

EN BANC

[G.R. No. 181704, December 06, 2011]

**BUREAU OF CUSTOMS EMPLOYEES ASSOCIATION (BOCEA),
REPRESENTED BY ITS NATIONAL PRESIDENT (BOCEA NATIONAL
EXECUTIVE COUNCIL) MR. ROMULO A. PAGULAYAN,
PETITIONER, VS. HON. MARGARITO B. TEVES, IN HIS CAPACITY
AS SECRETARY OF THE DEPARTMENT OF FINANCE, HON.
NAPOLEON L. MORALES, IN HIS CAPACITY AS COMMISSIONER
OF THE BUREAU OF CUSTOMS, HON. LILIAN B. HEFTI, IN HER
CAPACITY AS COMMISSIONER OF THE BUREAU OF INTERNAL
REVENUE, RESPONDENTS.**

D E C I S I O N

VILLARAMA, JR., J.:

Before this Court is a petition^[1] for certiorari and prohibition with prayer for injunctive relief/s under Rule 65 of the 1997 Rules of Civil Procedure, as amended, to declare Republic Act (R.A.) No. 9335,^[2] otherwise known as the Attrition Act of 2005, and its Implementing Rules and Regulations^[3] (IRR) unconstitutional, and the implementation thereof be enjoined permanently.

The Facts

On January 25, 2005, former President Gloria Macapagal-Arroyo signed into law R.A. No. 9335 which took effect on February 11, 2005.

In *Abakada Guro Party List v. Purisima*^[4] (*Abakada*), we said of R.A. No. 9335:

RA [No.] 9335 was enacted to optimize the revenue-generation capability and collection of the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC). The law intends to encourage BIR and BOC officials and employees to exceed their revenue targets by providing a system of rewards and sanctions through the creation of a Rewards and Incentives Fund (Fund) and a Revenue Performance Evaluation Board (Board). It covers all officials and employees of the BIR and the BOC with at least six months of service, regardless of employment status.

The Fund is sourced from the collection of the BIR and the BOC in excess of their revenue targets for the year, as determined by the Development Budget and Coordinating Committee (DBCC). Any incentive or reward is taken from the fund and allocated to the BIR and the BOC in proportion to their contribution in the excess collection of the targeted amount of tax revenue.

The Boards in the BIR and the BOC are composed of the Secretary of the Department of Finance (DOF) or his/her Undersecretary, the Secretary of the Department of Budget and Management (DBM) or his/her Undersecretary, the Director General of the National Economic Development Authority (NEDA) or his/her Deputy Director General, the Commissioners of the BIR and the BOC or their Deputy Commissioners, two representatives from the rank-and-file employees and a representative from the officials nominated by their recognized organization.

Each Board has the duty to (1) prescribe the rules and guidelines for the allocation, distribution and release of the Fund; (2) set criteria and procedures for removing from the service officials and employees whose revenue collection falls short of the target; (3) terminate personnel in accordance with the criteria adopted by the Board; (4) prescribe a system for performance evaluation; (5) perform other functions, including the issuance of rules and regulations and (6) submit an annual report to Congress.

The DOF, DBM, NEDA, BIR, BOC and the Civil Service Commission (CSC) were tasked to promulgate and issue the implementing rules and regulations of RA [No.] 9335, to be approved by a Joint Congressional Oversight Committee created for such purpose.^[5]

The Joint Congressional Oversight Committee approved the assailed IRR on May 22, 2006. Subsequently, the IRR was published on May 30, 2006 in two newspapers of general circulation, the *Philippine Star* and the *Manila Standard*, and became effective fifteen (15) days later.^[6]

Contending that the enactment and implementation of R.A. No. 9335 are tainted with constitutional infirmities in violation of the fundamental rights of its members, petitioner Bureau of Customs Employees Association (BOCEA), an association of rank-and-file employees of the Bureau of Customs (BOC), duly registered with the Department of Labor and Employment (DOLE) and the Civil Service Commission (CSC), and represented by its National President, Mr. Romulo A. Pagulayan (Pagulayan), directly filed the present petition before this Court against respondents Margarito B. Teves, in his capacity as Secretary of the Department of Finance (DOF), Commissioner Napoleon L. Morales (Commissioner Morales), in his capacity as BOC Commissioner, and Lilian B. Hefti, in her capacity as Commissioner of the Bureau of Internal Revenue (BIR). In its petition, BOCEA made the following averments:

Sometime in 2008, high-ranking officials of the BOC pursuant to the mandate of R.A. No. 9335 and its IRR, and in order to comply with the stringent deadlines thereof, started to disseminate Collection District Performance Contracts^[7] (Performance Contracts) for the lower ranking officials and rank-and-file employees to sign. The Performance Contract pertinently provided:

x x x x

WHEREAS, pursuant to the provisions of Sec. 25 (b) of the

Implementing Rules and Regulations (IRR) of the Attrition Act of 2005, that provides for the setting of criteria and procedures for removing from the service Officials and Employees whose revenue collection fall short of the target in accordance with Section 7 of Republic Act 9335.

x x x x

NOW, THEREFORE, for and in consideration of the foregoing premises, parties unto this Agreement hereby agree and so agreed to perform the following:

x x x x

2. The "**Section 2, PA/PE**" hereby accepts the allocated Revenue Collection Target and further accepts/commits to meet the said target under the following conditions:

a.) That he/she will meet the allocated Revenue Collection Target and thereby undertakes and binds himself/herself that **in the event the revenue collection falls short of the target with due consideration of all relevant factors affecting the level of collection as provided in the rules and regulations promulgated under the Act and its IRR, he/she will voluntarily submit to the provisions of Sec. 25 (b) of the IRR and Sec. 7 of the Act**; and

b.) That he/she will cascade and/or allocate to respective Appraisers/Examiners or Employees under his/her section the said Revenue Collection Target and require them to execute a Performance Contract, and direct them to accept their individual target. The Performance Contract executed by the respective Examiners/Appraisers/Employees shall be submitted to the Office of the Commissioner through the LAIC on or before March 31, 2008.

x x x x^[8]

BOCEA opined that the revenue target was impossible to meet due to the Government's own policies on reduced tariff rates and tax breaks to big businesses, the occurrence of natural calamities and because of other economic factors. BOCEA claimed that some BOC employees were coerced and forced to sign the Performance Contract. The majority of them, however, did not sign. In particular, officers of BOCEA were summoned and required to sign the Performance Contracts but they also refused. To ease the brewing tension, BOCEA claimed that its officers sent letters, and sought several dialogues with BOC officials but the latter refused to heed them.

In addition, BOCEA alleged that Commissioner Morales exerted heavy pressure on the District Collectors, Chiefs of Formal Entry Divisions, Principal Customs Appraisers and Principal Customs Examiners of the BOC during command conferences to make them sign their Performance Contracts. Likewise, BOC Deputy Commissioner Reynaldo Umali (Deputy Commissioner Umali) individually spoke to said personnel to convince them to sign said contracts. Said personnel were threatened that if they

do not sign their respective Performance Contracts, they would face possible reassignment, reshuffling, or worse, be placed on floating status. Thus, all the District Collectors, except a certain Atty. Carlos So of the Collection District III of the Ninoy Aquino International Airport (NAIA), signed the Performance Contracts.

BOCEA further claimed that Pagulayan was constantly harassed and threatened with lawsuits. Pagulayan approached Deputy Commissioner Umali to ask the BOC officials to stop all forms of harassment, but the latter merely said that he would look into the matter. On February 5, 2008, BOCEA through counsel wrote the Revenue Performance Evaluation Board (Board) to desist from implementing R.A. No. 9335 and its IRR and from requiring rank-and-file employees of the BOC and BIR to sign Performance Contracts.^[9] In his letter-reply^[10] dated February 12, 2008, Deputy Commissioner Umali denied having coerced any BOC employee to sign a Performance Contract. He also defended the BOC, invoking its mandate of merely implementing the law. Finally, Pagulayan and BOCEA's counsel, on separate occasions, requested for a certified true copy of the Performance Contract from Deputy Commissioner Umali but the latter failed to furnish them a copy.^[11]

This petition was filed directly with this Court on March 3, 2008. BOCEA asserted that in view of the unconstitutionality of R.A. No. 9335 and its IRR, and their adverse effects on the constitutional rights of BOC officials and employees, direct resort to this Court is justified. BOCEA argued, among others, that its members and other BOC employees are in great danger of losing their jobs should they fail to meet the required quota provided under the law, in clear violation of their constitutional right to security of tenure, and at their and their respective families' prejudice.

In their Comment,^[12] respondents, through the Office of the Solicitor General (OSG), countered that R.A. No. 9335 and its IRR do not violate the right to due process and right to security of tenure of BIR and BOC employees. The OSG stressed that the guarantee of security of tenure under the 1987 Constitution is not a guarantee of perpetual employment. R.A. No. 9335 and its IRR provided a reasonable and valid ground for the dismissal of an employee which is germane to the purpose of the law. Likewise, R.A. No. 9335 and its IRR provided that an employee may only be separated from the service upon compliance with substantive and procedural due process. The OSG added that R.A. No. 9335 and its IRR must enjoy the presumption of constitutionality.

In its Reply,^[13] BOCEA claimed that R.A. No. 9335 employs means that are unreasonable to achieve its stated objectives; that the law is unduly oppressive of BIR and BOC employees as it shifts the extreme burden upon their shoulders when the Government itself has adopted measures that make collection difficult such as reduced tariff rates to almost zero percent and tax exemption of big businesses; and that the law is discriminatory of BIR and BOC employees. BOCEA manifested that only the high-ranking officials of the BOC benefited largely from the reward system under R.A. No. 9335 despite the fact that they were not the ones directly toiling to collect revenue. Moreover, despite the BOCEA's numerous requests,^[14] BOC continually refused to provide BOCEA the Expenditure Plan on how such reward was distributed.

Since BOCEA was seeking similar reliefs as that of the petitioners in *Abakada Guro*

Party List v. Purisima, BOCEA filed a Motion to Consolidate^[15] the present case with *Abakada* on April 16, 2008. However, pending action on said motion, the Court rendered its decision in *Abakada* on August 14, 2008. Thus, the consolidation of this case with *Abakada* was rendered no longer possible.^[16]

In *Abakada*, this Court, through then Associate Justice, now Chief Justice Renato C. Corona, declared Section 12^[17] of R.A. No. 9335 creating a Joint Congressional Oversight Committee to approve the IRR as unconstitutional and violative of the principle of separation of powers. However, the constitutionality of the remaining provisions of R.A. No. 9335 was upheld pursuant to Section 13^[18] of R.A. No. 9335. The Court also held that until the contrary is shown, the IRR of R.A. No. 9335 is presumed valid and effective even without the approval of the Joint Congressional Oversight Committee.^[19]

Notwithstanding our ruling in *Abakada*, both parties complied with our Resolution^[20] dated February 10, 2009, requiring them to submit their respective Memoranda.

The Issues

BOCEA raises the following issues:

I.

WHETHER OR NOT THE ATTRITION LAW, REPUBLIC ACT [NO.] 9335, AND ITS IMPLEMENTING RULES AND REGULATIONS ARE UNCONSTITUTIONAL AS THESE VIOLATE THE RIGHT TO DUE PROCESS OF THE COVERED BIR AND BOC OFFICIALS AND EMPLOYEES[;]

II.

WHETHER OR NOT THE ATTRITION LAW, REPUBLIC ACT [NO.] 9335, AND ITS IMPLEMENTING RULES AND REGULATIONS ARE UNCONSTITUTIONAL AS THESE VIOLATE THE RIGHT OF BIR AND BOC OFFICIALS AND EMPLOYEES TO THE EQUAL PROTECTION OF THE LAWS[;]

III.

WHETHER OR NOT REPUBLIC ACT [NO.] 9335 AND ITS IMPLEMENTING RULES AND REGULATIONS VIOLATE THE RIGHT TO SECURITY OF TENURE OF BIR AND BOC OFFICIALS AND EMPLOYEES AS ENSHRINED UNDER SECTION 2 (3), ARTICLE IX (B) OF THE CONSTITUTION[;]

IV.

WHETHER OR NOT REPUBLIC ACT [NO.] 9335 AND ITS IMPLEMENTING RULES AND REGULATIONS ARE UNCONSTITUTIONAL AS THEY CONSTITUTE UNDUE DELEGATION OF LEGISLATIVE POWERS TO THE REVENUE PERFORMANCE EVALUATION BOARD IN VIOLATION OF THE PRINCIPLE OF SEPARATION OF POWERS ENSHRINED IN THE