

UNIVERSITY OF THE EAST, PETITIONER, VS. UNIVERSITY OF THE EAST EMPLOYEES' ASSOCIATION, RESPONDENT.

G.R. No. 179593. September 14, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

Before the Court is a petition for review under Rule 45 of the Rules of Court assailing the February 26, 2007 Decision[1] and September 5, 2007 Resolution[2] of the Court of Appeals (CA), in CA-G.R. SP No. 90740, which set aside the February 28, 2005 Decision and May 31, 2005 Resolution of the National Labor Relations Commission (NLRC) in NLRC-NCR-00-04-05015-99. The dispositive portion of the CA decision reads:

WHEREFORE, the instant petition is GRANTED. The Decision dated 28 February 2005 and Resolution dated 31 May 2005 rendered by the NLRC are SET ASIDE. The final resolutions dated 29 April 2004 and 24 August 2004 hereby REMAIN in effect.

SO ORDERED.[3]

Facts of the Case

Petitioner University of the East (UE) is an educational institution duly organized and existing under Philippine laws. On the other hand, respondent University of the East Employees' Association (UEEA) is a duly registered labor union of the rank-and-file employees of UE.

It appears from the records that prior to school year (SY) 1983-1984, the 70% incremental proceeds from tuition fee increases as mandated by Presidential Decree No. 451 (P.D. No. 451), as amended, was distributed by UE in proportion to the average number of academic and non-academic personnel. The distribution scheme became the subject of an Agreement[4] dated October 18, 1983 signed by the management, faculty association and respondent.[5] Starting SY 1994-1995, however, the 70% incremental proceeds from the tuition fee increase was distributed by UE to its covered employees based on a new formula of percentage of salary.

Not in conformity, UEEA, thru its president Ernesto C. Verceles (Verceles), sent a letter[6] dated December 22, 1994 to then UE President, Dr. Rosalina S. Cajucom (Dr. Cajucom), questioning the manner of distribution of the employees' share in the 1994-1995 tuition fee increase. The letter reads:

Dear President Cajucom:

This is with reference to the recent distribution of the employees' share in the 1994-95 tuition fee increase.

We understand that the University unilaterally instituted a partial distribution of FIVE PERCENT (5%) only of the basic wage of employees, faculty members and administration personnel.

This, to our mind, is quite irregular and unfair in view of the following considerations:

- 1.) We have all along instituted the practice of having a Tripartite Meeting where the three (3) sectors

involved, i.e. management, faculty and employees' representatives go over the incremental proceeds that have been realized and come to an agreement on the distribution of the share whether partial or total in nature;

2.) The accepted and traditional practice was that for every ₱1.00 per share of faculty members based on the "full load equivalent," management personnel and rank-and-file employees receive ₱100.00 a month;

3.) Using as a basis 5% of the wages of University personnel entitled thereto besides being a departure from past practices, creates that unfair situation where those who have higher salaries receive more to the prejudice of low salaried employees and faculty members;

4.) There is an existing Tripartite Agreement, with a xerox copy attached hereto as ANNEX "A," clearly specifying the agreed manner of distribution. Even [if] the May 17, 1994 letter to UE President Rosa[lina] Cajucum by then Secretary of Education, Culture and Sports Armand V. Fabella, states under the third paragraph thereof that "the discretion is vested upon the school authorities xxx," but, in the same breath, the Secretary qualifies the distribution or manner of remittance thereof with the phrase "(except where it forms part of a collective bargaining agreement but accrues to school personnel in any case) xxx." In this light, Article XX Section 5 of our past and current CBAs provide succinctly that:

"The UNIVERSITY agrees to continue the implementation of all benefits hitherto enjoyed by the employees not embodied herein and are the subject of communication between the UNIVERSITY and the ASSOCIATION provided they are not inconsistent with the provisions of the Agreement or of the Labor Code. All other existing clauses, covenants, provisions or agreements shall remain in force."

We, therefore, urge the University to rectify the aforementioned erroneous, unfair and irregular distribution instituted last December 13, 1994.

We believe that you may have been misled by your staff in so arriving at such objectionable manner of distributing our tuition fee shares. We therefore hope that in the spirit of the season, the University thru your good self would institute the necessary correction, thereby affording our lower salaried employees and faculty members the means to have a more meaningful Christmas celebration.

xxx

On February 23, 1995, UEEA sent another letter[7] to the UE President reiterating its earlier objection to the distribution scheme of the 70% incremental proceeds from the tuition fee increase and requested a tripartite conference among management, faculty, administration, and rank-and-file representatives to address the issue.

On June 19, 1995, a tripartite meeting was held among the representatives of management, faculty union and UEEA. In the said meeting, it was agreed that the distribution of the incremental proceeds would now be based on percentage of salary, and not anymore on the average number of personnel. The Minutes[8] of the June 19, 1995 meeting was signed and attested to by UEEA officers who attended.

On April 27, 1999, UEEA filed a complaint before the NLRC for non-payment/underpayment of the rank-and-file employees' share of the tuition fee increases against UE pursuant to P.D. No. 451, as amended, and Republic Act (R.A.) No. 6728 otherwise known as Government Assistance to Students and Teachers in Private Education Act.

In its position paper,[9] UEEA alleged that starting SY 1994-1995, UE had been withholding from the rank-and-file employees a sizeable portion of their share in the tuition fee increases as mandated by P.D. No. 451, as amended. It asserted that before SY 1994-1995, shares of tuition fee increases were distributed proportionately among the management, faculty and rank-and-file employees based on equal sharing or on a share-and-share alike basis. In SY 1994-1995, however, UE arbitrarily and unilaterally distributed the tuition fee increase proceeds through percentage based on salaries, thereby reducing the shares of the rank-and-file employees, while increasing

those of the management personnel.

In its reply, [10] UE denied that the implementation of the new scheme in the distribution of the 70% incremental proceeds derived from tuition fee increases starting SY 1994-1995 was made arbitrarily and/or unilaterally. It explained that the distribution scheme was only implemented after inquiry from the Department of Education, Culture and Sports (DECS) regarding the provision of R.A. No. 6728. DECS explained that the law was silent on the manner of the distribution of the 70% incremental proceeds and stated that discretion in the distribution was vested in the school authorities. What the law clearly required was that the incremental proceeds from the tuition fee increases should be allocated for the payment of salaries/wages, allowances and other benefits of the teaching and non-teaching personnel except the administrators who were principal stockholders of the school. Thus, UE insisted that it may distribute the entire 70% incremental proceeds for an across-the-board salary increase, or for merit increase, or for allowances and other employment benefits.

Furthermore, UE pointed out that the new distribution scheme was implemented after a tripartite meeting was held on June 19, 1995 among the representatives of the management, UE Faculty Association (UEFA) and the UEEA, wherein it was agreed that for SY 1994-1995, the distribution of the incremental increase would be 9.96% of the salaries of the employees as of May 31, 1994. In fact, copies of the minutes of the meeting were distributed and signed by the participants. Hence, UEEA was estopped from questioning the distribution scheme when it accepted the benefits.

Lastly, UE asserted that the claim of the UEEA was already barred since it was filed three (3) years from the time its supposed cause of action accrued.

On September 4, 2002, Labor Arbiter Francisco A. Robles (LA) rendered a decision[11] favoring UEEA, the fallo of which reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent University of the East, to pay the members of University of the East Employees Association (UEEA) the amount of TWENTY-FIVE MILLION SEVEN HUNDRED FORTY-NINE THOUSAND NINE HUNDRED NINETY-FIVE PESOS AND 40/100 (P25,749,995.40) representing the portions of the tuition fee increases for the school year 1994-1995 and up to May 31, 2002 which were denied/withheld and/or lost by the members of the aforesaid Union as a result of the disputed distribution scheme based on percentage of salary which was arbitrarily and unilaterally adopted and implemented by the respondent. Furthermore, the respondent is hereby directed to submit to this Office a report to show compliance to the order herein stated.

SO ORDERED.[12]

The LA ruled that the equal sharing distribution scheme in relation to the incremental proceeds from the tuition fee increases had been adopted as a matter of policy by UE since 1983 and was made part of its collective bargaining agreement with the UEEA. In addition, the LA noted that the existence of the said policy or practice in the university was made part of the tripartite agreement dated October 18, 1983, among UE, UEFA and UEEA. There was no evidence on record that the said agreement was superseded by another agreement between UE and UEEA. Furthermore, UE's reliance on the letter-reply of then DECS Secretary Armand V. Fabella was misplaced as the law imposed a limitation on the extent of the discretionary authority given to the school officials such as when the disposition had been agreed upon in a collective bargaining agreement. The LA concluded that UE was legally bound to keep and maintain the established practice of distributing equally among its employees the incremental proceeds from the tuition fee increases particularly in light of the aforesaid tripartite agreement dated October 18, 1983 and the provisions of Article XX, Section 5 of the UE-UEEA collective bargaining agreement.

Undaunted, UE interposed an appeal before the NLRC. The NLRC, in its April 29, 2004 Resolution,[13]

dismissed the appeal and sustained the LA decision. UE filed a motion for reconsideration but it was denied in a resolution[14] dated August 24, 2004 with a warning that no further motion for reconsideration shall be entertained.

Nonetheless, on September 20, 2004, UE filed a motion for leave to file and admit a second motion for reconsideration, incorporating therein its second motion for reconsideration. UE alleged that the NLRC resolution was not valid for failure to pass upon and consider the new and vital issues raised in its motion for reconsideration and for failure to comply with the prescribed form for NLRC resolutions pursuant to Section 13, Rule VII, NLRC New Rules of Procedure.[15]

On February 28, 2005, the NLRC gave due course to the second motion for reconsideration, reversed its earlier ruling and declared valid the distribution of the 70% incremental proceeds from tuition fee increases based on the percentage of salary of the covered employees.[16] Consequently, UEEA filed a motion for reconsideration[17] but it was denied in the NLRC Resolution[18] dated May 31, 2005.

Aggrieved, UEEA filed a petition before the CA. The appellate court granted the petition and set aside the questioned decision and resolution of the NLRC.[19] The CA declared that since the second motion for reconsideration was a prohibited pleading, it did not interrupt the running of the reglementary period. Therefore, the NLRC Resolution dated August 24, 2004 became final and executory after ten (10) days from receipt of the copy thereof by the parties. Accordingly, the said resolution had attained finality and could no longer be modified in any respect, even if the modification was meant to correct what was perceived to be an erroneous conclusion of fact or law.

UE filed a motion for reconsideration of the CA decision but it was denied in a resolution[20] dated September 5, 2007. Hence, this appeal, anchored on the following:

GROUND:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT DECLARED THAT PETITIONER'S SECOND MOTION FOR RECONSIDERATION IS A PROHIBITED PLEADING.

II

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT HELD THAT THERE ARE "[NO] EXTRAORDINARY PERSUASIVE REASONS" IN THE INSTANT CASE WARRANTING THE ALLOWANCE OF A SECOND MOTION FOR RECONSIDERATION.

III

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE ISSUANCE OF THE ENTRY OF JUDGMENT DATED OCTOBER 15, 2004 IS NOT PREMATURE.

IV

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT FOUND PETITIONER UNIVERSITY'S MOTION FOR RECONSIDERATION A "PRO FORMA" MOTION.

The issues for resolution are: (1) whether or not UE's second motion for reconsideration (MR) before the NLRC is a prohibited pleading; and (2) whether or not the change in the scheme of distribution of the incremental proceeds from tuition fee increase is a diminution of benefit.

UE argues that the CA erred in holding that the second MR was a prohibited pleading. It asserts that while a

second MR is generally a prohibited pleading, it may be allowed in meritorious cases. Section 14 of the NLRC rules cannot be construed as to prevent the NLRC from relieving itself from patent errors in order to render justice. UE stresses that the technical rules of procedure are not meant to frustrate but to facilitate justice.[21]

UE further contends that the Court in resolving the issue on the second MR should not be too dogmatic in its ruling. It persuades the Court to adopt a complete and holistic view, taking into consideration the peculiar circumstances of the case as well as the provisions on the liberal interpretation of the rules and the inherent power of the NLRC to amend and reverse its findings and conclusions as may be necessary to render justice.[22]

Petitioner further contends that there exist extraordinary persuasive reasons warranting the allowance of the second MR. First, it argues that the complaint is a money claim arising from employer-employee relationship; hence, it prescribes in three (3) years. Since the complaint was filed only on April 27, 1999, more than three (3) years from the alleged violation in 1994, prescription has set in. Second, UE maintains that the distribution of tuition fee increase based on percentage of salary was not arbitrary and/or unilateral because the new distribution scheme was taken up and agreed upon in the tripartite meeting held on June 19, 1995 and was adopted only after consultation with the DECS Secretary Armand Fabella. Third, the faculty union, UE Faculty Association (UEFA), a party to the Agreement dated October 18, 1983, did not complain against the new distribution scheme. Lastly, the new distribution scheme is in accordance with law. UE claims that the law and jurisprudence are clear that a private educational institution has the discretion on the disposition of the 70% incremental proceeds from tuition fee increase, with the only condition imposed that the proceeds should go to the salaries, wages and allowances and other benefits of teachers and non-teaching personnel.[23]

Indeed, a second MR as a rule, is generally a prohibited pleading.[24] The Court, however, does not discount instances when it may authorize the suspension of the rules of procedure so as to allow the resolution of a second motion for reconsideration, in cases of extraordinarily persuasive reasons[25] such as when the decision is a patent nullity.[26]

Time and again, the Court has upheld the theory that the rules of procedure are designed to secure and not to override substantial justice.[27] These are mere tools to expedite the decision or resolution of cases, hence, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided.[28]

On the second issue, after a careful review of the records and the arguments of the parties, the Court finds the position of the petitioner meritorious.

The Court agrees with petitioner UE that the change in the distribution of the 70% incremental proceeds from tuition fee increase from equal sharing to percentage of salaries is not a diminution of benefits. Its distribution to covered employees based on equal sharing scheme cannot be considered to have ripened into a company practice that the respondents have a right to demand.

Generally, employees have a vested right over existing benefits voluntarily granted to them by their employer, thus, said benefits cannot be reduced, diminished, discontinued or eliminated by the latter.[29] This principle against diminution of benefits, however, is applicable only if the grant or benefit is founded on an express policy or has ripened into a practice over a long period of time which is consistent and deliberate.[30] It does not contemplate the continuous grant of unauthorized or irregular compensation but it presupposes that a company practice, policy and tradition favourable to the employees has been clearly established; and that the payments made by the company pursuant to it have ripened into benefits enjoyed by them.[31] The test or rationale of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof.[32] In sum, the

benefit must be characterized by regularity, voluntary and deliberate intent of the employer to grant the benefits over a significant period of time.[33]

In the case at bench, contrary to UEEA's claim, the distribution of the 70% incremental proceeds based on equal sharing scheme cannot be held to have ripened into a company practice that the respondents have a right to demand. Jurisprudence is replete with the rule specifying a minimum number of years within which a company practice must be exercised in order to constitute voluntary company practice.[34] Even if UE had been continuously distributing the 70% incremental proceeds based on equal sharing scheme to all its covered employees, the same could not have ripened into a vested right because such grant would not have been characterized by a deliberate and voluntary act on the part of the petitioner.

As pronounced by the Court in the case of *Globe Mackay Cable and Radio Corporation v. NLRC*,[35] the grant by an employer of benefits through an erroneous application of the law due to absence of clear administrative guidelines is not considered a voluntary act which cannot be unilaterally discontinued. Here, no vested rights accrued to respondents. R.A. No. 6728 simply mandates that the 70% incremental proceeds arising from tuition fee increases should go to the payment of salaries, wages, allowances, and other benefits of the teaching and non-teaching personnel except administrators who are principal stockholders of the school.[36] As to the manner of its distribution, however, the law is silent. The letter[37] of then DECS Secretary Armand Fabella, correctly stated that the discretion on what distribution scheme to adopt is vested upon the school authorities. In fact, the school can distribute the entire 70% for an across-the-board salary increase, for merit increase and/or for allowances or other benefits. The only limitations provided are [1] the benefit must accrue to specific individual school personnel; and [2] the benefit once given for a specific year cannot be revoked for that same year.

Neither can UEEA claim that the change in the distribution scheme from equal sharing to percentage of salary was done peremptorily. Verceles wrote two (2) letters dated December 22, 1994[38] and February 23, 1995,[39] to then UE President, Dr. Cajucom, questioning the change in the distribution scheme from equal sharing to percentage of salary and requesting a tripartite meeting to settle the issue.

Consequently, a tripartite meeting was held on June 19, 1995. The said meeting was attended by the representatives of the management, UEFA and UEEA. From the minutes of the meeting, the tuition fee incremental proceeds for SY 1994-95 and the manner of its distribution based on percentage of the salaries of the covered employees were discussed and UEEA representatives, namely, Salvador Blanca and Miguel Teaño, did not object. They even later signed the minutes of the meeting to signify their conformity to it.

It was likewise erroneous for UEEA to rely on the October 18, 1983 Agreement[40] which provides:

The University of the East, represented by its Chairman of the Board and Chief Executive Officer, the UE Faculty Association (UEFA), represented by its President, and the UE Employees Association (UEEA), represented by its President, all assisted by their respective panels, hereby mutually agree:

1. That in determining the allocation of the 60% incremental proceeds from the approved increase in school fees effective school year 1982-83 among the three sectors (faculty, rank-and-file, and management personnel), the formula used in previous years shall be followed - namely, the allocation shall be in proportion to the average number of academic and non-academic personnel in the service as of the start of the first and second semesters of the school year 1982-83;
2. That the proposal of the UEEA, whereby the number of academic personnel is to be determined by using the "full load equivalent", shall be adopted in allocating the 60% incremental proceeds from the approved increase in school fees effective school year 1983-84.

Manila, October 18, 1983.

Clearly, the said agreement only pertains to the distribution of incremental proceeds for SY 1982-83. Besides, such agreement is deemed superseded by another agreement taken up during tripartite meeting held on June 19, 1995.

The Court agrees with UE and holds that UEEA's right to question the distribution of the incremental proceeds for SY 1994-1995 has already prescribed. Article 291 of the Labor Code provides that money claims arising from an employer-employee relationship must be filed within three (3) years from the time the cause of action accrued. In the present case, the cause of action accrued when the distribution of the incremental proceeds based on percentage of salary of the covered employees was discussed in the tripartite meeting held on June 19, 1995. UEEA did not question the manner of its distribution and only on April 27, 1999 did it file an action based therein. Hence, prescription had set in.

WHEREFORE, the petition is GRANTED. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 90740 are REVERSED and SET ASIDE. The Decision of the National Labor Relations Commission dated February 28, 2005 is REINSTATED.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and Sereno,* JJ., concur.

[*] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

[1] Rollo, pp. 61-74. Penned by Justice Mariflor P. Punzalan Castillo and concurred in by Justices Martin S. Villarama, Jr. (now a member of this Court) and Rosmari D. Carandang.

[2] Id. at 76-77.

[3] Id. at 73.

[4] Records, volume 1, p. 66.

[5] Annex "C" of the Petition, id. at 78.

[6] Rollo, p. 81.

[7] Id. at 83.

[8] Records, volume 1, pp. 48-49.

[9] Vol. I, NLRC records, pp. 23-37.

[10] Id. at 33-41.

[11] CA rollo, pp. 25-58.

[12] Id. at 57-58.

[13] Id. at 59-74.

[14] Id. at 76-77.

[15] Id. at 188-206.

[16] Raul T. Aquino, Presiding Commissioner with Victoriano R. Calaycay, concurring and Angelita A. Gacutan, dissenting; id. at 79-89.

[17] Id. at 96-119.

[18] Id. at 94-95.

[19] Id. at 515-528.

[20] Rollo, pp. 76-77.

[21] Id. at 22-30.

[22] Id. at 20-22

[23] Id. at 31-44.

[24] *Jardin v. National Labor Relations Commission*, 383 Phil. 187, 195 (2000).

[25] *Alcantara v. Ponce*, 514 Phil. 222 (2005); *Tirazona v. Philippine EDS Techno-Services, Inc.*, G.R. No. 169712, January 20, 2009, 576 SCRA 625, 628, citing *Ortigas and Company Limited Partnership v. Velasco*, 324 Phil. 483, 489 (1996).

[26] *Ramos vs. NLRC*, 358 Phil. 705 (1998).

[27] *Cando v. Olazo*, G.R. No. 160741, March 22, 2007, 518 SCRA 741.

[28] *Peñosa v. Dona*, G.R. No. 154018, April 3, 2007, 520 SCRA 232.

[29] Article 100 of the Labor Code.

Article 100. Prohibition against elimination or diminution of benefits. - Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

[30] *Barroga v. Data Center College of the Philippines*, G. R. No. 174158, June 27, 2011.

[31] *Boncodin v. National Power Corporation Employees Consolidated Union*, G.R. No. 162716, September 27, 2006, 503 SCRA 611, 628.

[32] *Metropolitan Bank and Trust Co. v. National Labor Relations Commission*, G.R. No. 152928, June 18, 2009, 589 SCRA 376, 384.

[33] Id. at 385.

[34] *Arco Metal Products Co., Inc. v. Samahan ng mga Manggagawa sa Arco Metal-NAFLU*, G.R. No. 170734, May 14, 2008, 554 SCRA 110, 119.

[35] No. L-74156, June 29, 1988, 163 SCRA 71, 78.

[36] Sec. 5. Tuition Fee Supplement for Students in Private High School. -- x x x

(2) Assistance under paragraph (1), subparagraphs (a) and (b) shall be granted and tuition fees under subparagraph (c) may be increased, on the condition that seventy percent (70%) of the amount subsidized allotted for tuition fee or of the tuition fee increases shall go to the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel except administrators who are principal stockholders of the school, and may be used to cover increases as provided for in the collective bargaining agreements existing or in force at the time when this Act is approved and made effective: Provided, That government subsidies are not used directly for salaries of teachers of non-secular subjects. At least twenty percent (20%) shall go to the improvement or modernization of

buildings, equipment, libraries, laboratories, gymnasias and similar facilities and to the payment of other costs of operation. For this purpose, school shall maintain a separate record of accounts for all assistance received from the government, any tuition fee increase, and the detailed disposition and use thereof, which record shall be made available for periodic inspection as may be determined by the State Assistance Council, during business hours, by the faculty, the non-teaching personnel, students of the school concerned, the Department of Education, Culture and Sports and other concerned government agencies.

[37] Rollo, p. 80.

[38] Records, volume I, pp. 64-65.

[39] Rollo, p. 83.

[40] Records, volume I, p. 66.

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