

UNITED STATES LINES, ET AL., PETITIONERS, VS. ASSOCIATED WATCHMEN AND SECURITY UNION (PTWO), RESPONDENT.

G.R. No. L-12208-11. May 21, 1958

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On February 21, 1956, the Associated Watchmen and Security Union, hereinafter referred to as respondent, filed nineteen (19) petitions for certification before the Court Of Industrial Relations with nineteen shipping companies as respondents. The United States Lines Company, American President Lines and Macondray & Co., Inc. were respondents in three of these certification cases, namely, Cases Nos. 328-MC, 3E9-MC and 33E-MC, respectively.

On March 13, 1956, while the said certification cases pending before the industrial court, the members of the respondent union, assisted by members of the Associated Workers Union (PTWO), another labor union which controls the dock workers employed by the arrastre operators, Manila Port Service, picketed the vessels for which the shipping companies are the agents in Manila for the purpose of compelling them to recognize respondent union as the collective bargaining representative of the watchmen working on board said vessels. Because of this picket line, the loading and unloading of cargoes to and from the foreign vessels in the piers at the Manila south Harbor stopped. Due to the paralization of this operation which was considered of national interest, the President of the Philippines certified the dispute to the Court of Industrial Relations. The case as certified was docketed as Case No. 10-IPA, with the shipping companies as petitioners and the Associated Watchmen and Security Union as respondent.

Joint trial was held by the industrial court of Case No. 10-IPA and the nineteen certification Cases Nos. 326-MC to 344-MC. Several watchmen agencies were allowed to intervene as respondents among them the City Watchmen and Security Agency, the Maligaya Ships Watchmen Agency and the Marine Security Agency, which later filed their answers to respondent's petition for certification. On March 16, 1956, the shipping companies filed separately a motion to dismiss on the common ground that the court has no jurisdiction over the subject-matter of the case, that the petition states no cause of action, and that there is another action pending between the same parties for the same cause. The court deferred action on this motion until the case is decided on the merits, and so the shipping companies filed their answers alleging, among other grounds, that the watchmen for whom representation is sought by respondent union were not their employees but were the employees of the intervenors-watchmen agencies and. that the alleged bargaining unit was not an appropriate bargaining unit.

In the course of the trial, respondent union asked for the dismissal of sixteen (16) of these certification cases in Case No. 10-IPA in so far as the sixteen affected shipping companies are concerned. Said petition was granted on May 23, 1956. The cases which remained were those concerning the United States Lines Company, American President Lines, and Macondray & Co., Inc., and Case No. 10-IPA in so far as these shipping companies are concerned. The watchmen agencies involved in these three cases are the Maligaya Ships Watchmen Agency of the United States Lines Company, the Marine Security Agency of the American President Lines, and Kessel &

Tagle Watchmen Agency, City Watchmen and Security Agency and the Republic Ships security Agency of Macondray & Co., Inc. After the submission of the evidence of both, parties, the court rendered its decision on December 30, 1956 declaring that it has Jurisdiction over the cases because they involve a labor dispute and holding that there is an employer-employee relationship between the different companies and the watchmen and, consequently, ordered a certification election.

The shipping companies filed a motion for reconsideration, but it was denied by the court en banc, with Judge Lanting taking no part and Judge Martinez concurring in the result. This decision and the resolution of the court en banc are now before this Court on a petition for review filed by the shipping companies.

Before discussing the issues raised in this appeal by petitioners-shipping companies, it is well to state some facts which serve as background and may give a clear view of the different relations existing between the shipping companies, the watchmen and the different watchmen agencies with which they are affiliated.

The various steamship companies which are either owners or agents of foreign vessels calling at the port of Manila had for sometime contracted with watchmen agencies to furnish watchmen on board their vessels in order to guard and protect the cargoes thereon and to keep unauthorized persons away from the ships. The United States Lines Company had a contract with the Maligaya Ships Watchmen Agency which is owned by Tomas Caraveo; the American President Lines had a contract with the Marine Security Agency which is owned by Bernard Bradbury; and Macondray & Co., Inc. had contract with three watchmen agencies, namely, Republic Ships Agency which is owned by Fernando Derupe, Tagle Ships Watchmen and Security Agency which is owned by Claro Tagle and the City Watchmen and Security Agency which is owned by Villardo Purificacion and Eduardo Murillo. The Maligaya ships Watchmen Agency is merely a business name which was registered with the Bureau of Commerce by its owner Tomas Caraveo. As of October, 1945, the agency employed forty-two (42) watchmen but later the number was reduced to thirty-nine (39). The Marine security Agency is also a business name registered with the Bureau of Commerce which is operated by Bernard Bradbury and managed by Lawrence Hunt. As of March 19, 1956, this agency employed sixty-four (64) watchmen. The Republic Ships Security Agency, Tagle Ships Watchmen and security Agency and City Watchmen and Security Agency are also business names registered with the Bureau of Commerce. The first employed forty-six (46) watchmen, the second thirty-six (36) watchmen and the third sixty-four (64) watchmen. These agencies are duly licensed by the city treasurer of Manila to engage in the business of supplying watchmen to steamship companies. They have secured permits from the Mayor of Manila to engage in business under Ordinance No. 2162 of said city. They have also secured annual permits to transact business from the Collector of Customs from 1951 up to the present time.

This arrangement between the shipping companies and the watchmen agencies existed through the years until the latter part of 1955 when the Associated Watchmen and Security Union (PTWO) presented demands upon the shipping companies asking that it be recognized as the collective bargaining representative of the watchmen employed in their ships. The shipping companies refused to accede to these demands for various reasons among which are that the watchmen are not the employees of the shipping companies but of the watchmen agencies, and that, even if they were, respondent union has not been selected by a majority of said watchmen to represent them for purposes of collective bargaining. Because of this refusal, the members of respondent union went on strike on February 18, 1956 and started picketing the gates of the piers at the Manila South Harbor. In this strike, they were joined by the members of the Associated Workers Union who also declared a sympathy strike. The inevitable result was the paralization of the work of loading and unloading the Cargoes from the ships to the piers. The strike however lost its coercive effect when Judge Macadaeg of the Court of First Instance of Manila issued an injunction on February 21, 1956 restraining the illegal picketing on the ground that there -was no labor dispute involved between the parties. Said injunction, however, was countermanded by the supreme Court when it issued

a preliminary mandatory injunction on February 28, 1956 in G. R. No. L-10333. The injunction lifted, the members of respondent union resumed the picket lines thereby again paralyzing the loading and unloading operations of the ships at the Manila South Harbor, and so the dispute "was certified by the President of the Philippines to the Court of Industrial Relations as a matter involving national interest.

The main issues posed by the shipping companies are: (1) Is the finding of the Court of Industrial Relations that the watchmen involved in these cases are employees of the steamship companies supported by substantial evidence?; (2) Is the determination by said court that the existence of "a Certain degree of control" exercised by an employer over an employee is a test of such relationship, in accordance with law?; (3) Is the Court of Industrial Relations required by Republic Act No. 875 to determine the appropriate bargaining unit in cases of petitions for certification?; and (4) Is a business name registered with the Bureau of Commerce but which is not a legitimate labor organization qualified to represent employees for purposes of collective bargaining?

The steamship companies contend that the watchmen who render guard service in their vessels are not their employees but of the intervenors-watchmen agencies who have contracts with said companies as independent contractors to guard their vessels while in the port of Manila. They claim that these watchmen are hired and discharged by the watchmen agencies and not by petitioners, their wages are determined and paid to them by the watchmen agencies, and their work is supervised by them. The industrial court, however, found that while it is a fact that the watchmen agencies recruit the watchmen, compute their wages and supervise their work, still they are not independent contractors, but mere agents which serve as extensions of the offices of the different steamship companies. This finding is now alleged as error. Counsel contends that in making this finding, the industrial court has disregarded and ignored the overwhelming evidence presented by petitioners in support of their claim that the watchmen agencies are independent contractors and the watchmen recruited by them are their employees.

Section 6 of Republic Act No. 875 provides in part that "The findings of the Court with respect to questions of fact if supported by substantial evidence on the record shall be conclusive. The appeal to the Supreme Court shall be limited to questions of law only." (Underlining supplied) the question raised in the first assignment of error evidently is one of fact so that if there is substantial evidence on record to support it, the same is conclusive upon this Court, the question then is : Are the above findings of the court a quo supported by substantial evidence?

The laws does not contain any definition of the term "substantial evidence." Neither is there a precedent in 'this jurisdiction which may serve as guide in the determination of the existence of "substantial evidence." Evidently, the legislature intended to leave this matter to the discretion and -wisdom of our courts, since it is a matter which involves many factors, facts and circumstances which cannot be predetermined but which can only arise when a litigation involving a labor dispute is submitted to the court for determination. Of course, in reaching a conclusion of fact, the court should weigh all the evidence on hand and cannot just consider the evidence of one side and disregard the evidence of the other. Much depends upon the wisdom and discretion of the court.

Precedents, however, are not wanting in America. Since our Magna Carta is of American origin, to enlighten us, we may resort to American interpretation, more so in this instance when the issue is raised for the first time. Thus, in one case, when a similar issue was raised, the Supreme Court of the United States held that "substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." In the same case it was pointed out that substantial evidence means "evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred" (National Labor Relations Board vs. Columbian Enameling and Stamping Co., Inc., 306 U.S. 292-306). Do the findings of fact made by the industrial court meet this test? Counsel for the shipping companies answers this question in the negative because, he contends, the Court of Industrial Relations disregarded and ignored the documentary

evidence submitted by them which would show that there is no employer-employee relationship between the watchmen and the shipping companies. Thus, counsel contends that if their evidence were considered it will show the following facts:

"1. Ordinance No. 216S, as amended, of the City of Manila (Exhibits '74' and '75-Macondray') which govern the business of special watchmen agencies in Manila recognizes the fact that persons employed by these special watchmen agencies to watch any premises are employees of said watchmen agencies.

"2. The watchmen are hired, disciplined and discharged by the watchmen agencies and not by petitioner companies.

"3. Their wages are determined and paid by the watchmen agencies and not by petitioner companies. They sign payrolls of the watchmen agencies.

"4. Their work aboard the vessels is supervised by the operators of these agencies. Their hours of work, place of work, shift of work, manner of doing the work, and preparation for the work are fixed and determined by the watchmen agencies and not by petitioner companies.

"5. The requirements for doing the work, such as permits from the City Mayor and the Collector of Customs and license fees paid to the City Engineer are taken care of by the watchmen agencies. Personal records and police clearances of the watchmen are also checked by the watchmen agencies, and not by petitioner companies.

"6. Petitioner steamship companies do not know who these watchmen are. Only the intervenor watchmen agencies know who they are and keep a list of these watchmen.

"7. These watchmen do not receive the special privileges such as Christmas bonus, sick leave, etc. given by petitioner companies to their employees.

"8. The watchmen agencies pay the petitioner companies the value of lost or stolen properties on board their vessels.

"9. Some watchmen agencies deduct withholding income tax from the wages they pay their watchmen and pay these tax withheld to the Bureau of Internal Revenue.

"10. The watchmen agencies make a profit out of their business. They maintain their respective offices and keep records of their employees."

But the Court of Industrial Relations, after proper evaluation of the evidence on hand, found "that the Intervenor Watchmen Agencies are not independent contractors, but are mere agents which serve as extensions of the offices of the above-mentioned Shipping Lines in the recruitment of watchmen, the computation of the watchmen's wages and the supervision of the work of the watchmen; that the Intervenor Watchmen Agencies are paid for whatever service is rendered by their watchmen." The court also found "that there is a certain degree of control that is exercised by the United States Lines, the American President Lines and the Macondray & Company over the watchmen of the Maligaya Ship Watchmen Agency, the Marine Security Agency and the City Watchmen Security Agency, respectively." Consequently, the court concluded "that there is an employer-employee relationship between the Shipping lines concerned and the watchmen of the above-mentioned Intervenor Watchmen Agencies."

These findings, we find, are supported by substantial evidence within the meaning of the law. Thus, the evidence on record discloses the following facts:

(1) On July 25, 1957, in G. R. No. L-10333, Associated Watchmen and Security Union (PTWO), et al. vs. United

States lines , et al., wherein the same questions of fact were involved, this Court said: "But no matter how studiously the complaint avoids stating that the watchmen employed by the steamship agencies are not their employees, because they are employees of the watchmen agencies, the stubborn fact remains that the said watchmen are ultimately working for the steamship companies and ultimately paid for by the latter. It may have been true that these watchmen are contracted for by the watchmen agencies, but the fact remains that their services were availed of and their compensation paid by the steamship agencies, even if such were done thru the agencies and without the direct intervention of the steamship agencies." (Underlining supplied) This is now res judicata and is conclusive upon this Court.

(2) The so-called operators or owners of the watchmen agencies are also employed by the shipping companies. Thus, the evidence shows that Tomas Caraveo, operator of the Maligaya Ships Watchmen Agency, is the head watchman of the United States lines and receives his pay as such from the company.) Bernard Bradbury, the operator of the Marine Security Agency, is the supervisor of the American President Lines and in that capacity he is paid by that company. And Fernando Derupe, operator of the Republic Ships Agency, is the head checker of Macondray & Company and also receives his pay from that company. (The evidence also shows that these agencies render exclusive guard service respectively to the companies in which their operators are employed, and they are paid for their services a commission of 10% of the wages of the watchmen.)

(3) The fact that these operators are mere agents of those shipping companies in the recruitment of watchmen, in the computation and payment of their wages, and in the supervision of their work, is also borne out by the evidence. Photostatic copies of the payrolls submitted by these operators show that they are approved by the ship officers and managers of the shipping companies before they are acted upon. Even the application forms of these operators and the identification cards given to the watchmen must bear the approval of the superintendents of the shipping companies.

(4) Although the operators of these agencies do the job of recruiting watchmen, however, the supervision over these watchmen while working on board the vessels are not only exercised by the "supervisors" of the shipping companies but also by the ship officers, the port captains, and the managers of the same firms. And these shipping firms for a time deducted and withheld from the wages of the watchmen the income taxes they were to pay under the law. And according to Esteban Buenaventura, watchman of Macondray & Company, this company paid compensation for injuries sustained by watchmen in line of duty.

All the foregoing constitute substantial evidence which supports not only the findings of the industrial court but those made by this Court in G.R. No. L-10333.

It is true that the different watchmen agencies are but business names registered with the Bureau of Commerce and they have not been properly organized as a legitimate labor organization as required by law. But this is no obstacle for the determination of the proper collective bargaining unit that would represent the watchmen in dealing with the different steamship companies for the order of the industrial court precisely directed the certification election subject to the condition that these agencies should first properly organize themselves into a legitimate labor organization. As a matter of fact, one of them, the Maligaya Ships Watchmen Agency has already organized itself into a labor union called Maligaya Ship Watchmen Union. In effect, these agencies are but mere representatives of the watchmen affiliated with them, in the same manner as any other labor union.

It is contended that the Industrial court erred in failing to determine the appropriate bargaining unit which would represent the watchmen in the three certification cases now pending before this Court, but this can be clearly inferred from the petition of respondent union wherein it is expressly requested that a collective bargaining unit be chosen to represent all watchmen who render service on the vessels of the different shipping companies

mentioned therein. No other unit has been proposed by any other party. When this petition for certification was given due course, the Court of Industrial Relations could not have intended certifying any bargaining unit other than for said ship watchmen.

The Court of Industrial Relations did not also err in ordering that in conducting the election the payrolls of the several ships showing the watchmen who rendered services from January 18, 1958 to February 18, 1956 be observed for such is the rule that is followed in certification proceedings, The payroll of the month preceding the labor dispute is the payroll to be used as voting list. But the court did not only order the use of these payrolls but also allowed to take part in the election those watchmen who are sick, on vacation, or on rotation, and even those dismissed for unfair labor practices whose status are still undefined. We see nothing improper in the rules laid down by the trial court to be followed by the Department of Labor in the conduct of the certification election. They have been adopted having in view only the law and the interest of the watchmen.

Wherefore, the decision appealed from is affirmed, with costs against petitioners.

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

Montemayor, J., reserves his vote.

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