

KILUSAN NG MGA MANGGAGAWA SA ALCOS GLOBAL CORPORATION-SUPER (KMAGC-SUPER), PETITIONER, VS. THE HONORABLE NATIONAL CONCILIATION AND MEDIATION BOARD, HON. AVA HERMINIGILDO C. JAVE...

Ponente: ABDULWAHID, J.

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ABDULWAHID, J.:

Before us is a petition for review, seeking to reverse and set aside the Decision[1] dated August 10, 2014 and the Resolution[2] dated September 1, 2014 of public respondent Accredited Voluntary Arbitrator (AVA) Herminigildo C. Javen of the National Conciliation and Mediation Board (NCMB) in Case No. AC 809-NCMB-NCR LVA-009-01-05-14.

The undisputed facts of the case from which the present action arose show that on June 12, 2010, petitioner union, Kilusan ng Manggagawa sa Alcos Global Corporation-SUPER (KMGC-SUPER) and private respondent company, Alcos Global Corporation signed a Collective Bargaining Agreement (CBA), granting wage increase to all employees within the bargaining unit. The pertinent provisions of the CBA read, as follows:[3]

ARTICLE IX

WAGE INCREASE

SECTION 1. The COMPANY shall grant general wage increase to each employee in the bargaining unit as follows:

- a. Effective January 6, 2010 on the 1st year, wage increase of Eight Pesos (P8.00).
- b. Effective January 6, 2011 on the 2nd year, wage increase of Nine Pesos (P9.00).
- c. Effective January 6, 2012 on the 3rd year, wage increase of Ten Pesos (P10.00).
- d. Effective January 6, 2013 on the 4th year, wage increase of Eleven Pesos (P11.00).
- e. Effective January 6, 2014 on the 5th year, wage increase of Twelve Pesos (P12.00).

SECTION 2. An employee who is regularized shall effectively from the date of his/her regularization receive the wage increase given by the COMPANY preceding his regularization.

SECTION 3. In the event that the application of any prescribed wage increase by virtue of a law or wage order issued by any Regional Board results into a distortion in the wage structure in the company, the procedures mandated by law shall be observed in its correction. The correction of the distortion shall only be applicable to the specific employee/s whose wage difference is eliminated or suffers a severe contraction.

On October 1, 2013, the Regional Wage and Productivity Board of the National Capital Region issued Wage Order No. NCR-18 which granted a ten peso (P10.00) wage increase to all minimum wage employees. Specifically, Section 2 of the said Wage Order provides, as follows:

Section 2. COVERAGE. The wage rates per day prescribed in this Order shall apply to all minimum wage earners in the private sector in the Region, regardless of their position, designation or status of employment and irrespective of the method by which they are paid.

xxx xxx xxx

Section 11. EFFECTS ON EXISTING WAGE STRUCTURE. Where the application of the wage rates prescribed in this Order results in distortions in the wage structure within the establishment, it shall be corrected in accordance with the procedure provided for under Article 124 of the Labor Code, as amended.

Also, Section 2, Rule I of the Rules Implementing Wage Order No. NCR-18, provides:

xxx xxx xxx

cc) WAGE DISTORTION – as defined under article 124 of Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, as amended, refers to a situation where an increase in the prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical basis of differentiation.

Pursuant to the CBA, the company paid the union members the wage increase of P12.00 but refused to pay the P10.00 increase provided for in Wage Order No. NCR-18.

Aggrieved with private respondent company's refusal to pay the P10.00 wage increase under Wage Order No. NCR No. 18, on May 22, 2014, petitioner union brought the issue for voluntary arbitration. Due to the parties' failure to arrive at a settlement, public respondent AVA Javen of the NCMB set the date for the submission of the parties' respective pleadings and, thereafter, considered the case submitted for decision.

In its Position Paper[4], petitioner union claimed for the union members' entitlement to the wage distortion adjustment mentioned under Section 3, Article IX of the CBA due to the existence of severe contraction of salary rates between employee groups in the respondent company. According to them, there are two types of employees in the company, namely, the regular employees also referred to as the union members, and the agency workers. Petitioner alleged that the existence of severe contraction in the salary structure of the company was caused by the implementation of the P10.00 increase under Wage Order No. NCR-18 in favor of the agency workers only, and not to the union members. To support such contraction in the salary structure, petitioner claimed that, before the CBA salary increase of P12.00 was given to six members of the bargaining unit, namely: Leonora Rico, Bebina Andrada, Jinalyne Adan, Josephine Padua, Evelyn Llandilar and Cristina Custodio, the salary of said union members was P479.90 per day while, the daily salary of agency workers was at that time P426.00 plus P30.00 COLA, thus, a salary gap of P53.90 between the six union members and the agency workers. After the P12.00 CBA increase was given to the six union members their salary amounted to P491.90. On the other hand, the increase pursuant to Wage Order No. NCR-18 in favor of the agency workers resulted to an increase in their salary amounting to P451.00 a day plus P15.00 COLA. These changes in the salary of the six union members and the agency workers caused the shortening of the gap between them to only P40.90. In view thereof, petitioner union contended that the salaries between the union members and the agency workers contracted by more than 50% or exactly 75.88%. Consequently, it is petitioner's contention that the necessary wage adjustment be implemented to all the employees covered by the bargaining unit. Lastly, they claimed entitlement to ten percent (10%) attorney's fees by reason of respondent company's failure to implement the distortion adjustment which is equivalent to unlawful, malicious, capricious, and arbitrary withholding of wages and other wage related benefits.

On the other hand, respondent company, in its Position Paper[5], argued that there was no wage distortion in this case and that the union members are not entitled to wage distortion adjustment provided under Wage Order No. NCR-18. It contended that Wage Order No. NCR-18 and its implementing rules and regulations apply only to minimum wage employees. Thus, petitioner union cannot claim under the provisions on the said wage order because they are not minimum wage earners prior to and after its implementation. In addition, private respondent

company contended that the increase under Wage Order No. NCR-18 did not result to the elimination of intentional quantitative differences in wage between and among employees in the establishment since the daily wage of the union members are way above the minimum wage set by law, and the wage conditions of the employees remained unchanged and undisturbed. With respect to the alleged implementation of Wage Order No. NCR-18 by respondent company to the agency workers which, according to petitioner union, is the cause of the severe contraction in the salary structure among employees, private respondent company argued in its Reply[6] that the agency workers are not employed under private respondent company but are actually employees of Job Placement Resources Services Cooperative. Hence, they are not part of the bargaining unit or the so called “employees groups” contemplated in the statutory definition of wage distortion. Thus, private respondent company contended that it is erroneous for petitioner to consider the wage increase given by Job Placement Resources Services Cooperative to its employees as basis for their claim of the alleged severe contraction in the daily salaries of petitioner union.

After considering the pleadings and supporting evidence of both parties, public respondent AVA Javen rendered a Decision dated August 10, 2014, finding that there was no severe wage contraction in private respondent company that warrants the application of salary adjustment provided in Wage Order No. NCR-18 and Section 3, Article IX of the existing CBA. Public respondent AVA Javen found that since it is Job Placement Services Cooperative who gave the salary increase to the agency workers and not respondent company, there cannot be a severe contraction in the salaries between union members and agency workers because they are covered by different salary structures. The dispositive portion of the said Decision reads, as follows:[7]

In view of the foregoing, this Honorable Office hereby ruled that there is no wage distortion in the instant case that would necessitate application of Article IX Section 3 of the existing CBA.

Other prayers are DISMISSED for sheer lack of merit.

SO ORDERED. August 10, 2014. Pasig City for Manila.

AVA HERMINIGILDO C. JAVEN
Accreditation No. 809

On August 26, 2014, petitioner filed a Motion for Reconsideration,[8] but the motion was denied in the assailed Resolution dated September 1, 2014.

Aggrieved, petitioner filed the instant petition for review, praying that the August 10, 2014 Decision and the September 1, 2014 Resolution of public respondent AVA Javen be reversed and set aside, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction when he declared that there is no wage distortion in the present case and that the members of the union are not entitled to the salary adjustment provided in Wage Order NCR No. 18 and Section 3, Article IX of the existing CBA.

Petitioner contends that public respondent AVA Javen committed grave abuse of discretion when he failed to consider in his decision the overwhelming facts showing the existence of wage distortion in respondent company. Petitioner explains that after the implementation of Wage Order No. NCR-18, the salaries between the union members and the agency workers contracted by more than 50% or exactly 75.88%, warranting an application of the wage distortion adjustment in Wage Order No. NCR-18 and Section 3, Article IX of the CBA.

We find no merit in the instant petition.

Article 124 of the Labor Code as amended by Republic Act No. 6727 also known as the Wage Rationalization Act, defines “wage distortion”, as follows:

xxx a wage distortion shall mean a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.

In case of a dispute arising from a wage distortion in an organized establishment, the same provision prescribes for a method in correcting the same stated, as follows:

Where the application of any prescribed wage increase by virtue of a law or Wage Order issued by any Regional Board results in distortions of the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions. Any dispute arising from wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement, and if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, such dispute shall be decided by the voluntary arbitrator or panel of voluntary arbitrators within ten (10) calendar days from the time said dispute was referred to voluntary arbitration.

In the light of the above-cited provision, we rule that there is no wage distortion in the instant case. According to petitioner, the alleged severe contraction in the wage structure in respondent company was caused by the implementation of Wage Order No. NCR-18 in favor of the agency workers. However, the evidence on record reveals that it was not respondent company who implemented the wage order, but Job Placement Resources Services Cooperative. The payslips[9] presented in this case substantially prove that the agency workers are actually employees of Job Placement Resources Services Cooperative and not of respondent company. Petitioner, on the other hand, failed to establish otherwise. Since the union members and the agency workers are governed by different salary structures under different employers, we find no reason to compare their salaries. In a problem dealing with "wage distortion," the basic assumption is that there exists a grouping or classification of employees that establishes distinctions among them on some relevant or legitimate bases.[10] We rule that such classification between employees does not exist in this case.

Considering the foregoing disquisition, we rule that since there is no wage distortion in this case, petitioner union is not entitled to the salary adjustment provided under Wage Order No. NCR-18 and Section 3, Article IX of the present CBA.

Accordingly, we sustain the ruling of public respondent AVA Javen which reads, as follows:[11]

The issue of wage distortion is an issue of CAUSE and EFFECT. When there is no severe contraction in wage structure in a business establishment, there will be no wage distortion and this was correctly pointed out by the respondents.

xxx

This Honorable office ruled that the agency workers are not covered by the company wage structure because they have different employer. This office was not convinced by complainant's allegation that the additional P10.00 wage increase on agency workers resulted to severe contraction in the respondent company.

With the foregoing disquisitions, this Honorable Office hereby declared that the Union members, irrespective whether the majority who disauthorized the Union to represent or the 22 or 23 remained members are not entitled to Wage Order No. NCR-18 neither pursuant to Article IX, Section 3 of the existing Collective Bargaining Agreement.

We disagree with petitioner's claim that public respondent AVA Javen committed grave abuse of discretion in rendering the assailed decision. In *Bankard Employees Union -Workers Alliance Trade Unions vs. NLRC*[12], the Supreme Court held:

The issue of whether wage distortion exists being a question of fact that is within the jurisdiction of quasi judicial tribunals, and it being a basic rule that findings of facts of quasi judicial agencies, like the NLRC, are generally accorded not only respect but at times even finality if they are supported by substantial evidence as are the findings in the case at bar, they must be respected. For these agencies have acquired expertise, their jurisdiction being confined to specific matters.

In this case, public respondent AVA Javen, who by the nature of his functions, acts as a quasi-judicial body, is presumed to have considered all the evidence and arguments of both parties in rendering his decision. In the absence of sufficient proof that the voluntary arbitrator in this case gravely abused his discretion, his decision should be accorded the highest respect and finality.[13] We find that petitioner failed to present evidence to overthrow this presumption, hence, we see no compelling reason to reverse the assailed decision.

In view of the foregoing conclusion, we find no basis to entertain petitioner's claim for attorney's fees.

WHEREFORE, the instant petition for review is DISMISSED for lack of merit.

SO ORDERED.

Baltazar-Padilla, P.J., and Inting, S.B., JJ., concur.

[1] Rollo, pp.27-39.

[2] Id. at 24-25.

[3] Id. at 62.

[4] Id. at 40-56.

[5] Id. at 79-89.

[6] Id. at 96-102.

[7] Id. at 39.

[8] Id. at 114-121.

[9] Id. at 75-76.

[10] Bankard Employees Union -Workers Alliance Trade Unions vs. National Labor Relations Commission, 423 SCRA 148, 151 (2004).

[11] See note 1 at 38-39.

[12] See Note 10 at 152.

[13] Icasiano vs. Office of the President, 209 SCRA 25, 36 (1992).

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