346 Phil. 524

SECOND DIVISION

[G.R. No. 125038, November 06, 1997]

THE HONGKONG AND SHANGHAI BANKING CORPORATION EMPLOYEES UNION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND THE HONGKONG AND SHANGHAI BANKING CORPORATION, LTD., RESPONDENTS.

D E C I S I O N

REGALADO, J.:

In an Order dated November 27, 1995,[1] respondent National Labor Relations Commission (NLRC) reversed and set aside the order issued by Labor Arbiter Felipe T. Garduque II which dismissed and remanded for further proceedings the case for unfair labor practice filed by private respondent Hongkong and Shanghai Banking Corporation, Ltd. (the "Bank") against petitioner Hongkong and Shanghai Banking Corporation Employees Union (the "Union"), the recognized bargaining representative of the Bank's regular rank and file employees. This petition for *certiorari* impugns the aforesaid Order of respondent commission.

The case at bar arose from the issuance of a non-executive job evaluation program (JEP) lowering the starting salaries of future employees, resulting from the changes made in the job grades and structures, which was unilaterally implemented by the Bank retroactive to January 1, 1993. The program in question was announced by the Bank on January 18, 1993.

In a letter dated January 20, 1993,[2] the Union, through its President, Peter Paul Gamelo, reiterated its previous verbal objections to the Bank's unilateral decision to devise and put into effect the said program because it allegedly was in violation of the existing collective bargaining agreement (CBA) between the parties and thus constituted unfair labor practice. The Union demanded the suspension of the implementation of the JEP and proposed that the same be instead taken up or included in their upcoming CBA negotiations.

The Bank replied in a letter dated January 25, 1993[3] that the JEP was issued in compliance with its obligation under the CBA, apparently referring to Article III, Section 18 thereof which provides that:

> "Within the lifetime of this Agreement the BANK shall conduct a job evaluation of employee positions. The implementation timetable of the said exercise shall be furnished the UNION by the BANK within two (2) months from the signing of this Agreement."

This prompted the Union to undertake concerted activities to protest the implementation of the JEP, such as whistle blowing during office hours starting on March 15, 1993 up to the 23rd day, and writing to clients of the Bank allegedly to

inform them of the real situation then obtaining and of an imminent disastrous showdown between the Bank and the Union.

The Union engaged in said activities despite the fact that as early as February 11, 1993,[4] it had already initiated the renegotiation of the non-representational provisions of the CBA by submitting their proposal to the Bank, to which the latter submitted a reply. As a matter of fact, negotiations on the CBA commenced on March 5, 1993 and continued through March 24, 1993 when the Bank was forced to declare a "recess" to last for as long as the Union kept up with its concerted activities. The Union refused to concede to the demand of the Bank unless the latter agreed to suspend the implementation of the JEP.

Instead of acquiescing thereto, the Bank filed on April 5, 1993[5] with the Arbitration Branch of the NLRC a complaint for unfair labor practice against the Union allegedly for engaging in the contrived activities against the ongoing CBA negotiations between the Bank and the Union in an attempt to unduly coerce and pressure the Bank into agreeing to the Union's demand for the suspension of the implementation of the JEP. It averred that such concerted activities, despite the ongoing CBA negotiations, constitute unfair labor practice (ULP) and a violation of the Union's duty to bargain collectively under Articles 249 (c) and 252 of the Labor Code.

The Union filed a Motion to Dismiss[6] on the ground that the complaint states no cause of action. It alleged that its united activities were actually being waged to protest the Bank's arbitrary imposition of a job evaluation program and its unjustifiable refusal to suspend the implementation thereof. It further claimed that the unilateral implementation of the JEP was in violation of Article I, Section 3 of the CBA which prohibits a diminution of existing rights, privileges and benefits already granted and enjoyed by the employees. To be sure, so the Union contended, the object of the Bank in downgrading existing CBA salary scales, despite its sanctimonious claim that the reduced rates will apply only to future employees, is to torpedo the salary structure built by the Union through three long decades of periodic hard bargaining with the Bank and to thereafter replace the relatively higher-paid unionized employees with cheap newly hired personnel. In light of these circumstances, the Union insists that the right to engage in these concerted activities is protected under Article 246 of the Labor Code regarding non-abridgment of the right to self-organization and, hence, is not actionable in law.

In its Opposition,[7] the Bank stated that the Union was actually challenging merely that portion of the JEP providing for a lower rate of salaries for future employees. Contrary to the Union's allegations in its motion to dismiss that the JEP had resulted in diminution of existing rights, privileges and benefits, the program has actually granted salary increases to, and in fact is already being availed of by, the rank and file staff. The Union's objections are premised on the erroneous belief that the salary rates for future employees is a matter which must be subject of collective bargaining negotiation. The Bank believes that the implementation of the JEP and the resultant lowering of the starting salaries of future employees, as long as there is no diminution of existing benefits and privileges being accorded to existing rank and file staff, is entirely a management prerogative.

In an Order dated July 29, 1993,[8] the labor arbiter dismissed the complaint with prejudice and ordered the parties to continue with the collective bargaining

negotiations, there having been no showing that the Union acted with criminal intent in refusing to comply with its duty to bargain but was motivated by the refusal of management to suspend the implementation of its job evaluation program, and that it is not evident that the concerted activities caused damage to the Bank. It concluded that, at any rate, the Bank is not left without recourse, in case more aggressive and serious acts be committed in the future by the Union, since it could institute a petition to declare illegal such acts which may constitute a strike or picketing.

On appeal, respondent NLRC declared that based on the facts obtaining in this case, it becomes necessary to resolve whether or not the Union's objections to the implementation of the JEP are valid and, if it is without basis, whether or not the concerted activities conducted by the Union constitute unfair labor practice. It held that the labor arbiter exceeded his authority when he ordered the parties to return to the bargaining table and continue with CBA negotiations, considering that his jurisdiction is limited only to labor disputes arising from those cases provided for under Article 217 of the Labor Code, and that the labor arbiter's participation in this instance only begins when the appropriate complaint for unfair labor practice due to a party's refusal to bargain collectively is filed. Consequently, the case was ordered remanded to the arbitration branch of origin for further proceedings in accordance with the guidelines provided for therein.

Hence, this petition.

The Union asserts that respondent NLRC committed grave abuse of discretion in failing to decide that it is not guilty of unfair labor practice considering that the concerted activities were actually directed against the implementation of the JEP and not at the ongoing CBA negotiations since the same were launched even before the start of negotiations. Hence, it cannot be deemed to have engaged in bad-faith bargaining. It claims that respondent NLRC gravely erred in remanding the case for further proceedings to determine whether the objections raised by the Union against the implementation of the JEP are valid or not, for the simple reason that such is not the issue involved in the complaint for ULP filed by the Bank but rather whether the Union is guilty of bargaining in bad faith in violation of the Labor Code. It is likewise averred that Labor Arbiter Garduque cannot be considered to have exceeded his authority in ordering the parties to proceed with the CBA negotiations because it was precisely a complaint for ULP which the Bank filed against the Union.

We find no merit in the petition.

The main issue involved in the present case is whether or not the labor arbiter correctly ordered the dismissal with prejudice of the complaint for unfair labor practice on the bases merely of the Complaint, the Motion to Dismiss as well as the Opposition thereto, filed by the parties. We agree with respondent NLRC that there are several questions that need to be threshed out before there can be an intelligent and complete determination of the propriety of the charges made by the Bank against the Union.

A perusal of the allegations and arguments raised by the parties in the Motion to Dismiss and the Opposition thereto will readily reveal that there are several issues that must preliminarily be resolved and which will require the presentation of evidence other than the bare allegations in the pleadings which have been filed, in

order to ascertain the propriety or impropriety of the ULP charge against the Union.

Foremost among the issues requiring resolution are:

1. Whether or not the unilateral implementation of the JEP constitutes a violation of the CBA provisions requiring the Bank to furnish the Union with the job evaluation implementation timetable within two months from the signing of the CBA on July 30, 1990,[9] and prohibiting the diminution of existing rights, privileges and benefits already granted and enjoyed by the employees;[10]

2. Whether or not the concerted acts committed by the Union were done with just cause and in good faith in the lawful exercise of their alleged right under Article 246 of the Labor Code on non-abridgment of the right to self-organization; and

3. Whether or not the fixing of salaries of future employees pursuant to a job evaluation program is an exclusive management prerogative or should be subject of collective bargaining negotiation.

It does not fare petitioner any better that it had, wittingly or unwittingly, alleged in its Consolidated Reply[11] that the concerted actions began on January 22, 1993 even before the commencement of CBA negotiations which started in March, 1993. Apparently that was an attempt on the part of the Union to rectify the incriminating pronouncement of the labor arbiter in his questioned order to the effect that the challenged activities occurred from March 15 to 23, 1993 during the CBA negotiations. This seemingly conflicting factual allegations are crucial in resolving the issue of whether or not the concerted activities were committed in violation of the Union's duty to bargain collectively and would therefore constitute unfair labor practice.

Likewise, the labor arbiter, in finding that the Union was not motivated by any criminal intent in resorting to said concerted activities, merely gave a sweeping statement without bothering to explain the factual and evidentiary bases therefor. The declaration that there was no damage caused to the Bank by reason of such Union activities remains unsubstantiated. Nowhere is there any showing in the labor arbiter's order of dismissal from which it can be fairly inferred that such a statement is supported by even a preponderance of evidence. What purportedly is an adjudication on the merits is in truth and in fact a short discourse devoid of evidentiary value but very liberal with generalities and hasty conclusions.

The fact that there is an alternative remedy available to the Bank, as the labor arbiter would suggest, will not justify an otherwise erroneous order. It bears emphasizing that by the very nature of an unfair labor practice, it is not only a violation of the civil rights of both labor and management but is also a criminal offense against the State which is subject to prosecution and punishment.[12] Essentially, a complaint for unfair labor practice is no ordinary labor dispute and therefore requires a more thorough analysis, evaluation and appreciation of the factual and legal issues involved.

One further point. The need for a more than cursory disposition on the unfair labor practice issue is made doubly exigent in view of the Bank's allegation in its Comment[13] that a strike has been launched by the Union specifically to protest the