Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

BANKARD, INC.,
Petitioner,

- versus -

NATIONAL LABOR RELATIONS COMMISSION – FIRST DIVISION, PAULO BUENCONSEJO, BANKARD EMPLOYEES UNION – AWATU,
Respondents.

G.R. No. 171664

Present:

VELASCO, JR., *J., Chairperson*,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

March 6, 2013

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DECISION

MENDOZA, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to review, reverse and set aside the October 20, 2005 Decision[1] and the February 21, 2006 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 68303, which affirmed the May 31, 2001 Resolution[3] and the September 24, 2001 Order[4] of the National Labor Relations Commission *(NLRC)* in Certified Cases No. 000-185-00 and 000-191-00.

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[1] *Rollo*, pp. 31-38. Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang, concurring.
[2] Id. at 40-41.
[3] Id. at 69-76.
[4] Id. at 78-79.

The Facts

On June 26, 2000, respondent Bankard Employees Union-AWATU *(Union)* filed before the National Conciliation and Mediation Board *(NCMB)* its first Notice of Strike *(NOS)*, docketed as NS-06-225-00,[5] alleging commission of unfair labor practices by petitioner Bankard, Inc. *(Bankard)*, to wit: 1) job contractualization; 2) outsourcing/contracting-out jobs; 3) manpower rationalizing program; and 4) discrimination.

On July 3, 2000, the initial conference was held where the Union clarified the issues cited in the NOS. On July 5, 2000, the Union held its strike vote balloting where the members voted in favor of a strike. On July 10, 2000, Bankard asked the Office of the Secretary of Labor to assume jurisdiction over the labor dispute or to certify the same to the NLRC for compulsory arbitration. On July 12, 2000, Secretary Bienvenido Laguesma *(Labor Secretary)* of the Department of Labor and Employment *(DOLE)* issued the order certifying the labor dispute to the NLRC.[6]

On July 25, 2000, the Union declared a CBA bargaining deadlock. The following day, the Union filed its second NOS, docketed as NS-07-265-00,[7] alleging bargaining in bad faith on the part of Bankard. Bankard then again asked the Office of the Secretary of Labor to assume jurisdiction, which was granted. Thus, the Order, dated August 9, 2000, certifying the labor dispute to the NLRC, was issued.[8]

The Union, despite the two certification orders issued by the Labor Secretary enjoining them from conducting a strike or lockout and from committing any act that would exacerbate the situation, went on strike on August 11, 2000.[9]

During the conciliatory conferences, the parties failed to amicably settle their dispute. Consequently, they were asked to submit their respective position papers. Both agreed to the following issues:

1. Whether job contractualization or outsourcing or contracting-out is an unfair labor practice on the part of the management.

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[5] Id. at 43-44.
[6] Id. at 32.
[7] Id. at 46-47.
[8] Id. at 32-33.
[9] Id. at 33.

2. Whether there was bad faith on the part of the management when it bargained with the Union.[10]

As regards the first issue, it was Bankard's position that job contractualization or outsourcing or contracting-out of jobs was a legitimate exercise of management prerogative and did not constitute unfair labor practice. It had to implement new policies and programs, one of which was the Manpower Rationalization Program *(MRP)* in December 1999, to further enhance its efficiency and be more competitive in the credit card industry. The MRP was an invitation to the employees to tender their voluntary resignation, with entitlement to separation pay equivalent to at least two (2) months salary for every year of service. Those eligible under the company's retirement plan would still receive additional pay. Thereafter, majority of the Phone Center and the Service Fulfilment Division availed of the MRP. Thus, Bankard contracted an independent agency to handle its call center needs.[11]

As to the second issue, Bankard denied that there was bad faith on its part in bargaining with the Union. It came up with counter-offers to the Union's proposals, but the latter's demands were far beyond what management could give. Nonetheless, Bankard continued to negotiate in good faith until the Memorandum of Agreement *(MOA)* re-negotiating the provisions of the 1997-2002, Collective Bargaining Agreement *(CBA)* was entered into between Bankard and the Union. The CBA was overwhelmingly ratified by the Union members. For said reason, Bankard contended that the issue of bad faith in bargaining had become moot and academic.[12]

On the other hand, the Union alleged that contractualization started in Bankard in 1995 in the Records Communications Management Division, particularly in the mailing unit, which was composed of two (2) employees and fourteen (14) messengers. They were hired as contractual workers to perform the functions of the regular employees who had earlier resigned and availed of the MRP.[13] According to the Union, there were other departments in Bankard utilizing messengers to perform work load considered for regular employees, like the Marketing Department, Voice Authorizational Department, Computer Services Department, and Records Retention Department. The Union contended that the number of regular employees had been reduced substantially through the management scheme of freeze-hiring policy on positions vacated by regular employees on the basis of cost-cutting measures and the introduction of a more drastic formula of streamlining its regular employees through the MRP.[14]

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[10] Id. at 71-72.
[11] Id. at 71.
[12] Id. at 73.
[13] Id.
[14] Id. at 73-74.

With regard to the second issue, the Union averred that Bankard's proposals were way below their demands, showing that the management had no intention of reaching an agreement. It was a scheme calculated to force the Union to declare a bargaining deadlock.[15]

On May 31, 2001, the NLRC issued its Resolution[16] declaring that the management committed acts considered as unfair labor practice *(ULP)* under Article 248(c) of the Labor Code. It ruled that:

> The act of management of reducing its number of employees thru application of the Manpower Rationalization Program and subsequently contracting the same to other contractual employees defeats the purpose or reason for streamlining the employees. The ultimate effect is to reduce the number of union members and increasing the number of contractual employees who could never be members of the union for lack of qualification. Consequently, the union was effectively restrained in their movements as a union on their rights to self-organization. Management had successfully limited and prevented the growth of the Union and the acts are clear violation of the provisions of the Labor Code and could be considered as Unfair Labor Practice in the light of the provisions of Article 248 paragraph (c) of the Labor Code.[17]

The NLRC, however, agreed with Bankard that the issue of bargaining in bad faith was rendered moot and academic by virtue of the finalization and signing of the CBA between the management and the Union.[18]

Unsatisfied, both parties filed their respective motions for partial reconsideration. Bankard assailed the NLRC's finding of acts of ULP on its part. The Union, on the other hand, assailed the NLRC ruling on the issue of bad faith bargaining.

On September 24, 2001, the NLRC issued the Order[19] denying both parties' motions for lack of merit.

On December 28, 2001, Bankard filed a petition for certiorari under Rule 65 with the CA arguing that the NLRC gravely abused its discretion amounting to lack or excess of jurisdiction when:

1. It issued the Resolution, dated May 31, 2001, particularly in finding that Bankard committed acts of unfair labor practice; and,

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[15] Id. at 74.
[16] Id. at 69-76.
[17] Id. at 75.
[18] Id.
[19] Id. at 78-79.

2. It issued the Order dated September 24, 2001 denying Bankard's partial motion for reconsideration.[20]

The Union filed two (2) comments, dated January 22, 2002, through its NCR Director, Cornelio Santiago, and another, dated February 6, 2002, through its President, Paulo Buenconsejo, both praying for the dismissal of the petition and insisting that Bankard's resort to contractualization or outsourcing of contracts constituted ULP. It further alleged that Bankard committed ULP when it conducted CBA negotiations in bad faith with the Union.

Ruling of the Court of Appeals

The CA dismissed the petition, finding that the NLRC ruling was supported by substantial evidence.

The CA agreed with Bankard that job contracting, outsourcing and/or contracting out of jobs did not *per se* constitute ULP, especially when made in good faith and for valid purposes. Despite Bankard's claim of good faith in resorting to job contractualization for purposes of cost-efficient operations and its non-interference with the employees' right to self-organization, the CA agreed with the NLRC that Bankard's acts impaired the employees right to self-organization and should be struck down as illegal and invalid pursuant to Article 248(c)[21] of the Labor Code. The CA thus, ruled in this wise:

> We cannot agree more with public respondent. Incontrovertible is the fact that petitioner's acts, particularly its promotion of the program enticing employees to tender their voluntary resignation in exchange for financial packages, resulted to a union dramatically reduced in numbers. Coupled with the management's policy of "freeze-hiring" of regular employees and contracting out jobs to contractual workers, petitioner was able to limit and prevent the growth of the Union, an act that clearly constituted unfair labor practice.[22]

In its assailed decision, the CA affirmed the May 31, 2001 Resolution and the September 24, 2001 Order of the NLRC.

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[20] Id. at 54-55.

[21] Art. 248. UNFAIR LABOR PRACTICES OF EMPLOYERS. - It shall be unlawful for an employer to commit any of the following unfair labor practices:

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(c) to contract out services or function being performed by union member when such will interfere with, restrain or coerce employees in the exercise of their right to self-organization.

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[22] *Rollo*, p. 36.

Aggrieved, Bankard filed a motion for reconsideration. The CA subsequently denied it for being a mere repetition of the grounds previously raised. Hence, the present petition bringing up this lone issue:

> **THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER BANKARD, INC. COMMITTED ACTS OF UNFAIR LABOR PRACTICE WHEN IT DISMISSED THE PETITION FOR CERTIORARI AND DENIED THE MOTION FOR RECONSIDERATION FILED BY PETITIONER**.[23]

Ruling of the Court

The Court finds merit in the petition.

Well-settled is the rule that "factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence."[24] Furthermore, the factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court.[25] When the petitioner, however, persuasively alleges that there is insufficient or insubstantial evidence on record to support the factual findings of the tribunal or court a quo, then the Court, exceptionally, may review factual issues raised in a petition under Rule 45 in the exercise of its discretionary appellate jurisdiction.[26]

This case involves determination of whether or not Bankard committed acts considered as ULP. The underlying concept of ULP is found in Article 247 of the Labor Code, to wit:

> **Article 247. Concept of unfair labor practice and procedure for prosecution thereof.** -- Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. x x x

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[23] Id. at 17.
[24] *Prince Transport, Inc. v. Garcia,* G.R. No. 167291, January 12, 2011, 639 SCRA 312, 324.
[25] *Career Philippines Shipmanagement, Inc. .v. Serna,* G.R. No. 172086, December 3, 2012, citing *Cootauco v. MMS Phil. Maritime Services, Inc.,* G.R. No. 184722, March 15, 2010, 615 SCRA 529, 541.
[26] Id.

The Court has ruled that the prohibited acts considered as ULP relate to the workers' right to self-organization and to the observance of a CBA. It refers to "acts that violate the workers' right to organize."[27] Without that element, the acts, even if unfair, are not ULP.[28] Thus, an employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize.[29]

In this case, the Union claims that Bankard, in implementing its MRP which eventually reduced the number of employees, clearly violated Article 248(c) of the Labor Code which states that:

> **Art. 248**. *Unfair labor practices of employers.* – It shall be unlawful for an employer to commit any of the following unfair labor practice:
>
> x x x x
>
> (c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization;
>
> x x x x

Because of said reduction, Bankard subsequently contracted out the jobs held by former employees to other contractual employees. The Union specifically alleges that there were other departments in Bankard, Inc. which utilized messengers to perform work load considered for regular employees like the Marketing Department, Voice Authorizational Department, Computer Services Department, and Records Retention Department.[30] As a result, the number of union members was reduced, and the number of contractual employees, who were never eligible for union membership for lack of qualification, increased.

The general principle is that the one who makes an allegation has the burden of proving it. While there are exceptions to this general rule, in ULP cases, the alleging party has the burden of proving the ULP;[31] and in order to show that the employer committed ULP under the Labor Code, substantial

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[27] *Culili v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 165381, February 9, 2011, 642 SCRA 338, 360, citing *Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery v. Asia Brewery, Inc.*, G.R. No. 162025, August 3, 2010, 626 SCRA 376, 388.

[28] *General Santos Coca-Cola Plant Free Workers Union-Tupas v. Coca-Cola Bottlers Phils., Inc (General Santos City)*, G.R. No. 178647, February 13, 2009, 579 SCRA 414, 419, citing *Philcom Employees Union v. Philippine Global Communication*, 527 Phil. 540, 557 (2006).

[29] Supra note 27, at 361, citing *Great Pacific Life Employees Union v. Great Pacific Life Assurance Corporation*, 362 Phil. 452, 464 (1999).

[30] *Rollo*, p. 208.

[31] *UST Faculty Union v. UST*, G.R. No. 180892, April 7, 2009, 584 SCRA 648, 656.

evidence is required to support the claim.[32] Such principle finds justification in the fact that ULP is punishable with both civil and/or criminal sanctions.[33]

Aside from the bare allegations of the Union, nothing in the records strongly proves that Bankard intended its program, the MRP, as a tool to drastically and deliberately reduce union membership. Contrary to the findings and conclusions of both the NLRC and the CA, there was no proof that the program was meant to encourage the employees to disassociate themselves from the Union or to restrain them from joining any union or organization. There was no showing that it was intentionally implemented to stunt the growth of the Union or that Bankard discriminated, or in any way singled out the union members who had availed of the retirement package under the MRP. True, the program might have affected the number of union membership because of the employees' voluntary resignation and availment of the package, but it does not necessarily follow that Bankard indeed purposely sought such result. It must be recalled that the MRP was implemented as a valid cost-cutting measure, well within the ambit of the so-called management prerogatives. Bankard contracted an independent agency to meet business exigencies. In the absence of any showing that Bankard was motivated by ill will, bad faith or malice, or that it was aimed at interfering with its employees' right to self-organize, it cannot be said to have committed an act of unfair labor practice. [34]

"Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise."[35] Unfortunately, the Union, which had the burden of adducing substantial evidence to support its allegations of ULP, failed to discharge such burden.[36]

The employer's right to conduct the affairs of its business, according to its own discretion and judgment, is well-recognized.[37] Management has a wide latitude to conduct its own affairs in accordance with the necessities of its business.[38] As the Court once said:

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[32] Id., citing *Standard Chartered Bank Employees Union (NUBE) v. Confesor*, 476 Phil. 346, 367 (2004).
[33] Id., citing Labor Code, Art. 247.
[34] *General Santos Coca-Cola Plant Free Workers Union-Tupas v. Coca-Cola Bottlers Phil., Inc. (General Santos City)*, supra note 28.
[35] *Niña Jewelry Manufacturing of Metal Arts, Inc. v. Montecillo*, G.R. No. 188169, November 28, 2011, 661 SCRA 416, 432, citing *Honorable Ombudsman Simeon Marcelo v. Leopoldo Bungubung*, G.R. No. 175201, April 23, 2008, 552 SCRA 589, 608.
[36] Supra note 28.
[37] *The Coca-Cola Export Corporation v. Gacayan*, G.R. No. 149433, December 15, 2010, 638 SCRA 377, 398.
[38] *Julie's Bakeshop v. Arnaiz*, G.R. No. 173882, February 15, 2012, 666 SCRA 101, 104.

> The Court has always respected a company's exercise of its prerogative to devise means to improve its operations. Thus, we have held that management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, supervision and transfer of employees, working methods, time, place and manner of work.
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> This is so because the law on unfair labor practices is not intended to deprive employers of their fundamental right to prescribe and enforce such rules as they honestly believe to be necessary to the proper, productive and profitable operation of their business.[39]

Contracting out of services is an exercise of business judgment or management prerogative. Absent any proof that management acted in a malicious or arbitrary manner, the Court will not interfere with the exercise of judgment by an employer.[40] Furthermore, bear in mind that ULP is punishable with both civil and/or criminal sanctions.[41] As such, the party so alleging must necessarily prove it by substantial evidence. The Union, as earlier noted, failed to do this. Bankard merely validly exercised its management prerogative. Not shown to have acted maliciously or arbitrarily, no act of ULP can be imputed against it.

WHEREFORE, the petition is **GRANTED.** The Decision of the Court of Appeals in CA-G.R. SP No. 68303, dated October 20, 2005, and its Resolution, dated February 21, 2006, are **REVERSED** and **SET ASIDE**. Petitioner Bankard, Inc. is hereby declared as not having committed any act constituting Unfair Labor Practice under Article 248 of the Labor Code.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[39] *Philcom Employees Union v. Philippine Global Communications*, 527 Phil. 540, 562-563 (2006).
[40] *Manila Electric Company v. Quisumbing*, 383 Phil 47, 60 (2000).
[41] *UST Faculty Union v. UST*, supra note 31.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice