

**STANDARD CHARTERED BANK EMPLOYEES UNION (SCBEU-NUBE),
PETITIONER, VS. STANDARD CHARTERED BANK AND
ANNEMARIEDURBIN, IN HER CAPACITY AS CHIEF EXECUTIVE
OFFICER, PHILIPPINES, STAND...**

G.R. No. 161933. April 22, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

For resolution is an appeal by certiorari filed by petitioner under Rule 45 of the Rules of Court, assailing the Decision[1] dated October 9, 2002 and Resolution[2] dated January 26, 2004 issued by the Court of Appeals (CA), dismissing their petition and affirming the Secretary of Labor and Employment's Orders dated May 31, 2001 and August 30, 2001.

Petitioner and the Standard Chartered Bank (Bank) began negotiating for a new Collective Bargaining Agreement (CBA) in May 2000 as their 1998-2000 CBA already expired. Due to a deadlock in the negotiations, petitioner filed a Notice of Strike prompting the Secretary of Labor and Employment to assume jurisdiction over the labor dispute.

On May 31, 2001, Secretary Patricia A. Sto. Tomas of the Department of Labor and Employment (DOLE) issued an Order with the following dispositive portion:

WHEREFORE, PREMISES CONSIDERED, the Standard Chartered Bank and the Standard Chartered Bank Employees Union are directed to execute their collective bargaining agreement effective 01 April 2001 until 30 March 2003 incorporating therein the foregoing dispositions and the agreements they reached in the course of negotiations and conciliation. All other submitted issues that were not passed upon are dismissed.

The charge of unfair labor practice for bargaining in bad faith and the claim for damages relating thereto are hereby dismissed for lack of merit.

Finally, the charge of unfair labor practice for gross violation of the economic provisions of the CBA is hereby dismissed for want of jurisdiction.

SO ORDERED.[3]

Both petitioner and the Bank filed their respective motions for reconsideration, which were denied by the Secretary per Order dated August 30, 2001.[4]

Petitioner sought recourse with the CA via a petition for certiorari, and in the assailed Decision dated October 9, 2002[5] and Resolution dated January 26, 2004,[6] the CA dismissed their petition and affirmed the Secretary's Orders.

Hence, herein petition based on the following grounds:

I.

THE COURT A QUO ERRED IN DECIDING THAT THERE WAS NO BASIS FOR REVISING THE SCOPE OF EXCLUSIONS FROM THE APPROPRIATE BARGAINING UNIT UNDER THE CBA.

II.

THE COURT A QUO ERRED IN DECIDING THAT A ONE-MONTH OR LESS TEMPORARY OCCUPATION OF A POSITION (ACTING CAPACITY) DOES NOT MERIT ADJUSTMENT IN REMUNERATION.[7]

The resolution of this case has been overtaken by the execution of the parties' 2003-2005 CBA. While this would render the case moot and academic, nevertheless, the likelihood that the same issues will come up in the parties' future CBA negotiations is not far-fetched, thus compelling its resolution. Courts will decide a question otherwise moot if it is capable of repetition yet evading review.[8]

The CBA provisions in dispute are the exclusion of certain employees from the appropriate bargaining unit and the adjustment of remuneration for employees serving in an acting capacity for one month.

In their proposal, petitioner sought the exclusion of only the following employees from the appropriate bargaining unit - all managers who are vested with the right to hire and fire employees, confidential employees, those with access to labor relations materials, Chief Cashiers, Assistant Cashiers, personnel of the Telex Department and one Human Resources (HR) staff.[9]

In the previous 1998-2000 CBA,[10] the excluded employees are as follows:

- All covenanted and assistant officers (now called National Officers)
- One confidential secretary of each of the:
 - Chief Executive, Philippine Branches
 - Deputy Chief Executive/Head, Corporate Banking Group
 - Head, Finance
 - Head, Human Resources
 - Manager, Cebu
 - Manager, Iloilo
- Coenanted Officers provided said positions shall be filled by new recruits.
- The Chief Cashiers and Assistant Cashiers in Manila, Cebu and Iloilo, and in any other branch that the BANK may establish in the country.
- Personnel of the Telex Department
- All Security Guards
- Probationary employees, without prejudice to Article 277 (c) of the Labor Code, as amended by R.A. 6715, casuals or emergency employees; and
- One (1) HR Staff[11]

The Secretary, however, maintained the previous exclusions because petitioner failed to show that the employees

sought to be removed from the list qualify for exclusion.[12]

With regard to the remuneration of employees working in an acting capacity, it was petitioner's position that additional pay should be given to an employee who has been serving in a temporary/acting capacity for one week. The Secretary likewise rejected petitioner's proposal and instead, allowed additional pay for those who had been working in such capacity for one month. The Secretary agreed with the Bank's position that a restrictive provision would curtail management's prerogative, and at the same time, recognized that employees should not be made to work in an acting capacity for long periods of time without adequate compensation.

The Secretary's disposition of the issues raised by petitioner were affirmed by the CA.[13] The Court sustains the CA.

Whether or not the employees sought to be excluded from the appropriate bargaining unit are confidential employees is a question of fact, which is not a proper issue in a petition for review under Rule 45 of the Rules of Court.[14] This holds more true in the present case in which petitioner failed to controvert with evidence the findings of the Secretary and the CA.

The disqualification of managerial and confidential employees from joining a bargaining unit for rank and file employees is already well-entrenched in jurisprudence. While Article 245 of the Labor Code limits the ineligibility to join, form and assist any labor organization to managerial employees, jurisprudence has extended this prohibition to confidential employees or those who by reason of their positions or nature of work are required to assist or act in a fiduciary manner to managerial employees and hence, are likewise privy to sensitive and highly confidential records.[15]

In this case, the question that needs to be answered is whether the Bank's Chief Cashiers and Assistant Cashiers, personnel of the Telex Department and HR staff are confidential employees, such that they should be excluded.

As regards the qualification of bank cashiers as confidential employees, National Association of Trade Unions (NATU) - Republic Planters Bank Supervisors Chapter v. Torres[16] declared that they are confidential employees having control, custody and/or access to confidential matters, e.g., the branch's cash position, statements of financial condition, vault combination, cash codes for telegraphic transfers, demand drafts and other negotiable instruments, pursuant to Sec. 1166.4 of the Central Bank Manual regarding joint custody, and therefore, disqualified from joining or assisting a union; or joining, assisting or forming any other labor organization.[17]

Golden Farms, Inc. v. Ferrer-Calleja[18] meanwhile stated that "confidential employees such as accounting personnel, radio and telegraph operators who, having access to confidential information, may become the source of undue advantage. Said employee(s) may act as spy or spies of either party to a collective bargaining agreement." [19]

Finally, in Philips Industrial Development, Inc. v. National Labor Relations Commission,[20] the Court designated personnel staff, in which human resources staff may be qualified, as confidential employees because by the very nature of their functions, they assist and act in a confidential capacity to, or have access to confidential matters of, persons who exercise managerial functions in the field of labor relations.

Petitioner insists that the foregoing employees are not confidential employees; however, it failed to buttress its claim. Aside from its generalized arguments, and despite the Secretary's finding that there was no evidence to support it, petitioner still failed to substantiate its claim. Petitioner did not even bother to state the nature of the duties and functions of these employees, depriving the Court of any basis on which it may be concluded that they are indeed confidential employees. As aptly stated by the CA:

While We agree that petitioner's proposed revision is in accordance with the law, this does not necessarily mean that the list of exclusions enumerated in the 1998-2000 CBA is contrary to law. As found by public respondent, petitioner failed to show that the employees sought to be removed from the list of exclusions are actually rank and file employees who are not managerial or confidential in status and should, accordingly, be included in the appropriate bargaining unit.

Absent any proof that Chief Cashiers and Assistant Cashiers, personnel of the Telex department and one (1) HR Staff have mutuality of interest with the other rank and file employees, then they are rightfully excluded from the appropriate bargaining unit. x x x[21] (Emphasis supplied)

Petitioner cannot simply rely on jurisprudence without explaining how and why it should apply to this case. Allegations must be supported by evidence. In this case, there is barely any at all.

There is likewise no reason for the Court to disturb the conclusion of the Secretary and the CA that the additional remuneration should be given to employees placed in an acting capacity for one month. The CA correctly stated:

Likewise, We uphold the public respondent's Order that no employee should be temporarily placed in a position (acting capacity) for more than one month without the corresponding adjustment in the salary. Such order of the public respondent is not in violation of the "equal pay for equal work" principle, considering that after one (1) month, the employee performing the job in an acting capacity will be entitled to salary corresponding to such position.

x x x x

In arriving at its Order, the public respondent took all the relevant evidence into account and weighed both parties arguments extensively. Thus, public respondent concluded that a restrictive provision with respect to employees being placed in an acting capacity may curtail management's valid exercise of its prerogative. At the same time, it recognized that employees should not be made to perform work in an acting capacity for extended periods of time without being adequately compensated. x x x[22]

Thus, the Court reiterates the doctrine that:

[T]he office of a petition for review on certiorari under Rule 45 of the Rules of Court requires that it shall raise only questions of law. The factual findings by quasi-judicial agencies, such as the Department of Labor and Employment, when supported by substantial evidence, are entitled to great respect in view of their expertise in their respective fields. Judicial review of labor cases does not go so far as to evaluate the sufficiency of evidence on which the labor official's findings rest. It is not our function to assess and evaluate all over again the evidence, testimonial and documentary, adduced by the parties to an appeal, particularly where the findings of both the trial court (here, the DOLE Secretary) and the appellate court on the matter coincide, as in this case at bar. The Rule limits that function of the Court to the review or revision of errors of law and not to a second analysis of the evidence. x x x Thus, absent any showing of whimsical or capricious exercise of judgment, and unless lack of any basis for the conclusions made by the appellate court be amply demonstrated, we may not disturb such factual findings.[23]

WHEREFORE, the petition is DENIED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr., concurring; rollo, pp. 27-31.

[2] Id. at 25.

[3] CA rollo, p. 42.

[4] Id. at 17-23.

[5] Id. at 243-246.

[6] Id. at 268.

[7] Rollo, p. 14.

[8] Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission, G.R. No. 144322, February 6, 2007, 514 SCRA 346, 360.

[9] CA rollo, p. 37.

[10] Id. at 102.

[11] Id. at 105.

[12] Id. at 37.

[13] Id. at 246.

[14] Kabankalan Catholic College v. Kabankalan Catholic College Union-PACIWU-TUCP, G.R. No. 157320, June 28, 2005, 461 SCRA 481, 491.

[15] Metrolab Industries, Inc. v. Roldan-Confesor, 324 Phil. 416 437-438 (1996).

[16] G.R. No. 93468, December 29, 1994, 239 SCRA 546.

[17] Id. at 559.

[18] G.R. No. 78755, July 19, 1989, 175 SCRA 471.

[19] Id. at 477.

[20] G.R. No. 88957, June 25, 1992, 210 SCRA 339, 347-348.

[21] Rollo, p. 29.

[22] Id. at 29-30.

[23] Telefunken Semiconductors Employees Union-FFW v. Court of Appeals, 401 Phil. 776, 791-792 (2000).

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