

UNITED STATES LINES, INC., PETITIONER, VS. ACTING MINISTER OF LABOR AMADO INCIONG, ASSOCIATED WATCHMEN AND SECURITY UNION, BERNARDO ABADILLOS, WILFREDO AGUILAR, ROMEO ALAFRIZ, P...

G.R. No. L-49990. September 30, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

In this special civil action on certiorari, petitioner United States Lines, Inc. seeks: (1) to set aside the Order of then Acting Minister of Labor Amado Inciong dated June 9, 1978,[1] in NLRC Case No. 5081-ULP entitled "Associated Watchmen and Security Union, Bernardo Abadillos, et al., vs. United States Lines, Inc., Union Obreros Estevadores De Filipinas (ULEF), et al." dismissing its appeal of the Resolution[2] of the National Labor Relations Commission (NLRC) First Division dated November 20, 1977 which affirmed the Decision[3] of Labor Arbiter Tito F. Genilo dated March 15, 1977; and (2) to set aside the Order[4] dated January 30, 1979 denying the motion for reconsideration of the Order dated June 9, 1978.

The decision of Labor Arbiter Tito F. Genilo dated March 15, 1977 which was affirmed by the NLRC and by then Acting Minister of Labor Amado Inciong provides in its dispositive portion, to wit:

"WHEREFORE, premises considered, this case should be, as it is hereby, DISMISSED, insofar as the unfair labor practice aspect is concerned. Respondent company, however, is hereby directed to reinstate the individual complainants to their former positions, if still existing, or if not to any available positions without backwages, and respondent Narciso Lim to pay them financial assistance corresponding to individual complain-ant' six (6) months back wages."

"SO ORDERED.

"Manila, Philippines, 15 March 1977.

(SGD). TITO F. GENILO
Labor Arbiter

The antecedent facts of the case are as follows:

The Associated Watchmen and Security Union, UNION for short, a duly registered labor organization affiliated with the Union de Obreros Estibadores de Filipinas, UOEF for short, composed of watchmen guarding the vessels of several shipping companies in the port of Manila, had a Collective Bargaining Agreement (CBA)[5] with the United States Lines, Inc., COMPANY for short, executed on December 7, 1967 for a term of three (3) years or until December 7, 1970 which was subsequently renewed for another three (3) years, or up to December 7, 1973. The CBA provides, among others:

"ARTICLE II

UNION SECURITY

"Section 1.- All watchmen covered by this AGREEMENT who are members of the Union as of the effective date of this AGREEMENT, as well as any other watchmen who shall subsequently become a member of the Union during the lifetime of this AGREEMENT, shall, as a condition of employment and continued employment, remain members of good standing in the Union."

x x x x x x x

"ARTICLE IV

WORK ASSIGNMENT

"Section 1.- The assignment of the watchmen enumerated in Article III hereof shall be made by the Union upon verbal or written request of the Company prior to the arrival of the vessel which would be guarded, protected and patrolled by said watchmen. The number of positions of said watchmen shall be in accordance with the present practice of the Company.

"The Union agrees to assign watchmen who are duly qualified to do the work of guarding: (a) the vessels' cargoes while on board the vessel; (b) the vessels' accessories and supplies on board; and (c) the passengers and crew's properties on board. The parties hereto agree that the total number of watchmen of the Company, during the lifetime of this Agreement, shall not exceed sixty (60) watchmen at any one time."

It appears that the UNION was registered with the Department (now Ministry) of Labor in 1964 with the following set of officers: Narciso Lim, president; Aniano Si-muangco, vice-present; Apolinar Bernardo, secretary; Quintin Robledo, treasurer; Joaquin Diamante, auditor. Since then, no election has been held among the general members of the Union in 1965, 1966 and 1967.

Sometime in 1968 an intra-union dispute developed within the ranks of the UNION splitting the members thereof into two factions. In a letter-notice dated April 20, 1968, Apolinar Bernardo, the incumbent secretary, notified the UNION's general membership that there will be a regular meeting on May 7, 1968 at the Headquarters of UOEF at 681 Sevilla Street at 10:00 a.m.

During the intervening period between April 20, 1968 and the proposed date of the general meeting on May 7, 1968, records show that the UNION's Constitution and By-laws was amended, then approved, ratified, and adopted in a meeting held at Rosedel Canteen, Intramuros, Manila on April 25, 1968 duly attested to by the UNION's incumbent officers with the notable exception of Narciso Lim.[6] Among other things, the provisions on election and meeting under the amended Constitution and By-laws read:

"ARTICLE VIII

MEETINGS AND ELECTIONS

"Section 1.- The annual meeting of the UNION shall be held within the first four (4) days of the first week of May, of every two years to be determined by the Executive Board, in which meeting the election of officers and members of the executive board shall take place every election year.

x x x x x x x

"Section 5. Except for the officers already elected upon the approval of this Constitution and by-laws, the next election of officers and members of the executive board shall be conducted by a "committee on election" which shall promulgate rules and regulations in order to insure a clean, honest, and orderly election. The decision of the Committee on Election in electoral matters shall be final."

Without waiting for the meeting as set for on May 7, 1968, a meeting was held instead on May 1, 1968 where an election was held with the following set of officers elected: Apolinar Bernardo, president; Mario Unson, vice-president; Aniano Simuangco, secretary; Quintin Robledo, treasurer; and Eduardo de Guzman, auditor.

The intra-union dispute thus resulted into two (2) Union presidents, Narciso Lim, the incumbent president since 1964, and Apolinar Bernardo, the newly elected president as of May 1, 1968, both of whom asserted the right of selection or nomination of watchmen to guard the vessels of the COMPANY under the provisions of Article IV of the Collective Bargaining Agreement.

Narciso Lim, the incumbent president, refused to recognize the election on May 1, 1968 as valid, claiming among others, that it was conducted without his knowledge, which accounts for his non-participation therein, and as such, he continued performing his function of assigning or nominating the watchmen to guard the vessels of the COMPANY under Article IV of the CBA.

On May 2, 1968, Apolinar Bernardo, the newly-elected president, together with his followers informed the COMPANY about their election as the new set of officers of the UNION, and as such, they have the right, under Article IV of the CBA, to assign or nominate the watchmen to guard the vessels of the COMPANY.

On May 3, 1968, Apolinar Bernardo presented a list of assignment of watchmen for the vessels S.S. Pioneer Contender even without prior request of the COMPANY which, however, was not honored. Instead, the COMPANY gave assignments to the watchmen belonging to Apolinar Bernardo's faction, on recommendation of Narciso Lim, covering the period from May 3, 1968 to June 3, 1968. They, however, refused to render service for the reason that the assignments were not made by Apolinar Bernardo.

Faced with two (2) sets of nominees or recommendees, the COMPANY sought the intercession of the UNION's mother federation, UOEF, which on June 3, 1968, through its president, the late Aurelio Intertas, in a letter informed the COMPANY that the 49 watchmen,[7] including the herein private respondents, are considered resigned and are no longer members of the UNION effective May 1, 1968 for acts inimical to the UNION. Aurelio Intertas advised the COMPANY to honor only the assignments of watchmen by Narciso Lim and warned that unless the COMPANY complies with said instruction, the UNION would strike.

As a consequence of the expulsion of the 49 watchmen from the UNION, the COMPANY refused their services as watchmen starting from June 3, 1968 thereafter on the ground that they are not members of the UNION, invoking the closed shop provision of the Collective Bargaining Agreement.

On April 30, 1970, the UNION and its thirty-five (35) members, through Prosecutor Ricardo D. Diaz, filed before the Court of Industrial Relations, a complaint for unfair labor practice against the COMPANY, James A. Clark, James W. Rader, Union de Obreros Estevadores de Filipinas (UOEF), Narciso Intertas (President), and Narciso Lim, and docketed as Case No. 5081-ULP.

The UNION and the thirty-five (35) members alleged in their complaint, among other things, that the COMPANY unlawfully refused them work on the ground that they are not members of the UNION and instead allowed non-union members and the followers of Narciso Lim to work as security guards in violation of the existing CBA; that the COMPANY and its officers refused and still refuses to give work or readmit them and that since May 3, 1968 and up to the filing of the complaint, they have not found any substantial, equivalent employment despite diligent efforts to look for one. They pray, among others, that they be allowed to continue working or to be readmitted to their former work under the same terms and conditions prevailing, with backwages from May 3, 1968 until readmitted, and particularly to honor the assignments of security guards by the newly-elected president Apolinar Bernardo as rotation officer in accordance with the Collective Bargaining Agreement.

After the answers were filed and documentary evidence submitted, Labor Arbiter Tito F. Genilo rendered a decision on March 15, 1977 stating therein, among others, that inasmuch as Case No. 5081-ULP involves substantially the same parties, facts, and issues as Case No. 5053-ULP,[8] a previous case decided on June 9, 1975 by Labor Arbiter Narciso Lim, and "in line with the established jurisprudence that judicial and quasi-judicial bodies should have uniformity of decisions," the findings and conclusions reached in Case No. 5053-ULP were adopted, thus, the dispositive portion of said decision[9] in Case No. 5081-ULP reads as follows:

"WHEREFORE, premises considered, this case should be as it is hereby DISMISSED, insofar as the unfair labor practice aspect is concerned. Respondent company, however, is hereby directed to reinstate the individual complainants to their former position, if still existing, or if not, to any available positions, without backwages, and respondent Narciso Lim to pay financial assistance corresponding to individual complainants' six (6) months backwages."

On appeal to the National Labor Relations Commission (NLRC), the COMPANY argued that the remedy of reinstatement is not available if the unfair labor practice charge in Case No. 5081-ULP is dismissed.

Acting on the appeal, the National Labor Relations Commission (NLRC) on November 20, 1977 issued a resolution affirming the decision of Labor Arbiter Tito F. Genilo stating therein that the decision in Case No. 5053-ULP, a previous case, was affirmed by the NLRC and then by the Acting Secretary of Labor.

Then, the COMPANY elevated its appeal to the Secretary (now Minister) of Labor on December 20, 1977 but the same was denied in an order dated June 9, 1978 issued by Acting Secretary Amado Inciong.

Upon a motion for reconsideration filed by the COMPANY on August 9, 1978, Deputy Minister Inciong issued an order which reads:

"Finding no merit in respondent's motion for reconsideration of the Decision of this Office, dated June 9, 1978, the same is hereby denied and the Decision sought to be reconsidered stands.

"No further motion of this nature, shall be entertained. Let execution issue immediately.

"SO ORDERED."

Hence, the present recourse by petitioner COMPANY.

The only issue raised in this petition is whether or not the Court of Industrial Relations (CIR) has jurisdiction to order the reinstatement of the herein private respondents (watchmen) in the same decision which absolved herein petitioner COMPANY of the unfair labor practice charge filed against it by the herein private respondents, who were found to have been validly refused re-employment on grounds of good faith in view of the closed-shop provision of the Collective Bargaining Agreement.

Petitioner COMPANY assails the order of reinstatement of the thirty-five (35) private respondent-watchmen despite the dismissal of the unfair labor practice charge filed against it, contending that when the acts alleged to have been committed as constituting unfair labor practice have not been proved, the CIR has no power under the provision of Section 5(c) of the Industrial Peace Act[10] to grant the affirmative relief of reinstatement, but must limit itself to dismissing the complaint for unfair labor practice.

Evidently, there is no dispute that the acts complained of as constituting an unfair labor practice under Section 4(a) subsections 1, 4 and 6 in relation to Section 13 and 14 of the Industrial Peace Act (R. A. 875) were not proved or established by private respondents, thus, the dismissal of the complaint for unfair labor practice. On this specific point, We are of the view that the dismissal of the complaint for unfair labor practice based on the refusal of the COMPANY to honor and comply with and/or implement the assignment of watchmen or security guards

made by the newly-elected president, Apolinar Bernardo, in accordance with Article IV of the CBA, and its simultaneous recognition of the assignment of watchmen or security guards made by the incumbent president, Narciso Lim which, according to private respondents, constitute as an unfair labor practice under the aforecited provisions of the Industrial Peace Act, logically precludes the relief of reinstatement as sought after their dismissal had been sustained as valid. To order their reinstatement, as what had been done by the Labor Arbiter, would be obviously inconsistent with the finding that their services as security guards were validly refused. An employee found to have been validly refused re-employment may not demand reinstatement.

Be that as it may, the herein private respondents are not left without any relief. In cases where the alleged unfair labor practice acts were not proved, or where as in this case, the complaint for unfair labor practice was dismissed, the herein private respondents may be entitled to affirmative relief which is not inconsistent with the finding that no unfair labor practice was committed by the employer, a finding We found no reason to disturb.

In the case of *Colgate-Palmolive Phils., Inc. vs. De la Cruz* (1972),^[11] this Court sustained the power of the Court of Industrial Relations to order the payment of the money equivalent of the unused sick leave of private respondents therein in the same decision which absolved petitioner Colgate-Palmolive of the unfair labor practice charge filed against it by the said private respondents. This is so because the award of money equivalent of their unused sick leave as an affirmative relief is not inconsistent with the finding that there is no unfair labor practice committed by the petitioner therein.

In the case at bar, it is beyond dispute that private respondents have one time or another served the COMPANY prior to the intra-union dispute as members of the UNION. The status of private respondents as employees of the COMPANY has long been settled in the case of *United States Lines, Inc., et al. vs. Associated Watchmen and Security Union, et al.*^[12] Considering their past services as watchmen or security guards in the COMPANY, and on equitable considerations, private respondents are entitled to separation pay. This, precisely, is what they are now seeking as manifested in their one-page comment^[13] to the petition, to wit:

"Under the fact-situation, if reinstatement is not legally feasible for the herein individual private respondents concerned, then at least they should be given separation pay equivalent to fifteen (15) days for every year service that they have rendered for the petitioner United States Lines, Inc.

"Separation pay is the only compassionate and equitable way for these displaced individual private respondents under the prevailing circumstances."

In the same manner and for like reasons as in the *Colgate-Palmolive* case the award of separation pay would not be inconsistent with the absolution of the COMPANY of the charge of unfair labor practice because the private respondents were not, in a real sense, dismissed for just cause, but were not accepted for re-employment because of non-membership in the Union.

WHEREFORE, in view of the foregoing, respondent COMPANY is hereby ordered to pay the separation pay of private respondents, equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

This decision shall be immediately executory upon promulgation and notice to the parties. No costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

[1] p. 43, Rollo.

[2] Diego P. Atienza, Presiding Commissioner; Geronimo Quadra, Commissioner; Cleto Villatuya, Commissioner, pp. 41-42, Rollo.

[3] pp. 39-40, Rollo.

[4] p. 44, Rollo.

[5] pp. 136-142, Rollo.

[6] pp. 26-34, Records, Case No. 5081-ULP.

[7] Bernardo Abadillos, Felix Abadillos, Wilfredo Aguilar, Romeo Alafriz, Pascual Alejada, Francisco Arce, Antonio Aureo, Edillo Banagua, Federico Banagua, Jr., Apolinar Bernardo, Gregorio Cusay, Jose Daplas, Rogelio de Claro, Eduardo de Guzman, Leonardo de Guzman, Joaquin Diamante, Tomas Encinas, Lorenzo Engalla, Diosdado Estorante, Hilario Feliciano, Romulo Feliciano, Exequiel Garcia, Juan Gines, Benjamin Limos, Hilario Lising, Aniceto Madriaga, Demetrio Magpoc, Pedro Mamangon, Deogracias Manlapig, Esteban Mateo, Leonardo Matias, Genaro Mendoza, Gregorio Mendoza, Salvador Parcia, Benjamin Paulino, Alfred Potato, Remegio Ramos, Eduardo Reley, Quintin Robledo, Alberto Roxas, Victoriano Rufo, Aniano Simuangco, Francisco Tazon, Mario Unson, Renato Vargas, Gerardo Villanero, Jorge Villanueva and Reynaldo Vipinoso.

[8] The case started from a complaint for unfair labor practice filed before the Court of Industrial Relations (CIR) on May 24, 1968 by the UNION and thirteen (13) watchmen, through Acting CIR Prosecutor Manuel Ho Mirafuente, against the U.S. Lines, Inc., James A. Clark, James W. Rader, Fortunato Reyes, Narciso-Lim and Engracio Jose, and was decided by Labor Arbiter Nestor Lim on June 9, 1975 wherein he dismissed the unfair labor practice but directed the reinstatement of the 13 watchmen without backwages and Narciso Lim to pay financial assistance corresponding to six-month backwages, then on appeal, was affirmed by the NLRC and the Secretary of Labor on November 25, 1975 and October 25, 1976, respectively, but modified on appeal by the Office of the President to the effect that reinstatement is reiterated provided that the 13 watchmen shall first secure the necessary license as security guards as provided for under existing laws and if not qualified, they should instead be given separation pay pursuant to the provisions of the New Labor Code.

[9] pp. 39-40, Rollo.

[10] Republic Act No. 875 (1953), Volume III, Philippine Permanent & General Statutes, 442.

Section 5. Unfair Labor Practice Cases. -

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(c) The testimony taken by the Court or such member of the Court or the Hearing Examiner shall be reduced to writing and filed with the Court. If, after investigation, the Court shall be of the opinion that any person named in the complaint has engaged in or is engaging in any unfair labor practice, then the Court shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and take such affirmative action as will effectuate the policies of this Act, including (but not limited to) reinstatement of employees with or without backpay and including rights of the employees prior to dismissal including seniority. x x x Such order may further require such person to post the Court's order and findings in a place available to all employees and to make reports from time to time showing the extent to which the Court's order has been complied with. If after investigation the Court shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Court shall state its findings of fact and shall issue an order dismissing the said complaint. If the complaining party withdraws its complaint, the Court shall dismiss the case. (underscoring supplied).

[11] 45 SCRA 190 (1972).

[12] 8 SCRA 326 (1963).

[13] p. 49, Rollo.

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