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SO ORDERED.

Antonio, Santos, and *Abad Santos, JJ.*, concur.

Concepcion Jr., J., took no part.

Barredo, J., concurs but wish to add that the reason why the undersecretary could ask is because when the secretary is disqualified, he should be deemed as absent or incapacitated to ask, hence the undersecretary should be correspondingly deemed as the secretary for the purposes of the case in question. Needless to say, the undersecretary should ask in such a way as to avoid any indication that he has been dictated upon actually by the secretary.

SECOND DIVISION

[G.R. No. 50568. November 7, 1979]

OCEANIC PHARMACAL EMPLOYEES UNION (FFW), *complainant-appellant*, *vs.* **HON. AMADO G. INCIONG and OCEANIC PHARMACAL INC.**, *respondents-appellees*.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; HOLIDAY PAY BENEFITS; WITHDRAWAL THEREOF, NOT JUSTIFIED IN CASE AT BAR.**— Section 2, Rule IV, Book III of the Rules and Regulations Implementing the Labor Code was promulgated on February 16, 1976. On the other hand, Policy Instructions No. 9 was issued on February 23, 1976. Since the said rules and policy instructions were already existing and effective prior to the execution of the Supplementary Agreement on April 27, 1976, it is clear that respondent company agreed

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to continue giving holiday pay to its monthly paid employees knowing fully well that said employees are not covered by the law requiring payment of holiday pay. When respondent company, therefore, interposed the condition that it "shall continue to extend the said benefits unless otherwise directed by other new requirements, rules, laws, decrees, etc. on the subject," it was referring to laws, decrees, rules, etc. other than the above-cited issuances. ... Even granting *arguendo* that the said issuance were promulgated after the execution of the agreement, there is still no justification for withdrawal of holiday pay benefits by respondent company, in view of Section 11, Rule IV, Book III of the Implementing Rules and Regulations, which explicitly provides: "Sec. 11. *Relation to agreements.* — Nothing in this Rule shall justify an employer in withdrawing or reducing any benefits, supplements or payments for unworked holidays as provided in existing individual or collective agreement or employer practice or policy."

2. ID.; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; VIOLATION THEREOF CONSTITUTES UNFAIR LABOR PRACTICE.— [T]here is no legal basis for the withdrawal of holiday pay benefits by the Company. Consequently, its violation of the Supplementary Agreement constitutes unfair labor practice. "It shall be unfair labor practice for an employer to violate a collective bargaining agreement" (Art. 248, Labor Code).

APPEARANCES OF COUNSEL

Jaime D. Lauron for appellant.
Siguion Reyna, Montecillo & Ongsiako for private appellee.

D E C I S I O N

ABAD SANTOS, *J.*:

This is a petition to review a decision of Deputy Minister Amado G. Inciong who acted by authority of the Minister of Labor in NLRC Case No. RB-IV-10042-77.

Oceanic Pharmacal Employees Union and Oceanic Pharmacal, Inc. had a collective bargaining agreement (CBA) good from

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March 1, 1976 to February 28, 1979. On April 27, 1976, the following letter was sent to the Union:

Mr. Arturo Fernandez
President
Oceanic Pharmacal Employees Union (FFW)
Makati, Rizal

Dear Mr. Fernandez:

Subject: *Supplementary Agreement to CBA*

This is to confirm in writing the agreement made between your panel and our own panel on April 24, 1976 on the following points:

1) Emergency Allowance — The management of OPI will continue its present practice of extending emergency allowance to all employees receiving less than ₱1,000.00 per month as basic pay.

2) Holiday Pay — OPI management will likewise continue to give holiday pay to monthly-salaried employees.

Please be informed too that we shall continue to extend the said benefits unless otherwise directed by other new requirements, rules, laws, decrees, *etc.* on the subject.

Very truly yours,

OCEANIC PHARMACAL, INC.

R.A. ALCANTARA
Vice-President-Treasurer"

On October 25, 1976, the Company posted on its bulletin board the following memorandum:

"October 25, 1976

To : All Concern

From : Personnel Dept.

Ref : Discontinuance of The Payment To Regular Employees of The Regular Holidays Pay For Regular Holidays.

This has reference to the payment of the subject benefit forming part of the supplemental Collective Bargaining Agreement dated April 27, 1976.

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This commitment to pay said benefit is being discontinued on account of the proviso in the said memo of the General Manager dated April 27, 1976, taken in relation to Section 2, Rule IV, Book III of the Implementing Rules, Policy Instruction No. 9 and the decision of the Secretary of Labor in the Chartered Bank Case dated September 7, 1976.

For your information and dissemination."

The Union objected to the discontinuance of the holiday pay and when an amicable settlement could not be reached, the Union filed a complaint against the Company for unfair labor practice and violation of the CBA regarding holiday pay. In a decision dated March 24, 1977, Labor Arbiter Apolonio R. Reyes ordered the Company to resume payment of the holiday pay effective October 25, 1976. On appeal by the Company to the National Labor Relations Commission, the appeal was dismissed for lack of merit. Still not satisfied, the Company appealed to the Minister of Labor who, on April 16, 1979, rendered a decision with the following dispositive portion: "Wherefore, the Resolution appealed from is hereby set aside, and a new judgment entered dismissing this case for lack of merit."

We required the respondents to comment on the petition, which they did. Private respondent, as expected, urges us to dismiss the petition. However, the Solicitor General recommends that the petition be given due course. We did so on November 12, 1979. Hence this decision.

We have to reverse the decision of the Minister of Labor.

The issue in this case is whether the Company may discontinue the holiday pay it had agreed to give pursuant to its letter dated April 27, 1976, by invoking the last paragraph thereof, namely: "Please be informed too that we shall continue to extend the said benefits unless otherwise directed by other new requirements, rules, laws, decrees, etc. on the subject." Stated in other words, is the discontinuance of the benefit justified by Section 2, Rule IV, Book III of the Rules and Regulations Implementing the Labor Code and Policy Instructions No. 9 of the Minister of Labor, as stated in the second paragraph of the Company's

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memorandum dated October 25, 1976? These issuances are respectively as follows:

"Section 2. *Status of employees paid by the month.* — Employees who are uniformly paid by the month, irrespective of the number of working days therein, with a salary of not less than the statutory or established minimum wages shall be presumed to be paid for all days in the month whether worked or not.

For this purpose, the monthly minimum wage shall not be less than the statutory minimum wage multiplied by 365 days divided by twelve." (Issued on February 16, 1976.)

"Policy Instructions No. 9. — The rules implementing PD 850 have clarified the policy in the implementation of the ten (10) paid legal holidays. Before PD 850, the number of working days a year in a firm was considered important in determing entitlement to the benefit. Thus, where an employee was working for at least 313 days, he was considered definitely already paid. If he was working for less than 313, there was no certainty whether the ten (10) paid legal holidays were already paid to him or not.

The ten (10) paid legal holidays law, to start with, is intended to benefit principally daily employees. In the case of monthly, only those whose monthly salary did not yet include payment for the ten (10) paid legal holidays are entitled to the benefit.

Under the rules implementing PD 850, this policy has been fully clarified to eliminate controversies on the entitlement of monthly paid employees. The new determining rule is this: If the monthly paid employee is receiving not less than ₱240, the maximum monthly minimum wage, and his monthly pay is uniform from January to December, he is presumed to be already paid the ten (10) paid legal holidays. However, if deductions are made from his monthly salary on account of holidays in months where they occur, then he is still entitled to the ten (10) paid legal holidays.

These new interpretations must be uniformly and consistently upheld.

This issuance shall take effect immediately."(Issued on February 23, 1976.)

As stated by the Solicitor General, the questions above stated should be answered in the negative for the following reasons:

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1. Section 2, Rule IV, Book III of the Rules and Regulations Implementing the Labor Code was promulgated on February 16, 1976. On the other hand, Policy Instructions No. 9 was issued on February 23, 1976. Since the said rules and policy instructions were already existing and effective prior to the execution of the Supplementary Agreement on April 27, 1976, it is clear that respondent company agreed to continue giving holiday pay to its monthly paid employees knowing fully well that said employees are not covered by the law requiring payment of holiday pay. When respondent company, therefore, interposed the condition that it "shall continue to extend the said benefits unless otherwise directed by other new requirements, rules, laws, decrees, etc. on the subject,' it was referring to laws, decrees, rules, etc. other than the above-cited issuances.

2. Even granting *arguendo* that the said issuances were promulgated after the execution of the agreement, there is still no justification for withdrawal of holiday pay benefits by respondent company, in view of Section 11, Rule IV, Book III of the Implementing Rules and Regulations, which explicitly provides:

"Sec. 11. *Relation to agreements.* — Nothing in this Rule shall justify an employer in withdrawing or reducing any benefits, supplements or payments for unworked holidays as provided in existing individual or collective agreement or employer practice or policy."

In the case of *States Marine Corporation v. Cebu Seaman's Association* (G.R. No. L-12444, February 28, 1963; 7 SCRA 294), this Court, on the basis of a similar provision in the Minimum Wage Law (R.A. No. 602), ruled that nothing in the Act justified an employer in reducing the wage paid to any of his employees in excess of the minimum wage established under the Act or in reducing supplements furnished on the date of enactment.

Evidently, there is no legal basis for the withdrawal of holiday pay benefits by the Company. Consequently, its violation of the Supplementary Agreement constitutes unfair labor practice.

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"It shall be unfair labor practice for an employer to violate a collective bargaining agreement" (Art. 248, Labor Code).

WHEREFORE, the decision appealed from is hereby reversed and those of the Labor Arbiter and NLRC are reinstated. No costs.

SO ORDERED.

Barredo (Chairman), Antonio, Concepcion Jr., and *Santos, JJ.*, concur.

Aquino, J., took no part.