

PAG-ASA AT ILAW NG MGA MANGGAGAWA SA ASIA-INDEPENDENT, PETITIONER, VS. OFFICE OF THE VOLUNTARY ARBITRATION (ATTY. RICKY G. TY VOLUNTARY ARBITRATOR) AND ASIA BREWERY, INC. RESPON...

Ponente: LOPEZ, J.

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LOPEZ, J.:

In July 2007, several rank-and file employees of Asia Brewery, Inc. (ABI) formed the Pag-Asa at Ilaw ng mga Manggagawa sa Asia-Independent (PAMI) which challenged in a certification election the incumbent exclusive bargaining agent Tunay na Pagkakaisa ng mga Manggagawa sa Asia-Independent (TPMA).

Meantime, on August 21, 2007,[1] the employees through PIMA asked ABI to hold in trust the union dues until a new bargaining agent is declared. However, ABI did not accede to the request and continued to remit the dues to TPMA. Later, on April 1, 2008,[2] PIMA won the election and was certified as the new bargaining representative of the rank-and-file employees. After negotiations, ABI and PIMA signed a collective bargaining agreement[3] to be effective from November 1, 2009 to October 31, 2012. During that period, the Department of Labor and Employment issued several wage orders that ABI implemented using the distortion formula.

In 2011, PAMI filed a grievance complaint[4] against ABI before the National Conciliation and Mediation Board involving the non-remittance of union dues collected from August 2007 to March 2008. PAMI alleged that an express trust in its favor was created between ABI and the employees. Nonetheless, ABI violated its obligation as trustee when it released the dues to TPMA. In addition, PAMI claimed across-the-board increase in salaries and assailed the implementation of the wage orders using the distortion formula for being contrary to the provisions of existing CBA. Lastly, PAMI argued that ABI should have consulted it before carrying out any salary adjustment.[5]

Several conciliation meetings were held but failed to bring about any amicable settlement. Thus, on December 29, 2011,[6] the parties agreed to submit the following issues to voluntary arbitration:

Whether or not the union dues covering the period August 2007 to March 2008 amounting to Php150,000.00 which was released by the company to the former union, TPMA, thru its union President Jose Manuel Miranda is valid despite formal petition of union members thru the certified and exclusive bargaining agent, PIMA, to hold in trust said union dues; and

Whether or not the contention of the union to implement Wage Order No. 11-14 across-the-board against management implementation using distortion formula, is in accordance with the provisions of the existing CBA.[7]

On May 26, 2012,[8] the Voluntary Arbitrator ruled that the collection and remittance of union dues were made pursuant to the obligation of ABI under the CBA and not based on an express trust. Moreover, PAMI was declared as the sole and exclusive bargaining agent only on April 1, 2008 therefore not entitled to any union dues before such date. Finally, the language of the CBA was clear in granting ABI the option between across-the-board

increase and distortion method in implementing the wage orders. Hence, this petition for review.[9]

Prefatorily, We stress that an express trust is created by the direct and positive acts of the parties, by some writing or deed or will or by words evidencing an intention to create a trust.[10] It must be manifested with reasonable certainty and cannot be inferred from loose and vague declarations or circumstances susceptible of other interpretations.[11] More importantly, its purpose should not be in contravention of some prohibition of statute or rule of public policy.[12]

Under these standards, it can hardly be considered that a trust relationship was established between ABI and its employees over the union dues in favor of PAMI. Foremost, ABI did not heed the request of the employees and continued to remit the dues to TPMA. This fact alone rules out any notion that ABI assumed the duties of a trustee or that it acted in a fiduciary capacity. Further, the discontinuance of remittance of union dues to the exclusive bargaining agent constitutes a violation of a contractual commitment for which ABI may incur liability for unfair labor practice.[13] It must be remembered that an employer should not be allowed to rescind unilaterally its CBA with the duly certified bargaining agent it had previously contracted with, and decide to bargain anew with a different group if there is no legitimate reason for doing so and without first following the proper procedure.[14] Apropos is Article 259 of the Labor Code which provides:

ART. 259. Duty to Bargain Collectively When There Exists a Collective Bargaining Agreement. – Where there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties. (Emphasis supplied.)

This is the reason why it is axiomatic in labor relations that a CBA entered into by a legitimate labor organization that has been duly certified as the exclusive bargaining representative and the employer becomes the law between them. Indeed, compliance with the terms and conditions of the CBA is mandated by express policy of the law primarily to afford protection to labor and to promote industrial peace.[15] Here, a valid and binding CBA had been entered into between ABI and TPMA when the disputed union dues were collected. Accordingly, ABI is behooved to observe the terms and conditions of the CBA bearing on union dues and representation.[16] Moreover, pending the result of the certification election, TPMA remained duly authorized to conduct the union affairs. As the Voluntary Arbitrator aptly observed, PIMA has no right to demand the union dues accruing from August 2007 to March 2008 since it was certified as the new bargaining representative only on April 1, 2008. To be sure, the Rules implementing the Labor Code is explicit that the incumbent bargaining agent shall continue to be entitled to check-off and collect dues and agency fees despite the pendency of a representation case, other inter/intra-union disputes or related labor relations disputes.[17]

Anent the implementation of the wage orders, the CBA between PAMI and ABI is clear that xxx [e]ach employee shall receive the government-mandated wage increase across the board or based on the distortion formula of the wage order, if any, xxx.[18] Settled is the rule that if the terms of a CBA have no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall prevail. In this case, the language of the agreement is unambiguous in granting ABI an option between the two methods in implementing the wage orders. The disjunctive article “or” indicates an alternative and often connects a series of words or propositions suggesting a choice of either.[19] Furthermore, the clause is bereft of any hint that consultation with the union is necessary before implementing any salary adjustment. If such was the intention of this provision, the parties could have simply incorporated it in the agreement. Otherwise, as the Voluntary Arbitrator correctly pointed out, the CBA

would still be subject to endless renegotiation which is contrary to the very spirit and purpose of the agreement which is to foster stability between labor and capital.

At any rate, in ascertaining the intention of the contracting parties, their contractual history may be considered.[20] Here, it has been the practice of ABI long before PIMA became the bargaining agent to implement government-mandated wage increases by applying the distortion formula. Lastly, the provisions of the CBA should be read in harmony with the wage orders.[21] Notably, all the orders provided for a distortion formula but did not grant an across-the-board increase.

In sum, We find that the Voluntary Arbitrator did not commit any reversible error in declaring that PIMA is not entitled to any union dues before the date it was certified as the new bargaining representative and, in holding that ABI validly implemented the wage orders pursuant to the terms of the existing collective bargaining agreement.

FOR THESE REASONS, the petition for review is DENIED.

SO ORDERED.

Reyes, J.C., JR., (Chairperson) and Inting, JJ., concur.

[1] Rollo, pp. 81-99.

[2] Id., pp. 100-102.

[3] Id., pp. 59-80.

[4] Id., p. 42.

[5] Id., pp. 27-35.

[6] Id., p. 43.

[7] Id., pp. 195-196.

[8] Id., pp. 195-209.

[9] Id., pp. 8-23.

[10] See Sotto v. Teves, 86 SCRA 154 (1978); Philippine National Bank v. Aznar, G.R. Nos. 171805 and 172021, May 30, 2011; Torbela v. Rosario, G.R. Nos. 140528 and 140553, December 7, 2011.

[11] See Heirs of Pedro Medina v. Court of Appeals, G.R. No. L-26107, November 27, 1981; and Philippine National Bank v. Aznar, supra.

[12] See Rizal Surety & Insurance Co. v. Court of Appeals, 329 Phil. 789, citing Mindanao Development Authority v. Court of Appeals, G.R. No. L-49087, April 5, 1982.

[13] Labor Code, Article 254 (i).

[14] Employees Union of Bayer Phils. v. Bayer Philippines, Inc., G.R. No. 162943, December 6, 2010.

[15] See TSPIC Corporation v. TSPIC Employees Union (FFW), G.R. No. 163419, February 13, 2008, citing Honda Phils. Inc. v. Samahan ng Malayang Manggagawa sa Honda, G.R. No. 145561, June 15, 2005. See also Employees Union of Bayer Phils. v. Bayer Philippines, Inc., supra, citing Del Monte Philippines, Inc. v. Saldivar, G.R. No. 158620, October 11, 2006.

[16] See *De La Salle University v. De La Salle University Employees Association (DLSUEA-NAFTEU)*, G.R. No. 177283, 584 SCRA 592.

[17] See *Implementing Rules of Book V*, Section 1, Rule XIII.

[18] *Rollo*, p. 66.

[19] *Id.*, p. 204, citing *Centeno v. Villalon-Pornillos*, G.R. No. 113092, September 1, 1994.

[20] See *Pag-Asa Steel Works, Inc. v. Court of Appeals*, G.R. No. 166647, March 31, 2006.

[21] See *Capitol Wireless, Inc. v. Bate*, 316 Phil. 355 (1995).

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