

MANILA ELECTRIC COMPANY, PETITIONER, VS. HON. SECRETARY OF LABOR LEONARDO QUISUMBING AND MERALCO EMPLOYEES AND WORKERS ASSOCIATION (MEWA), RESPONDENTS.

G.R. No. 127598. February 22, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

In the Decision promulgated on January 27, 1999, the Court disposed of the case as follows:

"WHEREFORE, the petition is granted and the orders of public respondent Secretary of Labor dated August 19, 1996 and December 28, 1996 are set aside to the extent set forth above. The parties are directed to execute a Collective Bargaining Agreement incorporating the terms and conditions contained in the unaffected portions of the Secretary of Labor's orders of August 19, 1996 and December 28, 1996, and the modifications set forth above. The retirement fund issue is remanded to the Secretary of Labor for reception of evidence and determination of the legal personality of the Meralco retirement fund." [1]

The modifications of the public respondent's resolutions include the following:

January 27, 1999 decision Secretary's resolution

Wages -P1,900.00 for 1995-96 P2,200.00

X'mas bonus -modified to one month 2 months

Retirees -remanded to the Secretary granted

Loan to coops -denied granted

GHSIP, HMP

and Housing loans -granted up to P60,000.00 granted

Signing bonus -denied granted

Union leave -40 days (typo error) 30 days

High voltage/pole -not apply to those members of a team

who are not exposed to the risk

Collectors -no need for cash bond, no need to reduce quota and MAPL

CBU -exclude confidential employees include

Union security -maintenance of membership closed shop

Contracting out -no need to consult union consult first

All benefits -existing terms and conditions all terms

Retroactivity -Dec 28, 1996-Dec 27, 199(9) from Dec 1, 1995

Dissatisfied with the Decision, some alleged members of private respondent union (Union for brevity) filed a motion for intervention and a motion for reconsideration of the said Decision. A separate intervention was likewise made by the supervisor's union (FLAMES[2]) of petitioner corporation alleging that it has bona fide legal interest in the outcome of the case.[3] The Court required the "proper parties" to file a comment to the three motions for reconsideration but the Solicitor-General asked that he be excused from filing the comment because the "petition filed in the instant case was granted" by the Court.[4] Consequently, petitioner filed its own consolidated comment. An "Appeal Seeking Immediate Reconsideration" was also filed by the alleged newly elected president of the Union.[5] Other subsequent pleadings were filed by the parties and intervenors.

The issues raised in the motions for reconsideration had already been passed upon by the Court in the January 27, 1999 decision. No new arguments were presented for consideration of the Court. Nonetheless, certain matters will be considered herein, particularly those involving the amount of wages and the retroactivity of the Collective Bargaining Agreement (CBA) arbitral awards.

Petitioner warns that if the wage increase of P2,200.00 per month as ordered by the Secretary is allowed, it would simply pass the cost covering such increase to the consumers through an increase in the rate of electricity. This is a non sequitur. The Court cannot be threatened with such a misleading argument. An increase in the prices of electric current needs the approval of the appropriate regulatory government agency and does not automatically result from a mere increase in the wages of petitioner's employees. Besides, this argument presupposes that petitioner is capable of meeting a wage increase. The All Asia Capital report upon which the Union relies to support its position regarding the wage issue can not be an accurate basis and conclusive determinant of the rate of wage increase. Section 45 of Rule 130 Rules of Evidence provides:

"Commercial lists and the like. - Evidence of statements of matters of interest to persons engaged in an occupation contained in a list, register, periodical, or other published compilation is admissible as tending to prove the truth of any relevant matter so stated if that compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them therein."

Under the afore-quoted rule, statement of matters contained in a periodical may be admitted only "if that compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them therein." As correctly held in our Decision dated January 27, 1999, the cited report is a mere newspaper account and not even a commercial list. At most, it is but an analysis or opinion which carries no persuasive weight for purposes of this case as no sufficient figures to support it were presented. Neither did anybody testify to its accuracy. It cannot be said that businessmen generally rely on news items such as this in their occupation. Besides, no evidence was presented that the publication was regularly prepared by a person in touch with the market and that it is generally regarded as trustworthy and reliable. Absent extrinsic proof of their accuracy, these reports are not admissible.[6] In the same manner, newspapers containing stock quotations are not admissible in evidence when the source of the reports is available.[7] With more reason, mere analyses or projections of such reports cannot be admitted. In particular, the source of the report in this case can be easily made available considering that the same is necessary for compliance with certain governmental requirements.

Nonetheless, by petitioner's own allegations, its actual total net income for 1996 was P5.1 billion.[8] An estimate by the All Asia financial analyst stated that petitioner's net operating income for the same year was about P5.7 billion, a figure which the Union relies on to support its claim. Assuming without admitting the truth thereof, the

figure is higher than the P4.171 billion allegedly suggested by petitioner as its projected net operating income. The P5.7 billion which was the Secretary's basis for granting the P2,200.00 is higher than the actual net income of P5.1 billion admitted by petitioner. It would be proper then to increase this Court's award of P1,900.00 to P2,000.00 for the two years of the CBA award. For 1992, the agreed CBA wage increase for rank-and-file was P1,400.00 and was reduced to P1,350.00, for 1993; further reduced to P1,150.00 for 1994. For supervisory employees, the agreed wage increase for the years 1992-1994 are P1,742.50, P1,682.50 and P1,442.50, respectively. Based on the foregoing figures, the P2,000.00 increase for the two-year period awarded to the rank-and-file is much higher than the highest increase granted to supervisory employees.[9] As mentioned in the January 27, 1999 Decision, the Court does "not seek to enumerate in this decision the factors that should affect wage determination" because collective bargaining disputes particularly those affecting the national interest and public service "requires due consideration and proper balancing of the interests of the parties to the dispute and of those who might be affected by the dispute." [10] The Court takes judicial notice that the new amounts granted herein are significantly higher than the weighted average salary currently enjoyed by other rank-and-file employees within the community. It should be noted that the relations between labor and capital is impressed with public interest which must yield to the common good.[11] Neither party should act oppressively against the other or impair the interest or convenience of the public.[12] Besides, matters of salary increases are part of management prerogative.[13]

On the retroactivity of the CBA arbitral award, it is well to recall that this petition had its origin in the renegotiation of the parties' 1992-1997 CBA insofar as the last two-year period thereof is concerned. When the Secretary of Labor assumed jurisdiction and granted the arbitral awards, there was no question that these arbitral awards were to be given retroactive effect. However, the parties dispute the reckoning period when retroaction shall commence. Petitioner claims that the award should retroact only from such time that the Secretary of Labor rendered the award, invoking the 1995 decision in *Pier 8 case*[14] where the Court, citing *Union of Filipino Employees v. NLRC*, [15] said:

"The assailed resolution which incorporated the CBA to be signed by the parties was promulgated on June 5, 1989, the expiry date of the past CBA. Based on the provision of Section 253-A, its retroactivity should be agreed upon by the parties. But since no agreement to that effect was made, public respondent did not abuse its discretion in giving the said CBA a prospective effect. The action of the public respondent is within the ambit of its authority vested by existing law."

On the other hand, the Union argues that the award should retroact to such time granted by the Secretary, citing the 1993 decision of *St Luke's*. [16]

"Finally, the effectivity of the Order of January 28, 1991, must retroact to the date of the expiration of the previous CBA, contrary to the position of petitioner. Under the circumstances of the case, Article 253-A cannot be properly applied to herein case. As correctly stated by public respondent in his assailed Order of April 12, 1991 dismissing petitioner's Motion for Reconsideration---

Anent the alleged lack of basis for the retroactivity provisions awarded, we would stress that the provision of law invoked by the Hospital, Article 253-A of the Labor Code, speaks of agreements by and between the parties, and not arbitral awards . . .

"Therefore, in the absence of a specific provision of law prohibiting retroactivity of the effectivity of arbitral awards issued by the Secretary of Labor pursuant to Article 263(g) of the Labor Code, such as herein involved, public respondent is deemed vested with plenary and discretionary powers to determine the effectivity thereof."

In the 1997 case of *Mindanao Terminal*, [17] the Court applied the *St. Luke's* doctrine and ruled that:

"In *St. Luke's Medical Center v. Torres*, a deadlock also developed during the CBA negotiations between

management and the union. The Secretary of Labor assumed jurisdiction and ordered the retroaction of the CBA to the date of expiration of the previous CBA. As in this case, it was alleged that the Secretary of Labor gravely abused its discretion in making his award retroactive. In dismissing this contention this Court held: "Therefore, in the absence of a specific provision of law prohibiting retroactive of the effectivity of arbitral awards issued by the Secretary of Labor pursuant to Article 263(g) of the Labor Code, such as herein involved, public respondent is deemed vested with plenary and discretionary powers to determine the effectivity thereof."

The Court in the January 27, 1999 Decision, stated that the CBA shall be "effective for a period of 2 years counted from December 28, 1996 up to December 27, 1999." Parenthetically, this actually covers a three-year period. Labor laws are silent as to when an arbitral award in a labor dispute where the Secretary had assumed jurisdiction by virtue of Article 263 (g) of the Labor Code shall retroact. In general, a CBA negotiated within six months after the expiration of the existing CBA retroacts to the day immediately following such date and if agreed thereafter, the effectivity depends on the agreement of the parties.[18] On the other hand, the law is silent as to the retroactivity of a CBA arbitral award or that granted not by virtue of the mutual agreement of the parties but by intervention of the government. Despite the silence of the law, the Court rules herein that CBA arbitral awards granted after six months from the expiration of the last CBA shall retroact to such time agreed upon by both employer and the employees or their union. Absent such an agreement as to retroactivity, the award shall retroact to the first day after the six-month period following the expiration of the last day of the CBA should there be one. In the absence of a CBA, the Secretary's determination of the date of retroactivity as part of his discretionary powers over arbitral awards shall control.

It is true that an arbitral award cannot per se be categorized as an agreement voluntarily entered into by the parties because it requires the interference and imposing power of the State thru the Secretary of Labor when he assumes jurisdiction. However, the arbitral award can be considered as an approximation of a collective bargaining agreement which would otherwise have been entered into by the parties.[19] The terms or periods set forth in Article 253-A pertains explicitly to a CBA. But there is nothing that would prevent its application by analogy to an arbitral award by the Secretary considering the absence of an applicable law. Under Article 253-A: "(I)f any such agreement is entered into beyond six months, the parties shall agree on the duration of retroactivity thereof." In other words, the law contemplates retroactivity whether the agreement be entered into before or after the said six-month period. The agreement of the parties need not be categorically stated for their acts may be considered in determining the duration of retroactivity. In this connection, the Court considers the letter of petitioner's Chairman of the Board and its President addressed to their stockholders, which states that the CBA "for the rank-and-file employees covering the period December 1, 1995 to November 30, 1997 is still with the Supreme Court,"[20] as indicative of petitioner's recognition that the CBA award covers the said period. Earlier, petitioner's negotiating panel transmitted to the Union a copy of its proposed CBA covering the same period inclusive.[21] In addition, petitioner does not dispute the allegation that in the past CBA arbitral awards, the Secretary granted retroactivity commencing from the period immediately following the last day of the expired CBA. Thus, by petitioner's own actions, the Court sees no reason to retroact the subject CBA awards to a different date. The period is herein set at two (2) years from December 1, 1995 to November 30, 1997.

On the allegation concerning the grant of loan to a cooperative, there is no merit in the union's claim that it is no different from housing loans granted by the employer. The award of loans for housing is justified because it pertains to a basic necessity of life. It is part of a privilege recognized by the employer and allowed by law. In contrast, providing seed money for the establishment of the employee's cooperative is a matter in which the employer has no business interest or legal obligation. Courts should not be utilized as a tool to compel any person to grant loans to another nor to force parties to undertake an obligation without justification. On the contrary, it is

the government that has the obligation to render financial assistance to cooperatives and the Cooperative Code does not make it an obligation of the employer or any private individual.[22]

Anent the 40-day union leave, the Court finds that the same is a typographical error. In order to avoid any confusion, it is herein declared that the union leave is only thirty (30) days as granted by the Secretary of Labor and affirmed in the Decision of this Court.

The added requirement of consultation imposed by the Secretary in cases of contracting out for six (6) months or more has been rejected by the Court. Suffice it to say that the employer is allowed to contract out services for six months or more. However, a line must be drawn between management prerogatives regarding business operations per se and those which affect the rights of employees, and in treating the latter, the employer should see to it that its employees are at least properly informed of its decision or modes of action in order to attain a harmonious labor-management relationship and enlighten the workers concerning their rights.[23] Hiring of workers is within the employer's inherent freedom to regulate and is a valid exercise of its management prerogative subject only to special laws and agreements on the matter and the fair standards of justice.[24] The management cannot be denied the faculty of promoting efficiency and attaining economy by a study of what units are essential for its operation. It has the ultimate determination of whether services should be performed by its personnel or contracted to outside agencies. While there should be mutual consultation, eventually deference is to be paid to what management decides.[25] Contracting out of services is an exercise of business judgment or management prerogative.[26] Absent proof that management acted in a malicious or arbitrary manner, the Court will not interfere with the exercise of judgment by an employer.[27] As mentioned in the January 27, 1999 Decision, the law already sufficiently regulates this matter.[28] Jurisprudence also provides adequate limitations, such that the employer must be motivated by good faith and the contracting out should not be resorted to circumvent the law or must not have been the result of malicious or arbitrary actions.[29] These are matters that may be categorically determined only when an actual suit on the matter arises.

WHEREFORE, the motion for reconsideration is **PARTIALLY GRANTED** and the assailed Decision is **MODIFIED** as follows: (1) the arbitral award shall retroact from December 1, 1995 to November 30, 1997; and (2) the award of wage is increased from the original amount of One Thousand Nine Hundred Pesos (P1,900.00) to Two Thousand Pesos (P2,000.00) for the years 1995 and 1996. This Resolution is subject to the monetary advances granted by petitioner to its rank-and-file employees during the pendency of this case assuming such advances had actually been distributed to them. The assailed Decision is **AFFIRMED** in all other respects.

SO ORDERED.

Davide, Jr., C.J., Melo, Kapunan, and Pardo, JJ., concur.

[1] Decision promulgated January 27, 1999, G. R. No. 127598 penned by Justice Antonio Martinez (now retired) with Chief Justice Hilario Davide, Jr. and Justices Jose Melo, Santiago Kapunan and Bernardo Pardo, concurring.

[2] First Line Association of Meralco Supervisory Employees.

[3] Motion for Leave to Intervene and to treat this as Movant's Intervention filed by FLAMES, p. 4; Rollo, p. 2476.

[4] Solicitor-General's Manifestation and Motion dated August 10, 1999, p. 2; Rollo, p. 2506.

[5] Rollo, p. 2495.

[6] 20 Am. Jur. 819.

[7] 20 Am. Jr. 819-820.

[8] Petitioner's Comment to Motions for Reconsideration and Motion for Intervention, p. 6; Rollo, p. 2514.

[9] See the January 27, 1999 Decision.

[10] Manila Electric Company v. Quisumbing, 302 SCRA 173, 196 (1999).

[11] Article 1700, New Civil Code (NCC).

[12] Article 1701, NCC.

[13] See National Federation of Labor Unions v. NLRC, 202 SCRA 346 (1991).

[14] Pier 8 Arrastre and Stevedoring Services, Inc. v. Roldan-Confesor, (2nd Div), 311 Phil. 311 penned by Justice Puno with Chief Justice Narvasa (ret.) and Justices Bidin (ret.), Regalado (ret.) and Mendoza, concurring, p. 329.

[15] 192 SCRA 414 (1990).

[16] St. Luke's Medical Center v. Torres, (3rd Div), 223 SCRA 779 (1993), penned by Justice Melo with Justices Feliciano (ret.), Bidin (ret.), Davide (now Chief Justice) and Romero (ret.), concurring, pp. 792-793.

[17] In Mindanao Terminal and Brokerage Service, Inc. v. Confesor, (2nd Div), 338 Phil. 671 penned by Justice Mendoza with Justices Regalado (ret.), Romero, (ret.), Puno and Torres (ret.), concurring, p. 679.

[18] Article 253-A, Labor Code, as amended..

[19] Mindanao Terminal and Brokerage Service, Inc. v. Confesor, 338 Phil. 671.

[20] Rollo, p. 2347.

[21] Annex "C" of the Petition.

[22] See Section 2, R.A. No. 6838 (Cooperative Code of the Philippines) which provides: "It is the declared policy of the State to foster the creation and growth of cooperative as a practical vehicle for promoting self-reliance and harnessing people power towards the attainment of economic development and social justice. The State shall encourage the private sector to undertake the actual formation of cooperatives and shall create an atmosphere that is conducive to the organizational growth and development of the cooperatives.

Towards this end, the Government and all its branches, subsidiaries, instrumentalities, and agencies shall ensure the provision of technical guidelines, financial assistance, and other services to enable said cooperative to development into viable and responsive economic enterprises and thereby bring about a strong cooperative movement that is free from any conditions that might infringe upon the autonomy or organizational integrity of cooperatives.

[23] Philippine Airlines v. NLRC, 225 SCRA 259 (1993).

[24] Tierra International Construction Corporation v. NLRC, 256 SCRA 36 (1996); Business Day Information Systems v. NLRC, 221 SCRA 9 (1993); Philtread Tire v. NLRC, 218 SCRA 805 (1993); San Miguel Corporation v. Ubaldo, 218 SCRA 293 (1993); San Miguel Brewery Sales Force Union v. Ople, 170 SCRA 25 (1989).

[25] Shell Oil Workers Union v. Shell Company of the Philippines, Ltd., 39 SCRA 276 (1971).

[26] De Ocampo v. NLRC, 213 SCRA 652 (1992).

[27] Asian Alcohol Corporation v. NLRC, G.R. No. 131108, March 25, 1999 cited in Serrano v. NLRC, G.R. No. 117040, January 27, 2000.

[28] See also Metrolab Industries v. Roldan-Confesor, 254 SCRA 182 (1996).

[29] Manila Electric Company v. Quisumbing, 302 SCRA 173, 196 (1999) citing De Ocampo v. NLRC, 213 SCRA 652 (1992).

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