

“BROTHERHOOD” LABOR UNITY MOVEMENT OF THE PHILIPPINES, ANTONIO CASBADILLO, PROSPERO TABLADA, ERNESTO BENGSON, PATRICIO SERRANO, ANTONIO B. BOBIAS, VIRGILIO ECHAS, DOMINGO PARINA...

G.R. No. L-48645. January 07, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The elemental question in labor law of whether or not an employer-employee relationship exists between petitioners - members of the "Brotherhood Labor Unit Movement of the Philippines" (BLUM) and respondent San Miguel Corporation, is the main issue in this petition. The disputed decision of public respondent Ronaldo Zamora, Presidential Assistant for Legal Affairs, contains a brief summary of the facts involved:

"1. The records disclose that on July 11, 1969, BLUM filed a complaint with the now defunct Court of Industrial Relations, charging San Miguel Corporation, and the following officers: Enrique Camahort, Federico Oñate, Feliciano Arceo, Melencio Eugenio, Jr., Ernesto Villanueva, Antonio Bocaling and Godofredo Cueto of unfair labor practice as set forth in Section 4 (a), sub-sections (1) and (4) of Republic Act No. 875 and of illegal dismissal. It was alleged that respondents ordered the individual complainants to disaffiliate from the complainant union; and that management dismissed the individual complainants when they insisted on their union membership.

"On their part, respondents moved for the dismissal of the complaint on the grounds that the complainants are not and have never been employees of respondent company but employees of the independent contractor; that respondent company has never had control over the means and methods followed by the independent contractor who enjoyed full authority to hire and control said employees; and that the individual complainants are barred by estoppel from asserting that they are employees of respondent company.

"While pending with the Court of Industrial Relations (CIR), pleadings and testimonial and documentary evidences were duly presented, although the actual hearing was delayed by several postponements. The dispute was taken over by the National Labor Relations Commission (NLRC) with the decreed abolition of the CIR and the hearing of the case intransferably commenced on September 8, 1975.

"On February 9, 1976, Labor Arbiter Nestor C. Lim found for complainants which was concurred in by the NLRC in a decision dated June 28, 1976. The amount of backwages awarded, however, was reduced by NLRC to the equivalent of one (1) year salary.

"On appeal, the Secretary in a decision dated June 1, 1977, set aside the NLRC ruling, stressing the absence of an employer-employee relationship as borne out by the records of the case. x x x."

The petitioners strongly argue that there exists an employer-employee relationship between them and the respondent company and that they were dismissed for unionism, an act constituting unfair labor practice "for which respondents must be made to answer".

Unrebutted evidence and testimony on record establish that the petitioners are workers who have been employed at the San Miguel Parola Glass Factory since 1961, averaging about seven (7) years of service at the time of their termination. They worked as "cargadores" or "pahinantes" at the SMC Plant loading, unloading, piling or palleting empty bottles and wooden shells to and from company trucks and warehouses. At times, they accompanied the company trucks on their delivery routes.

The petitioners first reported for work to Superintendent-in-Charge Camahort. They were issued gate passes signed by Camahort and were provided by the respondent company with the tools, equipment and paraphernalia used in the loading, unloading, piling and hauling operation.

Job orders emanated from Camahort. The orders are then transmitted to an assistant-officer-in-charge. In turn, the assistant informs the warehousemen and checkers regarding the same. The latter, thereafter, relays said orders to the capatazes or group leaders who then give orders to the workers as to where, when and what to load, unload, pile, pallet or clean.

Work in the glass factory was neither regular nor continuous, depending wholly on the volume of bottles manufactured to be loaded and unloaded, as well as the business activity of the company. Work did not necessarily mean a full eight (8) hour day for the petitioners. However, work, at times, exceeded the eight (8) hour day and necessitated work on Sundays and holidays. For this, they were neither paid overtime nor compensation for work on Sundays and holidays.

Petitioners were paid every ten (10) days on a piece rate basis, that is, according to the number of cartons and wooden shells they were able to load, unload, or pile. The group leader notes down the number or volume of work that each individual worker has accomplished. This is then made the basis of a report or statement which is compared with the notes of the checker and warehousemen as to whether or not they tally. Final approval of report is by officer-in-charge Camahort. The pay check is given to the group leaders for encashment, distribution, and payment to the petitioners in accordance with payrolls prepared by said leaders. From the total earnings of the group, the group leader gets a participation or share of ten (10%) percent plus an additional amount from the earnings of each individual.

The petitioners worked exclusively at the SMC plant, never having been assigned to other companies or departments of SMC plant, even when the volume of work was at its minimum. When any of the glass furnaces suffered a breakdown, making a shutdown necessary, the petitioners' work was temporarily suspended. Thereafter, the petitioners would return to work at the glass plant.

Sometime in January, 1969, the petitioner workers — numbering one hundred and forty (140) organized and affiliated themselves with the petitioner union and engaged in union activities. Believing themselves entitled to overtime and holiday pay, the petitioners pressed management, airing other grievances such as being paid below the minimum wage law, in human treatment, being forced to borrow at usurious rates of interest and to buy raffle tickets, coerced by withholding their salaries, and salary deductions made without their consent. However, their gripes and grievances were not heeded by the respondents.

On February 6, 1969, the petitioner union filed a notice of strike with the Bureau of Labor Relations in connection with the dismissal of some of its members who were allegedly castigated for their union membership and warned that should they persist in continuing with their union activities they would be dismissed from their jobs. Several conciliation conferences were scheduled in order to thresh out their differences. On February 12, 1969, union member Rogelio Dipad was dismissed from work. At the scheduled conference on February 19, 1969, the complainant union through its officers headed by National President Artemio Portugal, Sr., presented a letter to the respondent company containing proposals and/or labor demands together with a request for recognition and

collective bargaining.

San Miguel refused to bargain with the petitioner union alleging that the workers are not their employees.

On February 20, 1969, all the petitioners were dismissed from their jobs and, thereafter, denied entrance to respondent company's glass factory despite their regularly reporting for work. A complaint for illegal dismissal and unfair labor practice was filed by the petitioners.

The case reaches us now with the same issues to be resolved as when it had begun.

The question of whether an employer-employee relationship exists in a certain situation continues to bedevil the courts. Some businessmen try to avoid the bringing about of an employer-employee relationship in their enterprises because that judicial relation spawns obligations connected with workmen's compensation, social security, medicare, minimum wage, termination pay, and unionism. (*Mafinco Trading Corporation v. Ople*, 70 SCRA 139).

In determining the existence of an employer-employee relationship, the elements that are generally considered are the following: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished. It is the so-called "control test" that is the most important element (*Investment Planning Corp. of the Phils. v. The Social Security System*, 21 SCRA 924; *Mafinco Trading Corp. v. Ople*, supra, and *Rosario Brothers, Inc. v. Ople*, 131 SCRA 72).

Applying the above criteria, the evidence strongly indicates the existence of an employer-employee relationship between petitioner workers and respondent San Miguel Corporation. The respondent asserts that the petitioners are employees of the Guaranteed Labor Contractor, an independent labor contracting firm.

The facts and evidence on record negate respondent SMC's claim.

The existence of an independent contractor relationship is generally established by the following criteria: "whether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of a specified piece of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing and payment of the contractor's workers; the control of the premises; the duty to supply the premises tools, appliances, materials and labor; and the mode, manner and terms of payment (56 CJS Master and Servant, Sec. 3(2), 46; See also 27 AM. Jur. Independent Contractor, Sec. 5, 485 and Anne., 75 ALR 7260727).

None of the above criteria exists in the case at bar.

Highly unusual and suspect is the absence of a written contract to specify the performance of a specified piece of work, the nature and extent of the work and the term and duration of the relationship. The records fail to show that a large commercial outfit, such as the San Miguel Corporation, entered into mere oral agreements of employment or labor contracting where the same would involve considerable expenses and dealings with a large number of workers over a long period of time. Despite respondent company's allegations not an iota of evidence was offered to prove the same or its particulars. Such failure makes respondent SMC's stand subject to serious doubts.

Uncontroverted is the fact that for an average of seven (7) years, each of the petitioners had worked continuously and exclusively for the respondent company's shipping and warehousing department. Considering the length of time that the petitioners have worked with the respondent company, there is justification to conclude that they were engaged to perform activities necessary or desirable in the usual business or trade of the respondent, and the petitioners are, therefore regular employees (*Phil. Fishing Boat Officers and Engineers Union v. Court of*

Industrial Relations, 112 SCRA 159 and RJL Martinez Fishing Corporation v. National Labor Relations Commission, 127 SCRA 454).

As we have found in RJL Martinez Fishing Corporation v. National Labor Relations Commission, (supra):

"x x x [T]he employer-employee relationship between the parties herein is not co-terminous with each loading and unloading job. As earlier shown, respondents are engaged in the business of fishing. For this purpose, they have a fleet of fishing vessels. Under this situation, respondents' activity of catching fish is a continuous process and could hardly be considered as seasonal in nature. So that the activities performed by herein complainants, i.e. unloading the catch of tuna fish from respondents' vessels and then loading the same to refrigerated vans, are necessary or desirable in the business of respondents. This circumstance makes the employment of complainants a regular one, in the sense that it does not depend on any specific project or seasonable activity. (NLRC Decision, p. 94, Rollo)."

so is it with petitioners in the case at bar. In fact, despite past shutdowns of the glass plant for repairs, the petitioners, thereafter, promptly returned to their jobs, never having been replaced, or assigned elsewhere until the present controversy arose. The term of the petitioners' employment appears indefinite. The Continuity and habituality of petitioners' work bolsters their claim of employee status vis-a-vis respondent company.

Even under the assumption that a contract of employment had indeed been executed between respondent SMC and the alleged labor contractor, respondent's case will, nevertheless, fail.

Section 8, Rule VIII, Book III of the Implementing Rules of the Labor Code provides:

"Job contracting. — There is job contracting permissible under the Code if the following conditions are met:

"(1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and

"(2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business."

We find that Guaranteed and Reliable Labor contractors have neither substantial capital nor investment to qualify as an independent contractor under the law. The premises, tools, equipment and paraphernalia used by the petitioners in their jobs are admittedly all supplied by respondent company. It is only the manpower or labor force which the alleged contractors supply, suggesting the existence of a "labor-only" contracting scheme prohibited by law (Article 106, 109 of the Labor Code; Section 9(b), Rule VIII, Book III, Implementing Rules and Regulations of the Labor Code). In fact, even the alleged contractor's office, which consists of a space at respondent company's warehouse, table, chair, typewriter and cabinet, are provided for by respondent SMC. It is therefore clear that the alleged contractors have no capital outlay involved in the conduct of its business, in the maintenance thereof or in the payment of its workers' salaries.

The payment of the workers' wages is a critical factor in determining the actuality of an employer-employee relationship whether between respondent company and petitioners or between the alleged independent contractor and petitioners. It is important to emphasize that in a truly independent contractor-contractee relationship, the fees are paid directly to the manpower agency in lump sum without indicating or implying that the basis of such lump sum is the salary per worker multiplied by the number of workers assigned to the company. This is the rule in *Social Security System v. Court of Appeals* (39 SCRA 629, 635).

The alleged independent contractors in the case at bar were paid a lump sum representing only the salaries the

workers were entitled to, arrived at by adding the salaries of each worker which depend on the volume of work they had accomplished individually. These are based on payrolls, reports or statements prepared by the workers' group leader, warehousemen and checkers, where they note down the number of cartons, wooden shells and bottles each worker was able to load, unload, pile or pallet and see whether they tally. The amount paid by respondent company to the alleged independent contractor considers no business expenses or capital outlay of the latter. Nor is the profit or gain of the alleged contractor in the conduct of its business provided for as an amount over and above the workers' wages. Instead, the alleged contractor receives a percentage from the total earnings of all the workers plus an additional amount corresponding to a percentage of the earnings of each individual worker, which, perhaps, accounts for the petitioners' charge of unauthorized deductions from their salaries by the respondents.

Anent the argument that the petitioners are not employees as they worked on piece basis, we merely have to cite our rulings in *Dy Keh Beng v. International Labor and Marine Union of the Philippines* (90 SCRA 161), as follows:

""[C]ircumstances must be construed to determine indeed if payment by the piece is just a method of compensation and does not define the essence of the relation. Units of time ... and units of work are in establishments like respondent (sic) just yardsticks whereby to determine rate of compensation, to be applied whenever agreed upon. We cannot construe payment by the piece where work is done in such an establishment so as to put the worker completely at liberty to turn him out and take in another at pleasure.""

Article 106 of the Labor Code provides the legal effect of a labor-only contracting scheme, to wit:

"x x x the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him."

Firmly establishing respondent SMC's role as employer is the control exercised by it over the petitioners — that is, control in the means and methods/manner by which petitioners are to go about their work, as well as in disciplinary measures imposed by it.

Because of the nature of the petitioners' work as cargadores or pahinantes, supervision as to the means and manner of performing the same is practically nil. For, how many ways are there to load and unload bottles and wooden shells? The mere concern of both respondent SMC and the alleged contractor is that the job of having the bottles and wooden shells brought to and from the warehouse be done. More evident and pronounced is respondent company's right to control in the discipline of petitioners. Documentary evidence presented by the petitioners establish respondent SMC's right to impose disciplinary measures for violations or infractions of its rules and regulations as well as its right to recommend transfers and dismissals of the piece workers. The inter-office memoranda submitted in evidence prove the company's control over the petitioners. That respondent SMC has the power to recommend penalties or dismissal of the piece workers, even as to Abner Bungay who is alleged by SMC to be a representative of the alleged labor contractor, is the strongest indication of respondent company's right of control over the petitioners as direct employer. There is no evidence to show that the alleged labor contractor had such right of control or much less had been there to supervise or deal with the petitioners.

The petitioners were dismissed allegedly because of the shutdown of the glass manufacturing plant. Respondent company would have us believe that this was a case of retrenchment due to the closure or cessation of operations of the establishment or undertaking. But such is not the case here. The respondent's shutdown was merely temporary, one of its furnaces needing repair. Operations continued after such repairs, but the petitioners had already been refused entry to the premises and dismissed from respondent's service. New workers manned their positions. It is apparent that the closure of respondent's warehouse was merely a ploy to get rid of the petitioners,

who were then agitating the respondent company for benefits, reforms and collective bargaining as a union. There is no showing that petitioners had been remiss in their obligations and inefficient in their jobs to warrant their separation.

As to the charge of unfair labor practice because of SMC's refusal to bargain with the petitioners, it is clear that the respondent company had an existing collective bargaining agreement with the IBM union which is the recognized collective bargaining representative at the respondent's glass plant.

There being a recognized bargaining representative of all employees at the company's glass plant, the petitioners cannot merely form a union and demand bargaining. The Labor Code provides the proper procedure for the recognition of unions as sole bargaining representatives. This must be followed.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is GRANTED. The San Miguel Corporation is hereby ordered to REINSTATE petitioners, with three (3) years backwages. However, where reinstatement is no longer possible, the respondent SMC is ordered to pay the petitioners separation pay equivalent to one (1) month pay for every year of service.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Paras, JJ., concur.

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