Republic of the Philippines
SUPREME COURT
Manila

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAR 23 2018

THIRD DIVISION

HONGKONG BANK INDEPENDENT LABOR UNION (HBILU),	**G.R. No. 218390**
Petitioner,	Present:
- versus -	VELASCO, JR., *J.*, Chairperson, BERSAMIN, LEONEN, MARTIRES, and GESMUNDO, *JJ.*
HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED,	Promulgated:
Respondent.	February 28, 2018

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

DECISION

VELASCO, JR., *J.*:

The Case

For consideration is a Petition for Review on Certiorari under Rule 45 of the Rules of Court questioning the Decision[1] and Resolution of the Court of Appeals (CA), dated October 23, 2014 and May 21, 2015, respectively, in CA-G.R. SP No. 130798. The challenged rulings sustained the validity of the external credit check as a condition before respondent could grant the application for salary loans of petitioner's members. This is notwithstanding the non-mention of the said condition in the parties' Collective Bargaining Agreement (CBA).

The Facts

In 2001, the Bangko Sentral ng Pilipinas (BSP) issued the Manual of Regulations for Banks (MoRB). Relevant to the instant case is Section X338 thereof which reads:

---

[1] Penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Ramon M. Bato, Jr. and Rodil V. Zalameda.

> Banks may provide financial assistance to their officers and employees, as part of their fringe benefits program, to meet housing, transportation, household and personal needs of their officers and employees. **Financing plans and amendments thereto shall be with prior approval of the BSP.** (emphasis added)

Pursuant to the above-cited provision, respondent Hongkong and Shanghai Banking Corporation Limited (HSBC), on March 12, 2003, submitted its Financial Assistance Plan (Plan) to the BSP for approval. The Plan allegedly contained a credit checking proviso stating that "[r]epayment defaults on existing loans and adverse information on outside loans will be considered in the evaluation of loan applications." The BSP approved the Plan on May 5, 2003.[2] Said Plan was later amended thrice,[3] all of which amendments were approved by the BSP.[4]

Meanwhile, petitioner Hongkong Bank Independent Labor Union (HBILU), the incumbent bargaining agent of HSBC's rank-and-file employees, entered into a CBA with the bank covering the period from April 1, 2010 to March 31, 2012. Pertinent to the instant petition is Article XI thereof, which reads:

> Article XI
> Salary Loans
>
> Section 1. Housing/house Improvement Loan. The BANK, or other financial institution when appropriate, shall extend housing loan to qualified employees with at least three (3) YEARS OF SERVICE, UP TO One Million Five Hundred Thousand Pesos (P1,500,000.00) payable in twenty-five (25) years or up to the retirement date of the employee, whichever comes first. Subject to BSP approval, an additional Five Hundred Thousand Pesos (P500,000.00) can be availed subject to the terms above with interest rate at the BLR less 3% but not less than six percent (6%) per annum.
>
> Section 2. Personal Loans. The BANK, or the Retirement Trust Fund Inc. or other financial institutions, when appropriate, shall extend personal loan to qualified employees, with at least 1 year service, up to six months basic pay of the employees at six percent (6%) interest per annum, payable in three years.
>
> Section 3. Car Loans. The BANK, or the Retirement Trust Fund Inc. or other financial institutions when appropriate, shall extend a car loan to qualified employees with at least 3 years service up to Five Hundred Fifty Thousand Pesos (PHP550,000.00) payable in seven (7) years. Interest rate shall be six percent (6%) per annum.
>
> Section 4. Credit Ratio. The availment of any of the foregoing loans shall be subject to the BANK's credit ratio policy.

---

[2] *Rollo*, p. 283.
[3] On July 27, 2006, February 11, 2008, and on July 4, 2011.
[4] *Rollo*, p. 128.

When the CBA was about to expire, the parties started negotiations for a new one to cover the period from April 1, 2012 to March 31, 2017. During the said negotiations, HSBC proposed amendments to the above-quoted Article XI allegedly to align the wordings of the CBA with its BSP-approved Plan. Particularly, HSBC proposed the deletion of Article XI, Section 4 (Credit Ratio) of the CBA, and the amendment of Sections 1 to 3 of the same Article to read as follows:

> Article XI
> Salary Loans
>
> Section 1. Housing/house Improvement Loan. **Based on the Financial Assistance Plan duly approved by Bangko Sentral ng Pilipinas (BSP),** the BANK, or other financial institution when appropriate, shall extend housing loan to qualified employees with at least three (3) YEARS OF SERVICE UP TO One Million Five Hundred Thousand Pesos (P1,500,000.00) payable in twenty-five (25) years or up to the retirement date of the employee, whichever comes first, **subject to employee's credit ratio.** An additional Five hundred thousand Pesos (P500,000.00) can be availed subject to the terms above with interest rates at the BLR less 3% but not less than six percent (6%) per annum.
>
> Section 2. Personal Loans. **Based on the financial Assistance Plan duly approved by Bangko Sentral ng Pilipinas (BSP)**, the BANK, or other financial institutions when appropriate, shall extend personal loan to qualified employees, with at least 1 year service, up to six months basic pay of the employees at six percent (6%) interest per annum, payable in three (3) years, **subject to employee's credit ratio.**
>
> Section 3. Car loans. **Based on the Financial Assistance Plan duly approved by Bangko Sentral ng Pilipinas (BSP),** the BANK, or other financial institutions when appropriate, shall extend a car loan to qualified employees with at least three years service, up to Five Hundred Fifty Thousand Pesos (PHP550,000.00) payable in seven (7) years. Interest rate shall be six percent (6%) per annum. (emphasis added)

HBILU vigorously objected to the proposed amendments, claiming that their insertions would curtail its members' availment of salary loans. This, according to the Union, violates the existing exceptions set forth in BSP Circular 423, Series of 2004,[5] and Section X338.3[6] of the MoRB. In

---

[5] SECTION X338. Financial Assistance to Officers and Employees. Banks may provide financial assistance to their officers and employees, as part of their fringe benefits program, to meet the housing, transportation, household and personal needs of their officers and employees. Financing plans and amendments thereto, shall be with prior approval of the Bangko Sentral.

Subsection X338.1 Mechanics. The mechanics of such financing plan shall have the following minimum features:

Participation shall be limited to full-time and permanent officers and employees of the bank;

Financial assistance shall only be for the following purposes:

(1) The acquisition of a residential house and lot, or the construction, renovation or repair of a residential house on a lot owned and to be occupied by the officer or employee;

(2) The acquisition of vehicles, household equipment and appliances for the personal use of the officer or employee or his immediate family; or

(3) To meet expenses for the medical, maternity, education, emergency and other personal needs of the officer or employee or his immediate family;

Financial assistance for purposes mentioned in Items b(1) and b(2) of this Section shall be granted in the form of a loan, advance or other credit accommodation, installment sale, lease with option to

purchase or lease-purchase arrangement where the lessee is obliged to purchase the real estate or equipment;

The amount and maturity of financial assistance for each purpose shall be determined by the bank in consonance with the normal requirements thereof: Provided, That the maximum amount shall be stated as percentage or multiple of the total monthly compensation of the officer or employee and shall be within the paying capacity of the borrowing officer or employee.

Total monthly compensation shall include the basic salary and all fixed and regular monthly allowances of the officer or employee. Payments for sickness benefits and other special emoluments which are not fixed or regular in nature, or the commutation into cash of unused leave credits shall not be included in the computation of total monthly compensation;

The amortization payment shall include amounts necessary to cover mortgage redemption insurance and fire insurance premiums, taxes, special assessments, and other related fees and charges;

Availment of the financing plan to construct or acquire a residential house and lot shall be allowed only once during the officer's or employee's tenure with the bank, except where the right over the real estate previously acquired or constructed under the financing plan is absolutely transferred or assigned to another officer or employee of the bank or to a third party: Provided, That the bank must be fully paid or reimbursed for the outstanding availment on the financing plan before the officer/employee is allowed to re-avail himself of the same financing plan.

An officer or employee (or his spouse) who already owns a residential house and lot shall not be qualified to avail himself of financial assistance for purposes of acquiring a residential house and/or lot.

These prohibitions notwithstanding, financial assistance for the repair or renovation of a residential house may be allowed subject to such limitation as may be prescribed by the bank pursuant to Item d of this Section;

Availment of the financing plan for the acquisition of a specific type of equipment or appliance shall be allowed not oftener than once every three (3) years: Provided, That re-availment shall be allowed only after previous obligations in connection with the acquisition of the same type of equipment or appliances have been fully liquidated; and

The bank shall adopt measures to protect itself from losses such as by incorporating in the plan or contract provisions requiring co-makers or co-signor, chattel, or real estate mortgages, fire insurance, mortgage redemption insurance, assignment of money value of leave credits, pension or retirement benefits.

Subsection 1338.2 Funding by Foreign Banks. In the case of local branches of foreign banks, financial assistance for their officers and employees may be funded, through any of the following means:

Through a local affiliate by special arrangement with the head office abroad in any of the following forms:

(1) Inward remittance from the head office of the affiliate;

(2) Assignment to the affiliate of equivalent amounts of profits otherwise remittable abroad under existing regulations; or

(3) Direct loans by the foreign bank to the affiliate; or

Through the local branch itself by:

(1) Segregation or transfer of undivided profits normally remitted to the head office abroad equivalent to the loans to officers and employees which shall be lodged under "Other Liabilities-Head Office Accounts". This account shall at all times have a balance equivalent to the outstanding loans to officers/employees financed under this scheme; or

(2) Inward remittance; or

Through the local branch from local sources without earmarking an equivalent amount of undivided profits: Provided, that the aggregate ceilings on such loans as provided under existing regulations shall apply.

Loans under Items b(1) and b(2) of this Section shall be treated in the branch books as loans granted by its head office. The documentation and collection of such loans shall be handled by the branch for the account of the head office.

Loans financed under Items a and b shall be subject to the reporting requirements of Section X335 but not to the ceilings provided under Sections X330 and X331. The same shall be excluded from the computation of the capital to risk assets ratio.

Subsection X338.3 Other conditions/limitations

The investment by a bank in equipment and other chattels under its fringe benefits program for officers and employees shall be included in determining the extent of the investment of the bank in real estate and equipment for purposes of Section 51 of R.A. No. 8791.

The investment by a bank in equipment and other chattels contemplated under these guidelines shall not be for the purpose of profits in the course of business for the bank.

All loans or other credit accommodations to bank officers and employees, except those granted under the fringe benefit program of the bank, shall be subject to the same terms and conditions imposed on the regular lending operations of the bank. Loans or other credit accommodations granted to officers shall, in addition, be subject to the provisions of Section 36 of R.A. No. 8791 and Sections X326 to X336 but not to the individual ceilings where such loans or other credit accommodations are obtained under the bank's fringe benefits program.

view of HBILU's objection, HSBC withdrew its proposed amendments and, consequently, Article XI remained unchanged.

Despite the withdrawal of the proposal, HSBC sent an e-mail to its employees on April 20, 2012 concerning the enforcement of the Plan, including the Credit Checking provisions thereof. The e-mail reads:

> Dear All
>
> We wish to reiterate the following provisions included in the Financial Assistance Plan (FAP) as approved by Bangko Sentral ng Pilipinas (BSP). Note that the FAP is the official guideline and policy governing Staff Loans and Credit Cards.
>
> >>>> CREDIT CHECKING
>
> Below are the specific provisions included in the FAP regarding credit checking.

Housing Loan, Car Loan, Personal Loan & Computer/Club Membership/Medical Equipment Loan	Repayment defaults on existing loans and adverse information considered in the evaluation of loan applications.
Credit Card	Repayment defaults on existing loans and adverse information considered in the evaluation of loan applications.

> With the strict implementation of these provisions, adverse credit findings may result to disapproval of loan or credit card applications. These findings will include the following:
>
> (1) Frequency of confirmed ADA failure on staff/commercial loans and credit cards (3 consecutive incidents within the past 6 months or 6 incidents within the past 12 months). Note that applications with pending ADA for investigation will only be processed upon confirmation of status (Confirmed or Reprieved);
> (2) Adverse findings on HSBC cards; or
> (3) Adverse findings from external credit checks.[7]

The aggregate outstanding loans and other credit accommodations granted under the bank's fringe benefits program, inclusive of those granted to officers in the nature of lease with option to purchase, shall not exceed five percent (5%) of the bank's total loan portfolio. *See* <http://www.bsp.gov.ph/regulations/regulations.asp?type=1&id=165> (last visited December 12, 2017).

[6] All loans or credit accommodations to bank officers and employees, except those granted under the fringe benefit program of the bank, shall be subject to the same terms and conditions imposed on the regular lending operations of the bank. Loans of other credit accommodations granted to officers shall, in addition, be subject to the provisions of Section 36 of R.A. No. 8791 and Sections X326 and X336 but not to the individual ceilings where such loans or other credit accommodations are obtained under the bank's fringe benefits program.

The aggregate outstanding loans and other credit accommodations granted under the bank's fringe benefits program, inclusive of those granted to officers in the nature of lease with option to purchase, shall not exceed five percent (5%) of the bank's total loan portfolio.

[7] *Rollo*, p. 285.

Thereafter, in September 2012, HBILU member Vince Mananghaya (Mananghaya) applied for a loan under the provisions of Article XI of the CBA. His first loan application in March 2012 was approved, but adverse findings from the external checks on his credit background resulted in the denial of his September application.[8] HBILU then raised the denial as a grievance issue with the National Conciliation Mediation Board (NCMB). It argued that the imposition of an additional requirement—the external credit checking prior to approval of any loan application under Article XI of the CBA—is not sanctioned under the CBA. The Union emphasized that under the terms of Article XI, there is no such requirement and that it cannot, therefore, be unilaterally imposed by HSBC.

Justifying its denial of the loan application, HSBC countered that the external credit check conducted in line with Mananghaya's loan application was merely an implementation of the BSP-approved Plan. The adoption of the Plan, HSBC stressed, is a condition *sine qua non* for any loan grant under Section X338 of the MoRB. Moreover, the Credit Check policy has been in place since 2003, and is a sound practice in the banking industry to protect the interests of the public and preserve confidence in banks.

The issue was then submitted for resolution by the NCMB Panel of Accredited Voluntary Arbitrators (the Panel).[9] In the interim, the parties, on September 29, 2012, inked a new CBA for the period covering April 1, 2012 up to March 31, 2017.[10]

NCMB-PVA Decision

On May 17, 2013, the Panel rendered a Decision finding for HSBC. It held that herein respondent, as an employer, has the right to issue and implement guidelines for the availment of loan accommodations under the CBA as part of its management prerogative. The repeated use of the term "qualified employees" in Article XI of the CBA was deemed indicative of room for the adoption of further guidelines in the availment of the benefits thereunder. The Panel also agreed that HSBC's Plan is not a new policy as it has already been approved by the BSP as early as 2003. Thus, the Panel ruled that the salary loan provisions under Article XI of the CBA must be read in conjunction with the provisions of the Plan.

The Panel further discussed that HSBC's adoption of the Plan was not done for any whimsical or arbitrary reason, but because the bank was constrained to comply with Section X338 of the MoRB. As a banking institution, HSBC cannot divorce itself from the regulatory powers of the BSP. Observance of Section X338 of the MoRB was then necessary before the bank could have been allowed to extend loan accommodations to its officers and employees.

---

[8] Id.
[9] Via a Notice to Arbitrate filed by HBILU on November 26, 2012.
[10] *Rollo*, p. 95.

On the basis thereof, the Panel held that they are not ready to rule that HSBC's Plan violates Article XI of the CBA.

Aggrieved, HBILU elevated the case to the CA.

CA Decision

The CA sustained the findings and conclusions of the NCMB-PVA *in toto* on the ratiocination that HSBC was merely complying with Section X338 of the MoRB when it submitted the Plan to BSP. When BSP, in turn, approved the said Plan, HSBC became legally bound to enforce its provisions, including the conduct of external credit checks on its loan applicants.[11] The appellate court further ruled that the Plan should be deemed incorporated in the CBA because it is a regulatory requirement of BSP without which the salary loan provisions of the CBA are rendered inoperative.

Petitioner's motion for reconsideration having been denied by the CA thru its May 21, 2015 Resolution, HBILU now seeks recourse from this Court.

The Issues

HBILU presents the following grounds to warrant the reversal of the assailed Decision, viz:

> The decisions and resolutions of the Hon. Panel of Voluntary Arbitrators and the Hon. Court of Appeals are tainted with grave abuse of discretion and it showed patent errors in the appreciation of facts which led to wrong conclusions of law; or stated otherwise;
>
> The Hon. Panel of Voluntary Arbitrators and Court of Appeals committed serious, reversible and gross error in law in ruling that the Bank's Financial Assistance Plan as not in violation of Article XI of the Parties' CBA provision on Salary Loans (Article XII of the new and existing CBA)[12]

Simply put, the issue for Our resolution is whether or not HSBC could validly enforce the credit-checking requirement under its BSP-approved Plan in processing the salary loan applications of covered employees even when the said requirement is not recognized under the CBA.

---

[11] Id. at 168.
[12] Id. at 90.

Arguments of Petitioner

In support of its position, HBILU argues, among others, that HSBC failed to present in court the Plan that was supposedly submitted to the BSP for approval, and to show that the requirement of external credit checking had already been included therein.[13] Too, said Plan is not a set of policies for salary loans that came from the BSP, but was devised solely by HSBC.[14]

Furthermore, HBILU claims that it is not privy to the Plan and has not been consulted, much less informed, of the impositions therein prior to its implementation. No proof was offered that the Plan had been disseminated to the employees prior to the April 20, 2012 e-mail blast.[15]

Lastly, the implementation of the Plan, according to HBILU, is tantamount to diminution of benefits[16] and a unilateral amendment of the existing CBA,[17] which are both proscribed under the Labor Code. Had the parties to the CBA intended to include the external credit check as an additional condition to the availment of employee salary loans, then it should have been plainly provided in their agreement.[18]

Arguments of Respondent

In its Comment, HSBC claims that the Plan is neither new nor was it issued on a mere whim or caprice. On the contrary, the Plan was established as early as 2003, way before Mananghaya's application was denied, to conform to Section X338 of the BSP MoRB. HSBC reminds the Court that the loan and credit accommodations could have only formed part of the employees' fringe benefit program if they were extended through a financing scheme (i.e., the Plan) approved by the BSP.

Moreover, HSBC argues that the dissemination of the Plan via e-mail blast on April 20, 2012 was but a reiteration, as opposed to a first publication. It contends that even prior to the establishment and approval of the Plan in 2003, the then-loan policy already included the requirement on external credit checking. According to the bank, there was already a provision that required the conduct of credit checking in the processing and evaluation of loan applications in their General Policies on Loans, cascaded through the Intranet system to HSBC employees on October 24, 2002, viz:

CREDIT CHECKING	
	Repayment defaults on existing loans and adverse information on outside loans will be considered in the evaluation of loan applications.

[13] Id. at 92.
[14] Id. at 101.
[15] Id. at 93.
[16] Id. at 98.
[17] Id. at 102.
[18] Id. at 98.

The union members cannot then feign ignorance of the external credit checking requirement in staff loan applications, according to HSBC. Consequently, petitioner's bare denial of any knowledge about it cannot be given any credence. Considering too that the Plan reiterating the requirement has been approved by the BSP in 2003, HBILU slept on its rights when it questioned its strict imposition almost a decade after its issuance.

Finally, HSBC postulates that the non-mention of the Plan in the CBA is no justification for the bank to disregard the same in processing employee loan applications. Provisions of applicable laws, especially those relating to matters affected with public policy, are deemed written into the contract.[19]

Our Ruling

The petition is meritorious.

The constitutional right of employees to participate in matters affecting their benefits and the sanctity of the CBA

Preliminarily, it is crucial to stress that no less than the basic law of the land guarantees the rights of workers to collective bargaining and negotiations as well as to participate in policy and decision-making processes affecting their rights and benefits. Section 3, Article XIII of the 1987 Constitution provides:

> Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
>
> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

Pursuant to said guarantee, Article 211 of the Labor Code, as amended, declares it a policy of the State:

> (a) **To promote and emphasize the primacy of free collective bargaining and negotiations**, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes;
>
> x x x x

---

[19] Citing *Halagueña v. Philippine Airlines, Inc.*, G.R. No. 172013, October 2, 2009, 602 SCRA 297.

> (d) **To promote the enlightenment of workers concerning their rights** and obligations as union members and as employees;
>
> x x x x
>
> (g) **To ensure the participation of workers in decision and policy-making processes affecting their rights, duties and welfare**. (Emphasis ours)

Corollary thereto, Article 255 of the same Code provides:

> ART. 255. EXCLUSIVE BARGAINING REPRESENTATION AND WORKERS PARTICIPATION IN POLICY AND DECISION-MAKING.
>
> x x x x
>
> Any provision of law to the contrary notwithstanding, **workers shall have the right,** subject to such rules and regulations as the Secretary of Labor and Employment may promulgate, **to participate in policy and decision-making process of the establishment where they are employed insofar as said processes will directly affect their rights, benefits and welfare.** For this purpose, workers and employers may form labor-management councils: *Provided*, That the representatives of the workers in such labor management councils shall be elected by at least the majority of all employees in said establishment. (Emphasis and underscoring ours)

We deem it necessary to remind HSBC of the basic and well-entrenched rule that although jurisprudence recognizes the validity of the exercise by an employer of its management prerogative and will ordinarily not interfere with such, this prerogative is **not absolute** and is subject to limitations imposed by law, **collective bargaining agreement**, and general principles of fair play and justice.[20]

Indeed, being a product of said constitutionally-guaranteed right to participate, the CBA is, therefore, the law between the parties and they are obliged to comply with its provisions.

Unilateral amendments to the CBA violate Article 253 of the Labor Code

A collective bargaining agreement or CBA is the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit. As in all contracts, the parties in a CBA may establish such stipulations, clauses, terms and conditions as they may deem convenient provided these are not contrary to law, morals, good customs, public order or public policy. Thus, where the CBA is clear and unambiguous, it becomes

---

[20] See *Morales v. Harbour Centre Port Terminal, Inc.*, G.R. No. 174208, January 25, 2012, 664 SCRA 110, 119-120.

the law between the parties and compliance therewith is mandated by the express policy of the law.[21]

In *Faculty Association of Mapua Institute of Technology (FAMIT) v. Court of Appeals*,[22] this Court was emphatic in its pronouncement that the CBA during its lifetime binds all the parties. **The provisions of the CBA must be respected since its terms and conditions constitute the law between the parties. And until a new CBA is executed by and between the parties, they are duty-bound to keep the *status quo* and to continue in full force and effect the terms and conditions of the existing agreement.**[23] This finds basis under Article 253 of the Labor Code, which states:

> **ARTICLE 253. *Duty to bargain collectively when there exists a collective bargaining agreement.*** – When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that **neither party shall terminate nor modify such agreement during its lifetime.** x x x **It shall be the duty of both parties to keep the status quo and to continue in full force and effect the terms and conditions of the existing agreement** during the 60-day period and/or **until a new agreement is reached by the parties**. (emphasis added)

In the present controversy, it is clear from the arguments and evidence submitted that the Plan was never made part of the CBA. As a matter of fact, HBILU vehemently rejected the Plan's incorporation into the agreement. Due to this lack of consensus, the bank withdrew its proposal and agreed to the retention of the original provisions of the CBA. The subsequent implementation of the Plan's external credit check provisions in relation to employee loan applications under Article XI of the CBA was then an imposition solely by HSBC.

In this respect, this Court is of the view that tolerating HSBC's conduct would be tantamount to allowing a blatant circumvention of Article 253 of the Labor Code. It would contravene the express prohibition against the unilateral modification of a CBA during its subsistence and even thereafter until a new agreement is reached. **It would unduly license HSBC to add, modify, and ultimately further restrict the grant of Salary Loans beyond the terms of the CBA by simply adding stringent requirements in its Plan, and having the said Plan approved by BSP in the guise of compliance with the MoRB.**

---

[21] *Goya, Inc. v. Goya, Inc. Employees Union-FFW*, G.R. No. 170054, January 21, 2013, 689 SCRA 1, 15-16.

[22] G.R. No. 164060, June 15, 2007, 524 SCRA 709.

[23] Id.

HSBC's defense, that there was no modification of the CBA since the external credit check has been a long-standing policy of the Bank applied to all of its employees, is unconvincing. Noteworthy is that the bank failed to submit in evidence the very Plan that was supposedly approved by the BSP in 2003. Nevertheless, even if We were to rely on the later versions of the Plan approved by the BSP, Our ruling will not change.

The only provision relative to the credit checking requirement under the 2006 and 2011 Plans is this and nothing else:

CREDIT CHECKING	
	Repayment defaults on existing loans and adverse information on outside loans will be considered in the evaluation of loan applications.[24]

As for the manner in which said credit checking will be done, as well as any additional requirements that will be imposed for the purpose, the 2006 Plan and even its later 2011 version are silent thereon.[25] Nowhere in these Plans can We find the requirement for the submission of an "Authority to Conduct Checks Form," as well as the details on adverse credit finding, specifically:

> With the strict implementation of these provisions, adverse credit findings may result to disapproval of loan or credit card applications. These findings will include the following:
>
> (1) Frequency of confirmed ADA failure on staff/commercial loans and credit cards (3 consecutive incidents within the past 6 months or 6 incidents within the past 12 months). Note that applications with pending ADA for investigation will only be processed upon confirmation of status (Confirmed or Reprieved);
> (2) Adverse findings on HSBC cards; or
> (3) Adverse findings from external credit checks.[26]

In fact, regrettably, HSBC's only documentary basis for proving that the credit checking requirement and the manner of its enforcement have been set in place much earlier is the use of the term "reiterate" in its April 20, 2012 e-mail. Thus, we quote:

> Dear All
>
> We wish to **reiterate** the following provisions included in the Financial Assistance Plan (FAP) as approved by Bangko Sentral ng Pilipinas (BSP).
> x x x
>
> 20. Accordingly, **the above email dated 20 April 2012 clearly indicates that the dissemination therein of the FAP and its provisions is merely**

---

[24] *Rollo*, pp. 475-476.
[25] Id. at 475-488.
[26] Id. at 285.

> **a reiteration, and not a first publication as the Union now conveniently claims.**[27] x x x (emphasis supplied)

What further convinces Us that the external credit check as well as the manner of its enforcement is a new imposition by HSBC is the fact that the bank made no attempt to rebut HBILU's evidence that **the former's requirements for the grant of salary loans changed only after the April 20, 2012 email blast**. HBILU sufficiently proved that **prior to the April 20, 2012 email, members of the bargaining unit were using only four (4) documents in applying for a loan**, to wit: 1) Application for Personal Loan Form; 2) Authority to Deduct Form; 3) Set-Off of Retirement Fund Form; and 4) Promissory Note Form.[28] Thereafter, management imposed a **new set of requirements**, which includes the "Authority to Conduct Checks Form."[29] As testified to by Mananghaya, he only signed the first four (4) requirements for his March 2012 loan. However, for the September 2012 loan, he was asked to complete a new set of documents which included the Authority to Conduct Checks Form.[30] Too, **even the email itself states that said credit checking requirement, among others, is to be strictly enforced effective May 2012**.[31] Though HSBC claims that credit checking has been the bank's long-standing policy, **it failed to show that it indeed required such before its covered employees could avail of a salary loan under the CBA prior to April 20, 2012—the date of the email blast.**

Thus, no other conclusion can be had in this factual milieu other than the fact that **HSBC's enforcement of credit checking on salary loans under the CBA invalidly modified the latter's provisions thereon through the imposition of additional requirements which cannot be found anywhere in the CBA.**

If it were true that said credit checking under the Plan covers salary loans under the CBA, then the bank should have negotiated for its inclusion thereon as early as the April 1, 2010 to March 31, 2012 CBA which it entered into with HBILU. However, the express provisions of said CBA inked by the parties clearly make no reference to the Plan. And even in the enforcement thereof, credit checking was not included as one of its requirements. This leads Us to conclude that HSBC originally never intended the credit checking requirement under the Plan to apply to salary loans under the CBA. At most, its application thereto is a mere afterthought, as evidenced by its sudden, belated, and hurried enforcement on said salary loans via the disputed email blast.

---

[27] HSBC Comment, p. 8.
[28] *Rollo*, p. 640.
[29] Id. at 642.
[30] Id. at 642-643.
[31] Id. at 404.

In other words, it appears that, based on its actuations, HSBC never intended to apply the credit checking item under the Plan to salary loans under the CBA. Otherwise, it would have enforced such requirement from the moment the salary loans provisions under the old CBA were implemented, which it did not. It may be that said requirement was being applied to other types of loans under the Plan, but based on the evidence presented, We cannot say the same for salary loans under the CBA.

The minority argues that primacy is being accorded to the CBA over the Plan approved by the BSP. Such, however, is not the case. We are not saying that the Plan should yield to the CBA. The point that we are driving at in this lengthy discussion is that on the basis of the evidence presented, We are convinced that the credit checking provision of the Plan was never intended to cover salary loans under the CBA. Otherwise, HSBC would have implemented such the moment said salary loans under the previous CBA were made available to its covered employees. Thus, HSBC cannot now insist on its imposition on loan applications under the disputed CBA provision without violating its duty to bargain collectively.

If We were to allow this practice of leaving to HSBC the determination, formulation, and implementation of the guidelines, procedures, and requirements for the availment of salary loans granted under the CBA, which guidelines, procedures, and requirements unduly restrict the provisions of the CBA, this Court would in effect be permitting HSBC to repeatedly violate its duty to bargain collectively under the guise of enforcing the general terms of the Plan.

Salary loans subject of this case are not covered by the credit checking requirement under the MORB

In maintaining that the credit checking requirement under the MoRB should be deemed written into the CBA, the minority makes reference to Sec. X304.1 of the 2011 MoRB in maintaining that financial institutions must look into the obligor's repayment history, among other things, before approving a loan application. Said provision reads:

> § X304.1 **General guidelines.** Consistent with safe and sound banking practices, a bank shall grant loans or other credit accommodations only in amounts and for the periods of time essential for the effective completion of the operation to be financed. Before granting loans or other credit accommodations, a bank must ascertain that the borrower, co-maker, endorser, surety, and/or guarantor, if applicable, is/are financially capable of fulfilling his/their commitments to the bank. For this purpose, a bank shall obtain adequate information on his/their credit standing and financial capacities x x x.

At this point it is well to draw attention to the fact that said provision is a general one as specifically indicated thereat. It is also equally important to emphasize that Sec. X304.1 must be interpreted in conjunction with Section X338.3, the provision which specifically applies to salary loans under the fringe benefit program of the bank. Thus:

> Subsection X338.3 Other conditions/limitations
>
> The investment by a bank in equipment and other chattels under its fringe benefits program for officers and employees shall be included in determining the extent of the investment of the bank in real estate and equipment for purposes of Section 51 of R.A. No. 8791.
>
> The investment by a bank in equipment and other chattels contemplated under these guidelines shall not be for the purpose of profits in the course of business for the bank.
>
> **All loans or other credit accommodations to bank officers and employees, EXCEPT those granted under the fringe benefit program of the bank, shall be subject to the same terms and conditions imposed on the regular lending operations of the bank.** Loans or other credit accommodations granted to officers shall, in addition, be subject to the provisions of Section 36 of R.A. No. 8791 and Sections X326 to X336 but not to the individual ceilings where such loans or other credit accommodations are obtained under the bank's fringe benefits program. (emphasis ours)

In specifying that "[a]ll loans or other credit accommodations to bank officers and employees, *except those granted under the fringe benefit program of the bank*, shall be subject to the same terms and conditions imposed on the regular lending operations of the bank," **Sec. X338.3 clearly excluded loans and credit accommodations under the bank's fringe benefits program from the operation of Sec. X304.1**. This fact is even recognized in the dissent. To ignore this clear exception and insist on interpreting the general guidelines under Section X304.1 would be to renege from Our duty to apply a clear and unambiguous provision.[32]

It may also be argued that HSBC, being a bank, is statutorily required to conduct a credit check on all of its borrowers, even though it be made under a loan accommodation scheme, applying Section 40[33] of Republic Act

---

[32] A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. *Twin Ace Holdings Corporation v. Rufina and Company*, G.R. No. 160191, June 8, 2006, 490 SCRA 368, 376.

[33] SECTION 40. Requirement for Grant of Loans or Other Credit Accommodations. — Before granting a loan or other credit accommodation, a bank must ascertain that the debtor is capable of fulfilling his commitments to the bank. Toward this end, a bank may demand from its credit applicants a statement of their assets and liabilities and of their income and expenditures and such information as may be prescribed by law or by rules and regulations of Monetary Board to enable the bank to properly evaluate the credit application which includes the corresponding financial statements submitted for taxation purposes to the Bureau of Internal Revenue. Should such statements prove to be false or incorrect in any material detail, the bank may terminate any loan or other credit accommodation granted on the basis of said statements and shall have the right to demand immediate repayment or liquidation of the obligation. In formulating rules and regulations under this Section, the Monetary Board shall recognize the peculiar characteristics of microfinancing, such as cash flow-based lending to the basic sectors that are not covered by traditional collateral. (76a)

No. (RA) 8791 (General Banking Law of 2000). A reading of RA 8791, however, reveals that loan accommodations to employees are not covered by said statute. Nowhere in the law does it state that its provisions shall apply to loans extended to bank employees which are granted under the latter's fringe benefits program. Had the law intended otherwise, it could have easily specified such, similar to what was done for directors, officers, stockholders and their related interests under Section 36 thereof. This conclusion is supported by the very wording of Subsection X338.3 of the MORB. To reiterate:

> Subsection X338.3 Other conditions/limitations
>
> The investment by a bank in equipment and other chattels under its fringe benefits program for officers and employees shall be included in determining the extent of the investment of the bank in real estate and equipment for purposes of Section 51 of R.A. No. 8791.
>
> The investment by a bank in equipment and other chattels contemplated under these guidelines shall not be for the purpose of profits in the course of business for the bank.
>
> All loans or other credit accommodations to bank officers and employees, except those granted under the fringe benefit program of the bank, shall be subject to the same terms and conditions imposed on the regular lending operations of the bank. **Loans or other credit accommodations granted to officers shall, in addition, be subject to the provisions of Section 36 of R.A. No. 8791** and Sections X326 to X336 but not to the individual ceilings where such loans or other credit accommodations are obtained under the bank's fringe benefits program.

Notably, even though the provision covers loans extended to both bank officers and employees, paragraph 3 thereof singled out loans and credit accommodations granted to **officers** when it provided for the applicability of RA 8791.

What the law does not include, it excludes.

These convince Us to conclude that RA 8791 only intended to cover loans by third persons and those extended to directors, officers, stockholders and their related interests. Consequently, Section 40 thereof, which requires a bank to ascertain that the debtor is capable of fulfilling his commitments to it before granting a loan or other credit accommodation, does not automatically apply to the type of loan subject of the instant case.

Furthermore, it is inaccurate to state that credit checking is necessary, or even indispensable, in the grant of salary loans to the bank's employees, since the business of banking is imbued with public interest and there is a fiduciary relationship between the depositor and the bank. It is also incorrect to state that allowing bank employees to borrow funds from their employer via salary loans without the prior conduct of a credit check is inconsistent with this fiduciary obligation. This is so because there are other ways of

securing payment of said salary loans other than ascertaining whether the borrowing employee has the capacity to pay the loan. BSP Circular 423, Series of 2004 itself provides for such, thus:

> Subsection X338.1 Mechanics. The mechanics of such financing plan shall have the following minimum features:
>
> Participation shall be limited to full-time and permanent officers and employees of the bank;
>
> x x x x
>
> **The bank shall adopt measures to protect itself from losses such as by incorporating in the plan or contract provisions requiring co-makers or co-signor, chattel, or real estate mortgages, fire insurance, mortgage redemption insurance, assignment of money value of leave credits, pension or retirement benefits**. (Emphasis ours)

Additionally, both the BSP Circular 423, Series of 2004 and Section X338.3 of the MoRB provide for a safeguard in order to protect the funds of the Bank's depositors while allowing the Bank to extend such benefits to its employees, in that both require that:

> **The aggregate outstanding loans and other credit accommodations granted under the bank's fringe benefits program, inclusive of those granted to officers in the nature of lease with option to purchase, shall not exceed five percent (5%) of the bank's total loan portfolio.**[34]

There are, therefore, sufficient safety nets consistent with the bank's fiduciary duty to its depositors even without requiring the conduct of an external credit check in the availment of salary loans under the subject CBA. As a matter of fact, there is no showing that the bank's finances suffered because it has been granting said salary loans under the CBA without the external credit check.

Withal, We cannot subscribe to HSBC's position that its imposition of the credit checking requirement on salary loans granted under the CBA is valid. **The evidence presented convinces Us to hold that the credit checking requirement imposed by HSBC under the questioned Plan which effectively and undoubtedly modified the CBA provisions on salary loans was a unilateral imposition violative of HSBC's duty to bargain collectively and, therefore, invalid**. HSBC miserably failed to present even an iota of concrete documentary evidence that the credit checking requirement has been imposed on salary loans even before the signing of the CBA subject of the instant dispute and that the Plan was sufficiently disseminated to all concerned. In contrast, HBILU sufficiently proved that HSBC violated its duty to bargain collectively under Article 253 of the Labor Code when it unilaterally restricted the availment of salary loans under Article XI of the CBA on the excuse of enforcing the Plan approved by the BSP.

---

[34] Supra note 5.

As this Court emphasized in *Philippine Airlines, Inc. v. NLRC*, industrial peace cannot be achieved if the employees are denied their just participation in the discussion of matters affecting their rights,[35] **more so in the case at bar where the employees have been led to believe that they were given the chance to participate in HSBC's policy-formulation with respect to the subject benefit, only to find out later that they would be deprived of the fruits of said involvement**.

On interpretation of CBAs

At this point, We deem it proper to recall the basics in resolving issues relating to the provisions and enforcement of CBAs. In *United Kimberly-Clark Employees Union Philippine Transport General Workers Organization (UKCEU-PTGWO) v. Kimberly-Clark Philippines, Inc.*, this Court emphasized that:

> As a general proposition, an arbitrator is confined to the interpretation and application of the collective bargaining agreement. He does not sit to dispense his own brand of industrial justice: his award is legitimate only in so far as it draws its essence from the CBA, *i.e.*, when there is a rational nexus between the award and the CBA under consideration. It is said that an arbitral award does not draw its essence from the CBA; hence, there is an unauthorized amendment or alteration thereof, if:
>
> 1. It is so unfounded in reason and fact;
> 2. It is so unconnected with the working and purpose of the agreement;
> 3. **It is without factual support in view of its language, its context, and any other indicia of the parties' intention**;
> 4. **It ignores or abandons the plain language of the contract;**
> 5. It is mistakenly based on a crucial assumption which concededly is a nonfact;
> 6. It is unlawful, arbitrary or capricious; and
> 7. It is contrary to public policy.
>
> x x x x
>
> If the terms of a CBA are clear and [leave] no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall prevail. However, if, in a CBA, the parties stipulate that the hirees must be presumed of employment qualification standards but fail to state such qualification standards in said CBA, **the VA may resort to evidence extrinsic of the CBA to *determine the full agreement intended by the parties.* When a CBA may be expected to speak on a matter, but does not, its sentence imports ambiguity on that subject. The VA is not merely to rely on the cold and cryptic words on the face of the CBA but is mandated to *discover the intention of the parties.*** Recognizing the inability of the parties to anticipate or address all future problems, gaps may be left to be filled in by reference to the practices of the industry, and the step which is equally a part of the CBA although not expressed in it. ***In order to ascertain the intention of the contracting parties, their***

[35] G.R. No. 85985, August 13, 1993, 225 SCRA 301, 309.

> ***contemporaneous and subsequent acts shall be principally considered. The VA may also consider and rely upon negotiating and contractual history of the parties, evidence of past practices interpreting ambiguous provisions.*** **The VA has to examine such practices to determine the scope of their agreement, as where the provision of the CBA has been loosely formulated.** Moreover, the CBA must be construed liberally rather than narrowly and technically and the Court must place a practical and realistic construction upon it.[36] (emphasis ours)

Thus, in resolving issues concerning CBAs, We must not forget that the foremost consideration therein is upholding the intention of both parties as stated in the agreement itself, or based on their negotiations. Should it appear that a proposition or provision has clearly been rejected by one party, and said provision was ultimately not included in the signed CBA, then We should not simply disregard this fact. We are duty-bound to resolve the question presented, albeit on a different ground, so long as it is consistent with law and jurisprudence and, more importantly, does not ignore the intention of both parties. Otherwise, We would be substituting Our judgment in place of the will of the parties to the CBA.

With these, We find no need to resolve the other matters presented.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated October 23, 2014 and Resolution dated May 21, 2015 of the Court of Appeals in CA-G.R. SP No. 130798 are hereby **REVERSED** and **SET ASIDE**.

Respondent Hongkong and Shanghai Banking Corporation's Financial Assistance Plan, insofar as it unilaterally imposed a credit checking proviso on the availment of Salary Loans by its employees under Article XI of the 2010-2012 CBA, is hereby declared legally ineffective and invalid for being in contravention of Article 253 of the Labor Code.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

[36] G.R. No. 162957, March 6, 2006, 484 SCRA 187, 200-203.

WE CONCUR:

LUCAS P. BERSAMIN
Associate Justice

I dissent. See separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ALEXANDER G. GESMUNDO
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

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

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
First Division

MAR 23 2018