

JERRY E. ACEDERA, ANTONIO PARILLA, AND OTHERS LISTED IN ANNEX “A,” PETITIONERS-APPELLANTS, VS. INTERNATIONAL CONTAINER TERMINAL SERVICES, INC. (ICTSI), NATIONAL LABOR RELATIONS ...

G.R. No. 146073. January 13, 2003

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

For consideration is the petition for review on certiorari assailing the decision of the Court of Appeals affirming that of the National Labor Relations Commission (NLRC) which affirmed the decision of the Labor Arbiter denying herein petitioners-appellants' Complaint-in-Intervention with Motion for Intervention.

The antecedent facts are as follows:

Petitioners-appellants Jerry Acedera, et al. are employees of herein private respondent International Container Terminal Services, Inc. (ICTSI) and are officers/members of Associated Port Checkers & Workers Union-International Container Terminal Services, Inc. Local Chapter (APCWU-ICTSI), a labor organization duly registered as a local affiliate of the Associated Port Checkers & Workers Union (APCWU).

When ICTSI started its operations in 1988, it determined the rate of pay of its employees by using 304 days, the number of days of work of the employees in a year, as divisor.[2]

On September 28, 1990, ICTSI entered into its first Collective Bargaining Agreement (CBA) with APCWU with a term of five years effective until September 28, 1995.[3] The CBA was renegotiated and thereafter renewed through a second CBA that took effect on September 29, 1995, effective for another five years.[4] Both CBAs contained an identically-worded provision on hours and days of work reading:

Article IX

Regular Hours of Work and Days of Labor

Section 1. The regular working days in a week shall be five (5) days on any day from Monday to Sunday, as may be scheduled by the COMPANY, upon seven (7) days prior notice unless any of this day is declared a special holiday.[5] (Underscoring omitted)

In accordance with the above-quoted provision of the CBA, the employees' work week was reduced to five days or a total of 250 days a year. ICTSI, however, continued using the 304-day divisor in computing the wages of the employees.[6]

On November 10, 1990, the Regional Tripartite Wage and Productivity Board (RTWPB) in the National Capital Region decreed a P17.00 daily wage increase for all workers and employees receiving P125.00 per day or lower in the National Capital Region.[7] The then president of APCWU, together with some union members, thus requested the ICTSI's Human Resource Department/Personnel Manager to compute the actual monthly increase

in the employees' wages by multiplying the RTWPB mandated increase by 365 days and dividing the product by 12 months.[8]

Heeding the proposal and following the implementation of the new wage order, ICTSI stopped using 304 days as divisor and started using 365 days in determining the daily wage of its employees and other consequential compensation, even if the employees' work week consisted of only five days as agreed upon in the CBA.[9]

In early 1997, ICTSI went on a retrenchment program and laid off its on-call employees.[10] This prompted the APCWU-ICTSI to file a notice of strike which included as cause of action not only the retrenchment of the employees but also ICTSI's use of 365 days as divisor in the computation of wages.[11] The dispute respecting the retrenchment was resolved by a compromise settlement[12] while that respecting the computation of wages was referred to the Labor Arbiter.[13]

On February 26, 1997, APCWU, on behalf of its members and other employees similarly situated, filed with the Labor Arbiter a complaint against ICTSI which was dismissed for APCWU's failure to file its position paper.[14] Upon the demand of herein petitioners-appellants, APCWU filed a motion to revive the case which was granted. APCWU thereupon filed its position paper on August 22, 1997.[15]

On December 8, 1997, petitioners-appellants filed with the Labor Arbiter a Complaint-in-Intervention with Motion to Intervene.[16] In the petition at bar, they justified their move to intervene in this wise:

[S]hould the union succeed in prosecuting the case and in getting a favorable reward it is actually they that would benefit from the decision. On the other hand, should the union fail to prove its case, or to prosecute the case diligently, the individual workers or members of the union would suffer great and immeasurable loss. ... [t]hey wanted to insure by their intervention that the case would thereafter be prosecuted with all due diligence and would not again be dismissed for lack of interest to prosecute on the part of the union.[17]

The Labor Arbiter rendered a decision, the dispositive portion of which reads:

WHEREFORE, decision is hereby rendered declaring that the correct divisor in computing the daily wage and other labor standard benefits of the employees of respondent ICTSI who are members of complainant Union as well as the other employees similarly situated is two hundred fifty (250) days such that said respondent is hereby ordered to pay the employees concerned the differentials representing the underpayment of said salaries and other benefits reckoned three (3) years back from February 26, 1997, the date of filing of this complaint or computed from February 27 1994 until paid, but for purposes of appeal, the salary differentials are temporarily computed for one year in the amount of Four Hundred Sixty Eight Thousand Forty Pesos (P468,040.00).[18]

In the same decision, the Labor Arbiter denied petitioners-appellants' Complaint-in-Intervention with Motion for Intervention upon a finding that they are already well represented by APCWU.[19]

On appeal, the NLRC reversed the decision of the Labor Arbiter and dismissed APCWU's complaint for lack of merit.[20] The denial of petitioners-appellants' intervention was, however, affirmed.[21]

Unsatisfied with the decision of the NLRC, APCWU filed a petition for certiorari with the Court of Appeals while petitioners-appellants filed theirs with this Court which referred the petition[22] to the Court of Appeals.

The Court of Appeals dismissed APCWU's petition on the following grounds: failure to allege when its motion for reconsideration of the NLRC decision was filed, failure to attach the necessary appendices to the petition, and failure to file its motion for extension to file its petition within the reglementary period.[23]

As for petitioners-appellants' petition for certiorari, it was dismissed by the Court of Appeals in this wise:

It is clear from the records that herein petitioners, claiming to be employees of respondent ICTSI, are already

well represented by its employees union, APCWU, in the petition before this Court (CA-G.R. SP. No. 53266) although the same has been dismissed. The present petition is, therefore a superfluity that deserves to be dismissed. Furthermore, only Acedera signed the Certificate of non-forum shopping. On this score alone, this petition should likewise be dismissed. We find that the same has no merit considering that herein petitioners have not presented any meritorious argument that would justify the reversal of the Decision of the NLRC.

Article IX of the CBA provides:

Regular Hours of Work and Days of Labor

“Section 1. The regular working days in a week shall be five (5) days on any day from Monday to Sunday, as may be scheduled by the COMPANY, upon seven (7) days prior notice unless any of this day is declared a special holiday.”

This provision categorically states the required number of working days an employee is expected to work for a week. It does not, however, indicate the manner in which an employee’s salary is to be computed. In fact, nothing in the CBA makes any referral to any divisor which should be the basis for determining the salary. The NLRC, therefore, correctly ruled that” xxx the absence of any express or specific provision in the CBA that 250 days should be used as divisor altogether makes the position of the Union untenable.”

x x x

Considering that herein petitioners themselves requested that 365 days be used as the divisor in computing their wage increase and later did not raise or object to the same during the negotiations of the new CBA, they are clearly estopped to now complain of such computation only because they no longer benefit from it. Indeed, the 365 divisor for the past seven (7) years has already become practice and law between the company and its employees.[24] (Emphasis supplied)

x x x

Hence, the present petition of petitioners-appellants who fault the Court of Appeals as follows:

I

... IN REJECTING THE CBA OF THE PARTIES AS THE SOURCE OF THE DIVISOR TO DETERMINE THE WORKERS’ DAILY RATE TOTALLY DISREGARDED THE APPLICABLE LANDMARK DECISIONS OF THE HONORABLE SUPREME COURT ON THE MATTER.

II

... [IN] DISREGARD[ING] APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT RULED THAT THE PETITIONERS-APPELLANTS ARE ALREADY IN ESTOPPEL.

III

... IN RULING THAT THE PETITIONERS-APPELLANTS HAVE NO LEGAL RIGHT TO INTERVENE IN AND PURSUE THIS CASE AND THAT THEIR INTERVENTION IS A SUPERFLUITY.

IV

... IN HOLDING, ALTHOUGH MERELY AS AN OBITER DICTUM, THAT ONLY PETITIONER JERRY ACEDERA SIGNED THE CERTIFICATE OF NON-FORUM SHOPPING.[25]

The third assigned error respecting petitioners-appellants’ right to intervene shall first be passed upon, it being determinative of their right to raise the other assigned errors.

Petitioners-appellants anchor their right to intervene on Rule 19 of the 1997 Rules of Civil Procedure, Section 1 of which reads:

Section 1. Who may intervene.- A person who has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's right may be fully protected in a separate proceeding.

They stress that they have complied with the requisites for intervention because (1) they are the ones who stand to gain or lose by the direct legal operation and effect of any judgment that may be rendered in this case, (2) no undue delay or prejudice would result from their intervention since their Complaint-in-Intervention with Motion for Intervention was filed while the Labor Arbiter was still hearing the case and before any decision thereon was rendered, and (3) it was not possible for them to file a separate case as they would be guilty of forum shopping because the only forum available for them was the Labor Arbiter.[26]

Petitioners-appellants, however, failed to consider, in addition to the rule on intervention, the rule on representation, thusly:

Sec. 3. Representatives as parties.- Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. . . [27] (Emphasis supplied)

A labor union is one such party authorized to represent its members under Article 242(a) of the Labor Code which provides that a union may act as the representative of its members for the purpose of collective bargaining. This authority includes the power to represent its members for the purpose of enforcing the provisions of the CBA. That APCWU acted in a representative capacity "for and in behalf of its Union members and other employees similarly situated," the title of the case filed by it at the Labor Arbiter's Office so expressly states.

While a party acting in a representative capacity, such as a union, may be permitted to intervene in a case, ordinarily, a person whose interests are already represented will not be permitted to do the same[28] except when there is a suggestion of fraud or collusion or that the representative will not act in good faith for the protection of all interests represented by him.[29]

Petitioners-appellants cite the dismissal of the case filed by ICTSI, first by the Labor Arbiter, and later by the Court of Appeals.[30] The dismissal of the case does not, however, by itself show the existence of fraud or collusion or a lack of good faith on the part of APCWU. There must be clear and convincing evidence of fraud or collusion or lack of good faith independently of the dismissal. This, petitioners-appellants failed to proffer.

Petitioners-appellants likewise express their fear that APCWU would not prosecute the case diligently because of its "sweetheart relationship" with ICTSI.[31] There is nothing on record, however, to support this alleged relationship which allegation surfaces as a mere afterthought because it was never raised early on. It was raised only in petitioners-appellants' reply to ICTSI's comment in the petition at bar, the last pleading submitted to this Court, which was filed on June 20, 2001 or more than 42 months after petitioners-appellants filed their Complaint-in-Intervention with Motion to Intervene with the Labor Arbiter.

To reiterate, for a member of a class to be permitted to intervene in a representative action, fraud or collusion or lack of good faith on the part of the representative must be proven. It must be based on facts borne on record. Mere assertions, as what petitioners-appellants proffer, do not suffice.

The foregoing discussion leaves it unnecessary to discuss the other assigned errors.

WHEREFORE, the present petition is hereby denied.

SO ORDERED.

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

[1] Annex “A” to the petition lists 858 other petitioners.

[2] Rollo, p. 30.

[3] Id. at 31.

[4] Id. at 75.

[5] Id. at 31.

[6] Ibid.

[7] Wage Order Nos. NCR-01 and NCR-01-A.

[8] Rollo, p. 31-32.

[9] Id. at 32.

[10] Id. at 33.

[11] Ibid.

[12] Dated March 19, 1997; CA Rollo, pp. 106-108.

[13] Rollo, p. 34.

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] Id. at 35, 105-106.

[19] Id. at 35, 106.

[20] Id. at 35, 96.

[21] Id. at 96.

[22] CA G. R. No. 53266.

[23] Rollo, p. 176.

[24] Id. at 78-80.

[25] Id. at 37-38.

[26] Id. at 175-176.

[27] Rule 3, Rules of Court.

[28] 67A C.J.S. Parties 76.

[29] State ex rel. Kiser, Cohn & Shumaker, Inc. v Sammons et al., 57 N.E.2d. 587, 589-590 (1944).

[30] Rollo, p. 176.

[31] Id. at 174.

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