

**STANDARD CHARTERED BANK EMPLOYEES UNION (NUBE),
PETITIONER, VS. THE HONORABLE MA. NIEVES R. CONFESOR, IN
HER CAPACITY AS SECRETARY OF LABOR AND EMPLOYMENT; AND
THE STANDARD CHAR...**

G.R. No. 114974. June 16, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for certiorari under Rule 65 of the Rules of Court filed by the Standard Chartered Bank Employees Union, seeking the nullification of the October 29, 1993 Order[1] of then Secretary of Labor and Employment Nieves R. Confesor and her resolutions dated December 16, 1993 and February 10, 1994.

The Antecedents

Standard Chartered Bank (the Bank, for brevity) is a foreign banking corporation doing business in the Philippines. The exclusive bargaining agent of the rank and file employees of the Bank is the Standard Chartered Bank Employees Union (the Union, for brevity).

In August of 1990, the Bank and the Union signed a five-year collective bargaining agreement (CBA) with a provision to renegotiate the terms thereof on the third year. Prior to the expiration of the three-year period[2] but within the sixty-day freedom period, the Union initiated the negotiations. On February 18, 1993, the Union, through its President, Eddie L. Divinagracia, sent a letter[3] containing its proposals[4] covering political provisions[5] and thirty-four (34) economic provisions.[6] Included therein was a list of the names of the members of the Union's negotiating panel.[7]

In a Letter dated February 24, 1993, the Bank, through its Country Manager Peter H. Harris, took note of the Union's proposals. The Bank attached its counter-proposal to the non-economic provisions proposed by the Union.[8] The Bank posited that it would be in a better position to present its counter-proposals on the economic items after the Union had presented its justifications for the economic proposals.[9] The Bank, likewise, listed the members of its negotiating panel.[10] The parties agreed to set meetings to settle their differences on the proposed CBA.

Before the commencement of the negotiation, the Union, through Divinagracia, suggested to the Bank's Human Resource Manager and head of the negotiating panel, Cielito Diokno, that the bank lawyers should be excluded from the negotiating team. The Bank acceded.[11] Meanwhile, Diokno suggested to Divinagracia that Jose P. Umali, Jr., the President of the National Union of Bank Employees (NUBE), the federation to which the Union was affiliated, be excluded from the Union's negotiating panel.[12] However, Umali was retained as a member thereof.

On March 12, 1993, the parties met and set the ground rules for the negotiation. Diokno suggested that the negotiation be kept a "family affair." The proposed non-economic provisions of the CBA were discussed

first.[13] Even during the final reading of the non-economic provisions on May 4, 1993, there were still provisions on which the Union and the Bank could not agree. Temporarily, the notation “DEFERRED” was placed therein. Towards the end of the meeting, the Union manifested that the same should be changed to “DEADLOCKED” to indicate that such items remained unresolved. Both parties agreed to place the notation “DEFERRED/DEADLOCKED.”[14]

On May 18, 1993, the negotiation for economic provisions commenced. A presentation of the basis of the Union’s economic proposals was made. The next meeting, the Bank made a similar presentation. Towards the end of the Bank’s presentation, Umali requested the Bank to validate the Union’s “guestimates,” especially the figures for the rank and file staff.[15] In the succeeding meetings, Umali chided the Bank for the insufficiency of its counter-proposal on the provisions on salary increase, group hospitalization, death assistance and dental benefits. He reminded the Bank, how the Union got what it wanted in 1987, and stated that if need be, the Union would go through the same route to get what it wanted.[16]

Upon the Bank’s insistence, the parties agreed to tackle the economic package item by item. Upon the Union’s suggestion, the Bank indicated which provisions it would accept, reject, retain and agree to discuss.[17] The Bank suggested that the Union prioritize its economic proposals, considering that many of such economic provisions remained unresolved. The Union, however, demanded that the Bank make a revised itemized proposal.

In the succeeding meetings, the Union made the following proposals:

Wage Increase:

1st Year – Reduced from 45% to 40%

2nd Year - Retain at 20%

Total = 60%

Group Hospitalization Insurance:

Maximum disability benefit reduced from P75,000.00 to P60,000.00 per illness annually

Death Assistance:

For the employee --Reduced from P50,000.00 to P45,000.00

For Immediate Family Member -- Reduced from P30,000.00 to P25,000.00

Dental and all others -- No change from the original demand.[18]

In the morning of the June 15, 1993 meeting, the Union suggested that if the Bank would not make the necessary revisions on its counter-proposal, it would be best to seek a third party assistance.[19] After the break, the Bank presented its revised counter-proposal[20] as follows:

Wage Increase : 1st Year – from P1,000 to P1,050.00

2nd Year – P800.00 – no change

Group Hospitalization Insurance

From: P35,000.00 per illness

To : P35,000.00 per illness per year

Death Assistance – For employee

From: P20,000.00

To : P25,000.00

Dental Retainer – Original offer remains the same[21]

The Union, for its part, made the following counter-proposal:

Wage Increase: 1st Year - 40%

2nd Year - 19.5%

Group Hospitalization Insurance

From: P60,000.00 per year

To : P50,000.00 per year

Dental:

Temporary Filling/ – P150.00

Tooth Extraction

Permanent Filling – 200.00

Prophylaxis – 250.00

Root Canal – From P2,000 per tooth

To: 1,800.00 per tooth

Death Assistance:

For Employees: From P45,000.00 to P40,000.00

For Immediate Family Member: From P25,000.00 to P20,000.00.[22]

The Union's original proposals, aside from the above-quoted, remained the same.

Another set of counter-offer followed:

Management Union

Wage Increase

1st Year – P1,050.00 40%

2nd Year - 850.00 19.0%[23]

Diokno stated that, in order for the Bank to make a better offer, the Union should clearly identify what it wanted to be included in the total economic package. Umali replied that it was impossible to do so because the Bank's counter-proposal was unacceptable. He furthered asserted that it would have been easier to bargain if the atmosphere was the same as before, where both panels trusted each other. Diokno requested the Union panel to refrain from involving personalities and to instead focus on the negotiations.[24] He suggested that in order to break the impasse, the Union should prioritize the items it wanted to iron out. Divinagracia stated that the Bank should make the first move and make a list of items it wanted to be included in the economic package. Except for the provisions on signing bonus and uniforms, the Union and the Bank failed to agree on the remaining economic provisions of the CBA. The Union declared a deadlock[25] and filed a Notice of Strike before the National Conciliation and Mediation Board (NCMB) on June 21, 1993, docketed as NCMB-NCR-NS-06-380-93.[26]

On the other hand, the Bank filed a complaint for Unfair Labor Practice (ULP) and Damages before the Arbitration Branch of the National Labor Relations Commission (NLRC) in Manila, docketed as NLRC Case No. 00-06-04191-93 against the Union on June 28, 1993. The Bank alleged that the Union violated its duty to bargain, as it did not bargain in good faith. It contended that the Union demanded "sky high economic demands," indicative of blue-sky bargaining.[27] Further, the Union violated its no strike- no lockout clause by filing a notice of strike before the NCMB. Considering that the filing of notice of strike was an illegal act, the Union officers should be dismissed. Finally, the Bank alleged that as a consequence of the illegal act, the Bank suffered nominal and actual damages and was forced to litigate and hire the services of the lawyer.[28]

On July 21, 1993, then Secretary of Labor and Employment (SOLE) Nieves R. Confesor, pursuant to Article

263(g) of the Labor Code, issued an Order assuming jurisdiction over the labor dispute at the Bank. The complaint for ULP filed by the Bank before the NLRC was consolidated with the complaint over which the SOLE assumed jurisdiction. After the parties submitted their respective position papers, the SOLE issued an Order on October 29, 1993, the dispositive portion of which is herein quoted:

WHEREFORE, the Standard Chartered Bank and the Standard Chartered Bank Employees Union – NUBE are hereby ordered to execute a collective bargaining agreement incorporating the dispositions contained herein. The CBA shall be retroactive to 01 April 1993 and shall remain effective for two years thereafter, or until such time as a new CBA has superseded it. All provisions in the expired CBA not expressly modified or not passed upon herein are deemed retained while all new provisions which are being demanded by either party are deemed denied, but without prejudice to such agreements as the parties may have arrived at in the meantime.

The Bank's charge for unfair labor practice which it originally filed with the NLRC as NLRC-NCR Case No. 00-06-04191-93 but which is deemed consolidated herein, is dismissed for lack of merit. On the other hand, the Union's charge for unfair labor practice is similarly dismissed.

Let a copy of this order be furnished the Labor Arbiter in whose sala NLRC-NCR Case No. 00-06-04191-93 is pending for his guidance and appropriate action.[29]

The SOLE gave the following economic awards:

1. Wage Increase:

a) To be incorporated to present salary rates:

Fourth year : 7% of basic monthly salary

Fifth year : 5% of basic monthly salary based on the 4th year adjusted salary

b) Additional fixed amount:

Fourth year : P600.00 per month

Fifth year : P400.00 per month

2. Group Insurance

a) Hospitalization : P45,000.00

b) Life : P130,000.00

c) Accident : P130,000.00

3. Medicine Allowance

Fourth year : P5,500.00

Fifth year : P6,000.00

4. Dental Benefits

Provision of dental retainer as proposed by the Bank, but without diminishing existing benefits

5. Optical Allowance

Fourth year: P2,000.00

Fifth year : P2,500.00

6. Death Assistance

a)

Employee : P30,000.00

b) Immediate Family Member : P5,000.00

7. Emergency Leave – Five (5) days for each contingency

8. Loans

a) Car Loan : P200,000.00

b)

Housing Loan : It cannot be denied that the costs attendant to having one's own home have tremendously gone up. The need, therefore, to improve on this benefit cannot be overemphasized. Thus, the management is urged to increase the existing and allowable housing loan that the Bank extends to its employees to an amount that will give meaning and substance to this CBA benefit.[30]

The SOLE dismissed the charges of ULP of both the Union and the Bank, explaining that both parties failed to substantiate their claims. Citing *National Labor Union v. Insular-Yebana Tobacco Corporation*,[31] the SOLE stated that ULP charges would prosper only if shown to have directly prejudiced the public interest.

Dissatisfied, the Union filed a motion for reconsideration with clarification, while the Bank filed a motion for reconsideration. On December 16, 1993, the SOLE issued a Resolution denying the motions. The Union filed a second motion for reconsideration, which was, likewise, denied on February 10, 1994.

On March 22, 1994, the Bank and the Union signed the CBA.[32] Immediately thereafter, the wage increase was effected and the signing bonuses based on the increased wage were distributed to the employees covered by the CBA.

The Present Petition

On April 28, 1994, the Union filed this petition for certiorari under Rule 65 of the Rules of Procedure alleging as follows:

- RESPONDENT HONORABLE SECRETARY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DISMISSING THE UNION'S CHARGE OF UNFAIR LABOR PRACTICE IN VIEW OF THE CLEAR EVIDENCE OF RECORD AND ADMISSIONS PROVING THE UNFAIR LABOR PRACTICES CHARGED.[33]
- RESPONDENT HONORABLE SECRETARY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN FAILING TO RULE ON OTHER UNFAIR LABOR PRACTICES CHARGED.[34]
- RESPONDENT HONORABLE SECRETARY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DISMISSING THE CHARGES OF UNFAIR LABOR PRACTICES ON THE GROUND THAT NO PROOF OF INJURY TO THE PUBLIC INTEREST WAS PRESENTED.[35]

The Union alleges that the SOLE acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it found that the Bank did not commit unfair labor practice when it interfered with the Union's choice of negotiator. It argued that, Diokno's suggestion that the negotiation be limited as a "family affair" was tantamount to suggesting that Federation President Jose Umali, Jr. be excluded from the Union's negotiating panel. It further

argued that contrary to the ruling of the public respondent, damage or injury to the public interest need not be present in order for unfair labor practice to prosper.

The Union, likewise, pointed out that the public respondent failed to rule on the ULP charges arising from the Bank's surface bargaining. The Union contended that the Bank merely went through the motions of collective bargaining without the intent to reach an agreement, and made bad faith proposals when it announced that the parties should begin from a clean slate. It argued that the Bank opened the political provisions "up for grabs," which had the effect of diminishing or obliterating the gains that the Union had made.

The Union also accused the Bank of refusing to disclose material and necessary data, even after a request was made by the Union to validate its "guestimates."

In its Comment, the Bank prayed that the petition be dismissed as the Union was estopped, considering that it signed the Collective Bargaining Agreement (CBA) on April 22, 1994. It asserted that contrary to the Union's allegations, it was the Union that committed ULP when negotiator Jose Umali, Jr. hurled invectives at the Bank's head negotiator, Cielito Diokno, and demanded that she be excluded from the Bank's negotiating team. Moreover, the Union engaged in blue-sky bargaining and isolated the no strike-no lockout clause of the existing CBA.

The Office of the Solicitor General, in representation of the public respondent, prayed that the petition be dismissed. It asserted that the Union failed to prove its ULP charges and that the public respondent did not commit any grave abuse of discretion in issuing the assailed order and resolutions.

The Issues

The issues presented for resolution are the following: (a) whether or not the Union was able to substantiate its claim of unfair labor practice against the Bank arising from the latter's alleged "interference" with its choice of negotiator; surface bargaining; making bad faith non-economic proposals; and refusal to furnish the Union with copies of the relevant data; (b) whether or not the public respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction when she issued the assailed order and resolutions; and, (c) whether or not the petitioner is estopped from filing the instant action.

The Court's Ruling

The petition is bereft of merit.

"Interference" under Article 248 (a) of the Labor Code

The petitioner asserts that the private respondent committed ULP, i.e., interference in the selection of the Union's negotiating panel, when Cielito Diokno, the Bank's Human Resource Manager, suggested to the Union's President Eddie L. Divinagracia that Jose P. Umali, Jr., President of the NUBE, be excluded from the Union's negotiating panel. In support of its claim, Divinagracia executed an affidavit, stating that prior to the commencement of the negotiation, Diokno approached him and suggested the exclusion of Umali from the Union's negotiating panel, and that during the first meeting, Diokno stated that the negotiation be kept a "family affair."

Citing the cases of U.S. Postal Service[36] and Harley Davidson Motor Co., Inc., AMF,[37] the Union claims that interference in the choice of the Union's bargaining panel is tantamount to ULP.

In the aforecited cases, the alleged ULP was based on the employer's violation of Section 8(a)(1) and (5) of the National Labor Relations Act (NLRA),[38] which pertain to the interference, restraint or coercion of the employer

in the employees' exercise of their rights to self-organization and to bargain collectively through representatives of their own choosing; and the refusal of the employer to bargain collectively with the employees' representatives. In both cases, the National Labor Relations Board held that upon the employer's refusal to engage in negotiations with the Union for collective-bargaining contract when the Union includes a person who is not an employee, or one who is a member or an official of other labor organizations, such employer is engaged in unfair labor practice under Section 8(a)(1) and (5) of the NLRA.

The Union further cited the case of *Insular Life Assurance Co., Ltd. Employees Association – NATU vs. Insular Life Assurance Co., Ltd.*,^[39] wherein this Court said that the test of whether an employer has interfered with and coerced employees in the exercise of their right to self-organization within the meaning of subsection (a)(1) is whether the employer has engaged in conduct which it may reasonably be said, tends to interfere with the free exercise of employees' rights under Section 3 of the Act.^[40] Further, it is not necessary that there be direct evidence that any employee was in fact intimidated or coerced by statements of threats of the employer if there is a reasonable inference that anti-union conduct of the employer does have an adverse effect on self-organization and collective bargaining.^[41]

Under the International Labor Organization Convention (ILO) No. 87 FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANIZE to which the Philippines is a signatory, "workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to job organizations of their own choosing without previous authorization."^[42] Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom to organize their administration and activities and to formulate their programs.^[43] Article 2 of ILO Convention No. 98 pertaining to the Right to Organize and Collective Bargaining, provides:

Article 2

- Workers' and employers' organizations shall enjoy adequate protection against any acts or interference by each other or each other's agents or members in their establishment, functioning or administration.
- In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations within the meaning of this Article.

The aformentioned ILO Conventions are incorporated in our Labor Code, particularly in Article 243 thereof, which provides:

ART. 243. COVERAGE AND EMPLOYEES' RIGHT TO SELF-ORGANIZATION. – All persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical or educational institutions whether operating for profit or not, shall have the right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining. Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labor organizations for their mutual aid and protection.

and Articles 248 and 249 respecting ULP of employers and labor organizations.

The said ILO Conventions were ratified on December 29, 1953. However, even as early as the 1935 Constitution,^[44] the State had already expressly bestowed protection to labor as part of the general provisions. The 1973 Constitution,^[45] on the other hand, declared it as a policy of the state to afford protection to labor, specifying that the workers' rights to self-organization, collective bargaining, security of tenure, and just and humane conditions of work would be assured. For its part, the 1987 Constitution, aside from making it a policy to

“protect the rights of workers and promote their welfare,”[46] devotes an entire section, emphasizing its mandate to afford protection to labor, and highlights “the principle of shared responsibility” between workers and employers to promote industrial peace.[47]

Article 248(a) of the Labor Code, considers it an unfair labor practice when an employer interferes, restrains or coerces employees in the exercise of their right to self-organization or the right to form association. The right to self-organization necessarily includes the right to collective bargaining.

Parenthetically, if an employer interferes in the selection of its negotiators or coerces the Union to exclude from its panel of negotiators a representative of the Union, and if it can be inferred that the employer adopted the said act to yield adverse effects on the free exercise to right to self-organization or on the right to collective bargaining of the employees, ULP under Article 248(a) in connection with Article 243 of the Labor Code is committed.

In order to show that the employer committed ULP under the Labor Code, substantial evidence is required to support the claim. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[48] In the case at bar, the Union bases its claim of interference on the alleged suggestions of Diokno to exclude Umali from the Union’s negotiating panel.

The circumstances that occurred during the negotiation do not show that the suggestion made by Diokno to Divinagracia is an anti-union conduct from which it can be inferred that the Bank consciously adopted such act to yield adverse effects on the free exercise of the right to self-organization and collective bargaining of the employees, especially considering that such was undertaken previous to the commencement of the negotiation and simultaneously with Divinagracia’s suggestion that the bank lawyers be excluded from its negotiating panel.

The records show that after the initiation of the collective bargaining process, with the inclusion of Umali in the Union’s negotiating panel, the negotiations pushed through. The complaint was made only on August 16, 1993 after a deadlock was declared by the Union on June 15, 1993.

It is clear that such ULP charge was merely an afterthought. The accusation occurred after the arguments and differences over the economic provisions became heated and the parties had become frustrated. It happened after the parties started to involve personalities. As the public respondent noted, passions may rise, and as a result, suggestions given under less adversarial situations may be colored with unintended meanings.[49] Such is what appears to have happened in this case.

The Duty to Bargain Collectively

If at all, the suggestion made by Diokno to Divinagracia should be construed as part of the normal relations and innocent communications, which are all part of the friendly relations between the Union and Bank.

The Union alleges that the Bank violated its duty to bargain; hence, committed ULP under Article 248(g) when it engaged in surface bargaining. It alleged that the Bank just went through the motions of bargaining without any intent of reaching an agreement, as evident in the Bank’s counter-proposals. It explained that of the 34 economic provisions it made, the Bank only made 6 economic counterproposals. Further, as borne by the minutes of the meetings, the Bank, after indicating the economic provisions it had rejected, accepted, retained or were open for discussion, refused to make a list of items it agreed to include in the economic package.

Surface bargaining is defined as “going through the motions of negotiating” without any legal intent to reach an agreement.[50] The resolution of surface bargaining allegations never presents an easy issue. The determination of whether a party has engaged in unlawful surface bargaining is usually a difficult one because it involves, at

bottom, a question of the intent of the party in question, and usually such intent can only be inferred from the totality of the challenged party's conduct both at and away from the bargaining table.[51] It involves the question of whether an employer's conduct demonstrates an unwillingness to bargain in good faith or is merely hard bargaining.[52]

The minutes of meetings from March 12, 1993 to June 15, 1993 do not show that the Bank had any intention of violating its duty to bargain with the Union. Records show that after the Union sent its proposal to the Bank on February 17, 1993, the latter replied with a list of its counter-proposals on February 24, 1993. Thereafter, meetings were set for the settlement of their differences. The minutes of the meetings show that both the Bank and the Union exchanged economic and non-economic proposals and counter-proposals.

The Union has not been able to show that the Bank had done acts, both at and away from the bargaining table, which tend to show that it did not want to reach an agreement with the Union or to settle the differences between it and the Union. Admittedly, the parties were not able to agree and reached a deadlock. However, it is herein emphasized that the duty to bargain "does not compel either party to agree to a proposal or require the making of a concession." [53] Hence, the parties' failure to agree did not amount to ULP under Article 248(g) for violation of the duty to bargain.

We can hardly dispute this finding, for it finds support in the evidence. The inference that respondents did not refuse to bargain collectively with the complaining union because they accepted some of the demands while they refused the others even leaving open other demands for future discussion is correct, especially so when those demands were discussed at a meeting called by respondents themselves precisely in view of the letter sent by the union on April 29, 1960...[54]

In view of the finding of lack of ULP based on Article 248(g), the accusation that the Bank made bad faith provisions has no leg to stand on. The records show that the Bank's counter-proposals on the non-economic provisions or political provisions did not put "up for grabs" the entire work of the Union and its predecessors. As can be gleaned from the Bank's counter-proposal, there were many provisions which it proposed to be retained. The revisions on the other provisions were made after the parties had come to an agreement. Far from buttressing the Union's claim that the Bank made bad-faith proposals on the non-economic provisions, all these, on the contrary, disprove such allegations.

We, likewise, find that the Union failed to substantiate its claim that the Bank refused to furnish the information it needed.

While the refusal to furnish requested information is in itself an unfair labor practice, and also supports the inference of surface bargaining,[55] in the case at bar, Umali, in a meeting dated May 18, 1993, requested the Bank to validate its guestimates on the data of the rank and file. However, Umali failed to put his request in writing as provided for in Article 242(c) of the Labor Code:

Article 242. Rights of Legitimate Labor Organization...

(c) To be furnished by the employer, upon written request, with the annual audited financial statements, including the balance sheet and the profit and loss statement, within thirty (30) calendar days from the date of receipt of the request, after the union has been duly recognized by the employer or certified as the sole and exclusive bargaining representatives of the employees in the bargaining unit, or within sixty (60) calendar days before the expiration of the existing collective bargaining agreement, or during the collective negotiation;

The Union, did not, as the Labor Code requires, send a written request for the issuance of a copy of the data about the Bank's rank and file employees. Moreover, as alleged by the Union, the fact that the Bank made use of the aforesaid guestimates, amounts to a validation of the data it had used in its presentation.

No Grave Abuse of Discretion On the Part of the Public Respondent

The special civil action for certiorari may be availed of when the tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction and there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law for the purpose of annulling the proceeding.[56] Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility which must be so patent and gross as to amount to an invasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. Mere abuse of discretion is not enough.[57]

While it is true that a showing of prejudice to public interest is not a requisite for ULP charges to prosper, it cannot be said that the public respondent acted in capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction or excess thereof. Neither was it shown that the public respondent exercised its power in an arbitrary and despotic manner by reason of passion or personal hostility.

Estoppel not Applicable In the Case at Bar

The respondent Bank argues that the petitioner is estopped from raising the issue of ULP when it signed the new CBA.

Article 1431 of the Civil Code provides:

Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

A person, who by his deed or conduct has induced another to act in a particular manner, is barred from adopting an inconsistent position, attitude or course of conduct that thereby causes loss or injury to another.[58]

In the case, however, the approval of the CBA and the release of signing bonus do not necessarily mean that the Union waived its ULP claim against the Bank during the past negotiations. After all, the conclusion of the CBA was included in the order of the SOLE, while the signing bonus was included in the CBA itself. Moreover, the Union twice filed a motion for reconsideration respecting its ULP charges against the Bank before the SOLE.

The Union Did Not Engage In Blue-Sky Bargaining

We, likewise, do not agree that the Union is guilty of ULP for engaging in blue-sky bargaining or making exaggerated or unreasonable proposals.[59] The Bank failed to show that the economic demands made by the Union were exaggerated or unreasonable. The minutes of the meeting show that the Union based its economic proposals on data of rank and file employees and the prevailing economic benefits received by bank employees from other foreign banks doing business in the Philippines and other branches of the Bank in the Asian region.

In sum, we find that the public respondent did not act with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the questioned order and resolutions. While the approval of the CBA and the release of the signing bonus did not estop the Union from pursuing its claims of ULP against the Bank, we find that the latter did not engage in ULP. We, likewise, hold that the Union is not guilty of ULP.

IN LIGHT OF THE FOREGOING, the October 29, 1993 Order and December 16, 1993 and February 10, 1994 Resolutions of then Secretary of Labor Nieves R. Confesor are **AFFIRMED**. The Petition is hereby **DISMISSED**.

SO ORDERED.

Puno, Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Rollo, pp. 451-464.

[2] The expiration of the CBA is on March 31, 1993.

[3] Rollo, pp. 120-121.

[4] Id. at 122-141.

[5] Sometimes referred to as non-economic provisions.

[6] Uniforms, signing bonus, wages, group insurance, medicine allowance, dental benefits, optical allowance, death assistance, additional ½ month in midyear allowance, additional 2.5% in the teller's guarantee fund; profit-sharing provision, improvements in leave benefits, i.e., maternity, vacation, sick, emergency and union leave; introduction of paternity leave, marriage leave, birthday leave and loyalty leave; extension of the enjoyment of salary increments from 35 to 40 years of service; provision for meal and shift allowances; increase in overtime, weekend, holiday and shift allowances; increase emergency premiums, increase in availments of housing corresponding lowering of interest rates and eligibility requirements, and deletion of the current rules on availment; improvement of gratuities to a maximum of 175% and increase of medical benefits (Rollo, p. 142).

[7] Eddie L. Divinagracia, Rogelio Fernando, Nancy G. Sagum, Rebecca Gabay, Ray Michael Quimpo, Reyel G. Vargas, Cipriano Garcia, Alberto Diaz, Ed De Mesa and Jose P. Umali, Jr.

[8] The Bank's counter-proposal centered on union recognition and scope (appropriate bargaining agreement), union security and check-off (maintenance of membership), new employees, collection of union dues, job security, hiring of next of kin, temporary personnel, redundancies, closure and relocation, management prerogative, uniforms and grievance procedures. With respect to the counter-proposals on all economic provisions, the Bank said that it is open for discussion. (Rollo, p. 144).

[9] Rollo, p. 142.

[10] Pinky Diokno (sometimes referred to as Cielito Diokno), Jose S. Ho, Rene Padlan, Rolando Orbeta, Janet Camarista, Sinforoso Morada and Modesto B. Lim.

[11] Rollo, p. 544.

[12] Id. at 288.

[13] The negotiations for the non-economic provisions were made on March 12, 16, 23, and 30, 1993; April 6, 13, 20, 23 and 28, 1993 and May 4, 1993.

[14] The Union defined "DEADLOCKED" as exhaustion of the three readings; Rollo, p. 269.

[15] Minutes of the Meeting of June 1, 1993; Rollo, p. 277.

[16] Rollo, p. 278.

[17] Minutes of the Meeting of June 8, 1993; Rollo, p. 281.

[18] Rollo, p. 284.

[19] Ibid.

[20] Rollo, pp. 284-285.

[21] Id. at 285.

[22] Id. at 285.

[23] Id.

[24] Id.

[25] Minutes of the Meeting of June 15, 1993; Rollo, p. 286.

[26] Rollo, p. 683.

[27] Blue-Sky Bargaining is defined as “unrealistic and unreasonable demands in negotiations by either or both labor and management, where neither concedes anything and demands the impossible.” It actually is not collective bargaining at all. (Harold S. Roberts, Robert’s Dictionary of Industrial Relations (Revised Edition, 1971, p. 51); Rollo, p. 671.

[28] Rollo, pp. 670-676.

[29] Id. at 463-464.

[30] Id. at 459-460.

[31] 2 SCRA 924 (1961).

[32] Rollo, pp. 562-611.

[33] Id. at 10.

[34] Id. at 23.

[35] Id. at 24.

[36] 280 NLRB No. 80 280 NLRB No. 8

[37] 214 NLRB No. 062.

[38] Section 8.a . It shall be unfair labor practice for an employer-

(1)To interfere with, restrain or coerce employees in the exercise of their rights guaranteed under Section 7;

...

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9. (National Labor Management Act)

Section 7. Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3.)

[39] 37 SCRA 244 (1971).

[40] Section 3. Employees' Right to Self-Organization.- Employees shall have the right to self-organization and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection. Individuals employed as supervisors shall not be eligible for membership in a labor organization of employees under their supervision but may form separate organizations of their own.

...

Section 4. Unfair Labor Practices.-

(a) It shall be unfair labor practice for an employer:

(1) To interfere with, restrain or coerce employees in the exercise of their rights guaranteed in Section three; (Republic Act No. 875)

[41] Referring to Section 3 and 4(a)(1) of the Industrial Peace Act, Republic Act No. 875.

[42] Article 2, ILO Convention No. 87.

[43] Article 3, ILO Convention No. 87.

[44] Section 6, Article XIV of the 1935 Constitution provides:

Sec. 6. The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration.

[45] Section 9, Article II of the 1973 Constitution provides:

Sec. 9. The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration.

[46] Section 18, Article II of the 1987 Constitution provides:

Sec. 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

[47] Section 3, Article XIII on Social Justice and Human Rights reads as follows:

LABOR

Sec. 3. The State shall afford full protection to labor, local and overseas, organized and unorganized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance

therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable return on investments, and to expansion and growth.

[48] Rubberworld (Phils.), Inc. vs. NLRC, 175 SCRA 450 (1989).

[49] Rollo, p. 462.

[50] K-Mart Corporation vs. National Labor Relations Board, 626 F.2d 704 (1980).

[51] Luck Limousine, 312 NLRB 770, 789 (1993).

[52] Queen Mary Restaurants Corp. and Q.M. Foods, Inc. vs. National Labor Relations Board, 560 F.2d 403 (1977).

[53] Eastern Maine Medical Center vs. National Labor Relations Board, 658 F.2d 1 (1981).

[54] National Union of Restaurant Workers (PTUC) vs. Court of Industrial Relations, 10 SCRA 843 (1964).

[55] K-Mart Corporation vs. NLRB, *supra*.

[56] Guerrero vs. Commission on Elections, 336 SCRA 458 (2000).

[57] Santos vs. Commission on Elections, 399 SCRA 611 (2003).

[58] Navarro vs. Second Laguna Development Bank, 398 SCRA 227 (2003).

[59] Arthur A. Sloane and Fred Witney, Labor Relations, 7th Edition 1991, p. 195.

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