



Public Sector Labor-Management Council

Civil Service Commission Central Office Building
Batasang Pambansa Complex, Constitution Hills, Diliman, 1126 Quezon City
Tel No.: 931-80-71, Telefax No.: 931-4149

EASTERN VISAYAS STATE UNIVERSITY FACULTY ASSOCIATION (EVSUFA)

Re: Unfair Labor Practice; Violation of
Collective Negotiation Agreement;
Complaint

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PSLMC Resolution No. 02, s. 2009

The Eastern Visayas State University Faculty Association (EVSUFA), represented by its President, Castor A. Gamalo, filed a complaint before the Public Sector Labor-Management Council (PSLMC) against Bonifacio S. Villanueva, President, Eastern Visayas State University (EVSU), the members of the Board of Regents (BOR) of EVSU, and Evelyn Cardoso, EVSU BOR Secretary, for unfair labor practice (ULP) by violating the provisions of the Collective Negotiation Agreement (CNA) between EVSU and EVSUFA on the representation of said employees' organization in EVSU's BOR.

The material allegations in EVSUFA's complaint are, as follows:

*"x x x **EVSU Management violated the CNA** which is valid and existing contract between EVSU-FA and the Management. This has been breached by unjustly depriving the undersigned to sit in the Board of Regents since August 23, 2004 despite the clear provisions of Section 2, Article VI of the CNA. Moreover, both R.A. 8292 and R.A. 9311 categorically provide for the terms of office of the faculty trustee/regent in the Governing Board of SUCs. **Section 3 (b) of R.A. 8292** provides that 'The presidents of the faculty, alumni associations and the student regents or trustees shall sit in the Board until the expiration of their terms of office in such capacities'. x x x **Section 5, last paragraph of R.A. 9311** similarly provides that 'the term of office of the president of the federation of faculty associations, x x x shall be contemporaneous with their respective terms of office. x x x.*

x x x

*"The University Charter (R.A. 9311) which was signed into law by the President of the Republic on August 7, 2004 **did not nullify the CNA** particularly Section 2, Article VI as well as Article III thereof. By agreeing through Article X of the CNA saying that '**Conversion of the Institute into a University shall not affect this Agreement**', the EVSU Management, in effect, made an express waiver that even in the event that the Institute (LIT) would*

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be converted into a University (EVSU) with a possibly different governing law, all the provisions of the CNA including Section 2, Article VI and Article III thereof, would not be disturbed 'unless declared invalid in any court of competent jurisdiction' pursuant to Article IX (Separability Clause) of the said CNA.

"Moreover, no less than the Philippine Constitution provides for a NON-IMPAIRMENT CLAUSE (Section 10, Article III) which clearly protects valid contracts like a Collective Negotiation Agreement (CNA) to remain undisturbed despite a passage of a legislative enactment like R.A. 9311.

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"By causing/tolerating the formation and recognition of a rival faculty organization as the faculty's sole and exclusive negotiation agent to the prejudice of EVSU-FA which is an Accredited employees' organization, the EVSU Management clearly violated the Civil Service Rules and Regulations specifically Sections 40 (2) and 44 (1), Chapter 6, Book V of Executive Order No. 292."

In Opinion No. 494, s. 2005 dated November 21, 2005, the Civil Service Commission-Personnel Relations Office (CSC-PRO) stated the following:

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"In so far as faculty representation in the Board of Trustees/Regents is concerned, to ensure smooth and uniform implementation of Republic Act No. 8292, this Office and the Personnel Policy and Standard Office (PPSO) also of this Commission, made initial coordination/discussion on October 27, 2005 with Chair Carlito S. Puno of the Commission on Higher Education. The various state universities and colleges nationwide will be properly informed of any development on the matter.

"As far, however, as EVSUFA is concerned, records show that LITFA (now EVSUFA) also successfully negotiated with management the matter of representation in the Board of Trustees. Thus, under Article III (Association Recognition) of the CNA between the LIT management and LITFA, the institute (LIT) recognizes LITFA as the sole and exclusive collective negotiation representative of all faculty members of LIT with respect to terms and conditions of employment, is so far as not contrary to law, during the effectivity of the Agreement. Likewise, under Section 2 (on Representation in the LIT Board of Trustees and Institute Committees) of Article VI (Association Representation, Rights and Privileges), the Institute recognizes the Association's duly elected President as the official representative of the faculty in the Board of Trustees. Article X of the Agreement provides three (3) years for the effectivity and duration of the Agreement and states that 'the

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conversion of the Institute into a University shall not affect this Agreement. As a result of its voluntary recognition by management and subsequent accreditation by the Civil Service Commission, EVSUFA has the lawful right to represent the University's rank-and-file academic employees in the Board of Trustees of the University."

In response to the said CSC-PRO Opinion, the EVSU management, in its letter dated December 15, 2005, averred, as follows:

X X X

"II. On the Board of Regents Representation by the FACULTY SECTOR:

X X X

"2. x x x, there was a proper process resorted to by the Board in the selection or election of the Faculty representative to the Board of Regents of EVSU.

"3. The EVSUFA participated in the process, as an acknowledgement that it is the correct procedure of selecting the federation representative. However, it is in the result, that is the recognition by the Board of the Faculty Sector representative, that they cannot accept, simply because their representation was not accepted by the five (5) campuses of EVSU.

"4. After being repudiated by their own faculty members in the five (5) campuses, they now backtrack and uses (sic) the CNA as basis for the Faculty Sector representation in the Board of Regents.

"5. On this score, the law is clear: **the Faculty representative must come from the Federation group, for multi campus institution.** And since, EVSU has five (5) campus, the Faculty federation Representative must be the one to be recognized by the Board. **This is the same rule in the Alumni and the Student sector,** and these sectors have complied with this requirement.

"6. It is very clear that the EVSU-FA is the only one using the CNA as the basis for representation in the Board. **In its last meeting on December 8, 2005, the Board made the same ruling: only the Federation Representative will be allowed to sit in the Board.**

"7. A perusal of R.A. No. 8292 and R.A. No. 9311 and its Implementing Rules and Regulations, consistently mentions the Federation President/Representative as the FACULTY,

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ALUMNI and STUDENT Sector Representative to the Board of Regents. IT DOES NOT EVEN MENTION A COLLECTIVE NEGOTIATION (CNA) as an alternative basis for representation."

As a reply to the EVSU management's letter of December 15, 2005, the CSC-PRO, in its letter dated January 3, 2006, stated that:

x x x

"Insofar as representation in the Board of Regents is concerned, this Office reiterates its stand that EVSU-FA has the lawful right to represent the University's rank-and-file academic employees, by virtue of its accreditation by the CSC and the express provisions of Article III, Section 2 of Article VI, and Article X of the CNA which you signed. x x x

"The x x x provisions of the CNA affirm management's recognition of the right of representation of EVSU-FA in the Board of Regents.

x x x

"Representation of the faculty/academic rank-and-file employees in the Board must be governed by the same criteria followed in representation in the other committees/bodies in the agency like the Personnel Selection Board. The faculty/academic employees' organization enjoying the majority support of the entire academic/faculty employees which is evidenced by the Certificate of Accreditation issued by the proper agency (CSC) should have the right of representation in the Board."

In its letter dated January 19, 2006, EVSU reiterated its stand, as follows:

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"x x x. And we maintain, and we still hold that the CNA is not the basis for representation of the FACULTY, ALUMNI AND STUDENT SECTORS in the Board of Regents of EVSU, or in any SUCs for that matter. The law is very clear on this."

Records show that EVSUFA is a registered and accredited employees' organization under the Implementing Rules and Regulations of Executive Order No. 180 pursuant to Certificate of Registration No. 927 dated January 18, 2005 and Certificate of Accreditation No. 347 dated June 7, 2005.

Further perusal of the records reveals, the following:

1. On June 21, 2002, the Leyte Institute of Technology (LIT) entered into a Collective Negotiation Agreement (CNA) with the

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Leyte Institute of Technology Faculty Association (LITFA). The CNA was registered with the Civil Service Commission (CSC) on November 4, 2002. Pursuant to Certificate of Registration No. 87, the effectivity period of the CNA was from October 18, 2002 to October 18, 2005;

2. Said CNA provides that the LIT recognizes the LITFA as the sole and exclusive negotiation representative of all faculty members of the LIT during the effectivity of the CNA, or until October 18, 2005. It also provides that LIT recognizes the duly elected President of LITFA (in this case, Castor Gamalo) as the official representative of the faculty sector in the LIT Board of Trustees;
3. Said CNA provides for its validity notwithstanding conversion of the LIT into a university;
4. On August 7, 2004, Republic Act (R.A.) No. 9311 was passed into law, converting the LIT into the Eastern Visayas State University (EVSU). Following the conversion, the LITFA caused the change of its name into the Eastern Visayas State University Faculty Association (EVSUFA);
5. On August 23, 2004, the LIT Board of Trustees held a meeting where it was decided that the EVSU Board of Regents (BOR) shall deliberate on the proper representation of the faculty, alumni and students sectors to the EVSU BOR. The decision was arrived at considering that R.A. No. 9311 provided that representation shall pertain to the President of federation of faculty, alumni and/or student associations. It was also decided that pending resolution of the issue on proper representation, the organizations will be excluded in the EVSU BOR meetings;
6. Also on August 23, 2004, the EVSU BOR, whose membership retained that of the LIT Board of Trustees, held its first meeting without representation from the faculty, students and alumni sectors. Claiming to be mandated by the Implementing Rules and Regulations of Republic Act No. 8292, the EVSU BOR set up the guidelines for the formation of the federation of the unions/associations;
7. On September 4, 2004, the Federation of LIT Faculty Associations (which was founded on July 23, 2001) issued a Resolution endorsing Gamalo as the representative of the faculty federation to the EVSU BOR. This federation was subsequently registered with the Securities and Exchange Commission (SEC) on February 21, 2005 as the Federation of EVSU Faculty Associations (FEVSUFA);

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8. On November 15, 2004, the EVSU BOR issued Resolution No. 22, s. 2004 creating a Committee to evaluate the documents submitted relative to the recognition of the legitimate federation representation for faculty, students and alumni sectors to the EVSU BOR;
9. On December 17, 2004, the EVSU BOR issued Resolution No. 41, s. 2004, setting the guidelines for the recognition of the legitimate representatives of the student, faculty and alumni sectors to the EVSU BOR, as follows:
 - a. The Constitution and By-laws of the corresponding organization of each campus and of the Federation must be duly ratified by at least 2/3 of all members of the organization, and such manner of ratification must be incorporated as one of the provisions in the By-Laws;
 - b. The election of officers of the corresponding organization of each campus and its Federation must be conducted in accordance with their respective Constitution and By-Laws;
 - c. Each campus must pass a resolution endorsing its authorized representative to meetings.
10. On the same date, the EVSU BOR also issued Resolution No. 40, s. 2004, allowing sectoral representation to the EVSU BOR on observer and non-voting status pending compliance with the requirements for proper recognition as legitimate representatives;
11. Gamalo moved for the reconsideration of the EVSU BOR's decision of allowing representation from the faculty sector only on observer and non-voting status. He invoked the provisions of the CNA, specifically, with respect to FLITFA/FEVSUFA's personality as the sole and exclusive negotiation representative of all faculty members of the EVSU during the effectivity of the CNA, or until October 18, 2005. He also invoked the CNA provision that the conversion of LIT into a state university will not affect the CNA. Thus, he avers that as the President of the FLITFA/FEVSUFA, he should be allowed to represent the faculty sector to the EVSU BOR as a regular and voting member;
12. The EVSU BOR denied Gamalo's motion for reconsideration;

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13. On December 9, 2004, the Eastern Visayas State University Tacloban Main Campus Integrated Faculty Association, Inc. (EVSU-TMCIFA, Inc.) informed the EVSU of the formation of a new faculty association. It was composed of Gorgonio Mendiola as Chairman of the Board of Directors, Danilo Quinto, Virgilio Vallejos, Antonio Matoza III, Dioscoro Mancao, Eduardo Malpas, Danilo Pulma and Sol Arteche as members of the Board of Directors, Felixberto Avestruz as President, Lilian Estorninos as Vice-President, Evelyn Cardoso as Secretary, Myrna Go as Treasurer and Neil Pascual as Auditor. The persons enumerated occupy supervisory positions at the EVSU. Moreover, Cardoso is concurrent Secretary to the EVSU BOR. Subsequently, this group organized a faculty federation known as Federated Eastern Visayas State University Faculty (FEVSUF), Inc. and caused the registration of the same with the Securities and Exchange Commission (SEC).
14. On February 22, 2005, the Department of Labor and Employment-Bureau of Labor Relations (DOLE-BLR) issued a Certification that the EVSUFA was the only registered faculty association in the EVSU and that no other association in the same organizational unit was seeking registration with DOLE-BLR.
15. Gamalo submitted to the EVSU BOR a report on the validation of FEVSUFA's membership and the ratification of its Constitution and By-Laws. Consequently, the EVSU BOR found that the FEVSUFA did not comply with the EVSU BOR's guidelines. Thus, on February 28 to March 3, 2005, the EVSU BOR conducted a Validation Survey on faculty membership of FEVSUFA and the Federated Eastern Visayas State University Faculty, Inc. (FEVSUF, Inc.). FEVSUFA garnered 192 individual votes while FEVSUF, Inc. garnered 123. Based on campus votes, however, FEVSUFA obtained two (2) votes - the Main and Tanauan Campuses, while FEVSUF, Inc. obtained three (3) votes - the Burauen, Carigara and Ormoc City Campuses;
16. Considering that FEVSUF, Inc. had more campus votes than FEVSUFA based on the one-campus-one-vote formula, the Committee, created by the EVSU BOR to evaluate documents submitted relative to the recognition of the legitimate federation representation for faculty, students and alumni sectors, resolved to present for ratification the Constitution and By-Laws of the FEVSUF, Inc. The ratification of the Constitution and By-Laws of the federation was conducted on March 28-30, 2005;

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17. On April 4, 2005, EVSUFA filed a complaint with the Public Sector Labor-Management Council (PSLMC), through the Civil Service Commission, against the EVSU Management for interfering with the faculty members' exercise of their right to self-organization and for violating the provisions of the CNA.

The circumstances, arguments and counter-arguments presented all lead to one main issue to be resolved: Whether EVSU management committed an Unfair Labor Practice (ULP) by violating the provision of the Collective Negotiation Agreement (CNA) between EVSU and EVSUFA on the representation of said employees' organization in EVSU's Board of Regents (BOR).

At the onset, Unfair Labor Practice on the part of the agency is defined under **Section 1, Rule XVI of the Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize** otherwise known as the **Amended IRR of Executive Order No. 180 (E.O. 180)**, as follows:

"RULE XVI

"UNFAIR LABOR-MANAGEMENT PRACTICES

"Section 1. On the part of the agency. - The following shall constitute unfair labor-management practices on the part of the agency:

- "(a) interfering with, restraining, or coercing employees in the exercise of their right to self-organization;*
- "(b) requiring as a condition of employment that an employee shall not form or join an employees' organization or shall withdraw from one to which he/she belongs;*
- "(c) discriminating in regard to work schedules, places of assignment and other terms and conditions of employment in order to encourage or discourage membership in any employees' organization;*
- "(d) terminating the services or discriminating against any employee for having signed or filed an affidavit, petition or complaint or given any information or testimony against the head of the agency or members of top management;*
- "(e) refusing to collectively negotiate in good faith with the accredited employees' organization;*
- "(f) violating any of the provisions of the Collective Negotiation Agreement;*

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"(g) refusing to comply with the provisions of the Conciliation Agreement signed with the registered and/or accredited employees' organization and attested by the CSC-PRO or other CSC authorized representative; and

"(h) other analogous acts as may be determined by the PSLMC."

Section 3 of Republic Act No. 8292 (An Act Providing for the Uniform Composition and Powers of the Governing Boards, the Manner of Appointment and Term of Office of the President of Chartered State Universities and Colleges, and for Other Purposes) provides the following:

"Section 3. The Governing Boards; Manner of Appointment. –

"a. Composition – The governing body of state universities and colleges is hereby vested in the Board of Regents for universities and in the Board of Trustees for colleges which shall be composed of the following:

X X X

*"The **faculty** and the student council shall be **represented** by the **president of their respective federations in multi-campus universities and colleges.**" (Emphasis supplied)*

Meanwhile, **Section 5 (g) of Republic Act No. 9311 (An Act Converting the Leyte Institute of Technology (LIT) in the Province of Leyte into a State University to be Known as the Eastern Visayas State University and Appropriating Funds Therefor)** specifically provides, as follows:

"Section 5. Governing Board. The Governing Board of the University shall be the Board of Regents, hereinafter referred to as the Board, which shall be composed of the following:

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*"(g) The president of the **federation of the faculty associations** of the University, member;" (Emphasis supplied)*

On the other hand, **Section 2, Article VI of the CNA between EVSU and EVSUFA** states, as follows:

"Section 2. REPRESENTATION IN THE LIT BOARD OF TRUSTEES AND INSTITUTE COMMITTEES. Subject to the provisions of Republic Act 8292 otherwise known as the Higher Education Modernization Act, the INSTITUTE agrees to recognize the ASSOCIATION's duly elected President as the official representative of the Faculty in the LIT Board of Trustees. x x x"

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Further, **Article X (EFFECTIVITY AND DURATION)** of the CNA between EVSU and EVSUFA provides, as follows:

"x x x. Conversion of the INSTITUTE into a University shall not affect this agreement."

Meanwhile, **Article IX (Separability Clause)** of the CNA between EVSU and EVSUFA states, as follows:

*"Any provision(s) of this Agreement **which may be held contrary to law** or declared invalid in any court of competent jurisdiction, of which may be subsequently modified on amendment by the parties shall automatically be invalidated but all other provisions or applications not affected thereby shall continue to be in force and in effect."* (Emphasis supplied)

It appears that Section 2, Article VI of the CNA between EVSU management and EVSUFA, which deals on the representation of EVSUFA in the EVSU BOR, is not in consonance with the provisions of R.A. No. 8292 and R.A. No. 9311. The said CNA provision states that the president of the Leyte Institute of Technology Faculty Association (LITFA, now EVSUFA) is the official representative in the Leyte Institute of Technology (LIT, now EVSU) Board of Trustees. R.A. No. 8292 mandates that the president of federation of faculty associations should be the representative in the Board of Regents in the case of multi-campus universities. Likewise, R.A. No. 9311, the EVSU Charter, specifically provides that the president of the federation of faculty associations should represent the faculty in the EVSU BOR.

In several occasions, the Supreme Court ruled that no contract is binding when it runs counter to a law. Thus, when there is a conflict between a law and a contract (in this case, the CNA), the law should prevail.

In the case of ***Pakistan International Airlines Corporation vs. Hon. Blas F. Ople, in his capacity as Minister of Labor, Hon. Vicente Leogardo, Jr., in his capacity as Deputy Minister; Ethelynne B. Farrales and Maria Moonyeen Mamasig*** (G.R. No. 61594, September 28, 1990), the Supreme Court stated as follows:

*"A contract freely entered into should, of course, be respected, x x x, since a contract is the law between the parties. **The principle of party autonomy in contracts is not, however, an absolute principle. The rule in Article 1306 of our Civil Code is that the contracting parties may establish such stipulations as they may deem convenient, 'provided they are not contrary to law, morals, good customs, public order or public policy.'** x x x"* (Emphasis supplied)

Similarly, in ***National Housing Authority vs. Grace Baptist Church and the Court of Appeals*** (G.R. No. 156437, March 1, 2004), the Supreme Court ruled:

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"It is a fundamental rule that contracts, once perfected, bind both parties, and obligations arising therefrom have the force of law between the parties and should be complied with in good faith. However, it must be understood that contracts are not the only source of law that govern the rights and obligations between the parties. More specifically, no contractual stipulation may contradict law, morals, good customs, public order or public policy. x x x"

In this instant case, the provision of the CNA between EVSU management and EVSUFA on the representation in the Board of Regents runs counter to the provisions of RA 9282 and RA 9311. Thus, EVSUFA, as an employees' organization, can no longer claim representation in the EVSU BOR on the basis of the said CNA.

Granting that EVSUFA organized the Federation of Eastern Visayas State University Faculty Associations (FEVSUFA) and registered the same with the SEC, said federation cannot claim representation in the EVSU BOR on the basis of the CNA between EVSUFA and the EVSU management. Said CNA was forged with the EVSU management by the EVSUFA as an employees' organization and not by the FEVSUFA as a federation. EVSUFA and FEVSUFA are two different entities.

Further, while it is true that EVSUFA's CNA states that the provisions thereof cannot be affected in case there is a conversion of LIT into a university, the Council is of the position that R.A. No. 9311 changed the nature of LIT in such a way that said CNA is no longer applicable. The Council believes that the provision in the CNA which states that "*conversion of the Institute into a University shall not affect this Agreement*" is a conditionality which in effect disenfranchises everybody else who will become a part of a new entity. In this case, the nature of the LIT has completely changed when it became EVSU pursuant to R.A. No. 9311. LIT did not just change its name. The law created a university which, in effect, is a new entity that is the EVSU. If EVSUFA thinks that R.A. 9311 impaired said CNA provision based on Section 10, Article III of the Philippine Constitution, then the proper venue to address the matter is no less than the Congress of the Philippines which is the law-making body of the country.

As regards the allegation that EVSU interfered with union matters when it conducted a Validation Survey as to which federation of faculty associations should be represented in its BOR, the Council is of the position that the selection process is left to the discretion of the state university. This is no longer a union matter since the management is dealing with federations not registered nor accredited within the context of E.O. No. 180. In this case, EVSUFA is just a part of a federation and is not dealing with management as an employees' association. Likewise, when EVSU management submitted the constitution and by-laws of FEVSUF, Inc. and the federations representing the alumni and youth sectors, there was no interfering with union matters as the federations involved are also not associations/organizations within the context of EO No. 180.



From the foregoing, the PSLMC cannot find substantial evidence to establish that the EVSU management committed Unfair Labor Practice when it did not allow EVSUFA to be represented in the EVSU BOR. The Council, however, recognizes EVSUFA as the sole and exclusive bargaining unit in EVSU within the purview of EO No. 180.

WHEREFORE, the Public Sector Labor-Management Council (PSLMC) hereby finds no substantial evidence to declare that the Eastern Visayas State University (EVSU) management committed unfair labor practice (ULP) against the Eastern Visayas State University Faculty Association (EVSUFA) by violating the provisions of the Collective Negotiation Agreement (CNA) between EVSU and EVSUFA on the representation of said employees' organization in EVSU's BOR.

Quezon City, June 11, 2009



RICARDO L. SALUDO
Chairman, Civil Service Commission
CHAIRMAN



MARIANITO D. ROQUE
Secretary, Department of Labor and Employment
VICE-CHAIRMAN



RAUL M. GONZALEZ
Secretary, Department of Justice
MEMBER



Department of Justice
RMG-09-0013405



MARGARITO B. TEVES
Secretary, Department of Finance
MEMBER

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ROLANDO G. ANDAYA, JR.
Secretary, Department of Budget and Management
MEMBER

Attested by:



ALAN F. ALEGRIA
Director IV, Personnel Relations Office
Civil Service Commission
Chair, PSLMC Secretariat

Dept. of Labor & Employment
Office of the Secretary



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