

MOBIL EMPLOYEES ASSOCIATION (MEA) AND INTER-ISLAND LABOR ORGANIZATION-IBMEWA (ILO), PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION; MOBIL OIL PHILIPPINES, INC. (MOPI), MOB...*G.R. NO. 79329. March 28, 1990*

Ponente: FELICIANO, J.

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In 1983, Mobil Oil Philippines, Inc. ("MOPI"), a domestic corporation engaged in the marketing of petroleum products, was the subject of sale negotiations between Mobil Petroleum Company of New York ("Mobil Pet") and Caltex Petroleum Company, New York, U.S.A., ("Caltex Pet"). The negotiations covered, among other things, the sale of (a) Mobil Pet's one hundred percent (100%) interest in MOPI to Caltex Pet and (b) Mobil Pet's forty percent (40%) interest in the Bataan Refining Company ("BRC").

To protect its interests, Mobil Employees Association ("MEA"), with whom MOPI-Luzon had an existing Collective Bargaining Agreement ("CBA") covering the period from 1 May 1982 to 30 April 1985, inquired about the impending sale in talking to officials of MOPI. The latter were then noncommittal as no definite agreement had as yet been reached. The negotiations on the proposed sale were taking place off-shore, i.e., between two (2) foreign corporations, Mobil Pet and Caltex Pet, outside the Philippines. The sale of Mobil Pet's 40% interest in BRC was made one of the conditions precedent to the perfection of the sale of MOPI. Finally, approval by Philippine government agencies such as the Board of Investments and the Central Bank of the projected sale had yet to be obtained.

On 3 August 1983, the Philippine National Oil Company ("PNOC"), owner of sixty percent (60%) interest in BRC, signified its intention to buy all of Mobil Pet's interest in BRC. Thus, on the same date, officials of MOPI issued a memorandum circular addressed to all their employees regarding the conclusion of the sale negotiations and eventually, the cessation of MOPI's business operation on 31 August 1983.

In a letter dated 5 August 1983, MOPI's President, J.P. Bailleaux, informed all the employees that on 31 August 1983 their employment with the company would cease as a result of MOPI's withdrawal from business. Mr. Bailleaux, however, assured them that they would be paid compensation up to or until 5 September 1983; that they would be given separation pay equivalent to 2.25 months basic salary as of 31 August 1983 for every year of service; and that their unused vacation leave for the current year would be paid in cash. Simultaneously, notices of MOPI's withdrawal from business were also sent to the then Ministry of Labor and Employment ("MOLE") and its regional offices in places where MOPI had branches.

In a letter dated 12 August 1983, MOPI employees requested Mr. Bailleaux to improve their termination package.

On 18 August 1983, MOPI, thru Bailleaux, improved the employees' termination package considerably: (1) repayment of all personal loans of employees, except those obtained under the company car policy, was waived

by the company; (2) for purposes of computation of their termination pay, CBA increases due to union-represented employees in October, November and December 1983 on one hand were incorporated in their basic salary, while the budgeted merit increase from September to December, 1983 for non-bargainable employees on the other hand was added to their basic salary; (3) employees who were not previously scheduled to receive merit increases in 1983 were granted an adjustment to their basic salary; (4) the monthly cost of living allowance was included in the calculation of the encashment of outstanding and unused vacation leave for separating employees; (5) the ten (10) working days sick leave encashment privilege under company policy was granted to separating employees in Salary Groups 1 to 15 pro-rated on the basis of 8/12 of one year privilege; (6) the actual unused sick leave carry-over as of December 31, 1975, maximum of 15 working days, was encashed irrespective of salary grouping of the affected separating employees; and (7) the 1983 year-end bonus was paid to separating employees pro-rated on the basis of 8/12 of one year's privilege.

Upon conclusion of the contract of sale between Mobil Pet and Caltex Pet, on 31 August 1983,[1] the latter caused MOPI's dissolution by appropriate filings with the Security and Exchange Commission ("SEC") in Manila. All the employees separated from the service, 467 of them, were paid a total of P5,646,817.73 including loans waived, pursuant to the revised termination package. Some of these employees were hired, on a contractual basis, to wind up MOPI's affairs, by a newly formed subsidiary of Mobil Pet, Mobil Philippines, Inc. ("MPI").

On 31 August 1983, MEA filed a complaint for unfair labor practice ("ULP"), illegal lay-off and separation benefits against MOPI with the National Labor Relations Commission ("NLRC"), National Capital Region. The complaint was later on amended to include Mobil Philippines, Inc. ("MPI"), Mobil Pet, Caltex Pet and all the members of their respective Boards of Directors as respondents. Still later, another amendment to the complaint was filed to include as additional petitioner Inter-Island Labor Organization ("ILO"), with whom MOPI-Iloilo had a CBA for the period from 1 May 1982 to 31 May 1985. Finally, a supplemental complaint was filed charging respondents with another count of ULP, i.e., failure of the latter to check-off and pay petitioners' union dues for September, 1983.

In a decision in NLRC Case No. NCR-8-3929-83 dated 12 December 1984,[2] the Labor Arbiter dismissed the complaint for failure of petitioner to prove that MOPI was guilty of ULP and illegal dismissal. The Labor Arbiter found that the termination of all MOPI employees was caused by cessation of MOPI's business operations in the country; that in respect of this kind of termination, MOPI's only task pursuant to the Labor Code was to serve notice of termination on its employees and on the then MOLE and its regional offices at least thirty (30) days before its effectivity date and to pay separation pay to affected employees in accordance with law;[3] that MOPI did comply with these requirements; that the dissolution was done in good faith, no proof having been presented to establish that the dissolution was carried out to circumvent the CBAs between MOPI and the petitioner unions; that the newly created subsidiary of Mobil Pet, MPI, could not be categorized as a successor-in-interest of MOPI because MOPI's main line of business was the marketing of petroleum products while MPI was engaged in the marketing of Mobil Pet's chemicals and international business like high-octane aviation fuels, marine fuels and exports; that Caltex Pet, upon acquiring the shares of stock of MOPI caused the latter's dissolution at the SEC; that MPI's hiring of some of MOPI's employees was merely for the purpose of liquidating and winding up the affairs of MOPI; that MOPI had not restricted exercise of the right to self-organization of members of MEA, who had free access to the use of the conference room of MOPI in Makati, which access had not been availed of by MEA; that MEA had not proved that its counsel, who was not an employee of MOPI, was refused entrance to MOPI's Makati-based conference room; and that, finally, check-off was no longer available considering that MOPI's relationship with the employees had ceased by 31 August 1983.

In a resolution of the NLRC Second Division dated 6 April 1987, petitioners' appeal from the decision of the

Labor Arbiter was dismissed for lack of merit.

In the present Petition for Certiorari, petitioners claim that private respondents committed acts constituting unfair labor practices. These acts, in their allegation, were:

(a)

the termination of the employment of MOPI's employees without notice to the petitioner unions, in violation of relevant provisions of their CBAs;

(b)

the failure of private respondents to check off and pay to petitioner unions their dues for September 1983;

(c)

the dissolution of MOPI and the creation of MPI were done to circumvent the CBA agreements between MOPI and petitioner MEA on the one hand and MOPI and petitioner ILO on the other hand; and

(d)

the interference with petitioner unions' members in the exercise of their right to self-organization by refusing a non-MOPI employee the use of the company conference room.

Petitioners supplementarily argue, apparently in relation to (c) above, that MPI is a successor-in-interest of MOPI, considering that MPI is a wholly owned subsidiary of Mobil Pet in the same manner that MOPI was; that the members of MPI's Board of Directors are the same persons who had served as Directors of MOPI; and that MPI had hired some of MOPI's former employees.

We do not find the contentions of petitioners persuasive.

The relevant provisions in the CBAs invoked by petitioners are identical and read as follows:

"EFFECTIVITY

Section 1. This agreement shall be effective from the 1st day of May 1982 to 30th April 1985, subject to automatic extension for yearly periods unless terminated at the end of the original period or any subsequent year thereafter upon sixty (60) days prior written notice by either party to the other of its intention to terminate, modify, amend or supplement this agreement. (Art. XVIII MEA-MOPI CBA, Annex 'A'; Art. XIX, Annex 'LL' for ILO CBA, underscoring supplied)."[4]

"Art. II - Management Clause

Section 1. The union recognizes the following as the rights of the company.

x x x x x x x x

In cases of termination, dismissal, lay-off and shut down, the company may effect such actions, subject to the provisions of the New Labor Code and its implementing Rules and Regulations.

In the exercise of its above rights, time and circumstances permitting the management whenever possible shall enlist the support of the union in actions affecting the vital interests of the bargainable employees. Art. II, MEA CBA; Art. II, ILO CBA."[5]

Examination of the CBA provisions entitled "Effectivity" shows that the written notice to terminate that is required to be given by either party to the other relates to notice to terminate the CBA at the end of the original

three-year period or any subsequent year thereafter, in the absence of which written notice, the duration of the CBA would be automatically extended for one (1) year periods. What is involved in the instant Petition is not, however, the termination of the CBA itself, considering that the sale by Mobil Pet of its wholly owned subsidiary MOPI to Caltex Pet took place in 1983, in the middle of original period of the CBAs. It appears to the Court that the applicable provision is Article II, Section 1, quoted above. Under Article II, Section 1, in cases of termination of services of employees, the company is required to comply with the provisions of the Labor Code and its implementing Rules and Regulations and, "time and circumstances permitting" and "whenever possible," management should enlist the support of the unions in actions affecting the vital interests of the bargainable (i.e., member) employees. It may be well to add that, since actual notice was given to all of MOPI's employees, including, of course, the employees who were members of petitioner unions, such notice may also be regarded as effectively the notice to the unions contemplated by the CBA provision on "Effectivity."

Article 284 of the Labor Code as it existed in 1983 provided as follows:

"Art. 284. Closure of establishment and reduction of personnel. The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking, unless the closing is for the purpose of circumventing the provisions of this title by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (Underscoring supplied.)"

Under Article 284 above, three (3) requirements may be seen to be established in respect of cessation of business operations of an employer company not due to business reverses, namely:

(a)

service of a written notice to the employees and to the MOLE at least one (1) month before the intended date thereof;

(b)

the cessation of or withdrawal from business operations must be bona fide in character; and

(c)

payment to the employees of termination pay amounting to at least one-half (1/2) month pay for each year of service, or one (1) month pay, whichever is higher.

As noted earlier, MOPI's employees and the MOLE were notified in writing on 5 August 1983 that the employees' services would cease on 31 August 1983, but that employees would nonetheless, be paid their salaries and other benefits until or as of 5 September 1983. We believe that that is more than substantial compliance with the notice requirements of the Labor Code. In respect of requirement (c) above relating to payment of termination pay to the employees, we also noted earlier that the termination pay package given by MOPI to all its employees far exceeded the minimum requirement of one-half (1/2) month pay for every year of service laid down in Article 284 of the Labor Code. The very generosity of the termination pay package thus given to the employees argues

strongly that the cessation of business operations by MOPI was a bona fide one. It is very difficult for this Court to believe that MOPI would be dissolved and all its employees separated with generous separation pay benefits, for the sole purpose of circum-venting the requirements of MOPI's CBA with petitioner unions. Indeed, petitioners have not suggested any reason why MOPI should have undertaken such a fundamental and non-reversible business reorganization merely to evade its obligations under the CBA. The establishment of MPI with the same Directors who had served as such in MOPI and the hiring of some former MOPI employees for the purpose of settling and winding up the affairs of MOPI, does not detract from the bona fide character of MOPI's dissolution and withdrawal from business. MPI's residual business consisting of the marketing of chemicals, aviation and marine fuels as well as exports, all of which constituted a fraction of the prior business of MOPI, similarly does not argue against the bona fide character of the corporate reorganization which here took place. The net effect of the reorganization was the liquidation by Mobil Pet of the great bulk of its former business in the Philippines, the dissolution of the corporate entity of MOPI and the transfer of its physical assets and business to some other Philippine entity owned and controlled by Caltex Pet, presumably Caltex Philippines, without any impact upon the foreign exchange reserves of the Philippines.

The final argument of petitioner unions need not detain us for long. Having validly ceased to operate as of 31 August 1983, the duty of MOPI to check off and turn over to petitioners union dues from their members for September 1983, or until the expiration of the CBA in accordance with its terms, also ceased. In respect of alleged interference by MOPI with the rights of petitioners' members to self-organization, petitioners have not adduced any compelling reason for overturning the findings of the Labor Arbiter and the NLRC that MOPI had not interfered or encroached upon such right. Petitioner MEA admitted that it had not been denied the use of the company conference room. Indeed, this matter appears to us to be a de minimis affair.

We conclude that petitioners have failed to show any grave abuse of discretion or any act without or in excess of jurisdiction on the part of the NLRC in rendering its decision dated 6 April 1987.

WHEREFORE, the Petition for Certiorari is DISMISSED for lack of merit. Costs against petitioners.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Comment, p. 12; Rollo, p. 74.

[2] Rollo, p. 107.

[3] See Article 284 (now Article 283) of the Labor Code dealing with closing or cessation of operation of the company not due to serious business losses.

[4] Petition, pp. 8-9; Rollo, pp. 10-11; Comment, p. 6; Rollo, p. 175; underscoring supplied.

[5] Petition, p. 13; Rollo, p. 15; underscoring supplied.

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