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possibly constitute an infringement of her "right to good human working conditions," or be construed as subjecting her "to inhuman treatment," or treatment of her "as an object or dehumanized (sic)." The School's acts simply followed exactly the same pattern already laid out in its employment relationship with Clarita Javier. The respondent Commission's conclusion is thus shown, upon analysis, to be nothing but rhetoric of hyperbolic character, finding no justification whatever in the facts, or in law or logic. It will thus have to be, as it is hereby, rejected, as having been rendered with grave abuse of discretion amounting to excess of jurisdiction.

WHEREFORE, the petition is granted; and the Resolution promulgated on November 18, 1987 by the respondent National Labor Relations Commission, affirming the decision of the Executive Labor Arbiter of January 26, 1987, is ANNULLED AND SET ASIDE, reserving to private respondent Clarita Javier the option to retain her position as faculty member of the petitioner institution which she must exercise not later than the opening of school year 1991-1992. No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 89007. March 11, 1991]

JUAN C. CARDONA, representing all former employees of the COMMERCIAL BANK & TRUST COMPANY (COMTRUST), *petitioners*, *vs.* **THE HON. NATIONAL LABOR RELATIONS COMMISSION and THE BANK OF THE PHILIPPINE ISLANDS (BPI),** *respondents*.

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SYLLABUS

1. **REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE NLRC, UPHELD ON APPEAL. —** The so-called "wage distortion" is premised on the allegation that all or generally most of the CBTC employees absorbed by BPI received lower salary and wage benefits than original BPI employees. Whether they did so or not, however, is, at bottom, a question of fact. The NLRC categorically pronounced that there was no such wage disparity. That determination, based as it is on substantial evidence, is entitled to respect and finality. This is specially true with respect to the NLRC, which performs not only a statutory function but carries out a Constitutional mandate as well.

2. **ID.; SUPREME COURT; NOT A TRIER OF FACTS. —** It is not the function of this Court, which is not a trier of facts, to review the evidence all over again (*Lucena v. Pan-Trade, Inc*., G.R. No. 80998, 25 April 1989, 172 SCRA 733).

3. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; ABSENCE OF OBLIGATION WHERE CONTRACT NOT PERFECTED. —** Petitioner still insists that the ex-CBTC employees should be granted the deadlocked position CBTC offered CEU at the time their CBA negotiations were suspended. The fact remains, however, and it has been mutually admitted by the parties, that no CBA had been executed between CBTC and CEU. It was prematurely aborted by the merger. There being no perfected contract, it can not, therefore, be the source of any legal obligation. It could not be binding on CBTC nor on its successor-in-interest, the BPI, notwithstanding the fact that the latter, under the Articles of Merger, had succeeded to all the assets and liabilities of CBTC.

APPEARANCES OF COUNSEL

Francisco P. Angeles for petitioner.

Angara, Abello, Concepcion, Regala and Cruz for private respondent.

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D E C I S I O N

MELENCIO-HERRERA, *J.*:

The existence or not of wage distortion, and the entitlement to salary differentials, as a consequence of the merger of the former Commercial Bank and Trust Company (CBTC) and the Bank of the Philippine Islands and the absorption by the latter of all CBTC employees, are the basic issues addressed In this labor case.

Petitioner, Juan C. Cardona, was formerly the President of the Comtrust Employees Union (CEU), the recognized labor union of CBTC before it merged with BPI. He instituted the present action in his capacity as such former President and in representation of all CEU members.

Sometime in May 1980, CBTC and CEU started negotiations for the renewal of their 1977-1980 Collective Bargaining Agreement (CBA) that was to expire on 30 June 1980. In the meantime, in July 1980, CBTC and BPI started serious negotiations for a possible merger "in line with the policy of the government on banks merger as a tool of promoting the concept of 'universal banking'." As a result, the CBA negotiations between CBTC and CEU were discontinued without any CBA ever executed.

In November 1980, CEU and its mother union, the National Union of Bank Employees (NUBE), filed with the then Court of First Instance of Manila a damage suit against CBTC and BPI, praying for an injunction against the banks' impending merger unless and until there was "full compliance and conformity by all defendants (CBTC and BPI) with the current CBA in so far as the CBTC rank and file employees are concerned until a subsequent and more inclusive CBA will be replaced x x x." However, the suit was dismissed for lack of jurisdiction. On Appeal, the dismissal was affirmed by the Court of Appeals and much later, on 17 January 1988, by this Court.

Meanwhile, the merger between CBTC and BPI pushed through, with the BPI as the surviving bank. All CBTC employees

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were absorbed by BPI. The merger agreement was signed on 25 December 1980 to take effect on 5 March 1981. The merger was approved by the Central Bank on 1 March 1981. Pertinent to the issues herein is Article II, Sec. 6 of the Articles of Merger, reading:

"x x x it being understood that in accordance with the pertinent provisions of the Corporation Code, BPI shall be responsible and liable for all the liabilities and obligations of CBTC in the same manner as if BPI had itself incurred such liabilities or obligations, and any claim, action or proceeding pending by or against CBTC shall be prosecuted by or against BPI. Neither the rights of creditors nor any lien upon the property of CBTC shall be impaired by the merger."

The provision of the Corporation Code referred to is Sec. 80 [5].[1]

Eight (8) years after the merger, or on 19 April 1988, petitioner, in representation of all ex-CBTC rank and file employees, filed a complaint against BPI before the NLRC Arbitration Branch, seeking wage differentials because of alleged wage disparity/ distortion between the absorbed and the original BPI employees. The salary differentials adverted to include ₱240.00 basic wage and ₱100.00 COLA increases that allegedly would have been granted during the aborted CBTC-CEU CBA negotiations.

In answer, BPI denied any wage disparity nor liability for any salary differentials. It added that the claim, being in the

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[1] "Sec. 80. *Effects of merger or consolidation*. — The merger or consolidation shall have the following effects:

"x x x x x x x x x

"5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger or consolidation.

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nature of a money claim, had already prescribed; that petitioner lacks the legal capacity to file the complaint; that resumption of the aborted negotiation was not part of the obligation it assumed as a consequence of the merger; and that it was neither guilty of bad faith nor estopped from repudiating petitioner's claims.

On 22 December 1989, the Labor Arbiter favorably granted petitioner's claim for salary differentials, justified as follows:

"Indeed, we find that a wage distortion really exists and the solution thereto is to grant all former Comtrust employees the deadlocked amount reached during the aborted CBA negotiation.

"WHEREFORE, premises considered, Judgment is hereby rendered ordering respondent to pay complainants (all former Comtrust employees) the sum of ₱340.00 a month from March 1, 1981 to the present minus the sum of ₱60.00 representing the 3rd year wage increase already paid to them beginning April 1, 1981."

However, on 30 June 1989, the NLRC reversed the Labor Arbiter's Decision, after finding that "the case record is bereft of any evidence whatsoever of the alleged wage distortion" (p. 26, NLRC Decision), and that "we fail to see factual or legal substantiation of the allegations in the complaint." In addition, it held:

"x x x x x x x x x

"4. There was no obligation created for BPI to collectively bargain with its ex-CBTC absorbed employees apart from the existing BPI Union; nor for resumption of the aborted CBTC negotiations."

5. The so-termed 'deadlocked position' of the parties to such aborted CBA negotiations was and is meaningless and 'so much water under the bridge;' had CEU promptly accepted then whatever the defunct CBTC had to offer and in line with the cited Merchant-PCI banks merger, it should have posed a different situation altogether.

"6. The BPI pre-merger commitment to the defunct Comtrust *vis-a-vis* CBTC employee 'absorption' and application of 'common standard and uniformity of treatment with respect to all employees x x x as in x x x merger x x x with the People's Bank' by subsequent alignment of their benefits was fully met.

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"x x x x x x x x x

"8. The alleged 'wage distortion', if any, brought on by the Comtrust-BPI merger in 1980-1981, nonetheless would have had to accrue from 1981 (and by no stretching of the Corporation Code application) and governed by the Labor Code as a money claim which has already prescribed."

As previously adverted to, this Petition, challenging the aforesaid Decision, hinges on the following issues: (1) the existence of wage disparity/distortion between the original BPI employees and the ex-CBTC employees; (2) the consequent entitlement of said employees to salary differentials due to said wage distortion; and (3) the non-applicability of the 3-year period of prescription to the claim for salary differentials.

The so-called "wage distortion" is premised on the allegation that all or generally most of the CBTC employees absorbed by BPI received lower salary and wage benefits than original BPI employees. Whether they did so or not, however, is, at bottom, a question of fact. The NLRC categorically pronounced that there was no such wage disparity. That determination, based as it is on substantial evidence, is entitled to respect and finality. This is specially true with respect to the NLRC, which performs not only a statutory function but carries out a Constitutional mandate as well. It is not the function of this Court, which is not a trier of facts, to review the evidence all over again (*Lucena v. Pan-Trade, Inc*., G.R. No. 80998, 25 April 1989, 172 SCRA 733).

Besides, records show that upon absorption, the ex-CBTC employees' allowances were standardized. In BPI's "Guidelines in the Alignment of CBTC Benefits," the ex-CBTC employees' emergency and cost of living allowances, medicine allowance, clothing allowance, and the first quarter bonus were aligned to the level of the BPI employees. Since the emergency living allowance (ELA) of the ex-CBTC employees was higher than that of BPI, it was reduced. Since the cost of living allowance (COLA) of BPI was higher, the amount taken from ELA was infused into the COLA. The excess was integrated into the basic salary. Except in instances where there was an excess

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amount from the allowances, in which case the excess should have been integrated into the basic salaries, the current level of basic salary remained the same. The indubitable fact, therefore, is that the ex-CBTC employees were granted salary adjustments in terms of restructing of benefits and allowances and the grant of a ₱60.00 increase pursuant to the 1979-1981 BPI CBA.

Petitioner's charge of "manipulation" of the figures by the BPI, was not found as a fact by the NLRC.

But petitioner still insists that the ex-CBTC employees should be granted the deadlocked position CBTC offered CEU at the time their CBA negotiations were suspended. The fact remains, however, and it has been mutually admitted by the parties, that no CBA had been executed between CBTC and CEU. It was prematurely aborted by the merger. There being no perfected contract, it can not, therefore, be the source of any legal obligation. It could not be binding on CBTC nor on its successor-in-interest, the BPI, notwithstanding the fact that the latter, under the Articles of Merger, had succeeded to all the assets and liabilities of CBTC. Neither can bad faith be attributed to the BPI for the non-continuation of the CBTC-CEU negotiations, it appearing according to the NLRC findings, that the ex-CBTC employees were already absorbed into the BPI Union.

With the foregoing conclusions arrived at, the merits of the matter of prescription of petitioner's claims need no longer be passed upon.

One last point has to be addressed. The Solicitor General recommends that, in the interest of social justice, petitioner and all CBTC employees, absorbed by BPI as a consequence of the merger, be granted salary differentials from 1 July 1980 (the day after the expiration of the CBTC-CEU CBA), and benefits differentials from 1 July 1980 to 31 December 1980 (the date prior to the alignment of benefits on 1 January 1981). It appears, however, that BPI had already taken it upon itself to adjust the compensation package of ex-CBTC employees in compliance with its pre-merger commitments. At the time of the absorption of the ex-CBTC employees, BPI's existing CBAs

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were on the third year of implementation. Since said CBTC employees were already BPI employees at that time, they were given the CBA wage increase effective 1 April 1981, amounting to ₱60.00. At the same time, they were extended the same benefits to which original BPI employees were entitled, the alignment having taken place on 1 January 1981. CBTC employees had accepted and enjoyed the same, only to file this Complaint for differentials after eight (8) years. In the words of the NLRC, that is now "so much water under the bridge."

WHEREFORE, absent grave abuse of discretion, the instant Petition for *Certiorari* is DENIED and the questioned Resolution of the National Labor Relations Commission (NLRC), dated 30 June 1989, is SUSTAINED.

SO ORDERED.

Paras, Sarmiento, and *Regalado, JJ.*, concur.

Padilla, J., no part.

FIRST DIVISION

[G.R. No. 92155. March 11, 1991]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs*. **ANTHONY BELGAR *y* MAYOR**, *defendant-appellant*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; LEADING QUESTION; ALLOWED. —** Leading questions to a 12-year old retardate is allowed by Section 10, Rule 132 of the Revised Rules on Evidence.

2. **CRIMINAL LAW; RAPE; MODES OF COMMISSION. —** From the foregoing provision of law there are four (4) modes