulations:

> 1. The union will receive 100% of the separation pay based on the employees' basic salary and the remaining 50% shall be released by Management after the necessary deductions are made from the concerned employees;
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> 2. Both parties agree that the release of these benefits is without prejudice to the filing of the case by the Union with the National Labor Relations Commission;
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> 3. The Union undertakes to sign the Quitclaim but subject to the 2nd paragraph of this Agreement. [19]

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12 CA *rollo*, p. 107.
13 *Rollo*, p. 56.
14 CA *rollo*, p. 110. Docketed as NCMB RBVIII-NS-07-10-99.
15 Id. at 110, 112. Docketed as RAB Case No. VIII-7-0301-99.
16 Id. at 104. See also *rollo*, p. 57.
17 *Rollo*, p. 57.
18 CA *rollo*, p. 113-114. Docketed as RAB Case No. VIII-9-0459-99.
19 *Rollo*, pp. 501-502.

Pursuant thereto, respondents signed individual release and quitclaim forms in September 1999 (September 1999 quitclaims)[20] stating that Pepsi would be released and discharged from any action arising from their employment. Notwithstanding the foregoing, respondents[21] still filed separate complaints for illegal dismissal with the NLRC.[22]

The NLRC Ruling

On September 11, 2002, the NLRC rendered a Decision[23] in **NLRC Certified Case No. V-000001-2000**. Among the cases subsumed and consolidated therein are the following with the pertinent dispositions involving herein respondents:

> (1) In **NCMB RBVIII-NS-0710-99** and **NCMB-RBVIII-NS-07-14-99**, the NLRC absolved Pepsi of the charge of union busting/ULP as it was not shown that it (Pepsi) had any design to bust the union;[24]
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> (2) In **NLRC Case No. 7-0301-99**, the NLRC declared LEPCEU-ALU's July 23, 1999 strike as illegal for having been conducted without legal authority since LEPCEU-ALU was not the certified bargaining agent of the company. It was also observed that LEPCEU-ALU failed to comply with the seven (7)-day strike vote notice requirement. However, the NLRC denied Pepsi's prayer to declare loss of employment status of the union officers and members who participated in the strike for its failure to sufficiently establish the identity of the culpable union officers as well as their illegal acts;[25]
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> (3) In **NLRC RAB VIII Case No. 9-0459-00**, the NLRC ordered Pepsi to reinstate Remandaban to his former position without loss of seniority rights but without backwages considering the lack of evidence showing that he willfully intended to disregard the July 27, 1999 return-to-work order;[26] and
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> (4) In **NLRC RAB VIII Case Nos. 9-0432-99** to **9-0458-99**, the NLRC dismissed respondents' complaints for illegal

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20 Id. at 360-407. Annexes "A to WW" of petitioner's February 1, 2011 Memorandum.

21 With the exception of Remandaban who did not execute any release and quitclaim document and filed a separate complaint based on different grounds.

22 CA *rollo*, pp. 114. These were docketed as NLRC-RAB VIII Case Nos. 9-0432-99 to 9-0458-99 and subsequently subsumed under NLRC Certified Case No. V-000001-2000.

23 Id. at 103-136.

24 Id. at 106-110

25 Id. at 110-113.

26 Id. at 113-114.

> dismissal for having been finally settled by the parties through the execution of quitclaim documents by the respondents in favor of Pepsi.[27]

Respondents moved for reconsideration, mainly alleging that the NLRC erred when it declared that Pepsi's retrenchment program was valid.[28] The motion was, however, denied by the NLRC in its Resolution dated September 15, 2003.[29]

Aggrieved, respondents filed a petition for *certiorari* before the CA,[30] imputing grave abuse of discretion on the part of the NLRC when it upheld the validity of their retrenchment. They argued that the fact that Pepsi hired new employees as replacements right after retrenching forty-seven (47) of its workers negated the latter's claim of financial losses.[31] In any event, the evidence was inadequate to prove that Pepsi did suffer from any economic or financial loss to legitimize its conduct of retrenchment.[32]

In opposition, Pepsi pointed out that the respondents failed to assail the NLRC's finding that the controversy was not about the validity of the retrenchment program but only about the underlying conflict regarding the selection of the employees to be retrenched; [33] hence, the latter fact should only remain at issue. Further, it claimed that its financial/business losses were sufficiently substantiated by the audited financial statements and other related evidence it submitted.[34]

The CA Ruling

On March 31, 2006, the CA issued a Decision[35] which reversed and set aside the NLRC's ruling.

It observed that Pepsi could not have been in good faith when it retrenched the respondents given that they were chosen because of their union membership with LEPCEU-ALU. In this accord, it ruled that the subject retrenchment was invalid because there was no showing that Pepsi employed fair and reasonable criteria in ascertaining who among its

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27 Id. at 117-120.
28 Id. at 14a-17.
29 Id. at 14-19
30 The petition (Id. at 5-8) was initially dismissed due to procedural flaws through the CA's March 19, 2004 Resolution (Id. at 53-54). Respondents thereafter filed a Motion for Reconsideration With Prayer To Submit Supplemental Brief In Support of Petition For Certiorari and With Formal Appearance of Counsel (Id. at 66-97) which was granted by the CA in its August 17, 2004 Resolution (Id. at 240-242).
31 Id. at 74.
32 Id. at 76-77.
33 Id. at 330-331
34 Id. at 334-338.
35 *Rollo*, pp. 55-70

employees would be retrenched.[36]

Moreover, the CA held that Pepsi was guilty of ULP in the form of union busting as its retrenchment scheme only served to defeat LEPCEU-ALU's right to self-organization. It also pointed out that the fact that Pepsi hired twenty-six (26) replacements and sixty-five (65) new employees right after they were retrenched contravenes Pepsi's claim that the retrenchment was necessary to prevent further losses.[37]

Further, the CA pronounced that the respondents' signing of the individual release and quitclaims did not have the effect of settling all issues between them and Pepsi considering that the same should have been read in conjunction with the September 17, 1999 Agreement.[38]

Finally, the CA upheld the validity of LEPCEU-ALU's July 23, 1999 strike, ruling that LEPCEU-ALU "was sure to be the certified collective bargaining agent in the event that a certification election will be conducted" and thus, was authorized to conduct the aforesaid strike.[39] It added that there was no need for LEPCEU-ALU to comply with the fifteen (15) day cooling-off period requirement given that the July 23, 1999 strike was conducted on account of union busting.[40] In support thereof, the CA noted[41] that in a related case involving the same retrenchment incident affecting, however, other members of LEPCEU-ALU – entitled "*George C. Beraya, Arsenio B. Mercado, Romulo A. Orongan, Pio V. Dado and Primo C. Palana v. Pepsi Cola Products Philippines, Inc. (PCPPI), Pres. Jorge G. Sevilla and Area GM Edgar D. Del Mar*" (*Beraya*)[42] – the NLRC issued a Decision dated November 24, 2003[43] finding Pepsi guilty of union busting/ULP. Notably, in *Beraya*, the NLRC ruled that Pepsi's retrenchment program and the consequent dismissal of the retrenched employees were valid.[44]

Dissatisfied with the CA's ruling, Pepsi moved for reconsideration which was, however, denied by the CA in its September 18, 2006 Resolution.[45] Hence, the instant petition.

Issues Before the Court

As culled from the records, the following issues have been raised for

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36 Id. at 64-65.
37 Id. at 67-68.
38 Id. at 65-67.
39 Id. at 61.
40 Id. at 61-62.
41 Id. at 62.
42 Docketed as NLRC Case No. V-000115-2002.
43 NLRC records, pp. 743-748.
44 Id. at 748.
45 *Rollo*, pp. at 72-73.

the Court's resolution: (1) whether the CA may reverse the factual findings of the NLRC; (2) whether respondents' retrenchment was valid; (3) whether Pepsi committed ULP in the form of union busting; (4) whether respondents' execution of quitclaims amounted to a final settlement of the case; and (5) whether Remandaban was illegally dismissed.

The Court's Ruling

The petition is meritorious.

A. Appellate Court's Evaluation of the NLRC's Findings

Pepsi contends that the CA erred in evaluating and examining anew the evidence and in making its own finding of facts when the findings of the NLRC have been fully supported by substantial evidence. It therefore claims that the validity of the corporate rightsizing program, integrity and binding effect of the executed quitclaims as well as the issues relating to union busting and ULP constitute factual matters which have already been resolved by the NLRC and are now beyond the authority of the CA to pass upon on *certiorari*.

In contrast, respondents aver that the CA was clothed with ample authority to review the factual findings and conclusions of the NLRC, especially in this case where the latter misappreciated the factual circumstances and misapplied the law.

Pepsi's arguments are untenable.

Parenthetically, in a special civil action for *certiorari*, the CA is authorized to make its own factual determination when it finds that the NLRC gravely abused its discretion in overlooking or disregarding evidence which are material to the controversy. The Court, in turn, has the same authority to sift through the factual findings of both the CA and the NLRC in the event of their conflict. Thus, in *Plastimer Industrial Corporation v. Gopo*,[46] the Court explained:

> In a special civil action for certiorari, the Court of Appeals has ample authority to make its own factual determination. Thus, the Court of Appeals can grant a petition for certiorari when it finds that the NLRC committed grave abuse of discretion by disregarding evidence material to the controversy. To make this finding, the Court of Appeals necessarily has to look at the evidence and make its own factual determination. In the same manner, this Court is not precluded from reviewing the factual issues

[46] G.R. No. 183390, February 16, 2011, 643 SCRA 502, 509.

> when there are conflicting findings by the Labor Arbiter, the NLRC and the Court of Appeals. x x x x (Citations omitted.)

In this light, given the conflicting findings of the CA and NLRC in this case, the Court finds it necessary to examine the same in order to resolve the substantive issues.

Separately, it must be pointed out that the CA erred in resolving the issues pertaining to LEPCEU-ALU's July 23, 1999 strike in its March 31, 2006 Decision[47] and September 18, 2006 Resolution[48] (in CA-G.R. SP No. 82354) considering that the parties therein – now, the respondents in this case – do not have any legal interest in the said issue. To be clear, **NLRC-RAB VIII Case Nos. 9-0432-99 to 9-0458-99** are the cases which involve herein respondents; their concern in those cases was the illegality of their retrenchment. On the other hand, the strike issue was threshed out in **RAB Case No. VIII-7-0301-99** which involved other members of LEPCEU-ALU. Although all these cases were subsumed under **NLRC Certified Case No. V-000001-2000**, the legality of the July 23, 1999 strike was not raised by the respondents in NLRC-RAB VIII Case Nos. 9-0432-99 to 9-0458-99. In view of these incidents, given that the CA has taken cognizance of a matter (*i.e.*, the legality of the strike) where the parties (*i.e.*, respondents) are devoid of any legal interest, the Court sees no reason to perpetuate the misstep and delve upon the same.

B. Validity of Retrenchment

Retrenchment is defined as the termination of employment initiated by the employer through no fault of the employee and without prejudice to the latter, resorted by management during periods of business recession, industrial depression or seasonal fluctuations or during lulls over shortage of materials. It is a reduction in manpower, a measure utilized by an employer to minimize business losses incurred in the operation of its business.[49]

Under Article 297 of the Labor Code,[50] retrenchment is one of the authorized causes to validly terminate an employment. It reads:

> ART. 297. Closure of Establishment and Reduction of Personnel. – **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

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47 *Rollo*, pp. 55-70.

48 Id. at 72-73.

49 *Philippine Carpet Employees Association v. Secretary of Labor and Employment*, G.R. No. 168719, February 22, 2006, 483 SCRA 128, 143, citing *Trendline Employees Association-Southern Philippines Federation of Labor v. NLRC*, 338 Phil. 681, 688 (1997).

50 Renumbered pursuant to Republic Act No. 10151.

> circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry 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 closure 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 to 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 one (1) whole year. (Emphasis supplied.)

As may be gleaned from the afore-cited provision, to properly effect a retrenchment, the employer must: (a) serve a written notice both to the employees and to the DOLE at least one (1) month prior to the intended date of retrenchment; and (b) pay the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher.

Essentially, the prerogative of an employer to retrench its employees must be exercised only as a last resort, considering that it will lead to the loss of the employees' livelihood. It is justified only when all other less drastic means have been tried and found insufficient or inadequate.[51] Corollary thereto, the employer must prove the requirements for a valid retrenchment by clear and convincing evidence; otherwise, said ground for termination would be susceptible to abuse by scheming employers who might be merely feigning losses or reverses in their business ventures in order to ease out employees.[52] These requirements are:

> (1) That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;
>
> (2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;
>
> (3) That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher;
>
> (4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and

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51 Supra note 46, at 144, citing *Guerrero v. NLRC*, 329 Phil. 1069, 1076 (1996); and *Somerville Stainless Steel Corporation v. NLRC*, 350 Phil. 859, 870 (1998).

52 Id.

> (5) That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[53]

In due regard of these requisites, the Court observes that Pepsi had validly implemented its retrenchment program:

(1) Records disclose that both the CA and the NLRC had already determined that Pepsi complied with the requirements of substantial loss and due notice to both the DOLE and the workers to be retrenched. The pertinent portion of the CA's March 31, 2006 Decision reads:

> In the present action, the NLRC held that PEPSI-COLA's financial statements *are substantial evidence which carry great credibility and reliability viewed in light of the financial crisis that hit the country which saw multinational corporations closing shops and walking away, or adapting* [*sic*] *their own corporate rightsizing program*. Since these findings are supported by evidence submitted before the NLRC, we resolve to respect the same. x x x x
>
> The notice requirement was also complied with by PEPSI-COLA when it served notice of the corporate rightsizing program to the DOLE and to the fourteen (14) employees who will be affected thereby at least one (1) month prior to the date of retrenchment. (Citations omitted)[54]

It is axiomatic that absent any clear showing of abuse, arbitrariness or capriciousness, the findings of fact by the NLRC, especially when affirmed by the CA – as in this case – are binding and conclusive upon the Court.[55] Thus, given that there lies no discretionary abuse with respect to the foregoing findings, the Court sees no reason to deviate from the same.

(2) Records also show that the respondents had already been paid the requisite separation pay as evidenced by the September 1999 quitclaims signed by them. Effectively, the said quitclaims serve *inter alia* the purpose of acknowledging receipt of their respective separation pays.[56] Appositely, respondents never questioned that separation pay arising from their retrenchment was indeed paid by Pepsi to them. As such, the foregoing fact is now deemed conclusive.

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53 Id. at 144-145, citing *Asian Alcohol Corporation v. NLRC*, 364 Phil. 912, 926-927 (1999).
54 *Rollo*, p. 64.
55 See *Acevedo v. Advanstar Company, Inc.*, G.R. No. 157656, November 11, 2005, 474 SCRA 656, 664.
56 *Rollo*, pp. 360-407.

(3) Contrary to the CA's observation that Pepsi had singled out members of the LEPCEU-ALU in implementing its retrenchment program,[57] records reveal that the members of the company union (*i.e.*, LEPCEU-UOEF#49) were likewise among those retrenched.[58]

Also, as aptly pointed out by the NLRC, Pepsi's Corporate Rightsizing Program was a company-wide program which had already been implemented in its other plants in Bacolod, Iloilo, Davao, General Santos and Zamboanga.[59] Consequently, given the general applicability of its retrenchment program, Pepsi could not have intended to decimate LEPCEU-ALU's membership, much less impinge upon its right to self-organization, when it employed the same.

In fact, it is apropos to mention that Pepsi and its employees entered into a collective bargaining agreement on October 17, 1995 which contained a union shop clause requiring membership in LEPCEU-UOEF#49, the incumbent bargaining union, as a condition for continued employment. In this regard, Pepsi had all the reasons to assume that all employees in the bargaining unit were all members of LEPCEU-UOEF#49; otherwise, the latter would have already lost their employment. In other words, Pepsi need not implement a retrenchment program just to get rid of LEPCEU-ALU members considering that the union shop clause already gave it ample justification to terminate them. It is then hardly believable that union affiliations were even considered by Pepsi in the selection of the employees to be retrenched.[60]

Moreover, it must be underscored that Pepsi's management exerted conscious efforts to incorporate employee participation during the implementation of its retrenchment program. Records indicate that Pepsi had initiated sit-downs with its employees to review the criteria on which the selection of who to be retrenched would be based. This is evidenced by the report of NCMB Region VIII Director Juanito Geonzon which states that "[Pepsi's] [m]anagement conceded on the proposal to review the criteria and to sit down for more positive steps to resolve the issue."[61]

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57 Id. at 64. The CA disposed as follows; "Gleaned from the records, the members of the LEPCEU-ALU were singled out to be retrenched. Note that members of the other rival union did not file any case before the Labor Arbiter and the NLRC. This scenario creates a suspicion in the mind of the Court and bolsters our finding that indeed, the members of the LEPCEU-ALU were among those chosen to be retrenched because of their union membership. x x x"

58 NLRC records, pp. 43-44. Among the forty-seven (47) employees retrenched only thirty-five (35) belonged to LEPCEU-ALU.

59 CA *rollo*, p.107.

60 Id. at 107-108

61 Id. at 109.

Lastly, the allegation that the retrenchment program was a mere subterfuge to dismiss the respondents considering Pepsi's subsequent hiring of replacement workers cannot be given credence for lack of sufficient evidence to support the same.

Verily, the foregoing incidents clearly negate the claim that the retrenchment was undertaken by Pepsi in bad faith.

(5) On the final requirement of fair and reasonable criteria for determining who would or would not be dismissed, records indicate that Pepsi did proceed to implement its rightsizing program based on fair and reasonable criteria recommended by the company supervisors.[62]

Therefore, as all the requisites for a valid retrenchment are extant, the Court finds Pepsi's rightsizing program and the consequent dismissal of respondents in accord with law.

At this juncture, it is noteworthy to mention that in the related case of *Beraya* – which involved the same retrenchment incident affecting the respondents, although litigated by other LEPCEU-ALU employees – the NLRC in a Decision dated November 24, 2003 had already pronounced that Pepsi's retrenchment program was valid.[63] Subsequently, the petitioners in *Beraya* elevated the case via petition for *certiorari* to the CA[64] which was, however, denied in a Decision dated November 28, 2006.[65] They appealed the said ruling to the Court[66] which was equally denied through the Resolutions dated April 24, 2008[67] and August 4, 2008.[68] The fact that the validity of the same Pepsi retrenchment program had already been passed upon and thereafter sustained in a related case, albeit involving different parties, behooves the Court to accord a similar disposition and thus, finally uphold the legality of the said program altogether.

C. Union Busting and ULP

Under Article 276(c) of the Labor Code, there is union busting when the existence of the union is threatened by the employer's act of dismissing the former's officers who have been duly-elected in accordance with its constitution and by-laws.[69]

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62 Id. at 110.
63 NLRC records, p. 748.
64 Docketed as CA-G.R. SP No. 84383.
65 *Rollo*, pp. 517-533. Penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Isaias P. Dicdican and Romeo F. Barza, concurring.
66 Docketed as G.R. No. 181694 (*George C. Beraya, et al. v. Pepsi-Cola Products Phils., Inc.*).
67 *Rollo*, p. 539.
68 Id. at 540.
69 Article 276(c) of the Labor Code provides in part:
(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the

On the other hand, the term unfair labor practice refers to that gamut of offenses defined in the Labor Code[70] which, at their core, violates the constitutional right of workers and employees to self-organization,[71] with the sole exception of Article 257(f) (previously Article 248[f]).[72] As explained in the case of *Philcom Employees Union v. Philippine Global Communications*:[73]

> **Unfair labor practice refers to acts that violate the workers' right to organize**. The prohibited acts are related to the workers' right to self-organization and to the observance of a CBA. Without that element, the acts, no matter how unfair, are not unfair labor practices. The only exception is Article 248(f) [now Article 257(f)]. (Emphasis and underscoring supplied)

Mindful of their nature, the Court finds it difficult to attribute any act of union busting or ULP on the part of Pepsi considering that it retrenched its employees in good faith. As earlier discussed, Pepsi tried to sit-down with its employees to arrive at mutually beneficial criteria which would have been adopted for their intended retrenchment. In the same vein, Pepsi's cooperation during the NCMB-supervised conciliation conferences can also be gleaned from the records. Furthermore, the fact that Pepsi's rightsizing program was implemented on a company-wide basis dilutes respondents' claim that Pepsi's retrenchment scheme was calculated to stymie its union activities, much less diminish its constituency. Therefore, absent any perceived threat to LEPCEU-ALU's existence or a violation of respondents' right to self-organization – as demonstrated by the foregoing actuations – Pepsi cannot be said to have committed union busting or ULP in this case.

> Department at least thirty (30) days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be fifteen (15) days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However **in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened**, the 15-day cooling-off period shall not apply and the union may take action immediately. (Emphasis supplied.)

70 Art. 257 of the Labor Code enumerates the unfair labor practices by employers, while Art. 258 enumerates the unfair labor practices of labor organizations.

71 Article 256 of the Labor Code provides in part:

> ART. 256. Concept of Unfair Labor Practice and Procedure for Prosecution Thereof. – Unfair labor practices **violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management**, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.
>
> Consequently, unfair labor practices are not only violations of the civil rights of both labor and management but are also criminal offenses against the State which shall be subject to prosecution and punishment as herein provided. x x x (Emphasis supplied.)

72 (f) To dismiss, discharge, or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code; x x x.

73 *Philcom Employees Union v. Philippine Global Communications*, G.R. No. 144315, July 17, 2006 citing *Great Pacific Life Employees Union v. Great Pacific Life Assurance Corporation*, G.R. No. 126717, 11 February 1999, 303 SCRA 113; and Cesario A. Azucena, Jr., II The Labor Code with Comments and Cases 210 (5th ed. 2004).

D. Execution of Quitclaims

A waiver or quitclaim is a valid and binding agreement between the parties, provided that it constitutes a credible and reasonable settlement and the one accomplishing it has done so voluntarily and with a full understanding of its import.[74] The applicable provision is Article 232 of the Labor Code which reads in part:

> ART. 232. Compromise Agreements. — Any compromise settlement, including those involving labor standard laws, voluntarily agreed upon by the parties with the assistance of the Bureau or the regional office of the Department of Labor, shall be **final and binding upon the parties**. x x x (Emphasis and underscoring supplied)

In *Olaybar v. National Labor Relations Commission*,[75] the Court, recognizing the conclusiveness of compromise settlements as a means to end labor disputes, held that Article 2037 of the Civil Code, which provides that "[a] compromise has upon the parties the effect and authority of *res judicata*," applies suppletorily to labor cases even if the compromise is not judicially approved.[76]

In the present case, Pepsi claims that respondents have long been precluded from filing cases before the NLRC to assail their retrenchment due to their execution of the September 1999 quitclaims. In this regard, Pepsi advances the position that all issues arising from the foregoing must now be considered as conclusively settled by the parties.

The Court is unconvinced.

As correctly observed by the CA, the September 1999 quitclaims must be read in conjunction with the September 17, 1999 Agreement, to wit:

> 2. Both parties agree that the release of these benefits is **without prejudice to the filing of the case by the Union with the National Labor Relations Commission**;
>
> 3. The **Union undertakes to sign the Quitclaim but subject to the 2nd paragraph** of this Agreement. x x x (Emphasis and underscoring supplied) [77]

The language of the September 17, 1999 Agreement is

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74 *Alabang Country Club, Inc. v. NLRC,* G.R. No. 157611, August 9, 2005, 466 SCRA 329,346, citing *Wack Wack Golf and Country Club v. NLRC*, G.R. No. 149793, April 15, 2005, 456 SCRA 280.

75 *Olaybar v. NLRC*, G.R. No. 108713, October 28, 1994, 237 SCRA 819.

76 *J-Phil Marine, Inc. v. NLRC,* G.R. No. 175366, August 11, 2008, 561 SCRA 675, 680, citing *Olaybar* at 823-824.

77 *Rollo*, p. 501.

straightforward. The use of the term "subject" in the 3rd clause of the said agreement clearly means that the signing of the quitclaim documents was without prejudice to the filing of a case with the NLRC. Hence, when respondents signed the September 1999 quitclaims, they did so with the reasonable impression that that they were not precluded from instituting a subsequent action with the NLRC. Accordingly, it cannot be said that the signing of the September 1999 quitclaims was tantamount to a full and final settlement between Pepsi and respondents.

E. Dismissal of Remandaban

An illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.[78] In certain cases, however, the Court has ordered the reinstatement of the employee without backwages considering the fact that (1) the dismissal of the employee would be too harsh a penalty; and (2) the employer was in good faith in terminating the employee. For instance, in the case of *Cruz v. Minister of Labor and Employment*[79] the Court ruled as follows:

> The Court is convinced that petitioner's guilt was substantially established. Nevertheless, we agree with respondent Minister's order of reinstating petitioner without backwages instead of **dismissal which may be too drastic**. **Denial of backwages would sufficiently penalize her for her infractions**. The bank officials acted in good faith. They should be exempt from the burden of paying backwages. **The good faith of the employer, when clear under the circumstances, may preclude or diminish recovery of backwages**. Only employees discriminately dismissed are entitled to backpay. x x x (Emphasis and underscoring supplied)

Likewise, in the case of *Itogon-Suyoc Mines, Inc. v. National Labor Relations Commission*,[80] the Court pronounced that "[t]he ends of social and compassionate justice would therefore be served if private respondent is reinstated but without backwages in view of petitioner's good faith."

The factual similarity of these cases to Remandaban's situation deems it appropriate to render the same disposition.

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78 *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507, citing *Mt. Carmel College v. Resuena*, G.R. No. 173076, October 10, 2007, 535 SCRA 518, 541.

79 *Cruz v. Minister of Labor and Employment*, G.R. No. L-56591, January 17, 1983, 120 SCRA 15, 20.

80 *Itogon-Suyoc Mines, Inc. v. NLRC*, G.R. No. L-54280, September 30, 1982, 117 SCRA 523, 529.

As may be gathered from the September 11, 2002 NLRC Decision, while Remandaban was remiss in properly informing Pepsi of his intended absence, the NLRC ruled that the penalty of dismissal would have been too harsh for his infractions considering that his failure to report to work was clearly prompted by a medical emergency and not by any intention to defy the July 27, 1999 return-to-work order.[81] On the other hand, Pepsi's good faith is supported by the NLRC's finding that "the return-to-work-order of the Secretary was taken lightly by Remandaban."[82] In this regard, considering Remandaban's ostensible dereliction of the said order, Pepsi could not be blamed for sending him a notice of termination and eventually proceeding to dismiss him. At any rate, it must be noted that while Pepsi impleaded Remandaban as party to the case, it failed to challenge the NLRC ruling ordering his reinstatement to his former position without backwages. As such, the foregoing issue is now settled with finality.

All told, the NLRC's directive to reinstate Remandaban without backwages is upheld.

WHEREFORE, the petition is **GRANTED**. The assailed March 31, 2006 Decision and September 18, 2006 Resolution of the Court of Appeals in CA-G.R. S.P. No. 82354 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the September 11, 2002 Decision of the National Labor Relations Commission is hereby **REINSTATED** insofar as (1) it dismissed subsumed cases NLRC-RAB VIII Case Nos. 9-0432-99 to 9-0458-99 and; (2) ordered the reinstatement of respondent Saunder Santiago Remandaban III without loss of seniority rights but without backwages in NLRC-RAB VIII Case No. 9-0459-99.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

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81 CA *rollo*, p. 114.
82 Id.

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

I attest 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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

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.

MARIA LOURDES P. A. SERENO
Chief Justice