CHANROBLES PUBLISHING COMPANY

SUPREME COURT
FIRST DIVISION

WISE AND CO., INC.,
***Petitioner*,**

-versus-

G.R. No. 87672
October 13, 1989

WISE & CO., INC. EMPLOYEES UNION-NATU AND HONORABLE BIENVENIDO G. LAGUESMA, in his capacity as voluntary Arbitrator,
***Respondents*.**
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D E C I S I O N

GANCAYCO, *J.*:

The center of controversy in this petition is whether the grant by management of profit sharing benefits to its non-union member employees is discriminatory against its workers who are union members.

The facts are undisputed. On April 3, 1987 the management issued a memorandum circular introducing a profit sharing scheme for its managers and supervisors the initial distribution of which was to take effect March 31, 1988.

On July 3, 1987 the respondent union wrote petitioner through its president asking for participation in this scheme. This was denied by petitioner on the ground that it had to adhere strictly to the Collective Bargaining Agreement (CBA).

In the meantime, talks were underway for early negotiation by the parties of the CBA which was due to expire on April 30, 1988. The negotiation thus begun earlier than the freedom period. On November 11, 1987 petitioner wrote respondent union advising the latter that they were prepared to consider including the employees covered by the CBA in the profit sharing scheme beginning the year 1987 provided that the ongoing negotiations were concluded prior to December 1987. However, the collective bargaining negotiations reached a deadlock on the issue of the scope of the bargaining unit. Conciliation efforts to settle the dispute on 29 March 1988 were made but no settlement was reached.

On March 30, 1988, petitioner distributed the profit sharing benefit not only to managers and supervisors but also to all other rank and file employees not covered by the CBA. This caused the respondent union to file a notice of strike alleging that petitioner was guilty of unfair labor practice because the union members were discriminated against in the grant of the profit sharing benefits. Consequently, management refused to proceed with the CBA negotiations unless the last notice of strike was first resolved. The union agreed to postpone discussions on the profit sharing demand until a new CBA was concluded. After a series of conciliation conferences, the parties agreed to settle the dispute through voluntary arbitration. After the parties submitted their position papers, a rejoinder and reply, on March 20, 1989 the voluntary arbitrator issued an award ordering petitioner to likewise extend the benefits of the 1987 profit sharing scheme to the members of respondent union.[1] Hence, this petition wherein petitioner alleged the following grounds in support thereof —

"I

THE HONORABLE VOLUNTARY ARBITRATOR ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ORDERED THE EXTENSION OF PROFIT SHARING BENEFITS TO

THOSE EMPLOYEES COVERED BY THE CBA DESPITE PATENT LACK OF FACTUAL AND LEGAL BASIS THEREFOR IN THAT —

1. DISCRIMINATION PER SE IS NOT UNLAWFUL ESPECIALLY WHEN THE EMPLOYEES ARE NOT SIMILARLY SITUATED.

2. THE TERMS AND CONDITIONS STIPULATED IN THE CBA HAVE THE FORCE AND EFFECT OF A LAW BETWEEN THE PARTIES. PRIVATE RESPONDENT, THEREFORE CANNOT DEMAND, AS A MATTER OF RIGHT, WHAT IS NOT STIPULATED IN THE CBA.

3. THE ACT OF THE UNION IN NEGOTIATING FOR THE INCLUSION OF THE PROFIT SHARING BENEFIT IN THE PRESENT CBA IS AN IMPLIED ADMISSION THAT THEY WERE NOT ENTITLED TO IT IN 1987.

II

THE HONORABLE VOLUNTARY ARBITRATOR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE MADE THE CLEARLY BASELESS CONCLUSION THAT THE PETITIONER WAS MOTIVATED BY ITS DESIRE TO DEFEAT OR OTHERWISE PREJUDICE THE BASIC RIGHTS OF ITS EMPLOYEES."[2]

The petition is impressed with merit.

Under the CBA between the parties that was in force and effect from May 1, 1985 to April 30, 1988 it was agreed that the "bargaining unit" covered by the CBA "consists of all regular or permanent employees, below the rank of assistant supervisor."[3] Also expressly excluded from the term "appropriate bargaining unit" are all regular rank and file employees in the office of the president, vice-president, and the

other offices of the company — personnel office, security office, corporate affairs office, accounting and treasury department.[4]

It is to this class of employees who were excluded in the "bargaining unit" and who do not derive benefits from the CBA that the profit sharing privilege was extended by petitioner.

There can be no discrimination committed by petitioner thereby as the situation of the union employees are different and distinct from the non-union employees.[5] Indeed, discrimination per se is not unlawful. There can be no discrimination where the employees concerned are not similarly situated.

Respondent union can not claim that there is grave abuse of discretion by the petitioner in extending the benefits of profit sharing to the non-union employees as they are two (2) groups not similarly situated. These non-union employees are not covered by the CBA. They do not derive and enjoy the benefits under the CBA.

The contention of the respondent union that the grant to the non-union employees of the profit sharing benefits was made at a time when there was a deadlock in the CBA negotiation so that apparently the motive thereby was to discourage such non-union employees from joining the union is not borne by the record. Petitioner denies this accusation and instead points out that inspite of this benefit extended to them, some non-union workers actually joined the respondent union thereafter.

Respondent union also decries that no less than the president of the petitioner agreed to include its members in the coverage of the 1987 profit sharing benefit provided that they would agree to an earlier negotiation for the renewal of the CBA which expired in 1988. Be this as it may, since there was actually a deadlock in the negotiation and it was not resolved and consummated on the period expected, private respondent can not now claim that petitioner has a duty to extend the profit sharing benefit to the union members.

The Court holds that it is the prerogative of management to regulate, according to its discretion and judgment, all aspects of employment. This flows from the established rule that labor law does not authorize

the substitution of the judgment of the employer in the conduct of its business.[6] Such management prerogative may be availed of without fear of any liability so long as it is exercised in good faith for the advancement of the employers' interest and not for the purpose of defeating or circumventing the rights of employees under special laws or valid agreement and are not exercised in a malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite.[7]

The grant by petitioner of profit sharing benefits to the employees outside the "bargaining unit" falls under the ambit of its managerial prerogative. It appears to have been done in good faith and without ulterior motive. More so when as in this case there is a clause in the CBA where the employees are classified into those who are members of the union and those who are not. In the case of the union members, they derive their benefits from the terms and conditions of the CBA contract which constitute the law between the contracting parties.[8] Both the employer and the union members are bound by such agreement.

However, the court serves notice that it will not hesitate to strike down any act of the employer that tends to be discriminatory against union members. It is only because of the peculiar circumstances of this case showing there is no such intention that this court ruled otherwise.

WHEREFORE, the petition is **GRANTED** and the award of respondent Voluntary Arbitrator dated March 20, 1989 is hereby **REVERSED AND SET ASIDE** being null and void, without pronouncement as to costs.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino and Medialdea, *JJ.*, concur.

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[1] Pages 32-34, Rollo.
[2] Pages 11-12, Rollo.
[3] Article 1, Section 1, CBA; page 4, Rollo.
[4] Pages 4-5, Rollo.

[5] Caltex Phils. vs. Phil. Labor Organization, Caltex Chapter, 92 Phil. 1014, 1018 (1953).
[6] NLU vs. Insular-Yebana Tobacco Corporation, 2 SCRA 924, 931 (1961); Republic Savings Bank vs. CIR, 21 SCRA 226, 235-236 (1967).
[7] PRC vs. Garcia, 18 SCRA 107, 110 (1966); and LVN vs. LVN Employees Association, 35 SCRA 147, 156 (1970).
[8] Mactan Workers Union vs. Aboitiz, 45 SCRA 577, 581-582 (1977).

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