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THIRD DIVISION

[G.R. No. 178647, February 13, 2009]

GENERAL SANTOS COCA-COLA PLANT FREE WORKERS UNION-TUPAS, PETITIONER, VS. COCA-COLA BOTTLERS PHILS., INC. (GENERAL SANTOS CITY), THE COURT OF APPEALS AND THE NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

R E S O L U T I O N

NACHURA, J.:

In this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules on Civil Procedure, petitioner General Santos Coca-Cola Plant Free Workers Union-Tupas (Union) is seeking the reversal of the April 18, 2006 Decision[1] and May 30, 2007 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 80916. The CA affirmed the January 31, 2003 and August 29, 2003 Resolutions[3] of the National Labor Relations Commission (NLRC) in favor of respondent Coca-Cola Bottlers Phil., Inc. (CCBPI).

Sometime in the late 1990s, CCBPI experienced a significant decline in profitability due to the Asian economic crisis, decrease in sales, and tougher competition. To curb the negative effects on the company, it implemented three (3) waves of an Early Retirement Program.[4] Meanwhile, there was an inter-office memorandum sent to all of CCBPI's Plant Human Resources Managers/Personnel Officers, including those of the CCBPI General Santos Plant (CCBPI Gen San) mandating them to put on hold "all requests for hiring to fill in vacancies in both regular and temporary positions in [the] Head Office and in the Plants." Because several employees availed of the early retirement program, vacancies were created in some departments, including the production department of CCBPI Gen San, where members of petitioner Union worked. This prompted petitioner to negotiate with the Labor Management Committee for filling up the vacancies with permanent employees. No resolution was reached on the matter.[5]

Faced with the "freeze hiring" directive, CCBPI Gen San engaged the services of JLBP Services Corporation (JLBP), a company in the business of providing labor and manpower services, including janitorial services, messengers, and office workers to various private and government offices.[6]

On January 21, 2002, petitioner filed with the National Conciliation and Mediation Board (NCMB), Regional Branch 12, a Notice of Strike on the ground of alleged unfair labor practice committed by CCBPI Gen San for contracting-out services regularly performed by union members ("union busting"). After conciliation and mediation proceedings before the NCMB, the parties failed to come to an amicable settlement. On July 3, 2002, CCBPI filed a Petition for Assumption of Jurisdiction with the Office of the Secretary of Labor and Employment. On July 26, 2002, the

Secretary of Labor issued an Order enjoining the threatened strike and certifying the dispute to the NLRC for compulsory arbitration.[7]

In a Resolution[8] dated January 31, 2003, the NLRC ruled that CCBPI was not guilty of unfair labor practice for contracting out jobs to JLBP. The NLRC anchored its ruling on the validity of the "Going-to-the-Market" (GTM) system implemented by the company, which called for restructuring its selling and distribution system, leading to the closure of certain sales offices and the elimination of conventional sales routes. The NLRC held that petitioner failed to prove by substantial evidence that the system was meant to curtail the right to self-organization of petitioner's members. Petitioner filed a motion for reconsideration, which the NLRC denied in a Resolution[9] dated August 29, 2003. Hence, petitioner filed a Petition for *Certiorari* before the CA.

The CA issued the assailed Decision[10] on April 18, 2006 upholding the NLRC's finding that CCBPI was not guilty of unfair labor practice. The CA based its decision on the validity of CCBPI's contracting out of jobs in its production department. It held that the contract between CCBPI and JLBP did not amount to labor-only contracting. It found that JLBP was an independent contractor and that the decision to contract out jobs was a valid exercise of management prerogative to meet exigent circumstances. On the other hand, petitioner failed to adduce evidence to prove that contracting out of jobs by the company resulted in the dismissal of petitioner's members, prevented them from exercising their right to self-organization, led to the Union's demise or that their group was singled out by the company. Consequently, the CA declared that CCBPI was not guilty of unfair labor practice.

Its motion for reconsideration having been denied,[11] petitioner now comes to this Court seeking the reversal of the CA Decision.

The petition is bereft of merit. Hence, we deny the Petition.

Under Rule 45 of the Revised Rules on Civil Procedure, only questions of law may be raised in a Petition for Review on *Certiorari*.[12]

There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The resolution of the issue must rest solely on what the law provides on a given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to one another, the issue in that query is factual.[13]

An examination of the issues raised by petitioner reveals that they are questions of fact. The issues raised, *i.e.*, whether JLBP is an independent contractor, whether CCBPI's contracting-out of jobs to JLBP amounted to unfair labor practice, and whether such action was a valid exercise of management prerogative, call for a re-examination of evidence, which is not within the ambit of this Court's jurisdiction.

Moreover, factual findings of the NLRC, an administrative agency deemed to have