

TABANGAO SHELL REFINERY EMPLOYEES ASSOCIATION, PETITIONER, VS. PILIPINAS SHELL PETROLEUM CORPORATION, RESPONDENT.

G.R. No. 170007. April 07, 2014

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This an appeal from the Decision[1] dated August 8, 2005 of the Court of Appeals in CA-G.R. SP No. 88178 dismissing the petition for certiorari of the petitioner Tabangao Shell Refinery Employees Association.

The origins of the controversy

In anticipation of the expiration on April 30, 2004 of the 2001-2004 Collective Bargaining Agreement (CBA) between the petitioner and the respondent Pilipinas Shell Petroleum Corporation, the parties started negotiations for a new CBA. After several meetings on the ground rules that would govern the negotiations and on political items, the parties started their discussion on the economic items on July 27, 2004, their 31st meeting. The union proposed a 20% annual across-the-board basic salary increase for the next three years that would be covered by the new CBA. In lieu of the annual salary increases, the company made a counter-proposal to grant all covered employees a lump sum amount of P80,000.00 yearly for the three-year period of the new CBA.[2]

The union requested the company to present its counter-proposal in full detail, similar to the presentation by the union of its economic proposal. The company explained that the lump sum amount was based on its affordability for the corporation, the then current salary levels of the members of the union relative to the industry, and the then current total pay and benefits package of the employees. Not satisfied with the company's explanation, the union asked for further justification of the lump sum amount offered by the company. When the company refused to acknowledge any obligation to give further justification, the union rejected the company's counter-proposal and maintained its proposal for a 20% annual increase in basic pay for the next three years.[3]

On the 39th meeting of the parties on August 24, 2004, the union lowered its proposal to 12% annual across-the-board increase for the next three years. For its part, the company increased its counter-proposal to a yearly lump sum payment of P88,000.00 for the next three years. The union requested financial data for the manufacturing class of business in the Philippines. It also requested justification for the company's counter-offer. In response, the company stated that financial measures for Tabangao were available in the refinery scorecard regularly cascaded by the management to the employees. The company reiterated that its counter-offer is based on its affordability for the company, comparison with the then existing wage levels of allied industry, and the then existing total pay and benefits package of the employees. The company subsequently provided the union with a copy of the company's audited financial statements.[4]

However, the union remained unconvinced and asked for additional documents to justify the company's counter-offer. The company invited the attention of the union to the fact that additional data, such as the refinery performance scorecard, were available from the refinery's website and shared network drives. The company also

declared that the bases of its counter-offer were already presented to the union and contained in the minutes of previous meetings. The union thereafter requested for a copy of the comparison of the salaries of its members and those from allied industries. The company denied the request on the ground that the requested information was entrusted to the company under a confidential agreement. Alleging failure on the part of the company to justify its offer, the union manifested that the company was bargaining in bad faith.[5] The company, in turn, expressed its disagreement with the union's manifestation.[6]

On the parties' 41st meeting held on September 2, 2004, the company proposed the declaration of a deadlock and recommended that the help of a third party be sought. The union replied that they would formally answer the proposal of the company a day after the signing of the official minutes of the meeting. On that same day, however, the union filed a Notice of Strike in the National Conciliation and Mediation Board (NCMB), alleging bad faith bargaining on the part of the company. The NCMB immediately summoned the parties for the mandatory conciliation-mediation proceedings but the parties failed to reach an amicable settlement.[7]

Assumption of Jurisdiction by the Secretary of Labor and Employment

On September 16, 2004, during the cooling off period, the union conducted the necessary strike vote. The members of the union, who participated in the voting, unanimously voted for the holding of a strike. Upon being aware of this development, the company filed a Petition for Assumption of Jurisdiction with the Secretary of Labor and Employment.[8] The petition was filed pursuant to the first paragraph of Article 263(g) of the Labor Code which provides:

ART. 263. Strikes, picketing, and lockouts. – x x x

x x x x

(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure the compliance with this provision as well as with such orders as he may issue to enforce the same.

The company's petition for assumption of jurisdiction was docketed as OSEC-AJ-0033-04/NCMB-RBIV-LAG-NS-09-048-04.

In an Order[9] dated September 20, 2004, the then Secretary of Labor and Employment, Patricia Sto. Tomas, granted the petition of the company. The Secretary of Labor and Employment took notice of the Notice of Strike filed by the union in the NCMB which charged the company with unfair labor practice consisting of bad faith in bargaining negotiations. The Secretary of Labor and Employment also found that the intended strike would likely affect the company's capacity to provide petroleum products to the company's various clientele, including the transportation sector, the energy sector, and the manufacturing and industrial sectors. The Secretary of Labor and Employment further observed that a strike by the union would certainly have a negative impact on the price of commodities. Convinced that such a strike would have adverse consequences on the national economy, the Secretary of Labor and Employment ruled that the labor dispute between the parties would cause or likely to cause a strike in an industry indispensable to the national interest. Thus, the Secretary of Labor and Employment

assumed jurisdiction over the dispute of the parties. The dispositive portion of the Order dated September 20, 2004 reads:

WHEREFORE, considering the foregoing premises, this Office hereby assumes jurisdiction over the labor dispute between the TABANGAO SHELL REFINERY EMPLOYEES ASSOCIATION and the PILIPINAS SHELL PETROLEUM CORPORATION, pursuant to Article 263 (g) of the Labor Code, as amended.

Accordingly, any form of concerted action, whether actual or intended, is hereby enjoined. Parties are directed to maintain the status quo existing at the time of service of this Order. They are also ordered not to commit any act that may exacerbate the situation.

However, if at the time of service of this Order a strike has already commenced, the employees are directed to immediately return to work within twenty-four (24) hours from receipt thereof. In such case[,] the employer shall, without unnecessary delay, resume operations and readmit all workers under the same terms and conditions prevailing before the strike.

To expedite the resolution of this dispute, the parties are directed to submit in three [3] copies, their respective Position Paper on the economic issues and those raised in the Notice of Strike, docketed as NCMB-RBIV-LAG-NS-09-048-04. It must be submitted personally to this Office within seven [7] calendar days from receipt of this Order. Another three [3] calendar days from receipt of the other party's position paper shall be allowed for the personal filing or submission of their respective Comment and Reply thereon. Service of position papers together with annexes, affidavits and other papers accompanying the same should be done personally. If service by registered mail cannot be avoided, it should follow the mandate of Article 263 of the Labor Code and shall be deemed complete upon the expiration of five (5) calendar days from mailing. After said period[,] the allowed time for filing of Reply shall start, after which, the case shall be deemed submitted for resolution.

The Company is ordered to attach the following documents to its position paper, to assist this Office in the prompt resolution of this case:

a] Complete Audited Financial Statements for the past five [5] years certified as to its completeness by the Chief Financial Comptroller or Accountant, as the case may be[;]

SEC stamped COMPLETE audited Financial Statements shall include the following:

- Independent Auditor's opinion
- Comparative Balance Sheet
- Comparative Income Statement
- Comparative Cash Flows
- Notes to the Financial Statements as required by SEC

b] Projected Financial Statements of the Company FOR THE NEXT THREE [3] YEARS (Balance Sheets, Income Statements, Cash Flow, and Appropriate notes to such projected [F]inancial Statements);

c] CBA history as to all the economic issues;

d] Cost estimates of its final offer on the specific CBA issues;

e] A separate itemized summary of the Management Offer and the Union demands with [the] following format:

Description of Demands Existing CBA Union Demands Management Offer

1.

2.

The Union is directed to provide a copy of their last CBA, an itemized summary of its CBA demands, as well as a computation of their cost[s] that require resolution in triplicate copies using the same format stated above.

No petition, pleading or any opposition thereto shall be acted upon by this Office, without proof of its service to the adverse party/parties.

In the interest of speedy labor justice, this Office will entertain no motion for extension or postponement.

The urgency of the need to rule on this case is only in faithful adherence to the following provision of Article 263 paragraph (i) of the Labor Code, as follows:

“The Secretary of Labor and Employment, the Commission or the voluntary arbitrator shall decide or resolve the dispute within thirty (30) calendar days from the date of the assumption of jurisdiction or the certification or submission of the dispute, as the case may be. x x x”

The appropriate police authority is hereby deputized to enforce this Order if it turns out that within twenty-four (24) hours from service hereof, there appears a refusal by either or both parties to comply herewith.[10]

The Secretary of Labor and Employment denied the motion for reconsideration of the union in a Resolution dated October 6, 2004. The union’s second motion for reconsideration was denied in a Resolution dated December 13, 2004.[11]

Petition for certiorari in the Court of Appeals

The union thereafter filed a petition for certiorari,[12] docketed as CA-G.R. SP No. 88178, in the Court of Appeals on January 13, 2005. The union alleged in its petition that the Secretary of Labor and Employment acted with grave abuse of discretion in grossly misappreciating the facts and issue of the case. It contended that the issue is the unfair labor practice of the company in the form of bad faith bargaining and not the CBA deadlock. Anchoring its position on item 8 of what the parties agreed upon as the ground rules that would govern the negotiations, the union argued that, at the time the Order dated September 20, 2004 was issued, there was no CBA deadlock on account of the union’s non-conformity with the declaration of a deadlock, as item 8 of the said ground rules provided that a “deadlock can only be declared upon mutual consent of both parties.” Thus, the Secretary of Labor and Employment committed grave abuse of discretion when she assumed jurisdiction and directed the parties to submit position papers even on the economic issues.[13]

The Court of Appeals found the position of the union untenable. It cited this Court’s ruling in *St. Scholastica’s College v. Torres*[14] that the authority of the Secretary of Labor and Employment under Article 263(g) of the Labor Code to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to national interest includes questions and controversies arising from the said dispute, including cases over which the Labor Arbiter has exclusive jurisdiction. Applying *St. Scholastica’s College*, the Court of Appeals found that the 2004 CBA Official Minutes of the Meetings show that the union and the company were already discussing the economic issues when the union accused the company of bargaining in bad faith. As such, the Secretary of Labor and Employment had the authority to take cognizance of the economic issues, which issues were the necessary consequence of the alleged bad faith bargaining.[15]

Moreover, according to the Court of Appeals, Article 263(g) of the Labor Code vests in the Secretary of Labor and Employment not only the discretion to determine what industries are indispensable to national interest but also the power to assume jurisdiction over such industries’ labor disputes, including all questions and controversies arising from the said disputes. Thus, as the Secretary of Labor and Employment found the company’s business to be one that is indispensable to national interest, she had authority to assume jurisdiction

over all of the company's labor disputes, including the economic issues.[16]

Finally, the Court of Appeals noted that the union's contention that the Secretary of Labor and Employment cannot resolve the economic issues because the union had not given its consent to the declaration of a deadlock was already moot. The Court of Appeals observed that the union filed on February 7, 2005 another Notice of Strike citing CBA deadlock as a ground and, in an Order dated March 1, 2005, the then Acting Secretary of Labor and Employment, Manuel Imson, granted the company's Manifestation with Motion to Consider the Second Notice of Strike as Subsumed to the First Notice of Strike.[17]

Given the above reasons, the Court of Appeals dismissed the petition for certiorari of the union. The dispositive portion of the Decision dated August 8, 2005 reads as follows:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition must be, as it hereby is DISMISSED, for lack of merit. Costs against petitioner.[18]

A detour: from the National Labor Relations Commission to the Secretary of Labor and Employment

In the meantime, on February 2, 2005, the union filed a complaint for unfair labor practice against the corporation in the National Labor Relations Commission. The union alleged that the company refused, or violated its duty, to bargain.[19]

The company moved for the dismissal of the complaint, believing that all the elements of forum shopping and/or *litis pendencia* were present.[20]

In an Order[21] dated May 9, 2005, the Labor Arbiter found that the case arose from the very same CBA negotiations which culminated into a labor dispute when the union filed a notice of strike for bad faith bargaining and CBA deadlock. According to the Labor Arbiter, the issue raised by the union, refusal to bargain, was a proper incident of the labor dispute over which the Secretary of Labor and Employment assumed jurisdiction. Thus, the case was forwarded for consolidation with the labor dispute case of the parties in the Office of the Secretary of Labor and Employment.

Decision of the Secretary of Labor and Employment

During the pendency of the union's petition for certiorari in the Court of Appeals, the Secretary of Labor and Employment rendered a Decision[22] dated June 8, 2005 in OSEC-AJ-0033-04/NCMB-RBIV-LAG-NS-09-048-04/NCMB-RBIV-LAG-NS-02-004-05.

In her Decision, the Secretary of Labor and Employment held that there was already deadlock although the ground for the first Notice of Strike was unfair labor practice for bargaining in bad faith. Citing *Capitol Medical Center Alliance of Concerned Employees-Unified Filipino Service Workers v. Laguesma*[23] where it has been held that there may be a deadlock not only in the strict legal sense of an impasse despite reasonable effort at good faith bargaining but also where one of the parties unduly refuses to comply with its duty to bargain, the Secretary of Labor and Employment ruled that the circumstances – 41 CBA meetings showing "reasonable efforts at good faith bargaining" without arriving at a CBA – show that there was effectively a bargaining deadlock between the parties.[24]

Moreover, the Secretary of Labor and Employment also passed upon the issue of whether the company was guilty of bargaining in bad faith:

Now, is the Company guilty of bargaining in bad faith? This Office rules in the negative.

The duty to bargain does not compel any party to accept a proposal, or make any concession, as recognized by

Article 252 of the Labor Code, as amended. The purpose of collective bargaining is the reaching of an agreement resulting in a contract binding on the parties; however, the failure to reach an agreement after negotiations continued for a reasonable period does not establish a lack of good faith. The laws invite and contemplate a collective bargaining contract, but they do not compel one. The duty to bargain does not include the obligation to reach an agreement. Thus, the Company's insistence on a bargaining position to the point of stalemate does not establish bad faith. The Company's offer[,] a lump sum of Php88,000 per year, for each covered employee in lieu of a wage increase cannot, by itself, be taken as an act of bargaining in bad faith. The minutes of the meetings of the parties, show that they both exerted their best efforts, to try to resolve the issues at hand. Many of the proposed improvements or changes, were either resolved, or deferred for further discussion. It is only on the matter of the wage increase, that serious debates were registered. However, the totality of conduct of the Company as far as their bargaining stance with the Union is concerned, does not show that it was bargaining in bad faith.[25]

The Secretary of Labor and Employment then proceeded to decide on the matter of the wage increase and other economic issues of the new CBA. For failure of the union to substantiate its demand for wage increase as it did not file its position paper, the Secretary of Labor and Employment looked at the financial situation of the company, as shown by its audited financial statements, and found it just and equitable to give a lump sum package of P95,000.00 per year, per covered employee, for the new CBA covering the period May 1, 2004 until April 30, 2007. The Secretary of Labor and Employment further retained the other benefits covered by the 2001-2004 CBA as she found the said benefits to be sufficient and reasonable.[26]

Neither the union nor the company appealed the Decision dated June 8, 2005 of the Secretary of Labor and Employment.[27] Thus, the said Decision attained finality.

The present petition

The union now comes to this Court to press its contentions. It insists that the corporation is guilty of unfair labor practice through bad faith bargaining. According to the union, bad faith bargaining and a CBA deadlock cannot legally co-exist because an impasse in negotiations can only exist on the premise that both parties are bargaining in good faith. Besides, there could have been no deadlock between the parties as the union had not given its consent to it, pursuant to item 8 of the ground rules governing the parties' negotiations which required mutual consent for a declaration of deadlock. The union also posits that its filing of a CBA deadlock case against the company was a separate and distinct case and not an offshoot of the company's unfair labor practice through bargaining in bad faith. According to the union, as there was no deadlock yet when the union filed the unfair labor practice of bargaining in bad faith, the subsequent deadlock case could neither be an offshoot of, nor an incidental issue in, the unfair labor practice case. Because there was no deadlock yet at the time of the filing of the unfair labor practice case, the union claims that deadlock was not an incidental issue but a non-issue. As deadlock was a non-issue with respect to the unfair labor practice case, the Court of Appeals misapplied *St. Scholastica's College* and the Secretary of Labor and Employment committed grave abuse of discretion when it presumed deadlock in its Order dated September 20, 2004 assuming jurisdiction over the labor dispute between the union and the company.[28]

For its part, the company argues that the Court of Appeals correctly affirmed the Order dated September 20, 2004 of the Secretary of Labor and Employment assuming jurisdiction over the labor dispute between the parties. The company claims that it is engaged in an industry that is vital to the national interest, and that the evidence on record established that there was already a full-blown labor dispute between the company and the union arising from the deadlock in CBA negotiations. The company insists that the alleged bad faith on its part, which the union claimed to have prevented any CBA deadlock, has no basis. The company invokes the final Decision dated June 8, 2005 of the Secretary of Labor and Employment which ruled that the company was not guilty of bargaining in

bad faith. For the company, even if the union's first Notice of Strike was based on unfair labor practice and not deadlock in bargaining, the Secretary of Labor and Employment's assumption of jurisdiction over the labor dispute between the parties extended to all questions and controversies arising from the labor dispute, that is, including the economic issues.[29]

The Court's ruling

The petition fails. There are at least four reasons to support the denial of the petition and each reason is sufficient to defeat the union's claims.

First, the petition is barred by res judicata in the concept of conclusiveness of judgment.

The concept of conclusiveness of judgment is explained in *Nabus v. Court of Appeals*[30] as follows:

The doctrine states that a fact or question which was in issue in a former suit, and was there judicially passed on and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein, as far as concerns the parties to that action and persons in privity with them, and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or a different cause of action, while the judgment remains unreversed or unvacated by proper authority. The only identities thus required for the operation of the judgment as an estoppel x x x are identity of parties and identity of issues.

It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issues be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties [or their privies] will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit[.] x x x. (Citations omitted.)

The Decision dated June 8, 2005 of the Secretary of Labor and Employment in the labor dispute over which he assumed jurisdiction, OSEC-AJ-0033-04/NCMB-RBIV-LAG-NS-09-048-04/NCMB-RBIV-LAG-NS-02-004-05, has long attained finality. The union never denied this.

In this connection, Article 263(i) of the Labor Code is clear:

ART. 263. Strikes, picketing, and lockouts. – x x x

x x x x

(i) The Secretary of Labor and Employment, the Commission or the voluntary arbitrator shall decide or resolve the dispute within thirty (30) calendar days from the date of the assumption of jurisdiction or the certification or submission of the dispute, as the case may be. The decision of the President, the Secretary of Labor and Employment, the Commission or the voluntary arbitrator shall be final and executory ten (10) calendar days after receipt thereof by the parties. (Emphases supplied.)

Pursuant to Article 263(i) of the Labor Code, therefore, the Decision dated June 8, 2005 of the Secretary of Labor and Employment became final and executory after the lapse of the period provided under the said provision. Moreover, neither party further questioned the Decision dated June 8, 2005 of the Secretary of Labor and Employment.

The Decision dated June 8, 2005 of the Secretary of Labor and Employment already considered and ruled upon the issues being raised by the union in this petition. In particular, the said Decision already passed upon the issue of whether there was already an existing deadlock between the union and the company when the Secretary of

Labor and Employment assumed jurisdiction over their labor dispute. The said Decision also answered the issue of whether the company was guilty of bargaining in bad faith. As the Decision dated June 8, 2005 of the Secretary of Labor and Employment already settled the said issues with finality, the union cannot once again raise those issues in this Court through this petition without violating the principle of *res judicata*, particularly in the concept of conclusiveness of judgment.

Second, a significant consequence of the finality of the Decision dated June 8, 2005 of the Secretary of Labor and Employment is that it rendered the controversy between the union and the company moot.

In particular, with the finality of the Decision dated June 8, 2005, the labor dispute, covering both the alleged bargaining in bad faith and the deadlock, between the union and the company was settled with finality. As the said Decision settled essentially the same questions being raised by the union in this case, the finality of the said Decision rendered this case moot. The union cannot be allowed to use this case to once again unsettle the issues that have been already settled with finality by the final and executory Decision dated June 8, 2005 of the Secretary of Labor and Employment.

Moreover, the issues of alleged bargaining in bad faith on the part of the company and the deadlock in the negotiations were both incident to the framing of a new CBA that would govern the parties for the period 2004 to 2007. Not only had the said period long lapsed, the final Decision dated June 8, 2005 of the Secretary of Labor and Employment also facilitated the framing of the new CBA, particularly on the disputed provision on annual lump sum payment in lieu of wage increase. The dispositive portion of the said Decision is clear and categorical:

WHEREFORE, this Office hereby orders:

1. The award of Php95,000 lump sum, per covered employee per year, for the duration of their CBA, effective 01 May 2004 to 30 April 2007;
2. The retention of benefits on vacation leave, sick leave, and special leave as provided in the 2001-2004 CBA;
3. All improvements that [the] parties may have agreed upon during the negotiations, are adopted as part of the CBA. All other demands, not passed upon herein, are deemed DENIED.

The parties are hereby directed, to submit a copy of the CBA incorporating the awards granted herein, within ten (10) days from receipt of this Decision.[31]

As the above directive of the Secretary of Labor and Employment in the decretal portion of the Decision dated June 8, 2005 has long been final and executory, the dispute on the matter of the provision on annual wage increase contra yearly lump sum payment is already moot.

Third, the petition is improper as it presents questions of fact. A question of fact cannot properly be raised in a petition for review under Rule 45 of the Rules of Court.[32] This petition of the union now before this Court is a petition for review under Rule 45 of the Rules of Court.

The existence of bad faith is a question of fact and is evidentiary.[33] The crucial question of whether or not a party has met his statutory duty to bargain in good faith typically turns on the facts of the individual case, and good faith or bad faith is an inference to be drawn from the facts.[34] Thus, the issue of whether or not there was bad faith on the part of the company when it was bargaining with the union is a question of fact. It requires that the reviewing court look into the evidence to find if indeed there is proof that is substantial enough to show such bad faith.

The issue of whether there was already deadlock between the union and the company is likewise a question of fact. It requires the determination of evidence to find whether there is a “counteraction” of forces between the

union and the company and whether each of the parties exerted “reasonable effort at good faith bargaining.”[35] This is so because a deadlock is defined as follows:

A ‘deadlock’ is x x x the counteraction of things producing entire stoppage; x x x There is a deadlock when there is a complete blocking or stoppage resulting from the action of equal and opposed forces x x x. The word is synonymous with the word impasse, which x x x ‘presupposes reasonable effort at good faith bargaining which, despite noble intentions, does not conclude in agreement between the parties.’[36]

Considering that the issues presented by the union are factual issues, the union’s petition is improper. As a rule, this Court cannot properly inquire into factual matters in the exercise of its judicial power under Rule 45 of the Rules of Court. While there are exceptions to this rule, none of the exceptions apply in this case.

Fourth, and finally, assuming that this Court may disregard the conclusiveness of judgment and review the factual matters raised by the union, the merits are still not in the union’s favor.

The findings of fact of the Secretary of Labor and Employment in the Decision dated June 8, 2005 that there already existed a bargaining deadlock when she assumed jurisdiction over the labor dispute between the union and the company, and that there was no bad faith on the part of the company when it was bargaining with the union are both supported by substantial evidence. This Court sees no reason to reverse or overturn the said findings.

The final and executory Decision dated June 8, 2005 of the Secretary of Labor and Employment squarely addressed the contention of the union that the company was guilty of bargaining in bad faith. The said Decision correctly characterized the nature of the duty to bargain, that is, it does not compel any party to accept a proposal or to make any concession.[37] While the purpose of collective bargaining is the reaching of an agreement between the employer and the employee’s union resulting in a binding contract between the parties, the failure to reach an agreement after negotiations continued for a reasonable period does not mean lack of good faith. The laws invite and contemplate a collective bargaining contract but do not compel one.[38] For after all, a CBA, like any contract is a product of mutual consent and not of compulsion. As such, the duty to bargain does not include the obligation to reach an agreement.[39] In this light, the corporation’s unswerving position on the matter of annual lump sum payment in lieu of wage increase did not, by itself, constitute bad faith even if such position caused a stalemate in the negotiations, as correctly ruled by the Secretary of Labor and Employment in the decision dated June 8, 2005.

As there was no bad faith on the part of the company in its bargaining with the union, deadlock was possible and did occur. The union’s reliance on item 8 of the ground rules governing the parties’ negotiations which required mutual consent for a declaration of deadlock was reduced to irrelevance by the actual facts. *Contra factum non valet argumentum*. There is no argument against facts. And the fact is that the negotiations between the union and the company were stalled by the opposing offers of yearly wage increase by the union, on the one hand, and annual lump sum payment by the company, on the other hand. Each party found the other’s offer unacceptable and neither party was willing to yield. The company suggested seeking the assistance of a third party to settle the issue but the union preferred the remedy of filing a notice of strike. Each party was adamant in its position. Thus, because of the unresolved issue on wage increase, there was actually a complete stoppage of the ongoing negotiations between the parties and the union filed a Notice of Strike. A mutual declaration would neither add to nor subtract from the reality of the deadlock then existing between the parties. Thus, the absence of the parties’ mutual declaration of deadlock does not mean that there was no deadlock. At most, it would have been simply a recognition of the prevailing status quo between the parties.

More importantly, the union only caused confusion in the proceedings before the Secretary of Labor and Employment when it questioned the latter’s assumption of jurisdiction over the labor dispute between the union

and the company on the ground that the “Secretary erred in assuming jurisdiction over the ‘CBA’ case when it [was] not the subject matter of the notice of strike” because the case was “all about ‘ULP’ in the form of bad faith bargaining.” For the union, the Secretary of Labor and Employment should not have touched the issue of the CBA as there was no CBA deadlock at that time, and should have limited the assumption of jurisdiction to the charge of unfair labor practice for bargaining in bad faith.[40]

The union is wrong.

As discussed above, there was already an actual existing deadlock between the parties. What was lacking was the formal recognition of the existence of such a deadlock because the union refused a declaration of deadlock. Thus, the union’s view that, at the time the Secretary of Labor and Employment exercised her power of assumption of jurisdiction, the issue of deadlock was neither an incidental issue to the matter of unfair labor practice nor an existing issue is incorrect.

More importantly, however, the union’s mistaken theory that the deadlock issue was neither incidental nor existing is based on its premise that the case is all about the company’s alleged unfair labor practice of bargaining in bad faith, which is the ground stated in its first Notice of Strike. In particular, the union asserts:

The evidentiary value of the Notice of Strike for ULP of BAD FAITH BARGAINING (Annex “M” of the petition) cannot be taken for granted. It is the very important documentary evidence that shows what is the existing “labor dispute” between the parties.[41]

While the first Notice of Strike is indeed significant in the determination of the existing labor dispute between the parties, it is not the sole criterion. As this Court explained in *Union of Filipino Employees-Drug, Food and Allied Industries Unions-Kilusang Mayo Uno v. Nestle Philippines, Inc.*[42]:

The Secretary of the DOLE has been explicitly granted by Article 263(g) of the Labor Code the authority to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, and decide the same accordingly. And, as a matter of necessity, it includes questions incidental to the labor dispute; that is, issues that are necessarily involved in the dispute itself, and not just to that ascribed in the Notice of Strike or otherwise submitted to him for resolution. x x x (Emphasis supplied.)

The totality of the company’s Petition for Assumption of Jurisdiction, including every allegation therein, also guided the Secretary of Labor and Employment in the proper determination of the labor dispute over which he or she was being asked to assume jurisdiction.

A “labor dispute” is defined under Article 212(l) of the Labor Code as follows:

ART. 212. Definitions. – x x x

x x x x

(l) “Labor dispute” includes any controversy or matter concerning terms or conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

In this case, there was a dispute, an unresolved issue on several matters, between the union and the company in the course of the negotiations for a new CBA. Among the unsettled issues was the matter of compensation. In particular, paragraphs 1 to 6 of the statement of Antecedent Facts in the company’s Petition for Assumption of Jurisdiction[43] read:

1. The Collective Bargaining Agreement (CBA) of the Company and the Union expired on 30 April 2004.
2. Thus, as early as 13 April 2004, the Company and the Union already met to discuss the ground rules that would govern their upcoming negotiations. Then, on 15 April 2004, the Union submitted its proposals for the renewal of their CBA.
3. While a total of 41 meetings were held between the parties, several items, including the matter of compensation, remained unresolved.

Copies of the Minutes of the 41 meetings are attached hereto and made integral part hereof as Annexes “A” to “A-40”.

4. On 2 September 2004, the Union filed a Notice of Strike with the NCMB, Region IV based in Calamba, Laguna anchored on a perceived unfair labor practice consisting of alleged bad faith bargaining on the part of the Company.

Although there is no basis to the charge of unfair labor practice as to give a semblance of validity to the notice of strike, the Company willingly and actually participated in the conciliation and mediation conferences called by the NCMB to settle the dispute.

A copy of the Notice of Strike is attached hereto and made integral part hereof as Annex “B”.

5. Although conciliation meetings have been conducted by the National Conciliation and Mediation Board (NCMB) through Conciliator Leodegario Teodoro on 09 and 13 September 2004, no settlement of the dispute has yet been agreed upon.

6. Based on the attendant circumstances, as well as on the actuations of the Union officers and members, it is likely that the Union has already conducted, or is set to conduct soon, a strike vote.[44]

Thus, the labor dispute between the union and the company concerned the unresolved matters between the parties in relation to their negotiations for a new CBA. The power of the Secretary of Labor and Employment to assume jurisdiction over this dispute includes and extends to all questions and controversies arising from the said dispute, such as, but not limited to the union’s allegation of bad faith bargaining. It also includes and extends to the various unresolved provisions of the new CBA such as compensation, particularly the matter of annual wage increase or yearly lump sum payment in lieu of such wage increase, whether or not there was deadlock in the negotiations. Indeed, nowhere does the Order dated September 20, 2004 of the Secretary of Labor and Employment mention a CBA deadlock. What the union viewed as constituting the inclusion of a CBA deadlock in the assumption of jurisdiction was the inclusion of the economic issues, particularly the company’s stance of yearly lump sum payment in lieu of annual wage increase, in the directive for the parties to submit their respective position papers.[45] The union’s Motion for Reconsideration (With Urgent Prayer to Compel the Company to Justify Offer of Wage [Increase] Moratorium) and Second Motion for Reconsideration questioning the Order dated September 20, 2004 of the Secretary of Labor and Employment actually confirm that the labor dispute between the parties essentially and necessarily includes the conflicting positions of the union, which advocates annual wage increase, and of the company, which offers yearly lump sum payment in lieu of wage increase. In fact, that is the reason behind the union’s prayer that the company be ordered to justify its offer of wage increase moratorium.[46] As there is already an existing controversy on the matter of wage increase, the Secretary of Labor and Employment need not wait for a deadlock in the negotiations to take cognizance of the matter. That is the significance of the power of the Secretary of Labor and Employment under Article 263(g) of the Labor Code to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest. As this Court elucidated in *Bagong Pagkakaisa ng Manggagawa ng Triumph International v. Secretary of the Department of Labor and Employment*[47]:

Article 263(g) is both an extraordinary and a preemptive power to address an extraordinary situation – a strike or lockout in an industry indispensable to the national interest. This grant is not limited to the grounds cited in the notice of strike or lockout that may have preceded the strike or lockout; nor is it limited to the incidents of the strike or lockout that in the meanwhile may have taken place. As the term “assume jurisdiction” connotes, the intent of the law is to give the Labor Secretary full authority to resolve all matters within the dispute that gave rise to or which arose out of the strike or lockout; it includes and extends to all questions and controversies arising from or related to the dispute, including cases over which the labor arbiter has exclusive jurisdiction. (Citation omitted.)

Everything considered, therefore, the Secretary of Labor and Employment committed no abuse of discretion when she assumed jurisdiction over the labor dispute of the union and the company.

WHEREFORE, the petition is hereby DENIED.

SO ORDERED.

Sereno, C.J., (Chairperson), Bersamin, Villarama, Jr., and Reyes, JJ., concur.

[1] Rollo, pp. 52-63; penned by Associate Justice Renato C. Dacudao with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao, concurring.

[2] Id. at 53.

[3] Id.

[4] Id. at 54.

[5] Id.

[6] Id. at 163.

[7] Id. at 54-55.

[8] Id. at 55.

[9] Id. at 168-172.

[10] Id. at 171-172.

[11] Id. at 59.

[12] Id. at 67-96.

[13] Id. at 76-79.

[14] G.R. No. 100158, June 29, 1992, 210 SCRA 565.

[15] Rollo, pp. 60-62.

[16] Id. at 62.

[17] Id. at 63.

[18] Id. at 63.

[19] Id. at 208-209.

[20] CA rollo, pp. 354-397, 360; Memorandum of the company in CA-G.R. SP No. 88178.

[21] Id. at 392-397.

[22] Rollo, pp. 295-302.

[23] 335 Phil. 170 (1997).

[24] Rollo, pp. 299-300.

[25] Id. at 300.

[26] Id. at 300-301.

[27] Id. at 262.

[28] Id. at 24-42.

[29] Id. at 244-262.

[30] 271 Phil. 768, 784 (1991).

[31] Rollo, pp. 301-302.

[32] Only questions of law should be raised in a petition for review under Rule 45 (Mindanao Terminal and Brokerage Service, Inc. v. Nagkahiusang Mamumuo sa Minterbro-Southern Philippines Federation of Labor, G.R. No. 174300, December 5, 2012, 687 SCRA 28, 41).

[33] Belle Corporation v. De Leon-Banks, G.R. No. 174669, September 19, 2012, 681 SCRA 351, 362.

[34] Hongkong and Shanghai Banking Corporation Employees Union v. National Labor Relations Commission, 346 Phil. 524, 534 (1997).

[35] See Capitol Medical Center Alliance of Concerned Employees-Unified Filipino Service Workers v. Laguesma, supra note 23 at 179.

[36] Id. at 178-179, citing Divine Word University of Tacloban v. Secretary of Labor and Employment, G.R. No. 91915, September 11, 1992, 213 SCRA 759, 773.

[37] In this connection, Article 252 of the Labor Code defines the duty to bargain collectively as follows:

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 with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreements and executing a contract incorporating such agreements if requested by either party but such duty does not compel any party to agree to a proposal or to make any concession. (Emphasis supplied.)

[38] Union of Filipino Employees-Drug, Food and Allied Industries Unions-Kilusang Mayo Uno v. Nestle Philippines, Inc., 571 Phil. 29, 41 (2008).

[39] Id.

[40] Rollo, p. 178.

[41] Id. at 118.

[42] Supra note 38 at 49.

[43] CA rollo, pp. 32-40.

[44] Id. at 33-34.

[45] See union's Motion for Reconsideration (With Urgent Prayer to Compel the Company to Justify Offer of Wage Moratorium) and Second Motion for Reconsideration, rollo, pp. 173-180 and 188-195, respectively.

[46] Id. at 180 and 195.

[47] G.R. No. 167401, July 5, 2010, 623 SCRA 185, 205-206.

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