Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MANILA POLO CLUB EMPLOYEES' UNION (MPCEU) FUR-TUCP, Petitioner,	**G.R. No. 172846**
	Present:
	VELASCO, JR., *J.*, *Chairperson,*
	PERALTA,
- versus -	ABAD,
	MENDOZA, and
	LEONEN, *JJ.*
MANILA POLO CLUB, INC., Respondent.	
	Promulgated:
	JUL 24 2013

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D E C I S I O N

PERALTA, *J.*:

Challenged in this Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure are the February 2, 2006 Decision[1] and May 29, 2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 73127 affirming *in toto* the August 28, 2002 Decision[3] and September 13, 2002 Resolution[4] of Voluntary Arbitrator Jesus B. Diamonon (VA Diamonon), which dismissed the complaint for illegal retrenchment filed by petitioner.

The facts are uncomplicated.

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1 Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Elvi John S. Asuncion and Noel G. Tijam concurring; *rollo*, pp. 48-75.

2 *Id.* at 85-100.

3 *Id.* at 121-130.

4 *Id.* at 131-134.

Petitioner Manila Polo Club Employees Union (MPCEU), which is affiliated with the Federation of Unions of Rizal (FUR)-TUCP, is a legitimate labor organization duly registered with the Department of Labor and Employment (DOLE), while respondent Manila Polo Club, Inc. is a non-profit and proprietary membership organization which provides recreation and sports facilities to its proprietary members, their dependents, and guests.

On December 13, 2001, the Board of Directors of respondent unanimously resolved to completely terminate the entire operations of its Food and Beverage (F & B) outlets, except the Last Chukker, and award its operations to a qualified restaurant operator or caterer.[5] Cited as reasons were as follows:

> WHEREAS, the Food and Beverage (F & B) operations has resulted in yearly losses to the Club in six (6) out of the last eight (8) years with FY 2001 suffering the largest loss at ₱10,647,981 and that this loss is due mainly to the exceedingly high manpower cost and other management inefficiencies;
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> WHEREAS, due to the substantial losses incurred by the Club in both F&B operations and in its recurring operations, the Board and management had instituted cost and loss-cutting measures;
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> WHEREAS, the Board recognized the non-viability of the operations of the Food and Beverage Department and that its continued operations by the Club will result in substantial losses that will seriously impair the Club's financial health and membership satisfaction;
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> WHEREAS, the Board recognized the urgent need to act and act decisively and eliminate factors contributing to substantial losses in the operations of the Club, more particularly the food and beverage operations. Thus, F & B operations are to cease wholly and totally, subject to observance and requirements of the law and other rules. x x x[6]

Subsequently, on March 22, 2002, respondent's Board[7] approved the implementation of the retrenchment program of employees who are directly and indirectly involved with the operations of the F & B outlets and authorized then General Manager Philippe D. Bartholomi to pay the employees' separation pay in accordance with the following scheme:

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5 Per Board Resolution No. 83-01/02 entitled *Approving the Cessation of Operations of All F & B Restaurants of the Club and refer it to Concessionaire.*

6 CA *Rollo*, p. 289.

7 Per Board Resolution No. 138-01/02 entitled *Approving the Program Retrenching Employees Necessarily Arising Out of the Cessation of Operations of All F & B Restaurants of the Club and Authorizing General Manager Philippe D. Bartholomi to Implement the Foregoing Program.*

Length of Service (# Years)	Separation Pay (Php)
2 years of service and below	1 month pay
More than 2 years to 9 years of service	½ month pay for every year of service
At least 10 years of service	1 month pay for every year of service
At least 15 years of service	1.25 month(s) pay for every year of service
At least 20 years of service	1.5 month(s) pay for every year of service[8]

On even date, respondent sent notices to the petitioner and the affected employees (via registered mail) as well as submitted an Establishment Termination Report to the DOLE.[9] Respondent informed, among others, of the retrenchment of 123 employees[10] in the F & B Division and those whose functions are related to its operations; the discontinuance of the F & B operations effective March 25, 2002; the termination of the employment relationship on April 30, 2002; and, the continued payment of the employees' salaries despite the directive not to report to work effective immediately.

Unaware yet of the termination notice sent to them by respondent, the affected employees of petitioner were surprised when they were prevented from entering the Club premises as they reported for work on March 25, 2002. They later learned that the F & B operations of respondent had been awarded to Makati Skyline, Inc. effective that day. Treating the incident as respondent's way of terminating union members under the pretense of retrenchment to prevent losses, petitioner filed a Step II grievance and requested for an immediate meeting with the Management.[11] When the Management refused, petitioner filed a Notice of Strike before the National Conciliation and Mediation Board (NCMB) for illegal dismissal, violation/non-implementation of the Collective Bargaining Agreement (CBA), union busting, and other unfair labor practices (ULP).[12] In view of the position of respondent not to refer the issues to a voluntary arbitrator or to the Secretary of DOLE, petitioner withdrew the notice on April 9, 2002 and resolved to exhaust all remedies at the enterprise level.[13]

Later, on May 10, 2002, petitioner again filed a Notice of Strike, based on the same grounds, when it sensed the brewing tension brought about by the CBA negotiation that was in the meantime taking place.[14] A month after, however, the parties agreed, among others, to maintain the existing provisions of the CBA (except those pertaining to wage increases

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8 CA *rollo*, p. 309.
9 *Id.* at 311-337.
10 Five (5) of the affected employees are non-union members and are not included in the case submitted for voluntary arbitration.
11 CA *rollo*, p. 81.
12 *Id.* at 82-83.
13 *Id.* at 6.
14 *Id.* at 87-91.

and signing bonus) and to refer to the Voluntary Arbitrator the issue of retrenchment of 117 union members, with the qualification that *"[t]he retrenched employees subject of the VA will receive separation package without executing quitclaim and release, and without prejudice to the decision of the voluntary arbitrator."*[15]

On June 17, 2002, the parties agreed to submit before VA Diamonon the lone issue of whether the retrenchment of the 117 union members is legal.[16] Finding the pleadings submitted and the evidence adduced by the parties sufficient to arrive at a judicious determination of the issue raised, VA Diamonon resolved the case without the need of further hearings.

On August 28, 2002, VA Diamonon dismissed petitioner's complaint for lack of merit, but without prejudice to the payment of separation pay to the affected employees. In supporting his factual findings, the cases of *Catatista v. NLRC,*[17] *Dangan v. NLRC (2nd Div.), et al.,*[18] *Phil. Tobacco Flue-Curing & Redrying Corp. v. NLRC,*[19] *Special Events & Central Shipping Office Workers Union v. San Miguel Corp,*[20] and *San Miguel Corporation v. Ubaldo*[21] were relied upon. Petitioner's motion for reconsideration was likewise denied.

Upon an exhaustive examination of the evidence presented by the parties, the CA affirmed *in toto* the VA's Decision and denied the substantive aspects of petitioner's motion for reconsideration; hence, this petition.

We deny.

It is apparent from the records that this case involves a closure of business undertaking, not retrenchment. The legal requirements and consequences of these two authorized causes in the termination of employment are discernible. We distinguished, in *Alabang Country Club Inc. v. NLRC*:[22]

> x x x While retrenchment and closure of a business establishment or undertaking are often used interchangeably and are interrelated, they are

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15 CA *rollo*, pp. 92-93.
16 CA *rollo*, p. 94.
17 317 Phil. 54 (1995).
18 212 Phil. 653 (1984).
19 360 Phil. 218 (1998).
20 G.R. Nos. L-51002-06, May 30, 1983, 122 SCRA 557.
21 G.R. No. 92859, February 1, 1993, 218 SCRA 293.
22 503 Phil. 937 (2005).

actually two separate and independent authorized causes for termination of employment.

Retrenchment is the *reduction of personnel* for the purpose of cutting down on costs of operations in terms of salaries and wages resorted to by an employer because of losses in operation of a business occasioned by lack of work and considerable reduction in the volume of business.

Closure of a business or undertaking due to business losses is the reversal of fortune of the employer whereby there is a *complete cessation of business operations* to prevent further financial drain upon an employer who cannot pay anymore his employees since business has already stopped.

One of the prerogatives of management is the decision to close the entire establishment or to close or abolish a department or section thereof for economic reasons, such as to minimize expenses and reduce capitalization.

While the Labor Code provides for the payment of separation package in case of retrenchment to prevent losses, it does not obligate the employer for the payment thereof if there is closure of business due to serious losses.[23]

Likewise, the case of *Eastridge Golf Club, Inc. v. Eastridge Golf Club, Inc., Labor-Union, Super*[24] stressed the differences:

Retrenchment or lay-off is the termination of employment initiated by the employer, through no fault of the employees and without prejudice to the latter, during periods of business recession, industrial depression, or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation. It is an exercise of management prerogative which the Court upholds if compliant with certain substantive and procedural requirements, namely:

1. That retrenchment is necessary to prevent losses and it is proven, by sufficient and convincing evidence such as the employer's financial statements audited by an independent and credible external auditor, that such losses are substantial and not merely flimsy and actual or reasonably imminent; and that retrenchment is the only effective measure to prevent such imminent losses;
2. That written notice is served on to the employees and the DOLE at least one (1) month prior to the intended date of retrenchment; and

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23 *Alabang Country Club Inc. v. NLRC, supra,* at 950. (Italics in the original; citations omitted.)

24 G.R. No. 166760, August 22, 2008, 563 SCRA 93.

> 3. That the retrenched employees receive separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher.
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> The employer must prove compliance with all the foregoing requirements. Failure to prove the first requirement will render the retrenchment illegal and make the employer liable for the reinstatement of its employees and payment of full backwages. However, were the retrenchment undertaken by the employer is *bona fide*, the same will not be invalidated by the latter's failure to serve prior notice on the employees and the DOLE; the employer will only be liable in nominal damages, the reasonable rate of which the Court *En Banc* has set at ₱50,000.00 for each employee.
>
> Closure or cessation of business is the complete or partial cessation of the operations and/or shut-down of the establishment of the employer. It is carried out to either stave off the financial ruin or promote the business interest of the employer.
>
> ***Unlike retrenchment, closure or cessation of business, as an authorized cause of termination of employment, need not depend for validity on evidence of actual or imminent reversal of the employer's fortune.*** Article 283 authorizes termination of employment due to business closure, regardless of the underlying reasons and motivations therefor, be it financial losses or not.[25]

To be precise, closure or cessation of an employer's business operations, whether in whole or in part, is governed by Article 283 of the Labor Code, as amended. It states:

> *Article 283.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 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 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 one (1) whole year.[26]

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[25] *Eastridge Golf Club, Inc. v. Eastridge Golf Club, Inc., Labor-Union, Super, supra,* at 103-105. (Emphasis in the original; citations omitted.)

[26] Underscoring supplied.

In *Industrial Timber Corporation v. Ababon,*[27] the Court explained the above-quoted provision in this wise:

> A reading of the foregoing law shows that a partial or total closure or cessation of operations of establishment or undertaking may either be due to serious business losses or financial reverses or otherwise. Under the first kind, the employer must sufficiently and convincingly prove its allegation of substantial losses, while under the second kind, the employer can lawfully close shop anytime as long as cessation of or withdrawal from business operations was *bona fide* in character and not impelled by a motive to defeat or circumvent the tenurial rights of employees, and as long as he pays his employees their termination pay in the amount corresponding to their length of service. Just as no law forces anyone to go into business, no law can compel anybody to continue the same. It would be stretching the intent and spirit of the law if a court interferes with management's prerogative to close or cease its business operations just because the business is not suffering from any loss or because of the desire to provide the workers continued employment.
>
> In sum, under Article 283 of the Labor Code, three requirements are necessary for a valid cessation of business operations: (a) service of a written notice to the employees and to the DOLE at least one month before the intended date thereof; (b) the cessation of business must be *bona fide* in character; and (c) payment to the employees of termination pay amounting to one month pay or at least one-half month pay for every year of service, whichever is higher.[28]

Our pronouncements in *Alabang Country Club Inc.* and *Eastridge Golf Club, Inc.* are significant in the resolution of the instant case; thus, their discussion is apposite.

Alabang Country Club Inc. (ACCI) is a stock and non-profit corporation that operates and maintains a country club and various sports and recreational facilities for the exclusive use of its members. Realizing that it was no longer profitable for ACCI to maintain its own F & B Department, the Management decided to cease the operation of said department and to open the same to a contractor such as a concessionaire. On December 1, 1994, ACCI entered into an agreement with La Tasca Restaurant Inc. for the operation of the F & B Department. Also, on even date, ACCI sent to its employees in the F & B Department individual letters informing them that their services would be terminated effective January 1, 1995; that they would be paid separation pay equivalent to 125% percent of their monthly salary for every year of service; that La Tasca agreed to absorb all affected employees immediately with the status of regular employees without need of undergoing a probationary period; and, that all affected

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[27] 515 Phil. 805 (2006).

[28] *Industrial Timber Corporation v. Ababon, supra,* at 819. (Citations omitted)

employees would receive the same salary they were receiving from ACCI at the time of their termination. On December 11, 1994, the Union filed before the NLRC a complaint for illegal dismissal, ULP, regularization, and damages with prayer for the issuance of a writ of preliminary injunction. While the Labor Arbiter (LA) dismissed the complaint and the National Labor Relations Commission (NLRC) dismissed the appeal, the CA found in favor of the complainants. It ruled that ACCI failed to prove by sufficient and competent evidence that its alleged losses were substantial, continuing and without any immediate prospect of abating. This Court, however, granted ACCI's petition on the view that the case did not involve retrenchment but closure of a business undertaking. Despite ACCI's failure to prove that the closure of its F & B Department was due to substantial losses, We still opined that the complainants were legally dismissed on the ground of closure or cessation of an undertaking not due to serious business losses or financial reverses, which is allowed under Article 283 of the Labor Code, as amended. It was held:

> The closure of operation of an establishment or undertaking not due to serious business losses or financial reverses includes both the complete cessation of operations and the cessation of only part of a company's activities.
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> For any *bona fide* reason, an employer can lawfully close shop anytime. Just as no law forces anyone to go into business, no law can compel anybody to continue the same. It would be stretching the intent and spirit of the law if a court interferes with management's prerogative to close or cease its business operations just because the business is not suffering from any loss or because of the desire to provide the workers continued employment.
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> While petitioner did not sufficiently establish substantial losses to justify closure of its F & B Department on this ground, there is basis for its claim that the continued maintenance of said department had become more expensive through the years. An evaluation of the financial figures appearing in the audited financial statements prepared by the SGV & Co. shows that ninety-one to ninety-six (91%-96%) percent of the actual revenues earned by the F & B Department comprised the costs and expenses in maintaining the department. Petitioner's decision to place its F & B operations under a concessionaire must then be respected, absent a showing of bad faith on its part.
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> In fine, management's exercise of its prerogative to close a section, branch, department, plant or shop will be upheld as long as it is done in good faith to advance the employer's interest and not for the purpose of defeating or circumventing the rights of employees under the law or a valid agreement.[29]

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[29] *Alabang Country Club, Inc. v. NLRC*, *supra* note 22, at 952-953. (Citations omitted)

On the other hand, in *Eastridge Golf Club, Inc.*, complainants were kitchen staff of the Golf Club's F & B Department. They were terminated from employment on the ground that the operations of the F & B Department had been turned over to a concessionaire as a result of alleged company reorganization/downsizing. Claiming that their dismissal was not based on any of the causes allowed by law and that it was made without due process, the employees filed with the NLRC a complaint for illegal dismissal, ULP, and payment of 13th month pay. To controvert the Golf Club's claim that the partial cessation of operations was *bona fide*, complainants presented documentary evidence that there was no real transfer of operations and that the Golf Club remained to be the real employer of all the F & B staff. Their documentary evidence consisted of payslips, monthly payroll register, Philippine Health Insurance Corporation Contribution Payment Return, Employer Quarterly Remittance Report, and the Social Security System Contribution Payment Return. Both the CA and the LA found that the cessation of the Golf Club's F & B operations was a mere subterfuge, because the latter continued to act as the real employer by paying for the salaries and insurance contributions of the employees of the F & B Department even after the concessionaire took over its operations. The NLRC saw otherwise, opining that the evidence did not establish that the cessation of petitioner's F & B operations was in bad faith. When the matter was elevated to this Court, We agreed with the Golf Club that the CA erred when it declared that, for lack of evidence of financial losses, the cessation of its F & B operations was not a valid cause to terminate the employment of complainants. The Court held that the Golf Club need not present evidence of financial losses to justify such business decision, since the cause invoked in the termination of complainants' employment was the cessation of its F & B operations. Nonetheless, it was ruled that the CA correctly held that the cessation of petitioner's F & B operations and the transfer to the concessionaire were merely simulated, and that the employees' dismissal by reason thereof was illegal. We cited similar cases, thus:

> In *Me-Shurn Corporation v. Me-Shurn Workers Union-FSM*, the corporation shut down its operations allegedly due to financial losses and paid its workers separation benefits. Yet, barely one month after the shutdown, the corporation resumed operations. In light of such evidence of resumption of operations, the Court held that the earlier shutdown of the corporation was in bad faith.
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> With a similar outcome was the closure of the brokerage department of the corporation in *Danzas Intercontinental, Inc. v. Daguman.* In view of evidence consisting of a mere letter written by the corporation to its clientele that its brokerage department was still operating but with a new staff, the Court declared the earlier closure of the corporation's brokerage department not *bona fide* and ordered the reinstatement of its former staff, despite the latter having signed quitclaims and release forms acknowledging payment of separation benefits.

> The closure of a high school department in *St. John Colleges, Inc. v. St. John Academy Faculty and Employees Union* was likewise annulled upon evidence that barely one year after the announced closure, the school reopened its high school department. The Court found the closure of the high school in bad faith notwithstanding payment to the affected teachers of separation benefits.
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> In *Capitol Medical Center, Inc. v. Meris,* the hospital justified the closure of a unit and the dismissal of its head doctor by claiming that there was a dwindling demand for the unit's services. However, upon examination of the records, the Court found that service demand had in fact been rising, thus negating the very reason proffered by the hospital in closing down the unit. On that score, the Court declared the action of the hospital in bad faith.[30]

Based on the above and cases[31] of similar import, We summarize:

1. Closure or cessation of operations of establishment or undertaking may either be partial or total.
2. Closure or cessation of operations of establishment or undertaking may or may not be due to serious business losses or financial reverses. However, in both instances, proof must be shown that: (1) it was done in good faith to advance the employer's interest and not for the purpose of defeating or circumventing the rights of employees under the law or a valid agreement; and (2) a written notice on the affected employees and the DOLE is served at least one month before the intended date of termination of employment.
3. The employer can lawfully close shop even if not due to serious business losses or financial reverses but separation pay, which is equivalent to at least one month pay as provided for by Article 283 of the Labor Code, as amended, must be given to all the affected employees.
4. If the closure or cessation of operations of establishment or undertaking is due to serious business losses or financial reverses, the employer must prove such allegation in order to avoid the payment of separation pay. Otherwise, the affected employees are entitled to separation pay.
5. The burden of proving compliance with all the above-stated falls upon the employer.

Guided by the foregoing, the Court shall refuse to dwell on the issue of whether respondent was in sound financial condition when it resolved to stop the operations of its F & B Department. As stated, an employer can lawfully close shop anytime even if not due to serious business losses or

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[30] *Eastridge Golf Club, Inc. v. Eastridge Golf Club, Inc., Labor-Union, Super, supra* note 24, at 108-109. (Citations omitted)

[31] See also *Marc II Marketing, Inc. v. Joson*, G.R. No. 171993, December 12, 2011, 662 SCRA 35; *Espina v. Court of Appeals*, 548 Phil. 255 (2007); and *Kasapian ng Malayang Manggagawa sa Coca-Cola (KASAMMA-CCO)-CFW Local 245 v. Court of Appeals*, 521 Phil. 606 (2006).

financial reverses. Furthermore, the issue would entail an inquiry into the factual veracity of the evidence presented by the parties, the determination of which is not Our statutory function. Indeed, petitioner is asking Us to sift through the evidence on record and pass upon whether respondent had, in truth and in fact, suffered from serious business losses or financial reverses. That task, however, would be contrary to the well-settled principle that this Court is not a trier of facts, and cannot re-examine and re-evaluate the probative value of the evidence presented to the VA and the CA, which formed the basis of the questioned decision.

Respondent correctly asserted in its Memorandum that the instant case is similar to *Alabang Country Club Inc.* When it decided to cease operating its F & B Department and open the same to a concessionaire, respondent did not reduce the number of personnel assigned thereat; instead, it terminated the employment of all personnel assigned at the department and those who are directly and indirectly involved in its operations. The closure of the F & B Department was due to legitimate business considerations, a resolution which the Court has no business interfering with. We have already resolved that the characterization of the employee's service as no longer necessary or sustainable, and therefore, properly terminable, is an exercise of business judgment on the part of the employer; the determination of the continuing necessity of a particular officer or position in a business corporation is a management prerogative, and the courts will not interfere with the exercise of such so long as no abuse of discretion or arbitrary or malicious action on the part of the employer is shown.[32] As recognized by both the VA and the CA, evident proofs of respondent's good faith to arrest the losses which the F & B Department had been incurring since 1994 are: engagement of an independent consulting firm to conduct manpower audit/organizational development; institution of cost-saving programs, termination of the services of probationary employees, substantial reduction of a number of agency staff and personnel, and the retrenchment of eight (8) managers. After the effective date of the termination of employment relation, respondent even went on to aid the displaced employees in finding gainful employment by soliciting the assistance of respondent's members, Makati Skyline, Human Resource Managers of some companies, and the Association of Human Resource Managers.[33] These were not refuted by petitioner. Only that, it perceives them as inadequate and insists that the operational losses are very well covered by the other income of respondent and that less drastic measures could have been resorted to, like increasing the membership dues and the prices of food and beverage. Yet the wisdom or soundness of the Management decision is not subject to discretionary review of the Court for, even the VA admitted, it enjoys a pre-eminent role and is presumed to

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[32] *Kasapian ng Malayang Manggagawa sa Coca-Cola (KASAMMA-CCO)-CFW Local 245 v. Court of Appeals*, *supra*, at 625.

[33] CA *rollo*, pp. 383-403.

possess all relevant and necessary information to guide its business decisions and actions.

Further, unlike in the case of *Eastridge Golf Club, Inc.*, there is nothing on record to indicate that the closure of respondent's F & B Department was made in bad faith. It was not motivated by any specific and clearly determinable union activity of the employees; rather, it was truly dictated by economic necessity. Despite petitioner's allegations, no convincing and credible proofs were presented to establish the claim that such closure qualifies as an act of union-busting and ULP. No evidence was shown that the closure is stirred not by a desire to avoid further losses but to discourage the workers from organizing themselves into a union for more effective negotiations with the management.[34] Allegations are not proofs and it is incumbent upon petitioner to substantiate the same. On the contrary, respondent continued to negotiate with petitioner even after April 30, 2002. In fact, a Memorandum of Agreement was executed before the NCMB between petitioner and respondent on June 10, 2002 whereby the parties agreed, among others, to maintain the existing provisions of the CBA, except those pertaining to wage increases and signing bonus.[35]

Finally, even if the members of petitioner are not considered as illegally dismissed, they are entitled to separation pay pursuant to Article 283 of the Labor Code, as amended. Per respondent's information, however, the separation packages of all 117 union members were already paid during the pendency of the case.[36] Petitioner did not oppose this representation; hence, We shall treat the fact of receipt of separation pay as having been voluntarily entered into, with a full understanding of its import, and the amount received as credible and reasonable settlement that should be respected by the Court as the law between the parties are valid and binding between them.

WHEREFORE, the foregoing considered, the instant Petition is **DENIED**. The February 2, 2006 Decision and May 29, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 73127 sustaining *in toto* the August 28, 2002 Decision and September 13, 2002 Resolution of Voluntary Arbitrator Jesus B. Diamonon, which dismissed petitioner's complaint for illegal retrenchment, are **AFFIRMED**.

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34 See *Carmelcraft Corporation v. NLRC*, 264 Phil. 763, 768 (1990).
35 CA *rollo*, pp. 92-93.
36 *Id.* at 646-647, 661-663.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

ROBERTO A. ABAD
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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