

## FIRST DIVISION

[ GR. NO. 218454, December 01, 2016 ]

**PENINSULA EMPLOYEES UNION (PEU), \* PETITIONER, VS. MICHAEL B. ESQUIVEL, DOMINGO G. MABUTAS, RANDELL V. AFAN, LOISELLE S. AGUNOD, GEMELO L. ANSELMO, GERYMY ANCHETA, JOYLY V. ASUNCION, CRESENCIA A. BERMEJO, JOSHUA S. BERSAMINA, LITO S. CALINISAN, RANULFO C. CASTILLO, ENRICO C. CASTRO, GERARDO R. CASTRO, GLICERIA H. CELIZ, MARIA POLA R CORDERO, JORGE MARIO C. CORONADO, DOMINGA C. CRUZ, JUSTINE CRUZ, RONALD S. DADIA, ARCHIMEDES S. DALISAY, JOSEF PATRICK P. DE VERA, SERGIO B. DIANE, NONITA M. DOMINGO, JOSELITO E. EDANG, KRISTINE ANNE A. ENGRACIAL, CARLO GILJOSEF A. FORNIER, ELIAS S. GACAD, MEL GARRIDO, PHILLIP MICHAEL C. GAUDINEZ, SILVERIA B. GRAN, RODOR D. HEMEDES, BENIGNO A. HONGCO, LEONARD N. LAMBOT, MELECIO D. LAURENTE III, GRACE MILLISCEN L. LIM, MARIA ALICIA GEZZA D. LLAVE, EULALIA B. LOBATON, WILFREDO G. LOPEZ, GENLIE D. LUCERNA, DOMINGO C. MABUTAS III, CARMELITA A. MALIG, NICANOR T. MANGUIAT, HERVE STEVE A. MARTIN, RODELIO N. MARZO, FLORENCIO A. MASA, JR., EDINA H. MORALES, SYLVIA M. MORALES, ROBERT H. NACINO, ANGELO F. ONA, JEFFERSON O. ONG, DENNIS O. RAMOS, DENNIS S. REMBULAT, BENJIE B. REYES, VICTOR EMMANUEL I. REYES, ANTONIO R. RIOVEROS, MARCELO S. RIPA III, ALLAN T. ROXAS, MARIA B. RUANTO II, RONALD A. SALMON, ARMANDO P. SANTUYO, BRYAN S. SUN, MARYGRACE F. TAMAYO, LORENZVI IRENE U. TAN, MILAGROS O. TELOSA, HERMILO R. TUMBAGA, GINA S. UY, AND VENICE T. VILLAPONDO, RESPONDENTS.**

## DECISION

**PERLAS-BERNABE, J.:**

Before the Court is a petition for review on *certiorari* <sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated February 9, 2015 and the Resolution<sup>[3]</sup> dated May 21, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 124566, which annulled and set aside the Order<sup>[4]</sup> dated March 6, 2012 (March 6, 2012 Order) of the Office of the Secretary (OSEC) of the Department of Labor and Employment (DOLE) in OS-AJ-0024-07 declaring petitioner Peninsula Employees Union (PEU) National Union of Workers in Hotel Restaurants and Allied Industries (NUWHRAIN)<sup>[5]</sup> entitled to collect the amount of two percent (2%) agency fees from The Peninsula Manila Hotel Labor Union (TPMHLU), the former collective bargaining agent,<sup>[6]</sup> and the non-affiliated employees (NAE;<sup>[7]</sup> collectively, non-PEU members), herein represented by respondents Michael B. Esquivel, Domingo G. Mabutas, Randell V. Afan, *et al.*

(respondents), retroactively from July 2010.

### **The Facts**

On December 13, 2007, PEU's Board of Directors passed Local Board Resolution No. 12, series of 2007<sup>[8]</sup> authorizing (a) the affiliation of PEU with NUWHRAIN, and the direct membership of its individual members thereto; (b) the compliance with all the requirements therefor; and (c) the Local President to sign the affiliation agreement with NUWHRAIN upon acceptance of such affiliation.<sup>[9]</sup> On the same day, the said act was submitted to the general membership, and was duly ratified by 223 PEU members.<sup>[10]</sup>

Beginning January 1, 2009, PEU-NUWHRAIN sought to increase the union dues/agency fees from one percent (1%) to two percent (2%) of the rank and file employees' monthly salaries, brought about by PEU's affiliation with NUWHRAIN, which supposedly requires its affiliates to remit to it two percent (2%) of their monthly salaries.<sup>[11]</sup>

Meanwhile, in a Decision<sup>[12]</sup> dated October 10, 2008 (October 10, 2008 Decision), the OSEC resolved the collective bargaining deadlock between PEU-NUWHRAIN and The Peninsula Manila Hotel (Hotel), ordering the parties to execute a collective bargaining agreement (CBA) incorporating the dispositions therein (arbitral award).<sup>[13]</sup> The parties have yet to actually sign a CBA but have, for the most part, implemented the arbitral award.<sup>[14]</sup>

In March 2009, PEU-NUWHRAIN requested<sup>[15]</sup> the OSEC for Administrative Intervention for Dispute Avoidance<sup>[16]</sup> (AIDA) pursuant to DOLE Circular No. 1, series of 2006<sup>[17]</sup> in relation to the issue, among others, of its entitlement to collect increased agency fees from the non-PEU members,<sup>[18]</sup> which was docketed as OSEC-AIDA-03-001-09.<sup>[19]</sup>

The non-PEU members objected to the assessment of increased agency fees arguing that: (a) the new CBA is unenforceable since no written CBA has been formally signed and executed by PEU-NUWHRAIN and the Hotel; (b) the 2% agency fee is exorbitant and unreasonable; and (c) PEU-NUWHRAIN failed to comply with the mandatory requirements for such increase.<sup>[20]</sup>

### **The OSEC's Ruling**

In a Decision<sup>[21]</sup> dated June 2, 2010 (June 2, 2010 Decision), the OSEC upheld PEU-NUWHRAIN's right to collect agency fees from the non-PEU members in accordance with Article 4, Section 2 of the expired CBA, which was declared to be in full force and effect pursuant to the October 10, 2008 Decision, but only at the rate of one percent (1%),<sup>[22]</sup> and denied its bid to increase the agency fees to two percent (2%) for failure to show that its general membership approved the same, noting that: (a) the October 28, 2008 General Membership Resolution<sup>[23]</sup> (GMR) submitted in support of the claimed increase dealt with the approval of the payment of

attorney's fees from the CBA backwages, without reference to any approval of the increase in union dues; and (b) the minutes<sup>[24]</sup> of its October 28, 2008 general membership meeting (October 28, 2008 minutes) merely stated that there was a need to update the individual check-off authorization to implement the two percent (2%) union dues, but was silent as to any deliberation and formal approval thereof.<sup>[25]</sup> The OSEC pointed out that the only direct proof presented for the claimed increase in union dues was the PEU President's application for union membership with PEU-NUWHRAIN<sup>[26]</sup> dated October 29, 2008, together with his Individual Check-Off Authorization<sup>[27]</sup> purportedly dated May 11, 2008, which precedes such application and, thus, cannot be given credence.<sup>[28]</sup>

Dissatisfied, PEU-NUWHRAIN moved for reconsideration,<sup>[29]</sup> attaching thereto copies of: (a) the July 1, 2010 GMR<sup>[30]</sup> confirming and affirming the alleged approval of the deduction of two percent (2%) union dues from the members' monthly basic salaries; (b) the individual check-off authorizations<sup>[31]</sup> dated November 26 and 27, 2008 from three (3) members authorizing the deduction of two percent (2%) union dues from their monthly basic salaries; and (c) payslips<sup>[32]</sup> of some PEU-NUWHRAIN members purportedly showing the deduction of two percent (2%) union dues from their monthly basic pay beginning January 2009.

On March 6, 2012, the OSEC issued an Order<sup>[33]</sup> partially granting PEU-NUWHRAIN's motion for reconsideration, and declaring it entitled to collect two percent (2%) agency fees from the non-PEU members beginning July 2010 since the GMR showing approval for the increase of the union dues from one percent (1%) to two percent (2%) was only procured at that time.<sup>[34]</sup>

Unperturbed, respondents filed a petition for *certiorari*<sup>[35]</sup> with the CA, docketed as CA-GR. SP No. 124566, alleging that the OSEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in allowing PEU-NUWHRAIN to collection increased agency fees despite non-compliance with the legal requirements therefor.<sup>[36]</sup>

### **The CA Ruling**

In a Decision<sup>[37]</sup> dated February 9, 2015, the CA set aside the OSEC's March 6, 2012 Order, and reinstated the June 2, 2010 Decision.<sup>[38]</sup> It ruled that PEU-NUWHRAIN failed to prove compliance with the requisites for a valid check-off since the October 28, 2008 minutes do not show that the increase in union dues was duly approved by its general membership. It also found the July 1, 2010 GMR suspicious considering that it surfaced only after PEU received the OSEC's June 2, 2010 Decision disallowing the collection of increased agency fees.<sup>[39]</sup>

PEU-NUWHRAIN moved for reconsideration,<sup>[40]</sup> which was, however, denied in a Resolution<sup>[41]</sup> dated May 21, 2015; hence, the present petition.

### **The Issue Before the Court**

The essential issue for the Court's resolution is whether or not the CA committed reversible error in ruling that PEU-NUWHRAIN had no right to collect the increased agency fees.

### **The Court's Ruling**

The petition lacks merit.

The recognized collective bargaining union which successfully negotiated the CBA with the employer is given the right to collect a reasonable fee called "agency fee" from non-union members who are employees of the appropriate bargaining unit, in an amount equivalent to the dues and other fees paid by union members, in case they accept the benefits under the CBA.<sup>[42]</sup> While the collection of agency fees is recognized by Article 259<sup>[43]</sup> (formerly Article 248) of the Labor Code, as amended, the legal basis of the union's right to agency fees is neither contractual nor statutory, but quasi-contractual, deriving from the established principle that non-union employees may not unjustly enrich themselves by benefiting from employment conditions negotiated by the bargaining union.<sup>[44]</sup>

In the present case, PEU-NUWHRAIN's right to collect agency fees is not disputed. However, the rate of agency fees it seeks to collect from the non-PEU members is contested, considering its failure to comply with the requirements for a valid increase of union dues, rendering the collection of increased agency fees unjustified.

Case law interpreting Article 250 (n) and (o)<sup>[45]</sup> (formerly Article 241) of the Labor Code, as amended, mandates the submission of three (3) documentary requisites in order to justify a valid levy of increased union dues. These are: (a) an authorization by a written resolution of the majority of all the members at the general membership meeting duly called for the purpose; (b) the secretary's record of the minutes of the meeting, which shall include the list of all members present, the votes cast, the purpose of the special assessment or fees and the recipient of such assessment or fees;<sup>[46]</sup> and (c) individual written authorizations for check-off duly signed by the employees concerned.<sup>[47]</sup>

In the present case, however, PEU-NUWHRAIN failed to show compliance with the foregoing requirements. It attempted to remedy the "inadvertent omission" of the matter of the approval of the deduction of two percent (2%) union dues from the monthly basic salary of each union member through the July 1, 2010 GMR,<sup>[48]</sup> entitled "A GENERAL MEMBERSHIP RESOLUTION AUTHORIZING THE DEDUCTION OF TWO PERCENT (2%) UNION DUES FROM THE MONTHLY BASIC SALARY OF EACH UNION MEMBER," which stated, among others, that:

1. the General Membership Assembly (Assembly) "approved the deduction of two percent (2%) union dues from the monthly basic salary of each union member" during its 8<sup>th</sup> General Membership

Meeting, as shown in the October 28, 2008 minutes;

2. "through inadvertence, the [October 28, 2008 GMR] failed to include the Assembly's approval of the two percent (2%) deduction of union dues;"
3. the July 1, 2010 GMR is being issued "to confirm and affirm what was agreed upon during the 8<sup>th</sup> General Membership Meeting dated October 28, 2008."<sup>[49]</sup>

On the other hand, the adverted October 28, 2008 minutes<sup>[50]</sup> stated, *inter alia*, that:

1. "the [two percent (2%)] Union dues will have to be implemented since PEU was already affiliated with NUWHRAIN [in] 2007";<sup>[51]</sup>
2. "it was discussed, deliberated and approved by the majority of members the (sic) 10% of total CBA back wages through [the Assembly] resolution authorizing the payment of attorney's fees."<sup>[52]</sup>

It is evident from the foregoing that while the matter of implementing the two percent (2%) union dues was taken up during the PEU-NUWHRAIN's 8<sup>th</sup> General Membership Meeting on October 28, 2008, there was no sufficient showing that the same had been duly deliberated and approved. The minutes of the Assembly itself belie PEU-NUWHRAIN's claim that the increase in union dues and the corresponding check-off were duly approved since it merely stated that "the [two percent (2%)] Union dues will have to be implemented,"<sup>[53]</sup> meaning, it would still require the submission of such matter to the Assembly for deliberation and approval. Such conclusion is bolstered by the silence of the October 28, 2008 GMR on the matter of two percent (2%) union dues, *in contrast* to the payment of 10% attorney's fees from the CBA backwages which was clearly spelled out as having been "discussed and approved."<sup>[54]</sup> Thus, as aptly pointed out by the CA: "[i]f indeed majority of the members of [PEU-NUWHRAIN] approved the increase in union dues, the same should have been mentioned in the [October 28, 2008 minutes], and reflected in the GMR of the same date."<sup>[55]</sup>

Having failed to establish due deliberation and approval of the increase in union dues from one percent (1%) to two percent (2%), as well as the deduction of the two percent (2%) union dues during PEU-NUWHRAIN's 8<sup>th</sup> General Membership Meeting on October 28, 2008, there was nothing to confirm, affirm, or ratify through the July 1, 2010 GMR. Contrary to the ruling of the OSEC in its March 6, 2012 Order, the July 1, 2010 GMR, by itself, cannot justify the collection of two percent (2%) agency fees from the non-PEU members beginning July 2010. The Assembly was not called for the purpose of approving the proposed increase in union dues and the