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SECOND DIVISION

[G.R. No. 186965, December 23, 2009]

TEMIC AUTOMOTIVE PHILIPPINES, INC., PETITIONER, VS. TEMIC AUTOMOTIVE PHILIPPINES, INC. EMPLOYEES UNION-FFW, RESPONDENT.

D E C I S I O N

BRION, J.:

We resolve the present petition for review on *certiorari*[1] filed by Temic Automotive Philippines Inc. (*petitioner*) to challenge the decision[2] and resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 99029.[4]

The Antecedents

The petitioner is a corporation engaged in the manufacture of electronic brake systems and comfort body electronics for automotive vehicles. Respondent Temic Automotive Philippines, Inc. Employees Union-FFW (*union*) is the exclusive bargaining agent of the petitioner's rank-and-file employees. On May 6, 2005, the petitioner and the union executed a collective bargaining agreement (CBA) for the period January 1, 2005 to December 31, 2009.

The petitioner is composed of several departments, one of which is the warehouse department consisting of two warehouses - the electronic braking system and the comfort body electronics. These warehouses are further divided into four sections - receiving section, raw materials warehouse section, indirect warehouse section and finished goods section. The union members are regular rank-and-file employees working in these sections as clerks, material handlers, system encoders and general clerks. Their functions are interrelated and include: receiving and recording of incoming deliveries, raw materials and spare parts; checking and booking-in deliveries, raw materials and spare parts with the use of the petitioner's system application processing; generating bar codes and sticking these on boxes and automotive parts; and issuing or releasing spare parts and materials as may be needed at the production area, and piling them up by means of the company's equipment (forklift or jacklift).

By practice established since 1998, the petitioner contracts out some of the work in the warehouse department, specifically those in the receiving and finished goods sections, to three independent service providers or forwarders (*forwarders*), namely: Diversified Cargo Services, Inc. (*Diversified*), Airfreight 2100 (*Airfreight*) and Kuehne & Nagel, Inc. (*KNI*). These forwarders also have their own employees who hold the positions of clerk, material handler, system encoder and general clerk. The regular employees of the petitioner and those of the forwarders share the same work area and use the same equipment, tools and computers all belonging to the

petitioner.

This outsourcing arrangement gave rise to a union grievance on the issue of the scope and coverage of the collective bargaining unit, specifically to the question of "*whether or not the functions of the forwarders' employees are functions being performed by the regular rank-and-file employees covered by the bargaining unit*."[5] The union thus demanded that the forwarders' employees be absorbed into the petitioner's regular employee force and be given positions within the bargaining unit. The petitioner, on the other hand, on the premise that the contracting arrangement with the forwarders is a valid exercise of its management prerogative, posited that the union's position is a violation of its management prerogative to determine who to hire and what to contract out, and that the regular rank-and-file employees and their forwarders' employees serving as its clerks, material handlers, system encoders and general clerks do not have the same functions as regular company employees.

The union and the petitioner failed to resolve the dispute at the grievance machinery level, thus necessitating recourse to voluntary arbitration. The parties chose Atty. Roberto A. Padilla as their voluntary arbitrator. Their voluntary arbitration submission agreement delineated the issues to be resolved as follows:

1. Whether or not the company validly contracted out or outsourced the services involving forwarding, packing, loading and clerical activities related thereto; and

2. Whether or not the functions of the forwarders' employees are functions being performed by regular rank-and-file employees covered by the bargaining unit.[6]

To support its position, the union submitted in evidence a copy of the complete manpower complement of the petitioner's warehouse department as of January 3, 2007[7] showing that there were at the time 19 regular company employees and 26 forwarder employees. It also presented the affidavits[8] of Edgardo P. Usog, Antonio A. Muzones, Endrico B. Dumolong, Salvador R. Vargas and Harley J. Noval, regular employees of the petitioner, who deposed that they and the forwarders' employees assigned at the warehouse department were performing the same functions. The union also presented the affidavits of Ramil V. Barit[9] (*Barit*), Jonathan G. Prevendido[10] (*Prevendido*) and Eduardo H. Enano[11] (*Enano*), employees of forwarder KNI, who described their work at the warehouse department.

In its submission,[12] the petitioner invoked the exercise of its management prerogative and its authority under this prerogative to contract out to independent service providers the forwarding, packing, loading of raw materials and/or finished goods and all support and ancillary services (such as clerical activities) for greater economy and efficiency in its operations. It argued that in *Meralco v. Quisumbing*[13] this Court explicitly recognized that the contracting out of work is an employer proprietary right in the exercise of its inherent management prerogative.

The forwarders, the petitioners alleged, are all highly reputable freight forwarding

companies providing total logistics services such as customs brokerage that includes the preparation and processing of import and export documentation, cargo handling, transport (air, land or sea), delivery and trucking; and they have substantial capital and are fully equipped with the technical knowledge, facilities, equipment, materials, tools and manpower to service the company's forwarding, packing and loading requirements. Additionally, the petitioner argued that the union is not in a position to question its business judgment, for even their *CBA* expressly recognizes its prerogative to have exclusive control of the management of all functions and facilities in the company, including the exclusive right to plan or control operations and introduce new or improved systems, procedures and methods.

The petitioner maintained that the services rendered by the forwarders' employees are not the same as the functions undertaken by regular rank-and-file employees covered by the bargaining unit; therefore, the union's demand that the forwarders' employees be assimilated as regular company employees and absorbed by the collective bargaining unit has no basis; what the union asks constitutes an unlawful interference in the company's prerogative to choose who to hire as employees. It pointed out that the union could not, and never did, assert that the contracting-out of work to the service providers was in violation of the CBA or prohibited by law.

The petitioner explained that its regular employees' clerical and material handling tasks are not identical with those done by the service providers; the clerical work rendered by the contractors are recording and documentation tasks ancillary to or supportive of the contracted services of forwarding, packing and loading; on the other hand, the company employees assigned as general clerks prepare inventory reports relating to its shipments in general to ensure that the recording of inventory is consistent with the company's general system; company employees assigned as material handlers essentially assist in counter-checking and reporting activities to ensure that the contractors' services comply with company standards.

The petitioner submitted in evidence the affidavits of Antonio Gregorio[14] (*Gregorio*), its warehouse manager, and Ma. Maja Bawar[15] (*Bawar*), its section head.

The Voluntary Arbitration Decision

In his decision of May 1, 2007,[16] the voluntary arbitrator defined forwarding as a universally accepted and normal business practice or activity, and ruled that the company validly contracted out its forwarding services. The voluntary arbitrator observed that exporters, in utilizing forwarders as travel agents of cargo, mitigate the confusion and delays associated with international trade logistics; the company need not deal with many of the details involved in the export of goods; and given the years of experience and constant attention to detail provided by the forwarders, it may be a good investment for the company. He found that the outsourcing of forwarding work is expressly allowed by the rules implementing the Labor Code.[17]

At the same time, however, the voluntary arbitrator found that the petitioner went beyond the limits of the legally allowable contracting out because the forwarders' employees encroached upon the functions of the petitioner's regular rank-and-file workers. He opined that the forwarders' personnel serving as clerks, material handlers, system encoders and general clerks perform "*functions [that] are being*

performed by regular rank-and-file employees covered by the bargaining unit." He also noted that the forwarders' employees perform their jobs in the company warehouse together with the petitioner's employees, use the same company tools and equipment and work under the same company supervisors - indicators that the petitioner exercises supervision and control over all the employees in the warehouse department. For these reasons, he declared the forwarders' employees serving as clerks, material handlers, system encoders and general clerks to be "*employees of the company who are entitled to all the rights and privileges of regular employees of the company including security of tenure*."[18]

The petitioner sought relief from the CA through a petition for review under Rule 43 of the Rules of Court invoking questions of facts and law.[19] It specifically questioned the ruling that the company did not validly contract out the services performed by the forwarders' clerks, material handlers, system encoders and general clerks, and claimed that the voluntary arbitrator acted in excess of his authority when he ruled that they should be considered regular employees of the company.

The CA Decision

In its decision of October 28, 2008,[20] the CA fully affirmed the voluntary arbitrator's decision and dismissed the petition for lack of merit. The discussion essentially focused on three points. *First*, that decisions of voluntary arbitrators on matters of fact and law, acting within the scope of their authority, are conclusive and constitute *res adjudicata* on the theory that the parties agreed that the voluntary arbitrator's decision shall be final. *Second*, that the petitioner has the right to enter into the forwarding agreements, but these agreements should be limited to forwarding services; the petitioner failed to present clear and convincing proof of the delineation of functions and duties between company and forwarder employees engaged as clerks, material handlers, system encoders and general clerks; thus, they should be considered regular company employees. *Third,* on the extent of the voluntary arbitrator's authority, the CA acknowledged that the arbitrator can only decide questions agreed upon and submitted by the parties, but maintained that the arbitrator also has the power to rule on consequential issues that would finally settle the dispute. On this basis, the CA justified the ruling on the employment status of the forwarders' clerks, material handlers, system encoders and general clerks as a necessary consequence that ties up the loose ends of the submitted issues for a final settlement of the dispute.

The CA denied the petitioner's motion for reconsideration, giving way to the present petition.

The Petition

The petition questions as a preliminary issue the CA ruling that decisions of voluntary arbitrators are conclusive and constitute *res adjudicata* on the facts and law ruled upon.

Expectedly, it cites as error the voluntary arbitrator's and the CA's rulings that: (a) the forwarders' employees undertaking the functions of clerks, material handlers, system encoders and general clerks exercise the functions of regular company

employees and are subject to the company's control; and (b) the functions of the forwarders' employees are beyond the limits of what the law allows for a forwarding agreement.

The petitioner reiterates that there are distinctions between the work of the forwarders' employees and that of the regular company employees. The receiving, unloading, recording or documenting of materials the forwarders' employees undertake form part of the contracted forwarding services. The similarity of these activities to those performed by the company's regular employees does not necessarily lead to the conclusion that the forwarders' employees should be absorbed by the company as its regular employees. No proof was ever presented by the union that the company exercised supervision and control over the forwarders' employees. The contracted services and even the work performed by the regular employees in the warehouse department are also not usually necessary and desirable in the manufacture of automotive electronics which is the company's main business. It adds that as held in *Philippine Global Communications, Inc. v. De Vera*, [21] management can contract out even services that are usually necessary or desirable in the employer's business.

On the issue of jurisdiction, the petitioner argues that the voluntary arbitrator neither had jurisdiction nor basis to declare the forwarders' personnel as regular employees of the company because the matter was not among the issues submitted by the parties for arbitration; in voluntary arbitration, it is the parties' submission of the issues that confers jurisdiction on the voluntary arbitrator. The petitioner finally argues that the forwarders and their employees were not parties to the voluntary arbitration case and thus cannot be bound by the voluntary arbitrator's decision.

The Case for the Union

In its comment,[22] the union takes exception to the petitioner's position that the contracting out of services involving forwarding and ancillary activities is a valid exercise of management prerogative. It posits that the exercise of management prerogative is not an absolute right, but is subject to the limitation provided for by law, contract, existing practice, as well as the general principles of justice and fair play. It submits that both the law and the parties' CBA prohibit the petitioner from contracting out to forwarders the functions of regular employees, especially when the contracting out will amount to a violation of the employees' security of tenure, of the CBA provision on the coverage of the bargaining unit, or of the law on regular employment.

The union disputes the petitioner's claim that there is a distinction between the work being performed by the regular employees and that of the forwarders' employees. It insists that the functions being assigned, delegated to and performed by employees of the forwarders are also those assigned, delegated to and being performed by the regular rank-and-file employees covered by the bargaining unit.

On the jurisdictional issue, the union submits that while the submitted issue is "*whether or not the functions of the forwarders' employees are functions being performed by the regular rank-and-file employees covered by the bargaining unit,*" the ruling of the voluntary arbitrator was a necessary consequence of his finding that the forwarders' employees were performing functions similar to those being