

On May 29, 2009, the private respondent company, Coca-Cola Bottlers Philippines, Inc. (“**CCBPI**”) issued notices of termination to twenty seven (27) rank-and-file, regular employees and members of the San Fernando Rank-and-File Union (“**SACORU**”), collectively referred to as “**union members**”, on the ground of redundancy due to the ceding out of two selling and distribution systems, the *Conventional Route System* (“**CRS**”) and *Mini Bodega System* (“**MB**”) to the *Market Execution Partners* (“**MEPS**”), better known as “*Dealership System*”. The termination of employment was made effective on June 30, 2009, but the union members were no longer required to report for work as they were put on leave of absence with pay until the effectivity date of their termination. The union members were also granted individual separation packages, which twenty-two (22) of them accepted, but under protest.

To SACORU, the new, reorganized selling and distribution systems adopted and implemented by CCBPI would result in the diminution of the union membership amounting to union busting and to a violation of the Collective Bargaining Agreement (CBA) provision against contracting out of services or outsourcing of regular positions; hence, they filed a Notice of Strike with the National Conciliation and Mediation Board (NCMB) on June 3, 2009 on the ground of unfair labor practice, among others. On June 11, 2009, SACORU conducted a strike vote where a majority decided on conducting a strike.

On June 23, 2009, the then Secretary of the Department of Labor and Employment (DOLE), Marianito D. Roque, assumed jurisdiction over the labor dispute by certifying for compulsory arbitration the issues raised in the notice of strike. He ordered,

“WHEREFORE, premises considered, and pursuant to Article 263 (g) of the Labor Code of the Philippines, as amended, this Office hereby CERTIFIES the labor dispute at COCA-COLA BOTTLERS PHILIPPINES, INC. to the National Labor Relations Commission for compulsory arbitration.

Accordingly, any intended strike or lockout or any concerted action is automatically enjoined. If one has already taken place, all striking and locked out employees shall, within twenty-four (24) hours from receipt of this Order, immediately return to work and the employer shall immediately resume operations and re-admit all workers under the same terms and conditions prevailing before the strike. The parties are likewise enjoined from committing any act that may further exacerbate the situation.”

Meanwhile, pending hearing of the certified case, SACORU filed a motion for execution of the dispositive portion of the certification order praying that the dismissal of the union members not be pushed through because it would violate the order of the DOLE Secretary not to commit any act that would exacerbate the situation.

On August 26, 2009, however, the resolution of the motion for execution was ordered deferred and suspended; instead, the issue was treated as an item to be resolved jointly with the main labor dispute.



CCBPI, for its part, argued that the new business scheme is basically a management prerogative designed to improve the system of selling and distributing products in order to reach more consumers at a lesser cost with fewer manpower complement, but resulting in greater returns to investment. CCBPI also contended that there was a need to improve its distribution system if it wanted to remain viable and competitive in the business; that after a careful review and study of the existing system of selling and distributing its products, it decided that the existing CRS and MB systems be ceded out to the MEPs or better known as "*Dealership System*" because the enhanced MEPs is a cost-effective and simplified scheme of distribution and selling company products; that CCBPI, through the simplified system, would derive benefits such as: (a) lower cost to serve; (b) fewer assets to manage; (c) zero capital infusion.

SACORU maintained that the termination of the 27 union members is a circumvention of the CBA against the contracting out of regular job positions, and that the theory of redundancy as a ground for termination is belied by the fact that the job positions are contracted out to a "*third party provider*"; that the termination will seriously affect the union membership because out of 250 members, only 120 members will be left upon plan implementation; that there is no redundancy because the sales department still exists except that job positions will be contracted out to a sales contractor using company equipment for the purpose of minimizing labor costs because contractual employees do not enjoy CBA benefits; that the contractualization program of the company is illegal because it will render the union inutile in protecting the rights of its members as there will be more contractual employees than regular employees; and that the redundancy program will result in the displacement of regular employees which is a clear case of union busting.

Further, CCBPI argued that in the new scheme of selling and distributing products through MEPs or "*Dealership [System]*", which is a contract of sale arrangement, the ownership of the products is transferred to the MEPs upon consummation of the sale and payment of the products; thus, the jobs of the terminated union members will become redundant and they will have to be terminated as a consequence; that the termination on the ground of redundancy was made in good faith, and fair and reasonable criteria were determined to ascertain what positions were to be phased out being an inherent management prerogative; that the terminated union members were in fact paid their separation pay benefits when they were terminated; that they executed quitclaims and release; and that the quitclaims and release being voluntarily signed by the terminated union members should be declared valid and binding against them.⁵

The NLRC dismissed the complaint for unfair labor practice and declared as valid the dismissal of the employees due to redundancy. The dispositive portion of the NLRC Resolution states:

WHEREFORE, in view of the foregoing, a Decision is hereby rendered ordering the dismissal of the labor dispute between the Union and Coca-Cola Bottlers Company, Inc.

Accordingly, the charge of Unfair Labor Practice against the company is DISMISSED for lack of merit and the dismissal of the twenty seven (27)

⁵ Id. at 43-46; citations omitted.



complainants due to redundancy is hereby declared valid. Likewise, the Union's Motion for Writ of Execution is Denied for lack of merit.

SO ORDERED.⁶

With the NLRC's denial of its motion for reconsideration, SACORU filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. The CA, however, dismissed the petition and found that the NLRC did not commit grave abuse of discretion. The dispositive portion of the CA Decision states:

WHEREFORE, the instant petition is **DISMISSED**.

IT IS SO ORDERED.⁷

SACORU moved for reconsideration of the CA Decision but this was denied. Hence, this petition.

Issues

- a. Whether CCBPI validly implemented its redundancy program;
- b. Whether CCBPI's implementation of the redundancy program was an unfair labor practice; and
- c. Whether CCBPI should have enjoined the effectivity of the termination of the employment of the 27 affected union members when the DOLE Secretary assumed jurisdiction over their labor dispute.

The Court's Ruling

The petition is partly granted.

Although SACORU claims that its petition raises only questions of law, a careful examination of the issues on the validity of the redundancy program and whether it constituted an unfair labor practice shows that in resolving the issue, the Court would have to reexamine the NLRC and CA's evaluation of the evidence that the parties presented, thus raising questions of fact.⁸ This cannot be done following *Montoya v. Transmed Manila Corp.*⁹ that only questions of law may be raised against the CA decision and that the CA decision will be examined only using the prism of whether it correctly determined the existence of grave abuse of discretion, thus:

⁶ Id. at 156.

⁷ Id. at 53.

⁸ See *General Santos Coca-Cola Plant Free Workers Union-Tupas v. Coca-Cola Bottlers Phils., Inc. (General Santos City)*, 598 Phil 879, 884 (2009).

⁹ 613 Phil. 696 (2009).



Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** x x x¹⁰

“[G]rave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence.”¹¹ The Court further held in *Banal III v. Panganiban* that:

By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.¹²

The reason for this limited review is anchored on the fact that the petition before the CA was a *certiorari* petition under Rule 65; thus, even the CA did not have to assess and weigh the sufficiency of evidence on which the NLRC based its decision. The CA only had to determine the existence of grave abuse of discretion. As the Court held in *Soriano, Jr. v. National Labor Relations Commission*:¹³

As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence.¹⁴

Here, the Court finds that the CA was correct in its determination that the NLRC did not commit grave abuse of discretion.

CCBPI's redundancy program is valid.

For there to be a valid implementation of a redundancy program, the following should be present:

¹⁰ Id. at 707; emphasis in the original; citations omitted.

¹¹ *Banal III v. Panganiban*, 511 Phil 605, 614 (2005).

¹² Id. at 614-615; citations omitted.

¹³ 550 Phil. 111 (2007).

¹⁴ Id. at 121-122.

(1) written notice served on both the employees and the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.¹⁵

The NLRC found the presence of all the foregoing when it ruled that the termination was due to a scheme that CCBPI adopted and implemented which was an exercise of management prerogative,¹⁶ and that there was no proof that it was exercised in a malicious or arbitrary manner.¹⁷ Thus:

It appears that the termination was due to the scheme adopted and implemented by respondent company in distributing and selling its products, to reach consumers at greater length with greater profits, through MEPs or dealership system is basically an exercise of management prerogative. The adoption of the scheme is basically a management prerogative and even if it cause the termination of some twenty seven regular employees, it was not in violation of their right to self-organization much more in violation of their right to security of tenure because the essential freedom to manage business remains with management. x x x

Prior to the termination of the herein individual complainants, respondent company has made a careful study of how to be more cost effective in operations and competitive in the business recognizing in the process that its multi-layered distribution system has to be simplified. Thus, it was determined that compared to other distribution schemes, the company incurs the lowest cost-to-serve through Market Execution Partners (ME[P]s) or Dealership system. The CRS and Mini-Bodega systems posted the highest in terms of cost-to-serve. Thus, the phasing out of the CRS and MB is necessary which, however, resulted in the termination of the complainants as their positions have become redundant. Be that as it may, respondent company complied with granting them benefits that is more than what the law prescribes. They were duly notified of their termination from employment thirty days prior to actual termination. x x x¹⁸

On the issue of CCBPI's violation of the CBA because of its engagement of an independent contractor, the NLRC ruled that the implementation of a redundancy program is not destroyed by the employer availing itself of the services of an independent contractor, thus:

In resolving this issue, We find the ruling in *Asian Alcohol vs. NLRC*, 305 SCRA 416, in parallel application, where it was held that an employer's good faith in implementing a redundancy program is not necessarily destroyed by availment of services of an independent contractor to replace the services of the terminated employees. We have held previously that the reduction of the number of workers in a company

¹⁵ *Asian Alcohol Corp. v. National Labor Relations Commission*, 364 Phil. 912, 930 (1999); citations omitted.

¹⁶ *Rollo*, p. 148.

¹⁷ *Id.* at 149.

¹⁸ See *id.* at 148-150.

made necessary by the introduction of the services of an independent contractor is justified when the latter is undertaken in order to effectuate more economic and efficient methods of production. Likewise, in *Maya Farms Employees Organization vs. NLRC*, 239 SCRA 508, it was held that labor laws discourage interference with employer's judgment in the conduct of his business. Even as the law is solicitous of the welfare of the employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. As long as the company's exercise of the same is in good faith to advance its interest and not for the purpose of circumventing the rights of employees under the law or valid agreements, such exercise will be upheld. For while this right is not absolute, the employees right to security of tenure does not give him the vested right in his position as would deprive an employer of its prerogative to exercise his right to maximize profits. (*Abbot Laboratories, Phils. Inc. vs. NLRC*, 154 SCRA 713).¹⁹

For its part, the CA ruled that the NLRC did not commit grave abuse of discretion, even as it still reviewed the factual findings of the NLRC and arrived at the same conclusion as the NLRC. On whether redundancy existed and the validity of CCBPI's implementation, the CA ruled that CCBPI had valid grounds for implementing the redundancy program:

In the case at hand, CCBPI was able to prove its case that from the study it conducted, the previous CRS and MB selling and distribution schemes generated the lowest volume contribution which thus called for the redesigning and enhancement of the existing selling and distribution strategy; that such study called for maximizing the use of the MEPs if the company is to retain its market competitiveness and viability; that furthermore, based on the study, the company determined that the MEPs will enable the CCBPI to "*reach more*" with fewer manpower and assets to manage; that it is but a consequence of the new scheme that CCBPI had to implement a redundancy program structured to downsize its manpower complement.²⁰

The CA also agreed with the NLRC that CCBPI complied with the notice requirements for the dismissal of the employees.²¹

Given the limited review in this petition, the Court cannot now re-examine the foregoing factual findings of both the NLRC and CA that the redundancy program was valid.

As the CA found, the NLRC's factual findings were supported by substantial evidence and are in fact in compliance with the law and jurisprudence. The CA therefore correctly determined that there was no grave abuse of discretion on the part of the NLRC.

As stated earlier, the CA, even if it had no duty to re-examine the factual findings of the NLRC, still reviewed them and, in doing so, arrived at

¹⁹ Id. at 152-153.

²⁰ Id. at 50.

²¹ Id. at 51-52.

the very same conclusion. These factual findings are accorded not only great respect but also finality,²² and are therefore binding on the Court.

CCBPI did not commit an unfair labor practice.

The same principle of according finality to the factual findings of the NLRC and CA applies to the determination of whether CCBPI committed an unfair labor practice. Again, the CA also correctly ruled that the NLRC, with its findings supported by law and jurisprudence, did not commit grave abuse of discretion.

In *Zambrano v. Philippine Carpet Manufacturing Corp.*,²³ the Court stated:

Unfair labor practice refers to acts that violate the workers' right to organize. There should be no dispute that all the prohibited acts constituting unfair labor practice in essence relate to the workers' right to self-organization. Thus, an employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize.²⁴

To prove the existence of unfair labor practice, substantial evidence has to be presented.²⁵

Here, the NLRC found that SACORU failed to provide the required substantial evidence, thus:

The union's charge of ULP against respondent company cannot be upheld. The union's mere allegation of ULP is not evidence, it must be supported by substantial evidence.

Thus, the consequent dismissal of twenty seven (27) regular members of the complainant's union due to redundancy is not per se an act of unfair labor practice amounting to union busting. For while, the number of union membership was diminished due to the termination of herein union members, it cannot safely be said that respondent company acted in bad faith in terminating their services because the termination was not without a valid reason.²⁶

The CA ruled similarly and found that SACORU failed to support its allegation that CCBPI committed an unfair labor practice:

SACORU failed to proffer any proof that CCBPI acted in a malicious or arbitrarily manner in implementing the redundancy program which resulted in the dismissal of the 27 employees, and that CCBPI

²² See *Skippers United Pacific, Inc. v. National Labor Relations Commission*, 527 Phil 248, 256-257 (2006).

²³ G.R. No. 224099, June 21, 2017.

²⁴ Id. at 10.

²⁵ Id.

²⁶ *Rollo*, pp. 147-148.

engaged instead the services of independent contractors. As no credible, countervailing evidence had been put forth by SACORU with which to challenge the validity of the redundancy program implemented by CCBPI, the alleged unfair labor practice acts allegedly perpetrated against union members may not be simply swallowed. SACORU was unable to prove its charge of unfair labor practice and support its allegations that the termination of the union members was done with the end-in-view of weakening union leadership and representation. There was no showing that the redundancy program was motivated by ill will, bad faith or malice, or that it was conceived for the purpose of interfering with the employees' right to self-organize.²⁷

The Court accordingly affirms these findings of the NLRC and the CA that SACORU failed to present any evidence to prove that the redundancy program interfered with their right to self-organize.

CCBPI violated the return-to-work order.

SACORU claims that CCBPI violated the doctrine in *Metrolab Industries, Inc. v. Roldan-Confesor*,²⁸ when it dismissed the employees after the DOLE Secretary assumed jurisdiction over the dispute. SACORU argues that CCBPI should have enjoined the termination of the employees which took effect on July 1, 2009 because the DOLE Secretary enjoined further acts that could exacerbate the situation.²⁹ On the other hand, CCBPI argued that the termination of the employment was a certainty, from the time the notices of termination were issued,³⁰ and the status quo prior to the issuance of the assumption order included the impending termination of the employment of the 27 employees.³¹

Both the NLRC³² and CA³³ ruled that *Metrolab* did not apply to the dispute because the employees received the notice of dismissal prior to the assumption order of the DOLE Secretary, thus CCBPI did not commit an act that exacerbated the dispute.

To the Court, the issue really is this: whether the *status quo* to be maintained after the DOLE Secretary assumed jurisdiction means that the effectivity of the termination of employment of the 27 employees should have been enjoined. The Court rules in favor of SACORU.

Pertinent to the resolution of this issue is Article 263 (g)³⁴ of the Labor Code, which provides the conditions for, and the effects of, the DOLE Secretary's assumption of jurisdiction over a dispute:

²⁷ Id. at 51.

²⁸ 324 Phil. 416 (1996).

²⁹ *Rollo*, p. 33.

³⁰ Id. at 1226.

³¹ Id. at 1227.

³² Id. at 154-155.

³³ Id. at 49.

³⁴ LABOR CODE OF THE PHILIPPINES, Book V, Chapter I, Art. 263 (g).

ARTICLE 263. *Strikes, picketing, and lockouts.* x x x

x x x x

(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. **If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout.** The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same. (Emphasis and underscoring supplied.)

The powers given to the DOLE Secretary under Article 263 (g) is an exercise of police power with the aim of promoting public good.³⁵ In fact, the scope of the powers is limited to an industry indispensable to the national interest as determined by the DOLE Secretary.³⁶ Industries that are indispensable to the national interest are those essential industries such as the generation or distribution of energy, or those undertaken by banks, hospitals, and export-oriented industries.³⁷ And following Article 263 (g), the effects of the assumption of jurisdiction are the following:

- (a) the enjoining of an impending strike or lockout or its lifting, and
- (b) an order for the workers to return to work immediately and for the employer to readmit all workers under the same terms and conditions prevailing before the strike or lockout,³⁸ or the return-to-work order.

As the Court ruled in *Trans-Asia Shipping Lines, Inc.-Unlicensed Crews Employees Union-Associated Labor Union (TASLI-ALU) v. Court of Appeals*³⁹:

When the Secretary exercises these powers, he is granted “great breadth of discretion” in order to find a solution to a labor dispute. The most obvious of these powers is the automatic enjoining of an impending strike or lockout or the lifting thereof if one has already taken place. Assumption of jurisdiction over a labor dispute, or as in this case the certification of the same to the NLRC for compulsory arbitration, always

³⁵ See *Trans-Asia Shipping Lines, Inc.-Unlicensed Crews Employees Union-Associated Labor Union (TASLI-ALU) v. Court of Appeals*, 477 Phil. 715, 724 (2004).

³⁶ *Id.* at 727.

³⁷ See *GTE Directories Corp. v. Sanchez*, 274 Phil 738, 757-758 (1991).

³⁸ *Trans-Asia Shipping Lines, Inc.-Unlicensed Crews Employees Union-Associated Labor Union (TASLI-ALU) v. Court of Appeals*, supra note 34, at 725.

³⁹ Supra note 34.

co-exists with an order for workers to return to work immediately and for employers to readmit all workers under the same terms and conditions prevailing before the strike or lockout.⁴⁰

Of important consideration in this case is the return-to-work order, which the Court characterized in *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Co., Inc.*,⁴¹ as “interlocutory in nature, and is merely meant **to maintain status quo while the main issue is being threshed out in the proper forum.**”⁴² The *status quo* is simply the status of the employment of the employees the day before the occurrence of the strike or lockout.⁴³

Based on the foregoing, from the date the DOLE Secretary assumes jurisdiction over a dispute until its resolution, the parties have the obligation to maintain the *status quo* while the main issue is being threshed out in the proper forum — which could be with the DOLE Secretary or with the NLRC. This is to avoid any disruption to the economy and to the industry of the employer — as this is the potential effect of a strike or lockout in an industry indispensable to the national interest — while the DOLE Secretary or the NLRC is resolving the dispute.

Since the union voted for the conduct of a strike on June 11, 2009, when the DOLE Secretary issued the return-to-work order dated June 23, 2009,⁴⁴ this means that the *status quo* was the employment status of the employees on June 10, 2009. This *status quo* should have been maintained until the NLRC resolved the dispute in its Resolution dated March 16, 2010, where the NLRC ruled that CCBPI did not commit unfair labor practice and that the redundancy program was valid. This Resolution then took the place of the return-to-work order of the DOLE Secretary and CCBPI no longer had the duty to maintain the *status quo* after March 16, 2010.

Given this, the 27 employees are therefore entitled to backwages and other benefits from July 1, 2009 until March 16, 2010, and CCBPI should re-compute the separation pay that the 27 employees are entitled taking into consideration that the termination of their employment shall be effective beginning March 16, 2010.

WHEREFORE, premises considered, the petition for review is hereby **PARTLY GRANTED**. The Decision of the Court of Appeals dated July 21, 2011 and Resolution dated February 2, 2012 are hereby **AFFIRMED** as to the finding that respondent did not commit unfair labor practice and that the redundancy program is valid. Respondent, however, is directed to pay the 27 employees backwages from July 1, 2009 until March

⁴⁰ Id. at 725; italics in the original.

⁴¹ G.R. Nos. 190389 & 190390, April 19, 2017.

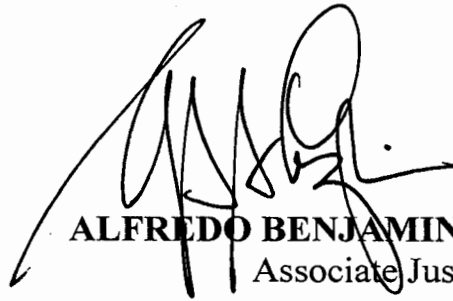
⁴² Id. at 20; emphasis and underscoring supplied.

⁴³ See *Philippine Long Distance Telephone Co., Inc. v. Manggagawa ng Komunikasyon sa Pilipinas*, 501 Phil. 704, 719-720 (2005).

⁴⁴ *Rollo*, pp. 165-168.

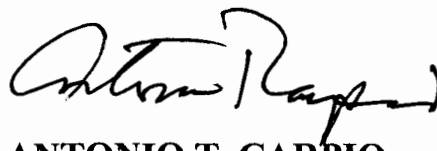
16, 2010, and to re-compute their separation pay taking into consideration that the termination of their employment is effective March 16, 2010.

SO ORDERED.

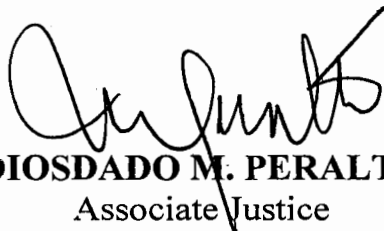


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

Reyes
ANDRES B. REYES, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

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



MARIA LOURDES P. A. SERENO

Chief Justice

