

BANKARD EMPLOYEES UNION-WORKERS ALLIANCE TRADE UNIONS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND BANKARD, INC., RESPONDENTS.

G.R. No. 140689. February 17, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The present Petition for Review on Certiorari under Rule 45 of the Rules of Court raises the issue of whether the unilateral adoption by an employer of an upgraded salary scale that increased the hiring rates of new employees without increasing the salary rates of old employees resulted in wage distortion within the contemplation of Article 124 of the Labor Code.

Bankard, Inc. (Bankard) classifies its employees by levels, to wit: Level I, Level II, Level III, Level IV, and Level V. On May 28, 1993, its Board of Directors approved a “New Salary Scale”, made retroactive to April 1, 1993, for the purpose of making its hiring rate competitive in the industry’s labor market. The “New Salary Scale” increased the hiring rates of new employees, to wit: Levels I and V by one thousand pesos (P1,000.00), and Levels II, III and IV by nine hundred pesos (P900.00). Accordingly, the salaries of employees who fell below the new minimum rates were also adjusted to reach such rates under their levels.

Bankard’s move drew the Bankard Employees Union-WATU (petitioner), the duly certified exclusive bargaining agent of the regular rank and file employees of Bankard, to press for the increase in the salary of its old, regular employees.

Bankard took the position, however, that there was no obligation on the part of the management to grant to all its employees the same increase in an across-the-board manner.

As the continued request of petitioner for increase in the wages and salaries of Bankard’s regular employees remained unheeded, it filed a Notice of Strike on August 26, 1993 on the ground of discrimination and other acts of Unfair Labor Practice (ULP).

A director of the National Conciliation and Mediation Board treated the Notice of Strike as a “Preventive Mediation Case” based on a finding that the issues therein were “not strikeable”.

Petitioner filed another Notice of Strike on October 8, 1993 on the grounds of refusal to bargain, discrimination, and other acts of ULP -union busting. The strike was averted, however, when the dispute was certified by the Secretary of Labor and Employment for compulsory arbitration.

The Second Division of the NLRC, by Order of May 31, 1995, finding no wage distortion, dismissed the case for lack of merit.

Petitioner’s motion for reconsideration of the dismissal of the case was, by Resolution of July 28, 1995, denied.

Petitioner thereupon filed a petition for certiorari before this Court, docketed as G.R. 121970. In accordance with

its ruling in *St. Martin Funeral Homes v. NLRC*,^[1] the petition was referred to the Court of Appeals which, by October 28, 1999, denied the same for lack of merit.

Hence, the present petition which faults the appellate court as follows:

- (1) It misapprehended the basic issues when it concluded that under Bankard's new wage structure, the old salary gaps between the different classification or level of employees were "still reflected" by the adjusted salary rates^[2]; and
- (2) It erred in concluding that "wage distortion does not appear to exist", which conclusion is manifestly contrary to law and jurisprudence.^[3]

Upon the enactment of R.A. No. 6727 (WAGE RATIONALIZATION ACT, amending, among others, Article 124 of the Labor Code) on June 9, 1989, the term "wage distortion" was explicitly defined as:

... 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.^[4]

Prubankers Association v. Prudential Bank and Trust Company^[5] laid down the four elements of wage distortion, to wit: (1.) An existing hierarchy of positions with corresponding salary rates; (2) A significant change in the salary rate of a lower pay class without a concomitant increase in the salary rate of a higher one; (3) The elimination of the distinction between the two levels; and (4) The existence of the distortion in the same region of the country.

Normally, a company has a wage structure or method of determining the wages of its employees. In a problem dealing with "wage distortion," the basic assumption is that there exists a grouping or classification of employees that establishes distinctions among them on some relevant or legitimate bases.^[6]

Involved in the classification of employees are various factors such as the degrees of responsibility, the skills and knowledge required, the complexity of the job, or other logical basis of differentiation. The differing wage rate for each of the existing classes of employees reflects this classification.

Petitioner maintains that for purposes of wage distortion, the classification is not one based on "levels" or "ranks" but on two groups of employees, the newly hired and the old, in each and every level, and not between and among the different levels or ranks in the salary structure.

Public respondent National Labor Relations Commission (NLRC) refutes petitioner's position, however. It, through the Office of the Solicitor General, essays in its Comment of April 12, 2000 as follows:

To determine the existence of wage distortion, the "historical" classification of the employees prior to the wage increase must be established. Likewise, it must be shown that as between the different classification of employees, there exists a "historical" gap or difference.

x x x

The classification preferred by petitioner is belied by the wage structure of private respondent as shown in the new salary scale it adopted on May 28, 1993, retroactive to April 1, 1993, which provides, thus:

Hiring

Minimum

Maximum

Level

From

To

From

To

From

To

I

3,100

4,100

3,200

4,200

7,200

9,250

II

3,200

4,100

3,300

4,200

7,500

9,500

III

3,300

4,200

3,400

4,300

8,000

10,000

IV

3,500

4,400

3,600

4,500

8,500

10,500

V

3,700

4,700

3,800

4,800

9,000

11,000

Thus the employees of private respondent have been “historically” classified into levels, i.e. I to V, and not on the basis of their length of service. Put differently, the entry of new employees to the company ipso facto place[s] them under any of the levels mentioned in the new salary scale which private respondent adopted retroactive [to] April 1, 1993. Petitioner cannot make a contrary classification of private respondent’s employees without encroaching upon recognized management prerogative of formulating a wage structure, in this case, one based on level.[7] (Emphasis and underscoring supplied)

The issue of whether wage distortion exists being a question of fact that is within the jurisdiction of quasi-judicial tribunals,[8] and it being a basic rule that findings of facts of quasi-judicial agencies, like the NLRC, are generally accorded not only respect but at times even finality if they are supported by substantial evidence, as are the findings in the case at bar, they must be respected. For these agencies have acquired expertise, their jurisdiction being confined to specific matters.[9]

It is thus clear that there is no hierarchy of positions between the newly hired and regular employees of Bankard, hence, the first element of wage distortion provided in Prubankers is wanting.

While seniority may be a factor in determining the wages of employees, it cannot be made the sole basis in cases where the nature of their work differs.

Moreover, for purposes of determining the existence of wage distortion, employees cannot create their own independent classification and use it as a basis to demand an across-the-board increase in salary.

As *National Federation of Labor v. NLRC, et al.*[10] teaches, the formulation of a wage structure through the classification of employees is a matter of management judgment and discretion.

[W]hether or not a new 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 of 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.”[11] (Emphasis and underscoring supplied)

As did the Court of Appeals, this Court finds that the third element provided in Prubankers is also wanting. For, as

the appellate court explained:

In trying to prove wage distortion, petitioner union presented a list of five (5) employees allegedly affected by the said increase: no

Pay of Old/Regular Employees

Pay of Newly Hired Employees

Difference

A. Prior to April 1, 1993

Level I P4,518.75 (Sammy Guce)

P3,100

P1,418.75

Level II P6,242.00 (Nazario Abello)

P3,200

P3,042.00

Level III P4,850.00 (Arthur Chavez)

P3,300

P1,550.00

Level IV P5,339.00 (Melissa Cordero)

P3,500

P1,839.00

Level V P7,090.69 (Ma. Lourdes Dee)

P3,700

P3,390.69

B. Effective April 1, 1993

Level I P4,518.75 (Sammy Guce)

P4,100

P418.75

Level II P6,242.00 (Nazario Abello)

P4,100

P2,142.00

Level IIP4,850.00 (Arthur Chavez)

P4,200

P650.00

Level IVP5,330.00 (Melissa Cordero)

P4,400

P939.00

Level VP7,090.69 (Ma. Lourdes Dee)

P4,700

P2,390.69

Even assuming that there is a decrease in the wage gap between the pay of the old employees and the newly hired employees, to Our mind said gap is not significant as to obliterate or result in severe contraction of the intentional quantitative differences in the salary rates between the employee group. As already stated, the classification under the wage structure is based on the rank of an employee, not on seniority. For this reason, ,wage distortion does not appear to exist.[12] (Emphasis and underscoring supplied)

Apart from the findings of fact of the NLRC and the Court of Appeals that some of the elements of wage distortion are absent, petitioner cannot legally obligate Bankard to correct the alleged “wage distortion” as the increase in the wages and salaries of the newly-hired was not due to a prescribed law or wage order.

The wordings of Article 124 are clear. If it was the intention of the legislators to cover all kinds of wage adjustments, then the language of the law should have been broad, not restrictive as it is currently phrased:

Article 124. Standards/Criteria for Minimum Wage Fixing.

x x x

Where the application of any prescribed wage increase by virtue of a law or Wage Order issued by any Regional Board results in distortions of the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions. Any dispute arising from the wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration.

x x x (Italics and emphasis supplied)

Article 124 is entitled “Standards/Criteria for Minimum Wage Fixing.” It is found in CHAPTER V on “WAGE STUDIES, WAGE AGREEMENTS AND WAGE DETERMINATION” which principally deals with the fixing of minimum wage. Article 124 should thus be construed and correlated in relation to minimum wage fixing, the intention of the law being that in the event of an increase in minimum wage, the distinctions embodied in the wage structure based on skills, length of service, or other logical bases of differentiation will be preserved.

If the compulsory mandate under Article 124 to correct “wage distortion” is applied to voluntary and unilateral increases by the employer in fixing hiring rates which is inherently a business judgment prerogative, then the hands of the employer would be completely tied even in cases where an increase in wages of a particular group is justified due to a re-evaluation of the high productivity of a particular group, or as in the present case, the need to increase the competitiveness of Bankard’s hiring rate. An employer would be discouraged from adjusting the salary rates of a particular group of employees for fear that it would result to a demand by all employees for a

similar increase, especially if the financial conditions of the business cannot address an across-the-board increase.

Petitioner cites *Metro Transit Organization, Inc. v. NLRC*[13] to support its claim that the obligation to rectify wage distortion is not confined to wage distortion resulting from government decreed law or wage order.

Reliance on *Metro Transit* is however misplaced, as the obligation therein to rectify the wage distortion was not by virtue of Article 124 of the Labor Code, but on account of a then existing “company practice” that whenever rank-and-file employees were paid a statutorily mandated salary increase, supervisory employees were, as a matter of practice, also paid the same amount plus an added premium. Thus this Court held in said case:

We conclude that the supervisory employees, who then (i.e., on April 17, 1989) had, unlike the rank-and-file employees, no CBA governing the terms and conditions of their employment, had the right to rely on the company practice of unilaterally correcting the wage distortion effects of a salary increase given to the rank-and-file employees, by giving the supervisory employees a corresponding salary increase plus a premium. . . [14] (Emphasis supplied)

Wage distortion is a factual and economic condition that may be brought about by different causes. In *Metro Transit*, the reduction or elimination of the normal differential between the wage rates of rank-and-file and those of supervisory employees was due to the granting to the former of wage increase which was, however, denied to the latter group of employees.

The mere factual existence of wage distortion does not, however, ipso facto result to an obligation to rectify it, absent a law or other source of obligation which requires its rectification.

Unlike in *Metro Transit* then where there existed a “company practice,” no such management practice is herein alleged to obligate Bankard to provide an across-the-board increase to all its regular employees.

Bankard’s right to increase its hiring rate, to establish minimum salaries for specific jobs, and to adjust the rates of employees affected thereby is embodied under Section 2, Article V (Salary and Cost of Living Allowance) of the parties’ Collective Bargaining Agreement (CBA), to wit:

Section 2. Any salary increase granted under this Article shall be without prejudice to the right of the Company to establish such minimum salaries as it may hereafter find appropriate for specific jobs, and to adjust the rates of the employees thereby affected to such minimum salaries thus established.[15] (Italics and underscoring supplied)

This CBA provision, which is based on legitimate business-judgment prerogatives of the employer, is a valid and legally enforceable source of rights between the parties.

In fine, absent any indication that the voluntary increase of salary rates by an employer was done arbitrarily and illegally for the purpose of circumventing the laws or was devoid of any legitimate purpose other than to discriminate against the regular employees, this Court will not step in to interfere with this management prerogative. Employees are of course not precluded from negotiating with its employer and lobby for wage increases through appropriate channels, such as through a CBA.

This Court, time and again, has shown concern and compassion to the plight of workers in adherence to the Constitutional provisions on social justice and has always upheld the right of workers to press for better terms and conditions of employment. It does not mean, however, that every dispute should be decided in favor of labor, for employers correspondingly have rights under the law which need to be respected.

WHEREFORE, the present petition is hereby DENIED.

SO ORDERED.

Vitug, (Chairman), Sandoval-Gutierrez, and Corona, JJ., concur.

[1] St. Martin Funeral Homes v. NLRC, 295 SCRA 494 (1998).

[2] Rollo at 25.

[3] Id. at 27.

[4] Article 124 “Standards/Criteria for Minimum Wage Fixing,” P.D. 442 otherwise known as the “Labor Code of the Philippines.”

[5] Prubankers Association v. Prudential Bank and Trust Company, 302 SCRA 74 (1999).

[6] National Federation of Labor v. NLRC, et al., 234 SCRA 311 (1994).

[7] Rollo at 115.

[8] Samahang Manggagawa sa Top Form v. NLRC, 295 SCRA 171 (1998).

[9] Associated Labor Unions-TUCP v. NLRC, 235 SCRA 395 (1994).

[10] National Federation of Labor v. NLRC, et al., 234 SCRA 311 (1994)

[11] Supra at 324.

[12] Rollo at 14 to 15.

[13] Metro Transit Organization, Inc. v. NLRC, 245 SCRA 767 (1995).

[14] Supra at 775 and 776.

[15] Rollo at 165.

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