642 Phil. 47

EN BANC

[G.R. No. 164301, August 10, 2010]

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

D E C I S I O N

LEONARDO-DE CASTRO, J.:

May a corporation invoke its merger with another corporation as a valid ground to exempt its "absorbed employees" from the coverage of a union shop clause contained in its existing Collective Bargaining Agreement (CBA) with its own certified labor union? That is the question we shall endeavor to answer in this petition for review filed by an employer after the Court of Appeals decided in favor of respondent union, which is the employees' recognized collective bargaining representative.

At the outset, we should call to mind the spirit and the letter of the Labor Code provisions on union security clauses, specifically Article 248 (e), which states, "x x x Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement."[1] This case which involves the application of a collective bargaining agreement with a union shop clause should be resolved principally from the standpoint of the clear provisions of our labor laws, and the express terms of the CBA in question, and not by inference from the general consequence of the merger of corporations under the Corporation Code, which obviously does not deal with and, therefore, is silent on the terms and conditions of employment in corporations or juridical entities.

This issue must be resolved NOW, instead of postponing it to a future time when the CBA is renegotiated as suggested by the Honorable Justice Arturo D. Brion because the same issue may still be resurrected in the renegotiation if the absorbed employees insist on their privileged status of being exempt from any union shop clause or any variant thereof.

We find it significant to note that it is only the employer, Bank of the Philippine Islands (BPI), that brought the case up to this Court *via* the instant petition for review; while the employees actually involved in the case did not pursue the same relief, but had instead chosen in effect to acquiesce to the decision of the Court of Appeals which effectively required them to comply with the union shop clause under the existing CBA at the time of the merger of BPI with Far East Bank and Trust Company (FEBTC), which decision had already become final and executory as to the aforesaid employees. By not appealing the decision of the Court of Appeals, the aforesaid employees are bound by the said Court of Appeals' decision to join BPI's

duly certified labor union. In view of the apparent acquiescence of the affected FEBTC employees in the Court of Appeals' decision, BPI should not have pursued this petition for review. However, even assuming that BPI may do so, the same still cannot prosper.

What is before us now is a petition for review under Rule 45 of the Rules of Court of the Decision[2] dated September 30, 2003 of the Court of Appeals, as reiterated in its Resolution[3] of June 9, 2004, reversing and setting aside the Decision[4] dated November 23, 2001 of Voluntary Arbitrator Rosalina Letrondo-Montejo, in *CA-G.R. SP No. 70445*, entitled *BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank v. Bank of the Philippine Islands, et al.*

The antecedent facts are as follows:

On March 23, 2000, the Bangko Sentral ng Pilipinas approved the Articles of Merger executed on January 20, 2000 by and between BPI, herein petitioner, and FEBTC.[5] This Article and Plan of Merger was approved by the Securities and Exchange Commission on April 7, 2000.[6]

Pursuant to the Article and Plan of Merger, all the assets and liabilities of FEBTC were transferred to and absorbed by BPI as the surviving corporation. FEBTC employees, including those in its different branches across the country, were hired by petitioner as its own employees, with their status and tenure recognized and salaries and benefits maintained.

Respondent BPI Employees Union-Davao Chapter - Federation of Unions in BPI Unibank (hereinafter the "Union," for brevity) is the exclusive bargaining agent of BPI's rank and file employees in Davao City. The former FEBTC rank-and-file employees in Davao City did not belong to any labor union at the time of the merger. Prior to the effectivity of the merger, or on March 31, 2000, respondent Union invited said FEBTC employees to a meeting regarding the Union Shop Clause (Article II, Section 2) of the existing CBA between petitioner BPI and respondent Union.[7]

The parties both advert to certain provisions of the existing CBA, which are quoted below:

ARTICLE I

Section 1. Recognition and Bargaining Unit - The BANK recognizes the UNION as the sole and exclusive collective bargaining representative of all the regular rank and file employees of the Bank offices in Davao City.

Section 2. Exclusions

Section 3. Additional Exclusions

Section 4. Copy of Contract

ARTICLE II

> Section 1. Maintenance of Membership - All employees within the bargaining unit who are members of the Union on the date of the effectivity of this Agreement as well as employees within the bargaining unit who subsequently join or become members of the Union during the lifetime of this Agreement shall as a condition of their continued employment with the Bank, maintain their membership in the Union in good standing.
>
> 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.[8] (Emphases supplied.)

After the meeting called by the Union, some of the former FEBTC employees joined the Union, while others refused. Later, however, some of those who initially joined retracted their membership.[9]

Respondent Union then sent notices to the former FEBTC employees who refused to join, as well as those who retracted their membership, and called them to a hearing regarding the matter. When these former FEBTC employees refused to attend the hearing, the president of the Union requested BPI to implement the Union Shop Clause of the CBA and to terminate their employment pursuant thereto.[10]

After two months of management inaction on the request, respondent Union informed petitioner BPI of its decision to refer the issue of the implementation of the Union Shop Clause of the CBA to the Grievance Committee. However, the issue remained unresolved at this level and so it was subsequently submitted for voluntary arbitration by the parties.[11]

Voluntary Arbitrator Rosalina Letrondo-Montejo, in a Decision[12] dated November 23, 2001, ruled in favor of petitioner BPI's interpretation that the former FEBTC employees were not covered by the Union Security Clause of the CBA between the Union and the Bank on the ground that the said employees were not new employees who were hired and subsequently regularized, but were absorbed employees "by operation of law" because the "**former employees** of FEBTC can be considered **assets and liabilities of the absorbed corporation**." The Voluntary Arbitrator concluded that the former FEBTC employees could not be compelled to join the Union, as it was their constitutional right to join or not to join any organization.

Respondent Union filed a Motion for Reconsideration, but the Voluntary Arbitrator denied the same in an Order dated March 25, 2002.[13]

Dissatisfied, respondent then appealed the Voluntary Arbitrator's decision to the Court of Appeals. In the herein assailed Decision dated September 30, 2003, the Court of Appeals reversed and set aside the Decision of the Voluntary Arbitrator.[14] Likewise, the Court of Appeals denied herein petitioner's Motion for Reconsideration

in a Resolution dated June 9, 2004.

The Court of Appeals pertinently ruled in its Decision:

> A union-shop clause has been defined as a form of union security provision wherein non-members may be hired, but to retain employment must become union members after a certain period.
>
> There is no question as to the existence of the union-shop clause in the CBA between the petitioner-union and the company. The controversy lies in its application to the "absorbed" employees.
>
> This Court agrees with the voluntary arbitrator that the ABSORBED employees are distinct and different from NEW employees BUT only in so far as their employment service is concerned. The distinction ends there. In the case at bar, the absorbed employees' length of service from its former employer is tacked with their employment with BPI. Otherwise stated, the absorbed employees service is continuous and there is no gap in their service record.
>
> This Court is persuaded that the *similarities* of "new" and "absorbed" employees far outweighs the *distinction* between them. The similarities lies on the following, to wit: (a) they have a new employer; (b) new working conditions; (c) new terms of employment and; (d) new company policy to follow. As such, they should be considered as "new" employees for purposes of applying the provisions of the CBA regarding the "union-shop" clause.
>
> To rule otherwise would definitely result to a very awkward and unfair situation wherein the "absorbed" employees shall be in a different if not, better situation than the existing BPI employees. The existing BPI employees by virtue of the "union-shop" clause are required to pay the monthly union dues, remain as members in good standing of the union otherwise, they shall be terminated from the company, and other union-related obligations. On the other hand, the "absorbed" employees shall enjoy the "fruits of labor" of the petitioner-union and its members for nothing in exchange. Certainly, this would disturb industrial peace in the company which is the paramount reason for the existence of the CBA and the union.
>
> The voluntary arbitrator's interpretation of the provisions of the CBA concerning the coverage of the "union-shop" clause is at war with the spirit and the rationale why the Labor Code itself allows the existence of such provision.
>
> The Supreme Court in the case of Manila Mandarin Employees Union vs. NLRC (G.R. No. 76989, September 29, 1987) rule, to quote:
>
> > "This Court has held that a valid form of union security, and such a provision in a collective bargaining agreement is not a

> restriction of the right of freedom of association guaranteed by the Constitution.
>
> A closed-shop agreement is an agreement whereby an employer binds himself to hire only members of the contracting union who must continue to remain members in good standing to keep their jobs. It is **"THE MOST PRIZED ACHIEVEMENT OF UNIONISM." IT ADDS MEMBERSHIP AND COMPULSORY DUES.** By holding out to loyal members a promise of employment in the closed-shop, **it wields group solidarity**." (Emphasis supplied)

Hence, the voluntary arbitrator erred in construing the CBA literally at the expense of industrial peace in the company.

With the foregoing ruling from this Court, necessarily, the alternative prayer of the petitioner to require the individual respondents to become members or if they refuse, for this Court to direct respondent BPI to dismiss them, follows.[15]

Hence, petitioner's present recourse, raising the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE FORMER FEBTC EMPLOYEES SHOULD BE CONSIDERED `NEW' EMPLOYEES OF BPI FOR PURPOSES OF APPLYING THE UNION SHOP CLAUSE OF THE CBA

II

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE VOLUNTARY ARBITRATOR'S INTERPRETATION OF THE COVERAGE OF THE UNION SHOP CLAUSE IS "AT WAR WITH THE SPIRIT AND THE RATIONALE WHY THE LABOR CODE ITSELF ALLOWS THE EXISTENCE OF SUCH PROVISION"[16]

In essence, the sole issue in this case is whether or not the former FEBTC employees that were absorbed by petitioner upon the merger between FEBTC and BPI should be covered by the Union Shop Clause found in the existing CBA between petitioner and respondent Union.

Petitioner is of the position that the former FEBTC employees are not new employees of BPI for purposes of applying the Union Shop Clause of the CBA, on this note, petitioner points to Section 2, Article II of the CBA, which provides:

> **New employees falling within the bargaining unit** as defined in Article I of this Agreement, **who may hereafter be regularly**