

MALIGAYA SHIP WATCHMEN AGENCY, MARINE SECURITY AGENCY, AND CITY WATCHMEN AGENCY, PETITIONERS, VS. ASSOCIATED WATCHMEN AND SECURITY UNION (PTWO), RESPONDENT.

G.R. No. 12214-17. May 28, 1958

Ponente: LABRADOR, J.

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LABRADOR, J.:

The above-entitled cases, are the appeals of the intervenors in Court of Industrial Relations Certification Cases No. 328-MC entitled "Associated Watchmen and Security Union (PTWO), Petitioner vs. United States Lines, Employer, Maligaya Ships Watchmen Agency, Intervenor," No. 329-MC entitled "Associated Watchmen and Security Union (PTWO), Petitioner vs. American President Lines, Employer, Marine Security Agency, Intervenor," No. 332-MC entitled "Associated Watchmen and Security Union (PTWO), Petitioner vs. Macondray & Co., Employer, City Watchmen Security Agency, Intervenor," and of the respondents in case No. 10-IPA entitled "United States Lines, et al., Petitioner vs. Associated Watchmen and Security Union, Catalino Rosales and Roberto S. Oca, respondents. The findings of fact of this Court in all the above-entitled cases are as follows:

"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. The 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." (Decision in United States Lines, et al. vs. Associated Watchmen and Security Union (PTWO), G. R. Nos. L-12208-11, promulgated May 21, 1958.)

The issues raised by the appellants in this Court are as follows: (1) that the petitioners, are independent contractors; (2) that the watchmen or security guards of the watchmen agencies-petitioners are not employees of the shipping- firms or steamship agencies; and (3) that the procedure of certification by the Court of Industrial

Relations is not proper.

On the first issue petitioners make the following contention:

"The Maligaya Ship Watchmen's Agency has a contract to supply guards for the ship represented by the United States Lines; the Marine Security Agency has a contract to supply guards for the ships represented by the American President Lines; and the City Watchmen & Security Agency is one of the three agencies which have contracts to supply guards for the ships represented by Macondray & Co., Inc. Under these contracts, the Maligaya Ship Watchmen's Agency and the Marine Security Agency are required to post bonds as security for the faithful performance of their obligations thereunder. Out of these contracts with the shipping firms mentioned, the three petitioners in this case make profits, enough to make them remain in the business; and this is so in spite of the fact that they pay or reimburse the shipping firms concerned for losses of property on board vessels being guarded by their men while docked at the port of Manila." (Petition for Review, p.9)

Assuming arguendo that contracts exist between the shipping lines or their agents and the watchmen agencies, said contracts refer to the recruitment of watchmen or laborers, as the Court of Industrial Relations found, which finding we hereby declare to be correct. The petitioners mistake these contracts, that they had entered into for the recruitment of watchmen, for a contract to perform the duty or obligation of watching the ships and their cargo. The watchmen agencies-petitioners did not contract for the guarding of the ships and their cargo, but only to furnish the watchmen.

An independent contractor is one who undertakes to do a piece of work for his own account, under his own responsibility, with minimum interference on the part of the other contracting party, in which case persons employed by said independent contractor do not become laborers or employees of the other contracting party. Insofar as the contract to recruit watchmen is concerned, the watchmen agencies are independent contractors and the members of said agencies do not become, as such, laborers or employees of the shipping lines or their agents. But insofar as the guarding of the ships and their cargo is concerned, there never were contracts between the shipping lines and their agencies, on the one hand, and the watchmen agencies-petitioners, on the other. The guarding of each ship and its cargo was never the subject of contract between one and the other. The watchmen agencies never undertook for a specified sum the guarding of the vessels and their cargo, were never paid therefor a lump sum without reference to the number of watchmen performing the duties of guarding and the wages that each should receive for his work. Furthermore, We have found in our decision that (1) "Tomas Caraveo, operator of the Maligaya Ships Watchmen Agency, is the headwatchmen of the United States Lines and receives his, pay as such from the company;" (2) "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 (3) "Fernando Derupe, operator of the Republic Ships Agency, is the headchecker of the Macondray & Company and also receives his pay from that company." (Decision in *U. S. Lines, et al. vs. Associated Watchmen and Security Union [PTWO]*, supra, p. 11.), and that "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." The operators are mere agents of the shippings companies in the recruitment of watchmen, in the computation and payment of their wages and in the supervision of their work. Even the application forms of these operators (watchmen agencies) and the identification cards given to the watchmen must have the approval of the superintendents of the shipping companies.

The above facts and circumstances conclusively show that the watchmen agencies-petitioners are not and may not be considered independent contractors insofar as the guarding of the ships and their cargo is concerned, nor do the watchmen of the agencies by the mere fact of their membership in said agencies become laborers or employees of

the shipping lines or their agents.

The finding hereinbefore made concludes the answer to the third issue. As members of the watchmen agencies do not become laborers or employees of the shipping lines or their agents by mere membership in such watchmen agencies, and can only become laborers or employees paid by the shipping lines or agencies when actually working as watchmen thereof, it stands to reason that only those who were actually employed and paid for as watchmen are the laborers or employees of the shipping lines and their agents and should take part in the certification elections. The decision of the Court of Industrial Relations that they alone should be certified and be considered as having the right to participate in the elections, is therefore correct, there being no actual relation of employer and employee or laborer between the shipping lines and the members of the watchmen agencies by the mere fact of such membership. Members of the watchmen agencies who were not actually employed and paid for as watchmen must necessarily be excluded from participating in the elections.

The petition for review in the above-entitled cases is hereby denied, and the decision of the Court of Industrial Relations affirmed in toto with costs against the petitioners.

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

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