

**ABS – CBN SUPERVISORS EMPLOYEE UNION MEMBERS, PETITIONER,
VS. ABS – CBN BROADCASTING CORP., HERBERT RIVERA, ALBERTO
BERBON, CINDY MUNOZ, CELSO JAMBALOS, SALVADOR DE VERA,
ARNULF...**

G.R. No. 106518. March 11, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a special civil action for Certiorari[1] seeking the reversal of the Order[2] dated July 31, 1992 of public respondent Department of Labor and Employment Undersecretary Bienvenido E. Laguesma[3] in Case No. NCR - OD - M - 90 - 07 - 037.

From the records on hand, it can be gathered, that:

On December 7, 1989, the ABS-CBN Supervisors Employees Union ("the Union"), represented by respondent Union Officers, and ABS-CBN Broadcasting Corporation ("the Company") signed and concluded a Collective Bargaining Agreement with the following check-off provision, to wit:

"Article XII - The [C]ompany agrees to advance to the Union a sum equivalent to 10% of the sum total of all the salary increases and signing bonuses granted to the Supervisors under this collective Bargaining Agreement and upon signing hereof to cover the Union's incidental expenses, including attorney's fees and representation expenses for its organization and (sic) preparation and conduct hereof, and such advance shall be deducted from the benefits granted herein as they accrue."

On September 19, 1990, Petitioners[4] filed with the Bureau of Labor Relations, DOLE-NCR, Quezon City, a Complaint against the Union Officers[5] and ABS-CBN Broadcasting corporation, praying that (1) the special assessment of ten percent (10%) of the sum total of all salary increases and signing bonuses granted by respondent Company to the members of the Union be declared illegal for failure to comply with the labor Code, as amended, particularly Article 241, paragraphs (g), (n), and (o); and in utter violation of the Constitution and By-Laws of the ABS-CBN Supervisors Employees Union; (2) respondent Company be ordered to suspend further deductions from petitioners' salaries for their shares thereof.

In their Answers, respondent Union Officers and Company prayed for the dismissal of the Complaint for lack of merit. They argued that the check-off provision is in accordance with law as majority of the Union members individually executed a written authorization giving the Union officers and the Company a blanket authority to deduct subject amount.

On January 21, 1991, Med-Arbiter Rasidali C. Abdula issued the following Order:[6]

"WHEREFORE, premises considered, judgment is hereby rendered:

a) declaring the special assessment of 10% of the sum total of CBA benefits as illegal;

b) ordering respondents union officers to refund to the complainants and other union members the amount of five Hundred Thousand Pesos (P500,000.00) advanced by the respondent Company as part of the 10% sum total of CBA benefits without unnecessary delay;

c) ordering the respondent company to stop and desist from further making advances and deductions from the union members' salaries their share in the advances already made to the union;

d) ordering the respondent Company to remit directly to the complainants and other union members the amount already deducted from the union members' salaries as part of their share in the advances already made to the union and which it had kept in trust during the pendency of this case; and

e) directing the respondents union officers and respondent Company to submit report on the compliance thereof.

SO ORDERED."

On appeal, respondent DOLE Undersecretary Bienvenido E. Laguesma handed down a Decision[7] on July 1, 1991, disposing as follows:

"WHEREFORE, the appeals are hereby denied, the Order of the Med-Arbiter is affirmed en toto."

On July 5, 1991, the aforesaid Decision was received by the respondent Union Officers and respondent Company. On July 13, 1991, they filed their Motion for Reconsideration stating, inter alia that the questioned ten percent (10%) special assessment is valid pursuant to the ruling in *Bank of the Philippine Islands Employee Union - ALU vs. NLRC*. [8]

On July 31, 1992, Undersecretary B.E. Laguesma issued an Order[9]; resolving, thus:

"WHEREFORE, the Decision dated 01 July 1991 is hereby SET ASIDE. In lieu thereof, a new one is hereby entered DISMISSING the Complaint/Petition for lack of merit."

Hence, the present petition seeking to annul and set aside the above-cited Order of public respondent Undersecretary B.E. Laguesma, for being allegedly tainted with grave abuse of discretion amounting to lack of jurisdiction.

Did the public respondent act with grave abuse of discretion in issuing the challenged Order reversing his own Decision of July 1, 1991? Such is the sole issue posited, which we resolve in the negative. The petition is unmeritorious.

Petitioners claim[10] that the Decision of the Secretary of Labor and Employment dated July 1, 1991, affirming in toto the Order of Med-Arbiter Rasidali Abdullah dated January 31, 1991, cannot be a subject of a motion for reconsideration because it is final and unappealable pursuant to Section 8, Rule VIII, Book V of the Omnibus Rule Implementing the Labor Code. It is further argued that the only remedy of the respondent Union Officers' is to file a petition for certiorari with this Court.

Section 8, Rule VIII, Book V of the Omnibus Rules Implementing the Labor Code, provides:

"The Secretary shall have fifteen (15) calendar days within which to decide the appeal from receipt of the records of the case. The decision of the Secretary shall be final and unappealable." [Underscoring supplied]. (Comment, p. 101)

The aforecited provision cannot be construed to mean that the Decision of the public respondent cannot be reconsidered since the same is reviewable by writ of certiorari under Rule 65 of the Rules of Court. As a rule, the law requires a motion for reconsideration to enable the public respondent to correct his mistakes, if any. In *Pearl*

S. Buck Foundation, Inc., vs. NLRC,[11] this Court held:

"Hence, the only way by which a labor case may reach the Supreme Court is through a petition for certiorari under Rule 65 of the Rules of Court alleging lack or excess of jurisdiction or grave abuse of discretion. Such petition may be filed within a reasonable time from receipt of the resolution denying the motion for reconsideration of the NLRC decision." [Underscoring; supplied].

Clearly, before a petition for certiorari under Rule 65 of the Rules of Court may be availed of, the filing of a motion for reconsideration is a condition sine qua non to afford an opportunity for the correction of the error or mistake complained of.

So also, considering that a decision of the Secretary of Labor is subject to judicial review only through a special civil action of certiorari and, as a rule, cannot be resorted to without the aggrieved party having exhausted administrative remedies through a motion for reconsideration, the aggrieved party, must be allowed to move for a reconsideration of the same so that he can bring a special civil action for certiorari before the Supreme Court.[12]

Furthermore, it appears that the petitioners filed with the public respondent a Motion for Early Resolution[13] dated June 24, 1992. Averring that private respondents' Motion for Reconsideration did not contain substantial factual or legal grounds for the reversal of subject decision. Consequently, petitioners are now estopped from raising the issue sought for resolution. In *Alfredo Marquez vs. Secretary of Labor*,[14] the Court said:

"xxx The active participation of the party against whom the action was brought, coupled with his failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction."

What is more, it was only when the public respondents issued the Order adverse to them that the petitioners raised the question for the first time before this Court. Obviously, it is a patent afterthought which must be abhorred.

Petitioners also argued that the check-off provision in question is illegal because it was never submitted for consideration and approval to "all the members at a general membership meeting called for the purpose"; and further alleged that the formalities mandated by Art. 241, paragraphs (n) and (o) of the Labor Code, as amended, were not complied with.

"A check-off is a process or device whereby the employer, on agreement with the Union, recognized as the proper bargaining representative, or on prior authorization from its employees, deducts union dues or agency fees from the latter's wages and remits them directly to the union." [15] Its desirability in a labor organization is quite evident. It is assured thereby of continuous funding. As this Court has acknowledged, the system of check-off is primarily for the benefit of the Union and only indirectly, for the individual employees.

The legal basis of check-off is found in statutes or in contracts.[16] The statutory limitations on check-offs are found in Article 241, Chapter II, Title IV, Book Five of the Labor Code, which reads:

"Rights and conditions of membership in a labor organization. - The following are the rights and conditions of membership in a labor organization:

x x x

(g) No officer, agent, member of a labor organization shall collect any fees, dues, or other contributions in its behalf or make any disbursement of its money or funds unless he is duly authorized pursuant to its constitution and by-laws.

x x x

(n) No special assessment or other extraordinary fees may be levied upon the members of a labor organization unless authorized by a written resolution of a majority of all the members of a general membership meeting duly called for the purpose. The secretary of the organization shall record the minutes of the meeting including the list of all members present, the votes cast, the purpose of the special assessment or fees and the recipient of such assessment or fees. The record shall be attested to by the president.

(o) Other than for mandatory activities under the Code, no special assessments, attorney's fees, negotiation fees or any other extraordinary fees may be checked off from any amount due to an employee with an individual written authorization duly signed by the employee. The authorization should specifically state the amount, purpose and beneficiary of the deductions. [Underscoring; supplied]

Article 241 of the Labor Code, as amended, must be read in relation to Article 222, paragraph (b) of the same law, which states:

"No attorney's fees, negotiation fees or similar charges of any kind arising from collective bargaining negotiations or conclusion of the collective agreement shall be imposed on any individual member of the contracting union: Provided, however, that attorney's fees may be charged against union funds in an amount to be agreed upon by the parties. Any contract, agreement or arrangement of any sort to the contrary shall be null and void." [Underscoring; supplied]

And this court elucidated the object and import of the said provision of law in *Bank of Philippine Islands Employees Union - Association Labor Union (BPIEU-ALU) vs. National Labor Relations Commission*: [17]

"The Court reads the afore-cited provision (Article 222 [b] of the Labor Code) as prohibiting the payment of attorney's fees only when it is effected through forced contributions from the workers from their own funds as distinguished from the union funds. xxx"

Noticeably, Article 241 speaks of three (3) requisites that must be complied with in order that the special assessment for Union's incidental expenses, attorney's fees and representation expenses, as stipulated in Article XII of the CBA, be valid and upheld namely: 1) authorization by a written resolution of the majority of all the members at the general membership meeting duly called for the purpose; (2) secretary's record of the minutes of the meeting; and (3) individual written authorization for check-off duly signed by the employee concerned.

After a thorough review of the records on hand, we find that the three (3) requisites for the validity of the ten percent (10%) special assessment for Union's incidental expenses, attorney's fees and representation expenses were met.

It can be gleaned that on July 14, 1989, the ABS-CBN Supervisors Employee Union held its general meeting, whereat it was agreed that a ten percent (10%) special assessment from the total economic package due to every member would be checked-off to cover expenses for negotiation, other miscellaneous expenses and attorney's fees. The minutes of the said meeting were recorded by the Union's Secretary, Ma. Carminda M. Munoz, and noted by its President, Herbert Rivera. [18]

On May 24, 1991, said Union held its General Membership Meeting, wherein majority of the members agreed that "in as much as the Union had already paid Atty. P. Pascual the amount of P500,000.00, the same must be shared by all the members until this is fully liquidated." [19]

Eighty-five (85) members of the same Union executed individual written authorizations for check-off, thus:

"Towards that end, I hereby authorize the Management and/or Cashier of ABS-CBN BROADCASTING CORPORATION to deduct from my salary the sum of P30.00 per month as my regular union dues and said Management and/or Cashier are further authorize (sic) to deduct a sum equivalent to 10% of all and whatever benefits that will become due to me under the COLLECTIVE BARGAINING AGREEMENT (CBA) that may

be agreed upon by the UNION and MANAGEMENT and to apply the said sum to the advance that Management will make to our Union for incidental expenses such as attorney's fees, representations and other miscellaneous expenses pursuant to Article XII of the proposed CBA." [20]

Records do not indicate that the aforesaid check-off authorizations were executed by the eighty-five (85) Union members under the influence of force or compulsion. There is then, the presumption that such check-off authorizations were executed voluntarily by the signatories thereto. Petitioner's contention that the amount to be deducted is uncertain [21] is not persuasive because the check-off authorization clearly stated that the sum to be deducted is equivalent to ten percent (10%) of all and whatever benefits may accrue under the CBA. In other words, although the amount is not fixed, it is determinable.

Petitioners further contend that Article 241 (n) of the Labor Code, as amended, on special assessments, contemplates a general meeting after the conclusion of the collective bargaining agreement.

Subject Article does not state that the general membership meeting should be called after the conclusion of a collective bargaining agreement. Even granting *ex gratia argumenti* that the general meeting should be held after the conclusion of the CBA, such requirement was complied with since the May 24, 1991 General Membership Meeting was held after the conclusion of the Collective Bargaining Agreement, which was signed and concluded on December 7, 1989.

Considering that the three requisites aforesaid for the validity of a special assessment were observed or met, we uphold the validity of the ten percent (10%) special assessment authorized in Article XII of the CBA.

We also concur in the finding by public respondent that the Bank of the Philippine Islands Employees Union - ALU vs. NLRC [22] is apposite in this case. In BPIEU-ALU, the petitioners, impugned the Order of the NLRC, holding that the validity of the five percent (5%) special assessment for attorney's fees is contrary to Article 222, paragraph (b) of the Labor Code, as amended. The court ratiocinated, thus:

"The Court reads the aforesaid provision as prohibiting the payment of attorney's fees only when it is effected through forced contributions from the workers from their own funds distinguished from the union funds. The purpose of the provision is to prevent imposition on the workers of the duty to individually contribute their respective shares in the fee to be paid the attorney for his services on behalf of the union in its negotiations with the management. xxx" [Underscoring supplied]

However, the public respondent overlooked the fact that in the said case, the deduction of the stipulated five percent (5%) of the total economic benefits under the new collective bargaining agreement was applied only to workers who gave their individual signed authorizations. The Court explained:

"xxx And significantly, the authorized deduction affected only the workers who adopted and signed the resolution and who were the only ones from whose benefits the deductions were made by BPI. No similar deductions were taken from the other workers who did not sign the resolution and so were not bound by it." [Underscoring; supplied]

While the court also finds merit in the finding by the public respondents that *Palacol vs. Ferrer-Calleja* [23] is inappropos in the case under scrutiny, it does not subscribe to public respondent's reasoning - that *Palacol* should not be retroactively applied to the present case in the interest of justice, equity and fairplay. [24] The inapplicability of *Palacol* lies in the fact that it has a different factual milieu from the present case. In *Palacol*, the check-off authorization was declared invalid because majority of the Union members had withdrawn their individual authorizations, to wit:

"Paragraph (o) on the other hand requires an individual written authorization duly signed by every employee in order that special assessment maybe validly check-off. Even assuming that the special assessment was validly

levied pursuant to paragraph (n), and granting that individual written authorizations were obtained by the Union, nevertheless there can be no valid check-off considering that the majority of the Union members had already withdrawn their individual authorizations. A withdrawal of individual authorization is equivalent to no authorization at all." xxx [Underscoring; supplied]

In this case, the majority of the Union members gave their individual written check-off authorizations for the ten percent (10%) special assessment. And they have never withdraw their individual written authorizations for check-off.

There is thus cogent reason to uphold the assailed Order, it appearing from the records of the case that twenty (20)[25] of the forty-two (42) petitioners executed as Compromise Agreement[26] ratifying the controversial check-off provision in the CBA.

Premises studiously considered, we are of the irresistible conclusion and, so find, that the ruling in *BPIEU-ALU vs. NLRC* that (1) the prohibition against attorney's fees in Article 222, paragraph (b) of the Labor Code applies only when the payment of attorney's fees is effected through forced contributions from the workers; and (2) that no deductions must be taken from the workers who did not sign the check-off authorization, applies to the case under consideration.

WHEREFORE, the assailed Order, dated July 31, 1992, of DOLE Undersecretary B.E. Laguesma is **AFFIRMED** except that no deductions shall be taken from the workers who did not give their individual written check-off authorization. No pronouncement as to costs.

SO ORDERED.

Romero (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] The nature of the petition is ambiguous as it is worded, as follows: "This is a petition for review on certiorari under Rule 45/65 of the Revised Rules of Court" The Court, however, resolved to treat the petition as one under Rule 65 in the interest of justice, equity and fairplay." (*Salazar vs. NLRC*, 256 SCRA 273 [1996])

[2] "Annex A," Petition; Rollo, 28-33.

[3] Public respondent Bienvenido E. Laguesma is not named in the case title but his Order dated 31 July 1992 is subject of this case. Petitioner's counsel, Atty. Manuel N. Camacho had impressed to this Court his inadequacy and incompetency of procedural law and he is hereby sternly warned that a repetition of a similar display of lack of legal skills will be dealt with more severely.

[4] Namely: Corina Sanchez, Ma. Angelica Lazo, Nicolas Belleza, Rogelio I. Gomez, Abraham Alhambra, Adelaida M. Espiritu, Servillano Caoagdan, Arlene Sinsuan, David Fabros, Adoracion, G. Camacho, Beverly S. Fernandez, Adora L. Jacila, Teresita C. Estrella, Josefino M. Sta. Ana, Emilia F. Guilalas, Albert L. Brillantes, Rodolfo Tapel, Zoilo Gonzales, Ernesto Balingit, Victoriano Rasido, Isabelo C. Albarracin, Cesar M. Solidum, Leonora V. Buenaventura, Roberto Saura, Diosdado Ricafrente, Alfon Marquez III, Rosario Villa, Gus Abelgas, Stephanie Quirino, Victor L. Lima, Erlindo Alvarado, Atanacio Pascua, Edgar Padil, Rizal C. Benjamia, Edgardo Ramos, Santos Bautista, Manuel Manio, Eladio Aligora, W. Osinsao, Neil A. Ocampo, Maria Teresita F. Naval, Claude Vitug and Isagani Oro.

[5] Namely: Herbert R. Rivera, Alberto Berbon, Cindy Munoz, Celso Jambalos, Salvador De Vera, Arnulfo Alcazar, Jake Maderazo, Gon Carpio, Oscar Landrito, Fred Garcia, Cesar Lopez, Ruben Barrameda.

[6] "Annex C," petition; Rollo, 41-56.

[7] "Annex B," Petition; Rollo, pp. 34-40.

[8] 171 SCRA 556.

[9] "Annex A," Petition; Rollo, 28-33.

[10] see: Petition, p. 9; Rollo, 15.

[11] 182 SCRA 446 [1990]; Rodrigo Bordeos et. al., vs. NLRC, 262 SCRA 424 [1996].

[12] Due to ambiguous nature of this petition, the Court restrained itself to discuss the failure of herein petitioners to file a motion for reconsideration before the sala of public respondent to have the assailed Order dated July 31, 1992 reconsidered.

[13] see: private respondents' "Rejoinder," p. 3; Rollo, 133-144.

[14] 171 SCRA 337, 346.

[15] Holy Cross of Davao College, Inc. vs. Joaquin, 263 SCRA 358 [1996].

[16] Ibid., p. 368.

[17] 171 SCRA 556, 569.

[18] see: p. 205, "Memorandum," Solicitor General; Rollo, 193-213; Records, pp. 391-393;

[19] Ibid., p. 206; Minutes of General Membership Meeting; May 24, 1991.

[20] Ibid.; Records, pp. 289-374.

[21] Petition, p. 13; Rollo, 19.

[22] Supra, p.11.

[23] 182 SCRA 710.

[24] Order dated 31 July 1992; Rollo, 32.

[25] Namely: Corina Sanchez, Ma. Angelica Lazo, Isagani Oro, Albert Brillantes, Ernesto Balingit, Victoriano Rizaldo, Isabelo Albarracin, Cesar Solidum, Roberto Saura, Alfon Marquez III, Rosario Villa, Gus Abelgas, Victor Lima, Erlindo Alvarado, Atanacio Pascual, Edgar Padil, Santos Bautista, Manuel Manio, W. Osinsao and Claude Vitug.

[26] "Annex 39;" Rollo, 78-80.

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