

**PHILIPPINE FISHERIES DEVELOPMENT AUTHORITY, PETITIONER,
VS. NATIONAL LABOR RELATIONS COMMISSION, AND ODIN
SECURITY AGENCY, AS REPRESENTATIVE OF ITS SECURITY
GUARDS, RESPONDENTS.**

G.R. No. 94825. September 04, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioner questions the resolution of the National Labor Relations Commission (NLRC) dated January 17, 1983 setting aside the order of dismissal issued by the Labor Arbiter and the resolution dated June 25, 1990 denying petitioner's motion for reconsideration.

The facts are as follows:

The petitioner is a government-owned or controlled corporation created by P.D. No. 977.

On November 11, 1985, it entered into a contract with the Odin Security Agency for security services of its Iloilo Fishing Port Complex in Iloilo City. The pertinent provision of the contract provides:

OBLIGATION OF THE FISHING PORT COMPLEX:

1. For and in consideration of the services to be rendered by the AGENCY to the FISHING PORT COMPLEX, the latter shall pay to the former per month for eight (8) hours work daily as follows:

OUTSIDE METRO MANILA

Security Guard P1,990.00

Security Supervisor 2,090.00

Det. Commander 2,190.00

The Security Group of the AGENCY will be headed by a detachment commander whose main function shall consist of the administration and supervision control of the AGENCY'S personnel in the FISHING PORT COMPLEX. There shall be one supervisor per shift who shall supervise the guards on duty during a particular shift.

The above schedule of compensation includes among others, the following:

- (a) Minimum wage (Wage Order No. 5)
- (b) Rest Day Pay
- (c) Night Differential Pay
- (d) Incentive Leave Pay

- (e) 13th Month Pay
 - (f) Emergency Cost of Living Allowance (up to Wage Order No. 5)
 - (g) 4% Contractor's Tax
 - (h) Operational Expenses
 - (i) Overhead
- (Rollo, pp. 197-198)

The contract for security services also provided for a one year renewable period unless terminated by either of the parties. It reads:

9. This agreement shall take effect upon approval for a period of one (1) year unless sooner terminated upon notice of one party to the other provided, that should there be no notice of renewal within thirty (30) days before the expiry date, the same shall be deemed renewed, and provided further, that the party desiring to terminate the contract before the expiry date shall give thirty (30) days written advance notice to the other party. (Rollo, p. 198)

On October 24, 1987, and during the effectivity of the said Security Agreement, the private respondent requested the petitioner to adjust the contract rate in view of the implementation of Wage Order No. 6 which took effect on November 1, 1984.

The private respondent's request for adjustment was anchored on the provision of Wage Order No. 6 which states:

SECTION 9. In the case of contracts for construction projects and for security, janitorial and similar services, the increases in the minimum wage and allowance rates of the workers shall be borne by the principal or client of the construction/service contractor and the contracts shall be deemed amended accordingly, subject to the provisions of Section 3(c) of this Order. (Rollo, p. 49)

Section 7, par. c of the Security Services Contract which calls for an automatic escalation of the rate per guard in case of wage increase also reads:

The terms and conditions herein set forth shall be modified by the applicable provisions of subsequent laws or decrees, especially as they pertain to increases in the minimum wage and occupational benefits to workers. (Rollo, p. 46)

Requests for adjustment of the contract price were reiterated on January 14, 1988 and February 19, 1988 but were ignored by the petitioner.

Thus on June 7, 1988, the private respondent filed with the Office of the Sub-Regional Arbitrator in Region VI, Iloilo City a complaint for unpaid amount of re-adjustment rate under Wage Order No. 6 together with wage salary differentials arising from the integration of the cost of living allowance under Wage Order No. 1, 2, 3 and 5 pursuant to Executive Order No. 178 plus the amount of P25,000.00 as attorney's fees and cost of litigation.

On July 29, 1988, the petitioner filed a Motion to Dismiss on the following grounds:

- (1) The Commission has no jurisdiction to hear and try the case;
- (2) Assuming it has jurisdiction, the security guards of Odin Security Agency have no legal personality to sue or be sued; and
- (3) Assuming the individual guards have legal personality the action involves interpretation of contract over

which it has no authority. (Rollo, p. 75)

On August 19, 1988, the Labor Arbiter issued an Order dismissing the complaint stating that the petitioner's being a government-owned or controlled corporation would place it under the scope and jurisdiction of the Civil Service Commission and not within the ambit of the NLRC.

This Order of dismissal was raised on Appeal to the NLRC and on January 17, 1989 the NLRC issued the questioned resolution setting aside the order and entered a decision granting reliefs to the private respondent.

A motion for reconsideration was subsequently filed raising among others that the resolution is:

- (1) In violation of the right of the respondent to due process under the Constitution;
- (2) Granting *arguendo* that the due process clause was observed, the resolution granting relief is without any legal basis; and
- (3) Granting *arguendo* that there is legal basis for the award, the stipulation under the contract allowing an increase of wage rate is void *ab initio*. (Rollo, p. 86)

On June 25, 1990, the motion for reconsideration was denied.

The petitioner now comes to this Court reiterating substantially the same grounds it raised in its motion for reconsideration, to wit:

- (1) The National Labor Relations Commission failed to observe due process.
- (2) Granting the award of the National Labor Relations Commission is valid, reliefs granted are not legal.
- (3) Assuming the award complies with the requirements of due process, the National Labor Relations Commission erred when it failed to declare the contract for security services void. (Rollo, pp. 201--202)

The petitioner is a government-owned or controlled corporation with a special charter. This places it under the scope of the civil service (Art. XI [B] [1] and [2], 1987 Constitution); *Boy Scouts of the Philippines v. NLRC*, 196 SCRA 176 [1991]; *PNOC-Energy Development Corp. v. NLRC*, 201 SCRA 487 [1991]). However, the guards are not employees of the petitioner. The contract of services explicitly states that the security guards are not considered employees of the petitioner (Rollo, p. 45). There being no employer-employee relationship between the petitioner and the security guards, the jurisdiction of the Civil Service Commission may not be invoked in this case.

The contract entered into by the petitioner which is merely job contracting makes the petitioner an indirect employer. The issue, therefore, is whether or not an indirect employer is bound by the rulings of the NLRC.

Notwithstanding that the petitioner is a government agency, its liabilities, which are joint and solidary with that of the contractor, are provided in Articles 106, 107 and 109 of the Labor Code. This places the petitioner's liabilities under the scope of the NLRC. Moreover, Book Three, Title II on Wages specifically provides that the term "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and shall include the Government and all its branches, subdivisions and instrumentalities, all government-owned or controlled corporation and institutions as well as non-profit private institutions, or organizations (Art. 97 [b], Labor Code; *Eagle Security Agency, Inc. v. NLRC*, 173 SCRA 479 [1989]; *Rabago v. NLRC*, 200 SCRA 158 [1991]). The NLRC, therefore, did not commit grave abuse of discretion in assuming jurisdiction to set aside the Order of dismissal by the Labor Arbiter.

The underlying issue in this case is who should carry the burden of the wage increases.

Settled is the rule that in job contracting, the petitioner as principal is jointly and severally liable with the contractor for the payment of unpaid wages. The statutory basis for the joint and several liability is set forth in Articles 107, and 109 in relation to Article 106 of the Labor Code. (Del Rosario and Sons Logging Enterprises, Inc. v. NLRC, 136 SCRA 669 [1985]; Baguio v. NLRC, 202 SCRA 465 [1991]; Ecal v. NLRC, 195 SCRA 224 [1991]). In the case at bar, the action instituted by the private respondent was for the payment of unpaid wage differentials under Wage Order No. 6. The liabilities of the parties were very well explained in the case of Eagle Security v. NLRC, supra where the court held:

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“The solidary liability of PTSI and EAGLE, however, does not preclude the right of reimbursement from his co-debtor by the one who paid [See Article 1217, Civil Code]. It is with respect to this right of reimbursement that petitioners can find support in the aforecited contractual stipulation and Wage Order provision.

“The Wage Orders are explicit that payment of the increases are ‘to be borne’ by the principal or client. ‘To be borne’, however, does not mean that the principal, PTSI in this case, would directly pay the security guards the wage and allowance increases because there is no privity of contract between them. The security guards’ contractual relationship is with their immediate employer, EAGLE. As an employer, EAGLE is tasked, among others, with the payment of their wages [See Article VII Sec. 3 of the Contract for Security Services, supra and Bautista v. Inciong, G.R. No. 52824, March 16, 1988, 158 SCRA 556].

“Premises considered, the security guards’ immediate recourse for the payment of the increases is with their direct employer, EAGLE. However, in order for the security agency to comply with the new wage and allowance rates it has to pay the security guards, the Wage Order made specific provision to amend existing contracts for security services by allowing the adjustment of the consideration paid by the principal to the security agency concerned. What the Wage Orders require, therefore, is the amendment of the contract as to the consideration to cover the service contractor’s payment of the increases mandated. In the end, therefore, ultimate liability for the payment of the increases rests with the principal.”

The Wage Orders are statutory and mandatory and can not be waived. The petitioner can not escape liability since the law provides the joint and solidary liability of the principal and the contractor for the protection of the laborers. The contention that it was deprived due process because no hearing was conducted does not deserve merit. A decision on the merits is proper where the issues raised by the parties did not involve intricate questions of law. (See Blue Bar Coconut Phils. Inc. v. Minister of Labor, 174 SCRA 25 [1989]) There can be no question that the security guards are entitled to wage adjustments. The computation of the amount due to each individual guard can be made during the execution of the decision where hearings can be held. (See Section 3, Rule VIII of the New Rules of Procedure of the NLRC) Neither can the petitioner assail the contract for security services for being void ab initio on the ground that it did not comply with the bidding requirements set by law. Undeniably, services were rendered already and the petitioner benefitted from said contract for two (2) years now. The petitioner is therefore estopped from assailing the contract.

Quite noteworthy is the fact that the private respondent entered into the contract when Wage Order No. 6 had already been in force. The contract was entered into in November 11, 1985 one year after the effectivity of Wage Order No. 6 which was on November 1, 1984. The rates of the security guards as stipulated in the contract did not consider the increases in the minimum wage mandated by Wage Order No. 6. Two years after, the private respondent is now asking for an adjustment in the contract price pursuant to the wage order provision.

Such action of the private respondent is rather disturbing and must not remain unchecked. In the complaint filed, the private respondent alleged that it requested the Regional Director, NCR Region of the Department of Labor and Employment for their intercession in connection with the illegal bidding and award made by the petitioner in

favor of Triad Security Agency which was below the minimum wage law. Undeniably, the private respondent is equally guilty when it entered into the contract with the petitioner without considering Wage Order No. 6.

The private respondent tries to explain that the Philippine Association of Detective and Protective Agency Operators (PADPAO) which fixes the contract rate of the security agencies was unable to fix the new contract rate until May 12, 1986.

We, however, agree with the posture that the setting of wages under PADPAO is of no moment. The PADPAO memorandum was not necessary to make Wage Order No. 6 effective. The PADPAO memo was merely an internal agreement among the operators to set the ceiling of the contract rates. It was aimed to curb the practice of security agencies which were in cutthroat competition to request for wage adjustments after proposals were accepted in good faith to the prejudice of the parties.

While it is true that security personnel should not be deprived of what is lawfully due them, it bears emphasis that it was the private respondent which first deprived the security personnel of their rightful wage under Wage Order No. 6. The private respondent is the employer of the security guards and as the employer, it is charged with knowledge of labor laws and the adequacy of the compensation that it demands for contractual services is its principal concern and not any other's (*Del Rosario & Sons Logging Enterprises, Inc. v. NLRC*, 136 SCRA 669 [1985]).

Given this peculiar circumstance, the private respondent should also be faulted for the unpaid wage differentials of the security guards. By filing the complaint in its own behalf and in behalf of the security guards, the private respondent wishes to exculpate itself from liability on the strength of the ruling in the *Eagle* case that the ultimate liability rests with the principal. Nonetheless, the inescapable fact is that the employees must be guaranteed payment of the wages due them for the performance of any work, task, job or project. They must be given ample protection as mandated by the Constitution (See Article II, Section 18 and Article XIII, Section 3). Thus, to assure compliance with the provisions of the Labor Code including the statutory minimum wage, the joint and several liability of the contractor and the principal is mandated.

We, therefore, hold the petitioner and the private respondent jointly and severally liable to the security guards for the unpaid wage differentials under Wage Order No. 6. As held in the *Eagle* case, the security guards' immediate recourse is with their direct employer, private respondent Odin Security Agency. The solidary liability is, however, without prejudice to a claim for reimbursement by the private respondent against the petitioner for only one-half of the amount due considering that the private respondent is also at fault for entering into the contract without taking into consideration the minimum wage rates under Wage Order No. 6.

WHEREFORE, the questioned resolutions of the National Labor Relations Commission are hereby **AFFIRMED** with the modification that both the petitioner and the private respondent are **ORDERED** to pay jointly and severally the unpaid wage differentials under Wage Order No. 6 without prejudice to the right of reimbursement for one-half of the amount which either the petitioner or the private respondent may have to pay to the security guards. Costs against the petitioner.

SO ORDERED.

Feliciano, J., on official leave.

Bidin, Davide, Jr., and Romero, JJ., concur.

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