

LABOR ORGANIZATION OF VRESCO EMPLOYEES (LOVE), PETITIONER, VS. V-M-C RURAL ELECTRIC SERVICE COOPERATIVE, INC., (VRESCO) AND VOLUNTARY ARBITRATOR JOVITO P. BERDIN, RESPONDENTS.

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

Before Us is this Petition[1] for Review under Rule 43 of the Rules of Court, seeking to assail the March 2, 2010 Decision[2] of the Accredited Voluntary Arbitrator (AVA) Jovito P. Berdin of the National Conciliation and Mediation Board (NCMB), Department of Labor and Employment, Regional Arbitration Branch No. VI, Bacolod City in VA Case- AC-787-RB6-01-01-2010,[3] entitled Labor Organization of VRESCO Employees (LOVE), complainant vs. Victorias-Manapla-Cadiz (VMC) Rural Electric Service Cooperative Inc. (VRESCO), respondent.

LOVE is the duly registered Labor Union representing the rank and file employees of VRESCO, with Certificate of Registration Number 10902-LC[4] issued by the DOLE on January 16, 1989; while VRESCO is the employer of LOVE, which is an Electric Cooperative operating in the northern towns of Negros Occidental from E.B. Magalona to San Carlos City, with business address at Brgy. Tortosa, Manapla, Negros Occidental. VRESCO employs about 232 employees, 203 of which belong to the rank and file category and are members of the labor union LOVE.

In the herein assailed March 2, 2010 Decision, AVA Berdin found for VRESCO and against LOVE, thus the instant petition by the latter, praying that the said decision be annulled and set aside, and in lieu thereof, a new one be entered, ordering the parties to execute an agreement, which is to cover the last two years of their April 1, 2006 - March 31, 2011 Collective Bargaining Agreement, with the following provisions, to wit:

- a. Wage increase of P3,500 per month per employee from April 1, 2009 to March 31, 2009 plus;
- b. Another wage increase of P1,500.00 per employee per month from April 1, 2010 to March 31, 2011.
- c. Increases in non-wage benefits starting April 1, 2009 as provided in the proposal of complainant which was received by respondent on April 14, 2009 and incorporated in the Submission Agreement of the parties.

The antecedents of the case are as follows:

VA Case-AC-787-RB6-6-01-01-2010 originated as a complaint for Preventive Mediation[5] filed before the National Conciliation and Mediation Board (NCMB) of Bacolod City on August 20, 2009 by herein petitioner LOVE, against herein private respondent VRESCO on grounds of alleged Unfair Labor Practice (for non-reply to union proposals for the 4th and 5th yr of the CBA) and Bad Faith in Collective Bargaining. As no settlement was reached after several conciliation proceedings, the parties agreed to submit their case to voluntary arbitration, for which reason the case was assigned to AVA Jovito P. Berdin. Initially, AVA Berdin required the parties to submit their respective Statement of Issues,[6] and the same were adopted and incorporated in the Submission

Agreement,[7] viz:

“For the Union:

Whether or not the respondent VRESCO is guilty of non-reply to the CBA proposal of the union; and if so, what is its effect?

Whether or not the respondent VRESCO is guilty of bad faith in CBA negotiation;

Whether or not the employees represented by the union are entitled to the wage increases contained in the union CBA proposal as follows:

- a. 4th year of the CBA – 3,500.00/month
- b. 5th year of the CBA – 1, 500.00/ month

Whether or not the employees represented by the union are entitled to the proposed increases in existing non-wage economic benefits contained in the union proposal as follows:

“Article X

Section 5- Meal and lodging allowance. During the lifetime of this agreement, the ELECTRIC Cooperative shall grant meal and lodging allowance as follows:

- a. Within the coverage area
P150.00/meal or per invoice
P350.00/lodging or invoice
- b. Outside the coverage area but within the province
P200.00/meal or per invoice
P650.00/lodging or per invoice
- c. Outside the coverage area and outside the province
P300.00/meal or per invoice
P1,900.00/lodging or pr invoice

Article XIV

DEATH BENEFITS

Section 1- During the lifetime of this Agreement, the ELECTIC COOPERATIVE shall grant death benefits for the following cases:

- a. In case of death of any covered employee from work-connected causes, his heirs shall be entitled to death benefits equivalent TWO AND A HALF (2 and ½) month salary for every year of service base(d) on his latest salary;
- b. Wife or children of the deceased employee shall have the right for his replacement.

Article XXII

MEDICAL ALLOWANCE AND DENTAL SERVICE

Section 1- the ELECTRIC COOPERATIVE will continue to grant medical allowance to all covered employees equivalent to-

- P4500.00 for the fourth year /375.00 per month
P4,500.00 for the fifth year/375.00 per month

Article XXIII

RICE ALLOWANCE

Section 1- The ELECTRIC COOPERATIVE agrees to grant the rice allowance to all covered employees who have rendered at least one (1) year of service to the COOPERATIVE on the following basis:

- Fourth year – P1,800.00/month
Fifth year – P2,000.00/month

It is understood that if a higher amount granted as rice allowance under NEA guidelines, the latter amount shall

be given.

Article XXIV

Retirement/Separation and Disability

Section 2- Upon retirement of a covered employee, he shall be entitled to retirement benefits for every year of service with the ELECTRIC COOPERATIVE based on his latest salary as follows:

01-05 years in the service – 50%

05-09 years in the service – 100%

10 to 14 years in the service – 125%

15 to 19 years in the service – 150%

20 to 24 years in the service – 200%

25 to 30 years in the service – 225%

31 to 35 years in the service – 250%

36 years and above in the service – 300%

Section 3- any covered employee/worker may at his/her option apply for voluntary retirement after having served the ELECTRIC COOPERATIVE for at least one (1) year. Application for said voluntary retirement shall be limited to four (4) employees/ workers per year and must be submitted to the ELECTRIC COOPERATIVE at least THREE (3) months prior to their respective effectivity dates. It is understood that the computation is equivalent to the computation as provided for in Section 2 of this Article.

ARTICLE XXV

HOSPITALIZATION BENEFITS

Section 1 – The ELECTRIC COOPERATIVE agrees to grant free hospitalization benefits on the following basis:

Employees only-

Maximum coverage – P50,000.00 per employee per year

Legal dependents-

Maximum coverage – P30,000.00 per year

a. Married – spouse and children

b. Single- parents, brothers and sisters below twenty one(21) years old.

ARTICLE XXXVI

LONGEVITY PAY

Section 1- The ELECTRIC COOPERATIVE shall grant a longevity pay to covered employees to be added to their regular monthly wage according to their length of service as follows:

Rank Every 4 years in EC

12 557

11 520

10

484

9 452

8 421

7 393

6 367

5 342

4 319

3 297

2 277

1 259

Article XXIX

TUBERCULOSIS OR CANCER LEAVE WITH PAY

Section 1- The ELECTRIC COOPERATIVE agrees to grant T.B. Or Cancer leave with pay to a maximum of three (3) months to regular employee who renders at least one (1) year of service), who are found to be suffering from pulmonary tuberculosis or cancer with the following benefits:

After the current sick and vacation leave with pay have been exhausted, the employee concerned shall be granted three (3) months leave T.B. Or Cancer leave with pay.

ARTICLE XXXI

SPECIAL PROVISION

Section 1 – Emergency Financial Assistance – in case of fire, typhoon, earthquake, or any fortuitous event, in which any employee is a victim, assistance shall be granted in the amount of FIVE THOUSAND PESOS (5,000.00) to TEN THOUSAND PESOS (P10,000.00) depending on the extent of damage to be determined by a Committee (to be formed) composed of Labor and Management.

Section 2- Education Loan. The ELECTRIC COOPERATIVE agrees to grant to all employees covered by this agreement a mid-year Education Assistance equivalent to Four Thousand Pesos (P4,000) and shall be given every first week of June.

Section 4- (Additional Section)

Employees upon reaching 30 years of service in the cooperative, he/she shall be automatically elevated to 1 grade higher.

And for the management:

Whether or not Bad Faith Bargaining can be imputed upon the union panel for its indifferent attitude in the negotiation table and unreasonable unilateral imposition of its demands upon the management level.

Whether the demands of the union panel are baseless, unreasonable, whimsical and capricious in the light of the poor financial condition of the electric cooperative and the recent wage increases of P650.00/month from April 2006, P750.00/month from April 2007 and P850.00 from April 2008 or a total of 2,250/month for the first three years of the existing CBA.”

Thereafter, AVA Berdin called for several hearings for the possibility of an amicable settlement, but these too failed. The parties then mutually agreed to submit their Position Papers, attaching therewith their oral and documentary evidence, to support their respective sides.

In its position paper,[8] petitioner LOVE alleged that it has been the Collective Bargaining Agent for the rank and file employees of respondent VRESCO since 1989. As Collective Bargaining Agent, it has executed and renewed with respondent VRESCO, the following CBA's:

- a. 1 April 1989 to March 31, 1994[9]
- b. 1 April 1994 to March 31, 1999[10]

c. 1 April 2001 to March 31, 2006 and[11]

d. 1 April 2006 to March 31, 2011[12]

The execution of the latest (2006-2011) CBA however, was preceded by a bargaining deadlock between the parties. The deadlock led to a labor dispute before the Secretary of Labor and Employment(SOLE), where the SOLE found for LOVE, and consequently ordered VRESCO to pay the following wage increases:[13]

First year (April 1, 2006)= 650.00/month/employee

Second year(April 1, 2007)= 750.00/month/employee

Third year (April 1, 2008)= 850.00/month/employee

Upon the lapse of three (3) years from the execution of the 2006 to 2011 CBA, petitioner LOVE, pursuant to Article XXXIX, Section 1 thereof,[14] initiated the renegotiation of the said CBA's economic provisions. On April 14, 2009, petitioner LOVE, sent a draft of its proposals[15] to respondent VRESCO, which contained provisions for an increase in wages, as follows:

Fourth year(April1,2009)=3,500.00/month/employee

Fifth year (April 1, 2010)= 1, 500.00/month/employee

and also for increases in existing non-wage economic benefits. The draft was received by respondent VRESCO through the Office of the General Manager on that same day.

Respondent VRESCO however, allegedly did not send a reply. Instead, conferences at the company level started only on June 19, 2009, and were continued on July 17, 2009 and on July 31, 2009, the minutes of which have been summarized by petitioner LOVE, and have been culled by VA Berdin in this wise:

On "June 19, 2009 (Annex- "H") [16] - After the ground/rules(sic) were agreed upon the union panel pointed out that it has submitted its proposal for the 4th and 5th yrs so that management can prepare its counter-proposal, but until now the management has not done so. The management panel replied that it (management) will present its financial situation/ operation, and after that, the union will be given time to see whether the management is capable to give the demands of how much management can afford to give or look for other out sources.

Maricris Pontino, then Financial Manager, presented the cooperative's financial operation supported by other management panelist. The thrust of the panel was for the union to study the financial situation of the cooperative as reflected on the figures presented and determine how much the cooperative could afford. Management panel advised the union to review the financial data and to reconsider its proposal.

The union panel asked management to submit its counterproposals before the next scheduled negotiation so that it could present them to the members.

On July 17, 2009 (Annex - "I") [17] the entire session was devoted to discussing the procedure to be followed in the negotiation. The union panel insisted that the management should submit its counter-proposal before the negotiation. It pointed out that although the management was operating on deficit, that did not imply "zero offer", the management should have come up with its counter-proposal acceptable to the workers.

The management panel insisted that it was necessary to have a presentation of the operation of the cooperative so as to simulate the effects of the proposed increases. This will then become a common reference point for both panels in the negotiation.

The union panel inquired from the management the needed time for the latter to come up with its proposal. The

management, however, replied that it was not presenting a counter-proposal on the next hearing but rather (to present) the effects of the union proposal on the operation of the cooperative.

The panel agreed to meet again on July 31, 2009.

On July 31, 2009 (Annex - "J") [18] hereof, the management made a second round presentation of financial operation of the cooperative which as in the first one on June 17, 2009 consumed most of the time of the conference xx x"

During that conference there were exchanges of unpleasant words and Director Teotimo Ballesteros, Jr. of the management panel walked-out. The in-house negotiation ended.

On August 3, 2009, petitioner LOVE wrote a letter to the General Manager of VRESCO officially declaring that the CBA renegotiation had reached a deadlock.[19] On August 20, 2009, petitioner filed the aforementioned complaint for Preventive Mediation with the NCMB, and in the course of the conciliation hearings, respondent VRESCO made a belated offer of P100/month for the 4th yr and P50.00/month for the 5th yr as wage increases.[20] Petitioner LOVE insisted on its demands as contained in its draft proposal, thus no amicable settlement was reached.

At the voluntary arbitration, petitioner LOVE reiterated its position of VRESCO's guilt for not sending any reply to its proposals. It emphasized that the non-reply was a clear violation of Article 250(a) of the Labor Code[21]; and that its persistent imposition on LOVE of its alleged financial woes with lengthy presentation of its financial operation without actually negotiating or giving its counter-proposals, is tantamount to a violation of its duty to bargain, and of bad faith, constitutive of unfair labor practice. It averred that in the absence of a counter-proposal from respondent VRESCO, its proposal, by law and jurisprudence, consequently becomes the binding agreement between them. The proposals are likewise fair and reasonable, when viewed in the light of the very sound financial footing of VRESCO as can be inferred from the following pieces of evidence- the National Electrification Administration (NEA) classification of VRESCO as Category A with an adjective rating of "Very Satisfactory for the first semester of 2009[22]; the purchase of brand new cars by petitioner for administrative functions[23]; the recent grant of the monthly Duty Incentive Pay of P1,500.00 to VRESCO's Managerial Employees[24]; and the payment by VRESCO of 20% of its savings from its tax liabilities as fees to the lawyer who negotiated for tax reduction.[25]

On the other hand, Respondent VRESCO, in its position paper,[26] asseverated that it could not be liable for non-reply to petitioner LOVE because what was submitted to it was not the "Official CBA Proposal" which should have been supported by a Resolution from the Union; but a mere "Draft Union Proposal" for CBA Negotiations signed only by three (3) members of the CBA Drafting Committee. It likewise asserted that it observed its duty to bargain, for even if it had yet to receive the Official CBA Proposals from petitioner LOVE, it did not stall in approving Board Resolution No. 48 Series of 2009, to organize its Management Negotiating Panel, and it did not miss in attending the bargaining conferences with petitioner LOVE, to negotiate in good faith all of its proposals. Respondent VRESCO highlighted on the contrary, that it was the Union panel that displayed arrogance and ill manner during the entire negotiation, as is revealed by its own summary of the minutes of the meetings, to wit:

"xxx June 19, 2009 at 3:00 PM.[27] During the meeting, the authority of the Management Panel was shown to the Union Panel by the reading of Board Resolution No. 48, Series of 2009. xxx Thereafter the negotiation process commenced with the UNION demanding for an increase of wages xxx. At no time was the demand for non-economic benefits mentioned during the OFFICIAL CBA Negotiations. In reply, the Management panel presented the financial statement of VRESCO by powerpoint presentation. The Management Panel wanted to allow the Union Panel to determine for themselves, whether or not VRESCO can afford to grant their demand

for wage increase. During this CBA negotiation, the Management Panel sufficiently explained that VRESCO incurred a Budget Deficit of 3.2 Million on a monthly basis and VRESCO's operation was running on a deficit mode of P13.7 Million as of May 31, 2009. Director Ballesteros of the Management Panel challenged the Union to work with Management as a team and not to look at the management negatively xxx.”

“xxx July 17, 2009 at 2:30 PM.[28] During the meeting, the Union Panel demanded the newly organized Management Panel to submit its counter-proposal on wage increases. Once again no demand for non-wage economic benefit was made during the OFFICIAL CBA Negotiations. In response the Management panel suggested that they be allowed to present a simulation adopting the union proposed wage increase of 3,500/month and 1,500 per month, and check out the effect on the cash flow and operations of the VRESCO. The Union proposal will be simulated, computed based on the number of employees, with some other data and then present the effect of their demand. It was also stressed that the union promised to support their proposal during the July 17, 2009 meeting, yet they failed to prepare and present their justifications. Since the Union Panel failed to comply, the Management Panel offered to do the studying and simulation. Instead of appreciating the Management Panel's offer of cooperation, Union president arrogantly shouted at the Management Panel, exhibiting his evidence in bad faith during the CBA negotiations. xxx The Management Panel calmly suggested that both Panels need to see how the financial condition of VRESCO will appear after adopting the Union Proposal for wage increase. From the resulting financial simulation, both panels can then jointly formulate a realistic wage increase. As of this time, the Management made it clear that it was not ready to present an accurate counter-proposal to the wage increase and that more time is required to study its counter-proposal.”

“xxx July 31, 2009 at 2:30 PM.[29] During the meeting, the Management Panel presented the financial simulation, showing the impact of the Proposed Union Wage increase on the financial condition of VRESCO. Just to cope up with the demands of the Union to increase wages, the electricity rate has to be increased by P 0.0891 and P0.01584 centavos per Kw/hr for the year 2011. These increases in electricity rates are not allowed under the National Electrification Administration Rules and the Energy Regulatory Commission Rules. Increase in wages must be sourced from the profits of the electric cooperatives and must not be passed on to the consumers. However in VRESCO's case, it is incurring losses in its operations and it has no way of finding sources of income to satisfy the demands of the Union Panel. It must be noted that during the presentation of evidence in the negotiation proceeding Union President Desuyo was sleeping and not paying attention to the speaker. After the presentation of the management panel, Union President Desuyo was in tantrums, slammed a photocopy of the labor Code on the negotiating table asked Dela China to read Article 250 of the Labor Code. Thereafter, he declared that the union will elevate the negotiation to the next level. xxx It is therefore established beyond doubt that it was the Union that caused the termination of the CBA negotiations. It abruptly/unceremoniously withdrew from the negotiating table.”

On March 2, 2010 AVA Jovito P. Berdin rendered his decision, reading:

“Wherefore, premises considered, and in the light of the facts and evidences gathered from the pleadings filed by the parties, the herein voluntary Arbitrator, hereby rules on the issues submitted by the parties as follows:

That respondent VRESCO is not guilty of non-reply to the CBA proposal.

That respondent VRESCO is not likewise guilty of bad faith in the CBA renegotiation.

That both parties have not committed bad faith in their renegotiation for the remaining two (2) years 4th and 5th) of the current CBA (01 April 2006 -March 31, 2011);

That the employees are entitled to the wage increases of P200.00/month/employee for the 4th year and P550.00 month/employee for the 5th year of the current CBA (01 April 2006-March 31, 2011).

In the event, that there will be a legislated wage increase which will be issued by the Wage Board of R.O.6 this

wage increases shall not be creditable against the recent wage order.

That with respect to the other non economic benefits package being asked by the complainant union to be enhanced or improved, it must be noted that the current CBA of the parties have only one year remaining to expire on March 31, 2011 and the parties will again negotiate for another five years, considering both the economic and non-economic benefits affecting the business operation of the respondent VRESCO and these awards are still for compliance by the respondent. This voluntary arbitrator hereby rules to remain these benefits in status quo, until a new CBA is concluded after March 31, 2011.

That all other issues of both parties not discussed in this awards/ decisions are hereby set-aside.

That the wage increases ordered herein shall retroactively take effect 01 April 2009. The respondent is hereby ordered to effect compliance within ten days from receipt hereof.

That the parties are also hereby reminded to observe on their future negotiations of their CBA provision, on "Grievance and Arbitration Procedures" under Article XXXIII, Section 6, Step 4 (Grievance Committee Level) where all their disputes on CBA deadlock and even unfair labor practice should be first raised. Otherwise such provision becomes inutil(sic) and should not be embodied in the CBA. Failure to comply with both parties maybe declared guilty of neglect and bad faith in their CBA re-negotiation.

SO ORDERED."

Aggrieved, petitioner comes to Us through this petition, on the following grounds:

I.

THE VOLUNTARY ARBITRATOR ERRED IN HOLDING THAT THE PETITIONER SUBMITTED JUST A DRAFT CBA NOT SUPPORTED BY APPROVED RESOLUTION OF THE UNION OFFICERS

II.

THE VOLUNTARY ARBITRATOR ERRED IN HOLDING THAT THE PROCEDURE UNDER ARTICLE 250 OF THE LABOR CODE IS NOT MANDATORY SINCE THERE IS AN EXISTING CBA

III.

THE VOLUNTARY ARBITRATOR ERRED IN HOLDING THAT THE RESPONDENT DID NOT COMMIT UNFAIR LABOR PRACTICE.

IV.

THE VOLUNTARY ARBITRATOR ERRED IN NOT DECLARING THE CBA PROPOSAL OF THE UNION AS THE BINDING AGREEMENT OF THE PARTIES.

We now resolve the Petition. The first three issues are interrelated and will be discussed jointly.

This being a case for Unfair Labor Practice(ULP) allegedly committed by an employer in Collective Bargaining Negotiations, We cite the pertinent provision of the Labor Code, thus:

Article 248. Unfair Labor Practice of employers. It shall be unlawful for an employer to commit any of the following unfair labor practices:

xxx

7. To violate the duty to bargain collectively as prescribed by this Code.

xxx

As explicitly defined by Article 252 of the Code, the "duty to bargain collectively" means "the performance of a

mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreement and executing a contract incorporating such agreements if requested by either party but such duty does not compel any party to agree to a proposal or to make any concession.”

Apropos to the above definition, the Code has also unequivocally set in Article 250[30] the mandatory procedure to be observed in this statutory “duty to bargain”. The procedure being mandatory,[31] it permeates all the four related but distinguishable processes in collective bargaining, to wit: 1) negotiation between representative of management and the union over “wages, hours, and other terms.. of employment”; (2) the execution of a written contract embodying the terms agreed upon; (3) negotiation of any question arising as to interpretation or application of the contract; and (4) negotiation over the terms of a new contract or proposed modifications, when an existing agreement is validly opened for negotiations..[32]

Relevant however to this case, which falls under the fourth process above-mentioned, are paragraphs a and b of Article 252 which state:

- a. When a party desires to negotiate an agreement, it shall serve a written notice upon the other party with a statement of its proposals. The other party shall make a reply thereto not later than ten (10) calendar days from receipt of such notice;
- b. Should differences arise on the basis of such notice and reply, either party may request for a conference which shall begin not later than ten (10) calendar days from the date of request.

In the case at bar, it is beyond cavil that respondent failed to make a reply to petitioner's April 14, 2003 CBA proposals, in direct violation of the aforecited paragraph a. Respondent, in seeming oblivion of the second major step at bargaining, proceeded instead to meet with the union, (still at the instance of the latter) without on its hand, a formal counter-proposal which should have made patent its differences with the union and should have been the basis in ironing the differences out by a series of negotiations. This evident failure more than anything, shows respondent's utter lack of interest or willingness in negotiating, especially that it can be inferred: 1) that its belated offer before the NCMB of P100/month for the 4th yr and P50.00/month for the 5th yr as wage increases, was only a scheme to negate a zero offer; and 2) that its assertion that it cannot be held guilty for non-reply as what was submitted to it was a mere draft union proposal and not the Official Union Proposal, was a mere afterthought to escape liability for ULP. If it were true that respondent was waiting for a copy of petitioner's official proposal, it should have expressed this to petitioner at the first instance, and even asked for deferment or for additional time to make a studied reply thereto. Respondent however did not do any of these.

Further, We also find an unwarranted delay of negotiations by respondent in violation of paragraph b of Article 250. Notwithstanding the fact that in a plethora of cases,[33] the Supreme Court has ruled the existence of ULP, in belated negotiations (those which are held a month or two from the submission of proposals), respondents in the instant case did not start negotiations until after the lapse of three months from the time petitioner first submitted its CBA draft. For this delay, respondent merely offered the feeble explanation that it still had to constitute and convene its Management Panel, which the Board empowered to negotiate with petitioner on its behalf.

As good or bad faith bargaining is an inference to be drawn from the facts of the case and not from the employer's individual actions,[34] We consider the herein unwarranted delay of negotiations as an indicium of respondent's bad faith in collective bargaining. This conclusion is inescapable when respondent's delay is taken in the light of its actuations during the negotiations at the plant level, where- 1) respondent stubbornly refused to submit its

counter-proposal even with repetitive demands from petitioner; 2) respondent consumed three entire meetings presenting its financial operations and simulating the effects of petitioner's demands without adopting a concrete bargaining position; and 3) respondent's Director, Teotimo Ballesteros, Jr. walked-out of the negotiation room on the third scheduled conference thereby signalling the end of a futile negotiation. Clearly, these acts show respondent's lack of sincerity in arriving at an agreement with the petitioner. Respondent merely went through the motions of negotiating, without discharging of the statutory duty to bargain, which requires more than a willingness to enter upon a sterile discussion of union-management differences, but presupposes a desire to reach an ultimate agreement to enter into a collective bargaining contract.[35]

All premises considered, We rule the commission by respondent of Unfair Labor Practice.

On the fourth issue which questions the AVA's decision of awarding wage increases in the amounts of only P200 and P550 respectively for the 4th and 5th yr of the parties' 2006-2011 CBA, (instead of automatically adopting the union's proposed rates and other benefit increases), We give deference to the findings of the AVA below Us, it being a basic legal tenet that:

“Factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, i.e., the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.”

By the Rules, a Voluntary Arbitrator has exclusive and original jurisdiction over unresolved grievances arising from interpretation and implementation of the CBA and of the grievance procedure itself; and upon agreement of the parties, it has concurrent jurisdiction with the NCMB to hear and decide other labor disputes, including unfair labor practice, and bargaining deadlocks. Considering that this case is of the nature of the latter two, We submit to the competence of the herein AVA and adopt the remedy which to him is just and equitable and within the scope of the parties' submission agreement.

As We have however ruled the attendance of Unfair Labor Practice in this case, in evident contrast to the findings of AVA Berdin, We deem it important to ratiocinate Our adherence to his arbitral amounts by emphasizing that a finding of ULP by the employer in collective bargaining negotiations, is not based on whether the provisions in the union-proposed CBA seem reasonable to the Arbitrator, or whether the Arbitrator thinks the proposed CBA should have been agreed to by the employer. Rather, ULP in bargaining is based entirely upon a consideration of the negotiations as whole, and pertains to the impact of the over-all actions of the employer in relation to its statutory duty to bargain. The reasonableness or unreasonableness of the provisions in a CBA proposal is therefore a different matter, and it is this matter which We believe the herein AVA has correctly adjudged.

Moreover, We are of the opinion that the automatic adoption of the union-proposed CBA (which was supposed to yield a total wage increase of P5,000 and several substantial increases in other benefits in two years time per employee), would be detrimental to the operations of respondent in this case. It is noteworthy that except for the documents proffered by petitioner to show respondent's recent expenditures and acquisitions, no other proof of respondent's financial stability and/or capacity to meet petitioner's demands for wage/benefit increases has been adduced (such as but not limited to respondent's financial statements), which could have very well established respondent's financial/economic affairs. In short, petitioner has not only failed to successfully rebut respondent's pleas of deficits and losses (the details of which have been explained by respondent to petitioner during conferences at the company level), it has likewise failed to lay down the basis of its proposed modifications, which should have been its onus considering that the initiative of modifying the economic terms of the then existing CBA came from it. Needless to emphasize, any modification in an existing CBA requires an honest justification, whichever way it is proposed to go, whether it be an upward direction or a scaling down of the

expiring CBA.[36]

Finally, We find it worth mentioning that petitioner has likewise failed to refute respondent's contention that "just to cope with the demands of the union to increase wages, the electricity rate has to be increased by P0.8091 centavos per kw/hr for the year 2009, P0.1532 centavos per kw/hr for the year 2010, and P0.1584 centavos per kw/hr for the year 2011". If this be the scenario, it would logically be the consuming public who would carry the burden of respondent's higher operating costs. Certainly, We cannot allow this to happen just so respondent can accede to petitioner's demands. For while this would be a clear contravention to the National Electrification Administration's (NEA) Guidelines, the move would also be greatly incongruous with the essence of respondent's corporate existence, which is public service.

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED**. The March 2, 2010 Decision of the Accredited Voluntary Arbitrator in VA Case- AC-787-RB6-01-01-2010, is **MODIFIED**, in that:

1. Respondent VRESCO is declared guilty of non-reply to the CBA proposal.
2. Respondent VRESCO is declared guilty of bad faith in the CBA renegotiation.
3. Respondent VRESCO is declared guilty of Unfair Labor Practice under Article 248, par. 7, Labor Code.

All the other aspects of the Decision however **STAND**.

SO ORDERED.

Ingles, J., (Chairperson), and [*]Quijano-Padilla, JJ., concur.

[*] Acting Junior Member per Office Order No. 472-13-ABR dated December 12, 2013.

[1] Rollo, pp. 12-38.

[2] Rollo, pp. 44-56.

[3] In the Petition and in the rest of the pleadings, the case number for the case "Labor Organization of VRESCO Employees (LOVE) vs. Victorias-Manapla-Cadiz (VMC) Rural Electric Cooperative Inc.(VRESCO)" is VA Case No. AC-747-RB6-01-01-2010.

[4] Rollo, p. 108.

[5] Rollo, p. 65.

[6] Rollo, pp. 74-78;79-80.

[7] Rollo, p. 81.

[8] Rollo, pp. 82-106.

[9] Rollo, pp. 109-116.

[10] Rollo, p. 117.

[11] Rollo, pp. 118-159.

[12] Rollo, pp. 163-205.

[13] Rollo, 206-219.

[14] Article XXXIX of LOVE CBA April 01,2006-March 31, 2011- Section 1.This AGREEMENT shall become effective April 1, 2006 and shall remain force and effect without change until March 31, 2011. Provided however, that three (3) years from the date of effectivity, the parties may re-negotiate the economic provisions thereof upon request of either party. PROVIDED Further that all economic benefits shall take effect on April 1, 2006

[15] Rollo, pp. 66- 73.

[16] Rollo, pp. 228-234.

[17] Rollo, pp. 235-237.

[18] Rollo, pp. 238-243.

[19] Rollo, p. 244.

[20] Rollo, p.245.

[21] Article 250. Procedure in collective bargaining.- The following procedures shall be observed in collective bargaining:

a. When a party desires to negotiate an agreement, it shall serve a written notice upon the other party with a statement of its proposals. The other party shall make a reply thereto not later than ten (10) calendar days from receipt of such notice;

b. Should differences arise on the basis of such notice and reply, either party may request for a conference which shall begin not later than ten (10) calendar days from the date of request.

[22] Rollo, pp.253-254.

[23] Rollo, pp. 255,256, and 258.

[24] Rollo, p. 259.

[25] Rollo, p. 260.

[26] Rollo, pp.267-275.

[27] Rollo, pp. 285-291.

[28] Rollo, pp. 292-294.

[29] Rollo, pp. 295-302.

[30] Article 250. PROCEDURE IN COLLECTIVE BARGAINING

The following procedures shall be observed in collective bargaining:

a. When a party desires to negotiate an agreement, it shall serve a written notice upon the other party with a statement of its proposals. The other party shall make a reply thereto not later than ten (10) calendar days from receipt of such notice; b. Should differences arise on the basis of such notice and reply, either party may request for a conference which shall begin not later than ten (10) calendar days from the date of request. c. If the dispute is not settled, the Board shall intervene upon request of either or both parties or at its own initiative and immediately call the parties to conciliation meetings. The Board shall have the power to issue subpoenas requiring the attendance of the parties to such meetings. It shall be the duty of the parties to participate fully and promptly in the conciliation meetings the Board may call. d. During the conciliation proceedings in the Board, the parties are prohibited from doing any act which may disrupt or impede the early settlement of the disputes; and e. The Board

shall exert all efforts to settle dispute amicably and encourage the parties to submit their case to a voluntary arbitrator.

[31] General Milling Corporation vs. Hon. Court of Appeals, General Milling Corporation Independent Labor Union and Rito Mangubat, G.R. No. 146728, February 11, 2004.

[32] Azucena, Cesario Alvero, Jr., The Labor Code with Comments and Cases Volume II, 7th Edition, (Quezon City: Rex Printing Company, Inc.2010), p.345 citing Edwin E. Witte, Collective Bargaining and the Democratic Process in E. Wight Bakke, Clark Kerr and Charles Anod, Unions, Management and the Public (Harcourt, New York, 1967), p. 295.

[33] Divine Word University of Tacloban vs. Secretary of Labor and Employment, G.R. No. 91915, September 11, 1992; Colegio De San Juan De Letran vs. Association of Employees and Faculty of Letran and Eleonor Ambas, G.R. No. 141471, September 18, 2000;

[34] Hongkong and Shanghai Banking Corp. Employees Union vs. NLRC, G.R. No. 125038, November 6, 1997;

[35] Azucena, Cesario Alvero, Jr., The Labor Code with Comments and Cases Volume II, 7th Edition, (Quezon City: Rex Printing Company, Inc.2010), p. 379.

[36] Azucena, Cesario Alvero, Jr., The Labor Code with Comments and Cases Volume II, 7th Edition, (Quezon City: Rex Printing Company, Inc.2010), p. 388.

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