

SECOND DIVISION

[G.R. Nos. 171594-96, September 18, 2013]

**ASIA BREWERY, INC., PETITIONER, VS. TUNAY NA PAGKAKAISA
NG MGA MANGGAGAWA SA ASIA (TPMA), RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

In cases of compulsory arbitration before the Secretary of labor pursuant to Article 263(g) of the labor Code, the financial statements of the employer must be properly audited by an external and independent auditor in order to be admissible in evidence for purposes of determining the proper wage award.

This Petition for Review on *Certiorari* assails the Court of Appeal's (CA) (October 6, 2005 Decision^[1] and the February 17, 2006 Amended Decisions^[2] in CAG.R. SP Nos. 80839, 81639, and 83168 which modified the January 19, 2004 Decision^[3] of the Secretary of Labor in ()S-AJ-0042-2003.

Factual Antecedents

The antecedents are aptly summarized by the CA:

[Respondent union] Tunay Na Pagkakaisa ng mga Manggagawa sa Asia (TPMA) is a legitimate labor organization, certified as the sole and exclusive bargaining agent of all regular rank and file employees of [petitioner corporation] Asia Brewery, Incorporated (ABI). The [petitioner corporation], on the other hand, is a company engaged in the manufacture, sale and distribution of beer, shandy, glass and bottled water products. It employs about 1,500 workers and has existing distributorship agreements with at least 13 companies.

[Respondent union] and [petitioner corporation] had been negotiating for a new collective bargaining agreement (CBA) for the years 2003-2006 since the old CBA expired last July 2003. After about 18 sessions or negotiations, the parties were still unable to reconcile their differences on their respective positions on most items, particularly on wages and other economic benefits.

On October 21, 2003, the [respondent union] declared a deadlock. On October 27, 2003, [respondent union] filed a notice of strike with the National Conciliation and Mediation Board (NCMB), docketed as NCMB-RB-IV-LAG- NS-10-064-03. However, the parties did not come to terms even before the NCMB.

On November 18, 2003, [respondent union] conducted a strike vote. Out

of the 840 union members, 768 voted in favor of holding a strike.

On November 20, 2003, [petitioner corporation] then petitioned the Secretary of the Department of Labor and Employment (DOLE) to assume jurisdiction over the parties' labor dispute, invoking Article 263 (g) of the Labor Code. In answer, [respondent union] opposed the assumption of jurisdiction, reasoning therein that the business of [petitioner corporation] is not indispensable to the national interest.

On December 2, 2003, [respondent union] filed before [the Court of Appeals] a petition for injunction, docketed as CA-G.R. SP No. 80839, which sought to enjoin the respondent Secretary of Labor from assuming jurisdiction over the labor dispute, or in the alternative, to issue a temporary restraining order, likewise to enjoin the former from assuming jurisdiction.

On December 19, 2003, the public respondent, through Undersecretary/ Acting Secretary Manuel G. Imson, issued an order assuming jurisdiction over the labor dispute between the [respondent union] and [petitioner corporation]. The pertinent portions of the said order read:

x x x x

"WHEREFORE, based on our considered determination that the current labor dispute is likely to adversely affect national interest, this Office hereby ASSUME[S] JURISDICTION over the labor dispute between the ASIA BREWERY[,] INCORPORATED and the TUNAY NA PAGKAKAISA NG MANGGAGAWA SA ASIA pursuant to Article 263 (g) of the Labor Code, as amended. Accordingly, any strike or lockout in the Company, whether actual or impending, is hereby enjoined. Parties are hereby directed to cease and desist from taking any action that might exacerbate the situation.

x x x x

"To expedite the resolution of this dispute, the parties are directed to submit in three (3) copies, their Position Papers within ten (10) days from receipt of this Order and another five (5) days from receipt of the said position papers to submit their Reply.

1. "The Company shall be required to provide:
 - Complete Audited Financial Statements for the
 - "a. past five (5) years certified as to its completeness by the Chief Financial Comptroller or Accountant;
 - "b. Projected Financial Statements of the Company for the next three (3) years;
 - "c. CBA history as to economic issues; and
 - "d. The average monthly salary of the employees in this bargaining unit.
- "2. The Union is required to provide an itemized summary of their CBA demands with financial costing

and sample CBA's (if any) in similarly situated or comparable bargaining units.

"In the interest of speedy labor justice, this Office will entertain no motion for extension or postponement.

"The appropriate police authority is hereby deputized to enforce this Order in case of defiance or the same is not forthwith obeyed.

"SO ORDERED."

x x x x

On January 19, 2004, [respondent union] filed another petition for certiorari with [the Court of Appeals], docketed as CA-G.R. SP No. 81639, imputing bad faith and grave abuse of discretion to the Secretary of Labor. [Respondent union] prayed therein for the nullification of the order of assumption of jurisdiction and the declaration that [petitioner corporation] is not an industry indispensable to the national interest.

In the meantime, in a decision dated January 19, 2004, Secretary of Labor Patricia Sto. Tomas resolved the deadlock between the parties. As summarized in a later resolution, the public respondent granted the following arbitral awards:

(1)WAGE INCREASES as follows:

First
Year = P18.00
Second
Year= 15.00
Third
Year = 12.00
Total = P45.00

(2)HEALTH CARE (HMO)

P1,300 premium to be shouldered by Asia Brewery, Inc., for each covered employee and P1,800 contribution [for each] Union member-dependent.

x x x x

The [respondent union] moved for a reconsideration of the decision on the ground that the ruling lacks evidentiary proof to sufficiently justify the same. It also filed a "Paglilinaw o Pagwawasto" of the Decision. Similarly, [petitioner corporation] also filed a motion for clarification/reconsideration. The respondent Secretary of Labor resolved all three motions in a resolution dated January 29, 2004 x x x.

x x x x

Thereafter, on February 9, 2004, the parties executed and signed the Collective Bargaining Agreement with a term from August 1, 2003 to July

31, 2006.

Subsequently, on April 1, 2004, [respondent union] filed another petition for certiorari before [the Court of Appeals], which was docketed as SP-83168, assailing the arbitral award and imputing grave abuse of discretion upon the public respondent.

x x x x^[4]

Court of Appeal's Ruling

On October 6, 2005, the CA rendered the first assailed Decision affirming with modification the arbitral award of the Secretary of Labor, viz:

WHEREFORE, judgment is hereby rendered with the following rulings:

- 1) The assailed order dated December 19, 2003 of public respondent Secretary of Labor is **AFFIRMED**. The petitions for injunction and certiorari in CA-G.R. SP Nos. 80839 and 81639 are **denied** and accordingly **DISMISSED**.
- 2) In CA-G.R. SP No. 81368, the assailed decision dated January 19, 2004 and the order dated January 29, 2004 of the public respondent are hereby **MODIFIED to read as follows**:
 - a) The present CBA is declared effective as of August 1, 2003;
 - b) Consequently, the employees are entitled to the arbitral awards or benefits from August 1, 2003 on top of the P2,500.00 signing bonus;
 - c) The computation of the wage increase is **REMANDED** to the public respondent; and
 - d) The health benefit of the employees shall be P1,390.00.

SO ORDERED.^[5]

In modifying the arbitral award of the Secretary of Labor, the CA ruled that: (1) The effectivity of the CBA should be August 1, 2003 because this is the date agreed upon by the parties and not January 1, 2004 as decreed by the Secretary of Labor; (2) The computation of wage increase should be remanded to the Secretary of Labor because the computation was based on petitioner corporation's unaudited financial statements, which have no probative value pursuant to the ruling in *Restaurante Las Conchas v. Llego*,^[6] and was done in contravention of DOLE Advisory No. 1, Series of 2004, which contained the guidelines in resolving bargaining deadlocks; and (3) The health benefits should be P1,390.00 per covered employee because petitioner corporation had already agreed to this amount and the same cannot be altered or reduced by the Secretary of Labor.

Aggrieved, respondent union and petitioner corporation moved for reconsideration and partial reconsideration, respectively. On February 17, 2006, the CA issued an Amended Decision, viz:

WHEREFORE, the foregoing considered, the Motion for Reconsideration of [respondent union] is **DENIED** and the Partial Motion for Reconsideration of [petitioner corporation] is **PARTIALLY GRANTED**. Accordingly, Our Decision is MODIFIED and the signing bonus previously

awarded is hereby **DELETED**. The assailed Decision of the respondent Secretary with respect to the issue on salary increases is **REMANDED** to her office for a definite resolution within one month from the finality of this Court's Decision using as basis the externally audited financial statements to be submitted by [petitioner corporation].

SO ORDERED.^[7]

The CA partially modified its previous Decision by deleting the award of the signing bonus. It ruled that, pursuant to the express provisions of the CBA, the signing bonus is over and beyond what the parties agreed upon in the said CBA.

From this Amended Decision, only petitioner corporation appealed to this Court *via* this Petition for Review on *Certiorari*.

Issues

Petitioner corporation raises the following issues for our resolution:

- I. Whether the CA erred when it failed to dismiss CA-G.R. SP No. 83168 despite the lack of authority of those who instituted it.
- II. Whether the CA erred when it remanded to the Secretary of Labor the issue on wage increase.
- III. Whether the CA erred when it awarded P1,390.00 as premium payment for each covered employee.^[8]

Our Ruling

The Petition lacks merit.

The authority of Rodrigo Perez (Perez) to file the petition before the CA was not sufficiently refuted.

Petitioner corporation claims that Perez, the person who verified the Petition in CA-G.R. SP No. 83168 questioning the propriety of the arbitral award issued by the Secretary of Labor, was without authority to represent respondent union. While there was a Secretary's Certificate attached to the aforesaid Petition purportedly authorizing Perez to file the Petition on behalf of the union, there was no showing that the union president, Jose Manuel Miranda (Miranda), called for and presided over the meeting when the said resolution was adopted as required by the union's constitution and by-laws. Moreover, the aforesaid resolution was adopted on March 23, 2004 while the Petition was filed on April 1, 2004 or nine days from the adoption of the resolution. Under the union's constitution and by-laws, the decision of the board of directors becomes effective only after two weeks from its issuance. Thus, at the time of the filing of the aforesaid Petition, the resolution authorizing Perez to file the same was still ineffective. Petitioner corporation also adverts to two labor cases allegedly divesting Perez of authority to represent the union in the case before the appellate court.

We disagree.