

JUAN YSMAEL & COMPANY, INC., PETITIONER, VS. THE COURT OF INDUSTRIAL RELATIONS, THE HONORABLE JOSE S. BAUTISTA, ARSENIO I. MARTINEZ, BALTAZAR M. VILLANUEVA, AND EMILIANO C. TABI...

G.R. No. L-14280. May 30, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

An appeal, taken by Juan Ysmael & Co., Inc., hereafter referred to as the Company, from an order of the Presiding Judge of the Court of Industrial Relations, which was affirmed by the Court sitting in banc, certifying the Ysmael Steel Salesmen's Union, hereafter referred to as the petitioning Union, as the sole and exclusive bargaining representative of all the salesmen of the Company, with all the rights and obligations imposed by law.

On November 27, 1957, the petitioning Union, a legitimate labor organization duly registered with the Department of Labor, filed a petition praying for the aforesaid certification, upon the ground that it is a labor organization composed of all the salesmen working for the Ysmael Steel Manufacturing Co., which is operated by the Company, as a subsidiary thereof, both of which are employers of the aforementioned salesmen; that there are in the Company two (2) other labor unions, namely, the Ysmael Steel Labor Organization (PAFLU), the membership of which is composed mainly of manual factory workers (non-supervisors), and the Ysmael Steel Employees Union, the membership of which is composed of supervisors, non-supervisors who are technical employees, office non-technical employees and clerical factory workers, and that the members of petitioning Union are not included in or represented by any of said two (2) unions in their collective bargaining agreement with the Company, for the economic factors affecting the members of petitioning Union are different and they constitute a separate and distinct union for an appropriate bargaining unit. The Company filed an answer objecting to the petition upon several grounds, which were, in effect, overruled by the Court in the order appealed from.

The Company assails the same as null and void for alleged want of a clear and distinct statement of the law and facts on which it is based, in violation, it is claimed, of Article VIII, Section 12, of the Constitution. The pertinent part of the order appealed from reads as follows:

"At the hearing of this case on February 11, March 12, 26 and May 5, 1958, the following facts appear to have been established in evidence: That the petitioning Union is duly registered by the Department of Labor and is, therefore, a legitimate labor organization within the meaning of Section 2(f) of the Act; that the Company is a corporation engaged in the manufacture of steel equipment, machines, etc., owned and operated by the Juan Ysmael & Company, Inc.; that at the time of the instant petition for certification was filed, there were twenty (20) salesmen or commission agents working for the Company, but that as of March 26, 1958, only fourteen (14) of them were left; and that neither of the two unions existing in the Company, namely the Ysmael Steel Labor Organization (PAFLU) and the Ysmael Steel Employees' Union, represents the members of the petitioning Union in any of their respective collective bargaining agreement with the Company.

"Furthermore, after a careful examination of the records, particularly the respective memoranda filed by both

of the petitioning Union and the Company, and after a mature consideration of all the proofs submitted in evidence in this case by both parties, the Court believes and so holds that there exists an employer-employee relationship between the members of the petitioning Union and the Company; that all the salesmen working with the Company may constitute a distinct and separate appropriate unit for bargaining purposes with the Company; and that the members of the petitioning Union constitute the majority of the salesmen working for the Company. The certification of the petitioning Union, therefore, as the sole and exclusive bargaining representative of all the salesmen working with the Company is in order."

The foregoing findings constitute a substantial compliance with the constitutional mandate invoked by the Company. In any event, this Court held in *Talabon vs. Provincial Warden* (78 Phil., 599; 44 Off. Gaz. 4326) that failure to comply with said requirement of our fundamental law does not nullify or affect the validity of the decision or order in question.

The main issue is whether the members of petitioning Union are employees of the Company, for purposes of certification of the former as the sole and exclusive bargaining representative of all the salesmen of the latter. The Company maintains the negative upon the ground that the members of petitioning Union are mere commission agents or sales representatives, whose form of selection and engagement is different from that of the employees of the Company, for unlike such employees, commission agents are not required to undergo physical examination, to submit a police clearance, and to punch the bundy clock, and are not provided with identification cards. It is further urged that commission agents are paid neither wages nor salaries, but are granted commissions, the amount of which depends on their sales, and that their conduct as agents is not subject to the control or supervision of the Company, which, moreover, has no power of dismissal over them.

The aforementioned difference in the manner of "selection and engagement" does not prove, however, the alleged absence of employer-employee relationship. Most business enterprises have employees of different classes, necessarily requiring different methods of selection and contracts of services of various types, without detracting from the existence of said relationship. Besides, the very evidence for the Company shows that commission agents are dispensed from physical examination and from punching the bundy clock because their duties are extraneous to the factory work and they have no fixed hours to contact their customers.

Again, the records disclose the following facts, among others:

- One who wishes to be a commission agent must file an application therefor. Then he is given a two-month probationary period, within which technical men of the Company train him. On the basis of his performance during said period, the Company, thereafter, decides whether or not he will be taken as a regular commission agent.
- His duties as such include the following: (a) One hundred per centum (100%) "loyalty to the Company", and "disloyalty of any form or free-lancing for any other company during their tour of duty, will be sufficient cause for cutting allowances and withdrawal of the authority to sell for the Company." (b) He must check in at 8:00 a.m., to "report daily all visits made", and "any misrepresentation with regard to coverage will be sufficient cause for cutting allowances." He was, also, required, before, to check in at 4:00 p.m., but, subsequently, this requirement was eliminated. (c) He "must list in his daily report all items offered to customers, plus results." (d) He "has to visit his accounts at least twice every month", and "if he fails to visit an account within two (2) months, he shall automatically lose any claim to his account."
- The Company directs the details of the work of making sales, through a sales manager, under whose authority commission agents are.
- As the agents or salesmen report for work each morning, they are given transportation allowances of P1.50 or

P2.00 each. They have, also, a drawing allowance, the amount of which varies depending upon past performances, deductible from future commissions.

- The Company exercises the power of dismissal: (a) by cutting off these allowances, when the agent makes a misrepresentation with regards to coverage or report on daily visits made, or is guilty of disloyalty in any form or free-lancing for any other company during his tour of duty; (b) by withdrawing the authority to sell in case of such disloyalty or free-lancing, or when an agent fails to make any reasonably good sale within a reasonable period; and (c) by forcing him to resign for any compelling reason, as the company has done in the case of commission agents Jose S. Esquivias, Melecio Data and Felicidad Sinope.

- The company has adopted the foregoing norms unilaterally—generally by the promulgation of pertinent rules—without the intervention or consent of the agents, and without any objection on their part. Both parties have thereby indicated that the Company has full authority to determine the manner and conditions under which the agents shall perform their duties. In other words, the Company has control over the conduct of its salesmen or agents. Thus, absence of any duty on their part to keep regular office hours, submit a police clearance and punch the Bundy clock, and of other additional duties, is due, not to lack of power or authority to impose the same, but merely to a policy of the management which deems it, for the time being, either unnecessary or inexpedient or both, owing to the peculiar nature of the task of commission agents.

- All sales of products of Ysmael Steel Manufacturing Company are seemingly effected through the aforementioned salesmen or commission agents. There are no other persons, apart from the sales manager and sales supervisor of the Company, charged with the duty to sell therefor said products.

- The salesmen or agents in question are, according to the assistant general manager of the Company, registered as members of the Social Security System, established by Republic Act No. 1161, as amended by Republic Act No. 1792, sections 9 and 8(d) of which read:

"* * * * *

"Sec. 9.—Compulsory coverage.—Coverage in the System shall be compulsory upon all employees between the ages of sixteen and sixty years, inclusive, if they have been for at least six months in the service of an employer who is a member of the System * * *."

"Sec. 8.—Terms defined.—For the purposes of this Act, the following shall, unless the context indicates otherwise, have the following meanings:

"(d) Employee.—Any person who performs services for an 'employer' in which either or both mental and physical efforts are used and who receives compensation for such services."

Pursuant to section 2, paragraphs (c) and (d), of Republic Act No. 875:

"An employer includes any person acting in the interest of an employer, directly or indirectly, but shall not include any labor organization (otherwise than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization." (Sec. 2[c], Rep. Act No. 875.)

"The term 'employee' shall include any employee and shall not be limited to the employee of a particular employer unless the Act explicitly states otherwise and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other substantially equivalent and regular employment." (Sec. 2[d], id.) In the light of the foregoing, it is our considered opinion that the lower court did not err in holding that the members of petitioning union are employees of the Company—within the purview of the terms "employer" and "employee" as denned in the Industrial Peace Act—for purposes of certification of said union as the bargaining

representative of: its salesmen or commission agents.

It is next argued by the Company that said members of petitioning Union do not constitute a majority of its salesmen or commission agents. This pretense is, however, contrary to the above quoted findings of fact of the lower court, which, admittedly, are borne out by Exhibit C, a list of the salesmen or agents affiliated to petitioning Union. Hence, said findings may not be disturbed in this proceeding for review by certiorari. (Rule 44, Sec. 2, Rules of Court; Sec. 14, Com. Act No. 103, Philippine Refining Co. Workers' Union vs. Philippine Refining Co., Inc., 80 Phil., 531; 45 Off. Gaz., 159). Besides, although the Company now says that said list, Exhibit C, is not correct, the fact is that, in its answer, filed with the lower court, it merely averred that it is "not certain" that the members of petitioning Union constitute a majority of the salesmen or commission agents of said Company. At any rate, the record shows that the same had twenty (20) salesmen or commission agents when this case was instituted; that, at the time of the hearing in the lower court, there were only fourteen (14) of them working for the Company; and that, with the exception of one (1) of them, the remaining thirteen (13) salesmen or commission agents are members of petitioning Union, and there is no evidence to the contrary. The Company doubts the accuracy of the finding to this effect in the order appealed from simply because only three (3) of these salesmen or agents appeared at the aforementioned hearing. Apart from the fact they were not required to be present at said hearing, the reluctance of employees or agents to do anything that may antagonize the employer, or may give occasion for antagonism, is readily understandable.

Wherefore, the order appealed from is hereby affirmed, with costs against petitioner herein, Juan Ysmael & Co., Inc. It is so ordered.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Barrera, and Gutierrez David, JJ., concur.

Montemayor, J., reserves his vote.

Reyes, J.B.L., and Endencia, JJ., took no part.

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