

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**EVANGELINE J. GABRIEL, TERESITA
C. LUALHATI, EVELYN SIA, RODOLFO
EUGENIO, ISAGANI MAKISIG, and
DEMETRIO SALAS,**

Petitioners,

-versus-

**G.R. No. 115949
March 16, 2000**

**THE HONORABLE SECRETARY OF
LABOR AND EMPLOYMENT and
SIMEON SARMIENTO, JESUS CARLOS
MARTINEZ III, ALBERT NAPIAL,
MARVIN ALMACIN, ROGELIO MATEO,
GLENN SIAPNO, EMILIANO CUETO,
SALOME ATIENZA, NORMA V. GO,
JUDITH DUDANG, MONINA DIZON,
EUSEBIO ROMERO, ISAGANI
MORALES, ELISEO BUENAVENTURA,
CLEMENTE AGCAMARAN,
CARMELITA NOLASCO, JOVITA FERI,
LULU ACOSTA, CAROL LAZARO, NIDA
ARRIZA, ROMAN BERNARDO,
DOMINGO B. MACALDO, EUGENE
PIDLAOAN, MA. SOCORRO T. ANGOB,
JOSEPHINE ALVAREZ, LOURDES
FERRER, JACQUILINE BAQUIRAN,
GRACIA R. ESCUADRO, KRISTINA
HERNANDEZ, LOURDES IBEAS,
MACARIO GARCIA, BILLY TECSON,
ALEX RECTO III, LEBRUDO, JOSE**

**RICAFORTE, RODOLFO MORADA,
TERESA AMADO, ROSITA TRINIDAD,
JEANETTE ONG, VICTORINO LAS-AY,
RANIEL DAYAO, OSCAR SANTOS,
CRISTINA SALAVER, VICTORIA
ARINO, A.H. SAJO, MICHAEL BIETE,
RED RP, GLORIA JUAT, ETHELINDA
CASILAN, FAMER DIPASUPIL, MA.
HIDELISA POMER, MA. CHARLOTTE
TAWATAO, GRACE REYES, ERNIE
COLINA, ZENAIDA MENDOZA,
PAULITA ADORABLE, BERNARDO
MADUMBA, NESTOR NAVARRO,
EASTER YAP, ALMA LIM, FELISA YU,
TIMOTEO GANASTRA, REVELITA
CARTAJENAS, ANGELITO CABUAL,
ROBERTA TAN, DOMINADOR TAPO,
GRACE LIM, GADIANE JEMIE,
CHRISTHDY DAUD, BENEDICTO
ACOSTA, JESUSA ACOSTA, MA.
AVELINA ARYAP, EVELYN BENITEZ,
ESTERITA CHU, EVANGELINE CHU,
BETTY CINCO, RICARDO CONNEJO,
MANULITO EVALO, FRANCIS
LEONIDA, GREGORIO NOBLEZA,
RODOLFO RIVERAL, ELSA SIA, CLARA
SUGBO, EDGARDO TABAO, MANUEL
VELOSO, MARLYN YU, ABSALON
BUENA, WILFREDO PUERTO,
FLORENTINA PINGOL, MARILOU
DAR, FE MORALES, MALEN BELLO,
LORENA TAMAYO, CESAR LIM, PAUL
BALTAZAR, ALFREDO GAYAGAS,
DUMAGUETE EMPLOYEES, CEBU
EMPLOYEES, OZAMIZ EMPLOYEES,
TACLOBAN EMPLOYEES AND ALL
OTHER SOLIDBANK UNION
MEMBERS,**

Respondents.

X-----X

DECISION

QUISUMBING, J.:

Before us is a Special Civil Action for Certiorari seeking to reverse partially the Order^[1] of public respondent dated June 3, 1994, in Case No. OS-MA A-8-170-92, which ruled that the workers through their union should be made to shoulder the expenses incurred for the professional services of a lawyer in connection with the collective bargaining negotiations and that the reimbursement for the deductions from the workers should be charged to the union's general fund or account.

The records show the following factual antecedents:

Petitioners comprise the Executive Board of the SolidBank Union, the duly recognized collective bargaining agent for the rank and file employees of Solid Bank Corporation. Private respondents are members of said union.

Sometime in October 1991, the union's Executive Board decided to retain anew the service of Atty. Ignacio P. Lacsina (now deceased) as union counsel in connection with the negotiations for a new Collective Bargaining Agreement (CBA). Accordingly, on October 19, 1991, the board called a general membership meeting for the purpose. At the said meeting, the majority of all union members approved and signed a resolution confirming the decision of the executive board to engage the services of Atty. Lacsina as union counsel.

As approved, the resolution provided that ten percent (10%) of the total economic benefits that may be secured through the negotiations be given to Atty. Lacsina as attorney's fees. It also contained an authorization for SolidBank Corporation to check-off said attorney's fees from the first lump sum payment of benefits to the employees under the new CBA and to turn over

said amount to Atty. Lacsina and/or his duly authorized representative.^[2]

The new CBA was signed on February 21, 1992. The bank then, on request of the union, made payroll deductions for attorney's fees from the CBA benefits paid to the union members in accordance with the abovementioned resolution.

On October 2, 1992, private respondents instituted a complaint against the petitioners and the union counsel before the Department of Labor and Employment (DOLE) for illegal deduction of attorney's fees as well as for quantification of the benefits in the 1992 CBA.^[3] Petitioners, in response, moved for the dismissal of the complaint citing *litis pendentia*, forum shopping and failure to state a cause of action as their grounds.^[4]

On April 22, 1993, Med-Arbiter Paterno Adap of the DOLE- NCR issued the following Order:

“WHEREFORE, premises considered, the Respondents Union Officers and Counsel are hereby directed to immediately return or refund to the Complainants the illegally deducted amount of attorney's fees from the package of benefits due herein complainants under the aforesaid new CBA.

“Furthermore, Complainants are directed to pay five percent (5%) of the total amount to be refunded or returned by the Respondent Union Officers and Counsel to them in favor of Atty. Armando D. Morales, as attorney's fees, in accordance with Section II, Rule VIII of Book II (sic) of the Omnibus Rules Implementing the Labor Code.”^[5]

On appeal, the Secretary of Labor rendered a Resolution^[6] dated December 27, 1993, stating:

“WHEREFORE, the appeal of respondents Evangeline Gabriel, et. al., is hereby partially granted and the Order of the Med-Arbiter dated 22 April 1993 is hereby modified as follows: (1) that the ordered refund shall be limited to those union members who have not signified their conformity to the check-

off of attorney's fees; and (2) the directive on the payment of 5% attorney's fees should be deleted for lack of basis.

SO ORDERED.”^[7]

On Motion for Reconsideration, public respondent affirmed the said Order with modification that the union's counsel be dropped as a party litigant and that the workers through their union should be made to shoulder the expenses incurred for the attorney's services. Accordingly, the reimbursement should be charged to the union's general fund/account.^[8]

Hence, the present petition seeking to partially annul the above-cited order of the public respondent for being allegedly tainted with grave abuse of discretion amounting to lack of jurisdiction.

The sole issue for consideration is, did the public respondent act with grave abuse of discretion in issuing the challenged order?

Petitioners argue that the General Membership Resolution authorizing the bank to check-off attorney's fee from the first lump sum payment of the benefits to the employees under the new CBA satisfies the legal requirements for such assessment.^[9] Private respondents, on the other hand, claim that the check-off provision in question is illegal because it was never submitted for approval at a general membership meeting called for the purpose and that it failed to meet the formalities mandated by the Labor Code.^[10]

In check-off, the employer, on agreement with the Union, or on prior authorization from employees, deducts union dues or agency fees from the latter's wages and remits them directly to the union.^[11] It assures continuous funding for the labor organization. As this Court has acknowledged, the system of check-off is primarily for the benefit of the union and only indirectly for the individual employees.^[12]

The pertinent legal provisions on check-offs are found in Article 222 (b) and Article 241 (o) of the Labor Code.

Article 222 (b) states:

“No attorney’s fees, negotiation fees or similar charges of any kind arising from any collective bargaining negotiations or conclusions of the collective agreement shall be imposed on any individual member of the contracting union: Provided, however, that attorney’s fees may be charged against union funds in an amount to be agreed upon by the parties. Any contract, agreement or arrangement of any sort to the contrary shall be null and void.” (*Emphasis ours*)

Article 241 (o) provides:

“Other than for mandatory activities under the Code, no special assessment, attorney’s fees, negotiation fees or any other extraordinary fees may be checked off from any amount due to an employee without an individual written authorization duly signed by the employee. The authorization should specifically state the amount, purpose and beneficiary of the deduction.” (*Emphasis ours.*)

Article 241 has three (3) requisites for the validity of the special assessment for union’s incidental expenses, attorney’s fees and representation expenses. These are: 1) authorization by a written resolution of the majority of all the members at the general membership meeting called for the purpose; (2) secretary’s record of the minutes of the meeting; and (3) individual written authorization for check off duly signed by the employees concerned.

Clearly, attorney’s fees may not be deducted or checked off from any amount due to an employee without his written consent.

After a thorough review of the records, we find that the General Membership Resolution of October 19, 1991 of the SolidBank Union did not satisfy the requirements laid down by law and jurisprudence for the validity of the ten percent (10%) special assessment for union’s incidental expenses, attorney’s fees and representation expenses. There were no individual written check off authorizations by the employees concerned and so the assessment cannot be legally deducted by their employer.

Even as early as February 1990, in the case of *Palacol vs. Ferrer-Calleja*^[13] we said that the express consent of employees is required, and this consent must be obtained in accordance with the steps outlined by law, which must be followed to the letter. No shortcuts are allowed. In *Stellar Industrial Services, Inc. vs. NLRC*^[14] we reiterated that a written individual authorization duly signed by the employee concerned is a condition sine qua non for such deduction.

These pronouncements are also in accord with the recent ruling of this Court in the case of *ABS-CBN Supervisors Employees Union Members vs. ABS-CBN Broadcasting Corporation, et. al.*,^[15] which provides:

“Premises studiedly considered, we are of the irresistible conclusion and, so find that the ruling in *BPIEU-ALU vs. NLRC* that (1) the prohibition against attorney’s fees in Article 222, paragraph (b) of the Labor Code applies only when the payment of attorney’s fees is effected through forced contributions from the workers; and (2) that no deduction must be take from the workers who did not sign the check-off authorization, applies to the case under consideration.” (*Emphasis ours.*)

We likewise ruled in *Bank of the Philippine Islands Employees Union-Association Labor Union (BPIEU-ALU) vs. NLRC*:^[16]

“x x x the afore-cited provision (Article 222 (b) of the Labor Code) as prohibiting the payment of attorney’s fees only when it is effected through forced contributions from workers from their own funds as distinguished from the union funds. The purpose of the provision is to prevent imposition on the workers of the duty to individually contribute their respective shares in the fee to be paid the attorney for his services on behalf of the union in its negotiations with management. The obligation to pay the attorney’s fees belongs to the union and cannot be shunted to the workers as their direct responsibility. Neither the lawyer nor the union itself may require the individual worker to assume the obligation to pay attorney’s fees from their own pockets. So categorical is this intent that the

law makes it clear that any agreement to the contrary shall be null and void ab initio.” (*Emphasis ours.*)

From all the foregoing, we are of the considered view that public respondent did not act with grave abuse of discretion in ruling that the workers through their union should be made to shoulder the expenses incurred for the services of a lawyer. And accordingly the reimbursement should be charged to the union’s general fund or account. No deduction can be made from the salaries of the concerned employees other than those mandated by law.

WHEREFORE, the petition is **DENIED**. The assailed Order dated June 3, 1994, of respondent Secretary of Labor signed by Undersecretary Bienvenido E. Laguesma is **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Bellosillo, Mendoza, Buena and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 22-24.

[2] Id at 25.

[3] Id. at 26-29.

[4] Id. at 30-36.

[5] Id. at 11, 201.

[6] Id. at 201-209.

[7] Id. at 209.

[8] Id. at 22-24.

[9] Id. at 18-19.

[10] Id. at 496-499.

[11] Holy Cross of Davao College, Inc. vs. Joaquin, 263 SCRA 358-359 (1996).

[12] Ibid.

[13] 182 SCRA 710-711 (1990).

[14] 252 SCRA 323, 325 (1996).

[15] G.R. No. 106518, March 11, 1999, p. 15.

[16] 171 SCRA 556, 569 (1989).