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[G.R. No. 164301, October 19, 2011]

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. BPI EMPLOYEES UNION-DAVAO CHAPTER-FEDERATION OF UNIONS IN BPI UNIBANK, RESPONDENT.

R E S O L U T I O N

LEONARDO-DE CASTRO, J.:

In the present incident, petitioner Bank of the Philippine Islands (BPI) moves for reconsideration[1] of our Decision dated August 10, 2010, holding that former employees of the Far East Bank and Trust Company (FEBTC) "absorbed" by BPI pursuant to the two banks' merger in 2000 were covered by the Union Shop Clause in the then existing collective bargaining agreement (CBA)[2] of BPI with respondent BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank (the Union).

To recall, the Union Shop Clause involved in this long standing controversy provided, thus:

> ARTICLE II
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> x x x x
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> Section 2. Union Shop - **New employees** falling within the bargaining unit as defined in Article I of this Agreement, **who may hereafter be regularly employed by the Bank shall, within thirty (30) days after they become regular employees, join the Union as a condition of their continued employment.** It is understood that membership in good standing in the Union is a condition of their continued employment with the Bank.[3] (Emphases supplied.)

The bone of contention between the parties was whether or not the "absorbed" FEBTC employees fell within the definition of "new employees" under the Union Shop Clause, such that they may be required to join respondent union and if they fail to do so, the Union may request BPI to terminate their employment, as the Union in fact did in the present case. Needless to state, BPI refused to accede to the Union's request. Although BPI won the initial battle at the Voluntary Arbitrator level, BPI's position was rejected by the Court of Appeals which ruled that the Voluntary Arbitrator's interpretation of the Union Shop Clause was at war with the spirit and rationale why the Labor Code allows the existence of such provision. On review with this Court, we upheld the appellate court's ruling and disposed of the case as

follows:

> WHEREFORE, the petition is hereby DENIED, and the Decision dated September 30, 2003 of the Court of Appeals is AFFIRMED, subject to the thirty (30) day notice requirement imposed herein. Former FEBTC employees who opt not to become union members but who qualify for retirement shall receive their retirement benefits in accordance with law, the applicable retirement plan, or the CBA, as the case may be.[4]

Notwithstanding our affirmation of the applicability of the Union Shop Clause to former FEBTC employees, for reasons already extensively discussed in the August 10, 2010 Decision, even now BPI continues to protest the inclusion of said employees in the Union Shop Clause.

In seeking the reversal of our August 10, 2010 Decision, petitioner insists that the parties to the CBA clearly intended to limit the application of the Union Shop Clause only to new employees who were hired as non-regular employees but later attained regular status at some point after hiring. FEBTC employees cannot be considered new employees as BPI merely stepped into the shoes of FEBTC as an employer purely as a consequence of the merger.[5]

Petitioner likewise relies heavily on the dissenting opinions of our respected colleagues, Associate Justices Antonio T. Carpio and Arturo D. Brion. From both dissenting opinions, petitioner derives its contention that "the situation of absorbed employees can be likened to old employees of BPI, insofar as their full tenure with FEBTC was recognized by BPI and their salaries were maintained and safeguarded from diminution" but such absorbed employees "cannot and should not be treated in exactly the same way as old BPI employees for there are substantial differences between them."[6] Although petitioner admits that there are similarities between absorbed and new employees, they insist there are marked differences between them as well. Thus, adopting Justice Brion's stance, petitioner contends that the absorbed FEBTC employees should be considered "a *sui generis* group of employees whose classification will not be duplicated until BPI has another merger where it would be the surviving corporation."[7] Apparently borrowing from Justice Carpio, petitioner propounds that the Union Shop Clause should be strictly construed since it purportedly curtails the right of the absorbed employees to abstain from joining labor organizations.[8]

Pursuant to our directive, the Union filed its Comment[9] on the Motion for Reconsideration. In opposition to petitioner's arguments, the Union, in turn, adverts to our discussion in the August 10, 2010 Decision regarding the voluntary nature of the merger between BPI and FEBTC, the lack of an express stipulation in the Articles of Merger regarding the transfer of employment contracts to the surviving corporation, and the consensual nature of employment contracts as valid bases for the conclusion that former FEBTC employees should be deemed new employees.[10] The Union argues that the creation of employment relations between former FEBTC employees and BPI (*i.e.*, BPI's selection and engagement of former FEBTC employees, its payment of their wages, power of dismissal and of control over the employees' conduct) occurred after the merger, or to be more precise, after the

Securities and Exchange Commission's (SEC) approval of the merger.[11] The Union likewise points out that BPI failed to offer any counterargument to the Court's reasoning that:

> The rationale for upholding the validity of union shop clauses in a CBA, even if they impinge upon the individual employee's right or freedom of association, is not to protect the union for the union's sake. Laws and jurisprudence promote unionism and afford certain protections to the certified bargaining agent in a unionized company because a strong and effective union presumably benefits all employees in the bargaining unit since such a union would be in a better position to demand improved benefits and conditions of work from the employer. x x x.
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> x x x Nonetheless, settled jurisprudence has already swung the balance in favor of unionism, in recognition that ultimately the individual employee will be benefited by that policy. In the hierarchy of constitutional values, this Court has repeatedly held that the right to abstain from joining a labor organization is subordinate to the policy of encouraging unionism as an instrument of social justice.[12]

While most of the arguments offered by BPI have already been thoroughly addressed in the August 10, 2010 Decision, we find that a qualification of our ruling is in order only with respect to the interpretation of the provisions of the Articles of Merger and its implications on the former FEBTC employees' security of tenure.

Taking a second look on this point, we have come to agree with Justice Brion's view that it is more in keeping with the dictates of social justice and the State policy of according full protection to labor to deem employment contracts as automatically assumed by the surviving corporation in a merger, even in the absence of an express stipulation in the articles of merger or the merger plan. In his dissenting opinion, Justice Brion reasoned that:

> To my mind, due consideration of Section 80 of the Corporation Code, the constitutionally declared policies on work, labor and employment, and the specific FEBTC-BPI situation -- *i.e.*, a merger with complete "body and soul" transfer of all that FEBTC embodied and possessed and where both participating banks were willing (albeit by deed, not by their written agreement) to provide for the affected human resources by recognizing continuity of employment -- should point this Court to a declaration that in a complete merger situation where there is total takeover by one corporation over another and there is silence in the merger agreement on what the fate of the human resource complement shall be, the latter should not be left in legal limbo and should be properly provided for, by compelling the surviving entity to absorb these employees. This is what Section 80 of the Corporation Code commands, as the surviving corporation has the legal obligation to assume all the obligations and liabilities of the merged constituent corporation.
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> Not to be forgotten is that the affected employees managed, operated

> and worked on the transferred assets and properties as their means of livelihood; they constituted a basic component of their corporation during its existence. In a merger and consolidation situation, they cannot be treated without consideration of the applicable constitutional declarations and directives, or, worse, be simply disregarded. If they are so treated, it is up to this Court to read and interpret the law so that they are treated in accordance with the legal requirements of mergers and consolidation, read in light of the social justice, economic and social provisions of our Constitution. Hence, there is a need for the surviving corporation to take responsibility for the affected employees and to absorb them into its workforce where no appropriate provision for the merged corporation's human resources component is made in the Merger Plan.[13]

By upholding the automatic assumption of the non-surviving corporation's existing employment contracts by the surviving corporation in a merger, the Court strengthens judicial protection of the right to security of tenure of employees affected by a merger and avoids confusion regarding the status of their various benefits which were among the chief objections of our dissenting colleagues. However, nothing in this Resolution shall impair the right of an employer to terminate the employment of the absorbed employees for a lawful or authorized cause or the right of such an employee to resign, retire or otherwise sever his employment, whether before or after the merger, subject to existing contractual obligations. In this manner, Justice Brion's theory of automatic assumption may be reconciled with the majority's concerns with the successor employer's prerogative to choose its employees and the prohibition against involuntary servitude.

Notwithstanding this concession, we find no reason to reverse our previous pronouncement that the absorbed FEBTC employees are covered by the Union Shop Clause.

Even in our August 10, 2010 Decision, we already observed that the legal fiction in the law on mergers (that the surviving corporation continues the corporate existence of the non-surviving corporation) is mainly a tool to adjudicate the rights and obligations between and among the merged corporations and the persons that deal with them.[14] Such a legal fiction cannot be unduly extended to an interpretation of a Union Shop Clause so as to defeat its purpose under labor law. Hence, we stated in the Decision that:

> In any event, it is of no moment that the former FEBTC employees retained the regular status that they possessed while working for their former employer upon their absorption by petitioner. This fact would not remove them from the scope of the phrase "new employees" as contemplated in the Union Shop Clause of the CBA, contrary to petitioner's insistence that the term "new employees" only refers to those who are initially hired as non-regular employees for possible regular employment.
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> The Union Shop Clause in the CBA simply states that "new employees" who during the effectivity of the CBA "may be regularly employed" by the Bank must join the union within thirty (30) days from their

> regularization. There is nothing in the said clause that limits its application to only new employees who possess non-regular status, meaning probationary status, at the start of their employment. Petitioner likewise failed to point to any provision in the CBA expressly excluding from the Union Shop Clause new employees who are "absorbed" as regular employees from the beginning of their employment. What is indubitable from the Union Shop Clause is that upon the effectivity of the CBA, petitioner's new regular employees (regardless of the manner by which they became employees of BPI) are required to join the Union as a condition of their continued employment.[15]

Although by virtue of the merger BPI steps into the shoes of FEBTC as a successor employer as if the former had been the employer of the latter's employees from the beginning it must be emphasized that, in reality, the legal consequences of the merger only occur at a specific date, *i.e.*, upon its effectivity which is the date of approval of the merger by the SEC. Thus, we observed in the Decision that BPI and FEBTC stipulated in the Articles of Merger that they will both continue their respective business operations until the SEC issues the certificate of merger and in the event no such certificate is issued, they shall hold each other blameless for the non-consummation of the merger.[16] We likewise previously noted that BPI made its assignments of the former FEBTC employees effective on April 10, 2000, or after the SEC approved the merger.[17] In other words, the obligation of BPI to pay the salaries and benefits of the former FEBTC employees and its right of discipline and control over them only arose with the effectivity of the merger. Concomitantly, the obligation of former FEBTC employees to render service to BPI and their right to receive benefits from the latter also arose upon the effectivity of the merger. What is material is that all of these legal consequences of the merger took place during the life of an existing and valid CBA between BPI and the Union wherein they have mutually consented to include a Union Shop Clause.

From the plain, ordinary meaning of the terms of the Union Shop Clause, it covers employees who (a) enter the employ of BPI during the term of the CBA; (b) are part of the bargaining unit (defined in the CBA as comprised of BPI's rank and file employees); and (c) become regular employees without distinguishing as to the manner they acquire their regular status. Consequently, the number of such employees may adversely affect the majority status of the Union and even its existence itself, as already amply explained in the Decision.

Indeed, there are differences between (a) new employees who are hired as probationary or temporary but later regularized, and (b) new employees who, by virtue of a merger, are absorbed from another company as regular and permanent from the beginning of their employment with the surviving corporation. It bears reiterating here that these differences are too insubstantial to warrant the exclusion of the absorbed employees from the application of the Union Shop Clause. In the Decision, we noted that:

> Verily, we agree with the Court of Appeals that there are no substantial differences between a newly hired non-regular employee who was regularized weeks or months after his hiring and a new employee who was absorbed from another bank as a regular employee pursuant to a