

ELEVENTH DIVISION

[CA-G.R. SP NO. 123037, January 22, 2015]

**IN RE: PETITION FOR AUDIT OF THE BOOKS OF ACCOUNTS OF
THE BATAAN REFINERS UNION OF THE PHILIPPINES (BRUP),**

**BERNARDO R. ABELLA, JR., SALVADOR C. MENDOZA,
JUSTINIANO H. AINZA, JR. AND MANUEL D. CUSTODIO,
PETITIONERS, VS. THE HON. REBECCA C. CHATO, DIRECTOR IV,
DEPARTMENT OF LABOR AND EMPLOYMENT, BUREAU OF LABOR
RELATIONS, MANILA AND THE CONCERNED MEMBERS OF THE
BATAAN REFINERS UNION OF THE PHILIPPINES, RESPONDENTS.**

DECISION

SADANG, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to set aside the Order,^[1] dated March 23, 2010, and Resolution,^[2] dated November 8, 2011, of public respondent Bureau of Labor Relations (BLR for brevity) Director in BLR-A-A-33-2-29-04 (RO300-0212-AU-001).

Antecedents of the Petition

The petition stemmed from the letter,^[3] dated November 25, 2002, filed by the concerned members (hereafter, private respondents) of the Bataan Refinery Union of the Philippines (the union, for short) before the Regional Office III, Department of Labor and Employment (DOLE), San Fernando, Pampanga seeking an independent audit of the union funds for the years 2000 to 2002. Impleaded in the letter were Bernardo Abella, Jr. and Justino Ainza, outgoing president and treasurer of the union, respectively, and Salvador Mendoza and Manuel Custodio, incoming president and treasurer, respectively (hereafter, petitioners). The letter was treated as a complaint for audit of union funds.

On March 26, 2003, petitioners moved to dismiss the complaint on procedural grounds to which private respondents filed a comment averring that they complied with the formal and substantial requirements and that the complaint is supported by 20% of the union membership.

On July 21, 2003, Regional Director (RD) Josefino Torres rendered a Decision^[4] for the audit and examination of books of account of the union. Accordingly, a pre-audit conference was scheduled by Audit Examiner (AE) Ma. Rosini David on August 19, 2003.

On March 1, 2004, RD Torres issued an Order,^[5] ostensibly on the basis of the audit findings of AE David, finding petitioners guilty of illegal disbursements and ordering them to jointly and severally reconstitute union funds in the amount of P1,025,367.10,

representing the total disallowed expenses.

Petitioners appealed to the BLR, Manila reiterating their contentions that: RD Torres erred in entertaining the letter in spite of non-compliance with the formal requirements on verification and certificate of non-forum shopping; private respondents did not exhaust their remedies under the union constitution and by-laws; and the audit violated Article 274 of the Labor Code because it was done within 30 days after the election of union officers.

On October 11, 2004, BLR Director Hans Leo Cacdac issued a Resolution^[6] partially granting the appeal of petitioners. Director Cacdac ordered a re-audit within ten (10) days and directed Accounts Examiner-Designate (AED) Josie Calderon to receive evidence and to examine and review the findings of AE David.

On the basis of AED Calderon's Audit Report, dated August 11, 2009, BLR Director Rebecca C. Chato issued an Order,^[7] dated March 23, 2010, the *fallo* of which reads:

WHEREFORE, premises considered, appellants Bernardo R. Abella, Jr., Salvador C. Mendoz, Justiniano H. Ainza and Manuel D. Custodio as the accountable officers during the period covered by the accounts examination are hereby directed to **ACCOUNT, JUSTIFY** and/or **EXPLAIN** to the entire union membership in a general assembly called for the purpose, the amount of Php783,099.15. Appellants are further directed to **RESTITUTE** to the union coffers the doubtful expenses amounting to Php10,578.00 and cash shortage of Php14,864.95.

Accordingly, the incumbent union officers are **ORDERED** to call for a general membership assembly within fifteen (15) days from receipt hereof to account, justify and/or explain the unaccounted mortuary assistance of Php145,000.00 and the Php638,099.15 temporarily disallowed disbursements or a total of Php783,099.15. In accordance with the union CBL, a resolution whether or not appellants have fully accounted for the said amount must be approved by the general membership in the general assembly convened for this purpose. Appellants are given fifteen (15) days from the conduct of general assembly, to submit a compliance report before this Office.

SO ORDERED.

Petitioners filed a Motion for Reconsideration^[8] but it was denied by Director Chato in a Resolution dated November 8, 2011. Director Chato further directed the conduct of another general membership assembly. She also directed the incumbent officers 1) to call another general membership assembly and to notify petitioners in writing of the schedule thereof for them to comply with the order; and 2) to pass and adopt a resolution, in accordance with the union constitution and by-laws, on the issue of whether or not to accept the accounting, justification and explanation of petitioners and to absolve them of any liability.^[9]

Hence, this petition on the following grounds:^[10]

- I. CERTIORARI MAY BE AVAILED OF WHEN ANY TRIBUNAL, BOARD OR OFFICER EXERCISING JUDICIAL OR QUASI-JUDICIAL FUNCTIONS HAS ACTED WITHOUT OR IN EXCESS OF ITS OR HIS/HER JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION;
- II. THE HON. REBECCA C. CHATO IGNORED THE MOTION FOR RECONSIDERATION TIMELY FILED BY PETITIONER FROM THE DECISION OF THE HONORABLE HANS LEO CACDAC.
- III. THE HONORABLE BUREAU DIRECTOR GRAVELY ABUSED HER DISCRETION WHEN IT ALLOWED THE BLR ACCOUNTS EXAMINER-DESIGNATE TO PROCEED WITH THE AUDIT AND IN UPHOLDING THE FINDINGS AND RECOMMENDATIONS OF THE LATTER AS REFLECTED IN HER REPORT DATED 11 AUGUST 2009.
- IV. THE HONORABLE BUREAU DIRECTOR GRAVELY ABUSED HER DISCRETION WHEN SHE DENIED THE MOTION FOR RECONSIDERATION OF THE PETITIONERS FROM HER ORDER DATED 23 MARCH 2010.
- V. THE HONORABLE BUREAU DIRECTOR GRAVELY ABUSED HER DISCRETION IN IMPEACHING SALVADOR C. MENDOZA AND MANUEL CUSTODIO AND IN CHARGING THEM AS ACCOUNTABLE OFFICERS DURING THE PERIOD COVERED BY ACCOUNTS EXAMINATIONS.
- VI. THE HONORABLE BUREAU DIRECTOR GRAVELY ABUSED HER DISCRETION IN DIRECTING THE INCUMBENT OFFICERS TO CAUSE THE GENERAL MEMBERSHIP TO FREELY AND VOLUNTARILY PASS AND ADOPT A RESOLUTION IN ACCORDANCE WITH THE UNION CONSTITUTION AND BY-LAWS WHETHER OR NOT TO ACCEPT THE ACCOUNTING, JUSTIFICATION AND EXPLANATION OF APPELLANTS, AND ABSOLVE THEM OF ANY LIABILITY.

RULING

The petition is partly meritorious.

Petitioners argue that public respondent Director Chato ignored their Motion for Reconsideration of the March 23, 2010 Order and their November 2, 2004 Motion for Reconsideration of the October 11, 2004 Order of Director Cacdac. They insist that they filed these motions and Director Chato should have investigated why they are not in the records.

No grave abuse of discretion may be ascribed to Director Chato for not considering the aforesaid motions. As found by Director Chato in her November 8, 2011 Resolution, the alleged November 2, 2004 Motion for Reconsideration of the October 11, 2004 Order of Director Cacdac and the other motion are not in the records. Director Chato ruled that petitioners were not able to prove that the motions were filed and received by the BLR. Accordingly, petitioners' allegation remains what it is, an allegation.