

UNIVERSITY OF PANGASINAN FACULTY UNION, PETITIONER, VS. UNIVERSITY OF PANGASINAN AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. No. 63122, February 20, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari pursuant to Rule 65 of the Rules of Court to annul and to set aside the decision of respondent National Labor Relations Commission (NLRC) dated October 25, 1982, dismissing the appeal of petitioner in NLRC Case No. RBI-47-82, entitled "University of Pangasinan Faculty Union, complainant, versus University of Pangasinan, respondent."

Petitioner is a labor union composed of faculty members of the respondent University of Pangasinan, an educational institution duly organized and existing by virtue of the laws of the Philippines.

On December 18, 1981, the petitioner, through its President, Miss Consuelo Abad, filed a complaint against the private respondent with the Arbitration Branch of the NLRC, Dagupan District Office, Dagupan City. The complaint seeks: (a) the payment of Emergency Cost of Living Allowances (ECOLA) for November 7 to December 5, 1981, a semestral break; (b) salary increases from the sixty (60%) percent of the incremental proceeds of increased tuition fees; and (c) payment of salaries for suspended extra loads.

The petitioner's members are full-time professors, instructors, and teachers of respondent University. The teachers in the college level teach for a normal duration of ten (10) months a school year, divided into two (2) semesters of five (5) months each, excluding the two (2) months summer vacation. These teachers are paid their salaries on a regular monthly basis.

In November and December, 1981, the petitioner's members were fully paid their regular monthly salaries. However, from November 7 to December 5, during the semestral break, they were not paid their ECOLA. The private respondent claims that the teachers are not entitled thereto because the semestral break is not an integral part of the schoolyear and there being no actual services rendered by the teachers during said period, the principle of "No work, no pay" applies.

During the same schoolyear (1981-1982), the private respondent was authorized by the Ministry of Education and Culture to collect, as it did collect, from its students a fifteen (15%) percent increase of tuition fees. Petitioner's members demanded a salary increase effective the first semester of said schoolyear to be taken from the sixty (60%) percent incremental proceeds of the increased tuition fees. Private respondent refused, compelling the petitioner to include said demand in the complaint filed in the case at bar. While the complaint was pending in the arbitration branch, the private respondent granted an across-the-board salary increase of 5.86%. Nonetheless, the petitioner is still pursuing full distribution of the 60% of the incremental proceeds as mandated by Presidential Decree No. 451.

Aside from their regular loads, some of petitioner's members were given extra loads to handle during the same 1981-1982 schoolyear. Some of them had extra loads to teach on September 21, 1981, but they were unable to teach as classes in all levels throughout the country were suspended, although said day was proclaimed by the President of the Philippines as a working holiday. Those with extra loads to teach on said day claimed they were not paid their salaries for those loads, but the private respondent claim otherwise.

The issues to be resolved in the case at bar are the following:

I

"WHETHER OR NOT PETITIONER'S MEMBERS ARE ENTITLED TO ECOLA DURING THE SEMESTRAL BREAK FROM NOVEMBER 7 TO DECEMBER 5, 1981 OF THE 1981-82 SCHOOL YEAR.

II

"WHETHER OR NOT 60% OF THE INCREMENTAL PROCEEDS OF INCREASED TUITION FEES SHALL BE DEVOTED EXCLUSIVELY SALARY INCREASE.

III

"WHETHER OR NOT ALLEGED PAYMENT OF SALARIES FOR EXTRA LOADS ON NOVEMBER 21, 1981 WAS PROVEN BY SUBSTANTIAL EVIDENCE."

Anent the first issue, the various Presidential Decrees on ECOLAs to wit: PD's 1614, 1634, 1678 and 1713, provide on "Allowances of Fulltime Employees x x x" that "Employees shall be paid in full the required monthly allowance regardless of the number of their regular working days if they incur no absences during the month. If they incur absences without pay, the amounts corresponding to the absences may be deducted from the monthly allowance x x x"; and on "Leave of Absence Without Pay", that "All covered employees shall be entitled to the allowance provided herein when they are on leave of absence with pay."

It is beyond dispute that the petitioner's members are full-time employees receiving their monthly salaries irrespective of the number of working days or teaching hours in a month. However, they find themselves in a most peculiar situation whereby they are forced to go on leave during semestral breaks. These semestral breaks are in the nature of work interruptions beyond the employees control. The duration of the semestral break varies from year to year dependent on a variety of circumstances affecting at times only the private respondent but at other times all educational institutions in the country. As such, these breaks cannot be considered as absences within the meaning of the law for which deductions may be made from monthly allowances. The "No work, no pay" principle does not apply in the instant case. The petitioner's members received their regular salaries during this period. It is clear from the aforequoted provision of law that it contemplates a "no work" situation where the employees voluntarily absent themselves. Petitioners, in the case at bar, certainly do not, ad voluntatem, absent themselves during semestral breaks. Rather, they are constrained to take mandatory leave from work. For this they cannot be faulted nor can they be begrudged that which is due them under the law. To a certain extent, the private respondent can specify dates when no classes would be held. Surely, it was not the intention of the framers of the law to allow employers to withhold employee benefits by the simple expedient of unilaterally imposing "no work" days and consequently avoiding compliance with the mandate of the law for those days.

Respondent's contention that "the fact of receiving a salary alone should not be the basis of receiving ECOLA", is, likewise, without merit. Particular attention is brought to the Implementing Rules and Regulations of Wage Order No. 1 to wit:

SECTION 5. Allowance for Unworked Days. -

"a) All covered employees whether paid on a monthly or daily basis shall be entitled to their daily living allowance when they are paid their basic wage."

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This provision, at once refutes the above contention. It is evident that the intention of the law is to grant ECOLA upon the payment of basic wages. Hence, we have the principle of "No pay, no ECOLA" the converse of which finds application in the case at bar. Petitioners cannot be considered to be on leave without pay so as not to be entitled to ECOLA, for, as earlier stated, the petitioners were paid their wages in full for the months of November and December of 1981, notwithstanding the intervening semestral break. This, in itself, is a tacit recognition of the rather unusual state of affairs in which teachers find themselves. Although said to be on forced leave, professors and teachers are, nevertheless, burdened with the task of working during a period of time supposedly available for rest and private matters. There are papers to correct, students to evaluate, deadlines to meet, and periods within which to submit grading reports. Although they may be considered by the respondent to be on leave, the semestral break could not be used effectively for the teachers' own purposes for the nature of a teacher's job im-poses upon him further duties which must be done during the said period of time. Learning is a never ending process. Teachers and professors must keep abreast of developments all the time. Teachers cannot also wait for the opening of the next semester to begin their work. Arduous preparation is necessary for the delicate task of educating our children. Teaching involves not only an application of skill and an imparting of knowledge, but a responsibility which entails self dedication and sacrifice. The task of teaching ends not with the perceptible efforts of the petitioner's members but goes beyond the classroom: a continuum where only the visible labor is relieved by academic intermissions. It would be most unfair for the private respondent to consider these teachers as employees on leave without pay to suit its purposes and, yet, in the meantime, continue availing of their services as they prepare for the next semester or complete all of the last semester's requirements. Furthermore, we may also by analogy apply the principle enunciated in the Omnibus Rules Implementing the Labor Code to wit:

Sec. 4 Principles in Determining Hours Worked. - The following general principles shall govern in determining whether the time spent by an employee is considered hours worked for purposes of this Rule:

xxx xxx xxx

"(d) The time during which an Employee is inactive by reason of interruptions in his work beyond his control shall be considered time either if the imminence of the resumption of work requires the employee's presence at the place of work or if the interval is too brief to be utilized effectively and gainfully in the employee's own interest." (Italics ours)

The petitioner's members in the case at bar, are exactly in such a situation. The semestral break scheduled is an interruption beyond petitioner's control and it cannot be used "effectively nor gainfully in the employee's interest". Thus, the semestral break may also be considered as "hours worked". For this, the teachers are paid regular salaries and, for this, they should be entitled to ECOLA. Not only do the teachers continue to work during this short recess but much less do they cease to live for which the cost of living allowance is intended. The legal principles of "No work, no pay; No pay, no ECOLA" must necessarily give way to the purpose of the law to augment the income of employees to enable them to cope with the harsh living conditions brought about by inflation, and to protect employees and their wages against the ravages brought by these conditions. Significantly, it is the commitment of the State to protect labor and to provide means by which the difficulties faced by the working force may best be alleviated. To submit to the respondents' interpretation of the no work, no pay policy is to defeat this noble purpose. The Constitution and the law mandate otherwise.

With regard to the second issue, we are called upon to interpret and apply Section 3 of Presidential Decree 451 to

wit:

SEC. 3. Limitations. - The increase in tuition or other school fees or other charges as well as the new fees or charges authorized under the next preceding section shall be subject to the following conditions:

"a) That no increase in tuition or other school fees or charges shall be approved unless sixty (60%) per centum of the proceeds is allocated for increase in salaries or wages of the members of the faculty and all other employees of the school concerned, and the balance for institutional development, student assistance and extension services, and return to investments: Provided, That in no case shall the return to investments exceed twelve (12%) per centum of the incremental proceeds; x x x "

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This Court had the occasion to rule squarely on this point in the very recent case entitled, *University of the East v. University of the East Faculty Association*, 117 SCRA 554. We held that:

"In effect, the problem posed before Us is whether or not the reference in Section 3(a) to 'increase in salaries or wages of the faculty and all other employees of the schools concerned' as the first purpose to which the incremental proceeds from authorized increases to tuition fees may be devoted, may be construed to include allowances and benefits. In the negative, which is the position of respondents, it would follow that such allowances must be taken from resources of the school not derived from tuition fees.

"Without delving into the factual issue of whether or not there could be any such other resources, We note that among the items of the second purpose stated in provision in question is return in investment. And the law provides only for a maximum, not a minimum. In other words, the schools may get a return to investment of not more than 12%, but if circumstances warrant, there is no minimum fixed by law which they should get.

"On this predicate, We are of the considered view that, if the schools happen to have no other resources to grant allowances and benefits, either mandated by law or secured by collective bargaining, such allowances and benefits should be charged against the return to investments referred to in the second purpose stated in Section 3(a) of P.D. 451."

Private respondent argues that the above interpretation "disregarded the intention and spirit of the law" which intention is clear from the "whereas" clauses as follows:

"It is imperative that private educational institutions upgrade classroom instruction x x x provide salary and or wage increases and other benefits x x x."

Respondent further contends that PD 451 was issued to alleviate the sad plight of private schools, their person-nel and all those directly or indirectly on school income as the decree was aimed -

"x x x to upgrade classroom instruction by improving their facilities and bring competent teachers in all levels of education, provide salary and or wage increases and other benefits to their teaching, administrative, and other personnel to keep up with the increasing cost of living." (Italics ours)

Respondent overlooks the elemental principle of statu-tory construction that the general statements in the whereas clauses cannot prevail over the specific or particular statements in the law itself which define or limit the purposes of the legislation or proscribe certain acts. True, the whereas clauses of PD 451 provide for salary and or wage increase and other benefits, however, the same do not delineate the source of such funds and it is only in Section 3 which provides for the limitations wherein the intention of the framers of the law is clearly outlined. The law is clear. The sixty (60%) percent incremental proceeds from the tuition increase are to be devoted entirely to wage or salary increases which means increases in basic salary. The law cannot be construed to include allowances which are benefits over and above the basic salaries of the employees. To charge such benefits to the 60% incremental proceeds would be to reduce the increase in basic salary provided by law, an increase intended also to

help the teachers and other workers tide themselves and their families over these difficult economic times.

This Court is not guilty of usurpation of legislative functions as claimed by the respondents. We expressed the opinion in the *University of the East* case that benefits mandated by law and collective bargaining may be charged to the 12% return on investments within the 40% incremental proceeds of tuition increase. As admitted by respondent, we merely made this statement as a suggestion in answer to the respondent's query as to where then, under the law, can such benefits be charged. We were merely interpreting the meaning of the law within the confines of its provisions. The law provides that 60% should go to wage increases and 40% to institutional developments, student assistance, extension services, and return on investments (ROI). Under the law, the last item ROI has flexibility sufficient to accommodate other purposes of the law and the needs of the university. ROI is not set aside for any one purpose of the university such as profits or returns on investments. The amount may be used to comply with other duties and obligations imposed by law which the university exercising managerial prerogatives finds cannot under present circumstances, be funded by other revenue sources. It may be applied to any other collateral purpose of the university or invested elsewhere. Hence, the framers of the law intended this portion of the increases in tuition fees to be a general fund to cover up for the university's miscellaneous expenses and, precisely, for this reason, it was not so delimited. Besides, ROI is a return or profit over and above the operating expenditures of the university, and still, over and above the profits it may have had prior to the tuition increase. The earning capacities of private educational institutions are not dependent on the increases in tuition fees allowed by P.D. 451. Accommodation of the allowances required by law require wise and prudent management of all the university resources together with the incremental proceeds of tuition increases. Cognizance should be taken of the fact that the private respondent had, before PD 451, managed to grant all allowances required by law. It cannot now claim that it could not afford the same, considering that additional funds are even granted them by the law in question. We find no compelling reason, therefore, to deviate from our previous ruling in the *University of the East* case even as we take the second hard look at the decision requested by the private respondent. This case was decided in 1982 when PDs 1614, 1634, 1678, and 1713 which are also the various Presidential Decrees on ECOLA were already in force. PD 451 was interpreted in the light of these subsequent legislations which bear upon, but do not modify nor amend, the same. We need not go beyond the ruling in the *University of the East* case.

Coming now to the third issue, the respondents are of the considered view that as evidenced by the payrolls submitted by them during the period September 16 to September 30, 1981, the faculty members have been paid for the extra loads. We agree with the respondents that this issue involves a question of fact properly within the competence of the respondent NLRC to pass upon. The findings of fact of the respondent Commission are binding on this Court there being no indication of their being unsubstantiated by evidence. We find no grave abuse in the findings of respondent NLRC on this matter to warrant reversal. Assuming *arguendo*, however, that the petitioners have not been paid for these extra loads, they are not entitled to payment following the principle of "No work, no pay". This time, the rule applies. Involved herein is a matter different from the payment of ECOLA under the first issue. We are now concerned with extra, not regular loads for which the petitioners are paid regular salaries every month regardless of the number of working days or hours in such a month. Extra loads should be paid for only when actually performed by the employee. Compensation is based, therefore, on actual work done and on the number of hours and days spent over and beyond their regular hours of duty. Since there was no work on September 21, 1981, it would now be unfair to grant petitioner's demand for extra wages on that day.

Finally, disposing of the respondent's charge of petitioner's lack of legal capacity to sue, suffice it to say that this question can no longer be raised initially on appeal or certiorari. It is quite belated for the private respondent to question the personality of the petitioner after it had dealt with it as a party in the proceedings below. Furthermore, it was not disputed that the petitioner is a duly registered labor organization and as such has the

legal capacity to sue and be sued. Registration grants it the rights of a legitimate labor organization and recognition by the respondent University is not necessary for it to institute this action in behalf of its members to protect their interests and obtain relief from grievances. The issues raised by the petitioner do not involve pure money claims but are more intricately intertwined with conditions of employment.

WHEREFORE, the petition for certiorari is hereby GRANTED. The private respondent is ordered to pay its regular fulltime teachers/employees emergency cost of living allowances for the semestral break from November 7 to December 5, 1981 and the undistributed balance of the sixty (60%) percent incremental proceeds from tuition increases for the same schoolyear as outlined above. The respondent Commission is sustained insofar as it DENIED the payment of salaries for the suspended extra loads on September 21, 1981.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Relova, JJ. concur.

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