KAISAHAN AT KAPATIRAN NG MGA MANGGAGAWA AT KAWANI SA MWC-EAST ZONE UNION AND EDUARDO BORELA, REPRESENTING ITS MEMBERS, PETITIONERS, VS. MANILA WATER COMPANY, INC., RESPONDENT.

G.R. No. 174179. November 16, 2011

Ponente: BRION, J.

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BRION, J.:

We resolve the petition for review on certiorari[1] filed by the petitioners, Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union (Union) and Eduardo Borela, assailing the decision[2] and the resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 83654.[4]

The Factual Antecedents

The background facts are not disputed and are summarized below.

The Union is the duly-recognized bargaining agent of the rank-and-file employees of the respondent Manila Water Company, Inc. (Company) while Borela is the Union President.[5] On February 21, 1997, the Metropolitan Waterworks and Sewerage System (MWSS) entered into a Concession Agreement (Agreement) with the Company to privatize the operations of the MWSS.[6] Article 6.1.3 of the Agreement provides that "the Concessionaire shall grant [its] employees benefits no less favorable than those granted to MWSS employees at the time of [their] separation from MWSS."[7] Among the benefits enjoyed by the employees of the MWSS were the amelioration allowance (AA) and the cost-of-living allowance (COLA) granted in August 1979, pursuant to Letter of Implementation No. 97 issued by the Office of the President.[8]

The payment of the AA and the COLA was discontinued pursuant to Republic Act No. 6758, otherwise known as the "Salary Standardization Law," which integrated the allowances into the standardized salary.[9] Nonetheless, in 2001, the Union demanded from the Company the payment of the AA and the COLA during the renegotiation of the parties' Collective Bargaining Agreement (CBA).[10] The Company initially turned down this demand, however, it subsequently agreed to an amendment of the CBA on the matter, which provides:

> The Company shall implement the payment of the Amelioration Allowance and Cost of Living [A]llowance retroactive August 1, 1997 should the MWSS decide to pay its employees and all its former employees or upon award of a favorable order by the MWSS Regulatory Office or upon receipt of [a] final court judgment.[11]

Thereafter, the Company integrated the AA into the monthly payroll of all its employees beginning August 1, 2002, payment of the AA and the COLA after an appropriation was made and approved by the MWSS Board of Trustees. The Company, however, did not subsequently include the COLA since the Commission on Audit disapproved its payment because the Company had no funds to cover this benefit.[12]

As a result, the Union and Borela filed on April 15, 2003 a complaint against the Company for payment of the

AA, COLA, moral and exemplary damages, legal interest, and attorney's fees before the National Labor Relations Commission (NLRC).[13]

The Compulsory Arbitration Rulings

In his decision of August 20, 2003, Labor Arbiter Aliman D. Mangandog (LA) ruled in favor of the petitioners and ordered the payment of their AA and COLA, six percent (6%) interest of the total amount awarded, and ten percent (10%) attorney's fees.[14]

On appeal by the Company, the NLRC affirmed with modification the LA's decision.[15] It set aside the award of the COLA benefits because the claim was not proven and established, but ordered the Company to pay the petitioners their accrued AA of about P107,300,000.00 in lump sum and to continue paying the AA starting August 1, 2002. It also upheld the award of 10% attorney's fees to the petitioners.

In its Motion for Partial Reconsideration of the NLRC's December 19, 2003 decision, the Company pointed out that the award of ten percent (10%) attorney's fees to the petitioners is already provided for in their December 19, 2003 Memorandum of Agreement (MOA) which mandated that attorney's fees shall be deducted from the AA and CBA receivables.[16] This compromise agreement, concluded between the parties in connection with a notice of strike filed by the Union in 2003,[17] provides among others that:[18]

> 31. Attorney's fees – 10% to be deducted from AA and CBA receivables.
> 32. All other issues are considered withdrawn.[19]

In their Opposition, the petitioners argued that the MOA only covered the payment of their share in the contracted attorney's fees, but did not include the attorney's fees awarded by the NLRC. To support their claim, the petitioners submitted Borela's affidavit which relevantly stated:

> 2. On December 19, 2003, in settlement of the notice of Strike for CBA Deadlock, Manila Water Company, Inc. and the Union entered into an Agreement settling the deadlock issued (sic) of the CBA negotiation including [the] payment of the AA and the mode of payment thereof.
>
> 3. Considering that the AA payment was included in the Agreement, the Union representation deemed it wise, for practical reason, to authorize the company to immediately deduct from the benefits that will be received by the member/employees the 10% attorney's fees in conformity with our contract with our counsel.
>
> 4. The 10% attorney's fees paid by the members/employees is separate and distinct from the obligation of the company to pay the 10% awarded attorney's fees which we also gave to our counsel as part of our contingent fee agreement.
>
> 5. There was no agreement that we are going to shoulder the entire attorney's fees as this would cost us 20% of the amount we would recover. There was also no agreement that the 10% attorney's fees in the MOA represents the entire attorney's cost because the said payment represents only our compliance of our share in the attorney's fees in conformity with our contract. Likewise, we did not waive the awarded 10% attorney's fees because the same belongs to our counsel and not to us and beyond our authority.[20] (emphasis ours)

The NLRC subsequently denied both parties' Motions for Partial Reconsideration,[21] prompting the Company to elevate the case to the CA via a petition for certiorari under Rule 65 of the Rules of Court. It charged the NLRC of grave abuse of discretion in sustaining the award of attorney's fees on the grounds that: (1) it is contrary to the MOA[22] concerning the payment of attorney's fees; (2) there was no finding of unlawful withholding of wages or bad faith on the part of the Company; and (3) the attorney's fees awarded are unconscionable.

The CA Decision

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In its Decision promulgated on March 6, 2006,[23] the CA modified the assailed NLRC rulings by deleting "[t]he order for respondent MWCI to pay attorney's fees equivalent to 10% of the total judgment awards." The CA recognized the binding effect of the MOA between the Company and the Union; it stressed that any further award of attorney's fees is unfounded considering that it did not find anything in the Agreement that is contrary to law, morals, good customs, public policy or public order.

In resolving the issue, the CA cited our ruling in Traders Royal Bank Employees Union-Independent v. NLRC,[24] where we distinguished between the two commonly accepted concepts of attorney's fees – the ordinary and the extraordinary. We held in that case that under its ordinary concept, attorney's fees are the reasonable compensation paid to a lawyer by his client for legal services rendered. On the other hand, we ruled that in its extraordinary concept, attorney's fees represent an indemnity for damages ordered by the court to be paid by the losing party in a litigation based on what the law provides; it is payable to the client not to the lawyer, unless there is an agreement to the contrary.

The CA noted that the fees at issue in this case fall under the extraordinary concept – the NLRC having ordered the Company, as losing party, to pay the Union and its members ten percent (10%) attorney's fees. It found the award without basis under Article 111 of the Labor Code which provides that attorney's fees equivalent to ten percent (10%) of the amount of wages recovered may be assessed only in cases of unlawful withholding of wages.

The CA ruled that the facts of the case do not indicate any unlawful withholding of wages or bad faith attributable to the Company. It also held that the additional grant of 10% attorney's fees violates Article 111 of the Labor Code considering that the MOA between the parties already ensured the payment of 10% attorney's fees, deductible from the AA and CBA receivables of the Union's members. The CA thus adjudged the NLRC decision awarding attorney's fees to have been rendered with grave abuse of discretion.

The Union and Borela moved for reconsideration, but the CA denied the motion in its resolution of August 15, 2006.[25] Hence, the present petition.

The Petition

The petitioners seek a reversal of the CA rulings on the sole ground that the appellate court committed a reversible error in reviewing the factual findings of the NLRC and in substituting its own findings – an action that is not allowed under Rule 65 of the Rules of Court. They question the CA's re-evaluation of the evidence, particularly the MOA, and its conclusion that there was no unlawful withholding of wages or bad faith attributable to the Company, thereby contradicting the factual findings of the NLRC. They also submit that a petition for certiorari under Rule 65 is confined only to issues of jurisdiction or grave abuse of discretion, and does not include the review of the NLRC's evaluation of the evidence and its factual findings.[26]

The petitioners argue that in the present case, all the parties' arguments and evidence relating to the award of attorney's fees were carefully studied and weighed by the NLRC. As a result, the NLRC gave credence to Borela's affidavit claiming that the attorney's fees paid by the Union's members are separate and distinct from the attorney's fees awarded by the NLRC. The petitioners stress that whether the NLRC is correct in giving credence to Borela's affidavit is a question that the CA cannot act upon in a petition for certiorari unless grave abuse of discretion can be shown.[27]

The Case for the Company

In its Memorandum filed on September 7, 2007,[28]the Company argues that the correctness of the NLRC's interpretation of the provision of the MOA, the reasonableness of the attorney's fees in question, and the application or interpretation of a provision of the Labor Code on the matter are questions of law which the CA

validly inquired into in the certiorari proceedings. It argues that the CA correctly ruled that the NLRC acted with grave abuse of discretion when it affirmed the LA's award of attorney's fees despite the absence of a finding of any unlawful withholding of wages or bad faith on the part of the Company. It finally contends that the Union's demand, together with the NLRC award, is unconscionable as it represents 20% of the amount due or about P21.4 million.

Issues

The core issues posed for our resolution are: (1) whether the CA can review the factual findings of the NLRC in a Rule 65 petition; and (2) whether the NLRC gravely abused its discretion in awarding ten percent (10%) attorney's fees to the petitioners.

The Court's Ruling

We find the petition and its arguments meritorious.
On the CA's Review of the NLRC's Factual Findings

We agree with the petitioners that as a rule, the CA cannot undertake a re-assessment of the evidence presented in the case in certiorari proceedings under Rule 65 of the Rules of Court.[29] However, the rule admits of exceptions. In Mercado v. AMA Computer College-Parañaque City, Inc.,[30] we held that the CA may examine the factual findings of the NLRC to determine whether or not its conclusions are supported by substantial evidence, whose absence justifies a finding of grave abuse of discretion. We ruled:

> We agree with the petitioners that, as a rule in certiorari proceedings under Rule 65 of the Rules of Court, the CA does not assess and weigh each piece of evidence introduced in the case. The CA only examines the factual findings of the NLRC to determine whether or not the conclusions are supported by substantial evidence whose absence points to grave abuse of discretion amounting to lack or excess of jurisdiction. In the recent case of Protacio v. Laya Mananghaya & Co., we emphasized that:
>
> As a general rule, in certiorari proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence. The Court has not hesitated to affirm the appellate court's reversals of the decisions of labor tribunals if they are not supported by substantial evidence. [31] (italics and emphasis supplied; citation omitted)

As discussed below, our review of the records and of the CA decision shows that the CA erred in ruling that the NLRC gravely abused its discretion in awarding the petitioners ten percent (10%) attorney's fees without basis in fact and in law. Corollary to the above-cited rule is the basic approach in the Rule 45 review of Rule 65 decisions of the CA in labor cases which we articulated in Montoya v. Transmed Manila Corporation[32] as a guide and reminder to the CA. We laid down that:

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45

> review of a CA ruling in a labor case. In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?[33] (italics and emphases supplied)

In the present case, we are therefore tasked to determine whether the CA correctly ruled that the NLRC committed grave abuse of discretion in awarding 10% attorney's fees to the petitioners.

On the Award of Attorney's Fees

Article 111 of the Labor Code, as amended, governs the grant of attorney's fees in labor cases:

> Art. 111. Attorney's fees.- (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.
>
> (b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

Section 8, Rule VIII, Book III of its Implementing Rules also provides, viz.:

> Section 8. Attorney's fees. – Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.

We explained in PCL Shipping Philippines, Inc. v. National Labor Relations Commission[34]that there are two commonly accepted concepts of attorney's fees – the ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services the former renders; compensation is paid for the cost and/or results of legal services per agreement or as may be assessed. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party to the winning party. The instances when these may be awarded are enumerated in Article 2208 of the Civil Code, specifically in its paragraph 7 on actions for recovery of wages, and is payable not to the lawyer but to the client, unless the client and his lawyer have agreed that the award shall accrue to the lawyer as additional or part of compensation.[35]

We also held in PCL Shipping that Article 111 of the Labor Code, as amended, contemplates the extraordinary concept of attorney's fees and that Article 111 is an exception to the declared policy of strict construction in the award of attorney's fees. Although an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. In carrying out and interpreting the Labor Code's provisions and implementing regulations, the employee's welfare should be the primary and paramount consideration. This kind of interpretation gives meaning and substance to the liberal and compassionate spirit of the law as embodied in Article 4 of the Labor Code (which provides that "[a]ll doubts in the implementation and interpretation of the provisions of [the Labor Code], including its implementing rules and regulations, shall be resolved in favor of labor") and Article 1702 of the Civil Code (which provides that "[i]n case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer").[36]

We similarly so ruled in RTG Construction, Inc. v. Facto[37]and in Ortiz v. San Miguel Corporation.[38] In RTG Construction, we specifically stated:

> Settled is the rule that in actions for recovery of wages, or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interests, a monetary award by way of attorney's fees is justifiable under Article 111 of the Labor Code; Section 8, Rule VIII, Book III of its Implementing Rules; and paragraph 7, Article 2208 of the Civil Code. The award of attorney's fees is proper, and there need not be any showing

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> that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly.[39] (emphasis ours)

In PCL Shipping, we found the award of attorney's fees due and appropriate since the respondent therein incurred legal expenses after he was forced to file an action for recovery of his lawful wages and other benefits to protect his rights.[40] From this perspective and the above precedents, we conclude that the CA erred in ruling that a finding of the employer's malice or bad faith in withholding wages must precede an award of attorney's fees under Article 111 of the Labor Code. To reiterate, a plain showing that the lawful wages were not paid without justification is sufficient.

In the present case, we find it undisputed that the union members are entitled to their AA benefits and that these benefits were not paid by the Company. That the Company had no funds is not a defense as this was not an insuperable cause that was cited and properly invoked. As a consequence, the union members represented by the Union were compelled to litigate and incur legal expenses. On these bases, we find no difficulty in upholding the NLRC's award of ten percent (10%) attorney's fees.

The more significant issue in this case is the effect of the MOA provision that attorney's fees shall be deducted from the AA and CBA receivables. In this regard, the CA held that the additional grant of 10% attorney's fees by the NLRC violates Article 111 of the Labor Code, considering that the MOA between the parties already ensured the payment of 10% attorney's fees deductible from the AA and CBA receivables of the Union's members. In addition, the Company also argues that the Union's demand, together with the NLRC award, is unconscionable as it represents 20% of the amount due or about P21.4 million.

In Traders Royal Bank Employees Union-Independent v. NLRC,[41] we expounded on the concept of attorney's fees in the context of Article 111 of the Labor Code, as follows:

> In the first place, the fees mentioned here are the extraordinary attorney's fees recoverable as indemnity for damages sustained by and payable to the prevailing part[y]. In the second place, the ten percent (10%) attorney's fees provided for in Article 111 of the Labor Code and Section 11, Rule VIII, Book III of the Implementing Rules is the maximum of the award that may thus be granted. Article 111 thus fixes only the limit on the amount of attorney's fees the victorious party may recover in any judicial or administrative proceedings and it does not even prevent the NLRC from fixing an amount lower than the ten percent (10%) ceiling prescribed by the article when circumstances warrant it.[42] (emphases ours; citation omitted)

In the present case, the ten percent (10%) attorney's fees awarded by the NLRC on the basis of Article 111 of the Labor Code accrue to the Union's members as indemnity for damages and not to the Union's counsel as compensation for his legal services, unless, they agreed that the award shall be given to their counsel as additional or part of his compensation; in this case the Union bound itself to pay 10% attorney's fees to its counsel under the MOA and also gave up the attorney's fees awarded to the Union's members in favor of their counsel. This is supported by Borela's affidavit which stated that "[t]he 10% attorney's fees paid by the members/employees is separate and distinct from the obligation of the company to pay the 10% awarded attorney's fees which we also gave to our counsel as part of our contingent fee agreement."[43] The limit to this agreement is that the indemnity for damages imposed by the NLRC on the losing party (i.e., the Company) cannot exceed ten percent (10%).

Properly viewed from this perspective, the award cannot be taken to mean an additional grant of attorney's fees, in violation of the ten percent (10%) limit under Article 111 of the Labor Code since it rests on an entirely different legal obligation than the one contracted under the MOA. Simply stated, the attorney's fees contracted under the MOA do not refer to the amount of attorney's fees awarded by the NLRC; the MOA provision on attorney's fees does not have any bearing at all to the attorney's fees awarded by the NLRC under Article 111 of the Labor Code. Based on these considerations, it is clear that the CA erred in ruling that the LA's award of

attorney's fees violated the maximum limit of ten percent (10%) fixed by Article 111 of the Labor Code.

Under this interpretation, the Company's argument that the attorney's fees are unconscionable as they represent 20% of the amount due or about P21.4 million is more apparent than real. Since the attorney's fees awarded by the LA pertained to the Union's members as indemnity for damages, it was totally within their right to waive the amount and give it to their counsel as part of their contingent fee agreement. Beyond the limit fixed by Article 111 of the Labor Code, such as between the lawyer and the client, the attorney's fees may exceed ten percent (10%) on the basis of quantum meruit, as in the present case.[44]

WHEREFORE, premises considered, the petition is hereby GRANTED. The assailed decision dated March 6, 2006 and the resolution dated August 15, 2006 of the Court of Appeals in CA-G.R. SP No. 83654 are REVERSED and SET ASIDE. The Labor Arbiter's award of attorney's fees equivalent to ten percent (10%) of the total judgment award is hereby REINSTATED.

No pronouncement as to costs.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Reyes, JJ., concur.

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[1] Rollo, pp. 3-26; under Rule 45 of the Rules of Court.

[2] Dated March 6, 2006, id. at 34-43; penned by Associate Justice Arcangelita M. Romilla-Lontok, and concurred in by Associate Justices Conrado M. Vasquez, Jr. (retired) and Martin S. Villarama, Jr. (now a member of this Court).

[3] Dated August 15, 2006, id. at 31-32.

[4] Manila Water Company, Inc. v. National Labor Relations Commission, et al.

[5] Rollo, pp. 267-268.

[6] Id. at 369.

[7] Id. at 36.

[8] Ibid.

[9] Ibid.

[10] Id. at 37.

[11] Ibid.

[12] Id. at 37-38.

[13] Id. at 36.

[14] Id. at 367-381.

[15] Decision rendered on December 19, 2003; id. at 102-118.

[16] Id. at 481-485.

[17] NCMB NCR-NS-11-311-03, id. at 478.

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[18] Ibid.

[19] Id. at 493.

[20] Id. at 658-659.

[21] Id. at 119-124; Resolution dated April 5, 2004.

[22] Id. at 489-493, item 31.

[23] Supra note 2.

[24] 336 Phil. 705, 712 (1997).

[25] Supra note 3.

[26] Supra note 1.

[27] Ibid.

[28] Id. at 694-720.

[29] Protacio v. Laya Mananghaya & Co., G.R. No. 168654, March 25, 2009, 582 SCRA 417, 427.

[30] G.R. No. 183572, April 13, 2010, 618 SCRA 218.

[31] Id. at 231-232.

[32] G.R. No. 183329, August 27, 2009, 597 SCRA 334.

[33] Id. at 342-343.

[34] G.R. No. 153031, December 14, 2006, 511 SCRA 44.

[35] Id. at 64-65, citing Dr. Reyes v. Court of Appeals, 456 Phil. 520, 539-540 (2003).

[36] Ibid.

[37] G.R. No. 163872, December 21, 2009, 608 SCRA 615.

[38] G.R. Nos. 151983-84, July 31, 2008, 560 SCRA 654.

[39] Supra note 37, at 625-626.

[40] Supra note 34, at 65.

[41] Supra note 24.

[42] Id. at 722.

[43] Supra note 20.

[44] C.A. Azucena, Jr., The Labor Code With Comments and Cases, Volume 1, 6[th] ed., p. 352.

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