

## THIRD DIVISION

**[ G.R. No. 169940, September 14, 2009 ]**

**UNIVERSITY OF SANTO TOMAS, PETITIONER, VS. SAMAHANG MANGGAGAWA NG UST (SM-UST), RESPONDENT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

Assailed in this petition for review on certiorari is the January 31, 2005 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 72965, which affirmed the May 31, 2002 Order of the Secretary of the Department of Labor and Employment (DOLE) directing the parties to execute a Collective Bargaining Agreement incorporating the terms in said Order with modification that the signing bonus is increased to P18,000.00. Also assailed is the September 23, 2005 Resolution<sup>[2]</sup> denying the motion for reconsideration.

Respondent Samahang Manggagawa ng U.S.T. (SM-UST) was the authorized bargaining agent of the **non-academic/non-teaching rank-and-file daily- and monthly-paid employees** (numbering about 619) of petitioner, the Pontifical and Royal University of Santo Tomas, The Catholic University of the Philippines (or UST), a private university in the City of Manila run by the Order of Preachers. In October 2001, during formal negotiations for a new collective bargaining agreement (CBA) for the academic year 2001 through 2006, petitioner submitted its "2001-2006 CBA Proposals" which, among others, contained the following economic provisions:

#### **A. ACADEMIC YEAR 2001-2002**

1. Salary increase of P800.00 per month
2. Signing bonus of P10,000.00
3. Additional Christmas bonus of P2,000.00

#### **B. ACADEMIC YEAR 2002-2003**

1. Salary increase of P1,500.00 per month
2. Additional Christmas bonus of P2,000.00
3. P6,000,000.00 for salary restructuring

#### **C. ACADEMIC YEAR 2003-2004**

1. Salary increase of P1,700.00 per month
2. Additional Christmas bonus of P2,000.00

In November 2001, the parties agreed in principle on all non-economic provisions of the proposed CBA, except those pertaining to Agency Contract or contractualization (Art. III, Sec. 3 of the proposed CBA), Union Leave of the SM-UST President (No. 4 of the Addendum to the proposed CBA), and hiring preference.

In December 2001, petitioner submitted its **final offer** on the economic provisions, thus:

#### **A. ACADEMIC YEAR 2001-2002**

1. Salary increase of P1,000.00 per month
2. Signing bonus of P10,000.00
3. Additional Christmas bonus of P2,000.00

#### **B. ACADEMIC YEAR 2002-2003**

1. Salary increase of P1,700.00 per month
2. Additional Christmas bonus of P2,000.00
3. P6,190,000.00 to be distributed in the form of salary restructuring

#### **C. ACADEMIC YEAR 2003-2004**

1. Salary increase of P2,000.00 per month
2. Additional Christmas bonus of P2,000.00

On the other hand, respondent reduced its demands for the first year from P8,000.00 monthly salary increase per employee to P7,000.00, and from P75,000.00 signing bonus to P60,000.00 for each employee, but petitioner insisted on its final offer. As a result, respondent declared a deadlock and filed a notice of strike with the National Conciliation and Mediation Board -National Capital Region (NCMB-NCR).

Conciliation and mediation proved to be futile, such that in January 2002, majority of respondent's members voted to stage a strike. However, the DOLE Secretary timely assumed jurisdiction over the dispute, and the parties were summoned and heard on their respective claims, and were required to submit their respective position papers.

On May 31, 2002, the DOLE Secretary issued an Order,<sup>[3]</sup> the pertinent portions of which read, as follows:

x x x In arguing on the reasonableness of its demands, it cites the income of the school from tuition fee increases and the allocation of this amount to the faculty and non-teaching employees of the School x x x. According to the Union, the School's estimate of the tuition fee increase for the school year 2003-2004 at P76,410,000.00 is erroneous. The Union argues that the total income of the School from tuition fee increases for school year 2003-2004 is P101,000,000.00 more or less, or a net of P98,252,187.36, after deducting adjustments for additional charges, allowances and discounts. This is based on the computation of the School's Assistant Chief Accountant x x x.

x x x x

The Union feels that the members of the bargaining unit are the least favored. On the wage increases alone, the Union points out that a comparison of the average monthly salary of the non-academic personnel from school year 1995-1996 up to school year 1999-2000 shows a declining relative percentage. For this period, the bargaining unit enjoyed an average monthly salary increase of 14.234%, the lowest being 8.9% in school year 1998-1999 and the highest being 15.38% in school year 1995-1996. The School's offer for this CBA cycle translates to an increase of only 8.23%, specified as follows: (1) 5.69% increase in school year 2000-2001 (P1,000.00); (2) 9.15% increase in school year 2001-2002 (P1,700.00); and (3) 9.86% increase in 2002-2003 (P2,000.00).

The Union also submits a comparative chart of the allocation to non-academic personnel of the 70% increase in tuition fees from school year 1996-1997 to 1999-2000 x x x. The average percentage allocation to non-academic personnel during this period is 32.8% of the total 70% of total tuition fee increases, the lowest being 20.83% for the school year 1999-2000 and the highest being 43.11% of the total allocation in 1997-1998. Using P101,036,330.37 as the estimated increase in tuition fee, 70% of this amount, net of adjustment, is P68,775,831.15 x x x. The Union argues that it is entitled to at least the average percentage of allocation to it for the past four (4) school years which is at 32.85%, or P22,592,860.53 of the total allocation of P68,775,831.15.

It maintains, however, that it is entitled to more than the average percentage of its allocation of the total 70% because it is School practice to allocate more than 70% of the total tuition fee increases for the salaries and benefits of School employees. Comparing the employees' share in the tuition fee increases from school year 1996-1997 to 1999-2000, the School allocated an average percentage of 76.75% for the benefits and salaries of its personnel, or from a low of 72% in 1998-1999 to a high of 84.4% in 1996-1997 x x x. If the average is applied this year, the Union argues that the available amount is P75,407,786.29. Because of this practice, the Union maintains that the School is already estopped from arguing that the allocation for employee wages and benefits should not exceed 70% of tuition fee increases.

Aside from this amount, the Union maintains that it is entitled to an additional P15,475,000.00, sourced from other income, for the signing bonus or one-time grant of P25,000.00 per member x x x. The Union alleges that it is school practice to appropriate other funds for the wages and benefits of its employees. For the school year 1996-1997, the School used funds from other sources to fund the P2,000,000.00 hospitalization fund and 50% of the signing bonus for the academic personnel; in 1997-1998 and 1998-1999, it used additional funds for the P1,000,000.00 hospitalization fund of the academic personnel; and in 1999-2000, it used other funds to finance the one-time grant of P10,000.00 each to the non-academic personnel and additional P4,000,000.00 for the hospitalization fund of the academic employees or a total of P17,592,500.00 for the past four (4) academic years x x x.

The School cannot claim that the funds are insufficient to cover the expenses for the CBA because for the fiscal year 2000-2001 alone, the accumulated excess of revenues over expenses at the end of the year totaled P148,881,678.00 x x x. The Statement of Revenues and Expenses from School Operations collated from the audited Financial Statements of the School for the school years 1996-1997 up to 2000-2001 shows that except for school years 1996-1997 and 2000-2001, the School posted a net income from school operations. Its average annual net income from school operations alone is P7,956,187.00 and the net loss in 2000-2001 was a result of the revaluation of the Main Building as part of the assets from its fully depreciated value so that a new depreciation cost was reported and charged to general expenses.

From the foregoing arguments, the Union demands that an amount should be allocated to it annually to

finance its demands as follows:

1st Year - P38,067,860.00 distributed as follows: P22,592,860.53 (share from tuition fee increases) for the economic benefits with sliding effect on the succeeding years; plus P15,475,000.00 for the one-time signing bonus of P25,000.00 for each employee sourced from other funds.

2nd Year - P33,568,970.00 to apply to its demand for salary increase, Christmas bonus, rice subsidy and clothing/uniform allowance.

3rd Year - P46,653,295.37 to apply to its demand for salary increase, Christmas bonus, medicine allowance, mid-year bonus allowance and meal allowance.

Based on the Union's computation, its demands will cost the School a total of P133,765,125.37 for the entire three (3) year period.

x x x x

Given all the foregoing, we cannot follow the Union's formula and in effect disregard the School's two other bargaining units; to do so is a distortion of economic reality that will not bring about long term industrial peace. We cannot simply adopt the School's proposal in light of the parties' bargaining history, particularly the pattern of increases in the last cycle. Considering all these, we believe the following to be a fair and reasonable resolution of the wage issue.

1<sup>st</sup> Year - P1,000.00/month

2<sup>nd</sup> Year - P2,000.00/month

3<sup>rd</sup> Year - P2,200.00/month

These increases, at a three-year total of P68,337,600, are less than the three (3)-year increases in the last CBA cycle to accommodate the School's proven lack of capacity to afford a higher increase, but are still substantial enough to accommodate the workers' needs while taking into account the symmetry that must be maintained with the wages of the other bargaining units. On a straight line aggregate of P5,200.00, the non-academic personnel will receive P498.48 less than an Instructor I (member of the faculty union) who received an aggregate of P5,698.48, thus maintaining the gap between the teaching and non-teaching personnel. The salary difference will as well be maintained over the three (3)-year period of the CBA. An RFI employee (member of the union's bargaining unit) will receive a monthly salary of P21,695.95 while an Instructor I (faculty union member) will have a salary of P22,948.00; while an RF5-5/A (member of the union's bargaining unit) will receive a salary of P23,462.97 compared to an Asst. Prof. 1 (faculty) who will receive P29,250.96. From a total cost of salary increases for the first year at P7,428,000, these costs will escalate to P22,284,000 in the second year, and to P38,625,000 at the third year. Given these figures, the amounts available for distribution and the member of groups sharing these amounts, these increases are by no means minimal.

#### **Signing Bonus**

A review of the past bargaining history of the parties shows that the School as a matter of course grants a signing bonus. This ranged from P8,000.00 during the first three (3) years of the last CBA to P10,000.00 during the remaining two (2) years of the re-negotiated term. In this instance, the School's offer of P10,000.00 signing bonus is already reasonable considering that the School could have taken the position that no signing bonus is due on compulsory arbitration in line with the ruling in *Meralco v. Quisumbing et al.*, G.R. No. 127598, 27 January 1999.

#### **Christmas Bonus**

We note that the members of the bargaining unit receive a P6,500.00 Christmas bonus. Considering this current level, we believe that the School's offer of P2,000.00 for each of the next three (3) years of the CBA is already reasonable. Under this grant, the workers' Christmas bonus will stand at a total of P12,500 at the end of the third year.

#### **Hospitalization Benefit**

We believe that the current practice is already reasonable and should be maintained.

#### **Meal Allowance**

The Union failed to show any justification for its demand on this item, hence its demand on the increase of meal allowance is denied.

#### **Rice Allowance**

We believe an additional 2 sacks of rice on top of the existing 6 sacks of rice is reasonable and is hereby granted, effective on the second year.

#### **Medical Allowance**

In the absence of any clear justification for an improvement of this benefit, we find the existing practice to be already reasonable and should be maintained.

#### **Uniform/Clothing**

The Union has not established why the School should grant the benefit; hence this demand is denied.

#### **Mid-year Bonus**

The P3,000.00 bonus is already fair and should be maintained.

#### **Hazard Pay**

There is no basis to increase this benefit, the current level being fair and reasonable.

#### **Educational Benefit**

The existing provision is already generous and should be maintained.

#### **Retirement Plan**

We are convinced that the 100% of basic salary per year of service is already reasonable and should be maintained.

#### **Hiring Preference**

Based on the Minutes of Meeting on 18 October 2001 and 8 November 2001, the parties agreed to retain the existing provision; hence, our ruling on this matter is no longer called for.

#### **Contractualization**

The Union's proposed amendments are legal prohibitions which need not be incorporated in the CBA. The Union has alternative remedies if it desires to assail the School's contracts with agencies.

#### **Full-time Union Leave of Union President**

The Union failed to provide convincing reasons why this demand should be favorably granted; hence, the same is denied.

#### **Other Demands**

All other demands not included in the defined deadlock issues are deemed abandoned, except for existing benefits which the School shall continue to grant at their current levels consistent with the principle of non-diminution of benefits.

**WHEREFORE**, premises considered, the parties are hereby directed to execute within ten (10) days from receipt of this Order a Collective Bargaining Agreement incorporating the terms and conditions of this Order as well as other agreements made in the course of negotiations and on conciliation.<sup>[4]</sup>

Respondent filed a motion for reconsideration but it was denied by the Secretary of Labor. Thus, respondent filed an original petition for certiorari with the Court of Appeals, claiming that the awards made by the DOLE Secretary are not supported by the evidence on record and are contrary to law and jurisprudence.

On January 31, 2005, the appellate court rendered the assailed Decision, the dispositive portion of which reads, as follows:

WHEREFORE, premises considered, the petition is partially GRANTED. The assailed Order of May 31, 2002 of Secretary Patricia Sto. Tomas is hereby AFFIRMED with the modification that the P10,000.00 signing bonus awarded is increased to P18,000.00.

SO ORDERED.<sup>[5]</sup>

In arriving at the foregoing disposition, the appellate court noted that:

Based on UST Chief Accountant Antonio J. Dayag's Certification, the tuition fee increment for the SY 2001-2002 amounted to P101,036,330.37. From this amount, the tuition fee adjustment amounting to P2,785,143.00 was deducted leaving a net tuition fee increment of P98,251,189.36.

Pursuant to Section 5 (2) RA 6728, seventy percent (70%) of P98,251,189.36 or P68,775,831.15 is the amount UST has to allocate for salaries, wages, allowances and other benefits of its 2,290 employees, categorized as follows: 619 non-teaching personnel represented by herein petitioner SM-UST; 1,452 faculty members represented by UST-Faculty Union (UST-FU) and 219 academic/administrative officials. The last group of employees is excluded from the coverage of the two bargaining units.

Public respondent, taking into consideration the bargaining history of the parties, the needs of the members of Union in relation to the capability of its employer, UST, to grant its demands, the impact of the award on the UST-Faculty Union members (UST-FU), and how the present salary and benefits of the non-academic personnel compare with the compensation of the employees of other learning institutions, arrived at the following "fair and reasonable" resolution to the wage issue:

1st year - P1,000.00/month  
2nd year - P2,000.00/month  
3rd year - P2,000.00/month

Based on public respondent's arbitral award for the first year (AY 2001-2002), We determine the allocation that SM-UST would get from the 70% of the tuition fee increment for AY 2001-2002 by approximating UST's expense on the increment of salaries/wages, allowances and benefits of the non-teaching personnel:

1. Increment on Salaries/Wages	P 8,047,000.00
+ 13th month pay	
(P1,000 x 13 months x 619 employees)	
2. Signing Bonus	6,190,000.00
(P10,000/employee)	
3. P2,000 Christmas Bonus	<u>1,238,000.00</u>
Total	P15,475,000.00
	=====

The amount of P15,475,000.00 represents 22.50% of the allocated P68,775,831.00 (70% of the tuition fee increment for AY 2001-2002). UST has allocated P45 million or 65.43% of the P68,775,831 to UST-Faculty Union.

Is the distribution equitable? If the share from the allocated P68,775,831.00 for each bargaining unit would be based on the union's membership, then the distribution appears fair and reasonable:

x x x x

Academic	1,452	employees awarded P45 million
Non-academic	619 employees	awarded P15.475 million
Academic & Administrative	219 employees	awarded P8 million
Total awarded		P68,475,000.00

The difference between P68,775,831 (70% of incremental tuition fee proceeds) and P68,475,000 (total actual allocation or award to the two bargaining units and the school officials) is P300,831.00, which is only .437% of the 70% mandatory allocation (P68,775,831.00).

The Supreme Court in the case of *Cebu Institute of Medicine v. Cebu Institute of Medicine Employees' Union National Federation of Labor* held that SSS, Medicare and Pag-Ibig employer's share may be charged against the "seventy percent (70%) incremental tuition fee increase (sic)" as they are, after all, for the benefit of the University's teaching and non-teaching personnel. The High Court further ruled that "the private educational institution concerned has the discretion on the disposition of the seventy percent (70%) incremental tuition fee increase (sic). It enjoys the privilege of determining how much increase in salaries to grant and the kind and amount of allowances and other benefits to give. The only precondition is that