

## **DEL PILAR ACADEMY, EDUARDO ESPEJO AND ELISEO OCAMPO, JR., PETITIONERS, VS. DEL PILAR ACADEMY EMPLOYEES UNION RESPONDENT.**

*G.R. No. 170112. April 30, 2008*

Ponente: NACHURA, J.

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### **NACHURA, J.:**

Before this Court is a petition for review on certiorari assailing the July 19, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP. No. 86868, and its September 28, 2005 Resolution[2] denying the motion for reconsideration.

Following are the factual antecedents.

Respondent Del Pilar Academy Employees Union (the UNION) is the certified collective bargaining representative of teaching and non-teaching personnel of petitioner Del Pilar Academy (DEL PILAR), an educational institution operating in Imus, Cavite.

On September 15, 1994, the UNION and DEL PILAR entered into a Collective Bargaining Agreement (CBA)[3] granting salary increase and other benefits to the teaching and non-teaching staff. Among the salient provisions of the CBA are:

### **ARTICLE V**

#### **SALARY INCREASE**

SECTION 1. Basic Pay - the ACADEMY and the UNION agreed to maintain the wage increase in absolute amount as programmed in the computation prepared by the ACADEMY and dated 30 June 1994 initiated by the members of the bargaining panel of both parties, taking into account increases in tuition fees, if any.

SECTION 2. The teaching load of teachers shall only be Twenty-Three (23) hours per week effective this school year and any excess thereon shall be considered as overload with pay.

SECTION 3. Overloadpay (sic) will be based on the Teachers' Basic Monthly Rate.

SECTION 4. The ACADEMY agrees to grant longevity pay as follows: P100.00 for every 5 years of continuous service. The longevity shall be integrated in the basic salary within three (3) years from the effectivity of this agreement.

### **ARTICLE VI**

#### **VACATION LEAVE WITH PAY**

SECTION 1. Every faculty member who has rendered at least six (6) consecutive academic semester of service shall be entitled to the 11[th] month and 12[th] month pay as summer vacation leave with pay. They may, however, be required to report [and] undergo briefings or seminars in connection with their teaching

assignments for the ensuing school year.

SECTION 2. Non-teaching employees who shall have rendered at least one (1) year of service shall be entitled to fifteen days leave with pay.

The UNION then assessed agency fees from non-union employees, and requested DEL PILAR to deduct said assessment from the employees' salaries and wages. DEL PILAR, however, refused to effect deductions claiming that the non-union employees were not amenable to it.

In September 1997, the UNION negotiated for the renewal of the CBA. DEL PILAR, however, refused to renew the same unless the provision regarding entitlement to two (2) months summer vacation leave with pay will be amended by limiting the same to teachers, who have rendered at least three (3) consecutive academic years of satisfactory service. The UNION objected to the proposal claiming diminution of benefits. DEL PILAR refused to sign the CBA, resulting in a deadlock. The UNION requested DEL PILAR to submit the case for voluntary arbitration, but the latter allegedly refused, prompting the UNION to file a case for unfair labor practice with the Labor Arbiter against DEL PILAR; Eduardo Espejo, its president; and Eliseo Ocampo, Jr., chairman of the Board of Trustees.

Traversing the complaint, DEL PILAR denied committing unfair labor practices against the UNION. It justified the non-deduction of the agency fees by the absence of individual check off authorization from the non-union employees. As regards the proposal to amend the provision on summer vacation leave with pay, DEL PILAR alleged that the proposal cannot be considered unfair for it was done to make the provision of the CBA conformable to the DECS' Manual of Regulations for Private Schools.[4]

On October 2, 1998, Labor Arbiter Nieves V. De Castro rendered a Decision, viz.:

Reviewing the records of this case and the law relative to the issues at hand, we came to the conclusion that it was an error on [the] part of [DEL PILAR] not to have collected agency fee due other workers who are non-union members but are included in the bargaining unit being represented by [the UNION]. True enough as was correctly quoted by [the UNION] Art. 248, to wit:

Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agency may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agreement: Provided, that the individual authorization required under Article [241], paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent.

As it is, [DEL PILAR's] unwarranted fear re-individual dues [without] authorization for non-union members has no basis in fact or in law. For receipt of CBA benefits brought about by the CBA negotiated with [petitioners], they are duty bound to pay agency fees which may lawfully be deducted sans individual check-off authorization. Being [recipients] of said benefits, they should share and be made to pay the same considerations imposed upon the union members. [DEL PILAR], therefore, was in error in refusing to deduct corresponding agency fees which lawfully belongs to the union.

Anent the proposal to decrease the coverage of the 11[th] and 12[th] month vacation with pay, we do not believe that such was done in bad faith but rather in an honest attempt to make perfect procession following the DECS' Manuals. Moreso, it is of judicial notice that in the course of negotiation, almost all provisions are up for grabs, amendments or change. This is something normal in the course of a negotiation and does not necessarily connote bad faith as each every one (sic) has the right to negotiate reward or totally amend the provisions of the contract/agreement.

All told while there was error on [the] part of [DEL PILAR] for the first issue, [it] came through in the second.

But as it is, we do not believe that a finding of unfair labor practice can be had considering the lack of evidence on record that said acts were done to undermine the union or stifle the member's right to self organization or that the [petitioners] were in bad faith. If at all, it's (sic) error may have been the result of a mistaken notion that individual check-off authorization is needed for it to be able to validly and legally deduct assessment especially after individual[s] concerned registered their objection. On the other hand, it is not error to negotiate for a better term in the CBA. So long as [the] parties will agree. It must be noted that a CBA is a contract between labor and management and is not simply a litany of benefits for labor. Moreso, for unfair labor practice to prosper, there must be a clear showing of acts aimed at stifling the worker's right to self-organization. Mere allegations and mistake notions would not suffice.

ACCORDINGLY, premises considered, the charge of unfair labor practice is hereby Dismissed for want of basis.

**SO ORDERED.[5]**

On appeal, the National Labor Relations Commission (NLRC) affirmed the Arbiter's ruling. In gist, it upheld the UNION's right to agency fee, but did not consider DEL PILAR's failure to deduct the same an unfair labor practice.[6]

The UNION's motion for reconsideration having been denied,[7] it then went to the CA via certiorari. On July 19, 2005, the CA rendered the assailed decision, affirming with modification the resolutions of the NLRC. Like the Arbiter and the NLRC, the CA upheld the UNION's right to collect agency fees from non-union employees, but did not adjudge DEL PILAR liable for unfair labor practice. However, it ordered DEL PILAR to deduct agency fees from the salaries of non-union employees.

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the petition is PARTIALLY GRANTED. The assailed resolution of the NLRC dated April 30, 2004 is hereby MODIFIED. Private respondent Del Pilar Academy is ordered to deduct the agency fees from non-union members who are recipients of the collective bargaining agreement benefits. The agency fees shall be equivalent to the dues and other fees paid by the union members.

SO ORDERED.[8]

DEL PILAR filed a motion for reconsideration of the decision, but the CA denied the same on September 28, 2005.[9]

Before us, DEL PILAR impugns the CA Decision on the following grounds:

- IN PROMULGATING THE CHALLENGED DECISION AND RESOLUTION, THE HON. COURT OF APPEALS DISREGARDED THE FACT THAT THE ANNUAL INCREASE IN THE SALARIES OF THE EMPLOYEES WAS NOT A BENEFIT ARISING FROM A COLLECTIVE BARGAINING AGREEMENT, BUT WAS MANDATED BY THE DIRECTIVE OF A GOVERNMENTAL DEPARTMENT; and
- CONSIDERING THE ANNUAL SALARY INCREASE OF NON-UNION MEMBERS WAS NOT A BENEFIT ARISING FROM THE CBA, THEIR INDIVIDUAL WRITTEN AUTHORIZATIONS ARE STILL REQUIRED TO ALLOW PETITIONER ACADEMY TO LEGALLY DEDUCT THE SAME FROM THEIR RESPECTIVE SALARY.[10]

The issue here boils down to whether or not the UNION is entitled to collect agency fees from non-union members, and if so, whether an individual written authorization is necessary for a valid check off.

The collection of agency fees in an amount equivalent to union dues and fees, from employees who are not union members, is recognized by Article 248(e) of the Labor Code, thus:

Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed reasonable fees equivalent to the dues and other fees paid by the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement. Provided, That the individual authorization required under Article 241, paragraph (o) of this Code shall not apply to the non-members of recognized collective bargaining agent.

When so stipulated in a collective bargaining agreement or authorized in writing by the employees concerned, the Labor Code and its Implementing Rules recognize it to be the duty of the employer to deduct the sum equivalent to the amount of union dues, as agency fees, from the employees' wages for direct remittance to the union. The system is referred to as check off.[11] No requirement of written authorization from the non-union employees is necessary if the non-union employees accept the benefits resulting from the CBA.[12]

DEL PILAR admitted its failure to deduct the agency fees from the salaries of non-union employees, but justifies the non-deduction by the absence of individual written authorization. It posits that Article 248(e) is inapplicable considering that its employees derived no benefits from the CBA. The annual salary increase of its employee is a benefit mandated by law, and not derived from the CBA. According to DEL PILAR, the Department of Education, Culture and Sports (DECS) required all educational institutions to allocate at least 70% of tuition fee increases for the salaries and other benefits of teaching and non-teaching personnel; that even prior to the execution of the CBA in September 1994, DEL PILAR was already granting annual salary increases to its employees. Besides, the non-union employees objected to the deduction; hence, a written authorization is indispensable to effect a valid check off. DEL PILAR urges this Court to reverse the CA ruling insofar as it ordered the deduction of agency fees from the salaries of non-union employees, arguing that such conclusion proceeds from a misplaced premise that the salary increase arose from the CBA.

The argument cannot be sustained.

Contrary to what DEL PILAR wants to portray, the grant of annual salary increase is not the only provision in the CBA that benefited the non-union employees. The UNION negotiated for other benefits, namely, limitations on teaching assignments to 23 hours per week, additional compensation for overload units or teaching assignments in excess of the 23 hour per week limit, and payment of longevity pay. It also negotiated for entitlement to summer vacation leave with pay for two (2) months for teaching staff who have rendered six (6) consecutive semesters of service. For the non-teaching personnel, the UNION worked for their entitlement to fifteen (15) days leave with pay.[13] These provisions in the CBA surely benefited the non-union employees, justifying the collection of, and the UNION's entitlement to, agency fees.

Accordingly, no requirement of written authorization from the non-union employees is needed to effect a valid check off. Article 248(e) makes it explicit that Article 241, paragraph (o),[14] requiring written authorization is inapplicable to non-union members, especially in this case where the non-union employees receive several benefits under the CBA.

As explained by this Court in *Holy Cross of Davao College, Inc. v. Hon. Joaquin*[15] viz.:

The employee's acceptance of benefits resulting from a collective bargaining agreement justifies the deduction of agency fees from his pay and the union's entitlement thereto. In this aspect, the legal basis of the union's right to agency fees is neither contractual nor statutory, but quasi-contractual, deriving from the established principle that non-union employees may not unjustly enrich themselves by benefiting from employment conditions negotiated by the bargaining union.

By this jurisprudential yardstick, this Court finds that the CA did not err in upholding the UNION's right to collect agency fees.

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 86868, are AFFIRMED.

**SO ORDERED.**

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

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[1] Penned by Associate Justice Eliezer R. De Los Santos (deceased), with Associate Justices Eugenio S. Labitoria (retired) and Arturo D. Brion (now a member of this Court), concurring; rollo, pp. 33-38.

[2] Id. at 39.

[3] CA rollo, pp. 196-197.

[4] Id. at 128-131.

[5] Id. at 144-146.

[6] Id. at 16-19.

[7] Id. at 20-21.

[8] Rollo, pp. 37-38.

[9] Id. at 39.

[10] Id. at 132.

[11] See *Gabriel v. Secretary of Labor and Employment*, 384 Phil. 797, 804 (2000).

[12] See *Holy Cross of Davao College, Inc. v. Joaquin*, 331 Phil. 680, 692 (1996).

[13] CA rollo, pp. 196-197.

[14] Art. 241. RIGHTS AND CONDITIONS OF MEMBERSHIP IN A LABOR ORGANIZATION.

The following are the rights and conditions of membership in a labor organization:

x x x x

(o) Other than for mandatory activities under the Code, no special assessments, attorney's fees, negotiation fees or any other extraordinary fees may be checked off from any amount due to employee without an individual written authorization duly signed by the employee. The authorization should specifically state the amount, purpose and beneficiary of the deduction; x x x.

[15] *Supra* note 12, at 692.

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