

## SECOND DIVISION

[ G.R. No. 111809, May 05, 1997 ]

**MINDANAO TERMINAL AND BROKERAGE SERVICE, INC.,  
PETITIONER, VS. HON. MA. NIEVES ROLDAN-CONFESOR, IN HER  
CAPACITY AS SECRETARY OF LABOR AND EMPLOYMENT, AND  
ASSOCIATED LABOR UNIONS (ALU-TUCP), RESPONDENTS.  
D E C I S I O N**

**MENDOZA, J.:**

This is a petition for certiorari to set aside the order of respondent Honorable Secretary of Labor and Employment, declaring (1) wage increases granted by petitioner to its employees not creditable as compliance by the company with future mandated wage increases, and (2) the increases to be retroactive, in the case of the fourth year wage increase, to August 1, 1992 to be implemented until July 31, 1993 and, in the case of the fifth year wage increase, to August 1, 1993 to be implemented until the expiration of the CBA on July 31, 1994.

Petitioner Mindanao Terminal and Brokerage Service, Inc., (hereafter referred to as the Company) and respondent Associated Labor Unions, (hereafter referred to as the Union) entered into a collective bargaining agreement for a period of five (5) years, starting on August 1, 1989 and ending July 31, 1994.

On the third year of the CBA on August 1, 1992, the Company and the Union met to renegotiate the provisions of the CBA for the fourth and fifth years. The parties, however, failed to resolve some of their differences, as a result of which a deadlock developed.

On November 12, 1992, a formal notice of deadlock was sent to the Company on the following issues: wages, vacation leave, sick leave, hospitalization, optional retirement, 13th month pay and signing bonus.

On November 18, 1992, the Company announced a cost-cutting or retrenchment program.

Charging unfair labor practice and citing the deadlock in the negotiations, the Union filed, on December 3, 1992, a notice of strike with the National Conciliation and Mediation Board (NCMB).

On December 18, 1992, as a result of a conference called by the NCMB, the Union and the Company went back to the bargaining table and agreed on the following provisions:

- a. Wage Increase (Article V, Section 2, CBA) - P3.00/day for the fourth year of the CBA and P3.00/day for the fifth year of the CBA;
- b. Vacation and Sick Leaves (Article VII, Section 1(c), CBA) - 1,100 hours

of aggregate service instead of the existing 1,500 hours within a year to be entitled to leave benefits but subject to reversion to the previous CBA if majority of the gangs average eight (8) vessels a month;

c. Hospitalization (Article VIII, Section 1, CBA) - Maximum aggregate of 1,100 hours instead of the 1,500 hours and up to be entitled to the benefit of P2,500.00 with the lower brackets adjusted accordingly but subject to reversion to the previous CBA if majority of the gangs average eight (8) vessels a month;

d. 13th Month Pay (Article XIII, Section 1, CBA) - Average of six (6) vessels instead of the existing eight (8) vessels to be entitled to eleven (11) days basic pay but subject to reversion to the previous CBA if majority of the gangs average eight (8) vessels a month;

e. Signing bonus; and

f. Seniority.

The agreement left only one issue for resolution of the parties, namely, retirement. Even this issue was soon settled as the parties met before the NCMB on January 14, 1993 and then agreed on an improved Optional Retirement Clause by giving the employees the option to retire after rendering eighteen (18) years of service instead of the previous twenty (20) years, and granting the employees retirement benefits equivalent to sixteen (16) days for every year of service. Thus, as the Med-Arbitrator noted in the record of the January 14, 1993 conference, "the issues raised by the notice of strike had been settled and said notice is thus terminated."

But no sooner had he stated this than the Company claimed that the wage increases which it had agreed to give to the employees should be creditable as compliance with future mandated wage increases. In addition, it maintained that such increases should not be retroactive.

Reacting to this development, the Union again filed a Notice of Strike on January 28, 1993, with the NCMB. On March 7, 1993, the Union staged a strike.

The NCMB tried to settle the issues of creditability and retroactivity, calling for this purpose a conciliation conference on March 9, 1993. As conciliation proved futile, the Company petitioned respondent Secretary of Labor and Employment (hereafter Secretary of Labor) to assume jurisdiction over the dispute. On March 10, 1993, respondent assumed jurisdiction over the dispute and ordered the parties to submit their respective position papers on the two unresolved issues.

After submission by the parties of their position papers, the Secretary of Labor issued an Order dated May 14, 1993, ordering the Company and the Union to incorporate into their existing collective bargaining agreement all improvements reached by them in the course of renegotiations. The Secretary of Labor held that the wage increases for the fourth and fifth years of the CBA were not to be credited as compliance with future mandated increases. In addition, the fourth year wage increase was to be retroactive to August 1992 and was to be implemented until July 31, 1993, while the fifth year wage increase was to take effect on August 1, 1993 until the expiration of the CBA.<sup>[1]</sup>

On May 31, 1993, the Company sought reconsideration of the May 14, 1993 order. The motion was denied for lack of merit by the Secretary of Labor in a resolution dated July 7, 1993. Hence, this petition for certiorari, alleging grave abuse of discretion on the part of respondent Secretary of Labor.

The petitioner contends that respondent erred in making the fourth year wage increase retroactive to August 1, 1992. It denies the power of the Secretary of Labor to decree retroaction of the wage increases, as the respondent herself had stated in her order subject of this petition, that it had been more than six (6) months since the expiration of the third anniversary of the CBA and, therefore, the automatic renewal clause of Art. 253-A of the Labor Code had no application. Although petitioner originally opposed giving retroactive effect to their agreement, it subsequently modified its stand and agreed that the fourth year wage increase and the other provisions of the CBA be made retroactive to the date the Secretary of Labor assumed jurisdiction of the dispute on March 10, 1993.

The petition is without merit. Art. 253-A of the Labor Code reads:

Terms of a collective bargaining agreement. - Any Collective Bargaining Agreement that the parties may enter into shall, insofar as the representation aspect is concerned, be for a term of five (5) years. No petition questioning the majority status of the incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of the sixty-day period immediately before the date of expiry of such five year term of the Collective Bargaining Agreement. All other provisions of the Collective Bargaining Agreement shall be renegotiated not later than three (3) years after its execution. Any agreement on such other provisions of the Collective Bargaining Agreement entered into within six (6) months from the date of expiry of the term of such other provisions as fixed in such Collective Bargaining Agreement, shall retroact to the day immediately following such date. If any such agreement is entered into beyond six months, the parties shall agree on the duration of retroactivity thereof. In case of a deadlock in the renegotiation of the collective bargaining agreement, the parties may exercise their rights under this Code.

The respondent indeed stated in her order of May 14, 1993 that "this case is clearly beyond the scope of the automatic renewal clause,"<sup>[2]</sup> but she also stated in the same order that "the parties have reached an agreement on all the renegotiated provisions of the CBA" on January 14, 1993, i.e., within six (6) months of the expiration of the third year of the CBA.

The signing of the CBA is not determinative of the question whether "the agreement was entered into within six months from the date of expiry of the term of such other provisions as fixed in such collective bargaining agreement" within the contemplation of Art. 253-A.

As already stated, on November 12, 1992, the Union sent the Company a notice of deadlock in view of their inability to reconcile their positions on the main issues,<sup>[3]</sup> particularly on wages. The Union filed a notice of strike. However, on December 18,