THIRTEENTH DIVISION

[CA-G.R. SP No. 116075, February 26, 2014]

LEPANTO CONSOLIDATED MINING COMPANY (LCMC), PETITIONER, VS. LEPANTO SECURITY FORCE UNION NAFLU-KMU, RESPONDENTS.

D E C I S I O N

YBAÑEZ, J.:

This is a Petition for Review[1] under Rule 43 of the Rules of Court seeking to reverse and set aside the 11 May 2010 Decision[2] and 27 July 2010 Order[3] of Voluntary Arbitrator Reynaldo B. Cajucom.

ANTECEDENTS

Petitioner Lepanto Consolidated Mining Company wrote a letter dated 13 October 2003 to Andres Victoriano, then President of Lepanto Security Force Union, reclassifying employees in the security force, who were members of the Lepanto Security Force Union or the Lepanto Security Force Bargaining Unit, as confidential rank-and-file employees. This was done in view of the purported handwritten request of twenty-nine (29) members of the Lepanto Security Force Union.[4] Because of said reclassification, the security guards were removed as union members and/or members of the bargaining unit.

On 17 September 2004, Lepanto Security Force Union manifested its desire to renew its collective bargaining agreement with the petitioner company. After a series of negotiation meetings, the two parties failed to reach an agreement.[5]

The respondent union filed a notice of strike with the National Conciliation and Mediation Board-Cordillera Administrative Region (NCMB-CAR) on 13 April 2005. Conciliation meetings were then conducted, but to no avail.[6]

On 10 May 2005, the Secretary of Labor and Employment issued an order assuming jurisdiction over the issues raised in the Notice of Strike. Meanwhile, conciliation proceedings continued.[7]

The parties agreed to submit the unresolved issues to voluntary arbitration. On the issue of the confidential employees, the voluntary arbitrator ruled against the respondent union.[8]

On appeal, this Court in CA-G.R. SP No. 97917 Decision promulgated on 27 November 2008, ruled in this wise:

"x x x Verily, the act of the respondent in automatically classifying the security guards as confidential employees, in the absence of any proof that they deal with labor relations policies in a confidential manner, is a clear contravention of the provisions of law and existing jurisprudence which cannot be countenanced.

Prescinding therefrom, the twenty-nine security guards in the present case cannot be excluded from the petitioner union on the basis that they are 'confidential employees'. xxx.

The voluntary arbitrator justified the reclassification of the security guards to confidential employees on the ground that the security guards no longer wanted to be part of the petitioner union, and were merely exercising their right not to join the union. Such reasoning is misplaced for, if said security guards truly no longer wanted to be part of the petitioner union, they could just have voluntarily disaffiliated from the petitioner union. There was in fact no need for them to ask that they be reclassified as confidential employees if they no longer wanted to be part of the union. xxx.

Based on the foregoing discussions, we find, therefore, that the voluntary arbitrator committed grave abuse of discretion when he upheld the decision of the respondent in classifying the 29 security guards as confidential employees.

x x x."[9]

This Court's 27 November 2008 Decision was affirmed by the Supreme Court.[10]

Meanwhile, a new Collective Bargaining Agreement (CBA) was signed by the parties on 21 April 2008. While the said CBA was in effect, the petitioner company again reclassified union members Wilbert Palasico, Godfrey Calabot and Leopoldo Long-a as confidential security guards. The said security guards were given wage increases and other benefits over and above those provided in the CBA. The respondent union opposed the company's act.[11]

After exhausting the grievance procedure outlined in the CBA, the respondent union filed a preventive mediation with the NCMB-CAR on 24 July 2009. The parties failed to amicably settle their differences, thus, the parties submitted the unresolved issues to voluntary arbitration.[12]

Included in the issues submitted to voluntary arbitration is the case of security guard Francis Gatayen. The petitioner company dismissed Gatayen for Qualified Theft of Diesoline Oil/Willful Breach of Trust and Confidence. Gatayen filed a case for Illegal Dismissal before the National Labor Relations Commission, but the same was

amicably settled during the mandatory conference. He was reinstated on 16 October 2008, but was later transferred to another department.[13]

The voluntary arbitrator, in his 11 May 2010 Decision, ruled that the classification of the three (3) security guards as confidential employees is null and void, the petitioner company is guilty of unfair labor practices, and the transfer of security guard Francis Gatayen is illegal.[14]

The petitioner company moved for reconsideration, but the motion was denied on 27 July 2010.[15]

Hence, the instant petition.

Initially, the case was submitted to appellate Court mediation. The mediation was, however, terminated for failure of the respondent's representative to appear before the Philippine Mediation Center-Court of Appeals.[16]

ISSUES

Thus, the case is reverted back to its appellate proceedings where petitioner raised the following grounds[17]:

> "1. THAT THE VOLUNTARY ARBITRATOR ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECLARED THAT THE CLASSIFICATION OF THREE SECURITY GUARDS AS CONFIDENTIAL EMPLOYEES, IS NULL AND VOID AND REVERTING THEM BACK TO LSFU-UNION AND TO PAY THEIR CORRESPONDING AGENCY FEES.
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> 2. THAT THE VOLUNTARY ARBITRATOR ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECLARED THAT PETITIONER LEPANTO CONSOLIDATED MINING COMPANY IS GUILTY OF UNFAIR LABOR PRACTICES ON WAGE DISTORTION.
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> 3. THAT THE VOLUNTARY ARBITRATOR ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECLARED THAT THE TRANSFER OF SECURITY GUARD FRANCIS GATAYEN IS ILLEGAL AND REINSTATING HIM TO HIS FORMER POSITION.
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> 4. THAT THE VOLUNTARY ARBITRATOR ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECLARED THAT PETITIONER IS SANCTIONED AND ORDERED TO PAY THE PENALTY OF ONE HUNDRED THOUSAND PESOS (P 100,000.00) FOR UNFAIR LABOR PRACTICES."

OUR RULING

According to the petitioner, it has the right to determine who among its employees are to be considered as confidential, and after accepting those employees listed by the company to be confidential, the respondent can no longer question the confidential status of the employees concerned.[18] The petitioner argued that the 3 security guards who want to be reclassified as confidential employees did not want to continue their membership with the union.[19]

The petitioner contended that an employer is free to manage and regulate, according to its own discretion and judgment, all phases of employment.[20] It further posited that granting that there was wage increase for confidential security guards, the same does not constitute wage discrimination.[21]

In the case of security guard Francis Gatayen, the petitioner asseverated that he was dismissed for just and valid cause for Qualified Theft of Diesoline Oil/Willful Breach of Trust and Confidence.[22]

In addition, the petitioner averred that the voluntary arbitrator erred in imposing P100,000.00 by way of penalty because the same has no factual and legal basis.[23]

On the other hand, the respondent posited that the security guards classified as confidential rank-and-file cannot be considered confidential employees because they do not have access to confidential labor relation information and their functions do not relate to labor relations.[24]

The respondent argued that since the reclassification of the 3 security guards as confidential employees is void, they remain union members and/or members of the bargaining unit. As such, they are required to pay agency fees.[25]

Another argument of the respondent is that the purpose of the petitioner in increasing the wage of confidential security guards is to discourage membership in the union and to remove them as union members, which is prohibited under Article 248 of the Labor Code.[26] The respondent stated that the petitioner successfully decreased the membership of the union and the bargaining unit.[27]

In the alternative, the respondent union, citing Article 124 of the Labor Code, contended that wage distortion resulted when the petitioner unilaterally granted wage increases and benefits to the alleged confidential company security guards.[28]

The respondent also submitted that at the time the petitioner accepted the letter of Wilbert Palasico, Godfrey Colabot and Leopoldo Long-a, this Court has already decided a previous and similar case in its favor. In said case, the respondent stated that this Court declared null and void the reclassification of security guards as confidential rank-and-file.[29]

The petition lacks merit.

The classification by petitioner of security guards Wilbert Palasico, Godfrey Colabot and Leopoldo Long-a as confidential employees is not valid.

Confidential employees are those who (1) assist or act in a confidential capacity, (2) to persons who formulate, determine, and effectuate management policies in the