

NATIONAL FEDERATION OF LABOR, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND FRANKLIN BAKER COMPANY OF THE PHILIPPINES (DAVAO PLANT), RESPONDENTS.*G.R. No. 103586. July 21, 1994*

Ponente: FELICIANO, J.

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Between 1 November 1983 and 1 November 1984, Wage Orders Nos. 3, 4, 5 and 6 were promulgated by the then President Ferdinand E. Marcos. Wage Order No. 3 became effective as of 1 November 1983; Wage Order No. 4, as of 1 May 1984; Wage Order No. 5, as of 16 June 1984; and Wage Order No. 6 went into effect on 1 November 1984. All these Wage Orders increased the statutory minimum wages of workers with differing increases being specified for agricultural plantation and non-agricultural workers.

Before the effectivity of Wage Order No. 3, the wage rates of regular employees and of casual (or non-regular) employees of private respondent Franklin Baker Company of the Philippines (Davao Plant) ("Company") were such that there was a positive differential between the two (2) in the amount of P4.56. The effect of the implementation of the successive Wage Orders upon the daily wage rates of these two (2) groups of employees was summarized by petitioner in the following table:

Effectivity

Date

Wage of

Regulars

Wage of

Casuals

Gap

Before W.O. No. 3

P22.56

P18.00

P4.56

After W.O. No. 3

1 Nov. 1983

22.56

20.00

2.56

After W.O. No. 4

1 May 1984

32.64

31.00

1.64

After W.O. No. 5

16 June 1984

34.00

34.00

0.00[1]

Upon the effectivity of Wage Order No. 5, grievance meetings were held by petitioner National Federation of Labor ("NFL") and private respondent Company sometime in June 1984, addressing the impact which implementation of the various Wage Orders had on the wage structure of the Company.

On 21 June 1984, all the casual or non-regular employees of private respondent Company (at least in its Davao Plant) were "regularized," or converted into regular employees, pursuant to the request of petitioner NFL.

On 1 July 1984, the effectivity date of the 1984 Collective Bargaining Agreement between NFL and the Company, all regular employees of the Company received an increase of P1.84 in their daily wage; the regular daily wage of the regular employees thus became P35.84 as against P34.00 per day for non-regular employees.

As a result of the implementation of Wage Order No. 6, casual employees received an increase of their daily wage from P34.00 to P36.00. At the same time, the Company unilaterally granted an across-the-board increase of P2.00 in the daily rate of all regular employees, thus increasing their daily wage from P35.84 to P37.84. Further, on 1 July 1985, the anniversary date of the increases under the CBA, all regular employees who were members of the collective bargaining unit got a raise of P1.76 in their basic daily wage, which pushed that daily wage from P37.84 to P39.60, as against the non-regular's basic wage of P36.00 per day. Finally, by November 1987, the lowest paid regular employee had a basic daily rate of P64.64, or P10.64 more than the statutory minimum wage paid to a non-regular employee.

The development of the wage scales of the Company's employees after the effectivity date of Wage Order No. 5 is presented in the following table:

Effectivity

Date

Wage of

Regulars

Wage of

Casuals

Gap

After W.O. No. 5

16 June 1984

34.00

34.00

0.00

CBA Increase

1 July 1984

35.84

34.00

1.84

After W.O. No. 6

1 Nov. 1984

37.84

36.00

1.84

CBA Anniversary

Increase

1 July 1985

39.60

36.00

3.60

Meantime, while the above wage developments were unfolding, the Company experienced a work output slow down. The Company directed some 205 workers to explain the reduction in their work output. The workers failed to comply and they were accordingly issued notices of dismissal by the Company. As a response to its decreasing productivity levels, the Company suspended operations on 16 August 1984. Operations were resumed on 14 September 1984; the Company, however, refused to take back the 205 dismissed employees. Petitioner Union then went on strike alleging a lock-out on the part of the Company and demanding rectification of the wage distortion. The case was certified by the Secretary of Labor to the National Labor Relations Commission

("NLRC") for compulsory conciliation.

On 19 June 1985, the Union and the Company reached an agreement with respect to the lock-out issue. The agreement, which was approved by the NLRC En Banc, granted the 205 employees "financial assistance" equivalent to thirty (30) days' separation pay. This left unresolved only the wage distortion issue.

On 11 November 1987, the NLRC En Banc rendered a decision which in effect found the existence of wage distortion and required the Company to pay a P1.00 wage increase effective 1 May 1984:

"In the computation submitted by the Union, there is a need to restore the P2.56 gap between non-regulars or 'casuals' and 'regular workers.' This difference in the basic wage of these workers was existing at the time of the conclusion of the collective bargaining agreement and before the implementation of Wage Orders No. 4 & 5. The imprecise claim of respondent that there is P3.60 gap between non-regular and regulars may not be sustained because as aforesaid, this amount represents negotiated wage increase which should not be considered covered and in compliance with the wage orders. Considering, however, the present economic conditions and the outlay involved in correcting the distortion in the wages of respondent's workers, this Commission, in the exercise of its arbitral powers, feels that an increase of P1.00 on the present basic wage of regular workers would significantly rectify or minimize the distortion in the wage structure of respondent company caused by the implementation of the various wage orders. Respondent is, therefore, required to implement the P1.00 wage increase effective May 1, 1984 when Wage Order 4 took effect." [2] (Underscoring supplied)

On motion for partial reconsideration filed by the Company, the above quoted portion of the NLRC En Banc's decision was reconsidered and set aside by the NLRC Fifth Division. [3] The Fifth Division of the NLRC in effect found that while a wage distortion did exist commencing 16 June 1984, the distortion persisted only for a total of fifteen (15) days and accordingly required private respondent company to pay "a wage increase of P2.00 per day to all regular workers effective June 16, 1984 up to June 30, 1984 or a total of fifteen (15) days." [4] The rest of the decision of 11 November 1987 was left untouched.

In its decision dated 16 December 1991, the NLRC (Fifth Division) said:

"x x x At the time Wage Order No. 4 was implemented on May 1, 1984, casual employees were increased to P34.00 per day, placing them on equal salary footing with the regular employees who were likewise receiving P34.00 per day. But effective July 1, 1984 when the 1984 CBA took effect, the regular employees of the company admittedly received the basic wage of P35.84 or an increase of P1.84 as against the daily wage of P34.00 of the casual employees.

Thus, the apparent wage distortion did not last long but only for 15 days, that is from June 16, 1984 when Wage Order No. 5 took effect and lasted only up to June 30, 1984. From July 1, 1984, the regular employees received an increase of P1.84 making their daily wage P35.84 as against the wage of casual employees of P34.00 per day. And as rightly pointed out respondent--movant, the difference in the wage scale between the two (2) groups of employees was maintained even after the implementation of Wage Order No. 6 which took effect on November 1, 1984." [5] (Underscoring supplied)

The bottom line issue presented to the Court is thus whether or not, under the facts as summarized above, the NLRC (Fifth Division) committed a grave abuse of discretion amounting to lack or excess of jurisdiction, when it concluded that the wage distortion had ceased to exist, after 1 July 1984.

The principal contention of petitioner NFL is that a wage distortion in the wage structure of private respondent Company continued to exist although a gap of P1.84 between the daily wage rate of regular employees and that of casual employees had been re-established upon the effectivity of the CBA increase on 1 July 1984. The original claim of NFL was that the initial -- prior to effectivity of Wage Order No. 3 -- differential of P4.56 in the wage

rate of regular employees and that of casual employees, should be re-created this time between the wage rates of the newly "regularized" employees (i.e., the casual employees regularized by the Company on 21 June 1984) and the "old" regular employees (employees who, allegedly, had been regular employees for at least three [3] years before the "regularization" of the casuels).[6] NFL stresses that seniority is a valid basis of distinction between differing groups of employees, under the Labor Code.

We note that neither the Wage Orders noted above, nor the Implementing Rules promulgated by the Department of Labor and Employment, set forth a clear and specific notion of "wage distortion." What the Wage Orders and the Implementing Rules did was simply to recognize that implementation of the Wage Orders could result in a "distortion of the wage structure" of an employer, and to direct the employer and the union to negotiate with each other to correct the distortion. Thus, Section 6 of Wage Order No. 3, dated 7 November 1983, provided as follows:

"Section 6. Where the application of the minimum wage rate prescribed herein results in distortions of the wage structure of 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 or through conciliation.

In case where there is no collective bargaining agreement or recognized labor organization, the employer shall endeavor to correct such distortions in consultation with their workers. Any dispute shall be resolved through conciliation by the appropriate Regional Office of the Ministry of Labor and Employment or through arbitration by the NLRC Arbitration Branch having jurisdiction over the work--place."[7] (Emphases supplied)

In its Resolution dated 11 November 1987, the NLRC En Banc provided some elaboration of the notion of wage distortion, in the following terms:

"Wage distortion presupposes a classifica-tion of positions and ranking of these positions at various levels. One visualizes a hierarchy of positions with corresponding ranks basically in terms of wages and other emoluments. Where a significant change occurs at the lowest level of positions in terms of basic wage without a corresponding change in the other level in the hierarchy of positions, negating as a result thereof the distinction between one level of position from the next higher level, and resulting in a disparity [should be "parity"] between the lowest level [and] the next higher level or rank, between new entrants and old hires, there exists a wage distortion.

The various issuances on wages anticipated this occurrence so that it had been commonly provided for in these issuances that negotiations may be initiated for the purposes of correcting the resulting distortion."[8] (Emphases and brackets supplied)

A statutory definition of "wage distortion" is now found in Article 124 of the Labor Code as amended by Republic Act No. 6727 (dated 9 June 1989) which reads as follows:

"Article 124. Standards/Criteria for Minimum Wage Fixing. --x x x

x x x x x x x x

As used herein, 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."[9] (Emphases supplied)

From the above quoted material, it will be seen that the concept of wage distortion assumes an existing grouping or classification of employees which establishes distinctions among such employees on some relevant or legitimate basis. This classification is reflected in a differing wage rate for each of the existing classes of

employees. The wage distortion anticipated in Wage Orders Nos. 3, 4, 5 and 6 was a "distortion" (or "compression") which ensued from the impact of those Wage Orders upon the different wage rates of the several classes of employees. Thus distortion ensued where the result of implementation of one or another of the several Wage Orders was the total elimination or the severe reduction of the differential or gap existing between the wage rates of the differing classes of employees.[10]

It is important to note that the remedy contemplated in the Wage Orders, and now in Article 124 of the Labor Code, for a wage distortion consisted of negotiations between employer and employees for the rectification of the distortion by re-adjusting the wage rates of the differing classes of employees. As a practical matter, this ordinarily meant a wage increase for one or more of the affected classes of employees so that some gap or differential would be re-established. There was no legal requirement that the historical gap which existed before the implementation of the Wage Orders be restored in precisely the same form or amount.

Applying the above concept to the case at bar, we note that there did exist a two-fold classification of employees within the private respondent Company: regular employees on the one hand and casual (or non-regular) employees on the other. As can be seen from the figures referred to earlier, the differential between these two (2) classes of employees existing before Wage Order No. 3 was reduced to zero upon the effectivity of Wage Order No. 5 on 16 June 1984. Obviously, distortion -- consisting of complete elimination of the wage rate differential -- had occurred. It is equally clear, however, that fifteen (15) days later, on 1 July 1984, upon effectivity of the wage increase stipulated in the collective bargaining agreement between the parties, a gap or differential of P1.84 was re-created. This restored differential persisted after the effectivity of Wage Order No. 6 on 1 November 1984. By operation of the same CBA, by 1 July 1985, the wage differential had grown to P3.60.

We believe and so hold that the re-establishment of a significant gap or differential between regular employees and casual employees by operation of the CBA was more than substantial compliance with the requirements of the several Wage Orders (and of Article 124 of the Labor Code). That this re-establishment of a significant differential was the result of collective bargaining negotiations, rather than of a special grievance procedure, is not a legal basis for ignoring it. The NLRC En Banc was in serious error when it disregarded the differential of P3.60 which had been restored by 1 July 1985 upon the ground that such differential "represent[ed] negotiated wage increase[s] which should not be considered covered and in compliance with the Wage Orders." [11] The Wage Orders referred to above had provided for the crediting of increases in wages or allowances granted or paid by employers within a specified time against the statutorily prescribed increases in minimum wages. [12] A similar provision recognizing crediting of increases in daily basic wage rates granted by employers pursuant to collective bargaining agreements, is set out in Section 4 (d) of R.A. No. 6727, a statute which sought to "rationalize wage policy determination by establishing the mechanism and proper standards therefor ---." In *Apex Mining Company, Inc. v. National Labor Relations Commission*, [13] the Supreme Court said:

"It is important to note that the credit-ability provisions in Wage Orders Nos. 5 and 6 (as well as the parallel provisions in Wage Orders Nos. 2, 3 and 4) are grounded in an important public policy. That public policy may be seen to be the encouragement of employers to grant wage and allowance increases to their employees higher than the minimum rates of increases prescribed by statute or administrative regulation. To obliterate the creditability provisions in the Wage Orders through interpret-ation or otherwise, and to compel employers simply to add legislated increases in salaries or allowances without regard to what is already being paid, would be to penalize employers who grant their workers more than the statutorily prescribed minimum rates of increases. Clearly, this would be counter-productive so far as securing the interests of labor is concerned. The creditability provisions in the Wage Orders prevent the penalizing of employers who are industry leaders and who do not wait for statutorily prescribed increases in salary or allowances and pay their workers more than what the law or regulations require." [14] (Emphases in the original)

We believe that the same public policy requires recognition and validation, as it were, of wage increases given by employers either unilaterally or as a result of collective bargaining negotiations, in the effort to correct wage distortions.

We consider, still further, that the "regularization" of the casual or non-regular employees on 21 June 1984 which was unilaterally effected by the Company (albeit upon the request of petitioner NFL), in conjunction with the coming into effect of the increases in daily wage stipulated in the CBA, had the effect of rendering the whole problem of wage distortion academic. The act of "regularization" eliminated the classification scheme in respect of which the wage distortion had existed.

Petitioner NFL's principal contention that the wage distortion persisted with respect to the "old" regular employees and the "newly regularized" employees, is realistically a claim or demand that the classification of "regular" employees be broken down into a sub-classification of "new regulars" and "old regulars." A basic problem with this contention is that, per the record of this case and during the period of time here relevant, there was in fact no pre-existing sub-classification of regular employees into "new regulars" and "old regulars" (i.e., on the basis of seniority or longevity) in the Company. It follows that, as pointed out by the Solicitor-General,[15] no wage distortion within the meaning of Wage Orders Nos. 3 through 6 (and of Article 124 of the Labor Code) continued beyond the "regularization" of the casual employees on 21 June 1984. It may be -- though here again the record is silent -- that the Company had some other sub-grouping of regular employees on the basis, for instance, of the kind of functions discharged by employees (e.g., rank and file; supervisory; middle management; senior management; highly technical, etc.).

The basic point which needs to be stressed is that whether or not a new or additional scheme of classification of employees for compensation purposes should be established by the Company (and the legitimacy or viability of the bases of distinction there embodied) is properly a matter for management judgment and discretion, and ultimately, perhaps, a subject matter for bargaining negotiations between employer and employees. It is assuredly something that falls outside the concept of "wage distortion." The Wage Orders and Article 124 as amended do not require the establishment of new classifications or sub-classifications by the employer. The NLRC is not authorized unilaterally to impose, directly or indirectly, under the guise of rectifying a "wage distortion," upon an employer a new scheme of classification of employees where none has been established either by management decision or by collective bargaining.

We conclude that petitioner NFL has not shown any grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC in rendering its decision (through its Fifth Division) dated 16 December 1991.

WHEREFORE, the Petition for Certiorari is hereby DISMISSED for lack of merit. No pronouncement as to costs.

SO ORDERED.

Bidin, Romero, Melo, and Vitug, JJ., concur.

[1] Petition, p. 3; Rollo, p. 4. The column on "Effect-ivity Date" has been added.

[2] NLRC (En Banc) Decision, 11 November 1987, pp. 11- 12; Rollo, pp. 34-35.

[3] Petitioner complained in its Petition that the NLRC Fifth Division could not modify the decision of the NLRC En Banc. We note that the NLRC Fifth Division had explained that:

"x x x during the pendency of petitioner's [NLF's] motion for reconsideration from the decision of the NLRC En

Banc, the Commission was reorganized in 1989 through the enactment of R.A. No. 6715. From then on, the Commission's adjudicatory powers were exercised exclusively through its various divisions. Consequently, the motion for reconsideration was resolved by the Commission's Fifth Division, which had territorial jurisdiction over the present case." (NLRC Resolution, 16 December 1991, pp. 3-4; Rollo, pp. 44-45; emphases supplied)

[4] NLRC (Fifth Division) Resolution, 16 December 1991, p. 12; Rollo, p. 53.

[5] Id., pp. 7-8; Rollo, pp. 48-49.

[6] It may be noted, in this connection, that petitioner withdrew its original claim that the initial gap of P4.56 in the wage rates of regular employees and of casual employees be reinstated (Petition, p. 16; Rollo, p. 17; see also the Solicitor General's Comment, p. 9; Rollo, p. 88). Petitioner has limited itself in the present Petition to seeking reinstatement of the NLRC En Banc Resolution of 11 November 1987 which, as noted above, had required a wage increase of P1.00 per day for all regular employees effective 1 May 1984.

[7] Substantially the same provision is found in Section 1 of Chapter IV of the Rules Implementing Wage Order No. 4; Section 8 of Wage Order No. 5 dated 11 June 1984 and Section 7 of Wage Order No. 6.

[8] NLRC (En Banc) Decision, 11 November 1987, p. 10; Rollo, p. 33.

[9] 85 O.G. 3956-6 (1989).

[10] Wage distortion may result from causes other than an increase in statutorily prescribed minimum wages. In *Cardona, etc. v. National Labor Relations Commission, et al.* (195 SCRA 92 [1991]), the Court had before it wage distortion allegedly resulting from the merger of two (2) banks and the absorption by the surviving bank of all the employees of the merged bank.

[11] *supra*, p. 5.

[12] Wage Order No. 3, Section 3 and Rules Implementing Wage Order No. 3, Chapter IV, Section 4; Rules Implementing Wage Order No. 4, Chapter II, Section 4; Wage Order No. 5, Section 7 and Rules Implementing Wage Order No. 5, Chapter IV, Section 2; Wage Order No. 6, Section 4 and Rules Implementing Wage Order No. 6, Chapter IV, Section 3.

[13] 206 SCRA 497 (1992).

[14] 206 SCRA at 500-501.

[15] Comment by the Solicitor General, p. 7; Rollo, p. 84.

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