

A. L. AMMEN TRANSPORTATION CO., INC., PETITIONER VS. BICOL TRANSPORTATION EMPLOYEES MUTUAL ASSOCIATION AND COURT OF INDUSTRIAL RELATIONS, RESPONDENTS.

G.R. No. L-4941. July 25, 1952

Ponente: TUASON, J.

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TUASON, J.:

This is an application for certiorari to review and set aside a portion of the decision of the Court of Industrial Relations, ordering A. L. Ammen Transportation Co., Inc. "to continue its former practice of allowing check-off to petitioning union whose affiliates have already filed with the management of the respondent company their corresponding authority to make the necessary deductions from their monthly earnings."

The facts, not denied, which led to the questioned order are thus stated in respondents' brief:

"On September 15, 1950, the Undersecretary of Labor certified to this Court that a labor dispute exists 'Between the Alcatraz and its workers numbering 308 who are affiliated to the Bicol Transportation Employees Mutual Aid Association, a legitimate labor organization duly registered in this department under C. A. No. 213'. The aforesaid certification by the Department of Labor was due to its failure to settle amicably the 'Alcatraz' employees' strike of September 14, 1950 which lasted until September 19, 1950 when the Honorable Presiding Judge of the respondent Court of Industrial Relations ordered the reopening of the business of the 'Alcatraz' and the return of the employees involved in the strike effective September 20, 1950, under the same terms and conditions of employment existing before the strike. In the meantime, the Honorable Presiding Judge of the respondent court ordered the 'Bitemaa' to submit a more detailed petition to embody all unsolved disputes not amicably settled in the conciliation proceedings effected on September 19, 1950; and In compliance therewith a petition dated November 3, 1950 was filed and received by the respondent court on November 9, 1950. After proper hearing and after considering the parties' evidence on record, the respondent Court rendered its decision in Case No. 506-V dated April 26, 1951 embodying the disposition on Demand No. 4 now involved in the present proceedings and quoted in Annex '1' of respondent court's answer."

The burden of the petitioner's argument is that the Court of Industrial Relations acted in excess of jurisdiction and contrary to law, in that, it is alleged, "there is no law in the Philippines which authorizes the Court of Industrial Relations to compel an employee to practise check-off against his will." The grounds of attack require a statement of the law creating the Court of Industrial Relations and of the rules of pleading and practice provided therefor.

Section 4 of Commonwealth Act No. 103 provides that "The court shall take cognizance for purposes of prevention, arbitration, decision and settlement, of any industrial or agricultural dispute causing or likely to cause a strike or lockout, arising from differences as regards wages, shares or compensation, hours of labor or conditions of tenancy of employment, etc." Section 13 provides that "In making an award, order or decision, under the provisions of Section four of this Act, the Court shall not be restricted to the specific relief claimed or demands made by the parties to the industrial or agricultural dispute, but may include in the award, order or decision any matter or determination which may be deemed necessary or expedient for the purpose of settling the

dispute or of preventing further industrial or agricultural disputes." And by Section 20 "the Court shall act according to justice and equity and substantial merits of the case, without regard to technicalities or legal forms and shall not be bound by any technical rules of legal evidence but may inform its mind in such manner as it may deem just and equitable."

It will be seen at once that these powers are comprehensive. While section 4 specifically speaks of wages, shares or compensation, and while these are the principal sources of industrial and agricultural conflicts, the Court's authority is by no means confined to them. "Conditions of tenancy or employment" (Sec. 4) and contingencies too numerous to be conveniently detailed in a statute or thought of in advance had to be met and settled. To settle disputes and prevent crippling strikes and lock-outs, besides the improvement of labor standards, are the paramount objectives of the law, and such conditions and contingencies are the matters envisaged by the all-embracing provisions of the aforementioned sections.

In consonance with these principles, sick leave, maternity leave, hospitalization, and other privileges having no direct relation to wages, shares or compensation, have been regarded without dissent as proper subjects of award. We perceive nothing so peculiar in checkoff that it can not be taken cognizance of by the Industrial Court. On the contrary, the practice of deducting dues from wages and payment of the amounts deducted over to the union appears to be more germane to wage fixing than are vacation leave or the defraying of hospitalization expenses by the management. That check-off is a normal incident of employment is best illustrated by the fact that the same had been the subject of agreement between the parties herein and put into practice, the court's order being no more than that it be continued.

Since the order of which the petitioner complains was promulgated, Republic Act No. 602, otherwise known as Minimum Wage Law, has been approved. This enactment confirms in a more explicit fashion the idea that check-off is a legitimate dispute for arbitration. The law goes further in that it makes, we suppose, the practice compulsory on the part of the employer under certain conditions.

Section 10 of Republic Act No. 602 provides that

* * * * *

(b) Wages, including wages which may be paid retroactively for whatever reason, shall be paid directly to the employee to whom they are due, except:

* * * * *

(3) In cases where the right of the employees or his (their) union to checkoff has been recognized by the employer or authorized in writing by the individual employees concerned.

It may be noted that sub-paragraph (3) consists of two clauses. Our understanding of this provision, which is none too clear, is that the two clauses are independent of each other, each denoting a separate meaning. In other words, check-off may be enforced with the consent of the employer or by authority in writing by the employees. When the union and the employer agree, the attitude of the employees is immaterial. When the employees duly authorize the check-off, as provided by the last clause, the employees consent is unnecessary and its recognition of the right is obligatory. If this were not so, if in any case the employer's conformity were essential, it would have to be concluded that the second clause is superfluous and meaningless, for the first clause already provides for such conformity as a condition precedent.

At any rate, Republic Act No. 602 is a clear signal that check-off is one of the matters affecting labor-management relations which the Court of Industrial Relations may include in an award, order or decision. And since the order in question was to be prospective its operation, the court in banc did not, in our opinion, err in

applying the said Act to the present case.

On the economic and practical side, petitioner complains that the practice imposes an extra burden on the employer. This alone is no reason for opposing the arrangement. Wage increases, reduction of working hours, sick leave, hospitalization and other privileges granted to the employed entail diminution of profits and additional duties and obligations to an extent much greater than the inconvenience and additional expense involved in the adoption of the check-off system. In fact, the circumstances of this case make said adoption more compelling than in ordinary cases.

The petitioner is operating in four provinces comprising nearly the whole Bicol region. The employees, the majority of whom are affiliates of the respondent labor union, are scattered in these provinces. It is not difficult to see how much easier and less expensive it is for the company to handle the collection of membership dues than it would be for individual members to make remittances to their union's office, or for the union to send out collectors in so wide a territory. The extra work and expense incurred by the company in deducting from its employees' salaries the amounts the employees owe their with union are small in comparison with the savings in time and money by the union and the employees, savings which can not fail, to effect increased efficiency and redound to the benefit of the employer itself in the long run. In the adjustment of industrial conflicts concessions have to be made and some rights have to be surrendered, or enforced if necessary in the interest of conciliation and peace.

The system of check-off is avowedly primarily for the benefit of the union and only indirectly of the individual laborers. However, the welfare of the laborers depends directly upon the preservation and welfare of the union. It is the union which is the recognized instrumentality and mouthpiece of the laborers. Only through the union can the laborers exercise the right of collective bargaining and enjoy other privileges. Without the union laborers are impotent to protect themselves against "the reaction of conflicting economic changes" and maintain and improve their lot. To protect the interests of the union ought therefore to be the concern of arbitration as much as to help the individual laborers.

The objection that the respondent labor union's permit to operate as such under Commonwealth Act No. 213 had been cancelled has become moot by the fact that said union has been re-registered as an organization in good standing.

The petition is denied with costs.

Paras, C. J., Pablo, Bengzon, Bautista Angelo, and Labrador, JJ., concur.

DISSENTING

MONTEMAYOR, J.:

I understand that this is the first case of check-off brought up for consideration and determination by this Tribunal and for that matter even by the Court of Industrial Relations.

Realizing the importance and far-reaching effects of the decision in the present case where the Supreme Court and the Court of Industrial Relations order the employer against its will, and without any prior agreement, contract or stipulation, to observe or practice the system of check-off, and considering further that in view of the positive advantages to labor unions tho doubtful benefits to the employees themselves, many similar cases would come up in the future, I feel constrained to give my reasons for my disagreement with my esteemed brethren.

Before proceeding it is well to determine the nature and scope of this system which involves the relation between the employer or management on one side and its employees and their union on the other. Oakes in his work on "Organized Labor and Industrial Conflicts" defines check-off thus:

"The check-off system has been said to consist in a deduction of union dues and assessments by the employer from the wages of the employee and the turning over of the amount so deducted to the union. A different definition, given by the appellate court, in the same case, describes a check-off as the 'voluntary assignment by the employee of so much of his wages as may be necessary to meet his union dues and his direction to his employer to pay the amount to the treasurer of his union.' " (Oakes, *Organized Labor and Industrial Conflicts*, Sec. 297, pp. 379-400).

Dangel and Shriber In their book on "Labor Unions" convey the same idea and say that it is usually found in the cases of closed shop agreements, thus:

"A check-off is a method of deducting from an employee's pay at prescribed periods, the amounts due the union for fees, fines, or assessments. The employee himself may voluntarily assign so much of his wages as may be necessary to meet his union dues and direct his employer to pay the amount to the treasurer of his union."

"Union agreements containing check-off provisions, may establish a general check-off for all employees, or, in the absence of a closed shop, they may provide a check-off for every union member without the requirement of individual authorization. However, another type of check-off provision establishes the deduction only for those employees who file individual authorizations with the employer. These latter authorizations are usually required to be in writing." (Dangel & Shriber, *Labor Unions*, Sec. 3, pp. 3-4).

Where the management and the employees and their union agree to the practice of check-off, there would seem to be no difficulty. Being subject of a contract or bargaining agreement, it would only be a question of carrying out the terms thereof. In this connection, I agree with the majority that where any party to such agreement or contract of check-off violates the same and the other party seeks redress from said violation and insists in the enforcement or performance of its terms, the Court of Industrial Relations would have jurisdiction over the case.

The system of check-off as observed and practiced in the United States, as far as I can ascertain, is always the subject of a bargaining agreement between the employers and the employees and their labor unions.

"Deduction of union dues.—An employer's practice of deducting union dues and fees from the wages of employees, known as 'checkoff' is a contractual expedient, his obligation to do so arising only by virtue of contract, and the destination of the funds deducted, as well as the rights appertaining to their eventual use, are likewise created and governed by contract. The agreement for the checkoff is deemed the joint and several contract of the members of the union made for them by their agents; the employer, although a contracting principal, also becomes the agent of the union and of the union employees for the purpose of making such deductions and transmittal." (56 C. J. S. 534).

"A check-off of union dues has been held to be an appropriate matter to be covered by a collective bargaining agreement, and provision for a check-off has been held to be valid and enforceable. (56 C. J. S. 535).

I have not come across any case in that country where an employer or management has, without previous agreement and against its will, been compelled by the courts to observe and practice it. In fact Oakes in his book says:

"There have been no decisions upon the question whether a strike to compel the employer to agree to the check-off system is for a legitimate purpose." (Oakes, *op. cit.*, p. 400).

Some laws in the United States, both State and Federal, permit it, the indirectly. They do not encourage it. In fact,

in the case of interstate common carriers, it is actually prohibited by Federal legislation. The Railway Labor Act of the United States Congress expressly prohibits it regardless of the desire and agreement of the parties. The constitutionality of said Act was brought to a test before the United States Circuit Court of Appeals in the case of Brotherhood of Railroad Shop Crafts of America, Rock Island System, Grand Lodge No. 3, et al., vs. Lowden, et al., 86 F. (2d) 458, 108 A.L.R. 1128. The Circuit Court said that the enactment of said law prohibiting the practices of check-off was within the power of Congress, on the basis of its authority to legislate on interstate commerce. According to the Circuit Court, the purpose of the Railway Labor Act was the amicable adjustments of disputes, and in that way to avoid strikes with their harmful effect upon public interests:

"The deduction of dues payable to an organization from the wages of employees discloses to the carrier the affiliation of employees with unions. It discloses which of them belong to a particular union. It may disclose which belong to a favored union and which do not belong to any union. It creates a contact in relation to the organization, and even though it is indirect and somewhat remote, it may detract from an element which is essential to success. Furthermore, it proffers an opportunity for the carrier to take into consideration the status of employees in respect to unions in connection with matters of promotion, discipline or dismissal. It is readily conceivable that, moved by a desire to avoid the displeasure of the carrier with the possible loss of employment, employees may be influenced to join a particular union or dissuaded from withdrawing membership. Congress may well have determined that the system could be resolved into a subtle device through which to trench upon the freedom of self-government of employees and in that way impede the success of the plan."

As may be gathered from the above decision, check-off may prove to be a double-edged sword. While ordinarily, the check-off may redound to the benefit of the laborers or employees by helping the finances of and strengthening their union, the better to represent them in their fight against the employer, on the other hand where the union affected happens to be a company union sponsored by the employer, the interests of the laborers not belonging to said company union, or those belonging to a truly labor union would be adversely affected for in that case the union strengthened by the practice of check-off is an instrument of the employer.

In the United States, the laws which permit tho indirectly the practice of check-off contain elaborate and detailed provisions especially designed to protect the interests of the employees. For instance, the Wisconsin Labor Relation Act (Wis., Stat., 111.06, Subd.) declares it an unfair practice for an employer to "deduct labor organization dues or assessments from an employee's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally, and terminable at the end of any year of its life by the employee giving at least thirty days written notice of such termination."

"In Pennsylvania an employer is, under penalty of conviction for unfair labor practice, prohibited from collecting union dues from employees unless the employees by a secret and majority ballot authorized him to do so, and then only if he receives a written authorization to do so from each employee whose wages are affected." (Rothenberg, Labor Relations, p. 53).

The Taft-Hartly Labor Management Relations Act imposes limitations on check-off. Sec. 302, provides:

"(a) It shall be unlawful for any employer to pay or delivery or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are engaged in an industry affecting commerce.

* * * * *

"(c) The provisions of this section shall not be applicable . . . (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall

not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective bargaining agreement, whichever occurs sooner; * * *

Here in the Philippines, so far, we have none of that kind of legislation dealing directly and in detail with the practice of check-off. So we don't know the scope and limitations thereof, and the amounts which an employer under proper authority may deduct from the wages of the employees, whether confined and limited to the membership dues of his labor union only, or whether extending to other charges such as assessments, fines, etc. Should the union later insist that other charges due to it from the employee besides his membership dues be deducted from his wages and the employer proceeds to deduct the same, that might be a source of misunderstanding, trouble, and enmity. Again, we have here no provision of law regarding the period of time within which an employee may bind himself irrevocably, a period within which the employer may deduct from his wages and the union may receive the deductions. The law and the practice in the United States, usually, is that the employee may bind himself for a period not exceeding one year. Thereafter he may revoke the authority and insist that his wages in full be paid directly to him. From this I understand that within a period, not more than one year, once the employee has given the authority to deduct from his wages, he may not revoke said authority, however much he needs the money for himself and his family, and perhaps even if he desires to discontinue his membership in the union. In other words, during the period within which the employee bound himself, the union is entitled to the deductions.

There are other points involved in the present case which deserve careful consideration. The petitioner, A. L. Ammen Transportation Co., Inc., insists that the practice of check-off demanded by respondents would mean additional expense to it because of the hiring of additional employees, to take charge of the collections, accounting and delivery of the amounts deducted, to the union. Not only this, but where the employee later decides to revoke the authority to deduct from his wages, preferring to pay the dues directly to the union, the employer would have to have and to keep a tab and accurate record of the same because if it made a mistake and continued to pay the amounts to the union, the employee may hold the employer responsible for said amounts.

But there is another point perhaps more important, at least interesting, a point which we are liable to overlook, regarding this check-off. Rothenberg in his work on "Labor Relations" has the following to say:

"The check-off is a device of great utility to the unions and is universally sought by them. The source of a union's strength is not only its affiliations and membership, but its revenue as well. Its stability and force is usually commensurate with its financial solidity. Inasmuch as dues constitute the primary stream of union income, the importance of check-off lies in its assurance of payment of dues. Despite the various disciplinary measures which unions adopt to penalize members for nonpayment of dues it is often found a measurable number of members are constant delinquents. Regulations and threats of expulsion for non-payment of dues are often unavailing to the union since some unions can less afford the loss of members than of revenue from members. Because the check-off precludes the necessity for the use of hazardous and distasteful pressure to enforce payment of dues and eliminates the contingency of delinquency, by extracting the dues at the source, from and on payment of wages, the check-off is of inestimable value to the union. So, too, any re-resentment which may result from the requirement of paying dues is levelled at the employer, who, although involuntarily, is the one who withholds the dues from the employees' pay envelope. This system not only assures the union the payment of dues which might otherwise not have been collected by it, but, more important, spares it the ill will and impairment of morale which reasonably attends the enforcement of payment through the use of disciplinary measures.

"As valuable as this practice is to the unions, it is as much a nuisance and detriment to the employer. Not only does the check-off require avoidable bookkeeping and work on the employer's part, but frequently and in given cases visits upon him a certain degree of misdirected animus and loss of the goodwill of his employees. Because many employers are unwilling to invite the resentment and loss of esteem that results from this

indirect method of diminishing wages, a demand for installation of the check-off system often meets with vigorous employer opposition. (Rothenberg, op. cit. pp. 53-54.)

We can readily agree with Mr. Rothenberg. By the practice of check-off, the labor union seeks to relieve itself of the misunderstanding, loss of goodwill and resentment of its members (employees) and transfer the same to the employer, an act which is hardly fair. The effect is not hard to realize. There is already enough misunderstanding and animosity between labor and capital in all countries, the Philippines not excluded. Disputes culminating in strikes are not infrequent. For that reason, to take cognizance of and solve these disputes and strikes the Court of Industrial Relations, was created, and the good offices of the Department of Labor are utilized. We do not have to add to this misunderstanding and conflict between employer and employee by transferring the problems and grudges between the union and its members, to the employer. If the employer voluntarily accepts this responsibility and believes that it can handle and discharge it without detriment to its good relations with its employees, well and good. But where it vigorously and justly declines and objects to it, I sincerely believe that it is unfair and unwise to compel it to do so, apart from the fact that there is no law or principle that sanctions the compulsion.

The Court of Industrial Relations in its resolution, Appendix D, denying the motion for reconsideration, cites Sec. 10-b(3) of Republic Act No. 602, known as the Minimum Wage Law, as additional if not conclusive authority to support its order compelling the petitioner-employer to observe land practice check-off. For a better understanding and interpretation of said law, I reproduce the same. Sec. 10, Republic Act No. 602 provides that:

* * * * *

"(b) Wages, including wages which may be paid retroactively for whatever reason, shall be paid directly to the employee to whom they are due, except:

* * * * *

"(3) In cases where the right of the employees or his union to check-off has been recognized by the employer or authorized in writing by the individual employees concerned."

The majority opinion in this Court says that although it merely supposes that the Minimum Wage Law, particularly Sec. 10-b(3), above quoted under certain conditions, makes the practice of check-off compulsory, later declares that "when the union and the employer agree, the attitude of the employees is immaterial. When the employees duly authorize the check-off, as provided by the last clause, the employer's consent is unnecessary and its recognition of the right is obligatory."

I beg to disagree to the preceding declaration, specially the first part, to the effect that when the union and the employer agree, the attitude of the employees is immaterial. In my opinion, in no case may a labor union bind its employees-members as regards deductions from their wages without their consent, by merely entering into an agreement with the employer. On that point the laws in the United States are explicit, in the sense that in order to practice check-off the employee must in writing first authorize the employer within a certain period to deduct his union dues from his wages. Without such authority, under no circumstance can there be any check-off; and if it is practiced without this authority, both the employer making the deduction and the union receiving it, are subject to criminal prosecution. The employee is the owner of his wages and the only person who can dispose of the same. Even in the Philippines, it is his written authority that constitutes one of the essential elements or requisites of a valid check-off. The employer is a mere agent of his who must first be given authority to make the deduction from his wages.

As to the second part of the majority's declaration that when the employees duly authorize the check-off as

provided by the last clause of subparagraph (3), the employer's consent is unnecessary, I also disagree, for the reason that I maintain that the consent of the employer is as necessary as the written authority of the employee, I admit that sub-paragraph (3) is misleading. The majority opinion itself says that this provision "is not clear". My understanding and interpretation of section 10, Republic Act 602, paragraph (b), subparagraph (3) is that all wages due to an employee should be paid by the employer directly to him except in case where the check-off is practiced, in which case, the amount corresponding to union dues need not be paid directly to the union. In other words, the payment of the deduction not to the employee but to his union is permissive, not mandatory.

We have a pertinent example in the Taft-Hartly Labor Management Relations Act (Sec. 302) quoted in the first part of this opinion, which declares it unlawful to pay or deliver any money to any representative of his employees who are engaged in an industry affecting commerce, but that said prohibition or illegality is not applicable where the employer has received from its employees on whose act such deduction is made, a written assignment. This legal provision tho worded (differently is similar to the provisions of section 10, par. (b), subparagraph (3) of our Republic Act No. 602. Commenting on this particular provision of the Taft-Hartly Labor Management Relations Act, Rothenberg believes that it is merely permissive. He says:

"Neither the union nor the employer may discriminate against an employee in his employment for any reason other than the non-payment of dues or initiation fees. Consequently, while check-off is permissible, providing the requirements of the Act are fulfilled, and notwithstanding that an employee may irrevocably bind himself to check-off for the specified period of time, where the employee refuses to bind himself thus, or recants his decision after the expiration of the proscribed period, he may not be prejudiced in his employment because of a provision in the collective-bargaining agreement which prescribes individual agreement to check-off as a condition of continued employment. To this extent the agreement itself would be in violation of the Act. Although the employee, by a collective-bargaining agreement, may be compelled to pay his dues and initiation fees as a condition of continued employment, he may not be involuntarily constrained to pay such dues through the medium of check-off." (Rothenberg, *op. cit.* p. 655.)

There is one aspect of this system of check-off which to me besides being of interest, is also relevant, and consequently, it may not be entirely out of place to discuss. That the interests of employer on the one hand and those of the employee and his union on the other, often conflict, we all know. Labor unions are organized to represent the interests of laborers and employees in order to better obtain concessions from the employer thru collective bargaining, even thru strikes as a last resort. In other words, the labor union is an instrument or agency used by employees and laborers to fight their battles for higher wages and better working condition against their employer. This traditional struggle between employer and employees representing capital and labor is inevitable. In the United States specially where there is no compulsory arbitration and where there are no Courts of Industrial Relations like what we have here, the employer and employees fight their battles sometimes to the bitter end, without hindrance or outside help. But they usually fight cleanly and on equal ground. It is all right for the Government to help labor by enacting legislation in the form of minimum wages, maximum hours of work, Workmen's Compensation Act, etc. But to compel the employer to help and strengthen the instrument and agency (the union) used by its adversary (labor) to fight against it (the employer), this without legal or contractual sanction, to me is unjust, unfair and unsportmanlike. It is even illogical. In effect that is what the Court of Industrial Relations and this Court thru the majority decision order and enjoin. We are compelling and ordering the management and employer against its will and in the absence of any contract, agreement or stipulations, and in the absence of any law, to practice the system of check-off, so as to strengthen and preserve the labor union by guaranteeing its finances, the employees thereby to better fight their employer. I repeat, I am unable to see the logic or justice, and I fail to recognize any principle of sportsmanship in what we are ordering to be done.

In conclusion, I believe that the system of check-off is a matter that should be left to the employer and employee

and their union to agree upon; that at present, there is no law that compels an employer to practice and observe the system of check-off, and that before we, as it were, rush into compelling the observance and practice of the check-off, we should await the promulgation of a law defining the scope and limitations of the system and providing conditions under which an employee may bind himself and authorize the employer to make deductions from his salary and give such deductions to the union, specially as to the nature of said authority whether revocable or irrevocable, the life or period of the same, etc., all for the protection of the employee, not only from the employer but from the union as well.

For the foregoing, I dissent from the majority opinion.

Padilla, J., concurs.

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