Republic of the Philippines
Supreme Court
Manila

EN BANC

FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP),
Petitioner,

- *versus* -

PHILIPPINE AIRLINES, INC., PATRIA CHIONG and THE COURT OF APPEALS,
Respondents.

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IN RE: LETTERS OF ATTY. ESTELITO P. MENDOZA RE: G.R. NO. 178083 – FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP) vs. PHILIPPINE AIRLINES, INC., ET AL.

G.R. No. 178083

Present:

*SERENO, *C.J.*,
**CARPIO, *Acting Chief Justice*,
***VELASCO, JR.,
****LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
*****DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
******JARDELEZA,
CAGUIOA,
MARTIRES,
TIJAM,
REYES, JR., and
GESMUNDO, *JJ.*

A.M. No. 11-10-1-SC

Promulgated:

March 13, 2018

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RESOLUTION

BERSAMIN, *J.*:

In determining the validity of a retrenchment, judicial notice may be taken of the financial losses incurred by an employer undergoing corporate

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* On indefinite leave effective March 1, 2018.
** No part.
*** No part.
**** No part.
***** No part.
****** No part.

rehabilitation. In such a case, the presentation of audited financial statements may not be necessary to establish that the employer is suffering from severe financial losses.

Before the Court are the following matters for resolution, namely:

(a) *Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2008* filed by respondents Philippine Airlines, Inc. (PAL) and Patria Chiong;[1] and

(b) *Motion for Reconsideration [Re: The Honorable Court's Resolution dated 13 March 2012]*[2] of petitioner Flight Attendants and Stewards Association of the Philippines (FASAP).

Antecedents

To provide a fitting backgrounder for this resolution, we first lay down the procedural antecedents.

Resolving the appeal of FASAP, the Third Division of the Court[3] promulgated its decision on July 22, 2008 reversing the decision promulgated on August 23, 2006 by the Court of Appeals (CA) and entering a new one finding PAL guilty of unlawful retrenchment,[4] disposing:

> **WHEREFORE**, the instant petition is **GRANTED**. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 87956 dated August 23, 2006, which affirmed the Decision of the NLRC setting aside the Labor Arbiter's findings of illegal retrenchment and its Resolution of May 29, 2007 denying the motion for reconsideration, are **REVERSED and SET ASIDE** and a new one is rendered:
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> 1. **FINDING** respondent Philippine Airlines, Inc. **GUILTY** of illegal dismissal;
>
> 2. **ORDERING** Philippine Airlines, Inc. to reinstate the cabin crew personnel who were covered by the retrenchment and demotion scheme of June 15, 1998 made effective on July

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1 *Rollo* (G.R. No. 178083), Vol. III, pp. 2239-2294.
2 *Rollo* (A.M. No. 11-10-1-SC), pp. 165-173.
3 Then composed of Associate Justice Consuelo Ynares-Santiago (*ponente*), Associate Justice Ma. Alicia Austria-Martinez, Associate Justice Minita V. Chico-Nazario, Associate Justice Antonio Eduardo B. Nachura, and Associate Justice Teresita J. Leonardo-De Castro (designated in lieu of Associate Justice Ruben T. Reyes).
4 *Rollo* (A.M. No. 11-10-1-SC), pp. 1517-1547.

> 15, 1998, without loss of seniority rights and other privileges, and to pay them full backwages, inclusive of allowances and other monetary benefits computed from the time of their separation up to the time of their actual reinstatement, provided that with respect to those who had received their respective separation pay, the amounts of payments shall be deducted from their backwages. Where reinstatement is no longer feasible because the positions previously held no longer exist, respondent Corporation shall pay backwages plus, in lieu of reinstatement, separation pay equal to one (1) month pay for every year of service;
>
> 3. **ORDERING** Philippine Airlines, Inc. to pay attorney's fees equivalent to ten percent (10%) of the total monetary award.
>
> Costs against respondent PAL.
>
> **SO ORDERED.**[5]

The Third Division thereby differed from the decision of the Court of Appeals (CA), which had pronounced in its appealed decision promulgated on August 23, 2006[6] that the remaining issue between the parties concerned the manner by which PAL had carried out the retrenchment program.[7] Instead, the Third Division disbelieved the veracity of PAL's claim of severe financial losses, and concluded that PAL had not established its severe financial losses because of its non-presentation of audited financial statements. It further concluded that PAL had implemented the retrenchment program in bad faith, and had not used fair and reasonable criteria in selecting the employees to be retrenched.

After PAL filed its *Motion for Reconsideration,*[8] the Court, upon motion,[9] held oral arguments on the following issues:

> I
> WHETHER THE GROUNDS FOR RETRENCHMENT WERE ESTABLISHED
>
> II
> WHETHER PAL RESORTED TO OTHER COST-CUTTING MEASURES BEFORE IMPLEMENTING ITS RETRENCHMENT PROGRAM

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5 *Rollo* (G.R. No. 178083), Vol. II, pp. 1546-1547.
6 *Rollo* (G.R. No. 178083), Vol. I, pp. 59-83; penned by Associate Justice Ruben T. Reyes and concurred in by Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Vicente S.E. Veloso.
7 *Rollo* (G.R. No. 178083), Vol. I, p. 73.
8 *Rollo* (G.R. No. 178083), Vol. II, pp. 1549-1585.
9 *Rollo* (G.R. No. 178083), Vol. III, pp. 1805-1806.

III
WHETHER FAIR AND REASONABLE CRITERIA WERE FOLLOWED IN IMPLEMENTING THE RETRENCHMENT PROGRAM

IV
WHETHER THE QUITCLAIMS WERE VALIDLY AND VOLUNTARILY EXECUTED

Upon conclusion of the oral arguments, the Court directed the parties to explore a possible settlement and to submit their respective memoranda.[10] Unfortunately, the parties did not reach any settlement; hence, the Court, through the Special Third Division,[11] resolved the issues on the merits through the resolution of October 2, 2009 denying PAL's motion for reconsideration,[12] thus:

> **WHEREFORE**, for lack of merit, the Motion for Reconsideration is hereby **DENIED** with **FINALITY**. The assailed Decision dated July 22, 2008 is **AFFIRMED** with **MODIFICATION** in that the award of attorney's fees and expenses of litigation is reduced to P2,000,000.00. The case is hereby **REMANDED** to the Labor Arbiter solely for the purpose of computing the exact amount of the award pursuant to the guidelines herein stated.
>
> No further pleadings will be entertained.
>
> **SO ORDERED.**[13]

The Special Third Division was unconvinced by PAL's change of theory in urging the June 1998 Association of Airline Pilots of the Philippines (ALPAP) pilots' strike as the reason behind the immediate retrenchment; and observed that the strike was a temporary occurrence that did not require the immediate and sweeping retrenchment of around 1,400 cabin crew.

Not satisfied, PAL filed the *Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2008.*[14]

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[10] *Rollo* (G.R. No. 178083), Vol. III, pp. 1816-1817.

[11] Then composed of Justice Consuelo Ynares-Santiago (*ponente*), Justice Minita V. Chico-Nazario, Justice Eduardo B. Nachura, Justice Diosdado M. Peralta (replacing Justice Alicia Austria-Martinez who retired on April 30, 2009), and Justice Lucas P. Bersamin (in lieu of Justice Teresita J. Leonardo-de Castro who inhibited from the case due to personal reasons).

[12] See *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc.*, G.R. No. 178083, October 2, 2009, 602 SCRA 473.

[13] Id. at 506-507.

[14] Supra note 1.

On October 5, 2009, the writer of the resolution of October 2, 2009, Justice Consuelo Ynares-Santiago, compulsorily retired from the Judiciary. Pursuant to A.M. No. 99-8-09-SC,[15] G.R. No. 178083 was then raffled to Justice Presbitero J. Velasco, Jr., a Member of the newly-constituted regular Third Division.[16] Upon the Court's subsequent reorganization,[17] G.R. No. 178083 was transferred to the First Division where Justice Velasco, Jr. was meanwhile re-assigned. Justice Velasco, Jr. subsequently inhibited himself from the case due to personal reasons.[18] Pursuant to SC Administrative Circular No. 84-2007, G.R. No. 178083 was again re-raffled to Justice Arturo D. Brion, whose membership in the Second Division resulted in the transfer of G.R. No. 178083 to said Division.[19]

On September 7, 2011, the Second Division denied with finality PAL's *Second Motion for Reconsideration of the Decision of July 22, 2008*.[20]

Thereafter, PAL, through Atty. Estelito P. Mendoza, its collaborating counsel, sent a series of letters inquiring into the propriety of the successive transfers of G.R. No. 178083.[21] His letters were docketed as A.M. No. 11-10-1-SC.

On October 4, 2011, the Court *En Banc* issued a resolution:[22] (*a*) assuming jurisdiction over G.R. No. 178083; (*b*) recalling the September 7, 2011 resolution of the Second Division; and (*c*) ordering the re-raffle of G.R. No. 178083 to a new Member-in-Charge.

Resolving the issues raised by Atty. Mendoza in behalf of PAL, as well as the issues raised against the recall of the resolution of September 7, 2011, the Court *En Banc* promulgated its resolution in A.M. No. 11-10-1-SC on March 13, 2012,[23] in which it summarized the intricate developments involving G.R. No. 178083, *viz.*:

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15 *Amended Rules on Who Shall Resolve Motions for Reconsideration of Decisions or Signed Resolutions in Cases Assigned to the Division of the Court* (November 17, 2009).

16 Then composed of Justice Antonio T. Carpio (in lieu of then Chief Justice Renato Corona† who inhibited from the case), Justice Velasco, Jr., Justice Nachura, Justice Peralta, and Justice Bersamin. See *In Re: Letters of Atty. Estelito P. Mendoza Re: G.R. No. 178083—Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc. (PAL),* A.M. No. 11-10-1-SC March 13, 2012, 668 SCRA 11, 27.

17 Special Order No. 839 dated May 17, 2010.

18 *In Re: Letters of Atty. Estelito P. Mendoza,* supra, note 16, at 32.

19 Special Order No. 1025 dated June 21, 2011.

20 Comprised of Justice Brion (*ponente*), with Justice Peralta (in lieu of Justice Carpio who also inhibited from the case), Justice Bersamin (temporarily replacing Justice Maria Lourdes P.A. Sereno who was on leave), Justice Jose Perez (now retired), and Justice Jose C. Mendoza (temporarily replacing Justice Bienvenido Reyes who was on leave).

21 Dated September 13, 16, 20, and 22, 2011.

22 *Rollo* (G.R. No. 178083), Vol. IV, p. 3568.

23 *In Re: Letters of Atty. Estelito P. Mendoza,* supra, note 16.

> To summarize all the developments that brought about the present dispute—expressed in a format that can more readily be appreciated in terms of the Court *en banc's* ruling to recall the September 7, 2011 ruling – the FASAP case, as it developed, was attended by special and unusual circumstances that saw:
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> (a) the confluence of the successive retirement of three Justices (in a Division of five Justices) who actually participated in the assailed Decision and Resolution;
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> (b) the change in the governing rules—from the A.M.s to the IRSC regime—which transpired during the pendency of the case;
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> (c) the occurrence of a series of inhibitions in the course of the case (Justices Ruben Reyes, Leonardo-De Castro, Corona, Velasco, and Carpio), and the absences of Justices Sereno and Reyes at the critical time, requiring their replacement; notably, Justices Corona, Carpio, Velasco and Leonardo-De Castro are the four most senior Members of the Court;
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> (d) the three re-organizations of the divisions, which all took place during the pendency of the case, necessitating the transfer of the case from the Third Division, to the First, then to the Second Division;
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> (e) the unusual timing of Atty. Mendoza's letters, made after the ruling Division had issued its Resolution of September 7, 2011, but before the parties received their copies of the said Resolution; and
>
> (f) finally, the time constraint that intervened, brought about by the parties' receipt on September 19, 2011 of the Special Division's Resolution of September 7, 2011, and the consequent running of the period for finality computed from this latter date; and the Resolution would have lapsed to finality after October 4, 2011, had it not been recalled by that date.
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> All these developments, in no small measure, contributed in their own peculiar way to the confusing situations that attended the September 7, 2011 Resolution, resulting in the recall of this Resolution by the Court *en banc*.[24]

In the same resolution of March 13, 2012, the Court *En Banc* directed the re-raffle of G.R. No. 178083 to the remaining Justices of the former Special Third Division who participated in resolving the issues pursuant to Section 7, Rule 2 of the *Internal Rules of the Supreme Court*, explaining:

> On deeper consideration, the majority now firmly holds the view that Section 7, Rule 2 of the IRSC should have prevailed in considering the raffle and assignment of cases after the 2nd MR was accepted, as advocated by some Members within the ruling Division, as against the general rule on inhibition under Section 3, Rule 8. The underlying

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[24] Id. at 46-47.

constitutional reason, of course, is the requirement of Section 4(3), Article VIII of the Constitution already referred to above.

The general rule on statutory interpretation is that apparently conflicting provisions should be reconciled and harmonized, as a statute must be so construed as to harmonize and give effect to all its provisions whenever possible. Only after the failure at this attempt at reconciliation should one provision be considered the applicable provision as against the other.

Applying these rules by reconciling the two provisions under consideration, **Section 3, Rule 8 of the IRSC should be read as the general rule applicable to the inhibition of a Member-in-Charge. This general rule should, however, yield where the inhibition occurs at the late stage of the case when a decision or signed resolution is assailed through an MR.** At that point, when the situation calls for the ***review of the merits*** of the decision or the signed resolution made by a *ponente* (or writer of the assailed ruling), Section 3, Rule 8 no longer applies and must yield to **Section 7, Rule 2 of the IRSC which contemplates a situation when the *ponente* is no longer available, and calls for the referral of the case for raffle among the remaining Members of the Division who acted on the decision or on the signed resolution.** This latter provision should rightly apply as it gives those who intimately know the facts and merits of the case, through their previous participation and deliberations, the chance to take a look at the decision or resolution produced with their participation.

To reiterate, Section 3, Rule 8 of the IRSC is the general rule on inhibition, but it must yield to the more specific Section 7, Rule 2 of the IRSC where the obtaining situation is for the review *on the merits* of an already issued decision or resolution and the *ponente* or writer is no longer available to act on the matter. On this basis, the *ponente*, on the merits of the case on review, should be chosen from the remaining participating Justices, namely, Justices Peralta and Bersamin.[25]

This last resolution impelled FASAP to file the *Motion for Reconsideration [Re: The Honorable Court's Resolution dated 13 March 2012]*, praying that the September 7, 2011 resolution in G.R. No. 178083 be reinstated.[26]

We directed the consolidation of G.R. No. 178083 and A.M. No. 11-10-1-SC on April 17, 2012.[27]

Issues

PAL manifests that the *Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision*

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[25] *In Re: Letters of Atty. Estelito P. Mendoza,* supra, note 16, at 47-48.
[26] Supra note 2.
[27] *Rollo* (A.M. No. 11-10-1-SC), p. 157.

of July 22, 2008 is its first motion for reconsideration vis-a-vis the October 2, 2009 resolution, and its second as to the July 22, 2008 decision. It states therein that because the Court did not address the issues raised in its previous motion for reconsideration, it is re-submitting the same, *viz.*:

> I
>
> xxx THE HONORABLE COURT ERRED IN NOT GIVING CREDENCE TO THE FOLLOWING COMPELLING EVIDENCE AND CIRCUMSTANCES CLEARLY SHOWING PALS; DIRE FINANCIAL CONDITION AT THE TIME OF THE RETRENCHMENT: (A) PETITIONER'S ADMISSIONS OF PAL'S FINANCIAL LOSSES; (B) THE UNANIMOUS FINDINGS OF THE SECURITIES AND EXCHANGE COMMISSION (SEC), THE LABOR ARBITER, THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND THE COURT OF APPEALS CONFIRMING PAL'S FINANCIAL CRISIS; (C) PREVIOUS CASES DECIDED BY THE HONORABLE COURT RECOGNIZING PAL'S DIRE FINANCIAL STATE; AND (D) PAL BEING PLACED BY THE SEC UNDER SUSPENSION OF PAYMENTS AND CORPORATE REHABILITATION AND RECEIVERSHIP
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> II
>
> xxx THERE IS NO SUFFICIENT BASIS FOR THE HONORABLE COURT'S CONCLUSION THAT PAL DID NOT EXERCISE GOOD FAITH [IN] ITS PREROGATIVE TO RETRENCH EMPLOYEES
>
> III
>
> THE HONORABLE COURT'S RULING THAT PAL DID NOT USE FAIR AND REASONABLE CRITERIA IN ASCERTAINING WHO WOULD BE RETRENCHED IS CONTRARY TO ESTABLISHED FACTS, EVIDENCE ON RECORD AND THE FINDINGS OF THE NLRC AND THE COURT OF APPEALS [28]

PAL insists that FASAP, while admitting PAL's serious financial condition, only questioned before the Labor Arbiter the alleged unfair and unreasonable measures in retrenching the employees;[29] that FASAP categorically manifested before the NLRC, the CA and this Court that PAL's financial situation was not the issue but rather the manner of terminating the 1,400 cabin crew; that the Court's disregard of FASAP's categorical admissions was contrary to the dictates of fair play;[30] that considering that the Labor Arbiter, the NLRC and the CA unanimously found PAL to have experienced financial losses, the Court should have accorded such unanimous findings with respect and finality;[31] that its being placed under suspension of payments and corporate rehabilitation and receivership already sufficiently indicated its grave financial condition;[32] and that the Court should have also taken judicial notice of the suspension of

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28 *Rollo* (G.R. No. 178083), Vol. III, p. 2299.
29 *Rollo* (G.R. No. 178083), Vol. II p. 1551.
30 Id. at 1551-1554.
31 Id. at 1555.
32 Id. at 1556-1557.

payments and monetary claims filed against PAL that had reached and had been consequently resolved by the Court.[33]

PAL describes the Court's conclusion that it was not suffering from tremendous financial losses because it was on the road to recovery a year after the retrenchment as a mere *obiter dictum* that was relevant only in rehabilitation proceedings; that whether or not its supposed "stand-alone" rehabilitation indicated its ability to recover on its own was a technical issue that the SEC was tasked to determine in the rehabilitation proceedings; that at any rate, the supposed track to recovery in 1999 and the capital infusion of $200,000,000.00 did not disprove the enormous losses it was sustaining; that, on the contrary, the capital infusion accented the severe financial losses suffered because the capital infusion was a condition precedent to the approval of the amended and restated rehabilitation plan by the Securities and Exchange Commission (SEC) with the conformity of PAL's creditors; and that PAL took nine years to exit from rehabilitation.[34]

As regards the implementation of the retrenchment program in good faith, PAL argues that it exercised sound management prerogatives and business judgment despite its critical financial condition; that it did not act in due haste in terminating the services of the affected employees considering that FASAP was being consulted thereon as early as February 17, 1998; that it abandoned "Plan 14" due to intervening events, and instead proceeded to implement "Plan 22" which led to the recall/rehire of some of the retrenched employees;[35] and that in selecting the employees to be retrenched, it adopted a fair and reasonable criteria pursuant to the collective bargaining agreement (CBA) where performance efficiency ratings and inverse seniority were basic considerations.[36]

With reference to the Court's resolution of October 2, 2009, PAL maintains that:

> I
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> PAL HAS NOT CHANGED ITS POSITION THAT THE REDUCTION OF PAL'S LABOR FORCE OF ABOUT 5,000 EMPLOYEES, INCLUDING THE 1,423 FASAP MEMBERS, WAS THE RESULT OF A CONFLUENCE OF EVENTS, THE EXPANSION OF PAL'S FLEET, THE ASIAN FINANCIAL CRISIS OF 1997, AND ITS CONSEQUENCES ON PAL'S OPERATIONS, AND THE PILOT'S

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[33] Id. at 1564-1567 (PAL claims that the Court had suspended the claims in view of the pending rehabilitation in *Philippine Airlines v. Kurangking,* G.R. No. 146698, September 24, 2002, 389 SCRA 588; *Philippine Airlines v. Zamora,* G.R. No. 166966, February 6, 2007, 514 SCRA 584; *Garcia v. Philippine Airlines, Inc.,* G.R. No. 164856, August 29, 2007, G.R. No. 164856, 531 SCRA 574; *Philippine Airlines v. Philippine Airlines Employee Association (PALEA),* G.R. No. 142399, June 19, 2007, 526 SCRA 29; *Philippine Airlines v. National Labor Relations Commission,* G.R. No. 123294, September 4, 2000, 634 SCRA 18.

[34] Id. at 1567-1568.

[35] Id. at 1569-1576.

[36] Id. at 1577-1582.

STRIKE OF JUNE 1998, AND THAT PAL SURVIVED BECAUSE OF THE IMPLEMENTATION OF ITS REHABILITATION PLAN (LATER "AMENDED AND RESTATED REHABILITATION PLAN") WHICH INCLUDED AMONG ITS COMPONENT ELEMENTS, THE REDUCTION OF LABOR FORCE

II

THE HONORABLE COURT SHOULD HAVE UPHELD PAL'S REDUCTION OF THE NUMBER OF CABIN CREW IN ACCORD WITH ITS ENTRY INTO REHABILITATION AND THE CONSEQUENT TERMINATION OF EMPLOYMENT OF CABIN CREW PERSONNEL AS A VALID EXERCISE OF MANAGEMENT PREROGATIVE

III

PAL HAS SUFFICIENTLY ESTABLISHED THE SEVERITY OF ITS FINANCIAL LOSSES, SO AS TO JUSTIFY THE ENTRY INTO REHABILITATION AND THE CONSEQUENT REDUCTION OF CABIN CREW PERSONNEL

IV

THE HONORABLE COURT ERRED IN HOLDING THAT THERE WAS NO SUFFICIENT BASIS FOR PAL TO IMPLEMENT THE RETRENCHMENT OF CABIN CREW PERSONNEL

V

UNDER THE CIRCUMSTANCES, THE PRIOR IMPLEMENTATION OF LESS DRASTIC COST-CUTTING MEASURES WAS NO LONGER POSSIBLE AND SHOULD NOT BE REQUIRED FOR A VALID RETRENCHMENT; IN ANY EVENT, PAL HAD IMPLEMENTED LESS DRASTIC COST-CUTTING MEASURES BEFORE IMPLEMENTING THE DOWNSIZING PROGRAM

VI

QUITCLAIMS WERE VALIDLY EXECUTED[37]

PAL contends that the October 2, 2009 resolution focused on an entirely new basis – that of PAL's supposed change in theory. It denies having changed its theory, however, and maintains that the reduction of its workforce had resulted from a confluence of several events, like the flight expansion; the 1997 Asian financial crisis; and the ALPAP pilots' strike.[38] PAL explains that when the pilots struck in June 1998, it had to decide quickly as it was then facing closure in 18 days due to serious financial hemorrhage; hence, the strike came as the final blow.

PAL posits that its business decision to downsize was far from being a hasty, knee-jerk reaction; that the reduction of cabin crew personnel was an integral part of its corporate rehabilitation, and, such being a management decision, the Court could not supplant the decision with its own judgment'

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[37] *Rollo* (G.R. No. 178083), Vol. III, pp. 2250-2251.
[38] Id. at 2251-2252.

and that the inaccurate depiction of the strike as a temporary disturbance was lamentable in light of its imminent financial collapse due to the concerted action.[39]

PAL submits that the Court's declaration that PAL failed to prove its financial losses and to explore less drastic cost-cutting measures did not at all jibe with the totality of the circumstances and evidence presented; that the consistent findings of the Labor Arbiter, the NLRC, the CA and even the SEC, acknowledging its serious financial difficulties could not be ignored or disregarded; and that the challenged rulings of the Court conflicted with the pronouncements made in *Garcia v. Philippine Airlines, Inc.*[40] and related cases[41] that acknowledged PAL's grave financial distress.

In its comment,[42] FASAP counters that a second motion for reconsideration was a prohibited pleading; that PAL failed to prove that it had complied with the requirements for a valid retrenchment by not submitting its audited financial statements; that PAL had immediately terminated the employees without prior resort to less drastic measures; and that PAL did not observe any criteria in selecting the employees to be retrenched.

FASAP stresses that the October 4, 2011 resolution recalling the September 7, 2011 decision was void for failure to comply with Section 14, Article VIII of the 1987 Constitution; that the participation of Chief Justice Renato C. Corona who later on inhibited from G.R. No. 178083 had further voided the proceedings; that the 1987 Constitution did not require that a case should be raffled to the Members of the Division who had previously decided it; and that there was no error in raffling the case to Justice Brion, or, even granting that there was error, such error was merely procedural.

The issues are restated as follows:

Procedural

I

IS THE RESOLUTION DATED OCTOBER 4, 2011 IN A.M. NO. 11-10-1-SC (RECALLING THE SEPTEMBER 7, 2011 RESOLUTION) VOID FOR FAILURE TO COMPLY WITH SECTION 14, RULE VIII OF THE 1987 CONSTITUTION?

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39 *Rollo* (G.R. No. 178083), Vol. III, pp. 2276-2277.

40 G.R. No. 164856, August 29, 2007, 531 SCRA 574.

41 *E.g.*, *Philippine Airlines v. Kurangking,* G.R. No. 146698, September 24, 2002, 389 SCRA 588; *Philippine Airlines, Incorporated v. Zamora,* G.R. No. 166966, February 6, 2007, 514 SCRA 584; *Philippine Airlines, Incorporated v. Philippine Airlines Employees Association (PALEA),* G.R. No. 142399, June 19, 2007, 525 SCRA 29; and *Philippine Airlines v. National Labor Relations Commission,* G.R. No. 123294, September 4, 2000, 634 SCRA 18.

42 *Rollo* (G.R. No. 178083), Vol. III, pp. 2444-2496.

II
MAY THE COURT ENTERTAIN THE SECOND MOTION FOR RECONSIDERATION FILED BY THE RESPONDENT PAL?

Substantive

I
DID PAL LAWFULLY RETRENCH THE 1,400 CABIN CREW PERSONNEL?

A
DID PAL PRESENT SUFFICIENT EVIDENCE TO PROVE THAT IT INCURRED SERIOUS FINANCIAL LOSSES WHICH JUSTIFIED THE DOWNSIZING OF ITS CABIN CREW?

B
DID PAL OBSERVE GOOD FAITH IN IMPLEMENTING THE RETRENCHMENT PROGRAM?

C
DID PAL COMPLY WITH SECTION 112 OF THE PAL-FASAP CBA IN SELECTING THE EMPLOYEES TO BE RETRENCHED?

III
ASSUMING THAT PAL VALIDLY IMPLEMENTED ITS RETRENCHMENT PROGRAM, DID THE RETRENCHED EMPLOYEES SIGN VALID QUITCLAIMS?

Ruling of the Court

After a thorough review of the records and all previous dispositions, we **GRANT** the *Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2008* filed by PAL and Chiong; and **DENY** the *Motion for Reconsideration [Re: The Honorable Court's Resolution dated 13 March 2012]*[43] of FASAP.

Accordingly, we **REVERSE** the July 22, 2008 decision and the October 2, 2009 resolution; and **AFFIRM** the decision promulgated on August 23, 2006 by the CA.

I
The resolution of October 4, 2011 was a valid issuance of the Court

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[43] *Rollo* (A.M. No. 11-10-1-SC), pp. 165-173.

The petitioner urges the Court to declare as void the October 4, 2011 resolution promulgated in A.M. No. 11-10-1-SC for not citing any legal basis in recalling the September 7, 2011 resolution of the Second Division.

The urging of the petitioner is gravely flawed and mistaken.

The requirement for the Court to state the legal and factual basis for its decisions is found in Section 14, Article VIII of the 1987 Constitution, which reads:

> Section 14. **No decision** shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

The constitutional provision clearly indicates that it contemplates only a *decision*, which is the judgment or order that *adjudicates on the merits of a case*. This is clear from the text and tenor of Section 1, Rule 36 of the *Rules of Court,* the rule that implements the constitutional provision, to wit:

> Section 1. *Rendition of judgments and final orders*. **A judgment or final order determining the merits of the case** shall be in writing personally and directly prepared by the judge, **stating clearly and distinctly the facts and the law on which it is based,** signed by him, and filed with the clerk of court.

The October 4, 2011 resolution did not adjudicate on the merits of G.R. No. 178083. We explicitly stated so in the resolution of March 13, 2012. What we thereby did was instead to exercise the Court's inherent power to recall orders and resolutions before they attain finality. In so doing, the Court only exercised prudence in order to ensure that the Second Division was vested with the appropriate legal competence in accordance with and under the Court's prevailing internal rules to review and resolve the pending motion for reconsideration. We rationalized the exercise thusly:

> As the narration in this Resolution shows, **the Court acted on its own pursuant to its power to recall its own orders and resolutions before their finality. The October 4, 2011 Resolution was issued to determine the propriety of the September 7, 2011 Resolution given the facts that came to light after the ruling Division's examination of the records. To point out the obvious, the recall was not a ruling on the merits and did not constitute the reversal of the substantive issues already decided upon by the Court in the FASAP case in its previously issued Decision (of July 22, 2008) and Resolution (of October 2, 2009)**. In short, the October 4, 2011 Resolution was not meant and was never intended to favor either party, but to simply remove any doubt about the validity of the ruling Division's action on the case. The case, in the ruling Division's view, could be brought to the Court *en banc*

> since it is one of "sufficient importance"; at the very least, it involves the interpretation of conflicting provisions of the IRSC with potential jurisdictional implications.
>
> At the time the Members of the ruling Division went to the Chief Justice to recommend a recall, there was no clear indication of how they would definitively settle the unresolved legal questions among themselves. The only matter legally certain was the looming finality of the September 7, 2011 Resolution if it would not be immediately recalled by the Court *en banc*by October 4, 2011. No unanimity among the Members of the ruling Division could be gathered on the unresolved legal questions; thus, they concluded that the matter is best determined by the Court *en banc* as it potentially involved questions of jurisdiction and interpretation of conflicting provisions of the IRSC. To the extent of the recommended recall, the ruling Division was unanimous and the Members communicated this intent to the Chief Justice in clear and unequivocal terms.[44] (Bold underscoring for emphasis)

It should further be clear from the same March 13, 2012 resolution that the factual considerations for issuing the recall order were intentionally omitted therefrom in obeisance to the prohibition against public disclosure of the internal deliberations of the Court.[45]

Still, FASAP assails the impropriety of the recall of the September 7, 2011 resolution. It contends that the raffle of G.R. No. 178083 to the Second Division had not been erroneous but in "*full and complete consonance with Section 4(3) Article VIII of the Constitution*;"[46] and that any error thereby committed was only procedural, and thus a mere "*harmless error*" that did not invalidate the prior rulings made in G.R. No. 178083.[47]

The contention of FASAP lacks substance and persuasion.

The Court carefully expounded in the March 13, 2012 resolution on the resulting jurisdictional conflict that arose from the raffling of G.R. No. 178083 resulting from the successive retirements and inhibitions by several Justices who at one time or another had been assigned to take part in the case. The Court likewise highlighted the importance of referring the case to the *remaining* Members who had actually participated in the deliberations, for not only did such participating Justices intimately know the facts and merits of the parties' arguments but doing so would give to such Justices the opportunity to review their decision or resolution in which they had taken part. As it turned out, only Justice Diosdado M. Peralta and Justice Lucas P. Bersamin were the *remaining* Members of the Special Third Division, and the task of being in charge procedurally fell on either of them.[48] As such, it is

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44 668 SCRA 11, 43-44.
45 Id. at 50.
46 *Rollo* (A.M. No. 11-10-1-SC), p. 169.
47 Id. at 169-170.
48 Id. at 85.

fallacious for FASAP to still insist that the previous raffle had complied with Section 4(3), Article VIII of the 1987 Constitution just because the Members of the Division actually took part in the deliberations.

FASAP is further wrong to insist on the application of the *harmless error* rule. The rule is embodied in Section 6, Rule 51 of the *Rules of Court*, which states:

> Section 6. *Harmless error*. No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the trial court or by any of the parties is ground for granting a new trial or for setting aside, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceedings must disregard any error or defect which does not affect the substantial rights of the parties.

The *harmless error* rule obtains during review of the things done by either the trial court or by any of the parties themselves in the course of trial, and any error thereby found does not affect the substantial rights or even the merits of the case. The Court has had occasions to apply the rule in the correction of a misspelled name due to clerical error;[49] the signing of the decedents' names in the notice of appeal by the heirs;[50] the trial court's treatment of the testimony of the party as an adverse witness during cross-examination by his own counsel;[51] and the failure of the trial court to give the plaintiffs the opportunity to orally argue against a motion.[52] All of the errors extant in the mentioned situations did not have the effect of altering the dispositions rendered by the respective trial courts. Evidently, therefore, the rule had no appropriate application herein.

The Court sees no justification for the urging of FASAP that the participation of the late Chief Justice Corona voided the recall order. The urging derives from FASAP's failure to distinguish the role of the Chief Justice as the Presiding Officer of the *Banc*. In this regard, we advert to the March 13, 2012 resolution, where the Court made the following observation:

> A final point that needs to be fully clarified at this juncture, in light of the allegations of the Dissent is the role of the Chief Justice in the recall of the September 7, 2011 Resolution. **As can be seen from the xxx narration, the Chief Justice acted only on the recommendation of the ruling Division, since he had inhibited himself from participation in the case long before. The confusion on this matter could have been brought about by the Chief Justice's role as the Presiding Officer of**

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[49] See *Republic v. Mercadera*, G.R. No. 186027, December 8, 2010, 637 SCRA 654.

[50] *Regional Agrarian Reform Adjudication Board v. Court of Appeals*, G.R. No. 165155, April 13, 2010, 618 SCRA 181, 202-203.

[51] *Gaw v. Chua*, G.R. No. 160855, April 16, 2008, 551 SCRA 506, 516.

[52] *Remonte v. Bonto,* No. L-19900, February 28, 1966, 16 SCRA 257, 261.

> **the Court *en banc* (particularly in its meeting of October 4, 2011), and the fact that the four most senior Justices of the Court (namely, Justices Corona, Carpio, Velasco and Leonardo-De Castro) inhibited from participating in the case. In the absence of any clear personal malicious participation, it is neither correct nor proper to hold the Chief Justice personally accountable for the collegial ruling of the Court en banc.**[53] (Bold underscoring supplied for emphasis)

To reiterate, the Court, whether sitting *En Banc* or in Division, acts as a collegial body. By virtue of the collegiality, the Chief Justice alone cannot promulgate or issue any decisions or orders. In *Complaint of Mr. Aurelio Indencia Arrienda Against SC Justices Puno, Kapunan, Pardo, Ynares-Santiago*,[54] the Court has elucidated on the collegial nature of the Court in relation to the role of the Chief Justice, *viz.*:

> The complainant's vituperation against the Chief Justice on account of what he perceived was the latter's refusal "to take a direct positive and favorable action" on his letters of appeal overstepped the limits of proper conduct. It betrayed his lack of understanding of a fundamental principle in our system of laws. Although the Chief Justice is *primus inter pares*, he cannot legally decide a case on his own because of the Court's nature as a collegial body. Neither can the Chief Justice, by himself, overturn the decision of the Court, whether of a division or the *en banc*.
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> There is only one Supreme Court from whose decisions all other courts are required to take their bearings.While most of the Court's work is performed by its three divisions, the Court remains one court—single, unitary, complete and supreme. Flowing from this is the fact that, while individual justices may dissent or only partially concur, when the Court states what the law is, it speaks with only one voice. Any doctrine or principle of law laid down by the court may be modified or reversed only by the Court *en banc*.[55]

Lastly, any lingering doubt on the validity of the recall order should be dispelled by the fact that the Court upheld its issuance of the order through the March 13, 2012 resolution, whereby the Court disposed:

> **WHEREFORE**, premises considered, **we hereby confirm that the Court *en banc* has assumed jurisdiction over the resolution of the merits of the motions for reconsideration of Philippine Airlines, Inc., addressing our July 22, 2008 Decision and October 2, 2009 Resolution; and that the September 7, 2011 ruling of the Second Division has been effectively recalled.** This case should now be raffled either to Justice Lucas P. Bersamin or Justice Diosdado M. Peralta (the remaining members of the case) as Member-in-Charge in resolving the merits of these motions.

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53 668 SCRA 11, 48-49.
54 A.M. No. 03-11-30-SC, June 9, 2005, 460 SCRA 1.
55 Id. at 15-16.

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The Flight Attendants and Stewards Association of the Philippines' Motion for Reconsideration of October 17, 2011 is hereby denied; the recall of the September 7, 2011 Resolution was made by the Court on its own before the ruling's finality pursuant to the Court's power of control over its orders and resolutions. Thus, no due process issue ever arose.

SO ORDERED.

II
PAL's *Second Motion for Reconsideration of the Decision of July 22, 2008* could be allowed in the higher interest of justice

FASAP asserts that PAL's *Second Motion for Reconsideration of the Decision of July 22, 2008* was a prohibited pleading; and that the July 22, 2008 decision was not anymore subject to reconsideration due to its having already attained finality.

FASAP's assertions are unwarranted.

With the Court's resolution of January 20, 2010 granting PAL's motion for leave to file a second motion for reconsideration,[56] PAL's *Second Motion for Reconsideration of the Decision of July 22, 2008* could no longer be challenged as a prohibited pleading. It is already settled that the granting of the motion for leave to file and admit a second motion for reconsideration authorizes the filing of the second motion for reconsideration.[57] Thereby, the second motion for reconsideration is no longer a prohibited pleading, and the Court cannot deny it on such basis alone.[58]

Nonetheless, we should stress that the rule prohibiting the filing of a second motion for reconsideration is by no means absolute. Although Section 2, Rule 52 of the *Rules of Court* disallows the filing of a second motion for reconsideration,[59] the *Internal Rules of the Supreme Court* (IRSC) allows an exception, to wit:

> Section 3. *Second motion for reconsideration.* — The Court shall not entertain a second motion for reconsideration, and **any exception to this rule can only be granted in the higher interest of justice by the**

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[56] *Rollo* (G.R. No. 178083), Vol. III, pp. 2435-2436.

[57] *League of Cities of the Philippines (LCP) v. Commission on Elections*, G.R. No. 176951, February 15, 2011, 643 SCRA 149.

[58] *McBurnie v. Ganzon*, G.R. Nos. 178034 & 178117 & G.R. Nos. 186984-85, October 17, 2013, 707 SCRA 646, 668-669.

[59] Sec. 2. *Second motion for reconsideration.*—No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

> **Court *en banc* upon a vote of at least two-thirds of its actual membership**. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. **A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.**
>
> In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court en banc.

The conditions that must concur in order for the Court to entertain a second motion for reconsideration are the following, namely:

1. The motion should satisfactorily explain why granting the same would be in the higher interest of justice;

2. The motion must be made before the ruling sought to be reconsidered attains finality;

3. If the ruling sought to be reconsidered was rendered by the Court through one of its Divisions, at least three members of the Division should vote to elevate the case to the Court *En Banc;* and

4. The favorable vote of at least two-thirds of the Court *En Banc*'s actual membership must be mustered for the second motion for reconsideration to be granted.[60]

Under the IRSC, a second motion for reconsideration may be allowed to prosper upon a showing by the movant that a reconsideration of the previous ruling is necessary in the higher interest of justice. There is higher interest of justice when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties.[61]

PAL maintains that the July 22, 2008 decision contravened prevailing jurisprudence[62] that had recognized its precarious financial condition;[63] that the decision focused on PAL's inability to prove its financial losses due to its failure to submit audited financial statements; that the decision ignored the common findings on the serious financial losses suffered by PAL made

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[60] *SM Land, Inc. v. Bases Conversion and Development Authority,* G.R. No. 203655, September 7, 2015, 769 SCRA 310, 317.
[61] Section 3, Rule 15 of the IRSC.
[62] Supra note 41.
[63] *Rollo* (G.R. No. 178083), Vol. III, pp. 2239-2240.

by the Labor Arbiter, the NLRC, the CA and even the SEC;[64] and that the decision and the subsequent resolution denying PAL's motion for reconsideration would negate whatever financial progress it had achieved during its rehabilitation.[65]

These arguments of PAL sufficed to show that the assailed decision contravened settled jurisprudence on PAL's precarious financial condition. It cannot be gainsaid that there were other businesses undergoing rehabilitation that would also be bound or negatively affected by the July 22, 2008 decision. This was the higher interest of justice that the Court sought to address, which the dissent by Justice Leonen is adamant not to accept.[66] Hence, we deemed it just and prudent to allow PAL's *Second Motion for Reconsideration of the Decision of July 22, 2008.*

It is timely to note, too, that the July 22, 2008 decision did not yet attain finality. The October 4, 2011 resolution *recalled* the September 7, 2011 resolution denying PAL's first motion for reconsideration. Consequently, the July 22, 2008 decision did not attain finality.

The dissent by Justice Leonen nonetheless proposes a contrary view — that both the July 22, 2008 decision and the October 2, 2009 resolution had become final on November 4, 2009 upon the lapse of 15 days following PAL's receipt of a copy of the resolution. To him, the grant of leave to PAL to file the second motion for reconsideration only meant that the motion was no longer prohibited but it did not stay the running of the reglementary period of 15 days. He submits that the Court's grant of the motion for leave to file the second motion for reconsideration did not stop the October 2, 2009 resolution from becoming final because a judgment becomes final by operation of law, not by judicial declaration.[67]

The proposition of the dissent is unacceptable.

In granting the motion for leave to file the second motion for reconsideration, the Court could not have intended to deceive the movants by allowing them to revel in some hollow victory. The proposition manifestly contravened the basic tenets of justice and fairness.

As we see it, the dissent must have inadvertently ignored the procedural effect that a second motion for reconsideration based on an allowable ground *suspended* the running of the period for appeal from the date of the filing of the motion until such time that the same was acted upon

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64 Id. at 2242-2244.
65 Id. at 2244-2245.
66 Dissenting Opinion, p. 21.
67 Id. at 7.

and granted.[68] Correspondingly, granting the motion for leave to file a second motion for reconsideration has the effect of *preventing* the challenged decision from attaining finality. This is the reason *why* the second motion for reconsideration should present extraordinarily persuasive reasons. Indeed, allowing *pro forma* motions would indefinitely avoid the assailed judgment from attaining finality.[69]

By granting PAL's motion for leave to file a second motion for reconsideration, the Court effectively averted the July 22, 2008 decision and the October 2, 2009 resolution from attaining finality. Worthy of reiteration, too, is that the March 13, 2012 resolution expressly recalled the September 7, 2011 resolution.

Given the foregoing, the conclusion stated in the dissent that the *Banc* was divested of the jurisdiction to entertain the second motion for reconsideration for being a "third motion for reconsideration;"[70] and the unfair remark in the dissent that "*[t]he basis of the supposed residual power of the Court En Banc to, take on its own, take cognizance of Division cases is therefore suspect*"[71] are immediately rejected as absolutely legally and factually unfounded.

To start with, there was no "third motion for reconsideration" to speak of. The September 11, 2011 resolution denying PAL's second motion for reconsideration had been recalled by the October 4, 2011 resolution. Hence, PAL's motion for reconsideration remained unresolved, negating the assertion of the dissent that the Court was resolving the second motion for reconsideration "for the second time."[72]

Also, the dissent takes issue against our having assumed jurisdiction over G.R. No. 178083 despite the clear reference made in the October 4, 2011 resolution to Sections 3(m) and (n), Rule 2 of the IRSC. Relying largely on the Court's construction of Section 4(3), Article VIII of the 1987 Constitution in *Fortich v. Corona*,[73] the dissent opines that the *Banc* could

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[68] *Belviz v. Buenaventura,* 83 Phil. 337-340 (1949). In *Guilambo v. Court of Appeals,* 65 Phil. 183-189 1937), the Court explained: "Within what time should a second motion for reconsideration or a second motion for new trial, be filed? Nothing is provided in our rules; but considering, on the one hand, that, under the provisions of Rule 37, judgment should be entered fifteen days after the promulgation of the decision of the court, and, on the other hand, that the previous leave of court is necessary to file a second motion for reconsideration or a second motion for new trial, it is inferable from all this that the second motion should be filed within the time granted by the court, and as the rules are likewise silent on the period within which application for leave of court to file a second motion for new trial or a second motion for reconsideration should be made, a reasonable and logical interpretation of Rule 39 seems to authorize the opinion that the said leave should be applied for immediately after receipt of notice denying the first motion, or as soon as possible."

[69] *Ortigas & Company Limited Partnership v. Velasco,* G.R. No. 109645, 112564 (Resolution), March 4, 1996, 324 PHIL 483-498

[70] Dissenting Opinion, p. 1.

[71] Id. at 17.

[72] Id. at 8.

[73] 352 Phil. 461 (1998).

not act as an appellate court in relation to the decisions of the Division;[74] and that the *Banc* could not take cognizance of any case in the Divisions except upon a prior *consulta* from the ruling Division pursuant to Section 3(m), in relation to Section 3(l), Rule 2 of the IRSC.[75]

The Court disagrees with the dissent's narrow view respecting the residual powers of the *Banc*.

Fortich v. Corona, which has expounded on the authority of the *Banc* to accept cases from the Divisions, is still the prevailing jurisprudence regarding the construction of Section 4(3), Article VIII of the 1987 Constitution. However, *Fortich v. Corona* does not apply herein. It is notable that *Fortich v. Corona* sprung from the results of the voting on the motion for reconsideration filed by the Sumilao Farmers. The vote ended in an equally divided Division ("two-two"). From there, the Sumilao Farmers sought to elevate the matter to the *Banc* based on Section 4(3), Article VIII because the required three-member majority vote was not reached. However, the factual milieu in *Fortich v. Corona* is not on all fours with that in this case.

In the March 13, 2012 resolution, the Court recounted the exigencies that had prompted the *Banc* to take cognizance of the matter, to wit:

> On September 28, 2011, the Letters dated September 13 and 20, 2011 of Atty. Mendoza to Atty. Vidal (asking that his inquiry be referred to the relevant Division Members who took part on the September 7, 2011 Resolution) were "NOTED" by the regular Second Division. The Members of the ruling Division also met to consider the queries posed by Atty. Mendoza. Justice Brion met with the Members of the ruling Division (composed of Justices Brion, Peralta, Perez, Bersamin, and Mendoza), rather than with the regular Second Division (composed of Justices Carpio, Brion, Perez, and Sereno), as the former were the active participants in the September 7, 2011 Resolution.
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> In these meetings, some of the Members of the ruling Division saw the problems pointed out above, some of which indicated that the ruling Division might have had no authority to rule on the case. Specifically, their discussions centered on the application of A.M. No. 99-8-09-SC for the incidents that transpired prior to the effectivity of the IRSC, and on the conflicting rules under the IRSC — Section 3, Rule 8 on the effects of inhibition and Section 7, Rule 2 on the resolution of MRs.
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> A.M. No. 99-8-09-SC indicated the general rule that the re-raffle shall be made among the other Members of the same Division who participated in rendering the decision or resolution and who concurred therein, which should now apply because the ruling on the case is no longer final after the case had been opened for review on the merits. In

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[74] Dissenting Opinion, p. 12.
[75] Id. at 17-18.

other words, after acceptance by the Third Division, through Justice Velasco, of the 2nd MR, there should have been a referral to raffle because the excepting qualification that the Clerk of Court cited no longer applied; what was being reviewed were the merits of the case and the review should be by the same Justices who had originally issued the original Decision and the subsequent Resolution, or by whoever of these Justices are still left in the Court, pursuant to the same A.M. No. 99-8-09-SC.

On the other hand, the raffle to Justice Brion was made by applying AC No. 84-2007 that had been superseded by Section 3, Rule 8 of the IRSC. Even the use of this IRSC provision, however, would not solve the problem, as its use still raised the question of the provision that should really apply in the resolution of the MR: should it be Section 3, Rule 8 on the inhibition of a Member-in-Charge, or Section 7, Rule 2 of the IRSC on the inhibition of the *ponente* when an MR of a decision and a signed resolution was filed. xxx

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A comparison of these two provisions shows the semantic sources of the seeming conflict: Section 7, Rule 2 refers to a situation where the *ponente* has retired, is no longer a Member of the Court, is disqualified, or has inhibited himself from acting on the case; while Section 3, Rule 8 generally refers to the inhibition of a Member-in-Charge who does not need to be the writer of the decision or resolution under review.

Significantly, Section 7, Rule 2 expressly uses the word *ponente* (not Member-in-Charge) and refers to a specific situation where the *ponente* (or the writer of the Decision or the Resolution) is no longer with the Court or is otherwise unavailable to review the decision or resolution he or she wrote. Section 3, Rule 8, on the other hand, expressly uses the term Member-in-Charge and generally refers to his or her inhibition, without reference to the stage of the proceeding when the inhibition is made.

Under Section 7, Rule 2, the case should have been re-raffled and assigned to anyone of Justices Nachura (who did not retire until June 13, 2011), Peralta, or Bersamin, either (1) after the acceptance of the 2nd MR (because the original rulings were no longer final); or (2) after Justice Velasco's inhibition because the same condition existed, *i.e.*, the need for a review by the same Justices who rendered the decision or resolution. As previously mentioned, Justice Nachura participated in both the original Decision and the subsequent Resolution, and all three Justices were the remaining Members who voted on the October 2, 2009 Resolution. On the other hand, if Section 3, Rule 8 were to be solely applied after Justice Velasco's inhibition, the Clerk of Court would be correct in her assessment and the raffle to Justice Brion, as a Member outside of Justice Velasco's Division, was correct.

These were the legal considerations that largely confronted the ruling Division in late September 2011 when it deliberated on what to do with Atty. Mendoza's letters.

The propriety of and grounds for the recall of the September 7, 2011 Resolution

Most unfortunately, the above unresolved questions were even further compounded in the course of the deliberations of the Members of the ruling Division when they were informed that the parties received the ruling on September 19, 2011, and this ruling would lapse to finality after the 15th day, or after October 4, 2011.

Thus, on September 30, 2011 (a Friday), the Members went to Chief Justice Corona and recommended, as a prudent move, that the September 7, 2011 Resolution be recalled at the very latest on October 4, 2011, and that the case be referred to the Court *en banc* for a ruling on the questions Atty. Mendoza asked. The consequence, of course, of a failure to recall their ruling was for that Resolution to lapse to finality. After finality, any recall for lack of jurisdiction of the ruling Division might not be understood by the parties and could lead to a charge of flip-flopping against the Court. The basis for the referral is Section 3(n), Rule 2 of the IRSC, which provides:

> RULE 2.
> OPERATING STRUCTURES
>
> Section 3. *Court en banc matters and cases.*—The Court *en banc* shall act on the following matters and cases:
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> x x x x
>
> (n) cases that the Court *en banc* deems of sufficient importance to merit its attention[.]"

Ruling positively, the Court en banc duly issued its disputed October 4, 2011 Resolution recalling the September 7, 2011 Resolution and ordering the re-raffle of the case to a new Member-in-Charge. Later in the day, the Court received PAL's Motion to Vacate (the September 7, 2011 ruling) dated October 3, 2011. This was followed by FASAP's MR dated October 17, 2011 addressing the Court Resolution of October 4, 2011. The FASAP MR mainly invoked the violation of its right to due process as the recall arose from the Court's *ex parte* consideration of mere letters from one of the counsels of the parties.

As the narration in this Resolution shows, the Court acted on its own pursuant to its power to recall its own orders and resolutions before their finality. The October 4, 2011 Resolution was issued to determine the propriety of the September 7, 2011 Resolution given the facts that came to light after the ruling Division's examination of the records. To point out the obvious, the recall was not a ruling on the merits and did not constitute the reversal of the substantive issues already decided upon by the Court in the FASAP case in its previously issued Decision (of July 22, 2008) and Resolution (of October 2, 2009). In short, the October 4, 2011 Resolution was not meant and was never intended to favor either party, but to simply remove any doubt about the validity of the ruling Division's action on the case. The case, in the ruling Division's view, could be brought to the Court *en banc* since it is one of "sufficient importance"; at the very least,

> it involves the interpretation of conflicting provisions of the IRSC with potential jurisdictional implications.
>
> At the time the Members of the ruling Division went to the Chief Justice to recommend a recall, there was no clear indication of how they would definitively settle the unresolved legal questions among themselves. The only matter legally certain was the looming finality of the September 7, 2011 Resolution if it would not be immediately recalled by the Court *en banc* by October 4, 2011. No unanimity among the Members of the ruling Division could be gathered on the unresolved legal questions; thus, they concluded that the matter is best determined by the Court *en banc* as it potentially involved questions of jurisdiction and interpretation of conflicting provisions of the IRSC. To the extent of the recommended recall, the ruling Division was unanimous and the Members communicated this intent to the Chief Justice in clear and unequivocal terms.[76] (Bold scoring supplied for emphasis)

It is well to stress that the *Banc* could not have assumed jurisdiction were it not for the initiative of Justice Arturo V. Brion who consulted the Members of the ruling Division as well as Chief Justice Corona regarding the jurisdictional implications of the successive retirements, transfers, and inhibitions by the Members of the ruling Division. This move by Justice Brion led to the referral of the case to the *Banc* in accordance with Section 3(l), Rule 2 of the IRSC that provided, among others, that *any Member* of the Division could request the Court *En Banc* to take cognizance of cases that fell under paragraph (m). This referral by the ruling Division became the basis for the *Banc* to issue its October 4, 2011 resolution.

For sure, the *Banc*, by assuming jurisdiction over the case, did not seek to act as appellate body in relation to the acts of the ruling Division, contrary to the dissent's position.[77] The Banc's recall of the resolution of September 7, 2011 should not be so characterized, considering that the *Banc* did not thereby rule on the merits of the case, and did not thereby reverse the July 22, 2008 decision and the October 2, 2009 resolution. The referral of the case to the *Banc* was done to address the conflict among the provisions of the IRSC that had potential jurisdictional implications on the ruling made by the Second Division.

At any rate, PAL constantly raised in its motions for reconsideration that the ruling Division had seriously erred not only in ignoring the consistent findings about its precarious financial situation by the Labor Arbiter, the NLRC, the CA and the SEC, but also in disregarding the pronouncements by the Court of its serious fiscal condition. To be clear, because the serious challenge by PAL against the ruling of the Third Division was anchored on the Third Division's having ignored or reversed settled doctrines or principles of law, only the *Banc* could assume

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[76] *In Re: Letters of Atty. Estelito P. Mendoza,* supra, note 16, at 38-44.
[77] Dissenting Opinion, p. 18.

jurisdiction and decide to either affirm, reverse or modify the earlier decision. The rationale for this arrangement has been expressed in *Lu v. Lu Ym*[78] thuswise:

> It is argued that the assailed Resolutions in the present cases have already become final, since a *second* motion for reconsideration is prohibited except for extraordinarily persuasive reasons and only upon express leave first obtained; and that once a judgment attains finality, it thereby becomes immutable and unalterable, however unjust the result of error may appear.
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> The contention, however, misses an important point. The doctrine of *immutability of decisions* applies only to final and executory decisions. Since the present cases may involve a modification or reversal of a Court-ordained doctrine or principle, the judgment rendered by the Special Third Division may be considered unconstitutional, hence, it can never become final. It finds mooring in the deliberations of the framers of the Constitution:
>
> > On proposed Section 3(4), Commissioner Natividad asked what the effect would be of a decision that violates the proviso that "no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court en banc." The answer given was that **such a decision would be invalid**. Following up, Father Bernas asked whether the decision, if not challenged, could become final and binding at least on the parties. Romulo answered that, **since such a decision would be in excess of jurisdiction, the decision on the case could be reopened anytime**. (emphasis and underscoring supplied)
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> A decision rendered by a Division of this Court in violation of this constitutional provision would be in excess of jurisdiction and, therefore, invalid. Any entry of judgment may thus be said to be "inefficacious" since the decision is void for being unconstitutional.
>
> While it is true that the Court *en banc* exercises no appellate jurisdiction over its Divisions, Justice Minerva Gonzaga-Reyes opined in *Firestone* and concededly recognized that "[t]he only constraint is that any doctrine or principle of law laid down by the Court, either rendered *en banc* or in division, may be overturned or reversed only by the Court sitting *en banc.*"
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> That a judgment must become final at some definite point at the risk of occasional error cannot be appreciated in a case that embroils not only a general allegation of "occasional error" but also a serious accusation of a violation of the Constitution, *viz.*, that doctrines or principles of law were modified or reversed by the Court's Special Third Division August 4, 2009 Resolution.
>
> The law allows a determination at first impression that a doctrine or principle laid down by the court *en banc* or in division **may**

[78] G.R. No. 153690, February 15, 2011, 643 SCRA 23.

> **be** modified or reversed in a case which would warrant a referral to the Court *En Banc*. The use of the word "may" instead of "shall" connotes probability, not certainty, of modification or reversal of a doctrine, as may be deemed by the Court. Ultimately, it is the entire Court which shall decide on the acceptance of the referral and, if so, "to reconcile any seeming conflict, to reverse or modify an earlier decision, and to declare the Court's doctrine."
>
> The Court has the power and prerogative to suspend its own rules and to exempt a case from their operation if and when justice requires it, as in the present circumstance where movant filed a motion for leave after the prompt submission of a second motion for reconsideration but, nonetheless, still within 15 days from receipt of the last assailed resolution.[79]

Lastly, the dissent proposes that a unanimous vote is required to grant PAL's *Second Motion for Reconsideration of the Decision of July 22, 2008*.[80] The dissent justifies the proposal by stating that "*[a] unanimous court would debate and deliberate more fully compared with a non-unanimous court.*"[81]

The radical proposal of the dissent is bereft of legal moorings. Neither the 1987 Constitution nor the IRSC demands such unanimous vote. Under Section 4(2), Article VIII of the 1987 Constitution, decisions by the *Banc* shall be attained by a "concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon." As a collegial body, therefore, the Court votes after deliberating on the case, and only a *majority* vote is required,[82] unless the 1987 Constitution specifies otherwise. In all the deliberations by the Court, dissenting and concurring opinions are welcome, they being seen as sound manifestations of "the license of individual Justices or groups of Justices to separate themselves from "the Court's" adjudication of the case before them,"[83] thus:

> [C]oncurring and dissenting opinions serve functions quite consistent with a collegial understanding of the Court. Internally within the Court itself---dissent promotes and improves deliberation and judgment. Arguments on either side of a disagreement test the strength of their rivals and demand attention and response. The opportunity for challenge and response afforded by the publication of dissenting and concurring opinions is a close and sympathetic neighbor of the obligation of reasoned justification.

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79 Id. at 40-42; emphasis and underscoring are part of the original text.

80 To correct the statement in the Dissenting Opinion (p. 19) that the motion was PAL's "*third* motion for reconsideration."

81 Dissenting Opinion, p. 19.

82 *Consing v. Court of Appeals*, G.R. No. 78272, 29 August 1989, 177 SCRA 14, 21.

83 Kornhauser and Sager, *The One and the Many: Adjudication in Collegial Courts*, 81 Cal. L. Rev. 1, p. 7 (1993). Available at: http://scholarship.law.berkeley.edu/ californialawreview/vol81/iss1/1 (last accessed January 14, 2018).

> Externally for lower courts, the parties, and interested bystanders--concurring and dissenting opinions are important guides to the dynamic "meaning" of a decision by the Court. From a collegial perspective, dissenting and concurring opinions offer grounds for understanding how individual Justices, entirely faithful to their Court's product, will interpret that product. The meaning each Justice brings to the product of her Court will inevitably be shaped by elements of value and judgment she brings to the interpretive endeavor; her dissent from the Court's conclusions in the case in question is likely to be dense with insight into these aspects of her judicial persona.[84]

III
PAL implemented a valid retrenchment program

Retrenchment or downsizing is a mode of terminating employment initiated by the employer through no fault of the employee and without prejudice to the latter, resorted to 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.[85]

Anent retrenchment, Article 298[86] of the *Labor Code* provides as follows:

> Article 298. *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 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.

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[84] Id. at 9.

[85] *Pepsi-Cola Products Philippines, Inc. v. Molon, G.R. No. 175002*, February 18, 2013, 691 SCRA 113, 126; *Philippine Carpet Employees Association (PHILCEA) v. Sto. Tomas,* G.R. No. 168719, February 22, 2006, 483 SCRA 128. 143.

[86] Formerly Article 283; See DOLE Department Advisory No. 01 series of 2015.

Accordingly, the employer may resort to retrenchment in order to avert serious business losses. To justify such retrenchment, the following conditions must be present, namely:

> 1. The retrenchment must be reasonably necessary and likely to prevent business losses;
>
> 2. The losses, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or, if only expected, are reasonably imminent;
>
> 3. The expected or actual losses must be proved by sufficient and convincing evidence;
>
> 4. The retrenchment must be in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and
>
> 5. There must be 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.[87]

Based on the July 22, 2008 decision, PAL failed to: (1) prove its financial losses because it did not submit its audited financial statements as evidence; (2) observe good faith in implementing the retrenchment program; and (3) apply a fair and reasonable criteria in selecting who would be terminated.

Upon a critical review of the records, we are convinced that PAL had met all the standards in effecting a valid retrenchment.

A
PAL's serious financial losses were duly established

PAL was discharged of the burden to prove serious financial losses in view of FASAP's admission

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[87] DOLE Department Order No. 147-15, series of 2015 (*Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, As Amended*)

PAL laments the unfair and unjust conclusion reached in the July 22, 2008 decision to the effect that it had not proved its financial losses due to its non-submission of audited financial statements. It points out that the matter of financial losses had not been raised as an issue before the Labor Arbiter, the NLRC, the CA, and even in the petition in G.R. No. 178083 in view of FASAP's admission of PAL having sustained serious losses; and that PAL's having been placed under rehabilitation sufficiently indicated the financial distress that it was suffering.

It is quite notable that the matter of PAL's financial distress had originated from the complaint filed by FASAP whereby it raised the sole issue of "*Whether or not respondents committed Unfair Labor Practice.*"[88] FASAP believed that PAL, in terminating the 1,400 cabin crew members, had violated Section 23, Article VII and Section 31, Article IX of the 1995-2000 PAL-FASAP CBA. Interestingly, FASAP averred in its position paper therein that it was not opposed to the retrenchment program because it understood PAL's financial troubles; and that it was only questioning the *manner and lack of standard* in carrying out the retrenchment, thus:

> At the outset, it must be pointed out that complainant was never opposed to the retrenchment program itself, as it understands respondent PAL's financial troubles. In fact, complainant religiously cooperated with respondents in their quest for a workable solution to the company-threatening problem. Attached herewith as Annexes "A" to "D" are the minutes of its meetings with respondent PAL's representatives showing complainant's active participation in the deliberations on the issue.
>
> What complainant vehemently objects to are the manner and the lack of criteria or standard by which the retrenchment program was implemented or carried out, despite the fact that there are available criteria or standard that respondents could have utilized or relied on in reducing its workforce. In adopting a retrenchment program that was fashioned after the evil prejudices and personal biases of respondent Patria Chiong, respondent PAL grossly violated at least two important provisions of its CBA with complainant – Article VII, Section 23 and Article IX, Sections 31 and 32.[89]

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88 *Rollo* (G.R. No. 178083), Vol. I, p. 491.
89 Id. at 113-114.

These foregoing averments of FASAP were echoed in its reply[90] and memorandum[91] submitted to the Labor Arbiter.

Evidently, FASAP's express recognition of PAL's grave financial situation meant that such situation no longer needed to be proved, the same having become a judicial admission[92] in the context of the issues between the parties. As a rule, indeed, admissions made by parties in the pleadings, or in the course of the trial or other proceedings in the same case are conclusive, and do not require further evidence to prove them.[93] By FASAP's admission of PAL's severe financial woes, PAL was relieved of its burden to prove its dire financial condition to justify the retrenchment. Thusly, PAL should not be taken to task for the non-submission of its audited financial statements in the early part of the proceedings inasmuch as the non-submission had been rendered irrelevant.

Yet, the July 22, 2008 decision ignored the judicial admission and unfairly focused on the lack of evidence of PAL's financial losses. The Special Third Division should have realized that PAL had been discharged of its duty to prove its precarious fiscal situation in the face of FASAP's admission of such situation. Indeed, PAL did not have to submit the audited financial statements because its being in financial distress was not in issue at all.

Nonetheless, the dissent still insists that PAL should be faulted for failing to prove its substantial business losses, and even referred to several

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90 Id. at 164-165.
Paragraphs 3 and 4 of the Reply reads:

> 3. It must be stressed that complainant was never opposed to respondents['] retrenchment program as it truly understands respondent PAL's financial position. As a matter of fact, when it became apparent that the company was already in the brink of bankruptcy, complainant actively participated in fashioning out some workable solutions to the problem. Respondents have personal knowledge of such fact;
>
> 4. What complainant vigorously objects to was the capricious and whimsical implementation of the retrenchment program which, as circumstances would prove, intended not only to save respondent PAL from business and financial collapse but also to get rid of employees who were actively engaging in union activities and also those who are relatively of age already. In other words, such retrenchment program was taken advantage of to cleanse complainant's ranks of vigilant and active union members as well as older and senior cabin attendants."

91 Id. at 175-176.
FASAP averred:

> This is a case of unfair labor practice, plain and simple. Respondents, finding an opportunity in its financial predicament due to the Asian economic crisis that gravely affected most industries in the far east, and specifically Respondents herein, retrenched around Five Thousand employees, including One Thousand Four Hundred flight attendants and stewards as well as pursers. While Complainant does not question the financial setback of respondent airline due to the Asian economic crisis, it doubts the manner and sincerity by which respondents effected the termination. It challenges respondents to show in this suit that they followed a set of rules and norms in coming up with the list of employees to be retrenched, more specifically those members and officers of Complainant union.

92 Sec. 4, Rule 129 of the *Rules of Court*.

93 *Josefa v. Manila Electric Company*, G.R. No. 182705, July 18, 2014, 730 SCRA 126, 144; *Philippine Long Distance Telephone Company (PLDT) v. Pingol*, G.R. No. 182622, September 8, 2010, 630 SCRA 413, 421.

decisions of the Court[94] wherein the employers had purportedly established their serious business losses as a requirement for a valid retrenchment.

Unfortunately, the cases cited by the dissent obviously had no application herein because they originated from either simple complaints of illegal retrenchment, or unfair labor practice, or additional separation pay.[95]

LVN Pictures originated from a complaint for unfair labor practice (ULP) based on Republic Act No. 874 (*Industrial Peace Act*). The allegations in the complaint concerned interference, discrimination and refusal to bargain collectively. The Court pronounced therein that the employer (LVN Pictures) did not resort to ULP because it was able to justify its termination, closure and eventual refusal to bargain collectively through the financial statements showing that it continually incurred serious financial losses. Notably, the Court did not interfere with the closure and instead recognized LVN's management prerogative to close its business and dismiss its employees.

North Davao Mining was a peculiar case, arising from a complaint for additional separation pay, among others. The Court therein held that separation pay was not required if the reason for the termination was due to serious business losses. It clarified that Article 283 (now Art. 298) governed payment of separation benefits in case of closure of business not due to serious business losses. When the reason for the closure was serious business losses, the employer shall not be required to grant separation pay to the terminated employees.

In *Manatad*, the complaint for illegal dismissal was based on the allegation that the retrenchment program was illegal because the employer was gaining profits. Hence, the core issue revolved around the existence (or absence) of grave financial losses that would justify retrenchment.

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[94] Namely: *Central Azucarera de La Carlota v. National Labor Relations Commission, Polymart Paper Industries, Inc. v. National Labor Relations Commission, F.F. Marine Corp. v. National Labor Relations Commission, Philippine Airlines, Inc. v. Dawal, LVN Pictures Employees and Workers Association (NLU) v. LVN Pictures, Inc., North Davao Mining Corporation v. NLRC,* and *Manatad v. Philippine Telegraph and Telephone Corporation* (Dissenting Opinion, pp. 23-24)

[95] *Central Azucarera de la Carlota* originated from a complaint for reinstatement, alleging that the implemented retrenchment program was not based on valid grounds. In *Polymart*, the employees alleged that their employer resorted to illegal dismissal on the pretext of incurring serious business losses and the officers and members of the labor union were the first to be retrenched because of their previous misdemeanors. *F.F. Marine Corp.* arose from a complaint for illegal dismissal, with the employee alleging that he was beguiled to accept the separation pay on the pretext that the machine he was working on was transferred to the province. The employer however countered that the employee was validly retrenched. In *PAL v. Dawal*, the complaint before the Labor Arbiter was that of illegal dismissal and unfair labor practice, with PAL claiming that the termination was a valid retrenchment due to the Asian Financial Crisis.

In the cited cases, the employers had to establish that they were incurring serious business losses because it was the very issue, if not intricately related to the main issue presented in the original complaints. In contrast, the sole issue herein as presented by FASAP to the Labor Arbiter was the "manner of retrenchment," not the basis for retrenchment. FASAP itself, in representation of the retrenched employees, had admitted in its position paper, as well as in its reply and memorandum submitted to the Labor Arbiter the fact of serious financial losses hounding PAL. In reality, PAL was not remiss by not proving serious business losses. FASAP's admission of PAL's financial distress already established the latter's precarious financial state.

Judicial notice could be taken of the financial losses incurred; the presentation of audited financial statements was not required in such circumstances

The July 22, 2008 decision recognized that PAL underwent corporate rehabilitation. In seeming inconsistency, however, the Special Third Division refused to accept that PAL had incurred serious financial losses, observing thusly:

> **The audited financial statements should be presented before the Labor Arbiter who is in the position to evaluate evidence.** They may not be submitted belatedly with the Court of Appeals, because the admission of evidence is outside the sphere of the appellate court's certiorari jurisdiction. Neither can this Court admit in evidence audited financial statements, or make a ruling on the question of whether the employer incurred substantial losses justifying retrenchment on the basis thereof, as this Court is not a trier of facts. Even so, this Court may not be compelled to accept the contents of said documents blindly and without thinking.
>
> x x x x
>
> In the instant case, PAL failed to substantiate its claim of actual and imminent substantial losses which would justify the retrenchment of more than 1,400 of its cabin crew personnel. **Although the Philippine economy was gravely affected by the Asian financial crisis, however, it cannot be assumed that it has likewise brought PAL to the brink of bankruptcy. Likewise, the fact that PAL underwent corporate rehabilitation does not automatically justify the retrenchment of its cabin crew personnel.**[96] (Emphasis supplied)

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[96] *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.*, G.R. No. 178083, July 22, 2008, 559 SCRA 252, 278-279.

Indeed, that a company undergoes rehabilitation sufficiently indicates its fragile financial condition. It is rather unfortunate that when PAL petitioned for rehabilitation the term "corporate rehabilitation" still had no clear definition. Presidential Decree No. 902-A,[97] the law then applicable, only set the remedy.[98] Section 6(c) and (d) of P.D. No. 902-A gave an insight into the precarious state of a distressed corporation requiring the appointment of a receiver or the creation of a management committee, *viz.*:

> x x x x
>
> c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order **to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors**: Provided, however, That the Commission may, in appropriate cases, appoint a rehabilitation receiver of corporations, partnerships or other associations not supervised or regulated by other government agencies who shall have, in addition to the powers of a regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph d) hereof: *Provided*, further, That the Commission may appoint a rehabilitation receiver of corporations, partnerships or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned: *Provided*, finally, That **upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly**.
>
> d) To create and appoint a management committee, board, or body upon petition or motu propio to undertake the management of corporations, partnerships or other associations not supervised or regulated by other government agencies in appropriate cases **when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties of paralyzation of business operations of such corporations or entities which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public**: Provided, further, That the Commission may create or appoint a management committee, board or body to undertake the management of corporations, partnerships or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned.
>
> The management committee or rehabilitation receiver, board or body shall have the power to take custody of, and control over, all the existing assets and property of such entities under management; to

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[97] *Reorganization of the Securities and Exchange Commission with Additional Power and Placing Said Agency under the Administrative Supervision of the Office of the President*," as amended by P.D. No. 1799.

[98] Concepcion, *Corporate Rehabilitation: The Philippine Experience*. Economic Policy Agenda Series No. 9. Foundation for Economic Freedom, Inc., p. 3, available at http://dirp3.pids.gov.ph/ris/taps/tapspp9916.pdf last accessed on April 8, 2017.

> evaluate the existing assets and liabilities, earnings and operations of such corporations, partnerships or other associations; **to determine the best way to salvage and protect the interest of the investors and creditors**; to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the Commission. It shall report and be responsible to the Commission until dissolved by order of the Commission: Provided, however, That the Commission may, on the basis of the findings and recommendation of the management committee, or rehabilitation receiver, board or body, or on its own findings, **determine that the continuance in business of such corporation or entity would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of such corporation entity and its remaining assets liquidated accordingly**. The management committee or rehabilitation receiver, board or body may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provision of law, articles of incorporation or by-laws to the contrary.
>
> The management committee, or rehabilitation receiver, board or body shall not be subject to any action, claim or demand for, or in connection with, any act done or omitted to be done by it in good faith in the exercise of its functions, or in connection with the exercise of its power herein conferred. (Bold underscoring supplied for emphasis)

After having been placed under corporate rehabilitation and its rehabilitation plan having been approved by the SEC on June 23, 2008, PAL's dire financial predicament could not be doubted. Incidentally, the SEC's order of approval came a week after PAL had sent out notices of termination to the affected employees. It is thus difficult to ignore the fact that PAL had then been experiencing difficulty in meeting its financial obligations long before its rehabilitation.

Moreover, the fact that airline operations were capital intensive but earnings were volatile because of their vulnerability to economic recession, among others.[99] The Asian financial crisis in 1997 had wrought havoc among the Asian air carriers, PAL included.[100] The peculiarities existing in the airline business made it easier to believe that at the time of the Asian financial crisis, PAL incurred liabilities amounting to ₱90,642,933,919.00, which were way beyond the value of its assets that then only stood at ₱85,109,075,351.

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[99] International Air Transport Association (IATA). *Airline Disclosure Guide: Aircraft Acquisition Cost and Depreciation* available at https://www.iata.org/publications/Documents/Airline-Disclosure-Guide-aircraft-acquisition.pdflast accessed on April 8, 2017.

[100] These included Cathay Pacific, Garuda Airlines, Japan Airlines and Malaysian Airlines, all of which reviewed their operating costs and implemented cost cutting measures including employment lay-off. See World Tourism Organization. *Impacts of the Financial Crisis on Asia's Tourism Sector,* p. 22availableat http://sete.gr/files/Media/Ebook/110301_Impacts%20of%20the%20Financial%20Crisis%20on%20Asia%20Tourism%20Sector.pdflast accessed on April 8, 2017.

Also, the Court cannot be blind and indifferent to current events affecting the society[101] and the country's economy,[102] but must take them into serious consideration in its adjudication of pending cases. In that regard, Section 2, Rule 129 of the *Rules of Court* recognizes that the courts have discretionary authority to take judicial notice of matters that are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.[103] The principle is based on convenience and expediency in securing and introducing evidence on matters that are not ordinarily capable of dispute and are not *bona fide* disputed.[104]

Indeed, the Labor Arbiter properly took cognizance of PAL's substantial financial losses during the Asian financial crisis of 1997.[105] On its part, the NLRC recognized the grave financial distress of PAL based on its ongoing rehabilitation/receivership.[106] The CA likewise found that PAL had implemented a retrenchment program to counter its tremendous business losses that the strikes of the pilot's union had aggravated.[107] Such recognitions could not be justly ignored or denied, especially after PAL's financial and operational difficulties had attracted so much public attention that even President Estrada had to intervene in order to save PAL as the country's flag carrier.[108]

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[101] In *Re: Request Radio-TV Coverage of the Trial in the Sandiganbayan of the Plunder Cases Against the Former President Joseph E. Estrada, Secretary of Justice Hernando Perez, Kapisanan ng mga Brodkaster ng Pilipinas, Cesar Sarino, Renato Cayetano and Atty. Ricardo Romulo v. Estrada,* A.M. No. 01-4-03-SC, June 29, 2001, 360 SCRA 248, the Court took judicial notice of the effect of the media in stirring public sentiments during an impeachment trial.

[102] In *Marcos v. Manglapus,* G.R. No. 88211, September 15, 1989, 177 SCRA 668, the Court took judicial notice of the resulting precarious state of the economy in connection with the return of former President Ferdinand E. Marcos to the country; In *Candelaria v. People,* G.R. No. 209386, December 8, 2014, 744 SCRA 178, the Court also took judicial notice of the value of diesel fuel as a matter of public knowledge.

[103] Section 2, Rule 129 of the *Rules of Court.*

[104] *Republic v. Sandiganbayan (Fourth Division),* G.R. No. 152375, December 13, 2011, 662 SCRA 152, 212; *Habagat Grill v. DMC-Urban Property Developer, Inc.*, G.R. No. 155110, March 31, 2005, 454 SCRA 653, 668, 669.

[105] *Rollo* (G.R. No. 178083), Vol. I, pp. 491-492.
The Labor Arbiter stated in its decision:

> "[I]t is not disputed that PAL suffered business reverses which almost brought it to total bankruptcy. PAL's precarious financial position immediately before it embarked on the controversial retrenchment program was not only directly attribute[d] to the crisis that plague the Asian economies which started in the middle of 1997 that continuous to be felt until today, but also partly due to the strike staged by the Airline Pilots Association of the Philippines (ALPAP) and by the Philippine Airlines Employees (PALEA), which crippled its operation for a considerable period of time.
>
> The combination of the economic predicament in the Asian region and the crippling strike proved too much for PAL. Its assets almost levelled with its liabilities. Under tremendous pressure, PAL was placed under Rehabilitation Receiver and its Rehabilitation Plan was approved, as evidenced by the Order of the Securities and Exchange Commission, dated 23 June 1998 in SEC Case No. 06-98-6004 entitled :[I]n the Matter of the Petition for the Approval of Rehabilitation Plan and for Appointment of a Rehabilitation Receiver." There is, therefore, no doubt with respect to respondent's financial distress."

[106] Id. at 673; the NLRC also noted that the complainants did not dispute the financial reverses suffered by PAL (*Rollo* (Id. at 685).

[107] Id. at 60.

[108] See *Rivera v. Espiritu*, G.R. No. 135547, January 23, 2002, 374 SCRA 351.

The Special Third Division also observed that PAL had submitted a "stand-alone" rehabilitation program that was viewed as an acknowledgment that it could "undertake recovery on its own and that it possessed enough resources to weather the financial storm." The observation was unfounded considering that PAL had been constrained to submit the "stand-alone" rehabilitation plan on December 7, 1998 because of the lack of a strategic partner.[109]

We emphasize, too, that the presentation of the audited financial statements should not the sole means by which to establish the employer's serious financial losses. The presentation of audited financial statements, although convenient in proving the unilateral claim of financial losses, is not required for all cases of retrenchment. The evidence required for each case of retrenchment really depends on the particular circumstances obtaining. The Court has cogently opined in that regard:

> That petitioners were not able to present financial statements for years prior to 2005 should not be automatically taken against them. Petitioner BEMI was organized and registered as a corporation in 2004 and started business operations in 2005 only. **While financial statements for previous years may be material in establishing the financial trend for an employer, these are not indispensable in all cases of retrenchment. The evidence required for each case of retrenchment will still depend on its particular circumstances.** In fact, in *Revidad v. National Labor Relations Commission*, the Court declared that "**proof of actual financial losses incurred by the company is not a condition *sine qua non* for retrenchment," and retrenchment may be undertaken by the employer to prevent even future losses**:
>
> > In its ordinary connotation, the phrase "to prevent losses" means that retrenchment or termination of the services of some employees is authorized to be undertaken by the employer sometime before the anticipated losses are actually sustained or realized. It is not, in other words, the intention of the lawmaker to compel the employer to stay his hand and keep all his employees until after losses shall have in fact materialized. If such an intent were expressly written into the law, that law may well be vulnerable to constitutional attack as unduly taking property from one man to be given to another.[110] (Bold underscoring supplied for emphasis)

In short, to require a distressed corporation placed under rehabilitation or receivership to still submit its audited financial statements may become unnecessary or superfluous.

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[109] Antes, *Brightening Philippine Airlines (PAL): Strategizing for the Future of Asia's Pioneer and Sunniest Air Transporter*. Case Studies in Asian Management, Haghirian, P. (Ed.), World Scientific Publishing Co, Pte. Ltd. (2014), p.189.

[110] *Blue Eagle Management, Inc. v. Bonoan*, G.R. No. 192488, April 19, 2016, 790 SCRA 328, 355.

Under P.D. No. 902-A, the SEC was empowered during rehabilitation proceedings to thoroughly review the corporate and financial documents submitted by PAL. Hence, by the time when the SEC ordered PAL's rehabilitation, suspension of payments and receivership, the SEC had already ascertained PAL's serious financial condition, and the clear and imminent danger of its losing its corporate assets. To require PAL in the proceedings below to still prove its financial losses would only trivialize the SEC's order and proceedings. That would be unfortunate because we should not ignore that the SEC was then the competent authority to determine whether or not a corporation experienced serious financial losses. Hence, the SEC's order – presented as evidence in the proceedings below – sufficiently established PAL's grave financial status.

Finally, PAL argues that the Special Third Division should not have deviated from the pronouncements made in *Garcia v. Philippine Airlines, Inc.*, *Philippine Airlines, Inc. v. Kurangking*, *Philippine Airlines v. Court of Appeals*, *Philippine Airlines v. Zamora*, *Philippine Airlines v. PALEA*, and *Philippine Airlines v. National Labor Relations Commission*, all of which judicially recognized PAL's dire financial condition.

The argument of PAL is valid and tenable.

Garcia v. Philippine Airlines, Inc. discussed the unlikelihood of reinstatement pending appeal because PAL had been placed under corporate rehabilitation, explaining that unlike the ground of substantial losses contemplated in a retrenchment case, the state of corporate rehabilitation was judicially pre-determined by a competent court and not formulated for the first time by the employer, *viz.*:

> While reinstatement pending appeal aims to avert the continuing threat or danger to the survival or even the life of the dismissed employee and his family, it does not contemplate the period when the employer-corporation itself is similarly in a *judicially monitored* state of being resuscitated in order to survive.
>
> The parallelism between a judicial order of corporation rehabilitation as a justification for the non-exercise of its options, on the one hand, and a claim of actual and imminent substantial losses as ground for retrenchment, on the other hand, stops at the red line on the financial statements. Beyond the analogous condition of financial gloom, as discussed by Justice Leonardo Quisumbing in his Separate Opinion, are more salient distinctions. Unlike the ground of substantial losses contemplated in a retrenchment case, the state of corporate rehabilitation was judicially pre-determined by a competent court and not formulated for the first time in this case by respondent.
>
> More importantly, there are legal effects arising from a judicial order placing a corporation under rehabilitation. Respondent was, during

> the period material to the case, effectively deprived of the alternative choices under Article 223 of the Labor Code, not only by virtue of the statutory injunction but also in view of the interim relinquishment of management control to give way to the full exercise of the powers of the rehabilitation receiver. Had there been no need to rehabilitate, respondent may have opted for actual physical reinstatement pending appeal to optimize the utilization of resources. Then again, though the management may think this wise, the rehabilitation receiver may decide otherwise, not to mention the subsistence of the injunction on claims.[111]

In *Philippine Airlines v. Kurangking, Philippine Airlines v. Court of Appeals, Philippine Airlines v. PALEA* and *Philippine Airlines v. National Labor Relations Commission*, the Court uniformly upheld the suspension of monetary claims against PAL because of the SEC's order placing it under receivership. The Court emphasized the need to suspend the payment of the claims pending the rehabilitation proceedings in order to enable the management committee/receiver to channel the efforts towards restructuring and rehabilitation. *Philippine Airlines v. Zamora* reiterated this rule and deferred to the prior judicial notice taken by the Court in suspending the monetary claims of illegally dismissed employees.[112]

Through these rulings, the Court consistently recognized PAL's financial troubles while undergoing rehabilitation and suspension of payments. Considering that the ruling related to conditions and circumstances that had occurred during the same period as those obtaining in G.R. No. 178083, the Court cannot take a different view.

It is also proper to indicate that the Court decided the other cases long before the promulgation of the assailed July 22, 2008 decision. Hence, the Special Third Division should not have regarded the financial losses as an issue that still required determination. Instead, it should have just simply taken judicial notice of the serious financial losses being suffered by PAL.[113] To still rule that PAL still did not prove such losses certainly conflicted with the antecedent judicial pronouncements about PAL's dire financial state.

As such, we cannot fathom the insistence by the dissent that the Court had not taken judicial notice but merely "recognized" that PAL was under corporate rehabilitation. Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because they already know them. It is the manner of recognizing and acknowledging facts that no longer need to be proved in court. In other words, when the Court "recognizes" a fact, it inevitably takes judicial notice of it.

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[111] G.R. No. 164856, January 20, 2009, 576 SCRA 479, 496-497.

[112] In an earlier resolution in *Philippine Airlines v. Zamora*, G.R. No. 166996, February 6, 2007, 514 SCRA 584.

[113] Sec. 1, Rule 129 of the *Rules of Court*.

For sure, it would not have been the first time that the Court would have taken judicial notice of the findings of the SEC and of antecedent jurisprudence recognizing the fact of rehabilitation by the employer. The Court did so in the 2002 case of *Clarion Printing House, Inc. v. National Labor Relations Commission*,[114] to wit:

> Sections 5 and 6 of Presidential Decree No. 902-A (P.D. 902-A) ("REORGANIZATION OF THE SECURITIES AND EXCHANGE COMMISSION WITH ADDITIONAL POWERS AND PLACING SAID AGENCY UNDER THE ADMINISTRATIVE SUPERVISION OF THE OFFICE OF THE PRESIDENT"), as amended, read:
>
> > SEC. 5. In addition to the regulatory and adjudicative functions of THE SECURITIES AND EXCHANGE COMMISSION over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, *it shall have original and exclusive jurisdiction to hear and decide cases involving:*
> >
> > xxx xxx xxx
> >
> > (d) **Petitions of corporations, partnerships or associations declared *in the state of suspension of payments* in cases where the corporation, partnership or association possesses sufficient property to cover all debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership, association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree.**
> >
> > SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
> >
> > xxx xxxxxx
> >
> > (c) **To appoint one or more receivers** of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or **protect the interest of the investing public and creditors: Provided, however, That *the Commission may in appropriate cases, appoint a rehabilitation receiver* of corporations, partnerships or other associations not supervised or regulated by other government agencies who shall have, in addition to powers of the regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph (d) hereof**: . . .

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[114] G.R. No. 148372, June 27, 2005, 461 SCRA 272.

> (d) To create and appoint a management committee, board or body upon petition or *motupropio* to undertake the management of corporations, partnership or other associations not supervised or regulated by other government agencies in appropriate cases ***when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralization of business operations of such corporations or entities*** **which may be prejudicial to the interest of minority stockholders, parties-litigants of the general public**: . . . (Emphasis and underscoring supplied).

From the above-quoted provisions of P.D. No. 902-A, as amended, the appointment of a receiver or management committee by the SEC presupposes a finding that, *inter alia,* a company possesses sufficient property to cover all its debts but "foresees the impossibility of meeting them when they respectively fall due" and "there is imminent danger of dissipation, loss, wastage or destruction of assets of other properties or paralization of business operations."

That the SEC, mandated by law to have regulatory functions over corporations, partnerships or associations, appointed *an interim* receiver for the EYCO Group of Companies on its petition in light of, as quoted above, the therein enumerated "factors beyond the control and anticipation of the management" rendering it unable to meet its obligation as they fall due, and thus resulting to "complications and problems . . . to arise that would impair and affect [its] operations . . ." shows that CLARION, together with the other member-companies of the EYCO Group of Companies, was suffering business reverses justifying, among other things, the retrenchment of its employees.

This Court in fact takes judicial notice of the Decision of the Court of Appeals dated June 11, 2000 in CA-G.R. SP No. 55208, "*Nikon Industrial Corp., Nikolite Industrial Corp., et al. [including CLARION], otherwise known as the EYCO Group of Companies v. Philippine National Bank, Solidbank Corporation, et al., collectively known and referred as the 'Consortium of Creditor Banks,*'" which was elevated to this Court via Petition for *Certiorari* and docketed as *G.R. No. 145977*, but which petition this Court dismissed by Resolution dated May 3, 2005:

> Considering the *joint manifestation and motion to dismiss* of petitioners and respondents dated February 24, 2003, stating that *the parties have reached a final and comprehensive settlement* of all the claims and counterclaims subject matter of the case and accordingly, agreed to the dismissal of the petition for *certiorari*, the Court Resolved to DISMISS the petition for *certiorari* (Underscoring supplied).

The parties in *G.R. No. 145977* having sought, and this Court having granted, the dismissal of the appeal of the therein petitioners including CLARION, the *CA decision which affirmed in toto the September 14, 1999 Order* of the SEC, the dispositive portion of which SEC Order reads:

> WHEREFORE, premises considered, the appeal is as it is hereby, granted and the Order dated 18 December 1998 is set aside. The Petition to be Declared in State of Suspension of payments is hereby ***disapproved*** and the SAC Plan terminated. Consequently, all committee, conservator/receivers created pursuant to said Order are dissolved and discharged and all acts and orders issued therein are vacated.
>
> **The Commission, likewise, orders *the liquidation and dissolution of the appellee corporations.*** The case is hereby remanded to the hearing panel below for that purpose.
>
> xxx xxxxxx (Emphasis and underscoring supplied),

has now become final and executory. *Ergo*, the SEC's disapproval of the EYCO Group of Companies' "Petition for the Declaration of Suspension of Payment . . ." and the order for the liquidation and dissolution of these companies including CLARION, must be deemed to have been unassailed.

That judicial notice can be taken of the above-said case of *Nikon Industrial Corp. et al. v. PNB et al.*, there should be no doubt.

As provided in Section 1, Rule 129 of the Rules of Court:

> SECTION 1. *Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the **official acts of the** legislative, executive and **judicial** departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (Emphasis and underscoring supplied)

which Mr. Justice Edgardo L. Paras interpreted as follows:

> ***A court will take judicial notice of*** its own acts and records in the same case, of facts established in prior proceedings in the same case, of the authenticity of its own records of another case between the same parties, of the ***files of related cases in the same court, and of public records on file in the same court.*** In addition judicial notice will be taken of the record, pleadings or judgment of a case in another court between the same parties or involving one of the same parties, as well as of the record of another case between different parties in the same court. Judicial notice will also be taken of court personnel. (Emphasis and underscoring supplied)

In fine, CLARION's claim that at the time it terminated Miclat it was experiencing business reverses gains more light from the SEC's disapproval of the EYCO Group of Companies' petition to be declared in state of suspension of payment, **filed before Miclat's**

> **termination**, and of the SEC's consequent order for the group of companies' dissolution and liquidation.[115]

At any rate, *even assuming that serious business losses had not been proved by PAL*, it would still be justified under Article 298 of the *Labor Code* to retrench employees *to prevent the occurrence of losses or its closing of the business*, provided that the projected losses were not merely *de minimis*, but substantial, serious, actual, and real, or, if only expected, were reasonably imminent as perceived objectively and in good faith by the employer.[116] In the latter case, proof of actual financial losses incurred by the employer would not be a condition *sine qua non* for retrenchment,[117] *viz.*:

> *Third*, contrary to petitioner's asseverations, proof of actual financial losses incurred by the company is not a condition *sine qua non* for retrenchment. Retrenchment is one of the economic grounds to dismiss employees, which is resorted to by an employer primarily to avoid or minimize business losses. The law recognize this under Article 283 of the Labor Code x x x
>
> x x x x
>
> In its ordinary connotation, the phrase "to prevent losses" means that retrenchment or termination of the services of some employees is authorized to be undertaken by the employer sometime before the anticipated losses are actually sustained or realized. It is not, in other words, the intention of the lawmaker to compel the employer to stay his hand and keep all his employees until after losses shall have in fact materialized. If such an intent were expressly written into the law, that law may well be vulnerable to constitutional attack as unduly taking property from one man to be given to another.
>
> At the other end of the spectrum, it seems equally clear that not every asserted possibility of loss is sufficient legal warrant for the reduction of personnel. In the nature of things, the possibility of incurring the losses is constantly present, in greater or lesser degree, in the carrying on of business operations, since some, indeed many, of the factors which impact upon the profitability or viability of such operations may be substantially outside the control of the employer.
>
> On the bases of these consideration, it follows that the employer bears the burden to prove his allegation of economic or business reverses with clear and satisfactory evidence, it being in the nature of an affirmative defense. As earlier discussed, we are fully persuaded that the private respondent has been and is besieged by a continuing downtrend in both its business operations and financial resources, thus amply justifying its resort to drastic cuts in personnel and costs.[118]

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[115] Id. at 290-294.
[116] *Beralde v. Lapanday Agricultural and Development Corporation (Guihing Plantation Operations)*, G.R. Nos. 205685-86, June 22, 2015, 760 SCRA 158, 175-176.
[117] *Revidad v. National Labor Relations Commission*, G.R. No. 111105, June 27, 1995, 245 SCRA 356.
[118] Id. at 367-368.

B
PAL retrenched in good faith

The employer is burdened to observe good faith in implementing a retrenchment program. Good faith on its part exists when the retrenchment is intended for the advancement of its interest and is not for the purpose of defeating or circumventing the rights of the employee under special laws or under valid agreements.[119]

The July 22, 2008 decision branded the recall of the retrenched employees and the implementation of "Plan 22" instead of "Plan 14" as badges of bad faith on the part of PAL. On the other hand, the October 2, 2009 resolution condemned PAL for changing its theory by attributing the cause of the retrenchment to the ALPAP pilots' strike.

PAL refutes the adverse observations, and maintains that its position was clear and consistent – that the reduction of its labor force was an act of survival and a less drastic measure as compared to total closure and liquidation that would have otherwise resulted; that downsizing had been an option to address its financial losses since 1997;[120] that the reduction of personnel was necessary as an integral part of the means to ensure the success of its corporate rehabilitation plan to restructure its business;[121] and that the downsizing of its labor force was a sound business decision undertaken after an assessment of its financial situation and the remedies available to it.[122]

A hard look at the records now impels the reconsideration of the July 22, 2008 decision and the resolution of October 2, 2009.

PAL could not have been motivated by ill will or bad faith when it decided to terminate FASAP's affected members. On the contrary, good faith could be justly inferred from PAL's conduct before, during and after the implementation of the retrenchment plan.

Notable in this respect was PAL's candor towards FASAP regarding its plan to implement the retrenchment program. This impression is gathered

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[119] *Pasig Agricultural Development and Industrial Supply Corporation v. Nievarez,* G.R. No. 197852, October 19, 2015, 773 SCRA 52, 64.

[120] *Rollo* (G.R. No. 178083), Vol. III, pp. 2261-2264.

[121] Id. at 2266-2267, PAL reasoned that the primary component of the Rehabilitation Plan and Amended Rehabilitation Plan approved by the PAL creditors and the SEC, was the downsizing of the labor force by at least 5,000, which included the 1,400 flight attendants. The cutting-down of operations and consequent reduction of labor force together with the debt restructuring and capital infusion of US$200 million, were the key components in the rehabilitation.

[122] Id. at 2268.

from PAL's letter dated February 11, 1998 inviting FASAP to a meeting to discuss the matter, thus:

> Roberto D. Anduiza
> President
> Flight Attendants' and Stewards' Association of the Philippines (FASAP)
> x x x x
>
> Mr. Anduiza:
>
> Due to critical business losses and in view of severe financial reverses, Philippine Airlines must undertake drastic measures to strive at survival. In order to meet maturing obligations amidst the present regional crisis, the Company will implement major cost-cutting measures in its fleet plan, operating budget, routes and frequencies. These moves include the closure of stations, downsizing of operations and reducing the workforce through layoff/retrenchment or retirement.
>
> In this connection, the Company would like to meet with the Flight Attendants' and Stewards' Association of the Philippines (FASAP) to discuss the implementation of the lay-off/retrenchment or retirement of FASAP-covered employees. The meeting shall be at the Allied Bank Center (8th Floor-Board Room) on February 12, 1998 at 4:00 p.m.
>
> This letter serves as notice in compliance with Article 283 of the Labor Code, as amended and DOLE Orders Nos[.] 9 and 10, Series of 1997.
>
> Very truly yours,
>
> (Sgd.)
> JOSE ANTONIO GARCIA
> President & Chief Operating Officer[123]

The records also show that the parties met on several occasions[124] to explore cost-cutting measures, including the implementation of the retrenchment program. PAL likewise manifested that the retrenchment plan was temporarily shelved while it implemented other measures (like termination of probationary cabin attendant, and work-rotations).[125] Obviously, the dissent missed this part as it stuck to the belief that PAL did not implement other cost-cutting measures prior to retrenchment.[126]

Given PAL's dire financial predicament, it becomes understandable that PAL was constrained to finally implement the retrenchment program

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[123] *Rollo* (G.R. No. 178083), Vol. II, p. 1419.
[124] *Rollo* (G.R. No. 178083), Vol. I, pp. 127-132; the meetings were held on February 17, February 20, March 6, March 10, and March 17, 1998.
[125] *Rollo* (G.R. No. 178083), Vol. III, p. 2274.
[126] Dissenting Opinion, pp. 25-26.

when the ALPAP pilots strike crippled a major part of PAL's operations.[127] In *Rivera v. Espiritu*,[128] we observed that said strike wrought "*serious losses to the financially beleaguered flag carrier*;" that "*PAL's financial situation went from bad to worse*;" and that "*[f]aced with bankruptcy, PAL adopted a rehabilitation plan and downsized its labor force by more than one-third.*" Such observations sufficed to show that retrenchment became a last resort, and was not the rash and impulsive decision that FASAP would make it out to be now.

As between maintaining the number of its flight crew and PAL's survival, it was reasonable for PAL to choose the latter alternative. This Court cannot legitimately force PAL as a distressed employer to maintain its manpower despite its dire financial condition. To be sure, the right of PAL as the employer to reasonable returns on its investments and to expansion and growth is also enshrined in the 1987 Constitution.[129] Thus, although labor is entitled to the right to security of tenure, the State will not interfere with the employer's valid exercise of its management prerogative.

Moreover, PAL filed its Petition for Appointment of Interim Rehabilitation Receiver and Approval of a Rehabilitation Plan with the SEC on June 19, 1998, before the retrenchment became effective.[130] PAL likewise manifested that:

> x x x The Rehabilitation Plan and Amended Rehabilitation Plan submitted by PAL in pursuance of its corporate rehabilitation, and which obtained the joint approval of PAL's creditors and the SEC, had **as a primary component, the downsizing of PAL's labor force by at least 5,000, including the 1,400 flight attendants. As conceptualized by a team of industry experts, the cutting down of operations and the consequent reduction of work force, along with the restructuring of debts with significant "haircuts" and the capital infusion of Mr. Lucio Tan amounting to US$200 million, were the key components of PAL's rehabilitation**. The Interim Rehabilitation Receiver was replaced by a Permanent Rehabilitation Receiver on June 7, 1999.[131] (Bold underscoring supplies for emphasis)

Being under a rehabilitation program, PAL had no choice but to implement the measures contained in the program, including that of reducing its manpower. Far from being an impulsive decision to defeat its employees'

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[127] *Rollo* (G.R. No. 178083), Vol. III, pp. 2252-2253; PAL manifested that the strike had crippled almost 90% of its operations wherein the striking pilots abandoned the planes wherever they were; that with only 60 pilots and lesser planes in operation, PAL's daily revenue losses reached ₱100 million while its fixed cost required ₱50 million daily to operate; that given the situation, it only had approximately eighteen (18) days to operate since it had no access to any further credit or other liquidity facilities.

[128] G.R. No. 135547, January 23, 2002, 374 SCRA 351, 355.

[129] The last paragraph of Section 3, Article XIII states: "The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth."

[130] *Rollo* (G.R. No. 178083), Vol. III, pp. 2255-2257.

[131] Id. at 2267.

right to security of tenure, retrenchment resulted from a meticulous plan primarily aimed to resuscitate PAL's operations.

Good faith could also be inferred from PAL's compliance with the basic requirements under Article 298 of the *Labor Code* prior to laying-off its affected employees. Notably, the notice of termination addressed to the Department of Labor and Employment (DOLE) identified the reasons behind the massive termination, as well as the measures PAL had undertaken to prevent the situation, to wit:

June 15, 1998

HON. MAXIMO B. LIM
THE REGIONAL DIRECTOR
Department of Labor and Employment
Regional Office No. NCR

Dear Sir:

This is to inform you that Philippine Air Lines, Inc. (PAL) will be implementing a retrenchment program one (1) month from notice hereof in order to prevent bankruptcy.

PAL is forced to take this action **because of continuous losses it has suffered over the years which losses were aggravated by the PALEA strike in October 1996, peso depreciation, Asian currency crisis, causing a serious drop in our yield and the collapse of passenger traffic in the region. Specifically, PAL suffered a net loss of ₱2.18 Billion during the fiscal year 1995-1996, ₱2.50 Billion during the fiscal year 1996-1997 and ₱8.08 Billion for the period starting April 1, 1997 to March 31, 1998**.

These uncontrolled heavy losses have left PAL with no recourse but to reduce its fleet and its flight frequencies both in the domestic and international sectors to ensure its survival.

In an effort to avoid a reduction of personnel, **PAL has resorted to other measures, such as freeze on all hiring, no salary increase for managerial and confidential staff (even for promotions), reduction of salaries of senior management personnel, freeze on staff movements, pre-termination of temporary staff contracts and negotiations with foreign investors. But all these measures failed to avert the continued losses.**

Finally, **all the efforts of PAL to preserve the employment of its personnel were shattered by the illegal strike of its pilots which has cause irreparable damage to the company's cash flow. Consequently, the company is now no longer able to meet its maturing obligations and is not about to go into default in all its major loans. It is presently under threat of receiving a barrage of suits from its creditors who will go after the assets of the corporation.**

> Under the circumstances, PAL is left with no recourse but to reduce its fleet and its flight frequencies both in the domestic and international sectors to ensure its survival. Consequently, a reduction of personnel is inevitable.
>
> All affected employees in the attached list will be given the corresponding benefits which they may be entitled to.
>
> Very truly yours,
>
> (Sgd)
> JOSE ANTONIO GARCIA
> President & Chief Operating Officer[132]

As regards the observation made in the decision of July 22, 2008 to the effect that the recall of the flight crew members indicated bad faith, we hold to the contrary.

PAL explained how the recall process had materialized, as follows:

> During this time, the Company was slowly but steadily recovering. Its finances were improving and additional planes were flying. Because of the Company's steady recovery, necessity dictated more employees to man and service the additional planes and flights. Thus, instead of taking in new hires, the Company first offered employment to employees who were previously retrenched. A recall/rehire plan was initiated.
>
> The recall/rehire plan was a success. A majority of retrenched employees were recalled/rehired and went back to work including the members of petitioner union. In the process of recall/rehire, many employees who could not be recalled for various reasons (such as, among others, being unfit for the job or the employee simply did not want to work for the Company anymore) decided to accept separation benefits and executed, willingly and voluntarily, valid quitclaims. Those who received separation packages included a good number of the members of the petitioner union.[133]

Contrary to the statement in the dissent that the implementation of Plan 22 instead of Plan 14 indicated bad faith,[134] PAL reasonably demonstrated that the recall was devoid of bad faith or of an attempt on its part to circumvent its affected employees' right to security of tenure. Far from being tainted with bad faith, the recall signified PAL's reluctance to part with the retrenched employees. Indeed, the prevailing unfavorable conditions had only compelled it to implement the retrenchment.

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132 *Rollo* (G.R. No. 178083), Vol. II, p. 1421 (bold underscoring supplied for emphasis).
133 Id. at 1395.
134 Dissenting Opinion, pp. 27-28.

The rehiring of previously retrenched employees should not invalidate a retrenchment program, the rehiring being an exercise of the employer's right to continue its business. Thus, we pointed out in one case:

> We likewise cannot sustain petitioners' argument that their dismissal was illegal on the basis that Lapanday did not actually cease its operation, or that they have rehired some of the dismissed employees and even hired new set of employees to replace the retrenched employees.
>
> The law acknowledges the right of every business entity to reduce its workforce if such measure is made necessary or compelled by economic factors that would otherwise endanger its stability or existence. In exercising its right to retrench employees, the firm may choose to close all, or a part of, its business to avoid further losses or mitigate expenses. In *Caffco International Limited v. Office of the Minister-Ministry of Labor and Employment*, the Court has aptly observed that —
>
> > Business enterprises today are faced with the pressures of economic recession, stiff competition, and labor unrest. Thus, businessmen are always pressured to adopt certain changes and programs in order to enhance their profits and protect their investments. Such changes may take various forms. Management may even choose to close a branch, a department, a plant, or a shop.
>
> In the same manner, when Lapanday continued its business operation and eventually hired some of its retrenched employees and new employees, it was merely exercising its right to continue its business. The fact that Lapanday chose to continue its business does not automatically make the retrenchment illegal. We reiterate that in retrenchment, the goal is to prevent impending losses or further business reversals — it therefore does not require that there is an actual closure of the business. Thus, when the employer satisfactorily proved economic or business losses with sufficient supporting evidence and have complied with the requirements mandated under the law to justify retrenchment, as in this case, it cannot be said that the subsequent acts of the employer to rehire the retrenched employees or to hire new employees constitute bad faith. It could have been different if from the beginning the retrenchment was illegal and the employer subsequently hired new employees or rehired some of the previously dismissed employees because that would have constituted bad faith. Consequently, when Lapanday continued its operation, it was merely exercising its prerogative to streamline its operations, and to rehire or hire only those who are qualified to replace the services rendered by the retrenched employees in order to effect more economic and efficient methods of production and to forestall business losses. The rehiring or reemployment of retrenched employees does not necessarily negate the presence or imminence of losses which prompted Lapanday to retrench.
>
> In spite of overwhelming support granted by the social justice provisions of our Constitution in favor of labor, the fundamental law itself guarantees, even during the process of tilting the scales of social justice towards workers and employees, "the right of enterprises to reasonable returns of investment and to expansion and growth." To hold otherwise would not only be oppressive and inhuman, but also counter-productive

> and ultimately subversive of the nation's thrust towards a resurgence in our economy which would ultimately benefit the majority of our people. Where appropriate and where conditions are in accord with law and jurisprudence, the Court has authorized valid reductions in the workforce to forestall business losses, the hemorrhaging of capital, or even to recognize an obvious reduction in the volume of business which has rendered certain employees redundant.[135]

Conselquently, we cannot pass judgment on the motive behind PAL's initiative to implement "Plan 22" instead of "Plan 14." The prerogative thereon belonged to the management alone due to its being in the best position to assess its own financial situation and operate its own business. Even the Court has no power to interfere with such exercise of the prerogative.

C
PAL used fair and reasonable criteria in selecting the employees to be retrenched pursuant to the CBA

The July 22, 2008 decision agreed with the holding by the CA that PAL was not obligated to consult with FASAP on the standards to be used in evaluating the performance of its employees. Nonetheless, PAL was found to be unfair and unreasonable in selecting the employees to be retrenched by doing away with the concept of seniority, loyalty, and past efficiency by solely relying on the employees' 1997 performance rating; and that the retrenchment of employees due to "other reasons," without any details or specifications, was not allowed and had no basis in fact and in law.[136]

PAL contends that it used fair and reasonable criteria in accord with Sections 23, 30 and 112 of the 1995-2000 CBA;[137] that the NLRC's use of the phrase "other reasons" referred to the varied grounds (*i.e.* excess sick leaves, previous service of suspension orders, passenger complains, tardiness, etc.) employed in conjunction with seniority in selecting the employees to be terminated;[138] that the CBA did not require reference to performance rating of the previous years, but to the use of an efficiency rating for a single year;[139] and that it adopted both efficiency rating and inverse seniority as criteria in the selection pursuant to Section 112 of the CBA.[140]

PAL's contentions are meritorious.

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[135] *Beralde v. Lapanday Agricultural and Development Corporation (Guihing Plantation Operations)*, supra, note 116, at 177-178.
[136] 559 SCRA, 252, 291-292.
[137] *Rollo* (G.R. No. 178083), Vol. III, pp. 2401-2405.
[138] Id. at 2407
[139] Id. at 2408-2409.
[140] Id. at 2412.

In selecting the employees to be dismissed, the employer is required to adopt fair and reasonable criteria, taking into consideration factors like: (*a*) preferred status; (*b*) efficiency; and (*c*) seniority, among others.[141] The requirement of fair and reasonable criteria is imposed on the employer to preclude the occurrence of arbitrary selection of employees to be retrenched. Absent any showing of bad faith, the choice of who should be retrenched must be conceded to the employer for as long as a basis for the retrenchment exists.[142]

We have found arbitrariness in terminating the employee under the guise of a retrenchment program wherein the employer discarded the criteria it adopted in terminating a particular employee;[143] when the termination discriminated the employees on account of their union membership without regard to their years of service;[144] the timing of the retrenchment was made a day before the employee may be regularized;[145] when the employer disregarded altogether the factor of seniority and choosing to retain the newly hired employees;[146] that termination only followed the previous retrenchment of two non-regular employees;[147] and when there is no appraisal or criteria applied in the selection.[148]

On the other hand, we have considered as valid the retrenchment of the employee based on work efficiency,[149] or poor performance;[150] or the margins of contribution of the consultants to the income of the company;[151] or absenteeism, or record of disciplinary action, or efficiency and work attitude;[152] or when the employer exerted efforts to solicit the employees' participation in reviewing the criteria to be used in selecting the workers to be laid off.[153]

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[141] *Caltex (Phils.), Inc. v. National Labor Relations Commission*, G.R. No. 159641, October 15, 2007, 536 SCRA 175, 188.
[142] *Talam v. National Labor Relations Commission*, G.R. No. 175040, April 6, 2010, 617 SCRA 408, 422.
[143] *Saballa v. National Labor Relations Commission*, G.R. Nos. 102472-84, August 22, 1996, 260 SCRA 697, 711.
[144] *Bogo-Medellin Sugarcane Planters Association, Inc. v. NLRC*, G.R. No. 97846, September 25, 1998, 296 SCRA 108, 123.
[145] *Manila Hotel Corporation v. NLRC*, G.R. No. L-53453, January 22, 1986, 141 SCRA 169, 177.
[146] *Philippine Tuberculosis Society, Inc. v. National Labor Union*, G.R. No. 115414, August 25, 1998, 294 SCRA 567. 576, 578.
[147] *Oriental Petroleum and Minerals Corporation v. Fuentes*, G.R. No. 151818, October 14, 2005, 473 SCRA 106, 118.
[148] *Caltex (Phils.), Inc. v. National Labor Relations Commission*, G.R. No. 159641, October 15, 2007, 536 SCRA 175, 190.
[149] *Shimizu Phils. Contractors, Inc. v. Callanta*, G.R. No. 165923, September 29, 2010, 631 SCRA 529, 542.
[150] *Morales v. Metropolitan Bank and Trust Company*, G.R. No. 182475, November 21, 2012, 686 SCRA 132, 146.
[151] *Talam v. National Labor Relations Commission*, supra, note 142.
[152] *Coats Manila Bay, Inc. v. Ortega*, G.R. No. 172628, February 13, 2009, 579 SCRA 300, 309.
[153] *Pepsi-Cola Products Philippines, Inc. v. Molon*, G.R. No. 175002, February 18, 2013, 691 SCRA 113, 134.

In fine, the Court will only strike down the retrenchment of an employee as capricious, whimsical, arbitrary, and prejudicial in the absence of a clear-cut and uniform guideline followed by the employer in selecting him or her from the work pool. Following this standard, PAL validly implemented its retrenchment program.

PAL resorted to both efficiency rating and inverse seniority in selecting the employees to be subject of termination. As the NLRC keenly pointed out, the "ICCD Masterank 1997 Ratings – Seniority Listing" submitted by PAL sufficiently established the criteria for the selection of the employees to be laid off. To insist on seniority as the sole basis for the selection would be unwarranted, it appearing that the applicable CBA did not establish such limitation. This counters the statement in the dissent that the retrenchment program was based on unreasonable standards without regard to service, seniority, loyalty and performance.[154]

In this connection, we adopt the following cogent observations by the CA on the matter for being fully in accord with law and jurisprudence:

> FASAP insists that several CBA provisions have been violated by the retrenchment. They are the provisions on seniority, performance appraisal, reduction in personnel and downgrading and permanent OCARs. Seniority and performance stand out because these were the main considerations of PAL in selecting workers to be retrenched. Under the CBA, seniority is defined "*to mean a measure of a regular Cabin Attendant's claim in relation to other regular Cabin Attendants holding similar positions, to preferential consideration whatever the Company exercises its right to promote to a higher paying position of lay-off of any Cabin Attendant.*" **Seniority, however, is not the sole determinant of retention. This is clear under Article XIII on performance appraisal of the CBA provisions.**
>
> **Under the CBA, several factors are likewise taken into consideration like performance and professionalism in addition to the seniority factor. However, the criteria for performance and professionalism are not indicated in the CBA but are to be formulated by PAL in consultation with FASAP. Where there is retrenchment, cabin attendants who fail to attain at least 85% of the established criteria shall be demoted progressively. Domestic cabin attendants, the occupants of lowest rung of the organizational hierarchy, are to be retrenched once they fail to meet the required percentage.**
>
> **We have painstakingly examined the records and We find no indication that these provisions have been grossly disregarded as to taint the retrenchment with illegality. PAL relied on specific categories of criteria, such as merit awards, physical appearance, attendance and *checkrides*, to guide its selection of employees to be removed. We do not find anything legally objectionable in the**

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[154] Dissenting Opinion, p. 41.

> **adoption of the foregoing norms. On the contrary, these norms are most relevant to the nature of a cabin attendant's work.**
>
> **However, the contention of FASAP that these criteria required its prior conformity before adoption is not supported by Section 30, Article VIII of the CBA. Note should be taken that this provision only mandates PAL to "*meet and consult*" the Association (FASAP) in the formulation of the Performance and Professionalism Appraisal System." By the ordinary import of this provision, PAL is only required to confer with FASAP; it is not at all required to forge an addendum to the CBA, which will concretize the appraisal system as basis for retrenchment or retention.**[155]

To require PAL to further limit its criteria would be inconsistent with jurisprudence and the principle of fairness. Instead, we hold that for as long as PAL followed a rational criteria defined or set by the CBA and existing laws and jurisprudence in determining who should be included in the retrenchment program, it sufficiently met the standards of fairness and reason in its implementation of its retrenchment program.

D
The retrenched employees signed valid quitclaims

The July 22, 2008 decision struck down as illegal the quitclaims executed by the retrenched employees because of the mistaken conclusion that the retrenchment had been unlawfully executed.

We reverse.

In *EDI Staffbuilders International, Inc. v. National Labor Relations Commission*,[156] we laid down the basic contents of valid and effective quitclaims and waivers, to wit:

> In order to prevent disputes on the validity and enforceability of quitclaims and waivers of employees under Philippine laws, said agreements should contain the following:
>
> 1. A **fixed amount** as full and final compromise settlement;
>
> 2. The **benefits** of the employees if possible with the corresponding amounts, **which the employees are giving up in consideration of the fixed compromise amount**;
>
> 3. A **statement that the employer has clearly explained to the employee in English, Filipino, or in the dialect known**

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[155] *Rollo* (G.R. No.178083), Vol. I, pp. 78-79 (bold underscoring supplied for emphasis).
[156] G.R. No. 145587, October 26, 2007, 537 SCRA 409.

> **to the employees** — that by signing the waiver or quitclaim, they are forfeiting or relinquishing their right to receive the benefits which are due them under the law; and
>
> 4. A statement that the **employees signed and executed the document voluntarily, and had fully understood the contents of the document and that their consent was freely given** without any threat, violence, duress, intimidation, or undue influence exerted on their person.[157] (Bold supplied for emphasis)

The release and quitclaim signed by the affected employees substantially satisfied the aforestated requirements. The consideration was clearly indicated in the document in the English language, including the benefits that the employees would be relinquishing in exchange for the amounts to be received. There is no question that the employees who had occupied the position of flight crew knew and understood the English language. Hence, they fully comprehended the terms used in the release and quitclaim that they signed.

Indeed, not all quitclaims are *per se* invalid or against public policy. A quitclaim is invalid or contrary to public policy only: (1) where there is clear proof that the waiver was wrangled from an unsuspecting or gullible person; or (2) where the terms of settlement are unconscionable on their face.[158] Based on these standards, we uphold the release and quitclaims signed by the retrenched employees herein.

WHEREFORE, the Court:

(a) **GRANTS** the *Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2008* filed by the respondents Philippine Airlines, Inc. and Patria Chiong;

(b) **DENIES** the *Motion for Reconsideration (Re: The Honorable Court's Resolution dated March 13, 2012)* filed by the petitioner Flight Attendants and Stewards Association of the Philippines;

(c) **SETS ASIDE** the decision dated July 22, 2008 and resolution dated October 2, 2009; and

(d) **AFFIRMS** the decision of the Court of Appeals dated August 23, 2006.

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[157] Id. at 442.

[158] *Sara Lee Philippines v. Macatlang*, G.R. No. 180147, January 14, 2015 (Resolution); *Radio Mindanao Network, Inc. v. Amurao III*, G.R. No. 167225, October 22, 2014, 739 SCRA 64, 72.

No pronouncement on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

(On Indefinite Leave)
MARIA LOURDES P. A. SERENO
Chief Justice

(No Part)
ANTONIO T. CARPIO
Associate Justice
Acting Chief Justice

(No Part)
PRESBITERO J. VELASCO, JR.
Associate Justice

I join the opinion of J. Caguioa

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

I join the opinion of J. Caguioa

(No Part)
MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

I dissent. See separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

(No Part)
FRANCIS H. JARDELEZA
Associate Justice

See Separate Concurring Opinion.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

I dissent. I join J. Leonen dissenting opinion

NOEL GIMENEZ TIJAM
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

I join the separate concurring opinion of J. Caguioa

ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

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

ANTONIO T. CARPIO
Acting Chief Justice