Management Prerogatives 
and Employee Participation

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Abstract

There is an inherent conflict between the interests of management and workers. Both have rights, which are enshrined in the Constitution. Workers have the right to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law, to security of tenure, humane conditions of work, and a living wage, and to participate in policy and decision-making processes affecting their rights and benefits, as may be provided by law. Management on the other hand, has the right to reasonable returns on investment, and to expansion and growth of the enterprise and, thus, conceded prerogatives in the running of an enterprise in order to achieve these objectives. Thus, there is a need for a clear delineation between management prerogatives and employees right to participate and assist in achieving and preserving industrial peace for their mutual benefit. There is also a need to explore ways of achieving worker empowerment to promote their dignity and, likewise, spur their productivity.
Management prerogatives and employee participation

By Juris Bernadette M. Tomboc

1. Introduction

There is no formal definition of social justice in the 1987 Philippine Constitution. In the absence of such definition, the social justice policy in the Constitution may be described through its aims which are, as follows: (a) to protect and enhance the right of all people to human dignity; (b) to reduce social, economic and political inequalities; and (c) to remove cultural inequities (Medina 1987).

Section 3 (on Labor) of Article XIII (on Social Justice and Human Rights) of the 1987 Philippine Constitution is hereby quoted for reference, viz.:

“Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of enterprises to reasonable returns on investments, and to expansion and growth.”

Article XIII enumerates the following rights of workers: (a) self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law; (b) security of tenure, humane conditions of work, and a living wage; and (c) participation in policy and decision-making processes affecting their rights and benefits, as may be provided by law.

The first category of rights of workers concerns the right to self-organization, collective bargaining and negotiations, and peaceful concerted activities. Legitimate concerted action is taken in the context of self-organization, through a registered union, and collective bargaining and negotiations. It must be peaceful and must not be contrary to law, morals, public order, public policy, and the basic tenets of justice and fair play. Further, the right to strike may be regulated by law.
The second classification of rights of workers concerning security of tenure, humane conditions of work, and a living wage, on the other hand, is principally addressed by the labor standards provisions in the Labor Code and other related legislation, which provide for minimum requirements. Enterprises and workers are free to agree on better terms and conditions of work than those provided by law. Employees and workers may negotiate with employers either individually or collectively, through a union or a non-union association, with or without a collective bargaining agreement (CBA).

The last category of workers’ rights ensures their participation in policy and decision-making processes affecting their rights and benefits. It is an affirmation of the human dignity of workers embodied in their empowerment and exercise of self-determination and recognition of workers’ essential contribution and partnership with management. It does not mean co-management of an enterprise, in general, but rather according workers with respect by allowing their representation in the formulation of company policies, plans and programs directly affecting their rights and benefits.

Enterprises, on the other hand, have the right to receive reasonable returns on investment and to expansion and growth. Management of a business is principally a property right of its owner/s. This is the rationale for the exercise of management prerogatives. Hence, enterprises possess inherent autonomy to direct their business operations efficiently and without unnecessary interference from either the government or workers, except as may be provided by law.

This paper aims to discuss the following topics and/or issues: (a) the definition, scope and exercise of management prerogatives; (b) the extent of employee participation in policy and decision-making processes affecting their rights and benefits; and, consequently, (c) the demarcation between management prerogatives and employee participation based on existing law.

2. Discussion

A. Definition, scope and exercise of management prerogatives
Management prerogatives refers to the rights of an employer to regulate all aspects of employment, such as the freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of workers (Baybay Water District vs. COA 2002).

Similarly, the Court has defined a valid exercise of management prerogative as one which covers hiring, work assignment, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. Except as provided for or limited by special
laws, employers are free to regulate, according to their own discretion and judgment, all aspects of employment (Consolidated Food Corp. vs. NLRC 1999).

An owner of a business enterprise is given considerable leeway in managing his business. Law recognizes certain rights collectively called management prerogatives as inherent in the management of business enterprises. The Court, as a rule, will not interfere with an employer’s prerogative to regulate all aspects of employment, which includes among others, work assignment, working methods, and place and manner of work. The rule is well settled that labor laws discourage interference with an employer’s judgment in the conduct of his business (Castillo vs. NLRC 1999).

The following are common examples of management rights clauses found in collective bargaining agreements (CBAs) in the manufacturing industry:

**CBA between Avon Products Manufacturing, Inc. and Avon Products Manufacturing Employees Union (2001):**

“The UNION hereby recognizes the COMPANY’s right to the exclusive control of Management over all functions and facilities, and to the direction of the entire work force. The COMPANY shall be sole judge of the competence of the employee in the performance of his assigned work. The exclusive rights of the COMPANY shall include but shall not be limited to the right to schedule the hours of work, shifts, and work schedules; plan, schedule, direct, curtail or control operations schedule of production; to introduce and install new or improved production methods or facilities; to designate the work and the employees, to train employees and improve their ability; to make rules and regulations governing conduct and safety; to promote, demote, dismiss, discharge, lay-off, discipline, suspend or relieve employees because of lack of work, for just causes or for other legitimate reasons, transfer employees from one job to another or from one shift to another or from one work location to another; to institute a job classification and/or merit rating system or create new or additional classification or to eliminate classification or employees; to make changes in the duties of the employees as the COMPANY may consider fit or convenient for the proper conduct of its business; and to make and enforce rules and regulations, copies of which shall be distributed by the COMPANY to all employees within the bargaining unit, to carry out the functions of Management; in general to exercise the inherent and customary functions of management.”

**CBA between Mabuhay Vinyl Corporation and Mabuhay Vinyl Employees Union-Southern Philippines Federation of Labor (2001):**

“SECTION 1 – The UNION recognizes the following as the rights of the COMPANY:

1.1 The management of the organization and the direction of the working force, including the right to plan, direct and
control plant operation, to schedule and assign work to employees;

1.2 To determine the means, methods, processes and schedules of production;

1.3 To appoint outside agents or subcontractors in handling unit operations and processes, except in cases of labor-only contracting as defined under Art. 106 of the Labor Code;

1.4 To determine the products to be manufactured, the location of its plants and the continuance and status of its operating departments;

1.5 To establish company standards, i.e., production, etc., and to maintain the efficiency of employees;

1.6 To evaluate job responsibility and competence of employees which is the basis of the corresponding wage and salary structure of various jobs;

1.7 To establish and require employees to observe company rules and regulations. Management will advise or inform the UNION on the proposed rules and the rationale for the promulgation and enforcement of such rules. The UNION may advance its views on any of the proposed rules and make suggestions for modifying and/or amending the same;

1.8 To hire, promote, transfer, lay-off or relieve employees from their duties;

1.9 To establish rules and regulations governing plant operations and discipline, violation of which shall be a cause for disciplinary action of employees upon proper investigation;

1.10 To maintain order and to suspend, demote, discipline and discharge employees after proper investigation for just cause.

The exercise by the COMPANY of any of the foregoing rights shall not alter any of the specified provisions of this Agreement nor shall they be used indiscriminately against any member of the UNION.

SECTION 2 – The UNION further recognizes that the foregoing enumeration of management’s rights does not exclude other rights or functions of management not specifically set forth. The COMPANY retains all other rights not otherwise specifically covered by this Agreement.”
The Supreme Court had ruled on several occasions on the application of management prerogatives. The following discussion is an abstract of decisions rendered by the Court concerning the exercise of specific management prerogatives:

**Transfer of employees**

The transfer of an employee ordinarily lies within the ambit of management prerogatives. However, managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, putting to mind the basic elements of justice and fair play (Castillo vs. NLRC 1999). Having the right should not be confused with the manner by which such right is to be exercised (Paguio vs. PLDT 2002). It cannot be used a subterfuge by the employer to rid himself of an undesirable worker (Castillo vs. NLRC 1999).

The Court ruled in the case of *Philippine Japan Active Carbon Corporation vs. NLRC* (cf. Castillo vs. NLRC 1999), as follows:

“It is the employer’s prerogative, based on its assessment of its employees’ qualifications, aptitudes and competence, to move them around in the various areas of its business operations in order to ascertain where they will function with maximum benefit to the company. An employee’s right to security of tenure does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where he will be most useful. When his transfer is not unreasonable, nor inconvenient, nor prejudicial to him, and it does not involve a demotion in rank or a diminution of his salaries, benefits and other privileges, the employee may not complain that it amounts to constructive dismissal.”

In the case of *Westin Philippine Plaza Hotel vs. NLRC* (1999), the Court held the transfer of an employee from doorman to linen room attendant as a valid exercise of a management prerogative, as follows:

“Indeed, petitioner is justified in assigning private respondent to the linen room. Petitioner’s right to transfer is expressly recognized in the collective bargaining agreement between the hotel management and the employees union as well as in the hotel employees’ handbook. The transfer order was issued in the exercise of petitioner’s management prerogative in view of the several negative reports vis-à-vis the performance of private respondent as doorman. It was a lateral movement as the positions of doorman and linen room attendant are equivalent in rank and compensation. It was a reasonable relocation from a guest contact area to a non-guest contact area. Thus, public respondent’s observation that private respondent was demoted because the position of doorman is “more glamorous” than that of a linen room attendant is pure conjecture. Public respondent’s conclusion that the transfer was punitive in character could not be sustained for lack of substantial basis.”
Similarly, transfers can be effected pursuant to a company policy to transfer employees from one place of work to another owned by the same employer to prevent connivance among them (Philippine Industrial Security Agency Corp. vs. NLRC 1999).

Likewise, the Court has affirmed the right of an employer to transfer an employee to another office in the exercise of sound business judgment and in accordance with the pre-determined and established office policy and practice, particularly so when no illicit, improper or underhanded purpose can be ascribed to the employer and the objection to the transfer was grounded solely on the personal inconvenience or hardship that will be caused to the employee by virtue of the transfer (Philippine Industrial Security Agency Corp. vs. NLRC 1999).

However, a transfer may amount to constructive dismissal when the transfer is unreasonable, inconvenient, or prejudicial to the employee, and involves a demotion in rank or diminution of salaries, benefits, and other privileges. Constructive dismissal does not always involve forthright dismissal or diminution in rank, compensation, benefits, and privileges. An act of clear discrimination, insensibility or disdain by an employer may become so unbearable on the part of an employee that it could foreclose any choice by him except to forego his continued employment (Zafra vs. PLDT 2002).

Transfer was considered as a demotion in rank in the case of Blue Dairy Corporation vs. NLRC (1999) where the court ruled, thus:

“We find insignificant the submission of petitioners that “the coring of lettuce together with the other production jobs connected therewith is one of the most important aspects of the corporation’s existence” and that “those assigned to the vegetable processing section are mostly professionals like teachers, computer secretaries and forestry graduates.” Rather, the focus should be on the comparison between the nature of Recalde’s work in the laboratory and in the vegetable processing section. As food technologist in the laboratory, she occupied a highly technical position requiring use of her mental faculty. As a worker in the vegetable processing section, she performed mechanical work. It was virtually a transfer from a position of dignity to a servile or menial job. We agree with the observation of the Office of the Solicitor General that the radical change in Recalde’s nature of work unquestionably resulted in, as rightly perceived by her, a demeaning and humiliating work condition. The transfer was a demotion in rank, beyond doubt.”

Retrenchment
The Labor Code recognizes retrenchment as one of the authorized causes for terminating the employer-employee relationship. The decision to retrench or not to retrench is a management prerogative. Thus, the Court ruled in the case of AG&P vs. NLRC (1999), as follows:
“Petitioners contend that that ‘redundancy program’ was actually a union-busting scheme of management, aimed at removing union officers who had declared a strike. This contention cannot stand in the face of evidence of substantial losses suffered by the company. Moreover, while it is true that the company rehired or reemployed some of the dismissed workers, it has been shown that such action was made only as company projects became available and that this was done in pursuance of the company’s policy of giving preference to its former workers in the hiring of project employees. The rehiring or reemployment does not negate the imminence to (sic) losses, which prompted private respondents to retrench.”

In the same case, the Court distinguished between redundancy and retrenchment. ‘Redundancy’ exists when the services of an employee are in excess of what is required by an enterprise. ‘Retrenchment’, on the other hand, is one of the economic grounds for dismissing employees and is resorted to primarily to avoid or minimize business losses (AG&P vs. NLRC 1999).

The Court also ruled on the validity of waivers and quit claims in the same case, as follows:

“Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking (AG&P vs. NLRC 1999).”

**Redundancy**

Redundancy is one of the authorized causes for termination of employment. Under Article 283 of the Labor Code, employees should be given separation pay of one (1) month pay per year of service in case of termination on the ground of redundancy.

The Court affirmed the termination of employment due to redundancy in several instances. In the case of *De Ocampo vs. NLRC* (cf. Serrano vs. NLRC 2000) the Court upheld the termination of employment of three (3) mechanics in a transportation company and their replacement by a company rendering maintenance and repair services, as follows:

“In contracting the services of Gemac Machineries, as part of the company’s cost-saving program, the services rendered by the mechanics became redundant and superfluous and, therefore, properly terminable. The company merely exercised its business judgment or management
prerogative. And in the absence of any proof that the management abused its discretion or acted in a malicious or arbitrary manner, the court will not interfere in the exercise of such prerogative.”

Likewise, in the case of Asian Alcohol Corporation v. NLRC (cf. Serrano vs. NLRC 2000) the Court upheld the termination of water pump tenders and their replacement by independent contractors to promote economy and efficiency. It ruled that an employer’s good faith in implementing a redundancy program may not necessarily be put into doubt because its hiring of the services of an independent contractor to replace the services of the terminated employees.

And, as pointed out by the Court in the case of Shell Oil Workers Union vs. Shell Company of the Philippines, Ltd. (cf. Serrano vs. NLRC 2000)–

“[The management of a company] cannot be denied the faculty of promoting efficiency and attaining economy by a study of what units are essential for its operation. To it belongs the ultimate determination of whether services should be performed by its personnel or contracted to outside agencies… [While there] should be mutual consultation, eventually deference is to be paid to what management decides.”

Thus, absent proof that management acted in a malicious or arbitrary manner, the Court will not interfere with the exercise of judgment by an employer (cf. Serrano vs. NLRC 2000).

In the case of Serrano vs. NLRC (2000) there is only the bare assertion of petitioner that, in abolishing the security section, private respondent’s real purpose was to avoid payment to the security checkers of the wage increases provided in the CBA in 1990. However, the Court ruled that such an assertion does not form a sufficient basis for concluding that the termination of petitioner’s employment was not a bona fide decision by management. The Court considered the phase-out of the security section as constituting a “legitimate business decision” in accordance with the factual finding by the National Labor Relations Commission.

Closure or cessation of business operations

The determination to cease operations is a management prerogative that is usually not interfered with by the State as no employer can be required to continue operating at a loss. The same would constitute the taking of property without due process of law, which an employer has the right to resist. Nonetheless, it is still management’s prerogative to close down its business, whether or not a company is incurring great losses, as long as the same is done in good faith and not merely being resorted to for the purpose of circumventing law or evading compliance with just obligations by the employer to the workers affected (Complex Electronics Employees Association vs. NLRC 1999). Thus:
“In any case, Article 283 of the Labor Code is clear that an employer may close or cease his business operations or undertaking even if he is not suffering from serious business losses or financial reverses, as long as he pays his employees their termination pay in the amount corresponding to their length of service. It would indeed be stretching the intent and spirit of the law if we were to unjustly interfere in management’s prerogative to close or cease its business operations just because said business operations or undertaking is not suffering from any loss.”

Article 283 of the Labor Code provides, *viz.*:

“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 at least one (1) month before the intended date thereof…”

The purpose of the notice requirement is to enable the proper authorities to determine, after hearing, whether such closure is in good faith, i.e., for bona fide business reasons (Complex Electronics Employees Association vs. NLRC 1999).

Installation of labor saving devices

The law authorizes an employer to terminate employment due to the installation of labor saving devices. The courts will not interfere with the exercise of this management prerogative in the absence of abuse of discretion, arbitrariness or maliciousness. However, the employer is also required to furnish a written notice of the intended termination to the employee and to the Department of Labor and Employment at least one (1) month before the intended date of termination. This is to enable the affected employee to contest the reality or good faith character of the asserted ground for the termination of his services before the DOLE (Complex Electronics Employees Association vs. NLRC 1999).

Dismissal

The burden of proof that the termination was for a valid or authorized cause rests on the employer. The employer must not rely on the weakness of an employee’s defense but stand on the merits of its/his own evidence. The legality of an employee’s dismissal will be measured against the requisites of a valid dismissal, as follows: (a) the employee must have been afforded due process, i.e., he must have been given an opportunity to be heard and to defend himself, and; (b) the dismissal must be for a valid cause (enumerated under in Article 282 of the Labor Code). Without these twin requirements, the termination would be considered as illegal (Austria vs. NLRC 1999).

Before the services of an employee can be terminated, the employer must served to the employee two (2) written notices, as follows: (a) a written notice
specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side, and, (b) a written notice of termination served to the employee indicating that upon due consideration of the circumstances, grounds have been established to justify his termination (Austria vs. NLRC 1999).

The first notice, which may be considered as the proper charge, is for the purpose of apprising the employee of the particular acts or omissions for which his dismissal is being sought. The second notice, on the other hand, is for the purpose of informing the employee of the employer’s decision to dismiss him. The decision, however, must come only after the employee has been given a reasonable period from receipt of the first notice within which to answer the charge as well as ample opportunity to be heard and to defend himself with the assistance of a representative, if he so desires. The same are in consonance with the Constitutional provision providing protection to labor and the broader dictates of procedural due process. These requirements are mandatory conditions before dismissal may be validly effected (Austria vs. NLRC 1999).

In the case of Austria vs. NLRC (1999), the Court explained what breach of trust, to be considered as a ground for dismissal, must constitute, as follows:

“Settled is the rule that under Article 282 (c) of the Labor Code breach of trust must be willful. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. It must rest on substantial grounds and not on the employer’s arbitrariness, whims, caprices, or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated. This ground has never been intended to afford an occasion for abuse, because of its subjective nature.”

Further, breach of trust or confidence must be related to the performance of the duties of the employee such as would show him to be thereby unfit to discharge the same task or continue working for the employer (Blue Dairy Corp. vs. NLRC 1999).

In the case of Austria vs. NLRC (1999), the Court repeated the rule with respect to misconduct as a ground for dismissal, as follows:

“Misconduct has been defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. For misconduct to be considered serious it must be of such grave and aggravated character and not merely trivial or unimportant.”
In the case of *Westin Philippine Plaza Hotel vs. NLRC* (1999), the Court had occasion to expound on the rule concerning *disobedience* as a ground for dismissal, as follows:

“Under Article 282 (a) of the Labor Code, as amended, an employer may terminate an employment for serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work. But disobedience to be a just cause for dismissal envisages the concurrence of at least two (2) requisites: (a) the employee’s assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and (b) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he has been engaged to discharge.

In the present case, the willfulness of private respondent’s insubordination was shown by his continued refusal to report to his new work assignment. Thus, upon receipt of the order of transfer, private respondent simply took an extended vacation leave. Then, when he reported back to work, he did not discharge his duties as linen room attendant despite repeated reminders from the personnel office as well as his union. Worse, while he came to the hotel everyday, he just went to the union office instead of working at the linen room. More than that, when he was asked to explain why no disciplinary action should be taken against him, private respondent merely questioned the transfer order without submitting the required explanation. Based on the foregoing facts, private respondent’s intransigence is very evident.”

While the Constitution does not condone wrongdoing by an employee, it, however, urges a moderation of the sanctions that may be applied to him in consideration of the many disadvantages that weigh heavily against him. Thus, if a less punitive penalty would suffice, whatever missteps a worker may have committed must not be penalized so severely as to cause his dismissal from employment (*Austria vs. NLRC* 1999).

The Court, in categorizing the causes for the dismissal of an employee – “just causes” under Article 282 and “authorized causes” under Article 283 and 284 of the Labor Code – reiterated that an employee whose employment was being terminated for a just cause would not be so entitled as a matter of right to the payment of separation benefits. While it would be compassionate to give separation pay to a salesman if he were dismissed for his inability to fill his quota. However, he does not deserve such generosity if his offense is the misappropriation of the receipts of his sales. Thus, where the cause for the termination of employment cannot be considered as one of mere inefficiency or incompetence but an act that constitutes an utter disregard for the interest of the employer or a palpable breach of trust reposed in him, the grant of separation benefits is hardly justifiable (*San Miguel Corp. vs. Lao* 2002).
Demotion

Due process required by law is also applicable to demotions as they likewise affect the employment of a worker whose right to continued employment, under the same terms and conditions, is also protected by law. Moreover, considering that demotion is, like dismissal, also a punitive action, the employee being demoted should, as in cases of dismissals, be given a chance to contest the same (Blue Dairy Corp. vs. NLRC 1999).

Granting of a bonus

By definition, a “bonus” is a gratuity or act of liberality of the giver, which the recipient has no right to demand as a matter of right. It is something given in addition to what is ordinarily received by or strictly due to the recipient. The granting of a bonus is a management prerogative and cannot be forced upon an employer who may not be forced to assume the burden of granting bonuses or other benefits aside from employees’ basic salaries or wages, especially if it is incapable of doing so (Producers Bank of the Philippines vs. NLRC 2001).

Likewise, the Court has opined that a bonus is an amount granted and paid to an employee for his industry and loyalty, which contributed to the success of the employer’s business and made possible the realization of profits. It is an act of generosity granted by an employer to spur employees to greater efforts for the success of the business and the realization of bigger profits (Producers Bank of the Philippines vs. NLRC 2001).

Thus, a bonus is not a demandable and enforceable obligation by management, except when it is made part of the wage, salary or compensation of the employee. However, an employer cannot be forced to distribute bonuses, which it can no longer afford to pay. Otherwise, the employer would be penalized for his past generosity (Producers Bank of the Philippines vs. NLRC 2001).

Retirement

An employer’s option to retire employees was recognized as valid. In the case of Bulletin Publishing Corp. vs. Sanchez (cf. Philippine Airlines, Inc. vs. Airline Pilots Association of the Philippines 2002), the Court held:

“The aforesaid section (in the CBA) explicitly declares, in no uncertain terms, that retirement of an employee may be done upon initiative and option of the management. And where there are cases of voluntary retirement, the same is effective only upon the approval of management. The fact that there are some supervisory employees who have not been retired after 25 years with the company or have reached the age of sixty merely confirms that it is the singular prerogative of management, at its option, to retire supervisors or rank-and-file members when it deems fit. There should be no unfair labor practice committed by management if the retirement of private respondents were made in accord with the agreed option. That there were numerous instances wherein management exercised its option to retire employees pursuant to the aforementioned provisions appears to be a fact, which private
respondents have not controverted. It seems only now when the question of legality of a supervisors union has arisen that private respondents attempt to inject the dubious theory that the private respondents are entitled to form a union or go on strike because there is allegedly no retirement policy for their benefit. As above noted, this assertion does not appear to have any factual basis.”

With respect to the issue of whether the Secretary of Labor may compel an employer to consult its employees before retirement is implemented, the Court in the case of Philippine Airlines, Inc. vs. Airline Pilots Association of the Philippines (2002) held that this added requirement by the Secretary of Labor, in effect, amended the terms of Article VII, Section 2 of the 1976 PAL-ALPAP Retirement Plan. It gave the pilot concerned undue prerogative to assail management’s decision. Due process only requires that notice be given to a pilot of management’s decision to retire him. Thus, the Secretary of Labor overstepped the boundaries of reason and fairness when it required management to consult each pilot prior to retiring him.

The granting of retirement benefits is likewise a management prerogative that cannot be exercised arbitrarily or whimsically (San Miguel Corp. vs. Lao 2002).

Re-assignment pending investigation

Re-assignment made by management pending investigation of any irregularity allegedly committed by an employee fall within the scope of management prerogatives. The purpose of reassignment is no different from that of preventive suspension which management could validly impose as a disciplinary measure for its protection pending investigation of an alleged malfeasance or misfeasance committed by an employee (Consolidated Food Corp. vs. NLRC 1999).

In the case of Consolidated Food Corporation vs. NLRC (1999), the Court had occasion to reiterate the rule concerning the degree of proof required as basis for the imposition of disciplinary action upon the employee, as follows:

“We have ruled that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition or any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded by his position.”

Rules and orders issued by management are binding on employees until and unless they are declared by Court to be illegal or improper. Employees disobey them at their own peril. As the Court admonishes in the case of Westin Philippine Plaza Hotel vs. NLRC (1999):
“Finally, it must be stressed that to sanction the disregard or disobedience by employees of a reasonable rule or order laid down by management would be disastrous to the discipline and order within the enterprise. It is in the interest of both the employer and the employee to preserve and maintain order and discipline in the work environment. Deliberate disregard of company rules or defiance of management prerogative cannot be countenanced. This is not to say that employees have no remedy against rules or orders they regard as unjust or illegal. They can object thereto, ask to negotiate thereon, bring proceedings for redress against the employer. But until and unless the rules or order are declared to be illegal or improper by competent authority, the employees ignore or disobey them at their peril.”

B. Extent of employee participation in policy and decision-making affecting employees’ rights and benefits

The right of workers to participate in policy and decision-making processes was written for the first time in the 1987 Constitution. (Azucena 1999) These rights were incorporated in the Labor Code (Articles 255 and 211), as follows:

“ART. 255. EXCLUSIVE BARGAINING REPRESENTATION AND WORKERS’ PARTICIPATION IN POLICY AND DECISION-MAKING

The labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of the employees in such unit for the purpose of collective bargaining. However, an individual employee or group of employees shall have the right at any time to present grievances to their employer.

Any provision of law to the contrary notwithstanding, workers shall have the right, subject to such rules and regulations as the Secretary of Labor and Employment may promulgate, to participate in policy and decision-making processes of the establishment where they are employed insofar as said processes will directly affect their rights, benefits and welfare. For this purpose, workers and employers may form labor-management councils: Provided that the representatives of the workers in such labor management councils shall be elected by at least the majority of all employees in said establishment.” (Emphasis supplied.)

“ART. 211. DECLARATION OF POLICY

A. It is the policy of the State:

(a) To promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes;
(b) To promote free trade unionism as an instrument for the enhancement of democracy and the promotion of social justice and development;

(c) To foster the free and voluntary organization of a strong and united labor movement;

(d) To promote the enlightenment of workers concerning their rights and obligations as union members and as employees;

(e) To provide an adequate administrative machinery for the expeditious settlement of labor or industrial disputes;

(f) To ensure a stable but dynamic and just industrial peace; and

(g) To ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare.

B. To encourage a truly democratic method of regulating the relations between the employers and employees by means of agreements freely entered into through collective bargaining, no court or administrative agency or official shall have the power to set or fix wages, rates of pay, hours of work or other terms and conditions of employment, except as otherwise provided under this Code.”

(Emphasis supplied.)

From the deliberations by the 1986 Constitutional Commission it can be gleaned that the intention by the framers of the Constitution was to provide for consultation with workers with direct reference to negotiation on the terms and conditions of employment to be included in a collective bargaining agreement, as well as workers’ participation in the interpretation and implementation of a CBA, particularly with reference to the procedure for settling disputes concerning the CBA, through the grievance machinery and other voluntary modes of settling disputes, such as conciliation, mediation and arbitration. In short, the Commission intended workers to be consulted on matters affecting their rights. Thus:

“MS. AQUINO: Madam President, let me define and reiterate the parameters covered by the phrase “TO PARTICIPATE IN POLICY AND DECISION-MAKING PROCESSES AFFECTING THEIR INTERESTS."

We begin from the basic premise that at the barest minimum, the workers are consulted on matters pertaining to their interests, and the parameters would be references to the negotiations in the collective bargaining agreement and its terms. Those would cover the processes of grievance machineries; likewise, these would pertain to the voluntary modes of settling labor disputes and the conciliation proceeding which can be initiated and mediated by the Ministry of Labor.
MR MONSOD: May I ask Commissioner Aquino to restate the Article and to make an explanation of the issue we had discussed before the Chair suspended the session.

THE PRESIDENT: Commissioner Aquino is recognized.

MS. AQUINO: First, we shall address the clarification of the position of the Committee on the matter of participation in policy and decision-making. Some of the Commissioners may have perceived a measure of difference and conflict in the interpretation of the Committee, so this now will be our submission in interpreting the phrase ‘participation in policy and decision-making affecting their interests.’ What is it? What it is in terms of processes has been previously defined in response to the query of Commissioner Romulo. We were referring to the grievance procedures, conciliation proceedings, and voluntary modes of settling labor disputes and negotiations in free collective bargaining agreement. What it is, pertaining to the scope and substance, would now be the rights and benefits of workers. In other words, the focus of participation is now introverted to the rights and benefits of workers. What it is not refers to the practice in the industrialized nations in Europe and in Japan referring to codetermination which pertains to charting of corporate programs and policies.

However, the other matters mentioned by Commissioner Quesada which she just read for purposes of informing the Commission are already rightfully covered in the negotiations of the collective bargaining agreement. So just to eliminate the confusion, these are the parameters contemplated by “participation in policy and decision-making processes.”

The Committee is proposing an amendment to delete the word “interest” on the first page and substitute the words RIGHTS AND BENEFITS if only to clarify the intention of the Committee on this matter.” (Deliberations on August 6, 1986 by the Constitutional Commission cf. Azucena, Labor Code with Comments and Cases, 1999)

However, the Commission did not intend consultation to cover the formulation of corporate programs and policies. In the case of Manila Electric Company vs. Quisumbing and MEWA (1999), the Court explained that employees’ right to participate does not include co-management of a business, thus:

“It is worthwhile to note that all the Union demands and what the Secretary’s order granted is that the Union be allowed to participate in policy formulation and decision-making process on matters affecting the Union members’ rights, duties and welfare as required in Article 211 (A)(g) of the Labor Code. And this can only be done when the Union is allowed to have representatives in the Safety Committee, Uniform Committee and other committees of similar nature. Certainly, such participation by the Union in the said committees is not in the nature of co-management control of the business of MERALCO. What is granted by the Secretary is participation and representation. Thus, there is no impairment of management prerogatives.”
In an earlier ruling in the case of *Philippine Airlines, Inc. (PAL) vs. NLRC, et al.* (1993), the Court clarified that a CBA may not be interpreted as cession or waiver of employees’ right to participate in the deliberation of other matters which may affect their rights. Employees must be given the right to participate in the formulation of policies affecting their rights, such as the formulation of an employees’ code of discipline since the same directly affects their continued employment. Employees must be allowed to participate in the formulation of a code of discipline whether or not such right to participate is granted under a CBA, and even when there is no CBA that is currently in force between management and its employees.

However, in other cases involving management of the business of the employer and not directly involving employees’ conduct and discipline, the court has recognized the employer’s power and authority to make policy, without employees’ participation. As discussed in the previous section of this study, the Court has consistently upheld management’s prerogative to lay-down business policy and adopt rules, even though the violation of such rules may result in the dismissal of disobedient employees.

The Court had occasion to discuss further the delineation between management prerogatives and employees’ right to participate in the case of *De La Salle University vs. De La Salle University Employees Association-National Federation of Teachers and Employees Union* (2000). In the said case the Court ruled against the Union’s position that the “last-in-first-out” method of lay-off should be followed in retrenching employees because the decision to retrench is basically a management prerogative. Thus:

“On the third issue regarding the Union’s proposal for the use of the “last-in-first-out” method in case of lay-off, termination due to retrenchment and transfer of employees, the Union relies on social justice and equity to support its proposition, and submits that the University’s prerogative to select and/or choose the employees it will hire is limited either by law or agreement, especially where the exercise of this prerogative might result in the loss of employment. (Rollo, G.R. No. 100092, pp. 245-256) The Union further insists that its proposal is “… in keeping with the avowed State policy ‘(g) to ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare’ (Art. 211, Labor Code, as amended).” (Ibid., p. 247)

On the other hand, the University asserts its management prerogative and counters that “[w]hile it is recognized that this right of employees and workers to ‘participate in policy and decision-making processes affecting their rights and benefits as may be provided by law’ has been enshrined in the Constitution (Article III, [should be Article XIII], Section 3, par. 2), said participation, however, does not automatically entitle the Union to dictate as to how an employer should choose the employees to be affected by a retrenchment program. The employer still retains the prerogative to determine the reasonable basis for selecting such employees.” (Ibid., pp. 220-221)

We agree with the voluntary arbitrator that as an exercise of management prerogative, the University has the right to adopt valid and equitable grounds as basis for terminating or transferring employees. As we ruled in the case of *Autobus Workers’ Union and Ricardo Escanlar vs. National Labor Relations*
Commission, “[a] valid exercise of management prerogative is one which, among others, covers: work assignment, working methods, time, supervision of workers, transfer of employees, work supervision, and the discipline, dismissal and recall of workers. Except as provided for, or limited by special laws, an employer is free to regulate, according to his own discretion and judgment, all aspects of employment.”’’ (Emphasis supplied.)

3. Summary and conclusion

An owner of a business enterprise is given considerable leeway in managing his business. The law recognizes certain rights, collectively referred to as management prerogatives, as inherent to enterprises. The Court, as a rule, will not interfere with an employer’s prerogative to regulate all aspects of employment, including among others, work assignment, working methods, and place and manner of work. The rule is well settled that labor laws discourage interference with an employer’s judgment in the conduct of his business (Castillo vs. NLRC 1999).

Management prerogatives should be exercised in good faith for the advancement of the employer’s interest, and not for the purpose of circumventing the rights of employees under the Labor Code, CBA or any valid agreement. Further, the exercise of management prerogatives must be in accordance with legal procedural requirements intended as safeguards against their abuse.

Workers are guaranteed, under the Constitution, the right to participate in the deliberation of matters affecting their rights and benefits in consideration of their human right to self-determination and dignity. However, the right to participate does not mean that employees may impose the outcome of such deliberation. The interest of workers is balanced in the Constitution with the need by enterprises to earn a reward for investment, and likewise to expansion and growth. Further, the right to participate does not mean co-management since the operation of an enterprise is inherently a management right.

In the case of Philippine Airlines, Inc. (PAL) vs. NLRC, et al. (1993), the Court clarified that the CBA may not be interpreted as cession of employees’ right to participate in the deliberation of matters affecting their rights. In other words, workers may still exercise the right to participate although a CBA has already been arrived at, such as in the formulation of an employee code of discipline since the same directly affects their continued employment. Employee participation may be exercised in accordance with, in addition to, or even in the absence of a valid CBA.

4. Recommendation

Although the provision on workers’ participation in policy and decision-making is found together with the provisions on collective bargaining representation under the Labor code, employee participation may also be exercised outside of the context of unionization and collective bargaining. Although collective bargaining is an important mode through which employees may participate in policy and decision-making affecting their rights and
benefits, there are other modes of empowering employees even in a non-unionized environment such as, for example, through a labor-management council.

Azucena (1999) compared an LMC against a labor union in the following manner:

“An LMC is versatile. It can exist where there is no union or co-exist with a union. One thing it cannot and must not do is to replace a union. While a labor union is hamstrung by such legal prescriptions as formal registration, limited bargaining unit, majority status, mandatory and nonmandatory subjects, etc., an LMC need not be held back by any of these. It can represent employees across the enterprise, present grievances regardless of the grievant’s rank, and proffer proposals unhindered by formalities. It can also handle projects and programs whoever is the proponent, form committees for myriad purposes, instill discipline and improve productivity. All these activities the LMC may do without have to face internecine strifes arising from periodic inter-union contests for supremacy. The LMC, in short, can deal with the employer on matters affecting the employees’ rights, benefits and welfare.”

An LMC is considered as less threatening than collective bargaining by a union, the formation of which is subject to legal prescriptions and intermittent inter-union disputes, conflict and struggle. (Azucena 1999) However, an LMC is not intended to replace a union in the interest of preserving workers’ basic right to self-organization.

Further, although workers’ participation is narrowly delineated under the law, the same does not preclude employers from encouraging employee participation in broader areas of management. A good example would be the practice at the De La Salle University where different councils and committees, such as Research Committee, Undergraduate and Graduate Studies Committees, and Information Technology Committee are composed of faculty representatives from each department. The committees undertake policy formulation as well as implementation and monitoring of the specific area within their concern. The committees promote empowerment of employees and serve as a vehicle for socialization among faculty members.
Bibliography


1987 Philippine Constitution.

Cases


Austria vs. NLRC (1999). G.R. No. 124382.


