

**JULIAN DUYAG, ARMANDO OLIVARES, JOSE ECHEVARIA,
ALEJANDRO SEVILLA AND FELIMON GUINGON, PETITIONERS, VS.
HON. AMANDO G. INCIONG, AS ACTING DIRECTOR OF LABOR
RELATIONS, CARMELO C....**

G.R. No. L-47775. July 05, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the removal of private respondents as union officers due to alleged irregularities and anomalies in the administration of the affairs of the union.

On January 14, 1977, the five petitioners, who are arrastre checkers of E. Razon, Inc. in the South Harbor, Port Area, Manila as well as bona fide members of the Associated Port Checkers and Workers Union, filed with Regional Office No. 4 of the Department of Labor a complaint containing several charges against the four private respondents, who, respectively, are the president (for more than twenty years), treasurer, vice-president and auditor of the union.

The record reveals the following facts, some of which are admitted or not denied by the private respondents, while the other facts are supported by substantial evidence which is summarized in the decisions of the med-arbiter and the Director of Labor Relations:

Unauthorized increases in union dues. - For arrastre checkers, the monthly union dues amount to ten pesos, as fixed in section 2(b), article VI of the union's constitution and by-laws approved on September 5, 1969.

The monthly union dues were increased by two pesos in the resolution of September 1, 1970 and by five pesos in the resolution of March 14, 1972. However, those two resolutions are void because they were not approved by three-fourths of all the members of the board of directors, as required in article VII of the union's constitution and by-laws, dealing with amend-ments.

For March, April and May, 1973, the respondents with-out the benefit of any board resolution caused to be collected an additional one peso, thus increasing the union dues to eighteen pesos.

For April and May, 1975, the respondents caused to be collected monthly union dues amounting to nineteen pesos or another increase of one peso.

And for the first semester of 1976, a deduction of eight pesos and fifty centavos was made from the mid-year bonus without any board resolution authorizing such deduction. In prior years, no deduction for union dues was made from the mid-year bonus.

The med-arbiter concluded that the increases in union dues and the deduction from the mid-year bonus are void be-cause the same were collected in contravention of the consti-tution and by-laws.

Moreover, their collection was not covered by any check-off authorization nor evidenced by any receipt and was in contravention of the Labor Code. The amounts collected were not duly accounted for. The Labor Code provides:

"ART. 242. Rights and conditions of membership in a labor organization. - The following are the rights and conditions of membership in a labor organization:

x x x x x x x x

"(g) No officer, agent or member of a labor organization shall collect any fees, dues, or other contributions in its behalf or make any disbursement of its money or funds unless he is duly authorized pursuant to its constitution and by-laws;

"(h) Every payment of fees, dues or other contributions by a member shall be evidenced by a receipt signed by the officer or agent making the collection and entered into the record of the organization to be kept and maintained for the purpose;

x x x x x x x x

"(n) No special assessment or other extraordinary fees may be levied upon the members of a labor organization unless authorized by a written resolution of a majority of all the members at a general membership meeting duly called for the purpose. The secretary of the organization shall re-cord the minutes of the meeting including the list of all mem-bers present, the votes cast, the purpose of the special assessment or fees and the recipient of such assessments or fees. The record shall be attested to by the president;

"(o) Other than for mandatory activities under the Code, no special assessments, attorney's fees, negotiation fees or any other extraordinary fees may be checked off from any amount due to an employee without an individual written authorization duly signed by the employee. The authorization should specifically state the amount, purpose and beneficiary of the deduction; and

x x x x x x x x."

The foregoing legal provisions apply squarely to the unauthorized deductions from the wages of the arrastre checkers.

For such unauthorized collection of union dues, the responsibility of respondent Ricardo R. Manalad, as union president, is not denied.

Withholding of union members' share in the profits amounting to P18,640.09. - E. Razon, Inc., the arrastre operator, paid to the union on December 18, 1973 the sum of P25,684.61 as its share of the profits (profit-share) for the period from May to October, 1973. Instead of distributing the whole amount to the union members, the respondents paid to them only P19,974 and retained the balance of P5,710.61 which had not been accounted for.

The med-arbiter found that other amounts were withheld by the respondents from the union's profit-shares for subsequent periods. The total amount withheld is P18,640.09 or P18,570.63, as shown in page 8 of private respondents' memorandum.

With specific reference to the profit-share amounting to P22,559.50 paid by E. Razon, Inc. for the period from November, 1973 to February, 1974, the respondents deposited the amount in the account of the union's Cooperative Credit Union of which respondent Manalad was also the president. Later, the respondents withdrew the said amount, distributed among the union members the sum of P20,848 and withheld the balance of P1,711.50, which respondent Manalad and the union treasurer, respondent Honorato K. Leaño, appropriated as follows:

Manalad - Filipinas Bank and Trust

Company, Manila Hilton Branch Check

No. 352966 dated March 22, 1975, drawn to cash

P1,000.00

Leaño - Filipinas Bank and Trust

Company, Manila Hilton Branch Check

No. 352967 dated March 22, 1975, drawn to cash

559.50

Leaño - Filipinas Bank and Trust

Company, Manila Hilton Branch Check

No. 352968 dated March 22, 1975, drawn to cash

152.00

TOTAL -----

P1,711.50

The med-arbiter found that the modus operandi re-sorted to by the respondents with respect to the profit-share amounting to P22,559.50 was followed by them as to the deductions from the profit-shares for the other periods.

He surmised that the union officers must have deducted a considerable amount from the profit-shares because they started that practice in 1966 when E. Razon, Inc. and Guacods Marine Terminals, Inc. commenced the profit-share program.

However, during the pendency of the case in this Court, the private respondents submitted a resolution dated November 25, 1977 wherein more than ninety percent of the union members allegedly ratified the deductions from the mid-year bonus and profit-shares and authorized future deductions (pp. 921 and 1615-6, Rollo).

Although the said resolution rendered this aspect of the case moot, it cannot obliterate the violations of the constitution and by-laws and the Labor Code already committed by respondents Manalad and Leaño. The deduction of union dues from the mid-year bonus and the withholding of part of the profit-shares were illegal and improper at the time they were made.

Disbursements exceeding P500 which were not authorized by the board of directors. - Section 4(d), article IV of the union's constitution and by-laws provides that the board of directors may "authorize and approve all disbursements from union fund where the amount involved is more than P500 and without that authorization or approval in due form, no such disbursements will be allowed by the Treasurer".

Respondent Manalad made the following disbursements of union funds in an amount exceeding P500 without the requisite authorization of the board of directors:

Evidence

Date

Amount Disbursed

Annex S -- March 26, 1969

-- P1,400.00

Annex T -- June 1, 1970

-- 1,000.00

Annex U to W -- July 13, August 6 and Sept. 24, 1971

-- 3,111.40

Annexes Y, X, Z March 5 and 30,

and Z-1 and AA

April 10, May 18,

to CC -- Aug. 30, Sept. 20

and Dec. 31, 1973

-- 7,028.00

Annex DD -- Dec. 6, 1974

-- 1,000.00

Annex R -- June 12, 1976

-- 900.00

Respondents Manalad and Leaño, also without prior board authorization, withdrew on twenty-three occasions union funds in the aggregate sum of P43,026.80 deposited in Savings Account No. 5953 of the Manila Hilton Branch of the Filipinas Bank and Trust Company (Annexes GG to GG-22).

The sum of P3,500 was paid to respondent Amparo pursuant to a resolution dated July 12, 1971 which was approved by only six members of the board of directors, instead of four-teen members, as required in the constitution and by-laws of the union.

Maladministration of welfare fund. - Respondent Manalad allowed the application of the funds of the union's Welfare Plan to the following extraneous purposes:

- On March 31, and April 6 and 14, 1973, the sum of P5,000 was taken from the Pacific Memorial Plan collections and loaned to the union's Cooperative Credit Union, Inc.
- On October 7, 1973, the sum of P1,500 was loaned to the same cooperative for organizational expenses.
- On August 7, 1971, the sum of P200 was taken from the welfare fund for advance representation expenses of Manalad.
- On December 18, 1971, the sum of P1,600 was taken from the welfare fund to cover cash advances to Marcelino Melegrito to be repaid upon the release of his credit union loan on March 8, 1973.

According to the complainants, those disbursements were not authorized by the board of directors.

Respondents Manalad, Amparo and Puerto approved the payment of retirement benefits amounting to (1) P3,500 to Miguel de Leon on June 21, 1976; (2) P7,000 to Eduardo Topacio on July 30, 1976 and (3) P7,000 to Roberto Victoria on August 4, 1976.

According to the complainants, the three employees did not deserve retirement benefits because they had been dismissed for prolonged absences and they had ceased to be members of the Welfare Plan.

Membership in another union. - Respondents Manalad, Amparo and Puerto are also officers of the Philippine Technical Clerical Commercial Employees Association, another labor union.

Their membership in the latter union is manifestly violative of section 9, article III of the constitution and bylaws

of the arrastre checkers' union which provides that an elected officer shall be deemed disqualified if he becomes a member of another organization.

In this connection, the complainants presented evidence to prove that because of that interlocking stewardship of the arrastre checkers' union and the other union, the respondents improperly channelled to the latter funds of the arrastre checkers' union.

Thus, on December 17, 1975 and March 29, June 9 and August 31, 1976, Manalad approved payments by the arrastre checkers' union to the other union of the sums of P1,000, P250 and P1,250.

Conflict of interest on the part of Manalad. - Respondent Manalad organized a family corporation known as the Comet Integrated Stevedoring Services, Inc. whose rank-and-file employees are also members of the arrastre checkers' union. Thus, Manalad has functioned in the dual capacity of labor leader and employer, not to mention the fact that he is also an officer of another labor union, PTCCEA.

As head of the arrastre checkers' union, he issued customs passes for the checkers of his family-owned stevedoring firm to facilitate their rendition of services to some shipping companies.

The complainants contend that such a situation has involved Manalad in a conflict of interest: if he favors his stevedoring firm, he is bound to jeopardize the interests of the arrastre checkers' union of which he is the president.

Under these facts, the med-arbiter in his decision of August 29, 1977 ordered the removal of the private respondents as officers of the union and directed them to reimburse to the members thereof the amounts illegally collected from them.

The private respondents appealed to the Director of Labor Relations who in his decision of November 9, 1977 reversed the decision of the med-arbiter.

The Director held that resort to intra-union remedies is not necessary and that the five complainants have the right and personality to institute the proceeding for the removal of the respondents, to recover the amounts illegally collected or withheld from them and to question illegal disbursements and expenditure of union funds.

However, the Director ruled that the power to remove the union officers rests in the members and that the Bureau of Labor Relations generally has nothing to do with the tenure of union officers which "is a political question".

The Director further ruled that his office has jurisdiction to look into the charge of illegal disbursements of union funds. He directed the Labor Organization Division of the Bureau to examine the books of account and financial records of the union and to submit a report on such examination.

The motions for reconsideration filed by the parties were denied by the Undersecretary of Labor in his resolution of January 25, 1978 (he was then Acting Director of Labor Relations). He ruled that the expulsion of union officers is the prerogative of the members of the union.

That decision of the Director is assailed in these special civil actions of certiorari and prohibition filed on February 10, 1978. The petitioners pray that the four union officers be expelled.

The case has been simplified by the admission of the private respondents in page 13 of their memorandum that the Bureau of Labor Relations has unquestionably the power to remove erring union officers under the last paragraph of article 242 of the Labor Code.

That paragraph provides that any violation of the rights and conditions of union membership, as enumerated in paragraphs (a) to (p) of article 242, "shall be a ground for cancellation of union registration or expulsion of officer

from office, whichever is appropriate. At least thirty percent (30%) of all the members of a union or any member or members specially concerned may report such violation to the Bureau (of Labor Relations). The Bureau shall have the power to hear and decide any reported violation to mete the appropriate penalty".

Nevertheless, the private respondents qualify their admission with the opinion that the Bureau of Labor Relations should remove the guilty union officers only when the members could not do so under the union's constitution and by-laws and that the removal should be subject to review by the Minister of Labor.

The Office of the Solicitor General, as *amicus curiae*, has taken the unqualified stand that the Bureau is empowered to expel from the union any officer found guilty of violating any of the rights and conditions of union membership specified in article 242.

In this appeal, the Director of Labor Relations maintains his view that the power of removal belongs to the union members, since the power to choose the officers belongs to them, and that the mediator and the Director should simply assist the union members in enforcing its constitution and by-laws.

We hold that the Labor Arbiter did not err in removing the respondents as union officers. The membership of Manalad and Puerto in another union is a sufficient ground for their removal under the constitution and by-laws of the union. In Manalad's case, his organization of a family-owned corporation competing with the union headed by him renders it untenable that he should remain as union president.

We hold further that Manalad, Puerto and Leaño violated the rights and conditions of membership in the union within the meaning of article 242. Hence, on that ground their expulsion from office is also justified.

The petitioners are entitled to the refund of the union dues illegally collected from them. The union should make the proper refund.

The Director of Labor Relations erred in holding that, as a matter of policy, the tenure of union officers, being a "political question", is, generally, a matter outside his Bureau's jurisdiction and should be passed upon by the union members themselves.

After hearing and even without submitting the matter to the union members, erring union officials may be removed by the Director of Labor Relations as clearly provided in article 242.

The Director should apply the law and not make policy considerations prevail over its clear intent and meaning. "The majority of the laws need no interpretation or construction. They require only application, and if there were more application and less construction, there would be more stability in the law, and more people would know what the law is." (*Lizarraga Hermanos vs. Yap Tico*, 24 Phil. 504, 513).

The labor officials should not hesitate to enforce strictly the law and regulations governing trade unions even if that course of action would curtail the so-called union autonomy and freedom from government interference.

For the protection of union members and in order that the affairs of the union may be administered honestly, labor officials should be vigilant and watchful in monitoring and checking the administration of union affairs.

Laxity, permissiveness, neglect and apathy in supervising and regulating the activities of union officials would result in corruption and oppression. Internal safeguards within the union can easily be ignored or swept aside by abusive, arrogant and unscrupulous union officials to the prejudice of the members.

It is necessary and desirable that the Bureau of Labor Relations and the Ministry of Labor should exercise close and constant supervision over labor unions, particularly the handling of their funds, so as to forestall abuses and venalities.

Hence, the Director acted correctly in ordering an examination of the books and records of the union. The examination should include a verification of the charge that the petty loans extended by the union to its members were usurious and that the fee for the issuance of checks is unwarranted since the loans were made in cash.

WHEREFORE, (1) that portion of the decision of the med-arbiter, removing respondents Manalad, Leaño and Puerto as union officers, is affirmed. (Respondent Amparo is no longer an officer of the union.)

(2) We also affirm that portion of the decision of the Director of Labor Relations, directing the Bureau's Labor Organization Division to examine the books of accounts and records of the Associated Port Checkers and Workers Union and to submit a report on such examination within a reasonable time.

(3) We declare that the five petitioners are entitled to a refund of the union dues illegally collected from them. The Director of Labor Relations is ordered to require the union to make the refund within twenty days from notice to his counsel of the entry of judgment in this case.

Costs against the private respondents.

SO ORDERED.

Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.

Barredo, (Chairman), J., I concur due to the peculiar circumstances of this case. Otherwise, he inclined in favor of union autonomy and less interference by the government, much less of the employer.

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