

UNITED STATES EMPLOYEES ASSOCIATION EMPLOYEES ASSOCIATION (USEAEA), FRANCISCO BAUTISTA, FILOMENO SARNO, ANTONIO NATIVIDAD JESUS ABRIA, ADORACION AGOR, TRINIDAD AQUINO, PRIMO ARC...

G.R. No. L-36896. August 31, 1981

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petition for review on certiorari of the Order of the Court of Industrial Relations, dated December 2, 1972, dismissing petitioners' complaint for unfair labor practice.

Records of the case show that petitioner United States Employees Association Employees Association (hereinafter referred to as USEAEA) is a legitimate labor organization composed of the employees (individual petitioners named herein) of the respondent United States Employees Association, or USEA, formerly the U.S. Embassy Commissary Association, located at Sea-front Compound, Roxas Boulevard, Manila. Francis G. Ready, Eugene Adams, Patrick Herlihy, George Warren and Antonio Fernandez are officers of the said respondent association.

It appears on record that on June 15, 1972, the petitioners, then complainants, filed with the Court of Industrial Relations an unfair labor practice complaint against private respondents for terminating petitioners from their employment because of "union activities among which was the persistent demand of petitioner union that the respondent association (USEA) bargain collectively with the former (USEAEA) and which culminated in the strike of November 18, 1971" [p. 9, rec.]. The case was docketed as Case No. 5798-ULP and was assigned to Judge Ansberto Paredes.

On July 29, 1972, private respondent filed a motion to dismiss the aforesaid complaint alleging, among others, that the CIR has no jurisdiction because (a) said respondent association is immune from suits, it being an agency or instrumentality of the United States government; and (b) said association is not established for profit, therefore, outside the scope of the Industrial Peace Act [p. 55, rec.].

On September 9, 1972 herein petitioners filed their opposition to the motion to dismiss filed by private respondents.

Acting on private respondents' motion to dismiss, respondent CIR issued an order dated December 2, 1972 dismissing the complaint for unfair labor practice and made findings that albeit the respondent USEA is not an agency of the U.S. government and therefore not immune from suit, it is nonetheless, not established for profit and therefore outside the scope of R.A. 875.

Petitioner union (USEAEA) filed a motion for reconsideration which was denied by the respondent CIR en banc in a resolution dated April 7, 1973 [p. 172, rec.].

Petitioners appealed from the Order of respondent CIR, with the following assignment of errors:

"I. The respondent Court erred in dismissing the case for lack of jurisdiction, on the ground that respondent Association (USEA) is not established for profit and therefore outside the scope of R.A. 875, considering that the issue of whether said association is established for profit or not has already been decided in a previous case.

"II. The respondent Court erred in holding that the re-spondent Association is not es-tablished for profit considering that its constitution and by-laws allows it to operate for profit, hence, contrary to the evidence.

"III. The respondent Court erred in considering respondent Association outside the scope of R.A. 875, even assuming that it is not established for profit, because its purpose of providing comfort and benefits to its mem-bers and their guests cannot be equated to the benevolent and lofty purpose as in the case of Boy Scouts of the Philippines, the Philippine National Red Cross, and hospitals, hence contrary to established jurisprudence" [pp. 13--14, rec.].

As can be deduced from the assignment of errors raised by herein petitioners, the only issue to be resolved in this case is whether or not the private respondent United States Employees Associa-tion (USEA) is established for profit.

The undisputed facts show that the respondent United States Employees Association (USEA) is a facility created pursuant to the U.S. Foreign Service Act of 1946, as amended, pertinent portions of which read:

"Section 1139. Commissary and mess services and recreation facili-ties abroad; charges; transportation.

"(a) The Secretary may, under such regulations as he may prescribe, establish and maintain emergency commissary or mess services in such places abroad where, in his judgment, such services are necessary temporarily to insure the effec-tive and efficient performance of the duties and responsibilities of the service, such services to be available to the officers and employees of all Government agencies located in any such places abroad. Reimbursement incident to the maintenance and operation of commissary or mess service shall be at not less than cost as determined by the Secre-tary and shall be used as working funds: Provided, that an amount equal to the amount expended for such services shall be covered into the Treasury as Miscellaneous receipts.

"(b) The Secretary, under such regulations as he may prescribe, may authorize and assist in the establishment, maintenance, and operation, by officers and employees of the Service, of non-Government-operated commissary and mess service and recreation facilities at posts abroad, in-cluding the furnishing of space, utilities, and properties owned or lease by the United States for use by its diplomatic and consular missions. The provi-sions of the Foreign Service Buildings Act 1926, as amended, may be utilized by the Secretary in providing such assistance. Commissary or mess services and recreation facilities established pursuant to this subsection shall be made available, insofar as practicable, to offices and employees of other Government agencies and their dependents who are Stationed abroad. Such services or facilities shall not be established in localities where another United States agency operates similar services or facilities unless the Secretary determined that such addi-tional services or facilities are necessary" [pp. 131-132, rec., underscoring supplied].

As can be gleaned from the aforequoted provi-sions of the U.S. Foreign Service Act, it does appear clear that respondent United States Employees Association is a non-government-operated facility created pursuant to paragraph (b) of said act. The purpose of the association, as declared in its constitution, is to "provide for its members and their dependents recreational activities and a source of food and other items at minimum prices that are consistent with good service and efficient management" [p. 164, rec.].

A perusal of the constitution of private re-spondent association shows the following pertinent provisions:

"All present members of the United States Embassy Commissary Association and the Seafront Recreation Association retain their membership in the association when this constitution is adopted.

"Any American who is allowed to import goods duty-free because of his connection with a civilian agency of the United States in the Manila area may be admitted to membership.

xx xx xx

"A new member must contribute to the Association as follows: The head of the family must contribute to the association three percent of his annual base salary; a single person must contribute one and one half percent of his base salary with a minimum of \$75.00. This contribution, less the prescribed dues, will be refunded when the member ends his membership or when the association is dissolved. At such times, any debts to the association will be deducted. During the life of each membership, the association has the right to collect from this contribution any debts to the association.

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"A member and his dependents may enjoy the facilities of the Association, and participate in its activities, and buy for cash in reasonable quantities foods and other items, provided such member is an employee of the U.S. Government and is entitled to duty-free entry privileges. Such purchases shall be only for the needs of the member and his family.

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"Other facilities operated by the Association shall be available only to members of the Association, their dependents, and guests, provided however that those local employees who are members of the Seafront Recreation Association at the time this constitution is adopted may continue to participate in those activities in which they are now participating, at current rates of dues of the Recreation Association.

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"The Board of Directors will carry on all of the association's business; however, its action will be subject to the review of the ambassador.

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"It will watch the Association's operation closely to insure that the Board's policies are carried out -- whether they concern finances, member relations, working conditions, pricing practices, food storage or any other details of operation.

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"It will fix wages and insure that fair labor practices are carried out in the Association, in accordance with the laws of the Philippines.

xx xx xx

"Profits of the Association will be kept at a minimum, consistent with efficient operation.

xx xx xx

"At the end of each fiscal period, 10 percent of the net earnings will be put into a Reserve Fund if this fund is below \$50,000 in value. This fund will be used at the discretion of the Board of Directors for capital improvements and to absorb operating deficits or any kind of loss. The remainder of the net earnings will be used to reduce prices.

xx xx xx

"Membership contributions will be returned to the members after individual deductions of any debts to the association.

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"The association's assets and liabilities will be liquidated in the most practicable manner and consistent with Philippine law"

[pp. 164-170, rec.; underlining supplied].

A further perusal of the constitution of the respondent association shows that apart from the regular dues collected from the members, the association also derived revenues from the commissary, gas station, snack bars, swimming pool and other activities operated by the association. In carrying out its affairs, the respondent association employed the petitioners as waiters, bartenders, bus-boys, janitors, janitresses, dietitians, cooks, stock custodians, warehousemen, typists, clerks, storeclerks, stock clerks and utility men [p. 147, rec.].

The ratiocination advanced by respondent association in support of its stand dwells on the assertion that respondent USEA is a non-profit organization and, therefore, beyond the ambit of the Industrial Peace Act (R.A. 875, as amended) and the jurisdiction of this Court. Specifically, private respondent USEA asserts that its non-profit character is discernible from the fact that there is no distribution of earnings or profits by way of dividends or otherwise and the members do not receive any interest in the net funds and assets resulting from liquidation.

WE find the foregoing contention of private respondent USEA untenable.

A close examination of the constitution of respondent association will show that while it is true that the members of the association do not receive dividends in the form of cash, nevertheless, they do receive benefits in the form of commissary privileges, such as the importation of goods duty-free, purchase of food and other items at minimum or reduced prices; and return or refund of the capital at the end of membership or upon dissolution of the association. The same constitution likewise provides that profits of the association will be kept at a minimum and at the end of each fiscal period, 10 per cent of the net earnings will be put into a Reserve Fund if this fund is below \$50,000 in value, to be used at the discretion of the Board of Directors for capital improvements and to absorb operating deficits or any kind of loss.

What then is the meaning of "profit"?

The following authorities concerning the meaning of the word "profit" are relevant:

1. Black's Law Dictionary, Fourth Edition, defines profit as "the advance in the price of goods sold beyond the cost of purchase. The gain made by the sale of produce or manufactures, after deducting the value of the labor, materials, rents, and all expenses, together with the interest of the capital employed. Webster. Lapham vs. Tax Com'r, 244 Mass. 40, 138 N.E. 708, 710; McCready vs. Bullis, 59 Cal. App. 286, 210 P. 638, 640. Gain realized from business or investment over and above expenditures. Citizens Nat. Bank vs. Corl. 225 N.C. 96, 33 S.E. 2d 613, 616. Fairchild vs. Gray, 242 N.Y.S. 192, 196, 136 Misc. 704. An excess of the value of returns over the value of advances. The same as net profits. Crawford vs. Surety Iv. Co., 91 Kan. 748, 139 P.481, 484.

"x x x This is a word of very extended signification. In commerce, it means the advance in the price of goods sold beyond the cost of purchase. In distinction from the wages of labor, it is well understood to imply the net return to the capital of stock employed, after deducting all the expenses, including not only the wages of those employed by the capitalist, but the wages of the capitalist himself for superintending the employment of his capital or stock. Columbus Mining Co. vs. Ross, 218 Ky. 98, 290 S.W. 1052, 1053, 50 A.L.R. 1394. After indemnifying the capitalist for his outlay, there commonly remains a surplus, which is his profit, the net

income from his capi-tal. 1 Mill, Polit. Econ. C. 15.

"In a wider sense, profit means any advantage, any acces-sion of goods from labour or exertion. 'Profit' it is said, is broad enough to cover any sort of advance, or gain and benefits of any kind (Simcoke vs. Sayre, 148 Iowa 132, 126 NW 816, 817). But profits may exist in kind as well as in cash. (In re Spanish Prospecting Co., Ltd. [1911] 1 Ch. 92, 20 Ann Cas 677).

"The term 'profit,' as applied to a corporation, has a larger meaning than 'dividends,' and covers benefits of any kind, the excess of value over cost, acquisition beyond expenditures, gain or advance. Booth vs. Gross, Kelley & Co., 30 N.M. 465, 238 P. 289, 831, 41 A.L.R. 868.

"The term 'profit' has like-wise been consistently defined as the 'excess of receipts over expen-ditures, that is, net earnings. Connolly vs. Davidson, 15 Minn. 519 (Gil 428), 2 Am. Rep. 154; Samet vs. Klaff, 818 N.G. 502, 107; S.E. 2; Tooley vs. C.L. Per-cival Co., 192 Iowa, 267, 182 N.W. 403, 406; Vidal vs. South American Securities Co., et al. (C.O.A.) 276 F-855, 871 App. Div. 677, 165 N.Y.S. 863, 864; Mc-Daniel vs. State Fair of Texas (ex. Ci. App.) 286 S.W. 513, 516; Read vs. Tidewater Coal Exch., 13 Del. Ch. 1954, 116 A. 898, 904."

2. Ballentine's Law Dic-tionary, 3rd Edition, gives the usual and ordinary meaning of the term 'profit' as the "return to capital rather than earnings from labor performed or services rendered."

On the basis of the foregoing authorities, We hold that the respondent United States Employees Association (USEA) is an entity created and operated for profit and, therefore, falls within the ambit of the Industrial Peace Act (R.A. 875).

WHEREFORE, THIS CASE IS HEREBY REMANDED TO THE NATIONAL LABOR RELATIONS COMMISSION, AS SUCCES-SOR OF THE DEFUNCT COURT OF INDUSTRIAL RELATIONS, FOR HEARING AND DECISION. NO COSTS.

SO ORDERED.

Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

Teehankee, J., (Chairman), in the result.

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