

UMALI-PACO, Vernetta

Re: Extension of the Period of
Preventive Suspension; Appeal

X-----X

RESOLUTION NO. 021535

Vernetta Umali-Paco, Chief Executive Officer and General Manager, Philippine Retirement Authority (PRA), appeals the Office Order No. 63 dated June 5, 2002 of the Philippine Retirement Authority (PRA) Board of Trustees extending the duration of her preventive suspension for a period of thirty (30) days or from June 8, 2002 to July 7, 2002.

The material portions of the order extending the period of the preventive suspension read, as follows:

"Atty. Vernetta Umali-Paco, Chief Executive Officer and General Manager, is hereby formally advised that during the 130th meeting held on June 4, 2002 in this Office, the Board resolved and approved the extension for another thirty (30) days of her preventive suspension from June 8, 2002 to July 7, 2002.

"This is pursuant to Section 27, Rule XIV (Discipline) of the Omnibus Rules Implementing Book V of E.O. 292 in order to prevent her from exercising undue influence on the witnesses who are PRA employees and to prevent her from tampering with the evidentiary documents relevant to Adm. Case No. 2001-01."

The appeal of Umali-Paco reads, in part, as follows:

"THE PRA BOARD ERRED IN EXTENDING APPELLANT'S PREVENTIVE SUSPENSION FOR THIRTY (30) DAYS.

"In extending Appellant's preventive suspension for another thirty (30) days, the PRA Board is clearly committing an injustice and an oppressive act considering that Appellant's total period of preventive suspension far exceeds the ninety (90) days allowed by law.

"The very purpose for which preventive suspension is imposed has already been achieved. During the cross examination of PRA's first witness, Ms. Virginia Guerrero last June 07, 2002, the latter admitted that all the documents PRA needed to support the alleged Formal Charges have been secured as early as October 2001, while the affidavits of the other prosecution witnesses who are employees of PRA have already been submitted

and likewise secured by the Chairman of the Fact Finding/Investigating Committee chaired by Ms. Guerrero.

"As evidenced by that ORDER dated June 17, 2002 . . . signed by the members of the Investigating Committee, the extension of Appellant's preventive suspension beyond the 90-day period allowed under the Uniform Rules on Administrative Cases in the Civil Service is bereft of any legal basis . . .

" x x x

THE PRA BOARD ERRED IN NOT INCLUDING THE THIRTY (30) DAYS PREVENTIVE SUSPENSION OF APPELLANT FROM NOVEMBER 05, 2001 TO DECEMBER 05, 2001 IN THE COUNTING OF THE NINETY (90) DAY PREVENTIVE SUSPENSION PERIOD OF APPELLANT.

"How is a preventive suspension implemented? The answer is basic – by preventing a person from entering the office premises as what happened to Appellant.

"1. Mr. Benjamin Santos effectively implemented the original ninety (90) day suspension for a period of thirty (30) days from November 5, 2001 to December 5, 2001.

"2. Thereafter, another preventive suspension of sixty (60) days by virtue of Office Order No. 20 . . . was ordered whereby Appellant was barred from reporting for work in PRA. This period was supposed to be from March 26, 2002 to May 24, 2002. However, because of Appellant's motion to inhibit and disqualify which resulted to the postponement of the initial preliminary conference on May 2, 2002, a period of twelve (12) days for the exchange of pleadings . . . was added. Thus, Appellant should have been reinstated as of June 5, 2002. Nevertheless, by some magical computation, the Board of Trustees/Investigating Committee declared that the second preventive suspension was to expire as of June 7, 2002 instead of correct date of June 5, 2002, adding fourteen (14) days to the sixty (60) day preventive suspension.

"3. Consequently, if the unlawful extension of thirty (30) days under Office Order No. 63 is allowed to continue, herein Appellant would be on preventive suspension for a total period of one hundred thirty four (134) days, far beyond the ninety (90) period allowed by law.

"x x x

"THE PRA BOARD ERRED IN EXTENDING THE EXPIRY OF THE SIXTY (60) DAY PREVENTIVE SUSPENSION UNDER OFFICE ORDER NO. 63 FROM MAY 24, 2002 TO JUNE 07, 2002.

"The PRA Board cannot consider the twelve (12) days resulting from Appellant's filing of her Motion to Inhibit and/or Disqualify whereby the Investigating Committee gave the private prosecutor five (5) days to file his Opposition/Comment and another (5) days for Appellant to file her Reply to Opposition and/or Comment plus the

two (2) days given to Appellant to file her Pre-Hearing Brief as a delay attributable to the fault or negligence of Appellant. In that case of Perfecto Yasay vs. Court of Appeals, the Supreme Court ruled that the Motion to Inhibit and/or Disqualify filed by Yasay is not the delay attributable to the fault or negligence of Yasay as he was just availing of a legal remedy under existing rules.

" x x x

"IN VIEW OF ALL THE FOREGOING, Appellant prays that the Decision of the PRA Board of Trustees under Office Order No. 63 dated June 5, 2002 extending Appellant's preventive suspension for another thirty (30) days from June 8, 2002 to July 7, 2002, effectively suspending her for a total of one hundred thirty four (134) days be revoked and set aside for being oppressive and illegal."

The PRA commented on the appeal, as follows:

"1. ON THE ALLEGATION THAT THE PRA BOARD ERRED IN EXTENDING APPELLANT'S PREVENTIVE SUSPENSION FOR THIRTY (30) DAYS

"Private prosecutor submits that the PRA Board acted within the legal bounds in giving appellant Paco additional thirty (30) days preventive suspension to complete the duration of ninety (90) days suspension under the law.

"While it is true that appellee PRA issued a preventive suspension order for sixty (60) days, the same was not in conformity with the law. Under the Civil Service Law, the preventive suspension is ninety (90) days, hence, the additional thirty (30) days was approved and implemented before the expiration of the initial 60 days period. It was done to rectify a mistake.

" x x x

"Besides the formal investigation was not yet completed within the duration of ninety (90) days preventive suspension period . . .

" x x x

"The appellant's arguments that the purpose of her preventive suspension has already been achieved is inapplicable to her case . . .

" x x x

"The Board of Trustees, as a disciplining authority, and as a governing body which controlled and

managed the affairs, activities and properties of the Philippine Retirement Authority has the right to exercise its sound management discretion within the ambit of the law whether or not to avail of additional thirty (30) days preventive suspension, particularly, in this case of appellant Paco, who is the Chief Executive Officer/General Manager and also Vice Chairman of the Board of Trustees, occupying sensitive position and has operational control and supervision of personnel, facilities and finances. As such, her moral ascendancy over the lowly employees of PRA exist.

" x x x

"II. ON THE ALLEGATION THAT THE PRA BOARD ERRED IN NOT INCLUDING THE THIRTY (30) DAYS PREVENTIVE SUSPENSION OF APPELLANT FROM NOVEMBER 05, 2001 TO DECEMBER 05, 2001 IN THE COUNTING OF THE NINETY (90) DAY PREVENTIVE SUSPENSION

"There was no official communication or records that would show appellant Paco intimated to Appellee PRA to serve the preventive suspension starting November 5, 2001.

"What appellant did was to question the authority of Acting CEO/GM Benjamin Santos and also the authority of PRA Board of Trustee. As the records will show, appellant initially rejected/refused to accept or receive the service of formal charges and preventive suspension, therefore, she could not now claim that the preventive suspension between November 5, 2001 to December 5, 2001 was effective. The administrative case against appellant dragged on because of her refusal to recognize the duly constituted authority. The first service of formal charge and preventive suspension was on October 23, 2001 at the appellant's residence, but appellant did not accept them . . . Another service by mail through the post office was also made, but there was no answer or reply made. The appellant's answer . . . was officially received by appellee PRA only on April 1, 2002 at 4:40 PM . . . or after the lapse of 5 months. Such obstinate refusal to recognize authority was apparent and she could not attribute the denial of due process to herein appellee, which afforded her all the opportunities to be heard.

"The appellant's allegation that she was prevented from entering the office premises, therefore, the preventive suspension was implemented from November 5 to December 5, 2001 is contrary to the facts obtaining in this case.

"Appellant insisted to report to the office by reason of the order of reinstatement by Malacañang on the basis of Ombudsman's decision exonerating her. But the reinstatement was premature as the PRA Board has not yet acted on it, since there were other five (5) major findings uncovered by the Fact-finding Committee which were to be resolved; aside from the one (1) already subject of the case which was decided by the Ombudsman. The six (6) major findings are the subject of the administrative charge and preventive suspension. Her refusal to be under preventive suspension during the period November 5, 2001 to December 5, 2001 could not be interpreted as abiding the suspension order but more as a leave of absence since she drew her salary for said

month. An employee under preventive suspension is not entitled to salary.

"It would be illogical therefore to reinstate appellant Paco because of the exoneration by the Ombudsman, when in fact the PRA Board, a disciplining authority, has knowledge that there are five (5) more major findings pending on their lap for resolution . . . Appellant wanted reinstatement in one case or count while the Appellee placed her on preventive suspension for the formal charge involving six (6) major findings or shall we say six (6) counts of administrative infractions.

"III. ON THE ALLEGATION THAT THE PRA BOARD ERRED IN EXTENDING THE EXPIRY OF SIXTY (60) DAY PREVENTIVE SUSPENSION UNDER OFFICE ORDER NO. 63 FROM MAY 24, 2002 TO JUNE 07, 2002.

"As discussed earlier, the law specifically provides that the preventive suspension is ninety (90) days, thus the addition of thirty (30) days per Office Order No. 63, to the original sixty (60) days, per Office Order No. 20, is still within the law. Assuming there was absence of any fault from the parties, the appellant should have been reinstated on the 90th day, or June 24, 2002, however, since there was a 'petition of the respondent' questioning the composition/authority of the investigating Committee, the incidence relative thereto in postponing the proceedings up to the time the case is actually heard shall be counted against the appellant . . .

"Private prosecutor submits that the delay is attributable to respondent-appellant, although the sixty (60) days suspension in the cited example came from the old law. Applying the above rules, the extension of 30 days to the original 60 days suspension is within the law, and the further extension of 12 days attributable to the petition of respondent-appellant is within the meaning of established jurisprudence of the Supreme Court.

"Furthermore, Private Prosecutor invites the attention of the Honorable Commission that the Memorandum Appeal of the respondent-appellant Paco is premature and that there was no exhaustion of administrative remedies.

"PRAYER

"WHEREFORE, it is respectfully prayed of this Honorable Commission that this Comment be given due course and the Appeal of Atty. Vernetta Umali-Paco be dismissed for being premature, and for non-exhaustion of administrative remedies, and for lack of merit."

Records show that on February 28, 2001, Atty. Felisberto L. Verano, Jr. filed with the Office of the Ombudsman a complaint against Vernetta Umali-Paco, Chief Executive Officer and General Manager of the Philippine Retirement Authority (PRA) for Misconduct, Abuse of Authority and Graft and Corruption. In the said complaint, Atty. Verano, Jr. alleged that Umali Paco as CEO and General Manager illegally charged the Philippine Retirement Authority Members Association Foundation, Inc. (PRAMA) a five percent (5%) fee based on the total amount collected by the PRA from its members. Complainant Verano,

Jr. also alleged that the Memorandum of Agreement authorizing the PRA to collect such fees was unilaterally terminated by Umali-Paco. Lastly, he alleged that PRA, through Umali-Paco, surreptitiously increased the membership fees to be paid by the members of PRAMA from P2,000.00 to P3,000.00.

In an Order dated March 20, 2001, the Office of the Ombudsman required Umali-Paco to answer the complaint. Subsequently, in an Order dated April 2, 2001, the said office formally charged appellant Umali-Paco with Grave Misconduct and preventively suspended her for a period of six (6) months without pay effective upon receipt of the said order.

However, before the expiration of the preventive suspension, in a Decision dated August 31, 2001 the Office of the Ombudsman dismissed the complaint against Umali-Paco, revoked the order preventively suspending her and ordered her reinstatement in the service. The said office found that the allegations of complainant Verano, Jr. in his complaint were not substantiated by the evidence on record.

Meanwhile, in a letter dated September 28, 2001 PRA Acting Chief Executive Officer (CEO)/General Manager (GM) Benjamin S. Santos filed a complaint against Umali-Paco before the PRA Board of Trustees for allegedly committing the following:

"1. That being then the Chief Executive Officer and General Manager . . . Philippine Retirement Authority entrusted with the duty, Atty. Paco neglected to accrue in the books of account, much less, collect from retiree-participants the visitorial fees amounting to approximately P8,000,000.00 as of June 30, 2001;

"2. That being such public officer, Atty. Paco caused and/or tolerated the collection from retiree-participants identification card fees in the aggregate amount of approximately P127,000.00, more or less, without issuing immediately Official Receipts therefore as required by the law and rules, such acts constituting illegal exaction;

"3. That abusing her authority as such public officer, Atty. Paco directed employees of this Office to collect membership fees pertaining to the PRAMA Foundation, a private entity, for the sole and exclusive benefit of such private organization, using official time and resources and misusing official receipts in acknowledging receipt thereof;

"4. That as such public officer, Atty. Paco caused the misuse of government funds and resources in printing and transporting circulars, letters and other materials for the use and benefit of a private person or group;

"5. That as such public officer, Atty. Paco caused the dropping from the PRA books of accounts her lost cellular phone without filing a relief from accountability within the reglementary period of 30 days from the loss of said cellular phone. She also ordered the purchase of a new more expensive cellular phone;

"6. That as such public officer, Atty. Paco used government funds and resources in connection with the case filed by Pedro Barrientos against her, knowing fully well that she is charged in her personal capacity."

In a Memorandum dated October 18, 2001 the PRA Board of Trustees approved the filing of a formal charge against Umali-Paco.

The said memorandum reads, in part, as follows:

"RESOLVED, that in the interest of the service, the Board hereby authorizes the filing of Formal Charges against Vernetta Umali-Paco based on the Complaint filed by Benjamin S. Santos, observing due process pursuant to the Civil Service Rules and Regulations;

"RESOLVED FURTHER, that upon the filing of Formal Charges against Vernetta Umali Paco, given that some of the charges involve grave misconduct, the Board hereby authorizes and orders the preventive suspension of Vernetta Umali-Paco;

"RESOLVED FINALLY, that Benjamin S. Santos is hereby authorized to sign any and all documents necessary to effect these resolutions."

On October 26, 2001, Acting CEO/GM Santos, in behalf of the PRA Board of Trustees, issued an Order formally charging Umali-Paco with Gross Misconduct, Gross Neglect of Duty, Dishonesty, Inefficiency and Incompetence in the Performance of Official Duties and Conduct Prejudicial to the Best Interest of the Service and preventively suspending her for a period of ninety (90) days.

The pertinent portions of the said order read, as follows:

"Before this Board is an administrative complaint filed against Atty. Vernetta Umali-Paco. The complaint is founded on various acts committed and tolerated by Respondent while in the performance of her official duties which constitute GROSS MISCONDUCT, GROSS NEGLIGENCE OF DUTY, DISHONESTY, INEFFICIENCY AND INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES, AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE

" x x x

"I.

"Respondent Vernetta Umali-Paco, through GROSS NEGLIGENCE and INEFFICIENCY AND INCOMPETENCE in the performance of their respective duties, knowingly refused to record in the books Visitorial Fee Receivables of PRA amounting to PHP 8,181, 535.63 as of June 30, 2001, a conduct clearly PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE. This consists of 73% of the total Visitorial Fees Receivables in the amount of PHP 11, 166,608.55.

"II.

"Respondent Vernetta Umali-Paco, through DISHONESTY, MISCONDUCT, GROSS NEGLIGENCE, INEFFICIENCY AND INCOMPETENCE in the performance of their respective duties, received payments for PRA identification cards in the amount of PHP 127,260.00 without issuing official receipts.

"III

"Respondent Vernetta Umali-Paco, through GROSS MISCONDUCT in the performance of their respective duties, willfully and unlawfully collected membership dues of PRAMA Foundation, a private juridical entity, from 1996 up to October 2000, without any legal right to collect the same. The collections were done by PRA employees using PRAMA official receipts as well as PRA official receipts.

"IV

"Respondent Vernetta Umali-Paco used government funds and resources in printing and transporting circulars, letters, and other material for the use and benefit of private persons and entities.

"V

"Respondent Vernetta Umali-Paco, through GROSS NEGLIGENCE in the performance of her official duties, failed to apply for relief of accountability within the thirty (30) day reglementary period after she lost her cellular phone, in violation of Section 73, P.D. No. 1445, otherwise known as the Government Auditing Code of the Philippines.

"VI

"Respondent Vernetta Umali-Paco used government funds in a complaint for damages filed against her in her personal capacity by Mr. Pedro Barrientos.

" x x x

"WHEREFORE, finding that the evidence of guilt of Respondent is strong and that a prima facie case exists, this Office hereby orders the following:

"1. That Respondent is formally charged of Gross Misconduct, Gross Neglect of Duty, Dishonesty, Inefficiency and Incompetence in the Performance of Official Duties, and Conduct Prejudicial to the Best Interest of the Service;

"2. That Respondent be immediately placed under PREVENTIVE SUSPENSION for a period of Ninety (90) days, counted from actual notice hereof;

"3. That a formal investigation be conducted against Respondent."

On October 29, 2001, Acting CEO/GM Santos informed the Office of the Government Corporate Counsel (OGCC) Government Corporate Counsel Amado D. Valdez that Umali-Paco was formally charged with the offense of Grave Misconduct and preventively suspended for a period of ninety (90) days and requested the latter to provide a hearing officer and prosecutor to hear and investigate the case.

In a letter dated October 30, 2001, Acting CEO/GM Santos informed the Office of the President's (OP) Executive Secretary Alberto G. Romulo that its memorandum dated October 22, 2001 requiring the Chairman of the PRA Board of Trustees to implement the decision (reinstating Umali-Paco in the service) of the Office of the Ombudsman cannot be implemented since another administrative case has been filed against Umali-Paco.

Thereafter on November 7, 2001, Umali-Paco appealed to the Department of Trade and Industry (DTI) and PRA Board of Trustees Chairman Manuel A. Roxas II the non-implementation of the decision of the Office of the Ombudsman reinstating her in the service and questioned the authority of Acting CEO/GM Santos to formally charge and preventively suspend her.

In an appeal dated November 16, 2001, Umali-Paco also questioned before the Civil Service Commission the authority of Santos to hold on to the position of Acting CEO/GM of the PRA considering that the OP ordered her reinstatement to the said position. Thus, the appellant prayed for the issuance of a resolution revoking the designation of Santos as CEO/GM and declaring all his actions as such, including the issuance of the Formal Charge and the Order of Preventive Suspension against Umali-Paco illegal.

While her appeal was pending with the Commission, Umali-Paco received a notice from the OGCC to appear before it in relation to the investigation of the case against her. On December 3, 2001, the appellant reiterated her request for the early resolution of the complaint which she filed with the Commission.

Thereafter, in a letter dated December 6, 2001 addressed to the OGCC Investigating Committee, Umali-Paco questioned the legality of the designation of Santos as Acting CEO/GM of PRA. The appellant claims that *"the question as to whether or not Santos is legally holding the position of Acting CEO/GM needs to be settled first before the investigation on the alleged Formal Charges against the undersigned can prosper. Another matter that needs to be resolved prior to the conduct of this investigation is the applicability to this administrative proceedings of the Decision of the Court of Appeals in that case . . . entitled Thelma N. Rupa vs. Civil Service Commission, Philippine Retirement Authority and Vernetta Umali-Paco which is part of the records in the custody and possession of the Office of the Government Corporate Counsel. She then moved for the resetting of the preliminary hearing on the alleged Formal Charges scheduled on December 7 and 14, 2001 until the said legal question have been ruled upon by the PRA Board of Trustees."*

In a letter dated December 6, 2001 the Commission, through its Office for Legal Affairs, dismissed the appeal of Umali-Paco for being premature since it violated the principles of non-forum shopping and non-exhaustion of administrative remedies. The said letter reads, in part, as follows:

"This refers to your letter-complaint dated November 16, 2001 and follow-up letter dated December 3, 2001 where you prayed for the Commission 'to quash the Formal Charge and Preventive Suspension being imposed against you by Mr. Benjamin Santos, Acting PRA CEO/GM, for being null and void, unlawful and oppressive' and for having been signed by Santos, who is a mere usurper' . . .

" x x x

"Your complaint/appeal before the Commission is premature. Records show that on November 7, 2001 you appealed to Secretary Roxas II in his capacity as PRA Chairman, for your immediate reinstatement and at the same time questioning the authority Santos to hold office in PRA. To say the least, the same should then be dismissed based on the principles of non-forum shopping and non-exhaustion of administrative remedies.

" x x x

"As regards your prayer that the Commission direct the PRA to pay you back salaries, please be informed that the Commission has no authority to do so as it is a decision of the Office of the Ombudsman, a Constitutional Office independent from the Commission, which needs to be implemented . . .

" x x x

"Finally, in case you will not be satisfied with the decision of Secretary Roxas II, and you want to pursue the case, then you should refile your appeal to the Commission with a reminder to comply with the following requirements as provided under the Uniform Rules on Administrative Cases in the Civil Service . . . "

Apparently, the OGCC continued with the investigation of the case despite the issues raised before it by Umali-Paco and issued the Order dated December 12, 2001.

On December 20, 2001, Umali-Paco moved for the reconsideration of the Order dated December 12, 2001 of the OGCC Investigating Committee on the ground that she is questioning the legality of the designation of Santos as CEO/GM and the right of the latter to issue the formal charge and Order of Preventive Suspension against her. The records transmitted to the Commission failed to include the Order dated December 12, 2001. The same can only be inferred from Umali-Paco's motion dated December 20, 2001.

On February 4, 2002, OGCC Government Corporate Counsel Amado D. Valdez submitted the investigation report on the case against Umali-Paco to the PRA Board of Trustees. The said investigation report reads, in part, as follows:

"All told, we believe that there is substantial evidence to support the charges. Substantial evidence, which is the quantum of evidence required to establish a fact in cases before administrative and quasi-judicial bodies, connotes merely that amount of relevant evidence which a reasonable mind might accept to be adequate in justifying a conclusion . . .

"PREMISES CONSIDERED, it is respectfully recommended that PRA Board of Trustees impose the penalty of DISMISSAL on respondent in accordance with Civil Service Rules and Regulations. This is consonance with Section 6 (h) and Section 7 of E.O. 1037, which provides:

'Section 6. Powers and Functions of the Board. The BOARD shall have the following powers, functions and duties:

" x x x

'(h) To appoint, promote, transfer, remove or otherwise suspend or discipline the Deputy General Managers and other officers of the System, occupying executive and senior management positions, and;

'Section 7. Officers of the System.

'The Officers of the System shall be the one Chief Executive Officer, One General Manager or Managing Director x x x and ALL shall be appointed by the Board.'

In PRA Office Order No. 20 dated March 11, 2002, Investigating Committee Chairman J. Antonio Leviste again ordered respondent Umali-Paco to submit her counter-affidavit to the complaint filed against her. In the same office order, appellant was preventively suspended for another period of sixty (60) days.

In PRA Office Order No. 63, dated June 5, 2002, the preventive suspension of Umali-Paco was extended for another thirty (30) days or from June 8, 2002 to July 7, 2002.

In a Memorandum dated June 19, 2002 and received by the Commission on even date, Umali-Paco appealed the extension of her preventive suspension. Subsequently, in an Order dated July 1, 2002 the Commission requested the PRA to comment on the said appeal.

The comment of the PRA on the appeal of Umali-Paco was received by the Commission on July 16, 2002.

Hence, this appeal.

The pivotal issue to be resolved is whether the Commission has jurisdiction over the present appeal.

Under **Section 1 of Executive Order No. 26 (Placing the Philippine Retirement Authority Under the Supervision and Control of the Board of Investments and for Other Purposes)** the Philippine Retirement Authority is placed under the supervision and control of the Board of Investments. Moreover, the composition of the Board of Trustees is enumerated under Section 2 of the same law, as follows:

"Chairman : Secretary of Trade and Industry/Chairman, Board of Investments or his duly designated representative

"Members : Secretary of Tourism or his duly designated representative

Chairman, Monetary Board or his duly designated representative

Commissioner of Immigration and Deportation or his duly designated representative"

Further, **Section 6 (h) of the Executive Order No. 1037 (Creating the Philippine Retirement Park System, Providing Funds Therefor and for Other Purposes)**, provides:

"Section 6. Powers and Functions of the Board. The BOARD shall have the following powers, functions and duties:

" x x x

"h. To appoint, promote, transfer, remove, suspend or otherwise discipline the Deputy General Manager and other officers of the SYSTEM, occupying executive and senior management positions . . . "

Therefore, it is clear that the PRA Board of Trustees has the primary jurisdiction to discipline its officers occupying executive and senior management positions. In the present case, Umali-Paco was holding the position of Chief Executive Officer (CEO) and General Manager (GM) of PRA when an Order dated April 2, 2001 was issued by the Office of the Ombudsman, which formally charged and preventively suspended her for a period of six (6) months. Although the case against her was dismissed by the said office in an Order dated August 31, 2001 another administrative complaint was filed against her by Acting CEO/GM Santos on September 28, 2001.

Hence, the appellant rightfully appealed to PRA Chairman Manuel A. Roxas II the non-implementation of the Office of the Ombudsman Order reinstating her in the service and the legality of the assumption of Santos as Acting CEO/GM including his right to issue the Order formally charging and preventively suspending her. At present, the appeal of Umali-Paco with PRA Chairman Roxas II is still pending.

It must be noted that Umali-Paco appealed the same issues to the Commission in a letter dated November 16, 2001.

In a letter dated December 6, 2001, the Commission dismissed the said appeal for being premature.

Considering that the appeal of Umali-Paco is still pending with PRA Chairman Roxas II at this time, then, the Commission has no alternative but to dismiss her appeal from PRA Office Order No. 63 dated June 5, 2002 extending her preventive suspension for another thirty (30) days. Conversely, in directly appealing to the Commission, the appellant violated the principles of exhaustion of administrative remedies and forum shopping.

Under the principle of *exhaustion of administrative remedies* whenever there is an available administrative remedy provided by law, no judicial recourse can be made until all such remedies have been availed of and exhausted.¹ Thus, Umali-Paco must wait for the resolution of her appeal presently pending with PRA Chairman Roxas II. On the other hand, the Supreme Court in the case of **Ruiz vs. Drilon**² illustrated how forum shopping is committed, as follows:

"Forum shopping is effected by a party litigant through the deliberate splitting of causes of actions and appeals in the hope that even as one case (in which a particular remedy is sought) is dismissed, another case (offering a similar remedy) would still be open, is a deplorable practice because it results in the unnecessary clogging of the already heavily burdened dockets of the courts."

In the instant case, the extension of the preventive suspension of Umali-Paco is a mere collateral issue of the main case pending before PRA Chairman Roxas II. It should be noted that the authority to extend the duration of preventive suspension including the issuance of a formal charge and an order of preventive suspension comes within the realm and purview of the powers of Acting CEO/GM Santos.

Nevertheless, as the central personnel agency of the government the Commission has the duty to carefully determine, after examining the records of each case, whether the period of preventive suspension of a government employee of a respondent in an administrative case is in accordance with the **Uniform Rules on Administrative Cases in the Civil Service (Civil Service Commission Resolution No. 99-1936 dated August 31, 1999)**, which provides:

"RULE II – DISCIPLINARY CASES

" x x x

*"Section 20. Duration of Preventive Suspension. – **When the administrative case against an officer or employee under preventive suspension is not finally decided by the disciplining authority with the period of ninety (90) days after the date of his preventive suspension, unless otherwise provided by special law, he shall be automatically reinstated in the service; provided that, when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay should not be included in the counting of the 90 calendar days period of preventive suspension. Provided further that should the respondent be on Maternity/Paternity leave, said preventive suspension shall be deferred or interrupted until such time that said***

leave has been fully enjoyed." (Emphasis supplied)

In the present case, as culled from the records, Umali-Paco has been preventively suspended from March 11, 2002 until the present. Hence, she should be immediately reinstated in the service with the payment of backwages from the date the ninety (90) days of preventive suspension was completed. However, this is without prejudice to the final outcome of the case against her presently pending with the PRA Chairman Roxas II.

Furthermore, the Commission also reminds PRA Chairman Roxas II that under Section 5 (a) of Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees) *all public officials in the performance of their duties shall, within fifteen (15) working days from receipt thereof, respond letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request.*

As mentioned earlier, Umali-Paco appealed the Order issued by Acting CEO/GM to PRA Chairman Roxas III as early as November 7, 2001, which up to now remains unresolved.

WHEREFORE, the appeal of Vernetta Umali-Paco is hereby GRANTED. Accordingly, she is immediately reinstated in the service with the payment of backwages from the time she has completed the period of ninety (90) days of preventive suspension without prejudice to the final outcome of her pending appeal with Philippine Retirement Authority (PRA) Chairman Manuel A. Roxas II. Finally, PRA Chairman Manuel A. Roxas II is hereby enjoined to expeditiously act on the appeal of Umali-Paco dated November 7, 2001.

Quezon City, DEC 09 2002

(Signed)

KARINA CONSTANTINO-DAVID

Chairman

(Signed)

JOSE F. ERESTAIN, JR.

Commissioner

(Signed)

J. WALDEMAR V. VALMORES
Commissioner

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

FPG/KPZ/X8/Y11(D34)jrl
Umali-Paco/D-02-0299

¹National Development Company vs. Hervilla, 151 SCRA 200
¹209 SCRA 695 (1992)