

THE ELKS CLUB, MANILA LODGE NO. 761, B.P.O.E., PETITIONER, VS. THE UNITED LABORERS & #038; EMPLOYEES OF THE ELKS CLUB, RESPONDENT.

G. R. No. L-9747. February 27, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for a review under Rule 44 and section 6, Republic Act No. 875, of a judgment of the Court of Industrial Relations.

The petitioner Manila Lodge No. 761, B.P.O.E., owns the Elks Club that runs and operates a dining room (restaurant), kitchen and bodega for the benefit and service of the members of the Lodge. On 15 September 1953, John F. Dwyer, the Chairman of the House Committee of the petitioner, wrote a letter to the President of the respondent union advising him that separate letters had been sent to 14 of its employees, 12 of whom were members of the union, ending their services effective 16 September 1953, the Club having decided to discontinue the operation of the dining room (restaurant), kitchen and bodega because of "losses continuously suffered." In each letter a check covering one month salary for the period 16 September to 15 October 1953 was enclosed. The recipients cashed their checks.

On 3 November 1953 the respondent union, in behalf of 12 of its members employed by the petitioner who were separated from its service, filed in the Court of Industrial Relations charges of unfair labor practice against the petitioner. After a preliminary investigation, on 4 January 1954 the Court issued and caused to be served upon the petitioner and John F. Dwyer, its Chairman of the House Committee, a complaint charging them with unfair labor practice under the provisions of section 4, sub-section (a), paragraphs 1 and 4, Republic Act No. 875, and with violation of paragraph 5 of the working agreement entered into by and between the petitioner and respondent union on 20 September 1950, which provides—

That in laying off of members of the union, the party of the first part (the petitioner) will consult the president and members of the board of directors of the second part (the respondent).

In its answer the petitioner denies that it committed unfair labor practice against the complaining employees and sets up the defense that their separation was due to continuous losses in the operation of its dining room (restaurant), kitchen and bodega.

The Court referred the case to an examiner for hearing. In the course of the hearing, the examiner directed the chief accounts examiner of the Court to examine and report on the financial condition of the petitioner. The examination and report were made. Later on, also upon order of the examiner, the same chief accounts examiner submitted a supplemental report. After the parties had rested their respective case, on 12 August 1955 the Court rendered judgment holding—

* * * that the respondents committed acts of unfair labor practice as charged in the complaint. The respondent

Elks Club, the chairman of the House Committee of Lodge No. 761, or its manager, or representative, or assigns, are hereby ordered:

1. To cease and desist from interfering, coercing or restraining or in any manner harassing the members of the complainant union in the free exercise of its right under the Act, or to discriminate the members of said union;
2. To do the following affirmative acts: (a) To reinstate the complainants or the members of the complainant union who were dismissed on September 16, 1953, with back pay and other such privileges that they could have acquired were it not for their dismissal, from the time of their dismissal to the time of their reinstatement, less what they have received as separation pay in lieu of notice; (b) To post copies of this decision in the conspicuous places of the following departments of the Club: (1) Club's executive office, (2) Bulletin board of the bowling alley, (3) In the men's room and (4) In the ladies lounge; and
3. To report to this Court within 15 days from the time of the receipt of this decision, and every 10 days thereafter for six months, compliance of this Decision.

The motion for reconsideration and new trial was denied by the court in banc. Hence this appeal.

The petitioner contends that the court below erred in holding that it incurred no losses despite proof to the contrary as shown by its profit and loss statement; that to compel the petitioner to retain the services of the complaining employees despite showing that it is losing is illegal; that the trial court allowed itself to be influenced by supposed facts that have no materiality or bearing upon the questions at issue; that the closing of the petitioner's dining room (restaurant), kitchen and bodega which brought about the separation of the complaining employees from the service is not an unfair labor practice as defined in section 4, Republic Act No. 875; and the trial court erred in ordering the reinstatement of the complaining employees.

Although the evidence shows that losses had been incurred by the petitioner in the operation of the dining room (restaurant), kitchen and bodega, yet such losses which brought about the separation of the 14 employees from the service are not decisive on the question brought to this Court for determination.

The Court of Industrial Relations found that—

* * * the club is not a business proposition, run for profit; it is created¹ for the benefit and service of the members of the Lodge. * * *.

Adhering to the rule laid down in *U.S.T. Hospital Employees Association vs. Santo Tomas University Hospital*, 95 Phil., 40; *San Beda College vs. Court of Industrial Relations*, 97 Phil., 787; 51 Off. Gaz., 5636; *Quezon Institute vs. Velasco* and *Quezon Institute vs. Parazo*, 97 Phil., 905; 51 Off. Gaz., 6175; *Marcelo vs. Philippine National Red Cross*, 101 Phil., 544; *Boy Scouts of the Philippines vs. Araos*, 102 Phil., 1080; *University of San Agustin vs. Court of Industrial Relations*, 103 Phil., 926; 50 Off. Gaz., 20; and *YMCA Employees Association (NATU) vs. Victoriano et al.*, G. R. No. L-15072, minute resolution of 23 February 1959, this Court holds that the Court of Industrial Relations has no jurisdiction to hear and determine the charges of unfair labor practice filed against the petitioner. It should have dismissed them.

The judgment under review is set aside and the charges of unfair labor practice against the petitioner are dismissed, without pronouncement as to costs.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador and Endencia, JJ., concur.

D I S S E N T I N G**CONCEPCION, J.,**

I dissent for the reasons set forth in my dissenting opinion in *Boy Scouts of the Philippines vs. Araos*, *supra*.

Reyes, J. B. L., J. concur.

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