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SECOND DIVISION

[G.R. No. 185556, March 28, 2011]

SUPREME STEEL CORPORATION, PETITIONER, VS. NAGKAKAISANG MANGGAGAWA NG SUPREME INDEPENDENT UNION (NMS-IND-APL), RESPONDENT.

D E C I S I O N

NACHURA, J.:

This petition for review on *certiorari* assails the Court of Appeals (CA) Decision[1] dated September 30, 2008, and Resolution dated December 4, 2008, which affirmed the finding of the National Labor Relations Commission (NLRC) that petitioner violated certain provisions of the Collective Bargaining Agreement (CBA).

Petitioner Supreme Steel Pipe Corporation is a domestic corporation engaged in the business of manufacturing steel pipes for domestic and foreign markets. Respondent Nagkakaisang Manggagawa ng Supreme Independent Union is the certified bargaining agent of petitioner's rank-and-file employees. The CBA[2] in question was executed by the parties to cover the period from June 1, 2003 to May 31, 2008.

The Case

On July 27, 2005, respondent filed a notice of strike with the National Conciliation and Mediation Board (NCMB) on the ground that petitioner violated certain provisions of the CBA. The parties failed to settle their dispute. Consequently, the Secretary of Labor certified the case to the NLRC for compulsory arbitration pursuant to Article 263(g) of the Labor Code.

Respondent alleged eleven CBA violations, delineated as follows:

A. Denial to four employees of the CBA- provided wage increase

Article XII, Section 1 of the CBA provides:

> **Section 1.** The COMPANY shall grant a general wage increase, over and above to all employees, according to the following schedule:
>
> A. Effective June 1, 2003 P14.00 per working day;
> B. Effective June 1, 2004 P12.00 per working day; and
> C. Effective June 1, 2005 P12.00 per working day.[3]

Respondent alleged that petitioner has repeatedly denied the annual CBA increases to at least four individuals: Juan Niño, Reynaldo Acosta, Rommel Talavera, and Eddie

Dalagon. According to respondent, petitioner gives an anniversary increase to its employees upon reaching their first year of employment. The four employees received their respective anniversary increases and petitioner used such anniversary increase to justify the denial of their CBA increase for the year.[4]

Petitioner explained that it has been the company's long standing practice that upon reaching one year of service, a wage adjustment is granted, and, once wages are adjusted, the increase provided for in the CBA for that year is no longer implemented. Petitioner claimed that this practice was not objected to by respondent as evidenced by the employees' pay slips.[5]

Respondent countered that petitioner failed to prove that, as a matter of company practice, the anniversary increase took the place of the CBA increase. It contended that all employees should receive the CBA stipulated increase for the years 2003 to 2005.[6]

B. Contracting-out labor

Article II, Section 6 of the CBA provides:

> **Section 6. Prohibition of Contracting Out of Work of Members of Bargaining Unit.** Thirty (30) days from the signing of this CBA, contractual employees in all departments, except Warehouse and Packing Section, shall be phased out. Those contractual employees who are presently in the workforce of the COMPANY shall no longer be allowed to work after the expiration of their contracts without prejudice to being hired as probationary employees of the COMPANY.[7]

Respondent claimed that, contrary to this provision, petitioner hired temporary workers for five months based on uniformly worded employment contracts, renewable for five months, and assigned them to almost all of the

departments in the company. It pointed out that, under the CBA, temporary workers are allowed only in the Warehouse and Packing Section; consequently, employment of contractual employees outside this section, whether direct or agency-hired, was absolutely prohibited. Worse, petitioner never regularized them even if the position they occupied and the services they performed were necessary and desirable to its business. Upon the expiration of their contracts, these workers would be replaced with other workers with the same employment status. This scheme is a clear circumvention of the laws on regular employment. [8]

Respondent argued that the right to self-organization goes beyond the maintenance of union membership. It emphasized that the CBA maintains a union shop clause which gives the regular employees 30 days within which to join respondent as a condition for their continued employment. Respondent maintained that petitioner's persistent refusal to grant regular status to its employees, such as Dindo Buella, who is assigned in the Galvanizing Department, violates the employees' right to self-organization in two ways: (1) they are deprived of a representative for collective bargaining purposes; and (2) respondent is deprived the right to expand its

membership. Respondent contended that a union's strength lies in its number, which becomes crucial especially during negotiations; after all, an employer will not bargain seriously with a union whose membership constitutes a minority of the total workforce of the company. According to respondent, out of the 500 employees of the company, only 147 are union members, and at least 60 employees would have been eligible for union membership had they been recognized as regular employees. [9]

For its part, petitioner admitted that it hired temporary workers. It purportedly did so to cope with the seasonal increase of the job orders from abroad. In order to comply with the job orders, petitioner hired the temporary workers to help the regular workers in the production of steel pipes. Petitioner maintained that these workers do not affect respondent's membership. Petitioner claimed that it agreed to terminate these temporary employees on the condition that the regular employees would have to perform the work that these employees were performing, but respondent refused. Respondent's refusal allegedly proved that petitioner was not contracting out the services being performed by union members. Finally, petitioner insisted that the hiring of temporary workers is a management prerogative.[10]

C. Failure to provide shuttle service

Petitioner has allegedly reneged on its obligation to provide shuttle service for its employees pursuant to Article XIV, Section 7 of the CBA, which provides:

> **Section 7. Shuttle Service.** As per company practice, once the company vehicle used for the purpose has been reconditioned.[11]

Respondent claimed that the company vehicle which would be used as shuttle service for its employees has not been reconditioned by petitioner since the signing of the CBA on February 26, 2004.[12] Petitioner explained that it is difficult to implement this provision and simply denied that it has reneged on its obligation.[13]

D. Refusal to answer for the medical expenses incurred by three employees

Respondent asserted that petitioner is liable for the expenses incurred by three employees who were injured while in the company premises. This liability allegedly stems from Article VIII, Section 4 of the CBA which provides:

> **Section 4.** The COMPANY agrees to provide first aid medicine and first aid service and consultation free of charge to all its employees.[14]

According to respondent, petitioner's definition of what constitutes first aid service is limited to the bare minimum of treating injured employees while still within the company premises and referring the injured employee to the Chinese General Hospital for treatment, but the travel expense in going to the hospital is charged to the employee. Thus, when Alberto Guevarra and Job Canizares, union members, were injured, they had to pay P90.00 each for transportation expenses in going to

the hospital for treatment and going back to the company thereafter. In the case of Rodrigo Solitario, petitioner did not even shoulder the cost of the first aid medicine, amounting to P2,113.00, even if he was injured during the company sportsfest, but the amount was deducted, instead, from his salary. Respondent insisted that this violates the above cited provision of the CBA.[15]

Petitioner insisted that it provided medicine and first aid assistance to Rodrigo Solitario. It alleged that the latter cannot claim hospitalization

benefits under Article VIII, Section 1[16] of the CBA because he was not confined in a hospital.[17]

E. Failure to comply with the time-off with pay provision

Article II, Section 8 of the CBA provides:

> **Section 8. Time-Off with Pay.** The COMPANY shall grant to the UNION's duly authorized representative/s or to any employee who are on duty, if summoned by the UNION to testify, if his/her presence is necessary, a paid time-off for the handling of grievances, cases, investigations, labor-management conferences provided that if the venue of the case is outside Company premises involving [the] implementation and interpretation of the CBA, two (2) representatives of the UNION who will attend the said hearing shall be considered time-off with pay. If an employee on a night shift attends grievance on labor-related cases and could not report for work due to physical condition, he may avail of union leave without need of the two (2) days prior notice.[18]

Respondent contended that under the said provision, petitioner was obliged to grant a paid time-off to respondent's duly authorized representative or to any employee who was on duty, when summoned by respondent to testify or when the employee's presence was necessary in the grievance hearings, meetings, or investigations.[19]

Petitioner admitted that it did not honor the claim for wages of the union officers who attended the grievance meetings because these meetings were initiated by respondent itself. It argued that since the union officers

were performing their functions as such, and not as employees of the company, the latter should not be liable. Petitioner further asserted that it is not liable to pay the wages of the union officers when the meetings are held beyond company time (3:00 p.m.). It claimed that time-off with pay is allowed only if the venue of the meeting is outside company premises and the meeting involves the implementation and interpretation of the CBA.[20]

In reply, respondent averred that the above quoted provision does not make a qualification that the meetings should be held during office hours (7:00 a.m. to 3:00 p.m.); hence, for as long as the presence of the employee is needed, time spent

during the grievance meeting should be paid.[21]

F. Visitors' free access to company premises

Respondent charged petitioner with violation of Article II, Section 7 of the CBA which provides:

> **Section 7. Free Access to Company Premises.** Local Union and Federation officers (subject to company's security measure) shall be allowed during working hours to enter the COMPANY premises for the following reasons:
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> a. To investigate grievances that have arisen;
> b. To interview Union Officers, Stewards and members during reasonable hours; and
> c. To attend to any meeting called by the Management or the UNION.[22]

G. Failure to comply with reporting time-off provision

Respondent maintained that a brownout is covered by Article XII, Section 3 of the CBA which states:

> **Section 3. Reporting Time-Off.** The employees who have reported for work but are unable to continue working because of emergencies such as typhoons, flood, earthquake, transportation strike, where the COMPANY is affected and in case of fire which occurs in the block where the home of the employee is situated and not just across the street and serious illness of an immediate member of the family of the employee living with him/her and no one in the house can bring the sick family member to the hospital, shall be paid as follows:
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> a. At least half day if the work stoppage occurs within the first four (4) hours of work; and
> b. A whole day if the work stoppage occurs after four (4) hours of work.[23]

Respondent averred that petitioner paid the employees' salaries for one hour only of the four-hour brownout that occurred on July 25, 2005 and refused to pay for the remaining three hours. In defense, petitioner simply insisted that brownouts are not included in the above list of emergencies.[24]

Respondent rejoined that, under the principle of *ejusdem generis*, brownouts or power outages come within the "emergencies" contemplated by the CBA provision. Although brownouts were not specifically identified as one of the emergencies listed in the said CBA provision, it cannot be denied that brownouts fall within the same kind or class of the enumerated emergencies. Respondent maintained that the