

GUAGUA NATIONAL COLLEGES, PETITIONER, VS. GUAGUA NATIONAL COLLEGES FACULTY LABOR UNION AND GUAGUA NATIONAL COLLEGES NON-TEACHING AND MAINTENANCE LABOR UNION, RESPONDENTS.

G.R. No. 204693. July 13, 2016

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

This Petition for Review on Certiorari assails the September 26, 2012 Decision[1] and December 3, 2012 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 120669, which respectively denied for lack of merit the Petition for Certiorari filed therewith by petitioner Guagua National Colleges (GNC) and the motion for reconsideration thereto.

Factual Antecedents

GNC is an educational institution located in Sta. Filomena, Guagua, Pampanga. On the other hand, respondents Guagua National Colleges Faculty Labor Union (GNCFLU) and Guagua National Colleges Non-Teaching and Maintenance Labor Union (GNCNTMLU) were the bargaining agents for GNC's faculty members and non-teaching and maintenance personnel, respectively.

Beginning 1994 until their present dispute, the parties concluded their Collective Bargaining Agreements (CBA) without issue as follows: (1) CBA effective June 1, 1994 to May 31, 1999 (1994-1999 CBA),[3] the economic provisions of which were renegotiated on November 3, 1997 for years 1997-1999;[4] (2) CBA effective June 1, 1999 to May 31, 2004,[5] the economic provisions of which were renegotiated on July 4, 2002 for years 2002-2004;[6] and, (3) CBA effective June 1, 2004 to May 31, 2009.[7] The aforementioned CBAs applied to both GNCFLU and GNCNTMLU without distinction.

Significantly, the 1994-1999 CBA has a "no-strike, no lock-out" clause under Section 17 thereof which likewise provides for mechanism for grievance resolution and voluntary arbitration. This provision was considered carried over in the subsequent CBAs.[8]

On April 3, 2009, the Presidents of both GNCFLU and GNCNTMLU, wrote the President of GNC, Atty. Ricardo V. Puno (Atty. Puno), to inform him of the former's intention to open the negotiation for the renewal of the then existing CBA which would expire on May 31, 2009.[9] Attached to the said letter was respondents' proposal for the next CBA[10] which was received by GNC on even date.[11]

Instead of serving upon respondents a reply/counter-proposal within 10 days from its receipt of respondents' proposal, GNC wrote respondents on May 11, 2009 calling for a meeting at 10:00 a.m. of May 15, 2009 regarding CBA negotiations. While the said meeting took place and was attended by panel members from GNC, GNCFLU and GNCNTMLU, no agreement was reached except that GNC would notify respondents of the next negotiation meeting. However, what respondents later received from GNC's Corporate Secretary, Atty. Ricardo M. Sampang

(Atty. Sampang) was not a notice of meeting but a letter dated May 27, 2009 which, among others, stated that the "management is not inclined to grant the economic/monetary-related proposals in [respondents'] letter of April 3, 2009." [12]

Still, respondents on June 1, 2009, requested for a conference with GNC to discuss the ground rules. [13] GNC granted respondents' request and scheduled a meeting at 1:00 p.m. of June 11, 2009 at the GNC boardroom. [14] Although respondents described GNC as "non-committal" during the meeting, they nevertheless reckoned thereon the start of the negotiation proper between the parties.

As to the events that transpired thereafter, the parties have conflicting claims.

While GNC asserted in general terms that the parties exchanged proposals and counter-proposals in the months that followed, [15] respondents, on the other hand, detailed the negotiations that allegedly ensued between the parties, [16] to wit: (1) another meeting was held on June 16, 2009 but since GNC at that time still did not have any reply/counter-proposal to respondents' proposal, it asked for three weeks to submit the same; (2) in their July 10, 2009 meeting, GNC failed to submit its purported counter-proposal; (3) in the meeting of July 31, 2009, Cita Rodriguez (Rodriguez), the school treasurer and a member of the management panel, discussed with respondents some of the economic items in respondents' proposal, particularly those relating to longevity pay, birthday gift, family assistance, medical check-up and clothing allowance; (4) the parties discussed further on longevity pay and family assistance benefit in the August 11, 2009 meeting. They also talked about an increase in rice subsidy; (5) in the August 17, 2009 meeting, Rodriguez stated that based on GNC's Faculty Manual of 2008, longevity pay shall be given according to the number of years of service and shall be deemed as loyalty pay. The parties then agreed to an increase of P5.00 in the longevity pay previously being given; (6) in the following meeting of August 24, 2009, Rodriguez announced the increased benefits included in the new CBA, to wit: loyalty pay, cash gift, rice subsidy, birthday gift and clothing allowance. Rodriguez likewise confirmed the grant of a Union Office at the 3rd floor of Goseco Building in GNC. However, respondents' demand for an increased signing bonus of P100,000.00 for each union (previously given at P50,000.00 each union) remained unsettled. Nevertheless, the parties agreed to further discuss the matter; (7) on September 23, 2009, respondents submitted to GNC a draft of the CBA containing all the benefits agreed upon. GNC requested that some revisions be made thereon; (8) Atty. Sampang called for a meeting on October 9, 2009. In the said meeting, the parties reviewed all the benefits agreed on. Rodriguez then stated that the signing of the next CBA may take place the following meeting; (9) on October 15, 2009, respondents submitted to Atty. Sampang the agreed terms of the CBA which already contained the revisions requested by GNC and the P100,000.00 signing bonus for each union. The document according to them was by then ready for signing; (10) respondents made several follow-ups with both Atty. Sampang and Rodriguez regarding the signing of the CBA but to no avail; (11) respondents received from Atty. Sampang, through a letter [17] dated December 21, 2009, GNC's counter-proposal. [18] Respondents were surprised since they thought all along that all matters, except for some details on the signing bonus, were already settled. Besides, the three-week period previously requested by GNC within which to submit its counter-proposal had long lapsed; (12) Atty. Sampang requested respondents to attend a meeting with Atty. Puno on January 5, 2010. Despite Atty. Puno's presence in the school premises, he did not, however, face respondents' representatives who waited for him for a considerable length of time; (13) in view of the foregoing, respondents were constrained to write Atty. Puno on January 8, 2010. [19] They stressed that while they have been bargaining in good faith, it was otherwise on the part of GNC. Respondents thus expressed their belief that the parties have already reached an impasse. They therefore asked GNC to respond to their letter and therein state its stand as to whether a third party is needed to assist them in threshing out their differences. As respondents did not get any reply from GNC, they filed on February 3, 2010 a preventive mediation case with the National Conciliation and Mediation Board (NCMB). [20]

Proceedings before the National Conciliation and Mediation Board

Again, the parties differ in their account of what transpired before the NCMB.

Respondents alleged that after several mediation meetings, the parties finally agreed on the details regarding the grant of signing bonus. Hence, they undertook to compose the final draft of the 2009-2014 CBA which it submitted to the NCMB on May 14, 2010 and copy furnished GNC on May 21, 2010.[21] Respondents likewise averred that the parties already agreed to schedule the signing of the said CBA on May 28, 2010. To their dismay, however, no signing of the CBA took place. Instead, Atty. Sabino Jose M. Padilla III (Atty. Padilla) appeared before the NCMB on behalf of GNC and requested for 10 days or until June 7, 2010 within which to submit GNC's Comment/Counter-Proposal to the "Union[s]' CBA draft." Although disappointed that Atty. Padilla merely referred to the supposed "final draft" of the parties as the "Union[s]' CBA draft," respondents agreed to the period requested by GNC to give the latter time to go over it. Respondents, however, manifested that they would want the parties to meet again on June 1, 2010. Come the said date, no one appeared on behalf of GNC. Thus, respondents filed on the same day a Notice of Strike[22] charging GNC with bad faith bargaining, violation of its duty to bargain, gross violations of the provisions of the CBA, and gross and blatant diminution of benefits. Subsequent to this, GNC allegedly stopped the grant of certain benefits to its employees.

GNC, on the other hand, contended that during mediation meetings with the NCMB, respondents submitted several CBA drafts for its consideration. Upon its receipt on May 21, 2010 of another draft CBA²³ from respondents under cover letter dated May 20, 2010,[24] it decided to secure the services of Atty. Padilla to assist it in its negotiations with respondents. Hence, on May 28, 2010, Atty. Padilla appeared before the NCMB and asked for 10 days to submit GNC's comment/counter-proposal to the purported draft CBA of respondents. However, on June 1, 2010, respondents filed a notice of strike.

In view of the notice of strike, the NCMB called for a conciliation conference on June 4, 2010 which was later set for continuation on June 9, 2010. Meanwhile on June 7, 2010, GNC filed with the NCMB its counter-proposal[25] to respondents' purported final CBA draft.

Subsequently during the June 9, 2010 conference, GNC filed a Motion to Strike Out Notice of Strike and to Refer Dispute to Grievance Machinery and Voluntary Arbitration Pursuant to the Collective Bargaining Agreement.[26] It invoked the "no-strike, no lock-out" clause and the grievance machinery and voluntary arbitration provision of the parties' existing CBA which was carried over from their 1994-1999 CBA and the CBAs subsequent thereto. According to it, the four grounds cited by respondents in their notice of strike, i.e., bad faith bargaining, violation of the duty to bargain, gross violation of the provisions of the CBA, and gross and blatant diminution of benefits, all come within the definition of "grievance" under their CBA, hence, not strikeable.

In the afternoon of the same day, respondents conducted their respective Strike Votes wherein majority voted in favor of a strike.[27] They then informed the NCMB of the strike vote results on June 21, 2010.[28]

Since the NCMB had not yet acted upon GNC's Motion to Strike Out Notice of Strike and to Refer Dispute to Grievance Machinery and Voluntary Arbitration Pursuant to the Collective Bargaining Agreement despite the looming strike of respondents, GNC urged the Secretary of Labor and Employment to assume jurisdiction over the dispute.[29] It specifically prayed in its letter of June 24, 2010 that the Secretary of Labor and Employment, pursuant to Article 263(g)[30] of the Labor Code "assume jurisdiction over the labor dispute between GNC and the Unions, i.e., GNCFLU and GNCNTMLU[,] in order to enjoin the intended strike x x x and thereafter direct the parties to submit the dispute to the grievance machinery and voluntary arbitration provisions of the CBA." [31]

In an Order[32] dated June 28, 2010, the Secretary of Labor and Employment, after finding the subject labor

dispute as one affecting national interest, assumed jurisdiction over the case; certified the same to the National Labor Relations Commission (NLRC) for immediate compulsory arbitration; and, accordingly enjoined the intended strike.

Proceedings before the National Labor Relations Commission

In their Position Paper,[33] respondents recounted that GNC at the plant level had already failed to reply or furnish them a timely counter-proposal. While GNC asked for three weeks to submit its counter-proposal in the meeting of June 16, 2009, no such counter-proposal was submitted. Instead, GNC opted to orally discuss with respondents the terms of the CBA. Yet, after the conduct of a series of meetings/negotiations and at a time when the parties had already substantially agreed on the terms of the new CBA, respondents received from Atty. Sampang on December 21, 2009 GNC's counter-proposal to respondents' purported "latest proposal." Respondents denied the existence of any "latest proposal" which requires a "counter-proposal" from GNC. And even assuming that said counter-proposal is GNC's answer to the proposal they furnished it at very outset, the same was already belatedly submitted not only because the period to serve a reply/counter-proposal had long lapsed, but also since all matters were already substantially agreed upon by the parties. This explains why at that point, respondents were already following up the signing of the CBA.

The same goes true in the NCMB level. Respondents averred that the parties had already come into agreement regarding the signing bonus after several mediation/conciliation meetings held therein. But when they undertook to draft the CBA containing the terms agreed upon by the parties and submitted the same to the NCMB, Atty. Padilla suddenly entered the picture and submitted a counter-proposal to what he referred to as the "Union[s]' CBA draft" when in fact, the same was actually the parties' final draft. Respondents thus argued that GNC clearly committed an unfair labor practice by bad faith bargaining. In addition, respondents averred that GNC, without notice, stopped the release of benefits to its employees.

For its part, GNC called attention to the fact that when it requested the Secretary of Labor and Employment to assume jurisdiction over the dispute, it also prayed that the same be ordered submitted to the grievance machinery and voluntary arbitration provided for under the parties' CBA. It stressed that its participation in the compulsory arbitration proceeding should therefore not be construed as a waiver of its position that jurisdiction over the dispute rests with the voluntary arbitrator in view of the parties' agreement in the CBA, the pertinent provisions of the Labor Code, and of the Court's ruling in *University of San Agustin Employees' Union-FFW v. Court of Appeals*.[34]

As to the charge of unfair labor practice on account of its alleged bad faith bargaining and violation of duty to bargain, GNC argued that the same is belied by the fact that since the very beginning, the parties were negotiating. This continued during the mediation and conciliation proceedings before the NCMB. And had not for respondents' impatience which caused them to file a notice of strike, such negotiations would have progressed. To GNC, respondents' move of filing a notice of strike was uncalled for and was only intended to compel GNC to hastily concede to their proposals. What respondents refused to see, however, was GNC's critical financial status that hindered it from readily agreeing with their economic proposals.

GNC likewise denied the allegation that it stopped the release of benefits to its employees. It explained that its Protégé Program[35] was only subjected to stricter implementation guidelines but not stopped; that its employees received their uniforms; and that it could not have stopped the grant of pilgrimage or excursion benefits since no such benefit was provided for in their previous CBAs. What was actually provided therein was the conduct of an annual retreat which was already held in December 2009 at the GNC campus; that as to rice subsidy, the same is granted on a best effort basis and only when savings are generated; and that it had always endeavored to provide,

to the best of its ability, the rice subsidy benefits to its employees. In fact, rice subsidy was last given in December 2009; and, that since the management was not generating savings from its operations, no rice subsidy has been released thereafter. GNC asserted that it had been explaining these to the respondents but the latter would just not listen.

The NLRC rendered a Decision[36] on March 31, 2011.

As to GNC's contention that jurisdiction over the dispute rests on the voluntary arbitrator, the NLRC had this to say:

GNC prays that [w]e dismiss the labor dispute for lack of jurisdiction and direct the parties to resolve their differences through the grievance machinery provided for by their CBA and eventually, resolve it under voluntary arbitration. They aver that x x x the failure or refusal of the NCMB and thereafter, the Secretary of Labor and Employment to enforce the grievance machinery and voluntary arbitration x x x [allowed] the unions to circumvent the CBA and their agreement to resolve conflicts through voluntary arbitration by the simple [expedient] of filing a notice of strike. We completely disagree.

When GNC filed their petition for assumption of jurisdiction[,] they prayed that:

"x x x. . .the Honorable Secretary of Labor and Employment, pursuant to Article 263 (g) of the Labor Code, assume jurisdiction over the labor dispute between GNC and the Unions, i.e. GNCFLU and GNCNTMLU[,] in order to enjoin the intended strike, or to order the immediate return to work of strikers if a strike has taken place, and thereafter direct the parties to submit to the grievance machinery and voluntary arbitration provisions of the CBA."

The June 28, 2010 Order of the Secretary granted the assumption of jurisdiction of the labor dispute and certified the same to this Commission for compulsory arbitration. In effect, the Order denied GNC's plea to submit the dispute to the parties' grievance machinery and voluntary arbitration. Article 263 (g) does not encompass referral of the labor dispute in an industry imbued with national interest to grievance machinery or voluntary arbitration. In the absence of a timely reconsideration or proof that GNC had exercised

available remedy in law, the Order now stands beyond reproach. In *Union of Filipino Employees v. NLRC* x x x, the Supreme Court ruled:

"When sitting in a compulsory arbitration certified to by the Secretary of Labor, the NLRC is not sitting as a judicial court but as an administrative body charged with the duty to implement the order of the Secretary. Its function only is to formulate the terms and conditions of the CBA and cannot go beyond the scope of the order. Moreover, the Commission is further tasked to act within the earliest time possible and with the end in view that its action would not only serve the interests of the parties alone, but would also have favorable implications to the community and to the economy as a whole. This is the clear intention of the legislative body in enacting Art. 263, paragraph (g) of the Labor Code, as amended by Section 27 of RA 6175." x x x

Corollary thereto, as an implementing body, [o]ur authority does not include the power to amend the Secretary's Order. To accede to a referral of the labor dispute to the grievance machinery and ultimately to voluntary arbitration is equivalent to amending said Order, x x x[37]

The NLRC thus upheld its jurisdiction over the case, viz.:

The Secretary is explicitly granted by Article 263 (g) of the Labor Code the authority to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, and decide the same accordingly. Inevitably, this authority to assume jurisdiction over a labor dispute must include and extend to all questions and controversies arising therefrom, including cases over which the Labor Arbiter has exclusive jurisdiction x x x. It is the declared policy of this Commission that in certified labor disputes for compulsory arbitration, We must ensure and maintain industrial peace based on social justice

and national interest by having a full, complete and immediate settlement or adjudication of all labor disputes between the parties, as well as issues that are relevant to or incidents of the certified issues. Under Section 3, par. (b), Rule VIII of our 2005 Revised Rules of Procedure:

"(b) All cases between the same parties, except where the certification order specifies otherwise, the issues submitted for arbitration which are already filed or may be filed, and are relevant to or are proper incidents of the certified case, shall be considered subsumed or absorbed by the certified case, and shall be decided by the appropriate Division of the Commission.

Subject to the second paragraph of Section 4 of Rule IV, the parties to a certified case, under pain of contempt, shall inform their counsels and the Division concerned of all cases pending with the Regional Arbitration Branches and the Voluntary Arbitrators relative or incident to the certified case before it."

Plaintly, [o]ur jurisdiction in this certified case extends to all other issues between the parties so long as they are relevant and germane in the resolution of the main labor dispute. Our rules, under pain of contempt, require consolidation of all cases pending with [o]ur Regional Arbitration Branches or with any Voluntary Arbitrator and consider them included or absorbed in the certified case to be able to completely and finally settle it. The intention of the law is an immediate and complete resolution of a labor dispute in an industry indispensable to the national interest. In this certified case, We are called to exercise [o]ur judgment and adjudicate the labor dispute in accordance with the Order of the Secretary of Labor and Employment. This Commission will not recuse from this responsibility for want of jurisdiction.[38]

Anent the merits of the case, the NLRC held that based on the totality of conduct of GNC, it was guilty of bad faith bargaining and therefore committed an unfair labor practice. This was on account of GNC's submission of a counter-proposal despite the parties already having reached an agreement regarding the terms of the CBA. To the NLRC, the belated submission of GNC's counter-proposal was intended to evade the execution of the CBA. With respect to GNC's alleged withdrawal of employees' benefits, the NLRC ruled that pursuant to Article 253 of the Labor Code, the parties have the duty to keep the status quo and to continue in full force and effect the terms and conditions of their existing agreement within 60 days prior to the expiration thereof and/or until a new agreement is reached by the parties. The NLRC, thus, held that GNC failed to abide by this duty when it discontinued the release of benefits pending the conclusion of a new CBA. Finally, pursuant to *General Milling Corporation v. Court of Appeals*,[39] the NLRC deemed it proper to declare the final draft submitted by respondents to the NCMB as the parties' CBA for the period June 1, 2009 to May 31, 2014.

The NLRC ultimately ruled as follows:

WHEFORE, considering [o]ur foregoing disquisitions, [w]e find Guagua National Colleges (GNC) to have committed an unfair labor practice by violating the statutory duty to bargain collectively in good faith. We [o]rder that the final CBA draft submitted by the unions to GNC and NCMB x x x be the Collective Bargaining Agreement between the parties for the period June 1, 2009 to May 31, 2014 with the parties free to renegotiate the economic provisions not later than May 31, 2012 in accordance with Article 253-A of the Labor Code. Lastly, We further [o]rder that the benefits agreed on by the parties as of August 24, 2009 be given retroactive effect to June 1, 2009.

SO ORDERED.[40]

Since GNC's Motion for Reconsideration[41] thereto was denied for lack of merit in the NLRC Resolution[42] dated May 25, 2011, it sought recourse from the CA through a Petition for Certiorari.[43]

Ruling of the Court of Appeals

In a Decision[44] dated September 26, 2012, the CA did not find any grave abuse of discretion on the part of

NLRC in issuing its assailed orders. Hence, it denied the Petition for lack of merit. GNC filed a Motion for Reconsideration[45] thereto which, however, was likewise denied in the Resolution[46] dated December 3, 2012.

Hence, this Petition for Review on Certiorari.

Issue

WHETHER THE COURT OF APPEALS XXX COMMITTED GRIEVOUS AND IRREVERSIBLE ERROR WHEN, IN ITS DECISION DATED 26 SEPTEMBER 2012 AND RESOLUTION DATED 3 DECEMBER 2012, IT DISMISSED [GNC's] PETITION FOR CERTIORARI AND MOTION FOR RECONSIDERATION[,] RESPECTIVELY[,] FOR LACK OF MERIT, THEREBY AFFIRMING THE DECISION DATED 31 MARCH 2011 AND RESOLUTION DATED 25 MAY 2011 OF THE NATIONAL LABOR RELATIONS COMMISSION XXX[47]

Essential to the determination of the issue raised is the resolution of the following:

- Whether the subject labor dispute should have been ordered submitted to voluntary arbitration by the Secretary of Labor and Employment pursuant to the parties' CBA and not certified to the NLRC for compulsory arbitration;
- Whether GNC is guilty of bad faith bargaining and thus violated its duty to bargain;
- Whether the final CBA draft submitted by respondents to the NCMB was correctly declared to be the parties' CBA for the period June 1, 2009 to May 31, 2014.

Our Ruling

The Petition has no merit.

The Secretary of Labor and Employment correctly certified the subject labor dispute to the NLRC for compulsory arbitration.

GNC asserts that it is the voluntary arbitrator which has jurisdiction over the grounds cited by respondents in their notice of strike in view of Section 17 of the parties' 1994-1999 CBA. The said provision contains the agreement of the parties on a "no strike, no lock-out" policy and on grievance resolution and voluntary arbitration which was carried over to their subsequent CBAs up to the existing one. According to GNC, respondents should not have filed a notice of strike in view of such "no-strike, no lock-out" clause and also since respondents' grounds for strike are within the scope of "grievance" to be resolved in accordance with the said Section 17. It argues that respondents, by the simple expedient of filing a notice of strike, were able to circumvent the "no strike, no lock-out" clause and the grievance machinery and voluntary arbitration provision of their CBA.

Indeed, the parties through their CBA, agreed to a "no-strike, no lock-out" policy and to resolve their disputes through grievance machinery and voluntary arbitration. Despite these, respondents were justified in filing a notice of strike in light of the facts of this case. It is settled that a "no strike, no lock-out" provision in the CBA "may [only] be invoked by [an] employer when the strike is economic in nature or one which is conducted to force wage or other agreements from the employer that are not mandated to be granted by law. It [is not applicable when the strike] is grounded on unfair labor practice." [48] Here, while respondents enumerated four grounds in their notice of strike, the facts of the case reveal that what primarily impelled them to file said notice was their perception of bad faith bargaining and violation of the duty to bargain collectively by GNC - charges which constitute unfair labor practice under Article 248(g) of the Labor Code.[49]

To recall, respondents acted prudently when they filed a preventive mediation case the first time that GNC refused

to acknowledge at the plant level that the parties already agreed on the terms of their incoming CBA. However, GNC again rebuffed that the parties had already entered into an agreement when respondents submitted the purported final CBA draft of the parties to the NCMB. Hence, respondents cannot be faulted into believing that GNC was bargaining in bad faith and had no genuine intention to comply with its duty to bargain collectively since it denied arriving at an agreement with respondents not once but twice. This belief in good faith prompted them to file a notice of strike. Clearly, respondents' intention was to protest what they perceived to be acts of unfair labor practice on the part of GNC through the exercise of their right to strike enshrined in the Constitution and not to circumvent the "no strike, no lock-out" clause and the grievance machinery and voluntary arbitration provision of the CBA.

GNC relies heavily on *University of San Agustin*[50] According to it, the facts therein are similar if not identical to the facts of the present case. Hence, the Court's ruling in the said case squarely applies here.

In *University of San Agustin*, the University of San Agustin (the University) and the University of San Agustin Employees' Union (Union) entered into a five-year CBA in 2000. Complementary to the economic provisions of the said CBA is Section 3, Article 8 thereof which provides for salary increases for school years 2000-2003. Such salary increases shall take the form of either lump sum or a percentage of the tuition incremental proceeds (TIP). Moreover and just like in the present case, the parties' CBA therein contained a "no strike, no lock-out" clause, a grievance machinery procedure, and a voluntary arbitration mechanism.

When the parties were renegotiating the economic provisions of their CBA, they could not agree on the manner of computing the TIP. In view of this impasse, the Union declared a bargaining deadlock. When the Union filed a Notice of Strike before the NCMB, the University opposed the same by filing a Motion to Strike Out Notice of Strike and to Refer the Dispute to Voluntary Arbitration invoking the "no strike, no lock-out" clause of their CBA. The NCMB, however, failed to resolve the said motion. The parties then jointly requested the Secretary of Labor and Employment to assume jurisdiction over the dispute. When the Secretary of Labor and Employment assumed jurisdiction, it proceeded to hear and decide on the dispute. Eventually, a Decision was rendered wherein the economic issues over which the parties had a deadlock in the collective bargaining were resolved, among others.

The CA, on certiorari petition, found merit in the University's argument that the Secretary of Labor abused his/her discretion in resolving the economic issues on the ground that the same were proper subject of the grievance machinery as embodied in the parties' CBA. Accordingly, the said court directed the parties to submit the economic issues to voluntary arbitration.

This Court affirmed the CA's ruling based on the following ratiocinations:

We xxx find logic in the CA's directive for the herein parties to proceed with voluntary arbitration as provided in their CBA. As we see it, the issue as to the economic benefits, which included the issue on the formula in computing the TIP share of the employees, is one that arises from the interpretation or implementation of the CBA. To be sure, the parties' CBA provides for a grievance machinery to resolve any 'complaint or dissatisfaction arising from the interpretation or implementation of the CBA and those arising from the interpretation or enforcement of company personnel policies.' Moreover, the same CBA provides that should the grievance machinery fail to resolve the grievance or dispute, the same shall be 'referred to a Voluntary Arbitrator for arbitration and final resolution.' However, through no fault of the University these processes were not exhausted. It must be recalled that while undergoing preventive mediation proceedings before the NCMB, the Union declared a bargaining deadlock, filed a notice of strike and thereafter, went on strike. The University filed a Motion to Strike Out Notice of Strike and to Refer the Dispute to Voluntary Arbitration but the motion was not acted upon by the NCMB. As borne by the records, the University has been consistent in its position that the Union must exhaust the grievance machinery provisions of the CBA which ends in voluntary arbitration.

The University's stance is consistent with Articles 261 and 262 of the Labor Code, as amended which respectively provide[s]:

Art. 261. Jurisdiction of voluntary arbitrators or panel of voluntary arbitrators. - The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Accordingly, violations of a collective bargaining agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the collective bargaining agreement. For purposes of this Article, gross violations of a collective bargaining agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.

The Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators and shall immediately dispose and refer the same to the grievance machinery or voluntary arbitration provided in the collective bargaining agreement.

Art. 262. Jurisdiction over other labor disputes. - The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

The grievance machinery and no strike, no lockout provisions of the CBA forged by the University and the Union are founded on Articles 261 and 262 quoted above. The parties agreed that practically all disputes - including bargaining deadlocks - shall be referred to the grievance machinery which ends in voluntary arbitration. Moreover, no strike or no lockout shall ensue while the matter is being resolved.

The University filed a Motion to Strike Out Notice of Strike and to Refer the Dispute to Voluntary Arbitration precisely to call the attention of the NCMB and the Union to the fact that the CBA provides for a grievance machinery and the parties' obligation to exhaust and honor said mechanism. Accordingly, the NCMB should have directed Hie Union to honor its agreement with the University to exhaust administrative grievance measures and bring the alleged deadlock to voluntary arbitration. Unfortunately, the NCMB did not resolve the University's motion thus paving the way for the strike on September 19, 2003 and the deliberate circumvention of the CBA's grievance machinery and voluntary arbitration provisions.

As we see it, the failure or refusal of the NCMB and thereafter the [Secretary of Labor and Employment] to recognize, honor and enforce the grievance machinery and voluntary arbitration provisions of the parties' CBA unwittingly rendered said provisions, as well as Articles 261 and 262 of the Labor Code, useless and inoperative. As here, a union can easily circumvent the grievance machinery and previous agreement to resolve differences or conflicts through voluntary arbitration through the simple expedient of filing a notice of strike. On the other hand, management can avoid the grievance machinery and voluntary arbitration provisions of its CBA by simply filing a notice of lockout.[51]

It must be noted that under the facts of University of San Agustin, the dispute between the parties primarily involved the formula in computing the TIP share of the employees - one which clearly arose from the interpretation or implementation of the CBA. Pursuant to Article 261 of the Labor Code,[52] such a grievance falls under the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators. Even if otherwise, the dispute would still fall under the said jurisdiction pursuant to Article 262[53] of the same Code since the parties agreed in their CBA that practically all disputes, including bargaining deadlock, shall be referred to grievance machinery that ends in voluntary arbitration.

It can safely be concluded, therefore, that the clear showing of the voluntary arbitrator's jurisdiction over the parties' dispute in University of San Agustin is the underlying reason why the Court upheld the CA's directive for the parties to proceed to voluntary arbitration in accordance with their CBA. After all, it is the declared policy of the State to promote and emphasize the primacy of voluntary arbitration as a mode of settling labor or industrial disputes.[54]

Contrary to GNC's contention, however, there is a marked difference between the facts of University of San Agustin and of the present case which makes the ruling in the former inapplicable to the latter. Unlike in University of San Agustin, the main cause of the dispute between the parties in this case, i.e., GNC's alleged commission of unfair labor practice, did not arise from the interpretation or implementation of the parties' CBA, or neither from the interpretation or enforcement of company personnel policies. Hence, it does not fall under the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators under the aforementioned Article 261. Be that as it may, GNC argues that since the grounds cited by respondents in their notice of strike come within the scope of "grievance" under the grievance resolution and voluntary arbitration provision of the parties' CBA, the same is cognizable by the voluntary arbitrator. Otherwise stated, since the parties allegedly agreed to submit a dispute of this kind to their CBA's grievance resolution procedure which ends in voluntary arbitration, it is the voluntary arbitrator which has jurisdiction in view of Article 262 of the Labor Code.

The grievance resolution and arbitration provision of the parties' CBA provides in part, viz.:

17. Grievance Machinery

The parties hereto agree on the principle that all disputes between labor and management may be settled through friendly negotiations, that the parties have the same interest in the continuity of work until all matters in dispute shall have been discussed and settled in a manner to the mutual benefit of the parties herein, that an open conflict in any form involves losses to the parties, hence, all efforts must be exerted to avoid such an open conflict. In the furtherance of the foregoing principle, the parties agree to establish a procedure for the adjustment of any grievance to provide the widest opportunity for discussion of any dispute, request or complaint and establish the procedure for the processing and settlement of grievances.

A grievance is defined as any protest, misunderstanding or difference of opinion or dispute affecting the COLLEGE and the UNION or affecting any employee covered by this Agreement with respect to:

- Meaning, interpretation, implementation or violation of any of the provisions of this Agreement;
- Any matter directly relating or affecting the terms and conditions of employment including all personnel policies;
- Dismissal, suspension and/or any other disciplinary action;
- Any other matter or dispute which may arise and is not settled by means other than the grievance machinery.

x x x x[55]

Plainly, a charge of unfair labor practice does not fall under the first three definition of grievance as above-quoted. Neither can it be considered as embraced by the fourth which at first blush, appears to be a "catch-all" definition of grievance because of the phrase "[a]ny other matter or dispute". It has been held that while the phrase "all other labor dispute" or its variant "any other matter or dispute" may include unfair labor practices, it is imperative, however, that the agreement between the union and the company states in unequivocal language that the parties conform to the submission of unfair labor practices to voluntary arbitration.[56] It is not sufficient to merely say that parties to the CBA agree on principle that "all disputes" or as in this case, "any other matter or dispute",

should be submitted to the grievance machinery and eventually to the voluntary arbitrator. There is a need for an express stipulation in the CBA that unfair labor practices should be resolved in the ultimate by the voluntary arbitrator or panel of voluntary arbitrators since the same fall within a special class of disputes that are generally within the exclusive original jurisdiction of the Labor Arbiter by express provision of the law.[57] "Absent such express stipulation, the phrase 'all disputes' [or "any other matter or dispute" for that matter] should be construed as limited to the areas of conflict traditionally within the jurisdiction of Voluntary Arbitrators, i.e., disputes relating to contract-interpretation, contract-implementation, or interpretation or enforcement of company personnel policies. [Unfair labor practices cases] - not falling within any of these categories - should then be considered as a special area of interest governed by a specific provision of law." [58]

In the absence here of an express stipulation in the CBA that GNC and respondents agreed to submit cases of unfair labor practice to their grievance machinery and eventually to voluntary arbitration, jurisdiction over the parties' dispute does not vest upon the voluntary arbitrator. The reason behind the ruling in *University of San Agustin* is therefore not attendant in this case and so does not find any application here. As it stands, the parties' dispute which centers on the charge of unfair labor practice is the proper subject of compulsory arbitration. In fact, GNC itself acknowledged in its June 24, 2010 letter to the Secretary of Labor and Employment that a charge of unfair labor practice in a notice of strike is ordinarily certified for compulsory arbitration.[59]

GNC further avers that under the parties' CBA, there are only two instances where compulsory arbitration may be resorted to, to wit: (1) at the grievance machinery level, if respondents are not satisfied with GNC's decision on a grievance; and, (2) at the voluntary arbitration level, when the parties cannot agree on the third member of the Arbitration Committee. GNC thus contends that submission of the parties' dispute to compulsory arbitration is but another violation of their agreement embodied in the CBA.

The argument is specious.

As expounded by both the NLRC and the CA, the Secretary of Labor and Employment's certification for compulsory arbitration of a dispute over which he/she has assumed jurisdiction is but an exercise of the powers granted to him/her by Article 263(g) of the Labor Code as amended. "[These] powers x x x have been characterized as an exercise of the police power of the State, aimed at promoting the public good. When the Secretary exercises these powers, he/[she] is granted 'great breadth of discretion' to find a solution to a labor dispute." [60] The Court therefore cannot subscribe to GNC's contention since to say that compulsory arbitration may only be resorted to in instances agreed upon by the parties would limit the power of the Secretary of Labor and Employment to certify cases that are proper subject of compulsory arbitration. The great breadth of discretion granted to the Secretary of Labor and Employment for him/her to find an immediate solution to a labor dispute would unnecessarily be diminished if such would be the case.

In view of the above discourse, the Court finds that the Secretary of Labor and Employment correctly certified the parties' dispute to the NLRC for compulsory arbitration.

GNC engaged in bad faith bargaining
and thus violated its duty to bargain.

GNC insists that it is not guilty of bad faith bargaining nor did it commit any violation of its duty to bargain by pointing out that it consistently engaged in negotiations with the respondents both at the plant and NCMB levels. It underscores that following its submission of a counter-proposal to the NCMB, it even manifested that it was willing to negotiate on a marathon basis. This negates any ill will, bad faith, fraud or conduct oppressive to labor on its part. In any case, there is no truth to respondents' assertion that the parties have already reached an agreement when GNC submitted a counter-proposal. Hence, it cannot be said that GNC engaged in dilatory tactics

to avoid the signing of the CBA since there was yet no final agreement to speak of. GNC likewise justifies its submission of counter-proposal asserting that the same was necessary in view of the chronic financial situation of GNC, the need to conclude a separate CBA for GNCFLU and GNCNTMLU, and in order to introduce thereon improved provisions for the mutual benefit of the parties.

The duty to bargain collectively is defined under Article 252 of the Labor Code to, viz.:

ARTICLE 252. Meaning of duty to bargain collectively. - The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreements and executing a contract incorporating such agreements if requested by either party but such duty does not compel any party to agree to a proposal or to make any agreement. (Emphasis supplied)

"It has been held that the crucial question whether or not a party has met his statutory duty to bargain in good faith typically turns on the facts of the individual case. There is no per se test of good faith in bargaining. Good faith or bad faith is an inference to be drawn from the facts."[61] "The effect of an employer's or a union's actions individually is not the test of good-faith bargaining, but the impact of all such occasions or actions, considered as a whole x x x"[62]

Here, the collective conduct of GNC is indicative of its failure to meet its duty to bargain in good faith. Badges of bad faith attended its actuations both at the plant and NCMB levels.

At the plant level, GNC failed to comply with the mandatory requirement of serving a reply/counter-proposal within 10 calendar days from receipt of a proposal,[63] a fact which by itself is already an indication of lack of genuine interest to bargain.[64] Then, it led respondents to believe that it was doing away with the reply/counter-proposal when it proceeded to just orally discuss the economic terms. After a series of negotiation meetings, the parties finally agreed on the economic terms which based on the records was the only contentious issue between them. In fact, in their meeting of August 24, 2009, Rodriguez, in her capacity as member of the management panel, already announced the included under the CBA for 2009-2014.[65] She then stated that the signing thereof would be underway. In the days that followed, however, GNC ignored the follow-ups made by respondents regarding the signing. It then suddenly capitalized on the fact that it had not yet submitted a reply/counter-proposal and thereupon served one upon respondents despite the parties already having reached an agreement.

It could not be any clearer from the above circumstances that GNC has no genuine intention to comply with its duty to bargain. It merely went through the motions of negotiations and then entered into an agreement with respondents which turned out to be an empty one since it later denounced the same by submitting a reply/counter-proposal. Worse, when respondents tried to clear out matters with the GNC President through their letter of January 8, 2010, GNC did not even bother to respond.

To persuade the Court that no agreement has yet been reached by the parties, GNC refers to the minutes of the October 9, 2009 meeting indicating that the economic benefits were still to be discussed with the President of GNC. GNC takes this to mean that the economic benefits were at that time still subject to the approval of the GNC President and, hence, not yet final. The Court, however, notes that GNC conveniently disregarded not only the previous minutes of the parties' meetings but also the other significant portions of the October 9, 2009 minutes it alluded to. The minutes of the meeting held on August 24, 2009 clearly shows that Rodriguez categorically announced and enumerated all the benefits "given by the school in the CBA 2009-2014." [66] Plainly, this means that the announced benefits were already approved by GNC. On the other hand, the minutes of the meeting on

October 09, 2009 states in full:

III. [Ms. Rodriguez] cited all the benefits of the permanent faculty and covered employees granted in the previous CBAs.

She requested to [sum] up all these benefits and privileges including the [additional benefits] acquired on this present CBA [which shall] be discussed with the President, so next time we will be on the signing.[67] (Emphasis supplied)

Nowhere from the afore-quoted minutes of the meeting can it be deduced that the terms of the CBA is still subject to the approval of the GNC President. There is no clear showing that the purpose of discussing the economic benefits with him is to secure his approval thereto. If at all, the purported discussion appears to be a mere formality since the signing of the CBA was not made dependent to the result of the discussion with him. As can be seen, the statement that "next time they will be on the signing" is clearly unqualified. Indubitably, indications lead to the conclusion that the parties already agreed on the terms of the CBA and it was only the execution thereof that needs to be done.

Anent GNC's claim that it was suffering from financial difficulties which according to it was one of the reasons why it saw the need to submit a counter-proposal, suffice it to say that GNC should have squarely raised this early on in the negotiations. After all, the employer's duty to negotiate in good faith with its employees consists of matching the latter's proposals, if unacceptable, with counter-proposals, and of making every reasonable effort to reach an agreement.[68] There must be common willingness among the parties to discuss freely and fully their respective claims and demands and, when these are opposed, to justify them on reason.[69] However, instead of laying all its card on the table, GNC for reasons only known to it, chose to forego the opportunity of discussing its claimed financial predicament with respondents as shown by the following: (1) GNC did not submit a reply/counter-proposal within 10 calendar days from its receipt of respondents' proposed CBA on April 3, 2009 as required by law; (2) while it later manifested through a letter dated May 27, 2009 that it is not inclined to grant the economic provisions in respondents' proposal, it did not fully discuss or explain to respondents its claimed opposition; (3) Atty. Sampang did not make good on the promise he made in the meeting of June 16, 2009 that GNC would submit its counter-proposal to respondents' economic provisions with the corresponding explanation;[70] and, (4) as shown by the minutes of the meetings, the members of the management panel simply made general statements that GNC was having financial difficulties but failed to elaborate on the same. As it is, GNC allowed itself to go through the process of negotiating with respondents without fully discussing its financial status and despite this, knowingly entered into an agreement with them. It cannot, therefore, be allowed to later interpose an opposition to the terms of the CBA based on financial incapacity by belatedly submitting a counter-proposal, which from the circumstances, is an obvious attempt to stall what would have been the last step of the process - the execution of the CBA. The Court cannot be expected to affix its imprimatur to such a dubious maneuver.[71]

With respect to GNC's assertion that its submission of a counter-proposal was also impelled by the need to conclude a separate CBA for GNCFLU and GNCNTMLU and to improve certain provisions, records reveal that during the negotiations at the plant level, GNC did not at all entertain this idea. This explains why the matter was not brought to fore during the negotiations therein. The idea was only introduced to GNC by Atty. Padilla when the former asked him to evaluate the final draft of the CBA submitted by respondents to the NCMB. Eventually, the same was used as a ground for GNC's opposition to the said final draft as contained in the counter-proposal that GNC submitted to the NCMB. The matter, however, loses its significance in the light of the Court's succeeding discussion as to the inopportune submission of the said counter-proposal.

The over-all conduct of GNC at the plant level, without a doubt, illustrates bad faith bargaining. And as already

stated, this display of bad faith continued even at the NCMB.

True, GNC participated in the conciliation meetings in the NCMB. In fact, the minutes of the proceedings would show that the parties were able to settle certain matters about the signing bonus.[72] Further, during the April 15, 2010 conciliation/meeting, it was agreed that respondents will come up with the "final draft" of the parties to be submitted to the NCMB and copy furnished GNC.[73] Respondents complied with the said undertaking such that the minutes of the May 14, 2010 conciliation/meeting reveals that the only thing left for the parties to do was to go over the details of the final draft of the CBA for fine-tuning.[74]

However, GNC again engaged itself in the scheme of denying that the parties have already reached an agreement. It denies that the draft submitted by the respondents to the NCMB was the parties' final draft. It instead asserts that the document was merely respondents' draft which was still subject to GNC's consideration. The Court, however, finds no merit in this assertion since as shown above, the minutes of the proceedings before the NCMB reveal otherwise.

As proof of its claimed faithful intention to comply with its duty to bargain, GNC asserts that it even manifested before the NCMB that it was willing to negotiate on a marathon basis following its submission of a counter-proposal. Suffice it to say, however, that such manifestation, as well as the said counter-proposal, already came too late in the day since at that point there already exists a "final draft" submitted by the respondents in accordance with the understanding reached by the parties in the conciliation/meetings conducted by the NCMB.

In view of the foregoing, the Court finds that GNC engaged in bad faith bargaining and by the same violated its duty to bargain collectively as mandated by law.

Before turning to the next issue, however, the Court finds proper to pass upon the matter of GNC's unilateral withdrawal of employee's benefits as found by the NLRC. GNC laments that while it squarely raised this matter before the CA, the said court ignored the same.

Guided by the basic rule that he who alleges must prove,[75] the Court finds that respondents failed to substantiate its claim that GNC unilaterally stopped the release of certain benefits to its employees. All that respondents advanced were bare allegations without any proof. On the other hand, GNC was able to show that benefits such as clothing benefit[76] and annual retreat were already extended to its employees. The protegee benefit, although subjected to stricter implementation guidelines, was likewise still in effect.[77] And while rice assistance was last given in December 2009, the grant of the same was shown to be on a best effort basis. Notably, respondents were not able to refute GNC's explanation. Thus, the Court finds the charge of unilateral withdrawal of benefits against GNC without basis. Be that as it may, let it be made clear that this does not have any effect and therefore does not change the finding that GNC committed a violation of its duty to bargain as extensively discussed above.

The final CBA draft submitted by respondents to the NCMB was correctly imposed by the NLRC as the parties' CBA for the period June 1, 2009 to May 31, 2014.

In the cases of *Kiok Lay*,[79] *Divine Word University of Tacloban v. Secretary of Labor and Employment*[80], and *General Milling Corporation*,[81] the Court unilaterally imposed upon the employers the CBAs proposed by the unions after the employers were found to have violated their duty to bargain collectively. This is on the premise that the said employers, by their acts which bespeak of insincerity, had lost their statutory right to

negotiate or renegotiate the terms and conditions contained in the unions' proposed CBAs.

Here, the Court finds nothing wrong in the pronouncement of the NLRC that the final CBA draft submitted by respondents to the NCMB should serve as the parties' CBA for the period June 1, 2009 to May 31, 2014. More than the fact that GNC is the erring party in this case, records show that the said draft is actually the final CBA draft of the parties which incorporates their agreements. Indeed and as held by the NLRC, fairness, equity and social justice are best served if the said final CBA draft shall govern their industrial relationship.

All told, the Court finds that the CA correctly affirmed the ruling of the NLRC and denied GNC's Petition for Certiorari for lack of merit.

WHEREFORE, the Petition is hereby DENIED. The assailed Decision dated September 26, 2012 and Resolution dated December 3, 2012 of the Court of Appeals in CA-G.R. SP No. 120669 are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, and Leonen, JJ., concur.
Mendoza, J., on official leave.

[1] CA rollo, pp. 683-709; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Francisco P. Acosta and Angelita A. Gacutan.

[2] Id. at 741.

[3] Records, pp. 76-88.

[4] Id. at 91.

[5] Id. at 92-95.

[6] Id. at 96-97.

[7] Id. at 98-102.

[8] This is in view of the following clauses in the parties' subsequent CBAs, to wit: (1) In the CBA for 1999-2004, "[Terms of the previous CBA-June 1, 1994-May 31, 1999 which were not touched or covered by die current CBA - 1999-2004 is still honored and become part and parcel of the latter," id. at 94; and, (2) In the CBA for 2004-2009, "Matters contained in the previous CBA, which were not touched or covered by the current CBA are still honored and become part and parcel of the latter," id. at 102.

[9] Id. at 103.

[10] Id. at 104-106.

[11] Id. at 103.

[12] Id. at 107.

[13] Id. at 108.

[14] Id. at 109.

[15] Position Paper for Guagua National Colleges, id. at 140-160.

[16] [Respondents'] Position Paper, id. at 49-74.

- [17] Id. at 112.
- [18] Id. at 113-119.
- [19] Id. at 121-123.
- [20] Id. at 124-125.
- [21] [Respondents'] Position Paper, id. at 49-74 at 64.
- [22] Id. at 169-170.
- [23] Id. at 208-224.
- [24] Id. at 207.
- [25] Id. at 227-223.
- [26] Id. at 11-16.
- [27] Id. at 8-10.
- [28] Id. at 6-7.
- [29] Id. at 167-168.
- [30] Article. 263. Strikes, picketing and lockouts.

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

In line with the national concern for and the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent, their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike and by management to lockout. In labor disputes adversely affecting the continued operation of such hospitals, clinics or medical institutions, it shall be the duty of the striking union or locking-out employer to provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services shall be unhampered and unrestricted, as are necessary to insure the proper and adequate protection of the life and health of its patients, most especially emergency cases, for the duration of the strike or lockout. In such cases, therefore, the Secretary of Labor and Employment may immediately assume, within twenty four (24) hours from knowledge of the occurrence of such a strike or lockout, jurisdiction over the same or certify it to the Commission for compulsory arbitration. For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued

by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them.

The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at any time and assuming jurisdiction over any such labor dispute in order to settle or terminate the same.

[31] Records, p. 168.

[32] *Id.* at 35-38.

[33] *Id.* at 49-74.

[34] 520 Phil. 400 (2006).

[35] Otherwise known as Child or Dependent Scholarship Privilege.

[36] *Id.* at 319-343; penned by Commissioner Nieves E. Vivar-De Castro and concurred in by Presiding Commissioner Benedicto R. Palacol and Commissioner Isabel G. Panganiban-Ortiguerra.

[37] *Id.* at 332-334; italics and underscoring in the original; citations omitted.

[38] *Id.* at 330-332; italics and underscoring in the original.

[39] 467 Phil. 125 (2004).

[40] Records, pp. 342-343.

[41] *Id.* at 345-360.

[42] *Id.* at 374-376.

[43] CA rollo, pp. 3-50.

[44] *Id.* at 683-709.

[45] *Id.* at 711-727.

[46] *Id.* at 741.

[47] Rollo, p. 22.

[48] *A. Soriano Aviation v. Employees Association of A. Soriano Aviation*, 612 Phil. 1093, 1103 (2009).

[49] ART. 248. Unfair labor practices of employers. - It shall be unlawful for an employer to commit any of the following unfair labor practice:

x x x x

(g) To violate the duty to bargain collectively as prescribed by this Code;

x x x x

[50] *Supra* note 34.

[51] *Id.* at 413-415; citations omitted.

[52] Article. 261. Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators. - The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all

unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement; For purposes of this article, gross violations of Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.

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[53] Article. 262. Jurisdiction over other labor disputes. - The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

[54] Sec. 3, Article XIII, 1987 Constitution; Article 211 of the Labor Code.

[55] Records, p. 83.

[56] *Vivero v. Court of Appeals*, 398 Phil. 158,169 (2000), citing *San Miguel Corp. v. National Labor Relations Commission*, 325 Phil 401 (1996).

Art. 217 of the Labor Code provides in part:

Art. 217. Jurisdiction of Labor Arbiters and the Commission.

(a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide x x x the following cases involving all workers, whether agricultural or non-agricultural:

(1) Unfair labor practices cases;

xxxx

[58] *Vivero v. Court of Appeals*, supra note 56 at 170.

[59]Records, p. 168. GNC stated, viz.: "Finally, although there is a charge of unfair labor practice in the Unions' Notice of Strike, which matter should ordinarily be certified for compulsory arbitration, the records will indubitably show - apart from the baselessness of the charge - that the proximate cause of the labor dispute is the parties['] differences in collective bargaining. (Emphasis supplied)

[60] *Steel Corporation of the Philippines v. SCP Employees Union-National Federation of Labor Unions*, 574 Phil. 716, 732 (2008).

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

[62] Id

[63] Article 250 of the Labor Code provides:

Article 250. Procedure in collective bargaining. The following procedures shall be observed in collective bargaining:

(a) When a party desires to negotiate an agreement, it shall serve a written notice upon the other party with a statement of its proposals. The other party shall make a reply thereto not later than ten (10) calendar days from receipt of such notice;

x x x x

- [64] General Milling Corporation v. Court of Appeals, *supra* note 39 at 135.
- [65] See Minutes of the Meeting, records, p. 312
- [66] *Id.*
- [67] *Id.* at 313.
- [68] Herald Delivery Carriers Union v. Herald Publication, Inc., 154 Phil. 662, 669 (1974)
- [69] *Id.*
- [70] Records, p. 307.
- [71] Kiok Loy v. National Labor Relations Commission, 225 Phil. 138, 146(1986).
- [72] Minutes dated March 29,2010, CA rollo, p. 358.
- [73] Minutes dated April 15,2010, *id.* at 359,
- [74] Minutes dated May 14,2010, *id.* at 361.
- [75] Lim v. Equitable PCI Bank, 724 Phil. 453,454 (2014).
- [76] Records, pp. 244-245.
- [77] *Id.* at 242-243.
- [78] *Id.* at 250.
- [79] *Supra* note 71.
- [80] G.R. No. 91915, September 11, 1992, 213 SCRA 759.
- [81] *Supra* note 39.

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