

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**HOLY CROSS OF DAVAO COLLEGE,
INC.,**

Petitioner,

-versus-

**G.R. No. 110007
October 18, 1996**

**HON. JEROME JOAQUIN, in his
capacity as Voluntary Arbitrator, and
HOLY CROSS OF DAVAO COLLEGE
UNION - KALIPUNAN NG
MANGGAGAWANG PILIPINO
(KAMAPI),**

Respondents.

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DECISION

NARVASA, C.J.:

A collective bargaining agreement, effective from June 1, 1986 to May 31, 1989 was entered into between petitioner Holy Cross of Davao College, Inc. (hereafter Holy Cross), an educational institution, and the affiliate labor organization representing its employees, respondent Holy Cross of Davao College Union-KAMAPI (hereafter KAMAPI). Shortly before the expiration of the agreement, KAMAPI President, Jose Lagahit, wrote Holy Cross under date of April 12,

1989 expressing his union's desire to renew the agreement, withal seeking its extension for two months, or until July 31, 1989, on the ground that the teachers were still on summer vacation and union activities necessary or incident to the negotiation of a new agreement could not yet be conducted.^[1] Holy Cross President Emilio P. Palma-Gil replied that he had no objection to the extension sought, it being allowable under the collective bargaining agreement.^[2]

On July 24, 1989, Jose Lagahit convoked a meeting of the KAMAPI membership for the purpose of electing a new set of union officers, at which Rodolfo Gallera won-election as president. To the surprise of many, and with resultant dissension among the membership, Galera forthwith initiated discussions for the union's disaffiliation from the KAMAPI Federation.

Gallera's group subsequently formed a separate organization known as the Holy Cross of Davao College Teachers Union, and elected its own officers. For its part, the existing union, KAMAPI, sent to the School its proposals for a new collective bargaining contract; this it did on July 31, 1989, the expiry date of the two-month extension it had sought.^[3]

Holy Cross thereafter stopped deducting from the salaries and wages of its teachers and employees the corresponding union dues and special assessments (payable by union members), and agency fees (payable by non-members), in accordance with the check-off clause of the CBA,^[4] prompting KAMAPI, on September 1, 1989, to demand an explanation.

In the meantime, there ensued between the two unions a full-blown action on the basic issue of representation, which was to last for some two years. It began with the filing by the new union (headed by Gallera) of a petition for certification election in the Office of the Med-Arbiter.^[5] KAMAPI responded by filing a motion asking the Med-Arbiter to dismiss the petition. On August 31, 1989, KAMAPI also advised Holy Cross of the election of a new set of officers who would also comprise its negotiating panel.^[6]

The Med-Arbiter denied KAMAPI's motion to dismiss, and ordered the holding of a certification election. On appeal, however, the

Secretary of Labor reversed the Med-Arbiter's ruling and ordered the dismissal of the petition for certification election, which action was eventually sustained by this Court in appropriate proceedings.

After its success in the certification election case KAMAPI presented, on April 11, 1991, revised bargaining proposals to Holy Cross;^[7] and on July 11, 1991, it sent a letter to the School asking for its counter-proposals. The School replied, that it did not know if the Supreme Court had in fact affirmed the Labor Secretary's decision in favor of KAMAPI as the exclusive bargaining representative of the School employees, whereupon KAMAPI's counsel furnished it with a copy of the Court's resolution to that effect; and on September 7, 1991, KAMAPI again wrote to Holy Cross asking for its counter-proposals as regards the terms of a new CBA.

In response, Holy Cross declared that it would take no action towards a new CBA without a "definitive ruling" on the proper interpretation of Article I of the old CBA which should have expired on May 31, 1989 (but, as above stated, had been extended for two months at the KAMAPI's request). Said Article provides inter alia for the automatic extension of the CBA for another period of three (3) years counted from its expiration, if the parties fail to agree on a renewal, modification or amendment thereof. It appears, in fact, that the opinion of the DOLE Regional Director on the meaning and import of said Article I had earlier been sought by the College president, Emilio Palma Gil.^[8]

KAMAPI then sent another letter to Holy Cross, this time accusing it of unfair labor practice for refusing to bargain despite the former's repeated demands; and on the following day, it filed a notice of strike with the National Mediation and Conciliation Board.^[9]

KAMAPI and Holy Cross were ordered to appear before Conciliator-Mediator Agapito J. Adipen on October 2, 1991. Several conciliation meetings were thereafter held between them, and when these failed to bring about any amicable settlement, the parties agreed to submit the case to voluntary arbitration.^[10] Both parties being of the view that the dispute did indeed revolve around the interpretation of §1 and §2 of Article I of the CBA, they submitted position papers explicitly

dealing with the following issues presented by them for resolution to the voluntary arbitrator:

- a. Whether or not the CBA which expired on May 31, 1989 was automatically renewed and did not serve merely as a holdover CBA; and
- b. Whether or not there was refusal to negotiate on the part of the Holy Cross of Davao College.

On both issues, Voluntary Arbitrator Jerome C. Joaquin found in favor of KAMAPI.

Respecting the matter of the automatic renewal of the bargaining agreement, the Voluntary Arbitrator ruled that the request for extension filed by KAMAPI constituted seasonable notice of its intention to renew, modify or amend the agreement, which it could not however pursue because of the absence of the teachers who were then on summer vacation.^[11] He rejected the contention of Holy Cross that KAMAPI had unreasonably delayed (until July 31, 1989) the submission of bargaining proposals, opining that the delay was partly attributable to the School's prolonged inaction on KAMAPI's request for extension of the CBA. He also ruled that Holy Cross was estopped from claiming automatic renewal of the CBA because it ceased to implement the check-off provision embodied in the CBA, declaring said School's argument — that a "definitive ruling" by the DOLE on the correct interpretation of the automatic-extension clause of the old CBA was a condition precedent to negotiations for a new CBA — to be a mere afterthought set up to justify its refusal to bargain with KAMAPI after the latter had proven that it was the legally-empowered bargaining agent of the school employees. In the dispositive portion of his award, the Voluntary Arbitrator ordered Holy Cross to:

1. sit down, negotiate and conclude (an agreement) with the Holy Cross of Davao College Faculty Union-KAMAPI, which, by Resolution of the Supreme Court, remains the collective bargaining agent of the permanent and regular teachers of said educational institution; (and)

2. pay to the Union the amount equivalent to the uncollected union dues from August 1989 up to the time respondent shall have concluded a new CBA with the Union, it appearing that respondent stopped complying with the CBA's check-off provisions as of said date.^[12]

The Voluntary Arbitrator also requested the Fiscal Examiner of the NLRC, Region XI, Davao City, to make the proper computation of the union dues to be paid by management to the complainant union.

Dissatisfied, Holy Cross filed the petition at bar, challenging the Voluntary Arbitrator's decision on the following grounds, viz.:^[13]

1. That the voluntary arbitrator erred and acted in grave abuse of discretion amounting to lack or excess of jurisdiction in ordering petitioner to pay the union the uncollected union dues to private respondent which was not even an issue submitted for voluntary arbitration, resulting in serious violation of due process.
2. That the voluntary arbitrator erred in considering that petitioner refused to negotiate with (the) Union, contrary to the records and evidence presented in the case.

The Voluntary Arbitrator's conclusion — that petitioner Holy Cross had, in light of the evidence on record, failed to negotiate with KAMAPI, adjudged as the collective bargaining agent of the school's permanent and regular teachers — is a conclusion of fact that the Court will not review, the inquiry at bar being limited to the issue of whether or not said Voluntary Arbitrator had acted without or in excess of his jurisdiction, or with grave abuse of discretion; nor does the Court see its way clear, after analyzing the record, to pronouncing that reasoned conclusion to have been made so whimsically, capriciously, oppressively, or unjustifiably — in other words, attended by grave abuse of discretion amounting to lack or excess of jurisdiction — as to call for extension of the Court's correcting hand through the extraordinary writ of *certiorari*. Said finding should therefore be, and is hereby, sustained.

Now, concerning its alleged failure to observe the check-off provisions of the collective bargaining agreement, Holy Cross contends that this was not one of the issues raised in the arbitration proceedings; that said issue was therefore extraneous and improper; and that even assuming the contrary, it (Holy Cross) had not in truth violated the CBA.

Holy Cross asserts that it could not comply with the check-off provision because contrary to established practice prior to August, 1989, KAMAPI failed to submit to the college comptroller every 8th day of the month, a list of employees from whom union dues and the corresponding agency fees were to be deducted, further, that there was an uncertainty as to the recognized bargaining agent with whom it would deal — a matter settled only upon its receipt of a copy of this Court's Resolution on July 18, 1991 — and in any case, the Voluntary Arbitrator's order for it to pay to the union the uncollected employees' dues or agency fees — would amount to the union's unjust enrichment.^[14]

KAMAPI maintains, on the other hand, that the check-off issue was raised in the position paper it submitted in the voluntary arbitration proceedings; and that in any case, the issue was intimately connected with those submitted for resolution and necessary for complete adjudication of the rights and obligations of the parties;^[15] and that said position paper had alleged the manifest bad faith of management in not providing information as to who were regular employees, thereby precluding determination of teachers eligible for union membership.

Disregarding the objection of failure to seasonably set up the check-off question — the factual premises thereof not being indisputable, and technical objections of this sort being generally inconsequential in quasi-judicial proceedings — the issues here ultimately boil down to whether or not an employer is liable to pay to the union of its employees, the amounts it failed to deduct from their salaries — as union dues (with respect to union members) or agency fees (as regards those not union members) — in accordance with the check-off provisions of the collective bargaining contract (CBA) which it claims to have been automatically extended.

A check-off is a process or device whereby the employer, on agreement with the union recognized as the proper bargaining representative, or on prior authorization from its employees, deducts union dues or agency fees from the latter's wages and remits them directly to the union.^[16] Its desirability to a labor organization is quite evident; by it, it is assured of continuous funding. Indeed, this Court has acknowledged that the system of check-off is primarily for the benefit of the union and, only indirectly, of the individual laborers.^[17] When so stipulated in a collective bargaining agreement; or authorized in writing by the employees concerned — the Labor Code and its Implementing Rules recognize it to be the duty of the employer to deduct sums equivalent to the amount of union dues from the employees' wages for direct remittance to the union, in order to facilitate the collection of funds vital to the role of the union as representative of employees in a bargaining unit if not, indeed, to its very existence. And it may be mentioned in this connection that the right to union dues deducted pursuant to a check-off, pertains to the local union which continues to represent the employees under the terms of a CBA, and not to the parent association from which it has disaffiliated.^[18]

The legal basis of check-off is thus found in statute or in contract.^[19] Statutory limitations on check-offs generally require written authorization from each employee to deduct wages; however, a resolution approved and adopted by a majority of the union members at a general meeting will suffice when the right to check-off has been recognized by the employer, including collection of reasonable assessments in connection with mandatory activities of the union, or other special assessments and extraordinary fees.^[20]

Authorization to effect a check-off of union dues is co-terminous with the union affiliation or membership of employees.^[21] On the other hand, the collection of agency fees in an amount equivalent to union dues and fees, from employees who are not union members, is recognized by Article 248 (e) of the Labor Code. No requirement of written authorization from the non-union employee is imposed. The employee's acceptance of benefits resulting from a collective bargaining agreement justifies the deduction of agency fees from his pay and the union's entitlement thereto. In this aspect, the legal basis of the union's right to agency fees is neither contractual nor statutory,

but quasi-contractual, deriving from the established principle that non-union employees may not unjustly enrich themselves by benefiting from employment conditions negotiated by the bargaining union.^[22]

No provision of law makes the employer directly liable for the payment to the labor organization of union dues and assessments that the former fails to deduct from its employees' salaries and wages pursuant to a check-off stipulation. The employer's failure to make the requisite deductions may constitute a violation of a contractual commitment for which it may incur liability for unfair labor practice.^[23] But it does not by that omission, incur liability to the union for the aggregate of dues or assessments uncollected from the union members, or agency fees for non-union employees.

Check-offs in truth impose an extra burden on the employer in the form of additional administrative and bookkeeping costs. It is a burden assumed by management at the instance of the union and for its benefit, in order to facilitate the collection of dues necessary for the latter's life and sustenance. But the obligation to pay union dues and agency fees obviously devolves not upon the employer, but the individual employee. It is a personal obligation not demandable from the employer upon default or refusal of the employee to consent to a check-off. The only obligation of the employer under a check-off is to effect the deductions and remit the collections to the union. The principle of unjust enrichment necessarily precludes recovery of union dues — or agency fees — from the employer, these being, to repeat, obligations pertaining to the individual worker in favor of the bargaining union. Where the employer fails or refuses to implement a check-off agreement, logic and prudence dictate that the union itself undertake the collection of union dues and assessments from its members (and agency fees from non-union employees); this, of course, without prejudice to suing the employer for unfair labor practice.

There was thus no basis for the Voluntary Arbitrator to require Holy Cross to assume liability for the union dues and assessments, and agency fees that it had failed to deduct from its employees' salaries on the proffered plea that contrary to established practice, KAMAPI had failed to submit to the college comptroller every 8th day of the month,

a list of employees from whose pay union dues and the corresponding agency fees were to be deducted.

WHEREFORE, the requirement imposed on petitioner Holy Cross by the challenged decision of the Voluntary Arbitrator, to pay respondent KAMAPI the amount equivalent to the uncollected union dues and agency fees from August 1989 up to the time a new collective bargaining agreement is concluded, is **NULLIFIED** and **SET ASIDE**; but in all other respects, the decision of the Voluntary Arbitrator is hereby **AFFIRMED**.

SO ORDERED.

Davide, Jr., Melo, Francisco and Panganiban, JJ., concur.

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- [1] Among them, the holding of a general assembly, election of new officers selection of a negotiating panel and submission of proposal for a new collective bargaining agreement; Rollo, p. 57.
- [2] Letter dated August 3, 1989; Id. at p. 58.
- [3] Supra note 1 and related text.
- [4] §1, 2 and 4 of Article IV of the CBA provides that the management is authorized to deduct union dues and special assessments from the basic salaries and wages to union members and future union members, and agency fees from non-union members who avail of any benefits under the CBA, without need for individual check-off authorization. §3 of the same Article provides that the management shall remit the collections to the union. Rollo, pp. 23 and 42-3.
- [5] Filed on July 28, 1989; see Rollo, p. 22.
- [6] Id., at p. 23.
- [7] Supra, at note 3.
- [8] This is so stated by Mr. Emilio Palma Gil, in a letter addressed to Mrs. Caballero, president of the HCDCU-KAMAPI. SEE §1 and 2 of Art. I; also p. 41.
- [9] September 27, 1991.
- [10] See Annex “R” of Conciliation Proceedings; dated Oct. 19, 1991 Rollo at p. 109.
- [11] Supra at notes 1 and 3.
- [12] Decision of the Voluntary Arbitrator, July 22, 1992; Rollo at p. 31.
- [13] See “Assignment of Errors,” Petition; Rollo at p. 10.
- [14] See Petition and Reply, Rollo at pp. 5 and 155, respectively.
- [15] See Comment, Rollo at p. 218; see also Annex “1” thereof, Rollo at 221, 229.
- [16] Pascual, C., Labor Relations Law, at 173.

- [17] See *Al L. Ammen Trans. Co. vs. Bicol Trans. Employees Mutual Assn. and CIR*, 91 Phils. 649.
- [18] *Volkchel Labor Union vs. BLR, et al.*, G.R. No. L-45824, June 19, 1985.
- [19] Through not ordinarily perceived in the context of check-off, statutory authority for deductions from employees' wages include the withholding of contributions to insurance or housing funds (e.g. SSS, GSIS or PAG-IBIG), or of taxes under relevant tax legislation; deduction for debts owed the employer or third persons (Art. 1706 Civil Code) or for breakages (Art. 114 Labor code and §14 Rule VIII, Book III, Implementing Rules and Regulations). In the case of contract, as in the case of provisions in the Rules and Regulations). In the case of contract, as in the case of provisions in the CBA; see also Fernandez, *Labor Law*, at 132.
- [20] See Art. 241 (n) and (o) of the Labor Code.
- [21] See Alcantara, *Reviewer in Labor and Social Legislation* at p. 211, 1988 ed.
- [22] *Id.*
- [23] Sec. 248 (i) of the Labor Code, as amended, provides that it "shall be unlawful for an employer to ** ** violate a collective bargaining agreement;" and under Art. 261 declares that except flagrant and/or malicious refusal to comply with economic provisions, CBA violations are mere grievances, not ULP, thus subject to grievance machinery and voluntary arbitration.