

THIRD DIVISION

[G.R. No. 161933, April 22, 2008]

STANDARD CHARTERED BANK EMPLOYEES UNION (SCBEU-NUBE), PETITIONER, VS. STANDARD CHARTERED BANK AND ANNEMARIEDURBIN, IN HER CAPACITY AS CHIEF EXECUTIVE OFFICER, PHILIPPINES, STANDARD CHARTERED BANK, RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

For resolution is an appeal by *certiorari* filed by petitioner under Rule 45 of the Rules of Court, assailing the Decision^[1] dated October 9, 2002 and Resolution^[2] dated January 26, 2004 issued by the Court of Appeals (CA), dismissing their petition and affirming the Secretary of Labor and Employment's Orders dated May 31, 2001 and August 30, 2001.

Petitioner and the Standard Chartered Bank (Bank) began negotiating for a new Collective Bargaining Agreement (CBA) in May 2000 as their 1998-2000 CBA already expired. Due to a deadlock in the negotiations, petitioner filed a Notice of Strike prompting the Secretary of Labor and Employment to assume jurisdiction over the labor dispute.

On May 31, 2001, Secretary Patricia A. Sto. Tomas of the Department of Labor and Employment (DOLE) issued an Order with the following dispositive portion:

WHEREFORE, PREMISES CONSIDERED, the Standard Chartered Bank and the Standard Chartered Bank Employees Union are directed to execute their collective bargaining agreement effective 01 April 2001 until 30 March 2003 incorporating therein the foregoing dispositions and the agreements they reached in the course of negotiations and conciliation. All other submitted issues that were not passed upon are dismissed.

The charge of unfair labor practice for bargaining in bad faith and the claim for damages relating thereto are hereby dismissed for lack of merit.

Finally, the charge of unfair labor practice for gross violation of the economic provisions of the CBA is hereby dismissed for want of jurisdiction.

SO ORDERED.^[3]

Both petitioner and the Bank filed their respective motions for reconsideration, which were denied by the Secretary per Order dated August 30, 2001.^[4]

Petitioner sought recourse with the CA *via* a petition for *certiorari*, and in the assailed Decision dated October 9, 2002^[5] and Resolution dated January 26, 2004,^[6] the CA dismissed their petition and affirmed the Secretary's Orders.

Hence, herein petition based on the following grounds:

I.

THE COURT A *QUO* ERRED IN DECIDING THAT THERE WAS NO BASIS FOR REVISING THE SCOPE OF EXCLUSIONS FROM THE APPROPRIATE BARGAINING UNIT UNDER THE CBA.

II.

THE COURT A *QUO* ERRED IN DECIDING THAT A ONE-MONTH OR LESS TEMPORARY OCCUPATION OF A POSITION (ACTING CAPACITY) DOES NOT MERIT ADJUSTMENT IN REMUNERATION.^[7]

The resolution of this case has been overtaken by the execution of the parties' 2003-2005 CBA. While this would render the case moot and academic, nevertheless, the likelihood that the same issues will come up in the parties' future CBA negotiations is not far-fetched, thus compelling its resolution. Courts will decide a question otherwise moot if it is capable of repetition yet evading review.^[8]

The CBA provisions in dispute are the exclusion of certain employees from the appropriate bargaining unit and the adjustment of remuneration for employees serving in an acting capacity for one month.

In their proposal, petitioner sought the exclusion of only the following employees from the appropriate bargaining unit - all managers who are vested with the right to hire and fire employees, confidential employees, those with access to labor relations materials, Chief Cashiers, Assistant Cashiers, personnel of the Telex Department and one Human Resources (HR) staff.^[9]

In the previous 1998-2000 CBA,^[10] the excluded employees are as follows:

A. All covenanted and assistant officers (now called National Officers)

B. One confidential secretary of each of the:

1. Chief Executive, Philippine Branches
2. Deputy Chief Executive/Head, Corporate Banking Group
3. Head, Finance
4. Head, Human Resources
5. Manager, Cebu
6. Manager, Iloilo
7. Coenanted Officers provided said positions shall be filled by new recruits.

C. The Chief Cashiers and Assistant Cashiers in Manila, Cebu and Iloilo, and in any other branch that the BANK may establish in the

country.

D. Personnel of the Telex Department

E. All Security Guards

F. Probationary employees, without prejudice to Article 277 (c) of the Labor Code, as amended by R.A. 6715, casuals or emergency employees; and

G. One (1) HR Staff^[11]

The Secretary, however, maintained the previous exclusions because petitioner failed to show that the employees sought to be removed from the list qualify for exclusion.^[12]

With regard to the remuneration of employees working in an acting capacity, it was petitioner's position that additional pay should be given to an employee who has been serving in a temporary/acting capacity for one week. The Secretary likewise rejected petitioner's proposal and instead, allowed additional pay for those who had been working in such capacity for one month. The Secretary agreed with the Bank's position that a restrictive provision would curtail management's prerogative, and at the same time, recognized that employees should not be made to work in an acting capacity for long periods of time without adequate compensation.

The Secretary's disposition of the issues raised by petitioner were affirmed by the CA.^[13] The Court sustains the CA.

Whether or not the employees sought to be excluded from the appropriate bargaining unit are confidential employees is a question of fact, which is not a proper issue in a petition for review under Rule 45 of the Rules of Court.^[14] This holds more true in the present case in which petitioner failed to controvert with evidence the findings of the Secretary and the CA.

The disqualification of managerial and confidential employees from joining a bargaining unit for rank and file employees is already well-entrenched in jurisprudence. While Article 245 of the Labor Code limits the ineligibility to join, form and assist any labor organization to managerial employees, jurisprudence has extended this prohibition to confidential employees or those who by reason of their positions or nature of work are required to assist or act in a fiduciary manner to managerial employees and hence, are likewise privy to sensitive and highly confidential records.^[15]

In this case, the question that needs to be answered is whether the Bank's Chief Cashiers and Assistant Cashiers, personnel of the Telex Department and HR staff are confidential employees, such that they should be excluded.

As regards the qualification of **bank cashiers** as confidential employees, *National Association of Trade Unions (NATU) - Republic Planters Bank Supervisors Chapter v. Torres*^[16] declared that they are confidential employees having control, custody and/or access to confidential matters, e.g., the branch's cash position, statements of