

IN RE: IN A MATTER OF VOLUNTARY ARBITRATION CASE BETWEEN:

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is a petition for review under Rule 43 of the Revised Rules of Civil Procedure filed by the Kilusan ng Manggagawa sa Alcos Global Corporation – Solidarity of Unions in the Philippines for Empowerment and Reforms (KMAGC-SUPER) seeking to reverse and set aside the decision dated January 4, 2011[1] issued by voluntary arbitrator Allan Montano of the National Conciliation and Mediation Board (NCMB) under the Department of Labor and Employment (DOLE) in AC-0812-NCR-49-07-10-10.

KMAGC-SUPER and respondent Alcos Global Corporation (Alcos) have an existing collective bargaining agreement which took effect on January 6, 2010. Article IX of the CBA states:

"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 1[st] year, wage increase of Eight Pesos (P8.00).
- b. Effective January 6, 2011 on the 2[nd] 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 of wage order issued by any Regional Board results into a distortion in the wage structure in the company, the procedure 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."[2]

On June 18, 2010, the Regional Tripartite Wages and Productivity Board - National Capital Region (RTWPB-NCR) issued Wage Order No. NCR-15, which mandated an increase in the minimum daily wage to P404.00 from P382.00 effective July 1, 2010.

KMAGC-SUPER and respondent entered into preventive mediation to solve their dispute relating to the implementation of the wage order. Failing to enter into an agreement, the parties submitted the issue for resolution before the NCMB.

KMAGC-SUPER claims that the wage order resulted into wage distortion. In its position paper[3] submitted to the NCMB, KMAGC-SUPER alleges that there is a group of employees whose work is the same as the members of KMAGC-SUPER but is considered by respondent as agency workers; that only these agency workers benefited from the wage order and had their daily minimum wage increased from P382.00 to P404.00; that the wage order

was not implemented on the daily wages of members of the union, which remained at P413.00-P528.00; that as a result, there is a severe contraction of the daily wages of the union members. KMACG-SUPER claims that the members of the bargaining unit are entitled to distortion adjustment effect by the wage order; and that they should be awarded attorney's fees since they were forced to litigate the issue before the NCMB.

In its position paper[4], respondent Alcos claims that it is not covered by the wage order since the members of the union are not minimum wage earners since their daily wage ranges between P413.00 and P514.48 and the amount is higher than the prescribed minimum wage of P404.00; and that the wage order has not altered or disturbed the wage conditions of the members of the union since there is no showing that the wage order effectively obliterated the distinctions in the wage structure of the company.

In its reply[5] to respondent's position paper, KMACG-SUPER claims that distortion of wages can happen between different groups of employees in the same company, like in the case of the union workers and agency workers.

Meanwhile, respondents claim in their reply[6] to KMACG-SUPER's position paper that there is no wage distortion since there is no employer-employee relationship between the respondent and agency workers.

On January 4, 2011, the NCMB, through voluntary arbitrator Atty. Allan S. Montaña, issued the assailed decision in favor of respondent, saying:

"This Office rules and so holds there is no distortion in the existing wage structure of the Company that would necessitate application of Article IX, Section 3 of the parties' existing CBA.

The facts of the instant case are too clear to be missed. Indeed, the only basis by which the Union based its claim for wage distortion was the increase given to the agency workers assigned in the Company. A close perusal of the pay slips of agency workers proffered by the Union clearly shows that said agency workers draw their respective salaries from the Job Placement Services Cooperative. It has to be clarified at this juncture that this Office has no jurisdiction to rule on the issue of labor-only contracting in the Company which the Union tries to imply in its pleadings.

Given that the agency workers draw their respective salaries from the Job Placement Services Cooperative, this Office, in the absence of evidence to the contrary, has no other option but to agree with the Company that "there is no employer-employee relationship between the Company and the agency workers, and that the Company has nothing to do in the payment of wages of this agency workers, hence, it is completely inaccurate for the union to claim that the Company implemented such wage increase.xxx"

In this petition, KMACG-SUPER claims that the voluntary arbitrator committed grave abuse of discretion amounting to lack or excess of jurisdiction when he declared that KMACG-SUPER is not entitled to wage distortion adjustment provided under the CBA.

The petition is devoid of merit.

Article 124 of the Labor Code of the Philippines provides that wage distortion exists when an increase in the 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 the logical bases of differentiation. Republic Act No. 6727, otherwise known as the Wage Rationalization Act, explicitly defines "wage distortion" as:

"xxx 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."

Otherwise stated, wage distortion means the disappearance or virtual disappearance of pay differentials between lower and higher positions in an enterprise because of compliance with a wage order.[7] In *Prubankers Association v. Prudential Bank and Trust Company*[8], the Supreme Court laid down the four elements of wage distortion, to wit: (1.) An existing hierarchy of positions with corresponding salary rates; (2) A significant change in the salary rate of a lower pay class without a concomitant increase in the salary rate of a higher one; (3) The elimination of the distinction between the two levels; and (4) The existence of the distortion in the same region of the country.

It is settled in this jurisdiction that 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, are generally accorded not only respect but at times even finality if they are supported by substantial evidence, for these agencies have acquired expertise, their jurisdiction being confined to specific matters.[9] Upon careful review of the records, this Court finds that the voluntary arbitrator did not err in ruling that there is no wage distortion.

Records show that respondent has two (2) type of workers: 1) direct hires which comprise the members of the union; and 2) workers provided by an agency. In this jurisdiction, there is no employer-employee relationship between the agency workers and respondent. Under the general rule set out in the first and second paragraphs of Article 106, an employer who enters into a contract with a contractor for the performance of work for the employer, does not thereby create an employer-employees relationship between himself and the employees of the contractor, and will only be solidarily liable "to the extent of the work performed under the contract" with the contractor should the latter fail to pay the wages of his employees in accordance with the Labor Code.[10]

Moreover, there is no "severe contraction" that resulted in the virtual disappearance of pay differentials between lower and higher positions in an enterprise because of compliance with the wage order as KMAGC-SUPER admitted that both sets of workers are doing more or less the same job. Further, even if the minimum wage of the agency workers is increased to P404.00 per day, this is still lower than the lowest wage paid to the members of the union which is P413.00.

This Court finds that the voluntary arbitrator did not err in ruling that there is no wage distortion following the implementation of Wage Order No. NCR-15. As such, KMAGC-SUPER is not entitled to wage distortion adjustment provided under the CBA.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Lampas Peralta, (Chairperson), and Acosta, JJ., concur.

[1] Rollo, pp. 25-34.

[2] Rollo, p. 48.

[3] Rollo, pp. 35-47.

[4] Rollo, pp. 54-58.

[5] Rollo, pp. 62-68.

[6] Rollo, pp. 73-78.

[7] P.I. Manufacturing, Incorporated vs. P.I. Manufacturing Supervisors and Foreman Association and National Labor Union, G.R. No. 167217, citing Azucena, The Labor Code with Comments and Cases, Vol. 1, p. 301.

[8] G.R. No. 131247, January 25, 1999.

[9] Bankard Employees Union-Workers Alliance Trade Unions vs. NLRC and Bankard, Inc., G.R. No. 140689, February 17, 2004.

[10] Vigilla, et al. vs. Philippine College of Criminology Inc., et al., G.R. No. 200094, June 10, 2013, citing Philippine Bank of Communications vs. NLRC, G.R. No. L-66598 December 19, 1986.

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