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THIRD DIVISION

[G.R. No. 174912, July 24, 2013]

BPI EMPLOYEES UNION-DAVAO CITY-FUBU (BPIEU-DAVAO CITY-FUBU), PETITIONER, VS. BANK OF THE PHILIPPINE ISLANDS (BPI), AND BPI OFFICERS CLARO M. REYES, CECIL CONANAN AND GEMMA VELEZ, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, assailing the April 5, 2006 Decision[1] and August 17, 2006 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 74595 affirming the December 21, 2001[3] and August 23, 2002[4] Resolutions of the National Labor Relations Commission (NLRC) in declaring as valid and legal the action of respondent Bank of the Philippine Islands-Davao City *(BPI-Davao)* in contracting out certain functions to BPI Operations Management Corporation *(BOMC)*.

The Factual Antecedents

BOMC, which was created pursuant to Central Bank[5] Circular No. 1388, Series of 1993 *(CBP Circular No. 1388, 1993)*, and primarily engaged in providing and/or handling support services for banks and other financial institutions, is a subsidiary of the Bank of Philippine Islands *(BPI)* operating and functioning as an entirely separate and distinct entity.

A service agreement between BPI and BOMC was initially implemented in BPI's Metro Manila branches. In this agreement, BOMC undertook to provide services such as check clearing, delivery of bank statements, fund transfers, card production, operations accounting and control, and cash servicing, conformably with BSP Circular No. 1388. Not a single BPI employee was displaced and those performing the functions, which were transferred to BOMC, were given other assignments.

The Manila chapter of BPI Employees Union *(BPIEU-Metro Manila-FUBU)* then filed a complaint for unfair labor practice *(ULP)*. The Labor Arbiter (LA) decided the case in favor of the union. The decision was, however, reversed on appeal by the NLRC. BPIEU-Metro Manila-FUBU filed a petition for *certiorari* before the CA which denied it, holding that BPI transferred the employees in the affected departments in the pursuit of its legitimate business. The employees were neither demoted nor were their salaries, benefits and other privileges diminished.[6]

On January 1, 1996, the service agreement was likewise implemented in Davao City. Later, a merger between BPI and Far East Bank and Trust Company *(FEBTC)* took effect on April 10, 2000 with BPI as the surviving corporation. Thereafter, BPI's

cashiering function and FEBTC's cashiering, distribution and bookkeeping functions were handled by BOMC. Consequently, twelve (12) former FEBTC employees were transferred to BOMC to complete the latter's service complement.

BPI Davao's rank and file collective bargaining agent, BPI Employees Union-Davao City-FUBU *(Union)*, objected to the transfer of the functions and the twelve (12) personnel to BOMC contending that the functions rightfully belonged to the BPI employees and that the Union was deprived of membership of former FEBTC personnel who, by virtue of the merger, would have formed part of the bargaining unit represented by the Union pursuant to its union shop provision in the CBA.[7]

The Union then filed a formal protest on June 14, 2000 addressed to BPI Vice Presidents Claro M. Reyes and Cecil Conanan reiterating its objection. It requested the BPI management to submit the BOMC issue to the grievance procedure under the CBA, but BPI did not consider it as "grievable." Instead, BPI proposed a Labor Management Conference (LMC) between the parties.[8]

During the LMC, BPI invoked management prerogative stating that the creation of the BOMC was to preserve more jobs and to designate it as an agency to place employees where they were most needed. On the other hand, the Union charged that BOMC undermined the existence of the union since it reduced or divided the bargaining unit. While BOMC employees perform BPI functions, they were beyond the bargaining unit's coverage. In contracting out FEBTC functions to BOMC, BPI effectively deprived the union of the membership of employees handling said functions as well as curtailed the right of those employees to join the union.

Thereafter, the Union demanded that the matter be submitted to the grievance machinery as the resort to the LMC was unsuccessful. As BPI allegedly ignored the demand, the Union filed a notice of strike before the National Conciliation and Mediation Board *(NCMB)* on the following grounds:

a) Contracting out services/functions performed by union members that interfered with, restrained and/or coerced the employees in the exercise of their right to self-organization;
b) Violation of duty to bargain; and
c) Union busting.[9]

BPI then filed a petition for assumption of jurisdiction/certification with the Secretary of the Department of Labor and Employment *(DOLE)*, who subsequently issued an order certifying the labor dispute to the NLRC for compulsory arbitration. The DOLE Secretary directed the parties to cease and desist from committing any act that might exacerbate the situation.

On October 27, 2000, a hearing was conducted. Thereafter, the parties were required to submit their respective position papers. On November 29, 2000, the Union filed its Urgent Omnibus Motion to Cease and Desist with a prayer that BPI-Davao and/or Mr. Claro M. Reyes and Mr. Cecil Conanan be held in contempt for the following alleged acts of BPI:

1. The Bank created a Task Force Committee on November 20, 2000 composed of six (6) former FEBTC employees to handle the Cashiering, Distributing, Clearing, Tellering and Accounting functions of the former FEBTC branches but the "task force" conducts its business at the office of the BOMC using the latter's equipment and facilities.

2. On November 27, 2000, the bank integrated the clearing operations of the BPI and the FEBTC. The clearing function of BPI, then solely handled by the BPI Processing Center prior to the labor dispute, is now encroached upon by the BOMC because with the merger, differences between BPI and FEBTC operations were diminished or deleted. What the bank did was simply to get the total of all clearing transactions under BPI but the BOMC employees process the clearing of checks at the Clearing House as to checks coming from former FEBTC branches. Prior to the labor dispute, the run-up and distribution of the checks of BPI were returned to the BPI processing center, now all checks whether of BPI or of FEBTC were brought to the BOMC. Since the clearing operations were previously done by the BPI processing center with BPI employees, said function should be performed by BPI employees and not by BOMC.[10]

On December 21, 2001, the NLRC came out with a resolution upholding the validity of the service agreement between BPI and BOMC and dismissing the charge of ULP. It ruled that the engagement by BPI of BOMC to undertake some of its activities was clearly a valid exercise of its management prerogative.[11] It further stated that the spinning off by BPI to BOMC of certain services and functions did not interfere with, restrain or coerce employees in the exercise of their right to self-organization.[12] The Union did not present even an iota of evidence showing that BPI had terminated employees, who were its members. In fact, BPI exerted utmost diligence, care and effort to see to it that no union member was terminated.[13] The NLRC also stressed that Department Order *(D.O.)* No. 10 series of 1997, strongly relied upon by the Union, did not apply in this case as BSP Circular No. 1388, series of 1993, was the applicable rule.

After the denial of its motion for reconsideration, the Union elevated its grievance to the CA *via* a petition for *certiorari* under Rule 65. The CA, however, affirmed the NLRC's December 21, 2001 Resolution with modification that the enumeration of functions listed under BSP Circular No. 1388 in the said resolution be deleted. The CA noted at the outset that the petition must be dismissed as it merely touched on factual matters which were beyond the ambit of the remedy availed of.[14] Be that as it may, the CA found that the factual findings of the NLRC were supported by substantial evidence and, thus, entitled to great respect and finality. To the CA, the NLRC did not act with grave abuse of discretion as to merit the reversal of the resolution.[15]

Furthermore, the CA ratiocinated that, considering the ramifications of the corporate merger, it was well within BPI's prerogatives "to determine what additional tasks should be performed, who should best perform it and what should be done to meet

the exigencies of business."[16] It pointed out that the Union did not, by the mere fact of the merger, become the bargaining agent of the merged employees[17] as the Union's right to represent said employees did not arise until it was chosen by them.[18]

As to the applicability of D.O. No. 10, the CA agreed with the NLRC that the said order did not apply as BPI, being a commercial bank, its transactions were subject to the rules and regulations of the BSP.

Not satisfied, the Union filed a motion for reconsideration which was, however, denied by the CA.

Hence, the present petition with the following

ASSIGNMENT OF ERRORS:

A. THE PETITION BEFORE THE COURT OF APPEALS INVOLVED QUESTIONS OF LAW AND ITS DECISION DID NOT ADDRESS THE ISSUE OF WHETHER BPI'S ACT OF OUTSOURCING FUNCTIONS FORMERLY PERFORMED BY UNION MEMBERS VIOLATES THE CBA.

B. THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT DOLE DEPARTMENT ORDER NO. 10 DOES NOT APPLY IN THIS CASE.

The Union is of the position that the outsourcing of jobs included in the existing bargaining unit to BOMC is a breach of the union-shop agreement in the CBA. In transferring the former employees of FEBTC to BOMC instead of absorbing them in BPI as the surviving corporation in the merger, the number of positions covered by the bargaining unit was decreased, resulting in the reduction of the Union's membership. For the Union, BPI's act of arbitrarily outsourcing functions formerly performed by the Union members and, in fact, transferring a number of its members beyond the ambit of the Union, is a violation of the CBA and interfered with the employees' right to self organization. The Union insists that the CBA covers the agreement with respect, not only to wages and hours of work, but to all other terms and conditions of work. The union shop clause, being part of these conditions, states that the regular employees belonging to the bargaining unit, including those absorbed by way of the corporate merger, were required to join the bargaining union "as a condition for employment." Simply put, the transfer of former FEBTC employees to BOMC removed them from the coverage of unionized establishment. While the Union admitted that BPI has the prerogative to determine what should be done to meet the exigencies of business in accordance with the case of *Sime Darby Pilipinas, Inc. v. NLRC*,[19] it insisted that the exercise of management prerogative is not absolute, thus, requiring good faith and adherence to the law and the CBA. Citing the case of *Shell Oil Workers' Union v. Shell Company of the Philippines, Ltd.*, [20] the Union claims that it is unfair labor practice for an employer to outsource the positions in the existing bargaining unit.

Position of BPI-Davao

For its part, BPI defended the validity of its service agreement with BOMC on three (3) grounds: 1] that it was pursuant to the prevailing law at that time, CBP Circular No. 1388; 2] that the creation of BOMC was within management prerogatives intended to streamline the operations and provide focus for BPI's core activities; and 3] that the Union recognized, in its CBA, the exclusive right and prerogative of BPI to conduct the management and operation of its business.[21]

BPI argues that the case of *Shell Oil Workers' Union v. Shell Company of the Philippines, Ltd*.,[22] cited by the Union, is not on all fours with the present case. In said case, the company dissolved its security guard section and replaced it with an outside agency, claiming that such act was a valid exercise of management prerogative. The Court, however, ruled against the said outsourcing because there was an express assurance in the CBA that the security guard section would continue to exist. Having failed to reserve its right to effect a dissolution, the company's act of outsourcing and transferring security guards was invalidated by the Court, ruling that the unfair labor practice strike called by the Union did have the impression of validity. In contrast, there is no provision in the CBA between BPI and the Union expressly stipulating the continued existence of any position within the bargaining unit. For BPI, the absence of this peculiar fact is enough reason to prevent the application of *Shell* to this case.

BPI likewise invokes settled jurisprudence,[23] where the Court upheld the acts of management to contract out certain functions held by employees, and even notably those held by union members. In these cases, the decision to outsource certain functions was a justifiable business judgment which deserved no judicial interference. The only requisite of this act is good faith on the part of the employer and the absence of malicious and arbitrary action in the outsourcing of functions to BOMC.

On the issue of the alleged curtailment of the right of the employees to self-organization, BPI refutes the Union's allegation that ULP was committed when the number of positions in the bargaining was reduced. It cites as correct the CA ruling that the representation of the Union's prospective members is contingent on the choice of the employee, that is, whether or not to join the Union. Hence, it was premature for the Union to claim that the rights of its prospective members to self-organize were restrained by the transfer of the former FEBTC employees to BOMC.

The Court's Ruling

In essence, the primordial issue in this case is whether or not the act of BPI to outsource the cashiering, distribution and bookkeeping functions to BOMC is in conformity with the law and the existing CBA. Particularly in dispute is the validity of the transfer of twelve (12) former FEBTC employees to BOMC, instead of being absorbed in BPI after the corporate merger. The Union claims that a union shop agreement is stipulated in the existing CBA. It is unfair labor practice for employer to outsource the positions in the existing bargaining unit, citing the case of *Shell Oil Workers' Union v. Shell Company of the Philippines, Ltd.*[24]

The Union's reliance on the Shell Case is misplaced. The rule now is covered by