GENERAL MILLING CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS, GENERAL MILLING CORPORATION INDEPENDENT LABOR UNION (GMC-ILU), AND RITO MANGUBAT, RESPONDENTS.

G.R. No. 146728. February 11, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for certiorari assailing the decision[1] dated July 19, 2000, of the Court of Appeals in CA-G.R. SP No. 50383, which earlier reversed the decision[2] dated January 30, 1998 of the National Labor Relations Commission (NLRC) in NLRC Case No. V-0112-94.

The antecedent facts are as follows:

In its two plants located at Cebu City and Lapu-Lapu City, petitioner General Milling Corporation (GMC) employed 190 workers. They were all members of private respondent General Milling Corporation Independent Labor Union (union, for brevity), a duly certified bargaining agent.

On April 28, 1989, GMC and the union concluded a collective bargaining agreement (CBA) which included the issue of representation effective for a term of three years. The CBA was effective for three years retroactive to December 1, 1988. Hence, it would expire on November 30, 1991.

On November 29, 1991, a day before the expiration of the CBA, the union sent GMC a proposed CBA, with a request that a counter-proposal be submitted within ten (10) days.

As early as October 1991, however, GMC had received collective and individual letters from workers who stated that they had withdrawn from their union membership, on grounds of religious affiliation and personal differences. Believing that the union no longer had standing to negotiate a CBA, GMC did not send any counter-proposal.

On December 16, 1991, GMC wrote a letter to the union's officers, Rito Mangubat and Victor Lastimoso. The letter stated that it felt there was no basis to negotiate with a union which no longer existed, but that management was nonetheless always willing to dialogue with them on matters of common concern and was open to suggestions on how the company may improve its operations.

In answer, the union officers wrote a letter dated December 19, 1991 disclaiming any massive disaffiliation or resignation from the union and submitted a manifesto, signed by its members, stating that they had not withdrawn from the union.

On January 13, 1992, GMC dismissed Marcia Tumbiga, a union member, on the ground of incompetence. The union protested and requested GMC to submit the matter to the grievance procedure provided in the CBA. GMC, however, advised the union to "refer to our letter dated December 16, 1991."[3]

Thus, the union filed, on July 2, 1992, a complaint against GMC with the NLRC, Arbitration Division, Cebu City.

The complaint alleged unfair labor practice on the part of GMC for: (1) refusal to bargain collectively; (2) interference with the right to self-organization; and (3) discrimination. The labor arbiter dismissed the case with the recommendation that a petition for certification election be held to determine if the union still enjoyed the support of the workers.

The union appealed to the NLRC.

On January 30, 1998, the NLRC set aside the labor arbiter's decision. Citing Article 253-A of the Labor Code, as amended by Rep. Act No. 6715,[4] which fixed the terms of a collective bargaining agreement, the NLRC ordered GMC to abide by the CBA draft that the union proposed for a period of two (2) years beginning December 1, 1991, the date when the original CBA ended, to November 30, 1993. The NLRC also ordered GMC to pay the attorney's fees.[5]

In its decision, the NLRC pointed out that upon the effectivity of Rep. Act No. 6715, the duration of a CBA, insofar as the representation aspect is concerned, is five (5) years which, in the case of GMC-Independent Labor Union was from December 1, 1988 to November 30, 1993. All other provisions of the CBA are to be renegotiated not later than three (3) years after its execution. Thus, the NLRC held that respondent union remained as the exclusive bargaining agent with the right to renegotiate the economic provisions of the CBA. Consequently, it was unfair labor practice for GMC not to enter into negotiation with the union.

The NLRC likewise held that the individual letters of withdrawal from the union submitted by 13 of its members from February to June 1993 confirmed the pressure exerted by GMC on its employees to resign from the union. Thus, the NLRC also found GMC guilty of unfair labor practice for interfering with the right of its employees to self-organization.

With respect to the union's claim of discrimination, the NLRC found the claim unsupported by substantial evidence.

On GMC's motion for reconsideration, the NLRC set aside its decision of January 30, 1998, through a resolution dated October 6, 1998. It found GMC's doubts as to the status of the union justified and the allegation of coercion exerted by GMC on the union's members to resign unfounded. Hence, the union filed a petition for certiorari before the Court of Appeals. For failure of the union to attach the required copies of pleadings and other documents and material portions of the record to support the allegations in its petition, the CA dismissed the petition on February 9, 1999. The same petition was subsequently filed by the union, this time with the necessary documents. In its resolution dated April 26, 1999, the appellate court treated the refiled petition as a motion for reconsideration and gave the petition due course.

On July 19, 2000, the appellate court rendered a decision the dispositive portion of which reads:

> WHEREFORE, the petition is hereby GRANTED. The NLRC Resolution of October 6, 1998 is hereby SET ASIDE, and its decision of January 30, 1998 is, except with respect to the award of attorney's fees which is hereby deleted, REINSTATED.[6]

A motion for reconsideration was seasonably filed by GMC, but in a resolution dated October 26, 2000, the CA denied it for lack of merit.

Hence, the instant petition for certiorari alleging that:

> I
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> THE COURT OF APPEALS DECISION VIOLATED THE CONSTITUTIONAL RULE THAT NO DECISION SHALL BE RENDERED BY ANY COURT WITHOUT EXPRESSING THEREIN CLEARLY

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AND DISTINCTLY THE FACTS AND THE LAW ON WHICH IT IS BASED.

II

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN REVERSING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION IN THE ABSENCE OF ANY FINDING OF SUBSTANTIAL ERROR OR GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

III

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN NOT APPRECIATING THAT THE NLRC HAS NO JURISDICTION TO DETERMINE THE TERMS AND CONDITIONS OF A COLLECTIVE BARGAINING AGREEMENT.[7]

Thus, in the instant case, the principal issue for our determination is whether or not the Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction in (1) finding GMC guilty of unfair labor practice for violating the duty to bargain collectively and/or interfering with the right of its employees to self-organization, and (2) imposing upon GMC the draft CBA proposed by the union for two years to begin from the expiration of the original CBA.

On the first issue, Article 253-A of the Labor Code, as amended by Rep. Act No. 6715, states:

ART. 253-A. Terms of a collective bargaining agreement. – Any Collective Bargaining Agreement that the parties may enter into shall, insofar as the representation aspect is concerned, be for a term of five (5) years. No petition questioning the majority status of the incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of the sixty-day period immediately before the date of expiry of such five year term of the Collective Bargaining Agreement. All other provisions of the Collective Bargaining Agreement shall be renegotiated not later than three (3) years after its execution....

The law mandates that the representation provision of a CBA should last for five years. The relation between labor and management should be undisturbed until the last 60 days of the fifth year. Hence, it is indisputable that when the union requested for a renegotiation of the economic terms of the CBA on November 29, 1991, it was still the certified collective bargaining agent of the workers, because it was seeking said renegotiation within five (5) years from the date of effectivity of the CBA on December 1, 1988. The union's proposal was also submitted within the prescribed 3-year period from the date of effectivity of the CBA, albeit just before the last day of said period. It was obvious that GMC had no valid reason to refuse to negotiate in good faith with the union. For refusing to send a counter-proposal to the union and to bargain anew on the economic terms of the CBA, the company committed an unfair labor practice under Article 248 of the Labor Code, which provides that:

ART. 248. Unfair labor practices of employers. – It shall be unlawful for an employer to commit any of the following unfair labor practice:

. . .

(g) To violate the duty to bargain collectively as prescribed by this Code;

. . .

Article 252 of the Labor Code elucidates the meaning of the phrase "duty to bargain collectively," thus:

ART. 252. Meaning of duty to bargain collectively. – The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of

> negotiating an agreement....

We have held that the crucial question whether or not a party has met his statutory duty to bargain in good faith typically turn$ on the facts of the individual case.[8] There is no per se test of good faith in bargaining.[9] Good faith or bad faith is an inference to be drawn from the facts.[10] The effect of an employer's or a union's actions individually is not the test of good-faith bargaining, but the impact of all such occasions or actions, considered as a whole.[11]

Under Article 252 abovecited, both parties are required to perform their mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement. The union lived up to this obligation when it presented proposals for a new CBA to GMC within three (3) years from the effectivity of the original CBA. But GMC failed in its duty under Article 252. What it did was to devise a flimsy excuse, by questioning the existence of the union and the status of its membership to prevent any negotiation.

It bears stressing that the procedure in collective bargaining prescribed by the Code is mandatory because of the basic interest of the state in ensuring lasting industrial peace. Thus:

> ART. 250. Procedure in collective bargaining. – The following procedures shall be observed in collective bargaining:
>
> (a) When a party desires to negotiate an agreement, it shall serve a written notice upon the other party with a statement of its proposals. The other party shall make a reply thereto not later than ten (10) calendar days from receipt of such notice. (Underscoring supplied.)

GMC's failure to make a timely reply to the proposals presented by the union is indicative of its utter lack of interest in bargaining with the union. Its excuse that it felt the union no longer represented the workers, was mainly dilatory as it turned out to be utterly baseless.

We hold that GMC's refusal to make a counter-proposal to the union's proposal for CBA negotiation is an indication of its bad faith. Where the employer did not even bother to submit an answer to the bargaining proposals of the union, there is a clear evasion of the duty to bargain collectively.[12]

Failing to comply with the mandatory obligation to submit a reply to the union's proposals, GMC violated its duty to bargain collectively, making it liable for unfair labor practice. Perforce, the Court of Appeals did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in finding that GMC is, under the circumstances, guilty of unfair labor practice.

Did GMC interfere with the employees' right to self-organization? The CA found that the letters between February to June 1993 by 13 union members signifying their resignation from the union clearly indicated that GMC exerted pressure on its employees. The records show that GMC presented these letters to prove that the union no longer enjoyed the support of the workers. The fact that the resignations of the union members occurred during the pendency of the case before the labor arbiter shows GMC's desperate attempts to cast doubt on the legitimate status of the union. We agree with the CA's conclusion that the ill-timed letters of resignation from the union members indicate that GMC had interfered with the right of its employees to self-organization. Thus, we hold that the appellate court did not commit grave abuse of discretion in finding GMC guilty of unfair labor practice for interfering with the right of its employees to self-organization.

Finally, did the CA gravely abuse its discretion when it imposed on GMC the draft CBA proposed by the union for two years commencing from the expiration of the original CBA?

The Code provides:

> ART. 253. Duty to bargain collectively when there exists a collective bargaining agreement. – ....It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement during the 60-day period [prior to its expiration date] and/or until a new agreement is reached by the parties. (Underscoring supplied.)

The provision mandates the parties to keep the status quo while they are still in the process of working out their respective proposal and counter proposal. The general rule is that when a CBA already exists, its provision shall continue to govern the relationship between the parties, until a new one is agreed upon. The rule necessarily presupposes that all other things are equal. That is, that neither party is guilty of bad faith. However, when one of the parties abuses this grace period by purposely delaying the bargaining process, a departure from the general rule is warranted.

In Kiok Loy vs. NLRC,[13] we found that petitioner therein, Sweden Ice Cream Plant, refused to submit any counter proposal to the CBA proposed by its employees' certified bargaining agent. We ruled that the former had thereby lost its right to bargain the terms and conditions of the CBA. Thus, we did not hesitate to impose on the erring company the CBA proposed by its employees' union - lock, stock and barrel. Our findings in Kiok Loy are similar to the facts in the present case, to wit:

> ...petitioner Company's approach and attitude – stalling the negotiation by a series of postponements, non-appearance at the hearing conducted, and undue delay in submitting its financial statements, lead to no other conclusion except that it is unwilling to negotiate and reach an agreement with the Union. Petitioner has not at any instance, evinced good faith or willingness to discuss freely and fully the claims and demands set forth by the Union much less justify its objection thereto.[14]

Likewise, in Divine Word University of Tacloban vs. Secretary of Labor and Employment,[15] petitioner therein, Divine Word University of Tacloban, refused to perform its duty to bargain collectively. Thus, we upheld the unilateral imposition on the university of the CBA proposed by the Divine Word University Employees Union. We said further:

> That being the said case, the petitioner may not validly assert that its consent should be a primordial consideration in the bargaining process. By its acts, no less than its action which bespeak its insincerity, it has forfeited whatever rights it could have asserted as an employer.[16]

Applying the principle in the foregoing cases to the instant case, it would be unfair to the union and its members if the terms and conditions contained in the old CBA would continue to be imposed on GMC's employees for the remaining two (2) years of the CBA's duration. We are not inclined to gratify GMC with an extended term of the old CBA after it resorted to delaying tactics to prevent negotiations. Since it was GMC which violated the duty to bargain collectively, based on Kiok Loy and Divine Word University of Tacloban, it had lost its statutory right to negotiate or renegotiate the terms and conditions of the draft CBA proposed by the union.

We carefully note, however, that as strictly distinguished from the facts of this case, there was no pre-existing CBA between the parties in Kiok Loy and Divine Word University of Tacloban. Nonetheless, we deem it proper to apply in this case the rationale of the doctrine in the said two cases. To rule otherwise would be to allow GMC to have its cake and eat it too.

Under ordinary circumstances, it is not obligatory upon either side of a labor controversy to precipitately accept or agree to the proposals of the other. But an erring party should not be allowed to resort with impunity to schemes feigning negotiations by going through empty gestures.[17] Thus, by imposing on GMC the provisions of the draft CBA proposed by the union, in our view, the interests of equity and fair play were properly served and both parties regained equal footing, which was lost when GMC thwarted the negotiations for new economic terms of

the CBA.

The findings of fact by the CA, affirming those of the NLRC as to the reasonableness of the draft CBA proposed by the union should not be disturbed since they are supported by substantial evidence. On this score, we see no cogent reason to rule otherwise. Hence, we hold that the Court of Appeals did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it imposed on GMC, after it had committed unfair labor practice, the draft CBA proposed by the union for the remaining two (2) years of the duration of the original CBA. Fairness, equity, and social justice are best served in this case by sustaining the appellate court's decision on this issue.

WHEREFORE, the petition is DISMISSED and the assailed decision dated July 19, 2000, and the resolution dated October 26, 2000, of the Court of Appeals in CA-G.R. SP No. 50383, are AFFIRMED. Costs against petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

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[1] Rollo, pp. 172-179. Penned by Associate Justice Conchita Carpio Morales (now a member of this Court), with Associate Justices Teodoro P. Regino and Mercedes Gozo-Dadole.

[2] Id. at 34-48.

[3] Id. at 175; See also CA Rollo, CA G.R. No. 51763, p. 83.

[4] Effective March 21, 1989.

[5] Rollo, p. 44.

[6] Id. at 178.

[7] Id. at 10.

[8] Hongkong and Shanghai Banking Corporation Employees Union v. National Labor Relations Commission, G.R. No. 125038, 6 November 1997, 281 SCRA 509, 518.

[9] Ibid.

[10] Ibid.

[11] Ibid.

[12] Colegio De San Juan De Letran v. Association of Employees and Faculty of Letran, G.R. No. 141471, 18 September 2000, 340 SCRA 587, 595.

[13] No. L-54334, 22 January 1986, 141 SCRA 179, 188.

[14] Supra.

[15] 213 SCRA 759, 11 September 1992.

[16] Supra.

[17] Ibid., citing H. ROTHENBERG, ROTHENBERG ON LABOR RELATIONS 435 (1949), NLRB v. Sunshine Mining Co., 110 F. 2d 780, NLRB v. Condenser Corp., 128 F. 2d 67.

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