

**UNION OF FILIPRO EMPLOYEES – DRUG, FOOD AND ALLIED INDUSTRIES UNIONS – KILUSANG MAYO UNO (UFE- DFA-KMU),
Petitioner,vs. NESTLÉ PHILIPPINES, INCORPORATED, Respondent.**

G.R. Nos. 158930-31. March 03, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

On 22 August 2006, this Court promulgated its Decision[1] in the above-entitled cases, the dispositive part of which reads –

WHEREFORE, in view of the foregoing, the Petition in G.R. No. 158930-31 seeking that Nestlé be declared to have committed unfair labor practice in allegedly setting a precondition to bargaining is DENIED. The Petition in G.R. No. 158944-45, however, is PARTLY GRANTED in that we REVERSE the ruling of the Court of Appeals in CA G.R. SP No. 69805 in so far as it ruled that the Secretary of the DOLE gravely abused her discretion in failing to confine her assumption of jurisdiction power over the ground rules of the CBA negotiations; but the ruling of the Court of Appeals on the inclusion of the Retirement Plan as a valid issue in the collective bargaining negotiations between UFE-DFA-KMU and Nestlé is AFFIRMED. The parties are directed to resume negotiations respecting the Retirement Plan and to take action consistent with the discussions hereinabove set forth. No costs.

Subsequent thereto, Nestlé Philippines, Incorporated (Nestlé) filed a Motion for Clarification[2] on 20 September 2006; while Union of Filipino Employees – Drug, Food and Allied Industries Union – Kilusang Mayo Uno (UFE-DFA-KMU), on 21 September 2006, filed a Motion for Partial Reconsideration[3] of the foregoing Decision.

The material facts of the case, as determined by this Court in its Decision, may be summarized as follows:

UFE-DFA-KMU was the sole and exclusive bargaining agent of the rank-and-file employees of Nestlé belonging to the latter’s Alabang and Cabuyao plants. On 4 April 2001, as the existing collective bargaining agreement (CBA) between Nestlé and UFE-DFA-KMU[4] was to end on 5 June 2001,[5] the Presidents of the Alabang and Cabuyao Divisions of UFE-DFA-KMU informed Nestlé of their intent to “open [our] new Collective Bargaining Negotiation for the year 2001-2004 x x x as early as June 2001.”[6] In response thereto, Nestlé informed them that it was also preparing its own counter-proposal and proposed ground rules to govern the impending conduct of the CBA negotiations.

On 29 May 2001, in another letter to the UFE-DFA-KMU (Cabuyao Division only)[7], Nestlé reiterated its stance that “unilateral grants, one-time company grants, company-initiated policies and programs, which include, but are not limited to the Retirement Plan, Incidental Straight Duty Pay and Calling Pay Premium, are by their very nature not proper subjects of CBA negotiations and therefore shall be excluded therefrom.”[8]

Dialogue between the company and the union thereafter ensued.

On 14 August 2001, however, Nestlé requested^[9] the National Conciliation and Mediation Board (NCMB), Regional Office No. IV, Imus, Cavite, to conduct preventive mediation proceedings between it and UFE-DFA-KMU owing to an alleged impasse in said dialogue; i.e., that despite fifteen (15) meetings between them, the parties failed to reach any agreement on the proposed CBA.

Conciliation proceedings proved ineffective, though, and the UFE-DFA-KMU filed a Notice of Strike^[10] on 31 October 2001 with the NCMB, complaining, in essence, of a bargaining deadlock pertaining to economic issues, i.e., “retirement (plan), panel composition, costs and attendance, and CBA”.^[11] On 07 November 2001, another Notice of Strike^[12] was filed by the union, this time predicated on Nestlé’s alleged unfair labor practices, that is, bargaining in bad faith by setting pre-conditions in the ground rules and/or refusing to include the issue of the Retirement Plan in the CBA negotiations. The result of a strike vote conducted by the members of UFE-DFA-KMU yielded an overwhelming approval of the decision to hold a strike.^[13]

On 26 November 2001, prior to holding the strike, Nestlé filed with the DOLE a Petition for Assumption of Jurisdiction,^[14] praying for the Secretary of the DOLE, Hon. Patricia A. Sto. Tomas, to assume jurisdiction over the current labor dispute in order to effectively enjoin any impending strike by the members of the UFE-DFA-KMU at the Nestlé’s Cabuyao Plant in Laguna.

On 29 November 2001, Sec. Sto. Tomas issued an Order^[15] assuming jurisdiction over the subject labor dispute. The fallo of said Order states that:

CONSIDERING THE FOREGOING, this Office hereby assumes jurisdiction over the labor dispute at the Nestlé Philippines, Inc. (Cabuyao Plant) pursuant to Article 263 (g) of the Labor Code, as amended.

Accordingly, any strike or lockout is hereby enjoined. The parties are directed to cease and desist from committing any act that might lead to the further deterioration of the current labor relations situation.

The parties are further directed to meet and convene for the discussion of the union proposals and company counter- proposals before the National Conciliation and Mediation Board (NCMB) who is hereby designated as the delegate/facilitator of this Office for this purpose. The NCMB shall report to this Office the results of this attempt at conciliation and delimitation of the issues within thirty (30) days from the parties’ receipt of this Order, in no case later than December 31, 2001. If no settlement of all the issues is reached, this Office shall thereafter define the outstanding issues and order the filing of position papers for a ruling on the merits.

UFE-DFA-KMU sought reconsideration^[16] of the above but nonetheless moved for additional time to file its position paper as directed by the Assumption of Jurisdiction Order.

On 14 January 2002, Sec. Sto. Tomas denied said motion for reconsideration.

On 15 January 2002, despite the order enjoining the conduct of any strike or lockout and conciliation efforts by the NCMB, the employee members of UFE-DFA-KMU at Nestlé’s Cabuyao Plant went on strike.

In view of the above, in an Order dated on 16 January 2002, Sec. Sto. Tomas directed: (1) the members of UFE-DFA-KMU to return-to-work within twenty-four (24) hours from receipt of such Order; (2) Nestlé to accept back all returning workers under the same terms and conditions existing preceding to the strike; (3) both parties to cease and desist from committing acts inimical to the on-going conciliation proceedings leading to the further deterioration of the situation; and (4) the submission of their respective position papers within ten (10) days from receipt thereof. But notwithstanding the Return-to-Work Order, the members of UFE-DFA-KMU continued with their strike, thus, prompting Sec. Sto. Tomas to seek the assistance of the Philippine National Police (PNP) for the enforcement of said order.

On 7 February 2002, Nestlé and UFE-DFA-KMU filed their respective position papers. Nestlé addressed several

issues concerning economic provisions of the CBA as well as the non-inclusion of the issue of the Retirement Plan in the collective bargaining negotiations. On the other hand, UFE-DFA-KMU limited itself to the issue of whether or not the retirement plan was a mandatory subject in its CBA negotiations.

On 11 February 2002, Sec. Sto. Tomas allowed UFE-DFA-KMU the chance to tender its stand on the other issues raised by Nestlé but not covered by its initial position paper by way of a Supplemental Position Paper.

UFE-DFA-KMU, instead of filing the above-mentioned supplement, filed several pleadings, one of which was a Manifestation with Motion for Reconsideration of the Order dated February 11, 2002 assailing the Order of February 11, 2002 for supposedly being contrary to law, jurisprudence and the evidence on record. The union posited that Sec. Sto. Tomas “could only assume jurisdiction over the issues mentioned in the notice of strike subject of the current dispute,”[17] and that the Amended Notice of Strike it filed did not cite, as one of the grounds, the CBA deadlock.

On 8 March 2002, Sec. Sto. Tomas denied the motion for reconsideration of UFE-DFA-KMU.

Thereafter, UFE-DFA-KMU filed a Petition for Certiorari[18] before the Court of Appeals, alleging that Sec. Sto. Tomas committed grave abuse of discretion amounting to lack or excess of jurisdiction when she issued the Orders of 11 February 2002 and 8 March 2002.

In the interim, in an attempt to finally resolve the crippling labor dispute between the parties, then Acting Secretary of the DOLE, Hon. Arturo D. Brion, came out with an Order[19] dated 02 April 2002, ruling that:

- we hereby recognize that the present Retirement Plan at the Nestlé Cabuyao Plant is a unilateral grant that the parties have expressly so recognized subsequent to the Supreme Court’s ruling in Nestlé, Phils. Inc. vs. NLRC, G.R. No. 90231, February 4, 1991, and is therefore not a mandatory subject for bargaining;
- the Union’s charge of unfair labor practice against the Company is hereby dismissed for lack of merit;
- the parties are directed to secure the best applicable terms of the recently concluded CBSs between Nestlé Phils. Inc. and it eight (8) other bargaining units, and to adopt these as the terms and conditions of the Nestlé Cabuyao Plant CBA;
- all union demands that are not covered by the provisions of the CBAs of the other eight (8) bargaining units in the Company are hereby denied;
- all existing provisions of the expired Nestlé Cabuyao Plant CBA without any counterpart in the CBAs of the other eight bargaining units in the Company are hereby ordered maintained as part of the new Nestlé Cabuyao Plant CBA;
- the parties shall execute their CBA within thirty (30) days from receipt of this Order, furnishing this Office a copy of the signed Agreement;
- this CBA shall, in so far as representation is concerned, be for a term of five (5) years; all other provisions shall be renegotiated not later than three (3) years after its effective date which shall be December 5, 2001 (or on the first day six months after the expiration on June 4, 2001 of the superceded CBA).

UFE-DFA-KMU moved to reconsider the aforequoted ruling, but such was subsequently denied on 6 May 2002.

For the second time, UFE-DFA-KMU went to the Court of Appeals via another Petition for Certiorari seeking to annul the Orders of 02 April 2002 and 06 May 2002 of the Secretary of the DOLE, having been issued in grave abuse of discretion amounting to lack or excess of jurisdiction.

On 27 February 2003, the appellate court promulgated its Decision on the twin petitions for certiorari, ruling

entirely in favor of UFE-DFA-KMU, the dispositive part thereof stating –

WHEREFORE, in view of the foregoing, there being grave abuse on the part of the public respondent in issuing all the assailed Orders, both petitions are hereby GRANTED. The assailed Orders dated February 11, 2001, and March 8, 2001 (CA-G.R. SP No. 69805), as well as the Orders dated April 2, 2002 and May 6, 2002 (CA-G.R. SP No. 71540) of the Secretary of Labor and Employment in the case entitled: “IN RE: LABOR DISPUTE AT NESTLE PHILIPPINES INC. (CABUYAO FACTORY)” under OS-AJ-0023-01 (NCMB-RBIV-CAV-PM-08-035-01, NCMB-RBIV-LAG-NS-10-037-01, NCMB-RBIV-LAG-NS-11-10-039—01) are hereby ANNULLED and SET ASIDE. Private respondent is hereby directed to resume the CBA negotiations with the petitioner.[20]

Both parties appealed the aforequoted ruling. Nestlé essentially assailed that part of the decision finding the DOLE Secretary to have gravely abused her discretion amounting to lack or excess of jurisdiction when she ruled that the Retirement Plan was not a valid issue to be tackled during the CBA negotiations; UFE-DFA-KMU, in contrast, questioned the appellate court’s decision finding Nestlé free and clear of any unfair labor practice.

Since the motions for reconsideration of both parties were denied by the Court of Appeals in a joint Resolution dated 27 June 2003, UFE-DFA-KMU and Nestlé separately filed the instant Petitions for Review on Certiorari under Rule 45 of the Rules of Court, as amended.

G.R. No. 158930-31 was filed by UFE-DFA-KMU against Nestlé seeking to reverse the Court of Appeals Decision insofar as the appellate court’s failure to find Nestlé guilty of unfair labor practice was concerned; while G.R. No. 158944-45 was instituted by Nestlé against UFE-DFA-KMU likewise looking to annul and set aside the part of the Court of Appeals Decision declaring that: 1) the Retirement Plan was a valid collective bargaining issue; and 2) the scope of the power of the Secretary of the Department of Labor and Employment (DOLE) to assume jurisdiction over the labor dispute between UFE-DFA-KMU and Nestlé was limited to the resolution of questions and matters pertaining merely to the ground rules of the collective bargaining negotiations to be conducted between the parties.

On 29 March 2004, this Court resolved[21] to consolidate the two petitions inasmuch as they (1) involved the same set of parties; (2) arose from the same set of circumstances, i.e., from several Orders issued by then DOLE Secretary, Hon. Patricia A. Sto. Tomas, respecting her assumption of jurisdiction over the labor dispute between Nestlé and UFE-DFA-KMU, Alabang and Cabuyao Divisions;[22] and (3) similarly assailed the same Decision and Resolution of the Court of Appeals.

After giving due course to the instant consolidated petitions, this Court promulgated on 22 August 2006 its Decision, now subject of UFE-DFA-KMU’s Motion for Partial Reconsideration and Nestlé’s Motion for Clarification.

In its Motion for Partial Reconsideration, UFE-DFA-KMU would have this Court address and discuss anew points or arguments that have basically been passed upon in this Court’s 22 August 2006 Decision. Firstly, it questions this Court’s finding that Nestlé was not guilty of unfair labor practice, considering that the transaction speaks for itself, i.e, *res ipsa loquitur*. And made an issue again is the question of whether or not the DOLE Secretary can take cognizance of matters beyond the amended Notice of Strike.

As to Nestlé’s prayer for clarification, the corporation seeks elucidation respecting the dispositive part of this Court’s Decision directing herein parties to resume negotiations on the retirement compensation package of the concerned employees. It posits that “[i]n directing the parties to negotiate the Retirement Plan, the Honorable Court x x x might have overlooked the fact that here, the Secretary of Labor had already assumed jurisdiction over the entire 2001-2004 CBA controversy x x x.”

As to the charge of unfair labor practice:

The motion does not put forward new arguments to substantiate the prayer for reconsideration of this Court's Decision except for the sole contention that the transaction speaks for itself, i.e., *res ipsa loquitur*. Nonetheless, even a perusal of the arguments of UFE-DFA-KMU in its petition and memorandum in consideration of the point heretofore raised will not convince us to change our disposition of the question of unfair labor practice. UFE-DFA-KMU argues therein that Nestlé's "refusal to bargain on a very important CBA economic provision constitutes unfair labor practice." [23] It explains that Nestlé set as a precondition for the holding of collective bargaining negotiations the non-inclusion of the issue of Retirement Plan. In its words, "respondent Nestlé Phils., Inc. insisted that the Union should first agree that the retirement plan is not a bargaining issue before respondent Nestlé would agree to discuss other issues in the CBA." [24] It then concluded that "the Court of Appeals committed a legal error in not ruling that respondent company is guilty of unfair labor practice. It also committed a legal error in failing to award damages to the petitioner for the ULP committed by the respondent." [25]

We are unconvinced still.

The duty to bargain collectively is mandated by Articles 252 and 253 of the Labor Code, as amended, which state

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ART. 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 agreement 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 concession.

ART. 253. Duty to bargain collectively when there exists a collective bargaining agreement. — When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate nor modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms of conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties.

Obviously, the purpose of collective bargaining is the reaching of an agreement resulting in a contract binding on the parties; but the failure to reach an agreement after negotiations have continued for a reasonable period does not establish a lack of good faith. The statutes invite and contemplate a collective bargaining contract, but they do not compel one. The duty to bargain does not include the obligation to reach an agreement.

The crucial question, therefore, of whether or not a party has met his statutory duty to bargain in good faith typically turns on the facts of the individual case. As we have said, 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. To some degree, the question of good faith may be a question of credibility. The effect of an employer's or a union's individual actions is not the test of good-faith bargaining, but the impact of all such occasions or actions, considered as a whole, and the inferences fairly drawn therefrom collectively may offer a basis for the finding of the NLRC. [26]

For a charge of unfair labor practice to prosper, it must be shown that Nestlé was motivated by ill will, "bad faith, or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy, and, of course, that social humiliation, wounded feelings, or grave anxiety resulted x x x" [27] in disclaiming unilateral grants as proper subjects in their collective bargaining negotiations. While the law makes it an obligation for the employer and the employees to bargain collectively with each other, such compulsion does not include the

commitment to precipitately accept or agree to the proposals of the other. All it contemplates is that both parties should approach the negotiation with an open mind and make reasonable effort to reach a common ground of agreement.

Herein, the union merely bases its claim of refusal to bargain on a letter[28] dated 29 May 2001 written by Nestlé where the latter laid down its position that “unilateral grants, one-time company grants, company-initiated policies and programs, which include, but are not limited to the Retirement Plan, Incidental Straight Duty Pay and Calling Pay Premium, are by their very nature not proper subjects of CBA negotiations and therefore shall be excluded therefrom.” But as we have stated in this Court’s Decision, said letter is not tantamount to refusal to bargain. In thinking to exclude the issue of Retirement Plan from the CBA negotiations, Nestlé, cannot be faulted for considering the same benefit as unilaterally granted, considering that eight out of nine bargaining units have allegedly agreed to treat the Retirement Plan as a unilaterally granted benefit. This is not a case where the employer exhibited an indifferent attitude towards collective bargaining, because the negotiations were not the unilateral activity of the bargaining representative. Nestlé’s desire to settle the dispute and proceed with the negotiation being evident in its cry for compulsory arbitration is proof enough of its exertion of reasonable effort at good-faith bargaining.

In the case at bar, Nestle never refused to bargain collectively with UFE-DFA-KMU. The corporation simply wanted to exclude the Retirement Plan from the issues to be taken up during CBA negotiations, on the postulation that such was in the nature of a unilaterally granted benefit. An employer’s steadfast insistence to exclude a particular substantive provision is no different from a bargaining representative’s perseverance to include one that they deem of absolute necessity. Indeed, an adamant insistence on a bargaining position to the point where the negotiations reach an impasse does not establish bad faith.[fn24 p.10] It is but natural that at negotiations, management and labor adopt positions or make demands and offer proposals and counter-proposals. On account of the importance of the economic issue proposed by UFE-DFA-KMU, Nestle could have refused to bargain with the former – but it did not. And the management’s firm stand against the issue of the Retirement Plan did not mean that it was bargaining in bad faith. It had a right to insist on its position to the point of stalemate.

The foregoing things considered, this Court replicates below its clear disposition of the issue:

The concept of “unfair labor practice” is defined by the Labor Code as:

ART. 247. CONCEPT OF UNFAIR LABOR PRACTICE AND PROCEDURE FOR PROSECUTION THEREOF. – Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.

x x x x.

The same code likewise provides the acts constituting unfair labor practices committed by employers, to wit:

ART. 248. UNFAIR LABOR PRACTICES OF EMPLOYERS. – It shall be unlawful for an employer to commit any of the following unfair labor practices:

- (a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;
- (b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;
- (c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters;

(e) To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement.

Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective agreement. Provided, That the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the nonmembers of the recognized collective bargaining agent; [The article referred to is 241, not 242. – CAA]

(f) To dismiss, discharge, or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;

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

(h) To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or

(i) To violate a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, only the officers and agents of corporations associations or partnerships who have actually participated, authorized or ratified unfair labor practices shall be held criminally liable. (Emphasis supplied.)

Herein, Nestlé is accused of violating its duty to bargain collectively when it purportedly imposed a pre-condition to its agreement to discuss and engage in collective bargaining negotiations with UFE-DFA-KMU.

A meticulous review of the record and pleadings of the cases at bar shows that, of the two notices of strike filed by UFE-DFA-KMU before the NCMB, it was only on the second that the ground of unfair labor practice was alleged. Worse, the 7 November 2001 Notice of Strike merely contained a general allegation that Nestlé committed unfair labor practice by bargaining in bad faith for supposedly “setting pre-condition in the ground rules (Retirement issue).” (Notice of Strike of 7 November 2001; Annex “C” of UFE-DFA-KMU Position Paper; DOLE original records, p. 146.) In contrast, Nestlé, in its Position Paper, did not confine itself to the issue of the non-inclusion of the Retirement Plan but extensively discussed its stance on other economic matters pertaining to the CBA. It is UFE-DFA-KMU, therefore, who had the burden of proof to present substantial evidence to support the allegation of unfair labor practice.

A perusal of the allegations and arguments raised by UFE-DFA-KMU in the Memorandum (in G.R. Nos. 158930-31) will readily disclose the need for the presentation of evidence other than its bare contention of unfair labor practice in order to make certain the propriety or impropriety of the ULP charge hurled against Nestlé. Under Rule XIII, Sec. 4, Book V of the Implementing Rules of the Labor Code:

x x x. In cases of unfair labor practices, the notice of strike shall as far as practicable, state the acts complained of and the efforts to resolve the dispute amicably.” (Emphasis supplied.)

In the case at bar, except for the assertion put forth by UFE-DFA-KMU, neither the second Notice of Strike nor the records of these cases substantiate a finding of unfair labor practice. It is not enough that the union believed

that the employer committed acts of unfair labor practice when the circumstances clearly negate even a prima facie showing to warrant such a belief. (*Tiu v. National Labor Relations Commission*, G.R. No. 123276, 18 August 1997, 277 SCRA 681, 688.)

Employers are accorded rights and privileges to assure their self-determination and independence and reasonable return of capital. (*Capitol Medical Center, Inc. v. Meris*, G.R. No. 155098, 16 September 2005, 470 SCRA 125, 136.) This mass of privileges comprises the so-called management prerogatives. (*Capitol Medical Center, Inc. v. Meris*, G.R. No. 155098, 16 September 2005, 470 SCRA 125, 136.) In this connection, the rule is that good faith is always presumed. As long as the company's exercise of the same is in good faith to advance its interest and not for purpose of defeating or circumventing the rights of employees under the law or a valid agreement, such exercise will be upheld. (*Capitol Medical Center, Inc. v. Meris*, G.R. No. 155098, 16 September 2005, 470 SCRA 125, 136.)

There is no per se test of good faith in bargaining. (*Hongkong Shanghai Banking Corporation Employees Union v. National Labor Relations Commission*, G.R. No. 125038, 6 November 1997, 281 SCRA 509, 518.) Good faith or bad faith is an inference to be drawn from the facts. (*Hongkong Shanghai Banking Corporation Employees Union v. National Labor Relations Commission*, G.R. No. 125038, 6 November 1997, 281 SCRA 509, 518.) Herein, no proof was presented to exemplify bad faith on the part of Nestlé apart from mere allegation. Construing arguendo that the content of the aforementioned letter of 29 May 2001 laid down a pre-condition to its agreement to bargain with UFE-DFA-KMU, Nestlé's inclusion in its Position Paper of its proposals affecting other matters covered by the CBA negates the claim of refusal to bargain or bargaining in bad faith. Accordingly, since UFE-DFA-KMU failed to proffer substantial evidence that would overcome the legal presumption of good faith on the part of Nestlé, the award of moral and exemplary damages is unavailing.

As to the jurisdiction of the DOLE Secretary under the amended Notice of Strike:

This Court is not convinced by the argument raised by UFE-DFA-KMU that the DOLE Secretary should not have gone beyond the disagreement on the ground rules of the CBA negotiations. The union doggedly asserts that the entire labor dispute between herein parties concerns only the ground rules.

Lest it be forgotten, it was UFE-DFA-KMU which first alleged a bargaining deadlock as the basis for the filing of its Notice of Strike; and at the time of the filing of the first Notice of Strike, several conciliation conferences had already been undertaken where both parties had already exchanged with each other their respective CBA proposals. In fact, during the conciliation meetings before the NCMB, but prior to the filing of the notices of strike, the parties had already delved into matters affecting the meat of the collective bargaining agreement.

The Secretary of the DOLE simply relied on the Notices of Strike that were filed by UFE-DFA-KMU as stated in her Order of 08 March 2002, to wit:

x x x The records disclose that the Union filed two Notices of Strike. The First is dated October 31, 2001 whose grounds are cited verbatim hereunder:

“A. Bargaining Deadlock

1. Economic issues (specify)
1. Retirement
2. Panel Composition
3. Costs and Attendance

4. CBA”

The second Notice of Strike is dated November 7, 2001 and the cited ground is like quoted verbatim below:

“B. Unfair Labor Practices (specify) Bargaining in bad faith – Setting pre-condition in the ground rules (Retirement issue)”

Nowhere in the second Notice of Strike is it indicated that this Notice is an amendment to and took the place of the first Notice of Strike. In fact, our Assumption of Jurisdiction Order dated November 29, 2001 specifically cited the two (2) Notices of Strike without any objection on the part of the Union x x x.[29]

Had the parties not been at the stage where the substantive provisions of the proposed CBA had been put in issue, the union would not have based thereon its initial notice to strike. This Court maintains its original position in the Decision that, based on the Notices of Strike filed by UFE-DFA-KMU, the Secretary of the DOLE rightly decided on matters of substance. That the union later on changed its mind is of no moment because to give premium to such would make the legally mandated discretionary power of the Dole Secretary subservient to the whims of the parties.

As to the point of clarification on the resumption of negotiations respecting the Retirement Plan:

As for the supposed confusion or uncertainty of the dispositive part of this Court’s Decision, Nestle moves for clarification of the statement – “The parties are directed to resume negotiations respecting the Retirement Plan and to take action consistent with the discussion hereinabove set forth. No costs.” The entire fallo of this Court’s Decision reads:

WHEREFORE, in view of the foregoing, the Petition in G.R. No. 158930-31 seeking that Nestlé be declared to have committed unfair labor practice in allegedly setting a precondition to bargaining is DENIED. The Petition in G.R. No. 158944-45, however, is PARTLY GRANTED in that we REVERSE the ruling of the Court of Appeals in CA G.R. SP No. 69805 in so far as it ruled that the Secretary of the DOLE gravely abused her discretion in failing to confine her assumption of jurisdiction power over the ground rules of the CBA negotiations; but the ruling of the Court of Appeals on the inclusion of the Retirement Plan as a valid issue in the collective bargaining negotiations between UFE-DFA-KMU and Nestlé is AFFIRMED. The parties are directed to resume negotiations respecting the Retirement Plan and to take action consistent with the discussions hereinabove set forth. No costs.

Nestle interprets the foregoing as an order for the parties to resume negotiations by themselves respecting the issue of retirement benefits due the employees of the Cabuyao Plant. Otherwise stated, Nestle posits that the dispositive part of the Decision directs the parties to submit to a voluntary mode of dispute settlement.

A read-through of this Court’s Decision reveals that the ambiguity is more ostensible than real. This Court’s Decision of 22 August 2006 designated marked boundaries as to the implications of the assailed Orders of the Secretary of the DOLE. We said therein that 1) the Retirement Plan is still a valid issue for herein parties’ collective bargaining negotiations; 2) the Court of Appeals committed reversible error in limiting to the issue of the ground rules the scope of the power of the Secretary of Labor to assume jurisdiction over the subject labor dispute; and 3) Nestlé is not guilty of unfair labor practice. Nowhere in our Decision did we require parties to submit to negotiate by themselves the tenor of the retirement benefits of the concerned employees of Nestlé, precisely because the Secretary of the DOLE had already assumed jurisdiction over the labor dispute subject of herein petitions. Again, we spell out what encompass the Secretary’s assumption of jurisdiction power. The Secretary of the DOLE has been 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. And, as a matter of necessity, it includes questions incidental

to the labor dispute; that is, issues that are necessarily involved in the dispute itself, and not just to that ascribed in the Notice of Strike or otherwise submitted to him for resolution. In the case at bar, the issue of retirement benefits was specifically what was presented before the Secretary of the DOLE; hence, We reject Nestlé's interpretation. Our decision is crystal and cannot be interpreted any other way. The Secretary having already assumed jurisdiction over the labor dispute subject of these consolidated petitions, the issue concerning the retirement benefits of the concerned employees must be remanded back to him for proper disposition.

All told, in consideration of the points afore-discussed and the fact that no substantial arguments have been raised by either party, this Court remains unconvinced that it should modify or reverse in any way its disposition of herein cases in its earlier Decision. The labor dispute between the Nestle and UFE-DFA-KMU has dragged on long enough. As no other issues are availing, let this Resolution write an ending to the protracted labor dispute between Nestlé and UFE- DFA-KMU (Cabuyao Division).

WHEREFORE, premises considered, the basic issues of the case having been passed upon and there being no new arguments availing, the Motion for Partial Reconsideration is hereby DENIED WITH FINALITY for lack of merit. Let these cases be remanded to the Secretary of the Department of Labor and Employment for proper disposition, consistent with the discussions in this Court's Decision of 22 August 2006 and as hereinabove set forth. No costs.

SO ORDERED.

Justice Ynares - Santiago, (Chairperson), Austria-Martinez, Azcuna, Tinga, and Chico-Nazario, JJ., concur.

* Justices Adolfo S. Azcuna and Dante O. Tinga were designated to sit as additional members replacing retired Chief Justice Artemio V. Panganiban and Justice Romeo J. Callejo, Sr. per Raffle dated 3 December 2007.

[1] Penned by Associate Justice Minita V. Chico-Nazario with retired Chief Justice Artemio V. Panganiban, Associate Justices Consuelo Ynares-Santiago, Alicia Austria-Martinez and Romeo J. Callejo, Jr. concurring. G.R. Nos. 158930-31, 22 August 2006, 499 SCRA 521, 551-552.

[2] Rollo of G.R. Nos. 158944-45, pp. 1371-1391.

[3] Rollo of G.R. Nos. 158930-31, pp. 1944-1956.

[4] Alabang and Cabuyao Divisions.

[5] Annex "B" of the Petition; rollo of G.R. Nos. 158930-31, Vol. I, p. 281.

[6] Id.

[7] The Cabuyao Division of UFE-DFA-KMU became the sole bargaining unit involved in the subject CBA negotiations because of the closure of the Nestlé Alabang Plant.

[8] Annex "F-1" of the Petition; rollo of G.R. Nos. 158930-31, p. 460.

[9] In a letter addressed to Atty. Jose Velasco, Director, National Conciliation and Mediation Board, Regional Office No. IV, Imus, Cavite; Annex "F" of the Petition; rollo of G.R. Nos. 158944-45, p. 104.

[10] Id.

[11] Records, Vol. IV, p. 1.

[12] Records, Vol. II, p. 146.

[13] Of the 789 regular rank-and-file employees of Nestlé (Cabuyao Factory, Laguna), only 724 employees voted; the YES ballot garnered 708 votes, while only 13 employees decided against the plan to stage a strike; Records, Vol. II, p. 150.

[14] Dated 23 November 2001; rollo of G.R. Nos. 158944-45, pp. 112-129.

[15] Id. at 130-135.

[16] Dated 29 November 2001; Annex “L” of the Petition; rollo of G.R. Nos. 158944-45, pp. 136-182.

[17] Id.

[18] CA rollo (CA-G.R. SP No. 69805).

[19] Annex “BB” of the Petition; rollo of G.R. Nos. 158944-45, pp. 508-520.

[20] Id. at 43.

[21] SC Resolution dated 29 March 2004.

[22] Concerning employees at Nestlé’s Alabang and Cabuyao factories.

[23] Petitioner’s Memorandum, pp 10-11; rollo of G.R. Nos. 158930-31, pp. 1672-1673.

[24] Id.

[25] Id. at 1671-1672.

[26] 48 Am. Jur. 2d, Labor and Labor Relations, Sec. 1028, 828.

[27] San Miguel Corporation v. Del Rosario, G.R. Nos. 168194 & 168603, 13 December 2005, 477 SCRA 604, 619.

[28] “x x x [U]nilateral grants, one-time company grants, company-initiated policies and programs, which include, but are not limited to the Retirement Plan, Incidental Straight Duty Pay and Calling Pay Premium, are by their very nature not proper subjects of CBA negotiations and therefore shall be excluded therefrom.”

[29] Rollo of G.R. Nos. 158930-31, Vol. I, pp. 333-334.

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