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THIRD DIVISION

[G.R. No. 99034. April 12, 1993]

JEAN C. AURELIO, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, NORTHWESTERN COLLEGE, BEN A. NICOLAS, ERNESTO B. ASUNCION, JOFFREY AURELIO, JOSE G. CASTRO, FRANCISCO SANTELLA, ALBA B. CADAY, LILIA PAZ, WILFRED A. NICOLAS, GLENN AQUINO, and LUCIDIA RUIZ-FLOREZ,** *respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RULES OF EMPLOYMENT REGARDING MANAGERIAL EMPLOYEES; EMPLOYERS ALLOWED A GREATER LATITUDE. — The rules on termination of employment, penalties for infractions, and resort to concerted actions, insofar as managerial employees are concerned, are not necessarily the same as those applicable to termination of employment of ordinary employees. Employers, generally, are allowed a wider latitude of discretion in terminating the employment of managerial personnel or those of similar rank performing functions which by their nature require the employer's trust and confidence, than in the case of ordinary rank-and-file employees.

2. ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE, VALID GROUND FOR DISMISSING MANAGERIAL EMPLOYEE. — Under Article 282(c) of the Labor Code, loss of trust and confidence is a valid ground for dismissing an employee. Termination of employment on this ground does not require proof beyond reasonable doubt. All that is needed is for the employer to establish sufficient basis for the dismissal of the employee.

3. ID.; ID.; ID.; TERMINATION; REQUIREMENTS FOR VALIDITY THEREOF. — Under Section 1, Rule XIV of the Implementing Rules and Regulations of the Labor Code,

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the dismissal of an employee must be for a just or authorized cause and after due process. The two requirements of this legal provision are: 1. The legality of the act of dismissal, that is, dismissal under the ground provided under Article 283 of the New Labor Code; and 2. The legality in the manner of dismissal, that is, with due observance of the procedural requirements of Sections 2, 5, and 6 of Batas Pambansa Blg. 130.

4. ID.; ID.; ID.; ID.; ID.; NON-OBSERVANCE OF DUE PROCESS ENTITLES EMPLOYEE TO AWARD OF ₱1,000.00; CASE AT BAR. — In cases where there was a valid ground to dismiss an employee but there was non-observance of due process, this Court held that only a sanction must be imposed upon the employer for failure to give formal notice and to conduct an investigation required by law before dismissing the employee in consonance with the ruling in *Wenphil v. NLRC*, 170 SCRA 69 [1989]; *Shoemart, Inc. vs. NLRC, supra*; and in *Pacific Mills, Inc. vs. Zenaida Alonzo,* 199 SCRA 617 [1991]). Public respondent's finding that petitioner was not afforded due process is correct but the Commission erred when it awarded separation pay in the amount of ₱32,750.00. In the *Pacific Mills, Inc.* and *Wenphil* cases, this Court merely awarded ₱1,000.00 as penalty for non-observance of due process. The decision under review is hereby AFFIRMED with the MODIFICATION that the award of separation pay is DELETED and that private respondents are ORDERED to pay petitioner the amount of One Thousand Pesos (₱1,000.00) as indemnity for non-observance of due process.

5. ID.; ID.; ID.; MANAGEMENT, AT LIBERTY TO ABOLISH POSITIONS NO LONGER NECESSARY. — The prerogative of management to conduct its own business affairs to achieve its purposes cannot be denied . Management is at liberty, absent any malice on its part, to abolish positions which it deems no longer necessary. When petitioner was stripped by the Board of her positions as Executive Vice President and Vice President for Administration, with a corresponding reduction in salary, the Board did not act in a capricious, whimsical, and arbitrary manner, thus negating malice and bad faith.

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APPEARANCES OF COUNSEL

Pedro Q. Qadra for petitioner.

Ponce, Enrile, Cayetano, & Reyes & Manalastas for private respondents.

D E C I S I O N

MELO, *J.*:

The appeal before us has reference to the decision of the National Labor Relations Commission (NLRC) dated March 27, 1991 which modified the decision of the Labor Arbiter involving petitioner's charge of illegal dismissal. The reviewing authority merely awarded separation pay equivalent to one-half month pay for every year of service and denied petitioner's prayer for reinstatement, backwages, moral and exemplary damages, including attorney's fees (p. 89, *Rollo*).

Petitioner started as clinical instructor of the College of Nursing of Northwestern College (NWC) in June 1977 with a basic salary of ₱600.00 a month. In October 1979, petitioner was appointed Dean of the College of Nursing with a starting salary of ₱3,000.00 a month. In September 1981, petitioner was promoted to College Administrator or Vice-President for Administration, retaining concurrently her position of Dean of the College of Nursing, with an increased salary of ₱3,500.00 per month. She was later promoted to Executive Vice-President with the corresponding salary of ₱7,500.00.

On April 10, 1988, petitioner's husband, Oscar Aurelio, a stockholder of respondent NWC, was elected Auditor. On May 1, 1988, the individual respondents, as Board of Directors, took over the management of respondent NWC. This new management unleashed a series of reorganization affecting the petitioner and her husband, Oscar Aurelio, to wit:

(a) On May 30, 1988, petitioner's husband, then in the United States, was removed as Auditor of the college;

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(b) Without prior notice, petitioner's office was stripped of its facilities. First, the airconditioner, then the refrigerator;

(c) Respondents asked petitioner, "to justify," the continued use of the conference room which was used for team teaching; the librarian of the College of Nursing was removed and assigned as secretary of the Chairman of Academic Matters and all the facilities of the College of Nursing were taken over by the individual respondents;

(d) Petitioner's salary was reduced from ₱7,500.00 to ₱5,000.00 then to ₱2,500.00 a month;

(e) While petitioner was absent because of influenza, respondents assigned her office room to the Chairman on Management and Planning; the Nursing conference room was assigned as the lounge room of the members of the Board of Directors;

Because of the indignities and humiliation suffered by the petitioner, she wrote a letter on September 20, 1988 informing the President of Northwestern College that she was going on an indefinite leave, thus:

Dear Sir:

This is to inform your office that I am taking an indefinite leave of absence effective immediately due to the following reasons:

1. My having been demoted in rank from Executive Vice-President to Vice-President for Administration to Dean of the College of Nursing without prior notice and without any dialogue whatsoever with management. This mote(s) of the administration was coupled with innuendos perpetuated by some people close to management giving rise to speculations that besmirched my reputation and character.

2. Since the new management took over on May 1, 1988, my office has been stripped of its facilities one after the other, again without prior notice. First, the air-conditioner was removed, then the refrigerator.

3. My efforts and that of my staff to complete and improve our physical plant and facilities such as the conference room, library, team teaching requirements and nutrition laboratory did not get any support from management. In fact, our efforts were even seen

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as mere exercises to satisfy our personal whims. Imagine being asked to "justify" the continued use of our conference room which is a basic requirement for team teaching? To make matters worse, our librarian was assigned as secretary to the Chairman of Academic Matters and our facilities were taken over by same officers of the college.

4. My salary was reduced from ₱7,500.00 per month to ₱5,000.00, and then finally to ₱2,500.00 per month since May 1, 1980. This defies logic because in 1979, I had the starting salary of ₱3,000.00. Nine years later, I am to be paid ₱2,500.00 per month.

5. To cap all these, while I was absent because of influenza, management decided to assign my office to the Chairman on Management Planning, and the Nursing conference room to the members of the board to be used as their lounging room. This singular act has caused me extreme anguish and embarrassment which I feel I don't deserve and it has caused much damage to my integrity.

Because of the above-cited development, I feel that I have been inflicted with an injustice that has caused irreparable damage to my reputation, and has rendered me ineffective in discharging my duties as member of administration and as Dean of the College of Nursing.

Yours truly,
(SGD) Jean C. Aurelio

(pp. 6-7, *Rollo*.)

On September 21, 1988, petitioner sent a copy of the above letter to the Secretary of Education, Culture and Sports praying for assistance. On October 26, 1988, the Secretary of Education, Culture and Sports referred the letter to the DECS Director of Region I. On October 28, 1988, the Director of the Bureau of Higher Education ordered the DECS Regional Director of Region I through telegram "to investigate NWC College of Nursing, Laoag City immediately PRC recommends suspension of the operation of College of Nursing due to lack of Dean and faculty to supervise students." On November 3, 1988, the Regional Director informed respondent Northwestern College of the order of investigation and that pursuant thereto, the Director was sending her representatives "to look into the problem stated

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thereon which is apparently facing the College of Nursing." On November 7, 1988, the representatives of the Regional Director submitted their official findings and recommendations confirming the truth of the allegations of petitioner in her September 20, 1988 letter. The DECS also confirmed the willingness of petitioner to withdraw her indefinite leave of absence. The matter of petitioner's resumption of her position as Dean of the College of Nursing was addressed by the DECS to the attention of respondents who were given up to November 13, 1988 to make their decision. On November 7, 1988, the Regional Director sent a telegram stating: "Please submit written decision status position dean college of nursing not later than November 14, 1988 pd."

Private respondents did not answer. They refused to accept petitioner. On November 16, 1988, petitioner filed her complaint for illegal dismissal against private respondents and prayed for reinstatement plus backwages, moral and exemplary damages, and attorney's fees. At the arbitration level, petitioner and private respondents submitted their respective position papers. On December 29, 1989, the labor arbiter issued a decision dismissing the complaint.

It appears that private respondent Northwestern College is managed by its Board of Directors elected annually by the stockholders and who serve as such for the ensuing year until their successors shall have been duly elected and qualified.

The individual respondents Ben Nicolas, Ernesto Asuncion, Joffrey Aurelio, Alva B. Caday, Lilia Paz, Wilfredo Santillan, and Glen Aquino, are members of the Board of Directors of Northwestern College of which Jean C. Aurelio is a stockholder.

On April 30, 1988, the annual regular meeting of stockholders was held at the principal office of the corporation in Laoag City. Elected Directors were the following: Alva Caday, Lucidia Flores, Nicolas Nicolas, Oscar Aurelio, Cherry Caday, Lilia Paz, Ben Nicolas, Joffrey Aurelio, Francisco Santella, Glenn Aquino, and Wilfredo Nicolas. The following members were elected as officers of the Northwestern College: Alva Caday, Chairman of the Board; Ben Nicolas, Vice-Chairman and President; Joffrey Aurelio, Treasurer; Oscar Aurelio, Corporate

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Auditor and Lucidia Flores, Corporate Secretary. Nicolas Nicolas, Oscar Aurelio, and Cherry Caday later resigned and in their stead, Atty. Ernesto Asuncion, Atty. Jose Castro, and Dr. Juanito Chan were elected by the stockholders.

Since their election into office, the Board members have taken effective control of the management of the college and have regularly exercised their corporate powers. The new Board conducted a preliminary audit which revealed that the college was financially distressed, unable to meet its maturing obligations with its creditor bank. The new management headed by its President, Ben Nicolas, embarked on a realignment of positions and functions of the different department in order to minimize expenditures.

As a result of the audit, NWC was compelled to abolish the administrative positions held by petitioner, which she did not contest, because of the following reasons:

a) In 1988, NWC realized that it was violating the Administrative Manual for Private Schools. Thus, the position of Administrator/Vice President had to be eliminated;

b) At that time, NWC was reeling from the effects of, its failure to meet its obligations with its creditors and all efforts to minimize expenditures were being undertaken;

c) NWC realized after a study of the realignment of the positions that the functions and duties of Administrator/Vice President for Administration were being performed by the President. Consequently, the former positions had become redundant.

During the first semester of the school year 1988-1989, Northwestern College uncovered irregularities allegedly committed by the petitioner, to wit:

a) She personally exacted without receipt ₱25.00 from every student in the College of Nursing for the maintenance of the College Library.

b) She did not remit nor liquidate the sum of ₱600.00 out of the ₱1,295.91 Related Learning Experience (RLE) fee paid

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by all students in the College of Nursing. The total sum thereof in the amount of ₱114,280.00 suspiciously remained unremitted and unliquidated for an unreasonable length of time.

c) She drew salaries for teaching in the College of Nursing although she did not have a teaching load. Before the investigation could be concluded, petitioner sent a letter to the President of the college on September 20, 1988 manifesting that she is on an indefinite leave of absence.

On December 29, 1989, the labor arbiter dismissed the complaint on the basis of these findings which were adopted by the NLRC:

> . . . Undoubtedly, complainant had occupied managerial positions, thus the rule of loss of trust and confidence applies. This office is however aware that allegations of loss of trust and confidence must have some basis and such is not lacking on record.
>
> Respondent had alleged and submitted evidence of irregularities of complainant during her tenure at the college. The complainant instead of refuting the charges cited alleged irregularities committed by the respondents in their respective offices. Needless to state, the allegation does not detract anything from the charges of irregularities against her by the respondent school. As the records of this case stand, our complainant has not sufficiently explained the substantiated charges of Northwestern College anent exaction of ₱25.00 from every student of the College of nursing, receipt of salaries for alleged teaching services for which she did not have any teaching load and failure to remit nor liquidate a total amount of ₱120,000.00. (p. 29 and 94, *Rollo*.)

It must be emphasized that the rules of dismissal for managerial employees are different from those governing ordinary employees for it would be unjust and inequitable to compel an employer to continue with the employment of a person who occupies a managerial and sensitive position despite loss of trust and confidence. At the very least, the relationship must be considered seriously strained, foreclosing the remedy of reinstatement. We find that the allegations of irregularities were sufficiently substantiated thus justifying petitioner's separation.

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Moreover, and still on the issue of dismissal, the records disclose that in holding on to the two positions, petitioner violated the Administrative Manual for Private Schools. Thus, the respondent had no other recourse but to take away one of the positions from her or abolish the same. Undoubtedly, the College Board of Directors has the authority to reorganize and streamline the operations of the college with the end in view of minimizing expenditures.

We believe that the instant case was an offshoot of a *corporate reorganization*, a prerogative reposed on the Board of Directors of the College.

The NLRC found that:

> Admittedly, complainant was a managerial employee who has to have the complete trust and confidence of respondents. While it may be true that complainant was not strictly an accountable employee primarily responsible for disbursement of whatever funds, respondents had some basis in losing its trust and confidence in complainant. Respondents' evidence showed that under the principle of command responsibility, complainant was in a sense responsible in the monitoring of monetary transactions involving funds from library collections and from Related Learning Science collection (pp. 29-32, 136). For it has been held that in case of termination due to loss of trust and confidence proof beyond reasonable doubt of misconduct is not necessary but some basis being sufficient (*Villadolid vs. Inciong*, 121 SCRA 205).
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> However, we find that complainant was not accorded notice and investigation prior to termination. Indeed, circumstances herein resulted in constructive dismissal. We lend credence to complainant's allegation that investigation was conducted after she tendered her indefinite leave. Law and jurisprudence mandate due process prior to termination (*Century Textile vs. NLRC,* 161 SCRA 528). Considering the circumstances obtaining and in the spirit of compassionate justice, we find complainant entitled to separation pay, equivalent to one-half month per year of service based on her salary of ₱7,500.00 or the total amount of ₱32,750.00.

Except for the allegation on constructive dismissal, this petition is a repetition of what petitioner had already alleged below

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and which the labor arbiter and the NLRC dismissed for lack of merit.

Petitioner's claim of constructive dismissal stems from her alleged removal from the positions of Administrator, Vice President for Administration and Executive Vice President. From the time petitioner assumed the position of Executive Vice President, she did not possess any legal right to claim security of tenure concerning this position because she assumed the same without authority from the Board of Directors. Petitioner cannot claim that she was dismissed from the position of Administrator and Vice-President for Administration because her continuous occupation of the positions is at the discretion or pleasure of the Board of Directors.

In *La Sallete of Santiago, Inc. vs. NLRC* (195 SCRA 80 [1991]), this Court explained:

> The acquisition of security of tenure by the teacher in the manner indicated signifies that he shall thenceforth have the right to remain in employment as such teacher until he reaches the compulsory retirement age in accordance with the rules of the school or the law. That tenure, once acquired, cannot be adversely affected or defeated by requiring the teacher to execute contracts stipulating the termination of his employment upon the expiration of a fixed period or term. Contracts of that sort are anathema and will be struck down as null and void.
>
> Now, a teacher may also be appointed as a department head or administrative officer of the school, *e.g.*, as member of the school's governing council, as college dean or assistant dean, as high school principal, as college secretary. Except in the case of a clear and explicit agreement to the contrary, the acceptance by a teacher of an administrative position offered to him or to which he might have aspired, does not operate as a relinquishment or loss by him of his security of tenure as a faculty member; he retains his tenure as a teacher during all the time that he occupies the additional position of department head or administrative officer of the school. Indeed, the agreement between him and the school may very well include a provision for him to continue teaching even on a part-time basis.
>
> The teacher designated as administrative officer ordinarily serves for a definite term or at the pleasure of the school head or board of

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trustees or regents depending on the rules of the school and the agreement he may enter into with the institution. This appears to the Court to be the invariable practice in most private schools, the purpose being, as the Court *en banc* has also had occasion to point out, to afford to as many of the teaching staff as possible the opportunity to serve as dean or principal or as administrative officer of one type or another. There is, to be sure, nothing whatever amiss in said practice of having teachers serve as administrative officials for a fixed term or in a non-permanent capacity.

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A distinction should thus be drawn between the teaching staff of private educational institutions, on one hand — teachers, assistant instructors, assistant professors, associate professors, full professors — and department or administrative heads or officials on the other — college or department secretaries, principals, directors," assistant, deans, deans. The teaching staff, the faculty members, may and should acquire tenure in accordance with the rules and regulations of the Department of Education and Culture and the school's own rules and standards. On the other hand, teachers appointed to serve as administrative officials do not normally and should not expect to, acquire a second or additional tenure. The acquisition of such an additional tenure is not normal, is the exception rather than the rule, and should therefore be clearly and specifically provided by law or contract. (at pp. 82-83, and 85.)

The management of NWC rests on its Board of Directors including the selection of members of the faculty who may be allowed to assume other positions in the college aside from that of teacher or instructor. In 1988, when the then new Board of Directors abolished the additional positions held by the petitioner, it was merely exercising its right.

The Board abolished the positions not because the petitioner was the occupant thereof but because the positions had become redundant with functions overlapping those of the President of the college. The Board realized that the college was violating the Administrative Manual for Private School which requires that all collegiate departments should have a full-time head.

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In *Philippine School of Business Administration, et al. vs. Labor Arbiter Lacandola S. Leano and Rufino R. Tan* (127 SCRA 778 [1984]), this Court held:

> This is not a case of dismissal. The situation is that of a corporate office having been declared vacant, and of TAN's not having been elected thereafter, The matter of whom to elect is a prerogative that belongs to the Board, and involves the exercise of deliberate choice and the faculty of discriminative selection. Generally speaking, the relationship of a person to a corporation, whether as officer or agent or employee, is not determined by the nature of the services performed, but by the incidents of the relationship as they actually exist. (At p. 783.)

The Board of Directors of NWC merely exercised rights vested in it by the Articles of Incorporation. Petitioner failed to refute the evidence proffered by NWC before the labor arbiter. In her appeal to the NLRC, petitioner also failed to rebut the findings of the labor arbiter. In the instant petition, she has again failed to overturn private respondents' evidence as well as the findings of the labor arbiter which were affirmed by the NLRC.

Petitioner's application for an indefinite leave of absence was not approved by the college authorities, but this notwithstanding, she failed to follow-up her application and did not report for work. Believing she was dismissed, petitioner filed the complaint for illegal dismissal, illegal deductions, underpayment, unpaid wages or commissions and for moral damages and attorney's fees on November 16, 1988.

As pointed out earlier, the rules on termination of employment, penalties for infractions, and resort to concerted actions, insofar as managerial employees are concerned, are not necessarily the same as those applicable to termination of employment of ordinary employees. Employers, generally, are allowed a wider latitude of discretion in terminating the employment of managerial personnel or those of similar rank performing functions which by their nature require the employer's trust and confidence, than in the case of ordinary rank-and-file employees (*Cruz vs. Medina*, 177 SCRA 565 [1989]).

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Article 282(c) of the Labor Code provides that an employer may terminate an employment for "fraud or willful breach by the employee of the trust reposed in him by his employer or his duly authorized representative."

Under this provision, loss of trust and confidence is a valid ground for dismissing an employee. Termination of employment on this ground does not require proof beyond reasonable doubt. All that is needed is for the employer to establish sufficient basis for the dismissal of the employee (*Cruz vs. Medina, supra*)

Both the labor arbiter and the public respondent NLRC found that there is some basis for respondent NWC's loss of trust and confidence on petitioner.

The dismissal of the petitioner was for a just and valid cause. However, public respondent gave credence to petitioner's allegation that she was not accorded notice and hearing prior to termination. It appears on record that the investigation of petitioner's alleged irregularities was conducted after the filing of the complaint for illegal dismissal.

Under Section 1, Rule XIV of the Implementing Rules and Regulations of the Labor Code, the dismissal of an employee must be for a just or authorized cause and after due process.

The two requirements of this legal provision are:

1. The legality of the act of dismissal, that is, dismissal under the ground provided under Article 283 of the New Labor Code; and

2. The legality in the manner of dismissal, that is, with due observance of the procedural requirements of Sections 2, 5, and 6 of Batas Pambansa Blg. 130 (*Shoemart vs. NLRC*, 176 SCRA 385 [1989]).

While the Labor Code treats of the nature and the remedies available with regard to the first, such as: (a) reinstatement to his former position without loss of seniority rights, and (b) payment of backwages corresponding to the period from his illegal dismissal up to actual reinstatement, said Code does not deal at all with the second, that is, the manner of dismissal,

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which is therefore, governed exclusively by the Civil Code (*Primero vs. IAC*, 156 SCRA 436 [1987]; *Shoemart vs. NLRC, supr*a).

In cases where there was a valid ground to dismiss an employee but there was non-observance of due process, this Court held that only a sanction must be imposed upon the employer for failure to give formal notice and to conduct an investigation required by law before dismissing the employee in consonance with the ruling in *Wenphil v. NLRC*, 170 SCRA 69 (1989); *Shoemart, Inc. vs. NLRC, supra*; and in P*acific Mills, Inc. vs. Zenaida Alonzo,* 199 SCRA 617 (1991).

In *Wenphil*, we held:

> However, the petitioner must nevertheless be held to account for failure to extend to private respondent his right to an investigation before causing his dismissal. The rule is explicit as discussed above. The dismissal of an employee must be *for just or authorized cause and after due process* (Italics supplied). Petitioner committed an infraction of the second requirement. Thus, it must be imposed a sanction for its failure to give a formal notice and conduct an investigation as required by law before dismissing petitioner from employment. Considering the circumstance of this case petitioner must indemnify the private respondent the amount of ₱1,000.00. The measure of this award depends on the facts of each case and the gravity of the omission committed by the employer. (at p. 76, reiterated in *Pacific Mills, supra,* at p. 261.)

Public respondent's finding that petitioner was not afforded due process is correct but the Commission erred when it awarded separation pay in the amount of ₱32,750.00. In the *Pacific Mills, Inc.* and *Wenphil* cases, this Court merely awarded ₱1,000.00 as penalty for non-observance of due process.

The Board of Directors, composed of the individual private respondents herein, has the power granted by the Corporation Code to implement a reorganization of respondent college's offices, including the abolition of various positions, since it is implied or incidental to its power to conduct the regular business affairs of the corporation.

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The prerogative of management to conduct its own business affairs to achieve its purposes cannot be denied (*San Miguel Brewery Sales Force Union [FTGHWO] vs. Ople*, 110 SCRA 25 [1981]; *Abbot Laboratories vs. NLRC*, 154 SCRA 713 [1987]). Management is at liberty, absent any malice on its part, to abolish positions which it deems no longer necessary (*Great Pacific Life Assurance Corp. vs. NLRC*, 188 SCRA 139 [1990]).

When petitioner was stripped by the Board of her positions as Executive Vice President and Vice President for Administration, with a corresponding reduction in salary, the Board did not act in a capricious, whimsical, and arbitrary manner, thus negating malice and bad faith.

WHEREFORE, the decision under review is hereby AFFIRMED with the MODIFICATION that the award of separation pay is DELETED and that private respondents are ORDERED to pay petitioner the amount of One Thousand Pesos (₱1,000.00) as indemnity for non-observance of due process.

SO ORDERED.

Feliciano (Acting Chairman), Bidin, Davide, Jr., and *Romero, JJ.*, concur.