

SUPREME STEEL CORPORATION, PETITIONER, VS. NAGKAKAISANG MANGGAGAWA NG SUPREME INDEPENDENT UNION (NMS-IND-APL), RESPONDENT.

G.R. No. 185556. March 28, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

This petition for review on certiorari assails the Court of Appeals (CA) Decision[1] dated September 30, 2008, and Resolution dated December 4, 2008, which affirmed the finding of the National Labor Relations Commission (NLRC) that petitioner violated certain provisions of the Collective Bargaining Agreement (CBA).

Petitioner Supreme Steel Pipe Corporation is a domestic corporation engaged in the business of manufacturing steel pipes for domestic and foreign markets. Respondent Nagkakaisang Manggagawa ng Supreme Independent Union is the certified bargaining agent of petitioner's rank-and-file employees. The CBA[2] in question was executed by the parties to cover the period from June 1, 2003 to May 31, 2008.

The Case

On July 27, 2005, respondent filed a notice of strike with the National Conciliation and Mediation Board (NCMB) on the ground that petitioner violated certain provisions of the CBA. The parties failed to settle their dispute. Consequently, the Secretary of Labor certified the case to the NLRC for compulsory arbitration pursuant to Article 263(g) of the Labor Code.

Respondent alleged eleven CBA violations, delineated as follows:

A. Denial to four employees of the CBA- provided wage increase

Article XII, Section 1 of the CBA provides:

Section 1. The COMPANY shall grant a general wage increase, over and above to all employees, according to the following schedule:

- A. Effective June 1, 2003 P14.00 per working day;
- B. Effective June 1, 2004 P12.00 per working day; and
- C. Effective June 1, 2005 P12.00 per working day.[3]

Respondent alleged that petitioner has repeatedly denied the annual CBA increases to at least four individuals: Juan Niño, Reynaldo Acosta, Rommel Talavera, and Eddie Dalagon. According to respondent, petitioner gives an anniversary increase to its employees upon reaching their first year of employment. The four employees received their respective anniversary increases and petitioner used such anniversary increase to justify the denial of their CBA increase for the year.[4]

Petitioner explained that it has been the company's long standing practice that upon reaching one year of service, a

wage adjustment is granted, and, once wages are adjusted, the increase provided for in the CBA for that year is no longer implemented. Petitioner claimed that this practice was not objected to by respondent as evidenced by the employees' pay slips.[5]

Respondent countered that petitioner failed to prove that, as a matter of company practice, the anniversary increase took the place of the CBA increase. It contended that all employees should receive the CBA stipulated increase for the years 2003 to 2005.[6]

B. Contracting-out labor

Article II, Section 6 of the CBA provides:

Section 6. Prohibition of Contracting Out of Work of Members of Bargaining Unit. Thirty (30) days from the signing of this CBA, contractual employees in all departments, except Warehouse and Packing Section, shall be phased out. Those contractual employees who are presently in the workforce of the COMPANY shall no longer be allowed to work after the expiration of their contracts without prejudice to being hired as probationary employees of the COMPANY.[7]

Respondent claimed that, contrary to this provision, petitioner hired temporary workers for five months based on uniformly worded employment contracts, renewable for five months, and assigned them to almost all of the

departments in the company. It pointed out that, under the CBA, temporary workers are allowed only in the Warehouse and Packing Section; consequently, employment of contractual employees outside this section, whether direct or agency-hired, was absolutely prohibited. Worse, petitioner never regularized them even if the position they occupied and the services they performed were necessary and desirable to its business. Upon the expiration of their contracts, these workers would be replaced with other workers with the same employment status. This scheme is a clear circumvention of the laws on regular employment. [8]

Respondent argued that the right to self-organization goes beyond the maintenance of union membership. It emphasized that the CBA maintains a union shop clause which gives the regular employees 30 days within which to join respondent as a condition for their continued employment. Respondent maintained that petitioner's persistent refusal to grant regular status to its employees, such as Dindo Buella, who is assigned in the Galvanizing Department, violates the employees' right to self-organization in two ways: (1) they are deprived of a representative for collective bargaining purposes; and (2) respondent is deprived the right to expand its membership. Respondent contended that a union's strength lies in its number, which becomes crucial especially during negotiations; after all, an employer will not bargain seriously with a union whose membership constitutes a minority of the total workforce of the company. According to respondent, out of the 500 employees of the company, only 147 are union members, and at least 60 employees would have been eligible for union membership had they been recognized as regular employees.[9]

For its part, petitioner admitted that it hired temporary workers. It purportedly did so to cope with the seasonal increase of the job orders from abroad. In order to comply with the job orders, petitioner hired the temporary workers to help the regular workers in the production of steel pipes. Petitioner maintained that these workers do not affect respondent's membership. Petitioner claimed that it agreed to terminate these temporary employees on the condition that the regular employees would have to perform the work that these employees were performing, but respondent refused. Respondent's refusal allegedly proved that petitioner was not contracting out the services being performed by union members. Finally, petitioner insisted that the hiring of temporary workers is a management prerogative.[10]

C. Failure to provide shuttle service

Petitioner has allegedly reneged on its obligation to provide shuttle service for its employees pursuant to Article XIV, Section 7 of the CBA, which provides:

Section 7. Shuttle Service. As per company practice, once the company vehicle used for the purpose has been reconditioned.[11]

Respondent claimed that the company vehicle which would be used as shuttle service for its employees has not been reconditioned by petitioner since the signing of the CBA on February 26, 2004.[12] Petitioner explained that it is difficult to implement this provision and simply denied that it has reneged on its obligation.[13]

D. Refusal to answer for the medical expenses incurred by three employees

Respondent asserted that petitioner is liable for the expenses incurred by three employees who were injured while in the company premises. This liability allegedly stems from Article VIII, Section 4 of the CBA which provides:

Section 4. The COMPANY agrees to provide first aid medicine and first aid service and consultation free of charge to all its employees.[14]

According to respondent, petitioner's definition of what constitutes first aid service is limited to the bare minimum of treating injured employees while still within the company premises and referring the injured employee to the Chinese General Hospital for treatment, but the travel expense in going to the hospital is charged to the employee. Thus, when Alberto Guevarra and Job Canizares, union members, were injured, they had to pay P90.00 each for transportation expenses in going to the hospital for treatment and going back to the company thereafter. In the case of Rodrigo Solitario, petitioner did not even shoulder the cost of the first aid medicine, amounting to P2,113.00, even if he was injured during the company sportsfest, but the amount was deducted, instead, from his salary. Respondent insisted that this violates the above cited provision of the CBA.[15]

Petitioner insisted that it provided medicine and first aid assistance to Rodrigo Solitario. It alleged that the latter cannot claim hospitalization

benefits under Article VIII, Section 1[16] of the CBA because he was not confined in a hospital.[17]

E. Failure to comply with the time-off with pay provision

Article II, Section 8 of the CBA provides:

Section 8. Time-Off with Pay. The COMPANY shall grant to the UNION's duly authorized representative/s or to any employee who are on duty, if summoned by the UNION to testify, if his/her presence is necessary, a paid time-off for the handling of grievances, cases, investigations, labor-management conferences provided that if the venue of the case is outside Company premises involving [the] implementation and interpretation of the CBA, two (2) representatives of the UNION who will attend the said hearing shall be considered time-off with pay. If an employee on a night shift attends grievance on labor-related cases and could not report for work due to physical condition, he may avail of union leave without need of the two (2) days prior notice.[18]

Respondent contended that under the said provision, petitioner was obliged to grant a paid time-off to respondent's duly authorized representative or to any employee who was on duty, when summoned by respondent to testify or when the employee's presence was necessary in the grievance hearings, meetings, or investigations.[19]

Petitioner admitted that it did not honor the claim for wages of the union officers who attended the grievance meetings because these meetings were initiated by respondent itself. It argued that since the union officers

were performing their functions as such, and not as employees of the company, the latter should not be liable. Petitioner further asserted that it is not liable to pay the wages of the union officers when the meetings are held beyond company time (3:00 p.m.). It claimed that time-off with pay is allowed only if the venue of the meeting is outside company premises and the meeting involves the implementation and interpretation of the CBA.[20]

In reply, respondent averred that the above quoted provision does not make a qualification that the meetings should be held during office hours (7:00 a.m. to 3:00 p.m.); hence, for as long as the presence of the employee is needed, time spent during the grievance meeting should be paid.[21]

F. Visitors' free access to company premises

Respondent charged petitioner with violation of Article II, Section 7 of the CBA which provides:

Section 7. Free Access to Company Premises. Local Union and Federation officers (subject to company's security measure) shall be allowed during working hours to enter the COMPANY premises for the following reasons:

- a. To investigate grievances that have arisen;
- b. To interview Union Officers, Stewards and members during reasonable hours; and
- c. To attend to any meeting called by the Management or the UNION.[22]

G. Failure to comply with reporting time-off provision

Respondent maintained that a brownout is covered by Article XII, Section 3 of the CBA which states:

Section 3. Reporting Time-Off. The employees who have reported for work but are unable to continue working because of emergencies such as typhoons, flood, earthquake, transportation strike, where the COMPANY is affected and in case of fire which occurs in the block where the home of the employee is situated and not just across the street and serious illness of an immediate member of the family of the employee living with him/her and no one in the house can bring the sick family member to the hospital, shall be paid as follows:

- a. At least half day if the work stoppage occurs within the first four (4) hours of work; and
- b. A whole day if the work stoppage occurs after four (4) hours of work.[23]

Respondent averred that petitioner paid the employees' salaries for one hour only of the four-hour brownout that occurred on July 25, 2005 and refused to pay for the remaining three hours. In defense, petitioner simply insisted that brownouts are not included in the above list of emergencies.[24]

Respondent rejoined that, under the principle of *eiusdem generis*, brownouts or power outages come within the "emergencies" contemplated by the CBA provision. Although brownouts were not specifically identified as one of the emergencies listed in the said CBA provision, it cannot be denied that brownouts fall within the same kind or class of the enumerated emergencies. Respondent maintained that the intention of the provision was to compensate the employees for occurrences which are beyond their control, and power outage is one of such occurrences. It insisted that the list of emergencies is not an exhaustive list but merely gives an idea as to what constitutes an actual emergency that is beyond the control of the employee.[25]

H. Dismissal of Diosdado Madayag

Diosdado Madayag was employed as welder by petitioner. He was served a Notice of Termination dated March 14, 2005 which read:

Please consider this as a Notice of Termination of employment effective March 14, 2005 under Art. 284 of the

Labor Code and its Implementing Rules.

This is based on the medical certificate submitted by your attending physician, Lucy Anne E. Mamba, M.D., Jose R. Reyes Memorial Medical Center dated March 7, 2005 with the following diagnosis:

`Diabetes Mellitus Type 2'

Please be guided accordingly.[26]

Respondent contended that Madayag's dismissal from employment is illegal because petitioner failed to obtain a certification from a competent public authority that his disease is of such nature or at such stage that it cannot be cured within six months even after proper medical treatment. Petitioner also failed to prove that Madayag's continued employment was prejudicial to his health or that of his colleagues.[27]

Petitioner, on the other hand, alleged that Madayag was validly terminated under Art. 284[28] of the Labor Code and that his leg was amputated by reason of diabetes, which disease is not work-related. Petitioner claimed that it was willing to pay Madayag 13 days for every year of service but respondent was asking for additional benefits.[29]

I. Denial of paternity leave
benefit to two employees

Article XV, Section 2 of the CBA provides:

Section 2. Paternity Leave. As per law[,] [t]he Company shall, as much as possible, pay paternity leave within 2 weeks from submission of documents.[30]

Petitioner admitted that it denied this benefit to the claimants for failure to observe the requirement provided in the Implementing Rules and Regulations of Republic Act No. 8187 (Paternity Leave Act of 1995), that is, to notify the employer of the pregnancy of their wives and the expected date of delivery.[31]

Respondent argued that petitioner is relying on technicalities by insisting that the denial was due to the two employees' failure to notify it of the pregnancy of their respective spouses. It maintained that the notification requirement runs counter to the spirit of the law. Respondent averred that, on grounds of social justice, the oversight to notify petitioner should not be dealt with severely by denying the two claimants this benefit.[32]

J. Discrimination and
harassment

According to respondent, petitioner was contemptuous over union officers for protecting the rights of union members. In an affidavit executed by Chito Guadaña, union secretary, he narrated that Alfred Navarro, Officer-in-Charge of the Packing Department, had been harsh in dealing with his fellow employees and would even challenge some workers to a fight. He averred that Navarro had an overbearing attitude during work and grievance meetings. In November 2004, Navarro removed Guadaña, a foreman, from his position and installed another foreman from another section. The action was allegedly brought about by earlier grievances against Navarro's abuse. Petitioner confirmed his transfer to another section in violation of Article VI, Section 6 of the CBA,[33] which states in part:

Section 6. Transfer of Employment. - No permanent positional transfer outside can be effected by the COMPANY without discussing the grounds before the Grievance Committee. All transfer shall be with advance notice of two (2) weeks. No transfer shall interfere with the employee's exercise of the right to self-organization.[34]

Respondent also alleged that Ariel Marigondon, union president, was also penalized for working for his fellow employees. One time, Marigondon inquired from management about matters concerning tax discrepancies because it appeared that non-taxable items were included as part of taxable income. Thereafter, Marigondon was transferred from one area of operation to another until he was allegedly forced to accept menial jobs of putting control tags on steel pipes, a kind of job which did not require his 16 years of expertise in examining steel pipes.[35]

Edgardo Masangcay, respondent's Second Vice President, executed an affidavit wherein he cited three instances when his salary was withheld by petitioner. The first incident happened on May 28, 2005 when petitioner refused to give his salary to his wife despite presentation of a proof of identification (ID) and letter of authorization. On June 18, 2005, petitioner also refused to release his salary to Pascual Lazaro despite submission of a letter of authority and his ID and, as a result, he was unable to buy medicine for his child who was suffering from asthma attack. The third instance happened on June 25, 2005 when his salary was short of P450.00; this amount was however released the following week.[36]

Petitioner explained that the transfer of the employee from one department to another was the result of downsizing the Warehouse Department, which is a valid exercise of management prerogative. In Guadaña's case, Navarro denied that he was being harsh but claimed that he merely wanted to stress some points. Petitioner explained that Guadaña was transferred when the section where he was assigned was phased out due to the installation of new machines. Petitioner pointed out that the other workers assigned in said section were also transferred.[37]

For the petitioner, Emmanuel Mendiola, Production Superintendent, also executed an affidavit attesting that the allegation of Ariel Marigondon, that he was harassed and was a victim of discrimination for being respondent's President, had no basis. Marigondon pointed out that after the job order was completed, he was reassigned to his original shift and group.[38]

Petitioner also submitted the affidavits of Elizabeth Llaneta Aguilar, disbursement clerk and hiring staff, and Romeo T. Sy, Assistant Personnel Manager. Aguilar explained that she did not mean to harass Masangcay, but she merely wanted to make sure that he would receive his salary. Affiant Sy admitted that he refused to release Masangcay's salary to a woman who presented herself as his (Masangcay's) wife since nobody could attest to it. He claimed that such is not an act of harassment but a precautionary measure to protect Masangcay's interest.[39]

K. Non-implementation of COLA in Wage Order Nos. RBIII-10 and 11

Respondent posited that any form of wage increase granted through the CBA should not be treated as compliance with the wage increase given through the wage boards. Respondent claimed that, for a number of years, petitioner has complied with Article XII, Section 2 of the CBA which provides:

Section 2. All salary increase granted by the COMPANY shall not be credited to any future contractual or legislated wage increases. Both increases shall be implemented separate and distinct from the increases stated in this Agreement. It should be understood by both parties that contractual salary increase are separate and distinct from legislated wage increases, thus the increase brought by the latter shall be enjoyed also by all covered employees.[40]

Respondent maintained that for every wage order that was issued in Region 3, petitioner never hesitated to comply and grant a similar increase. Specifically, respondent cited petitioner's compliance with Wage Order No. RBIII-10 and grant of the mandated P15.00 cost of living allowance (COLA) to all its employees. Petitioner, however, stopped implementing it to non-minimum wage earners on July 24, 2005. It contended that this violates

Article 100 of the Labor Code which prohibits the diminution of benefits already enjoyed by the workers and that such grant of benefits had already ripened into a company practice.[41]

Petitioner explained that the COLA provided under Wage Order No. RBIII-10 applies to minimum wage earners only and that, by mistake, it implemented the same across the board or to all its employees. After realizing its mistake, it stopped integrating the COLA to the basic pay of the workers who were earning above the minimum wage.[42]

The NLRC's Ruling

Out of the eleven issues raised by respondent, eight were decided in its favor; two (denial of paternity leave benefit and discrimination of union members) were decided in favor of petitioner; while the issue on visitor's free access to company premises was deemed settled during the mandatory conference. The dispositive portion of the NLRC Decision dated March 30, 2007 reads:

WHEREFORE, Supreme Steel Pipe Corporation (the Company) is hereby ordered to:

1) implement general wage increase to Juan Niño, Eddie Dalagon and Rommel Talavera pursuant to the CBA in June 2003, 2004 and 2005;

2) regularize workers Dindo Buella and 60 other workers and to respect CBA provision on contracting-out labor;

3) recondition the company vehicle pursuant to the CBA;

4) answer for expenses involved in providing first aid services including transportation expenses for this purpose, as well as to reimburse Rodrigo Solitario the sum of P2,113.00;

5) pay wages of union members/officers who attended grievance meetings as follows:

- 1) D. Serenilla - P115.24375
- 2) D. Miralpes - P115.80625
- 3) E. Mallari - P108.7625
- 4) C. Cruz - P114.65313
- 5) J. Patalbo - P161.0625
- 6) J.J. Muñoz - P111.19375
- 7) C. Guadaña - P56.94375
- 8) J. Patalbo - P161.0625
- 9) E. Mallari - P108.7625
- 10) C. Guadaña - P113.8875
- 11) A. Marigondon - P170.30625
- 12) A. Marigondon - P181.66
- 13) A. Marigondon - P181.66
- 14) E. Masangcay - P175.75
- 15) A. Marigondon - P181.66
- 16) E. Masangcay - P175.75
- 17) A. Marigondon - P181.66
- 18) F. Servano - P174.02
- 19) R. Estrella - P181.50
- 20) A. Marigondon - P181.66

6) pay workers their salary for the 3 hours of the 4 hour brownout as follows:

- 1) Alagon, Jr., Pedro - P130.0875

- 2) Aliwalas, Cristeto - P108.5625
- 3) Baltazar, Roderick - P 90.1875
- 4) Bañez, Oliver - P 90.9375
- 5) Prucal, Eduardo - P126.015
- 6) Calimquin, Rodillo - P131.0362
- 7) Clave, Arturo - P125.64
- 8) Cadavero, Rey - P108.5625
- 9) De Leon, Romulo - P124.35
- 10) Lactao, Noli - P126.015
- 11) Layco, Jr., Dandino - P130.5375
- 12) Legaspi, Melencio - P127.63
- 13) Quiachon, Rogelio - P130.5525
- 14) Sacmar, Roberto - P108.9375
- 15) Tagle, Farian - P129.3375
- 16) Villavicencio, Victor - P126.015
- 17) Agra, Romale - P126.015
- 18) Basabe, Luis - P128.5575
- 19) Bornasal, Joel - P127.53
- 20) Casitas, Santiago - P128.5575
- 21) Celajes, Bonifacio - P128.1825
- 22) Avenido, Jerry - P133.2487
- 23) Gagarin, Alfredo - P108.9375
- 24) Layson, Paulo - P131.745
- 25) Lledo, Asalem - P128.5575
- 26) Marigondon, Ariel - P131.745
- 27) Orcena, Sonnie - P126.015
- 28) Servano, Fernando - P126.015
- 29) Versola, Rodrigo - P126.015

7) reinstate Diosdado Madayag to his former position without loss of seniority rights and to pay full backwages and other benefits from 14 March 2005, date of dismissal, until the date of this Decision; if reinstatement is impossible[,] to pay separation pay of one month pay for every year of service in addition to backwages;

8) dismiss the claim for paternity leave for failure of claimants to observe the requirements;

9) dismiss the charge of harassment and discrimination for lack of merit; and to

10) continue to implement COLA under Wage Order Nos. [RBIII]-10 & 11 across the board.

The issue on Visitors' Free Access to Company Premises is dismissed for being moot and academic after it was settled during the scheduled conferences.

SO ORDERED.[43]

Forthwith, petitioner elevated the case to the CA, reiterating its arguments on the eight issues resolved by the NLRC in respondent's favor.

The CA's Ruling

On September 30, 2008, the CA rendered a decision dismissing the petition, thus:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED, for lack of merit. The assailed Decision dated March 30, 2007 and Resolution dated April 28, 2008 of the National Labor Relations Commission in NLRC NCR CC No. 000305-05 are hereby AFFIRMED.

With costs against the petitioner.

SO ORDERED.[44]

According to the CA, petitioner failed to show that the NLRC committed grave abuse of discretion in finding that it violated certain provisions of the CBA. The NLRC correctly held that every employee is entitled to the wage increase under the CBA despite receipt of an anniversary increase. The CA concluded that, based on the wording of the CBA, which uses the words "general increase" and "over and above," it cannot be said that the parties have intended the anniversary increase to be given in lieu of the CBA wage increase.[45]

The CA declared that the withdrawal of the COLA under Wage Order No. RBIII-10 from the employees who were not minimum wage earners amounted to a diminution of benefits because such grant has already ripened into a company practice. It pointed out that there was no ambiguity or doubt as to who were covered by the wage order. Petitioner, therefore, may not invoke error or mistake in extending the COLA to all employees and such act can only be construed as "as a voluntary act on the part of the employer." [46] The CA opined that, considering the foregoing, the ruling in *Globe Mackay Cable and Radio Corp. v. NLRC* [47] clearly did not apply as there was no doubtful or difficult question involved in the present case. [48]

The CA sustained the NLRC's interpretation of Art. VIII, Section 4 of the CBA as including the expenses for first aid medicine and transportation cost in going to the hospital. The CA stressed that the CBA should be construed liberally rather than narrowly and technically, and the courts must place a practical and realistic construction upon it, giving due consideration to the context in which it was negotiated and the purpose which it intended to serve. [49]

Based on the principle of liberal construction of the CBA, the CA likewise sustained the NLRC's rulings on the issues pertaining to the shuttle service, time-off for attendance in grievance meetings/hearings, and time-off due to brownouts. [50]

The CA further held that management prerogative is not unlimited: it is subject to limitations found in law, a CBA, or the general principles of fair play and justice. It stressed that the CBA provided such limitation on management prerogative to contract-out labor, and compliance with the CBA is mandated by the express policy of the law. [51]

Finally, the CA affirmed the NLRC's finding that Madayag's dismissal was illegal. It emphasized that the burden to prove that the employee's disease is of such nature or at such stage that it cannot be cured within a period of six months rests on the employer. Petitioner failed to submit a certification from a competent public authority attesting to such fact; hence, Madayag's dismissal is illegal. [52]

Petitioner moved for a reconsideration of the CA's decision. On December 4, 2008, the CA denied the motion for lack of merit. [53]

Dissatisfied, petitioner filed this petition for review on certiorari, contending that the CA erred in finding that it violated certain provisions of the CBA.

The Court's Ruling

The petition is partly meritorious.

It is a familiar and fundamental doctrine in labor law that the CBA is the law between the parties and compliance therewith is mandated by the express policy of the law. If the terms of a CBA are clear and there is no doubt as to the intention of the contracting parties, the literal meaning of its stipulation shall prevail. [54] Moreover, the CBA must be construed liberally rather than narrowly and technically and the Court must place a practical and realistic

construction upon it.[55] Any doubt in the interpretation of any law or provision affecting labor should be resolved in favor of labor.[56]

Upon these well-established precepts, we sustain the CA's findings and conclusions on all the issues, except the issue pertaining to the denial of the COLA under Wage Order No. RBIII-10 and 11 to the employees who are not minimum wage earners.

The wording of the CBA on general wage increase cannot be interpreted any other way: The CBA increase should be given to all employees "over and above" the amount they are receiving, even if that amount already includes an anniversary increase. Stipulations in a contract must be read together, not in isolation from one another.[57] Consideration of Article XIII, Section 2 (non-crediting provision), bolsters such interpretation. Section 2 states that "[a]ll salary increase granted by the company shall not be credited to any future contractual or legislated wage increases." Clearly then, even if petitioner had already awarded an anniversary increase to its employees, such increase cannot be credited to the "contractual" increase as provided in the CBA, which is considered "separate and distinct."

Petitioner claims that it has been the company practice to offset the anniversary increase with the CBA increase. It however failed to prove such material fact. Company practice, just like any other fact, habits, customs, usage or patterns of conduct must be proven. The offering party must allege and prove specific, repetitive conduct that might constitute evidence of habit,[58] or company practice. Evidently, the pay slips of the four employees do not serve as sufficient proof.

Petitioner's excuse in not providing a shuttle service to its employees is unacceptable. In fact, it can hardly be considered as an excuse. Petitioner simply says that it is difficult to implement the provision. It relies on the fact that "no time element [is] explicitly stated [in the CBA] within which to fulfill the undertaking." We cannot allow petitioner to dillydally in complying with its obligation and take undue advantage of the fact that no period is provided in the CBA. Petitioner should recondition the company vehicle at once, lest it be charged with and found guilty of unfair labor practice.

Petitioner gave a narrow construction to the wording of the CBA when it denied (a) reimbursement for the first-aid medicines taken by Rodrigo Solitario when he was injured during the company sportsfest and the transportation cost incurred by Alberto Guevara and Job Canizares in going to the hospital, (b) payment of the wages of certain employees during the time they spent at the grievance meetings, and (c) payment of the employees' wages during the brownout that occurred on July 25, 2002. As previously stated, the CBA must be construed liberally rather than narrowly and technically. It is the duty of the courts to place a practical and realistic construction upon the CBA, giving due consideration to the context in which it is negotiated and the purpose which it is intended to serve. Absurd and illogical interpretations should be avoided.[59] A CBA, like any other contract, must be interpreted according to the intention of the parties.[60]

The CA was correct in pointing out that the concerned employees were not seeking hospitalization benefits under Article VIII, Section 1 of the CBA, but under Section 4 thereof; hence, confinement in a hospital is not a prerequisite for the claim. Petitioner should reimburse Solitario for the first aid medicines; after all, it is the duty of the employer to maintain first- aid medicines in its premises.[61] Similarly, Guevara and Canizares should also be reimbursed for the transportation cost incurred in going to the hospital. The Omnibus Rules Implementing the Labor Code provides that, where the employer does not have an emergency hospital in its premises, the employer is obliged to transport an employee to the nearest hospital or clinic in case of emergency.[62]

We likewise agree with the CA on the issue of nonpayment of the time-off for attending grievance meetings. The intention of the parties is obviously to compensate the employees for the time that they spend in a grievance

meeting as the CBA provision categorically states that the company will pay the employee "a paid time-off for handling of grievances, investigations, labor-management conferences." It does not make a qualification that such meeting should be held during office hours or within the company premises.

The employees should also be compensated for the time they were prevented from working due to the brownout. The CBA enumerates some of the instances considered as "emergencies" and these are "typhoons, flood earthquake, transportation strike." As correctly argued by respondent, the CBA does not exclusively enumerate the situations which are considered "emergencies." Obviously, the key element of the provision is that employees "who have reported for work are unable to continue working" because of the incident. It is therefore reasonable to conclude that brownout or power outage is considered an "emergency" situation.

Again, on the issue of contracting-out labor, we sustain the CA. Petitioner, in effect, admits having hired "temporary" employees, but it maintains that it was an exercise of management prerogative, necessitated by the increase in demand for its product.

Indeed, jurisprudence recognizes the right to exercise management prerogative. Labor laws also discourage interference with an employer's judgment in the conduct of its business. For this reason, the Court often declines to interfere in legitimate business decisions of employers. The law must protect not only the welfare of employees, but also the right of employers.[63] However, the exercise of management prerogative is not unlimited. Managerial prerogatives are subject to limitations provided by law, collective bargaining agreements, and general principles of fair play and justice.[64] The CBA is the norm of conduct between the parties and, as previously stated, compliance therewith is mandated by the express policy of the law.[65]

The CBA is clear in providing that temporary employees will no longer be allowed in the company except in the Warehouse and Packing Section. Petitioner is bound by this provision. It cannot exempt itself from compliance by invoking management prerogative. Management prerogative must take a backseat when faced with a CBA provision. If petitioner needed additional personnel to meet the increase in demand, it could have taken measures without violating the CBA.

Respondent claims that the temporary employees were hired on five-month contracts, renewable for another five months. After the expiration of the contracts, petitioner would hire other persons for the same work, with the same employment status.

Plainly, petitioner's scheme seeks to prevent employees from acquiring the status of regular employees. But the Court has already held that, where from the circumstances it is apparent that the periods of employment have been imposed to preclude acquisition of security of tenure by the employee, they should be struck down or disregarded as contrary to public policy and morals.[66] The primary standard to determine a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business of the employer. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists.[67]

We also uphold the CA's finding that Madayag's dismissal was illegal. It is already settled that the burden to prove the validity of the dismissal rests upon the employer. Dismissal based on Article 284 of the Labor Code is no different, thus:

The law is unequivocal: the employer, before it can legally dismiss its employee on the ground of disease, must

adduce a certification from a competent public authority that the disease of which its employee is suffering is of such nature or at such a stage that it cannot be cured within a period of six months even with proper treatment.

x x x x

In *Triple Eight Integrated Services, Inc. v. NLRC*, the Court explains why the submission of the requisite medical certificate is for the employer's compliance, thus:

The requirement for a medical certificate under Article 284 of the Labor Code cannot be dispensed with; otherwise, it would sanction the unilateral and arbitrary determination by the employer of the gravity or extent of the employee's illness and thus defeat the public policy on the protection of labor.

x x x x[68]

However, with respect to the issue of whether the COLA under Wage Order Nos. RBIII-10 and 11 should be implemented across the board, we hold a different view from that of the CA. No diminution of benefits would result if the wage orders are not implemented across the board, as no such company practice has been established.

Diminution of benefits is the unilateral withdrawal by the employer of benefits already enjoyed by the employees. There is diminution of benefits when it is shown that: (1) the grant or benefit is founded on a policy or has ripened into a practice over a long period of time; (2) the practice is consistent and deliberate; (3) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (4) the diminution or discontinuance is done unilaterally by the employer.[69]

To recall, the CA arrived at its ruling by relying on the fact that there was no ambiguity in the wording of the wage order as to the employees covered by it. From this, the CA concluded that petitioner actually made no error or mistake, but acted voluntarily, in granting the COLA to all its employees. It therefore took exception to the *Globe Mackay* case which, according to it, applies only when there is a doubtful or difficult question involved.

The CA failed to note that *Globe Mackay* primarily emphasized that, for the grant of the benefit to be considered voluntary, "it should have been practiced over a long period of time, and must be shown to have been consistent and deliberate." [70] The fact that the practice must not have been due to error in the construction or application of a doubtful or difficult question of law is a distinct requirement.

The implementation of the COLA under Wage Order No. RBIII-10 across the board, which only lasted for less than a year, cannot be considered as having been practiced "over a long period of time." While it is true that jurisprudence has not laid down any rule requiring a specific minimum number of years in order for a practice to be considered as a voluntary act of the employer, under existing jurisprudence on this matter, an act carried out within less than a year would certainly not qualify as such. Hence, the withdrawal of the COLA Wage Order No. RBIII-10 from the salaries of non-minimum wage earners did not amount to a "diminution of benefits" under the law.

There is also no basis in enjoining petitioner to implement Wage Order No. RBIII-11 across the board. Similarly, no proof was presented showing that the implementation of wage orders across the board has ripened into a company practice. In the same way that we required petitioner to prove the existence of a company practice when it alleged the same as defense, at this instance, we also require respondent to show proof of the company practice as it is now the party claiming its existence. Absent any proof of specific, repetitive conduct that might constitute evidence of the practice, we cannot give credence to respondent's claim. The isolated act of implementing a wage order across the board can hardly be considered a company practice,[71] more so when such implementation was erroneously made.

WHEREFORE, premises considered, the petition is PARTIALLY GRANTED. The CA Decision September 30, 2008 and Resolution dated December 4, 2008 are AFFIRMED with MODIFICATION that the order for petitioner to continue implementing Wage Order No. RBIII-10 and 11 across the board is SET ASIDE. Accordingly, item 10 of the NLRC Decision dated March 30, 2007 is modified to read "dismiss the claim for implementation of Wage Order Nos. RBIII-10 and 11 to the employees who are not minimum wage earners."

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Noel G. Tijam and Arturo G. Tayag, concurring; rollo, pp. 35-61.

[2] Rollo, pp. 174-184.

[3] Id. at 180.

[4] Id. at 115-116.

[5] Id. at 116.

[6] Id.

[7] Id. at 175.

[8] Id. at 118.

[9] Id. at 118-119.

[10] Id. at 117.

[11] Id. at 181.

[12] Id. at 119.

[13] Id. at 120.

[14] Id. at 178.

[15] Id. at 120.

[16] Section 1, Article VIII of the CBA provides:

Section 1. The COMPANY agrees to extend financial assistance to regular employees/workers who are required to undergo hospitalization upon proper certification by the COMPANY Physician except in emergency cases which do not require physician's certification. The maximum assistance to be extended to any worker covered by the Agreement shall not exceed EIGHT THOUSAND PESOS (P8,000.00) and shall be availed only after the Philhealth Benefits have been exhausted. It is understood that the EIGHT THOUSAND PESOS (P8,000.00) assistance is to include fees of the specialist upon proper certification by the Company Physician.

[17] Rollo, p. 121.

[18] Id. at 175.

[19] Id. at 121-122.

[20] Id. at 122.

[21] Id.

[22] Id. at 175.

[23] Id. at 180.

[24] Id. at 124.

[25] Id.

[26] Id. at 125.

[27] Id.

[28] LABOR CODE OF THE PHILIPPINES, Article 284 provides:

ART. 284. DISEASE AS GROUND FOR TERMINATION

An employee may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees; Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one whole year.

[29] Rollo, p. 126.

[30] Id. at 181.

[31] Id.

[32] Id. at 128.

[33] Id. at 130.

[34] Id. at 177.

[35] Id. at 129.

[36] Id.

[37] Id. at 129 and 131.

[38] Id. at 131.

[39] Id.

[40] Id. at 180.

[41] Id. at 132.

[42] Id.

[43] Id. at 133-136.

[44] Id. at 61.

[45] Id. at 54.

[46] Id. at 54-55.

[47] 163 Phil. 71 (1988).

[48] Rollo, p. 55.

[49] Id. at 55-56.

[50] Id. at 56.

[51] Id.

[52] Id. at 56-61.

[53] Id. at 33.

[54] United Kimberly-Clark Employees Union-Philippine Transport General Workers' Organization (UKCEU-PTGWO) v. Kimberly-Clark Philippines, Inc., G.R. No. 162957, March 6, 2006, 484 SCRA 187, 202.

[55] Id. at 203.

[56] Faculty Association of Mapua Institute of Technology (FAMIT) v. Court of Appeals, G.R. No. 164060, June 15, 2007, 524 SCRA 709, 717.

[57] Norkis Free and Independent Workers Union v. Norkis Trading Company, Inc., 501 Phil. 170, 178 (2005).

[58] Pag-Asa Steel Works, Inc. v. Court of Appeals, G.R. No. 166647, March 31, 2006, 486 SCRA 475, 497.

[59] TSPIC Corporation v. TSPIC Employees Union (FFW), G.R. No. 163419, February 13, 2008, 545 SCRA 215, 226.

[60] Id.

[61] Section 3, Rule 1, Book Four of the Omnibus Rules Implementing the Labor Code provides:

SECTION 3. Medicines and facilities. -- Every employer shall keep in or about his work place the first-aid medicines, equipment and facilities that shall be prescribed by the Department of Labor and Employment within 5 days from the issuance of these regulations. The list of medicines, equipment and facilities may be revised from time to time by the Bureau of Working Conditions, subject to the approval of the Secretary of Labor and Employment.

[62] Section 5, Rule 1, Book Four of the Omnibus Rules Implementing the Labor Code provides:

SECTION 5. Emergency hospital. -- An employer need not put up an emergency hospital or dental clinic in the work place as required in these regulations where there is a hospital or dental clinic which is not more than five (5) kilometers away from the work place if situated in any urban area or which can be reached by motor vehicle in twenty-five (25) minutes of travel, if situated in a rural area and the employer has facilities readily available for transporting a worker to the hospital or clinic in case of emergency: Provided, That the employer shall enter into a written contract with the hospital or dental clinic for the use thereof in the treatment of workers in case of emergency. (Emphasis supplied.)

[63] Endico v. Quantum Foods Distribution Center, G.R. No. 161615, January 30, 2009, 577 SCRA 299, 309.

[64] DOLE Philippines, Inc. v. Pawis ng Makabayang Obrero (PAMAO-NFL), 443 Phil. 143, 149 (2003).

[65] Id. at 150.

[66] Philips Semiconductors (Phils.), Inc. v. Fadriquela, 471 Phil. 355, 372 (2004), citing Brent School, Inc. v.

Zamora, 260 Phil. 747 (1990).

[67] *Id.* at 369-370.

[68] *Duterte v. Kingswood Trading Co., Inc.*, G.R. No. 160325, October 4, 2007, 534 SCRA 607, 614-615.

[69] *TSPIC Corporation v. TSPIC Employees Union (FFW)*, note 59 at 232.

[70] *Globe Mackay Cable and Radio Corp. v. NLRC*, note 47 at 77.

[71] *Pag-Asa Steel Works, Inc. v. Court of Appeals*, note 58 at 499.

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