Republic of the Philippines
Supreme Court
Manila

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INTERNATIONAL SCHOOL ALLIANCE OF EDUCATORS (ISAE),

Petitioner,

- versus -

HON. LEONARDO A. QUISUMBING in his capacity as the Secretary of Labor and Employment; HON. CRESENCIANO B. TRAJANO in his capacity as the Acting Secretary of Labor and Employment; DR. BRIAN MACCAULEY in his capacity as the Superintendent of International School-Manila; and INTERNATIONAL SCHOOL, INC.,

Respondents.

G. R. NO. 128845

Present:

*DAVIDE, JR, C.J., Chairman,
**PUNO,
KAPUNAN,
PARDO, and
***SANTIAGO, JJ.

Promulgated:

JUNE 1, 2000

x ---------- x

DECISION

KAPUNAN, J.:

Receiving salaries less than their counterparts hired abroad, the local-hires of private respondent School, mostly Filipinos, cry discrimination. We agree. That the local-hires are paid more than their colleagues in other schools is, of course, beside the point. The point is that employees should be given equal pay for work of equal value. That

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**Acting Chairman
***On Leave

is a principle long honored in this jurisdiction. That is a principle that rests on fundamental notions of justice. That is the principle we uphold today.

Private respondent International School, Inc. (the School, for short), pursuant to Presidential Decree 732, is a domestic educational institution established primarily for dependents of foreign diplomatic personnel and other temporary residents.[1] To enable the School to continue carrying out its educational program and improve its standard of instruction, Section 2(c) of the same decree authorizes the School to

> employ its own teaching and management personnel selected by it either locally or abroad, from Philippine or other nationalities, such personnel being exempt from otherwise applicable laws and regulations attending their employment, except laws that have been or will be enacted for the protection of employees.

Accordingly, the School hires both foreign and local teachers as members of its faculty, classifying the same into two: (1) foreign-hires and (2) local-hires. The School employs four tests to determine whether a faculty member should be classified as a foreign-hire or a local hire:

a. What is one's domicile?

b. Where is one's home economy?

c. To which country does one owe economic allegiance?

d. Was the individual hired abroad specifically to work in the School and was the School responsible for bringing that individual to the Philippines?[2]

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[1] Issued on June 19, 1975 (Authorizing International School, Inc. to Donate Its Real Properties to the Government of the Republic of the Philippines and Granting It Certain Rights.)

[2] *Rollo*, p. 328.

Should the answer to any of these queries point to the Philippines, the faculty member is classified as a local hire; otherwise, he or she is deemed a foreign-hire.

The School grants foreign-hires certain benefits not accorded local-hires. These include housing, transportation, shipping costs, taxes, and home leave travel allowance. Foreign-hires are also paid a salary rate twenty-five percent (25%) more than local-hires. The School justifies the difference on two "significant economic disadvantages" foreign-hires have to endure, namely: (a) the "dislocation factor" and (b) limited tenure. The School explains:

> A foreign-hire would necessarily have to uproot himself from his home country, leave his family and friends, and take the risk of deviating from a promising career path—all for the purpose of pursuing his profession as an educator, but this time in a foreign land. The new foreign hire is faced with economic realities: decent abode for oneself and/or for one's family, effective means of transportation, allowance for the education of one's children, adequate insurance against illness and death, and of course the primary benefit of a basic salary/retirement compensation.
>
> Because of a limited tenure, the foreign hire is confronted again with the same economic reality after his term: that he will eventually and inevitably return to his home country where he will have to confront the uncertainty of obtaining suitable employment after a long period in a foreign land.
>
> The compensation scheme is simply the School's adaptive measure to remain competitive on an international level in terms of attracting competent professionals in the field of international education.[3]

[3] *Id.*, at 324.

When negotiations for a new collective bargaining agreement were held on June 1995, petitioner International School Alliance of Educators, "a legitimate labor union and the collective bargaining representative of all faculty members"[4] of the School, contested the difference in salary rates between foreign and local-hires. This issue, as well as the question of whether foreign-hires should be included in the appropriate bargaining unit, eventually caused a deadlock between the parties.

On September 7, 1995, petitioner filed a notice of strike. The failure of the National Conciliation and Mediation Board to bring the parties to a compromise prompted the Department of Labor and Employment (DOLE) to assume jurisdiction over the dispute. On June 10, 1996, the DOLE Acting Secretary, Crescenciano B. Trajano, issued an Order resolving the parity and representation issues in favor of the School. Then DOLE Secretary Leonardo A. Quisumbing subsequently denied petitioner's motion for reconsideration in an Order dated March 19, 1997. Petitioner now seeks relief in this Court.

Petitioner claims that the point-of-hire classification employed by the School is discriminatory to Filipinos and that the grant of higher salaries to foreign-hires constitutes racial discrimination.

The School disputes these claims and gives a breakdown of its faculty members, numbering 38 in all, with nationalities other than Filipino,

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[4] *Id.*, at 8.

who have been hired locally and classified as local hires.[5] The Acting Secretary of Labor found that these non-Filipino local-hires received the same benefits as the Filipino local-hires:

> The compensation package given to local-hires has been shown to apply to all, regardless of race. Truth to tell, there are foreigners who have been hired locally and who are paid equally as Filipino local hires.[6]

The Acting Secretary upheld the point-of-hire classification for the distinction in salary rates:

> The principle "equal pay for equal work" does not find application in the present case. The international character of the School requires the hiring of foreign personnel to deal with different nationalities and different cultures, among the student population.
>
> We also take cognizance of the existence of a system of salaries and benefits accorded to foreign hired personnel which system is universally recognized. We agree that certain amenities have to be provided to these people in order to entice them to render their services in the Philippines and in the process remain competitive in the international market.

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[5] *Id.*, at 325. The breakdown is as follows:

Americans	-	17
Australian	-	2
Belgian	-	1
British	-	2
Burmese	-	1
Canadian	-	2
Chinese	-	2
French	-	1
German	-	1
Indian	-	5
Japanese	-	1
Malaysian	-	1
New Zealander	-	1
Spanish	-	1

[6] *Id.*, at 39.

Furthermore, we took note of the fact that foreign hires have limited contract of employment unlike the local hires who enjoy security of tenure. To apply parity therefore, in wages and other benefits would also require parity in other terms and conditions of employment which include the employment contract.

A perusal of the parties' 1992-1995 CBA points us to the conditions and provisions for salary and professional compensation wherein the parties agree as follows:

> All members of the bargaining unit shall be compensated only in accordance with Appendix C hereof provided that the Superintendent of the School has the discretion to recruit and hire expatriate teachers from abroad, under terms and conditions that are consistent with accepted international practice.

Appendix C of said CBA further provides:

> The new salary schedule is deemed at equity with the Overseas Recruited Staff (OSRS) salary schedule. The 25% differential is reflective of the agreed value of system displacement and contracted status of the OSRS as differentiated from the tenured status of Locally Recruited Staff (LRS).

To our mind, these provisions demonstrate the parties' recognition of the difference in the status of two types of employees, hence, the difference in their salaries.

The Union cannot also invoke the equal protection clause to justify its claim of parity. It is an established principle of constitutional law that the guarantee of equal protection of the laws is not violated by legislation or private covenants based on reasonable classification. A classification is reasonable if it is based on substantial distinctions and apply to all members of the same class. Verily, there is a substantial distinction between foreign hires and local hires, the former enjoying only a limited tenure, having no amenities of their own in the Philippines and have

to be given a good compensation package in order to attract them to join the teaching faculty of the School.[7]

We cannot agree.

That public policy abhors inequality and discrimination is beyond contention. Our Constitution and laws reflect the policy against these evils. The Constitution[8] in the Article on Social Justice and Human Rights exhorts Congress to "give highest priority to the enactment of measures that protect and enhance the right of all people to human dignity, reduce social, economic, and political inequalities." The very broad Article 19 of the Civil Code requires every person, "in the exercise of his rights and in the performance of his duties, [to] act with justice, give everyone his due, and observe honesty and good faith."

International law, which springs from general principles of law,[9] likewise proscribes discrimination. General principles of law include principles of equity,[10] i.e., the general principles of fairness and justice, based on the test of what is reasonable.[11] The Universal Declaration of Human Rights,[12] the International Covenant on Economic, Social, and

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[7] *Id.*, at 38-39.

[8] In Section 1, Article XIII thereof.

[9] Statute of the International Court of Justice, art. 38.d

[10] M. DEFENSOR-SANTIAGO, International Law 75 (1999), citing Judge Hudson in *River Meuse Case*, (1937) Ser. A/B No. 70.

[11] *Ibid.*, citing *Rann of Kutch Arbitration (India vs. Pakistan)*, 50 ILR 2 (1968).

[12] Adopted by the General Assembly of the United Nations on December 10, 1948. Article 1 thereof states: "All human beings are born free and equal in dignity and rights." Article 2 provides, "1. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Cultural Rights,[13] the International Convention on the Elimination of All Forms of Racial Discrimination,[14] the Convention against Discrimination in Education,[15] the Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation[16]—all embody the general principle against discrimination, the very antithesis of fairness and justice. The Philippines, through its Constitution, has incorporated this principle as part of its national laws.

In the workplace, where the relations between capital and labor are often skewed in favor of capital, inequality and discrimination by the employer are all the more reprehensible.

The Constitution[17] specifically provides that labor is entitled to "humane conditions of work." These conditions are not restricted to the

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[13] Adopted by the General of the United Nations in Resolution 2200 (XXI) of 16 December 1966. Article 2 provides: "2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

[14] Adopted by the General assembly of the United Nations in Resolution 2106 (XX) 21 December 1965. Article 2 of the Convention states: "States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races x x x."

[15] Adopted at Paris, December 14, 1960. Under Article 3, the States Parties undertake, among others, "to abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education." Under Article 4, "The States Parties to this Convention undertake further more to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education x x x."

[16] Adopted by the General Conference of the International Labor Organization at Geneva, June 25, 1958. Article 2 provides that, "Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national condition and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof."

[17] in Article XIII, Section 3 thereof.

physical workplace—the factory, the office or the field—but include as well the manner by which employers treat their employees.

The Constitution[18] also directs the State to promote "equality of employment opportunities for all." Similarly, the Labor Code[19] provides that the State shall "ensure equal work opportunities regardless of sex, race or creed." It would be an affront to both the spirit and letter of these provisions if the State, in spite of its primordial obligation to promote and ensure equal employment opportunities, closes its eyes to unequal and discriminatory terms and conditions of employment.[20]

Discrimination, particularly in terms of wages, is frowned upon by the Labor Code. Article 135, for example, prohibits and penalizes[21] the payment of lesser compensation to a female employee as against a male employee for work of equal value. Article 248 declares it an unfair labor practice for an employer to discriminate in regard to wages in order to encourage or discourage membership in any labor organization.

Notably, the International Covenant on Economic, Social, and Cultural Rights, *supra*, in Article 7 thereof, provides:

> The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:

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[18] *Id.*

[19] In Article 3 thereof.

[20] E.g., Article 135 of the Labor Code declares it unlawful for the employer to require, not only as a condition of employment, but also as a condition for the continuation of employment, that a woman shall not get married.

[21] In relation to Articles 288 and 289 of the same Code.

a. Remuneration which provides all workers, as a minimum, with:

i. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; -

x x x.

The foregoing provisions impregnably institutionalize in this jurisdiction the long honored legal truism of "equal pay for equal work." Persons who work with substantially equal qualifications, skill, effort and responsibility, under similar conditions, should be paid similar salaries.[22] This rule applies to the School, its "international character" notwithstanding.

The School contends that petitioner has not adduced evidence that local-hires perform work equal to that of foreign-hires.[23] The Court finds this argument a little cavalier. If an employer accords employees the same position and rank, the presumption is that these employees perform equal work. This presumption is borne by logic and human experience. If the employer pays one employee less than the rest, it is not for that

[22] Indeed, the government employs this rule in fixing the compensation of government employees. Thus, Republic Act No. 6758 (An Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes) declares it "the policy of the State to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. See also the Preamble of Presidential Decree No. 985 (A Decree Revising the Position Classification and Compensation Systems in the National Government, and Integrating the same).

[23] *Rollo*, p. 491.

employee to explain why he receives less or why the others receive more. That would be adding insult to injury. The employer has discriminated against that employee; it is for the employer to explain why the employee is treated unfairly.

The employer in this case has failed to discharge this burden. There is no evidence here that foreign-hires perform 25% more efficiently or effectively than the local-hires. Both groups have similar functions and responsibilities, which they perform under similar working conditions.

The School cannot invoke the need to entice foreign-hires to leave their domicile to rationalize the distinction in salary rates without violating the principle of equal work for equal pay.

"Salary" is defined in Black's Law Dictionary (5th ed.) as "a reward or recompense for services performed." Similarly, the Philippine Legal Encyclopedia states that "salary" is the "[c]onsideration paid at regular intervals for the rendering of services." In *Songco v. National Labor Relations Commission*,[24] we said that:

> "salary" means a recompense or consideration made to a person for his pains or industry in another man's business. Whether it be derived from "salarium," or more fancifully from "sal," the pay of the Roman soldier, it carries with it the fundamental idea of compensation for services rendered. (Emphasis supplied.)

[24] 183 SCRA 610 (1990).

While we recognize the need of the School to attract foreign-hires salaries should not be used as an enticement to the prejudice of local-hires. The local-hires perform the same services as foreign-hires and they ought to be paid the same salaries as the latter. For the same reason, the "dislocation factor" and the foreign-hires' limited tenure also cannot serve as valid bases for the distinction in salary rates. The dislocation factor and limited tenure affecting foreign-hires are adequately compensated by certain benefits accorded them which are not enjoyed by local-hires, such as housing, transportation, shipping costs, taxes and home leave travel allowances.

The Constitution enjoins the State to "protect the rights of workers and promote their welfare,"[25] "to afford labor full protection."[26] The State, therefore, has the right and duty to regulate the relations between labor and capital.[27] These relations are not merely contractual but are so impressed with public interest that labor contracts, collective bargaining agreements included, must yield to the common good.[28] Should such contracts contain stipulations that are contrary to public policy, courts will not hesitate to strike down these stipulations.

In this case, we find the point-of-hire classification employed by respondent School to justify the distinction in the salary rates of foreign-

[25] In Section 18, Article II thereof.
[26] In Section 3, Article XIII thereof. See also Article 3 of the Labor Code.
[27] See Sec. 3, Article XIII, Constitution. Article 3 of the Labor Code.
[28] Article 1700, Civil Code.

hires and local hires to be an invalid classification. There is no reasonable distinction between the services rendered by foreign-hires and local-hires. The practice of the School of according higher salaries to foreign-hires contravenes public policy and, certainly, does not deserve the sympathy of this Court.

We agree, however, that foreign-hires do not belong to the same bargaining unit as the local-hires.

A *bargaining unit* is "a group of employees of a given employer, comprised of all or less than all of the entire body of employees, consistent with equity to the employer, indicate to be the best suited to serve the reciprocal rights and duties of the parties under the collective bargaining provisions of the law."[29] The factors in determining the appropriate collective bargaining unit are (1) the will of the employees (Globe Doctrine); (2) affinity and unity of the employees' interest, such as substantial similarity of work and duties, or similarity of compensation and working conditions (Substantial Mutual Interests Rule); (3) prior collective bargaining history; and (4) similarity of employment status.[30] The basic test of an asserted bargaining unit's acceptability is whether or not it is

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[29] *Toyota Motor Philippines Corporation vs. Toyota Motor Philippines Federation Labor Union and the Secretary of Labor and Employment*, 268 SCRA 573 (1997); *San Miguel Corporation vs. Laguesma*, 236 SCRA 595 (1994).

[30] *San Miguel Corporation vs. Laguesma, supra.*

fundamentally the combination which will best assure to all employees the exercise of their collective bargaining rights.[31]

It does not appear that foreign-hires have indicated their intention to be grouped together with local-hires for purposes of collective bargaining. The collective bargaining history in the School also shows that these groups were always treated separately. Foreign-hires have limited tenure; local-hires enjoy security of tenure. Although foreign-hires perform similar functions under the same working conditions as the local-hires, foreign-hires are accorded certain benefits not granted to local-hires. These benefits, such as housing, transportation, shipping costs, taxes, and home leave travel allowance, are reasonably related to their status as foreign-hires, and justify the exclusion of the former from the latter. To include foreign-hires in a bargaining unit with local-hires would not assure either group the exercise of their respective collective bargaining rights.

WHEREFORE, the petition is GIVEN DUE COURSE. The petition is hereby GRANTED IN PART. The Orders of the Secretary of Labor and Employment dated June 10, 1996 and March 19, 1997, are hereby

[31] *Belyca Corporation vs. Ferrer-Calleja*, 168 SCRA 184 (1988).

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[31] *Bolyca Corporation vs. Ferrer-Calleja*, 168 SCRA 184 (1988).

REVERSED and SET ASIDE insofar as they uphold the practice o respondent School of according foreign-hires higher salaries than local-hires.

SO ORDERED.

SANTIAGO M. KAPUNAN
Associate Justice

WE CONCUR:

(on official leave)
HILARIO G. DAVIDE, JR.
Chief Justice
Chairman

REYNATO S. PUNO
Associate Justice
(Acting Chairman)

BERNARDO P. PARDO
Associate Justice

(On Leave)
CONSUELO YNARES-SANTIAGO
Associate Justice

ATTESTATION

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

REYNATO S. PUNO
Acting Chairman

CERTIFICATION

Pursuant to Section 13, Article VII of the Constitution, It is certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JOSUE N. BELLOSILLO
Acting Chief Justice