PHILIPPINES: REVISITING REDUNDANCIES

This article looks at the principles relating to dismissal for redundancy in the Philippines and provides an explanation of what is needed to substantiate a dismissal for redundancy and to ensure the redundancy process is valid.

Redundancy principles

Establishing cause

Philippines labour law recognises that an employer may unilaterally terminate employment for certain ‘authorised causes’, one of which is redundancy.

A redundancy will exist where the services of an employee are in excess of what is reasonably required by the enterprise ie. a position is redundant where it is superfluous to the business. This may be for any number of reasons, for example, previous over-hiring or a decreased volume of business. It may also result from a restructuring, reorganization or outsourcing of work.

An employer’s decision of whether an employee's services continue to be necessary is an exercise of business judgment and part of the employer's management prerogative. Such a decision will not be subject to review provided that it was not made unlawfully, arbitrarily or maliciously.

Procedural requirements

In addition to establishing the cause of a dismissal was redundancy, for the dismissal to be lawful, an employer must:

1. serve written notice on both the employee and the Department of Labor and Employment at least one month prior to the intended date of termination;
2. pay the employee separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher;
3. act in good faith in abolishing the redundant position; and
4. apply fair and reasonable criteria in ascertaining what positions are to be declared redundant.

Likely Approach

A dismissal is likely to be found to be unlawful if an employer is unable to properly show:

1. why it considered the position as superfluous and unnecessary; and
2. the process it followed to establish the position was redundant.

To substantiate a redundancy, an employer should be prepared to provide documentary evidence of new staffing patterns, feasibility studies or proposals on the viability of certain positions or relied on affidavits of officers which set out the reasons and necessities for the implementation of the redundancy program.

Employer’s Prerogative

Although the basic principle of management prerogative in determining staffing needs is widely accepted, this prerogative must be exercised fairly; management prerogative is not absolute and will always be viewed subject to the need to protect employees against “concocted causes to legitimize an otherwise irregular termination of employment”1.

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1 Recent, unreported decision of the National Labour Relations Commission
Deeds of release

Perhaps of significance, employers should be aware that a deed of release or quitclaim will not necessarily bar an employee from demanding benefits to which they are legally entitled. Nor will employees who receive separation pay be barred from contesting the legality of their dismissal.