

SECOND DIVISION

[G.R. No. 109002, April 12, 2000]

**DELA SALLE UNIVERSITY, PETITIONER, VS. DELA SALLE
UNIVERSITY EMPLOYEES ASSOCIATION (DLSUEA) AND
BUENAVENTURA MAGSALIN, RESPONDENTS.**

[G.R. No. 110072]

**DELA SALLE UNIVERSITY EMPLOYEES ASSOCIATION-NATIONAL
FEDERATION OF TEACHERS AND EMPLOYEES UNION (DLSUEA-
NAFTEU), PETITIONER, VS. DELA SALLE UNIVERSITY AND
BUENAVENTURA MAGSALIN, RESPONDENTS.**

D E C I S I O N

BUENA, J.:

Filed with this Court are two petitions for *certiorari*,^[1] the first petition with preliminary injunction and/or temporary restraining order,^[2] assailing the decision of voluntary arbitrator Buenaventura Magsalin, dated January 19, 1993, as having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction. These two petitions have been consolidated inasmuch as the factual antecedents, parties involved and issues raised therein are interrelated.^[3]

The facts are not disputed and, as summarized by the voluntary arbitrator, are as follows. On December 1986, Dela Salle University (hereinafter referred to as UNIVERSITY) and Dela Salle University Employees Association - National Federation of Teachers and Employees Union (DLSUEA-NAFTEU), which is composed of regular non-academic rank and file employees,^[4] (hereinafter referred to as UNION) entered into a collective bargaining agreement with a life span of three (3) years, that is, from December 23, 1986 to December 22, 1989.^[5] During the freedom period, or 60 days before the expiration of the said collective bargaining agreement, the Union initiated negotiations with the University for a new collective bargaining agreement^[6] which, however, turned out to be unsuccessful, hence, the Union filed a Notice of Strike with the National Conciliation and Mediation Board, National Capital Region.^[7] After several conciliation-mediation meetings, five (5) out of the eleven (11) issues raised in the Notice of Strike were resolved by the parties. A partial collective bargaining agreement was thereafter executed by the parties.^[8] On March 18, 1991, the parties entered into a Submission Agreement, identifying the remaining six (6) unresolved issues for arbitration, namely: "(1) scope of the bargaining unit, (2) union security clause, (3) security of tenure, (4) salary increases for the third and fourth years [this should properly read second and third years]^[9] of the collective bargaining agreement, (5) indefinite union leave, reduction of the union president's workload, special leave, and finally, (6) duration

of the agreement."^[10] The parties appointed Buenaventura Magsalin as voluntary arbitrator.^[11] On January 19, 1993, the voluntary arbitrator rendered the assailed decision.^[12]

In the said decision, the voluntary arbitrator, on the first issue involving the scope of the bargaining unit, ruled that "...the Computer Operators assigned at the CSC [Computer Services Center], just like any other Computer Operators in other units, [should be] included as members of the bargaining unit,"^[13] after finding that "[e]vidently, the Computer Operators are presently doing clerical and routinary work and had nothing to do with [the] setting of management policies for the University, as [may be] gleaned from the duties and responsibilities attached to the position and embodied in the CSC [Computer Services Center] brochure. They may have, as argued by the University, access to vital information regarding the University's operations but they are not necessarily confidential."^[14] Regarding the discipline officers, the voluntary arbitrator "...believes that this type of employees belong (sic) to the rank-and-file on the basis of the nature of their job."^[15] With respect to the employees of the College of St. Benilde, the voluntary arbitrator found that the College of St. Benilde has a personality separate and distinct from the University and thus, held "...that the employees therein are outside the bargaining unit of the University's rank-and-file employees."^[16]

On the second issue regarding the propriety of the inclusion of a union shop clause in the collective bargaining agreement, in addition to the existing maintenance of membership clause, the voluntary arbitrator opined that a union shop clause "...is not a restriction on the employee's right of (sic) freedom of association but rather a valid form of union security while the CBA is in force and in accordance with the Constitutional policy to promote unionism and collective bargaining and negotiations. The parties therefore should incorporate such union shop clause in their CBA."^[17]

On the third issue with respect to the use of the "last-in-first-out" method in case of retrenchment and transfer to other schools or units, the voluntary arbitrator upheld the "...elementary right and prerogative of the management of the University to select and/or choose its employees, a right equally recognized by the Constitution and the law. The employer, in the exercise of this right, can adopt valid and equitable grounds as basis for lay-off or separation, like performance, qualifications, competence, etc. Similarly, the right to transfer or reassign an employee is an employer's exclusive right and prerogative."^[18]

Regarding the fourth issue concerning salary increases for the second and third years of the collective bargaining agreement, the voluntary arbitrator opined that the "...proposed budget of the University for SY 1992-93 could not sufficiently cope up with the demand for increases by the Union. xxx xxx. With the present financial condition of the University, it cannot now be required to grant another round of increases through collective bargaining without exhausting its coffers for other legitimate needs of the University as an institution,"^[19] thus, he ruled that "...the University can no longer be required to grant a second round of increase for the school years under consideration and charge the same to the incremental proceeds."

^[20]

On the fifth issue as to the Union's demand for a reduction of the workload of the union president, special leave benefits and indefinite union leave with pay, the voluntary arbitrator rejected the same, ruling that unionism "...is no valid reason for the reduction of the workload of its President,"^[21] and that there is "...no sufficient justification to grant an indefinite leave."^[22] Finding that the Union and the Faculty Association are not similarly situated, technically and professionally,^[23] and that "[w]hile professional growth is highly encouraged on the part of the rank-and-file employees, this educational advancement would not serve in the same degree as demanded of the faculty members,"^[24] the voluntary arbitrator denied the Union's demand for special leave benefits.

On the last issue regarding the duration of the collective bargaining agreement, the voluntary arbitrator ruled that "...when the parties forged their CBA and signed it on 19 November 1990, where a provision on duration was explicitly included, the same became a binding agreement between them. Notwithstanding the Submission Agreement, thereby reopening this issue for resolution, this Voluntary Arbitrator is constrained to respect the original intention of the parties, the same being not contrary to law, morals or public policy."^[25] As to the economic aspect of the collective bargaining agreement, the voluntary arbitrator opined that the "...economic provisions of the CBA shall be re-opened after the third year in compliance with the mandate of the Labor Code, as amended."^[26]

Subsequently, both parties filed their respective motions for reconsideration which, however, were not entertained by the voluntary arbitrator "pursuant to existing rules and jurisprudence governing voluntary arbitration cases."^[27]

On March 5, 1993, the University filed with the Second Division of this Court, a petition for *certiorari* with temporary restraining order and/or preliminary injunction assailing the decision of the voluntary arbitrator, as having been rendered "in excess of jurisdiction and/or with grave abuse of discretion."^[28] Subsequently, on May 24, 1993, the Union also filed a petition for *certiorari* with the First Division.^[29] Without giving due course to the petition pending before each division, the First and Second Divisions separately resolved to require the respondents in each petition, including the Solicitor General on behalf of the voluntary arbitrator, to file their respective Comments.^[30] Upon motion by the Solicitor General dated July 29, 1993, both petitions were consolidated and transferred to the Second Division.^[31]

In his consolidated Comment^[32] filed on September 9, 1993 on behalf of voluntary arbitrator Buenaventura C. Magsalin, the Solicitor General agreed with the voluntary arbitrator's assailed decision on all points except that involving the employees of the College of St. Benilde. According to the Solicitor General, the employees of the College of St. Benilde should have been included in the bargaining unit of the rank-and-file employees of the University.^[33] The Solicitor General came to this conclusion after finding "...sufficient evidence to justify the Union's proposal to consider the University and the CSB [College of St. Benilde] as only one entity because the latter is but a mere integral part of the University," to wit:^[34]

"1. One of the duties and responsibilities of the CSB's Director of Academic Services is to coordinate with the University's Director of

Admissions regarding the admission of freshmen, shiftees and transferees (Annex "3" of the University's Reply);

"2. Some of the duties and responsibilities of the CSB's Administrative Officer are as follows:

'A. xxx xxx xxx.

'4. Recommends and implements personnel policies and guidelines (in accordance with the Staff Manual) as well as pertinent existing general policies of the university as a whole. xxx.

'12. Conducts and establishes liaison with all the offices concerned at the Main Campus as well (sic) with other government agencies on all administrative-related matters. xxx

'B. xxx xxx xxx

'7. Handles processing, canvassing and direct purchasing of all requisitions worth more than P10,000 or less. Coordinates and canvasses with the Main Campus all requisitions worth more than P10,000. xxx

'C. xxx xxx xxx

'7. Plans and coordinates with the Security and Safety Committee at the Main Campus the development of a security and safety program during times of emergency or occurrence of fire or other natural calamities. xxx (Annex "4" of the University's Reply).'

"3. The significant role which the University assumes in the admission of students at the CSB is revealed in the following provisions of the CSB's Bulletin for Arts and Business Studies Department for the schoolyear 1992-1993, thus:

'Considered in the process of admission for a (sic) high school graduate applicants are the following criteria: results of DLSU College Entrance Examination xxx.

'Admission requirements for transferees are: xxx and an acceptable score in the DLSU admission test. xxx

'Shiftees from DLSU who are still eligible to enroll may be admitted in accordance with the DLSU policy on shifting. Considering that there sometimes exist exceptional cases where a very difficult but temporary situation renders a DLSU student falling under this category a last chance to be re-admitted provided he meets the cut-off scores required in the qualifying examination administered by the university. xxx

'He may not be remiss in his study obligations nor incur any violation whatsoever, as such will be taken by the University to be an indication of his loss of initiative to pursue further studies at DLSU. In sch (sic) a case, he renders himself ineligible to continue studying at DLSU. DLSU thus reserves the right to the discontinuance of the studies of any enrollee whose presence is inimical to the objectives of the CSB/DLSU.
xxx Mi-so

'As a college within the university, the College of St. Benilde subscribes to the De La Salle Mission." (Annexes "C-1," "C-2," and "C-3" of the Union's Consolidated Reply and Rejoinder)'

"4. The academic programs offered at the CSB are likewise presented in the University's Undergraduate Prospectus for schoolyear 1992-1993 (Annex "D" of the Union's Consolidated Reply and Rejoinder).

"5. The Leave Form Request (Annex "F" of the Union's Position Paper) at the CSB requires prior permission from the University anent leaves of CSB employees, to wit:

'AN EMPLOYEE WHO GOES ON LEAVE WITHOUT PRIOR PERMISSION FROM THE UNIVERSITY OR WHO OVEREXTENDS THE PERIOD OF HIS APPROVED LEAVE WITHOUT SECURING AUTHORITY FROM THE UNIVERSITY, OR WHO REFUSE TO BE RECALLED FROM AN APPROVED LEAVE SHALL BE CONSIDERED ABSENT WITHOUT LEAVE AND SHALL BE SUBJECT TO DISCIPLINARY ACTION.'

"6. The University officials themselves claimed during the 1990 University Athletic Association of the Philippines (UAAP) meet that the CSB athletes represented the University since the latter and the CSB comprise only one entity."

On February 9, 1994, this Court resolved to give due course to these consolidated petitions and to require the parties to submit their respective memoranda.^[35]

In its memorandum filed on April 28, 1994,^[36] pursuant to the above-stated Resolution,^[37] the University raised the following issues for the consideration of the Court:^[38]

I.

"WHETHER OR NOT GRAVE ABUSE OF DISCRETION WAS COMMITTED BY THE VOLUNTARY ARBITRATOR WHEN HE INCLUDED, WITHIN THE BARGAINING UNIT COMPRISING THE UNIVERSITY'S RANK-AND-FILE EMPLOYEES, THE COMPUTER OPERATORS ASSIGNED AT THE UNIVERSITY'S COMPUTER SERVICES CENTER AND THE UNIVERSITY'S DISCIPLINE OFFICERS, AND WHEN HE EXCLUDED THE COLLEGE OF SAINT BENILDE EMPLOYEES FROM THE SAID BARGAINING UNIT.

II.