

DEMOCRATIC LABOR ASSOCIATION, PETITIONER, VS. CEBU STEVEDORING COMPANY, INC. ET AL., RESPONDENTS.

G.R. No. L-10321. February 28, 1958

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

The Cebu stevedores Association, a legitimate labor union with Registration Permit No. 357, filed on March 8, 1954 with the Court of Industrial Relations a petition for certification election for the purpose of determining the collective bargaining unit that should represent the employees and laborers of the Cebu Stevedoring Co., Inc. The latter was made party respondent as the employer. In the process, three other labor unions intervened, to wit; the Democratic Labor Association, the Cebu Trade Union, and the Katubsan Sa Mamumuo, who also asserted their right to take part in the certification election.

As the parties could not agree on the union that should be designated as the appropriate collective bargaining agency, hearings were held and evidence adduced not only on what should be the proper bargaining unit but also on the membership of each labor organization. Thereafter, Judge Jose S. Bautista, who has been designated to receive the evidence, issued an order declaring the Democratic labor Association as the collective bargaining agency for all the regular and permanent workers of respondent company considering that it has more employees belonging to this class than the other unions. He found that the Cebu stevedores Association has more casual laborers affiliated with it but that it is not a union registered under the provisions of the law and so it cannot take part in the certification election. He also found that the Katubsan Sa Mamumuo is no longer interested in the election and that Judging from the attitude of its president it can be implied that it has waived its claim, in favor of the Cebu Stevedores Association. Consequently, Judge Bautista ordered that an election be conducted by the Department of Labor among the casual laborers whose names appear on pages 1 and 3-24 of Exhibit 4-respondent designating as the only labor organizations that may be voted in said election the Democratic labor Association and the Cebu Trade Union, two legitimate labor organizations registered in accordance with law.

Dissatisfied with this order, respondent Cebu Stevedoring Co., Inc., as well as the Cebu Stevedores Association and the Katubsan sa Mamumuo, filed each a motion for reconsideration disputing the finding of the trial judge that there should be two collective bargaining units thafe would represent two sets of workers based on their terms of employment, as well as the finding that the two labor unions above-mentioned are ineligible to take part or be voted for in the certification election. These motions having been submitted to the court en banc, a split vote resulted, 3 voting in favor of revoking the order and two in favor of upholding it. In other words, Judge Juan L. Lanting, with Judges Arsenio I. Martinez and Bienvenido Tan concurring, with the dissent of Judge Jose S. Bautista, concurred in by Judge Jimenez Yanson, issued a resolution setting aside the order aforesaid and containing the following dispositive part: (1) declaring that the appropriate collective bargaining unit is the employer's unit, embracing all the employees and workers therein involved; and (2) ordering the holding of an election wherein the four labor unions should take part, namely, the Cebu Stevedores Association, Democratic labor Association, Katubsan Sa Mamumuo and Cebu Trade Union. Hence the present petition for review.

The facts as found by the trial court are: The Cebu Stevedoring Co., Inc. is a corporation engaged principally in stevedoring work consisting of loading and unloading of cargoes to and from the foreign ocean-going vessels that dock in the port of Cebu and, secondarily, in the lighterage business consisting of hauling and storing copper, gypsum, oil products and other merchandise to and from the port of Cebu and neighboring islands and provinces. In the operation of these two kinds of business, the company employs two sets of workers, namely, the regular and permanent on one hand, and the daily or casual on the other. The first set of laborers work continuously and are paid either semi-annually, monthly or weekly, are given annual bonuses, sick leave and vacation leave for every year of service, and are given overtime compensation for overtime work ranging from 25% to 50%. The casual laborers are the stevedores who work solely on the loading and unloading of cargoes, are paid daily, are laid off from time to time, and work as they please depending on the arrival of foreign vessels in the port of Cebu. They do not enjoy any vacation or sick leave, but when they work overtime, they are paid 100% additional compensation. Considering these factors and following American precedents, the trial court deemed it proper that two separate bargaining units be certified, namely, one consisting of the regular and permanent employees and the other consisting of the casual laborers or stevedores of the employer.

In this connection, the trial court also found that the Democratic Labor Association had a majority of the regular and permanent employees among its members because, of a total of 211 workers of that class, 128 thereof are affiliated with said union. And so, the trial court deemed it proper to certify said union as the appropriate bargaining unit for regular and permanent employees, the trial court also found that the Cebu Stevedores Association has among its members more casual laborers or stevedores than the other unions but because it is not registered as required by law, it cannot be certified as the collective bargaining unit of a class of laborers. The trial court finally found that the Katubanan Sa Mamumuo was no longer interested in taking part in the election because its president and counsel, Jose Muana, made it known that he was giving the claim of that union in favor of the Cebu Stevedores Association. It is for this reason that the trial court only considered the Democratic Labor Association and the Cebu Trade Union as the only ones qualified to take part in the election of the bargaining unit for casual laborers or stevedores.

Some of these facts however were found by the court en banc to be incorrect because they are contrary to the evidence. Thus, the evidence is not clear whether the Democratic Labor Union has among its members more regular and permanent employees than the other labor unions which doubt, according to the court en banc, should be resolved in favor of holding a certification election, "It is not also correct that the Cebu Stevedores Association is not a registered labor union for the record shows that this union was formally registered under Commonwealth Act No. 813 but that such registration expired on January 31, 1955. Later, however, its permit was renewed and Certificate of Registration No. 1477-IP was issued on September 7, 1955. It is therefore a legitimate labor organization entitled to take part in the certification election. With regard to the finding that Katubanan Sa Mamumuo waived its claim in favor of the Cebu Stevedores Association, the court en banc also found that the same is not borne out by the evidence and concluded that that union is entitled to take part in the certification election.

The issue now to be determined is: Considering that there are two sets of employees or laborers working in respondent company, one regular and permanent and the other casual or temporary, is it proper and, convenient that there should be one collective bargaining unit for each, as held by the trial court, or only one collective bargaining unit for all the workers and employees of said respondent company regardless of their terms of employment, as held by the court en banc?

In determining the appropriate collective bargaining unit in the present case, the court en banc took into account the fact that as early as March 4, 1947 a collective bargaining agreement was enforced between the petitioning,

union and respondent company and that such agreement was substituted by another on November 1, 1950, which was renewed for another two years on November 1, 1952. An examination of the contract executed on November 1, 1950 reveals, according to said court, that it covers "laborers on daily wage, officers and members of the crew of launches, tugboats, barges, and lighters" or, in short, all the working force employed in respondent company. There is therefore a collective bargaining history to reckon with according to which all the employees of the company have always belonged to only one collective bargaining unit, and considering that that collective bargaining agreement has stabilized or at least has contributed to the stabilization of labor relations between the company and its employees from 1947 to 1952, no reason is seen why such historical precedent should not control the present case.

While it may be true that a collective bargaining agreement has for sometime existed between the petitioning union and respondent company and the same has served the purpose for which it has been concluded, it does not follow that the same situation should continue even if there are supervening factors that press for a different treatment or other cogent reasons that would justify a different course in the determination of the appropriate collective bargaining agency. While the existence of a bargaining history is a factor that may be reckoned with in determining the appropriate bargaining unit, the same is not decisive nor conclusive. There are other factors that may be considered depending upon the circumstances of each case. One of them is the fact that since the conclusion of said collective bargaining agreement there have arisen several other labor unions composed of employees and laborers of the same company whose relations have become so diverse and conflicting that a re-evaluation of the labor relations has become imperative in order that they may not be jeopardized. This moment has come when the petitioning union brought the matter to court for certification election and the situation with which the court was confronted was: there were four labor unions composed of employees and laborers working in the same company with diverse and conflicting interest and there was no collective bargaining agency to represent them. Hence the need for certification election. And the crucial issue is how to determine the proper collective bargaining unit and what unit would be appropriate to be the collective bargaining agency. This is now the crux in the present case.

This issue is novel in this jurisdiction. No other case has arisen before involving a similar issue and which may serve as a guide for the determination of the controversy. However, American precedents on the matter abound and to them we should resort considering that our present Magna Carta has been patterned after the American law on the subject. Under these precedents, there are various factors which must be satisfied and considered in determining the proper constituency of bargaining unit. No one particular factor is itself decisive of the determination. The weight accorded to any particular factor varies in accordance with the particular question or questions that may arise in a given case. What are these factors? Rothenberg mentions a good number, but the most pertinent to our case are: (1) will of employees (Globe Doctrine); (2) affinity and unity of employees' interest, such as substantial similarity of work and duties, or similarity of compensation and working conditions; (3) prior collective bargaining history; and (4) employment status, such as temporary, seasonal and probationary employees (Rothenberg on Labor Relations, pp. 488-510). A brief discussion of the nature of each of these factors becomes necessary.

By reason of the modern complexity of both employer and union structure, it frequently becomes difficult to determine from the evidence alone which of several claimant groups form a proper bargaining unit. It then becomes necessary to give consideration to the express will or desire of the employees. This practice of considering the employees' will has been designated as the Globe doctrine. This doctrine arose in a case where there were four contending labor groups, three claiming to be the proper bargaining units for employees coming within each of their three separate categories of work, and the fourth claiming the right to be designated as the bargaining unit for all employees on a plant-wide basis. The National Labor Relations Board, finding that each of

the competing units have an equally valid basis for their respective claims, decided to hold a series of elections, not for the purpose of allowing the group receiving an overall majority of votes to represent all employees, but for the specific purpose of permitting the employees in each of the several categories of work to select the group which each chose as a bargaining unit (p. 483, *Idem.*).

The second factor is perhaps one of the most conclusive in determining the proper bargaining unit. Inasmuch, as the basic test of a bargaining unit's acceptability is whether it will best assure to all employees the exercise of their collective bargaining rights, industrial experience indicates that the most efficacious bargaining unit is one which is comprised of constituents enjoying a community of interest and economic or occupational unity. This community of interest is reflected in groups having substantial similarity of work and duties or similarity of compensation and working conditions (pp. 490-494, *Idem.*),

Another important factor is the precedent history of collective bargaining between the proposed bargaining unit and the employer. When this precedent exists, it may be assumed that the court will not disturb the composition of a consolidated bargaining unit which has an established existence and has, in its past dealings with the employer, demonstrated its service to the collective bargaining purposes of the act. However, where the circumstances have been so altered or where the reciprocal relationship of the employer and the bargaining unit has been so changed that the past mutual experience in collective bargaining cannot be reasonably said to establish a reliable guide to the present constituency of the bargaining unit, then prior collective bargaining history cannot be considered a factor in the determination. In such an event, the determination must be made entirely upon the basis of existing facts and with due consideration to all of the remaining factors (pp. 496-498, *Idem.*)

The status of employment is another important factor in the determination of which employees shall be included or excluded from a proposed bargaining unit. There are certain positions and categories of work which, by their very nature, place the employees in a position wherein a conflict of duties and interest exists. There are several categories of employment which have so far received the special attention of congress, the courts and the board, among them supervisory employees, confidential employees, guards and plant policemen and temporary, seasonal and probationary employees. With respect to such employees, there frequently arises the question of the right to include or exclude them from bargaining units composed of permanent employees. It was held that employees hired on a brief, casual or day to day basis or for a short, definite term, and who have no reasonable basis for continued or renewed employment for any appreciable substantial time, are considered to have no such mutuality of interest with permanent employees as to justify their interest in a bargaining unit composed of such permanent employees (pp. 500- 511, *Idem.*).

An enlightening appraisal of the problem of defining an appropriate bargaining unit is given in the 10th Annual Report of the National Labor Relations Board wherein it is emphasized that the factors which said board may consider and weigh in fixing appropriate units are: the history, extent and type of organization of employees; the history of their collective bargaining; the history, extent and type of organization of employees in other plants of the same employer, or other employers in the same industry; the skill, wages, work, and working conditions of the employees; the desires of the employees; the eligibility of the employees for membership in the union or unions involved; and the relationship between the unit or units proposed and the employer's organization, management, and operation. In said report, it is likewise emphasized that the basic test in determining the appropriate bargaining unit is that a unit, to be appropriate, must effect a grouping of employees who have substantial, mutual interests in wages, hours, working conditions and other subjects of collective bargaining (Smith, Labor Law, 316-317 ;Francisco, labor Laws, 162).

We have therefore seen that the mere existence of a prior collective bargaining history is not a decisive factor in the determination of a collective bargaining agency. Where the circumstances had been so altered or where the

reciprocal relationship of the employer and the particular bargaining unit has been so changed that the past mutual experience cannot be considered as a reliable guide to the present determination of the bargaining unit, then prior collective bargaining history should be brushed aside and only the prevailing facts and factors should control the determination. We have also seen that an important factor to consider is the employment status of the workers and employees to be affected by the collective bargaining agency. The positions or categories of work to which they belong should also be considered. This rule requires that temporary, seasonal or probational employees be grouped as one category and be treated separately from permanent employees. The test of the grouping is community or mutuality of interest. And this is so because "the basic test of an asserted bargaining unit's acceptability is whether or not it is fundamentally the combination which will best assure to all employees the exercise of their collective bargaining rights" (Rothenberg on Labor Relations, 490).

We therefore find that the conclusion reached by the trial court to the effect that two separate bargaining units should be formed in dealing with the respondent company, namely, one consisting of regular and permanent employees, and the other consisting of casual laborers or stevedores, is correct, it being supported by precedents on the matter. We also find correct the finding that the Democratic Labor Association, having among its members more regular and permanent employees, should be designated as the collective bargaining unit for this group. Certain facts, however, found by the trial court should be corrected: The Cebu Stevedores Association is now a legitimate labor union, its permit having been renewed and should be allowed to take part in the certification election for the group of casual or temporary employees. The Katubsan Sa Mamumuo has not waived its right to take part in the election and it must be allowed to take part therein, and with the facts thus modified, the ruling of the trial court should be upheld.

Wherefore, the decision of the industrial court en banc dated November 7, 1955 is hereby modified as follows: (1) the Democratic labor Association is hereby declared as the collective bargaining agent for the regular and permanent employees and workers of respondent company; and (2) let certification election be held for casual or temporary employees and workers in which the following organizations should participate: Cebu Stevedores Association, Democratic Labor Association, Katubsan Sa Mamumuo and Cebu Trade Union. No pronouncement as to costs.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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