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THIRD DIVISION

[G.R. No. 170054, January 21, 2013]

GOYA, INC., PETITIONER, VS. GOYA, INC. EMPLOYEES UNION-FFW, RESPONDENT.

D E C I S I O N

PERALTA, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure seeks to reverse and set aside the June 16, 2005 Decision[1] and October 12, 2005 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 87335, which sustained the October 26, 2004 Decision[3] of Voluntary Arbitrator Bienvenido E. Laguesma, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered declaring that the Company is NOT guilty of unfair labor practice in engaging the services of PESO.
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> The company is, however, directed to observe and comply with its commitment as it pertains to the hiring of casual employees when necessitated by business circumstances.[4]

The facts are simple and appear to be undisputed.

Sometime in January 2004, petitioner Goya, Inc. (*Company*), a domestic corporation engaged in the manufacture, importation, and wholesale of top quality food products, hired contractual employees from PESO Resources Development Corporation (PESO) to perform temporary and occasional services in its factory in Parang, Marikina City. This prompted respondent Goya, Inc. Employees Union–FFW (*Union*) to request for a grievance conference on the ground that the contractual workers do not belong to the categories of employees stipulated in the existing Collective Bargaining Agreement (CBA).[5] When the matter remained unresolved, the grievance was referred to the National Conciliation and Mediation Board (NCMB) for voluntary arbitration.

During the hearing on July 1, 2004, the Company and the Union manifested before Voluntary Arbitrator (VA) Bienvenido E. Laguesma that amicable settlement was no longer possible; hence, they agreed to submit for resolution the solitary issue of "[w]hether or not [the Company] is guilty of unfair labor acts in engaging the services of PESO, a third party service provider[,] under the existing CBA, laws[,] and jurisprudence."[6] Both parties thereafter filed their respective pleadings.

The Union asserted that the hiring of contractual employees from PESO is not a management prerogative and in gross violation of the CBA tantamount to unfair

labor practice (ULP). It noted that the contractual workers engaged have been assigned to work in positions previously handled by regular workers and Union members, in effect violating Section 4, Article I of the CBA, which provides for three categories of employees in the Company, to wit:

> Section 4. Categories of Employees.– The parties agree on the following categories of employees:
>
> (a) Probationary Employee. – One hired to occupy a regular rank-and-file position in the Company and is serving a probationary period. If the probationary employee is hired or comes from outside the Company (non-Goya, Inc. employee), he shall be required to undergo a probationary period of six (6) months, which period, in the sole judgment of management, may be shortened if the employee has already acquired the knowledge or skills required of the job. If the employee is hired from the casual pool and has worked in the same position at any time during the past two (2) years, the probationary period shall be three (3) months.
> (b) Regular Employee. – An employee who has satisfactorily completed his probationary period and automatically granted regular employment status in the Company.
> (c) Casual Employee, – One hired by the Company to perform occasional or seasonal work directly connected with the regular operations of the Company, or one hired for specific projects of limited duration not connected directly with the regular operations of the Company.

It was averred that the categories of employees had been a part of the CBA since the 1970s and that due to this provision, a pool of casual employees had been maintained by the Company from which it hired workers who then became regular workers when urgently necessary to employ them for more than a year. Likewise, the Company sometimes hired probationary employees who also later became regular workers after passing the probationary period. With the hiring of contractual employees, the Union contended that it would no longer have probationary and casual employees from which it could obtain additional Union members; thus, rendering inutile Section 1, Article III (Union Security) of the CBA, which states:

> Section 1. Condition of Employment. – As a condition of continued employment in the Company, all regular rank-and-file employees shall remain members of the Union in good standing and that new employees covered by the appropriate bargaining unit shall automatically become regular employees of the Company and shall remain members of the Union in good standing as a condition of continued employment.

The Union moreover advanced that sustaining the Company's position would easily weaken and ultimately destroy the former with the latter's resort to retrenchment and/or retirement of employees and not filling up the vacant regular positions

through the hiring of contractual workers from PESO, and that a possible scenario could also be created by the Company wherein it could "import" workers from PESO during an actual strike.

In countering the Union's allegations, the Company argued that: (a) the law expressly allows contracting and subcontracting arrangements through Department of Labor and Employment (DOLE) Order No. 18-02; (b) the engagement of contractual employees did not, in any way, prejudice the Union, since not a single employee was terminated and neither did it result in a reduction of working hours nor a reduction or splitting of the bargaining unit; and (c) Section 4, Article I of the CBA merely provides for the definition of the categories of employees and does not put a limitation on the Company's right to engage the services of job contractors or its management prerogative to address temporary/occasional needs in its operation.

On October 26, 2004, VA Laguesma dismissed the Union's charge of ULP for being purely speculative and for lacking in factual basis, but the Company was directed to observe and comply with its commitment under the CBA. The VA opined:

> We examined the CBA provision [Section 4, Article I of the CBA] allegedly violated by the Company and indeed the agreement prescribes three (3) categories of employees in the Company and provides for the definition, functions and duties of each. Material to the case at hand is the definition as regards the functions of a casual employee described as follows:
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> > *Casual Employee* – One hired by the COMPANY to perform occasional or seasonal work directly connected with the regular operations of the COMPANY, or one hired for specific projects of limited duration not connected directly with the regular operations of the COMPANY.
>
> While the foregoing agreement between the parties did eliminate management's prerogative of outsourcing parts of its operations, it serves as a limitation on such prerogative particularly if it involves functions or duties specified under the aforequoted agreement. It is clear that the parties agreed that in the event that the Company needs to engage the services of additional workers who will perform "occasional or seasonal work directly connected with the regular operations of the COMPANY," or "specific projects of limited duration not connected directly with the regular operations of the COMPANY", the Company can hire casual employees which is akin to contractual employees. If we note the Company's own declaration that PESO was engaged to perform "temporary or occasional services" (See the Company's Position Paper, at p. 1), then it should have directly hired the services of casual employees rather than do it through PESO.
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> It is evident, therefore, that the engagement of PESO is not in keeping with the intent and spirit of the CBA provision in question. It must, however, be stressed that the right of management to outsource parts of its operations is not totally eliminated but is merely limited by the CBA.

> Given the foregoing, the Company's engagement of PESO for the given purpose is indubitably a violation of the CBA.[7]

While the Union moved for partial reconsideration of the VA Decision,[8] the Company immediately filed a petition for review[9] before the Court of Appeals (CA) under Rule 43 of the Revised Rules of Civil Procedure to set aside the directive to observe and comply with the CBA commitment pertaining to the hiring of casual employees when necessitated by business circumstances. Professing that such order was not covered by the sole issue submitted for voluntary arbitration, the Company assigned the following errors:

> THE HONORABLE VOLUNTARY ARBITRATOR EXCEEDED HIS POWER WHICH WAS EXPRESSLY GRANTED AND LIMITED BY BOTH PARTIES IN RULING THAT THE ENGAGEMENT OF PESO IS NOT IN KEEPING WITH THE INTENT AND SPIRIT OF THE CBA.[10]
>
> THE HONORABLE VOLUNTARY ARBITRATOR COMMITTED A PATENT AND PALPABLE ERROR IN DECLARING THAT THE ENGAGEMENT OF PESO IS NOT IN KEEPING WITH THE INTENT AND SPIRIT OF THE CBA.[11]

On June 16, 2005, the CA dismissed the petition. In dispensing with the merits of the controversy, it held:

> This Court does not find it arbitrary on the part of the Hon. Voluntary Arbitrator in ruling that "the engagement of PESO is not in keeping with the intent and spirit of the CBA." The said ruling is interrelated and intertwined with the sole issue to be resolved that is, "Whether or not [the Company] is guilty of unfair labor practice in engaging the services of PESO, a third party service provider[,] under existing CBA, laws[,] and jurisprudence." Both issues concern the engagement of PESO by [the Company] which is perceived as a violation of the CBA and which constitutes as unfair labor practice on the part of [the Company]. This is easily discernible in the decision of the Hon. Voluntary Arbitrator when it held:
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> > x x x x While the engagement of PESO is in violation of Section 4, Article I of the CBA, it does not constitute unfair labor practice as it (sic) not characterized under the law as a gross violation of the CBA. Violations of a CBA, except those which are gross in character, shall no longer be treated as unfair labor practice. Gross violations of a CBA means flagrant and/or malicious refusal to comply with the economic provisions of such agreement. x x x
>
> Anent the second assigned error, [the Company] contends that the Hon. Voluntary Arbitrator erred in declaring that the engagement of PESO is not in keeping with the intent and spirit of the CBA. [The Company]

justified its engagement of contractual employees through PESO as a management prerogative, which is not prohibited by law. Also, it further alleged that no provision under the CBA limits or prohibits its right to contract out certain services in the exercise of management prerogatives.

Germane to the resolution of the above issue is the provision in their CBA with respect to the categories of the employees:

x x x x

A careful reading of the above-enumerated categories of employees reveals that the PESO contractual employees do not fall within the enumerated categories of employees stated in the CBA of the parties. Following the said categories, [the Company] should have observed and complied with the provision of their CBA. Since [the Company] had admitted that it engaged the services of PESO to perform temporary or occasional services which is akin to those performed by casual employees, [the Company] should have tapped the services of casual employees instead of engaging PESO.

In justifying its act, [the Company] posits that its engagement of PESO was a management prerogative. It bears stressing that a management prerogative refers to the right of the employer to regulate all aspects of employment, such as the freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of work, presupposing the existence of employer-employee relationship. On the basis of the foregoing definition, [the Company's] engagement of PESO was indeed a management prerogative. This is in consonance with the pronouncement of the Supreme Court in the case of Manila Electric Company vs. Quisumbing where it ruled that contracting out of services is an exercise of business judgment or management prerogative.

This management prerogative of contracting out services, however, is not without limitation. In contracting out services, the management must be motivated by good faith and the contracting out should not be resorted to circumvent the law or must not have been the result of malicious arbitrary actions. In the case at bench, the CBA of the parties has already provided for the categories of the employees in [the Company's] establishment. [These] categories of employees particularly with respect to casual employees [serve] as limitation to [the Company's] prerogative to outsource parts of its operations especially when hiring contractual employees. As stated earlier, the work to be performed by PESO was similar to that of the casual employees. With the provision on casual employees, the hiring of PESO contractual employees, therefore, is not in keeping with the spirit and intent of their CBA. (Citations omitted)[12]

The Company moved to reconsider the CA Decision,[13] but it was denied;[14] hence, this petition.