787 Phil. 612

FIRST DIVISION

[G.R. No. 211015, June 20, 2016]

CAGAYAN ELECTRIC POWER & LIGHT COMPANY, INC. (CEPALCO) AND CEPALCO ENERGY SERVICES CORPORATION (CESCO), FORMERLY CEPALCO ENERGY SERVICES & TRADING CORPORATION (CESTCO), PETITIONERS, VS. CEPALCO EMPLOYEE'S LABOR UNION-ASSOCIATED LABOR UNIONS-TRADE UNION CONGRESS OF THE PHILIPPINES (TUCP), RESPONDENT.

[G.R. No. 213835]

CAGAYAN ELECTRIC POWER & LIGHT COMPANY, INC. (CEPALCO) AND CEPALCO ENERGY SERVICES CORPORATION (CESCO), FORMERLY CEPALCO ENERGY SERVICES & TRADING CORPORATION (CESTCO), PETITIONERS, VS. CEPALCO EMPLOYEE'S LABOR UNION-ASSOCIATED LABOR UNIONS-TRADE UNION CONGRESS OF THE PHILIPPINES (TUCP), RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court are petitions for review on *certiorari*[1] which assail: (*a*) in G.R. No. 211015, the Decision[2] dated September 14, 2012 and the Resolution[3] dated January 15, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 03169-MIN; and (*b*) in G.R. No. 213835, the Decision[4] dated November 11, 2013 and the Resolution[5] dated July 17, 2014 of the CA in CA-G.R. SP No. 04296-MIN. In both cases, the CA absolved herein petitioners Cagayan Electric Power & Light Company, Inc. (CEPALCO) and CEPALCO Energy Services Corporation (CESCO), formerly CEPALCO Energy Services & Trading Corporation,[6] from the charges of Unfair Labor Practice (ULP) filed by herein respondent CEPALCO Employee's Labor Union-Associated Labor Unions-Trade Union Congress of the Philippines (respondent), but nonetheless, pronounced that CESCO was engaged in labor-only contracting and that, in consequence, the latter's employees are actually the regular employees of CEPALCO in the same manner and extent as if they were directly employed by CEPALCO.

The Facts

Respondent is the duly certified bargaining representative of CEPALCO's regular rank-and-file employees. On the other hand, CEPALCO is a domestic corporation engaged in electric distribution in Cagayan de Oro and other municipalities in Misamis Oriental; while CESCO is a business entity engaged in trading and services.[7]

On February 19, 2007, CEPALCO and CESCO (petitioners) entered into a Contract for Meter Reading Work[8] where CESCO undertook to perform CEPALCO's ***meter-reading* activities**. As a result, several employees and union members of CEPALCO were relieved, assigned in floating positions, and replaced with CESCO workers,[9] prompting respondent to file a complaint[10] for ULP against petitioners, docketed as **NLRC Case No. RAB-10-07-00408-2007**. Respondent alleged that when CEPALCO engaged CESCO to perform its meter-reading activities, its intention was to evade its responsibilities under the Collective Bargaining Agreement (CBA) and labor laws, and that it would ultimately result in the dissipation of respondent's membership in CEPALCO.[11] Thus, respondent claimed that CEPALCO's act of contracting out services, which used to be part of the functions of the regular union members, is violative of Article 259 (c)[12] of the Labor Code, as amended,[13] governing ULP of employers. It further averred that for engaging in labor-only contracting, the workers placed by CESCO must be deemed regular rank-and-file employees of CEPALCO, and that the Contract for Meter Reading Work be declared null and void.[14]

In defense,[15] petitioners averred that CESCO is an independent job contractor and that the contracting out of the meter-reading services did not interfere with CEPALCO's regular workers' right to self-organize, denying that none of respondent's members was put on floating status.[16] Moreover, they argued that the case is only a labor standards issue, and that respondent is not the proper party to raise the issue regarding the status of CESCO's employees and, hence, cannot seek that the latter be declared as CEPALCO's regular employees.[17]

In a Decision[18] dated August 20, 2008, the Labor Arbiter (LA) dismissed the complaint for lack of merit. The LA found that petitioners have shown by substantial evidence that CESCO carries on an independent business of contracting services, in this case for CEPALCO's meter-reading work, and that CESCO has an authorized capital stock of P100,000,000.00, as well as equipment and materials necessary to carry out its business.[19] As an independent contractor, CESCO is the statutory employer of the workers it supplied to CEPALCO pursuant to their contract.[20] Thus, there is no factual basis to say that CEPALCO committed ULP as there can be no splitting or erosion of the existing rank-and-file bargaining unit that negates interference with the exercise of CEPALCO workers' right to self-organize.[21]

On appeal[22] by respondent, the National Labor Relations Commission (NLRC), in a Decision[23] dated April 30, 2009, affirmed the LA's ruling *in toto*, finding that the evidence proffered by respondent proved inadequate in establishing that the service contract amounted to the interference of the right of the union members to self-organization and collective bargaining.[24]

Respondent's motion for reconsideration[25] was denied in a Resolution[26] dated June 30, 2009; hence, it filed a petition for *certiorari*[27] before the CA, docketed as **CA-G.R. SP No. 03169-MIN**.

Pending resolution of **CA-G.R. SP No. 03169-MIN**, or on January 5, 2010, CEPALCO and CESCO entered into another Contract of Service,[28] this time for the

***warehousing* works** of CEPALCO. Alleging that three (3) union members who were assigned at the warehouse of the logistics department were transferred to other positions and departments without their conformity and, eventually, were replaced by workers recruited by CESCO, respondent filed another complaint[29] for ULP against petitioners, docketed as **NLRC Case No. RAB-10-12-00602-2009**, similarly decrying that CEPALCO was engaged in labor-only contracting and, thus, committed ULP.[30]

As in the first case against them, petitioners posited[31] that CEPALCO did not engage in ULP when it contracted out its warehousing works[32] and that CESCO is an independent contractor.[33] They further reiterated their argument that respondent is not the proper party to seek any form of relief for the CESCO employees.[34]

In a Decision[35] dated July 29, 2010, the LA dismissed the case for lack of merit, citing its earlier decision in **NLRC Case No. RAB-10-07-00408-2007**. It explained that the only difference between the previous case and the present case was that in the former, CEPALCO contracted out its meter-reading activities, while in the latter, it contracted out its warehousing works. However, both cases essentially raised the same issue between the same parties, *i.e.*, whether or not the contracting out of services being performed by the union members constitute ULP.[36] As such, the NLRC applied the principle of *res judicata* under the rule on eonclusiveness of judgment and dismissed the complaint for ULP.[37] At any rate, it found that respondent failed to present substantial evidence that CEPALCO's contracting out of the warehousing works constituted ULP.[38]

On appeal[39] by respondent, the NLRC, in a Resolution[40] dated February 21, 2011, dismissed the appeal and affirmed the LA's ruling *in toto*. Respondent's motion for reconsideration[41] was denied in a Resolution[42] dated April 15, 2011; hence, it elevated the matter to the CA via petition for *certiorari*,[43] docketed as **CA-G.R. SP No. 04296-MIN**.

The Ruling in CA-G.R. SP No. 03169-MIN

In a Decision[44] dated September 14, 2012, the CA partially granted respondent's *certiorari* petition and reversed and set aside the assailed NLRC issuances.

Preliminarily, the CA found that CESCO was engaged in labor-only contracting in view of the following circumstances: (*a*) there was absolutely no evidence to show that CESCO exercised control over its workers, as it was CEPALCO that established the working procedure and methods, supervised CESCO's workers, and evaluated them;[45] (*b*) there is no substantial evidence to show that CESCO had substantial capitalization as it only had a paid-up capital of P51,000.00 as of May 30, 1984, and there was nothing on CESCO's list of machineries and equipment that could have been used for the performance of the meter-reading activities contracted out to it;[46] and (*c*) the workers of CESCO performed activities that are directly related to CEPALCO's main line of business.[47] Moreover, while CESCO presented a Certificate of Registration[48] with the Department of Labor and Employment, the CA held that

it was not a conclusive evidence of CESCO's status as an independent contractor.[49] Consequently, the workers hired by CESCO pursuant to the service contract for the meter-reading activities were declared regular employees of CEPALCO.[50]

However, the CA found no substantial evidence that CEPALCO was engaged in ULP, there being no showing that when it contracted out the meter-reading activities to CESCO, CEPALCO was motivated by ill will, bad faith or malice, or that it was aimed at interfering with its employees' right to self-organize.[51]

Petitioners' motion for reconsideration[52] was denied in a Resolution[53] dated January 15, 2014; hence, the present petition docketed as **G.R. No. 211015**.

The Ruling in CA-G.R. SP No. 04296-MIN

In a Decision[54] dated November 11, 2013, the CA partially granted respondent's petition, finding that CESCO was a labor-only contractor as it had no substantial capitalization, as well as tools, equipment, and machineries used in the work contracted out by CEPALCO.[55] As such, it stated that CESCO is merely an agent of CEPALCO, and that the latter is still responsible to the workers recruited by CESCO in the same manner and extent as if those workers were directly employed by CEPALCO.[56]

Nonetheless, same as the ruling in **CA-G.R. SP No. 03169-MIN**, the CA found that CEPALCO committed no ULP for lack of substantial evidence to establish the same.[57]

Petitioners' motion for reconsideration[58] was denied in a Resolution[59] dated July 17, 2014; hence, the present petition docketed as **G.R. No. 213835**.

The Issues Before the Court

In both **G.R. Nos. 211015** and **213835**,[60] petitioners lament that the CA erred in declaring CESCO as a labor-only contractor notwithstanding the fact that CEPALCO has already been absolved of the charges of ULP. To this, petitioners argue that the issue of whether or not CESCO is an independent contractor was mooted by the finality of the finding that there was no ULP on the part of CEPALCO.[61] Also, they aver that respondent is not a party-in-interest in this issue because the declaration of the CA t&at the employees of CESCO are considered regular employees will not even benefit the respondent.[62] If there is anyone who stands to benefit from such rulings, they are the employees of the CESCO who are not impleaded in these cases. In any event, petitioners insist that CESCO is a legitimate contractor. Overall, they prayed that the assailed CA rulings be reversed and set aside insofar as the CA found CESCO as engaged in labor-only contracting and that its employees are actually the regular employees of CEPALCO.[63]

The Court's Ruling

The petitions are partly meritorious.

At the outset, it is well to note that the status of CESCO as a labor-only contractor was raised in respondent's complaints before the labor tribunals only in relation to the charges of ULP. In particular, respondent, in its complaint in **NLRC Case No. RAB-10-07-00408-2007**, mainly argued that the "[labor-only] contracting agreement between CEPALCO and [CESCO] discriminates regular union member employees and will ultimately result in the dissipation of its ranks in the line maintenance and construction department."[64] This is similar to the thrust of its complaint in **NLRC Case No. RAB-10-12-00602-2009**, wherein they averred that "the [labor-only] contracting arrangement between CEPALCO and [CESCO] discriminates union members and restrains or coerces employees in the exercise of their rights to [self-organization] and collective bargaining[,] and amounts to union busting."[65] As the LA in the latter case aptly observed, "the essential issue between the same parties remain[s] identical: whether the contracting out of activities or services being performed by [u]nion members constitute [ULP]."[66]

Under Article 106[67] of the Labor Code, as amended, labor-only contracting is an arrangement where the contractor, who does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, supplies workers to an employer and the workers recruited are performing activities which are directly related to the principal business of such employer. **Section 5 of Department Order No. 18-02, Series of 2002, otherwise known as the "Rules Implementing Articles 106 to 109 of the Labor Code, As Amended" (DO 18-02), provides the following criteria to gauge whether or not an arrangement constitutes labor-only contracting:**

> ***Section 5. Prohibition against labor-only contracting.*** Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:
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> **i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or**
> **ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.**
>
> The foregoing provisions shall be without prejudice to the application of Article 248 (C) of the Labor Code, as amended.
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> "Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.
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> The "right to control" shall refer to the right reserved to the person for