

[With resolution of March 29, 1962]*G.R. Nos. L-15453 and 15723. March 17, 1961*

Ponente: REYES, J.B.L., J.

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In two related cases (Cases Nos. 86-ULP & 3-ULP jointly heard and decided, San Carlos Milling Co. appeals by certiorari from the decision of the Court of Industrial Relations, dated April 30, 1958, and its resolution, dated May 5, 1959, denying the motion for reconsideration filed by the aforementioned company.

It appears that on December 2, 1952, the San Carlos Milling, hereinafter referred to as the Company, concluded a collective bargaining agreement with the Allied Workers Association of the Philippines, hereinafter called AWA for short, a legitimate organization of workers employed in the company. Included in said contract was a union shop agreement the details of which shall be later discussed. Sometime, after, another labor union, the Philippine-Land-Air-Sea Labor Union, PLASLU for short, was also organized in the Company. Sinforoso Kyamko, an employee in the Company and member of the AWA, appears to have joined this second union, and thereafter, actively campaigned for it to gain membership among the workers. Having received reports of Kyamko's activities for the PLASLU, the Board of Directors of AWA, on December 13, 1955, passed a resolution to investigate all members of AWA, San Carlos Chapter, who had committed acts of disloyalty to the association. Upon complaint against and investigation of Kyamko for disloyalty, in which the latter was present and given opportunity to defend himself, the AWA found him guilty of disloyalty and expelled him from the association on December 26, 1955. Upon demand of the AWA, Kyamko was dismissed by the Company on February 18, 1956, pursuant to the union shop provisions of the contract of December 12, 1952.

On March 5, 1956, the PLASLU asked for the reinstatement of Kyamko (and another employee with whose dismissal, found by the Court of Industrial Relations to have been for cause, we are not concerned since there is no appeal therefrom), at the same time petitioning for better terms and conditions of employment, with a warning that the PLASLU will conduct a strike if the Company failed to act on the demands within 30 days (Appendix "C", Memo for appellant). When the Company refused to entertain the demands, the PLASLU declared a strike on April 12, 1956, in which 149 of its members joined. The strikers offered to return to work on April 27, 1956, but were refused reinstatement by the Company. Antecedently, it may be pertinent to state that on November 28, 1955, it appears that the PLASLU informed the Company of its organization among the latter's workers, and that it intended to demand a certification election. On December 2, 1955, the PLASLU filed in court a petition for certification election, which at the time of the strike, was admittedly pending.

The first issue before us is whether the Company's dismissal of Kyamko pursuant to its union shop agreement with the AWA was legally justified. Parenthetically, it should be stated that among the causes for the strike, only the dismissal of Kyamko was found by the Court of Industrial Relations to be an unfair labor practice act committed by the Company. In return, the legality of Kyamko's dismissal depends on whether, when he was dismissed, there was an effective union shop agreement between the AWA and the Company which authorized the latter to discharge him from his employment.

The PLASLU contends that there was no longer any Such agreement; that the contract between the AWA and the Company, on December 12, 1952, was only for three (3) years, or, only up to December 11, 1955; that this was never renewed, despite the agreement dated July 14, 1955, which allegedly renewed it; that consequently, the dismissal of Kyamko on February 18, 1956, was illegal and founded on no other reason than has membership in, and activities for, the PLASLU. On the other hand, the Company contends that though the contract of December 12, 1952 provided for a duration of three (3) years, said contract was, by its terms, self-renewing, unless otherwise agreed; that furthermore, on July 14, 1955, the parties executed another agreement renewing the contract of December 12, 1952 for another period of three (3) years; that therefore, Kyamko was legally dismissed in pursuance of the union shop provision in said collective bargaining contract. The court below concluded that the contract was not renewed.

The pertinent portion of the December 12, 1955 contract reads—

"11. That the duration of this agreement shall be for three (3) years from December 12, 1952, and automatically renewable thereafter unless the parties hereto agree and decide otherwise." (Italics supplied),

which subject as reiterated in the document dated July 14, 1955, as follows:—

"11. The parties further record their complete understanding and agreement to effect a renewal for another three years of the Collective Bargaining and Union Shop Agreement entered into between them on December 12, 1952 upon its expiration on December 11, 1955." (Italics supplied)

We think it clear from the above that the contract of December 12 was renewed by the parties. Only a very strained and hair-splitting reasoning could sustain that by the above provisions, the parties still did not actually renew the contract in question. Indeed, this is the only logical explanation for the use of the word "automatically" to modify "renewable". Buttressing this interpretation, the phrase "unless the parties hereto agree and decide otherwise" can only mean that the parties did not intend to accomplish another positive act to continue the contract beyond its expiry date. Whatever doubt remains is dispelled when the parties, on July 14, 1955, expressly signified their agreement to renew the contract for a period of another three (3) years. From the strict grammatical point of view, the contention that "renewable" and "to effect a renewal" do not mean actual renewal may be justified. But we are here concerned, not so much with strict adherence to grammatical construction as with the intent of the parties reflected in the agreement itself. And a construction that will unduly hamper the renewal of labor contracts appears undesirable.

Be that as it may, does the union shop agreement on December 12, 1952, by its terms, authorize the dismissal of Kyamko under the attendant circumstances? The pertinent portions of the union shop agreement are:

"4. * * * New employees and laborers hired who are not members of the Workers Association will be on temporary status and the employer agrees that before they will be considered regular employees and laborers, they have to become members of the Allied Workers Association of the Philippines or the Allied Workers Association of the Philippines, San Carlos Chapter within 30 days from the date of employment and if they refuse to affiliate with the said labor organization within this time, they will be immediately dismissed by the employer. After a laborer or employee is hired pursuant to this arrangement, and he resigns later from the Workers Association or is expelled from it due to acts committed by him contrary to the By-Laws, rules and regulations of the Workers Association, the management, upon advice of the Workers Association, shall dismiss the said laborer or employee. * * *." (Italics supplied).

"5. Employees and laborers presently working in any department or section of the factory or mill of the Employer, including those who are working by piece jobs or "pakiao" system, who are not members of the Workers Association shall hereby be declared as temporary employees and laborers and shall be given thirty (30) days time from the date of this agreement within which to join or affiliate with the Workers Association,

and if they refuse to do so their positions will be declared vacant and will be filled in the manner provided for in this agreement. However, employees and laborers who have rendered ten (10) years continuous service with the Employer may not be affected by this condition, provided they are not members of, and will not join or affiliate with other labor unions or associations, although they may join the Workers Association, if they so desire. * * *." (Italics supplied).

Carefully read, nothing in the above provisions authorizes the employer to dismiss old employees who, having joined the AWA, later ceased to be members of good standing herein. Quite explicit with respect to new employees, the contract in paragraph 4 provides that they should join the AWA within 30 days from employment, and that if, after joining, they should later resign or be expelled from the contracting union, the company shall immediately dismiss said employee. Paragraph 5, with respect to workers already employed but who are not members of the union, makes it obligatory for these workers to join within 30 days from the agreement, on pain of dismissal. Expressly exempted from the obligation to join or affiliate with the contracting union are those who have rendered 10 years continuous service. Conspicuously absent with respect to those already employed at the time of the agreement is my provision making it a condition of continued employment that an old worker should remain a member of good standing of the AWA. Union shop, as with close shop provisions, should be strictly construed against the existence of union shop. Sometimes harsh and onerous, such provisions should not be extended beyond the explicit coverage of their terms, and will not be deemed to authorize by implication the dismissal of employees already working before the agreement was made (see *Confederated Sons of Labor vs. Anakan Lumber Co.*, 107 Phil., 915).

Here, Kyamko had been an employee of the Company since 1948, long before the union shop established in the contract of December 12, 1952. He was, therefore, an old employee on whom the particular union shop in question did not impose the obligation to remain a member of good standing in the AWA, as a condition of continued employment in the company. It results that his dismissal—founded on a union shop agreement which did not explicitly authorize such dismissal—was, in legal effect, an unfair labor practice act prompted by his membership and activities in the PLASLU. Consequently, the strike on April 12, 1956 was legally justified.

Even if it were assumed that Kyamko's dismissal was legally founded, this fact alone would not make the strike illegal. A strike to secure better terms and conditions of employment is a legitimate labor activity recognized by law (*Radio Operators Ass'n. of the Phil. vs. Phil. Marine Radio Officers Ass'n.*, 102 Phil., 526), and its legality does not depend on the reasonableness of the demands. If they cannot be granted, they should be rejected, but without other reasons, the strike itself does not become illegal (*Caltex vs. PLO*, 93 Phil., 295). Purely from the perspective of the economic demands, the strike may even have been premature, since the PLASLU itself had filed a petition for certification election on December 2, 1955, which was still pending when the strike was declared. Even so, this did not transpose the strike into something illegal, especially since the economic aspects were only one of the demands which precipitated the strike, as of which the workers believed in good faith to be meritorious (see *PECO vs. CIR, et al.*, L-7156, May 31, 1955; *Radio Operators Ass'n. of the Phil. vs. Phil. Marine Radio Officers Ass'n.*, *supra.*) Thus, regardless of Kyamko's dismissal, the strike itself were merely another legitimate exercise of what has now evolved as an institutionalized factor of democratic growth. For this, no punishment or reprisal should be due. Hence, when the strikers offered to return to work on April 2, 1956, the employer had no right to have the former's participation in the strike counted against them. When the Company refused to admit the strikers back for no valid reason shown it was virtually applying a standard prohibited by law, i.e., the participation in the strike which, as shown, was legal. Unfair Labor practice acts may be committed by the employer against workers on strike. A strike is not abandonment of employment, and workers do not cease to be employed, in legal contemplation, simply because they struck against their employer (see *Francisco's Labor Laws*, Vol. 1, 3rd Ed., p. 322; Sec. 2(d), R. A. 875).

The pendency of the petition for certification election at the time the offer to return to work was made, could not legally militate against the strikers' readmission. That the result of the petition for certification election would determine whether or not the employer would be legally bound to bargain with the PLASLU on their economic demands is also beside the point. The offer to return is not shown to have been conditioned upon a commitment that the employer had to bargain with the PLASLU. If there were any conditions attached, their proof was a matter of defense for the company, since in the complaint in Case No. 3-ULP below, it was alleged, unqualifiedly, that such offer was made. In fact, the company claimed in the court below that no such offer was made, a theory which, in good faith, should preclude it from suggesting that the offer to return was conditional. The court below found, unqualifiedly, that there was in fact an offer to return to work, and this finding is binding upon us.

Finally, the union shop itself could not have barred the striker's readmission. It had but a limited coverage which is not shown to have covered the strikers by its terms. Not only this, but when the strikers offered to return, it does not appear that they had already been expelled from the AWA in accordance with the procedure laid down and followed with respect to Kyamko, nor that their dismissal had been advised by said union to the Company. As for the replacements, their positions should be deemed temporary, subject to the outcome of the strike.

On last observation, however. The strike was justified; the employer acted wrongfully in dismissing Kyamko and in refusing reinstatement to the strikers. Still, as shown by the circumstances on record, the employer acted in good faith, in the belief that Kyamko's dismissal was legally justified pursuant to the union shop agreement. Considering the difficulty of the questions involved, the Company should be given the benefit of its good faith, at least with regard to back wages, which should be equitably reduced.

In view of the foregoing, the decision under appeal should be modified, the back wages counted from April 27, 1956 up to their actual reinstatement to be, as they hereby are, reduced to one-half. In all other respects, the decision appealed from is affirmed. Without costs.

Bengzon, Acting C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, and Dizon, JJ., concur.

RESOLUTION

March 29, 1962

REYES, J. B. L., J.:

Both the employer, San Carlos Milling Co., Inc., and the intervenor, Allied Workers Association of the Philippines (AWA), have petitioned for the reconsideration and reversal of our main decision that affirmed the Court of Industrial Relations' finding of unfair labor practice and ordered the reinstatement of Sinforoso Kyamko and the PLASLU union strikers, with backpay.

It is first contended that the spirit of the union shop agreement between the employer and the AWA requires the old employees, already working when the contract was last renewed in 1955, to maintain their membership in the AWA as a condition to continued employment. We have already pointed out in our main opinion that paragraph 4 of the union shop agreement expressly prescribed that new employees should affiliate with the AWA and that upon their refusal to do so, or their expulsion from the union, the management would dismiss the employees upon the union's advice. On the other hand, paragraph 5, referring to those "presently working" at the time of the agreement, classified the latter into two groups: (a) those who had rendered 10 or more years continuous service were not compelled to join the AWA, provided they did not join other unions; while (b) those who had not rendered service for 10 years or more were only required to join and affiliate with the AWA within 30 days under

penalty of dismissal. But with regard to the latter group of employees (and Kyamko was one of them), the contract did not expressly provide for their dismissal in case of subsequent expulsion from the Union; and this Court held that in the absence of such stipulation, Kyamko's subsequent expulsion from the AWA did not warrant his dismissal by the employer.

In so ruling, this Court had adhered to the doctrine laid down in *Confederated Sons of Labor vs. Anakan Lumber Co.*, 107 Phil., 915 (reiterated in *ICAWO vs. Central Pilar*, L-17422, 28 Feb. 1962), that the dismissal, of laborers for non-union membership must be expressly and unequivocally stipulated, because:

"An undertaking of this nature is so harsh that it must be strictly construed, and doubts must be resolved against the existence of 'closed shop'." (*Confed. Sons of Labor vs. Anakan Lumber*, supra).

With respect to employees already working at the time a bargaining contract is made, their discharge for failure to affiliate or maintain union membership always retains a coercive character inimical to the individual worker's freedom to join unions of its choice, and for this reason, it has been viewed with disfavor, contracts providing it being restrictively interpreted (see *Freeman Shirt Manufacturing Co., et al., vs. C.I.R.*, 110 Phil., 962; 61 Off. Gaz., [21] 3107; *Talim Quarry Co., Inc. vs. Barriola*, L-15768, 29 April 1961; *NLU vs. Zip Venetian Blind Co.*, 112 Phil., 407; 59 Off. Gaz., [32] 5046). To extend it by implication, as asked by petitioners, could easily result in perpetuation of one union's hold on the members, even after it has ceased to adequately represent their interests.

The discharge of Kyamko being patently unjustified, the supporting action by the PLASLU members can not be deemed an illegal strike; hence, participants therein could not be penalized by their discharge or by refusal to reinstate them when they applied for readmission without conditions.

Moreover, the renewal of the closed-shop agreement with AWA, on 11 December 1955, must be understood as subject to the outcome of the certification election that was subsequently won by the PLASLU against the AWA (*PLASLU vs. Court of Industrial Relations*, L-14656, November 29, 1960), because prior to such renewal, the PLASLU already had given formal notice of its claim to majority status on 28 November 1955, followed by a petition to the Court of Industrial Relations for a certification election on 2 December 1955. The employer was, therefore, aware, in renewing the closed-shop contract with AWA, that the latter might turn out to be the proper bargaining agency, and thereby acted at its risk in yielding to the AWA's demand for the discharge of Kyamko and of the strikers, for it knew, or ought to know, that the union shop clauses could not be enforceable if PLASLU won the right to be the proper collective bargaining agency.

The good faith of the Company, however, has been duly taken into account by us when we reduced to one half the backpay of the laborers entitled to reinstatement, thereby apportioning the prejudice equally between the employer and employees. To exempt totally the Company from the payment of backpay would place the entire burden of its error on the shoulders of the laborers improperly discharged, contrary to all justice and equity. We see no reason for so doing, specially considering that, as between the two parties, the laborers were certainly the weaker in economic power and resources, whereas the company enjoyed not only superior finances but also had access to advice of eminent counsel.

As to the possibility that payment at one time of the entire backpay ordered might inflict on the employer Company an irretrievably crippling blow, we feel that this matter should be properly addressed to the Court of Industrial Relations, and not to us. That court possesses adequate machinery to ascertain and pass upon the truth of the claim, to determine the deductions to be made by reason of earnings of the laborers during the pendency of the action, and to decide the manner in which the payment or payments should be made. If the Company's claim is correct, the laborers themselves should be interested in devising ways whereby the payment may be made without forcing the company to close its business to their own prejudice.

The motions for reconsideration are denied. Let the records be remanded to the court below for determination of the amount and manner of payment of the back wages conformably to this opinion.

Bengzon, Acting C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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